

LEASES AND PROPERTY INSURANCE

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Leases and Property Insurance

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This article examines the role of property insurance in leaseholds. The standard insurance forms and endorsements available to landlords and tenants are identified and discussed. Also discussed are additional forms of property insurance that are commonly encountered, builder's risk, boiler and machinery coverage, flood insurance, ordinance or law coverage, glass insurance and sign insurance. Attached to this article are the three standard forms of certificates or evidences of property insurance: the ACORD Certificate of Property Insurance, the Evidence of Commercial Property Insurance, and an Insurance Binder. The article is presented primarily from a Texas law standpoint. See the Insurance Committee's Webpage on the ACREL Website for the following additional resources: *Insurance Glossary* and the following articles by this author, *Landlords: Beware of Insurance Certificates (A Trojan Horse)*; *Annotated Lease Indemnity and Insurance Specifications* (this article is an extract of the property insurance portion of the article on the Website); *Additional Insured Endorsements to Liability Policies – Typical Defects and Solutions*. As discussed in *Landlords: Beware of Insurance Certificates (A Trojan Horse)* landlords and tenants should not rely on certificates of insurance furnished by the other party or contractors.

A. The Landlord and Tenant Relationship

1. Tenant's General Duty of Care of the Premises

At common law, neither the landlord nor the tenant is obligated to repair the premises after casualty damages unless it caused the damage; the lease continues in effect, and the rent is not reduced or abated. In order to use the premises, the tenant is put to the burden of restoring the premises to useful condition.

Absent a tenant's fault in causing damage to the premises or provision in the lease, the tenant's common law obligation is not to commit waste. The tenant is liable to the landlord, if the tenant negligently destroys the premises (*e.g.*, a negligently caused fire) absent a provision in the lease to the contrary. *Nagorny v. Gray*, 261 S.W.2d 741 (Tex. Civ. App.—Galveston 1953, *no writ*).

If the lease does not obligate the landlord or the tenant to restore the premises after a casualty loss, and the loss is not caused by the negligence of either party, the landlord bears the risk of the decline in value of the property if either it or the tenant does not restore the property.

As opposed to leaving the rebuilding obligation to common law rules, the parties customarily will address this topic in the lease. The lease may provide that the tenant is obligated to return the premises at the expiration of the lease term and make no exception for casualty losses; the lease may allocate the responsibility of rebuilding to landlord or to tenant, or parts to landlord and parts to tenant; and the lease will address funding of the rebuilding obligation by requiring one or the other of the parties to maintain property insurance, including setting out specifications for the property insurance.

2. Contractual Risk Allocations

a. **Covenant Requiring Party To Insure Its Own Property Not Equivalent to Waiver Of Recovery Or Waiver Of Subrogation**

Most leases contain a provision addressing the rights between the parties in the event that the property is damaged by the negligence of the other party.

These leases may provide that the party whose property is damaged waives claims against the other negligent party and that the damaged party will look to the property insurance for recovery. Further the lease may provide that the right of subrogation of the insurer is waived or that the party obtaining the insurance will also obtain an endorsement to the property policy whereby the insurer waives its rights of subrogation to recovery its insurance proceeds against the negligent party.

In circumstances where the lease does not contain a waiver of claims and a waiver of subrogation, the insurer's right to recover against a person other than its insured rests on the basic principle of law, **equitable subrogation**.

A majority of courts follow the rule that a lessor's property insurer may not subrogate against a lessee

whose negligence has caused damage to the lessor's property. These courts have found that the lessee is an **implied coinsured**. Some of these courts have concluded that the landlord's agreement to procure property insurance covering the building implies an obligation by the landlord to insure the building for the benefit of both the landlord and the tenant. Others of these courts have reasoned that the tenant has indirectly paid for the insurance, either through rent or through expense pass through. The better practice is to address this risk in the lease. See FRIEDMAN ON LEASES (5th ed. 2011), § 9.11. INSURANCE LAW, Keeton and Widiss, §4.4(b). *Metal Works, Inc. v. North Star Reinsurance Corp. v. Continental Ins. Co.*, 624 N.E.2d 647 (1993); *Cook Paint & Varnish Co.*, 418 F.Supp 56 (N.D. Tex. 1976); *Sutton v. Jondahl*, 532 P.2d 478 (Okla. 1975).

Texas follows the minority rule. *Wichita City Lines, Inc. v. Puckett*, 295 S.W.2d 894 (Tex. 1956); FRIEDMAN ON LEASES (5th ed. 2011), § 9.12 No Implication of Co-Insured Status Unless Explicitly and Unambiguously Stated Otherwise in the Lease. The minority jurisdiction rule is based on the common-law presumption that a tenant is liable for the tenant's own negligence and the equitable principle of subrogation.

Upon payment by the landlord's insurer for an insured property loss, the landlord's insurer is subrogated to the landlord's rights and claim against its tenant and can sue the tenant to recoup the insurance proceeds. In *Wichita City Lines, Inc. v. Puckett*, 295 S.W.2d 894 (Tex. 1956), the Texas Supreme Court held that where the lease merely provided that the landlord agreed to carry fire and extended coverage insurance on the building, part of which was occupied by the landlord, there was no duty on the landlord to procure insurance for the benefit of the tenant, and the landlord's insurers were not precluded from obtaining a subrogated cause of action to recoup its policy proceeds on account of fire caused by tenant's negligence. The court rejected the tenant's contention that the intent of the parties for including a covenant of the landlord to insure its own building (presumably the cost of which was built into the rent) was to exculpate the tenant for its own negligence.

Since there is no recognized standard property policy form, like the ISO liability form, it is prudent to examine the property policy in connection with drafting the lease and to condition the lease, if necessary, on obtaining a subrogation waiver from the insurer.

The ISO property policy for leased premises allows the parties to waive the insurer's rights in advance by a waiver of claims in the lease. The ISO property policy also allows the landlord to waive the insurer's subrogation right even after a loss. See **App. Form A.3 Commercial Property Conditions ¶ I. Transfer of Rights of Recovery Against Others To Us.**

b. Waivers Of Subrogation Or Waiver Of Recovery

(1) Waivers Of Subrogation Or Waiver Of Recovery?

Waiver of recovery is the landlord or tenant waiving its rights or recovery for the acts of the other. Waiver of subrogation is the landlord or tenant or both waiving the right of its insurer to be subrogated to the landlord's or tenant's claim. While a waiver of recovery also is a waiver of subrogation (because the insurer has no rights left to which to be subrogated), a waiver of subrogation alone is not a waiver of recovery.

(2) Covenant Requiring Tenant To Pay For Insurance And Name Landlord As An Insured Equivalent To Waiver of Recovery By Landlord Against Tenant

In *Publix Theatres Corp. v. Powell*, 71 S.W.2d 237 (Tex. Comm. App. 1934), the lessee agreed in the lease to carry fire insurance on the leased building, at the lessee's expense, naming the landlord as the insured. The insurer paid, but the landlord still sued the tenant for the loss. The court declared that to permit the lessor to keep the insurance money and also to collect from the lessee would be a double recovery.

In *Interstate Fire Ins. Co. v. First Tape, Inc.*, 817 S.W.2d 142 (Tex. App.— Houston [1st Dist.] 1991, *writ denied*), the court of appeals refused to limit the waiver of subrogation contained in the lease to claims against the current tenant so as to permit the otherwise subrogated insurer to pursue the former tenant after assignment. The assigning tenant, First Tape, therefore, was able to retain the protection of the waiver of subrogation clause even after it had assigned its lease.

(3) Valid Despite Negligence Of Released Party

In Texas, waiver of recovery and waiver of subrogation clauses are valid if properly drafted. See *International Co. v. Medical-Professional Building of Corpus Christi*, 405 S.W.2d 867 (Tex. Civ. App.—Corpus Christi 1966, writ *ref'd n.r.e.*)—lessee waived in advance any claims for damages caused by lessor’s negligent failure to maintain boilers in the portion of the leased premises which was under landlord’s control “to extent that lessee was compensated by insurance for such damages;” and *Williams v. Advanced Technology Ctr., Inc.*, 537 S.W.2d 531 (Tex. App.— Eastland 1976, writ *ref'd n.r.e.*)—subrogation suit brought against lessee by lessor’s fire insurance carrier was barred by lessor’s waiver of subrogation clause contained in lease, notwithstanding lessee’s breach of the lease by permitting the leased premises to be used for an extra hazardous operation.

In order for indemnity and waiver provisions to be enforceable in Texas they must be drafted to comply with the two-pronged “fair notice doctrine” under Texas case law: (1) the “express negligence rule” set forth in *Ethyl Corp. v. Daniel Construction Co.*, 725 S.W.2d 705 (Tex. 1987), and (2) the “conspicuousness rule” enunciated in *Dresser Industries, Inc. v. Page Petroleum, Inc.*, 853 S.W.2d 505 (Tex. 1993). See discussion below as to the failure of the AIA waiver of claims language to comply with Texas’ fair notice doctrine.

c. Conflicts - Return Of Premises Covenant vs. Waiver Of Recovery Provision

A lease may be drafted to require the tenant at the termination of the lease to return the leased premises in its original condition except for “reasonable wear and tear and damage by casualty not occurring through the tenant’s negligence”. Such a clause is potentially in conflict with a waiver of subrogation clause, unless specifically excepted in the waiver clause.

3. Policies

a. Outdated Terminology

Outdated terminology requiring that the policy provide “**fire and extended coverage**” is often used in contracts. “**Extended coverage**” refers to an endorsement that was once added to a standard fire policy to cover the perils now insured under ISO’s Basic Causes of Loss Form. Since the extended coverage endorsement is no longer used, a better

approach to requiring this coverage is to refer to the ISO “Basic,” “Broad,” or “Special” Causes of Loss Form. Prior property insurance forms used the terms “risk” and “perils.” Pre-“causes of loss” property insurance was written either on a “**named peril**” basis which insured property against loss or damage from causes of loss expressly enumerated in the policy or an “**all risks**” basis, which insured property against loss or damage from all causes of loss except those which were expressly excluded. “Fire and extended coverage” insurance was a named peril property insurance.

b. Format

ISO commercial property insurance is a form comprised of the following documents combined to make the policy: the Declarations Page (ISO form IL 00 19, or a variation) **App. Form A.1**; the Common Policy Conditions (IL 00 17) **App. Form A.2**; one of the 3 Causes of Loss Forms (CP 10 10, 10 20 or 10 30); the Commercial Property Conditions (CP 10 90) **App. Form A.3**; the Building and Personal Property Coverage Form **App. Form A.4**; additional limits and optional coverages, endorsements describing property covered; loss payees endorsements **App. Form A.5** and **A.6**; and the ISO form CP 00 10.

c. Current Coverage Forms

(1) Basic, Broad And Special

PERILS COVERED UNDER ISO CAUSES OF LOSS FORMS

Basic Causes of Loss Form (CP 10 10)

- Fire
- Lightning
- Explosion
- Windstorm or hail
- Smoke
- Aircraft or vehicles
- Riot or civil commotion
- Vandalism

- Sprinkler leakage
- Sinkhole collapse
- Volcanic action

Broad Causes of Loss Form (CP 10 20)

Basic causes of loss form perils, plus:

- Breakage of glass
- Falling objects
- Weight of snow, ice, or sleet
- Water damage from leaking appliances
- Collapse from specified causes

Special Causes of Loss Form (CP 10 30)

- All perils except as excluded
- Collapse from specified causes

(2) Buildings and Personal Property

Commercial property insurance covers “**Buildings**” and “**Business Personal Property**.”

