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SUPREME COURT OF VIRGI.
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RICHMOND, VIRGINIA

IN THE

Supreme Court of Virginia

AT RICHMOND

RECORD NO. 791080

UNITED STATES FIRE INSURANCE COMPANY,
Appellant

v.

GEORGE G. MARTIN, t/a MARTIN'S CAFETERIA,
Appellee

APPENDIX

Frank O. Meade
MEADE, TATE & DANIEL
116 South Ridge Street
Danville, Virginia 24541

Counsel for Appellant

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APPELLATE PRINTING SERVICES, INC., HERITAGE BLDG., RICHMOND, VA. (804) 643-7789

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THE GENERAL DISTRICT COURT OF DANVILLE, VIRGINIA

GDC Docket No._____ **CIVIL WARRANT** File No._____

VIRGINIA: In the General District Court of Danville – To ~~High Constable of Danville~~ Sheriff of Richmond

George G. Martin t/a Martin's Cafeteria _____Plaintiff

vs

United States Fire Insurance Company serve: P. C. Overby, Jr. _____Defendant

Registered Agent, 1503 Santa Rosa Road, Richmond, Va. 23229 _____Defendant

I COMMAND you to summon the defendant____ to appear before the General District Court of Danville on January 2, 1979 at 3 o'clock P.M. to answer the complaint of the Plaintiff upon a claim of $ 2,715.76 with interest from date and accrued interest ~~or~~ from date of Judgment ..... $_____ plus attorney's fee of ..... $ 5.00 ~~and~~ the costs, for this: lightning loss under insurance policy

REC'D DEC 15

And make due return of this warrant. Given under my hand this November 30, 1978

Attorney: Garrett, Garrett, Smith & Garrett _____Magistrate

JUDGMENT ORDER

Entered April 24, 1979, in the Circuit Court of Danville, Virginia

This day came the plaintiff, in his proper person and by his attorney, as well as the defendant, by its attorney, and issue was joined.

Whereupon, by consent of the parties and with the assent of the Court, the Court proceeded to hear and determine the case without the intervention of a jury, and, having heard the arguments

of counsel upon a stipulation of the facts, doth find in favor of the plaintiff and assess his damages at $2715.76.

Therefore, it is considered by the Court that the plaintiff, George G. Martin, t/a Martin's Cafeteria, recover and have judgment against United States Fire Insurance Company for the sum of Two Thousand Seven Hundred Fifteen & 76/100 Dollars ($2715.76), with interest thereon at the rate of eight per centum per annum from the 24th day of April, 1979, until paid, together with his costs by him about his action herein expended.

Thereupon, it being intimated to the Court that the defendant, United States Fire Insurance Company, will apply to the Supreme Court of Virginia for a writ of error in this case, it is ORDERED that execution on the judgment of the Court herein shall be suspended pending the timely filing of a petition for writ of error and the final determination on appeal by the Supreme Court of Virginia, provided that the said defendant, or someone for it, execute a bond within fifteen days from the date of entry of this order in the amount of $3000.00 with surety approved by the Clerk of this Court.

ASSIGNMENT OF ERROR

Petition for Appeal, page 2, filed July 20, 1979

The Trial Court erred in holding that the damage to the compressor units was a risk insured (or covered) under the policy.

WRITTEN STATEMENT OF FACT UNDER RULE 5:9

Filed June 28, 1979

This case was tried by the Circuit Court of Danville without a jury. The evidence consisted of three exhibits and a stipulation of facts as set forth herein.

Dan Shopping Center, Inc. owns a multi-unit shopping center in Danville, Virginia, known as the Ballou Park Shopping Center.

Plaintiff operated a cafeteria in the shopping center.

The premises occupied by the plaintiff were initially leased to another cafeteria known as Bailey's Cafeteria under a five year lease (Plaintiff's Exhibit #2).

Plaintiff was to occupy these premises and operate a cafeteria for a one year period under a lease (Plaintiff's Exhibit #3) beginning February 1, 1978.

On the roof of the leased premises were two large air-conditioning compressor units, which served the premises leased to plaintiff. Plaintiff had neither installed nor expended money on the original installation of the air-conditioning compressors, which were a part of the air-conditioning system which had been built into the building. On April 26, 1978, during the occupancy of the plaintiff, (Plaintiff's Exhibit #3) lightning struck and damaged the air-conditioning compressors installed on the roof. As a result of this damage, plaintiff had the compressor units repaired, at his expense, totaling $2,715.76.

At the time of the damage and repairs, plaintiff was insured under defendant's policy of insurance (Plaintiff's Exhibit #1).

After hearing argument of counsel alleging several theories of coverage by defendant's policy and denial of coverage by defendant, the Court rendered judgment for the plaintiff in the amount of $2,715.76.

CIRCUIT COURT OF DANVILLE

George L. Martin, t/a re, Plaintiff

v. L 79-9

U.S. Fire Insurance Co. Defendant

EXHIBIT PLAINTIFF NO. 1

4-24-79 M.E., Dpty.

JFI JUDGE

DECLARATIONS

COMMERCIAL PACKAGE
COMPAC

Part Two. This Declarations Page with "Policy Provisions-Part One" completes the below numbered

Item		
	RENEWAL OF New	DATE ISSUED 3-6-78sm POLICY NO. 500 050432 8
1.	**Named Insured** and P. O. Address (Number, Street, Town, County, State & Zip No.)	MARTIN CAFETERIA 637 W. MAIN STREET DANVILLE, VA. 24541
		POLICY PART TWO. RETURN TO COMPANY IF CANCELLED.
2.	Policy Period: NOON STANDARD TIME AT LOCATION OF DESCRIBED PROPERTY From: 2-10-78	To: 2-10-81

THIS INSURANCE POLICY IS ISSUED BY

- [X] UNITED STATES FIRE INSURANCE COMPANY
- [ ] THE NORTH RIVER INSURANCE COMPANY
- [ ] WESTCHESTER FIRE INSURANCE COMPANY
- [ ] INTERNATIONAL INSURANCE COMPANY

REPRESENTATIVE:

Agent or Broker: 0-04718-0 FULCHER, INC.
Office Address: P.O. BOX 3324
Town, State & Zip: DANVILLE, VIRGINIA 24541

3. The Named Insured is: [X] Individual [ ] Corporation [ ] Partnership [ ] Joint Venture [ ] Other:

4. Location of Premises (Enter "Same" if same location as above)
1. Same
2.
3.

Occupancy of Premises
1. Cafeteria
2.
3.

5. Insurance is provided with respect to those premises described above and with respect to those coverages and kinds of property for which a specific limit of liability is shown, subject to all of the terms of this policy including forms and endorsements made a part hereof:

SECTION I — PROPERTY COVERAGE	Coinsurance Percentage Applicable	LIMIT OF LIABILITY Loc. No. Bldg. No.	Loc. No. Bldg. No.	Loc. No. Bldg. No.
DIVISION 1. Cov. A—Building(s)		$ nil	$	$
Cov. B—Personal Property	80	$ 100,000	$	$
Addl. Cov. (Specify)		$	$	$
Deductible: [ ] Loss Deductible Clause No. 1 [ ] Loss Deductible Clause No. 2 [X] Other: MLB 80				
DIVISION 2. Addl. Cov. (Specify)		$	$	$

SECTION II — LIABILITY COVERAGE	LIMIT OF LIABILITY	
Cov. C—Bodily Injury and Property Damage Liability	$ See CF 21 each occurrence	$ See CF 21 aggregate
Cov. D—Premises Medical Payments	$ 500 each person	$ 25,000 each accident
Addl. Cov. (Specify) Fire Legal Liability See G209		$ $
SECTION III — CRIME COVERAGE [ ]	Limits as stated in the endorsement, made part of this Policy, if indicated by [X].	
SECTION IV — BOILER AND MACHINERY COVERAGE [ ]		

6. Forms and Endorsements made part of this Policy at time of issue: (Insert No. and Edition Date) CF 100(2/71) MLB 80(1/71) MLB 121(10/72) CF 16(11/69) CF 21(1/73) CFJ200(1/73) G209(11/69) MLB 240(10/66)

7. Mortgagee:
(Name and Address)

8. The Total Provisional Premium is $ 5007. and is payable $ 1669. at inception, and $ 1669. at each anniversary.

FOR STATE EXCEPTIONS SEE REVERSE SIDE

R. Fulcher Jr. Agent.

In Consideration of the Provisions and Stipulations Herein or Added Hereto and of the Premium Above Specified (or specified in endorsement attached hereto), this Company, for the term of **three years from inception date shown above** (At Noon Standard Time) **to expiration date shown above** (At Noon Standard Time) at location of property involved, to an amount not exceeding the limit of liability specified, does insure **the insured named in the Declarations above** and legal representatives, to the extent of the actual cash value of the property at the time of loss, but not exceeding the amount which it would cost to repair or replace the property with material of like kind and quality within a reasonable time after such loss, without allowance for any increased cost of repair or reconstruction by reason of any ordinance or law regulating construction or repair, and without compensation for loss resulting from interruption of business or manufacture, nor in any event for more than the interest of the insured, against all DIRECT LOSS BY FIRE, LIGHTNING AND OTHER PERILS INSURED AGAINST IN THIS POLICY INCLUDING REMOVAL FROM PREMISES ENDANGERED BY THE PERILS INSURED AGAINST IN THIS POLICY, EXCEPT AS HEREINAFTER PROVIDED, to the property described herein while located or contained as described in this policy, or pro rata for five days at each proper place to which any of the property shall necessarily be removed for preservation from the perils insured against in this policy, but not elsewhere.

Assignment of this policy shall not be valid except with the written consent of this Company.

This policy is made and accepted subject to the foregoing provisions and stipulations and those hereinafter stated, which are hereby made a part of this policy, together with such other provisions, stipulations and agreements as may be added hereto, as provided in this policy.

FM 600.0.115-D (Ed. 4-76)

Concealment, fraud. This entire policy shall be void if, whether before or after a loss, the insured has wilfully concealed or misrepresented any material fact or circumstance concerning this insurance or the subject thereof, or the interest of the insured therein, or in case of any fraud or false swearing by the insured relating thereto.

Uninsurable and excepted property. This policy shall not cover accounts, bills, currency, deeds, evidences of debt, money or securities; nor, unless specifically named hereon in writing, bullion or manuscripts.

Perils not included. This Company shall not be liable for loss by fire or other perils insured against in this policy caused, directly or indirectly, by: (a) enemy attack by armed forces, including action taken by military, naval or air forces in resisting an actual or an immediately impending enemy attack; (b) invasion; (c) insurrection; (d) rebellion; (e) revolution; (f) civil war; (g) usurped power; (h) order of any civil authority except acts of destruction at the time of and for the purpose of preventing the spread of fire, provided that such fire did not originate from any of the perils excluded by this policy; (i) neglect of the insured to use all reasonable means to save and preserve the property at and after a loss, or when the property is endangered by fire in neighboring premises; (j) nor shall this Company be liable for loss by theft.

Other Insurance. Other insurance may be prohibited or the amount of insurance may be limited by endorsement attached hereto.

Conditions suspending or restricting insurance. Unless otherwise provided in writing added hereto this Company shall not be liable for loss occurring

(a) while the hazard is increased by any means within the control or knowledge of the insured; or

(b) while a described building, whether intended for occupancy by owner or tenant, is vacant or unoccupied beyond a period of sixty consecutive days; or

(c) as a result of explosion or riot, unless fire ensue, and in that event for loss by fire only.

Other perils or subjects. Any other peril to be insured against or subject of insurance to be covered in this policy shall be by endorsement in writing hereon or added hereto.

Added provisions. The extent of the application of insurance under this policy and of the contribution to be made by this Company in case of loss, and any other provision or agreement not inconsistent with the provisions of this policy, may be provided for in writing added hereto, but no provision may be waived except such as by the terms of this policy is subject to change.

