SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

WEST FLAGLER ASSOCIATES, LTD. D/B/A MAGIC CITY CASINO AND FLAGLER DOG TRACK

Plaintiff(s),

-against-

INDIAN HARBOR INSURANCE COMPANY, HALLMARK SPECIALTY INSURANCE COMPANY, ATEGRITY SPECIALTY INSURANCE COMPANY, and GREAT LAKES INSURANCE SE

Defendant(s).

Index No.

Summons

Date Index No. Purchased: May 24, 2021

To the above named Defendant(s) INDIAN HARBOR INSURANCE COMPANY

c/o Chief Financial Officer of the Florida Department of Financial Services
200 East Gaines Street
Tallahassee, FL 32399-4201

Ms. Sarah Mims
General Counsel
505 Eagleview Boulevard, Suite 100
Exton, PA 19341-1120

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's attorney within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

The basis of venue is pursuant to Rules 501, 503(a), and 509 of the New York Civil Practice Law and Rules which is Plaintiff's designation and forum selection clauses

Dated: Coral Gables, FL

May 24, 2021

THE MOSKOWITZ LAW FIRM, PLLC
by_____
Seth M. Shapiro
Attorneys for Plaintiff

Seth M. Shapiro
Adam M. Moskowitz (Pro Hac Vice forthcoming)
Adam A. Schwartzbaum (Pro Hac Vice forthcoming)
Howard M. Bushman (Pro Hac Vice forthcoming)
2 Alhambra Plaza, Suite 601
Coral Gables, FL 33134
Telephone: (305) 740-1423
seth@moskowitz-law.com
adam@moskowitz-law.com
service@moskowitz-law.com

MERLIN LAW GROUP
William F. "Chip" Merlin, Jr.
Shane S. Smith (Pro Hac Vice forthcoming)
777 S. Harbour Island Blvd., Suite 950
Tampa, FL 33602
Telephone: (813) 229-1000
cmerlin@merlinlawgroup.com
smith@merlinlawgroup.com

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

WEST FLAGLER ASSOCIATES, LTD. D/B/A MAGIC CITY CASINO AND FLAGLER DOG TRACK

Plaintiff(s),

-against-

INDIAN HARBOR INSURANCE COMPANY, HALLMARK SPECIALTY INSURANCE COMPANY, ATEGRITY SPECIALTY INSURANCE COMPANY, and GREAT LAKES INSURANCE SE

Defendant(s).

Index No.

Summons

Date Index No. Purchased: May 24, 2021

To the above named Defendant(s) HALLMARK SPECIALTY INSURANCE COMPANY

c/o Chief Financial Officer of the Florida Department of Financial Services
200 East Gaines Street
Tallahassee, FL 32399-4201

General Counsel
Hallmark Financial Services, Inc.
777 Main St, Suite #1000
Ft. Worth, TX 76102

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's attorney within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

The basis of venue is pursuant to Rules 501, 503(a), and 509 of the New York Civil Practice Law and Rules which is Plaintiff's designation and forum selection clauses

Dated: Coral Gables, FL

May 24, 2021

THE MOSKOWITZ LAW FIRM, PLLC

by_____

Seth M. Shapiro
Attorneys for Plaintiff

Seth M. Shapiro
Adam M. Moskowitz (Pro Hac Vice forthcoming) Adam A. Schwartzbaum (Pro Hac Vice forthcoming)
Howard M. Bushman (Pro Hac Vice forthcoming)
2 Alhambra Plaza, Suite 601
Coral Gables, FL 33134
Telephone: (305) 740-1423
seth@moskowitz-law.com
adam@moskowitz-law.com
service@moskowitz-law.com

MERLIN LAW GROUP
William F. "Chip" Merlin, Jr.
Shane S. Smith (Pro Hac Vice forthcoming)
777 S. Harbour Island Blvd., Suite 950
Tampa, FL 33602
Telephone: (813) 229-1000
cmerlin@merlinlawgroup.com
smith@merlinlawgroup.com

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

WEST FLAGLER ASSOCIATES, LTD. D/B/A MAGIC CITY CASINO AND FLAGLER DOG TRACK

Plaintiff(s),

-against-

INDIAN HARBOR INSURANCE COMPANY, HALLMARK SPECIALTY INSURANCE COMPANY, ATEGRITY SPECIALTY INSURANCE COMPANY, and GREAT LAKES INSURANCE SE

Defendant(s).

Index No.

Summons

Date Index No. Purchased: May 24, 2021

To the above named Defendant(s) ATEGRITY SPECIALTY INSURANCE COMPANY

c/o Chief Financial Officer of the Florida Department of Financial Services
200 East Gaines Street
Tallahassee, FL 32399-4201

Mr. Michael D. Miller
Ategrity Specialty Insurance Company
15990 N. Greenway-Hayden Loop, Suite D-160
Scottsdale, Arizona 85260

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's attorney within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

The basis of venue is pursuant to Rules 501, 503(a), and 509 of the New York Civil Practice Law and Rules which is Plaintiff's designation and forum selection clauses

Dated: Coral Gables, FL

May 24, 2021

THE MOSKOWITZ LAW FIRM, PLLC

by _____

Seth M. Shapiro
Attorneys for Plaintiff

Seth M. Shapiro
Adam M. Moskowitz (Pro Hac Vice forthcoming)
Adam A. Schwartzbaum (Pro Hac Vice forthcoming)
Howard M. Bushman (Pro Hac Vice forthcoming)
2 Alhambra Plaza, Suite 601
Coral Gables, FL 33134
Telephone: (305) 740-1423
seth@moskowitz-law.com
adam@moskowitz-law.com
service@moskowitz-law.com

MERLIN LAW GROUP
William F. "Chip" Merlin, Jr.
Shane S. Smith (Pro Hac Vice forthcoming)
777 S. Harbour Island Blvd., Suite 950
Tampa, FL 33602
Telephone: (813) 229-1000
cmerlin@merlinlawgroup.com
smith@merlinlawgroup.com

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

WEST FLAGLER ASSOCIATES, LTD. D/B/A MAGIC CITY CASINO AND FLAGLER DOG TRACK

Plaintiff(s),

-against-

INDIAN HARBOR INSURANCE COMPANY, HALLMARK SPECIALTY INSURANCE COMPANY, ATEGRITY SPECIALTY INSURANCE COMPANY, and GREAT LAKES INSURANCE SE

Defendant(s).

Index No.

Summons

Date Index No. Purchased: May 24, 2021

To the above named Defendant(s) GREAT LAKES INSURANCE SE

c/o Chief Financial Officer of the Florida Department of Financial Services
200 East Gaines Street
Tallahassee, FL 32399-4201

Mr. Edward Smith
Mendes and Mount, LLP
750 Seventh Avenue
New York, NY 10019-6829

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's attorney within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

The basis of venue is pursuant to Rules 501, 503(a), and 509 of the New York Civil Practice Law and Rules which is Plaintiff's designation and forum selection clauses

Dated: Coral Gables, FL

May 24, 2021

THE MOSKOWITZ LAW FIRM, PLLC

by _____

Seth M. Shapiro

Attorneys for Plaintiff

Seth M. Shapiro
Adam M. Moskowitz (Pro Hac Vice forthcoming)
Adam A. Schwartzbaum (Pro Hac Vice forthcoming)
Howard M. Bushman (Pro Hac Vice forthcoming)
2 Alhambra Plaza, Suite 601
Coral Gables, FL 33134
Telephone: (305) 740-1423
seth@moskowitz-law.com
adam@moskowitz-law.com
service@moskowitz-law.com

MERLIN LAW GROUP
William F. "Chip" Merlin, Jr.
Shane S. Smith (Pro Hac Vice forthcoming)
777 S. Harbour Island Blvd., Suite 950
Tampa, FL 33602
Telephone: (813) 229-1000
cmerlin@merlinlawgroup.com
smith@merlinlawgroup.com

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

WEST FLAGLER ASSOCIATES, LTD. D/B/A MAGIC CITY CASINO AND FLAGLER DOG TRACK, Plaintiff, - against - INDIAN HARBOR INSURANCE COMPANY, HALLMARK SPECIALTY INSURANCE COMPANY, ATEGRITY SPECIALTY INSURANCE COMPANY, and GREAT LAKES INSURANCE SE, Defendants.	Index No. _____ **COMPLAINT**

Plaintiff West Flagler Associates, Ltd. d/b/a Magic City Casino and Flagler Dog Track ("Magic City" or "Plaintiff"), for its Complaint against Defendants Indian Harbor Insurance Company ("Indian Harbor"), Hallmark Specialty Insurance Company ("Hallmark"), Ategrity Specialty Insurance Company ("Ategrity"), and Great Lakes Insurance SE ("Great Lakes") (collectively, "Defendants"), hereby alleges the following:

PRELIMINARY STATEMENT

1. This is an action for declaratory judgment and breach of contract arising out of Defendants' denials of Plaintiff's claims for insurance coverage under "all risk" property insurance policies that Plaintiff purchased from Defendants to insure Plaintiff's property, business operations, and potential liability and expenses in connection with those business operations. All-risk policies cover all risks of loss that are not expressly excluded.

2. Plaintiff is an entertainment business that paid Defendants large premiums commensurate with the "all risk" nature of the insurance coverages that Defendants promised to provide in the event of a catastrophe requiring a shutdown of business operations. In March 2020, such a catastrophe took place when Plaintiff was forced to close its business due to the COVID-19 pandemic and the presence of the novel coronavirus on Plaintiff's insured premises. The virus and governmental orders shutting down Plaintiff's business caused direct physical loss and damage to Plaintiff's property, resulting in business interruption losses and related expenses. Despite agreeing to cover exactly those kinds of losses, Defendants have wrongfully denied coverage.

3. Plaintiff purchased, and paid large premiums for, Defendants' policies in order to protect against business interruption losses and to incentivize expenditures to protect its staff, patrons, and business. For example, in reliance on the coverages in Defendants' insurance policies, Plaintiff paid *millions* of dollars in payroll to its employees *while shut down* by government orders and incurred great expenses to resume and maintain business operations pursuant to scientific guidelines and governmental orders. Nevertheless, Defendants have refused to provide coverage.

4. Tellingly, Defendants *changed* their subsequent insurance policies with Plaintiff by expressly excluding coverage of losses caused by viruses. This fact is unique to other complaints filed around the country. That change shows that the policies at issue do *not* exclude such coverage or, at a minimum, are unclear as to whether they exclude such coverage, and such ambiguity must be resolved in favor of coverage for Plaintiff as a matter of law.

5. Moreover, an epidemiology, public health, and biostatistician expert, Lawrence S. Mayer, MD, MS, PhD, agrees that the virus was *in fact* present on Plaintiff's insured property,[1] thereby causing the direct physical loss and damage that led to Plaintiff's busines interruption

[1] *See* Aff. of Dr. Lawrence S. Mayer, MD, MS, PhD (May 18, 2021) ("Mayer Aff.") ¶¶ 83, 95.

losses. The applicable shutdown orders in Florida also expressly state that the virus causes property loss and damage.

6. Because the virus and shutdown orders caused direct "physical loss" and "physical damage" to insured property, courts across the country, applying the same contract law principles, agree with Plaintiff's position that coverage is required in the context of the COVID-19 pandemic.

7. For these and other reasons discussed below, Defendants are liable to cover Plaintiff's alleged losses.

THE PARTIES

8. Plaintiff Magic City is a corporation organized under Florida law with its principal place of business at 401 NW 38th Court, Miami, FL 33126. Magic City operates an entertainment complex in Miami, Florida that offers gaming, dog racing, jai alai, dining, and live entertainment.

9. Defendant Indian Harbor is a corporation organized under Delaware law with its principal place of business in Stamford, Connecticut.

10. Defendant Hallmark is a corporation organized under Nevada law with its principal place of business in Dallas, Texas.

11. Defendant Ategrity is a corporation organized under Delaware law with its principal place of business in Scottsdale, Arizona.

12. Defendant Great Lakes is a "Societas Europea," a public company organized under the corporate law of the European Union with its principal place of business in Germany.

JURISDICTION AND VENUE

13. This Court has jurisdiction over Defendants pursuant to Rule 301 of the New York Civil Practice Law and Rules ("CPLR") due to the forum selection clauses in Defendant's policies.

14. Venue is proper in this Court pursuant to CPLR 501, 503(a), and 509 due to Plaintiff's designation and the forum selection clauses in Defendants' insurance policies.

15. Indian Harbor, Ategrity, and Hallmark are estopped from denying personal jurisdiction and venue in this Court. In prior litigation involving these very claims and insurance policies, those Defendants represented to the court that they, through their insurance policies with Plaintiff, "agreed to 'irrevocably submit' to the exclusive jurisdiction of the Courts of the State of New York." *West Flagler Assocs., Ltd. v. AXA XL Ins. Grp.*, No. 1:20-CV-22990-KMM (S.D. Fla.), ECF No. 23 at 2 (joint filing by Indian Harbor and Ategrity) & ECF No. 17 at 1-2 ("Hallmark's policy designates the state courts of New York as the exclusive jurisdiction for litigation between Hallmark and Magic City[.]").[2]

FACTUAL ALLEGATIONS

I. Plaintiff's Business Operations

16. Plaintiff employs 411 people to operate a variety of businesses on its insured property in Miami, Florida: 25 card gambling, 800 slot machines, a buffet, restaurants, bars, jai alai, dog racing, and a "sports club" to watch sports on large screens while eating and drinking. Jai alia is played in an auditorium with a capacity of 600 people.

17. Prior to the pandemic, Plaintiff welcomed approximately 3,000 patrons per day on the casino floor alone, and that number excludes poker tables, the clubhouse, special events, and employees.

18. At any one time on Friday and Saturday nights, approximately 900 people were on Plaintiff's property.

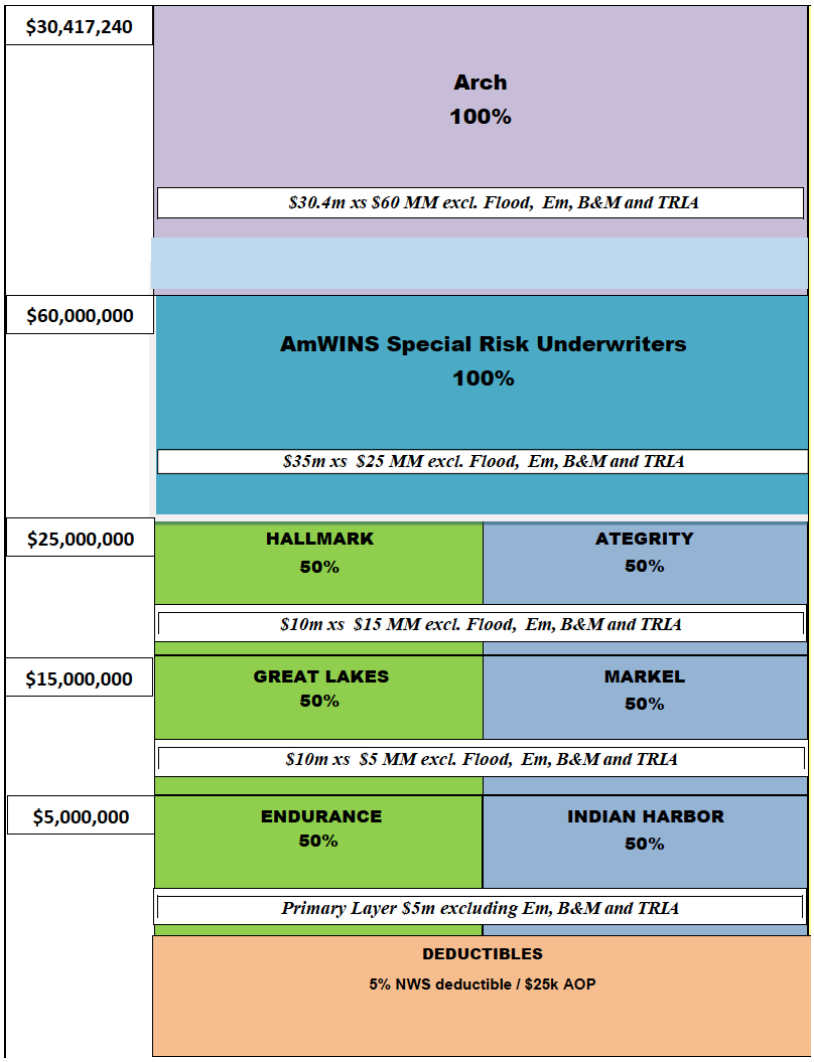
[2] Great Lakes was a nonparty to that prior litigation because, then, it had not issued a denial of coverage to Plaintiff. Since then, Great Lakes has denied coverage.

19. Those businesses on Plaintiff's property collectively generated approximately $75 million to $85 million in annual net revenue prior to the COVID-19 pandemic.

II. Plaintiff's Insurance Policies and Structure of Insurance Coverage

20. Plaintiff purchases insurance coverage to protect its business interests and incentivize expenditures to protect its staff and patrons. The insurance policies at issue cover claims arising from April 29, 2019, to April 29, 2020. The insured premises under those policies is 401 NW 28th Court, Miami, FL 33126, where Plaintiff operates its entertainment complex.

21. Plaintiff's coverage consists of five "layers" of insurance as depicted below. Nine insurance companies, pursuant to eight insurance policies, collectively cover those layers.



22. With "layered" insurance, each layer provides a specified monetary amount (or "limit") of coverage. If the insured's losses exceed the limit of coverage provided by the first layer (in this case, $5 million), the excess losses are covered by the second layer, and so on.

23. The first layer of insurance coverage is provided by two insurance policies: one with Endurance American Specialty Insurance Company ("Endurance") and the second with Indian Harbor.

24. Magic City does not bring any claims against Endurance because the insurance policy between them contains a "communicable disease exclusion" that excludes losses caused by viruses.

25. On or around April 29, 2019, Plaintiff obtained a property insurance policy issued and underwritten by Indian Harbor (the "Indian Harbor Policy"), which does not contain an applicable virus exclusion and covers Plaintiff's losses alleged herein. A copy of this policy is attached as **Exhibit 1**.

26. The second layer of insurance coverage is also provided by two insurance policies: one with the Markel Service, Inc. ("Markel") and Evanston Insurance Company ("Evanston" and, collectively with Markel, the "Markel Insurers") and a second with Great Lakes.

27. Plaintiff does not bring any claims against the Markel Insurers because the insurance policy between them contains an exclusion for "Organic Pathogens," which excludes losses caused by a "virus."

28. On or around April 29, 2019, Plaintiff obtained a property insurance policy issued and underwritten by Great Lakes (the "Great Lakes Policy"), which does not contain an applicable virus exclusion and covers the losses alleged herein. A copy of this policy is attached as **Exhibit 2**.

29. The third layer of insurance coverage is also provided by two insurance policies: one with Hallmark and a second with Ategrity.

30. On or about April 29, 2019, Plaintiff obtained a property insurance policy issued and underwritten by Hallmark (the "Hallmark Policy") and another issued and underwritten by Ategrity (the "Ategrity Policy"). Neither policy contains an applicable virus exclusion, and both cover the losses alleged herein. A copy of the Hallmark and Ategrity Policies are attached, respectively, as **Exhibits 3 and 4**.

31. The fourth layer of insurance coverage is provided by AmWINS.

32. Although AmWINS denied coverage to Plaintiff for the losses alleged herein, Plaintiff does not bring claims against AmWINS at this time because Plaintiff believes that its losses do not exceed the coverage limits of the first three layers. Plaintiff reserves the right to assert claims against AmWINS.

33. The fifth layer of insurance coverage is provided by Arch Specialty Insurance Company ("Arch").

34. Plaintiff does not bring any claims against Arch because the insurance policy between them excludes coverage for "loss due to virus or bacteria."

35. This Complaint collectively refers to Defendants' policies as the "Policies."

36. The Policies use language and forms that were created by the Insurance Services Office, Inc. ("ISO"), which is evidenced by the ISO copyright designation at the bottom of some pages of the Policies.[3] *See, e.g.*, Ex. 1 at Endorsements # 001–003 ("Includes copyrighted material of [ISO], with its permission."); Ex. 4 at "Service of Suit Clause" (emphasis removed) (same); Ex.

[3] *See ISO General Questions: Frequently Asked Questions*, § "Is ISO my insurance company?," Verisk Analytics, Inc. ("On your insurance policies, you may see notices showing ISO . . . as the copyright owner. That's because ISO develops and publishes policy language that many insurance companies use as the basis for their products."), https://www.verisk.com/insurance/about/faq (last visited May 20, 2021).

2 at OFAC Advisory Notice to Policyholders ("© ISO Properties, Inc."); Ex. 3 at OFAC Advisory Notice to Policyholders (same). "Since 1971, ISO has been a leading source of information about property/casualty insurance risk," providing "advisory services and information to many insurance companies," including "Policy language."[4]

37. The Policies are "all risk" insurance policies because they cover all risks of loss except for those that are expressly excluded. *See* Exs. 1-4, § V(A)(1) ("This POLICY insures TIME ELEMENT loss, during the **Period of Liability** directly resulting from direct physical loss or damage insured by this POLICY to INSURED PROPERTY at INSURED LOCATION(S)[.]").

38. Accordingly, Defendants agreed to pay for all losses resulting from direct physical loss or damage insured by the Policies at the insured premises, subject to express exclusions. *See Int'l Multifoods Corp. v. Commercial Union Ins. Co.*, 309 F.3d 76, 83 (2d Cir. 2002) ("All risk coverage covers all losses which are fortuitous no matter what caused the loss[.]").

39. Notably, Defendants chose not to include virus exclusions in the Policies despite *knowing* that Plaintiff's other policies included virus exclusions. Upon information and belief, Plaintiff's insurers, including Defendants, coordinated their policies with each other. The policies are largely consistent in substance, structure, and format. For example, they provide coverage for the same exact time period (April 29, 2019 to April 29, 2020) and premises, and they contain *identical* provisions in *identically* numbered paragraphs on *identical* page numbers, including all the provisions that require coverage here. *See infra* Section VII (quoting identical Policy provisions with identical citations). Moreover, Plaintiff's policies for that time period recognize the existence of the other policies by defining themselves as covering a particular layer of losses.

[4] *Id.*; *Insurance Services Office (ISO)* § "About ISO," Verisk Analytics, Inc., www.verisk.com/insurance/brands/iso (last visited May 20, 2021).

Based on this coordination, consistency, and knowledge, Defendants knew of the virus-related exclusions contained in the non-Defendant insurers' policies and, yet, *chose* not to include those exclusions.

40. Moreover, Defendants *changed* their subsequent, annual policies with Plaintiff by including a "Microorganism Exclusion" that expressly excludes the kind of coverage alleged here. That change demonstrates that the Policies *do not exclude* such coverage or, at a minimum, are unclear as to such coverage, and such ambiguity must be resolved in favor of coverage for the insured. *See Fed. Ins. Co. v. Int'l Bus. Machs. Corp.*, 18 N.Y.3d 642, 646 (2012) (citing other New York Court of Appeals cases) ("[If] there is a 'reasonable basis for a difference of opinion' as to the meaning of the [insurance] policy. . . , the language at issue would be deemed to be ambiguous and thus interpreted in favor of the insured."). In either case, coverage is required. That change also indicate that's Defendants *knew* that they did not exclude such coverage, but they denied coverage anyway, exhibiting bad faith.

III. The Meaning of "Direct Physical Loss or Damage" and Its Application to Business Interruption Losses Caused by Viruses

41. The phrase "direct physical loss or damage" indicates two distinct circumstances, *either* of which requires insurance coverage. That interpretation is based on plain English, case law in New York and around the country, insurance industry experts, the history of this language in insurance forms, and public knowledge of the likelihood of a respiratory-illness pandemic. Moreover, ISO, the creator of those forms, has acknowledged that viruses can cause "direct physical loss or damage" that result in covered business interruption losses.

42. Case law requires that different contract terms have different meanings to avoid surplusage. Applying that principle to the phrase "direct physical loss or damage" (and substantively identical phrases) in insurance policies, courts have held that the terms "loss" and

"damage" have different meanings. *See, e.g.*, *Fed. Ins. Co.*, 18 N.Y.3d at 646 ("A reviewing court must . . . 'afford[] a fair meaning to all of the language employed by the parties in the contract and leav[e] no provision without force and effect[.]'"); *Kingray Inc. v. Farmers Grp. Inc.*, No. 5:20-CV-963-JGB-SP (C.D. Cal. Mar. 4, 2021), ECF No. 82 at 9 (holding that, under New York law, the disjunctive in "direct physical loss of or damage to property" means that "'physical loss' is different from 'physical damage'"); *Ungarean v. CNA*, No. GD-20-006544 (Pa. C.P. Mar. 25, 2021), Mem. & Order at 12; *Nautilus Grp., Inc. v. Allianz Global Risks US*, 2012 WL 760940, at *7 (W.D. Wash. Mar. 8, 2012) ("[I]f 'physical loss' was interpreted to mean 'damage,' then one or the other would be superfluous. . . . [P]hysical loss means something other than damage."); *Manpower Inc. v. Ins. Co. of the State of Pa.*, No. 08 Civ. 85, 2009 WL 3738099, at *5 (E.D. Wisc. Nov. 3, 2009) ("[T]he policy covered physical losses in addition to physical damage, and if a physical loss could not occur without physical damage, then the policy would contain surplus language. However, a contract must, where possible, be interpreted so as to give reasonable meaning to each provision without rendering any portion superfluous. Thus, 'direct physical loss' must mean something other than 'direct physical damage.'").

43. Whereas "damage" requires an alteration of or injury to the property, "physical alteration to property is not necessary to constitute a physical loss." *Kingray Inc.*, No. 5:20-cv-963-JGB-SP, ECF No. 82, at 10 (citing cases) (applying New York law); "Damage," Merriam-Webster Dictionary, www.merriam-webster.com/dictionary/damage; *Society Ins. Co.*, No. 1:20-CV-5965, ECF No. 131, at 21 (holding that "loss" does not require "a change to the property's physical characteristics" but, rather, a loss of use or functionality, such as a loss of use of "physical space"); "Loss," Merriam-Webster Dictionary ("act of losing possession: DEPRIVATION"; "the

harm or privation resulting from loss or separation"; "decrease in amount, magnitude, or degree"), www.merriam-webster.com/dictionary/loss.

44. While plain meaning and case law are sufficient, insurance industry experts also agree that "loss" and "damage" have distinct meanings. *See, e.g.*, Donald S. Malecki, *Commercial Property Coverage Guide*, at 8 (Nat'l Underwriter Co. Pub., 5th ed. 2013) ("Physical loss is not synonymous with damage or physical damage.").

45. Additionally, the history of the phrase "direct physical loss or damage" as used in insurance forms further establishes the distinct meanings of "loss" and "damage."

46. Prior to ISO's formation in 1971, fire bureaus created insurance forms. Business interruption insurance, then called "use and occupancy" insurance, covered "loss of net profit and necessarily continuing business expenses" while the business was prevented from wholly or partly operating due to "damage to or destruction of" business property caused by fire or other perils.[5] Thus, expenses and lost business income were covered only if caused by "damage" or "destruction." The term "loss" was not used to describe a *cause* of lost income but, rather, to describe the amount of income that was lost.[6]

47. In 1971, the nine fire bureaus merged into ISO,[7] which continued to require "damage to or destruction of" covered property for coverage of business interruption losses.[8]

---

[5] *See* Henry C. Klein & Wallace L. Clapp, Jr., *Business Interruption Insurance and Extra Expense Insurance as Written By Fire Insurance Companies in the United States and Canada*, Ch. 12 at 24 (The Rough Notes Co. Pub., 1st ed. 1964).

[6] *See* Edward W. Siver, CPCU, CLU, *The Handbook of Commercial Property and Casualty Insurance* at 193 (Insurers Press, Inc. Pub. 1972) [hereinafter, "Siver"].

[7] *See* Tim Wagner, *Insurance Rating Bureaus*, J. INS. REGS., 19(2) at 199 (Winter 2000); Douglas Talley, "Stock and Mutual Insurer Contract Wordings," Int'l Risk Mgmt. Institute, Inc., at 4 (June 2011).

[8] *See, e.g.*, Business Interruption (Gross Earnings Form for Mercantile or Non-Manufacturing Risks), ISO Form CF 15 03 (Ed. 05.77) (1977).

48. Around 1985, coverage for business income losses caused by a "loss" of property began. ISO created the "Businessowners Standard Property Coverage Form," Form BP 00 01 06 89, as one of the first policy forms to cover business income loss caused by "direct physical loss of or damage to Covered Property." It was also an all-risk policy, like Plaintiff's policies.

49. The replacement of "destruction" with "loss" was "a radical departure from the standard loss-of-income approach that historically ha[d] been written to cover the perils of fire."[9] Here, "loss" does not refer to the monetary amount of lost income but, rather, the *cause* of that lost income.

50. That change was made because the Businessowners Standard Property Coverage Form provided for coverages when there is a loss of property without any damage to or destruction of that property, such as: (a) "Looting," which means seizing and carrying away property, *see* "Loot," Merriam-Webster Dictionary, www.merriam-webster.com/dictionary/loot; (b) "Burglary and Robbery," which were defined to involve "the taking away of property"; and (c) "Employee Dishonesty," which covered "loss of or damage to" property, including "money and securities." Accordingly, these "loss" coverages apply to lost *possession, use, function, or value* of property, not damage to property. ISO continues to use the phrase "direct physical loss or damage" in its forms, and that phrase is used in the Policy provisions that apply here.

51. Based on the meaning of that phrase, ISO acknowledged that viruses can cause direct physical loss or damage to property around the time of the 2003 SARS epidemic. SARS (caused by the SARS-CoV virus), just like COVID-19 (caused by the SARS-CoV-2 virus), is a respiratory disease caused by a coronavirus.[10] In response to the outbreak, ISO submitted a virus

[9] Werner A. Mueller, *Insurance Quiz of the Month*, Agent & Broker, at 48 (Aug. 1975).

[10] *See* Mayer Aff. ¶¶ 11-13.

exclusion for approval to departments of insurance across the country along with the following statement in support for form, with emphasis added here:

> An example of bacterial contamination of a product is the growth of listeria bacteria in milk. In this example, bacteria develop and multiply due in part of inherent qualities in the property itself. Some other examples of viral and bacterial contaminants are rotavirus, SARS, influenza (such as avian flu) legionella and anthrax. The universe of disease-causing organisms is always in evolution.
>
> Disease-causing agents may render a product impure (change its quality or substance), or enable the spread of disease by their presence on interior buildings surfaces or the surfaces of personal property. When disease-causing viral or bacterial contamination occurs, potential claims involve the cost of replacement of property (for example, the milk), cost of decontamination (for example, interior building surfaces), and *business interruption (time element) losses*.

52. Accordingly, ISO – the creator of insurance forms – *acknowledged* that, absent an express virus exclusion, all-risk policies cover business interruption losses caused by a coronavirus outbreak.

53. Since SARS and up to the COVID-19 pandemic, the medical community, including the World Health Organization ("WHO"), has consistently warned of the increasing risk and likelihood of respiratory-illness epidemics and pandemics.[11]

54. Nevertheless, despite (1) including other ISO forms in the Policies, (2) public knowledge of SARS, and (3) warnings from the medical community, Defendants chose to omit a virus exclusion from the Policies. Therefore, Defendants agreed to cover losses caused by viruses and led Plaintiff to reasonably believe that it had such coverage, for which Plaintiff paid hefty premiums.

---

[11] Jennifer B., Nuzzo, et al., *Preparedness for a High-Impact Respiratory Pathogen Pandemic*, JOHNS HOPKINS CENTER FOR HEALTH SECURITY (Sept. 2019), https://apps.who.int/gpmb/assets/thematic_papers/tr-6.pdf; *Epidemic-prone & pandemic-prone acute respiratory diseases*, WORLD HEALTH ORGANIZATION (2007), https://www.who.int/csr/resources/publications/ICHC_booklet_FINAL.pdf; Molly Walker, *Report: Next Pandemic Will Likely Be Respiratory-Based Virus*, MEDPAGE TODAY (May 14, 2018), https://www.medpagetoday.com/infectiousdisease/publichealth/72867.

55. As a result, courts around the country have held that "direct physical loss or damage" also results from SARS-CoV-2, COVID-19 pandemic, and related governmental shutdown orders. *See infra* Paras. 79-80 (citing cases).

56. In sum, plain English, case law, industry experts, and the history of insurance forms make clear that: "loss" and "damage" have distinct meanings; "loss" means total or partial lack of use, possession, function, or value of property or a separation from property; that "damage" means injury to or alteration of property; and that respiratory-illness viruses can cause loss or damage to property that results in losses covered by insurance policies.

IV. The COVID-19 Pandemic and the Resulting Direct Physical Loss and Damage to Plaintiff's Covered Property

57. Severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) is the novel coronavirus that causes the coronavirus disease 2019 ("COVID-19").[12] A virus is a non-living parasite that invades and hijacks host cells in order to replicate and, therefore, is not an organism.[13]

58. SARS-CoV-2 is a physical substance, contagious, uniquely resilient, potentially fatal, and cause of long-term health effects.[14]

59. The virus originated in the Hubei province of China around the fall of 2019 and rapidly spread around the world.[15] As of May 12, 2021, COVID-19 infected nearly 161 million people and caused more than 3.3 million deaths in 220 countries. The United States tops the charts by far. The United States has suffered more than 33.5 *million* infections and more than *half a*

[12] *See* Mayer Aff. ¶ 13; *see also id.* ¶¶ 9-12.

[13] *See id.* ¶¶ 7-8, 27-34.

[14] *See, e.g.*, *id.* ¶¶ 19, 36-41, 55-56.

[15] *See id.* ¶ 14.

million deaths, closely approaching 600,000. As of May 14, 2021, Florida has reported more than 2.2 *million* cases and nearly 36 *thousand* deaths.[16]

60. Notably, those are just the reported figures, and the actual number are likely to be much higher.[17] The CDC estimates that the number of COVID-19 infections in the United States is likely to be ten times higher.[18] Moreover, Florida specifically has been underreporting COVID-19 cases.[19]

61. The virus's contagiousness is measurable. Contagiousness is measured by the number of people who will become infected by one infected person. Studies show that one person infected with the novel coronavirus will infect, on average, 2.5 to 5.7 other people, the higher of which is more than four times that of seasonal influenza.[20]

62. Several characteristics of SARS-CoV-2 make it particularly contagious. Infectious individuals carry between one billion and one hundred billion virions on their person and

---

[16] *See id.* ¶ 17.

[17] *Id.* ¶ 92.

[18] Center for Disease Control and Prevention, *Dr. Robert R. Redfield Statement on SARS-CoV-2 infections* (July 22, 2020), https://www.cdc.gov/media/releases/2020/s0722-SARS-CoV-2-infections.html.

[19] *See* Lauren Seabrook and Adam Poulisse, *Florida Department of Health underreporting COVID-19 deaths in Orange, Osceola counties*, WFTV 9 (Apr. 27, 2020), https://www.wftv.com/news/local/department-health-underreporting-covid-19-deaths-orange-osceola-counties/EXM4XIHMCJDABBPBJD3JIVYL4U; *Florida Scientist Says She Was Fired For Not Manipulating COVID-19 Data*, NPR (June 29, 2020), https://www.npr.org/2020/06/29/884551391/florida-scientist-says-she-was-fired-for-not-manipulating-covid-19-data; Mario Ariza and Angie DiMichele, *Florida's hidden data skews COVID-19 test results*, SOUTH FLORIDA SUN SENTINEL (July 15, 2020), https://www.sun-sentinel.com/coronavirus/fl-ne-positivity-rate-florida-paints-rosy-pandemic-picture-20200715-cpwwngaefzdnpitbs7buh7zsei-story.html; Lauren Pastrana, *Infectious Disease Specialist: Florida Is 'Underreporting Of Cases' Among School-Aged Children*, CBS4 MIAMI (Oct. 29, 2020), https://miami.cbslocal.com/2020/10/29/florida-underreporting-covid-cases-school-aged-children.

[20] *See* M. Cevik, C.C.G. Bamford, A. Ho, *COVID-19 pandemic-a focused review for clinicians*, 26 CLIN MICROBIOL INFECT. 7, 842-47 (July 2020), https://www.clinicalmicrobiologyandinfection.com/article/S1198-743X(20)30231-7/fulltext (last visited Mar. 20, 2021); Mayer Aff. ¶ 19.

constantly produce and expel virions in high volumes during every moment of the infected host's contagious period.[21] An infected individual can remain infectious for up to twenty days.[22]

63. Worse, the virus can be spread by asymptomatic and pre-symptomatic people, who are unaware that they are infected and spreading the virus.[23] Asymptomatic people are infectious without ever displaying symptoms, and pre-symptomatic people are infectious before displaying symptoms.[24] At least 30% of people infected with SARS-CoV-2 are asymptomatic.[25] These people pose a heightened risk for transmission because they are unaware that they are infected and, therefore, more likely to be out in public (for example, at casinos) and take less precautions when engaging in activities that pose higher risk of transmission.[26] That risk is compounded by the fact that, according to studies, they carry the greatest "viral load."[27] Therefore, according to the National Academy of Sciences, "the majority of transmission is attributable to people who are not exhibiting symptoms."[28]

64. Additionally, the virus can easily infect people in variety of ways, including by: (a) human contact with one's mouth, nose, or eyes after touching an infected surface of physical property; (b) human-to-human contact or interaction, especially indoors at places like bars,

---

[21] *See* Mayer Aff. ¶ 23.

[22] *See id.* ¶ 35.

[23] *See id.* ¶¶ 51-54.

[24] *See id.* ¶¶ 51-53.

[25] *See id.* ¶¶ 52-54.

[26] *See id.* ¶¶ 52-53, 82-88; *see also* Ellen Cranley, *40% of people infected with covid-19 are asymptomatic, a new CDC estimate says*, BUSINESS INSIDER (July 12, 2020), https://www.businessinsider.com/cdc-estimate-40-percent-infected-with-covid-19-asymptomatic-2020-7 (last visited Mar. 20, 2021).

[27] Xi He et al., *Temporal dynamics in viral shedding and transmissibility of COVID-19*, 26 NATURE MED. 672, 674 (Apr. 15, 2020), https://www.nature.com/articles/s41591-020-0869-5 (last visited Mar. 20, 2021); Lirong Zou, M.Sc., *et al., SARS-CoV-2 Viral Load in Upper Respiratory Specimens of Infected Patients,* NEW ENG. J. OF MED. (Mar. 19, 2020).

[28] Meagan C. Fitzpatrick, Alison P. Galvani, Seyed M. Moghadas, Abhishek Pandey, Pratha Sah, Affan Shoukat, and Burton H. Singer, *The implications of silent transmission for the control of COVID-19 outbreaks*, 117 PNAS 30, 17513-15 (July 28, 2020) https://www.pnas.org/content/117/30/17513 (last visited Mar. 20, 2021).

casinos, restaurants, retail stores, hair and beauty salons, and the like; and (c) inhalation of air containing viral particles that are suspended or recirculated through air conditioning units.[29] High-touch points, like doorknobs, slot machines, and card games, are obvious hot spots for spreading and contracting the virus, especially when food and beverages are also available.[30]

65. Due to these means of transmission, the Center for Disease Control ("CDC") issued guidance recommending people not to gather in groups larger than ten. CDC guidelines state that people face increased danger of contracting the virus in places where people congregate and are near one another, especially indoors.[31]

66. Further exacerbating the contagiousness, the virus can remain suspended in the air as aerosols (fine particles) and respiratory droplets (larger particles) and attached to surfaces for extended periods of time and can travel far and fast in the air from infected persons and in air currents.[32]

67. As to suspension in the air, according to an October 2020 letter written by six scientists, airborne respiratory droplets can remain suspended in the air up to "hours, like smoke, and be inhaled," and according to a Tulane University study, the virus "can remain infectious in aerosol for up to 16 hours."[33] A report issued by the National Institute of Health ("NIH") indicates that the virus remains stable and transmittable in airborne aerosols for up to three hours.[34] Another

---

[29] *See* Mayer Aff. ¶ 22.

[30] *See id.* ¶¶ 64-65, 82(f), 91.

[31] *See also id.* ¶ 67(a)-(c).

[32] *See id.* ¶¶ 7, 22.

[33] Kimberly A. Prather et al., *Airborne transmission of SARS-CoV-2*, SCIENCE (Oct. 16, 2020), https://science.sciencemag.org/content/370/6514/303.2.35; Leslie Tate, *Tulane researchers find that coronavirus can survive in air for hours*, TULANE NEWS (July 6, 2020), https://news.tulane.edu/pr/tulane-researchers-find-coronavirus-can-survive-air-hours; Alyssa Fears et al., *Persistence of Severe Acute Respiratory Syndrome Coronavirus2 in Aerosol Suspensions*, CTRS. DISEASE CONTROL & PREVENTION (Sept. 9, 2020), https://wwwnc.cdc.gov/eid/article/26/9/20-1806_article; *see* Mayer Aff. ¶ 22(c)(i).

[34] *New coronavirus stable for hours on surfaces*, NAT'L INST. OF HEALTH (Mar. 17, 2020), https://www.nih.gov/news-events/news-releases/new-coronavirus-stable-hours-surfaces; *see also Aerosol and Surface Stability of SARS-CoV-2*

study found that these tiny particles can remain suspended "for indefinite periods unless removed by air currents or dilution ventilation."[35] As a result, the risk of disease transmission increases substantially in enclosed environments compared to outdoor settings.[36]

68. As to travel distance and speed in the air from an infected person, "[e]ven without the launching power of a sneeze, air currents could carry a flow of aerosol sized virus particles exhaled by an infected person 20 feet or more away."[37] Viral "clouds" of clustered droplets emitted by a sneeze can travel even farther, up to 23 to 27 feet, at a speed of 33 to 100 feet per second.[38]

69. As for attachment to surfaces, NIH reports state that the virus remains stable and transmittable on copper for up to four hours, on cardboard for up to twenty-four hours, and on plastic and stainless steel for up to three days.[39] The virus can remain alive on the surfaces of some materials for up to *twenty-eight days*.[40]

---

as Compared with SARS-CoV-1, N. ENGL. J. MED. (Apr. 16, 2020), https://www.nejm.org/doi/full/10.1056/NEJMc2004973?query=featured_home.

[35] Kevin P. Fennelly, *Particle sizes of infectious aerosols: implications for infection control*, 8 LANCET RESPIRATORY MED. 9, P914-24 (Sept. 1, 2020), https://www.thelancet.com/journals/lanres/article/PIIS2213-2600(20)30323-4/fulltext (last visited Mar. 20, 2021).

[36] Muge Cevik, Julia L Marcus, Caroline Buckee, & Tara C Smith, *Severe Acute Respiratory Syndrome Coronavirus 2 (SARS-CoV-2) Transmission Dynamics Should Inform Policy*, CLINICAL INFECTIOUS DISEASES (2020), https://academic.oup.com/cid/advance-article/doi/10.1093/cid/ciaa1442/5910315 (last visited Mar. 20, 2021).

[37] Knuvel Sheikh, James Gorman & Kenneth Chang, *Stay 6 Feet Apart, We're Told. But How Far Can Air Carry Coronavirus*, N.Y. TIMES (published Apr. 14, 2020, updated Apr. 20, 2020), https://www.nytimes.com/2020/04/14/health/coronavirus-six-feet.html.

[38] Lydia Bourouiba, *Turbulent Gas Clouds and Respiratory Pathogen Emissions: Potential Implications for Reducing Transmission of COVID-19*, JAMA INSIGHTS (Mar. 26, 2020), https://jamanetwork.com/journals/jama/fullarticle/2763852.

[39] *See* NAT'L INST. OF HEALTH *supra* note 34.

[40] *CSIRO scientists publish new research on SARS-COV-2 virus 'survivability,'* COMMONWEALTH SCI. AND INDUS. RSCH. ORG. (Oct. 12, 2020), https://www.csiro.au/en/News/News-releases/2020/CSIRO-scientists-publish-new-research-on-SARS-COV-2-virus-survivability; Shane Riddell et al., *The effect of temperature on persistence of SARS-CoV-2 on common surfaces*, VIROLOGY J. (Oct. 7, 2020), https://virologyj.biomedcentral.com/articles/10.1186/s12985-020-01418-7.

70. A study of a COVID-19 outbreak published by the CDC identified elevator buttons and restroom taps as possible causes of the "rapid spread of SARS-CoV-2" in a shopping mall.[41]

71. An article from the American Society for Microbiology regarding infection via porous and non-porous fomites (i.e., objects that have and can spread a disease[42]) concludes that "[o]nce a fomite is contaminated, the transfer of infectious virus may readily occur between inanimate and animate objects, or vice versa, and between two separate fomites (if brought together)."[43] Generally, frequently touched surfaces can become highly transmissive fomites, such as cards at a gambling table, slot machines, and buffets, all of which are on Plaintiff's premises.[44] A study published in the Journal of Epidemiology and Infection demonstrates that after a lockdown in the United Kingdom, coronavirus transmission via fomites may have contributed to as many as 25% of deaths in that region.[45]

72. As a result, the presence of coronavirus transforms everyday surfaces and objects into fomites, causing a tangible change of the property into a transmission vehicle for disease from one host to another.[46] The WHO's description of fomite transmission of COVID-19 expressly recognizes this direct, physical alteration of property, describing viral droplets as "*creating* fomites

---

[41] CDC, Jing Cai, Wenjie Sun, Jianping Huang, Michelle Gamber, Jing Wu, Guiqing He, *Indirect Virus Transmission in Cluster of COVID-19 Cases, Wenzhou, China, 2020*, 26 EMERGING INFECTIONS DISEASES 6 (June 2020), https://wwwnc.cdc.gov/eid/article/26/6/20-0412 (last visited Mar. 20, 2021).

[42] *See* Mayer Aff. ¶ 22(a)(i).

[43] Stephanie A. Bone and Charles P. Gerba, *Significance of Fomites in the Spread of Respiratory and Enteric Viral Disease*, 73 APPLIED AND ENVIRONMENTAL MICROBIOLOGY 6, 1687-96 (Mar. 2007) https://aem.asm.org/content/73/6/1687 (last visited Mar. 20, 2021).

[44] *Id.*; *see* Mayer Aff. ¶¶ 82(f), 87-88.

[45] A. Meiksin, *Dynamics of COVID-19 transmission including indirect transmission mechanisms: a mathematical analysis*, 148 EPIDEMIOLOGY & INFECTION e257, 1-7 (Oct. 2020), https://www.cambridge.org/core/journals/epidemiology-and-infection/article/dynamics-of-covid19-transmission-including-indirect-transmission-mechanisms-a-mathematical-analysis/A134C5182FD44BEC9E2BA6581EF805D3 (last visited Mar. 20, 2021).

[46] *See* Mayer Aff. ¶ 22(a)(i).

(contaminated surfaces)."[47] "Creating" involves making or bringing into existence something new,[48] such as something that is in an altered state due to the coronavirus's presence.

73. For these reasons, "it is reasonable and appropriate to operate on the assumption that all of the air and surfaces that the host individual contacts are damaged and infectious."[49]

74. The virus is also highly resilient. Studies demonstrate that it is "much more resilient to cleaning than other respiratory viruses so tested."[50] As a result, the measures that must be taken to remove the virus from property are significant and far beyond ordinary or routine cleaning.

75. When considering disinfection and decontamination, the safety of products and procedures must be considered as well, due to the risks of harmful chemical accumulation, breakdown of treated materials, flammability, and potential for allergen exposure.[51]

76. Moreover, the aerosolized viral particles that can be inhaled cannot be eliminated by routine cleaning of surfaces.[52]

77. Given the pervasiveness and resilience of the virus, no amount of cleaning or ventilation intervention will prevent a contagious person from entering an indoor space and exhaling *billions* of additional coronavirus particles into the air, which can remain suspended and inhaled by others and which can land on surfaces, thereby physically altering and transforming the surfaces into disease-transmitting fomites.[53]

---

[47] *Transmission of SARS-CoV-2: implications for infection prevention precautions*, WHO (Jul. 9, 2020) (emphasis added), https://www.who.int/news-room/commentaries/detail/transmission-of-sars-cov-2-implications-for-infection-prevention-precautions (last visited Mar. 20, 2021) (last visited Mar. 20, 2021).

[48] *See, e.g.*, Merriam-Webster Dictionary, https://www.merriam-webster.com/dictionary/create (last visited Mar. 20, 2021).

[49] Mayer Aff. ¶ 25; *see also id.* ¶ 26.

[50] Nevio Cimolai, *Environmental and decontamination issues for human coronaviruses and their potential surrogates*, 92 J. OF MED. VIROLOGY 11, 2498-510 (June 2020), https://doi.org/10.1002/jmv.26170 (last visited Mar. 20, 2021).

[51] *Id.*

[52] *See* Mayer Aff. ¶ 69.

[53] *See* Mayer Aff. ¶¶ 23, 66, 70, 22.

78. Notably, these studies were conducted in 2020. In 2021, the virus mutated into variants that are even more contagious and lethal and can evade immune responses that developed from a prior infection with the original SARS-CoV-2 virus. South Florida, where Plaintiff is located, "leads [the] state in COVID variants."[54] As a result, Plaintiff has had to implement significant measures to protect its employees and patrons.

79. The virus causes direct *physical damage* to property. The virus's persistence on surfaces is the result of a *physical* attachment and chemical reaction by way of a noncovalent, chemical bond formed with the surface.[55] By bonding with and becoming part of the property that the virus contacts, the virus corrupts and alters that property and converts the property into fomites. The viral aerosols and droplets also alter the physical consistency of air. Both alterations constitute physical damage to the property, and other courts applying the same contract law principles have agreed that he virus causes direct physical damage. *See, e.g.*, *Craven v. Cameron Mut. Ins. Co.*, No. 20CY-CV06381 (Mo. Cir. Ct. Mar. 9, 2021), Order Denying Def. Mot. To Dismiss, ¶ 5 at 2-3 (holding that SARS-CoV-2 causes "physical damage" to property because it: "physically attaches to and can remain on surfaces and in the air for days, even up to 28 days"; "form[s] a noncovalent chemical bond with the surface" that "will persist, if left undisturbed for many weeks in some cases"; and "can remain in the air within a property for hours or days and traveling on indoor air currents – rendering the entire physical enclosure potentially dangerous").[56]

---

[54] Brooke Baitinger and Kate Santich, *South Florida leads state in COVID variants, data shows*, SUN SENTINEL (Mar. 19, 2021), https://www.sun-sentinel.com/coronavirus/fl-ne-south-florida-covid-variant-data-20210320-7n4fwzjrlnfwviu3bcbm7va4tm-story.html (last visited Apr. 20, 2021); Ben Conarck, *Some COVID viruses share a concerning mutation. Now it's cropping up in South Florida*, MIAMI HERALD, https://www.miamiherald.com/news/coronavirus/article250338246.html (last visited Apr. 20, 2021).

[55] *See* Edris Joonaki, et al., *Surface Chemistry Can Unlock Drivers of Surface Stability of SARS-CoV-2 in a Variety of Environmental Conditions*, CHEM (Sept. 10, 2020), https://www.cell.com/chem/pdf/S2451-9294(20)30411-3.pdf.

[56] *See also* Mayer Aff. ¶¶ 6 ("[T]he virus physically altered the surfaces of property[.]"), ¶ 22(a)(i) (emphasis added) ("An object or surface *becomes* a fomite while it harbors viable viral particles within or upon it."), ¶¶ 22(b)-(c)(iii), ¶ 26 ("Physical presence in proximity to these individuals, sharing common air supplies, and contact with shared fomites are all modalities for the transfer of virions from an infectious individual to a susceptible individual."), ¶ 64

80. The virus also causes direct *physical loss* to property. The persistent presence of transmittable viral particles on a premises – on surfaces of property, on persons' bodies and clothing, in infected persons' exhalations, and suspended in the air – also renders physical property dangerous, unsafe, unusable, and unfit for humans.[57] That impairs the value, usefulness, and/or normal function of the premises and property. Such impairment constitutes a physical loss of property, and many courts applying the same contract law principles agree. *See, e.g.*, *Kingray Inc.*, No. 5:20-CV-963-JGB-SP (C.D. Cal. Mar. 4, 2021), ECF No. 82 (denying motion to dismiss claims governed by New York law); *Ungarean v. CNA*, No. GD-20-6544 (Pa. C.P. Mar. 25, 2021), Mem. & Order; *In re: Society Ins. Co. COVID-19 Business Interruption Protection Ins. Litig.*, No. 1:20-CV-5965 (N.D. Ill. Feb. 22, 2021) ("*Society Ins. Co.*"), ECF No. 131; *McKinley Dev. Leasing Co. Ltd. v. Westfield Ins. Co.*, No. 2020 CV 815 (Ohio C.P. Feb. 9, 2021), Judgment Entry.

81. For these reasons, the scientific community recognizes the virus as a cause of direct physical loss and damage to property that requires a suspension of business operations and remediation measures to kill the viruses and destroy the chemical bonds.[58] Plaintiff responded to these scientific realities by closing down its business and later implementing a variety of expensive remediation measures in order to resume and maintain its business operations, including substantially reducing its capacity and business operations. By suspending and reducing business operations, Plaintiff lost the value, usefulness, and normal function of its premises and property, which constitutes a direct physical loss of property. In addition, Plaintiff had to shut down its business due to orders issued by civil authorities, also causing a direct physical loss of property.

("[S]urfaces and air [] have been physically altered by the presence of SARS-CoV-2[.]"), ¶ 69(a) ("[I]nfectious droplets may settle on and physically attach to a cleaned surface[.]"), ¶ 71, ¶¶ 73-74, ¶¶ 82-97, ¶ 91 (discussing how the virus damages surfaces and the air).

[57] *See id.*

[58] *See id.* ¶¶ 64-67.

V. Orders Issued by Civil Authorities in Florida

82. The COVID-19 pandemic and presence of SARS-CoV-2 caused civil authorities throughout the country to issue orders requiring the suspension of business at a wide range of establishments, including Plaintiff's business (the "Closure Orders").

83. As of March 29, 2020, around the start of the pandemic impacting the United States, more than two *million* COVID-19 cases and 33,175 COVID-19-related deaths have been reported in Florida.

84. In response to the public health emergency caused by the COVID-19 pandemic, civil authorities across the United States, including those with jurisdiction over Plaintiff in Florida, issued Closure Orders restricting and prohibiting access to Plaintiff's insured property.

85. In Florida, between March 1, 2020 and June 17, 2020, Governor Ron DeSantis issued dozens of executive orders concerning COVID-19. In piecemeal fashion, different sectors of the Florida economy were gradually closed.[59]

86. On March 1, 2020, the Florida Department of Health was ordered to issue a Public Health Emergency due to COVID-19.

87. On March 9, 2020, Governor DeSantis issued Executive Order 20-52, declaring a Florida State of Emergency due to COVID-19.

88. In South Florida, local orders were even stricter. For example, Miami-Dade County, where Plaintiff is located, was an early advocate for stricter measures, issuing orders on March 16 and 17, 2020 that required congregate meal sites, community centers, food service establishments, movie theaters, playhouses, and other gathering places to close.

---

[59] *See* Gov. Ron DeSantis, *COVID-19 Executive Orders*, EXECUTIVE OFFICE OF THE GOVERNOR OF THE STATE OF FLORIDA, https://www.flgov.com/covid-19-executive-orders.

89. On March 18, 2020, the City of Miami wrote a letter specifically to Plaintiff, attached hereto at **Exhibit 5**, directing Plaintiff to "close [its] business immediately" because its "business is an entertainment facility [that] does not fall within the exceptions."

90. Plaintiff immediately complied by ceasing business operations.

91. Nevertheless, despite shutting down its business, Plaintiff *continued to pay its employees*, costing *millions* of dollars. Plaintiff did so in reliance on the Ordinary Payroll insurance coverage (discussed below) that it purchased in the Policies.

92. On March 17, 2020, Governor DeSantis issued Executive Order 20-70, ordering Broward and Palm Beach counties to enact closures similar to Miami-Dade County. Within the following week, Miami-Dade, Broward, and Palm Beach Counties enacted a variety of measures to make people stay at home and close all non-essential retail and commercial establishments.

93. On March 24, 2020, Governor DeSantis issued Executive Order 20-83, directing the State Surgeon General and State Health Officer to issue public health advisories urging high-risk populations to stay home due to COVID-19, urging against all social or recreational gatherings of 10 or more people, and advising those who can work remotely to do so.

94. On March 30, 2020 Governor DeSantis issued Executive Order 20-89, placing additional restrictions on public access to non-essential retail and commercial establishments in Miami-Dade, Broward, Palm Beach, and Monroe Counties.

95. On April 1, 2020, Governor DeSantis issued Executive Order 20-91, requiring high-risk individuals to stay at home and ordering all persons in Florida to limit their movement and personal interactions outside of their homes to only those necessary to obtain or provide essential services or conduct essential activities.

96. On April 29, 2020, Governor DeSantis issued Executive Order 20-112, establishing a plan for the Phase 1 reopening of Florida. This order, which took effect on May 4, 2020, eased some of the restrictions imposed on businesses by previous executive orders, such as the Plaintiff's business; however, various measures continued to limit Plaintiff's income.

97. The closure orders issued by municipal and county governments throughout Florida expressly state that COVID-19 caused loss and damage to property and loss of business income.

98. The Florida counties include Broward, Escambia, Gadsden, Hillsborough, Martin, Orange, Osceola, Pinellas, St. Lucie, and Walton Counties. *See* Broward County Admin.'s Emergency Order 20-01 (emphasis added) ("[T]his Emergency Order is necessary because of the propensity of the virus to spread person to person and also because the virus is *physically causing property damage* due to its proclivity to attach to surfaces for prolonged periods of time[.]"); Escambia County Resolution 2020-37 (emphases added) ("COVID-19 and infection diseases have the capacity to pose a significant, imminent, and dangerous threat to the health, safety, and welfare of the inhabitants of Escambia County, Florida, visitors and tourists to Escambia County, Florida, *as well as to their real and personal property* . . . . [T]he COVID-19 virus has the propensity to *attach to surfaces for prolonged periods of time, thus causing property damage* and continuing the spread of the virus."); Gadsden County Resolution 2020-014 (emphasis added) ("[T]here is reason to believe that COVID-19 is spread amongst the population by various means of exposure, including the propensity to spread person to person and the propensity to *attach to surfaces for prolonged periods of time, thereby spreading from surface to person and causing increased infections to persons, and property loss and damage in certain circumstances*."); Hillsborough County Exec. Order (Mar. 27, 2020) (stating that COVID-19 is "creating property or business income loss and damage"); Martin County Emergency Order 20-04 (stating that COVID-19 is

"creating property or business income loss and damage"); Orange County Emergency Exec. Order No. 2020-01 (declaring a state of emergency "to protect the health, welfare, and safety of the people and *property* within Orange County"); Orange County Emergency Exec. Order No. 2012-12 (emphasis added) (stating that "COVID-19 is spread amongst the population by various means of exposure, including the propensity to spread person to person and the propensity to *attach to surfaces for prolonged periods of time, thereby spreading from surface to person and causing increased infections to persons*"); Osceola County Emergency Order No. 2 (emphasis added) (stating COVID-19 causes a "serious threat to life *and property* within the County"); Pinellas County Resolution 20-20 (stating that COVID-19 causes "property loss and damage"); St. Lucie County Order (Mar. 31, 2020) (emphases added) ("*COVID-19 is causing property damage and business income loss* due to its proclivity to attach to surfaces for prolonged periods of time and thereby *creating a dangerous physical condition*; and [a]s a governmental civil authority action, it is necessary to impose the regulations and restrictions set forth herein *in response to the dangerous physical conditions* that currently exist and to stop the COVID-19 virus from spreading."); Walton County Resolution 2020-10 ("[T]he novel coronavirus physically is causing property damage due to its proclivity to attach to surfaces for prolonged periods of time.").

99. The Florida municipalities include the City of Miami, where Plaintiff's property is located, City of Lauderdale Lakes, City of North Miami, City of Aventura, Town of Indian Shores, City of Oakland Park, City of Sarasota, and City of Venice. *See* City of Miami Decl. of a State of Emergency (Mar. 26, 2020) (emphasis added) ("COVID-19 may be spread amongst the population by various means of exposure, including the propensity to spread person-to-person and the propensity to attach to surfaces for prolonged periods of time, thereby spreading from surface to person and *causing property loss and damage* in certain circumstances"); City of Lauderdale Lakes

Emergency Order 2020-01 at 2 (Mar. 27, 2020) (emphasis added) ("This Emergency Order is necessary . . . because *the virus physically is causing property damage* due to its proclivity to attach to surfaces for prolonged periods of time."); City of North Miami "Safer at Home" Emergency Order (Mar. 30, 2020) (same); City of Aventura Order & Supp. to Decl. of State of Emergency § 2(C) (Mar. 24, 2020) (same); Town of Indian Shores Resolution 05-2020 (emphasis added) ("[T]he COVID-19 virus has the propensity to attach to surfaces for prolonged periods of time, thus *causing property damage* and continuing the spread of the virus."); City of Oakland Park Local Public Emergency Action Directive Civil Authority Order Proclamation 2020-002 § 4 (same); City of Sarasota Emergency Order (May 1, 2020) (same); City of Venice Executive Order 2020-01 (same).

100. Orders issued in other states, such as New York, Colorado, Washington, Indiana, New Mexico, North Carolina, Missouri, and Illinois, have also recognized that the COVID-19 virus poses a specific threat to property and can cause property loss and damage.

VI. Plaintiff's Actions in Response to the Presence of the Pandemic, the Closure Orders, and the "Certain" Presence of COVID-19 on the Premises

101. The COVID-19 pandemic and Closure Orders required Plaintiff to close its facility and suspend its in-person workforce, thereby requiring it to cease its business operations. These fortuitous events, which meet the criteria of a "covered cause of loss," resulted in the presence of the novel coronavirus at the insured property, which, in turn, caused direct physical loss and damage to the insured property. Human interaction is critical – and, indeed, unavoidable – for Plaintiff's business. However, the "certain" hazardous presence of human respiratory droplets on or around Plaintiff's premises (both in the air and on surfaces), and the risk of a continued hazard

should business continue as usual, damaged the property and caused a loss of property by rendering the premises unsafe, uninhabitable, and unfit for this use.[60]

102. In early March 2020, Plaintiff became aware that its insured property was damaged by hazardous, human, respiratory droplets that posed an immediate danger to all persons physically present on the premises. Given the thousands of people entering Plaintiff's premises on a daily basis, the types of activities on the premises, and the prevalence of the virus throughout Florida and especially Miami, it is "certain" that the virus was present throughout Plaintiff's property in the air, on surfaces, and on persons.[61]

103. Indeed, on March 30, 2020, Florida's positive rate was 10%,[62] and 3,000 patrons entered Plaintiff's premises each day, meaning that approximately 300 infected people entered Plaintiff's premises each day, spreading the virus on cards, slot machines, doorknobs, sink faucets, credit cards, cash, and other items touched by others.[63] That number could have been even greater in the City of Miami, where Plaintiff is located.

104. In early March 2020, it became "impossible" to operate Plaintiff's business without continually exposing the insured premises, patrons, and employees to viral particles and the risk of COVID-19, making the property unfit for occupation.[64]

105. Plaintiff was prohibited from reasonably mitigating these losses because the applicable Closure Orders and the personal letter from the City of Miami ordered Plaintiff to shut down its premises and cease business operations. *See* Ex. 5.

---

[60] Mayer Aff. ¶¶ 6, 83, 95; *see id.* ¶¶ 18-26.

[61] *Id.* ¶¶ 6, 83, 95.

[62] *Florida Department of Health Updates New COVID-19 Cases, Announces Three New Deaths Related to COVID-19, Morning Update*, FLORIDA HEALTH (Mar. 30, 2020), http://www.floridahealth.gov/newsroom/2020/03/033020-1100-covid19.pr.html (last visited Apr. 20, 20201).

[63] *See supra* Para. 17; Mayer Aff. ¶¶ 87-91.

[64] Mayer Aff. ¶ 66.

106. The Closure Orders prohibited the public from accessing Plaintiff's insured property, thereby causing the total suspension of business operations.

107. Since early March 2020 at the latest, patrons, employees, and other workers carried SARS-CoV-2 particles in, on, or about their person and transferred and expelled those particulars into the air, on surfaces, and to other individuals at or around the insured property during the time period covered by the Policies.[65] Indeed, some of Plaintiff's staff were infected within fourteen days of working at the premises.

108. Like the pandemic generally and the certain presence of infectious virions, aerosols, and droplets on, in, and around Plaintiff's premises, the Closure Orders also caused Plaintiff to suffer a direct physical loss of property. The orders denied access to the property, prevented customers and employees from physically occupying the property, caused the property to be physically uninhabitable by customers, eliminated the property's functions, and suspended business operations on the premises.

109. Furthermore, because Plaintiff relies on business from dependent properties, the direct physical loss of and damage to those dependent properties, due to the virus's presence there, the pandemic, and the Closure Orders, caused Plaintiff to sustain additional business income losses once Plaintiff resumed business operations.

110. Eventually, the governmental authorities with jurisdiction over Plaintiff began to gradually allow business to reopening through issuing new orders (the "Reopening Orders").

111. On May 19, 2020, the City of Miami issued Order No. 20-11 to allow businesses to reopen if they comply with Miami-Dade County Emergency Order 23-20 and allow city personnel to inspect the businesses for compliance.

---

[65] *See id.* ¶¶ 83, 95.

112. On June 4, 2020, Miami-Dade County issued Amendment 2 to Emergency Order 23-20, which, *inter alia*, permitted casinos and other businesses to operate if they (a) submit, and receive approval of, a reopening and operation plan for COVID-19 mitigation in accordance with the standards set forth the county's "The New Normal" handbook and (b) implement the plan.

113. On June 3, 2020, the Office of the Governor of Florida issued Executive Order No. 20-139, effective on June 5, 2020, allowing entertainment businesses to operate at fifty percent capacity with appropriate social distancing and sanitation measures.

114. Plaintiff promptly took diligent actions to comply with applicable orders in order to resume business operations, but that came at a significant cost, and those costs continue.

115. Plaintiff had to make physical alterations and implement other safety measures to its insured property as outlined in a Safety Plan for COVID-19 that it had to submit to civil authorities in accordance with "The New Normal – Guide for Commercial Establishments" published by Miami-Dade County. Such safety measures include: taking employees' temperature before accessing the premises; separating employees into groups to limit the spread of COVID-19 among the workforce; deactivating approximately forty percent of slot machines; prohibiting the consumption of food and beverages on the casino floor; installing plexiglass panels at all interactive points between employees and customers; installing social distancing markers on the floor at all queuing areas; requiring all employees and customers to wear masks at all times; taking patrons' temperature before entering the facility; constantly sanitizing all high-touch areas and machines; purchasing and placing hand sanitizer dispensers throughout the facility; and purchasing approximately 100,000 masks, 80,000 gloves, 250 gallons of sanitizer, a sterilizing machine, and three thermal temperature scanners. These and other continuously implemented measures cost a

great deal of money and time but, nevertheless, were (and continue to be) "reasonable and necessary" from a legal perspective and an epidemiological and public health perspective.[66]

116. These measures were also reasonable and necessary from a business perspective. Through these diligent efforts, Plaintiff was able to resume business on June 11, 2020 and to maintain operations today.

117. Upon reopening, Plaintiff could operate only 460 of the 800 slot machines. Through diligent, legal and regulatory compliance, Plaintiff has been able operate more machines.

118. Since reopening, Plaintiff has been allowed to operate only 17 of the 25 card tables.

119. Plaintiff's buffet remains closed, and restaurant seating was reduced by 33%.

120. Since the reopening, the jai alai space remained closed until this month and now operates at a reduced capacity of 250 patrons.

121. Average daily attendance at Plaintiff's property fell by approximately 30%.

122. Even despite Plaintiff's best efforts to keep the virus off its property, at least nine employees tested positive for coronavirus, eight of whom tested positive within fourteen days of working at Plaintiff's premises. That makes it likely that these individuals brought SARS-CoV-2 into the casino and potentially infected others.[67]

123. Due to the nature of the virus, Plaintiff's efforts achieve risk reduction, not elimination, because "eliminating all SARS-CoV-2 virions through these methods is

[66] *Id.* ¶ 98; *see also id.* ¶¶ 63-67, 72-97.

[67] *See id.* ¶ 35 ("A typical COVID-19 infection could render an individual infectious for up to 20 days. For certain individuals with immune deficiencies, this period could be significantly longer. This is because their bodies may have limited ability to destroy the virus."), ¶¶ 51-52 (explaining that asymptomatic carriers of SARS-CoV-2 pose greater risks for transmitting the virus).

impossible."[68] Accordingly, Plaintiff's efforts have had to continue on an ongoing basis to continually reduce the amount of virus entering its premises as Plaintiff operates.

124. Plaintiff's obligation to implement these measures is heightened by the fact that the very nature of its business renders it a likely host of super-spreader events.[69] The venue has a high capacity for many patrons and staff to engage in multiple simultaneous activities in close proximity in an indoor space, and the particular activities are especially high risk because they involve many fomite objects and require having no mask on.[70] Yelling and cheering for live jai alai and televised sports games increases the risk of transmission.[71] Making matters worse, because food and drinks are served on the premises, patrons then eat and drink with their hands on silverware, plates, and cups with the same hands with which they touched the machines, cards, gambling chips, and cash.[72] Worse still, participating in more than one activity at Plaintiff's property is common, thereby causing people to spread the virus all over the air, surfaces, and other individuals within venue, such as playing cards, slot machines, gambling chips, cash, chairs, door handles, and glasses that the bartender touches with hands that are then used to serve glasses to others.[73] Plaintiff's Miami location was an additional risk factor given the infection rate.[74]

125. As a result, Plaintiff was "certain to have had SARS-CoV-2 inside its premises, both in the air and on surfaces, in March 2020."[75]

---

[68] *See id.* ¶ 66.

[69] *See id.* ¶¶ 75-97.

[70] *See id.* ¶¶ 83-87, 90.

[71] *See id.* ¶ 89.

[72] *See id.* ¶ 88.

[73] *See id.* ¶ 91.

[74] *See id.* ¶ 92.

[75] *See id.* ¶¶ 6, 83, 95.

VII. The Policies Plainly Cover Plaintiff's COVID-19-Related Losses

126. At least five provisions, identical across all Policies, require Defendants to cover Plaintiff's lost profit, extra expenses, and payroll to most employees due to the pandemic. *See* Exs. 1-4, § V(B) at 20-21 ("Gross Earnings"), § V(D) at 22 ("Extra Expense"), § V(F)(11) at 27 ("Ordinary Payroll"), § V(F)(5) at 25 ("Ingress / Egress"), § V(F)(7) at 25-26 ("Order of Civil or Military Authority"). Plaintiff paid large premiums for these coverages, and yet, Defendants have refused to honor their end of the bargain to pay Plaintiff for its losses.

127. Some of those provisions require "direct physical loss or damage" to Plaintiff's insured property. As discussed above, many state courts agree with Plaintiff's position that, in the context of COVID-19, physical loss and damage exists and, therefore, requires coverage. *See supra* Paras. 79-80. Many, if not all, of the cases in which courts concluded otherwise did not involve many of the allegations here, such as: (1) defendant-insurers *changing their subsequent policies* to expressly exclude coverage of losses caused by viruses, which acknowledges that such an exclusion was not already in the Policies; (2) defendant-insurers *knowing* that other policies insuring the plaintiff included a virus exclusion, which shows that Defendants knew how to expressly exclude such virus-related coverage and *chose* not to; (3) the virus's physical, chemical bonds to property that alter and damage the property; (4) an expert affidavit stating that the virus was *in fact* present inside the plaintiff's insured property and made the property dangerous to humans; (5) civil authority orders expressly finding property damage and loss due to the virus; (6) a history of the meaning and use of "physical loss or damage" in ISO forms; (7) ISO's acknowledgement around the SARS outbreak that all-risk policies, without an express virus exclusion, cover losses caused by viruses; and (8) defendant-insurers' decisions to use various ISO

forms *but not* ISO's standard virus exclusion, giving rise to Plaintiff's reasonable belief of coverage. Accordingly, the Policy provisions involving "physical loss or damage" apply here.

128. In any event, to the extent that the meaning of "direct physical loss or damage" or any other applicable term is held to be unclear, such ambiguity must be resolved in favor of Plaintiff. *See Fed. Ins. Co.*, 18 N.Y.3d at 646; *see also, e.g.*, *Craven*, No. 20CY-CV06381 (Mo. Cir. Ct. Mar. 9, 2021), Order Denying Def. Mot. To Dismiss, ¶ 8 at 4 (holding that plaintiffs adequately alleged physical loss *and* physical damage due to COVID-19 and that, "[a]t a minimum, . . . the phrase 'direct physical loss of or damage to property' is ambiguous," and "that ambiguity must be construed in Plaintiffs' favor and in factor of coverage").

A. Provisions Related to Timing

129. For coverage to apply under the five aforementioned provisions, the losses must begin with a specific event (the "TIME ELEMENT") and accrue during a defined liability period (the "Period of Liability").

130. The Policies identically define "TIME ELEMENT," in relevant part, as:

> A type or category of loss which is dependent, with respect to quantification, upon the passage of a period of time measured from a specific event. A coverage provision or series of provisions pertaining to such loss. Examples of such provisions include **Gross Earnings, Extra Expense,** . . . **Ingress/Egress, Order of Civil or Military Authority**.

Exs. 1-4, § X(CC) at 48.

131. In other words, Plaintiff must have incurred losses with respect to a "specific event" for coverage to apply.

132. Here, the "specific event" depends on the type of loss.

133. The "specific event" for Plaintiff's losses covered by the Gross Earnings provision is the presence of SARS-CoV-2 on Plaintiff's insured property. The virus's presence eliminated,

then reduced, and continues to reduce patronage to Plaintiff's property, resulting in lost profit. The Gross Earnings provisions are further discussed below.

134. The "specific event" for Plaintiff's losses covered by the Ordinary Payroll, Ingress/Egress, and Civil Authority provisions is the shutdown of Plaintiff's business, effective on March 19, 2020, pursuant to the Closure Orders issued by civil authorities, which also prevented ingress to and egress from Plaintiff's property. These three provisions are further discussed below. The shutdown did not stop Plaintiff from continuing to pay its employees, saving them from the painful fate of millions of Americans who: lost their jobs; struggled to apply for unemployment benefits while unemployment agency websites were crashing and phone lines were constantly busy due to the sudden and overwhelming surge in demand; and had to live on unemployment benefits, which were often delayed due to the surge and poor mail service.

135. The "specific event" for Plaintiff's losses covered by the Extra Expense provisions is the issuance of the first Reopening Order on May 19, 2020. On that date, Plaintiff diligently began incurring expenses to comply with the Reopening Orders to resume business operations. Plaintiff continues to incur such expenses. The Extra Expenses provision is further discussed below.

136. In addition to the TIME ELEMENT, the losses must have occurred during a "Period of Liability." Exs. 1-4, § V(C)(1) ("The **Period of Liability** appl[ies] to all TIME ELEMENT coverages[.]"). Plaintiff's losses occurred during that time period, which is ongoing.

137. The Period of Liability that applies to Plaintiff's losses:

> I. start[s] on the date of physical loss or damage insured by this POLICY to INSURED PROPERTY; and
>
> II. end[s] when with due diligence and dispatch the building and equipment could be repaired or replaced with current materials of like size, kind and quality and made ready for operations;

> under the same or equivalent physical and operating conditions that existed immediately prior to such physical loss or damage.
>
> *Such period of time is not limited by the POLICY expiration date.*

Exs. 1-4 § V(C)(1) (emphasis added).

138. The start date for the Period of Liability is the date on which SARS-CoV-2 was first present on Plaintiff's insured property because that presence caused physical loss and damage to the property. That date preceded March 19, 2020, when Plaintiff first began to lose business income. However, because Plaintiff's losses began on March 19, 2020, that is when the Period of Liability begins.

139. The Period of Liability has not yet ended because, despite "due diligence and dispatch," Plaintiff has yet to bring the insured premises to "the same or equivalent physical and operating conditions that existed immediately prior to such physical loss or damage" caused by the COVID-19 virus. Exs. 1-4, § V(C)(1). Plaintiff's best efforts cannot possibly eradicate the virus from its premises overnight, especially with people continuing to bring in more viral particles as business operations continue.[76] Without those measures, Plaintiff would have had to remain shut down, which would have caused far greater income losses. To mitigate those losses, Plaintiff implemented and continued to implement measures to safely and lawfully operate its businesses.

B. The Gross Earnings Provisions

140. The Gross Earnings provisions cover Plaintiff's lost profits since March 19, 2020 on an ongoing basis.

141. The first two paragraphs of the Gross Earnings provisions state:

> 1. The recoverable Gross Earnings loss is the Actual Loss Sustained by the Insured due to the necessary interruption of the Insured's business during the Period of Liability as respects Gross Earnings less all charges and

[76] *See* Mayer Aff. ¶¶ 66, 70; *see also id.* ¶¶ 68-69, 71-73.

expenses that do not, or did not necessarily, continue during such interruption.

2. In determining the indemnity payable as the Actual Loss Sustained by the Insured, the Company will consider the continuation of only those normal charges and expenses that would have been incurred had no interruption of the Insured's business occurred.

Exs. 1-4, § V(B)(1)-(2) at 20.

142. Simply put, the first paragraph defines "Gross Earnings loss" as lost profit (revenue minus costs) due to a "necessary interruption," and the second paragraph limits those costs to only those that Plaintiff would have incurred had there been no business interruption.

143. Plaintiff's lost profits certainly resulted, and continue to result, from a "necessary interruption." *Id.* Civil authorities ordered Plaintiff to shut down. Even after Plaintiff resumed busines operations, its business continues to be necessarily interrupted. For example, Plaintiff had to shut down forty percent of its slot machines and test the temperatures of all patrons and all employees working each shift everyday. *See supra* Para. 115.

144. The third paragraph of the Gross Earnings provisions requires a payout from Defendants "to the extent that [Plaintiff] is":

a. wholly or partially prevented from producing goods or continuing business operations or services;

b. unable to make up lost production within a reasonable period of time, not limited to the period during which production is interrupted;

c. unable to continue its operations or services during the **Period of Liability**; and

d. able to demonstrate a loss of SALES resulting from an interruption in operations, services or production.

Exs. 1-4, § V(B)(3) at 20-21.

145. All of those requirements are satisfied. Plaintiff was wholly prevented from continuing business operations during the shutdown and, since reopening, has been partially prevented from continuing business operations.

146. The Closure and Reopening Orders prohibited, and continue to prohibit, Plaintiff from making up for lost production.

147. Plaintiff is unable to continue its operations or services during the ongoing Period of Liability. During the shutdown, Plaintiff could not operate at all. Since the shutdown, Plaintiff has had to discontinue the operation of forty percent of its slot machines and other business operations.

148. Plaintiff can demonstrate a loss of "SALES" resulting from its business interruption through its deactivated slot machines and lessened sales of food, beverages, and other goods and services, as well as the civil orders limiting Plaintiff's capacity of patrons. *See* Exs. 1-4, § X(C) (defining "SALES" as "[t]he amount paid or payable to the Insured for goods sold or delivered and for services rendered in the conduct of the business at INSURED LOCATION[]").

149. The fourth and final applicable paragraph of the Gross Earnings provisions defines "**Gross Earnings**" as, put simply, total profit. *See* Exs. 1-4, § V(B)(4)(a)(II), (B)(4)(b) at 21 ("the sum of . . . the total net SALES less cost of MERCHANDISE sold, materials and supplies consumed in the operations or services rendered by the Insured" and "all other earnings derived from the operation of the business"); Exs. 1-4, § X(P) at 46 (defining "MERCHANDISE," in relevant part, as "[g]oods kept for sale by the Insured").

150. Accordingly, the Gross Earnings provisions require Defendants to cover Plaintiff's ongoing lost profit on March 19, 2020.

C. The Extra Expense Provisions

151. The Extra Expense provisions cover Plaintiff's ongoing extra expenses since March 19, 2020.

152. Plaintiff began to incur extra expenses on May 19, 2020, when the first applicable Reopening Order was issued. On that date, Plaintiff promptly and diligently acted to comply with the Reopening Orders in order to resume and maintain business operations.

153. The Extra Expenses provisions consist of two paragraphs. The first defines the coverage, and the second provides exclusions.

154. The first paragraph states, in relevant part:

> The recoverable **Extra Expense** loss is the reasonable and necessary extra costs incurred by the Insured during the **Period of Liability** as respects the following:
>
> a. extra costs to temporarily continue as nearly normal as practicable the conduct of the Insured's business; . . .
>
> d. less any value remaining at the end of the Period of Liability for any property obtained in connection with the above.

Exs. 1-4, § V(D)(1) at 22.

155. Plaintiff first began to incur "reasonable and necessary extra costs" to resume business. *Id.* It was reasonable for Plaintiff to incur the extra expenses because that was the precondition to resuming business. Efforts to resume business was reasonable because not doing so would have resulted in a *total* loss of profit, and Defendants would have considered that inaction to be a failure to mitigate costs and denied coverage to Plaintiff on that basis.

156. Plaintiff's extra costs were also necessary because they were mandated by the Reopening Orders.

157. Plaintiff's extra costs were also "reasonable and necessary" from an epidemiological and public health perspective.[77]

158. These extra costs enabled Plaintiff to "temporarily continue as nearly normal as practicable the conduct of [its] business." Exs. 1-4, § V(D)(1)(a) at 22. Indeed, Plaintiff has resumed as much of its business operations as it could pursuant to the Reopening Orders, and doing so required Plaintiff to incur extra costs, including those mentioned above in Paragraph 115.

159. The second paragraph of the Extra Expense provisions states, "No coverage is provided herein for":

a. any loss of income;

b. costs that normally would have been incurred in conducting the Insured's business during the same period had no physical loss or damage insured by this POLICY to INSURED PROPERTY occurred;

c. cost of permanent repair or replacement of any property that has sustained physical loss or damage; or

d. any expense recoverable elsewhere in this POLICY.

Exs. 1-4, § V(D)(2) at 22.

160. Subparagraph (a) does not apply because Plaintiff seeks to recover lost income under the Gross Earnings provisions, not these Extra Expenses provisions.

161. Subparagraph (b) does not apply because Plaintiff does not seek to recover any costs that it would have incurred but for the physical loss and damage due to the COVID-19 pandemic.

162. Subparagraph (c) does not apply because Plaintiff's extra costs do not permanently repair or replace any property. The inherently temporary nature of the repairs is evident by the fact

[77] Mayer Aff. ¶ 98.

that Plaintiff must constantly repair its property multiple times a day, every day. The only way for Plaintiff to permanently repair its property is to completely shut down for weeks and disinfect everything with provably uninfected people during that time.

163. As to subparagraph (d), to the extent that any of Plaintiff's extra costs are recoverable pursuant to another Policy provision, Plaintiff would seek that portion of recovery accordingly.

164. Accordingly, the Extra Expense provisions require Defendants to cover Plaintiff's ongoing extra costs since May 19, 2020.

D. The Ordinary Payroll Provisions

165. The Ordinary Payroll provisions cover Plaintiff's payroll expense from March 19, 2020 through June 10, 2020, the last day of Plaintiff's shutdown. During that time period, Plaintiff was shut down but continued to pay its staff.

166. The Ordinary Payroll provisions state, in their entirety: "This POLICY is extended to insure loss of Ordinary Payroll. Ordinary Payroll is the entire payroll expense for all employees of the insured except officers, executives, employees under contract, and other critical employees."

167. This straightforward language requires Defendants to cover Plaintiff's payroll expense, except for the specifically excluded employees, while Plaintiff was shut down.

E. The Civil Authority Provisions

168. The "Order of Civil or Military Authority" provisions (the "Civil Authority" provisions) require coverage of Plaintiff's lost profit and extra expenses throughout Plaintiff's shutdown from around March 19, 2020 through June 10, 2020, the last day of Plaintiff's shutdown.

169. The Civil Authority provisions state:

> This POLICY is extended to insure loss of **Gross Earnings, Rental Insurance**, and **Extra Expense** incurred by the Insured due the necessary interruption of the Insured's business, provided that:
>
> a. the interruption directly results from an order of a civil or military authority that prohibits partial or total access to INSURED LOCATION(S); and
>
> b. the order referenced above is caused by direct physical loss or damage insured by this POLICY to property of the type insured.

Exs. 1-4, § V(F)(7) at 25-26.

170. These requirements are satisfied.

171. Plaintiff's business was necessarily interrupted as a direct result of the applicable state, county, and city Closure Orders and the personal letter from the City of Miami mandating that Plaintiff "close [its] business immediately." Ex. 5. Those orders prohibited access to Plaintiff's insured property and the areas immediately surrounding.

172. Those orders – by their own express terms – were "caused by direct physical loss or damage" to property, including Plaintiff's insured property. *See supra* Paras. 97-100, 89.

173. Indeed, the presence of the virus in the air and on the surfaces at Plaintiff's insured premises caused a "direct physical loss *or* damage" to property on that premises. Exs. 1-4, § V(F)(7) at 25-26 (emphasis added); *supra* Para. 42, 79-80, 97-100 (citing cases).

174. As to direct physical *damage*, the virus physically interacts with surfaces, such as tables, chairs, and doorhandles, through chemical bonds, thereby physically altering and damaging the insured property. *See Society Ins. Co.*, No. 1:20-CV-5965, ECF No. 131, at 20 n.5; *supra* Paras. 79, 97-100 & note 56.

175. Additionally, the presence of coronavirus aerosols and droplets in the air at Plaintiff's premises caused direct physical damage to that air – and, therefore, to the insured

property – by physically altering the air's physical consistency and characteristics for extended periods of time, potentially even after decontamination efforts. *See Society Ins. Co.*, No. 1:20-CV-5965 (N.D. Ill. Feb. 22, 2021), ECF No. 131, at 20 n.5; *supra* note 56.

176. The presence of coronavirus in the air and on surfaces at Plaintiff's insured premises also caused a direct physical *loss*. As discussed above, "loss" does not require "a change to the property's physical characteristics" but, rather, a physical loss of use, functionality, or habitability. *Society Ins. Co.*, No. 1:20-CV-5965, ECF No. 131, at 21; *accord Kingray Inc.*, No. 5:20-cv-963-JGB-SP, ECF No. 82, at 10 (citing cases) ("[P]hysical alteration to property is not necessary to constitute a physical loss."); *see supra* Paras. 80, 97-100 & note 57. Here, Plaintiff was prohibited from using and allowing use of its physical, insured property to operate its business.

177. As a non-essential business under the applicable Closure Orders, Plaintiff could not make *any* use of its property for its business. Accordingly, those orders, caused by the COVID-19 pandemic and presence of the coronavirus on the premises, caused a complete, and then a partial, direct physical loss. *See Ungarean*, No. GD-20-006544 (Pa. C.P. Mar. 25, 2021), Mem. & Order at 14 (emphases in original) ("The spread of COVID-19, and a desired limitation of the same, had a close logical, causal, and/or consequential relationship to the ways in which Plaintiff materially utilized its property and physical space. Indeed, the spread of COVID-19 and social distancing measures (with or without the Governor's orders) caused Plaintiff, and many other businesses, to *physically* limit the use of property and the number of people that could inhabit *physical* buildings at any given time. . . [,] impos[ing not only] economic limitations. . . [but also] *physical* losses.").

178. Accordingly, the Civil Authority provisions require Defendants to cover Plaintiff's lost profit and extra expenses.

F. The Ingress/Egress Provisions

179. The Ingress/Egress provisions require coverage of Plaintiff's lost profit and extra expenses throughout Plaintiff's shutdown from around March 19, 2020 through June 10, 2020, the last day of Plaintiff's shutdown.

180. These provisions, structured similarly to the Civil Authority provisions, state:

> This POLICY is extended to insure loss of **Gross Earnings, Rental Insurance**, and **Extra Expense** incurred by the Insured due to the necessary interruption of the Insured's business, provided that:
>
> a. the interruption directly results from the prevention of direct ingress to or direct egress from INSURED LOCATION(S), whether or not INSURED PROPERTY at such INSURED LOCATION(S) is damaged; and
>
> b. the prevention above is caused by direct physical loss or damage insured by this POLICY to any property, including property excluded under **Property Not Insured**.

Exs. 1-4, § V(F)(5) at 25.

181. Unlike the Civil Authority provisions, however, these provisions do not require physical damage or loss to Plaintiff's property to be the cause of the prevention of ingress or egress. Loss or damage to any property, even uninsured property, would suffice. *See id.*

182. The Closure Orders prevented direct ingress to and egress from Plaintiff's property, which necessarily and directly interrupted Plaintiff's business. Those orders prohibited Plaintiff from operating and prohibited residents from going to Plaintiff's property, all of which prevented ingress and egress to and from Plaintiff's property. Without patrons entering the premises, Plaintiff could not generate income.

183. As alleged above, the Closure orders preventing ingress and egress expressly state that they were caused by direct physical loss and damage to Plaintiff's and other properties, which, in turn, were caused by SARS-CoV-2.

184. Accordingly, the Ingress/Egress provisions require Defendants to cover Plaintiff's lost profits and extra expenses.

VIII. The Policies Do Not Exclude Coverage of Plaintiff's Losses

185. The Policies do not expressly exclude coverage of Plaintiff's aforementioned losses. Express exclusions are required to deny coverage because the Policies are all-risk policies.

186. Tellingly, Defendants tacitly acknowledged the lack of an applicable exclusion by updating their subsequent policies with Plaintiff. Those new policies now contain a "Microorganism Exclusion" that excludes the *exact* type of coverage that Defendants contend was already excluded in the Policies. Clearly, Defendants recognized that the Policies do *not* exclude such coverage, so they sought to exclude that coverage going forward.

187. At a minimum, Defendants' change to their Policies demonstrates that the Policies are unclear as to such coverage, and such ambiguity must be resolved in favor of coverage for the insured, i.e., Plaintiff. *See Fed. Ins. Co.*, 18 N.Y.3d at 646.

188. In addition to the lack of any applicable exclusion, Plaintiff reasonably believed that the Policies provided coverage because Defendants knowingly chose *not* to include a communicable disease exclusion despite (1) communicable diseases being a long-known peril in insurance underwriting for decades, and especially recently with SARS, and (2) warnings from the scientific community of an impending pandemic.

189. Moreover, Defendants' Policies utilize ISO policy forms and language but not ISO's standard virus exclusion form, which was available for use prior to the effective date of the Policies. This stands in stark contrast to Plaintiff's nonparty insurers, such as Arch, which included the ISO's standard virus exclusion form or other language that specifically excluded losses caused by a virus.

190. Further still, Defendants also chose not to incorporate the virus exclusion used by Arch or any of the other nonparties that insured Plaintiff during the relevant time period. Upon information and belief, Plaintiff's insurers, including Defendants, coordinated their policies with each other. The policies are largely consistent in substance, structure, and format. For example, they provide coverage for the same exact time period (April 29, 2019 to April 29, 2020) and premises, and they contain *identical* provisions in *identically* numbered paragraphs on *identical* page numbers, including all the provisions that require coverage here. *See supra* Section VII (quoting identical provisions with identical citations in the Policies). Moreover, Plaintiff's policies for that time period recognize the existence of the other policies by defining themselves as covering a particular layer of losses. Based on this coordination, consistency, and knowledge, Defendants knew of the virus-related exclusions contained in the non-Defendant insurers' policies and, yet, *chose* not to include those exclusions.

191. For these reasons, the Policies do *not* exclude coverage of Plaintiff's losses, and Plaintiff reasonably believed that the Policies provided such coverage.

192. Accordingly, Defendants must pay Plaintiff for its business interruption losses.

IX. Defendants Unlawfully Denied Coverage to Plaintiff

193. Despite Plaintiff's compliance with its contractual duties pursuant to the Policies, Defendants have refused to comply with theirs by unlawfully denying coverage to Plaintiff.

194. Consistent with the terms and procedures of the Policies, Plaintiff submitted a claim for loss to Defendants under the Policies.

195. Although the Policies plainly require Defendants to pay Plaintiff for its losses, Defendants have denied coverage of Plaintiff's claims, giving rise to this litigation.

196. Plaintiff has complied with all conditions precedent to filing this suit.

X. Defendants Coordinated Their Denials of Coverage and Never Adjusted Plaintiff's Claims Because They Had Planned to Deny Coverage All Along

197. The Policy provisions discussed herein are identical across the Policies.

198. Accordingly, Defendants could, and did, coordinate their approaches in denying coverage to Plaintiff.

199. Defendants did not even bother to adjust Plaintiff's claims. They did not send an adjuster. They did not conduct an investigation. They did not request additional information from Plaintiff or even bother to call Plaintiff. The one exception, Great Lakes, engaged in *de minimis* adjustment procedure by requesting additional information from Plaintiff and later denying the claim anyway.

200. By doing nothing about adjusting Plaintiff's claim, Defendants demonstrated their financial interest in denying the claim. They stuck their heads in the sand to avoid learning the facts that require them to provide coverage.

201. That financial interest spans far beyond Plaintiff. The contractual language at issue – physical loss or damage – is virtually ubiquitous in the insurance industry. *See, e.g.*, *supra* Paras. 42-56, 79-80 (citing cases). Defendants knew that, if they were to grant coverage to Plaintiff, they could not justify denying coverage to other insureds. For that reason, based on information and belief, Defendants similarly failed to conduct a reasonable and good-faith adjustment, if any, as to claims filed by *any* of their insureds.

202. Therefore, rather than engage in a reasonable and good-faith adjustment of Plaintiff's claims as required by law, which would have yielded factual support for Plaintiff's claims, Defendants reflexively denied Plaintiff the coverage for which Plaintiff paid.

203. Defendants also coordinated their denials. They issued materially similar denial letters that raise the same meritless arguments.

204. For example, Defendants blurred the distinction between "loss" and "damage" to deny coverage. Specifically, Defendants asserted that Plaintiff failed to show "direct physical loss or damage" caused by the COVID-19 virus despite the obvious fact, which Plaintiff explained in letters to Defendants, that Plaintiff suffered a physical loss by being prohibited from (a) using its property to operate its business and (b) allowing patrons and employees on the property.

205. As another example, Defendants also denied coverage based on a "Contaminants Exclusion" even though that exclusion plainly does not apply for a multitude of reasons despite mentioning the word "virus."

206. "[I]f an insurer wishes to exclude coverage by virtue of an exclusion in its policy, it must (1) write the exclusion in obvious and unambiguous language in the policy, (2) establish that the interpretation excluding covering under the exclusion is the only interpretation that could fairly be made, and (3) establish that the exclusion clearly applies to this particular case." *Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 164, 252 P.3d 668, 674 (2011) (citing *Alamia v. Nationwide Mut. Fire Ins. Co.*, 495 F. Supp. 2d 362, 367 (S.D.N.Y. 2007)); *see also Belt Painting Corp. v. TIG Ins. Co.*, 100 N.Y.2d 377, 383 (2003) (stating that "policy exclusions are given a strict and narrow construction"). Defendants cannot satisfy those requirements.

