

IN THE SUPREME COURT OF THE STATE OF NEVADA

ASPEN SPECIALTY INSURANCE
COMPANY,

Petitioner,

v.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; and THE HONORABLE
GLORIA STURMAN, DISTRICT JUDGE,
DEPT. 26,

Respondents,

ST. PAUL FIRE & MARINE
INSURANCE COMPANY; NATIONAL
UNION FIRE INSURANCE COMPANY
OF PITTSBURGH, PA; and ROOF DECK
ENTERTAINMENT, LLC d/b/a
MARQUEE NIGHTCLUB

Real Parties in Interest.

Electronically Filed
Nov 17 2021 01:42 p.m.
Elizabeth A. Brown
Clerk of Supreme Court
*Related to Nevada Supreme Court
Case No. 81344*

District Court Case No. A-17-758902-C

**APPENDIX OF EXHIBITS TO
PETITION UNDER NRAP 21 FOR
WRIT OF MANDAMUS OR, IN THE
ALTERNATIVE,
PETITION FOR WRIT OF
PROHIBITION**

Volume I of XIX

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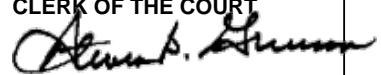
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41	Aspen Specialty Insurance Company's Reservation of Rights Letters dated August 5, 2014	XVI	AA02195-AA02207
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45	Zurich American Insurance Company Policy of Insurance issued to Nevada Property I LLC, Policy Number PRA 9829242-01	XVIII, XIX	AA02449-AA02608

Document No. 1

St. Paul Fire & Marine Insurance Company's First Amended Complaint to be filed under seal pending approval of Petitioner's Motion to File Under Seal Unredacted First Amended Complaint [Bates No. AA-00001-00027]



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15
16 DISTRICT COURT

17 CLARK COUNTY, NEVADA

18 ST. PAUL FIRE & MARINE INSURANCE)
19 COMPANY,)

20 Plaintiffs,)

21 vs.)

22 ASPEN SPECIALTY INSURANCE)
23 COMPANY; NATIONAL UNION FIRE)
24 INSURANCE COMPANY OF)
25 PITTSBURGH, PA.; ROOF DECK)
26 ENTERTAINMENT, LLC, d/b/a MARQUEE)
27 NIGHTCLUB; and DOES 1 through 25,)
28 inclusive,)

29 Defendants.)

CASE NO.: A-17-758902-C

**ST. PAUL'S NOTICE OF MOTION AND
MOTION FOR PARTIAL SUMMARY
JUDGMENT, AS TO DEFENDANT
ASPEN SPECIALTY INSURANCE
COMPANY**

Date:

Time: 9:00 a.m.

Dept.: XXVI

30 COMES NOW PLAINTIFF ST. PAUL FIRE AND MARINE INSURANCE COMPANY
31 ("St. Paul") and hereby respectfully moves the above-captioned court for an order granting partial
32 summary judgment as to the claims in its complaint against DEFENDANT ASPEN SPECIALTY
33 INSURANCE COMPANY ("Aspen"). This motion is made and brought on the grounds that there
34 are no genuine issues of material fact that Aspen owed \$2,000,000 in coverage for the claims in
35 the Underlying *Moradi v. Roof Deck Entertainment, LLC, d/b/a Marquee Nightclub, et al.* action,
36 rather than \$1,000,000 as Aspen contends. This motion is supported by this notice of motion, the

37 ST. PAUL'S MOTION FOR PARTIAL
38 SUMMARY JUDGMENT AS TO ASPEN

CASE NO. A-17-758902-C

1 accompanying memorandum of points and authorities, declarations and exhibits thereto, the entire
2 file in this matter, any further briefing and the oral argument of counsel.

3 Dated: August 29, 2019

MORALES FIERRO & REEVES

4
5 By: /s/Ramiro Morales

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I. INTRODUCTION

This motion will establish that Aspen had \$2 million in available policy limits to settle the lawsuit styled *Moradi v. Roof Deck Entertainment, LLC, d/b/a Marquee Nightclub, et al.*, District Court Clark County, Nevada, Case No. A-14-698824-C (“Underlying Action” or “Moradi”). This is important as St. Paul alleges in its complaint and intends to establish through discovery that Aspen failed to settle the case in the face of a \$1.5 million Offer of Judgment based on its position that the Aspen policy was capped at a \$1 million limit, and that Aspen was therefore unable to accept the offer. As a result, the offer lapsed and a \$160.5 million judgment followed. But for Aspen’s failure to accept an offer of judgment within its limits, the parties would not have been subject to the ultimate \$160.5 million judgment. As alleged in the complaint, due to Aspen’s failure to settle the case and the resulting judgment far in excess of the initial within limits offer, it is St. Paul’s position that Aspen was liable to The Cosmopolitan Hotel and Casino (“Cosmo”) for the full amount of that judgment. Aspen’s alleged breach exposed Cosmo and its carrier, St. Paul, to this disastrous judgment. St. Paul was forced to pay damages and St. Paul is now subrogated to Cosmo's rights against Aspen for the excess damages Aspen caused.

Aspen had \$2 million in limits available to settle this claim: Moradi's allegations implicated both Aspen's \$1 million per occurrence limit under Coverage A and its \$1 million personal and advertising injury limit under Coverage B. Both Coverage A and Coverage B are coverages within the CGL Coverage Part of Aspen's policy and when added together provide a combined limit of \$2 million under Aspen's Commercial General Liability Coverage Part ("CGL Coverage Part") – an amount that was sufficient to accept the \$1.5 Offer of Judgment.

Coverage A covers, among other things, damages for bodily injury caused by an accident. Coverage B covers, among other things, damages for false imprisonment. Moradi alleged in his complaint (and the jury stated in the special verdict form that Moradi proved) his claims both for negligence and for false imprisonment, and that he sustained bodily injury. Therefore, a total of \$2 million in limits were available under Aspen's policy to settle the case.

In addition to the available limits exceeding the Offer of Judgment made by Moradi, Aspen's appointed defense counsel warned Aspen that damages could exceed \$310 million, and

1 that a defense verdict could only be expected 3 out of 10 times, *i.e.*, the defense would very likely
2 lose. Thus, St. Paul has alleged and will seek to prove that when Aspen rejected Moradi's offer to
3 settle for the relatively modest sum of \$1.5 million, after defense counsel had told Aspen that
4 Cosmo's exposure was in excess of \$300 million and that Cosmo would likely lose, Aspen erred.

5 Aspen made and continues to make the untenable argument that it had only \$1 million in
6 available limits and, therefore, it could not accept the Offer of Judgment. It pointed to an
7 endorsement which provides that the most it owes under its policy as a whole is the maximum
8 limit of insurance under "any one Coverage Part", and then asserted that Coverages A and B
9 within the CGL Coverage Part are in fact themselves coverage parts as that term is used in the
10 endorsement, such that Aspen only ever owed a single \$1 million limit. This argument is belied
11 by the very terms of the policy. The term "coverage part" is used throughout the Aspen policy, but
12 only ever refers to coverage parts such as the CGL Coverage Part and the Liquor Liability
13 Coverage Part. Conversely, the policy specifically refers to Coverages A and B as being within a
14 *single* coverage part, *i.e.*, the CGL Coverage Part. Incredibly, the very endorsement on which
15 Aspen relies itself specifically states that it applies to the CGL Coverage Part, not a "coverage part
16 A" or a "coverage part B." This argument is untenable and unsupported by the clear terms of the
17 policy.

18 Accordingly, for the reasons discussed herein, St. Paul respectfully requests that its motion
19 for summary adjudication that Aspen had \$2 million in policy limits for the Moradi matter be
20 granted.

21 **II. BACKGROUND FACTS**

22 **A. The Underlying Parties**

23 This dispute arises out of a \$160,500,000 verdict based on an assault committed by
24 security for the Marquee Nightclub against one of its patrons, David Moradi. See St. Paul's
25 Request for Judicial Notice ("RJN"), Exh. 1, filed concurrently herewith. The nightclub was
26 managed by Roof Deck Entertainment, LLC, dba Marquee Nightclub ("Marquee") on property
27 owned by Cosmo. See Declaration of Marc J. Derewetzky in Support of Motion for Partial
28 Summary Judgment ("Derewetzky Decl."), ¶ 1. Pursuant to the management agreement,

1 Marquee agreed to defend and indemnify Cosmo for liability for Marquee's or its employees'
2 breach of that agreement or their negligence or willful misconduct, that Cosmo would be named
3 as an additional insured under any liability policies Marquee procured, and that such insurance
4 provided by Marquee would be primary. Derewetzky Decl., ¶2, Exh. 13.

5 B. The Underlying Incident

6 The incident began on April 8, 2012, when underlying plaintiff, David Moradi, was ready
7 to close out his tab for the night at the Marquee Nightclub. See Exhibit 2 to RJN (underlying
8 Complaint), ¶ 1. Marquee's club manager believed that Moradi's signature did not match his
9 credit card, and so came to Moradi's table with a Marquee security guard.¹ See Exhibits 2 and 3
10 to RJN. Because the club was loud, Moradi left the table with the manager and the guard to go
11 discuss the matter somewhere quieter, but on their way, a fight broke out between Moradi on the
12 one hand and Marquee's manager and security guard on the other, with Moradi claiming it was
13 started by Marquee's employees, and Marquee's employees claiming it was started by Moradi.
14 See Exhibits 2 and 4 to RJN. Marquee's security guard then put Moradi in a dangerous
15 chokehold and forcibly removed him from the club, striking his head on a steel door jam on the
16 way out. See Exhibits 2 and 5 to RJN. Marquee personnel then confined Moradi in a room away
17 from public view and smashed his head repeatedly against the concrete floor. See Exhibits 2 and
18 6 to RJN. While they eventually let him go, Marquee personnel justified their behavior by
19 claiming that Moradi had earlier started the fight by head-butting Marquee's manager. See
20 Exhibit 2 to RJN. No clear video of any such head-butt exists. Further, Moradi contended that,
21 after the attack, Marquee destroyed video which would have more fully supported his account of
22 Marquee's employees' wrongful behavior. See Exhibits 2 and 7 to RJN.

23 The attack left Moradi with traumatic brain damage, and injuries to his head, neck, arm,
24 knees, and other parts of his body. See Exhibits 2 and 8 to RJN. The brain injury made it
25 impossible for him to continue his work as a high-end hedge fund manager. See Exhibits 2 and 9
26 to RJN. Moradi alleged not only that the attack on him was wrongful, but that it was part of a
27 pattern of behavior by Marquee employees that resulted from Marquee's negligent training,

28 ¹ There is no dispute at this point that the credit card was in fact Moradi's.

1 supervision, and hiring of them. See Exhibits 2 and 10 to RJN. Moradi specifically alleged there
2 were attacks on other patrons that also involved dangerous chokeholds as well as the destruction
3 of evidence by Marquee and its employees, including incidents involving victims Cochran,
4 Nguyen, and Moore. See Exhibits 2 and 11 to RJN. During trial, the court viewed video of
5 Marquee employees attacking another patron, Cochran, during one of these other incidents, which
6 the court described as "disturbing." See Exhibits 2 and 12 to RJN.

7 C. The Underlying Suit and Judgment

8 Moradi sued Marquee and Cosmo for his injuries under causes of action for: 1) assault
9 and battery; 2) negligence; 3) intentional infliction of emotional distress; and 4) false
10 imprisonment. See Exhibit 2 to RJN. Cosmo's only exposure in this case was as the landowner,
11 *i.e.*, its alleged liability was based merely on purported premises liability instead of any actual
12 wrong doing. See Exhibit 2 to RJN. At trial of the Underlying Action, the jury found in favor of
13 Moradi. See Exhibit 1 to RJN. The special verdict form states that Moradi established his claims
14 for: 1) assault; 2) battery; 3) false imprisonment; and 4) negligence. *Id.* It also states that the
15 actions of Marquee employees were a legal cause of injury or damage to Moradi, that an officer
16 or managing agent of Marquee acted with oppression or malice in conduct that caused Moradi's
17 damages, and that an officer of Marquee expressly authorized or ratified its employees' malicious
18 or oppressive conduct that caused Moradi's damages. *Id.* The jury awarded Moradi \$160.5
19 million in damages, including \$23 million in lost past earnings, \$79.5 million in lost future
20 earnings, \$20 million in past pain and suffering, and \$38 million in future pain and suffering. *Id.*
21 The jury also allowed Moradi to recover punitive damages, but the matter settled for a
22 confidential sum before conclusion of that phase of trial. See Exhibit 2 to RJN, Derewetzky
23 Decl., ¶ 3.

24 Lastly, it is not clear if the jury's verdict supported a judgment against Cosmo for any
25 wrongdoing: The special verdict did not ask and the jury did not indicate whether Cosmo was
26 independently negligent or indeed whether it was liable for any portion of the verdict at all. See
27 Exhibit 2 to RJN. Thus, while judgment was entered against Cosmo as well as Marquee, because
28 of manner in which counsel drafted the special verdict, it is not clear if the jury's verdict

1 supported the judgment as against Cosmo for anything. See Exhibit 2 to RJN.

2 D. The Policy

3 Aspen issued a primary insurance policy with a CGL Coverage Part and a Liquor Liability
4 Coverage Part to Marquee effective October 16, 2011 to October 16, 2012. Derewetzky Decl., ¶4,
5 Exh. 14. Per a blanket additional insured endorsement, Cosmo qualifies as an additional insured
6 on Aspen's policy, meaning that both Marquee and Cosmo are Aspen's insureds. See Derewetzky
7 Decl., Exh. 14 (ASPEN000090). The CGL Coverage Part includes within it Coverage A for
8 bodily injury and property damage liability, and Coverage B for personal and advertising injury
9 liability. See Derewetzky Decl., Exh. 14 (ASPEN000042-50). Coverage A covers the insured's
10 legal liability for damages because of bodily injury that takes place during the policy period if it
11 is caused by an occurrence, defined as an accident. See Derewetzky Decl., Exh. 14
12 (ASPEN000042-46). This bodily injury coverage is subject to a limit of \$1 million per
13 occurrence, meaning that for any one accident that causes bodily injury, the insured is entitled to
14 up to \$1 million under Coverage A. See Derewetzky Decl., Exh. 14 (ASPEN000033).

15 Coverage B covers the insured's legal liability for damages because of personal and
16 advertising injury, defined to include false imprisonment. See Derewetzky Decl., Exh. 14
17 (ASPEN000046-47). This personal injury coverage is subject to a limit of \$1 million per person
18 insured under Coverage B. See Derewetzky Decl., Exh. 14 (ASPEN000033). Coverage under the
19 entire CGL Coverage Part, which includes both Coverages A and B, is subject to a general
20 aggregate limit of \$2 million. *Id.* Thus, an insured may have \$1 million in bodily injury
21 coverage under Coverage A and another \$1 million in coverage under Coverage B, capped by a
22 total aggregate limit of \$2 million dollars, which would limit liability if there were more than one
23 person injured or more than one accident at issue.

24 In response to tender of the Moradi action, Aspen provided a joint defense to both
25 Marquee and Cosmo. Derewetzky Decl., ¶ 5, Exhs. 15 and 16. Aspen never sought nor procured
26 a conflict waiver from Cosmo. Derewetzky Decl., ¶ 5. As early as November 13, 2015, defense
27 counsel Aspen appointed and controlled specifically warned Aspen of the potential for a
28 catastrophic verdict of \$310 million in compensatory damages, and predicted a defense verdict

1 only 3 out of 10 times, *i.e.*, there was a 70 percent chance of plaintiff prevailing. Derewetzky
2 Decl., ¶ 6, Exh 17. On or about December 10, 2015, Moradi served a formal, written statutory
3 Offer of Judgment in the amount of \$1,500,000. Derewetzky Decl., ¶ 7, Exh 18. Aspen failed to
4 accept the offer. The matter proceeded to trial resulting in a \$160.5 million judgment. RJN, Exh.
5 1.

6 **III. LEGAL STANDARDS**

7 **A. Summary Judgment Standard**

8 Under Rule 56(a) of the Nevada Rules of Civil Procedure, “[s]ummary judgment is
9 appropriate and ‘shall be rendered forthwith’ when the pleadings and other evidence on file
10 demonstrate that no ‘genuine issue as to any material fact [remains] and that the moving party is
11 entitled to a judgment as a matter of law.’” *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d
12 1026, 1029 (2005). “The party moving for summary judgment bears the initial burden of
13 production to show the absence of a genuine issue of material fact. If such a showing is made,
14 then the party opposing summary judgment assumes a burden of production to show the existence
15 of a genuine issue of material fact.” *Cuzze v. University and Community College System of*
16 *Nevada*, 123 Nev. 598, 602, 172 P.3d 131, 134 (2007). “The substantive law controls which
17 factual disputes are material and will preclude summary judgment; other factual disputes are
18 irrelevant. A factual dispute is genuine when the evidence is such that a rational trier of fact could
19 return a verdict for the nonmoving party.” *Wood v. Safeway, Inc.*, 121 Nev. 724, 731, 121 P.3d
20 1026, 1031 (2005). However, “the nonmoving party . . . bears the burden to ‘do more than simply
21 show that there is some metaphysical doubt’ as to the operative facts in order to avoid summary
22 judgment being entered in the moving party’s favor.” *Id.* Rather, “[t]he nonmoving party ‘must,
23 by affidavit or otherwise, set forth specific facts demonstrating the existence of a genuine issue for
24 trial or have summary judgment entered against him.’ The nonmoving party ‘is not entitled to
25 build a case on the gossamer threads of whimsy, speculation, and conjecture.’” *Id.*

26 **B. Nevada Rules of Insurance Policy Interpretation**

27 Under Nevada law, the interpretation of an insurance contract is a question of law for the
28 court. *Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 14, 252 P.3d 668, 672 (2011). “The contract

1 will be read as a whole and given a construction which will accomplish the object of providing
2 indemnity for the losses covered by the policy.” *American Excess v. MGM Grand*, 102 Nev. 601,
3 604 (Nev. 1986). Nevada courts view a policy’s language “from the perspective of one not trained
4 in law and give plain and ordinary meaning to the terms.” *Farmers Ins. Exch. v. Neal*, 119 Nev.
5 62, 64, 64 P.3d 472, 473 (2003) (quotations omitted). “Any ambiguity or uncertainty in an
6 insurance policy must be resolved against the insurer and in favor of the insured. . . . The contract
7 will be given a construction which will fairly achieve its object of providing indemnity for the loss
8 to which the insurance relates.” *National Union v. Reno Executive Air*, 100 Nev. 360, 365 (1984).
9 “Accordingly, the language of an insurance policy is broadly interpreted in order to afford ‘the
10 greatest possible coverage to the insured.’ . . . An insurance policy may restrict coverage only if
11 the policy’s language ‘clearly and distinctly communicates to the insured the nature of the
12 limitation.’” *United Nat’l Ins. Co. v. Frontier Ins. Co.*, 120 Nev. 678, 684 (2004).

13 “While clauses providing coverage are interpreted broadly so as to afford the greatest
14 possible coverage to the insured, clauses excluding coverage are interpreted narrowly against the
15 insurer.” *Id.* “[I]f an insurer wishes to exclude coverage by virtue of an exclusion in its policy, it
16 must (1) write the exclusion in obvious and unambiguous language in the policy, (2) establish that
17 the interpretation excluding covering [sic] under the exclusion is the *only* interpretation of the
18 exclusion that could fairly be made, and (3) establish that the exclusion clearly applies to this
19 particular case.” *Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 164, 252 P.3d 668, 674 (Nev.
20 2011) (emphasis added). “[C]lauses excluding coverage are interpreted narrowly against the
21 insurer.” *Fed. Ins. Co. v. Am. Hardware Mut. Ins. Co.*, 124 Nev. 319 322, 184 P.3d 390, 392
22 (Nev. 2008) (internal quotation marks omitted); *see also Cranmore v. Unumprovident Corp.*, 430
23 F.Supp. 2d 1143, 1149 (D. Nev. 2006). “When a policy has been issued which purportedly
24 provides coverage but whose exclusionary provisions as interpreted by the insurer would narrow
25 the coverage to defeat the purpose of the insurance, the policy *must* be construed against the
26 insurer. . . . Such an exclusion must be stated clearly and unambiguously so as to readily
27 communicate to the insured the specific circumstances under which he or she will not receive the
28 expected coverage.” *Reno’s Executive Air*, 100 Nev. at 366 (emphasis added). “Ultimately, a court

1 should interpret an insurance policy to effectuate the reasonable expectations of the insured.”
2 *Powell v. Liberty Mut. Fire Ins. Co.*, *supra* at 162, 252 P.3d at 672.

3 **IV. ARGUMENT**

4 **A. Aspen Had Two Million in Limits Available to Settle the Moradi Action – One**
5 **Million Under Coverage A Plus One Million Under Coverage B.**

6 Aspen had \$2 million in available policy limits but it allowed a \$1.5 million Offer of
7 Judgment to lapse by improperly claiming that it had only \$1 million in policy limits available to
8 its insureds. This resulted in the case proceeding to trial and a \$160.5 million judgment against
9 the insureds. This result was fully avoidable had Aspen simply made available the true policy
10 limits in order to accept the \$1.5 million Offer of Judgment.

11 Insurers owe a duty of good faith and fair dealing to their insureds. *U. S. Fid. & Guar. Co.*
12 *v. Peterson*, 91 Nev. 617, 540 P.2d 1070 (1975); *see also, Pemberton v. Farmers Ins. Exch.*, 109
13 Nev. 789, 793, 858 P.2d 380, 382 (1993). As alleged in the complaint, when Aspen failed to settle
14 the case, it became responsible for all consequential damages proximately caused thereby,
15 including damages in excess of policy limits. *Id.*; *see also, Kelly v. CSE Safeguard Ins., Co.*, No.
16 2:08-CV-0088-KJD-RJJ, 2011 WL 4526769, at *4 (D. Nev. Sept. 27, 2011), *aff'd*, 532 F. App'x
17 698 (9th Cir. 2013). Aspen was wrong to contend that it had no ability to accept the settlement as
18 both the Coverage A. Bodily Injury and the Coverage B. Personal Injury limits were available to
19 settle.

20 **1. Aspen's Per Occurrence Limit of One Million Dollars Under Coverage A for**
21 **Bodily Injury Caused by an Occurrence Was Available for Settlement.**

22 Aspen's CGL Coverage Part provided \$1 million in coverage for the Moradi action under
the bodily injury coverage of Coverage A. Coverage A states:

23 Coverage A. Bodily Injury and Property Damage Liability²

24 **1. Insuring Agreement**

- 25 a. We will pay those sums that the insured becomes legally obligated
26 to pay as damages because of “bodily injury” or “property damage”
to which this insurance applies. . . .

27
28 ² This text is in all caps and bold in the policy. For ease of reading, we present it in title case
and regular font here.

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

(1) The “bodily injury” or “property damage” is caused by an “occurrence” that takes place in the “coverage territory”, . . .

See, Derewetzky Decl., Exh. 14 at ASPEN000042.

Under this language, Coverage A covers, among other things, sums the insured is legally obligated to pay as damages because of bodily injury caused by an occurrence. "Bodily injury" is defined as "bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time." A Nevada federal district court has held that such a definition is inherently ambiguous, and therefore includes not only physical injury to the body, but also emotional distress without accompanying physical injury. *Brewington v. State Farm Mut. Auto. Ins. Co.*, 45 F. Supp. 3d 1215, 1220 (D. Nev. 2014).

Here, the underlying Moradi case is indisputably based in part on bodily injury: Moradi claimed traumatic brain damage, and injuries to the head, neck, arm, knees, and other parts of his body. Emotional distress was also claimed stemming from the physical injuries and security's overall reprehensible treatment of him. Moradi alleged that Marquee employees created a cover story after the attack in which they claimed Moradi attacked them first, and by allegedly destroying video after the fact to support their false narrative. Based on these allegations, the bodily injury requirement of Coverage A is met.

Likewise, there is an occurrence. Aspen's policy defines "occurrence" as "an accident, including continuous or repeated exposure to substantially the same general harmful conditions." The Nevada Supreme Court has defined an accident as “a happening that is not expected, foreseen, or intended.” *Beckwith v. State Farm Fire & Cas. Co.*, 120 Nev. 23, 26, 83 P.3d 275, 276 (2004). Here, Moradi alleged a cause of action for negligence (and the jury determined he proved that claim). Thus, the occurrence requirement of Coverage A was also met.

Because the Moradi suit alleged bodily injury caused by an occurrence, Coverage A of the CGL Coverage Part was triggered up to the applicable limit of liability. The limits of insurance section provides that Coverage A is subject to a per occurrence limit.

The policy provides:

1 Section III - Limits of Insurance

2 . . .

3 5. Subject to Paragraph 2 or 3 above,³ whichever applies, the Each Occurrence
4 Limit is the most we will pay for the sum of:

- 5 a. Damages under Coverage A; and
6 b. Medical expenses under Coverage C

7 because of all bodily injury and property damage arising out of any one
8 occurrence.