“**Buildings**” means a building or structure and includes completed additions, fixtures, permanently installed machinery and equipment, and personal property owned by the named insured and used to maintain or service the Building (for example, fire extinguishers and floor coverings). The term “**Buildings**” does not cover land, water or lawns; foundations machinery or boilers, if the foundations are below the lowest basement floor, or the surface of the ground, if there is no basement; bridges, roadways, walks, patios or other paved surfaces; bulkheads, pilings, piers, wharves or docks, underground pipes, flues or drains; retaining walls not part of the building; or costs of excavations, grading, backfilling or filling.

“**Business Personal Property**” means personal property located within the Building and personal property out in the open within 100 feet of the Building. Business Personal Property includes furniture and fixtures; machinery and equipment;

stock (merchandise held in storage or for sale, raw materials and in-process or finished goods), all other personal property owned by the named insured and used in its business; labor, materials, or services furnished by the named insured on the personal property for others; the named insured’s use interest as tenant in improvements and betterments (for example, fixtures, alterations, installations or additions to a structure occupied but not owned by the named insured which are acquired or made at the expense of the named insured but are not legally removable by the named insured); leased personal property for which the named insured has a contractual responsibility to insure; and personal property of others that is under the care, custody or control of the named insured and located in or on the Premises. Business Personal Property does not cover accounts, bills, currency, money, notes, securities; automobiles held for sale; personal property while airborne or waterborne; electronic data.

(3) Valuation Terminology

“**Replacement cost**” is the cost of repairing or replacing insured property at time of the occurrence of the loss, without reduction for loss of value through depreciation. Recovery is limited to the lesser of (a) the policy limit, (b) the cost to replace the lost or damaged property with other property of comparable material and quality and used for the same purpose, or (c) the amount actually spent to repair or replace the damaged or lost property.

“**Actual cash value**” means replacement cost of the covered property at the time of loss with like-kind and quality less physical depreciation. Depreciation may be determined by consideration of age, condition at time of loss, obsolescence and other factors causing deterioration. An “**agreed value endorsement**” is an optional endorsement used where the named insured and the insurer agree upon the actual cash value or the replacement cost of the covered property before the policy is written and agree that co-insurance will not apply.

“**Inflation guard**” is an optional endorsement designed to offset potential inflation by specifying a percentage in the declarations by which the coverage will increase annually as to the portion of the covered property specified.

d. Standard Endorsements

Generally, to be eligible for insured status under a property policy, the insured must have an **insurable interest** in the insured property. The assumption by a tenant of liability for damage to leased premises is recognized as creating an insurable interest in the tenant. Leases for single tenant buildings sometime require the tenant to insure the improvements and to name the owner-lessor as an additional insured. Unlike the standard mortgagee coverage, other additional insurable interests endorsements do not provide coverage despite the acts of the insured, whether the first named insured (e.g., tenant) or the additional insured or loss payee (e.g., landlord). Under current ISO commercial property forms, intentional concealment or misrepresentation of a material fact by any insured voids coverage for the additional insured.

(1) **ISO CP 12 19 Additional Insured – Building Owner**

See the **App. Form A.6** for a copy of this endorsement form.

(a) **Building Owner Designated As An Additional Insured**

In November 2008 ISO issued its form CP 12 19 Additional Insured – Building Owner endorsement to designate a building owner as a **Named Insured** for damage to the building on a tenant’s property policy covering the building. It is the “insureds” who receive the loss payment under a property policy. Thus, it is unnecessary to specify that the building owner also be designated as a *loss payee* when it is designated as an insured.

(b) **“As Their Interests May Appear”**

The phrase “**as their interests may appear**” often is added in a property additional insured endorsement. This is done in order to limit the additional insured’s recovery rights to covered property with respect to which the additional insured has an interest. Without these limiting words, if the policy covers multiple properties, the insurer could include the additional insured on all policy proceed checks. Under the CP 12 19 the building owner is an additional insured with respect to the coverage provided for direct physical damage to the building and covered loss is adjusted with and payable to both the tenant, as the **First Named Insured** (the insured whose name is listed first in the Declarations), and to the building owner, as additional insured.

(c) **No Notice Of Cancellation to Landlord**

The ISO CP 12 19 Building Owner Additional Insured Endorsement **App. Form A.6** does not provide for notice of cancellation to be given to the landlord/additional insured. Further, the cancellation provision in the ISO Common Policy Conditions **App. Form A.2** states that notice of cancellation is given only to the First Named Insured. Thus, the tenant’s property policy provides notice of cancellation will only be given to the tenant.

In *Scottsdale Ins. Co. v. Mason Park Partners, LP*, 2007 WL 2710735 (5th Cir. – Tex. 2007) the landlord learned the hard way that it needed to follow up and obtain a corrected additional insured endorsement on the tenant’s property policy. Although the landlord was designated as an additional insured on the liability portion of the package policy, the additional insured endorsement on the property policy stated that the name and address of the loss payee was “to follow”. It never did and the insurance company did not send notice of cancellation of the property portion of the policy prior to the fire that destroyed the Taste of Katy restaurant. The court found

“Nothing in the loss payable provision or anywhere else gave Scottsdale notice that (landlord) was the intended loss payee”.

In addition to issuing the additional insured endorsement to the property policy, the landlord should also have obtained an endorsement to the property policy requiring notice of cancellation be given to it of policy cancellation. The standard property policy only requires notice of cancellation be sent to the first named insured.

Caveat: To assure notice of cancellation by the insurer, the landlord must obtain a notification endorsement to the policy. Additionally, note that the notification endorsement likely will not address notification as to cancellations by the tenant and will need to be manuscripted to include notice to the landlord of tenant cancellations.

(2) **ISO CP 12 18 Building Owner Loss Payable**

See ISO CP 12 18 06 07 Loss Payable Provisions, Optional Clause F Building Owner Loss Payable Clause in the **App. Form A.5**.

In November 2008 ISO amended its CP 12 18 Loss Payable Provisions endorsement to permit a building owner to be designated as a loss payee under a Building Owner Loss Payable option **App. Form A.5**, as an alternative to using the CP 12 19 **App. Form A.6**. Under the Building Owner Loss Payable option, covered loss to the building is adjusted with the building owner and loss to betterments is adjusted with the tenant, unless the lease stipulates otherwise. Notice of cancellation is not granted to the building owner.

(3) Business Income And Additional Expenses

This form of insurance (ISO form CP 00 30) covers two types of loss: loss of earnings (formerly called “**business interruption insurance**”) and/or extraordinary additional expenses incurred due to a necessary suspension of operations during a period of restoration caused by direct physical loss of or damage to property at the premises described in the policy. This coverage is available with no co-insurance or monthly limitation. Frequently recovery is limited to the length of time required to rebuild or repair the damaged property, plus an additional 30 days for recover business that may have been lost to competitors. Business income insurance may be purchased without the extra expense coverage (ISO Form CP 00 32) and extra expense coverage can be purchased without business income insurance (ISO Form CP 00 50).

“**Business Income Rental Value**” is included under both forms of business income forms (ISO CP 00 30 and CP 00 32) if the attached declaration so provides. Rental value protects the landlord against loss of rents during reconstruction and abatement of rentals if the abatement results from a loss under a named cause of loss in the property insurance.

(4) ISO CP 15 03 Business Income – Landlord As Additional Insured (Rental Value) Endorsement

ISO has recently promulgated an additional insured endorsement form. This endorsement to the tenant’s property policy adds the person identified in the endorsement (the landlord) as an insured for loss of “rental value” and thus meets lease requirements that the tenant obtain coverage for loss of the additional insured’s rental income. The ISO CP 15 03 provides that notice of insurer cancellation will be provided by the insurer to the additional insured, landlord.

B. Vacancy Clauses

See 17 Am. Jur. Proof of Facts2d 103 “Vacancy” of Insured Commercial Structure (2010); Annot., *What constitutes “vacant or unoccupied” dwelling within exclusionary provision of fire insurance policy* 47 A.L.R.3d 398 (1973); 45 C.J.S. Insurance § 999 Change in Use or Occupancy and §1002 What Constitutes Vacancy or Nonoccupancy.

1. Provisions Of The Standard Commercial Property Policy

The standard commercial property policy addresses the increased insurance risk arising out of the vacancy of the covered property. See Paragraph E.6 on page 13 of the standard commercial property policy form **App. Form A.4**. The standard commercial property policy states that a building is “**vacant**” unless

at least 31% of its total square footage is:

- (i) Rented to a lessee or sub-lessee and used by the lessee or sublessee to conduct its customary operations; and/or
- (ii) Used by the building owner to conduct *customary operations*.

a. Customary Operations

The court in *Langill v. Vermont Mut. Ins. Co.*, 268 F.3d 46 (Ma. 2001) found that a property is vacant even though the owner sporadically spent time refurbishing an unoccupied rental property vacated by tenants three months prior to arson loss; in *Catalina Enterprises v. Hartford Ins.*, 67 F.3d 63, 64 (Md. 1995) the court held that an industrial storage warehouse was considered to be vacant even though scaffolding and a hand truck had remained in the premises after tenant vacated five months previously; and in *Schmidt v. Underwriters*, 82 P.3d 649 (Or. 2004) the court held that an intent to commence residency in premises that had been vacant for more than 60 days at time of fire was not sufficient to constitute use.

b. Building Under Construction Or Renovation

A building under construction or renovation is not considered vacant under the standard commercial property policy. See Paragraph E.6a(2) on page 13 of standard commercial property policy form **App. Form A.4**. The court in *Myers v. Merrimack Mut. Fire Ins.*, 601 F.Supp. 620, 621 (Il. 1985), judgment aff'd, 788 F.2d 468 (7th Cir. 1986) interpreted a fire policy that contained a construction exception to the vacancy clause as not excepting repairs or renovations but only the construction of something which did not previously exist or the creation of something new.

c. 60 Consecutive Days Vacancy – 6 Excluded Causes Of Loss

It further provides that if the building has been vacant for more than 60 consecutive days losses or damages from the following six causes are not covered losses: (1) vandalism; (2) sprinkler leakage, unless the insured has protected the system against freezing; (3) building glass breakage; (4) water damage; (5) theft; or (6) attempted theft. In *Sorema N. Am. Reinsurance Co. v. Johnson*, 574 S.E.2d 377 (Ga. 2002) the vandalism exception applied preventing a mortgagee, which acquired property through foreclosure, from coverage for damages caused post foreclosure by vandals; the fact that the former mortgagor's equipment was left on premises did not mean that the property was not vacant; in *MDW Enterprises v. CNA Ins. Co.*, 772 N.Y.S.2d 79 (NY 2004) the vandalism exception did not exclude coverage for arson destroying a building that had been vacant for the preceding 15 months while pending sale. In *Essex Ins. Co. v. Eldridge Land, L.L.C.*, 2010 WL 1992833 (Tex. App. – Hou. [14th Dist.] May, 2010) the court held that damage to the interior of an insured building inflicted by thieves incidentally to their theft of copper wiring and copper pipe fell within the theft exclusion to vacancy coverage under a standard commercial property policy. Also see *Nautilus Ins. Co. v. Steinberg*, 316 S.W.3d 752 (Tex. App. – Dallas 2010, no writ) similarly holding that damage to roof HVAC caused by thieves removing copper wiring is excluded from coverage under the standard policy.

d. 15% Reduction in Proceeds

The standard commercial policy further provides that with respect to Covered Causes of Loss other than

those listed as (1) – (6) above, the amount the insurer would otherwise pay for the loss or damage is reduced by 15%.

2. Typical Provision of Non-Standard Commercial Property Policies

a. Vacancy Clause In Some Policies Provides for Cancellation of Coverage

Some commercial property policies provide that the policy is cancelled and no proceeds are payable if the property is vacant for a specified period. In *Lynn v. USAA Casualty Ins. Co.*, 1997 WL 61485 (Tex. App. – San Antonio 1997, writ denied) a vacancy clause prevented coverage. In this case the vacant house did not contain any appliances, furniture or other contents, except for one metal desk, as all contents had been stolen during various break-ins and the owner had not spent a night at the house for more than a year as there was no bed. Also see *Carolina Ins. Co. of Wilmington, N.C. v. St. Charles*, 98 S.W.2d 1088 (Tenn. 1936); and *Republic Ins. Co. v. Dickson*, 69 S.W.2d 599 (Tex. Civ. App. – Beaumont 1938, writ dism'd).

