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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Larry B. Hyman, Circuit Court Judge

Case No. 2016-CP-26-4464

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JUN 27 2018
SC Court of Appeals

Jill Keck Humphries, Dennis L. Johnson, Jr., Delona Penny Rice, Whitmel L. Brown, Jr.,
Gary Steven Robinson, Elizabeth Erin Humphries, and Nancy H. Johnson, ... Plaintiffs,

v.

Tilghman Beach and Racquet Club Condominium Association, Inc., James H. Austin, III,
Daniel G. Coe, C. Doug Madison, George P. White and Steele Brice Windle, III, individually
and as Members of the Board of Directors of the Tilghman Beach and Racquet Club
Condominium Association, Inc., ... Respondents,

v.

Great American Insurance Company Appellant.

APPELLANT'S EMERGENCY MOTION FOR PROTECTIVE ORDER

Pursuant to Rules 205, 240, and 241, SCACR, Great American Insurance Company
("Appellant") seeks an emergency protective order from this Court protecting Appellant from
discovery in the underlying matter during the pendency of this appeal.

BACKGROUND

The subject case was filed on July 7, 2016 and arises out of a group of homeowners'
assertions that Respondents failed to maintain and repair damage to the common elements at
Tilghman Beach and Racquet Club ("Property"). Plaintiffs amended their complaint three

times to, among other things, drop class action and derivative claims after Respondents attempted to remove the case to federal court, add additional grounds for Plaintiffs' negligence and declaratory judgment claims, and add separate claims for negligence and wrongful *ultra vires* acts as to certain individual Respondents as well as additional claims for indemnification and appointment of a receiver as to the Association.

With the lower court's permission, on May 2, 2017, Respondents filed a Third-Party Complaint against Appellant, asserting causes of action for breach of contract, attorneys' fees under S.C. Code Ann. § 38-59-40, bad faith, and seeking a declaratory judgment regarding Appellant's duty to defend and indemnify. Appellant filed an Answer and Counterclaims on July 10, 2017.

On July 14, 2017, Appellant filed a Motion to Dismiss or in the Alternative Motion to Sever the third-party action from the underlying case. *See Exhibit 1*. Appellant based its arguments on Rule 14(a), SCRCP, asserting its potential liability to Respondents was founded on direct rather than derivative liability and should be dismissed. *Id.* at pp. 3-4. Alternatively, Appellant asserted the third-party action should be severed from the underlying case, as the primary claims in the underlying case involved "questions of homeowner governance and complex, fact-intensive issues of property damage" while claims in the third-party action hinged upon construction of insurance policies. *Id.* at pp. 4-5.

Respondents opposed Appellant's Motion, arguing Respondents' declaratory judgment claim in the third-party action, asserting a duty to indemnify, asserted a derivative rather than direct claim. *See Exhibit 2*, Respondents' Memorandum in Opposition to Motion to Dismiss, or in the alternative, Motion to Sever, filed August 11, 2017, at p. 7. In addition, Respondents argued the third-party action should not be severed because "[Appellant's]

joinder does not ‘unnecessarily complicate’ the litigation as the anticipated discovery in the underlying action will likely be directly relevant to whether [Appellant] has a duty to provide coverage in the underlying action.” *Id.* at p. 3. On February 23, 2018 the Court denied Appellant’s motion, adopting Respondents’ reasoning as its own. *See Exhibit 3*, Order denying Motion to Dismiss, or in the alternative, Motion to Sever.

On January 15, 2018, Respondents filed a Motion for Judgment on the Pleadings as to Appellant’s alleged duty to defend. *See Exhibit 4*, Motion and Memorandum in Support of Motion for Judgment on the Pleadings. Following briefing and oral argument on the motion (*Exhibit 5*, Memorandum in Opposition to Motion for Judgment on the Pleadings), the lower court ruled on June 15, 2018, that Appellant “had, and has, a duty to defend Respondents against the allegations in Plaintiffs’ original Complaint in this matter, and the allegations in the Complaints subsequently filed by Plaintiffs.” *See* Order on Appeal at p. 2. The Court did not rule on: (1) “damages that might have been caused to [Respondents]” by Appellant’s “failure to defend them in this matter”; (2) “whether [Appellant] has a duty to indemnify [Respondents] from any judgment that Plaintiffs might obtain in this case”; or (3) “who has the right to control the defense” as between Appellant, [Respondents], or their commercial general liability carrier, Lexington Insurance Company.¹ *Id.*

As predicted in Appellant’s Motion to Dismiss, or in the alternative, Motion to Sever (*Exhibit 2* at p. 4), discovery in the underlying action has been time consuming and expensive. Indeed, Respondents attorneys’ fees in the case are in excess of one million dollars.² Tens of thousands of pages of document production has been exchanged and fifteen

¹ Lexington has agreed to provide Respondents with a defense to the Plaintiffs’ claims.

² *See Exhibit 6*, excerpts from the deposition testimony of Plaintiffs’ expert witness, Michael Parades, PCAM (Vol. II, June 5, 2018), at p. 359, line 5 – p. 362, line 12; 395, line 20 – p. 96, line 5; p. 406, lines 11-25 (referencing legal fee expenses as stated on Association’s financial statement and

witnesses have been deposed over multiple days. Ten additional witnesses have had their depositions noticed. Appellant has been forced to participate in this sweeping discovery despite its counterclaim seeking rescission of one of the underlying policies and its assertion that at least two exclusions in the underlying policies extinguish Appellant's duties to defend and indemnify. Moreover, Respondents are pursuing discovery directly related to Appellant's purported duty to defend as well as their claims for bad faith and breach of contract. Respondents have scheduled video depositions of five of Appellant's employees for July 9, 10 and 11, 2018 in Chicago, Illinois. See **Exhibit 7**, Amended Deposition Notices.

On June 22, 2018, Appellant filed a timely notice of appeal of the lower court's Order Granting Respondents' Motion for Judgment on the Pleadings. Given the procedural posture of the case, Appellant should be protected from all discovery in at least the third-party action as well as discovery in the underlying action until a resolution of this appeal pursuant to the automatic stay provided by Rule 241, SCACR.

ARGUMENT

I. THIS COURT'S EXCLUSIVE JURISDICTION OVER THE APPEAL AND THE AUTOMATIC STAY IN RULE 241, SCACR, STAYS ALL DISCOVERY.

Upon service of a notice of appeal, the appellate court obtains exclusive jurisdiction over the appeal. Rule 205, SCACR. The lower court retains jurisdiction to proceed on "matters not affected by the appeal." *Id.* Rule 241, SCACR imposes an automatic stay upon "matters decided in the order, judgment, decree or decision on appeal," subject to certain exception that are inapplicable here. The question presented by this motion is whether

testifying "I'm amazed at the dollar value of the legal fees and we're still in deposition[s]. I'm just amazed and, you know, I would strongly urge at some point somebody do a forensic audit of the legal – the contract and all the legal fees and just make sure they're all appropriately supported...."; "I think personally from my experience that the amount of legal fees charged to date seem abnormally high for something where we're just still in the deposition stage.").

Appellant's appeal of the lower court's order finding Appellant has a duty to defend Respondents with respect to the underlying claims automatically stays all discovery in the third-party action, the underlying action, or both. For the following reasons, Appellant submits that all discovery should be stayed by this appeal.

Rule 241, SCACR, does not provide a procedure for settling disputes over the applicability or scope of the automatic stay. When no procedure is specified, authority to resolve such a dispute vests in the appellate court in which the appeal is pending, not the circuit court. Jean Hoefer Toal, *Appellate Practice in South Carolina* at p. 344 (3d ed. 2016) (citing *Kearney v. Allen*, 287 S.C. 324, 338 S.E.2d 335 (1985) (interpreting former Supreme Court Rule 41 and holding when no procedure is specified, authority to resolve disputes over whether an exception to the automatic stay is vested in the Supreme Court, not the circuit court); *see also State v. Cooper*, 342 S.C. 389, 536 S.E.2d 870 (2000) (modifying *Kearney* to hold Court of Appeals has the power and the authority to rule upon issues arising under the SCACR, including those arising under the predecessor to Rule 241)).

In *Tillman v. Oakes*, 398 S.C. 245, 728 S.E.2d 45 (Ct. App. 2012), this Court held “the lower court’s power to proceed is determined by whether the issue sought to be litigated in the lower court during the appeal is a ‘matter[] affected by the appeal’ under Rules 205 and 241(a).” *Id.* at 255, 728 S.E.2d at 51 (citation omitted). In *Stokes-Craven Holding Corp. v. McKenzie*, 416 S.C. 517, 534, 787 S.E.2d 485, 494 (2016), the Supreme Court expressly stated: “Rule 205 divests the lower court . . . over ‘matters affected by the appeal,’ which necessarily would include a legal . . . action that is based on the outcome of the appealed verdict, judgment, or ruling.”

In the case at bar, the “issue[s] sought to be litigated in the lower court” include: (i) the underlying claims asserted by Plaintiffs for Respondents’ alleged failure to maintain and repair damage to the common elements at the Property; and (ii) the third-party claims asserted by Respondents for bad faith, breach of contract, and recovery of attorneys’ fees against Appellant. For obvious reasons, issues in the third-party action are “matters affected by the appeal,” as Respondents’ damages for bad faith, breach of contract, and reimbursement of attorneys’ fees are founded upon the existence of Appellant’s duty to defend. If no such duty exists, or if the lower court’s decision finding such a duty exists is reversed for later proceedings, it would be a waste of judicial resources, time, and money for the parties to conduct discovery on these issues during the pendency of this appeal.

For similar reasons, as Respondents have themselves argued,³ and the lower court agreed,⁴ discovery in the underlying action is inseparably intertwined with the third-party case and are therefore matters affected by this appeal.⁵ Moreover, Respondents’ defense of the allegations in the underlying action, including control of the defense, will likely be affected by “the outcome of the appealed verdict, judgment, or ruling” and therefore constitutes “matters affected by the appeal.” *See Stokes-Craven Holding Corp. v. McKenzie*,

³ “Despite [Appellant’s] protestations to the contrary, [Appellant’s] joinder does not ‘unnecessarily complicate’ the litigation as the anticipated discovery in the underlying action will likely be directly relevant to whether [Appellant] has a duty to provide coverage in the underlying action.” **Exhibit 2** at p. 3.

⁴ “This Court believes that the facts developed in the underlying action brought by the Plaintiffs will directly affect the coverage issues. Whether [Appellant] has a duty under the Insurance Policy to defend [Respondents] or to indemnify them will necessarily be contingent upon the facts of the Plaintiffs’ case. In reviewing the pleadings and in listening to the arguments of counsel, this Court finds that the issues in the Third-Party Complaint are sufficiently related and relevant to the issues raised in the Third Amended Complaint....” **Exhibit 3** at p. 5.

⁵ Indeed, some of the discovery in the underlying action, including the deposition testimony of Plaintiffs’ expert witness, Michael Parades, has touched upon Appellant’s duty to defend and alleged bad faith. *See Exhibit 6*, excerpts from Parades’ Depo. Trans. (Vol. I, Feb. 6, 2018), p. 290, line 14 – p. 291, line 1 (testifying Appellant “needs to be defending [the underlying suit].” Further stating, “[I am] familiar with that agent and some of the products that he offers” and opined Appellant’s refusal to defend Respondents “[m]ight make a really good suit for the Association.”).

416 S.C. at 534, 787 S.E.2d at 494.

The Supreme Court's decision in *Cousar v. New London Eng'g Co.*, 306 S.C. 37, 410 S.E.2d 243 (1991), permitting discovery on underlying claims to proceed during an appeal, is distinguishable. In that case, the Court held the lower court had jurisdiction to proceed with discovery in the underlying suit despite the defendant/third-party plaintiff's appeal of an order denying its motion to amend to add third-party defendants on claims for contribution. Inherent in the Court's ruling was that the defendant would be able to go after third-party joint tortfeasors for contribution in separate actions *after* it made payment to plaintiff on any settlement resolving the case or final judgment. The matter on appeal—whether joint tortfeasors could be brought into the underlying action on a third-party complaint—was not germane to the underlying litigation. Here, it is, as acknowledged by Plaintiffs' expert witnesses, Respondents, and the lower court.⁶ Moreover, if this Court finds Appellant did not have a duty to defend, or it reverses the lower court's finding as to the existence of such a duty, Appellant should be dismissed from the underlying action in its entirety.

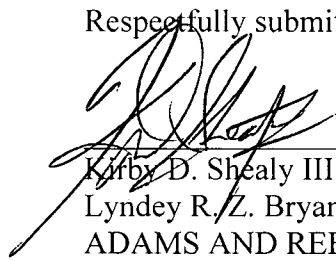
CONCLUSION

For the reasons stated above, Appellant seeks an order from this Honorable Court protecting Appellant from further discovery in both the third-party action and the underlying case pursuant to Rule 241, SCACR.

[SIGNATURE ON FOLLOWING PAGE]

⁶ *Supra*, notes 7, 8, and 9.

Respectfully submitted,



Kirby D. Shealy III
Lyndey R./Z. Bryant
ADAMS AND REESE LLP
1501 Main Street, 5th Floor
Columbia, South Carolina 29201
(803) 254-4190
kirby.shealy@arlaw.com
lyndey.bryant@arlaw.com
Attorneys for Appellant

June 26, 2018.

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

Jill Keck Humphries, Dennis L. Johnson, Jr.,)
Delona Penny Rice, Whitmel L. Brown, Jr.,)
Gary Steven Robinson, Elizabeth Erin)
Humphries, and Nancy H. Johnson,)

Plaintiffs,)

vs.)

Tilghman Beach and Racquet Club)
Condominium Association, Inc., James H.)
Austin, III, Daniel G. Coe, C. Doug)
Madison, George P. White and Steele Brice)
Windle, III, individually and as Members of)
the Board of Directors of the Tilghman)
Beach and Racquet Club Condominium)
Association, Inc.,)

Defendants.)

Tilghman Beach and Racquet Club)
Condominium Association, Inc., James H.)
Austin, III, Daniel G. Coe, C. Doug)
Madison, George P. White and Steele Brice)
Windle, III, individually and as Members of)
the Board of Directors of the Tilghman)
Beach and Racquet Club Condominium)
Association, Inc.,)

Third-Party Plaintiffs,)

vs.)

Great American Insurance Company,)

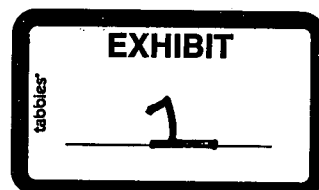
Third-Party Defendant.)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL
CIRCUIT

Civil Action No. 2016-CP-26-04464

**THIRD-PARTY DEFENDANT'S
MOTION TO DISMISS OR IN THE
ALTERNATIVE MOTION TO SEVER**

**TO: CHARLES B. JORDAN, JR., ESQUIRE, ATTORNEY FOR THIRD-PARTY
PLAINTIFFS:**



YOU WILL PLEASE TAKE NOTICE that the undersigned attorneys for Third-Party Defendant Great American Insurance Company ("Great American") will move before this Court at such time and place as may be set by the Court for an Order dismissing the above-captioned third-party complaint ("Third-Party Complaint") pursuant to Rules 12(b)(6) and 14(a) of the *South Carolina Rules of Civil Procedure* or, in the alternative, for an Order pursuant to Rule 14(a), SCRCP, severing the Third-Party Complaint filed by Tilghman Beach and Racquet Club Condominium Association, Inc., James H. Austin, III, Daniel G. Coe, C. Doug Madison, George P. White and Steele Brice Windle, III, individually and as Members of the Board of Directors of the Tilghman Beach and Racquet Club Condominium Association, Inc. ("Third-Party Plaintiffs"). This motion is based on the authorities referenced in the memorandum of law that follows.

BACKGROUND

Great American issued a Community Association Solution Insurance Policy to Tilghman Beach & Racquet Club HOA, Inc., effective between February 10, 2016 and February 10, 2017, bearing policy number EPP3654704 (the "Policy"). *See* Third-Party Complaint, Exhibit H, pp. 3.

On March 8, 2017, Plaintiffs filed a third amended complaint with this Court against Third-Party Plaintiffs ("Third Amended Complaint"). Plaintiffs allege the Tilghman Beach and Racquet Club Condominium Association, Inc. and its board of directors: (1) failed to provide maintenance and repairs to the common elements of a condominium regime, and (2) failed to set aside reserve funds for such repairs, pursuant to the terms of the condominium regime's master deed. They assert claims for negligence/gross negligence, breach of master deed, declaratory judgment, injunctive relief, specific performance, *ultra vires* conduct, indemnification and

appointment of a receiver by the Circuit Court. All of these claims arise from the Third-Party Plaintiffs' alleged failure to maintain and repair the condominium regime's common elements.

On May 2, 2017, Third-Party Plaintiffs filed the above-captioned Third-Party Complaint with this Court, alleging the following causes of action against Great American: breach of contract, recovery of attorney's fees under Section 38-59-40 of the South Carolina Code, bad faith and a declaratory judgment declaring that Great American owes Third-Party Plaintiffs a duty of defense and indemnification pursuant to the Policy in connection with the causes of action alleged against Third-Party Plaintiffs in the Third Amended Complaint.

ARGUMENT

I. The Third-Party Complaint is improper because it alleges that Great American is directly liable to Third-Party Plaintiffs.

South Carolina Rule of Civil Procedure 14(a) states that "[a]t any time after commencement of the action a defending party, as a third-party plaintiff, may cause a summons and complaint to be served upon a person not a party to the action who is or may be liable to him for all or part of the plaintiff's claim against him."

In analyzing Rule 14, the South Carolina Supreme Court has stated "Under Rule 14, the third-party plaintiff must have a substantive claim against the third-party defendant *founded upon derivative liability*" (emphasis added). *First Gen. Servs. of Charleston, Inc. v. Miller*, 314 S.C. 439, 442, 445 S.E.2d 446, 447 (1994) (citing Wright, Miller & Kane, *Federal Practice and Procedure: Civil 2d* § 1446). "A third-party claim may be asserted under S.C. R. Civ. P. 14(a) only when the third party's liability is in some way dependent on the outcome of the main claim or when the third party is secondarily liable to defendant." *Beach v. Hudson*, 298 S.C. 424, 425, 380 S.E.2d 869, 870 (Ct. App. 1989); *see also Laughlin v. Dell Fin. Servs.*, 465 F. Supp. 2d 563, 567 (D.S.C. 2006) (federal Rule 14(a) does not allow a defendant to assert a separate and

independent claim against third-party defendant even though claim arises out of the same general facts as main claim). Direct liability places liability on defendants for their own acts as opposed to derivative liability, which imposes liability on a defendant for the acts of others. *Musick, Peeler & Garrett v. Employers Ins.*, 508 U.S. 286, 296, 113 S. Ct. 2085, 2090 (1993).

The third-party claims in this case are not based in derivative liability. Because they stand on their own, and are not dependent upon the outcome of the Plaintiffs' claims against the Defendants, they are not proper third-party claims. The third-party complaint should therefore be dismissed.

II. In the alternative, the Third-Party Complaint should be severed from the underlying action pursuant to Rule 14(a) SCRCP to avoid prejudice to the parties.

In the alternative, should this Court find that Third-Party Plaintiffs properly impleaded Great American as a third-party defendant pursuant to Rule 14(a), SCRCP, Great American respectfully requests that the Court sever the Third-Party Complaint from the underlying action.

Pursuant to Rule 14(a), SCRCP, "Any party may move to strike the third-party claim, or for its severance or separate trial." "When considering a request to strike or to sever a third-party claim, a trial court may properly consider the effect the additional parties and claims will have on the adjudication of the main action-in particular, whether continued joinder will serve to complicate the litigation unduly or will prejudice the other parties in any substantial way." *See Hudson, supra*.

The primary claims involve questions of homeowner association governance and complex, fact-intensive issues of property damage. The claims asserted in the third-party complaint merely hinge upon the construction of certain exclusions in an insurance policy. The scopes and focus of the discovery and evidence in the primary claims and the third-party claims

are completely different. Therefore, this litigation will be unnecessarily complicated by the continued joinder of the third-party claims with the primary claims.

For the foregoing reasons, Great American respectfully requests that the third-party claims be dismissed pursuant to Rules 12(b)(6) and 14(a), SCRCP, or, in the alternative, for an order pursuant to Rule 14(a), SCRCP, severing the claims in the Third-Party Complaint.

Respectfully submitted,

ADAMS AND REESE LLP

s/Kirby D. Shealy III

Kirby D. Shealy III (SC Bar No. 11556)

Justine M. Tate (SC Bar No. 101561)

1501 Main Street, Fifth Floor

Post Office Box 2285 (29202)

Columbia, South Carolina 29201

Telephone: (803) 212-4966

kirby.shealy@arlaw.com

justine.tate@arlaw.com

Attorneys for Great American Insurance Company

July 14, 2017.

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NUMBER: 2016-CP-26-4464

Jill Keck Humphries, Dennis L.)
Johnson, Jr., Delona Penny Rice,)
Whitmel L. Brown, Jr., Gary Steven)
Robinson, Elizabeth Erin Humphries,)
and Nancy H. Johnson,)

Plaintiffs,)

vs.)

Tilghman Beach and Racquet Club)
Condominium Association, Inc.,)
James H. Austin, III, Daniel G. Coe,)
C. Doug Madison, George P. White)
and Steele Brice Windle, III,)
individually and as Members of the)
Board of Directors of the Tilghman)
Beach and Racquet Club)
Condominium Association, Inc.,)

Defendants.)

Tilghman Beach and Racquet Club)
Condominium Association, Inc.,)
James H. Austin, III, Daniel G. Coe,)
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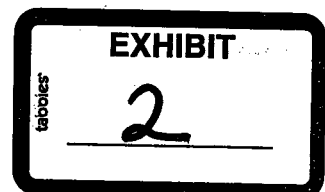
Third-Party Plaintiffs,)

vs.)

Great American Insurance Company,)

Third-Party Defendant.)

**THIRD-PARTY PLAINTIFFS'
MEMORANDUM IN OPPOSITION TO
THIRD-PARTY DEFENDANT'S MOTION
TO DISMISS, OR IN THE ALTERNATIVE,
MOTION TO SEVER**



Third-Party Plaintiffs, Tilghman Beach and Racquet Club Condominium Association, Inc., James H. Austin, III, Daniel G. Coe, C. Doug Madison, George P. White, and Steele Brice Windle, III (“Third-Party Plaintiffs”), submit this memorandum in opposition to Third-Party Defendant’s, Great American Insurance Company (“Great American”), Motion to Dismiss, or in the alternative, Motion to Sever.

INTRODUCTION

The granting of a motion to dismiss is an extraordinary remedy. It should occur only if the facts alleged in the Third-Party Complaint—and the inferences reasonably deductible therefrom—would not entitle the Third-Party Plaintiffs to relief on any possible theory of the case. Further, when considering this motion, all such facts and inferences must be construed in the Third-Party Plaintiffs’ favor.

Under South Carolina law, a liability insurer, such as Great American, has two (2) separate and distinct duties to the insured. The first is the duty to defend the insured during the course of the litigation of the underlying action, and the second is the duty to indemnify the insured from the ultimate outcome. The nature of liability for the duty to defend is direct liability. Great American is directly liable to Third-Party Plaintiffs for the costs of defending the underlying action. Conversely, the nature of liability for the duty to indemnify is derivative. Namely, Great American’s liability is derivative of, and contingent upon, the outcome of the underlying lawsuit against Third-Party Plaintiffs.

In the instant motion, Great American contends that Third-Party Plaintiffs’ claims against it should be dismissed because the Third-Party Complaint alleges that Great American is directly liable to Third-Party Plaintiffs. What Great American ignores is that the Third-Party Complaint *also alleges* that Great American is in breach of its duty to indemnify Third-Party Plaintiffs against

any judgment rendered against them in the underlying action. Great American's liability in this regard is dependent upon the outcome of the underlying action and is, indeed, derivative in nature. As a result, Third-Party Plaintiffs' claims against Great American should not be dismissed, as the derivative nature of the claims squarely fit within the requirements of Rule 14(a), SCRCP.

In the alternative, Great American contends that the Third-Party Complaint should be severed from the underlying action. Despite Great American's protestations to the contrary, Great American's joinder does not "unnecessarily complicate" the litigation as the anticipated discovery in the underlying action will likely be directly relevant to whether Great American has a duty to provide coverage in the underlying action. As such, Great American's Motion to Sever should also be denied.

THIRD-PARTY PLAINTIFFS' ALLEGATIONS

The Third-Party Complaint, which allegations must be taken as true for the purposes of a motion to dismiss, alleges:

1. Great American issued to Third-Party Plaintiffs a directors and officers liability insurance policy entitled, "Exec Pro Community Association Solution Insurance Policy", # EPP3654704-01 ("Great American Policy"). (Defs.'/Third-Party Pls.' Third-Party Compl., ¶ 6.)

2. "The Association is an 'Insured' as defined in the Great American Policy, and . . . [the Third-Party Plaintiffs] are 'Insured Persons' as defined in the Great American Policy. [Great American] . . . is the 'Insurer' as defined in the Great American Policy." Id. at ¶ 7.

3. The Third-Party Complaint specifically alleges that the Great American Policy requires Great American to provide coverage for the ultimate loss and, therefore, indemnify Third-Party Plaintiffs against any judgment rendered against them in the underlying action. "Section 1, Insuring Agreements, Subsection A of the Great American Policy provides as follows:

If during the **Policy Period** or the **Discovery Period** any **Claim** is first made against any **Insured Persons** for a **Wrongful Act**, the *Insurer shall pay on behalf of the Insured Persons, Loss and Costs of Defense* resulting from such **Claim**, except for any **Loss** and **Costs of Defense** which the **Organization** or any **Subsidiary** actually pays as indemnification.”

Id. at ¶ 8 (underline and italics added).

4. “Loss” is defined in the Great American Policy as

settlements, judgments, pre-judgment and post-judgment interest, front and back pay, compensatory damages, punitive or exemplary damages, the multiple portion of any multiplied damage award, and subject to the provisions of Section V. and VI., **Costs of Defense** incurred by the **Insured**. **Loss** shall not include:

- (1) criminal or civil fines or penalties imposed by law (except as provided pursuant to Section X.H.), or taxes;
- (2) the value of perquisites, deferred compensation or any other type of compensation earned in the course of employment or the equivalent value thereof; and
- (3) any amounts which may be deemed uninsurable under the law pursuant to which this Policy shall be construed.

It is understood and agreed that the enforceability of the foregoing coverage shall be governed by such applicable law which most favors coverage for punitive or exemplary damages or the multiple portion of any multiplied damage award.

(Defs.’/Third-Party Pls.’ Third-Party Compl., Exhibit A, p. 4 of 11) (underline and italics added).¹

5. Claims made against Third-Party Plaintiffs in the original Complaint, the Second Amended Complaint, and the Third Amended Complaint constitute a “Claim” made within the “Policy Period,” as defined by the Great American Policy. (Defs.’/Third-Party Pls.’ Third-Party Compl., ¶ 10.)

¹ Under Rule 10(c), SCRCP, the Great American Policy is considered to be incorporated into the allegations of the Third-Party Complaint. Rule 10(c), SCRCP (“A copy of any plat, photograph, diagram, document, or other paper which is an exhibit to a pleading is a part thereof for all purposes if a copy is attached to such pleading.”)

6. The Great American Policy provided for “a defense *and indemnification* of the losses, incidents, wrongful acts and occurrences alleged in the original Complaint, the Second Amended Complaint, and the Third Amended Complaint in the Litigation.” *Id.* at ¶ 14 (emphasis added); *see also Id.* at ¶¶ 16, 30, & Prayer for Relief (d).

7. Great American “*is or may be liable to. . . [Third-Party Plaintiffs]* for all or part of the claim or claims made against. . . [Third-Party Plaintiffs] contained in the original Complaint, the Second Amended Complaint, and the Third Amended Complaint in the Litigation within the meaning of Rule 14, SCRCP.” *Id.* (emphasis added).

8. Despite repeated written demands by Third-Party Plaintiffs, Great American has failed and refused, and continues to refuse, to provide coverage or a defense in this matter. *Id.* at ¶ 12.

ARGUMENT

I. Motion to Dismiss Standard

Under Rule 12(b)(6), SCRCP, a defendant may move for dismissal based on a failure to state facts sufficient to constitute a cause of action. *Plateau v. Harrelson*, 355 S.C. 197, 201, 584 S.E.2d 413, 415 (Ct. App. 2003) (*citing* *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999)). A trial judge in the civil setting may dismiss a claim when the defendant demonstrates the plaintiff has failed to state facts sufficient to constitute a cause of action in the pleadings filed with the court. *Williams v. Condon*, 347 S.C. 227, 553 S.E.2d 496 (Ct. App. 2001). “Generally, in considering a 12(b)(6) motion, the trial court must base its ruling solely upon allegations set forth on the face of the complaint.” *Doe v. Marion*, 361 S.C. 463, 469, 605 S.E.2d 556, 559 (Ct. App. 2004), *aff’d* 645 S.E.2d 245, 2007 WL 1321978; *accord Stiles v. Onorato*, 318 S.C. 297, 457 S.E.2d 601 (1995); *see also Brown v. Leverette*, 291 S.C. 364, 353 S.E.2d 697 (1987) (noting trial

court must dispose of a motion for failure to state a cause of action based solely upon the allegations set forth on face of complaint); Williams, 347 S.C. at 233, 553 S.E.2d at 499 (finding trial court's ruling on 12(b)(6) motion must be bottomed and premised solely upon allegations set forth by plaintiff).

"A motion to dismiss under Rule 12(b)(6) should not be granted if facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to relief on any theory of the case." Flateau, 355 S.C. at 202, 584 S.E.2d at 415; *see* Baird, 333 S.C. at 527, 511 S.E.2d at 73 (declaring that if the facts and inferences drawn from the facts alleged in the complaint would entitle the plaintiff to relief on any theory, then the grant of a motion to dismiss for failure to state a claim is improper); McCormick v. England, 328 S.C. 627, 494 S.E.2d 431 (Ct. App. 1997) (concluding a motion to dismiss cannot be sustained if the facts alleged in the complaint and inferences reasonably deducible therefrom would entitle the plaintiff to relief on any theory of the case). In considering a motion to dismiss, the court must consider whether the complaint, viewed in the light most favorable to the plaintiff, and with all doubts resolved in his behalf, articulates any valid claim for relief. *See* Cowart v. Poore, 337 S.C. 359, 523 S.E.2d 182 (Ct. App. 1999) (explaining that looking at facts in light most favorable to plaintiff, and with all doubts resolved in his behalf, the court must consider whether the pleadings articulate any valid claim for relief).

The complaint should not be dismissed merely because the court doubts the plaintiff will prevail in the action. Toussaint v. Ham, 292 S.C. 415, 357 S.E.2d 8 (1987). The grant of a motion to dismiss will be sustained only if the facts alleged in the complaint do not support relief under any theory of law. McEachern v. Black, 329 S.C. 642, 496 S.E.2d 659 (Ct. App. 1998); *see also* Gray v. State Farm Auto Ins. Co., 327 S.C. 646, 491 S.E.2d 272 (Ct. App. 1997) (stating motion

must be granted if facts and inferences reasonably deducible from them show that plaintiff could not prevail on any theory of the case).

II. Third-Party Plaintiffs' Complaint States Facts Sufficient To Constitute A Cause Of Action Against Great American.

A. *Applicable South Carolina Law Concerning an Insurer's Duty to Defend and Indemnify it's Insured.*

Under South Carolina law, "[a] liability insurer has two separate and distinct duties to the insured." Nationwide Mut. Ins. Co. v. Tate, 313 S.C. 444, 447, 438 S.E.2d 266, 268 (Ct. App. 1993) (citing Sloan Construction Co. v. Central Nat'l Ins. Co., 269 S.C. 183, 236 S.E.2d 818 (1977)). The first is the duty to defend and the second is the duty to indemnify. Id.

An insurer's duty to defend is determined by the allegations of the underlying complaint. City of Hartsville v. S.C. Mun. Ins. & Risk Fin. Fund, 382 S.C. 535, 544, 677 S.E.2d 574, 578 (2009) (citing references omitted). "If the facts alleged in a complaint against the insured bring a claim within policy coverage, the insurer has a duty to defend." Town of Duncan v. State Budget & Control Bd., Div. of Ins. Servs., 326 S.C. 6, 13, 482 S.E.2d 768, 772 (1997) (citing South Carolina Medical Malpractice Liab. Ins. v. Ferry, 291 S.C. 460, 354 S.E.2d 378 (1987)); see also Auto-Owners Ins. Co. v. Newsome, No. 4:12-CV-00447-RBH, 2013 WL 3148334, at *4 (D.S.C. June 19, 2013) (citing references omitted) ("[T]he duty to defend is triggered where the underlying complaint includes *any allegation* that raises the possibility of coverage.")

On the other hand, a liability insurer's duty to indemnify is determined by the findings of the fact finder in the underlying case. Ellett Bros. v. U.S. Fid. & Guar. Co., 275 F.3d 384, 388 (4th Cir. 2001) (citing Jourdan v. Boggs/Vaughn Contracting, Inc., 324 S.C. 309, 476 S.E.2d 708, 711 (1996)). The insurer's liability is, therefore, contingent upon and derivative of the result of the underlying case.

B. Third-Party Plaintiffs' Complaint Properly Alleges Derivative Liability on the Part of Great American under Rule 14(a), SCRCP.

Great American's motion to dismiss does not assert that the Third-Party Complaint fails to allege sufficient facts to state a claim for causes of action which are pled: breach of contract, statutory attorney's fees, bad faith, and declaratory judgment. Instead, the motion to dismiss is directed solely to whether the Third-Party Complaint alleges derivative liability within the meaning of Rule 14(a), SCRCP.

Rule 14(a), SCRCP, governs third party practice and provides for when a party may assert claims against a non-party in an underlying action. Rule 14(a) provides that "[a]t any time after commencement of the action a defending party, as a third-party plaintiff, may cause a summons and complaint to be served upon a person not a party to the action *who is or may be liable to him for all or part of the plaintiff's claim against him.*" Rule 14(a), SCRCP (emphasis added).

Rule 14 of the South Carolina Rules of Civil Procedure is patterned after, and is substantially the same, as Rule 14 of the Federal Rules of Civil Procedure. Rule 14, SCRCP, Notes ("These Rules 14(a) through (c) are substantially the same as the Federal Rule . . ."). As Great American relied on the Federal Courts' interpretation of Rule 14(a), Fed. R. Civ. P., (*See Third-Party Def.'s Mot. to Dismiss or in the Alternative Mot. to Sever*, pp. 3-4), so too do Third-Party Plaintiffs. *See Maybank v. BB&T Corp.*, 416 S.C. 541, 565, 787 S.E.2d 498, 510 (2016), reh'g denied (July 13, 2016) (*citing Gardner v. Newsome Chevrolet-Buick, Inc.*, 304 S.C. 328, 330, 404 S.E.2d 200, 201 (1991) ("In construing the South Carolina Rules of Civil Procedure, our Court looks for guidance to cases interpreting the federal rules."); *Beach v. Hudson*, 298 S.C. 424, 426, 380 S.E.2d 869, 871 (Ct. App. 1989) (noting that Rule 14(a), SCRCP, is "like its federal counterpart," Rule 14(a), Fed. R. Civ. P.)).

The Third-Party Complaint alleges that Great American is the Third-Party Plaintiffs' insurer and has coverage for, and a duty to indemnify, the Third-Party Plaintiffs for any judgment rendered for the original Plaintiffs in this case. Federal courts almost uniformly allow impleader of insurers under Rule 14(a), Fed. R. Civ. P.

The question of impleader of insurers has been a difficult one. However, both the inherent liberality of Rule 14 and the obvious desirability of consolidating as many claims in one action as is practicable have brought about the *now-accepted rule that a defendant in a negligence action may implead his liability insurer*. . . . the condition under which the rule arises is where a party has an insurer who has refused to defend, disclaiming liability. That condition necessarily involves a party having to take up his own defense where he had earlier contracted to have another do so, and is a use of Rule 14 to call the disclaiming insurer to account on its contract.

Green v. Shepherd Const. Co., 46 F.R.D. 434, 437–38 (N.D. Ga. 1969) (emphasis added); *See also* Nat'l Sur. Corp. v. Charles Carter & Co., 539 F.2d 450, 457 (5th Cir. 1976) (party permitted to assert a third-party claim under Rule 14 against its liability insurer to the extent claims asserted against the party fell within its liability policy). “When the insurer disclaims liability and refuses to defend on behalf of the insured, the *federal courts uniformly recognize the propriety of impleader*. These decisions have been supported by numerous commentators, including Judge Charles E. Clark, the principal draftsman of the federal rules.” 6 Fed. Prac. & Proc. Civ. § 1449 (3d ed.) (emphasis added).²

² In addition to numerous cases that establish an insured's ability to assert a third-party coverage claim against its insurer, there are additional cases from across the country that recognize that third-party claims may be asserted under Rule 14, Fed. R. Civ. P., against persons who allegedly have a duty to indemnify the third-party plaintiff for claims asserted against the third-party plaintiff in the underlying litigation. *See Wanta v. Powers*, 478 F. Supp. 990, 993 (M.D. Pa. 1979) (finding third-party complaint properly alleged a claim for indemnity and denying third-party defendant's motion to dismiss); Brown & Caldwell v. Inst. for Energy Funding, Ltd., 617 F. Supp. 649, 650 (C.D. Cal. 1985) (permitting a third-party claim for indemnity under Rule 14); Sperling v. Washington Metro. Area Transit Auth., 498 F. Supp. 2d 288, 291 (D.D.C. 2007) (finding that a third-party complaint was properly asserted under Rule 14 where a third-party complaint alleged

The Third-Party Complaint expressly alleges that Great American is or may be liable to Third-Party Plaintiffs as required by Rule 14(a), SCRCP.

Great American “*is or may be liable to. . . [Third-Party Plaintiffs] for all or part of the claim or claims made against. . . [Third-Party Plaintiffs]*” contained in the original Complaint, the Second Amended Complaint, and the Third Amended Complaint in the Litigation within the meaning of Rule 14, SCRCP.”

(Defs.’/Third-Party Pls.’ Third-Party Compl., ¶ 14.) Third-Party Plaintiffs further allege facts in support of the foregoing. In particular, Third-Party Plaintiffs’ Complaint alleges that Great American is or may be liable to Third-Party Plaintiffs because of Great American’s duty to indemnify the Third-Party Plaintiffs, which is necessarily contingent upon the ultimate outcome of the underlying litigation. (*Id.* at ¶¶ 8, 10 & 14). By the face of the Third-Party Complaint, Third-Party Plaintiffs state facts sufficient to constitute a cause of action against Great American.

Great American relies on the case of First Gen. Servs. of Charleston, Inc. v. Miller, 314 S.C. 439, 442, 445 S.E.2d 446, 447 (1994) for the proposition that, under Rule 14, SCRCP, a third-party plaintiff must have a claim against a third-party defendant founded upon derivative liability. However, the South Carolina Supreme Court in First Gen. Servs. noted that the critical question for determining whether a impleader under Rule 14(a), SCRCP, is proper is “whether . . . [the third-party plaintiff] has a cause of action against . . . [the third-party defendant] which would impose liability upon . . . [the third-party defendant] for all or part of . . . [plaintiff’s] claim.” First Gen. Servs., 314 S.C. at 442, 445 S.E.2d at 447. In the case at bar, the answer to this question is, undoubtedly, yes. In the event Plaintiffs in the underlying action were to obtain a judgment against Third-Party Plaintiffs, Great American, depending on the nature of the verdict in the underlying

that a third-party defendant may have contributed to the collision at issue). As discussed *infra*, a contract of insurance is a form of express contractual indemnity under settled South Carolina law.

action, “is or may be liable for all or part of” Plaintiffs’ claims under the policy in question. As such, Third-Party Plaintiffs have properly alleged a derivative claim under Rule 14, SCRCPP.

Moreover, in First General, the Supreme Court held that the third-party plaintiff’s claim for indemnity from the third-party defendant was properly asserted in a third-party complaint under Rule 14(a), SCRCPP. A claim for indemnity was derivative under Rule 14(a) because it turned on whether the original plaintiff recovered from the third-party plaintiff in the lawsuit. First Gen. Servs., 314 S.C. at 442-43, 445 S.E.2d. at 448. A contract of insurance, like the one on which the Third-Party Complaint against Great American is clearly based, is a form of express contractual indemnity under South Carolina law. Town of Winnsboro v. Wiedeman-Singleton, Inc., 303 S.C. 52, 56, 398 S.E.2d 500, 502 (Ct. App. 1990), *affirmed*, 307 S.C. 128, 414 S.E.2d 118 (1992) (stating a “right to indemnity may arise by contract (express or implied) or by operation of law as a matter of equity between the first and second party.... A familiar example of *contractual* indemnity is the third party liability insurance policy”) (emphasis in original). The Court of Appeals’ opinion in Town of Winnsboro was cited with approval in First General. In other words, the primary case cited by Great American in its motion to dismiss holds that a claim for indemnity—which includes a claim under South Carolina law based on an insurance contract like the Great American Policy—can properly be asserted under Rule 14(a), SCRCPP.

III. Third-Party Plaintiffs’ Claims Against Great American Do Not Prejudice or Unnecessarily Complicate the Continued Joinder of Great American.

In the event this Court denies Great American’s Motion to Dismiss, Great American contends that this Court should, nevertheless, sever the instant action from the underlying dispute. Courts have substantial discretion when deciding whether to strike or sever a third-party claim under Rule 14(a), Fed. R. Civ. P. First Nat. Bank of Nocona v. Duncan Sav. & Loan Ass’n, 957 F.2d 775, 777 (10th Cir. 1992) (*citing* Farmers and Merchants Mutual Fire Insurance Co. v.

Pulliam, 481 F.2d 670, 673 (10th Cir.1973)) (“The granting of leave for a defendant to prosecute a third party proceeding under Rule 14 rests in the sound discretion of the trial court.”); *cf.* Beach, 298 S.C. at 426, 380 S.E.2d at 871 (“The question of whether to grant a motion to strike a third-party claim, whether filed with or without the leave of court, is addressed to the sound discretion of the trial court.”); *cf.* State v. Simmons, 352 S.C. 342, 350, 573 S.E.2d 856, 860 (Ct. App. 2002) (citing references omitted) (in a criminal action, “[a] motion for severance is addressed to the sound discretion of the trial court”).

Great American contends that the Third-Party Complaint should be severed from the underlying action because Third-Party Plaintiffs’ claims against Great American will be “unnecessarily complicated” by the joinder. Quite the contrary is true. The anticipated discovery in the underlying action will likely be directly relevant to whether Great American has coverage for some or all of the claims in the underlying action. Additionally, considering that the underlying action is in the preliminary stages of discovery, it is premature to make a determination as to severance. If a determination as to severance is to be made, it should be made closer to trial to allow discovery to bear out whether the continued joinder of Great American would unnecessarily complicate the trial of the underlying action and the instant coverage dispute.

CONCLUSION

For the foregoing reasons, Third-Party Plaintiffs respectfully request that this Court deny Great American’s Motion to Dismiss, or in the alternative, Motion to Sever.

[SIGNATURE PAGE TO FOLLOW]

Respectfully submitted,
THE PEARCE LAW GROUP, PC

/s/ Charles B. Jordan, Jr.
Charles B. Jordan, Jr.,
SC Bar No. 11708
cjordan@pearcelawgroup.com
1314 Professional Drive
Myrtle Beach, South Carolina 29577
Telephone: (843) 839-3210
Facsimile: (843) 839-3214

Attorneys for Defendants / Third-Party Plaintiffs

August 11, 2017
Myrtle Beach, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NUMBER: 2016-CP-26-4464

Jill Keck Humphries, Dennis L.)
Johnson, Jr., Delona Penny Rice,)
Whitmel L. Brown, Jr., Gary Steven)
Robinson, Elizabeth Erin Humphries,)
and Nancy H. Johnson,)

Plaintiffs,)

vs.)

Tilghman Beach and Racquet Club)
Condominium Association, Inc.,)
James H. Austin, III, Daniel G. Coe,)
C. Doug Madison, George P. White)
and Steele Brice Windle, III,)
individually and as Members of the)
Board of Directors of the Tilghman)
Beach and Racquet Club)
Condominium Association, Inc.,)

Defendants.)

Tilghman Beach and Racquet Club)
Condominium Association, Inc.,)
James H. Austin, III, Daniel G. Coe,)
C. Doug Madison, George P. White)
and Steele Brice Windle, III,)
individually and as Members of the)
Board of Directors of the Tilghman)
Beach and Racquet Club)
Condominium Association, Inc.)

Third-Party Plaintiffs,)

vs.)

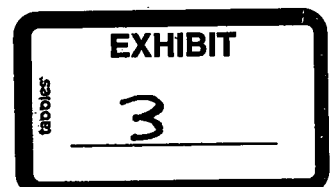
Great American Insurance Company,)

Third-Party Defendant.)

**ORDER DENYING THIRD-PARTY
DEFENDANT'S MOTION TO DISMISS, OR
IN THE ALTERNATIVE, MOTION TO
SEVER**

And

ORDER GRANTING SEPARATE TRIALS



This matter comes before me upon the Motion of the Third-Party Defendant Great American Insurance Company (“Great American”) to Dismiss the Third-Party Complaint under Rule 12(b)(6), S.C.R.C.P., or in the alternative, to Sever the Third-Party Complaint under Rule 14(a), S.C.R.C.P. brought by Defendants and Third-Party Plaintiffs, Tilghman Beach and Racquet Club Condominium Association, Inc., James H. Austin, III, Daniel G. Coe, C. Doug Madison, George P. White, and Steele Brice Windle, III (collectively, “Third-Party Plaintiffs”). This Court held a hearing on this matter on October 30, 2017. At the hearing, Great American was represented Mr. Kirby D. Shealy, III. Third-Party Plaintiffs were represented by Charles B. Jordan, Jr. For the reasons set forth below, this Court denies the motion of Great American and grants the alternative relief of a Separate Trial.

FACTS¹

As set forth in the pleadings, the Plaintiffs are homeowners at the Tilghman Beach and Racquet Club Horizontal Property Regime in North Myrtle Beach, South Carolina. The Defendants/Third-Party Plaintiffs are the Homeowner’s Association for the Regime and the current directors of that Association.

Effective February 10, 2016, Great American issued a directors and officer’s liability insurance policy entitled “Community Association Solution Insurance Policy” with Policy No. EPP3654704-01 (“Insurance Policy”). All of the Third-Party Plaintiffs are “Insureds” or “Insured Persons” under this policy. As set forth in the Complaint, Section I of the Insuring Agreement provides that:

If during the Policy Period or the Discovery Period any Claim is first made against any Insured Persons for a Wrongful Act, the Insurer shall pay on

¹ In a Motion to Dismiss under Rule 12(b)(6) the court must consider all well-plead allegations as true. Disabto v. S.C. Association of School Administrators, 746 S.E.2d 329, 333 (S.C. 2013).

behalf of the Insured Persons, Loss and Costs of Defense resulting from such Claim. . . .

The Insurance Policy further defines "Loss" as a settlement or judgment.

On or about July 7, 2016, Plaintiffs filed the present suit against the Defendants/Third-Party Plaintiffs. Plaintiffs filed a Second Amended Complaint on October 28, 2016, and a Third Amended Complaint on March 8, 2017. In each of these Complaints, Plaintiffs seek both monetary and non-monetary relief. In correspondence dated July 13, 2016, August 10, 2016, August 25, 2016, and November 3, 2016, Third-Party Plaintiffs repeatedly made demands on Great American to defend this action. Great American denied each of these tenders.

On March 28, 2017, Defendants/Third-Party Plaintiffs filed a consent motion for leave to file a third-party Complaint against Great American pursuant to Rule 14(a), S.C.R.C.P. This motion was granted by the Honorable Benjamin H. Culbertson, Circuit Court Judge, on May 2, 2017. Third-Party Plaintiffs also filed the Third-Party Complaint on May 2, 2017, and it was served upon Great American on May 9, 2017. Great American timely answered the Third-Party Complaint on July 10, 2017 and asserted a counterclaim for a declaratory judgment that coverage for the claims set forth in each of the Complaints filed by Plaintiffs is excluded by one or more policy exclusions. On July 14, 2017, Great American filed the present Motion to Dismiss under Rule 12(b)(6), S.C.R.C.P. or in the alternative a Motion to Sever pursuant to Rule 14(a), S.C.R.C.P.

CONCLUSIONS OF LAW

Under Rule 12(b)(6), S.C.R.C.P., a defendant may move for dismissal based on a failure to state facts sufficient to constitute a cause of action. Flateau v. Harrelson, 355 S.C. 197, 201, 584 S.E.2d 413, 415 (Ct. App. 2003). "A motion to dismiss under Rule 12(b)(6) should not be granted if facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to relief on any theory of the case." Id.

Great American made its motion under Rule 12(b)(6) on the grounds that the third-party claim is not based upon derivative liability as required to bring a third-party complaint under Rule 14(a). Specifically, Great American argues that the claims made by Third-Party Plaintiffs against Great American are not dependent upon the outcome of Plaintiffs' case against Defendant/Third-Party Plaintiffs.

Rule 14(a) governs third-party practice in our courts. This rule provides, in part, that "[a]t any time after commencement of the action a defending party, as a third-party plaintiff, may cause a summons and complaint to be served upon a person not a party to the action who is or may be liable to him for all or part of the plaintiff's claim against him." This Court finds that there are sufficient allegations to bring the Third-Party Complaint within the provisions of Rule 14(a).

Under South Carolina law, an insurance company has two separate and distinct duties to an insured – a duty to defend and a duty to indemnify. Nationwide Mut. Ins. Co. v. Tate, 313 S.C. 444, 447, 438 S.E.2d 266, 268 (Ct. App. 1993). A claim for indemnification falls clearly within the provisions of Rule 14(a). See, First Gen. Servs. of Charleston, Inc. v. Miller, 314 S.C. 439, 442, 445 S.E.2d 446, 447 (1994).² In this case, Third-Party Plaintiffs, specifically allege in paragraph 14 of the Third-Party Complaint that the Insurance Policy gives rise to a duty of indemnification by Great American towards that the Third-Party Plaintiffs, and that therefore, Great American is or may be liable to the Third-Party Plaintiffs for all or part of the claims made against the Third-Party Plaintiffs by the Plaintiffs. This allegation is sufficient to defeat a motion to dismiss.

² Under Rule 14(a) of the Federal Rules of Civil Procedure, which is substantially the same as the South Carolina rule, the Courts have frequently allowed a party to implead its insurer as a third party defendant. Digital Ally Inc. v. Z3 Technology, LLC, 2011 WL 723039, FN 35.

Great American alternatively has requested that the Third-Party Complaint be severed from the action brought by the Plaintiffs against Defendants/Third-Party Plaintiffs on the grounds that the claims in the Plaintiffs' Third Amended Complaint and the claims in the Third-Party Complaint are substantially dissimilar and that joinder unnecessarily complicates the issues. Specifically, Great American argues that the issue in the Third-Party Complaint concerns the construction of certain provisions of the Insurance Policy whereas the issues in the Plaintiffs' action concern allegations of negligence and breaches of fiduciary duty by members of a homeowner's association's board of directors. Great American further argues that it has no need to participate in the underlying suit brought by Plaintiffs and that therefore severance would be appropriate.

Rule 14(a) provides that "Any party may move to strike the third-party claim, or for its severance or separate trial." A motion to sever is addressed to the sound discretion of the trial court. Flagstar Corp. v. Royal Surplus Lines, 341 S.C. 68, 73, 533 S.E.2d 331, 333-34 (2000). This Court is generally familiar with insurance disputes related to homeowners' associations and other contexts. This Court believes that the facts developed in the underlying action brought by the Plaintiffs will directly affect the coverage issues. Whether Great American has a duty under the Insurance Policy to defend the Third-Party Plaintiffs or to indemnify them will necessarily be contingent upon the facts of the Plaintiffs' case. In reviewing the pleadings and in listening to the arguments of counsel, this Court finds that the issues in the Third-Party Complaint are sufficiently related and relevant to the issues raised in the Third-Amended Complaint and, therefore, Great American's motion to sever is denied.

However, this Court is cognizant that the specific causes of action raised in the Third-Party Complaint regarding coverage should not be tried in the same proceeding as Plaintiffs' causes of action against Defendants/Third-Party Plaintiffs. This Court does find that it would inappropriate

for the same jury to hear and decide both the Plaintiffs' case against the Defendants/Third-Party Plaintiffs and the Third-Party Plaintiffs' case against Great American. Therefore, pursuant to Rule 14(a) and Rule 42(b), the Court orders that these cases be tried separately.

THEREFORE, IT IS HEREBY ORDERED THAT:

A. Third-Party Defendant Great American's Motion to Dismiss the Third-Party Complaint is DENIED;

B. Third-Party Defendant Great American's Motion to Sever the Third-Party Complaint is DENIED; and

C. A Separate Trial of the Plaintiffs' Third-Amended Complaint (or subsequent Amended Complaints) and the Third-Party Complaint is GRANTED.

AND IT IS SO ORDERED.

Larry B. Hyman
Judge, Court of Common Pleas
Fifteenth Judicial Circuit

Dated: _____, 2017
Conway, South Carolina



Horry Common Pleas

Case Caption: Jill Keck Humphries , plaintiff, et al VS Tilghman Beach And
Racquet Club Condominium Association Inc , defendant, et al
Case Number: 2016CP2604464
Type: Order/Other

So Ordered

s/ Larry B. Hyman 2152

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

C.A. No. 2016-CP-26-4464

Jill Keck Humphries, Dennis L,)
Johnson, Jr., Delona Penny Rice,)
Whitmel L. Brown, Jr., Gary Steven)
Robinson, Elizabeth Erin Humphries,)
and Nancy H. Johnson,)

Plaintiffs,)

vs.)

Tilghman Beach and Racquet Club)
Condominium Association, Inc.,)
James H. Austin, III, Daniel G. Coe,)
C. Doug Madison, George P. White)
and Steele Brice Windle, III,)
individually and as Members of the)
Board of Directors of the Tilghman)
Beach and Racquet Club)
Condominium Association, Inc.,)

Defendants.)

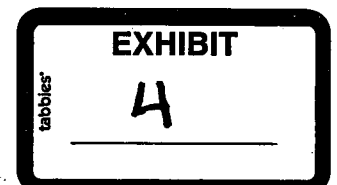
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Condominium Association, Inc.,)

Third-Party Plaintiffs,)

vs.)

Great American Insurance Company,)

Third-Party Defendant.)



**DEFENDANTS'/THIRD-PARTY PLAINTIFFS' MOTION FOR JUDGMENT ON THE
PLEADINGS AS TO THE FIRST AND FOURTH CAUSES OF ACTION IN
DEFENDANTS'/THIRD-PARTY PLAINTIFFS' THIRD-PARTY COMPLAINT**

PLEASE TAKE NOTICE that, pursuant to Rule 12(c), SCRCP, Defendants/Third-Party Plaintiffs hereby move for judgment on the pleadings as to Third-Party Defendant Great American Insurance Company's (hereinafter "Great American") duty to defend the Defendants/Third-Party Plaintiffs under the First and Fourth causes of action in Defendants'/Third-Party Plaintiffs' Third-Party Complaint. The grounds for this Motion are generally that, in its Amended Answer, Great American admits that it issued a "claims made" directors and officers liability insurance policy which covered the Defendants/Third Party Plaintiffs for claims made against them between February 11, 2016, and February 10, 2017 (hereinafter "the 2016 Great American Policy"). Great American's Amended Answer further admits facts which establish that Great American had a duty to defend its Insureds, Defendants/Third-Party Plaintiffs, from the allegations in the original Complaint filed on July 7, 2016, and the Second Amended Complaint filed on October 28, 2016. Those pleadings alleged at least one (1) claim against an Insured which created "a possibility of coverage" under the 2016 Great American Policy and which was not "unambiguously excluded" by the express terms of an exclusion in the 2016 Great American Policy.

Pursuant to South Carolina Supreme Court Order No. 015-09-10-01 Re: Civil Motions Pilot Program, the grounds for this Motion are set forth with greater particularity in the accompanying Memorandum In Support Of Defendants'/Third-Party Plaintiffs' Motion For Partial Judgment On The Pleadings As To Defendants'/Third-Party Plaintiffs' Third-Party Complaint. Said grounds are all incorporated herein by reference.

SIGNATURE BLOCKS ON FOLLOWING PAGE

Respectfully submitted,

/s/ Charles B. Jordan, Jr.

Charles B. Jordan, Jr., SC Bar No. 11708

cjordan@pearcelawgroup.com

THE PEARCE LAW GROUP, PC

1314 Professional Drive

Myrtle Beach, South Carolina 29577

Telephone: (843) 839-3210

Facsimile: (843) 839-3214

Attorneys for Defendants / Third-Party Plaintiffs

January 15, 2018

Myrtle Beach, South Carolina

/s/Joshua D. Spencer

H. Sam Mabry, III, Fed. I.D. No. 3252

smabry@hsblawfirm.com

Joshua D. Spencer, Fed. I.D. No. 9845

jspencer@hsblawfirm.com

Bonnie A. Lynch, Fed. I.D. No. 10402

blynch@hsblawfirm.com

HAYNSWORTH SINKLER BOYD, P.A.

Post Office Box 2048 (29602)

One North Main Street, Second Floor

Greenville, South Carolina 29601

Telephone: (864) 240-3200

Facsimile: (864) 240-3300

Attorneys for Defendants/Third-Party Plaintiffs

January 15, 2018

Greenville, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS

FIFTEENTH JUDICIAL CIRCUIT

C.A. No. 2016-CP-26-4464

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Beach and Racquet Club)
Condominium Association, Inc.,)

Third-Party Plaintiffs,)

vs.)

Great American Insurance Company,)

Third-Party Defendant.)

**MEMORANDUM IN SUPPORT OF DEFENDANTS'/THIRD-PARTY PLAINTIFFS'
MOTION FOR JUDGMENT ON THE PLEADINGS AS TO DEFENDANTS'/THIRD-
PARTY PLAINTIFFS' THIRD-PARTY COMPLAINT**

I. INTRODUCTION/SUMMARY OF ARGUMENT

This matter is before the Court on Defendants'/Third-Party Plaintiffs' Motion for Judgment on the Pleadings as to Third-Party Defendant, Great American Insurance Company's ("Great American's") duty to defend Defendants'/Third-Party Plaintiffs under the First and Fourth causes of action in Defendants'/Third-Party Plaintiffs' Third-Party Complaint. The grounds for this Motion are that Great American's Amended Answer to the Third-Party Complaint admits facts which establish, as a matter of law, that Great American had a duty to defend its **Insureds**, the Defendants'/Third-Party Plaintiffs, from the allegations in the original Complaint filed on July 7, 2016, and the Second Amended Complaint filed on October 28, 2016.¹ Those pleadings alleged at least one (1) claim against the **Insureds** that created "a possibility of coverage" under the 2016 Great American Policy and that was not "unambiguously excluded" by the express terms of an exclusion in the 2016 Great American Policy.

A. Great American's Amended Answer Admits Facts Which Establish That Great American Had A Duty To Defend Defendants'/Third-Party Plaintiffs.

Under South Carolina law, the determination of whether a liability carrier has a duty to defend its insured is made by examining the allegations in the complaint against the insured and the policy in question. The duty to defend is triggered if the underlying complaint includes any allegation that raises the "possibility of coverage" under the policy even if the complaint also contains other allegations which would not be covered by the policy. The insurance company has

¹ Plaintiffs filed a Third Amended Complaint in this matter on March 8, 2017. The Third Amended Complaint repeated the same material allegations contained in the original Complaint and Second Amended Complaint, and provided further factual details supposedly supporting the claims against James H. Austin, III, Daniel G. Coe, C. Doug Madison, George P. White and Steele Brice Windle, III ("Individual Defendants") who are members of the current Board of Directors of Defendant Tilghman Beach and Racquet Club Condominium Association, Inc.

a duty to defend if the underlying complaint has a single allegation that might possibly be covered by the policy. Stated another way, an insurance company can refuse to defend its insured only if the insurance company can show, as a matter of law, that the claims in the underlying complaint do not possibly fall within any coverage provision of the policy. If the complaint contains an allegation which might possibly be covered under the policy, the insurance company has a duty to defend the entire case, including defending the claims which are not possibly covered by the policy. Because the duty to defend under South Carolina law is “broad,” both the underlying complaint and the insurance policy are broadly construed in the insured’s favor and in favor of the duty to defend.

Great American’s Amended Answer here admits: (1) it issued a “claims made” directors and officers liability insurance policy which covered Defendants/Third Party Plaintiffs for claims made against them between February 11, 2016 and February 10, 2017 (hereinafter “the 2016 Great American Policy”); (2) that Defendants/Third-Party Plaintiffs are **Insureds** under the 2016 Great American Policy; (3) the authenticity of Plaintiffs’ Complaints against Great American’s **Insureds**; (4) that Plaintiffs’ Complaints allege a **Claim** during the **Policy Period** within the meaning of the 2016 Great American Policy; and (5) that the Complaints allege **Wrongful Acts** within the meaning of the 2016 Great American Policy. In sum, Great American’s Amended Answer does not dispute that the claims in the underlying Complaints fall within the general coverage provisions of the 2016 Great American Policy and raise the “possibility of coverage” under that Policy.

B. The Four Exclusions Raised by Great American Do Not Excuse Great American from Fulfilling its Duty to Defend Defendants/Third-Party Plaintiffs.

Given Great American's admissions, the issue before this Court is whether any of the (4) exclusions raised by Great American in its Amended Answer excuse Great American from fulfilling its duty to defend Defendants/Third-Party Plaintiffs. Several general legal principles bear mentioning on the question of whether these exclusions excuse Great American's duty to defend. First, because Great American drafted the 2016 Great American Policy, any ambiguity in that policy (particularly any ambiguity in an exclusion) is resolved against Great American and in Defendants'/Third-Party Plaintiffs' favor. Policy exclusions are construed very narrowly and most strongly against the insurance company, which bears the burden of establishing the exclusion's applicability. Second, each exclusion in the policy must be read and applied independently of every other exclusion. Third, an insurer can refuse to defend based on a policy exclusion only if the *only* possible construction of the underlying complaint is that *all* allegations and claims fall *totally* within the express language of the cited exclusion. For an insurer to justify the refusal to defend an insured based on a policy exclusion, all the allegations in the underlying complaint must be unambiguously excluded by the express terms of the cited exclusion.

1. Exclusion D(2)

Exclusion D(2) excludes coverage for "damage to or destruction of any tangible property or the loss of use of any tangible property." The allegations of Plaintiffs' Complaints do not fall exclusively within Exclusion D.(2) because the Complaints include allegations that Defendants/Third-Party Plaintiffs failed to make, levy, collect, and/or maintain adequate reserves to repair and perform maintenance on the common elements at TBRC. South Carolina courts have already held against Great American's position on this issue—finding that the failure of a

homeowners' association's to maintain adequate repair reserves is outside a property damage exclusion that excluded claims related to, or based on, physical damage to tangible property.²

Additionally, Exclusion D.(2) requires damage, destruction or loss of use of "tangible property." However, the Complaints allege that the **Insureds' Wrongful Acts** in failing to adequately maintain the property caused damages to the individual Plaintiffs in the form of diminution in value of their individual condominium units. Diminution in value is economic loss under South Carolina law which is not destruction of, or damage to, "tangible property."

2. Exclusion G

Exclusion G deals with "seepage, pollution, radiation, emission, contamination or irritant." There are a number of claims in Plaintiffs' Complaints which do not involve the foregoing, including, but not limited to, the claim against the insured **Organization** and its individual Board members (the Individual Defendants) that they failed to maintain adequate reserves for repairing and maintaining the common elements.

3. Exclusion H

Exclusion H precludes coverage where a **Claim** is brought "by, or for the benefit of or at the behest of" the insured **Organization**. The Complaints contain no allegation that Plaintiffs' claims were brought on behalf of, or for the benefit of, the insured **Organization** (TBRC). The Complaints are brought by the Plaintiffs as individual unit owners and seek damages from the insured **Organization** to be paid to the Plaintiffs individually. Plaintiffs have signed a

² *Pulliam v. Travelers Indemnity Co.*, 403 S.C. 332, 342, 743 S.E.2d 117, 122 (Ct. App. 2013) ("[t]he failure to establish a reserve fund resulted in [plaintiffs] . . . having to expend more [money] from their own pockets to make the repairs than they might have otherwise had to expend—economic damage"). *See also Builders Mut. Ins. Co. v. Lacey Constr. Co.* No. CIV.A. 3:11-cv-400-CMC, 2012 WL 1032539, at *9 (D.S.C. Mar. 7, 2012) ("To the extent damages sought in the [underlying action] are for inadequate reserves . . . they do not involve physical injury and, consequently, cannot satisfy the definition of property damage").

Stipulation stating that they are not pursuing this case as a class action or derivative action on behalf of the **Organization**.

Moreover, the Complaints expressly allege that Plaintiffs' claims are brought pursuant to *Murphy v. Yacht Cove Homeowners Association*, 289 S.C. 367, 345 S.E.2d 709 (1986), which provides that a member of a condominium association may bring an action in contract or tort against the association for failure to maintain the common elements. *Murphy* does not allow a member to sue on behalf of or for the benefit of the association.

Furthermore, to the extent Great American contends that the insured **Organization** will "benefit" from this lawsuit because any recovery will be used to repair the common elements at TBRC, this position is wrong as a matter of law. The insured **Organization** (TBRC) is incorporated and, thus, a separate and distinct legal entity from the Plaintiffs who are suing and seeking to recover personally. Moreover, the common elements are owned by the unit owners, and not TBRC. Further, *Pulliam* provides the claims in Plaintiffs' Complaints related to inadequate repair reserves directly affect the economic, financial interests of the individual Plaintiffs, not the insured **Organization** (TBRC), and the diminution in value damages sought in the Complaints relate solely to the alleged diminished value of Plaintiffs' individual units, not the common elements.

4. Exclusion C.(1)

Exclusion C.(1) excludes certain prior **Claims**. Exclusion C.(1) is inapplicable as Great American waived its right to assert this exclusion because Great American failed to assert this exclusion for over a year after notice of this lawsuit and did not raise it until Great American was faced with the instant coverage dispute. Further, Great American's Amended Answer alleges facts which establish that Exclusion C.(1) does not apply here.

C. Great American's Rescission Counterclaims Do Not Excuse Great American from Fulfilling its Duty to Defend Defendants/Third-Party Plaintiffs.

First, the law is well-settled that, until Great American's Rescission Counterclaims are litigated in its favor and the policies are *declared void ab initio*, the policies remain in effect such that Great American had and has a duty to defend the Defendants/Third-Party Plaintiffs. Second, the basis of Great American's claim that the 2015 and 2016 Great American Policies should be rescinded is that TBRC allegedly misrepresented whether it anticipated any major building renovations in the next year when TBRC's agent applied for the 2015 Great American Policy in or around February 2015. However, Great American's own allegations necessarily admit that it was aware of the building renovations going on as early as April 2015—*approximately two (2) months after* the 2015 Great American Policy was issued. Despite this knowledge, Great American never rescinded the 2015 Great American Policy and, in fact, with knowledge of the on-going renovations, issued the 2016 Great American Policy. Great American's issuance of the 2016 Great American Policy with knowledge of the on-going building renovations, and its failure to rescind the 2015 Great American Policy when it necessarily became aware of the renovations in April 2015, constitutes a waiver of Great American's right to rescind the policies.

Third, in support of its Rescission Counterclaim concerning the 2016 Great American Policy, Great American relies upon an alleged misrepresentation that was contained within a purported "application for coverage" that was completed in February 2015 in conjunction with the issuance of the 2015 Great American Policy. There is no allegation that another application was completed in conjunction with the issuance of the 2016 Great American Policy, much less that there was a misrepresentation contained within such an application.

Fourth, Great American bases both of its Rescission Counterclaims on a representation present in what Great American calls an "application for coverage." While the 2015 and 2016

Great American Policies provide that statements contained in *Proposal Forms* submitted to the **Insurer** are the representations of the **Insured** and are incorporated into the policy, neither policy defines “Proposal Form.” The “application for coverage” that was completed by TBRC was not a “Proposal Form,” but instead a “Community Association Program Quote Form.” As such, any representations contained therein are not incorporated into the 2015 or 2016 Great American Policies and cannot form a basis for rescission of the 2015 or 2016 Great American Policies.

Fifth, Great American’s counterclaims for rescission of its 2015 and 2016 Great American Policies, *exclusively* concern the actions and knowledge of TBRC. Great American’s Amended Answer fails to make any allegation regarding the knowledge or actions of the Individual Defendants who are **Insureds** under the 2016 Policy—particularly that the Individual Defendants were aware that the alleged representation was false, or that the false representation was made to Great American with the intent to deceive. Furthermore, the very language of the 2015 and 2016 Great American Policies prohibits Great American from rescinding the policies as to an **Insured Person** (the Individual Defendants) who did not make the alleged untrue statement or have knowledge of it.

D. The Consequences of Great American’s Failure to Defend.

By breaching its duty to defend the Defendants/Third-Party Plaintiffs from the allegations in the Complaints, Great American has lost its right to control the defense or to select defense counsel in this matter.³ Additionally, Great American is liable to reimburse Defendants/Third-Party Plaintiffs for the attorneys’ fees and expenses they incurred in defending this case since the filing of the original Complaint or, at the very least, since July 13, 2016, the date on which Great

³ *Episcopal Church in South Carolina v. Church Ins. Co. of Vermont*, 53 F. Supp. 3d 816, 826 (D.S.C. 2014).

American admittedly received notice of this lawsuit against Defendants/Third-Party Plaintiffs.⁴ Further, Defendants/Third-Party Plaintiffs are entitled to recover their attorneys' fees incurred in prosecuting the Third-Party Complaint.⁵

II. PROCEDURAL BACKGROUND

On July 7, 2016, Plaintiffs filed their original Complaint in the Horry County Court of Common Pleas against Defendants/Third-Party Plaintiffs, Tilghman Beach and Racquet Club Condominium Association, Inc. ("TBRC" or "insured **Organization**") and the members of its Board of Directors in their individual capacities⁶ ("State Court Action"). The original Complaint alleged numerous causes of action,⁷ all of which were grounded, in part, on the assertion that Defendants/Third-Party Plaintiffs failed to maintain adequate reserves "for the repair of the common elements at the HOA" and otherwise failed to adequately maintain the property. Plaintiffs purported to bring the action "Individually and in a Representative Capacity on Behalf of All Persons Similarly Situated Who Own Units" in buildings at TBRC. The original

⁴ *Fuller v. Eastern Fire & Cas. Ins. Co.*, 240 S.C. 75, 124 S.E.2d 602 (1962); *Allstate Ins. Co. v. Wilson*, 259 S.C. 586, 592, 193 S.E.2d 527, 530 (1972) (insurer's "obligation to defend existed from the time the actions were instituted and continued until it fulfilled its obligation under its policy"); *Unisun Ins. Co. v. Hertz Rental Corp.*, 312 S.C. 549, 554, 436 S.E.2d 182, 186 (Ct. App. 1993) ("insurer that breaches its duty to defend . . . the insured may be held liable for the expenses the insured incurs in providing for his own defense"); *Episcopal Church in South Carolina*, 53 F. Supp. 3d at 830 (holding "an insurer who breached its duty to defend will be liable for reasonable costs of defense incurred both before and after notice").