9 See, Derewetzky Decl., Exh. 14 at ASPEN000049-50.

10 Under this provision, the most Aspen owes under Coverage A and Coverage C⁴ for all
11 bodily injury arising from a single occurrence is the amount of the per occurrence limit. The
12 Declarations in the Aspen policy state that the per occurrence limit is \$1 million dollars.⁵
13 Therefore, assuming for the sake of argument there is only a single accident at issue here, Aspen
14 had \$1 million available under Coverage A to pay toward settlement of the claim.

15 **2. Aspen's Personal And Advertising Injury Limit of One Million Dollars Under
16 Coverage B for False Imprisonment Provided An Additional Limit Available
17 for the Offer of Judgement.**

18 Aspen's CGL Coverage Part also provided \$1 million in coverage for the Moradi suit under
19 the personal and advertising injury coverage of Coverage B. The Coverage B coverage grant
20 states:

21 Coverage B. Personal and Advertising Injury Liability

22 1. Insuring Agreement

- 23 a. We will pay those sums that the insured becomes legally obligated
24 to pay as damages because of "personal and advertising injury" to
25 which this insurance applies. . . .
26 b. This insurance applies to "personal and advertising injury" caused
27 by an offense arising out of your business but only if the offense was
28 committed in the "coverage territory" during the policy period.

29 ³ Paragraphs 2 and 3 refer to the general aggregate limit and the products-completed
30 operations aggregate limit. The products-completed operations hazard is not relevant here, and the
31 general aggregate is discussed below.

32 ⁴ Coverage C provides some coverage for certain medical expenses, but it is not at issue
33 here.

34 ⁵ Paragraph 1 of the limits section specifically provides that "[t]he Limits of Insurance
35 shown in the Declarations and the rules below fix the most we will pay . . ."

1 See, Derewetzky Decl., Exh. 14 at ASPEN000046.

2 Under this language Aspen owes, among other things, coverage for all damages the insured
3 must pay because of personal and advertising injury caused by an offense committed during the
4 policy period. "Personal and advertising injury" is defined to include a number of offenses,
5 including "[f]alse arrest, detention or imprisonment." Moradi made a claim of false imprisonment
6 and as such, Aspen has a coverage obligation for that claim under Coverage B. *See, e.g., N. Am.*
7 *Bldg. Maint., Inc. v. Fireman's Fund Ins. Co.*, 137 Cal. App. 4th 627, 639, 40 Cal. Rptr. 3d 468,
8 477 (2006) (duty to defend false imprisonment claim under personal injury coverage). Notably,
9 under Coverage B, there is no requirement that the injury result from an accident as it must under
10 Coverage A, because many of the offenses covered are not accidental. Further, under Coverage B,
11 the type of injury is also irrelevant; all injury from the offense is covered, even economic loss. *Id.*
12 ("[P]ersonal and advertising injury may involve purely economic losses, irrespective of whether
13 the claimant also suffered any bodily injury or property damage."). Thus, any injury, including
14 physical injury, purely economic loss, or emotional distress resulting from false imprisonment
15 would fall within Coverage B.

16 Here, Moradi alleged a cause of action for false imprisonment, and the jury found on the
17 verdict form that Moradi proved his claim for false imprisonment. This indisputably triggered
18 Coverage B. Thus, the personal and advertising injury limit of Coverage B was also available to
19 settle the Moradi action.

20 The limit of liability for Coverage B is set forth as follows:

21 Section III - Limits of Insurance

22 . . .

- 23 4. Subject to Paragraph 2. above,⁶ the Personal and Advertising Injury Limit is
24 the most we will pay under Coverage B for the sum of all damages because
25 of all "personal and advertising injury" sustained by any one person or
organization.

26 See, Derewetzky Decl., Exh. 14 at ASPEN000049-50.

27 ///

28 ⁶ Paragraph 2, discussed below, sets the general aggregate limit under the whole CGL Coverage Part.

1 Under this provision, Aspen's liability under Coverage B is limited to the personal and
2 advertising limit for all damages suffered by one person. Here, because Moradi was the only
3 person injured, Aspen's liability under Coverage B is one separate personal and advertising injury
4 limit for all damages based on false imprisonment.

5 Notably, Coverage A and Coverage B within the CGL Coverage Part are two separate and
6 distinct coverages, each with separate limits. Thus, the personal and advertising injury limit of
7 Coverage B was triggered in addition to the per occurrence limit of Coverage A. Therefore,
8 Aspen also had \$1 million available under Coverage B to pay toward settlement of the claim, in
9 addition to the \$1 million available under Coverage A for a total of available limits of \$2 million.

10 The CGL Coverage Part does limit the total coverage available under that coverage part as
11 a whole through the general aggregate limit, but that limit is \$2 million. The policy provides:

12 Section III - Limits of Insurance

13 . . .

14 2. The General Aggregate Limit is the most we will pay for *the sum* of:

- 15 a. Medical expenses under Coverage C;
- 16 b. Damages under Coverage A, except damages because of "bodily
17 injury" or "property damage" included in the "products-completed
operations" hazard;⁷ *and*
- c. Damages under Coverage B.

18 See, Derewetzky Decl., Exh. 14 at ASPEN000049.

19 Under this provision, Aspen's liability under Coverage A and Coverage B together is
20 limited to the general aggregate limit. The Declarations state that the general aggregate limit is \$2
21 million. However, as the per occurrence limit and personal and advertising injury limits added
22 together total only \$2 million, this limit has no practical effect in this case.⁸

23 In summary, because this claim involved both bodily injury caused by an accident and

24 ⁷ The products-completed operations hazard refers to damage caused by products and
25 completed work, and is not at issue here because the injuries were caused during operations, not
after they were completed.

26 ⁸ This would not be the case if, for example, the underlying suit involved more than one
27 occurrence, each of which would trigger a separate per occurrence limit, or if more than one
28 person were subjected to personal injury, which would trigger multiple personal and advertising
injury limits. For purposes of this motion only, St. Paul does not contend there is more than one
occurrence.

injury caused by false imprisonment, Aspen had both its \$1 million per occurrence limit under Coverage A and its \$1 million personal and advertising injury limit under Coverage B, or a total of \$2 million under its CGL Coverage Part, available to accept the \$1.5 million Offer of Judgment.

3. Aspen's Common Conditions Provision Did Not Limit Its Liability Within Its CGL Coverage Part To Only One Million Dollars.

In its first Motion to Dismiss, Aspen argued, without any reference to the insurance policy's terms, that it could not have breached its duty to settle as a matter of law because its policy limit was \$1 million and the lowest settlement offer was the \$1.5 million Offer of Judgment. (Aspen's December 13, 2017 Motion to Dismiss at 14:15 – 15:1). The motion was denied and Aspen then filed a second Motion to Dismiss, which was also denied. In the second motion, Aspen again claimed that, as a matter of law, it was unable to accept the \$1.5 million Offer of Judgment due to a maximum \$1 million limit under the Aspen policy. However, this time Aspen asserted that its Common Policy Conditions endorsement protected it from owing the full \$2 million aggregate limit. (Aspen's June 25, 2018 Motion to Dismiss, at 18:21-24; 19:1-23) This argument is incorrect and demonstrates that Aspen failed in its duty to properly represent the policy terms. The Common Policy Conditions endorsement applies only as between separate coverage parts, not to coverages within a single coverage part. Thus, Aspen owed its full \$2 million policy limits. It was fully within Aspen's ability to accept the Offer of Judgment and avoid being guilty of breach of the duty to settle.

The provision on which Aspen relies states: "If this policy contains two or more Coverage Parts providing coverage for the same 'occurrence,' 'accident,' 'cause of loss,' 'loss' or offense, the maximum limit of insurance under all Coverage Parts shall not exceed the highest limit of insurance under any one Coverage Part." "Coverage Part," while capitalized, is not specifically defined in the Aspen policy. Nevada law requires insurance policies be read as a whole. *American Excess v. MGM Grand*, 102 Nev. 601, 604 (Nev. 1986). Even a cursory review of the first page of Aspen's policy's Declarations reveals the following:

THIS POLICY CONSISTS OF THE FOLLOWING *COVERAGE PARTS* FOR WHICH A PREMIUM IS INDICATED. THIS PREMIUM MAY BE SUBJECT TO ADJUSTMENT.

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	PREMIUM
COMMERCIAL GENERAL LIABILITY COVERAGE PART	\$525,000
COMMERCIAL PROPERTY COVERAGE PART	\$N/A
LIQUOR LIABILITY COVERAGE PART	\$INCLUDED
TERRORISM PREMIUM	\$N/A
...	
FORMS APPLICABLE TO ALL COVERAGE PARTS ; AS PER SCHEDULE OF APPLICABLE FORMS	

See, Derewetzky Decl., Exh. 14 at ASPEN000032 (emphasis added).

This language makes it blatantly obvious that the "Coverage Parts" referred to in the endorsement are the Commercial General Liability Coverage Part, the Commercial Property Coverage Part, the Liquor Liability Coverage Part, etc. That the Commercial General Liability Coverage Part is a *single* coverage part is basic insurance application. The policy does not refer to separate *coverages* within a particular Coverage Part, such as the “bodily injury and property damage” coverage and “personal and advertising injury” coverage that are both found within the single CGL Coverage Part. Nothing in the endorsement or anywhere else in the Aspen policy indicates that the two coverages cannot both respond to appropriate claims where, as here, the underlying action alleges both bodily injury caused by an accident (Marquee employees’ negligence) and personal injury caused by an offense (Marquee employees’ false imprisonment of Moradi). Indeed, the plain language of the policy mandates this result. Thus, Aspen owed both of its \$1 million dollar limits -- one for bodily injury and one for false imprisonment -- for a total of \$2 million in limits.

An examination of the other terms of Aspen's policy also reveals numerous policy provisions confirming St. Paul's interpretation of Aspen's endorsement. For example, the Commercial General Liability Coverage Part (“CGL”) includes another insurance provision on form CG0001 at Section IV(4) which provides:

4. Other Insurance

1 If other valid and collectible insurance is available to the insured
2 for a loss we cover ***under Coverages A and B of this Coverage***
Part, our obligations are limited as follows . . .

3 See, Derewetzky Decl., Exh. 14 at ASPEN000050 (emphasis added).

4 The other insurance clause specifically states that both Coverages A and B fall under a
5 single coverage part, which is the CGL Coverage Part. There is no other way to interpret the
6 provision than that Coverages A and B are not separate coverage parts as that term is used in the
7 Aspen endorsement because the clause applies to losses under both Coverage A and Coverage B.
8 Thus, "this Coverage Part" must refer to the CGL Coverage Part. Accordingly, Aspen's
9 interpretation of the endorsement is wrong.

10 Other sections of form CG0001 within the CGL Coverage Part which apply to both
11 Coverage A and Coverage B also refer to "this Coverage Part" in the singular, including: Section
12 II(2)(d) (regarding the rights and duties of legal representatives under this Coverage Part), the last
13 paragraph of Section III, Limits of Insurance (regarding applicability of the limits within this
14 Coverage Part annually), Section IV(1) (regarding bankruptcy not relieving Aspen of its
15 obligations under this Coverage Part), Section IV(3) (regarding legal action against Aspen under
16 this Coverage Part), Section IV(5) (regarding the premium shown for this Coverage Part), the final
17 paragraph of Section IV(4) (stating that Aspen does not share with policies excess to the limits of
18 this Coverage Part), Section IV(7) (regarding duties assigned the first named insured in this
19 Coverage Part), Section IV(8) (regarding Aspen's right of subrogation for payments made under
20 this Coverage Part), and Section IV(9), (regarding when Aspen decides not to renew this coverage
21 part). Each of these sections is drafted in such a way that they indicate it is the CGL Coverage
22 Part as a whole which is the relevant Coverage Part, not Coverages A and B within it.

23 Further, the Liquor Liability Coverage Part includes analogous references on form CG 00
24 33 12 14, such as the other insurance provision at Section IV(4) of that form. See, Derewetzky
25 Decl., Exh. 14 at ASPEN000058 ("If other valid and collective insurance is available to the
26 insured for a loss we cover under this Coverage Part . . ."). Likewise, the Calculation of Premium
27 endorsement on form IL 00 03 07 02,⁹ a standard form which is drafted to apply to all coverage

28 ⁹ See, Derewetzky Decl., Exh. 14 at ASPEN000040.

1 parts that may appear in a policy, lists the following coverage parts to which it is potentially
2 applicable if they are included: Boiler and Machinery Coverage Part, Capital Assets Program
3 (output policy) Coverage Part, Commercial Automobile Coverage Part, **Commercial General**
4 **Liability Coverage Part**, Commercial Inland Marine Coverage Part, Commercial Property
5 Coverage Part, Crime and Fidelity Coverage Part, Employment-Related Practices Liability
6 Coverage Part, Farm Coverage Part, Liquor Liability Coverage Part, Owners and Contractors
7 Protective Liability Coverage Part, Pollution Liability Coverage Part, Products/Completed
8 Operations Liability Coverage Part, Professional Liability Coverage Part, and Railroad Protective
9 Liability Coverage Part. While these additional coverage parts were not included in Aspen's
10 policy, they provide further evidence of how Aspen (and the insurance industry as a whole)
11 employ the term "coverage part." This unambiguously demonstrates that Coverage A and
12 Coverage B within the CGL Coverage Part are not themselves "Coverage Parts," but rather
13 coverages within a single coverage part.

14 The policy change endorsements (ASPEN0000108-109) also each refer to "Coverage Parts
15 Affected," specifying they apply to the "Commercial General Liability Coverage Part." Numerous
16 endorsements, including the Total Lead Exclusion, Silica Exclusion, contractual liability
17 amendments, hired auto and non-owned auto liability, and *even the endorsement Aspen relies on*
18 *itself*, the "Amendment – Common Policy Conditions" endorsement, state that they modify only
19 the "Commercial General Liability Coverage Part." See, Derewetzky Decl., Exh. 14 at
20 ASPEN000068. This further confirms that the coverage part is the whole CGL Coverage Part, not
21 those separate coverages within it.

22 Finally, if Aspen's position were correct, then it would make no sense for the general
23 aggregate limit section quoted above to state that it limits coverage under Coverage A and
24 Coverage B to the amount of the general aggregate limit of \$2 million. This is because, under
25 Aspen's interpretation, the full amount of both limits could never apply; rather, only a one limit of
26 \$1 million could ever apply, so there would be no need for a general aggregate limit. The per
27 occurrence and personal and advertising injury limits themselves would function as aggregates,
28 because Aspen's liability could not exceed either one of them. Indeed, Aspen's argument would

1 mean that there could not even be more than one per occurrence limit triggered by multiple
2 accidents, or multiple personal and advertising injury limits triggered by injuries to multiple
3 claimants, and yet the way these clauses are drafted clearly contemplates that this could be the
4 case by addressing such situations. For these reasons also, Aspen's argument is wrong.

5 In contrast, Aspen cannot point to any specific use of the term "coverage parts" in its
6 policy which supports its interpretation. Rather, its only "argument" that Coverage A and
7 Coverage B are each "coverage parts" rather than parts of a single "coverage part" is that is what
8 Aspen says it means. This is contrary not only to Nevada's rules of policy interpretation, but to the
9 rules in every jurisdiction. Aspen's empty, unsupported argument is contrary to the fundamental
10 structure and plain language of its policy because it has no other way to avoid liability in excess of
11 limits.

12 Finally, even if Aspen's argument were tenable, which it is not, to the extent there is
13 uncertainty in its policy, that doubt would have to be resolved in favor of coverage. *National*
14 *Union v. Reno Executive Air*, 100 Nev. 360, 365 (1984). Of course, the policy is not ambiguous.
15 It simply does not say what Aspen says it does. Accordingly, Aspen owed both limits, and so
16 failed to settle when good faith required it to do so, rendering it liable for the excess judgment and
17 so too to St. Paul in subrogation.

18 **II. St. Paul is Subrogated to All Claims Cosmo Had Against Aspen Based on the**
19 **\$160.5 Million in Damages Aspen Caused to Cosmo.**

20 Due to Aspen's breach of duty to settle, St. Paul was required to pay a confidential sum to
21 resolve the \$160.5 million judgment entered against Cosmo. Nevada law supports the position
22 that St. Paul is now entitled to assert Cosmo's right to recover those sums from Aspen through
23 both equitable and contractual subrogation.¹⁰

24 "Subrogation is not a cause of action in and of itself," but rather an equitable remedy that
25 allows one party to assert the cause of action of another. 73 Am. Jur. 2d Subrogation § 75; *Pulte*

26 ¹⁰ St. Paul included a more comprehensive discussion of the history and purpose of
27 subrogation in its oppositions to AIG's and Aspen's motions to dismiss. If the Court would like a
28 more detailed discussion of subrogation, St. Paul can provide it or incorporate by reference those
arguments here.

1 *Home Corp. v. Parex, Inc.*, 174 Md. App. 681, 742, 923 A.2d 971, 1005 (2007), *aff'd*, 403 Md.
2 367, 942 A.2d 722 (2008). Under this doctrine, when an insurer pays for an injury to another
3 caused by a third party, then the insurer has the right to step into the injured party's shoes to
4 recover the amount paid from the wrong doer. *Id.* Thus, the burden of the loss is placed on the
5 party that caused it, where it belongs. 73 Am. Jur. 2d Subrogation § 2; *Kim v. Lee*, 145 Wash. 2d
6 79, 88, 31 P.3d 665, 669 (Wash. 2001) ("Subrogation is fundamentally an equitable concept
7 designed 'to impose ultimate responsibility for a wrong or loss on the party who, in equity and
8 good conscience, ought to bear it.'").

9 Foundational to the operation of subrogation is that the party who would have been injured
10 was not ultimately injured because the insurer paid for the injury. *Arguello v. Sunset Station, Inc.*,
11 127 Nev. 365, 368–69, 252 P.3d 206, 208 (2011) ("[A]n insurer that pays its insured in full for
12 claimed losses is subrogated by operation of law to the rights, if any, which the insured may have
13 had against the tortfeasor before payment was made."); *see also, Fireman's Fund Ins. Co. v.*
14 *Maryland Cas. Co.*, 65 Cal. App. 4th 1279, 1292, 77 Cal. Rptr. 2d 296, 302–03 (1998) (including
15 as a necessary element of subrogation that the insurer paid for the claim). Thus, the fact the
16 original party was ultimately protected from injury does not defeat a right of subrogation, but
17 rather establishes it.

18 One of the common areas in which subrogation is employed between insurers is by an
19 excess carrier against a primary carrier which failed to settle within its limits. Cases allowing an
20 excess carrier to proceed against a lower level primary carrier are legion. Litig. & Prev. Ins. Bad
21 Faith § 7:9 ("The courts are all but unanimous in holding that a paying excess carrier, as subrogee
22 of the insured's rights, may maintain an action against a primary carrier for the latter's bad faith,
23 excess liability resulting from breach of its settlement duties, or defense duties, or both. The
24 vehicle used has largely been that of equitable subrogation."); *see, e.g., National Sur. Corp. v.*
25 *Hartford Cas. Ins. Co.*, 493 F.3d 752, 757 n.2 (6th Cir. 2007) (explaining subrogation between
26 primary and excess insurers is the "overwhelming majority" rule and citing cases from twenty-
27 seven jurisdictions in support); *Sequoia Ins. Co. v. Royal Ins. Co. of Am.*, 971 F.2d 1385, 1391
28 (9th Cir. 1992) (primary insurer responsible for excess judgment because of failure to settle, not

1 excess insurer); *Twin City Fire Ins. Co. v. Burke*, 204 Ariz. 251, 255, 63 P.3d 282, 286 (2003)
2 ("An excess insurer's right to bring an action for refusal to settle is premised on the notion that the
3 excess insurer should not have to pay a judgment if the primary insurer caused the excess
4 judgment by the failure to settle within primary limits."). This is because the primary carrier had
5 an obligation to pay before the excess carrier, and because by failing to do so it caused the excess
6 damages for which the excess carrier had to pay per its own policy obligations.

7 Nevada, like jurisdictions nationally, has long recognized that where one party pays for
8 another's injuries, the party who paid has the right to recover the amount it paid from the guilty
9 tortfeasor via subrogation. *See, e.g., Am. Sterling Bank v. Johnny Mgmt. LV, Inc.*, 126 Nev. 423,
10 428, 245 P.3d 535, 538–39 (2010); *Laffranchini v. Clark*, 39 Nev. 48 (1915). Nevada trial courts
11 may apply subrogation in any context to achieve an equitable result, and will be reviewed for
12 abuse of discretion only. *Am. Sterling Bank, supra*; *see also, Zhang v. Recontrust Co., N.A.*, 2017
13 WL 5499229, 405 P.3d 103 (Nev., Docket nos. 69246; 70923, Nov. 15, 2017)(unpublished
14 opinion); *Arguello v. Sunset Station, Inc.*, 127 Nev. 365, 368–69, 252 P.3d 206, 208 (2011); *NAD,*
15 *Inc. v. Eighth Judicial Dist. Court of State, ex rel. Cty. of Clark*, 115 Nev. 71, 76, 976 P.2d 994,
16 997 (1999).

17 Nevada recognizes not only equitable subrogation, but also contractual subrogation, which
18 is not based on equity, but rather a contractual agreement between subrogee and subrogor. *See,*
19 *e.g., Canfora v. Coast Hotels & Casinos, Inc.*, 121 Nev. 771, 776, 121 P.3d 599, 603 (2005)
20 (enforcing a contractual subrogation clause in an employee benefits plan). The Nevada Supreme
21 Court has only restricted enforcement of contractual subrogation clauses in the very limited med-
22 pay context, which is not applicable here, nor to insurers generally. *Id.* The principal difference
23 between contractual and equitable subrogation is that contractual subrogation does not require
24 equitable superiority. *Fortis Benefits v. Cantu*, 234 S.W.3d 642, 647 (Tex. 2007); *see also, Windt,*
25 *Insurance Claims and Disputes Section 10:5* (6th Ed., Thomson Reuters 2018) ("The only
26 differences between the insurer's rights under contractual as opposed to legal subrogation are that,
27 in many states, under the former, the insurer will not have to demonstrate (1) that it is not a
28 volunteer in order to obtain any subrogation rights, and (2) that its equities are superior to the

1 party against whom it is seeking subrogation."); *see, e.g., Nat'l Union Fire Ins. Co. of Pittsburgh,*
2 *Pa. v. Riggs Nat. Bank of Washington, D.C.*, 646 A.2d 966, 971 (D.C. 1994); *Liberty Mut. Ins. Co.*
3 *v. Thunderbird Bank*, 113 Ariz. 375, 379, 555 P.2d 333, 337 (1976); *Mut. Serv. Cas. Ins. Co. v.*
4 *Elizabeth State Bank*, 265 F.3d 601, 628 (7th Cir. 2001).

5 Here, St. Paul has both the right to equitable subrogation and contractual subrogation
6 against Aspen. "There is no general rule to determine whether a right of subrogation exists. Thus,
7 ordering subrogation depends on the equities and attending facts and circumstances of each case."
8 73 Am. Jur. 2d Subrogation § 10. In the insurance context, a widely-cited California court of
9 appeal opinion broke down subrogation into eight elements:

- 10 (a) the insured suffered a loss for which the defendant is liable, either as the
11 wrongdoer whose act or omission caused the loss or because the defendant
12 is legally responsible to the insured for the loss caused by the wrongdoer;
13 (b) the claimed loss was one for which the insurer was not primarily liable;
14 (c) the insurer has compensated the insured in whole or in part for the same
15 loss for which the defendant is primarily liable; (d) the insurer has paid the
16 claim of its insured to protect its own interest and not as a volunteer; (e) the
17 insured has an existing, assignable cause of action against the defendant
18 which the insured could have asserted for its own benefit had it not been
19 compensated for its loss by the insurer; (f) the insurer has suffered damages
20 caused by the act or omission upon which the liability of the defendant
21 depends; (g) justice requires that the loss be entirely shifted from the insurer
22 to the defendant, whose equitable position is inferior to that of the insurer;
23 and (h) the insurer's damages are in a liquidated sum, generally the amount
24 paid to the insured.

19 *Fireman's Fund Ins. Co. v. Maryland Cas. Co.*, 65 Cal.App.4th 1279, 1292, 77 Cal.Rptr.2d
20 296, 302–03 (1998).

21 In the context of subrogation by an excess carrier against a lower level carrier, the Nevada
22 federal district court has opined that while Nevada will weigh these factors, because subrogation is
23 an equitable remedy, none are dispositive except that only the insured's rights may be asserted.
24 *Colony Ins. Co. v. Colorado Cas. Ins. Co.*, 2018 WL 3312965, at *5 (D. Nev. July 5, 2018).

25 For purposes of this case, whether the Court weighs or requires all the factors makes no
26 difference. St. Paul is entitled to subrogation because: a) Cosmo suffered a loss for which Aspen
27 is liable, namely the \$160.5 million excess judgment; b) St. Paul is not primarily liable like Aspen
28 because: i) Aspen is a primary carrier and St. Paul is an excess carrier; and ii) Aspen refused an

1 opportunity to settle for the \$1.5 Offer of Judgment because it claimed it only had a \$1 million
2 limit; c) St. Paul paid to protect its own interest, not as a volunteer, because the claim underlying
3 the judgment was potentially covered under St. Paul's policy; d) Cosmo had an existing assignable
4 cause of action against Aspen that it could have asserted had it not been compensated for its loss
5 by St. Paul; e) St. Paul suffered damages because of Aspen's "limits" position; and g) justice
6 requires the entirety of the loss be shifted to Aspen. Accordingly, St. Paul is subrogated to
7 Cosmo's rights against Aspen the full amount it paid toward settlement.

