

**MONTANA MUNICIPAL INTERLOCAL  
AUTHORITY**

**MEMORANDUM OF PROPERTY  
COVERAGE**

**July 1, 2010**



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# MONTANA MUNICIPAL INTERLOCAL AUTHORITY

## MEMORANDUM OF PROPERTY COVERAGE

EFFECTIVE July 1, 2010

### SECTION I: DEFINITIONS

#### Definitions and Rules of Construction

Unless the context otherwise requires, of capitalized terms used herein shall, for all purposes of this MEMORANDUM, have the meaning specified in the Interlocal Agreement entered into between and among the MMIA and its Members, together with any amendments thereof or supplements thereto permitted to be made thereunder; and the additional terms defined in this Section (I) shall, for all purposes of this MEMORANDUM, have the meanings specified herein.

**Accounts Receivable** means:

1. All sums due the Member from customers provided the Member is unable to effect collection thereof as the direct result of loss or damage to records of Accounts Receivable.
2. Interest charges on any loan to offset impaired collections pending repayment of such sums made uncollectible by such loss or damage.
3. Collection expense in excess of normal collection cost and made necessary because of such loss or damage.
4. Other expenses, when reasonably incurred by the Member, in re-establishing records of Accounts Receivable following such loss or damage.

**Actual Cash Value** shall mean Replacement Cost less depreciation wherever the term is used as respects real property or improvements and betterment's. Actual Cash Value shall also be used for the purpose of the assessment adjustment clause of this MEMORANDUM.

**Actual Replacement Cost (Value)** shall mean Replacement Cost less depreciation wherever the term is used as respects real property or improvements and betterment's in this clause.

**Assessment** means the dollars charged to the Members necessary to (1) fund the group or pooled Deductible reserve or self-insurance reserve, (2) pay Assessment charges or fees to any commercial insurance carrier with whom the MMIA has entered into an agreement either directly or indirectly through a pooled or group program for the benefit of the Program, any fees, dues, or charges payable to any group or pooled program in which the Program is a participant, (3) pay Assessment for boiler and machinery coverage, crime and fidelity coverage, or other types of property coverage purchased through a group purchase agreement, and (4) pay all reasonable and necessary administrative expenses necessary to the operation of the Program. **Claim** means a demand, action or suit to recover for losses or damages within or alleged to be within the scope of coverage set forth in this MEMORANDUM.

**Computer Virus** means a set of corrupting, harmful or otherwise unauthorized instructions or code including a set of maliciously introduced unauthorized instructions or code, programmatic or otherwise, that propagate themselves through a computer system or network of whatsoever nature. Computer Virus includes, but is not limited to, `Trojan Horses', `worms' and `time or logic

bombs'.

**Contractors Equipment** shall include, but is not limited to, land vehicles including equipment and apparatus attached thereto, whether or not self-propelled and not subject to motor vehicle registration.

**Coverage** means the insurance and other services provided pursuant to and in accordance with and on the terms set forth in this MEMORANDUM.

**Covered Party** means participating Program member as named on the Declarations Page or other entities eligible for Coverage under this MEMORANDUM.

**Declaration Page (Declarations)** is a separate form listing, at a minimum, the individual **Member** (Covered Party) and their address, **Coverage Period, Total Insured Value, Deductibles, Assessment, Limits of Liability and Sub-Limits of Liability**. It establishes the limits to the obligation of MMIA to provide Coverages as stated in this **MEMORANDUM of Property Coverage**.

**Deductible** means the dollar amount of a Claim which the Member must pay before this **MEMORANDUM** of Coverage starts paying benefits. This MEMORANDUM pays benefits only for losses in excess of the amount specified in the Deductible provisions of the **Declaration Page**.

**Electronic Data** means facts, concepts and information converted to a form useable for communications, interpretation or processing by electronic and electromechanical data processing or electronically controlled equipment and includes program, software, and other coded instructions for the processing and manipulation of data or the direction and manipulation of such equipment.

**Extra Expense** is defined as the excess (if any) of the total cost incurred during the Period of Restoration chargeable to the operation of the Member's business over and above the total cost that would normally have been incurred to conduct the business during the same period had no damage or destruction occurred. Any salvage value of property obtained for temporary use during the Period of Restoration, which remains after the resumption of normal operations, shall be taken into consideration in the adjustment of any loss hereunder.

**Gross Earnings** is defined as the sum of total net sales and other earnings derived from the operation of the business less the cost of

1. merchandise sold including packaging materials;
2. materials and supplies consumed directly in supplying the service(s) sold by the Member, and;
3. service(s) purchased from outside (not employees of the Member) for resale that does not continue under contract.

No other cost shall be deducted in determining Gross Earnings. In determining Gross Earnings, due consideration shall be given to the experience of the business before the date of loss or damage and the probable experience thereafter, had no loss occurred.

**Improvements and Betterments** means, additions or changes made by a Member/ lessee at their own expense to a building they are occupying that enhance the building's value.

**Interlocal Agreement** means that Interlocal Cooperation Agreement establishing the Montana Municipal Interlocal Authority pursuant to Title 7, Chapter 11, Part 1, MCA.

**Lease Interest** means the excess rent paid for the same or similar replacement property over actual rent payable plus cash bonuses or advance rent paid (including any maintenance or operating charges) for each month during the unexpired term of the Member's lease.

**Member/Member Entity** shall mean any political subdivision which has executed the Interlocal Agreement and this MEMORANDUM.

**Memorandum** means this Memorandum of Property Coverage entered into, between and among the MMIA, as MMIA, and the cities and towns signatory hereto, as Members.

**Merchandise** shall mean goods kept for sale by the Member, which are not the products of manufacturing operations conducted by the Member.

**Net Lease Interest** means that sum which, placed at 8% interest compounded annually, would equal the Lease Interest less any amounts otherwise payable hereunder.

**Occurrence** is defined as a loss, incident or series of losses or incidents not otherwise excluded by this MEMORANDUM and arising out of a single event or originating cause and includes all resultant or concomitant covered losses. When the term applies to loss or losses from Earthquake Shock, Flood and/or windstorm, the following provisions shall apply:

**a. Windstorm**

Each loss by windstorm shall constitute a single Claim hereunder; provided, if more than one windstorm shall occur within any period of seventy-two (72) hours during the term of this MEMORANDUM, such windstorm shall be deemed to be a single windstorm within the meaning thereof. The Member may elect the moment from which each of the aforesaid periods of seventy-two (72) hours shall be deemed to have commenced but no two such seventy-two (72) hour periods shall overlap. The MMIA shall not be liable for any loss occurring before the effective date and time of the MEMORANDUM. The MMIA will be liable for any losses occurring for a period of up to seventy-two (72) hours after the expiration of this MEMORANDUM provided that the first windstorm loss or damage within that seventy-two (72) hours occurs prior to the date and time of expiration of this MEMORANDUM.

In the event of there being a difference of opinion between the Member and the MMIA as to whether or not all windstorm losses sustained by the Member during an elected period of seventy-two (72) hours arose out of, or was caused by a single atmospheric disturbance, the stated opinion of the United States Weather Bureau or comparable Authority in any other country or locality shall govern as to whether or not a single atmospheric disturbance continued throughout the period at the location(s) involved.

**b. Flood**

Each loss by Flood shall constitute a single loss hereunder.

1. If any Flood occurs within a period of the continued rising or overflow of any river(s) or stream(s) and the subsidence of same within the banks of such river(s) or stream(s); or
2. If any Flood results from any tidal wave or series of tidal waves caused by any one disturbance;

Such Flood shall be deemed to be a single Occurrence within the meaning of this MEMORANDUM.

Should any time period referred to above extend beyond the expiration date of this MEMORANDUM and commence prior to expiration, the MMIA shall pay all such Flood losses occurring during such period as if such period fell entirely within the term of this MEMORANDUM.

The MMIA shall not be liable, however, for any loss caused by any Flood occurring before the effective date and time of this MEMORANDUM or commencing after the expiration date and time of this MEMORANDUM.

Flood shall mean a general condition of partial or complete inundation of normally dry land area from:

1. overflow of inland or tidal water;
2. unusual and rapid accumulation or run off of surface waters from any natural source.

Flood shall also mean mudslide or mudflow, which is a river or flow of liquid mud caused by flooding as define in 1 or 2 above.

The definition of Flood does not include ensuing loss or damage not otherwise excluded.

**c. Earthquake Shock**

With respect to the peril of Earthquake Shock, any and all losses from this cause within a one hundred sixty-eight (168) hour period shall be deemed to be one loss. The Member may elect the moment from which each of the aforesaid periods of one hundred sixty eight (168) hours shall be deemed to have commenced but no two such one hundred sixty eight (168) hour periods shall overlap.

The MMIA shall not be liable for any loss caused by an Earthquake Shock occurring before the effective date and time of this MEMORANDUM. The MMIA will be liable for any losses occurring for a period of up to one hundred sixty eight (168) hours after the expiration of the MEMORANDUM provided that the first Earthquake Shock loss or damage within that one hundred sixty eight (168) hours occurs prior to the date and time of the expiration of this MEMORANDUM.

In the event of there being a difference of opinion between the Member and the MMIA as to whether or not all Earthquake Shock losses sustained by the Member during an elected period of one hundred sixty eight (168) hours arose out of, or were caused by a single Earthquake Shock, the stated opinion of the National Earthquake Shock Information Service of the United States Department of the Interior or comparable authority in any other country or locality shall govern as to whether or not a single Earthquake Shock continued throughout the period at the locations involved.

The term Earthquake Shock is defined as: earth movement meaning natural faulting of land masses, but not including subsidence, landslide, rock slide, earth rising, earth sinking, earth shifting or settling unless as a direct result of such earth movement. The definition of Earthquake Shock does not include ensuing loss or damage not otherwise

excluded. Further, Earthquake Sprinkler Leakage is covered outside of the Earthquake Shock definition and is subject to the basic peril Deductible.

**Period of Restoration** is the period during which Business Interruption and or rental interruption applies which began on the date the direct physical loss occurred and interrupts normal business operations and ends on the date that the damaged property should have been repaired, rebuilt or replaced with due diligence and dispatch (i.e. "normal speed")

**Personal Property (of others)** means any property (other than real property) belonging to others for which a Member has assumed liability. This includes, but is not limited to Articles of Clothing, Jewelry, Sound Equipment, Fine Arts (up to the sub-limit of unscheduled fine arts), EDP Media & Hardware, Valuable Papers, Portable Electronic Equipment, and Employee Tools.

**Policy Year** means each fiscal year of the MMIA for which a Member has paid Assessment.

**Program** means the Property Coverage Program, the terms and conditions of which are set forth herein.

**Program Documents** means this MEMORANDUM, the Interlocal Agreement and all exhibits pertaining thereto.

**Rental Value** is defined as the sum of:

1. the total anticipated gross rental income from tenant occupancy as furnished and equipped by the Member;
2. the amount of all charges which are the legal obligation of the tenant(s) and which would otherwise be obligations of the Member;
3. the fair Rental Value of any portion of said property which is occupied by the Member, and
4. any amount in excess of 1, 2 and 3 (above) which is an obligation due under the terms and conditions of any Revenue bond, certificate of participation or other financial instrument.

In determining Rental Value, due consideration shall be given to the experience before the date of loss or damage and the probable experience thereafter had no loss occurred.

**Replacement Cost** shall mean the cost of repairing, replacing, constructing or reconstructing (whichever is the least) the property on the same site, using new materials of like kind and quality and for like occupancy without deduction for depreciation, subject to the following:

1. Until the property is actually repaired, replaced or reconstructed, the maximum amount recoverable shall be the Actual Cash Value of the lost or damaged property;
2. Replacement shall be effected by the Member with due diligence and dispatch;
3. Replacement need not be on same site, or of same or similar construction or occupancy provided that the MMIA shall not be liable for any additional costs that are directly attributable to the inclusion of this provision.

It is understood and agreed that as respects Replacement Cost, the Member shall have the option of replacement with electrical and mechanical equipment having technological advantages and/or representing an improvement in function and/or forming part of a program of system enhancement provided that such replacement can be accomplished without increasing the MMIA's liability. The MMIA shall be allowed to dispose of, as salvage, any non-proprietary

property deemed unusable by the Member.

In the event the Member should fail to comply with any of the foregoing provisions, settlement shall be made as if this Replacement Cost provision had not been in effect.

**Revenue** means only such Revenue as specified.

**Summary of Values** refers to the list of properties declared to MMIA by each Member for Coverage inclusion: also referred to as **Property Schedule**.

**Unit of Coverage** refers to each separate building or structure; the contents of each building or structure; the applicable time element Coverage of each separate building or structure; and property in each yard.

Such other terms as may appear in this MEMORANDUM which are not defined in this Section (I) shall have such definitions as may be contained in the remainder of this MEMORANDUM.

## **SECTION II: GENERAL PROVISIONS**

### **A. AGREEMENT FOR COVERAGE**

In consideration of the contribution paid by the Member, MMIA agrees to cover the following per the terms and conditions herein.

### **B. ENTITY**

1. Entity, Covered Party, or Member as per Declaration
2. Lessors and other party(ies) of interest in all property of every description covered hereunder are included herein for their respective rights and interests, it being understood that the inclusion hereunder of more than one Covered Party shall not serve to increase the MMIA limit of liability; and
3. Mortgagees to whom MMIA has issued certificates of coverage are covered hereunder in accordance with the terms and conditions as required by the mortgagee.

Loss, if any, shall be adjusted with the MMIA and payable to the Member as their respective interests may appear, subject however, to the provisions of any mortgagees or payee clauses which may otherwise be herein provided or endorsed hereon.

### **C. MAILING ADDRESS OF MEMBER**

PER DECLARATIONS

### **D. COVERAGE PERIOD**

PER DECLARATIONS

### **E. LIMITS OF LIABILITY:**

The Shared Pool Limits and Sub-Limits of Liability as stated in the Declarations apply across participating pool membership and are not specific to individual Member.

The provisions of the reinstatement clause as stated elsewhere herein, are null and void as respects the perils of Earthquake Shock and Flood. Subject to specific exclusions, modifications, and conditions hereinafter provided, the liability of the MMIA in any one Occurrence, regardless of whether one or more of the Coverages of this MEMORANDUM are involved, shall not exceed:

1. The specific shared pool Limits of Liability as described in the Declarations, apply per Occurrence unless indicated otherwise.
2. The following shared pool Sub-Limits of Liability are provided as described in the Declarations and apply per Occurrence unless indicated otherwise. Coverage is provided only if a Sub-Limit of Liability is shown in the Declarations for that item, and do not increase the specific limits of liability. The absence of a Sub-Limit of Liability amount in the Declarations means that no Coverage is provided for that item.