Waiver provisions. No permission affecting this insurance shall exist, or waiver of any provision be valid, unless granted herein or expressed in writing added hereto. No provision, stipulation or forfeiture shall be held to be waived by any requirement or proceeding on the part of this Company relating to appraisal or to any examination provided for herein.

Cancellation of policy. This policy shall be cancelled at any time at the request of the insured, in which case this Company shall, upon demand and surrender of this policy, refund the excess of paid premium above the customary short rates for the expired time. This policy may be cancelled at any time by this Company by giving to the insured a five days' written notice of cancellation with or without tender of the excess of paid premium above the pro rata premium for the expired time, which excess, if not tendered, shall be refunded on demand. Notice of cancellation shall state that said excess premium (if not tendered) will be refunded on demand.

Mortgagee interests and obligations. If loss hereunder is made payable, in whole or in part, to a designated mortgagee not named herein as the insured, such interest in this policy may be cancelled by giving to such mortgagee a ten days' written notice of cancellation.

If the insured fails to render proof of loss such mortgagee, upon notice, shall render proof of loss in the form herein specified within sixty (60) days thereafter and shall be subject to the provisions hereof relating to appraisal and time of payment and of bringing suit. If this Company shall claim that no liability existed as to the mortgagor or owner, it shall, to the extent of payment of loss to the mortgagee, be subrogated to all the mortgagee's rights of recovery, but without impairing mortgagee's right to sue; or it may pay off the mortgage debt and require an assignment thereof and of the mortgage. Other provisions relating to the interests and obligations of such mortgagee may be added hereto by agreement in writing.

Pro rata liability. This Company shall not be liable for a greater proportion of any loss than the amount hereby insured shall bear to the whole insurance covering the property against the peril involved, whether collectible or not.

Requirements in case loss occurs. The insured shall give immediate written notice to this Company of any loss, protect the property from further damage, forthwith separate the damaged and undamaged personal property, put it in the best possible order, furnish a complete inventory of the destroyed, damaged and undamaged property, showing in detail quantities, costs, actual cash value and amount of loss claimed; **and within sixty days after the loss, unless such time is extended in writing by this Company, the insured shall render to this Company a proof of loss,** signed and sworn to by the insured, stating the knowledge and belief of the insured as to the following: the time and origin of the loss, the interest of the insured and of all others in the property, the actual cash value of each item thereof and the amount of loss thereto, all encumbrances thereon, all other contracts of insurance, whether valid or not, covering any of said property, any changes in the title, use, occupation, location, possession or exposures of said property since the issuing of this policy, by whom and for what purpose any building herein described and the several parts thereof were occupied at the time of loss and whether or not it then stood on leased ground, and shall furnish a copy of all the descriptions and schedules in all policies and, if required, verified plans and specifications of any building, fixtures or machinery destroyed or damaged. The insured, as often as may be reasonably required, shall exhibit to any person designated by this Company all that remains of any property herein described, and submit to examinations under oath by any person named by this Company, and subscribe the same; and, as often as may be reasonably required, shall produce for examination all books of account, bills, invoices and other vouchers, or certified copies thereof if originals be lost, at such reasonable time and place as may be designated by this Company or its representative, and shall permit extracts and copies thereof to be made.

Appraisal. In case the insured and this Company shall fail to agree as to the actual cash value or the amount of loss, then, on the written demand of either, each shall select a competent and disinterested appraiser and notify the other of the appraiser selected within twenty days of such demand. The appraisers shall first select a competent and disinterested umpire; and failing for fifteen days to agree upon such umpire, then, on request of the insured or this Company, such umpire shall be selected by a judge of a court of record in the state in which the property covered is located. The appraisers shall then appraise the loss, stating separately actual cash value and loss to each item; and, failing to agree, shall submit their differences, only, to the umpire. An award in writing, so itemized, of any two when filed with this Company shall determine the amount of actual cash value and loss. Each appraiser shall be paid by the party selecting him and the expenses of appraisal and umpire shall be paid by the parties equally.

Company's options. It shall be optional with this Company to take all, or any part, of the property at the agreed or appraised value, and also to repair, rebuild or replace the property destroyed or damaged with other of like kind and quality within a reasonable time, on giving notice of its intention so to do within thirty days after the receipt of the proof of loss herein required.

Abandonment. There can be no abandonment to this Company of any property.

When loss payable. The amount of loss for which this Company may be liable shall be payable sixty days after proof of loss, as herein provided, is received by this Company and ascertainment of the loss is made either by agreement between the insured and this Company expressed in writing or by the filing with this Company of an award as herein provided.

Suit. No suit or action on this policy for the recovery of any claim shall be sustainable in any court of law or equity unless all the requirements of this policy shall have been complied with, and unless commenced within twelve months next after inception of the loss.

Subrogation. This Company may require from the insured an assignment of all right of recovery against any party for loss to the extent that payment therefor is made by this Company.

STATE EXCEPTIONS	**KANSAS:** The words "demand and" in line 58 and "on demand" in lines 65 and 67 are deleted. The words "twelve months" in line 161 are changed to "sixty months". **MAINE:** The words "five days'" in line 62 are changed to "ten days'." The words "twelve months" in line 161 are changed to "two years". **NORTH CAROLINA:** The words "twelve months" in line 161 are changed to "three years". **NORTH DAKOTA:** The words "twelve months" in line 161 are changed to "thirty-six months". **WISCONSIN:** The words "five days'" in line 62 are changed to "ten days'." **VIRGINIA:** The words "twelve months" in line 161 are changed to "two years".

IN WITNESS WHEREOF, this company has executed and attested these presents; but this policy shall not be valid unless countersigned by the duly authorized Agent of this company at the agency hereinbefore mentioned.

Secretary

President

(The Attaching Clause need be co 1 only when this endorsement is issued subsequent to prepar of the policy.)

LIABILITY

L 9132
(Ed. 11-69)

G 209

REAL PROPERTY — LIABILITY — FIRE

This endorsement modifies such insurance as is afforded by the provisions of the policy relating to the following:

COMPREHENSIVE GENERAL LIABILITY INSURANCE
MANUFACTURERS' AND CONTRACTORS' LIABILITY INSURANCE
OWNERS', LANDLORDS' AND TENANTS' LIABILITY INSURANCE
STOREKEEPER'S INSURANCE

This endorsement, effective 2-10-78 (12:01 A. M., standard time), forms a part of policy No. 500 050432 8

issued to MARTIN CAFETERIA

by UNITED STATES FIRE INSURANCE COMPANY

R. J. Fulcher Jr
Authorized Representative

Premium	Rate (per $100 of Limit)	Limit of Liability	Description of Property
$ INCL	INCL	$ 100,000 each occurrence	Building

It is agreed that the Property Damage Liability Coverage applies to **property damage** to structures or portions thereof rented to or occupied by the **named insured** and described in this endorsement, including fixtures permanently attached thereto, if such **property damage** arises out of fire, subject to the following additional provisions:

1. With respect to the insurance provided by this endorsement, all of the exclusions of the policy, other than the Nuclear Energy Liability Exclusion (Broad Form), are deleted and replaced by the following:

   This insurance does not apply to liability assumed by the **insured** under any contract or agreement.

2. The limit of liability stated in this endorsement applies separately to the insurance under this endorsement and is in lieu of any other limit of liability stated in the policy.

AUTHENTIC

I. PROPERTY COVERED

COVERAGE A — BUILDING(S): When the insurance under this policy covers buildings, such insurance shall also cover all additions and extensions attached thereto; all fixtures, machinery and equipment constituting a permanent part of and pertaining to the service of the building; materials and supplies intended for use in construction, alteration or repair of the buildings; yard fixtures; personal property of the insured as landlord used for the maintenance or service of the described buildings, and including fire extinguishing apparatus, floor coverings, refrigerating, ventilating, cooking, dishwashing and laundering equipment, shades and outdoor furniture (but not including other personal property in apartments or rooms furnished by the insured as landlord); all while at the described locations.

COVERAGE B — PERSONAL PROPERTY: When the insurance under this policy covers personal property, such insurance shall cover only business personal property owned by the insured and usual to the occupancy of the insured, including bullion, manuscripts, furniture, fixtures, equipment and supplies, not otherwise covered under this policy, and shall also cover the insured's interest in personal property owned by others to the extent of the value of labor and materials expended thereon by the insured; all while in or on the described buildings, or in the open (including within vehicles) on the described premises or within 100 feet thereof.

This coverage shall also include Tenant's Improvements and Betterments, meaning the insured's use interest in fixtures, alterations, installations or additions comprising a part of the buildings occupied but not owned by the insured and made or acquired at the expense of the insured exclusive of rent paid by the insured, but which are not legally subject to removal by the insured.

PERSONAL PROPERTY OF OTHERS: The insured may apply at each location up to 2%, but not exceeding $2,000, of the limit of liability specified for Coverage B — Personal Property at such location, as an additional amount of insurance, to cover for the account of the owners thereof (other than the named insured) direct loss by a peril insured against to personal property, similar to that covered by this policy, belonging to others while in the care, custody or control of the named insured and only while on the described premises or within 100 feet thereof.

Loss shall be adjusted with the named insured for the account of the owners of the property, except that the right to adjust any loss with the owners is reserved to the Company and the receipts of the owners in satisfaction thereof shall be in full satisfaction of any claim by the named insured for which payments have been made. As respects personal property belonging to others, this provision shall replace any loss payable provision of this policy.

The Coinsurance Clause of this form or the Value Reporting and Full Reporting Clauses of the Reporting Provisions of any other form made a part of this policy shall not apply to this coverage, and when applying said clauses to insurance covering property owned by the insured, the value of personal property of others shall not be considered in the determination of actual cash value.

When there is Contributing Insurance, the Company shall not be liable for more than its pro rata share of the limit applying to personal property of others.

DEBRIS REMOVAL — COVERAGE A — BUILDING(S) OR COVERAGE B — PERSONAL PROPERTY: This policy covers expense incurred in the removal of debris of the property covered hereunder which may be occasioned by loss by a peril insured against. The total amount recoverable under this policy shall not exceed the limit of liability stipulated for each item. Cost of removal of debris shall not be considered in the determination of actual cash value when applying the Coinsurance Clause.

II. PROPERTY NOT COVERED

In addition to the kinds of property which are otherwise excluded or limited under this policy, the following are also excluded from coverage under this form:

A. Animals and pets; aircraft; watercraft, including motors, equipment and accessories (except rowboats and canoes, while out of water and on the described premises); and automobiles, trailers, semi-trailers or any self-propelled vehicles or machines, except motorized equipment not licensed for use on public thoroughfares and operated principally on the premises of the insured.
This exclusion does not apply to the following types of property when held for sale or sold but not delivered and specifically covered by endorsement:
1. Animals and pets.
2. Motorcycles and motor-scooters.
3. Trailers designed for use with private passenger vehicles for general utility purposes or carrying boats.
4. Watercraft, including motors, equipment and accessories, while not afloat.

B. Outdoor swimming pools; fences; piers, wharves and docks; beach or diving platforms or appurtenances; retaining walls not constituting a part of building; walks, roadways and other paved surfaces; unless such items are specifically covered by endorsement.

C. The cost of excavations, grading or filling; foundations of buildings, machinery, boilers or engines which foundations are below the undersurface of the lowest basement floor, or where there is no basement, below the surface of the ground; pilings, piers, pipes, flues and drains which are underground; pilings which are below the low water mark.

D. Outdoor signs, whether or not attached to a building unless specifically covered by endorsement.

E. Household and personal effects contained in living quarters occupied by the insured, any officer, director, stockholder or partner of the insured or relatives of any of the foregoing, except as provided in the Extensions of Coverage or unless specifically covered by endorsement.

F. Growing crops and lawns.

G. Trees, shrubs and plants, except when held for sale or sold but not delivered, or to the extent provided in the Extensions of Coverage.