Some commercial property policies suspend coverage rather than void the policy where the insured property is vacant. *Barlow v. Allstate Texas Lloyds*, 214 Fed. Appx. 435 (5th Cir. 2007).

b. Policy Issued With Insurer's Knowledge Of Vacancy Or Partial Vacancy

Policies are sometimes written with knowledge of the insurer that a portion of the premises will be vacant and in such cases the insured will covenant to keep the vacant portion secure. In *730 J&J LLC v. Twin City Fire*, 740 N.Y.S.2d 119 (NY 2002) the policy did not cover fire loss; insured breached warranty to keep vacant 3rd and 4th floors of building locked and secured.

c. Notice Provision

Also, some commercial property policy forms require the insured to notify the insurer that the premises have become vacant and permit the insurer to elect to continue coverage or cancel coverage unless a vacancy permit or rider issue issued and paid for. *National Mut. Fire Ins. Co. v. Duncan*, 98 P. 634 (Colo. 1908); *Corey v. Niagara Fire Ins. Co.*, 47 S.W.2d 955 (Ky. 1932); *Hartford Fire Ins. Co. v. Merrimack Mut. Fire Ins. Co.*, 457 A.2d 410 (Me.

1983); *Lumbermens Mut. Cas. Co. v. Thomas*, 555 S.2d 67 (Miss. 1989).

d. Occupancy Requirement

Some commercial property policies trigger coverage termination if the property is “**unoccupied**” for a specified period as distinguished from being “vacant”. In *Grannemann v. Columbia Ins. Gro.*, 931 S.W.2d 502, 504 (Mo. 1996) a city’s order prohibiting occupancy due to disrepair of property did not render insured’s performance impossible and excuse compliance with occupancy requirement in property policy and vandalism loss was excluded from coverage of loss on premises that was unoccupied for over four months prior to loss; in *Rojas v. Scottsdale Ins. Co.*, 678 N.W.2d 527, 529 (NE 2004) sporadic presence of insureds and their workers to make renovations did not rise to the level of residency; and in *Young v. Linden*, 719 N.E.2d 556 (Oh. 1998) a court held that a property policy did not cover loss due to erroneous demolition of an unoccupied tavern by a contractor hired by the purchaser at a tax lien foreclosure sale, which was subsequently set aside, as vacancy clause in the policy provided for no coverage for any loss or damage occurring if building became “vacant” or “unoccupied” for more than specified periods (presence of \$100,000 worth of personal property in tavern did not constitute “occupancy”).

3. Standard Homeowners Property Policies

a. Residence Premises

(1) To Reside

See MILLER’S STANDARD INSURANCE POLICIES ANNOTATED 5th Ed. HO 00 03 10. The standard homeowners policy defines property as being a “**residence premises**”, a place where the insured resides. To be a “residence premises” some courts have held that the insured must have resided at the premises and intent to reside at the premises at some indefinite future date may not be sufficient. In *Varsalona v. Auto-Owners Ins. Co.*, 637 S.E.2d 64 (Ga. 2006) the court found that the premises were not the insured’s residence premises as the insured had never lived there or used it as their residence; and despite their intent originally to reside in the house when they purchased it, a change in the insureds’ plans led to occupancy by the insureds’ daughter; in *Schmidt v. Underwriters*, 82 P.3d 649, 650 (Or. 2004) the court found it was not sufficient that son

intended to live at the insured house in order for it not to be vacant at the time of a fire; *also see Marshall v. Tower Ins. Co. NY*, 845 S.2d 90, 91, 44 A.D.3d 1014 (NY 2007) where the court found there was no coverage as the insured never resided at the premises. Vacancy issues occur frequently in the context of estates. In *Estate of Higgins v. Wash. Mut.*, 838 A.2d 778 (Pa. 2003) the court held that a 60-day vacancy clause precluded coverage where policy was renewed by named insured’s estate after she died.

(2) Occupancy by Tenants

Some courts have extended coverage to a rental by the insured after an initial occupancy by the insured. In *Dixon v. First Premium Ins.*, 934 So.2d 134, 139 (La. 2006) the court held that the homeowners policy covered a fire loss to the insured’s home, which occurred after the insured moved out of the home but while it was rented to a tenant.

(3) Periods of Remodeling

Some policies provide that periods of remodeling do not constitute vacancy. In *Garcia v. Farmers Ins. Exchange*, 122 F.Supp.2d 926, 928 (Il. 2000) the court held that the policy covered fire damage to a house purchased by the insured with the intention of remodeling, where trespassers broke in, lit a candle, and fell asleep, even if the insured misrepresented to the agent that the house would be occupied; the vacancy provision did not preclude coverage; the fire was accidental, and not the result of vandalism. However, the court in *Mortgage Bancorp. v. New Hampshire Ins.*, 677 P.2d 726, 727 (Or. 1984) held that where remodeling had ceased due to unavailability of financing, 30 day vacancy exclusion operated to avoid coverage for vandalism.

b. Vacancy For More Than 60 Consecutive Days

Most homeowners property policies provide that they do not insure against loss caused by vandalism and malicious mischief, if the dwelling has been vacant for more than 60 consecutive days immediately before the loss. If the dwelling is vacant for longer than 60 days, most homeowners policies also will exclude losses ensuing from vandalism and malicious mischief.

(1) Arson And Other Excluded Causes of Loss

There is a split in jurisdictions as to whether arson is classified as vandalism: courts holding arson is a form of vandalism – *Costabile v. Metro Prop. & Cas. Co.* 193 F.Supp.2d 465, 474 (Ct. 2002), *Estes v. St. Paul Fire & Marine Ins. Co.*, F.Supp.2d 1227, 1229 (Ks. 1999), and *Battishill v. Farmers Alliance*, 127 P.3d 1111, 1112 (N.M. 2006); courts holding arson is not a form of vandalism – *Mutual Fire v. Ackerman*, 872 A.2d 110, 116 (Md. 2005).

(2) Unoccupied But Not Vacant

A dwelling may be “unoccupied” but not “vacant”. Vacancy is a fact question. In *Andrews v. USAA*, 837 So.2d 1190, 1191 (Fl. 2003) it was determined that the lower court abused its discretion in directing a verdict on whether a dwelling was vacant where different conclusions could be drawn from the evidence. A determination of vacancy may not be avoided if the premises do not convey the appearance of residential living. The court in *Venneman v. Badger Mutual Ins. Co.*, 334 F.3d 772, 773(Minn. 2003) held that an insured’s sporadic nighttime visits and remodeling projects did not qualify the property for the “being constructed” exception to the vacancy exclusion under the homeowners policy in question; also see *Rojas v. Scottsdale Ins. Co.*, 678 N.W.2d 527, 529 (Ne. 2004) and in *Barlow v. Allstate Texas Lloyd*, 214 Fed. Appx. 435, 436 (Tex. 2007) the court found that a fire loss not was covered in a case where the insured had moved out of residence and removed all furniture.

See Hungelmann, Insurance for Dummies (www.JackHungelmann.com) for good advice on how to avoid a “vacant” home. Hungelmann advises his readers that a home may be considered vacant unless it has kitchen appliances, a table and chairs, at least one bed on which to sleep, and somewhere to sit. He further advises his readers to furnish a home with rental furniture to avoid it being classified as vacant. Further mentions that the owner’s real estate agent could “stage” the home with furnishings. Further advice from Hungelmann is for the home owner to reduce the risk of a major loss from break-ins, fires, smoke damage and water damage from frozen pipes in an unoccupied home by installing a central alarm monitored for burglar and fire/smoke and to add an optional temperature sensor to protect the pipes from freezing. Depending on policy terms, a dwelling may not be vacant, if it is occupied by a caretaker or a month-to-month tenant.

c. Insurers

Most insurers will not continue to insure a vacant home. There are a very limited number of insurers in the business of insuring vacant homes and the premium can be five times the premium for an occupied dwelling. If an insurer is willing to insure a vacant home, it may limit coverage to actual cash value as opposed to replacement cost.

C. Contractual Waivers Of Subrogation

1. Rationale

Many commercial property policies and inland marine policies include subrogation clauses that imply permission to grant pre-loss waiver. However, some forms may specifically deny the insured the right to waive subrogation. The ISO form expressly recognizes the right of the insured to waive subrogation. Since the landlord’s primary interest is insuring the landlord’s improvements, and the tenant’s primary interest is in insuring the tenant’s property, why make the other party liable for a risk that is already insured? Because both parties can be protected by insurance, neither is particularly interested in imposing liability on the other. The issue is how to allocate the risk of loss or, more precisely, which party should pay the property insurance premiums.

a. Avoids Double Coverage

To require each party to carry coverage for negligently causing damage to another party’s property forces the landlord and the tenant to insure both the landlord’s and the tenant’s property, which results in each insuring its own and the other party’s property. To avoid this need for double coverage each party can agree to look to its own insurance carrier for property loss caused by the acts or omissions of the other party and waive rights of recovery and subrogation against each other. If both landlord and tenant are to be liable for the risk of negligently caused loss to the property of the other, then the landlord and every tenant in a multi-tenant project must not only be sure to have a policy for its own property but must be sure that their liability insurance is sufficient to cover the replacement cost of the entire building and all of tenants’ property therein. A more sensible approach is to have the landlord take out a casualty policy and have the premium costs paid by the tenants in the building

under an operating cost pass-through provision in the lease.

b. Allocates Risk To Property Insurer

A waiver of subrogation clause assures that the insurance carrier for the property owner pays for the property loss as opposed to the other party's (the negligent landlord's or tenant's, as the case may be) liability insurance carrier. See Hagan, *Using Waivers and Indemnities in Commercial Leases*, THE PRACTICAL REAL ESTATE LAWYER 11 (1993), also repeated at ALI-ABA'S PRACTICE CHECKLIST MANUAL FOR DRAFTING LEASES: Checklists, Forms, and Drafting Advice from *The Practical Lawyer* and *The Practical Real Estate Lawyer* 149 (1994), for the rationale that the appropriate allocation of risk is to require each party to insure its own property and waive recovery, and waive subrogation against the other for damages to each other's property due to the negligence of either party.

c. Usually Inadequate Liability Insurance To Cover Risk

Why is this the best approach? This question incorrectly assumes that there is adequate liability insurance to cover the loss. Many times there will be no liability insurance because the party self insures. The more likely situation is that the liability insurance policy of the negligent party will have limits far short of the loss involved (for example, where a negligent employee of the tenant leaves the coffee pot on at night which results in a large office building burning down). In a large multi-tenant building, the loss could easily exceed the liability insurance coverage of a small tenant. Even if there is sufficient property loss coverage under the liability policy, there usually is a large deductible and dissipation of the time and energy in a contest between the insurance companies and the parties over the issue of who negligently caused the fire.

d. Risk Already Factored In To Property Insurance Premium.

Also, more importantly, is the fact that claims against property insurance are much less likely to result in higher premiums or loss of coverage than claims against the liability insurance. The property insurance carrier has more than likely already calculated its premium based on the assumption that

it will not be able to recoup its costs via subrogation against a negligent tenant.

2. Scope Of Insurer's Claims Waived

Care should be taken in drafting the scope of the waiver of subrogation. A waiver of subrogation as to "the premises" does not include the tenant's furniture, equipment, machinery, goods or supplies which the tenant might bring on to the premises. See *International Medical Sales, Inc. v. Prudential Ins. Co. of America*, 690 S.W.2d 84 (Tex. Civ. App.--Dallas 1985, *no writ*).