- a. Per Occurrence, and in the annual aggregate as respects the peril of Flood;
- b. Per Occurrence, and in the annual aggregate as respects the peril of Earthquake Shock;
- c. Combined Business Interruption, Rental Income, Tax Interruption;
- d. Extra Expense;
- e. Miscellaneous Unnamed locations;
- f. Automatic Acquisition. As per this MEMORANDUM provisions;
- g. Unscheduled landscaping, tees, sand traps, greens and athletic fields if specific values for such items have not been reported as part of the Member schedule of values held on file with the MMIA;
- h. Scheduled landscaping, tees, sand traps, greens and athletic fields if specific values for such items have been reported as part of the Member schedule of values held on file with the MMIA;
- i. Errors & Omissions;
- j. Course of Construction and Remodeling Projects;
- k. Money and Securities for Fire, Wind, Hail, Explosion, Smoke, Lightning, Riot, Civil Commotion, Impact by Aircraft or Objects falling there from, Impact by Vehicles, Water Damage and Theft (other than by an employee of the Member);
- l. Unscheduled Fine Arts (as more fully defined herein);
- m. Unscheduled tunnels, bridges, dams, catwalks (except those not for public use), roadways, highways, streets, sidewalks, culverts, street lights and traffic signals (unless specific values for such items have been reported as part of a Member Schedule of Values held on file in the offices of MMIA) excluding Coverage for the peril of Earthquake Shock and excluding Federal Emergency Management Agency (FEMA) and/or Office of Emergency Services (OES) declared disasters;
- n. Increased Cost of Construction due to the enforcement of building codes/ordinance or law;
- o. Transit;
- p. Unscheduled Animals;
- q. Watercraft;
- r. Research Animals solely as respects Universities attaching under Declaration Number 4;
- s. Newly Acquired Vehicles;
- t. Off premises services interruption including Extra Expense resulting from a covered peril at non-owned/operated location(s);
- u. Separately as respects Contingent Business Interruption, Contingent Rental Value, and Contingent Extra Expense;
- v. Expediting Expenses;
- w. Separately as respects furs, jewelry, precious metals and precious stones;
- x. Business Interruption for power generation facilities, which is understood to be part of, and not additional to, the Sub-Limit of Liability set forth in Item 2c above;
- y. Terrorism per Occurrence and in the aggregate combined for all Members as provided on the Declarations;
- z. Personal Property outside the USA; and
- aa. Boiler Explosion and Machinery Breakdown (as provided in separate coverage).

## **F. DEDUCTIBLE PROVISIONS**

If two or more Deductible amounts provided in the Declarations apply for a single Occurrence, the total to be deducted shall not exceed the largest per Occurrence Deductible amount applicable. Deductibles are shown on the Declarations, or by endorsement.

Unless a more specific Deductible is applicable for a particular loss, the Deductible shown in the Declarations, shall apply per Occurrence. The MMIA will not pay for loss or damage in any one Occurrence until the amount of the loss or damage exceeds the applicable Deductible.

**G. UNIT OF COVERAGE**

The MMIA shall not be liable for loss to any Unit of Coverage covered hereunder unless such loss exceeds the Deductible as stated in the Declarations of the replacement values of such Unit of Coverage at the time when such loss shall happen, and then only for its proportion of such excess.

The Terms and Conditions stated in F (Deductible Provisions) and G (Unit of Coverage) supersede the provisions of any Deductible Clause contained elsewhere in this MEMORANDUM.

## **SECTION III: PHYSICAL DAMAGE TO PROPERTY**

### **A. COVERAGE**

Subject to the terms, conditions and exclusions hereinafter contained, this MEMORANDUM covers all property of every description of a coverable nature, both real and personal (including Improvements and Betterments), of the Member or property of others in the care, custody or control of the Member, for which the MMIA is liable or under obligation to keep.

It is also understood and agreed that the interest of additional covered parties and/or loss payees are automatically included.

### **B. EXTENSIONS OF COVERAGE**

#### **1. PERSONAL EFFECTS**

This MEMORANDUM is extended to cover only such personal effects and wearing apparel of any of the officials, employees, students and personal effects of the Member named in this MEMORANDUM for which the MMIA may elect to assume liability while located in accordance with the Coverage hereof, but loss, if any, on such property shall be adjusted with and payable to the Member.

#### **2. PROPERTY IN COURSE OF CONSTRUCTION, REMODELING**

It is understood and agreed that as respects Course of Construction and remodeling projects, this MEMORANDUM will provide automatic Coverage subject to the following conditions:

- a. Project involves only real property on new or existing locations (excluding dams, piers, roads, and bridges)
- b. Value of the project at the location does not exceed US Dollars as per Declarations. Projects that exceed this amount are subject to approval prior to binding. However, inadvertent failure to report shall not void Coverage of said Project.
- c. Additional Expense Soft Cost: This Coverage applies to new buildings or structures in the Course of Construction up to the time that the new building(s) or structure(s) is initially occupied or put to its intended use whichever occurs first.

The MMIA will cover the additional expenses of the Member as defined below for up to 25% of the estimated completed value of the project which results from a delay in the completion of the project beyond the date it would have been completed had no loss or damage occurred. The delay must be due to direct physical loss or damage to property covered and be caused by, or result from, a peril not excluded by this MEMORANDUM. The MMIA will pay covered expenses when they are incurred.

- a. Additional Interest Coverage: The MMIA will pay the additional interest on money the Member borrows to finance construction or repair.
- b. Rent or Rental Value Coverage: The MMIA will pay the actual loss of net Rental Income resulting from delay beyond the projected completion date. The MMIA will not pay more than the reduction in Rental Income less charges and expenses that do not necessarily continue.
- c. Additional Real Estate Taxes or Other Assessments: The MMIA will pay the

- additional real estate taxes or other assessments the Member incurs for the period of time that construction is extended beyond the completion date.
- d. Additional Advertising and Promotional Expenses: The MMIA will pay the additional advertising and promotional expenses resulting from a delay in the completion of the project.
  - e. Additional Commissions Expense: The MMIA will pay the additional expenses resulting from the renegotiating of leases following an interruption in the project.
  - f. Additional Architectural and Engineering Fees: The MMIA will pay the additional architectural and engineering fees resulting from a delay in the completion of the project.
  - g. Additional License and Permit Fees: The MMIA will pay the additional license and permit fees resulting from a delay in the completion of the project.
  - h. Legal and Accounting Fees: The MMIA will pay the additional legal and accounting fees the Member incurs resulting from a delay in the completion of the project.

### **3. FIRE FIGHTING EXPENSES**

It is understood and agreed that the MMIA shall be liable for the actual charges of fire fighting expenses including, but not limited to, those charged by municipal or private fire departments responding to and fighting fire in/on, and/or protecting property included in Coverage provided by this MEMORANDUM.

### **4. OFF PREMISES SERVICES INTERRUPTION**

It is understood and agreed that Coverage under this MEMORANDUM is extended to include physical damage, Business Interruption loss and/or Extra Expense incurred and/or sustained by the Member as a result of physical damage to, or destruction of, by the perils covered against occurring during the MEMORANDUM period, to property of the type not excluded by this MEMORANDUM of any suppliers furnishing heat, light, power, gas, water, telephone or similar services to a Member premises. The Coverage provided by this clause is sub-limited to US Dollars as per the Declarations, and Section II (General Provisions) Clause E of this form. There is a 24 hour waiting period for off premises services interruption coverage.

### **5. ARCHITECTS AND ENGINEERS FEES AND LOSS ADJUSTMENT EXPENSES**

This MEMORANDUM also covers, as a direct result of physical loss or damage covered hereunder, any of the following:

- a. Architects and engineers fees.
- b. Loss adjustment expenses including, but not limited to, auditors, consultants and accountants. However, the expenses of public adjusters are specifically excluded.

### **6. EXPEDITING EXPENSES**

In the event of physical loss or damage covered hereunder, it is understood and agreed that Coverage under this MEMORANDUM includes the reasonable extra cost of temporary repair and of expediting the repair of such damaged property of the Member, including overtime and the extra costs of express or other rapid means of transportation. This Coverage provided by this clause is sub-limited to US Dollars as per the Declarations.

### **7. DEBRIS REMOVAL**

This MEMORANDUM also covers expenses incurred in the removal of debris of the property covered hereunder from the premises of the Member that may be destroyed or damaged by a covered peril(s). This debris removal coverage does not apply to the cost to extract pollutants from land or water, or to remove, restore or replace polluted land or water.

## **8. BUILDING LAWS**

In the event of physical damage to property covered by a covered peril, this MEMORANDUM is extended to cover the loss occasioned by the enforcement of any local or state ordinance or law regulating the construction, repair or demolition of buildings or structures, which is in force at the time such a loss occurs, which necessitates the demolition of any portion of the covered building not damaged by the covered peril(s).

## **9. DEMOLITION COST**

In the event of physical damage to property covered by a covered peril, this MEMORANDUM is extended to cover the cost of demolishing any undamaged portion of the covered property including the cost of clearing the site thereof, caused by loss from any covered peril(s) under this MEMORANDUM and resulting from enforcement of any local or state ordinance or law regulating the construction, repair or demolition of buildings or structures and in force at the time of loss which necessitates such demolition.

## **10. INCREASED COST OF CONSTRUCTION**

In the event of physical damage to property covered by a covered peril, this MEMORANDUM is extended to cover the increased cost of repair or replacement occasioned by the enforcement of any local state ordinance or law regulating the construction, repair or demolition of buildings or structures, which is in force at the time such a loss occurs or which comes into force within 12 months after such a loss occurs, which necessitates in repairing or replacing the building covered hereunder which has suffered damage or destruction by the covered peril(s) or which has undergone demolition, limited, however, to the minimum requirements of such ordinance or law.

The maximum amount of additional loss covered by this MEMORANDUM which results from the above referenced 12 month period is not to exceed 20% of the amount of the physical damage loss or US Dollars \$15,000,000 whichever is greater from which this additional loss results.

## **11. ERRORS & OMISSIONS**

No unintentional errors or unintentional omissions in description, location of property or valuation of property will prejudice the MMIA's right of recovery but will be reported to the MMIA as soon as practicable when discovered. The Coverage provided by this clause is sub-limited to US Dollars as per Declarations, and Section II (General Provisions) Clause E of this MEMORANDUM.

## **12. ANIMALS**

This MEMORANDUM is extended to cover retraining expenses associated with the loss of specially trained animals. Retraining expenses are included within the sub-limit provided, unless otherwise scheduled.

### **13. VALUABLE PAPERS**

This MEMORANDUM is extended to cover Valuable Papers or the cost to reconstruct Valuable Papers physically lost or damaged by a covered peril.

### **14. TRANSIT**

This MEMORANDUM is extended to cover Personal Property of the Member or property held by the Member in trust or on commission or on consignment for which the Member may be held legally liable while in due course of transit, worldwide, against all risks of Direct Physical Loss or Damage not excluded by this MEMORANDUM to the property covered.

The Coverage provided by this clause is sub-limited to US Dollars as per Declarations, and Section II (General Provisions) Clause E of this MEMORANDUM.

### **15. VEHICLES WHILE ON MEMBER PREMISES**

During its term, this MEMORANDUM is extended to cover Vehicles while on premises of the Member against physical loss or damage by a covered peril.

### **16. ASBESTOS CLEAN UP AND REMOVAL**

- a. This MEMORANDUM specifically excludes Asbestos materials clean-up or removal, unless asbestos is itself damaged by a peril covered by this MEMORANDUM. Then asbestos clean-up or removal within the damaged area, and applicable time element coverages, will be covered by this MEMORANDUM.
- b. In no event will Coverage be extended to cover undamaged asbestos, including undamaged asbestos in any portion of the building mandated by any governmental direction or request declaring that asbestos material present in any undamaged portion of the Member's property must be removed or modified, or; any loss or expense including investigation or defense costs, caused by, resulting from, or arising out of asbestos, exposure to asbestos, or any product containing asbestos, or; any loss or expense normally provided by demolition, increased cost or building ordinance.

## **C. PROPERTY NOT COVERED**

1. Aircraft, watercraft over 27 feet in length, and rolling stock (except scheduled watercraft, and rolling stock, light rail vehicles, subway trains and related track maintenance vehicles for light rail and subway lines).
2. Standing timber, bodies of water, growing crops.
3. Land, (including land on which covered property is located), and land values (except athletic fields, landscaping, sand traps, tees and greens).

4. Property in due course of ocean marine transit.
5. Shipment by mail after delivery into the custody of the United States Post Office.
6. Power transmission, feeder lines and underground pipes more than 1,000 feet from the premises of the Member unless specifically approved by MMIA.
7. Tunnels, bridges, dams, catwalks (except those not for public use), roadways, highways, streets, sidewalks, culverts, streetlights, traffic signals, retaining walls, (excess of the sub-limit noted on the Declarations), unless specific values for such items have been reported as part of the Member Schedule of Values held on file with MMIA (excluding Coverage for the peril of Earthquake Shock and excluding FEMA and/or OES declared disasters).
8. Offshore property, oil rigs, underground mines, caverns and their contents. Railroad track is excluded unless values have been reported by the Member.

#### **D. LOSS PAYMENT BASIS/VALUATION**

In case of loss to property of a Member covered hereunder, the basis of adjustment shall be as of the time and place of loss as follows:

1. On all Real and Personal Property, including property of others in the care or control of the Member at the Replacement Cost at the time of the loss without deduction for depreciation. If property is not replaced within a reasonable period of time, then the Actual Cash Value shall apply.
2. On Improvements and Betterments at the Replacement Cost at time of loss without deduction for depreciation. If property is not repaired or replaced within a reasonable period of time, then the Actual Cash Value. If replaced or repaired by others for the use of the Member, there shall be no liability hereunder. The MMIA agrees to accept and consider the Member as sole and unconditional owner of all Improvements and Betterments, any contract or lease the Member may have made to the contrary notwithstanding.
3. On manuscripts, mechanical drawings, patterns, Electronic Data processing media, books of accounting and other Valuable Papers, the full Replacement Cost of the property at the time of loss (including expenses incurred to recreate the information lost, damaged or destroyed) or what it would then cost to repair, replace or reconstruct the property with other of like kind and quality. If not repaired, replaced or reconstructed within a reasonable period of time, then not to exceed the cost of blank or unexposed material.
4. On antique, restored or historical buildings, the cost of acquisition, relocation to the site and renovation or reconstruction. In the event of a partial loss, normal Replacement Cost Coverage, as set forth in Item 1 above would apply.
5. On property of others for which the Member is liable under contract or lease agreement, the MMIA's liability in the event of loss is limited to the Member's obligation as defined in said contract or lease agreement but not to exceed the Replacement Cost.

6. The valuation of library contents is as follows:

<b>Category</b>	<b>Value (US currency)</b>
Juvenile Picture Book	\$46.20
Juvenile Book	\$34.78
Juvenile Reference	\$47.30
Pamphlets	\$5.50
Magazines	\$11.00
Fiction	\$27.93
Law Periodical	\$138.75
Non-Fiction	\$91.61
Reference	\$161.87
Law Reference	\$130.15
Art	\$66.20
Film (16mm)	\$1320.00
Film (8mm)	\$58.75
Film (Super 8mm)	\$429.00
Strips	\$8.80
Cassette Film Strips	\$66.00
Records	\$158.77
Videos (Tapes and Disks)	\$148.50
Audio Cassette	\$27.50
Computer Software	\$1558.70
(Law) CD ROM	\$258.80
Books on Tape	\$69.85
Law Magazines	\$144.93
Compact Discs	\$41.95
Paperback Books	\$35.17

These figures are the raw costs of each category of books established from the library association. The figures do not include the shelving cost of each book as we recognize that not all books will be replaced. The Coverage for shelving is a Valuable Papers exposure i.e. and covered elsewhere in this MEMORANDUM.