H. Property which is more specifically covered in whole or in part under this or any other contract of insurance.

III. PERILS INSURED AGAINST

This policy insures under Section I against all direct loss to the property covered under this form caused by the following perils, except as otherwise specifically provided:

A. Fire.

B. Lightning.

C. Windstorm and Hail:
1. The Company shall not be liable as respects these perils for loss caused directly or indirectly by frost or cold weather or ice (other than hail), snow or sleet, whether driven by wind or not.
2. The Company shall not be liable as respects these perils for loss to the interior of the buildings or the property covered therein caused
   a. by rain, snow, sand or dust, whether driven by wind or not, unless the buildings covered or containing the property covered shall first sustain an actual damage to roof or walls by the direct action of wind or hail and then shall be liable for loss to the interior of the buildings or the property covered therein as may be caused by rain, snow, sand or dust entering the buildings through openings in the roof or walls by direct action of wind or hail; or
   b. by water from sprinkler equipment or other piping, unless

such equipment or piping be dam[illegible] as a direct result of wind or hail.

3. Unless specifically covered by endorsement, the Company shall not be liable as respects these perils for damage to the following property:
   a. grain, hay, straw or other crops outside of buildings;
   b. windmills, windpumps or their towers;
   c. crop silos or their contents;
   d. metal smokestacks or, when outside of buildings, awnings or canopies (fabric or slat) including their supports;
   e. outdoor radio or television antennas including their lead-in wiring, masts or towers;
   f. trees, shrubs and plants.

D. Explosion: Loss by explosion shall include direct loss resulting from the explosion of accumulated gases or unconsumed fuel within the firebox (or combustion chamber) of any fired vessel or within the flues or passages which conduct the gases of combustion therefrom. The Company shall not be liable for loss by explosion of steam boilers, steam pipes, steam turbines or steam engines, if owned by, leased by or operated under the control of the insured. The following are not explosions within the intent or meaning of these provisions:

1. Shock waves caused by aircraft, generally known as "sonic boom".
2. Electric arcing.
3. Rupture or bursting of rotating or moving parts of machinery caused by centrifugal force or mechanical breakdown.
4. Water hammer.
5. Rupture or bursting of water pipes.
6. Rupture or burstin[illegible] e to expansion or swelling of the contents of any building or structure, caused by or resulting from water.
7. Rupture, bursting or operation of pressure relief devices.

E. Sudden and Accidental Damage from Smoke, other than smoke from agricultural smudging or industrial operations.

F. Vehicles or Aircraft: Loss by aircraft or by vehicles shall mean only direct loss resulting from actual physical contact of an aircraft, including self-propelled missiles or spacecraft, or a vehicle with the property covered hereunder or with the buildings containing the property covered hereunder, except that loss by aircraft includes direct loss by objects falling therefrom.

The Company shall not be liable as respects this peril for loss

1. by any vehicle owned or operated by the insured or by any occupant of the described premises; or
2. to any aircraft or vehicle, including contents thereof, other than stocks of aircraft or vehicles in process of manufacture or for sale.

G. Riot, Riot Attending a Strike and Civil Commotion: Loss by riot, riot attending a strike or civil commotion shall include direct loss by acts of striking employees of the owner or occupants of the described buildings while occupied by said striking employees and shall also include under this peril direct loss from pillage and looting occurring during and at the immediate place of a riot, riot attending a strike or civil commotion.

The Company shall not be liable as respects this peril for loss resulting from damage to or destruction of the described property owing to change in temperature or humidity or interruption of operations, whether or not such loss is covered by this policy as to other perils.

IV. EXTENSIONS OF COVERAGE

The liability of the Company for loss in any one occurrence, including loss under these Extensions of Coverage, shall not exceed the limit of liability specified for the coverages being extended.

The total amount recoverable under the Extensions of Coverage in this form and Extensions of Coverage in any other form made a part of this policy are not cumulative and shall not exceed the largest amount recoverable under any single form made a part of this policy.

When there is Contributing Insurance, the Company shall not be liable for more than its pro rata share of the limits set forth in the following Extensions of Coverage.

A. Newly Acquired Property:

1. The insured may apply up to 10%, but not exceeding $25,000, of the limit of liability specified for Coverage A — Building(s) to cover direct loss in any one occurrence by a peril insured against to the following described property:
   a. New additions, new buildings and new structures when constructed on the described premises and intended for similar occupancy. This coverage shall cease 30 days from the date construction begins or on the date the values of new construction are reported to the Company, or on the expiration date of the policy, whichever occurs first.
   b. Buildings acquired by the insured at any location, elsewhere than at the described premises, within the territorial limits of this policy and used by him for similar occupancies or warehouse purposes. This coverage shall cease 30 days from the date of such acquisition or on the date values of the buildings are reported to the Company, or on the expiration date of the policy, whichever occurs first.
2. The insured may apply up to 10%, but not exceeding $10,000, of the limit of liability specified for Coverage B — Personal Property to cover direct loss in any one occurrence by a peril insured against to such property at any location (except fairs and exhibitions) acquired by the insured, elsewhere than at the described premises, within the territorial limits of this policy. This coverage shall cease 30 days from the date of such acquisition or on the date values at such locations are reported to the Company, or on the expiration date of the policy, whichever occurs first.

Additional premium shall be due and payable for values so reported from the date construction begins or the property is acquired.

B. Off-Premises: The insured may apply up to 2%, but not exceeding $5,000, of the sum of the limits of liability specified for Coverage A — Building(s) and Coverage B — Personal Property at a described location to cover direct loss in any one occurrence by a peril insured against to such property (other than merchandise or stock) while removed from such location for purposes of cleaning, repairing, reconstruction or restoration. This Extension of Coverage shall not apply to property in transit, nor to property on any premises owned, leased, operated or controlled by the insured.

C. Personal Effects: The insured may apply up to $500 of the limit of liability specified for Coverage B — Personal Property to cover direct loss in any one occurrence by a peril insured against to personal effects while located on the described premises, belonging to the insured, officers, partners or employees thereof, and limited to $100 on personal effects owned by any one individual. This Extension of Coverage does not apply if the loss is covered by any other insurance, whether collectible or not, or which would have been covered by such other insurance in the absence of this policy. At the option of the Company, loss under this Extension of Coverage may be adjusted with and payable to the insured.

D. Valuable Papers and Records: The insured may apply up to $500 of the limit of liability specified for Coverage B — Personal Property to cover direct loss in any one occurrence by a peril insured against under Coverage B — Personal Property of this form to valuable papers and records consisting of books of account, manuscripts, abstracts, drawings, card index systems, film, tape, disc, drum, cell and other magnetic recording or storage media for electronic data processing, and other records, all the property of the insured at described locations. This Extension of Coverage covers only the cost of research and other expense necessarily incurred by the insured to reproduce, replace or restore such valuable papers and records. The total amount payable in any one occurrence under this Extension of Coverage shall not exceed the limit specified above, regardless of the number of described locations.

E. Trees, Shrubs and Plants: The insured may apply up to $1,000 of the sum of the limits of liability specified for Coverage A — Building(s)

and Coverage B — Personal Property to cover trees, shrubs and plants at the described location against direct loss in any one occurrence by the perils of fire, lightning, explosion, riot, civil commotion or aircraft, but only to the extent such perils are insured against herein. The Company shall not be liable for more than $250 on any one tree, shrub or plant, including expense incurred for removing debris thereof.

F. **Extra Expense:** The insured may apply up to $1,000 of the sum of the limits of liability specified for Coverage A — Building(s) and Coverage B — Personal Property to cover the necessary extra expense incurred by the insured in order to continue as nearly as practicable the normal operation of the insured's business immediately following damage by a peril insured against to the buildings or personal property situated at the described locations.

"Extra expense" means the excess of the total cost incurred during the period of restoration chargeable to the operation of the insured's business over and above the total cost that would normally have been incurred to conduct the business during the same period had no loss 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.

"Period of restoration" means that period of time, commencing with the date of damage and not limited by the date of expiration of this policy, as would be required with the exercise of due diligence and dispatch to repair, rebuild or replace such part of said buildings or personal property thereof as have been damaged.

The Company shall not be liable under this Extension of Coverage for:

1. loss of income.
2. the cost of repairing or replacing any of the described property, or the cost of research or other expense necessary to replace or restore books of account, manuscripts, abstracts, drawings, card index systems, film, tape, disc, drum, cell and other magnetic recording or storage media for electronic data processing, and other records that have been damaged by a peril insured against, except cost in excess of the normal cost of such repair, replacement or restoration necessarily incurred for the purpose of reducing the total amount of extra expense. In no event shall such excess cost exceed the amount by which the total extra expense otherwise payable under this Extension of Coverage is reduced.
3. any other consequential or remote loss.

G. **Replacement Cost:** In the event of loss to a building structure covered under this policy, when the full cost of repair or replacement is less than $1,000, the coverage of this policy is extended to cover the full cost of repair or replacement (without deduction for depreciation). Coverage shall be applicable only to a building structure covered hereunder, but excluding carpeting, cloth awnings, air-conditioners, domestic appliances and out-door equipment, all whether permanently attached to the building structure or not.

The Company shall not be liable under this Extension of Coverage:

1. unless and until the damaged property is actually repaired or replaced on the same premises with due diligence and dispatch, and, in no event, unless repair or replacement is completed within a reasonable time after such loss.
2. unless the whole amount of insurance applicable to the building structure for which claim is made is equal to or in excess of the amount produced by multiplying the co-insurance percentage applicable (specified in this policy) by the actual cash value of such property at the time of the loss.

V. EXCLUSIONS

This policy does not insure under this form against:

A. Loss occasioned directly or indirectly by:

1. enforcement of any local or state ordinance or law regulating the construction, repair or demolition of buildings or structures unless such liability is otherwise specifically assumed by endorsement;
2. electrical currents artificially generated unless loss by fire or explosion as insured against hereunder ensues, and then the Company shall be liable for only such ensuing loss.

B. Loss caused by or resulting from power, heating or cooling failure, unless such failure results from physical damage to power, heating or cooling equipment situated on premises where the property covered is located, caused by a peril insured against. The Company shall not be liable for any loss specifically excluded under the riot provisions of this form.

C. Loss caused by, resulting from, contributed to or aggravated by any of the following:

1. earth movement, including but not limited to earthquake, landslide, mudflow, earth sinking, earth rising or shifting;
2. flood, surface water, waves, tidal water or tidal wave, overflow of streams or other bodies of water, or spray from any of the foregoing, all whether driven by wind or not;
3. water which backs up through sewers or drains;
4. water below the surface of the ground including that which exerts pressure on or flows, seeps or leaks through sidewalks, driveways, foundations, walls, basement or other floors, or through doors, windows or any other openings in such sidewalks, driveways, foundations, walls or floors;

unless loss by fire or explosion as insured against hereunder ensues, and then the Company shall be liable for only such ensuing loss.

VI. COINSURANCE CLAUSE

The Company shall not be liable for a greater proportion of any loss to the property covered hereunder than the limit of liability under this policy for such property bears to the amount produced by multiplying the coinsurance percentage applicable (specified in this policy) by the actual cash value of such property at the time of the loss.

In the event that the aggregate claim for any loss is both less than $10,000 and less than 5% of the limit of liability for all contributing insurance applicable to the property involved at the time such loss occurs, no special inventory and appraisement of the undamaged property shall be required, provided that nothing herein shall be construed to waive the application of the first paragraph of this clause.

If insurance under Section I of this policy is divided into separate limits of liability, the foregoing shall apply separately to the property covered under each such limit of liability.

The value of property covered under Extensions of Coverage, and the cost of the removal of debris, shall not be considered in the determination of actual cash value when applying the Coinsurance Clause.