8 Furthermore, because St. Paul's policy includes a contractual subrogation provision, it does
9 not actually need equitable superiority to prevail against Aspen. Rather, St. Paul can assert
10 Cosmo's causes of action against Aspen as if it were Cosmo, with Aspen's liability determined
11 based solely on whether it would be liable to Cosmo. As explained above, Aspen is liable to
12 Cosmo for failing to accept the \$1.5 Offer of Judgment that then resulted in a \$160.5 million
13 judgement against Cosmo.

14 This result is wholly in accord with the underlying equitable purpose of subrogation,
15 because it places the full cost of the damages caused on the insurer that caused them, rather than
16 other innocent parties who did not. This in turn provides an incentive for malfeasant insurers such
17 as Aspen to honor their duties. Indeed, if subrogation were not permitted, as Aspen and AIG
18 proposed in their failed, misguided motions to dismiss, then insurers would have an incentive not
19 to pay claims they knew were perfectly valid in the hope that some other carrier would pay first
20 and be stuck with the bill. In other words, if subrogation were not permitted, carriers would be
21 forced to "play chicken" with each other, a perilous game which would inevitably result in
22 massive excess judgments such as that at issue here, which damage not only innocent excess
23 carriers whose obligations are not yet triggered, but also insureds themselves. The madness of
24 such a result is why authorities nationwide almost universally support subrogation in cases such as
25 this one.

26 Accordingly, St Paul is entitled to summary judgment against Aspen, and damages in the
27 amount of its payment toward settlement.

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V. CONCLUSION

For all the foregoing reasons, St. Paul’s motion for partial summary judgment should be granted, establishing that Aspen’s policy had \$2 million in limits available for Moradi’s claims.

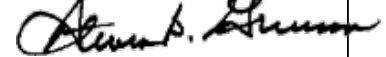
Dated: August 29, 2019

MORALES FIERRO & REEVES

By: /s/Ramiro Morales

Ramiro Morales, [Bar No. 007101]
William C. Reeves [Bar No. 008235]
Marc J. Derewetzky [Bar No.: 006619]
600 So. Tonopah Dr., Suite 300
Las Vegas, NV 89106

Attorneys for Plaintiff, ST. PAUL
FIRE & MARINE INSURANCE
COMPANY



1 **DECL**

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3 E-mail: rmorales@mfrlegal.com

4 WILLIAM C. REEVES [Bar No. 008235]

5 E-mail: wreeves@mfrlegal.com

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8 MORALES, FIERRO & REEVES

9 600 South Tonopah Drive, Suite 300

10 Las Vegas, Nevada 89106

11 Telephone: (702) 699-7822

12 Facsimile: (702) 699-9455

13 Attorneys for Plaintiff, ST. PAUL FIRE &
14 MARINE INSURANCE COMPANY

15
16 DISTRICT COURT

17 CLARK COUNTY, NEVADA

18 ST. PAUL FIRE & MARINE INSURANCE)
19 COMPANY,)

20 Plaintiffs,)

21 vs.)

22 ASPEN SPECIALTY INSURANCE)
23 COMPANY; NATIONAL UNION FIRE)
24 INSURANCE COMPANY OF)
25 PITTSBURGH, PA.; ROOF DECK)
26 ENTERTAINMENT, LLC, d/b/a MARQUEE)
27 NIGHTCLUB; and DOES 1 through 25,)
28 inclusive,)

Defendants.)

CASE NO.: A-17-758902-C

**DECLARATION OF MARC J.
DEREWETZKY IN SUPPORT OF
PLAINTIFF ST. PAUL FIRE & MARINE
INSURANCE COMPANY'S MOTION
FOR PARTIAL SUMMARY
JUDGMENT AGAINST DEFENDANT
ASPEN SPECIALTY INSURANCE
COMPANY**

Date:

Time:

Dept.: XXVI

I, Marc J. Derewetzky, declare:

1. I am an attorney duly licensed to practice before the Courts of the State of Nevada and am an associate with Morales, Fierro & Reeves, counsel of record for Plaintiff St. Paul Fire & Marine Insurance Company ("St. Paul") herein. I have personal knowledge of all facts contained in this Declaration and if call as a witness in this matter, I could and would competently testify thereto. I make this Declaration in support of St. Paul's Motion For Partial Summary Judgment Against Defendant Aspen Specialty Insurance Company herein.

1 2. The Marquee Nightclub was managed by Roof Deck Entertainment, LLC, dba
2 Marquee Nightclub (“Marquee”) on property owned by Cosmopolitan Hotel and Casino
3 (“Cosmo”), as reflected in the Nightclub Management Agreement between Nevada Restaurant
4 Venture 1 LLC and Roof Deck Entertainment, LLC. The Nightclub Management Agreement
5 contains confidential information and therefore was filed under temporary seal by Marquee as
6 Exhibit A to Marquee’s Appendix of Exhibits in support of its Motion to Dismiss St. Paul’s
7 complaint in this action on or about December 4, 2017, and is therefore part of the record in this
8 case and available for the Court’s review.

9 3. Attached hereto as Exhibit 13 are true and correct copies pages 61-64 of the
10 Nightclub Management Agreement that reflect the fact that Marquee agreed to defend and
11 indemnify Cosmo for liability for Marquee’s or its employees’ breach of that agreement or their
12 negligence or willful misconduct, that Cosmo would be named as an additional insured under any
13 liability policies Marquee procured, and that such insurance provided by Marquee would be
14 primary.

15 4. The *Moradi* Action settled after the verdict was rendered and before the punitive
16 damages phase of the trial for a confidential sum.

17 5. Aspen issued a primary insurance policy with a CGL Coverage Part and a Liquor
18 Liability Coverage Part to Marquee effective October 16, 2011 to October 16, 2012. Attached as
19 Exhibit 14 hereto is a true and correct copy of the Aspen policy as produced in this case pursuant
20 to Aspen’s Rule 16.1 Initial Disclosures, and bearing Bates numbers ASPEN000032-000149.

21 6. In response to tenders of the *Moradi* action, Aspen provided a joint defense to both
22 Marquee and Cosmo. Attached hereto as Exhibits 15 and 16 are true and correct copies of letters
23 to Marquee and Cosmo, respectively, stating that Aspen was appointing the same law firm,
24 Kravitz, Schnitzer & Johnson, to represent both defendants in the *Moradi* Action. Neither of
25 these letters inform the addressees of any actual or potential conflict of interest in the
26 representation of both by the same firm. And Aspen has not provided any other documentation
27 of a request for a conflict waiver directed to Cosmo or Marquee, much less documentation
28 informing either party of a potential conflict.

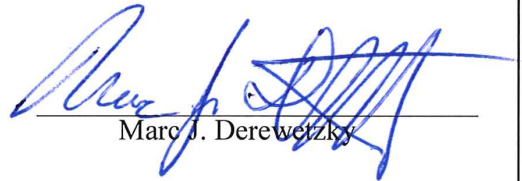
1 7. As early as November 13, 2015, defense counsel Aspen appointed and controlled
2 specifically warned Aspen of the potential for a catastrophic verdict of \$310 million in
3 compensatory damages, and predicted a defense verdict only 3 out of 10 times, *i.e.*, there was a 70
4 percent chance of plaintiff prevailing. A true and correct copy of a letter from Kravitz, Schnitzer
5 & Johnson to Aspen dated November 13, 2015 containing this analysis is attached hereto as
6 Exhibit 17.

7 8. On or about December 10, 2015, Moradi served a formal, written statutory Offer of
8 Judgment in the amount of \$1,500,000. A true and correct copy of the Offer of Judgment is
9 attached hereto as Exhibit 18.

10 I declare under penalty of perjury under the laws of the State of Nevada and of the United
11 States of America that the foregoing is true and correct.

12 Executed this 29th day of August 2019 at Concord, CA.

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Marc J. Derewetzky

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EXHIBIT 13

DECLARATION OF MARC J. DEREWETZKY IN SUPPORT
OF MOTION FOR PARTIAL SUMMARY JUDGMENT

CASE NO. A-17-758902-C

AA00055

contrary contained herein, in no event shall Owner be obligated to fund any amounts (a) required to pay any portion of the Management Fee or Base Rent, that are not consistent with the then applicable Annual Operations Budget (or the permitted deviations therefrom pursuant to Section 6.4) or (b) at any time Operator is in default under this Agreement beyond applicable notice and grace periods. In no event shall Owner be obligated to fund during the Term of this Agreement an aggregate amount in excess of Seven Hundred Fifty Thousand Dollars (\$750,000.00) outstanding at any time (the "**Maximum Additional Funding Amount**"). Except as aforesaid, Owner shall provide and make the requested funds available for the use specified in the Funding Notice within the forty-five (45) day time period (each such funding event is referred to herein as an "**Additional Funding Installment**"). As used herein, "**Additional Funding Total**" shall mean the total amount of funds funded by Owner in connection with the Nightclub Venues Operations pursuant to this paragraph from and after the Opening Date and outstanding from time to time. The outstanding balance of the Additional Funding Total shall be treated as a loan made as of the date of each such Additional Funding Installment during the Fiscal Year in which the funding of such Additional Funding Installment is made, and shall accrue a preferred return of the Base Rate. The aggregate outstanding amount of the Additional Funding Total, together with all outstanding accrued preferred return thereon, shall be referred to herein as the "**Additional Funding Total Balance**." The Additional Funding Total Balance shall be repaid to Owner pursuant to Section 4.2 above.

10.3 Cash Drawers. Owner shall provide Operator with cash for cashier drawers in amounts adequate for the initial operation of the Nightclub Venues and all funds so provided shall be deemed to be Pre-Opening Expenses. After the initial opening of the Nightclub Venues, Operator shall be responsible for maintaining adequate cash drawer balances to reflect the needs and operations of the Nightclub Venues.

10.4 Disputed Nightclub Venue Charges. If a guest of the Project complains about or refuses to pay all or any portion of any charge at the Nightclub Venues because of an issue concerning Operator's services or product, Operator shall use commercially reasonable efforts to address such complaints or refusals. If Owner determines that an excessive number of patrons are disputing bills, complaining about quality or service or refusing to pay a portion of their bills attributable to charges at the Nightclub Venues, then Operator shall, upon ten (10) days' prior written notice from Owner, meet with Owner to discuss possible procedures for improving quality and service.

11. No Partnership

Nothing in this Agreement shall constitute or be construed as creating a tenancy, employment, partnership, or joint venture between the Owner and Operator. Operator and Owner agree that Operator will perform its services under this Agreement as an independent contractor. Neither Party nor any of the respective agents will be considered employees or agents of the other Party hereunder or its Affiliates as a result of this Agreement.

12. Insurance

12.1 Owner's Insurance. During the Term of this Agreement, Owner shall provide and maintain the following insurance coverage, at its sole cost and expense (and not as an Operating Expense):

12.1.1 Personal property insurance covering Owner's personal property located on the Premises and all alterations, improvements and betterments existing or added to the Premises;

12.1.2 Commercial general liability insurance, including contractual liability and liability for bodily injury or property damage, with a combined single limit of not less than Two Million Dollars (\$2,000,000) for each occurrence, and at least Four Million Dollars (\$4,000,000) in the aggregate, including excess coverage; and

12.1.3 Any coverage required under the terms of the Lease to the extent such coverage is not the responsibility of Operator to provide pursuant to Section 12.2 below.

12.2 Operator's Insurance.

12.2.1 During the Term of this Agreement, Operator shall provide and maintain the following insurance coverage (the "Operator Policies"), the cost of which shall be an Operating Expense:

12.2.1.1 Commercial general liability insurance (occurrence form), including broad form contractual liability coverage, with minimum coverages as follows: general aggregate - \$4,000,000; products-completed operations aggregate - \$4,000,000; personal and advertising injury - \$5,000,000; liquor liability - \$1,000,000 with \$4,000,000 liquor liability annual aggregate each occurrence - \$2,000,000; fire damage (any one fire) - \$2,000,000; and medical expense (any one person) - \$5,000;

12.2.1.2 Excess liability insurance (follow form excess or umbrella), liquor liability, commercial general liability, automobile liability, and employers liability), with minimum coverages as follows: each occurrence - \$25,000,000; aggregate - \$25,000,000;

12.2.1.3 Workers compensation insurance which complies with the applicable workers compensation laws governing the State of Nevada;

12.2.1.4 Employers' liability insurance, with minimum coverages as follows: each accident - \$1,000,000; disease (each employee) - \$1,000,000; disease (policy limit) - \$1,000,000;

12.2.1.5 Automobile liability insurance (any auto or owned, hired and non-owned vehicles), with a minimum coverage of \$1,000,000 for combined single limit per accident for bodily injury and property damage;

12.2.1.6 Employee dishonesty insurance, with a minimum coverage of \$1,000,000; and

12.2.1.7 Employment practices liability insurance, including third party coverage, with minimum coverages of \$2,000,000 for each claim, and \$2,000,000 in the aggregate.

12.2.2 Notwithstanding anything to the contrary contained herein, if the types of coverage or the minimum coverages for any or all of the Operator Policies as set forth herein is less than the coverage requirements required by owners or landlords of other high revenue nightclubs in Las Vegas, Nevada or by Owner's reasonable internal insurance requirements, or any lender of the Project, the scope and coverage to be maintained by Operator for each such coverage shall be the greater of the minimum coverage required herein and the minimum coverage so required by Owner or such lender.

12.2.3 Except with respect to the workers compensation and the employee practices liability insurance, Owner, Project Owner, the landlord and tenant under the Lease, Hotel Operator, their respective parents, subsidiaries and Affiliates, and their respective officers, directors, officials, managers, employees and agents (collectively, "**Owner Insured Parties**"), shall all be named as additional insureds on all other Operator Policies.

12.2.4 All Operator Policies shall be issued by a carrier approved in advance by Owner (which approval shall not be unreasonably withheld), provided, that such carrier shall have a current A.M. Best Company rating of at least a-VII and shall be licensed in the State of Nevada. Owner may require Operator to utilize one or more carriers selected by Owner or participate in such pooled insurance programs with Project Owner and/or other operators of retail locations in the Project as Owner may reasonably designate, so long as the coverage and cost is competitive with what Operator could otherwise obtain. Except as prohibited by applicable Laws, the minimum coverages of the various Operator Policies may be adjusted by Owner from time to time as set forth above upon thirty (30) days written notice delivered to Operator notifying Operator of the adjustments required to the coverage amounts.

12.2.5 All insurance coverages maintained by Operator shall be primary to any insurance coverage maintained by any Owner Insured Parties (the "**Owner Policies**"), and any such Owner Policies shall be in excess of, and not contribute towards, Operator Policies. The Operator Policies shall apply separately to each insured against whom a claim is made, except with respect to the limits of the insurer's liability.

12.2.6 All Owner Policies and Operator Policies shall contain a waiver of subrogation against the Owner Insured Parties and Operator and its officers, directors, officials, managers, employees and agents and the Operator Principals. The coverages provided by Owner and Operator shall not be limited to the liability assumed under the indemnification provisions of this Agreement.

12.2.7 Not later than fifteen (15) days before the Effective Date and at least annually thereafter, Operator shall deliver to Owner certificates of insurance evidencing that all of the Operator Policies have been obtained and are in full force and effect and providing that the insurance company will endeavor to provide Owner with not less than thirty (30) days prior written notice of any cancellation or modification of any of the Operator Policies (or ten days in the case of non payment of premiums), including any changes to the coverage amounts. Failure by Operator to provide and maintain all Operator Policies as required herein, or failure to provide the certificates of insurance, shall be considered a default of this Agreement.

13. Indemnity

13.1 By Operator. Operator shall indemnify, hold harmless and defend Owner and its respective parents, subsidiaries and Affiliates and all of each of their respective officers, directors, shareholders, employees, agents, members, managers, representatives, successors and assigns ("**Owner Indemnitees**") from and against any and all Losses to the extent incurred as a result of (i) the breach or default by Operator of any term or condition of this Agreement, or (ii) the negligence or willful misconduct of Operator or any of its owners, principals, officers, directors, agents, employees, Staff, members, or managers ("**Operator Representatives**") and not otherwise covered by the insurance required to be maintained hereunder. Operator's indemnification obligation hereunder shall include liability for any deductibles and/or self retained insurance retentions to the extent permitted hereunder, and shall terminate on the termination of the Term; provided however that such indemnification obligation shall continue in

effect for a period of three (3) years following the termination of the Term with respect to any events or occurrences occurring prior to the termination of the Term.

13.2 By Owner. Owner shall indemnify, hold harmless and defend Operator and its respective parents, subsidiaries and Affiliates and all of each of their respective officers, directors, shareholders, employees, agents, members, managers, representatives, successors and assigns ("**Operator Indemnitees**") from and against any and all Losses to the extent incurred as a result of (i) the breach or default by Owner of any term or condition of this Agreement or (ii) the negligence or willful misconduct of Owner or any of its owners, principals, officers, directors, agents, employees, members, or managers and not otherwise covered by the insurance required to be maintained hereunder. Owner's indemnification obligation hereunder shall terminate on the termination of the Term; provided, however, that such indemnification obligation shall continue in effect for a period of three (3) years following the termination of the Term with respect to any events or occurrences occurring prior to the termination of the Term.

14. Termination

14.1 By Owner. In addition to other termination rights in this Agreement, Owner shall have the right to terminate this Agreement upon the occurrence of any one or more of the following events:

14.1.1 The default by Operator under this Agreement. In the event of a default, Owner shall be entitled to all rights and remedies available at law or in equity including, without limitation, the right to damages and injunctive relief. The following shall constitute a default by Operator:

- (a) Operator becomes the subject of any Bankruptcy;
- (b) Operator making a Transfer, or purported Transfer, in violation of Section 16.1 below;
- (c) A breach by Operator of Section 36;
- (d) Any breach by Operator of any provision of this Agreement which expressly contains a specific cure period where Operator fails to cure such breach within the applicable cure period, including, without limitation, Section 5.2 or Section 8.8;
- (e) Without opportunity to cure, conviction of Operator, or any of Operator Principals, of any felony, including without limitation criminal fraud, embezzlement, forgery or bribery, as defined under the laws of the United States, the State of Nevada or any other state, or any other crime that the Gaming Authorities could serve as a basis for loss or suspension of any of Operator's or Owner's licenses or permits as provided in Section 8.8.1 hereof, including but not limited to gaming or liquor licenses unless Operator promptly disassociates itself from such Person;
- (f) Without opportunity to cure, in the event of any loss or suspension of any gaming, liquor or other material license of Owner or any loss of any liquor license finding of suitability or other material license or permit required in order for Operator to provide its services hereunder, in each case, by reason of the acts or omission of Operator or its Principals;

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EXHIBIT 14

DECLARATION OF MARC J. DEREWETZKY IN SUPPORT
OF MOTION FOR PARTIAL SUMMARY JUDGMENT

CASE NO. A-17-758902-C

AA00060

ASPEN SPECIALTY INSURANCE COMPANY
POLICY NUMBER: CRA8XYD11
RENEWAL OF: NEW



COMMON POLICY DECLARATIONS

ASPEN SPECIALTY INSURANCE COMPANY c/o Aspen Specialty Insurance Management, Inc. 590 Madison Avenue, 7th Floor New York, NY 10022	AMWINS INSURANCE BROKERAGE OF CA 601 S. FIGUEROA STREET LOS ANGELES, CA 90017
NAMED INSURED: THE RESTAURANT GROUP ETAL MAILING ADDRESS: 888 7TH AVENUE, 34TH FLOOR NEW YORK, NY 10106 POLICY PERIOD: FROM 10/06/2011 TO 10/06/2012 AT 12:01 A.M. STANDARD TIME AT YOUR MAILING ADDRESS SHOWN ABOVE.	

BUSINESS DESCRIPTION	
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IN RETURN FOR THE PAYMENT OF THE PREMIUM, AND SUBJECT TO ALL THE TERMS OF THIS POLICY, WE AGREE WITH YOU TO PROVIDE THE INSURANCE AS STATED IN THIS POLICY.

THIS POLICY CONSISTS OF THE FOLLOWING COVERAGE PARTS FOR WHICH A PREMIUM IS INDICATED. THIS PREMIUM MAY BE SUBJECT TO ADJUSTMENT.	
COMMERCIAL GENERAL LIABILITY COVERAGE PART	PREMIUM \$ [REDACTED]
COMMERCIAL PROPERTY COVERAGE PART	\$ [REDACTED]
LIQUOR LIABILITY COVERAGE PART	\$ [REDACTED]
TERRORISM PREMIUM	\$ [REDACTED]
TOTAL ADVANCE PREMIUM DUE AND PAYABLE AT INCEPTION	\$ [REDACTED]
Minimum retained audit prem: \$100%	Minimum retained premium: \$ [REDACTED]
FORMS APPLICABLE TO ALL COVERAGE PARTS: AS PER SCHEDULE OF APPLICABLE FORMS	

NEW YORK: The insurer(s) named herein is (are) not licensed by the state of New York, not subject to its supervision, and in the event of the insolvency of the insurer(s), not protected by the New York State Security Funds. The policy may not be subject to all the regulations of the insurance department pertaining to policy forms.

Surplus Lines Broker Name: AMWINS INSURANCE BROKERAGE OF CA
Surplus Lines Broker Address: 601 S. FIGUEROA STREET
LOS ANGELES, CA 90017
Surplus Lines Broker License No.: EX-1053628-R

Jaime E. DeCantillon
Authorized Representative

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Page 1 of 1

ASPGL074 DEC 0511

AA00061

ASPEN SPECIALTY INSURANCE COMPANY
POLICY NUMBER: CRA8XYD11
RENEWAL OF: NEW



COMMERCIAL GENERAL LIABILITY DECLARATIONS

ASPEN SPECIALTY INSURANCE COMPANY c/o Aspen Specialty Insurance Management, Inc. 590 Madison Avenue, 7th Floor New York, NY 10022	AMWINS INSURANCE BROKERAGE OF CA 601 S. FIGUEROA STREET LOS ANGELES, CA 90017
NAMED INSURED: THE RESTAURANT GROUP ETAL	
MAILING ADDRESS: 888 7TH AVENUE, 34TH FLOOR NEW YORK, NY 10106	
POLICY PERIOD: FROM 10/06/2011 TO 10/06/2012 AT 12:01 A.M. TIME AT YOUR MAILING ADDRESS SHOWN ABOVE.	

IN RETURN FOR THE PAYMENT OF THE PREMIUM, AND SUBJECT TO ALL THE TERMS OF THIS POLICY, WE AGREE WITH YOU TO PROVIDE THE INSURANCE AS STATED IN THIS POLICY.