207. *First*, "[d]enying coverage for losses stemming from COVID-19 . . . does not logically align with the grouping of the virus exclusion with other pollutants such that the Policy necessarily anticipated and intended to deny coverage for these kinds of business losses." *JGB Vegas Retail Lessee, LLC v. Starr Surplus Lins Ins. Co.*, No. A-20-816628-B, Order Denying Motion at 4 (Nev. Dist. Ct. Nov. 30, 2020) (quoting *Urogynecology Specialist of Fla. LLC v. Sentinel Ins. Co.*, No. 6:20-cv-1174, 2020 WL 5939172, at *4 (M.D. Fla. Sept. 24, 2020)).

208. "If Defendants wanted to exclude coverage for any loss caused by viruses in any manner whatsoever, Defendants could have easily included such a provision clearly and unambiguously in the contract. However, Defendants did not include a virus exclusion." *Ungarean v. CAN*, No. GD-20-6544, Mem. & Order at 23 (Pa. C.P. Mar. 22, 2021).

209. Indeed, such an exclusion was never intended to apply to pandemics because it has coexisted with microorganism exclusions. Because they provide different coverage, Defendants logically included a microorganism exclusion in their *subsequent* policies with Plaintiff.

210. *Second*, the contamination exclusion does not logically apply to SARS-CoV-2 specifically. "[T]he risk of person-to-person transmission of COVID-19, and the social distancing measures necessary to mitigate the spread of the COVID-19, together constitute a cause that is both separate and distinct from any possible or actual contamination of property." *Id.*

211. *Third*, even if the Contaminants Exclusion could somehow apply in principle, at most, it would exclude coverage for the only cost "to cleanup, remove and dispose of any CONTAMINANTS from land, or from water or any other substance in or on land." Exs.1-4 § IV(B)(14)(b) at 15. Thus, the Contamination Exclusion in *no way* bars coverage of: lost profit; payroll expense; costs to clean the *air*; costs to *prevent* the entry of contaminants, such as by purchasing temperature tests for employees and patrons, plexiglass, and social distancing floor markers; or other costs.

212. For these and other reasons, the Contamination Exclusion does exclude coverage of Plaintiff's losses.

213. Therefore, Defendant's asserted grounds for denying coverage are baseless. Based on these and other similarities between Defendants' letters and conduct, and other information and

belief, Defendants had always planned to deny coverage to Plaintiff and coordinated with each other to do so, thereby denying Plaintiff the benefit of its bargain.

214. Any applicable limitation period is tolled pursuant to the executive orders issued by New York State Governor Andrew Cuomo – including Executive Order 202.8, issued on March 20, 2020, just one day after the date of loss and damage giving rise to Plaintiff's claims, and Executive Order 202.67 – which collectively "tolled" any "time limit for the commencement . . . of any legal action" through November 3, 2020 such that limitation periods would resume running on November 4, 2020.[78]

CAUSES OF ACTION

COUNT I
DECLARATORY JUDGMENT
(Against All Defendants)

215. Plaintiff repeats and realleges Paragraphs 1–214 as if fully set forth herein.

216. The Policies are valid and enforceable contracts pursuant to which Plaintiff paid premiums to Defendants in exchange for their promise to cover all losses that are not expressly excluded.

217. Plaintiff has complied with all applicable provisions of the Policies. Any other provisions do not apply or were waived by Defendants, or Defendants are estopped from denying compliance therewith.

218. Despite Plaintiff's compliance, Defendants have abrogated their insurance coverage obligations pursuant to the Policies by refusing to provide the coverage that Plaintiff seeks herein.

[78] https://www.governor.ny.gov/news/no-2028-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency; https://www.governor.ny.gov/news/no-20267-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency.

219. An actual case or controversy exists regarding Plaintiff's rights and Defendants' obligations under the Policies to reimburse Plaintiff for the full amount of covered losses alleged herein.

220. Pursuant to CPLR 3001, Plaintiff seeks a declaratory judgment from this Court declaring the following:

a. The losses that Plaintiff incurred in connection with the COVID-19 pandemic, presence of SARS-CoV-2, and Closure Orders are insured losses under the Policies; and

b. Defendants are obligated to pay Plaintiff the full amount of those losses.

COUNT II
BREACH OF CONTRACT
(Against All Defendants)

221. Plaintiff repeats and realleges Paragraphs 1–220 as if fully set forth herein.

222. In the Policies, Defendants agreed to cover Plaintiff's insured property against all risks of physical loss or damage that are not expressly excluded.

223. Defendants expressly agreed to insure Plaintiff's losses covered by the Gross Earnings, Extra Expense, Ordinary Payroll, Ingress/Egress, and Civil Authority provisions.

224. Plaintiff incurred losses that are covered by those provisions.

225. No exclusions apply to bar those coverages.

226. Accordingly, Defendants are required to pay Plaintiff for its covered losses.

227. Plaintiff complied with all applicable provisions in the Policies, including the provisions requiring payment of premiums and timely notice of claims.

228. Nevertheless, in breach of the Policies, Defendants have refused to pay Plaintiff for its covered losses.

229. Those breaches caused Plaintiff to suffer damages in an amount to be determined at trial.

COUNT III
BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING
(Against All Defendants)

230. Plaintiff repeats and realleges Paragraphs 1–229 as if fully set forth herein.

231. The Policies contain the implied covenant of good faith and fair dealing, which requires Defendants to act reasonably and in good faith so as to not deny Plaintiff the benefits of the Policies.

232. Defendants unreasonably and in bad faith predetermined that they would deny Plaintiff's claims.

233. Defendants failed to conduct a reasonable and good-faith investigation into Plaintiff's claims.

234. Defendants unreasonably and in bad faith coordinated with each other to deny Plaintiff's claims.

235. Defendant raised unreasonably and bad-faith reasons for denying coverage.

236. Those unreasonable and bad-faith acts and omissions breached the implied covenant of good faith and fair dealing.

237. Those breaches deprived Plaintiff of the benefit of coverage, thereby causing Plaintiff damages in an amount to be determined at trial.

238. Defendants knew that the Policies do not expressly exclude Plaintiff's losses because they added an exclusion to their subsequent policies with Plaintiff to exclude coverage of the very losses alleged herein – yet they denied coverage to Plaintiff under the Policies anyway.

239. Those breaches also deprived Plaintiff of the benefit of a reasonable, good-faith investigation into Plaintiff's claims, which resulted in a denial coverage that caused damages in an amount to be determined at trial.

COUNT IV
VIOLATION OF N.Y. GEN. BUS. LAW § 349
(Against All Defendants)

240. Plaintiff repeats and realleges Paragraphs 1–239 as if fully set forth herein.

241. Section 349(a) of the New York General Business Law ("GBL") states, "Deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state are hereby declared unlawful."

242. To prevail on this claim, the defendant must have engaged in (1) consumer-oriented conduct (2) that is materially misleading and (3) caused the plaintiff to suffer injury.

243. To be materially misleading, the allegedly deceptive act must mislead a reasonable consumer acting reasonably under the circumstances.

244. Those elements are satisfied here.

245. Defendants sold the Policies to Plaintiff as the consumer.

246. The Policies require Defendant to provide coverage of the losses alleged herein.

247. When the COVID-19 pandemic occurred, Defendants sought to deprive Plaintiff of coverage.

248. Defendants coordinated the bases upon which they would deny Plaintiff coverage.

249. In response to Plaintiffs' notices of claim, Defendants sent correspondence to Plaintiff that materially misrepresents the Policies' coverage in order to deny coverage to Plaintiff.

250. Defendants' denial of coverage caused Plaintiff to sustain damages in the form of, *inter alia*, lost profit and expenses in amounts to be determined at trial.

251. Furthermore, the denials of coverage substantially devalue the Policies.

252. Such devaluation caused Plaintiffs to sustain damages in the form of price premiums that Plaintiff paid for the Policies and in an amount to be determined at trial.

253. In addition, Defendants' high degree of moral culpability in consciously disregarding Plaintiff's rights, and reckless misconduct, warrant punitive damages to punish Defendants and deter other insurers from engaging in this type of misconduct. Deterrence is especially critical given the likelihood of future pandemics and the widespread, systematic denials of business interruption coverage due to COVID-19, as evidenced by more than 1,500 lawsuits filed nationwide.

COUNT V
CONVERSION
(Against All Defendants)

254. Plaintiff repeats and realleges Paragraphs 1–253 as if fully set forth herein.

255. Defendants possess funds that they owe Plaintiff as coverage for Plaintiff's insured losses pursuant to the Policies.

256. Plaintiff owns and has the right to possess those funds.

257. Defendants' continued possession of those funds is unauthorized by Plaintiff.

258. Defendants have acted to exclude Plaintiff's right to possess those funds by sending Plaintiff letters to deny coverage and refusing to transfer those funds to Plaintiff.

259. Defendants are liable to Plaintiff for conversion in an amount to be determined at trial.

260. Defendants are also liable for punitive damages and other relief. *See supra* Para. 253.

COUNT VI
TORTIOUS INTERFERENCE WITH CONTRACT
(Against All Defendants)

261. Plaintiff repeats and realleges Paragraphs 1–260 as if fully set forth herein.

262. Each Defendant tortiously interfered with all other Defendants' performance of their contractual obligations pursuant to those other Defendants' Policies.

263. Each Defendant knew of the existence of the Policies between the other Defendants and Plaintiff.

264. As alleged above, each Defendant took actions that it intended would induce the other Defendants to breach their Policies with Plaintiff. *See, e.g.*, *supra* Paras. 197-205.

265. Those actions include Defendants' conspiracy alleged below and their acts in furtherance thereof, such as their coordinated failures to conduct a reasonable and good-faith adjustment and coordinated denial letters, as well as their encouragement of each other to engage in those acts and omissions.

266. There is no legal justification for those actions.

267. Those actions by each Defendant caused the other Defendants to deny coverage to Plaintiff, causing Plaintiff to sustain damages in an amount to be determined at trial.

268. Therefore, each Defendant is liable for the damages that Plaintiff sustained due to that Defendant's tortious interference with other Defendants' Policies.

269. Defendants are also liable for punitive damages and other relief. *See supra* Para 253.

COUNT VII
CONSPIRACY
(Against All Defendants)

270. Plaintiff repeats and realleges Paragraphs 1–269 as if fully set forth herein.

271. Defendants are liable for each other's conversion, tortious interference with contract, and violations of GBL § 349 because they conspired to commit those torts.

272. Defendants conspired to deny Plaintiff coverage and deprive Plaintiff of funds in violation of common law and GBL § 349.

273. Defendants agreed to deny Plaintiff coverage, to coordinate the substance of their denials, and to not conduct sufficient and good-faith investigations into Plaintiff's claims.

274. Defendants overtly acted in furtherance of their agreement by, *inter alia*, communicating with each other to deny Plaintiff's claims, encouraging each other to deny Plaintiff's claims, asserting agreed-upon grounds for denying coverage in correspondence to Plaintiff's notices of claim, and failing to conduct reasonable, good-faith investigations.

275. The parties intentionally engaged in those and other acts to unlawfully deprive Plaintiff of coverage.

276. The intentional conduct caused Plaintiff to suffer damages by depriving Plaintiff of coverage.

277. Therefore, all Defendants are liable to Plaintiff for each other's conversion, tortious interference with contract, and violations of GBL § 349.

278. Defendants are also liable for punitive damages and other relief. *See supra* Para 253.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court enter judgment in its favor and against Defendants as follows:

a. Entering declaratory judgments in favor of Plaintiff stating (i) that Plaintiff's alleged losses stemming from the COVID-19-pandemic, SARS-CoV-2, and the Closure Orders are insured losses under the Policies, (ii) that Defendants are obligated to pay Plaintiff the full amount of those losses within each Defendant's respective layer of coverage and coverage limit, (iii) that Defendants are liable to Plaintiff for each cause of action alleged herein, and (iv) that, pursuant to the conspiracy theory of liability, each Defendant is liable to Plaintiff for all other Defendants' torts alleged herein according to those other Defendants' layers and coverage limits;

b. An award of compensatory, consequential, and punitive damages in amount to be proven at trial;

c. An award of pre- and post-judgment interest;

d. An award of attorneys' fees and costs; and

e. Such other and further relief as the Court deems just and proper.

JURY TRIAL DEMAND

Pursuant to CPLR 4102, Plaintiff demands a trial by jury on all issues so trialable.

Dated: May 24, 2021
Coral Gables, Florida

THE MOSKOWITZ LAW FIRM, PLLC

By: _____
Seth M. Shapiro
Adam M. Moskowitz (*Pro Hac Vice* forthcoming)
Howard M. Bushman (*Pro Hac Vice* forthcoming)
Adam A. Schwartzbaum (*Pro Hac Vice* forthcoming)
2 Alhambra Plaza, Suite 601
Coral Gables, FL 33134
Telephone: (305) 740-1423
seth@moskowitz-law.com
adam@moskowitz-law.com
howard@moskowitz-law.com
adams@moskowitz-law.com

MERLIN LAW GROUP
William F. "Chip" Merlin, Jr.
Shane Smith (*Pro Hac Vice* forthcoming)
777 S. Harbour Island Blvd., Suite 950
Tampa, FL 33602
Telephone: (813) 229-1000
Facsimile: (813) 229-3692
cmerlin@MerlinLawGroup.com
ssmith@MerlinLawGroup.com

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

WEST FLAGLER ASSOCIATES, LTD. D/B/A MAGIC CITY CASINO AND FLAGLER DOG TRACK, Plaintiff, - against - INDIAN HARBOR INSURANCE COMPANY, HALLMARK SPECIALTY INSURANCE COMPANY, ATEGRITY SPECIALTY INSURANCE COMPANY, and GREAT LAKES INSURANCE SE, Defendants.	Index No. _____

AFFIDAVIT OF DR. LAWRENCE S. MAYER, MD, MS, PhD

State of Florida)
:SS
County of Miami-Dade)

I, Lawrence S. Mayer, MD, MS, PhD, MAKE OATH AND SAY THAT I, being first duly sworn, deposes and states as follows:

I. INTRODUCTION AND OVERVIEW OF TESTIMONY

1. I have been retained as an independent expert in this matter. For purpose of identification, I am a Research Fellow at Harvard University and an Emeritus Professor, having served in professorial roles during the last fifty years at various institutions, including tenured and untenured professorships at Johns Hopkins University, Arizona State University, Princeton University, the University of Pennsylvania, and Stanford University. My background and

credentials are set forth in my curriculum vitae, which is attached to this Affidavit as **Appendix A**. Counsel for West Flagler Associates, Ltd. ("Magic City Casino" or "Plaintiff"), the plaintiff in this litigation, has retained me as a consultant and expert in epidemiology, biostatistics, and public health. I am one of only a few physicians who are formally trained in epidemiology, biostatistics, statistics, and public health.

2. Plaintiff's counsel has informed me of the facts that pertain to Plaintiff, such as its business operations, which I discuss below where pertinent. *See infra* Parts IX-X.

3. Plaintiff's counsel asked me to use those facts to assess the risk of SARS-CoV-2, the virus that causes Coronavirus Disease 2019 ("COVID-19"), to the health of individuals entering Plaintiff's premises and to Plaintiff's business operations and property. Plaintiff's counsel also asked me to discuss current state of scientific knowledge in public health and medicine concerning SARS-CoV-2, COVID-19, and the resulting pandemic.

4. The sources of information on which I relied in preparing this Affidavit are listed in **Appendix B**, attached hereto. The facts, data, and studies on which I base my opinions are of the type on which experts in my field would reasonably rely in rendering such opinions. I have vast access to such information, not only from my roles as a physician, researcher, and professor but, also, as the lead moderator of a Facebook group consisting of approximately 5,200 physicians, epidemiologists, and public health researchers, which is believed to be the largest group of physicians and scientists dedicated to the science of COVID-19. Of those members, 2,800 are frontline physicians working in intensive care units (ICUs) and emergency departments (EDs). With the help of 23 moderators, including 13 physicians, we provide a daily update on new scientific research on COVID-19. This group is devoted strictly to science. The web address for the group is: https://www.facebook.com/groups/clinical.epidemiology.

5. Below, I discuss the following topics and then apply them to Magic City Casino:

a. Viruses and coronaviruses generally

b. The origin and extent of the COVID-19 pandemic;

c. The location and modes of transmission of SARS-CoV-2;

d. The nature, clinical symptoms, and treatment of COVID-19;

e. High-risk individuals, "long haulers," asymptomatic carriers, and pre-symptomatic carriers;

f. Transmission of SARS-CoV-2;

g. Prevention and mitigation of threats posed by the virus and the limitations of those measures;

h. Strategies to reduce transmission in workplaces and gathering places; and

i. The characteristics of super-spreader events.

6. Based on my expertise, I can say with statistical certainty that, in March 2020, SARS-CoV-2 was present in the air and on physical surfaces within the Magic City Casino premises, and that the virus physically altered the surfaces of property on that premises. The virus's presence at Magic City Casino, along with the characteristics of Plaintiff's business operations, made Magic City Casino a high-probability locale for "super spreader" events of COVID-19 to occur. Furthermore, due to the foregoing, the measures that Magic City Casino has been employing to reduce transmission since reopening in summer 2020 were and continue to be necessary.

II. VIRUSES AND CORONAVIRUSES GENERALLY

7. Viruses are non-living parasites that are incapable of energy metabolism, do not grow, do not respond to most environmental stimuli, and rely on living cells, called "hosts," to take them up to allow for reproduction. They are not living organisms.

8. Outside of host cells, viruses exist as an infectious particle called a "virion." Virions are protein-coated bundles of genetic information encoded in nucleic acid sequences as DNA or RNA. Nearly all virions are far too small to be visible to the naked eye.

9. A coronavirus is a type of virus that is distinguished by its spike-like proteins on its membrane, which looks like a "corona," or crown.

10. The novel coronavirus, SARS-CoV-2, is a zoonotic coronavirus, meaning that it has traveled to a new host species (humans) from an animal source.

11. Of the seven coronaviruses known to infect humans, five are betacoronaviruses.

12. Four of those betacoronaviruses cause the diseases known as MERS, SARS, the common cold, and pneumonia.

13. The fifth is SARS-CoV-2, the virus that causes COVID-19.

III. THE ORIGIN OF SARS-CoV-2 AND EXTENT OF THE PANDEMIC

14. The best, current, scientific evidence strongly suggests that SARS-CoV-2 originated in the Hubei province of China.

15. Considerable evidence also suggests that the virus transferred to humans from a species of bats.

16. Scientific evidence strongly suggests that COVID-19 first appeared in humans in the "wet markets" where live animals to be used for food are kept near meat that is sold for human consumption.

17. The virus rapidly spread around the world. As of May 12, 2021, it infected 160,895,072 people and caused 3,339,933 million deaths in 220 countries. The United States suffered the greatest number of infections and deaths in the world: more than 33.5 million

infections and 597,448 deaths. As of May 14, 2021, reporting suggests at least 2.28 million infections and 35,929 deaths in Florida alone.

IV. LOCATION AND MODES OF TRANSMISSION OF SARS-COV-2

18. SARS-CoV-2 virions are physically present in communal areas in which infectious individuals (whether symptomatic or asymptomatic) are or have been present. These invisible virions remain suspended in the air, on surfaces, and in droplets.

19. COVID-19, the disease caused by SARS-CoV-2, is relatively contagious. The rate at which COVID-19 spreads is represented by its estimated "reproductive number." Current literature suggests that a conservative estimate for this number is 2.5, meaning that for each new case of COVID-19, we might expect that person will then infect an average of 2.5 additional people. This rate is substantially higher than that of influenza (1.5).

20. The reproductive number, however, is an average rate. In reality, what is observed is that, during a pandemic, a small portion of people are responsible for a large portion of infections.

21. The effect of this reality is that the average person is a bit less dangerous than expected while certain individuals, often referred to as "super spreaders," might be far more dangerous than expected.

22. There are three primary vectors of transmission for SARS-CoV-2:

a. Contact transmission is the direct transfer of virions by way of a vulnerable individual's immediate contact with an infected person or surface by touch.

i. Contaminated surfaces and objects that can spread disease in this way are called "fomites," and transmission in this way is often referred to as "fomite transmission." An object or surface becomes a fomite while it harbors viable viral particles within or upon it.

ii. This category also contains infections that result from direct physical contact between an uninfected person and person who is infected with SARS-CoV-2.

b. Droplet transmission occurs when droplets, large or small, are expelled from an infected host and reach a vulnerable individual.

i. This form of transmission is most likely to occur within six feet of an infected person.

c. Aerosol transmission occurs by way of smaller droplets (called aerosols) that remain suspended in the air.

i. Aerosols can remain suspended in the air for long periods of time, ranging from minutes to hours depending primarily on ventilation of the space in exchanges of fresh air per hour. Laboratory efforts to measure aerosol suspension of SARS-CoV-2 virions have demonstrated the ability for these virions to stay suspended for 16 hours. As a result, there is a long period of time for the air containing these aerosols to contaminate surfaces and infect people, and the risk of disease transmission increases substantially in enclosed environments compared to outdoor settings.

ii. As infectious individuals enter an enclosed area and expel aerosols, new aerosols are continually introduced to the air, thereby extending the time period during which the air can contaminate surfaces and infect people.

iii. This transmission modality is not restricted to being with six feet of an infectious person.

23. Scientific evidence suggests that infectious individuals carry between one billion and one hundred billion virions on their person. These virions are constantly being produced and expelled in high volumes during every moment of the infected host's contagious period.

24. Due to the properties of the virus, during peak infectivity, it is reasonable and appropriate to operate on the assumption that all of the air and surfaces that the host individual contacts are damaged and infectious.

25. Peak infectivity for an acute infection of SARS-CoV-2 is the period directly after incubation. The incubation period is the time period between infection and when symptoms are first apparent. During peak infectivity, an individual can produce tens to hundreds of billions of SARS-CoV-2 virions per day. Proximity to these individuals is an extreme health risk.

26. Physical presence in proximity to these individuals, sharing common air supplies, and contact with shared fomites are all modalities for the transfer of virions from an infectious individual to a susceptible individual.

V. THE PATHOLOGY OF COVID-19

27. Pathology is the branch of medicine and public health that concerns the causes and effects of diseases.

28. Transmission of infectious virions from a host individual to a susceptible individual by way of the aforementioned modalities could lead to the development of disease. For SARS-CoV-2, the associated disease is called coronavirus disease 2019, or COVID-19.

29. The RNA in SARS-CoV-2 virions contains information to produce "spike proteins." When the virus infects a host cell, the enclosed genetic instructions direct the host cell to produce and assemble spike proteins that become part of a new virion.

30. These spike proteins are expressed on the outside of the viral particle and facilitate the binding of the virus to the human angiotensin-converting enzyme 2 receptor ("ACE2").

31. ACE2 appears throughout the body, particularly in respiratory, lung, artery, heart, intestine, and kidney tissue.

32. By binding to ACE2, the SARS-CoV-2 virion can enter into a human cell in those tissues. For this reason, COVID-19 is known to affect those organs, especially the lungs and heart.

33. That cell entry may result in infection of the cell such that its cellular machinery is coopted to produce and expel multiple copies of the SARS-CoV-2 virions. This is how the virus replicates. It cannot replicate on its own because it is not a living organism.

34. New virions expelled from an infected cell can go on to infect other cells in the host or be expelled by the infected host through breathing, speaking, singing, coughing, defecation, surface contact, or other modalities of transmission.

35. A typical COVID-19 infection could render an individual infectious for up to 20 days. For certain individuals with immune deficiencies, this period could be significantly longer. This is because their bodies may have limited ability to destroy the virus.

VI. THE EFFECTS OF COVID-19

A. Effects Generally

36. COVID-19 is primarily a respiratory disease. Individuals who contract COVID-19 may present with early signs and symptoms that include:

a. Fatigue;

b. Headache;

c. Pyrexia (fever);

d. Dyspnea (shortness of breath);

e. Radiographically visible pneumonia;

f. Non-productive cough;

g. Rigors ("chills");

h. Myalgia (body aches);

i. Ageusia (loss of taste);

j. Hyposmia or Anosmia (partial or complete loss of smell);

k. Pharyngitis (sore throat);

l. Vomiting; and

m. Diarrhea.

37. Chronic health effects are symptoms continuing past the point of acute illness. Unlike an influenza infection, from which one is likely to recover quickly to health, infection with SARS-CoV-2 and the resulting disease may have chronic health effects. Chronic health effects that are epidemiologically associated with a current or past infection with SARS-CoV-2 include:

a. Brain fog;

b. Pulmonary tissue damage;

c. Cardiovascular damage;

d. Postural orthostatic tachycardia syndrome;

e. Persistent cough;

f. Depression;

g. Muscle pain;

h. Headache;

i. Kidney injury; and

j. Dermatologic conditions.

38. The course of the disease is quite variable, ranging from asymptomatic to minimally symptomatic to critical illness and death.

B. Severe Effects

39. Severe disease is characterized by severe lung disease, perturbations of the immune system (such as low white blood cell count and hyperinflammatory response causing tissue damage), and blood clots caused by inflammation of blood vessels. Heart attacks, strokes, and neurologic problems can also accompany this intense inflammation.

40. The lung damage can progress to Acute Respiratory Distress Syndrome (ARDS), a condition when only a small portion of the lung is functional, leading to inadequate oxygen levels. This, along with the severe inflammatory response, leads to the failure of multiple organs and, for at least 40% of cases, death.

41. Severe effects also include hospitalization and death. Hospitalization rates range from 7% to 40% depending on patient characteristics. Overall hospital mortality is about 17% but varies significantly with age and prior health status. Mortality is 37-50% for patients requiring admission to the ICU. The case fatality rate is 1.8% for patients overall in the United States. That rate has decreased significantly since spring 2020 because of new approaches to and developments in treatment.

C. Low- and High-Risk Individuals

42. The risk of severe disease and death from COVID-19 is heavily age-dependent, with older patients at sharply increased risk.

43. Although somewhat reduced, younger individuals still face a significant risk of death from COVID-19.

44. Similarly, although somewhat reduced, younger individuals also face a significant risk of serious disease, hospitalization, and chronic symptoms as a result of COVID-19.

45. A high-risk individual is a person who is at high risk of severe effects, hospitalization, or death from COVID-19.

46. Some of the above-listed effects are experienced in a positively correlated, age-dependent manner, and some are not.

47. As a result, it is both important and wise to not only reduce the rate of COVID-19 infections among the elderly because they most acutely face a risk of death but, also, to reduce the rate of COVID-19 among the general population.

48. A person is at high risk if that person has at least one high-risk factor.

49. High-risk factors include:

a. A body mass index ("BMI") ≥ 35;

b. Chronic kidney disease;

c. Diabetes;

d. An immunosuppressive disease;

e. Current immunosuppressive treatment;

f. Being 65 years old or older; and

g. Being 55 years old or older with cardiovascular disease, hypertension, chronic obstructive pulmonary disease (COPD), or another chronic respiratory disease.

50. High-risk factors for individuals who are 12 to 17 years old include:

a. A BMI $\geq$ 85th percentile for the person's age and gender based on CDC growth charts;

b. Sickle cell disease although this factor might be associated with race rather than the disease;

c. Congenital or acquired heart disease;

d. Neurodevelopmental disorders, such as cerebral palsy;

e. Medical-related, technological dependence, such as tracheostomy, gastrostomy, or positive pressure ventilation (not related to COVID-19); and

f. Asthma, reactive airway, or another chronic respiratory disease that requires daily medication for control.

D. Asymptomatic and Pre-Symptomatic Individuals

51. Not all individuals infected by SARS-CoV-2 display symptoms of the COVID-19 disease. An infection that does not result in the individual feeling any symptoms is called an "asymptomatic" infection.

52. Such individuals are called "asymptomatic carriers" because, despite feeling no symptoms, they carry and spread the disease to others. Because asymptomatic carriers are unaware of being infected, they are far more likely to infect others. This threat of infection is called "asymptomatic transmission." Evidence suggests that at least 30% of people infected with SARS-CoV-2 are asymptomatic.

53. There is a lapse of time between the infection and the display of symptoms. During that lapse, the infected individual is considered to be "pre-symptomatic." Infected individuals can be contagious during this pre-symptomatic period. This threat of infection is called "pre-symptomatic transmission."

54. The possibilities of asymptomatic and pre-symptomatic transmission of COVID-19 make it obvious that quarantine of only symptomatic individuals is not an effective means to control transmission.

E. "Long Haulers"

55. "Long haulers" are COVID-19 patients whose symptoms persist for at least six months. They comprise a substantial subset of COVID-19 patients: sleep disorders (25%), shortness of breath (20%), loss of taste or smell (14%), and brain fog (13%).

56. Long haulers typically display one or more of the following symptoms for six months or longer:

a. Persistent cough;

b. Continual shortness of breath;

c. Fatigue;

d. Myalgia (joint and muscle pain);

e. Headaches;

f. Autonomic disturbances;

g. Blood pressure and heart rate problems when standing;

h. Brain fog;

i. Numbness or tingling;

j. Ongoing dysgeusia (altered or loss of sense of taste); and

k. Ongoing anosmia (loss of sense of smell).

VII. TREATMENT OF COVID-19

57. There are no proven therapies for mild to moderate COVID-19. Accordingly, for patients with mild to moderate disease and who are not at high risk of deterioration, treatment is limited to the symptoms and supportive care, such as rest, hydration, and acetaminophen.

58. For mild to moderate disease, medications such as Interferon, inhaled corticosteroids, colchicine, and fluvoxamine are under investigation, but as of yet, there is inadequate, scientific evidence regarding their efficacy.

59. For patients with mild to moderate disease who are at high risk for deterioration, immediate treatment is recommended. These patients can be treated with a combination of monoclonal antibody therapy, such as bamlanivimab plus etesevimab or casirivimab plus imdevimab.

60. For hospitalized patients requiring oxygen but who are not on mechanical ventilation, remdesivir may be used, but evidence of efficacy is relatively weak and seems to be getting weaker despite being FDA-approved.

61. In hospitalized patients requiring oxygen, especially those on ventilators, dexamethasone, a corticosteroid, is recommended. That medication, unlike remdesiver, has considerable and continuing scientific support in the medical and public health literature.

62. Patients with rapid decline in respiratory status may benefit from the addition of tocilizumab, an immunomodulator drug.

VIII. EPIDEMIOLOGY OF COVID-19

63. Epidemiology is the branch of medicine and public heath that concerns the transmission, risk, and mitigation of diseases. *See supra* Part IV (discussing transmission).

A. Risk Reduction / Mitigation

64. The surfaces and air that have been physically altered by the presence of SARS-CoV-2 could pose less of a transmission risk to individuals if risk-reduction strategies are applied. These strategies are focused on mitigating the damage caused to these objects and environments by the presence of infectious virions. Mitigation includes cleaning of high-touch surfaces with

virucidal disinfectant and ensuring maximal ventilation.

65. Efforts made to reduce risks of exposure and infection are directed at reducing the number (density) of these virions. Disinfection is one of the most important measures and mainly consists of cleaning high-touch surfaces with virucidal disinfectants/cleaners and ensuring a high rate of air filtration.

66. These strategies are referred to as risk reduction measures, not risk elimination measures, because eliminating all SARS-CoV-2 virions through these methods is impossible. Nevertheless, it remains prudent to reduce these risks as much as is feasible.

67. Actions that reduce the risk of infection to an individual include:

a. Utilizing outdoor spaces rather than indoor spaces whenever possible;

b. Maintaining a distance of at least six feet between oneself and others;

c. Avoiding large gatherings, especially indoors;

d. Wearing a well-fitting face mask that covers the mouth and nose;

e. Minimizing touching the mouth, nose, face, and eyes, especially in public;

f. Avoiding individuals known or suspected to be infectious;

g. Regularly washing hands with soap and hot water;

h. Isolating from family and household if they are known or suspected to be infectious; and

i. Frequently disinfecting handled objects and surfaces.

B. Limitations on the Practicality and Effectiveness of Risk Reduction

68. Certain parameters of the SARS-CoV-2 virus, and the nature of the business employing these risk reduction strategies, can lessen the effective of these strategies. Accordingly, the effectiveness of these measures varies.

69. For example, aerosol spread will reduce the efficacy of regularly disinfecting certain surfaces.

a. In a shared air space with an infectious individual, infectious droplets may settle on and physically attach to a cleaned surface after being disinfected.

b. This threat persists for hours after the infectious person has vacated the area.

70. Asymptomatic spread of COVID-19 could not only undermine some of the above risk-reduction strategies but entirely subvert them. For example, if an asymptomatic employee is disinfecting surfaces, such as tables, chairs, and machines or other equipment, it is much more likely that this person is *increasing* the risk of infection to those around him or her through respiration and subsequent air contamination rather than decreasing these risks through disinfection.

71. Some of these risk reduction measures could also be impractical due to the nature of a business's activities. For example, it is impossible to eat, drink, or be treated by a dentist or hygienist while wearing a mask. Therefore, businesses that provide dining, drinks, or other services that require an uncovered mouth are especially likely to contribute to aerosol and droplet transmission.

* * *

72. Given the high transmissibility of the virus, its modes of transmission, the added risk of asymptomatic and pre-symptomatic carriers, and other factors, it is essential from a public health and epidemiological perspective for businesses to employ a combination of mitigation strategies to maximize risk reduction. Failure to employ such strategies based on scientifically sound industry and local government guidance would be, in the view of the overwhelming proportion of scientists, negligent at a minimum.

73. This negligence of a business in exposing its employees or patrons to undue risks associated with SARS-CoV-2 infection and the COVID-19 disease is a risk to public health. It could be a significant liability to any business choosing to operate a public space during the COVID-19 pandemic.

74. Businesses, especially complex venues, must be especially concerned with not hosting a super-spreader event.

IX. SUPER-SPREADER EVENTS CONTRIBUTE HEAVILY TO THE PANDEMIC

75. The COVID-19 epidemic is labeled a "pandemic" because the disease is very widely spread.

76. Major contributors to that spread are "super-spreader events."

77. These events have been well-documented and analyzed in the scientific literature since the first appearance of the COVID-19 disease.

78. These events occur in venues where large groups of people meet and risk mitigation strategies are not implemented or, perhaps, not practical.

79. A super-spreader event is an event during which the rate of transmission is disproportionately high compared to the background transmission rate.

80. No business can afford, from a public health perspective, to risk hosting a super-spreader event.

81. Super-spreader events require timing for both the index patient to be at peak infectivity and a large number of people to be in an environment that has been shared with the index patient.

82. Certain physical and environmental characteristics create a "super-spreader" event, including but not limited to:

a. Shared spaces in close proximity;

b. Activities for which pandemic mitigation strategies are ineffective;

c. Eating;

d. Drinking;

e. Yelling and/or cheering; and

f. Rapid interaction with fomite objects, such as plates, cups, and other high-touch objects.

X. IN MARCH 2020, PRIOR TO RISK MITIGATION STRATEGIES, BECAUSE OF THE VIRUS BEING PRESENT AND UNCHECKED ON PLAINTIFF'S PREMISES, THE MAGIC CITY CASINO HAD A HIGH LIKELIHOOD OF BEING A VENUE FOR COVID-19 SUPER-SPREADING.

83. The nature of Magic City Casino's business and other characteristics made it highly likely to have hosted super-spreader events because it was certain to have had SARS-CoV-2 inside is premises, both in the air and on surfaces, in March 2020 when the business shut down.

84. Every characteristic of a super-spreader event applies to Magic City Casino.

85. The venue has a high capacity for many patrons and staff to engage in multiple simultaneous activities in close proximity in an indoor space.

86. The particular activities are especially high-risk activities: card tables, slot machines, restaurant and buffet dining, bars, and jai alai in an indoor entertainment space, and a sports club to watch sports on large screens while eating and drinking.

87. Further heightening the risk is the capacity of the property and its activities. The gaming area alone is approximately 44,500 square feet, which holds 800 slot machines and 25 card tables. The indoor entertainment space for jai alai holds up to 600 people, half seated and half

standing. These are "high touch" activities, which create an enhanced risk of fomite transmission. People touch their face, eyes, nose, or mouth and then the machines and cards, which other people then touch.

88. Making matters worse, because food and drinks are served on the premises, patrons then eat and drink with their hands on silverware, plates, and cups with the same hands with which they touched the machines, cards, gambling chips, and cash.

89. Even worse, people watching live jai alai and televised sports games are cheering and yelling, which release droplets and aerosols into the air at high speeds and far distances.

90. The casino's patronage is another exacerbating factor. Prior to the pandemic, an average of 3,000 customers entered the Plaintiff's premises each day – in just the casino area alone. That excludes the poker table area, clubhouse, and special events. At any one time on Friday and Saturday nights, the property had up to 900 people. In addition to customers, approximately 440 were employed at the casino, excluding poker and jai alai.

91. The risk of transmission is amplified by the fact that these various types of entertainment have patrons gathering in multiple, different groups during their visit. Unlike a choir super-spreader event, in which members of a choir might be exposed to and become infected by a super-spreading choir member, an individual at peak infectivity at Magic City Casino poses an even higher risk. That infectious individual will expose others with whom he or she is gambling, another group with whom he or she is dining, and potentially another group with whom he or she is in the audience of an entertainment or sporting event like jai alai. The air and objects with which this person interacts while at the casino will all become vectors for transmission of infectious virions to other patrons at the venue, such as the playing cards, slot machines, gambling chips,

cash, chairs, door handles, and glasses that the bartender touches with hands that are then used to serve glasses to others.

92. Plaintiff's location further heightens the risk. As of May 14, 2021, at least 2.28 million COVID-19 cases and 35,929 COVID-19-related deaths were reported in Florida. These are the reported numbers, and the actual numbers are likely to be much higher.

93. Due to these conditions, Magic City Casino was likely to have become a continuously running host of super-spreader events.

94. Managing the safety and public health risks in such a complex environment presents unique challenges.

95. Moreover, given the Plaintiff's patronage, large staff, and capacity as well as the infection rate in Miami at the time, it is statistically certain that Magic City Casino had a constant flow of infected individuals spreading SARS-CoV-2 onto everything that they touched and into the air.

96. For Magic City Casino, a single employee or patron at peak infectivity represents a threat of transforming the casino into a venue for viral "super spreading." That was highly likely the case.

97. That was also highly likely to be the case after Magic City Casino reopened for business in the summer of 2020 after shutting down in March 2020. After June 1, 2020, eight employees tested positive for SARS-CoV-2 within fourteen days of working at the casino. As discussed above, an infected person can remain contagious up to twenty days.

XI. MAGIC CITY CASINO'S RISK REDUCTION MEASURES SINCE REOPENING WERE AND CONTINUE TO BE REASONABLE AND NECESSARY

98. The measures that Magic City Casino employed to reopen in the summer of 2020 (after being shut down since March 2020) were reasonable and necessary. Given the infection rate in Miami, the number of daily patrons, and the types of activities, it is highly likely that infected individuals entered the premises each day. Therefore, daily risk mitigation measures were necessary.

99. Magic City Casino employed measures across its venue to address the droplet, airborne, and fomite transmission modalities discussed above. Such measures include:

1. Upon reopening, operating only 460 of the 800 slot machines, which later increased to 560 machines in operation;

2. Since reopening, operating only 17 of the 25 card tables;

3. The buffet remains closed since the reopening;

4. Restaurant seating capacity has been reduced by 33%;

5. The jai alai space remained closed until May 2021 with a limited capacity of 250 patrons;

6. All employees have their temperature taken before accessing the premises;

7. Employees are separated in groups to avoid potential contamination of the entire workforce if additional positives occur;

8. No food or drink is allowed to be consumed on the casino floor;

9. Plexiglas panels have been installed at all interactive points between employees and customers;

10. Social distancing markers have been placed on the floor at all queuing areas;

11. All employees and all customers are required to wear masks at all times;

12. All patrons have their temperature taken before entering the facility;

13. Machines and all high touch areas are constantly sanitized;

14. Hand cleansing dispensers have been placed throughout the facility; and

15. Purchase of approximately 100,000 masks, 40,000 pairs of gloves, 250 gallons of sanitizer, a special sterilizing machine, and 3 thermal temperature scanners.

100. Each of those measures serves to reduce risk of infection to employees and patrons.

101. From a public health perspective, it would have been negligent for the casino to have reopened during the pandemic without a multifaceted, risk reduction strategy similar to the one that Magic City Casino employed.

Lawrence S. Mayer, MD, MS, PhD

18 May 2021

State of FLORIDA
County of Miami Dade

Sworn to (or affirmed) and subscribed before me by means of ☐ physical presence or ☑ online notarization, this 18 day of May, 2021 by Lawrence S. Mayer, who ☐ is personally known to me or ☒ produced a Driver license as identification, regarding the attached instrument described as: Affidavit of Dr. Lawrence S. Mayer, MD, MS, PhD
and to whose signature this notarization applies.

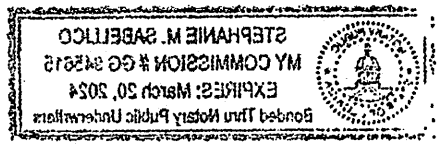
STEPHANIE M. SABELLICO
MY COMMISSION # GG 945615
EXPIRES: March 20, 2024
Bonded Thru Notary Public Underwriters

S. Sabellico
notary public signature

Stephanie M. Sabellico
notary public printed name

FL-2003-JUR

www.NotaryFL.com provides this form pursuant to Florida Statutes §117.05(13)(a)


STEPHANIE M. SABELLICO
MY COMMISSION # GG 94515
EXPIRES: March 20, 2024
Bonded Thru Notary Public Underwriters

APPENDIX A

Curriculum Vitae of Dr. Lawrence S. Mayer, MD, MS, PhD

LAWRENCE S. MAYER, MD, MS, PhD

Curriculum Vita

February 2021

Primary interests: Biostatistical methods, applications and interpretations used in public health, epidemiology, medicine and social policy. Development implementation and evaluation of statistical methods and models for assessing health effects of preventive interventions and environmental exposures including life-style variables. Analysis of statistical and epidemiological issues arising from applying evidence-based medicine in a clinical or policy environment. Analysis of the statistical issues arising from applying epidemiological models in the diagnosis, treatment, and prognosis of disease. Particularly interested in the intersections among medicine, public health, epidemiology and statistics. Analysis of clinical trials data in a public health or public policy context.

Current Positions:

Research Fellow in Human Flourishing, Harvard University, 2018-
https://www.iq.harvard.edu/people/lawrence-s-mayer (for identification only)

Independent Scholar and Consultant: Working and consulting on the application of epidemiology, clinical trials methods and biostatistical methods and models in policy and legal settings.

Director of the CovidNerds, the largest Facebook group of physicians, epidemiologists, bench researchers and public health researchers committed to reviewing and posting in real-time all scientific publications on the science and epidemiology of Covid 19. (5200 members, 2800 physicians with 1500 working in ICU's. ED's, or L&D). Pro Bono effort of 23 moderators including 13 physicians.
https://www.facebook.com/groups/COVIDnerds/

Address:

22772 Azure Sea
Laguna Niguel, CA 92677
949-291-7027

Last full-time Professional Addresses (prior to July, 2017):

Johns Hopkins Medicine
Department of Psychiatry
5300 Alpha Commons Drive
Baltimore, MD 21224-2764

Mayo Clinic
Samuel C. Johnson Research Building

13212 East Shea Boulevard
Scottsdale, AZ 85259

Arizona State University
Department of Economics
Tempe, AZ 85258

Education:

Undergraduate: Arizona State University (1963-64) and Ohio State University: Psychology (Pre-med), BS, 1967, Phi Beta Kappa, *magna cum laude* with distinction in psychology. President's award for outstanding graduate.

Professional: Ohio State University College of Medicine (pre-clinical), dual enrollment, 1966-68; Guy's Hospital Medical School, London, MB (British MD), 1971; Junior House Officer, Associated Medical Schools, British Virgin Islands 1971-1972, MD qualified to practice as a Public Health Physician (psychiatric epidemiologist), British Health Service, 1972

Graduate: Ohio State University, Mathematics, MS, 1969; Mathematics (Statistics and Biostatistics); PhD, 1971

Other: MA in Arts and Letters, *honoris causa,* University of Pennsylvania, 1981

Previous Appointments:

Scholar in Residence, Department of Psychiatry, Johns Hopkins School of Medicine, 2016-2017

Professor of Statistics, Biostatistics, and Economics, Arizona State University, 1995-2016

(Affiliate) Professor, Mayo Clinic/ASU Program in Biomedical Informatics, 2008-2016

Professor of Psychiatry and Public Health (Part-time), School of Medicine and Bloomberg School of Public Health, Johns Hopkins University, 1989-2016

Detective (Fully Sworn), Prosecutor's Office, Maricopa County, Arizona 1998-2016 (retired) and State Resource Officer (Fully Sworn), State of Arizona, 1983-1998

Professor of Epidemiology, College of Public Health, University of Arizona, 2000-2016

Research Staff Member, Mayo Clinic, 2014-2016

Consultant in Psychiatric Epidemiology, Banner Alzheimer's Institute, Phoenix, 2003-2016

Chief, Epidemiology and Biostatistics Section, Integrated Fellowship in Cardiology, Phoenix, 1998-2016

Faculty Member, Medical Education, Banner Good Samaritan Medical Center, Phoenix, 1993-2016

Visiting Professor, Division of Neuropsychiatry, Department of Psychiatry, Johns Hopkins Medicine, 2003-2004

Visiting Professor, Department of Biostatistics, Johns Hopkins School of Public Health, 1996-1997, 1989-1990

Director of Research, Maricopa Integrated Health System, 2003-2006

System Director, Research, Banner Health System; Director and Medical Director of the Banner Health Research Institute, Phoenix, 2001-2003

Director, Wharton Analysis Center, Wharton School; Associate Professor of Statistics, Public and Urban Policy, and Epidemiology, University of Pennsylvania, 1979-1983

Visiting Professor, Department of Statistics, Stanford University, 1982-1983

Research Statistician and Lecturer with Rank of Associate Professor, Department of Statistics; Member, Center for Energy and Environmental Studies; Associate Master and Fellow, Princeton Inn College; Instructor, Woodrow Wilson School of Public Affairs; Princeton University, 1974-1979

Assistant Professor of Statistics (with secondary appointments in Political Science, Sociology, and Education) Virginia Polytechnic Institute and State University, 1971-1974

Assistant Professor, Department of Political Science, The Ohio State University, 1971

Teaching Assistant, Department of Mathematics, The Ohio State University, 1967-1968

Visiting Scholar, Department of Statistics, Stanford University, Summer Semesters, 1984-1988

Instructor, Summer Programs, Inter-University Consortium for Political and Social Research, Institute for Social Research, University of Michigan, 1971-1980

Other Major Appointments:

Clinical Professor, College of Medicine, University of Arizona, 1997-2006

Chair, Division of Research, Medical Professionals of Arizona, Phoenix, 2003-2006

Director, Good Samaritan Research Institute, Phoenix, 1999-2001

Consultant in Biostatistics and Clinical Epidemiology, Good Samaritan Medical Center, Phoenix, 1993-2000

Thesis Advisor, Masters in Public Health, School of Public Health, University of Arizona, 1996-1998

Member, Committee on Statistics, Graduate College, Arizona State University, 1989-2004

Member, Program on Law and the Social Sciences, Arizona State University, 1983-2004

Member, Committee on Malpractice Reform, Arizona Supreme Court, 1989-1993

Erskine Fellow, Occupational Medicine, University of Canterbury, Christchurch, New Zealand, 1989-1990

Scholarly Publications:

Hruz, PW, McHugh, PR, and Mayer, LS (2017) Growing Pains: Problems with Puberty Suppression in Treating Gender Dysphoria, The New Atlantis, Spring;(51): 1-24

Mayer, LS, and McHugh, PR (2016) Sexuality and Gender: Findings from the Biological, Psychological, and Social Sciences, The New Atlantis, Fall;(50): 7-143 (the entire issue – an invited issue)

Samus QM, Onyike CU, Johnston D, Mayer L, McNabney M, Baker AS, Brandt J, Rabins PV, Lyketsos CG, Rosenblatt A (2013) 12-month incidence, prevalence, persistence, and treatment of mental disorders among individuals recently admitted to assisted living facilities in Maryland. Int Psychogeriatr. 2013 May;25(5):721-731

Kozubal DE, Samus QM, Bakare AA, Trecker CC, Wong HW, Guo H, Cheng J, Allen PX, Mayer LS, Jamison KR, Kaplin AI Separate may not be equal: a preliminary investigation of clinical correlates of electronic psychiatric record accessibility in academic medical centers. Int J Med Inform. 2013 Apr;82(4):260-7.

Bicket M, Samus Q, McNabney M, Onyike C, Mayer L, Brandt J, Rabins P, Lyketsos C, Rosenblatt A (2010) The Physical Environment Influences Neuropsychiatric Symptoms and Other Outcomes in Assisted Living Residents Int J Geriatr Psychiatry. Oct;25(10):1044-54.

Ramsey CM, Leoutsakos JM, Mayer LS, Eaton WW, Lee HB (2010) History of manic and hypomanic episodes and risk of incident cardiovascular disease: 11.5 year follow-up from the Baltimore Epidemiologic Catchment Area Study. J Affective Disord. Sep;125(1-3):35-41.

Samus QM, Rosenblatt A, Steele C, Baker A, Harper M, Brandt J, Mayer, LS, Rabins PV, and Lyketsos CG (2009) The Impact of Neuropsychiatric Symptoms and Environmental Characteristics on Quality of Life in Assisted Living Residents with Dementia. Journal of the American Geriatric Society (in press)

Samus QM, Mayer L, Onyike CU, Brandt J, Baker A, McNabney M, Rabins PV, Lyketsos CG, Rosenblatt A. (2009) Correlates Of Functional Dependence Among Recently Admitted Assisted Living Residents With And Without Dementia. J Am Med Dir Assoc. Jun;10(5):323-9.

Hayden KM, Zandi PP, West NA, Tschanz JT, Norton MC, Corcoran C, Breitner JC, Welsh-Bohmer KA; Cache County Study Group. Effects of family history and apolipoprotein E epsilon4 status on cognitive decline in the absence of Alzheimer dementia: the Cache County Study.Arch Neurol. 2009 Nov;66(11):1378-83.

Welsh-Bohmer KA, Ostbye T, Sanders L, Pieper CF, Hayden KM, Tschanz JT, ..., Mayer L, ... (2009) Neuropsychological performance in advanced age: influences of demographic factors and Apolipoprotein E: findings from the Cache County Memory Study. Clin Neuropsycho 2009 Jan;23(1):77-99. Epub 2008 Jun 10.

Samus QM, Mayer L, Baker A, McNabney M, Brandt J, Onyike CU, Rabins PV, Lyketsos CG, Rosenblatt A. (2008) Characteristics And Outcomes For Assisted Living Residents With Dementia: Comparing Dementia-Specific Care Units With Non-Dementia-Specific Care Units. Journal of the American Geriatric Society. July;56(7)1361-3

Rao V, Spiro J, Samus QM, Steele C, Baker A, Brandt J, Mayer L, Lyketsos CG, Rosenblatt A. (2008) Insomnia And Daytime Sleepiness In People With Dementia Residing In Assisted Living: Findings From The Maryland Assisted Living Study. Int J Geriatr Psychiatry. Feb(23)199-206

Rosenblatt A, Samus QM, Onyike CU, Baker AS, McNabney M, Mayer LS, Brandt J, Lyketsos CG. (2008) Acetylcholinesterase Inhibitors In Assisted Living: Patterns Of Use And Association With Retention. Int J Geriatr Psychiatry Feb;23(2):178-84.

Tighe SK, Leoutsakos JM, C Carlson M, Onyike CU, Samus Q, Baker A, Brandt J, Rabins PV, Mayer L, Rosenblatt A, Lyketsos CG. (2008) The Association Between Activity Participation And Time To Discharge In The Assisted Living Setting Int J Geriatr Psychiatry Jun:23(6):586-91

Steinberg M, Shao H, Zandi P, Lyketsos CG, Welsh-Bohmer KA, Norton MC, Breitner JC, Steffens DC, Tschanz JT...Mayer, L....(2008) Point and 5-year period prevalence of neuropsychiatric symptoms in dementia: the Cache County Study Int J Geriatr Psychiatry Feb;23(2):170-7.

Lyketsos CG, Samus QM, Baker A, McNabney M, Onyike CU, Mayer LS, Brandt J, Rabins P, Rosenblatt A. (2007) Effect Of Dementia And Treatment Of Dementia On Time To Discharge From Assisted Living Facilities: The Maryland Assisted Living Study. J Am Geriatr Soc;55(7):1031-7

Mayer LS, Bay RC, Politis A, Steinberg M, Steele C, Baker AS, Rabins PV, Lyketsos CG. Comparison Of Three Rating Scales As Outcome Measures For Treatment Trials Of Depression In Alzheimer Disease: Findings From DIADS (2006) Int J Geriatr Psychiatry. Oct;21(10):930-6

Maust DT, Onyike CU, Sheppard JM, Mayer LS, Samus QM, Brandt J, Rabins PV, Lyketsos CG, Rosenblatt A. (2006) Predictors Of Caregiver Unawareness And Nontreatment Of Dementia Among Residents Of Assisted Living Facilities: The Maryland Assisted Living Study. Am J Geriatr Psychiatry. 2006 Aug;14(8):668-75

Khachaturian AS, Zandi PP, Lyketsos CG, Hayden KM, Skoog I, Norton MC, Tschanz JT, Mayer LS, Welsh-Bohmer KA, Breitner JC. (2006) Antihypertensive Medication Use And Incident Alzheimer Disease: The Cache County Study. Arch Neurol. 2006 May;63(5):686-92

Mayer LS, Bay RC, Politis A, Steinberg M, Steele C, Baker AS, Rabins PV, Lyketsos CG. (2006) Comparison Of Three Rating Scales As Outcome Measures For Treatment Trials Of Depression In Alzheimer Disease: Findings From DIADS Int J Geriatr Psychiatry. 21(10):930-6

Watson, Lea C., Lehmann, Susan, Mayer, Lawrence, Samus, Quincy, Baker, Alva, Brandt, Jason, Steele, Cynthia, Rabins, Peter, Rosenblatt, Adam, Lyketsos, Constantine (2006) Depression in Assisted Living Is Common and Related to Physical Burden Am. J. Geriatr. Psychiatry.14: 876-883

Samus, Quincy M., Rosenblatt, Adam, Onyike, Chiadi, Steele, Cynthia, Baker, Alva, Harper, Michael, Brandt, Jason, Mayer, Lawrence, Rabins, Peter V., Lyketsos, Constantine G. (2006) Correlates of Caregiver-Rated Quality of Life in Assisted Living: The Maryland Assisted Living Study J Gerontol B Psychol Sci Soc Sci 2006 61: P311-314

Maust, Donovan T., Onyike, Chiadi U., Sheppard, Jeannie-Marie E., Mayer, Lawrence S., Samus, Quincy M., Brandt, Jason, Rabins, Peter V., Lyketsos, Constantine G., Rosenblatt, Adam (2006) Predictors of Caregiver Unawareness and Nontreatment of Dementia Among Residents of Assisted Living Facilities: The Maryland Assisted Living Study Am. J. Geriatr. Psychiatry.14: 668-675

Burdick DJ, Rosenblatt A, Samus QM, Steele C, Baker A, Harper M, Mayer L, Brandt J, Rabins P, Lyketsos CG. (2005) Predictors of functional impairment in residents of assisted-living facilities: the Maryland Assisted Living study. J Gerontol A Biol Sci Med Sci. Feb;60(2):258-64

Rao V, Spiro JR, Samus QM, Rosenblatt A, Steele C, Baker A, Harper M, Brandt J, Mayer L, Rabins PV, Lyketsos CG. (2005) Sleep disturbances in the elderly residing in assisted living: findings from the Maryland Assisted Living Study Int J Geriatr Psychiatry. 2005 Oct;20(10):956-66

Samus QM, Rosenblatt A, Steele C, Baker A, Harper M, Brandt J, Mayer L, Rabins PV, Lyketsos CG. (2005) The association of neuropsychiatric symptoms and environment with quality of life in assisted living residents with dementia Gerontologist. 45 Spec No 1(1):19-26

Politis, AM, Vozzella S, Mayer LS, Onyike CU, Baker A, and Lyketsos, CG (2004) A randomized, controlled, clinical trial of activity therapy for apathy in patients with dementia residing in long-term care, Intl Jour Geriatric Psychiatry, November, 2004, 19(11), 2069-2079

Khachaturian AS, Corcoran, CD, Mayer LS, Zandi PP, and Breitner JC (2004) Apolipoprotein E Epsilon4 Count Affects Age At Onset Of Alzheimer's Disease, But Not Lifetime Susceptibility: The Cache County Study (2004) Archives of General Psychiatry, May, 61(5), 518-24

Politis AM, Mayer LS, Passa M, Maillis A, and Lyketsos, CG (2004) Validity and Reliability of the Newly Translated Hellenic Neuropsychiatry Inventory (H-NPI) Applied to Greek Outpatients with Alzheimer's Disease: A study of Disturbing Behaviors Among Referrals to a Memory Clinic (2004) Int Jour Geriatric Psychiatry (2004) March, 2004, 19(3), 203-8

Zandi, P. Carlson, C., Plassman, B., Welsh-Bolmer, K., Mayer, L., Steffens, D., and Breitner, J. (2002) Hormone Replacement Therapy and the Incidence of Alzheimer Disease in Older Women: The Cache County Study, Journal of the American Medical Association, 288 (17), November, 2123-2129

Zandi, P., Anthony, J. Hayden, K. Mehta, D., Mayer, L., and Breitner, J. (2002) Reduced Incidence Of AD With NSAIDS But Not H2 Receptor Antagonists, Neurology, 59:880-886

Miech, R., Breitner, J.C.S., Zandi, P.P., Khachaturian, A.S., Anthony, J. and Mayer, L. (2002) Incidence of AD May Decline in the Early 90's for Men, Later for Women: The Cache County Study, Neurology, 58 (2), 209-218

Merrill, R., Merrill, A., and Mayer, L. (2000) "Factors Associated with No Surgery or Radiation Therapy for Invasive Cervical Cancer in Black and White Women", Ethnicity and Disease, 10(2), 248-256

Rebok, G., Hawkins, W., Kellam, S., and Mayer, L. (1997) The Role of Concentration Problems on the Course of Aggressive and Shy Behavior in an Epidemiologically-Based Preventive Trials, Child Development, 23, 465-486

Rebok, G. W., Hawkins, W. E., Krener, P., Mayer, L.S., and Kellam, S.G. (1996) "The Effect of Concentration Problems on the Malleability of Children's Aggressive and Shy Behavior, Journal of the American Academy of Child and Adolescent Psychiatry, 35, 193-203

Kellam, S., Mayer, L., Rebok, G. and Hawkins, W. (1996) "The Effects of Improving Achievement on Aggressive Behavior and of Improving Aggressive Behavior on Achievement Through Two Preventive Interventions: An Investigation of Causal Paths", in Dohrenwend (ed.) Adversity, Stress and Psychopathology , American Psychiatric Press, American Psychiatric Association, [a refereed journal published as a monograph series]

Kellam, S., Rebok G., Mayer, L., Ialongo, N. and Kalodner, C. (1994) "Depressive Symptoms Over First Grade and Their Response to a Developmental Epidemiologically Based Preventive Trial Aimed at Improving Achievement" , Development and Psychopathology, 6, 463-481

Kellam, S.G., Rebok, G.W., Wilson, R. and Mayer, L.S.(1994) "The Social Field of the Classroom: Context for the Developmental Epidemiological Study of Aggressive Behavior", in Adolescence in Context: The Interplay of Family, School, Peers, and Work in Adjustment, Silbereisen, R. K. and Todt, E. (eds), New York: Springer-Verlag, 390-408

Kellam, S., Rebok G., Ialongo, N., and Mayer, L. (1994) "The Course and Malleability of Aggressive Behavior from Early First Grade Into Middle School: Results of a Developmental Epidemiological Based Preventive Trial", The Journal of Child Psychology and Psychiatry, 35(2), 259-281

Mayer, L. S. (1994) "On Cross-Lagged Panel Studies with Serially Correlated Errors," Frontiers in Econometrics, G. Maddala (ed), Springer-Verlag, 336-345

Dolan, L. J., Kellam, S. G., Brown, C. H., Werthamer-Larson, L., Rebok, G. W., Mayer, L. S., Laudolff, J. and Turkkan, J. S.(1993) "The Short-term Impact of Two Classroom-based Preventive Interventions on Aggressive and Shy Behaviors and Poor Achievement", Journal of Applied Developmental Psychology, 14, 317-345

Kellam, S. G., Werthamer-Larson, L., Dolan, L. J., Brown, C. H., Mayer, L. S., Rebok, G. R., Anthony, J. C., Laudolff, J. and Edelsohn, G.(1991) "Developmental Epidemiologically Based Preventive Trials: Baseline Modelling of Early Target Behaviors and Depressive Symptoms", American Journal of Community Psychology, 19, 563-584

Rebok, G.R., Kellam, S. G., Dolan, L. J., Werthamer-Larsson, L., Edwards, E. J., and Mayer, L. S., and Brown, G.H. (1991) "Preventing Early Risk Behavior: Process Issues and Problem Areas in Prevention Research", The Community Psychologist, 24, 18-21

Mayer, L.S. and Carroll, S.S. (1991) "Modeling the Contemporaneous Relationship in a Continuous Variable Panel Model", Communications in Statistics, 17, 463-477

Mayer, L.S. and Carroll, S.S. (1988) "Measures of Dependence for Cross-Lagged Panel Models," Sociological Methods and Research, 17(1) August, 248-260

Mayer, L.S. and Carroll, S.S. (1987) "Testing for Homogeneity in Cross-Lagged Panel Studies, Communications in Statistics, 16(9), 2487-2510

Mayer, L.S. and Carroll, S.S. (1987) "Testing for Lagged, Cotemporal, and Total Dependence in Cross-Lagged Panel Analysis, Sociological Methods and Research, 16(2), 187-217

Mayer, L.S. (1986) "Statistical Inferences for Cross-Lagged Panel Models Without the Assumption of Normal Errors," Social Science Research, 15, 28-42

Mayer, L.S. and Carroll, S.S. (1986) "Detecting Serial Correlation in the Error Structure of a Cross-Lagged Panel Model," Communications in Statistics, 15, 347-366

Carroll, S.S. and Mayer, L.S. (1986) "Analysis of the Cross-Effects in a Cross-Lagged Panel Study," Communication in Statistics, 15, 3361-3395

Mayer, L.S. (1986) "On Cross-Lagged Panel Studies with Serially Correlated Errors," Journal of Business and Economic Statistics, 4, 347-357

Mayer, L.S. (1981). "A Comment on 'Estimating Volumes of Remaining Fossil Fuel Resources'," Journal of the American Statistical Association, 76, 551-554

Mayer, L.S. and Horowitz, C.E. (1979). "The Effect of Price on the Residential Demand for Electricity: A Statistical Study," Energy, 4, 87-99

Mayer, L.S. (1978). "Estimating the Effects of the Onset of the Energy Crisis on Residential Energy Demand," Resource and Energy, 1, 57-92

Mayer, L.S. and Benjamin, Y. (1978). "Modeling Residential Demand for Natural Gas as a Function of the Coldness of the Month," Energy and Buildings, 1, 301-312

Mayer, L.S., Hoyer, R.W., and Bernd, J.L. (1977). "Some Problems in the Validation of Mathematical and Stochastic Models of Political Phenomena: The Case of the Supreme Court," American Journal of Political Science, 21, 381-403

Mayer, L.S. and Younger, M.S. (1976). "Estimation of Standardized Regression Coefficients," Journal of the American Statistical Association, 71, 154-157

Mayer, L.S. and Robinson, J.A. (1977). "Measures of Association for Multiple Regression Models with Ordinal Predictor Variables," Sociological Methodology, 1978, Jossey-Bass, 141-162

Jensen, D.R. and Mayer, L.S. (1977). "Some Variational Results and Their Applications to Problems in Multiple Inference," Annals of Statistics, 5, 922-931

Horowitz, C.E. and Mayer, L.S. (1977). "The Relationship Between the Price and Demand for Natural Gas: A Partially Controlled Study," Energy Research, 1, 193-222

Hoyer, R.W. and Mayer, L.S. (1976). "On Electoral Equilibria in a Spatial Analysis Based on the Theory of Games," Journal of Politics, 38, 116-171

Hoyer, R.W. and Mayer, L.S. (1975). "On Social Preference Orderings Under Majority Rule," Econometrica, 43, 803-806

Mayer, L.S., and Good, I.J. (1975). "Is Minimax Regret Applicable to Voting Decisions? American Political Science Review, 69, 916-917

Good, I.J. and Mayer, L.S. (1975). "Estimating the Efficacy of a Vote," Behavioral Science, 20, January, 25-33

Mayer, L.S. and Younger, M.S. (1975). "Multiple Indicators and the Relationship Between Abstract Variables," Sociological Methodology, 1975, 191-211

Jensen, D.R. and Mayer, L.S. (1975). "Normal-Theory Approximations to Tests for Linear Hypotheses," Annals of Statistics, 3, 429-444

Jensen, D.R., Mayer, L.S. and Myers, R.H. (1975). "Optimal Designs and Large-Sample Tests for Linear Hypotheses," Biometrika, 62, 71-78

Hoyer, R.W. and Mayer, L.S. (1974). "Comparing Strategies in a Spatial Model of Electoral Competition," American Journal of Political Science, 18, 501-523

Bush, W. and Mayer, L.S. (1974). "Some Implications of Anarchy for the Distribution of Property," Journal of Economic Theory, 4, 401-411

Mayer, L.S., Singh, J. and Willke, T.A. (1974). "Utilizing Initial Estimates in Estimating the Coefficients in a Linear Model," Journal of the American Statistical Association, 69, 219-222

Mayer, L.S. and Younger, M.S. (1974). "Procedures for Estimating Standardized Regression Coefficients from Sample Data," Sociological Methods and Research, 1, 431-453

Mayer, L.S. and Good, I.J. (1974). "On Ordinal Prediction Problems," Social Forces, 52 (4), 543-549

Mayer, L.S. (1974). "On the Use of Non-Random Exogenous Variables in Path Analysis," American Sociological Review, 39, 891-893

Klemmack, D.L., Leggette, T.A. and Mayer, L.S. (1973). "Non-Random Exogenous Variables in Path Analysis," American Sociological Review, 38 (December), 778-784

Mayer, L.S. and Hendrickson, A. (1973). "A Method for Constructing an Optimal Regression Design After an Initial Set of Input Values Has Been Selected," Communications in Statistics, 2(5), 465-477

Mayer, L.S. and Willke, T.A. (1973). "On Biased Estimation in Linear Models," Technometrics, 15, 497-508

Mayer, L.S. (1973). "Estimating a Correlation Coefficient When One Variable is Not Directly Observed," Journal of the American Statistical Association, 68, 420-421

Burgess, P.M. and Mayer, L.S. (1973). "Simulation and Society, A Review Essay," Journal of Regional Science, 12, 303-311

Good, I.J. and Mayer, L.S. (1973). "On Surfaces of Constant Societal Loss in a Model of Social Choice," Journal of Mathematical Sociology, 2, 209-219

Mayer, L.S. (1972). "Using Monotone Regression to Estimate a Correlation Coefficient," Sociological Methodology, (Herbert Costner, ed.), Jossey-Bass: San Francisco, 200-212

Mayer, L.S. (1972). "An Analysis of Measures of Crosscutting and Fragmentation," Comparative Politics, 4, 405-415

Mayer, L.S. (1971). "Comment on 'The Assignment of Numbers to Rank Order Categories'," American Sociological Review, 35, 916-917

Mayer, L.S. (1971). "A Note on Treating Ordinal Data as Interval Data," American Sociological Review, 36, 519-520

Mayer, L.S. (1971). "A Note on An Axiomatic Model of Voting Bodies," American Political Science Review, 65, 764-65

Mayer. L.S. (1971). "A Method of Cluster Analysis When There Exists Multiple Indicators of a Theoretic Concept," Biometrics, 27, 143-155

Mayer, L.S. (1971). "A Comment on 'A Theorem on Voting'," American Political Science Review, 65, 779-780

Research Monographs:

Energy Consumption Measurement: Data Needs for Public Policy, (1977) Committee on Measurement of Energy Consumption, Washington: National Academy of Science

Mayer, L.S. (1976). An Analysis of Alternative Voter Registration Systems, Modules in Applied Mathematics, Washington: Mathematical Association of America

Chapters in Research Monographs:

Mayer, L. S. (1994) "On Cross-Lagged Panel Studies with Serially Correlated Errors," Frontiers in Econometrics, G. Maddala (ed), 154-165

Mayer, L.S. (1980). "The Effects of Price on Energy Demand: Econometrics Versus Exploratory Data Analysis," in Evaluation of Econometric Models (J. Kmenta and J. Ramsey, eds.), Academic Press, 15-45
Mayer, L.S. and Benjamin, Y. (1980). "Modelling Residential Demand for Natural Gas as a Function of the Coldness of the Month," in Saving Energy in the Home, (R. Socolow, ed.) New York: Ballinger

Bush, W. and Mayer, L.S. (1976). "On the Economics of Human Fertility," in Essays on Unorthodox Economic Strategies: Anarchy, Politics and Population, (A.T. Denzau and R.J. Mackay, eds.), University Publications, 163-181

Mayer, L.S. (1974). "Optimal Voting Behavior in a Two-Party Primary", in Applications of Mathematics in Political Science, Vol. VIII, (J. Herndon and J. Bernd, eds.), Charlottesville: University of Virginia Press, 4-14

Published Book Reviews:

On the Verge: The Legal Fight of Travellers in England for their Rights (many authors), Romani Studies, 2001, 144-146

Firms and Markets (C. Tucker and R. Fuller, eds.), Perspective, Winter, 1988, 41

Social Science and Social Policy (R. Shotland and M. Mark, eds.), Perspective, April, 1986, 60

Principles of Epidemiology (Kleinbaum, Kupper and Morgenstern) Journal of the American Statistical Association, July/August 1984, 108

U.S. Interests and Global Natural Resources (Castle and Price, eds.), Perspective, September, 1984, 725-726

Proximity and Preference: Problems in the Multidimensional Analysis of Large Data Sets (R. Golledge and J. Raynor, eds.), Journal of the American Statistical Association, September, 1983, 78, 734

Statistical Applications in the Spatial Sciences (N. Wrigley, ed.), Journal of the American Statistical Association, June, 1983, 78, 509-510

Power, Voting, and Voting Power (Manfred J. Holler, ed.), Perspective, February, 1983

Exploratory Data Analysis (J. Tukey), Evaluation and Program Planning , 1981, 4, 195-196

On the Social Use of Information (A. Wissel), Perspective, June, 1977, Vol. 6, No. 5

Simulation Model Building: A Statistical Approach to Modeling in the Social Sciences With The Simulation Method (U. Norlen), Perspective, March 1977, Vol. 6, No. 2

Research Methods in the Social Sciences (D. Nachimas and C. Nachimas), Perspective, November 1976, Vol. 5, No. 9

Registering Voters by Mail: The Maryland and New Jersey Experience (R. Smolka), Perspective, October 1975, Vol. 4, No. 8

Other Professional Activities:

Guest Lecture, Statistics and Epidemiology in Court, University of Maryland Law School, March, 2012

Editorial Board Member, Journal of Cardiology Research, 2003-

Member, Development Board, Copper Ridge Institute, Sykesville, MD, 1998-2000

Member, Expert Panel, Sexually Transmitted Disease and Teens, W. T. Grant Foundation, 2000-2001

Advisor, Sexually Transmitted Diseases & the Internet, American Social Health Association, 2000-2001

Invited Member, Panel on Mental Health Problems of Asylum Seekers, University of Greenwich, July 2000

Invited participant, Expert Panel on Mortality Associated with Alternative Fuels, Department of Energy, Carmel, May, 2000

Chief, Epidemiology and Biostatistics Branch, Phoenix Integrated Residency in Cardiology, 1999-

Clinical Professor, Prevention Center, College of Medicine, University of Arizona, 1999-

Member, Faculty of the Psychiatry Residency Program, Good Samaritan, 1998 –

Member of the Board of Directors, Palms Clinic, Phoenix, 1998-

Invited Participant, US Environmental Protection Agency Expert Panel on Cryptosporidium, October, 1998

Member, Evaluation Panel, Graduate Programs, University of Greenwich, London, August, 1998

Expert Witness, Appropriations Hearing on NIH Budget, US Senate, October, 1997-

Member, Expert Review Committee on Grant Applications and Awards, Health Care and Promotion Fund, Hong Kong, 1996-1998

Member, Clinical Committee, Health Services Advisory Group, Arizona, [the arm of the Medicare system that advises Medicare on reimbursements], 1994-1996

Alternate Member, Institutional Review Board, Samaritan Health Systems 1994-2001

Invited Attendee, Workshop on Psychosocial Research, American Psychiatric Association, Massachusetts General Hospital, Boston, October, 1996

Invited Attendee, Risk Estimation Conference, Environmental Protection Agency, Durham, North Carolina, September, 1996

Invited Attendee, Society for Prevention Research, Annual Conference, Puerto Rico, May, 1996

Proposal Evaluation Site Visit, Raptor Research Center, Boise State University, March 1996

Workshop Attendee, The Epidemiology of Avian Mortality, California Energy Commission, Sacramento, California, January, 1996

Invited Attendee, Prevention Science and Methodology Conference, Baltimore, MD, October, 1995

Invited Attendee, Avian Windpower Planning Meeting, Palm Springs, September, 1995

Invited Attendee, US Department of Energy Course on Risk Assessment, Boulder, July 1995

Invited Attendee, Mini-conference on Measuring Health Outcomes, Phoenix, March 1995

Invited Attendee, Private Conference on Wind Energy Research, California Energy Commission, Grand Island, California, December, 1994

Invited Participant, Workshop on Prevention Methodology, University of South Florida, Baltimore, December, 1994

Invited Participant, National Conference on Prevention Research, Washington, DC, December, 1994

Invited Consultant, California Energy Commission, Flagstaff, Arizona, November, 1994

Invited Participant, Workshop on the Science of Prevention, NIMH, Baltimore, December, 1994

Invited Participant, Meeting on Renewable Energy, California Energy Commission, Flagstaff, Arizona, November, 1994

Invited Participant, Workshop on Prevention Methodology, Oregon Social Learning Center, Eugene Oregon, August, 1994

Invited Technical Advisor, National Planning Meeting on Wind Power and Avian Mortality, Lakewood, CO, July, 1994

Invited Participant, Workshop on Biostatistical Methods in Preventive Mental Health Research, College of Public Health, University of South Florida, Tampa, March, 1994

Invited Participant, Biomedical Effects of Renewable Energy, Invited Conference, US Department of Energy, Washington, DC February, 1994

Member, Special Study Section, National Institute of Health, 1993-

Invited Participant, Avian Mortality Taskforce Meeting, October, Pleasonton, CA, December, 1993

Invited Participant, Conference on Avian Mortality and Wind Energy, Pacific Gas and Electric, Livermore, CA, October, 1993

Invited Participant, Prevention Center Directors Meeting, National Institute of Mental Health, Tysons Corner, September, 1993

Invited Participant, National Conference on Prevention Research, McLean, Virginia, April, 1993.

Invited Participant, Prevention Center Directors Meeting, National Institute of Mental Health, Rockville, September, 1992

Invited Participant, Prevention Center Directors Meeting, National Institute of Mental Health, Rockville, September, 1991

Invited Participant, Conference on the Future of Prevention Research, National Institute of Mental Health, Washington, DC, July, 1991

Invited Participant, Workshop on Development of Delinquency, National Academy of Science, Woods Hole Study Center, July, 1991

Invited Participant, Workshop on Preventive Research, National Institute of Mental Health, October, 1990

Invited Lecturer, Exploratory Data Analysis, The Bootstrap and Panel Models in Occupational Medicine, lecture series, College of Business Administration, University of Canterbury, Christchurch, New Zealand, September - October, 1989

Invited Host, Mini-conference on The Epidemiology of Bladder Cancer, August, 1988, Lenox, Massachusetts

Expert Witness, Department of Public Health, Commonwealth of Massachusetts, July, 1988

Expert Witness, Department of Labor and Industry, Commonwealth of Massachusetts, July, 1988

Invited Participant, Workshop in Multidimensional Analysis, Information Theory and Asymptotic Methods, Stanford University, July 1983

Assisted in Preparation and Coordination, Conference on Science and Technology in the Soviet Union, Stanford University, July, 1983

Session Organizer, International Conference on Energy Use Management, Berlin, October, 1981

Member, Committee on Industrial Use of Solar Energy, Solar Energy Research Institute, Golden, Colorado, 1979-1981

Press Conference on Wharton's Support to Litigation Project Award, April, 1981, Philadelphia

Invited Participant, Workshop on Model Validation, Department of Economics, New York University, April, 1980.

Expert Witness, Hearings on Energy Tax Exemptions, Energy Committee, Pennsylvania State Assembly, April, 1980

Lecturer, Workshop in Environmental Policy, Florida Atlantic University, March, 1980

Interviewed on Feasibility of Philadelphia's Refinery Tax Proposal, WUSL Radio, Philadelphia, November, 1980

Member, Committee on Health Manpower Training, Department of Health, New Jersey, 1976-79.

Interviewed on Model Validation, WPEN Radio, Philadelphia, November, 1979.

Interviewed on Value of Energy Forecasts, Philadelphia Inquirer, October, 1979.

Invited Panelist, Panel on Energy Models in Energy Policy-making, Program in Science Technology and Public Policy, George Washington University, Washington, D.C., October, 1979

Organizer, Workshop on Resource Estimation, Department of Energy Statistical Symposium, Gatlinburg, Tennessee, October, 1979

Session Chairperson, Special Topics Meetings on Regression, Institute of Mathematical Statistics, October, 1979

Invited Participant, Workshop on the Measurement and Interpretation of Model Confidence, National Bureau of Standards, U.S. Department of Commerce, Washington, D.C., October, 1979

Invited Participant, Workshop on Measuring Model Confidence, National Bureau of Standards, Gaithersburg, MD, October 1979

Expert Witness, Hearings on State Health Benefits, Ohio State Assembly, February, 1979

Member, Committee on Model Evaluation, General Accounting Office, United States Congress, 1977-1978.

Participant, Workshop on Assessment of Energy Models, Massachusetts Institute of Technology, October, 1978.

Organizer, Session on Multivariate Statistics, Annual Meeting, Institute of Mathematical Statistics, August, 1978

Lecturer, Program on Environmental Management, Florida Atlantic University, April, 1978

Expert Witness, Hearings on Local Energy Policies, Subcommittee on Energy and Power, Committee on Interstate and Foreign Commerce, U.S. House of Representatives, May, 1978

Invited Panelist, Policy Workshop on Energy Policy, Swarthmore College, March, 1978

Chairperson, Committee on Membership, Institute of Mathematical Statistics, 1974-78

Invited Participant, Workshop on Energy Information, Stanford University, December 1977

Invited Participant, Conference on Criteria for Evaluation of Econometric Models, University of Michigan, June 1977

Expert Witness, Hearings on Health Impacts of Energy Conservation, Commerce Committee, US House Representatives, April, 1977

Conference Chair, Conference on the Analysis of Large Data Sets, Institute of Mathematical Statistics and American Statistical Association, Dallas, February 1977

Panelist, Seminars on Models and Energy Policy, Program in Public Policy, George Washington University, February, 1977

Invited Participant, Workshop on Stochastic Models of Social Structure Carnegie-Mellon University, MSSB Workshop, Pittsburgh, December, 1977

Interviewed on Energy Policy, West Virginia Public Television Network, October, 1976

Member, Committee on Measurement of Energy Consumption, National Academy of Sciences, 1975-76

Interviewed on Energy Policy, West Virginia Public Television Network, October, 1976

Participant, Workshop on Model Building, Mathematical Association of America, Cornell University, August, 1976

Organizer and Chair, Session on Voting Models, Annual Meeting of the Public Choice Society, Roanoke, VA, April, 1976

Instructor, Short Course on Advances in Data Analysis, Princeton University, April, 1976

Member, Organizing Committee, Annual Convention, Institute of Mathematical Statistics, 1975-76

Member, Site Review Committee, University of Texas, San Antonio, National Science Foundation, 1975

Participant, Workshop on Validation of Econometric Models, National Science Foundation, Vail, Colorado, June, 1975

Participant, Workshop on Decentralization Theory, National Science Foundation, Princeton University, March, 1975

Member of the Council, Polymetrics Section, International Studies Association, 1973-75

Member, Committee on Education of Gifted Children, Department of Education, Virginia, 1973-74

Member, Committee on Health Training, State Council of Higher Education, Virginia, 1973-74

Instructor, Workshop on Survey Research, University of Cologne, Cologne, West Germany, 1973

Lecturer, Institute on Model Building, National Science Foundation, Blacksburg, Virginia, August, 1973

Clinical Assistant [Clinical Rotations], Associated Medical Schools, British Virgin Islands, 1969-1970

Summer Fellow, College of Medicine, University of Michigan, Summer, 1970

Major Consulting Appointments (Other than Public and Non-profit):

Play an active advisory role to several CEO's, corporate medical directors, courts, boards, and non-profits on specific health issues, which are confidential, private, proprietary or privileged. I would be glad to discuss these activities in an executive session. They are not appropriate for open documentation.

Major Consulting Appointments (Public and Non-profit):

Consultant in Research Compliance, Maricopa Integrated Medical System, 2002-2003

Consultant, California Energy Commission, 1994-2002

Consultant, National Renewable Energy Laboratory, 1992-1996

Consultant, Department of Mental Hygiene, Johns Hopkins Medical Institutions, June-August, 1990 -1993

Consultant, Program on Delinquency, Child and Maternal Health, Harvard School of Public Health, 1991.

Consultant, Committee on the Courts, Arizona Supreme Court, 1988-1989.

Consultant, Bonneville Power Authority, 1986-1988.

Consultant, Special Counsel, Department of Energy, 1979-82.

Consultant, National Governors Association, 1979-81

Consultant, Environmental Monitoring Project, Environmental Protection Agency, 1979

Consultant, Energy Office, State of New York, 1976-78

Consultant, Department of Health, City of New York, 1976-78

Consultant, Center for the Study of Emergency Health Services, University of Pennsylvania, 1977

Consultant, Chancellor, The University of Missouri, 1976

Consultant, National Commission on Water Quality, 1974-76

Consultant, Trout Unlimited, 1976

Consultant, Policy Analysis Division, Department of Housing and Urban Development, 1974

Consultant, Department of Political Science, Ohio State University, 1974

Consultant, Committee on State Employee Benefits, Assembly of the State of Ohio, 1973

Consultant, Department of Preventive Medicine, Ohio State University, 1972-73

Editorial Service:

Abstract Review Board, Annual Meeting, Society for General Internal Medicine, 1995

Member, Editorial Board, Sociological Methodology, Publication of the American Sociological Association, 1979-1983

Associate Editor, Series on Social Methodology, Sage Publications, 1974-81

Member, Editorial Board, Journal of Politics, 1974-81

Associate Editor, Journal of the American Statistical Association, 1977-79

Abstracter, Executive Sciences Incorporated, 1974-79

Abstracter, Mathematical Reviews, 1974-76

Proposal reviewer for a variety of public agencies. In 1991-93 reviewed proposals for NIH, NIMH, NSF, DOE, EPA and others

Manuscript reviewer for several publishers including John Wiley and Sons and Wadsworth

Honors and Awards:

Listed in the International Who's Who in Medicine, 1997-

Listed in Who's Who in Medicine, 1994-

Honorary Member, Phi Beta Phi, Honorary Society, inducted 1991

Distinguished Research Professor, Arizona State University, 1987-88

Fellow, Royal Statistical Society, elected November, 1984.

Listed in Who's Who in the West, 1983-

Listed in Who's Who in Medical Research, 1982-

Listed in Personalities in America, 1981-

Listed in Distinguished Educators, 1982-

Member, Phi Beta Kappa, inducted 1967

Member, Alpha Iota Delta (Decision Science Honorary Society), elected 1986

Distinguished Alumni Award, Ohio State University, 1971

Awardee, Graduate Scholarship, National Science Foundation, 1967

Recipient, President's Scholarship Award, Ohio State University, 1968

Recipient, President's Scholarship Award, Ohio State University, 1967

Research Grants and Contracts:

Co-Principal Investigator, Alzheimer's Disease and Anti-Inflammatory Prevention: Is Elevated Serum Cholesterol Predictive of Developing AD?, D. Larry Sparks, PI, Institute for the Study of Aging, funded, March 2001, 360,000

Biostatistical Problems in Research Methodology, Samaritan Health Services, Principal Investigator: L.S. Mayer, 1996-2003, approximate award 450,000

Statistical Problems in Developing Intermediate Outcome Models of the Role of Apolipoprotein E in Alzheimer's Disease, Office of Research, Arizona State University, 1994-95, approximate award 20,000.

Biostatistical Problems in Research Methodology, Samaritan Health Services, Principal Investigator: L.S. Mayer, 1995-96, approximate award 26,000

Co-Principal Investigator, Prevention Research Training Grant, awarded by the Prevention Branch, National Institute of Mental Health, to the Prevention Center, Department of Mental Hygiene, Johns Hopkins School of Hygiene and Public Health. Principal Investigator: S. G. Kellam, 1994-1999, approximate award 500,000

Co-Principal Investigator, Epidemiological Prevention Center for Early Risk Behavior, awarded by the Prevention Branch, National Institute of Mental Health, to the Prevention Center, Department of Mental Hygiene, Johns Hopkins School of Hygiene and Public Health. Principal Investigator: S. G. Kellam, 1990-1995, approximate award, 5,000,000

Biostatistical Problems in Research Methodology, Samaritan Health Services, Principal Investigator: L.S. Mayer, 1994-95, approximate award 26,000

Biostatistical Problems in Research Methodology, Samaritan Health Services, Principal Investigator: L.S. Mayer, 1993-94, approximate award 25,000

Wharton Support to Litigation Project, awarded by the Office of the Special Counsel, Department of Energy to the Wharton Analysis Center, Wharton School, University of Pennsylvania. Principal Investigator: L.S. Mayer, 1981-83, approximate award: 2,200,000

Wharton Energy Allocation Project, awarded by the Department of Energy to the Wharton Analysis Center, Wharton School, University of Pennsylvania, Principal Investigator: L.S. Mayer, 1981-83, approximate award: 100,000

Wharton Energy Data Analysis Project, awarded by Oak Ridge National Laboratory to the Wharton Analysis Center, Wharton School, University of Pennsylvania, Principal Investigator: L.S. Mayer, 1980-81, approximate award: 450,000

Wharton Petroleum Data Analysis Project, awarded by CEXEC, Inc. to the Wharton Analysis Center, Wharton School, University of Pennsylvania, Principal Investigator: L.S. Mayer, 1980-81, approximate award: 100,000

Wharton Model Evaluation Project, awarded by the Energy Information Administration, Department of Energy to the Wharton Analysis Center, Wharton School, University of Pennsylvania, Principal Investigator: L.S. Mayer, 1979-81, approximate award: 900,000

Wharton Energy Assessment Project, awarded by Oak Ridge National Laboratory to the Wharton Analysis Center, Wharton School, University of Pennsylvania, Principal Investigator: L.S. Mayer, 1980-81, approximate award: 100,000

Princeton Resource Estimation and Validation Project, awarded by the Energy Information Administration, Department of Energy, to the Departments of Statistics and Geology, Princeton University, Principal Investigators: K. Deffeyes, G. Watson, and L. Mayer, 1978-79, approximate award: 450,000

Analysis of Residential Energy Demand, awarded by the Office of Conservation, Department of Energy to the Center for Energy and Environmental Studies, Princeton University, Principal Investigators: R. Socolow, D. Harrje, L. Mayer and F. Sinden, 1977-78, approximate award: 300,000

Analysis of Statistical Issues Arising from Energy Studies, awarded by the National Science Foundation to the Center for Energy and Environmental Studies, Princeton University, Principal Investigator: L.S. Mayer, 1977-78, approximate award: 50,000

Analysis of Residential Energy Demand, awarded by the Energy Research and Development Administration to the Center for Energy and Environmental Studies, Princeton University, Principal Investigators: R. Socolow, D. Harrje and L. Mayer, 1976-77, approximate award: 300,000

Assessing the Value of Econometric Energy Models, awarded by the Department of Commerce to the Center for Energy and Environmental Studies, Princeton University, Principal Investigator: L.S. Mayer, 1976-77, approximate award: 25,000

Energy Husbandry in Residential Housing, awarded by the National Science Foundation to the Center for Environmental Studies, Princeton University, Principal Investigators: R. Socolow, D. Harrje and L. Mayer, 1975-76, approximate award: 300,000

On Comparing Factor Matrices, awarded by the National Institute of Mental Health to the Department of Statistics, Princeton University, Principal Investigator: L.S. Mayer, 1974 - 1975, approximate award: 15,000

Measuring the Relationship Between Abstract Variables, awarded by the National Institute of Mental Health to the Department of Statistics, Virginia Polytechnic Institute and State University, Principal Investigator: L.S. Mayer, 1972-74, approximate award: 15,000

Component Analysis of Variance, awarded by the National Institute of Mental Health to the Behavioral Sciences Laboratory, Ohio State University and the Department of Statistics, Virginia Polytechnic Institute and State University, Principal Investigator: L.S. Mayer, 1971-72, approximate award: 15,000

Papers Presented at Professional Meetings:

Depression in Assisted Living is Common and Related To Physical Burden, Gerontology Society Annual Meeting, Washington DC, November 2004

"Methodological Issues In Modeling The Incidence Of Alzheimer's Disease As A Function Of Age", World Congress of Epidemiology, Toronto, June, 2001

"Biostatistical Problems in Forecasting the Prevalence of Alzheimer's Disease" World Psychiatric Congress, Baltimore, March, 2001

"Using Latent Growth Models and Exploratory Methods to Assess the Relationship Between Responses in a Bivariate Prevention Model (with M. Reiser) Society for Prevention Research, Annual Meeting, Washington DC, May 1997

"Standard Metrics and Methods for Conducting Avian Wind Energy Interaction Studies (with R. Anderson) American Wind Energy Association Conference, Austin Texas, June, 1997

"A Randomized Clinical Trial of a Group Empowerment Program for Somatizing Patients: Six Months Follow-up Results", (with J. C. Peirce, A. Miller and J. Westley), invited lecture, Society for General Internal Medicine, Washington, DC, May 1997

"Measuring Effectiveness: Lessons from Heparinizing Patients with Deep Vein Thrombosis and Pulmonary Embolism" (with J. C. Peirce and R. A. Raschke), invited lecture, Society for General Internal Medicine, Washington, DC, May 1997

"Latent Growth Models of the Impact of Intervention on a Bivariate Longitudinal Response", invited lecture, Society for Research on Child Development, Washington, DC, March, 1997

"Developmental Epidemiology and its Implications for Prevention Research" invited lecture (with Sheppard Kellam), Life History Society Annual Meeting, London, December, 1996

"Standard Methods for Conducting Avian Mortality Studies", with R. L. Anderson, European Wind Energy Conference, Rome, October, 1996

"Using Multilevel Models to Tease Out Variability in Individual Behavior", invited lecture, Association for Clinical Psychosocial Research, American Psychiatric Association, Boston, October, 1996

"Statistical Issues Arising from Application of the Proximal-Distal Model in Prevention Research, Society for Prevention Research, San Juan, Puerto Rico, June, 1996.