VII. DEDUCTIBLE CLAUSES

A. The following Deductible Clauses are applicable only if so stated in the Declarations:

1. **Loss Deductible Clause No. 1:** With respect to loss by windstorm or hail to buildings, structures or personal property in the open, the Company shall be liable only when such loss in each occurrence exceeds $50. When loss is between $50 and $500, the Company shall be liable for 111% of loss in excess of $50; and when loss is $500 or more, this deductible shall not apply.
2. **Loss Deductible Clause No. 2:** With respect to loss by any of the perils insured against other than:
   a. fire or lightning,
   b. windstorm or hail to buildings, structures or personal property in the open,

   the Company shall be liable only when such loss in each occurrence exceeds $50. When loss is between $50 and $500, the Company shall be liable for 111% of loss in excess of $50; and when loss is $500 or more, this deductible shall not apply.

B. No more than one deductible shall apply to loss by windstorm or hail arising out of any one occurrence.

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VIII. VALUATION

Subject to the provisions and stipulations of this policy, the following bases for valuation of property are established:

A. Tenant's Improvements and Betterments:
   1. If repaired or replaced at the expense of the insured within a reasonable time after loss, the actual cash value of the damaged or destroyed improvements and betterments.
   2. If not repaired or replaced within a reasonable time after loss, that proportion of the original cost at time of installation of the damaged or destroyed property which the unexpired term of the lease or rental agreement, whether written or oral, in effect at the time of loss bears to the periods from the dates such improvements or betterments were made to the expiration date of the lease.
   3. If repaired or replaced at the expense of others for the use of the insured, there shall be no liability hereunder.

B. Books of account, manuscripts, abstracts, drawings, card index systems and other records (except film, tape, disc, drum, cell and other magnetic recording or storage media for electronic data processing) for not exceeding the cost of blank books, cards or other blank material.

C. Film, tape, disc, drum, cell and other magnetic recording or storage media for electronic data processing for not exceeding the cost of such media in unexposed or blank form.

D. All other property at actual cash value.

IX. CONDITIONS

A. **Permits and Use:** Except as otherwise provided herein, permission is hereby granted:
   1. to make alterations and repairs;
   2. for such unoccupancy as is usual or incidental to the described occupancy but vacancy is limited to the 60 day period permitted by the policy conditions;
   3. in the event of loss hereunder, to make reasonable repairs, temporary or permanent, provided such repairs are confined solely to the protection of the property from further damage, and provided further that the insured shall keep an accurate record of such repair expenditures. The cost of any such repairs directly attributable to damage by any peril insured hereunder shall be included in determining the amount of loss hereunder. Nothing herein contained is intended to modify the policy requirements applicable in case loss occurs, and in particular the requirement that, in case loss occurs, the insured shall protect the property from further damage.

B. **Loss Clause:** Any loss hereunder shall not reduce the amount of this policy.

C. **Mortgage Clause:** Applicable to buildings only (this entire clause is void unless name of mortgagee (or trustee) is inserted in the Declarations): Loss, if any, under this policy, shall be payable to the mortgagee (or trustee), named on the first page of this policy, as interest may appear under all present or future mortgages upon the property herein described in which the aforesaid may have an interest as mortgagee (or trustee) in order of precedence of said mortgages, and this insurance as to the interest of the mortgagee (or trustee) only therein, shall not be invalidated by any act or neglect of the mortgagor or owner of the within described property, nor by any foreclosure or other proceedings or notice of sale relating to the property, nor by any change in the title or ownership of the property, nor by the occupation of the premises for purposes more hazardous than are permitted by this policy: provided, that in case the mortgagor or owner shall neglect to pay any premium due under this policy, the mortgagee (or trustee) shall, on demand, pay the same. Provided also, that the mortgagee (or trustee) shall notify the Company of any change of ownership or occupancy or increase of hazard which shall come to the knowledge of said mortgagee (or trustee) and, unless permitted by this policy, it shall be noted thereon and the mortgagee (or trustee) shall, on demand, pay the premium for such increased hazard for the term of the use thereof, otherwise this policy shall be null and void. The Company reserves the right to cancel this policy at any time as provided by its terms, but in such case this policy shall continue in force for the benefit only of the mortgagee (or trustee) for ten days after notice to the mortgagee (or trustee) of such cancellation and shall then cease, and the Company shall have the right, on like notice, to cancel this agreement.

Whenever the Company shall pay the mortgagee (or trustee) any sum for loss under this policy, and shall claim that, as to the mortgagor or owner, no liability therefor existed, the Company shall to the extent of such payment, be thereupon legally subrogated to all the rights of the party to whom such payment shall be made, under all securities held as collateral to the mortgage debt, or may at its option pay to the mortgagee (or trustee) the whole principal due or to grow due on the mortgage, with interest accrued and shall thereupon receive a full assignment and transfer of the mortgage and of all such other securities; but no subrogation shall impair the right of the mortgagee (or trustee) to recover the full amount of said mortgagee's (or trustee's) claim.

AMEN ENT OF LIMITS OF LIABILITY

COVERAGE C—BODILY INJURY AND PROPERTY DAMAGE LIABILITY

COMMERCIAL PACKAGE
COMPAC

This endorsement modifies such insurance as is afforded by the provisions of the policy relating to the following:

SMP LIABILITY INSURANCE
COMPREHENSIVE GENERAL LIABILITY INSURANCE

It is agreed that the policy is amended as follows:

1. The limits of liability stated in the Declarations as applicable to Coverage C—Bodily Injury and Property Damage Liability are amended to read as follows:

Bodily Injury Liability	$100,000 each occurrence
	$100,000 aggregate
Property Damage Liability	$ 10,000 each occurrence
	$ 10,000 aggregate

2. The Limits of Liability provision is replaced by the following:

   Regardless of the number of (1) insureds under this policy, (2) persons or organizations who sustain bodily injury or property damage, or (3) claims made or suits brought on account of bodily injury or property damage, the Company's liability is limited as follows:

   Coverage C—Bodily Injury Liability—The total liability of the Company for all damages, including damages for care and loss of services, because of bodily injury sustained by one or more persons as the result of any one occurrence shall not exceed the limit of bodily injury liability stated as applicable to "each occurrence".

   Subject to the above provisions respecting "each occurrence" the total liability of the Company for all damages because of (1) all bodily injury included within the completed operations hazard and (2) all bodily injury included within the products hazard shall not exceed the limits of bodily injury liability stated as "aggregate".

   Coverage C—Property Damage Liability—The total liability of the Company for all damages because of all property damage sustained by one or more persons or organizations as the result of any one occurrence shall not exceed the limit of property damage liability stated as applicable to "each occurrence".

   Subject to the above provision respecting "each occurrence", the total liability of the Company for all damages because of all property damage to which this coverage applies and described in any of the numbered subparagraphs below shall not exceed the limit of property damage liability stated as "aggregate".

   (1) all property damage arising out of premises or operations rated on a remuneration basis or contractors equipment rated on a receipts basis, including property damage for which liability is assumed under any incidental contract relating to such premises or operations, but excluding property damage included in subparagraph (2) below;

   (2) all property damage arising out of and occurring in the course of operations performed for the named insured by independent contractors and general supervision thereof by the named insured, including any such property damage for which liability is assumed under any incidental contract relating to such operations, but this subparagraph (2) does not include property damage arising out of maintenance or repairs at premises owned by or rented to the named insured or structural alterations at such premises which do not involve changing the size of or moving buildings or other structures;

   (3) all property damage included within the products hazard and all property damage included within the completed operations hazard.

   Such aggregate limit shall apply separately to the property damage described in subparagraphs (1), (2) and (3) above, and under subparagraphs (1) and (2), separately with respect to each project away from premises owned by or rented to the named insured.

   Bodily Injury and Property Damage Liability—For the purpose of determining the limit of the Company's liability, all bodily injury and property damage arising out of continuous or repeated exposure to substantially the same general conditions shall be considered as arising out of one occurrence.

3. With respect to any occurrence for which notice of this policy is given in lieu of security or when this policy is certified as proof of financial responsibility for the future under the provisions of any motor vehicle financial responsibility law, such insurance as is afforded by this policy for bodily injury liability or for property damage liability shall comply with the provisions of such law to the extent of the coverage and limits of liability required by such law. The insured agrees to reimburse the company for any payment made by the company which it would not have been obligated to make under the terms of this policy except for the agreement contained in this paragraph.

PRODUCTS HAZARD REDEFINED ENDORSEMENT

Form MLB-240
(Ed. 10-66)

This endorsement modifies such insurance as is afforded by the provisions of the policy relating to the following:

SMP LIABILITY INSURANCE

COMPREHENSIVE GENERAL LIABILITY INSURANCE

Description of Premises and Operations:

Restaurant

It is agreed that with respect to bodily injury or property damage arising out of the named insured's products manufactured, sold, handled or distributed

(1) on, from or in connection with the use of any premises described in this endorsement, or

(2) in connection with the conduct of any operation described in this endorsement, when conducted by or on behalf of the named insured,

the definition of "products hazard" is amended to read as follows:

"products hazard" includes bodily injury and property damage arising out of (a) the named insured's products or (b) reliance upon a representation or warranty made with respect thereto; but only if the bodily injury or property damage occurs after physical possession of such products has been relinquished to others;"

This Endorsement must be attached to Change Endorsement MLB-20 when issued after the Policy is written.

Form MLB-240 (Ed. 10-66)

I. COVERAGE C—BODILY INJURY AND PROPERTY DAMAGE LIABILITY:

The Company will pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of bodily injury or property damage to which this insurance applies, caused by an occurrence and arising out of the ownership, maintenance or use of the insured premises and all operations necessary or incidental to the business of the named insured conducted at or from the insured premises and the Company shall have the right and duty to defend any suit against the insured seeking damages on account of such bodily injury or property damage, even if any of the allegations of the suit are groundless, false or fraudulent, and may make such investigation and settlement of any claim or suit as it deems expedient, but the Company shall not be obligated to pay any claim or judgment or to defend any suit after the applicable limit of the Company's liability has been exhausted by payment of judgments or settlements.

Exclusions

This insurance does not apply

(a) to liability assumed by the insured under any contract or agreement except an incidental contract; but this exclusion does not apply to a warranty of fitness or quality of the named insured's products or a warranty that work performed by or on behalf of the named insured will be done in a workmanlike manner;

(b) to bodily injury or property damage arising out of the ownership, maintenance, operation, use, loading or unloading of

(1) any automobile or aircraft owned or operated by, or rented or loaned to any insured, or

(2) any other automobile or aircraft operated by any person in the course of his employment by any insured;

but this exclusion does not apply to the parking of an automobile on insured premises, if such automobile is not owned by or rented or loaned to any insured;

(c) to bodily injury or property damage arising out of (1) the ownership, maintenance, operation, use, loading or unloading of any mobile equipment while being used in any prearranged or organized racing, speed or demolition contest or in any stunting activity or in practice or preparation for any such contest or activity or (2) the operation or use of any snowmobile or trailer designed for use therewith;

(d) to bodily injury or property damage arising out of and in the course of the transportation of mobile equipment by an automobile owned or operated by or rented or loaned to any insured;

(e) to bodily injury or property damage arising out of the ownership, maintenance, operation, use, loading or unloading of

(1) any watercraft owned or operated by or rented or loaned to any insured, or

(2) any other watercraft operated by any person in the course of his employment by any insured;

but this exclusion does not apply to watercraft while ashore on the insured premises;

(f) to bodily injury or property damage arising out of the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any water course or body of water; but this exclusion does not apply if such discharge, dispersal, release or escape is sudden and accidental;

(g) to bodily injury or property damage arising out of operations on or from premises (other than insured premises) owned by, rented to or controlled by the named insured, or to liability assumed by the insured under any contract or agreement relating to such premises;

(h) to bodily injury or property damage for which the insured or his indemnitee may be held liable

(1) as a person or organization engaged in the business of manufacturing, distributing, selling or serving alcoholic beverages, or

(2) if not so engaged, as an owner or lessor of premises used for such purposes,

if such liability is imposed

(a) by, or because of the violation of any statute, ordinance or regulation pertaining to the sale, gift, distribution or use of any alcoholic beverage, or