⁵ *Gordon-Gallup Realtors, Inc. v. Cincinnati Ins. Co.*, 274 S.C. 468, 472, 265 S.E.2d 38, 40 (1980) ("Respondent [the insured] was forced to prosecute this action to enforce its rights under the policy with appellant just as the insured in *Hegler* was forced to defend an action to enforce his rights under the policy with his insurer."); *Hegler v. Gulf Ins. Co.*, 270 S.C. 548, 550, 243 S.E.2d 443, 444 (1978) (awarding attorneys' fees to insured where the insured was forced to employ counsel to obtain coverage under the policy because the action of the insurer amounts to a wrongful breach of its contractual obligations).

⁶ The Individual Defendants.

⁷ Plaintiffs' original Complaint alleged causes of action for: (1) Negligence/Gross Negligence; (2) Breach of Master Deed's Covenants and Restrictions; (3) Declaratory Judgment; (4) Injunctive Relief, and (5) Specific Performance.

Complaint sought damages against Defendants/Third-Party Plaintiffs, including TBRC, on behalf of the individual unit owners, including alleged diminution in value of the individual units. TBRC and the Individual Defendants sent Great American a copy of the original Complaint on July 13, 2016, but Great American did not step forward to defend TBRC and the Individual Defendants.

TBRC removed the case to the United States District Court for the District of South Carolina, Florence Division on August 19, 2016, primarily on the grounds that the case was brought as a class action and was removable under the Federal Class Action Fairness Act (“CAFA”). Along with the removal, TBRC filed an Answer to Plaintiffs’ original Complaint and asserted counterclaims for civil conspiracy, abuse of process, indemnity, and *ultra vires* acts.⁸

On September 2, 2016, Plaintiffs filed a Motion to Remand in Federal Court. The Parties subsequently reached an agreement concerning the Motion to Remand and memorialized their agreement in a Stipulation filed with the Federal Court on October 5, 2016, which provided that, in exchange for Defendants’/Third-Party Plaintiffs’ consenting to the Motion to Remand, Plaintiffs agreed to maintain this lawsuit solely in their individual capacities and not to seek to maintain this case as a class action or derivative action on remand.

Plaintiffs filed a Second Amended Complaint in State Court which deleted any class allegations. TBRC and the Individual Defendants sent a copy of the Second Amended Complaint to Great American but, again, Great American did not step forward to defend TBRC and the Individual Defendants.

⁸ TBRC also filed a Motion to Dismiss Plaintiffs’, Gary Steven Robinson, Elizabeth Erin Humphries, Dennis L. Johnson, Jr., and Nancy H. Johnson, claims pursuant to Rule 12(b)(1) and 12(b)(6), Fed. R. Civ. P.

Plaintiffs filed a Third Amended Complaint on March 8, 2017.⁹ On March 28, 2017, Defendants/Third-Party Plaintiffs filed a Consent Motion for Leave to file a Third-Party Complaint against Great American which was granted on May 2, 2017. On the same day, Defendants/Third-Party Plaintiffs filed the Third-Party Complaint against Great American, alleging claims for breach of contract, attorney's fees under § 38-59-40 of the South Carolina Code, bad faith, and declaratory judgment. Great American filed an Answer to the Third-Party Complaint and Counterclaim on July 10, 2017. On August 30, 2017, Great American filed an Amended Answer and Counterclaim to Defendants'/Third-Party Plaintiffs' Third-Party Complaint.

III. UNDISPUTED FACTS

1. Great American's Amended Answer admits the authenticity of the "*ExecPro* Community Association Solution Insurance Policy," #EPP3654704-01, issued by Great American to TBRC a/k/a "Tilghman Beach & Racquet Club HOA, Inc.", for policy period February 11, 2016 to February 10, 2017, which is attached as Exhibit A to the Third-Party Complaint (hereinafter "the 2016 Great American Policy").^{10, 11}

2. In its Amended Answer to the Third-Party Complaint, Great American admits the authenticity of the original Complaint, the Second Amended Complaint, and the Third Amended Complaint filed by Plaintiffs in the underlying litigation.¹²

3. Great American's Amended Answer admits that :

⁹ See Footnote 1, *supra*.

¹⁰ Third-Party Def.'s Am. Answer and Countercl. to Defs.'/Third-Party Pls.' Third-Party Compl. ¶¶ 5 and 34.

¹¹ In Paragraph 5 of its Amended Answer, Great American admits the existence and authenticity of the 2016 Great American Policy. *Id.* at ¶ 5. Further, in Paragraph 33, Great American affirmatively alleges the existence and authenticity of the 2016 Great American Policy and attaches the same as Exhibit 2. *Id.* at ¶ 34.

¹² See Third-Party Def.'s Am. Answer and Countercl. to Defs.'/Third-Party Pls.' Third-Party Compl. ¶¶ 7 & 38.

(a) Defendants/Third-Party Plaintiffs are **Insureds** as defined by the 2016 Great American Policy;¹³

(b) the original Complaint, the Second Amended Complaint, and the Third Amended Complaint (collectively, the “Complaints”) in this matter allege a **Claim**¹⁴ during the **Policy Period**¹⁵ of the 2016 Great American Policy;¹⁶ and

(c) the Complaints in this matter allege **Wrongful Acts** by the **Insureds** within the meaning of the 2016 Great American Policy¹⁷.

4. Great American further admits receiving the demand letters from the Defendants/Third-Party Plaintiffs attached as Exhibits E, F and G to the Third-Party Complaint, and admits that it has denied coverage and a defense to its **Insureds** in this matter.¹⁸

5. Finally, Great American admits the authenticity of an August 1, 2016 letter in which it acknowledges receiving notice of the lawsuit by e-mail dated July 13, 2016.¹⁹ Great American also admits the authenticity of a November 3, 2016 letter in which it was sent a copy of the Second Amended Complaint in this matter.^{20, 21}

IV. LEGAL ARGUMENTS

A. The Standard for a Motion for Judgment on the Pleadings.

¹³ Id. at ¶¶ 5 & 37.

¹⁴ As defined by the 2016 Great American Policy.

¹⁵ As defined by the 2016 Great American Policy.

¹⁶ Id. at ¶ 8.

¹⁷ Id. at ¶ 9.

¹⁸ Id. at ¶ 10.

¹⁹ Id. at ¶ 11.

²⁰ Id. at ¶ 10.

²¹ The law is well-settled that stipulations and admissions contained in a pleading filed and served by a party in a civil lawsuit in South Carolina are binding on the party and preclude the party from taking an inconsistent position in the litigation. *Johnson v. Alexander*, 413 S.C. 196, 202, 775 S.E.2d 697, 700 (2015) (citing *Elrod v. All*, 243 S.C. 425, 436, 134 S.E.2d 410, 416 (1964)) (“Parties are generally bound by their pleadings and are precluded from advancing arguments or submitting evidence contrary to those assertions.”)

“After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings.”²² “When considering such motion, the court must regard all properly pleaded factual allegations as admitted.”²³ Moreover, the motion does not admit the inferences drawn from the facts, nor does it admit conclusions of law.²⁴ A judgment on the pleadings is proper where there is no issue of fact raised by the pleadings that would entitle Great American to judgment if resolved in Great American’s favor.²⁵ “A Rule 12(c) motion for judgment on the pleadings is appropriate when all material allegations of fact are admitted in the pleadings and only questions of law remain.”²⁶

B. The Standard for the Duty to Defend.

As previously mentioned, Great American’s Amended Answer admits the existence of a “claims made” policy of liability insurance which Great American issued to Defendants/Third-Party Plaintiffs for the period of February 10, 2016 to February 10, 2017, during which a **Claim**, as defined in the 2016 Great American Policy, was admittedly made against Great American’s **Insureds**. Under South Carolina law, a liability insurer like Great American has two (2) separate and distinct duties to its insured. First, the insurer is obligated to pay sums the insured becomes obligated to pay. Second, the insurer must defend any suit or claim possibly payable under the

²² Rule 12(c), SCRPC.

²³ *Falk v. Sadler*, 341 S.C. 281, 286, 533 S.E.2d 350, 353 (Ct. App. 2000) (citing references omitted).

²⁴ *Firemen's Ins. Co. of Newark, New Jersey v. Cincinnati Ins. Co.*, 302 S.C. 234, 236, 394 S.E.2d 855, 856 (Ct. App. 1990) (citing *Russell v. City of Columbia*, 301 S.C. 117, 390 S.E.2d 463 (Ct. App. 1989)).

²⁵ See *Sapp v. Ford Motor Co.*, 386 S.C. 143, 146, 687 S.E.2d 47, 49 (2009) (citing *Russell*, 305 S.C. at 89, 406 S.E.2d at 339) (“A judgment on the pleadings is proper where there is no issue of fact raised by the complaint that would entitle plaintiff to judgment if resolved in plaintiff’s favor.”)

²⁶ *Wells Fargo Equip. Fin., Inc. v. State Farm Fire & Cas. Co.*, 805 F. Supp. 2d 213, 216 (E.D. Va. 2011), *aff'd*, 494 F. App'x 394 (4th Cir. 2012) (quoting *Republic Ins. Co. v. Culbertson*, 717 F.Supp. 415, 418 (E.D.Va.1989)).

terms of the liability policy in question.²⁷ The South Carolina Supreme Court noted in *Nationwide Mutual Ins. Co. v. Simmonds*, 315 S.C. 404, 434 S.E.2d 277 (1993), that “[t]he defense of . . . suits by the insurer is a valuable right of the insured for which [the insured] pays and to which [the insurer] is entitled by the very words of the policy.”²⁸ The duty to defend is distinct from and broader than the duty to indemnify—the duty to pay the judgment against its insured.²⁹

The determination of whether there is a duty to defend is made by examining the allegations of the complaint against the insured.³⁰ The underlying complaint is construed liberally in favor of the duty of the insurance company to defend its insured with all doubts resolved in the insured’s favor.³¹ If the underlying complaint against the insured creates “a *possibility* of coverage under the policy, the insurer is obligated to defend.”³² Therefore, “the duty to defend is triggered where the underlying complaint includes *any allegation* that raises the possibility of coverage.”³³ If the underlying complaint contains an allegation or allegations which raise the possibility of coverage under the insurance policy in question, the insurer cannot refuse to defend its insured even if there are other allegations in the complaint which are

²⁷ *City of Hartsville v. S.C. Mun. Ins. & Risk Fin. Fund*, 382 S.C. 535, 543, 677 S.E.2d 574, 578 (2009).

²⁸ *Nationwide Mutual Ins. Co.*, 315 S.C. at 407, 434 S.E.2d at 278 (quoting *American Casualty Company v. Howard*, 187 F.2d 322, 327 (4th Cir.1951)).

²⁹ *City of Hartsville*, 382 S.C. at 544; 677 S.E.2d at 578; *Ross Dev. Corp. v. Fireman’s Fund Ins. Co.*, 809 F. Supp. 2d 449, 457 (D.S.C. 2011).

³⁰ *City of Hartsville*, 382 S.C. at 544; 677 S.E.2d at 578; *B.L.G. Enterprises, Inc. v. First Financial Ins. Co.*, 334 S.C. 529, 514 S.E.2d 327 (1999); *Walterboro Comm. Hosp. v. Meacher*, 392 S.C. 479, 709 S.E.2d 71 (Ct. App. 2011).

³¹ *Darwin Nat. Assur. Co. v. Matthews & Megna LLC*, 36 F.Supp.3d 636, 655 (D.S.C. 2014).

³² *City of Hartsville*, 382 S.C. at 543, 677 S.E.2d at 578 (citing *Gordon-Gallup Realtors, Inc. v. Cincinnati Ins. Co.*, 274 S.C. 468, 265 S.E.2d 38 (1980)) (emphasis added).

³³ *Auto-Owners Ins. Co. v. Newsome*, No. 4:12-cv-00447-RBH, 2013 WL 3148334, at *4 (D.S.C. June 19, 2013) (emphasis added).

supposedly not covered by the policy.³⁴ Stated another way, an insurance company can refuse to defend its insured only if the insurance company can show, as a matter of law, that the claims in the underlying complaint do not possibly fall within any coverage provision of the policy.³⁵

In determining whether there is a duty to defend, South Carolina courts require that the policy be broadly construed in favor of the insured, and thus, in favor of the duty to defend the insured.³⁶ The substantive factual allegations of the underlying complaint, not the titles of the causes of action, control whether there is a duty to defend.³⁷ Here, all Defendants/Third-Party Plaintiffs need to show is one (1) covered claim alleged in the original Complaint, or in any amended Complaints subsequently filed by Plaintiffs and Great American has a duty to defend.³⁸

³⁴ *Palms Pest Control Co. v. Monticello Ins. Co.*, 319 S.C. 12, 15, 459 S.E.2d 318, 319 (Ct. App. 1994), *aff'd in part*, 321 S.C. 310, 468 S.E.2d 304 (1996) (holding that “[w]hile the complaint also includes allegations . . . which would not be covered by the policy, the inclusion of some non-covered claims does not abrogate an insurer’s duty to defend when a complaint raises claims covered by the policy”). See also *Town of Duncan v. State Budget & Control Bd.*, 326 S.C. 6, 482 S.E.2d 768, 773–74 (1997); *Employers Mut. Liab. Ins. Co. v. Hendrix*, 199 F.2d 53, 59 (4th Cir. 1952); *Cincinnati Ins. Co. v. Crossmann Cmtys. of N.C, Inc.*, No. 4:09-CV-1379-RBH, 2013 WL 1282017, at *11 (D.S.C. Mar. 27, 2013) (“South Carolina law requires that a triggered insurer with a duty to defend the policyholder in a suit must defend the policyholder against all claims in that suit, even those claims that are not covered under the policy.”)

³⁵ Vol. 3 Jeffrey E. Thomas, New Appleman on Insurance Law Library Edition, § 17.01[2][a] (LexisNexis); see also *Blackhawk-Cent. City Sanitation Dist. v. Am. Guarantee & Liab. Ins. Co.*, 214 F.3d 1183, 1188 (10th Cir. 2000) (citing references omitted) (with regard to the duty to defend, “the insured need only show that the underlying claim may fall within policy coverage; the insurer must prove that it cannot.”)

³⁶ See, e.g., *Town of Duncan*, 326 S.C. at 12, 482 S.E.2d at 772; *Torrington Co. v. Aetna Cas. and Sur. Co.*, 264 S.C. 636, 216 S.E.2d 547 (1975).

³⁷ *City of Hartsville*, 382 S.C. at 544-45, 677 S.E.2d at 579; *Wadle v. Association Ins. Co.*, 401 S.C. 431, 440, 737 S.E.2d 631, 635 (Ct. App. 2012).

³⁸ See, e.g., *Liberty Mutual Fire Ins. Co. v. JM Smith Corp.*, 602 Fed.Appx. 115, 119 (4th Cir. 2015) (citing references omitted) (“South Carolina law, like most states, imposes a broad duty to defend on insurers An insurer must defend its insured if there is a ‘possibility of coverage’ under the policy . . . for even just one claim in the complaint.”); *Town of Duncan*, 326 S.C. at 16, 482 S.E.2d at 774 (citing references omitted) (“where a lawsuit contains several causes of action, some of which are covered under the policy and some of which are not, an insurer is not justified in refusing to defend the entire suit.”).

As will be discussed later in this Memorandum, Great American's refusal to defend Defendants/Third-Party Plaintiffs in this case is based on four (4) exclusions which appear in the 2016 Great American Policy. Three (3) additional legal principles bear mentioning on the question of whether those policy exclusions excuse Great American's duty to defend Defendants/Third-Party Plaintiffs in this case.

First, because Great American drafted the 2016 Great American Policy, any ambiguity in that policy (particularly any ambiguity in an exclusion) is resolved against Great American and in Defendants'/Third-Party Plaintiffs' favor.³⁹ Policy exclusions are construed very narrowly and "most strongly against the insurance company, which also bears the burden of establishing the exclusion's applicability."⁴⁰ Second, each exclusion in the policy must be read and applied independently of every other exclusion.⁴¹

Third, an insurer can refuse to defend based on a policy exclusion only if the *only* possible construction of the underlying complaint is that *all* allegations and claims fall *totally* within the express language of the cited exclusion.⁴² To justify the refusal to defend the insured,

³⁹ *South Carolina Budget and Control Bd. v. Prince*, 304 S.C. 241, 403 S.E.2d 643 (1991); *Millstead v. Life Ins. Co. Virginia*, 256 S.C. 449, 182 S.E.2d 867 (1971).

⁴⁰ *Auto Owners Ins. Co. v. Personal Touch Med. Spa, LLC*, 763 F.Supp.2d 769, 780 (D.S.C. 2011) (citing references omitted); *Owners Ins. Co. v. Clayton*, 364 S.C. 555, 614 S.E.2d 611 (2005); *Boggs v. Aetna Casualty and Surety Co.*, 272 S.C. 460, 252 S.E.2d 565 (1979); *see also M & M Corp. of S.C. v. Auto-Owners Ins. Co.*, 390 S.C. 255, 259, 701 S.E.2d 33, 35 (2010) (stating "[p]olicies are construed in favor of coverage, and exclusions in insurance policy are construed against the insurer").

⁴¹ *Auto Owners Ins. Co. v. Newman*, 385 S.C. 187, 684 S.E.2d 541 (2009).

⁴² *Seaboard Sur. Co. v. Gillette Co.*, 64 N.Y.2d 304, 312, 476 N.E.2d 272, 276 (1984) (citing references omitted) (if an insurer is to be "relieved of [its] duty to defend it is obligated to demonstrate that the allegations of the complaint cast that pleading solely and entirely within the policy exclusions, and, further, that the allegations, in toto, are subject to no other interpretation."); *Avondale Indus., Inc. v. Travelers Indem. Co.*, 887 F.2d 1200, 1204-05 (2d Cir. 1989) (citing references omitted) ("To avoid the duty therefore the insurer must demonstrate that the allegations in the underlying complaints are 'solely and entirely' within specific and unambiguous exclusions from the policy's coverage."); *Haygood v. Dies*, 174 So. 3d 1211, 1214

all the claims in the underlying complaint must be “unambiguously excluded” by the express terms of the cited exclusion.⁴³

C. Great American’s Amended Answer Admits that the Complaints in this Matter Constitute Claims and Allege Wrongful Acts Against Its Insureds.

In its Amended Answer, Great American admits the authenticity of the 2016 Great American Policy and, indeed, attached a copy of the policy as Exhibit 2 to its Amended Answer. “Section I. Insuring Agreements” in the 2016 Great American Policy provides that Great American “has the right and duty to defend any **Claim** to which this insurance applies, even if the allegations of such **Claim** are groundless, false or fraudulent.”⁴⁴ Because the term “duty” is not defined in the 2016 Great American Policy, the word is given its plain, ordinary, popular meaning.⁴⁵ The term is to be construed broadly in favor of Defendants/Third Party Plaintiffs and the duty to defend. “Duty” has been defined as a “moral obligation”; “that which is due from a person; that which a person owes to another.... A word of more extensive signification than ‘debt’”; “obligatory tasks, conduct, service, or functions that arise from one’s position”; “a moral or legal obligation”; “ethical, legal or moral accountability owed always or for a certain period of time, specifically to someone who has a right to demand satisfaction of an obligation”.⁴⁶ The word “duty” is synonymous with “charge,” “obligation,” “mission,” and “responsibility.” In other words, the contract language selected and placed by Great American in the 2016 Great

(La. App. 2 Cir. 2015) (quoting *Vaughn v. Franklin*, 785 So. 2d 79, 88 (La. App. 1st Cir. 2001)) (stating an “insurer has a duty to defend if there exists a ‘single allegation in the plaintiff’s [complaint] . . . under which coverage is not unambiguously excluded.’”).

⁴³ *USAA Property and Cas. Ins. Co. v. Clegg*, 377 S.C. 643, 655, 661 S.E.2d 791, 797 (2008).

⁴⁴ Defs.’/Third-Party Pls.’ Third-Party Compl., Ex. A, p. 1 of 11; Third-Party Def.’s Am. Answer and Countercl. to Defs.’/Third-Party Pls.’ Third-Party Compl., Ex. 2, p. 1 of 11 (underline emphasis supplied).

⁴⁵ *American Credit of Sumter, Inc. v. Nationwide Mut. Ins. Co.*, 378 S.C. 623, 628, 663 S.E.2d. 492, 495 (2008).

⁴⁶ BusinessDictionary.com; Merriam-Webster; The American Heritage College Dictionary (Third Edition) at 428 (1997); Black’s Law Dictionary (Sixth Edition) at 505 (1990).

American Policy states that Great American has the obligation, charge, and responsibility “to defend any **Claim** to which this insurance applies, even if the allegations of such **Claim** are groundless, false or fraudulent.”

As discussed earlier, the critical document which is examined to determine the duty to defend is the underlying complaint in the lawsuit against the insured. Great American’s Amended Answer admits the authenticity of the Complaints filed by Plaintiffs in the underlying case against Defendants/Third-Party Plaintiffs. Moreover, this Court can take judicial notice of those pleadings because they are specifically filed in this case before this Court.⁴⁷

As previously discussed, Great American’s Amended Answer to the Third-Party Complaint admits that: (1) Defendants/Third-Party Plaintiffs are **Insureds** under the 2016 Great American Policy; (2) the Complaints in this matter allege a **Claim** within the meaning of the 2016 Great American Policy; and (3) the Complaints allege **Wrongful Acts** within the meaning of the 2016 Great American Policy.⁴⁸ Further, Great American’s Amended Answer admits the authenticity of an August 1, 2016 letter sent on behalf of Great American which acknowledges “receipt of the July 13, 2016 email from Brenda Riska of Risk Partners Insurance Group, giving [Great American] notice of [this lawsuit].”⁴⁹ Great American, therefore, admits getting notice of the **Claim** during the **Policy Period** within the “Section VII. Notice of Claim” provision in the 2016 Great American Policy. The Complaints here, when construed broadly in favor of Defendants/Third-Party Plaintiffs, as required by South Carolina law, clearly allege a possibility

⁴⁷ *S.C. Dep’t of Soc. Servs. v. Janice C.*, 383 S.C. 221, 227, 678 S.E.2d 463, 467 (Ct. App. 2009) (quoting *Freeman v. McBee*, 280 S.C. 490, 494, 313 S.E.2d 325, 327 (Ct.App.1984)) (“a court can take judicial notice of its own records, files and proceedings for all proper purposes including facts established in its records.”)

⁴⁸ Third-Party Def.’s Am. Answer and Countercl. to Defs.’/Third-Party Pls.’ Third-Party Compl.

¶¶ 6, 8, 9, & 37.

⁴⁹ *Id.* at ¶ 11.

of coverage under the 2016 Great American Policy given the admissions contained in Great American's Amended Answer.⁵⁰ Great American's Amended Answer does not dispute that the claims in the underlying Complaints here fall within the general coverage provisions of the 2016 Great American Policy.

D. The Policy Exclusions Asserted by Great American Do Not Unambiguously Exclude the Claims Alleged in the Complaints.

Great American's Amended Answer alleges that four (4) exclusions in the 2016 Great American Policy exclude all coverage to Defendants/Third-Party Plaintiffs and, thus, relieve Great American of its duty to defend: (1) Exclusion D(2) for "damage to or destruction of any tangible property or the loss of use of any tangible property;" (2) Exclusion G which deals with "seepage;" (3) Exclusion H which provides that the 2016 Great American Policy does not apply to any **Claim** brought "by, or for the benefit of or at the behest of" the insured **Organization**; and (4) Exclusion C(1) which excludes certain prior **Claims**. As previously discussed, each cited exclusion must be read and applied independently of every other exclusion.⁵¹ Exclusions are narrowly construed "most strongly against the insurance company which also bears the burden of establishing the exclusion's applicability."⁵² Further, to avoid the duty to defend based on a policy exclusion, Great American must demonstrate that all the factual allegations in the underlying complaint fall solely and entirely within the cited policy exclusion. A review of the original Complaint (and the subsequent amended complaints) demonstrates, as a matter of law, that none of the foregoing four (4) exclusions exclude all of the claims alleged in the original Complaint or any subsequently amended Complaint.

⁵⁰ *Wilson*, 259 S.C. at 592, 193 S.E.2d at 5 ("it is generally recognized that the insurer is under a duty to defend a suit against the insured where the complaint in such suit alleges a state of facts within the coverage of the policy").

⁵¹ *Newman*, 385 S.C. 187, 684 S.E.2d 541.

⁵² *Auto Owners Ins. Co.*, 763 F. Supp. 2d at 780.

1. Exclusion D.(2)⁵³

Great American's assertion of Exclusion D.(2) ignores the fact that the original Complaint alleges that Defendants/Third-Party Plaintiffs committed actual or alleged errors, acts and omissions, negligence and/or breach of duty by failing to maintain adequate reserves to repair and perform maintenance on the common elements at TBRC.⁵⁴ South Carolina courts have already held against Great American on this issue, finding a claim alleging that a homeowners' association failed to maintain adequate repair reserves is outside a property damage exclusion contained in a liability insurance policy.⁵⁵

Pulliam is fatal to Great American's contention that Exclusion D.(2) excused its duty to defend here. There, individual unit owners (hereinafter the "Respondents") in a horizontal property regime called Kensington Place filed a lawsuit against their Property Owners Association (the "POA") "for breaches of fiduciary duty and negligence in failing to: (1) adequately inspect, repair and maintain the common elements; (2) inform unit owners of the conflict of interest in a developer-controlled POA; and (3) establish a reserve fund to pay for repairs."⁵⁶ A declaratory judgment was filed seeking a determination on whether the insurance policy issued to the POA by Travelers covered the claims alleged against the POA in the

⁵³ Exclusion D.(2) provides as follows: "This Policy does not apply to any **Claim** made against any **Insured**: . . . D. based on, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving: . . . (2) damage to or destruction of any tangible property or the loss of use of any tangible property . . ."

⁵⁴ See, e.g., original Complaint ¶¶ 26, 27, 31, 49, 50.g., 50.j., 50.k., 55, and 62.e.

⁵⁵ *Pulliam v. Travelers Indemnity Co.*, 403 S.C. 332, 342, 743 S.E.2d 117, 122 (Ct. App. 2013) ("[t]he failure to establish a reserve fund resulted in [plaintiffs] . . . having to expend more [money] from their own pockets to make the repairs than they might have otherwise had to expend—economic damage"). See also *Builders Mut. Ins. Co. v. Lacey Constr. Co.* No. CIV.A. 3:11-cv-400-CMC, 2012 WL 1032539, at *9 (D.S.C. Mar. 7, 2012) ("To the extent damages sought in the [underlying action] are for inadequate reserves . . . they do not involve physical injury and, consequently, cannot satisfy the definition of property damage").

⁵⁶ *Pulliam*, 403 S.C. at 336-337, 743 S.E.2d at 119.

underlying lawsuit. Similar to the original Complaint here, the underlying complaint in *Pulliam* alleged that the POA “had the duty to create and fund an adequate fund of reserves for the normal replacement of the components of the Common Elements, yet . . . the POA failed to develop and fund an adequate reserve fund.”⁵⁷ Travelers argued that the claims were within a property damage exclusion in the policy and therefore there was no coverage. As with Exclusion D.(2), the property damage exclusion in *Pulliam* purported to exclude claims related to or based on physical damage to tangible property.

On appeal, the South Carolina Court of Appeals held that claims related to the POA’s failure to establish and maintain an adequate repair reserve fund, and claims related to breach of fiduciary duty for failing to warn about conflicts of interest were outside the property damage exclusion and thus covered by the policy in question:

Respondents assert two more allegations not addressed by the prior decisions of *Crossman* or *Eastpoint*. They allege [the Property Owners Association] failed to establish a reserve fund and breached a fiduciary duty to warn of the inherent conflict in developer-controlled associations. ***The duty to establish a reserve fund, while related to the property damage, did not result in physical damage to tangible property as required by the policy.*** The failure to establish a reserve fund resulted in Respondents [the unit owners] having to expend more from their own pockets to make the repairs than they might have otherwise had to expend-economic damages . . . Likewise, allegations that [the POA] breached its fiduciary duty by failing to warn of conflicts of interest . . . did not allege physical injury to tangible property constituting property damage.⁵⁸

Again, an insurer in South Carolina has the duty to defend the entire case if there is ***just one single claim alleged in the complaint that falls within the coverage of the policy and outside the policy exclusions.***⁵⁹ The original Complaint here clearly alleged **Claims** under the

⁵⁷ *Id.* at 337, 743, S.E.2d at 120.

⁵⁸ *Id.* at 342, 743 S.E.2d at 122 (citation omitted) (emphasis added).

⁵⁹ *Palms Pest Control Co.*, 319 S.C. at 15, 459 S.E.2d at 319 (holding “the inclusion of some non-covered claims does not abrogate an insurer’s duty to defend when a complaint raises claims covered by the policy”); *Berenyi, Inc. v. Landmark Am. Ins. Co.*, No. C.A. 2:09-CV01556PMD,

2016 Great American Policy against Defendants/Third-Party Plaintiffs for failing to access and maintain adequate repair reserves. The original Complaint is replete with allegations related to the **Insureds'** failure to make, levy, collect, and/or maintain an appropriate reserve fund for repairs to the common or limited common elements.⁶⁰ The Second Amended Complaint makes similar allegations. The ultimate truth of these allegations is irrelevant because the 2016 Great American Policy expressly provides that Great American has the "duty to defend any **Claim** to which this insurance applies, even if the allegations of such **Claim** are groundless, false or fraudulent."⁶¹ The allegations in the original Complaint, and every amended Complaint in this case since then, assert that the **Insureds** committed **Wrongful Acts** with respect to the failure to maintain adequate repair reserves which implicates matters outside Exclusion D.(2). Therefore, Exclusion D.(2) does not extinguish Great American's duty to defend.

Additionally, Exclusion D.(2) requires damage, destruction or loss of use of "tangible property." The Complaints in this matter allege that the **Insureds' Wrongful Acts** in failing to adequately maintain the property caused damages to the individual Plaintiffs due to the diminution in value of their individual condominium units.⁶² Diminution in value is economic loss under South Carolina law which is not destruction of, or damage to, "tangible property."⁶³ South Carolina's position on this issue is consistent with the law in other states.⁶⁴

2010 WL 233861, at *4 - *8 (D.S.C. Jan. 14, 2010) ("[t]he inclusion of claims which would not be covered by the policy does not abrogate an insurer's duty to defend when the complaint raises at least one claim covered by the policy Therefore, this exclusion, which would only affect coverage as to part of the underlying claim, does not affect whether or not there is a duty to defend").

⁶⁰ See, e.g., original Complaint, ¶¶ 26, 27, 31, 49, 50.g., 50.j., 50.k., 55, and 62.e.

⁶¹ Third-Party Def.'s Am. Answer and Countercl. to Defs.'/Third-Party Pls.' Third-Party Compl., Ex. 2, p. 1 of 11.

⁶² See original Complaint, ¶ 51; Second Am. Complaint, ¶ 53; Third Am. Complaint, ¶ 54.

⁶³ *Auto-Owners Ins. Co. v. Carl Brazell Builders, Inc.*, 356 S.C. 156, 163, 588 S.E.2d 112, 115-16 (2003) (finding that homeowners' alleged losses of diminution in value of their property were

If Great American wanted to exclude diminution in value from the coverage of its 2016 Great American Policy, it should have followed the example in *Pulliam* by broadly excluding “property damage” and specifically defining “property damage” to include “diminution in property value”.⁶⁵ Instead, Great American drafted Exclusion D.(2) to only exclude damage to, destruction of, or loss of use of “tangible property” and did not define “tangible property” in the 2016 Great American Policy to include diminution in value of tangible property.⁶⁶

2. Exclusion G⁶⁷

There are a number of claims in the Complaints which allege a **Wrongful Act** by an **Insured** which does not involve “seepage, pollution, radiation, emission, contamination or

not property damages (i.e. physical injury to their property) but, instead, purely economic damages).

⁶⁴ *Id.* at 163-64, 588 S.E.2d at 116; *see also State Farm Fire and Cas. Co. v. Tillerson*, 334 Ill.App.3d 404, 268 Ill.Dec. 63, 777 N.E.2d 986 (2002) (diminution in value is intangible damage, not physical injury, therefore, CGL policy does not provide coverage where injured parties do not allege contractor’s work tortiously injured their home); *L. Ray Packing Co. v. Commercial Union Ins. Co.*, 469 A.2d 832 (Me.1983) (where complaint alleged price-fixing scheme resulting in loss of profits, but no physical injury to merchandise; it failed to allege property damage within CGL policy); *Federated Mut. Ins. Co. v. Concrete Units*, 363 N.W.2d 751 (Minn.1985) (incorporation of defective concrete into grain elevator resulting in diminution in market value of the elevator does not constitute physical injury as required by property damage definition in CGL policy); *Wyoming Sawmills, Inc. v. Transp. Ins. Co.*, 282 Or. 401, 578 P.2d 1253 (1978) (use of term “physical” to define property damage negates possibility policy intended to include consequential or intangible damage such as depreciation in value).

⁶⁵ *Pulliam*, 403 S.C. at 340-41, 743 S.E.2d at 121-22.

⁶⁶ *Diamond State Ins. Co. v. Homestead Indus., Inc.*, 318 S.C. 231, 236, 456 S.E.2d 912, 915 (1995) (citing references omitted) (“[a]mbiguous or conflicting terms in an insurance policy must be liberally construed in favor of the insured and against the insurer”); *Town of Duncan*, 326 S.C. at 12, 482 S.E.2d at 772 (insurance policy is to be construed broadly in favor of the duty to defend); *M&M Corp. of S.C.*, 390 S.C. at 259, 701 S.E.2d at 35 (“[p]olicies are construed in favor of coverage, and exclusions in insurance policy are construed against the insurer”).

⁶⁷ Exclusion G provides as follows: “This Policy does not apply to any **Claim** made against any **Insured**: . . . G. based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving actual or alleged seepage, pollution, radiation, emission, contamination or irritant of any kind, including but not limited to smoke, vapor, dust, fibers, mold, spores, fungi, germs, soot, fumes, acids, alkalis, asbestos, chemicals or waste of any kind, provided, however, this exclusion shall not apply to coverage provided under Insuring Agreement 1.A.”

irritant” including, but not limited to, the claim against the insured **Organization** and its individual Board members (the Individual Defendants) for failing to maintain adequate reserves for repairing and maintaining the common elements. Great American has a duty to defend if even just one part of Plaintiffs’ claim falls outside this exclusion.⁶⁸

3. Exclusion H⁶⁹

The original Complaint contains absolutely no allegation that it was brought on behalf of, or for the benefit of, the insured **Organization** (TBRC). The caption of the original Complaint expressly states that it is brought by Plaintiffs “Individually and in a Representative Capacity on Behalf of All Persons Similarly Situated Who Own Units” in the buildings at Tilghman Beach and Racquet Club and names the insured **Organization** (TBRC) as a Defendant. The contention that a lawsuit, which names the insured **Organization** (TBRC) as a Defendant, which seeks an award of actual and punitive damages from the insured **Organization** (TBRC) to be paid to Plaintiffs, which seeks to order the insured **Organization** (TBRC) to perform certain acts, and which seeks damages solely for the benefit of the individual Plaintiffs (and the punitive class), is brought “for the benefit of” the insured **Organization** is absurd on its face.

⁶⁸ *Berenyi, Inc.*, 2010 WL 233861 at *8 (“this exclusion, which would only affect coverage as to part of the underlying claim, does not affect whether there is a duty to defend”); *USAA Property and Cas. Ins. Co.*, 377 S.C. at 655, 661 S.E.2d at 797 (to avoid the duty to defend, all claims in the underlying complaint must be unambiguously excluded by the express terms of the exclusion in question); *Auto Owners Ins. Co.*, 763 F.Supp.2d at 780 (policy exclusions are construed “most strongly against the insurance company, which bears the burden of establishing the exclusion’s applicability”).

⁶⁹ Exclusion H provides as follows: “This Policy does not apply to any **Claim** made against any **Insured**: . . . H. by, or for the benefit of, or at the behest of the **Organization** or any **Subsidiary** or any entity which controls, is controlled by, or is under common control with the **Organization** or any **Subsidiary**, or any person or entity which succeeds to the interest of the **Organization** or any **Subsidiary**, provided, however, this exclusion shall not apply to any **Claim** brought by the receiver, conservator, liquidator, rehabilitator, examiner or similar official of the **Organization**, if any, in the event of **Financial Insolvency**,”

Moreover, Exclusion H only applies if the **Claim** was brought “by, or for the benefit of, or at the behest of” the insured **Organization** (TBRC). The original Complaint alleges that Plaintiffs’ claims in this case are brought pursuant to *Murphy v. Yacht Cove Homeowners Association*, 289 S.C. 367, 345 S.E.2d 709 (1986).⁷⁰ In *Murphy*, the South Carolina Supreme Court addressed the question of whether a unit owner could sue an HOA for failing to repair the common elements and held “that a member of a condominium association, established pursuant to the Horizontal Property Act, may bring an action in contract or tort against the association.”⁷¹ Exclusion H does not exclude from coverage a lawsuit brought “against” the insured **Organization**. Nothing in *Murphy*, which is alleged as the basis of Plaintiffs’ claims in the original Complaint and in each of Plaintiffs’ subsequent pleadings, permits a suit by a homeowner by or for the benefit of a homeowner’s association like TBRC.

Additionally, as previously discussed, defense counsel, independently retained and paid by Defendants/Third-Party Plaintiffs, removed the case contained in the original Complaint from South Carolina state court to federal court. As a result of a Motion to Remand filed by Plaintiffs, the Parties engaged in negotiations and entered into a Stipulation, which was filed with the federal court on October 5, 2016, whereby Defendants/Third-Party Plaintiffs agreed to consent to a remand of the case to South Carolina state court in exchange for Plaintiffs’ agreement to not pursue this case as a class action or derivative action, and Plaintiffs’ agreement to delete any such allegations from future pleadings. A copy of this Stipulation was provided to Great American via letter dated November 3, 2016, which Great American admits receiving in its Amended Answer. Plaintiffs filed the Second Amended Complaint in South Carolina state court, from which Plaintiffs deleted any class allegations. Great American’s contention that the

⁷⁰ See, e.g., original Compl. at p. 12, n. 2, p. 28, n. 6; Second Am. Compl. at p. 12, n. 2.

⁷¹ *Murphy*, S.C. at 369, 345 S.E.2d at 710 (emphasis supplied).

original Complaint alleged derivative claims for the benefit of the insured **Organization** (TBRC), which implicated Exclusion H of the Great American Policy, was patently wrong. The provisions of the Stipulation and Second Amended Complaint demonstrate that Great American's continuing insistence on Exclusion H has absolutely no validity with respect to the allegations now in this litigation.⁷²

Great American has also suggested that the original Complaint was brought "for the benefit of" the insured **Organization** (TBRC) because TBRC will benefit from any repairs to the common or limited common elements. This position is wrong as a matter of law because the insured **Organization** (TBRC) is incorporated and, thus, a separate and distinct legal entity from Plaintiffs or other unit owners.⁷³ Moreover, under South Carolina law, and the TBRC documents attached to the original Complaint as Exhibit A, the common elements and limited common elements are owned by the unit owners, and not TBRC.⁷⁴ Further, the claims in Plaintiffs' Complaints related to inadequate repair reserves directly affect the economic, financial interests of the individual Plaintiffs, not the insured **Organization** (TBRC),⁷⁵ and the diminution in value damages sought in the Complaints relate solely to Plaintiffs' individual units, not the common elements.⁷⁶

⁷² *South Carolina Medical Malpractice Liability Insurance Joint Underwriting Assoc. v. Ferry*, 291 S.C. 460, 354 S.E.2d 378 (1997) (although liability carrier had no duty to defend based on allegations in original complaint, the duty to defend held to rise from allegations in amended complaint).

⁷³ S.C. Code Ann. § 27-31-90; *Costas v. First Federal Sav. Loan Ass'n*, 283 S.C. 94, 102, 321 S.E.2d 51, 56 (1984) ("a corporation is an entity separate and distinct from its . . . stockholders").

⁷⁴ See, e.g., S.C. Code Ann. §§ 27-31-60; 27-31-190.

⁷⁵ *Pulliam*, 743 S.E.2d at 122 (stating "failure to establish a reserve fund resulted in Respondents [the unit owners] having to expend more from their own pockets to make the repairs than they might have otherwise had to expend-economic damage") (emphasis supplied)

⁷⁶ *Berenyi, Inc.*, 2010 WL 233861 at *8 ("this exclusion, which would only affect coverage as to part of the underlying claim, does not affect whether there is a duty to defend . . .").

4. Exclusion C(1)⁷⁷

Great American's Amended Answer contends that all coverage under the 2016 Great American Policy is excluded by a prior claims exclusion, Exclusion C.(1).⁷⁸ However, Great American pleads no actual facts that support the application of this exclusion. Great American's reliance on Exclusion C.(1) to exclude coverage is misplaced considering that Great American waived its ability to rely on the foregoing exclusion, and that the exclusion does not even apply to the undisputed facts of this case.

Great American admitted that it received notice of the original Complaint on July 13, 2017.⁷⁹ Nevertheless, and despite lengthy letters denying coverage under the 2016 Great American Policy, which are exhibits to the pleadings, Great American failed to raise Exclusion C.(1) as a basis for its denial in any of these letters.⁸⁰ Instead, it was not until over one (1) year later, in response to the instant coverage action, and through an amended pleading in this litigation (Great American's Amended Answer and Counterclaims), that Great American *first* raised Exclusion C.(1) as a basis for denial of coverage. Great American's failure to assert the foregoing exclusion for over a year, and not until it was faced with the instant coverage dispute, constitutes a waiver of Great American's ability to raise Exclusion C.(1) as a basis for which it may deny coverage.

⁷⁷ Exclusion C.(1) provides as follows: "This Policy does not apply to any **Claim** made against any **Insured**: . . . C. . . based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving: (1) any **Wrongful Act** or **Related Wrongful Act** or any fact, circumstance or situation which has been the subject of any notice or **Claim** given under any other policy of which this Policy is a renewal or replacement;"

⁷⁸ Third-Party Def.'s Am. Answer and Countercl. to Defs.'/Third-Party Pls.' Third-Party Compl., ¶ 40.

⁷⁹ Third-Party Def.'s Am. Answer and Countercl. to Defs.'/Third-Party Pls.' Third-Party Compl. ¶ 11.

⁸⁰ Id.; Defs.'/Third-Party Pls.' Third-Party Compl. ¶ 13 & Exs. H & I.

Applying South Carolina law, the United States District Court for the District of South Carolina found that the insurer was precluded from asserting additional and different grounds for denial than those originally asserted in a denial letter.⁸¹ In reaching its decision, the *Slager* Court relied heavily on the South Carolina Supreme Court case of *Washington v. Nat'l Serv. Fire Ins. Co.*, 252 S.C. 635, 168 S.E.2d 90 (1969) which held that “[i]t is well settled that an insurer which has denied coverage on some other basis is precluded from defending against an action on a liability policy on the ground that the insured failed to comply with its requirements as to notice and forwarding of suit papers.”⁸²

Further, notwithstanding Great American’s waiver of Exclusion C.(1), and despite having the burden of pleading facts establishing the applicability of the exclusion, Great American’s Amended Answer concedes that the exclusion, on its face, is inapplicable. Exclusion C.(1) excludes coverage where any “**Wrongful Act or Related Wrongful Act** or any fact, circumstance or situation which has been the subject of any notice or Claim given under any other policy of which this Policy is a renewal or replacement.”⁸³ Great American specifically alleges that it is denying coverage under Exclusion C.(1) of the 2016 Great American Policy, which is a renewal of the 2015 Great American policy.⁸⁴ Therefore, under the language of the

⁸¹ *Slager v. S. States Police Benevolent Ass’n, Inc.*, No. 2:15-CV-04536-DCN, 2016 WL 4123700, at *3 (D.S.C. Aug. 3, 2016); *see also, e.g., Cox v. Reliance Standard Life Ins. Co.*, 43 Fed.Appx. 606, 610 (4th Cir. 2002) (holding an insurer waived the right to argue the insured’s death was not an accident and, thus, not covered by the policy, given that the insurer’s letter denying the beneficiary’s claim for accidental death benefits stated only that, pursuant to a policy exclusion, the loss was not covered because the insured was engaged in a felony at the time of his death).

⁸² *Washington*, 252 S.C. at 641, 168 S.E.2d at 92.

⁸³ Defs.’/Third-Party Pls.’ Third-Party Compl., Ex. A, Section IV. Exclusions, C.(1), p. 5 of 11; Third-Party Def.’s Am. Answer and Countercl. to Defs.’/Third-Party Pls.’ Third-Party Compl., Ex. 2, Section IV. Exclusions, C.(1), p. 5 of 11 (underline emphasis added).

⁸⁴ Third-Party Def.’s Am. Answer and Countercl. to Defs.’/Third-Party Pls.’ Third-Party Compl., ¶¶ 34 & 40.

exclusion, which is strictly construed against Great American, either a “notice” or **Claim** was required to be made while the 2015 Great American Policy was in effect in order for the exclusion to preclude coverage under the 2016 Great American Policy.

In Paragraph 36 of Great American’s Amended Answer, Great American acknowledges that, in April 2015, TBRC “notified Great American of a potential claim against the [2015 Great American] Policy because of threats of litigation against . . . [TBRC] by Third-Party Plaintiff Steele Brice Windle, III.”⁸⁵ Yet, Great American further alleges that it investigated the matter and determined that it was not a **Claim** as that term is defined by the 2015 Great American Policy.⁸⁶ Therefore, as made plain by Great American’s own allegations, there was no **Claim** under the 2015 Great American Policy – thereby eliminating the existence of a **Claim** under the 2015 Great American Policy as a basis for the exclusion’s applicability under the 2016 Great American Policy.

Exclusion C.(1) also applies where there was a “notice” under the 2015 Great American Policy. The term “notice” is not defined in the 2015 or 2016 Great American Policies, and Exclusion C.(1) fails to specify what kind of “notice” is required in order for the exclusion to apply. As is well established, “[a]mbiguous or conflicting terms in an insurance policy must be construed liberally in favor of the insured and strictly against the insurer.”⁸⁷ Policy exclusions are construed very narrowly and “most strongly against the insurance company, which also bears the burden of establishing the exclusion’s applicability.”⁸⁸ The very fact that the 2016

⁸⁵ Third-Party Def.’s Am. Answer and Countercl. to Defs.’/Third-Party Pls.’ Third-Party Compl., ¶ 36.

⁸⁶ *Id.*

⁸⁷ *Diamond State Ins. Co.*, 318 S.C. at 236, 456 S.E.2d at 915 (citing references omitted).

⁸⁸ *Personal Touch Med. Spa, LLC*, 763 F.Supp.2d at 780 (citing references omitted); *see also M & M Corp. of S.C.*, 390 S.C. at 259, 701 S.E.2d at 35 (stating “[p]olicies are construed in favor of coverage, and exclusions in insurance policy are construed against the insurer”).

Great American Policy uses the term “notice” approximately 16 times in the policy evidences the numerous notices contemplated by the policy and the ambiguous nature of the term.

Furthermore, even if Mr. Windle’s April 2015 letter was a “notice,” it was not a notice of the claims asserted by Plaintiffs. As alleged by Great American, the April 7, 2015 letter was from Steele Brice Windle, III—a Defendant/Third-Party Plaintiff to this action.⁸⁹ The letter was not written by a Plaintiff in this case, and therefore, necessarily, could not have put Great American on notice of Plaintiffs’ claims.

5. Rescission Counterclaims

In its Amended Answer, Great American asserts two (2) counterclaims—one for rescission of the 2015 Great American Policy, and the other for rescission of the 2016 Great American Policy. The basis for Great American’s Counterclaims is that the “HOA, by and through its authorized agent . . .” misrepresented in its “application for coverage” for the 2015 Great American Policy whether “the Association anticipate[d] any major building renovations in the next year.”⁹⁰ As relief, Great American seeks to have both the 2015 and the 2016 Great American Policies rescinded *ab initio*.

a. *Great American’s Rescission Counterclaims Do Not Defeat its Duty to Defend.*

The law is well-settled that an insurer’s present duty to defend the insured under a liability policy is unaffected by an unproven claim for rescission. “[U]ntil . . . [the insurer’s]

⁸⁹ Third-Party Def.’s Am. Answer and Countercl. to Defs.’/Third-Party Pls.’ Third-Party Compl., ¶ 36.

⁹⁰ Third-Party Def.’s Am. Answer and Countercl. to Defs.’/Third-Party Pls.’ Third-Party Compl., ¶¶ 43-55.

rescission claims are litigated in its favor and the Policies are declared void ab initio, they remain in effect and bind the parties.”⁹¹

Considering the foregoing case law, the very presence of Great American’s Rescission Counterclaims in no way impacts its duty to defend Defendants/Third-Party Plaintiffs against Plaintiffs’ claims. Great American was, and is, obligated to defend Defendants/Third-Party Plaintiffs until its Rescission Counterclaims are “fully litigated,” and there has been a judicial adjudication that the 2015 and 2016 Great American Policies be rescinded—that has simply not happened and, until that time, Great American has, under its policy, “the duty” to defend Defendants/Third-Party Plaintiffs.

- b. *Great American Waived its Right to Rescind the 2015 Great American Policy and the 2016 Great American Policy.*

The basis of Great American’s Rescission claim for the 2015 Great American Policy is that the “HOA, by and through its authorized agent . . .” misrepresented whether “the Association anticipate[d] any major building renovations in the next year” when the HOA’s

⁹¹ *Fed. Ins. Co. v. Tyco Int’l Ltd.*, 2 Misc. 3d 1006(A), 784 N.Y.S.2d 920 (Sup. Ct. 2004); *See also Gon v. First St. Ins. Co.*, 871 F.2d 863, 864–65 (9th Cir. 1989) (affirming district court’s order that insurer pay insured’s defense costs after the district court held insurer’s rescission action “in abeyance”); *Indep. Petrochem. Corp. v. Aetna Cas. & Sur. Co.*, 654 F.Supp. 1334, 1345–46 (D.D.C. 1986), *rev’d in part on other grounds*, 944 F.2d 940 (D.C.Cir. 1991) (finding that insured’s primary carrier had duty to defend its insured until the insurer proved that the policy was “negated by fraud”); *Natl. Union Fire Ins. Co. of Pitt. v. Brown*, 787 F.Supp. 1424, 1427 n. 8 (S.D.Fla. 1991) (court could not declare directors and officers policy *void ab initio* until the insurer’s rescission action was “fully litigated”; until then, policy remained in effect); *U.S. Fid. & Guar. Co. v. Thomas Solvent Co.*, 683 F.Supp. 1139, 1151–52 (W.D.Mich. 1988) (when insurer’s motion for summary judgment on rescission claim was denied, due to a genuine dispute as to whether the insured obtained the policy by fraud and misrepresentation; the insurer had duty to defend); *Hoechst Celanese Corp. v. Natl. Union Fire Ins. Co. of Pitt.*, 1994 WL 721618 at *4 (Del.Super.Ct. 1994) (insurer obligated to defend despite its unproven claim that insured procured the policies by fraud); *accord Natl. Union Fire Ins. Co. of Pitt. v. Rhone-Poulenc Basic Chems. Co.*, 1992 WL 22690 at *5–*8 (Del.Super.Ct. 1992).

agent applied for the policy in or around February 2015.⁹² However, Great American alleges that it was necessarily aware of the building renovations going on as early as April 2015—*approximately two (2) months after* the 2015 Great American Policy was issued. In Paragraph 36 of Great American's Amended Answer, Great American makes the following allegation:

[i]n April 2015, . . . [TBRC] notified Great American of a potential claim against the Policy because of threats of litigation against . . . [TBRC] by Third-Party Plaintiff Steele Brice Windle, III. Great American *investigated the matter* and determined that Third-Party Windle's threats of litigation did not, as of that time, meet the Policy's definition of a 'Claim.'⁹³

Mr. Windle makes numerous references to the on-going construction at TBRC in his April 7, 2015 letter, attached hereto as **Exhibit A**.⁹⁴ Therefore, through Great American's own allegation that it "investigated the matter," it would necessarily have been aware of the on-going construction.

As for the 2016 Great American Policy, Great American claims that it should be rescinded for the exact same reasons—that there was an alleged misrepresentation on the application completed a year earlier (in February 2015), and in conjunction with a different policy (the 2015 Great American Policy).⁹⁵

⁹² Third-Party Def.'s Am. Answer and Countercl. to Defs.'/Third-Party Pls.' Third-Party Compl., ¶¶ 43-55.

⁹³ Third-Party Def.'s Am. Answer and Countercl. to Defs.'/Third-Party Pls.' Third-Party Compl., ¶ 36 (emphasis added).

⁹⁴ In *Brazell v. Windsor*, 384 S.C. 512, 516, 682 S.E.2d 824, 826 (2009), the court held that the trial court did not convert a Rule 12(b)(6) motion into a summary judgment motion by considering a document incorporated into the complaint, but not attached. The court reasoned that "allowing a trial court to consider documents that are incorporated by reference in the complaint but not actually attached thereto prevents a plaintiff from benefiting from his own oversight or from surviving a motion to dismiss by intentionally omitting documents upon which their claims are based." *Id.*

⁹⁵ Third-Party Def.'s Am. Answer and Countercl. to Defs.'/Third-Party Pls.' Third-Party Compl., ¶¶ 57-69.

Despite Great American's knowledge of the ongoing renovations in approximately April 2015, Great American not only failed to rescind the 2015 Great American Policy, but issued another policy the following year (the 2016 Great American Policy)—all with knowledge that there were ongoing repairs at the property.⁹⁶ Great American's issuance of the 2016 Great American Policy with knowledge of the on-going building renovations, and its failure to rescind the 2015 Great American Policy when it necessarily became aware of the renovations in April 2015, constitutes a waiver of Great American's right to rescind the policies.

Where an insurer fails to act after it discovers a ground for rescission, or after it learns facts which would put a reasonably prudent insurer on notice to inquire further, the right to rescind is waived.⁹⁷

The Supreme Court, addressing the situation where the insurer has knowledge of a reason to rescind and accepts premiums without rescinding, has stated: "To hold otherwise would be to maintain that the contract of insurance requires good faith of the insured only, and not of the insurers, and to permit insurers, knowing all the facts, to continue to receive new benefits from the contract while they decline to bear its burdens."⁹⁸

The law in the Fourth Circuit is the same, "that upon discovering a basis for rescission, an insurance company must take action to avoid the policy within a reasonable time or it will be deemed to waive the right to do so."⁹⁹ The Fourth Circuit in *Foremost Guar. Corp.* found that an insurer waived its claim for rescission by not rescinding when it gained access to the inconsistent statements.¹⁰⁰ The Court went on to state that "[a]n insurer should not be permitted

⁹⁶ Third-Party Def.'s Am. Answer and Countercl. to Defs.'/Third-Party Pls.' Third-Party Compl., ¶36.

⁹⁷ *Foremost Guar. Corp. v. Meritor Sav. Bank*, 910 F.2d 118, 129 (4th Cir. 1990).

⁹⁸ *Id.* at 129 (quoting *Phoenix Mutual Life Ins. Co. v. Raddin*, 120 U.S. 183, 197, 7 S.Ct. 500, 506 (1887)).

⁹⁹ *Foremost Guar. Corp.*, 910 F.2d at 129 (citing *Bowles v. Mutual Ben. Health and Acc. Ass'n*, 99 F.2d 44 (4th Cir.1938)).

¹⁰⁰ *Foremost Guar. Corp.*, 910 F.2d at 129.

to rescind when it continues to collect premiums, as here, after coming into the knowledge of facts upon which to base rescission.”¹⁰¹ Therefore, with respect to the 2015 Great American Policy, Great American has clearly waived its right to rescind.

With respect to the 2016 Great American Policy—the policy issued by Great American with knowledge that there were on-going renovations at the property and the policy which admittedly covers the claims in this case—Great American has also lost its ability to rescind the policy. It is well-established that “[a]n insurance company cannot avoid liability on the basis of facts known to it at the time the policy was delivered.”¹⁰²

Therefore, according to Great American’s own allegations, Great American has, as a matter of law, waived its right to seek rescission of the 2015 and 2016 Great American Policies. As such, Great American’s Rescission Counterclaims in no way excuses Great American from defending Defendants/Third-Party Plaintiffs against Plaintiffs’ claims in the State Court Action.

c. *Great American Fails to Allege Any Factual Basis for Rescission of the 2016 Great American Policy at Issue in this Coverage Dispute.*

The liability policy at issue here is the 2016 Great American Policy which, it is undisputed, provides coverage for “claims made” during the **Policy Period** of February 10, 2016 to February 10, 2017. Great American’s Amended Answer admits that the original Complaint in

¹⁰¹ Id.

¹⁰² *Foremost Guar. Corp.*, 910 F.2d at 127 (quoting *Rutherford v. John Hancock Mut. Life Ins. Co.*, 562 F.2d 290, 293 (4th Cir.1977)); see also *S. Farm Bureau Cas. Ins. Co. v. Ausborn*, 249 S.C. 627, 636, 155 S.E.2d 902, 907 (1967) (if the insurer, “at the inception of the contract, had knowledge of facts which render the policy void at its option, and the . . . [insurer] delivers the binder as a valid one, it is estopped to assert such ground as a forfeiture.”); *Nationwide Life Ins. Co. v. Attaway*, 254 F.2d 30, 35 (4th Cir. 1958) (“If an insurance company issues a life policy with knowledge that the insured has misrepresented his physical condition and is in fact not in good health, the company is deemed to have waived the right to object and is bound by its contract . . .”). See also *Davis v. Cordell*, 237 S.C. 88, 100, 115 S.E.2d 649, 655 (1960) (party seeking rescission of a contract must promptly and unequivocally provide notice of the intention to demand rescission).

this matter was a **Claim** during the **Policy Period** of the 2016 Great American Policy. However, in support of its Rescission Counterclaim concerning the 2016 Great American Policy, Great American relies upon an alleged misrepresentation that was contained within an “application for coverage” that was purportedly completed in February 2015, before the 2015 Great American Policy was issued.¹⁰³ There is no allegation that another “application for coverage” was completed in 2016 before the 2016 Great American Policy was issued, much less that there was a misrepresentation contained within such an application. Nevertheless, Great American still seeks to have a purported application form that was completed in conjunction with a wholly separate policy serve to rescind the policy at issue in this coverage dispute—the 2016 Great American Policy. Great American’s efforts in this regard are wholly improper and do not provide the factual support necessary to properly allege a Rescission claim regarding the 2016 Great American Policy.

d. *“Proposal Form”*

Great American bases both of its Rescission Counterclaims on a representation present in an “application for coverage” that was completed in or around February 2015.¹⁰⁴ Both the 2015 and 2016 Great American Policies provide that “the particulars and statements contained in *Proposal Forms* submitted to the **Insurer** (and any material submitted therewith) are the representations of the **Insured** and are to be considered as incorporated in and constituting part

¹⁰³ Third-Party Def.’s Am. Answer and Countercl. to Defs.’/Third-Party Pls.’ Third-Party Compl., ¶¶ 57-58.

¹⁰⁴ Third-Party Def.’s Am. Answer and Countercl. to Defs.’/Third-Party Pls.’ Third-Party Compl., ¶¶ 43,44, 57, 58.

of this Policy.”¹⁰⁵ The capitalized term, “Proposal Form,” is not defined by either the 2015 Great American Policy or the 2016 Great American Policy.

The “application for coverage” that forms the basis of Great American’s Rescission Counterclaims is not a “Proposal Form” per the 2015 and 2016 Great American Policies. Instead, the form completed was a completely different form—a “Community Association Program Quote Form.” By the face of the “Community Association Program Quote Form” it is not a “Proposal Form” and, as such, any representations contained therein are not incorporated into the 2015 or 2016 Great American Policies—much less can they form a basis for rescission of the 2015 or 2016 Great American Policies.

- e. *Great American Failed To Allege Rescission of the 2015 Great American Policy and the 2016 Great American Policy as to the Individual Defendants. Therefore, Great American is required to defend the Individual Defendants.*

In its Amended Answer, Great American admits that the Individual Defendants are “**Insured Persons**” as defined in the Great American Policy.¹⁰⁶ Therefore, as **Insured Persons**, Great American has “the duty” to defend and indemnify the Individual Defendants resulting from any **Claim** made under the Great American Policy.¹⁰⁷

While Great American asserts counterclaims for rescission of its 2015 and 2016 Great American Policies, its allegations *exclusively* concern the actions and knowledge of TBRC. Great American’s Amended Answer fails to make any allegation regarding the knowledge or actions of the Individual Defendants. More particularly, Great American made the following

¹⁰⁵ Third-Party Def.’s Am. Answer and Countercl. to Defs.’/Third-Party Pls.’ Third-Party Compl., Ex. 2, Section IX. General Conditions, B. p. 10 of 11 and Ex. 1, Section IX. General Conditions, B. p. 10 of 11 (italic emphasis added).

¹⁰⁶ Third-Party Def.’s Am. Answer and Countercl. to Defs.’/Third-Party Pls.’ Third-Party Compl., ¶ 5.

¹⁰⁷ Third-Party Def.’s Am. Answer and Countercl. to Defs.’/Third-Party Pls.’ Third-Party Compl., Ex. 2, p. 1 of 11 and Ex. 1, p. 1 of 11.

allegations, none of which specifically allege, or even reference, the essential elements needed to assert a rescission claim¹⁰⁸ as to the Individual Defendants:

- “In its application for coverage, *Third-Party Plaintiff HOA* was asked, among other things, the following question: “Does the Association anticipate any major building/renovations in the next year?” *HOA, by and through its authorized agent, responded* “No” to this question in its application for coverage.”¹⁰⁹
- “Upon information and belief, *Third-Party Plaintiff HOA, by and through its authorized agent*, acknowledged receipt of the Notice set forth in Paragraph Forty-Five (45) as part of the application process.”¹¹⁰
- “*Third-Party Plaintiff HOA’s* negative response to the question set forth in Paragraph Forty-Four (44) above was material to the risk insured under the Policy.”¹¹¹
- “*Third-Party Plaintiff HOA’s representation*, as set forth in Paragraph Forty-Four (44) above, was made for the purpose of inducing Great American to issue the Policy.”¹¹²
- “Great American relied on *Third-Party Plaintiff HOA’s representations* in the application in deciding whether to issue the Policy.”¹¹³
- “Great American submits that *the Association* made this statement on the application for the policy with the intent to deceive and defraud Great American.”¹¹⁴
- “Based on the *HOA’s material representation* on its application for the Policy, Great American is entitled to the equitable remedy of rescission of the Policy *ab initio*.”¹¹⁵

¹⁰⁸ “In order to rescind a policy of insurance, the insurer must demonstrate: 1) the falsity of the statements complained of; 2) that the falsity was known to the applicant; 3) were material to the risk; and 4) made with intent to defraud the insurer; and 5) relied upon by the insurer in issuing the policy.” *Darwin Nat. Assur. Co. v. Matthews & Megna LLC*, 36 F. Supp. 3d 636, 642–43 (D.S.C. 2014) (citing *Strickland v. Prudential Ins. Co.*, 278 S.C. 82, 292 S.E.2d 301, 304 (1982)).

¹⁰⁹ Third-Party Def.’s Am. Answer and Countercl. to Defs.’/Third-Party Pls.’ Third-Party Compl., ¶¶ 44 & 58 (emphasis added).

¹¹⁰ *Id.* at ¶ 46 (emphasis added); see also *Id.* at ¶ 60.

¹¹¹ *Id.* at ¶ 47 (emphasis added); see also *Id.* at ¶ 61.

¹¹² *Id.* at ¶ 48 (emphasis added); see also *Id.* at ¶ 62.

¹¹³ *Id.* at ¶¶ 51 & 65 (emphasis added).

¹¹⁴ *Id.* at ¶¶ 53 & 67 (emphasis added).

The result is that Great American failed to allege any elements of a rescission claim against the Individual Defendants. Namely, Great American failed to allege that the Individual Defendants were aware that the alleged representation was false, or that the false representation was made to Great American by the Individual Defendants with the intent to deceive.¹¹⁶

Furthermore, the very language of the 2015 and 2016 Great American Policies prohibits Great American from rescinding the policies as to an **Insured Person** who did not make the alleged untrue statement or had knowledge of it. The 2015 and 2016 Great American Policies both provide as follows: “[h]owever, coverage shall not be excluded as a result of any untrue statement in the Proposal Form, except as to the **Organization**, its **Subsidiaries**, and any **Insured Person making such untrue statement or having knowledge of its falsity.**”¹¹⁷ As a result, Great American, by the language of its own policy, is prohibited from refusing coverage where, as here, the **Insured Persons** did not make the alleged untrue statement or have knowledge of its falsity.

V. CONCLUSION

The facts admitted in Great American’s Amended Answer in this matter establish that, as a matter of law, Great American had a duty to defend Defendants/Third Party Plaintiffs from the date the original Complaint was filed in this matter on July 7, 2016. Great American’s Amended Answer admits: (1) the authenticity of the original Complaint, the Second Amended Complaint, and the Third Amended Complaint; (2) the authenticity of the 2016 Great American Policy in

¹¹⁵ *Id.* at ¶¶ 54 & 68 (emphasis added).

¹¹⁶ *Darwin*, 36 F. Supp. 3d at 642–43 (citing *Strickland*, 278 S.C. at 86, 292 S.E.2d at 304) (noting that for an insurer to rescind a policy of insurance it must demonstrate, among other things, that “the falsity was known to the applicant,” and “made with intent to defraud the insurer”).

¹¹⁷ Third-Party Def.’s Am. Answer and Countercl. to Defs.’/Third-Party Pls.’ Third-Party Compl., Ex. 2, Section IX. General Conditions, B. p. 10 of 11 and Ex. 1, Section IX. General Conditions, B. p. 10 of 11 (italic emphasis added).

question, which is attached to the Third-Party Complaint; (3) that Defendants/Third-Party Plaintiffs are **Insureds** under the 2016 Great American Policy; (4) that the original Complaint in this case alleged a **Claim** against the **Insureds** within the **Policy Period**; and (5) that the original Complaint alleged **Wrongful Acts** by the **Insureds** as defined in the 2016 Great American Policy. The original Complaint alleges at least one **Claim** against the **Insureds** which raises the possibility of coverage under the 2016 Great American Policy and, thus, activated Great American's "duty to defend any **Claim** to which this insurance applies, even if the allegations of such **Claim** are groundless, false or fraudulent." The exclusions cited in Great American's Amended Answer, when viewed individually and in isolation as required by South Carolina law, do not "unambiguously exclude" all of the claims alleged in the original Complaint or Plaintiffs' subsequent complaints. The Complaints allege claims against Defendants/Third-Party Plaintiffs which are outside each of the cited exclusions. Great American's Recession Counterclaims do not provide a basis for Great American to refuse to defend the insured **Organization** or the Individual Defendants who are **Insured Persons** under the 2016 Great American Policy. Because Great American breached its duty to defend its **Insureds** from the allegations in the original Complaint, it is liable to Defendants/Third-Party Plaintiffs for all fees and expenses incurred by Defendants/Third-Party Plaintiffs in defending themselves from the date the original Complaint was filed.

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Respectfully submitted,

/s/ Charles B. Jordan Jr.

Charles B. Jordan, Jr., SC Bar No. 11708
cjordan@pearcelawgroup.com

THE PEARCE LAW GROUP, PC

1314 Professional Drive
Myrtle Beach, South Carolina 29577
Telephone: (843) 839-3210
Facsimile: (843) 839-3214

Attorneys for Defendants / Third-Party Plaintiffs

January 15, 2018
Myrtle Beach, South Carolina

/s/Joshua D. Spencer

H. Sam Mabry, III, Fed. I.D. No. 3252
smabry@hsblawfirm.com
Joshua D. Spencer, Fed. I.D. No. 9845
jspencer@hsblawfirm.com
Bonnie A. Lynch, Fed. I.D. No. 10402
blynch@hsblawfirm.com

HAYNSWORTH SINKLER BOYD, P.A.

Post Office Box 2048 (29602)
One North Main Street, Second Floor
Greenville, South Carolina 29601
Telephone: (864) 240-3200
Facsimile: (864) 240-3300

Attorneys for Defendants/Third-Party Plaintiffs

January 15, 2018
Greenville, South Carolina

April 7, 2015

Tilghman Beach & Racquet Club Homeowners

Re: -Steele B. Windle, III
-Building 3 Has Been a Waste of \$250,000.00
-Building 3 is a "Renovation" Project
-The Board Lacks Authority for a "Renovation" Project
-The "Robinson/Humphries Renovation Plan for all of TBRC"
-Immediate Need for (1) Meeting of all Homeowners, (2) Full Disclosure, (3) Discussion, and (4) a Vote on any "Renovation" Project

All:

My name is Steele B. Windle, III. I own Unit 127 at Tilghman Beach & Racquet Club ("TBRC").

This is a lengthy communication, but it is important. Please take the time to read the entire communication.

I am a construction lawyer. For the past 34 years, I have represented owners, general contractors, subcontractors and suppliers in relation to all types of commercial construction projects throughout the Carolinas, including the renovation of multi-story wood framed condominium units, like TBRC.

At the annual meeting on March 7, 2015, after listening to the comments by homeowners, I volunteered to assist the Board with the ongoing work on Building 3 and future construction projects at TBRC.

I want to take this opportunity to inform all of the homeowners at TBRC what I have learned and what I believe. Most importantly, as explained herein, I believe we need an immediate meeting of all homeowners at TBRC to discuss the current Building 3 Renovation Project as well as discuss and vote on any future renovation projects at TBRC before we are committed to paying \$7.5-\$8M for any "renovation" work.

Before I go any further, I want to make several things clear.

First, everything stated herein is stated with all due respect for the opinions and positions of others. After all we are a family of 213 homeowners. Each of us is entitled to our opinions.

Second, I will explain the plan Mr. Steve Robinson and Ms. Jill Humphries have for the "renovation" of TBRC, the increase in the monthly dues, the \$16,000.00 - \$20,000.00 assessment against each homeowner and the total cost of \$7.5-\$8M (hereinafter the "Robinson/Humphries Renovation Plan" or "Renovation Plan"). I will also explain how they

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plan to conduct this "renovation" of all 12 buildings at TBRC under the guise of "repairs" so as to avoid any vote of approval by the homeowners.

Third, I am 100% opposed to implementation of the Robinson/Humphries Renovation Plan, or any similar plan, without full disclosure to all homeowners in advance, an opportunity for consideration and discussion by all homeowners, and a vote of approval by at least 51% of all homeowners. In short, I do not want the 3-member majority of a 5-member Board dictating to a family of 213 homeowners that their property is going to be "renovated" at a cost of \$8M.

Fourth, I want to make it clear that I am not trying to make enemies out of any neighbors. I just feel strongly that all 213 members of the TBRC family deserve the right to full disclosure, in advance, of any and all "renovation" plans for TBRC, the opportunity to see what the results of any plan will be before construction is commenced, an opportunity to discuss any "renovation" plan, and an opportunity to vote on any proposed "renovation" plan before a majority of three (3) Board Members proceed to spend \$8M and expect the remaining homeowners of the TBRC family to fund their "renovation" plan.

Finally, and most importantly, all of our current Board Members are good people and, for the most part, trying to do the best they can under the circumstances. However, they are very inexperienced in regard to construction terms, construction contracts, the typical process of construction projects, managing a \$500,000.00 or \$8,000,000.00 construction project, and managing a contractor. They need substantial help. While most on the Board readily acknowledge that assistance is needed, a few seem to be in denial and simply want to proceed without appropriate assistance in order to push personal agendas.

