

BUILDER'S RISK POLICY

AGREEMENT

We will provide the insurance described in this policy in return for the premium and **your**

compliance with all provisions of this policy including endorsements.

DEFINITIONS

Words in bold print are defined herein.

1. In this policy **you** and **your** refer to the named insured shown on the Declarations Page. **We, us** and **our** refer to the company providing this insurance.
2. **Structures** means buildings, foundations, fences, walks, roadways, other paved surfaces, signs, awnings and similar constructions.
3. **Accident** means an undesigned, unexpected and rapidly occurring event.

4. **Your work** means construction done by **you** or on **your** behalf.
5. **Volcanic action** means lava flow, airborne shock waves, ash, dust or other particulate matter caused by or resulting from volcanic eruption.
6. **Pollutants** means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

LIMIT OF INSURANCE

Regardless of the number of persons insured under this policy, the most **we** will pay for any

one loss is the applicable limit of insurance shown on the Declarations Page.

PROPERTY COVERED

We cover the property described below while at a location described on the Declarations Page:

1. new **structures** during the course of construction and after completion, materials intended to become integral parts of such

structures, construction forms and **your work** on additions, alterations, repair or renovation to or of existing **structures**;

2. lawns, trees, shrubs and plants.

LOSSES COVERED

Subject to the terms, conditions and limitations of this policy, **we** insure **you** against financial loss resulting from direct physical loss of or

damage to covered property caused by an **accident**.

ADDITIONAL COVERAGES

1. When an **accident** causes direct physical loss of or damage to property at a location described on the Declarations Page, **we** provide the limits of insurance shown on the Declarations Page as additional amounts of coverage. The limit of insurance shown on the Declarations Page for each category below is the total limit for each covered loss is a result of any one **accident** for all property in that category. The coverages

provided are subject to all other conditions of this policy:

- a. **your** net business income loss resulting from the delay in completion of covered **structures**;
- b. increase in otherwise covered loss made necessary by reason of the removal of debris of covered property;

ADDITIONAL COVERAGES (CONTINUED)

- c. expenses necessarily incurred to extract **pollutants** from land or water at a location described on the Declarations Page. **We** will pay these expenses only if reported to **us** in writing within one hundred eighty (180) days of the date of the **accident**. This limit of insurance is the most **we** will pay for all loss occurring in any one twelve (12) month policy period.
2. When an **accident** causes direct physical loss of or damage to property at a location in the continental United States of America or Canada not described on the Declarations Page, **we** provide the limits of insurance shown on the Declarations Page as additional amounts of coverage. The limit of insurance shown on the Declarations Page

for each category below is the total limit for each covered loss as a result of any one **accident** for all property in that category. The coverages provided are subject to all other conditions of this policy:

- a. plans, specifications and blueprints for the covered construction project;
- b. while in transit, materials intended to become integral parts of the covered construction project and construction forms pertaining thereto;
- c. while at a temporary storage site, other than a location shown on the Declarations Page, materials intended to become integral parts of the covered construction project.

DEDUCTIBLE

Subject to the applicable limit of insurance, **we** will pay no more than the amount by which any loss exceeds the deductible amount shown on

the Declarations Page. This provision applies to each separately occurring loss.

BASIS OF LOSS PAYMENT

Subject to the provisions contained in the LIMIT OF INSURANCE section and subject to all other terms and conditions of this policy the amount **we** will pay is calculated as follows:

1. **Structures** and Personal Property

We will pay the cost to repair or replace with new property of like kind, quality and use.

2. Lawns, Trees, Shrubs and Plants

We will pay the amount actually and necessarily spent to replace lost or damaged lawns, trees, shrubs and plants or, if not replaced, the amount actually and necessarily spent for removal of debris of such property.

3. Business Income

We will pay **your** net loss of business income actually and necessarily incurred which results from the delay in completion of the covered property because of direct physical loss of or damage to the property. Consideration shall be given to all factors that contribute to the amount of the loss, including the time value of money. Covered loss shall be limited by the time necessary to repair or replace the covered property at the same location.

Subject to the limit of insurance, **we** will pay for increases in covered loss made necessary by reason of any ordinance or law regulating the use, construction, repair or demolition of covered **structures**; except any ordinance or law in effect prior to the covered loss that required **your** compliance even if the **structures** were undamaged is limited to \$2,500.

PROPERTY NOT COVERED

We do not cover:

1. **structures** which exist at the time this construction commences;

2. land, land values and the cost of excavations and site preparations.

LOSSES NOT COVERED

1. **We** do not insure **you** against loss of or damage to covered property resulting from or caused, directly or indirectly, by any of the following. Such loss or damage is not covered regardless of any **accident** that contributes concurrently or in any sequence to such loss or damage:

- a. earth movement including earthquake, volcanic eruption, landslide, mudflow, earth sinking, rising or shifting.

If fire, explosion or **volcanic action** ensues, **we** will be liable only for the ensuing direct damage from the fire, explosion or **volcanic action**.