LIMITS OF INSURANCE		
EACH OCCURRENCE LIMIT	\$ 1,000,000	
DAMAGE TO PREMISES		
RENTED TO YOU LIMIT	\$ 100,000	Any one premises
MEDICAL EXPENSE LIMIT	\$ N/A	Any one person
PERSONAL & ADVERTISING INJURY LIMIT	\$ 1,000,000	Any one person or organization
GENERAL AGGREGATE LIMIT		\$ 2,000,000
PRODUCTS/COMPLETED OPERATIONS AGGREGATE LIMIT		\$ 2,000,000

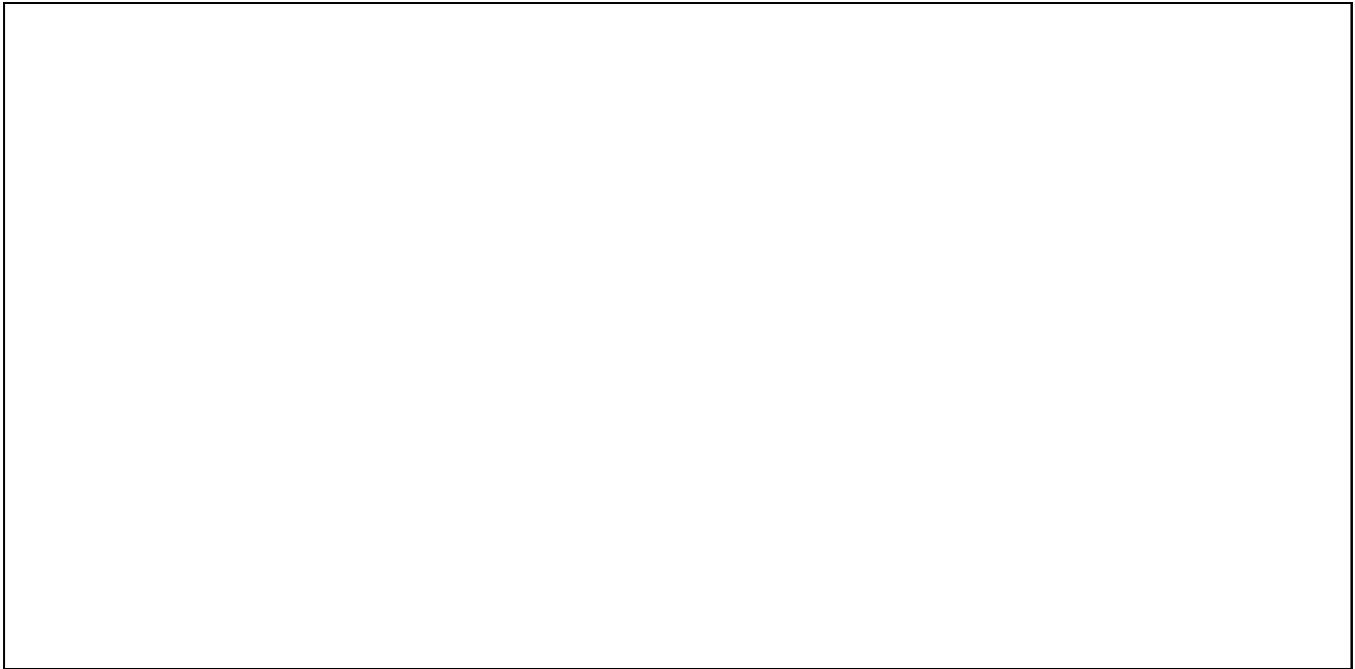
DESCRIPTION OF BUSINESS	
FORM OF BUSINESS:	
<input type="checkbox"/> INDIVIDUAL <input type="checkbox"/> PARTNERSHIP <input type="checkbox"/> JOINT VENTURE <input type="checkbox"/> TRUST	
<input type="checkbox"/> LIMITED LIABILITY COMPANY <input checked="" type="checkbox"/> ORGANIZATION, INCLUDING A CORPORATION (BUT NOT INCLUDING A PARTNERSHIP, JOINT VENTURE OR LIMITED LIABILITY COMPANY)	
<input type="checkbox"/> OTHER	
BUSINESS DESCRIPTION:	
ALL PREMISES YOU OWN, RENT OR OCCUPY	
LOCATION NUMBER	
	SEE FORM #CG2144

CLASSIFICATION AND PREMIUM							
LOCATION NUMBER	CLASSIFICATION	BASE	EXPOSURE	RATE/1000		ADVANCE PREMIUM	
				Prem/ Ops	Prod Comp Ops	Prem/ Ops	Prod Comp Ops
	COMPOSITE RATE ALL OPERATIONS	GROSS SALES	\$175,000,000	\$3.00	INCL.	\$ [REDACTED]	INCL.
ADVANCE PREMIUM DUE AND PAYABLE AT INCEPTION (SUBJECT TO AUDIT) \$ [REDACTED] MINIMUM RETAINED AUDIT PREMIUM \$ [REDACTED] MINIMUM RETAINED PREMIUM \$ [REDACTED]							
AUDIT PERIOD (IF APPLICABLE)		<input checked="" type="checkbox"/> ANNUALLY	<input type="checkbox"/> SEMI- ANNUALLY	<input type="checkbox"/> QUARTERLY		<input type="checkbox"/> MONTHLY	

ENDORSEMENTS ENDORSEMENTS ATTACHED TO THIS POLICY: <u>SEE SCHEDULE OF APPLICABLE FORMS</u>

THESE DECLARATIONS, TOGETHER WITH THE COMMON POLICY CONDITIONS AND COVERAGE FORM(S) AND ANY ENDORSEMENT(S), COMPLETE THE ABOVE NUMBERED POLICY.


 Authorized Representative





COMMERCIAL GENERAL LIABILITY

IN RETURN FOR THE PAYMENT OF THE PREMIUM, AND SUBJECT TO ALL THE TERMS OF THIS POLICY, WE AGREE WITH YOU TO PROVIDE THE INSURANCE AS STATED IN THIS POLICY.

DESCRIPTION OF BUSINESS	
FORM OF BUSINESS:	
<input type="checkbox"/> INDIVIDUAL	<input type="checkbox"/> PARTNERSHIP <input type="checkbox"/> JOINT VENTURE
<input type="checkbox"/> LIMITED LIABILITY COMPANY	<input checked="" type="checkbox"/> ORGANIZATION, INCLUDING A CORPORATION (BUT NOT INCLUDING A PARTNERSHIP, JOINT VENTURE OR LIMITED LIABILITY COMPANY)
<input type="checkbox"/> OTHER	
BUSINESS DESCRIPTION:	

AA00065

NEW YORK: The insurer(s) named herein is (are) not licensed by the state of New York, not subject to its supervision, and in the event of the insolvency of the insurer(s), not protected by the New York State Security Funds. The policy may not be subject to all the regulations of the insurance department pertaining to policy forms.

Surplus Lines Broker Name: AMWINS INSURANCE BROKERAGE OF CA

Surplus Lines Broker Address: 601 S. FIGUEROA STREET

LOS ANGELES, CA 90017


Surplus Lines Broker License No.: EX-1053628-R

Surplus Lines State Taxes were filed: New York

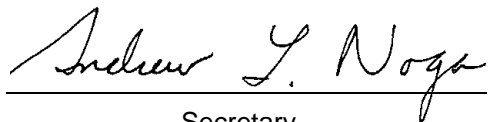
CLASSIFICATION AND PREMIUM				
CLASSIFICATION	CODE NO.	PREMIUM BASE	RATE	ADVANCE PREMIUM
COMPOSITE RATE ALL OPERATIONS	FLAT	\$ FLAT	\$ FLAT	\$ INCL.
ADVANCE PREMIUM DUE AND PAYABLE AT INCEPTION (SUBJECT TO AUDIT) \$ ████ MINIMUM RETAINED AUDIT PREMIUM \$ ████ MINIMUM RETAINED PREMIUM \$ ████ (IF POLICY PERIOD IS MORE THAN ONE YEAR AND PREMIUM IS PAID IN ANNUAL INSTALLMENTS)				
AUDIT PERIOD (IF APPLICABLE)	<input type="checkbox"/> ANNUALLY	<input type="checkbox"/> SEMI-ANNUALLY	<input type="checkbox"/> QUARTERLY	<input type="checkbox"/> MONTHLY

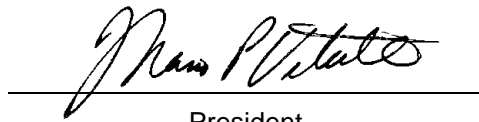
ENDORSEMENTS
ENDORSEMENTS ATTACHED TO THIS POLICY:
SEE SCHEDULE OF APPLICABLE FORMS

THESE DECLARATIONS, TOGETHER WITH THE COMMON POLICY CONDITIONS AND COVERAGE FORM(S) AND ANY ENDORSEMENT(S), COMPLETE THE ABOVE NUMBERED POLICY.


Authorized Representative

IN WITNESS WHEREOF, the Insurer has caused this Policy to be signed by its President and Secretary and countersigned where required by law on the Declarations page by its duly Authorized representative.


Secretary


President

COMMON POLICY CONDITIONS

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

A. Cancellation

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

B. Changes

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

C. Examination Of Your Books And Records

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

D. Inspections And Surveys

1. We have the right to:
 - a. Make inspections and surveys at any time;

- b. Give you reports on the conditions we find; and

- c. Recommend changes.

2. We are not obligated to make any inspections, surveys, reports or recommendations and any such actions we do undertake relate only to insurability and the premiums to be charged. We do not make safety inspections. We do not undertake to perform the duty of any person or organization to provide for the health or safety of workers or the public. And we do not warrant that conditions:

- a. Are safe or healthful; or

- b. Comply with laws, regulations, codes or standards.

3. Paragraphs 1. and 2. of this condition apply not only to us, but also to any rating, advisory, rate service or similar organization which makes insurance inspections, surveys, reports or recommendations.

4. Paragraph 2. of this condition does not apply to any inspections, surveys, reports or recommendations we may make relative to certification, under state or municipal statutes, ordinances or regulations, of boilers, pressure vessels or elevators.

E. Premiums

The first Named Insured shown in the Declarations:

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

F. Transfer Of Your Rights And Duties Under This Policy

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

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

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CALCULATION OF PREMIUM

THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE FOLLOWING:

BOILER AND MACHINERY COVERAGE PART
CAPITAL ASSETS PROGRAM (OUTPUT POLICY) COVERAGE PART
COMMERCIAL AUTOMOBILE COVERAGE PART
COMMERCIAL GENERAL LIABILITY COVERAGE PART
COMMERCIAL INLAND MARINE COVERAGE PART
COMMERCIAL PROPERTY COVERAGE PART
CRIME AND FIDELITY COVERAGE PART
EMPLOYMENT-RELATED PRACTICES LIABILITY COVERAGE PART
FARM COVERAGE PART
LIQUOR LIABILITY COVERAGE PART
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART
POLLUTION LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART
PROFESSIONAL LIABILITY COVERAGE PART
RAILROAD PROTECTIVE LIABILITY COVERAGE PART

The following is added:

The premium shown in the Declarations was computed based on rates in effect at the time the policy was issued. On each renewal, continuation, or anniversary of the effective date of this policy, we will compute the premium in accordance with our rates and rules then in effect.

SCHEDULE OF APPLICABLE FORMS

COMMERCIAL GENERAL LIABILITY

NAMED INSURED: THE RESTAURANT GROUP ETAL

POLICY NUMBER: CRA8XYD11

FORMS AND ENDORSEMENTS MADE PART OF THIS POLICY AT TIME OF ISSUE:

FORM NUMBER AND TITLE:

ASPL074 DEC 0511	Common Policy Declarations
ASPL075 DEC 0511	Commercial General Liability Declarations
ASPL007 DEC 0511	Liquor Liability Declarations
ASPL020 0511	Signature Page
IL 00 17 11 98	Common Policy Conditions
IL 00 03 07 02	Calculation of Premium
ASPL006 0104	Schedule of Applicable Forms
CG 00 01 12 07	Commercial General Liability Coverage Form Occurrence
CG 00 33 12 04	Liquor Liability Coverage Form
ASPL001 0104	Asbestos Exclusion Endorsement
ASPL003 0104	Total Lead Exclusion
ASPL004 0104	Additional Named Insured
ASPL007 0104	Silica Exclusion Endorsement
ASPL019 0404	Contractual Liability - Amendments
ASPL035 0504	Hired Auto and Non-Owned Auto Liability
ASPL044 0504	Amendment - Common Policy Conditions
ASPL050 0604	Electromagnetic Fields {EMF's} Exclusion
ASPL057 1004	Garagekeepers Coverage
ASPL071 0305	Bodily Injury Property Damage Personal and Advertising Injury Liability Deductible Per Occurrence
ASPL098 0406	Discrimination Exclusion
ASPL133 0807	Amendment - Cross Suits
ASPL001 0204	Common Policy Conditions Amendment Minimum Retained Premium
ASPL002 0110	General Service of Suit Endorsement
ASPL002 0304	Liquor Liability Minimum Retained Audit Premium
CG 00 62 12 02	War Liability Exclusion
CG 00 68 05 09	Recording and Distribution of Material or Information in Violation of Law Exclusion
CG 04 35 02 02	Employee Benefits Liability Coverage
CG 20 11 01 96	Additional Insured - Managers Or Lessors Of Premises
CG 20 18 11 85	Additional Insured - Mortgagee Assignee Or Receiver
CG 20 28 07 04	Additional Insured - Lessor Of Leased Equipment
CG 21 16 07 98	Exclusion - Designated Professional Services
CG 21 35 10 01	Exclusion - Coverage C - Medical Payments
CG 21 44 07 98	Limitation Of Coverage To Designated Premises Or Project
CG 21 47 07 98	Employment - Related Practices Exclusion
CG 21 54 01 96	Exclusion - Designated Operations Covered By A Consolidated Wrap-Up Insurance Program
CG 21 65 12 04	Total Pollution Exclusion With A Building Heating Equipment Exception And A Hostile Fire Exception
CG 21 67 04 02	Fungi Or Bacteria Exclusion
CG 21 75 12 02	Exclusion Of Certified Acts Of Terrorism And Other Acts Of Terrorism
CG 22 43 07 98	Exclusion - Engineers Architects or Surveyors Professional Liability
CG 24 07 01 96	Products/Completed Operations Hazard Redefined
CG 25 04 03 97	Designated Locations General Aggregate Limit
IL 00 21 07 02	Nuclear Energy Liability Exclusion Endorsement
IL 12 01 11 85	Policy Changes
IL 12 01 11 85\2	Policy Changes
ASPL139 0811	Policyholder's Guide to Reporting a Casualty Claim

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

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

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as a Named Insured under this policy. The words "we", "us" and "our" refer to the company providing this insurance.

The word "insured" means any person or organization qualifying as such under Section II – Who Is An Insured.

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

SECTION I – COVERAGES

COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY

1. Insuring Agreement

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

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

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

- b. This insurance applies to "bodily injury" and "property damage" only if:
- (1) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";

- (2) The "bodily injury" or "property damage" occurs during the policy period; and

- (3) Prior to the policy period, no insured listed under Paragraph 1. of Section II – Who Is An Insured and no "employee" authorized by you to give or receive notice of an "occurrence" or claim, knew that the "bodily injury" or "property damage" had occurred, in whole or in part. If such a listed insured or authorized "employee" knew, prior to the policy period, that the "bodily injury" or "property damage" occurred, then any continuation, change or resumption of such "bodily injury" or "property damage" during or after the policy period will be deemed to have been known prior to the policy period.

- c. "Bodily injury" or "property damage" which occurs during the policy period and was not, prior to the policy period, known to have occurred by any insured listed under Paragraph 1. of Section II – Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim, includes any continuation, change or resumption of that "bodily injury" or "property damage" after the end of the policy period.

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

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

- e. Damages because of "bodily injury" include damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury".

2.Exclusions

This insurance does not apply to:

a. Expected Or Intended Injury

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

from the use of reasonable force to protect persons or property.

b. Contractual Liability

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

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

c. Liquor Liability

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

- (1) Causing or contributing to the intoxication of any person;
- (2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
- (3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

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

d. Workers' Compensation And Similar Laws

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

e. Employer's Liability

"Bodily injury" to:

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

graph (1) above.

This exclusion applies whether the insured may be liable as an employer or in any other capacity and to any obligation to share damages with or repay someone else who must pay damages because of the injury.

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

f. Pollution

- (1) "Bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":
 - (a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any insured. However, this subparagraph does not apply to:
 - (i) "Bodily injury" if sustained within a building and caused by smoke, fumes, vapor or soot produced by or originating from equipment that is used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use, by the building's occupants or their guests;
 - (ii) "Bodily injury" or "property damage" for which you may be held liable, if you are a contractor and the owner or lessee of such premises, site or location has been added to your policy as an additional insured with respect to your ongoing operations performed for that additional insured at that premises, site or location and such premises, site or location is not and never was owned or occupied by, or rented or loaned to, any insured, other than that additional insured; or
 - (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire";
 - (b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;
 - (c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for:
 - (i) Any insured; or
 - (ii) Any person or organization for whom you may be legally responsible; or
 - (d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the "pollutants" are brought on or to

the premises, site or location in connection with such operations by such insured, contractor or subcontractor. However, this subparagraph does not apply to:

- (i) "Bodily injury" or "property damage" arising out of the escape of fuels, lubricants or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for the operation of "mobile equipment" or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the "bodily injury" or "property damage" arises out of the intentional discharge, dispersal or release of the fuels, lubricants or other operating fluids, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent that they be discharged, dispersed or released as part of the operations being performed by such insured, contractor or subcontractor;
 - (ii) "Bodily injury" or "property damage" sustained within a building and caused by the release of gases, fumes or vapors from materials brought into that building in connection with operations being performed by you or on your behalf by a contractor or subcontractor; or
 - (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire".
- (e) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants".
- (2) Any loss, cost or expense arising out of any:
- (a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
 - (b) Claim or "suit" by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

However, this paragraph does not apply to liability for damages because of "property damage" that the insured would have in the absence of

such request, demand, order or statutory or regulatory requirement, or such claim or "suit" by or on behalf of a governmental authority.

g. Aircraft, Auto Or Watercraft

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

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

This exclusion does not apply to:

- (1) A watercraft while ashore on premises you own or rent;
- (2) A watercraft you do not own that is:
 - (a) Less than 26 feet long; and
 - (b) Not being used to carry persons or property for a charge;
- (3) Parking an "auto" on, or on the ways next to, premises you own or rent, provided the "auto" is not owned by or rented or loaned to you or the insured;
- (4) Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft; or
- (5) "Bodily injury" or "property damage" arising out of:
 - (a) The operation of machinery or equipment that is attached to, or part of, a land vehicle that would qualify under the definition of "mobile equipment" if it were not subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged; or
 - (b) the operation of any of the machinery or equipment listed in Paragraph f.(2) or f.(3) of the definition of "mobile equipment".

h. Mobile Equipment

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

- (1) The transportation of "mobile equipment" by an "auto" owned or operated by or rented or loaned to any insured; or
- (2) The use of "mobile equipment" in, or while in practice for, or while being prepared for, any prearranged racing, speed, demolition, or stunt activity.

i. War

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

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

j. Damage To Property

"Property damage" to:

- (1) Property you own, rent, or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;
- (2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;
- (3) Property loaned to you;
- (4) Personal property in the care, custody or control of the insured;
- (5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or
- (6) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

Paragraphs (1), (3) and (4) of this exclusion do not apply to "property damage" (other than damage by fire) to premises, including the contents of such premises, rented to you for a period of 7 or fewer consecutive days. A separate limit of insurance applies to Damage To Premises Rented To You as described in Section III – Limits Of Insurance.

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

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

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

k. Damage To Your Product

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

l. Damage To Your Work

"Property damage" to "your work" arising out of it or any part of it and included in the "products-completed operations hazard".

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

m. Damage To Impaired Property Or Property Not Physically Injured

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

- (1) A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or
- (2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to "your product" or "your work" after it has been put to its intended use.

n. Recall Of Products, Work Or Impaired Property

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

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

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

o. Personal And Advertising Injury

"Bodily injury" arising out of "personal and advertising injury".

p. Electronic Data

Damages arising out of the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate electronic data.

As used in this exclusion, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

q. Distribution Of Material In Violation Of Statutes

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

- (1) The Telephone Consumer Protection Act

(TCPA), including any amendment of or addition to such law; or

- (2) The CAN-SPAM Act of 2003, including any amendment of or addition to such law; or
- (3) Any statute, ordinance or regulation, other than the TCPA or CAN-SPAM Act of 2003, that prohibits or limits the sending, transmitting, communicating or distribution of material or information.

Exclusions **c.** through **n.** do not apply to damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner. A separate limit of insurance applies to this coverage as described in Section **III** – Limits Of Insurance.

COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY

1. Insuring Agreement

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

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

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

- b.** This insurance applies to "personal and advertising injury" caused by an offense arising out of your business but only if the offense was committed in the "coverage territory" during the policy period.

2. Exclusions

This insurance does not apply to:

a. Knowing Violation Of Rights Of Another

"Personal and advertising injury" caused by or at the direction of the insured with the knowledge that the act would violate the rights of another and would inflict "personal and advertising injury".

b. Material Published With Knowledge Of Falsity

"Personal and advertising injury" arising out of oral or written publication of material, if done by or at

the direction of the insured with knowledge of its falsity.

c. Material Published Prior To Policy Period

"Personal and advertising injury" arising out of oral or written publication of material whose first publication took place before the beginning of the policy period.

d. Criminal Acts

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

e. Contractual Liability

"Personal and advertising injury" for which the insured has assumed liability in a contract or agreement. This exclusion does not apply to liability for damages that the insured would have in the absence of the contract or agreement.

f. Breach Of Contract

"Personal and advertising injury" arising out of a breach of contract, except an implied contract to use another's advertising idea in your "advertisement".

g. Quality Or Performance Of Goods – Failure To Conform To Statements

"Personal and advertising injury" arising out of the failure of goods, products or services to conform with any statement of quality or performance made in your "advertisement".

h. Wrong Description Of Prices

"Personal and advertising injury" arising out of the wrong description of the price of goods, products or services stated in your "advertisement".

i. Infringement Of Copyright, Patent, Trademark Or Trade Secret

"Personal and advertising injury" arising out of the infringement of copyright, patent, trademark, trade secret or other intellectual property rights. Under this exclusion, such other intellectual property rights do not include the use of another's advertising idea in your "advertisement".

However, this exclusion does not apply to infringement, in your "advertisement", of copyright, trade dress or slogan.

j. Insureds In Media And Internet Type Businesses

"Personal and advertising injury" committed by an insured whose business is:

- (1) Advertising, broadcasting, publishing or telecasting;
- (2) Designing or determining content of web-sites for others; or
- (3) An Internet search, access, content or service provider.

However, this exclusion does not apply to Paragraphs **14.a., b. and c.** of "personal and advertising injury" under the Definitions Section.

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

k. Electronic Chatrooms Or Bulletin Boards

"Personal and advertising injury" arising out of an electronic chatroom or bulletin board the insured hosts, owns, or over which the insured exercises control.

l. Unauthorized Use Of Another's Name Or Product

"Personal and advertising injury" arising out of the unauthorized use of another's name or product in your e-mail address, domain name or metatag, or any other similar tactics to mislead another's potential customers.

m. Pollution

"Personal and advertising injury" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" at any time.

n. Pollution-Related

Any loss, cost or expense arising out of any:

- (1) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
- (2) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

o. War

"Personal and advertising injury", however caused, arising, directly or indirectly, out of:

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

p. Distribution Of Material In Violation Of Statutes

"Personal and advertising injury" arising directly or indirectly out of any action or omission that violates or is alleged to violate:

- (1) The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law; or
- (2) The CAN-SPAM Act of 2003, including any amendment of or addition to such law; or
- (3) Any statute, ordinance or regulation, other than the TCPA or CAN-SPAM Act of 2003, that prohibits or limits the sending, transmitting, communicating or distribution of material or information.

COVERAGE C MEDICAL PAYMENTS

1. Insuring Agreement

- a. We will pay medical expenses as described below for "bodily injury" caused by an accident:

- (1) On premises you own or rent;
- (2) On ways next to premises you own or rent; or
- (3) Because of your operations;

provided that:

- (a) The accident takes place in the "coverage territory" and during the policy period;
- (b) The expenses are incurred and reported to us within one year of the date of the accident; and
- (c) The injured person submits to examination, at our expense, by physicians of our choice as often as we reasonably require.

- b. We will make these payments regardless of fault. These payments will not exceed the applicable limit of insurance. We will pay reasonable expenses for:

- (1) First aid administered at the time of an accident;
- (2) Necessary medical, surgical, x-ray and dental services, including prosthetic devices; and
- (3) Necessary ambulance, hospital, professional nursing and funeral services.

2. Exclusions

We will not pay expenses for "bodily injury":

a. Any Insured

To any insured, except "volunteer workers".

b. Hired Person

To a person hired to do work for or on behalf of any insured or a tenant of any insured.

c. Injury On Normally Occupied Premises

To a person injured on that part of premises you own or rent that the person normally occupies.

d. Workers Compensation And Similar Laws

To a person, whether or not an "employee" of any insured, if benefits for the "bodily injury" are payable or must be provided under a workers' compensation or disability benefits law or a similar law.

e. Athletics Activities

To a person injured while practicing, instructing or participating in any physical exercises or games, sports, or athletic contests.

f. Products-Completed Operations Hazard

Included within the "products-completed operations hazard".

g. Coverage A Exclusions

Excluded under Coverage A.

SUPPLEMENTARY PAYMENTS – COVERAGES A AND B

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

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

These payments will not reduce the limits of insurance.

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

- a. The "suit" against the indemnitee seeks damages for which the insured has assumed the liability of the indemnitee in a contract or agreement that is an "insured contract";
- b. This insurance applies to such liability assumed by the insured;
- c. The obligation to defend, or the cost of the defense

of, that indemnitee, has also been assumed by the insured in the same "insured contract";

- d. The allegations in the "suit" and the information we know about the "occurrence" are such that no conflict appears to exist between the interests of the insured and the interests of the indemnitee;
- e. The indemnitee and the insured ask us to conduct and control the defense of that indemnitee against such "suit" and agree that we can assign the same counsel to defend the insured and the indemnitee; and
- f. The indemnitee:

(1) Agrees in writing to:

- (a) Cooperate with us in the investigation, settlement or defense of the "suit";
- (b) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "suit";
- (c) Notify any other insurer whose coverage is available to the indemnitee; and
- (d) Cooperate with us with respect to coordinating other applicable insurance available to the indemnitee; and

(2) Provides us with written authorization to:

- (a) Obtain records and other information related to the "suit"; and
- (b) Conduct and control the defense of the indemnitee in such "suit".

So long as the above conditions are met, attorneys' fees incurred by us in the defense of that indemnitee, necessary litigation expenses incurred by us and necessary litigation expenses incurred by the indemnitee at our request will be paid as Supplementary Payments. Notwithstanding the provisions of Paragraph 2.b.(2) of Section I – Coverage A – Bodily Injury And Property Damage Liability, such payments will not be deemed to be damages for "bodily injury" and "property damage" and will not reduce the limits of insurance.

Our obligation to defend an insured's indemnitee and to pay for attorneys' fees and necessary litigation expenses as Supplementary Payments ends when we have used up the applicable limit of insurance in the payment of judgments or settlements or the conditions set forth above, or the terms of the agreement described in Paragraph f. above, are no longer met.

SECTION II – WHO IS AN INSURED

1. If you are designated in the Declarations as:

- a. An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
- b. A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the con-

duct of your business.