"Recent Advances in Prevention Methodology: Multilevel Models", invited lecture, Prevention Methodology Conference, Tempe, Arizona, May 1996

"Advances in the Methods of Prevention Research", invited lecture, National Forum on Prevention, McLean, VA, May, 1996

"Multilevel Models in Prevention Science", invited presentation, Prevention Science Methodology Group meeting, College of Public Health, University of South Florida, Tampa, March, 1996

"Prevented Fractions and Attributable Risk in Proximal Distal Prevention Models", invited lecture, College of Public Health, University of South Florida, Tampa, February, 1996

"Prevented Fractions and Attributable Risks in Preventive Trials", invited paper, Prevention Science and Methodology Conference, Baltimore, MD, October, 1995

"The Use of Epidemiological Measures to Estimate the Effects of Adverse Factors and Preventive Interventions", Workshop on Avian Mortality, Palm Springs, September, 1995

"The Use of Epidemiological Measures to Estimate the Effects of Adverse Factors and Preventive Interventions", invited presentation, Workshop on Avian Mortality and Avian Windpower Planning Meeting, Department of Energy, Palm Springs, September, 1995

"Methodological Advances in Prevention Research", with S. Kellam and J. Anthony, invited symposium, Prevention Research Society, Scottsdale Arizona, June 1995

"Multilevel Modeling and the Development of Aggressive Behavior", invited paper, World Psychiatric Association, New York, May, 1995

"Attributable Risk and Preventive Fractions in Prevention Research", invited lecture, Workshop on the Science of Prevention, NIMH, Baltimore, December, 1994

"Reduction of Aggressive Behavior Among First Graders and Its Consequences for Later Antisocial Behavior and Drug Use", with S. Kellam, H. Chilcoat, J. Anthony, G. Rebok, and N. Ialongo, invited lecture, Society for Prevention Research, Washington, June, 1994

"The Impact of Failure on Boys and Girls: Preventive Intervention Studies on Achievement and Depression" with S. Kellam, G. Rebok, and N. Ialongo, Society for Life History, Durham, November, 1993

"The Course and Malleability of Aggressive Behavior", with S. Kellam, G. Rebok, and N. Ialongo, invited lecture, American Society of Criminology, Annual Meeting, Phoenix, October, 1993

"Mediated Effects in Structural Equation Models", invited paper, American Statistical Association Annual Meeting, August, 1992

"The Course and Malleability of Aggressive Behavior in Young Children", invited presentation, with S. Kellam, et. al., National Academy of Science Institute of Medicine, Committee on Prevention of Mental Disorders, June, 1992

"Developmental Epidemiology and the course of Aggressive Behavior", Life Course Development Society, Philadelphia, April, 1992

"Modeling the Cotemporal Effects in a Cross-Lagged Panel Model", ASA Annual Meeting, New Orleans, August, 1988

"Estimating Multivariate Continuous Variable Panel Models", ASA Annual Meeting, San Francisco, August, 1987

"Inferences in Cross-Lagged Panel Models," invited paper, AIDS Convention, Phoenix, March, 1986

"Recent Advances in Cross-Lagged Panel Analysis," invited lecture, Southwest Social Science Convention, San Antonio, March, 1986

Hypothesis Testing with Continuous Variable Panel Data," Annual Meeting, Biometrics Society (WNAR), San Luis Obispo, June, 1985

"Multivariate Cross-Lagged Panel Models: Does IQ Cause Achievement?" invited lecture, Regional Meeting, Institute of Mathematical Statistics, Humboldt State University, Arcata, CA, June, 1983

"Analysis of the U.S. Short-Term Integrated (Energy) Forecasting System," invited lecture, International Energy Conference, Berlin, October 1981

"Assessing Energy Models: A Policy Process Approach," invited lecture, Workshop on Energy Model Validation, National Bureau of Standards, January 1979

"Energy Use and Potential for Conservation," (with David Harrje et al.), invited lecture, International Conference on Energy Use Management, Tucson, October 1977

"Large Data Sets and the Meta-Theorems of Exploratory Data Analysis," invited lecture, American Statistical Association, Special Topic Meeting, Dallas, 1977

"The Internalization of Cosmopolitan-Local Orientations Among College Students," (with W. Snizek), invited lecture, Southern Sociological Association, Washington, D.C., April 1975

"Equivalent Estimation and a Special Group Structure," (with T. Woteki), invited lecture, Regional Meeting, Institute of Mathematical Statistics, Minneapolis, March 1975

"The Use and Abuses of Probability in Voting Theory Models," invited lecture, Annual Meeting, Public Choice Society, New Haven, April 1974

"Some Problems with the Theory of Coalitions as Applied to the Judiciary," invited paper, Annual Meeting, American Political Science Association Convention, Chicago, August 1974

"On Principal Components and Clusters," invited lecture, Annual Meeting, International Classification Society, Atlanta, Georgia, April, 1973

"On Biased Estimation in Linear Models," invited lecture, Annual Meeting, American Statistical Association, New York, December, 1973

"Invariant Estimation with Applications to Linear Models," (with M.S. Younger), Institute of Mathematical Statistics, Blacksburg, Virginia, Academy of Science, May, 1972

"On Biased Estimation in Linear Models," invited lecture, Virginia Academy of Science, Lexington, Virginia, May, 1972

"Methods of Cluster Analysis Which Utilize Principle Components," invited lecture, International Classification Society Convention, Chicago, Illinois, April 1972

"A Method of Cluster Analysis," invited lecture, Annual Meeting, Biometrics Society, Fort Collins, Colorado, August, 1971

"Measures of Association," invited lecture, International Studies Association, San Juan, Puerto Rico, March, 1971

"Utilizing Initial Estimates in Estimating the Coefficients in a General Linear Model," Annual Meeting, Institute of Mathematical Statistics, Laramie, Wyoming, August 1970

Speeches, Presentations, Lectures and Colloquia:

"Validating Biomarkers in Psychiatry", Department of Psychiatry, University of Athens, Athens, Greece, October, 2006

"Fitting Failure Models to the Incidence of Alzheimer's Disease: Methodological Problems", invited lecture, Johns Hopkins School of Public Health, Noon conference series on Mental Heath, January, 2001

"Psychiatric Epidemiology", Residency Program in Psychiatry, Samaritan Health System, September, 2000

"Critical Appraisal in Internal Medicine", invited speaker, Good Samaritan Internal Medicine Program. April, 2000

"Psychiatric Epidemiology", Residency Program in Psychiatry, Samaritan Health System, September, 1999

"Tradeoffs Between Latent Growth Models and Epidemiological Models of Preventive Interventions, invited colloquium, Department of Mental Hygiene, Johns Hopkins School of Hygiene and Public Health, October, 1998

"Psychiatric Epidemiology", Residency Program in Psychiatry, Samaritan Health System, September, 1998

"Advances in Psychiatric Epidemiology", Clinical Epidemiology Section, Royal Medical Society (Edinburgh), August, 1998

"Latent Growth Models and Attributable Risks", luncheon speaker, Fellowship in Drug Epidemiology, Johns Hopkins University, April 1998

"Attributable Risk Measure in Mediational Impact Models: Somatizing Behavior", invited colloquium, Department of Mental Hygiene, Johns Hopkins School of Hygiene and Public Health, March, 1998

"Statistical Issues in Using Attributable Risk Measures in Intermediate Outcome Models", Department of Statistics, The University of Lancaster, Lancaster, England, June, 1997

"Statistical Problems that Arise in Applying Intermediate outcome Models in Prevention Research", invited lecture, Department of Statistics, Virginia Polytechnic Institute and State University, Blacksburg, Virginia, May, 1997

"The Epidemiology of Thyroid Disease", invited lecture, Grand Rounds in Endocrinology, Samaritan Health Services, April, 1997

"Attributable Risk and Preventive Fractions in Prevention Research", invited lecture, Workshop on the Science of Prevention, NIMH, Baltimore, December, 1994

"Advances in Prevention Methodology", invited lecture, Prevention Research Center, Johns Hopkins University, September, 1994

"Multi-level Modeling in Prevention Research", invited colloquium, Prevention Research Center, Arizona State University, April, 1994

"Multi-level Modeling of Health Data; The Effects of Intervention on Aggressive Behavior", invited lecture, Program in Developmental Biology, University of North Carolina, April, 1994

"Mediation in Intermediate Variable Models", Department of Epidemiology and Biostatistics, College of Public Health, University of South Florida, March, 1994

"Assessing the Impact of Interventions on Proximal and Distal Outcomes" NIMH Prevention Research Center Directors Meeting, October 1993 with Reiser, M. and Warsi, G

"Epidemiology and Social Methodology: Complementarity in Prevention Research", invited presentation, with S. Kellam, et. al., NIMH Prevention Research Conference, Tysons Corners, VA, April, 1993

"Statistical Issues in Prevention Research", invited lecture, Directors' Meeting, Prevention Research Center Directors Meeting, National Institute of Mental Health, Rockville, Maryland, October, 1992

"The Course and Malleability of Aggressive Behavior in Young Children", invited presentation, with S. Kellam, et. al., National Academy of Science Institute of Medicine, Committee on Prevention of Mental Disorders, June, 1992

"Causal Models in Prevention Research: Mediation Moderation and Confounding", invited seminar, Carl A. Taube Memorial Colloquium Series in Psychiatry and Mental Health, Johns Hopkins University, May, 1992

"Breast Implants, Risk Surveillance and Health Statistics", invited lecture, MBA Special Colloquium Series, Arizona State University, March, 1992

"Proximal/Distal Effects on Two Developmental Epidemiologically-Based Preventive Interventions", invited seminar, Colloquium Series in Mental Health, Johns Hopkins School of Hygiene and Public Health, February, 1992

"Analyzing Subgroups and Contextual Effects" [with Sheppard Kellam], invited presentation, Directors' Meeting, Prevention Research Center Directors Meeting, National Institute of Mental Health, Rockville, Maryland, September, 1991

"Proximal/Distal Effects on Two Developmental Epidemiologically-Based Preventive Interventions" [with Sheppard Kellam, et. al.], invited seminar, Carl A. Taube Memorial Colloquium Series in Mental Health, Johns Hopkins School of Hygiene and Public Health, September 1991

"The Epidemiology of Preventive Care in the Workplace", invited lecture, Phoenix Chapter, Association of Corporate Fitness Directors, Phoenix, May 1991.

"Statistics, Medicine and the Law", Invited Lecture, East Mesa Doctors Club, November 1990

"Statistical Models in the Analysis of Panel Data", invited lecture, Department of Biostatistics, Johns Hopkins School of Hygiene and Public Health, April, 1990

"Applications of Statistics to Occupational Health Problems", invited lecture, Department of Statistics, MacQuarie University, Australia, October, 1989

"Panel Models and Policy Analysis", invited lecture, Lincoln College, Christchurch, New Zealand, September 1989

"Panel Analysis and Occupational Health Analysis", invited lecture, University of Otago, New Zealand", September 1989

"Current Trends in Data Analysis, invited lecture, MBA colloquium, University of Canterbury, Christchurch, New Zealand, September 1989

"Managing the Health of Workers and the Health of the Firm", invited banquet speech, Conference on Analysis of Occupational Health Risks, Phoenix, August 1987

"Panel Models, Covariance Structures and the Exclusion of Liberals from 'Death-Sentence' Juries", invited colloquium, Department of Statistics, Stanford University, August, 1986

"A Statistician Looks at Panel Analysis or a Perfidious Peek at Pundits and Pookas," invited lecture, Arizona Chapter, American Statistical Association, March, 1984.

"A Statistician Looks at Panel Analysis", invited lecture, College of Business, University of Tennessee, June, 1983

"The Use of Panel Models in Non-experimental Research", invited lecture, College of Medicine, University of California, San Francisco, June, 1983

"Competing Approaches to Analysis of Panel Data", invited lecture, Econometrics Seminar, Stanford University, May 1983

"Science Analysis in Politics and the Politics of Science Analysis", invited lecture, Butler University, Indianapolis, March, 1983

"Statistical Problems in Panel Models", invited lecture, College of Education, Stanford University, March, 1983

"A Statistician Looks at Panel Analysis or a Perfidious Peek at Pundits and Pookas", invited lecture, Department of Computer and Information Sciences, University of California, Santa Cruz, February, 1983

"A Statistician Looks at Panel Analysis or a Perfidious Peek at Pundits and Pookas", invited lecture, Department of Computer and Information Sciences, University of Santa Clara, February, 1983

"Statistical Problems in Panel Analysis", invited lecture, Department of Mathematics, University of California, Santa Barbara, February, 1983

"A Statistician Looks at Panel Analysis", invited lecture, Department of Statistics, University of Arizona, February, 1983

"A Crossed Lagged Penal Analysis of Cross-Lagged Panel Analysis", invited colloquium, Department of Statistics, Stanford University, January, 1983

"Some Exciting Problems in Energy Modeling", invited lecture, Department of Mathematics, Arizona State University, August, 1982

"Statistical Problems in Short-term Energy Forecasting", invited lecture, Energy Information Administration, Washington, D.C., February, 1982

"Problems in Forecasting Energy Supplies", Decision Sciences Seminar, Wharton School, September, 1981

"Energy Policy: Myth and Reality", invited lecture, Philadelphia Business Seminar, April, 1981

"Energy Management: Building Image and Minimizing Liabilities", invited lecture, Wharton Executive Development Seminar, April, 1981

"Evaluating Energy Models", invited lecture, Delaware Chapter, American Statistical Association, University of Delaware, May, 1980

"Evaluating Models of Resource Depletion", invited lecture, Department of Economics, New York University, April, 1980.

"Exploratory Methods and the Art of Data Analysis", Dinner speech, Philadelphia Chapter, American Statistical Association, October, 1979

"Models of Domestic Oil Resources: Science Products and Political Agents", invited lecture, Thayer School of Engineering, Dartmouth College, March, 1979

"Models of Sequential Voting", invited lecture, Department of Political Science, Dartmouth College, March, 1979

"Estimating Oil Reserves: The Methods, Models and Policy Issues", invited lecture, School of Public and Urban Policy, University of Pennsylvania, December, 1978

"Estimating the Domestic Crude Oil Resource Base: Examining the King's Approach", invited lecture, Department of Statistics, University of Pennsylvania, November, 1978

"Picking a Multivariate Test Function, The Eenie-Meany Principle", invited lecture, Montreal Joint Statistics Colloquium, Montreal, November, 1977

"Econometric Energy Models: The Emperor's Quantitative Suit", invited lecture, Department of Commerce, October, 1977

"Exploratory Data Analysis as an Alternative to the Econometric Analysis of Social Problems," invited lecture, Department of Psychology, College of William and Mary, April, 1977

"Analyzing Energy Policy: The Competing Roles of the Economist, Engineer and Mathematician", invited lecture, Department of Mathematics, University of South Carolina, April, 1977

"Analyzing Political Data: What Can Statistics Tell Us?," invited lecture, School of International Studies, University of Denver, May, 1976

"Schur-Convexity and the Equivalence of Multivariate Tests", invited seminar, Department of Statistics, Rutgers University, October, 1975

"On Communal Indifference Curves," (with I.J. Good), invited seminar, Mathematical Economics Seminar, Virginia Polytechnic Institute and State University, October, 1975

"The Statistical Analysis of Energy Problems: Who Should We Believe?", invited lecture, Office of Energy Analysis, Department of Commerce, October, 1975

"Energy Research and Residential Housing", invited lecture, The Federal Energy Administration, September, 1975

"Consumer Reaction to the Energy Crisis: The Long Underwear Effect", invited address, West Virginia University, February, 1975

"Mathematical Models and other Forms of Hocus-Pocus", invited lecture, Department of Political Science, West Virginia University, February, 1975

"Factor Analysis: The Short Bed Problem", invited lecture, Department of Statistics and Operations Research, University of Pennsylvania, March, 1975

"LSD and Political Science: Distinguishing Uppers and Downers", invited address, Western New England College, November, 1974

"Probability, Statistics and the Theory of Democracy", invited lecture, Department of Statistics, University of Connecticut, October, 1974

"Statistical Policy Analysis: Assessing the Unobservable", invited lecture, Department of Statistics, Princeton University, January, 1974

"On Procedures for Comparing Factor Matrices", invited lecture, Department of Statistics, University of Connecticut, January, 1974.

"A Mathematician's Doubts About Econometric Solutions to Political Problems", invited lecture, Department of Political Science, Ohio State University, May, 1973

"Estimating the Relationship Between Unobserved Variables, or Can We Sell the Second Canonical Correlation to the Social Scientists?", invited lecture, Department of Statistics, Ohio State University, May, 1973

"Generalized Spatial Models of Voting Theory", invited lecture, Center for Public Choice, Virginia Polytechnic Institute and State University, February, 1973

"Estimating the Relationship Between Ordinal Variables", invited lecture, Department of Statistics, Harvard University, 1973.

"Some Statistical Problems in Spatial Models", invited colloquium, Department of Statistics, Carnegie-Mellon University, Pittsburgh, October, 1972.

"Sex, the Generation Gap, and Fermat's Last Theorem", invited speech, Tidewater Council of Teachers of Mathematics, Norfolk, Virginia, September, 1972

"Mathematics: Is it Irrelevant by Necessity or Design?", invited lecture, Department of Mathematics, Emory and Henry College, Emory, Virginia, April, 1972

"Is There Reason for a Mathematician to help a Social Scientist?", invited to deliver annual Phi Mu Epsilon Lecture, Blacksburg, Virginia, 1972

"Probability Without Calculus and Statistics Without Mathematics", invited lecture, Virginia Mathematics Teachers Annual Convention, Roanoke, Virginia, November, 1972

"If Educators Educate Educators, Who Educates the Educated?", banquet address, State Mathematics Teachers Convention, Norfolk, Virginia, 1971

"Two-Stage Estimation in linear Models", invited lecture, Department of Statistics, Pennsylvania State University, January, 1971

"Problems in Cluster Analysis", invited lecture, Department of Applied Statistics, University of Minnesota, January 1971

Papers in Proceedings:

Mayer, L. S. and Reiser M.(1992) "Mediation and Confounding in Panel Models of Prevention Research" Proceedings of the Social Statistics Section, American Statistical Association

Mayer, L. S. and Carroll, S. S.(1988) "Modeling the Cotemporal Effect in a Cross-Lagged Panel Model," Proceedings of the Business and Economics Section, American Statistical Association

Carroll, S. S. and Mayer, L. S. (1987) "Testing for Serial Correlation in Cross-Lagged Panel Studies," Proceedings of the Business and Economics Section, American Statistical Association

Carroll, S. S. and Mayer, L. S. (1986) "Evaluation of the Cross Effects Parameters in a Cross-Lagged Panel Model," Proceedings of the Business and Economic Section, American Statistical Association

Mayer, L. S. (1985) "Hypothesis Testing in Cross-Lagged Panel Models," Proceedings of the Social Statistics Section, American Statistical Association

Mayer, L. S. and Carroll, S. S. (1985) "Testing for Serial Correlation in Cross-Lagged Panel Studies," Proceedings of the Business and Economics Section, American Statistical Association

Mayer, L.S. et. al. (1982). "Analysis of the U.S. Short-Term Integrated (Energy) Forecasting System," Proceedings of the International Conference on Energy Use Management, New York: Pergamon Press, 971-982

Harrje, D. and Mayer, L.S. (1978). "Energy Use and the Potential for Conservation," Proceedings of the International Conference on Energy Use Management,, Volume II, R. Fazzolare and C. Smith (eds.), New York: Pergamon Press, 749- 771

Mayer, L.S. (1978). "The Use of Semi-Controlled Experiments in the Analysis of Residential Energy Demand," Proceedings of the 1978 Department of Energy Symposium, Washington: Government Printing Office

Mayer, L.S. (1978). "The Value of the Econometric Approach to Forecasting Our Energy Future," Proceedings of the International Conference on Energy Use Management,, Volume III, R. Fazzolare and C. Smith (eds.), New York: Pergamon Press, 1073-1082

Mayer, L.S. (1978). "Difficulty in Developing Local Energy Policy," expert testimony, Hearings on Local Energy Policy, Washington: U.S. Congress

Mayer, L.S. (1977). "Exploratory Data Analysis and Classical Statistics: Their Abilities to Shed Light on Energy Issues," Proceedings of the 1977 Department of Energy Symposium, 27-32, Washington: Government Printing Office

Published Abstracts:

"Equivariant Estimation and A Special Group Structure", (with T. Woteki), Bulletin of the Institute of Mathematical Statistics, 1975

"A Fortran Program for Linear Log Odds Analysis", (with P.J. Pichotta), Behavior Research Methods and Instrumentation, 1974, 6, p. 521

"Invariant Estimation in the Social Sciences", (with M. S. Younger), Bulletin of the Institute of Mathematical Statistics, 1973

"On Principal Components and Clusters", Bulletin of the International Classification Society, 1973

"Methods of Cluster Analysis Which Utilize Principal Components", Bulletin of the International Classification Society, 1972

"Utilizing Initial Estimates in Estimating the Coefficients in General Linear Model", Annals of Mathematical Statistics, October 1970

Society Membership:

Society for Epidemiological Research, Society for Environmental Epidemiology, Royal Statistical Society, Society for Medical Decision Making, American Statistical Association, Biometrics Society, Institute for Mathematical Statistics, Psychometric Society, Econometric Society, American Association for the Advancement of Science, American Political Science Association, American Sociological Association, and Council for Applied for Social Research.

Courses Taught at Arizona State University and Banner University Medical Center

Epidemiology, Epidemiological Methodology, Clinical Epidemiology, Panel Analysis, Biostatistics, Multiple Regression, Time Series Modeling, Applied Forecasting Methods, Stochastic Processes, Exploratory Data Analysis, Seminar in Multivariate Analysis, Advanced Topics in Statistical Inference, Advanced Topics in Linear Models, Advanced Research Methods.

Courses taught at other Universities:

Undergraduate:

Biostatistics, Data Analysis, Nonparametric Methods, Regression Analysis, Mathematical Statistics, Mathematical Modeling, Design of Experiments, Statistics for the Social Sciences, Educational Statistics, Statistics and Public Policy, Computers and Society, Forecasting.

Graduate:

Biostatistics, Clinical Epidemiology, Statistical Forecasting, Exploratory Data Analysis, Epidemiological Methods, Econometrics, Applied Multivariate Statistics, Advanced Multivariate Statistics, Stochastic Processes, Advanced Probability, Linear Models, Advanced Inference, Time Series, Sampling Theory, Quantitative Methods of Policy Analysis, Philosophy of Science, Advances in Social Methodology.

Professional:

Statistics and Public Policy (Woodrow Wilson School, Princeton University); Advanced Study in Energy Analysis (Wharton MBA Program, University of Pennsylvania); Advanced Study in Statistics and Law (Law School, University of Pennsylvania): Medical Statistics (College of Medicine, Ohio State University)

Notable University Committees:

Member, Graduate Committee on Ph.D. program in Health Services Administration and Policy, Arizona State University (ASU) 1991-1992

Member, Executive Board, Program on Law and the Social Sciences, ASU, 1983-1989

Faculty Senate (elected), ASU, 1987-89

University Services Committee, ASU, 1988-89

Council on Research and Creative Activities, ASU, 1986-1988

Sunset Review Committee, Meteorite Center, ASU, 1987

Sunset Review Committee, Energy Research Center, ASU, 1987

Chair, Sunset Review Committee, Center for Advanced Research in Transportation, ASU, 1987

Women Studies Research Awards Committee, ASU, 1984-1989

Board, Ph.D. Program in Justice Studies, ASU, 1987-1989

Biomedical Research Committee, ASU< 1986-1988

Notable Previous University Committee Assignments:

Member, Health Professions Advisory Board, University of Pennsylvania, 1980-83

Member, Environmental Task Force Committee, Office of the Provost, University of Pennsylvania, 1979-82

Member, Committee on Undergraduate Student Life, Princeton University, 1976

Member, Council of Masters, Princeton University, 1976-79

Fellow, Princeton Inn College, Princeton University, 1975-76

Member, Chair Search Committee, Department of Statistics, Virginia Polytechnic Institute and State University, 1972-74

APPENDIX B

List of Materials Relied on

1. Alsved, M., Matamis, A., Bohlin, R., Richter, M., Bengtsson, P.-E., Fraenkel, C.-J., Medstrand, P. and Löndahl, J. *Exhaled respiratory particles during singing and talking* Aerosol Science and Technology, Vol. 54(11), at 1-5 (2020).

2. Fears, Alyssa C. et al., *Persistence of Severe Acute Respiratory Syndrome Coronavirus2 in Aerosol Suspensions*, CTRS. DISEASE CONTROL & PREVENTION (Sept. 9, 2020), https://wwwnc.cdc.gov/eid/article/26/9/20-1806_article

3. Bae, S., Kim, H., Jung, T.-Y., Lim, J.-A., Jo, D.-H., Kang, G.-S., Jeong, S.-H., Choi, D.-K., Kim, H.-J., Cheon, Y. H., Chun, M.-k., Kim, M., Choi, S., Chun, C., Shin, S. H., Kim, H. K., Park, Y. J., Park, O. and Kwon, H.-J. E*pidemiological Characteristics of COVID-19 Outbreak at Fitness Centers in Cheonan, Korea* Journal of Korean Medical Science, Vol. 35(31), at e288 (2020).

4. Baig, A. M., *Chronic COVID syndrome: Need for an appropriate medical terminology for long-COVID and COVID long-haulers* Journal of Medical Virology, Vol. 93(5), at 2555-56 (2021).

5. Center for Disease Control and Prevention, *Human Coronavirus Types*, COVID-19, https://www.cdc.gov/coronavirus/types.html (as retrieved Apr. 21, 2021).

6. Center for Disease Control and Prevention, *Post-COVID Conditions*, COVID-19, https://www.cdc.gov/coronavirus/2019-ncov/long-term-effects.html (as retrieved Apr. 21, 2021).

7. Center for Disease Control and Prevention, *Science Brief: Sars-covid-2 and Potential Airborne Transmission*, COVID-19, https://www.cdc.gov/coronavirus/2019-ncov/science/science-briefs/scientific-brief-Sars-covid-2.html (as retrieved Apr. 21, 2021).

8. Center for Disease Control and Prevention, *Symptoms of COVID-19*, COVID-19://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html (as retrieved Apr. 21, 2021).

9. *COVID-19 Coronavirus Pandemic* (last updated May 12, 2021 at 20:41 GMT), WORLDOMETER, https://www.worldometers.info/coronavirus/#countries (last visited May 12, 2021 4:45 PM).

10. Center for Disease Control and Prevention, *COVID-19 Pandemic Planning Scenarios*, COVID-19 (as retrieved May. 14, 2021), https://www.cdc.gov/coronavirus/2019-ncov/hcp/planning-scenarios.html#table-1

11. *Dr. Robert R. Redfield Statement on SARS-CoV-2 infections*, Center for Disease Control (July 22, 2020), https://www.cdc.gov/media/releases/2020/s0722-SARS-CoV-2-infections.html.

12. Goyal, A., Reeves, D. B., Cardozo-Ojeda, E. F., Schiffer, J. T. and Mayer, B. T. *Wrong person, place and time: viral load and contact network structure predict Sars-covid-2 transmission and super-spreading events* medRxiv (2020).

13. Graham, E. L., Clark, J. R., Orban, Z. S., Lim, P. H., Szymanski, A. L., Taylor, C., DiBiase, R. M., Jia, D. T., Balabanov, R., Ho, S. U., Batra, A., Liotta, E. M., and Koralnik, I. J. *Persistent neurologic symptoms and cognitive dysfunction in non-hospitalized COVID-19 "long haulers,"* Annals of Clinical and Translational Neurology (2021).

14. Harvard Medical School Coronavirus Resource Center, *Preventing the spread of the coronavirus*, Harvard Medical School (Harvard Health Pub.) (as retrieved Apr. 21, 2021). https://www.health.harvard.edu/diseases-and-conditions/preventing-the-spread-of-the-coronavirus.

15. Johns Hopkins University of Medicine Coronavirus Resource Center. *Mortality Analyses.* Johns Hopkins University of Medicine. (as retrieved May 14, 2021).

16. Lai, C.-C., Shih, T.-P., Ko, W.-C., Tang, H.-J. and Hsueh, P.-R., *Severe acute respiratory syndrome coronavirus 2 (Sars-covid-2) and coronavirus disease-2019 (COVID-19): The epidemic and the challenges*, International Journal of Antimicrobial Agents, Vol. 55(3) (2020).

17. Petersen, E., Koopmans, M., Go, U., Hamer, D. H., Petrosillo, N., Castelli, F., Storgaard, M., Khalili, S. A., and Simonsen, L. *Comparing Sars-covid-2 with SARS-CoV and influenza pandemics*, The Lancet Infectious Diseases, Vol. 20(9), at e238-e244 (2020).

18. Rauf, A., Abu-Izneid, T., Olatunde, A., Khalil, A. A., Alhumaydhi, F. A., Tufail, T., Shariati, M. A., Rebezov, M., Almarhoon, Z. M., Mabkhot, Y. N., Alsayari, A., and Rengasamy, K. R. R. *COVID-19 Pandemic: Epidemiology, Etiology, Conventional and Non-Conventional Therapies*, International Journal of Environmental Research and Public Health, Vol. 17(21), at 8155 (2020).

19. Sender, R., Bar-On, Y. M., Flamholz, A., Gleizer, S., Bernsthein, B., Phillips, R. and Milo, R., *The total number and mass of Sars-covid-2 virions in an infected person*, medRxiv (2020).

20. *Tracking Coronavirus in Florida: Latest Map and Case Count*, THE NEW YORK TIMES (last updated May 12, 2021), https://www.nytimes.com/interactive/2021/us/florida-covid-cases.html (last visited May 12, 2021 4:47 PM).

Exhibit 1

XL Insurance

CLAIM REPORTING INSTRUCTIONS

New claims can be reported by phone, fax, mail or email, 24 hours a day, seven days a week, 365 days a year.

Please include, if available, the name, address and phone number for all relevant parties, the date and time of loss, the location of the loss, a description of the loss, and any damage information.

If reporting by phone, please be sure to indicate if the claim involves a fatality, serious bodily injury, pollution spill, or requires immediate response.

Phone: **1-800-823-7351** (Toll-Free)

Fax: **1-866-262-9002** (Toll-Free)
1-678-819-7388 (Toll)

Email: napropcasclaimnewnotices@axaxl.com (New Claims Notices)

Email: napropcasclaims@axaxl.com (All Other Claims Correspondence)

USPS Mail: **AXA XL**
Attn: Property – E&S
PO Box 614002
Orlando, FL 32861-4002

Overnight Mail: **AXA XL**
Attn: Property – E&S
4209 Vineland Road, Suite J-2
Orlando, FL 32811

INSTRUCTIONS FOR REQUESTING LOSS RUNS

To request a copy of loss runs for your policy, please submit your request to:

SurplusLossRun.Prop@axaxl.com

ESCR-PROPERTY 10/2018

NOTICE TO POLICYHOLDERS

FLORIDA

THIS INSURANCE IS ISSUED PURSUANT TO THE FLORIDA SURPLUS LINES LAW. PERSONS INSURED BY SURPLUS LINES CARRIERS DO NOT HAVE THE PROTECTION OF THE FLORIDA INSURANCE GUARANTY ACT TO THE EXTENT OF ANY RIGHT OF RECOVERY FOR THE OBLIGATION OF AN INSOLVENT UNLICENSED INSURER.

SURPLUS LINES INSURERS' POLICY RATES AND FORMS ARE NOT APPROVED BY ANY FLORIDA REGULATORY AGENCY.

PN FL 10 0909

NOTICE TO POLICYHOLDERS

PRIVACY POLICY

The AXA XL insurance group (the "Companies"), believes personal information that we collect about our customers, potential customers, and proposed insureds (referred to collectively in this Privacy Policy as "customers") must be treated with the highest degree of confidentiality. For this reason and in compliance with the Title V of the Gramm-Leach-Bliley Act ("GLBA"), we have developed a Privacy Policy that applies to all of our companies. For purposes of our Privacy Policy, the term "personal information" includes all information we obtain about a customer and maintain in a personally identifiable way. In order to assure the confidentiality of the personal information we collect and in order to comply with applicable laws, all individuals with access to personal information about our customers are required to follow this policy.

Our Privacy Promise

Your privacy and the confidentiality of your business records are important to us. Information and the analysis of information is essential to the business of insurance and critical to our ability to provide to you excellent, cost-effective service and products. We understand that gaining and keeping your trust depends upon the security and integrity of our records concerning you. Accordingly, we promise that:

1. We will follow strict standards of security and confidentiality to protect any information you share with us or information that we receive about you;
2. We will verify and exchange information regarding your credit and financial status only for the purposes of underwriting, policy administration, or risk management and only with reputable references and clearinghouse services;
3. We will not collect and use information about you and your business other than the minimum amount of information necessary to advise you about and deliver to you excellent service and products and to administer our business;
4. We will train our employees to handle information about you or your business in a secure and confidential manner and only permit employees authorized to use such information to have access to such information;
5. We will not disclose information about you or your business to any organization outside the AXA XL insurance group of Companies or to third party service providers unless we disclose to you our intent to do so or we are required to do so by law;
6. We will not disclose medical information about you, your employees, or any claimants under any policy of insurance, unless you provide us with written authorization to do so, or unless the disclosure is for any specific business exception provided in the law;
7. We will attempt, with your help, to keep our records regarding you and your business complete and accurate, and will advise you how and where to access your account information (unless prohibited by law), and will advise you how to correct errors or make changes to that information; and
8. We will audit and assess our operations, personnel and third party service providers to assure that your privacy is respected.

Collection and Sources of Information

We collect from a customer or potential customer only the personal information that is necessary for (a) determining eligibility for the product or service sought by the customer, (b) administering the product or service obtained, and (c) advising the customer about our products and services. The information we collect generally comes from the following sources:

- Submission – During the submission process, you provide us with information about you and your business, such as your name, address, phone number, e-mail address, and other types of personal identification information;
- Quotes – We collect information to enable us to determine your eligibility for the particular insurance product and to determine the cost of such insurance to you. The information we collect will vary with the type of insurance you seek;

NOTICE TO POLICYHOLDERS

- Transactions – We will maintain records of all transactions with us, our affiliates, and our third party service providers, including your insurance coverage selections, premiums, billing and payment information, claims history, and other information related to your account;
- Claims – If you obtain insurance from us, we will maintain records related to any claims that may be made under your policies. The investigation of a claim necessarily involves collection of a broad range of information about many issues, some of which does not directly involve you. We will share with you any facts that we collect about your claim unless we are prohibited by law from doing so. The process of claim investigation, evaluation, and settlement also involves, however, the collection of advice, opinions, and comments from many people, including attorneys and experts, to aid the claim specialist in determining how best to handle your claim. In order to protect the legal and transactional confidentiality and privileges associated with such opinions, comments and advice, we will not disclose this information to you; and
- Credit and Financial Reports – We may receive information about you and your business regarding your credit. We use this information to verify information you provide during the submission and quote processes and to help underwrite and provide to you the most accurate and cost-effective insurance quote we can provide.

Retention and Correction of Personal Information

We retain personal information only as long as required by our business practices and applicable law. If we become aware that an item of personal information may be materially inaccurate, we will make reasonable effort to re-verify its accuracy and correct any error as appropriate.

Storage of Personal Information

We have in place safeguards to protect data and paper files containing personal information.

Sharing/Disclosing of Personal Information

We maintain procedures to assure that we do not share personal information with an unaffiliated third party for marketing purposes unless such sharing is permitted by law. Personal information may be disclosed to an unaffiliated third party for necessary servicing of the product or service or for other normal business transactions as permitted by law.

We do not disclose personal information to an unaffiliated third party for servicing purposes or joint marketing purposes unless a contract containing a confidentiality/non-disclosure provision has been signed by us and the third party. Unless a consumer consents, we do not disclose “consumer credit report” type information obtained from an application or a credit report regarding a customer who applies for a financial product to any unaffiliated third party for the purpose of serving as a factor in establishing a consumer’s eligibility for credit, insurance or employment. “Consumer credit report type information” means such things as net worth, credit worthiness, lifestyle information (piloting, skydiving, etc.) solvency, etc. We also do not disclose to any unaffiliated third party a policy or account number for use in marketing. We may share with our affiliated companies information that relates to our experience and transactions with the customer.

Policy for Personal Information Relating to Nonpublic Personal Health Information

We do not disclose nonpublic personal health information about a customer unless an authorization is obtained from the customer whose nonpublic personal information is sought to be disclosed. However, an authorization shall not be prohibited, restricted or required for the disclosure of certain insurance functions, including, but not limited to, claims administration, claims adjustment and management, detection, investigation or reporting of actual or potential fraud, misrepresentation or criminal activity, underwriting, policy placement or issuance, loss control and/or auditing.

NOTICE TO POLICYHOLDERS

Access to Your Information

Our employees, employees of our affiliated companies, and third party service providers will have access to information we collect about you and your business as is necessary to effect transactions with you. We may also disclose information about you to the following categories of person or entities:

- Your independent insurance agent or broker;
- An independent claim adjuster or investigator, or an attorney or expert involved in the claim;
- Persons or organizations that conduct scientific studies, including actuaries and accountants;
- An insurance support organization;
- Another insurer if to prevent fraud or to properly underwrite a risk;
- A state insurance department or other governmental agency, if required by federal, state or local laws; or
- Any persons entitled to receive information as ordered by a summons, court order, search warrant, or subpoena.

Violation of the Privacy Policy

Any person violating the Privacy Policy will be subject to discipline, up to and including termination.

For more information or to address questions regarding this privacy statement, please contact your broker.

NOTICE TO POLICYHOLDERS

FRAUD NOTICE

Alabama	Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or who knowingly presents false information in an application for insurance is guilty of a crime and may be subject to restitution fines or confinement in prison, or any combination thereof.
Arkansas	Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance is guilty of a crime and may be subject to fines and confinement in prison.
Colorado	**It is unlawful to knowingly provide false, incomplete, or misleading facts or information to an insurance company for the purpose of defrauding or attempting to defraud the company. Penalties may include imprisonment, fines, denial of insurance, and civil damages. Any insurance company or agent of an insurance company who knowingly provides false, incomplete, or misleading facts or information to a policyholder or claimant for the purpose of defrauding or attempting to defraud the policyholder or claimant with regard to a settlement or award payable from insurance proceeds shall be reported to the Colorado Division of Insurance within the Department of Regulatory Agencies.**
District of Columbia	**WARNING:** It is a crime to provide false or misleading information to an insurer for the purpose of defrauding the insurer or any other person. Penalties include imprisonment and/or fines. In addition, an insurer may deny insurance benefits if false information materially related to a claim was provided by the applicant.
Florida	Any person who knowingly and with intent to injure, defraud, or deceive any insurer files a statement of claim or an application containing any false, incomplete, or misleading information is guilty of a felony of the third degree.
Kansas	A "fraudulent insurance act" means an act committed by any person who, knowingly and with intent to defraud, presents, causes to be presented or prepares with knowledge or belief that it will be presented to or by an insurer, purported insurer, broker or any agent thereof, any written, electronic, electronic impulse, facsimile, magnetic, oral, or telephonic communication or statement as part of, or in support of, an application for the issuance of, or the rating of an insurance policy for personal or commercial insurance, or a claim for payment or other benefit pursuant to an insurance policy for commercial or personal insurance which such person knows to contain materially false information concerning any fact material thereto; or conceals, for the purpose of misleading, information concerning any fact material thereto.
Kentucky	Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance 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.
Louisiana	Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance is guilty of a crime and may be subject to fines and confinement in prison.
Maine	It is a crime to knowingly provide false, incomplete or misleading information to an insurance company for the purpose of defrauding the company. Penalties may include imprisonment, fines, or denial of insurance benefits.
Maryland	Any person who knowingly or willfully presents a false or fraudulent claim for payment of a loss or benefit or who knowingly or willfully presents false information in an application for insurance is guilty of a crime and may be subject to fines and confinement in prison.
New Jersey	Any person who includes any false or misleading information on an application for an insurance policy is subject to criminal and civil penalties.

NOTICE TO POLICYHOLDERS

New Mexico	ANY PERSON WHO KNOWINGLY PRESENTS A FALSE OR FRAUDULENT CLAIM FOR PAYMENT OF A LOSS OR BENEFIT OR KNOWINGLY PRESENTS FALSE INFORMATION IN AN APPLICATION FOR INSURANCE IS GUILTY OF A CRIME AND MAY BE SUBJECT TO CIVIL FINES AND CRIMINAL PENALTIES.
New York	**General: All applications for commercial insurance, other than automobile insurance:** Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information, or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime, and shall also be subject to a civil penalty not to exceed five thousand dollars and the stated value of the claim for each such violation. **All applications for automobile insurance and all claim forms:** Any person who knowingly makes or knowingly assists, abets, solicits or conspires with another to make a false report of the theft, destruction, damage or conversion of any motor vehicle to a law enforcement agency, the department of motor vehicles or an insurance company, commits a fraudulent insurance act, which is a crime, and shall also be subject to a civil penalty not to exceed five thousand dollars and the value of the subject motor vehicle or stated claim for each violation. **Fire:** Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance containing any false information, or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime. The proposed insured affirms that the foregoing information is true and agrees that these applications shall constitute a part of any policy issued whether attached or not and that any willful concealment or misrepresentation of a material fact or circumstances shall be grounds to rescind the insurance policy.
Ohio	Any person who, with intent to defraud or knowing that he is facilitating a fraud against an insurer, submits an application or files a claim containing a false or deceptive statement is guilty of insurance fraud.
Oklahoma	**WARNING**: Any person who knowingly, and with intent to injure, defraud or deceive any insurer, makes any claim for the proceeds of an insurance policy containing any false, incomplete or misleading information is guilty of a felony.
Pennsylvania	**All Commercial Insurance, Except As Provided for Automobile Insurance:** Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information or conceals for the purpose of misleading, information concerning any fact material thereto commits a fraudulent insurance act, which is a crime and subjects such person to criminal and civil penalties. **Automobile Insurance:** Any person who knowingly and with intent to injure or defraud any insurer files an application or claim containing any false, incomplete or misleading information shall, upon conviction, be subject to imprisonment for up to seven years and the payment of a fine of up to $15,000.

NOTICE TO POLICYHOLDERS

Puerto Rico	**Any person who knowingly and with the intention of defrauding presents false information in an insurance application, or presents, helps, or causes the presentation of a fraudulent claim for the payment of a loss or any other benefit, or presents more than one claim for the same damage or loss, shall incur a felony and, upon conviction, shall be sanctioned for each violation by a fine of not less than five thousand dollars ($5,000) and not more than ten thousand dollars ($10,000), or a fixed term of imprisonment for three (3) years, or both penalties. Should aggravating circumstances [be] present, the penalty thus established may be increased to a maximum of five (5) years, if extenuating circumstances are present, it may be reduced to a minimum of two (2) years.**
Rhode Island	Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance is guilty of a crime and may be subject to fines and confinement in prison.
Tennessee	**All Commercial Insurance, Except As Provided for Workers' Compensation** It is a crime to knowingly provide false, incomplete or misleading information to an insurance company for the purpose of defrauding the company. Penalties include imprisonment, fines and denial of insurance benefits. **Workers' Compensation:** It is a crime to knowingly provide false, incomplete or misleading information to any party to a workers' compensation transaction for the purpose of committing fraud. Penalties include imprisonment, fines and denial of insurance benefits.
Utah	**Workers' Compensation:** Any person who knowingly presents false or fraudulent underwriting information, files or causes to be filed a false or fraudulent claim for disability compensation or medical benefits, or submits a false or fraudulent report or billing for health care fees or other professional services is guilty of a crime and may be subject to fines and confinement in state prison.
Virginia	It is a crime to knowingly provide false, incomplete or misleading information to an insurance company for the purpose of defrauding the company. Penalties include imprisonment, fines and denial of insurance benefits.
Washington	It is a crime to knowingly provide false, incomplete or misleading information to an insurance company for the purpose of defrauding the company. Penalties include imprisonment, fines and denial of insurance benefits.
West Virginia	Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance is guilty of a crime and may be subject to fines and confinement in prison.
All Other States	Any person who knowingly and willfully presents false information in an application for insurance may be guilty of insurance fraud and subject to fines and confinement in prison. (In Oregon, the aforementioned actions may constitute a fraudulent insurance act which may be a crime and may subject the person to penalties).

NOTICE TO POLICYHOLDERS

U.S. TREASURY DEPARTMENT'S OFFICE OF FOREIGN ASSETS CONTROL ("OFAC")

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

This Policyholder Notice provides information concerning possible impact on your insurance coverage due to the impact of U.S. Trade Sanctions[1]. Please read this Policyholder Notice carefully.

In accordance with the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC") regulations, or any other U.S. Trade Sanctions applied by any regulatory body, if it is determined that you or any other insured, or any person or entity claiming the benefits of this insurance has violated U.S. sanctions law, is a Specially Designated National and Blocked Person ("SDN"), or is owned or controlled by an SDN, this insurance will be considered a blocked or frozen contract. When an insurance policy is considered to be such a blocked or frozen contract, neither payments nor premium refunds may be made without authorization from OFAC. Other limitations on the premiums and payments also apply.

[1] "U.S Trade Sanctions" may be promulgated by Executive Order, act of Congress, regulations from the U.S. Departments of State, Treasury, or Commerce, regulations from the State Insurance Departments, etc.

PN CW 05 1017

NOTICE TO POLICYHOLDERS

FLORIDA

FOR INFORMATION, OR
TO MAKE A COMPLAINT, CALL:
1-800-622-7311
AXA XL
SEAVIEW HOUSE
70 SEAVIEW AVENUE
STAMFORD, CT 06902-6040

NOTICE TO POLICYHOLDERS

PROPERTY CLAIMS LOSS NOTIFICATION

AXA XL has built a reputation for resolving property claims efficiently and fairly. To deliver our world-class service and respond to our clients business needs in a timely manner, please contact our property claims specialists.

For immediate service in the event of a loss:

Loss notification can be made as follows:
Email napropcasclaimnewnotices@axaxl.com
Fax (866) 740-6067
Phone (800) 688-1840 (during and after business hours)

We hope you never have to use this information. In the event you do, however, you can expect AXA XL exceptional claims specialists to be ready to respond.

XL Insurance

REGULATORY OFFICE
505 Eagleview Blvd., Ste. 100
Dept: Regulatory
Exton, PA 19341-1120
Telephone: 800-688-1840

INDIAN HARBOR INSURANCE COMPANY

PROPERTY POLICY DECLARATIONS

Policy Number: US00090928PR19A **Renewal or Replacement of:** New

Item 1. **Named Insured:** West Flagler Associates, Ltd. Dba Magic City Casino and West Flagler Dog Track

Address: 401 NW 38th Court
Miami, Florida 33126

Item 2. **Policy Period:** **From** April 29, 2019 **To** April 29, 2020
at 12:01 a.m. Standard Time at the location of the property involved.

Item 3. **Company Participation**

Layer Excess of Deductible	Layer Limit Per Occurrence	Company Share	Company Capacity
Primary	$5,000,000	50%	$2,500,000

Item 4. **Policy Premium** **$**121,429
Premium for Acts of Terrorism **$**Rejected

Total Policy Premium **$**121,429

Minimum Earned Premium **$**42,500

Surplus Lines Agent's Nam
Surplus Lines Agent's Address: 5 Suite 200
Surplus Lines Agent's License #
Producing Agent's Name: Joseph Hanono
Producing Agent's Address: 18305 Biscayne Blvd.
Aventura, FL 33160

This insurance is issued pursuant to the Florida Surplus Lines Law. Persons insured by surplus lines carriers do not have the protection of the Florida Insurance Guaranty Act to the extent of any right of recovery for the obligation of an insolvent unlicensed insurer.

Premium: $121,429 Tax: $6,146.45 Service Fee: $122.93
EMPA Surcharge: $4 Broker Fee:
Inspection Fee: $1,500 Policy Fee:
Surplus Lines Agent's Countersignature: Charles J. Cimarelli

Item 5. Form(s) and Endorsement(s) made a part of this policy at time of issue:

Endorsement Number	Endorsement Title
PN FL 10 0909	Notice To Policyholders - Florida
PN CW 02 0119	Notice To Policyholders - Privacy Policy
PN CW 01 0119	Notice To Policyholders - Fraud Notice
PN CW 05 1017	Notice To Policyholders - U.S. Treasury Department's Office Of Foreign Assets Control ("OFAC")
PN FL 03 0119	Notice To Policyholders - Florida
USA Claims Notice	Notice To Policyholders - Property Claims Loss Notification
IL MP 9104 0314 IHIC	In Witness - Indian Harbor Insurance Company
US00090928PR19A (Manus 001 0519 West Flagler Associates, Ltd. Dba Magic City Casino and West Flagler Dog Track)	Property Policy
Endorsement No. 001 PRO 300 1211	General Change Endorsement
Endorsement No. 002 PRO 300 1211	General Change Endorsement
Endorsement No. 003 PRO 213 1012	Chemical, Biological, And Radiological Exposure Exclusion
Endorsement No. 004 PRO 205 1116	Cancellation - Additional Provision
Endorsement No. 005 PRO 237 0415	New Location Rating
Endorsement No. 006 PRO 209 1012	Below Grade Property Exclusion
Endorsement No. 007 PRO 210 0415	Actual Cash Value Amendment For Roofs
Endorsement No. 008 PRO 236 0415	Aluminum Wiring Provision
Endorsement No. 009 PRO 238 0615	Pre-Existing Damage Endorsement
Endorsement No. 010 PRO 200 0912	Minimum Earned Premium
Endorsement No. 011 PRO 002 1111	Terrorism Exclusion Endorsement
Endorsement No. 012 XL-FLSOP 0118	Service Of Process

Item 6. **Producer Name:** AmWINS Brokerage of New Jersey Inc.
Address: 105 Fieldcrest Avenue
Suite 200
Edison, NJ 08837

BY:_____

THESE DECLARATIONS TOGETHER WITH THE COMMON POLICY CONDITIONS, COVERAGE PART COVERAGE FORM(S) AND FORMS AND ENDORSEMENTS, IF ANY, ISSUED TO FORM A PART THEREOF, COMPLETE THE ABOVE NUMBERED POLICY.

Date Issued: May 31, 2019

IN WITNESS

INDIAN HARBOR INSURANCE COMPANY

REGULATORY OFFICE
505 EAGLEVIEW BOULEVARD, SUITE 100
DEPARTMENT: REGULATORY
EXTON, PA 19341-1120
PHONE: 800-688-1840

It is hereby agreed and understood that the following In Witness Clause supercedes any and all other In Witness clauses in this policy.

All other provisions remain unchanged.

IN WITNESS WHEREOF, the Company has caused this policy to be executed and attested, and, if required by state law, this policy shall not be valid unless countersigned by a duly authorized representative of the Company.

Joseph Tocco
President

Toni Ann Perkins
Secretary

IL MP 9104 0314 IHIC

PROPERTY POLICY

SECTION I
DECLARATIONS

All terms in un-bolded capital letters throughout this POLICY are subject to the definition as set forth in this POLICY.

A. Issuing Company - (hereafter referred to as "the Company")

Indian Harbor Insurance Company

B. Policy Number

US00090928PR19A

C. Insured

West Flagler Associates, Ltd. Dba Magic City Casino and Flagler Dog Track and any subsidiary, and **West Flagler Associates, Ltd. Dba Magic City Casino and Flagler Dog Track** interest in any partnership or joint venture in which **West Flagler Associates, Ltd. Dba Magic City Casino and Flagler Dog Track** has management control, ownership, or is obligated to insure, as now constituted or hereafter is acquired, as the respective interest of each may appear; all hereafter referred to as the Insured, including legal representatives.

D. First Named Insured and Mailing Address

West Flagler Associates, Ltd. Dba Magic City Casino and Flagler Dog Track
401 NW 38th CT
Miami, FL 33136

E. Policy Period

From: 04/29/2019

To: 04/29/2020

F. Inception and Expiration Time

The time of inception and the time of expiration of this POLICY and of any schedule(s) or endorsement(s) attached shall be at 12:01 a.m. (Standard Time) at the First Named Insured's principal place of business. Notwithstanding the foregoing, it is agreed that the actual effective time of attachment of this insurance shall be the same time on the specified date as the actual effective time of cancellation or expiration of the POLICY(IES) replaced or renewed by this POLICY.

The POLICY Period ends, and coverage under this POLICY terminates, when the first of the following occurs:

1. cancellation of this POLICY by the First Named Insured or by the Company;
2. the replacement POLICY takes effect; or
3. the POLICY Expiration Date.

G. Gross Premium

$121,429 at Inception

H. Currency

Any amounts specified in this POLICY, including but not limited to premium, limit(s) of liability, deductible(s), and loss payable will be considered to be in:

U.S. Currency ($)

I. Policy Territory

United States of America, Puerto Rico and the United States Virgin Islands

J. Sanctions Clause

This POLICY will not be deemed to have provided coverage and will not be liable to pay any claim or provide any benefit to the extent that payment of such claim or provision of such benefit would expose the Company to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of any jurisdiction applicable to the Company.

SECTION II
POLICY LIMITS AND SUBLIMITS PURCHASED OR NOT PURCHASED

A. Program Limit of Liability

The Insured has chosen to purchase a Property Insurance Program with a limit of $90,417,240, and this POLICY will serve to participate in that Program subject to the terms outlined in the **Company's Policy Limit of Liability and Application** section.

B. Company's Policy Limit of Liability and Application

1. The Company is not liable for more than its proportionate share, as specified below, of the Program Limit or of the Program Layer Limits that make up the Program Limit for all loss or damage insured by this POLICY arising out of one OCCURRENCE regardless of the number of LOCATIONS or coverages involved in the OCCURRENCE.

Company's Policy Limit of Liability		Program Limit or Program Layer Limits
$2,500,000	Being 50% part of	$5,000,000

2. The Company is not liable for more than the same proportionate share specified above of any Program Sublimit(s) which are part of the Program Limit or are part of any Program Layer Limits that make up the Program Limit.

3. The amount payable under this POLICY shall be determined by the terms of this POLICY after the application of any deductible features which may be a part of this POLICY. The **Other Insurance** provision of this POLICY is not applicable as respects other Insurers participating in the Program Limit or Program Layer Limit along with the Company's Proportionate Share.

4. In the event an OCCURRENCE results in an amount payable under more than one POLICY issued to the Insured by the Company, or its subsidiaries and affiliates, the maximum amount payable in the aggregate under all such policies will be the **Company's Policy Limit of Liability** specified herein regardless of the number of INSURED LOCATION(S) or coverages involved.

C. Application of Program Sublimit(s)

1. Program Sublimit(s) are part of and not in addition to the Program Limit. Program Sublimit(s) do not increase the Program Limit or any other Program Sublimit(s).

2. Program Sublimit(s) apply in the aggregate per OCCURRENCE to all INSURED LOCATION(S) and for all coverages involved, including TIME ELEMENT.

3. When a Program Sublimit(s) is noted as an Annual Aggregate, such Program Sublimit(s) applies in the aggregate annually to all losses insured by this POLICY occurring during the **Policy Period**.

4. If a Program Sublimit(s) is specified for the cause of loss that causes the claimed loss or damage such sublimit is the maximum amount payable for such OCCURRENCE.

5. If a Program Sublimit(s) is specified for a coverage that is provided, such Sublimit(s) are the maximum amount payable under this POLICY for all loss or damage, resulting from physical loss or damage insured by this POLICY at such INSURED LOCATION(S).

6. If a Program Sublimit(s) is specified for an INSURED LOCATION(S) or property, such Program Sublimit(s) is the maximum amount payable under this POLICY for all loss or damage, including TIME ELEMENT loss, at all INSURED LOCATION(S) resulting from physical loss or damage insured by this POLICY at such INSURED LOCATION(S) or to such property.

7. This policy may contain sublimits applicable to specific locations, specific types of loss, specific causes of loss, or specific coverages. Such sublimits shall be the total payable arising out of one OCCURRENCE (or a Annual Aggregate of certain OCCURRENCES where so specified), and neither the policy limit nor any sublimits shall be increased by the application of one or more sublimits.

D. Coverage Purchased and Coverage Not Purchased

The following Types of Loss, Causes of Loss and Coverages are all excluded unless a monetary amount is set forth next to the Type of Loss, Cause of Loss or Coverage. If no monetary amount is provided; the amount is $0; the line is left blank; or **NCP** (No Coverage Purchased) is shown, then those Types of Loss, Causes of Loss and those Coverages, so designated, remain excluded from recovery under this POLICY.

Program Sublimit(s)	Type of Loss, Cause of Loss and Coverage
$10,000,000	EARTH MOVEMENT (Annual Aggregate), [further sublimited as follows:]
a. $5,000,000 **b. $1,000,000** **c. $1,000,000** **d. $1,000,000**	EARTH MOVEMENT as respects: a. **Newly Acquired Property**; b. **Errors and Omissions**; c. **Exhibitions, Expositions, Fairs or Trade Shows**; and d. **Miscellaneous Unnamed Locations.** (Annual Aggregate)]
$10,000,000	FLOOD (Annual Aggregate), [further sublimited as follows:]
a. $5,000,000 **b. $1,000,000** **c. $1,000,000** **d. $1,000,000**	FLOOD as respects: a. **Newly Acquired Property**; b. **Errors and Omissions**; c. **Exhibitions, Expositions, Fairs or Trade Shows**; and d. **Miscellaneous Unnamed Locations.** (Annual Aggregate)]
INCLUDED	NAMED WINDSTORM, [further sublimited as follows:]
a. $5,000,000 **b. $1,000,000** **c. $1,000,000** **d. $1,000,000**	NAMED WINDSTORM as respects: a. **Newly Acquired Property**; b. **Errors and Omissions**; c. **Exhibitions, Expositions, Fairs or Trade Shows**; and d. **Miscellaneous Unnamed Locations.** (Annual Aggregate)]
$1,000,000	**Accounts Receivable**
$100,000	**Arson or Theft Reward**
EXCLUDED	**Attraction Properties**
$50,000	**Brands and Labels**
$25,000	**Building Materials at Off Premises Storage for Prop. Under construction**
$1,000,000	**Commissions, Licensing Fees and Royalties**
EXCLUDED	**Contingent Time Element** – Direct Named Suppliers and Customers
EXCLUDED	**Contingent Time Element** – Direct Unnamed Suppliers and Customers
EXCLUDED	**Contingent Time Element** – Indirect Suppliers and Customers
$25,000	**Contractual Penalties**
EXCLUDED	**Cyber –** see Endorsement B for exclusion wording
$1,000,000	**Data Restoration –** PROPERTY DAMAGE and TIME ELEMENT combined
$2,500,000	**Debris Removal** - or 25% of the combined amount of physical damage and TIME ELEMENT loss payable at the LOCATION where the damage occurs or limit shown, whichever is the lesser.
Included	**Demolition And Increased Cost Of Construction – Coverage A**
$2,500,000	**Demolition And Increased Cost Of Construction – Coverage B**
$2,500,000	**Demolition And Increased Cost Of Construction – Coverage C**
$2,500,000	**Demolition And Increased Cost Of Construction – Coverage D**
$500,000	**Errors and Omissions**
$500,000	**Exhibitions, Expositions, Fairs or Trade Shows**

Program Sublimit(s)	Type of Loss, Cause of Loss and Coverage
$500,000	**Expediting Expenses**
$2,500,000	**Extra Expense**
$500,000	**Fine Arts**, subject to a maximum of **$1,500** per item
$100,000	**Fire and Police Department Service Charges**
Included	**Gross Earnings**
$2,500,000	**Ingress/Egress**
$500,000	**Land And Water Contaminants Cleanup, Removal And Disposal** (Annual Aggregate)
$2,500,000	**Land Improvements, subject to a maximum of $25,000 per item**
$5,000,000	**Leasehold Interest**
$10,000	**Locks and Keys**
$10,000	**Logistics Extra Cost**
$1,000,000	**Miscellaneous Unnamed Locations**
$250,000	**Mold Ensuing from an Insured Cause of Loss**
$50,000	**Money and Securities**
$500,000	**On Site Construction**
Included	**Ordinary Payroll**
$5,000,000	**Newly Acquired Property – excluding Tier 1 Named Windstorm, High Hazard Flood and High Hazard Earth Movement**
$500,000	**Outdoor Property**, subject to a maximum of **$5,000** per item
$2,500,000	**Order of Civil or Military Authority**
$50,000	**Professional Fees**
$500,000	**Protection and Preservation of Property – Property Damage**
$500,000	**Protection and Preservation of Property – Time Element**
NCP	**Radioactive Contamination**
$100,000	**Rental Insurance**
$1,000,000	**Service Interruption** – **Property Damage** and **Service Interruption** – **Time Element Combined – including T&D lines within 1,000 feet of insured's premises**
$100,000	**Soft Costs**
$500,000	**Spoilage**
$1,000,000	**Temporary Removal of Property**
$1,000,000	**Temporary Storage Locations**
$250,000	**Transportation** - PROPERTY DAMAGE and TIME ELEMENT combined
$1,000,000	**Valuable Papers and Records**

E. Time Limit(s)

No coverage is provided by this POLICY for any loss sustained or incurred beyond the corresponding Time Limit specified. Such Time Limit starts on the date of the physical loss or damage insured by this POLICY; however, not to exceed the stated dollar sublimit provided in Section D above:

90 consecutive calendar days from the date of acquisition for **Newly Acquired Property**

365 consecutive calendar days for **Extended Period of Liability – Gross Earnings** and **Rental Insurance**

30 consecutive calendar days after such length of time as would be required with the exercise of due diligence and dispatch to repair or replace the damaged dam, reservoir or equipment for **Impounded Water**

30 consecutive calendar days from the date of OCCURRENCE for **Ingress/Egress**

30 consecutive calendar days from the date of OCCURRENCE for **Order Of Civil Or Military Authority**

F. Distance Limit(s)

No coverage for TIME ELEMENT loss, as described below, is provided if the LOCATION of the physical loss or damage is beyond the stated Distance Limits indicated below:

5 statute mile(s) from the INSURED LOCATION for **Ingress/Egress**

5 statute mile(s) from the INSURED LOCATION for **Order Of Civil Or Military Authority**

G. Time Element Coverage Extensions - Application of Limits

For purposes of all claims paid hereunder in accordance with the TIME ELEMENT coverage provisions, the applicable Program Sublimits, set forth above, will be determined as though the LOCATION(S) suffering physical loss or damage insured by this POLICY were INSURED LOCATION(S), and not where the TIME ELEMENT losses might be incurred if different.

SECTION III
POLICY DEDUCTIBLES AND WAITING PERIODS

A. Policy Deductibles

In each case of loss or damage insured by this POLICY, the Company is liable only if the Insured sustains such loss or damage in a single OCCURRENCE, the value of which is in excess of the applicable deductible specified, and then the amount insured by this POLICY shall be the amount in excess of the deductible, subject to all terms, conditions, provisions, limitations and exclusions of this POLICY.

$25,000 per occurrence for all perils, except;

NAMED WINDSTORM
5% Per Unit of Insurance at each location involved in the loss or damage arising out of a NAMED WINDSTORM and subject to a minimum deductible of $100,000 per occurrence as respects LOCATIONS situated in a TIER 1 COUNTY

EARTH MOVEMENT:
$50,000 per occurrence for the peril of EARTHQUAKE

FLOOD:
$100,000 per occurrence for the peril of FLOOD, except for locations wholly or partially situated in HIGH HAZARD FLOOD ZONES the deductible shall be $500,000 per building, $500,000 for Contents per building and $100,000 for Time Element per occurrence.

Each of the following shall be considered a separate Unit of Insurance:

- Each separate building or structure
- Contents in each separate building or structure
- Property in the yard of each separate building or structure
- Annual Business Interruption values apply to each separate building or structure

B. Application of Deductibles

Unless otherwise specified above:

1. All deductibles apply per OCCURRENCE.

2. When this POLICY insures more than one INSURED LOCATION(S), the deductible applies against the total loss and damage insured by this POLICY in any one OCCURRENCE.

3. If two or more deductibles provided in this POLICY apply to a single OCCURRENCE, then the total to be deducted will not exceed the largest deductible applicable; provided, however, the largest deductible applicable may be comprised of two parts, one applicable to PROPERTY DAMAGE and one applicable to TIME ELEMENT.

4. If a deductible is expressed as a period of time which is:

   a. not otherwise more specifically stated; or

   b. not intended to be converted to its monetary equivalents;

   then the Company will not be liable for the amount of loss incurred or sustained by the Insured during such period of time that immediately follows the physical loss or damage insured by this POLICY.

5. If a deductible is expressed as an Actual Daily Value (ADV) or a multiple thereof, the ADV will be calculated as follows:

a. Determine the **Gross Earnings** that would have been earned during the **Period of Liability** of the Insured's business had no **Time Element** loss occurred.

b. Divide the result in a. above by the number of working days in the **Period of Liability** of the Insured's business had no loss occurred. The resulting amount is the ADV.

No reduction will be made for the **Gross Earnings** not being earned in the number of working days because of the loss or damage, or because of any scheduled or unscheduled shutdowns during the **Period of Liability** of the Insured's business.

The ADV will be calculated based on the **Gross Earnings** of the entirety of the INSURED LOCATION(S), whether or not the loss or damage affects the entirety of the INSURED LOCATION(S). If physical loss or damage insured by this POLICY results in a TIME ELEMENT loss at more than one INSURED LOCATION(S), the ADV will be calculated based on the combined **Gross Earnings** of all affected INSURED LOCATION(S).

6. The deductibles provisions specified herein this POLICY for NAMED WINDSTORM apply to all loss or damage insured by this POLICY, caused by or arising out of a NAMED WINDSTORM, including, but not limited to, the following:

   a. the force or action of WIND caused by or resulting from a NAMED WINDSTORM; in accordance with the FLOOD definition provision of this POLICY;

   b. any material, object or debris that is carried, propelled or in any manner moved by a NAMED WINDSTORM;

   c. any tornadoes that are a result of actions or effects of a NAMED WINDSTORM;

   d. hail that is a result of actions or effects of a NAMED WINDSTORM;

   e. lightning that is a result of actions or effects of a NAMED WINDSTORM;

   f. rain or water, whether the rain or water is driven by WIND or not, that enters the covered building or structure through an opening created by the force of WIND or water from a NAMED WINDSTORM; or

   g. FLOOD, if covered by this POLICY, that results from the actions or effects of NAMED WINDSTORM.

7. The LOCATION(S) where physical loss or damage insured by this POLICY occurs shall be used to determine the deductible. Once the deductible is determined, if it is a percentage deductible, it shall be applied to the APPLICABLE VALUES.

C. Waiting Periods

Coverage is provided by this POLICY only if the corresponding WAITING PERIOD specified is exceeded. Coverage shall then apply only to the LOCATION(s) where the WAITING PERIOD has been exceeded. The corresponding coverage will then apply from the beginning of the interruption of services but only for the amounts in excess of the applicable Deductible(s). If multiple LOCATIONS exceed the WAITING PERIOD then the applicable Deductible(s) will apply to the combined loss of all such LOCATIONS.

1. **24** consecutive hours from the inception of interruption of services for **Service Interruption – Property Damage** and **Service Interruption – Time Element**.

STRATEGIC NON-ADMITTED PROPERTY POLICY

SECTION IV
PROPERTY DAMAGE

A. Insured Property

Except as excluded hereinafter, INSURED PROPERTY consists of property described below:

1. Real property owned by the Insured or in which the Insured has an insurable interest.

2. Personal property:

   a. owned by the Insured, including the Insured's interest as a tenant in IMPROVEMENTS AND BETTERMENTS for which the Insured incurred the costs of installation or for which the Insured is legally liable under the terms of its lease.

      In the event of physical loss or damage insured by this POLICY to such IMPROVEMENTS AND BETTERMENTS, the Company agrees to accept and consider the Insured as sole and unconditional owner of IMPROVEMENTS AND BETTERMENTS, notwithstanding any contract or lease to the contrary.

   b. of officers and employees of the Insured; and of others in the Insured's custody:

      I. to the extent the Insured is under obligation to keep such property insured for physical loss or damage insured by this POLICY; or

      II. to the extent of the INSURED'S LIABILITY for physical loss or damage insured by this POLICY to such property.

B. Property Damage Coverage Extensions, Terms and Conditions

The following are subject to all terms, conditions, provisions, limitations and exclusions of this POLICY and in addition, any other terms, conditions, provisions, limitations and exclusions set forth below.

1. Accounts Receivable

a. This POLICY is extended to insure ACCOUNTS RECEIVABLE loss and expense resulting from direct physical loss or damage insured by this POLICY to the Insured's accounts receivable records, including accounts receivable records stored as ELECTRONIC DATA, while anywhere, including while in transit to the extent provided under **Transportation**, within the **Policy Territory**.

b. This extension also insures the following:

   I. The interest charges on any loan to offset impaired collections pending repayment of such sum uncollectible as a result of such physical loss or damage.

      Unearned interest and service charges on deferred payment accounts and normal credit losses on credit extended or bad debts will be deducted in determining the recovery.

   II. Any other necessary and reasonable costs incurred to reduce the loss, to the extent the loss is reduced.

c. In the event of loss to accounts receivable records, the Insured will use all reasonable efforts, including legal action, if necessary, to effect collection of outstanding accounts receivable.

d. The Insured agrees to use any suitable property or service owned or controlled by the Insured, or obtainable from other sources, in reducing the loss otherwise insured under this extension.

e. If it is possible to reconstruct accounts receivable records so that no ACCOUNTS RECEIVABLE loss is sustained, this POLICY insures only the reasonable and necessary costs incurred for material and time required to re-establish or reconstruct such records, and not for any costs insured by any other insurance.

f. When there is proof that a loss covered by this POLICY has occurred but the Insured cannot accurately establish the total amount of accounts receivable outstanding as of the date of such loss, such amount shall be based on the Insured's monthly statements and shall be computed as follows:

I. determine the amount of all outstanding accounts receivable at the end of the same fiscal month in the year immediately preceding the year in which the loss occurs;

II. calculate the percentage of increase or decrease in the average monthly total of accounts receivable for the twelve (12) months immediately preceding the month in which the loss occurs, or such part thereof for which the Insured has furnished monthly statements to the Company, as compared with such average for the same months of the preceding year;

III. the amount determined under I. above, increased or decreased by the percentage calculated under II. above, shall be the agreed total amount of accounts receivable as of the last day of the fiscal month in which said loss occurs;

IV. the amount determined under III. above shall be increased or decreased in conformity with the normal fluctuations in the amount of accounts receivable during the fiscal month involved, due consideration being given to the experience of the business since the last day of the last fiscal month for which a statement has been rendered.

V. Add any collection expenses in excess of normal collection costs and made necessary because of loss or damage, and the reasonable expenses incurred in re-establishing accounts receivable records following the loss or damage.

g. All amounts recovered by the Insured on outstanding accounts receivable on the date of loss will belong and be paid to the Company up to the amount of loss paid by the Company. All recoveries exceeding the amount paid by the Company will belong to the Insured.

h. No coverage is provided under this extension for any shortage resulting from:

I. bookkeeping, accounting or billing errors or omissions; or

II. alteration, falsification, manipulation, concealment, destruction or disposal of accounts receivable records committed to conceal the wrongful giving, taking, obtaining or withholding of MONEY, SECURITIES or other property; but only to the extent of such wrongful giving, taking, obtaining or withholding.

2. Brands and Labels

If branded or labeled MERCHANDISE or FINISHED GOODS insured by this POLICY is damaged and the Company elects to take all or any part of such MERCHANDISE or FINISHED GOODS at the value established by the provisions of this POLICY, the Insured may, at the Company's expense, stamp “salvage” on the MERCHANDISE or FINISHED GOODS or its containers or may remove or obliterate the brands or labels, if such stamp, removal or obliteration will not physically damage or otherwise reduce the value of the MERCHANDISE or FINISHED GOODS, but the Company shall re-label the MERCHANDISE or FINISHED GOODS or containers in compliance with the requirements of law.

3. Control of Damaged Property

This POLICY gives control of physically damaged FINISHED GOODS or MERCHANDISE as follows:

a. the Insured will have full rights to the possession and control of damaged FINISHED GOODS or MERCHANDISE in the event of physical loss or damage insured by this POLICY to such FINISHED GOODS or MERCHANDISE provided proper testing is done to show which FINISHED GOODS or MERCHANDISE is physically damaged;

b. the Insured using reasonable judgment will decide if FINISHED GOODS or MERCHANDISE sustaining physical loss or damage can be reprocessed or sold;

c. FINISHED GOODS or MERCHANDISE so judged by the Insured to be unfit for reprocessing or selling will not be sold or disposed of except by the Insured, or with the Insured's consent; and

d. any salvage proceeds received will go to the:

I. Company at the time of loss settlement; or

II. Insured if received prior to loss settlement and such proceeds will reduce the amount of loss payable hereunder.

e. Notwithstanding, the foregoing paragraphs a. through d., the Insured shall allow the Insurer any salvage which could be or which could have been obtained on any sale or other disposition of such goods or products through normal insurance industry salvage practices.

4. Data Restoration

This POLICY is extended to insure the necessary and reasonable costs and expenses actually incurred by the Insured, subject to the limits specified in the Program Sublimit(s) section, following direct physical loss or damage insured by this POLICY to INSURED PROPERTY for reproduction of ELECTRONIC DATA. Such cost of reproduction shall include all reasonable and necessary amounts, incurred by the Insured in recreating, gathering and assembling such ELECTRONIC DATA.

5. Debris Removal

a. This POLICY is extended to insure the necessary and reasonable costs and expenses actually incurred by the Insured, subject to the limits specified in the Program Sublimit(s) section, following direct physical loss or damage insured by this POLICY to INSURED PROPERTY, to dismantle, demolish and/or remove from INSURED LOCATION(S) the debris of INSURED PROPERTY remaining after any such physical loss or damage.

b. No coverage is provided hereunder for costs and expenses incurred in the removal of:

I. any foundation, other than damaged portions which must be removed in order to effectuate the repair or rebuilding of any INSURED PROPERTY; or

II. any property or part thereof, the removal of which is required by the enforcement of any law, ordinance, regulation or rule regulating or restricting the construction, installation, repair, replacement, demolition, occupancy, operation or other use of INSURED PROPERTY; or

III. CONTAMINANTS from land or water, nor for the cost to remove, restore or replace polluted land or water.

No liability shall exist under this extension of coverage unless such costs and expenses are reported to the Company within one hundred eighty (180) days of the date of such physical loss or damage insured by this POLICY or the expiration of this POLICY, whichever shall be earlier.

6. Demolition and Increased Cost of Construction

a. This POLICY is extended to insure the following additional costs when there is direct physical loss or damage insured by this POLICY to building(s) or structure(s) insured by this POLICY and such additional costs are occasioned by the enforcement of any law or ordinance regulating the construction, repair, replacement, use or demolition of building(s) or structure(s) which is in force at the time of loss and necessitates such costs:

I. **Coverage A**: value of the undamaged portion(s) which has been demolished subject to the same basis of recovery which applies to the damaged portion(s) of such building(s) or structure(s). This cost shall not include any greater cost of repair, replacement, construction or reconstruction due to the enforcement of any law or ordinance;

II. **Coverage B**: cost of demolishing any undamaged portion(s);

III. **Coverage C**: if the basis of recovery is replacement cost, the increased cost actually expended (excess of I. Coverage A above) in rebuilding or replacing both the damaged and demolished portions on the same INSURED LOCATION with like height, floor area and style and for like occupancy to comply with the minimum requirements of such law or ordinance.

IV. **Coverage D:** any increase in the business interruption, extra expense, rental value and royalties loss arising out of the additional time required to comply with said law or ordinance.

b. This extension provision shall not insure:

I. any increase of loss associated with the enforcement of any law or ordinance which requires the Insured or others to test for, monitor, cleanup, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of CONTAMINANTS.

II. any loss due to any law or ordinance with which the Insured was required to comply prior to the loss.

This entire provision shall not increase any amounts or limits of insurance provided by this POLICY.

7. Destruction by Civil or Military Authority

This POLICY is extended to insure against acts of destruction by order of civil or military authority at the time of and for the purpose of preventing the spread of fire provided such fire originated from physical loss or damage insured by this POLICY.

8. Errors and Omissions

a. If loss or damage is not payable under this POLICY solely due to an error or unintentional omission:

I. in the description of where INSURED PROPERTY is physically situated within the **Policy Territory**; or

II. to include any LOCATION(S), within the **Policy Territory**, that is owned, rented or leased by the Insured as of the POLICY Inception Date; or

b. It is a condition precedent to recovery under this extension of coverage that any error or unintentional omission be:

I. reported by the Insured to the Company when discovered; and

II. corrected upon its discovery.

9. Exhibitions, Expositions, Fairs or Trade Shows

a. The POLICY is extended to insure any personal property, except as excluded under the **Property Not Insured** section of this POLICY:

I. owned by the Insured;

II. of others in the Insured's care, custody and control:

1) to the extent the Insured is under an obligation to insure such property against direct physical loss or damage insured by this POLICY; or

2) to the extent of the INSURED'S LIABILITY for direct physical loss or damage insured by this POLICY to such property;

while such property is situated on the premises of any exhibitions, expositions, fairs or trade shows within the **Policy Territory**.

b. No coverage is provided under this extension for any property:

I. while in transit;

II. while waterborne;

III. at INSURED LOCATION(S);

IV. insured under **Course of Construction**;

V. insured under **Fine Arts**;

VI. that is otherwise insured by this POLICY or any other POLICY issued by the Company to the Insured.

10. Expediting Expenses

This extension provision applies to real and personal property only.

a. This POLICY is extended to insure the reasonable and necessary expenses incurred by the Insured:

I. to pay for the temporary repair of direct physical damage insured by this POLICY to INSURED PROPERTY at INSURED LOCATION(S); and

II. to expedite the permanent repair or replacement of such INSURED PROPERTY.

b. No coverage is provided under this extension for any expenses:

I. recoverable under any other section or provision in this POLICY; or

II. for permanent repair or replacement of any INSURED PROPERTY.

11. Fine Arts

a. This POLICY is extended to insure direct physical loss or damage insured by this POLICY to FINE ARTS while anywhere, including while in transit to the extent provided under **Transportation**, within the **Policy Territory**.

b. No coverage is provided under this extension for:

I. loss or damage if the FINE ARTS cannot be replaced with others of like kind and quality, unless such FINE ARTS are specifically declared to and accepted by the Company prior to the loss or damage; or

II. loss or damage caused by or resulting from or occurring during any repairing, restoration or retouching process.

12. Fire and Police Department Service Charges

a. This POLICY is extended to insure the following reasonable and necessary charges:

I. fire department firefighting charges imposed on the Insured by law or ordinance as a result of responding to a fire in, on or exposing the INSURED PROPERTY at INSURED LOCATION(S);

II. costs incurred in restoring and recharging fire protection systems at INSURED LOCATION(S) following direct physical loss or damage insured by this POLICY to INSURED PROPERTY;

III. costs incurred for the water used for fighting a fire following direct physical loss or damage insured by this POLICY in, on or exposing INSURED PROPERTY at INSURED LOCATION(S);

IV. police department charges imposed on the Insured by law or ordinance as a result of responding to a covered cause of loss in, on or exposing the INSURED PROPERTY at INSURED LOCATION(S).

b. To the extent costs are incurred as insured under this extension of coverage and such costs served to prevent the occurrence of direct physical loss or damage insured by this POLICY to INSURED PROPERTY, this extension of coverage is subject to the POLICY Deductible that would have applied to any claim for such physical loss or damage insured by this POLICY that was avoided.

13. Infrastructure System Coverage

This POLICY is extended to insure direct physical loss or damage insured by this POLICY to insured personal property that is part of communications lines, data transmission lines or any infrastructure comprising or supporting the Insured's connection to its internet service provider or ELECTRONIC DATA COMMUNICATIONS SYSTEM when, and only to the extent that, such personal property is located on INSURED LOCATION(S) and is under the Insured's exclusive operational control. Insured personal property does not include satellites or ELECTRONIC DATA.

ELECTRONIC DATA COMMUNICATIONS SYSTEM, means any communication system, including computer systems and the Internet, which provides the Insured with access to other computer systems, microchips, integrated circuits or similar devices in non-computer equipment, or which provides any party access to the Insured's computer systems, microchips, integrated circuits or similar devices in non-computer equipment.

14. Land and Water Contaminants, Cleanup, Removal and Disposal

a. This POLICY is extended to insure the reasonable and necessary cost for the cleanup, removal and disposal of CONTAMINANTS:

I. from land; or

II. from water or any other substance in or on land

at INSURED LOCATION(S) provided the release, discharge or dispersal of such CONTAMINANTS is directly caused by direct physical loss or damage insured by this POLICY to INSURED PROPERTY at INSURED LOCATION(S).

b. No coverage is provided under this extension of coverage for the cost:

I. to test for, monitor or assess the existence, concentration or effects of any CONTAMINANTS, other than the testing which is performed in the course of extracting the CONTAMINANTS;

II. to cleanup, remove and dispose of any CONTAMINANTS from land, or from water or any other substance in or on land:

1) at INSURED LOCATION(S) for which coverage is not provided hereunder for real property.

2) if the Insured fails to give written notice of loss to the Company within one hundred eighty (180) consecutive calendar days from the date of such physical loss or damage causing the release, discharge or dispersal of such CONTAMINANTS.

15. Miscellaneous Unnamed Locations

This POLICY is extended to insure INSURED PROPERTY within the **Policy Territory** that is either:

a. not listed on the latest Schedule of Locations submitted to, accepted by and on file with the Company; or

b. listed on the latest Schedule of Locations submitted to, accepted by and on file with the Company but for which the Insured has not submitted values for its interest.

16. Newly Acquired Property

a. This POLICY is extended to insure direct physical loss or damage insured by this POLICY to newly constructed real property upon completion, or real property acquired or leased within the **Policy Territory** during the term of this POLICY and personal property, while under the care, custody and control of the Insured at any such new LOCATION(S). TIME ELEMENT coverage is provided for property insured under this extension of coverage, subject to all TIME ELEMENT terms, conditions, provisions, limitations and exclusions.

b. Coverage under this **Newly Acquired Property** provision shall commence when the Insured first acquires an insurable interest at the new LOCATION(S) and shall cease after the number of days specified in the **Time Limit** section if not reported to and accepted by the Company. If reported to and accepted by the Company the coverage provided by this POLICY for that LOCATION shall be the same as for all other INSURED LOCATION(S) unless otherwise specified herein or by endorsement.

c. No coverage is provided under this coverage extension for property while in transit or waterborne, nor while on the premises of any exhibition, exposition, fair or trade show. This provision shall not be construed as providing coverage at LOCATION(S) scheduled or otherwise insured herein.

d. This **Newly Acquired Property** provision shall not increase any amounts or limits of insurance provided by this POLICY.

17. On Site Construction

This POLICY is extended to insure direct physical loss or damage insured by this POLICY to buildings and structures undergoing construction, alteration, extension, or renovation while taking place on INSURED LOCATION(S). TIME ELEMENT coverage is provided for property insured under this extension of coverage, subject to all TIME ELEMENT terms, conditions, provisions, limitations and exclusions.

18. On Site Service Interruption

This POLICY is extended to insure direct physical loss or damage insured by this POLICY, including shrinkage, evaporation, leakage of contents, change in flavor or texture or finish, decay or other spoilage, when such physical loss or damage is the result of an interruption of services caused by physical loss or damage as insured against by this POLICY, at INSURED LOCATION(S).

The period of service interruption is the period starting with the time when an interruption of specified services happens; and ending when with due diligence and dispatch the service could be wholly restored.

19. Professional Fees

a. This POLICY is extended to insure the reasonable expenses, including the cost of using the Insured's employees, incurred by the Insured, or by the Insured's representatives, for preparing the details of a claim insured by this POLICY.

b. No coverage is provided under this extension of coverage for expenses incurred by the Insured in utilizing or retaining the services of:

I. attorneys;

II. independent or public adjusters;

III. insurance agents or brokers; or

IV. any subsidiary, related or associated entities either wholly or partially owned by an attorney, insurance agent, broker, or public adjuster.

20. Protection and Preservation of Property – Property Damage

a. This Policy is extended to insure reasonable and necessary costs incurred for actions to temporarily protect or preserve INSURED PROPERTY; provided such actions are necessary due to actual, or to prevent immediately impending, direct physical loss or damage insured by this POLICY to such INSURED PROPERTY.

b. This extension is subject to the deductible and sublimit provisions that would have applied had the physical loss or damage happened.

21. Radioactive Contamination

Notwithstanding any Nuclear Exclusion clause contained herein, this POLICY is extended to insure direct physical loss or damage insured by this POLICY to INSURED PROPERTY caused by sudden and accidental radioactive contamination, including resultant radiation damage to INSURED PROPERTY provided:

a. such radioactive contamination is caused by the release of radiation from radioactive material which is commonly known to be radioactive and commonly located on an INSURED LOCATION(S);

b. such radioactive material knowingly is kept on an INSURED LOCATION(S) and its radioactivity is used for the purpose of the Insured's operations; and

c. at the time of such sudden and accidental contamination, there is neither a nuclear reactor capable of sustaining nuclear fission in a self-supporting chain reaction, nor any new or used nuclear fuel which is intended for or which has been used in a nuclear reactor, on the INSURED LOCATION(S).

22. Service Interruption – Property Damage

a. This POLICY is extended to insure direct physical loss or damage insured by this POLICY including shrinkage, evaporation, leakage of contents, change in flavor or texture or finish, decay or other spoilage to INSURED PROPERTY at INSURED LOCATION(S) when such physical loss or damage results from the interruption of services consisting of:

I. incoming electricity;

II. incoming fuel;

III. incoming gas;

IV. incoming refrigerant;

V. incoming steam;

VI. incoming water;

VII. outgoing sewerage service; or

VIII. incoming or outgoing audio, voice and video;

b. This extension of coverage applies only when such interruption of service is caused by physical loss or damage resulting from a cause of loss insured by this POLICY to any property of the type insured by this POLICY of the supplier of such services if such property is situated within the **Policy Territory** commencing when such service is interrupted and ceasing when with due diligence and dispatch such services have been or could have been restored.

c. The Insured agrees to immediately notify the suppliers of services of any interruption of such services.

d. No coverage is provided under this extension of coverage:

I. unless the period of service interruption exceeds the WAITING PERIOD specified for this extension; or

II. if the interruption of such services is caused by the failure of the Insured to comply with the terms and conditions of any terms or contracts the Insured has for the supply of such services; or

III. for loss sustained at any **Miscellaneous Unnamed Location**.

23. Temporary Removal of Property

When INSURED PROPERTY is removed from an INSURED LOCATION for the purpose of being repaired or serviced or in order to avoid threatened physical loss or damage insured by this POLICY, this POLICY insures such property:

a. while at the premises to which such property has been moved; and

b. for physical loss or damage insured by this POLICY at the INSURED LOCATION from which such property was removed.

This additional coverage does not apply to property:

a. insured, in whole or in part, elsewhere in this POLICY.

b. insured, in whole or in part, by any other insurance policy.

c. removed for normal storage, processing or preparation for sale or delivery.

24. Transportation

a. This POLICY is extended to insure the following personal property, except as excluded under **Property Not Insured**, while in transit within the **Policy Territory**:

I. personal property owned by the Insured;

II. personal property shipped to customers under F.O.B., C & F or similar terms. The Insured's contingent interest in such shipments is admitted;

III. personal property of others in the actual or constructive custody of the Insured to the extent of the Insured's interest or INSURED'S LIABILITY;

IV. personal property of others sold by the Insured, that the Insured has agreed prior to the loss to insure during the course of delivery.

b. No coverage is provided under this extension for:

I. samples in the custody of salespeople or selling agents;

II. any property insured under import or export ocean marine insurance;

III. waterborne shipments, except while on the navigable inland waters and coastwise shipments within the **Policy Territory**;

IV. airborne shipments unless by regularly-scheduled passenger airlines or air freight carriers;

V. property of others, including the INSURED'S LIABILITY for it, hauled on vehicles owned, leased or operated by the Insured when acting as a common or contract carrier;

VI. the conveyance used as the mode of transportation (including any part of equipment thereof) or containers;

VII. all materials in transit which are otherwise insured under another policy of insurance.

c. Coverage attachment and duration:

I. Coverage provided under this extension of coverage starts from the time the property leaves the original point of shipment for transit. It then insures continuously in the due course of transit within the continent in which the shipment commences until the property arrives at the destination within such continent subject to the terms and conditions set forth in a and b of this extension of coverage;

II. However, coverage on export shipments not insured under ocean cargo policies ends when such personal property is loaded onboard overseas vessels or aircraft. Coverage on import shipments not insured under ocean cargo policies starts after discharge from overseas vessels or aircraft;

III. This insurance only covers such shipments, the transportation of which begins within the term of this POLICY, even though said transportation is not completed prior to POLICY expiration.

d. This extension of coverage also insures:

I. general average and salvage charges on shipments insured while waterborne;

II. physical loss or damage to such personal property caused by or resulting from:

1) unintentional acceptance of fraudulent bills of lading, shipping or messenger receipts;

2) improper parties having gained possession of property through fraud or deceit.

e. Additional general provisions:

I. This extension will not inure to the benefit of any carrier or bailee;

II. The Insured has permission, without prejudicing this insurance, to accept:

1) ordinary bills of lading used by carriers;

2) released bills of lading;

3) undervalued bills of lading; and

4) shipping or messenger receipts.

f. The Insured may waive subrogation against railroads under side track agreements.

g. Except as otherwise stated, the Insured agrees not to enter into any special agreement with carriers releasing them from their common law or statutory liability.

25. Valuable Papers and Records

a. This POLICY insures direct physical loss or damage insured by this POLICY to VALUABLE PAPERS AND RECORDS while anywhere, including while in transit to the extent provided under **Transportation**, within the **Policy Territory**.

b. No coverage is provided under this extension of coverage for:

I. loss or damage to VALUABLE PAPERS AND RECORDS if such property cannot be replaced with others of like kind and quality, unless specifically declared to and accepted by the Company prior to the loss or damage;

II. loss or damage to property held as samples or for sale or for delivery after sale;

III. errors or omissions in processing or copying unless physical loss or damage insured by this POLICY to VALUABLE PAPERS AND RECORDS results, in which event, only such resulting physical loss or damage is insured under this extension of coverage;

IV. loss or damage to VALUABLE PAPERS AND RECORDS caused by or resulting from deterioration, inherent vice, vermin or wear and tear; all unless physical loss or damage insured by this POLICY to VALUABLE PAPERS AND RECORDS results, in which event, only such resulting physical loss or damage is insured under this extension.

SECTION V
TIME ELEMENT

A. Loss Insured

1. This POLICY insures TIME ELEMENT loss, during the **Period of Liability** directly resulting from direct physical loss or damage insured by this POLICY to INSURED PROPERTY at INSURED LOCATION(S) or as otherwise provided in this section or endorsed hereon, and subject to all terms and conditions within this POLICY.

2. This POLICY insures TIME ELEMENT loss only to the extent it cannot be reduced through:

   a. the use of any property or service owned or controlled by the Insured;

   b. the use of any property or service obtainable from other sources;

   c. working extra time or overtime; or

   d. the use of inventory.

3. The Company shall take into consideration the combined operating results of all INSURED LOCATION(S) and associated, affiliated or subsidiary companies of the Insured in determining the TIME ELEMENT loss.

4. This POLICY insures expenses reasonably and necessarily incurred by the Insured to reduce the loss otherwise payable under this section. The amount of such recoverable expenses will not exceed the amount by which the loss otherwise payable hereunder is reduced.

5. The Insured agrees to:

   a. act with due diligence and dispatch in repairing or replacing physically damaged buildings and equipment to the same or equivalent physical and operating conditions that existed immediately prior to such physical loss or damage; and

   b. take whatever actions are necessary and reasonable to minimize the loss payable hereunder.

6. In determining the amount of loss payable, the Company will consider:

   a. the experience of the business before and after; and

   b. the probable experience during

   the **Period of Liability**.

7. There will be no recovery of loss under this **Time Element** section of this POLICY when there is recovery elsewhere in this POLICY.

B. Gross Earnings

1. The recoverable **Gross Earnings** loss is the Actual Loss Sustained by the Insured due to the necessary interruption of the Insured's business during the **Period of Liability** as respects **Gross Earnings** less all charges and expenses that do not, or did not necessarily, continue during such interruption.

2. In determining the indemnity payable as the Actual Loss Sustained by the Insured, the Company will consider the continuation of only those normal charges and expenses that would have been incurred had no interruption of the Insured's business occurred.

3. There is recovery herein but only to the extent that the Insured is:

a. wholly or partially prevented from producing goods or continuing business operations or services;

b. unable to make up lost production within a reasonable period of time, not limited to the period during which production is interrupted;

c. unable to continue its operations or services during the **Period of Liability**; and

d. able to demonstrate a loss of SALES resulting from an interruption in operations, services or production.

4. For the purpose of this insurance, **Gross Earnings** are defined as the sum of:

a. As respects:

I. manufacturing operations, the net SALES value of production less the cost of all RAW STOCK, materials and supplies used in such production; or

II. mercantile or non-manufacturing operations, the total net SALES less cost of MERCHANDISE sold, materials and supplies consumed in the operations or services rendered by the Insured; and

b. all other earnings derived from the operation of the business.

Any amount recovered at selling price for physical loss or damage to FINISHED GOODS or MERCHANDISE, which has been valued at the selling price, will be considered to have been sold to the Insured's regular customers and will be credited against claimed loss of net SALES.

C. Period of Liability

1. The **Period of Liability** applying to all TIME ELEMENT coverages, except **Leasehold Interest** and as shown below, or if otherwise provided under the TIME ELEMENT coverage extensions, is as follows:

a. For building and equipment, the period of time:

I. starting on the date of physical loss or damage insured by this POLICY to INSURED PROPERTY; and

II. ending when with due diligence and dispatch the building and equipment could be repaired or replaced with current materials of like size, kind and quality and made ready for operations;

under the same or equivalent physical and operating conditions that existed immediately prior to such physical loss or damage.

Such period of time is not limited by the POLICY expiration date.

b. For stock-in-process and MERCHANDISE, including finished goods not manufactured by the Insured, the period of time required with the exercise of due diligence and dispatch:

I. to restore stock-in-process to the same state of manufacture in which it existed at the inception of the interruption of the Insured's business; and

II. to replace physically damaged MERCHANDISE.

c. For raw materials and supplies, the period of time:

I. of the actual interruption of the Insured's business resulting from the Insured's inability to obtain suitable raw materials and supplies similar to those damaged; but

II. limited to that period of time for which the damaged raw materials and supplies would have supplied operating needs.

d. For physical loss or damage as covered under data restoration, the period of time required to cop y from backups or from originals of a previous generation. Such period of time shall include

all reasonable and necessary time, incurred by the Insured in recreating, gathering and assembling such ELECTRONIC DATA.

e. For physical loss or damage to exposed films, records, manuscripts and drawings, the period of ti

me required to copy from backups or from originals of a previous generation. Such period of ti me shall include all reasonable and necessary time, incurred by the Insured in recreating, gatherin g and assembling such backups or orginal of previous generations.

2. The **Period of Liability** does not include any additional time due to the Insured's inability to resume operations for any reason, including but not limited to:

a. making changes to the equipment;

b. making changes to the buildings or structures;

c. re-staffing or re-training employees. However, this item **c.** does not apply to additional time needed to train staff to use new machinery or equipment that replaces machinery or equipment that suffered insured physical loss or damage, provided such training is completed within 90 consecutive days after the new machinery or equipment has been installed.

3. If more than one **Period of Liability** applies, such periods will not be cumulative.

D. Extra Expense

1. The recoverable **Extra Expense** loss is the reasonable and necessary extra costs incurred by the Insured during the **Period of Liability** as respects the following:

a. extra costs to temporarily continue as nearly normal as practicable the conduct of the Insured's business; and

b. extra costs of temporarily using property or facilities of the Insured or of others;

c. costs to purchase FINISHED GOODS from third parties to fulfill orders when such orders cannot be met due to physical loss or damage to the Insured's FINISHED GOODS, less payment received for the sale of such FINISHED GOODS;

d. less any value remaining at the end of the **Period of Liability** for any property obtained in connection with the above.

Time Element Exclusion paragraph **D.3.** does not apply to paragraph **c.** above.

2. No coverage is provided herein for:

a. any loss of income;

b. costs that normally would have been incurred in conducting the Insured's business during the same period had no physical loss or damage insured by this POLICY to INSURED PROPERTY occurred;

c. cost of permanent repair or replacement of any property that has sustained physical loss or damage; or

d. any expense recoverable elsewhere in this POLICY.

E. Rental Insurance

1. The recoverable **Rental Insurance** loss is the Actual Loss Sustained by the Insured during the **Period of Liability** as respects:

   a. the fair rental value of any portion of an INSURED LOCATION(S) occupied by the Insured that the Insured is unable to occupy following physical loss or damage insured by this POLICY;

   b. the income reasonably expected from rentals of unoccupied or unrented portions of INSURED LOCATION(S) available for rent at the time of physical loss or damage insured by this POLICY; and

   c. the rental income from the rented portions of INSURED LOCATION(S) according to bona fide leases, contracts or agreements in force at the time of physical loss or damage insured by this POLICY to such real property;

   all not to include non-continuing charges and expenses.

2. No coverage is provided herein for any loss of rental income during any period in which INSURED PROPERTY would not have been tenantable for any reason other than physical loss or damage insured by this POLICY, except as otherwise provided under **Extended Period of Liability**.

F. Time Element Coverage Extensions, Terms and Conditions

The following are subject to all terms, conditions, provisions, limitations and exclusions of this POLICY and in addition, any other terms, conditions, provisions, limitations and exclusions set forth below.

1. Commissions, Licensing Fees and Royalties

a. The recoverable **Commissions, Licensing Fees and Royalties** loss is **Gross Earnings** loss incurred by the Insured during the **Period of Liability** less any non-continuing expenses and charges.

b. The recoverable **Commissions, Licensing Fees and Royalties** loss incurred is **Gross Earnings** lost by the Insured during the **Period of Liability** under any royalty, licensing fee, franchise fee or commission agreements between the Insured and another party which is not realizable due to direct physical loss or damage insured by this POLICY to any property, except of the type excluded under **Property Not Insured**, of the other party at any LOCATION(S) situated within the **Policy Territory**.

c. The Insured agrees to influence, to the extent possible, the other party with whom the agreements described above have been made to use any other machinery, supplies or LOCATION(S) in order to resume business so as to reduce the amount of loss payable hereunder, and the Insured agrees to cooperate with that party in every way to effect this.

d. No coverage is provided hereunder for any costs to effect the above unless authorized in advance by the Company.

e. In determining the amount of loss payable hereunder, the Company will consider the amount of income derived from such agreements before and the probable amount of income after the date of such physical loss or damage had no loss occurred.

f. Recovery is available hereunder only if such physical loss or damage interrupts the delivery of goods in whole or in part to the Insured or for the Insured's account.