This exclusion does not apply to covered property while in transit;

- b. flood, surface water, water below the surface of the ground or water which backs up through or overflows from a sewer or drain.

If fire or explosion ensues, **we** will be liable only for the ensuing direct damage from the fire or explosion.

This exclusion does not apply to covered property while in transit;

- c. freezing.

If fire ensues **we** will be liable only for the ensuing direct damage from the fire;

- d. insects, vermin or rodents.

If fire or explosion ensues, **we** will be liable only for the ensuing direct damage from the fire or explosion;

- e. theft by **you**, **your** employee(s) or, with the exception of carriers for hire, by others to whom covered property is entrusted;

- f. shortage disclosed on taking inventory or unexplained or mysterious disappearance of covered property.

This exclusion does not apply to covered property in the custody of a carrier for hire;

- g. error in design, plans or specifications; faulty or defective workmanship or materials; inherent vice, latent or patent defect; or mechanical breakdown.

If an otherwise covered loss ensues, **we** will be liable only for the ensuing direct damage from such ensuing loss. **We** will, however, not pay for the cost to correct the condition which causes such ensuing loss;

- h. pollution caused by or resulting from the presence of or the release, discharge, escape, dispersal, seepage or migration of **pollutants**.

If the release, discharge, escape, dispersal, seepage or migration is caused by or results from fire, lightning, explosion, windstorm, hail, aircraft, vehicles, riot or civil commotion, vandalism or malicious mischief, sprinkler leakage, falling objects, **volcanic action** or weight of snow, sleet or ice, **we** will pay for the resulting loss.

This exclusion does not apply to item 1.c. of the ADDITIONAL COVERAGES section;

- i. war, including undeclared or civil war; 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; insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these;
- j. nuclear reaction or radiation, or radioactive contamination, however caused.

If fire ensues **we** will be liable only for the ensuing direct damage from the fire.

LOSSES NOT COVERED (CONTINUED)

2. In addition, **we** do not insure **you** against any of the following losses, however caused:

- a. delay, loss of use, loss of market, loss of business income or other consequential loss.

This exclusion does not apply to business income coverage provided in 1.a. of the ADDITIONAL COVERAGES

section of this policy;

- b. wear and tear, deterioration, rust, mold, wet or dry rot.

If fire or explosion ensues, **we** will be liable only for the ensuing direct damage from the fire or explosion;

- c. reduction in market value.

TERMINATION OF COVERAGE

Coverage shall not extend beyond whichever of the following occurs first:

- 1. the date of sale of the covered property. If an escrow account is opened to facilitate the transaction the date escrow closes shall be considered the date of sale;
- 2. with respect to any covered **structure**, the date such **structure** has been accepted as complete by the purchaser;

- 3. with respect to **your work** on additions, alterations, repair or renovation to or of existing **structures**, the date such work has been accepted as complete by the owner of the existing **structure**;
- 4. with respect to any covered **structure**, one (1) year from the date construction commenced on any such **structure**;
- 5. the date this policy expires or is cancelled.

YOUR DUTIES FOLLOWING A LOSS

1. **You** shall at **your** expense:

- a. give **us** notice of any loss as soon as practicable;
- b. file with **us** a detailed sworn statement of loss within ninety (90) days after the loss, unless this time is extended by **us** in writing, setting forth to the best of **your** knowledge and belief:

- (1) the time and cause of loss;
- (2) **your** interest and that of all others in the property involved;
- (3) other policies of insurance that may cover the loss;
- (4) changes in title or occupancy of the property during the term of this policy;

(5) specifications of any damaged **structures**, detailed estimates for repair of the damage and the amount **you** claim for the repair under this policy;

(6) an inventory of damaged personal property and the amount **you** claim for that property under this policy;

(7) the amount claimed for loss of business income accompanied by all exhibits necessary to support that amount;

- c. do all things and produce all documents reasonably required to establish values, loss and damage and coverage for the loss.

2. **You** shall at **our** expense submit and subscribe to examinations under oath by any person named by **us**.

REPRESENTATIONS

By accepting this policy **you** agree that:

1. the statements on the Declarations Page are accurate and complete;

2. those statements are based upon representations **you** made to **us**;

3. **we** have issued this policy in reliance upon **your** representations.

CONCEALMENT, MISREPRESENTATION OR FRAUD

This policy shall be void if any insured, whether before or after a loss, has intentionally concealed or misrepresented any material fact

or circumstance or made false statements or engaged in fraudulent conduct relating to this insurance.

WAIVER OR CHANGE OF POLICY CONDITIONS

This policy contains all the agreements between **you** and **us** concerning this insurance. A waiver

or change of any provision of this policy must be in writing by **us** to be valid.

TIME OF LOSS

This policy applies only to losses which occur during the policy period shown on the

Declarations Page.

MANDATORY ARBITRATION

In case **we** fail to agree with **you** as to the meaning or effect of any provision of this policy or as to the amount payable for any loss covered by this policy, said disagreement shall be resolved by binding arbitration in accordance with the statutory rules and procedures of the state in which the property is located or in accordance with the Commercial Arbitration Rules of the American Arbitration Association.