1. Keystone Construction:

Now that I understand what happened with Keystone Construction, I can confirm that the work by Keystone was a mismanaged mess. The mismanagement of this contract and contractor was a waste of approximately \$150,000.00.

Several current Board members have attempted to blame Don Womble for the mismanagement, but that is inappropriate. Nothing occurred in a vacuum out of sight of any Board Member. The entire 2014 Board is responsible for the mismanagement of Keystone Construction and the waste of \$150,000.00 of our money.

2. The Contract with A&I was not signed in an "emergency:"

At the March 7, 2015 meeting, the Board represented, no less than five (5) times, that some "emergency" existed and the contract with A&I Construction ("A&I") needed to be signed immediately. In reality, there was no "emergency." The Board, in fact, had been talking with the contractor for three (3) months before the contract was signed.

You should know that I have read emails between Board members discussing the fact that the work was not an "emergency" and to make sure that all homeowners understood that no emergency actually existed in regard to Building 3. However, that is not what the Board represented to the homeowners at the annual meeting on March 7, 2015.

3. The Board's Failure to Obtain Competitive Bids for the Building 3 Work is Inexcusable:

Because there was no emergency, the Board had ample time and opportunity to obtain competitive bids from any number of contractors for the work on Building 3. The Board's failure to do so is inexcusable and, as explained in more detail below, has put TBRC in the position of paying approximately \$100,000.00 too much for the work currently being performed on Building 3.

When you consider the \$150,000.00 wasted with Keystone Construction and the fact that TBRC is contractually obligated to pay A&I approximately \$100,000.00 more than necessary, the inexperience of the current Board has cost the TBRC family in excess of one quarter of a million dollars.

Without a doubt, and for whatever reasons, the 2014 and 2015 Board of TBRC has not fulfilled its obligation to be a good steward of our money.

We, the members of the TBRC family, simply cannot ignore that fact. Something needs to change and the change needs to occur sooner rather than later.

4. The Current Work on Building 3 is Actually a "Renovation" of Building 3 and, in my opinion, The Board Lacks the Authority to Proceed with a "Renovation" of any Building Without Approval of at Least 51% of the Homeowners:

a. The Provision of the Master Deed

The Master Deed authorizes the Board to undertake required "repairs" without first conducting a vote and obtaining approval of at least 51% of the homeowners. However, the Master Deed mandates that before undertaking any "improvement" that exceeds 10% of the prior year's budget, the Board must first conduct a vote and obtain approval of at least 51% of the homeowners.

b. The Work on Building 3 exceeds "Repairs"

The work on Building 3 started as a (1) painting project that evolved into a (2) replace deteriorated boards and paint project, then into a (3) "find and fix" termite damage, replace deteriorated boards and painting project. However, the Building 3 Project is now being touted as a "renovation" project that will "be as the model for the future construction throughout the

Tilghman Beach & Racquet Club Homeowners
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complex" (see email from K.A. Diehl dated March 20, 2015, copy attached, the heading states "Building 3 Renovations"). The future construction projects, as explained below, will cost \$7.5 to \$8.0M and include increase in the monthly dues and an assessment against each homeowner of between \$16,000.00 to \$20,000.00.

The current work on Building 3 does include some repairs, but the work far exceeds normal repairs. For example, the work on Building 3 currently includes:

1. A new roof;
2. New skylights;
3. New gutters;
4. New commercial grade PVC hand railings;
5. New carpet; and
6. Etc... (no one currently knows what other "renovation" work will be performed).

Clearly, all of the above was not in need of "repair." There is no evidence that the roof was leaking, the skylights were not working, the gutters were in need of any repair, all the handrails needed replacement or that all the carpet needed replacement.

Typically, when a "repair" is performed, the repaired structure looks the same. The aesthetics are not changed. However, that is not the case with Building 3. In actuality, Building 3 is being completely "renovated" and will look very different than all other buildings at TBRC. The aesthetics are being substantially changed.

c. The Board's Lack of Authority to Conduct any "Renovation"

Shortly after starting work for the Board, I informed the Board, in writing, that it was not clear to me that the Board had the authority to proceed with a "renovation" without a vote and approval of at least 51% of the homeowners. In that regard, I urged the Board, in writing, to obtain a written legal opinion confirming that the Board has the required authority to undertake a "renovation" project. To date, the Board has failed to obtain any such legal opinion. The failure of the Board to confirm its authority to undertake a "renovation" project concerns me greatly and should concern all homeowners at TBRC.

5. In Regard to the Current "Renovation" of Building 3, the Contract with A&I is a Bad Contract for TBRC:

Unfortunately, the Board failed to have the Contract with A&I reviewed by a construction lawyer before it was executed. Again, there was no emergency. The Board dealt with this contract for approximately three (3) months before it was executed. The Board's failure to have the contract reviewed by a construction lawyer or someone familiar with construction and knowledgeable of AIA contracts is inexcusable.

Because the Contract with A&I was not reviewed by anyone familiar with construction or AIA contracts, it is a bad contract for TBRC for, among other things, the following reasons:

a. The \$100,000.00 Advance Payment to the Contractor on Building 3 was Unnecessary:

The Contract required TBRC to pay \$100,000.00 to A&I upon execution of the Contract, which is unheard of in commercial contracting. No one gets paid before the work is performed. The AIA contract documents are based on the premise that the contractor is paid as he performs the work and earns the payment. Giving \$100,000.00 to A&I before A&I commenced construction was absolutely unnecessary, unheard of in commercial contracting, and an unmitigated risk by the Board;

b. The Building 3 Contract Designates the Wrong Person as the Project Representative for TBRC:

The A&I Contract designates Earl Collins of K.A. Diehl as the Owner's representative in regard to the Project. This means that Mr. Collins is authorized to issue directives and make decisions that would be binding on TBRC, potentially costing TBRC thousands of dollars. Clearly, TBRC does not need a representative of a property management company in a position of issuing binding directives to the contractor or making decisions that would be binding on TBRC. Only a member of the Board should be designated as the Owner's designated representative for the project and preferably the President of the Board. No one should have the authority to bind TBRC to anything other than the President of the Board, certainly not an employee of a property management company.

c. The Building 3 Contract Does Not Contain a Clear Scope of Work for the Contractor:

Typically, the contract document clearly defines the contractor's scope of work so that the owner and contractor know exactly what is to be built, the owner knows exactly what is being paid for and, most importantly, the owner knows exactly what the finished product will look like.

That is not the case with the TBRC/A&I Contract. All TBRC knows is that TBRC is obligated to pay A&I \$525,000.00 for "something."

That is bad for TBRC.

TBRC should know exactly what the end product will be. We, the homeowners, should not be in the position of paying \$525,000.00 and hoping that we will like the final product.

Phil Calabritto (Unit 331) at the March 7, 2015 annual meeting asked the Board to "visualize" for him what our \$525,000.00 is expected to produce. That should not have been

necessary. A rendering or drawing of the "completed" Building 3 should have been prepared and presented to all homeowners for discussion and a vote before the contract was executed with A&I. Remember, the Board had three (3) months to have a rendering prepared in order to be able to "visualize" the final product before the contract was signed. So far, for whatever reasons, the Board has not obtained any drawing or rendering of what the completed Building 3 will look like. In short, at this point, we still don't know what the completed Building 3 is supposed to look like.

That is bad for TBRC.

d. The Contract Drawings for Building 3, as currently designed, Will Cause Mold to Grow in the End walls of Building 3:

Typically, an HOA Board hires an architect to prepare the design details for a condominium renovation project. The architect, in turn, hires engineers to prepare the design details for the civil, structural, mechanical, and electrical portions of the project.

Typically, the architect prepares the design details for such things as the roof construction, how walls will be constructed, how walls will be waterproofed, how window openings will be constructed and waterproofed, etc...

Typically, the structural engineer prepares the design details for the foundations, columns, beams and how the building will be supported structurally; and, importantly, the structural engineer does not prepare the design details depicting how exterior walls are to be waterproofed.

However, in this case, the Board of TBRC has had the structural engineer, Martinez & Associates, prepare design details showing how the walls will be constructed, including how the waterproofing behind the walls will be constructed. As stated, that design is usually the responsibility of the architect, not the structural engineer. The structural engineer typically does not prepare design details for how buildings will be waterproofed.

I had an experienced architect review the design details for the TBRC Project. This architect has substantial experience preparing design details for the construction and renovation of condominium projects in Charleston, SC, Myrtle Beach, SC and Wilmington, NC. The first thing the architect told me was that if the end walls of Building 3 are constructed as designed, mold will grow behind the walls.

This design detail must be changed.

e. The Building 3 Contract Does Not Require the Contractor to Provide Lien Waivers:

In normal commercial construction contracting, no owner pays a contractor without receiving a lien waiver in return from the contractor. That practice is universal. However, the A&I Contract does not require A&I to provide lien waivers in return for payments. As a result, both A&I and its subcontractors have the right to file a lien against the real property and, if necessary, foreclose on the lien and take ownership of our property.

The failure of the Board to include a requirement for lien waivers from the Contractor in return for payment in the A&I Contract is inexcusable.

f. The Contractor is Currently in Material Breach of its Contractual Obligations:

The Contract requires the Contractor to provide to the Owner, prior to commencement of the work, (1) a construction schedule, and (2) a Schedule of Values. To date, some five (5) to six (6) weeks after the contract was executed, the Contractor has failed to provide either a construction schedule or Schedule of Values. As a result, the Contractor is in material breach of its contractual obligations.

Without a construction schedule, TBRC has no idea what work is planned or when any planned work is scheduled to be performed. This is exactly why we were caught off guard and surprised when we received a 5-day notice to vacate Building 3. Just as important, without a construction schedule, we have no way of knowing whether the contractor is ahead, on or behind schedule.

The Schedule of Values is used to determine the value of work performed to date and what amounts the contractor has earned and is entitled to be paid based on the percentage of work completed. Without a Schedule of Values there is no way for TBRC to correctly approve any payment to the contractor.

Please note that in each of the Project Engineer's four (4) Observation Reports, the Project Engineer has requested that the contractor provide both a construction schedule and Schedule of Values. The contractor's failure to do so after repeated requests is excusable and constitutes a material breach of the contract.

6. The "Robinson/Humphries Renovation Plan:"

a. Mr. Robinson's "TBRC Restoration" Plan:

Mr. Steve Robinson recently informed me that, (these are Mr. Robinson's written words):

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"The only interest I have in TBRC is money that I gave to Jill [Humphries] and my concern for her investment. I would never have bought a unit at Tilghman, ... Just to repair Building 3 is going to cost \$525,000.00 and this will not completely "restore" it. In my estimation ..., we are now facing \$5M to \$6M to save the place. (emphasis added)

Note that Mr. Robinson did not refer to "repairing" Building 3, Mr. Robinson referred to "restoring" Building 3. "Repairing" and "restoring" are substantially different.

Note also that Mr. Robinson is pushing for a \$5M to \$6M "restoration" project. That is substantially different than just performing any required repairs.

I do not agree with Mr. Robinson for several reasons. First, the structural engineer has confirmed that nothing is "falling down." Second, while some maintenance is required, we should not be considering a \$5M - \$6M "restoration" project without the approval of at least 51% of the homeowners at TBRC.

b. Ms. Humphries' "TBRC Renovation" Plan:

Similarly, one (1) of our Board Members, Ms. Jill Humphries, informed me that her goal and plan is to "renovate" TBRC to look like a similar Tilghman project, called Dunescape Village, in Atlantic Beach, NC. Ms. Humphries has calculated that this overall "renovation" of all 12 buildings at TBRC will cost approximately \$7.5M to \$8M. Ms. Humphries has proposed that this project be funded by a \$3.5M loan (which she has already been to the bank to secure), an increase in the monthly dues and an assessment of between \$16,000.00 to \$20,000.00 per unit (the "Robinson/Humphries Renovation Plan" or the "Renovation Plan").

Alarming though, Ms. Humphries does not plan on presenting the Robinson/Humphries Renovation Plan to all homeowners for discussion and a vote. She plans to proceed with this plan under the guise of "repairs" and, therefore, avoid the requirement of first presenting a drawing or rendering of the proposed renovation, having an open discussion with all homeowners at TBRC, a vote or obtaining the approval of at least 51% of the homeowners.

That is wrong. No one should even consider starting, much less attempt to force such a \$7M-\$8M "renovation" plan and cost on 213 neighbors without full disclosure, an open discussion and a vote, especially when disclosure, discussion and a vote is mandated by the Master Deed of TBRC.

7. DJ Johnson's Support for the "Robinson/Humphries Renovation Plan:"

Although DJ Johnson did not disclose his support for the Robinson/Humphries Renovation Plan when campaigning for a position on the Board, he fully supports the

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Robinson/Humphries Renovation Plan. That is exactly why he was recruited to run for a seat on the Board.

Unfortunately, in my opinion, Mr. Johnson has chosen to ignore the requirements of the Master Deed as well and forego any requirement of disclosure, an opportunity for discussion and a vote of approval of at least 51% of the homeowners.

Mr. Johnson's position, presented to me, in writing, is that the \$7.5M - \$8M "renovation" project contemplated by the Robinson/Humphries Renovation Plan cannot get started and completed soon enough to satisfy him. He further believes, as confirmed in writing, that he does not care when the "renovation" work is performed or whether homeowners must vacate their units, even during the busy season. In his opinion, also confirmed in writing, "it is just too bad for the homeowners who must simply get out of the way" so that the Robinson/Humphries Renovation Plan can proceed.

Mr. Johnson completely ignores the facts that (1) per the requirements of the Master Deed, any "renovation" project needs to be approved by at least 51% of the homeowners at TBRC, (2) many homeowners rent their units and cannot forego the rental income during the busy season, and (3) many homeowners may not be able to afford a \$16,000.00 - \$20,000.00 assessment at all.

Mr. Johnson's seemingly narrow minded approach is, at a minimum, extremely disconcerting, especially for someone who is supposed to be representing 213 homeowners.

8. We Need a Special Meeting of All Homeowners:

The attitudes and positions of these two (2) Board Members cannot be ignored. Action is required now.

We need to conduct a Special Meeting of all homeowners and demand full disclosure of the Robinson/Humphries Renovation Plan, especially the cost that Ms. Humphries is contemplating forcing on each homeowner. We, as a unit of all homeowners, should demand a vote on the Robinson/Humphries Renovation Plan before any attempt to proceed with the Robinson/Humphries Renovation Plan under the guise of "repairs."

The Master Deed contemplates that upon receipt of a request by 51% of the homeowners, the Board shall conduct a special meeting for the purpose of conducting whatever business is required.

We need such a Special Meeting now. We need to stop wasting money now. We need to put procedures in place to maximize the possibility of a successful Building 3 project, on time and on budget. We also need to vote on any future "renovation" of TBRC.

I urge all homeowners to contact me ASAP and provide your authorization for the request for a Special Meeting of all homeowners. Upon receipt of authorization of at least 51% of all homeowners, we will force the Board to conduct a Special Meeting and disclose all aspects of the Robinson/Humphries Renovation Plan, including all cost ramifications.

9. What Should Happen at TBRC:

a. TBRC Should Immediately Hire a Project Manager for the Building 3 Project:

This is something TBRC, without a doubt, needs to do. No one currently on the Board understands commercial contracting or the construction industry contracts provided by the American Institute of Architects and being utilized on the Building 3 Project by TBRC. Further, no Board Member is available to be on-site on a daily basis. Our Board is not only inexperienced, but also not present and the Contractor is taking advantage of an inexperienced/absent Owner. As a result, TBRC should immediately hire a retired Project Manager from a reputable local commercial contractor with 25-35 years of experience to serve as the Project Manager for TBRC. The cost of hiring a retired Project Manager with 25-30+ years of experience in construction of multimillion dollar commercial construction projects to visit the site for an hour five (5) times a week and be the interface between the Board and general contractor would be minimal (\$5,000.00 - \$10,000.00) and more than worth the cost.

b. In Regard to any Future Construction Projects, TBRC Should Require that the Typical Procedures for any Renovation Project be Implemented and Followed:

Pursuant to the provisions of the Master Deed, typical planning and approval and common sense, the following should take place:

1. Retain an Architectural/Engineering Firm to Perform a Complete Forensic Analysis, Not Just a Structural Engineer:

The current professional for Building 3 is only a structural engineer. Our buildings need to be inspected and remedial design drawings prepared by a multi-disciplined architecture and engineering firm; not just a structural engineer.

A forensic analysis includes removing siding and dry wall as well as limited destructive testing. Martinez & Associates has done a forensic analysis of only Buildings 1 and 3. Martinez & Associates has only done a visual examination of the exterior of the buildings, not a forensic

analysis. TBRC should retain a firm containing both architects and engineers to do a forensic analysis of Building 2 and Buildings 4 thru 12, something Martinez & Associates has not done.

The forensic analysis would involve removing some siding and drywall to determine what needs to be done inside the walls, but the damaged walls would be repaired immediately. They would not be left open for months like on Building 3.

The architectural/engineering firm would then develop a (1) scope of work and (2) specifications in regard to the repair work. This scope of work would clearly state what work was to be done, where the work would be done, how the work would be done, what materials would be used and drawings would be prepared showing or "visualizing" what the finished product would look like. This was not in regard to Building 3.

This "repair" work would not require a vote of at least 51% of the homeowners.

2. Disclose Any Additional "Renovation" Work:

The Board should then present a list of any additional "renovation" work desired. This list of desired "renovation" work should include a rendering or enlarged color drawing and be presented to all homeowners for review, discussion (including a discussion of how much the renovation work would cost and how it would be paid for) and, most importantly, a vote.

3. TBRC Should Hire a Project Manager to Oversee any future Repair/Renovation Work at TBRC:

Assuming the repair/renovation work receives approval of at least 51% of the homeowners, TBRC should hire a retired Project Manager from a commercial general contractor in the area, (such as Dargan Construction in Myrtle Beach or Chancel Construction in Conway), to serve as the Project Manager for TBRC on the TBRC repair/renovation project. These individuals have the knowledge and experience needed to successfully manage

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such a project because that is exactly what they did, although on a larger scale, for 20-30 years of their lives. The estimated cost to TBRC would be \$5,000.00 - \$10,000.00, a lot less than the \$250,000.00 wasted on Building 3 to date.

In closing, I again want to reiterate that all of us are part of the TBRC family of 213 homeowners and that nothing contained herein is intended to be derogatory towards anyone. Everything stated herein is only for the purpose of complete disclosure and transparency.

I urge all homeowners to support a request for a Special Meeting of all homeowners of TBRC. Let's put all the facts on the table, engage in a healthy, positive discussion of all plans and possible alternative plans, as well as the estimated costs, then vote on how we, collectively, want to proceed.

Sincerely,

Steele B. Windle, III
Unit 127

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

Jill Keck Humphries, Dennis L. Johnson, Jr.,)
 Delona Penny Rice, Whitmel L. Brown, Jr.,)
 Gary Steven Robinson, Elizabeth Erin)
 Humphries, and Nancy H. Johnson,)

Plaintiffs,)

vs.)

Tilghman Beach and Racquet Club)
 Condominium Association, Inc., James H.)
 Austin, III, Daniel G. Coe, C. Doug)
 Madison, George P. White and Steele Brice)
 Windle, III, individually and as Members of)
 the Board of Directors of the Tilghman)
 Beach and Racquet Club Condominium)
 Association, Inc.,)

Defendants.)

Tilghman Beach and Racquet Club)
 Condominium Association, Inc., James H.)
 Austin, III, Daniel G. Coe, C. Doug)
 Madison, George P. White and Steele Brice)
 Windle, III, individually and as Members of)
 the Board of Directors of the Tilghman)
 Beach and Racquet Club Condominium)
 Association, Inc.,)

Third-Party Plaintiffs,)

vs.)

Great American Insurance Company,)

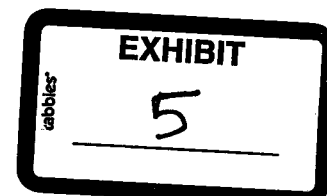
Third-Party Defendant.)

IN THE COURT OF COMMON PLEAS
 FOR THE FIFTEENTH JUDICIAL CIRCUIT

Civil Action No. 2016-CP-26-04464

**THIRD-PARTY DEFENDANT'S
 MEMORANDUM IN OPPOSITION
 TO DEFENDANTS/THIRD-PARTY
 PLAINTIFFS' MOTION FOR
 JUDGMENT ON THE PLEADINGS**

On January 15, 2018, Defendants/Third-Party Plaintiffs ("Defendants") filed a Motion for Judgment on the Pleadings ("Motion"), requesting that this Court enter an order finding Third-Party Defendant Great American Insurance Company ("Great American") owes a duty to defend



Defendants with respect to Plaintiffs' **Claim** against them.¹ For the reasons set forth in this memorandum, the Motion is unwarranted. As a preliminary matter, judgment on the pleadings as to the duty to defend is improper where Great American has asserted counterclaims for rescission of the very insurance policy under which Defendants seek a defense. *See* Great American's Amended Answer & Counterclaim, filed August 30, 2017, at ¶¶ 42-69. A finding by the Court that Great American owes a duty to defend would be moot, or a mere advisory opinion, should Great American succeed on its counterclaim that the policy at issue should be rescinded.

Moreover, Great American does not owe a duty to defend because Plaintiffs' **Claim** against Defendants, seeking recovery for property damage, etc., falls squarely within the express language of certain policy exclusions contained in its directors and officers insurance ("D&O") policy, including (i) the broad "Property Damage Exclusion," and (ii) the "Other Insurance Exclusion," as Defendants' commercial general liability ("CGL") insurer has agreed to defend them against the **Claim**.² Because these exclusions preclude coverage for Plaintiffs' **Claim**, there is no duty to defend under the D&O policy. Respectfully, this Court should deny Defendants' Motion for Judgment on the Pleadings.

ARGUMENT

I. JUDGMENT ON THE PLEADINGS FOR DEFENDANTS IS UNWARRANTED.

Judgment upon the pleadings is reserved for the "proper cases." *Wooten v. Standard Life & Cas. Ins. Co.*, 239 S.C. 243, 248, 122 S.E.2d 637, 639 (1961). Such a motion is only appropriate where the pleading at issue is fatally deficient in substance or raises solely an issue of law. *Id.* In determining the right of a moving party to judgment on the pleadings, "the real question to be determined is the sufficiency of the admitted facts to warrant the judgment

¹ Great American's Policy defines **Claim** in relevant part as a civil proceeding. Section III(A)(2).

² Great American also raised additional coverage defenses.

rendered, and the materiality of those upon which issue is joined.” *Id.* “If there is joined an issue of fact upon which, if supported by the evidence, a valid judgment may be based, a judgment on the pleadings is improper.” *Id.* at 249, 122 S.E.2d at 639; *see also Perez v. Wells Fargo N.A.*, 774 F.3d 1329, 1335 (11th Cir. 2014) (“in determining whether a party is entitled to judgment on the pleadings, [the court] accepts as true all material facts alleged in the non-moving party’s pleading, and [it] views those facts in the light most favorable to the non-moving party”). Such a “motion . . . is not favored by the courts; pleadings alleged to state no cause of action or defense will be liberally construed in favor of the pleader.” *Wooten*, 239 S.C. at 248, 122 S.E.2d at 639. In addition, a motion for judgment on the pleadings “cannot be sustained except where, under the conceded facts, a judgment different from that pronounced could not be rendered, notwithstanding any evidence which might be produced.” *Id.* Moreover, a pleading is sufficient if it states any cause of action or it appears that the pleader is entitled to any relief whatsoever. *Baldwin v. Sanders*, 266 S.C. 394, 223 S.E.2d 602 (1976).

A judgment on the pleadings can only be entered where the pleading at issue is, *in its entirety*, fatally deficient or, *in its entirety*, raises solely an issue of law. *See Wooten*, 239 S.C. at 248, 122 S.E.2d at 639. Here, Defendants are not arguing that there is a fatal deficiency in Great American’s pleading, but rather they assert that the pleadings raise solely issues of law. Defendants are incorrect. Although Defendants present their Motion as limited to the sole question of whether Great American owes a duty to defend, there are other causes of action yet to be determined in this case. Great American has raised counterclaims against Defendants for rescission *ab initio* of the policies issued to Defendants.

Because questions of fact exist as to whether Great American will succeed on its counterclaims for rescission, a finding in favor of Defendants on the issue of Great American’s

duty to defend could very well be rendered moot, or merely an advisory opinion.³ As such, judgment on the pleadings is not permitted because a judgment different from that pronounced in a judgment on the pleadings may yet be rendered. *See Wooten*, 239 S.C. at 248, 122 S.E.2d at 639.

Defendants make sweeping, unsupported arguments in their efforts to turn the Court's attention from the fatal flaw in their Motion. They claim it is "well-settled that, until Great American's Rescission Counterclaims are litigated in its favor and the policies are *declared void ab initio*, the policies remain in effect such that Great American had and has a duty to defend" This contention is unsupported by any citation to South Carolina law. Even if South Carolina countenanced such a proposition, the fact that Great American may prevail upon its rescission counterclaims is an appropriate ground to deny Defendants' Motion. Great American cannot be deemed to owe a duty to defend as a matter of law under a policy that may be void.

Defendants' remaining arguments on this point are similarly misplaced. First, they raise issues with the factual support for Great American's rescission counterclaims, which are clearly inappropriate on a motion for judgment on the pleadings. They end by claiming that a named policyholder's material misrepresentations of fact cannot adversely affect coverage for those meeting the definition of "Insureds" under the policy. This naked assertion has no support in South Carolina law. Moreover, there are at least questions of fact as to the knowledge of the Defendants with respect to rescission and the exclusion in the application/Proposal Form. Therefore, Defendants' Motion should be denied.

³ *See, e.g., Atmel Corp. v. St. Paul Fire Marine Ins. Co.*, 416 F. Supp. 2d 802, 807 (N.D. Cal. 2006) ("[I]f St. Paul is entitled to rescission, then it never owed Atmel a duty to defend. . . . Because a valid rescission voids a policy *ab initio*, and because both plaintiff's attempted enforcement of and defendant's attempted rescission of the policy are being decided in this one action, any preliminary declaration that the policies 'are currently in effect' or that St. Paul is currently 'in breach of its duties' would be inappropriate.")

II. CLEAR AND UNAMBIGUOUS POLICY EXCLUSIONS EXTINGUISH GREAT AMERICAN'S DUTY TO DEFEND.

Significantly, there is no coverage for the **Claim** and no duty to defend in any event because of the Property Damage Exclusion.

Only one Great American policy is implicated by Plaintiffs' **Claim**: Policy No. EPP3654704-00, effective February 10, 2015 to February 10, 2016. *See* certified copy of policy attached hereto as Exhibit A (the "Policy"). Subject to all of the Policy's terms, conditions and limitations, the Policy generally provides coverage for a **Claim** against **Insureds** for a **Wrongful Act**. Ex. B at Section I.⁴ As noted in Defendants' Motion, the parties do not dispute the following facts: (i) the authenticity of the Policy; (ii) that Defendants are "**Insureds**" pursuant to the Policy; and (iii) that Plaintiffs' lawsuit constitutes a "**Claim**" during the "Policy Period" involving "**Wrongful Acts**" by Defendants. *See* Defendants' Motion at pp. 11-12. As more fully set forth in Defendants' Motion, Plaintiffs have filed four Complaints, all stating various iterations of similar factual allegations against Defendants in this case.⁵ *Id.* at pp. 9-11. Defendants acknowledge that "[t]he Complaints . . . constitute a 'Claim' . . . because they involve a civil proceeding" Third-Party Compl. at ¶ 10. *See also* Motion at p. 10 ("a **Claim**, as defined in the . . . Policy, was admittedly made . . .").

However, exclusions in the Policy extinguish Great American's duty to defend. "Questions of coverage and the duty of a liability insurance company to defend a claim brought against its insured are determined by the allegations of the third party's complaint." *Isle of Palms Pest Control Co. v. Monticello Ins. Co.*, 319 S.C. 12, 15, 459 S.E.2d 318, 319 (Ct. App. 1994), *aff'd*, 321 S.C. 310, 468 S.E.2d 304 (1996). In examining the third-party's allegations,

⁴ Terms in bold are defined in the Policy.

⁵ *See* Complaint, filed July 7, 2016; First Amended Complaint, filed August 24, 2016; Second Amended Complaint, filed October 28, 2016; and Third Amended Complaint, filed March 8, 2017.

the “court must look beyond the labels describing the acts to the acts themselves which form the basis of the claim against the insurer.” *Collins Holding Corp. v. Wausau Underwriters Ins. Co.*, 379 S.C. 573, 577, 666 S.E.2d 897, 899 (2008). If these alleged acts create “a possibility of coverage under an insurance policy, the insurer is obligated to defend.” *Isle of Palms Pest Control Co.*, 319 S.C. at 15, 459 S.E.2d at 319.

Importantly, exclusions from coverage in the policy may operate to foreclose an insurer’s duty to defend. “Although exclusions in an insurance policy are construed against the insurer, insurers have the right to limit their liability and to impose conditions on their obligations provided they are not in contravention of public policy or a statutory prohibition.” *B.L.G. Enters. v. First Fin. Ins. Co.*, 334 S.C. 529, 535-36, 514 S.E.2d 327, 330 (1999) (citing *Boggs*, 272 S.C. 460, 252 S.E.2d 565; *Burns v. State Farm Mut. Auto. Ins. Co.*, 297 S.C. 520, 377 S.E.2d 569 (1989); *Rhame v. Nat’l Grange Mut. Ins. Co.*, 238 S.C. 539, 121 S.E.2d 94 (1961)). An insurance company bears the burden of establishing the applicability of policy exclusions. *Owners Ins. Co. v. Clayton*, 364 S.C. 555, 560, 614 S.E.2d 611, 614 (2005) (citing *Boggs v. Aetna Cas. & Sur. Co.*, 272 S.C. 460, 252 S.E.2d 565 (1979)).

For the reasons set forth below, Great American does not have a duty to defend Defendants because Plaintiffs’ **Claim** fails to raise the possibility of coverage as the **Claim** is excluded by the clear and unambiguous language of the Policy.

A. Plaintiffs’ Claim is excluded from coverage under the Policy.

Plaintiffs’ **Claim** certainly involves property damage, i.e., damage to the buildings in the Tilghman Beach and Racquet Club Condominium Association allegedly resulting from Defendants’ negligent and grossly negligent conduct. For example, Plaintiffs assert: “Actual

property damage to the Project⁶ has been caused by continuous and repeated exposure to moisture and water seeping into and around the walls, terminations, windows, doors, and intersections, resulting from the negligent and grossly negligent maintenance, replacement, and repair of the Project's General Common Elements and Limited Common Elements performed by" Defendants. Third Am. Compl. ¶ 47.

1. The Property Damage Exclusion Precludes Coverage, Including a Duty to Defend.

Plaintiffs' **Claim** implicates the Property Damage Exclusion in the Policy, which states in relevant part:

This Policy does not apply to any **Claim**⁷ made against any **Insured**: ... based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving: ... (2) damage to or destruction of any tangible property or the loss of use of any tangible property

Ex. B at Section IV(D).⁸

Property damage exclusions similar to this one are frequently found to be unambiguous and enforceable by courts in other jurisdictions. *See, e.g., Eastpointe Condo. I Ass'n v. Travelers Cas. & Sur. Co. of Am.*, 379 F. App'x 906, 908-09 (11th Cir. 2010) (applying narrower property damage exclusion in D&O policy in similar situation); *Huntingdon Ridge Townhouse Homeowners Ass'n v. QBE Ins. Corp.*, No. 3:09-cv-00071, 2009 WL 4060458, 2009 U.S. Dist. LEXIS 108558 (M.D. Tenn. Nov. 20, 2009); *Bd. of Managers of Yardarm Condo. II v. Federal Ins. Co.*, 699 N.Y.S.2d 332, 247 A.D.2d 499 (N.Y. App. Div. 1998).

⁶ Plaintiffs define the "Project" as 12 residential buildings and related common facilities. Third Am. Compl. at ¶ 10.

⁷ Again, **Claim** is defined in relevant part as a "civil proceeding." Ex. B at Section III(A)(2).

⁸ Curiously, Defendants first quote this exclusion in footnote 53 on page 20 of their memorandum to this Court. Defendants misleadingly and very significantly truncate this exclusion in other parts of their memorandum. *See, e.g.*, pp. 4, 19 ("Exclusion D(2) excludes coverage for 'damage to or destruction of any tangible property or the loss of use of any tangible property.'" (emphasis added)).

Plaintiffs' **Claim** is clearly "*based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving ... damage to or destruction of any tangible property or the loss of use of any tangible property.*" Compare Third Am. Compl. at ¶¶ 32-50 with Ex. B at Section IV(D)(2). For example, Plaintiffs allege Defendants "failed or otherwise refused to undertake . . . necessary repairs to eliminate the major structural and water intrusion damage, the leaks, and to protect the General Common Elements and Limited Common Elements from future damage, or even to assess the Co-owners for the necessary repair cost thereof, all as required under the Master Deed and By-Laws." Third Am. Compl. at ¶ 43. Plaintiffs also allege "the existing and ongoing water intrusion problems and defective building conditions at the Project are the result of [Defendants'] failure to follow their own recommended construction procedure and/or process for determining and completing all necessary repairs to defective and deficient General Common Elements and Limited Common Elements as well as their failure to comply with their expressed affirmative duties under the governing documents and State law." *Id.* at ¶ 45. Plaintiffs outline the numerous "defects in the maintenance, replacement, and repair of the General Common Elements and Limited Common Elements" in ¶ 46(a)-(q) and assert that "[a]ctual property damage to the Project has been caused by continuous and repeated exposure to moisture and water seeping into and around the walls, terminations, windows, doors, and intersections, resulting from the negligent and grossly negligent maintenance, replacement, and repair of the Project's General Common Elements and Limited Common Elements performed by" Defendants. *Id.* at ¶ 47.

A recent decision by the Eleventh Circuit Court of Appeals directly supports applying the Property Damage Exclusion to Plaintiffs' **Claim**. *Eastpointe Condominium I Association v. Travelers Casualty & Surety Co. of America*, 379 F. App'x 906 (11th Cir. 2010) (applying

Florida law), involved a condominium association's lawsuit for breach of contract and declaratory judgment against its D&O insurer, asserting the insurer had a duty to defend a unit owner's lawsuit against the association. *Id.* at 906. The unit owner alleged the association failed to adequately maintain and repair the roof and air conditioning system of the condominium building before, between, and after two hurricanes, resulting in water intrusion, mold, and other damage to the unit. *Id.* at 907. The unit owner asserted negligence, breach of fiduciary duty, and breach of contract. *Id.* The association's CGL insurer accepted defense of the suit under a reservation of rights, while the D&O insurer denied coverage, including any duty to defend, pursuant to its property damage exclusion. *Id.* The court held that the exclusion for a claim "for or arising out of any damage, destruction, loss of use or deterioration of any tangible property" precluded coverage and the D&O insurer had no duty to defend. *Id.* at 907-08. The court interpreted the phrase "arising out of" broadly. *Id.* at 908.

As in *Eastpointe*, this Court should apply the Property Damage Exclusion as written, without differentiating between losses originating from property damage, and losses originating from breaches of fiduciary duty that ultimately result in property damage. *Eastpointe*, 379 F. App'x at 908. The plain language of the Policy excludes coverage for any **Claim** "*based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving . . . damage to or destruction of any tangible property or the loss of use of any tangible property . . .*" Ex. B at Section IV(D)(2) (emphasis added). In *Eastpointe*, the court held that, because the underlying plaintiff's claim, including alleged breach of fiduciary duty, etc., "fell within the D&O policy's property damage exclusion," the D&O insurer "had no duty to defend" the condominium association against the unit owner's lawsuit. *Id.* at 909. Moreover, the property damage exclusion in *Eastpointe* was narrower (using only "for or arising out of")

than the Property Damage Exclusion in the Great American Policy. Therefore, this Court should similarly find that the Property Damage Exclusion applies to Plaintiffs' **Claim** and deny Defendants' Motion seeking an order that Great American has a duty to defend.

The case relied upon by Defendants, *Pulliam v. Travelers Indemnity Co.*, 403 S.C. 332, 342, 743 S.E.2d 117, 122 (Ct. App. 2013), is plainly distinguishable and inapplicable here, and does not stand for the broad proposition advanced by Defendants that "the failure of a homeowners' association to maintain adequate repair reserves is outside a property damage exclusion," Motion at pp. 4-5. The *Pulliam* court's holding should be limited to that case's facts because the Property Damage Exclusion at issue in this case is much broader than the one at issue in *Pulliam*.

The D&O Endorsement in *Pulliam* stated in pertinent part:

(I.)(D.) The insurance provided by this endorsement does not apply to:

(1) "Bodily injury," "property damage,"

(V.)(F.) "Property Damage" means:

Physical injury to tangible property, including all resulting use of that property;

Loss of use of tangible property that is not physically injured; or

Diminution of property value.

Pulliam at 340, 743 S.E.2d at 121. Again, the Property Damage Exclusion in this case excludes any **Claim** "*based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving: . . . damage to or destruction of any tangible property or the loss of use of any tangible property*" Ex. B at Section IV(D)(2) (emphasis added). None of the italicized phrases were included in the exclusion at issue in *Pulliam*. In other words,

the exclusion in *Pulliam* was very narrow, while the exclusion in the Great American Policy is very broad and comprehensive and applies to the **Claim**.⁹

Another case relied upon by Defendants, *Builders Mutual Insurance Co. v. Lacey Construction Co.*, No. CIV. A. 3:11-cv-400-CMC, 2012 WL 1032539 (D.S.C. Mar. 7, 2012), is also clearly distinguishable. That case addresses different policy language and a different scenario, rendering the case inapplicable. Specifically, the *Builders* court addressed whether the insuring clause of a CGL policy applied to an underlying lawsuit. The CGL policy covered “property damage,” which was defined as “[p]hysical injury to tangible property, including all resulting loss of use of that property.” 2012 WL 1032539, at *9. The case did not involve application of a broad property damage exclusion like the one at issue here.

Plaintiffs’ allegations or causes of action do not change the significant involvement of property damage in the **Claim**. Specifically, Plaintiffs’ allegations of negligence, gross negligence, breach of fiduciary duty, breach of contract, failure to establish reserves, diminution in value, etc. do not change the fact that their lawsuit is a **Claim**¹⁰ “based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving” damage to property.

Defendants’ assertion that Great American breached a duty to defend with respect to Plaintiffs’ **Claim** should be rejected. The Court should find Great American did not have a duty to defend Defendants against Plaintiffs’ **Claim** because it is excluded pursuant to the plain and unambiguous language in the Property Damage Exclusion of the Policy. Therefore, the Court

⁹ Contrary to Defendants’ assertion, Motion at p. 21, the property damage exclusion in *Pulliam* quoted above *did not* purport to exclude claims “related to or based on” physical damage to tangible property.

¹⁰ Defendants cannot rely on the “**Claim**” made to invoke coverage (examples on p. 5 above) and then ignore the term or distort it in the exclusion.

should deny Defendants' motion. Rather, if the Court decides to render judgment on the pleadings, it should be in favor of Great American.

III. EVIDENCE ADDUCED AFTER THE PLEADINGS CLOSED RAISES FACTUAL ISSUES.

Following the filing of Defendants' Reply to Great American's Amended Answer and Counterclaim on August 30, 2017, evidence has been adduced giving rise to additional factual questions regarding the Other Insurance Exclusion in the Policy.

During the relevant time period, February 10, 2015 to February 10, 2017, Defendants carried CGL insurance policies issued by Lexington Insurance Company ("Lexington"). See Van Deven Affidavit, attached hereto as Exhibit B. Lexington has agreed to defend Defendants under a reservation of rights, as stated in a September 2017 letter, which Great American received subsequently. *Id.* Therefore, the Other Insurance Exclusion in Great American's Policy applies. That exclusion states in relevant part:

This Policy does not apply to any **Claim** made against any **Insured**: ... to the extent it is insured in whole or in part by any other valid and collectible policy or policies, (except with respect to any excess beyond the amount or amounts of coverage under such other policy or policies), whether such other policy or policies are stated to be primary, contributory, excess, contingent, or otherwise.

Ex. B at Section IV(B).

The other insurance clause in the Lexington policies reads as follows:

If other valid and collectible insurance is available to the insured for a loss we cover under Coverages A [Bodily Injury and Property Damage Liability] or B [Personal and Advertising Injury Liability] of this Coverage Part, our obligations are limited as follows:

a. *Primary Insurance*

This insurance is primary except when Paragraph b. below applies. If this insurance is primary, our obligations are not affected unless any of the other

insurance is also primary. Then, we will share with all that other insurance by the method described in Paragraph c. below. [Emphasis added.]

b. Excess Insurance

(1) This insurance is excess over:

- (a) Any of the other insurance, whether primary, excess, contingent or on any other basis:
 - (i) That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";
 - (ii) That is Fire insurance for premises rented to you or temporarily occupied by you with permission of the owner;
 - (iii) That is insurance purchased by you to cover your liability as a tenant for "property damage" to premises rented to you or temporarily occupied by you with permission of the owner; or
 - (iv) If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion g. of Section I – Coverage A – Bodily Injury And Property Damage Liability.
- (b) Any other primary insurance available to you covering liability for damages arising out of the premises or operations, or the products and completed operations, for which you have been added as an additional insured. . . .

Van Deven Aff., Exs. 3 and 4, Section IV(4). Reading the other insurance provisions in both the Great American Policy and the Lexington policies together, it is clear that Lexington's policies are primary, and Great American's Policy is, at most, excess (although the Property Damage Exclusion eliminates all coverage).¹¹ Furthermore, the Great American Policy states that "**Costs of Defense** shall not include ... any amounts incurred in defense of any **Claim** which any other insurer has a duty to defend, regardless of whether or not such other insurer undertakes such duty." Ex. B at Section III(D).¹²

¹¹ Regarding Lexington's duty to defend, it continues until its policy limits are used up in payment of judgments or settlements. *Id.* at Section I(A)(1). In other words, defense costs are in addition to those limits.

¹² **Costs of Defense** generally include reasonable and necessary legal fees, costs and expenses incurred in the investigation or defense of any **Claim**" Ex. B. at Section III(D). Defendants have quoted the entire **Costs of Defense** provision. Third-Party Compl. at ¶ 8.

“Other-insurance clauses are generally valid and enforceable, *see* 15 Russ & Segalla, *Couch on Insurance* § 219:3” *Horace Mann Ins. Co. v. Gen. Star Nat’l Ins. Co.*, 514 F.3d 327, 330-31 (4th Cir. 2008); *see also Bardsley v. Gov’t Emps. Ins. Co.*, 405 S.C. 68, 81-82, 747 S.E.2d 436, 443 (2013) (describing a frequent “method insurance companies use to indicate whether they intend to provide primary, secondary, or other coverage is to include in their policies ‘other insurance’ clauses that attempt to apportion liability among multiple insurers”). “Generally speaking, in cases where the other-insurance clauses can be reconciled, the clauses will be enforced in accordance with their terms.” *Id.* at 331 (citing *Citgo Petroleum Corp. v. Yeargin, Inc.*, La. App. 95-1574, 690 So. 2d 154, 167 (1997); *Northland Ins. Co. v. Cont’l W. Ins. Co.*, 550 N.W.2d 298, 303 (Minn. Ct. App. 1996)).

Moreover, “other insurance exclusions” in policies are frequently enforced. *See, e.g., Motor Club of Am. Ins. Co. v. Phillips*, 330 A.2d 360, 368 (N.J. 1974) (rejecting “theory that an other insurance exclusion deprives the insured of consideration for the premium paid for the ... endorsement”); *State Farm Fire & Cas. Co. v. Bd. of Governors*, 50 Ill. Ct. Cl. 304, 309, 1997 Ill. Ct. Cl. LEXIS 54, at *9 (1997) (finding “‘other insurance’ exclusion clause in an insurance policy is the principle, and usually the sole, determinant of whether a particular insurance policy or coverage is primary or excess coverage.”).

The policies at issue do not conflict. Lexington’s CGL policies state that they are primary unless one of several inapplicable conditions is met. Van Deven Aff., Exs. 3 and 4, Section IV.4. On the other hand, Great American’s other insurance provision is an exclusion and indicates that its Policy is excess to all other applicable insurance policies, precluding coverage where other insurance exists to cover the **Claim**, as here. Ex. B at Section IV(B). In addition, **Costs of Defense** do not include amounts incurred where another insurer has a duty to defend, as

here. *Id.* at Section III(D). Accordingly, given the existence of the CGL policies and Lexington's agreement to defend, Great American has no duty to defend.

Based on this recently discovered evidence, Defendants' Motion should be denied.

CONCLUSION

For the above-stated reasons, Defendants' Motion for Judgment on the Pleadings as to Great American's alleged duty to defend should be denied because: (1) the Motion is procedurally improper in view of Great American's counterclaims for rescission; and (2) Plaintiffs' **Claim** is explicitly excluded from coverage under the Policy. Alternatively, if the Court grants judgment on the pleadings, it should be in favor of Great American based on the Property Damage Exclusion.

Respectfully submitted,

ADAMS AND REESE LLP

s/Kirby D. Shealy III

Kirby D. Shealy III (SC Bar No. 11556)
 Lyndey Ritz Zwingelberg (SC Bar No. 100804)
 Justine M. Tate (SC Bar No. 101561)
 1501 Main Street, Fifth Floor
 Post Office Box 2285 (29202)
 Columbia, South Carolina 29201
 Telephone: (803) 212-4966
 kirby.shealy@arlaw.com
 lyndey.zwing@arlaw.com
 justine.tate@arlaw.com

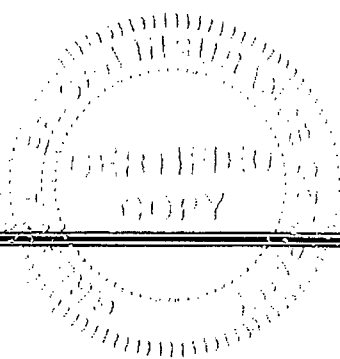
Attorneys for Great American Insurance Company

February 14, 2018



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Great American Insurance Group – Executive Liability Division:
1515 Woodfield Road, Suite 500, Schaumburg, IL 60173

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GREAT AMERICAN INSURANCE GROUP®
Headquarters: 301 E. Fourth Street, Cincinnati, Ohio 45202

THIS IS A CLAIMS MADE POLICY. READ IT CAREFULLY.

In consideration of the payment of the premium and in reliance upon all statements made and information furnished to the company shown in the Declarations (a stock insurance company, hereinafter called the **Insurer**), including the statements made in the Proposal Form and subject to all terms, conditions and limitations of this Policy, the **Insured** and **Insurer** agree:

Section I. Insuring Agreements

- A. If during the **Policy Period** or the **Discovery Period** any **Claim** is first made against any **Insured Persons** for a **Wrongful Act**, the **Insurer** shall pay on behalf of the **Insured Persons**, **Loss** and **Costs of Defense** resulting from such **Claim**, except for any **Loss** and **Costs of Defense** which the **Organization** or any **Subsidiary** actually pays as indemnification.
- B. If during the **Policy Period** or the **Discovery Period** any **Claim** is first made against any **Insured Persons** for a **Wrongful Act**, the **Insurer** shall pay on behalf of the **Organization** or any **Subsidiary**, **Loss** and **Costs of Defense** resulting from such **Claim**, but only to the extent the **Organization** or any **Subsidiary** is required or permitted by law to indemnify the **Insured Persons**.
- C. If during the **Policy Period** or the **Discovery Period** any **Claim** is first made against the **Organization**, any **Subsidiary**, or the **Property Manager** for a **Wrongful Act**, the **Insurer** shall pay on behalf of the **Organization**, any **Subsidiary**, or the **Property Manager**, **Loss** and **Costs of Defense** resulting from such **Claim**.

The **Insurer** has the right and duty to defend any **Claim** to which this insurance applies, even if the allegations of such **Claim** are groundless, false or fraudulent.

Section II. Discovery Period

- A. If this Policy is not renewed or is cancelled by the **Insurer**, for any reason other than non-payment of premium, then without the requirement of any additional premium, the **Organization** shall receive an automatic ninety (90) day extension of the coverage granted by this Policy with respect to any **Claim** first made against any **Insured** during this extended coverage, but only with respect to **Wrongful Acts** committed prior to the end of the **Policy Period**. This extended coverage shall be referred to as the **Automatic Discovery Period**. In addition, if prior to the end of the **Automatic Discovery Period**, the **Organization** pays the **Insurer** an additional amount equal to forty (40%), seventy-five (75%), or one hundred (100%) percent of the annual premium of this Policy, the **Organization** shall receive an extension of the coverage granted by this Policy for an additional twelve (12), twenty-four (24), or thirty-six (36) months respectively from the end of the **Automatic Discovery Period** with respect to any **Claim** first made against any **Insured** during this extended coverage, but only with respect to **Wrongful Acts** committed prior to the end of the **Policy Period**. This extended coverage shall be referred to as the **Discovery Period**. The **Organization** shall have no right to purchase this **Discovery Period** at any later date or to elect more than one **Discovery Period**.

- B. If this Policy is not renewed or is cancelled by the **Organization**, and if no later than sixty (60) days after the end of the **Policy Period** the **Organization** pays the **Insurer** an additional amount equal to forty (40%), seventy-five (75%), or one hundred (100%) percent of the annual premium of this Policy, the **Organization** shall receive a **Discovery Period** for an additional twelve (12), twenty-four (24), or thirty-six (36) months respectively from the end of the **Policy Period**. The **Organization** shall have no right to purchase this **Discovery Period** at any later date or to elect more than one **Discovery Period**.
- C. The fact that this Policy may be extended by virtue of the **Automatic Discovery Period** or **Discovery Period** shall not in any way increase the Limit of Liability stated in Item 3 of the Declarations. For purposes of the Limit of Liability, the **Automatic Discovery Period** and the **Discovery Period** is considered to be part of and not in addition to the last **Policy Year**.

Section III. Definitions

A. "Claim" shall mean:

- (1) a written demand for monetary relief made against any **Insured**;
- (2) a civil proceeding, including any appeals therefrom made against any **Insured** seeking monetary or non-monetary (including injunctive) relief commenced by service of a complaint or similar pleading;
- (3) a criminal proceeding, including any appeals therefrom made against any **Insured** commenced by the return of an indictment or the filing of notice of charge or similar document; or
- (4) a formal administrative proceeding, including any proceeding before the Equal Employment Opportunity Commission (EEOC) or any similar governmental body, made against any **Insured** commenced by the receipt of charges, formal investigative order, service of summons or similar document.

B. "Claimant" shall mean:

- (1) any past, present, and future **Insured Persons** or applicants for employment with the **Organization** or any **Subsidiary**;
- (2) a government entity or agency, including but not limited to the Equal Employment Opportunity Commission (EEOC) or any similar governmental body, when acting on behalf of or for the benefit of any individual in (1) above; or
- (3) all persons who were, now are, or shall be independent contractors, but only to the extent such individuals perform work or services for or on behalf of the **Organization** or any **Subsidiary** and only to the extent such individuals are indemnified by the **Organization** or any **Subsidiary**.

It is further understood and agreed that **Claimant** shall not include any employee of any **Property Manager**.

- C. **"Construction Defect(s)"** shall mean any actual or alleged defective, faulty or delayed construction or any other matter constituting a construction defect under applicable law regardless of whether it results from:
- (1) defective or incorrect architectural plans or other designs;
 - (2) defective or improper soil testing;
 - (3) defective, inadequate or insufficient protection from subsoil or earth movement or subsidence;
 - (4) construction, manufacture or assembly of any tangible property;
 - (5) the failure to provide or pay for any construction-related goods or services; or
 - (6) the supervision or management of any construction-related activities.
- D. **"Costs of Defense"** shall mean reasonable and necessary legal fees, costs and expenses incurred in the investigation or defense of any **Claim**, including the costs of any appeal or appeal bond, attachment bond or similar bond (but without any obligation on the part of the **Insurer** to apply for or furnish such bonds); provided, however, **Costs of Defense** shall not include: (1) salaries, wages, overhead or benefit expenses associated with any **Insured Persons**, and (2) any amounts incurred in defense of any **Claim** which any other insurer has a duty to defend, regardless of whether or not such other insurer undertakes such duty.
- E. **"Employment Practices Wrongful Act"** shall mean any of the following acts related to employment, but only if alleged by or on behalf of a **Claimant**:
- (1) wrongful dismissal, discharge or termination of employment, whether actual or constructive;
 - (2) misrepresentation;
 - (3) violation of employment laws;
 - (4) sexual or workplace harassment;
 - (5) discrimination;
 - (6) wrongful failure to employ or promote;
 - (7) wrongful discipline;
 - (8) wrongful deprivation of career opportunity including a wrongful failure to hire or promote;
 - (9) failure to grant tenure;
 - (10) negligent employee evaluation;
 - (11) retaliation;
 - (12) failure to provide adequate workplace or employment policies or procedures;
 - (13) defamation (including libel and slander);
 - (14) invasion of privacy;
 - (15) wrongful demotion;
 - (16) negligent reassignment;
 - (17) violation of any federal, state or local civil rights laws;
 - (18) negligent hiring;
 - (19) negligent supervision;
 - (20) negligent training;
 - (21) negligent retention; or
 - (22) acts described in (1) through (21) above arising from the use of the **Organization's** or **Subsidiary's** Internet, e-mail, telecommunication or similar systems, including the failure to provide and enforce adequate policies and procedures relating to such use of the **Organization's** or **Subsidiary's** Internet, e-mail, telecommunication or similar systems.
- F. **"Financial Insolvency"** shall mean the **Organization** becoming a Debtor in Possession, or the appointment of a receiver, conservator, liquidator, trustee, rehabilitator or similar official to control, supervise, manage or liquidate the **Organization**.
- G. **"Fungi"** shall mean any type or form of fungus, including mold or mildew and any mycotoxins, spores, scents, or byproducts produced or released by fungi.

H. **"Insured"** shall mean:

- (1) the **Organization**;
- (2) any **Subsidiary**;
- (3) in the event of **Financial Insolvency**, the resulting Debtor in Possession (or foreign equivalent status), if any;
- (4) all **Insured Persons**; and
- (5) any **Property Manager**, but only if such **Property Manager** is acting pursuant to the written authority granted by the **Organization** or on behalf of and at the direction of the **Organization** or any **Subsidiary**.

I. **"Insured Persons"** shall mean all persons who were, now are, or shall be directors, trustees, officers, employees, leased employees, temporary or seasonal employees, volunteers or staff members of the **Organization** or any **Subsidiary**, including any executive board members and committee members, whether salaried or not. It shall also mean all persons who were, now are, or shall be directors, trustees, officers, employees, leased employees, temporary or seasonal employees, volunteers or staff members of any **Property Manager**, but only if such persons are acting within the scope of their employment with the **Property Manager** and on behalf of the **Organization** or any **Subsidiary**.

J. **"Loss"** shall mean settlements, judgments, pre-judgment and post-judgment interest, front and back pay, compensatory damages, punitive or exemplary damages, the multiple portion of any multiplied damage award, and subject to the provisions of Section V. and VI., **Costs of Defense** incurred by the **Insured**. **Loss** shall not include:

- (1) criminal or civil fines or penalties imposed by law (except as provided pursuant to Section X. H.), or taxes;
- (2) the value of perquisites, deferred compensation or any other type of compensation earned in the course of employment or the equivalent value thereof; and
- (3) any amounts which may be deemed uninsurable under the law pursuant to which this Policy shall be construed.

It is understood and agreed that the enforceability of the foregoing coverage shall be governed by such applicable law which most favors coverage for punitive or exemplary damages or the multiple portion of any multiplied damage award.

K. **"Organization"** shall mean the entity named in Item 1 of the Declarations.

L. **"Policy Year"** shall mean the period of one year following the effective date and hour of this Policy or the period of one year following any anniversary date thereof falling within the **Policy Period**; or if the time between the effective date or any anniversary date and the termination of this Policy is less than one year, such lesser period. Any **Discovery Period** or **Automatic Discovery Period** shall be considered part of and not in addition to the last **Policy Year**.

M. **"Policy Period"** shall mean the period from the inception of this Policy to the expiration date stated in Item 2 of the Declarations or its earlier termination, if applicable.

N. **"Property Manager"** shall mean any entity providing real estate property management services to the **Organization** or any **Subsidiary** pursuant to a written contract.

O. **"Related Wrongful Acts"** shall mean **Wrongful Acts** which are causally connected by reason of any common fact, circumstance, situation, transaction, casualty, event or decision.

P. "Subsidiary" shall mean:

- (1) any entity which qualifies as a not-for-profit organization under the Internal Revenue Code, other than a political committee organized pursuant to Section 432 of the Federal Election Campaign Act of 1971 (and amendments thereto), and for which the **Organization** has or controls the right to elect or appoint more than fifty percent (50%) of the Board of Directors or other governing body of such entity as of the inception date of this Policy;
- (2) any similar entity which was created or acquired by the **Organization** after the inception date of this Policy, if the entity's total assets do not exceed thirty-five percent (35%) of the total consolidated assets of the **Organization** as of the inception date of this Policy; or
- (3) any other entity added as a **Subsidiary** by written endorsement to this Policy.

Coverage shall apply to a **Subsidiary** only for **Wrongful Acts** allegedly committed during the time such entity qualified as a **Subsidiary**.

Q. "Wrongful Act" shall mean:

- (1) any of the following by the **Organization**, and/or any **Subsidiary**, and/or any **Insured Persons** acting in their capacity with the **Organization** or a **Subsidiary**:
 - (a) actual or alleged error, misstatement, misleading statement; act or omission, neglect or breach of duty;
 - (b) **Employment Practices Wrongful Act**;
- (2) any matter claimed against any **Insured Persons** solely by reason of their status with the **Organization** or any **Subsidiary**.

Section IV. Exclusions

This Policy does not apply to any **Claim** made against any **Insured**:

- A.** brought about or contributed to by: (1) any **Insured** gaining any profit, advantage or remuneration to which they were not legally entitled; or (2) the deliberate fraudulent or criminal acts of any **Insured**; however, this exclusion shall not apply unless it is finally adjudicated such conduct in fact occurred, nor shall it apply to coverage provided under Insuring Agreement I.B.;
- B.** to the extent it is insured in whole or in part by any other valid and collectible policy or policies, (except with respect to any excess beyond the amount or amounts of coverage under such other policy or policies), whether such other policy or policies are stated to be primary, contributory, excess, contingent, or otherwise;
- C.** based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving:
 - (1) any **Wrongful Act** or **Related Wrongful Act** or any fact, circumstance or situation which has been the subject of any notice or **Claim** given under any other policy of which this Policy is a renewal or replacement;
 - (2) any **Wrongful Act** or any circumstance known by any **Insured Person** prior to the date stated in Item 8 of the Declarations which would indicate the probability of such **Claim** being made, provided, however, this exclusion shall only apply to the **Organization**, its **Subsidiaries** and those **Insured Persons** having such knowledge; or

- (3) any civil, criminal, administrative or investigative proceeding involving any **Insured** pending as of or prior to the date stated in Item 8 of the Declarations, or any fact, circumstance or situation underlying or alleged in such proceeding;
- D. based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving: (1) bodily injury, sickness, disease or death of any person, assault or battery; (2) damage to or destruction of any tangible property or the loss of use of any tangible property; or (3) humiliation, mental anguish, emotional distress, invasion of privacy, wrongful entry, trespassing, eviction, false arrest, false imprisonment, malicious prosecution, abuse of process, libel or slander; provided, however, that part (3) of this exclusion shall not apply to any **Claim** for an **Employment Practices Wrongful Act**;
- E. for any actual or alleged violation by any **Insured** of the Employee Retirement Income Security Act of 1974, the National Labor Relations Act, the Worker Adjustment and Retraining Notification Act, the Consolidated Omnibus Budget Reconciliation Act of 1985, the Occupational Safety and Health Act or any rules or regulations promulgated under these acts or any similar provisions of any federal, state, local or foreign law, except a **Claim** alleging retaliation for the exercise of any rights under such laws;
- F. for any **Wrongful Act** of any **Insured Persons** in their respective capacity as a director, officer, trustee, or equivalent position of an entity other than the **Organization** or any **Subsidiary**;
- G. based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving actual or alleged seepage, pollution, radiation, emission, contamination or irritant of any kind, including but not limited to smoke, vapor, dust, fibers, mold, spores, fungi, germs, soot, fumes, acids, alkalis, asbestos, chemicals or waste of any kind, provided, however, this exclusion shall not apply to coverage provided under Insuring Agreement 1.A.;
- H. by, or for the benefit of, or at the behest of the **Organization** or any **Subsidiary** or any entity which controls, is controlled by, or is under common control with the **Organization** or any **Subsidiary**, or any person or entity which succeeds to the interests of the **Organization** or any **Subsidiary**, provided, however, this exclusion shall not apply to any **Claim** brought by the receiver, conservator, liquidator, trustee, rehabilitator, examiner or similar official of the **Organization**, if any, in the event of **Financial Insolvency**;
- I. other than **Costs of Defense**:
- (1) for any obligation of the **Organization** or any **Subsidiary**, as a result of a **Claim**, seeking relief or redress in any form other than money damages, including but not limited to any obligations of the **Organization** or any **Subsidiary** to modify any building or property;
 - (2) for any obligation of the **Organization** or any **Subsidiary** to pay compensation earned by any **Insured Person** in the course of employment, but not paid by the **Organization** or any **Subsidiary**, including any unpaid salary, bonus, wages, severance pay, retirement benefits, vacation days or sick days, provided, however, this exclusion shall not apply to front pay and back pay;
 - (3) for any actual or alleged violation by any **Insured** of the Fair Labor Standards Act or any similar state or local law, provided, however, this exclusion shall not apply to the Equal Pay Act. **Costs of Defense** provided pursuant to this section, I.(3), shall be subject to the FLSA Defense Sublimit of Liability stated in Item 3 of the Declarations, if any; or
 - (4) for any actual or alleged liability of any **Insured** under any contract or agreement, express or implied, written or oral; provided, however this exclusion shall not apply to employment related obligations which would have attached absent such contract or agreement;

- J. for any obligations under a worker's compensation, disability benefits, insurance benefits or unemployment compensation law, or any similar law; provided, however this exclusion shall not apply to a **Claim** for an **Employment Practices Wrongful Act** involving retaliation with regard to benefits paid or payable;
- K. based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving:
 - (1) actual, alleged or threatened:
 - (a) Inhalation of, ingestion of, contact with, or exposure to any **Fungi** or bacteria; or
 - (b) 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 any injury or damage; or
 - (2) any loss, cost or expense arising out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating, 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;
- L. based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving actual or alleged **Construction Defect(s)**;
- M. based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving any actual or alleged liability of an **Insured**, in whole or in part, in the capacity as a builder or developer, or in the capacity of a sponsor of the **Organization**, or of an **Insured** affiliated with such a builder, developer or sponsor, and which is related to actual or alleged misconduct on the part of such builder, developer or sponsor, including but not limited to actual or alleged conflict of interest, self-dealing, or disputes concerning conversion, construction or development;
- N. based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving actual or alleged noise.

With respect to this section of the Policy, no fact pertaining to or conduct by any **Insured Person** shall be imputed to any other **Insured Person**; and only facts pertaining to or conduct by any past, present, or future Executive Director, President, or Chairman of the **Organization** shall be imputed to the **Organization** or any **Subsidiary** to determine if coverage is available.

Section V. Limits of Liability and Retention

- A. The **Insurer** shall be liable to pay one hundred percent (100%) of **Loss** in excess of the Retention stated in Item 4 of the Declarations. The **Insurer's** maximum Limit of Liability for the aggregate amount of **Loss** resulting from all **Claims** deemed to have been made in a **Policy Year** shall be shown in Item 3 of the Declarations.
- B. One Retention shall apply to each and every **Claim**. More than one **Claim** involving the same **Wrongful Act** or **Related Wrongful Acts** of one or more **Insureds** shall be considered a single **Claim**, and only one Retention shall be applicable to such single **Claim**. All such **Claims**, constituting a single **Claim**, shall be deemed to have been made on the earlier of the following dates: (1) the earliest date on which any such **Claim** was first made; or (2) the earliest date on which any such **Wrongful Act** or **Related Wrongful Act** was reported under this Policy or any other policy providing similar coverage.

- C. **Costs of Defense** incurred by the **Insurer** shall be in addition to the Limit of Liability, and such **Costs of Defense** shall not be subject to the Retention amount. If **Costs of Defense** are incurred by the **Insured** with the **Insurer's** consent, such **Costs of Defense** shall be considered **Loss** and thus subject to the Limit of Liability and Retention.
- D. With respect to all **Claims** deemed to have been made in a **Policy Year**, should the Limit of Liability be exhausted by payment of **Loss** resulting from one or more such **Claims**, the **Insurer's** duty to defend shall cease and any and all obligations of the **Insurer** hereunder shall be deemed to be completely fulfilled and extinguished and the **Insurer** shall have no further obligations.
- E. For the purpose of applying the Retention, **Loss** applicable to Insuring Agreement I.B. includes that for which indemnification is legally permissible, regardless of whether actual indemnification is granted. The certificate of incorporation, charter or other organizational document of the **Organization**, including by-laws and resolutions, shall be deemed to require indemnification and advancement of **Loss** to the **Insured Persons** to the fullest extent permitted by law.

Section VI. Costs of Defense and Settlements

- A. The **Insureds** shall not incur **Costs of Defense**, or admit liability, offer to settle, or agree to any settlement in connection with any **Claim** without the express written consent of the **Insurer**, which consent shall not be unreasonably withheld. The **Insureds** shall provide the **Insurer** with full cooperation and all information and particulars it may reasonably request in order to reach a decision as to such consent. Any **Loss** resulting from any admission of liability, agreement to settle, or **Costs of Defense** incurred prior to the **Insurer's** consent shall not be covered hereunder.
- B. The **Insurer** has the right to investigate and settle any **Claim** as it deems expedient. If the **Insurer** recommends a settlement and the **Insured** refuses to consent thereto, the **Insurer's** liability for such **Claim** is limited to the amount in excess of the Retention, which the **Insurer** would have contributed had the **Insured** consented to the settlement, the **Costs of Defense** covered by the Policy and incurred prior to the date of such refusal to settle, and fifty percent (50%) of any additional covered **Loss**, including **Costs of Defense**, incurred subsequent to such refusal and subject to the Limit of Liability.

If the **Insured** refuses to consent to a settlement as contemplated above, **Costs of Defense** shall be subject to the Retention.

Section VII. Notice of Claim

- A. The **Insureds** shall, as a condition precedent to their rights under this Policy, give the **Insurer** notice in writing of any **Claim** made during the **Policy Period**. Such notice shall be given as soon as practicable after the date a Board Member or an employee of the **Property Manager** has knowledge of the **Claim**, and in no event later than ninety (90) days after the end of the **Policy Period**.
- B. If during the **Policy Period** or **Discovery Period**, any **Insured** first becomes aware of a specific **Wrongful Act** and gives notice to the **Insurer** of: (1) the specific **Wrongful Act**; (2) the injury or damage which has or may result therefrom; and (3) the circumstances by which the **Insured** first became aware thereof; then any **Claim** arising out of such **Wrongful Act** which is subsequently made against the **Insured** shall be deemed to have been made at the time the **Insurer** received such written notice from the **Insured**.

- C. In addition to furnishing the notice as provided in Section VII A or B, the **Insured** shall, as soon as practicable, provide the **Insurer** with copies of reports, investigations, pleadings and other documents in connection therewith, and shall provide all information, assistance and cooperation which the **Insurer** reasonably requests and do nothing to prejudice the **Insurer's** position or its potential or actual rights of recovery.
- D. Notice to the **Insurer** as provided in Section VII A or B shall be emailed to **ELDClaims@gaic.com** or mailed to **GREAT AMERICAN INSURANCE GROUP, EXECUTIVE LIABILITY DIVISION, CLAIMS DEPARTMENT, P.O. BOX 66943, CHICAGO, IL 60666.**

Section VIII. Coverage Extensions

A. Spousal/Domestic Partner Provision

The coverage provided by this Policy shall also apply to the lawful spouse or "Domestic Partner" of any **Insured Person**, but only for **Claims** arising out of any actual or alleged **Wrongful Acts** of any **Insured Person**. The term "Domestic Partner" shall mean any natural person qualifying as a domestic partner under the provisions of any applicable federal, state or local law.

B. Worldwide Provision

The coverage provided under this Policy shall apply worldwide. The term **Insured Persons** is deemed to include individuals who serve in equivalent positions in foreign **Subsidiaries**.

C. Estates and Legal Representatives

The coverage provided by this Policy shall also apply to the estates, heirs, legal representatives, or assigns of any **Insured Persons** in the event of their death, incapacity or bankruptcy, but only for **Claims** arising out of any actual or alleged **Wrongful Acts** of any **Insured Persons**.

Section IX. General Conditions

A. Cancellation or Non-Renewal

- (1) This Policy may be cancelled by the **Organization** at any time by written notice to the **Insurer**. In the event the **Organization** cancels this Policy for reasons other than the downgrade of the **Insurer's** rating by A.M. Best, the **Insurer** shall retain the customary short rate portion of the premium. However, if the **Organization** cancels the Policy due to a downgrade of the **Insurer's** rating to below [A-] by A.M. Best, the **Insurer** shall refund any unearned premium on a pro rata basis. Payment of any unearned premium by the **Insurer** shall not be a condition precedent of the effectiveness of cancellation but such payment shall be made as soon as practicable.
- (2) This Policy will only be cancelled by the **Insurer** if the **Organization** does not pay the premium when due.
- (3) If the **Insurer** elects not to renew this Policy, the **Insurer** shall provide the **Organization** with at least sixty (60) days advance notice thereof.

B. Proposal Form

It is agreed the particulars and statements contained in Proposal Forms submitted to the **Insurer** (and any material submitted therewith) are the representations of the **Insured** and are to be considered as incorporated in and constituting part of this Policy. It is also agreed this Policy is issued in reliance upon the truth of such representations. However, coverage shall not be excluded as a result of any untrue statement in the Proposal Form, except as to the **Organization**, its **Subsidiaries**, and any **Insured Person** making such untrue statement or having knowledge of its falsity.

In no event shall Insuring Agreement I.A. of this Policy be rescinded by the **Insurer**.

C. Order of Payments

In the event of **Loss** arising from a covered **Claim** for which payment is due under the provisions of this Policy, the **Insurer** shall first, pay **Loss** for which coverage is provided under Insuring Agreement I.A. of this Policy; and thereafter with respect to whatever remaining amount of the Limit of Liability is available after such payment, pay such other **Loss** for which coverage is provided under any other applicable Insuring Agreements in Section I of this Policy.

D. Merger or Acquisition

If, during the **Policy Period**, the **Organization** acquires the assets of another entity, by merger or otherwise, and the acquired assets of such other entity exceed thirty-five percent (35%) of the assets of the **Organization** as of the inception date of the Policy, written notice thereof shall be given to the **Insurer** as soon as practicable, but in no event later than ninety (90) days from the effective date of the transaction, together with such information as the **Insurer** may request. Premium adjustment and coverage revisions shall be effected as may be required by the **Insurer**.