Therefore, the formula for adjusting a library loss is:

"Number of items in a category, multiplied by the valuation figure plus shelving cost under Valuable Papers coverage if item is replaced."

This eliminates the need to adjust each item on its specific Actual Cash Value or Replacement Cost. The actual cost per item in the final adjustment is to be computed as of the time and place of loss or damage.

7. On Vehicles and Contractors / Mobile Equipment where Replacement Cost (New) values are specified, loss or damage to Insured Vehicles and/or Contractor / Mobile Equipment / Unlicensed Vehicles (as per summary of values on file with this Company) shall be based on 100% of the Replacement Cost (New) at the time any loss or damage occurs. Partial losses shall be based on the cost of repairing or replacing the damaged portion with like kind and quality up to the actual replacement cost. On Vehicles and Contractors / Mobile Equipment, where Stated Amount values are specified by the member, loss or damage to Insured Vehicles and/or Contractor / Mobile Equipment / Unlicensed Vehicles (as per summary of values on file with this Company) shall be based on repairs or substitution in like kind and quality not to exceed the Stated Amount limits as declared by the member. If summary of values, provided by the insured, for vehicles / contractors' equipment / unlicensed vehicles provides a valuation based on either Replacement Cost or Stated Amount, then recovery will be on the same basis if physically replaced. If cash payment is elected in lieu of physical replacement or substitution, the recovery shall be actual cash value.
8. Landscaping, sand traps, tees, putting greens and athletic fields; the Actual Replacement Cost of sod, shrubs, sand, plants and trees; however the MMIA's liability for replacement of trees, plants and shrubs will be limited to the actual size of the destroyed plant, tree or shrub at the time of the loss up to a maximum size of 25 gallons per item but not to exceed US Dollars \$25,000 per item.

For the purpose of determining Coverage under this MEMORANDUM, landscaping, trees, plants and shrubs are only covered if their position and planting was undertaken by human agency for cosmetic effect.

Landscape coverage excludes loss caused by or resulting from drought or freeze/thaw thermal event.

Wherever the term "Actual Cash Value" is used as respects real property or Improvements and Betterment's in this clause, or elsewhere herein, it shall mean Replacement Cost less depreciation.

The aforementioned valuations shall also be used for the purpose of the assessment adjustment clause of this MEMORANDUM.

#### **E. SPECIAL CONDITION – AUTOMATIC COVERAGE/REPORTING CONDITIONS**

Subject to the terms, conditions and limitations in the Additional Conditions Section (IX) entitled "Automatic Acquisition Clause (K),"

It is understood and agreed that:

9. This MEMORANDUM is automatically extended to cover all additional property as described in this MEMORANDUM and associated Business Interruption/Extra Expense which may be purchased, leased, acquired or otherwise become at the risk of

the Member during the term of this MEMORANDUM.

10. The MMIA shall automatically cover such property and/or properties, subject to all the terms and conditions of the MEMORANDUM to which this clause is attached; provided, however, that if there shall be any other Coverage of additional property, this MEMORANDUM shall not attach or provide Coverage thereon until liability of all such other Coverage shall have first been exhausted and shall then attach and cover only for its proportion of the excess of loss, if any, over and above the amount due from such other Coverage, whether valid or invalid or by solvent or insolvent insurers.
11. If following an insured loss, it has been determined that the damaged property has been owned or in the control of the member for a period in excess of 18 months and not reported or declared on their schedule of property on record with the MMIA for the current year, the claim will be adjusted on a depreciated replacement / Actual Cash Value basis.
12. It is understood and agreed as respects Earthquake Shock at this MEMORANDUM annual inception, per the sub-limit that appears on the Declarations, automatic Coverage applies for the peril of Earthquake Shock for a period of 30 days from date of contractual requirement by any bond, certificate of participation or any similar investment, for any new locations where there is such a contractual requirement to provide Earthquake Shock Coverage.

## **SECTION IV: INTERRUPTION OF BUSINESS EARNINGS/EXTRA EXPENSE AND RENTAL INCOME**

Subject to the terms, conditions and exclusions stated elsewhere herein, this MEMORANDUM provides Coverage for:

### **A. COVERAGE**

#### **1. BUSINESS INTERRUPTION**

Against loss resulting directly from interruption of business, services or Rental Value caused by direct physical loss or damage, as covered by this MEMORANDUM to real and/or Personal Property covered by this MEMORANDUM, occurring during the term of this MEMORANDUM.

In the event of such loss or damage, the MMIA shall be liable for the actual loss sustained by the Member for Gross Earnings as defined herein and Rental Value as defined herein resulting from such interruption of business, services, or Rental Value; less all charges and expenses which do not necessarily continue during interruption of business for only such length of time as would be required with the exercise of due diligence and dispatch to rebuild, repair or replace such part of the property as has been damaged or destroyed, commencing with the date of such damage or destruction and not limited by the date of expiration of this MEMORANDUM. Due consideration shall be given to the continuation of normal charges and expenses including payroll expenses to the extent necessary to resume operations of the Member with the same quality of service which existed immediately preceding the loss.

With respect to Business Interruption for power generation facilities, the Coverage provided hereunder is sub-limited to US Dollars as per Declarations.

#### **2. EXTRA EXPENSE**

This MEMORANDUM is extended to cover the necessary extra expenses occurring during the term of this MEMORANDUM at any location as hereinafter defined, incurred by the Member in order to continue as nearly as practicable the normal operation of the Member's business following damage to or destruction as covered by this MEMORANDUM of real or Personal Property covered by this MEMORANDUM which is on premises owned, leased or occupied by the Member. In the event of such damage or destruction, the MMIA shall be liable for such necessary Extra Expense incurred for only such length of time as would be required with the exercise of due diligence and dispatch to rebuild, repair or replace such part of the property as has been damaged or destroyed commencing with the date of damage or destruction and not limited by the date of expiration of this MEMORANDUM (hereinafter referred to as the Period of Restoration).

### **B. EXTENSIONS OF COVERAGE**

#### **1. INGRESS/EGRESS**

This MEMORANDUM extends to include the actual loss sustained during the period of time (not exceeding 30 days) when ingress to or egress from a property covered by this MEMORANDUM is prevented, as a direct result of physical loss or damage caused by a

covered peril(s) occurring at property or within a 10 mile radius of such property. Coverage under this extension is subject to a 24-hour waiting period.

## **2. INTERRUPTION BY CIVIL AUTHORITY**

This MEMORANDUM is extended to include the actual loss sustained by the Member, as covered hereunder during the length of time (not exceeding 30 days) when access to property covered by this MEMORANDUM is specifically prohibited by order of civil authority as a direct result of damage to or destruction of property or within a 10 mile radius of such property. Coverage under this extension is subject to a 24-hour waiting period.

## **3. DEMOLITION AND INCREASED TIME TO REBUILD**

The MMIA shall, in the case of loss covered under this MEMORANDUM, be liable also for loss to the interest covered by the MEMORANDUM, occasioned by the enforcement of any local or state ordinance or law regulating the construction, repair or demolition of buildings or structures and in force at the time such loss occurs, which necessitates the demolition of any portion of the described building(s) not damaged by the covered peril(s). The MMIA shall also be liable for loss due to the additional period of time required for repair or reconstruction in conformity with the minimum standards of such ordinance or law of the building(s) described in this MEMORANDUM damaged by a covered peril.

THE MMIA SHALL NOT BE LIABLE UNDER THIS CLAUSE FOR:

- a. More than the Limit of Liability as shown elsewhere in this MEMORANDUM.
- b. Any greater proportion of any loss to the interest covered by this MEMORANDUM than the amount (covered under this MEMORANDUM) on said interest bears to the total Coverage and coverage on said interest, whether all such Coverage contains this clause or not.

## **4. NON PRODUCTIVE PROPERTY**

If the Real and/or Personal Property sustaining loss or damage do not produce an income, the actual loss sustained shall be the continuing fixed charges and expenses directly attributable to such non-productive property.

## **5. CONTINGENT BUSINESS INTERRUPTION AND/OR EXTRA EXPENSE AND/OR RENTAL VALUE**

Subject to the terms, conditions and exclusions of this MEMORANDUM, the Business Interruption, Extra Expense, Rental Value Coverage provided by this MEMORANDUM is extended to cover loss directly resulting from physical damage to property of the type not otherwise excluded by this MEMORANDUM at direct supplier or direct customer locations (whether such location is owned by the Member or not) that prevents a supplier of goods and/or services to the Member from supplying such goods and/or services, or that prevents a recipient of goods and/or services from the Member from accepting such goods and/or services. The Coverage provided by this clause separately as respects each of these Coverage's is sub-limited to US Dollars as per Declarations.

## **6. EXTENDED PERIOD OF INDEMNITY EXTENSION**

Subject to the terms, conditions and exclusions of the MEMORANDUM to which this extension is attached, the Business Interruption and/or Extra Expense and/or Rental Value Coverage provided by this MEMORANDUM is extended to provide Coverage for the additional length of time required to restore the business of the Member to the condition that would have existed had no loss occurred commencing on either;

- a. the date on which the MMIA's liability would otherwise terminate or;
- b. the date on which rebuilding, repairing or replacement of such property as has been lost, damaged or destroyed is actually completed, whichever is later.

The MMIA's liability under this extension shall terminate no later than one hundred and twenty days (120) from the commencement date set forth above, unless a different time period is agreed to by the MMIA through an endorsement to this MEMORANDUM.

## **7. EXPENSES TO REDUCE LOSS**

This MEMORANDUM also covers such expenses as are necessarily incurred for the purpose of reducing loss under this Section (IV) (except incurred to extinguish a fire); but in no event to exceed the amount by which loss is thereby reduced.

## **C. EXCLUSIONS**

The MMIA shall not be liable for any increase of loss which may be occasioned by the suspension, lapse, or cancellation of any lease or license, contract or order, unless such suspension, lapse, or cancellation results directly from the interruption of business and, then the MMIA shall only be liable for such loss as affects the Member's earnings during and limited to, the period of indemnity covered under this MEMORANDUM.

With respect to loss resulting from damage to or destruction of media for, or programming records pertaining to, Electronic Data processing or electronically controlled equipment, including data thereon, by the perils covered against, the length of time for which the MMIA shall be liable hereunder shall not exceed:

1. thirty (30) consecutive calendar days or the time required with exercise of due diligence and dispatch to reproduce the data thereon from duplicates or from originals of the previous generation, whichever is less; or,
2. the length of time that would be required to rebuild, repair or replace such other property herein described as has been damaged or destroyed, but not exceeding eighteen (18) calendar months, whichever is the greater length of time.

## **D. CONDITIONS APPLICABLE TO BUSINESS INTERRUPTION/EXTRA EXPENSE/ RENTAL VALUE**

If the Member could reduce the loss resulting from the interruption of business (1) by complete or partial resumption of operation of the property whether or not such property be lost or damaged, or (2) by making use of Merchandise or other property at the Member's location or elsewhere, such reduction shall be taken into account in arriving at the amount of the loss hereunder.

## **SECTION V: GENERAL CONDITIONS**

### **A. PERILS COVERED**

Subject to the terms, conditions and exclusions stated elsewhere herein, this MEMORANDUM provides Coverage against all risk of direct physical loss or damage occurring during the period of this MEMORANDUM.

### **B. PERILS EXCLUDED**

This MEMORANDUM does not cover against any of the following:

1. Loss or damage caused by, or resulting from, moths, vermin, termites, or other insects, inherent vice, latent defect, faulty materials, error in design, faulty workmanship, wear, tear or gradual deterioration, contamination, rust, corrosion, wet or dry rot, unless physical loss or damage not otherwise excluded herein ensues and then only for such ensuing loss.
2. Loss or damage caused by or resulting from freezing, unless: (a) You do your best to maintain heat in the building or structure: or (b) You drain the equipment and shut off the water supply if the heat is not maintained.
3. Physical loss or damage by normal settling, shrinkage or expansion in building or foundation.
4. Delay or loss of markets (this exclusion shall be inapplicable to the extent inconsistent with any time element coverage provided elsewhere herein).
5. Breakdown or derangement of machinery and/or steam boiler explosion, unless physical loss or damage not otherwise excluded herein ensues and then only for such ensuing loss. (This exclusion applicable only to boilers owned or controlled by Member.) This exclusion does not apply to data processing equipment or media.
6. Loss or damage caused by, or resulting from, misappropriation, conversion, inventory shortage, unexplained disappearance, infidelity or any dishonest act on the part of the Member, it's employees or agents or others to whom the property may be entrusted (bailees and carriers for hire excepted) or other party of interest.
7. Loss or damage caused by, or resulting from, electrical injury or disturbance from artificial causes to electrical appliances, devices of any kind or wiring, unless physical loss or damage not otherwise excluded herein ensues and then only for such ensuing loss. This exclusion does not apply to data processing equipment or media.
8. Loss or damage to Personal Property resulting from shrinkage, evaporation, loss of weight, leakage, breakage of fragile articles, marring, scratching, exposure to light or change in color, texture or flavor, unless such loss is caused directly by fire or the combating thereof, lightning, windstorm, hail, explosion, strike, riot, or civil commotion, aircraft, vehicles, breakage of pipes or apparatus, sprinkler leakage, vandalism and malicious mischief, theft, attempted theft, Flood or Earthquake Shock.
9. Loss or shortage disclosed upon taking inventory or mysterious disappearance of property (except property in the custody of carriers or bailees for hire).

9. Loss or damage caused by rain, sleet or snow to Personal Property in the open (except in the custody of carriers or bailees for hire).
10. Loss caused directly or indirectly, by:
  - a. hostile or warlike action in time of peace or war, including action in hindering, combating or defending against an actual, impending or expected attack
    - i. by any government or sovereign power (de jure or de facto), or by any authority maintaining or using military, naval or air forces; or
    - ii. by military, naval or air forces; or
    - iii. by an agent of any such government, power, authority or forces;
  - b. any weapon of war employing atomic fission or radioactive force whether in time of peace or war;
  - c. insurrection, rebellion, revolution, civil war, usurped power, or action taken by governmental authority or hindering, combating or defending against such an Occurrence, seizure or destruction under quarantine or customs regulations, confiscation by order of any government or public authority, or risks of contraband or illegal transportation or trade.
11. Loss by nuclear reaction or nuclear radiation or radioactive contamination, whether controlled or uncontrolled, and whether such loss be direct or indirect, proximate or remote, or in whole or in part caused by, contributed to, or aggravated by the covered peril(s) in this MEMORANDUM; however, subject to the foregoing and all provisions of this MEMORANDUM, direct loss by fire resulting from nuclear reaction or nuclear radiation or radioactive contamination is covered by this MEMORANDUM.
12. As respects Course of Construction, the following exclusions shall apply:
  - a. The cost of making good, faulty or defective workmanship, material, construction or design, but this exclusion shall not apply to damage by a peril not excluded resulting from such faulty or defective workmanship, material, construction or design.
  - b. The cost of non-compliance of, or delay in, completion of contract.
  - c. The cost of non-compliance with contract conditions.
  - d. Contractors' Equipment or tools not a part, or destined to become a part, of the installation.