(b) by reason of the selling, serving or giving of any alcoholic beverage to a minor or to a person under the influence of alcohol or which causes or contributes to the intoxication of any person;

but part (b) of this exclusion does not apply with respect to liability of the insured or his indemnitee as an owner or lessor described in (2) above;

(i) to any obligation for which the insured or any carrier as his insurer may be held liable under any workmen's compensation, unemployment compensation or disability benefits law, or under any similar law;

(j) to bodily injury to any employee of the insured arising out of and in the course of his employment by the insured or to any obligation of the insured to indemnify another because of damages arising out of such injury; but this exclusion does not apply to liability assumed by the insured under an incidental contract;

(k) to property damage to

(1) property owned or occupied by or rented to the insured,

(2) property used by the insured, or

(3) property in the care, custody or control of the insured or as to which the insured is for any purpose exercising physical control;

but parts (2) and (3) of this exclusion do not apply with respect to liability under a written sidetrack agreement and part (3) of this exclusion does not apply with respect to property damage (other than to elevators) arising out of the use of an elevator at premises owned by, rented to or controlled by the named insured,

(l) to property damage to premises alienated by the named insured arising out of such premises or any part thereof;

(m) to loss of use of tangible property which has not been physically injured or destroyed resulting from

(1) a delay in or lack of performance by or on behalf of the named insured of any contract or agreement, or

(2) the failure of the named insured's products or work performed by or on behalf of the named insured to meet the level of performance, quality, fitness or durability warranted or represented by the named insured;

but this exclusion does not apply to loss of use of other tangible property resulting from the sudden and accidental physical injury to or destruction of the named insured's products or work performed by or on behalf of the named insured after such products or work have been put to use by any person or organization other than an insured;

(n) to property damage to the named insured's products arising out of such products or any part of such products;

(o) to property damage to work performed by or on behalf of the named insured arising out of the work or any portion thereof, or out of materials, parts or equipment furnished in connection therewith;

(p) to damages claimed for the withdrawal, inspection, repair, replacement, or loss of use of the named insured's products or work completed by or for the named insured or of any property of which such products or work forms a part, if such products, work or property are withdrawn from the market or from use because of any known or suspected defect or deficiency therein;

(q) to bodily injury and property damage arising out of demolition operations performed by or on behalf of the insured.

II. PERSONS INSURED

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

(a) if the named insured is designated in the Declarations as an individual, the person so designated but only with respect to the conduct of a business of which he is the sole proprietor, and the

spouse of the named insured with respect to the conduct of such a business;

(b) if the named insured is designated in the Declarations as a partnership or joint venture, the partnership or joint venture so designated and any partner or member thereof but only with respect to his liability as such;

(c) if the named insured is designated in the Declarations as other than an individual, partnership or joint venture, the organization so designated and any executive officer, member of the board of trustees, directors or governors or stockholder thereof while acting within the scope of his duties as such;

(d) any person (other than an employee of the named insured) or organization while acting as real estate manager for the named insured; and

(e) with respect to the operation, for the purpose of locomotion upon a public highway, of mobile equipment registered under any motor vehicle registration law,

(i) an employee of the named insured while operating any such equipment in the course of his employment, and

(ii) any other person while operating with the permission of the named insured any such equipment registered in the name of the named insured and any person or organization legally responsible for such operation, but only if there is no other valid and collectible insurance available, either on a primary or excess basis, to such person or organization;

provided that no person or organization shall be an insured under this paragraph (e) with respect to:

(1) bodily injury to any fellow employee of such person injured in the course of his employment, or

(2) property damage to property owned by, rented to, in charge of or occupied by the named insured or the employer of any person described in subparagraph (ii).

This insurance does not apply to bodily injury or property damage arising out of the conduct of any partnership or joint venture of which the insured is a partner or member and which is not designated in this policy as a named insured.

III. SUPPLEMENTARY PAYMENTS

The Company will pay, in addition to the applicable limit of liability:

(a) all expenses incurred by the Company, all costs taxed against the insured in any suit defended by the Company and all interest on the entire amount of any judgment therein which accrues after entry of the judgment and before the Company has paid or tendered or deposited in court that part of the judgment which does not exceed the limit of the Company's liability thereon;

(b) premiums on appeal bonds required in any such suit, premiums on bonds to release attachments in any such suit for an amount not in excess of the applicable limit of liability of this policy, and the cost of bail bonds required of the insured because of accident or traffic law violation arising out of the use of any vehicle to which this policy applies, not to exceed $250 per bail bond, but the Company shall have no obligation to apply for or furnish any such bonds;

(c) expenses incurred by the insured for first aid to others at the time of an accident, for bodily injury to which this policy applies;

(d) reasonable expenses incurred by the insured at the Company's request in assisting the Company in the investigation or defense of any claim or suit, including actual loss of earnings not to exceed $25 per day.

IV. LIMITS OF LIABILITY—COVERAGE C

Regardless of the number of (1) insureds under this policy, (2) persons or organizations who sustain bodily injury or property damage, or (3) claims made or suits brought on account of bodily injury or property damage, the Company's liability is limited as follows:

(a) The total liability of the Company for Coverage C for all damages, including damages for care and loss of services, as a result of any one occurrence shall not exceed the limit of liability for Coverage C as stated in the Declarations provided that with respect to any occurrence for which notice of this policy is given in lieu of security or when this policy is certified as proof of financial responsibility under the provisions of the Motor Vehicle Financial Responsibility Law of any state or province such limit of liability shall be applied to provide the separate limits required by such law for bodily injury liability and property damage liability to the extent of the coverage required by such but the separate application of such limit shall not increase the total limit of the Company's liability.

(b) Subject to the above provision respecting "each occurrence", the total liability of the Company for all damages because of all bodily injury and property damage which occurs during each annual period while this policy is in force commencing from its effective date and is described in any of the numbered subparagraphs below shall not exceed the limit of liability stated in the Declarations as "aggregate":

(1) all property damage arising out of premises or operations rated on a remuneration basis or contractor's equipment rated on a receipts basis, including property damage for which liability is assumed under any incidental contract relating to such premises or operations, but excluding property damage included in subparagraph (2) below;

(2) all property damage arising out of and occurring in the course of operations performed for the named insured by independent contractors and general supervision thereof by the named insured, including any such property damage for which liability is assumed under any incidental contract relating to such operations, but this subparagraph (2) does not include property damage arising out of maintenance or repairs at premises owned by or rented to the named insured or structural alterations at such premises which do not involve changing the size of or moving buildings or other structures;

(3) all bodily injury and property damage included within the completed operations hazard and all bodily injury and property damage included within the products hazard.

Such aggregate limit shall apply separately to the property damage described in subparagraphs (1) and (2) and separately with respect to each project away from the insured premises. Such aggregate limit shall apply separately to the bodily injury and property damage described in subparagraph (3).

For the purpose of determining the limit of the Company's liability, all bodily injury and property damage arising out of continuous or repeated exposure to substantially the same general conditions shall be considered as arising out of one occurrence.

V. COVERAGE D—PREMISES MEDICAL PAYMENTS:

The Company will pay to or for each person who sustains bodily injury caused by accident all reasonable medical expense incurred within one year from the date of the accident on account of such bodily injury, provided such bodily injury arises out of (a) a condition in the insured premises or (b) operations with respect to which the named insured is afforded coverage for bodily injury liability under this policy.

Exclusions:

This insurance does not apply:

(a) to bodily injury

(1) arising out of operations on or from premises (other than insured premises) owned by, rented to, or controlled by the named insured;

(2) arising out of the ownership, maintenance, operation, use, loading or unloading of

(i) any automobile or aircraft owned or operated by or rented or loaned to any insured, or

(ii) any other automobile or aircraft operated by any person in the course of his employment by any insured;

but this exclusion does not apply to the parking of an automobile on the insured premises, if such automobile is not owned by or rented or loaned to any insured;

(3) arising out of (i) the ownership, maintenance, operation, use, loading or unloading of any mobile equipment while being used in any prearranged or organized racing, speed or demolition contest or in any stunting activity or in practice or preparation for any such contest or activity or (ii) the operation or use of any snowmobile or trailer designed for use therewith;

(4) arising out of the ownership, maintenance, operation, use, loading or unloading of

(i) any watercraft owned or operated by or rented or loaned to any insured, or

(ii) any other watercraft operated by any person in the course of his employment by any insured;

but this exclusion does not apply to watercraft while ashore on the insured premises; or

(5) arising out of and in the course of the transportation of mobile equipment by an automobile owned or operated by or rented or loaned to any insured;

(b) to bodily injury

(1) included within the completed operations hazard or the products hazard;

(2) arising out of operations performed for the named insured by independent contractors other than (i) maintenance and repair of the insured premises or (ii) structural alterations at such premises which do not involve changing the size of or moving buildings or other structures;

(3) resulting from the selling, serving or giving of any alcoholic beverage (i) in violation of any statute, ordinance or regulation, (ii) to a minor, (iii) to a person under the influence of alcohol or (iv) which causes or contributes to the intoxication of any person, if the named insured is a person or organization engaged in the business of manufacturing, distributing, selling or serving alcoholic beverages or, if not so engaged, is an owner or lessor of premises used for such purposes but only part (i) of this exclusion (b) (3) applies when the named insured is such an owner or lessor;

(4) arising out of demolition operations performed by or on behalf of insureds;

(c) to bodily injury

(1) to the named insured, any partner therein, any tenant or other person regularly residing on the insured premises or any employee of the foregoing if the bodily injury arises out of and in the course of his employment therewith;

(2) to any other tenant if the bodily injury occurs on that part of the insured premises rented from the named insured or to any employee of such a tenant if the bodily injury occurs on the tenant's part of the insured premises and arises out of and in the course of his employment for the tenant;

(3) to any person while engaged in maintenance and repair of the insured premises or alteration, demolition or new construction at such premises;

(4) to any person if any benefits for such bodily injury are payable or required to be provided under any workmen's compensation, unemployment compensation or disability benefits law, or under any similar law;

(5) to any person practicing, instructing or participating in any physical training, sport, athletic activity or contest;

(d) to any medical expense for services by the named insured, any employee thereof or any person or organization under contract to the named insured to provide such services.

VI. LIMITS OF LIABILITY—COVERAGE D:

The limit of liability for Coverage D stated in the Declarations as applicable to "each person" is the limit of the Company's liability for all medical expense for bodily injury to any one person as the result of any one accident; but subject to the above provision respecting "each person", the total liability of the Company under Premises Medical Payments Coverage for all medical expense for bodily injury to two or more persons as the result of any one accident shall not exceed the limit of liability stated in the Declarations as applicable to "each accident".

When more than one medical payments coverage afforded by this policy applies to the loss, the Company shall not be liable for more than the amount of the highest applicable limit of liability.

SMP $100 DEDUCTIBLE ENDORSEMENT

Form MLB-80
(Ed. 1-71)

The following deductible clause supersedes and replaces all other deductible clauses of $100 or less in Section I of this policy with respect to Coverage A — Building(s) and Coverage B — Personal Property.

The sum of $100 shall be deducted from the amount of loss to property in any one occurrence resulting from any of the perils insured against. This deductible shall apply separately to each building (including personal property therein), separately to personal property in each building if no coverage is provided on the containing building, and separately to personal property in the open.

☒ CF-200, SMP Liability Insurance Form ☐ CF-202, Comprehensive General Liability Insurance Endorsement

Description of Hazards and Locations

The rating classifications herein, except as specifically provided elsewhere, do not modify any of the provisions of the policy.	Code No.	Premium Bases †	Rates *B.I.	Rates P.D.	Advance Premiums *B.I.	Advance Premiums P.D.
(a) Premises—Operations		(a) Area (Sq. Ft.) (b) Frontage (c) Remuneration	(a) Per 100 Sq. Ft. of Area (b) Per Linear Foot (c) Per $100 of Remuneration		*If Single Limit, Use B.I. Column. Include Premium for Premises Medical Payment Insurance in B.I. Column.	
(b) Escalators		(d) Number Insured	(d) Per Landing			
(c) Independent Contractors—Let or Sublet Work		(e) Cost	(e) Per $100 of Cost			
(d) Completed Operations		(f) Receipts	(f) Per $1,000 of Receipts			
(e) Products		(g) Sales	(g) Per $1,000 of Sales			
(a) Restaurants NOC	58161s	(a)9200	7.585	.143	incl	incl
Medical Payments			.140		incl	
(e) Restaurants NOC	58161	(g) 275,000	.440	.019	incl	incl

† Describe premium basis, if other than stated.