E. Conversion to Run-Off Coverage

If prior to the end of the **Policy Period**, the **Organization** merges into another organization and the **Organization** is not the surviving entity, another organization or person acquires the right to elect or appoint more than fifty percent (50%) of the Board of Directors or other governing body of the **Organization**, or the **Organization** ceases to qualify as a not-for-profit organization under any federal, provincial and territorial legislation and/or the Internal Revenue Code (such events hereinafter referred to as **Transaction**), then:

- (1) the **Organization** must give written notice of such **Transaction** to the **Insurer** within thirty (30) days after the effective date of such **Transaction**, and provide the **Insurer** with such information as the **Insurer** may deem necessary; and
- (2) this Policy, including the **Discovery Period** if elected, shall apply, but only with respect to any **Wrongful Act** committed prior to the effective date of such **Transaction**.

F. Action Against the Insurer

- (1) No action shall be taken against the **Insurer** unless, as a condition precedent thereto, there shall have been full compliance with all the terms of this Policy, and until the **Insured's** obligation to pay shall have been finally determined by an adjudication against the **Insured** or by written agreement of the **Insured**, those filing the claim, and the **Insurer**.
- (2) No person or organization shall have any right under this Policy to join the **Insurer** as a party to any **Claim** against any **Insured** nor shall the **Insurer** be impleaded by any **Insured** or their legal representative in any such **Claim**.

G. Subrogation

In the event of payment under this Policy, the **Insurer** shall be subrogated to all the **Insureds'** rights of recovery. The **Insureds** shall do everything necessary to secure such rights, including the execution of such documents necessary to enable the **Insurer** to effectively bring suit in the name of any **Insured**. In no event, however, shall the **Insurer** exercise its rights to subrogation against an **Insured Person** under this Policy unless, such **Insured Person**:

- (1) has been convicted of a deliberate criminal act, or
- (2) has been determined by a final adjudication adverse to the **Insured Person** to have committed a deliberate fraudulent act, or to have obtained any profit, advantage or remuneration to which such **Insured Person** was not legally entitled.

In the event the **Insurer** shall for any reason pay indemnifiable **Loss** on behalf of an **Insured Person**, the **Insurer** shall have the contractual right hereunder to recover from the **Organization** or any **Subsidiary** the amount of such **Loss** equal to the amount of the Retention not satisfied by the **Organization** or any **Subsidiary** and shall be subrogated to rights of the **Insured Persons** hereunder.

H. Conformity to Law

Any terms of this Policy which are in conflict with the terms of any applicable laws are hereby amended to conform to such laws.

I. Assignment

Assignment of interest under this Policy shall not bind the **Insurer** until its consent is endorsed hereon.

J. Representative of the Insurer

Great American Insurance Group, Executive Liability Division, Post Office Box 66943, Chicago, Illinois, 60666 shall act on behalf of the **Insurer** for all purposes including, but not limited to, the giving and receiving of all notices and correspondence.

K. Organization Represents Insured

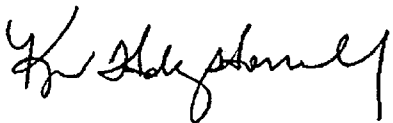
By acceptance of this Policy, the **Organization** shall be designated to act on behalf of the **Insureds** for all purposes including, but not limited to, giving and receiving of all notices and correspondence, the cancellation or non-renewal of this Policy, the payment of premiums, and the receipt of any return premiums that may be due under this Policy.

L. Entire Agreement

By acceptance of this Policy, the **Insured** and the **Insurer** agree that this Policy (including the Proposal Forms submitted to the **Insurer** and any materials submitted therewith) and any written endorsements attached hereto constitute the entire agreement between the parties.

In witness whereof the **Insurer** has caused this Policy to be signed by its President and Secretary and countersigned, if required, on the Declarations page by a duly authorized agent of the **Insurer**.

GREAT AMERICAN INSURANCE COMPANY®



Secretary



President



ExecProsm
DECLARATIONS
for
Community Association
Solution
Insurance Policy

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Insurance is afforded by the company indicated below: (Each a capital stock corporation)

☒ Great American Insurance Company
Policy Number: **EPP3654704-00**

Policy Form Number: **D26100 (2/10)**

Item 1. Name of Organization: **Tilghman Beach & Racquet Club HOA Inc.**
Mailing Address: **11822 HIGHWAY 17 BYP**

City, State, Zip Code: **MURRELLS INLET, SC, 29576-9337**

Item 2. Policy Period: From **02-10-2015** To **02-10-2016**
(Month, Day, Year) (Month, Day, Year)
(Both dates at 12:01 a.m. Standard Time at the address of the Organization as stated in Item 1.)

Item 3. (a) Limit of Liability for each Policy Year: **\$1,000,000**
(b) **FLSA Defense Sublimit of Liability: \$150,000 – This limit is part of and not in addition to the Limit of Liability provided for in 3(a).**

Item 4. Retentions:
Insuring Agreement A: **\$0** Each Claim
Insuring Agreement B and/or C: **\$1,000** Each Claim

Item 5. Premium: **\$2,559.00** Annual Taxes/Surcharges: **\$0.00** Annual Fees: **\$0.00**

Item 6. Endorsements Attached:
ExecPro - Community Association Solution D 26100 (2/10)
Terrorism Coverage Endorsement DTCV_09P (11/09)
Terrorism Coverage Premium Disclosure DTDP_09P (11/09)
Deletion of Noise Exclusion D 26714-2 (11/12)
Terrorism Coverage Policyholder Disclosure NTDN_08P (1/08)
Data Security Wrongful Acts and Privacy Wrongful Acts Coverage Endorsement D26740 (10/14)

Item 7. Notices: All notices required to be given to the Insurer under this policy shall be addressed to:
Great American Insurance Companies
Executive Liability Division
P.O. Box 66943
Chicago, Illinois 60666

Item 8. Prior & Pending Litigation Date: **02-10-2015**

These Declarations along with the completed and signed Proposal Form and community Associations Solution Insurance Policy shall constitute the contract between the Insureds and the Insurer.

THIS IS A CLAIMS MADE POLICY. READ IT CAREFULLY.

GREAT AMERICAN
INSURANCE GROUP
 580 Walnut Street, Cincinnati, OH 45202

COVERAGE FOR ACTS OF TERRORISM

It is understood and agreed that the General Conditions of the Policy are amended by the addition of the following:

Act of Terrorism Coverage

Subject to all other terms and conditions of this Policy, coverage is available for Loss caused by an **Act of Terrorism** as defined below.

"Act of Terrorism" means any 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 –

- (i) to be an act of terrorism;
- (ii) to be a violent act or an act that is dangerous to –
 - (a) human life;
 - (b) property; or
 - (c) infrastructure;
- (iii) to have resulted in damage within the United States, or outside of the United States in the case of –
 - (a) an air carrier or vessel described in Section (5)(B) of the Terrorism Risk Insurance Act; or
 - (b) the premises of a United States mission; and
- (iv) to have been committed by an individual or individuals, as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

With respect to any one or more **Acts of Terrorism** under the Terrorism Risk Insurance Act, as amended in 2007, we will not pay any amounts for which we are not responsible under the terms of that Act (including subsequent action of Congress pursuant to the Act) due to the application of any clause which results in a cap on our liability for payments for terrorism losses.

No act shall be certified by the Secretary as an **Act of Terrorism** if (i) the act is committed as part of the course of a war declared by the Congress, except that this clause shall not apply with respect to any coverage for workers compensation; or (ii) property and casualty insurance losses resulting from the act, in the aggregate, do not exceed \$5,000,000.

Other than as stated above, nothing herein contained shall be held to vary, alter, waive or extend any of the terms, conditions, provisions, agreements or limitations of the Policy to which this endorsement is attached.

Insured: **Tilghman Beach & Racquet Club HOA Inc.**

Policy Period **02-10-2015 - 02-10-2016**

Policy Number: **EPP3654704-00**

Countersigned by: **Not Required**
Authorized Representative

Endorsement Effective Date: **02-10-2015**



AMENDMENT TO DECLARATIONS PAGE

It is understood and agreed that the Declarations is amended by the addition of the following:

Act of Terrorism Premium: \$0.00

It is further understood and agreed the Policyholder Disclosure of Terrorism Coverage is attached to and is to be considered as incorporated and constituting a part of this Policy.

Other than as stated above, nothing herein contained shall be held to vary, alter, waive or extend any of the terms, conditions, provisions, agreements or limitations of the Policy to which this endorsement is attached.

Insured: **Tilghman Beach & Racquet Club HOA Inc.**

Policy Period **02-10-2015 - 02-10-2016**

Policy Number: **EPP3654704-00**

Countersigned by: **Not Required**
Authorized Representative

Endorsement Effective Date: **02-10-2015**



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DELETION OF NOISE EXCLUSION

It is understood and agreed that Section IV.N. of the policy is deleted in its entirety.

Nothing herein contained shall be held to vary, alter, waive or extend any of the terms, conditions, provisions, agreements or limitations of the above mentioned Policy other than as above stated.

Insured:

Policy Period

Policy Number:

Countersigned by: _____

Endorsement Effective Date:

Authorized Representative



POLICYHOLDER DISCLOSURE OF TERRORISM COVERAGE

The Terrorism Risk Insurance Act establishes a program within the Department of the Treasury, under which the federal government shares, with the insurance industry, the risk of loss from future terrorist attacks. The Act applies when the Secretary of the Treasury certifies that an event meets the definition of an Act of Terrorism. The Act provides that, to be certified, an Act of Terrorism must cause losses of at least five million dollars and must have been committed by an individual or individuals as part of an effort to coerce the government or population of the United States.

The United States Government, Department of the Treasury, will pay a share of terrorism losses insured under the federal program. The federal share equals 85% of that portion of the amount of such insured losses that exceeds the applicable insurer retention.

The Terrorism Risk Insurance Act, as amended in 2007, contains a \$100 billion cap that limits U.S. Government reimbursement as well as insurers' liability for losses resulting from certified acts of terrorism when the amount of such losses in any one calendar year exceeds \$100 billion. If the aggregate insured losses for all insurers exceed \$100 billion, your coverage may be reduced.

In accordance with the Terrorism Risk Insurance Act, we are required to offer you coverage for losses resulting from an act of terrorism that is **certified under the federal program** as an Act of Terrorism. All other provisions of this policy will still apply to such an act. That is, an act will not be excluded or covered just because it was caused by an Act of Terrorism.

The portion of the annual premium that is attributable to coverage for Acts of Terrorism that are certified under the Terrorism Risk Insurance Act is \$0.00.

All other terms and conditions of the policy remain unchanged.

If you would like to reject the coverage for "certified" Acts of Terrorism, please provide Great American written confirmation of such, and an exclusion will be attached to your policy.

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**DATA SECURITY WRONGFUL ACTS AND PRIVACY
WRONGFUL ACTS COVERAGE ENDORSEMENT**

Solely for purposes of coverage provided by this endorsement, it is understood and agreed that the following changes are made to the Policy:

THIRD PARTY COVERAGE

Section I. is deleted and replaced with the following:

Section I. Insuring Agreements

- A. If during the **Policy Period** or the **Discovery Period** any **Claim**, including a **Regulatory Action**, is first made against any **Insured Persons** for a **Data Security Wrongful Act** or a **Privacy Wrongful Act**, the **Insurer** shall pay on behalf of the **Insured Persons**, **Loss and Costs of Defense** resulting from such **Claim**, except for any **Loss and Costs of Defense** which the **Organization** or any **Subsidiary** actually pays as indemnification.
- B. If during the **Policy Period** or the **Discovery Period** any **Claim**, including a **Regulatory Action**, is first made against any **Insured Persons** for a **Data Security Wrongful Act** or a **Privacy Wrongful Act** the **Insurer** shall pay on behalf of the **Organization**, **Subsidiary** or **Property Manager**, **Loss and Costs of Defense** resulting from such **Claim**, but only to the extent the **Organization** or any **Subsidiary** is required or permitted by law to indemnify the **Insured Persons**.
- C. If during the **Policy Period** or the **Discovery Period** any **Claim**, including a **Regulatory Action**, is first made against the **Organization**, **Subsidiary** or **Property Manager** for a **Data Security Wrongful Act** or a **Privacy Wrongful Act**, the **Insurer** shall pay on behalf of the **Organization** or any **Subsidiary**, **Loss and Costs of Defense** resulting from such **Claim**.

The **Insurer** has the right and duty to defend any **Claim** to which this insurance applies, even if the allegations of such **Claim** are groundless, false or fraudulent.

FIRST PARTY COVERAGE FOR ORGANIZATION AND SUBSIDIARIES

Section VIII. is amended by the addition of the following:

D. Privacy Event Expenses Provision

The **Insurer** shall reimburse or pay on behalf of the **Organization** or any **Subsidiary** all **Privacy Event Expenses** in excess of the applicable Retention stated in Item 4. of the Declarations and up to the applicable Limits of Liability stated in Item 3. of the Declarations that the **Organization** or any **Subsidiary** incurs as a direct result of a **Data Breach** provided:

Insured: Tilghman Beach & Racquet Club HOA Inc.

Policy Period: 02-10-2015 - 02-10-2016

Policy Number: EPP3654704-00

Countersigned by: _____
Authorized Representative

Endorsement Effective Date: 02-10-2015



Community Association Solution
Insurance Policy

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**DATA SECURITY WRONGFUL ACTS AND PRIVACY
WRONGFUL ACTS COVERAGE ENDORSEMENT**

- (1) such **Data Breach** is first discovered during the **Policy Period**;
- (2) prior to the inception date of the first policy issued by the **Insurer** to the **Organization** and continuously renewed, no **Insured** had a basis to believe that any such **Data Breach** might reasonably be expected;
- (3) the **Insured** reports such **Data Breach** in accordance with the Reporting Obligations for a **Data Breach** section below; and
- (4) the **Insured** obtains the **Insurer's** advance written consent to incur such **Privacy Event Expenses**.

AMENDMENT TO DEFINITIONS.

1. Section III.A. is amended by the addition of the following:

Claim shall also mean a **Regulatory Action**.

2. Section III.J. is amended by the addition of the following:

Loss shall also mean **Privacy Regulatory Fines and Penalties, Privacy Event Expenses and Regulatory Restitution Funds**.

3. Section III. is amended by the addition of the following:

"Computer Systems" shall mean any computer, network of computers, mobile device, or internet-enabled or networked telephone, printer, copier or other device, if owned, leased or operated by or on behalf of the **Organization** or any **Subsidiary** in connection with the **Insured's** ordinary business activities, including if operated by a cloud computer provider on behalf of the **Organization** or any **Subsidiary**.

"Data Asset" shall mean software and electronic data, including but not limited to databases, audio files, video files or other image files, maintained by or on behalf of the **Organization** or any **Subsidiary** in connection with the **Organization** or any **Subsidiary's** business operations.

"Data Breach" shall mean the unauthorized access to, loss of control over or disclosure of **Protected Information** maintained by the **Insured** or by those acting on behalf of the **Insured**.

"Data Security Wrongful Act" shall mean an actual or alleged negligent act, error or omission by or on behalf of the **Insured** in the performance of the **Organization** or any **Subsidiary's** business that causes or fails to prevent:



Community Association Solution
Insurance Policy

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**DATA SECURITY WRONGFUL ACTS AND PRIVACY
WRONGFUL ACTS COVERAGE ENDORSEMENT**

- (1) the theft of, or unauthorized access to, or disclosure or use of, the **Data Asset** of a client or customer of the **Organization** or any **Subsidiary** stored on the **Computer Systems**;
- (2) unauthorized access to or use of the **Computer Systems** that results in the alteration, corruption, destruction, deletion or damage to **Data Asset** of a client or customer of the **Organization** or any **Subsidiary** stored on the **Computer Systems**;
- (3) the transmission of any virus, worm, trojan horse, backdoor or similar malicious software program or code from the **Computer Systems** to a third party's computer systems;
- (4) unauthorized access to or use of the **Computer Systems** that results in damage or disruption to computer systems of any third party or any **Data Asset** on such third party computer systems, including through a denial-of-service attack or similar action by an unauthorized person; or
- (5) a denial-of-service attack or similar action by any unauthorized person that makes the **Computer Systems** unavailable to authorized clients or customers of the **Organization** or any **Subsidiary**.

"Privacy Event Expenses" shall mean the reasonable and necessary:

- (1) legal and forensic fees and costs to investigate the cause of the **Data Breach**, identify persons affected or potentially affected and determine the extent that any law, regulation, statute or contract requires notification of the **Data Breach**;
- (2) costs of notification of the **Data Breach**, if required by law, regulation, statute or contract or voluntarily incurred with the **Insurer's** prior written consent; and
- (3) costs to monitor, freeze or thaw credit or provide credit restoration services for persons affected by the **Data Breach**.

"Privacy Wrongful Act" shall mean an actual or alleged negligent act, error or omission by or on behalf of the **Insured** in the performance of the **Organization** or any **Subsidiary's** business that causes or fails to prevent:

- (1) the theft of, or unauthorized access to, or disclosure or use of, **Protected Information** held or maintained by or on behalf of the **Organization** or any **Subsidiary**, including by a cloud service provider or other vendor for the **Organization** or any **Subsidiary**, if such theft, access, disclosure or use:
 - a) results in identity theft or other misuse of such **Protected Information**;
 - or



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Insurance Policy

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**DATA SECURITY WRONGFUL ACTS AND PRIVACY
WRONGFUL ACTS COVERAGE ENDORSEMENT**

- b) violates any federal, state, local or foreign law or regulation, or the **Organization** or any **Subsidiary's** published policies, regarding the maintenance, protection, use or disclosure of **Protected Information**;
- (2) violation of any federal, state, local or foreign law or regulation, or any publicly stated policy of the **Organization** or any **Subsidiary**, relating to **Protected Information** that:
 - a) prohibits or restricts the **Insured's** collection, sharing or selling of **Protected Information**; or
 - b) requires the **Insured** to provide access to **Protected Information** or upon request, correct incomplete or inaccurate **Protected Information**; or
- (3) any fraudulent website or electronic communication, including a phishing email, from impersonating the **Insured** and causing financial loss to any customer or client of the **Organization** or any **Subsidiary**.

"**Privacy Regulatory Fines and Penalties**" shall mean the sums the **Organization** or any **Subsidiary** is required to pay as part of the settlement or judgment of a covered **Regulatory Action**.

"**Protected Information**" shall mean:

- (1) any non-public personally identifiable information, including financial, medical or health care information, held or maintained by or on behalf of the **Insured** in connection with the **Organization's** or any **Subsidiary's** business operations, whether in electronic form or otherwise, which is protected from unauthorized access or disclosure by any federal, state, local or foreign law or regulation or by any publicly stated policy of the **Insured**; and
- (2) confidential, non-public business information of a third party that is in the care or custody of the **Organization** or any **Subsidiary** pursuant to a confidentiality agreement between the **Organization** or any **Subsidiary** and such third party.

"**Regulatory Action**" shall mean a written request for information, civil investigation or administrative proceeding or civil proceeding brought by any local, state, federal or regulatory agency for any **Privacy Wrongful Act** in connection with a **Data Breach**. However, **Regulatory Action** shall not include any written request, investigation or proceeding brought by or on behalf of the Securities and Exchange Commission.



Community Association Solution
Insurance Policy

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**DATA SECURITY WRONGFUL ACTS AND PRIVACY
WRONGFUL ACTS COVERAGE ENDORSEMENT**

"Regulatory Restitution Fund" shall mean any sums deposited into a fund and used to provide compensation to individuals affected by a **Privacy Wrongful Act** as part of the settlement or judgment of a **Regulatory Action**.

4. Section III.Q. is amended by the addition of the following:

Wrongful Act shall also mean a **Data Security Wrongful Act** and a **Privacy Wrongful Act**.

AMENDMENT TO EXCLUSIONS

1. Section IV.B. is deleted and replaced with the following:

B. to the extent it is insured in whole or in part by any other valid and collectible policy or policies, (except with respect to any excess beyond the amount or amounts of coverage under such other policy or policies), whether such other policy or policies are stated to be primary, contributory, excess, contingent, or otherwise; provided, however, that coverage for all **Data Breaches** and **Claims for Personal Injury Wrongful Acts, Data Security Wrongful Acts** and/or **Privacy Wrongful Acts** shall be specifically excess of any similar coverage provided pursuant to terms and conditions of any general liability policy, business owner policy or cyber liability policy issued to the **Organization** or any **Subsidiary**.

2. Section IV.D. is deleted and replaced with the following:

D. based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving: (1) bodily injury, sickness, disease or death of any person, assault or battery; (2) damage to or destruction of any tangible property; or (3) humiliation, mental anguish, or emotional distress; provided, however, that part (3) of this exclusion shall not apply to any **Claim for a Privacy Wrongful Act**;

3. The **Insurer** shall not be liable for **Loss, Costs of Defense** or any other payment for any **Claim** made against any **Insured** or any **Data Breach** based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving actual or alleged:



Community Association Solution
Insurance Policy

ELECTRONICALLY FILED - 2018 Feb 14 4:31 PM - Horry - COMMON PLEAS - CASE#2016CP2604464

**DATA SECURITY WRONGFUL ACTS AND PRIVACY
WRONGFUL ACTS COVERAGE ENDORSEMENT**

- (1) mechanical or electrical failure or outage, routine wear and tear, or a disruption or failure of any infrastructure service or utility supplied by a third-party, including but not limited to power, water, gas, communications or connectivity; provided, however, this exclusion shall not apply to a **Claim** for a **Privacy Wrongful Act**;
- (2) fire, smoke, explosion, lightning, wind, flood, earthquake, volcanic eruption, tidal wave, landslide, hail or act of God or any other physical event, however caused;
- (3) price-fixing, restraint of trade or monopolization;
- (4) violation of any federal, provincial, state, local or foreign statute or regulation prohibiting or restricting unsolicited communications, regardless of whether such communication was transmitted via facsimile, email, text, telephone or otherwise, including but not limited to the Controlling the Assault of Non-Solicited Pornography and Marketing (CAN-SPAM) Act of 2003, the Canadian Anti-Spam Law (CASL) and the Telephone Consumer Protection Act (TCPA);
- (5) misappropriation, infringement or theft, or inducement of misappropriation, infringement or theft of trade secrets;
- (6) war including undeclared or civil war, or seizure, confiscation, expropriation, nationalization, or destruction of a **Computer System** by order of any governmental authority;
- (7) potential violation of any federal, state, foreign or local law or regulation and investigated or pursued by a federal, state, foreign or local regulatory agency or other governmental body, provided, however, this exclusion shall not apply to a **Regulatory Action**;
- (8) act, error, omission or circumstance, which was known by the President, Executive Director, Chairman of the Board, Chief Information Officer, Chief Technology Officer, Chief Security Officer, Risk Manager, General Counsel (or the functional equivalent of any of the foregoing) prior to the inception date of the first policy issued by the **Insurer** to the **Organization** and continuously renewed and which could have been reasonably foreseen to be the basis for a **Claim** or **Data Breach**, including, but not limited to, knowledge of security weaknesses, or vulnerabilities in software, hardware or firmware; or
- (9) breach of any express or implied contract, agreement, warranty or guarantee, including, but not limited to, any express or implied contract or agreement to pay royalties or to account for same; provided, however, this exclusion shall not apply to:



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Insurance Policy

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**DATA SECURITY WRONGFUL ACTS AND PRIVACY
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- a) any liability that an **Insured** would have incurred in the absence of such contract, agreement, warranty or guarantee; or
 - b) a **Privacy Wrongful Act** when the actual or alleged breach of contract or agreement is to secure or maintain **Protected Information**.
4. The **Insurer** shall not be liable for **Loss**, **Costs of Defense** or any other payment for any **Claim** made against any **Insured** or any **Data Breach** for:
- (1) any fees or costs to update or improve a **Data Asset** to a level beyond that which existed prior to any **Data Breach** or **Data Security Wrongful Act**;
 - (2) any fees or costs to correct or remediate software program errors or vulnerabilities or deficiencies or problems with any **Computer System** not directly resulting from a **Data Security Wrongful Act**;
 - (3) any amounts incurred by any **Insured** prior to the date a **Claim** is reported to the **Insurer** pursuant to Section VII, or a **Data Breach** is reported pursuant to the Reporting Obligations set below;
 - (4) any overhead expenses of the **Organization** or any **Subsidiary**, including but not limited to compensation or benefits; or
 - (5) the economic or market value of any **Data Asset**.

AMENDMENTS TO LIMITS OF LIABILITY AND RETENTIONS

1. Item 3. of the Declarations is amended by the addition of the following:
- (c) \$50,000 Sublimit of Liability for all **Privacy Event Expenses** from all **Data Breaches**. This Sublimit is part of and not in addition to the Limit of Liability provided for in 3(a).
 - (d) \$250,000 Limit of Liability for all **Loss** from all **Claims**, including **Regulatory Actions**, for **Data Security Wrongful Acts** or **Privacy Wrongful Acts**. This limit is part of and not in addition to the Limit of Liability provided for in 3(a).



Community Association Solution
Insurance Policy

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**DATA SECURITY WRONGFUL ACTS AND PRIVACY
WRONGFUL ACTS COVERAGE ENDORSEMENT**

2. Item 4. of the Declarations is deleted and replaced with the following:

Item 4. Retentions

Insuring Agreement A:	\$ <u>0</u>	Each Claim for Privacy Wrongful Acts
Insuring Agreement B and/or C:	<u>\$1,000</u>	Each Claim for Privacy Wrongful Acts
	<u>\$1,000</u>	Each Reimbursement for Privacy Event Expenses pursuant to Section VIII.D. of the Policy

3. Section V. of the Policy is amended by the addition of the following:

The "Each Reimbursement for Privacy Event Expenses" Retention amount stated in Item 4. of the Declarations is the **Organization's** obligation for all **Privacy Event Expenses** from each **Data Breach**.

The "Each Claim for Data Security Wrongful Acts or Privacy Wrongful Acts" Retention stated in Item 4. of the Declarations is the **Organization's** obligation for each **Claim**, including any **Regulatory Action**. If a **Claim** and **Privacy Event Expenses** arise out of the same **Privacy Wrongful Act** or **Data Breach**, any amounts paid by the **Organization** in satisfaction of the "Each Reimbursement Privacy Event Expenses" Retention will also erode the "Each Claim for Data Security Wrongful Acts or Privacy Wrongful Acts" Retention with respect to such **Claim**.

4. Section V.C. is deleted and replaced with the following:

C. **Costs of Defense** incurred by either the **Insurer** or **Insured** shall be subject to applicable Retention and the Limit of Liability for all **Claims**, including **Regulatory Actions**, for **Data Security Wrongful Acts** or **Privacy Wrongful Acts**.

REPORTING OBLIGATIONS FOR A DATA BREACH

After a **Data Breach** is first discovered by an **Insured**, the **Insured** shall, as a condition precedent to coverage pursuant to this endorsement:

- (a) notify the **Insurer** of the **Data Breach** as soon as practicable but in no event later than thirty (30) days after the **Data Breach** is first discovered;



Community Association Solution
Insurance Policy

**DATA SECURITY WRONGFUL ACTS AND PRIVACY
WRONGFUL ACTS COVERAGE ENDORSEMENT**

- (b) take reasonable measures to stop or mitigate the damage caused by such **Data Breach**;
- (c) give the **Insurer**, upon request, a detailed proof of the damage caused by such **Data Breach**;
- (d) submit, upon request of the **Insurer**, to examination under oath and give the **Insurer** a signed statement of the **Insured's** answers; and
- (e) cooperate with the **Insurer** in the investigation and settlement of any payments as a result of the **Data Breach**.

For the purposes of coverage extended by this endorsement, a **Data Breach** is "first discovered" when any **Insured** first becomes aware of facts that would cause a reasonable person to assume a **Privacy Wrongful Act** has occurred even though the exact amount or details of loss may not then be known.

Notice of the **Data Breach** shall be given to the **Insurer** at the address indicated in Section VII.D. of the Policy.

Nothing herein contained shall be held to vary, alter, waive or extend any of the terms, conditions, provisions, agreements or limitations of the above mentioned Policy other than as above stated.



DISTINGUISHED
PROGRAMS



Community Association Program Quote form D&O Liability Coverage ("Claims Made" Basis)

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	Yes	No	N/A
Have there been any D&O claims made against the Association in the last 5 years?		X	
Is this the first time the Association has purchased D&O Insurance?		X	
Has the Association's current D&O policy been cancelled or non-renewed by the carrier?		X	
Does the Association anticipate any major building/renovations in the next year?		X	
Is the Developer on the Board?		X	

Association Name: Tilghman Beach & Racquet Club HOA Inc.
 Street Address: 208 North Ocean Blvd City/State/Zip: North Myrtle Beach, SC 29582
 How is association managed? Third Party Management Co
 Property Manager Name: KA Diehl
 Mailing Address: 11822 HIGHWAY 17 BYP City/State/Zip: MURRELLS INLET, SC 29576-9337

Association Type: Residential Condominium Association (COA) Number of Employees: 0
 Total Unit Count: 213 Commercial Units:
 Residential Units: 213 Units at Completion:
 Average Unit Value: \$220,000 Owners in Arrears: 0
 Limit: \$1,000,000 Retention: \$1,000
 Developer Controlled Board?: No Retail Units: 0
 Management Type: Third Party Management Co Units Sold: 213
 PPL Date: 02/10/2015

Total Assets: Total Salaries:

Agent or Broker Name: Global Risk Partners, LLC Phone: (609) 641-6677
 Broker Address: 1622 Tilton Rd City/State/Zip: Northfield, NJ 08225

KNOWN PRIOR CLAIMS: IT IS UNDERSTOOD AND AGREED THAT THIS POLICY DOES NOT APPLY TO ANY CLAIM MADE AGAINST ANY INSURED BASED UPON, ARISING OUT OF, RELATING TO, DIRECTLY OR INDIRECTLY RESULTING FROM OR IN CONSEQUENCE OF, OR IN ANY WAY INVOLVING ANY WRONGFUL ACT OR ANY FACT, MATTER, CIRCUMSTANCE, SITUATION, TRANSACTION, CASUALTY, EVENT OR DECISION, KNOWN BY ANY INSURED PRIOR TO THE INITIAL COVERAGE DATE WHICH WOULD INDICATE THE PROBABILITY OF SUCH CLAIM BEING MADE. IT IS UNDERSTOOD AND AGREED THAT COVERAGE SHALL NOT BE EXCLUDED AS A RESULT OF ANY UNTRUE STATEMENT ON THIS APPLICATION, EXCEPT AS TO THE ORGANIZATION, ITS SUBSIDIARIES AND THOSE INSURED PERSONS HAVING SUCH KNOWLEDGE. PLEASE OBTAIN A COPY OF THE POLICY THROUGH YOUR BROKER AND READ IT CAREFULLY.

"By selecting 'Yes', I agree with the above notice.": ☒ Yes

FRAUD WARNING: ANY PERSON WHO KNOWINGLY AND WITH INTENT TO DEFRAUD AN INSURANCE COMPANY OR OTHER PERSON FILES THIS QUESTIONNAIRE CONTAINING ANY MATERIALLY FALSE INFORMATION, OR CONCEALS FOR THE PURPOSE OF MISLEADING, INFORMATION CONCERNING ANY FACT MATERIAL THERETO, COMMITS A FRAUDULENT INSURANCE ACT, WHICH IS A CRIME AND WHICH MAY RESULT IN CIVIL OR CRIMINAL FINES OR PENALTIES.

"By selecting 'Yes', I agree with the above notice.": ☒ Yes

Distinguished Programs Group
 1180 Ave. of the Americas
 New York, NY 10036

Fax: 917-438-6610
 Ed. 12/2011

E-mail: info@distinguished.com
 Phone: 888-355-4626

STATE OF ILLINOIS)
)
 COUNTY OF COOK)

AFFIDAVIT OF KATHLEEN VAN DEVEN

PERSONALLY appeared before me, Kathleen Van Deven, who deposes and states that the following is based upon her own personal knowledge, except those matters stated upon information and belief, and as to those matters, she believes them to be true.

1. I am a lawyer licensed to practice law in the State of Illinois. Since July 2001, I have worked in the claim department of the Executive Liability Division of Great American Insurance Company ("Great American"). Part of my responsibilities includes handling regulatory compliance issues and **Claims** noticed under Great American policies.

2. I have been assigned to handle the case of *Jill Keck Humphries, et al. v. Tilghman Beach & Racquet Club Condominium Association, Inc., et al. v. Great American Insurance Company*, since the time that Great American was served with the third-party complaint in this matter on May 9, 2017.

3. In the course of handling a **Claim**, it is customary for me to investigate whether an insured may be covered by other policies issued by other insurers. I routinely inquire of the insured's insurance broker as to what other policies exist, and if there is other coverage available, I obtain copies of the policies and maintain them as part of my file.

4. During my investigation of the *Humphries Claim*, I have learned that Tilghman Beach & Racquet Club Home Owners Association is covered by policies of commercial general liability insurance issued by Lexington Insurance Company (a subsidiary of AIG) (Policy Numbers 41-LX-067045193-0 and 41-LX-067045193-1, effective from February 10, 2015 to February 10, 2017), and that Lexington has agreed to defend the Defendants in the *Humphries*

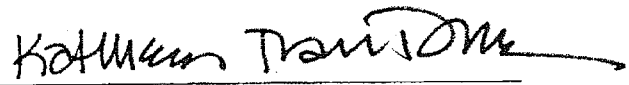
Claim under a reservation of rights. I was provided with the attached reservation of rights letter dated September 6, 2017. *See Exhibit 1*, attached hereto and incorporated herein by reference.

5. Recently, I have communicated with James Hornecker, the claims handler for Lexington/AIG with respect to the *Humphries Claim*, and he confirmed that Lexington/AIG has agreed to pay defense counsel's reasonable fees and expenses. *See Exhibit 2*. I understand that Mr. Hornecker lives and works in Ohio.

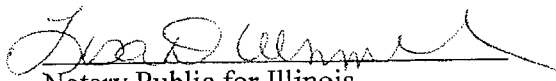
6. I am informed and believe that the documents attached hereto as Exhibits 3 and 4 are true and accurate copies of the applicable Lexington/AIG policies.

7. I have also learned that Tilghman Beach & Racquet Club Home Owners Association may also be covered for the *Humphries Claim* under a policy of commercial general liability insurance issued by Philadelphia Insurance Company (Policy number PHPK529023) for policy periods spanning from February 10, 2010 to February 10, 2015, although I do not presently have copies of those policies.

FURTHER AFFIANT SAYETH NAUGHT.


Kathleen Van Deven

SWORN to before me this 14th
day of February 2018.


Notary Public for Illinois
My Commission Expires: 9/26/2021



Ms. Karen Jones
Global Risk Partners
4000 South Faber Place Drive, Suite 300
North Charleston, SC 29405



York Risk Services Group, Inc.
Mailing address: PO Box 183188
Columbus, OH 43218-3188

Tel: (973) 404-1289
Fax: (973) 404-9052

James.Hornecker@yorkrsg.com

September 6, 2017

CERTIFIED MAIL – RETURN RECEIPT REQUESTED #7016 3010 0000 4064 1230

Ms. Vickie Gallagher
Tilghman Beach & Racquet Club c/o KA Diehl
11822 Hwy 17 Bypass South
Murrells Inlet, SC 29576

RE: Insured: Tilghman Beach & Racquet Club Home Owners Association
Policy No's.: 41-LX-067045193-0 (Eff. 2/10/15-2/10/16)
41-LX-067045193-1 (Eff. 2/10/16—2/10/17)
York File #: LXCC-3084A1
AIG File No: 6104672568US
Lawsuit Caption:

Jill Keck Humphries, Dennis L. Johnson, Delona Penny Rice, and Whitmel L. Brown, Individually and in a Representative Capacity on Behalf of All Persons Similary Situated Who Own Units in Buildings I, II, III, IV, V, VI, VII, VIII, IX, X, XI, and XII of the Tilghman Beach and Racquet Club Horizontal Property Regime; Gary Steven Robinson and Elizabeth Erin Humphries; Dennis L. Johnson, Jr. and Nancy H. Johnson, plaintiffs

vs.

Tilghman Beach and Racquet Club Condominium Association, Inc., James H. Austin, III, Daniel G Coe, C. Doug Madison, George P. White and Steele Brice Windle, III, individually and as Members of the board of Directors of the Tilghman Beach and Racquet Club Condominium Association, Inc., defendants

In the State of South Carolina, County of Horry, Court of Common Pleas | Docket No.: 2016-CP-264464

Dear Ms. Gallagher:

Lexington Insurance Company ("Lexington") issued commercial general liability insurance policy numbers 41-LX-067045193-0 and 41-LX-067045193-1 with effective dates of February 10, 2015 to February 10, 2017 ("The Policies") to Tilghman Beach & Racquet Club Home Owners Association ("Tilghman"). York Risk Services Group, Inc. ("York") is the third-party claims administrator assigned to handle liability claims asserted against Tilghman under the Lexington policies.

We acknowledge receipt of a claim asserted by unit owners of the Home Owners Association ("the Plaintiffs") against Tilghman and several former members of the association board claiming the buildings of the association were not properly maintained and repaired. For the reasons set forth below, we will defend the litigation against the defendants under a reservation of Lexington's rights under the policies.

In consideration of your request for coverage, we carefully reviewed the aforementioned policies and no other policy was considered. If you assert a right to coverage under another policy issued by another carrier for AIG Property Casualty Inc., please submit notice pursuant to the notice provisions contained in that policy. You should notify the carrier(s) immediately if you have any other insurance policies which may be applicable to this claim.

The Suit

The Plaintiffs own condominium units in the Tilghman Beach and Racquet Club ("TBRC"), which was established in 1982. TBRC consists of 213 units in twelve buildings, certified for occupancy in 1982 and 1983.

The Plaintiffs are seeking damages from the Tilghman Beach and Racquet Club Homeowners Association ("HOA") for financial loss and property damage to common elements, limited common elements and unit owner property.

Prior to 2010

The Plaintiffs allege the HOA and its Property Manager failed to conduct proper and timely inspections and repairs to portions of the property they were obligated to inspect and maintain, pursuant to the HOA's obligations set forth in the TBRC Master Deed and By-Laws. The Plaintiffs allege the cost to maintain and/or repair property was greater than it should have been, had it been done in a timely manner.

Since 2010, the following consultants were engaged for the purpose of evaluating and/or developing various repair and reconstruction plans to cure deficient and defective conditions:

- Kyzer & Timmerman Engineers ("Kyzer"),
- Criterium-Giles Engineers ("Criterium"),
- Martinez & Associates Structural Engineers ("Martinez"),
- SGA Architecture ("SGA"),
- Procon & Associates ("Procon"),
- Spann Roofing & Sheet Metal ("Spann"),
- ABS ("ABS"),
- Keystone R&C ("Keystone"),
- Sutton-Kennerly and Associates ("Sutton"),
- Maxey P Nolan ("Nolan"),
- A&I Construction ("A&I"),
- Shoreline/Stewart Construction ("Shoreline"), and
- Reserve Advisers ("Reserve").

The above consultants identified numerous defective and deficient conditions resulting in building distress in Buildings I, II, IV, V, VI, VII, VIII, IX, X, XI and XII, which are separated into structural, building envelope, interior and roofing issues.

Structural items needing repair were identified as balconies, exterior staircases, pilings, soffits and framing (including floor joists, cantilever beams spandrel beams, band boards, post anchorage connections, post to top rail connections), etc.

Building envelope issues identified include: moisture penetration (behind exterior siding trim and flashing, windows and sliding glass doors and roof) behind exterior siding trim and flashing; delaminated

exterior siding, trim and flashing; delaminated stucco, rotting fascia boards, etc).

Interior issues identified include: damaged sheetrock, interior paint, microbial growth, floor coverings, carpet/padding, etc.

Roofing remediation issues include: missing shingles, distressed flashing, rotting fascia, skylight leaks, missing hurricane ties, eaves and soffits.

The consultants determined that the above issues and repair items "did not just develop within the past few years."

In June of 2015, the Board hired Saul Martinez, PE ("Martinez") to assess the current condition of structural systems and the exterior envelope of the twelve buildings. Martinez' findings were summarized in a Building Summary and Field Itemization Table for each building.

In January of 2016, the Board hired Steve Coggins, AIA of SGA to prepare a comprehensive capital improvement plan to complete all necessary repairs and restoration work regarding the documented defective conditions in Buildings I, II, IV, V, VI, VII, VIII, IX, X, XI and XII. This repair plan exceeded \$6,000,000.

Notwithstanding the recommendations of Martinez and Coggins, the HOA failed to undertake necessary repairs to eliminate major structural and water intrusion issues, to protect the Common Elements and Limited Common Elements from future damage or even to assess the Co-Owners for necessary repair costs.

The Plaintiffs allege the Defendants are legally liable for damages because of:

- First Cause of Action – Negligence/Gross Negligence
- Second Cause of Action – Breach of the Master Deed's Covenants and Restrictions

The Plaintiffs also seek a Declaratory Judgment (Third Cause of Action), regarding Plaintiff's rights relating to future maintenance, repair and replacement of the defective and deficient General Common Elements, as well as Injunctive Relief (Fourth Cause of Action) in the form of a court order, requiring maintenance, repair and replacement of identified defects and deficiencies with the Common Elements and Limited Common Elements.

The Insurance Policies

We discuss below certain provisions of the Lexington policies. Our discussion involves only a partial recitation of the terms, conditions, limitations and exclusions contained in the policies. It is not intended to supplement, amend, supersede or otherwise alter the policies. Lexington does not intend to waive any provisions of the policies by virtue of its discussion.

Lexington provides Commercial General Liability coverage to Tilghman under policies 41-LX-067045193-0 and 41-LX-067045193-1, with effective dates of February 10, 2015 to February 10, 2017. The Policies contain general liability coverage form CG 00 01 04 13.

COMMERCIAL GENERAL LIABILITY COVERAGE FORM CG 00 01 04

SECTION I – COVERAGES

COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY

1. **Insuring Agreement**

a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" 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" or "property damage" to which this insurance does not apply. We may, at our discretion, investigate any "occurrence" and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section III—Limits Of Insurance; and
- (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments — Coverages A and B.

b. This insurance applies to "bodily injury" and "property damage" only if:

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

2. **Exclusions.** 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.

j. **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;

COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY

1. **Insuring Agreement**

a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "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 "personal and advertising injury" to which this insurance does not apply. We may, at our discretion, investigate any "occurrence" or offense and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section III—Limits of Insurance; 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 under Coverages A or B or medical expenses under Coverage C.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments – Coverages A and B.

- b. This insurance applies 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.

SECTION II - WHO IS AN INSURED

- 1. If you are designated in the Declarations as:
 - 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.

SECTION V – DEFINITIONS

- 3. “Bodily injury” means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.
- 6. “Executive officer” means a person holding any of officer positions created by your charter, constitution, by-laws or other similar governing document.
- 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”.
- 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. . . .
- 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.

The policies contain a **Fungus Exclusion**, form 78689 (7/03), which reads as follows:

This endorsement modifies insurance under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

The insurance does not apply to "bodily injury", "property damage", "personal and advertising injury", or any other loss, cost or expense, including but not limited to, losses, costs or expenses related to, arising from or associated with clean-up, remediation, containment, removal or abatement, caused directly or indirectly, in whole or in part, by:

- a. Any "fungus(i)", "mold(s)", mildew or yeast, or
- b. Any "spore(s)" or toxins created or produced by or emanating from such "fungus(i)", "mold(s)", mildew or yeast, or
- c. Any substance, vapor, gas, or other omission or organic or inorganic body or substance produced by or arising out of any "fungus(i)", "mold(s)", mildew or yeast, or
- d. Any material, product, building component, building or structure, or any concentration of moisture, water or other liquid within such material, product, building component, building or structure, that contains, harbors, nurtures or acts as a medium for any "fungus(i)", "mold(s)", mildew, yeast or "spore(s)" or toxins emanating therefrom.

Regardless of any other cause, event, material, product and/or building component that contributed concurrently or in any sequence to that "bodily injury", "property damage", "personal and advertising injury", loss, cost or expense.

For the purposes of this exclusion, the following definitions are added to the Policy:

"Fungus(i)" includes, but is not limited to, any of the parts or organisms belonging to the major group fungi, lacking chlorophyll, and including "mold(s)", rusts, mildews, smuts and mushrooms.

"Mold(s)" includes, but is not limited to, any superficial growth produced on damp or decaying organic matter or on living organisms, and any "fungi" that produce molds.

"Spore(s)" means any dormant or reproductive body produced by or arising or emanating out of any "fungus(i)", "mold(s)", mildew, plants, organisms or microorganisms.

It is understood that to the extent any coverage may otherwise be provided under this policy or any of its other endorsements, the provisions of this exclusion will supersede.

ALL OTHER TERMS AND CONDITIONS WILL REMAIN UNCHANGED

THE INSURANCE COMPANY'S POSITION

In order for Commercial General Liability coverage to potentially apply, a claim must be asserted against an insured seeking damages because of "bodily injury" or "property damage" during the policy period and caused by an "occurrence" or "personal and advertising injury" from an enumerated offense that occurs during the policy period.

The Plaintiffs are not seeking damages because of a "bodily injury" or "personal and advertising injury", as these terms are defined in the Policies. These coverages, therefore, are not impacted and do not apply.

The Plaintiff's Complaint seeks damages from Tilghman and/or its Board, including damages that may be considered "property damage." Lexington agrees to provide a defense to Tilghman and its Board of Directors, while reserving its right to deny coverage and refuse to indemnify for damages not covered under the policy.

The vast majority of damages sought by the plaintiffs in the complaint are damages representing the cost to repair common elements that have not been properly maintained over a period of many years. The Complaint also makes reference to resultant damage to individual condominium units, as well. Lexington will not indemnify for "property damage" that occurred prior to the effective date of the first Lexington policy (February 10, 2015) or for "property damage" that was not caused by an "occurrence." These damages fall outside the scope of coverage provided by the Policies' Coverage A. Bodily Injury and Property Damage Liability, 1. Insuring Agreements.

Lexington will not indemnify for damages representing the cost to repair common and limited common area property. Normal wear and tear damages may not be deemed to have been caused by an "occurrence;" may be excluded by Exclusion a., to the extent the damage was expected or intended, and are excluded by Exclusion j(4) above.

With regard to "property damage" to Unit Owners' individual units and personal property, Lexington will not indemnify for certain mold related damages or expenses, to the extent they are excluded from coverage by the Fungus Exclusion cited above.

The Plaintiffs' Complaint also seeks injunctive relief, in the form of an Order requiring maintenance, repair and/or replacement of defective and/or deficient common and limited common elements. Claims seeking injunctive relief do not seek damages and are therefore not covered under the policy.

Tilghman and its Board may be entitled to coverage for this claim under other Commercial General Liability policies of insurance that were issued prior to the Lexington Policies. We hereby request that you immediately notify your prior Commercial General Liability insurers of this matter and request coverage under any such policies issued after 2004.

Lexington's coverage position is based on the information presently available to us. Nothing contained herein should be construed as a waiver of any rights or defenses whether or not stated herein, which Lexington may possess under its policies and/or applicable law. Any investigation conducted by Lexington regarding the above-referenced lawsuit is subject to all terms, conditions, provisions and limitations of the Lexington policies. Any actions taken by Lexington or its agents, representatives or attorneys do not constitute and are not intended as a waiver of any rights or defenses available to Lexington, whether or not stated herein, that may be available now or at any point in time. Lexington reserves its rights to supplement and/or amend their coverage position at any time and to assert any defenses, whether or not enumerated herein, which may now or later be applicable.

If you have any additional information which you feel would either cause us to change our position or would assist us in our investigation or determination, we ask that you advise us as soon as possible. Also, if you are served with any additional demands or complaints or pleadings, please forward them to us immediately, since they could change our analysis of coverage.

You can call me at 973-404-1289, send faxes to 973-404-9052 or send emails to James.Hornecker@yorkrsg.com should you have any questions or problems concerning the coverage position taken by Lexington.

Sincerely,

York Risk Services Group, Inc.

James Hornecker

James Hornecker
Senior Analyst

CC: via email ONLY
NSM, Inc. | Mr. Timothy Greenfield
tbreenfield@nsminc.com

CC: Ms. Karen Jones
Global Risk Partners
4000 South Faber Place Drive, Suite 300
North Charleston, SC 29405

From: Van Deven, Kathleen
Sent: Friday, February 09, 2018 7:11 AM
To: 'Hornecker, James' <James.Hornecker@yorkrsg.com>
Subject: RE: Tilghman Beach & Racquet Club HOA In.

Thank you for the information. While reserving on other applicable exclusions under the Great American policy, the other insurance exclusion applies to this matter. In reviewing the respective other insurance provisions of the AIG and Great American policies, AIG's policy is primary for this matter. So, Great American will not contribute toward defense costs in this matter.

From: Hornecker, James [<mailto:James.Hornecker@yorkrsg.com>]
Sent: Friday, February 09, 2018 5:50 AM
To: Van Deven, Kathleen <kvandeven@GAIG.COM>
Subject: RE: Tilghman Beach & Racquet Club HOA In.

AIG has agreed to pay defense counsel's reasonable fees and expenses.
 To the best of my knowledge, Tilghman has not pursued Philadelphia for its share of the expenses. I will be following up with AIG to see if they will pursue/
 Will Great American share in paying defense counsels' fees and expenses?

From: Van Deven, Kathleen [<mailto:kvandeven@GAIG.COM>]
Sent: Thursday, February 08, 2018 3:24 PM
To: Hornecker, James
Subject: Tilghman Beach & Racquet Club HOA In.

Hello James:

Have you received the necessary materials from defense counsel regarding AIG's commitment to pay reasonable defense fees in this matter? IF so, do you have an approximate amount AIG has paid/agreed to pay? Also, do you know if the Insured has requested reconsideration of coverage from Philadelphia?

Thanks,
 Kathleen

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The content of this e-mail message and any attachments are confidential and may be legally privileged, intended solely for the addressee. If you are not the intended recipient, be advised that any use, dissemination, distribution, or copying of this e-mail is strictly prohibited. If you receive this message in error, please notify the sender immediately by reply email and destroy the message and its attachments.



CLAIM REPORTING PROCEDURES

All liability and property claims for the NSM's Coastal Condominium Program regardless of severity or location should be reported to the YORK Claims Intake Center. The YORK Claims Intake Center is ready to accept new losses and provides different options for you to submit new loss reports:

Phone: 877-371-9774

Fax: 800-393-8104

Email: 1305LXCC@YORKRSG.COM

**Mail: York Risk Services Group, Inc
Attn. OSC
P.O. Box 183188
Columbus, OH 43218-3188**

To expedite the handling of your new claim, the following information must be provided when reporting a claim:

- 1. York Client Code: 1305**
- 2. Named Insured: _____**
- 3. Policy Number: _____**

The York Claims Intake Center will review all claims notices upon receipt and assign to the York handling branch office. A claim acknowledgement will then be transmitted to the designated individuals advising of the York claim number and the adjuster assigned to the claim.

Key Contacts:

OSC Contact: Jacob A. Banker, Assistant Vice President
Email: Jacob.Banker@Yorkrsg.com
Contact #: (916) 580-2453

York Contact: Dena Noerr, AVP Client Services
Email: dena.noerr@Yorkrsg.com
Contact #: (609)948-5816

POLICYHOLDER NOTICE

Thank you for purchasing insurance from a member company of American International Group, Inc. (AIG). The AIG member companies generally pay compensation to brokers and independent agents, and may have paid compensation in connection with your policy. You can review and obtain information about the nature and range of compensation paid by AIG member companies to brokers and independent agents in the United States by visiting our website at www.aig.com/producercompensation or by calling 1-800-706-3102.

Common Policy Declarations

DECLARATIONS

NAME AND ADDRESS OF PRODUCER NSM Insurance Group 555 North Lane, Suite 6060 Conshohocken, PA 19428 00000 0000	INSURANCE COMPANY Lexington Insurance Company (a capital stock company) 99 High Street Boston MA 02110
NAME AND MAILING ADDRESS OF INSURED TILGHMAN BEACH & RACQUET CLUB HOA C/O KA DIEHL 11822 HIGHWAY 17 BYPASS SOUTH MYRTLE BEACH SC 29576	POLICY NUMBER 41-LX -067045193-0/000 POLICY PERIOD FROM: 02-10-15 TO: 02-10-16 at 12:01 A.M. standard time at the mailing address shown.

THE NAMED INSURED IS : ASSOCIATION

BUSINESS DESC : RESIDENTIAL CONDOMINIUM

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

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

	PREMIUM
COMMERCIAL PROPERTY COVERAGE PART	157,144
COMMERCIAL GENERAL LIABILITY COVERAGE PART	9,920
COMMERCIAL CRIME COVERAGE PART	NOT COVERED
COMMERCIAL INLAND MARINE COVERAGE PART	NOT COVERED
COMMERCIAL AUTO COVERAGE PART	NOT COVERED
GARAGE COVERAGE PART	NOT COVERED
MISCELLANEOUS PROFESSIONAL LIABILITY	NOT COVERED

TOTAL ADVANCED PREMIUM

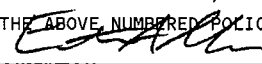
\$167,064

THE POLICY WRITING NONREFUNDABLE MINIMUM PREMIUM IS \$41,766

FORMS AND ENDORSEMENTS APPLICABLE TO ALL COVERAGE PARTS

89644 (06-13) IL0017 (11-98) IL0249 (09-08) 52167 (09-08) PRG2040(07-06) PRG7003(11-09)

THESE DECLARATIONS AND THE COMMON POLICY DECLARATIONS, IF APPLICABLE, TOGETHER WITH THE COMMON POLICY CONDITIONS, COVERAGE FORM(S) AND FORMS AND ENDORSEMENTS, IF ANY, ISSUED TO FORM A PART THEREOF, COMPLETE THE ABOVE NUMBERED POLICY.

BY: 

AUTHORIZED REPRESENTATIVE

02-10-15

Page 1 of 6

This company has been approved by the director or his designee of the South Carolina Department of Insurance to write business in this State as an eligible surplus lines insurer, but it is not afforded guaranty fund protection.

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Commercial Property

DECLARATIONS

NAME AND ADDRESS OF PRODUCER NSM Insurance Group 555 North Lane, Suite 6060 Conshohocken, PA 19428 00000 0000	INSURANCE COMPANY Lexington Insurance Company (a capital stock company) 99 High Street Boston MA 02110
NAME AND MAILING ADDRESS OF INSURED TILGHMAN BEACH & RACQUET CLUB HOA C/O KA DIEHL 11822 HIGHWAY 17 BYPASS SOUTH MYRTLE BEACH SC 29576	POLICY NUMBER 41-LX -067045193-0/000 POLICY PERIOD FROM: 02-10-15 TO: 02-10-16 At 12:01 A.M. standard time at the mailing address shown.

BUILDING-1

PREM. NO. 1 BLDG. NO. 1 "LIMIT OF INSURANCE" IS THE TOTAL FOR ALL LOCATIONS INDIVIDUAL BUILDING LIMITS APPLY, PER SCHEDULE ON FILE. BLANKET LIMITS ARE NOT PROVIDED.				
COVERAGES PROVIDED				
INSURANCE AT THE DESCRIBED PREMISES APPLIES ONLY FOR COVERAGES FOR WHICH A LIMIT OF INSURANCE IS SHOWN				
COVERAGE	CAUSE OF LOSS	DED	COINS	LIMIT OF INSURANCE
		\$		\$
BUILDING	SPECIAL-Incl theft	5,000		23,192,303
AGREED VALUE: \$ 23,192,303	EXP DATE: 02-10-16			
OPTIONAL COVERAGES				
BUILDING: REPLACEMENT COST ORDINANCE OR LAW COVERAGES: A - LOSS TO THE UNDAMAGED PORTION OF THE BUILDING B - DEMOLITION COST AND C - INCREASED COST OF CONSTRUCTION BLANKET LIMIT OF INSURANCE \$1,000,000 WINDSTORM & HAIL DEDUCTIBLE: 3 % MINIMUM DOLLAR DEDUCTIBLE: \$25,000				

"LIMIT OF INSURANCE" FIGURE IS THE TOTAL FOR ALL LOCATIONS. INDIVIDUAL BUILDING LIMITS APPLY PER SCHEDULE ON FILE.
BLANKET LIMITS ARE NOT PROVIDED.

Commercial Property

DECLARATIONS

NAME AND ADDRESS OF PRODUCER NSM Insurance Group 555 North Lane, Suite 6060 Conshohocken, PA 19428 00000 0000	INSURANCE COMPANY Lexington Insurance Company (a capital stock company) 99 High Street Boston MA 02110
NAME AND MAILING ADDRESS OF INSURED TILGHMAN BEACH & RACQUET CLUB HOA C/O KA DIEHL 11822 HIGHWAY 17 BYPASS SOUTH MYRTLE BEACH SC 29576	POLICY NUMBER 41-LX -067045193-0/000 POLICY PERIOD FROM: 02-10-15 TO: 02-10-16 At 12:01 A.M. standard time at the mailing address shown.

MANUSCRIPT FORMS:

- CP0320 (10-92) - MULTIPLE DEDUCTIBLE FORM APPLIES TO BUILDINGS 1-12
\$5,000 DED FOR ALL COVERED PERILS EXCEPT WIND & HAIL
- CP0325 - 3% PER BUILDING NAMED STORM WIND & HAIL DEDUCTIBLE
MINIMUM \$25,000 PER OCCURENCE
\$25,000 ALL OTHER WIND & HAIL DEDUCTIBLE
- 64546 - EARTHQUAKE LIMIT APPLIES TO BUILDINGS 1-19: \$23,192,303
2% EARTHQUAKE DEDUCTIBLE
- WDP-1 - \$500,000 WIND DRIVEN PRECIPITATION LIMITS
*SUBJECT TO NAMED STORM DEDUCTIBLE

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Commercial Property

DECLARATIONS

NAME AND ADDRESS OF PRODUCER NSM Insurance Group 555 North Lane, Suite 6060 Conshohocken, PA 19428 00000 0000	INSURANCE COMPANY Lexington Insurance Company (a capital stock company) 99 High Street Boston MA 02110
NAME AND MAILING ADDRESS OF INSURED TILGHMAN BEACH & RACQUET CLUB HOA C/O KA DIEHL 11822 HIGHWAY 17 BYPASS SOUTH MYRTLE BEACH SC 29576	POLICY NUMBER 41-LX -067045193-0/000 POLICY PERIOD FROM: 02-10-15 TO: 02-10-16 At 12:01 A.M. standard time at the mailing address shown.

EQUIPMENT BREAKDOWN

Coverage: COMPREHENSIVE - EXCLUDING PRODUCTION MACHINES Program: EQUIPMENT BREAKDOWN

Deductibles:

Property Damage: \$5,000
Business Interruption:
Consequential Damage:
Other:

TERRORISM RISK INSURANCE ACT IS INCLUDED

\$1,556

TOTAL PROPERTY PREMIUM \$157,144

FORMS AND ENDORSEMENTS

APPLYING TO COMMERCIAL PROPERTY COVERAGE PART AND MADE PART OF THIS POLICY AT TIME OF ISSUE:

CP0090 (07-88) IL0194 (10-12) CP0405 (10-12) CP0017 (10-12) CP1030 (10-12) CP0110 (07-88)
CP0320 (10-92) WDP-1 90630 (02-07) PRG9137(10-10) CP0325 (06-07) 64546 (12/04)

THESE DECLARATIONS AND THE COMMON POLICY DECLARATIONS, IF APPLICABLE, TOGETHER WITH THE COMMON POLICY CONDITIONS, COVERAGE FORM(S) AND FORMS AND ENDORSEMENTS, IF ANY, ISSUED TO FORM A PART THEREOF, COMPLETE THE ABOVE NUMBERED POLICY.

BY: 

AUTHORIZED REPRESENTATIVE

Commercial General Liability

DECLARATIONS

NAME AND ADDRESS OF PRODUCER

NSM Insurance Group
555 North Lane, Suite 6060
Conshohocken, PA 19428 00000 0000

INSURANCE COMPANY

Lexington Insurance Company
(a capital stock company)
99 High Street
Boston MA 02110

NAME AND MAILING ADDRESS OF INSURED

TILGHMAN BEACH & RACQUET CLUB HOA
C/O KA DIEHL
11822 HIGHWAY 17 BYPASS SOUTH
MYRTLE BEACH SC 29576

POLICY NUMBER

41-LX -067045193-0/000

POLICY PERIOD

FROM: 02-10-15 TO: 02-10-16

At 12:01 A.M. standard time at the mailing address shown.

LIMITS OF INSURANCE

GENERAL AGGREGATE	\$ 2,000,000	
PRODUCTS-COMPLETED OPERATIONS AGGREGATE	\$ INCLUDED	
PERSONAL INJURY & ADVERTISING INJURY	\$ 1,000,000	
EACH OCCURRENCE	\$ 1,000,000	
DAMAGE TO PREMISES RENTED TO YOU	\$ 50,000	ANY ONE PREMISES
MEDICAL EXPENSE	\$ 5,000	ANY ONE PERSON

STATE - 1

LOCATION OF ALL PREMISES YOU OWN, RENT OR OCCUPY:

LOC # 1:	208 N OCEAN BLVD	NORTH MYRTLE BEACH, SC 29582
LOC # 2:	108 N OCEAN BLVD	NORTH MYRTLE BEACH, SC 29582
LOC # 3:	210 N OCEAN BLVD	NORTH MYRTLE BEACH, SC 29582
LOC # 4:	206 N OCEAN BLVD	NORTH MYRTLE BEACH, SC 29582
LOC # 5:	202 N OCEAN BLVD	NORTH MYRTLE BEACH, SC 29582
LOC # 6:	207 N OCEAN BLVD	NORTH MYRTLE BEACH, SC 29582
LOC # 7:	201 N OCEAN BLVD	NORTH MYRTLE BEACH, SC 29582
LOC # 8:	206 2ND AVE N	NORTH MYRTLE BEACH, SC 29582
LOC # 9:	212 2ND AVE N	NORTH MYRTLE BEACH, SC 29582
LOC # 10:	206 HILLSIDE AVE	NORTH MYRTLE BEACH, SC 29582
LOC # 11:	215 3RD AVE N	NORTH MYRTLE BEACH, SC 29582
LOC # 12:	207 3RD AVE N	NORTH MYRTLE BEACH, SC 29582

Commercial General Liability

DECLARATIONS

NAME AND ADDRESS OF PRODUCER NSM Insurance Group 555 North Lane, Suite 6060 Conshohocken, PA 19428 00000 0000	INSURANCE COMPANY Lexington Insurance Company (a capital stock company) 99 High Street Boston MA 02110
NAME AND MAILING ADDRESS OF INSURED TILGHMAN BEACH & RACQUET CLUB HOA C/O KA DIEHL 11822 HIGHWAY 17 BYPASS SOUTH MYRTLE BEACH SC 29576	POLICY NUMBER 41-LX -067045193-0/000 POLICY PERIOD FROM: 02-10-15 TO: 02-10-16 At 12:01 A.M. standard time at the mailing address shown.

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LOC CLASSIFICATION	CODE	PREMIUM BASIS	PMS RATE	PDTs RATE
1 CONDOMINIUMS - RESIDENTIAL - (ASSOCIATION RISK ONLY) PRODUCTS-COMPLETED OPERATIONS ARE SUBJECT TO THE GENERAL AGGREGATE LIMIT	62003	UNITS	213	
1 SWIMMING POOLS PRODUCTS-COMPLETED OPERATIONS ARE SUBJECT TO THE GENERAL AGGREGATE LIMIT	48925	EACH	4	
1 PARKS OR PLAYGROUNDS PRODUCTS-COMPLETED OPERATIONS ARE SUBJECT TO THE GENERAL AGGREGATE LIMIT	46671	EACH	2	
HIRED/NON-OWN AUTO LIABILITY LIMIT OF LIABILITY: \$1,000,000 CSL				
ADDITIONAL INSURED				
CONDOMINIUMS - RESIDENTIAL - (ASSOCIATION RISK ONLY)	62003	UNITS	213	
PER FORM: CG2004 (11-85)				
CONDOMINIUM UNIT OWNERS				

TERRORISM RISK INSURANCE ACT IS INCLUDED

\$98

GENERAL LIABILITY PREMIUM

\$9,920

FORMS AND ENDORSEMENTS

APPLYING TO COMMERCIAL GENERAL LIABILITY COVERAGE PART AND MADE PART OF THIS POLICY AT TIME OF ISSUE:

IL0021 (09-08) CG0001 (04-13) CG2106 (05-14) CG2147 (12-07) CG2004 (11-85) 78689 (07-03)
69928 (03-98) 58332 (07-93) CG0419 (11-85) CG2155 (09-99)

THESE DECLARATIONS AND THE COMMON POLICY DECLARATIONS, IF APPLICABLE, TOGETHER WITH THE COMMON POLICY CONDITIONS, COVERAGE FORM(S) AND FORMS AND ENDORSEMENTS, IF ANY, ISSUED TO FORM A PART THEREOF, COMPLETE THE ABOVE NUMBERED POLICY.

BY: _____

AUTHORIZED REPRESENTATIVE

93837 (12/06)
CG DS 01 10 01

Page 6 of 6

EXHIBIT 3

FORMS SCHEDULE

NAME AND ADDRESS OF PRODUCER NSM Insurance Group 555 North Lane, Suite 6060 Conshohocken, PA 19428 00000 0000	INSURANCE COMPANY Lexington Insurance Company (a capital stock company) 99 High Street Boston MA 02110
NAME AND MAILING ADDRESS OF INSURED TILGHMAN BEACH & RACQUET CLUB HOA C/O KA DIEHL 11822 HIGHWAY 17 BYPASS SOUTH MYRTLE BEACH SC 29576	POLICY NUMBER 41-LX -067045193-0/000 POLICY PERIOD FROM: 02-10-15 TO: 02-10-16 at 12:01 A.M. standard time at the mailing address shown.

COMMON POLICY PACKAGE

89644 (06-13) ECONOMIC SANCTIONS ENDORSEMENT
IL0017 (11-98) COMMON POLICY CONDITIONS
IL0249 (09-08) SOUTH CAROLINA CHANGES - CANCELLATION & NONRENEWAL
52167 (09-08) SOUTH CAROLINA - AMENDATORY ENDORSEMENT
PRG2040 (07-06) MINIMUM EARNED PREMIUM
PRG7003 (11-09) ESTIMATED TAXES, ASSESSMENTS AND SURCHARGES

COMMERCIAL PROPERTY FORMS

CP0090 (07-88) COMMERCIAL PROPERTY CONDITIONS
IL0194 (10-12) SOUTH CAROLINA CHANGES - LEGAL ACTION AGAINST US
CP0405 (10-12) ORDINANCE OR LAW COVERAGE
CP0017 (10-12) CONDOMINIUM ASSOCIATION COVERAGE FORM
CP1030 (10-12) CAUSES OF LOSS - SPECIAL FORM
CP0110 (07-88) SOUTH CAROLINA CHANGES - VALUATION
CP0320 (10-92) MULTIPLE DEDUCTIBLE FORM
WDP-1
90630 (02-07) ADDITIONAL COVERAGE - EQUIPMENT BREAKDOWN
PRG9137 (10-10) CONDOMINIUM AMENDATORY ENDORSEMENT
CP0325 (06-07) NAMED STORM PERCENTAGE DEDUCTIBLE
64546 (12/04) EARTH MOVEMENT ENDORSEMENT

COMMERCIAL GENERAL LIABILITY FORMS

IL0021 (09-08) NUCLEAR ENERGY LIABILITY EXCLUSION ENDORSEMENT
CG0001 (04-13) COMMERCIAL GENERAL LIABILITY COVERAGE FORM (OCCUR)
CG2106 (05-14) EXCL-ACCESS OR DISCLOSURE OF CONFIDENTIAL OR PERSON
CG2147 (12-07) EMPLOYMENT-RELATED PRACTICES EXCLUSION
CG2004 (11-85) ADDITIONAL INSURED - CONDOMINIUM UNIT
78689 (07-03) FUNGUS EXCLUSION REVISED
69928 (03-98) ASBESTOS EXCLUSION ENDORSEMENT
58332 (07-93) TOTAL LEAD EXCLUSION
CG0419 (11-85) HIRED/NON-OWNED AUTO
CG2155 (09-99) TOTAL POLLUTION EXCLUSION WITH A HOSTILE FIRE EXCP

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

ENDORSEMENT #

This endorsement, effective 12:01 A.M.

forms a part of Policy

No.

issued to

by

ECONOMIC SANCTIONS ENDORSEMENT

This endorsement modifies insurance provided under the following:

The Insurer shall not be deemed to provide cover and the Insurer shall not be liable to pay any claim or provide any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose the Insurer, its parent company or its ultimate controlling entity to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union or the United States of America.

AUTHORIZED REPRESENTATIVE

COMMON POLICY CONDITIONS

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

A. Cancellation

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

B. Changes

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

C. Examination Of Your Books And Records

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

D. Inspections And Surveys

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

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

2. We are not obligated to make any inspections, surveys, reports or recommendations and any such actions we do undertake relate only to insurability and the premiums to be charged. We do not make safety inspections. We do not undertake to perform the duty of any person or organization to provide for the health or safety of workers or the public. And we do not warrant that conditions:
 - a. Are safe or healthful; or
 - b. Comply with laws, regulations, codes or standards.

3. Paragraphs 1. and 2. of this condition apply not only to us, but also to any rating, advisory, rate service or similar organization which makes insurance inspections, surveys, reports or recommendations.

4. Paragraph 2. of this condition does not apply to any inspections, surveys, reports or recommendations we may make relative to certification, under state or municipal statutes, ordinances or regulations, of boilers, pressure vessels or elevators.

E. Premiums

The first Named Insured shown in the Declarations:

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

F. Transfer Of Your Rights And Duties Under This Policy

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

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

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

SOUTH CAROLINA CHANGES – CANCELLATION AND NONRENEWAL

This endorsement modifies insurance provided under the following:

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

A. Paragraphs 2. and 3. of **Cancellation Common Policy Condition are replaced by the following:**

2. We may cancel this policy by mailing or delivering to the first Named Insured and the agent, if any, written notice of cancellation at least:
 - a. 10 days before the effective date of cancellation if we cancel for nonpayment of premium; or
 - b. 30 days before the effective date of cancellation if we cancel for any other reason.
3. We will mail or deliver our notice to the first Named Insured's and agent's last known addresses.

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

7. Cancellation Of Policies In Effect For 120 Days Or More

If this policy has been in effect for 120 days or more, or is a renewal or continuation of a policy we issued, we may cancel this policy only for one or more of the following reasons:

- a. Nonpayment of premium;

- b. Material misrepresentation of fact which, if known to us, would have caused us not to issue the policy;
- c. Substantial change in the risk assumed, except to the extent that we should reasonably have foreseen the change or contemplated the risk in writing the policy;
- d. Substantial breaches of contractual duties, conditions or warranties; or
- e. Loss of our reinsurance covering all or a significant portion of the particular policy insured, or where continuation of the policy would imperil our solvency or place us in violation of the insurance laws of South Carolina.

Prior to cancellation for reasons permitted in this Item e., we will notify the Commissioner, in writing, at least 60 days prior to such cancellation and the Commissioner will, within 30 days of such notification, approve or disapprove such action.

Any notice of cancellation will state the precise reason for cancellation.