2. Contingent Time Element

a. This POLICY is extended to insure loss of **Gross Earnings**, **Rental Insurance**, and **Extra Expense** incurred by the Insured during the **Period of Liability** directly resulting from direct physical loss or damage insured by this POLICY to any property, except of the type as excluded under **Property Not Insured**, at any LOCATION(S) of suppliers or customers, provided that such physical loss or damage prevents:

I. such suppliers from supplying goods or services directly or indirectly to the Insured;

II. such customers from receiving goods or services directly or indirectly from the Insured;

provided that such LOCATION(S) of suppliers or customers are situated within the **Policy Territory.**

b. Specified limits for this extension are shown in the **Coverage Purchased and Coverage Not Purchased** section of this POLICY for:

I. those direct suppliers and customers who have been specifically named by the Insured have been submitted to, accepted by and on file with the Company;

II. those direct suppliers and customers who have not been specifically named by the Insured; and

III. all indirect suppliers and customers.

c. As used herein, suppliers or customers do not include any company supplying to or receiving from INSURED LOCATION(S) electricity, fuel, gas, refrigerant, sewage, steam, water, telecommunications, audio, data or video.

3. Extended Period of Liability

a. The coverage provided hereunder for loss of **Gross Earnings** and **Rental Insurance** is extended to insure for only up to the additional length of time shown for **Extended Period of Liability** in the **Coverage Purchased and Coverage Not Purchased** section as would be required with the exercise of due diligence and dispatch to restore the Insured's business to the condition that would have existed had no physical loss or damage insured by this POLICY occurred;

b. The Time Limit for this extension of coverage starts on the date the applicable **Period of Liability** ends.

4. Impounded Water

a. This POLICY is extended to insure loss of **Gross Earnings**, **Rental Insurance**, and **Extra Expense** incurred by the Insured due to the necessary interruption of the Insured's business caused by inadequate water supply.

b. It is a condition precedent to recovery under this extension that such inadequate water supply is a direct result of the release of water:

I. stored behind dams or in reservoirs; and

II. at INSURED LOCATION(S); and

III. used for any manufacturing purpose, including but not limited to as raw material or for power production; and

IV. caused by direct physical loss or damage insured by this POLICY to such dams or reservoirs, or to equipment connected thereto.

5. Ingress / Egress

This POLICY is extended to insure loss of **Gross Earnings**, **Rental Insurance**, and **Extra Expense** incurred by the Insured due to the necessary interruption of the Insured's business, provided that:

a. the interruption directly results from the prevention of direct ingress to or direct egress from INSURED LOCATION(S), whether or not INSURED PROPERTY at such INSURED LOCATION(S) is damaged; and

b. the prevention above is caused by direct physical loss or damage insured by this POLICY to any property, including property excluded under **Property Not Insured**.

6. Leasehold Interest

a. This POLICY is extended to insure **Leasehold Interest** loss is as follows:

In the event of direct physical loss or damage insured by this POLICY to INSURED LOCATION(S) at which the Insured leases space and pursuant to a written lease, if the lease agreement requires continuation of rent and if the property is wholly untenantable or unusable due to such physical loss or damage:

I. the actual rent payable for the unexpired term of the lease; or,

II. if the property is partially untenantable or unusable, the proportion of the rent payable for the unexpired term of the lease; or,

III. If the lease is canceled by the lessor pursuant to the lease agreement or by the operation of law:

1) the LEASE INTEREST for the first three (3) consecutive calendar months following the physical loss or damage; and

2) the NET LEASE INTEREST for the remaining unexpired term of the lease.

LEASE INTEREST means the excess rent paid for the same or similar replacement property over actual rent payable plus cash bonuses or advance rent paid (including maintenance or operating charges) for each month during the unexpired term of the Insured's lease.

NET LEASE INTEREST means the present value amount, which placed at the prime rate of annual interest effective on the date of physical loss or damage, as published in the Wall Street Journal, would equal the LEASE INTEREST (less any amounts otherwise payable hereunder).

b. No coverage is provided for any increase in loss resulting from:

I. the suspension, cancellation or lapse of any license;

II. the Insured exercising an option to extend, renew or cancel the lease;

III. any act or omission of the Insured that constitutes a default under the lease;

IV. the Insured's loss of **Leasehold Interest** resulting from physical loss or damage to personal property.

7. Order of Civil or Military Authority

This POLICY is extended to insure loss of **Gross Earnings**, **Rental Insurance**, and **Extra Expense** incurred by the Insured due to the necessary interruption of the Insured's business, provided that:

a. the interruption directly results from an order of a civil or military authority that prohibits partial or total access to INSURED LOCATION(S); and

b. the order referenced above is caused by direct physical loss or damage insured by this POLICY to property of the type insured.

8. Protection and Preservation of Property – Time Element

a. This POLICY is extended to insure loss of **Gross Earnings**, **Rental Insurance**, and **Extra Expense** incurred by the Insured for a period of time after the Insured has first taken reasonable action for the temporary protection and preservation of property insured by this POLICY provided such action is necessary to prevent immediately impending direct physical loss or damage insured by this POLICY to such INSURED PROPERTY.

b. This extension is subject to the deductible provisions that would have applied had the physical loss or damage happened.

9. Related Reported Values

If:

a. reported TIME ELEMENT values include values for LOCATION(S) used by the Insured (such as branch stores, SALES outlets and other plants) but such LOCATION(S) are not listed on the latest schedule submitted to, accepted by and on file with the Company; and

b. a TIME ELEMENT loss results at such LOCATION(S) due to direct physical loss or damage insured by this POLICY to INSURED PROPERTY at INSURED LOCATION(S);

then this POLICY is extended to insure such resulting TIME ELEMENT loss in accordance with the coverage applicable at the INSURED LOCATION(S) where such physical loss or damage occurred.

10. Service Interruption – Time Element

a. This POLICY is extended to insure loss of **Gross Earnings**, **Rental Insurance**, and **Extra Expense** incurred by the Insured at INSURED LOCATION(S) when such loss results from the interruption of services consisting of:

I. in coming electricity;

II. incoming fuel;

III. incoming gas;

IV. incoming refrigerant;

V. incoming steam;

VI. incoming water;

VII. outgoing sewerage service; or

VIII. incoming or outgoing audio, voice and video;

b. This extension of coverage applies only when such interruption of service is caused by direct physical loss or damage insured by this POLICY to any property of the type insured by this POLICY of the supplier of such services if such property is situated within the **Policy Territory**.

c. The Insured agrees to immediately notify the suppliers of services of any interruption of such services.

d. No coverage is provided under this extension of coverage:

I. unless the period of service interruption exceeds the WAITING PERIOD specified for this extension; or

II. if the interruption of such services is caused by the failure of the Insured to comply with the terms and conditions of any contracts the Insured has for the supply of such services; or

III. for loss sustained at any **Miscellaneous Unnamed Location;** or

IV. for loss or damage caused by or resulting from EARTH MOVEMENT for property located in California, in the NEW MADRID SEISMIC ZONE or in the PACIFIC NORTHWEST SEISMIC ZONE, regardless of any other cause or event, whether or not insured under this Policy, contributing concurrently or in any other sequence to the loss.

11. Ordinary Payroll

a. This POLICY is extended to insure loss of Ordinary Payroll. Ordinary Payroll is the entire payroll expense for all employees of the insured except officers, executives, employees under contract, and other critical employees.

SECTION VI
EXCLUSIONS

A. Property Not Insured

INSURED PROPERTY does not include and this POLICY does not insure loss or damage to the following:

1. bills, notes, MONEY, SECURITIES, PRECIOUS METALS, precious stones, semi-precious stones, jewelry, furs;

2. land, water or any other substance in or on land, except this exclusion does not apply to:

   a. LAND IMPROVEMENTS

   b. water which is normally contained within any enclosed tank, piping system or any other processing equipment;

3. animals, growing and standing crops, trees, standing timber, plants, shrubs and lawns, except this exclusion does not apply to property that is LAND IMPROVEMENTS as defined herein;

4. aircraft or watercraft and contents thereof, rolling stock, spacecraft, satellites including their launch vehicles and launch sites;

5. waterborne equipment or OFFSHORE property, including any OFFSHORE drilling and production rigs. Offshore property means property away from the shore but not connected to the shore by dock, piers or any other physical connection other than pipelines. In the Gulf of Mexico off Texas and Louisiana, OFFSHORE is to be seaward of the Inland edge of the Lease Block of the Plane Coordinate System, as defined on United States Department of Land Management Leasing Maps;

6. motor vehicles licensed for highway use, except when at INSURED LOCATION(S). This POLICY does insure the INSURED'S LIABILITY for motor vehicles of others while at INSURED LOCATION(S);

7. underground mines, mine shafts, caverns, tunnels, or any property within such underground mines, mine shafts, caverns or tunnels;

8. underwater piping and its contents, fittings, conduits, drains or flues, all situated outside INSURED LOCATION(S);

9. air supported structures and the contents thereof;

10. bulkheads, bridges, retaining walls, revetments, dikes, jetties, wharves, piers, docks, levees and property thereon when loss or damage is caused by action of water or ice or impact of watercraft;

11. above ground transmission and distribution lines including but not limited to wires, cables, poles, pylons, transformers, standards, towers or other supporting structures, which may be attendant to the transmission or distribution of electrical power, telephone or telegraph signals, and all other communications signals, whether audio or visual. However, this exclusion does not apply when such property is situated at INSURED LOCATION(S). Nor does this exclusion apply to coverage granted under **Service Interruption** provisions of this POLICY;

12. nuclear power plants, facilities handling or processing nuclear fuel or waste;

13. property in transit, except as otherwise provided under the **Transportation** provision of this POLICY;

14. property sold by the Insured under conditional sale, trust agreement, installment plan or other deferred payment plan after delivery to customers;

15. the Insured's product when loss or damage is caused by or results from errors in design, poor workmanship, or use of faulty materials, in the development, processing, testing or manufacture of the Insured's product;

16. stock or materials when loss or damage is caused by manufacturing or processing operations which result in damage to such property while being processed, manufactured, tested or otherwise being worked upon;

17. MEDIA for, or programming records pertaining to electronic and electromechanical data processing or electronically controlled equipment, including the data thereon when loss or damage is caused by error or omission in machine programming or instructions to machine;

18. ELECTRONIC DATA, except as may be otherwise provided under **Data Restoration** coverage provided elsewhere;

B. Types of Loss or Damage Not Insured

This POLICY does not insure against the following types of loss or damage:

1. a. indirect or remote loss or damage;

   b. delay or loss of market; or

   c. interruption of business unless otherwise provided hereon.

2. the cost of correcting or making good:

   a. faulty workmanship, material, construction or design; or

   b. inherent or latent defects;

3. unexplained or mysterious disappearance of any property, or shortage disclosed by audit or upon taking inventory;

4. accumulated effects of smog, smoke, vapor, liquid and dust;

5. a. wear and tear, deterioration, depletion, erosion, corrosion;

   b. settling, cracking, shrinkage, bulging or expansion of pavements, foundations, walls, floors, roofs or ceilings; or

   c. shrinkage, evaporation, leakage of contents, change in flavor or texture or finish, decay or other spoilage;

   unless physical loss or damage insured by this POLICY results, then only that resulting loss or damage is insured.

6. mold, mildew, fungus, spores or other microorganism of any type, nature, or description, including but not limited to any substance whose presence poses an actual or potential threat to human health, wet rot or dry rot, unless such loss or damage results directly from physical loss or damage insured by this POLICY and then only to the limit of liability shown in the **Coverage Purchased and Coverage Not Purchased** section of this POLICY.

   If no limit of liability is shown in the **Coverage Purchased and Coverage Not Purchased** section of this POLICY, then this exclusion applies regardless whether there is:

   a. any physical loss or damage to INSURED PROPERTY;

   b. any insured cause of loss or damage, whether or not contributing concurrently or in any sequence;

c. any loss of use, occupancy, or functionality; or

d. any action required, including but not limited to repair, replacement, removal, cleanup, abatement, disposal, relocation, or steps taken to address medical or legal concerns.

7. Any loss or damage, both PROPERTY DAMAGE and TIME ELEMENT, occasioned by damage to or failure of, any type whatsoever, to the internet including the World Wide Web (WWW), unless physical loss or damage insured by this POLICY results, then only that resulting loss or damage is insured.

8. Any loss resulting from the voluntary parting with title or possession of property if induced by any fraudulent act or by false pretense.

C. Causes of Loss Not Insured

This POLICY does not insure against loss or damage caused by any of the following:

1. Animals, vermin or insects unless physical loss or damage insured by this POLICY results, then only that resulting loss or damage is insured;

2. Any fraudulent: dishonest or other act intended to result in a financial gain of the Insured or any associate, proprietor, director, trustee, officer, employee or agent of any insured;

3. Dampness or dryness of atmosphere, or extremes or changes of temperature, unless physical loss or damage insured by this POLICY results, then only that resulting loss or damage is insured;

4. Lack of the following services when caused by loss or damage to any property outside INSURED LOCATION(S):

   a. incoming electricity, fuel, gas, refrigerant, steam, water;

   b. outgoing sewerage; or

   c. incoming or outgoing audio, voice and video;

   This exclusion does not apply to the **Service Interruption – Property Damage** and **Service Interruption - Time Element** provisions of this POLICY.

5. Loss or damage due to the discharge, dispersal, seepage, migration, release or escape of CONTAMINANTS (except as provided under the **Radioactive Contamination** provision of this POLICY), unless the discharge, dispersal, seepage, migration, release or escape is directly caused by physical loss or damage insured by this POLICY.

6. Loss or damage caused by any of the following, regardless of any other cause or event contributing concurrently or in any other sequence to the loss or damage:

   a. Nuclear reaction or nuclear radiation, or radioactive contamination (except as provided under the **Radioactive Contamination** provision of this POLICY), all whether controlled or uncontrolled. However, subject to the foregoing and all provisions of this POLICY, direct loss by fire resulting from nuclear reaction or nuclear radiation or radioactive contamination is insured against by this POLICY.

   b. Hostile or warlike action in time of peace or war, including action in hindering, combating or defending against an actual, impending or expected attack:

      I. by any government or sovereign power (de jure or de facto), or by any authority maintaining or using military, naval or air forces; or

      II. by military, naval or air forces; or

III. by an agent of any such government, power, authority or forces;

it being understood that any discharge, explosion or use of any weapon of war employing nuclear fission or fusion shall be conclusively presumed to be such a hostile or warlike action by such a government, power, authority or forces;

c. insurrection, rebellion, revolution, civil war, usurped power, or action taken by governmental authority in hindering, combating or defending against such an OCCURRENCE.

d. The unlawful possession, use, release, discharge, dispersal or disposal of any chemical, bacteriological, viral, radioactive or similar agents or matter regardless of who is responsible for the act and whether war has been declared or not.

e. The unlawful possession, use, release, discharge, detonation, dispersal or disposal of any device or material capable of producing a nuclear reaction or the spread of radioactivity, regardless of who is responsible for the act and whether war has been declared or not.

7. Enforcement of any law, ordinance, regulation or rule regulating or restricting the construction, installation, repair, replacement, demolition, occupancy, operation or other use of property on INSURED LOCATION(S) except as provided in the **Demolition and Increased Cost of Construction** provision of this POLICY.

8. Any increase of loss resulting from interference at INSURED LOCATION(S) by strikers or other persons, with rebuilding, repairing or replacing property or with the resumption or continuation of business.

9. Any loss, damage, destruction, distortion, erasure, corruption or alteration of ELECTRONIC DATA from any cause whatsoever (including but not limited to COMPUTER VIRUS) or loss of use, reduction in functionality, cost, expense of whatsoever nature resulting there from, unless physical loss or damage insured by this POLICY results, then only that resulting loss or damage is insured.

ELECTRONIC DATA means facts, concepts and information converted to a form useable for communications, interpretation or processing by electronic and electromechanical data processing or electronically controlled equipment and includes programs, software, and other coded instructions for the processing and manipulation of data or the direction and manipulation of such equipment.

COMPUTER VIRUS means a set of corrupting, harmful or otherwise unauthorized instructions or code including a set of maliciously introduced unauthorized instructions or code, programmatic or otherwise, that propagate themselves through a computer system or network of whatsoever nature. COMPUTER VIRUS includes but is not limited to 'Trojan Horses', 'worms' and 'time or logic bombs'.

10. a. explosion in or of the following property owned, operated or controlled by the Insured: steam boilers, including equipment attached to and forming a part thereof; steam turbines; steam engines; steam pipes interconnecting any of the foregoing; or gas turbines; except that liability is specifically assumed for loss resulting from EXPLOSION of accumulated gases or unconsumed fuel within the firebox (or the combustion chamber) of any fired vessel, other than gas turbines, or within the flues or passages which conduct the gases of combustion there from;

b. rupture, bursting, cracking, burning or bulging of: steam boilers including equipment attached to and forming a part thereof; steam turbines; steam engines; steam pipes interconnecting any of the foregoing; hot water boilers or other equipment for heating water; pressure vessels, including equipment attached to and forming a part thereof; or, gas turbines;

c. mechanical or machinery breakdown, including rupture or bursting caused by centrifugal force;

d. electrical injury or disturbance to electrical appliances, devices, fixtures, wiring, or other electrical or electronic equipment caused by electrical currents artificially generated;

nor does this POLICY insure against resulting damage to INSURED PROPERTY caused by such OCCURRENCE(S) except damage from resulting fire, water or other means to extinguish a fire, or combustion EXPLOSION outside any of the property described in this exclusion.

EXPLOSION shall mean: explosion, except loss by explosion in or of the following property owned, operated or controlled by the Insured:

a. steam boilers, steam turbines, steam engines, steam pipes interconnecting any of the foregoing, or gas turbines;

b. moving or rotating machinery or parts of same when such loss is caused by centrifugal force or mechanical breakdown;

c. any property undergoing pressure test to the extent of loss to such property undergoing test, including equipment attached to and forming part of such property.

The foregoing exceptions (a. through c.) are modified to the extent that liability is specifically assumed for loss resulting from:

a. malicious use of explosives;

b. EXPLOSION of accumulated gases or unconsumed fuel within the firebox (or the combustion chamber) of any fired vessel, other than gas turbines, or within the flues or passages which conduct the gases of combustion there from.

The following are not EXPLOSIONS within the intent or meaning of this exclusion:

a. electric arcing or any coincident rupture of electrical equipment due to such arcing;

b. bursting, rupture or collapse caused by freezing;

c. shock waves generated by aircraft, generally known as sonic boom;

d. bursting, rupture or collapse of any safety disc, rupture diaphragm or fusible plug.

D. Time Element Exclusions

1. This POLICY does not insure against TIME ELEMENT loss for any period during which business would not or could not have been conducted for any reason other than physical loss or damage insured by this POLICY to INSURED PROPERTY.

2. This POLICY does not insure against any increase in the TIME ELEMENT loss due to:

   a. suspension, cancellation or lapse of any lease, contract, license or orders;

   b. damages for breach of contract or for late or non-completion of orders;

   c. fines or penalties of any nature; or

   d. any other consequential or remote loss.

   However, a. and d. above do not apply to **Extended Period of Liability** provision of this POLICY.

3. This POLICY does not insure against any **Gross Earnings** loss resulting from loss or damage to FINISHED GOODS manufactured by the Insured or MERCHANDISE when valued at its selling price, nor the time required for their reproduction.

SECTION VII
VALUATION

A. Adjustment of the loss amount for physical loss or damage insured by this POLICY will be computed as of the date of loss at the INSURED LOCATION(S) where such physical loss or damage occurred, and for no more than the interest of the Insured in such property, subject to the following:

1. buildings and structures, building equipment, plant equipment, machinery, machine parts, office furniture, office equipment, tools, dies, jigs, templates, patterns and flasks, except all such property that is obsolete or useless to the Insured:

   a. if repaired, rebuilt or replaced, at the same or at another site, within two (2) consecutive calendar years from the date of loss or damage, the lesser of the following:

      I. the cost to repair, rebuild or replace on the same site, with new and current materials of like size, kind and quality, whichever is the least;

      II. the actual expenditure incurred by or on behalf of the Insured in repairing, rebuilding or replacing on the same or another site, whichever is the least;

      but in no event to include any increased costs resulting from the enforcement of any law, ordinance, regulation or rule regulating or restricting the construction, installation, repair, replacement, demolition, occupancy, operation or other use of property at INSURED LOCATION(S);

   b. if not repaired, rebuilt or replaced, at the same or another site, within two (2) consecutive calendar years from the date of loss or damage:

      the ACTUAL CASH VALUE at the time and place of loss.

2. catalysts or refractory material:

   the ACTUAL CASH VALUE of the material which equals the replacement cost at the time of loss or damage multiplied by the remaining useful life factor. Remaining useful life factor means the normal useful life of the material in months minus the number of months the material had been in use at the time of the loss or damage, divided by the normal useful life of the material in months.

3. FINISHED GOODS manufactured by the Insured:

   a. the regular cash selling price less all discounts and charges to which the FINISHED GOODS would have been subject and a commensurate reduction to reflect waste, pilferage, breakage, spoilage or other factors that would have affected the sale of FINISHED GOODS had no physical loss or damage occurred.

4. motor vehicles or other mobile equipment not manufactured by the Insured, the least of the following:

   a. the repair cost;

   b. the replacement cost; or

   c. the ACTUAL CASH VALUE if not replaced.

5. Pair, Set or Parts - In the event of loss of or damage (as insured against by this POLICY) to:

   a. any article or articles which are a part of a pair or set, the measure of loss of or damage to such article or articles shall be a reasonable and fair proportion of the total value of the pair or set, giving consideration to the importance of said article or articles, but in no event shall such loss or damage be construed to mean total loss of the pair or set; or

b. any part of INSURED PROPERTY consisting, when complete for use, of several parts, the Company shall be liable only for the value of the part lost or damaged.

6. RAW STOCK, MERCHANDISE and supplies:

the replacement cost, unless the regular cash selling price less all discounts and charges for merchandise has been specifically submitted to, accepted by and on file with the Company.

7. STOCK IN PROCESS:

a. the replacement cost of raw materials;

b. the cost of labor expended at the time of loss or damage; and

c. the proper proportion of overhead charges.

8. exposed films, records, manuscripts, and drawings that are not VALUABLE PAPERS AND RECORDS:

a. the replacement cost of exposed films, records, manuscripts, and drawings blank; plus

b. the cost of copying information from back-ups or from originals of a previous generation;

c. excluding all other costs, such as the cost for research or engineering, incurred in restoring or recreating the information lost.

9. VALUABLE PAPERS AND RECORDS, the least of the following:

a. the reasonable and necessary costs to repair or restore to a functional usage condition;

b. the replacement cost;

c. excluding all other costs, such as the cost for research, engineering, programming, or assembling or gathering information, incurred in restoring or recreating the ELECTRONIC DATA lost, except as may be otherwise provided under **Data Restoration** coverage provided elsewhere.

10. ELECTRONIC DATA PROCESSING MEDIA

a. if repaired or replaced within two (2) consecutive calendar years from the date of loss or damage:

I. the cost of the MEDIA blank; plus the cost to repair, replace or restore such MEDIA to the condition that existed immediately prior to such loss or damage, including the cost of copying the ELECTRONIC DATA from back-ups or from originals of a previous generation;

b. if not repaired or replaced within two (2) consecutive calendar years from the date of loss or damage:

I. the replacement cost of the MEDIA blank;

c. excluding all other costs, such as the cost for research, engineering, programming, or assembling or gathering information, incurred in restoring or recreating the ELECTRONIC DATA lost, except as may be otherwise provided under **Data Restoration** coverage provided elsewhere.

11. FINE ARTS, the least of the following:

a. the reasonable and necessary costs to repair or restore to the functional usable condition that existed immediately prior to the physical of loss or damage;

b. the replacement cost of substantially identical property;

c. the ACTUAL CASH VALUE if not repaired or replaced or designated;

d. the amount designated, if any, for such FINE ARTS on the latest schedule submitted to, accepted by and on file with the Company.

e. In the event a FINE ARTS article is part of a pair or set, and such article, if physically damaged, cannot be repaired or replaced or restored to the physical condition that existed immediately prior to the physical loss or damage, the amount recoverable under this POLICY will be limited to the lesser of the following:

I. the full value of the pair or set; or

II. the amount designated, if any, for such FINE ARTS pair or set on the latest schedule submitted to, accepted by and on file with the Company.

The Insured agrees to surrender the pair or set to the Company.

12. property insured under **Transportation**:

a. As respects property shipped to or for the account of the Insured, the actual invoice to the Insured including accrued costs and charges legally due to the Insured. Such charges may include the Insured's commission as a selling agent.

b. As respects property sold by the Insured and shipped to or for the purchaser's account, the Insured's selling invoice amount including prepaid or advanced freight costs.

c. As respects property not under invoice:

I. for property of the Insured, based on the **Valuation** provisions applying to the LOCATION from which the property is being transported;

II. for other property, the ACTUAL CASH VALUE at the destination point on the date of the OCCURRENCE;

less any charges saved which would have become due and payable upon arrival at destination.

13. IMPROVEMENTS AND BETTERMENTS:

a. if repaired or replaced at the expense of the Insured within two (2) consecutive calendar years from the date of loss or damage, the lesser of the following:

I. the cost to repair or replace the lost or damaged IMPROVEMENTS AND BETTERMENTS with new and current materials of like size, kind and quality, whichever is less;

II. the actual expenditure incurred in repairing or replacing the lost or damaged IMPROVEMENTS AND BETTERMENTS, whichever is less;

b. if not repaired or replaced within two (2) consecutive calendar years after such loss or damage:

that proportion of the original cost at the time of installation of the lost or damaged IMPROVEMENTS AND BETTERMENTS which the unexpired term of the lease at the time of loss or damage bears to the period from the date such IMPROVEMENTS AND BETTERMENTS were made to the expiration date of the lease as of the date of loss or damage, and not including any rights or options for extensions or renewals;

c. if repaired or replaced at the expense of others for the use of the Insured, there shall be no liability hereunder.

14. unrepairable electrical or mechanical equipment, including computer equipment:

the cost to replace such damaged or destroyed property with the most functionally equivalent new and current equipment of like size, kind and quality even if such equipment:

a. has technological advantages;

b. represents an improvement in function; or

c. forms part of a program or system enhancement.

15. property planned and/or scheduled for demolition at the time of the loss or damage:

only the increased cost of demolition, if any, resulting from physical loss or damage insured by this POLICY.

16. real property or machinery and equipment, other than stock, held for sale at the time of the loss or damage. The lesser of the following:

a. the reasonably anticipated selling price;

b. market value.

17. personal property of others for which the Insured is legally liable in the event of loss or damage:

the amount for which the Insured is legally liable, but not to exceed the ACTUAL CASH VALUE of such property.

18. all other property, including property that is obsolete or useless to the Insured:

the ACTUAL CASH VALUE.

B. The Insured may elect not to repair or replace any real and personal property lost, destroyed or damaged and insured hereunder. Loss settlement may be elected on the lesser of repair or replacement cost basis if the proceeds of such loss settlement are expended on other capital expenditures related to the Insured's operations within two (2) consecutive calendar years from the date of physical loss or damage. As a condition of collecting herein, such expenditure must be unplanned as of the date of physical loss or damage. This does not extend to **Demolition and Increased Cost of Construction** provision of this POLICY.

SECTION VIII
LOSS ADJUSTMENT AND SETTLEMENT

A. Abandonment

There may be no abandonment of any property to the Company.

B. Collection from Others

The Company will not be liable for any loss or damage insured hereunder to the extent that the Insured has collected for such loss or damage from others or others have funded the repair or replacement of any property lost or damaged.

C. Company Option

1. Subject to the **Control of Damaged Property** provision, the Company has the option to take all or any part of damaged property at the agreed value within a reasonable time.

2. The Company must give notice to the Insured of its intention to do so within thirty (30) consecutive calendar days after receipt of the signed and sworn to proof of loss required by this POLICY.

D. Dispute Resolution / Optional Arbitration Provision

Upon the mutual agreement of the Company and the Insured, any controversy or dispute arising out of or relating to this POLICY, or the breach, termination or validity thereof, shall be resolved in accordance with the procedures specified herein.

1. Negotiation and Mediation

   The Insured and the Company shall attempt in good faith to resolve any controversy or dispute arising out of or relating to this POLICY promptly by negotiations between representatives who have authority to settle the controversy. If the dispute cannot be resolved by negotiation, the parties shall endeavor to settle the dispute through a confidential mediation with the assistance of a mediator mutually selected by the parties. To the extent the parties are unable to select a mutually agreeable mediator, each party will propose three mediators. Each party then shall strike two of the mediators proposed by the other, leaving one mediator as proposed by each party. A coin then shall be tossed, with the Insured calling heads or tails, with the prevailing party in the coin toss having its remaining proposed mediator jointly engaged by the parties to mediate the dispute, with the cost being split equally among the parties.

2. Arbitration

   a. If a resolution cannot be achieved through the negotiation and mediation process as set forth above, the parties can mutually agree to submit the remaining dispute to be determined through binding arbitration before a panel of three arbitrators in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA"). Provisions in the Commercial Arbitration Rules pertaining to mediation shall not apply.

   b. Notwithstanding anything to the contrary in the Commercial Arbitration Rules, the panel of arbitrators shall be constituted as follows. The Insured and the Company each shall appoint one arbitrator within 14 days of mutually agreeing to arbitrate. The third arbitrator, who shall serve as the chair of the arbitration panel, shall be appointed by the parties upon mutual agreement. If the parties are unable to mutually agree upon a third arbitrator within 30 days of the selection of party-appointed arbitrators, the AAA shall appoint the chairperson in accordance with the rules for doing so in the Commercial Arbitration Rules.

c. In any such arbitration, the terms of this POLICY are to be construed in an evenhanded fashion as between the Insured and the Company in accordance with the laws of the state of New York. The arbitrators are not empowered to award damages in excess of compensatory damages and each party hereby irrevocably waives such damages.

3. Appraisal Provision

If the Insured and the Company fail to agree on the amount of loss to be paid for a claim insured by this POLICY and a resolution cannot be achieved through the negotiation and mediation process as set forth above, and the parties do not mutually agree to submit the dispute to be determined through binding arbitration, either may elect to have that dispute resolved by appraisal by making a written demand upon the other. The venue of the appraisal shall be the State and County of the mailing address for the Insured as set forth in the Declarations of this POLICY. Each party shall select a competent and disinterested appraiser within twenty (20) days after the written demand for appraisal is made. The appraisers then shall select a third competent and disinterested appraiser to serve as the umpire. If they should fail to agree upon an umpire within fifteen (15) days after both appraisers are selected, then upon the request of the Insured or of the Company, such umpire shall be selected by a judge of a court of record and competent jurisdiction in the county in which the appraisal is venued. After the panel of three appraisers has been constituted, the two appraisers selected by the Insured and the Company shall make a good faith effort to appraise and agree upon the amount of the loss in dispute or portions thereof. If the appraisers fail to fully agree, they shall submit their differences to the umpire. An award in writing and signed by any two (2) of the appraiser shall determine the amount of loss. The Insured and the Company shall each pay their selected appraiser and shall bear equally the other expenses of the appraisal and of the umpire. The Company shall not be held to have waived any of its rights by any act relating to appraisal.

E. Identity of Interests

If the Insured is comprised of more than one legal entity, liability shall not exceed the amount of loss had all interests comprised a single legal entity.

F. Loss Adjustment and Loss Payable

Loss, if any, will be adjusted with and payable to the First Named Insured, or as may be directed by the First Named Insured. Additional insured interests will also be included in loss payment as their interests may appear when named as additional named insured, lender, mortgagee or loss payee in the Certificates of Insurance on file with the Company. The receipt of the payee(s) so designated shall constitute a release in full of all liability with respect to such loss.

G. Partial Payment of Loss Settlement

1. In the event of a loss occurring which has been ascertained by the Company to be recoverable under this POLICY, the Company will advance mutually agreed upon partial payments for such loss, subject to the provisions of this POLICY.

2. To obtain such partial payments, the Insured agrees to submit a signed and sworn partial proof of loss as described in this POLICY with adequate supporting documentation.

H. Requirements in Case of Loss

The Insured shall give immediate written notice to the Company of any loss, protect the property from further damage, forthwith separate the damaged and undamaged personal property, put it in the best possible order, furnish a complete inventory of the destroyed, damaged and undamaged property, showing in detail quantities, costs, ACTUAL CASH VALUE and amount of loss claimed; and within sixty (60) days after the loss, unless such time is extended in writing by the Company, the Insured shall render to the Company a proof of loss, signed and sworn to by the Insured, stating the knowledge and belief of the Insured as to the following:

1. the time and origin of the loss;

2. the interest of the Insured and of all others in the property;

3. the ACTUAL CASH VALUE of each item thereof and the amount of loss thereof;

4. all encumbrances thereon;

5. all other contracts of insurance, whether valid or not, insuring any of said property;

6. any changes in the title, use, occupation, LOCATION(S), possession or exposures of said property since the issuing of this POLICY, by whom and for what purpose any building herein described and the several parts thereof were occupied at the time of loss and whether or not it then stood on leased ground, and shall furnish a copy of all the descriptions and schedules in all policies or on file with the Company and, if required, verified plans and specifications of any building, fixtures or machinery destroyed or damaged.

7. the Insured, as often as may be reasonably required, shall exhibit to any person designated by the Company all that remains of any property herein described, and submit to examinations under oath by any person named by the Company, and subscribe the same; and, as often as may be reasonably required, shall produce for examination all books of account, bills, invoices and other vouchers, or certified copies thereof if originals be lost, at such reasonable time and place as may be designated by the Company or its representative, and shall permit extracts and copies thereof to be made.

I. Salvage and Recovery

Any salvage or other recovery, except recovery under **Subrogation** or **Other Insurance** section, will accrue entirely to the benefit of the Company until the sum paid by the Company is recovered.

J. Settlement of Claims

The amount of loss or damage, for which the Company may be liable, will be paid within thirty (30) consecutive calendar days after:

1. proof of loss as described under **Requirements in Case of Loss** section is accepted in writing by the Company; and

2. when a resolution of the amount of loss is made either by:

   a. agreement in writing between the Insured and the Company; or

   b. the filing with the Company of an award as provided under the **Arbitration or Appraisal Provision** section.

K. Subrogation

In the event of any payment made under this POLICY:

1. the Company will be subrogated to all of the Insured's rights of recovery against any person, entity or organization;

2. the Insured agrees to execute and deliver instruments and papers and do whatever is necessary to secure such rights;

3. the Company will not acquire any rights of recovery that the Insured has expressly waived, in writing, prior to loss or damage, nor will such waiver affect the Insured's rights under this POLICY;

4. the Insured agrees to do nothing after loss or damage to prejudice the subrogation rights of the Company;

5. the Insured agrees to cooperate with the Company and upon the Company's request and expense, attend hearings and trials and assist in:

   a. effecting settlements;

   b. securing and giving information and evidence;

   c. obtaining the attendance of witnesses; and

   d. pursuing recovery through legal action or other formal proceedings;

6. the net amount of any recovery after deducting the costs of proceedings shall be divided between each party instituting such proceedings in the same proportion as each such party has borne to the provable loss.

L. Suit

No suit or action on this POLICY for the recovery of any claim shall be sustainable in any court of law unless all the requirements of this POLICY shall have been complied with, and unless commenced within twelve (12) months next after the date of the physical loss or damage giving rise to any claim hereunder.

SECTION IX
GENERAL CONDITIONS

A. Additional Insurable Interests

Additional insured interests are automatically added to this POLICY as their interests may appear when named as additional named insured, lender, mortgagee or loss payee in the Certificates of Insurance on file with the Company. Such interests become effective on the dates shown in such certificates but do not further amend or extend the terms, conditions, provisions and limitations of this POLICY.

B. Assignment of Policy

Assignment of this POLICY is not valid except with the written consent of the Company.

C. Concealment, Misrepresentation and Fraud

This entire POLICY shall be void if, whether before or after loss or damage, the Insured has willfully concealed or misrepresented any material fact or circumstance concerning this insurance or the subject thereof, a claim for loss or damages or the interest of the Insured therein, or in case of any fraud or false swearing by the Insured relating thereto.

D. Conditions Suspending or Restricting Insurance

Unless otherwise provided in writing added hereto the Company shall not be liable for loss or damage occurring while the hazard is increased by any means within the control or knowledge of the Insured.

E. Excess Insurance

Permission is granted to the Insured to have excess insurance over the limit(s) of liability set forth in this POLICY without prejudice to this POLICY, and the existence of such insurance, if any, shall not reduce any liability under this POLICY.

F. Governing Law and Jurisdiction

1. The laws of the State of New York, without regard to its conflict of laws rules, that would cause the application of the laws of any other jurisdiction, shall govern the construction and interpretation of this POLICY.

2. The parties hereto do irrevocably submit to the exclusive jurisdiction of the Courts of the State of New York, and to the extent permitted by law, the parties expressly waive all rights to challenge or otherwise limit such jurisdiction.

G. Inspection of Property and Operations

The Company shall be permitted but not obligated to inspect the Insured's property and operations at any reasonable time. Neither the right to make inspections nor the making thereof nor any risk analysis for any particular hazards, exposures or potential risks of loss or damage nor any advice or report resulting there from shall imply any liability, nor constitute an undertaking on behalf of or for the benefit of the Insured or others, to determine or warrant that such property or operations are safe or healthful, or are in compliance with any law, rule or regulation.

H. Minimum Earned Premium

In consideration of the premium charged and subject to the terms, exclusions, limits and conditions of this POLICY, not in conflict herewith, it is agreed that the minimum earned premium due to the Company is twenty-five percent (25.0%) of the total invoiced annual POLICY premium, including any applicable taxes and surcharges, regardless of the actual term of this POLICY.

However, if this POLICY is canceled by the Company prior to the expiration date, the earned premium shall be computed pro-rata and the terms and conditions of this minimum earned premium provision shall be null and void.

Nothing herein contained shall be held to vary, alter, waive or extend any of the terms, conditions, or limitations of the POLICY to which this provision is attached other than as above stated.

I. Notice of Cancellation

This POLICY may be canceled

1. at any time at the request of the First Named Insured:

    a. by surrendering this POLICY to the Company; or

    b. by giving written notice to the Company stating when thereafter such cancellation will be effective; or

2. by the Company by giving the First Named Insured written notice at least:

    a. ten (10) consecutive calendar days before the effective date of cancellation in the event the Company does not receive the premium by the date payment thereof becomes due; or

    b. ninety (90) consecutive calendar days before the effective date of cancellation for any other reasons.

If notice is mailed, then proof of mailing is sufficient proof of notice.

If the First Named Insured cancels this POLICY, then any unearned premium will be calculated based on the customary short rate table. However, if the Company cancels this POLICY, any unearned premium will be calculated on pro-rata basis. The Company agrees to return any unearned premium due the Insured as soon as practicable.

J. Occurrence Hour Clause

1. Subject to the **Prior or Subsequent Loss** condition of this POLICY, each loss OCCURRENCE by EARTH MOVEMENT shall constitute a single claim hereunder, provided, if more than one EARTH MOVEMENT shall occur within any continuous period of one-hundred-sixty-eight (168) hours during the term of this POLICY, such EARTH MOVEMENT shall be deemed to be a single OCCURRENCE of EARTH MOVEMENT.

2. Subject to the **Prior or Subsequent Loss** condition of this POLICY, when the word OCCURRENCE applies to loss or damage resulting from tornado, windstorm, NAMED WINDSTORM, hail, riot, riot attending a strike, civil commotion, and malicious mischief, if such causes of loss are insured by this POLICY one event will be construed to be all losses arising during a continuous period of seventy-two (72) hours.

3. When filing a proof of loss, the Insured may elect the moment at which such **Occurrence Hour Clause** hour period is deemed to have commenced, which will not be earlier than when the first physical loss or damage to property or interests insured by this POLICY occurs.

K. Other Insurance

The Company shall not be liable if, at the time of loss or damage there is any other insurance or warranty which would attach if this insurance had not incepted, except that this insurance shall apply only as excess and in no event as contributing insurance, and then only after all other insurance or any warranty has been exhausted.

L. Policy Modification

1. This POLICY contains all of the agreements between the Insured and the Company concerning this insurance.

2. This POLICY can be changed only by endorsements issued by the Company and made part of this POLICY.

3. Notice to any agent of the Insured or knowledge possessed by any agent of the Insured or by any other person does not:

   a. create a waiver or change any part of this POLICY; or

   b. prevent the Company from asserting any rights under the provisions of this POLICY or law.

M. Prior or Subsequent Loss

The Company is not liable hereunder for any loss or damage:

1. occurring before the POLICY becomes effective; or

2. arising from an OCCURRENCE which is in progress at the time this POLICY becomes effective, even if such loss or damage occurs after this POLICY becomes effective; or

3. occurring after the expiration of this POLICY, except loss or damage arising from an OCCURRENCE in progress at the time this POLICY expires.

N. Reduction by Loss

Except with respect to any aggregate limit of liability, any paid loss shall not reduce any other limit of this POLICY.

O. Several and Not Joint Liability

The liability of the Company shall be several and not joint and is limited solely to the extent of Company's individual share. The Company is not responsible for the subscription of any co-subscribing company or reinsurer who for any reason does not satisfy all or part of its obligations.

P. Titles of Paragraphs

The titles of the paragraphs of this form (and of endorsements and supplemental contracts, if any, now or hereafter attached to this POLICY) are inserted solely for convenience of reference and shall not be deemed in any way to limit or affect the provisions to which they relate.

Q. Underlying Insurance

Permission is granted the Insured to purchase insurance on all or any part of the deductibles of this POLICY, and the existence of such underlying insurance shall not prejudice any recovery otherwise payable under this POLICY. If the limits of such underlying insurance exceed the deductible which would apply under this POLICY, then the insurance provided by this POLICY shall apply only as excess after that portion which exceeds such deductible has been exhausted.

SECTION X
DEFINITIONS

Unless otherwise defined elsewhere, the following Definitions apply when the term is used in this POLICY.

A. ACCOUNTS RECEIVABLE

The total of:

a. all sums due the Insured from customers, provided the Insured is unable to effect collection thereof as the result of physical loss or damage to the MEDIA of accounts receivable records; and

b. interest charges on any loan to offset impaired collections pending repayment of such sums made uncollectible by such loss or damage; and

c. collection expense in excess of normal collection cost and made necessary because of such loss or damage; and

d. other expenses, when reasonably incurred by the Insured in re-establishing the MEDIA, excluding ELECTRONIC DATA PROCESSING MEDIA, of accounts receivable records following such loss or damage.

B. ACTUAL CASH VALUE

The amount it would cost to repair or replace INSURED PROPERTY on the date of the physical loss or damage with new and current material of like size, kind and quality and with proper deduction for obsolescence and physical depreciation. ACTUAL CASH VALUE is expected to be less than, and cannot exceed, replacement cost.

C. CONTAMINANT(S)

a. Materials that may be harmful to human health, wildlife or the environment. CONTAMINANTS include any impurity, solid, liquid, gaseous or thermal irritant or pollutant, poison, toxin, pathogen or pathogenic organism, disease-causing or illness-causing agent, asbestos, dioxin, polychlorinated biphenyls, agricultural smoke, agricultural soot, vapor, fumes, acids, alkalis, chemicals, bacteria, virus, vaccines, waste, and hazardous substances as listed in the Federal Water Pollution Control Act, Clean Air Act, Resource Conservation and Recovery Act, Toxic Substances Control Act, or as designated by the United States Environmental Protection Agency or any other local governmental agency.

b. However, CONTAMINANTS do not include fungi.

D. EARTH MOVEMENT

a. Any earthquake, landslide, avalanche, subsidence, sinkhole, volcanic eruption, tsunami or any other movement of earth arising out of one OCCURRENCE except mudslide or mudflow caused by accumulation of water on or under the ground (all whether or not naturally occurring).

b. Loss or damage caused by EARTH MOVEMENT shall include all insured loss or damage to INSURED PROPERTY at INSURED LOCATION(S) resulting from EARTH MOVEMENT, except loss or damage from resulting fire, explosion, or sprinkler leakage.

E. ELECTRONIC DATA PROCESSING EQUIPMENT

Any computer, computer system or component, hardware, network, microprocessor, microchip, integrated circuit or similar devices or components in computer or non-computer equipment, or operating systems.

F. FINE ARTS

Paintings, etchings, pictures, tapestries, rare or art glass, art glass windows, valuable rugs, statuary, sculptures, antique furniture, antique jewelry, bric-a-brac, porcelains, and similar property of rarity, historical value, or artistic merit excluding automobiles, coins, stamps, furs, jewelry, precious stones, PRECIOUS METALS, watercraft, aircraft, MONEY, SECURITIES.

G. FINISHED GOODS

Goods manufactured by the Insured which in the ordinary course of the Insured's business is ready for packing, labeling, shipment or sale.

H. FLOOD

Surface waters, rising waters, storm surge, sea surge, wave wash, waves, tide or tidal water, the release of water, the rising, overflowing or breaking of boundaries of natural or man-made bodies of water; or the spray therefrom; all whether driven by WIND or not or caused by, resulting from or accompanying a NAMED WINDSTORM or not; mudslide or mudflow caused by or resulting from surface water, runoff or accumulation of water on or under the ground; or sewer back-up caused by or resulting from any of the foregoing; all regardless of any other cause or event, whether natural or man-made, contributing concurrently or in any other sequence of loss, arising out of one OCCURRENCE. Physical loss or damage from FLOOD associated with a NAMED WINDSTORM is considered to be FLOOD within the terms of this POLICY for purposes of exclusions, limits and sublimits hereunder. However, physical loss or damage by fire, explosion or sprinkler leakage resulting from FLOOD is not considered to be loss by FLOOD within the terms and conditions of this POLICY.

I. HIGH HAZARD FLOOD ZONE

a. All property at INSURED LOCATION(S) that is wholly or partially situated in an area which at the time of loss or damage has been designated on a Flood Insurance Rate Map (FIRM) to be a Special Flood Hazard Area (SFHA); or

b. All property in areas where the National Flood Insurance Program (NFIP) is not in effect, and where all property at INSURED LOCATION(S) is wholly or partially situated in an area which is within a one hundred (100) year FLOOD plain or its worldwide equivalent.

J. IMPROVEMENTS AND BETTERMENTS

Fixtures, improvements, betterments, alterations, installations or additions comprising part of a building occupied but not owned by the Insured and acquired or made at the expense of the Insured, which the Insured cannot legally remove.

K. INSURED LOCATION(S)

Location(s):

a. listed on the latest schedule of LOCATION(S) submitted to, accepted by and on file with the Company;

b. insured under **Newly Acquired Property**;

c. insured under **Errors and Omissions**;

d. insured under **Miscellaneous Unnamed Locations**;

e. insured under **Course of Construction**;

f. INSURED LOCATION(S) includes the area within one thousand (1,000) feet of such LOCATION(S) if within the **Policy Territory**.

L. INSURED'S LIABILITY

Liability which is imposed by law upon the Insured or is assumed by the Insured by specific agreement prior to loss for physical loss or damage of the type insured against by this POLICY.

M. LAND IMPROVEMENTS

Landscaping, gardening, roadways and pavements, but not including any fill or land beneath such property.

N. LOCATION(S)

a. A building, yard, dock, wharf, pier or bulkhead or any group of the foregoing bounded by public streets, clear land space, open waterways or any combination thereof, with each public street, clear land space or open waterway measuring no less than fifty (50) feet wide. Any bridge or tunnel crossing such streets, space or waterways renders such separation inoperative;

b. The term LOCATIONS means more than one LOCATION.

O. MEDIA

The materials upon which data is recorded, including but not limited to, paper tapes, cards, electronic memory circuits and magnetic or optical storage devices.

P. MERCHANDISE

Goods kept for sale by the Insured which are not RAW STOCK, STOCK IN PROCESS or FINISHED GOODS.

Q. MONEY

Bank notes, coins, currency, money order held for sale to the public, traveler's checks or register checks.

R. NAMED WINDSTORM

All loss or damage insured by this POLICY, arising out of one OCCURRENCE which is caused by or results from a storm or weather disturbance which is named by the National Weather Service or any other recognized meteorological authority. Storm or weather disturbance includes all weather phenomena insured by this POLICY, associated with or occurring in conjunction with the storm or weather disturbance, including, but not limited to WIND, hail, sleet, tornadoes, hurricane or lightning. To the extent FLOOD is caused by, results from or accompanies a NAMED WINDSTORM, any physical loss or damage caused by, resulting from, or arising out of that FLOOD shall be treated as FLOOD, and not NAMED WINDSTORM, for purposes of exclusions, limits and sublimits hereunder.

S. NEW MADRID SEISMIC ZONE:

Arkansas, United States of America

Counties of Arkansas, Ashley, Chicot, Clay, Craighead, Crittenden, Cross, Desha, Drew, Fulton, Grant, Greene, Independence, Izard, Jackson, Jefferson, Lawrence, Lee, Lincoln, Lonoke, Mississippi, Monroe, Phillips, Poinsett, Prairie, Pulaski, Randolph, Saline, Sharp, St. Francis, White, Woodruff;

Illinois, United States of America

Counties of Alexander, Bond, Calhoun, Christian, Clark, Clay, Clinton, Coles, Crawford, Cumberland, Edwards, Effingham, Fayette, Franklin, Gallatin, Greene, Hamilton, Hardin, Jackson, Jasper, Jefferson, Jersey, Johnson, Lawrence, Macoupin, Madison, Marion, Massac, Monroe, Montgomery, Morgan, Perry, Pike, Pope, Pulaski, Randolph, Richland, Saline, Sangamon, Scott, Shelby, St. Clair, Union, Wabash, Washington, Wayne, White, Williamson;

Indiana, United States of America

Counties of Crawford, Daviess, Dubois, Gibson, Greene, Knox, Lawrence, Martin, Orange, Perry, Pike, Posey, Spencer, Sullivan, Vanderburgh, Warrick;

Kentucky, United States of America

Counties of Ballard, Breckinridge, Butler, Caldwell, Calloway, Carlisle, Christian, Crittenden, Daviess, Fulton, Graves, Hancock, Henderson, Hickman, Hopkins, Livingston, Logan, Lyon, Marshall, McCracken, McLean, Muhlenberg, Ohio, Simpson, Todd, Trigg, Union, Warren, Webster;

Mississippi, United States of America

Counties of Alcorn, Benton, Bolivar, Calhoun, Carroll, Chickasaw, Choctaw, Clay, Coahoma, De Soto, Grenada, Holmes, Humphreys, Issaquena, Itawamba, Lafayette, Lee, Leflore, Lowndes, Marshall, Monroe, Montgomery, Oktibbeha, Panola, Pontotoc, Prentiss, Quitman, Sharkey, Sunflower, Tallahatchie, Tate, Tippah, Tishomingo, Tunica, Union, Warren, Washington, Webster, Yalobusha, Yazoo;

Missouri, United States of America

Counties of Audrain, Bollinger, Butler, Callaway, Cape Girardeau, Carter, Cole, Crawford, Dent, Dunklin, Franklin, Gasconade, Howell, Iron, Jefferson, Lincoln, Madison, Maries, Marion, Miller, Mississippi, Montgomery, New Madrid, Oregon, Osage, Pemiscot, Perry, Phelps, Pike, Pulaski, Ralls, Reynolds, Ripley, Scott, Shannon, St. Charles, St. Francois, St. Louis, City of St. Louis, Ste. Genevieve, Stoddard, Texas, Warren, Washington, Wayne;

Tennessee, United States of America

Counties of Benton, Carroll, Cheatham, Chester, Crockett, Decatur, Dickson, Dyer, Fayette, Gibson, Hardeman, Hardin, Haywood, Henderson, Henry, Hickman, Houston, Humphreys, Lake, Lauderdale, Lawrence, Lewis, Madison, McNairy, Montgomery, Obion, Perry, Robertson, Shelby, Stewart, Tipton, Wayne, Weakley.

T. OCCURRENCE

The sum total of all loss or damage of the type insured caused by or arising out of one event, including any insured TIME ELEMENT loss, regardless of the number of LOCATIONS affected.

U. OUTDOOR PROPERTY

Fences, radio and television antennas (including satellite dishes), trees, shrubs, plants (other than trees, shrubs, and plants which are RAW STOCK or STOCK IN PROCESS or are part of a vegetated roof.

All sections of this document and the appendices and endorsements attached or added to this document.

V. PACIFIC NORTHWEST SEISMIC ZONE:

Oregon, United States of America

Counties of Benton, Clackamas, Clatsop, Columbia, Coos, Curry, Douglas, Jackson, Josephine, Klamath, Lake, Lane, Lincoln, Linn, Marion, Multnomah, Polk, Tillamook, Washington, Yamhill;

Washington, United States of America

Counties of Chelan, Clallam, Clark, Cowlitz, Grays Harbor, Island, Jefferson, King, Kitsap, Kittitas, Lewis, Mason, Pacific, Pierce, San Juan, Skagit, Skamania, Snohomish, Thurston, Wahkiakum, Whatcom.

W. PRECIOUS METALS

Any of the following metals: gold, iridium, osmium, palladium, platinum, rhodium, ruthenium, and silver.

X. PROPERTY DAMAGE

A type or category of loss due to the reduction in the value of real or personal property directly caused by or resulting from physical loss or damage thereto. A coverage provision or series of provisions pertaining to such loss.

Y. RAW STOCK

Material in the state in which the Insured receives it for conversion by the Insured into STOCK IN PROCESS or FINISHED GOODS.

Z. SALES

The amount paid or payable to the Insured for goods sold or delivered and for services rendered in the conduct of the business at INSURED LOCATION(S).

AA. SECURITIES

a. All negotiable and non-negotiable instruments or contracts representing either MONEY or other property;

b. SECURITIES include accounts, bills, bonds, stocks, food stamps, other evidences of debt or revenue, other stamps in current use, tokens, tickets, evidences of title and letter of credit. SECURITIES do not include MONEY.

BB. STOCK IN PROCESS

RAW STOCK which has undergone any aging, seasoning, mechanical or other process of manufacture at INSURED LOCATION(S) but which has not become FINISHED GOODS.

CC. TIME ELEMENT

A type or category of loss which is dependent, with respect to quantification, upon the passage of a period of time measured from a specific event. A coverage provision or series of provisions pertaining to such loss. Examples of such provisions include **Gross Earnings, Extra Expense, Rental Insurance, Contingent Time Element, Service Interruption – Time Element, Leasehold Interest, Commissions, Licensing Fees and Royalties**, **Ingress/Egress, Order of Civil or Military Authority**.

DD. TIER 1 COUNTIES

Jurisdiction	**Counties**
ALABAMA	Baldwin, Mobile
FLORIDA	Entire State
GEORGIA	Bryan, Camden, Chatham, Glynn, Liberty, McIntosh
HAWAII	Entire State
LOUISIANA	Cameron, Iberia, Jefferson, Lafourche, Orleans, Plaquemines, St. Bernard, St. Mary, St. Tammany, Terrebonne, Vermilion
MISSISSIPPI	Hancock, Harrison, Jackson

NORTH CAROLINA	Beaufort, Bertie, Brunswick, Camden, Carteret, Chowan, Currituck, Dare, Hyde, New Hanover, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Tyrrell, Washington
PUERTO RICO	Entire Territory
SOUTH CAROLINA	Beaufort, Berkeley, Charleston, Colleton, Georgetown, Horry, Jasper
TEXAS	Aransas, Brazoria, Calhoun, Cameron, Chambers, Galveston, Harris, Jackson, Jefferson, Kenedy, Kleberg, Matagorda, Nueces, Refugio, San Patricio, Willacy
US VIRGIN ISLANDS	Entire Territory
VIRGINIA	Accomack, Chesapeake, Gloucester, Hampton, Isle of Wight, James City, Lancaster, Mathews, Middlesex, Newport News, Norfolk, Northampton, Northumberland, Portsmouth, Suffolk, Surry, Virginia Beach, Westmoreland, York.

EE. VALUABLE PAPERS AND RECORDS

Written, printed or otherwise inscribed documents and records, including books, maps, films, drawings, abstracts, deeds, mortgages and manuscripts, but not MONEY, SECURITIES, ELECTRONIC DATA, ELECTRONIC DATA PROCESSING MEDIA.

FF. WAITING PERIOD

A continuous period of time which must elapse before there is any liability for loss under this POLICY.

GG. WIND

Direct action of wind including substance driven by wind. WIND does not mean or include anything defined as FLOOD in this POLICY.

Endorsement A

Occurrence Limit of Liability

It is understood and agreed that the following special terms and conditions apply to this quotation:

It is understood and agreed that the following special terms and conditions apply to this Policy:

1. The limit of liability or Limit of Insurance shown on the face of this Policy, or endorsed onto this Policy, is the total Program Limit of Liability applicable to each occurrence, as hereafter defined. Notwithstanding any other terms and conditions of this Policy to the contrary, in no event shall our liability exceed our proportionate program share of this limit or amount irrespective of the number of locations involved.

   The term "occurrence" shall mean any one loss, disaster, casualty or series of losses, disasters, or casualties, arising out of one event except as specified elsewhere in the policy with regards to flood or earthquake coverage.

   When the term applies to loss or losses from the perils of tornado, cyclone, hurricane, windstorm, hail, volcanic eruption, riot, riot attending a strike, civil commotion, and vandalism and malicious mischief one event shall be construed to be all losses arising during a continuous period of 72 hours. When filing proof of loss, you may elect the moment at which the 72 hour period shall be deemed to have commenced, which shall not be earlier than the first loss to the covered property occurs and must commence within the policy term.

2. The premium for this Policy is based upon the Statement of Values on file with us, or attached to this Policy. In the event of loss hereunder, the total Program Limit of Liability, subject to the terms of paragraph one (1) above, shall be limited to the least of the following:

   a. The actual adjusted amount of loss, less applicable deductible(s),

   b. 120% of the total stated value for the property involved, as shown on the latest Statement of Values on file with the Company, less applicable deductible(s);

   b. The limit of Liability or Limit of Insurance shown on the face of this Policy or endorsed onto this Policy.

Hurricane Minimum Earned Premium Provision

The following terms and conditions will apply to this policy:

1. If the Insured cancels this policy, removes a location or reduces the amount of insurance on a location that is within 100 miles of the Atlantic Ocean and/or the Gulf of Mexico and/or the Hawaii Islands, and coverage existed any time during the period of June 1st to November 30th, the amount of premium the Company will return will be the Unearned Premium for the location. The Unearned Premium is the annual premium for the policy (or for the location removed or coverage reduced, as applicable) multiplied by the Unearned Factor noted below. The location premium is the 100% annual rate multiplied by the location value as scheduled in the most current Statement of Values on file with the Company.

1 Year Policy

Days Policy In Force	Unearned Factor
1 to 180	20%
181 to 210	15%
211 to 240	10%
241 to 270	7.5%
271 to 300	5.0%
301 to 330	2.5%
331 to 365	0.0%

2. If a Location that is within 100 miles of the Atlantic Ocean and/or the Gulf of Mexico and/or the Hawaii Islands is added during the term of the policy and coverage exists any time during the period of June 1st to November 30th, the rate will be calculated as 100% of the annual rate, less the Unearned Factor as calculated in No. 1 above based upon the number of days remaining in the policy term.

3. The provisions of this Hurricane Minimum Earned Premium Provision replace any short rate provisions stipulated in this policy for all locations that are within 100 miles of the Atlantic Ocean and/or the Gulf of Mexico and/or the Hawaii Islands and coverage existed any time during the period of June 1st to November 30th.

Certificates Wording

Please be advised that **Indian Harbor Insurance Company** does not review Certificates of Insurance issued by you, or by any party, relating to this policy of insurance either for content or accuracy. Accordingly, we request that you do not provide copies of certificates to us for review or for our records. Authority is granted to you for the limited purpose of issuing unmodified ACORD 24, 27 or 28 Certificates only. It is your responsibility to see that any Certificate provides an accurate representation of the coverage form and endorsements applicable to this policy at the time the Certificate is issued. Any modification of the approved ACORD forms specifically set forth above, or the issuance of a non-approved Certificate of Insurance ACORD or other is prohibited. Certificates of Insurance may only be issued as a matter of information.

Loss Adjuster

It is hereby understood and agreed that each and every loss will be adjusted by the Adjuster named below unless otherwise agreed by the Insured and the **Insurer**.

Evan Sussman
Engle Martin & Associates
90 Broad Street
New York, NY 10004
Direct: 212.822.2793
Mobile: 908.616.5806
esussman@englemartin.comde

Joint Loss Agreement

In the event the insurance company, if any, providing boiler and machinery insurance disputes any portion of the claim made against that company and this Company believes the boiler and machinery policy should have paid that portion of the claim, then this Company shall, upon written request of the Insured, pay to the Insured one-half of the amount of the loss which is in disagreement, but in no event more than this company would have paid if there had been no boiler and machinery policy(ies) in effect, subject to the following conditions:

A. The amount of the loss which is in disagreement, after making provisions for any undisputed claims payable under the said policies and after the amount of the loss is agreed upon by the Insured and the insurers, is limited to the minimum amount remaining payable under the boiler and machinery policy(ies);

B. The boiler and machinery insurer(s) shall simultaneously pay to the Insured one-half of said amount which is in disagreement;

C. The payments by the insurers hereunder and acceptance of the same by the Insured signify the agreement of the insurers to submit to and proceed with arbitration within 90 days of such payments; the arbitrators shall be three in number, one of whom shall be appointed by the Property insurer(s) and one of whom shall be appointed by the Boiler and Machinery insurer(s) and the third shall be appointed with the consent of the other two insurers, and the decision by the arbitrators shall be binding upon the insurers and that judgment upon such award may be entered in any court of competent jurisdiction;

D. The Insured agrees to cooperate in connection with such arbitration but not to intervene therein;

E. The provisions of this endorsement shall not apply unless such other policy(ies) issued by the Boiler and Machinery insurance company(ies) is similarly endorsed;

F. Acceptance by the Insured of sums paid pursuant to the provisions of this endorsement, including an arbitration award, shall not operate to alter, waive, surrender, or in any way affect the rights of the Insured against any of the insurers.

Endorsement B

EXCLUSION FOR CERTAIN COMPUTER RELATED LOSSES

THIS ENDORSEMENT CHANGES THIS POLICY. PLEASE READ IT CAREFULLY.

This policy does not insure any loss, or damage caused by or resulting directly or indirectly by any of the following. **Such loss or damage is excluded regardless of any other cause or event that contributes directly, indirectly, concurrently, proximately, remotely, or in any sequence to the loss and includes but is not limited to**:

A. The alteration, manipulation or destruction of computer media and data, by the addition of a virus, destructive code or similar instruction, hacking or any other malicious or destructive programming or instructions that disrupts the normal operation of computer equipment or computer media and data or results in the loss of use or physical damage to computer equipment, including but not limited to microprocessors and networks, or computer media and data;

B. Denial of service; by unauthorized direction of a high volume of messages or inquiries to a web site or e-mail destinations, effectively denying, interrupting or limiting legitimate access;

C. Inability to correctly recognize, process, distinguish, interpret or accept one or more dates or times;

D. Transfer of property caused by, resulting from, or arising out of unauthorized instructions transmitted by a computer;

E. Financial loss or any other loss or damage due to unauthorized viewing, copying or use of any data (including proprietary or confidential information) by any person, even if such activity is characterized as theft.

F. Any advice, consultation, design, evaluation, inspection, installation, maintenance, repair, replacement or supervision provided or done by the Insured or on the Insured's behalf to determine, rectify or test for any actual or potential problem described in paragraphs A through E above.

This exclusion applies regardless whether there is (a) any physical loss or damage to insured property; (b) any loss of use, occupancy or functionality; or (c) any action required, including but not limited to repair, replacement, restoration, removal, cleanup, abatement, disposal, relocation, or steps taken to address medical or legal concerns.

All other terms and conditions of this policy shall remain unchanged.

ENDORSEMENT # 001

This endorsement, effective 12:01 a.m., April 29, 2019 forms part of

Policy No. US00090928PR19A issued to West Flagler Associates, Ltd. Dba Magic City Casino and West Flagler Dog Track

by Indian Harbor Insurance Company.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

GENERAL CHANGE ENDORSEMENT

This endorsement modifies the policy identified above and is subject to all definitions in that policy.

Engle Martin & Associates as designated independent adjuster

All other terms and conditions of this policy remain unchanged.

ENDORSEMENT # 002

This endorsement, effective 12:01 a.m., April 29, 2019 forms part of

Policy No. US00090928PR19A issued to West Flagler Associates, Ltd. Dba Magic City Casino and West Flagler Dog Track

by Indian Harbor Insurance Company.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

GENERAL CHANGE ENDORSEMENT

This endorsement modifies the policy identified above and is subject to all definitions in that policy.

In consideration of no change in premium, it is hereby agreed that the following subjectivities are added to this policy.

1. No deterioration of loss history prior to binding
2. Underwriter's approval of final policy form incorporating the changes listed above
3. Signed Statement of Values upon binding
4. Surplus Lines taxes, fees and surcharges are the responsibility of the broker listed above.
5. Unless a valid Rate Matrix has been agreed upon, any new locations in High Hazard Earthquake, High Hazard Flood and/or High Hazard Named Storm Zones will be underwritten and rated in accordance with our guidelines at the time we are requested to add them.
6. Inspection and consulting services and associated fees, including but not limited to jurisdictional boiler & machinery inspections or property loss prevention services are not included in the scope of this proposal. Fees for Loss Prevention Services including Boiler & Machinery Jurisdictional Inspections are not included in premium.
7. All locations reported with $0 or no values are not covered within this policy unless approved by Underwriter
8. Choice of Law and Jurisdiction – NY Applicable Law; Court Jurisdiction. The laws of the State of New York, without regard to any conflict of laws rules that would cause the application of the laws of any other jurisdiction, shall govern the construction, effect, and interpretation of this insurance agreement. The parties irrevocably submit to the exclusive jurisdiction of the Courts of the State of New York and to the extent permitted by law the parties expressly waive all rights to challenge or otherwise limit such jurisdiction
9. Subject to favorable inspection within 60 days of binding
10. Exhaust Hoods are serviced and cleaned quarterly
11. Ansul Systems are serviced and inspected semiannually
12. Subject to Final SOV Approved by Underwriter
13. AXA XL reserves the right to choose loss adjuster within designated claims adjustment firm
14. AXA XL reserves the right to be involved in the adjustment of the loss at the Company's expense.
15. AXA XL reserves the right to withdraw this quote if there is an active hurricane prior to binding.

All other terms and conditions of this policy remain unchanged.

ENDORSEMENT # 003

This endorsement, effective 12:01 a.m., April 29, 2019 forms part of

Policy No. US00090928PR19A issued to West Flagler Associates, Ltd. Dba Magic City Casino and West Flagler Dog Track

by Indian Harbor Insurance Company.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CHEMICAL, BIOLOGICAL, AND RADIOLOGICAL EXPOSURE EXCLUSION

This endorsement modifies insurance provided under the following:

Commercial Property Insurance Policy

Notwithstanding any provision(s) to the contrary within this policy or any endorsement(s) attached thereto, this policy does not insure against any loss, damage, cost or expense directly or indirectly caused by or resulting from any of the following, regardless of any other cause or event contributing concurrently or in any other sequence thereto:

1. The unlawful possession, use, release, discharge, dispersal or disposal of any chemical, bacteriological, viral, radioactive or similar agents or matter regardless of who is responsible for the act and whether war has been declared or not, and regardless of any other cause or event contributing concurrently or in any other sequence thereto.

2. The unlawful possession, use, release, discharge, detonation, dispersal or disposal of any device or material capable of producing a nuclear reaction or the spread of radioactivity, regardless of who is responsible for the act and whether war has been declared or not, and regardless of any other cause or event contributing concurrently or in any other sequence thereto.

In any action, suit or other proceeding where the Company alleges that, by reason of either of the provisions above, some or all loss or damage is not insured by this policy, the burden of proving that such loss or damage is not excluded shall be upon the Insured.

All other terms and conditions of this policy remain unchanged.

ENDORSEMENT # 004

This endorsement, effective 12:01 a.m., April 29, 2019 forms part of

Policy No. US00090928PR19A issued to West Flagler Associates, Ltd. Dba Magic City Casino and West Flagler Dog Track

by Indian Harbor Insurance Company.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CANCELLATION – ADDITIONAL PROVISION

Commercial Property Insurance Policy

This endorsement modifies the policy identified above and is subject to all definitions in that policy.

The Policy is amended as respects cancellation. The following additional provisions shall apply with respect to the cancellation provisions of this Policy:

If this Policy covers any location or locations in Tier 1 as defined in this Policy, and the Policy is cancelled at the request of the Insured, the following provision will apply:

If the Policy was in effect at any time during the period from June 1st to November 30th, the amount of the premium we will return upon the Insured's cancellation of the Policy will be a percentage of the total premium, determined as follows:

NUMBER OF DAYS POLICY IN FORCE	PERCENTAGE OF PREMIUM TO BE RETURNED
1 to 180	20%
181 to 210	15%
211 to 240	10%
241 to 270	7.5%
271 to 300	5%
301 to 330	2.5%
331 or greater	0%

If a coverage or location is added to or deleted from the Policy, each type of coverage or such location(s) shall be underwritten separately and the rate will be determined based upon the characteristics of the risk.

If a location within a Tier 1 is added or delete from the Policy, and coverage for that location existed at any time during the period from June 1st to November 30th, the premium to be returned for that location upon the Insured's cancellation of the Policy will be determined in accordance with the above table.

If a location is not within a Tier 1 and is added to or deleted from the Policy, normal pro-rata or short rate factors shall apply as provided by the Policy.

All other terms and conditions of this policy remain unchanged.

ENDORSEMENT # 005

This endorsement, effective 12:01 a.m., April 29, 2019 forms part of

Policy No. US00090928PR19A issued to West Flagler Associates, Ltd. Dba Magic City Casino and West Flagler Dog Track

by Indian Harbor Insurance Company.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

NEW LOCATION RATING

This endorsement modifies the policy identified above and is subject to all definitions in that policy.

Commercial Property Insurance Policy

Any new Location(s) in High Hazard Earth Movement, High Hazard Flood and/or High Hazard Named Storm Zones will be underwritten and rated in accordance with our guidelines at the time we are requested to add them.

All other terms and conditions remain the same.

ENDORSEMENT # 006

This endorsement, effective 12:01 a.m., April 29, 2019 forms part of

Policy No. US00090928PR19A issued to West Flagler Associates, Ltd. Dba Magic City Casino and West Flagler Dog Track

by Indian Harbor Insurance Company.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BELOW GRADE PROPERTY EXCLUSION

This endorsement modifies insurance provided under the following:

Commercial Property Insurance Policy

If Flood coverage is afforded this policy, coverage does not insure against loss or damage to any property that is either below the surface of the ground or is located in a “basement”, regardless of any other cause or event contributing concurrently or in any other sequence thereto.

For purposes of this endorsement, “basement” means any area of a structure having its bottom surface, whether floored or not, sub-grade (below ground level on any side of such structure).

All other terms and conditions of this policy remain unchanged.

ENDORSEMENT # 007

This endorsement, effective 12:01 a.m., April 29, 2019 forms part of

Policy No. US00090928PR19A issued to West Flagler Associates, Ltd. Dba Magic City Casino and West Flagler Dog Track

by Indian Harbor Insurance Company.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ACTUAL CASH VALUE AMENDMENT FOR ROOFS

This endorsement modifies the policy identified above and is subject to all definitions in that policy.

Commercial Property Insurance Policy

The Valuation provisions of this policy are deleted and replaced with the following with respect to roofs or sections of roofs more than fifteen (15) years old:

1. In the event of loss or damage, as insured by this policy to roofs or sections of roofs older than fifteen (15) years, as evidenced by actual documentation of installation, the loss or damage shall be valued at the time and place of the loss on an Actual Cash Value basis determined as follows:

A. Actual Cash Value equals the Replacement Cost times the Remaining Useful Life Factor (R). The Remaining Useful Life Factor is calculated by the following formula:

Where N = The Normal Useful Life of the roof based on the Manufacturer's design life expectancy.

Where U = The length of time the roof was in use at the time of the loss.

Where R = The Remaining Useful Life Factor at the time of the loss.

Replacement Cost shall not exceed the actual cost to repair or replace the property with material of like kind and quality within a reasonable time after loss.

2. If a Replacement Coverage provision is attached to this policy, the conditions of that provision do not apply to roofs or roof sections older than fifteen (15) years.

All other terms and conditions remain the same.

ENDORSEMENT # 008

This endorsement, effective 12:01 a.m., April 29, 2019 forms part of

Policy No. US00090928PR19A issued to West Flagler Associates, Ltd. Dba Magic City Casino and West Flagler Dog Track

by Indian Harbor Insurance Company.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ALUMINUM WIRING PROVISION

This endorsement modifies the policy identified above and is subject to all definitions in that policy.

Commercial Property Insurance Policy

It is a condition precedent to coverage that all aluminum branch wiring at all receptacles and all switches in all buildings have been migrated with CO/ALR devices. The CO/ALR devices must be installed in accordance with local building codes and in accordance with the manufacturer's instructions. The following warranty is added to the policy:

As a warranty of this insurance, you are required to maintain the CO/ALR devices per the Aluminum wiring provision.

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

1. Knew of any aluminum branch wiring not migrated with CO/ALR devices and failed to notify us and received written approval of that fact; or

2. Failed to maintain any CO/ALR devices, of which you had control, in complete working order.

All other terms and conditions remain the same.

ENDORSEMENT # 009

This endorsement, effective 12:01 a.m., April 29, 2019 forms part of

Policy No. US00090928PR19A issued to West Flagler Associates, Ltd. Dba Magic City Casino and West Flagler Dog Track

by Indian Harbor Insurance Company.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

PRE-EXISTING DAMAGE ENDORSEMENT

This endorsement modifies the policy identified above and is subject to all definitions in that policy.

Commercial Property Insurance Policy

This policy shall exclude any loss or Damage directly or indirectly caused by, resulting from or contributed to by any pre-existing building Damage at the time of the policy inception. This exclusion shall automatically be removed upon the completion of exterior building repairs which fully enclose the building. Completion of the building enclosure repairs shall be evidenced by: 1) a signed letter from the licensed general contractor stating such repairs are completed; and 2) a copy of a certificate of insurance from the general contractor confirming general liability coverage with a minimum limit of $1,000,000. This certificate of insurance shall be on file with the agent.

All other terms and conditions remain the same.

ENDORSEMENT # 010

This endorsement, effective 12:01 a.m., April 29, 2019 forms part of

Policy No. US00090928PR19A issued to West Flagler Associates, Ltd. Dba Magic City Casino and West Flagler Dog Track

by Indian Harbor Insurance Company.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

MINIMUM EARNED PREMIUM

This endorsement modifies insurance provided under the following:

Commercial Property Insurance Policy

If this insurance is cancelled at the request of the Named Insured, there will be a minimum earned premium retained by the insurance company of:

$42,500, 35% of the premium for this insurance.

Cancellation of this insurance for non-payment of premium is considered a request by the Named Insured for cancellation of this Policy.

If a policy fee or inspection fee is applicable to this policy, the fee(s) will be fully earned and no refund of fees will be made.

All other terms and conditions of this policy remain unchanged.

ENDORSEMENT # 011

This endorsement, effective 12:01 a.m., April 29, 2019 forms part of

Policy No. US00090928PR19A issued to West Flagler Associates, Ltd. Dba Magic City Casino and West Flagler Dog Track

by Indian Harbor Insurance Company.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

TERRORISM EXCLUSION ENDORSEMENT

This endorsement modifies insurance provided under the following:

Commercial Property Insurance Policy

Notwithstanding any provision to the contrary within this policy or any endorsement attached thereto it is agreed that this policy excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any act of terrorism regardless of any other cause or event contributing concurrently or in any other sequence to the loss, except as provided by the Certified Act(s) of Terrorism Endorsement provided that said endorsement is attached to this policy.

This policy excludes loss or damage caused by fire that is part of or arises directly from terrorism. However, with respect to insured locations in the United States, its territories and possessions and Puerto Rico, in the event that the law of the jurisdiction where the insured property sustaining loss or damage requires that damage caused by fire be covered, then this policy covers such loss or damage but only for the physical loss or damage, with adjustment being at the lesser of actual cash value, the cost to repair or the cost to replace, all as of the date of the loss at the location of the loss, for no more than the interest of the Insured and without allowance for upgrades to comply with codes or building laws. This coverage exception for such resulting fire loss or damage does not apply to any time element coverages; including but not limited to business interruption, loss of earnings, extra expense, contingent coverage(s), leasehold interest or rental insurance; nor for any fire legal liability.

For the purpose of this endorsement an act of terrorism means the intentional conduct by any person(s) or group(s) causing loss or damage and/or the threat thereof, in order to induce fear, submission or otherwise influence people or government(s), or to promote, publicize or advance any ideological, religious, social or political cause.

This endorsement also excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to any act of terrorism.

If the Company alleges that by reason of this exclusion, any loss, damage, cost or expense is not covered by this insurance, the burden of proving the contrary shall be upon the Insured.

In the event any portion of this endorsement is found to be invalid or unenforceable, the remainder shall continue in full force and effect.

All other terms and conditions of this policy remain unchanged.

ENDORSEMENT # 012

This endorsement, effective 12:01 a.m., April 29, 2019 forms part of

Policy No. US00090928PR19A issued to West Flagler Associates, Ltd. Dba Magic City Casino and West Flagler Dog Track

by Indian Harbor Insurance Company.

SERVICE OF PROCESS

The Commissioner of Insurance of the State of Florida is hereby designated the true and lawful attorney of the Insurer upon whom may be served all lawful process in any action, suit or proceeding arising out of this Policy. The Insurer further designates:

Sarah Mims
General Counsel
505 Eagleview Boulevard, Suite 100
Exton, PA 19341-1120

as its agent in Florida to whom such process shall be forwarded by the Commissioner of Insurance.

For Illinois exposures, the Insurer further designates the Director of the Illinois Division of Insurance and his successors in office, as its true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the Insured or any beneficiary hereunder arising out of an Illinois exposure and this contract of insurance.

All other terms and conditions of this Policy remain unchanged.

Exhibit 2

Rivington Partners
1120 Avenue of the Americas, 21st Floor
New York, NY 10019

COMMERCIAL PROPERTY POLICY DECLARATIONS

RIVINGTON REFERENCE NUMBER: GLSE180076 **ISSUED DATE:** 7/24/2019

NAMED INSURED AND MAILING ADDRESS:
West Flagler Associates Ltd. dba Magic City Casino and West Flagler Dog Track
401 NW 38th Court
Miami, FL 33126

PRODUCER NAME AND ADDRESS:
AmWINS
105 Fieldcrest Avenue Suite 200
Edison, NJ 08837

POLICY PERIOD: **FROM:** April 29, 2019 **TO:** April 29, 2020
Effective 12:01 a.m. Standard Time at your mailing address shown above.

POLICY LIMIT: $5,000,000 part of $10,000,000 Per Occurrence Excess of $5,000,000 Per Occurrence

THIS POLICY is issued in accordance with the limited authorization granted by certain Insurers whose names appear in the Schedule attached and in consideration of the Premium specified herein; Insurers do hereby bind themselves each for his own part, and not one for another.

THE ASSURED is request to read this Certificate, and if not correct, return it immediately to the Correspondent for appropriate alteration.

INSURING COMPANIES:

INSURANCE COMPANY	POLICY NUMBER	LIMIT
Great Lakes Insurance SE *(Non-Admitted)*	GLSE180076	$5,000,000

This policy and certificate consists of the following coverage parts for which a premium is indicated. This premium may be subject to adjustment.

COMMERCIAL PROPERTY COVERAGE PART

GREAT LAKES INSURANCE SE
RF3752A18

Non-Terrorism Premium:	$50,000
TRIPRA:	Not Covered
Total Premium:	$50,000
Taxes and Fees:	Paid by Broker
35.00% Minimum Earned Premium	
Inspection Fee:	N/A

No Flat cancellations and Inspection Fee is 100% Earned

The Companies listed above have executed this policy, but it is valid only if signed by our authorized representatives.

RIVINGTON REFERENCE NUMBER: GLSE180076

NAMED INSURED AND MAILING ADDRESS:
West Flagler Associates Ltd. dba Magic City Casino and West Flagler Dog Track
401 NW 38th Court
Miami, FL 33126

Surplus Lines Agent's Nam _____
Surplus Lines Agent's Address: 5 Suite 200
_____
Surplus Lines Agent's License # _____
Producing Agent's Name: Joseph Hanono
Producing Agent's Address: 18305 Biscayne Blvd.
Aventura, FL 33160

This insurance is issued pursuant to the Florida Surplus Lines Law. Persons insured by surplus lines carriers do not have the protection of the Florida Insurance Guaranty Act to the extent of any right of recovery for the obligation of an insolvent unlicensed insurer.

Premium: $50,000 Tax: $2,500.00 Service Fee: $50.00
EMPA Surcharge: $4 Broker Fee: _____
Inspection Fee: ____ __ ___ Policy Fee: _ _____
Surplus Lines Agent's Countersignature: Charles J Ciccarelli

SUBSCRIPTION PROVISIONS

1. **Signatures Required.** This subscription Policy shall not be valid unless signed by the authorized representatives on the attached Declaration Page.

2. **Cancellation.** If this subscription Policy provides for cancellation and this subscription Policy is cancelled after the inception date, earned premium must be paid for the time the insurance has been in force.

3. **Conformity of Terms Endorsement:**
   For the purpose of this insurance:
   1- Any reference herein to Underwriter(S) or Company or We is deemed to mean Insurer(s).
   2- Any reference herein to Certificate is deemed to mean Policy.
   3- Any reference herein to Named Assured, Assured or Insured is deemed to mean Insured.
   4- Any reference herein to US$ or $ or USD shall be deemed to mean US Dollars.
   5- The Reference LPO, NMA, LMA and Ref are synonymous.

4. **Attached Conditions Incorporated.** This subscription Policy is made and accepted subject to all the provisions, conditions, and warranties set forth herein, attached or endorsed, all of which are to be considered as incorporated herein.

5. **Several Liability Notice and Lines Clause. -** The liability of an insurer under this contract is several and not joint with other insurers party to this contract. An insurer is liable only for the proportion of liability it has underwritten. An insurer is not jointly liable for the proportion of liability underwritten by any other insurer. Nor is an insurer otherwise responsible for any liability of any other insurer that may underwrite this contract.

   Although reference is made at various points in this clause to "this contract" in the singular, where the circumstances so require this should be read as a reference to contracts in the plural.

6. **Correspondent/Intermediary Not Insurer.** Neither the Correspondent nor the Intermediary is an Insurer hereunder and neither of them is nor shall be liable for any loss or claim whatsoever. The Insurers hereunder are as stated in the Certificate of Declarations Page.

7. **Any provisions or conditions** appearing in any forms attached hereto which conflict with or alter the provisions set out above shall supersede the above provisions insofar as the latter are inconsistent with any provisions or conditions appearing in such attached forms.

8. **Duty of Disclosure:** Since an insurance contract is based upon the duty of utmost good faith, it is important that those seeking insurance should provide full disclosure of all material facts to insurers and that this information should be kept updated. Courts will find a fact to be 'material' where it would affect the judgment of a prudent Underwriter as to whether or not to accept the risk at the particular terms offered. The practical advice, which we give to clients or producers, is this: if you are in doubt we recommend that you advise the information to insurers.

   This insurance, being signed for $5,000,000 part of $10,000,000 Per Occurrence Excess of $5,000,000 Per Occurrence insures only that proportion of any loss, whether total or partial, including but not limited to that proportion of associated expenses, if any, to the extent and in the manner provided to this insurance.

   Company: Great Lakes Insurance SE
   Participation Limit: $5,000,000

GREAT LAKES INSURANCE SE
COMMERCIAL PROPERTY COVERAGE PART DECLARATIONS

DESCRIPTION OF PREMISES:
As per the current schedule on file with the Company(ies)

COVERAGE PROVIDED:

POLICY LIMIT: $5,000,000 part of $10,000,000 Per Occurrence Excess of $5,000,000 Per Occurrence

PERILS INSURED: Risks of Direct Physical Loss or Damage including Flood and Earthquake, but excluding Boiler and Machinery.

COVERAGES: Real Property, Business Personal Property and Business Interruption

CO-INSURANCE: As per the controlling underlying policy*

VALUATION: As per the controlling underlying policy*

SUB-LIMITS: Sublimits are a part of, and not in addition to the Limit(s) of Liability as shown within this Policy.

Great Lakes's Sublimits are 100% share of the Rivington Partner's Sublimits stated below:

$5,000,000 Per Occurrence and in the Annual Aggregate for the peril of Flood

$5,000,000 Per Occurrence and in the Annual Aggregate for the peril of Earthquake

All other sublimits as per the controlling underlying policy*

DEDUCTIBLES: As per the controlling underlying policy*

* *"Controlling underlying policy" means the insurance policy or policies designated as such in the Schedule of Underlying Insurance. If no policy is so designated, then the policy providing the layer of insurance immediately below this Policy's layer for a particular coverage, as shown in the Schedule of Underlying Insurance, will be deemed the "controlling underlying policy."*

FORMS AND ENDORSEMENTS
(other than applicable Forms and Endorsements shown elsewhere in the policy):
Forms and Endorsements applying to this Coverage Part and made part of this policy at time of issue: See Form Schedule attached.

THESE DECLARATIONS ARE PART OF THE POLICY DECLARATIONS CONTAINING THE NAME OF THIS INSURED AND THE POLICY PERIOD.

Authorization Signature

Short Rate Cancellation Table for Term of One Year.

The table below will be used to calculate the short rate proportion of the premium when applicable under the terms of cancellation.

Days Insurance in Force	Per Cent of one year Premium	Days Insurance in Force	Per Cent of one year Premium	Days Insurance in Force	Per Cent of one year Premium	Days Insurance in Force	Per Cent of one year Premium
1	5%	66 - 69	29%	154 - 156	53%	256 - 260	77%
2	6	70 - 73	30	157 - 160	54	261 - 264	78
3 - 4	7	74 - 76	31	161 - 164	55	265 - 269	79
5 - 6	8	77 - 80	32	165 - 167	56	270 - 273 (9 mos)	80
7 - 8	9	81 - 83	33	168 - 171	57	274 - 278	81
9 - 10	10	84 - 87	34	172 - 175	58	279 - 282	82
11 - 12	11	88 - 91 (3 mos)	35	176 - 178	59	283 - 287	83
13 - 14	12	92 - 94	36	179 - 182 (6 mos)	60	288 - 291	84
15 - 16	13	95 - 98	37	183 - 187	61	292 - 296	85
17 - 18	14	99 - 102	38	188 - 191	62	297 - 301	86
19 - 20	15	103 - 105	39	192 - 196	63	302 - 305 (10 mos)	87
21 - 22	16	106 - 109	40	197 - 200	64	306 - 310	88
23 - 25	17	110 - 113	41	201 - 205	65	311 - 314	89
26 - 29	18	114 - 116	42	206 - 209	66	315 - 319	90
30 - 32 (1 mos)	19	117 - 120	43	210 - 214 (7 mos)	67	320 - 323	91
33 - 36	20	121 - 124 (4 mos)	44	215 - 218	68	324 - 328	92
37 - 40	21	125 - 127	45	219 - 223	69	329 - 332	93
41 - 43	22	128 - 131	46	224 - 228	70	333 - 337 (11 mos)	94
44 - 47	23	132 - 135	47	229 - 232	71	338 - 342	95
48 - 51	24	136 - 138	48	233 - 237	72	343 - 346	96
52 - 54	25	139 - 142	49	238 - 241	73	347 - 351	97
55 - 58	26	143 - 146	50	242 - 246 (8 mos)	74	352 - 355	98
59 - 62 (2 mos)	27	147 - 149	51	247 - 250	75	356 - 360	99
63 - 65	28	150 - 153 (5 mos)	52	251 - 255	76	361 - 365 (12 mos)	100

Rules applicable to insurance with terms less than one or more than one year:

A. If insurance has been in force for one year or less, apply the short rate table for annual insurance to the full annual premium determined as for insurance written for a term of one year.

B. If insurance has been in force for more than one year:

1. Determine full annual premium as for insurance written for a term of one year.

2. Deduct such premium from the full insurance premium, and on the remainder calculate the pro rata earned premium on the basis of the ratio of the length of time beyond one year the insurance has been in force to the length of time beyond one year for which the policy was originally written.

3. Add premium produced in accordance with terms (1) and (2) to obtain earned premium during full period insurance has been in force.

THIS INSURANCE IS ISSUED PURSUANT TO THE FLORIDA SURPLUS LINES LAW. PERSONS INSURED BY SURPLUS LINES CARRIERS DO NOT HAVE THE PROTECTION OF THE FLORIDA INSURANCE GUARANTY ACT TO THE EXTENT OF ANY RIGHT OF RECOVERY FOR THE OBLIGATION OF AN INSOLVENT UNLICENSED INSURER.

SURPLUS LINES INSURERS' POLICY RATES AND FORMS ARE NOT APPROVED BY ANY FLORIDA REGULATORY AGENCY.

Claims Reporting Procedures

An important value of your insurance coverage is the ability of the insurance company to respond when you have a claim. Rivington Partners is committed to providing the insured with effective claim services.

Notices of each incident, claim or suit must be sent immediately to:

Email: YorkClaimsReporting@yorkrsg.com (preferred method)
FAX: 281-597-1488
Telephone: 800-475-2026

You will be contacted by a representative of the company's Claim Department. This representative will confirm receipt of the loss notice directly to you, provide a company claim number for all future correspondence, refer the claim to an adjuster if necessary, and discuss any further aspects of the claim.

Enquiries or Disputes:

Should you wish to make a complaint or dispute concerning your premium or about a claim regarding the coverage under this policy, you may do so either in writing or verbally to:

Rivington Partners

1120 Avenue of the Americas, 21st Floor

New York, NY 10019

212 247-2757

Schedule of Forms

Named Insured: West Flagler Associates Ltd. dba Magic City Casino and West Flagler Dog Track

Policy No.: GLSE180076

Form Edition No.	Form Name
GLISE(i)(01.17)	GREAT LAKES INSURANCE SE PRIVACY POLICY STATEMENT
IL P 001 01 04	OFAC
REF2962	BIOLOGICAL OR CHEMICAL MATERIALS EXCLUSION
BCM3A	MICROORGANISM EXCLUSION (MAP) (Absolute)
REF0464	WAR AND CIVIL WAR EXCLUSION CLAUSE
REF1191	RADIOACTIVE CONTAMINATION EXCLUSION CLAUSE
REF1998	SERVICE OF SUIT CLAUSE (U.S.A.)
REF2915	ELECTRONIC DATA ENDORSEMENT B
REF3100	SANCTION LIMITATION AND EXCLUSION CLAUSE
REF 5219	U.S. TERRORISM RISK INSURANCE ACT OF 2002 AS AMENDED NOT PURCHASED CLAUSE NOT PURCHASED
OLL	OCCURRENCE LIMIT OF LIABILITY ENDORSEMENT
ExOLL 2B (12/13)	REMOVAL OF CLAUSE 2B WITHIN OLL ENDORSEMENT
REF2918	WAR AND TERRORISM EXCLUSION ENDORSEMENT
MEP	MINIMUM EARNED PREMIUM ENDORSEMENT

GREAT LAKES INSURANCE SE PRIVACY POLICY STATEMENT

Great Lakes Insurance SE want you to know how we protect the confidentiality of your non-public personal information. We want you to know how and why we use and disclose the information that we have about you. The following describes our policies and practices for securing the privacy of our current and former customers.

INFORMATION WE COLLECT

The non-public personal information that we collect about you includes, but is not limited to:

- Information contained in applications or other forms that you submit to us, such as name, address, and social security number
- Information about your transactions with our affiliates or other third-parties, such as balances and payment history
- Information we receive from a consumer-reporting agency, such as credit-worthiness or credit history

INFORMATION WE DISCLOSE

We disclose the information that we have when it is necessary to provide our products and services. We may also disclose information when the law requires or permits us to do so.

CONFIDENTIALITY AND SECURITY

Only our employees and others who need the information to service your account have access to your personal information. We have measures in place to secure our paper files and computer systems.

RIGHT TO ACCESS OR CORRECT YOUR PERSONAL INFORMATION

You have a right to request access to or correction of your personal information that is in our possession.

CONTACTING US

If you have any questions about this privacy notice or would like to learn more about how we protect your privacy, please write to us at the following address:

GREAT LAKES INSURANCE SE,
Plantation Place,
30 Fenchurch Street,
London EC3M 3AJ

GLISE(i)(01.17)

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

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

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

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

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

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

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

BIOLOGICAL OR CHEMICAL MATERIALS EXCLUSION

It is agreed that this Insurance excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with the actual or threatened malicious use of pathogenic or poisonous biological or chemical materials regardless of any other cause or event contributing concurrently or in any other sequence thereto.

REF2962
06/02/03

MICROORGANISM EXCLUSION (MAP)
(Absolute)

This policy does not insure any loss, damage, claim, cost, expense or other sum, including liability, directly or indirectly arising out of or relating to:

> mold, mildew, fungus, spores or other microorganism of any type, nature, or description, including but not limited to any substance whose presence poses an actual or potential threat to human health

This exclusion applies regardless whether there is (i) any physical loss or damage to insured property; (ii) any insured peril or cause, whether or not contributing concurrently or in any sequence; (iii) any loss or use, occupancy, or functionality; or (iv) any action required, including but not limited to repair, replacement, removal, cleanup, abatement, disposal, relocation, or steps taken to address medical or legal concerns; or (v) any failure to procure or maintain valid insurance for the above.

This exclusion replaces and supersedes any provision in the policy that provides insurance, in whole or in part, for these matters.

BCM3A

WAR AND CIVIL WAR EXCLUSION CLAUSE

Notwithstanding anything to the contrary contained herein this Policy does not cover Loss or Damage directly or indirectly occasioned by, happening through or in consequence of war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalisation or requisition or destruction of or damage to property by or under the order of any government or public or local authority.

1/1/38
REF 464

RADIOACTIVE CONTAMINATION EXCLUSION CLAUSE - PHYSICAL DAMAGE - DIRECT (U.S.A.)

This Policy does not cover any loss or damage arising directly or indirectly from nuclear reaction nuclear radiation or radioactive contamination however such nuclear reaction nuclear radiation or radioactive contamination may have been caused * NEVERTHELESS if Fire is an insured peril and a Fire arises directly or indirectly from nuclear reaction nuclear radiation or radioactive contamination any loss or damage arising directly from that Fire shall (subject to the provisions of this Policy) be covered EXCLUDING however all loss or damage caused by nuclear reaction nuclear radiation or radioactive contamination arising directly or indirectly from that Fire.

* NOTE. - If Fire is not an insured peril under this Policy the words “NEVERTHELESS” to the end of the clause do not apply and should be disregarded.

7/5/59
REF 1191

SERVICE OF SUIT CLAUSE (U.S.A.)

It is agreed that in the event of the failure of the Underwriters hereon to pay any amount claimed to be due hereunder, the Underwriters hereon, at the request of the Insured (or Reinsured), will submit to the jurisdiction of a Court of competent jurisdiction within the United States. Nothing in this Clause constitutes or should be understood to constitute a waiver of Underwriters' 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:

Eileen Ridley, FLWA Service Corp, c/o Foley & Lardner LLP, 555 California Street, Suite 1700, San Francisco, CA. 94104-1520, U.S.A., in respect of California Risks

or

Mr. Edward Smith, Mendes and Mount, LLP, 750 Seventh Avenue, New York, NY. 10019-6829, U.S.A. for other states or as per State Law.

and that in any suit instituted against any one of them upon this contract, Underwriters will abide by the final decision of such Court or of any Appellate Court in the event of an appeal.