Form MLB-121
(Ed. 10-72)

VANDALISM OR MALICIOUS MISCHIEF ENDORSEMENT

PROPERTY COVERED ☐ Coverage A-Building(s) ☒ Coverage B-Personal Property

Subject to all the provisions and stipulations otherwise applicable to Section I of this policy of which this endorsement is made a part, except as otherwise provided for herein, the following perils are added to and made part of the "Perils Insured Against" section of the forms of which this endorsement is made a part with respect to the coverage specified by an "X" in the appropriate box above.

A. **Vandalism or Malicious Mischief:** Loss by vandalism or malicious mischief shall mean only the wilful and malicious damage to or destruction of the property covered. The Company shall not be liable, as respects these perils, for any loss:

1. to glass (other than glass building blocks) constituting a part of a building;
2. by pilferage, theft, burglary or larceny, except for wilful damage to the buildings covered hereunder caused by burglars;
3. by explosion, rupture, or bursting of steam boilers, steam pipes, steam turbines, steam engines, or rotating parts of machines or machinery owned, operated or controlled by the insured;
4. caused by or resulting from power, heating or cooling failure unless such failure results from physical damage to power, heating or cooling equipment situated on premises where the property covered is located;
5. if the described buildings had been vacant or unoccupied beyond a period of 30 consecutive days immediately preceding the loss, whether or not such period commenced prior to the inception date of this endorsement.

   NOTE: A building in process of construction shall not be deemed vacant or unoccupied.

B. With respect to the perils of vandalism or malicious mischief, the deductible clause or clauses appearing in the forms or endorsements attached to this policy are hereby waived, except when Form MLB-178 applies, and the following is substituted therefor:

   DEDUCTIBLE CLAUSE: With respect to loss resulting from the perils of vandalism or malicious mischief, the sum of $100 shall be deducted from each loss separately occurring to the property covered hereunder. This deductible shall apply separately to each building including its contents; separately to contents in each building if such building is not covered hereunder; and to all personal property in the open at the location at which the loss occurs.

This Endorsement must be attached to Change Endorsement MLB-20 when issued after the Policy is written.

Form MLB-121 (Ed. 10-72)

COMPAC
COMMERCIAL PACKAGE

Commercial Policy

FULCHER Insurance
You can't buy good luck.
You can buy good insurance.

203 North Ridge St.,
P.O. Box 3324
Danville, Va., 24541 [804] 792-8711

CRUM & FORSTER
INSURANCE COMPANIES
THE POLICYMAKERS

20

POLICY PROVISIONS — PART ONE

COMMERCIAL PACKAGE
COMPAC

United States Fire Insurance Company
A New York Corporation
Home Office: New York, N. Y.

International Insurance Company
An Illinois Corporation
Home Office: Chicago, Illinois

Westchester Fire Insurance Company
A New York Corporation
Home Office: New York, N. Y.

The North River Insurance Company
A New Jersey Corporation
Home Office: Township of Morris, N. J.

CRUM & FORSTER INSURANCE COMPANIES

THE COMPANY NAMED ON THE DECLARATIONS PAGE

(A capital stock company, herein called the company)

THE FOLLOWING PROVISIONS APPLY TO SECTIONS I AND II

A. WAR RISK AND GOVERNMENTAL ACTION EXCLUSION: Under Section I as respects perils other than fire (which is otherwise provided for on Page 2 of this policy) and under Section II as respects liability assumed by the insured under any incidental contract or as to first aid or medical expense, this policy shall not apply to loss, bodily injury, or property damage caused, directly or indirectly, by or due to any act or condition incident to the following:

1. hostile or warlike action in time of peace or war, including action in hindering, combating or defending against an actual, impending or expected attack, (a) by any government or sovereign power (de jure or de facto), or by any authority maintaining or using military, naval or air forces; or (b) by military, naval or air forces; or (c) by an agent of any such government, power, authority or forces, it being understood that any discharge, explosion or use of any weapon of war employing nuclear fission or fusion shall be conclusively presumed to be such a hostile or warlike action by such a government, power, authority or forces;
2. 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 custom's regulations, confiscation by order of any government or public authority, or risks of contraband or illegal transportation or trade.

B. LIBERALIZATION CLAUSE: If during the period that insurance is in force under this policy, or within 45 days prior to the inception date thereof, on behalf of the Company there be adopted, or filed with an approved or accepted by the insurance supervisory authorities, all in conformity with law, any changes in the form attached to this policy by which this form of insurance could be extended or broadened without increased premium charge by endorsement or substitution of form, then such extended or broadened insurance shall inure to the benefit of the insured hereunder as though such endorsement or substitution of form had been made.

C. INSPECTION AND AUDIT: The Company shall be permitted but not obligated to inspect the named insured's property and operations at any time. Neither the Company's right to make inspections nor the making thereof nor any report thereon shall constitute an undertaking, on behalf of or for the benefit of the named insured or others, to determine or warrant that such property or operations are safe or healthful, or are in compliance with any law, rule or regulation.

The Company may examine and audit the named insured's books and records at any time during the policy period and extensions thereof and within three years after the final termination of this policy, as far as they relate to the subject matter of this insurance.

D. CANCELLATION (NOT APPLICABLE IN THE STATES OF MAINE, MASSACHUSETTS AND MINNESOTA): The words "five days" in the cancellation provision on Page 2 of the policy are deleted and the words "ten days" are substituted therefor.

E. SUBROGATION: In the event of any payment under this policy, the Company shall be subrogated to all the insured's rights of recovery therefor against any person or organization and the insured shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The insured shall do nothing after loss to prejudice such rights.

F. CONFORMITY WITH STATUTE: The terms of this policy and forms attached hereto which are in conflict with the statutes of the state wherein this policy is issued are hereby amended to conform to such statutes.

G. POLICY PERIOD, TERRITORY:

1. Section I of this policy applies only to loss to property during the policy period while such property is within the fifty states of the United States of America and the District of Columbia.
2. Section II of this policy applies only to bodily injury or property damage which occurs during the policy period within the policy territory; "policy territory" means:
   a. the United States of America, its territories or possessions, or Canada, or
   b. international waters or air space, provided the bodily injury or property damage does not occur in the course of travel or transportation to or from any other country, state or nation, or
   c. anywhere in the world with respect to damages because of bodily injury or property damage arising out of a product which was sold for use or consumption within the territory described in paragraph a. above, provided the original suit for such damages is brought within such territory.

H. TIME OF INCEPTION: To the extent that coverage in this policy replaces coverage in other policies terminating at 12:01 A.M. (Standard Time) on the inception date of this policy, this policy shall be effective at 12:01 A.M. (Standard Time) instead of at Noon Standard Time.

THE FOLLOWING PROVISIONS APPLY TO SECTION I

A. NUCLEAR CLAUSE: The word "fire" in this policy is not intended to and does not embrace nuclear reaction or nuclear radiation or radioactive contamination, all whether controlled or uncontrolled, and loss by nuclear reaction or nuclear radiation or radioactive contamination is not intended to be and is not insured against by this policy, whether such loss be direct or indirect, proximate or remote, or be in whole or in part caused by, contributed to, or aggravated by "fire" or any other perils insured against by this policy; however, subject to the foregoing and all provisions of this policy, direct loss by "fire" resulting from nuclear reaction or nuclear radiation or radioactive contamination is insured against by this policy.

B. NUCLEAR EXCLUSION: Loss by nuclear reaction or nuclear radiation or radioactive contamination, all whether controlled or uncontrolled, or due to any act or condition incident to any of the foregoing is not insured against by this policy, whether such loss be direct or indirect, proximate or remote, or be in whole or in part caused by contributed to, or aggravated by any of the perils insured against by this policy; and nuclear reaction or nuclear radiation or radioactive contamination, all whether controlled or uncontrolled, is not "explosion" or "smoke". This clause applies to all perils insured against hereunder except the perils of fire and lightning, which are otherwise provided for in the Nuclear Clause above.

C. NO CONTROL: This insurance shall not be prejudiced:

1. by any act or neglect of the owner of any building if the insured is not the owner thereof, or by any act or neglect of any occupant (other than the insured) of any building, when such act or neglect of the owner or occupant is not within the control of the insured, or
2. by failure of the insured to comply with any warranty or condition contained in any form or endorsement attached to this policy with regard to any portion of the premises over which the insured has no control.

D. PROTECTIVE SAFEGUARDS: It is a condition of this insurance that the insured shall maintain so far as is within his control such protective safeguards as are set forth by endorsement hereto.

Failure to maintain such protective safeguards shall suspend this insurance, only as respects the location or situation affected, for the time of such discontinuance.

E. IMPAIRMENT OF RECOVERY: Exc[illegible] noted below, the Company shall not be bound to p[illegible]ny loss if the insured shall have impaired any right of recovery for loss to the property insured; however it is agreed that:

1. as respects property while on the premises of the insured, permission is given the insured to release others in writing from liability for loss prior to loss, and such release shall not affect the right of the insured to recover hereunder, and
2. as respects property in transit, the insured may, without prejudice to this insurance, accept such bills of lading, receipts or contracts of transportation as are ordinarily issued by carriers containing a limitation as to the value of such goods or merchandise.

F. OTHER INSURANCE:

1. Loss by fire or other perils not provided for in 2. below: If at the time of the loss, there is other insurance available to the insured or any other interested party covering such loss or which would have covered such loss except for the existence of this insurance, then the Company shall be liable as follows:
   a. If such insurance is Contributing Insurance, defined as any insurance written in the name of the insured, upon the same plan, terms, conditions and provisions as contained in this policy whether collectible or not, the Company shall be liable for no greater proportion of any loss than the limit of liability under this policy bears to the whole amount of insurance covering such property.
   b. If such insurance is Specific Insurance, defined as any insurance other than that described as Contributing Insurance in a. above, the Company shall not be liable for any loss hereunder until the liability of such Specific Insurance has been exhausted, and then shall cover only such amount as may exceed the amount due from such Specific Insurance (whether collectible or not) after application of any contribution, coinsurance, average or distribution or other clauses contained in policies of such Specific Insurance affecting the amount collectible thereunder, not exceeding however, the applicable limit of liability under this policy.
2. Loss by burglary, robbery or theft or loss of personal property covered on an unspecified peril basis: Insurance under this policy shall apply as excess insurance over any other valid and collectible insurance which would apply in the absence of this policy.
3. When loss under this policy is subject to a deductible, the Company shall not be liable for more than its pro rata share of such loss in excess of the deductible amount.

G. NO BENEFIT TO BAILEE: This insurance shall in no wise inure directly or indirectly to the benefit of any carrier or other bailee for hire.

H. LOSS PAYABLE CLAUSE: Loss if any, shall be adjusted with the named insured and shall be payable to him unless other payee is specifically named hereunder.

I. REPORT TO POLICE: When either a loss or occurrence takes place, the insured shall give notice thereof to the proper police authority if loss or occurrence is due to a violation of a law.

THE FOLLOWING PROVISIONS APPLY TO SECTION II

A. MODIFICATION OF TERMS: Provisions on Page 2, other than those pertaining to waiver, cancellation and concealment and fraud, do not apply.

B. FINANCIAL RESPONSIBILITY LAWS: When this policy is certified as proof of financial responsibility for the future under the provisions of any motor vehicle financial responsibility law, such insurance as is afforded by this policy for bodily injury liability or for property damage liability shall comply with the provisions of such law to the extent of the coverage and limits of liability required by such law. The insured agrees to reimburse the Company for any payment made by the Company which it would not have been obligated to make under the terms of this policy except for the agreement contained in this paragraph.