As respects loss or damage to animals covered under this MEMORANDUM, the following additional exclusions apply:

- a. Death of any animal(s) from natural causes.
- b. Death of any animal(s) that dies from an unknown cause unless:
  - i. upon the death of such animal, a post-mortem examination is made of such animal by a licensed veterinarian, and if
  - ii. the veterinarian's post-mortem report shows the cause of death to clearly fall within the Coverages of this MEMORANDUM.
- c. Death of any animal(s) as a result of surgical operation, including inoculation, unless the necessity for same arises from an event covered by this MEMORANDUM.
- d. The death or destruction of any animal(s) caused by, resulting from, or made necessary by physical injury caused by or resulting from the activities of the injured animal or other animals unless such death or destruction is the result of any event otherwise covered by this MEMORANDUM.
- e. The death of any animal(s) caused directly or indirectly by the neglect or abuse of

- the Member, his agent, employees or bailees (carriers for hire excepted) unless such loss is a result of an event otherwise covered by this MEMORANDUM.
- f. The loss by death of any animal(s) as a result of parturition or abortion.
  - g. Loss resulting from depreciation in value caused by any animal(s) covered hereunder becoming unfit for, or incapable of, filling the function or duties for which it is kept, employed or intended unless such loss is the result of an event otherwise covered by this MEMORANDUM.
  - h. Loss by destruction of any animal(s) on the order of the federal or any state government, or otherwise as a result of having contracted or been exposed to any contagious or communicable disease.
  - i. The removal or disposal of the remains of any animal(s) or the expense thereof unless such loss is the result of an event otherwise covered by this MEMORANDUM.
  - j. The loss of any animal(s) that has been unnerved (the term "unnerved" to be considered as meaning the operation of neurotomy for lameness.)
13. Any Claim consequent upon delay, deterioration, or loss of use or loss of market arising from an event covered by this MEMORANDUM.

### **C. TERRITORIAL LIMITS**

This MEMORANDUM covers Real and Personal Property within the United States. Personal Property while in transit therein is extended to Worldwide coverage. Real and Personal Property within Canada is covered by this MEMORANDUM to the extent of the Shared Pool Per Occurrence and Annual Aggregate Sub-Limits of \$10,000,000 in US Dollars as per Declarations.

### **D. REINSTATEMENT**

Any reduction in the amount covered hereunder due to payment of any loss or losses shall be automatically reinstated for the balance of the term of this contract except as respects to those perils that are subject to annual aggregate limitation.

### **E. F.O.B. SHIPMENTS**

The MMIA shall be liable for the interest of the Member at sole option of the Member. The interest of the consignee in Merchandise, which has been sold by the Member under terms of F.O.B. point of origin or other terms usually regarded as terminating shippers' responsibility, short of point-of-delivery, is excluded.

### **F. PROTECTION AND PRESERVATION OF PROPERTY**

In case of actual or imminent physical loss or damage of the type covered against by this MEMORANDUM, the expenses incurred by the Member in taking reasonable and necessary actions for the temporary protection and preservation of property covered hereunder shall be added to the total physical loss or damage otherwise recoverable under the MEMORANDUM and be subject to the applicable Deductible and without increase in the limit provisions contained in this MEMORANDUM.

### **G. BREACH OF CONDITIONS**

If any breach of a clause, condition or warranty of this MEMORANDUM shall occur prior to a loss affected thereby under this MEMORANDUM, such breach shall not void the MEMORANDUM nor avail the MMIA to avoid liability unless such breach shall exist at the time of such loss under this contract or MEMORANDUM, and be a contributing factor to the loss for which Claim is presented hereunder, it being understood that such breach of clause or condition is applicable only to the property affected thereby. Notwithstanding the foregoing, if the Member establishes that the breach, whether contributory or not, occurred without its knowledge or permission or beyond its control, such breach shall not prevent the Member from recovering under this MEMORANDUM.

## **H. PERMITS AND PRIVILEGES**

Anything in the printed conditions of this MEMORANDUM to the contrary notwithstanding, permission is hereby granted:

1. to maintain present and increased hazards;
2. to make additions, alterations, extensions, improvements and repairs, to delete, demolish, construct and reconstruct, and also to include all materials, equipment and supplies incidental to the foregoing operations of the property covered hereunder, while in, on and/or about the premises or adjacent thereto;
3. for such use of the premises as usual and/or incidental to the business as conducted therein and to keep and use all articles and materials usual and/or incidental to said business in such quantities as the exigencies of the business require;
4. to be or become vacant or unoccupied without limit of time. Nor shall this MEMORANDUM be prejudiced by:
  - a. error in stating the name, number, street, or location of any building(s) and contents covered hereunder, or any error or omission involving the name or title of the Member;
  - b. any act or neglect of the owner of the building, if the Member hereunder is not the owner, or of any occupant of the within described premises other than the Member, when such act or neglect is not within the control of the Member, named herein; or
  - c. by failure of the Member to comply with any of the warranties or conditions endorsed hereon in any portion of the premises over which the Member has no control.

## **I. PROTECTIVE SAFEGUARDS**

The Member shall exercise due diligence in maintaining in complete working order all protective safeguard equipment and services.

## **J. NOTICE OF LOSS**

In the event of loss or damage covered against under this MEMORANDUM, the Member shall give notice thereof to MMIA of such loss.

## **K. PROTECTION OF PROPERTY**

The Member shall protect the property from further damage forthwith; separate the

damaged and undamaged Personal Property stored in the best possible order and furnish a complete inventory of the destroyed, damaged and undamaged property. The expense for same are covered expenses under this MEMORANDUM.

## **L. DISPUTE RESOLUTION FOR CONTESTED COVERAGE DETERMINATIONS**

### **1. SCOPE OF COVERAGE**

The Dispute Resolution Procedures set forth in this Section (V) shall be followed in resolving any dispute, Claim, or controversy arising between the MMIA and a Member concerning determinations of Coverage under this document.

### **2. PROCEDURE FOR RESOLVING DISPUTES**

#### **a. Appeal to Underwriting Committee:**

In the event that a Member is aggrieved by a coverage determination, the Member shall initially appeal any adverse determination to the Underwriting Committee of the Board of Directors within thirty (30) calendar days of receiving the adverse determination.

- i. This appeal shall be initiated by sending written notification of the desire to appeal and the basis for the appeal to the Chief Executive Officer.
- ii. The Chief Executive Officer shall, within three (3) business days of receipt of the appeal submit the documents received from the Member, together with such additional explanatory material as the Chief Executive Officer deems appropriate, to the members of the Underwriting Committee in writing.
- iii. If either the appealing Member or any member of the Underwriting Committee or the Chief Executive Officer so requests, the Committee shall be convened within ten (10) business days after the Chief Executive Officer has sent to the Committee the appeals materials. Such meeting shall be conducted either by telephone conference call or in person at the discretion of the Committee Chair. Representatives of the Member and the Chief Executive Officer shall participate in any such conference call or meeting of the Committee and shall have an opportunity to be heard.
- iv. The Committee may accept, reject, or modify in whole or in part the initial Coverage Determination which is the subject of the appeal and shall render its decision at the time of such meeting or, if no meeting is held, within ten (10) business days after the Chief Executive Officer has sent to the Committee the appeals materials.
- v. The Chief Executive Officer shall prepare a written statement of the reason(s) for the decision of the Underwriting Committee within five (5) business days after the Committee has made its decision. This statement of decision shall be provided to the Member.

#### **b. Appeal of the decision of the Underwriting Committee to the Board of Directors.** If either the appealing Member or the Chief Executive Officer is aggrieved by the decision of the Underwriting Committee, that decision may be appealed to the Board of Directors of the MMIA.

- i. The aggrieved party shall file a written notice of appeal, together with the basis for the appeal, with the Chief Executive Officer of the MMIA within thirty (30) calendar days of the date of receipt of the written decision of the Underwriting Committee. If filed by the MMIA, a copy of this notice of appeal shall be mailed to the chief appointed or elected official of the Member.
- ii. The non-appealing party shall have seven (7) business days from the date of the notice to submit to the Chief Executive Officer any additional information which it may desire to be submitted to the Board of Directors.

- iii. The Chief Executive Officer shall, within three (3) business days thereafter, submit the documents received from the parties, together with such additional explanatory material as the Chief Executive Officer deems appropriate to the members of the Board of Directors in writing.
- iv. If either of the parties or a member of the Board of Directors so requests, the Board of Directors shall be convened within ten (10) business days after the Chief Executive Officer has sent to the Board of Directors the appeals material. Such meeting shall be conducted either by telephone conference call or in person at the discretion of the Board Chair. Representatives of the parties shall participate in any such conference call or meeting of the Board of Directors and shall have an opportunity to be heard.
- v. The Board of Directors may accept, reject, or modify in whole or in part the Coverage Determination of the Underwriting Committee and shall render its decision at the time of such meeting, or, if no meeting is held, within ten (10) business days after the Chief Executive Officer has sent to the Board of Directors the appeals materials.
- vi. The Chief Executive Officer shall prepare a written statement of the reason(s) for the decision of the Board of Directors within five (5) business days of the Board of Directors' determination. This statement of decision shall be provided to each party.

### **3. VOLUNTARY SUBMISSION TO BINDING ARBITRATION**

- a. In the event either the Member or the Chief Executive Officer is aggrieved by the decision of the Board of Directors, the matter may be voluntarily submitted to binding arbitration. The agreement between the Member and the Chief Executive Officer to submit to arbitration shall be in writing and the party requesting arbitration shall submit a request to arbitrate to the other party within fourteen (14) calendar days of the date of the written decision of the Board of Directors. The request for agreement to submit to arbitration shall, if requested by the MMIA, be sent to the chief elected or appointed official of the Member or, if requested by the Member, shall be mailed to the Chief Executive Officer of the MMIA.
- b. Once a request for agreement to submit to arbitration has been made by the aggrieved party, the other party must provide its decision to the aggrieved party within ten (10) calendar days of the date the request to submit to arbitration was received. In entering into an agreement to submit to arbitration, both parties must certify that they are voluntarily submitting to binding arbitration for that particular dispute, and that both parties voluntarily agree that the arbitrator's decision is binding upon both parties.
- c. Once an agreement to submit to arbitration is made, the MMIA and the Member shall agree upon a single arbitrator within ten (10) business days of the filing of an agreement to submit to arbitration. In the event that the MMIA and the Member cannot agree on the choice of an arbitrator, each party shall designate in writing within five (5) business days thereafter an arbitrator and the two arbitrators shall select a single arbitrator within five (5) business days thereafter who alone shall preside at the hearing and render a decision. In selecting an arbitrator, consideration may be given to a candidate's prior experience with, and knowledge of, matters related to coverage disputes.
- d. The arbitrator shall commence a hearing within forty-five (45) calendar days of his/her designation.
- e. The MMIA and the Member shall each pay one-half of the fees and costs of the arbitrator; and, each party shall pay its own fees and costs for representation at the arbitration.

- f. Discovery shall be limited to an exchange of documents, list of expert and lay witnesses, a statement of the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion as contemplated by Montana Rules of Civil Procedure 26(b)(4)(A)(i), and a list of exhibits to be used at the hearing.
- g. Written interrogatories, requests for admission, and depositions shall not be permitted unless the parties stipulate otherwise, and such discovery is completed within the time set for the arbitration hearing.
- h. Upon appointment, the arbitrator shall convene as soon as practicable a preliminary prehearing conference, at which time the parties shall submit their respective Statement of Facts, Contentions, Issues of Law, and preliminary disclosure of witnesses and documents relevant to the arbitration. At the preliminary hearing, the arbitrator and the parties shall identify factual and legal issues and establish a schedule for the exchange of documents, reports, and other prehearing matters. Thereafter, the arbitrator shall issue a prehearing order setting forth agreed facts, facts in dispute, legal issues, and the timetable for further proceedings.
- i. The parties may stipulate to a determination by the arbitrator by way of summary judgment rather than hearing if there are no material facts in dispute.
- j. The arbitrator may require the filing of prehearing memoranda by the parties, which shall set forth the contested facts, the summary of applicable law, anticipated evidentiary issues which may arise at the hearing, and any other matters which the arbitrator may identify. The hearing shall be governed by the Montana Rules of Civil Procedure and the Montana Rules of Evidence. Testimony shall be under oath administered by the arbitrator; however, there shall be no stenographic transcript or other "official" record of hearing.
- k. Posthearing briefs shall not be permitted.
- l. The arbitrator shall render his or her decision in writing within thirty (30) calendar days of the close of the hearing.
- m. All decisions on appeals, whether by the Board of Directors (after the time to request arbitration has expired) or by the arbitrator shall be final and binding upon the MMIA and the Member.

#### 4. GENERAL PROVISIONS

- a. **Admissibility of Certain Statements.**  
The deliberations of the Underwriting Committee and the Board of Directors concerning any such appeal shall be deemed to be settlement discussions within the meaning of Rule 408 of the Montana Rules of Evidence and no statements of any committee member or board member or any other participant to such appeals shall be admissible in any subsequent proceedings, and only the final written decision of the Committee or the Board of Directors, as may be the case, shall form the basis for any subsequent appeal.
- b. **Funding of Defense and Claims Pending Resolution of Dispute.**  
During the course of any appeal to the Underwriting Committee or to the Board of Directors or during the arbitration proceedings provided herein, the Member will be responsible for all fees and expenses for the defense or litigation of the Claim or lawsuit, the Coverage of which is the subject of the appeal as provided herein. In the event that the final decision of the appeal proceedings as set forth herein is that a duty to defend exists, the MMIA will reimburse the Member for defense costs incurred during the pendency of the appeal for the defense of the underlying Claim or lawsuit.

## M. PROOF OF LOSS

The Member shall render a signed and sworn proof of loss as soon as practical, not to exceed 12 months (subject to mutual extension agreement) after the Occurrence of a loss; stating the time, place and cause of loss, the interest of the Member and of all others in the property, the value thereof and the amount of loss or damage thereto.

#### **N. SUBROGATION**

The MMIA shall be subrogated to the extent of any payment hereunder to all the Covered Party's rights of recovery thereof, and the Covered Party shall do nothing after loss to prejudice such right and shall do everything necessary to secure such right. Any amount so recovered shall be apportioned as follows:

1. The highest layer of Coverage shall be reimbursed first and if there are sufficient recoveries, then the next highest layer until all recoveries are used up.
2. The expenses of all such recovery proceedings shall be paid before any reimbursements are made for the highest layer of Coverage. If there is no recovery in the proceedings conducted by the MMIA, it shall bear the expenses thereof.

#### **O. RIGHTS AND OBLIGATIONS UPON WITHDRAWAL, TERMINATION FROM OR NON-RENEWAL OF PARTICIPATION IN THE PROGRAM.**

Any Member may withdraw from the Program by giving at least sixty (60) days' notice in writing to the Board of Directors of its desire to withdraw, provided such withdrawal is permitted under the terms of the applicable agreements entered into by the MMIA.

Any unearned Assessment returned to the MMIA because of the withdrawal of any Member from the Program shall be returned to the withdrawing Member.

In no event shall withdrawal from Coverage, termination or non-renewal of a Member's participation in the Property Program release a Member from its obligation to pay damages resulting from default under the terms of this Agreement, nor shall such withdrawal or termination release a Member from its obligation to pay Assessments. Notice to withdraw shall be revocable only at the option of the MMIA. Any re-entry into the Program by a former Member whose participation in the Program has been terminated either voluntarily or involuntarily, or has provided a notice of withdrawal, may be conditioned upon the payment of such former Member of a re-entry fee in such amount as the Board may determine in its sole discretion.