The above-named are authorized and directed to accept service of process on behalf of Underwriters in any such suit and/or upon the request of the Insured (or Reinsured) to give a written undertaking to the Insured (or Reinsured) that they will enter a general appearance upon Underwriters' behalf in the event such a suit shall be instituted.

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

REF 1998

ELECTRONIC DATA ENDORSEMENT B

1. Electronic Data Exclusion

Notwithstanding any provision to the contrary within the Policy or any endorsement thereto, it is understood and agreed as follows:

(a) This Policy does not insure loss, damage, destruction, distortion, erasure, corruption or alteration of ELECTRONIC DATA from any cause whatsoever (including but not limited to COMPUTER VIRUS) or loss of use, reduction in functionality, cost, expense of whatsoever nature resulting therefrom, regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

ELECTRONIC DATA means facts, concepts and information converted to a form useable for communications, interpretation or processing by electronic and electromechanical data processing or electronically controlled equipment and includes programmes, software and other coded instructions for the processing and manipulation of data or the direction and manipulation of such equipment.

COMPUTER VIRUS means a set of corrupting, harmful or otherwise unauthorised instructions or code including a set of maliciously introduced unauthorised instructions or code, programmatic or otherwise, that propagate themselves through a computer system or network of whatsoever nature. COMPUTER VIRUS includes but is not limited to 'Trojan Horses', 'worms' and 'time or logic bombs'.

(b) However, in the event that a peril listed below results from any of the matters described in paragraph (a) above, this Policy, subject to all its terms, conditions and exclusions, will cover physical damage occurring during the Policy period to property insured by this Policy directly caused by such listed peril.

Listed Perils
Fire
Explosion

2. Electronic Data Processing Media Valuation

Notwithstanding any provision to the contrary within the Policy or any endorsement thereto, it is understood and agreed as follows:

Should electronic data processing media insured by this Policy suffer physical loss or damage insured by this Policy, then the basis of valuation shall be the cost of the blank media plus the costs of copying the ELECTRONIC DATA from back-up or from originals of a previous generation. These costs will not include research and engineering nor any costs of recreating, gathering or assembling such ELECTRONIC DATA. If the media is not repaired, replaced or restored the basis of valuation shall be the cost of the blank media. However this Policy does not insure any amount pertaining to the value of such ELECTRONIC DATA to the Assured or any other party, even if such ELECTRONIC DATA cannot be recreated, gathered or assembled.

REF 2915

SANCTION LIMITATION AND EXCLUSION CLAUSE

No (re)insurer shall be deemed to provide cover and no (re)insurer shall 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 that (re)insurer to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America.

REF 3100
15 September 2010

U.S. TERRORISM RISK INSURANCE ACT OF 2002 AS AMENDED
NOT PURCHASED CLAUSE

This Clause is issued in accordance with the terms and conditions of the "U.S. Terrorism Risk Insurance Act of 2002" as amended as summarized in the disclosure notice.

It is hereby noted that the Underwriters have made available coverage for “insured losses” directly resulting from an "act of terrorism" as defined in the "U.S. Terrorism Risk Insurance Act of 2002", as amended (“TRIA”) and the Insured has declined or not confirmed to purchase this coverage.

This Insurance therefore affords no coverage for losses directly resulting from any "act of terrorism" as defined in TRIA except to the extent, if any, otherwise provided by this policy.

All other terms, conditions, insured coverage and exclusions of this Insurance including applicable limits and deductibles remain unchanged and apply in full force and effect to the coverage provided by this Insurance.

REF 5219

12 January 2015

WAR AND TERRORISM EXCLUSION ENDORSEMENT

Notwithstanding any provision to the contrary within this insurance or any endorsement thereto it is agreed that this insurance excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any of the following regardless of any other cause or event contributing concurrently or in any other sequence to the loss;

1. war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power; or

2. any act of terrorism.

   For the purpose of this endorsement an act of terrorism means an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear.

This endorsement also excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to 1 and/or 2 above.

If the Underwriters allege that by reason of this exclusion, any loss, damage, cost or expense is not covered by this insurance the burden of proving the contrary shall be upon the Assured.

In the event any portion of this endorsement is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

08/10/01
REF2918

Occurrence Limit of Liability Endorsement

It is hereby understood and agreed that the following special terms and conditions apply to this policy:

1. The Policy Limit shown on the face of this policy is the total Program Limit of Liability applicable to each occurrence, as hereafter defined. Notwithstanding any other terms and conditions of this Policy to the contrary, in no event shall our liability exceed our proportionate program share of this limit or amount irrespective of the number of locations involved.

   The term “occurrence” shall mean any one loss, disaster, casualty or series of losses, disasters, or casualties, arising out of one event except as specified elsewhere in the policy with regards to flood and earthquake coverage.

   When the term applies to loss or losses from the perils of tornado, cyclone, hurricane, windstorm, hail, volcanic eruption, riot, riot attending a strike, civil commotion, and vandalism and malicious mischief one event shall be construed to be all losses arising during a continuous period of 72 hours. When filing proof of loss, you may elect the moment at which the 72 hour period shall be deemed to have commenced, which shall not be earlier than the first loss to the covered property occurs and must commence within the policy term.

2. The premium for this policy is based upon the Statement of Values on file with us, or attached to this policy. In the event of loss hereunder, the total Program Limit of Liability, subject to the terms of paragraph one (1) above, shall be limited to the least of the following:

   a. The actual adjusted amount of loss, less applicable deductibles(s),

   b. *100%* of the total stated value for the property involved, as shown on the latest Statement of Values on file with us, less applicable deductible(s),

   c. The limit of Liability or Limit of insurance shown on the face of this Policy or endorsed onto this Policy.

3. If the property involved consists of multiple buildings, and the latest Statement of Values does not report values by individual building, in case shall the loss for the building, including all Additional coverages other than Debris Removal, exceed that Building’s respective proportional value of the total building value for that location as shown on the latest Statement of Values on file with us.

   The building’s respective proportional value shall be calculated by:

   a. Dividing *100%* of the building values reported for the location involved, as shown on the latest statement of values on file with us, by the square footage reported on the statement of values to arrive at a dollar per square foot number for the location.

   b. Multiplying the dollar per square foot calculated above by the square footage of the specific building(s) damaged.

REMOVAL OF CLAUSE 2B WITHIN THE OCCURRENCE LIMIT OF LIABILITY ENDORSEMENT

It is hereby understood and agreed that Clause 2b within the Occurrence Limit of Liability Endorsement is removed and does not apply to the Policy.

All other Terms, Conditions, and Warranties will remain unchanged.

Minimum Earned Premium Endorsement

It is hereby declared and agreed that the policy premium is subject to a minimum earned premium of 35.00% the total premium, or the short rate cancellation per the terms on the Declaration Certificate, whichever is greater.

PROPERTY POLICY

SECTION I
DECLARATIONS

All terms in un-bolded capital letters throughout this POLICY are subject to the definition as set forth in this POLICY.

A. Issuing Company - (hereafter referred to as "the Company")

Great Lakes Insurance SE

B. Policy Number

GLSE180076

C. Insured

West Flagler Associates, Ltd. Dba Magic City Casino and Flagler Dog Track and any subsidiary, and **West Flagler Associates, Ltd. Dba Magic City Casino and Flagler Dog Track** interest in any partnership or joint venture in which **West Flagler Associates, Ltd. Dba Magic City Casino and Flagler Dog Track** has management control, ownership, or is obligated to insure, as now constituted or hereafter is acquired, as the respective interest of each may appear; all hereafter referred to as the Insured, including legal representatives.

D. First Named Insured and Mailing Address

West Flagler Associates, Ltd. Dba Magic City Casino and Flagler Dog Track
401 NW 38th CT
Miami, FL 33136

E. Policy Period

From: 04/29/2019

To: 04/29/2020

F. Inception and Expiration Time

The time of inception and the time of expiration of this POLICY and of any schedule(s) or endorsement(s) attached shall be at 12:01 a.m. (Standard Time) at the First Named Insured's principal place of business. Notwithstanding the foregoing, it is agreed that the actual effective time of attachment of this insurance shall be the same time on the specified date as the actual effective time of cancellation or expiration of the POLICY(IES) replaced or renewed by this POLICY.

The POLICY Period ends, and coverage under this POLICY terminates, when the first of the following occurs:

1. cancellation of this POLICY by the First Named Insured or by the Company;
2. the replacement POLICY takes effect; or
3. the POLICY Expiration Date.

G. Gross Premium

$50,000 at Inception

H. Currency

Any amounts specified in this POLICY, including but not limited to premium, limit(s) of liability, deductible(s), and loss payable will be considered to be in:

U.S. Currency ($)

I. Policy Territory

United States of America, Puerto Rico and the United States Virgin Islands

J. Sanctions Clause

This POLICY will not be deemed to have provided coverage and will not be liable to pay any claim or provide any benefit to the extent that payment of such claim or provision of such benefit would expose the Company to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of any jurisdiction applicable to the Company.

SECTION II
POLICY LIMITS AND SUBLIMITS PURCHASED OR NOT PURCHASED

A. Program Limit of Liability

The Insured has chosen to purchase a Property Insurance Program with a limit of $90,417,240, and this POLICY will serve to participate in that Program subject to the terms outlined in the **Company's Policy Limit of Liability and Application** section.

B. Company's Policy Limit of Liability and Application

1. The Company is not liable for more than its proportionate share, as specified below, of the Program Limit or of the Program Layer Limits that make up the Program Limit for all loss or damage insured by this POLICY arising out of one OCCURRENCE regardless of the number of LOCATIONS or coverages involved in the OCCURRENCE.

Company's Policy Limit of Liability		**Program Limit or Program Layer Limits**
$5,000,000	Being 50% part of	$10,000,000 excess of $5,000,000

2. The Company is not liable for more than the same proportionate share specified above of any Program Sublimit(s) which are part of the Program Limit or are part of any Program Layer Limits that make up the Program Limit.

3. The amount payable under this POLICY shall be determined by the terms of this POLICY after the application of any deductible features which may be a part of this POLICY. The **Other Insurance** provision of this POLICY is not applicable as respects other Insurers participating in the Program Limit or Program Layer Limit along with the Company's Proportionate Share.

4. In the event an OCCURRENCE results in an amount payable under more than one POLICY issued to the Insured by the Company, or its subsidiaries and affiliates, the maximum amount payable in the aggregate under all such policies will be the **Company's Policy Limit of Liability** specified herein regardless of the number of INSURED LOCATION(S) or coverages involved.

C. Application of Program Sublimit(s)

1. Program Sublimit(s) are part of and not in addition to the Program Limit. Program Sublimit(s) do not increase the Program Limit or any other Program Sublimit(s).

2. Program Sublimit(s) apply in the aggregate per OCCURRENCE to all INSURED LOCATION(S) and for all coverages involved, including TIME ELEMENT.

3. When a Program Sublimit(s) is noted as an Annual Aggregate, such Program Sublimit(s) applies in the aggregate annually to all losses insured by this POLICY occurring during the **Policy Period**.

4. If a Program Sublimit(s) is specified for the cause of loss that causes the claimed loss or damage such sublimit is the maximum amount payable for such OCCURRENCE.

5. If a Program Sublimit(s) is specified for a coverage that is provided, such Sublimit(s) are the maximum amount payable under this POLICY for all loss or damage, resulting from physical loss or damage insured by this POLICY at such INSURED LOCATION(S).

6. If a Program Sublimit(s) is specified for an INSURED LOCATION(S) or property, such Program Sublimit(s) is the maximum amount payable under this POLICY for all loss or damage, including TIME ELEMENT loss, at all INSURED LOCATION(S) resulting from physical loss or damage insured by this POLICY at such INSURED LOCATION(S) or to such property.

7. This policy may contain sublimits applicable to specific locations, specific types of loss, specific causes of loss, or specific coverages. Such sublimits shall be the total payable arising out of one OCCURRENCE (or a Annual Aggregate of certain OCCURRENCES where so specified), and neither the policy limit nor any sublimits shall be increased by the application of one or more sublimits.

D. Coverage Purchased and Coverage Not Purchased

The following Types of Loss, Causes of Loss and Coverages are all excluded unless a monetary amount is set forth next to the Type of Loss, Cause of Loss or Coverage. If no monetary amount is provided; the amount is $0; the line is left blank; or **NCP** (No Coverage Purchased) is shown, then those Types of Loss, Causes of Loss and those Coverages, so designated, remain excluded from recovery under this POLICY.

Program Sublimit(s)	Type of Loss, Cause of Loss and Coverage
$10,000,000	EARTH MOVEMENT (Annual Aggregate), [further sublimited as follows:]
a. $5,000,000 **b. $1,000,000** **c. $1,000,000** **d. $1,000,000**	EARTH MOVEMENT as respects: a. **Newly Acquired Property**; b. **Errors and Omissions**; c. **Exhibitions, Expositions, Fairs or Trade Shows**; and d. **Miscellaneous Unnamed Locations.** (Annual Aggregate)]
$10,000,000	FLOOD (Annual Aggregate), [further sublimited as follows:]
a. $5,000,000 **b. $1,000,000** **c. $1,000,000** **d. $1,000,000**	FLOOD as respects: a. **Newly Acquired Property**; b. **Errors and Omissions**; c. **Exhibitions, Expositions, Fairs or Trade Shows**; and d. **Miscellaneous Unnamed Locations.** (Annual Aggregate)]
INCLUDED	NAMED WINDSTORM, [further sublimited as follows:]
a. $5,000,000 **b. $1,000,000** **c. $1,000,000** **d. $1,000,000**	NAMED WINDSTORM as respects: a. **Newly Acquired Property**; b. **Errors and Omissions**; c. **Exhibitions, Expositions, Fairs or Trade Shows**; and d. **Miscellaneous Unnamed Locations.** (Annual Aggregate)]
$1,000,000	**Accounts Receivable**
$100,000	**Arson or Theft Reward**
EXCLUDED	**Attraction Properties**
$50,000	**Brands and Labels**
$25,000	**Building Materials at Off Premises Storage for Prop. Under construction**
$1,000,000	**Commissions, Licensing Fees and Royalties**
EXCLUDED	**Contingent Time Element** – Direct Named Suppliers and Customers
EXCLUDED	**Contingent Time Element** – Direct Unnamed Suppliers and Customers
EXCLUDED	**Contingent Time Element** – Indirect Suppliers and Customers
$25,000	**Contractual Penalties**
EXCLUDED	**Cyber –** see Endorsement B for exclusion wording
$1,000,000	**Data Restoration –** PROPERTY DAMAGE and TIME ELEMENT combined
$2,500,000	**Debris Removal -** or 25% of the combined amount of physical damage and TIME ELEMENT loss payable at the LOCATION where the damage occurs or limit shown, whichever is the lesser.
Included	**Demolition And Increased Cost Of Construction – Coverage A**
$2,500,000	**Demolition And Increased Cost Of Construction – Coverage B**
$2,500,000	**Demolition And Increased Cost Of Construction – Coverage C**
$2,500,000	**Demolition And Increased Cost Of Construction – Coverage D**
$500,000	**Errors and Omissions**
$500,000	**Exhibitions, Expositions, Fairs or Trade Shows**

Program Sublimit(s)	Type of Loss, Cause of Loss and Coverage
$500,000	**Expediting Expenses**
$2,500,000	**Extra Expense**
$500,000	**Fine Arts**, subject to a maximum of **$1,500** per item
$100,000	**Fire and Police Department Service Charges**
Included	**Gross Earnings**
$2,500,000	**Ingress/Egress**
$500,000	**Land And Water Contaminants Cleanup, Removal And Disposal** (Annual Aggregate)
$2,500,000	**Land Improvements, subject to a maximum of $25,000 per item**
$5,000,000	**Leasehold Interest**
$10,000	**Locks and Keys**
$10,000	**Logistics Extra Cost**
$1,000,000	**Miscellaneous Unnamed Locations**
$250,000	**Mold Ensuing from an Insured Cause of Loss**
$50,000	**Money and Securities**
$500,000	**On Site Construction**
Included	**Ordinary Payroll**
$5,000,000	**Newly Acquired Property – excluding Tier 1 Named Windstorm, High Hazard Flood and High Hazard Earth Movement**
$500,000	**Outdoor Property**, subject to a maximum of **$5,000** per item
$2,500,000	**Order of Civil or Military Authority**
$50,000	**Professional Fees**
$500,000	**Protection and Preservation of Property – Property Damage**
$500,000	**Protection and Preservation of Property – Time Element**
NCP	**Radioactive Contamination**
$100,000	**Rental Insurance**
$1,000,000	**Service Interruption – Property Damage** and **Service Interruption – Time Element Combined – including T&D lines within 1,000 feet of insured's premises**
$100,000	**Soft Costs**
$500,000	**Spoilage**
$1,000,000	**Temporary Removal of Property**
$1,000,000	**Temporary Storage Locations**
$250,000	**Transportation** - PROPERTY DAMAGE and TIME ELEMENT combined
$1,000,000	**Valuable Papers and Records**

E. Time Limit(s)

No coverage is provided by this POLICY for any loss sustained or incurred beyond the corresponding Time Limit specified. Such Time Limit starts on the date of the physical loss or damage insured by this POLICY; however, not to exceed the stated dollar sublimit provided in Section D above:

90 consecutive calendar days from the date of acquisition for **Newly Acquired Property**

365 consecutive calendar days for **Extended Period of Liability – Gross Earnings** and **Rental Insurance**

30 consecutive calendar days after such length of time as would be required with the exercise of due diligence and dispatch to repair or replace the damaged dam, reservoir or equipment for **Impounded Water**

30 consecutive calendar days from the date of OCCURRENCE for **Ingress/Egress**

30 consecutive calendar days from the date of OCCURRENCE for **Order Of Civil Or Military Authority**

F. Distance Limit(s)

No coverage for TIME ELEMENT loss, as described below, is provided if the LOCATION of the physical loss or damage is beyond the stated Distance Limits indicated below:

5 statute mile(s) from the INSURED LOCATION for **Ingress/Egress**

5 statute mile(s) from the INSURED LOCATION for **Order Of Civil Or Military Authority**

G. Time Element Coverage Extensions - Application of Limits

For purposes of all claims paid hereunder in accordance with the TIME ELEMENT coverage provisions, the applicable Program Sublimits, set forth above, will be determined as though the LOCATION(S) suffering physical loss or damage insured by this POLICY were INSURED LOCATION(S), and not where the TIME ELEMENT losses might be incurred if different.

SECTION III
POLICY DEDUCTIBLES AND WAITING PERIODS

A. Policy Deductibles

In each case of loss or damage insured by this POLICY, the Company is liable only if the Insured sustains such loss or damage in a single OCCURRENCE, the value of which is in excess of the applicable deductible specified, and then the amount insured by this POLICY shall be the amount in excess of the deductible, subject to all terms, conditions, provisions, limitations and exclusions of this POLICY.

$25,000 per occurrence for all perils, except;

NAMED WINDSTORM
5% Per Unit of Insurance at each location involved in the loss or damage arising out of a NAMED WINDSTORM and subject to a minimum deductible of $100,000 per occurrence as respects LOCATIONS situated in a TIER 1 COUNTY

EARTH MOVEMENT:
$50,000 per occurrence for the peril of EARTHQUAKE

FLOOD:
$100,000 per occurrence for the peril of FLOOD, except for locations wholly or partially situated in HIGH HAZARD FLOOD ZONES the deductible shall be $500,000 per building, $500,000 for Contents per building and $100,000 for Time Element per occurrence.

Each of the following shall be considered a separate Unit of Insurance:

- Each separate building or structure
- Contents in each separate building or structure
- Property in the yard of each separate building or structure
- Annual Business Interruption values apply to each separate building or structure

B. Application of Deductibles

Unless otherwise specified above:

1. All deductibles apply per OCCURRENCE.

2. When this POLICY insures more than one INSURED LOCATION(S), the deductible applies against the total loss and damage insured by this POLICY in any one OCCURRENCE.

3. If two or more deductibles provided in this POLICY apply to a single OCCURRENCE, then the total to be deducted will not exceed the largest deductible applicable; provided, however, the largest deductible applicable may be comprised of two parts, one applicable to PROPERTY DAMAGE and one applicable to TIME ELEMENT.

4. If a deductible is expressed as a period of time which is:

   a. not otherwise more specifically stated; or

   b. not intended to be converted to its monetary equivalents;

   then the Company will not be liable for the amount of loss incurred or sustained by the Insured during such period of time that immediately follows the physical loss or damage insured by this POLICY.

5. If a deductible is expressed as an Actual Daily Value (ADV) or a multiple thereof, the ADV will be calculated as follows:

a. Determine the **Gross Earnings** that would have been earned during the **Period of Liability** of the Insured's business had no **Time Element** loss occurred.

b. Divide the result in a. above by the number of working days in the **Period of Liability** of the Insured's business had no loss occurred. The resulting amount is the ADV.

No reduction will be made for the **Gross Earnings** not being earned in the number of working days because of the loss or damage, or because of any scheduled or unscheduled shutdowns during the **Period of Liability** of the Insured's business.

The ADV will be calculated based on the **Gross Earnings** of the entirety of the INSURED LOCATION(S), whether or not the loss or damage affects the entirety of the INSURED LOCATION(S). If physical loss or damage insured by this POLICY results in a TIME ELEMENT loss at more than one INSURED LOCATION(S), the ADV will be calculated based on the combined **Gross Earnings** of all affected INSURED LOCATION(S).

6. The deductibles provisions specified herein this POLICY for NAMED WINDSTORM apply to all loss or damage insured by this POLICY, caused by or arising out of a NAMED WINDSTORM, including, but not limited to, the following:

   a. the force or action of WIND caused by or resulting from a NAMED WINDSTORM; in accordance with the FLOOD definition provision of this POLICY;

   b. any material, object or debris that is carried, propelled or in any manner moved by a NAMED WINDSTORM;

   c. any tornadoes that are a result of actions or effects of a NAMED WINDSTORM;

   d. hail that is a result of actions or effects of a NAMED WINDSTORM;

   e. lightning that is a result of actions or effects of a NAMED WINDSTORM;

   f. rain or water, whether the rain or water is driven by WIND or not, that enters the covered building or structure through an opening created by the force of WIND or water from a NAMED WINDSTORM; or

   g. FLOOD, if covered by this POLICY, that results from the actions or effects of NAMED WINDSTORM.

7. The LOCATION(S) where physical loss or damage insured by this POLICY occurs shall be used to determine the deductible. Once the deductible is determined, if it is a percentage deductible, it shall be applied to the APPLICABLE VALUES.

C. Waiting Periods

Coverage is provided by this POLICY only if the corresponding WAITING PERIOD specified is exceeded. Coverage shall then apply only to the LOCATION(s) where the WAITING PERIOD has been exceeded. The corresponding coverage will then apply from the beginning of the interruption of services but only for the amounts in excess of the applicable Deductible(s). If multiple LOCATIONS exceed the WAITING PERIOD then the applicable Deductible(s) will apply to the combined loss of all such LOCATIONS.

1. **24** consecutive hours from the inception of interruption of services for **Service Interruption – Property Damage** and **Service Interruption – Time Element**.

STRATEGIC NON-ADMITTED PROPERTY POLICY

SECTION IV
PROPERTY DAMAGE

A. Insured Property

Except as excluded hereinafter, INSURED PROPERTY consists of property described below:

1. Real property owned by the Insured or in which the Insured has an insurable interest.

2. Personal property:

   a. owned by the Insured, including the Insured's interest as a tenant in IMPROVEMENTS AND BETTERMENTS for which the Insured incurred the costs of installation or for which the Insured is legally liable under the terms of its lease.

      In the event of physical loss or damage insured by this POLICY to such IMPROVEMENTS AND BETTERMENTS, the Company agrees to accept and consider the Insured as sole and unconditional owner of IMPROVEMENTS AND BETTERMENTS, notwithstanding any contract or lease to the contrary.

   b. of officers and employees of the Insured; and of others in the Insured's custody:

      I. to the extent the Insured is under obligation to keep such property insured for physical loss or damage insured by this POLICY; or

      II. to the extent of the INSURED'S LIABILITY for physical loss or damage insured by this POLICY to such property.

B. Property Damage Coverage Extensions, Terms and Conditions

The following are subject to all terms, conditions, provisions, limitations and exclusions of this POLICY and in addition, any other terms, conditions, provisions, limitations and exclusions set forth below.

1. Accounts Receivable

a. This POLICY is extended to insure ACCOUNTS RECEIVABLE loss and expense resulting from direct physical loss or damage insured by this POLICY to the Insured's accounts receivable records, including accounts receivable records stored as ELECTRONIC DATA, while anywhere, including while in transit to the extent provided under **Transportation**, within the **Policy Territory**.

b. This extension also insures the following:

   I. The interest charges on any loan to offset impaired collections pending repayment of such sum uncollectible as a result of such physical loss or damage.

      Unearned interest and service charges on deferred payment accounts and normal credit losses on credit extended or bad debts will be deducted in determining the recovery.

   II. Any other necessary and reasonable costs incurred to reduce the loss, to the extent the loss is reduced.

c. In the event of loss to accounts receivable records, the Insured will use all reasonable efforts, including legal action, if necessary, to effect collection of outstanding accounts receivable.

d. The Insured agrees to use any suitable property or service owned or controlled by the Insured, or obtainable from other sources, in reducing the loss otherwise insured under this extension.

e. If it is possible to reconstruct accounts receivable records so that no ACCOUNTS RECEIVABLE loss is sustained, this POLICY insures only the reasonable and necessary costs incurred for material and time required to re-establish or reconstruct such records, and not for any costs insured by any other insurance.

f. When there is proof that a loss covered by this POLICY has occurred but the Insured cannot accurately establish the total amount of accounts receivable outstanding as of the date of such loss, such amount shall be based on the Insured's monthly statements and shall be computed as follows:

I. determine the amount of all outstanding accounts receivable at the end of the same fiscal month in the year immediately preceding the year in which the loss occurs;

II. calculate the percentage of increase or decrease in the average monthly total of accounts receivable for the twelve (12) months immediately preceding the month in which the loss occurs, or such part thereof for which the Insured has furnished monthly statements to the Company, as compared with such average for the same months of the preceding year;

III. the amount determined under I. above, increased or decreased by the percentage calculated under II. above, shall be the agreed total amount of accounts receivable as of the last day of the fiscal month in which said loss occurs;

IV. the amount determined under III. above shall be increased or decreased in conformity with the normal fluctuations in the amount of accounts receivable during the fiscal month involved, due consideration being given to the experience of the business since the last day of the last fiscal month for which a statement has been rendered.

V. Add any collection expenses in excess of normal collection costs and made necessary because of loss or damage, and the reasonable expenses incurred in re-establishing accounts receivable records following the loss or damage.

g. All amounts recovered by the Insured on outstanding accounts receivable on the date of loss will belong and be paid to the Company up to the amount of loss paid by the Company. All recoveries exceeding the amount paid by the Company will belong to the Insured.

h. No coverage is provided under this extension for any shortage resulting from:

I. bookkeeping, accounting or billing errors or omissions; or

II. alteration, falsification, manipulation, concealment, destruction or disposal of accounts receivable records committed to conceal the wrongful giving, taking, obtaining or withholding of MONEY, SECURITIES or other property; but only to the extent of such wrongful giving, taking, obtaining or withholding.

2. Brands and Labels

If branded or labeled MERCHANDISE or FINISHED GOODS insured by this POLICY is damaged and the Company elects to take all or any part of such MERCHANDISE or FINISHED GOODS at the value established by the provisions of this POLICY, the Insured may, at the Company's expense, stamp “salvage” on the MERCHANDISE or FINISHED GOODS or its containers or may remove or obliterate the brands or labels, if such stamp, removal or obliteration will not physically damage or otherwise reduce the value of the MERCHANDISE or FINISHED GOODS, but the Company shall re-label the MERCHANDISE or FINISHED GOODS or containers in compliance with the requirements of law.

3. Control of Damaged Property

This POLICY gives control of physically damaged FINISHED GOODS or MERCHANDISE as follows:

a. the Insured will have full rights to the possession and control of damaged FINISHED GOODS or MERCHANDISE in the event of physical loss or damage insured by this POLICY to such FINISHED GOODS or MERCHANDISE provided proper testing is done to show which FINISHED GOODS or MERCHANDISE is physically damaged;

b. the Insured using reasonable judgment will decide if FINISHED GOODS or MERCHANDISE sustaining physical loss or damage can be reprocessed or sold;

c. FINISHED GOODS or MERCHANDISE so judged by the Insured to be unfit for reprocessing or selling will not be sold or disposed of except by the Insured, or with the Insured's consent; and

d. any salvage proceeds received will go to the:

I. Company at the time of loss settlement; or

II. Insured if received prior to loss settlement and such proceeds will reduce the amount of loss payable hereunder.

e. Notwithstanding, the foregoing paragraphs a. through d., the Insured shall allow the Insurer any salvage which could be or which could have been obtained on any sale or other disposition of such goods or products through normal insurance industry salvage practices.

4. Data Restoration

This POLICY is extended to insure the necessary and reasonable costs and expenses actually incurred by the Insured, subject to the limits specified in the Program Sublimit(s) section, following direct physical loss or damage insured by this POLICY to INSURED PROPERTY for reproduction of ELECTRONIC DATA. Such cost of reproduction shall include all reasonable and necessary amounts, incurred by the Insured in recreating, gathering and assembling such ELECTRONIC DATA.

5. Debris Removal

a. This POLICY is extended to insure the necessary and reasonable costs and expenses actually incurred by the Insured, subject to the limits specified in the Program Sublimit(s) section, following direct physical loss or damage insured by this POLICY to INSURED PROPERTY, to dismantle, demolish and/or remove from INSURED LOCATION(S) the debris of INSURED PROPERTY remaining after any such physical loss or damage.

b. No coverage is provided hereunder for costs and expenses incurred in the removal of:

I. any foundation, other than damaged portions which must be removed in order to effectuate the repair or rebuilding of any INSURED PROPERTY; or

II. any property or part thereof, the removal of which is required by the enforcement of any law, ordinance, regulation or rule regulating or restricting the construction, installation, repair, replacement, demolition, occupancy, operation or other use of INSURED PROPERTY; or

III. CONTAMINANTS from land or water, nor for the cost to remove, restore or replace polluted land or water.

No liability shall exist under this extension of coverage unless such costs and expenses are reported to the Company within one hundred eighty (180) days of the date of such physical loss or damage insured by this POLICY or the expiration of this POLICY, whichever shall be earlier.

6. Demolition and Increased Cost of Construction

a. This POLICY is extended to insure the following additional costs when there is direct physical loss or damage insured by this POLICY to building(s) or structure(s) insured by this POLICY and such additional costs are occasioned by the enforcement of any law or ordinance regulating the construction, repair, replacement, use or demolition of building(s) or structure(s) which is in force at the time of loss and necessitates such costs:

I. **Coverage A**: value of the undamaged portion(s) which has been demolished subject to the same basis of recovery which applies to the damaged portion(s) of such building(s) or structure(s). This cost shall not include any greater cost of repair, replacement, construction or reconstruction due to the enforcement of any law or ordinance;

II. **Coverage B**: cost of demolishing any undamaged portion(s);

III. **Coverage C**: if the basis of recovery is replacement cost, the increased cost actually expended (excess of I. Coverage A above) in rebuilding or replacing both the damaged and demolished portions on the same INSURED LOCATION with like height, floor area and style and for like occupancy to comply with the minimum requirements of such law or ordinance.

IV. **Coverage D:** any increase in the business interruption, extra expense, rental value and royalties loss arising out of the additional time required to comply with said law or ordinance.

b. This extension provision shall not insure:

I. any increase of loss associated with the enforcement of any law or ordinance which requires the Insured or others to test for, monitor, cleanup, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of CONTAMINANTS.

II. any loss due to any law or ordinance with which the Insured was required to comply prior to the loss.

This entire provision shall not increase any amounts or limits of insurance provided by this POLICY.

7. Destruction by Civil or Military Authority

This POLICY is extended to insure against acts of destruction by order of civil or military authority at the time of and for the purpose of preventing the spread of fire provided such fire originated from physical loss or damage insured by this POLICY.

8. Errors and Omissions

a. If loss or damage is not payable under this POLICY solely due to an error or unintentional omission:

I. in the description of where INSURED PROPERTY is physically situated within the **Policy Territory**; or

II. to include any LOCATION(S), within the **Policy Territory**, that is owned, rented or leased by the Insured as of the POLICY Inception Date; or

III. that results in cancellation of coverage for INSURED PROPERTY under the POLICY;

then such property shall be considered INSURED PROPERTY under this POLICY to the extent it would have provided coverage had such error or unintentional omission not been made.

b. It is a condition precedent to recovery under this extension of coverage that any error or unintentional omission be:

I. reported by the Insured to the Company when discovered; and

II. corrected upon its discovery.

9. Exhibitions, Expositions, Fairs or Trade Shows

a. The POLICY is extended to insure any personal property, except as excluded under the **Property Not Insured** section of this POLICY:

I. owned by the Insured;

II. of others in the Insured's care, custody and control:

1) to the extent the Insured is under an obligation to insure such property against direct physical loss or damage insured by this POLICY; or

2) to the extent of the INSURED'S LIABILITY for direct physical loss or damage insured by this POLICY to such property;

while such property is situated on the premises of any exhibitions, expositions, fairs or trade shows within the **Policy Territory**.

b. No coverage is provided under this extension for any property:

I. while in transit;

II. while waterborne;

III. at INSURED LOCATION(S);

IV. insured under **Course of Construction**;

V. insured under **Fine Arts**;

VI. that is otherwise insured by this POLICY or any other POLICY issued by the Company to the Insured.

10. Expediting Expenses

This extension provision applies to real and personal property only.

a. This POLICY is extended to insure the reasonable and necessary expenses incurred by the Insured:

I. to pay for the temporary repair of direct physical damage insured by this POLICY to INSURED PROPERTY at INSURED LOCATION(S); and

II. to expedite the permanent repair or replacement of such INSURED PROPERTY.

b. No coverage is provided under this extension for any expenses:

I. recoverable under any other section or provision in this POLICY; or

II. for permanent repair or replacement of any INSURED PROPERTY.

11. Fine Arts

a. This POLICY is extended to insure direct physical loss or damage insured by this POLICY to FINE ARTS while anywhere, including while in transit to the extent provided under **Transportation**, within the **Policy Territory**.

b. No coverage is provided under this extension for:

I. loss or damage if the FINE ARTS cannot be replaced with others of like kind and quality, unless such FINE ARTS are specifically declared to and accepted by the Company prior to the loss or damage; or

II. loss or damage caused by or resulting from or occurring during any repairing, restoration or retouching process.

12. Fire and Police Department Service Charges

a. This POLICY is extended to insure the following reasonable and necessary charges:

I. fire department firefighting charges imposed on the Insured by law or ordinance as a result of responding to a fire in, on or exposing the INSURED PROPERTY at INSURED LOCATION(S);

II. costs incurred in restoring and recharging fire protection systems at INSURED LOCATION(S) following direct physical loss or damage insured by this POLICY to INSURED PROPERTY;

III. costs incurred for the water used for fighting a fire following direct physical loss or damage insured by this POLICY in, on or exposing INSURED PROPERTY at INSURED LOCATION(S);

IV. police department charges imposed on the Insured by law or ordinance as a result of responding to a covered cause of loss in, on or exposing the INSURED PROPERTY at INSURED LOCATION(S).

b. To the extent costs are incurred as insured under this extension of coverage and such costs served to prevent the occurrence of direct physical loss or damage insured by this POLICY to INSURED PROPERTY, this extension of coverage is subject to the POLICY Deductible that would have applied to any claim for such physical loss or damage insured by this POLICY that was avoided.

13. Infrastructure System Coverage

This POLICY is extended to insure direct physical loss or damage insured by this POLICY to insured personal property that is part of communications lines, data transmission lines or any infrastructure comprising or supporting the Insured's connection to its internet service provider or ELECTRONIC DATA COMMUNICATIONS SYSTEM when, and only to the extent that, such personal property is located on INSURED LOCATION(S) and is under the Insured's exclusive operational control. Insured personal property does not include satellites or ELECTRONIC DATA.

ELECTRONIC DATA COMMUNICATIONS SYSTEM, means any communication system, including computer systems and the Internet, which provides the Insured with access to other computer systems, microchips, integrated circuits or similar devices in non-computer equipment, or which provides any party access to the Insured's computer systems, microchips, integrated circuits or similar devices in non-computer equipment.

14. Land and Water Contaminants, Cleanup, Removal and Disposal

a. This POLICY is extended to insure the reasonable and necessary cost for the cleanup, removal and disposal of CONTAMINANTS:

I. from land; or

II. from water or any other substance in or on land

at INSURED LOCATION(S) provided the release, discharge or dispersal of such CONTAMINANTS is directly caused by direct physical loss or damage insured by this POLICY to INSURED PROPERTY at INSURED LOCATION(S).

b. No coverage is provided under this extension of coverage for the cost:

I. to test for, monitor or assess the existence, concentration or effects of any CONTAMINANTS, other than the testing which is performed in the course of extracting the CONTAMINANTS;

II. to cleanup, remove and dispose of any CONTAMINANTS from land, or from water or any other substance in or on land:

1) at INSURED LOCATION(S) for which coverage is not provided hereunder for real property.

2) if the Insured fails to give written notice of loss to the Company within one hundred eighty (180) consecutive calendar days from the date of such physical loss or damage causing the release, discharge or dispersal of such CONTAMINANTS.

15. Miscellaneous Unnamed Locations

This POLICY is extended to insure INSURED PROPERTY within the **Policy Territory** that is either:

a. not listed on the latest Schedule of Locations submitted to, accepted by and on file with the Company; or

b. listed on the latest Schedule of Locations submitted to, accepted by and on file with the Company but for which the Insured has not submitted values for its interest.

16. Newly Acquired Property

a. This POLICY is extended to insure direct physical loss or damage insured by this POLICY to newly constructed real property upon completion, or real property acquired or leased within the **Policy Territory** during the term of this POLICY and personal property, while under the care, custody and control of the Insured at any such new LOCATION(S). TIME ELEMENT coverage is provided for property insured under this extension of coverage, subject to all TIME ELEMENT terms, conditions, provisions, limitations and exclusions.

b. Coverage under this **Newly Acquired Property** provision shall commence when the Insured first acquires an insurable interest at the new LOCATION(S) and shall cease after the number of days specified in the **Time Limit** section if not reported to and accepted by the Company. If reported to and accepted by the Company the coverage provided by this POLICY for that LOCATION shall be the same as for all other INSURED LOCATION(S) unless otherwise specified herein or by endorsement.

c. No coverage is provided under this coverage extension for property while in transit or waterborne, nor while on the premises of any exhibition, exposition, fair or trade show. This provision shall not be construed as providing coverage at LOCATION(S) scheduled or otherwise insured herein.

d. This **Newly Acquired Property** provision shall not increase any amounts or limits of insurance provided by this POLICY.

17. On Site Construction

This POLICY is extended to insure direct physical loss or damage insured by this POLICY to buildings and structures undergoing construction, alteration, extension, or renovation while taking place on INSURED LOCATION(S). TIME ELEMENT coverage is provided for property insured under this extension of coverage, subject to all TIME ELEMENT terms, conditions, provisions, limitations and exclusions.

18. On Site Service Interruption

This POLICY is extended to insure direct physical loss or damage insured by this POLICY, including shrinkage, evaporation, leakage of contents, change in flavor or texture or finish, decay or other spoilage, when such physical loss or damage is the result of an interruption of services caused by physical loss or damage as insured against by this POLICY, at INSURED LOCATION(S).

The period of service interruption is the period starting with the time when an interruption of specified services happens; and ending when with due diligence and dispatch the service could be wholly restored.

19. Professional Fees

a. This POLICY is extended to insure the reasonable expenses, including the cost of using the Insured's employees, incurred by the Insured, or by the Insured's representatives, for preparing the details of a claim insured by this POLICY.

b. No coverage is provided under this extension of coverage for expenses incurred by the Insured in utilizing or retaining the services of:

I. attorneys;

II. independent or public adjusters;

III. insurance agents or brokers; or

IV. any subsidiary, related or associated entities either wholly or partially owned by an attorney, insurance agent, broker, or public adjuster.

20. Protection and Preservation of Property – Property Damage

a. This Policy is extended to insure reasonable and necessary costs incurred for actions to temporarily protect or preserve INSURED PROPERTY; provided such actions are necessary due to actual, or to prevent immediately impending, direct physical loss or damage insured by this POLICY to such INSURED PROPERTY.

b. This extension is subject to the deductible and sublimit provisions that would have applied had the physical loss or damage happened.

21. Radioactive Contamination

Notwithstanding any Nuclear Exclusion clause contained herein, this POLICY is extended to insure direct physical loss or damage insured by this POLICY to INSURED PROPERTY caused by sudden and accidental radioactive contamination, including resultant radiation damage to INSURED PROPERTY provided:

a. such radioactive contamination is caused by the release of radiation from radioactive material which is commonly known to be radioactive and commonly located on an INSURED LOCATION(S);

b. such radioactive material knowingly is kept on an INSURED LOCATION(S) and its radioactivity is used for the purpose of the Insured's operations; and

c. at the time of such sudden and accidental contamination, there is neither a nuclear reactor capable of sustaining nuclear fission in a self-supporting chain reaction, nor any new or used nuclear fuel which is intended for or which has been used in a nuclear reactor, on the INSURED LOCATION(S).

22. Service Interruption – Property Damage

a. This POLICY is extended to insure direct physical loss or damage insured by this POLICY including shrinkage, evaporation, leakage of contents, change in flavor or texture or finish, decay or other spoilage to INSURED PROPERTY at INSURED LOCATION(S) when such physical loss or damage results from the interruption of services consisting of:

I. incoming electricity;

II. incoming fuel;

III. incoming gas;

IV. incoming refrigerant;

V. incoming steam;

VI. incoming water;

VII. outgoing sewerage service; or

VIII. incoming or outgoing audio, voice and video;

b. This extension of coverage applies only when such interruption of service is caused by physical loss or damage resulting from a cause of loss insured by this POLICY to any property of the type insured by this POLICY of the supplier of such services if such property is situated within the **Policy Territory** commencing when such service is interrupted and ceasing when with due diligence and dispatch such services have been or could have been restored.

c. The Insured agrees to immediately notify the suppliers of services of any interruption of such services.

d. No coverage is provided under this extension of coverage:

I. unless the period of service interruption exceeds the WAITING PERIOD specified for this extension; or

II. if the interruption of such services is caused by the failure of the Insured to comply with the terms and conditions of any terms or contracts the Insured has for the supply of such services; or

III. for loss sustained at any **Miscellaneous Unnamed Location**.

23. Temporary Removal of Property

When INSURED PROPERTY is removed from an INSURED LOCATION for the purpose of being repaired or serviced or in order to avoid threatened physical loss or damage insured by this POLICY, this POLICY insures such property:

a. while at the premises to which such property has been moved; and

b. for physical loss or damage insured by this POLICY at the INSURED LOCATION from which such property was removed.

This additional coverage does not apply to property:

a. insured, in whole or in part, elsewhere in this POLICY.

b. insured, in whole or in part, by any other insurance policy.

c. removed for normal storage, processing or preparation for sale or delivery.

24. Transportation

a. This POLICY is extended to insure the following personal property, except as excluded under **Property Not Insured**, while in transit within the **Policy Territory**:

I. personal property owned by the Insured;

II. personal property shipped to customers under F.O.B., C & F or similar terms. The Insured's contingent interest in such shipments is admitted;

III. personal property of others in the actual or constructive custody of the Insured to the extent of the Insured's interest or INSURED'S LIABILITY;

IV. personal property of others sold by the Insured, that the Insured has agreed prior to the loss to insure during the course of delivery.

b. No coverage is provided under this extension for:

I. samples in the custody of salespeople or selling agents;

II. any property insured under import or export ocean marine insurance;

III. waterborne shipments, except while on the navigable inland waters and coastwise shipments within the **Policy Territory**;

IV. airborne shipments unless by regularly-scheduled passenger airlines or air freight carriers;

V. property of others, including the INSURED'S LIABILITY for it, hauled on vehicles owned, leased or operated by the Insured when acting as a common or contract carrier;

VI. the conveyance used as the mode of transportation (including any part of equipment thereof) or containers;

VII. all materials in transit which are otherwise insured under another policy of insurance.

c. Coverage attachment and duration:

I. Coverage provided under this extension of coverage starts from the time the property leaves the original point of shipment for transit. It then insures continuously in the due course of transit within the continent in which the shipment commences until the property arrives at the destination within such continent subject to the terms and conditions set forth in a and b of this extension of coverage;

II. However, coverage on export shipments not insured under ocean cargo policies ends when such personal property is loaded onboard overseas vessels or aircraft. Coverage on import shipments not insured under ocean cargo policies starts after discharge from overseas vessels or aircraft;

III. This insurance only covers such shipments, the transportation of which begins within the term of this POLICY, even though said transportation is not completed prior to POLICY expiration.

d. This extension of coverage also insures:

I. general average and salvage charges on shipments insured while waterborne;

II. physical loss or damage to such personal property caused by or resulting from:

1) unintentional acceptance of fraudulent bills of lading, shipping or messenger receipts;

2) improper parties having gained possession of property through fraud or deceit.

e. Additional general provisions:

I. This extension will not inure to the benefit of any carrier or bailee;

II. The Insured has permission, without prejudicing this insurance, to accept:

1) ordinary bills of lading used by carriers;

2) released bills of lading;

3) undervalued bills of lading; and

4) shipping or messenger receipts.

f. The Insured may waive subrogation against railroads under side track agreements.

g. Except as otherwise stated, the Insured agrees not to enter into any special agreement with carriers releasing them from their common law or statutory liability.

25. Valuable Papers and Records

a. This POLICY insures direct physical loss or damage insured by this POLICY to VALUABLE PAPERS AND RECORDS while anywhere, including while in transit to the extent provided under **Transportation**, within the **Policy Territory**.

b. No coverage is provided under this extension of coverage for:

I. loss or damage to VALUABLE PAPERS AND RECORDS if such property cannot be replaced with others of like kind and quality, unless specifically declared to and accepted by the Company prior to the loss or damage;

II. loss or damage to property held as samples or for sale or for delivery after sale;

III. errors or omissions in processing or copying unless physical loss or damage insured by this POLICY to VALUABLE PAPERS AND RECORDS results, in which event, only such resulting physical loss or damage is insured under this extension of coverage;

IV. loss or damage to VALUABLE PAPERS AND RECORDS caused by or resulting from deterioration, inherent vice, vermin or wear and tear; all unless physical loss or damage insured by this POLICY to VALUABLE PAPERS AND RECORDS results, in which event, only such resulting physical loss or damage is insured under this extension.

SECTION V
TIME ELEMENT

A. Loss Insured

1. This POLICY insures TIME ELEMENT loss, during the **Period of Liability** directly resulting from direct physical loss or damage insured by this POLICY to INSURED PROPERTY at INSURED LOCATION(S) or as otherwise provided in this section or endorsed hereon, and subject to all terms and conditions within this POLICY.

2. This POLICY insures TIME ELEMENT loss only to the extent it cannot be reduced through:

   a. the use of any property or service owned or controlled by the Insured;

   b. the use of any property or service obtainable from other sources;

   c. working extra time or overtime; or

   d. the use of inventory.

3. The Company shall take into consideration the combined operating results of all INSURED LOCATION(S) and associated, affiliated or subsidiary companies of the Insured in determining the TIME ELEMENT loss.

4. This POLICY insures expenses reasonably and necessarily incurred by the Insured to reduce the loss otherwise payable under this section. The amount of such recoverable expenses will not exceed the amount by which the loss otherwise payable hereunder is reduced.

5. The Insured agrees to:

   a. act with due diligence and dispatch in repairing or replacing physically damaged buildings and equipment to the same or equivalent physical and operating conditions that existed immediately prior to such physical loss or damage; and

   b. take whatever actions are necessary and reasonable to minimize the loss payable hereunder.

6. In determining the amount of loss payable, the Company will consider:

   a. the experience of the business before and after; and

   b. the probable experience during

   the **Period of Liability**.

7. There will be no recovery of loss under this **Time Element** section of this POLICY when there is recovery elsewhere in this POLICY.

B. Gross Earnings

1. The recoverable **Gross Earnings** loss is the Actual Loss Sustained by the Insured due to the necessary interruption of the Insured's business during the **Period of Liability** as respects **Gross Earnings** less all charges and expenses that do not, or did not necessarily, continue during such interruption.

2. In determining the indemnity payable as the Actual Loss Sustained by the Insured, the Company will consider the continuation of only those normal charges and expenses that would have been incurred had no interruption of the Insured's business occurred.

3. There is recovery herein but only to the extent that the Insured is:

a. wholly or partially prevented from producing goods or continuing business operations or services;

b. unable to make up lost production within a reasonable period of time, not limited to the period during which production is interrupted;

c. unable to continue its operations or services during the **Period of Liability**; and

d. able to demonstrate a loss of SALES resulting from an interruption in operations, services or production.

4. For the purpose of this insurance, **Gross Earnings** are defined as the sum of:

a. As respects:

I. manufacturing operations, the net SALES value of production less the cost of all RAW STOCK, materials and supplies used in such production; or

II. mercantile or non-manufacturing operations, the total net SALES less cost of MERCHANDISE sold, materials and supplies consumed in the operations or services rendered by the Insured; and

b. all other earnings derived from the operation of the business.

Any amount recovered at selling price for physical loss or damage to FINISHED GOODS or MERCHANDISE, which has been valued at the selling price, will be considered to have been sold to the Insured's regular customers and will be credited against claimed loss of net SALES.

C. Period of Liability

1. The **Period of Liability** applying to all TIME ELEMENT coverages, except **Leasehold Interest** and as shown below, or if otherwise provided under the TIME ELEMENT coverage extensions, is as follows:

a. For building and equipment, the period of time:

I. starting on the date of physical loss or damage insured by this POLICY to INSURED PROPERTY; and

II. ending when with due diligence and dispatch the building and equipment could be repaired or replaced with current materials of like size, kind and quality and made ready for operations;

under the same or equivalent physical and operating conditions that existed immediately prior to such physical loss or damage.

Such period of time is not limited by the POLICY expiration date.

b. For stock-in-process and MERCHANDISE, including finished goods not manufactured by the Insured, the period of time required with the exercise of due diligence and dispatch:

I. to restore stock-in-process to the same state of manufacture in which it existed at the inception of the interruption of the Insured's business; and

II. to replace physically damaged MERCHANDISE.

c. For raw materials and supplies, the period of time:

I. of the actual interruption of the Insured's business resulting from the Insured's inability to obtain suitable raw materials and supplies similar to those damaged; but

II. limited to that period of time for which the damaged raw materials and supplies would have supplied operating needs.

d. For physical loss or damage to MEDIA, the period of time required to copy from backups or from originals of a previous generation. Such period of time shall include all reasonable and necessary time, incurred by the Insured in recreating, gathering and assembling such ELECTRONIC DATA.

e. For physical loss or damage to exposed films, records, manuscripts and drawings, the period of time required to copy from backups or from originals of a previous generation. Such period of time shall include all reasonable and necessary time, incurred by the Insured in recreating, gathering and assembling such ELECTRONIC DATA.

2. The **Period of Liability** does not include any additional time due to the Insured's inability to resume operations for any reason, including but not limited to:

a. making changes to the equipment;

b. making changes to the buildings or structures;

c. re-staffing or re-training employees. However, this item **c.** does not apply to additional time needed to train staff to use new machinery or equipment that replaces machinery or equipment that suffered insured physical loss or damage, provided such training is completed within 90 consecutive days after the new machinery or equipment has been installed.

3. If more than one **Period of Liability** applies, such periods will not be cumulative.

D. Extra Expense

1. The recoverable **Extra Expense** loss is the reasonable and necessary extra costs incurred by the Insured during the **Period of Liability** as respects the following:

a. extra costs to temporarily continue as nearly normal as practicable the conduct of the Insured's business; and

b. extra costs of temporarily using property or facilities of the Insured or of others;

c. costs to purchase FINISHED GOODS from third parties to fulfill orders when such orders cannot be met due to physical loss or damage to the Insured's FINISHED GOODS, less payment received for the sale of such FINISHED GOODS;

d. less any value remaining at the end of the **Period of Liability** for any property obtained in connection with the above.

Time Element Exclusion paragraph **D.3.** does not apply to paragraph **c.** above.

2. No coverage is provided herein for:

a. any loss of income;

b. costs that normally would have been incurred in conducting the Insured's business during the same period had no physical loss or damage insured by this POLICY to INSURED PROPERTY occurred;

c. cost of permanent repair or replacement of any property that has sustained physical loss or damage; or

d. any expense recoverable elsewhere in this POLICY.

E. Rental Insurance

1. The recoverable **Rental Insurance** loss is the Actual Loss Sustained by the Insured during the **Period of Liability** as respects:

   a. the fair rental value of any portion of an INSURED LOCATION(S) occupied by the Insured that the Insured is unable to occupy following physical loss or damage insured by this POLICY;

   b. the income reasonably expected from rentals of unoccupied or unrented portions of INSURED LOCATION(S) available for rent at the time of physical loss or damage insured by this POLICY; and

   c. the rental income from the rented portions of INSURED LOCATION(S) according to bona fide leases, contracts or agreements in force at the time of physical loss or damage insured by this POLICY to such real property;

   all not to include non-continuing charges and expenses.

2. No coverage is provided herein for any loss of rental income during any period in which INSURED PROPERTY would not have been tenantable for any reason other than physical loss or damage insured by this POLICY, except as otherwise provided under **Extended Period of Liability**.

F. Time Element Coverage Extensions, Terms and Conditions

The following are subject to all terms, conditions, provisions, limitations and exclusions of this POLICY and in addition, any other terms, conditions, provisions, limitations and exclusions set forth below.

1. Commissions, Licensing Fees and Royalties

a. The recoverable **Commissions, Licensing Fees and Royalties** loss is **Gross Earnings** loss incurred by the Insured during the **Period of Liability** less any non-continuing expenses and charges.

b. The recoverable **Commissions, Licensing Fees and Royalties** loss incurred is **Gross Earnings** lost by the Insured during the **Period of Liability** under any royalty, licensing fee, franchise fee or commission agreements between the Insured and another party which is not realizable due to direct physical loss or damage insured by this POLICY to any property, except of the type excluded under **Property Not Insured**, of the other party at any LOCATION(S) situated within the **Policy Territory**.

c. The Insured agrees to influence, to the extent possible, the other party with whom the agreements described above have been made to use any other machinery, supplies or LOCATION(S) in order to resume business so as to reduce the amount of loss payable hereunder, and the Insured agrees to cooperate with that party in every way to effect this.

d. No coverage is provided hereunder for any costs to effect the above unless authorized in advance by the Company.

e. In determining the amount of loss payable hereunder, the Company will consider the amount of income derived from such agreements before and the probable amount of income after the date of such physical loss or damage had no loss occurred.

f. Recovery is available hereunder only if such physical loss or damage interrupts the delivery of goods in whole or in part to the Insured or for the Insured's account.

2. Contingent Time Element

a. This POLICY is extended to insure loss of **Gross Earnings**, **Rental Insurance**, and **Extra Expense** incurred by the Insured during the **Period of Liability** directly resulting from direct physical loss or damage insured by this POLICY to any property, except of the type as excluded under **Property Not Insured**, at any LOCATION(S) of suppliers or customers, provided that such physical loss or damage prevents:

I. such suppliers from supplying goods or services directly or indirectly to the Insured;

II. such customers from receiving goods or services directly or indirectly from the Insured;

provided that such LOCATION(S) of suppliers or customers are situated within the **Policy Territory.**

b. Specified limits for this extension are shown in the **Coverage Purchased and Coverage Not Purchased** section of this POLICY for:

I. those direct suppliers and customers who have been specifically named by the Insured have been submitted to, accepted by and on file with the Company;

II. those direct suppliers and customers who have not been specifically named by the Insured; and

III. all indirect suppliers and customers.

c. As used herein, suppliers or customers do not include any company supplying to or receiving from INSURED LOCATION(S) electricity, fuel, gas, refrigerant, sewage, steam, water, telecommunications, audio, data or video.

3. Extended Period of Liability

a. The coverage provided hereunder for loss of **Gross Earnings** and **Rental Insurance** is extended to insure for only up to the additional length of time shown for **Extended Period of Liability** in the **Coverage Purchased and Coverage Not Purchased** section as would be required with the exercise of due diligence and dispatch to restore the Insured's business to the condition that would have existed had no physical loss or damage insured by this POLICY occurred;

b. The Time Limit for this extension of coverage starts on the date the applicable **Period of Liability** ends.

4. Impounded Water

a. This POLICY is extended to insure loss of **Gross Earnings**, **Rental Insurance**, and **Extra Expense** incurred by the Insured due to the necessary interruption of the Insured's business caused by inadequate water supply.

b. It is a condition precedent to recovery under this extension that such inadequate water supply is a direct result of the release of water:

I. stored behind dams or in reservoirs; and

II. at INSURED LOCATION(S); and

III. used for any manufacturing purpose, including but not limited to as raw material or for power production; and

IV. caused by direct physical loss or damage insured by this POLICY to such dams or reservoirs, or to equipment connected thereto.

5. Ingress / Egress

This POLICY is extended to insure loss of **Gross Earnings**, **Rental Insurance**, and **Extra Expense** incurred by the Insured due to the necessary interruption of the Insured's business, provided that:

a. the interruption directly results from the prevention of direct ingress to or direct egress from INSURED LOCATION(S), whether or not INSURED PROPERTY at such INSURED LOCATION(S) is damaged; and

b. the prevention above is caused by direct physical loss or damage insured by this POLICY to any property, including property excluded under **Property Not Insured**.

6. Leasehold Interest

a. This POLICY is extended to insure **Leasehold Interest** loss is as follows:

In the event of direct physical loss or damage insured by this POLICY to INSURED LOCATION(S) at which the Insured leases space and pursuant to a written lease, if the lease agreement requires continuation of rent and if the property is wholly untenantable or unusable due to such physical loss or damage:

I. the actual rent payable for the unexpired term of the lease; or,

II. if the property is partially untenantable or unusable, the proportion of the rent payable for the unexpired term of the lease; or,

III. If the lease is canceled by the lessor pursuant to the lease agreement or by the operation of law:

1) the LEASE INTEREST for the first three (3) consecutive calendar months following the physical loss or damage; and

2) the NET LEASE INTEREST for the remaining unexpired term of the lease.

LEASE INTEREST means the excess rent paid for the same or similar replacement property over actual rent payable plus cash bonuses or advance rent paid (including maintenance or operating charges) for each month during the unexpired term of the Insured's lease.

NET LEASE INTEREST means the present value amount, which placed at the prime rate of annual interest effective on the date of physical loss or damage, as published in the Wall Street Journal, would equal the LEASE INTEREST (less any amounts otherwise payable hereunder).

b. No coverage is provided for any increase in loss resulting from:

I. the suspension, cancellation or lapse of any license;

II. the Insured exercising an option to extend, renew or cancel the lease;

III. any act or omission of the Insured that constitutes a default under the lease;

IV. the Insured's loss of **Leasehold Interest** resulting from physical loss or damage to personal property.

7. Order of Civil or Military Authority

This POLICY is extended to insure loss of **Gross Earnings**, **Rental Insurance**, and **Extra Expense** incurred by the Insured due to the necessary interruption of the Insured's business, provided that:

a. the interruption directly results from an order of a civil or military authority that prohibits partial or total access to INSURED LOCATION(S); and

b. the order referenced above is caused by direct physical loss or damage insured by this POLICY to property of the type insured.

8. Protection and Preservation of Property – Time Element

a. This POLICY is extended to insure loss of **Gross Earnings**, **Rental Insurance**, and **Extra Expense** incurred by the Insured for a period of time after the Insured has first taken reasonable action for the temporary protection and preservation of property insured by this POLICY provided such action is necessary to prevent immediately impending direct physical loss or damage insured by this POLICY to such INSURED PROPERTY.

b. This extension is subject to the deductible provisions that would have applied had the physical loss or damage happened.

9. Related Reported Values

If:

a. reported TIME ELEMENT values include values for LOCATION(S) used by the Insured (such as branch stores, SALES outlets and other plants) but such LOCATION(S) are not listed on the latest schedule submitted to, accepted by and on file with the Company; and

b. a TIME ELEMENT loss results at such LOCATION(S) due to direct physical loss or damage insured by this POLICY to INSURED PROPERTY at INSURED LOCATION(S);

then this POLICY is extended to insure such resulting TIME ELEMENT loss in accordance with the coverage applicable at the INSURED LOCATION(S) where such physical loss or damage occurred.

10. Service Interruption – Time Element

a. This POLICY is extended to insure loss of **Gross Earnings**, **Rental Insurance**, and **Extra Expense** incurred by the Insured at INSURED LOCATION(S) when such loss results from the interruption of services consisting of:

I. in coming electricity;

II. incoming fuel;

III. incoming gas;

IV. incoming refrigerant;

V. incoming steam;

VI. incoming water;

VII. outgoing sewerage service; or

VIII. incoming or outgoing audio, voice and video;

b. This extension of coverage applies only when such interruption of service is caused by direct physical loss or damage insured by this POLICY to any property of the type insured by this POLICY of the supplier of such services if such property is situated within the **Policy Territory**.

c. The Insured agrees to immediately notify the suppliers of services of any interruption of such services.

d. No coverage is provided under this extension of coverage:

I. unless the period of service interruption exceeds the WAITING PERIOD specified for this extension; or

II. if the interruption of such services is caused by the failure of the Insured to comply with the terms and conditions of any contracts the Insured has for the supply of such services; or

III. for loss sustained at any **Miscellaneous Unnamed Location;** or

IV. for loss or damage caused by or resulting from EARTH MOVEMENT for property located in California, in the NEW MADRID SEISMIC ZONE or in the PACIFIC NORTHWEST SEISMIC ZONE, regardless of any other cause or event, whether or not insured under this Policy, contributing concurrently or in any other sequence to the loss.

11. Ordinary Payroll

a. This POLICY is extended to insure loss of Ordinary Payroll. Ordinary Payroll is the entire payroll expense for all employees of the insured except officers, executives, employees under contract, and other critical employees.

SECTION VI
EXCLUSIONS

A. Property Not Insured

INSURED PROPERTY does not include and this POLICY does not insure loss or damage to the following:

1. bills, notes, MONEY, SECURITIES, PRECIOUS METALS, precious stones, semi-precious stones, jewelry, furs;

2. land, water or any other substance in or on land, except this exclusion does not apply to:

   a. LAND IMPROVEMENTS

   b. water which is normally contained within any enclosed tank, piping system or any other processing equipment;

3. animals, growing and standing crops, trees, standing timber, plants, shrubs and lawns, except this exclusion does not apply to property that is LAND IMPROVEMENTS as defined herein;

4. aircraft or watercraft and contents thereof, rolling stock, spacecraft, satellites including their launch vehicles and launch sites;

5. waterborne equipment or OFFSHORE property, including any OFFSHORE drilling and production rigs. Offshore property means property away from the shore but not connected to the shore by dock, piers or any other physical connection other than pipelines. In the Gulf of Mexico off Texas and Louisiana, OFFSHORE is to be seaward of the Inland edge of the Lease Block of the Plane Coordinate System, as defined on United States Department of Land Management Leasing Maps;

6. motor vehicles licensed for highway use, except when at INSURED LOCATION(S). This POLICY does insure the INSURED'S LIABILITY for motor vehicles of others while at INSURED LOCATION(S);

7. underground mines, mine shafts, caverns, tunnels, or any property within such underground mines, mine shafts, caverns or tunnels;

8. underwater piping and its contents, fittings, conduits, drains or flues, all situated outside INSURED LOCATION(S);

9. air supported structures and the contents thereof;

10. bulkheads, bridges, retaining walls, revetments, dikes, jetties, wharves, piers, docks, levees and property thereon when loss or damage is caused by action of water or ice or impact of watercraft;

11. above ground transmission and distribution lines including but not limited to wires, cables, poles, pylons, transformers, standards, towers or other supporting structures, which may be attendant to the transmission or distribution of electrical power, telephone or telegraph signals, and all other communications signals, whether audio or visual. However, this exclusion does not apply when such property is situated at INSURED LOCATION(S). Nor does this exclusion apply to coverage granted under **Service Interruption** provisions of this POLICY;

12. nuclear power plants, facilities handling or processing nuclear fuel or waste;

13. property in transit, except as otherwise provided under the **Transportation** provision of this POLICY;

14. property sold by the Insured under conditional sale, trust agreement, installment plan or other deferred payment plan after delivery to customers;

15. the Insured's product when loss or damage is caused by or results from errors in design, poor workmanship, or use of faulty materials, in the development, processing, testing or manufacture of the Insured's product;

16. stock or materials when loss or damage is caused by manufacturing or processing operations which result in damage to such property while being processed, manufactured, tested or otherwise being worked upon;

17. MEDIA for, or programming records pertaining to electronic and electromechanical data processing or electronically controlled equipment, including the data thereon when loss or damage is caused by error or omission in machine programming or instructions to machine;

18. ELECTRONIC DATA, except as may be otherwise provided under **Data Restoration** coverage provided elsewhere;

B. Types of Loss or Damage Not Insured

This POLICY does not insure against the following types of loss or damage:

1. a. indirect or remote loss or damage;

   b. delay or loss of market; or

   c. interruption of business unless otherwise provided hereon.

2. the cost of correcting or making good:

   a. faulty workmanship, material, construction or design; or

   b. inherent or latent defects;

3. unexplained or mysterious disappearance of any property, or shortage disclosed by audit or upon taking inventory;

4. accumulated effects of smog, smoke, vapor, liquid and dust;

5. a. wear and tear, deterioration, depletion, erosion, corrosion;

   b. settling, cracking, shrinkage, bulging or expansion of pavements, foundations, walls, floors, roofs or ceilings; or

   c. shrinkage, evaporation, leakage of contents, change in flavor or texture or finish, decay or other spoilage;

   unless physical loss or damage insured by this POLICY results, then only that resulting loss or damage is insured.

6. mold, mildew, fungus, spores or other microorganism of any type, nature, or description, including but not limited to any substance whose presence poses an actual or potential threat to human health, wet rot or dry rot, unless such loss or damage results directly from physical loss or damage insured by this POLICY and then only to the limit of liability shown in the **Coverage Purchased and Coverage Not Purchased** section of this POLICY.

   If no limit of liability is shown in the **Coverage Purchased and Coverage Not Purchased** section of this POLICY, then this exclusion applies regardless whether there is:

   a. any physical loss or damage to INSURED PROPERTY;

   b. any insured cause of loss or damage, whether or not contributing concurrently or in any sequence;

c. any loss of use, occupancy, or functionality; or

d. any action required, including but not limited to repair, replacement, removal, cleanup, abatement, disposal, relocation, or steps taken to address medical or legal concerns.

7. Any loss or damage, both PROPERTY DAMAGE and TIME ELEMENT, occasioned by damage to or failure of, any type whatsoever, to the internet including the World Wide Web (WWW), unless physical loss or damage insured by this POLICY results, then only that resulting loss or damage is insured.

8. Any loss resulting from the voluntary parting with title or possession of property if induced by any fraudulent act or by false pretense.

C. Causes of Loss Not Insured

This POLICY does not insure against loss or damage caused by any of the following:

1. Animals, vermin or insects unless physical loss or damage insured by this POLICY results, then only that resulting loss or damage is insured;

2. Any fraudulent: dishonest or other act intended to result in a financial gain of the Insured or any associate, proprietor, director, trustee, officer, employee or agent of any insured;

3. Dampness or dryness of atmosphere, or extremes or changes of temperature, unless physical loss or damage insured by this POLICY results, then only that resulting loss or damage is insured;

4. Lack of the following services when caused by loss or damage to any property outside INSURED LOCATION(S):

   a. incoming electricity, fuel, gas, refrigerant, steam, water;

   b. outgoing sewerage; or

   c. incoming or outgoing audio, voice and video;

   This exclusion does not apply to the **Service Interruption – Property Damage** and **Service Interruption - Time Element** provisions of this POLICY.

5. Loss or damage due to the discharge, dispersal, seepage, migration, release or escape of CONTAMINANTS (except as provided under the **Radioactive Contamination** provision of this POLICY), unless the discharge, dispersal, seepage, migration, release or escape is directly caused by physical loss or damage insured by this POLICY.

6. Loss or damage caused by any of the following, regardless of any other cause or event contributing concurrently or in any other sequence to the loss or damage:

   a. Nuclear reaction or nuclear radiation, or radioactive contamination (except as provided under the **Radioactive Contamination** provision of this POLICY), all whether controlled or uncontrolled. However, subject to the foregoing and all provisions of this POLICY, direct loss by fire resulting from nuclear reaction or nuclear radiation or radioactive contamination is insured against by this POLICY.

   b. Hostile or warlike action in time of peace or war, including action in hindering, combating or defending against an actual, impending or expected attack:

      I. by any government or sovereign power (de jure or de facto), or by any authority maintaining or using military, naval or air forces; or

      II. by military, naval or air forces; or

      III. by an agent of any such government, power, authority or forces;

it being understood that any discharge, explosion or use of any weapon of war employing nuclear fission or fusion shall be conclusively presumed to be such a hostile or warlike action by such a government, power, authority or forces;

c. insurrection, rebellion, revolution, civil war, usurped power, or action taken by governmental authority in hindering, combating or defending against such an OCCURRENCE.

d. The unlawful possession, use, release, discharge, dispersal or disposal of any chemical, bacteriological, viral, radioactive or similar agents or matter regardless of who is responsible for the act and whether war has been declared or not.

e. The unlawful possession, use, release, discharge, detonation, dispersal or disposal of any device or material capable of producing a nuclear reaction or the spread of radioactivity, regardless of who is responsible for the act and whether war has been declared or not.

7. Enforcement of any law, ordinance, regulation or rule regulating or restricting the construction, installation, repair, replacement, demolition, occupancy, operation or other use of property on INSURED LOCATION(S) except as provided in the **Demolition and Increased Cost of Construction** provision of this POLICY.

8. Any increase of loss resulting from interference at INSURED LOCATION(S) by strikers or other persons, with rebuilding, repairing or replacing property or with the resumption or continuation of business.

9. Any loss, damage, destruction, distortion, erasure, corruption or alteration of ELECTRONIC DATA from any cause whatsoever (including but not limited to COMPUTER VIRUS) or loss of use, reduction in functionality, cost, expense of whatsoever nature resulting there from, unless physical loss or damage insured by this POLICY results, then only that resulting loss or damage is insured.

ELECTRONIC DATA means facts, concepts and information converted to a form useable for communications, interpretation or processing by electronic and electromechanical data processing or electronically controlled equipment and includes programs, software, and other coded instructions for the processing and manipulation of data or the direction and manipulation of such equipment.

COMPUTER VIRUS means a set of corrupting, harmful or otherwise unauthorized instructions or code including a set of maliciously introduced unauthorized instructions or code, programmatic or otherwise, that propagate themselves through a computer system or network of whatsoever nature. COMPUTER VIRUS includes but is not limited to ‘Trojan Horses’, ‘worms’ and ‘time or logic bombs’.

10. a. explosion in or of the following property owned, operated or controlled by the Insured: steam boilers, including equipment attached to and forming a part thereof; steam turbines; steam engines; steam pipes interconnecting any of the foregoing; or gas turbines; except that liability is specifically assumed for loss resulting from EXPLOSION of accumulated gases or unconsumed fuel within the firebox (or the combustion chamber) of any fired vessel, other than gas turbines, or within the flues or passages which conduct the gases of combustion there from;

b. rupture, bursting, cracking, burning or bulging of: steam boilers including equipment attached to and forming a part thereof; steam turbines; steam engines; steam pipes interconnecting any of the foregoing; hot water boilers or other equipment for heating water; pressure vessels, including equipment attached to and forming a part thereof; or, gas turbines;

c. mechanical or machinery breakdown, including rupture or bursting caused by centrifugal force;

d. electrical injury or disturbance to electrical appliances, devices, fixtures, wiring, or other electrical or electronic equipment caused by electrical currents artificially generated;

nor does this POLICY insure against resulting damage to INSURED PROPERTY caused by such OCCURRENCE(S) except damage from resulting fire, water or other means to extinguish a fire, or combustion EXPLOSION outside any of the property described in this exclusion.

EXPLOSION shall mean: explosion, except loss by explosion in or of the following property owned, operated or controlled by the Insured:

a. steam boilers, steam turbines, steam engines, steam pipes interconnecting any of the foregoing, or gas turbines;

b. moving or rotating machinery or parts of same when such loss is caused by centrifugal force or mechanical breakdown;

c. any property undergoing pressure test to the extent of loss to such property undergoing test, including equipment attached to and forming part of such property.

The foregoing exceptions (a. through c.) are modified to the extent that liability is specifically assumed for loss resulting from:

a. malicious use of explosives;

b. EXPLOSION of accumulated gases or unconsumed fuel within the firebox (or the combustion chamber) of any fired vessel, other than gas turbines, or within the flues or passages which conduct the gases of combustion there from.

The following are not EXPLOSIONS within the intent or meaning of this exclusion:

a. electric arcing or any coincident rupture of electrical equipment due to such arcing;

b. bursting, rupture or collapse caused by freezing;

c. shock waves generated by aircraft, generally known as sonic boom;

d. bursting, rupture or collapse of any safety disc, rupture diaphragm or fusible plug.

D. Time Element Exclusions

1. This POLICY does not insure against TIME ELEMENT loss for any period during which business would not or could not have been conducted for any reason other than physical loss or damage insured by this POLICY to INSURED PROPERTY.

2. This POLICY does not insure against any increase in the TIME ELEMENT loss due to:

   a. suspension, cancellation or lapse of any lease, contract, license or orders;

   b. damages for breach of contract or for late or non-completion of orders;

   c. fines or penalties of any nature; or

   d. any other consequential or remote loss.

   However, a. and d. above do not apply to **Extended Period of Liability** provision of this POLICY.

3. This POLICY does not insure against any **Gross Earnings** loss resulting from loss or damage to FINISHED GOODS manufactured by the Insured or MERCHANDISE when valued at its selling price, nor the time required for their reproduction.

SECTION VII
VALUATION

A. Adjustment of the loss amount for physical loss or damage insured by this POLICY will be computed as of the date of loss at the INSURED LOCATION(S) where such physical loss or damage occurred, and for no more than the interest of the Insured in such property, subject to the following:

1. buildings and structures, building equipment, plant equipment, machinery, machine parts, office furniture, office equipment, tools, dies, jigs, templates, patterns and flasks, except all such property that is obsolete or useless to the Insured:

   a. if repaired, rebuilt or replaced, at the same or at another site, within two (2) consecutive calendar years from the date of loss or damage, the lesser of the following:

      I. the cost to repair, rebuild or replace on the same site, with new and current materials of like size, kind and quality, whichever is the least;

      II. the actual expenditure incurred by or on behalf of the Insured in repairing, rebuilding or replacing on the same or another site, whichever is the least;

      but in no event to include any increased costs resulting from the enforcement of any law, ordinance, regulation or rule regulating or restricting the construction, installation, repair, replacement, demolition, occupancy, operation or other use of property at INSURED LOCATION(S);

   b. if not repaired, rebuilt or replaced, at the same or another site, within two (2) consecutive calendar years from the date of loss or damage:

      the ACTUAL CASH VALUE at the time and place of loss.

2. catalysts or refractory material:

   the ACTUAL CASH VALUE of the material which equals the replacement cost at the time of loss or damage multiplied by the remaining useful life factor. Remaining useful life factor means the normal useful life of the material in months minus the number of months the material had been in use at the time of the loss or damage, divided by the normal useful life of the material in months.

3. FINISHED GOODS manufactured by the Insured:

   a. the regular cash selling price less all discounts and charges to which the FINISHED GOODS would have been subject and a commensurate reduction to reflect waste, pilferage, breakage, spoilage or other factors that would have affected the sale of FINISHED GOODS had no physical loss or damage occurred.

4. motor vehicles or other mobile equipment not manufactured by the Insured, the least of the following:

   a. the repair cost;

   b. the replacement cost; or

   c. the ACTUAL CASH VALUE if not replaced.

5. Pair, Set or Parts - In the event of loss of or damage (as insured against by this POLICY) to:

   a. any article or articles which are a part of a pair or set, the measure of loss of or damage to such article or articles shall be a reasonable and fair proportion of the total value of the pair or set, giving consideration to the importance of said article or articles, but in no event shall such loss or damage be construed to mean total loss of the pair or set; or

b. any part of INSURED PROPERTY consisting, when complete for use, of several parts, the Company shall be liable only for the value of the part lost or damaged.

6. RAW STOCK, MERCHANDISE and supplies:

the replacement cost, unless the regular cash selling price less all discounts and charges for merchandise has been specifically submitted to, accepted by and on file with the Company.

7. STOCK IN PROCESS:

a. the replacement cost of raw materials;

b. the cost of labor expended at the time of loss or damage; and

c. the proper proportion of overhead charges.

8. exposed films, records, manuscripts, and drawings that are not VALUABLE PAPERS AND RECORDS:

a. the replacement cost of exposed films, records, manuscripts, and drawings blank; plus

b. the cost of copying information from back-ups or from originals of a previous generation;

c. excluding all other costs, such as the cost for research or engineering, incurred in restoring or recreating the information lost.

9. VALUABLE PAPERS AND RECORDS, the least of the following:

a. the reasonable and necessary costs to repair or restore to a functional usage condition;

b. the replacement cost;

c. excluding all other costs, such as the cost for research, engineering, programming, or assembling or gathering information, incurred in restoring or recreating the ELECTRONIC DATA lost, except as may be otherwise provided under **Data Restoration** coverage provided elsewhere.

10. ELECTRONIC DATA PROCESSING MEDIA

a. if repaired or replaced within two (2) consecutive calendar years from the date of loss or damage:

I. the cost of the MEDIA blank; plus the cost to repair, replace or restore such MEDIA to the condition that existed immediately prior to such loss or damage, including the cost of copying the ELECTRONIC DATA from back-ups or from originals of a previous generation;

b. if not repaired or replaced within two (2) consecutive calendar years from the date of loss or damage:

I. the replacement cost of the MEDIA blank;

c. excluding all other costs, such as the cost for research, engineering, programming, or assembling or gathering information, incurred in restoring or recreating the ELECTRONIC DATA lost, except as may be otherwise provided under **Data Restoration** coverage provided elsewhere.

11. FINE ARTS, the least of the following:

a. the reasonable and necessary costs to repair or restore to the functional usable condition that existed immediately prior to the physical of loss or damage;

b. the replacement cost of substantially identical property;

c. the ACTUAL CASH VALUE if not repaired or replaced or designated;

d. the amount designated, if any, for such FINE ARTS on the latest schedule submitted to, accepted by and on file with the Company.

e. In the event a FINE ARTS article is part of a pair or set, and such article, if physically damaged, cannot be repaired or replaced or restored to the physical condition that existed immediately prior to the physical loss or damage, the amount recoverable under this POLICY will be limited to the lesser of the following:

I. the full value of the pair or set; or

II. the amount designated, if any, for such FINE ARTS pair or set on the latest schedule submitted to, accepted by and on file with the Company.

The Insured agrees to surrender the pair or set to the Company.

12. property insured under **Transportation**:

a. As respects property shipped to or for the account of the Insured, the actual invoice to the Insured including accrued costs and charges legally due to the Insured. Such charges may include the Insured's commission as a selling agent.

b. As respects property sold by the Insured and shipped to or for the purchaser's account, the Insured's selling invoice amount including prepaid or advanced freight costs.

c. As respects property not under invoice:

I. for property of the Insured, based on the **Valuation** provisions applying to the LOCATION from which the property is being transported;

II. for other property, the ACTUAL CASH VALUE at the destination point on the date of the OCCURRENCE;

less any charges saved which would have become due and payable upon arrival at destination.

13. IMPROVEMENTS AND BETTERMENTS:

a. if repaired or replaced at the expense of the Insured within two (2) consecutive calendar years from the date of loss or damage, the lesser of the following:

I. the cost to repair or replace the lost or damaged IMPROVEMENTS AND BETTERMENTS with new and current materials of like size, kind and quality, whichever is less;

II. the actual expenditure incurred in repairing or replacing the lost or damaged IMPROVEMENTS AND BETTERMENTS, whichever is less;

b. if not repaired or replaced within two (2) consecutive calendar years after such loss or damage:

that proportion of the original cost at the time of installation of the lost or damaged IMPROVEMENTS AND BETTERMENTS which the unexpired term of the lease at the time of loss or damage bears to the period from the date such IMPROVEMENTS AND BETTERMENTS were made to the expiration date of the lease as of the date of loss or damage, and not including any rights or options for extensions or renewals;

c. if repaired or replaced at the expense of others for the use of the Insured, there shall be no liability hereunder.

14. unrepairable electrical or mechanical equipment, including computer equipment:

the cost to replace such damaged or destroyed property with the most functionally equivalent new and current equipment of like size, kind and quality even if such equipment:

a. has technological advantages;

b. represents an improvement in function; or

c. forms part of a program or system enhancement.

15. property planned and/or scheduled for demolition at the time of the loss or damage:

only the increased cost of demolition, if any, resulting from physical loss or damage insured by this POLICY.

16. real property or machinery and equipment, other than stock, held for sale at the time of the loss or damage. The lesser of the following:

a. the reasonably anticipated selling price;

b. market value.

17. personal property of others for which the Insured is legally liable in the event of loss or damage:

the amount for which the Insured is legally liable, but not to exceed the ACTUAL CASH VALUE of such property.

18. all other property, including property that is obsolete or useless to the Insured:

the ACTUAL CASH VALUE.

B. The Insured may elect not to repair or replace any real and personal property lost, destroyed or damaged and insured hereunder. Loss settlement may be elected on the lesser of repair or replacement cost basis if the proceeds of such loss settlement are expended on other capital expenditures related to the Insured's operations within two (2) consecutive calendar years from the date of physical loss or damage. As a condition of collecting herein, such expenditure must be unplanned as of the date of physical loss or damage. This does not extend to **Demolition and Increased Cost of Construction** provision of this POLICY.

SECTION VIII
LOSS ADJUSTMENT AND SETTLEMENT

A. Abandonment

There may be no abandonment of any property to the Company.

B. Collection from Others

The Company will not be liable for any loss or damage insured hereunder to the extent that the Insured has collected for such loss or damage from others or others have funded the repair or replacement of any property lost or damaged.

C. Company Option

1. Subject to the **Control of Damaged Property** provision, the Company has the option to take all or any part of damaged property at the agreed value within a reasonable time.

2. The Company must give notice to the Insured of its intention to do so within thirty (30) consecutive calendar days after receipt of the signed and sworn to proof of loss required by this POLICY.

D. Dispute Resolution / Optional Arbitration Provision

Upon the mutual agreement of the Company and the Insured, any controversy or dispute arising out of or relating to this POLICY, or the breach, termination or validity thereof, shall be resolved in accordance with the procedures specified herein.

1. Negotiation and Mediation

   The Insured and the Company shall attempt in good faith to resolve any controversy or dispute arising out of or relating to this POLICY promptly by negotiations between representatives who have authority to settle the controversy. If the dispute cannot be resolved by negotiation, the parties shall endeavor to settle the dispute through a confidential mediation with the assistance of a mediator mutually selected by the parties. To the extent the parties are unable to select a mutually agreeable mediator, each party will propose three mediators. Each party then shall strike two of the mediators proposed by the other, leaving one mediator as proposed by each party. A coin then shall be tossed, with the Insured calling heads or tails, with the prevailing party in the coin toss having its remaining proposed mediator jointly engaged by the parties to mediate the dispute, with the cost being split equally among the parties.

2. Arbitration

   a. If a resolution cannot be achieved through the negotiation and mediation process as set forth above, the parties can mutually agree to submit the remaining dispute to be determined through binding arbitration before a panel of three arbitrators in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA"). Provisions in the Commercial Arbitration Rules pertaining to mediation shall not apply.

   b. Notwithstanding anything to the contrary in the Commercial Arbitration Rules, the panel of arbitrators shall be constituted as follows. The Insured and the Company each shall appoint one arbitrator within 14 days of mutually agreeing to arbitrate. The third arbitrator, who shall serve as the chair of the arbitration panel, shall be appointed by the parties upon mutual agreement. If the parties are unable to mutually agree upon a third arbitrator within 30 days of the selection of party-appointed arbitrators, the AAA shall appoint the chairperson in accordance with the rules for doing so in the Commercial Arbitration Rules.

c. In any such arbitration, the terms of this POLICY are to be construed in an evenhanded fashion as between the Insured and the Company in accordance with the laws of the state of New York. The arbitrators are not empowered to award damages in excess of compensatory damages and each party hereby irrevocably waives such damages.

3. Appraisal Provision

If the Insured and the Company fail to agree on the amount of loss to be paid for a claim insured by this POLICY and a resolution cannot be achieved through the negotiation and mediation process as set forth above, and the parties do not mutually agree to submit the dispute to be determined through binding arbitration, either may elect to have that dispute resolved by appraisal by making a written demand upon the other. The venue of the appraisal shall be the State and County of the mailing address for the Insured as set forth in the Declarations of this POLICY. Each party shall select a competent and disinterested appraiser within twenty (20) days after the written demand for appraisal is made. The appraisers then shall select a third competent and disinterested appraiser to serve as the umpire. If they should fail to agree upon an umpire within fifteen (15) days after both appraisers are selected, then upon the request of the Insured or of the Company, such umpire shall be selected by a judge of a court of record and competent jurisdiction in the county in which the appraisal is venued. After the panel of three appraisers has been constituted, the two appraisers selected by the Insured and the Company shall make a good faith effort to appraise and agree upon the amount of the loss in dispute or portions thereof. If the appraisers fail to fully agree, they shall submit their differences to the umpire. An award in writing and signed by any two (2) of the appraiser shall determine the amount of loss. The Insured and the Company shall each pay their selected appraiser and shall bear equally the other expenses of the appraisal and of the umpire. The Company shall not be held to have waived any of its rights by any act relating to appraisal.

E. Identity of Interests

If the Insured is comprised of more than one legal entity, liability shall not exceed the amount of loss had all interests comprised a single legal entity.

F. Loss Adjustment and Loss Payable

Loss, if any, will be adjusted with and payable to the First Named Insured, or as may be directed by the First Named Insured. Additional insured interests will also be included in loss payment as their interests may appear when named as additional named insured, lender, mortgagee or loss payee in the Certificates of Insurance on file with the Company. The receipt of the payee(s) so designated shall constitute a release in full of all liability with respect to such loss.

G. Partial Payment of Loss Settlement

1. In the event of a loss occurring which has been ascertained by the Company to be recoverable under this POLICY, the Company will advance mutually agreed upon partial payments for such loss, subject to the provisions of this POLICY.

2. To obtain such partial payments, the Insured agrees to submit a signed and sworn partial proof of loss as described in this POLICY with adequate supporting documentation.

H. Requirements in Case of Loss

The Insured shall give immediate written notice to the Company of any loss, protect the property from further damage, forthwith separate the damaged and undamaged personal property, put it in the best possible order, furnish a complete inventory of the destroyed, damaged and undamaged property, showing in detail quantities, costs, ACTUAL CASH VALUE and amount of loss claimed; and within sixty (60) days after the loss, unless such time is extended in writing by the Company, the Insured shall render to the Company a proof of loss, signed and sworn to by the Insured, stating the knowledge and belief of the Insured as to the following:

1. the time and origin of the loss;

2. the interest of the Insured and of all others in the property;

3. the ACTUAL CASH VALUE of each item thereof and the amount of loss thereof;

4. all encumbrances thereon;

5. all other contracts of insurance, whether valid or not, insuring any of said property;

6. any changes in the title, use, occupation, LOCATION(S), possession or exposures of said property since the issuing of this POLICY, by whom and for what purpose any building herein described and the several parts thereof were occupied at the time of loss and whether or not it then stood on leased ground, and shall furnish a copy of all the descriptions and schedules in all policies or on file with the Company and, if required, verified plans and specifications of any building, fixtures or machinery destroyed or damaged.

7. the Insured, as often as may be reasonably required, shall exhibit to any person designated by the Company all that remains of any property herein described, and submit to examinations under oath by any person named by the Company, and subscribe the same; and, as often as may be reasonably required, shall produce for examination all books of account, bills, invoices and other vouchers, or certified copies thereof if originals be lost, at such reasonable time and place as may be designated by the Company or its representative, and shall permit extracts and copies thereof to be made.

I. Salvage and Recovery

Any salvage or other recovery, except recovery under **Subrogation** or **Other Insurance** section, will accrue entirely to the benefit of the Company until the sum paid by the Company is recovered.

J. Settlement of Claims

The amount of loss or damage, for which the Company may be liable, will be paid within thirty (30) consecutive calendar days after:

1. proof of loss as described under **Requirements in Case of Loss** section is accepted in writing by the Company; and

2. when a resolution of the amount of loss is made either by:

   a. agreement in writing between the Insured and the Company; or

   b. the filing with the Company of an award as provided under the **Arbitration or Appraisal Provision** section.

K. Subrogation

In the event of any payment made under this POLICY:

1. the Company will be subrogated to all of the Insured's rights of recovery against any person, entity or organization;

2. the Insured agrees to execute and deliver instruments and papers and do whatever is necessary to secure such rights;

3. the Company will not acquire any rights of recovery that the Insured has expressly waived, in writing, prior to loss or damage, nor will such waiver affect the Insured's rights under this POLICY;

4. the Insured agrees to do nothing after loss or damage to prejudice the subrogation rights of the Company;

5. the Insured agrees to cooperate with the Company and upon the Company's request and expense, attend hearings and trials and assist in:

a. effecting settlements;

b. securing and giving information and evidence;

c. obtaining the attendance of witnesses; and

d. pursuing recovery through legal action or other formal proceedings;

6. the net amount of any recovery after deducting the costs of proceedings shall be divided between each party instituting such proceedings in the same proportion as each such party has borne to the provable loss.

L. Suit

No suit or action on this POLICY for the recovery of any claim shall be sustainable in any court of law unless all the requirements of this POLICY shall have been complied with, and unless commenced within twelve (12) months next after the date of the physical loss or damage giving rise to any claim hereunder.

SECTION IX
GENERAL CONDITIONS

A. Additional Insurable Interests

Additional insured interests are automatically added to this POLICY as their interests may appear when named as additional named insured, lender, mortgagee or loss payee in the Certificates of Insurance on file with the Company. Such interests become effective on the dates shown in such certificates but do not further amend or extend the terms, conditions, provisions and limitations of this POLICY.

B. Assignment of Policy

Assignment of this POLICY is not valid except with the written consent of the Company.

C. Concealment, Misrepresentation and Fraud

This entire POLICY shall be void if, whether before or after loss or damage, the Insured has willfully concealed or misrepresented any material fact or circumstance concerning this insurance or the subject thereof, a claim for loss or damages or the interest of the Insured therein, or in case of any fraud or false swearing by the Insured relating thereto.

D. Conditions Suspending or Restricting Insurance

Unless otherwise provided in writing added hereto the Company shall not be liable for loss or damage occurring while the hazard is increased by any means within the control or knowledge of the Insured.

E. Excess Insurance

Permission is granted to the Insured to have excess insurance over the limit(s) of liability set forth in this POLICY without prejudice to this POLICY, and the existence of such insurance, if any, shall not reduce any liability under this POLICY.

F. Governing Law and Jurisdiction

1. The laws of the State of New York, without regard to its conflict of laws rules, that would cause the application of the laws of any other jurisdiction, shall govern the construction and interpretation of this POLICY.

2. The parties hereto do irrevocably submit to the exclusive jurisdiction of the Courts of the State of New York, and to the extent permitted by law, the parties expressly waive all rights to challenge or otherwise limit such jurisdiction.

G. Inspection of Property and Operations

The Company shall be permitted but not obligated to inspect the Insured's property and operations at any reasonable time. Neither the right to make inspections nor the making thereof nor any risk analysis for any particular hazards, exposures or potential risks of loss or damage nor any advice or report resulting there from shall imply any liability, nor constitute an undertaking on behalf of or for the benefit of the Insured or others, to determine or warrant that such property or operations are safe or healthful, or are in compliance with any law, rule or regulation.

H. Minimum Earned Premium

In consideration of the premium charged and subject to the terms, exclusions, limits and conditions of this POLICY, not in conflict herewith, it is agreed that the minimum earned premium due to the Company is twenty-five percent (25.0%) of the total invoiced annual POLICY premium, including any applicable taxes and surcharges, regardless of the actual term of this POLICY.

However, if this POLICY is canceled by the Company prior to the expiration date, the earned premium shall be computed pro-rata and the terms and conditions of this minimum earned premium provision shall be null and void.

Nothing herein contained shall be held to vary, alter, waive or extend any of the terms, conditions, or limitations of the POLICY to which this provision is attached other than as above stated.

I. Notice of Cancellation

This POLICY may be canceled

1. at any time at the request of the First Named Insured:

    a. by surrendering this POLICY to the Company; or

    b. by giving written notice to the Company stating when thereafter such cancellation will be effective; or

2. by the Company by giving the First Named Insured written notice at least:

    a. ten (10) consecutive calendar days before the effective date of cancellation in the event the Company does not receive the premium by the date payment thereof becomes due; or

    b. ninety (90) consecutive calendar days before the effective date of cancellation for any other reasons.

If notice is mailed, then proof of mailing is sufficient proof of notice.

If the First Named Insured cancels this POLICY, then any unearned premium will be calculated based on the customary short rate table. However, if the Company cancels this POLICY, any unearned premium will be calculated on pro-rata basis. The Company agrees to return any unearned premium due the Insured as soon as practicable.

J. Occurrence Hour Clause

1. Subject to the **Prior or Subsequent Loss** condition of this POLICY, each loss OCCURRENCE by EARTH MOVEMENT shall constitute a single claim hereunder, provided, if more than one EARTH MOVEMENT shall occur within any continuous period of one-hundred-sixty-eight (168) hours during the term of this POLICY, such EARTH MOVEMENT shall be deemed to be a single OCCURRENCE of EARTH MOVEMENT.

2. Subject to the **Prior or Subsequent Loss** condition of this POLICY, when the word OCCURRENCE applies to loss or damage resulting from tornado, windstorm, NAMED WINDSTORM, hail, riot, riot attending a strike, civil commotion, and malicious mischief, if such causes of loss are insured by this POLICY one event will be construed to be all losses arising during a continuous period of seventy-two (72) hours.

3. When filing a proof of loss, the Insured may elect the moment at which such **Occurrence Hour Clause** hour period is deemed to have commenced, which will not be earlier than when the first physical loss or damage to property or interests insured by this POLICY occurs.

K. Other Insurance

The Company shall not be liable if, at the time of loss or damage there is any other insurance or warranty which would attach if this insurance had not incepted, except that this insurance shall apply only as excess and in no event as contributing insurance, and then only after all other insurance or any warranty has been exhausted.

L. Policy Modification

1. This POLICY contains all of the agreements between the Insured and the Company concerning this insurance.

2. This POLICY can be changed only by endorsements issued by the Company and made part of this POLICY.

3. Notice to any agent of the Insured or knowledge possessed by any agent of the Insured or by any other person does not:

   a. create a waiver or change any part of this POLICY; or

   b. prevent the Company from asserting any rights under the provisions of this POLICY or law.