3. Waiver Limited To Insured Risks Or Claims Waived?

Should the waiver extend to specified risks or only to the extent of the proceeds actually recovered from the insurer? If the waiver is only as to the insurance proceeds, then the parties are exposed for the deductible or losses in excess of the other party's insurance coverage.

4. Verification Of Effect Of Waivers On Insurance Coverage And Cost Of Insurance Coverage.

Before the parties agree to waivers of recovery or subrogation, they should verify that their respective insurance policies will not be voided due to the waiver. Also, the parties should determine, in advance, if the waivers will impact the cost of coverage. Confirmation of endorsement reflecting contractual indemnity, waiver of subrogation and additional insured/loss payee should be verified as a condition of extending the waivers.

D. Builder's Risk Insurance

1. Standard Commercial Property Policy

Standard commercial property insurance policies usually will not cover loss associated with buildings under construction except for additions under construction, alterations and repairs to the building or structure. See definition of Covered Property at Paragraph A.1.a(5)(a) on page 1 of **App. Form A.4**, the standard Building and Commercial Property Coverage Form. Also, on to a limited extent will standard commercial property insurance cover buildings under construction on newly acquired premises through an extension of coverage. See Coverage Extension at Paragraph A.1.a(5)(a) on page

1 of **App. Form A.4**, the standard Building and Commercial Property Coverage Form.

2. No Standard Builder's Risk Policy

There is no standard builder's risk policy, like there is a commonly recognized standard ISO CGL policy. ISO has a builder's risk policy, but builder's risk policies are considered to be **Inland Marine** policies and there is a wide divergence in builder's risk coverages insurer to insurer. Inland marine policies are policies that are customized to the loss sought to be insured, and are designed to provide coverage for special exposures typically associated with the type property at which they are directed and the special valuation methods need to address the exposure. Construction is recognized as a special exposure. A commonly used inland marine policy for builder's risk coverage is the Commercial Inland Marine Conditions (Form CM 00 01 09 04).

3. Insureds

The owner and all contractors and major subcontractors should be named as named insureds under a builder's risk policy. *Employers' Fire Ins. Co. v. Behunin*, 275 F.Supp. 399 (Colo. 1967); *McBroome-Bennett Plumbing, Inc. v. Villa France, Inc.*, 515 S.W.2d 32 (Tex. 1974); *LeMaster Steel Erectors, Inc. v. Reliance Ins. Co.*, 546 N.E.2d 313 (Ind. 1989); and *Tri-State Ins. Co. v. Commercial Group W., LLC*, 698 N.W.2d 483 (N.D. 2005).

Phrases like "*as their interests may appear*" should not be included either in contractual specifications, insurance certificates or the policy, as this qualification has been the source of subrogation claims by insurers against an insured under builder's risk policies in cases where there has not been an express waiver of subrogation. *Paul Tishman Co., Inc. v. Carney & Del Guidice, Inc.*, 320 N.Y.S.2d 396 (1971), aff'd 359 N.Y.S.2d 561 (N.Y. 1974); *Turner Constr. v. John B. Kelly Co.*, 442 F.Supp. 551 (Penn. 1976) subrogation against named insured subcontractor permitted even though policy contained a waiver of subrogation endorsement. *But see St. Paul Fire & Marine Ins. Co. v. F. D. Sprinkler, Inc.*, No. 119 021/06, N.Y. Sup. Ct. (Aug. 2009) where the court rejected the insurer's argument that ATIMA language limited the insurable interest of the sprinkler subcontractor to its work as opposed to the consequential damages to 21 floors of the building which arose out of an accidental discharge from a

sprinkler head located in a temporary bathroom on the 21st floor.

4. Common Errors and Problems

a. Review of Policy Delayed Until After Construction Commencement

Like the other insurance products discussed in this article, the actual builder's risk insurance policy may not, and likely will not, be issued or available prior to commencement of construction! The actual policy in many cases is not issued and delivered for weeks or months after work has begun. The policy itself (not the ACORD Certificate of Property Insurance or an ACORD Evidence of Insurance or even an ACORD Binder) is the contract of insurance and contains extensive terms and conditions that should be reviewed and approved prior to commencement of work. A great level of "distress" can occur, if an assumed coverage in fact is not included in the policy, despite the best written insurance specifications, and a loss occurs before issuance of the policy. If construction will commence before issuance and delivery of the policy, one avenue may be to have the insurer deliver a specimen policy and specimen endorsements.

b. Coverage Amount

Failure of the policy amount to reflect the full loss exposure is a common error. The contractor's contract sum is a guide in setting the coverage amount. In projects involving remodeling (especially if the structure is a historic structure) or improvement to an existing building, limiting the coverage amount to the contractor's contract sum could lead to a significant uninsured loss.

c. Coverage for Architect's Fees, Owner Supplied Materials, Debris Removal, Full Limit Coverage of Flood and Earthquakes, and Elimination of Law and Ordinance Exclusions

Many commonly expected coverages are available only through policy endorsement and are not part of the issuer's standard policy form, such as coverage for the owner's additional architect's fees arising out of an insured loss; coverage for owner supplied materials; amending the law and ordinance exclusion to cover costs of demolition of the intact portion of a building when a law, ordinance or regulation requires that the entire structure be torn down; endorsement to

include full collapse coverage, including collapse resulting from design error; and verification that sublimits (e.g., sublimits for flood and earthquake coverage) are adequate or eliminated.

d. Delay Damages

See Bruner and O'Connor on Construction Law (2010) §§ 11:116 Builder's risk soft cost coverage; Delayed completion and force majeure insurance.

(1) Soft Cost Endorsement

Builder's risk policies typically do not cover damages caused by delays arising out of a covered loss. These "soft costs" can be covered by an endorsement. A soft cost endorsement can be tailored to cover loss of expected revenue, additional interest expense, loan fees, property taxes, design fees, insurance premiums, legal and accounting costs and additional commissions arising from the renegotiation of leases. Typical exclusions contained in a soft cost endorsement are for cost to correct construction deficiencies, costs to comply with laws or ordinances, loss caused by adverse weather and loss caused by strikes.

(2) Delayed Completion and Force Majeure Endorsement

Another endorsement that may be available to insure against a financial distress risk is a delayed completion and force majeure endorsement. This endorsement supplements the risk of covered loss to cover consequential damage losses due to completion delays and force majeure events not otherwise covered. This endorsement extends coverage for losses due to strikes and labor disputes, changes in law (e.g., building codes, emission standards), acts of God, adverse weather conditions and off-site physical damage to materials or equipment.

5. Waivers Of Recovery; Waivers Of Subrogation

a. AIA's Waiver Of Subrogation

Waivers of subrogation in the AIA system are designed to shift to the owner and its property insurance carrier the risk of loss to the project during construction. Such provisions are a valid risk allocation for the following reasons: (1) They avoid disruption and disputes between the parties involved in the construction project; (2) They allow the parties

to identify and allocate the risks associated with the project; and (3) They allow one party to contract to provide the property insurance for all risks associated with the project for all parties. Under the AIA documents, the owner is responsible for obtaining the type and amounts of property coverage. The form of waiver of subrogation contained in the AIA documents is a "waiver of recovery" between the parties (e.g., the owner and the contractor in Paragraph 11.3.7 to the AIA A201 General Conditions of the Contract for Construction), but also is a waiver of recovery by the parties against "any of their subcontractors, sub-subcontractors, agents and employees" and requires that these third parties similarly provide a waiver of recovery against all such parties to the project.

The waiver of subrogation contained in the AIA A201 waives recovery between the parties to the extent covered by property insurance applicable to the Work. This provision does not expressly address loss within the deductible, loss above the amount of property insurance or uninsured losses.

This provision does not waive claims or subrogation as to liabilities arising out of bodily or personal injuries.

Since releases are construed by courts narrowly, the AIA waiver of subrogation language has been interpreted narrowly. In *SSDW Co. v. Brisk Waterproofing Co.*, 556 N.E.2d 1097 (N.Y. 1990), a New York court held that the waiver clause found in the AIA Construction Projects of a Limited Scope form applied only to damages occurring to areas within the limits of the "work" and not to the parts of the building outside the "work". Also see *Public Employees Mutual Ins. Co. v. Sellen Constr. Co.*, 740 P.2d 913 (Wash. App. 1987).

The time period covered by the "waiver" has been the subject of litigation. In *Automobile Ins. Co. v. United H.R.B.*, 876 S.W.2d 791 (Mo. App. 1994) an insurer of the owner brought a subrogation action against a contractor for property damaged caused by a fire that occurred five months after final payment had been made to the contractor and after the owner had exclusive control of the premises. The court found an ambiguity between the AIA provisions. The contractor took the position that it had an insurable interest in the property as long as the owner maintained the insurance policy in effect at the time the work was being done. The court, however, held that the waiver of subrogation provision no longer

applied after final payment because the contractor no longer had an insurable interest in “the work.”

Provision: Par. 11.3.7 AIA Document A201

The Owner or Contractor, as appropriate, shall require of the Architect, Architect’s consultants, separate contractors described in Article 6, if any, and the subcontractors, sub- subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein.

(1) Fails Fair Notice Test

The AIA Waiver of Subrogation provision is drafted as a waiver of recovery. However, this provision does **not** meet the fair notice requirements for releases articulated in *Dresser Industries, Inc. v. Page Petroleum, Inc.*, 853 S.W.2d 505 (Tex. 1993) in order to release liabilities arising out of the Released Party’s negligence. The provision is neither conspicuous nor does it expressly refer to the negligence of the party being released.

(2) Fails Express Negligence Test

The waiver should expressly cover loss due to the negligence of the other party. Although no Texas case has yet addressed whether the waiver of subrogation clause must meet the fair notice requirements, such clauses are exculpation clauses identical in effect as those held unenforceable for failing to meet the fair notice requirements, including the express negligence test, in *Dresser Industries, Inc. v. Page Petroleum, Inc.* 853 S.W.2d 505 (Tex. 1993). If so, then most waiver of subrogation clauses in standard use are not enforceable as written!

b. ISO Builder’s Risk Form Prohibits Waiver of Subrogation

Builders risk insurance is written on a variety of forms. Therefore, it is important to determine whether the policy prohibits waiver of subrogation. The typical mutual waiver of subrogation in the owner - contractor construction contract form may invalidate the builder’s risk coverage. The following is the ISO Builders Risk Coverage Form CP 00 20 10 91 provision:

4. Waiver of Recovery Against Others

You may not waive your rights to recover damages from an architect, engineer or building trades contractor or subcontractor with respect to the described premises except as agreed to in writing by us. This provision supersedes any provision to the contrary in the TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US Commercial Property Conditions.

See Comiskey, *Builder’s Risk Requirements and Strategies*, State Bar of Texas, Construction Law Conference (2010).

E. Boiler and Machinery Coverage

Boiler and machinery coverage is added by endorsement or by a separate policy. Property insurance typically excludes damages due to explosion of pressure vessels and sudden and accidental, mechanical or electrical breakdown of machinery. Boiler and machinery coverage includes damages arising out of pressure vessels, hot water heaters, air conditioning and heating equipment, and electrical switchgear. If a separate policy is to be written to cover boiler and machinery caused damages then there needs to be added to both the primary policy and the boiler and machinery policy an ISO CP 12 72 Joint or Disputed Loss Agreement.

F. Flood Insurance

Flood losses are commonly excluded from property insurance policies. Flood losses are losses caused by rising waters, back up of storm sewers and storm surges. The Flood Disaster protection Act of 1973 mandated that federally regulated lending institutions could not “make, increase, extend, or renew any loan secured by improved real estate or a mobile home located or to be located in an area that has been identified ... as an area having special flood hazards and in which flood insurance has been made available under the national Flood Insurance Act of 1968 without flood insurance in an amount equal to the lesser of the loan amount or the available coverage. 42 U.S.C.A. § 4012a(b)(1). Regulations implementing the flood insurance program are found at 44 C.F.R. pts. 59-78 (2006). See also TEX. LOC. GOV’T CODE ANN. 240.901; TEX WATER CODE ANN. §§ 16.311-.324. Coverage can be obtained for these losses through flood insurance, a difference in

conditions policy, or as an endorsement to a property policy.