- c. A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
- d. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.
- e. A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.

2. Each of the following is also an insured:

- a. Your "volunteer workers" only while performing duties related to the conduct of your business, or your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business. However, none of these "employees" or "volunteer workers" are insureds for:

(1) "Bodily injury" or "personal and advertising injury":

- (a)** To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;

- (b)** To the spouse, child, parent, brother or sister of that co-"employee" or "volunteer worker" as a consequence of Paragraph **(1)(a)** above;

- (c)** For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraphs **(1)(a)** or **(b)** above; or

- (d)** Arising out of his or her providing or failing to provide professional health care services.

(2) "Property damage" to property:

- (a)** Owned, occupied or used by,

- (b)** Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by

you, any of your "employees", "volunteer workers", any partner or member (if you are a partnership or joint venture), or any member (if you

are a limited liability company).

- b. Any person (other than your "employee" or "volunteer worker"), or any organization while acting as your real estate manager.

- c. Any person or organization having proper temporary custody of your property if you die, but only:

- (1)** With respect to liability arising out of the maintenance or use of that property; and

- (2)** Until your legal representative has been appointed.

- d. Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this Coverage Part.

- 3.** Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:

- a. Coverage under this provision is afforded only until the 90th day after you acquire or form the organization or the end of the policy period, whichever is earlier;

- b. Coverage **A** does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and

- c. Coverage **B** does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

SECTION III – LIMITS OF INSURANCE

- 1.** The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:

- a. Insureds;

- b. Claims made or "suits" brought; or

- c. Persons or organizations making claims or bringing "suits".

- 2.** The General Aggregate Limit is the most we will pay for the sum of:

- a. Medical expenses under Coverage **C**;

- b. Damages under Coverage **A**, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard"; and

- c. Damages under Coverage **B**.

- 3.** The Products-Completed Operations Aggregate Limit is the most we will pay under Coverage **A** for damages because of "bodily injury" and "property damage"

included in the "products-completed operations hazard".

4. Subject to Paragraph 2. above, the Personal and Advertising Injury Limit is the most we will pay under Coverage B for the sum of all damages because of all "personal and advertising injury" sustained by any one person or organization.
5. Subject to Paragraph 2. or 3. above, whichever applies, the Each Occurrence Limit is the most we will pay for the sum of:
 - a. Damages under Coverage A; and
 - b. Medical expenses under Coverage Cbecause of all "bodily injury" and "property damage" arising out of any one "occurrence".
6. Subject to Paragraph 5. above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage A for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, while rented to you or temporarily occupied by you with permission of the owner.
7. Subject to Paragraph 5. above, the Medical Expense Limit is the most we will pay under Coverage C for all medical expenses because of "bodily injury" sustained by any one person.

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

SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS

1. Bankruptcy

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

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

- a. You must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:
 - (1) How, when and where the "occurrence" or offense took place;
 - (2) The names and addresses of any injured persons and witnesses; and
 - (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.
- b. If a claim is made or "suit" is brought against any insured, you must:

- (1) Immediately record the specifics of the claim or "suit" and the date received; and

- (2) Notify us as soon as practicable.

You must see to it that we receive written notice of the claim or "suit" as soon as practicable.

- c. You and any other involved insured must:

- (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
 - (2) Authorize us to obtain records and other information;
 - (3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and
 - (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this insurance may also apply.
- d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

3. Legal Action Against Us

No person or organization has a right under this Coverage Part:

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

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured; but we will not be liable for damages that are not payable under the terms of this Coverage Part or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

4. Other Insurance

If other valid and collectible insurance is available to the insured for a loss we cover under Coverages A or B of this Coverage Part, our obligations are limited as follows:

a. Primary Insurance

This insurance is primary except when Paragraph b. below applies. If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in Paragraph c. below.

b. Excess Insurance

- (1) This insurance is excess over:
 - (a) Any of the other insurance, whether primary, excess, contingent or on any other

basis:

- (i) That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";
- (ii) That is Fire insurance for premises rented to you or temporarily occupied by you with permission of the owner;
- (iii) That is insurance purchased by you to cover your liability as a tenant for "property damage" to premises rented to you or temporarily occupied by you with permission of the owner; or
- (iv) If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion **g**. of Section **I** – Coverage **A** – Bodily Injury And Property Damage Liability.

(b) Any other primary insurance available to you covering liability for damages arising out of the premises or operations, or the products and completed operations, for which you have been added as an additional insured by attachment of an endorsement.

(2) When this insurance is excess, we will have no duty under Coverages **A** or **B** to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

(3) When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

(a) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and

(b) The total of all deductible and self-insured amounts under all that other insurance.

(4) We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

c. Method Of Sharing

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

5. Premium Audit

- a. We will compute all premiums for this Coverage Part in accordance with our rules and rates.
- b. Premium shown in this Coverage Part as advance premium is a deposit premium only. At the close of each audit period we will compute the earned premium for that period and send notice to the first Named Insured. The due date for audit and retrospective premiums is the date shown as the due date on the bill. If the sum of the advance and audit premiums paid for the policy period is greater than the earned premium, we will return the excess to the first Named Insured.
- c. The first Named Insured must keep records of the information we need for premium computation, and send us copies at such times as we may request.

6. Representations

By accepting this policy, you agree:

- a. The statements in the Declarations are accurate and complete;
- b. Those statements are based upon representations you made to us; and
- c. We have issued this policy in reliance upon your representations.

7. Separation Of Insureds

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Part to the first Named Insured, this insurance applies:

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

8. Transfer Of Rights Of Recovery Against Others To Us

If the insured has rights to recover all or part of any payment we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.

9. When We Do Not Renew

If we decide not to renew this Coverage Part, we will mail or deliver to the first Named Insured shown in the Declarations written notice of the nonrenewal not less than 30 days before the expiration date.

If notice is mailed, proof of mailing will be sufficient proof of notice.

SECTION V – DEFINITIONS

- 1. "Advertisement" means a notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters. For the

purposes of this definition:

- a. Notices that are published include material placed on the Internet or on similar electronic means of communication; and
- b. Regarding web-sites, only that part of a web-site that is about your goods, products or services for the purposes of attracting customers or supporters is considered an advertisement.

2. "Auto" means:

- a. A land motor vehicle, trailer or semitrailer designed for travel on public roads, including any attached machinery or equipment; or
- b. Any other land vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged.

However, "auto" does not include "mobile equipment".

3. "Bodily injury" means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.

4. "Coverage territory" means:

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

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

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

- b. You have failed to fulfill the terms of a contract or agreement;

if such property can be restored to use by the repair, replacement, adjustment or removal of "your product" or "your work" or your fulfilling the terms of the contract or agreement.

9. "Insured contract" means:

- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";
- b. A sidetrack agreement;
- c. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
- d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
- e. An elevator maintenance agreement;
- f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

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

- (1) That indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass or crossing;
 - (2) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
 - (a) Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
 - (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or
 - (3) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in (2) above and supervisory, inspection, architectural or engineering activities.
- 10. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you**

and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".

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

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

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

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

- a.** Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
- b.** Vehicles maintained for use solely on or next to premises you own or rent;
- c.** Vehicles that travel on crawler treads;
- d.** Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:

(1) Power cranes, shovels, loaders, diggers or drills; or

(2) Road construction or resurfacing equipment such as graders, scrapers or rollers;

- e.** Vehicles not described in Paragraph **a.**, **b.**, **c.** or **d.** above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:

(1) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or

(2) Cherry pickers and similar devices used to raise or lower workers;

- f.** Vehicles not described in Paragraph **a.**, **b.**, **c.** or **d.** above maintained primarily for purposes other than the transportation of persons or cargo.

However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":

(1) Equipment designed primarily for:

(a) Snow removal;

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

(c) Street cleaning;

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

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

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

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

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

a. False arrest, detention or imprisonment;

b. Malicious prosecution;

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

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

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

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

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

15. "Pollutants" mean any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

16. "Products-completed operations hazard":

a. Includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:

(1) Products that are still in your physical possession; or

(2) Work that has not yet been completed or abandoned. However, "your work" will be deemed completed at the earliest of the following times:

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

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

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

son or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

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

- (1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the "loading or unloading" of that vehicle by any insured;
- (2) The existence of tools, uninstalled equipment or abandoned or unused materials; or
- (3) Products or operations for which the classification, listed in the Declarations or in a policy schedule, states that products-completed operations are subject to the General Aggregate Limit.

17. "Property damage" means:

- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
- b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it.

For the purposes of this insurance, electronic data is not tangible property.

As used in this definition, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

18. "Suit" means a civil proceeding in which damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies are alleged. "Suit" includes:

- a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or
- b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which

the insured submits with our consent.

19. "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.

20. "Volunteer worker" means a person who is not your "employee", and who donates his or her work and acts at the direction of and within the scope of duties determined by you, and is not paid a fee, salary or other compensation by you or anyone else for their work performed for you.

21. "Your product":

a. Means:

- (1) Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
 - (a) You;
 - (b) Others trading under your name; or
 - (c) A person or organization whose business or assets you have acquired; and
- (2) Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.

b. Includes:

- (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your product"; and
- (2) The providing of or failure to provide warnings or instructions.

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

22. "Your work":

a. Means:

- (1) Work or operations performed by you or on your behalf; and
- (2) Materials, parts or equipment furnished in connection with such work or operations.

b. Includes:

- (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your work", and
- (2) The providing of or failure to provide warnings or instructions.

LIQUOR LIABILITY COVERAGE FORM

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

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as a Named Insured under this policy. The words "we", "us" and "our" refer to the Company providing this insurance.

The word "insured" means any person or organization qualifying as such under Section II – Who Is An Insured.

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

SECTION I – LIQUOR LIABILITY COVERAGE

1. Insuring Agreement

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "injury" to which this insurance applies if liability for such "injury" is imposed on the insured by reason of the selling, serving or furnishing of any alcoholic beverage. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "injury" to which this insurance does not apply. We may, at our discretion, investigate any "injury" and settle any claim or "suit" that may result. But:

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

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

- b. This insurance applies to "injury" only if:

- (1) The "injury" occurs during the policy period in the "coverage territory"; and

- (2) Prior to the policy period, no insured listed under Paragraph 1. of Section II – Who Is An Insured and no "employee" authorized by you to give or receive notice of an "injury" or claim, knew that the "injury" had occurred, in whole or in part. If such a listed insured or authorized "employee" knew, prior to the policy period, that the "injury" occurred, then any continuation, change or resumption of such "injury" during or after the policy period will be deemed to have been known prior to the policy period.

- c. "Injury" which occurs during the policy period and was not, prior to the policy period, known to have occurred by any insured listed under Paragraph 1. of Section II – Who Is An Insured or any "employee" authorized by you to give or receive notice of an "injury" or claim, includes any continuation, change or resumption of that "injury" after the end of the policy period.

- d. "Injury" will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph 1. of Section II – Who Is An Insured or any "employee" authorized by you to give or receive notice of an "injury" or claim:

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

2. Exclusions

This insurance does not apply to:

a. Expected Or Intended Injury

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

b. Workers' Compensation And Similar Laws

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

c. Employer's Liability

"Bodily injury" to:

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

This exclusion applies:

- (1) Whether the insured may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the "injury".

d. Liquor License Not In Effect

"Injury" arising out of any alcoholic beverage sold, served or furnished while any required license is not in effect.

e. Your Product

"Injury" arising out of "your product". This exclusion does not apply to "injury" for which the insured or the insured's indemnitees may be held liable by reason of:

- (1) Causing or contributing to the intoxication of any person;
- (2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
- (3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

f. Other Insurance

Any "injury" with respect to which other insurance is afforded, or would be afforded but for the exhaustion of the limits of insurance.

This exclusion does not apply if the other insurance responds to liability for "injury" imposed on the insured by reason of the selling, serving or furnishing of any alcoholic beverage.

g. War

"Injury", however caused, arising, directly or indirectly, out of:

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

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

SUPPLEMENTARY PAYMENTS

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

1. All expenses we incur.
2. The cost of bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.
3. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$250 a day because of time off from work.
4. All costs taxed against the insured in the "suit".
5. Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.
6. All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.
7. Expenses incurred by the insured for first aid administered to others at the time of an event to which this insurance applies.

These payments will not reduce the limits of insurance.

SECTION II – WHO IS AN INSURED

1. If you are designated in the Declarations as:
 - a. An individual, you and your spouse are insureds.
 - b. A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.
 - c. A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
 - d. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.

2. Each of the following is also an insured:

- a.** Your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business. However, none of these "employees" is an insured for:

(1) "Injury":

- (a)** To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), or to a co-"employee" while that co-"employee" is either in the course of his or her employment or performing duties related to the conduct of your business;
- (b)** To the spouse, child, parent, brother or sister of that co-"employee" as a consequence of Paragraph **(1)(a)** above; or
- (c)** For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraphs **(1)(a)** or **(b)** above.

(2) "Property damage" to property:

- (a)** Owned or occupied by, or
- (b)** Rented or loaned
to that "employee", any of your other "employees", by any of your partners or members (if you are a partnership or joint venture), or by any of your members (if you are a limited liability company).

- b.** Any person or organization having proper temporary custody of your property if you die, but only:

- (1)** With respect to liability arising out of the maintenance or use of that property; and
- (2)** Until your legal representative has been appointed.

- c.** Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this Coverage Part.

- 3.** Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:

- a.** Coverage under this provision is afforded only until the 90th day after you acquire or form the organization or the end of the policy period, whichever is earlier; and

- b.** Coverage does not apply to "injury" that occurred before you acquired or formed the organization.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

SECTION III – LIMITS OF INSURANCE

- 1.** The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:

- a.** Insureds;
- b.** Claims made or "suits" brought; or
- c.** Persons or organizations making claims or bringing "suits".

- 2.** The Aggregate Limit is the most we will pay for all "injury" as the result of the selling, serving or furnishing of alcoholic beverages.

- 3.** Subject to the Aggregate Limit, the Each Common Cause Limit is the most we will pay for all "injury" sustained by one or more persons or organizations as the result of the selling, serving or furnishing of any alcoholic beverage to any one person.

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

SECTION IV – LIQUOR LIABILITY CONDITIONS

1. Bankruptcy

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

2. Duties In The Event Of Injury, Claim Or Suit

- a.** You must see to it that we are notified as soon as practicable of an "injury" which may result in a claim. To the extent possible, notice should include:

- (1)** How, when and where the "injury" took place;
- (2)** The names and addresses of any injured persons and witnesses; and
- (3)** The nature and location of any "injury".

b. If a claim is made or "suit" is brought against any insured, you must:

- (1)** Immediately record the specifics of the claim or "suit" and the date received; and
- (2)** Notify us as soon as practicable.

You must see to it that we receive written notice of the claim or "suit" as soon as practicable.

c. You and any other involved insured must:

- (1)** Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
- (2)** Authorize us to obtain records and other information;
- (3)** Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and
- (4)** Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of "injury" to which this insurance may also apply.

d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

3. Legal Action Against Us

No person or organization has a right under this Coverage Part:

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

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured; but we will not be liable for damages that are not payable under the terms of this Coverage Part or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

4. Other Insurance

If other valid and collectible insurance is available to the insured for a loss we cover under this Coverage Part, our obligations are limited as follows:

a. Primary Insurance

This insurance is primary. Our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in **b.** below.

b. Method Of Sharing

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

5. Premium Audit

- a.** We will compute all premiums for this Coverage Part in accordance with our rules and rates.
- b.** Premium shown in this Coverage Part as advance premium is a deposit premium only. At the close of each audit period we will compute the earned premium for that period and send notice to the first Named Insured. The due date for audit and retrospective premiums is the date shown as the due date on the bill. If the sum of the advance and audit premiums paid for the policy period is greater than the earned premium, we will return the excess to the first Named Insured.
- c.** The first Named Insured must keep records of the information we need for premium computation, and send us copies at such times as we may request.

6. Representations

By accepting this policy, you agree:

- a.** The statements in the Declarations are accurate and complete;

- b. Those statements are based upon representations you made to us; and
- c. We have issued this policy in reliance upon your representations.

7. Separation Of Insureds

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Part to the first Named Insured, this insurance applies:

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

8. Transfer Of Rights Of Recovery Against Others To Us

If the insured has rights to recover all or part of any payment we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.

9. When We Do Not Renew

If we decide not to renew this Coverage Part, we will mail or deliver to the first Named Insured shown in the Declarations written notice of the nonrenewal not less than 30 days before the expiration date.

If notice is mailed, proof of mailing will be sufficient proof of notice.

SECTION V – DEFINITIONS

1. "Bodily injury" means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.
2. "Coverage territory" means:
 - a. The United States of America (including its territories and possessions), Puerto Rico and Canada;
 - b. International waters or airspace, but only if the "injury" occurs in the course of travel or transportation between any places included in **a.** above; or
 - c. All other parts of the world if the "injury" arises out of:
 - (1) Goods or products made or sold by you in the territory described in **a.** above; or
 - (2) The activities of a person whose home is in the territory described in **a.** above, but is away for a short time on your business

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

3. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".
4. "Executive Officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.
5. "Injury" means all damages, including damages because of "bodily injury" and "property damage", and including damages for care, loss of services or loss of support.
6. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".
7. "Property damage" means:
 - a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
 - b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the occurrence that caused it.
8. "Suit" means a civil proceeding in which damages because of "injury" to which this insurance applies are alleged. "Suit" includes:
 - a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or
 - b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.
9. "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.
10. "Your product":
 - a. Means:
 - (1) Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
 - (a) You;
 - (b) Others trading under your name; or
 - (c) A person or organization whose business or assets you have acquired; and
 - (2) Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.

b. Includes:

- (1)** Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your product", and
- (2)** The providing of or failure to provide warnings or instructions.

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

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ASBESTOS EXCLUSION ENDORSEMENT

THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE FOLLOWING:

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

1. The following Exclusion is added to SECTION I – COVERAGES, COVERAGE A. - BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. – EXCLUSIONS and SECTION I – COVERAGES, COVERAGE B. – PERSONAL AND ADVERTISING INJURY LIABILITY, 2. – EXCLUSIONS:
 1. Any liability for “bodily injury”, “property damage”, “personal injury”, “advertising injury”, occupational disease, disability, shock, mental anguish or mental injury, at any time arising out of the manufacture of, mining of, use of, sale of, installation of, removal of, distribution of, or exposure to asbestos, asbestos products, asbestos fibers or asbestos dust; or
 2. Any obligation of the “insured” to indemnify any party because of damages arising out of “bodily injury”, “property damage”, “personal injury”, “advertising injury”, occupational disease, disability, shock, mental anguish or mental injury, at any time as a result of the manufacture of, mining of, use of, sale of, installation of, removal of, distribution of, or exposure to asbestos, asbestos products, asbestos fibers or asbestos dust; or
 3. Any obligation to defend any “suit” or claim against the “insured” alleging bodily injury, “property damage”, “personal injury”, “advertising injury”, occupational disease, disability, shock, mental anguish or mental injury, resulting from or contributed to, by the manufacture of, mining of, use of, sale of, installation of, removal of, distribution of, or exposure to asbestos, asbestos products, asbestos fibers or asbestos dust.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

TOTAL LEAD EXCLUSION

THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE FOLLOWING:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

1. The following Exclusion is added to 2., Exclusions of the GENERAL LIABILITY COVERAGE FORM:

This Policy Does Not Apply To:

1. "Bodily Injury", "Property Damage", "Personal Injury", or "Advertising Injury" arising out of, resulting from, caused by or contributed to by the presence, ingestion, inhalation, or absorption of or exposure to lead, lead compounds, or lead contained in any materials;
2. Any cost or expense to abate, mitigate, remove, or dispose of lead, lead compounds or materials containing lead;
3. Any supervision, instruction, recommendations, warnings or advice given or which should have been given in connection with parts 1. or 2. above; or
4. Any obligation to share damages with or repay anyone else who must pay damages in connection with parts 1., 2., or 3. above.

POLICY NUMBER: CRA8XYD11

INSURED NAME: THE RESTAURANT GROUP ETAL

ADDITIONAL NAMED INSURED ENDORSEMENT

THE NAMED INSURED IS HEREBY AMENDED TO INCLUDE THE FOLLOWING:

- 1) Madison Entertainment Associates, LLC.
- 2) Asia Las Vegas, LLC.
- 3) Buddha Entertainment, LLC.
- 4) Buddha Beach, LLC.
- 5) Stripview Entertainment, LLC.
- 6) Roof Deck Entertainment, LLC.
- 7) 5 Chinese Brothers, LLC.
- 8) Tao Licensing, LLC.
- 9) RMNJ, LLC.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY

SILICA EXCLUSION ENDORSEMENT

THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE FOLLOWING:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

1. The following Exclusion is added to SECTION I - COVERAGES, COVERAGE A. - BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. - EXCLUSIONS and SECTION I - COVERAGES, COVERAGE B. - PERSONAL AND ADVERTISING INJURY LIABILITY, 2. - EXCLUSIONS:
 1. Any liability for "bodily injury", "property damage", "personal injury", "advertising injury", occupational disease, disability, shock, mental anguish or mental injury, at any time arising out of the manufacture of, mining of, use of, sale of, installation of, removal of, distribution of, or exposure to silica, silicate, any silica material or any by-product, residue or compound containing silica or silicate; or
 2. Any obligation of the "insured" to indemnify any party because of damages arising out of "bodily injury", "property damage", "personal injury", "advertising injury", occupational disease, disability, shock, mental anguish or mental injury, at any time as a result of the manufacture of, mining of, use of, sale of, installation of, removal of, distribution of, or exposure to silica or silicate, any silica material or any by-product, residue or compound containing silica or silicate; or
 3. Any obligation to defend any "suit" or claim against the "insured" alleging bodily injury, "property damage", "personal injury", "advertising injury", occupational disease, disability, shock, mental anguish or mental injury, resulting from or contributed to, by the manufacture of, mining of, use of, sale of, installation of, removal of, distribution of, or exposure to silica, silicate, any silica material or any by-product, residue or compound containing silica or silicate.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CONTRACTUAL LIABILITY – AMENDMENTS

THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE FOLLOWING:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

This insurance does not apply to any claim for damages resulting:

1. from the sole negligence of the indemnitee; or
2. from the ownership, maintenance or use of any aircraft;

arising out of any liability assumed under any “insured contract.”

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY

HIRED AUTO AND NON-OWNED AUTO LIABILITY

THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE FOLLOWING:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Coverage	Limits of Insurance	Additional Premium
Hired Auto Liability	\$1,000,000	\$INCL.
Non-Owned Auto Liability	\$1,000,000	\$INCL.

- A.** Insurance is provided only for those coverages for which a specific premium charge is shown in the Declarations or in this Schedule.

1. HIRED AUTO LIABILITY

The insurance provided under the Commercial General Liability Form, **SECTION I – COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY**, applies to "bodily injury" or "property damage" arising out of the maintenance or use of a "hired auto" by you or your "employees" in the course of your business.

2. NON-OWNED AUTO LIABILITY

The insurance provided under the Commercial General Liability Form, **SECTION I – COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY**, applies to "bodily injury" or "property damage" arising out of the use of any "non-owned auto" in your business by any person other than you.

- B.** For insurance provided by this endorsement only:

- 1.** The exclusions, under the Commercial General Liability Form, **SECTION I – COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY**, 2. Exclusions, e. and j. are deleted and replaced by the following:

- e.** "Bodily injury" to:

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

This exclusion applies:

- (1)** Whether the insured may be liable as an employer or in any other capacity; and
- (2)** To any obligation to share damages with or repay someone else who must pay damages because of injury.

This exclusion does not apply to:

- (1) Liability assumed by the insured under an "insured contract"; or
- (2) "Bodily injury" arising out of and in the course of domestic employment by the insured unless benefits for such injury are in whole or in part either payable or required to be provided under any workers compensation law.

j. "Property damage" to:

- (1) Property owned or being transported by, or rented or loaned to the insured; or
- (2) Property in the care, custody or control of the insured,

2. **SECTION II – WHO IS AN INSURED** in the Commercial General Liability Form, is replaced by the following:

Each of the following is an insured under this endorsement to the extent set forth below:

- a. You
- b. Any other person using a "hired auto" with your permission
- c. For a "non-owned auto", any partner or "executive officer" of yours, but only while such "non-owned auto" is being used in your business; and
- d. Any other person or organization, but only for their liability because of acts or omissions of an insured under **a.**, **b.** or **c.** above

None of the following is an insured:

- (1) Any person engaged in the business of his or her employer for "bodily injury" to any co-"employee" of such person injured in the course of employment, or to the spouse, child, parent, brother or sister of that co-"employee" as a consequence of such "bodily injury", or for any obligation to share damages with or repay someone else who must pay damages because of the injury.
- (2) Any partner or "executive officer" for any "auto" owned by such partner or officer or a member of his or her household;
- (3) Any person while employed in or otherwise engaged in duties in connection with an "auto business", other than an "auto business" you operate;
- (4) The owner or lessee (of whom you are a sublessee) of a "hired auto" or the owner of a "non-owned auto" or any agent or "employee" of any such owner or lessee;
- (5) Any person or organization for the conduct of any current or past partnership or joint venture that is not shown as a Named Insured in the Declarations.