#### **P. ABANDONMENT**

There shall be no abandonment to the MMIA of any property.

#### **Q. ASSIGNMENT**

Assignment or transfer of this MEMORANDUM shall not be valid except with the written consent of the MMIA.

#### **R. SALVAGE**

When, in connection with any loss hereunder, any salvage is received prior or subsequent to the payment of such loss, the loss shall be figured on the basis on which it would have been settled had the amount of salvage been known at the time the loss was originally determined.

#### **S. OTHER COVERAGE**

Permission is hereby granted to the Member to carry more specific Coverage on any property covered under this MEMORANDUM. This MEMORANDUM shall not attach or become Coverage upon any property which, at the time of loss, is more specifically described and covered under any other policy form until the liability of such other Coverage has first been exhausted and shall then cover only the excess of value of such property over and above the amount payable under such other coverage, whether collectible or not. This MEMORANDUM, subject to its conditions and limitations, shall attach and become Coverage upon such property as respects any peril not covered by such other Coverage and not otherwise excluded herein.

In the event of a loss that is covered by other Coverage, wherein this MEMORANDUM is excess and non-contributory of any amount paid by such other Coverage, the other Coverage shall be applied to the Deductible amount stated elsewhere. Should the amount paid by such other Coverage exceed these Deductibles, no further Deductibles shall be applied under this MEMORANDUM.

#### **T. EXCESS COVERAGE**

Permission is granted for the Member to maintain excess coverage over the limit of liability set forth in this MEMORANDUM without prejudice to this MEMORANDUM and the existence of such Coverage, if any, shall not reduce any liability under this MEMORANDUM. Also it is understood and agreed as respects Earthquake Shock or Flood, that in the event of reduction or exhaustion of the aggregate Limits of Liability under the underlying Coverage agreement(s) by reason of loss(es) hereunder, this MEMORANDUM shall:

1. in the event of reduction, pay out excess of the reduced underlying limit and
2. in the event of exhaustion, continue in force as the underlying Coverage agreement.

#### **U. RIGHT TO REVIEW RECORDS FOLLOWING A COVERED LOSS**

The Member, as often as may be reasonably required, shall submit and so far as within their power, cause all other persons interested in the property or employees to submit to examination under oath by any person named by the MMIA relative to any and all matters in connection with a Claim, and produce for examination all books of account, bills, invoices and other vouchers or certified copies thereof if originals be lost, at such reasonable time and place as may be designated by the MMIA or their representatives and shall permit extracts and copies thereof to be made.

#### **V. CONCEALMENT AND FRAUD**

This entire MEMORANDUM shall be void if, whether before or after a loss, the Member has willfully concealed or misrepresented any material facts or circumstances concerning this MEMORANDUM of the subject thereof, or the interest of the Member therein, or in case of

any fraud or false swearing by the Member relating thereto.

**W. LOSS PAYABLE CLAUSE**

In the event of a loss occurring under this MEMORANDUM, the loss payment will be made in favor of the Member(s) submitting the Claim alone, and not to the Program name.

**X. FULL WAIVER**

The terms and conditions of this form and endorsements attached thereto are substitute for those of the Coverage agreement to which it is attached, all terms, conditions and endorsements of latter being waived.

**Y. SUIT AGAINST MMIA**

No suit, action or proceeding for the recovery of any Claim under this MEMORANDUM shall be sustainable in any court of law or equity unless the Member shall have fully complied with all the requirements of this MEMORANDUM, nor unless the same be commenced within twelve (12) months next after the date of the loss provided, however, that if under the laws of the jurisdiction in which the property is located such limitation is invalid, then any such Claims shall be void unless such action, suit or proceedings be commenced within the shortest limit of time permitted by the laws of such jurisdiction.

## **SECTION VI: FINE ARTS FLOATER**

### **A. COVERAGE**

This MEMORANDUM covers against all risks of physical loss of or damage occurring during the MEMORANDUM period to fine arts, which are the property of the Member or the property of others in the custody or control of the Member while on exhibition or otherwise within the limits of the Continental United States, except as hereinafter provided.

If any of the property covered by this Section is also covered under any other provisions of the MEMORANDUM of which this Section is made a part, those provisions are hereby amended to exclude such property, the intent being that the Coverage under this Section is the sole Coverage on such property.

#### **1. PROPERTY COVERED**

Objects of art of every kind and description, and property incidental thereto, which are the property of the Member, or the property of others in the custody and control of the Member, or in transit at the Member's risk, and property in which the Member shall have a fractional ownership interest which are owned by or have been leased, loaned, rented or otherwise made available to the Member.

"Property" shall mean paintings, drawings, etchings, prints, rare books, manuscripts, rugs, tapestries, furniture, pictures, bronzes, potteries, porcelains, marble statuary and all other bonafide works of art and other objects of rarity, historic value, cultural interest or artistic merit, which are part of the collections of the Member, or in the care, custody or control of the Member, and their frames, glazing and shadow boxes.

#### **2. "WALL TO WALL" ("NAIL TO NAIL") COVERAGE**

This Section (VI) covers the Member's property on a "Wall to Wall" ("Nail to Nail") basis, or domicile to domicile basis, as applicable, from the time said property is removed from its normal repository incidental to shipment until returned thereto or other point designated by the owner or owner's agent prior to return shipment, including while in transit to or from points of consolidation or deconsolidation, packing, repacking or unpacking, while at such locations during such processes or awaiting shipment.

Coverage shall terminate upon arrival of the covered property at the final destination designated by the owner or owner's agent, or upon expiration of this MEMORANDUM, whichever may occur first, except that expiration of this MEMORANDUM shall not prejudice Coverage of any risk then in transit.

### **B. EXTENSIONS OF COVERAGE**

None

### **C. EXCLUSIONS**

1. Loss or damage occasioned by: wear and tear, gradual deterioration, insects, vermin, inherent vice or damage sustained due to and resulting from any repairing, restoration or retouching process;

2. Loss or damage caused by or resulting from:
  - a. Hostile or warlike action in time of peace or war, including action in hindering, combating or defending against an actual, impending or expected attack;
    - i. by any government or sovereign power (de jure or de facto), or by any authority maintaining or using military, naval or air forces; or
    - ii. by military, naval or air forces; or
    - iii. by an agent of any such government, power, authority or forces;
  - b. Any weapon of war employing atomic fission or radioactive force whether in time of peace or war;
  - c. Insurrection, rebellion, revolution, civil war, usurped power, or action taken by governmental authority in hindering, combating or defending against such an Occurrence, seizure or destruction under quarantine or customs regulations, confiscation by order of any government or public authority, or risks of contraband or illegal transportation or trade.
3. Loss by nuclear reaction or nuclear radiation or radioactive contamination, all whether controlled or uncontrolled and whether such loss be direct or indirect, proximate or remote, or be in whole or in part caused by, contributed to, or aggravated by the covered perils covered against in this endorsement; however, subject to the foregoing and all provisions of this endorsement, direct loss by fire resulting from nuclear reaction, a nuclear radiation or radioactive contamination is covered against by this endorsement.
4. Any dishonest, fraudulent or criminal act by the Member, a partner therein or an officer, director, employee or trustee thereof, whether acting alone or in collusion with others.

For the purpose of this exclusion an act of vandalism or malicious damage by an employee shall not constitute a dishonest, fraudulent or criminal act.

#### **D. LOSS PAYMENT BASIS/VALUATION**

The valuation of each article of property covered by this Section shall be determined as follows:

1. Property of the Member shall be covered for and valued at the current fair market value of each article indicated on the books and records of the Member prior to loss, according to the Member's valuation of each object covered.
2. Property of others loaned to the Member and for which the Member may be legally liable, or which the Member has been instructed to cover, shall be covered for and valued at the amount agreed upon for each article by the Member and owner(s) as recorded on the books and records of the Member prior to loss.
3. Otherwise, in the absence of recorded current fair market values or agreed values for each article covered, the MMIA shall not be liable beyond the fair market value of the property at the time any loss or damage occurs. Said value shall be ascertained by the Member and the MMIA or, if they differ, then the amount of value or loss shall be determined as provided in the following appraisal clause.

#### **E. SPECIAL CONDITIONS**

1. **MISREPRESENTATION AND FRAUD:** This entire Section (VI) shall be void if, whether before or after a loss, the Member has concealed or misrepresented any material fact or

circumstance concerning this MEMORANDUM or the subject thereof, or the interest of the Member therein, or in case of any fraud or false swearing by the Member relating thereto.

2. **NOTICE OF LOSS:** The Member shall, as soon as practicable, report in writing to the MMIA or its agent every loss, damage or Occurrence which may give rise to a Claim under this Section (VI) and shall also file with the MMIA or its agent within ninety (90) days from the date of discovery of such loss, damage or Occurrence, a detailed sworn proof of loss.
3. **EXAMINATION UNDER OATH:** The Member, as often as may be reasonably required, shall exhibit to any person designated by the MMIA all that remains of any property herein described, and shall submit, and insofar as is within its power cause its employees, Member and others to submit to examination under oath by any person named by the MMIA and subscribe the same; and, as often as may be reasonably required, shall produce for examination all writings, books of account, bills, invoices and other vouchers, or certified copies thereof if originals be lost, at such reasonable time and place as may be designated by the MMIA or its representative and shall permit extracts and copies thereof to be made. No such examination under oath or examination of books or documents, nor any act of the Member or any of its employees or representatives in connection with the investigation of any loss or Claim hereunder, shall be deemed a waiver of any defense which the Member might otherwise have with respect to any loss or Claim, but all such examinations and acts shall be deemed to have been made or done without prejudice to the MMIA's liability.
4. **SETTLEMENT OF LOSS:** All adjusted Claims shall be paid or made good to the Member within sixty (60) days after presentation and acceptance of satisfactory proof of interest and loss at the office of the MMIA. No loss shall be paid or made good if the Member has collected the same from others.
5. **NO BENEFIT TO BAILEE:** This Section (VI) shall in no way inure directly or indirectly to the benefit of any carrier or other bailee.
6. **SUBROGATION OR LOAN:** If, in the event of loss or damage, the Member shall acquire any right of action against any individual, firm or corporation for loss of, or damage to, property covered hereunder, the Member will, if requested by the MMIA, assign and transfer such Claim or right of action to the MMIA or, at the MMIA's option, execute and deliver to the MMIA the customary form of loan receipt upon receiving an advance of funds in respect of the loss or damage; and will subrogate the MMIA to, or will hold in trust for the MMIA, all such rights of action to the extent of the amount paid or advanced, and will permit suit to be brought in the Member's name under the direction of and at the expense of the MMIA.
7. **LOSS CLAUSE:** Any loss hereunder shall not reduce the amount of this Section (VI), except in the event of payment of Claim for total loss of an item specifically scheduled hereon.
8. **PROTECTION AND PRESERVATION OF PROPERTY:** In case of actual or imminent physical loss or damage of the type covered against by this MEMORANDUM, the expenses incurred by the Member in taking reasonable and necessary actions for the temporary protection and preservation of property covered hereunder, shall be added to the total physical loss or damage otherwise recoverable under the MEMORANDUM and

be subject to the applicable Deductible and without increase in the limit provisions contained in this MEMORANDUM.

9. **APPRAISAL:** If the Member and the MMIA fail to agree as to the amount of valuation, each shall, on the written demand of other, made within sixty (60) days after receipt of proof of loss by the MMIA, select a competent and disinterested appraiser, and the appraisal shall be made at a reasonable time and place. The appraiser shall first select a competent and disinterested umpire, and failing for fifteen (15) days to agree upon such umpire, then on the request of the Member or the MMIA, such umpire shall be selected by a judge of a court of record in the state in which such appraisal is pending. The appraisers shall then appraise the loss, stating separately the fair market value at the time of loss and the amount of loss, and failing to agree shall submit their differences to the umpire. An award in writing of any two shall determine the amount of loss. The Member and the MMIA shall each pay their chosen appraiser and shall bear equally the other expenses of the appraisal and umpire. The Member shall not be held to have waived any of its rights by any act relating to appraisal.
10. **CIVIL AUTHORITY:** Property covered under this Section (VI) against the peril of fire is also covered against the risk of damage or destruction by Civil authority during a conflagration and for the purpose of retarding the same; provided that neither such conflagration nor such damage or destruction is caused or contributed to by a peril otherwise excluded herein.
11. **CHANGES:** Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this Section (VI) or stop the Member from asserting any right under the terms of this Section (VI), nor shall the terms of this Section (VI) be waived or changed except by endorsement issued to form a part of this Section (VI).
12. **ADDITIONAL COVERED PARTY(IES):** The owner and owners defined as associations, corporations, firms, institutions, museums, persons and others who own or control collections, objects or articles who make them available to the Member, and temporary borrowers or custodians (but not carriers, packers or shippers) of property covered, are additional Member(s) hereunder, but only as respects coverage afforded said Member's property.
13. **PACKING:** It is agreed by the Member that the property covered hereunder be packed and unpacked by competent packers.
14. **PAIR AND SET:** In the event of the total loss of any article or articles which are a part of a set, the MMIA agrees to pay the Member the full amount of the value of such set and the Member agrees to surrender the remaining article or articles of the set to the MMIA.
15. **OTHER COVERAGE:** This fine arts floater Section is Excess Coverage over any other valid and collectible coverage which may apply to any objects of art for which Coverage would apply under this MEMORANDUM.

## SECTION VII: MOBILE/CONTRACTORS EQUIPMENT

### A. COVERAGE

This Section covers only mobile machines, including equipment thereof while attached thereto or located thereon, such as bulldozers, drag lines, power shovels, derricks, drills, concrete mixers and other machinery of a mobile nature. This extension covers against all risks of direct physical loss or damage occurring during the Coverage Period to the above described property from any external cause except as provided below:

1. Loss or damage due to wear, tear, rust, corrosion, latent defect, mechanical breakage or improper assemblage.
2. Loss or damage due to the weight of the load imposed on the machine exceeding the capacity for which such machine was designed.
3. Loss or damage to crane or derrick boom(s) and jib(s) of lattice construction while being operated unless directly caused by fire, lightning, hail, windstorm, Earthquake Shock, explosion, riot, riot attending a strike, civil commotion, actual physical contact with an aircraft or airborne missile including objects falling there from, collision with other vehicles or other Contractors Equipment whether or not such other equipment is covered hereunder, landslide, or upset of the unit of which it is a part (but only when and to the same extent that such other perils are covered by the MEMORANDUM).
4. Loss or damage due to explosion arising from within steam boilers.
5. Loss or damage to dynamos, exciters, lamps, switches, motors or other electrical appliances or devices, including wiring, caused by lightning or other electrical currents (artificial or natural) unless fire ensues and then for the loss by fire only.
6. Loss or damage due to dishonesty of Member's employees or persons to whom the Member's property is entrusted.
7. Loss or damage caused by or contributed to failure of the Member to keep and maintain the property in a thorough state of repair.
8. Loss or damage caused by or resulting from:
  - a. hostile or warlike action in time of peace or, including action in hindering, combating or defending against an actual, impending or expected attack,
    - i. by any government or sovereign power (de jure or de facto) or by any authority maintaining using military, naval or air forces; or
    - ii. any military, naval or air forces; or
    - iii. by an agent of any such government, power, authority or forces;
  - b. any weapon of war employing atomic fission or radioactive force whether in time of peace or war;
  - c. insurrection, rebellion, revolution, civil war, usurped power, or action taken by governmental authority in hindering, combating or defending against such an Occurrence, seizure or destruction under quarantine or customs regulations, confiscation by order of any governmental or public authority, or risk of contraband or illegal transport or trade;

9. Loss by nuclear reaction or nuclear radiation or radioactive contamination, all whether controlled or uncontrolled, and whether such loss be direct or indirect, proximate or remote, or be in whole or in part caused by, contributed to, or aggravated by the peril(s) covered against in this endorsement; however, subject to the foregoing and all provisions of this MEMORANDUM, direct loss by fire resulting from nuclear reaction or nuclear radiation or radioactive contamination is covered against by this MEMORANDUM.