Should an arbitration under the terms of this clause result in a determination in **your** favor, **we** shall reimburse **you** for expenses actually incurred by **you** with respect to the arbitration, including reasonable attorney's fees, in a sum to be determined by the arbitrator(s). The provisions of this clause are mandatory and may be enforced either by **you** or by **us**.

TIME LIMITATION FOR ACTION

No suit, arbitration or other action on this policy for the recovery of any claim shall be sustainable in any court or other forum unless all the requirements of this policy shall have been

complied with and unless commenced within twelve (12) months after the inception of the loss.

INSPECTION OF PROPERTY

We may inspect covered property at any reasonable time. Such inspection(s) are for **our**

benefit only and do not mean that **your** premises are safe or free from any hazards.

OTHER INSURANCE

We will not pay a greater portion of any loss than the limit of insurance for the loss under this policy bears to the total of the limits of insurance for the loss under all policies which cover the

loss or which would cover the loss but for the existence of this policy, except insurance written specifically to cover as excess over the limits of insurance that apply in this policy.

RECOVERY FROM THIRD PARTIES

1. **You** may waive **your** rights of recovery against any party in writing before an **accident**.
2. Within ninety (90) days after an **accident**, **you** may waive **your** rights of recovery against any party who at the time of the **accident** is:
 - a. shown on the Declarations Page;

- b. **your** tenant;
- c. owned or controlled by **you** or owns or controls **you**.

Subject to the above **we** may require an assignment of **your** rights of recovery against any party for loss to the extent that payment for that loss is made by **us**.

SALVAGE AND RECOVERY

Any recovery from third parties or salvage recovery on a loss will accrue entirely to **our** benefit until the sum paid by **us** has been made

up. But **we** will be entitled to any other recovery only after **you** have been fully compensated for the full value of the property lost.

WHEN LOSS IS PAYABLE

The amount for which **we** are liable will be payable within thirty (30) days after the required statement of loss is received and agreed to in

writing by **us** or an arbitration award is received by **us**.

CANCELLATION AND NON-RENEWAL

1. **You** may cancel this policy at any time by returning it to **us** or by notifying **us** in writing of the date cancellation is to take effect.
2. **We** may:
 - a. cancel this policy for non-payment of premium by giving **you** fifteen (15) days of written notice; or
 - b. non-renew this policy for any reason by giving **you** at least sixty (60) days, but not more than one hundred twenty (120) days, written notice to be effective at the next anniversary or the expiration date of the policy whichever is first.

We will also mail such notice of cancellation or non-renewal to each mortgagee or other person or entity shown on this policy to have an insurable interest in the covered property.

We will state the reason for cancellation or non-renewal on the written notice.

3. **We** are not required to send notice of non-renewal if:
 - a. the policy has been extended for ninety (90) days or less provided that written notice of non-renewal has been given at least sixty (60) days, but not more than one hundred twenty (120) days, before the expiration date of the policy after it was extended;
 - b. **you** have obtained replacement coverage or if **you** have agreed in writing within sixty (60) days of the expiration date of this policy to obtain replacement coverage;
 - c. the policy is for a period of sixty (60) days or less and **you** are notified at the time of issuance of the policy that it will not be renewed;
 - d. **you** request a change in terms, conditions or coverage within sixty (60) days of the expiration date of the policy;

CANCELLATION AND NON-RENEWAL (CONTINUED)

- e. **we** have made **you** a written offer to renew the policy under changed terms or conditions or at an increase in premium in excess of twenty five (25) per cent. Such offer must be made at least sixty (60) days, but not more than

one hundred twenty (120) days, before the expiration date of the policy.

Any pro-rata premium due **you** will be refunded within a reasonable time after the cancellation takes effect.

MORTGAGEE INTEREST AND OBLIGATIONS

Loss shall be payable to a mortgagee named on the Declarations Page subject to its mortgage interest in the covered property. As to that mortgage interest, this insurance shall not be affected by any:

1. act or neglect of the mortgagor or owner of the covered property;
2. foreclosure or other proceeding or notice of sale relating to the covered property;
3. change in title or ownership of the covered property;

provided that, in case the mortgagor or owner shall neglect to pay any premium due under this policy, the mortgagee shall, on demand, pay that premium.

If **you** fail to render a statement of loss, a named mortgagee, upon notice, shall render a statement of loss within sixty (60) days thereafter and shall be subject to all of the provisions of this policy.

If **we** cancel this policy any named mortgagee shall be notified in accordance with the cancellation provisions of this policy.

To the extent of any payment for loss under this policy which **we** make to any mortgagee and for which **we** claim **we** are not liable to the mortgagor or the owner, **we** will be subrogated to all of the rights of the mortgagee under the mortgage. Or **we** may pay the whole mortgage debt including accrued interest in return for a full assignment and transfer of the mortgage and all other securities for that debt.

NO BENEFIT TO BAILEE

This insurance shall not directly or indirectly

benefit any carrier or other bailee.