C. The following additional definitions apply:

- 1. "Auto Business" means the business or occupation of selling, repairing, servicing, storing or parking "autos".
- 2. "Hired Auto" means any "auto" you lease, hire or borrow. This does not include any "auto" you lease, hire or borrow from any of your "employees" or members of their households, or from any partner or "executive officer" of yours.
- 3. "Non-Owned Auto" means any "auto" you do not own, lease, hire or borrow which is used in connection with your business. However, if you are a partnership, a "non-owned auto" does not include any "auto" owned by any partner.

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.

THIS AMENDMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY

AMENDMENT – COMMON POLICY CONDITIONS

THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE FOLLOWING:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

The Common Policy Conditions (IL 00 17 11/98) are amended by the addition of the following:

G. Other Insurance with This Company

If this policy contains two or more Coverage Parts providing coverage for the same “occurrence,” “accident,” “cause of loss,” “loss” or offense, the maximum limit of insurance under all Coverage Parts shall not exceed the highest limit of insurance under any one Coverage Part.

If this policy and any other policy issued to you by us apply to the same “occurrence,” “accident,” “cause of loss,” “injury,” “loss” or offense, the maximum limit of insurance under all of the policies shall not exceed the highest limit of insurance under any one policy. This condition does not apply to any policy issued by us which specifically provides that the policy is to apply as excess insurance over this policy.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ELECTROMAGNETIC FIELDS (EMF'S) EXCLUSION

THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE FOLLOWING:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

1. The following Exclusion is added to SECTION I – COVERAGES, COVERAGE A. - BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. – EXCLUSIONS:

Any liability for bodily injury or property damage, or any other loss, cost (including defense costs) or expense arising out of exposure to an electromagnetic field in any form, including but not limited to liability for the installation, operations, repair, sale or manufacture or distribution of any kind of equipment or products producing or in any way involving the effects of an electromagnetic field.

2. The following Definition is added to SECTION V – DEFINITIONS:

“Electromagnetic Field” means electric and magnetic fields generated by varying electrical current through any medium including but not limited to wires whether or not intended for the purpose of conducting electricity.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY

GARAGEKEEPERS COVERAGE

THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE FOLLOWING:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

Endorsement Effective: Named Insured: THE RESTAURANT GROUP ETAL	Countersigned By: (Authorized Representative)
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SCHEDULE

Location No.	Coverages	Limits of Insurance for Each Location		
<input type="checkbox"/>	Comprehensive	\$	PER LOCATION FOR ALL CUSTOMER'S AUTO MINUS A	
	SIR \$25,000	\$	DEDUCTIBLE FOR EACH "CUSTOMER'S AUTO FOR LOSS" CAUSED BY THEFT OR MISCHIEF OR VANDALISM	
ONE	SUBJECT TO \$		DEDUCTIBLE FOR ALL SUCH "LOSS" IN ANY ONE EVENT	
<input checked="" type="checkbox"/>	Comprehensive	\$100,000	MINUS \$25,000 DEDUCTIBLE FOR EACH "CUSTOMER'S AUTO" FOR "LOSS" CAUSED BY THEFT OR MISCHIEF VANDALISM; OR	
	Specified Causes	\$	MINUS \$	DEDUCTIBLE FOR ALL PERILS SUBJECT TO
	Of Loss	\$	MINUS \$	MAXIMUM DEDUCTIBLE FOR ALL SUCH "LOSS" IN ANY ONE
	Collision	\$	MINUS \$	DEDUCTIBLE FOR EACH "CUSTOMER'S AUTO"
<input type="checkbox"/>	Comprehensive	\$	MINUS \$	DEDUCTIBLE FOR EACH "CUSTOMER'S AUTO" FOR "LOSS" CAUSED BY THEFT OR MISCHIEF VANDALISM; OR
	Specified Causes	\$	MINUS \$	DEDUCTIBLE FOR ALL PERILS SUBJECT TO
	Of Loss	\$	MINUS \$	MAXIMUM DEDUCTIBLE FOR ALL SUCH "LOSS" IN ANY ONE
	Collision	\$	MINUS \$	DEDUCTIBLE FOR EACH "CUSTOMER'S AUTO"

LOCATIONS WHERE YOU CONDUCT "GARAGE OPERATIONS"

Location No.	Address State Your Main Business Location as Location No. 1
<input type="checkbox"/>	All locations where insured provides Valet Parking Services. Limit is subject to a policy aggregate limit of \$100,000
<input type="checkbox"/>	
<input type="checkbox"/>	

Premium For All Locations	
Comprehensive	\$
Specified Causes of Loss	\$
Collision	\$

DIRECT COVERAGE OPTIONS

Indicate below with "X" which, if any, Direct Coverage Option is selected.

☒ **EXCESS INSURANCE**

If this box is checked, Garage keepers Coverage remains applicable on a legal liability basis. However, coverage also applies without regard to your or any other "insured's" legal liability for "loss" to a "customer's auto" on an excess basis over any other collectible insurance regardless of whether the other insurance covers your or any other "insured's" interest or the Interest of the "customer's auto's" owners.

☐ **PRIMARY INSURANCE**

If this box is checked, Garage keepers Coverage is changed to apply without regard to your or any other "insured's" legal liability for "loss" to a "customer's auto" and is primary insurance.

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

A. This endorsement provides only those coverages:

1. Where the Limit of Insurance and a premium are shown for that coverage in the Schedule:
and
2. For the location shown in the Schedule.

B. Coverage

1. We will pay all sums the "insured" legally must pay as damages for "loss" to a "customer's auto" or "customer's auto" equipment left in the "insured's" care while the "insured" is attending, servicing, repairing, parking or storing it in your "garage operations" under:

a. Comprehensive Coverage

From any cause except:

- (1) The "customer's auto's" collision with another object; or
- (2) The "customer's auto's" overturn.

b. **Specified Causes Of Loss Coverage**

Cause by:

- (1) Fire, lightning or explosion;
- (2) Theft; or
- (3) Mischief or vandalism.

c. **Collision Coverage**

Caused by:

- (1) The "customer's auto's" collision with another object; or
- (2) The "customer's auto's" overturn.

2. We will have the right and duty to defend any "insured" against a "suit" asking for these damages. However, we have no duty to defend any "insured" against a "suit" seeking damages for "loss" to which this insurance does not apply. We may investigate and settle any claim or "suit" as we consider appropriate. Our duty to defend or settle ends for a coverage when the Limit of Insurance for that coverage has been exhausted by payment of judgments or settlements.

3. **Who Is An Insured**

The following are "insureds" for "loss" to "customer's autos".

- a. You.
- b. Your partner (if you are a partnership), or members (if you are a limited liability company), "employees", directors or shareholders while acting within the scope of their duties as such.

4. **Coverage Extensions**

The following applies as Supplementary Payments. In addition to the Limit of Insurance, we will pay for the "Insured":

- a. All expenses we incur.
- b. The costs of bonds to release attachments in any "suit" against an "insured" we defend, but only for bond amounts within our Limit of Insurance.
- c. All reasonable expenses incurred by the "insured" at our request, including actual loss of earnings up to \$250 a day because of time off from work.
- d. All costs taxed against the "insured" in any "suit" against an "insured" we defend.
- e. All interest on the full amount of any judgment that accrues after entry of the judgment in any "suit" against an "insured" we defend; but our duty to pay interest ends when we have paid, offered to pay, or deposited in court the part of the judgment that is within our Limit of Insurance.

C. Exclusions

1. This insurance does not apply to any of the following:

a. **Contractual Obligations**

Liability resulting from any agreement by which the "Insured" accepts responsibility for "loss".

b. **Theft**

"Loss due to theft or conversion caused in any way by you, "employees" or by your shareholders.

c. **Defective Parts**

Defective parts or materials.

d. **Faulty Work**

Faulty "work you performed".

2. We will not pay for "loss" to any of the following:

- a. Tape decks or other sound reproducing equipment unless permanently installed in a "customer's auto".
- b. Tapes, records or other sound reproducing devices designed for use with sound reproducing equipment.
- c. Sound receiving equipment designed for use as a citizen's band radio, two-way mobile radio or telephone or scanning monitor receiver, including its antennas and other accessories, unless permanently installed in the dash or console opening normally used by the "customer's auto" manufacturer for the installation of a radio.
- d. Any device designed or used to detect speed measurement equipment such as a radar or laser detectors and any jamming apparatus intended to elude or disrupt speed measurement equipment.

D. Limit Of Insurance And Deductible

1. Regardless of the number of "customer's auto", "insureds", premiums paid, claims made or "suits" brought, the most we will pay for each "loss" at each location is the Garage keepers Coverage Limit of Insurance shown in the Schedule for that location minus the applicable deductible for "loss" caused by collision, theft or mischief or vandalism.
2. The maximum deductible stated in the Schedule for Garage keepers Coverage Comprehensive or Specified Causes of Loss Coverage is the most that will be deducted for all "loss" in any one event caused by theft or mischief or vandalism.
3. Sometimes to settle a claim or "suit", we may pay all or any part of the deductible. If this happens you must reimburse us for the deductible or that portion of the deductible that we paid.

E. Additional Definitions

As used in this endorsement:

1. "Customer's auto" means a customer's land motor vehicle or trailer or semi trailer. This definition also includes any customer's auto while left with you for service, repair, storage or safekeeping. Customers include your employees, and members of their households who pay for services performed.
2. "Loss" means direct and accidental loss or damage and includes any resulting loss of use.

3. "Garage operations" means the ownership, maintenance or use of locations for the purpose or a business of selling, servicing, repairing, parking or storing "customer's autos" and that portion of the roads or other accesses that adjoin these locations. "Garage operations" also includes all operations necessary or incidental to the performance of garage operations.
4. "Work you performed" includes:
 - a. Work that someone performed on your behalf; and
 - b. The providing of or failure to provide warnings or instructions.

All other definitions, terms and conditions of this policy remain unchanged.

This endorsement is a part of your policy and takes effect on the effective date of your policy, unless otherwise stated.

Authorized Representative

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**BODILY INJURY, PROPERTY DAMAGE, PERSONAL AND ADVERTISING INJURY LIABILITY
DEDUCTIBLE ENDORSEMENT**

THIS ENDORSEMENT MODIFIES INSURANCE PROVIDE UNDER THE FOLLOWING:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Coverage	Amount and Basis of Deductible
Bodily Injury Liability	\$25,000 per occurrence INCLUDING LOSS ADJUSTMENT EXPENSE
Property Damage Liability	\$25,000 per occurrence INCLUDING LOSS ADJUSTMENT EXPENSE
Personal Advertising Injury Liability (Personal Injury and Advertising Injury)	\$25,000 per occurrence INCLUDING LOSS ADJUSTMENT EXPENSE

APPLICATION OF ENDORSEMENT

Enter below any limitations on the application of this endorsement. If no limitation is entered, the deductibles apply to damages for all "bodily injury," property damage," "personal advertising injury," ("personal injury" and "advertising injury") however caused:

1. Our obligation under the Bodily Injury Liability, Property Damage Liability, Personal and Advertising Injury Liability (Personal Injury and Advertising Injury) Coverages to pay damages on your behalf applies only to the amount of damages in excess of any deductible amounts stated in the Schedule above as applicable to such coverages, and the Limits of Insurance applicable to Each Occurrence or offense for such coverages will be reduced by the amount of such deductible. Aggregate Limits for such coverages shall not be reduced by the application of such deductible amount.
2. The deductible amounts apply to damages and all legal and loss adjustment expenses.
3. The deductible amounts stated in the Schedule above apply, respectively:
 - a. Under the Bodily Injury Liability Coverage to all damages because of the "bodily injury" sustained by one person;
 - b. Under Property Damage Liability Coverage to all damages because of the "property damage" sustained by one person, any organization or association; or
 - c. Under Personal and Advertising Injury Liability (Personal Injury and Advertising Injury) Coverages to all damages sustained by one person as a result of one "occurrence" or offense.
4. The terms of this insurance, including those with respect to our right and duty to defend any "suits" seeking those damages and your duties in the event of an "occurrence," offense, claim or "suit", apply irrespective of the application of the deductible amount.
5. We may pay any part or all of the deductible amount to effect settlement of any claim or "suit" and, upon notification of the action taken, you shall promptly reimburse us for such part of the deductible amount as has been paid by us.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION - DISCRIMINATION

THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE FOLLOWING:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

1. The following Exclusion is added to SECTION I – COVERAGES, COVERAGE A. - BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. – EXCLUSIONS and SECTION I – COVERAGES, COVERAGE B. – PERSONAL AND ADVERTISING INJURY LIABILITY, 2. – EXCLUSIONS:

This policy does not apply to:

Discrimination

Bodily injury, personal injury, or advertising injury liability that arises from discrimination based upon, but not limited to, race, creed, color, sex, age, disability, national origin, handicap, illness, religion or sexual preference.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

AMENDMENT - CROSS SUITS

THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE FOLLOWING:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCT/COMPLETED OPERATIONS LIABILITY COVERAGE PART

This policy does not afford coverage to claims for damages arising out of bodily injury, personal and advertising injury, or property damage as defined, initiated, alleged or caused to be brought about by a Named Insured covered by this policy against any other Named Insured covered by this policy.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

COMMON POLICY CONDITIONS AMENDMENT MINIMUM RETAINED PREMIUM

THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE FOLLOWING:

COMMON POLICY CONDITIONS

Condition A – CANCELLATION, paragraph 5, is deleted and replaced by the following:

5. If this policy is cancelled, we will send the first Named Insured any premium refund due. If we cancel, the refund will be pro rata. If the first Named Insured cancels, earned premium will be computed according to the customary short rate table and procedure, subject to a Minimum Retained Premium of \$[REDACTED]. The cancellation will be effective even if we have not made or offered a refund.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

GENERAL SERVICE OF SUIT ENDORSEMENT

THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE FOLLOWING:

ALL COVERAGE PARTS IN THIS POLICY

Pursuant to any statute of any state or district of the United States of America which makes provision therefore, the insurer hereby designates the Commissioner, Superintendent or Director of Insurance or other officer specified for that purpose in the statute, and his or her successors in office, and duly authorized deputies in the state where this policy is issued, as the insurer's true and lawful attorney for service of legal process in action, suit or proceeding brought in the state where this policy is issued by or on behalf of an insured or beneficiary against the insurer arising out of the insurance issued under this policy.

The Company's registered forwarding address for purposes of receiving service from the Commissioner, Superintendent or Director of Insurance or other officer in each state shall be: Aspen Specialty Insurance Management, Inc., c/o General Counsel, 175 Capital Blvd., Rocky Hill, CT 06067; (860) 760-7758; Questions can be directed to: Compliance@aspenspecialty.com. In addition, please note state-specific instructions as follows:

In Arizona, service must be made on the Commissioner of Insurance, but a copy of any service of legal process should also be delivered or forwarded (for informational purposes only) to: Mr. John Rohwer, John Rohwer & Company, P.O. Box 2229, Phoenix, AZ 85002 or Gail Flock c/o CT Corporation System, 2394 East Camelback Road, Phoenix, AZ 85016.

In California, any service of legal process may also be delivered or forwarded to: Jere Keprios c/o CT Corporation, 818 West Seventh Street, Los Angeles, CA 90017.

In Colorado, any service of legal process may also be delivered or forwarded to: Christen Vinnola c/o The Corporation Company, 1675 Broadway, Suite 1200, Denver, CO 80202.

In Georgia, service must be made on the Commissioner of Insurance, but a copy of such service should also be delivered or forwarded (for informational purposes only) to: Dale W. Morris c/c CT Corporation System, 1201 Peachtree Street, NE, Atlanta, GA 30361.

In Hawaii, any service of legal process may also be delivered or forwarded to: Ronald V. Grant c/o CT Corporation Company, Inc. 900 Fort Street Mall, Suite 1800 Honolulu, HI 96813.

In Louisiana, any service of legal process may also be delivered or forwarded to: Lisa Uttech c/o CT Corporation Regional System, 5615 Corporate Blvd Suite 400B, Baton Rouge, LA 70808.

In Maine, service must be made on the Commissioner of Insurance, but a copy of such filing should also be delivered or forwarded (for informational purposes only) to: Peter B. Webster c/o CT Corporation System, 81 West Main Street, Yarmouth, ME 04096.

In Michigan, service of legal process may only be made on the Insurance Commissioner, but a copy of such filing should also be sent (for reference only) to: General Counsel, Aspen Insurance U.K. Limited c/o Aspen Specialty Insurance Management, Inc., 175 Capital Blvd., Rocky Hill, CT 06067.

In North Carolina, service of legal process may only be made on the Insurance Commissioner, but a copy of any service of legal process should also be delivered or forwarded (for reference only) to: Ron M. Strickland c/o CT Corporation System 150 Fayetteville Street Box 1011, Raleigh, NC 27601.

In Tennessee, any service of legal process may only be made on the Insurance Commissioner, but a copy of such filing should also be delivered or forwarded (for reference only) to: Mark Williams c/o CT Corporation System 800 S. Gay Street, Suite 2021, Knoxville, TN 37929.

In Texas, any service of legal process may only be made on the Insurance Commissioner, but a copy of such filing should also be delivered or forwarded (for reference only) to: Shirley Dillon c/o CT Corporation System, 350 North St. Paul Street, Dallas, TX 75201.

In Wyoming, any service of legal process should be made on the Insurance Commissioner, but a copy of such filing should also be delivered or forwarded (for reference only) to: Tammy Bellefeuille c/o CT Corporation System 1720 Carey Avenue, Cheyenne, WY 82001.

The foregoing designation of attorney for service of legal process upon the Company shall not constitute a waiver of the Company's rights to remove, remand, dismiss or transfer any suit or proceeding from any court, or to commence any suit or other proceeding in any court of competent jurisdiction.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**LIQUOR LIABILITY COVERAGE FORM CONDITIONS AMENDMENT
MINIMUM RETAINED AUDIT PREMIUM**

THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE FOLLOWING:

LIQUOR LIABILITY COVERAGE FORM

SECTION IV, LIQUOR LIABILITY CONDITIONS, Paragraph 5, **Premium Audit**, subparagraph b, is deleted and replaced by the following:

- b.** Premium shown in this Coverage Part as Advance Premium is a deposit premium only. At the close of each audit period, we will compute the earned premium for that period. Audit premiums are due and payable upon notice to the First Named Insured. Premium Audit adjustments will be made to determine additional premiums only. You agree that there will be no downward adjustment of the Minimum Retained Audit Premium resulting from the Premium Audit provision of this policy.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

WAR LIABILITY EXCLUSION

THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE FOLLOWING:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

- A.** Exclusion **i.** under Paragraph **2.**, **Exclusions of Section I – Coverage A – Bodily Injury And Property Damage Liability** is replaced by the following:
- 2. Exclusions**
- This insurance does not apply to:
- i. War**
- "Bodily injury" or "property damage", however caused, arising, directly or indirectly, out of:
- (1)** War, including undeclared or civil war; or
 - (2)** Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
 - (3)** Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.
- B.** The following exclusion is added to Paragraph **2.**, **Exclusions of Section I – Coverage B – Personal And Advertising Injury Liability:**
- 2. Exclusions**
- This insurance does not apply to:
- WAR**
- "Personal and advertising injury", however caused, arising, directly or indirectly, out of:
- a.** War, including undeclared or civil war; or
 - b.** Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
 - c.** Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.
- C.** Exclusion **h.** under Paragraph **2.**, **Exclusions of Section I – Coverage C – Medical Payments** does not apply. Medical payments due to war are now subject to Exclusion **g.** of Paragraph **2.**, **Exclusions of Section I – Coverage C – Medical Payments** since "bodily injury" arising out of war is now excluded under Coverage **A.**

RECORDING AND DISTRIBUTION OF MATERIAL OR INFORMATION IN VIOLATION OF LAW EXCLUSION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. Exclusion q. of Paragraph 2. Exclusions of Section I – Coverage A – Bodily Injury And Property Damage Liability is replaced by the following:

2. Exclusions

This insurance does not apply to:

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

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

- (1) The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law;
- (2) The CAN-SPAM Act of 2003, including any amendment of or addition to such law;
- (3) The Fair Credit Reporting Act (FCRA), and any amendment of or addition to such law, including the Fair and Accurate Credit Transaction Act (FACTA); or
- (4) Any federal, state or local statute, ordinance or regulation, other than the TCPA, CAN-SPAM Act of 2003 or FCRA and their amendments and additions, that addresses, prohibits, or limits the printing, dissemination, disposal, collecting, recording, sending, transmitting, communicating or distribution of material or information.

B. Exclusion p. of Paragraph 2. Exclusions of Section I – Coverage B – Personal And Advertising Injury Liability is replaced by the following:

2. Exclusions

This insurance does not apply to:

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

"Personal and advertising injury" arising directly or indirectly out of any action or omission that violates or is alleged to violate:

- (1) The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law;
- (2) The CAN-SPAM Act of 2003, including any amendment of or addition to such law;
- (3) The Fair Credit Reporting Act (FCRA), and any amendment of or addition to such law, including the Fair and Accurate Credit Transaction Act (FACTA); or
- (4) Any federal, state or local statute, ordinance or regulation, other than the TCPA, CAN-SPAM Act of 2003 or FCRA and their amendments and additions, that addresses, prohibits, or limits the printing, dissemination, disposal, collecting, recording, sending, transmitting, communicating or distribution of material or information.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EMPLOYEE BENEFITS LIABILITY COVERAGE

**THIS ENDORSEMENT PROVIDES CLAIMS-MADE COVERAGE.
PLEASE READ THE ENTIRE ENDORSEMENT CAREFULLY.**

THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE FOLLOWING:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Coverage		Limit Of Insurance		Deductible		Premium
Employee Benefits Programs	\$1,000,000	each employee	\$25,000	each employee	\$ [REDACTED]	
	\$1,000,000	aggregate				
Retroactive Date:	10/06/2011					

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

A. The following is added to Section I – Coverages:

**COVERAGE – EMPLOYEE BENEFITS
LIABILITY**

1. Insuring Agreement

- a.** We will pay those sums that the insured becomes legally obligated to pay as damages because of any act, error or omission, of the insured, or of any other person for whose acts the insured is legally liable, to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages to which this insurance does not apply. We may, at our discretion, investigate any report of an act, error or omission and settle any "claim" or "suit" that may result. But:

- (1)** The amount we will pay for damages is limited as described in Paragraph **E.** (Section **III** – Limits Of Insurance); and
- (2)** Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements.

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

b. This insurance applies to damages only if:

- (1)** The act, error or omission, is negligently committed in the "administration" of your "employee benefit program";
- (2)** The act, error or omission, did not take place before the Retroactive Date, if any, shown in the Schedule nor after the end of the policy period; and
- (3)** A "claim" for damages, because of an act, error or omission, is first made against any insured, in accordance with Paragraph **c.** below, during the policy period or an Extended Reporting Period we provide under Paragraph **G.** of this endorsement.

c. A "claim" seeking damages will be deemed to have been made at the earlier of the following times:

- (1)** When notice of such "claim" is received and recorded by any insured or by us, whichever comes first; or

- (2) When we make settlement in accordance with Paragraph 1.a. above.

A "claim" received and recorded by the insured within 60 days after the end of the policy period will be considered to have been received within the policy period, if no subsequent policy is available to cover the claim.

- d. All "claims" for damages made by an "employee" because of any act, error or omission, or a series of related acts, errors or omissions, including damages claimed by such "employee's" dependents and beneficiaries, will be deemed to have been made at the time the first of those "claims" is made against any insured.

2. Exclusions

This insurance does not apply to:

a. Dishonest, Fraudulent, Criminal Or Malicious Act

Damages arising out of any intentional, dishonest, fraudulent, criminal or malicious act, error or omission, committed by any insured, including the willful or reckless violation of any statute.

b. Bodily Injury, Property Damage, Or Personal And Advertising Injury

"Bodily injury", "property damage" or "personal and advertising injury".

c. Failure To Perform A Contract

Damages arising out of failure of performance of contract by any insurer.

d. Insufficiency Of Funds

Damages arising out of an insufficiency of funds to meet any obligations under any plan included in the "employee benefit program".

e. Inadequacy Of Performance Of Investment/Advice Given With Respect To Participation

Any "claim" based upon:

- (1) Failure of any investment to perform;
- (2) Errors in providing information on past performance of investment vehicles; or
- (3) Advice given to any person with respect to that person's decision to participate or not to participate in any plan included in the "employee benefit program".

f. Workers' Compensation And Similar Laws

Any "claim" arising out of your failure to comply with the mandatory provisions of any workers' compensation, unemployment compensation insurance, social security or disability benefits law or any similar law.

g. ERISA

Damages for which any insured is liable because of liability imposed on a fiduciary by the Employee Retirement Income Security Act of 1974, as now or hereafter amended, or by any similar federal, state or local laws.

h. Available Benefits

Any "claim" for benefits to the extent that such benefits are available, with reasonable effort and cooperation of the insured, from the applicable funds accrued or other collectible insurance.

i. Taxes, Fines Or Penalties

Taxes, fines or penalties, including those imposed under the Internal Revenue Code or any similar state or local law.

j. Employment-Related Practices

Damages arising out of wrongful termination of employment, discrimination, or other employment-related practices.