M. Prior or Subsequent Loss

The Company is not liable hereunder for any loss or damage:

1. occurring before the POLICY becomes effective; or

2. arising from an OCCURRENCE which is in progress at the time this POLICY becomes effective, even if such loss or damage occurs after this POLICY becomes effective; or

3. occurring after the expiration of this POLICY, except loss or damage arising from an OCCURRENCE in progress at the time this POLICY expires.

N. Reduction by Loss

Except with respect to any aggregate limit of liability, any paid loss shall not reduce any other limit of this POLICY.

O. Several and Not Joint Liability

The liability of the Company shall be several and not joint and is limited solely to the extent of Company's individual share. The Company is not responsible for the subscription of any co-subscribing company or reinsurer who for any reason does not satisfy all or part of its obligations.

P. Titles of Paragraphs

The titles of the paragraphs of this form (and of endorsements and supplemental contracts, if any, now or hereafter attached to this POLICY) are inserted solely for convenience of reference and shall not be deemed in any way to limit or affect the provisions to which they relate.

Q. Underlying Insurance

Permission is granted the Insured to purchase insurance on all or any part of the deductibles of this POLICY, and the existence of such underlying insurance shall not prejudice any recovery otherwise payable under this POLICY. If the limits of such underlying insurance exceed the deductible which would apply under this POLICY, then the insurance provided by this POLICY shall apply only as excess after that portion which exceeds such deductible has been exhausted.

SECTION X
DEFINITIONS

Unless otherwise defined elsewhere, the following Definitions apply when the term is used in this POLICY.

A. ACCOUNTS RECEIVABLE

The total of:

a. all sums due the Insured from customers, provided the Insured is unable to effect collection thereof as the result of physical loss or damage to the MEDIA of accounts receivable records; and

b. interest charges on any loan to offset impaired collections pending repayment of such sums made uncollectible by such loss or damage; and

c. collection expense in excess of normal collection cost and made necessary because of such loss or damage; and

d. other expenses, when reasonably incurred by the Insured in re-establishing the MEDIA, excluding ELECTRONIC DATA PROCESSING MEDIA, of accounts receivable records following such loss or damage.

B. ACTUAL CASH VALUE

The amount it would cost to repair or replace INSURED PROPERTY on the date of the physical loss or damage with new and current material of like size, kind and quality and with proper deduction for obsolescence and physical depreciation. ACTUAL CASH VALUE is expected to be less than, and cannot exceed, replacement cost.

C. CONTAMINANT(S)

a. Materials that may be harmful to human health, wildlife or the environment. CONTAMINANTS include any impurity, solid, liquid, gaseous or thermal irritant or pollutant, poison, toxin, pathogen or pathogenic organism, disease-causing or illness-causing agent, asbestos, dioxin, polychlorinated biphenyls, agricultural smoke, agricultural soot, vapor, fumes, acids, alkalis, chemicals, bacteria, virus, vaccines, waste, and hazardous substances as listed in the Federal Water Pollution Control Act, Clean Air Act, Resource Conservation and Recovery Act, Toxic Substances Control Act, or as designated by the United States Environmental Protection Agency or any other local governmental agency.

b. However, CONTAMINANTS do not include fungi.

D. EARTH MOVEMENT

a. Any earthquake, landslide, avalanche, subsidence, sinkhole, volcanic eruption, tsunami or any other movement of earth arising out of one OCCURRENCE except mudslide or mudflow caused by accumulation of water on or under the ground (all whether or not naturally occurring).

b. Loss or damage caused by EARTH MOVEMENT shall include all insured loss or damage to INSURED PROPERTY at INSURED LOCATION(S) resulting from EARTH MOVEMENT, except loss or damage from resulting fire, explosion, or sprinkler leakage.

E. ELECTRONIC DATA PROCESSING EQUIPMENT

Any computer, computer system or component, hardware, network, microprocessor, microchip, integrated circuit or similar devices or components in computer or non-computer equipment, or operating systems.

F. FINE ARTS

Paintings, etchings, pictures, tapestries, rare or art glass, art glass windows, valuable rugs, statuary, sculptures, antique furniture, antique jewelry, bric-a-brac, porcelains, and similar property of rarity, historical value, or artistic merit excluding automobiles, coins, stamps, furs, jewelry, precious stones, PRECIOUS METALS, watercraft, aircraft, MONEY, SECURITIES.

G. FINISHED GOODS

Goods manufactured by the Insured which in the ordinary course of the Insured's business is ready for packing, labeling, shipment or sale.

H. FLOOD

Surface waters, rising waters, storm surge, sea surge, wave wash, waves, tide or tidal water, the release of water, the rising, overflowing or breaking of boundaries of natural or man-made bodies of water; or the spray therefrom; all whether driven by WIND or not or caused by, resulting from or accompanying a NAMED WINDSTORM or not; mudslide or mudflow caused by or resulting from surface water, runoff or accumulation of water on or under the ground; or sewer back-up caused by or resulting from any of the foregoing; all regardless of any other cause or event, whether natural or man-made, contributing concurrently or in any other sequence of loss, arising out of one OCCURRENCE. Physical loss or damage from FLOOD associated with a NAMED WINDSTORM is considered to be FLOOD within the terms of this POLICY for purposes of exclusions, limits and sublimits hereunder. However, physical loss or damage by fire, explosion or sprinkler leakage resulting from FLOOD is not considered to be loss by FLOOD within the terms and conditions of this POLICY.

I. HIGH HAZARD FLOOD ZONE

a. All property at INSURED LOCATION(S) that is wholly or partially situated in an area which at the time of loss or damage has been designated on a Flood Insurance Rate Map (FIRM) to be a Special Flood Hazard Area (SFHA); or

b. All property in areas where the National Flood Insurance Program (NFIP) is not in effect, and where all property at INSURED LOCATION(S) is wholly or partially situated in an area which is within a one hundred (100) year FLOOD plain or its worldwide equivalent.

J. IMPROVEMENTS AND BETTERMENTS

Fixtures, improvements, betterments, alterations, installations or additions comprising part of a building occupied but not owned by the Insured and acquired or made at the expense of the Insured, which the Insured cannot legally remove.

K. INSURED LOCATION(S)

Location(s):

a. listed on the latest schedule of LOCATION(S) submitted to, accepted by and on file with the Company;

b. insured under **Newly Acquired Property**;

c. insured under **Errors and Omissions**;

d. insured under **Miscellaneous Unnamed Locations**;

e. insured under **Course of Construction**;

f. INSURED LOCATION(S) includes the area within one thousand (1,000) feet of such LOCATION(S) if within the **Policy Territory**.

L. INSURED'S LIABILITY

Liability which is imposed by law upon the Insured or is assumed by the Insured by specific agreement prior to loss for physical loss or damage of the type insured against by this POLICY.

M. LAND IMPROVEMENTS

Landscaping, gardening, roadways and pavements, but not including any fill or land beneath such property.

N. LOCATION(S)

a. A building, yard, dock, wharf, pier or bulkhead or any group of the foregoing bounded by public streets, clear land space, open waterways or any combination thereof, with each public street, clear land space or open waterway measuring no less than fifty (50) feet wide. Any bridge or tunnel crossing such streets, space or waterways renders such separation inoperative;

b. The term LOCATIONS means more than one LOCATION.

O. MEDIA

The materials upon which data is recorded, including but not limited to, paper tapes, cards, electronic memory circuits and magnetic or optical storage devices.

P. MERCHANDISE

Goods kept for sale by the Insured which are not RAW STOCK, STOCK IN PROCESS or FINISHED GOODS.

Q. MONEY

Bank notes, coins, currency, money order held for sale to the public, traveler’s checks or register checks.

R. NAMED WINDSTORM

All loss or damage insured by this POLICY, arising out of one OCCURRENCE which is caused by or results from a storm or weather disturbance which is named by the National Weather Service or any other recognized meteorological authority. Storm or weather disturbance includes all weather phenomena insured by this POLICY, associated with or occurring in conjunction with the storm or weather disturbance, including, but not limited to WIND, hail, sleet, tornadoes, hurricane or lightning. To the extent FLOOD is caused by, results from or accompanies a NAMED WINDSTORM, any physical loss or damage caused by, resulting from, or arising out of that FLOOD shall be treated as FLOOD, and not NAMED WINDSTORM, for purposes of exclusions, limits and sublimits hereunder.

S. NEW MADRID SEISMIC ZONE:

<u>Arkansas, United States of America</u>

Counties of Arkansas, Ashley, Chicot, Clay, Craighead, Crittenden, Cross, Desha, Drew, Fulton, Grant, Greene, Independence, Izard, Jackson, Jefferson, Lawrence, Lee, Lincoln, Lonoke, Mississippi, Monroe, Phillips, Poinsett, Prairie, Pulaski, Randolph, Saline, Sharp, St. Francis, White, Woodruff;

<u>Illinois, United States of America</u>

Counties of Alexander, Bond, Calhoun, Christian, Clark, Clay, Clinton, Coles, Crawford, Cumberland, Edwards, Effingham, Fayette, Franklin, Gallatin, Greene, Hamilton, Hardin, Jackson, Jasper, Jefferson, Jersey, Johnson, Lawrence, Macoupin, Madison, Marion, Massac, Monroe, Montgomery, Morgan, Perry, Pike, Pope, Pulaski, Randolph, Richland, Saline, Sangamon, Scott, Shelby, St. Clair, Union, Wabash, Washington, Wayne, White, Williamson;

Indiana, United States of America

Counties of Crawford, Daviess, Dubois, Gibson, Greene, Knox, Lawrence, Martin, Orange, Perry, Pike, Posey, Spencer, Sullivan, Vanderburgh, Warrick;

Kentucky, United States of America

Counties of Ballard, Breckinridge, Butler, Caldwell, Calloway, Carlisle, Christian, Crittenden, Daviess, Fulton, Graves, Hancock, Henderson, Hickman, Hopkins, Livingston, Logan, Lyon, Marshall, McCracken, McLean, Muhlenberg, Ohio, Simpson, Todd, Trigg, Union, Warren, Webster;

Mississippi, United States of America

Counties of Alcorn, Benton, Bolivar, Calhoun, Carroll, Chickasaw, Choctaw, Clay, Coahoma, De Soto, Grenada, Holmes, Humphreys, Issaquena, Itawamba, Lafayette, Lee, Leflore, Lowndes, Marshall, Monroe, Montgomery, Oktibbeha, Panola, Pontotoc, Prentiss, Quitman, Sharkey, Sunflower, Tallahatchie, Tate, Tippah, Tishomingo, Tunica, Union, Warren, Washington, Webster, Yalobusha, Yazoo;

Missouri, United States of America

Counties of Audrain, Bollinger, Butler, Callaway, Cape Girardeau, Carter, Cole, Crawford, Dent, Dunklin, Franklin, Gasconade, Howell, Iron, Jefferson, Lincoln, Madison, Maries, Marion, Miller, Mississippi, Montgomery, New Madrid, Oregon, Osage, Pemiscot, Perry, Phelps, Pike, Pulaski, Ralls, Reynolds, Ripley, Scott, Shannon, St. Charles, St. Francois, St. Louis, City of St. Louis, Ste. Genevieve, Stoddard, Texas, Warren, Washington, Wayne;

Tennessee, United States of America

Counties of Benton, Carroll, Cheatham, Chester, Crockett, Decatur, Dickson, Dyer, Fayette, Gibson, Hardeman, Hardin, Haywood, Henderson, Henry, Hickman, Houston, Humphreys, Lake, Lauderdale, Lawrence, Lewis, Madison, McNairy, Montgomery, Obion, Perry, Robertson, Shelby, Stewart, Tipton, Wayne, Weakley.

T. OCCURRENCE

The sum total of all loss or damage of the type insured caused by or arising out of one event, including any insured TIME ELEMENT loss, regardless of the number of LOCATIONS affected.

U. OUTDOOR PROPERTY

Fences, radio and television antennas (including satellite dishes), trees, shrubs, plants (other than trees, shrubs, and plants which are RAW STOCK or STOCK IN PROCESS or are part of a vegetated roof.

All sections of this document and the appendices and endorsements attached or added to this document.

V. PACIFIC NORTHWEST SEISMIC ZONE:

Oregon, United States of America

Counties of Benton, Clackamas, Clatsop, Columbia, Coos, Curry, Douglas, Jackson, Josephine, Klamath, Lake, Lane, Lincoln, Linn, Marion, Multnomah, Polk, Tillamook, Washington, Yamhill;

Washington, United States of America

Counties of Chelan, Clallam, Clark, Cowlitz, Grays Harbor, Island, Jefferson, King, Kitsap, Kittitas, Lewis, Mason, Pacific, Pierce, San Juan, Skagit, Skamania, Snohomish, Thurston, Wahkiakum, Whatcom.

W. PRECIOUS METALS

Any of the following metals: gold, iridium, osmium, palladium, platinum, rhodium, ruthenium, and silver.

X. PROPERTY DAMAGE

A type or category of loss due to the reduction in the value of real or personal property directly caused by or resulting from physical loss or damage thereto. A coverage provision or series of provisions pertaining to such loss.

Y. RAW STOCK

Material in the state in which the Insured receives it for conversion by the Insured into STOCK IN PROCESS or FINISHED GOODS.

Z. SALES

The amount paid or payable to the Insured for goods sold or delivered and for services rendered in the conduct of the business at INSURED LOCATION(S).

AA. SECURITIES

a. All negotiable and non-negotiable instruments or contracts representing either MONEY or other property;

b. SECURITIES include accounts, bills, bonds, stocks, food stamps, other evidences of debt or revenue, other stamps in current use, tokens, tickets, evidences of title and letter of credit. SECURITIES do not include MONEY.

BB. STOCK IN PROCESS

RAW STOCK which has undergone any aging, seasoning, mechanical or other process of manufacture at INSURED LOCATION(S) but which has not become FINISHED GOODS.

CC. TIME ELEMENT

A type or category of loss which is dependent, with respect to quantification, upon the passage of a period of time measured from a specific event. A coverage provision or series of provisions pertaining to such loss. Examples of such provisions include **Gross Earnings, Extra Expense, Rental Insurance, Contingent Time Element, Service Interruption – Time Element, Leasehold Interest, Commissions, Licensing Fees and Royalties**, **Ingress/Egress, Order of Civil or Military Authority**.

DD. TIER 1 COUNTIES

Jurisdiction	**Counties**
ALABAMA	Baldwin, Mobile
FLORIDA	Entire State
GEORGIA	Bryan, Camden, Chatham, Glynn, Liberty, McIntosh
HAWAII	Entire State
LOUISIANA	Cameron, Iberia, Jefferson, Lafourche, Orleans, Plaquemines, St. Bernard, St. Mary, St. Tammany, Terrebonne, Vermilion
MISSISSIPPI	Hancock, Harrison, Jackson

NORTH CAROLINA	Beaufort, Bertie, Brunswick, Camden, Carteret, Chowan, Currituck, Dare, Hyde, New Hanover, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Tyrrell, Washington
PUERTO RICO	Entire Territory
SOUTH CAROLINA	Beaufort, Berkeley, Charleston, Colleton, Georgetown, Horry, Jasper
TEXAS	Aransas, Brazoria, Calhoun, Cameron, Chambers, Galveston, Harris, Jackson, Jefferson, Kenedy, Kleberg, Matagorda, Nueces, Refugio, San Patricio, Willacy
US VIRGIN ISLANDS	Entire Territory
VIRGINIA	Accomack, Chesapeake, Gloucester, Hampton, Isle of Wight, James City, Lancaster, Mathews, Middlesex, Newport News, Norfolk, Northampton, Northumberland, Portsmouth, Suffolk, Surry, Virginia Beach, Westmoreland, York.

EE. VALUABLE PAPERS AND RECORDS

Written, printed or otherwise inscribed documents and records, including books, maps, films, drawings, abstracts, deeds, mortgages and manuscripts, but not MONEY, SECURITIES, ELECTRONIC DATA, ELECTRONIC DATA PROCESSING MEDIA.

FF. WAITING PERIOD

A continuous period of time which must elapse before there is any liability for loss under this POLICY.

GG. WIND

Direct action of wind including substance driven by wind. WIND does not mean or include anything defined as FLOOD in this POLICY.

Endorsement A

Occurrence Limit of Liability

It is understood and agreed that the following special terms and conditions apply to this quotation:

It is understood and agreed that the following special terms and conditions apply to this Policy:

1. The limit of liability or Limit of Insurance shown on the face of this Policy, or endorsed onto this Policy, is the total Program Limit of Liability applicable to each occurrence, as hereafter defined. Notwithstanding any other terms and conditions of this Policy to the contrary, in no event shall our liability exceed our proportionate program share of this limit or amount irrespective of the number of locations involved.

   The term "occurrence" shall mean any one loss, disaster, casualty or series of losses, disasters, or casualties, arising out of one event except as specified elsewhere in the policy with regards to flood or earthquake coverage.

   When the term applies to loss or losses from the perils of tornado, cyclone, hurricane, windstorm, hail, volcanic eruption, riot, riot attending a strike, civil commotion, and vandalism and malicious mischief one event shall be construed to be all losses arising during a continuous period of 72 hours. When filing proof of loss, you may elect the moment at which the 72 hour period shall be deemed to have commenced, which shall not be earlier than the first loss to the covered property occurs and must commence within the policy term.

2. The premium for this Policy is based upon the Statement of Values on file with us, or attached to this Policy. In the event of loss hereunder, the total Program Limit of Liability, subject to the terms of paragraph one (1) above, shall be limited to the least of the following:

   a. The actual adjusted amount of loss, less applicable deductible(s),

   b. The limit of Liability or Limit of Insurance shown on the face of this Policy or endorsed onto this Policy.

Hurricane Minimum Earned Premium Provision

The following terms and conditions will apply to this policy:

1. If the Insured cancels this policy, removes a location or reduces the amount of insurance on a location that is within 100 miles of the Atlantic Ocean and/or the Gulf of Mexico and/or the Hawaii Islands, and coverage existed any time during the period of June 1st to November 30th, the amount of premium the Company will return will be the Unearned Premium for the location. The Unearned Premium is the annual premium for the policy (or for the location removed or coverage reduced, as applicable) multiplied by the Unearned Factor noted below. The location premium is the 100% annual rate multiplied by the location value as scheduled in the most current Statement of Values on file with the Company.

1 Year Policy

Days Policy

In Force	Unearned Factor
1 to 180	20%
181 to 210	15%
211 to 240	10%
241 to 270	7.5%
271 to 300	5.0%
301 to 330	2.5%
331 to 365	0.0%

2. If a Location that is within 100 miles of the Atlantic Ocean and/or the Gulf of Mexico and/or the Hawaii Islands is added during the term of the policy and coverage exists any time during the period of June 1st to November 30th, the rate will be calculated as 100% of the annual rate, less the Unearned Factor as calculated in No. 1 above based upon the number of days remaining in the policy term.

3. The provisions of this Hurricane Minimum Earned Premium Provision replace any short rate provisions stipulated in this policy for all locations that are within 100 miles of the Atlantic Ocean and/or the Gulf of Mexico and/or the Hawaii Islands and coverage existed any time during the period of June 1st to November 30th.

Certificates Wording

Please be advised that **Great Lakes Insurance SE** does not review Certificates of Insurance issued by you, or by any party, relating to this policy of insurance either for content or accuracy. Accordingly, we request that you do not provide copies of certificates to us for review or for our records. Authority is granted to you for the limited purpose of issuing unmodified ACORD 24, 27 or 28 Certificates only. It is your responsibility to see that any Certificate provides an accurate representation of the coverage form and endorsements applicable to this policy at the time the Certificate is issued. Any modification of the approved ACORD forms specifically set forth above, or the issuance of a non-approved Certificate of Insurance ACORD or other is prohibited. Certificates of Insurance may only be issued as a matter of information.

Loss Adjuster

It is hereby understood and agreed that each and every loss will be adjusted by the Adjuster named below unless otherwise agreed by the Insured and the **Insurer**.

Evan Sussman
Engle Martin & Associates
90 Broad Street
New York, NY 10004
Direct: 212.822.2793
Mobile: 908.616.5806
esussman@englemartin.comde

Joint Loss Agreement

In the event the insurance company, if any, providing boiler and machinery insurance disputes any portion of the claim made against that company and this Company believes the boiler and machinery policy should have paid that portion of the claim, then this Company shall, upon written request of the Insured, pay to the Insured one-half of the amount of the loss which is in disagreement, but in no event more than this company would have paid if there had been no boiler and machinery policy(ies) in effect, subject to the following conditions:

A. The amount of the loss which is in disagreement, after making provisions for any undisputed claims payable under the said policies and after the amount of the loss is agreed upon by the Insured and the insurers, is limited to the minimum amount remaining payable under the boiler and machinery policy(ies);

B. The boiler and machinery insurer(s) shall simultaneously pay to the Insured one-half of said amount which is in disagreement;

C. The payments by the insurers hereunder and acceptance of the same by the Insured signify the agreement of the insurers to submit to and proceed with arbitration within 90 days of such payments; the arbitrators shall be three in number, one of whom shall be appointed by the Property insurer(s) and one of whom shall be appointed by the Boiler and Machinery insurer(s) and the third shall be appointed with the consent of the other two insurers, and the decision by the arbitrators shall be binding upon the insurers and that judgment upon such award may be entered in any court of competent jurisdiction;

D. The Insured agrees to cooperate in connection with such arbitration but not to intervene therein;

E. The provisions of this endorsement shall not apply unless such other policy(ies) issued by the Boiler and Machinery insurance company(ies) is similarly endorsed;

F. Acceptance by the Insured of sums paid pursuant to the provisions of this endorsement, including an arbitration award, shall not operate to alter, waive, surrender, or in any way affect the rights of the Insured against any of the insurers.

Endorsement B

EXCLUSION FOR CERTAIN COMPUTER RELATED LOSSES

THIS ENDORSEMENT CHANGES THIS POLICY. PLEASE READ IT CAREFULLY.

This policy does not insure any loss, or damage caused by or resulting directly or indirectly by any of the following. **Such loss or damage is excluded regardless of any other cause or event that contributes directly, indirectly, concurrently, proximately, remotely, or in any sequence to the loss and includes but is not limited to**:

A. The alteration, manipulation or destruction of computer media and data, by the addition of a virus, destructive code or similar instruction, hacking or any other malicious or destructive programming or instructions that disrupts the normal operation of computer equipment or computer media and data or results in the loss of use or physical damage to computer equipment, including but not limited to microprocessors and networks, or computer media and data;

B. Denial of service; by unauthorized direction of a high volume of messages or inquiries to a web site or e-mail destinations, effectively denying, interrupting or limiting legitimate access;

C. Inability to correctly recognize, process, distinguish, interpret or accept one or more dates or times;

D. Transfer of property caused by, resulting from, or arising out of unauthorized instructions transmitted by a computer;

E. Financial loss or any other loss or damage due to unauthorized viewing, copying or use of any data (including proprietary or confidential information) by any person, even if such activity is characterized as theft.

F. Any advice, consultation, design, evaluation, inspection, installation, maintenance, repair, replacement or supervision provided or done by the Insured or on the Insured's behalf to determine, rectify or test for any actual or potential problem described in paragraphs A through E above.

This exclusion applies regardless whether there is (a) any physical loss or damage to insured property; (b) any loss of use, occupancy or functionality; or (c) any action required, including but not limited to repair, replacement, restoration, removal, cleanup, abatement, disposal, relocation, or steps taken to address medical or legal concerns.

All other terms and conditions of this policy shall remain unchanged.

Exhibit 3

COMMERCIAL PROPERTY
POLICY DECLARATIONS

73PRX19A049
POLICY NUMBER:

New Business
Renewal Of:

Hallmark Specialty Insurance Company
Two Lincoln Center
5420 Lyndon B Johnson Freeway, Suite 1100
Dallas, TX 75240-2345
(800) 866-0047

Named Insured and Mailing Address:	**Producer:** **Producer Code:** 1568
West Flagler Associates, Ltd.dba Magic City Casino and Flagler Dog Track 401 N.W. 38th Court Miami, FL 33136	AmWINS Brokerage of New Jersey 105 Fieldcrest Avenue #200 Edison, NJ 08837

Policy Period: From April 29, 2019 To April 29, 2020
12:01 A.M. Standard Time at your Mailing Address above.

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

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

COVERAGE PARTS	PREMIUM	COMM
Commercial Property Coverage Part	**$22,500.00**	**DO NOT WRITE IN THIS AREA**
Terrorism Purchased	**$0.00**	
State Assessment Fees	**$0.00**	
Inspection Fee	**$0.00**	
Fee	**$0.00**	
TOTAL	**$22,500.00**	
Minimum Earned	**25.00%**	

FORMS APPLICABLE TO ALL COVERAGE PARTS:

SEE SCHEDULE OF POLICY ATTACHMENTS AND FORMS - HP TC 01 01 15

BUSINESS DESCRIPTION Casino/Dog Track

THESE DECLARATIONS TOGETHER WITH THE COMMON POLICY CONDITIONS, COVERAGE PART DECLARATIONS, COVERAGE FORMS(S) AND ENDORSEMENTS, IF ANY, ISSUED TO FORM A PART THEREOF, COMPLETE THE CONTRACT OF INSURANCE.

DATE OF ISSUE	SIGNATURE OF AUTHORIZED REPRESENTATIVE
August 22, 2019	

This Policy shall not be valid unless signed by our authorized representative.

73PRX19A049
POLICY NUMBER:

Named Insured and Mailing Address:

West Flagler Associates, Ltd.dba Magic City Casino and
Flagler Dog Track
401 N.W. 38th Court
Miami, FL 33136

Policy Period: From April 29, 2019 To April 29, 2020
12:01 A.M. Standard Time at your Mailing Address above.

Surplus Lines Agent's Name Charles . Ciccarelli
Surplus Lines Agent's Address: 105 Fieldcrest Ave. Suite 200
Edison N 0 37
Surplus Lines Agent's License # E06 190
Producing Agent's Name: Joseph Hanono
Producing Agent's Address: 18305 Biscayne Blvd.
Aventura, FL 33160

This insurance is issued pursuant to the Florida Surplus Lines Law. Persons insured by surplus lines carriers do not have the protection of the Florida Insurance Guaranty Act to the extent of any right of recovery for the obligation of an insolvent unlicensed insurer.

Premium: $22,500 Tax: $1,125.00 Service Fee: $22.50
EMPA Surcharge: $4 Broker Fee: _____
Inspection Fee: ____ __ ___ Policy Fee: _ _____
Surplus Lines Agent's Countersignature: Charles J Ciccarelli

POLICY NUMBER: 73PRX19A049 Commercial Property Insurance

SCHEDULE OF POLICY ATTACHMENTS AND FORMS

(Other than applicable forms and endorsements shown elsewhere in the policy)

Form Name	Form Number
Property Policy Declarations Page	HP DS 01 01 15 (01-15)
Schedule Of Policy Attachments and Forms	HP TC 01 01 15 (01-15)
Notice to Policyholder	HP PN 01 01 15 (01-15)
U.S. Treasury Dept. ("OFAC")	IL P 001 01 04 (01-04)
Manuscript Excess Of Loss Policy Form	HP MA E1 01 15 (01-15)
Minimum Earned Premium Endorsement	HP MP 01 01 15 (01-15)
Cyber Exclusion	HP CY 01 04 19 (04-19)
Exclusion of Prior Loss or Damage	HP LD 01 03 17 (03-17)
Surplus Lines Notification	SLFL2017 (10-17)
State Fraud Statements	HP SF 01 01 15 (01-15)
Service Of Suit Endorsement	HP SS 01 01 15 (01-15)
Claim Reporting Procedures	HP CC 00 01 15 (01-15)
Privacy Policy Disclosure Notice	HP 00 01 01 15 (01-15)
Policyholder Disclosure Notice of Terrorism – Exclusion of Terrorism	HP ET 01 01 15 (01-15)
General Change Endorsement	HP GC 01 01 15 (01-15)
Occurrence Limit of Liability	HP OL LM 01 15 (01-15)
Signature Page	HS 00 01 01 16 (01-16)

NOTICE TO POLICYHOLDER

This policy is composed of various forms explaining the insurance coverage provided. It may also include one or more endorsements. Endorsements are documents that change the policy. Endorsements may provide additional coverage to the policy. Endorsements can also restrict or remove coverage provided in the policy. THE POLICY SHOULD BE READ CAREFULLY TO DETERMINE WHAT IS AND WHAT IS NOT COVERED.As the context may require, the words "you", "your", "Insured", and "the Insured" refer to the Named Insured shown on the Declarations Page. The words "we", "us", "our", "Company", "the Company", and "this Company" refer to the Company providing this insurance.

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

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

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

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

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

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

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

PROPERTY POLICY

SECTION I
DECLARATIONS

All terms in un-bolded capital letters throughout this POLICY are subject to the definition as set forth in this POLICY.

A. Issuing Company - (hereafter referred to as "the Company")

Hallmark Specialty Insurance Company

B. Policy Number

73PRX19A049

C. Insured

West Flagler Associates, Ltd. Dba Magic City Casino and Flagler Dog Track and any subsidiary, and **West Flagler Associates, Ltd. Dba Magic City Casino and Flagler Dog Track** interest in any partnership or joint venture in which **West Flagler Associates, Ltd. Dba Magic City Casino and Flagler Dog Track** has management control, ownership, or is obligated to insure, as now constituted or hereafter is acquired, as the respective interest of each may appear; all hereafter referred to as the Insured, including legal representatives.

D. First Named Insured and Mailing Address

West Flagler Associates, Ltd. Dba Magic City Casino and Flagler Dog Track
401 NW 38th CT
Miami, FL 33136

E. Policy Period

From: 04/29/2019

To: 04/29/2020

F. Inception and Expiration Time

The time of inception and the time of expiration of this POLICY and of any schedule(s) or endorsement(s) attached shall be at 12:01 a.m. (Standard Time) at the First Named Insured's principal place of business. Notwithstanding the foregoing, it is agreed that the actual effective time of attachment of this insurance shall be the same time on the specified date as the actual effective time of cancellation or expiration of the POLICY(IES) replaced or renewed by this POLICY.

The POLICY Period ends, and coverage under this POLICY terminates, when the first of the following occurs:

1. cancellation of this POLICY by the First Named Insured or by the Company;
2. the replacement POLICY takes effect; or
3. the POLICY Expiration Date.

G. Gross Premium

$22,500 at Inception

H. Currency

Any amounts specified in this POLICY, including but not limited to premium, limit(s) of liability, deductible(s), and loss payable will be considered to be in:

U.S. Currency ($)

I. Policy Territory

United States of America, Puerto Rico and the United States Virgin Islands

J. Sanctions Clause

This POLICY will not be deemed to have provided coverage and will not be liable to pay any claim or provide any benefit to the extent that payment of such claim or provision of such benefit would expose the Company to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of any jurisdiction applicable to the Company.

SECTION II
POLICY LIMITS AND SUBLIMITS PURCHASED OR NOT PURCHASED

A. Program Limit of Liability

The Insured has chosen to purchase a Property Insurance Program with a limit of $90,417,240, and this POLICY will serve to participate in that Program subject to the terms outlined in the **Company's Policy Limit of Liability and Application** section.

B. Company's Policy Limit of Liability and Application

1. The Company is not liable for more than its proportionate share, as specified below, of the Program Limit or of the Program Layer Limits that make up the Program Limit for all loss or damage insured by this POLICY arising out of one OCCURRENCE regardless of the number of LOCATIONS or coverages involved in the OCCURRENCE.

Company's Policy Limit of Liability		Program Limit or Program Layer Limits
$5,000,000	Being 50% part of	$10,000,000 excess of $15,000,000

2. The Company is not liable for more than the same proportionate share specified above of any Program Sublimit(s) which are part of the Program Limit or are part of any Program Layer Limits that make up the Program Limit.

3. The amount payable under this POLICY shall be determined by the terms of this POLICY after the application of any deductible features which may be a part of this POLICY. The **Other Insurance** provision of this POLICY is not applicable as respects other Insurers participating in the Program Limit or Program Layer Limit along with the Company's Proportionate Share.

4. In the event an OCCURRENCE results in an amount payable under more than one POLICY issued to the Insured by the Company, or its subsidiaries and affiliates, the maximum amount payable in the aggregate under all such policies will be the **Company's Policy Limit of Liability** specified herein regardless of the number of INSURED LOCATION(S) or coverages involved.

C. Application of Program Sublimit(s)

1. Program Sublimit(s) are part of and not in addition to the Program Limit. Program Sublimit(s) do not increase the Program Limit or any other Program Sublimit(s).

2. Program Sublimit(s) apply in the aggregate per OCCURRENCE to all INSURED LOCATION(S) and for all coverages involved, including TIME ELEMENT.

3. When a Program Sublimit(s) is noted as an Annual Aggregate, such Program Sublimit(s) applies in the aggregate annually to all losses insured by this POLICY occurring during the **Policy Period**.

4. If a Program Sublimit(s) is specified for the cause of loss that causes the claimed loss or damage such sublimit is the maximum amount payable for such OCCURRENCE.

5. If a Program Sublimit(s) is specified for a coverage that is provided, such Sublimit(s) are the maximum amount payable under this POLICY for all loss or damage, resulting from physical loss or damage insured by this POLICY at such INSURED LOCATION(S).

6. If a Program Sublimit(s) is specified for an INSURED LOCATION(S) or property, such Program Sublimit(s) is the maximum amount payable under this POLICY for all loss or damage, including TIME ELEMENT loss, at all INSURED LOCATION(S) resulting from physical loss or damage insured by this POLICY at such INSURED LOCATION(S) or to such property.

7. This policy may contain sublimits applicable to specific locations, specific types of loss, specific causes of loss, or specific coverages. Such sublimits shall be the total payable arising out of one OCCURRENCE (or a Annual Aggregate of certain OCCURRENCES where so specified), and neither the policy limit nor any sublimits shall be increased by the application of one or more sublimits.

D. Coverage Purchased and Coverage Not Purchased

The following Types of Loss, Causes of Loss and Coverages are all excluded unless a monetary amount is set forth next to the Type of Loss, Cause of Loss or Coverage. If no monetary amount is provided; the amount is $0; the line is left blank; or **NCP** (No Coverage Purchased) is shown, then those Types of Loss, Causes of Loss and those Coverages, so designated, remain excluded from recovery under this POLICY.

Program Sublimit(s)	Type of Loss, Cause of Loss and Coverage
$10,000,000	EARTH MOVEMENT (Annual Aggregate), [further sublimited as follows:]
a. $5,000,000 **b. $1,000,000** **c. $1,000,000** **d. $1,000,000**	EARTH MOVEMENT as respects: a. **Newly Acquired Property**; b. **Errors and Omissions**; c. **Exhibitions, Expositions, Fairs or Trade Shows**; and d. **Miscellaneous Unnamed Locations.** (Annual Aggregate)]
$10,000,000	FLOOD (Annual Aggregate), [further sublimited as follows:]
a. $5,000,000 **b. $1,000,000** **c. $1,000,000** **d. $1,000,000**	FLOOD as respects: a. **Newly Acquired Property**; b. **Errors and Omissions**; c. **Exhibitions, Expositions, Fairs or Trade Shows**; and d. **Miscellaneous Unnamed Locations.** (Annual Aggregate)]
INCLUDED	NAMED WINDSTORM, [further sublimited as follows:]
a. $5,000,000 **b. $1,000,000** **c. $1,000,000** **d. $1,000,000**	NAMED WINDSTORM as respects: a. **Newly Acquired Property**; b. **Errors and Omissions**; c. **Exhibitions, Expositions, Fairs or Trade Shows**; and d. **Miscellaneous Unnamed Locations.** (Annual Aggregate)]
$1,000,000	**Accounts Receivable**
$100,000	**Arson or Theft Reward**
EXCLUDED	**Attraction Properties**
$50,000	**Brands and Labels**
$25,000	**Building Materials at Off Premises Storage for Prop. Under construction**
$1,000,000	**Commissions, Licensing Fees and Royalties**
EXCLUDED	**Contingent Time Element** – Direct Named Suppliers and Customers
EXCLUDED	**Contingent Time Element** – Direct Unnamed Suppliers and Customers
EXCLUDED	**Contingent Time Element** – Indirect Suppliers and Customers
$25,000	**Contractual Penalties**
EXCLUDED	**Cyber –** see Endorsement B for exclusion wording
$1,000,000	**Data Restoration –** PROPERTY DAMAGE and TIME ELEMENT combined
$2,500,000	**Debris Removal** - or 25% of the combined amount of physical damage and TIME ELEMENT loss payable at the LOCATION where the damage occurs or limit shown, whichever is the lesser.
Included	**Demolition And Increased Cost Of Construction – Coverage A**
$2,500,000	**Demolition And Increased Cost Of Construction – Coverage B**
$2,500,000	**Demolition And Increased Cost Of Construction – Coverage C**
$2,500,000	**Demolition And Increased Cost Of Construction – Coverage D**
$500,000	**Errors and Omissions**
$500,000	**Exhibitions, Expositions, Fairs or Trade Shows**

Program Sublimit(s)	Type of Loss, Cause of Loss and Coverage
$500,000	**Expediting Expenses**
$2,500,000	**Extra Expense**
$500,000	**Fine Arts**, subject to a maximum of **$1,500** per item
$100,000	**Fire and Police Department Service Charges**
Included	**Gross Earnings**
$2,500,000	**Ingress/Egress**
$500,000	**Land And Water Contaminants Cleanup, Removal And Disposal** (Annual Aggregate)
$2,500,000	**Land Improvements, subject to a maximum of $25,000 per item**
$5,000,000	**Leasehold Interest**
$10,000	**Locks and Keys**
$10,000	**Logistics Extra Cost**
$1,000,000	**Miscellaneous Unnamed Locations**
$250,000	**Mold Ensuing from an Insured Cause of Loss**
$50,000	**Money and Securities**
$500,000	**On Site Construction**
Included	**Ordinary Payroll**
$5,000,000	**Newly Acquired Property – excluding Tier 1 Named Windstorm, High Hazard Flood and High Hazard Earth Movement**
$500,000	**Outdoor Property**, subject to a maximum of **$5,000** per item
$2,500,000	**Order of Civil or Military Authority**
$50,000	**Professional Fees**
$500,000	**Protection and Preservation of Property – Property Damage**
$500,000	**Protection and Preservation of Property – Time Element**
NCP	**Radioactive Contamination**
$100,000	**Rental Insurance**
$1,000,000	**Service Interruption – Property Damage** and **Service Interruption – Time Element Combined – including T&D lines within 1,000 feet of insured's premises**
$100,000	**Soft Costs**
$500,000	**Spoilage**
$1,000,000	**Temporary Removal of Property**
$1,000,000	**Temporary Storage Locations**
$250,000	**Transportation** - PROPERTY DAMAGE and TIME ELEMENT combined
$1,000,000	**Valuable Papers and Records**

E. Time Limit(s)

No coverage is provided by this POLICY for any loss sustained or incurred beyond the corresponding Time Limit specified. Such Time Limit starts on the date of the physical loss or damage insured by this POLICY; however, not to exceed the stated dollar sublimit provided in Section D above:

90 consecutive calendar days from the date of acquisition for **Newly Acquired Property**

365 consecutive calendar days for **Extended Period of Liability – Gross Earnings** and **Rental Insurance**

30 consecutive calendar days after such length of time as would be required with the exercise of due diligence and dispatch to repair or replace the damaged dam, reservoir or equipment for **Impounded Water**

30 consecutive calendar days from the date of OCCURRENCE for **Ingress/Egress**

30 consecutive calendar days from the date of OCCURRENCE for **Order Of Civil Or Military Authority**

F. Distance Limit(s)

No coverage for TIME ELEMENT loss, as described below, is provided if the LOCATION of the physical loss or damage is beyond the stated Distance Limits indicated below:

5 statute mile(s) from the INSURED LOCATION for **Ingress/Egress**

5 statute mile(s) from the INSURED LOCATION for **Order Of Civil Or Military Authority**

G. Time Element Coverage Extensions - Application of Limits

For purposes of all claims paid hereunder in accordance with the TIME ELEMENT coverage provisions, the applicable Program Sublimits, set forth above, will be determined as though the LOCATION(S) suffering physical loss or damage insured by this POLICY were INSURED LOCATION(S), and not where the TIME ELEMENT losses might be incurred if different.

SECTION III
POLICY DEDUCTIBLES AND WAITING PERIODS

A. Policy Deductibles

In each case of loss or damage insured by this POLICY, the Company is liable only if the Insured sustains such loss or damage in a single OCCURRENCE, the value of which is in excess of the applicable deductible specified, and then the amount insured by this POLICY shall be the amount in excess of the deductible, subject to all terms, conditions, provisions, limitations and exclusions of this POLICY.

$25,000 per occurrence for all perils, except;

NAMED WINDSTORM
5% Per Unit of Insurance at each location involved in the loss or damage arising out of a NAMED WINDSTORM and subject to a minimum deductible of $100,000 per occurrence as respects LOCATIONS situated in a TIER 1 COUNTY

EARTH MOVEMENT:
$50,000 per occurrence for the peril of EARTHQUAKE

FLOOD:
$100,000 per occurrence for the peril of FLOOD, except for locations wholly or partially situated in HIGH HAZARD FLOOD ZONES the deductible shall be $500,000 per building, $500,000 for Contents per building and $100,000 for Time Element per occurrence.

Each of the following shall be considered a separate Unit of Insurance:

- Each separate building or structure
- Contents in each separate building or structure
- Property in the yard of each separate building or structure
- Annual Business Interruption values apply to each separate building or structure

B. Application of Deductibles

Unless otherwise specified above:

1. All deductibles apply per OCCURRENCE.

2. When this POLICY insures more than one INSURED LOCATION(S), the deductible applies against the total loss and damage insured by this POLICY in any one OCCURRENCE.

3. If two or more deductibles provided in this POLICY apply to a single OCCURRENCE, then the total to be deducted will not exceed the largest deductible applicable; provided, however, the largest deductible applicable may be comprised of two parts, one applicable to PROPERTY DAMAGE and one applicable to TIME ELEMENT.

4. If a deductible is expressed as a period of time which is:

   a. not otherwise more specifically stated; or

   b. not intended to be converted to its monetary equivalents;

   then the Company will not be liable for the amount of loss incurred or sustained by the Insured during such period of time that immediately follows the physical loss or damage insured by this POLICY.

5. If a deductible is expressed as an Actual Daily Value (ADV) or a multiple thereof, the ADV will be calculated as follows:

a. Determine the **Gross Earnings** that would have been earned during the **Period of Liability** of the Insured's business had no **Time Element** loss occurred.

b. Divide the result in a. above by the number of working days in the **Period of Liability** of the Insured's business had no loss occurred. The resulting amount is the ADV.

No reduction will be made for the **Gross Earnings** not being earned in the number of working days because of the loss or damage, or because of any scheduled or unscheduled shutdowns during the **Period of Liability** of the Insured's business.

The ADV will be calculated based on the **Gross Earnings** of the entirety of the INSURED LOCATION(S), whether or not the loss or damage affects the entirety of the INSURED LOCATION(S). If physical loss or damage insured by this POLICY results in a TIME ELEMENT loss at more than one INSURED LOCATION(S), the ADV will be calculated based on the combined **Gross Earnings** of all affected INSURED LOCATION(S).

6. The deductibles provisions specified herein this POLICY for NAMED WINDSTORM apply to all loss or damage insured by this POLICY, caused by or arising out of a NAMED WINDSTORM, including, but not limited to, the following:

   a. the force or action of WIND caused by or resulting from a NAMED WINDSTORM; in accordance with the FLOOD definition provision of this POLICY;

   b. any material, object or debris that is carried, propelled or in any manner moved by a NAMED WINDSTORM;

   c. any tornadoes that are a result of actions or effects of a NAMED WINDSTORM;

   d. hail that is a result of actions or effects of a NAMED WINDSTORM;

   e. lightning that is a result of actions or effects of a NAMED WINDSTORM;

   f. rain or water, whether the rain or water is driven by WIND or not, that enters the covered building or structure through an opening created by the force of WIND or water from a NAMED WINDSTORM; or

   g. FLOOD, if covered by this POLICY, that results from the actions or effects of NAMED WINDSTORM.

7. The LOCATION(S) where physical loss or damage insured by this POLICY occurs shall be used to determine the deductible. Once the deductible is determined, if it is a percentage deductible, it shall be applied to the APPLICABLE VALUES.

C. Waiting Periods

Coverage is provided by this POLICY only if the corresponding WAITING PERIOD specified is exceeded. Coverage shall then apply only to the LOCATION(s) where the WAITING PERIOD has been exceeded. The corresponding coverage will then apply from the beginning of the interruption of services but only for the amounts in excess of the applicable Deductible(s). If multiple LOCATIONS exceed the WAITING PERIOD then the applicable Deductible(s) will apply to the combined loss of all such LOCATIONS.

1. **24** consecutive hours from the inception of interruption of services for **Service Interruption – Property Damage** and **Service Interruption – Time Element**.

STRATEGIC NON-ADMITTED PROPERTY POLICY

SECTION IV
PROPERTY DAMAGE

A. Insured Property

Except as excluded hereinafter, INSURED PROPERTY consists of property described below:

1. Real property owned by the Insured or in which the Insured has an insurable interest.

2. Personal property:

   a. owned by the Insured, including the Insured's interest as a tenant in IMPROVEMENTS AND BETTERMENTS for which the Insured incurred the costs of installation or for which the Insured is legally liable under the terms of its lease.

      In the event of physical loss or damage insured by this POLICY to such IMPROVEMENTS AND BETTERMENTS, the Company agrees to accept and consider the Insured as sole and unconditional owner of IMPROVEMENTS AND BETTERMENTS, notwithstanding any contract or lease to the contrary.

   b. of officers and employees of the Insured; and of others in the Insured's custody:

      I. to the extent the Insured is under obligation to keep such property insured for physical loss or damage insured by this POLICY; or

      II. to the extent of the INSURED'S LIABILITY for physical loss or damage insured by this POLICY to such property.

B. Property Damage Coverage Extensions, Terms and Conditions

The following are subject to all terms, conditions, provisions, limitations and exclusions of this POLICY and in addition, any other terms, conditions, provisions, limitations and exclusions set forth below.

1. Accounts Receivable

a. This POLICY is extended to insure ACCOUNTS RECEIVABLE loss and expense resulting from direct physical loss or damage insured by this POLICY to the Insured's accounts receivable records, including accounts receivable records stored as ELECTRONIC DATA, while anywhere, including while in transit to the extent provided under **Transportation**, within the **Policy Territory**.

b. This extension also insures the following:

   I. The interest charges on any loan to offset impaired collections pending repayment of such sum uncollectible as a result of such physical loss or damage.

      Unearned interest and service charges on deferred payment accounts and normal credit losses on credit extended or bad debts will be deducted in determining the recovery.

   II. Any other necessary and reasonable costs incurred to reduce the loss, to the extent the loss is reduced.

c. In the event of loss to accounts receivable records, the Insured will use all reasonable efforts, including legal action, if necessary, to effect collection of outstanding accounts receivable.

d. The Insured agrees to use any suitable property or service owned or controlled by the Insured, or obtainable from other sources, in reducing the loss otherwise insured under this extension.

e. If it is possible to reconstruct accounts receivable records so that no ACCOUNTS RECEIVABLE loss is sustained, this POLICY insures only the reasonable and necessary costs incurred for material and time required to re-establish or reconstruct such records, and not for any costs insured by any other insurance.

f. When there is proof that a loss covered by this POLICY has occurred but the Insured cannot accurately establish the total amount of accounts receivable outstanding as of the date of such loss, such amount shall be based on the Insured's monthly statements and shall be computed as follows:

I. determine the amount of all outstanding accounts receivable at the end of the same fiscal month in the year immediately preceding the year in which the loss occurs;

II. calculate the percentage of increase or decrease in the average monthly total of accounts receivable for the twelve (12) months immediately preceding the month in which the loss occurs, or such part thereof for which the Insured has furnished monthly statements to the Company, as compared with such average for the same months of the preceding year;

III. the amount determined under I. above, increased or decreased by the percentage calculated under II. above, shall be the agreed total amount of accounts receivable as of the last day of the fiscal month in which said loss occurs;

IV. the amount determined under III. above shall be increased or decreased in conformity with the normal fluctuations in the amount of accounts receivable during the fiscal month involved, due consideration being given to the experience of the business since the last day of the last fiscal month for which a statement has been rendered.

V. Add any collection expenses in excess of normal collection costs and made necessary because of loss or damage, and the reasonable expenses incurred in re-establishing accounts receivable records following the loss or damage.

g. All amounts recovered by the Insured on outstanding accounts receivable on the date of loss will belong and be paid to the Company up to the amount of loss paid by the Company. All recoveries exceeding the amount paid by the Company will belong to the Insured.

h. No coverage is provided under this extension for any shortage resulting from:

I. bookkeeping, accounting or billing errors or omissions; or

II. alteration, falsification, manipulation, concealment, destruction or disposal of accounts receivable records committed to conceal the wrongful giving, taking, obtaining or withholding of MONEY, SECURITIES or other property; but only to the extent of such wrongful giving, taking, obtaining or withholding.

2. Brands and Labels

If branded or labeled MERCHANDISE or FINISHED GOODS insured by this POLICY is damaged and the Company elects to take all or any part of such MERCHANDISE or FINISHED GOODS at the value established by the provisions of this POLICY, the Insured may, at the Company's expense, stamp “salvage” on the MERCHANDISE or FINISHED GOODS or its containers or may remove or obliterate the brands or labels, if such stamp, removal or obliteration will not physically damage or otherwise reduce the value of the MERCHANDISE or FINISHED GOODS, but the Company shall re-label the MERCHANDISE or FINISHED GOODS or containers in compliance with the requirements of law.

3. Control of Damaged Property

This POLICY gives control of physically damaged FINISHED GOODS or MERCHANDISE as follows:

a. the Insured will have full rights to the possession and control of damaged FINISHED GOODS or MERCHANDISE in the event of physical loss or damage insured by this POLICY to such FINISHED GOODS or MERCHANDISE provided proper testing is done to show which FINISHED GOODS or MERCHANDISE is physically damaged;

b. the Insured using reasonable judgment will decide if FINISHED GOODS or MERCHANDISE sustaining physical loss or damage can be reprocessed or sold;

c. FINISHED GOODS or MERCHANDISE so judged by the Insured to be unfit for reprocessing or selling will not be sold or disposed of except by the Insured, or with the Insured's consent; and

d. any salvage proceeds received will go to the:

I. Company at the time of loss settlement; or

II. Insured if received prior to loss settlement and such proceeds will reduce the amount of loss payable hereunder.

e. Notwithstanding, the foregoing paragraphs a. through d., the Insured shall allow the Insurer any salvage which could be or which could have been obtained on any sale or other disposition of such goods or products through normal insurance industry salvage practices.

4. Data Restoration

This POLICY is extended to insure the necessary and reasonable costs and expenses actually incurred by the Insured, subject to the limits specified in the Program Sublimit(s) section, following direct physical loss or damage insured by this POLICY to INSURED PROPERTY for reproduction of ELECTRONIC DATA. Such cost of reproduction shall include all reasonable and necessary amounts, incurred by the Insured in recreating, gathering and assembling such ELECTRONIC DATA.

5. Debris Removal

a. This POLICY is extended to insure the necessary and reasonable costs and expenses actually incurred by the Insured, subject to the limits specified in the Program Sublimit(s) section, following direct physical loss or damage insured by this POLICY to INSURED PROPERTY, to dismantle, demolish and/or remove from INSURED LOCATION(S) the debris of INSURED PROPERTY remaining after any such physical loss or damage.

b. No coverage is provided hereunder for costs and expenses incurred in the removal of:

I. any foundation, other than damaged portions which must be removed in order to effectuate the repair or rebuilding of any INSURED PROPERTY; or

II. any property or part thereof, the removal of which is required by the enforcement of any law, ordinance, regulation or rule regulating or restricting the construction, installation, repair, replacement, demolition, occupancy, operation or other use of INSURED PROPERTY; or

III. CONTAMINANTS from land or water, nor for the cost to remove, restore or replace polluted land or water.

No liability shall exist under this extension of coverage unless such costs and expenses are reported to the Company within one hundred eighty (180) days of the date of such physical loss or damage insured by this POLICY or the expiration of this POLICY, whichever shall be earlier.

6. Demolition and Increased Cost of Construction

a. This POLICY is extended to insure the following additional costs when there is direct physical loss or damage insured by this POLICY to building(s) or structure(s) insured by this POLICY and such additional costs are occasioned by the enforcement of any law or ordinance regulating the construction, repair, replacement, use or demolition of building(s) or structure(s) which is in force at the time of loss and necessitates such costs:

I. **Coverage A**: value of the undamaged portion(s) which has been demolished subject to the same basis of recovery which applies to the damaged portion(s) of such building(s) or structure(s). This cost shall not include any greater cost of repair, replacement, construction or reconstruction due to the enforcement of any law or ordinance;

II. **Coverage B**: cost of demolishing any undamaged portion(s);

III. **Coverage C**: if the basis of recovery is replacement cost, the increased cost actually expended (excess of I. Coverage A above) in rebuilding or replacing both the damaged and demolished portions on the same INSURED LOCATION with like height, floor area and style and for like occupancy to comply with the minimum requirements of such law or ordinance.

IV. **Coverage D:** any increase in the business interruption, extra expense, rental value and royalties loss arising out of the additional time required to comply with said law or ordinance.

b. This extension provision shall not insure:

I. any increase of loss associated with the enforcement of any law or ordinance which requires the Insured or others to test for, monitor, cleanup, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of CONTAMINANTS.

II. any loss due to any law or ordinance with which the Insured was required to comply prior to the loss.

This entire provision shall not increase any amounts or limits of insurance provided by this POLICY.

7. Destruction by Civil or Military Authority

This POLICY is extended to insure against acts of destruction by order of civil or military authority at the time of and for the purpose of preventing the spread of fire provided such fire originated from physical loss or damage insured by this POLICY.

8. Errors and Omissions

a. If loss or damage is not payable under this POLICY solely due to an error or unintentional omission:

I. in the description of where INSURED PROPERTY is physically situated within the **Policy Territory**; or

II. to include any LOCATION(S), within the **Policy Territory**, that is owned, rented or leased by the Insured as of the POLICY Inception Date; or

III. that results in cancellation of coverage for INSURED PROPERTY under the POLICY;

then such property shall be considered INSURED PROPERTY under this POLICY to the extent it would have provided coverage had such error or unintentional omission not been made.

b. It is a condition precedent to recovery under this extension of coverage that any error or unintentional omission be:

I. reported by the Insured to the Company when discovered; and

II. corrected upon its discovery.

9. Exhibitions, Expositions, Fairs or Trade Shows

a. The POLICY is extended to insure any personal property, except as excluded under the **Property Not Insured** section of this POLICY:

I. owned by the Insured;

II. of others in the Insured's care, custody and control:

1) to the extent the Insured is under an obligation to insure such property against direct physical loss or damage insured by this POLICY; or

2) to the extent of the INSURED'S LIABILITY for direct physical loss or damage insured by this POLICY to such property;

while such property is situated on the premises of any exhibitions, expositions, fairs or trade shows within the **Policy Territory**.

b. No coverage is provided under this extension for any property:

I. while in transit;

II. while waterborne;

III. at INSURED LOCATION(S);

IV. insured under **Course of Construction**;

V. insured under **Fine Arts**;

VI. that is otherwise insured by this POLICY or any other POLICY issued by the Company to the Insured.

10. Expediting Expenses

This extension provision applies to real and personal property only.

a. This POLICY is extended to insure the reasonable and necessary expenses incurred by the Insured:

I. to pay for the temporary repair of direct physical damage insured by this POLICY to INSURED PROPERTY at INSURED LOCATION(S); and

II. to expedite the permanent repair or replacement of such INSURED PROPERTY.

b. No coverage is provided under this extension for any expenses:

I. recoverable under any other section or provision in this POLICY; or

II. for permanent repair or replacement of any INSURED PROPERTY.

11. Fine Arts

a. This POLICY is extended to insure direct physical loss or damage insured by this POLICY to FINE ARTS while anywhere, including while in transit to the extent provided under **Transportation**, within the **Policy Territory**.

b. No coverage is provided under this extension for:

I. loss or damage if the FINE ARTS cannot be replaced with others of like kind and quality, unless such FINE ARTS are specifically declared to and accepted by the Company prior to the loss or damage; or

II. loss or damage caused by or resulting from or occurring during any repairing, restoration or retouching process.

12. Fire and Police Department Service Charges

a. This POLICY is extended to insure the following reasonable and necessary charges:

I. fire department firefighting charges imposed on the Insured by law or ordinance as a result of responding to a fire in, on or exposing the INSURED PROPERTY at INSURED LOCATION(S);

II. costs incurred in restoring and recharging fire protection systems at INSURED LOCATION(S) following direct physical loss or damage insured by this POLICY to INSURED PROPERTY;

III. costs incurred for the water used for fighting a fire following direct physical loss or damage insured by this POLICY in, on or exposing INSURED PROPERTY at INSURED LOCATION(S);

IV. police department charges imposed on the Insured by law or ordinance as a result of responding to a covered cause of loss in, on or exposing the INSURED PROPERTY at INSURED LOCATION(S).

b. To the extent costs are incurred as insured under this extension of coverage and such costs served to prevent the occurrence of direct physical loss or damage insured by this POLICY to INSURED PROPERTY, this extension of coverage is subject to the POLICY Deductible that would have applied to any claim for such physical loss or damage insured by this POLICY that was avoided.

13. Infrastructure System Coverage

This POLICY is extended to insure direct physical loss or damage insured by this POLICY to insured personal property that is part of communications lines, data transmission lines or any infrastructure comprising or supporting the Insured's connection to its internet service provider or ELECTRONIC DATA COMMUNICATIONS SYSTEM when, and only to the extent that, such personal property is located on INSURED LOCATION(S) and is under the Insured's exclusive operational control. Insured personal property does not include satellites or ELECTRONIC DATA.

ELECTRONIC DATA COMMUNICATIONS SYSTEM, means any communication system, including computer systems and the Internet, which provides the Insured with access to other computer systems, microchips, integrated circuits or similar devices in non-computer equipment, or which provides any party access to the Insured's computer systems, microchips, integrated circuits or similar devices in non-computer equipment.

14. Land and Water Contaminants, Cleanup, Removal and Disposal

a. This POLICY is extended to insure the reasonable and necessary cost for the cleanup, removal and disposal of CONTAMINANTS:

I. from land; or

II. from water or any other substance in or on land

at INSURED LOCATION(S) provided the release, discharge or dispersal of such CONTAMINANTS is directly caused by direct physical loss or damage insured by this POLICY to INSURED PROPERTY at INSURED LOCATION(S).

b. No coverage is provided under this extension of coverage for the cost:

I. to test for, monitor or assess the existence, concentration or effects of any CONTAMINANTS, other than the testing which is performed in the course of extracting the CONTAMINANTS;

II. to cleanup, remove and dispose of any CONTAMINANTS from land, or from water or any other substance in or on land:

1) at INSURED LOCATION(S) for which coverage is not provided hereunder for real property.

2) if the Insured fails to give written notice of loss to the Company within one hundred eighty (180) consecutive calendar days from the date of such physical loss or damage causing the release, discharge or dispersal of such CONTAMINANTS.

15. Miscellaneous Unnamed Locations

This POLICY is extended to insure INSURED PROPERTY within the **Policy Territory** that is either:

a. not listed on the latest Schedule of Locations submitted to, accepted by and on file with the Company; or

b. listed on the latest Schedule of Locations submitted to, accepted by and on file with the Company but for which the Insured has not submitted values for its interest.

16. Newly Acquired Property

a. This POLICY is extended to insure direct physical loss or damage insured by this POLICY to newly constructed real property upon completion, or real property acquired or leased within the **Policy Territory** during the term of this POLICY and personal property, while under the care, custody and control of the Insured at any such new LOCATION(S). TIME ELEMENT coverage is provided for property insured under this extension of coverage, subject to all TIME ELEMENT terms, conditions, provisions, limitations and exclusions.

b. Coverage under this **Newly Acquired Property** provision shall commence when the Insured first acquires an insurable interest at the new LOCATION(S) and shall cease after the number of days specified in the **Time Limit** section if not reported to and accepted by the Company. If reported to and accepted by the Company the coverage provided by this POLICY for that LOCATION shall be the same as for all other INSURED LOCATION(S) unless otherwise specified herein or by endorsement.

c. No coverage is provided under this coverage extension for property while in transit or waterborne, nor while on the premises of any exhibition, exposition, fair or trade show. This provision shall not be construed as providing coverage at LOCATION(S) scheduled or otherwise insured herein.

d. This **Newly Acquired Property** provision shall not increase any amounts or limits of insurance provided by this POLICY.

17. On Site Construction

This POLICY is extended to insure direct physical loss or damage insured by this POLICY to buildings and structures undergoing construction, alteration, extension, or renovation while taking place on INSURED LOCATION(S). TIME ELEMENT coverage is provided for property insured under this extension of coverage, subject to all TIME ELEMENT terms, conditions, provisions, limitations and exclusions.

18. On Site Service Interruption

This POLICY is extended to insure direct physical loss or damage insured by this POLICY, including shrinkage, evaporation, leakage of contents, change in flavor or texture or finish, decay or other spoilage, when such physical loss or damage is the result of an interruption of services caused by physical loss or damage as insured against by this POLICY, at INSURED LOCATION(S).

The period of service interruption is the period starting with the time when an interruption of specified services happens; and ending when with due diligence and dispatch the service could be wholly restored.

19. Professional Fees

a. This POLICY is extended to insure the reasonable expenses, including the cost of using the Insured's employees, incurred by the Insured, or by the Insured's representatives, for preparing the details of a claim insured by this POLICY.

b. No coverage is provided under this extension of coverage for expenses incurred by the Insured in utilizing or retaining the services of:

I. attorneys;

II. independent or public adjusters;

III. insurance agents or brokers; or

IV. any subsidiary, related or associated entities either wholly or partially owned by an attorney, insurance agent, broker, or public adjuster.

20. Protection and Preservation of Property – Property Damage

a. This Policy is extended to insure reasonable and necessary costs incurred for actions to temporarily protect or preserve INSURED PROPERTY; provided such actions are necessary due to actual, or to prevent immediately impending, direct physical loss or damage insured by this POLICY to such INSURED PROPERTY.

b. This extension is subject to the deductible and sublimit provisions that would have applied had the physical loss or damage happened.

21. Radioactive Contamination

Notwithstanding any Nuclear Exclusion clause contained herein, this POLICY is extended to insure direct physical loss or damage insured by this POLICY to INSURED PROPERTY caused by sudden and accidental radioactive contamination, including resultant radiation damage to INSURED PROPERTY provided:

a. such radioactive contamination is caused by the release of radiation from radioactive material which is commonly known to be radioactive and commonly located on an INSURED LOCATION(S);

b. such radioactive material knowingly is kept on an INSURED LOCATION(S) and its radioactivity is used for the purpose of the Insured's operations; and

c. at the time of such sudden and accidental contamination, there is neither a nuclear reactor capable of sustaining nuclear fission in a self-supporting chain reaction, nor any new or used nuclear fuel which is intended for or which has been used in a nuclear reactor, on the INSURED LOCATION(S).

22. Service Interruption – Property Damage

a. This POLICY is extended to insure direct physical loss or damage insured by this POLICY including shrinkage, evaporation, leakage of contents, change in flavor or texture or finish, decay or other spoilage to INSURED PROPERTY at INSURED LOCATION(S) when such physical loss or damage results from the interruption of services consisting of:

I. incoming electricity;

II. incoming fuel;

III. incoming gas;

IV. incoming refrigerant;

V. incoming steam;

VI. incoming water;

VII. outgoing sewerage service; or

VIII. incoming or outgoing audio, voice and video;

b. This extension of coverage applies only when such interruption of service is caused by physical loss or damage resulting from a cause of loss insured by this POLICY to any property of the type insured by this POLICY of the supplier of such services if such property is situated within the **Policy Territory** commencing when such service is interrupted and ceasing when with due diligence and dispatch such services have been or could have been restored.

c. The Insured agrees to immediately notify the suppliers of services of any interruption of such services.

d. No coverage is provided under this extension of coverage:

I. unless the period of service interruption exceeds the WAITING PERIOD specified for this extension; or

II. if the interruption of such services is caused by the failure of the Insured to comply with the terms and conditions of any terms or contracts the Insured has for the supply of such services; or

III. for loss sustained at any **Miscellaneous Unnamed Location**.

23. Temporary Removal of Property

When INSURED PROPERTY is removed from an INSURED LOCATION for the purpose of being repaired or serviced or in order to avoid threatened physical loss or damage insured by this POLICY, this POLICY insures such property:

a. while at the premises to which such property has been moved; and

b. for physical loss or damage insured by this POLICY at the INSURED LOCATION from which such property was removed.

This additional coverage does not apply to property:

a. insured, in whole or in part, elsewhere in this POLICY.

b. insured, in whole or in part, by any other insurance policy.

c. removed for normal storage, processing or preparation for sale or delivery.

24. Transportation

a. This POLICY is extended to insure the following personal property, except as excluded under **Property Not Insured**, while in transit within the **Policy Territory**:

I. personal property owned by the Insured;

II. personal property shipped to customers under F.O.B., C & F or similar terms. The Insured's contingent interest in such shipments is admitted;

III. personal property of others in the actual or constructive custody of the Insured to the extent of the Insured's interest or INSURED'S LIABILITY;

IV. personal property of others sold by the Insured, that the Insured has agreed prior to the loss to insure during the course of delivery.

b. No coverage is provided under this extension for:

I. samples in the custody of salespeople or selling agents;

II. any property insured under import or export ocean marine insurance;

III. waterborne shipments, except while on the navigable inland waters and coastwise shipments within the **Policy Territory**;

IV. airborne shipments unless by regularly-scheduled passenger airlines or air freight carriers;

V. property of others, including the INSURED'S LIABILITY for it, hauled on vehicles owned, leased or operated by the Insured when acting as a common or contract carrier;

VI. the conveyance used as the mode of transportation (including any part of equipment thereof) or containers;

VII. all materials in transit which are otherwise insured under another policy of insurance.

c. Coverage attachment and duration:

I. Coverage provided under this extension of coverage starts from the time the property leaves the original point of shipment for transit. It then insures continuously in the due course of transit within the continent in which the shipment commences until the property arrives at the destination within such continent subject to the terms and conditions set forth in a and b of this extension of coverage;

II. However, coverage on export shipments not insured under ocean cargo policies ends when such personal property is loaded onboard overseas vessels or aircraft. Coverage on import shipments not insured under ocean cargo policies starts after discharge from overseas vessels or aircraft;

III. This insurance only covers such shipments, the transportation of which begins within the term of this POLICY, even though said transportation is not completed prior to POLICY expiration.

d. This extension of coverage also insures:

I. general average and salvage charges on shipments insured while waterborne;

II. physical loss or damage to such personal property caused by or resulting from:

1) unintentional acceptance of fraudulent bills of lading, shipping or messenger receipts;

2) improper parties having gained possession of property through fraud or deceit.

e. Additional general provisions:

I. This extension will not inure to the benefit of any carrier or bailee;

II. The Insured has permission, without prejudicing this insurance, to accept:

1) ordinary bills of lading used by carriers;

2) released bills of lading;

3) undervalued bills of lading; and

4) shipping or messenger receipts.

f. The Insured may waive subrogation against railroads under side track agreements.

g. Except as otherwise stated, the Insured agrees not to enter into any special agreement with carriers releasing them from their common law or statutory liability.

25. Valuable Papers and Records

a. This POLICY insures direct physical loss or damage insured by this POLICY to VALUABLE PAPERS AND RECORDS while anywhere, including while in transit to the extent provided under **Transportation**, within the **Policy Territory**.

b. No coverage is provided under this extension of coverage for:

I. loss or damage to VALUABLE PAPERS AND RECORDS if such property cannot be replaced with others of like kind and quality, unless specifically declared to and accepted by the Company prior to the loss or damage;

II. loss or damage to property held as samples or for sale or for delivery after sale;

III. errors or omissions in processing or copying unless physical loss or damage insured by this POLICY to VALUABLE PAPERS AND RECORDS results, in which event, only such resulting physical loss or damage is insured under this extension of coverage;

IV. loss or damage to VALUABLE PAPERS AND RECORDS caused by or resulting from deterioration, inherent vice, vermin or wear and tear; all unless physical loss or damage insured by this POLICY to VALUABLE PAPERS AND RECORDS results, in which event, only such resulting physical loss or damage is insured under this extension.

SECTION V
TIME ELEMENT

A. Loss Insured

1. This POLICY insures TIME ELEMENT loss, during the **Period of Liability** directly resulting from direct physical loss or damage insured by this POLICY to INSURED PROPERTY at INSURED LOCATION(S) or as otherwise provided in this section or endorsed hereon, and subject to all terms and conditions within this POLICY.

2. This POLICY insures TIME ELEMENT loss only to the extent it cannot be reduced through:

   a. the use of any property or service owned or controlled by the Insured;

   b. the use of any property or service obtainable from other sources;

   c. working extra time or overtime; or

   d. the use of inventory.

3. The Company shall take into consideration the combined operating results of all INSURED LOCATION(S) and associated, affiliated or subsidiary companies of the Insured in determining the TIME ELEMENT loss.

4. This POLICY insures expenses reasonably and necessarily incurred by the Insured to reduce the loss otherwise payable under this section. The amount of such recoverable expenses will not exceed the amount by which the loss otherwise payable hereunder is reduced.

5. The Insured agrees to:

   a. act with due diligence and dispatch in repairing or replacing physically damaged buildings and equipment to the same or equivalent physical and operating conditions that existed immediately prior to such physical loss or damage; and

   b. take whatever actions are necessary and reasonable to minimize the loss payable hereunder.

6. In determining the amount of loss payable, the Company will consider:

   a. the experience of the business before and after; and

   b. the probable experience during

   the **Period of Liability**.

7. There will be no recovery of loss under this **Time Element** section of this POLICY when there is recovery elsewhere in this POLICY.

B. Gross Earnings

1. The recoverable **Gross Earnings** loss is the Actual Loss Sustained by the Insured due to the necessary interruption of the Insured's business during the **Period of Liability** as respects **Gross Earnings** less all charges and expenses that do not, or did not necessarily, continue during such interruption.

2. In determining the indemnity payable as the Actual Loss Sustained by the Insured, the Company will consider the continuation of only those normal charges and expenses that would have been incurred had no interruption of the Insured's business occurred.

3. There is recovery herein but only to the extent that the Insured is:

a. wholly or partially prevented from producing goods or continuing business operations or services;

b. unable to make up lost production within a reasonable period of time, not limited to the period during which production is interrupted;

c. unable to continue its operations or services during the **Period of Liability**; and

d. able to demonstrate a loss of SALES resulting from an interruption in operations, services or production.

4. For the purpose of this insurance, **Gross Earnings** are defined as the sum of:

a. As respects:

I. manufacturing operations, the net SALES value of production less the cost of all RAW STOCK, materials and supplies used in such production; or

II. mercantile or non-manufacturing operations, the total net SALES less cost of MERCHANDISE sold, materials and supplies consumed in the operations or services rendered by the Insured; and

b. all other earnings derived from the operation of the business.

Any amount recovered at selling price for physical loss or damage to FINISHED GOODS or MERCHANDISE, which has been valued at the selling price, will be considered to have been sold to the Insured's regular customers and will be credited against claimed loss of net SALES.

C. Period of Liability

1. The **Period of Liability** applying to all TIME ELEMENT coverages, except **Leasehold Interest** and as shown below, or if otherwise provided under the TIME ELEMENT coverage extensions, is as follows:

a. For building and equipment, the period of time:

I. starting on the date of physical loss or damage insured by this POLICY to INSURED PROPERTY; and

II. ending when with due diligence and dispatch the building and equipment could be repaired or replaced with current materials of like size, kind and quality and made ready for operations;

under the same or equivalent physical and operating conditions that existed immediately prior to such physical loss or damage.

Such period of time is not limited by the POLICY expiration date.

b. For stock-in-process and MERCHANDISE, including finished goods not manufactured by the Insured, the period of time required with the exercise of due diligence and dispatch:

I. to restore stock-in-process to the same state of manufacture in which it existed at the inception of the interruption of the Insured's business; and

II. to replace physically damaged MERCHANDISE.

c. For raw materials and supplies, the period of time:

I. of the actual interruption of the Insured's business resulting from the Insured's inability to obtain suitable raw materials and supplies similar to those damaged; but

II. limited to that period of time for which the damaged raw materials and supplies would have supplied operating needs.

d. For physical loss or damage to MEDIA, the period of time required to copy from backups or from originals of a previous generation. Such period of time shall include all reasonable and necessary time, incurred by the Insured in recreating, gathering and assembling such ELECTRONIC DATA.

e. For physical loss or damage to exposed films, records, manuscripts and drawings, the period of time required to copy from backups or from originals of a previous generation. Such period of time shall include all reasonable and necessary time, incurred by the Insured in recreating, gathering and assembling such ELECTRONIC DATA.

2. The **Period of Liability** does not include any additional time due to the Insured's inability to resume operations for any reason, including but not limited to:

a. making changes to the equipment;

b. making changes to the buildings or structures;

c. re-staffing or re-training employees. However, this item **c.** does not apply to additional time needed to train staff to use new machinery or equipment that replaces machinery or equipment that suffered insured physical loss or damage, provided such training is completed within 90 consecutive days after the new machinery or equipment has been installed.

3. If more than one **Period of Liability** applies, such periods will not be cumulative.

D. Extra Expense

1. The recoverable **Extra Expense** loss is the reasonable and necessary extra costs incurred by the Insured during the **Period of Liability** as respects the following:

a. extra costs to temporarily continue as nearly normal as practicable the conduct of the Insured's business; and

b. extra costs of temporarily using property or facilities of the Insured or of others;

c. costs to purchase FINISHED GOODS from third parties to fulfill orders when such orders cannot be met due to physical loss or damage to the Insured's FINISHED GOODS, less payment received for the sale of such FINISHED GOODS;

d. less any value remaining at the end of the **Period of Liability** for any property obtained in connection with the above.

Time Element Exclusion paragraph **D.3.** does not apply to paragraph **c.** above.

2. No coverage is provided herein for:

a. any loss of income;

b. costs that normally would have been incurred in conducting the Insured's business during the same period had no physical loss or damage insured by this POLICY to INSURED PROPERTY occurred;

c. cost of permanent repair or replacement of any property that has sustained physical loss or damage; or

d. any expense recoverable elsewhere in this POLICY.

E. Rental Insurance

1. The recoverable **Rental Insurance** loss is the Actual Loss Sustained by the Insured during the **Period of Liability** as respects:

   a. the fair rental value of any portion of an INSURED LOCATION(S) occupied by the Insured that the Insured is unable to occupy following physical loss or damage insured by this POLICY;

   b. the income reasonably expected from rentals of unoccupied or unrented portions of INSURED LOCATION(S) available for rent at the time of physical loss or damage insured by this POLICY; and

   c. the rental income from the rented portions of INSURED LOCATION(S) according to bona fide leases, contracts or agreements in force at the time of physical loss or damage insured by this POLICY to such real property;

   all not to include non-continuing charges and expenses.

2. No coverage is provided herein for any loss of rental income during any period in which INSURED PROPERTY would not have been tenantable for any reason other than physical loss or damage insured by this POLICY, except as otherwise provided under **Extended Period of Liability**.

F. Time Element Coverage Extensions, Terms and Conditions

The following are subject to all terms, conditions, provisions, limitations and exclusions of this POLICY and in addition, any other terms, conditions, provisions, limitations and exclusions set forth below.

1. Commissions, Licensing Fees and Royalties

a. The recoverable **Commissions, Licensing Fees and Royalties** loss is **Gross Earnings** loss incurred by the Insured during the **Period of Liability** less any non-continuing expenses and charges.

b. The recoverable **Commissions, Licensing Fees and Royalties** loss incurred is **Gross Earnings** lost by the Insured during the **Period of Liability** under any royalty, licensing fee, franchise fee or commission agreements between the Insured and another party which is not realizable due to direct physical loss or damage insured by this POLICY to any property, except of the type excluded under **Property Not Insured**, of the other party at any LOCATION(S) situated within the **Policy Territory**.

c. The Insured agrees to influence, to the extent possible, the other party with whom the agreements described above have been made to use any other machinery, supplies or LOCATION(S) in order to resume business so as to reduce the amount of loss payable hereunder, and the Insured agrees to cooperate with that party in every way to effect this.

d. No coverage is provided hereunder for any costs to effect the above unless authorized in advance by the Company.

e. In determining the amount of loss payable hereunder, the Company will consider the amount of income derived from such agreements before and the probable amount of income after the date of such physical loss or damage had no loss occurred.

f. Recovery is available hereunder only if such physical loss or damage interrupts the delivery of goods in whole or in part to the Insured or for the Insured's account.

2. Contingent Time Element

a. This POLICY is extended to insure loss of **Gross Earnings**, **Rental Insurance**, and **Extra Expense** incurred by the Insured during the **Period of Liability** directly resulting from direct physical loss or damage insured by this POLICY to any property, except of the type as excluded under **Property Not Insured**, at any LOCATION(S) of suppliers or customers, provided that such physical loss or damage prevents:

I. such suppliers from supplying goods or services directly or indirectly to the Insured;

II. such customers from receiving goods or services directly or indirectly from the Insured;

provided that such LOCATION(S) of suppliers or customers are situated within the **Policy Territory.**

b. Specified limits for this extension are shown in the **Coverage Purchased and Coverage Not Purchased** section of this POLICY for:

I. those direct suppliers and customers who have been specifically named by the Insured have been submitted to, accepted by and on file with the Company;

II. those direct suppliers and customers who have not been specifically named by the Insured; and

III. all indirect suppliers and customers.

c. As used herein, suppliers or customers do not include any company supplying to or receiving from INSURED LOCATION(S) electricity, fuel, gas, refrigerant, sewage, steam, water, telecommunications, audio, data or video.

3. Extended Period of Liability

a. The coverage provided hereunder for loss of **Gross Earnings** and **Rental Insurance** is extended to insure for only up to the additional length of time shown for **Extended Period of Liability** in the **Coverage Purchased and Coverage Not Purchased** section as would be required with the exercise of due diligence and dispatch to restore the Insured's business to the condition that would have existed had no physical loss or damage insured by this POLICY occurred;

b. The Time Limit for this extension of coverage starts on the date the applicable **Period of Liability** ends.

4. Impounded Water

a. This POLICY is extended to insure loss of **Gross Earnings**, **Rental Insurance**, and **Extra Expense** incurred by the Insured due to the necessary interruption of the Insured's business caused by inadequate water supply.

b. It is a condition precedent to recovery under this extension that such inadequate water supply is a direct result of the release of water:

I. stored behind dams or in reservoirs; and

II. at INSURED LOCATION(S); and

III. used for any manufacturing purpose, including but not limited to as raw material or for power production; and

IV. caused by direct physical loss or damage insured by this POLICY to such dams or reservoirs, or to equipment connected thereto.

5. Ingress / Egress

This POLICY is extended to insure loss of **Gross Earnings**, **Rental Insurance**, and **Extra Expense** incurred by the Insured due to the necessary interruption of the Insured's business, provided that:

a. the interruption directly results from the prevention of direct ingress to or direct egress from INSURED LOCATION(S), whether or not INSURED PROPERTY at such INSURED LOCATION(S) is damaged; and

b. the prevention above is caused by direct physical loss or damage insured by this POLICY to any property, including property excluded under **Property Not Insured**.

6. Leasehold Interest

a. This POLICY is extended to insure **Leasehold Interest** loss is as follows:

In the event of direct physical loss or damage insured by this POLICY to INSURED LOCATION(S) at which the Insured leases space and pursuant to a written lease, if the lease agreement requires continuation of rent and if the property is wholly untenantable or unusable due to such physical loss or damage:

I. the actual rent payable for the unexpired term of the lease; or,

II. if the property is partially untenantable or unusable, the proportion of the rent payable for the unexpired term of the lease; or,

III. If the lease is canceled by the lessor pursuant to the lease agreement or by the operation of law:

1) the LEASE INTEREST for the first three (3) consecutive calendar months following the physical loss or damage; and

2) the NET LEASE INTEREST for the remaining unexpired term of the lease.

LEASE INTEREST means the excess rent paid for the same or similar replacement property over actual rent payable plus cash bonuses or advance rent paid (including maintenance or operating charges) for each month during the unexpired term of the Insured's lease.

NET LEASE INTEREST means the present value amount, which placed at the prime rate of annual interest effective on the date of physical loss or damage, as published in the Wall Street Journal, would equal the LEASE INTEREST (less any amounts otherwise payable hereunder).

b. No coverage is provided for any increase in loss resulting from:

I. the suspension, cancellation or lapse of any license;

II. the Insured exercising an option to extend, renew or cancel the lease;

III. any act or omission of the Insured that constitutes a default under the lease;

IV. the Insured's loss of **Leasehold Interest** resulting from physical loss or damage to personal property.

7. Order of Civil or Military Authority

This POLICY is extended to insure loss of **Gross Earnings**, **Rental Insurance**, and **Extra Expense** incurred by the Insured due to the necessary interruption of the Insured's business, provided that:

a. the interruption directly results from an order of a civil or military authority that prohibits partial or total access to INSURED LOCATION(S); and

b. the order referenced above is caused by direct physical loss or damage insured by this POLICY to property of the type insured.

8. Protection and Preservation of Property – Time Element

a. This POLICY is extended to insure loss of **Gross Earnings**, **Rental Insurance**, and **Extra Expense** incurred by the Insured for a period of time after the Insured has first taken reasonable action for the temporary protection and preservation of property insured by this POLICY provided such action is necessary to prevent immediately impending direct physical loss or damage insured by this POLICY to such INSURED PROPERTY.

b. This extension is subject to the deductible provisions that would have applied had the physical loss or damage happened.

9. Related Reported Values

If:

a. reported TIME ELEMENT values include values for LOCATION(S) used by the Insured (such as branch stores, SALES outlets and other plants) but such LOCATION(S) are not listed on the latest schedule submitted to, accepted by and on file with the Company; and

b. a TIME ELEMENT loss results at such LOCATION(S) due to direct physical loss or damage insured by this POLICY to INSURED PROPERTY at INSURED LOCATION(S);

then this POLICY is extended to insure such resulting TIME ELEMENT loss in accordance with the coverage applicable at the INSURED LOCATION(S) where such physical loss or damage occurred.

10. Service Interruption – Time Element

a. This POLICY is extended to insure loss of **Gross Earnings**, **Rental Insurance**, and **Extra Expense** incurred by the Insured at INSURED LOCATION(S) when such loss results from the interruption of services consisting of:

I. in coming electricity;

II. incoming fuel;

III. incoming gas;

IV. incoming refrigerant;

V. incoming steam;

VI. incoming water;

VII. outgoing sewerage service; or

VIII. incoming or outgoing audio, voice and video;

b. This extension of coverage applies only when such interruption of service is caused by direct physical loss or damage insured by this POLICY to any property of the type insured by this POLICY of the supplier of such services if such property is situated within the **Policy Territory**.

c. The Insured agrees to immediately notify the suppliers of services of any interruption of such services.

d. No coverage is provided under this extension of coverage:

I. unless the period of service interruption exceeds the WAITING PERIOD specified for this extension; or

II. if the interruption of such services is caused by the failure of the Insured to comply with the terms and conditions of any contracts the Insured has for the supply of such services; or

III. for loss sustained at any **Miscellaneous Unnamed Location;** or

IV. for loss or damage caused by or resulting from EARTH MOVEMENT for property located in California, in the NEW MADRID SEISMIC ZONE or in the PACIFIC NORTHWEST SEISMIC ZONE, regardless of any other cause or event, whether or not insured under this Policy, contributing concurrently or in any other sequence to the loss.

11. Ordinary Payroll

a. This POLICY is extended to insure loss of Ordinary Payroll. Ordinary Payroll is the entire payroll expense for all employees of the insured except officers, executives, employees under contract, and other critical employees.

SECTION VI
EXCLUSIONS

A. Property Not Insured

INSURED PROPERTY does not include and this POLICY does not insure loss or damage to the following:

1. bills, notes, MONEY, SECURITIES, PRECIOUS METALS, precious stones, semi-precious stones, jewelry, furs;

2. land, water or any other substance in or on land, except this exclusion does not apply to:

   a. LAND IMPROVEMENTS

   b. water which is normally contained within any enclosed tank, piping system or any other processing equipment;

3. animals, growing and standing crops, trees, standing timber, plants, shrubs and lawns, except this exclusion does not apply to property that is LAND IMPROVEMENTS as defined herein;

4. aircraft or watercraft and contents thereof, rolling stock, spacecraft, satellites including their launch vehicles and launch sites;

5. waterborne equipment or OFFSHORE property, including any OFFSHORE drilling and production rigs. Offshore property means property away from the shore but not connected to the shore by dock, piers or any other physical connection other than pipelines. In the Gulf of Mexico off Texas and Louisiana, OFFSHORE is to be seaward of the Inland edge of the Lease Block of the Plane Coordinate System, as defined on United States Department of Land Management Leasing Maps;

6. motor vehicles licensed for highway use, except when at INSURED LOCATION(S). This POLICY does insure the INSURED'S LIABILITY for motor vehicles of others while at INSURED LOCATION(S);

7. underground mines, mine shafts, caverns, tunnels, or any property within such underground mines, mine shafts, caverns or tunnels;

8. underwater piping and its contents, fittings, conduits, drains or flues, all situated outside INSURED LOCATION(S);

9. air supported structures and the contents thereof;

10. bulkheads, bridges, retaining walls, revetments, dikes, jetties, wharves, piers, docks, levees and property thereon when loss or damage is caused by action of water or ice or impact of watercraft;

11. above ground transmission and distribution lines including but not limited to wires, cables, poles, pylons, transformers, standards, towers or other supporting structures, which may be attendant to the transmission or distribution of electrical power, telephone or telegraph signals, and all other communications signals, whether audio or visual. However, this exclusion does not apply when such property is situated at INSURED LOCATION(S). Nor does this exclusion apply to coverage granted under **Service Interruption** provisions of this POLICY;

12. nuclear power plants, facilities handling or processing nuclear fuel or waste;

13. property in transit, except as otherwise provided under the **Transportation** provision of this POLICY;

14. property sold by the Insured under conditional sale, trust agreement, installment plan or other deferred payment plan after delivery to customers;

15. the Insured's product when loss or damage is caused by or results from errors in design, poor workmanship, or use of faulty materials, in the development, processing, testing or manufacture of the Insured's product;

16. stock or materials when loss or damage is caused by manufacturing or processing operations which result in damage to such property while being processed, manufactured, tested or otherwise being worked upon;

17. MEDIA for, or programming records pertaining to electronic and electromechanical data processing or electronically controlled equipment, including the data thereon when loss or damage is caused by error or omission in machine programming or instructions to machine;

18. ELECTRONIC DATA, except as may be otherwise provided under **Data Restoration** coverage provided elsewhere;

B. Types of Loss or Damage Not Insured

This POLICY does not insure against the following types of loss or damage:

1. a. indirect or remote loss or damage;

   b. delay or loss of market; or

   c. interruption of business unless otherwise provided hereon.

2. the cost of correcting or making good:

   a. faulty workmanship, material, construction or design; or

   b. inherent or latent defects;

3. unexplained or mysterious disappearance of any property, or shortage disclosed by audit or upon taking inventory;

4. accumulated effects of smog, smoke, vapor, liquid and dust;

5. a. wear and tear, deterioration, depletion, erosion, corrosion;

   b. settling, cracking, shrinkage, bulging or expansion of pavements, foundations, walls, floors, roofs or ceilings; or

   c. shrinkage, evaporation, leakage of contents, change in flavor or texture or finish, decay or other spoilage;

   unless physical loss or damage insured by this POLICY results, then only that resulting loss or damage is insured.

6. mold, mildew, fungus, spores or other microorganism of any type, nature, or description, including but not limited to any substance whose presence poses an actual or potential threat to human health, wet rot or dry rot, unless such loss or damage results directly from physical loss or damage insured by this POLICY and then only to the limit of liability shown in the **Coverage Purchased and Coverage Not Purchased** section of this POLICY.

   If no limit of liability is shown in the **Coverage Purchased and Coverage Not Purchased** section of this POLICY, then this exclusion applies regardless whether there is:

   a. any physical loss or damage to INSURED PROPERTY;

   b. any insured cause of loss or damage, whether or not contributing concurrently or in any sequence;

c. any loss of use, occupancy, or functionality; or

d. any action required, including but not limited to repair, replacement, removal, cleanup, abatement, disposal, relocation, or steps taken to address medical or legal concerns.

7. Any loss or damage, both PROPERTY DAMAGE and TIME ELEMENT, occasioned by damage to or failure of, any type whatsoever, to the internet including the World Wide Web (WWW), unless physical loss or damage insured by this POLICY results, then only that resulting loss or damage is insured.

8. Any loss resulting from the voluntary parting with title or possession of property if induced by any fraudulent act or by false pretense.

C. Causes of Loss Not Insured

This POLICY does not insure against loss or damage caused by any of the following:

1. Animals, vermin or insects unless physical loss or damage insured by this POLICY results, then only that resulting loss or damage is insured;

2. Any fraudulent: dishonest or other act intended to result in a financial gain of the Insured or any associate, proprietor, director, trustee, officer, employee or agent of any insured;

3. Dampness or dryness of atmosphere, or extremes or changes of temperature, unless physical loss or damage insured by this POLICY results, then only that resulting loss or damage is insured;

4. Lack of the following services when caused by loss or damage to any property outside INSURED LOCATION(S):

   a. incoming electricity, fuel, gas, refrigerant, steam, water;

   b. outgoing sewerage; or

   c. incoming or outgoing audio, voice and video;

   This exclusion does not apply to the **Service Interruption – Property Damage** and **Service Interruption - Time Element** provisions of this POLICY.

5. Loss or damage due to the discharge, dispersal, seepage, migration, release or escape of CONTAMINANTS (except as provided under the **Radioactive Contamination** provision of this POLICY), unless the discharge, dispersal, seepage, migration, release or escape is directly caused by physical loss or damage insured by this POLICY.

6. Loss or damage caused by any of the following, regardless of any other cause or event contributing concurrently or in any other sequence to the loss or damage:

   a. Nuclear reaction or nuclear radiation, or radioactive contamination (except as provided under the **Radioactive Contamination** provision of this POLICY), all whether controlled or uncontrolled. However, subject to the foregoing and all provisions of this POLICY, direct loss by fire resulting from nuclear reaction or nuclear radiation or radioactive contamination is insured against by this POLICY.

   b. Hostile or warlike action in time of peace or war, including action in hindering, combating or defending against an actual, impending or expected attack:

      I. by any government or sovereign power (de jure or de facto), or by any authority maintaining or using military, naval or air forces; or

      II. by military, naval or air forces; or

III. by an agent of any such government, power, authority or forces;

it being understood that any discharge, explosion or use of any weapon of war employing nuclear fission or fusion shall be conclusively presumed to be such a hostile or warlike action by such a government, power, authority or forces;

c. insurrection, rebellion, revolution, civil war, usurped power, or action taken by governmental authority in hindering, combating or defending against such an OCCURRENCE.

d. The unlawful possession, use, release, discharge, dispersal or disposal of any chemical, bacteriological, viral, radioactive or similar agents or matter regardless of who is responsible for the act and whether war has been declared or not.

e. The unlawful possession, use, release, discharge, detonation, dispersal or disposal of any device or material capable of producing a nuclear reaction or the spread of radioactivity, regardless of who is responsible for the act and whether war has been declared or not.

7. Enforcement of any law, ordinance, regulation or rule regulating or restricting the construction, installation, repair, replacement, demolition, occupancy, operation or other use of property on INSURED LOCATION(S) except as provided in the **Demolition and Increased Cost of Construction** provision of this POLICY.

8. Any increase of loss resulting from interference at INSURED LOCATION(S) by strikers or other persons, with rebuilding, repairing or replacing property or with the resumption or continuation of business.

9. Any loss, damage, destruction, distortion, erasure, corruption or alteration of ELECTRONIC DATA from any cause whatsoever (including but not limited to COMPUTER VIRUS) or loss of use, reduction in functionality, cost, expense of whatsoever nature resulting there from, unless physical loss or damage insured by this POLICY results, then only that resulting loss or damage is insured.

ELECTRONIC DATA means facts, concepts and information converted to a form useable for communications, interpretation or processing by electronic and electromechanical data processing or electronically controlled equipment and includes programs, software, and other coded instructions for the processing and manipulation of data or the direction and manipulation of such equipment.

COMPUTER VIRUS means a set of corrupting, harmful or otherwise unauthorized instructions or code including a set of maliciously introduced unauthorized instructions or code, programmatic or otherwise, that propagate themselves through a computer system or network of whatsoever nature. COMPUTER VIRUS includes but is not limited to 'Trojan Horses', 'worms' and 'time or logic bombs'.

10. a. explosion in or of the following property owned, operated or controlled by the Insured: steam boilers, including equipment attached to and forming a part thereof; steam turbines; steam engines; steam pipes interconnecting any of the foregoing; or gas turbines; except that liability is specifically assumed for loss resulting from EXPLOSION of accumulated gases or unconsumed fuel within the firebox (or the combustion chamber) of any fired vessel, other than gas turbines, or within the flues or passages which conduct the gases of combustion there from;

b. rupture, bursting, cracking, burning or bulging of: steam boilers including equipment attached to and forming a part thereof; steam turbines; steam engines; steam pipes interconnecting any of the foregoing; hot water boilers or other equipment for heating water; pressure vessels, including equipment attached to and forming a part thereof; or, gas turbines;

c. mechanical or machinery breakdown, including rupture or bursting caused by centrifugal force;

d. electrical injury or disturbance to electrical appliances, devices, fixtures, wiring, or other electrical or electronic equipment caused by electrical currents artificially generated;

nor does this POLICY insure against resulting damage to INSURED PROPERTY caused by such OCCURRENCE(S) except damage from resulting fire, water or other means to extinguish a fire, or combustion EXPLOSION outside any of the property described in this exclusion.

EXPLOSION shall mean: explosion, except loss by explosion in or of the following property owned, operated or controlled by the Insured:

a. steam boilers, steam turbines, steam engines, steam pipes interconnecting any of the foregoing, or gas turbines;

b. moving or rotating machinery or parts of same when such loss is caused by centrifugal force or mechanical breakdown;

c. any property undergoing pressure test to the extent of loss to such property undergoing test, including equipment attached to and forming part of such property.

The foregoing exceptions (a. through c.) are modified to the extent that liability is specifically assumed for loss resulting from:

a. malicious use of explosives;

b. EXPLOSION of accumulated gases or unconsumed fuel within the firebox (or the combustion chamber) of any fired vessel, other than gas turbines, or within the flues or passages which conduct the gases of combustion there from.

The following are not EXPLOSIONS within the intent or meaning of this exclusion:

a. electric arcing or any coincident rupture of electrical equipment due to such arcing;

b. bursting, rupture or collapse caused by freezing;

c. shock waves generated by aircraft, generally known as sonic boom;

d. bursting, rupture or collapse of any safety disc, rupture diaphragm or fusible plug.

D. Time Element Exclusions

1. This POLICY does not insure against TIME ELEMENT loss for any period during which business would not or could not have been conducted for any reason other than physical loss or damage insured by this POLICY to INSURED PROPERTY.