G. Ordinance Or Law Coverage

Ordinance or law coverage may be purchased using ISO CP 04 05 to cover the cost above the limit available under the ISO property insurance for cost of construction incurred to comply with an ordinance or law. The base form ISO property insurance limits such coverage to the lesser of \$10,000 or 5% of the policy limits.

H. Glass Insurance

Damage to plate glass caused by vandalism or settling of the building is commonly excluded in property policies. Coverage can be obtained through "plate glass insurance," issued by endorsement or as a separate policy.

I. Sign Insurance

Exterior signage is not covered under most property insurance policies and its coverage for damage to exterior signage must be added by endorsement or covered under a separate policy.

A.1

**COMMERCIAL PROPERTY COVERAGE PART
DECLARATIONS PAGE**

POLICY NO. _____ EFFECTIVE DATE ___mm/dd/yy_____ "X" If Supplemental
Declarations is Attached

NAMED INSURED _____

DESCRIPTION OF PREMISES _____

Prem. Bldg. Location, Construction And Occupancy
No. ___ No. ___

COVERAGES PROVIDED Insurance At The Described Premises Applies Only For Coverages For Which A
Limit Of Insurance Is Shown

Prem. No. ___	Bldg. No. ___	Coverage	Limit Of Insurance	Covered Causes Of Loss	Coinsurance*	Rates
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OPTIONAL COVERAGES *If Extra Expense Coverage, Limits On Loss Payment
Applicable Only When Entries Are Made In The Schedule Below

Prem. No. ___	Bldg. No. ___	Expiration Date	Agreed Value	Cov.	Amount Building	Replacement Cost (X)
						Pers. Including Prop. "Stock"

Inflation Guard (%)	*Monthly Limit Of Bldg. Pers. Prop. Indemnity (Fraction)	*Monthly Limit Of Of Indemnity (X)	Maximum Period Of Indemnity (Days)	*Extended Period
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*Applies to Business Income Only

MORTGAGEHOLDERS _____

Prem. No. ___	Bldg. No. ___	Mortgageholder Name And Mailing Address
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DEDUCTIBLE
\$500. Exceptions: _____

FORMS APPLICABLE _____

To All Coverages:
To Specific Premises/Coverages:

Prem. No. ___	Bldg. No. ___	Coverages ___	Form Number ___
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COMMON POLICY CONDITIONS

All Coverage Parts included in this policy are subject to the following conditions.

A. Cancellation

1. The first Named Insured shown in the Declarations may cancel this policy by mailing or delivering to us advance written notice of cancellation.
2. We may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation at least:
 - a. 10 days before the effective date of cancellation if we cancel for nonpayment of premium; or
 - b. 30 days before the effective date of cancellation if we cancel for any other reason.
3. We will mail or deliver our notice to the first Named Insured's last mailing address known to us.
4. Notice of cancellation will state the effective date of cancellation. The policy period will end on that date.
5. If this policy is cancelled, we will send the first Named Insured any premium refund due. If we cancel, the refund will be pro rata. If the first Named Insured cancels, the refund may be less than pro rata. The cancellation will be effective even if we have not made or offered a refund.
6. If notice is mailed, proof of mailing will be sufficient proof of notice.

B. Changes

This policy contains all the agreements between you and us concerning the insurance afforded. The first Named Insured shown in the Declaration is authorized to make changes in the terms of this policy with our consent. This policy's terms can be amended or waived only by endorsement issued by us and made a part of this policy.

C. Examination of Your Books and Records

We may examine and audit your books and records as they relate to this policy at any time during the policy period and up to three years afterward.

D. Inspections and Surveys

1. We have the right to:
 - a. Make inspections and surveys at this time;
 - b. Give you reports on the conditions we find; and
 - c. Recommend changes.
2. We are not obligated to make any inspections, surveys, reports or recommendations and any such actions we do undertake relate only to insurability and the premiums to be charged. We do not make safety inspections. We do not undertake to perform the duty of any person or organization to provide for the health or safety of workers or the public. And we do not warrant that conditions:
 - a. Are safe or healthful; or
 - b. Comply with laws, regulations, codes and standards.
3. Paragraphs 1. and 2. of this condition apply not only to us, but also to any rating, advisory, rate service or similar organization which makes insurance inspections, surveys, reports or recommendations.
4. Paragraph 2. of this condition does not apply to any inspections, surveys, reports or recommendations we may make relative to certification, under state or municipal statutes, ordinances or regulations, of boilers, pressure vessels or elevators.

E. Premiums

The first Named Insured shown in the Declarations:

1. Is responsible for the payment of all premiums; and
2. Will be the payee for any return premiums we pay.

F. Transfer of Your Rights and Duties Under This Policy

Your rights and duties under this policy may not be transferred without our written consent except in the case of death of an individual named insured.

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

COMMERCIAL PROPERTY CONDITIONS

This Coverage Part is subject to the following conditions, the Common Policy Conditions and applicable Loss Conditions and Additional Conditions in Commercial Property Coverage Forms.

A. CONCEALMENT, MISREPRESENTATION OR FRAUD

This coverage part is void in any case of fraud by you as it relates to this coverage part at any time. It is also void if you or any other insured, at any time, intentionally conceal or misrepresent a material fact concerning:

1. This coverage part;
2. The covered property
3. Your interest in the covered property; or
4. A claim under this coverage part.

B. CONTROL OF PROPERTY

Any act or neglect of any person other than you beyond your direction or control will not affect this insurance.

The breach of any condition of this coverage part at any one or more locations will not affect coverage at any location where, at the time of loss or damage, the breach of condition does not exist.

C. INSURANCE UNDER TWO OR MORE COVERAGES

If two or more of this policy's coverages apply to the same loss or damage, we will not pay more than the actual amount of the loss or damage.

D. LEGAL ACTION AGAINST US

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

1. There has been full compliance with all of the terms of this coverage part; and
2. The action is brought within 2 years after the date on which the direct physical loss or damage occurred.

E. LIBERALIZATION

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

F. NO BENEFIT TO BAILEE

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

G. OTHER INSURANCE

1. You may have other insurance subject to the same plan, terms, conditions and provisions as the insurance under this coverage part. If you do, we will pay our share of the covered loss or damage. Our share is the proportion that the applicable limit of insurance under this coverage part bears to the limits of insurance of all insurance covering on the same basis.
2. If there is other insurance covering the same loss or damage, other than that described in 1. above, we will pay only for the amount of covered loss or damage in excess of the amount due from that other insurance, whether you can collect on it or not. But we will not pay more than the applicable limit of insurance.

H. POLICY PERIOD, COVERAGE TERRITORY

Under this coverage part:

1. We cover loss or damage commencing:
 - a. During the policy period shown in the declarations; and
 - b. Within the coverage territory.
2. The coverage territory is:
 - a. The United States of America (including its territories and possessions);
 - b. Puerto Rico; and
 - c. Canada.

I. TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

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

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

This will not restrict your insurance.

A.4

BUILDING AND PERSONAL PROPERTY COVERAGE FORM

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

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

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

A. Coverage

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

1. Covered Property

Covered Property, as used in this Coverage Part, means the type of property described in this section, A.1., and limited in A.2., Property Not Covered, if a Limit of Insurance is shown in the Declarations for that type of property.

a. Building, meaning the building or structure described in the Declarations, including:

- (1) Completed additions;
- (2) Fixtures, including outdoor fixtures;
- (3) Permanently installed:
 - (a) Machinery and
 - (b) Equipment;
- (4) Personal property owned by you that is used to maintain or service the building or structure or its premises, including:
 - (a) Fire-extinguishing equipment;
 - (b) Outdoor furniture;
 - (c) Floor coverings; and
 - (d) Appliances used for refrigerating, ventilating,

cooking, dishwashing or
laundrying;

(5) If not covered by other insurance:

(a) Additions under construction, alterations and repairs to the building or structure;

(b) Materials, equipment, supplies and temporary structures, on or within 100 feet of the described premises, used for making additions, alterations or repairs to the building or structure.

b. Your Business Personal Property located in or on the building described in the Declarations or in the open (or in a vehicle) within 100 feet of the described premises, consisting of the following unless otherwise specified in the Declarations or on the Your Business Personal Property – Separation Of Coverage form:

- (1) Furniture and fixtures;
- (2) Machinery and equipment;
- (3) “Stock”;
- (4) All other personal property owned by you and used in your business;
- (5) Labor, materials or services furnished or arranged by you on personal property of others;
- (6) Your use interest as tenant in improvements and betterments. Improvements and betterments are

fixtures, alterations, installations or additions:

(a) Made a part of the building or structure you occupy but do not own; and

(b) You acquired or made at your expense but cannot legally remove;

(7) Leased personal property for which you have a contractual responsibility to insure, unless otherwise provided for under Personal Property Of Others.

c. Personal Property Of Others that is:

(1) In your care, custody or control; and

(2) Located in or on the building described in the Declarations or in the open (or in a vehicle) within 100 feet of the described premises.

However, our payment for loss of or damage to personal property of others will only be for the account of the owner of the property.

2. Property Not Covered

Covered Property does not include:

a. Accounts, bills, currency, food stamps or other evidences of debt, money, notes or securities. Lottery tickets held for sale are not securities;

b. Animals, unless owned by others and boarded by you, or if owned by you, only as "stock" while inside of buildings;

c. Automobiles held for sale;

d. Bridges, roadways, walks, patios or other paved surfaces;

e. Contraband, or property in the course of illegal transportation or trade;

f. The cost of excavations, grading, backfilling or filling;

g. Foundations of buildings, structures, machinery or boilers if their foundations are below:

(1) The lowest basement floor; or

(2) The surface of the ground, if there is no basement;

h. Land (including land on which the property is located), water, growing crops or lawns;

i. Personal property while airborne or waterborne;

j. Bulkheads, pilings, piers, wharves or docks;

k. Property that is covered under another coverage form of this or any other policy in which it is more specifically described, except for the excess of the amount due (whether you can collect on it or not) from that other insurance;

l. Retaining walls that are not part of a building;

m. Underground pipes, flues or drains;

n. Electronic data, except as provided under the Additional Coverage, Electronic Data. Electronic data means information, facts or computer programs stored as or on, created or used on, or transmitted to or from computer software (including systems and applications software), on hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other repositories of computer software which are used with electronically controlled equipment. The term computer programs, referred to in the foregoing description of electronic data, means a set of related electronic instructions which direct the operations and functions of a computer or device connected to it, which enable the computer or device to receive, process, store, retrieve or send data. This paragraph, **n.**, does not apply to your "stock" of prepackaged software;

- o. The cost to replace or restore the information on valuable papers and records, including those which exist as electronic data. Valuable papers and records include but are not limited to proprietary information, books of account, deeds, manuscripts, abstracts, drawings and card index systems. Refer to the Coverage Extension for Valuable Papers And Records (Other Than Electronic Data) for limited coverage for valuable papers and records other than those which exist as electronic data;
- p. Vehicles or self-propelled machines (including aircraft or watercraft) that:
 - (1) Are licensed for use on public roads; or
 - (2) Are operated principally away from the described premises.

This paragraph does not apply to:

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

- q. The following property while outside of buildings:
 - (1) Grain, hay, straw or other crops;
 - (2) Fences, radio or television antennas (including satellite dishes) and their lead-in wiring, masts or towers, trees, shrubs or plants (other than "stock" of trees, shrubs or plants), all except as provided in the Coverage Extensions.