B. For the purposes of the coverage provided by this endorsement:

1. All references to Supplementary Payments – Coverages A and B are replaced by Supplementary Payments – Coverages A, B and Employee Benefits Liability.
2. Paragraphs 1.b. and 2. of the Supplementary Payments provision do not apply.

C. For the purposes of the coverage provided by this endorsement, Paragraphs 2. and 4. of Section II – Who Is An Insured are replaced by the following:

2. Each of the following is also an insured:

- a. Each of your "employees" who is or was authorized to administer your "employee benefit program".
- b. Any persons, organizations or "employees" having proper temporary authorization to administer your "employee benefit program" if you die, but only until your legal representative is appointed.
- c. Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this Endorsement.

4. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest, will qualify as a Named Insured if no other similar insurance applies to that organization. However:
 - a. Coverage under this provision is afforded only until the 90th day after you acquire or form the organization or the end of the policy period, whichever is earlier.
 - b. Coverage under this provision does not apply to any act, error or omission that was committed before you acquired or formed the organization.
- D. For the purposes of the coverage provided by this endorsement, Paragraph 3. of **Section II – Who Is An Insured** does not apply.
- E. For the purposes of the coverage provided by this endorsement, **Section III – Limits Of Insurance** is replaced by the following:

1. Limits Of Insurance

- a. The Limits of Insurance shown in the Schedule and the rules below fix the most we will pay regardless of the number of:
 - (1) Insureds;
 - (2) "Claims" made or "suits" brought;
 - (3) Persons or organizations making "claims" or bringing "suits";
 - (4) Acts, errors or omissions; or
 - (5) Benefits included in your "employee benefit program".
- b. The Aggregate Limit is the most we will pay for all damages because of acts, errors or omissions negligently committed in the "administration" of your "employee benefit program".
- c. Subject to the Aggregate Limit, the Each Employee Limit is the most we will pay for all damages sustained by any one "employee", including damages sustained by such "employee's" dependents and beneficiaries, as a result of:
 - (1) An act, error or omission; or
 - (2) A series of related acts, errors or omissions negligently committed in the "administration" of your "employee benefit program".

However, the amount paid under this endorsement shall not exceed, and will be subject to, the limits and restrictions that apply to the payment of benefits in any plan included in the "employee benefit program".

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

2. Deductible

- a. Our obligation to pay damages on behalf of the insured applies only to the amount of damages in excess of the deductible amount stated in the Schedule as applicable to Each Employee. The limits of insurance shall not be reduced by the amount of this deductible.
- b. The deductible amount stated in the Schedule applies to all damages sustained by any one "employee", including such "employee's" dependents and beneficiaries, because of all acts, errors or omissions to which this insurance applies.
- c. The terms of this insurance, including those with respect to:
 - (1) Our right and duty to defend any "suits" seeking those damages; and
 - (2) Your duties, and the duties of any other involved insured, in the event of an act, error or omission, or "claim"
 apply irrespective of the application of the deductible amount.
- d. We may pay any part or all of the deductible amount to effect settlement of any "claim" or "suit" and, upon notification of the action taken, you shall promptly reimburse us for such part of the deductible amount as we have paid.

F. For the purposes of the coverage provided by this endorsement, Conditions **2.** and **4.** of **Section IV – Conditions** are replaced by the following:

2. Duties In The Event Of An Act, Error Or Omission, Or "Claim" Or "Suit"

- a.** You must see to it that we are notified as soon as practicable of an act, error or omission which may result in a "claim". To the extent possible, notice should include:
 - (1)** What the act, error or omission was and when it occurred; and
 - (2)** The names and addresses of anyone who may suffer damages as a result of the act, error or omission.
- b.** If a "claim" is made or "suit" is brought against any insured, you must:
 - (1)** Immediately record the specifics of the "claim" or "suit" and the date received; and
 - (2)** Notify us as soon as practicable.

You must see to it that we receive written notice of the "claim" or "suit" as soon as practicable.
- c.** You and any other involved insured must:
 - (1)** Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "claim" or "suit";
 - (2)** Authorize us to obtain records and other information;
 - (3)** Cooperate with us in the investigation or settlement of the "claim" or defense against the "suit"; and
 - (4)** Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of an act, error or omission to which this insurance may also apply.
- d.** No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation or incur any expense without our consent.

4. Other Insurance

If other valid and collectible insurance is available to the insured for a loss we cover under this endorsement, our obligations are limited as follows:

a. Primary Insurance

This insurance is primary except when **b.** below applies. If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in **c.** below.

b. Excess Insurance

- (1)** This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis that is effective prior to the beginning of the policy period shown in the Schedule of this insurance and that applies to an act, error or omission on other than a claims-made basis, if:
 - (a)** No Retroactive Date is shown in the Schedule of this insurance; or
 - (b)** The other insurance has a policy period which continues after the Retroactive Date shown in the Schedule of this insurance.
- (2)** When this insurance is excess, we will have no duty to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.
- (3)** When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of the total amount that all such other insurance would pay for the loss in absence of this insurance; and the total of all deductible and self-insured amounts under all that other insurance.
- (4)** We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Schedule of this endorsement.

c. Method Of Sharing

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limits of insurance of all insurers.

- G.** For the purposes of the coverage provided by this endorsement, the following Extended Reporting Period provisions are added, or, if this endorsement is attached to a claims-made Coverage Part, replaces any similar Section in that Coverage Part:

EXTENDED REPORTING PERIOD

- 1.** You will have the right to purchase an Extended Reporting Period, as described below, if:
 - a.** This endorsement is canceled or not renewed; or
 - b.** We renew or replace this endorsement with insurance that:
 - (1)** Has a Retroactive Date later than the date shown in the Schedule of this endorsement; or
 - (2)** Does not apply to an act, error or omission on a claims-made basis.
- 2.** The Extended Reporting Period does not extend the policy period or change the scope of coverage provided. It applies only to "claims" for acts, errors or omissions that were first committed before the end of the policy period but not before the Retroactive Date, if any, shown in the Schedule. Once in effect, the Extended Reporting Period may not be canceled.
- 3.** An Extended Reporting Period of five years is available, but only by an endorsement and for an extra charge.

You must give us a written request for the endorsement within 60 days after the end of the policy period. The Extended Reporting Period will not go into effect unless you pay the additional premium promptly when due.

We will determine the additional premium in accordance with our rules and rates. In doing so, we may take into account the following:

- a.** The "employee benefit programs" insured;

- b.** Previous types and amounts of insurance;
- c.** Limits of insurance available under this endorsement for future payment of damages; and
- d.** Other related factors.

The additional premium will not exceed 100% of the annual premium for this endorsement.

The Extended Reporting Period endorsement applicable to this coverage shall set forth the terms, not inconsistent with this Section, applicable to the Extended Reporting Period, including a provision to the effect that the insurance afforded for "claims" first received during such period is excess over any other valid and collectible insurance available under policies in force after the Extended Reporting Period starts.

- 4.** If the Extended Reporting Period is in effect, we will provide an extended reporting period aggregate limit of insurance described below, but only for claims first received and recorded during the Extended Reporting Period.

The extended reporting period aggregate limit of insurance will be equal to the dollar amount shown in the Schedule of this endorsement under Limits of Insurance.

Paragraph **E.1.b.** of this endorsement will be amended accordingly. The Each Employee Limit shown in the Schedule will then continue to apply as set forth in Paragraph **E.1.c.**

- H.** For the purposes of the coverage provided by this endorsement, the following definitions are added to the **Definitions** Section:

- 1.** "Administration" means:
 - a.** Providing information to "employees", including their dependents and beneficiaries, with respect to eligibility for or scope of "employee benefit programs";
 - b.** Handling records in connection with the "employee benefit program"; or
 - c.** Effecting, continuing or terminating any "employee's" participation in any benefit included in the "employee benefit program".

However, "administration" does not include handling payroll deductions.

2. "Cafeteria plans" means plans authorized by applicable law to allow employees to elect to pay for certain benefits with pre-tax dollars.
 3. "Claim" means any demand, or "suit", made by an "employee" or an "employee's" dependents and beneficiaries, for damages as the result of an act, error or omission.
 4. "Employee benefit program" means a program providing some or all of the following benefits to "employees", whether provided through a "cafeteria plan" or otherwise:
 - a. Group life insurance; group accident or health insurance; dental, vision and hearing plans; and flexible spending accounts; provided that no one other than an "employee" may subscribe to such benefits and such benefits are made generally available to those "employees" who satisfy the plan's eligibility requirements;
 - b. Profit sharing plans, employee savings plans, employee stock ownership plans, pension plans and stock subscription plans, provided that no one other than an "employee" may subscribe to such benefits and such benefits are made generally available to all "employees" who are eligible under the plan for such benefits;
 - c. Unemployment insurance, social security benefits, workers' compensation and disability benefits;
 - d. Vacation plans, including buy and sell programs; leave of absence programs, including military, maternity, family, and civil leave; tuition assistance plans; transportation and health club subsidies; and
 - e. Any other similar benefits designated in the Schedule or added thereto by endorsement.
- I. For the purposes of the coverage provided by this endorsement, Definitions 5. and 18. in the **Definitions** Section are replaced by the following:
5. "Employee" means a person actively employed, formerly employed, on leave of absence or disabled, or retired. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".
 18. "Suit" means a civil proceeding in which damages because of an act, error or omission to which this insurance applies are alleged. "Suit" includes:
 - a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or
 - b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – MANAGERS OR LESSORS OF PREMISES

THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE FOLLOWING:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

1. Designation of Premises (Part Leased to You): As required by written contract
signed by both parties prior to a loss
2. Name of Person or Organization (Additional Insured):

3. Additional Premium:

(If no entry appears above, the information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

WHO IS AN INSURED (Section II) is amended to include as an insured the person or organization shown in the Schedule but only with respect to liability arising out of the ownership, maintenance or use of that part of the premises leased to you and shown in the Schedule and subject to the following additional exclusions:

This insurance does not apply to:

1. Any "occurrence" which takes place after you cease to be a tenant in that premises.
2. Structural alterations, new construction or demolition operations performed by or on behalf of the person or organization shown in the Schedule.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED –
MORTGAGEE, ASSIGNEE, OR RECEIVER**

THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE FOLLOWING:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name of Person or Organization: As required by written contract signed by
both parties prior to a loss

Designation of Premises:

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

1. WHO IS AN INSURED (Section II) is amended to include as an insured the person(s) or organization(s) shown in the Schedule but only with respect to their liability as mortgagee, assignee, or receiver and arising out of the ownership, maintenance, or use of the premises by you and shown in the Schedule.
2. This insurance does not apply to structural alterations, new construction and demolition operations performed by or for that person or organization.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – LESSOR OF LEASED EQUIPMENT

THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE FOLLOWING:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s)
As required by written contract signed by both parties prior to a loss
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person(s) or organization(s).

B. With respect to the insurance afforded to these additional insureds, this insurance does not apply to any "occurrence" which takes place after the equipment lease expires.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION – DESIGNATED PROFESSIONAL SERVICES

THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE FOLLOWING:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Description Of Professional Services:
1. ALL PROFESSIONAL SERVICES
2.
3.

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

With respect to any professional services shown in the Schedule, the following exclusion is added to Paragraph 2., **Exclusions of Section I – Coverage A – Bodily Injury And Property Damage Liability** and Paragraph 2., **Exclusions of Section I – Coverage B – Personal And Advertising Injury Liability**:

This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" due to the rendering of or failure to render any professional service.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION – COVERAGE C – MEDICAL PAYMENTS

THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE FOLLOWING:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Description And Location Of Premises Or Classification:

ALL LOCATIONS

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

With respect to any premises or classification shown in the Schedule:

- 1.** Section **I** – Coverage **C** – Medical Payments does not apply and none of the references to it in the Coverage Part apply: and

- 2.** The following is added to Section **I** – Supplementary Payments:

- h.** Expenses incurred by the insured for first aid administered to others at the time of an accident for "bodily injury" to which this insurance applies.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**LIMITATION OF COVERAGE TO DESIGNATED
PREMISES OR PROJECT**

THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE FOLLOWING:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

- Premises:** 1) Lavo NY - 39 EAST 58TH STREET, NEW YORK, NY 10022
- 2) TAO Las Vegas - 3355 LAS VEGAS BLVD SOUTH, LAS VEGAS, NV 89109
(INSIDE THE VENETIAN RESORT HOTEL)
- 3) Lavo Las Vegas - 3325 LAS VEGAS BLVD SOUTH, LAS VEGAS, NV 89109
(LOCATED AT THE PALAZZO RESORT HOTEL)
- 4) Marquee Las Vegas - 3708 LAS VEGAS BLVD SOUTH, LAS VEGAS, NV 89109
(INSIDE THE COSMOPOLITAN OF LAS VEGAS)

Project:

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

This insurance applies only to "bodily injury", "property damage", "personal and advertising injury" and medical expenses arising out of:

1. The ownership, maintenance or use of the premises shown in the Schedule and operations necessary or incidental to those premises; or
2. The project shown in the Schedule.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EMPLOYMENT-RELATED PRACTICES EXCLUSION

THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE FOLLOWING:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. The following exclusion is added to Paragraph 2., Exclusions of Section I – Coverage A – Bodily Injury And Property Damage Liability:

This insurance does not apply to:

"Bodily injury" to:

- (1)** A person arising out of any:
 - (a)** Refusal to employ that person;
 - (b)** Termination of that person's employment; or
 - (c)** Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation or discrimination directed at that person; or
- (2)** The spouse, child, parent, brother or sister of that person as a consequence of "bodily injury" to that person at whom any of the employment-related practices described in Paragraphs **(a)**, **(b)**, or **(c)** above is directed.

This exclusion applies:

- (1)** Whether the insured may be liable as an employer or in any other capacity; and
- (2)** To any obligation to share damages with or repay someone else who must pay damages because of the injury.

B. The following exclusion is added to Paragraph 2., Exclusions of Section I – Coverage B – Personal And Advertising Injury Liability:

This insurance does not apply to:

"Personal and advertising injury" to:

- (1)** A person arising out of any:
 - (a)** Refusal to employ that person;
 - (b)** Termination of that person's employment; or
 - (c)** Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation or discrimination directed at that person; or
- (2)** The spouse, child, parent, brother or sister of that person as a consequence of "personal and advertising injury" to that person at whom any of the employment-related practices described in Paragraphs **(a)**, **(b)**, or **(c)** above is directed.

This exclusion applies:

- (1)** Whether the insured may be liable as an employer or in any other capacity; and
- (2)** To any obligation to share damages with or repay someone else who must pay damages because of the injury.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION – DESIGNATED OPERATIONS COVERED BY A CONSOLIDATED (WRAP-UP) INSURANCE PROGRAM

THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE FOLLOWING:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Description and Location of Operation(s):

ALL PROJECTS AND LOCATIONS FOR WHICH A CONSOLIDATED (WRAP-UP) INSURANCE PROGRAM HAS BEEN PROVIDED

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

The following exclusion is added to paragraph 2., Exclusions of COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY (Section I – Coverages):

This insurance does not apply to "bodily injury" or "property damage" arising out of either your ongoing operations or operations included within the "products-completed operations hazard" at the location described in the Schedule of this endorsement, as a consolidated (wrap-up) insurance program has been provided by the prime contractor/project manager or owner of the construction project in which you are involved.

This exclusion applies whether or not the consolidated (wrap-up) insurance program:

- (1)** Provides coverage identical to that provided by this Coverage Part;
- (2)** Has limits adequate to cover all claims; or
- (3)** Remains in effect.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**TOTAL POLLUTION EXCLUSION WITH A BUILDING HEATING, COOLING AND DEHUMIDIFYING
EQUIPMENT EXCEPTION AND A HOSTILE FIRE EXCEPTION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

Exclusion f. under Paragraph 2. **Exclusions of Section I – Coverage A – Bodily Injury And Property Damage Liability** is replaced by the following:

This insurance does not apply to:

f. Pollution

- (1) "Bodily injury" or "property damage" which would not have occurred in whole or part but for the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" at any time.

This exclusion does not apply to:

- (a) "Bodily injury" if sustained within a building which is or was at any time owned or occupied by, or rented or loaned to, any insured and caused by smoke, fumes, vapor or soot produced by or originating from equipment that is used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use, by the building's occupants or their guests; or
- (b) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire" unless that "hostile fire" occurred or originated:
- (i) At any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste; or
- (ii) At any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations to test for, monitor, clean up, remove, contain, treat, detoxify, neutralize or in any way respond to, or assess the effects of, "pollutants".

- (2) Any loss, cost or expense arising out of any:

- (a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
- (b) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

FUNGI OR BACTERIA EXCLUSION

THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE FOLLOWING:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

- A.** The following exclusion is added to Paragraph 2., Exclusions of **Section I – Coverage A – Bodily Injury And Property Damage Liability**:

2. Exclusions

This insurance does not apply to:

Fungi or Bacteria

- a.** "Bodily injury" or "property damage" which would not have occurred, in whole or in part, but for the actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to, existence of, or presence of, any "fungi" or bacteria on or within a building or structure, including its contents, regardless of whether any other cause, event, material or product contributed concurrently or in any sequence to such injury or damage.
- b.** Any loss, cost or expenses arising out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating or disposing of, or in any way responding to, or assessing the effects of, "fungi" or bacteria, by any insured or by any other person or entity.

This exclusion does not apply to any "fungi" or bacteria that are, are on, or are contained in, a good or product intended for consumption.

- B.** The following exclusion is added to Paragraph 2., Exclusions of **Section I – Coverage B – Personal And Advertising Injury Liability**:

2. Exclusions

This insurance does not apply to:

Fungi or Bacteria

- a.** "Personal and advertising injury" which would not have taken place, in whole or in part, but for the actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to, existence of, or presence of any "fungi" or bacteria on or within a building or structure, including its contents, regardless of whether any other cause, event, material or product contributed concurrently or in any sequence to such injury.
- b.** Any loss, cost or expense arising out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating or disposing of, or in any way responding to, or assessing the effects of, "fungi" or bacteria, by any insured or by any other person or entity.

- C.** The following definition is added to the **Definitions** Section:

"Fungi" means any type or form of fungus, including mold or mildew and any mycotoxins, spores, scents or byproducts produced or released by fungi.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION OF CERTIFIED ACTS OF TERRORISM AND OTHER ACTS OF TERRORISM

THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE FOLLOWING:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
LIQUOR LIABILITY COVERAGE PART
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART
POLLUTION LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART
RAILROAD PROTECTIVE LIABILITY COVERAGE PART
UNDERGROUND STORAGE TANK POLICY

A. The following exclusion is added:

This insurance does not apply to:

TERRORISM

"Any injury or damage" arising, directly or indirectly, out of a "certified act of terrorism" or an "other act of terrorism". However, with respect to an "other act of terrorism", this exclusion applies only when one or more of the following are attributed to such act:

- 1.** The total of insured damage to all types of property exceeds \$25,000,000. In determining whether the \$25,000,000 threshold is exceeded, we will include all insured damage sustained by property of all persons and entities affected by the terrorism and business interruption losses sustained by owners or occupants of the damaged property. For the purpose of this provision, insured damage means damage that is covered by any insurance plus damage that would be covered by any insurance but for the application of any terrorism exclusions; or
- 2.** Fifty or more persons sustain death or serious physical injury. For the purposes of this provision, serious physical injury means:
 - a.** Physical injury that involves a substantial risk of death; or
 - b.** Protracted and obvious physical disfigurement; or
 - c.** Protracted loss of or impairment of the function of a bodily member or organ; or
- 3.** The terrorism involves the use, release or escape of nuclear materials, or directly or indirectly results in nuclear reaction or radiation or radioactive contamination; or

- 4.** The terrorism is carried out by means of the dispersal or application of pathogenic or poisonous biological or chemical materials; or
- 5.** Pathogenic or poisonous biological or chemical materials are released, and it appears that one purpose of the terrorism was to release such materials.

With respect to this exclusion, Paragraphs **1.** and **2.** describe the thresholds used to measure the magnitude of an incident of an "other act of terrorism" and the circumstances in which the threshold will apply for the purpose of determining whether this exclusion will apply to that incident.

B. The following definitions are added:

- 1.** For the purposes of this endorsement, "any injury or damage" means any injury or damage covered under any Coverage Part to which this endorsement is applicable, and includes but is not limited to "bodily injury", "property damage", "personal and advertising injury", "injury" or "environmental damage" as may be defined in any applicable Coverage Part.
- 2.** "Certified act of terrorism" means an act that is certified by the Secretary of the Treasury, in concurrence with the Secretary of State and the Attorney General of the United States, to be an act of terrorism pursuant to the federal Terrorism Risk Insurance Act of 2002. The federal Terrorism Risk Insurance Act of 2002 sets forth the following criteria for a "certified act of terrorism":
 - a.** The act resulted in aggregate losses in excess of \$5 million; and

- b.** The act is a violent act or an act that is dangerous to human life, property or infrastructure and is committed by an individual or individuals acting on behalf of any foreign person or foreign interest, as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.
- 3.** "Other act of terrorism" means a violent act or an act that is dangerous to human life, property or infrastructure that is committed by an individual or individuals and that appears to be part of an effort to coerce a civilian population or to influence the policy or affect the conduct of any government by coercion, and the act is not certified as a terrorist act pursuant to the federal Terrorism Risk Insurance Act of 2002. Multiple incidents of an "other act of terrorism" which occur within a seventy-two hour period and appear to be carried out in concert or to have a related purpose or common leadership shall be considered to be one incident.
- C.** In the event of any incident of a "certified act of terrorism" or an "other act of terrorism" that is not subject to this exclusion, coverage does not apply to any loss or damage that is otherwise excluded under this Coverage Part.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION – ENGINEERS, ARCHITECTS OR SURVEYORS PROFESSIONAL LIABILITY

THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE FOLLOWING:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

The following exclusion is added to Paragraph 2., **Exclusions of Section I – Coverage A – Bodily Injury And Property Damage Liability** and Paragraph 2., **Exclusions of Section I – Coverage B – Personal And Advertising Injury Liability**:

This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or failure to render any professional services by you or any engineer, architect or surveyor who is either employed by you or performing work on your behalf in such capacity.

Professional services include:

1. The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; and
2. Supervisory, inspection, architectural or engineering activities.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

PRODUCTS/COMPLETED OPERATIONS HAZARD REDEFINED

THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE FOLLOWING:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

SCHEDULE

Description of Premises and Operations:

SEE FORM# CG2144

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

With respect to "bodily injury" or "property damage" arising out of "your products" manufactured, sold, handled or distributed:

- 1.** On, from or in connection with the use of any premises described in the Schedule, or
- 2.** In connection with the conduct of any operation described in the Schedule, when conducted by you or on your behalf,

Paragraph **a.** of the definition of "Products-completed operations hazard" in the DEFINITIONS Section is replaced by the following:

"Products-completed operations hazard":

- a.** Includes all "bodily injury" and "property damage" that arises out of "your products" if the "bodily injury" or "property damage" occurs after you have relinquished possession of those products.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

DESIGNATED LOCATION(S) GENERAL AGGREGATE LIMIT

THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE FOLLOWING:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Designated Location(s):
SEE FORM# CG2144

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

- A.** For all sums which the insured becomes legally obligated to pay as damages caused by "occurrences" under **COVERAGE A** (SECTION I), and for all medical expenses caused by accidents under **COVERAGE C** (SECTION I), which can be attributed only to operations at a single designated "location" shown in the Schedule above:
- 1.** A separate Designated Location General Aggregate Limit applies to each designated "location", and that limit is equal to the amount of the General Aggregate Limit shown in the Declarations.
 - 2.** The Designated Location General Aggregate Limit is the most we will pay for the sum of all damages under **COVERAGE A**, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard", and for medical expenses under **COVERAGE C** regardless of the number of:
 - a.** Insureds;
 - b.** Claims made or "suits" brought; or
 - c.** Persons or organizations making claims or bringing "suits".
 - 3.** Any payments made under **COVERAGE A** for damages or under **COVERAGE C** for medical expenses shall reduce the Designated Location General Aggregate Limit for that designated "location". Such payments shall not reduce the General Aggregate Limit shown in the Declarations nor shall they reduce any other Designated Location General Aggregate Limit for any other designated "location" shown in the Schedule above.
 - 4.** The limits shown in the Declarations for Each Occurrence, Fire Damage and Medical Expense continue to apply. However, instead of being subject to the General Aggregate Limit shown in the Declarations, such limits will be subject to the applicable Designated Location General Aggregate Limit.

B. For all sums which the insured becomes legally obligated to pay as damages caused by "occurrences" under **COVERAGE A (SECTION I)**, and for all medical expenses caused by accidents under **COVERAGE C (SECTION I)**, which cannot be attributed only to operations at a single designated "location" shown in the Schedule above:

1. Any payments made under **COVERAGE A** for damages or under **COVERAGE C** for medical expenses shall reduce the amount available under the General Aggregate Limit or the Products-Completed Operations Aggregate Limit, whichever is applicable; and
2. Such payments shall not reduce any Designated Location General Aggregate Limit.

C. When coverage for liability arising out of the "products-completed operations hazard" is provided, any payments for damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard" will reduce the Products-Completed Operations Aggregate Limit, and not reduce the General Aggregate Limit nor the Designated Location General Aggregate Limit.