- C. The following is added and supersedes any provisions to the contrary:

Nonrenewal

1. We will not refuse to renew a policy issued for a term of more than one year, until expiration of its full term, if anniversary renewal has been guaranteed by additional premium consideration.
2. If we decide not to renew this policy, we will:
 - a. Mail or deliver written notice of nonrenewal to the first Named Insured and agent, if any, before:
 - (1) The expiration date of this policy, if the policy is written for a term of one year or less; or
 - (2) An anniversary date of this policy, if the policy is written for a term of more than one year or for an indefinite term; and

- b. Provide at least:

- (1) 60 days' notice of nonrenewal, when nonrenewal is to become effective between November 1 and May 31; or
 - (2) 90 days' notice of nonrenewal, when nonrenewal is to become effective between June 1 and October 31.
3. Any notice of nonrenewal will be mailed or delivered to the first Named Insured's and agent's last known addresses. If notice is mailed, proof of mailing will be sufficient proof of notice.
 4. Any notice of nonrenewal will state the precise reason for nonrenewal.

SOUTH CAROLINA AMENDATORY ENDORSEMENT

This endorsement, effective _____ forms a part of
 policy no.: _____ issued to _____
 by: _____

Wherever used in this endorsement: 1) "Insurer" means the insurance company which issued this policy; and 2) "Insured" means the Named Corporation, Named Entity, Named Organization, Named Sponsor, Named Insured, or Insured stated in the declarations page;

The following is added and supersedes any provision in the policy to the contrary:

CANCELLATION:

This policy may be cancelled by the Insured by surrender thereof to the Insurer or any of its authorized agents or by mailing to the Insurer written notice stating when thereafter the cancellation shall be effective.

If this policy has been in effect for less than 120 days and is not a renewal of a previously existing policy, this policy may be cancelled by the Insurer for any reason by delivering or mailing to the Insured at the address shown in this policy, written notice stating when, not less than thirty (30) days thereafter, such cancellation shall be effective. Where the reason for cancellation is nonpayment of premium however, not less than ten (10) days written notice shall be furnished by the Insurer.

If this policy has been in effect for 120 days or more, or is a renewal of a previously existing policy, this policy may be cancelled by the Insurer by delivering or mailing to the Insured and the agent of record, if any, at the address shown in the policy, written notice stating when, not less than thirty (30) days thereafter, such cancellation shall be effective. Where the reason for cancellation is nonpayment of premium however, not less than ten (10) days written notice shall be furnished by the Insurer.

If this policy applies to property insurance on risks located in the State it may be cancelled by the Insurer by delivering or mailing to the Insured at the address shown in the policy a written notice stating when such cancellation shall be effective:

- (1) not less than sixty (60) days for any cancellation effective between November first and May thirty-first; and
- (2) not less than ninety (90) days for any cancellation effective between June first and October 31st

Any notice of cancellation will state the reason for cancellation. Cancellation under this paragraph shall be based on one or more of the following reasons:

- (1) Nonpayment of premium;
- (2) Material misrepresentation of fact which, if known to the Insurer, would have caused the Insurer not to issue the policy;

- (3) Substantial change in the risk assumed, except to the extent the Insurer should reasonably have foreseen the change or contemplated the risk in writing the policy;
- (4) Substantial breaches of contractual duties, conditions, or warranties;
- (5) Loss of the Insurer's reinsurance covering all or a significant portion of the particular policy insured; or
- (6) Where continuation of the policy would imperil the Insurer's solvency or place the Insurer in violation of the insurance laws of this state.

Prior to cancellation for reasons numbered five (5) and six (6) above, the Insurer shall notify the Insurance Commissioner in writing at least sixty (60) days prior to the effective date of such cancellation.

NONRENEWAL:

If the Insurer shall elect to nonrenew this policy and such policy is for a period of one year or less, than the Insurer shall mail or deliver written notice of nonrenewal to the Insured and the Insured's agent of record, if any, at least:

- (1) sixty days prior to the anniversary date of the policy for any nonrenewal that would be effective between November first and May thirty-first; and
- (2) ninety days prior to the anniversary date of the policy for any nonrenewal that would be effective between June first and October thirty-first.

If the Insurer shall elect to nonrenew this policy and such policy is for a period of more than one year or for an indefinite term, than the Insurer shall mail or deliver written notice of nonrenewal to the Insured and the Insured's agent of record, if any, at least:

- (1) sixty days prior to the anniversary date of the policy for any nonrenewal that would be effective between November first and May thirty-first; and
- (2) ninety days prior to the anniversary date of the policy for any nonrenewal that would be effective between June first and October thirty-first.

Any notice of nonrenewal will be mailed or delivered to the Insured's and the Insured's agent's at their addresses shown in the policy or, if not reflected therein, at their last known addresses. If notice is mailed, proof of mailing will be sufficient proof of notice.

Any notice of nonrenewal will state the precise reason for nonrenewal.

POLICY RENEWAL NOTICE:

If the Insurer intends to renew a policy, the Insurer shall furnish renewal terms and a statement of the amount of premium or estimated premium due for the renewal policy period.

If the policy being renewed (hereinafter "original policy") is written for a term of one year or less, the renewal terms and statement of premium or estimated premium due shall be furnished to the Insured not less than thirty (30) days prior to the expiration date of the original policy.

If the original policy is written for a term of more than one year or for an indefinite term, the renewal terms and statement of premium or estimated premium due shall be furnished to the Insured not less than thirty (30) days prior to the anniversary date of the original policy.

The Insurer may satisfy its obligation to furnish renewal terms and statement of premium or estimated premium due by either of the following methods:

- mailing or delivering renewal terms and statement to the Insured at his address shown in the policy or, if not reflected therein, at his last known address, not less than thirty (30) days prior to expiration or anniversary; or
- mailing or delivering renewal terms and statement to the agent of record, if any, not less than forty-five (45) days prior to the expiration or anniversary, along with instructions that the agent furnish the renewal terms and statement to the Insured not less than thirty (30) days prior to expiration or anniversary.

If the Insurer fails to furnish the renewal terms and statement of premium or estimated premium due, the Insured may elect to cancel the renewal policy within the thirty-day period following receipt of the renewal terms and statement of premium or estimated premium due. Earned premium for any period of coverage shall be calculated pro rata based upon the premium applicable to the original policy and not the premium applicable to the renewal policy.

All other terms, conditions and exclusions shall remain the same.

AUTHORIZED REPRESENTATIVE

ENDORSEMENT

This endorsement, effective 12:01 A.M.,

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

MINIMUM EARNED PREMIUM ENDORSEMENT

This endorsement modifies insurance provided by the policy. The Common Policy Conditions are modified as follows:

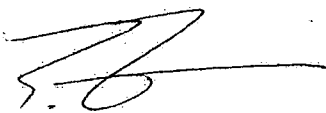
1. Paragraph 5 of Condition A—Cancellation is deleted and replaced with the following paragraph:
 5. If this policy is cancelled, we will send the first Named Insured any premium refund due. If we cancel, the refund will be pro rata. If the first Name Insured cancels, earned premium will be computed according to the customary short-rate table and procedure, subject to a Minimum Earned Premium of \$ 41,766. The cancellation will be effective even if we have not made or offered a refund.

Estimated Taxes, Assessments and Surcharges

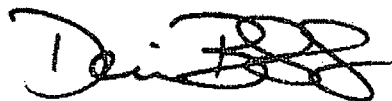
The taxes, assessments and surcharges shown on the Schedule are based upon our knowledge of the current law in the states involved. If the law changes, or a rate or assessment changes, or a new surcharge is imposed, or a state reinterprets its law, any additional taxes, assessments and surcharges will become part of *Your Payment Obligation*.

ADDENDUM TO THE DECLARATIONS

By signing below, the President and the Secretary of the Insurer agree on behalf of the Insurer to all the terms of this Policy.



Jeremy Johnson
PRESIDENT



Denis M. Butkovic
SECRETARY

This policy shall not be valid unless signed at the time of issuance by an authorized representative of the Insurer, either below or on the Declarations page of the policy.



Ethan D. Allen
AUTHORIZED REPRESENTATIVE

COMMERCIAL PROPERTY CONDITIONS

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

A. CONCEALMENT, MISREPRESENTATION OR FRAUD

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

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

B. CONTROL OF PROPERTY

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

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

C. INSURANCE UNDER TWO OR MORE COVERAGES

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

D. LEGAL ACTION AGAINST US

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

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

E. LIBERALIZATION

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

F. NO BENEFIT TO BAILEE

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

G. OTHER INSURANCE

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

H. POLICY PERIOD, COVERAGE TERRITORY

Under this Coverage Part:

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

I. TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

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

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

This will not restrict your insurance.

IL 01 94 10 12

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

SOUTH CAROLINA CHANGES – LEGAL ACTION AGAINST US

This endorsement modifies insurance provided under the following:

CAPITAL ASSETS PROGRAM (OUTPUT POLICY) COVERAGE PART
COMMERCIAL PROPERTY COVERAGE PART
FARM COVERAGE PART – FARM LIVESTOCK COVERAGE FORM
FARM COVERAGE PART – FARM MOBILE AGRICULTURAL MACHINERY AND EQUIPMENT COVERAGE FORM
FARM COVERAGE PART – FARM PROPERTY – OTHER FARM PROVISIONS FORM – ADDITIONAL COVERAGES, CONDITIONS, DEFINITIONS
STANDARD PROPERTY POLICY

A. The **Legal Action Against Us** Condition, in the Commercial Property Conditions, the Standard Property Policy, the Capital Assets Program Coverage Form (Output Policy), and in the Farm Forms listed above, is replaced by the following:

LEGAL ACTION AGAINST US

No one may bring a legal action against us under this Coverage Part, Coverage Form or Policy to which this Condition applies unless:

1. There has been full compliance with all of the terms of this Coverage Part, Coverage Form or Policy; and
2. The action is brought within 3 years after the date on which the direct physical loss ("loss") or damage occurred.

B. Under the Commercial Property Coverage Part, Paragraph (1) of the **Legal Action Against Us** Condition in the Mortgageholders Errors And Omissions Coverage Form is replaced by the following:

- (1) No one may bring a legal action against us under Coverages A and B unless:
 - (a) There has been full compliance with all of the terms of Coverages A and B; and
 - (b) The action is brought within 3 years after you discover the error or accidental omission.

POLICY NUMBER:

COMMERCIAL PROPERTY
CP 04 05 10 12

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ORDINANCE OR LAW COVERAGE

This endorsement modifies insurance provided under the following:

BUILDING AND PERSONAL PROPERTY COVERAGE FORM
CONDOMINIUM ASSOCIATION COVERAGE FORM
STANDARD PROPERTY POLICY

SCHEDULE

Building Number/ Premises Number	Coverage A	Coverage B Limit Of Insurance	Coverage C Limit Of Insurance	Coverage B And C Combined Limit Of Insurance
/	☐	\$	\$	\$ *
/	☐	\$	\$	\$ *
/	☐	\$	\$	\$ *

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.
*Do **not** enter a Blanket Limit of Insurance if individual Limits of Insurance are selected for Coverages B and C, or if one of these Coverages is not applicable.

A. Each Coverage – Coverage A, Coverage B and Coverage C – is provided under this endorsement only if that Coverage(s) is chosen by entry in the above Schedule and then only with respect to the building identified for that Coverage(s) in the Schedule.

B. Application Of Coverage(s)

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

1. The ordinance or law:

a. Regulates the demolition, construction or repair of buildings, or establishes zoning or land use requirements at the described premises; and

b. Is in force at the time of loss.

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

2.a. The building sustains direct physical damage that is covered under this policy and as a result of such damage, you are required to comply with the ordinance or law; or

b. The building sustains both direct physical damage that is covered under this policy and direct physical damage that is not covered under this policy, and as a result of the building damage in its entirety, you are required to comply with the ordinance or law.

c. But if the building sustains direct physical damage that is not covered under this policy, and such damage is the subject of the ordinance or law, then there is no coverage under this endorsement even if the building has also sustained covered direct physical damage.

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3. In the situation described in **B.2.b.** above, we will not pay the full amount of loss otherwise payable under the terms of Coverages **A**, **B**, and/or **C** of this endorsement. Instead, we will pay a proportion of such loss, meaning the proportion that the covered direct physical damage bears to the total direct physical damage.

(Section **H.** of this endorsement provides an example of this procedure.)

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

- C.** We will not pay under Coverage **A**, **B** or **C** of this endorsement for:

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

D. Coverage

1. Coverage A – Coverage For Loss To The Undamaged Portion Of The Building

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

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

2. Coverage B – Demolition Cost Coverage

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

The Coinsurance Additional Condition does not apply to Demolition Cost Coverage.

3. Coverage C – Increased Cost Of Construction Coverage

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

- (1) Repair or reconstruct damaged portions of that building; and/or
- (2) Reconstruct or remodel undamaged portions of that building, whether or not demolition is required;

when the increased cost is a consequence of a requirement to comply with the minimum standards of the ordinance or law.

However:

- (1) This coverage applies only if the restored or remodeled property is intended for similar occupancy as the current property, unless such occupancy is not permitted by zoning or land use ordinance or law.
- (2) We will not pay for the increased cost of construction if the building is not repaired, reconstructed or remodeled.

The Coinsurance Additional Condition does not apply to Increased Cost of Construction Coverage.

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

- (1) The cost of excavations, grading, backfilling and filling;

- (2) Foundation of the building;
- (3) Pilings; and
- (4) Underground pipes, flues and drains.

The items listed in **b.(1)** through **b.(4)** above are deleted from Property Not Covered, but only with respect to the coverage described in this provision, **3.b.**

E. Loss Payment

1. All following loss payment provisions, **E.2.** through **E.5.**, are subject to the apportionment procedures set forth in Section **B.3.** of this endorsement.
2. When there is a loss in value of an undamaged portion of a building to which Coverage **A** applies, the loss payment for that building, including damaged and undamaged portions, will be determined as follows:
 - a. If the Replacement Cost Coverage Option applies and the property is being repaired or replaced, on the same or another premises, we will not pay more than the lesser of:
 - (1) The amount you would actually spend to repair, rebuild or reconstruct the building, but not for more than the amount it would cost to restore the building on the same premises and to the same height, floor area, style and comparable quality of the original property insured; or
 - (2) The Limit Of Insurance shown in the Declarations as applicable to the covered building.
 - b. If the Replacement Cost Coverage Option applies and the property is **not** repaired or replaced, or if the Replacement Cost Coverage Option does **not** apply, we will not pay more than the lesser of:
 - (1) The actual cash value of the building at the time of loss; or
 - (2) The Limit Of Insurance shown in the Declarations as applicable to the covered building.
3. Unless Paragraph **E.5.** applies, loss payment under Coverage **B** – Demolition Cost Coverage will be determined as follows:

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

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

- b. The applicable Limit Of Insurance shown for Coverage **B** in the Schedule above.

4. Unless Paragraph **E.5.** applies, loss payment under Coverage **C** – Increased Cost Of Construction Coverage will be determined as follows:

- a. We will not pay under Coverage **C**:

- (1) Until the property is actually repaired or replaced, at the same or another premises; and
- (2) Unless the repair or replacement is made as soon as reasonably possible after the loss or damage, not to exceed two years. We may extend this period in writing during the two years.

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

- (1) The increased cost of construction at the same premises; or
- (2) The applicable Limit Of Insurance shown for Coverage **C** in the Schedule above.

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

- (1) The increased cost of construction at the new premises; or
- (2) The applicable Limit Of Insurance shown for Coverage **C** in the Schedule above.

5. If a Combined Limit Of Insurance is shown for Coverages **B** and **C** in the Schedule above, Paragraphs **E.3.** and **E.4.** of this endorsement do not apply with respect to the building that is subject to the Combined Limit, and the following loss payment provisions apply instead:

The most we will pay, for the total of all covered losses for Demolition Cost and Increased Cost of Construction, is the Combined Limit Of Insurance shown for Coverages **B** and **C** in the Schedule above. Subject to this Combined Limit of Insurance, the following loss payment provisions apply:

- a. For Demolition Cost, we will not pay more than the amount you actually spend to demolish and clear the site of the described premises.

b. With respect to the Increased Cost of Construction:

(1) We will not pay for the increased cost of construction:

- (a)** Until the property is actually repaired or replaced, at the same or another premises; and
- (b)** Unless the repair or replacement is made as soon as reasonably possible after the loss or damage, not to exceed two years. We may extend this period in writing during the two years.

(2) 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.

(3) 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.

F. The terms of this endorsement apply separately to each building to which this endorsement applies.

G. Under this endorsement we will not pay for loss due to any ordinance or law that:

- 1.** You were required to comply with before the loss, even if the building was undamaged; and
- 2.** You failed to comply with.

H. Example of proportionate loss payment for Ordinance Or Law Coverage Losses (procedure as set forth in Section B.3. of this endorsement).

Assume:

- Wind is a Covered Cause of Loss; Flood is an excluded Cause of Loss
- The building has a value of \$200,000
- Total direct physical damage to building: \$100,000
- The ordinance or law in this jurisdiction is enforced when building damage equals or exceeds 50% of the building's value
- Portion of direct physical damage that is covered (caused by wind): \$30,000
- Portion of direct physical damage that is not covered (caused by flood): \$70,000
- Loss under Ordinance Or Law Coverage **C** of this endorsement: \$60,000

Step 1: Determine the proportion that the covered direct physical damage bears to the total direct physical damage.

$$\$30,000 \div \$100,000 = .30$$

Step 2: Apply that proportion to the Ordinance or Law loss.

$$\$60,000 \times .30 = \$18,000$$

In this example, the most we will pay under this endorsement for the Coverage **C** loss is \$18,000, subject to the applicable Limit of Insurance and any other applicable provisions.

Note: The same procedure applies to losses under Coverages **A** and **B** of this endorsement.

I. The following definition is added:

"Fungus" means any type or form of fungus, including mold or mildew, and any mycotoxins, spores, scents or by-products produced or released by fungi.

CONDOMINIUM ASSOCIATION COVERAGE FORM

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

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

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

A. Coverage

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

1. Covered Property

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

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

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

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

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

- (a) Fixtures, improvements and alterations that are a part of the building or structure; and
- (b) Appliances, such as those used for refrigerating, ventilating, cooking, dishwashing, laundering, security or housekeeping.

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

b. Your Business Personal Property located in or on the building or structure described in the Declarations or in the open (or in a vehicle) within 100 feet of the described premises, consisting of the following:

- (1) Personal property owned by you or owned indivisibly by all unit-owners;
- (2) Your interest in the labor, materials or services furnished or arranged by you on personal property of others; and
- (3) Leased personal property for which you have a contractual responsibility to insure, unless otherwise provided for under Personal Property Of Others.

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

c. Personal Property Of Others that is:

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

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

2. Property Not Covered

Covered Property does not include:

- a. Accounts, bills, currency, food stamps or other evidences of debt, money, notes or securities. Lottery tickets held for sale are not securities;
- b. Animals, unless owned by others and boarded by you;
- c. Automobiles held for sale;
- d. Bridges, roadways, walks, patios or other paved surfaces;
- e. Contraband, or property in the course of illegal transportation or trade;
- f. The cost of excavations, grading, backfilling or filling;
- g. Foundations of buildings, structures, machinery or boilers if their foundations are below:
 - (1) The lowest basement floor; or
 - (2) The surface of the ground if there is no basement;
- h. Land (including land on which the property is located), water, growing crops or lawns (other than lawns which are part of a vegetated roof);
- i. Personal property while airborne or waterborne;
- j. Bulkheads, pilings, piers, wharves or docks;
- k. Property that is covered under this or any other policy in which it is more specifically described, except for the excess of the amount due (whether you can collect on it or not) from that other insurance;
- l. Retaining walls that are not part of a building;
- m. Underground pipes, flues or drains;
- n. Electronic data, except as provided under the Additional Coverage, Electronic Data. Electronic data means information, facts or computer programs stored as or on, created or used on, or transmitted to or from computer software (including systems and applications software), on hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other repositories of computer software which are used with electronically controlled equipment. The term computer programs, referred to in the foregoing description of electronic data, means a set of related electronic instructions which direct the operations and functions of a computer or device connected to it, which enable the computer or device to receive, process, store, retrieve or send data. This paragraph, n., does not apply to electronic data which is integrated in and operates or controls the building's elevator, lighting, heating, ventilation, air conditioning or security system;
- o. The cost to replace or restore the information on valuable papers and records, including those which exist as electronic data. Valuable papers and records include but are not limited to proprietary information, books of account, deeds, manuscripts, abstracts, drawings and card index systems. Refer to the Coverage Extension for Valuable Papers And Records (Other Than Electronic Data) for limited coverage for valuable papers and records other than those which exist as electronic data;
- p. Vehicles or self-propelled machines (including aircraft or watercraft) that:
 - (1) Are licensed for use on public roads; or
 - (2) Are operated principally away from the described premises.

This paragraph does not apply to:

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

q. The following property while outside of buildings:

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

3. Covered Causes Of Loss

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

4. Additional Coverages

a. Debris Removal

- (1) Subject to Paragraphs (2), (3) and (4), we will pay your expense to remove debris of Covered Property and other debris that is on the described premises, when such debris is caused by or results from a Covered Cause of Loss that occurs during the policy period. The expenses will be paid only if they are reported to us in writing within 180 days of the date of direct physical loss or damage.
- (2) Debris Removal does not apply to costs to:
 - (a) Remove debris of property of yours that is not insured under this policy, or property in your possession that is not Covered Property;
 - (b) Remove any property that is Property Not Covered, including property addressed under the Outdoor Property Coverage Extension;
 - (c) Remove property of others of a type that would not be Covered Property under this Coverage Form;
 - (d) Remove deposits of mud or earth from the grounds of the described premises;
 - (e) Extract "pollutants" from land or water; or
 - (f) Remove, restore or replace polluted land or water.

(3) Subject to the exceptions in Paragraph (4), the following provisions apply:

- (a) The most we will pay for the total of direct physical loss or damage plus debris removal expense is the Limit of Insurance applicable to the Covered Property that has sustained loss or damage.
- (b) Subject to (a) above, the amount we will pay for debris removal expense is limited to 25% of the sum of the deductible plus the amount that we pay for direct physical loss or damage to the Covered Property that has sustained loss or damage. However, if no Covered Property has sustained direct physical loss or damage, the most we will pay for removal of debris of other property (if such removal is covered under this Additional Coverage) is \$5,000 at each location.
- (4) We will pay up to an additional \$25,000 for debris removal expense, for each location, in any one occurrence of physical loss or damage to Covered Property, if one or both of the following circumstances apply:
 - (a) The total of the actual debris removal expense plus the amount we pay for direct physical loss or damage exceeds the Limit of Insurance on the Covered Property that has sustained loss or damage.
 - (b) The actual debris removal expense exceeds 25% of the sum of the deductible plus the amount that we pay for direct physical loss or damage to the Covered Property that has sustained loss or damage.

Therefore, if (4)(a) and/or (4)(b) applies, our total payment for direct physical loss or damage and debris removal expense may reach but will never exceed the Limit of Insurance on the Covered Property that has sustained loss or damage, plus \$25,000.

(5) Examples

The following examples assume that there is no Coinsurance penalty.

Example 1

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

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

Example 2

Limit of Insurance:	\$ 90,000
Amount of Deductible:	\$ 500
Amount of Loss:	\$ 80,000
Amount of Loss Payable:	\$ 79,500
	(\$80,000 - \$500)
Debris Removal Expense:	\$ 40,000
Debris Removal Expense Payable	
Basic Amount:	\$ 10,500
Additional Amount:	\$ 25,000

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

The additional amount payable for debris removal expense is provided in accordance with the terms of Paragraph (4), because the debris removal expense (\$40,000) exceeds 25% of the loss payable plus the deductible (\$40,000 = 50% of \$80,000), and because the sum of the loss payable and debris removal expense (\$79,500 + \$40,000 = \$119,500) would exceed the Limit of Insurance (\$90,000). The additional amount of covered debris removal expense is \$25,000, the maximum payable under Paragraph (4). Thus, the total payable for debris removal expense in this example is \$35,500; \$4,500 of the debris removal expense is not covered.

b. Preservation Of Property

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

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

c. Fire Department Service Charge

When the fire department is called to save or protect Covered Property from a Covered Cause of Loss, we will pay up to \$1,000 for service at each premises described in the Declarations unless a higher limit is shown in the Declarations. Such limit is the most we will pay regardless of the number of responding fire departments or fire units, and regardless of the number or type of services performed.

This Additional Coverage applies to your liability for fire department service charges:

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

No Deductible applies to this Additional Coverage.

d. Pollutant Clean-up And Removal

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

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

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

e. Increased Cost Of Construction

- (1) This Additional Coverage applies only to buildings to which the Replacement Cost Optional Coverage applies.
- (2) In the event of damage by a Covered Cause of Loss to a building that is Covered Property, we will pay the increased costs incurred to comply with the minimum standards of an ordinance or law in the course of repair, rebuilding or replacement of damaged parts of that property, subject to the limitations stated in **e.(3)** through **e.(9)** of this Additional Coverage.
- (3) The ordinance or law referred to in **e.(2)** of this Additional Coverage is an ordinance or law that regulates the construction or repair of buildings or establishes zoning or land use requirements at the described premises and is in force at the time of loss.
- (4) Under this Additional Coverage, we will not pay any costs due to an ordinance or law that:
 - (a) You were required to comply with before the loss, even when the building was undamaged; and
 - (b) You failed to comply with.
- (5) Under this Additional Coverage, we will not pay for:
 - (a) The enforcement of or compliance with any ordinance or law which requires demolition, repair, replacement, reconstruction, remodeling or remediation of property due to contamination by "pollutants" or due to the presence, growth, proliferation, spread or any activity of "fungus", wet or dry rot or bacteria; or
 - (b) Any costs associated with the enforcement of or compliance with an ordinance or law which requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants", "fungus", wet or dry rot or bacteria.

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

The amount payable under this Additional Coverage is additional insurance.

- (7) With respect to this Additional Coverage:
 - (a) We will not pay for the Increased Cost of Construction:
 - (i) Until the property is actually repaired or replaced, at the same or another premises; and
 - (ii) Unless the repair or replacement is made as soon as reasonably possible after the loss or damage, not to exceed two years. We may extend this period in writing during the two years.
 - (b) If the building is repaired or replaced at the same premises, or if you elect to rebuild at another premises, the most we will pay for the Increased Cost of Construction, subject to the provisions of **e.(6)** of this Additional Coverage, is the increased cost of construction at the same premises.
 - (c) If the ordinance or law requires relocation to another premises, the most we will pay for the Increased Cost of Construction, subject to the provisions of **e.(6)** of this Additional Coverage, is the increased cost of construction at the new premises.
- (8) This Additional Coverage is not subject to the terms of the Ordinance Or Law Exclusion to the extent that such Exclusion would conflict with the provisions of this Additional Coverage.

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

f. Electronic Data

- (1) Under this Additional Coverage, electronic data has the meaning described under Property Not Covered, Electronic Data. This Additional Coverage does not apply to electronic data which is integrated in and operates or controls the building's elevator, lighting, heating, ventilation, air conditioning or security system.
- (2) Subject to the provisions of this Additional Coverage, we will pay for the cost to replace or restore electronic data which has been destroyed or corrupted by a Covered Cause of Loss. To the extent that electronic data is not replaced or restored, the loss will be valued at the cost of replacement of the media on which the electronic data was stored, with blank media of substantially identical type.
- (3) The Covered Causes of Loss applicable to Your Business Personal Property apply to this Additional Coverage, Electronic Data, subject to the following:
 - (a) If the Causes Of Loss – Special Form applies, coverage under this Additional Coverage, Electronic Data, is limited to the "specified causes of loss" as defined in that form and Collapse as set forth in that form.
 - (b) If the Causes Of Loss – Broad Form applies, coverage under this Additional Coverage, Electronic Data, includes Collapse as set forth in that form.
 - (c) If the Causes Of Loss form is endorsed to add a Covered Cause of Loss, the additional Covered Cause of Loss does not apply to the coverage provided under this Additional Coverage, Electronic Data.

- (d) The Covered Causes of Loss include a virus, harmful code or similar instruction introduced into or enacted on a computer system (including electronic data) or a network to which it is connected, designed to damage or destroy any part of the system or disrupt its normal operation. But there is no coverage for loss or damage caused by or resulting from manipulation of a computer system (including electronic data) by any employee, including a temporary or leased employee, or by an entity retained by you or for you to inspect, design, install, modify, maintain, repair or replace that system.

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

5. Coverage Extensions

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

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

a. Newly Acquired Or Constructed Property

(1) Buildings

You may extend the insurance that applies to Building to apply to:

- (a) Your new buildings while being built on the described premises; and

(b) Buildings you acquire at locations, other than the described premises, intended for:

- (i) Similar use as the building described in the Declarations; or
- (ii) Use as a warehouse.

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

(2) Your Business Personal Property

(a) If this policy covers Your Business Personal Property, you may extend that insurance to apply to:

- (i) Business personal property, including such property that you newly acquire, at any location you acquire other than at fairs, trade shows or exhibitions; or
- (ii) Business personal property, including such property that you newly acquire, located at your newly constructed or acquired buildings at the location described in the Declarations.

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

(b) This Extension does not apply to:

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

(3) Period Of Coverage

With respect to insurance provided under this Coverage Extension for Newly Acquired Or Constructed Property, coverage will end when any of the following first occurs:

(a) This policy expires;

(b) 30 days expire after you acquire the property or begin construction of that part of the building that would qualify as covered property; or

(c) You report values to us.

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

b. Personal Effects And Property Of Others

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

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

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

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

(1) You may extend the insurance that applies to Your Business Personal Property to apply to the cost to replace or restore the lost information on valuable papers and records for which duplicates do not exist. But this Extension does not apply to valuable papers and records which exist as electronic data. Electronic data has the meaning described under Property Not Covered, Electronic Data.

(2) If the Causes Of Loss – Special Form applies, coverage under this Extension is limited to the "specified causes of loss" as defined in that form and Collapse as set forth in that form.

(3) If the Causes Of Loss – Broad Form applies, coverage under this Extension includes Collapse as set forth in that form.

- (4) Under this Extension, the most we will pay to replace or restore the lost information is \$2,500 at each described premises, unless a higher limit is shown in the Declarations. Such amount is additional insurance. We will also pay for the cost of blank material for reproducing the records (whether or not duplicates exist) and (when there is a duplicate) for the cost of labor to transcribe or copy the records. The costs of blank material and labor are subject to the applicable Limit of Insurance on Your Business Personal Property and, therefore, coverage of such costs is not additional insurance.

d. Property Off-premises

- (1) You may extend the insurance provided by this Coverage Form to apply to your Covered Property while it is away from the described premises, if it is:
- (a) Temporarily at a location you do not own, lease or operate;
 - (b) In storage at a location you lease, provided the lease was executed after the beginning of the current policy term; or
 - (c) At any fair, trade show or exhibition.
- (2) This Extension does not apply to property:
- (a) In or on a vehicle; or
 - (b) In the care, custody or control of your salespersons, unless the property is in such care, custody or control at a fair, trade show or exhibition.
- (3) The most we will pay for loss or damage under this Extension is \$10,000.

e. Outdoor Property

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

- (1) Fire;
- (2) Lightning;

- (3) Explosion;
- (4) Riot or Civil Commotion; or
- (5) Aircraft.

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

Subject to all aforementioned terms and limitations of coverage, this Coverage Extension includes the expense of removing from the described premises the debris of trees, shrubs and plants which are the property of others.

f. Non-owned Detached Trailers

- (1) You may extend the insurance that applies to Your Business Personal Property to apply to loss or damage to trailers that you do not own, provided that:
- (a) The trailer is used in your business;
 - (b) The trailer is in your care, custody or control at the premises described in the Declarations; and
 - (c) You have a contractual responsibility to pay for loss or damage to the trailer.
- (2) We will not pay for any loss or damage that occurs:
- (a) While the trailer is attached to any motor vehicle or motorized conveyance, whether or not the motor vehicle or motorized conveyance is in motion;
 - (b) During hitching or unhitching operations, or when a trailer becomes accidentally unhitched from a motor vehicle or motorized conveyance.
- (3) The most we will pay for loss or damage under this Extension is \$5,000, unless a higher limit is shown in the Declarations.
- (4) This insurance is excess over the amount due (whether you can collect on it or not) from any other insurance covering such property.

g. Business Personal Property Temporarily In Portable Storage Units

- (1) You may extend the insurance that applies to Your Business Personal Property to apply to such property while temporarily stored in a portable storage unit (including a detached trailer) located within 100 feet of the described premises.
- (2) If the applicable Covered Causes of Loss form or endorsement contains a limitation or exclusion concerning loss or damage from sand, dust, sleet, snow, ice or rain to property in a structure, such limitation or exclusion also applies to property in a portable storage unit.
- (3) Coverage under this Extension:
 - (a) Will end 90 days after the business personal property has been placed in the storage unit;
 - (b) Does not apply if the storage unit itself has been in use at the described premises for more than 90 consecutive days, even if the business personal property has been stored there for 90 or fewer days as of the time of loss or damage.
- (4) Under this Extension, the most we will pay for the total of all loss or damage to business personal property is \$10,000 (unless a higher limit is indicated in the Declarations for such Extension) regardless of the number of storage units. Such limit is part of, not in addition to, the applicable Limit of Insurance on Your Business Personal Property. Therefore, payment under this Extension will not increase the applicable Limit of Insurance on Your Business Personal Property.
- (5) This Extension does not apply to loss or damage otherwise covered under this Coverage Form or any endorsement to this Coverage Form or policy, and does not apply to loss or damage to the storage unit itself.

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

B. Exclusions And Limitations

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

C. Limits Of Insurance

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

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

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

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

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

D. Deductible

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

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

Example 1

(This example assumes there is no Coinsurance penalty.)

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

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

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

\$ 60,100
 - 250

\$ 59,850 Loss Payable – Building 1

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

Total amount of loss payable:

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

Example 2

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

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

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

E. Loss Conditions

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

1. Abandonment

There can be no abandonment of any property to us.

2. Appraisal

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

- a. Pay its chosen appraiser; and

- b. Bear the other expenses of the appraisal and umpire equally.

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

3. Duties In The Event Of Loss Or Damage

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

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

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

4. Loss Payment

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

We will determine the value of lost or damaged property, or the cost of its repair or replacement, in accordance with the applicable terms of the Valuation Condition in this Coverage Form or any applicable provision which amends or supersedes the Valuation Condition.

- b. The cost to repair, rebuild or replace does not include the increased cost attributable to enforcement of or compliance with any ordinance or law regulating the construction, use or repair of any property.
- c. We will give notice of our intentions within 30 days after we receive the sworn proof of loss.
- d. We will not pay you more than your financial interest in the Covered Property.
- e. We may adjust losses with the owners of lost or damaged property if other than you. If we pay the owners, such payments will satisfy your claims against us for the owners' property. We will not pay the owners more than their financial interest in the Covered Property.
- f. We may elect to defend you against suits arising from claims of owners of property. We will do this at our expense.

- g. We will pay for covered loss or damage to Covered Property within 30 days after we receive the sworn proof of loss, if you have complied with all of the terms of this Coverage Part, and:

- (1) We have reached agreement with you on the amount of loss; or
- (2) An appraisal award has been made.

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

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

5. Recovered Property

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

6. Unit-owner's Insurance

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

7. Vacancy

a. Description Of Terms

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

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

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

(i) Rented to a lessee or sublessee and used by the lessee or sublessee to conduct its customary operations; and/or

(ii) Used by the building owner to conduct customary operations.

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

b. Vacancy Provisions

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

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

(a) Vandalism;

(b) Sprinkler leakage, unless you have protected the system against freezing;

(c) Building glass breakage;

(d) Water damage;

(e) Theft; or

(f) Attempted theft.

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

8. Valuation

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

a. At actual cash value as of the time of loss or damage, except as provided in b. and c. below.

b. If the Limit of Insurance for Building satisfies the Additional Condition, Coinsurance, and the cost to repair or replace the damaged building property is \$2,500 or less, we will pay the cost of building repairs or replacement.

The cost of building repairs or replacement does not include the increased cost attributable to enforcement of or compliance with any ordinance or law regulating the construction, use or repair of any property. However, the following property will be valued at the actual cash value, even when attached to the building:

(1) Awnings or floor coverings;

(2) Appliances for refrigerating, ventilating, cooking, dishwashing or laundering; or

(3) Outdoor equipment or furniture.

c. Glass at the cost of replacement with safety-glazing material if required by law.

9. Waiver Of Rights Of Recovery

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

F. Additional Conditions

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

1. Coinsurance

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

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

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

(1) Multiply the value of Covered Property at the time of loss by the Coinsurance percentage;

(2) Divide the Limit of Insurance of the property by the figure determined in Step (1);

(3) Multiply the total amount of loss, before the application of any deductible, by the figure determined in Step (2); and

(4) Subtract the deductible from the figure determined in Step (3).

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

Example 1 (Underinsurance)

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

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

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

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

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

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

Example 2 (Adequate Insurance)

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

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

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

Example 3

When: The value of the property is:
 Building at Location 1: \$ 75,000
 Building at Location 2: \$ 100,000
 Personal Property at Location 2: \$ 75,000
\$ 250,000

The Coinsurance percentage for it is: 90%

The Limit of Insurance for Buildings and Personal Property at Locations 1 and 2 is: \$ 180,000

The Deductible is: \$ 1,000

The amount of loss is:
 Building at Location 2: \$ 30,000

Personal Property at Location 2: \$ 20,000
\$ 50,000

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

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

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

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

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

2. Mortgageholders

- The term mortgageholder includes trustee.
- 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.
- The mortgageholder has the right to receive loss payment even if the mortgageholder has started foreclosure or similar action on the building or structure.
- If we deny your claim because of your acts or because you have failed to comply with the terms of this Coverage Part, the mortgageholder will still have the right to receive loss payment if the mortgageholder:
 - (1) Pays any premium due under this Coverage Part at our request if you have failed to do so;

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

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

- e. If we pay the mortgageholder for any loss or damage and deny payment to you because of your acts or because you have failed to comply with the terms of this Coverage Part:

- (1) The mortgageholder's rights under the mortgage will be transferred to us to the extent of the amount we pay; and
- (2) The mortgageholder's right to recover the full amount of the mortgageholder's claim will not be impaired.

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

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

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

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

G. Optional Coverages

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

1. Agreed Value

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

- b. If the expiration date for this Optional Coverage shown in the Declarations is not extended, the Additional Condition, Coinsurance, is reinstated and this Optional Coverage expires.

- c. The terms of this Optional Coverage apply only to loss or damage that occurs:

- (1) On or after the effective date of this Optional Coverage; and
- (2) Before the Agreed Value expiration date shown in the Declarations or the policy expiration date, whichever occurs first.

2. Inflation Guard

- a. The Limit of Insurance for property to which this Optional Coverage applies will automatically increase by the annual percentage shown in the Declarations.

- b. The amount of increase will be:

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

Example

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

3. Replacement Cost

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

Under the terms of this Replacement Cost Optional Coverage, personal property owned indivisibly by all unit-owners, and the property covered under Paragraph **A.1.a.(6)** of this Coverage Form, are not considered to be the personal property of others.

- c. You may make a claim for loss or damage covered by this insurance on an actual cash value basis instead of on a replacement cost basis. In the event you elect to have loss or damage settled on an actual cash value basis, you may still make a claim for the additional coverage this Optional Coverage provides if you notify us of your intent to do so within 180 days after the loss or damage.
- d. We will not pay on a replacement cost basis for any loss or damage:
 - (1) Until the lost or damaged property is actually repaired or replaced; and
 - (2) Unless the repair or replacement is made as soon as reasonably possible after the loss or damage.
- e. We will not pay more for loss or damage on a replacement cost basis than the least of (1), (2) or (3), subject to f. below:
 - (1) The Limit of Insurance applicable to the lost or damaged property;
 - (2) The cost to replace the lost or damaged property with other property:
 - (a) Of comparable material and quality; and
 - (b) Used for the same purpose; or
 - (3) The amount actually spent that is necessary to repair or replace the lost or damaged property.

If a building is rebuilt at a new premises, the cost described in **e.(2)** above is limited to the cost which would have been incurred if the building had been rebuilt at the original premises.

- f. The cost of repair or replacement does not include the increased cost attributable to enforcement of or compliance with any ordinance or law regulating the construction, use or repair of any property.

4. Extension Of Replacement Cost To Personal Property Of Others

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

- b. With respect to replacement cost on the personal property of others, the following limitation applies:

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

H. Definitions

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

CAUSES OF LOSS – SPECIAL FORM

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

A. Covered Causes Of Loss

When Special is shown in the Declarations, Covered Causes of Loss means direct physical loss unless the loss is excluded or limited in this policy.

B. Exclusions

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

a. Ordinance Or Law

The enforcement of or compliance with any ordinance or law:

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

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

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

b. Earth Movement

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

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

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

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

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

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

With respect to coverage for Volcanic Action as set forth in (5)(a), (5)(b) and (5)(c), all volcanic eruptions that occur within any 168-hour period will constitute a single occurrence.

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

This exclusion applies regardless of whether any of the above, in Paragraphs (1) through (5), is caused by an act of nature or is otherwise caused.

c. Governmental Action

Seizure or destruction of property by order of governmental authority.

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

d. Nuclear Hazard

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

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

e. Utility Services

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

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

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

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

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

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

f. War And Military Action

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

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

g. Water

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

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

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

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

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

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

This exclusion does not apply:

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

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

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

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

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

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

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

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

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

- (5) Nesting or infestation, or discharge or release of waste products or secretions, by insects, birds, rodents or other animals.

- (6) Mechanical breakdown, including rupture or bursting caused by centrifugal force. But if mechanical breakdown results in elevator collision, we will pay for the loss or damage caused by that elevator collision.

- (7) The following causes of loss to personal property:

- (a) Dampness or dryness of atmosphere;
- (b) Changes in or extremes of temperature; or
- (c) Marring or scratching.

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

- e. Explosion of steam boilers, steam pipes, steam engines or steam turbines owned or leased by you, or operated under your control. But if explosion of steam boilers, steam pipes, steam engines or steam turbines results in fire or combustion explosion, we will pay for the loss or damage caused by that fire or combustion explosion. We will also pay for loss or damage caused by or resulting from the explosion of gases or fuel within the furnace of any fired vessel or within the flues or passages through which the gases of combustion pass.**
- f. Continuous or repeated seepage or leakage of water, or the presence or condensation of humidity, moisture or vapor, that occurs over a period of 14 days or more.**
- g. Water, other liquids, powder or molten material that leaks or flows from plumbing, heating, air conditioning or other equipment (except fire protective systems) caused by or resulting from freezing, unless:**
 - (1) You do your best to maintain heat in the building or structure; or

(2) You drain the equipment and shut off the supply if the heat is not maintained.

- h. Dishonest or criminal act (including theft) by you, any of your partners, members, officers, managers, employees (including temporary employees and leased workers), directors, trustees or authorized representatives, whether acting alone or in collusion with each other or with any other party; or theft by any person to whom you entrust the property for any purpose, whether acting alone or in collusion with any other party.

This exclusion:

- (1) Applies whether or not an act occurs during your normal hours of operation;
 - (2) Does not apply to acts of destruction by your employees (including temporary employees and leased workers) or authorized representatives; but theft by your employees (including temporary employees and leased workers) or authorized representatives is not covered.
- i. Voluntary parting with any property by you or anyone else to whom you have entrusted the property if induced to do so by any fraudulent scheme, trick, device or false pretense.
- j. Rain, snow, ice or sleet to personal property in the open.
- k. Collapse, including any of the following conditions of property or any part of the property:
- (1) An abrupt falling down or caving in;
 - (2) Loss of structural integrity, including separation of parts of the property or property in danger of falling down or caving in; or
 - (3) Any cracking, bulging, sagging, bending, leaning, settling, shrinkage or expansion as such condition relates to (1) or (2) above.

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

This exclusion, k., does not apply:

- (a) To the extent that coverage is provided under the Additional Coverage, Collapse; or

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

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

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

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

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

3. We will not pay for loss or damage caused by or resulting from any of the following, 3.a. through 3.c. But if an excluded cause of loss that is listed in 3.a. through 3.c. results in a Covered Cause of Loss, we will pay for the loss or damage caused by that Covered Cause of Loss.

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

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

- c. Faulty, inadequate or defective:

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

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

4. Special Exclusions

The following provisions apply only to the specified Coverage Forms:

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

We will not pay for:

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

This exclusion does not apply to Extra Expense.

- (2) Any loss caused by or resulting from direct physical loss or damage to radio or television antennas (including satellite dishes) and their lead-in wiring, masts or towers.
- (3) Any increase of loss caused by or resulting from:
 - (a) Delay in rebuilding, repairing or replacing the property or resuming "operations", due to interference at the location of the rebuilding, repair or replacement by strikers or other persons; or
 - (b) Suspension, lapse or cancellation of any license, lease or contract. But if the suspension, lapse or cancellation is directly caused by the "suspension" of "operations", we will cover such loss that affects your Business Income during the "period of restoration" and any extension of the "period of restoration" in accordance with the terms of the Extended Business Income Additional Coverage and the Extended Period Of Indemnity Optional Coverage or any variation of these.
- (4) Any Extra Expense caused by or resulting from suspension, lapse or cancellation of any license, lease or contract beyond the "period of restoration".

- (5) Any other consequential loss.

b. Leasehold Interest Coverage Form

- (1) Paragraph B.1.a., Ordinance Or Law, does not apply to insurance under this Coverage Form.
- (2) We will not pay for any loss caused by:
 - (a) Your cancelling the lease;
 - (b) The suspension, lapse or cancellation of any license; or
 - (c) Any other consequential loss.

c. Legal Liability Coverage Form

- (1) The following exclusions do not apply to insurance under this Coverage Form:
 - (a) Paragraph B.1.a. Ordinance Or Law;
 - (b) Paragraph B.1.c. Governmental Action;
 - (c) Paragraph B.1.d. Nuclear Hazard;
 - (d) Paragraph B.1.e. Utility Services; and
 - (e) Paragraph B.1.f. War And Military Action.
- (2) The following additional exclusions apply to insurance under this Coverage Form:
 - (a) **Contractual Liability**
We will not defend any claim or "suit", or pay damages that you are legally liable to pay, solely by reason of your assumption of liability in a contract or agreement. But this exclusion does not apply to a written lease agreement in which you have assumed liability for building damage resulting from an actual or attempted burglary or robbery, provided that:
 - (i) Your assumption of liability was executed prior to the accident; and
 - (ii) The building is Covered Property under this Coverage Form.
 - (b) **Nuclear Hazard**
We will not defend any claim or "suit", or pay any damages, loss, expense or obligation, resulting from nuclear reaction or radiation, or radioactive contamination, however caused.

5. Additional Exclusion

The following provisions apply only to the specified property:

Loss Or Damage To Products

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

C. Limitations

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

1. We will not pay for loss of or damage to property, as described and limited in this section. In addition, we will not pay for any loss that is a consequence of loss or damage as described and limited in this section.

- a. Steam boilers, steam pipes, steam engines or steam turbines caused by or resulting from any condition or event inside such equipment. But we will pay for loss of or damage to such equipment caused by or resulting from an explosion of gases or fuel within the furnace of any fired vessel or within the flues or passages through which the gases of combustion pass.

- b. Hot water boilers or other water heating equipment caused by or resulting from any condition or event inside such boilers or equipment, other than an explosion.

- c. The interior of any building or structure, or to personal property in the building or structure, caused by or resulting from rain, snow, sleet, ice, sand or dust, whether driven by wind or not, unless:

- (1) The building or structure first sustains damage by a Covered Cause of Loss to its roof or walls through which the rain, snow, sleet, ice, sand or dust enters; or
- (2) The loss or damage is caused by or results from thawing of snow, sleet or ice on the building or structure.

- d. Building materials and supplies not attached as part of the building or structure, caused by or resulting from theft.

However, this limitation does not apply to:

- (1) Building materials and supplies held for sale by you, unless they are insured under the Builders Risk Coverage Form; or
- (2) Business Income Coverage or Extra Expense Coverage.

- e. Property that is missing, where the only evidence of the loss or damage is a shortage disclosed on taking inventory, or other instances where there is no physical evidence to show what happened to the property.

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

- g. Lawns, trees, shrubs or plants which are part of a vegetated roof, caused by or resulting from:

- (1) Dampness or dryness of atmosphere or of soil supporting the vegetation;
- (2) Changes in or extremes of temperature;
- (3) Disease;
- (4) Frost or hail; or
- (5) Rain, snow, ice or sleet.

2. We will not pay for loss of or damage to the following types of property unless caused by the "specified causes of loss" or building glass breakage:

- a. Animals, and then only if they are killed or their destruction is made necessary.

- b. Fragile articles such as statuary, marbles, chinaware and porcelains, if broken. This restriction does not apply to:

- (1) Glass; or
- (2) Containers of property held for sale.

- c. Builders' machinery, tools and equipment owned by you or entrusted to you, provided such property is Covered Property.

However, this limitation does not apply:

- (1) If the property is located on or within 100 feet of the described premises, unless the premises is insured under the Builders Risk Coverage Form; or
- (2) To Business Income Coverage or to Extra Expense Coverage.

3. The special limit shown for each category, **a.** through **d.**, is the total limit for loss of or damage to all property in that category. The special limit applies to any one occurrence of theft, regardless of the types or number of articles that are lost or damaged in that occurrence. The special limits are (unless a higher limit is shown in the Declarations):

- a. \$2,500 for furs, fur garments and garments trimmed with fur.
- b. \$2,500 for jewelry, watches, watch movements, jewels, pearls, precious and semiprecious stones, bullion, gold, silver, platinum and other precious alloys or metals. This limit does not apply to jewelry and watches worth \$100 or less per item.
- c. \$2,500 for patterns, dies, molds and forms.
- d. \$250 for stamps, tickets, including lottery tickets held for sale, and letters of credit.

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

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

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

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

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

D. Additional Coverage – Collapse

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

1. For the purpose of this Additional Coverage, Collapse, abrupt collapse means an abrupt falling down or caving in of a building or any part of a building with the result that the building or part of the building cannot be occupied for its intended purpose.

2. We will pay for direct physical loss or damage to Covered Property, caused by abrupt collapse of a building or any part of a building that is insured under this Coverage Form or that contains Covered Property insured under this Coverage Form, if such collapse is caused by one or more of the following:

- a. Building decay that is hidden from view, unless the presence of such decay is known to an insured prior to collapse;
- b. Insect or vermin damage that is hidden from view, unless the presence of such damage is known to an insured prior to collapse;
- c. Use of defective material or methods in construction, remodeling or renovation if the abrupt collapse occurs during the course of the construction, remodeling or renovation.
- d. Use of defective material or methods in construction, remodeling or renovation if the abrupt collapse occurs after the construction, remodeling or renovation is complete, but only if the collapse is caused in part by:

- (1) A cause of loss listed in **2.a.** or **2.b.**;
- (2) One or more of the "specified causes of loss";
- (3) Breakage of building glass;
- (4) Weight of people or personal property; or
- (5) Weight of rain that collects on a roof.

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

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

4. With respect to the following property:

- a. Outdoor radio or television antennas (including satellite dishes) and their lead-in wiring, masts or towers;

- b. Awnings, gutters and downspouts;
 - c. Yard fixtures;
 - d. Outdoor swimming pools;
 - e. Fences;
 - f. Piers, wharves and docks;
 - g. Beach or diving platforms or appurtenances;
 - h. Retaining walls; and
 - i. Walks, roadways and other paved surfaces;
- if an abrupt collapse is caused by a cause of loss listed in **2.a.** through **2.d.**, we will pay for loss or damage to that property only if:
- (1) Such loss or damage is a direct result of the abrupt collapse of a building insured under this Coverage Form; and
 - (2) The property is Covered Property under this Coverage Form.
5. If personal property abruptly falls down or caves in and such collapse is **not** the result of abrupt collapse of a building, we will pay for loss or damage to Covered Property caused by such collapse of personal property only if:
- a. The collapse of personal property was caused by a cause of loss listed in **2.a.** through **2.d.**;
 - b. The personal property which collapses is inside a building; and
 - c. The property which collapses is not of a kind listed in **4.**, regardless of whether that kind of property is considered to be personal property or real property.
- The coverage stated in this Paragraph **5.** does not apply to personal property if marring and/or scratching is the only damage to that personal property caused by the collapse.
6. This Additional Coverage, Collapse, does not apply to personal property that has not abruptly fallen down or caved in, even if the personal property shows evidence of cracking, bulging, sagging, bending, leaning, settling, shrinkage or expansion.
7. This Additional Coverage, Collapse, will not increase the Limits of Insurance provided in this Coverage Part.
8. The term Covered Cause of Loss includes the Additional Coverage, Collapse, as described and limited in **D.1.** through **D.7.**

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

1. The coverage described in **E.2.** and **E.6.** only applies when the "fungus", wet or dry rot or bacteria are the result of one or more of the following causes that occur during the policy period and only if all reasonable means were used to save and preserve the property from further damage at the time of and after that occurrence:

- a. A "specified cause of loss" other than fire or lightning; or
- b. Flood, if the Flood Coverage Endorsement applies to the affected premises.

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

2. We will pay for loss or damage by "fungus", wet or dry rot or bacteria. As used in this Limited Coverage, the term loss or damage means:

- a. Direct physical loss or damage to Covered Property caused by "fungus", wet or dry rot or bacteria, including the cost of removal of the "fungus", wet or dry rot or bacteria;
- b. The cost to tear out and replace any part of the building or other property as needed to gain access to the "fungus", wet or dry rot or bacteria; and
- c. The cost of testing performed after removal, repair, replacement or restoration of the damaged property is completed, provided there is a reason to believe that "fungus", wet or dry rot or bacteria are present.

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

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

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

5. The terms of this Limited Coverage do not increase or reduce the coverage provided under Paragraph F.2. (Water Damage, Other Liquids, Powder Or Molten Material Damage) of this Causes Of Loss form or under the Additional Coverage, Collapse.

6. The following, 6.a. or 6.b., applies only if Business Income and/or Extra Expense Coverage applies to the described premises and only if the "suspension" of "operations" satisfies all terms and conditions of the applicable Business Income and/or Extra Expense Coverage Form:

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

F. Additional Coverage Extensions

1. Property In Transit

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

- a. You may extend the insurance provided by this Coverage Part to apply to your personal property (other than property in the care, custody or control of your salespersons) in transit more than 100 feet from the described premises. Property must be in or on a motor vehicle you own, lease or operate while between points in the coverage territory.
- b. Loss or damage must be caused by or result from one of the following causes of loss:

- (1) Fire, lightning, explosion, windstorm or hail, riot or civil commotion, or vandalism.
- (2) Vehicle collision, upset or overturn. Collision means accidental contact of your vehicle with another vehicle or object. It does not mean your vehicle's contact with the roadbed.
- (3) Theft of an entire bale, case or package by forced entry into a securely locked body or compartment of the vehicle. There must be visible marks of the forced entry.

- c. The most we will pay for loss or damage under this Extension is \$5,000.

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

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

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

3. Glass

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

- b. We will pay for expenses incurred to remove or replace obstructions when repairing or replacing glass that is part of a building. This does not include removing or replacing window displays.

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

G. Definitions

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

c. Water damage means:

- (1) Accidental discharge or leakage of water or steam as the direct result of the breaking apart or cracking of a plumbing, heating, air conditioning or other system or appliance (other than a sump system including its related equipment and parts), that is located on the described premises and contains water or steam; and
- (2) Accidental discharge or leakage of water or waterborne material as the direct result of the breaking apart or cracking of a water or sewer pipe that is located off the described premises and is part of a municipal potable water supply system or municipal sanitary sewer system, if the breakage or cracking is caused by wear and tear.

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

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

POLICY NUMBER:

COMMERCIAL PROPERTY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**SOUTH CAROLINA CHANGES – VALUATION**

This endorsement modifies insurance provided under the following:

BUILDING AND PERSONAL PROPERTY COVERAGE FORM
 BUILDERS' RISK COVERAGE FORM
 CONDOMINIUM ASSOCIATION COVERAGE FORM
 STANDARD PROPERTY POLICY

SCHEDULE*

Prem. No.	Bldg. No.	Agreed Value of Buildings	Total Amount of Insurance to be Carried

- A. When this endorsement is attached to the STANDARD PROPERTY POLICY CP 00 99 the term Coverage Part in this endorsement is replaced by the term Policy.
- B. The following is added to VALUATION Loss Condition:
1. For loss or damage to buildings caused by or resulting from fire or lightning, you and we agree that:
 - a. The value of buildings described in this Coverage Part; and
 - b. The total amount of insurance to be carried on the buildings, including this Coverage Part; are the amounts shown in the Schedule.
 2. The following applies to the Builders' Risk Coverage Form, or the Builders' Risk Changes – Standard Property Policy, if applicable:
 The Agreed Value of Buildings represents the value of the building when it is completed.

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

POLICY NUMBER:

COMMERCIAL PROPERTY
CP 03 20 10 92

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

MULTIPLE DEDUCTIBLE FORM

(FIXED DOLLAR DEDUCTIBLES)

This endorsement modifies insurance provided under the following:

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

SCHEDULE *

The Deductibles applicable to any one occurrence are shown below:

Prem. No.	Bldg. No.	Deductible	Covered Causes of Loss **

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

** For each deductible listed in this Schedule, enter the number corresponding to the Covered Cause(s) of Loss to which that deductible applies (or enter the description):

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

The following is added to the DEDUCTIBLE section:

- A. In the event that loss or damage occurs to Covered Property at more than one building location as a result of one occurrence, the largest applicable deductible for that Covered Cause of Loss, shown in the Schedule above or in the Declarations, will apply.
- B. The terms of this endorsement do not apply to any Earthquake Deductible or to any Windstorm or Hail Percentage Deductible provided elsewhere in this policy.

POLICY NUMBER:

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL COVERAGE ENDORSEMENT
(WIND DRIVEN PRECIPITATION)**

This endorsement modifies insurance provided under the following:

CAUSE OF LOSS - SPECIAL FORM

Sublimit:

The sublimit for WIND DRIVEN PRECIPITATION is included within the Limit of Insurance shown in the Declarations as applicable to the covered Building Property. This sublimit does not increase the Limit of Insurance.

Sublimit: \$

Covered Cause of Loss:

The term Covered Cause of Loss includes the Additional Coverage - Wind Driven Precipitation as described and limited below.

We will pay for direct physical loss or damage to the interior of any building or structure, or to personal property in the building or structure caused by or resulting from rain, snow, sleet or ice, when driven by wind.

Additional Exclusions:

We will not pay for loss or damage caused directly or indirectly by any of the following:

- (1) Sand or dust, unless the building or structure first sustains damage by a Covered Cause of Loss to its roof or walls through which the sand or dust enters;
- (2) Thawing of snow, sleet or ice on the building or structure; or
- (3) Faulty, inadequate or defective:
 - (a) Planning, zoning, development, surveying, siting;
 - (b) Design, specifications, workmanship, repair, construction, renovation, remodeling, grading, compaction;
 - (c) Materials used in repair, construction, renovation or remodeling; or
 - (d) Maintenance;

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

ELECTRONICALLY FILED - 2018 Feb 14 4:31 PM - Horry - COMMON PLEAS - CASE#2016CP2604464

ENDORSEMENT

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement, effective at 12:01 A.M. forms a part of

Policy No. Issued to:

By:

ADDITIONAL COVERAGE - EQUIPMENT BREAKDOWN

In consideration of the premium charged, it is hereby understood and agreed that the following amendments to the policy shall apply:

A. The following is added as an Additional Coverage:

Additional Coverage-- Equipment Breakdown

The term Covered Cause of Loss includes the Additional Coverage - Equipment Breakdown as described below.

1. We will pay for direct physical loss or damage to Covered Property that is the direct result of an "accident". As used in this Additional Coverage - Equipment Breakdown endorsement, "accident" means a fortuitous event that causes direct physical damage to "covered equipment" as a result of any of the following:
 - a. mechanical breakdown, including rupture or bursting caused by centrifugal force;
 - b. artificially generated electrical current, including electric arcing, that disturbs electrical devices, appliances, or wires;
 - c. explosion of steam boilers, steam pipes, steam engines, or steam turbines owned or leased by you, or operated under your control;
 - d. 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
 - e. 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.
2. Unless otherwise shown in the Additional Coverage - Equipment Breakdown Schedule, we will pay for the following when they are the direct result of an "accident". The limits for these coverages are within, and do not increase, the Equipment Breakdown limit.
 - a. **Expediting Expenses**
With respect to your damaged Covered Property, unless otherwise shown in the Additional Coverage - Equipment Breakdown Schedule, we will pay up to \$25,000 of the reasonable additional expense to:
 - (1) make temporary repairs; and
 - (2) expedite permanent repairs or permanent replacement.

- b. **Hazardous Substances**
 We will pay for the "additional expenses" to repair or replace Covered Property because of contamination by a "hazardous substance". This includes the "additional expense" to clean up or dispose of such property. As used in this Section 2.b., "additional expense" means those amounts beyond what would have been payable under this Equipment Breakdown Coverage had no "hazardous substance" been involved. Unless otherwise shown in the Additional Coverage - Equipment Breakdown Schedule, \$25,000 is the most we will pay under this Section 2.b., including actual loss of Business Income you sustain and necessary Extra Expense you incur, if shown as covered.
- c. **Spoilage**
 (1) We will pay for physical damage to "perishable goods" that occurs as a result of an "accident".
 (2) We will pay for physical damage to "perishable goods" due to contamination from the release of refrigerant, including but not limited to ammonia;
 (3) We will also pay any necessary expenses you incur to reduce the amount of loss under the coverage provided by this Section 2.c., to the extent that such expenses do not exceed the amount of loss that otherwise would have been payable under this coverage.
 (4) If you are unable to replace the "perishable goods" before their 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", less discounts and expenses you otherwise would have incurred. Otherwise our payment will be determined in accordance with the Valuation condition.
 (5) Unless otherwise shown in the Additional Coverage - Equipment Breakdown Schedule, the most we will pay for loss, damage, or expense under this Section 2.c. is \$25,000.
- d. **Computer Equipment**
 We will pay for loss, damage, or expense resulting from an "accident" to "computer equipment".
 Unless otherwise shown in the Additional Coverage - Equipment Breakdown Schedule, the most we will pay for loss, damage, or expense under this Section 2.d., including actual loss of Business Income you sustain and necessary Extra Expense you incur, if shown as covered, is \$25,000. "Computer equipment" used primarily to control or operate "covered equipment" is not subject to this limit.
- e. **Data Restoration**
 We will pay for your reasonable and necessary cost to research, replace, and restore "data" lost as a result of an "accident".
 Unless otherwise shown in the Additional Coverage - Equipment Breakdown Schedule, the most we will pay for loss, damage, or expense under this Section 2.e., including actual loss of Business Income you sustain and necessary Extra Expense you incur, if shown as covered, is \$25,000.

f. Service Interruption Coverage

- (1) Any insurance provided for Business Income, Extra Expense, or Spoilage is extended to apply to your loss, damage, or expense caused by an "accident" to equipment that is owned by a utility, landlord, or other supplier with whom you have a contract to supply you with any of the following services: electrical power, waste disposal, air conditioning, refrigeration, heating, natural gas, compressed air, water, steam, internet access, telecommunications services, wide area networks, or data transmission. The equipment must meet the definition of "covered equipment".
- (2) Unless otherwise shown in the Additional Coverage - Equipment Breakdown Schedule, Service Interruption coverage will not apply unless the failure or disruption of service exceeds 24 hours immediately following the "accident".
- (3) The most we will pay under this Section 2.f. is either the Business Income, Extra Expense limit or Spoilage limit that applies to the coverage provided under this Additional Coverage - Equipment Breakdown endorsement if such loss, damage, or expense is covered under the policy, except that if a Service Interruption limit is shown in the Additional Coverage - Equipment Breakdown Schedule, that limit will apply to the Business Income and Extra Expense loss under this Section 2.f.

g. Business Income and Extra Expense

Any insurance provided under this policy for Business Income or Extra Expense is extended to the coverages provided by this Additional Coverage - Equipment Breakdown endorsement. Unless a different limit is shown in the Additional Coverage - Equipment Breakdown Schedule, the most we will pay for loss of Business Income you sustain or necessary Extra Expense you incur is the limit shown in the Declarations for such coverages.

3. EXCLUSIONS

All exclusions in the Causes of Loss provision(s) of the Coverage Forms attached to and forming a part of this policy apply, except as modified below and to the extent that coverage is specifically provided by this Additional Coverage - Equipment Breakdown endorsement.

a. Notwithstanding any other exclusions in the applicable Covered Causes of Loss form, if an "accident" results from the following, we will pay for such resulting loss, damage, or expense:

- (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) Settling, cracking, shrinking or expansion; or
- (4) Dampness or dryness of atmosphere, changes or extremes in temperature or marring or scratching.

b. As respects any Water and/or Flood exclusion included in this policy, the following is added:

However, if electrical "covered equipment" requires drying out because of Water and/or Flood, we will pay for the direct expenses of such drying out subject to the applicable Limit of Insurance and deductible for Building or Business Personal Property, whichever applies.

- c. We will not pay under this Additional Coverage – Equipment Breakdown endorsement for loss, damage, or expense caused by or resulting from:
 - (1) your failure to use all reasonable means to protect Covered Property from damage following an “accident”;
 - (2) any defect, programming error, programming limitation, computer virus, malicious code, loss of “data”, loss of access, loss of use, loss of functionality, or other condition within or involving “data” or “media” of any kind; or
 - (3) any of the following tests:
 - 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.
- d. With respect to Service Interruption coverage, we will also not pay for an “accident” caused by or resulting from: fire; lightning; windstorm or hail; explosion (except as specifically provided in A.1.c. above); smoke; aircraft or vehicles; riot or civil commotion; vandalism; sprinkler leakage; falling objects; weight of snow, ice, or sleet; freezing; collapse; flood or earth movement.
- e. With respect to Business Income, Extra Expense, and Service Interruption coverages, we will also not pay for:
 - (1) loss caused by your failure to use due diligence and dispatch and all reasonable means to resume business; or
 - (2) any increase in loss resulting from an agreement between you and your customer or supplier.
- f. 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”: Any mold, fungus, mildew, or yeast, including any spores or toxins produced by or emanating from such mold, fungus, mildew, or yeast. This includes, but is not limited to, costs arising from clean up, removal, or abatement of such mold, fungus, mildew, yeast, spores, or toxins. However, this exclusion does not apply to spoilage of personal property that is “perishable goods”, to the extent that spoilage is covered under the Spoilage coverage provided by this Additional Coverage – Equipment Breakdown endorsement.
- g. We will not pay under this Additional Coverage – Equipment Breakdown endorsement for any loss or damage to animals.

4. DEFINITIONS

The following definitions are added as respects this Additional Coverage - Equipment Breakdown endorsement:

- a. “Boilers and Vessels” means:
 - (1) Any boiler, including attached steam, condensate, and feedwater piping; and
 - (2) Any fired or unfired pressure vessel subject to vacuum or internal pressure other than the static pressure of its contents.

This term does not appear elsewhere in this Additional Coverage - Equipment Breakdown endorsement, but may appear in the Additional Coverage – Equipment Breakdown Schedule.

- b. "Computer equipment" means Covered Property that is electronic computer or other data processing equipment, including "media" and peripherals used in conjunction with such equipment.
- c. "Covered Equipment"
 - (1) "Covered equipment" means, unless otherwise specified in the Additional Coverage – Equipment Breakdown Schedule, Covered Property:
 - (a) that generates, transmits, or utilizes energy, including electronic communications and data processing equipment; or
 - (b) which, during normal usage, operates under vacuum or pressure, other than the weight of its contents.
 - (2) None of the following is "covered equipment":
 - (a) structure, foundation, cabinet, compartment, or air supported structure or building;
 - (b) insulating or refractory material;
 - (c) sewer piping, underground vessels or piping, or piping forming a part of a sprinkler system;
 - (d) water piping other than boiler feedwater piping, boiler condensate return piping, or water piping forming a part of a refrigerating or air conditioning system;
 - (e) "vehicle" or any equipment mounted on a "vehicle";
 - (f) satellite, spacecraft, or any equipment mounted on a satellite or spacecraft;
 - (g) dragline, excavation, or construction equipment; or
 - (h) equipment manufactured by you for sale.
- d. "Data" means information or instructions stored in digital code capable of being processed by machinery.
- e. "Hazardous substance" means any substance that is hazardous to health or has been declared to be hazardous to health by a governmental agency.
- f. "Media" means material on which "data" is recorded, such as magnetic tapes, hard disks, optical disks, or floppy disks.
- g. "One accident" means: If an initial "accident" causes other "accidents", all will be considered "one accident". All "accidents" resulting from the same event will be considered "one accident".
- h. "Perishable Goods" means personal property maintained under controlled conditions for its preservation, and susceptible to loss or damage if the controlled conditions change.
- i. "Production Machinery" means any machine or apparatus that processes or produces a product intended for eventual sale. However, "production machinery" does not mean any fired or unfired pressure vessel other than a cylinder containing a movable plunger or piston.

This term does not appear elsewhere in this Additional Coverage - Equipment Breakdown endorsement, but may appear in the Additional Coverage – Equipment Breakdown Schedule.

- j. "Vehicle" means, as respects this Additional Coverage - Equipment Breakdown endorsement only, 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".
- B. The policy to which this Additional Coverage - Equipment Breakdown endorsement is attached is modified as follows.

The definitions stated above also apply to this section B.

1. DEDUCTIBLE

The deductible in the Declarations applies unless a separate Equipment Breakdown deductible is shown in the Additional Coverage - Equipment Breakdown Schedule. When a separate Equipment Breakdown deductible is shown in the Additional Coverage - Equipment Breakdown Schedule, the following applies:

Only as regards Equipment Breakdown Coverage, the DEDUCTIBLE provision of the policy is deleted and replaced with the following:

- a. Deductibles for Each Coverage
 - (1) Unless the Additional Coverage - Equipment Breakdown Schedule indicates that your deductible is combined for all coverages, multiple deductibles may apply to any "one accident".
 - (2) We will not pay for loss, damage, or expense under any coverage until the amount of the covered loss, damage, or expense exceeds the deductible amount indicated for that coverage in the Additional Coverage - Equipment Breakdown Schedule. We will then pay the amount of loss, damage, or expense in excess of the applicable deductible amount, subject to the applicable limit.
 - (3) If deductibles vary by type of "covered equipment" and more than one type of "covered equipment" is involved in any "one accident", only the highest deductible for each coverage will apply.
- b. Direct and Indirect Coverages
 - (1) Direct Coverages Deductibles and Indirect Coverages Deductibles may be indicated in the Additional Coverage - Equipment Breakdown Schedule.
 - (2) Unless more specifically indicated in the Additional Coverage - Equipment Breakdown Schedule:
 - (a) Indirect Coverages Deductibles apply to Business Income and Extra Expense loss as defined in any Business Income coverage that is part of this policy; and
 - (b) Direct Coverages Deductibles apply to all remaining loss, damage, or expense covered by this Additional Coverage - Equipment Breakdown endorsement.

c. Application of Deductibles

(1) Dollar Deductibles

We will not pay for loss, damage, or expense resulting from any "one accident" until the amount of loss, damage, or expense exceeds the applicable Deductible shown in the Additional Coverage - Equipment Breakdown Schedule. We will then pay the amount of loss, damage, or expense in excess of the applicable Deductible or Deductibles, up to the applicable Limit of Insurance.