**B. EXTENSIONS OF COVERAGE:**

None

**C. PROPERTY EXCLUDED:**

1. Automobiles, motorcycles, motor trucks, or parts thereof.
2. Buildings used as camps or otherwise
3. Machinery or equipment or building materials to be installed in any building for the purpose of becoming a part thereof; nor on any property which has become a permanent part of any structure.
4. Property that is located underground.
5. Property while waterborne except while being transported on any regular ferry.
6. Storage risks at premises controlled or leased by the Member, except where incidental to the regular or frequent use of the equipment or property.
7. Plans, blue prints, designs or specifications.

**D. LOSS PAYMENT BASIS/VALUATION:**

See specific Sections regarding Loss Payment Basis/Valuation.

**E. SPECIAL CONDITIONS:**

This extension covers only within the limits of the United States of America and Canada per sub-limits stated in the Declarations.

It is a condition of this MEMORANDUM that all articles covered hereunder are in sound condition at the time of attachment of this MEMORANDUM.

## **SECTION VIII: ACCOUNTS RECEIVABLE**

### **A. COVERAGE**

This MEMORANDUM covers the loss of, or damage resulting from, all risks of direct physical loss or damage to the Member's records of Accounts Receivable as defined in Section I of this MEMORANDUM, occurring during the MEMORANDUM period.

### **B. EXTENSIONS OF COVERAGE**

None

### **C. EXCLUSIONS**

In addition to the exclusions in the General Conditions (Section V of this MEMORANDUM), this Extension does not apply:

1. To loss due to any fraudulent, dishonest or criminal act by the Member, a partner therein, or an officer, director, employee or trustee thereof, while working or otherwise and whether acting alone or in collusion with others.

For the purpose of this exclusion, an act of vandalism or malicious damage by an employee shall not constitute a dishonest, fraudulent or criminal act.

2. To loss due to bookkeeping, accounting or billing errors or omissions.
3. To loss, the proof of which as to factual existence is dependent upon an audit of records or an inventory computation; but this shall not preclude the use of such procedures in support of a claim for loss which the Member can prove through evidence wholly apart therefrom, is due solely to a risk of loss to records of Accounts Receivable not otherwise excluded hereunder.
4. To loss due to alteration, falsification, manipulation, concealment, destruction or disposal of records of Accounts Receivable committed to conceal the wrongful giving, taking, obtaining or withholding of money, securities or other property, but only to the extent of such wrongful giving, taking, obtaining or withholding.

### **D. LOSS PAYMENT BASIS/VALUATION:**

#### **DETERMINATION OF RECEIVABLES; DEDUCTIONS**

When there is proof that a loss covered by this MEMORANDUM has occurred but the Member cannot accurately establish the total amount of Accounts Receivable outstanding as of the date of such loss, such amount shall be based on the Member's monthly statements and shall be computed as follows:

1. Determine the amount of all outstanding Accounts Receivable at the end of the same fiscal month in the year immediately preceding the year in which the loss occurs;
2. Calculate the percentage of increase or decrease in the average monthly total of Accounts Receivable for the twelve (12) months immediately preceding the month in which the loss occurs as compared with such average for the months of the preceding

year;

3. The amount determined under (1) above, increased or decreased by the percentage calculated under (2) above, shall be the agreed total amount of Accounts Receivable as of the last day of the fiscal month in which said loss occurs;
4. The amount determined under (3) above shall be increased or decreased in conformity with the normal fluctuations in the amount of Accounts Receivable during the fiscal month involved, due consideration being given to the experience of the business since the last day of the last fiscal month for which statement has been rendered. There shall be deducted from the total amount of Accounts Receivable, however established, the amount of such accounts evidenced by records not lost or damaged or otherwise established or collected by the Member, and an amount to allow for probable bad debts which would normally have been uncollectible by the Member. All unearned interest and service charges shall be deducted.

#### **E. SPECIAL CONDITIONS**

None

## **SECTION IX: ADDITIONAL CONDITIONS, EXCLUSIONS & ENDORSEMENTS**

### **A. JOINT LOSS ADJUSTMENT – BOILER & MACHINERY**

In the event of damage to, or destruction of, property at a location designated in this MEMORANDUM and also designated in a Boiler and Machinery coverage agreement, and there is a disagreement between the MMIA and the Member with respect to:

1. Whether such damage or destruction was caused by a peril covered against by this MEMORANDUM or by an accident covered against by such Boiler and Machinery coverage agreement or
2. The extent of participation of this MEMORANDUM and of such Boiler and Machinery coverage agreement in a loss that is covered against, partially or wholly, by one or all of said coverage agreement(s).

The MMIA shall, upon written request of the Member, pay to the Member one-half of the amount of the loss which is in disagreement, but in no event more than the MMIA would have paid if there had been no Boiler and Machinery coverage agreement(s) in effect, subject to the following conditions:

1. The amount of loss, which is in disagreement after making provisions for any undisputed Claims payable under the said coverage agreement(s) and after the amount of the loss is agreed by the Member and the Boiler and Machinery Insurer and the MMIA, is limited to the minimum amount remaining payable under either of the coverage agreements.
2. The Boiler and Machinery Coverage(s) shall simultaneously pay to the Member, one-half of the said amount, which is in disagreement.
3. The payments by the MMIA and acceptance of the same by the Member signify the agreement of the MMIA to submit to and proceed with arbitration within ninety (90) days of such payments:

The arbitrators shall be three (3) in number, one of whom shall be appointed by the boiler coverage(s) and one of whom shall be appointed by the MMIA hereon and the third appointed by consent of the other two, and the decision by the arbitrators shall be binding on the MMIA and the Member and that judgment upon such award may be entered in any court of competent jurisdiction.

4. The Member agrees to cooperate in connection with such arbitration but not to intervene therein.
5. This agreement shall be null and void unless the coverage of the boiler and machinery insurer is similarly endorsed.

### **B. SEEPAGE AND/OR POLLUTION AND/OR CONTAMINATION EXCLUSION; DEBRIS REMOVAL AND COST OF CLEAN UP EXTENSION; AUTHORITY'S EXCLUSION**

#### **1. SEEPAGE AND/OR POLLUTION AND/OR CONTAMINATION EXCLUSION**

Notwithstanding any provision in the coverage agreement to which the endorsement is

attached, this MEMORANDUM does not cover against loss, damage, costs or expenses in connection with any kind or description of seepage and/or Pollution and/or contamination, direct or indirect, arising from any cause whatsoever.

Nevertheless, if fire is not excluded from this MEMORANDUM and a fire arises directly or indirectly from seepage and/or Pollution and/or contamination, any loss or damage covered under this MEMORANDUM arising directly from that fire shall, (subject to the terms, conditions and limitations of the MEMORANDUM) be covered.

However, if the covered property is the subject of direct physical loss or damage for which the MMIA has paid or agreed to pay, then this MEMORANDUM (subject to its terms, conditions and limitations) covers against direct physical loss or damage to the property covered hereunder caused by resulting seepage and/or Pollution and/or contamination.

The Member shall give notice to the MMIA of intent to claim NO LATER THAN TWELVE (12) MONTHS AFTER THE DATE OF THE ORIGINAL PHYSICAL LOSS OR DAMAGE.

## **2. DEBRIS REMOVAL AND COST OF CLEAN UP EXTENSION**

Notwithstanding the provisions of the preceding exclusions in this endorsement or any provision respecting seepage and/or Pollution and/or contamination, and/or debris removal and/or cost of clean-up in the MEMORANDUM to which this endorsement is attached, in the event of direct physical loss or damage to the property covered hereunder, this MEMORANDUM (subject otherwise to its terms, conditions and limitations, including but not limited to any applicable Deductible) also covers, within the sum covered:

- a. expenses reasonably incurred in removal of debris of the property hereunder destroyed or damaged from the premises of the Member; and/or;
- b. cost of clean-up at the premises of the Member made necessary as a result of such direct physical loss or damage;

PROVIDED that this MEMORANDUM does not cover against the costs of decontamination or removal of water, soil or any other substance on or under such premises.

It is a condition precedent to recovery under this extension that the MMIA shall have paid or agreed to pay for direct physical loss or damage to the property covered hereunder unless such payment is precluded solely by the operation of any Deductible and that the Member shall give notice to the MMIA of intent to claim for cost of removal of debris or cost of clean up NO LATER THAN TWELVE (12) MONTHS AFTER THE DATE OF SUCH PHYSICAL LOSS OR DAMAGE.

## **3. AUTHORITY'S EXCLUSION**

This MEMORANDUM does not cover expenses, fines, penalties or cost incurred or sustained by the Member or imposed on the Member at the order of any Government Agency, Court of other authority, in connection with any kind or description of environmental impairment including seepage or Pollution or contamination from any

cause.

Nothing in this endorsement shall override any radioactive contamination exclusion clause in the MEMORANDUM to which this endorsement is attached.

### **C. LENDER'S LOSS PAYABLE**

The following provisions (or equivalent) apply as required by "mortgages" and "lenders" to whom certificates of coverage have been issued.

1. Loss or damage, if any, under this MEMORANDUM, shall be paid to the Payee named as Covered Party of this MEMORANDUM, its successors and assigns, hereinafter referred to as "the Lender," in whatever form or capacity its interests may appear and whether said interest be vested in said Lender in its individual or in its disclosed or undisclosed fiduciary or representative capacity, or otherwise, or vested in a nominee or trustee of said Lender.
2. The Coverage under this MEMORANDUM, or any rider or endorsement attached thereto, as to the interest only of the Lender, its successors and assigns, shall not be invalidated nor suspended:
  - a. by any error, omission, or change respecting the ownership, description, possession, or location of the subject of the coverage or the interest therein, or the title thereto;
  - b. by the commencement of foreclosure proceedings or the giving of notice of sale of any of the property covered by this MEMORANDUM by virtue of any mortgage or trust deed; and
  - c. by any breach of warranty, act, omission, neglect, or non-compliance with any of the provisions of this MEMORANDUM, including any and all riders now or hereafter attached thereto, by the Named Member, the borrower, mortgagor, trustor, vendee, owner, tenant, warehouseman, custodian, occupant, or by the agents of either or any of them or by the happening of any event permitted by them or either of them, or their agents, or which they failed to prevent, whether occurring before or after the attachment of this endorsement, or whether before or after a loss, which under the provisions of this MEMORANDUM, or of any rider or endorsement attached thereto, would invalidate or suspend the Coverage as to the Member, excluding herefrom, however, any acts or omissions of the Lender while exercising active control and management of the property.
3. In the event of failure of the Member to pay any Assessment or additional Assessment which shall be or become due under the terms of this MEMORANDUM or on account of any change in occupancy or increase in hazard not permitted by this MEMORANDUM, the MMIA agrees to give written notice to the Lender of such non-payment of Assessment after sixty (60) days from and within one hundred and twenty (120) days after due date of such Assessment and it is a condition of the continuance of the rights of the Lender hereunder that the Lender when so notified in writing by the MMIA of the failure of the Member to pay such Assessment shall pay or cause to be paid the Assessment due within ten (10) days following receipt of the MMIA's demand in writing therefore. If the Lender shall decline to pay said Assessment or additional Assessment, the rights of the Lender under this Lender's Loss Payable Endorsement shall not be terminated before ten (10) days after receipt of said written notice by the Lender.
4. Whenever the MMIA shall pay to the Lender any sum for loss or damage under this

MEMORANDUM and shall claim that as to the Member no liability therefore exists, the MMIA, at its option, may pay to the Lender the whole principal sum and interest and other indebtedness due or to become due from the Member, whether secured or unsecured, (with refund of all interest not accrued), and the MMIA, to the extent of such payment, shall thereupon receive a full assignment and transfer, without recourse, of the debt and all rights and securities held as collateral thereto.

5. If there be any other Coverage upon or within the described property, the MMIA shall be liable under this MEMORANDUM as to the Lender for the proportion of such loss or damage that the sum hereby Member bears to the entire coverage of similar character on said property under policies held by, payable to and expressly consented to by the Lender. Any Contribution Clause included in any Fallen Building Clause Waiver or any Extended Coverage Endorsement attached to this MEMORANDUM is hereby nullified, and also any Contribution Clause in any other endorsement or rider attached to this MEMORANDUM is hereby nullified except Contribution Clauses for the compliance with which the Member has received reduction in the rate charged or has received extension of the coverage to include hazards other than fire and compliance with such Contribution Clause is made a part of the consideration for covering such other hazards. The Lender, upon the payment to it of the full amount of its Claim, will subrogate the MMIA (pro rata with all other covers contributing to said payment) to all of the Lender's rights of contribution under said other coverage.
6. The MMIA reserves the right to cancel this MEMORANDUM at any time, as provided by its terms, but in such case this MEMORANDUM shall continue in force for the benefit of the Lender for ten (10) days after written notice of such cancellation is received by the Lender and shall then cease.
7. This MEMORANDUM shall remain in full force and effect as to the interest of the Lender for a period of ten (10) days after its expiration unless an acceptable coverage agreement in renewal thereof with loss thereunder payable to the Lender in accordance with the terms of this Lender's Loss Payable Endorsement, shall have been issued by some Coverage Company and accepted by the Lender.
8. Should legal title to and beneficial ownership of any of the property covered under this MEMORANDUM become vested in the Lender or its agents, coverage under this MEMORANDUM shall continue for the term thereof for the benefit of the Lender but, in such event, any privileges granted by this Lender's Loss Payable Endorsement which are not also granted the Member under the terms and conditions of this MEMORANDUM and/or under other riders or endorsements attached thereto shall not apply to the coverage hereunder as respects such property.
9. All notices herein provided to be given by the MMIA to the Lender in connection with this MEMORANDUM and this Lender's Loss Payable Endorsement shall be mailed to or delivered to the Lender at its office or branch described on the first page of the MEMORANDUM.

#### **D. SEVERAL LIABILITY NOTICE**

The subscribing parties' obligations under contracts of Coverage to which they subscribe are several, not joint and are limited solely to the extent of their individual subscriptions. The subscribing parties are not responsible for the subscription of any co-subscribing party who for any reason does not satisfy all or part of its obligations.