C. PREMIUM: All premiums for this insurance shall be computed in accordance with the Company's rules, rates, rating plans, premiums and minimum premiums applicable to the insurance afforded herein.

Premium designated in this policy as "provisional premium" is a deposit premium only which shall be credited to the amount of the earned premium due at the end of the policy period. At the close of each annual period (or part thereof terminating with the end of the policy period), the earned premium shall be computed for such period and, upon notice thereof to the named insured,shall become due and payable. If the total earned premium for the policy period is less than the premium previously paid, the Company shall return to the named insured the unearned portion paid by the named insured.

The named insured shall maintain records of such information as is necessary for premium computation, and shall send copies of such records to the Company at the end of the policy period and at such times during the policy period as the Company may direct.

D. INSURED'S DUTIES IN THE EVENT OF OCCURRENCE, CLAIM OR SUIT:

1. In the event of an occurrence, written notice containing particulars sufficient to identify the insured and also reasonably obtainable information with respect to the time, place and circumstances thereof, and the names and addresses of the injured and of available witnesses, shall be given by or for the insured to the Company or any of its authorized agents as soon as practicable.
2. If claim is made or suit is brought against the insured, the insured shall immediately forward to the Company every demand, notice, summons or other process received by him or his representative.
3. The insured shall cooperate with the Company and, upon the Company's request, assist in making settlements, in the conduct of suits and in enforcing any right of contribution or indemnity against any person or organization who may be liable to the insured because of injury or damage with respect to which insurance is afforded under this policy; and the insured shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses. The insured shall not, except at his own cost, voluntarily make any payment, assume any obligation or incur any expense other than for first aid to others at the time of accident.

E. MEDICAL REPORTS, PROOF AND PAYMENT OF CLAIM — COVERAGE D: As soon as practicable the injured person or someone on his behalf shall give to the Company written proof of claim for medical expense, under oath if required, and shall after each request from the Company, execute authorization to enable the Company to obtain medical reports and copies of records. The injured person shall submit to physical examination by physicians selected by the Company when and as often as the Company may reasonably require. The Company may pay the injured person or any person or organization rendering the services and the payment shall reduce the amount payable hereunder for such injury. Payment hereunder shall not constitute an admission of liability of any person or, except hereunder, of the Company.

F. OTHER INSURANCE: This insurance is primary insurance, except when stated to apply in excess of or contingent upon the absence of other insurance. When this insurance is primary and the insured has other insurance which is stated to be applicable to the loss on an excess or contingent basis, the amount of the Company's liability under this policy shall not be reduced by the existence of such other insurance.

When both this insurance and other insurance apply to the loss on the same basis, whether primary, excess or contingent, the Company shall not be liable under this policy for a greater proportion of the loss than that stated in the applicable contribution provision below:

1. **Contribution by Equal Shares:** If all of such other valid and collectible insurance provides for contribution by equal shares, the Company shall not be liable for a greater proportion of such loss than would be payable if each insurer contributes an equal share until the share of each insurer equals the lowest applicable limit of liability under any one policy or the full amount of the loss is paid, and with respect to any amount of loss not so paid the remaining insurers then continue to contribute equal shares of the remaining amount of the loss until each such insurer has paid its limit in full or the full amount of the loss is paid.
2. **Contribution by Limits:** If any of such other insurance does not provide for contribution by equal shares, the Company shall not be liable for a greater proportion of such loss than the applicable limit of liability under this policy for such loss bears to the total applicable limit of liability of all valid and collectible insurance against such loss.

G. ACTION AGAINST COMPANY: No action shall lie against the Company unless, as a condition precedent thereto, there shall have been full compliance with all of the terms of this policy, nor until the amount of the insured's obligation to pay shall have been finally determined either by judgment against the insured after actual trial or by written agreement of the insured, the claimant and the Company.

Any person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this policy to the extent of the insurance afforded by this policy. No person or organization shall have any right under this policy to join the Company as a party to any action against the insured to determine the insured's liability, nor shall the Company be impleaded by the insured or his legal representative. Bankruptcy or insolvency of the insured or of the insured's estate shall not relieve the Company of any of its obligations hereunder.

H. NUCLEAR EXCLUSION:

1. This policy does not apply:
   a. Under any Liability Coverage, to bodily injury or property damage
      (1) with respect to which an insured under this policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability; or

(2) resulting from the hazardous properties of nuclear material and with respect to which (a) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, (b) the insured is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.

b. Under any Medical Payments Coverage, or under any Supplementary Payments provision relating to first aid, to expenses incurred with respect to bodily injury resulting from the hazardous properties of nuclear material and arising out of the operation of a nuclear facility by any person or organization.

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

(1) the nuclear material (a) is at any nuclear facility owned by, or operated by or on behalf of, an insured or (b) has been discharged or dispensed therefrom;

(2) the nuclear material is contained in spent fuel or waste at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of an insured; or

(3) the bodily injury or property damage arises out of the furnishing by an insured of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any nuclear facility, but if such facility is located within the United States of America, its territories or possessions or Canada, this exclusion (3) applies only to property damage to such nuclear facility and any property thereat.

2. As used in this provision: "hazardous properties" include radioactive, toxic or explosive properties; "nuclear material" means source material, special nuclear material or byproduct material; "source material", "special nuclear material" and "byproduct material" have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof; "spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a nuclear reactor; "waste" means any waste material (1) containing byproduct material and (2) resulting from the operation by any person or organization of any nuclear facility included within the definition of nuclear facility under paragraph a. or b. thereof; "nuclear facility" means

a. any nuclear reactor,

b. any equipment or device designed or used for (1) separating the isotopes of uranium or plutonium, (2) processing or utilizing spent fuel, or (3) handling, processing or packaging waste,

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

d. any structure, basin, excavation, premises or place prepared or used for the storage or disposal of waste,

and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations; "nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material; "property damage" includes all forms of radioactive contamination of property.

DEFINITIONS – SECTION II

When used in the provisions applicable to Section II of this policy (including endorsements forming a part hereof):

"automobile" means a land motor vehicle, trailer or semi-trailer designed for travel on public roads (including any machinery or apparatus attached thereto), but does not include mobile equipment;

"bodily injury" means bodily injury, sickness or disease sustained by any person which occurs during the policy period, including death at any time resulting therefrom;

"completed operations hazard" includes bodily injury and property damage arising out of operations or reliance upon a representation or warranty made at any time with respect thereto, but only if the bodily injury or property damage occurs after such operations have been completed or abandoned and occurrs away from premises owned by or rented to the named insured. "Operations" include materials, parts or equipment furnished in connection therewith Operations shall be deemed completed at the earliest of the following times:

(1) when all operations to be performed by or on behalf of the named insured under the contract have been completed,

(2) when all operations to be performed by or on behalf of the named insured at the site of the operations have been completed, or

(3) when the portion of the work out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

Operations which may require further service or maintenance work, or correction, repair or replacement because of any defect or deficiency, but which are otherwise completed, shall be deemed completed.

The completed operations hazard does not include bodily injury or property damage arising out of (1) operations in connection with the transportation of property, unless the bodily injury or property damage arises out of a condition in or on a vehicle created by the loading or unloading thereof, (2) the existence of tools, uninstalled equipment or abandoned or unused materials, or (3) operations for which the classification stated in the policy or in the Company's manual specifies "including completed operations";

"elevator" means any hoisting or lowering device to connect floors or landings, whether or not in service, and all appliances thereof including any car, platform, shaft, hoistway, stairway, runway, power equipment and machinery; but does not include an automobile servicing hoist, or a hoist without a platform outside a building if without mechanical power or if not attached to building walls, or a hod or material hoist used in alteration, construction or demolition operations, or an inclined conveyor used exclusively for carrying property or a dumbwaiter used exclusively for carrying property and having a compartment height not exceeding four feet;

"incidental contract" means any written (1) lease of premises, (2) easement agreement, except in connection with construction or demolition operations on or adjacent to a railroad, (3) undertaking to indemnify a municipality required by municipal ordinance, except in connection with work for the municipality, (4) sidetrack agreement, or (5) elevator maintenance agreement;

"insured" means any person or organization qualifying as an insured in the "Persons Insured" provision of the applicable insurance coverage. The insurance afforded applies separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the Company's liability;

"insured premises" means (1) the premises designated in the Declarations, (2) premises alienated by the named insured (other than premises constructed for sale by the named insured), if possession has been relinquished to others, and (3) premises as to which the named insured acquires ownership or control and reports his intention to insure such premises under this policy and no other within 30 days after such acquisition; and includes the ways immediately adjoining such premises on land;

"medical expenses" means expenses for necessary medical, surgical, x-ray and dental services, including prosthetic devices and necessary ambulance, hospital, professional nursing and funeral services;

"mobile equipment" means a land vehicle (including any machinery or apparatus attached thereto), whether or not self-propelled, (1) not subject to motor vehicle registration, or (2) maintained for use exclusively on premises owned by or rented to the named insured, including the ways immediately adjoining, or (3) designed for use principally off public roads, or (4) designed or maintained for the sole purpose of affording mobility to equipment of the following types forming an integral part of or permanently attached to such vehicle: power cranes, shovels, loaders, diggers and drills; concrete mixers (other than the mix-in-transit type); graders, scrapers, rollers and other road construction or repair equipment; air-compressors, pumps and generators, including spraying, welding and building cleaning equipment; and geophysical exploration and well servicing equipment:

"named insured" means the person or organization named in Item 1 of the Declarations of this policy;

"named insured's products" means goods or products manufactured, sold, handled or distributed by the named insured or by others trading under his name, including any container thereof (other than a vehicle), but "named insured's products" shall not include a vending machine or any property other than such container, rented to or located for use of others but not sold;

"occurrence" means an accident, including continuous or repeated exposure to conditions, which results in bodily injury or property damage neither expected nor intended from the standpoint of the insured;

"products hazard" includes bodily injury and property damage arising out of the named insured's products or reliance upon a representation or warranty made at any time with respect thereto, but only if the bodily injury or property damage occurs away from premises owned by or rented to the named insured and after physical possession of such products has been relinquished to others;

"property damage" means (1) physical injury to or destruction of tangible property which occurs during the policy period, including the loss of use thereof at any time resulting therefrom, or (2) loss of use of tangible property which has not been physically injured or destroyed provided such loss of use is caused by an occurrence during the policy period.

600.0.179 (Standard) (Maine) (Mass.) (Minn.) Rev. 10-1-66 Print Date (6-76)

HARRISON & BATES
INCORPORATED
RICHMOND PLAZA • 111 S. 6th STREET, RICHMOND, VIRGINIA 23219 • AREA CODE 804 • 788-1000
REALTORS

AGREEMENT OF LEASE

THIS LEASE AGREEMENT made on February 1, 1978 by and between

EXHIBIT PLAINTIFF NO. 3

Filed 4/24/79

Dan Shopping Center, Inc.
(hereinafter called "Landlord"), party of the first part, and

George G. Martin, Sr.
(hereinafter called "Tenant"), party of the second part.

WITNESSETH:

That in consideration of the rents and covenants herein set forth, Landlord hereby leases to Tenant, and Tenant hereby rents from Landlord, the premises containing approximately 9,200 square feet, as shown, outlined in red, on a drawing identified by the parties as "Schedule A", a copy of which is attached hereto and made a part hereof, and located in the shopping center known as

Ballou Park Shopping Center, located in
Danville, Virginia.