2. This POLICY does not insure against any increase in the TIME ELEMENT loss due to:

   a. suspension, cancellation or lapse of any lease, contract, license or orders;

   b. damages for breach of contract or for late or non-completion of orders;

   c. fines or penalties of any nature; or

   d. any other consequential or remote loss.

   However, a. and d. above do not apply to **Extended Period of Liability** provision of this POLICY.

3. This POLICY does not insure against any **Gross Earnings** loss resulting from loss or damage to FINISHED GOODS manufactured by the Insured or MERCHANDISE when valued at its selling price, nor the time required for their reproduction.

SECTION VII
VALUATION

A. Adjustment of the loss amount for physical loss or damage insured by this POLICY will be computed as of the date of loss at the INSURED LOCATION(S) where such physical loss or damage occurred, and for no more than the interest of the Insured in such property, subject to the following:

1. buildings and structures, building equipment, plant equipment, machinery, machine parts, office furniture, office equipment, tools, dies, jigs, templates, patterns and flasks, except all such property that is obsolete or useless to the Insured:

   a. if repaired, rebuilt or replaced, at the same or at another site, within two (2) consecutive calendar years from the date of loss or damage, the lesser of the following:

      I. the cost to repair, rebuild or replace on the same site, with new and current materials of like size, kind and quality, whichever is the least;

      II. the actual expenditure incurred by or on behalf of the Insured in repairing, rebuilding or replacing on the same or another site, whichever is the least;

      but in no event to include any increased costs resulting from the enforcement of any law, ordinance, regulation or rule regulating or restricting the construction, installation, repair, replacement, demolition, occupancy, operation or other use of property at INSURED LOCATION(S);

   b. if not repaired, rebuilt or replaced, at the same or another site, within two (2) consecutive calendar years from the date of loss or damage:

      the ACTUAL CASH VALUE at the time and place of loss.

2. catalysts or refractory material:

   the ACTUAL CASH VALUE of the material which equals the replacement cost at the time of loss or damage multiplied by the remaining useful life factor. Remaining useful life factor means the normal useful life of the material in months minus the number of months the material had been in use at the time of the loss or damage, divided by the normal useful life of the material in months.

3. FINISHED GOODS manufactured by the Insured:

   a. the regular cash selling price less all discounts and charges to which the FINISHED GOODS would have been subject and a commensurate reduction to reflect waste, pilferage, breakage, spoilage or other factors that would have affected the sale of FINISHED GOODS had no physical loss or damage occurred.

4. motor vehicles or other mobile equipment not manufactured by the Insured, the least of the following:

   a. the repair cost;

   b. the replacement cost; or

   c. the ACTUAL CASH VALUE if not replaced.

5. Pair, Set or Parts - In the event of loss of or damage (as insured against by this POLICY) to:

   a. any article or articles which are a part of a pair or set, the measure of loss of or damage to such article or articles shall be a reasonable and fair proportion of the total value of the pair or set, giving consideration to the importance of said article or articles, but in no event shall such loss or damage be construed to mean total loss of the pair or set; or

b. any part of INSURED PROPERTY consisting, when complete for use, of several parts, the Company shall be liable only for the value of the part lost or damaged.

6. RAW STOCK, MERCHANDISE and supplies:

the replacement cost, unless the regular cash selling price less all discounts and charges for merchandise has been specifically submitted to, accepted by and on file with the Company.

7. STOCK IN PROCESS:

a. the replacement cost of raw materials;

b. the cost of labor expended at the time of loss or damage; and

c. the proper proportion of overhead charges.

8. exposed films, records, manuscripts, and drawings that are not VALUABLE PAPERS AND RECORDS:

a. the replacement cost of exposed films, records, manuscripts, and drawings blank; plus

b. the cost of copying information from back-ups or from originals of a previous generation;

c. excluding all other costs, such as the cost for research or engineering, incurred in restoring or recreating the information lost.

9. VALUABLE PAPERS AND RECORDS, the least of the following:

a. the reasonable and necessary costs to repair or restore to a functional usage condition;

b. the replacement cost;

c. excluding all other costs, such as the cost for research, engineering, programming, or assembling or gathering information, incurred in restoring or recreating the ELECTRONIC DATA lost, except as may be otherwise provided under **Data Restoration** coverage provided elsewhere.

10. ELECTRONIC DATA PROCESSING MEDIA

a. if repaired or replaced within two (2) consecutive calendar years from the date of loss or damage:

I. the cost of the MEDIA blank; plus the cost to repair, replace or restore such MEDIA to the condition that existed immediately prior to such loss or damage, including the cost of copying the ELECTRONIC DATA from back-ups or from originals of a previous generation;

b. if not repaired or replaced within two (2) consecutive calendar years from the date of loss or damage:

I. the replacement cost of the MEDIA blank;

c. excluding all other costs, such as the cost for research, engineering, programming, or assembling or gathering information, incurred in restoring or recreating the ELECTRONIC DATA lost, except as may be otherwise provided under **Data Restoration** coverage provided elsewhere.

11. FINE ARTS, the least of the following:

a. the reasonable and necessary costs to repair or restore to the functional usable condition that existed immediately prior to the physical of loss or damage;

b. the replacement cost of substantially identical property;

c. the ACTUAL CASH VALUE if not repaired or replaced or designated;

d. the amount designated, if any, for such FINE ARTS on the latest schedule submitted to, accepted by and on file with the Company.

e. In the event a FINE ARTS article is part of a pair or set, and such article, if physically damaged, cannot be repaired or replaced or restored to the physical condition that existed immediately prior to the physical loss or damage, the amount recoverable under this POLICY will be limited to the lesser of the following:

I. the full value of the pair or set; or

II. the amount designated, if any, for such FINE ARTS pair or set on the latest schedule submitted to, accepted by and on file with the Company.

The Insured agrees to surrender the pair or set to the Company.

12. property insured under **Transportation**:

a. As respects property shipped to or for the account of the Insured, the actual invoice to the Insured including accrued costs and charges legally due to the Insured. Such charges may include the Insured's commission as a selling agent.

b. As respects property sold by the Insured and shipped to or for the purchaser's account, the Insured's selling invoice amount including prepaid or advanced freight costs.

c. As respects property not under invoice:

I. for property of the Insured, based on the **Valuation** provisions applying to the LOCATION from which the property is being transported;

II. for other property, the ACTUAL CASH VALUE at the destination point on the date of the OCCURRENCE;

less any charges saved which would have become due and payable upon arrival at destination.

13. IMPROVEMENTS AND BETTERMENTS:

a. if repaired or replaced at the expense of the Insured within two (2) consecutive calendar years from the date of loss or damage, the lesser of the following:

I. the cost to repair or replace the lost or damaged IMPROVEMENTS AND BETTERMENTS with new and current materials of like size, kind and quality, whichever is less;

II. the actual expenditure incurred in repairing or replacing the lost or damaged IMPROVEMENTS AND BETTERMENTS, whichever is less;

b. if not repaired or replaced within two (2) consecutive calendar years after such loss or damage:

that proportion of the original cost at the time of installation of the lost or damaged IMPROVEMENTS AND BETTERMENTS which the unexpired term of the lease at the time of loss or damage bears to the period from the date such IMPROVEMENTS AND BETTERMENTS were made to the expiration date of the lease as of the date of loss or damage, and not including any rights or options for extensions or renewals;

c. if repaired or replaced at the expense of others for the use of the Insured, there shall be no liability hereunder.

14. unrepairable electrical or mechanical equipment, including computer equipment:

the cost to replace such damaged or destroyed property with the most functionally equivalent new and current equipment of like size, kind and quality even if such equipment:

a. has technological advantages;

b. represents an improvement in function; or

c. forms part of a program or system enhancement.

15. property planned and/or scheduled for demolition at the time of the loss or damage:

only the increased cost of demolition, if any, resulting from physical loss or damage insured by this POLICY.

16. real property or machinery and equipment, other than stock, held for sale at the time of the loss or damage. The lesser of the following:

a. the reasonably anticipated selling price;

b. market value.

17. personal property of others for which the Insured is legally liable in the event of loss or damage:

the amount for which the Insured is legally liable, but not to exceed the ACTUAL CASH VALUE of such property.

18. all other property, including property that is obsolete or useless to the Insured:

the ACTUAL CASH VALUE.

B. The Insured may elect not to repair or replace any real and personal property lost, destroyed or damaged and insured hereunder. Loss settlement may be elected on the lesser of repair or replacement cost basis if the proceeds of such loss settlement are expended on other capital expenditures related to the Insured's operations within two (2) consecutive calendar years from the date of physical loss or damage. As a condition of collecting herein, such expenditure must be unplanned as of the date of physical loss or damage. This does not extend to **Demolition and Increased Cost of Construction** provision of this POLICY.

SECTION VIII
LOSS ADJUSTMENT AND SETTLEMENT

A. Abandonment

There may be no abandonment of any property to the Company.

B. Collection from Others

The Company will not be liable for any loss or damage insured hereunder to the extent that the Insured has collected for such loss or damage from others or others have funded the repair or replacement of any property lost or damaged.

C. Company Option

1. Subject to the **Control of Damaged Property** provision, the Company has the option to take all or any part of damaged property at the agreed value within a reasonable time.

2. The Company must give notice to the Insured of its intention to do so within thirty (30) consecutive calendar days after receipt of the signed and sworn to proof of loss required by this POLICY.

D. Dispute Resolution / Optional Arbitration Provision

Upon the mutual agreement of the Company and the Insured, any controversy or dispute arising out of or relating to this POLICY, or the breach, termination or validity thereof, shall be resolved in accordance with the procedures specified herein.

1. Negotiation and Mediation

   The Insured and the Company shall attempt in good faith to resolve any controversy or dispute arising out of or relating to this POLICY promptly by negotiations between representatives who have authority to settle the controversy. If the dispute cannot be resolved by negotiation, the parties shall endeavor to settle the dispute through a confidential mediation with the assistance of a mediator mutually selected by the parties. To the extent the parties are unable to select a mutually agreeable mediator, each party will propose three mediators. Each party then shall strike two of the mediators proposed by the other, leaving one mediator as proposed by each party. A coin then shall be tossed, with the Insured calling heads or tails, with the prevailing party in the coin toss having its remaining proposed mediator jointly engaged by the parties to mediate the dispute, with the cost being split equally among the parties.

2. Arbitration

   a. If a resolution cannot be achieved through the negotiation and mediation process as set forth above, the parties can mutually agree to submit the remaining dispute to be determined through binding arbitration before a panel of three arbitrators in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA"). Provisions in the Commercial Arbitration Rules pertaining to mediation shall not apply.

   b. Notwithstanding anything to the contrary in the Commercial Arbitration Rules, the panel of arbitrators shall be constituted as follows. The Insured and the Company each shall appoint one arbitrator within 14 days of mutually agreeing to arbitrate. The third arbitrator, who shall serve as the chair of the arbitration panel, shall be appointed by the parties upon mutual agreement. If the parties are unable to mutually agree upon a third arbitrator within 30 days of the selection of party-appointed arbitrators, the AAA shall appoint the chairperson in accordance with the rules for doing so in the Commercial Arbitration Rules.

c. In any such arbitration, the terms of this POLICY are to be construed in an evenhanded fashion as between the Insured and the Company in accordance with the laws of the state of New York. The arbitrators are not empowered to award damages in excess of compensatory damages and each party hereby irrevocably waives such damages.

3. Appraisal Provision

If the Insured and the Company fail to agree on the amount of loss to be paid for a claim insured by this POLICY and a resolution cannot be achieved through the negotiation and mediation process as set forth above, and the parties do not mutually agree to submit the dispute to be determined through binding arbitration, either may elect to have that dispute resolved by appraisal by making a written demand upon the other. The venue of the appraisal shall be the State and County of the mailing address for the Insured as set forth in the Declarations of this POLICY. Each party shall select a competent and disinterested appraiser within twenty (20) days after the written demand for appraisal is made. The appraisers then shall select a third competent and disinterested appraiser to serve as the umpire. If they should fail to agree upon an umpire within fifteen (15) days after both appraisers are selected, then upon the request of the Insured or of the Company, such umpire shall be selected by a judge of a court of record and competent jurisdiction in the county in which the appraisal is venued. After the panel of three appraisers has been constituted, the two appraisers selected by the Insured and the Company shall make a good faith effort to appraise and agree upon the amount of the loss in dispute or portions thereof. If the appraisers fail to fully agree, they shall submit their differences to the umpire. An award in writing and signed by any two (2) of the appraiser shall determine the amount of loss. The Insured and the Company shall each pay their selected appraiser and shall bear equally the other expenses of the appraisal and of the umpire. The Company shall not be held to have waived any of its rights by any act relating to appraisal.

E. Identity of Interests

If the Insured is comprised of more than one legal entity, liability shall not exceed the amount of loss had all interests comprised a single legal entity.

F. Loss Adjustment and Loss Payable

Loss, if any, will be adjusted with and payable to the First Named Insured, or as may be directed by the First Named Insured. Additional insured interests will also be included in loss payment as their interests may appear when named as additional named insured, lender, mortgagee or loss payee in the Certificates of Insurance on file with the Company. The receipt of the payee(s) so designated shall constitute a release in full of all liability with respect to such loss.

G. Partial Payment of Loss Settlement

1. In the event of a loss occurring which has been ascertained by the Company to be recoverable under this POLICY, the Company will advance mutually agreed upon partial payments for such loss, subject to the provisions of this POLICY.

2. To obtain such partial payments, the Insured agrees to submit a signed and sworn partial proof of loss as described in this POLICY with adequate supporting documentation.

H. Requirements in Case of Loss

The Insured shall give immediate written notice to the Company of any loss, protect the property from further damage, forthwith separate the damaged and undamaged personal property, put it in the best possible order, furnish a complete inventory of the destroyed, damaged and undamaged property, showing in detail quantities, costs, ACTUAL CASH VALUE and amount of loss claimed; and within sixty (60) days after the loss, unless such time is extended in writing by the Company, the Insured shall render to the Company a proof of loss, signed and sworn to by the Insured, stating the knowledge and belief of the Insured as to the following:

1. the time and origin of the loss;

2. the interest of the Insured and of all others in the property;

3. the ACTUAL CASH VALUE of each item thereof and the amount of loss thereof;

4. all encumbrances thereon;

5. all other contracts of insurance, whether valid or not, insuring any of said property;

6. any changes in the title, use, occupation, LOCATION(S), possession or exposures of said property since the issuing of this POLICY, by whom and for what purpose any building herein described and the several parts thereof were occupied at the time of loss and whether or not it then stood on leased ground, and shall furnish a copy of all the descriptions and schedules in all policies or on file with the Company and, if required, verified plans and specifications of any building, fixtures or machinery destroyed or damaged.

7. the Insured, as often as may be reasonably required, shall exhibit to any person designated by the Company all that remains of any property herein described, and submit to examinations under oath by any person named by the Company, and subscribe the same; and, as often as may be reasonably required, shall produce for examination all books of account, bills, invoices and other vouchers, or certified copies thereof if originals be lost, at such reasonable time and place as may be designated by the Company or its representative, and shall permit extracts and copies thereof to be made.

I. Salvage and Recovery

Any salvage or other recovery, except recovery under **Subrogation** or **Other Insurance** section, will accrue entirely to the benefit of the Company until the sum paid by the Company is recovered.

J. Settlement of Claims

The amount of loss or damage, for which the Company may be liable, will be paid within thirty (30) consecutive calendar days after:

1. proof of loss as described under **Requirements in Case of Loss** section is accepted in writing by the Company; and

2. when a resolution of the amount of loss is made either by:

   a. agreement in writing between the Insured and the Company; or

   b. the filing with the Company of an award as provided under the **Arbitration or Appraisal Provision** section.

K. Subrogation

In the event of any payment made under this POLICY:

1. the Company will be subrogated to all of the Insured's rights of recovery against any person, entity or organization;

2. the Insured agrees to execute and deliver instruments and papers and do whatever is necessary to secure such rights;

3. the Company will not acquire any rights of recovery that the Insured has expressly waived, in writing, prior to loss or damage, nor will such waiver affect the Insured's rights under this POLICY;

4. the Insured agrees to do nothing after loss or damage to prejudice the subrogation rights of the Company;

5. the Insured agrees to cooperate with the Company and upon the Company's request and expense, attend hearings and trials and assist in:

   a. effecting settlements;

   b. securing and giving information and evidence;

   c. obtaining the attendance of witnesses; and

   d. pursuing recovery through legal action or other formal proceedings;

6. the net amount of any recovery after deducting the costs of proceedings shall be divided between each party instituting such proceedings in the same proportion as each such party has borne to the provable loss.

L. Suit

No suit or action on this POLICY for the recovery of any claim shall be sustainable in any court of law unless all the requirements of this POLICY shall have been complied with, and unless commenced within twelve (12) months next after the date of the physical loss or damage giving rise to any claim hereunder.

SECTION IX
GENERAL CONDITIONS

A. Additional Insurable Interests

Additional insured interests are automatically added to this POLICY as their interests may appear when named as additional named insured, lender, mortgagee or loss payee in the Certificates of Insurance on file with the Company. Such interests become effective on the dates shown in such certificates but do not further amend or extend the terms, conditions, provisions and limitations of this POLICY.

B. Assignment of Policy

Assignment of this POLICY is not valid except with the written consent of the Company.

C. Concealment, Misrepresentation and Fraud

This entire POLICY shall be void if, whether before or after loss or damage, the Insured has willfully concealed or misrepresented any material fact or circumstance concerning this insurance or the subject thereof, a claim for loss or damages or the interest of the Insured therein, or in case of any fraud or false swearing by the Insured relating thereto.

D. Conditions Suspending or Restricting Insurance

Unless otherwise provided in writing added hereto the Company shall not be liable for loss or damage occurring while the hazard is increased by any means within the control or knowledge of the Insured.

E. Excess Insurance

Permission is granted to the Insured to have excess insurance over the limit(s) of liability set forth in this POLICY without prejudice to this POLICY, and the existence of such insurance, if any, shall not reduce any liability under this POLICY.

F. Governing Law and Jurisdiction

1. The laws of the State of New York, without regard to its conflict of laws rules, that would cause the application of the laws of any other jurisdiction, shall govern the construction and interpretation of this POLICY.

2. The parties hereto do irrevocably submit to the exclusive jurisdiction of the Courts of the State of New York, and to the extent permitted by law, the parties expressly waive all rights to challenge or otherwise limit such jurisdiction.

G. Inspection of Property and Operations

The Company shall be permitted but not obligated to inspect the Insured's property and operations at any reasonable time. Neither the right to make inspections nor the making thereof nor any risk analysis for any particular hazards, exposures or potential risks of loss or damage nor any advice or report resulting there from shall imply any liability, nor constitute an undertaking on behalf of or for the benefit of the Insured or others, to determine or warrant that such property or operations are safe or healthful, or are in compliance with any law, rule or regulation.

H. Minimum Earned Premium

In consideration of the premium charged and subject to the terms, exclusions, limits and conditions of this POLICY, not in conflict herewith, it is agreed that the minimum earned premium due to the Company is twenty-five percent (25.0%) of the total invoiced annual POLICY premium, including any applicable taxes and surcharges, regardless of the actual term of this POLICY.

However, if this POLICY is canceled by the Company prior to the expiration date, the earned premium shall be computed pro-rata and the terms and conditions of this minimum earned premium provision shall be null and void.

Nothing herein contained shall be held to vary, alter, waive or extend any of the terms, conditions, or limitations of the POLICY to which this provision is attached other than as above stated.

I. Notice of Cancellation

This POLICY may be canceled

1. at any time at the request of the First Named Insured:

    a. by surrendering this POLICY to the Company; or

    b. by giving written notice to the Company stating when thereafter such cancellation will be effective; or

2. by the Company by giving the First Named Insured written notice at least:

    a. ten (10) consecutive calendar days before the effective date of cancellation in the event the Company does not receive the premium by the date payment thereof becomes due; or

    b. ninety (90) consecutive calendar days before the effective date of cancellation for any other reasons.

If notice is mailed, then proof of mailing is sufficient proof of notice.

If the First Named Insured cancels this POLICY, then any unearned premium will be calculated based on the customary short rate table. However, if the Company cancels this POLICY, any unearned premium will be calculated on pro-rata basis. The Company agrees to return any unearned premium due the Insured as soon as practicable.

J. Occurrence Hour Clause

1. Subject to the **Prior or Subsequent Loss** condition of this POLICY, each loss OCCURRENCE by EARTH MOVEMENT shall constitute a single claim hereunder, provided, if more than one EARTH MOVEMENT shall occur within any continuous period of one-hundred-sixty-eight (168) hours during the term of this POLICY, such EARTH MOVEMENT shall be deemed to be a single OCCURRENCE of EARTH MOVEMENT.

2. Subject to the **Prior or Subsequent Loss** condition of this POLICY, when the word OCCURRENCE applies to loss or damage resulting from tornado, windstorm, NAMED WINDSTORM, hail, riot, riot attending a strike, civil commotion, and malicious mischief, if such causes of loss are insured by this POLICY one event will be construed to be all losses arising during a continuous period of seventy-two (72) hours.

3. When filing a proof of loss, the Insured may elect the moment at which such **Occurrence Hour Clause** hour period is deemed to have commenced, which will not be earlier than when the first physical loss or damage to property or interests insured by this POLICY occurs.

K. Other Insurance

The Company shall not be liable if, at the time of loss or damage there is any other insurance or warranty which would attach if this insurance had not incepted, except that this insurance shall apply only as excess and in no event as contributing insurance, and then only after all other insurance or any warranty has been exhausted.

L. Policy Modification

1. This POLICY contains all of the agreements between the Insured and the Company concerning this insurance.

2. This POLICY can be changed only by endorsements issued by the Company and made part of this POLICY.

3. Notice to any agent of the Insured or knowledge possessed by any agent of the Insured or by any other person does not:

   a. create a waiver or change any part of this POLICY; or

   b. prevent the Company from asserting any rights under the provisions of this POLICY or law.

M. Prior or Subsequent Loss

The Company is not liable hereunder for any loss or damage:

1. occurring before the POLICY becomes effective; or

2. arising from an OCCURRENCE which is in progress at the time this POLICY becomes effective, even if such loss or damage occurs after this POLICY becomes effective; or

3. occurring after the expiration of this POLICY, except loss or damage arising from an OCCURRENCE in progress at the time this POLICY expires.

N. Reduction by Loss

Except with respect to any aggregate limit of liability, any paid loss shall not reduce any other limit of this POLICY.

O. Several and Not Joint Liability

The liability of the Company shall be several and not joint and is limited solely to the extent of Company's individual share. The Company is not responsible for the subscription of any co-subscribing company or reinsurer who for any reason does not satisfy all or part of its obligations.

P. Titles of Paragraphs

The titles of the paragraphs of this form (and of endorsements and supplemental contracts, if any, now or hereafter attached to this POLICY) are inserted solely for convenience of reference and shall not be deemed in any way to limit or affect the provisions to which they relate.

Q. Underlying Insurance

Permission is granted the Insured to purchase insurance on all or any part of the deductibles of this POLICY, and the existence of such underlying insurance shall not prejudice any recovery otherwise payable under this POLICY. If the limits of such underlying insurance exceed the deductible which would apply under this POLICY, then the insurance provided by this POLICY shall apply only as excess after that portion which exceeds such deductible has been exhausted.

SECTION X
DEFINITIONS

Unless otherwise defined elsewhere, the following Definitions apply when the term is used in this POLICY.

A. ACCOUNTS RECEIVABLE

The total of:

a. all sums due the Insured from customers, provided the Insured is unable to effect collection thereof as the result of physical loss or damage to the MEDIA of accounts receivable records; and

b. interest charges on any loan to offset impaired collections pending repayment of such sums made uncollectible by such loss or damage; and

c. collection expense in excess of normal collection cost and made necessary because of such loss or damage; and

d. other expenses, when reasonably incurred by the Insured in re-establishing the MEDIA, excluding ELECTRONIC DATA PROCESSING MEDIA, of accounts receivable records following such loss or damage.

B. ACTUAL CASH VALUE

The amount it would cost to repair or replace INSURED PROPERTY on the date of the physical loss or damage with new and current material of like size, kind and quality and with proper deduction for obsolescence and physical depreciation. ACTUAL CASH VALUE is expected to be less than, and cannot exceed, replacement cost.

C. CONTAMINANT(S)

a. Materials that may be harmful to human health, wildlife or the environment. CONTAMINANTS include any impurity, solid, liquid, gaseous or thermal irritant or pollutant, poison, toxin, pathogen or pathogenic organism, disease-causing or illness-causing agent, asbestos, dioxin, polychlorinated biphenyls, agricultural smoke, agricultural soot, vapor, fumes, acids, alkalis, chemicals, bacteria, virus, vaccines, waste, and hazardous substances as listed in the Federal Water Pollution Control Act, Clean Air Act, Resource Conservation and Recovery Act, Toxic Substances Control Act, or as designated by the United States Environmental Protection Agency or any other local governmental agency.

b. However, CONTAMINANTS do not include fungi.

D. EARTH MOVEMENT

a. Any earthquake, landslide, avalanche, subsidence, sinkhole, volcanic eruption, tsunami or any other movement of earth arising out of one OCCURRENCE except mudslide or mudflow caused by accumulation of water on or under the ground (all whether or not naturally occurring).

b. Loss or damage caused by EARTH MOVEMENT shall include all insured loss or damage to INSURED PROPERTY at INSURED LOCATION(S) resulting from EARTH MOVEMENT, except loss or damage from resulting fire, explosion, or sprinkler leakage.

E. ELECTRONIC DATA PROCESSING EQUIPMENT

Any computer, computer system or component, hardware, network, microprocessor, microchip, integrated circuit or similar devices or components in computer or non-computer equipment, or operating systems.

F. FINE ARTS

Paintings, etchings, pictures, tapestries, rare or art glass, art glass windows, valuable rugs, statuary, sculptures, antique furniture, antique jewelry, bric-a-brac, porcelains, and similar property of rarity, historical value, or artistic merit excluding automobiles, coins, stamps, furs, jewelry, precious stones, PRECIOUS METALS, watercraft, aircraft, MONEY, SECURITIES.

G. FINISHED GOODS

Goods manufactured by the Insured which in the ordinary course of the Insured's business is ready for packing, labeling, shipment or sale.

H. FLOOD

Surface waters, rising waters, storm surge, sea surge, wave wash, waves, tide or tidal water, the release of water, the rising, overflowing or breaking of boundaries of natural or man-made bodies of water; or the spray therefrom; all whether driven by WIND or not or caused by, resulting from or accompanying a NAMED WINDSTORM or not; mudslide or mudflow caused by or resulting from surface water, runoff or accumulation of water on or under the ground; or sewer back-up caused by or resulting from any of the foregoing; all regardless of any other cause or event, whether natural or man-made, contributing concurrently or in any other sequence of loss, arising out of one OCCURRENCE. Physical loss or damage from FLOOD associated with a NAMED WINDSTORM is considered to be FLOOD within the terms of this POLICY for purposes of exclusions, limits and sublimits hereunder. However, physical loss or damage by fire, explosion or sprinkler leakage resulting from FLOOD is not considered to be loss by FLOOD within the terms and conditions of this POLICY.

I. HIGH HAZARD FLOOD ZONE

a. All property at INSURED LOCATION(S) that is wholly or partially situated in an area which at the time of loss or damage has been designated on a Flood Insurance Rate Map (FIRM) to be a Special Flood Hazard Area (SFHA); or

b. All property in areas where the National Flood Insurance Program (NFIP) is not in effect, and where all property at INSURED LOCATION(S) is wholly or partially situated in an area which is within a one hundred (100) year FLOOD plain or its worldwide equivalent.

J. IMPROVEMENTS AND BETTERMENTS

Fixtures, improvements, betterments, alterations, installations or additions comprising part of a building occupied but not owned by the Insured and acquired or made at the expense of the Insured, which the Insured cannot legally remove.

K. INSURED LOCATION(S)

Location(s):

a. listed on the latest schedule of LOCATION(S) submitted to, accepted by and on file with the Company;

b. insured under **Newly Acquired Property**;

c. insured under **Errors and Omissions**;

d. insured under **Miscellaneous Unnamed Locations**;

e. insured under **Course of Construction**;

f. INSURED LOCATION(S) includes the area within one thousand (1,000) feet of such LOCATION(S) if within the **Policy Territory**.

L. INSURED'S LIABILITY

Liability which is imposed by law upon the Insured or is assumed by the Insured by specific agreement prior to loss for physical loss or damage of the type insured against by this POLICY.

M. LAND IMPROVEMENTS

Landscaping, gardening, roadways and pavements, but not including any fill or land beneath such property.

N. LOCATION(S)

a. A building, yard, dock, wharf, pier or bulkhead or any group of the foregoing bounded by public streets, clear land space, open waterways or any combination thereof, with each public street, clear land space or open waterway measuring no less than fifty (50) feet wide. Any bridge or tunnel crossing such streets, space or waterways renders such separation inoperative;

b. The term LOCATIONS means more than one LOCATION.

O. MEDIA

The materials upon which data is recorded, including but not limited to, paper tapes, cards, electronic memory circuits and magnetic or optical storage devices.

P. MERCHANDISE

Goods kept for sale by the Insured which are not RAW STOCK, STOCK IN PROCESS or FINISHED GOODS.

Q. MONEY

Bank notes, coins, currency, money order held for sale to the public, traveler's checks or register checks.

R. NAMED WINDSTORM

All loss or damage insured by this POLICY, arising out of one OCCURRENCE which is caused by or results from a storm or weather disturbance which is named by the National Weather Service or any other recognized meteorological authority. Storm or weather disturbance includes all weather phenomena insured by this POLICY, associated with or occurring in conjunction with the storm or weather disturbance, including, but not limited to WIND, hail, sleet, tornadoes, hurricane or lightning. To the extent FLOOD is caused by, results from or accompanies a NAMED WINDSTORM, any physical loss or damage caused by, resulting from, or arising out of that FLOOD shall be treated as FLOOD, and not NAMED WINDSTORM, for purposes of exclusions, limits and sublimits hereunder.

S. NEW MADRID SEISMIC ZONE:

Arkansas, United States of America

Counties of Arkansas, Ashley, Chicot, Clay, Craighead, Crittenden, Cross, Desha, Drew, Fulton, Grant, Greene, Independence, Izard, Jackson, Jefferson, Lawrence, Lee, Lincoln, Lonoke, Mississippi, Monroe, Phillips, Poinsett, Prairie, Pulaski, Randolph, Saline, Sharp, St. Francis, White, Woodruff;

Illinois, United States of America

Counties of Alexander, Bond, Calhoun, Christian, Clark, Clay, Clinton, Coles, Crawford, Cumberland, Edwards, Effingham, Fayette, Franklin, Gallatin, Greene, Hamilton, Hardin, Jackson, Jasper, Jefferson, Jersey, Johnson, Lawrence, Macoupin, Madison, Marion, Massac, Monroe, Montgomery, Morgan, Perry, Pike, Pope, Pulaski, Randolph, Richland, Saline, Sangamon, Scott, Shelby, St. Clair, Union, Wabash, Washington, Wayne, White, Williamson;

Indiana, United States of America

Counties of Crawford, Daviess, Dubois, Gibson, Greene, Knox, Lawrence, Martin, Orange, Perry, Pike, Posey, Spencer, Sullivan, Vanderburgh, Warrick;

Kentucky, United States of America

Counties of Ballard, Breckinridge, Butler, Caldwell, Calloway, Carlisle, Christian, Crittenden, Daviess, Fulton, Graves, Hancock, Henderson, Hickman, Hopkins, Livingston, Logan, Lyon, Marshall, McCracken, McLean, Muhlenberg, Ohio, Simpson, Todd, Trigg, Union, Warren, Webster;

Mississippi, United States of America

Counties of Alcorn, Benton, Bolivar, Calhoun, Carroll, Chickasaw, Choctaw, Clay, Coahoma, De Soto, Grenada, Holmes, Humphreys, Issaquena, Itawamba, Lafayette, Lee, Leflore, Lowndes, Marshall, Monroe, Montgomery, Oktibbeha, Panola, Pontotoc, Prentiss, Quitman, Sharkey, Sunflower, Tallahatchie, Tate, Tippah, Tishomingo, Tunica, Union, Warren, Washington, Webster, Yalobusha, Yazoo;

Missouri, United States of America

Counties of Audrain, Bollinger, Butler, Callaway, Cape Girardeau, Carter, Cole, Crawford, Dent, Dunklin, Franklin, Gasconade, Howell, Iron, Jefferson, Lincoln, Madison, Maries, Marion, Miller, Mississippi, Montgomery, New Madrid, Oregon, Osage, Pemiscot, Perry, Phelps, Pike, Pulaski, Ralls, Reynolds, Ripley, Scott, Shannon, St. Charles, St. Francois, St. Louis, City of St. Louis, Ste. Genevieve, Stoddard, Texas, Warren, Washington, Wayne;

Tennessee, United States of America

Counties of Benton, Carroll, Cheatham, Chester, Crockett, Decatur, Dickson, Dyer, Fayette, Gibson, Hardeman, Hardin, Haywood, Henderson, Henry, Hickman, Houston, Humphreys, Lake, Lauderdale, Lawrence, Lewis, Madison, McNairy, Montgomery, Obion, Perry, Robertson, Shelby, Stewart, Tipton, Wayne, Weakley.

T. OCCURRENCE

The sum total of all loss or damage of the type insured caused by or arising out of one event, including any insured TIME ELEMENT loss, regardless of the number of LOCATIONS affected.

U. OUTDOOR PROPERTY

Fences, radio and television antennas (including satellite dishes), trees, shrubs, plants (other than trees, shrubs, and plants which are RAW STOCK or STOCK IN PROCESS or are part of a vegetated roof.

All sections of this document and the appendices and endorsements attached or added to this document.

V. PACIFIC NORTHWEST SEISMIC ZONE:

Oregon, United States of America

Counties of Benton, Clackamas, Clatsop, Columbia, Coos, Curry, Douglas, Jackson, Josephine, Klamath, Lake, Lane, Lincoln, Linn, Marion, Multnomah, Polk, Tillamook, Washington, Yamhill;

Washington, United States of America

Counties of Chelan, Clallam, Clark, Cowlitz, Grays Harbor, Island, Jefferson, King, Kitsap, Kittitas, Lewis, Mason, Pacific, Pierce, San Juan, Skagit, Skamania, Snohomish, Thurston, Wahkiakum, Whatcom.

W. PRECIOUS METALS

Any of the following metals: gold, iridium, osmium, palladium, platinum, rhodium, ruthenium, and silver.

X. PROPERTY DAMAGE

A type or category of loss due to the reduction in the value of real or personal property directly caused by or resulting from physical loss or damage thereto. A coverage provision or series of provisions pertaining to such loss.

Y. RAW STOCK

Material in the state in which the Insured receives it for conversion by the Insured into STOCK IN PROCESS or FINISHED GOODS.

Z. SALES

The amount paid or payable to the Insured for goods sold or delivered and for services rendered in the conduct of the business at INSURED LOCATION(S).

AA. SECURITIES

a. All negotiable and non-negotiable instruments or contracts representing either MONEY or other property;

b. SECURITIES include accounts, bills, bonds, stocks, food stamps, other evidences of debt or revenue, other stamps in current use, tokens, tickets, evidences of title and letter of credit. SECURITIES do not include MONEY.

BB. STOCK IN PROCESS

RAW STOCK which has undergone any aging, seasoning, mechanical or other process of manufacture at INSURED LOCATION(S) but which has not become FINISHED GOODS.

CC. TIME ELEMENT

A type or category of loss which is dependent, with respect to quantification, upon the passage of a period of time measured from a specific event. A coverage provision or series of provisions pertaining to such loss. Examples of such provisions include **Gross Earnings, Extra Expense, Rental Insurance, Contingent Time Element, Service Interruption – Time Element, Leasehold Interest, Commissions, Licensing Fees and Royalties**, **Ingress/Egress, Order of Civil or Military Authority**.

DD. TIER 1 COUNTIES

Jurisdiction	**Counties**
ALABAMA	Baldwin, Mobile
FLORIDA	Entire State
GEORGIA	Bryan, Camden, Chatham, Glynn, Liberty, McIntosh
HAWAII	Entire State
LOUISIANA	Cameron, Iberia, Jefferson, Lafourche, Orleans, Plaquemines, St. Bernard, St. Mary, St. Tammany, Terrebonne, Vermilion
MISSISSIPPI	Hancock, Harrison, Jackson

NORTH CAROLINA	Beaufort, Bertie, Brunswick, Camden, Carteret, Chowan, Currituck, Dare, Hyde, New Hanover, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Tyrrell, Washington
PUERTO RICO	Entire Territory
SOUTH CAROLINA	Beaufort, Berkeley, Charleston, Colleton, Georgetown, Horry, Jasper
TEXAS	Aransas, Brazoria, Calhoun, Cameron, Chambers, Galveston, Harris, Jackson, Jefferson, Kenedy, Kleberg, Matagorda, Nueces, Refugio, San Patricio, Willacy
US VIRGIN ISLANDS	Entire Territory
VIRGINIA	Accomack, Chesapeake, Gloucester, Hampton, Isle of Wight, James City, Lancaster, Mathews, Middlesex, Newport News, Norfolk, Northampton, Northumberland, Portsmouth, Suffolk, Surry, Virginia Beach, Westmoreland, York.

EE. VALUABLE PAPERS AND RECORDS

Written, printed or otherwise inscribed documents and records, including books, maps, films, drawings, abstracts, deeds, mortgages and manuscripts, but not MONEY, SECURITIES, ELECTRONIC DATA, ELECTRONIC DATA PROCESSING MEDIA.

FF. WAITING PERIOD

A continuous period of time which must elapse before there is any liability for loss under this POLICY.

GG. WIND

Direct action of wind including substance driven by wind. WIND does not mean or include anything defined as FLOOD in this POLICY.

Endorsement A

Occurrence Limit of Liability

It is understood and agreed that the following special terms and conditions apply to this quotation:

It is understood and agreed that the following special terms and conditions apply to this Policy:

1. The limit of liability or Limit of Insurance shown on the face of this Policy, or endorsed onto this Policy, is the total Program Limit of Liability applicable to each occurrence, as hereafter defined. Notwithstanding any other terms and conditions of this Policy to the contrary, in no event shall our liability exceed our proportionate program share of this limit or amount irrespective of the number of locations involved.

   The term "occurrence" shall mean any one loss, disaster, casualty or series of losses, disasters, or casualties, arising out of one event except as specified elsewhere in the policy with regards to flood or earthquake coverage.

   When the term applies to loss or losses from the perils of tornado, cyclone, hurricane, windstorm, hail, volcanic eruption, riot, riot attending a strike, civil commotion, and vandalism and malicious mischief one event shall be construed to be all losses arising during a continuous period of 72 hours. When filing proof of loss, you may elect the moment at which the 72 hour period shall be deemed to have commenced, which shall not be earlier than the first loss to the covered property occurs and must commence within the policy term.

2. The premium for this Policy is based upon the Statement of Values on file with us, or attached to this Policy. In the event of loss hereunder, the total Program Limit of Liability, subject to the terms of paragraph one (1) above, shall be limited to the least of the following:

   a. The actual adjusted amount of loss, less applicable deductible(s),

   b. The limit of Liability or Limit of Insurance shown on the face of this Policy or endorsed onto this Policy.

Hurricane Minimum Earned Premium Provision

The following terms and conditions will apply to this policy:

1. If the Insured cancels this policy, removes a location or reduces the amount of insurance on a location that is within 100 miles of the Atlantic Ocean and/or the Gulf of Mexico and/or the Hawaii Islands, and coverage existed any time during the period of June 1st to November 30th, the amount of premium the Company will return will be the Unearned Premium for the location. The Unearned Premium is the annual premium for the policy (or for the location removed or coverage reduced, as applicable) multiplied by the Unearned Factor noted below. The location premium is the 100% annual rate multiplied by the location value as scheduled in the most current Statement of Values on file with the Company.

1 Year Policy

Days Policy

In Force	Unearned Factor
1 to 180	20%
181 to 210	15%
211 to 240	10%
241 to 270	7.5%
271 to 300	5.0%
301 to 330	2.5%
331 to 365	0.0%

2. If a Location that is within 100 miles of the Atlantic Ocean and/or the Gulf of Mexico and/or the Hawaii Islands is added during the term of the policy and coverage exists any time during the period of June 1st to November 30th, the rate will be calculated as 100% of the annual rate, less the Unearned Factor as calculated in No. 1 above based upon the number of days remaining in the policy term.

3. The provisions of this Hurricane Minimum Earned Premium Provision replace any short rate provisions stipulated in this policy for all locations that are within 100 miles of the Atlantic Ocean and/or the Gulf of Mexico and/or the Hawaii Islands and coverage existed any time during the period of June 1st to November 30th.

Certificates Wording

Please be advised that **Hallmark Specialty Insurance Company** does not review Certificates of Insurance issued by you, or by any party, relating to this policy of insurance either for content or accuracy. Accordingly, we request that you do not provide copies of certificates to us for review or for our records. Authority is granted to you for the limited purpose of issuing unmodified ACORD 24, 27 or 28 Certificates only. It is your responsibility to see that any Certificate provides an accurate representation of the coverage form and endorsements applicable to this policy at the time the Certificate is issued. Any modification of the approved ACORD forms specifically set forth above, or the issuance of a non-approved Certificate of Insurance ACORD or other is prohibited. Certificates of Insurance may only be issued as a matter of information.

Loss Adjuster

It is hereby understood and agreed that each and every loss will be adjusted by the Adjuster named below unless otherwise agreed by the Insured and the **Insurer**.

Evan Sussman
Engle Martin & Associates
90 Broad Street
New York, NY 10004
Direct: 212.822.2793
Mobile: 908.616.5806
esussman@englemartin.comde

Joint Loss Agreement

In the event the insurance company, if any, providing boiler and machinery insurance disputes any portion of the claim made against that company and this Company believes the boiler and machinery policy should have paid that portion of the claim, then this Company shall, upon written request of the Insured, pay to the Insured one-half of the amount of the loss which is in disagreement, but in no event more than this company would have paid if there had been no boiler and machinery policy(ies) in effect, subject to the following conditions:

A. The amount of the loss which is in disagreement, after making provisions for any undisputed claims payable under the said policies and after the amount of the loss is agreed upon by the Insured and the insurers, is limited to the minimum amount remaining payable under the boiler and machinery policy(ies);

B. The boiler and machinery insurer(s) shall simultaneously pay to the Insured one-half of said amount which is in disagreement;

C. The payments by the insurers hereunder and acceptance of the same by the Insured signify the agreement of the insurers to submit to and proceed with arbitration within 90 days of such payments; the arbitrators shall be three in number, one of whom shall be appointed by the Property insurer(s) and one of whom shall be appointed by the Boiler and Machinery insurer(s) and the third shall be appointed with the consent of the other two insurers, and the decision by the arbitrators shall be binding upon the insurers and that judgment upon such award may be entered in any court of competent jurisdiction;

D. The Insured agrees to cooperate in connection with such arbitration but not to intervene therein;

E. The provisions of this endorsement shall not apply unless such other policy(ies) issued by the Boiler and Machinery insurance company(ies) is similarly endorsed;

F. Acceptance by the Insured of sums paid pursuant to the provisions of this endorsement, including an arbitration award, shall not operate to alter, waive, surrender, or in any way affect the rights of the Insured against any of the insurers.

Endorsement B

EXCLUSION FOR CERTAIN COMPUTER RELATED LOSSES

THIS ENDORSEMENT CHANGES THIS POLICY. PLEASE READ IT CAREFULLY.

This policy does not insure any loss, or damage caused by or resulting directly or indirectly by any of the following. **Such loss or damage is excluded regardless of any other cause or event that contributes directly, indirectly, concurrently, proximately, remotely, or in any sequence to the loss and includes but is not limited to**:

A. The alteration, manipulation or destruction of computer media and data, by the addition of a virus, destructive code or similar instruction, hacking or any other malicious or destructive programming or instructions that disrupts the normal operation of computer equipment or computer media and data or results in the loss of use or physical damage to computer equipment, including but not limited to microprocessors and networks, or computer media and data;

B. Denial of service; by unauthorized direction of a high volume of messages or inquiries to a web site or e-mail destinations, effectively denying, interrupting or limiting legitimate access;

C. Inability to correctly recognize, process, distinguish, interpret or accept one or more dates or times;

D. Transfer of property caused by, resulting from, or arising out of unauthorized instructions transmitted by a computer;

E. Financial loss or any other loss or damage due to unauthorized viewing, copying or use of any data (including proprietary or confidential information) by any person, even if such activity is characterized as theft.

F. Any advice, consultation, design, evaluation, inspection, installation, maintenance, repair, replacement or supervision provided or done by the Insured or on the Insured's behalf to determine, rectify or test for any actual or potential problem described in paragraphs A through E above.

This exclusion applies regardless whether there is (a) any physical loss or damage to insured property; (b) any loss of use, occupancy or functionality; or (c) any action required, including but not limited to repair, replacement, restoration, removal, cleanup, abatement, disposal, relocation, or steps taken to address medical or legal concerns.

All other terms and conditions of this policy shall remain unchanged.

MINIMUM EARNED PREMIUM CLAUSE – PERCENTAGE

Named Insured **West Flagler Associates, Ltd.dba Magic City Casino and Flagler Dog Track**			Endorsement Number
Policy Symbol	Policy Number **73PRX19A049**	Policy Period **4/29/2019 To 4/29/2020**	Endorsement Date
Issued By (Name of Insurance Company) **Hallmark Specialty Insurance Company**			

THIS ENDORSEMENT CHANGES YOUR POLICY. PLEASE READ IT CAREFULLY.

In the event of cancellation of this policy by the Insured, a minimum earned premium of 25.00% of the original policy premium shall become earned; any conditions of the policy to the contrary notwithstanding.

Failure of the Insured to make timely payment of premium shall be considered a request by the Insured for the Company to cancel. In the event if such cancellation by the Company for nonpayment of premium, the minimum earned premium shall be due and payable; provided, however, such non-payment cancellation shall be rescinded if the Insured remits the full premium due within 10 days of receiving it.

In the event of any other cancellation by the Company, the earned premium shall be computed pro-rata, not subject to the minimum premium.

CYBER EXCLUSION

Named Insured **West Flagler Associates, Ltd.dba Magic City Casino and Flagler Dog Track**			Endorsement Number
Policy Symbol	Policy Number 73PRX19A049	Policy Period **4/29/2019 To 4/29/2020**	Endorsement Date
Issued By (Name of Insurance Company) **Hallmark Specialty Insurance Company**			

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

Notwithstanding any provision to the contrary within this policy or any endorsements thereto, it is understood and agreed, this policy excludes any loss, damage, liability, costs or expenses directly or indirectly caused by or contributed to or resulting from:

a. Any loss of data or damage to any computer system, including but not limited to hardware or software (unless such loss or damage incurs a physical loss caused by an earthquake, a fire, a flood or storm);

b. Any electronic transmission of data or other information;

c. Any computer virus or similar program;

d. A computer malicious act on the insured's computer systems (by either employed or contracted personnel or non-employees of the insured);

e. Computer malware on the insured's computer system;

f. A human error affecting the insured computer systems;

g. A system failure occurring on the insured's computer systems;

h. A defect of the insured's computer systems;

i. A cyber extortion ;

j. The use or misuse of any internet address, Website or similar facility;

k. Any data or other information posted on a Website or similar facility;

l. Any functioning or malfunctioning of the internet or similar facility, or of any internet address, website or similar facility;

m. Any infringement, whether intentional or unintentional, of any intellectual property rights (including but not limited to trademark, copyright or patent or the application of any of these items);

are all excluded from indemnification and are not covered by this policy, regardless of any other causes or event contributing concurrently or in any other sequence to the loss, damage, liability, cost or expenses.

However, in the event that a peril insured by this Policy results from any of the matters described herein, this Policy, subject to all its terms, conditions and exclusions, will cover physical damage to insured property that was directly caused by such peril insured by this Policy and occurring within the Policy period.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

EXCLUSION OF PRIOR LOSS OR DAMAGE

Named Insured **West Flagler Associates, Ltd.dba Magic City Casino and Flagler Dog Track**			Endorsement Number
Policy Symbol	Policy Number **73PRX19A049**	Policy Period **4/29/2019 To 4/29/2020**	Endorsement Date
Issued By (Name of Insurance Company) **Hallmark Specialty Insurance Company**			

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

In consideration of premium charged and coverage provided, it is understood and agreed that this policy does not provide any coverage for any direct or indirect physical loss or damage, or Business Income or Extra Expense coverage as defined in this policy, caused directly or indirectly or contributed to in any manner by loss or damage which occurred prior to the inception date of this policy, regardless of any other cause or event contributing concurrently or in any other sequence to the loss or damage.

All other terms and conditions remain unchanged.

FLORIDA SURPLUS LINES NOTIFICATION

THIS INSURANCE IS ISSUED PURSUANT TO THE FLORIDA SURPLUS LINES LAW. PERSONS INSURED BY SURPLUS LINES CARRIERS DO NOT HAVE THE PROTECTION OF THE FLORIDA INSURANCE GUARANTY ACT TO THE EXTENT OF ANY RIGHT OF RECOVERY FOR THE OBLIGATION OF AN INSOLVENT UNLICENSED INSURER.

SLFL 2017

STATE FRAUD STATEMENTS

Applicable in Alabama

Alabama Fraud Statement

"Any person who knowing presents a false or fraudulent claim for payment of a loss or benefit or who knowingly presents false information in an application for insurance is guilty of a crime and may be subject to restitution fines or confinement in prison or any combination thereof."

Applicable in Arkansas

Arkansas Fraud Statement

"Any person who knowing presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance is guilty of a crime and may be subject to fines and confinement in prison."

Applicable in Colorado

Colorado Fraud Statement

"It is unlawful to knowingly provide false, incomplete, or misleading facts or information to an insurance company for the purpose of defrauding or attempting to defraud the company. Penalties may include imprisonment, fines, denial of insurance and civil damages. Any insurance company or agent of an insurance company who knowingly provides false, incomplete, or misleading facts or information to a policyholder or claimant for the purpose of defrauding or attempting to defraud the policyholder or claimant with regard to a settlement or award payable from insurance proceeds shall be reported to the Colorado division of insurance within the department of regulatory agencies."

Applicable in District of Columbia

District of Columbia Fraud Statement

"Warning: It is a crime to provide false or misleading information to an insurer for the purpose of defrauding the insurer or any other person. Penalties include imprisonment and/or fines. In addition, an insurer may deny insurance benefits if false information materially related to a claim was provided by the applicant."

Applicable in Florida

Florida Fraud Statement

"Any person who knowingly and with intent to injure, defraud, or deceive any insurer files a statement of claim or an application containing any false, incomplete or misleading information is guilty of a felony of the third degree."

Applicable in Kansas

Kansas Fraud Statement

"Any person who knowingly and with intent to defraud any insurance company or another person files an application for the issuance of, or the rating of, an insurance policy or statement of claim or any written statement containing any materially false information, or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime and subjects the person to criminal penalties."

STATE FRAUD STATEMENTS

Applicable in Kentucky

Kentucky Fraud Statement

"Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance 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."

Applicable in Louisiana

Louisiana Fraud Statement

"Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance is guilty of a crime and may be subject to civil fines and criminal penalties."

Applicable in Maine

Maine Fraud Statement

"It is a crime to knowingly provide false, incomplete or misleading information to an insurance company for the purpose of defrauding the company. Penalties may include imprisonment, fines or a denial of insurance benefits."

Applicable in Maryland

Maryland Fraud Statement

"Any person who knowingly or willfully presents a false or fraudulent claim for payment of a loss or benefit or who knowingly or willfully presents false information in an application for insurance is guilty of a crime and may be subject to fines and confinement in prison."

Applicable in New Jersey

New Jersey Fraud Statement

"Any person who includes any false or misleading information on an application for an insurance policy is subject to criminal and civil penalties."

Applicable in New Mexico

New Mexico Fraud Statement

"Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance is guilty of a crime and may be subject to civil fines and criminal penalties."

Applicable in New York

New York Fraud Statement

"Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information, or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime, and shall also be subject to a civil penalty not to exceed five thousand dollars and the stated value of the claim for each such violation."

STATE FRAUD STATEMENTS

Applicable in Ohio

Ohio Fraud Statement

"Any person who, with intent to defraud or knowing that he is facilitating a fraud against an insurer, submits an application or files a claim containing a false or deceptive statement is guilty of insurance fraud."

Applicable in Oklahoma

Oklahoma Fraud Statement

"Any person who knowingly, and with intent to injure, defraud or deceive any insurer, makes any claim for proceeds of an insurance policy containing any false, incomplete or misleading information is guilty of a felony."

Applicable in Oregon

Oregon Fraud Statement

Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents materially false information in an application for insurance may be guilty of a crime and may be subject to fines and confinement in prison.

In order for us to deny a claim on the basis of misstatements, misrepresentations, omissions or concealments on your part, we must show that:

A. The misinformation is material to the content of the policy;
B. We relied upon the misinformation; and
C. The information was either:
    1. Material to the risk assumed by us; or
    2. Provided fraudulently.

For remedies other than the denial of a claim, misstatements, misrepresentations, omissions or concealments on your part must either be fraudulent or material to our interests.

With regard to fire insurance, in order to trigger the right to remedy, material misrepresentations must be willful or intentional.

Misstatements, misrepresentations, omissions or concealments on your part are not fraudulent unless they are made with the intent to knowingly defraud.

Applicable in Pennsylvania

Pennsylvania Fraud Statement

"Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information or conceals for the purpose of misleading, information concerning any fact material thereto commits a fraudulent insurance act, which is a crime and subjects such person to criminal and civil penalties."

STATE FRAUD STATEMENTS

Applicable in Puerto Rico

Puerto Rico Fraud Statement

Any person who knowingly and with the intention of defrauding presents false information in an insurance application, or presents, helps, or causes the presentation of a fraudulent claim for the payment of a loss or any other benefit, or presents more than one claim for the same damage or loss, shall incur a felony and, upon conviction, shall be sanctioned for each violation with the penalty of a fine of not less than five thousand dollars ($5,000) and not more than ten thousand dollars ($10,000), or a fixed term of imprisonment for three (3) years, or both penalties. Should aggravating circumstances be present, the penalty thus established may be increased to a maximum of five (5) years, if extenuating circumstances are present, it may be reduced to a minimum of two (2) years.

Applicable in Rhode Island

Rhode Island Fraud Statement

"Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance is guilty of a crime and may be subject to fines and confinement in prison."

Applicable in Tennessee

Tennessee Fraud Statement

"It is a crime to knowingly provide false, incomplete or misleading information to an insurance company for the purpose of defrauding the company. Penalties include imprisonment, fines and denial of insurance benefits."

Applicable in Virginia

Virginia Fraud Statement

"It is a crime to knowingly provide false, incomplete or misleading information to an insurance company for the purpose of defrauding the company. Penalties include imprisonment, fines and denial of insurance benefits."

Applicable in Washington

Washington Fraud Statement

"It is a crime to knowingly provide false, incomplete or misleading information to an insurance company for the purpose of defrauding the company. Penalties include imprisonment, fines and denial of insurance benefits."

SERVICE OF SUIT ENDORSEMENT

Named Insured **West Flagler Associates, Ltd.dba Magic City Casino and Flagler Dog Track**			Endorsement Number
Policy Symbol	Policy Number **73PRX19A049**	Policy Period **4/29/2019 To 4/29/2020**	Endorsement Date
Issued By (Name of Insurance Company) **Hallmark Specialty Insurance Company**			

THIS ENDORSEMENT CHANGES YOUR POLICY. PLEASE READ IT CAREFULLY.

Information about service of suits upon the company is given below. Service of process of suits against the company may be made upon the following person, or another person the company may designate:

General Counsel
Hallmark Financial Services, Inc.
777 Main St, Suite #1000
Ft. Worth, TX 76102

The person named above is authorized and directed to accept service of process on the company's behalf in any action, suit or proceeding instituted against the company. If the insured requests, the company will give the insured a written promise that a general appearance will be entered on the company's behalf if a suit is brought.

If the insured requests, the company will submit to the jurisdiction of any court of competent jurisdiction. The company will accept the final decision of that court or any Appellate Court in the event of an appeal.

The law of some jurisdictions of the United States of America require that the Superintendent, Commissioner or Director of Insurance (or their successor in office) be designated as the company's agent for service of process. In these jurisdictions, the company designates the Director of Insurance as the company's true and lawful attorney upon whom service of process on the company's behalf may be made. The company also authorizes the Director of Insurance to mail process received on the company's behalf to the company person named above.

If the insured is a resident of Canada, the insured may also serve suit upon the company by serving the government official designated by the law of the insured's province.

NOTHING HEREIN CONTAINED SHALL BE HELD TO VARY, ALTER, WAIVE OR EXTEND ANY OF THE TERMS, CONDITIONS, OR LIMITATIONS OF THE POLICY TO WHICH THIS ENDORSEMENT IS ATTACHED OTHER THAN AS ABOVE STATED.

CLAIM REPORTING PROCEDURES

Your policy is written through Hallmark Specialty Insurance Company or Hallmark National Insurance Company. Please refer to your Declaration Page to determine who provides the coverage. Both companies offer options for reporting claims and addressing questions. The claims are handled by Effective Claims Management, Inc.

To report a new claim:

1. You may e-mail a completed ACORD First Notice of Loss to claims@hallmarkgrp.com
2. You may report a claim by faxing a completed ACORD First Notice of Loss to one of the following fax numbers: 800-722-4052 (toll free), 817-348-1607 or 817-348-1785
3. You may report a claim telephonically by calling 800-426-5119 ext. 1780 (toll free number) or 817-348-1780 (direct to support staff personnel).
4. You may mail the ACORD First Notice of Loss to:

   Effective Claims Management
   Attention: Claims
   777 Main Street, Suite 1000
   Fort Worth, Texas 76102
5. The above email address and telephone numbers may also be used to direct your request(s) for the status of claims related questions (i.e. status of specific claim or the name of the adjuster to whom a claim has been assigned).
6. To obtain claim information on your claim, ask a general question, or voice a complaint, you may contact the claims department directly at 800-426-5119 ext 1780 or 817-348-1780.

Privacy Policy Disclosure Notice

The Gramm-Leach-Bliley Act (GLBA) and various other federal and state privacy regulations generally prohibit any financial institution, directly or through its affiliates, from sharing nonpublic personal information about you with a non-affiliated third party unless the institution provides you with a notice of its privacy policies and practices, such as the type of information that it collects about you and the categories of persons or entities to whom it may be disclosed.

Hallmark Financial Services, Inc. ("HFS"), through its subsidiaries, provides insurance products and services and is firmly committed to its affirmative and continuing obligation to respect the privacy of its current, former and prospective policyholders and to protect the security and confidentiality of their nonpublic personal information. Therefore, proper handling of your personal information is one of our highest priorities. We collect and utilize information we believe is necessary to efficiently administer our business, to advise you about our products, and provide you with outstanding customer service. We want you to know why we collect personal information about you, what we do with that information and explain to you our commitment to protect the information collected.

In order to provide you with quality insurance products and the service you deserve, it is necessary for us to collect nonpublic personal information about you and, in certain situations, to share that information with others. The following notice describes our policies and practices with regard to your nonpublic personal information.

PROTECTION OF YOUR PERSONAL INFORMATION

Not only is the protection of nonpublic personal information a legal requirement, it is also a good business practice. We maintain appropriate physical, electronic and procedural safeguards to maintain the confidentiality and security of your nonpublic personal information. We restrict access to nonpublic personal information about you to those employees who need access to that information to provide products or services to you. When information is shared with companies performing work on Hallmark's behalf, we protect your personal information where required by law with contractual confidentiality agreements that obligate those companies to keep confidential any information about you furnished to them.

We provide training to our employees on the importance of maintaining the confidentiality and security of your nonpublic personal information. Employees who violate our privacy policies are appropriately disciplined.

CATEGORIES OF INFORMATION THAT WE COLLECT

We collect and use only that nonpublic personal information required for us to provide services and products requested by you and to administer your business with us such as underwriting and processing your policies and the administration and handling of claims.

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

- Information that we receive from you on applications and other related forms such as your name, address, telephone number, and social security number;
- Information about your transactions with us, our affiliates or others such as your underwriting information, driving record, claim history, policy number, premium, payment history, and claim information;
- Information that we receive from consumer credit reporting agencies such as your credit history.

The nonpublic personal information collected may come from persons such as independent insurance agents, brokers, policyholders, or persons involved in the claim adjustment process such as claimants, witnesses to an accident, repair facilities, hospitals, doctors and attorneys.

Privacy Policy Disclosure Notice

If you visit our website, www.hallmarkgrp.com, we automatically track and collect information regarding your visit including your IP address; domain server, type of computer, type of web browser and the pages you viewed on our site. This information (Traffic Data) is information that unless you have specifically entered identifying information somewhere in the site, does not personally identify you, but rather is helpful for marketing purposes or for improving your experience on the Site. We currently do not collect nonpublic personal information through your use of our corporate website. You may view the website privacy statement by clicking the "Conditions of Use" sections of the site.

CATEGORIES OF INFORMATION THAT WE DISCLOSE AND PARTIES TO WHOM WE MAY DISCLOSE INFORMATION

We do not disclose any nonpublic personal information about our customers or former customers to anyone, except as required or permitted by law. Hallmark does not sell or distribute for sale any nonpublic personal information. Nor do we disclose your personal information to any person, company or organization not affiliated with us for their own marketing purposes.

However, we may disclose nonpublic personal information about our policyholders (current, former and prospective) with affiliated and non-affiliated third parties as necessary to service an insurance policy or claim or as permitted or required by law. We may disclose nonpublic personal information we collect about you to third parties with whom we contract to perform business functions such as record keeping, policy administration, claim administration, billing, computer related services, distribution of materials, and joint marketing of our products and services.

We understand the importance and seriousness of protecting the confidentiality and security of your nonpublic personal information. We respect and appreciate the trust that you, as a valued policyholder, have placed with us and we continuously strive to earn and maintain that trust.

ACCESS TO AND CORRECTION OF YOUR INFORMATION:

You have a right to know the nature and substance of the recorded personal information contained in our files about you. You may review and/or for a reasonable fee, receive a copy of the information upon written request at the address shown below. You must properly identify yourself and reasonably describe the information you seek. Your request should contain your name, address, all policy and claim numbers issued to you by us and a copy of your drivers license or other personal identification. Upon receipt of your request, we will furnish to you within thirty (30) business days the nature and substance of locatable, retrievable and available recorded personal information. We will also furnish you with a list of all persons or organizations to whom the information has been disclosed within the past two years. If the source of information about you was a consumer credit reporting agency or other institution, we will identify those sources so you can contact them if you so desire. You may also request that we correct, amend or delete any recorded personal information. If we do not make the requested change(s), you have the right to provide, for insertion in our file, a concise written statement setting forth what you think is the correct, relevant or fair information and a concise statement of the reasons why you disagree with our decision not to correct, amend or delete recorded personal information. Your statement will become a part of our file and included with any future disclosures.

Privacy Policy Disclosure Notice

CHANGES TO OUR NOTICE OF PRIVACY POLICY AND INSURANCE INFORMATION PRACTICES:

We reserve the right to change our privacy policies and insurance information practices. If we make any material changes to our policies or practices, we will provide you with a copy of a revised notice.

OPT OUT STATEMENT:

If you prefer we do not disclose personal identifying information or personal financial information about you to nonaffiliated third parties, you may opt out of those disclosures (other than disclosures allowed by law). You may do so by sending us a letter informing us of your election to opt out at the address shown below.

If you have any questions regarding the content of this notice, you may call us at (817)348-1600 or you may write to us at:

Hallmark Financial Services, Inc.
Attention: Compliance
777 Main Street, Suite 1000
Fort Worth, Texas 76102

This notice is being provided on behalf of the following companies:

Hallmark Financial Services, Inc.

Hallmark E&S Insurance Services, LLC

Hallmark Specialty Insurance Company

Hallmark Claims Service Inc.

Effective Claims Management, Inc.

Heath XS, LLC

Hallmark National Insurance Company

EXCLUSION OF TERRORISM

THIS ENDORSEMENT CHANGES YOUR POLICY. PLEASE READ IT CAREFULLY.

ALL COVERAGE PARTS

A. Definitions

1. "Certified act of terrorism" means an act that is certified by the Secretary of the Treasury, in concurrence with the Secretary of State and the Attorney General of the United States, to be an act of terrorism pursuant to the federal Terrorism Risk Insurance Act. The criteria contained in that Terrorism Risk Insurance Act for a "certified act of terrorism" include the following:
   a. The act resulted in insured losses in excess of $5 million in aggregate, attributable to all types of insurance subject to the Terrorism Risk Insurance Act; and
   b. The act is a violent act or an act that is dangerous to human life, property or infrastructure and is committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.
2. "Other act of terrorism" means activities against persons, organizations or property of any nature:
   a. That involves the following or preparation for the following:
      1. Use or threat of force or violence; or
      2. Commission or threat of a dangerous act; or
      3. Commission or threat of an act that interferes with or disrupts an electronic, communication, information, or mechanical system; and
   b. When one or both of the following applies:
      1. The effect is to intimidate or coerce a government or the civilian population or any segment thereof, or to disrupt any segment of the economy; or
      2. It appears that the intent is to intimidate or coerce a government, or to further political, ideological, religious, social or economic objectives or to express (or express opposition to) a philosophy or ideology.
   c. The act is not certified as a terrorist act pursuant to the federal Terrorism Risk Insurance Act.

B. The following exclusion is added:

Exclusion of Certified Act of Terrorism and the following Other Acts of Terrorism

We will not pay for loss or damage caused directly or indirectly by a "certified act of terrorism" or an "other act of terrorism". Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss. But with respect to any "other act of terrorism", this exclusion applies only when one or more of the following are attributed to such act:

1. That involves the use, release or escape of nuclear materials, or that directly or indirectly results
2. in nuclear reaction or radiation or radioactive contamination; or
3. That is carried out by means of the dispersal or application of pathogenic or poisonous biological or chemical materials, or
4. In which pathogenic or poisonous biological or chemical materials are released, and it appears that one purpose of the terrorism was to release such materials.

GENERAL CHANGE ENDORSEMENT

Named Insured **West Flagler Associates, Ltd.dba Magic City Casino and Flagler Dog Track**			Endorsement Number
Policy Symbol	Policy Number **73PRX19A049**	Policy Period **4/29/2019 To 4/29/2020**	Endorsement Date
Issued By (Name of Insurance Company) **Hallmark Specialty Insurance Company**			

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

In accordance with the terms and conditions of the policy, it is understood and agreed that the policy is amended as follows.

It is a condition of this policy that Boiler and Machinery is Excluded.

ALL OTHER TERMS AND CONDITIONS OF THIS POLICY REMAIN UNCHANGED.

OCCURRENCE LIMIT OF LIABILITY

Named Insured **West Flagler Associates, Ltd.dba Magic City Casino and Flagler Dog Track**			Endorsement Number
Policy Symbol	Policy Number **73PRX19A049**	Policy Period **4/29/2019 To 4/29/2020**	Endorsement Date
Issued By (Name of Insurance Company) **Hallmark Specialty Insurance Company**			

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

THIS ENDORSEMENT MODIFIED INSURANCE PROVIDED UNDER THE FOLLOWING:

ALL COVERAGE PARTS

It is understood and agreed that the following special terms and conditions apply to this policy:

1. In the event of loss here under, liability of the Company shall be limited to the least of the following in any one "occurrence":

   a. The actual adjusted amount of the loss, less applicable deductibles and primary and underlying excess limits;

   b. 120 % of the total stated value for each scheduled item of property insured at the location which had the loss as shown on the latest Statement of Values on file with this Company, less applicable deductibles and primary and underlying excess limits. If no value is shown for a scheduled item then there is no coverage for that item; or

   c. The Limit of Liability as shown on the Declarations page of this policy or as endorsed to this policy.

2. Coverage under this policy is provided only at the locations listed on the latest Statement of Values on file with this Company or as endorsed on to this policy.

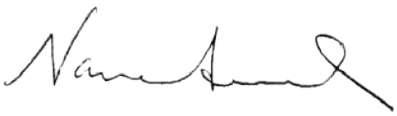
3. The premium for this policy is based upon the Statement of Values on file with this Company or attached to this policy.

The term "occurrence", where used in this policy, shall mean any one loss, disaster, casualty or series of losses, disasters, or casualties arising from one event.

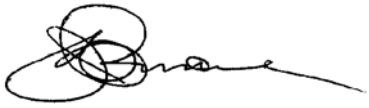
When the term "occurrence" applies to a loss or series of losses from the perils of tornado, cyclone, hurricane, windstorm, hail, flood, earthquake, volcanic eruption, riot, riot attending a strike, civil commotion and vandalism and malicious mischief, one event shall be construed to be all losses arising during a continuous period of 72 hours. When filing a proof of loss the insured may elect the moment at which the 72 hour period shall be deemed to have commenced, which shall not be earlier than the first loss to occur at any covered location.

HALLMARK SPECIALTY INSURANCE COMPANY

In Witness Whereof, the Company has caused this policy to be executed and attested, and, if required by state law, this policy shall not be valid unless countersigned by a duly authorized representative of the Company.



President



Secretary

Exhibit 4

ATEGRITY SPECIALTY INSURANCE COMPANY

CLAIM REPORTING INFORMATION

Your insurance policy has been placed with Ategrity Specialty Insurance Company. Promptly reporting an event that could lead to a claim, as required by your policy, helps us fulfill this commitment to you. Please refer to your policy for this and all other terms and conditions.

In the event of a claim to which this policy may apply, please give immediate notice to:

CLAIM DEPARTMENT
ATEGRITY SPECIALTY INSURANCE COMPANY

Email: Claims@ategrity.com
Phone: 480.237.2417
Toll Free: 1.833.783.6206
Fax: 602.419.2977

In order to expediate your claims process, please be prepared to furnish as much of the following information as possible:

- Policy Number
- Date, time and location of the accident/loss
- Details of the accident/loss
- Name, address and phone number of involved parties
- Name of law enforcement agency or fire department along with any file or incident number

PLEASE REFER TO YOUR POLICY FOR SPECIFIC CLAIM REPORTING REQUIREMENTS

15990 N. Greenway-Hayden Loop, Suite D-160, Scottsdale, AZ 85260

ATEGRITY SPECIALTY INSURANCE COMPANY

SERVICE OF SUIT CLAUSE

It is agreed that in the event of the failure of the Company to pay any amount claimed to be due under this policy, the Company at the request of the Insured (or reinsured), will submit to the jurisdiction of any court of competent jurisdiction within the United States of America and will comply with all requirements necessary to give the Court jurisdiction. All matters which arise will be determined in accordance with the law and practice of the Court. In a suit instituted against any one of them under this contract, the Company agrees to abide by the final decision of the Court or of any Appellate Court in the event of an appeal.

Pursuant to any statute of any state, territory or district of the United States of America which makes a provision, the Company will designate the Superintendent, Commissioner or Director of Insurance or other officer specified for that purpose in the statute, or his successor or successors in office, as their true and lawful attorney upon whom may be served any lawful process in any action, suit, or proceeding instituted by or on behalf of the Insured (or reinsured) or any beneficiary arising out of this contract of insurance (or reinsurance).

The officer named below is authorized and directed to accept service of process on behalf of the Company:

Michael D. Miller
Ategrity Specialty Insurance Company
15990 N. Greenway-Hayden Loop, Suite D-160
Scottsdale, Arizona 85260

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.
Includes some copyrighted material of Insurance Services Office, Inc., with its permission.

AUTHORIZED REPRESENTATIVE / DATE

Ategrity Specialty Insurance Company
15990 N Greenway Hayden Loop, Suite D-160, Scottsdale, AZ 85260

FORMS AND ENDORSEMENT SCHEDULE

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

#	Form Number	Form Name
1	West Flagler Associates Ltd Dba Magic City Casino and Flagler Dog Track	Manuscript Policy-West Flagler Associates Ltd, Dba Magic City Casino and Flagler Dog Track
2	IL 09 53 01 15	Exclusion of Certified Acts of Terrorism-West Flagler Associates Ltd, Dba Magic City Casino and Flagler Dog Track
3	XP-0005 07-18	Commercial Property Excess Declaration-West Flagler Associates Ltd, Dba Magic City Casino and Flagler Dog Track
4	ASIC-AF-0000 08-18	Cover Page
5	ASIC-AF-0003 08-18	Service Of Suit Clause
6	XP-0001 07-18	Minimum Earned Cancellation Premium
7	ASIC-NOT-0002 10-18	Claim Reporting Information

ATEGRITY SPECIALTY INSURANCE COMPANY

MINIMUM EARNED CANCELLATION PREMIUM

POLICY NUMBER: 01-B-XP-P00000308-0 **EFFECTIVE DATE:** 04/29/2019
12:01 AM STANDARD TIME

NAMED INSURED: West Flagler Associates Ltd; DBA Magic City Casino and Flagler Dog Track

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

THE FOLLOWING PROVISION IS ADDED TO THE CANCELLATION CONDITION:

IF YOU REQUEST CANCELLATION OF THIS POLICY, WE WILL RETAIN NOT LESS THAN 25% OF THE ORIGINAL PREMIUM.

Ategrity

ATEGRITY SPECIALTY INSURANCE COMPANY

15990 N Greenway Hayden Loop, Suite D-160, Scottsdale, AZ 85260

COMMERCIAL PROPERTY EXCESS DECLARATION

POLICY NUMBER: 01-B-XP-P00000308-0

RENEWAL OF: N/A

NAMED INSURED AND MAILING ADDRESS:

West Flagler Associates Ltd, Dba Magic City Casino and
Flagler Dog Track
401 NW 38th Court
Miami, FL 33136

BROKER NAME AND MAILING ADDRESS:

AmWINS Brokerage NJ – Dennis DeLuca
105 Fieldcrest Ave, Suite 200
Edison, NJ 08837

POLICY PERIOD: 04/29/2019 to 04/29/2020 12:01 AM LOCAL STANDARD TIME

INSURED LOCATIONS:

Per SOV information on file

COVERAGE PROVIDED:

Per West Flagler Associates Ltd, Dba Magic City Casino and Flagler Dog Track Manuscript Policy

SUBJECTS OF INSURANCE:

Per West Flagler Associates Ltd, Dba Magic City Casino and Flagler Dog Track Manuscript Policy

Primary Carrier Schedule:

LEAD PRIMARY INSURER(S)	POLICY NUMBER	LIMIT/PARTICIPATION
Per West Flagler Associates Ltd, Dba Magic City Casino and Flagler Dog Track Manuscript Policy		

UNDERLYING EXCESS CARRIER SCHEDULE:

UNDERLYING EXCESS INSURER(S)	POLICY NUMBER	LIMIT/PARTICIPATION
Per West Flagler Associates Ltd, Dba Magic City Casino and Flagler Dog Track Manuscript Policy		

LIMITS OF LIABILITY AND PREMIUM:

ATEGRITY SPECIALTY LAYER PREMIUM: $25,000

$5,000,000 part of $10,000,000 excess of $15,000,000; All Risk;

Excluding Earthquake, Flood, Equipment Breakdown Terrorism (TRIPRA)

THIS SUPPLEMENTAL DECLARATION TOGETHER WITH THE COVERAGE FORM(S) AND ENDORSEMENT(S), IF ANY, ISSUED TO FORM A PART THEREOF, COMPLETE THE ABOVE NUMBERED POLICY.

Surplus Lines Agent's Nam
Surplus Lines Agent's Address: 5 Suite 200

Surplus Lines Agent's License #
Producing Agent's Name: Joseph Hanono
Producing Agent's Address: 18305 Biscayne Blvd.
Aventura, FL 33160

This insurance is issued pursuant to the Florida Surplus Lines Law. Persons insured by surplus lines carriers do not have the protection of the Florida Insurance Guaranty Act to the extent of any right of recovery for the obligation of an insolvent unlicensed insurer.

Premium: $25,000 Tax: $1,250.00 Service Fee: $25.00
EMPA Surcharge: $4 Broker Fee:
Inspection Fee: Policy Fee:

Surplus Lines Agent's Countersignature:

XP-0005 07-18

PROPERTY POLICY

SECTION I
DECLARATIONS

All terms in un-bolded capital letters throughout this POLICY are subject to the definition as set forth in this POLICY.

A. Issuing Company - (hereafter referred to as "the Company")

Ategrity Specialty Insurance Company

B. Policy Number

01-B-XP-P00000308-0

C. Insured

West Flagler Associates, Ltd. Dba Magic City Casino and Flagler Dog Track and any subsidiary, and **West Flagler Associates, Ltd. Dba Magic City Casino and Flagler Dog Track** interest in any partnership or joint venture in which **West Flagler Associates, Ltd. Dba Magic City Casino and Flagler Dog Track** has management control, ownership, or is obligated to insure, as now constituted or hereafter is acquired, as the respective interest of each may appear; all hereafter referred to as the Insured, including legal representatives.

D. First Named Insured and Mailing Address

West Flagler Associates, Ltd. Dba Magic City Casino and Flagler Dog Track
401 NW 38th CT
Miami, FL 33136

E. Policy Period

From: 04/29/2019

To: 04/29/2020

F. Inception and Expiration Time

The time of inception and the time of expiration of this POLICY and of any schedule(s) or endorsement(s) attached shall be at 12:01 a.m. (Standard Time) at the First Named Insured's principal place of business. Notwithstanding the foregoing, it is agreed that the actual effective time of attachment of this insurance shall be the same time on the specified date as the actual effective time of cancellation or expiration of the POLICY(IES) replaced or renewed by this POLICY.

The POLICY Period ends, and coverage under this POLICY terminates, when the first of the following occurs:

1. cancellation of this POLICY by the First Named Insured or by the Company;
2. the replacement POLICY takes effect; or
3. the POLICY Expiration Date.

G. Gross Premium

$25,000 at Inception

H. Currency

Any amounts specified in this POLICY, including but not limited to premium, limit(s) of liability, deductible(s), and loss payable will be considered to be in:

U.S. Currency ($)

I. Policy Territory

United States of America, Puerto Rico and the United States Virgin Islands

J. Sanctions Clause

This POLICY will not be deemed to have provided coverage and will not be liable to pay any claim or provide any benefit to the extent that payment of such claim or provision of such benefit would expose the Company to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of any jurisdiction applicable to the Company.

SECTION II
POLICY LIMITS AND SUBLIMITS PURCHASED OR NOT PURCHASED

A. Program Limit of Liability

The Insured has chosen to purchase a Property Insurance Program with a limit of $90,417,240, and this POLICY will serve to participate in that Program subject to the terms outlined in the **Company's Policy Limit of Liability and Application** section.

B. Company's Policy Limit of Liability and Application

1. The Company is not liable for more than its proportionate share, as specified below, of the Program Limit or of the Program Layer Limits that make up the Program Limit for all loss or damage insured by this POLICY arising out of one OCCURRENCE regardless of the number of LOCATIONS or coverages involved in the OCCURRENCE.

Company's Policy Limit of Liability		Program Limit or Program Layer Limits
$5,000,000	Being 50% part of	$10,000,000 excess of $15,000,000

2. The Company is not liable for more than the same proportionate share specified above of any Program Sublimit(s) which are part of the Program Limit or are part of any Program Layer Limits that make up the Program Limit.

3. The amount payable under this POLICY shall be determined by the terms of this POLICY after the application of any deductible features which may be a part of this POLICY. The **Other Insurance** provision of this POLICY is not applicable as respects other Insurers participating in the Program Limit or Program Layer Limit along with the Company's Proportionate Share.

4. In the event an OCCURRENCE results in an amount payable under more than one POLICY issued to the Insured by the Company, or its subsidiaries and affiliates, the maximum amount payable in the aggregate under all such policies will be the **Company's Policy Limit of Liability** specified herein regardless of the number of INSURED LOCATION(S) or coverages involved.

C. Application of Program Sublimit(s)

1. Program Sublimit(s) are part of and not in addition to the Program Limit. Program Sublimit(s) do not increase the Program Limit or any other Program Sublimit(s).

2. Program Sublimit(s) apply in the aggregate per OCCURRENCE to all INSURED LOCATION(S) and for all coverages involved, including TIME ELEMENT.

3. When a Program Sublimit(s) is noted as an Annual Aggregate, such Program Sublimit(s) applies in the aggregate annually to all losses insured by this POLICY occurring during the **Policy Period**.

4. If a Program Sublimit(s) is specified for the cause of loss that causes the claimed loss or damage such sublimit is the maximum amount payable for such OCCURRENCE.

5. If a Program Sublimit(s) is specified for a coverage that is provided, such Sublimit(s) are the maximum amount payable under this POLICY for all loss or damage, resulting from physical loss or damage insured by this POLICY at such INSURED LOCATION(S).

6. If a Program Sublimit(s) is specified for an INSURED LOCATION(S) or property, such Program Sublimit(s) is the maximum amount payable under this POLICY for all loss or damage, including TIME ELEMENT loss, at all INSURED LOCATION(S) resulting from physical loss or damage insured by this POLICY at such INSURED LOCATION(S) or to such property.

7. This policy may contain sublimits applicable to specific locations, specific types of loss, specific causes of loss, or specific coverages. Such sublimits shall be the total payable arising out of one OCCURRENCE (or a Annual Aggregate of certain OCCURRENCES where so specified), and neither the policy limit nor any sublimits shall be increased by the application of one or more sublimits.

D. Coverage Purchased and Coverage Not Purchased

The following Types of Loss, Causes of Loss and Coverages are all excluded unless a monetary amount is set forth next to the Type of Loss, Cause of Loss or Coverage. If no monetary amount is provided; the amount is $0; the line is left blank; or **NCP** (No Coverage Purchased) is shown, then those Types of Loss, Causes of Loss and those Coverages, so designated, remain excluded from recovery under this POLICY.

Program Sublimit(s)	Type of Loss, Cause of Loss and Coverage
$10,000,000	EARTH MOVEMENT (Annual Aggregate), [further sublimited as follows:]
a. $5,000,000 **b. $1,000,000** **c. $1,000,000** **d. $1,000,000**	EARTH MOVEMENT as respects: a. **Newly Acquired Property**; b. **Errors and Omissions**; c. **Exhibitions, Expositions, Fairs or Trade Shows**; and d. **Miscellaneous Unnamed Locations.** (Annual Aggregate)]
$10,000,000	FLOOD (Annual Aggregate), [further sublimited as follows:]
a. $5,000,000 **b. $1,000,000** **c. $1,000,000** **d. $1,000,000**	FLOOD as respects: a. **Newly Acquired Property**; b. **Errors and Omissions**; c. **Exhibitions, Expositions, Fairs or Trade Shows**; and d. **Miscellaneous Unnamed Locations.** (Annual Aggregate)]
INCLUDED	NAMED WINDSTORM, [further sublimited as follows:]
a. $5,000,000 **b. $1,000,000** **c. $1,000,000** **d. $1,000,000**	NAMED WINDSTORM as respects: a. **Newly Acquired Property**; b. **Errors and Omissions**; c. **Exhibitions, Expositions, Fairs or Trade Shows**; and d. **Miscellaneous Unnamed Locations.** (Annual Aggregate)]
$1,000,000	**Accounts Receivable**
$100,000	**Arson or Theft Reward**
EXCLUDED	**Attraction Properties**
$50,000	**Brands and Labels**
$25,000	**Building Materials at Off Premises Storage for Prop. Under construction**
$1,000,000	**Commissions, Licensing Fees and Royalties**
EXCLUDED	**Contingent Time Element** – Direct Named Suppliers and Customers
EXCLUDED	**Contingent Time Element** – Direct Unnamed Suppliers and Customers
EXCLUDED	**Contingent Time Element** – Indirect Suppliers and Customers
$25,000	**Contractual Penalties**
EXCLUDED	**Cyber –** see Endorsement B for exclusion wording
$1,000,000	**Data Restoration –** PROPERTY DAMAGE and TIME ELEMENT combined
$2,500,000	**Debris Removal** - or 25% of the combined amount of physical damage and TIME ELEMENT loss payable at the LOCATION where the damage occurs or limit shown, whichever is the lesser.
Included	**Demolition And Increased Cost Of Construction – Coverage A**
$2,500,000	**Demolition And Increased Cost Of Construction – Coverage B**
$2,500,000	**Demolition And Increased Cost Of Construction – Coverage C**
$2,500,000	**Demolition And Increased Cost Of Construction – Coverage D**
$500,000	**Errors and Omissions**
$500,000	**Exhibitions, Expositions, Fairs or Trade Shows**

Program Sublimit(s)	Type of Loss, Cause of Loss and Coverage
$500,000	**Expediting Expenses**
$2,500,000	**Extra Expense**
$500,000	**Fine Arts**, subject to a maximum of **$1,500** per item
$100,000	**Fire and Police Department Service Charges**
Included	**Gross Earnings**
$2,500,000	**Ingress/Egress**
$500,000	**Land And Water Contaminants Cleanup, Removal And Disposal** (Annual Aggregate)
$2,500,000	**Land Improvements, subject to a maximum of $25,000 per item**
$5,000,000	**Leasehold Interest**
$10,000	**Locks and Keys**
$10,000	**Logistics Extra Cost**
$1,000,000	**Miscellaneous Unnamed Locations**
$250,000	**Mold Ensuing from an Insured Cause of Loss**
$50,000	**Money and Securities**
$500,000	**On Site Construction**
Included	**Ordinary Payroll**
$5,000,000	**Newly Acquired Property – excluding Tier 1 Named Windstorm, High Hazard Flood and High Hazard Earth Movement**
$500,000	**Outdoor Property**, subject to a maximum of **$5,000** per item
$2,500,000	**Order of Civil or Military Authority**
$50,000	**Professional Fees**
$500,000	**Protection and Preservation of Property – Property Damage**
$500,000	**Protection and Preservation of Property – Time Element**
NCP	**Radioactive Contamination**
$100,000	**Rental Insurance**
$1,000,000	**Service Interruption – Property Damage** and **Service Interruption – Time Element Combined – including T&D lines within 1,000 feet of insured's premises**
$100,000	**Soft Costs**
$500,000	**Spoilage**
$1,000,000	**Temporary Removal of Property**
$1,000,000	**Temporary Storage Locations**
$250,000	**Transportation** - PROPERTY DAMAGE and TIME ELEMENT combined
$1,000,000	**Valuable Papers and Records**

E. Time Limit(s)

No coverage is provided by this POLICY for any loss sustained or incurred beyond the corresponding Time Limit specified. Such Time Limit starts on the date of the physical loss or damage insured by this POLICY; however, not to exceed the stated dollar sublimit provided in Section D above:

90 consecutive calendar days from the date of acquisition for **Newly Acquired Property**

365 consecutive calendar days for **Extended Period of Liability – Gross Earnings** and **Rental Insurance**

30 consecutive calendar days after such length of time as would be required with the exercise of due diligence and dispatch to repair or replace the damaged dam, reservoir or equipment for **Impounded Water**

30 consecutive calendar days from the date of OCCURRENCE for **Ingress/Egress**

30 consecutive calendar days from the date of OCCURRENCE for **Order Of Civil Or Military Authority**

F. Distance Limit(s)

No coverage for TIME ELEMENT loss, as described below, is provided if the LOCATION of the physical loss or damage is beyond the stated Distance Limits indicated below:

5 statute mile(s) from the INSURED LOCATION for **Ingress/Egress**

5 statute mile(s) from the INSURED LOCATION for **Order Of Civil Or Military Authority**

G. Time Element Coverage Extensions - Application of Limits

For purposes of all claims paid hereunder in accordance with the TIME ELEMENT coverage provisions, the applicable Program Sublimits, set forth above, will be determined as though the LOCATION(S) suffering physical loss or damage insured by this POLICY were INSURED LOCATION(S), and not where the TIME ELEMENT losses might be incurred if different.

SECTION III
POLICY DEDUCTIBLES AND WAITING PERIODS

A. Policy Deductibles

In each case of loss or damage insured by this POLICY, the Company is liable only if the Insured sustains such loss or damage in a single OCCURRENCE, the value of which is in excess of the applicable deductible specified, and then the amount insured by this POLICY shall be the amount in excess of the deductible, subject to all terms, conditions, provisions, limitations and exclusions of this POLICY.

$25,000 per occurrence for all perils, except;

NAMED WINDSTORM
5% Per Unit of Insurance at each location involved in the loss or damage arising out of a NAMED WINDSTORM and subject to a minimum deductible of $100,000 per occurrence as respects LOCATIONS situated in a TIER 1 COUNTY

EARTH MOVEMENT:
$50,000 per occurrence for the peril of EARTHQUAKE

FLOOD:
$100,000 per occurrence for the peril of FLOOD, except for locations wholly or partially situated in HIGH HAZARD FLOOD ZONES the deductible shall be $500,000 per building, $500,000 for Contents per building and $100,000 for Time Element per occurrence.

Each of the following shall be considered a separate Unit of Insurance:

- Each separate building or structure
- Contents in each separate building or structure
- Property in the yard of each separate building or structure
- Annual Business Interruption values apply to each separate building or structure

B. Application of Deductibles

Unless otherwise specified above:

1. All deductibles apply per OCCURRENCE.

2. When this POLICY insures more than one INSURED LOCATION(S), the deductible applies against the total loss and damage insured by this POLICY in any one OCCURRENCE.

3. If two or more deductibles provided in this POLICY apply to a single OCCURRENCE, then the total to be deducted will not exceed the largest deductible applicable; provided, however, the largest deductible applicable may be comprised of two parts, one applicable to PROPERTY DAMAGE and one applicable to TIME ELEMENT.

4. If a deductible is expressed as a period of time which is:

   a. not otherwise more specifically stated; or

   b. not intended to be converted to its monetary equivalents;

   then the Company will not be liable for the amount of loss incurred or sustained by the Insured during such period of time that immediately follows the physical loss or damage insured by this POLICY.

5. If a deductible is expressed as an Actual Daily Value (ADV) or a multiple thereof, the ADV will be calculated as follows:

a. Determine the **Gross Earnings** that would have been earned during the **Period of Liability** of the Insured's business had no **Time Element** loss occurred.

b. Divide the result in a. above by the number of working days in the **Period of Liability** of the Insured's business had no loss occurred. The resulting amount is the ADV.

No reduction will be made for the **Gross Earnings** not being earned in the number of working days because of the loss or damage, or because of any scheduled or unscheduled shutdowns during the **Period of Liability** of the Insured's business.

The ADV will be calculated based on the **Gross Earnings** of the entirety of the INSURED LOCATION(S), whether or not the loss or damage affects the entirety of the INSURED LOCATION(S). If physical loss or damage insured by this POLICY results in a TIME ELEMENT loss at more than one INSURED LOCATION(S), the ADV will be calculated based on the combined **Gross Earnings** of all affected INSURED LOCATION(S).

6. The deductibles provisions specified herein this POLICY for NAMED WINDSTORM apply to all loss or damage insured by this POLICY, caused by or arising out of a NAMED WINDSTORM, including, but not limited to, the following:

   a. the force or action of WIND caused by or resulting from a NAMED WINDSTORM; in accordance with the FLOOD definition provision of this POLICY;

   b. any material, object or debris that is carried, propelled or in any manner moved by a NAMED WINDSTORM;

   c. any tornadoes that are a result of actions or effects of a NAMED WINDSTORM;

   d. hail that is a result of actions or effects of a NAMED WINDSTORM;

   e. lightning that is a result of actions or effects of a NAMED WINDSTORM;

   f. rain or water, whether the rain or water is driven by WIND or not, that enters the covered building or structure through an opening created by the force of WIND or water from a NAMED WINDSTORM; or

   g. FLOOD, if covered by this POLICY, that results from the actions or effects of NAMED WINDSTORM.

7. The LOCATION(S) where physical loss or damage insured by this POLICY occurs shall be used to determine the deductible. Once the deductible is determined, if it is a percentage deductible, it shall be applied to the APPLICABLE VALUES.

C. Waiting Periods

Coverage is provided by this POLICY only if the corresponding WAITING PERIOD specified is exceeded. Coverage shall then apply only to the LOCATION(s) where the WAITING PERIOD has been exceeded. The corresponding coverage will then apply from the beginning of the interruption of services but only for the amounts in excess of the applicable Deductible(s). If multiple LOCATIONS exceed the WAITING PERIOD then the applicable Deductible(s) will apply to the combined loss of all such LOCATIONS.

1. **24** consecutive hours from the inception of interruption of services for **Service Interruption** – **Property Damage** and **Service Interruption** – **Time Element**.

STRATEGIC NON-ADMITTED PROPERTY POLICY

SECTION IV
PROPERTY DAMAGE

A. Insured Property

Except as excluded hereinafter, INSURED PROPERTY consists of property described below:

1. Real property owned by the Insured or in which the Insured has an insurable interest.

2. Personal property:

   a. owned by the Insured, including the Insured's interest as a tenant in IMPROVEMENTS AND BETTERMENTS for which the Insured incurred the costs of installation or for which the Insured is legally liable under the terms of its lease.

      In the event of physical loss or damage insured by this POLICY to such IMPROVEMENTS AND BETTERMENTS, the Company agrees to accept and consider the Insured as sole and unconditional owner of IMPROVEMENTS AND BETTERMENTS, notwithstanding any contract or lease to the contrary.

   b. of officers and employees of the Insured; and of others in the Insured's custody:

      I. to the extent the Insured is under obligation to keep such property insured for physical loss or damage insured by this POLICY; or

      II. to the extent of the INSURED'S LIABILITY for physical loss or damage insured by this POLICY to such property.

B. Property Damage Coverage Extensions, Terms and Conditions

The following are subject to all terms, conditions, provisions, limitations and exclusions of this POLICY and in addition, any other terms, conditions, provisions, limitations and exclusions set forth below.

1. Accounts Receivable

   a. This POLICY is extended to insure ACCOUNTS RECEIVABLE loss and expense resulting from direct physical loss or damage insured by this POLICY to the Insured's accounts receivable records, including accounts receivable records stored as ELECTRONIC DATA, while anywhere, including while in transit to the extent provided under **Transportation**, within the **Policy Territory**.

   b. This extension also insures the following:

      I. The interest charges on any loan to offset impaired collections pending repayment of such sum uncollectible as a result of such physical loss or damage.

         Unearned interest and service charges on deferred payment accounts and normal credit losses on credit extended or bad debts will be deducted in determining the recovery.

      II. Any other necessary and reasonable costs incurred to reduce the loss, to the extent the loss is reduced.

   c. In the event of loss to accounts receivable records, the Insured will use all reasonable efforts, including legal action, if necessary, to effect collection of outstanding accounts receivable.

d. The Insured agrees to use any suitable property or service owned or controlled by the Insured, or obtainable from other sources, in reducing the loss otherwise insured under this extension.

e. If it is possible to reconstruct accounts receivable records so that no ACCOUNTS RECEIVABLE loss is sustained, this POLICY insures only the reasonable and necessary costs incurred for material and time required to re-establish or reconstruct such records, and not for any costs insured by any other insurance.

f. When there is proof that a loss covered by this POLICY has occurred but the Insured cannot accurately establish the total amount of accounts receivable outstanding as of the date of such loss, such amount shall be based on the Insured's monthly statements and shall be computed as follows:

I. determine the amount of all outstanding accounts receivable at the end of the same fiscal month in the year immediately preceding the year in which the loss occurs;

II. calculate the percentage of increase or decrease in the average monthly total of accounts receivable for the twelve (12) months immediately preceding the month in which the loss occurs, or such part thereof for which the Insured has furnished monthly statements to the Company, as compared with such average for the same months of the preceding year;

III. the amount determined under I. above, increased or decreased by the percentage calculated under II. above, shall be the agreed total amount of accounts receivable as of the last day of the fiscal month in which said loss occurs;

IV. the amount determined under III. above shall be increased or decreased in conformity with the normal fluctuations in the amount of accounts receivable during the fiscal month involved, due consideration being given to the experience of the business since the last day of the last fiscal month for which a statement has been rendered.