(2) Time Deductible

If a time deductible is shown in the Additional Coverage - Equipment Breakdown Schedule, we will not be liable for any loss occurring during the specified number of hours or days immediately following the "accident". If a time deductible is expressed in days, each day shall mean twenty-four consecutive hours.

(3) Multiple of Average Daily Value (ADV)

If a deductible is expressed as a number times ADV, that amount will be calculated as follows:

The ADV (Average Daily Value) will be the Business Income (as defined in any Business Income coverage that is part of this policy) that would have been earned during the period of interruption of business had no "accident" occurred, divided by the number of working days in that period. No reduction shall be made for the Business Income not being earned, or in the number of working days, because of the "accident" or any other scheduled or unscheduled shutdowns during the period of interruption. The ADV applies to the Business Income value of the entire location, whether or not the loss affects the entire location. If more than one location is included in the valuation of the loss, the ADV will be the combined value of all affected locations. For purposes of this calculation, the period of interruption may not extend beyond the period of restoration.

The number indicated in the Additional Coverage - Equipment Breakdown Schedule will be multiplied by the ADV as determined above. The result shall be used as the applicable deductible.

(4) Percentage of Loss Deductibles

If a deductible is expressed as a percentage of loss, we will not be liable for the indicated percentage of the gross amount of loss, damage, or expense (prior to any applicable deductible or coinsurance) insured under the applicable coverage. If the dollar amount of such percentage is less than the indicated minimum deductible, the minimum deductible will be the applicable deductible.

2. CONDITIONS

The following conditions are added as respects this Additional Coverage - Equipment Breakdown endorsement:

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" 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 Additional Coverage – Equipment Breakdown 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.

c. Environmental, Safety, and Efficiency Improvements

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

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

d. Coinsurance Additional Coverage – Equipment Breakdown

If a coinsurance percentage is shown in the Additional Coverage – Equipment Breakdown Schedule for specified coverages, the following condition applies:

We will not pay for the full amount of your loss if the applicable limit is less than the product of the specified coinsurance percentage times the value of the property subject to the coverage at the time of the loss. Instead, we will determine what percentage this calculated product is compared to the applicable limit and apply that percentage to the gross amount of loss. We will then subtract the applicable deductible. The most we will pay is the lesser of the resulting amount, or the applicable limit. We will not pay for the remainder of the loss. Coinsurance applies separately to each insured location.

The most we will pay for loss, damage, or expense under this Additional Coverage – Equipment Breakdown endorsement arising from any "one accident" is the applicable Limit of Insurance in the Declarations unless otherwise shown in the Additional Coverage – Equipment Breakdown Schedule. Coverage provided under this Additional Coverage – Equipment Breakdown endorsement does not provide an additional amount of insurance.

ENDORSEMENT

This endorsement, effective at 12:01 A.M. forms a part of

Policy No. Issued to:

By:

CONDOMINIUM AMENDATORY ENDORSEMENT

This endorsement modifies insurance provided under the following:

CONDOMINIUM ASSOCIATION COVERAGE FORM**CAUSES OF LOSS – SPECIAL FORM**

If any coverage provided by this endorsement is afforded elsewhere in this policy by any other coverage form or endorsement, then applicable limit of insurance shall be the highest single limit provided by this policy. Coverage as respects the coverage form or endorsement that provides a lesser limit for any such duplicate coverage shall not apply.

The **CONDOMINIUM ASSOCIATION COVERAGE FORM** is amended as follows:

- I. Subparagraph **e. Increased Cost of Construction** of Paragraph **4. Additional Coverages** (Section **A. Coverage**) is deleted in its entirety and replaced with the following:
 - e. **Ordinance or Law**
 - (1) This Additional Coverage applies only to buildings to which the Replacement Cost Coverage applies.
 - (2) In the event of damage by a Covered Cause of Loss to a building that is Covered Property, we will pay the increased costs incurred to comply with enforcement of an ordinance or law that requires you to demolish and clear the site of undamaged parts of the building, subject to the limitations stated in e.(4) through e.(10) of this Additional Coverage.
 - (3) In the event of damage by a Covered Cause of Loss to a building that is Covered Property, we will pay the increased costs incurred to comply with enforcement of an ordinance or law in the course of repair, rebuilding or replacement of damaged parts of that property, subject to the limitations stated in e.(4) through e.(10) of this Additional Coverage.
 - (4) The ordinance or law referred to in e.(2) and e.(3) 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.
 - (5) 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.
 - (6) Under this Additional Coverage, we will not pay for:
 - (a) The enforcement of any ordinance or law which requires demolition, repair, replacement, reconstruction, remodeling or remediation of property due to contamination by "pollutants" or due to the presence, growth, proliferation, spread or any activity of "fungus", wet or dry rot or bacteria; or

- (b) Any costs associated with the enforcement of an ordinance or law which requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants", "fungus", wet or dry rot or bacteria.
- (7) The most we will pay under this Additional Coverage, for each described building insured under this Coverage Form, is the lesser of 10% of the Limit of Insurance applicable to that building or \$250,000. The amount payable under this Additional Coverage is in addition to the Limits of Insurance.
- (8) With respect to this Additional Coverage:
 - (a) We will not pay for the Increased Cost of Construction:
 - (i) Until the property is actually repaired or replaced, at the same or another premises; and
 - (ii) Unless the repairs or replacement are made as soon as reasonably possible after the loss or damage, not to exceed two years. We may extend this period in writing during the two years.
 - (b) If the building is repaired or replaced at the same premises, or if you elect to rebuild at another premises, the most we will pay for the Increased Cost of Construction, subject to the provisions of e.(7) of this Additional Coverage, is the increased cost of construction at the same premises.
 - (c) If the ordinance or law requires relocation to another premises, the most we will pay for the Increased Cost of Construction, subject to the provisions of e.(7) of this Additional Coverage, is the increased cost of construction at the new premises.
- (9) 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.
- (10) The costs addressed in the Loss Payment and Valuation Conditions, and the Replacement Cost Optional Coverage, in this Coverage Form, do not include the increased cost attributable to enforcement of an ordinance or law. The amount payable under this Additional Coverage, as stated in e.(7) of this Additional Coverage, is not subject to such limitation.

II. Subparagraph g. is added to Paragraph 4. **Additional Coverages** (Section A. Coverage) as follows:

g. Unscheduled Business Personal Property

We will pay for direct physical loss or damage to your unscheduled business personal property. The most we will pay under this Additional Coverage is \$25,000 in any one occurrence.

The amount payable under this Additional Coverage is in addition to the Limits of Insurance.

III. Subparagraph e. **Outdoor Property** of Paragraph 5. **Coverage Extensions** (Section A. Coverage) is deleted in its entirety and replaced with the following:

e. Outdoor Property

You may extend the insurance provided by this Coverage Form to apply to your outdoor fences, radio and television antennas (including satellite dishes), signs (other than signs attached to buildings), trees, shrubs and plants, (other than "stock" of trees, shrubs or plants), including debris removal expense.

The most we will pay for loss or damage under this Extension is \$25,000, but not more than \$250 for any one tree, shrub or plant. These limits apply to any one occurrence, regardless of the types or number of items lost or damaged in that occurrence. The deductible(s) applicable to your business personal property shall apply to this Coverage Extension.

IV. Subparagraph g. is added to Paragraph 5. **Coverage Extensions** (Section A. Coverages) as follows:

g. Loss of Condominium Association Fees and Extra Expense

You may extend the insurance provided by this Coverage Form to apply to loss of "condominium association fees" sustained by you resulting directly from the necessary untenability of any unit, during the "period of restoration", caused by direct physical loss or damage to Covered Property by a Covered Cause of Loss. However, the loss of "condominium association fees" does not include "loss assessment charges".

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You may extend the insurance provided by this Coverage Form to apply to "extra expense" you incur as a result of direct physical loss or damage to Covered Property by a Covered Cause of Loss.

As used in this Subparagraph **5.g.**, these terms are defined as follows:

- (1) "Condominium association fees" mean fees payable to you in accordance with the Condominium Association agreement between you and a unit owner, and in accordance with the terms of your association by-laws.
- (2) "Extra expense" means necessary expenses you incur during the "period of restoration" that you would not have incurred if there had been no direct physical loss or damage to property. Coverage pertains to expenses (other than the expense to repair or replace property) which are incurred to:
 - (a) To continue "operations" at the described premises or at replacement premises or temporary locations, including relocation expenses and costs to equip and operate the replacement location or temporary location; or
 - (b) To meet contractual obligations to any property manager.
- (3) "Loss assessment charges" mean assessments charged to all unit owners, by the Condominium Association, due to additional costs incurred by the association as a result of physical loss or damage to Covered Property.
- a. "Period of restoration" means the period of time that:
 - a. Begins on the date of direct physical loss or damage to Covered Property by a Covered Cause of Loss; and
 - b. Ends on the date when Covered Property should be repaired, rebuilt or replaced with reasonable speed and similar quality;

The most we will pay under this Coverage Extension is \$50,000 in any one occurrence. The amount payable under this Coverage Extension is in addition to the Limits of Insurance.

V. Subparagraph h. is added to Paragraph 5. Coverage Extensions (Section A. Coverages) as follows:

a. Coverage for Loss to Portion of Undamaged Building

This Coverage Extension applies only to buildings to which the Replacement Cost Coverage applies.

In the event of damage by a Covered Cause of Loss to a building that is Covered Property, we will pay for the loss in value of the undamaged portion of the damaged building as a consequence of enforcement of an ordinance or law that requires demolition of undamaged parts of the same building.

VI. Subparagraph a. of Paragraph 4. Loss Payment (Section E. Loss Conditions) is deleted in its entirety and replaced with the following:

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

We will determine the value of lost or damaged property, or the cost of its repair or replacement, in accordance with the applicable terms of the Valuation Condition in this Coverage Form or any applicable provision which amends or supersedes the Valuation Condition.

In addition, in the event of a covered loss hereunder, we will pay the actual adjusted amount of loss, less applicable deductible(s), but in no event more than the total stated value for all covered property plus 15% of such value, less applicable deductible(s).

For purposes of this subparagraph **4.a.**, the total stated value shall be the amount(s) corresponding to each premises involved in the loss, shown as Limits of Insurance in the Declarations, or on the latest

Statement of Values on file with us. In the event of any loss in excess of the total stated value, you shall pay us the annual additional premium calculated for such excess amount at the policy rate for that premises.

The **CAUSES OF LOSS – SPECIAL FORM** is amended as follows:

Paragraph 4. is added to Section F. **Additional Coverage Extensions** as follows:

4. Sewer Back-Up

We will pay for direct physical loss or damage to Covered Property solely caused by water or other materials that back up, overflow, or discharge from a sewer or drain.

However, we will not pay for any loss or damage caused by water or other materials that back up, overflow, or discharge from a sewer or drain when such back up, overflow, or discharge is caused by any flood. As used in this Paragraph **4.Sewer Back-Up**, "flood" means accumulation of surface water, mudslide, mudflow, waves, tides, tidal waves and the rising, including overflowing or breaking of boundaries of any body of water, all whether wind driven or not.

The most we will pay for loss or damage by back up, overflow, or discharge from a sewer or drain is \$50,000 in any one occurrence. Payments under this Additional Coverage Extension will not increase the applicable Limit of Insurance shown in the Declarations.

All other terms and conditions remain the same.

Authorized Representative

POLICY NUMBER:

COMMERCIAL PROPERTY
CP 03 25 06 07

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

NAMED STORM PERCENTAGE DEDUCTIBLE

This endorsement modifies insurance provided under the following:

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

SCHEDULE

Premises Number	Building Number	Named Storm Deductible Percentage – Enter 1%, 2% Or 5%
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.		

A Named Storm is a storm system that has been identified as a tropical storm or hurricane and assigned a name by the National Hurricane Center or the Central Pacific Hurricane Center of the National Weather Service (hereafter referred to as NHC and CPHC). Under the terms of this endorsement, a Named Storm begins at the time a Watch or Warning is issued by the NHC or CPHC for the area in which the affected premises are located, and ends 72 hours after the termination of the last Watch or Warning issued for that area by the NHC or CPHC.

The Named Storm Deductible, as shown in the Schedule and set forth in this endorsement, applies to covered loss or damage caused directly or indirectly by each Named Storm. If there is covered loss or damage from a windstorm that is not a Named Storm, the applicable deductible is the same deductible that applies to Fire, unless a different deductible is stated elsewhere in this policy for such loss or damage.

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

As used in this endorsement, the terms "specific insurance" and "blanket insurance" have the following meanings: Specific insurance covers each item of insurance (for example, each building or personal property in a building) under a separate Limit of Insurance. Blanket insurance covers two or more items of insurance (for example, a building and personal property in that building, or two buildings) under a single Limit of Insurance. Items of insurance and corresponding Limit(s) of Insurance are shown in the Declarations.

ELECTRONICALLY FILED - 2018 Feb 14 4:31 PM - Horry - COMMON PLEAS - CASE#2016CP2604464

NAMED STORM DEDUCTIBLE CALCULATIONS

A. Calculation Of The Deductible – All Policies

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

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

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

B. Calculation Of The Deductible – Specific Insurance Other Than Builders' Risk

1. Property Not Subject To Value Reporting Forms

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

2. Property Subject To Value Reporting Forms

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

However:

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

C. Calculation Of The Deductible – Blanket Insurance Other Than Builders' Risk

1. Property Not Subject To Value Reporting Forms

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

2. Property Subject To Value Reporting Forms

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

D. Calculation Of The Deductible – Builders' Risk Insurance

1. Builders' Risk Other Than Reporting Form

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

2. Builders' Risk Reporting Form

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

However:

- a. If the most recent Report of Values shows less than the actual cash value(s) of the property on the report date, we will determine the deductible amount as a percentage of the actual cash value(s) as of the report date.

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

EXAMPLES – APPLICATION OF DEDUCTIBLE

EXAMPLE #1 – SPECIFIC INSURANCE (B.1.)

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

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

The **actual** Limit of Insurance on the damaged building is \$70,000.

The Deductible is 1%.

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

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

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

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

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

EXAMPLE #2 – SPECIFIC INSURANCE (B.1.)

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

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

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

The Deductible is 2%.

BUILDING

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

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

PERSONAL PROPERTY

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

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

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

EXAMPLE #3 – BLANKET INSURANCE (C.1.)

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

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

The **actual** Blanket Limit of Insurance covering Buildings #1, #2, and #3, shown in the Declarations, is \$1,800,000 (therefore no Coinsurance penalty).

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

The Deductible is 2%.

BUILDING #1

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

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

BUILDING #2

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

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

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

EXAMPLE #4 – BLANKET INSURANCE (C.1.)

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

The Coinsurance percentage shown in the Declarations is 90%; the minimum Blanket Limit of Insurance needed to meet the coinsurance requirement is \$1,350,000 (90% of \$1,500,000).

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

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

The Deductible is 5%.

BUILDING

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

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

PERSONAL PROPERTY

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

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

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

THIS ENDORSEMENT EFFECTIVE 12:01 AM ON

FORMS A PART OF

POLICY NO.

ISSUED TO:

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**PROPERTY COVERAGE FORM - EARTH MOVEMENT ENDORSEMENT**

This endorsement modifies insurance provided under the following:

PROPERTY COVERAGE FORM

The policy is hereby amended as follows:

Section VI. EXCLUSIONS, Paragraph S. **Earth Movement**, is deleted in its entirety.Section IV. SUPPLEMENTAL COVERAGES, Paragraph B. **The Limits of Insurance for the following Supplemental Coverages are WITHIN the Limits of Insurance for Covered Property indicated in the Declarations**, is amended to include the following:**Earth Movement**

- a. We shall pay for direct physical loss or damage to Covered Property caused by **earth movement** at the premises described in the Declarations, except:
 - 1. Coverage shall not apply to any unnamed location, unscheduled location or **Covered Property Not On Premises**, whether described in the Declarations or not;
 - 2. Coverage shall not apply to any location described in the schedule below.
- b. We shall be liable for any loss occurring for a period of up to seventy two (72) consecutive hours after the expiration of this Policy provided that the first **earth movement** damage commences prior to the expiration of this Policy.
- c. All loss arising from **earth movement** during a continuous period of seventy two (72) consecutive hours shall be considered one loss.

ANNUAL AGGREGATE LIMITThe total for all **earth movement** loss or damage in any one policy year shall not exceed:\$ _____ in the aggregate at all premises for which SUPPLEMENTAL COVERAGES, **Earth Movement**, is provided by this endorsement.**DEDUCTIBLE**\$ _____ deductible each loss by **earth movement**.**SCHEDULE**Prem. No. Bldg. No.**_____(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)**

All other terms, conditions, and exclusions shall remain unchanged.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

NUCLEAR ENERGY LIABILITY EXCLUSION ENDORSEMENT

(Broad Form)

This endorsement modifies insurance provided under the following:

COMMERCIAL AUTOMOBILE COVERAGE PART
COMMERCIAL GENERAL LIABILITY COVERAGE PART
FARM COVERAGE PART
LIQUOR LIABILITY COVERAGE PART
MEDICAL PROFESSIONAL LIABILITY COVERAGE PART
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART
POLLUTION LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART
RAILROAD PROTECTIVE LIABILITY COVERAGE PART
UNDERGROUND STORAGE TANK POLICY

1. The insurance does not apply:

A. Under any 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 Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters, Nuclear Insurance Association of Canada or any of their successors, 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 any Medical Payments 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 any Liability Coverage, to "bodily injury" or "property damage" resulting from "hazardous properties" of "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.

2. As used in this endorsement:

"Hazardous properties" includes radioactive, toxic or explosive properties.

"Nuclear material" means "source material", "special nuclear material" or "by-product material".

"Source material", "special nuclear material", and "by-product material" have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof.

"Spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a "nuclear reactor".

"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 the first two paragraphs of the definition of "nuclear facility".

"Nuclear facility" means:

- (a)** Any "nuclear reactor";
- (b)** Any equipment or device designed or used for **(1)** separating the isotopes of uranium or plutonium, **(2)** processing or utilizing "spent fuel", or **(3)** handling, processing or packaging "waste";

- (c)** Any equipment or device used for 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.

"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.

"Property damage" includes all forms of radioactive contamination of property.

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

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

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as a Named Insured under this policy. The words "we", "us" and "our" refer to the company providing this insurance.

The word "insured" means any person or organization qualifying as such under Section II – Who Is An Insured.

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

SECTION I – COVERAGES

COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY

1. Insuring Agreement

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" 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" or "property damage" to which this insurance does not apply. We may, at our discretion, investigate any "occurrence" and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section III – Limits Of Insurance; and
- (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments – Coverages A and B.

- b. This insurance applies to "bodily injury" and "property damage" only if:

- (1) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";

- (2) The "bodily injury" or "property damage" occurs during the policy period; and

- (3) Prior to the policy period, no insured listed under Paragraph 1. of Section II – 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 prior to 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 1. of Section II – 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 that "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 1. of Section II – 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".

2. Exclusions

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 attorneys' 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 attorneys' 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 even if the claims against any insured allege negligence or other wrongdoing in:

- (a) The supervision, hiring, employment, training or monitoring of others by that insured; or
- (b) Providing or failing to provide transportation with respect to any person that may be under the influence of alcohol;

if the "occurrence" which caused the "bodily injury" or "property damage", involved that which is described in Paragraph (1), (2) or (3) above.

However, this exclusion applies only if you are in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages. For the purposes of this exclusion, permitting a person to bring alcoholic beverages on your premises, for consumption on your premises, whether or not a fee is charged or a license is required for such activity, is not by itself considered the business of 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 whether the insured may be liable as an employer or in any other capacity and to any obligation to share damages with or repay someone else who must pay damages because of 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 against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that 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 26 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 law where it is licensed or principally garaged; or
- (b) The operation of any of the machinery or equipment listed in Paragraph **f.(2)** or **f.(3)** of the definition of "mobile 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" or "property damage", however caused, arising, directly or indirectly, out of:

- (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.

j. 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 contractors or subcontractors working directly or indirectly on your behalf are 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 Section III – Limits Of Insurance.

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".

k. Damage To Your Product

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

l. 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.

m. 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.

n. 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.

o. Personal And Advertising Injury

"Bodily injury" arising out of "personal and advertising injury".

p. 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.

However, this exclusion does not apply to liability for damages because of "bodily injury".

As used in this exclusion, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

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

"Bodily injury" or "property damage" 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 Transactions 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. through n. 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 limit of insurance applies to this coverage as described in Section III – Limits Of Insurance.

COVERAGE B – PERSONAL AND ADVERTISING INJURY LIABILITY

1. Insuring Agreement

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "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 "personal and advertising injury" to which this insurance does not apply. We may, at our discretion, investigate 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 Section III – Limits Of Insurance; 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 under Coverages A or B or medical expenses under Coverage C.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments – Coverages A and B.

- b. This insurance applies 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.

2. Exclusions

This insurance does not apply to:

a. Knowing Violation Of Rights Of Another

"Personal and advertising injury" caused by or at the direction of the insured with the knowledge that the act would violate the rights of another and would inflict "personal and advertising injury".

b. Material Published With Knowledge Of Falsity

"Personal and advertising injury" arising out of oral or written publication, in any manner, of material, if done by or at the direction of the insured with knowledge of its falsity.

c. Material Published Prior To Policy Period

"Personal and advertising injury" arising out of oral or written publication, in any manner, of material whose first publication took place before the beginning of the policy period.

d. Criminal Acts

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

e. Contractual Liability

"Personal and advertising injury" 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.

f. Breach Of Contract

"Personal and advertising injury" arising out of a breach of contract, except an implied contract to use another's advertising idea in your "advertisement".

g. Quality Or Performance Of Goods – Failure To Conform To Statements

"Personal and advertising injury" arising out of the failure of goods, products or services to conform with any statement of quality or performance made in your "advertisement".

h. Wrong Description Of Prices

"Personal and advertising injury" arising out of the wrong description of the price of goods, products or services stated in your "advertisement".

i. Infringement Of Copyright, Patent, Trademark Or Trade Secret

"Personal and advertising injury" 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.

j. Insureds In Media And Internet Type Businesses

"Personal and advertising injury" committed by an insured whose business is:

- (1) Advertising, broadcasting, publishing or telecasting;
- (2) Designing or determining content of web sites for others; or
- (3) An Internet search, access, content or service provider.

However, this exclusion does not apply to Paragraphs 14.a., b. and c. of "personal and advertising injury" under the Definitions section.

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

k. Electronic Chatrooms Or Bulletin Boards

"Personal and advertising injury" arising out of an electronic chatroom or bulletin board the insured hosts, owns, or over which the insured exercises control.

l. Unauthorized Use Of Another's Name Or Product

"Personal and advertising injury" arising out of the unauthorized use of another's name or product in your e-mail address, domain name or metatag, or any other similar tactics to mislead another's potential customers.

m. Pollution

"Personal and advertising injury" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" at any time.

n. Pollution-related

Any loss, cost or expense arising out of any:

- (1) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
- (2) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

o. War

"Personal and advertising injury", however caused, arising, directly or indirectly, out of:

- (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.

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

"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 Transactions 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.

COVERAGE C – MEDICAL PAYMENTS**1. Insuring Agreement**

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 applicable limit of insurance. 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.

2. Exclusions

We will not pay expenses for "bodily injury":

a. Any Insured

To any insured, except "volunteer workers".

b. Hired Person

To a person hired to do work for or on behalf of any insured or a tenant of any insured.

c. Injury On Normally Occupied Premises

To a person injured on that part of premises you own or rent that the person normally occupies.

d. Workers' Compensation And Similar Laws

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. Athletics Activities

To a person injured while practicing, instructing or participating in any physical exercises or games, sports, or athletic contests.

f. Products-Completed Operations Hazard

Included within the "products-completed operations hazard".

g. Coverage A Exclusions

Excluded under Coverage A.

SUPPLEMENTARY PAYMENTS – COVERAGES A AND B

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 the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.
- c. The cost of bonds to release attachments, but only for bond amounts within the applicable 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 applicable 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 the applicable limit of insurance.

These payments will not reduce the limits of insurance.

- 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:
 - (1) Agrees in writing to:
 - (a) Cooperate with us in the investigation, settlement or defense of the "suit";
 - (b) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "suit";
 - (c) Notify any other insurer whose coverage is available to the indemnitee; and
 - (d) Cooperate with us with respect to coordinating other applicable insurance available to the indemnitee; and
 - (2) Provides us with written authorization to:
 - (a) Obtain records and other information related to the "suit"; and
 - (b) Conduct and control the defense of the indemnitee in such "suit".

So long as the above conditions 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 2.b.(2) of Section I – Coverage A – Bodily Injury And Property Damage 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 we have used up the applicable limit of insurance in the payment of judgments or settlements or the conditions set forth above, or the terms of the agreement described in Paragraph f. above, are no longer met.

SECTION II – 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), 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" or "volunteer worker" as a consequence of Paragraph (1)(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 (1)(a) or (b) above; 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 Coverage Part.

3. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:

- a. Coverage under this provision is afforded only until the 90th day after you acquire or form the organization or the end of the policy period, whichever is earlier;
- b. Coverage A does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and
- c. Coverage B does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

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.

SECTION III – LIMITS OF INSURANCE

1. The Limits of Insurance 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 General Aggregate Limit is the most we will pay for the sum of:

- a. Medical expenses under Coverage C;
- b. Damages under Coverage A, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard"; and
- c. Damages under Coverage B.

3. The Products-Completed Operations Aggregate Limit is the most we will pay under Coverage **A** for damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard".
4. Subject to Paragraph **2.** above, the Personal And Advertising Injury Limit is the most we will pay under Coverage **B** for the sum of all damages because of all "personal and advertising injury" sustained by any one person or organization.
5. Subject to Paragraph **2.** or **3.** above, whichever applies, the Each Occurrence Limit is the most we will pay for the sum of:
 - a. Damages under Coverage **A**; and
 - b. Medical expenses under Coverage **C** because of all "bodily injury" and "property damage" arising out of any one "occurrence".
6. Subject to Paragraph **5.** above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage **A** for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, while rented to you or temporarily occupied by you with permission of the owner.
7. Subject to Paragraph **5.** above, the Medical Expense Limit is the most we will pay under Coverage **C** for all medical expenses because of "bodily injury" sustained by any one person.

The Limits of Insurance of this Coverage Part 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.

SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS

1. Bankruptcy

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

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 which 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 Coverage Part:

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

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured; but we will not be liable for damages that are not payable under the terms of this Coverage Part 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. Other Insurance

If other valid and collectible insurance is available to the insured for a loss we cover under Coverages **A** or **B** of this Coverage Part, our obligations are limited as follows:

a. Primary Insurance

This insurance is primary except when Paragraph **b.** below applies. If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in Paragraph **c.** below.

b. Excess Insurance

(1) This insurance is excess over:

- (a) Any of the other insurance, whether primary, excess, contingent or on any other basis:
 - (i) That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";
 - (ii) That is Fire insurance for premises rented to you or temporarily occupied by you with permission of the owner;
 - (iii) That is insurance purchased by you to cover your liability as a tenant for "property damage" to premises rented to you or temporarily occupied by you with permission of the owner; or
 - (iv) If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion **g.** of Section **I** – Coverage **A** – Bodily Injury And Property Damage Liability.
- (b) Any other primary insurance available to you covering liability for damages arising out of the premises or operations, or the products and completed operations, for which you have been added as an additional insured.

(2) When this insurance is excess, we will have no duty under Coverages **A** or **B** to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". 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.

(3) When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

- (a) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
- (b) The total of all deductible and self-insured amounts under all that other insurance.

(4) We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

c. Method Of Sharing

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

5. Premium Audit

- a. We will compute all premiums for this Coverage Part in accordance with our rules and rates.
- b. Premium shown in this Coverage Part 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 and retrospective 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.
- c. 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.

6. Representations

By accepting this policy, you agree:

- a. The statements in the Declarations are accurate and complete;

- b. Those statements are based upon representations you made to us; and
- c. We have issued this policy in reliance upon your representations.

7. Separation Of Insureds

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Part 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.

8. Transfer Of Rights Of Recovery Against Others To Us

If the insured has rights to recover all or part of any payment we have made under this Coverage Part, 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.

9. When We Do Not Renew

If we decide not to renew this Coverage Part, we will mail or deliver to the first Named Insured shown in the Declarations written notice of the nonrenewal not less than 30 days before the expiration date.

If notice is mailed, proof of mailing will be sufficient proof of notice.

SECTION V – 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 web sites, only that part of a web site 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 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 the repair, replacement, adjustment or removal of "your product" or "your work" or 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, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and 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 (2) above and supervisory, inspection, architectural or engineering activities.

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, maintained primarily to provide mobility to 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 any land vehicles that are subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged. Land vehicles subject to a compulsory or financial responsibility law or other motor vehicle insurance law are considered "autos".

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 a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

- 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;
- (2) The existence of tools, uninstalled equipment or abandoned or unused materials; or
- (3) Products or operations for which the classification, listed in the Declarations or in a policy Schedule, states that products-completed operations are subject to the General Aggregate Limit.

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 or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

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.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**EXCLUSION – ACCESS OR DISCLOSURE OF
CONFIDENTIAL OR PERSONAL INFORMATION AND
DATA-RELATED LIABILITY – WITH
LIMITED BODILY INJURY EXCEPTION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

- A. Exclusion 2.p. of Section I – Coverage A – Bodily Injury And Property Damage Liability is replaced by the following:

2. Exclusions

This insurance does not apply to:

- p. **Access Or Disclosure Of Confidential Or Personal Information And Data-related Liability**

Damages arising out of:

- (1) 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) 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.

However, unless Paragraph (1) above applies, this exclusion does not apply to damages because of "bodily injury".

As used in this exclusion, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

- B. The following is added to Paragraph 2. **Exclusions of Section I – Coverage B – Personal And Advertising Injury Liability:**

2. Exclusions

This insurance does not apply to:

Access Or Disclosure Of Confidential Or Personal Information

"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.

COMMERCIAL GENERAL LIABILITY
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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EMPLOYMENT-RELATED PRACTICES EXCLUSION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. The following exclusion is added to Paragraph 2., Exclusions of Section I – Coverage A – Bodily Injury And Property Damage Liability:

This insurance does not apply to:

"Bodily 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" to that person at whom any of the employment-related practices described in Paragraphs (a), (b), or (c) above is directed.

This exclusion applies:

- (1) Whether the injury-causing event described in Paragraphs (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.

B. The following exclusion is added to Paragraph 2., Exclusions of Section I – Coverage B – Personal And Advertising Injury Liability:

This insurance does not apply to:

"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 "personal and advertising injury" to that person at whom any of the employment-related practices described in Paragraphs (a), (b), or (c) above is directed.

This exclusion applies:

- (1) Whether the injury-causing event described in Paragraphs (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.

COMMERCIAL GENERAL LIABILITY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED – CONDOMINIUM
UNIT OWNERS**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART:

WHO IS AN INSURED (Section II) is amended to include as an insured each individual unit owner of the insured condominium, but only with respect to liability arising out of the ownership, maintenance or repair of that portion of the premises which is not reserved for that unit owner's exclusive use or occupancy.

ENDORSEMENT

This endorsement, effective 12:01 A. M. forms a part of Policy

No. issued to by

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

FUNGUS EXCLUSION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

This insurance does not apply to "bodily injury", "property damage", "personal and advertising injury", or any other loss, cost or expense, including but not limited to, losses, costs or expenses related to, arising from or associated with clean-up, remediation, containment, removal or abatement, caused directly or indirectly, in whole or in part, by:

- a. Any "fungus(i)", "mold(s)", mildew or yeast, or
- b. Any "spore(s)" or toxins created or produced by or emanating from such "fungus(i)", "mold(s)", mildew or yeast, or
- c. Any substance, vapor, gas, or other emission or organic or inorganic body or substance produced by or arising out of any "fungus(i)", "mold(s)", mildew or yeast, or
- d. Any material, product, building component, building or structure, or any concentration of moisture, water or other liquid within such material, product, building component, building or structure, that contains, harbors, nurtures or acts as a medium for any "fungus(i)", "mold(s)", mildew, yeast, or "spore(s)" or toxins emanating therefrom,

regardless of any other cause, event, material, product and/or building component that contributed concurrently or in any sequence to that "bodily injury", "property damage", "personal and advertising injury", loss, cost or expense.

For the purposes of this exclusion, the following definitions are added to the Policy:

"Fungus(i)" includes, but is not limited to, any of the plants or organisms belonging to the major group fungi, lacking chlorophyll, and including "mold(s)", rusts, mildews, smuts, and mushrooms.

"Mold(s)" includes, but is not limited to, any superficial growth produced on damp or decaying organic matter or on living organisms, and "fungi" that produce molds.

"Spore(s)" means any dormant or reproductive body produced by or arising or emanating out of any "fungus(i)", "mold(s)", mildew, plants, organisms or microorganisms.

It is understood that to the extent any coverage may otherwise be provided under this policy or any of its other endorsements, the provisions of this exclusion will supercede.

ALL OTHER TERMS AND CONDITIONS SHALL REMAIN UNCHANGED.

Authorized Representative

The endorsement, effective

A.M.

forms part of

Policy No.

issued to

ENDORSEMENT

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ASBESTOS EXCLUSION ENDORSEMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

This insurance does not apply to:

1. The manufacture of, mining of, use of, sale of, installation of, removal of, distribution of or exposure to asbestos, asbestos products, asbestos fibers or asbestos dust;
2. Any obligation of the **insured** to indemnify any party because of damages arising out of such **bodily injury, property damage, personal injury or advertising injury as** a result of the manufacture of, mining of, use of, sale of, installation of, removal of, distribution of or exposure to asbestos, asbestos products, fibers or asbestos dust;
3. Any obligation to defend any **claim or suit** against the **insured** alleging **bodily injury, property damage, personal injury or advertising injury** and seeking damages, if such **claim or suit** arises from **bodily injury, property damage, personal injury or advertising injury** as a result of the manufacture of, mining of, use of, sales of, installation of, removal of, distribution of or exposure to asbestos, asbestos, asbestos products, asbestos or asbestos dust; or
4. To any loss, cost, expense, fine, penalty arising out of any of the foregoing items 1., 2., or 3.

All other terms and conditions of this Policy remain unchanged.

Authorized Representative

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69928 (3/98)

ENDORSEMENT

This endorsement, effective 12:01 A.M. _____ forms a part of
policy No. _____ issued to
by

THIS ENDORSEMENT CHANGES THE POLICY, PLEASE READ CAREFULLY.

TOTAL LEAD EXCLUSION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART COMMERCIAL UMBRELLA LIABILITY

This insurance does not apply to any "bodily injury", "property damage", "personal injury", or "advertising injury", or any other loss, cost or expense arising out of the presence, ingestion, inhalation, or absorption of or exposure to lead in any form or products containing lead.

AUTHORIZED REPRESENTATIVE

POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

HIRED AUTO AND NON-OWNED AUTO LIABILITY

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART.

SCHEDULE

Insurance is provided only with respect to those coverages for which a specific premium charge is shown:

Coverage	Additional Premium
Non-Ownership Liability	\$
Hired Auto Liability	\$

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

HIRED AUTO LIABILITY

The insurance provided under COVERAGE A (Section I) applies to "bodily injury" or "property damage" arising out of the maintenance or use of a "hired auto" by you or your employees in the course of your business.

With respect to the insurance provided by this endorsement:

1. The exclusions, under COVERAGE A (Section I), other than exclusions a, b, d, f and i and the Nuclear Liability Exclusion (Broad Form) are deleted and replaced by the following:

a. "Bodily injury:"

- (1) To an employee of the insured arising out of and in the course of employment by the insured; or
- (2) To the spouse, child, parent, brother or sister of that employee as a consequence of (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 injury.

This exclusion does not apply to:

- (1) Liability assumed by the insured under an "insured contract;" or
- (2) "Bodily injury" arising out of and in the course of domestic employment by the insured unless benefits for such injury are in whole or in part either payable or required to be provided under any workers compensation law.

b. "Property damage" to:

- (1) Property owned or being transported by, or rented or loaned to the insured; or
- (2) Property in the care, custody or control of the insured.

2. WHO IS AN INSURED (Section II) is replaced by the following:

Each of the following is an insured under this insurance to the extent set forth below:

- a. You;
- b. Any other person using a "hired auto" with your permission;
- c. With respect to a "non-owned auto," any partner or executive officer of yours, but only while such "non-owned auto" is being used in your business.
- d. Any other person or organization, but only with respect to their liability because of acts or omissions of an insured under a., b., or c. above.

None of the following is an insured:

- a. Any person engaged in the business of his or her employer with respect to "bodily injury" to any co-employee of such person injured in the course of employment;
- b. Any partner or executive officer with respect to any "auto" owned by such partner or officer or a member of his or her household;
- c. Any person while employed in or otherwise engaged in duties in connection with an "auto business," other than an "auto business" you operate;

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- d. The owner or lessee (of whom you are a sublessee) of a "hired auto" or the owner of a "non-owned auto" or any agent or employee of any such owner or lessee;
- e. Any person or organization with respect to the conduct of any current or past partnership or joint venture that is not shown as a Named Insured in the Declarations.

NON-OWNED AUTO LIABILITY

The insurance provided under COVERAGE A (Section I) applies to "bodily injury" or "property damage" arising out of the use of any "non-owned auto" in your business by any person other than you.

The following additional definitions apply:

"Auto business" means the business or occupation of selling, repairing, servicing, storing or parking "autos."

"Hired auto" means any "auto" you lease, hire, or borrow. This does not include any "auto" you lease, hire, or borrow from any of your employees or members of their households, or from any partner or executive officer of yours.

"Non-owned auto" means any "auto" you do not own, lease, hire or borrow which is used in connection with your business. However, if you are a partnership a "non-owned auto" does not include any auto owned by any partner.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

TOTAL POLLUTION EXCLUSION WITH A HOSTILE FIRE EXCEPTION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

Exclusion f. under Paragraph 2., **Exclusions of Section I – Coverage A – Bodily Injury And Property Damage 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.

This exclusion does not apply to "bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire" unless that "hostile fire" occurred or originated:

- (a) At 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; or

- (b) At 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 to test for, monitor, clean up, remove, contain, treat, detoxify, 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".



CLAIM REPORTING PROCEDURES

All liability and property claims for the NSM's Coastal Condominium Program regardless of severity or location should be reported to the YORK Claims Intake Center. The YORK Claims Intake Center is ready to accept new losses and provides different options for you to submit new loss reports:

Phone: 877-371-9774

Fax: 800-393-8104

Email: 1305LXCC@YORKRSG.COM

**Mail: York Risk Services Group, Inc
Attn. OSC
P.O. Box 183188
Columbus, OH 43218-3188**

To expedite the handling of your new claim, the following information must be provided when reporting a claim:

1. York Client Code: **1305**
2. Named Insured: _____
3. Policy Number: _____

The York Claims Intake Center will review all claims notices upon receipt and assign to the York handling branch office. A claim acknowledgement will then be transmitted to the designated individuals advising of the York claim number and the adjuster assigned to the claim.

Key Contacts:

OSC Contact: Jacob A. Banker, Assistant Vice President
Email: Jacob.Banker@Yorkrsg.com
Contact #: (916) 580-2453

York Contact: Dena Noerr, AVP Client Services
Email: dena.noerr@Yorkrsg.com
Contact #: (609)948-5816

**POLICYHOLDER DISCLOSURE
NOTICE OF TERRORISM INSURANCE COVERAGE
(COVERAGE INCLUDED)**

Coverage for acts of terrorism is included in your policy. You are hereby notified that under the Terrorism Risk Insurance Act, as amended in 2015, the definition of act of terrorism has changed. As defined in Section 102(1) of the Act: The term "act of terrorism" means any act that is certified by the Secretary of the Treasury - in consultation with the Secretary of Homeland Security, and the Attorney General of the United States - to be an act of terrorism; to be a violent act or an act that is dangerous to human life, property, or infrastructure; to have resulted in damage within the United States, or outside the United States in the case of certain air carriers or vessels or the premises of a United States mission; and to have been committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion. Under your coverage, any losses resulting from certified acts of terrorism may be partially reimbursed by the United States Government under a formula established by the Terrorism Risk Insurance Act, as amended. However, your policy may contain other exclusions which might affect your coverage, such as an exclusion for nuclear events. Under the formula, the United States Government generally reimburses 85% through 2015; 84% beginning January 1, 2016; 83% beginning January 1, 2017; 82% beginning January 1, 2018; 81% beginning January 1, 2019 and 80% beginning on January 1, 2020 of covered terrorism losses exceeding the statutorily established deductible paid by the insurance company providing the coverage. The Terrorism Risk Insurance Act, as amended, contains a \$100 billion cap that limits U.S. Government reimbursement as well as insurers' liability for losses resulting from certified acts of terrorism when the amount of such losses exceeds \$100 billion in any one calendar year. If the aggregate insured losses for all insurers exceed \$100 billion, your coverage may be reduced.

The portion of your annual premium that is attributable to coverage for acts of terrorism is \$ 1,485, and does not include any charges for the portion of losses covered by the United States Government under the Act.

Policy No. . 41-LX-067045193-1
Named Insured TILGHMAN BEACH & RACQUET CLUB

96556 (1/15)
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POLICYHOLDER NOTICE

Thank you for purchasing insurance from a member company of American International Group, Inc. (AIG). The AIG member companies generally pay compensation to brokers and independent agents, and may have paid compensation in connection with your policy. You can review and obtain information about the nature and range of compensation paid by AIG member companies to brokers and independent agents in the United States by visiting our website at www.aig.com/producercompensation or by calling 1-800-706-3102.

Common Policy Declarations

RENEWAL DECLARATION

NAME AND ADDRESS OF PRODUCER NSM Insurance Group 555 North Lane, Suite 6060 Conshohocken, PA 19428 00000 0000	INSURANCE COMPANY Lexington Insurance Company (a capital stock company) 99 High Street Boston MA 02110
NAME AND MAILING ADDRESS OF INSURED TILGHMAN BEACH & RACQUET CLUB HOA C/O KA DIEHL 11822 HIGHWAY 17 BYPASS SOUTH MURRELLS INLET SC 29576	POLICY NUMBER 41-LX -067045193-1/000 POLICY PERIOD FROM: 02-10-16 TO: 02-10-17 RENEWAL OF 41-LX-067045193-0 at 12:01 A.M. standard time at the mailing address shown.

THE NAMED INSURED IS : ASSOCIATION

BUSINESS DESC : RESIDENTIAL CONDOMINIUM

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

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

	PREMIUM
COMMERCIAL PROPERTY COVERAGE PART	140,080
COMMERCIAL GENERAL LIABILITY COVERAGE PART	9,920
COMMERCIAL CRIME COVERAGE PART	NOT COVERED
COMMERCIAL INLAND MARINE COVERAGE PART	NOT COVERED
COMMERCIAL AUTO COVERAGE PART	NOT COVERED
GARAGE COVERAGE PART	NOT COVERED
MISCELLANEOUS PROFESSIONAL LIABILITY	NOT COVERED

TOTAL ADVANCED PREMIUM

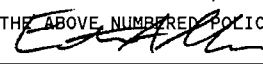
\$150,000

THE POLICY WRITING NONREFUNDABLE MINIMUM PREMIUM IS \$37,500

FORMS AND ENDORSEMENTS APPLICABLE TO ALL COVERAGE PARTS

89644 (06-13) IL0017 (11-98) IL0249 (09-08) 52167 (09-08) PRG2040(07-06) PRG2023(05-14)
118477 (03-15)

THESE DECLARATIONS AND THE COMMON POLICY DECLARATIONS, IF APPLICABLE, TOGETHER WITH THE COMMON POLICY CONDITIONS, COVERAGE FORM(S) AND FORMS AND ENDORSEMENTS, IF ANY, ISSUED TO FORM A PART THEREOF, COMPLETE THE ABOVE NUMBERED POLICY.

BY: 

AUTHORIZED REPRESENTATIVE

02-08-16 This company has been approved by the director or his designee of the South Carolina Department of Insurance to write business in this State as an eligible surplus lines insurer, but it is not afforded guaranty fund protection.

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Commercial Property

RENEWAL DECLARATION

NAME AND ADDRESS OF PRODUCER NSM Insurance Group 555 North Lane, Suite 6060 Conshohocken, PA 19428 00000 0000	INSURANCE COMPANY Lexington Insurance Company (a capital stock company) 99 High Street Boston MA 02110
NAME AND MAILING ADDRESS OF INSURED TILGHMAN BEACH & RACQUET CLUB HOA C/O KA DIEHL 11822 HIGHWAY 17 BYPASS SOUTH MURRELLS INLET SC 29576	POLICY NUMBER RENEWAL OF 41-LX -067045193-1/000 41-LX-067045193-0 POLICY PERIOD FROM: 02-10-16 TO: 02-10-17 At 12:01 A.M. standard time at the mailing address shown.

BUILDING-1

PREM. NO. 1 BLDG. NO. 1 "LIMIT OF INSURANCE" IS THE TOTAL FOR ALL LOCATIONS INDIVIDUAL BUILDING LIMITS APPLY, PER SCHEDULE ON FILE. BLANKET LIMITS ARE NOT PROVIDED.				
COVERAGES PROVIDED INSURANCE AT THE DESCRIBED PREMISES APPLIES ONLY FOR COVERAGES FOR WHICH A LIMIT OF INSURANCE IS SHOWN				
COVERAGE	CAUSE OF LOSS	DED \$	COINS	LIMIT OF INSURANCE \$
BUILDING	SPECIAL-Incl theft	5,000		23,192,284
AGREED VALUE: \$ 23,192,284 EXP DATE: 02-10-17				
OPTIONAL COVERAGES BUILDING: REPLACEMENT COST ORDINANCE OR LAW COVERAGES: A - LOSS TO THE UNDAMAGED PORTION OF THE BUILDING B - DEMOLITION COST AND C - INCREASED COST OF CONSTRUCTION BLANKET LIMIT OF INSURANCE \$1,000,000 WINDSTORM & HAIL DEDUCTIBLE: 3 % MINIMUM DOLLAR DEDUCTIBLE: \$25,000				

"LIMIT OF INSURANCE" FIGURE IS THE TOTAL FOR ALL LOCATIONS. INDIVIDUAL BUILDING LIMITS APPLY PER SCHEDULE ON FILE.
BLANKET LIMITS ARE NOT PROVIDED.

Commercial Property

RENEWAL DECLARATION

NAME AND ADDRESS OF PRODUCER NSM Insurance Group 555 North Lane, Suite 6060 Conshohocken, PA 19428 00000 0000	INSURANCE COMPANY Lexington Insurance Company (a capital stock company) 99 High Street Boston MA 02110
NAME AND MAILING ADDRESS OF INSURED TILGHMAN BEACH & RACQUET CLUB HOA C/O KA DIEHL 11822 HIGHWAY 17 BYPASS SOUTH MURRELLS INLET SC 29576	POLICY NUMBER 41-LX -067045193-1/000 POLICY PERIOD FROM: 02-10-16 TO: 02-10-17 RENEWAL OF 41-LX-067045193-1 At 12:01 A.M. standard time at the mailing address shown.

MANUSCRIPT FORMS:

CP0320 (10-92) - MULTIPLE DEDUCTIBLE FORM APPLIES TO BUILDINGS 1-12
\$5,000 DED FOR ALL COVERED PERILS EXCEPT WIND & HAIL

100382 (12-08) - 3% PER BUILDING NAMED STORM WIND & HAIL DEDUCTIBLE
MINIMUM \$25,000 PER OCCURENCE
\$25,000 ALL OTHER WIND & HAIL DEDUCTIBLE

CP1045 (10-12) - EARTHQUAKE LIMIT APPLIES TO BUILDINGS 1-19: \$23,192,284
2% EARTHQUAKE DEDUCTIBLE

PRG9245 (5/14) - \$500,000 WIND DRIVEN PRECIPITATION LIMITS
*SUBJECT TO NAMED STORM DEDUCTIBLE

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Commercial Property

RENEWAL DECLARATION

NAME AND ADDRESS OF PRODUCER NSM Insurance Group 555 North Lane, Suite 6060 Conshohocken, PA 19428 00000 0000	INSURANCE COMPANY Lexington Insurance Company (a capital stock company) 99 High Street Boston MA 02110
NAME AND MAILING ADDRESS OF INSURED TILGHMAN BEACH & RACQUET CLUB HOA C/O KA DIEHL 11822 HIGHWAY 17 BYPASS SOUTH MURRELLS INLET SC 29576	POLICY NUMBER 41-LX -067045193-1/000 RENEWAL OF 41-LX-067045193-1/0 POLICY PERIOD FROM: 02-10-16 TO: 02-10-17 At 12:01 A.M. standard time at the mailing address shown.

EQUIPMENT BREAKDOWN

Coverage: COMPREHENSIVE - EXCLUDING PRODUCTION MACHINES Program: EQUIPMENT BREAKDOWN

Deductibles:

Property Damage: \$5,000
Business Interruption:
Consequential Damage:
Other:

TERRORISM RISK INSURANCE ACT IS INCLUDED

\$1,387

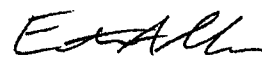
TOTAL PROPERTY PREMIUM \$140,080

FORMS AND ENDORSEMENTS

APPLYING TO COMMERCIAL PROPERTY COVERAGE PART AND MADE PART OF THIS POLICY AT TIME OF ISSUE:

CP0090 (07-88) IL0194 (10-12) CP0405 (10-12) CP0017 (10-12) CP1030 (10-12) CP0110 (07-88)
CP0320 (10-92) 100382 (12-08) CP1045 (10-12) 90630 (02-07) PR69137(10-10) PR69245(05-14)

THESE DECLARATIONS AND THE COMMON POLICY DECLARATIONS, IF APPLICABLE, TOGETHER WITH THE COMMON POLICY CONDITIONS, COVERAGE FORM(S) AND FORMS AND ENDORSEMENTS, IF ANY, ISSUED TO FORM A PART THEREOF, COMPLETE THE ABOVE NUMBERED POLICY.

BY: 

AUTHORIZED REPRESENTATIVE

Commercial General Liability

RENEWAL DECLARATION

NAME AND ADDRESS OF PRODUCER NSM Insurance Group 555 North Lane, Suite 6060 Conshohocken, PA 19428 00000 0000	INSURANCE COMPANY Lexington Insurance Company (a capital stock company) 99 High Street Boston MA 02110
NAME AND MAILING ADDRESS OF INSURED TILGHMAN BEACH & RACQUET CLUB HOA C/O KA DIEHL 11822 HIGHWAY 17 BYPASS SOUTH MURRELLS INLET SC 29576	POLICY NUMBER 41-LX -067045193-1/000 POLICY PERIOD FROM: 02-10-16 TO: 02-10-17 RENEWAL OF 41-LX-067045193-1/000 At 12:01 A.M. standard time at the mailing address shown.

LIMITS OF INSURANCE

GENERAL AGGREGATE	\$ 2,000,000	
PRODUCTS-COMPLETED OPERATIONS AGGREGATE	\$ INCLUDED	
PERSONAL INJURY & ADVERTISING INJURY	\$ 1,000,000	
EACH OCCURRENCE	\$ 1,000,000	
DAMAGE TO PREMISES RENTED TO YOU	\$ 50,000	ANY ONE PREMISES
MEDICAL EXPENSE	\$ 5,000	ANY ONE PERSON

STATE - 1

LOCATION OF ALL PREMISES YOU OWN, RENT OR OCCUPY:

LOC # 1: 208 N OCEAN BLVD	NORTH MYRTLE BEACH, SC 29582
LOC # 2: 108 N OCEAN BLVD	NORTH MYRTLE BEACH, SC 29582
LOC # 3: 210 N OCEAN BLVD	NORTH MYRTLE BEACH, SC 29582
LOC # 4: 206 N OCEAN BLVD	NORTH MYRTLE BEACH, SC 29582
LOC # 5: 202 N OCEAN BLVD	NORTH MYRTLE BEACH, SC 29582
LOC # 6: 207 N OCEAN BLVD	NORTH MYRTLE BEACH, SC 29582
LOC # 7: 201 N OCEAN BLVD	NORTH MYRTLE BEACH, SC 29582
LOC # 8: 206 2ND AVE N	NORTH MYRTLE BEACH, SC 29582
LOC # 9: 212 2ND AVE N	NORTH MYRTLE BEACH, SC 29582
LOC # 10: 206 HILLSIDE AVE	NORTH MYRTLE BEACH, SC 29582
LOC # 11: 215 3RD AVE N	NORTH MYRTLE BEACH, SC 29582
LOC # 12: 207 3RD AVE N	NORTH MYRTLE BEACH, SC 29582

Commercial General Liability

RENEWAL DECLARATION

ELECTRONICALLY FILED - 2018 Feb 14 4:11 PM - HONRY - COMMON PLEAS - CASE #2018CP2804464

NAME AND ADDRESS OF PRODUCER NSM Insurance Group 555 North Lane, Suite 6060 Conshohocken, PA 19428 00000 0000	INSURANCE COMPANY Lexington Insurance Company (a capital stock company) 99 High Street Boston MA 02110
NAME AND MAILING ADDRESS OF INSURED TILGHMAN BEACH & RACQUET CLUB HOA C/O KA DIEHL 11822 HIGHWAY 17 BYPASS SOUTH MURRELLS INLET SC 29576	POLICY NUMBER RENEWAL OF 41-LX -067045193-1/000 41-LX-067045193-1/000 POLICY PERIOD FROM: 02-10-16 TO: 02-10-17 At 12:01 A.M. standard time at the mailing address shown.

LOC CLASSIFICATION	CODE	PREMIUM BASIS	PMS RATE	PDTs RATE
1 CONDOMINIUMS - RESIDENTIAL - (ASSOCIATION RISK ONLY) PRODUCTS-COMPLETED OPERATIONS ARE SUBJECT TO THE GENERAL AGGREGATE LIMIT	62003	UNITS	213	
1 SWIMMING POOLS PRODUCTS-COMPLETED OPERATIONS ARE SUBJECT TO THE GENERAL AGGREGATE LIMIT	48925	EACH	4	
1 PARKS OR PLAYGROUNDS PRODUCTS-COMPLETED OPERATIONS ARE SUBJECT TO THE GENERAL AGGREGATE LIMIT	46671	EACH	2	
HIRED/NON-OWN AUTO LIABILITY				
LIMIT OF LIABILITY: \$1,000,000 CSL				
ADDITIONAL INSURED				
CONDOMINIUMS - RESIDENTIAL - (ASSOCIATION RISK ONLY)	62003	UNITS	213	
				PER FORM: CG2004 (11-85)
CONDOMINIUM UNIT OWNERS				
ADDITIONAL INSURED				
1 CONDOMINIUMS - RESIDENTIAL - (ASSOCIATION RISK ONLY) MYRTLE BEACH MALL LLC, PEAK-MISUMA MB LLC, MB MALL LLC JONES LANG LASALLE AMERICAS, INC. 10177 N. KINGS HWY UNIT 1 MYRTLE BEACH, SC 29572 APPLIES ON MARCH 5, 2016 AT 10:00 AM ONLY FOR THE DURATION OF THE MEETING	62003	UNITS	IF ANY	
				PER FORM: CG2026 (04-13)

TERRORISM RISK INSURANCE ACT IS INCLUDED

\$98

GENERAL LIABILITY PREMIUM

\$9,920

Commercial General Liability

RENEWAL DECLARATION

NAME AND ADDRESS OF PRODUCER

NSM Insurance Group
555 North Lane, Suite 6060
Conshohocken, PA 19428 00000 0000

INSURANCE COMPANY

Lexington Insurance Company
(a capital stock company)
99 High Street
Boston MA 02110

NAME AND MAILING ADDRESS OF INSURED

TILGHMAN BEACH & RACQUET CLUB HOA
C/O KA DIEHL
11822 HIGHWAY 17 BYPASS SOUTH
MURRELLS INLET SC 29576

POLICY NUMBER

41-LX -067045193-1/000 41-LX-067045193-0

RENEWAL OF

POLICY PERIOD

FROM: 02-10-16 TO: 02-10-17

At 12:01 A.M. standard time at the mailing address shown.

FORMS AND ENDORSEMENTS

APPLYING TO COMMERCIAL GENERAL LIABILITY COVERAGE PART AND MADE PART OF THIS POLICY AT TIME OF ISSUE:

IL0021 (09-08)	CG0001 (04-13)	CG2106 (05-14)	CG2147 (12-07)	CG2004 (11-85)	CG2026 (04-13)
78689 (07-03)	58332 (07-93)	CG2146 (07-98)	CG2155 (09-99)	IL0003 (09-08)	PRG3181 (06/06)
CG0419 (11-85)	62898 (07-12)	64004 (07-12)	82540 (07-12)		

THESE DECLARATIONS AND THE COMMON POLICY DECLARATIONS, IF APPLICABLE, TOGETHER WITH THE COMMON POLICY CONDITIONS, COVERAGE FORM(S) AND FORMS AND ENDORSEMENTS, IF ANY, ISSUED TO FORM A PART THEREOF, COMPLETE THE ABOVE NUMBERED POLICY.

BY: 

AUTHORIZED REPRESENTATIVE

93837 (12/06)

CG DS 01 10 01

Page 7 of 7

EXHIBIT 3

ELECTRONICALLY FILED - 2018 Feb 14 4:11 PM - HARRY - COMMON PLEAS - CASE#2016CP2604464

FORMS SCHEDULE

ELECTRONICALLY FILED - 2018 Feb 14 4:11 PM - Horry - COMMON PLEAS - CASE#2016CP2604464

NAME AND ADDRESS OF PRODUCER NSM Insurance Group 555 North Lane, Suite 6060 Conshohocken, PA 19428 00000 0000	INSURANCE COMPANY Lexington Insurance Company (a capital stock company) 99 High Street Boston MA 02110
NAME AND MAILING ADDRESS OF INSURED TILGHMAN BEACH & RACQUET CLUB HOA C/O KA DIEHL 11822 HIGHWAY 17 BYPASS SOUTH MURRELLS INLET SC 29576	POLICY NUMBER RENEWAL OF 41-LX -067045193-1/000 41-LX-067045193-1/000 POLICY PERIOD FROM: 02-10-16 TO: 02-10-17 at 12:01 A.M. standard time at the mailing address shown.

COMMON POLICY PACKAGE

89644 (06-13) ECONOMIC SANCTIONS ENDORSEMENT
IL0017 (11-98) COMMON POLICY CONDITIONS
IL0249 (09-08) SOUTH CAROLINA CHANGES - CANCELLATION & NONRENEWAL
52167 (09-08) SOUTH CAROLINA - AMENDATORY ENDORSEMENT
PRG2040 (07-06) MINIMUM EARNED PREMIUM
PRG2023 (05-14) SERVICE OF SUIT CONDITION
118477 (03-15) POLICYHOLDER NOTICE TAXES ASSESSMENTS SURCHARGES

COMMERCIAL PROPERTY FORMS

CP0090 (07-88) COMMERCIAL PROPERTY CONDITIONS
IL0194 (10-12) SOUTH CAROLINA CHANGES - LEGAL ACTION AGAINST US
CP0405 (10-12) ORDINANCE OR LAW COVERAGE
CP0017 (10-12) CONDOMINIUM ASSOCIATION COVERAGE FORM
CP1030 (10-12) CAUSES OF LOSS - SPECIAL FORM
CP0110 (07-88) SOUTH CAROLINA CHANGES - VALUATION
CP0320 (10-92) MULTIPLE DEDUCTIBLE FORM
100382 (12-08) WINDSTORM OR HAIL DEDUCTIBLE ENDT-WITH NAMED STORM
CP1045 (10-12) EARTHQUAKE & VOLCANIC ERUPTION ENDORSEMENT (SUBLIM)
90630 (02-07) ADDITIONAL COVERAGE - EQUIPMENT BREAKDOWN
PRG9137 (10-10) CONDOMINIUM AMENDATORY ENDORSEMENT
PRG9245 (05-14) WIND DRIVEN PRECIPITATION ENDORSEMENT

COMMERCIAL GENERAL LIABILITY FORMS

IL0021 (09-08) NUCLEAR ENERGY LIABILITY EXCLUSION ENDORSEMENT
CG0001 (04-13) COMMERCIAL GENERAL LIABILITY COVERAGE FORM (OCCUR)
CG2106 (05-14) EXCL-ACCESS OR DISCLOSURE OF CONFIDENTIAL OR PERSON
CG2147 (12-07) EMPLOYMENT-RELATED PRACTICES EXCLUSION
CG2004 (11-85) ADDITIONAL INSURED - CONDOMINIUM UNIT
CG2026 (04-13) ADDITIONAL INSURED-DESIGNATED PERSON OR ORGANIZATION
78689 (07-03) FUNGUS EXCLUSION REVISED
58332 (07-93) TOTAL LEAD EXCLUSION
CG2146 (07-98) ABUSE OR MOLESTATION EXCLUSION
CG2155 (09-99) TOTAL POLLUTION EXCLUSION WITH A HOSTILE FIRE EXCEPT
IL0003 (09-08) CALCULATION OF PREMIUM
PRG3181 (06/06) CROSS SUITS EXCLUSION
CG0419 (11-85) HIRED/NON-OWNED AUTO
62898 (07-12) RADIOACTIVE MATTER EXCLUSION
64004 (07-12) ERISA EXCLUSION
82540 (07-12) ASBESTOS AND SILICA EXCLUSION ENDORSEMENT

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

ENDORSEMENT #

This endorsement, effective 12:01 A.M.

forms a part of Policy

No.

issued to

by

ECONOMIC SANCTIONS ENDORSEMENT

This endorsement modifies insurance provided under the following:

The Insurer shall not be deemed to provide cover and the Insurer shall not be liable to pay any claim or provide any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose the Insurer, its parent company or its ultimate controlling entity to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union or the United States of America.

AUTHORIZED REPRESENTATIVE

POLICYHOLDER NOTICE

Taxes, Assessments and/or Surcharges

The taxes, assessments and/or surcharges shown on the declarations page or any premium schedule are collected on behalf of the applicable State(s) and in accordance with such State's laws and regulations. The payment of these taxes, assessments and/or surcharges is the responsibility of the Named Insured. In the event the applicable State implements a new tax, assessment and/or surcharge or increases such tax, assessment and/or surcharge during the term of this policy, the Named Insured shall remain responsible for the payment of all amounts due under the policy, including those newly implemented or increased taxes, assessments and/or surcharges.

Any newly implemented or increased taxes, assessments and/or surcharges shall apply on the effective date dictated by the applicable State regardless:

1. Of when the Insurance Company implements the new or increased tax, assessment or surcharge into its systems; or
2. If the Insurance Company recalculates the Named Insured's premium in accordance with the policy's terms and conditions as part of a premium audit after the end of the policy period.

ENDORSEMENT

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement, effective 12:01 A.M.,
Forms a part of Policy No.:

SERVICE OF SUIT CONDITION

This endorsement modifies insurance provided under the policy:

The following condition is added to this policy and, if applicable, supersedes any Service of Suit Condition currently provided therein:

In the event of our failure to pay any amount claimed to be due hereunder, we, at your request, will submit to the jurisdiction of a court of competent jurisdiction within the United States. Nothing in this condition constitutes or should be understood to constitute a waiver of our rights to commence an action in any court of competent jurisdiction in the United States to remove an action to a United States District Court or to seek a transfer of a case to another court as permitted by the laws of the United States or of any state in the United States. It is further agreed that service of process in such suit may be made upon Counsel, Legal Department, Lexington Insurance Company, 99 High Street, Boston, Massachusetts 02110 or his or her representative, and that in any suit instituted against us upon this Policy, we will abide by the final decision of such court or of any appellate court in the event of any appeal.

Further, pursuant to any statute of any state, territory, or district of the United States which makes provision therefor, we hereby designate the Superintendent, Commissioner or Director of Insurance, or other officer specified for that purpose in the statute, or his or her successors in office, as our true and lawful attorney upon whom may be served any lawful process in any action, suit, or proceeding instituted by you or on your behalf or any beneficiary hereunder arising out of this Policy of insurance, and hereby designates the above named Counsel as the person to whom the said officer is authorized to mail such process or a true copy thereof.

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

Authorized Representative

COMMON POLICY CONDITIONS

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

A. Cancellation

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

B. Changes

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

C. Examination Of Your Books And Records

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

D. Inspections And Surveys

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

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

- c. Recommend changes.

2. We are not obligated to make any inspections, surveys, reports or recommendations and any such actions we do undertake relate only to insurability and the premiums to be charged. We do not make safety inspections. We do not undertake to perform the duty of any person or organization to provide for the health or safety of workers or the public. And we do not warrant that conditions:

- a. Are safe or healthful; or

- b. Comply with laws, regulations, codes or standards.

3. Paragraphs 1. and 2. of this condition apply not only to us, but also to any rating, advisory, rate service or similar organization which makes insurance inspections, surveys, reports or recommendations.

4. Paragraph 2. of this condition does not apply to any inspections, surveys, reports or recommendations we may make relative to certification, under state or municipal statutes, ordinances or regulations, of boilers, pressure vessels or elevators.

E. Premiums

The first Named Insured shown in the Declarations:

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

F. Transfer Of Your Rights And Duties Under This Policy

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

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

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

SOUTH CAROLINA CHANGES – CANCELLATION AND NONRENEWAL

This endorsement modifies insurance provided under the following:

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

A. Paragraphs 2. and 3. of **Cancellation** Common Policy Condition are replaced by the following:

2. We may cancel this policy by mailing or delivering to the first Named Insured and the agent, if any, written notice of cancellation at least:

- a. 10 days before the effective date of cancellation if we cancel for nonpayment of premium; or
- b. 30 days before the effective date of cancellation if we cancel for any other reason.

3. We will mail or deliver our notice to the first Named Insured's and agent's last known addresses.

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

7. Cancellation Of Policies In Effect For 120 Days Or More

If this policy has been in effect for 120 days or more, or is a renewal or continuation of a policy we issued, we may cancel this policy only for one or more of the following reasons:

- a. Nonpayment of premium;

b. Material misrepresentation of fact which, if known to us, would have caused us not to issue the policy;

c. Substantial change in the risk assumed, except to the extent that we should reasonably have foreseen the change or contemplated the risk in writing the policy;

d. Substantial breaches of contractual duties, conditions or warranties; or

e. Loss of our reinsurance covering all or a significant portion of the particular policy insured, or where continuation of the policy would imperil our solvency or place us in violation of the insurance laws of South Carolina.

Prior to cancellation for reasons permitted in this Item e., we will notify the Commissioner, in writing, at least 60 days prior to such cancellation and the Commissioner will, within 30 days of such notification, approve or disapprove such action.

Any notice of cancellation will state the precise reason for cancellation.

- C. The following is added and supersedes any provisions to the contrary:

Nonrenewal

1. We will not refuse to renew a policy issued for a term of more than one year, until expiration of its full term, if anniversary renewal has been guaranteed by additional premium consideration.
2. If we decide not to renew this policy, we will:
 - a. Mail or deliver written notice of nonrenewal to the first Named Insured and agent, if any, before:
 - (1) The expiration date of this policy, if the policy is written for a term of one year or less; or
 - (2) An anniversary date of this policy, if the policy is written for a term of more than one year or for an indefinite term; and

- b. Provide at least:

- (1) 60 days' notice of nonrenewal, when nonrenewal is to become effective between November 1 and May 31; or
- (2) 90 days' notice of nonrenewal, when nonrenewal is to become effective between June 1 and October 31.
3. Any notice of nonrenewal will be mailed or delivered to the first Named Insured's and agent's last known addresses. If notice is mailed, proof of mailing will be sufficient proof of notice.
4. Any notice of nonrenewal will state the precise reason for nonrenewal.

SOUTH CAROLINA AMENDATORY ENDORSEMENT

This endorsement, effective _____ forms a part of
 policy no.: _____ issued to
 by: _____

Wherever used in this endorsement: 1) "Insurer" means the insurance company which issued this policy; and 2) "Insured" means the Named Corporation, Named Entity, Named Organization, Named Sponsor, Named Insured, or Insured stated in the declarations page;

The following is added and supersedes any provision in the policy to the contrary:

CANCELLATION:

This policy may be cancelled by the Insured by surrender thereof to the Insurer or any of its authorized agents or by mailing to the Insurer written notice stating when thereafter the cancellation shall be effective.

If this policy has been in effect for less than 120 days and is not a renewal of a previously existing policy, this policy may be cancelled by the Insurer for any reason by delivering or mailing to the Insured at the address shown in this policy, written notice stating when, not less than thirty (30) days thereafter, such cancellation shall be effective. Where the reason for cancellation is nonpayment of premium however, not less than ten (10) days written notice shall be furnished by the Insurer.

If this policy has been in effect for 120 days or more, or is a renewal of a previously existing policy, this policy may be cancelled by the Insurer by delivering or mailing to the Insured and the agent of record, if any, at the address shown in the policy, written notice stating when, not less than thirty (30) days thereafter, such cancellation shall be effective. Where the reason for cancellation is nonpayment of premium however, not less than ten (10) days written notice shall be furnished by the Insurer.

If this policy applies to property insurance on risks located in the State it may be cancelled by the Insurer by delivering or mailing to the Insured at the address shown in the policy a written notice stating when such cancellation shall be effective:

- (1) not less than sixty (60) days for any cancellation effective between November first and May thirty-first; and
- (2) not less than ninety (90) days for any cancellation effective between June first and October 31st

Any notice of cancellation will state the reason for cancellation. Cancellation under this paragraph shall be based on one or more of the following reasons:

- (1) Nonpayment of premium;
- (2) Material misrepresentation of fact which, if known to the Insurer, would have caused the Insurer not to issue the policy;

- (3) Substantial change in the risk assumed, except to the extent the Insurer should reasonably have foreseen the change or contemplated the risk in writing the policy;
- (4) Substantial breaches of contractual duties, conditions, or warranties;
- (5) Loss of the Insurer's reinsurance covering all or a significant portion of the particular policy insured; or
- (6) Where continuation of the policy would imperil the Insurer's solvency or place the Insurer in violation of the insurance laws of this state.

Prior to cancellation for reasons numbered five (5) and six (6) above, the Insurer shall notify the Insurance Commissioner in writing at least sixty (60) days prior to the effective date of such cancellation.

NONRENEWAL:

If the Insurer shall elect to nonrenew this policy and such policy is for a period of one year or less, than the Insurer shall mail or deliver written notice of nonrenewal to the Insured and the Insured's agent of record, if any, at least:

- (1) sixty days prior to the anniversary date of the policy for any nonrenewal that would be effective between November first and May thirty-first; and
- (2) ninety days prior to the anniversary date of the policy for any nonrenewal that would be effective between June first and October thirty-first.

If the Insurer shall elect to nonrenew this policy and such policy is for a period of more than one year or for an indefinite term, than the Insurer shall mail or deliver written notice of nonrenewal to the Insured and the Insured's agent of record, if any, at least:

- (1) sixty days prior to the anniversary date of the policy for any nonrenewal that would be effective between November first and May thirty-first; and
- (2) ninety days prior to the anniversary date of the policy for any nonrenewal that would be effective between June first and October thirty-first.

Any notice of nonrenewal will be mailed or delivered to the Insured's and the Insured's agent's at their addresses shown in the policy or, if not reflected therein, at their last known addresses. If notice is mailed, proof of mailing will be sufficient proof of notice.

Any notice of nonrenewal will state the precise reason for nonrenewal.

POLICY RENEWAL NOTICE:

If the Insurer intends to renew a policy, the Insurer shall furnish renewal terms and a statement of the amount of premium or estimated premium due for the renewal policy period.