## **E. ACCIDENTAL CONTAMINATION EXTENSION**

In consideration of the Assessment charged and notwithstanding the terms, conditions and stipulations contained in the MEMORANDUM (except as regards the MEMORANDUM term and Limits of Liability), including all other endorsements attached thereto, (especially Endorsement No. B Seepage and/or Pollution and/or Contamination Exclusion; Debris And Cost of Clean Up Extension; Authorities Exclusion to the extent that it is in conflict herewith), to which this endorsement is attached, this MEMORANDUM is hereby extended to cover Business Interruption and Property Damage loss from accidental contamination from any source to Member property, as covered by this MEMORANDUM, including expenses necessarily incurred to clean up, remove and dispose of contaminated substances so as to restore the Member Property as covered by this MEMORANDUM to the same condition as existed prior to loss, all as a result of accidental contamination, discharge or dispersal in an amount not exceeding the sub-limit of liability of US Dollars as per Declarations for each Occurrence per Program declaration unless such contamination or dispersal is itself caused by fire, lightning, impact from aircraft, explosion, riot, civil commotion, smoke, collapse, vehicles, windstorm, hail, vandalism, malicious mischief or leakage and accidental discharge from automatic fire protective systems whereupon this extension shall provide coverage up to full limit of liability provided by this MEMORANDUM.

For the purposes of this extension, the term "Member property" as covered by this MEMORANDUM, is held to include Land (and Land Values) on which Covered Property is located, as part of the below stated sub-limit, whether or not the same are excluded by this MEMORANDUM. It being specifically understood and agreed that this extension shall not afford coverage to land, (including land on which Covered Property is located), and land values for loss in excess of US Dollars as per Declarations per Member and US Dollars as per Declarations in the aggregate sub-limit liability.

It is further understood and agreed that this extension shall not override anything contained in Asbestos Clean Up and Removal in this MEMORANDUM.

The sub-limit of liability stated above forms part of the limit(s) of liability provided by this MEMORANDUM and does not increase it (them).

## **F. ADDITIONAL COVERED'S/LOSS PAYEES**

It is hereby understood and agreed that the interest of Additional Covered Parties and/or Loss Payees is automatically included, as per schedule held on file with MMIA.

## **G. LEASEHOLD INTEREST ENDORSEMENT**

In the event of physical loss or damage of the type covered by this MEMORANDUM to real property of the type covered by this MEMORANDUM, which is leased by the Member, this MEMORANDUM is extended to cover:

1. If, as a result of such loss or damage, the property becomes wholly untenable or unusable and the lease agreement requires continuation of the rent, the MMIA shall indemnify the Member for the actual rent payable for the unexpired term of the lease; or
2. If, as a result of such loss or damage, the property becomes partially untenable or unusable and the lease agreement requires continuation of the rent, the MMIA shall

indemnify the Member for the proportion of the rent applicable thereto; or

4. If, as a result of such loss or damage, the lease is cancelled by the lessor pursuant to the lease agreement or by operation of law, the MMIA shall indemnify the Member for its Lease Interest for the first three months following such loss or damage and for its Net Lease Interest for the remaining unexpired term of the lease; provided, however, that the MMIA shall not be liable for any increase in the amount recoverable hereunder resulting from the suspension, lapse or cancellation of any license, or from the Member exercising an option to cancel the lease; or from any act or omission of the Member which constitutes a default under the lease; and provided further that the Member shall use any suitable property or service owned or controlled by the Member or obtainable from another source to reduce the loss hereunder.

#### **H. CONTINGENT TAX REVENUE INTERRUPTION PROTECTION (EXCLUDING EARTHQUAKE AND FLOOD)**

1. Type of Revenue to be covered: ( XX Property Tax, XX Other).
2. Except as hereinafter or heretofore excluded, this MEMORANDUM covers only against loss resulting directly from necessary interruption of Revenue as specified above collected by or due to the Member caused by damage to or destruction by a peril not excluded of any of the real or Personal Property covered by this MEMORANDUM and referred to any contribution property(ies) and which is not operated by the Member against all risks of direct physical loss or damage by a peril not excluded by this MEMORANDUM during the term of this MEMORANDUM, which wholly or partially prevents the generation of Revenue for the account of the Member.
3. In the event of such damage or destruction, the MMIA shall be liable, with limitations as indicated, if the following conditions (a) and (b) are both met:
  - a. The total Revenue is reduced to less than 97.5% of the Member's anticipated Revenue had no loss occurred, and
  - b. The actual loss sustained by the Member from direct damage by perils covered to one or more contributing properties which results in the interruption of Revenue for only the length of time as would be required with exercise of due diligence and dispatch to rebuild, replace or repair the contributing property commencing with the date of damage to the contributing property, but not limited by the expiration date of this MEMORANDUM.

If the Member has reported revenue interruption values for which Assessment has been charged, such loss recovery after Deductible shall be limited to whichever is the least of:

- a. The limit on the MEMORANDUM,
- b. The actual loss sustained, or
- c. The difference in amount between 97.5% of the anticipated Revenue and the actual total Revenue after the loss.

If the Member has not reported Revenue Interruption values for which Assessment has been charged, such loss recovery after Deductible shall be limited to whichever is the least of:

- a. The MEMORANDUM sub-limit, or
- b. The latest values for these items declared by the Member making the Claim or US Dollars \$100,000 per Occurrence if no values have been declared by the Member making the Claim.

4. DEDUCTIBLE: Each loss or series of losses arising out of one event at each location shall be adjusted separately and from the aggregate amount of all such losses 2.50% of the annual Revenue value shall be deducted.

## **I. AUTOMATIC ACQUISITION CLAUSE**

The following automatic acquisition provisions apply only to those Member's that are provided coverage at the inception of the MEMORANDUM term, unless otherwise endorsed.

This MEMORANDUM is automatically extended to cover additional property and/or interests as described in this MEMORANDUM, which may be acquired or otherwise become at the risk of the Member, or a Member covered during the MEMORANDUM term, within the United States of America, subject to the values of such additional property and/or interests not exceeding US Dollars \$25,000,000 any one acquisition excluding licensed vehicles for which a limit of US Dollars \$10,000,000 applies. This extension will extend to include Flood coverage for any location not situated in Flood Zones A or V. In the event that coverage for Flood for any location situated in Flood Zones A or V is required, it is to be agreed by the MMIA prior to attachment hereunder.

In the event of Coverage being required for additional property and/or interest where the value exceeds US Dollars \$25,000,000, any one acquisition details of said property and/or interest are to be provided to the MMIA for its agreement not later than ninety (90) days from the date of the said additional property and/or interest have become at the risk of the Member, this MEMORANDUM providing coverage automatically for such period of time up to a maximum limit of US Dollars \$100,000,000. The MMIA retains the right to determine the acceptability of all such property(ies). Additional Assessment will be calculated from the date of acquisition.

In the event that the Member fails to comply with the above reporting provision, then Coverage hereunder is sub-limited to US Dollars \$25,000,000 any one Occurrence.

## **J. MISCELLANEOUS UNNAMED LOCATIONS**

Coverage is extended to include property at any other location (including buildings or structures, owned, occupied or for which the Member is obligated to maintain coverage) located within the territorial limitations set by this declaration. Coverage provided by this clause is limited to any sub-limit noted on the Declarations attached to this form, and by terms and conditions of this MEMORANDUM. This extension will extend to include Flood coverage for any location not situated in Flood Zones A or V.

## **K. LOSS PAYABLE PROVISIONS**

### **1. LOSS PAYABLE**

For covered property in which both Member and a Loss Payee to which a certificate of coverage has been issued by MMIA, or shown in the Schedule on file with MMIA have a coverage interest, the MMIA will:

- a. Adjust losses with the Member, and
- b. Pay any Claim for loss or damage jointly to the Member and the Loss Payee, as interests may appear.

## **2. LENDER'S LOSS PAYABLE**

- a. The Loss Payee shown in the certificate of coverage or schedule is a creditor, including a mortgage holder or trustee, whose interest in covered property is established by such written instruments as:
  - i. Warehouse receipts;
  - ii. A contract for deed;
  - iii. Bills of lading;
  - iv. Financing statements; or
  - v. Mortgages, deeds of trust or security agreements.
- b. For Covered Property in which both the Member and a Loss Payee have a coverage interest:
  - i. MMIA will pay for covered loss or damage to each Loss Payee in their order of precedence, as interests may appear.
  - ii. The Loss Payee has the right to receive loss payment even if the Loss Payee has started foreclosure or similar action on the Covered Property.
  - iii. If the MMIA denies the Member Claim because of the covered act or because the Member has failed to comply with the terms of the Coverage Part, the Loss Payee will still have the right to receive loss payment if the Loss Payee:
    - Pays any Assessment due under this Coverage Part at our request if the Member has failed to do so;
    - Submits a signed, sworn proof of loss within 60 days after receiving notice from us of the Member failure to do so; and
    - Has notified us of any change in ownership, occupancy or substantial change in risk known to the Loss Payee.

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

- c. If the MMIA pays the Loss Payee for any loss or damage and denies payment to the Member because the Member acts or because the Member has failed to comply with the terms of this Coverage Part:
  - i. The Loss Payee's rights will be transferred to us to the extent of the amount the MMIA pays; and
  - ii. The Loss Payee's rights to recover the full amount of the Loss Payee's Claim will not be impaired.

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

- d. If the MMIA cancels this MEMORANDUM, the MMIA will give written notice to the Loss Payee at least:
  - i. Ten (10) days before the effective date of cancellation if the MMIA cancels for the Member non-payment of Assessment; or
  - ii. Thirty (30) days before the effective date of cancellation if the MMIA cancels for any other reason.
- e. If the MMIA elects not to renew this MEMORANDUM, the MMIA will give written notice to the Loss Payee at least 10 days before the expiration date of this MEMORANDUM.

## **3. CONTRACT OF SALE**

- a. The Loss Payee shown on the Certificate of Coverage, in the Schedule or in the Declarations is a person or organization the Member has entered a contract with for the sale of Covered Property.
- b. For Covered Property in which both the Member and the Loss Payee have a

- coverage interest, the MMIA will:
- i. Adjust losses with the Member; and
  - ii. Pay any Claim for loss or damage jointly to the Member and the Loss Payee, as interests may appear:
- c. The following is added to the OTHER COVERAGE Condition:

For Covered Property that is the subject of a contract of sale, the word "the covered Member" includes the Loss Payee.

## **L. ELECTRONIC DATA ENDORSEMENT A**

### **1. ELECTRONIC DATA EXCLUSION**

Notwithstanding any provision to the contrary within the MEMORANDUM or any endorsement thereto, it is understood and agreed as follows:

- a. This MEMORANDUM does not cover, loss, damage, destruction, distortion, erasure, corruption or alteration of Electronic Data from any cause whatsoever (including but not limited to Computer Virus) or loss of use, reduction in functionality, cost, expense of whatsoever nature resulting therefrom, regardless of any other cause or event contributing concurrently or in any other sequence to the loss.
- b. However, in the event that a peril listed below results from any of the matters described in Paragraph a) above, this MEMORANDUM, subject to all its terms, conditions and exclusions will cover physical damage occurring during the Coverage Period to property covered by this MEMORANDUM directly caused by such listed peril.

#### ***Listed Perils***

Fire  
Explosion

### **2. ELECTRONIC DATA PROCESSING MEDIA VALUATION**

Notwithstanding any provision to the contrary within the MEMORANDUM or any endorsement thereto, it is understood and agreed as follows:

Should Electronic Data processing media covered by this MEMORANDUM suffer physical loss or damage covered by this MEMORANDUM, then the basis of valuation shall be the cost to repair, replace or restore such media to the condition that existed immediately prior to such loss or damage, including the cost of reproducing any Electronic Data contained thereon, providing such media is repaired, replaced or restored. Such cost of reproduction shall include all reasonable and necessary amounts, not to exceed US Dollars \$10,000,000 any one loss, incurred by the Member in recreating, gathering and assembling such Electronic Data. If the media is not repaired, replaced or restored the basis of valuation shall be the cost of the blank media. However this MEMORANDUM does not cover any amount pertaining to the value of such Electronic Data to the Member or any other party, even if such Electronic Data cannot be recreated, gathered or assembled.

However, the MMIA reserves the right to utilize other adjusting firms if and when they feel it necessary.

## **M. MICROORGANISM EXCLUSION – ABSOLUTE**

This MEMORANDUM does not cover any loss, damage, Claim, cost, expense or other sum directly or indirectly arising out of, or relating to, mold, mildew, fungus, spores or other microorganism of any type, nature, or description, including but not limited to any substance whose presence poses an actual or potential threat to human health.

This exclusion applies regardless of whether there is:

1. any physical loss or damage to covered property;
2. any covered peril or cause, whether or not contributing concurrently or in any sequence;
3. any loss of use, occupancy, or functionality;
4. any action required, including but not limited to repair, replacement, removal, cleanup, abatement, disposal, relocation, or steps taken to address medical or legal concerns.

This exclusion replaces and supersedes any provision in the MEMORANDUM that provides coverage, in whole or in part, for these matters.

## **N. BIOLOGICAL OR CHEMICAL MATERIALS EXCLUSION**

It is agreed that this MEMORANDUM excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with the actual or threatened malicious use of pathogenic or poisonous biological or chemical materials regardless of any other cause or event contributing concurrently or in any other sequence thereto.

## **O. TERRORISM COVERAGE EXTENSION**

In consideration of the contribution charged, it is agreed that this coverage includes physical loss or damage directly caused by any "act of terrorism."

For the purpose of this endorsement, an act of terrorism means an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organization(s) or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear.

Coverage provided by this endorsement is limited to the sub-limit(s) listed in the Declarations.

## **P. BOILER AND MACHINERY BREAKDOWN EXTENSION**

### **1. PERILS COVERED**

In consideration of the Assessment paid and subject to the Terms, General Conditions and General Exclusions of the MEMORANDUM to which this Extension is attached, and to the following terms and conditions, this MEMORANDUM is extended to cover direct damage to Covered Property caused by a Covered Cause of Loss.

### **2. ADDITIONAL COVERAGE**

#### **a. Hazardous Substance:**

The Additional Expense incurred for cleanup, repair or replacement or disposal of damaged, contaminated or polluted property as a result of an Accident, which causes property to become damaged, contaminated or polluted by a substance declared hazardous to health by an authorized governmental agency. The

Coverage provided by this clause is sub-limited to US Dollars as per Declarations. For the purpose of this Coverage, "Additional Expense" means any expense that would not have incurred, if no substance hazardous to health had been involved in the accident.