V. Add any collection expenses in excess of normal collection costs and made necessary because of loss or damage, and the reasonable expenses incurred in re-establishing accounts receivable records following the loss or damage.

g. All amounts recovered by the Insured on outstanding accounts receivable on the date of loss will belong and be paid to the Company up to the amount of loss paid by the Company. All recoveries exceeding the amount paid by the Company will belong to the Insured.

h. No coverage is provided under this extension for any shortage resulting from:

I. bookkeeping, accounting or billing errors or omissions; or

II. alteration, falsification, manipulation, concealment, destruction or disposal of accounts receivable records committed to conceal the wrongful giving, taking, obtaining or withholding of MONEY, SECURITIES or other property; but only to the extent of such wrongful giving, taking, obtaining or withholding.

2. Brands and Labels

If branded or labeled MERCHANDISE or FINISHED GOODS insured by this POLICY is damaged and the Company elects to take all or any part of such MERCHANDISE or FINISHED GOODS at the value established by the provisions of this POLICY, the Insured may, at the Company's expense, stamp “salvage” on the MERCHANDISE or FINISHED GOODS or its containers or may remove or obliterate the brands or labels, if such stamp, removal or obliteration will not physically damage or otherwise reduce the value of the MERCHANDISE or FINISHED GOODS, but the Company shall re-label the MERCHANDISE or FINISHED GOODS or containers in compliance with the requirements of law.

3. Control of Damaged Property

This POLICY gives control of physically damaged FINISHED GOODS or MERCHANDISE as follows:

a. the Insured will have full rights to the possession and control of damaged FINISHED GOODS or MERCHANDISE in the event of physical loss or damage insured by this POLICY to such FINISHED GOODS or MERCHANDISE provided proper testing is done to show which FINISHED GOODS or MERCHANDISE is physically damaged;

b. the Insured using reasonable judgment will decide if FINISHED GOODS or MERCHANDISE sustaining physical loss or damage can be reprocessed or sold;

c. FINISHED GOODS or MERCHANDISE so judged by the Insured to be unfit for reprocessing or selling will not be sold or disposed of except by the Insured, or with the Insured's consent; and

d. any salvage proceeds received will go to the:

I. Company at the time of loss settlement; or

II. Insured if received prior to loss settlement and such proceeds will reduce the amount of loss payable hereunder.

e. Notwithstanding, the foregoing paragraphs a. through d., the Insured shall allow the Insurer any salvage which could be or which could have been obtained on any sale or other disposition of such goods or products through normal insurance industry salvage practices.

4. Data Restoration

This POLICY is extended to insure the necessary and reasonable costs and expenses actually incurred by the Insured, subject to the limits specified in the Program Sublimit(s) section, following direct physical loss or damage insured by this POLICY to INSURED PROPERTY for reproduction of ELECTRONIC DATA. Such cost of reproduction shall include all reasonable and necessary amounts, incurred by the Insured in recreating, gathering and assembling such ELECTRONIC DATA.

5. Debris Removal

a. This POLICY is extended to insure the necessary and reasonable costs and expenses actually incurred by the Insured, subject to the limits specified in the Program Sublimit(s) section, following direct physical loss or damage insured by this POLICY to INSURED PROPERTY, to dismantle, demolish and/or remove from INSURED LOCATION(S) the debris of INSURED PROPERTY remaining after any such physical loss or damage.

b. No coverage is provided hereunder for costs and expenses incurred in the removal of:

I. any foundation, other than damaged portions which must be removed in order to effectuate the repair or rebuilding of any INSURED PROPERTY; or

II. any property or part thereof, the removal of which is required by the enforcement of any law, ordinance, regulation or rule regulating or restricting the construction, installation, repair, replacement, demolition, occupancy, operation or other use of INSURED PROPERTY; or

III. CONTAMINANTS from land or water, nor for the cost to remove, restore or replace polluted land or water.

No liability shall exist under this extension of coverage unless such costs and expenses are reported to the Company within one hundred eighty (180) days of the date of such physical loss or damage insured by this POLICY or the expiration of this POLICY, whichever shall be earlier.

6. Demolition and Increased Cost of Construction

a. This POLICY is extended to insure the following additional costs when there is direct physical loss or damage insured by this POLICY to building(s) or structure(s) insured by this POLICY and such additional costs are occasioned by the enforcement of any law or ordinance regulating the construction, repair, replacement, use or demolition of building(s) or structure(s) which is in force at the time of loss and necessitates such costs:

I. **Coverage A**: value of the undamaged portion(s) which has been demolished subject to the same basis of recovery which applies to the damaged portion(s) of such building(s) or structure(s). This cost shall not include any greater cost of repair, replacement, construction or reconstruction due to the enforcement of any law or ordinance;

II. **Coverage B**: cost of demolishing any undamaged portion(s);

III. **Coverage C**: if the basis of recovery is replacement cost, the increased cost actually expended (excess of I. Coverage A above) in rebuilding or replacing both the damaged and demolished portions on the same INSURED LOCATION with like height, floor area and style and for like occupancy to comply with the minimum requirements of such law or ordinance.

IV. **Coverage D:** any increase in the business interruption, extra expense, rental value and royalties loss arising out of the additional time required to comply with said law or ordinance.

b. This extension provision shall not insure:

I. any increase of loss associated with the enforcement of any law or ordinance which requires the Insured or others to test for, monitor, cleanup, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of CONTAMINANTS.

II. any loss due to any law or ordinance with which the Insured was required to comply prior to the loss.

This entire provision shall not increase any amounts or limits of insurance provided by this POLICY.

7. Destruction by Civil or Military Authority

This POLICY is extended to insure against acts of destruction by order of civil or military authority at the time of and for the purpose of preventing the spread of fire provided such fire originated from physical loss or damage insured by this POLICY.

8. Errors and Omissions

a. If loss or damage is not payable under this POLICY solely due to an error or unintentional omission:

I. in the description of where INSURED PROPERTY is physically situated within the **Policy Territory**; or

II. to include any LOCATION(S), within the **Policy Territory**, that is owned, rented or leased by the Insured as of the POLICY Inception Date; or

III. that results in cancellation of coverage for INSURED PROPERTY under the POLICY;

then such property shall be considered INSURED PROPERTY under this POLICY to the extent it would have provided coverage had such error or unintentional omission not been made.

b. It is a condition precedent to recovery under this extension of coverage that any error or unintentional omission be:

I. reported by the Insured to the Company when discovered; and

II. corrected upon its discovery.

9. Exhibitions, Expositions, Fairs or Trade Shows

a. The POLICY is extended to insure any personal property, except as excluded under the **Property Not Insured** section of this POLICY:

I. owned by the Insured;

II. of others in the Insured's care, custody and control:

1) to the extent the Insured is under an obligation to insure such property against direct physical loss or damage insured by this POLICY; or

2) to the extent of the INSURED'S LIABILITY for direct physical loss or damage insured by this POLICY to such property;

while such property is situated on the premises of any exhibitions, expositions, fairs or trade shows within the **Policy Territory**.

b. No coverage is provided under this extension for any property:

I. while in transit;

II. while waterborne;

III. at INSURED LOCATION(S);

IV. insured under **Course of Construction**;

V. insured under **Fine Arts**;

VI. that is otherwise insured by this POLICY or any other POLICY issued by the Company to the Insured.

10. Expediting Expenses

This extension provision applies to real and personal property only.

a. This POLICY is extended to insure the reasonable and necessary expenses incurred by the Insured:

I. to pay for the temporary repair of direct physical damage insured by this POLICY to INSURED PROPERTY at INSURED LOCATION(S); and

II. to expedite the permanent repair or replacement of such INSURED PROPERTY.

b. No coverage is provided under this extension for any expenses:

I. recoverable under any other section or provision in this POLICY; or

II. for permanent repair or replacement of any INSURED PROPERTY.

11. Fine Arts

a. This POLICY is extended to insure direct physical loss or damage insured by this POLICY to FINE ARTS while anywhere, including while in transit to the extent provided under **Transportation**, within the **Policy Territory**.

b. No coverage is provided under this extension for:

I. loss or damage if the FINE ARTS cannot be replaced with others of like kind and quality, unless such FINE ARTS are specifically declared to and accepted by the Company prior to the loss or damage; or

II. loss or damage caused by or resulting from or occurring during any repairing, restoration or retouching process.

12. Fire and Police Department Service Charges

a. This POLICY is extended to insure the following reasonable and necessary charges:

I. fire department firefighting charges imposed on the Insured by law or ordinance as a result of responding to a fire in, on or exposing the INSURED PROPERTY at INSURED LOCATION(S);

II. costs incurred in restoring and recharging fire protection systems at INSURED LOCATION(S) following direct physical loss or damage insured by this POLICY to INSURED PROPERTY;

III. costs incurred for the water used for fighting a fire following direct physical loss or damage insured by this POLICY in, on or exposing INSURED PROPERTY at INSURED LOCATION(S);

IV. police department charges imposed on the Insured by law or ordinance as a result of responding to a covered cause of loss in, on or exposing the INSURED PROPERTY at INSURED LOCATION(S).

b. To the extent costs are incurred as insured under this extension of coverage and such costs served to prevent the occurrence of direct physical loss or damage insured by this POLICY to INSURED PROPERTY, this extension of coverage is subject to the POLICY Deductible that would have applied to any claim for such physical loss or damage insured by this POLICY that was avoided.

13. Infrastructure System Coverage

This POLICY is extended to insure direct physical loss or damage insured by this POLICY to insured personal property that is part of communications lines, data transmission lines or any infrastructure comprising or supporting the Insured's connection to its internet service provider or ELECTRONIC DATA COMMUNICATIONS SYSTEM when, and only to the extent that, such personal property is located on INSURED LOCATION(S) and is under the Insured's exclusive operational control. Insured personal property does not include satellites or ELECTRONIC DATA.

ELECTRONIC DATA COMMUNICATIONS SYSTEM, means any communication system, including computer systems and the Internet, which provides the Insured with access to other computer systems, microchips, integrated circuits or similar devices in non-computer equipment, or which provides any party access to the Insured's computer systems, microchips, integrated circuits or similar devices in non-computer equipment.

14. Land and Water Contaminants, Cleanup, Removal and Disposal

a. This POLICY is extended to insure the reasonable and necessary cost for the cleanup, removal and disposal of CONTAMINANTS:

I. from land; or

II. from water or any other substance in or on land

at INSURED LOCATION(S) provided the release, discharge or dispersal of such CONTAMINANTS is directly caused by direct physical loss or damage insured by this POLICY to INSURED PROPERTY at INSURED LOCATION(S).

b. No coverage is provided under this extension of coverage for the cost:

I. to test for, monitor or assess the existence, concentration or effects of any CONTAMINANTS, other than the testing which is performed in the course of extracting the CONTAMINANTS;

II. to cleanup, remove and dispose of any CONTAMINANTS from land, or from water or any other substance in or on land:

1) at INSURED LOCATION(S) for which coverage is not provided hereunder for real property.

2) if the Insured fails to give written notice of loss to the Company within one hundred eighty (180) consecutive calendar days from the date of such physical loss or damage causing the release, discharge or dispersal of such CONTAMINANTS.

15. Miscellaneous Unnamed Locations

This POLICY is extended to insure INSURED PROPERTY within the **Policy Territory** that is either:

a. not listed on the latest Schedule of Locations submitted to, accepted by and on file with the Company; or

b. listed on the latest Schedule of Locations submitted to, accepted by and on file with the Company but for which the Insured has not submitted values for its interest.

16. Newly Acquired Property

a. This POLICY is extended to insure direct physical loss or damage insured by this POLICY to newly constructed real property upon completion, or real property acquired or leased within the **Policy Territory** during the term of this POLICY and personal property, while under the care, custody and control of the Insured at any such new LOCATION(S). TIME ELEMENT coverage is provided for property insured under this extension of coverage, subject to all TIME ELEMENT terms, conditions, provisions, limitations and exclusions.

b. Coverage under this **Newly Acquired Property** provision shall commence when the Insured first acquires an insurable interest at the new LOCATION(S) and shall cease after the number of days specified in the **Time Limit** section if not reported to and accepted by the Company. If reported to and accepted by the Company the coverage provided by this POLICY for that LOCATION shall be the same as for all other INSURED LOCATION(S) unless otherwise specified herein or by endorsement.

c. No coverage is provided under this coverage extension for property while in transit or waterborne, nor while on the premises of any exhibition, exposition, fair or trade show. This provision shall not be construed as providing coverage at LOCATION(S) scheduled or otherwise insured herein.

d. This **Newly Acquired Property** provision shall not increase any amounts or limits of insurance provided by this POLICY.

17. On Site Construction

This POLICY is extended to insure direct physical loss or damage insured by this POLICY to buildings and structures undergoing construction, alteration, extension, or renovation while taking place on INSURED LOCATION(S). TIME ELEMENT coverage is provided for property insured under this extension of coverage, subject to all TIME ELEMENT terms, conditions, provisions, limitations and exclusions.

18. On Site Service Interruption

This POLICY is extended to insure direct physical loss or damage insured by this POLICY, including shrinkage, evaporation, leakage of contents, change in flavor or texture or finish, decay or other spoilage, when such physical loss or damage is the result of an interruption of services caused by physical loss or damage as insured against by this POLICY, at INSURED LOCATION(S).

The period of service interruption is the period starting with the time when an interruption of specified services happens; and ending when with due diligence and dispatch the service could be wholly restored.

19. Professional Fees

a. This POLICY is extended to insure the reasonable expenses, including the cost of using the Insured's employees, incurred by the Insured, or by the Insured's representatives, for preparing the details of a claim insured by this POLICY.

b. No coverage is provided under this extension of coverage for expenses incurred by the Insured in utilizing or retaining the services of:

I. attorneys;

II. independent or public adjusters;

III. insurance agents or brokers; or

IV. any subsidiary, related or associated entities either wholly or partially owned by an attorney, insurance agent, broker, or public adjuster.

20. Protection and Preservation of Property – Property Damage

a. This Policy is extended to insure reasonable and necessary costs incurred for actions to temporarily protect or preserve INSURED PROPERTY; provided such actions are necessary due to actual, or to prevent immediately impending, direct physical loss or damage insured by this POLICY to such INSURED PROPERTY.

b. This extension is subject to the deductible and sublimit provisions that would have applied had the physical loss or damage happened.

21. Radioactive Contamination

Notwithstanding any Nuclear Exclusion clause contained herein, this POLICY is extended to insure direct physical loss or damage insured by this POLICY to INSURED PROPERTY caused by sudden and accidental radioactive contamination, including resultant radiation damage to INSURED PROPERTY provided:

a. such radioactive contamination is caused by the release of radiation from radioactive material which is commonly known to be radioactive and commonly located on an INSURED LOCATION(S);

b. such radioactive material knowingly is kept on an INSURED LOCATION(S) and its radioactivity is used for the purpose of the Insured's operations; and

c. at the time of such sudden and accidental contamination, there is neither a nuclear reactor capable of sustaining nuclear fission in a self-supporting chain reaction, nor any new or used nuclear fuel which is intended for or which has been used in a nuclear reactor, on the INSURED LOCATION(S).

22. Service Interruption – Property Damage

a. This POLICY is extended to insure direct physical loss or damage insured by this POLICY including shrinkage, evaporation, leakage of contents, change in flavor or texture or finish, decay or other spoilage to INSURED PROPERTY at INSURED LOCATION(S) when such physical loss or damage results from the interruption of services consisting of:

I. incoming electricity;

II. incoming fuel;

III. incoming gas;

IV. incoming refrigerant;

V. incoming steam;

VI. incoming water;

VII. outgoing sewerage service; or

VIII. incoming or outgoing audio, voice and video;

b. This extension of coverage applies only when such interruption of service is caused by physical loss or damage resulting from a cause of loss insured by this POLICY to any property of the type insured by this POLICY of the supplier of such services if such property is situated within the **Policy Territory** commencing when such service is interrupted and ceasing when with due diligence and dispatch such services have been or could have been restored.

c. The Insured agrees to immediately notify the suppliers of services of any interruption of such services.

d. No coverage is provided under this extension of coverage:

I. unless the period of service interruption exceeds the WAITING PERIOD specified for this extension; or

II. if the interruption of such services is caused by the failure of the Insured to comply with the terms and conditions of any terms or contracts the Insured has for the supply of such services; or

III. for loss sustained at any **Miscellaneous Unnamed Location**.

23. Temporary Removal of Property

When INSURED PROPERTY is removed from an INSURED LOCATION for the purpose of being repaired or serviced or in order to avoid threatened physical loss or damage insured by this POLICY, this POLICY insures such property:

a. while at the premises to which such property has been moved; and

b. for physical loss or damage insured by this POLICY at the INSURED LOCATION from which such property was removed.

This additional coverage does not apply to property:

a. insured, in whole or in part, elsewhere in this POLICY.

b. insured, in whole or in part, by any other insurance policy.

c. removed for normal storage, processing or preparation for sale or delivery.

24. Transportation

a. This POLICY is extended to insure the following personal property, except as excluded under **Property Not Insured**, while in transit within the **Policy Territory**:

I. personal property owned by the Insured;

II. personal property shipped to customers under F.O.B., C & F or similar terms. The Insured's contingent interest in such shipments is admitted;

III. personal property of others in the actual or constructive custody of the Insured to the extent of the Insured's interest or INSURED'S LIABILITY;

IV. personal property of others sold by the Insured, that the Insured has agreed prior to the loss to insure during the course of delivery.

b. No coverage is provided under this extension for:

I. samples in the custody of salespeople or selling agents;

II. any property insured under import or export ocean marine insurance;

III. waterborne shipments, except while on the navigable inland waters and coastwise shipments within the **Policy Territory**;

IV. airborne shipments unless by regularly-scheduled passenger airlines or air freight carriers;

V. property of others, including the INSURED'S LIABILITY for it, hauled on vehicles owned, leased or operated by the Insured when acting as a common or contract carrier;

VI. the conveyance used as the mode of transportation (including any part of equipment thereof) or containers;

VII. all materials in transit which are otherwise insured under another policy of insurance.

c. Coverage attachment and duration:

I. Coverage provided under this extension of coverage starts from the time the property leaves the original point of shipment for transit. It then insures continuously in the due course of transit within the continent in which the shipment commences until the property arrives at the destination within such continent subject to the terms and conditions set forth in a and b of this extension of coverage;

II. However, coverage on export shipments not insured under ocean cargo policies ends when such personal property is loaded onboard overseas vessels or aircraft. Coverage on import shipments not insured under ocean cargo policies starts after discharge from overseas vessels or aircraft;

III. This insurance only covers such shipments, the transportation of which begins within the term of this POLICY, even though said transportation is not completed prior to POLICY expiration.

d. This extension of coverage also insures:

I. general average and salvage charges on shipments insured while waterborne;

II. physical loss or damage to such personal property caused by or resulting from:

1) unintentional acceptance of fraudulent bills of lading, shipping or messenger receipts;

2) improper parties having gained possession of property through fraud or deceit.

e. Additional general provisions:

I. This extension will not inure to the benefit of any carrier or bailee;

II. The Insured has permission, without prejudicing this insurance, to accept:

1) ordinary bills of lading used by carriers;

2) released bills of lading;

3) undervalued bills of lading; and

4) shipping or messenger receipts.

f. The Insured may waive subrogation against railroads under side track agreements.

g. Except as otherwise stated, the Insured agrees not to enter into any special agreement with carriers releasing them from their common law or statutory liability.

25. Valuable Papers and Records

a. This POLICY insures direct physical loss or damage insured by this POLICY to VALUABLE PAPERS AND RECORDS while anywhere, including while in transit to the extent provided under **Transportation**, within the **Policy Territory**.

b. No coverage is provided under this extension of coverage for:

I. loss or damage to VALUABLE PAPERS AND RECORDS if such property cannot be replaced with others of like kind and quality, unless specifically declared to and accepted by the Company prior to the loss or damage;

II. loss or damage to property held as samples or for sale or for delivery after sale;

III. errors or omissions in processing or copying unless physical loss or damage insured by this POLICY to VALUABLE PAPERS AND RECORDS results, in which event, only such resulting physical loss or damage is insured under this extension of coverage;

IV. loss or damage to VALUABLE PAPERS AND RECORDS caused by or resulting from deterioration, inherent vice, vermin or wear and tear; all unless physical loss or damage insured by this POLICY to VALUABLE PAPERS AND RECORDS results, in which event, only such resulting physical loss or damage is insured under this extension.

SECTION V
TIME ELEMENT

A. Loss Insured

1. This POLICY insures TIME ELEMENT loss, during the **Period of Liability** directly resulting from direct physical loss or damage insured by this POLICY to INSURED PROPERTY at INSURED LOCATION(S) or as otherwise provided in this section or endorsed hereon, and subject to all terms and conditions within this POLICY.

2. This POLICY insures TIME ELEMENT loss only to the extent it cannot be reduced through:

   a. the use of any property or service owned or controlled by the Insured;

   b. the use of any property or service obtainable from other sources;

   c. working extra time or overtime; or

   d. the use of inventory.

3. The Company shall take into consideration the combined operating results of all INSURED LOCATION(S) and associated, affiliated or subsidiary companies of the Insured in determining the TIME ELEMENT loss.

4. This POLICY insures expenses reasonably and necessarily incurred by the Insured to reduce the loss otherwise payable under this section. The amount of such recoverable expenses will not exceed the amount by which the loss otherwise payable hereunder is reduced.

5. The Insured agrees to:

   a. act with due diligence and dispatch in repairing or replacing physically damaged buildings and equipment to the same or equivalent physical and operating conditions that existed immediately prior to such physical loss or damage; and

   b. take whatever actions are necessary and reasonable to minimize the loss payable hereunder.

6. In determining the amount of loss payable, the Company will consider:

   a. the experience of the business before and after; and

   b. the probable experience during

   the **Period of Liability**.

7. There will be no recovery of loss under this **Time Element** section of this POLICY when there is recovery elsewhere in this POLICY.

B. Gross Earnings

1. The recoverable **Gross Earnings** loss is the Actual Loss Sustained by the Insured due to the necessary interruption of the Insured's business during the **Period of Liability** as respects **Gross Earnings** less all charges and expenses that do not, or did not necessarily, continue during such interruption.

2. In determining the indemnity payable as the Actual Loss Sustained by the Insured, the Company will consider the continuation of only those normal charges and expenses that would have been incurred had no interruption of the Insured's business occurred.

3. There is recovery herein but only to the extent that the Insured is:

a. wholly or partially prevented from producing goods or continuing business operations or services;

b. unable to make up lost production within a reasonable period of time, not limited to the period during which production is interrupted;

c. unable to continue its operations or services during the **Period of Liability**; and

d. able to demonstrate a loss of SALES resulting from an interruption in operations, services or production.

4. For the purpose of this insurance, **Gross Earnings** are defined as the sum of:

a. As respects:

I. manufacturing operations, the net SALES value of production less the cost of all RAW STOCK, materials and supplies used in such production; or

II. mercantile or non-manufacturing operations, the total net SALES less cost of MERCHANDISE sold, materials and supplies consumed in the operations or services rendered by the Insured; and

b. all other earnings derived from the operation of the business.

Any amount recovered at selling price for physical loss or damage to FINISHED GOODS or MERCHANDISE, which has been valued at the selling price, will be considered to have been sold to the Insured's regular customers and will be credited against claimed loss of net SALES.

C. Period of Liability

1. The **Period of Liability** applying to all TIME ELEMENT coverages, except **Leasehold Interest** and as shown below, or if otherwise provided under the TIME ELEMENT coverage extensions, is as follows:

a. For building and equipment, the period of time:

I. starting on the date of physical loss or damage insured by this POLICY to INSURED PROPERTY; and

II. ending when with due diligence and dispatch the building and equipment could be repaired or replaced with current materials of like size, kind and quality and made ready for operations;

under the same or equivalent physical and operating conditions that existed immediately prior to such physical loss or damage.

Such period of time is not limited by the POLICY expiration date.

b. For stock-in-process and MERCHANDISE, including finished goods not manufactured by the Insured, the period of time required with the exercise of due diligence and dispatch:

I. to restore stock-in-process to the same state of manufacture in which it existed at the inception of the interruption of the Insured's business; and

II. to replace physically damaged MERCHANDISE.

c. For raw materials and supplies, the period of time:

I. of the actual interruption of the Insured's business resulting from the Insured's inability to obtain suitable raw materials and supplies similar to those damaged; but

II. limited to that period of time for which the damaged raw materials and supplies would have supplied operating needs.

d. For physical loss or damage to MEDIA, the period of time required to copy from backups or from originals of a previous generation. Such period of time shall include all reasonable and necessary time, incurred by the Insured in recreating, gathering and assembling such ELECTRONIC DATA.

e. For physical loss or damage to exposed films, records, manuscripts and drawings, the period of time required to copy from backups or from originals of a previous generation. Such period of time shall include all reasonable and necessary time, incurred by the Insured in recreating, gathering and assembling such ELECTRONIC DATA.

2. The **Period of Liability** does not include any additional time due to the Insured's inability to resume operations for any reason, including but not limited to:

a. making changes to the equipment;

b. making changes to the buildings or structures;

c. re-staffing or re-training employees. However, this item **c.** does not apply to additional time needed to train staff to use new machinery or equipment that replaces machinery or equipment that suffered insured physical loss or damage, provided such training is completed within 90 consecutive days after the new machinery or equipment has been installed.

3. If more than one **Period of Liability** applies, such periods will not be cumulative.

D. Extra Expense

1. The recoverable **Extra Expense** loss is the reasonable and necessary extra costs incurred by the Insured during the **Period of Liability** as respects the following:

a. extra costs to temporarily continue as nearly normal as practicable the conduct of the Insured's business; and

b. extra costs of temporarily using property or facilities of the Insured or of others;

c. costs to purchase FINISHED GOODS from third parties to fulfill orders when such orders cannot be met due to physical loss or damage to the Insured's FINISHED GOODS, less payment received for the sale of such FINISHED GOODS;

d. less any value remaining at the end of the **Period of Liability** for any property obtained in connection with the above.

Time Element Exclusion paragraph **D.3.** does not apply to paragraph **c.** above.

2. No coverage is provided herein for:

a. any loss of income;

b. costs that normally would have been incurred in conducting the Insured's business during the same period had no physical loss or damage insured by this POLICY to INSURED PROPERTY occurred;

c. cost of permanent repair or replacement of any property that has sustained physical loss or damage; or

d. any expense recoverable elsewhere in this POLICY.

E. Rental Insurance

1. The recoverable **Rental Insurance** loss is the Actual Loss Sustained by the Insured during the **Period of Liability** as respects:

   a. the fair rental value of any portion of an INSURED LOCATION(S) occupied by the Insured that the Insured is unable to occupy following physical loss or damage insured by this POLICY;

   b. the income reasonably expected from rentals of unoccupied or unrented portions of INSURED LOCATION(S) available for rent at the time of physical loss or damage insured by this POLICY; and

   c. the rental income from the rented portions of INSURED LOCATION(S) according to bona fide leases, contracts or agreements in force at the time of physical loss or damage insured by this POLICY to such real property;

   all not to include non-continuing charges and expenses.

2. No coverage is provided herein for any loss of rental income during any period in which INSURED PROPERTY would not have been tenantable for any reason other than physical loss or damage insured by this POLICY, except as otherwise provided under **Extended Period of Liability**.

F. Time Element Coverage Extensions, Terms and Conditions

The following are subject to all terms, conditions, provisions, limitations and exclusions of this POLICY and in addition, any other terms, conditions, provisions, limitations and exclusions set forth below.

1. Commissions, Licensing Fees and Royalties

a. The recoverable **Commissions, Licensing Fees and Royalties** loss is **Gross Earnings** loss incurred by the Insured during the **Period of Liability** less any non-continuing expenses and charges.

b. The recoverable **Commissions, Licensing Fees and Royalties** loss incurred is **Gross Earnings** lost by the Insured during the **Period of Liability** under any royalty, licensing fee, franchise fee or commission agreements between the Insured and another party which is not realizable due to direct physical loss or damage insured by this POLICY to any property, except of the type excluded under **Property Not Insured**, of the other party at any LOCATION(S) situated within the **Policy Territory**.

c. The Insured agrees to influence, to the extent possible, the other party with whom the agreements described above have been made to use any other machinery, supplies or LOCATION(S) in order to resume business so as to reduce the amount of loss payable hereunder, and the Insured agrees to cooperate with that party in every way to effect this.

d. No coverage is provided hereunder for any costs to effect the above unless authorized in advance by the Company.

e. In determining the amount of loss payable hereunder, the Company will consider the amount of income derived from such agreements before and the probable amount of income after the date of such physical loss or damage had no loss occurred.

f. Recovery is available hereunder only if such physical loss or damage interrupts the delivery of goods in whole or in part to the Insured or for the Insured's account.

2. Contingent Time Element

a. This POLICY is extended to insure loss of **Gross Earnings**, **Rental Insurance**, and **Extra Expense** incurred by the Insured during the **Period of Liability** directly resulting from direct physical loss or damage insured by this POLICY to any property, except of the type as excluded under **Property Not Insured**, at any LOCATION(S) of suppliers or customers, provided that such physical loss or damage prevents:

I. such suppliers from supplying goods or services directly or indirectly to the Insured;

II. such customers from receiving goods or services directly or indirectly from the Insured;

provided that such LOCATION(S) of suppliers or customers are situated within the **Policy Territory.**

b. Specified limits for this extension are shown in the **Coverage Purchased and Coverage Not Purchased** section of this POLICY for:

I. those direct suppliers and customers who have been specifically named by the Insured have been submitted to, accepted by and on file with the Company;

II. those direct suppliers and customers who have not been specifically named by the Insured; and

III. all indirect suppliers and customers.

c. As used herein, suppliers or customers do not include any company supplying to or receiving from INSURED LOCATION(S) electricity, fuel, gas, refrigerant, sewage, steam, water, telecommunications, audio, data or video.

3. Extended Period of Liability

a. The coverage provided hereunder for loss of **Gross Earnings** and **Rental Insurance** is extended to insure for only up to the additional length of time shown for **Extended Period of Liability** in the **Coverage Purchased and Coverage Not Purchased** section as would be required with the exercise of due diligence and dispatch to restore the Insured's business to the condition that would have existed had no physical loss or damage insured by this POLICY occurred;

b. The Time Limit for this extension of coverage starts on the date the applicable **Period of Liability** ends.

4. Impounded Water

a. This POLICY is extended to insure loss of **Gross Earnings**, **Rental Insurance**, and **Extra Expense** incurred by the Insured due to the necessary interruption of the Insured's business caused by inadequate water supply.

b. It is a condition precedent to recovery under this extension that such inadequate water supply is a direct result of the release of water:

I. stored behind dams or in reservoirs; and

II. at INSURED LOCATION(S); and

III. used for any manufacturing purpose, including but not limited to as raw material or for power production; and

IV. caused by direct physical loss or damage insured by this POLICY to such dams or reservoirs, or to equipment connected thereto.

5. Ingress / Egress

This POLICY is extended to insure loss of **Gross Earnings**, **Rental Insurance**, and **Extra Expense** incurred by the Insured due to the necessary interruption of the Insured's business, provided that:

a. the interruption directly results from the prevention of direct ingress to or direct egress from INSURED LOCATION(S), whether or not INSURED PROPERTY at such INSURED LOCATION(S) is damaged; and

b. the prevention above is caused by direct physical loss or damage insured by this POLICY to any property, including property excluded under **Property Not Insured**.

6. Leasehold Interest

a. This POLICY is extended to insure **Leasehold Interest** loss is as follows:

In the event of direct physical loss or damage insured by this POLICY to INSURED LOCATION(S) at which the Insured leases space and pursuant to a written lease, if the lease agreement requires continuation of rent and if the property is wholly untenantable or unusable due to such physical loss or damage:

I. the actual rent payable for the unexpired term of the lease; or,

II. if the property is partially untenantable or unusable, the proportion of the rent payable for the unexpired term of the lease; or,

III. If the lease is canceled by the lessor pursuant to the lease agreement or by the operation of law:

1) the LEASE INTEREST for the first three (3) consecutive calendar months following the physical loss or damage; and

2) the NET LEASE INTEREST for the remaining unexpired term of the lease.

LEASE INTEREST means the excess rent paid for the same or similar replacement property over actual rent payable plus cash bonuses or advance rent paid (including maintenance or operating charges) for each month during the unexpired term of the Insured's lease.

NET LEASE INTEREST means the present value amount, which placed at the prime rate of annual interest effective on the date of physical loss or damage, as published in the Wall Street Journal, would equal the LEASE INTEREST (less any amounts otherwise payable hereunder).

b. No coverage is provided for any increase in loss resulting from:

I. the suspension, cancellation or lapse of any license;

II. the Insured exercising an option to extend, renew or cancel the lease;

III. any act or omission of the Insured that constitutes a default under the lease;

IV. the Insured's loss of **Leasehold Interest** resulting from physical loss or damage to personal property.

7. Order of Civil or Military Authority

This POLICY is extended to insure loss of **Gross Earnings**, **Rental Insurance**, and **Extra Expense** incurred by the Insured due to the necessary interruption of the Insured's business, provided that:

a. the interruption directly results from an order of a civil or military authority that prohibits partial or total access to INSURED LOCATION(S); and

b. the order referenced above is caused by direct physical loss or damage insured by this POLICY to property of the type insured.

8. Protection and Preservation of Property – Time Element

a. This POLICY is extended to insure loss of **Gross Earnings**, **Rental Insurance**, and **Extra Expense** incurred by the Insured for a period of time after the Insured has first taken reasonable action for the temporary protection and preservation of property insured by this POLICY provided such action is necessary to prevent immediately impending direct physical loss or damage insured by this POLICY to such INSURED PROPERTY.

b. This extension is subject to the deductible provisions that would have applied had the physical loss or damage happened.

9. Related Reported Values

If:

a. reported TIME ELEMENT values include values for LOCATION(S) used by the Insured (such as branch stores, SALES outlets and other plants) but such LOCATION(S) are not listed on the latest schedule submitted to, accepted by and on file with the Company; and

b. a TIME ELEMENT loss results at such LOCATION(S) due to direct physical loss or damage insured by this POLICY to INSURED PROPERTY at INSURED LOCATION(S);

then this POLICY is extended to insure such resulting TIME ELEMENT loss in accordance with the coverage applicable at the INSURED LOCATION(S) where such physical loss or damage occurred.

10. Service Interruption – Time Element

a. This POLICY is extended to insure loss of **Gross Earnings**, **Rental Insurance**, and **Extra Expense** incurred by the Insured at INSURED LOCATION(S) when such loss results from the interruption of services consisting of:

I. in coming electricity;

II. incoming fuel;

III. incoming gas;

IV. incoming refrigerant;

V. incoming steam;

VI. incoming water;

VII. outgoing sewerage service; or

VIII. incoming or outgoing audio, voice and video;

b. This extension of coverage applies only when such interruption of service is caused by direct physical loss or damage insured by this POLICY to any property of the type insured by this POLICY of the supplier of such services if such property is situated within the **Policy Territory**.

c. The Insured agrees to immediately notify the suppliers of services of any interruption of such services.

d. No coverage is provided under this extension of coverage:

I. unless the period of service interruption exceeds the WAITING PERIOD specified for this extension; or

II. if the interruption of such services is caused by the failure of the Insured to comply with the terms and conditions of any contracts the Insured has for the supply of such services; or

III. for loss sustained at any **Miscellaneous Unnamed Location;** or

IV. for loss or damage caused by or resulting from EARTH MOVEMENT for property located in California, in the NEW MADRID SEISMIC ZONE or in the PACIFIC NORTHWEST SEISMIC ZONE, regardless of any other cause or event, whether or not insured under this Policy, contributing concurrently or in any other sequence to the loss.

11. Ordinary Payroll

a. This POLICY is extended to insure loss of Ordinary Payroll. Ordinary Payroll is the entire payroll expense for all employees of the insured except officers, executives, employees under contract, and other critical employees.

SECTION VI
EXCLUSIONS

A. Property Not Insured

INSURED PROPERTY does not include and this POLICY does not insure loss or damage to the following:

1. bills, notes, MONEY, SECURITIES, PRECIOUS METALS, precious stones, semi-precious stones, jewelry, furs;

2. land, water or any other substance in or on land, except this exclusion does not apply to:

   a. LAND IMPROVEMENTS

   b. water which is normally contained within any enclosed tank, piping system or any other processing equipment;

3. animals, growing and standing crops, trees, standing timber, plants, shrubs and lawns, except this exclusion does not apply to property that is LAND IMPROVEMENTS as defined herein;

4. aircraft or watercraft and contents thereof, rolling stock, spacecraft, satellites including their launch vehicles and launch sites;

5. waterborne equipment or OFFSHORE property, including any OFFSHORE drilling and production rigs. Offshore property means property away from the shore but not connected to the shore by dock, piers or any other physical connection other than pipelines. In the Gulf of Mexico off Texas and Louisiana, OFFSHORE is to be seaward of the Inland edge of the Lease Block of the Plane Coordinate System, as defined on United States Department of Land Management Leasing Maps;

6. motor vehicles licensed for highway use, except when at INSURED LOCATION(S). This POLICY does insure the INSURED'S LIABILITY for motor vehicles of others while at INSURED LOCATION(S);

7. underground mines, mine shafts, caverns, tunnels, or any property within such underground mines, mine shafts, caverns or tunnels;

8. underwater piping and its contents, fittings, conduits, drains or flues, all situated outside INSURED LOCATION(S);

9. air supported structures and the contents thereof;

10. bulkheads, bridges, retaining walls, revetments, dikes, jetties, wharves, piers, docks, levees and property thereon when loss or damage is caused by action of water or ice or impact of watercraft;

11. above ground transmission and distribution lines including but not limited to wires, cables, poles, pylons, transformers, standards, towers or other supporting structures, which may be attendant to the transmission or distribution of electrical power, telephone or telegraph signals, and all other communications signals, whether audio or visual. However, this exclusion does not apply when such property is situated at INSURED LOCATION(S). Nor does this exclusion apply to coverage granted under **Service Interruption** provisions of this POLICY;

12. nuclear power plants, facilities handling or processing nuclear fuel or waste;

13. property in transit, except as otherwise provided under the **Transportation** provision of this POLICY;

14. property sold by the Insured under conditional sale, trust agreement, installment plan or other deferred payment plan after delivery to customers;

15. the Insured's product when loss or damage is caused by or results from errors in design, poor workmanship, or use of faulty materials, in the development, processing, testing or manufacture of the Insured's product;

16. stock or materials when loss or damage is caused by manufacturing or processing operations which result in damage to such property while being processed, manufactured, tested or otherwise being worked upon;

17. MEDIA for, or programming records pertaining to electronic and electromechanical data processing or electronically controlled equipment, including the data thereon when loss or damage is caused by error or omission in machine programming or instructions to machine;

18. ELECTRONIC DATA, except as may be otherwise provided under **Data Restoration** coverage provided elsewhere;

B. Types of Loss or Damage Not Insured

This POLICY does not insure against the following types of loss or damage:

1. a. indirect or remote loss or damage;

   b. delay or loss of market; or

   c. interruption of business unless otherwise provided hereon.

2. the cost of correcting or making good:

   a. faulty workmanship, material, construction or design; or

   b. inherent or latent defects;

3. unexplained or mysterious disappearance of any property, or shortage disclosed by audit or upon taking inventory;

4. accumulated effects of smog, smoke, vapor, liquid and dust;

5. a. wear and tear, deterioration, depletion, erosion, corrosion;

   b. settling, cracking, shrinkage, bulging or expansion of pavements, foundations, walls, floors, roofs or ceilings; or

   c. shrinkage, evaporation, leakage of contents, change in flavor or texture or finish, decay or other spoilage;

   unless physical loss or damage insured by this POLICY results, then only that resulting loss or damage is insured.

6. mold, mildew, fungus, spores or other microorganism of any type, nature, or description, including but not limited to any substance whose presence poses an actual or potential threat to human health, wet rot or dry rot, unless such loss or damage results directly from physical loss or damage insured by this POLICY and then only to the limit of liability shown in the **Coverage Purchased and Coverage Not Purchased** section of this POLICY.

   If no limit of liability is shown in the **Coverage Purchased and Coverage Not Purchased** section of this POLICY, then this exclusion applies regardless whether there is:

   a. any physical loss or damage to INSURED PROPERTY;

   b. any insured cause of loss or damage, whether or not contributing concurrently or in any sequence;

c. any loss of use, occupancy, or functionality; or

d. any action required, including but not limited to repair, replacement, removal, cleanup, abatement, disposal, relocation, or steps taken to address medical or legal concerns.

7. Any loss or damage, both PROPERTY DAMAGE and TIME ELEMENT, occasioned by damage to or failure of, any type whatsoever, to the internet including the World Wide Web (WWW), unless physical loss or damage insured by this POLICY results, then only that resulting loss or damage is insured.

8. Any loss resulting from the voluntary parting with title or possession of property if induced by any fraudulent act or by false pretense.

C. Causes of Loss Not Insured

This POLICY does not insure against loss or damage caused by any of the following:

1. Animals, vermin or insects unless physical loss or damage insured by this POLICY results, then only that resulting loss or damage is insured;

2. Any fraudulent: dishonest or other act intended to result in a financial gain of the Insured or any associate, proprietor, director, trustee, officer, employee or agent of any insured;

3. Dampness or dryness of atmosphere, or extremes or changes of temperature, unless physical loss or damage insured by this POLICY results, then only that resulting loss or damage is insured;

4. Lack of the following services when caused by loss or damage to any property outside INSURED LOCATION(S):

   a. incoming electricity, fuel, gas, refrigerant, steam, water;

   b. outgoing sewerage; or

   c. incoming or outgoing audio, voice and video;

   This exclusion does not apply to the **Service Interruption – Property Damage** and **Service Interruption - Time Element** provisions of this POLICY.

5. Loss or damage due to the discharge, dispersal, seepage, migration, release or escape of CONTAMINANTS (except as provided under the **Radioactive Contamination** provision of this POLICY), unless the discharge, dispersal, seepage, migration, release or escape is directly caused by physical loss or damage insured by this POLICY.

6. Loss or damage caused by any of the following, regardless of any other cause or event contributing concurrently or in any other sequence to the loss or damage:

   a. Nuclear reaction or nuclear radiation, or radioactive contamination (except as provided under the **Radioactive Contamination** provision of this POLICY), all whether controlled or uncontrolled. However, subject to the foregoing and all provisions of this POLICY, direct loss by fire resulting from nuclear reaction or nuclear radiation or radioactive contamination is insured against by this POLICY.

   b. Hostile or warlike action in time of peace or war, including action in hindering, combating or defending against an actual, impending or expected attack:

      I. by any government or sovereign power (de jure or de facto), or by any authority maintaining or using military, naval or air forces; or

      II. by military, naval or air forces; or

      III. by an agent of any such government, power, authority or forces;

it being understood that any discharge, explosion or use of any weapon of war employing nuclear fission or fusion shall be conclusively presumed to be such a hostile or warlike action by such a government, power, authority or forces;

c. insurrection, rebellion, revolution, civil war, usurped power, or action taken by governmental authority in hindering, combating or defending against such an OCCURRENCE.

d. The unlawful possession, use, release, discharge, dispersal or disposal of any chemical, bacteriological, viral, radioactive or similar agents or matter regardless of who is responsible for the act and whether war has been declared or not.

e. The unlawful possession, use, release, discharge, detonation, dispersal or disposal of any device or material capable of producing a nuclear reaction or the spread of radioactivity, regardless of who is responsible for the act and whether war has been declared or not.

7. Enforcement of any law, ordinance, regulation or rule regulating or restricting the construction, installation, repair, replacement, demolition, occupancy, operation or other use of property on INSURED LOCATION(S) except as provided in the **Demolition and Increased Cost of Construction** provision of this POLICY.

8. Any increase of loss resulting from interference at INSURED LOCATION(S) by strikers or other persons, with rebuilding, repairing or replacing property or with the resumption or continuation of business.

9. Any loss, damage, destruction, distortion, erasure, corruption or alteration of ELECTRONIC DATA from any cause whatsoever (including but not limited to COMPUTER VIRUS) or loss of use, reduction in functionality, cost, expense of whatsoever nature resulting there from, unless physical loss or damage insured by this POLICY results, then only that resulting loss or damage is insured.

   ELECTRONIC DATA means facts, concepts and information converted to a form useable for communications, interpretation or processing by electronic and electromechanical data processing or electronically controlled equipment and includes programs, software, and other coded instructions for the processing and manipulation of data or the direction and manipulation of such equipment.

   COMPUTER VIRUS means a set of corrupting, harmful or otherwise unauthorized instructions or code including a set of maliciously introduced unauthorized instructions or code, programmatic or otherwise, that propagate themselves through a computer system or network of whatsoever nature. COMPUTER VIRUS includes but is not limited to 'Trojan Horses', 'worms' and 'time or logic bombs'.

10. a. explosion in or of the following property owned, operated or controlled by the Insured: steam boilers, including equipment attached to and forming a part thereof; steam turbines; steam engines; steam pipes interconnecting any of the foregoing; or gas turbines; except that liability is specifically assumed for loss resulting from EXPLOSION of accumulated gases or unconsumed fuel within the firebox (or the combustion chamber) of any fired vessel, other than gas turbines, or within the flues or passages which conduct the gases of combustion there from;

    b. rupture, bursting, cracking, burning or bulging of: steam boilers including equipment attached to and forming a part thereof; steam turbines; steam engines; steam pipes interconnecting any of the foregoing; hot water boilers or other equipment for heating water; pressure vessels, including equipment attached to and forming a part thereof; or, gas turbines;

    c. mechanical or machinery breakdown, including rupture or bursting caused by centrifugal force;

    d. electrical injury or disturbance to electrical appliances, devices, fixtures, wiring, or other electrical or electronic equipment caused by electrical currents artificially generated;

    nor does this POLICY insure against resulting damage to INSURED PROPERTY caused by such OCCURRENCE(S) except damage from resulting fire, water or other means to extinguish a fire, or combustion EXPLOSION outside any of the property described in this exclusion.

EXPLOSION shall mean: explosion, except loss by explosion in or of the following property owned, operated or controlled by the Insured:

a. steam boilers, steam turbines, steam engines, steam pipes interconnecting any of the foregoing, or gas turbines;

b. moving or rotating machinery or parts of same when such loss is caused by centrifugal force or mechanical breakdown;

c. any property undergoing pressure test to the extent of loss to such property undergoing test, including equipment attached to and forming part of such property.

The foregoing exceptions (a. through c.) are modified to the extent that liability is specifically assumed for loss resulting from:

a. malicious use of explosives;

b. EXPLOSION of accumulated gases or unconsumed fuel within the firebox (or the combustion chamber) of any fired vessel, other than gas turbines, or within the flues or passages which conduct the gases of combustion there from.

The following are not EXPLOSIONS within the intent or meaning of this exclusion:

a. electric arcing or any coincident rupture of electrical equipment due to such arcing;

b. bursting, rupture or collapse caused by freezing;

c. shock waves generated by aircraft, generally known as sonic boom;

d. bursting, rupture or collapse of any safety disc, rupture diaphragm or fusible plug.

D. Time Element Exclusions

1. This POLICY does not insure against TIME ELEMENT loss for any period during which business would not or could not have been conducted for any reason other than physical loss or damage insured by this POLICY to INSURED PROPERTY.

2. This POLICY does not insure against any increase in the TIME ELEMENT loss due to:

   a. suspension, cancellation or lapse of any lease, contract, license or orders;

   b. damages for breach of contract or for late or non-completion of orders;

   c. fines or penalties of any nature; or

   d. any other consequential or remote loss.

   However, a. and d. above do not apply to **Extended Period of Liability** provision of this POLICY.

3. This POLICY does not insure against any **Gross Earnings** loss resulting from loss or damage to FINISHED GOODS manufactured by the Insured or MERCHANDISE when valued at its selling price, nor the time required for their reproduction.

SECTION VII
VALUATION

A. Adjustment of the loss amount for physical loss or damage insured by this POLICY will be computed as of the date of loss at the INSURED LOCATION(S) where such physical loss or damage occurred, and for no more than the interest of the Insured in such property, subject to the following:

1. buildings and structures, building equipment, plant equipment, machinery, machine parts, office furniture, office equipment, tools, dies, jigs, templates, patterns and flasks, except all such property that is obsolete or useless to the Insured:

   a. if repaired, rebuilt or replaced, at the same or at another site, within two (2) consecutive calendar years from the date of loss or damage, the lesser of the following:

      I. the cost to repair, rebuild or replace on the same site, with new and current materials of like size, kind and quality, whichever is the least;

      II. the actual expenditure incurred by or on behalf of the Insured in repairing, rebuilding or replacing on the same or another site, whichever is the least;

      but in no event to include any increased costs resulting from the enforcement of any law, ordinance, regulation or rule regulating or restricting the construction, installation, repair, replacement, demolition, occupancy, operation or other use of property at INSURED LOCATION(S);

   b. if not repaired, rebuilt or replaced, at the same or another site, within two (2) consecutive calendar years from the date of loss or damage:

      the ACTUAL CASH VALUE at the time and place of loss.

2. catalysts or refractory material:

   the ACTUAL CASH VALUE of the material which equals the replacement cost at the time of loss or damage multiplied by the remaining useful life factor. Remaining useful life factor means the normal useful life of the material in months minus the number of months the material had been in use at the time of the loss or damage, divided by the normal useful life of the material in months.

3. FINISHED GOODS manufactured by the Insured:

   a. the regular cash selling price less all discounts and charges to which the FINISHED GOODS would have been subject and a commensurate reduction to reflect waste, pilferage, breakage, spoilage or other factors that would have affected the sale of FINISHED GOODS had no physical loss or damage occurred.

4. motor vehicles or other mobile equipment not manufactured by the Insured, the least of the following:

   a. the repair cost;

   b. the replacement cost; or

   c. the ACTUAL CASH VALUE if not replaced.

5. Pair, Set or Parts - In the event of loss of or damage (as insured against by this POLICY) to:

   a. any article or articles which are a part of a pair or set, the measure of loss of or damage to such article or articles shall be a reasonable and fair proportion of the total value of the pair or set, giving consideration to the importance of said article or articles, but in no event shall such loss or damage be construed to mean total loss of the pair or set; or

b. any part of INSURED PROPERTY consisting, when complete for use, of several parts, the Company shall be liable only for the value of the part lost or damaged.

6. RAW STOCK, MERCHANDISE and supplies:

the replacement cost, unless the regular cash selling price less all discounts and charges for merchandise has been specifically submitted to, accepted by and on file with the Company.

7. STOCK IN PROCESS:

a. the replacement cost of raw materials;

b. the cost of labor expended at the time of loss or damage; and

c. the proper proportion of overhead charges.

8. exposed films, records, manuscripts, and drawings that are not VALUABLE PAPERS AND RECORDS:

a. the replacement cost of exposed films, records, manuscripts, and drawings blank; plus

b. the cost of copying information from back-ups or from originals of a previous generation;

c. excluding all other costs, such as the cost for research or engineering, incurred in restoring or recreating the information lost.

9. VALUABLE PAPERS AND RECORDS, the least of the following:

a. the reasonable and necessary costs to repair or restore to a functional usage condition;

b. the replacement cost;

c. excluding all other costs, such as the cost for research, engineering, programming, or assembling or gathering information, incurred in restoring or recreating the ELECTRONIC DATA lost, except as may be otherwise provided under **Data Restoration** coverage provided elsewhere.

10. ELECTRONIC DATA PROCESSING MEDIA

a. if repaired or replaced within two (2) consecutive calendar years from the date of loss or damage:

I. the cost of the MEDIA blank; plus the cost to repair, replace or restore such MEDIA to the condition that existed immediately prior to such loss or damage, including the cost of copying the ELECTRONIC DATA from back-ups or from originals of a previous generation;

b. if not repaired or replaced within two (2) consecutive calendar years from the date of loss or damage:

I. the replacement cost of the MEDIA blank;

c. excluding all other costs, such as the cost for research, engineering, programming, or assembling or gathering information, incurred in restoring or recreating the ELECTRONIC DATA lost, except as may be otherwise provided under **Data Restoration** coverage provided elsewhere.

11. FINE ARTS, the least of the following:

a. the reasonable and necessary costs to repair or restore to the functional usable condition that existed immediately prior to the physical of loss or damage;

b. the replacement cost of substantially identical property;

c. the ACTUAL CASH VALUE if not repaired or replaced or designated;

d. the amount designated, if any, for such FINE ARTS on the latest schedule submitted to, accepted by and on file with the Company.

e. In the event a FINE ARTS article is part of a pair or set, and such article, if physically damaged, cannot be repaired or replaced or restored to the physical condition that existed immediately prior to the physical loss or damage, the amount recoverable under this POLICY will be limited to the lesser of the following:

I. the full value of the pair or set; or

II. the amount designated, if any, for such FINE ARTS pair or set on the latest schedule submitted to, accepted by and on file with the Company.

The Insured agrees to surrender the pair or set to the Company.

12. property insured under **Transportation**:

a. As respects property shipped to or for the account of the Insured, the actual invoice to the Insured including accrued costs and charges legally due to the Insured. Such charges may include the Insured's commission as a selling agent.

b. As respects property sold by the Insured and shipped to or for the purchaser's account, the Insured's selling invoice amount including prepaid or advanced freight costs.

c. As respects property not under invoice:

I. for property of the Insured, based on the **Valuation** provisions applying to the LOCATION from which the property is being transported;

II. for other property, the ACTUAL CASH VALUE at the destination point on the date of the OCCURRENCE;

less any charges saved which would have become due and payable upon arrival at destination.

13. IMPROVEMENTS AND BETTERMENTS:

a. if repaired or replaced at the expense of the Insured within two (2) consecutive calendar years from the date of loss or damage, the lesser of the following:

I. the cost to repair or replace the lost or damaged IMPROVEMENTS AND BETTERMENTS with new and current materials of like size, kind and quality, whichever is less;

II. the actual expenditure incurred in repairing or replacing the lost or damaged IMPROVEMENTS AND BETTERMENTS, whichever is less;

b. if not repaired or replaced within two (2) consecutive calendar years after such loss or damage:

that proportion of the original cost at the time of installation of the lost or damaged IMPROVEMENTS AND BETTERMENTS which the unexpired term of the lease at the time of loss or damage bears to the period from the date such IMPROVEMENTS AND BETTERMENTS were made to the expiration date of the lease as of the date of loss or damage, and not including any rights or options for extensions or renewals;

c. if repaired or replaced at the expense of others for the use of the Insured, there shall be no liability hereunder.

14. unrepairable electrical or mechanical equipment, including computer equipment:

the cost to replace such damaged or destroyed property with the most functionally equivalent new and current equipment of like size, kind and quality even if such equipment:

a. has technological advantages;

b. represents an improvement in function; or

c. forms part of a program or system enhancement.

15. property planned and/or scheduled for demolition at the time of the loss or damage:

    only the increased cost of demolition, if any, resulting from physical loss or damage insured by this POLICY.

16. real property or machinery and equipment, other than stock, held for sale at the time of the loss or damage. The lesser of the following:

    a. the reasonably anticipated selling price;

    b. market value.

17. personal property of others for which the Insured is legally liable in the event of loss or damage:

    the amount for which the Insured is legally liable, but not to exceed the ACTUAL CASH VALUE of such property.

18. all other property, including property that is obsolete or useless to the Insured:

    the ACTUAL CASH VALUE.

B. The Insured may elect not to repair or replace any real and personal property lost, destroyed or damaged and insured hereunder. Loss settlement may be elected on the lesser of repair or replacement cost basis if the proceeds of such loss settlement are expended on other capital expenditures related to the Insured's operations within two (2) consecutive calendar years from the date of physical loss or damage. As a condition of collecting herein, such expenditure must be unplanned as of the date of physical loss or damage. This does not extend to **Demolition and Increased Cost of Construction** provision of this POLICY.

SECTION VIII
LOSS ADJUSTMENT AND SETTLEMENT

A. Abandonment

There may be no abandonment of any property to the Company.

B. Collection from Others

The Company will not be liable for any loss or damage insured hereunder to the extent that the Insured has collected for such loss or damage from others or others have funded the repair or replacement of any property lost or damaged.

C. Company Option

1. Subject to the **Control of Damaged Property** provision, the Company has the option to take all or any part of damaged property at the agreed value within a reasonable time.

2. The Company must give notice to the Insured of its intention to do so within thirty (30) consecutive calendar days after receipt of the signed and sworn to proof of loss required by this POLICY.

D. Dispute Resolution / Optional Arbitration Provision

Upon the mutual agreement of the Company and the Insured, any controversy or dispute arising out of or relating to this POLICY, or the breach, termination or validity thereof, shall be resolved in accordance with the procedures specified herein.

1. Negotiation and Mediation

   The Insured and the Company shall attempt in good faith to resolve any controversy or dispute arising out of or relating to this POLICY promptly by negotiations between representatives who have authority to settle the controversy. If the dispute cannot be resolved by negotiation, the parties shall endeavor to settle the dispute through a confidential mediation with the assistance of a mediator mutually selected by the parties. To the extent the parties are unable to select a mutually agreeable mediator, each party will propose three mediators. Each party then shall strike two of the mediators proposed by the other, leaving one mediator as proposed by each party. A coin then shall be tossed, with the Insured calling heads or tails, with the prevailing party in the coin toss having its remaining proposed mediator jointly engaged by the parties to mediate the dispute, with the cost being split equally among the parties.

2. Arbitration

   a. If a resolution cannot be achieved through the negotiation and mediation process as set forth above, the parties can mutually agree to submit the remaining dispute to be determined through binding arbitration before a panel of three arbitrators in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA"). Provisions in the Commercial Arbitration Rules pertaining to mediation shall not apply.

   b. Notwithstanding anything to the contrary in the Commercial Arbitration Rules, the panel of arbitrators shall be constituted as follows. The Insured and the Company each shall appoint one arbitrator within 14 days of mutually agreeing to arbitrate. The third arbitrator, who shall serve as the chair of the arbitration panel, shall be appointed by the parties upon mutual agreement. If the parties are unable to mutually agree upon a third arbitrator within 30 days of the selection of party-appointed arbitrators, the AAA shall appoint the chairperson in accordance with the rules for doing so in the Commercial Arbitration Rules.

c. In any such arbitration, the terms of this POLICY are to be construed in an evenhanded fashion as between the Insured and the Company in accordance with the laws of the state of New York. The arbitrators are not empowered to award damages in excess of compensatory damages and each party hereby irrevocably waives such damages.

3. Appraisal Provision

If the Insured and the Company fail to agree on the amount of loss to be paid for a claim insured by this POLICY and a resolution cannot be achieved through the negotiation and mediation process as set forth above, and the parties do not mutually agree to submit the dispute to be determined through binding arbitration, either may elect to have that dispute resolved by appraisal by making a written demand upon the other. The venue of the appraisal shall be the State and County of the mailing address for the Insured as set forth in the Declarations of this POLICY. Each party shall select a competent and disinterested appraiser within twenty (20) days after the written demand for appraisal is made. The appraisers then shall select a third competent and disinterested appraiser to serve as the umpire. If they should fail to agree upon an umpire within fifteen (15) days after both appraisers are selected, then upon the request of the Insured or of the Company, such umpire shall be selected by a judge of a court of record and competent jurisdiction in the county in which the appraisal is venued. After the panel of three appraisers has been constituted, the two appraisers selected by the Insured and the Company shall make a good faith effort to appraise and agree upon the amount of the loss in dispute or portions thereof. If the appraisers fail to fully agree, they shall submit their differences to the umpire. An award in writing and signed by any two (2) of the appraiser shall determine the amount of loss. The Insured and the Company shall each pay their selected appraiser and shall bear equally the other expenses of the appraisal and of the umpire. The Company shall not be held to have waived any of its rights by any act relating to appraisal.

E. Identity of Interests

If the Insured is comprised of more than one legal entity, liability shall not exceed the amount of loss had all interests comprised a single legal entity.

F. Loss Adjustment and Loss Payable

Loss, if any, will be adjusted with and payable to the First Named Insured, or as may be directed by the First Named Insured. Additional insured interests will also be included in loss payment as their interests may appear when named as additional named insured, lender, mortgagee or loss payee in the Certificates of Insurance on file with the Company. The receipt of the payee(s) so designated shall constitute a release in full of all liability with respect to such loss.

G. Partial Payment of Loss Settlement

1. In the event of a loss occurring which has been ascertained by the Company to be recoverable under this POLICY, the Company will advance mutually agreed upon partial payments for such loss, subject to the provisions of this POLICY.

2. To obtain such partial payments, the Insured agrees to submit a signed and sworn partial proof of loss as described in this POLICY with adequate supporting documentation.

H. Requirements in Case of Loss

The Insured shall give immediate written notice to the Company of any loss, protect the property from further damage, forthwith separate the damaged and undamaged personal property, put it in the best possible order, furnish a complete inventory of the destroyed, damaged and undamaged property, showing in detail quantities, costs, ACTUAL CASH VALUE and amount of loss claimed; and within sixty (60) days after the loss, unless such time is extended in writing by the Company, the Insured shall render to the Company a proof of loss, signed and sworn to by the Insured, stating the knowledge and belief of the Insured as to the following:

1. the time and origin of the loss;

2. the interest of the Insured and of all others in the property;

3. the ACTUAL CASH VALUE of each item thereof and the amount of loss thereof;

4. all encumbrances thereon;

5. all other contracts of insurance, whether valid or not, insuring any of said property;

6. any changes in the title, use, occupation, LOCATION(S), possession or exposures of said property since the issuing of this POLICY, by whom and for what purpose any building herein described and the several parts thereof were occupied at the time of loss and whether or not it then stood on leased ground, and shall furnish a copy of all the descriptions and schedules in all policies or on file with the Company and, if required, verified plans and specifications of any building, fixtures or machinery destroyed or damaged.

7. the Insured, as often as may be reasonably required, shall exhibit to any person designated by the Company all that remains of any property herein described, and submit to examinations under oath by any person named by the Company, and subscribe the same; and, as often as may be reasonably required, shall produce for examination all books of account, bills, invoices and other vouchers, or certified copies thereof if originals be lost, at such reasonable time and place as may be designated by the Company or its representative, and shall permit extracts and copies thereof to be made.

I. Salvage and Recovery

Any salvage or other recovery, except recovery under **Subrogation** or **Other Insurance** section, will accrue entirely to the benefit of the Company until the sum paid by the Company is recovered.

J. Settlement of Claims

The amount of loss or damage, for which the Company may be liable, will be paid within thirty (30) consecutive calendar days after:

1. proof of loss as described under **Requirements in Case of Loss** section is accepted in writing by the Company; and

2. when a resolution of the amount of loss is made either by:

   a. agreement in writing between the Insured and the Company; or

   b. the filing with the Company of an award as provided under the **Arbitration or Appraisal Provision** section.

K. Subrogation

In the event of any payment made under this POLICY:

1. the Company will be subrogated to all of the Insured's rights of recovery against any person, entity or organization;

2. the Insured agrees to execute and deliver instruments and papers and do whatever is necessary to secure such rights;

3. the Company will not acquire any rights of recovery that the Insured has expressly waived, in writing, prior to loss or damage, nor will such waiver affect the Insured's rights under this POLICY;

4. the Insured agrees to do nothing after loss or damage to prejudice the subrogation rights of the Company;

5. the Insured agrees to cooperate with the Company and upon the Company's request and expense, attend hearings and trials and assist in:

a. effecting settlements;

b. securing and giving information and evidence;

c. obtaining the attendance of witnesses; and

d. pursuing recovery through legal action or other formal proceedings;

6. the net amount of any recovery after deducting the costs of proceedings shall be divided between each party instituting such proceedings in the same proportion as each such party has borne to the provable loss.

L. Suit

No suit or action on this POLICY for the recovery of any claim shall be sustainable in any court of law unless all the requirements of this POLICY shall have been complied with, and unless commenced within twelve (12) months next after the date of the physical loss or damage giving rise to any claim hereunder.

SECTION IX
GENERAL CONDITIONS

A. Additional Insurable Interests

Additional insured interests are automatically added to this POLICY as their interests may appear when named as additional named insured, lender, mortgagee or loss payee in the Certificates of Insurance on file with the Company. Such interests become effective on the dates shown in such certificates but do not further amend or extend the terms, conditions, provisions and limitations of this POLICY.

B. Assignment of Policy

Assignment of this POLICY is not valid except with the written consent of the Company.

C. Concealment, Misrepresentation and Fraud

This entire POLICY shall be void if, whether before or after loss or damage, the Insured has willfully concealed or misrepresented any material fact or circumstance concerning this insurance or the subject thereof, a claim for loss or damages or the interest of the Insured therein, or in case of any fraud or false swearing by the Insured relating thereto.

D. Conditions Suspending or Restricting Insurance

Unless otherwise provided in writing added hereto the Company shall not be liable for loss or damage occurring while the hazard is increased by any means within the control or knowledge of the Insured.

E. Excess Insurance

Permission is granted to the Insured to have excess insurance over the limit(s) of liability set forth in this POLICY without prejudice to this POLICY, and the existence of such insurance, if any, shall not reduce any liability under this POLICY.

F. Governing Law and Jurisdiction

1. The laws of the State of New York, without regard to its conflict of laws rules, that would cause the application of the laws of any other jurisdiction, shall govern the construction and interpretation of this POLICY.

2. The parties hereto do irrevocably submit to the exclusive jurisdiction of the Courts of the State of New York, and to the extent permitted by law, the parties expressly waive all rights to challenge or otherwise limit such jurisdiction.

G. Inspection of Property and Operations

The Company shall be permitted but not obligated to inspect the Insured's property and operations at any reasonable time. Neither the right to make inspections nor the making thereof nor any risk analysis for any particular hazards, exposures or potential risks of loss or damage nor any advice or report resulting there from shall imply any liability, nor constitute an undertaking on behalf of or for the benefit of the Insured or others, to determine or warrant that such property or operations are safe or healthful, or are in compliance with any law, rule or regulation.

H. Minimum Earned Premium

In consideration of the premium charged and subject to the terms, exclusions, limits and conditions of this POLICY, not in conflict herewith, it is agreed that the minimum earned premium due to the Company is twenty-five percent (25.0%) of the total invoiced annual POLICY premium, including any applicable taxes and surcharges, regardless of the actual term of this POLICY.

However, if this POLICY is canceled by the Company prior to the expiration date, the earned premium shall be computed pro-rata and the terms and conditions of this minimum earned premium provision shall be null and void.

Nothing herein contained shall be held to vary, alter, waive or extend any of the terms, conditions, or limitations of the POLICY to which this provision is attached other than as above stated.

I. Notice of Cancellation

This POLICY may be canceled

1. at any time at the request of the First Named Insured:

    a. by surrendering this POLICY to the Company; or

    b. by giving written notice to the Company stating when thereafter such cancellation will be effective; or

2. by the Company by giving the First Named Insured written notice at least:

    a. ten (10) consecutive calendar days before the effective date of cancellation in the event the Company does not receive the premium by the date payment thereof becomes due; or

    b. ninety (90) consecutive calendar days before the effective date of cancellation for any other reasons.

If notice is mailed, then proof of mailing is sufficient proof of notice.

If the First Named Insured cancels this POLICY, then any unearned premium will be calculated based on the customary short rate table. However, if the Company cancels this POLICY, any unearned premium will be calculated on pro-rata basis. The Company agrees to return any unearned premium due the Insured as soon as practicable.

J. Occurrence Hour Clause

1. Subject to the **Prior or Subsequent Loss** condition of this POLICY, each loss OCCURRENCE by EARTH MOVEMENT shall constitute a single claim hereunder, provided, if more than one EARTH MOVEMENT shall occur within any continuous period of one-hundred-sixty-eight (168) hours during the term of this POLICY, such EARTH MOVEMENT shall be deemed to be a single OCCURRENCE of EARTH MOVEMENT.

2. Subject to the **Prior or Subsequent Loss** condition of this POLICY, when the word OCCURRENCE applies to loss or damage resulting from tornado, windstorm, NAMED WINDSTORM, hail, riot, riot attending a strike, civil commotion, and malicious mischief, if such causes of loss are insured by this POLICY one event will be construed to be all losses arising during a continuous period of seventy-two (72) hours.

3. When filing a proof of loss, the Insured may elect the moment at which such **Occurrence Hour Clause** hour period is deemed to have commenced, which will not be earlier than when the first physical loss or damage to property or interests insured by this POLICY occurs.

K. Other Insurance

The Company shall not be liable if, at the time of loss or damage there is any other insurance or warranty which would attach if this insurance had not incepted, except that this insurance shall apply only as excess and in no event as contributing insurance, and then only after all other insurance or any warranty has been exhausted.

L. Policy Modification

1. This POLICY contains all of the agreements between the Insured and the Company concerning this insurance.

2. This POLICY can be changed only by endorsements issued by the Company and made part of this POLICY.

3. Notice to any agent of the Insured or knowledge possessed by any agent of the Insured or by any other person does not:

   a. create a waiver or change any part of this POLICY; or

   b. prevent the Company from asserting any rights under the provisions of this POLICY or law.

M. Prior or Subsequent Loss

The Company is not liable hereunder for any loss or damage:

1. occurring before the POLICY becomes effective; or

2. arising from an OCCURRENCE which is in progress at the time this POLICY becomes effective, even if such loss or damage occurs after this POLICY becomes effective; or

3. occurring after the expiration of this POLICY, except loss or damage arising from an OCCURRENCE in progress at the time this POLICY expires.

N. Reduction by Loss

Except with respect to any aggregate limit of liability, any paid loss shall not reduce any other limit of this POLICY.

O. Several and Not Joint Liability

The liability of the Company shall be several and not joint and is limited solely to the extent of Company's individual share. The Company is not responsible for the subscription of any co-subscribing company or reinsurer who for any reason does not satisfy all or part of its obligations.

P. Titles of Paragraphs

The titles of the paragraphs of this form (and of endorsements and supplemental contracts, if any, now or hereafter attached to this POLICY) are inserted solely for convenience of reference and shall not be deemed in any way to limit or affect the provisions to which they relate.

Q. Underlying Insurance

Permission is granted the Insured to purchase insurance on all or any part of the deductibles of this POLICY, and the existence of such underlying insurance shall not prejudice any recovery otherwise payable under this POLICY. If the limits of such underlying insurance exceed the deductible which would apply under this POLICY, then the insurance provided by this POLICY shall apply only as excess after that portion which exceeds such deductible has been exhausted.

SECTION X
DEFINITIONS

Unless otherwise defined elsewhere, the following Definitions apply when the term is used in this POLICY.

A. ACCOUNTS RECEIVABLE

The total of:

a. all sums due the Insured from customers, provided the Insured is unable to effect collection thereof as the result of physical loss or damage to the MEDIA of accounts receivable records; and

b. interest charges on any loan to offset impaired collections pending repayment of such sums made uncollectible by such loss or damage; and

c. collection expense in excess of normal collection cost and made necessary because of such loss or damage; and

d. other expenses, when reasonably incurred by the Insured in re-establishing the MEDIA, excluding ELECTRONIC DATA PROCESSING MEDIA, of accounts receivable records following such loss or damage.

B. ACTUAL CASH VALUE

The amount it would cost to repair or replace INSURED PROPERTY on the date of the physical loss or damage with new and current material of like size, kind and quality and with proper deduction for obsolescence and physical depreciation. ACTUAL CASH VALUE is expected to be less than, and cannot exceed, replacement cost.

C. CONTAMINANT(S)

a. Materials that may be harmful to human health, wildlife or the environment. CONTAMINANTS include any impurity, solid, liquid, gaseous or thermal irritant or pollutant, poison, toxin, pathogen or pathogenic organism, disease-causing or illness-causing agent, asbestos, dioxin, polychlorinated biphenyls, agricultural smoke, agricultural soot, vapor, fumes, acids, alkalis, chemicals, bacteria, virus, vaccines, waste, and hazardous substances as listed in the Federal Water Pollution Control Act, Clean Air Act, Resource Conservation and Recovery Act, Toxic Substances Control Act, or as designated by the United States Environmental Protection Agency or any other local governmental agency.

b. However, CONTAMINANTS do not include fungi.

D. EARTH MOVEMENT

a. Any earthquake, landslide, avalanche, subsidence, sinkhole, volcanic eruption, tsunami or any other movement of earth arising out of one OCCURRENCE except mudslide or mudflow caused by accumulation of water on or under the ground (all whether or not naturally occurring).

b. Loss or damage caused by EARTH MOVEMENT shall include all insured loss or damage to INSURED PROPERTY at INSURED LOCATION(S) resulting from EARTH MOVEMENT, except loss or damage from resulting fire, explosion, or sprinkler leakage.

E. ELECTRONIC DATA PROCESSING EQUIPMENT

Any computer, computer system or component, hardware, network, microprocessor, microchip, integrated circuit or similar devices or components in computer or non-computer equipment, or operating systems.

F. FINE ARTS

Paintings, etchings, pictures, tapestries, rare or art glass, art glass windows, valuable rugs, statuary, sculptures, antique furniture, antique jewelry, bric-a-brac, porcelains, and similar property of rarity, historical value, or artistic merit excluding automobiles, coins, stamps, furs, jewelry, precious stones, PRECIOUS METALS, watercraft, aircraft, MONEY, SECURITIES.

G. FINISHED GOODS

Goods manufactured by the Insured which in the ordinary course of the Insured's business is ready for packing, labeling, shipment or sale.

H. FLOOD

Surface waters, rising waters, storm surge, sea surge, wave wash, waves, tide or tidal water, the release of water, the rising, overflowing or breaking of boundaries of natural or man-made bodies of water; or the spray therefrom; all whether driven by WIND or not or caused by, resulting from or accompanying a NAMED WINDSTORM or not; mudslide or mudflow caused by or resulting from surface water, runoff or accumulation of water on or under the ground; or sewer back-up caused by or resulting from any of the foregoing; all regardless of any other cause or event, whether natural or man-made, contributing concurrently or in any other sequence of loss, arising out of one OCCURRENCE. Physical loss or damage from FLOOD associated with a NAMED WINDSTORM is considered to be FLOOD within the terms of this POLICY for purposes of exclusions, limits and sublimits hereunder. However, physical loss or damage by fire, explosion or sprinkler leakage resulting from FLOOD is not considered to be loss by FLOOD within the terms and conditions of this POLICY.

I. HIGH HAZARD FLOOD ZONE

a. All property at INSURED LOCATION(S) that is wholly or partially situated in an area which at the time of loss or damage has been designated on a Flood Insurance Rate Map (FIRM) to be a Special Flood Hazard Area (SFHA); or

b. All property in areas where the National Flood Insurance Program (NFIP) is not in effect, and where all property at INSURED LOCATION(S) is wholly or partially situated in an area which is within a one hundred (100) year FLOOD plain or its worldwide equivalent.

J. IMPROVEMENTS AND BETTERMENTS

Fixtures, improvements, betterments, alterations, installations or additions comprising part of a building occupied but not owned by the Insured and acquired or made at the expense of the Insured, which the Insured cannot legally remove.

K. INSURED LOCATION(S)

Location(s):

a. listed on the latest schedule of LOCATION(S) submitted to, accepted by and on file with the Company;

b. insured under **Newly Acquired Property**;

c. insured under **Errors and Omissions**;

d. insured under **Miscellaneous Unnamed Locations**;

e. insured under **Course of Construction**;

f. INSURED LOCATION(S) includes the area within one thousand (1,000) feet of such LOCATION(S) if within the **Policy Territory**.

L. INSURED'S LIABILITY

Liability which is imposed by law upon the Insured or is assumed by the Insured by specific agreement prior to loss for physical loss or damage of the type insured against by this POLICY.

M. LAND IMPROVEMENTS

Landscaping, gardening, roadways and pavements, but not including any fill or land beneath such property.

N. LOCATION(S)

a. A building, yard, dock, wharf, pier or bulkhead or any group of the foregoing bounded by public streets, clear land space, open waterways or any combination thereof, with each public street, clear land space or open waterway measuring no less than fifty (50) feet wide. Any bridge or tunnel crossing such streets, space or waterways renders such separation inoperative;

b. The term LOCATIONS means more than one LOCATION.

O. MEDIA

The materials upon which data is recorded, including but not limited to, paper tapes, cards, electronic memory circuits and magnetic or optical storage devices.

P. MERCHANDISE

Goods kept for sale by the Insured which are not RAW STOCK, STOCK IN PROCESS or FINISHED GOODS.

Q. MONEY

Bank notes, coins, currency, money order held for sale to the public, traveler's checks or register checks.

R. NAMED WINDSTORM

All loss or damage insured by this POLICY, arising out of one OCCURRENCE which is caused by or results from a storm or weather disturbance which is named by the National Weather Service or any other recognized meteorological authority. Storm or weather disturbance includes all weather phenomena insured by this POLICY, associated with or occurring in conjunction with the storm or weather disturbance, including, but not limited to WIND, hail, sleet, tornadoes, hurricane or lightning. To the extent FLOOD is caused by, results from or accompanies a NAMED WINDSTORM, any physical loss or damage caused by, resulting from, or arising out of that FLOOD shall be treated as FLOOD, and not NAMED WINDSTORM, for purposes of exclusions, limits and sublimits hereunder.

S. NEW MADRID SEISMIC ZONE:

Arkansas, United States of America

Counties of Arkansas, Ashley, Chicot, Clay, Craighead, Crittenden, Cross, Desha, Drew, Fulton, Grant, Greene, Independence, Izard, Jackson, Jefferson, Lawrence, Lee, Lincoln, Lonoke, Mississippi, Monroe, Phillips, Poinsett, Prairie, Pulaski, Randolph, Saline, Sharp, St. Francis, White, Woodruff;

Illinois, United States of America

Counties of Alexander, Bond, Calhoun, Christian, Clark, Clay, Clinton, Coles, Crawford, Cumberland, Edwards, Effingham, Fayette, Franklin, Gallatin, Greene, Hamilton, Hardin, Jackson, Jasper, Jefferson, Jersey, Johnson, Lawrence, Macoupin, Madison, Marion, Massac, Monroe, Montgomery, Morgan, Perry, Pike, Pope, Pulaski, Randolph, Richland, Saline, Sangamon, Scott, Shelby, St. Clair, Union, Wabash, Washington, Wayne, White, Williamson;

Indiana, United States of America

Counties of Crawford, Daviess, Dubois, Gibson, Greene, Knox, Lawrence, Martin, Orange, Perry, Pike, Posey, Spencer, Sullivan, Vanderburgh, Warrick;

Kentucky, United States of America

Counties of Ballard, Breckinridge, Butler, Caldwell, Calloway, Carlisle, Christian, Crittenden, Daviess, Fulton, Graves, Hancock, Henderson, Hickman, Hopkins, Livingston, Logan, Lyon, Marshall, McCracken, McLean, Muhlenberg, Ohio, Simpson, Todd, Trigg, Union, Warren, Webster;

Mississippi, United States of America

Counties of Alcorn, Benton, Bolivar, Calhoun, Carroll, Chickasaw, Choctaw, Clay, Coahoma, De Soto, Grenada, Holmes, Humphreys, Issaquena, Itawamba, Lafayette, Lee, Leflore, Lowndes, Marshall, Monroe, Montgomery, Oktibbeha, Panola, Pontotoc, Prentiss, Quitman, Sharkey, Sunflower, Tallahatchie, Tate, Tippah, Tishomingo, Tunica, Union, Warren, Washington, Webster, Yalobusha, Yazoo;

Missouri, United States of America

Counties of Audrain, Bollinger, Butler, Callaway, Cape Girardeau, Carter, Cole, Crawford, Dent, Dunklin, Franklin, Gasconade, Howell, Iron, Jefferson, Lincoln, Madison, Maries, Marion, Miller, Mississippi, Montgomery, New Madrid, Oregon, Osage, Pemiscot, Perry, Phelps, Pike, Pulaski, Ralls, Reynolds, Ripley, Scott, Shannon, St. Charles, St. Francois, St. Louis, City of St. Louis, Ste. Genevieve, Stoddard, Texas, Warren, Washington, Wayne;

Tennessee, United States of America

Counties of Benton, Carroll, Cheatham, Chester, Crockett, Decatur, Dickson, Dyer, Fayette, Gibson, Hardeman, Hardin, Haywood, Henderson, Henry, Hickman, Houston, Humphreys, Lake, Lauderdale, Lawrence, Lewis, Madison, McNairy, Montgomery, Obion, Perry, Robertson, Shelby, Stewart, Tipton, Wayne, Weakley.

T. OCCURRENCE

The sum total of all loss or damage of the type insured caused by or arising out of one event, including any insured TIME ELEMENT loss, regardless of the number of LOCATIONS affected.

U. OUTDOOR PROPERTY

Fences, radio and television antennas (including satellite dishes), trees, shrubs, plants (other than trees, shrubs, and plants which are RAW STOCK or STOCK IN PROCESS or are part of a vegetated roof.

All sections of this document and the appendices and endorsements attached or added to this document.

V. PACIFIC NORTHWEST SEISMIC ZONE:

Oregon, United States of America

Counties of Benton, Clackamas, Clatsop, Columbia, Coos, Curry, Douglas, Jackson, Josephine, Klamath, Lake, Lane, Lincoln, Linn, Marion, Multnomah, Polk, Tillamook, Washington, Yamhill;

Washington, United States of America

Counties of Chelan, Clallam, Clark, Cowlitz, Grays Harbor, Island, Jefferson, King, Kitsap, Kittitas, Lewis, Mason, Pacific, Pierce, San Juan, Skagit, Skamania, Snohomish, Thurston, Wahkiakum, Whatcom.

W. PRECIOUS METALS

Any of the following metals: gold, iridium, osmium, palladium, platinum, rhodium, ruthenium, and silver.

X. PROPERTY DAMAGE

A type or category of loss due to the reduction in the value of real or personal property directly caused by or resulting from physical loss or damage thereto. A coverage provision or series of provisions pertaining to such loss.

Y. RAW STOCK

Material in the state in which the Insured receives it for conversion by the Insured into STOCK IN PROCESS or FINISHED GOODS.

Z. SALES

The amount paid or payable to the Insured for goods sold or delivered and for services rendered in the conduct of the business at INSURED LOCATION(S).

AA. SECURITIES

a. All negotiable and non-negotiable instruments or contracts representing either MONEY or other property;

b. SECURITIES include accounts, bills, bonds, stocks, food stamps, other evidences of debt or revenue, other stamps in current use, tokens, tickets, evidences of title and letter of credit. SECURITIES do not include MONEY.

BB. STOCK IN PROCESS

RAW STOCK which has undergone any aging, seasoning, mechanical or other process of manufacture at INSURED LOCATION(S) but which has not become FINISHED GOODS.

CC. TIME ELEMENT

A type or category of loss which is dependent, with respect to quantification, upon the passage of a period of time measured from a specific event. A coverage provision or series of provisions pertaining to such loss. Examples of such provisions include **Gross Earnings, Extra Expense, Rental Insurance, Contingent Time Element, Service Interruption – Time Element, Leasehold Interest, Commissions, Licensing Fees and Royalties**, **Ingress/Egress, Order of Civil or Military Authority**.

DD. TIER 1 COUNTIES

Jurisdiction	**Counties**
ALABAMA	Baldwin, Mobile
FLORIDA	Entire State
GEORGIA	Bryan, Camden, Chatham, Glynn, Liberty, McIntosh
HAWAII	Entire State
LOUISIANA	Cameron, Iberia, Jefferson, Lafourche, Orleans, Plaquemines, St. Bernard, St. Mary, St. Tammany, Terrebonne, Vermilion
MISSISSIPPI	Hancock, Harrison, Jackson

NORTH CAROLINA	Beaufort, Bertie, Brunswick, Camden, Carteret, Chowan, Currituck, Dare, Hyde, New Hanover, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Tyrrell, Washington
PUERTO RICO	Entire Territory
SOUTH CAROLINA	Beaufort, Berkeley, Charleston, Colleton, Georgetown, Horry, Jasper
TEXAS	Aransas, Brazoria, Calhoun, Cameron, Chambers, Galveston, Harris, Jackson, Jefferson, Kenedy, Kleberg, Matagorda, Nueces, Refugio, San Patricio, Willacy
US VIRGIN ISLANDS	Entire Territory
VIRGINIA	Accomack, Chesapeake, Gloucester, Hampton, Isle of Wight, James City, Lancaster, Mathews, Middlesex, Newport News, Norfolk, Northampton, Northumberland, Portsmouth, Suffolk, Surry, Virginia Beach, Westmoreland, York.

EE. VALUABLE PAPERS AND RECORDS

Written, printed or otherwise inscribed documents and records, including books, maps, films, drawings, abstracts, deeds, mortgages and manuscripts, but not MONEY, SECURITIES, ELECTRONIC DATA, ELECTRONIC DATA PROCESSING MEDIA.

FF. WAITING PERIOD

A continuous period of time which must elapse before there is any liability for loss under this POLICY.

GG. WIND

Direct action of wind including substance driven by wind. WIND does not mean or include anything defined as FLOOD in this POLICY.

Endorsement A

Occurrence Limit of Liability

It is understood and agreed that the following special terms and conditions apply to this quotation:

It is understood and agreed that the following special terms and conditions apply to this Policy:

1. The limit of liability or Limit of Insurance shown on the face of this Policy, or endorsed onto this Policy, is the total Program Limit of Liability applicable to each occurrence, as hereafter defined. Notwithstanding any other terms and conditions of this Policy to the contrary, in no event shall our liability exceed our proportionate program share of this limit or amount irrespective of the number of locations involved.

   The term "occurrence" shall mean any one loss, disaster, casualty or series of losses, disasters, or casualties, arising out of one event except as specified elsewhere in the policy with regards to flood or earthquake coverage.

   When the term applies to loss or losses from the perils of tornado, cyclone, hurricane, windstorm, hail, volcanic eruption, riot, riot attending a strike, civil commotion, and vandalism and malicious mischief one event shall be construed to be all losses arising during a continuous period of 72 hours. When filing proof of loss, you may elect the moment at which the 72 hour period shall be deemed to have commenced, which shall not be earlier than the first loss to the covered property occurs and must commence within the policy term.

2. The premium for this Policy is based upon the Statement of Values on file with us, or attached to this Policy. In the event of loss hereunder, the total Program Limit of Liability, subject to the terms of paragraph one (1) above, shall be limited to the least of the following:

   a. The actual adjusted amount of loss, less applicable deductible(s),

   b. The limit of Liability or Limit of Insurance shown on the face of this Policy or endorsed onto this Policy.

Hurricane Minimum Earned Premium Provision

The following terms and conditions will apply to this policy:

1. If the Insured cancels this policy, removes a location or reduces the amount of insurance on a location that is within 100 miles of the Atlantic Ocean and/or the Gulf of Mexico and/or the Hawaii Islands, and coverage existed any time during the period of June 1st to November 30th, the amount of premium the Company will return will be the Unearned Premium for the location. The Unearned Premium is the annual premium for the policy (or for the location removed or coverage reduced, as applicable) multiplied by the Unearned Factor noted below. The location premium is the 100% annual rate multiplied by the location value as scheduled in the most current Statement of Values on file with the Company.

1 Year Policy

Days Policy

In Force	Unearned Factor
1 to 180	20%
181 to 210	15%
211 to 240	10%
241 to 270	7.5%
271 to 300	5.0%
301 to 330	2.5%
331 to 365	0.0%

2. If a Location that is within 100 miles of the Atlantic Ocean and/or the Gulf of Mexico and/or the Hawaii Islands is added during the term of the policy and coverage exists any time during the period of June 1st to November 30th, the rate will be calculated as 100% of the annual rate, less the Unearned Factor as calculated in No. 1 above based upon the number of days remaining in the policy term.

3. The provisions of this Hurricane Minimum Earned Premium Provision replace any short rate provisions stipulated in this policy for all locations that are within 100 miles of the Atlantic Ocean and/or the Gulf of Mexico and/or the Hawaii Islands and coverage existed any time during the period of June 1st to November 30th.

Certificates Wording

Please be advised that **Ategrity Specialty Insurance Company** does not review Certificates of Insurance issued by you, or by any party, relating to this policy of insurance either for content or accuracy. Accordingly, we request that you do not provide copies of certificates to us for review or for our records. Authority is granted to you for the limited purpose of issuing unmodified ACORD 24, 27 or 28 Certificates only. It is your responsibility to see that any Certificate provides an accurate representation of the coverage form and endorsements applicable to this policy at the time the Certificate is issued. Any modification of the approved ACORD forms specifically set forth above, or the issuance of a non-approved Certificate of Insurance ACORD or other is prohibited. Certificates of Insurance may only be issued as a matter of information.

Loss Adjuster

It is hereby understood and agreed that each and every loss will be adjusted by the Adjuster named below unless otherwise agreed by the Insured and the **Insurer**.

Evan Sussman
Engle Martin & Associates
90 Broad Street
New York, NY 10004
Direct: 212.822.2793
Mobile: 908.616.5806
esussman@englemartin.comde

Joint Loss Agreement

In the event the insurance company, if any, providing boiler and machinery insurance disputes any portion of the claim made against that company and this Company believes the boiler and machinery policy should have paid that portion of the claim, then this Company shall, upon written request of the Insured, pay to the Insured one-half of the amount of the loss which is in disagreement, but in no event more than this company would have paid if there had been no boiler and machinery policy(ies) in effect, subject to the following conditions:

A. The amount of the loss which is in disagreement, after making provisions for any undisputed claims payable under the said policies and after the amount of the loss is agreed upon by the Insured and the insurers, is limited to the minimum amount remaining payable under the boiler and machinery policy(ies);

B. The boiler and machinery insurer(s) shall simultaneously pay to the Insured one-half of said amount which is in disagreement;

C. The payments by the insurers hereunder and acceptance of the same by the Insured signify the agreement of the insurers to submit to and proceed with arbitration within 90 days of such payments; the arbitrators shall be three in number, one of whom shall be appointed by the Property insurer(s) and one of whom shall be appointed by the Boiler and Machinery insurer(s) and the third shall be appointed with the consent of the other two insurers, and the decision by the arbitrators shall be binding upon the insurers and that judgment upon such award may be entered in any court of competent jurisdiction;

D. The Insured agrees to cooperate in connection with such arbitration but not to intervene therein;

E. The provisions of this endorsement shall not apply unless such other policy(ies) issued by the Boiler and Machinery insurance company(ies) is similarly endorsed;

F. Acceptance by the Insured of sums paid pursuant to the provisions of this endorsement, including an arbitration award, shall not operate to alter, waive, surrender, or in any way affect the rights of the Insured against any of the insurers.

Endorsement B

EXCLUSION FOR CERTAIN COMPUTER RELATED LOSSES

THIS ENDORSEMENT CHANGES THIS POLICY. PLEASE READ IT CAREFULLY.

This policy does not insure any loss, or damage caused by or resulting directly or indirectly by any of the following. **Such loss or damage is excluded regardless of any other cause or event that contributes directly, indirectly, concurrently, proximately, remotely, or in any sequence to the loss and includes but is not limited to**:

A. The alteration, manipulation or destruction of computer media and data, by the addition of a virus, destructive code or similar instruction, hacking or any other malicious or destructive programming or instructions that disrupts the normal operation of computer equipment or computer media and data or results in the loss of use or physical damage to computer equipment, including but not limited to microprocessors and networks, or computer media and data;

B. Denial of service; by unauthorized direction of a high volume of messages or inquiries to a web site or e-mail destinations, effectively denying, interrupting or limiting legitimate access;

C. Inability to correctly recognize, process, distinguish, interpret or accept one or more dates or times;

D. Transfer of property caused by, resulting from, or arising out of unauthorized instructions transmitted by a computer;

E. Financial loss or any other loss or damage due to unauthorized viewing, copying or use of any data (including proprietary or confidential information) by any person, even if such activity is characterized as theft.

F. Any advice, consultation, design, evaluation, inspection, installation, maintenance, repair, replacement or supervision provided or done by the Insured or on the Insured's behalf to determine, rectify or test for any actual or potential problem described in paragraphs A through E above.

This exclusion applies regardless whether there is (a) any physical loss or damage to insured property; (b) any loss of use, occupancy or functionality; or (c) any action required, including but not limited to repair, replacement, restoration, removal, cleanup, abatement, disposal, relocation, or steps taken to address medical or legal concerns.

All other terms and conditions of this policy shall remain unchanged.

POLICY NUMBER: 01-B-XP-P00000308-0 **IL 09 53 01 15**

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION OF CERTIFIED ACTS OF TERRORISM

This endorsement modifies insurance provided under the following:

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

SCHEDULE

The **Exception Covering Certain Fire Losses** (Paragraph **C)** applies to property located in the following state(s), if covered under the indicated Coverage Form, Coverage Part or Policy:

State(s)	Coverage Form, Coverage Part Or Policy
CA, CT, GA, HI, IL, IA, ME, MO, NJ, NY, NC, OR,	ALL
RI, VA, WA, WV, WI	
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

A. The following definition is added with respect to the provisions of this endorsement:

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

1. The act resulted in insured losses in excess of $5 million in the aggregate, attributable to all types of insurance subject to the Terrorism Risk Insurance Act; and

2. The act is a violent act or an act that is dangerous to human life, property or infrastructure and is committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

B. The following exclusion is added:

CERTIFIED ACT OF TERRORISM EXCLUSION

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

C. Exception Covering Certain Fire Losses

The following exception to the exclusion in Paragraph **B.** applies only if indicated and as indicated in the Schedule of this endorsement.

If a "certified act of terrorism" results in fire, we will pay for the loss or damage caused by that fire. Such coverage for fire applies only to direct loss or damage by fire to Covered Property. Therefore, for example, the coverage does not apply to insurance provided under Business Income and/or Extra Expense coverage forms or endorsements which apply to those forms, or to the Legal Liability Coverage Form or the Leasehold Interest Coverage Form.

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

D. Application Of Other Exclusions

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

Exhibit 5

City of Miami, Florida

ARTHUR NORIEGA, V
CITY MANAGER

P.O. BOX 330708
MIAMI, FLORIDA 33233-0708
(305) 250-5400
FAX (305) 250-5410

March 18, 2020

Mr. Isadore Havenick
Magic City Casino
401 Northwest 38th Court
Miami, FL 33126

Dear Mr. Havenick:

On March 17, 2020, the City Manager issued a Second Amendment to Local Emergency Measures (a copy of the order is attached for your reference) ordering **all non-essential businesses and establishments within the City of Miami to close** by no later 11:59 PM on March 17, 2020. Given that your business is an entertainment facility and does not fall within the exceptions as defined by this order, I ask that you close your business immediately.

Please feel free to contact my office for any further clarification.

Sincerely,

Arthur Noriega, V
City Manager