If the policy being renewed (hereinafter "original policy") is written for a term of one year or less, the renewal terms and statement of premium or estimated premium due shall be furnished to the Insured not less than thirty (30) days prior to the expiration date of the original policy.

If the original policy is written for a term of more than one year or for an indefinite term, the renewal terms and statement of premium or estimated premium due shall be furnished to the Insured not less than thirty (30) days prior to the anniversary date of the original policy.

The Insurer may satisfy its obligation to furnish renewal terms and statement of premium or estimated premium due by either of the following methods:

- mailing or delivering renewal terms and statement to the Insured at his address shown in the policy or, if not reflected therein, at his last known address, not less than thirty (30) days prior to expiration or anniversary; or
- mailing or delivering renewal terms and statement to the agent of record, if any, not less than forty-five (45) days prior to the expiration or anniversary, along with instructions that the agent furnish the renewal terms and statement to the Insured not less than thirty (30) days prior to expiration or anniversary.

If the Insurer fails to furnish the renewal terms and statement of premium or estimated premium due, the Insured may elect to cancel the renewal policy within the thirty-day period following receipt of the renewal terms and statement of premium or estimated premium due. Earned premium for any period of coverage shall be calculated pro rata based upon the premium applicable to the original policy and not the premium applicable to the renewal policy.

All other terms, conditions and exclusions shall remain the same.

AUTHORIZED REPRESENTATIVE

ENDORSEMENT

This endorsement, effective 12:01 A.M.,

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

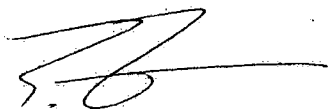
MINIMUM EARNED PREMIUM ENDORSEMENT

This endorsement modifies insurance provided by the policy. The Common Policy Conditions are modified as follows:

1. Paragraph 5 of Condition A—Cancellation is deleted and replaced with the following paragraph:
 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 Name Insured cancels, earned premium will be computed according to the customary short-rate table and procedure, subject to a Minimum Earned Premium of \$ 37,500. The cancellation will be effective even if we have not made or offered a refund.

ADDENDUM TO THE DECLARATIONS

By signing below, the President and the Secretary of the Insurer agree on behalf of the Insurer to all the terms of this Policy.

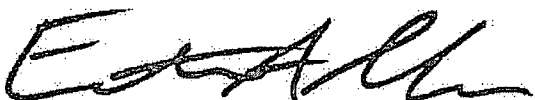


Jeremy Johnson
PRESIDENT



Denis M. Butkovic
SECRETARY

This policy shall not be valid unless signed at the time of issuance by an authorized representative of the Insurer, either below or on the Declarations page of the policy.



Ethan D. Allen
AUTHORIZED REPRESENTATIVE

COMMERCIAL PROPERTY CONDITIONS

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

A. CONCEALMENT, MISREPRESENTATION OR FRAUD

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

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

B. CONTROL OF PROPERTY

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

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

C. INSURANCE UNDER TWO OR MORE COVERAGES

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

D. LEGAL ACTION AGAINST US

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

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

E. LIBERALIZATION

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

F. NO BENEFIT TO BAILEE

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

G. OTHER INSURANCE

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

H. POLICY PERIOD, COVERAGE TERRITORY

Under this Coverage Part:

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

ELECTRONICALLY FILED - 2018 Feb 14 4:31 PM - Horry - COMMON PLEAS - CASE#2016CP2604464

I. TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

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

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

This will not restrict your insurance.

IL 01 94 10 12

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

SOUTH CAROLINA CHANGES – LEGAL ACTION AGAINST US

This endorsement modifies insurance provided under the following:

CAPITAL ASSETS PROGRAM (OUTPUT POLICY) COVERAGE PART
COMMERCIAL PROPERTY COVERAGE PART
FARM COVERAGE PART – FARM LIVESTOCK COVERAGE FORM
FARM COVERAGE PART – FARM MOBILE AGRICULTURAL MACHINERY AND EQUIPMENT COVERAGE FORM
FARM COVERAGE PART – FARM PROPERTY – OTHER FARM PROVISIONS FORM – ADDITIONAL COVERAGES, CONDITIONS, DEFINITIONS
STANDARD PROPERTY POLICY

A. The Legal Action Against Us Condition, in the Commercial Property Conditions, the Standard Property Policy, the Capital Assets Program Coverage Form (Output Policy), and in the Farm Forms listed above, is replaced by the following:

LEGAL ACTION AGAINST US

No one may bring a legal action against us under this Coverage Part, Coverage Form or Policy to which this Condition applies unless:

1. There has been full compliance with all of the terms of this Coverage Part, Coverage Form or Policy; and
2. The action is brought within 3 years after the date on which the direct physical loss ("loss") or damage occurred.

B. Under the Commercial Property Coverage Part, Paragraph (1) of the Legal Action Against Us Condition in the Mortgageholders Errors And Omissions Coverage Form is replaced by the following:

- (1) No one may bring a legal action against us under Coverages A and B unless:
 - (a) There has been full compliance with all of the terms of Coverages A and B; and
 - (b) The action is brought within 3 years after you discover the error or accidental omission.

POLICY NUMBER:

COMMERCIAL PROPERTY
CP 04 05 10 12

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ORDINANCE OR LAW COVERAGE

This endorsement modifies insurance provided under the following:

BUILDING AND PERSONAL PROPERTY COVERAGE FORM
CONDOMINIUM ASSOCIATION COVERAGE FORM
STANDARD PROPERTY POLICY**SCHEDULE**

Building Number/ Premises Number	Coverage A	Coverage B Limit Of Insurance	Coverage C Limit Of Insurance	Coverage B And C Combined Limit Of Insurance
/	☐	\$	\$	\$ *
/	☐	\$	\$	\$ *
/	☐	\$	\$	\$ *

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.
*Do **not** enter a Blanket Limit of Insurance if individual Limits of Insurance are selected for Coverages B and C, or if one of these Coverages is not applicable.

A. Each Coverage – Coverage A, Coverage B and Coverage C – is provided under this endorsement only if that Coverage(s) is chosen by entry in the above Schedule and then only with respect to the building identified for that Coverage(s) in the Schedule.

B. Application Of Coverage(s)

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

1. The ordinance or law:

a. Regulates the demolition, construction or repair of buildings, or establishes zoning or land use requirements at the described premises; and

b. Is in force at the time of loss.

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

2.a. The building sustains direct physical damage that is covered under this policy and as a result of such damage, you are required to comply with the ordinance or law; or

b. The building sustains both direct physical damage that is covered under this policy and direct physical damage that is not covered under this policy, and as a result of the building damage in its entirety, you are required to comply with the ordinance or law.

c. But if the building sustains direct physical damage that is not covered under this policy, and such damage is the subject of the ordinance or law, then there is no coverage under this endorsement even if the building has also sustained covered direct physical damage.

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3. In the situation described in **B.2.b.** above, we will not pay the full amount of loss otherwise payable under the terms of Coverages **A**, **B**, and/or **C** of this endorsement. Instead, we will pay a proportion of such loss, meaning the proportion that the covered direct physical damage bears to the total direct physical damage.

(Section **H.** of this endorsement provides an example of this procedure.)

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

- C.** We will not pay under Coverage **A**, **B** or **C** of this endorsement for:

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

D. Coverage

1. Coverage A – Coverage For Loss To The Undamaged Portion Of The Building

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

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

2. Coverage B – Demolition Cost Coverage

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

The Coinsurance Additional Condition does not apply to Demolition Cost Coverage.

3. Coverage C – Increased Cost Of Construction Coverage

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

- (1) Repair or reconstruct damaged portions of that building; and/or
- (2) Reconstruct or remodel undamaged portions of that building, whether or not demolition is required;

when the increased cost is a consequence of a requirement to comply with the minimum standards of the ordinance or law.

However:

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

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

The Coinsurance Additional Condition does not apply to Increased Cost of Construction Coverage.

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

- (1) The cost of excavations, grading, backfilling and filling;

- (2) Foundation of the building;
- (3) Pilings; and
- (4) Underground pipes, flues and drains.

The items listed in **b.(1)** through **b.(4)** above are deleted from Property Not Covered, but only with respect to the coverage described in this provision, **3.b.**

E. Loss Payment

1. All following loss payment provisions, **E.2.** through **E.5.**, are subject to the apportionment procedures set forth in Section **B.3.** of this endorsement.
2. When there is a loss in value of an undamaged portion of a building to which Coverage **A** applies, the loss payment for that building, including damaged and undamaged portions, will be determined as follows:
 - a. If the Replacement Cost Coverage Option applies and the property is being repaired or replaced, on the same or another premises, we will not pay more than the lesser of:
 - (1) The amount you would actually spend to repair, rebuild or reconstruct the building, but not for more than the amount it would cost to restore the building on the same premises and to the same height, floor area, style and comparable quality of the original property insured; or
 - (2) The Limit Of Insurance shown in the Declarations as applicable to the covered building.
 - b. If the Replacement Cost Coverage Option applies and the property is **not** repaired or replaced, or if the Replacement Cost Coverage Option does **not** apply, we will not pay more than the lesser of:
 - (1) The actual cash value of the building at the time of loss; or
 - (2) The Limit Of Insurance shown in the Declarations as applicable to the covered building.
3. Unless Paragraph **E.5.** applies, loss payment under Coverage **B** – Demolition Cost Coverage will be determined as follows:
We will not pay more than the lesser of the following:
 - a. The amount you actually spend to demolish and clear the site of the described premises; or

- b. The applicable Limit Of Insurance shown for Coverage **B** in the Schedule above.
4. Unless Paragraph **E.5.** applies, loss payment under Coverage **C** – Increased Cost Of Construction Coverage will be determined as follows:
 - a. We will not pay under Coverage **C**:
 - (1) Until the property is actually repaired or replaced, at the same or another premises; and
 - (2) Unless the repair or replacement is made as soon as reasonably possible after the loss or damage, not to exceed two years. We may extend this period in writing during the two years.
 - b. If the building is repaired or replaced at the same premises, or if you elect to rebuild at another premises, the most we will pay under Coverage **C** is the lesser of:
 - (1) The increased cost of construction at the same premises; or
 - (2) The applicable Limit Of Insurance shown for Coverage **C** in the Schedule above.
 - c. If the ordinance or law requires relocation to another premises, the most we will pay under Coverage **C** is the lesser of:
 - (1) The increased cost of construction at the new premises; or
 - (2) The applicable Limit Of Insurance shown for Coverage **C** in the Schedule above.
 5. If a Combined Limit Of Insurance is shown for Coverages **B** and **C** in the Schedule above, Paragraphs **E.3.** and **E.4.** of this endorsement do not apply with respect to the building that is subject to the Combined Limit, and the following loss payment provisions apply instead:
The most we will pay, for the total of all covered losses for Demolition Cost and Increased Cost of Construction, is the Combined Limit Of Insurance shown for Coverages **B** and **C** in the Schedule above. Subject to this Combined Limit of Insurance, the following loss payment provisions apply:
 - a. For Demolition Cost, we will not pay more than the amount you actually spend to demolish and clear the site of the described premises.

b. With respect to the Increased Cost of Construction:

(1) We will not pay for the increased cost of construction:

(a) Until the property is actually repaired or replaced, at the same or another premises; and

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

(2) 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.

(3) 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.

F. The terms of this endorsement apply separately to each building to which this endorsement applies.

G. Under this endorsement we will not pay for loss due to any ordinance or law that:

1. You were required to comply with before the loss, even if the building was undamaged; and
2. You failed to comply with.

H. Example of proportionate loss payment for Ordinance Or Law Coverage Losses (procedure as set forth in Section **B.3.** of this endorsement).

Assume:

- Wind is a Covered Cause of Loss; Flood is an excluded Cause of Loss
- The building has a value of \$200,000
- Total direct physical damage to building: \$100,000
- The ordinance or law in this jurisdiction is enforced when building damage equals or exceeds 50% of the building's value
- Portion of direct physical damage that is covered (caused by wind): \$30,000
- Portion of direct physical damage that is not covered (caused by flood): \$70,000
- Loss under Ordinance Or Law Coverage **C** of this endorsement: \$60,000

Step 1: Determine the proportion that the covered direct physical damage bears to the total direct physical damage.

$$\$30,000 \div \$100,000 = .30$$

Step 2: Apply that proportion to the Ordinance or Law loss.

$$\$60,000 \times .30 = \$18,000$$

In this example, the most we will pay under this endorsement for the Coverage **C** loss is \$18,000, subject to the applicable Limit of Insurance and any other applicable provisions.

Note: The same procedure applies to losses under Coverages **A** and **B** of this endorsement.

I. The following definition is added:

"Fungus" means any type or form of fungus, including mold or mildew, and any mycotoxins, spores, scents or by-products produced or released by fungi.

CONDOMINIUM ASSOCIATION COVERAGE FORM

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

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

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

A. Coverage

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

1. Covered Property

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

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

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

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

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

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

(b) Appliances, such as those used for refrigerating, ventilating, cooking, dishwashing, laundering, security or housekeeping.

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

b. Your Business Personal Property located in or on the building or structure described in the Declarations or in the open (or in a vehicle) within 100 feet of the described premises, consisting of the following:

- (1) Personal property owned by you or owned indivisibly by all unit-owners;
- (2) Your interest in the labor, materials or services furnished or arranged by you on personal property of others; and
- (3) Leased personal property for which you have a contractual responsibility to insure, unless otherwise provided for under Personal Property Of Others.

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

c. Personal Property Of Others that is:

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

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

2. Property Not Covered

Covered Property does not include:

- a. Accounts, bills, currency, food stamps or other evidences of debt, money, notes or securities. Lottery tickets held for sale are not securities;
- b. Animals, unless owned by others and boarded by you;
- c. Automobiles held for sale;
- d. Bridges, roadways, walks, patios or other paved surfaces;
- e. Contraband, or property in the course of illegal transportation or trade;
- f. The cost of excavations, grading, backfilling or filling;
- g. Foundations of buildings, structures, machinery or boilers if their foundations are below:
 - (1) The lowest basement floor; or
 - (2) The surface of the ground if there is no basement;
- h. Land (including land on which the property is located), water, growing crops or lawns (other than lawns which are part of a vegetated roof);
- i. Personal property while airborne or waterborne;
- j. Bulkheads, pilings, piers, wharves or docks;
- k. Property that is covered under this or any other policy in which it is more specifically described, except for the excess of the amount due (whether you can collect on it or not) from that other insurance;
- l. Retaining walls that are not part of a building;
- m. Underground pipes, flues or drains;
- n. Electronic data, except as provided under the Additional Coverage, Electronic Data. Electronic data means information, facts or computer programs stored as or on, created or used on, or transmitted to or from computer software (including systems and applications software), on hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other repositories of computer software which are used with electronically controlled equipment. The term computer programs, referred to in the foregoing description of electronic data, means a set of related electronic instructions which direct the operations and functions of a computer or device connected to it, which enable the computer or device to receive, process, store, retrieve or send data. This paragraph, n., does not apply to electronic data which is integrated in and operates or controls the building's elevator, lighting, heating, ventilation, air conditioning or security system;
- o. The cost to replace or restore the information on valuable papers and records, including those which exist as electronic data. Valuable papers and records include but are not limited to proprietary information, books of account, deeds, manuscripts, abstracts, drawings and card index systems. Refer to the Coverage Extension for Valuable Papers And Records (Other Than Electronic Data) for limited coverage for valuable papers and records other than those which exist as electronic data;
- p. Vehicles or self-propelled machines (including aircraft or watercraft) that:
 - (1) Are licensed for use on public roads; or
 - (2) Are operated principally away from the described premises.

This paragraph does not apply to:

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

q. The following property while outside of buildings:

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

3. Covered Causes Of Loss

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

4. Additional Coverages

a. Debris Removal

(1) Subject to Paragraphs (2), (3) and (4), we will pay your expense to remove debris of Covered Property and other debris that is on the described premises, when such debris is caused by or results from a Covered Cause of Loss that occurs during the policy period. The expenses will be paid only if they are reported to us in writing within 180 days of the date of direct physical loss or damage.

(2) Debris Removal does not apply to costs to:

- (a) Remove debris of property of yours that is not insured under this policy, or property in your possession that is not Covered Property;
- (b) Remove any property that is Property Not Covered, including property addressed under the Outdoor Property Coverage Extension;
- (c) Remove property of others of a type that would not be Covered Property under this Coverage Form;
- (d) Remove deposits of mud or earth from the grounds of the described premises;
- (e) Extract "pollutants" from land or water; or
- (f) Remove, restore or replace polluted land or water.

(3) Subject to the exceptions in Paragraph (4), the following provisions apply:

(a) The most we will pay for the total of direct physical loss or damage plus debris removal expense is the Limit of Insurance applicable to the Covered Property that has sustained loss or damage.

(b) Subject to (a) above, the amount we will pay for debris removal expense is limited to 25% of the sum of the deductible plus the amount that we pay for direct physical loss or damage to the Covered Property that has sustained loss or damage. However, if no Covered Property has sustained direct physical loss or damage, the most we will pay for removal of debris of other property (if such removal is covered under this Additional Coverage) is \$5,000 at each location.

(4) We will pay up to an additional \$25,000 for debris removal expense, for each location, in any one occurrence of physical loss or damage to Covered Property, if one or both of the following circumstances apply:

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

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

Therefore, if (4)(a) and/or (4)(b) applies, our total payment for direct physical loss or damage and debris removal expense may reach but will never exceed the Limit of Insurance on the Covered Property that has sustained loss or damage, plus \$25,000.

(5) Examples

The following examples assume that there is no Coinsurance penalty.

Example 1

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

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

Example 2

Limit of Insurance:	\$ 90,000
Amount of Deductible:	\$ 500
Amount of Loss:	\$ 80,000
Amount of Loss Payable:	\$ 79,500
	(\$80,000 – \$500)
Debris Removal Expense:	\$ 40,000
Debris Removal Expense Payable	
Basic Amount:	\$ 10,500
Additional Amount:	\$ 25,000

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

The additional amount payable for debris removal expense is provided in accordance with the terms of Paragraph (4), because the debris removal expense (\$40,000) exceeds 25% of the loss payable plus the deductible (\$40,000 = 50% of \$80,000), and because the sum of the loss payable and debris removal expense (\$79,500 + \$40,000 = \$119,500) would exceed the Limit of Insurance (\$90,000). The additional amount of covered debris removal expense is \$25,000, the maximum payable under Paragraph (4). Thus, the total payable for debris removal expense in this example is \$35,500; \$4,500 of the debris removal expense is not covered.

b. Preservation Of Property

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

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

c. Fire Department Service Charge

When the fire department is called to save or protect Covered Property from a Covered Cause of Loss, we will pay up to \$1,000 for service at each premises described in the Declarations unless a higher limit is shown in the Declarations. Such limit is the most we will pay regardless of the number of responding fire departments or fire units, and regardless of the number or type of services performed.

This Additional Coverage applies to your liability for fire department service charges:

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

No Deductible applies to this Additional Coverage.

d. Pollutant Clean-up And Removal

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

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

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

e. Increased Cost Of Construction

- (1) This Additional Coverage applies only to buildings to which the Replacement Cost Optional Coverage applies.
- (2) In the event of damage by a Covered Cause of Loss to a building that is Covered Property, we will pay the increased costs incurred to comply with the minimum standards of an ordinance or law in the course of repair, rebuilding or replacement of damaged parts of that property, subject to the limitations stated in **e.(3)** through **e.(9)** of this Additional Coverage.
- (3) The ordinance or law referred to in **e.(2)** of this Additional Coverage is an ordinance or law that regulates the construction or repair of buildings or establishes zoning or land use requirements at the described premises and is in force at the time of loss.
- (4) Under this Additional Coverage, we will not pay any costs due to an ordinance or law that:
 - (a) You were required to comply with before the loss, even when the building was undamaged; and
 - (b) You failed to comply with.
- (5) Under this Additional Coverage, we will not pay for:
 - (a) The enforcement of or compliance with any ordinance or law which requires demolition, repair, replacement, reconstruction, remodeling or remediation of property due to contamination by "pollutants" or due to the presence, growth, proliferation, spread or any activity of "fungus", wet or dry rot or bacteria; or
 - (b) Any costs associated with the enforcement of or compliance with an ordinance or law which requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants", "fungus", wet or dry rot or bacteria.

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

The amount payable under this Additional Coverage is additional insurance.

- (7) With respect to this Additional Coverage:
 - (a) We will not pay for the Increased Cost of Construction:
 - (i) Until the property is actually repaired or replaced, at the same or another premises; and
 - (ii) Unless the repair or replacement is made as soon as reasonably possible after the loss or damage, not to exceed two years. We may extend this period in writing during the two years.
 - (b) If the building is repaired or replaced at the same premises, or if you elect to rebuild at another premises, the most we will pay for the Increased Cost of Construction, subject to the provisions of **e.(6)** of this Additional Coverage, is the increased cost of construction at the same premises.
 - (c) If the ordinance or law requires relocation to another premises, the most we will pay for the Increased Cost of Construction, subject to the provisions of **e.(6)** of this Additional Coverage, is the increased cost of construction at the new premises.
- (8) This Additional Coverage is not subject to the terms of the Ordinance Or Law Exclusion to the extent that such Exclusion would conflict with the provisions of this Additional Coverage.

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

f. Electronic Data

- (1) Under this Additional Coverage, electronic data has the meaning described under Property Not Covered, Electronic Data. This Additional Coverage does not apply to electronic data which is integrated in and operates or controls the building's elevator, lighting, heating, ventilation, air conditioning or security system.
- (2) Subject to the provisions of this Additional Coverage, we will pay for the cost to replace or restore electronic data which has been destroyed or corrupted by a Covered Cause of Loss. To the extent that electronic data is not replaced or restored, the loss will be valued at the cost of replacement of the media on which the electronic data was stored, with blank media of substantially identical type.
- (3) The Covered Causes of Loss applicable to Your Business Personal Property apply to this Additional Coverage, Electronic Data, subject to the following:
 - (a) If the Causes Of Loss – Special Form applies, coverage under this Additional Coverage, Electronic Data, is limited to the "specified causes of loss" as defined in that form and Collapse as set forth in that form.
 - (b) If the Causes Of Loss – Broad Form applies, coverage under this Additional Coverage, Electronic Data, includes Collapse as set forth in that form.
 - (c) If the Causes Of Loss form is endorsed to add a Covered Cause of Loss, the additional Covered Cause of Loss does not apply to the coverage provided under this Additional Coverage, Electronic Data.

- (d) The Covered Causes of Loss include a virus, harmful code or similar instruction introduced into or enacted on a computer system (including electronic data) or a network to which it is connected, designed to damage or destroy any part of the system or disrupt its normal operation. But there is no coverage for loss or damage caused by or resulting from manipulation of a computer system (including electronic data) by any employee, including a temporary or leased employee, or by an entity retained by you or for you to inspect, design, install, modify, maintain, repair or replace that system.

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

5. Coverage Extensions

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

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

a. Newly Acquired Or Constructed Property

(1) Buildings

You may extend the insurance that applies to Building to apply to:

- (a) Your new buildings while being built on the described premises; and

(b) Buildings you acquire at locations, other than the described premises, intended for:

- (i) Similar use as the building described in the Declarations; or
- (ii) Use as a warehouse.

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

(2) Your Business Personal Property

(a) If this policy covers Your Business Personal Property, you may extend that insurance to apply to:

- (i) Business personal property, including such property that you newly acquire, at any location you acquire other than at fairs, trade shows or exhibitions; or
- (ii) Business personal property, including such property that you newly acquire, located at your newly constructed or acquired buildings at the location described in the Declarations.

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

(b) This Extension does not apply to:

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

(3) Period Of Coverage

With respect to insurance provided under this Coverage Extension for Newly Acquired Or Constructed Property, coverage will end when any of the following first occurs:

(a) This policy expires;

(b) 30 days expire after you acquire the property or begin construction of that part of the building that would qualify as covered property; or

(c) You report values to us.

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

b. Personal Effects And Property Of Others

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

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

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

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

- (1) You may extend the insurance that applies to Your Business Personal Property to apply to the cost to replace or restore the lost information on valuable papers and records for which duplicates do not exist. But this Extension does not apply to valuable papers and records which exist as electronic data. Electronic data has the meaning described under Property Not Covered, Electronic Data.
- (2) If the Causes Of Loss – Special Form applies, coverage under this Extension is limited to the "specified causes of loss" as defined in that form and Collapse as set forth in that form.
- (3) If the Causes Of Loss – Broad Form applies, coverage under this Extension includes Collapse as set forth in that form.

- (4) Under this Extension, the most we will pay to replace or restore the lost information is \$2,500 at each described premises, unless a higher limit is shown in the Declarations. Such amount is additional insurance. We will also pay for the cost of blank material for reproducing the records (whether or not duplicates exist) and (when there is a duplicate) for the cost of labor to transcribe or copy the records. The costs of blank material and labor are subject to the applicable Limit of Insurance on Your Business Personal Property and, therefore, coverage of such costs is not additional insurance.

d. Property Off-premises

- (1) You may extend the insurance provided by this Coverage Form to apply to your Covered Property while it is away from the described premises, if it is:
- (a) Temporarily at a location you do not own, lease or operate;
 - (b) In storage at a location you lease, provided the lease was executed after the beginning of the current policy term; or
 - (c) At any fair, trade show or exhibition.
- (2) This Extension does not apply to property:
- (a) In or on a vehicle; or
 - (b) In the care, custody or control of your salespersons, unless the property is in such care, custody or control at a fair, trade show or exhibition.
- (3) The most we will pay for loss or damage under this Extension is \$10,000.

e. Outdoor Property

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

- (1) Fire;
- (2) Lightning;

- (3) Explosion;
- (4) Riot or Civil Commotion; or
- (5) Aircraft.

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

Subject to all aforementioned terms and limitations of coverage, this Coverage Extension includes the expense of removing from the described premises the debris of trees, shrubs and plants which are the property of others.

f. Non-owned Detached Trailers

- (1) You may extend the insurance that applies to Your Business Personal Property to apply to loss or damage to trailers that you do not own, provided that:
- (a) The trailer is used in your business;
 - (b) The trailer is in your care, custody or control at the premises described in the Declarations; and
 - (c) You have a contractual responsibility to pay for loss or damage to the trailer.
- (2) We will not pay for any loss or damage that occurs:
- (a) While the trailer is attached to any motor vehicle or motorized conveyance, whether or not the motor vehicle or motorized conveyance is in motion;
 - (b) During hitching or unhitching operations, or when a trailer becomes accidentally unhitched from a motor vehicle or motorized conveyance.
- (3) The most we will pay for loss or damage under this Extension is \$5,000, unless a higher limit is shown in the Declarations.
- (4) This insurance is excess over the amount due (whether you can collect on it or not) from any other insurance covering such property.

g. Business Personal Property Temporarily In Portable Storage Units

- (1) You may extend the insurance that applies to Your Business Personal Property to apply to such property while temporarily stored in a portable storage unit (including a detached trailer) located within 100 feet of the described premises.
- (2) If the applicable Covered Causes of Loss form or endorsement contains a limitation or exclusion concerning loss or damage from sand, dust, sleet, snow, ice or rain to property in a structure, such limitation or exclusion also applies to property in a portable storage unit.
- (3) Coverage under this Extension:
 - (a) Will end 90 days after the business personal property has been placed in the storage unit;
 - (b) Does not apply if the storage unit itself has been in use at the described premises for more than 90 consecutive days, even if the business personal property has been stored there for 90 or fewer days as of the time of loss or damage.
- (4) Under this Extension, the most we will pay for the total of all loss or damage to business personal property is \$10,000 (unless a higher limit is indicated in the Declarations for such Extension) regardless of the number of storage units. Such limit is part of, not in addition to, the applicable Limit of Insurance on Your Business Personal Property. Therefore, payment under this Extension will not increase the applicable Limit of Insurance on Your Business Personal Property.
- (5) This Extension does not apply to loss or damage otherwise covered under this Coverage Form or any endorsement to this Coverage Form or policy, and does not apply to loss or damage to the storage unit itself.

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

B. Exclusions And Limitations

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

C. Limits Of Insurance

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

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

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

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

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

D. Deductible

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

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

Example 1

(This example assumes there is no Coinsurance penalty.)

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

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

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

\$ 60,100
 - 250

\$ 59,850 Loss Payable – Building 1

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

Total amount of loss payable:

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

Example 2

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

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

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

E. Loss Conditions

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

1. Abandonment

There can be no abandonment of any property to us.

2. Appraisal

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

a. Pay its chosen appraiser; and

b. Bear the other expenses of the appraisal and umpire equally.

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

3. Duties In The Event Of Loss Or Damage

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

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

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

4. Loss Payment

- a. In the event of loss or damage covered by this Coverage Form, at our option, we will either:

- (1) Pay the value of lost or damaged property;
- (2) Pay the cost of repairing or replacing the lost or damaged property, subject to b. below;
- (3) Take all or any part of the property at an agreed or appraised value; or
- (4) Repair, rebuild or replace the property with other property of like kind and quality, subject to b. below.

We will determine the value of lost or damaged property, or the cost of its repair or replacement, in accordance with the applicable terms of the Valuation Condition in this Coverage Form or any applicable provision which amends or supersedes the Valuation Condition.

- b. The cost to repair, rebuild or replace does not include the increased cost attributable to enforcement of or compliance with any ordinance or law regulating the construction, use or repair of any property.
- c. We will give notice of our intentions within 30 days after we receive the sworn proof of loss.
- d. We will not pay you more than your financial interest in the Covered Property.
- e. We may adjust losses with the owners of lost or damaged property if other than you. If we pay the owners, such payments will satisfy your claims against us for the owners' property. We will not pay the owners more than their financial interest in the Covered Property.
- f. We may elect to defend you against suits arising from claims of owners of property. We will do this at our expense.

- g. We will pay for covered loss or damage to Covered Property within 30 days after we receive the sworn proof of loss, if you have complied with all of the terms of this Coverage Part, and:

- (1) We have reached agreement with you on the amount of loss; or
- (2) An appraisal award has been made.

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

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

5. Recovered Property

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

6. Unit-owner's Insurance

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

7. Vacancy

a. Description Of Terms

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

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

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

(i) Rented to a lessee or sublessee and used by the lessee or sublessee to conduct its customary operations; and/or

(ii) Used by the building owner to conduct customary operations.

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

b. Vacancy Provisions

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

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

(a) Vandalism;

(b) Sprinkler leakage, unless you have protected the system against freezing;

(c) Building glass breakage;

(d) Water damage;

(e) Theft; or

(f) Attempted theft.

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

8. Valuation

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

a. At actual cash value as of the time of loss or damage, except as provided in b. and c. below.

b. If the Limit of Insurance for Building satisfies the Additional Condition, Coinsurance, and the cost to repair or replace the damaged building property is \$2,500 or less, we will pay the cost of building repairs or replacement.

The cost of building repairs or replacement does not include the increased cost attributable to enforcement of or compliance with any ordinance or law regulating the construction, use or repair of any property. However, the following property will be valued at the actual cash value, even when attached to the building:

(1) Awnings or floor coverings;

(2) Appliances for refrigerating, ventilating, cooking, dishwashing or laundering; or

(3) Outdoor equipment or furniture.

c. Glass at the cost of replacement with safety-glazing material if required by law.

9. Waiver Of Rights Of Recovery

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

F. Additional Conditions

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

1. Coinsurance

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

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

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

(1) Multiply the value of Covered Property at the time of loss by the Coinsurance percentage;

(2) Divide the Limit of Insurance of the property by the figure determined in Step (1);

(3) Multiply the total amount of loss, before the application of any deductible, by the figure determined in Step (2); and

(4) Subtract the deductible from the figure determined in Step (3).

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

Example 1 (Underinsurance)

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

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

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

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

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

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

Example 2 (Adequate Insurance)

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

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

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

Example 3

When: The value of the property is:

Building at Location 1:	\$ 75,000
Building at Location 2:	\$ 100,000
Personal Property at Location 2:	\$ 75,000
	<u>\$ 250,000</u>

The Coinsurance percentage for it is: 90%

The Limit of Insurance for Buildings and Personal Property at Locations 1 and 2 is: \$ 180,000

The Deductible is: \$ 1,000

The amount of loss is:

Building at Location 2:	\$ 30,000
Personal Property at Location 2:	\$ 20,000
	<u>\$ 50,000</u>

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

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

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

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

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

2. Mortgageholders

- The term mortgageholder includes trustee.
- 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.
- The mortgageholder has the right to receive loss payment even if the mortgageholder has started foreclosure or similar action on the building or structure.
- If we deny your claim because of your acts or because you have failed to comply with the terms of this Coverage Part, the mortgageholder will still have the right to receive loss payment if the mortgageholder:
 - (1) Pays any premium due under this Coverage Part at our request if you have failed to do so;

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

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

- e. If we pay the mortgageholder for any loss or damage and deny payment to you because of your acts or because you have failed to comply with the terms of this Coverage Part:

- (1) The mortgageholder's rights under the mortgage will be transferred to us to the extent of the amount we pay; and
- (2) The mortgageholder's right to recover the full amount of the mortgageholder's claim will not be impaired.

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

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

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

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

G. Optional Coverages

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

1. Agreed Value

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

- b. If the expiration date for this Optional Coverage shown in the Declarations is not extended, the Additional Condition, Coinsurance, is reinstated and this Optional Coverage expires.

- c. The terms of this Optional Coverage apply only to loss or damage that occurs:

- (1) On or after the effective date of this Optional Coverage; and
- (2) Before the Agreed Value expiration date shown in the Declarations or the policy expiration date, whichever occurs first.

2. Inflation Guard

- a. The Limit of Insurance for property to which this Optional Coverage applies will automatically increase by the annual percentage shown in the Declarations.

- b. The amount of increase will be:

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

Example

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

3. Replacement Cost

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

Under the terms of this Replacement Cost Optional Coverage, personal property owned indivisibly by all unit-owners, and the property covered under Paragraph **A.1.a.(6)** of this Coverage Form, are not considered to be the personal property of others.

- c. You may make a claim for loss or damage covered by this insurance on an actual cash value basis instead of on a replacement cost basis. In the event you elect to have loss or damage settled on an actual cash value basis, you may still make a claim for the additional coverage this Optional Coverage provides if you notify us of your intent to do so within 180 days after the loss or damage.
- d. We will not pay on a replacement cost basis for any loss or damage:
 - (1) Until the lost or damaged property is actually repaired or replaced; and
 - (2) Unless the repair or replacement is made as soon as reasonably possible after the loss or damage.
- e. We will not pay more for loss or damage on a replacement cost basis than the least of (1), (2) or (3), subject to f. below:
 - (1) The Limit of Insurance applicable to the lost or damaged property;
 - (2) The cost to replace the lost or damaged property with other property:
 - (a) Of comparable material and quality; and
 - (b) Used for the same purpose; or
 - (3) The amount actually spent that is necessary to repair or replace the lost or damaged property.

If a building is rebuilt at a new premises, the cost described in e.(2) above is limited to the cost which would have been incurred if the building had been rebuilt at the original premises.

- f. The cost of repair or replacement does not include the increased cost attributable to enforcement of or compliance with any ordinance or law regulating the construction, use or repair of any property.

4. Extension Of Replacement Cost To Personal Property Of Others

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

- b. With respect to replacement cost on the personal property of others, the following limitation applies:

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

H. Definitions

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

CAUSES OF LOSS – SPECIAL FORM

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

A. Covered Causes Of Loss

When Special is shown in the Declarations, Covered Causes of Loss means direct physical loss unless the loss is excluded or limited in this policy.

B. Exclusions

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

a. Ordinance Or Law

The enforcement of or compliance with any ordinance or law:

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

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

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

b. Earth Movement

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

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

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

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

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

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

With respect to coverage for Volcanic Action as set forth in **(5)(a)**, **(5)(b)** and **(5)(c)**, all volcanic eruptions that occur within any 168-hour period will constitute a single occurrence.

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

This exclusion applies regardless of whether any of the above, in Paragraphs **(1)** through **(5)**, is caused by an act of nature or is otherwise caused.

c. Governmental Action

Seizure or destruction of property by order of governmental authority.

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

d. Nuclear Hazard

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

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

e. Utility Services

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

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

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

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

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

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

f. War And Military Action

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

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

g. Water

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

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

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

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

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

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

This exclusion does not apply:

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

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

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

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

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

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

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

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

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

- (5) Nesting or infestation, or discharge or release of waste products or secretions, by insects, birds, rodents or other animals.

- (6) Mechanical breakdown, including rupture or bursting caused by centrifugal force. But if mechanical breakdown results in elevator collision, we will pay for the loss or damage caused by that elevator collision.

- (7) The following causes of loss to personal property:

- (a) Dampness or dryness of atmosphere;
- (b) Changes in or extremes of temperature; or
- (c) Marring or scratching.

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

- e. Explosion of steam boilers, steam pipes, steam engines or steam turbines owned or leased by you, or operated under your control. But if explosion of steam boilers, steam pipes, steam engines or steam turbines results in fire or combustion explosion, we will pay for the loss or damage caused by that fire or combustion explosion. We will also pay for loss or damage caused by or resulting from the explosion of gases or fuel within the furnace of any fired vessel or within the flues or passages through which the gases of combustion pass.
- f. Continuous or repeated seepage or leakage of water, or the presence or condensation of humidity, moisture or vapor, that occurs over a period of 14 days or more.
- g. Water, other liquids, powder or molten material that leaks or flows from plumbing, heating, air conditioning or other equipment (except fire protective systems) caused by or resulting from freezing, unless:
 - (1) You do your best to maintain heat in the building or structure; or

- (2) You drain the equipment and shut off the supply if the heat is not maintained.
- h. Dishonest or criminal act (including theft) by you, any of your partners, members, officers, managers, employees (including temporary employees and leased workers), directors, trustees or authorized representatives, whether acting alone or in collusion with each other or with any other party; or theft by any person to whom you entrust the property for any purpose, whether acting alone or in collusion with any other party.

This exclusion:

- (1) Applies whether or not an act occurs during your normal hours of operation;
 - (2) Does not apply to acts of destruction by your employees (including temporary employees and leased workers) or authorized representatives; but theft by your employees (including temporary employees and leased workers) or authorized representatives is not covered.
- i. Voluntary parting with any property by you or anyone else to whom you have entrusted the property if induced to do so by any fraudulent scheme, trick, device or false pretense.
- j. Rain, snow, ice or sleet to personal property in the open.
- k. Collapse, including any of the following conditions of property or any part of the property:
- (1) An abrupt falling down or caving in;
 - (2) Loss of structural integrity, including separation of parts of the property or property in danger of falling down or caving in; or
 - (3) Any cracking, bulging, sagging, bending, leaning, settling, shrinkage or expansion as such condition relates to (1) or (2) above.

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

This exclusion, k., does not apply:

- (a) To the extent that coverage is provided under the Additional Coverage, Collapse; or

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

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

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

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

- m. Neglect of an insured to use all reasonable means to save and preserve property from further damage at and after the time of loss.
3. We will not pay for loss or damage caused by or resulting from any of the following, 3.a. through 3.c. But if an excluded cause of loss that is listed in 3.a. through 3.c. results in a Covered Cause of Loss, we will pay for the loss or damage caused by that Covered Cause of Loss.
- a. Weather conditions. But this exclusion only applies if weather conditions contribute in any way with a cause or event excluded in Paragraph 1. above to produce the loss or damage.
 - b. Acts or decisions, including the failure to act or decide, of any person, group, organization or governmental body.
 - c. Faulty, inadequate or defective:
 - (1) Planning, zoning, development, surveying, siting;
 - (2) Design, specifications, workmanship, repair, construction, renovation, remodeling, grading, compaction;
 - (3) Materials used in repair, construction, renovation or remodeling; or
 - (4) Maintenance;
 of part or all of any property on or off the described premises.

4. Special Exclusions

The following provisions apply only to the specified Coverage Forms:

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

We will not pay for:

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

This exclusion does not apply to Extra Expense.
- (2) Any loss caused by or resulting from direct physical loss or damage to radio or television antennas (including satellite dishes) and their lead-in wiring, masts or towers.
- (3) Any increase of loss caused by or resulting from:
 - (a) Delay in rebuilding, repairing or replacing the property or resuming "operations", due to interference at the location of the rebuilding, repair or replacement by strikers or other persons; or
 - (b) Suspension, lapse or cancellation of any license, lease or contract. But if the suspension, lapse or cancellation is directly caused by the "suspension" of "operations", we will cover such loss that affects your Business Income during the "period of restoration" and any extension of the "period of restoration" in accordance with the terms of the Extended Business Income Additional Coverage and the Extended Period Of Indemnity Optional Coverage or any variation of these.
- (4) Any Extra Expense caused by or resulting from suspension, lapse or cancellation of any license, lease or contract beyond the "period of restoration".

- (5) Any other consequential loss.

b. Leasehold Interest Coverage Form

- (1) Paragraph B.1.a., Ordinance Or Law, does not apply to insurance under this Coverage Form.
- (2) We will not pay for any loss caused by:
 - (a) Your cancelling the lease;
 - (b) The suspension, lapse or cancellation of any license; or
 - (c) Any other consequential loss.

c. Legal Liability Coverage Form

- (1) The following exclusions do not apply to insurance under this Coverage Form:
 - (a) Paragraph B.1.a. Ordinance Or Law;
 - (b) Paragraph B.1.c. Governmental Action;
 - (c) Paragraph B.1.d. Nuclear Hazard;
 - (d) Paragraph B.1.e. Utility Services; and
 - (e) Paragraph B.1.f. War And Military Action.
- (2) The following additional exclusions apply to insurance under this Coverage Form:

(a) Contractual Liability

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

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

(b) Nuclear Hazard

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

5. Additional Exclusion

The following provisions apply only to the specified property:

Loss Or Damage To Products

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

C. Limitations

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

1. We will not pay for loss of or damage to property, as described and limited in this section. In addition, we will not pay for any loss that is a consequence of loss or damage as described and limited in this section.
 - a. Steam boilers, steam pipes, steam engines or steam turbines caused by or resulting from any condition or event inside such equipment. But we will pay for loss of or damage to such equipment caused by or resulting from an explosion of gases or fuel within the furnace of any fired vessel or within the flues or passages through which the gases of combustion pass.
 - b. Hot water boilers or other water heating equipment caused by or resulting from any condition or event inside such boilers or equipment, other than an explosion.
 - c. The interior of any building or structure, or to personal property in the building or structure, caused by or resulting from rain, snow, sleet, ice, sand or dust, whether driven by wind or not, unless:
 - (1) The building or structure first sustains damage by a Covered Cause of Loss to its roof or walls through which the rain, snow, sleet, ice, sand or dust enters; or
 - (2) The loss or damage is caused by or results from thawing of snow, sleet or ice on the building or structure.
- d. Building materials and supplies not attached as part of the building or structure, caused by or resulting from theft.

However, this limitation does not apply to:

 - (1) Building materials and supplies held for sale by you, unless they are insured under the Builders Risk Coverage Form; or
 - (2) Business Income Coverage or Extra Expense Coverage.
- e. Property that is missing, where the only evidence of the loss or damage is a shortage disclosed on taking inventory, or other instances where there is no physical evidence to show what happened to the property.
- f. Property that has been transferred to a person or to a place outside the described premises on the basis of unauthorized instructions.
- g. Lawns, trees, shrubs or plants which are part of a vegetated roof, caused by or resulting from:
 - (1) Dampness or dryness of atmosphere or of soil supporting the vegetation;
 - (2) Changes in or extremes of temperature;
 - (3) Disease;
 - (4) Frost or hail; or
 - (5) Rain, snow, ice or sleet.
2. We will not pay for loss of or damage to the following types of property unless caused by the "specified causes of loss" or building glass breakage:
 - a. Animals, and then only if they are killed or their destruction is made necessary.
 - b. Fragile articles such as statuary, marbles, chinaware and porcelains, if broken. This restriction does not apply to:
 - (1) Glass; or
 - (2) Containers of property held for sale.
 - c. Builders' machinery, tools and equipment owned by you or entrusted to you, provided such property is Covered Property.

However, this limitation does not apply:

 - (1) If the property is located on or within 100 feet of the described premises, unless the premises is insured under the Builders Risk Coverage Form; or
 - (2) To Business Income Coverage or to Extra Expense Coverage.

3. The special limit shown for each category, **a.** through **d.**, is the total limit for loss of or damage to all property in that category. The special limit applies to any one occurrence of theft, regardless of the types or number of articles that are lost or damaged in that occurrence. The special limits are (unless a higher limit is shown in the Declarations):

- a. \$2,500 for furs, fur garments and garments trimmed with fur.
- b. \$2,500 for jewelry, watches, watch movements, jewels, pearls, precious and semiprecious stones, bullion, gold, silver, platinum and other precious alloys or metals. This limit does not apply to jewelry and watches worth \$100 or less per item.
- c. \$2,500 for patterns, dies, molds and forms.
- d. \$250 for stamps, tickets, including lottery tickets held for sale, and letters of credit.

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

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

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

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

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

D. Additional Coverage – Collapse

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

1. For the purpose of this Additional Coverage, Collapse, abrupt collapse means an abrupt falling down or caving in of a building or any part of a building with the result that the building or part of the building cannot be occupied for its intended purpose.

2. We will pay for direct physical loss or damage to Covered Property, caused by abrupt collapse of a building or any part of a building that is insured under this Coverage Form or that contains Covered Property insured under this Coverage Form, if such collapse is caused by one or more of the following:

- a. Building decay that is hidden from view, unless the presence of such decay is known to an insured prior to collapse;
- b. Insect or vermin damage that is hidden from view, unless the presence of such damage is known to an insured prior to collapse;
- c. Use of defective material or methods in construction, remodeling or renovation if the abrupt collapse occurs during the course of the construction, remodeling or renovation.
- d. Use of defective material or methods in construction, remodeling or renovation if the abrupt collapse occurs after the construction, remodeling or renovation is complete, but only if the collapse is caused in part by:

- (1) A cause of loss listed in **2.a.** or **2.b.**;
- (2) One or more of the "specified causes of loss";
- (3) Breakage of building glass;
- (4) Weight of people or personal property; or
- (5) Weight of rain that collects on a roof.

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

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

4. With respect to the following property:

- a. Outdoor radio or television antennas (including satellite dishes) and their lead-in wiring, masts or towers;

- b. Awnings, gutters and downspouts;
 - c. Yard fixtures;
 - d. Outdoor swimming pools;
 - e. Fences;
 - f. Piers, wharves and docks;
 - g. Beach or diving platforms or appurtenances;
 - h. Retaining walls; and
 - i. Walks, roadways and other paved surfaces;
- if an abrupt collapse is caused by a cause of loss listed in **2.a.** through **2.d.**, we will pay for loss or damage to that property only if:

- (1) Such loss or damage is a direct result of the abrupt collapse of a building insured under this Coverage Form; and
 - (2) The property is Covered Property under this Coverage Form.
5. If personal property abruptly falls down or caves in and such collapse is **not** the result of abrupt collapse of a building, we will pay for loss or damage to Covered Property caused by such collapse of personal property only if:
- a. The collapse of personal property was caused by a cause of loss listed in **2.a.** through **2.d.**;
 - b. The personal property which collapses is inside a building; and
 - c. The property which collapses is not of a kind listed in **4.**, regardless of whether that kind of property is considered to be personal property or real property.

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

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

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

- 1. The coverage described in **E.2.** and **E.6.** only applies when the "fungus", wet or dry rot or bacteria are the result of one or more of the following causes that occur during the policy period and only if all reasonable means were used to save and preserve the property from further damage at the time of and after that occurrence:

- a. A "specified cause of loss" other than fire or lightning; or
- b. Flood, if the Flood Coverage Endorsement applies to the affected premises.

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

- 2. We will pay for loss or damage by "fungus", wet or dry rot or bacteria. As used in this Limited Coverage, the term loss or damage means:

- a. Direct physical loss or damage to Covered Property caused by "fungus", wet or dry rot or bacteria, including the cost of removal of the "fungus", wet or dry rot or bacteria;
- b. The cost to tear out and replace any part of the building or other property as needed to gain access to the "fungus", wet or dry rot or bacteria; and
- c. The cost of testing performed after removal, repair, replacement or restoration of the damaged property is completed, provided there is a reason to believe that "fungus", wet or dry rot or bacteria are present.

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

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

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

5. The terms of this Limited Coverage do not increase or reduce the coverage provided under Paragraph F.2. (Water Damage, Other Liquids, Powder Or Molten Material Damage) of this Causes Of Loss form or under the Additional Coverage, Collapse.
6. The following, 6.a. or 6.b., applies only if Business Income and/or Extra Expense Coverage applies to the described premises and only if the "suspension" of "operations" satisfies all terms and conditions of the applicable Business Income and/or Extra Expense Coverage Form:
 - a. If the loss which resulted in "fungus", wet or dry rot or bacteria does not in itself necessitate a "suspension" of "operations", but such "suspension" is necessary due to loss or damage to property caused by "fungus", wet or dry rot or bacteria, then our payment under Business Income and/or Extra Expense is limited to the amount of loss and/or expense sustained in a period of not more than 30 days. The days need not be consecutive.
 - b. If a covered "suspension" of "operations" was caused by loss or damage other than "fungus", wet or dry rot or bacteria but remediation of "fungus", wet or dry rot or bacteria prolongs the "period of restoration", we will pay for loss and/or expense sustained during the delay (regardless of when such a delay occurs during the "period of restoration"), but such coverage is limited to 30 days. The days need not be consecutive.

F. Additional Coverage Extensions

1. Property In Transit

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

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

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

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

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

3. Glass

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

- b. We will pay for expenses incurred to remove or replace obstructions when repairing or replacing glass that is part of a building. This does not include removing or replacing window displays.

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

G. Definitions

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

c. Water damage means:

- (1) Accidental discharge or leakage of water or steam as the direct result of the breaking apart or cracking of a plumbing, heating, air conditioning or other system or appliance (other than a sump system including its related equipment and parts), that is located on the described premises and contains water or steam; and
- (2) Accidental discharge or leakage of water or waterborne material as the direct result of the breaking apart or cracking of a water or sewer pipe that is located off the described premises and is part of a municipal potable water supply system or municipal sanitary sewer system, if the breakage or cracking is caused by wear and tear.

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

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

POLICY NUMBER:

COMMERCIAL PROPERTY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**SOUTH CAROLINA CHANGES – VALUATION**

This endorsement modifies insurance provided under the following:

BUILDING AND PERSONAL PROPERTY COVERAGE FORM
 BUILDERS' RISK COVERAGE FORM
 CONDOMINIUM ASSOCIATION COVERAGE FORM
 STANDARD PROPERTY POLICY

SCHEDULE*

Prem. No.	Bldg. No.	Agreed Value of Buildings	Total Amount of Insurance to be Carried

- A.** When this endorsement is attached to the STANDARD PROPERTY POLICY CP 00 99 the term Coverage Part in this endorsement is replaced by the term Policy.
- B.** The following is added to VALUATION Loss Condition:
- 1.** For loss or damage to buildings caused by or resulting from fire or lightning, you and we agree that:
 - a.** The value of buildings described in this Coverage Part; and
 - b.** The total amount of insurance to be carried on the buildings, including this Coverage Part; are the amounts shown in the Schedule.
 - 2.** The following applies to the Builders' Risk Coverage Form, or the Builders' Risk Changes – Standard Property Policy, if applicable:
 The Agreed Value of Buildings represents the value of the building when it is completed.

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

POLICY NUMBER:

COMMERCIAL PROPERTY
CP 03 20 10 92

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

MULTIPLE DEDUCTIBLE FORM

(FIXED DOLLAR DEDUCTIBLES)

This endorsement modifies insurance provided under the following:

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

SCHEDULE *

The Deductibles applicable to any one occurrence are shown below:

Prem. No.	Bldg. No.	Deductible	Covered Causes of Loss **

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

** For each deductible listed in this Schedule, enter the number corresponding to the Covered Cause(s) of Loss to which that deductible applies (or enter the description):

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

The following is added to the DEDUCTIBLE section:

- A. In the event that loss or damage occurs to Covered Property at more than one building location as a result of one occurrence, the largest applicable deductible for that Covered Cause of Loss, shown in the Schedule above or in the Declarations, will apply.
- B. The terms of this endorsement do not apply to any Earthquake Deductible or to any Windstorm or Hail Percentage Deductible provided elsewhere in this policy.

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

This endorsement, effective 12:01 a.m.

Forms a part of Policy No.

Issued to:

By:

WINDSTORM OR HAIL DEDUCTIBLE ENDORSEMENT – WITH NAMED STORM DEFINITION

This endorsement modifies insurance provided under the following:

BUILDING AND PERSONAL PROPERTY COVERAGE FORM
 COUNTRY CLUB PREMIER PROPERTY COVERAGE FORM
 PROPERTY COVERAGE FORM
 BUSINESS INCOME (AND EXTRA EXPENSE) COVERAGE FORM
 BUSINESS INCOME AND EXTRA EXPENSE COVERAGE PART

SCHEDULE*

Prem. No.	Bldg. No.	PROPERTY COVERED, OR BUSINESS INCOME (AND EXTRA EXPENSE) COVERAGE	WINDSTORM OR HAIL DEDUCTIBLE PERCENTAGE, OR MONETARY (DOLLAR) DEDUCTIBLE, OR "PERIOD OF RESTORATION" (HOURS)

Minimum Per Occurrence Deductible: \$ _____

* Information required to complete this schedule, if not shown on this endorsement, will be shown in the Declarations or by endorsement hereto.

The Windstorm or Hail Cause of Loss, as used in this endorsement, includes only those occurrences of windstorm or hail that are designated as a "named storm".

The Windstorm or Hail Deductible, as shown in the Schedule, applies to loss or damage to Covered Property caused directly or indirectly by Windstorm or Hail, regardless of any other cause or event that contributes concurrently or in any sequence to the loss or damage. If loss or damage from a covered weather condition other than Windstorm or Hail occurs, and that loss or damage would not have occurred but for the Windstorm or Hail, such loss or damage shall be considered to be caused by the Windstorm or Hail and therefore part of the Windstorm or Hail occurrence.

The Windstorm or Hail, "Period of Restoration" (hours), as shown in the Schedule, applies to the "Period of Restoration" for Business Income (and Extra Expense) coverage, if any, as specified in this endorsement.

With respect to Covered Property at a location identified in the Schedule, no other deductible, or "Period of Restoration", applies to Windstorm or Hail.

The Windstorm or Hail Deductible, and "Period of Restoration" (hours), applies whenever there is a Windstorm or Hail occurrence caused by a "named storm". If there is a covered loss by windstorm or hail that is not a "named storm", the applicable deductible is the same deductible that applies to fire, unless a different deductible is stated elsewhere in this policy for such loss or damage.

DEFINITIONS:

"Named storm" is a storm system that has been identified as a tropical storm or hurricane and assigned a name by the National Hurricane Center or the Central Pacific Hurricane Center of the National Weather Service (hereafter referred to as NHC and CPHC). Under the terms of this endorsement, a Named Storm begins at the time a Watch or Warning is issued by the NHC or CPHC for the area in which the affected premises are located, and ends 72 hours after the termination of the last Watch or Warning issued for that area by the NHC or CPHC.

As used in this endorsement, the terms "specific insurance" and "blanket insurance" have the following meanings: Specific insurance covers each item of insurance (for example, each building or personal property in a building) under a separate Limit of Insurance. Blanket insurance covers two or more items of insurance (for example, a building and personal property in that building, or two buildings) under a single Limit of Insurance. Items of insurance and corresponding Limit(s) of Insurance are shown in the Declarations.

WINDSTORM OR HAIL DEDUCTIBLE CLAUSE

- A. We will not pay for loss or damage until the amount of loss or damage exceeds the applicable Deductible(s) shown in the Schedule. We will then pay the amount of loss or damage in excess of that (those) Deductible(s), up to the applicable Limit of Insurance, after any reduction required by any of the following: Coinsurance Condition, Agreed Value Optional Coverage.

When property is covered under the Coverage Extension for Newly Acquired or Constructed Property: In determining the amount, if any, that we will pay for loss or damage, we will deduct an amount equal to:

- a. a percentage of the value(s) of the property at time of loss, if a Deductible percentage is shown in the Schedule. The applicable percentage for Newly Acquired or Constructed Property is the highest percentage shown in the Schedule for any described premises; or
- b. the highest monetary (dollar) Deductible shown in the schedule; or
- c. if both Deductible percentage and monetary (dollar) Deductible amounts are shown in the Schedule, then the applicable Deductible will be the greater of the deductibles determined by a. and b. above.

- B. Calculation of the Percentage Deductible – Specific Insurance

In determining the amount, if any, that we will pay for loss or damage, we will deduct an amount equal to the percentage as shown in the Schedule, of the Limit(s) of Insurance applicable to the property that has sustained loss or damage.

- C. Calculation of the Percentage Deductible – Blanket Insurance

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

- D. Minimum Per Occurrence Deductible

In any one occurrence of loss or damage, the minimum amount that will be deducted from all loss or damage, regardless of the number of locations, or number of buildings, involved in the loss, is the Minimum Per Occurrence Deductible shown in the Schedule.

WINDSTORM OR HAIL "PERIOD OF RESTORATION"

In the event of loss or damage to Covered Property by an occurrence of Windstorm or Hail, as covered by this endorsement, the Business Income "Period of Restoration" is amended as follows:

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

- a. Begins:

- (1) the number of hours as shown in the Schedule after the time of direct physical loss or damage for Business Income coverage; or
- (2) Immediately after the time of direct physical loss or damage for Extra Expense coverage; caused by or resulting from any Covered Cause of Loss at the described premises; and

- b. Ends on the earlier of:

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

"Period of restoration" does not include any increased period required due to the enforcement of 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".

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

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

Authorized Signature

ENDORSEMENT

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement, effective 12:01 A.M.,
Forms a part of Policy No.:

WIND DRIVEN PRECIPITATION ENDORSEMENT

This endorsement modifies insurance provided under the following:

CAUSES OF LOSS – SPECIAL FORM

Wind Driven Precipitation Limit of Insurance: \$ _____

Subparagraph 1.c. of section C. **Limitations** is deleted in its entirety and replaced by the following:

- c. The interior of any building or structure, or to personal property in the building or structure, caused by or resulting from rain, snow, sleet, ice, sand or dust, whether driven by wind or not, unless:
- (1) The building or structure first sustains damage by a Covered Cause of Loss to its roof or walls through which the rain, snow, sleet, ice, sand or dust enters; or
 - (2) The loss or damage is caused by or results from thawing of snow, sleet or ice on the building or structure.

However we will pay for direct physical loss or damage to the interior of any building or structure, or to personal property in the building or structure caused by or resulting from wind driven precipitation being: rain, snow, sleet or ice, when driven by wind absent any damage to the building or structure.

The most we will pay for loss or damage by wind driven precipitation in any one occurrence is the Wind Driven Precipitation Limit of Insurance shown above.

The policy deductible applicable to windstorm or hail will apply to all loss or damage caused by or resulting from wind driven precipitation.

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

Authorized Representative

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EARTHQUAKE AND VOLCANIC ERUPTION ENDORSEMENT (SUB-LIMIT FORM)

This endorsement modifies insurance provided under the following:

COMMERCIAL PROPERTY COVERAGE PART
STANDARD PROPERTY POLICY

A. When this endorsement is attached to the Standard Property Policy, the terms Coverage Part and Coverage Form in this endorsement are replaced by the term Policy.

B. This endorsement applies to the Covered Property and Coverages for which an Earthquake – Volcanic Eruption Limit Of Insurance is shown in the Earthquake – Volcanic Eruption Coverage Schedule or in the Declarations.

C. Additional Covered Causes Of Loss

1. The following are added to the Covered Causes of Loss:

- a. Earthquake.
- b. Volcanic Eruption, meaning the eruption, explosion or effusion of a volcano.

All Earthquake shocks or Volcanic Eruptions that occur within any 168-hour period will constitute a single Earthquake or Volcanic Eruption. The expiration of this policy will not reduce the 168-hour period.

2. If the Earthquake – Volcanic Eruption Coverage Schedule or the Declarations indicate that this endorsement covers Earthquake – Sprinkler Leakage Only, then the Covered Causes of Loss in Paragraph C.1. of this endorsement do not apply, and the following apply instead:

- a. Sprinkler Leakage resulting from Earthquake.
- b. Sprinkler Leakage resulting from Volcanic Eruption. Volcanic Eruption means the eruption, explosion or effusion of a volcano.

All Earthquake shocks or Volcanic Eruptions that occur within any 168-hour period will constitute a single Earthquake or Volcanic Eruption. The expiration of this policy will not reduce the 168-hour period.

D. Exclusions, Limitations And Related Provisions

1. The Exclusions and Limitation(s) sections of the Causes Of Loss Form (and the Exclusions section of the Mortgageholders Errors And Omissions Coverage Form and the Standard Property Policy) apply to coverage provided under this endorsement, except as provided in D.2. and D.3. below.
2. To the extent that the Earth Movement Exclusion might conflict with coverage provided under this endorsement, the Earth Movement Exclusion does not apply.
3. The exclusion of collapse, in the Causes Of Loss – Special Form and Mortgageholders Errors And Omissions Coverage Form, does not apply to collapse caused by Earthquake or Volcanic Eruption.
4. The Additional Coverage – Collapse, in the Causes Of Loss – Broad Form, Causes Of Loss – Special Form and Mortgageholders Errors And Omissions Coverage Form, does not apply to the coverage provided under this endorsement. This endorsement includes coverage for collapse caused by Earthquake or Volcanic Eruption.
5. We will not pay for loss or damage caused directly or indirectly by tidal wave or tsunami, even if attributable to an Earthquake or Volcanic Eruption.

6. We will not pay for loss or damage caused by or resulting from any Earthquake or Volcanic Eruption that begins before the inception of this insurance.
7. The Ordinance Or Law Exclusion in this Coverage Part continues to apply with respect to any loss under this Coverage Part including any loss under this endorsement, unless Ordinance Or Law Coverage is added by endorsement.
8. We will not pay for loss of or damage to exterior masonry veneer (except stucco) on wood frame walls caused by or resulting from Earthquake or Volcanic Eruption. The value of such veneer will not be included in the value of Covered Property or the amount of loss when applying the Property Damage Deductible applicable to this endorsement.

This limitation, **D.8.**, does not apply if:

- a. The Earthquake – Volcanic Eruption Coverage Schedule or the Declarations indicate that the “Including Masonry Veneer” option applies; or
 - b. Less than 10% of the total outside wall area is faced with masonry veneer (excluding stucco).
9. Under this Coverage Part, as set forth under Property Not Covered in the Coverage Form to which this endorsement is attached, land is not covered property, nor is the cost of excavations, grading, backfilling or filling. Therefore, coverage under this endorsement does not include the cost of restoring or remediating land.

E. No Coinsurance

The Coinsurance Condition in this policy, if any, does not apply to the coverage provided under this endorsement.

Various Coverage Extensions, in the Coverage Form to which this endorsement is attached, require coinsurance. The coinsurance requirement for such Coverage Extensions is eliminated with respect to coverage provided under this endorsement.

F. Limit Of Insurance

1. General Information

The term Limit of Insurance means the Limit of Insurance applicable to Earthquake – Volcanic Eruption for the Covered Property or Coverage under which loss or damage is sustained.

The Earthquake – Volcanic Eruption Coverage Schedule or the Declarations provide information on the Limit of Insurance applicable to Covered Property and Coverages for Earthquake – Volcanic Eruption.

2. Annual Aggregate Limit

The Limit of Insurance for Earthquake – Volcanic Eruption is an annual aggregate limit and as such is the most we will pay for the total of all loss or damage that is caused by Earthquake or Volcanic Eruption in a 12-month period (starting with the beginning of the present annual policy period), even if there is more than one Earthquake or Volcanic Eruption during that period of time. Thus, if the first Earthquake or Volcanic Eruption does not exhaust the Limit of Insurance, then the balance of that Limit is available for a subsequent Earthquake(s) or Volcanic Eruption(s).

If a single Earthquake or Volcanic Eruption (as defined in Section **C.** of this endorsement) begins during one annual policy period and ends during the following annual policy period, any Limit of Insurance applicable to the following annual policy period will **not** apply to such Earthquake or Volcanic Eruption.

3. Increased Annual Aggregate Limit Option

If the Earthquake – Volcanic Eruption Coverage Schedule or the Declarations indicate that the Increased Annual Aggregate Limit Option applies, then the following applies instead of Paragraph **F.2.** above:

The Limit of Insurance for Earthquake – Volcanic Eruption is the most we will pay in a single Earthquake or Volcanic Eruption (as defined in Section **C.** of this endorsement) for loss or damage caused by the Earthquake or Volcanic Eruption. If there is more than one Earthquake or Volcanic Eruption in a 12-month period (starting with the beginning of the present annual policy period), the most we will pay for the total of all loss or damage sustained during that period of time and caused by Earthquake or Volcanic Eruption is two times the Limit of Insurance.

If a single Earthquake or Volcanic Eruption (as defined in Section **C.** of this endorsement) begins during one annual policy period and ends during the following annual policy period, any Limit of Insurance applicable to the following annual policy period will **not** apply to such Earthquake or Volcanic Eruption.

4. Additional Coverages And Coverage Extensions

Amounts payable under an Additional Coverage or Coverage Extension, as set forth in the applicable Coverage Form, do not increase the Limit of Insurance for Earthquake – Volcanic Eruption.

5. Limitation

For property or coverage that is subject to a Blanket Limit on Earthquake – Volcanic Eruption (as shown in the Earthquake – Volcanic Eruption Coverage Schedule or in the Declarations), we will not pay more than we would pay in the absence of such Blanket Limit. Therefore, the maximum amount payable for any such item of property or coverage is the Limit of Insurance or stated value (as shown in a Statement of Values on file with us) specific to that item of property or coverage for Covered Causes of Loss other than Earthquake – Volcanic Eruption.

6. Ensuing Loss

If a Cause of Loss (such as fire) is covered by means of an exception to the Earth Movement Exclusion, in the Causes Of Loss Form, we will also pay for the loss or damage caused by that other Covered Cause of Loss. But the most we will pay, for the total of all loss or damage caused by the Earthquake, Volcanic Eruption and other Covered Cause of Loss, is the Limit of Insurance applicable to such other Covered Cause of Loss. We will **not** pay the sum of the two Limits.

EXAMPLES – ENSUING LOSS

Two examples follow using these facts: The Commercial Property Coverage Part, in these examples, includes the Causes Of Loss – Basic Form (which covers fire) and this Earthquake – Volcanic Eruption Endorsement. A building is damaged by Earthquake, and by Fire which is caused by the Earthquake. The value of the damaged building is \$1,000,000. The Limit of Insurance applicable to the building, for the Basic Causes of Loss, is \$800,000. The Limit of Insurance for Earthquake – Volcanic Eruption is \$400,000. The Earthquake Deductible amount is \$50,000.

Example 1

The damage due to Earthquake is \$500,000.

The damage due to Fire is \$500,000.

Payment for Earthquake damage is \$400,000 (\$500,000 damage minus \$50,000 Earthquake deductible = \$450,000; Limit is \$400,000).

Payment for Fire damage is \$400,000 (\$500,000 damage capped at the difference between the Basic Limit and the Earthquake Limit).

Total Loss Payment is \$800,000.

Example 2

The damage due to Earthquake is \$800,000.

The damage due to Fire is \$100,000.

Payment for Earthquake damage is \$400,000 (\$800,000 damage minus \$50,000 Earthquake deductible = \$750,000; Limit is \$400,000).

Payment for Fire damage is \$100,000 (amount of damage).

Total Loss Payment is \$500,000.

G. Property Damage Deductible

1. The provisions of Section **G.3.** of this endorsement are applicable to all Coverage Forms except:

- a. Business Income (And Extra Expense) Coverage Form;
- b. Business Income (Without Extra Expense) Coverage Form;
- c. Extra Expense Coverage Form.

2. If the Declarations indicate that this endorsement covers Earthquake – Sprinkler Leakage Only, then the Deductible set forth in Section **G.3.** of this endorsement does not apply to such coverage. The applicable Deductible for such coverage is the same Deductible that applies to Fire.

3. The Deductible, if any, in this Coverage Part is replaced by the following with respect to Earthquake and Volcanic Eruption:

a. All Policies

- (1) The Deductible provisions apply to each Earthquake or Volcanic Eruption.
- (2) Separate Deductibles are calculated for, and apply to, each building, personal property at each building and personal property in the open. Deductibles are separately calculated and applied even if:
 - (a) Two or more buildings sustain loss or damage;
 - (b) Personal property at two or more buildings sustains loss or damage; and/or
 - (c) A building and the personal property in that building sustain loss or damage.

- (3) We will not pay for loss or damage until the amount of loss or damage exceeds the applicable Deductible. We will then pay the amount of loss or damage in excess of that Deductible, up to the applicable Limit of Insurance.
- (4) When property is covered under the Coverage Extension for Newly Acquired or Constructed Property: In determining the amount, if any, that we will pay for loss or damage, we will deduct an amount equal to a percentage of the value of the property at time of loss. The applicable percentage for Newly Acquired or Constructed Property is the highest percentage shown in the Earthquake - Volcanic Eruption Coverage Schedule or in the Declarations for any described premises.
- (5) If there is loss or damage caused by Earthquake or Volcanic Eruption, and loss or damage caused by a Cause of Loss (e.g., fire) that is covered by means of an exception to the Earth Movement Exclusion, then the only applicable Deductible provisions are those stated in this endorsement.

b. Calculation Of The Deductible - Specific Insurance Other Than Builders Risk

(1) Property Not Subject To Value Reporting Forms

In determining the amount, if any, that we will pay for loss or damage, we will deduct an amount equal to a percentage (as shown in the Earthquake - Volcanic Eruption Coverage Schedule or in the Declarations, concerning the Earthquake - Volcanic Eruption Deductible) of the value of the property that has sustained loss or damage. The value to be used is that shown in the most recent Statement of Values on file with us.

(2) Property Subject To Value Reporting Forms

In determining the amount, if any, that we will pay for loss or damage, we will deduct an amount equal to a percentage (as shown in the Earthquake - Volcanic Eruption Coverage Schedule or in the Declarations, concerning the Earthquake - Volcanic Eruption Deductible) of the value of the property that has sustained loss or damage. The value to be used is the latest value shown in the most recent Report of Values on file with us.

However:

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

c. Calculation Of The Deductible - Blanket Insurance Other Than Builders Risk

(1) Property Not Subject To Value Reporting Forms

In determining the amount, if any, that we will pay for loss or damage, we will deduct an amount equal to a percentage (as shown in the Earthquake - Volcanic Eruption Coverage Schedule or in the Declarations, concerning the Earthquake - Volcanic Eruption Deductible) of the value of the property that has sustained loss or damage. The value to be used is that shown in the most recent Statement of Values on file with us.

(2) Property Subject To Value Reporting Forms

In determining the amount, if any, that we will pay for property that has sustained loss or damage, we will deduct an amount equal to a percentage (as shown in the Earthquake – Volcanic Eruption Coverage Schedule or in the Declarations, concerning the Earthquake – Volcanic Eruption Deductible) of the value of that property as of the time of loss or damage.

d. Calculation Of The Deductible – Builders Risk Insurance**(1) Builders Risk Other Than Reporting Form**

In determining the amount, if any, that we will pay for property that has sustained loss or damage, we will deduct an amount equal to a percentage (as shown in the Earthquake – Volcanic Eruption Coverage Schedule or in the Declarations, concerning the Earthquake – Volcanic Eruption Deductible) of the actual cash value of that property as of the time of loss or damage.