D. For the purposes of this endorsement, the **Definitions** Section is amended by the addition of the following definition:

"Location" means premises involving the same or connecting lots, or premises whose connection is interrupted only by a street, roadway, waterway or right-of-way of a railroad.

E. The provisions of Limits Of Insurance (**SECTION III**) not otherwise modified by this endorsement shall continue to apply as stipulated.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

NUCLEAR ENERGY LIABILITY EXCLUSION ENDORSEMENT

(Broad Form)

THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE FOLLOWING:

COMMERCIAL AUTOMOBILE COVERAGE PART
COMMERCIAL GENERAL LIABILITY COVERAGE PART
FARM COVERAGE PART
LIQUOR LIABILITY COVERAGE PART
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART
POLLUTION LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART
PROFESSIONAL LIABILITY COVERAGE PART
RAILROAD PROTECTIVE LIABILITY COVERAGE PART
UNDERGROUND STORAGE TANK POLICY

1. The insurance does not apply:

A. Under any Liability Coverage, to "bodily injury" or "property damage":

- (1)** With respect to which an "insured" under the policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters, Nuclear Insurance Association of Canada or any of their successors, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability; or
- (2)** Resulting from the "hazardous properties" of "nuclear material" and with respect to which **(a)** any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or **(b)** the "insured" is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.

B. Under any Medical Payments coverage, to expenses incurred with respect to "bodily injury" resulting from the "hazardous properties" of "nuclear material" and arising out of the operation of a "nuclear facility" by any person or organization.

C. Under any Liability Coverage, to "bodily injury" or "property damage" resulting from "hazardous properties" of "nuclear material", if:

- (1)** The "nuclear material" **(a)** is at any "nuclear facility" owned by, or operated by or on behalf of, an "insured" or **(b)** has been discharged or dispersed therefrom;
- (2)** The "nuclear material" is contained in "spent fuel" or "waste" at any time possessed, handled, used, processed, stored, transported or disposed of, by or on behalf of an "insured"; or
- (3)** The "bodily injury" or "property damage" arises out of the furnishing by an "insured" of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any "nuclear facility", but if such facility is located within the United States of America, its territories or possessions or Canada, this exclusion **(3)** applies only to "property damage" to such "nuclear facility" and any property thereat.

2. As used in this endorsement:

"Hazardous properties" includes radioactive, toxic or explosive properties.

"Nuclear material" means "source material", "Special nuclear material" or "by-product material".

"Source material", "special nuclear material", and "by-product material" have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof.

"Spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a "nuclear reactor".

"Waste" means any waste material **(a)** containing "by-product material" other than the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its "source material" content, and **(b)** resulting from the operation by any person or organization of any "nuclear facility" included under the first two paragraphs of the definition of "nuclear facility".

"Nuclear facility" means:

- (a)** Any "nuclear reactor";
- (b)** Any equipment or device designed or used for **(1)** separating the isotopes of uranium or plutonium, **(2)** processing or utilizing "spent fuel", or **(3)** handling, processing or packaging "waste";

- (c)** Any equipment or device used for the processing, fabricating or alloying of "special nuclear material" if at any time the total amount of such material in the custody of the "insured" at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;

- (d)** Any structure, basin, excavation, premises or place prepared or used for the storage or disposal of "waste";

and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations.

"Nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material.

"Property damage" includes all forms of radioactive contamination of property.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

POLICY CHANGES

Policy Change
Number 001

POLICY NUMBER:

CRA8XYD11

**POLICY CHANGES
EFFECTIVE:**

10/06/2011

COMPANY:

Aspen Specialty Insurance Company

NAMED INSURED:

THE RESTAURANT GROUP ETAL

AUTHORIZED REPRESENTATIVE

COVERAGE PARTS AFFECTED:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

CHANGES:

Stop Loss Aggregate Endorsement - \$250,000 for sales up to \$175M/\$400k
for sales excess of \$175M

TBD

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

POLICY CHANGES

Policy Change
Number 002

POLICY NUMBER:

CRA8XYD11

**POLICY CHANGES
EFFECTIVE:**

10/06/2011

COMPANY:

Aspen Specialty Insurance Company

NAMED INSURED:

THE RESTAURANT GROUP ETAL

AUTHORIZED REPRESENTATIVE

COVERAGE PARTS AFFECTED:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

CHANGES:

90 Day Notice of cancellation (except for non-payment of premium)

TBD

POLICYHOLDER'S GUIDE TO REPORTING A CASUALTY CLAIM

A. As soon as you are aware of an event that will give rise to a claim being made against you (3rd Party Liability Claims), please be sure to quickly report the matter to both your agent/broker and Aspen Specialty Insurance Management, Inc. Be sure to include your policy number and the name of the insured as it is stated on the policy.

B. New claims can be reported to ASPEN SPECIALTY INSURANCE COMPANY as follows:

- 1. By Mail:**
ASPEN SPECIALTY INSURANCE COMPANY
c/o Aspen Specialty Insurance Management, Inc.
Claims Department
600 Atlantic Avenue, Suite 2100
Boston, MA 02210
Main Telephone No: 617-532-7300
- 2. By Fax:**
617-532-7342
- 3. By Dedicated Email:**
3rd Party Liability Claims: casualty.claims@aspenspecialty.com
Claim Status Requests: casualty.status@aspenspecialty.com

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

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

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as a Named Insured under this policy. The words "we", "us" and "our" refer to the company providing this insurance.

The word "insured" means any person or organization qualifying as such under Section II – Who Is An Insured.

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

SECTION I – COVERAGES

COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY

1. Insuring Agreement

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

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

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

- b. This insurance applies to "bodily injury" and "property damage" only if:
- (1) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";

- (2) The "bodily injury" or "property damage" occurs during the policy period; and

- (3) Prior to the policy period, no insured listed under Paragraph 1. of Section II – Who Is An Insured and no "employee" authorized by you to give or receive notice of an "occurrence" or claim, knew that the "bodily injury" or "property damage" had occurred, in whole or in part. If such a listed insured or authorized "employee" knew, prior to the policy period, that the "bodily injury" or "property damage" occurred, then any continuation, change or resumption of such "bodily injury" or "property damage" during or after the policy period will be deemed to have been known prior to the policy period.

- c. "Bodily injury" or "property damage" which occurs during the policy period and was not, prior to the policy period, known to have occurred by any insured listed under Paragraph 1. of Section II – Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim, includes any continuation, change or resumption of that "bodily injury" or "property damage" after the end of the policy period.

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

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

- e. Damages because of "bodily injury" include damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury".

2.Exclusions

This insurance does not apply to:

a. Expected Or Intended Injury

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

from the use of reasonable force to protect persons or property.

b. Contractual Liability

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

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

c. Liquor Liability

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

- (1) Causing or contributing to the intoxication of any person;
- (2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
- (3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

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

d. Workers' Compensation And Similar Laws

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

e. Employer's Liability

"Bodily injury" to:

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

graph (1) above.

This exclusion applies whether the insured may be liable as an employer or in any other capacity and to any obligation to share damages with or repay someone else who must pay damages because of the injury.

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

f. Pollution

- (1) "Bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":
 - (a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any insured. However, this subparagraph does not apply to:
 - (i) "Bodily injury" if sustained within a building and caused by smoke, fumes, vapor or soot produced by or originating from equipment that is used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use, by the building's occupants or their guests;
 - (ii) "Bodily injury" or "property damage" for which you may be held liable, if you are a contractor and the owner or lessee of such premises, site or location has been added to your policy as an additional insured with respect to your ongoing operations performed for that additional insured at that premises, site or location and such premises, site or location is not and never was owned or occupied by, or rented or loaned to, any insured, other than that additional insured; or
 - (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire";
 - (b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;
 - (c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for:
 - (i) Any insured; or
 - (ii) Any person or organization for whom you may be legally responsible; or
 - (d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the "pollutants" are brought on or to

the premises, site or location in connection with such operations by such insured, contractor or subcontractor. However, this subparagraph does not apply to:

- (i) "Bodily injury" or "property damage" arising out of the escape of fuels, lubricants or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for the operation of "mobile equipment" or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the "bodily injury" or "property damage" arises out of the intentional discharge, dispersal or release of the fuels, lubricants or other operating fluids, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent that they be discharged, dispersed or released as part of the operations being performed by such insured, contractor or subcontractor;
 - (ii) "Bodily injury" or "property damage" sustained within a building and caused by the release of gases, fumes or vapors from materials brought into that building in connection with operations being performed by you or on your behalf by a contractor or subcontractor; or
 - (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire".
- (e) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants".
- (2) Any loss, cost or expense arising out of any:
- (a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
 - (b) Claim or "suit" by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

However, this paragraph does not apply to liability for damages because of "property damage" that the insured would have in the absence of

such request, demand, order or statutory or regulatory requirement, or such claim or "suit" by or on behalf of a governmental authority.

g. Aircraft, Auto Or Watercraft

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

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

This exclusion does not apply to:

- (1) A watercraft while ashore on premises you own or rent;
- (2) A watercraft you do not own that is:
 - (a) Less than 26 feet long; and
 - (b) Not being used to carry persons or property for a charge;
- (3) Parking an "auto" on, or on the ways next to, premises you own or rent, provided the "auto" is not owned by or rented or loaned to you or the insured;
- (4) Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft; or
- (5) "Bodily injury" or "property damage" arising out of:
 - (a) The operation of machinery or equipment that is attached to, or part of, a land vehicle that would qualify under the definition of "mobile equipment" if it were not subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged; or
 - (b) the operation of any of the machinery or equipment listed in Paragraph f.(2) or f.(3) of the definition of "mobile equipment".

h. Mobile Equipment

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

- (1) The transportation of "mobile equipment" by an "auto" owned or operated by or rented or loaned to any insured; or
- (2) The use of "mobile equipment" in, or while in practice for, or while being prepared for, any prearranged racing, speed, demolition, or stunt activity.

i. War

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

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

j. Damage To Property

"Property damage" to:

- (1) Property you own, rent, or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;
- (2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;
- (3) Property loaned to you;
- (4) Personal property in the care, custody or control of the insured;
- (5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or
- (6) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

Paragraphs (1), (3) and (4) of this exclusion do not apply to "property damage" (other than damage by fire) to premises, including the contents of such premises, rented to you for a period of 7 or fewer consecutive days. A separate limit of insurance applies to Damage To Premises Rented To You as described in Section III – Limits Of Insurance.

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

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

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

k. Damage To Your Product

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

l. Damage To Your Work

"Property damage" to "your work" arising out of it or any part of it and included in the "products-completed operations hazard".

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

m. Damage To Impaired Property Or Property Not Physically Injured

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

- (1) A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or
- (2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to "your product" or "your work" after it has been put to its intended use.

n. Recall Of Products, Work Or Impaired Property

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

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

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

o. Personal And Advertising Injury

"Bodily injury" arising out of "personal and advertising injury".

p. Electronic Data

Damages arising out of the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate electronic data.

As used in this exclusion, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

q. Distribution Of Material In Violation Of Statutes

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

- (1) The Telephone Consumer Protection Act

(TCPA), including any amendment of or addition to such law; or

- (2) The CAN-SPAM Act of 2003, including any amendment of or addition to such law; or
- (3) Any statute, ordinance or regulation, other than the TCPA or CAN-SPAM Act of 2003, that prohibits or limits the sending, transmitting, communicating or distribution of material or information.

Exclusions **c.** through **n.** do not apply to damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner. A separate limit of insurance applies to this coverage as described in Section **III** – Limits Of Insurance.

COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY

1. Insuring Agreement

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

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

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

- b. This insurance applies to "personal and advertising injury" caused by an offense arising out of your business but only if the offense was committed in the "coverage territory" during the policy period.

2. Exclusions

This insurance does not apply to:

a. Knowing Violation Of Rights Of Another

"Personal and advertising injury" caused by or at the direction of the insured with the knowledge that the act would violate the rights of another and would inflict "personal and advertising injury".

b. Material Published With Knowledge Of Falsity

"Personal and advertising injury" arising out of oral or written publication of material, if done by or at

the direction of the insured with knowledge of its falsity.

c. Material Published Prior To Policy Period

"Personal and advertising injury" arising out of oral or written publication of material whose first publication took place before the beginning of the policy period.

d. Criminal Acts

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

e. Contractual Liability

"Personal and advertising injury" for which the insured has assumed liability in a contract or agreement. This exclusion does not apply to liability for damages that the insured would have in the absence of the contract or agreement.

f. Breach Of Contract

"Personal and advertising injury" arising out of a breach of contract, except an implied contract to use another's advertising idea in your "advertisement".

g. Quality Or Performance Of Goods – Failure To Conform To Statements

"Personal and advertising injury" arising out of the failure of goods, products or services to conform with any statement of quality or performance made in your "advertisement".

h. Wrong Description Of Prices

"Personal and advertising injury" arising out of the wrong description of the price of goods, products or services stated in your "advertisement".

i. Infringement Of Copyright, Patent, Trademark Or Trade Secret

"Personal and advertising injury" arising out of the infringement of copyright, patent, trademark, trade secret or other intellectual property rights. Under this exclusion, such other intellectual property rights do not include the use of another's advertising idea in your "advertisement".

However, this exclusion does not apply to infringement, in your "advertisement", of copyright, trade dress or slogan.

j. Insureds In Media And Internet Type Businesses

"Personal and advertising injury" committed by an insured whose business is:

- (1) Advertising, broadcasting, publishing or telecasting;
- (2) Designing or determining content of web-sites for others; or
- (3) An Internet search, access, content or service provider.

However, this exclusion does not apply to Paragraphs **14.a., b. and c.** of "personal and advertising injury" under the Definitions Section.

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

k. Electronic Chatrooms Or Bulletin Boards

"Personal and advertising injury" arising out of an electronic chatroom or bulletin board the insured hosts, owns, or over which the insured exercises control.

l. Unauthorized Use Of Another's Name Or Product

"Personal and advertising injury" arising out of the unauthorized use of another's name or product in your e-mail address, domain name or metatag, or any other similar tactics to mislead another's potential customers.

m. Pollution

"Personal and advertising injury" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" at any time.

n. Pollution-Related

Any loss, cost or expense arising out of any:

- (1) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
- (2) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

o. War

"Personal and advertising injury", however caused, arising, directly or indirectly, out of:

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

p. Distribution Of Material In Violation Of Statutes

"Personal and advertising injury" arising directly or indirectly out of any action or omission that violates or is alleged to violate:

- (1) The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law; or
- (2) The CAN-SPAM Act of 2003, including any amendment of or addition to such law; or
- (3) Any statute, ordinance or regulation, other than the TCPA or CAN-SPAM Act of 2003, that prohibits or limits the sending, transmitting, communicating or distribution of material or information.

COVERAGE C MEDICAL PAYMENTS

1. Insuring Agreement

- a. We will pay medical expenses as described below for "bodily injury" caused by an accident:

- (1) On premises you own or rent;
- (2) On ways next to premises you own or rent; or
- (3) Because of your operations;

provided that:

- (a) The accident takes place in the "coverage territory" and during the policy period;
- (b) The expenses are incurred and reported to us within one year of the date of the accident; and
- (c) The injured person submits to examination, at our expense, by physicians of our choice as often as we reasonably require.

- b. We will make these payments regardless of fault. These payments will not exceed the applicable limit of insurance. We will pay reasonable expenses for:

- (1) First aid administered at the time of an accident;
- (2) Necessary medical, surgical, x-ray and dental services, including prosthetic devices; and
- (3) Necessary ambulance, hospital, professional nursing and funeral services.

2. Exclusions

We will not pay expenses for "bodily injury":

a. Any Insured

To any insured, except "volunteer workers".

b. Hired Person

To a person hired to do work for or on behalf of any insured or a tenant of any insured.

c. Injury On Normally Occupied Premises

To a person injured on that part of premises you own or rent that the person normally occupies.

d. Workers Compensation And Similar Laws

To a person, whether or not an "employee" of any insured, if benefits for the "bodily injury" are payable or must be provided under a workers' compensation or disability benefits law or a similar law.

e. Athletics Activities

To a person injured while practicing, instructing or participating in any physical exercises or games, sports, or athletic contests.

f. Products-Completed Operations Hazard

Included within the "products-completed operations hazard".

g. Coverage A Exclusions

Excluded under Coverage A.

SUPPLEMENTARY PAYMENTS – COVERAGES A AND B

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

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

These payments will not reduce the limits of insurance.

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

- a. The "suit" against the indemnitee seeks damages for which the insured has assumed the liability of the indemnitee in a contract or agreement that is an "insured contract";
- b. This insurance applies to such liability assumed by the insured;
- c. The obligation to defend, or the cost of the defense

of, that indemnitee, has also been assumed by the insured in the same "insured contract";

- d. The allegations in the "suit" and the information we know about the "occurrence" are such that no conflict appears to exist between the interests of the insured and the interests of the indemnitee;
- e. The indemnitee and the insured ask us to conduct and control the defense of that indemnitee against such "suit" and agree that we can assign the same counsel to defend the insured and the indemnitee; and
- f. The indemnitee:

(1) Agrees in writing to:

- (a) Cooperate with us in the investigation, settlement or defense of the "suit";
- (b) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "suit";
- (c) Notify any other insurer whose coverage is available to the indemnitee; and
- (d) Cooperate with us with respect to coordinating other applicable insurance available to the indemnitee; and

(2) Provides us with written authorization to:

- (a) Obtain records and other information related to the "suit"; and
- (b) Conduct and control the defense of the indemnitee in such "suit".

So long as the above conditions are met, attorneys' fees incurred by us in the defense of that indemnitee, necessary litigation expenses incurred by us and necessary litigation expenses incurred by the indemnitee at our request will be paid as Supplementary Payments. Notwithstanding the provisions of Paragraph 2.b.(2) of Section I – Coverage A – Bodily Injury And Property Damage Liability, such payments will not be deemed to be damages for "bodily injury" and "property damage" and will not reduce the limits of insurance.

Our obligation to defend an insured's indemnitee and to pay for attorneys' fees and necessary litigation expenses as Supplementary Payments ends when we have used up the applicable limit of insurance in the payment of judgments or settlements or the conditions set forth above, or the terms of the agreement described in Paragraph f. above, are no longer met.

SECTION II – WHO IS AN INSURED

1. If you are designated in the Declarations as:

- a. An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
- b. A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the con-

duct of your business.

- c. A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
- d. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.
- e. A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.

2. Each of the following is also an insured:

- a. Your "volunteer workers" only while performing duties related to the conduct of your business, or your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business. However, none of these "employees" or "volunteer workers" are insureds for:

(1) "Bodily injury" or "personal and advertising injury":

- (a)** To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;

- (b)** To the spouse, child, parent, brother or sister of that co-"employee" or "volunteer worker" as a consequence of Paragraph **(1)(a)** above;

- (c)** For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraphs **(1)(a)** or **(b)** above; or

- (d)** Arising out of his or her providing or failing to provide professional health care services.

(2) "Property damage" to property:

- (a)** Owned, occupied or used by,

- (b)** Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by

you, any of your "employees", "volunteer workers", any partner or member (if you are a partnership or joint venture), or any member (if you

are a limited liability company).

- b. Any person (other than your "employee" or "volunteer worker"), or any organization while acting as your real estate manager.

- c. Any person or organization having proper temporary custody of your property if you die, but only:

- (1)** With respect to liability arising out of the maintenance or use of that property; and

- (2)** Until your legal representative has been appointed.

- d. Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this Coverage Part.

- 3.** Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:

- a. Coverage under this provision is afforded only until the 90th day after you acquire or form the organization or the end of the policy period, whichever is earlier;

- b. Coverage **A** does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and

- c. Coverage **B** does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

SECTION III – LIMITS OF INSURANCE

- 1.** The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:

- a. Insureds;

- b. Claims made or "suits" brought; or

- c. Persons or organizations making claims or bringing "suits".

- 2.** The General Aggregate Limit is the most we will pay for the sum of:

- a. Medical expenses under Coverage **C**;

- b. Damages under Coverage **A**, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard"; and

- c. Damages under Coverage **B**.

- 3.** The Products-Completed Operations Aggregate Limit is the most we will pay under Coverage **A** for damages because of "bodily injury" and "property damage"

included in the "products-completed operations hazard".

4. Subject to Paragraph 2. above, the Personal and Advertising Injury Limit is the most we will pay under Coverage B for the sum of all damages because of all "personal and advertising injury" sustained by any one person or organization.
5. Subject to Paragraph 2. or 3. above, whichever applies, the Each Occurrence Limit is the most we will pay for the sum of:
 - a. Damages under Coverage A; and
 - b. Medical expenses under Coverage Cbecause of all "bodily injury" and "property damage" arising out of any one "occurrence".
6. Subject to Paragraph 5. above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage A for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, while rented to you or temporarily occupied by you with permission of the owner.
7. Subject to Paragraph 5. above, the Medical Expense Limit is the most we will pay under Coverage C for all medical expenses because of "bodily injury" sustained by any one person.

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

SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS

1. Bankruptcy

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

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

- a. You must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:
 - (1) How, when and where the "occurrence" or offense took place;
 - (2) The names and addresses of any injured persons and witnesses; and
 - (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.
- b. If a claim is made or "suit" is brought against any insured, you must:

- (1) Immediately record the specifics of the claim or "suit" and the date received; and

- (2) Notify us as soon as practicable.

You must see to it that we receive written notice of the claim or "suit" as soon as practicable.

c. You and any other involved insured must:

- (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
 - (2) Authorize us to obtain records and other information;
 - (3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and
 - (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this insurance may also apply.
- d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

3. Legal Action Against Us

No person or organization has a right under this Coverage Part:

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

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured; but we will not be liable for damages that are not payable under the terms of this Coverage Part or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

4. Other Insurance

If other valid and collectible insurance is available to the insured for a loss we cover under Coverages A or B of this Coverage Part, our obligations are limited as follows:

a. Primary Insurance

This insurance is primary except when Paragraph b. below applies. If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in Paragraph c. below.

b. Excess Insurance

- (1) This insurance is excess over:
 - (a) Any of the other insurance, whether primary, excess, contingent or on any other

basis:

- (i) That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";
- (ii) That is Fire insurance for premises rented to you or temporarily occupied by you with permission of the owner;
- (iii) That is insurance purchased by you to cover your liability as a tenant for "property damage" to premises rented to you or temporarily occupied by you with permission of the owner; or
- (iv) If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion **g**. of Section **I** – Coverage **A** – Bodily Injury And Property Damage Liability.

(b) Any other primary insurance available to you covering liability for damages arising out of the premises or operations, or the products and completed operations, for which you have been added as an additional insured by attachment of an endorsement.

(2) When this insurance is excess, we will have no duty under Coverages **A** or **B** to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

(3) When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

(a) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and

(b) The total of all deductible and self-insured amounts under all that other insurance.

(4) We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

c. Method Of Sharing

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

5. Premium Audit

- a. We will compute all premiums for this Coverage Part in accordance with our rules and rates.
- b. Premium shown in this Coverage Part as advance premium is a deposit premium only. At the close of each audit period we will compute the earned premium for that period and send notice to the first Named Insured. The due date for audit and retrospective premiums is the date shown as the due date on the bill. If the sum of the advance and audit premiums paid for the policy period is greater than the earned premium, we will return the excess to the first Named Insured.
- c. The first Named Insured must keep records of the information we need for premium computation, and send us copies at such times as we may request.

6. Representations

By accepting this policy, you agree:

- a. The statements in the Declarations are accurate and complete;
- b. Those statements are based upon representations you made to us; and
- c. We have issued this policy in reliance upon your representations.

7. Separation Of Insureds

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Part to the first Named Insured, this insurance applies:

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

8. Transfer Of Rights Of Recovery Against Others To Us

If the insured has rights to recover all or part of any payment we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.

9. When We Do Not Renew

If we decide not to renew this Coverage Part, we will mail or deliver to the first Named Insured shown in the Declarations written notice of the nonrenewal not less than 30 days before the expiration date.

If notice is mailed, proof of mailing will be sufficient proof of notice.

SECTION V – DEFINITIONS

- 1. "Advertisement" means a notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters. For the

purposes of this definition:

- a. Notices that are published include material placed on the Internet or on similar electronic means of communication; and
- b. Regarding web-sites, only that part of a web-site that is about your goods, products or services for the purposes of attracting customers or supporters is considered an advertisement.

2. "Auto" means:

- a. A land motor vehicle, trailer or semitrailer designed for travel on public roads, including any attached machinery or equipment; or
- b. Any other land vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged.

However, "auto" does not include "mobile equipment".

3. "Bodily injury" means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.

4. "Coverage territory" means:

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

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

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

- b. You have failed to fulfill the terms of a contract or agreement;

if such property can be restored to use by the repair, replacement, adjustment or removal of "your product" or "your work" or your fulfilling the terms of the contract or agreement.

9. "Insured contract" means:

- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";
- b. A sidetrack agreement;
- c. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
- d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
- e. An elevator maintenance agreement;
- f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

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

- (1) That indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass or crossing;
 - (2) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
 - (a) Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
 - (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or
 - (3) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in (2) above and supervisory, inspection, architectural or engineering activities.
- 10. "Leased worker" means** a person leased to you by a labor leasing firm under an agreement between you