3. Covered Causes Of Loss

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

4. Additional Coverages

a. Debris Removal

- (1) Subject to Paragraphs (3) and (4), we will pay your expense to remove debris of Covered Property caused by or resulting from a Covered Cause of Loss that occurs during the policy period. The expenses will be paid only if they are reported to us in writing within 180 days of the date of direct physical loss or damage.
- (2) Debris Removal does not apply to costs to:
 - (a) Extract "pollutants" from land or water; or
 - (b) Remove, restore or replace polluted land or water.
- (3) Subject to the exceptions in Paragraph (4), the following provisions apply:
 - (a) The most we will pay for the total of direct physical loss or damage plus debris removal expense is the Limit of Insurance applicable to the Covered Property that has sustained loss or damage.
 - (b) Subject to (a) above, the amount we will pay for debris removal expense is limited to 25% of the sum of the deductible plus the amount that we pay for direct physical loss or damage to the Covered Property that has sustained loss or damage.
- (4) We will pay up to an additional \$10,000 for debris removal expense, for each location, in any one occurrence of physical loss or damage to Covered Property, if one or both of the following circumstances apply:

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

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

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

(5) Examples

The following examples assume that there is no Coinsurance penalty.

EXAMPLE #1

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

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

EXAMPLE #2

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

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

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

b. Preservation Of Property

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

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

c. Fire Department Service Charge

When the fire department is called to save or protect Covered Property from a Covered Cause of Loss, we will pay up to \$1,000, unless a higher limit is shown in the Declarations, for your liability for fire department service charges:

- (1) Assumed by contract or agreement prior to loss; or

(2) Required by local ordinance.

No Deductible applies to this Additional Coverage.

d. Pollutant Clean-up And Removal

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

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

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

e. Increased Cost Of Construction

(1) This Additional Coverage applies only to buildings to which the Replacement Cost Optional Coverage applies.

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

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

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

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

(b) You failed to comply with.

(5) Under this Additional Coverage, we will not pay for:

(a) The enforcement of any ordinance or law which requires demolition, repair, replacement, reconstruction, remodeling or remediation of property due to contamination by “pollutants” or due to the presence, growth, proliferation, spread or any activity of “fungus”, wet or dry rot or bacteria; or

(b) Any costs associated with the enforcement of an ordinance or law which requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of “pollutants”, “fungus”, wet or dry rot or bacteria.

(6) The most we will pay under this Additional Coverage, for each described building insured under this Coverage Form, is \$10,000 or 5% of the Limit of Insurance applicable to that building, whichever is less. If a damaged building is covered under a blanket Limit of Insurance which

applies to more than one building or item of property, then the most we will pay under this Additional Coverage, for that damaged building, is the lesser of: \$10,000 or 5% times the value of the damaged building as of the time of loss times the applicable Coinsurance percentage.

The amount payable under this Additional Coverage is additional insurance.

(7) With respect to this Additional Coverage:

(a) We will not pay for the Increased Cost of Construction:

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

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

(b) If the building is repaired or replaced at the same premises, or if you elect to rebuild at another premises, the most we will pay for the Increased Cost of Construction, subject to the provisions of **e.(6)** of this Additional Coverage, is the increased cost of construction at the same premises.

(c) If the ordinance or law requires relocation to another premises, the most we will pay for the Increased Cost of Construction, subject to the provisions of **e.(6)** of this Additional Coverage, is the increased cost of construction at the new premises.

(b) If the Causes Of Loss – Broad Form applies, coverage under this Additional Coverage, Electronic Data, includes

(8) This Additional Coverage is not subject to the terms of the Ordinance Or Law Exclusion, to the extent that such Exclusion would conflict with the provisions of this Additional Coverage.

(9) The costs addressed in the Loss Payment and Valuation Conditions, and the Replacement Cost Optional Coverage, in this Coverage Form, do not include the increased cost attributable to enforcement of an ordinance or law. The amount payable under this Additional Coverage, as stated in **e.(6)** of this Additional Coverage, is not subject to such limitation.

f. Electronic Data

(1) Under this Additional Coverage, electronic data has the meaning described under Property Not Covered, Electronic Data.

(2) Subject to the provisions of this Additional Coverage, we will pay for the cost to replace or restore electronic data which has been destroyed or corrupted by a Covered Cause of Loss. To the extent that electronic data is not replaced or restored, the loss will be valued at the cost of replacement of the media on which the electronic data was stored, with blank media of substantially identical type.

(3) The Covered Causes of Loss applicable to Your Business Personal Property apply to this Additional Coverage, Electronic Data, subject to the following:

(a) If the Causes Of Loss – Special Form applies, coverage under this Additional Coverage, Electronic Data, is limited to the “specified causes of loss” as defined in that form, and Collapse as set forth in that form.

Collapse as set forth in that form.

(c) If the Causes Of Loss Form is endorsed to add a Covered Cause of Loss, the additional

Covered Cause of Loss does not apply to the coverage provided under this Additional Coverage, Electronic Data.

- (d) The Covered Causes of Loss include a virus, harmful code or similar instruction introduced into or enacted on a computer system (including electronic data) or a network to which it is connected, designed to damage or destroy any part of the system or disrupt its normal operation. But there is no coverage for loss or damage caused by or resulting from manipulation of a computer system (including electronic data) by any employee, including a temporary or leased employee, or by an entity retained by you or for you to inspect, design, install, modify, maintain, repair or replace that system.
- (4) The most we will pay under this Additional Coverage, Electronic Data, is \$2,500 for all loss or damage sustained in any one policy year, regardless of the number of occurrences of loss or damage or the number of premises, locations or computer systems involved. If loss payment on the first occurrence does not exhaust this amount, then the balance is available for subsequent loss or damage sustained in but not after that policy year. With respect to an occurrence which begins in one policy year and continues or results in additional loss or damage in a subsequent policy year(s), all loss or damage is deemed to be sustained in the policy year in which the occurrence began.

5. Coverage Extensions

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

If a Coinsurance percentage of 80% or more, or a Value Reporting period symbol, is shown in the Declarations, you may extend the

insurance provided by this Coverage Part as follows:

a. Newly Acquired Or Constructed Property

(1) Buildings

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

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

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

(2) Your Business Personal Property

- (a) If this policy covers Your Business Personal Property, you may extend that insurance to apply to:

- (i) Business personal property, including such property that you newly acquire, at any location you acquire other than at fairs, trade shows or exhibitions;
- (ii) Business personal property, including such property that you newly acquire, located at your newly constructed or acquired buildings at the location described in the Declarations; or
- (iii) Business personal property that you newly acquire, located at the described premises.

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

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

(3) Period Of Coverage

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

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

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

b. Personal Effects And Property Of Others

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

- (1) Personal effects owned by you, your officers, your partners or members, your managers or your employees. This Extension does not apply to loss or damage by theft.
- (2) Personal property of others in your care, custody or control.

The most we will pay for loss or damage under this Extension is \$2,500 at each described premises. Our payment for loss of or damage to personal property of others will only be for the account of the owner of the property.

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

- (1) You may extend the insurance that applies to Your Business Personal Property to apply to the cost to replace or restore the lost information on valuable papers and records for which duplicates do not exist. But this Extension does not apply to valuable papers and records which exist as electronic data. Electronic data has the meaning described under Property Not Covered, Electronic Data.
- (2) If the Causes Of Loss – Special Form applies, coverage under this Extension is limited to the “specified causes of loss” as defined in that form, and Collapse as set forth in that form.

- (3) If the Causes Of Loss – Broad Form applies, coverage under this Extension includes Collapse as set forth in that form.
- (4) Under this Extension, the most we will pay to replace or restore the lost information is \$2,500 at each described premises, unless a higher limit is shown in the Declarations. Such amount is additional insurance. We will also pay for the cost of blank material for reproducing the records (whether or not duplicates exist), and (when there is a duplicate) for the cost of labor to transcribe or copy the records. The costs of blank material and labor are subject to the applicable Limit of Insurance on Your Business Personal Property and therefore coverage of such costs is not additional insurance.

d. Property Off-premises

- (1) You may extend the insurance provided by this Coverage Form to apply to your Covered Property while it is away from the described premises, if it is:
 - (a) Temporarily at a location you do not own, lease or operate;
 - (b) In storage at a location you lease, provided the lease was executed after the beginning of the current policy term; or
 - (c) At any fair, trade show or exhibition.
- (2) This Extension does not apply to property:
 - (a) In or on a vehicle; or
 - (b) In the care, custody or control of your salespersons, unless the property is in such care, custody or control at a fair, trade show or exhibition.
- (3) The most we will pay for loss or damage under this Extension is \$10,000.

e. Outdoor Property

- (b) During hitching or unhitching operations, or when a trailer becomes accidentally unhitched

You may extend the insurance provided by this Coverage Form to apply to your outdoor fences, radio and television antennas (including satellite dishes), trees, shrubs and plants (other than “stock” of trees, shrubs or plants), including debris removal expense, caused by or resulting from any of the following causes of loss if they are Covered Causes of Loss:

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

The most we will pay for loss or damage under this Extension is \$1,000, but not more than \$250 for any one tree, shrub or plant. These limits apply to any one occurrence, regardless of the types or number of items lost or damaged in that occurrence.

f. Non-owned Detached Trailers

- (1) You may extend the insurance that applies to Your Business Personal Property to apply to loss or damage to trailers that you do not own, provided that:
 - (a) The trailer is used in your business;
 - (b) The trailer is in your care, custody or control at the premises described in the Declarations; and
 - (c) You have a contractual responsibility to pay for loss or damage to the trailer.
- (2) We will not pay for any loss or damage that occurs:
 - (a) While the trailer is attached to any motor vehicle or motorized conveyance, whether or not the motor vehicle or motorized conveyance is in motion;

from a motor vehicle or motorized conveyance.

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

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

B. Exclusions And Limitations

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

C. Limits Of Insurance

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

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

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

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

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

D. Deductible

In any one occurrence of loss or damage (hereinafter referred to as loss), we will first reduce the amount of loss if required by the Coinsurance Condition or the Agreed Value Optional Coverage. If the adjusted amount of loss

is less than or equal to the Deductible, we will not pay for that loss. If the adjusted amount of loss exceeds the Deductible, we will then subtract the Deductible from the adjusted amount of loss, and will pay the resulting amount or the Limit of Insurance, whichever is less.

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

EXAMPLE #1

(This example assumes there is no Coinsurance penalty.)

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

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

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

$$\begin{array}{r}
 \$ 60,100 \\
 - \quad 250 \\
 \hline
 \$ 59,850 \text{ Loss Payable – Building \#1}
 \end{array}$$

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

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

EXAMPLE #2

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

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

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

(Limit of Insurance)

Total amount of loss payable: \$ 140,000

E. Loss Conditions

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

1. Abandonment

There can be no abandonment of any property to us.

2. Appraisal

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

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

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

3. Duties In The Event Of Loss Or Damage

- a. You must see that the following are done in the event of loss or damage to Covered Property:
 - (1) Notify the police if a law may have been broken.
 - (2) Give us prompt notice of the loss or damage. Include a description of the property involved.
 - (3) As soon as possible, give us a description of how, when and where the loss or damage occurred.
 - (4) Take all reasonable steps to protect the Covered Property from further damage, and keep a record of your expenses necessary to protect the Covered Property, for consideration in the settlement of the claim. This will not increase the Limit of Insurance. However, we will not pay

for any subsequent loss or damage resulting from a cause of loss that is not a Covered Cause of Loss. Also, if feasible, set the damaged property aside and in the best possible order for examination.

- (5) At our request, give us complete inventories of the damaged and undamaged property. Include quantities, costs, values and amount of loss claimed.
- (6) As often as may be reasonably required, permit us to inspect the property proving the loss or damage and examine your books and records.