(2) Builders Risk Reporting Form

In determining the amount, if any, that we will pay for loss or damage, we will deduct an amount equal to a percentage (as shown in the Earthquake – Volcanic Eruption Coverage Schedule or in the Declarations, concerning the Earthquake – Volcanic Eruption Deductible) of the value of the property that has sustained loss or damage. The value to be used is the actual cash value shown in the most recent Report of Values on file with us.

However:

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

H. Example – Application Of Deductible In G.3.b.(1) And G.3.c.(1) – For Specific Or Blanket Insurance Other Than Builders Risk (Not Subject To Value Reporting Forms)

The values, as shown in the most recent Statement of Values on file with us, are:

Building 1 \$500,000

Building 2 \$500,000

Business Personal Property at Building 1 \$250,000

Business Personal Property at Building 2 \$250,000

For this example, assume that the amounts of loss do not exceed the applicable Limits of Insurance (for specific insurance). Also assume that the total amount of loss does not exceed the applicable Blanket Limit of Insurance (for blanket insurance).

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

The Deductible is 10%.

Building

Step (1): $\$500,000 \times 10\% = \$50,000$

Step (2): $\$95,000 - \$50,000 = \$45,000$

Business Personal Property

Step (1): $\$250,000 \times 10\% = \$25,000$

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

The most we will pay is \$45,000. The remainder of the building loss, \$50,000, is not covered due to application of the Deductible. There is no loss payment for the business personal property.

I. Business Income And Extra Expense Period Of Restoration

This Section I. is applicable only to the Coverage Forms specified below:

1. Business Income (And Extra Expense) Coverage Form;
2. Business Income (Without Extra Expense) Coverage Form;
3. Extra Expense Coverage Form.

The "period of restoration" definition stated in the Coverage Form, or in any endorsement amending the beginning of the "period of restoration", applies to each Earthquake or Volcanic Eruption. A single Earthquake or Volcanic Eruption is defined in Section C. of this endorsement.

ENDORSEMENT

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement, effective at 12:01 A.M. forms a part of

Policy No. Issued to:

By:

ADDITIONAL COVERAGE - EQUIPMENT BREAKDOWN

In consideration of the premium charged, it is hereby understood and agreed that the following amendments to the policy shall apply:

A. The following is added as an Additional Coverage:

Additional Coverage-- Equipment Breakdown

The term Covered Cause of Loss includes the Additional Coverage - Equipment Breakdown as described below.

1. We will pay for direct physical loss or damage to Covered Property that is the direct result of an "accident". As used in this Additional Coverage - Equipment Breakdown endorsement, "accident" means a fortuitous event that causes direct physical damage to "covered equipment" as a result of any of the following:
 - a. mechanical breakdown, including rupture or bursting caused by centrifugal force;
 - b. artificially generated electrical current, including electric arcing, that disturbs electrical devices, appliances, or wires;
 - c. explosion of steam boilers, steam pipes, steam engines, or steam turbines owned or leased by you, or operated under your control;
 - d. 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
 - e. 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.
2. Unless otherwise shown in the Additional Coverage - Equipment Breakdown Schedule, we will pay for the following when they are the direct result of an "accident". The limits for these coverages are within, and do not increase, the Equipment Breakdown limit.
 - a. **Expediting Expenses**
With respect to your damaged Covered Property, unless otherwise shown in the Additional Coverage - Equipment Breakdown Schedule, we will pay up to \$25,000 of the reasonable additional expense to:
 - (1) make temporary repairs; and
 - (2) expedite permanent repairs or permanent replacement.

- b. **Hazardous Substances**
 We will pay for the "additional expenses" to repair or replace Covered Property because of contamination by a "hazardous substance". This includes the "additional expense" to clean up or dispose of such property. As used in this Section 2.b., "additional expense" means those amounts beyond what would have been payable under this Equipment Breakdown Coverage had no "hazardous substance" been involved. Unless otherwise shown in the Additional Coverage – Equipment Breakdown Schedule, \$25,000 is the most we will pay under this Section 2.b., including actual loss of Business Income you sustain and necessary Extra Expense you incur, if shown as covered.
- c. **Spoilage**
 (1) We will pay for physical damage to "perishable goods" that occurs as a result of an "accident".
 (2) We will pay for physical damage to "perishable goods" due to contamination from the release of refrigerant, including but not limited to ammonia;
 (3) We will also pay any necessary expenses you incur to reduce the amount of loss under the coverage provided by this Section 2.c., to the extent that such expenses do not exceed the amount of loss that otherwise would have been payable under this coverage.
 (4) If you are unable to replace the "perishable goods" before their 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", less discounts and expenses you otherwise would have incurred. Otherwise our payment will be determined in accordance with the Valuation condition.
 (5) Unless otherwise shown in the Additional Coverage – Equipment Breakdown Schedule, the most we will pay for loss, damage, or expense under this Section 2.c. is \$25,000.
- d. **Computer Equipment**
 We will pay for loss, damage, or expense resulting from an "accident" to "computer equipment".
 Unless otherwise shown in the Additional Coverage – Equipment Breakdown Schedule, the most we will pay for loss, damage, or expense under this Section 2.d., including actual loss of Business Income you sustain and necessary Extra Expense you incur, if shown as covered, is \$25,000. "Computer equipment" used primarily to control or operate "covered equipment" is not subject to this limit.
- e. **Data Restoration**
 We will pay for your reasonable and necessary cost to research, replace, and restore "data" lost as a result of an "accident".
 Unless otherwise shown in the Additional Coverage – Equipment Breakdown Schedule, the most we will pay for loss, damage, or expense under this Section 2.e., including actual loss of Business Income you sustain and necessary Extra Expense you incur, if shown as covered, is \$25,000.

f. Service Interruption Coverage

- (1) Any insurance provided for Business Income, Extra Expense, or Spoilage is extended to apply to your loss, damage, or expense caused by an "accident" to equipment that is owned by a utility, landlord, or other supplier with whom you have a contract to supply you with any of the following services: electrical power, waste disposal, air conditioning, refrigeration, heating, natural gas, compressed air, water, steam, internet access, telecommunications services, wide area networks, or data transmission. The equipment must meet the definition of "covered equipment".
- (2) Unless otherwise shown in the Additional Coverage - Equipment Breakdown Schedule, Service Interruption coverage will not apply unless the failure or disruption of service exceeds 24 hours immediately following the "accident".
- (3) The most we will pay under this Section 2.f. is either the Business Income, Extra Expense limit or Spoilage limit that applies to the coverage provided under this Additional Coverage - Equipment Breakdown endorsement if such loss, damage, or expense is covered under the policy, except that if a Service Interruption limit is shown in the Additional Coverage - Equipment Breakdown Schedule, that limit will apply to the Business Income and Extra Expense loss under this Section 2.f.

g. Business Income and Extra Expense

Any insurance provided under this policy for Business Income or Extra Expense is extended to the coverages provided by this Additional Coverage - Equipment Breakdown endorsement. Unless a different limit is shown in the Additional Coverage - Equipment Breakdown Schedule, the most we will pay for loss of Business Income you sustain or necessary Extra Expense you incur is the limit shown in the Declarations for such coverages.

3. EXCLUSIONS

All exclusions in the Causes of Loss provision(s) of the Coverage Forms attached to and forming a part of this policy apply, except as modified below and to the extent that coverage is specifically provided by this Additional Coverage - Equipment Breakdown endorsement.

a. Notwithstanding any other exclusions in the applicable Covered Causes of Loss form, if an "accident" results from the following, we will pay for such resulting loss, damage, or expense:

- (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) Settling, cracking, shrinking or expansion; or
- (4) Dampness or dryness of atmosphere, changes or extremes in temperature or marring or scratching.

b. As respects any Water and/or Flood exclusion included in this policy, the following is added:

However, if electrical "covered equipment" requires drying out because of Water and/or Flood, we will pay for the direct expenses of such drying out subject to the applicable Limit of Insurance and deductible for Building or Business Personal Property, whichever applies.

- c. We will not pay under this Additional Coverage – Equipment Breakdown endorsement for loss, damage, or expense caused by or resulting from:
 - (1) your failure to use all reasonable means to protect Covered Property from damage following an “accident”;
 - (2) any defect, programming error, programming limitation, computer virus, malicious code, loss of “data”, loss of access, loss of use, loss of functionality, or other condition within or involving “data” or “media” of any kind; or
 - (3) any of the following tests:
 - 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.
- d. With respect to Service Interruption coverage, we will also not pay for an “accident” caused by or resulting from: fire; lightning; windstorm or hail; explosion (except as specifically provided in A.1.c. above); smoke; aircraft or vehicles; riot or civil commotion; vandalism; sprinkler leakage; falling objects; weight of snow, ice, or sleet; freezing; collapse; flood or earth movement.
- e. With respect to Business Income, Extra Expense, and Service Interruption coverages, we will also not pay for:
 - (1) loss caused by your failure to use due diligence and dispatch and all reasonable means to resume business; or
 - (2) any increase in loss resulting from an agreement between you and your customer or supplier.
- f. 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”: Any mold, fungus, mildew, or yeast, including any spores or toxins produced by or emanating from such mold, fungus, mildew, or yeast. This includes, but is not limited to, costs arising from clean up, removal, or abatement of such mold, fungus, mildew, yeast, spores, or toxins. However, this exclusion does not apply to spoilage of personal property that is “perishable goods”, to the extent that spoilage is covered under the Spoilage coverage provided by this Additional Coverage – Equipment Breakdown endorsement.
- g. We will not pay under this Additional Coverage – Equipment Breakdown endorsement for any loss or damage to animals.

4. DEFINITIONS

The following definitions are added as respects this Additional Coverage - Equipment Breakdown endorsement:

- a. “Boilers and Vessels” means:
 - (1) Any boiler, including attached steam, condensate, and feedwater piping; and
 - (2) Any fired or unfired pressure vessel subject to vacuum or internal pressure other than the static pressure of its contents.

This term does not appear elsewhere in this Additional Coverage - Equipment Breakdown endorsement, but may appear in the Additional Coverage – Equipment Breakdown Schedule.

- b. "Computer equipment" means Covered Property that is electronic computer or other data processing equipment, including "media" and peripherals used in conjunction with such equipment.
- c. "Covered Equipment"
 - (1) "Covered equipment" means, unless otherwise specified in the Additional Coverage - Equipment Breakdown Schedule, Covered Property:
 - (a) that generates, transmits, or utilizes energy, including electronic communications and data processing equipment; or
 - (b) which, during normal usage, operates under vacuum or pressure, other than the weight of its contents.
 - (2) None of the following is "covered equipment":
 - (a) structure, foundation, cabinet, compartment, or air supported structure or building;
 - (b) insulating or refractory material;
 - (c) sewer piping, underground vessels or piping, or piping forming a part of a sprinkler system;
 - (d) water piping other than boiler feedwater piping, boiler condensate return piping, or water piping forming a part of a refrigerating or air conditioning system;
 - (e) "vehicle" or any equipment mounted on a "vehicle";
 - (f) satellite, spacecraft, or any equipment mounted on a satellite or spacecraft;
 - (g) dragline, excavation, or construction equipment; or
 - (h) equipment manufactured by you for sale.
- d. "Data" means information or instructions stored in digital code capable of being processed by machinery.
- e. "Hazardous substance" means any substance that is hazardous to health or has been declared to be hazardous to health by a governmental agency.
- f. "Media" means material on which "data" is recorded, such as magnetic tapes, hard disks, optical disks, or floppy disks.
- g. "One accident" means: If an initial "accident" causes other "accidents", all will be considered "one accident". All "accidents" resulting from the same event will be considered "one accident".
- h. "Perishable Goods" means personal property maintained under controlled conditions for its preservation, and susceptible to loss or damage if the controlled conditions change.
- i. "Production Machinery" means any machine or apparatus that processes or produces a product intended for eventual sale. However, "production machinery" does not mean any fired or unfired pressure vessel other than a cylinder containing a movable plunger or piston.

This term does not appear elsewhere in this Additional Coverage - Equipment Breakdown endorsement, but may appear in the Additional Coverage - Equipment Breakdown Schedule.

- j. "Vehicle" means, as respects this Additional Coverage - Equipment Breakdown endorsement only, 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".

- B. The policy to which this Additional Coverage - Equipment Breakdown endorsement is attached is modified as follows.

The definitions stated above also apply to this section B.

1. DEDUCTIBLE

The deductible in the Declarations applies unless a separate Equipment Breakdown deductible is shown in the Additional Coverage - Equipment Breakdown Schedule. When a separate Equipment Breakdown deductible is shown in the Additional Coverage - Equipment Breakdown Schedule, the following applies:

Only as regards Equipment Breakdown Coverage, the DEDUCTIBLE provision of the policy is deleted and replaced with the following:

a. Deductibles for Each Coverage

- (1) Unless the Additional Coverage - Equipment Breakdown Schedule indicates that your deductible is combined for all coverages, multiple deductibles may apply to any "one accident".
- (2) We will not pay for loss, damage, or expense under any coverage until the amount of the covered loss, damage, or expense exceeds the deductible amount indicated for that coverage in the Additional Coverage - Equipment Breakdown Schedule. We will then pay the amount of loss, damage, or expense in excess of the applicable deductible amount, subject to the applicable limit.
- (3) If deductibles vary by type of "covered equipment" and more than one type of "covered equipment" is involved in any "one accident", only the highest deductible for each coverage will apply.

b. Direct and Indirect Coverages

- (1) Direct Coverages Deductibles and Indirect Coverages Deductibles may be indicated in the Additional Coverage - Equipment Breakdown Schedule.
- (2) Unless more specifically indicated in the Additional Coverage - Equipment Breakdown Schedule:
 - (a) Indirect Coverages Deductibles apply to Business Income and Extra Expense loss as defined in any Business Income coverage that is part of this policy; and
 - (b) Direct Coverages Deductibles apply to all remaining loss, damage, or expense covered by this Additional Coverage - Equipment Breakdown endorsement.

c. Application of Deductibles

(1) Dollar Deductibles

We will not pay for loss, damage, or expense resulting from any "one accident" until the amount of loss, damage, or expense exceeds the applicable Deductible shown in the Additional Coverage - Equipment Breakdown Schedule. We will then pay the amount of loss, damage, or expense in excess of the applicable Deductible or Deductibles, up to the applicable Limit of Insurance.

(2) Time Deductible

If a time deductible is shown in the Additional Coverage - Equipment Breakdown Schedule, we will not be liable for any loss occurring during the specified number of hours or days immediately following the "accident". If a time deductible is expressed in days, each day shall mean twenty-four consecutive hours.

(3) Multiple of Average Daily Value (ADV)

If a deductible is expressed as a number times ADV, that amount will be calculated as follows:

The ADV (Average Daily Value) will be the Business Income (as defined in any Business Income coverage that is part of this policy) that would have been earned during the period of interruption of business had no "accident" occurred, divided by the number of working days in that period. No reduction shall be made for the Business Income not being earned, or in the number of working days, because of the "accident" or any other scheduled or unscheduled shutdowns during the period of interruption. The ADV applies to the Business Income value of the entire location, whether or not the loss affects the entire location. If more than one location is included in the valuation of the loss, the ADV will be the combined value of all affected locations. For purposes of this calculation, the period of interruption may not extend beyond the period of restoration.

The number indicated in the Additional Coverage - Equipment Breakdown Schedule will be multiplied by the ADV as determined above. The result shall be used as the applicable deductible.

(4) Percentage of Loss Deductibles

If a deductible is expressed as a percentage of loss, we will not be liable for the indicated percentage of the gross amount of loss, damage, or expense (prior to any applicable deductible or coinsurance) insured under the applicable coverage. If the dollar amount of such percentage is less than the indicated minimum deductible, the minimum deductible will be the applicable deductible.

2. CONDITIONS

The following conditions are added as respects this Additional Coverage - Equipment Breakdown endorsement:

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" 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 Additional Coverage – Equipment Breakdown 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.

c. Environmental, Safety, and Efficiency Improvements

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

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

d. Coinsurance Additional Coverage – Equipment Breakdown

If a coinsurance percentage is shown in the Additional Coverage – Equipment Breakdown Schedule for specified coverages, the following condition applies:

We will not pay for the full amount of your loss if the applicable limit is less than the product of the specified coinsurance percentage times the value of the property subject to the coverage at the time of the loss. Instead, we will determine what percentage this calculated product is compared to the applicable limit and apply that percentage to the gross amount of loss. We will then subtract the applicable deductible. The most we will pay is the lesser of the resulting amount, or the applicable limit. We will not pay for the remainder of the loss. Coinsurance applies separately to each insured location.

The most we will pay for loss, damage, or expense under this Additional Coverage – Equipment Breakdown endorsement arising from any "one accident" is the applicable Limit of Insurance in the Declarations unless otherwise shown in the Additional Coverage – Equipment Breakdown Schedule. Coverage provided under this Additional Coverage – Equipment Breakdown endorsement does not provide an additional amount of insurance.

ENDORSEMENT

This endorsement, effective at 12:01 A.M. forms a part of

Policy No. Issued to:

By:

CONDOMINIUM AMENDATORY ENDORSEMENT

This endorsement modifies insurance provided under the following:

CONDOMINIUM ASSOCIATION COVERAGE FORM**CAUSES OF LOSS – SPECIAL FORM**

If any coverage provided by this endorsement is afforded elsewhere in this policy by any other coverage form or endorsement, then applicable limit of insurance shall be the highest single limit provided by this policy. Coverage as respects the coverage form or endorsement that provides a lesser limit for any such duplicate coverage shall not apply.

The **CONDOMINIUM ASSOCIATION COVERAGE FORM** is amended as follows:

- I. Subparagraph **e. Increased Cost of Construction** of Paragraph **4. Additional Coverages** (Section **A. Coverage**) is deleted in its entirety and replaced with the following:

e. Ordinance or Law

- (1) This Additional Coverage applies only to buildings to which the Replacement Cost Coverage applies.
- (2) In the event of damage by a Covered Cause of Loss to a building that is Covered Property, we will pay the increased costs incurred to comply with enforcement of an ordinance or law that requires you to demolish and clear the site of undamaged parts of the building, subject to the limitations stated in e.(4) through e.(10) of this Additional Coverage.
- (3) In the event of damage by a Covered Cause of Loss to a building that is Covered Property, we will pay the increased costs incurred to comply with enforcement of an ordinance or law in the course of repair, rebuilding or replacement of damaged parts of that property, subject to the limitations stated in e.(4) through e.(10) of this Additional Coverage.
- (4) The ordinance or law referred to in e.(2) and e.(3) 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.
- (5) 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.
- (6) Under this Additional Coverage, we will not pay for:
 - (a) The enforcement of any ordinance or law which requires demolition, repair, replacement, reconstruction, remodeling or remediation of property due to contamination by "pollutants" or due to the presence, growth, proliferation, spread or any activity of "fungus", wet or dry rot or bacteria; or

- (b) Any costs associated with the enforcement of an ordinance or law which requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants", "fungus", wet or dry rot or bacteria.
- (7) The most we will pay under this Additional Coverage, for each described building insured under this Coverage Form, is the lesser of 10% of the Limit of Insurance applicable to that building or \$250,000. The amount payable under this Additional Coverage is in addition to the Limits of Insurance.
- (8) With respect to this Additional Coverage:
 - (a) We will not pay for the Increased Cost of Construction:
 - (i) Until the property is actually repaired or replaced, at the same or another premises; and
 - (ii) Unless the repairs or replacement are made as soon as reasonably possible after the loss or damage, not to exceed two years. We may extend this period in writing during the two years.
 - (b) If the building is repaired or replaced at the same premises, or if you elect to rebuild at another premises, the most we will pay for the Increased Cost of Construction, subject to the provisions of e.(7) of this Additional Coverage, is the increased cost of construction at the same premises.
 - (c) If the ordinance or law requires relocation to another premises, the most we will pay for the Increased Cost of Construction, subject to the provisions of e.(7) of this Additional Coverage, is the increased cost of construction at the new premises.
- (9) 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.
- (10) The costs addressed in the Loss Payment and Valuation Conditions, and the Replacement Cost Optional Coverage, in this Coverage Form, do not include the increased cost attributable to enforcement of an ordinance or law. The amount payable under this Additional Coverage, as stated in e.(7) of this Additional Coverage, is not subject to such limitation.

II. Subparagraph g. is added to Paragraph 4. **Additional Coverages** (Section A. Coverage) as follows:

g. Unscheduled Business Personal Property

We will pay for direct physical loss or damage to your unscheduled business personal property. The most we will pay under this Additional Coverage is \$25,000 in any one occurrence.

The amount payable under this Additional Coverage is in addition to the Limits of Insurance.

III. Subparagraph e. **Outdoor Property** of Paragraph 5. **Coverage Extensions** (Section A. Coverage) is deleted in its entirety and replaced with the following:

e. Outdoor Property

You may extend the insurance provided by this Coverage Form to apply to your outdoor fences, radio and television antennas (including satellite dishes), signs (other than signs attached to buildings), trees, shrubs and plants, (other than "stock" of trees, shrubs or plants), including debris removal expense.

The most we will pay for loss or damage under this Extension is \$25,000, but not more than \$250 for any one tree, shrub or plant. These limits apply to any one occurrence, regardless of the types or number of items lost or damaged in that occurrence. The deductible(s) applicable to your business personal property shall apply to this Coverage Extension.

IV. Subparagraph g. is added to Paragraph 5. **Coverage Extensions** (Section A. Coverages) as follows:

g. Loss of Condominium Association Fees and Extra Expense

You may extend the insurance provided by this Coverage Form to apply to loss of "condominium association fees" sustained by you resulting directly from the necessary untenability of any unit, during the "period of restoration"; caused by direct physical loss or damage to Covered Property by a Covered Cause of Loss. However, the loss of "condominium association fees" does not include "loss assessment charges".

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You may extend the insurance provided by this Coverage Form to apply to "extra expense" you incur as a result of direct physical loss or damage to Covered Property by a Covered Cause of Loss.

As used in this Subparagraph 5.g., these terms are defined as follows:

- (1) "Condominium association fees" mean fees payable to you in accordance with the Condominium Association agreement between you and a unit owner, and in accordance with the terms of your association by-laws.
 - (2) "Extra expense" means necessary expenses you incur during the "period of restoration" that you would not have incurred if there had been no direct physical loss or damage to property. Coverage pertains to expenses (other than the expense to repair or replace property) which are incurred to:
 - (a) To continue "operations" at the described premises or at replacement premises or temporary locations, including relocation expenses and costs to equip and operate the replacement location or temporary location; or
 - (b) To meet contractual obligations to any property manager.
 - (3) "Loss assessment charges" mean assessments charged to all unit owners, by the Condominium Association, due to additional costs incurred by the association as a result of physical loss or damage to Covered Property.
- a. "Period of restoration" means the period of time that:
- a. Begins on the date of direct physical loss or damage to Covered Property by a Covered Cause of Loss; and
 - b. Ends on the date when Covered Property should be repaired, rebuilt or replaced with reasonable speed and similar quality;

The most we will pay under this Coverage Extension is \$50,000 in any one occurrence. The amount payable under this Coverage Extension is in addition to the Limits of Insurance.

V. Subparagraph h. is added to Paragraph 5. Coverage Extensions (Section A. Coverages) as follows:

a. Coverage for Loss to Portion of Undamaged Building

This Coverage Extension applies only to buildings to which the Replacement Cost Coverage applies.

In the event of damage by a Covered Cause of Loss to a building that is Covered Property, we will pay for the loss in value of the undamaged portion of the damaged building as a consequence of enforcement of an ordinance or law that requires demolition of undamaged parts of the same building.

VI. Subparagraph a. of Paragraph 4. Loss Payment (Section E. Loss Conditions) is deleted in its entirety and replaced with the following:

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

We will determine the value of lost or damaged property, or the cost of its repair or replacement, in accordance with the applicable terms of the Valuation Condition in this Coverage Form or any applicable provision which amends or supersedes the Valuation Condition.

In addition, in the event of a covered loss hereunder, we will pay the actual adjusted amount of loss, less applicable deductible(s), but in no event more than the total stated value for all covered property plus 15% of such value, less applicable deductible(s).

For purposes of this subparagraph 4.a., the total stated value shall be the amount(s) corresponding to each premises involved in the loss, shown as Limits of Insurance in the Declarations, or on the latest

Statement of Values on file with us. In the event of any loss in excess of the total stated value, you shall pay us the annual additional premium calculated for such excess amount at the policy rate for that premises.

The **CAUSES OF LOSS – SPECIAL FORM** is amended as follows:

Paragraph 4. is added to Section F. **Additional Coverage Extensions** as follows:

4. Sewer Back-Up

We will pay for direct physical loss or damage to Covered Property solely caused by water or other materials that back up, overflow, or discharge from a sewer or drain.

However, we will not pay for any loss or damage caused by water or other materials that back up, overflow, or discharge from a sewer or drain when such back up, overflow, or discharge is caused by any flood. As used in this Paragraph **4.Sewer Back-Up**, "flood" means accumulation of surface water, mudslide, mudflow, waves, tides, tidal waves and the rising, including overflowing or breaking of boundaries of any body of water, all whether wind driven or not.

The most we will pay for loss or damage by back up, overflow, or discharge from a sewer or drain is \$50,000 in any one occurrence. Payments under this Additional Coverage Extension will not increase the applicable Limit of Insurance shown in the Declarations.

All other terms and conditions remain the same.

Authorized Representative

IL 00 21 09 08

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

NUCLEAR ENERGY LIABILITY EXCLUSION ENDORSEMENT

(Broad Form)

This endorsement modifies insurance provided under the following:

COMMERCIAL AUTOMOBILE COVERAGE PART
COMMERCIAL GENERAL LIABILITY COVERAGE PART
FARM COVERAGE PART
LIQUOR LIABILITY COVERAGE PART
MEDICAL PROFESSIONAL LIABILITY COVERAGE PART
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART
POLLUTION LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART
RAILROAD PROTECTIVE LIABILITY COVERAGE PART
UNDERGROUND STORAGE TANK POLICY

1. The insurance does not apply:

A. Under any 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 Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters, Nuclear Insurance Association of Canada or any of their successors, 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 any Medical Payments 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 any Liability Coverage, to "bodily injury" or "property damage" resulting from "hazardous properties" of "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.

2. As used in this endorsement:

"Hazardous properties" includes radioactive, toxic or explosive properties.

"Nuclear material" means "source material", "special nuclear material" or "by-product material".

"Source material", "special nuclear material", and "by-product material" have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof.

"Spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a "nuclear reactor".

"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 the first two paragraphs of the definition of "nuclear facility".

"Nuclear facility" means:

- (a)** Any "nuclear reactor";
- (b)** Any equipment or device designed or used for **(1)** separating the isotopes of uranium or plutonium, **(2)** processing or utilizing "spent fuel", or **(3)** handling, processing or packaging "waste";

- (c)** Any equipment or device used for 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.

"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.

"Property damage" includes all forms of radioactive contamination of property.

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

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

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as a Named Insured under this policy. The words "we", "us" and "our" refer to the company providing this insurance.

The word "insured" means any person or organization qualifying as such under Section II – Who Is An Insured.

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

SECTION I – COVERAGES

COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY

1. Insuring Agreement

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" 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" or "property damage" to which this insurance does not apply. We may, at our discretion, investigate any "occurrence" and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section III – Limits Of Insurance; and
- (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments – Coverages A and B.

- b. This insurance applies to "bodily injury" and "property damage" only if:

- (1) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";

- (2) The "bodily injury" or "property damage" occurs during the policy period; and

- (3) Prior to the policy period, no insured listed under Paragraph 1. of Section II – 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 prior to 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 1. of Section II – 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 that "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 1. of Section II – 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".

2. Exclusions

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 attorneys' 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 attorneys' 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 even if the claims against any insured allege negligence or other wrongdoing in:

- (a) The supervision, hiring, employment, training or monitoring of others by that insured; or
- (b) Providing or failing to provide transportation with respect to any person that may be under the influence of alcohol;

if the "occurrence" which caused the "bodily injury" or "property damage", involved that which is described in Paragraph (1), (2) or (3) above.

However, this exclusion applies only if you are in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages. For the purposes of this exclusion, permitting a person to bring alcoholic beverages on your premises, for consumption on your premises, whether or not a fee is charged or a license is required for such activity, is not by itself considered the business of 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 whether the insured may be liable as an employer or in any other capacity and to any obligation to share damages with or repay someone else who must pay damages because of 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 against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that 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 26 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 law where it is licensed or principally garaged; or
- (b) The operation of any of the machinery or equipment listed in Paragraph **f.(2)** or **f.(3)** of the definition of "mobile 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" or "property damage", however caused, arising, directly or indirectly, out of:

- (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.

j. 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 contractors or subcontractors working directly or indirectly on your behalf are 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 Section III – Limits Of Insurance.

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".

k. Damage To Your Product

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

l. 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.

m. 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.

n. 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.

o. Personal And Advertising Injury

"Bodily injury" arising out of "personal and advertising injury".

p. 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.

However, this exclusion does not apply to liability for damages because of "bodily injury".

As used in this exclusion, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

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

"Bodily injury" or "property damage" 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 Transactions 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. through n. 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 limit of insurance applies to this coverage as described in Section III – Limits Of Insurance.

COVERAGE B – PERSONAL AND ADVERTISING INJURY LIABILITY

1. Insuring Agreement

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "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 "personal and advertising injury" to which this insurance does not apply. We may, at our discretion, investigate 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 Section III – Limits Of Insurance; 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 under Coverages A or B or medical expenses under Coverage C.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments – Coverages A and B.

- b. This insurance applies 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.

2. Exclusions

This insurance does not apply to:

a. Knowing Violation Of Rights Of Another

"Personal and advertising injury" caused by or at the direction of the insured with the knowledge that the act would violate the rights of another and would inflict "personal and advertising injury".

b. Material Published With Knowledge Of Falsity

"Personal and advertising injury" arising out of oral or written publication, in any manner, of material, if done by or at the direction of the insured with knowledge of its falsity.

c. Material Published Prior To Policy Period

"Personal and advertising injury" arising out of oral or written publication, in any manner, of material whose first publication took place before the beginning of the policy period.

d. Criminal Acts

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

e. Contractual Liability

"Personal and advertising injury" 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.

f. Breach Of Contract

"Personal and advertising injury" arising out of a breach of contract, except an implied contract to use another's advertising idea in your "advertisement".

g. Quality Or Performance Of Goods – Failure To Conform To Statements

"Personal and advertising injury" arising out of the failure of goods, products or services to conform with any statement of quality or performance made in your "advertisement".

h. Wrong Description Of Prices

"Personal and advertising injury" arising out of the wrong description of the price of goods, products or services stated in your "advertisement".

i. Infringement Of Copyright, Patent, Trademark Or Trade Secret

"Personal and advertising injury" 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.

j. Insureds In Media And Internet Type Businesses

"Personal and advertising injury" committed by an insured whose business is:

- (1) Advertising, broadcasting, publishing or telecasting;
- (2) Designing or determining content of web sites for others; or
- (3) An Internet search, access, content or service provider.

However, this exclusion does not apply to Paragraphs 14.a., b. and c. of "personal and advertising injury" under the Definitions section.

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

k. Electronic Chatrooms Or Bulletin Boards

"Personal and advertising injury" arising out of an electronic chatroom or bulletin board the insured hosts, owns, or over which the insured exercises control.

l. Unauthorized Use Of Another's Name Or Product

"Personal and advertising injury" arising out of the unauthorized use of another's name or product in your e-mail address, domain name or metatag, or any other similar tactics to mislead another's potential customers.

m. Pollution

"Personal and advertising injury" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" at any time.

n. Pollution-related

Any loss, cost or expense arising out of any:

- (1) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
- (2) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

o. War

"Personal and advertising injury", however caused, arising, directly or indirectly, out of:

- (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.

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

"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 Transactions 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.

COVERAGE C – MEDICAL PAYMENTS**1. Insuring Agreement**

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 applicable limit of insurance. 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.

2. Exclusions

We will not pay expenses for "bodily injury":

a. Any Insured

To any insured, except "volunteer workers".

b. Hired Person

To a person hired to do work for or on behalf of any insured or a tenant of any insured.

c. Injury On Normally Occupied Premises

To a person injured on that part of premises you own or rent that the person normally occupies.

d. Workers' Compensation And Similar Laws

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. Athletics Activities

To a person injured while practicing, instructing or participating in any physical exercises or games, sports, or athletic contests.

f. Products-Completed Operations Hazard

Included within the "products-completed operations hazard".

g. Coverage A Exclusions

Excluded under Coverage A.

SUPPLEMENTARY PAYMENTS – COVERAGES A AND B

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 the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.
- c. The cost of bonds to release attachments, but only for bond amounts within the applicable 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 applicable 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 the applicable limit of insurance.

These payments will not reduce the limits of insurance.

- 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:
 - (1) Agrees in writing to:
 - (a) Cooperate with us in the investigation, settlement or defense of the "suit";
 - (b) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "suit";
 - (c) Notify any other insurer whose coverage is available to the indemnitee; and
 - (d) Cooperate with us with respect to coordinating other applicable insurance available to the indemnitee; and
 - (2) Provides us with written authorization to:
 - (a) Obtain records and other information related to the "suit"; and
 - (b) Conduct and control the defense of the indemnitee in such "suit".

So long as the above conditions 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 2.b.(2) of Section I – Coverage A – Bodily Injury And Property Damage 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 we have used up the applicable limit of insurance in the payment of judgments or settlements or the conditions set forth above, or the terms of the agreement described in Paragraph f. above, are no longer met.

SECTION II – 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), 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" or "volunteer worker" as a consequence of Paragraph (1)(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 (1)(a) or (b) above; 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 Coverage Part.

3. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:

- a. Coverage under this provision is afforded only until the 90th day after you acquire or form the organization or the end of the policy period, whichever is earlier;
- b. Coverage A does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and
- c. Coverage B does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

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.

SECTION III – LIMITS OF INSURANCE

1. The Limits of Insurance 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 General Aggregate Limit is the most we will pay for the sum of:
 - a. Medical expenses under Coverage C;
 - b. Damages under Coverage A, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard"; and
 - c. Damages under Coverage B.

3. The Products-Completed Operations Aggregate Limit is the most we will pay under Coverage **A** for damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard".
4. Subject to Paragraph 2. above, the Personal And Advertising Injury Limit is the most we will pay under Coverage **B** for the sum of all damages because of all "personal and advertising injury" sustained by any one person or organization.
5. Subject to Paragraph 2. or 3. above, whichever applies, the Each Occurrence Limit is the most we will pay for the sum of:
 - a. Damages under Coverage **A**; and
 - b. Medical expenses under Coverage **C** because of all "bodily injury" and "property damage" arising out of any one "occurrence".
6. Subject to Paragraph 5. above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage **A** for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, while rented to you or temporarily occupied by you with permission of the owner.
7. Subject to Paragraph 5. above, the Medical Expense Limit is the most we will pay under Coverage **C** for all medical expenses because of "bodily injury" sustained by any one person.

The Limits of Insurance of this Coverage Part 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.

SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS

1. Bankruptcy

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

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 which 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 Coverage Part:

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

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured; but we will not be liable for damages that are not payable under the terms of this Coverage Part 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. Other Insurance

If other valid and collectible insurance is available to the insured for a loss we cover under Coverages **A** or **B** of this Coverage Part, our obligations are limited as follows:

a. Primary Insurance

This insurance is primary except when Paragraph **b.** below applies. If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in Paragraph **c.** below.

b. Excess Insurance

(1) This insurance is excess over:

(a) Any of the other insurance, whether primary, excess, contingent or on any other basis:

(i) That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";

(ii) That is Fire insurance for premises rented to you or temporarily occupied by you with permission of the owner;

(iii) That is insurance purchased by you to cover your liability as a tenant for "property damage" to premises rented to you or temporarily occupied by you with permission of the owner; or

(iv) If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion **g.** of Section **I** – Coverage **A** – Bodily Injury And Property Damage Liability.

(b) Any other primary insurance available to you covering liability for damages arising out of the premises or operations, or the products and completed operations, for which you have been added as an additional insured.

(2) When this insurance is excess, we will have no duty under Coverages **A** or **B** to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". 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.

(3) When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

(a) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and

(b) The total of all deductible and self-insured amounts under all that other insurance.

(4) We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

c. Method Of Sharing

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

5. Premium Audit

a. We will compute all premiums for this Coverage Part in accordance with our rules and rates.

b. Premium shown in this Coverage Part 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 and retrospective 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.

c. 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.

6. Representations

By accepting this policy, you agree:

a. The statements in the Declarations are accurate and complete;

- b. Those statements are based upon representations you made to us; and
- c. We have issued this policy in reliance upon your representations.

7. Separation Of Insureds

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Part 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.

8. Transfer Of Rights Of Recovery Against Others To Us

If the insured has rights to recover all or part of any payment we have made under this Coverage Part, 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.

9. When We Do Not Renew

If we decide not to renew this Coverage Part, we will mail or deliver to the first Named Insured shown in the Declarations written notice of the nonrenewal not less than 30 days before the expiration date.

If notice is mailed, proof of mailing will be sufficient proof of notice.

SECTION V – 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 web sites, only that part of a web site 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 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 the repair, replacement, adjustment or removal of "your product" or "your work" or 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, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and 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 (2) above and supervisory, inspection, architectural or engineering activities.

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, maintained primarily to provide mobility to 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 any land vehicles that are subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged. Land vehicles subject to a compulsory or financial responsibility law or other motor vehicle insurance law are considered "autos".

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 a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

- 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;
- (2) The existence of tools, uninstalled equipment or abandoned or unused materials; or
- (3) Products or operations for which the classification, listed in the Declarations or in a policy Schedule, states that products-completed operations are subject to the General Aggregate Limit.

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 or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

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.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**EXCLUSION – ACCESS OR DISCLOSURE OF
CONFIDENTIAL OR PERSONAL INFORMATION AND
DATA-RELATED LIABILITY – WITH
LIMITED BODILY INJURY EXCEPTION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

- A. Exclusion 2.p. of Section I – Coverage A – Bodily Injury And Property Damage Liability** is replaced by the following:

2. Exclusions

This insurance does not apply to:

- p. Access Or Disclosure Of Confidential Or Personal Information And Data-related Liability**

Damages arising out of:

- (1) 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) 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.

However, unless Paragraph (1) above applies, this exclusion does not apply to damages because of "bodily injury".

As used in this exclusion, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

- B. The following is added to Paragraph 2. Exclusions of Section I – Coverage B – Personal And Advertising Injury Liability:**

2. Exclusions

This insurance does not apply to:

Access Or Disclosure Of Confidential Or Personal Information

"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.

COMMERCIAL GENERAL LIABILITY
CG 21 47 12 07

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EMPLOYMENT-RELATED PRACTICES EXCLUSION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. The following exclusion is added to Paragraph 2., Exclusions of Section I – Coverage A – Bodily Injury And Property Damage Liability:

This insurance does not apply to:

"Bodily 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" to that person at whom any of the employment-related practices described in Paragraphs (a), (b), or (c) above is directed.

This exclusion applies:

- (1) Whether the injury-causing event described in Paragraphs (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.

B. The following exclusion is added to Paragraph 2., Exclusions of Section I – Coverage B – Personal And Advertising Injury Liability:

This insurance does not apply to:

"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 "personal and advertising injury" to that person at whom any of the employment-related practices described in Paragraphs (a), (b), or (c) above is directed.

This exclusion applies:

- (1) Whether the injury-causing event described in Paragraphs (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.

COMMERCIAL GENERAL LIABILITY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED – CONDOMINIUM
UNIT OWNERS**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART.

WHO IS AN INSURED (Section II) is amended to include as an insured each individual unit owner of the insured condominium, but only with respect to liability arising out of the ownership, maintenance or repair of that portion of the premises which is not reserved for that unit owner's exclusive use or occupancy.

POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY
CG 20 26 04 13

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – DESIGNATED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s):

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

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

1. In the performance of your ongoing operations; or
2. In connection with your premises owned by or rented to you.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

ELECTRONICALLY FILED - 2018 Feb 14 4:31 PM - Horry - COMMON PLEAS - CASE#2016CP2604464

ENDORSEMENT #

This endorsement, effective 12:01 A. M. forms a part of Policy

No. issued to by

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

FUNGUS EXCLUSION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

This insurance does not apply to "bodily injury", "property damage", "personal and advertising injury", or any other loss, cost or expense, including but not limited to, losses, costs or expenses related to, arising from or associated with clean-up, remediation, containment, removal or abatement, caused directly or indirectly, in whole or in part, by:

- a. Any "fungus(i)", "mold(s)", mildew or yeast, or
- b. Any "spore(s)" or toxins created or produced by or emanating from such "fungus(i)", "mold(s)", mildew or yeast, or
- c. Any substance, vapor, gas, or other emission or organic or inorganic body or substance produced by or arising out of any "fungus(i)", "mold(s)", mildew or yeast, or
- d. Any material, product, building component, building or structure, or any concentration of moisture, water or other liquid within such material, product, building component, building or structure, that contains, harbors, nurtures or acts as a medium for any "fungus(i)", "mold(s)", mildew, yeast, or "spore(s)" or toxins emanating therefrom,

regardless of any other cause, event, material, product and/or building component that contributed concurrently or in any sequence to that "bodily injury", "property damage", "personal and advertising injury", loss, cost or expense.

For the purposes of this exclusion, the following definitions are added to the Policy:

"Fungus(i)" includes, but is not limited to, any of the plants or organisms belonging to the major group fungi, lacking chlorophyll, and including "mold(s)", rusts, mildews, smuts, and mushrooms.

"Mold(s)" includes, but is not limited to, any superficial growth produced on damp or decaying organic matter or on living organisms, and "fungi" that produce molds.

"Spore(s)" means any dormant or reproductive body produced by or arising or emanating out of any "fungus(i)", "mold(s)", mildew, plants, organisms or microorganisms.

It is understood that to the extent any coverage may otherwise be provided under this policy or any of its other endorsements, the provisions of this exclusion will supercede.

ALL OTHER TERMS AND CONDITIONS SHALL REMAIN UNCHANGED.

Authorized Representative

ENDORSEMENT

This endorsement, effective 12:01 A.M. _____ forms a part of
policy No. _____ issued to
by

THIS ENDORSEMENT CHANGES THE POLICY, PLEASE READ CAREFULLY.

TOTAL LEAD EXCLUSION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART COMMERCIAL UMBRELLA LIABILITY

This insurance does not apply to any "bodily injury", "property damage", "personal injury", or "advertising injury", or any other loss, cost or expense arising out of the presence, ingestion, inhalation, or absorption of or exposure to lead in any form or products containing lead.

AUTHORIZED REPRESENTATIVE

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ABUSE OR MOLESTATION EXCLUSION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

The following exclusion is added to Paragraph 2., Exclusions of Section I – Coverage A – Bodily Injury And Property Damage Liability and Paragraph 2., Exclusions of Section I – Coverage B – Personal And Advertising Injury Liability:

This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of:

1. The actual or threatened abuse or molestation by anyone of any person while in the care, custody or control of any insured, or
2. The negligent:
 - a. Employment;
 - b. Investigation;
 - c. Supervision;
 - d. Reporting to the proper authorities, or failure to so report; or
 - e. Retention;of a person for whom any insured is or ever was legally responsible and whose conduct would be excluded by Paragraph 1. above.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

TOTAL POLLUTION EXCLUSION WITH A HOSTILE FIRE EXCEPTION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

Exclusion f. under Paragraph 2., **Exclusions of Section I – Coverage A – Bodily Injury And Property Damage 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.

This exclusion does not apply to "bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire" unless that "hostile fire" occurred or originated:

- (a) At 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; or

- (b) At 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 to test for, monitor, clean up, remove, contain, treat, detoxify, 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".

IL 00 03 09 08

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CALCULATION OF PREMIUM

This endorsement modifies insurance provided under the following:

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

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.

ENDORSEMENT #

This endorsement, effective 12:01 AM

Forms a part of policy no.:

Issued to:

By: LEXINGTON INSURANCE COMPANY

CROSS SUITS ENDORSEMENT

It is agreed that the coverage afforded by this policy does not apply to a claim for damages arising out of Personal Injury or Property Damage, as defined, initiated, alleged, or caused to be brought about by a Named insured or Additional Named Insured covered by this policy against any other Named Insured or Additional Named Insured covered by this policy.

POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**HIRED AUTO AND NON-OWNED AUTO LIABILITY**

This endorsement modifies insurance provided under the following:
COMMERCIAL GENERAL LIABILITY COVERAGE PART.

SCHEDULE

Insurance is provided only with respect to those coverages for which a specific premium charge is shown:

Coverage	Additional Premium
Non-Ownership Liability	\$
Hired Auto Liability	\$

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

HIRED AUTO LIABILITY

The insurance provided under COVERAGE A (Section I) applies to "bodily injury" or "property damage" arising out of the maintenance or use of a "hired auto" by you or your employees in the course of your business.

With respect to the insurance provided by this endorsement:

1. The exclusions, under COVERAGE A (Section I), other than exclusions a, b, d, f and i and the Nuclear Liability Exclusion (Broad Form) are deleted and replaced by the following:
 - a. "Bodily injury:"
 - (1) To an employee of the insured arising out of and in the course of employment by the insured; or
 - (2) To the spouse, child, parent, brother or sister of that employee as a consequence of (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 injury.

This exclusion does not apply to:

- (1) Liability assumed by the insured under an "insured contract;" or
- (2) "Bodily injury" arising out of and in the course of domestic employment by the insured unless benefits for such injury are in whole or in part either payable or required to be provided under any workers compensation law.

b. "Property damage" to:

- (1) Property owned or being transported by, or rented or loaned to the insured; or
- (2) Property in the care, custody or control of the insured.

2. WHO IS AN INSURED (Section II) is replaced by the following:

Each of the following is an insured under this insurance to the extent set forth below:

- a. You;
- b. Any other person using a "hired auto" with your permission;
- c. With respect to a "non-owned auto," any partner or executive officer of yours, but only while such "non-owned auto" is being used in your business.
- d. Any other person or organization, but only with respect to their liability because of acts or omissions of an insured under a., b., or c. above.

None of the following is an insured:

- a. Any person engaged in the business of his or her employer with respect to "bodily injury" to any co-employee of such person injured in the course of employment;
- b. Any partner or executive officer with respect to any "auto" owned by such partner or officer or a member of his or her household;
- c. Any person while employed in or otherwise engaged in duties in connection with an "auto business," other than an "auto business" you operate;

- d. The owner or lessee (of whom you are a sublessee) of a "hired auto" or the owner of a "non-owned auto" or any agent or employee of any such owner or lessee;
- e. Any person or organization with respect to the conduct of any current or past partnership or joint venture that is not shown as a Named Insured in the Declarations.

NON-OWNED AUTO LIABILITY

The insurance provided under COVERAGE A (Section I) applies to "bodily injury" or "property damage" arising out of the use of any "non-owned auto" in your business by any person other than you.

The following additional definitions apply:

"Auto business" means the business or occupation of selling, repairing, servicing, storing or parking "autos."

"Hired auto" means any "auto" you lease, hire, or borrow. This does not include any "auto" you lease, hire, or borrow from any of your employees or members of their households, or from any partner or executive officer of yours.

"Non-owned auto" means any "auto" you do not own, lease, hire or borrow which is used in connection with your business. However, if you are a partnership a "non-owned auto" does not include any auto owned by any partner.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ENDORSEMENT #

This endorsement, effective 12:01 A.M. forms a
part of Policy

No. issued to by

RADIOACTIVE MATTER EXCLUSION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

Section I. - Coverages, Coverage A.- Bodily Injury and Property Damage Liability, 2. - Exclusions, is amended to add:

"Bodily injury" or "property damage" arising out of the actual, alleged or threatened exposure of person(s) or property to any radioactive matter or any form of radiation.

Section I. - Coverages, Coverage B.- Personal and Advertising Liability, 2. - Exclusions, is amended to add:

"Personal and advertising injury" arising out of the actual, alleged or threatened exposure of person(s) or property to any radioactive matter or any form of radiation.

AUTHORIZED REPRESENTATIVE

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

ENDORSEMENT #

This endorsement, effective 12:01 A.M.
part of Policy

forms a

No. issued to by

ERISA EXCLUSION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

Section I. - Coverages, Coverage A.- Bodily Injury and Property Damage Liability, 2.
- Exclusions, is amended to add:

"Bodily injury" or "property damage" arising out of any obligation you incur
under the Employee Retirement Income Security Act of 1974, Public Law
93-406, any law amendatory thereof or any regulation pertaining thereto.

Section I. - Coverages, Coverage B.- Personal and Advertising Liability, 2. -
Exclusions is amended to add:

"Personal and advertising injury" arising out of any obligation you incur
under the Employee Retirement Income Security Act of 1974, Public Law
93-406, any law amendatory thereof or any regulation pertaining thereto.

AUTHORIZED REPRESENTATIVE

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ENDORSEMENT #

This endorsement, effective 12:01 A.M. forms a part
of Policy

No. issued to by

ASBESTOS AND SILICA EXCLUSION ENDORSEMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

Section 1. - COVERAGES, COVERAGE A. - BODILY INJURY and PROPERTY DAMAGE LIABILITY, 2. - Exclusions, is amended to add the following exclusions:

Asbestos

"Bodily injury" or "property damage" arising out of the manufacture of, mining of, use of, sale of, installation of, removal of, distribution of, or exposure to asbestos products, asbestos fibers or asbestos dust, or to any obligation of the insured to indemnify any party because of "bodily injury" or "property damage" arising out of the manufacture of, mining of, use of, sale of, installation of, removal of, distribution of, or exposure to asbestos products, asbestos fibers or asbestos dust.

Silica

"Bodily injury" or "property damage" arising out of the presence, ingestion, inhalation or absorption of or exposure to silica products, silica fibers, silica dust or silica in any form, or to any obligation of the insured to indemnify any party because of "bodily injury" or "property damage" arising out of the presence, ingestion, inhalation or absorption of or exposure to silica products, silica fibers, silica dust or silica in any form.

Section 1. - COVERAGES, COVERAGE B. - PERSONAL and ADVERTISING INJURY LIABILITY, 2. - Exclusions is amended to add the following exclusions:

Asbestos

"Personal and advertising injury" arising out of the manufacture of, mining of, use of, sale of, installation of, removal of, distribution of, or exposure to asbestos products, asbestos fibers or asbestos dust, or to any obligation of the insured to indemnify any party because of "personal and advertising injury" arising out of the

manufacture of, mining of, use of, sale of, installation of, removal of, distribution of, or exposure to asbestos products, asbestos fibers or asbestos dust.

Silica

"Personal and advertising injury" arising out of the presence, ingestion, inhalation or absorption of or exposure to silica products, silica fibers, silica dust or silica in any form, or to any obligation of the insured to indemnify any party because of "personal and advertising injury" arising out of the presence, ingestion, inhalation or absorption of or exposure to silica products, silica fibers, silica dust or silica in any form.

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

AUTHORIZED REPRESENTATIVE

**Jill Keck Humphries, et al. v Tilghman Beach & Racquet Club Condo Assoc., et al.
Michael Parades, PCAM on 02/06/2018**

1 STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
2 COUNTY OF HORRY 15TH JUDICIAL CIRCUIT
3 CASE NO. 2016-CP-26-4464

4
5 JILL KECK HUMPHRIES,
6 DENNIS L. JOHNSON, JR.,
7 DELONA PENNY RICE,
8 WHITMEL L. BROWN, JR.,
9 GARY STEVEN ROBINSON,
10 ELIZABETH ERIN HUMPHRIES,
11 AND NANCY H. JOHNSON,
12 Plaintiff(s),

13 -vs-

14 TILGHMAN BEACH AND RACQUET CLUB.
15 CONDOMINIUM ASSOCIATION, INC.,
16 JAMES H. AUSTIN, III, DANIEL G. COE,
17 C. DOUG MADISON, GEORGE P. WHITE AND
18 STEELE BRICE WINDLE, III, INDIVIDUALLY
19 AND AS MEMBERS OF THE BOARD OF DIRECTORS
20 OF THE TILGHMAN BEACH AND RACQUET CLUB
21 CONDOMINIUM ASSOCIATION, INC.,
22 Defendant(s).

23 TILGHMAN BEACH AND RACQUET CLUB
24 CONDOMINIUM ASSOCIATION, INC., JAMES
25 H. AUSTIN, III, DANIEL G. COE, C.
DOUG MADISON, GEORGE P. WHITE AND
STEELE BRICE WINDLE, III, INDIVIDUALLY
AND AS MEMBERS OF THE BOARD OF DIRECTORS
OF THE TILGHMAN BEACH AND RACQUET CLUB
CONDOMINIUM ASSOCIATION, INC.,
Third-Party Plaintiffs,

26 -vs-

27 GREAT AMERICAN INSURANCE COMPANY,
28 Third-Party Defendant.

1 (Caption Continued)

2

3 Deposition of Michael Parades, PCAM, taken
4 on behalf of the Defendants pursuant to the
5 stipulations agreed to herein, before Nicole D.
6 White, Certified Court Reporter and Notary
7 Public, at 1000 29th Ave., North, Myrtle Beach,
8 South Carolina on the 6th day of February 2018
9 commencing at 9:15 a.m.

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1 enough, they excluded the property condition
2 assessment and then we subsequently were
3 able to get the full 2009 reserve study.

4 I don't know if there's a more
5 recent one, there should be. I'm going to
6 suggest to Howell that he ask for it,
7 whatever the most recent reserve studies
8 are. There should be one, because industry
9 standard says every four to five years.
10 Anyway...

11 MR. MABRY: I'm not gonna do any
12 kind of game to keep you from coming back
13 and asking follow-up questions. It's not,
14 you know, it's not gonna happen.

15 MR. BELLAMY, III: I want to ask
16 about two questions. I'll make it short.

17 MR. MABRY: That's fine.

18 MR. BELLAMY, III: Okay.

19 THE DEPONENT: Yeah, I read part
20 of that into the Record earlier.

21 MR. BELLAMY, III: This is
22 the letter dated August 11, 2017. Where's
23 the one we have that's marked as an
24 exhibit?

25 THE DEPONENT: I'm not sure it

1 got marked as an exhibit, but we'll see.

2 MR. MABRY: I don't believe that
3 ever got marked, but it's got an exhibit
4 sticker already on it. I thought we agreed
5 to just...

6 THE DEPONENT: This is the one
7 dealing with the \$12,000 special assessment.

8 E-X-A-M-I-N-A-T-I-O-N

9 BY MR. BELLAMY, III:

10 Q. What I'm showing you has been
11 previously marked as deposition, Defendant's
12 Exhibit 123 -- or Plaintiffs' Exhibit 123. It's
13 deposition of I think Bell and it was dated
14 August 16, 2017 and I marked it, I guess -- so
15 you want to take this off or you want to --

16 MR. MABRY: I'm fine giving it
17 another sticker for him.

18 (Plaintiff's Exhibit 165 was
19 marked for identification.)

20 MR. BELLAMY, III: Okay, we've
21 now marked it as Plaintiff's Exhibit Number
22 165 to your deposition.

23 MR. MABRY: Can I slip up,
24 because he didn't give me a copy.

25 BY MR. BELLAMY, III:

**Jill Keck Humphries, et al. v Tilghman Beach & Racquet Club Condo Assoc., et al.
Michael Parades, PCAM on 06/05/2018**

1 STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
2 COUNTY OF HORRY 15TH JUDICIAL CIRCUIT
3 CASE NO. 2016-CP-26-4464

4 JILL KECK HUMPHRIES,
5 DENNIS L. JOHNSON, JR.,
6 DELONA PENNY RICE,
7 WHITMEL L. BROWN, JR.,
8 GARY STEVEN ROBINSON, VOLUME II
9 ELIZABETH ERIN HUMPHRIES,
10 AND NANCY H. JOHNSON,
11 Plaintiff(s),

12 -vs-

13 TILGHMAN BEACH AND RACQUET CLUB
14 CONDOMINIUM ASSOCIATION, INC.,
15 JAMES H. AUSTIN, III, DANIEL G. COE,
16 C. DOUG MADISON, GEORGE P. WHITE AND
17 STEELE BRICE WINDLE, III, INDIVIDUALLY
18 AND AS MEMBERS OF THE BOARD OF DIRECTORS
19 OF THE TILGHMAN BEACH AND RACQUET CLUB
20 CONDOMINIUM ASSOCIATION, INC.,
21 Defendant(s).

22 TILGHMAN BEACH AND RACQUET CLUB
23 CONDOMINIUM ASSOCIATION, INC., JAMES
24 H. AUSTIN, III, DANIEL G. COE, C.
25 DOUG MADISON, GEORGE P. WHITE AND
STEELE BRICE WINDLE, III, INDIVIDUALLY
AND AS MEMBERS OF THE BOARD OF DIRECTORS
OF THE TILGHMAN BEACH AND RACQUET CLUB
CONDOMINIUM ASSOCIATION, INC.,
Third-Party Plaintiffs,

26 -vs-

27 GREAT AMERICAN INSURANCE COMPANY,
28 Third-Party Defendant.

1 (Caption Continued)

2

3 Volume II of the deposition of MICHAEL
4 PARADES, PCAM, taken on behalf of the Defendants
5 pursuant to the stipulations agreed to herein,
6 before Nicole D. White, Certified Court Reporter
7 and Notary Public, at 1000 29th Ave., North,
8 Myrtle Beach, South Carolina on the 5th day of
9 June 2018 commencing at 10:10 a.m.

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1 Q. Okay. And this is the second document
2 you say was provided by Ms. Humphries; is that
3 correct?

4 A. Yes, sir, that's correct.

5 Q. All right. And tell me what your
6 concerns are about this document, Exhibit 328?

7 A. I mentioned it before, it just -- I'm
8 amazed at the dollar value of the legal fees and
9 we're still in deposition. I'm just amazed and,
10 you know, I would strongly urge at some point
11 somebody does a forensic audit of the legal --
12 the contract and all the legal fees and just
13 makes sure they're all appropriately supported,
14 because I have never seen something like this
15 and, you know, been through some lawsuits that
16 went six years and never seen fees approaching
17 the number.

18 Q. Okay.

19 A. Except for one.

20 Q. And that was Shipyard?

21 A. That was Shipyard.

22 Q. All right. Do you know the
23 circumstances under which the defense counsel in
24 Shipyard was, quote, in your words, fired?

25 A. I think I raised a question with

1 somebody in the industry that's pretty high up
2 about, I mean, that's what it is, I said isn't
3 this unusual. Because it is unusual. I'm not
4 sure what he did with it, but they were
5 terminated and there's no question they were
6 terminated afterwards and a different law firm
7 was given the case.

8 Q. Were you involved in any of the
9 decision making as to whether the defense firm
10 was terminated and replaced?

11 A. No, sir, I was not.

12 Q. All right. Any other concerns you
13 have about Exhibit 328?

14 A. Just legal fees. Now, I guess the
15 other concern would be in looking at the April 30
16 financial statements, it indicates there's only
17 been about \$2,500 in round numbers of legal fees
18 in 2018, so you must have sent some bills in in
19 May and June that were pretty substantial because
20 at the end of the year, the legal fee total was
21 920 and now we've gone up about almost a hundred
22 thousand dollars. It concerns me about the
23 accrual of fees and that they weren't necessarily
24 being accrued by the HOA in January, February,
25 March and April.

1 Q. I'm not --

2 A. Financial disclosures. While I know
3 you said you did my deposition in February, I
4 didn't remember that.

5 Q. Here's the transcript.

6 A. No, you mentioned the date, I just --
7 you mentioned the date, so I know you spent some
8 legal dollars in February. I'm sure you probably
9 spent some legal dollars in January, February,
10 March, April. Yet the only thing that shows up
11 on the financial statements is about, I'd have to
12 look and see exactly how much, it's about \$2,500
13 give or take. Were you just not billing or is it
14 being hidden somewhere in the financial
15 statements? I don't have enough detail of the
16 financial statements to really tell for sure.
17 Just my concern.

18 Q. Okay. Another explanation could be
19 that it was billed and just not paid, right?

20 A. No, if you practice accrual
21 accounting, you record the liability.

22 Q. Okay.

23 A. And the expense shows up. But if
24 you're sending financials, making financial
25 statements available on the website and you don't

1 show the expense, it implies to the people that
2 are reviewing the financials on the website that
3 you didn't spend much in the way of legal fees in
4 the first part of the year. It all goes back to
5 appropriate financial disclosure just like the
6 problems with the audit report for 2016, '17 and
7 I'm sure you'll want to get and ask questions
8 about that.

9 Q. Okay. All right. Any other concerns
10 about the legal fees other than what you've
11 expressed?

12 A. No, sir.

13 Q. All right. Now I want to go back to
14 you said that you had looked at since your
15 February 6, 2018 deposition, you had looked at
16 the 2016-2017 audit?

17 A. Yes, sir.

18 Q. Okay. And you had, I think you either
19 used the term "I have some concerns" or "I find
20 some things about it interesting" and I don't
21 know which one you used.

22 A. Well, I'll get it out and let you make
23 a copy of -- make it an exhibit, because I'll be
24 happy to tell you what the problems are.

25 Q. All right.

1 Q. I'm sorry, 327 and 328.

2 A. If that's what the numbers are. I
3 think that the financial disclosures -- some of
4 the financial information in the 2016-2017 audit
5 report are completely wrong and somebody gave
6 direction to the auditor to put that one section
7 in, that one ending of the one sentence saying
8 you can just forget about it if you don't have
9 the money. I'm paraphrasing. And that the
10 auditor needs to be sanctioned, for lack of a
11 better word, either reported to the South
12 Carolina Certified Public Accountants or given
13 the opportunity to change his audit report
14 because it is completely misleading.

15 I think there's some financial
16 reporting concerns with the in-house financial
17 statements that those apparently go on the
18 website for the owners to see and it just needs
19 to be clear what is being presented.

20 And I'm concerned about the fact that
21 there was apparently some significant legal fees
22 that haven't showed up at April -- April 30th and
23 maybe it's because they didn't accrue them until
24 May or now into June. And I expressed an opinion
25 that I think personally from my experience that

1 the amount of legal fees charged to date seem
2 abnormally high for something where we're just
3 still in deposition stage. I think those recap
4 all the opinions that I was talking about this
5 morning.

6 Q. Okay. All right. I wanted to ask you
7 in -- first of all, you are not a property
8 appraiser, correct?

9 A. No, sir.

10 Q. Is that a correct statement?

11 A. That is correct.

12 Q. Okay. And you don't have the
13 expertise to appraise property values, correct?

14 A. That's correct.

15 Q. Okay. You testified in your previous
16 deposition about a property in Charleston called
17 Little Oak Island Villas --

18 A. Yes, sir.

19 Q. -- where there was repair to the
20 common elements that you say produced a dollar
21 for dollar increase in the individual condominium
22 units or actually, you said more of an increase.

23 A. It was more.

24 Q. Can you tell me where that property
25 was located?

1 sudden now that they're starting to do some
2 further investigation, they're finding there's a
3 lot of problems in the building that already have
4 been reported. That's all I meant by that and it
5 begins.

6 Q. All right.

7 A. Which means it's gonna probably cost
8 more money for the homeowners.

9 Q. All right. Then what did you mean by
10 this -- this last note?

11 A. Okay. And I think at the time that I
12 looked at this, I probably had some financial
13 information and at that point your legal fees,
14 your legal, your firm's legal fees were in the
15 \$600,000 range.

16 Q. Uh-huh.

17 A. And again, it goes back to this is in
18 August of 2017, how can it possibly be at
19 \$600,000 in legal, you know, and then I wrote
20 down, see I'm trying to read what it says, "When
21 were they hired? Who is reviewing the bills?"
22 Now, presumably the board knows when you were
23 hired and presumably the board's reviewing the
24 bills or Mr. Windle's reviewing the bills or
25 somebody's reviewing the bills.

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Jill Keck Humphries, Dennis L.
Johnson, Jr., Delona Penny Rice,
Whitmel L. Brown, Jr., Gary Steven
Robinson, Elizabeth Erin Humphries,
and Nancy H. Johnson,

Plaintiffs,

vs.

Tilghman Beach and Racquet Club
Condominium Association, Inc.,
James H. Austin, III, Daniel G. Coe,
C. Doug Madison, George P. White
and Steele Brice Windle, III,
individually and as Members of the
Board of Directors of the Tilghman
Beach and Racquet Club
Condominium Association, Inc.,

Defendants.

Tilghman Beach and Racquet Club
Condominium Association, Inc.,
James H. Austin, III, Daniel G. Coe,
C. Doug Madison, George P. White
and Steele Brice Windle, III,
individually and as Members of the
Board of Directors of the Tilghman
Beach and Racquet Club
Condominium Association, Inc.,

Third-Party Plaintiffs,

vs.

Great American Insurance Company,

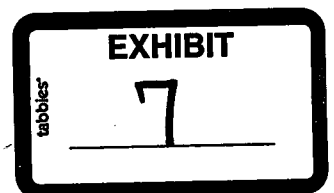
Third-Party Defendant.

IN THE COURT OF COMMON PLEAS

FIFTEENTH JUDICIAL CIRCUIT

C.A. No. 2016-CP-26-4464

**DEFENDANTS'/THIRD-PARTY PLAINTIFFS'
THIRD AMENDED NOTICE OF
VIDEOTAPED DEPOSITIONS OF MARTHA
MANRIQUEZ, SANDRA VISSER, KATHLEEN
VAN DEVEN, SUSAN FARRELL, AND
JUDITH PIETRUCHA**



TO: ALL COUNSEL OF RECORD:

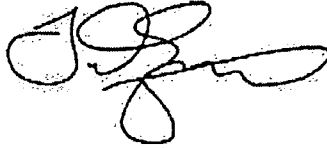
PLEASE TAKE NOTICE that, pursuant to Rule 30 of the South Carolina Rules of Civil Procedure, Defendants/Third-Party Plaintiffs, by and through their undersigned attorneys, will take upon oral examination the videotaped depositions of the following individuals, before a notary public or before some other officer authorized by law to administer oaths.

DEPONENT	DATE	TIME	LOCATION
Martha Manriquez	July 9, 2018	9:00 a.m.	Regus Business Center 875 North Michigan Avenue, 31st Floor Chicago, IL 60611
Sandra Visser	July 9, 2018	1:30 p.m.	Regus Business Center 875 North Michigan Avenue, 31st Floor Chicago, IL 60611
Kathleen Van Deven	July 10, 2018	9:00 a.m.	Regus Business Center 875 North Michigan Avenue, 31st Floor Chicago, IL 60611
Susan Farrell	July 10, 2018	1:30 p.m.	Regus Business Center 875 North Michigan Avenue, 31st Floor Chicago, IL 60611
Judith Pietrucha	July 11, 2018	9:00 a.m.	Regus Business Center 875 North Michigan Avenue, 31st Floor Chicago, IL 60611

The depositions will be recorded by stenographic means and will continue from day to day until completed. You are also notified that Defendants/Third-Party Plaintiffs intend to videotape these depositions pursuant to the provisions of Rule 30(h), SCRPC. You are invited to attend the depositions and participate in accordance with applicable law.

[SIGNATURE BLOCK ON FOLLOWING PAGE]

HAYNSWORTH SINKLER BOYD, P.A.



H. Sam Mabry, III, SC Bar No. 3490
Joshua D. Spencer, SC Bar No. 74782
Bonnie A. Lynch, SC Bar No. 77399
HAYNSWORTH SINKLER BOYD, P.A.
ONE North Main Street, 2nd Floor (29601)
Post Office Box 204
Greenville, SC 29602
(864) 240-3200
(864) 240-3300 (facsimile)

Attorneys for Defendants

June 26, 2018
Greenville, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Larry B. Hyman, Circuit Court Judge

Case No. 2016-CP-26-4464

RECEIVED
JUN 27 2018
SC Court of Appeals

Jill Keck Humphries, Dennis L. Johnson, Jr., Delona Penny Rice, Whitmel L. Brown, Jr.,
Gary Steven Robinson, Elizabeth Erin Humphries, and Nancy H. Johnson, ... Plaintiffs,

v.

Tilghman Beach and Racquet Club Condominium Association, Inc., James H. Austin, III,
Daniel G. Coe, C. Doug Madison, George P. White and Steele Brice Windle, III, individually
and as Members of the Board of Directors of the Tilghman Beach and Racquet Club
Condominium Association, Inc., ... Respondents,

v.

Great American Insurance Company Appellant.

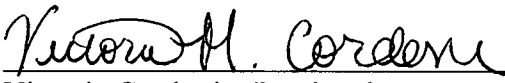
CERTIFICATE OF SERVICE

I certify I have served **Appellant's Emergency Motion for Protective Order** on
counsel by depositing a copy of said documents in the United States Mail, postage prepaid,
on **June 27, 2018**, addressed to Respondents' attorneys of record as follows:

Howell V. Bellamy, III, Esquire
Bellamy Law Firm
Post Office Box 357
Myrtle Beach, SC 29578
Attorney for Plaintiffs

Joshua D. Spencer, Esquire
Bonnie Allen Lynch, Esquire
H. Sam Mabry, Esquire
Haynesworth Sinkler Boyd
P.O. Box 2048
Greenville, SC 29602
Attorneys for Respondents

Charles B. Jordan, Jr., Esquire
The Pearce Law Group, PC
1314 Professional Drive
Myrtle Beach, SC 29577
Attorneys for Respondents


Victoria Cordoni – Paralegal

June 27, 2018.



June 27, 2018

VIA HAND-DELIVERY:

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Attorneys at Law

Alabama
Florida
Georgia
Louisiana
Mississippi
South Carolina
Tennessee
Texas
Washington, DC

Kirby D. Shealy III

Direct: 803.212.4966

Fax: 803.779.4749

Kirby.shealy@arlaw.com

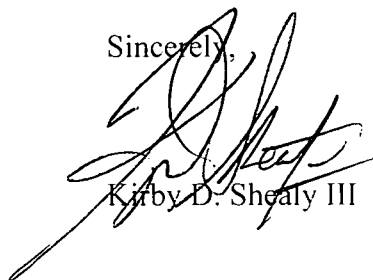
Re: *Jill Keck Humphries, et.al. vs. Tilghman Beach & Racquet Club Condominium Association, Inc., James H. Austin, III, Daniel G. Coe, C. Doug Madison, George P. White, and Steele Brice Windle, III, individually and as Members of the Board of Directors of the Tilghman Beach & Racquet Club Condominium Association, Inc. v. Great American Insurance Company*
C.A. No.: 2016-CP-26-4464
AR File No.: 006347-000037

Dear Ms. Kitchings:

Enclosed for filing in the above-referenced matter are the original and six copies of Appellant's Emergency Motion for Protective Order along with the \$25.00 filing fee. Also enclosed for filing is our Proof of Service. Please file the originals and return the clocked-in copies to me via our courier.

By copy of this letter, I am serving opposing counsel with the Motion, as set forth in the enclosed Proof of Service. Thank you for your attention to this matter.

Sincerely,



Kirby D. Shealy III

RECEIVED

JUN 27 2018

SC Court of Appeals

KDS/vmc

Enclosures

cc: Howell V. Bellamy, III, Esquire
Joshua D. Spencer, Esquire
H. Sam Mabry, Esquire
Charles B. Jordan, Jr., Esq.