- b. Ammonia Contamination:  
The loss, including salvage expense, incurred with respect to damage by ammonia contacting or permeating property under refrigeration or in process requiring refrigeration, as a result of any one Accident to one or more Objects. The Coverage provided by this clause is sub-limited to US Dollars as per Declarations.
- c. Water Damage:  
The loss, including salvage expense, with respect to property damaged by water, resulting from any one Accident. The Coverage provided by this clause is sub-limited to US Dollars as per Declarations.
- d. Media Coverage:  
The loss to all forms of electronic, magnetic and optical tapes and discs used in any electronic computer or Electronic Data processing equipment directly damaged by an Accident to an Object. The Coverage provided by this clause is sub-limited to US Dollars as per Declarations. For the purpose of this Coverage, the valuation basis for Media is as follows:
  - i. For Media that is mass-produced and commercially available, at the Replacement Cost.
  - ii. For all other Media, at the cost of blank material for reproducing the records.
- e. Consequential Damage  
The Consequential Damage to refrigerated and frozen goods of the Member or for which the Member is legally liable or under the Member's care, custody or control caused solely by an Accident to an Object. For the purpose of this Coverage, "Consequential Damage" is defined as loss due to spoilage from lack of power, light, heat, steam or refrigeration, resulting from Accident. The Coverage provided by this clause is sub-limited to US Dollars as per Declarations.
- f. Utility Interruption  
The loss caused by an Accident to an Object that is owned, operated or controlled by a public or private entity that the Member has contracted with to furnish them with electrical utility service including all direct electrical suppliers. The Coverage provided by this clause is sub-limited to US Dollars as per Declarations.
- g. CFC Refrigerants and Halon  
The replacement of any CFC (chlorofluorocarbon) refrigerant used in refrigeration or air conditioning equipment or Halon used in a fire suppression system due to an Accident to an Object.
- h. Ordinance or Law  
If an Accident to an Object at the Member's location damages a building that is Covered Property, the MMIA will pay for
  - i. Loss to the undamaged portion of the building, meaning loss to the undamaged portion of the building caused by enforcement of any ordinance or law that:
    - a) Requires the demolition of parts of the same building not damaged by the Accident to an Object; or
    - b) Regulates the construction or repair of buildings, or establishes zoning or land use requirements at the location of the building.
  - ii. Demolition Cost meaning the cost to demolish and clear the site of undamaged parts of the building, caused by the enforcement of building, zoning, or land ordinance or use.
  - iii. Increased Cost of Construction, meaning the increased cost to:
    - a) Repair or reconstruct damaged portions of the building; and

- b) Reconstruct or remodel undamaged portions of the building whether or not demolition is required;

when the increased cost is a consequence of enforcement of building, zoning or land use ordinance or law. But the MMIA will only pay for this increased cost if the building is repaired, reconstructed or remodeled. Also, if the building is repaired, reconstructed or remodeled, it must be intended for similar occupancy as the current building, unless such occupancy is not permitted by zoning or land use ordinance or law. Coverage under this section only applies with respect to ordinance or law that is in force at the time of the Accident to an Object. Coverage under this section does not apply to:

- a) Costs associated with the enforcement of any ordinance or law which requires any Member or others to test for, monitor, clean up, remove, contain, treat, detoxify, or neutralize, or in any way respond to, or assess the effects of substances declared to be hazardous to health by a governmental agency; or
- b) Loss due to any ordinance or law that:
  - i The Member was required to comply with before the Accident to an Object even if the building was undamaged; and
  - ii. The Member failed to comply with.

The Coverage provided by this clause is sub-limited to US Dollars as per Declarations.

### **3. DEFINITION OF ACCIDENT**

Accident shall mean a sudden and accidental breakdown of the Object, or a part thereof, which manifests itself at the time of its Occurrence by physical damage to the Object that necessitates repair or replacement of the Object or part thereof; but Accident shall not mean:

- a. depletion, deterioration, corrosion , or erosion of material;
- b. wear and tear;
- c. leakage at any valve, fitting, shaft seal, gland packing, joint or connection;
- d. the breakdown of any vacuum tube, gas tube or brush;
- e. the breakdown of any structure or foundation supporting the Object or any part thereof;
- f. the functioning of any safety device or protective device.

### **4. DEFINITION OF OBJECT**

Except as otherwise specifically designated herein, Object as described below shall mean any equipment or apparatus which is owned by, leased by or operated under the control of the Member subject to the Exclusions and Special Provisions specified herein:

- a. Any boiler, any fired vessel, any unfired vessel subject to vacuum or internal pressure other than static pressure of contents, any refrigerating and air conditioning vessels, or any piping and its accessory equipment, but such Object shall not include:
  - i. Any boiler setting, any insulating or refractory material,
  - ii. Any sewer piping, any underground gas piping, any piping forming a part of a sprinkler system or any water piping other than
    - a) Feed water piping between any boiler and its feed pumps or injectors
    - b) Boiler condensate returning piping
- b. Any mechanical or electrical machine or electrical apparatus used for the generation, transmission or utilization of mechanical or electrical power, but Object

shall not include

- i. Any structure or foundation other than a bedplate of a machine,
- ii. Any vehicle, elevator, crane, hoist, power shovel or drag line, but not excluding any electrical equipment used with said machine or apparatus,
- iii. Any refractory material, or
- iv. Any penstock or draft tube.

## **5. COVERED CAUSE OF LOSS**

A Covered Cause of Loss is an Accident to an Object covered hereon. An Object must be in use or connected ready for use at the location specified for at the time of the Accident.

## **6. COVERED PROPERTY**

Covered Property, as used in this Extension, means any property that:

- a. The Member owns; or
- b. Is in the Member's' care, custody or control and for which they are legally liable

## **7. SPECIAL PROVISIONS**

- a. As respects any boiler, fired or unfired vessel, refrigerating system or piping, the MMIA shall not be liable for loss from an Accident while said Object is undergoing a hydrostatic, pneumatic or gas pressure test that exceeds manufacturers recommended limits.
- b. As respects any boiler of fired vessel, the MMIA shall not be liable for loss from an explosion of gas or unconsumed fuel within the furnace of such Object or within the passages from the furnace to the atmosphere, whether or not such explosion (a) is contributed to or aggravated by an Accident to any part of said Object that contains steam or water, or (b) is caused in whole or in part, directly or indirectly, by any Accident to any Object, or part thereof, nor shall the MMIA be liable for any loss from an Accident caused directly or indirectly by such explosion.
- c. As respects any unfired vessel which is used for the storage of gas or liquid and which is periodically filled, moved, emptied and refilled in the course of its normal service, such vessel shall be considered as "connected ready for use" within the terms of this Extension of the MEMORANDUM.
- d. As respects any Object or part of an Object that is being dismantled, reassembled or is in storage, will be considered as "connected ready for use" within the terms of this Extension of the MEMORANDUM.
- e. As respects any gas turbine of the internal combustion type, (a) the combustor or such Object shall not be considered to be a "furnace" as the word is used in the Definition of Accident or in Special Provision "b" above and (b) the Definition of Accident shall not mean the cracking of any part of the Turbine exposed to the production of combustion.
- f. As respects new turbine generator units, Coverage shall not apply until the unit has been contractually accepted by the Member, that all tests required by the contractor have been performed and satisfied and the unit has been placed in commercial operation.

## **8. VALUATION**

- a. The MMIA will pay the Member the amount the Member spends to repair or replace the property directly damaged by an Accident. The MMIA payment will be the smallest of:
  - i. The Limit of Coverage;
  - ii. The cost at the time of the Accident to repair the damaged property with

- property of like kind, capacity, size and quality;
    - iii. The cost at the time of the Accident to replace the damaged property on the same site with other property:
      - a) Of like kind, capacity, size and quality; and
      - b) Used for the same purpose
    - iv. The amount the Member actually spends that is necessary to repair or replace the damaged property.
  - b. As respects any Object if the cost of repairing or replacing only a part of the Object is greater than:
    - i. the cost of repairing the Object; or
    - ii. the cost of replacing the entire Object on the same site;
 The MMIA will pay only the smaller of (i) or (ii). The repair parts or replacement Object must be:
    - i. of like kind, capacity, size and quality; and
    - ii. used for the same purpose.
  - c. The MMIA will not pay:
    - i. if the loss or damage is to property that is obsolete or useless to the Member; or
    - ii. for any extra cost if the Member decides to repair or replace the damaged property with property of a better kind or quality or of larger capacity,
  - d. If the Member does not repair or replace the damaged property within 18 months after the date of the Accident, then the MMIA will pay on the smaller of the:
    - i. cost it would have taken to repair; or
    - ii. Actual Cash Value;
 at the time of the Accident.  
 Paragraph (d) does not apply to any time period beyond the 18 months that the MMIA agrees to in writing.
  - e. As respects CFC (chlorofluorocarbon) refrigerant or Halon, the following valuation basis is applicable:
    - i. If the CFC refrigerant or Halon is replaceable, the Member may, at their option, elect to:
      - a) Repair or replace the damaged refrigeration equipment, air conditioning equipment or fire suppression system and replace the lost CFC refrigerant or Halon subject to it being of like kind, capacity, size and quality and used for the same purpose; or
      - b) Change the refrigeration equipment, air conditioning equipment or fire suppression system, through modification or replacement, to:
        - (1) Refrigeration or air conditioning equipment that uses an approved non-CFC refrigerant; or
        - (2) A fire suppression system that uses an approved non-Halon agent.
 But this option is available only if the change to the equipment or system is made within 18 months after the date of the Accident or within any extended time period that the MMIA agrees to in writing.  
 If Option i b) above is elected, the MMIA will not pay more than the least of the following amounts:
      - a) The Limit of Coverage;
      - b) The cost at the time of the Accident to repair the damaged refrigeration equipment, air conditioning equipment or fire suppression system, retrofit the equipment or system to accept non-CFC refrigerant or non-Halon fire suppressant, and charge the equipment or system with that refrigerant or fire suppressant;

- c) The cost at the time of the Accident to replace the damaged refrigeration equipment, air conditioning equipment or fire suppression system with equipment or a system that is functionally equivalent and uses an approved non-CFC refrigerant or non-Halon fire suppressant;
  - d) The amount that the Member actually spent that is necessary to change the refrigeration equipment, air conditioning equipment or fire suppression system, through modification or replacement, to equipment or a system that uses an approved non-CFC refrigerant or non-Halon fire suppressant; or
  - e) One hundred twenty-five percent (125%) of the amount the MMIA otherwise would have paid for loss to the refrigeration equipment, air conditioning equipment or fire suppression system.
- f. If the CFC refrigerant or Halon is not replaceable and:
- i. The Member repairs or replaces the damaged equipment within 18 months after the date of the Accident or within any extended time that the MMIA agrees to in writing, the MMIA will pay the least of the following amounts:
    - a) The Limit of Coverage;
    - b) The cost at the time of the Accident to repair the damaged refrigeration equipment, air conditioning equipment or fire suppression system, retrofit the equipment or system to accept non-CFC refrigerant or non-Halon fire suppressant, and charge the equipment or system with that refrigerant or fire suppressant;
    - c) The cost at the time of the Accident to replace the damaged refrigeration equipment, air conditioning equipment or fire suppression system with equipment or a system that is functionally equivalent and uses an approved non-CFC refrigerant or non-Halon fire suppressant;
    - d) The amount that the Member actually spent that is necessary to change the refrigeration equipment, air conditioning equipment or fire suppression system, through modification or replacement, to equipment or a system that uses an approved non-CFC refrigerant or non-Halon fire suppressant.
  - ii. If the Member does not replace the damaged equipment within 18 months after the date of the Accident or within the extended time period that the MMIA agrees to in writing, the MMIA will not pay more than the lesser of:
    - a) The amount that the MMIA would have paid if repair or replacement of the damaged equipment had been made as determined in f i above; or
    - b) The Actual Cash Value of the damaged equipment at the time of the Accident.
- g. As respects Coverage under Ordinance and Law, the most the MMIA will pay as a result of any one Accident for:
- i. Loss to the undamaged portion of the building is included in the Limit of Coverage that otherwise applies to the damaged building. But in no event will the amount the MMIA pays for loss to the building, including the loss in value of the undamaged portion of the building due to enforcement of an ordinance or law to which this coverage applies, exceed:
    - a) The amount that the Member actually spent to repair, rebuild or replace the building, but not more than the amount it would cost to restore the building on the same premises and to the same height, floor area, style and comparable quality of the original property Member; or
    - b) The Actual Cash Value of the building at the time of loss if the building is not repaired or replaced.
  - ii. Demolition and Increased Cost of Construction in US Dollars as per Declarations, subject to the following:
    - a) With respect to the Coverage provided for Demolition Cost, the MMIA will not

- pay more than the amount the Member actually spent to demolish and clear the site of the undamaged parts of the building;
- b) With respect to the coverage provided for Increased Cost of Construction:
    - (1) We will not pay for the Increased Cost of Construction until the building is actually repaired or replaced at the same or another premises; and unless the repairs or replacement are made as soon as reasonably possible after the loss or damage, not to exceed 18 months. We may extend this period in writing during the 18 months.
    - (2) If the building is repaired or replaced at the same location, or if the Member elects to rebuild at another location, the most the MMIA will pay for the increased cost of construction is the increased cost of construction at the same location.
    - (3) If the ordinance or law requires relocation to another location, the most the MMIA will pay for the increased cost of construction is the increased cost of construction at the new location.
  - h. If a Claim or "suit" is brought against the Member alleging that the Member is liable for damage to property of another that was caused by an Accident to an Object, the MMIA will either:
    - i. Settle the Claim or "suit", or
    - ii. Defend the Member against the "suit" but reserve the right for themselves to settle at any point.

## **9. EXCLUSIONS**

- a. To loss from explosion of an Object other than:
  - i. Any steam boiler, steam piping, steam turbine, gas turbine, steam engine, or
  - ii. Any machine when such loss is caused by centrifugal force or mechanical breakdown,
- b. Nuclear reaction or radiation or radioactive contamination however caused, however this exclusion shall not apply to nuclear medicine at covered hospitals,
- c. From fire concomitant with or following an Accident.
- d. From an Accident caused directly or indirectly by fire
- e. From a combustion explosion outside the Object concomitant with or following an Accident,
- f. From an Accident caused directly or indirectly by a combustion explosion outside an Object.

## **10. CONDITIONS**

### **a. Inspection**

The MMIA shall be permitted, but not obligated, to inspect the Member's property and operations at any reasonable time. Neither the right to make inspections nor the making thereof nor any advice or report resulting therefrom shall constitute an undertaking, on behalf of or for the benefit of the Member or others, to determine or warrant that such property or operations are safe or healthful, or are in compliance with any law, rule or regulation.

### **b. Suspension**

Upon the discovery of a dangerous condition with respect to any Object, MMIA may immediately suspend the Coverage with respect to an Accident to said Object, by written notice mailed or delivered to the Member at the address of the Member stated in the Declarations, or at the location of the Object, as stated for it in a schedule or endorsement. The Coverage so suspended may be reinstated by the MMIA but only by an endorsement issued to form a part of this MEMORANDUM. The Member shall be allowed the unearned portion of the Assessment paid for

such suspended Coverage, pro rata for the period of suspension.

**c. Notice of Accident and Adjustments**

When an Accident occurs, written (or electronic) notice shall be given to the MMIA as soon as practicable. The MMIA shall be given like notice of any Claim made on account of such Accident. The MMIA, or their representative, shall have reasonable time and opportunity to examine the property, and the Covered Party's Location of Risk, before repairs are undertaken or physical evidence of the Accident is removed, except for protection or salvage. Proof of loss shall be made in such form as the MMIA may require. If suit is brought against the Member for loss to which this Section of the MEMORANDUM is applicable, any summons or other process served upon the Member shall be forwarded immediately to the MMIA.

**d. Additional duty after loss or damage to covered property**

At a minimum, within 18 months of a Covered Property loss Occurrence, the Member must submit to MMIA a complete inventory of the damaged property including quantities, costs, values and amount of loss claimed.

**e. Cooperation**

The Member must fully cooperate with MMIA adjusters in the investigation of the Claim commencing with initial Claim notification.

**f. Deductible**

In the event of an Accident to an Object as covered under this Extension that is concomitant with or followed by physical loss or damage incurred under the All Risks MEMORANDUM that this Extension attaches to, the Deductible to be applied to the total loss shall be the applicable Boiler & Machinery Deductible.