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

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

A. Loss Payment

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

We will determine the value of lost or damaged property, or the cost of its repair or replacement, in accordance with the applicable terms of the Valuation Condition in this Coverage Form or any applicable provision which amends or supersedes the Valuation Condition.

- b. The cost to repair, rebuild or replace does not include the increased cost attributable to enforcement of any ordinance or law regulating the construction, use or repair of any property.
- c. We will give notice of our intentions within 30 days after we receive the sworn proof of loss.
- d. We will not pay you more than your financial interest in the Covered Property.
- e. We may adjust losses with the owners of lost or damaged property if other than you. If we pay the owners, such payments will satisfy your claims against us for the owners' property. We will not pay the owners more than their financial interest in the Covered Property.
- f. We may elect to defend you against suits arising from claims of owners of property. We will do this at our expense.

- g. We will pay for covered loss or damage within 30 days after we receive the sworn proof of loss, if you have complied with all of the terms of this Coverage Part and:
 - (1) We have reached agreement with you on the amount of loss; or
 - (2) An appraisal award has been made.
- h. A party wall is a wall that separates and is common to adjoining buildings that are owned by different parties. In settling covered losses involving a party wall, we will pay a proportion of the loss to the party wall based on your interest in the wall in proportion to the interest of the owner of the adjoining building. However, if you elect to repair or replace your building and the owner of the adjoining building elects not to repair or replace that building, we will pay you the full value of the loss to the party wall, subject to all applicable policy provisions including Limits of Insurance, the Valuation and Coinsurance Conditions and all other provisions of this Loss Payment Condition. Our payment under the provisions of this paragraph does not alter any right of subrogation we may have against any entity, including the owner or insurer of the adjoining building, and does not alter the terms of the Transfer Of Rights Of Recovery Against Others To Us Condition in this policy.

5. Recovered Property

If either you or we recover any property after loss settlement, that party must give the other prompt notice. At your option, the property will be returned to you. You must then return to us the amount we paid to you for the property. We will pay recovery expenses and the expenses to repair the recovered property, subject to the Limit of Insurance.

6. Vacancy

a. Description Of Terms

(1) As used in this Vacancy Condition, the term building and the term vacant have the meanings set forth in **(1)(a)** and **(1)(b)** below:

(a) When this policy is issued to a tenant, and with respect to that tenant's interest in Covered Property, building means the unit or suite rented or leased to the tenant. Such building is vacant when it does not contain enough business personal property to conduct customary operations.

(b) When this policy is issued to the owner or general lessee of a building, building means the entire building. Such building is vacant unless at least 31% of its total square footage is:

(i) Rented to a lessee or sub-lessee and used by the lessee or sublessee to conduct its customary operations; and/or

(ii) Used by the building owner to conduct customary operations.

(2) Buildings under construction or renovation are not considered vacant.

b. Vacancy Provisions

If the building where loss or damage occurs has been vacant for more than 60

(2) Appliances for refrigerating, ventilating, cooking, dishwashing or laundering; or

consecutive days before that loss or damage occurs:

(1) We will not pay for any loss or damage caused by any of the following even if they are Covered Causes of Loss:

(a) Vandalism;

(b) Sprinkler leakage, unless you have protected the system against freezing;

(c) Building glass breakage;

(d) Water damage;

(e) Theft; or

(f) Attempted theft.

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

7. Valuation

We will determine the value of Covered Property in the event of loss or damage as follows:

a. At actual cash value as of the time of loss or damage, except as provided in **b., c., d.** and **e.** below.

b. If the Limit of Insurance for Building satisfies the Additional Condition, Coinsurance, and the cost to repair or replace the damaged building property is \$2,500 or less, we will pay the cost of building repairs or replacement.

The cost of building repairs or replacement does not include the increased cost attributable to enforcement of any ordinance or law regulating the construction, use or repair of any property.

However, the following property will be valued at the actual cash value even when attached to the building:

(1) Awnings or floor coverings;

(3) Outdoor equipment or furniture.

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

d. Glass at the cost of replacement with safety-glazing material if required by law.

e. Tenants' Improvements and Betterments at:

(1) Actual cash value of the lost or damaged property if you make repairs promptly.

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

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

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

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

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

F. Additional Conditions

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

1. Coinsurance

If a Coinsurance percentage is shown in the Declarations, the following condition applies.

a. We will not pay the full amount of any loss if the value of Covered Property at the time of loss times the Coinsurance percentage shown for it in the Declarations is greater than the Limit of Insurance for the property.

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

(1) Multiply the value of Covered Property at the time of loss by the Coinsurance percentage;

(2) Divide the Limit of Insurance of the property by the figure determined in Step (1);

(3) Multiply the total amount of loss, before the application of any deductible, by the figure determined in Step (2); and

(4) Subtract the deductible from the figure determined in Step (3).

We will pay the amount determined in Step (4) or the limit of insurance, whichever is less. For the remainder, you will either have to rely on other insurance or absorb the loss yourself.

EXAMPLE #1 (UNDERINSURANCE)

When: The value of the property is:	\$ 250,000
The Coinsurance percentage for it is:	80%
The Limit of Insurance for it is:	\$ 100,000
The Deductible is:	\$ 250
The amount of loss is:	\$ 40,000

Step (1): $\$250,000 \times 80\% = \$200,000$
(the minimum amount of insurance to meet your Coinsurance requirements)

Step (2): $\$100,000 \div \$200,000 = .50$

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

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

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

EXAMPLE #2 (ADEQUATE INSURANCE)

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

The minimum amount of insurance to meet your Coinsurance requirement is \$200,000 (\$250,000 x 80%). Therefore, the Limit of Insurance in this example is adequate and no penalty applies. We will pay no more than \$39,750 (\$40,000 amount of loss minus the deductible of \$250).

- b.** If one Limit of Insurance applies to two or more separate items, this condition will apply to the total of all property to which the limit applies.

EXAMPLE #3

When: The value of the property is:

Building at Location #1:	\$ 75,000
Building at Location #2:	\$ 100,000
Personal Property at Location #2:	\$ 75,000
	\$ 250,000

The Coinsurance percentage for it is: 90%

The Limit of Insurance for Buildings and Personal Property at Locations #1 and #2 is:	\$ 180,000
The Deductible is:	\$ 1,000
The amount of loss is:	
Building at Location #2:	\$ 30,000
Personal Property at Location #2:	\$ 20,000
	\$ 50,000

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

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

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

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

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

2. Mortgageholders

- a.** The term mortgageholder includes trustee.
- b.** We will pay for covered loss of or damage to buildings or structures to each mortgageholder shown in the Declarations in their order of precedence, as interests may appear.
- c.** The mortgageholder has the right to receive loss payment even if the mortgageholder has started foreclosure or similar action on the building or structure.

d. If we deny your claim because of your acts or because you have failed to comply with the terms of this Coverage Part, the mortgageholder will still have the right to receive loss payment if the mortgageholder:

- (1)** Pays any premium due under this Coverage Part at our request if you have failed to do so;
- (2)** Submits a signed, sworn proof of loss within 60 days after receiving notice from us of your failure to do so; and
- (3)** Has notified us of any change in ownership, occupancy or substantial change in risk known to the mortgageholder.

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

e. If we pay the mortgageholder for any loss or damage and deny payment to you because of your acts or because you have failed to comply with the terms of this Coverage Part:

- (1)** The mortgageholder's rights under the mortgage will be transferred to us to the extent of the amount we pay; and
- (2)** The mortgageholder's right to recover the full amount of the mortgageholder's claim will not be impaired.

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

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

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

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

G. Optional Coverages

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

1. Agreed Value

- a.** The Additional Condition, Coinsurance, does not apply to Covered Property to which this Optional Coverage applies. We will pay no more for loss of or damage to that property than the proportion that the Limit of Insurance under this Coverage Part for the property bears to the Agreed Value shown for it in the Declarations.
- b.** If the expiration date for this Optional Coverage shown in the Declarations is not extended, the Additional Condition, Coinsurance, is reinstated and this Optional Coverage expires.
- c.** The terms of this Optional Coverage apply only to loss or damage that occurs:
 - (1)** On or after the effective date of this Optional Coverage; and
 - (2)** Before the Agreed Value expiration date shown in the Declarations or the policy expiration date, whichever occurs first.

2. Inflation Guard

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

- (3)** The number of days since the beginning of the current policy year or the effective date of the most recent policy change amending the Limit of Insurance, divided by 365.

EXAMPLE

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

3. Replacement Cost

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

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

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

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

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

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

With respect to tenants' improvements and betterments, the following also apply:

(3) If the conditions in **d.(1)** and **d.(2)** above are not met, the value of tenants' improvements and betterments will be determined as a proportion of your original cost, as set forth in the Valuation Loss Condition of this Coverage Form; and

(4) We will not pay for loss or damage to tenants' improvements and betterments if others pay for repairs or replacement.

e. We will not pay more for loss or damage on a replacement cost basis than the least of **(1)**, **(2)** or **(3)**, subject to **f.** below:

(1) The Limit of Insurance applicable to the lost or damaged property;

(2) The cost to replace the lost or damaged property with other property:

(a) Of comparable material and quality; and

(b) Used for the same purpose; or

(3) The amount actually spent that is necessary to repair or replace the lost or damaged property.

If a building is rebuilt at a new premises, the cost described in **e.(2)** above is limited to the cost which would have been incurred if the building had been rebuilt at the original premises.

f. The cost of repair or replacement does not include the increased cost attributable to enforcement of any ordinance or law regulating the construction, use or repair of any property.

4. Extension Of Replacement Cost To Personal Property Of Others

a. If the Replacement Cost Optional Coverage is shown as applicable in the Declarations, then this Extension may also be shown as applicable. If the Declarations show this Extension as applicable, then Paragraph **3.b.(1)** of the Replacement Cost Optional Coverage is deleted and all other provisions of the Replacement Cost Optional Coverage apply to replacement cost on personal property of others.

b. With respect to replacement cost on the personal property of others, the following limitation applies:

If an item(s) of personal property of others is subject to a written contract which governs your liability for loss or damage to that item(s), then valuation of that item(s) will be based on the amount for which you are liable under such contract, but not to exceed the lesser of the replacement cost of the property or the applicable Limit of Insurance.

H. Definitions

1. "Fungus" means any type or form of fungus, including mold or mildew, and any mycotoxins, spores, scents or by-products produced or released by fungi.

2. "Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.
3. "Stock" means merchandise held in storage or for sale, raw materials and in-process or finished goods, including supplies used in their packing or shipping.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

A.5

LOSS PAYABLE PROVISIONS

This endorsement modifies insurance provided under the following:

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

SCHEDULE

Premises Number:		Building Number:		Applicable Clause (Enter C., D., E., or F.):	
Description Of Property:					
Loss Payee Name:					
Loss Payee Address:					
Premises Number:		Building Number:		Applicable Clause (Enter C., D., E., or F.):	
Description Of Property:					
Loss Payee Name:					
Loss Payee Address:					
Premises Number:		Building Number:		Applicable Clause (Enter C., D., E., or F.):	
Description Of Property:					
Loss Payee Name:					
Loss Payee Address:					
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.					

A. When this endorsement is attached to the Standard Property Policy **CP 00 99**, the term Coverage Part in this endorsement is replaced by the term Policy.

B. Nothing in this endorsement increases the applicable Limit of Insurance. We will not pay any Loss Payee more than their financial interest in the Covered Property, and we will not pay more than the applicable Limit of Insurance on the Covered Property.

The following is added to the **Loss Payment Loss Condition**, as indicated in the **Declarations** or in the **Schedule**:

C. Loss Payable Clause

For Covered Property in which both you and a Loss Payee shown in the Schedule or in the Declarations have an insurable interest, we will:

1. Adjust losses with you; and
2. Pay any claim for loss or damage jointly to you and the Loss Payee, as interests may appear.

D. Lender's Loss Payable Clause

1. The Loss Payee shown in the Schedule or in the Declarations is a creditor, including a mortgageholder or trustee, whose interest in Covered Property is established by such written instruments as:
 - a. Warehouse receipts;
 - b. A contract for deed;
 - c. Bills of lading;
 - d. Financing statements; or
 - e. Mortgages, deeds of trust, or security agreements.
2. For Covered Property in which both you and a Loss Payee have an insurable interest:
 - a. We will pay for covered loss or damage to each Loss Payee in their order of precedence, as interests may appear.

b. The Loss Payee has the right to receive loss payment even if the Loss Payee has started foreclosure or similar action on the Covered Property.

c. If we deny your claim because of your acts or because you have failed to comply with the terms of the Coverage Part, the Loss Payee will still have the right to receive loss payment if the Loss Payee:

- (1) Pays any premium due under this Coverage Part at our request if you have failed to do so;
- (2) Submits a signed, sworn proof of loss within 60 days after receiving notice from us of your failure to do so; and
- (3) Has notified us of any change in ownership, occupancy or substantial change in risk known to the Loss Payee.

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

d. If we pay the Loss Payee for any loss or damage and deny payment to you because of your acts or because you have failed to comply with the terms of this Coverage Part:

- (1) The Loss Payee's rights will be transferred to us to the extent of the amount we pay; and
- (2) The Loss Payee's rights to recover the full amount of the Loss Payee's claim will not be impaired.

At our option, we may pay to the Loss Payee the whole principal on the debt plus any accrued interest. In this event, you will pay your remaining debt to us.

3. If we cancel this policy, we will give written notice to the Loss Payee at least:
 - a. 10 days before the effective date of cancellation if we cancel for your nonpayment of premium; or
 - b. 30 days before the effective date of cancellation if we cancel for any other reason.
4. If we elect not to renew this policy, we will give written notice to the Loss Payee at least 10 days before the expiration date of this policy.

E. Contract Of Sale Clause

1. The Loss Payee shown in the Schedule or in the Declarations is a person or organization you have entered a contract with for the sale of Covered Property.
2. For Covered Property in which both you and the Loss Payee have an insurable interest we will:
 - a. Adjust losses with you; and
 - b. Pay any claim for loss or damage jointly to you and the Loss Payee, as interests may appear.
3. The following is added to the **Other Insurance** Condition:

For Covered Property that is the subject of a contract of sale, the word “you” includes the Loss Payee.

F. Building Owner Loss Payable Clause

1. The Loss Payee shown in the Schedule or in the Declarations is the owner of the described building, in which you are a tenant.
2. We will adjust losses to the described building with the Loss Payee. Any loss payment made to the Loss Payee will satisfy your claims against us for the owner’s property.
3. We will adjust losses to tenants’ improvements and betterments with you, unless the lease provides otherwise.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

A.6

ADDITIONAL INSURED – BUILDING OWNER

This endorsement modifies insurance provided under the following:

COMMERCIAL PROPERTY COVERAGE PART
STANDARD PROPERTY POLICY

SCHEDULE

Premises Number:		Building Number:	
Building Description:			
Building Owner Name:			
Building Owner Address:			
Premises Number:		Building Number:	
Building Description:			
Building Owner Name:			
Building Owner Address:			
Premises Number:		Building Number:	
Building Description:			
Building Owner Name:			
Building Owner Address:			
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.			

The building owner identified in this endorsement is a Named Insured, but only with respect to the coverage provided under this Coverage Part or Policy for direct physical loss or damage to the building(s) described in the Schedule.



EVIDENCE OF COMMERCIAL PROPERTY INSURANCE

DATE (MM/DD/YYYY)

THIS EVIDENCE OF COMMERCIAL PROPERTY INSURANCE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE ADDITIONAL INTEREST NAMED BELOW. THIS EVIDENCE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS EVIDENCE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE ADDITIONAL INTEREST.

PRODUCER NAME, CONTACT PERSON AND ADDRESS	PHONE (A/C, No, Ext)	COMPANY NAME AND ADDRESS	NAIC NO:
FAX (A/C, No):	E-MAIL ADDRESS:	IF MULTIPLE COMPANIES, COMPLETE SEPARATE FORM FOR EACH	
CODE:	SUB CODE:	POLICY TYPE	
AGENCY CUSTOMER ID #:		LOAN NUMBER	POLICY NUMBER
NAMED INSURED AND ADDRESS		EFFECTIVE DATE	EXPIRATION DATE
ADDITIONAL NAMED INSURED(S)		CONTINUED UNTIL TERMINATED IF CHECKED	
		THIS REPLACES PRIOR EVIDENCE DATED:	

PROPERTY INFORMATION (Use REMARKS on page 2, if more space is required) BUILDING OR BUSINESS PERSONAL PROPERTY

LOCATION/DESCRIPTION

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS EVIDENCE OF PROPERTY INSURANCE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

COVERAGE INFORMATION	PERILS INSURED	BASIC	ABROAD	SPECIAL	DED:
COMMERCIAL PROPERTY COVERAGE AMOUNT OF INSURANCE:		YES NO N/A			
<input type="checkbox"/> BUSINESS INCOME <input type="checkbox"/> RENTAL VALUE					Actual Loss Sustained; # of months:
BLANKET COVERAGE					If YES, indicate value(s) reported on property identified above: \$
TERRORISM COVERAGE					Attach Disclosure Notice / DEC
IS THERE A TERRORISM-SPECIFIC EXCLUSION?					
IS DOMESTIC TERRORISM EXCLUDED?					
LIMITED FUNGUS COVERAGE					If YES, LIMIT: DED:
FUNGUS EXCLUSION (If "YES", specify organization's form used)					
REPLACEMENT COST					
AGREED VALUE					
COINSURANCE					If YES, %
EQUIPMENT BREAKDOWN (If Applicable)					If YES, LIMIT: DED:
ORDINANCE OR LAW - Coverage for loss to undamaged portion of bldg					
- Demolition Costs					If YES, LIMIT: DED:
- Incr. Cost of Construction					If YES, LIMIT: DED:
EARTH MOVEMENT (If Applicable)					If YES, LIMIT: DED:
FLOOD (If Applicable)					If YES, LIMIT: DED:
WIND / HAIL (If Subject to Different Provisions)					If YES, LIMIT: DED:
PERMISSION TO WAIVE SUBROGATION IN FAVOR OF MORTGAGE HOLDER PRIOR TO LOSS					

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

ADDITIONAL INTEREST

<input type="checkbox"/> MORTGAGEE	<input type="checkbox"/> CONTRACT OF SALE	LENDER SERVICING AGENT NAME AND ADDRESS
<input type="checkbox"/> LENDERS LOSS PAYABLE		
NAME AND ADDRESS		
		AUTHORIZED REPRESENTATIVE

SPECIMEN



INSURANCE BINDER

DATE (MM/DD/YYYY)

THIS BINDER IS A TEMPORARY INSURANCE CONTRACT, SUBJECT TO THE CONDITIONS SHOWN ON THE REVERSE SIDE OF THIS FORM.

AGENCY		COMPANY		BINDER #	
PHONE (A/C, No, Ext):		FAX (A/C, No):		THIS BINDER IS ISSUED TO EXTEND COVERAGE IN THE ABOVE NAMED COMPANY PER EXPIRING POLICY #:	
CODE:		SUB CODE:		DESCRIPTION OF OPERATIONS/VEHICLES/PROPERTY (Including Location)	
AGENCY CUSTOMER ID:		INSURED			

COVERAGES		LIMITS		
TYPE OF INSURANCE	COVERAGE/FORMS	DEDUCTIBLE	COINS %	AMOUNT
PROPERTY CAUSES OF LOSS <input type="checkbox"/> BASIC <input type="checkbox"/> BROAD <input type="checkbox"/> SPEC				
GENERAL LIABILITY <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR RETRO DATE FOR CLAIMS MADE:				EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/PROP AGG \$
VEHICLE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS				COMBINED SINGLE LIMIT \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE \$ MEDICAL PAYMENTS \$ PERSONAL INJURY PROT \$ UNINSURED MOTORIST \$
VEHICLE PHYSICAL DAMAGE DED <input type="checkbox"/> ALL VEHICLES <input type="checkbox"/> SCHEDULED VEHICLES <input type="checkbox"/> COLLISION: _____ <input type="checkbox"/> OTHER THAN COL: _____				ACTUAL CASH VALUE STATED AMOUNT \$
GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EACH ACCIDENT \$ AGGREGATE \$
EXCESS LIABILITY <input type="checkbox"/> UMBRELLA FORM <input type="checkbox"/> OTHER THAN UMBRELLA FORM RETRO DATE FOR CLAIMS MADE:				EACH OCCURRENCE \$ AGGREGATE \$ SELF-INSURED RETENTION \$ WC STATUTORY LIMITS
WORKER'S COMPENSATION AND EMPLOYER'S LIABILITY				E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
SPECIAL CONDITIONS / OTHER COVERAGES				FEES \$ TAXES \$ ESTIMATED TOTAL PREMIUM \$

NAME & ADDRESS

	<input type="checkbox"/> MORTGAGEE	<input type="checkbox"/> ADDITIONAL INSURED
	<input type="checkbox"/> LOSS PAYEE	
	LOAN #	
AUTHORIZED REPRESENTATIVE		

CONDITIONS

This Company binds the kind(s) of insurance stipulated on the reverse side. The Insurance is subject to the terms, conditions and limitations of the policy(ies) in current use by the Company.

This binder may be cancelled by the Insured by surrender of this binder or by written notice to the Company stating when cancellation will be effective. This binder may be cancelled by the Company by notice to the Insured in accordance with the policy conditions. This binder is cancelled when replaced by a policy. If this binder is not replaced by a policy, the Company is entitled to charge a premium for the binder according to the Rules and Rates in use by the Company.

Applicable in California

When this form is used to provide insurance in the amount of one million dollars (\$1,000,000) or more, the title of the form is changed from "Insurance Binder" to "Cover Note".

Applicable in Colorado

With respect to binders issued to renters of residential premises, home owners, condo unit owners and mobile home owners, the insurer has thirty (30) business days, commencing from the effective date of coverage, to evaluate the issuance of the insurance policy.

Applicable in Delaware

The mortgagee or Obligee of any mortgage or other instrument given for the purpose of creating a lien on real property shall accept as evidence of insurance a written binder issued by an authorized insurer or its agent if the binder includes or is accompanied by: the name and address of the borrower; the name and address of the lender as loss payee; a description of the insured real property; a provision that the binder may not be canceled within the term of the binder unless the lender and the insured borrower receive written notice of the cancellation at least ten (10) days prior to the cancellation; except in the case of a renewal of a policy subsequent to the closing of the loan, a paid receipt of the full amount of the applicable premium, and the amount of insurance coverage.

Chapter 21 Title 25 Paragraph 2119

Applicable in Florida

Except for Auto Insurance coverage, no notice of cancellation or nonrenewal of a binder is required unless the duration of the binder exceeds 60 days. For auto insurance, the insurer must give 5 days prior notice, unless the binder is replaced by a policy or another binder in the same company.

Applicable in Maryland

The insurer has 45 business days, commencing from the effective date of coverage to confirm eligibility for coverage under the insurance policy.

Applicable in Michigan

The policy may be cancelled at any time at the request of the insured.

Applicable in Nevada

Any person who refuses to accept a binder which provides coverage of less than \$1,000,000.00 when proof is required: (A) Shall be fined not more than \$500.00, and (B) is liable to the party presenting the binder as proof of insurance for actual damages sustained therefrom.

Applicable in the Virgin Islands

This binder is effective for only ninety (90) days. Within thirty (30) days of receipt of this binder, you should request an insurance policy or certificate (if applicable) from your agent and/or insurance company.