Premises and Improvements

~~SECTION 1. There have been signed by the parties and identified as "Schedule B", Outline Specifications~~ describing the following:

1. Improvements to be provided and installed by Landlord ~~at its~~ expense.
2. Improvements to be provided ~~and installed~~ by Tenant at its expense.
3. Dollar ~~allowances~~ to be credited to Tenant by Landlord against the cost of improvements selected by ~~Tenant and to be provided and installed by either Landlord or Tenant at Tenant's expense.~~

Common Facilities

SECTION 2. In addition to the leased premises, Tenant shall have the right of non-exclusive use, in common with others, of, (a) automobile parking areas, driveways and footways, mall and corridors, and of (b) such loading facilities and other facilities as may be constructed and designated, from time to time, by Landlord, all to be subject to the terms and conditions of this Lease Agreement, and to reasonable rules and regulations for the use thereof as prescribed from time to time by Landlord. Landlord shall have the right to make changes or revisions in the site plan in accordance with recommendations of its architects and so as to provide additional leasing area.

Title; Subordination

SECTION 3. Landlord hereby warrants that Landlord and no other person or corporation has the right to lease the premises hereby demised. Tenant shall have peaceful and quiet use and possession of the leased premises without hindrance on the part of Landlord, and Landlord shall warrant and defend Tenant in such peaceful and quiet use and possession against the claims of all persons, claiming by, through or under Landlord. Tenant's rights under this Lease Agreement are, however, and shall always be subordinate to the operation and effect of any mortgage, deed of trust or other security instrument now or hereafter placed upon the Center, or any part or parts thereof, by Landlord.

Term

SECTION 4. The term of this lease shall commence on February 1, 1978 ~~the earlier to occur of (a) the first date on which the leased premises are ready for occupancy by Tenant (as hereinafter defined), or (b) the opening by Tenant of its business in the leased premises;~~ and shall be for a period of one

(1) years plus the part of a month, if any, from the date of the commencement of the term to the first day of the first full calendar month in the term. Each of the parties hereto agrees, upon demand of the other, to execute a declaration in recordable form expressing the commencement and termination dates of the term as soon as the commencement date has been determined.

Termination

SECTION 5. This lease and the tenancy hereby created shall cease and determine at the end of the original term hereof, or any extension or renewal thereof, without the necessity of any notice from either Landlord or Tenant to terminate the same, and Tenant hereby waives notice to vacate the premises and agrees that Landlord shall be entitled to the benefit of all provisions of law respecting the summary recovery of possession of premises from a tenant holding over to the same extent as if statutory notice had been given. For the period of six (6) months prior to the expiration of the original term of this lease or any renewal or extension thereof. Landlord shall have the right to display on the exterior of the premises (but not in any window or doorway thereof) the customary sign "For Rent", and during such period Landlord may show the premises and all parts thereof to prospective tenants between the hours of 9:00 A. M. and 5:00 P.M. on any day except Sunday and except any legal holiday on which Tenant shall not be open for business.

Rentals Payable

SECTION 6. Tenant covenants and agrees to pay to Landlord, as rental for the leased premises, the greater of the following, namely:

(a) A minimum rental at the rate of Nine thousand six hundred and no/100 ($ 9,600.00) per annum; or

(b) A percentage rental equal to five percent (5 %) of "gross sales" during each rental year as hereinafter defined.

Minimum Rentals

SECTION 7. The minimum rental shall be payable in equaly monthly installments in advance on the first day of each full calendar month during the term, the first such payment to include also any prorated minimum rental for the period from the date of the commencement of the term to the first day of the first full calendar month in the term.

Percentage Rentals

SECTION 8. The percentage rental shall be determined and payable annually on or before the twentieth day following the close of each full calendar years period of the term, based on gross sales for such period. The first payment of percentage rental due hereunder shall include a percentage of gross sales from the date of the commencement of the term to the first day of the first full calendar month in the term. As soon as practicable after the end of each rental year, the percentage rental paid or payable for such rental year shall be adjusted between Landlord and Tenant, each party hereby agreeing to make such adjustments and to pay to the other, on demand, such amount as may be necessary to effect adjustment to the agreed percentage rental.

"Rental Year" Defined

SECTION 9. The first "rental year" shall commence on the first day of the term and shall end at the close of the twelfth full calendar month of the term; thereafter the rental year shall consist of periods of twelve full calendar months or, at the end of the term, the portion of such twelve full calendar months included in the term.

"Gross Sales" Defined

SECTION 10. For the purpose of this Agreement, the term "gross sales" shall mean the actual sales prices of all goods, wares, and merchandise sold, and the actual charges for all services performed by Tenant or by any sub-tenant, licensee or concessionaire, in, at or from the leased premises, whether for cash, on credit, or otherwise, without reserve or deduction for inability or failure to collect, including, but not limited to, such sales and services (i) where the orders therefor originate in, at or from the leased premises, whether delivery or performance is made from the leased premises or from some other place, (ii) pursuant to mail, telephone, telegraph or other similar orders received at the leased premises, (iii) by means of mechanical and other vending devices in the leased premises, (iv) as a result of transactions originating in, at or from the leased premises, or (v) which Tenant or any sub-tenant, licensee, or concessionaire, in the normal and customary course of its business, would credit or attribute to its operation at the leased premises or any part thereof.

The following shall be excluded from gross sales, namely: (i) any exchange of merchandise between stores of Tenant where such exchange is made solely for the convenient operation of the Tenant's business and not for the purpose of consummating a sale made in, at or from the leased premises, (ii) returns to shippers or manufacturers, (iii) cash or credit refunds to customers on transactions otherwise included in gross sales, (iv) sales of fixtures, machinery and equipment after use thereof in the conduct of Tenant's business in the leased premises, (v) amounts collected and paid out by Tenant for any sales, excise or similar tax imposed by and duly constituted governmental authority, and (vi) the amount of any discount on sales to employees.

Tenant's Records

SECTION 11. For the purpose of permitting verification by Landlord of any amounts due as rentals, Tenant will keep and preserve for at least two years, at an office of the Tenant in Danville, VA, original or duplicate books and records which shall disclose all information required to determine gross sales, as above defined, the disposition of cash receipts and entries of credit sales, and such other information relating to or in support of the items comprising gross sales as may be reasonably required by the Landlord. Landlord, its employees and accountants shall have the right during business hours to inspect such books and records and to make any examination or audit thereof which Landlord may desire. If such audit shall disclose a liability for rent three per centum (3%) or more in excess of the rentals theretofore paid by Tenant for such period, Tenant shall promptly pay to Landlord the cost of said audit in addition to the deficiency in rental, which deficiency shall be payable in any event.

Tenant further covenants and agrees (a) that not later than the twentieth day after the close of each calendar month of the term and any renewal thereof, it will deliver to Landlord a written statement signed by Tenant or by an authorized officer of Tenant, showing the gross sales, as above defined, made in the preceding calendar month, and (b) that not later than the due date for each payment of percentage rental during the term and any renewal thereof, it will deliver to Landlord a written statement signed by Tenant or by an authorized officer of Tenant, showing the gross sales, as above defined, made in the preceding percentage rental period, and (c) that not later than sixty (60) days after the close of each rental year, and after the termination of the lease or any renewal thereof, it will deliver to Landlord a certificate of an independent certified public accountant showing the amount of gross sales, specifically stated to be as above defined, of the preceding rental year.

Additional Rentals

SECTION 12. Tenant will promptly pay all rentals herein prescribed when and as the same shall become due and payable. If Landlord shall pay any moneys, or incur any expenses in correction of the violation of covenants herein set forth, the amounts so paid or incurred shall, at Landlord's option, and on notice to Tenant, be considered additional rentals payable by Tenant with the first installment of rental thereafter to become due and payable, and may be collected or enforced as by law provided in respect of rentals.

Payments at Office of Landlord's Agent

SECTION 13. All rentals payable and all statements deliverable by Tenant to Landlord under this Agreement shall be paid and delivered to Harrison & Bates, Incorporated, Agents for the Landlord, at the office of said Agent, ~~801 East Main Street~~, Richmond, Virginia 23219, or to such other party or address as Landlord may direct by written notice.

111 S. 6th Street

Taxes

SECTION 14. That, in the event the real estate taxes levied upon or assessed against the premises of which the demised premises are a part, are increased above the amount of such taxes as fixed for the first full year in which the improvements to be occupied by the Tenant are assessed and taxed, Tenant shall pay that portion of such excess equal to the product obtained by multiplying said excess by a fraction, the numerator of which shall be the square foot area of the demised premises, and the denominator of which shall be the total square feet of rentable floor area of Landlord's property in the Shopping Center reflected in such assessment.

That, in the event a tax is levied against the gross rental receipts of the entire Shopping Center, Tenant agrees to pay that portion of the tax in the proportion that the Tenant's gross rents payable hereunder bears to the gross rents of the entire Shopping Center.

The additional rent provided for in the above paragraphs shall be paid within twenty (20) days after demand therefor by Landlord.

Not a Joint Venture

SECTION 15. Any intention to create a joint venture or partnership relation between the parties hereto is hereby expressly disclaimed, it being understood and agreed that the provisions of this Agreement in regard to the payment by Tenant and the acceptance by Landlord of a percentage of the gross sales of Tenant and others is a reservation of rent for the use of the leased premises.

Landlord's Improvements

SECTION 16. Landlord will maintain during the term of this lease a shopping center substantially as shown on "Schedule A" but not less than 110,000 square feet. Although Landlord reserves the right to make additions to, substractions from, or rearrangements of the building areas indicated on "Schedule A", it is distinctly understood that any such changes or rearrangements shall not reduce the total gross building area below that required by this Section 16.

~~Prior to commencement of the term Landlord agrees to provide, at its expence, improvements to the~~ leased premises substantially in accordance with the general description of the improvements to be provided by Landlord as set forth in "Schedule B" hereto. The leased premises will be considered as ready for occupancy by Tenant on the first day which the Landlord shall have substantially completed all work to be performed by it in accordance with "Schedule B", as evidenced by certificate of Landlord's architect to that effect, or Tenant shall have opened its business in the leased premises.

Driveways and Parking Areas

SECTION 17. Landlord agrees to provide hard surfaced parking areas with adequate drainage and lighting facilities, including footways and necessary access roads within the center, to accommodate not less than fourteen hundred (1400) passenger automobiles.

Tenant's Improvements

~~SECTION 18. On or before the commencement of the term, Tenant will substantially complete all fix~~turing and other work which Tenant has agreed to do in, on and about the leased premises as specified in "Schedule B" hereto. Tenant shall obtain the prior written approval of Landlord's architect to all plans and specifications for work which will affect the exterior appearance of the leased premises or any structural, mechanical or electrical component of the building in which the leased premises are located. All Tenant's work, as herein provided, shall be done at the sole cost and expense of Tenant, subject to allowances, if any, to be provided by Landlord to Tenant under "Schedule B".

Landlord ~~Tenant~~ will provide and install within the leased premises such equipment as will assure adequate heating, ventilating and air conditioning for the leased premises.

Unavoidable Delays

SECTION 19. The obligations of the Landlord and of Tenant, respectively, under Sections 16, 17, ~~and 18~~ hereof, are subject to unavoidable delays due to labor disputes, acts of God or the public enemy, governmental regulations or controls, fire or other casualties or other conditions or causes beyond the reasonable control of the parties.

Trade Fixtures

SECTION 20. All trade fixtures and apparatus installed by Tenant in the leased premises ~~except such as may be the property of Landlord as a result of Landlord having provided Tenant with allowances under "Schedule B" for the installation of any such fixtures or apparatus~~, shall remain the property of the Tenant and shall be removable from time to time and also at the expiration of the term of this lease or any renewal or extension thereof, or other termination thereof, provided Tenant shall not at such time be in default under any covenant or agreement contained in this Agreement; otherwise Landlord shall have a lien on said fixtures or apparatus as security against loss and damage resulting from defaults by Tenant.

Use of Premises

SECTION 21. The leased premises shall be used by Tenant solely for the purpose of conducting therein the business of

a cafeteria.

Prompt Occupancy and Use

SECTION 22. (a) Tenant will occupy the leased premises promptly upon commencement of the term, and thereafter will continuously conduct in the leased premises the business as above stated. Tenant will not use, or permit or suffer the use of, the leased premises for any other business or for residential purposes, and will conduct business on the premises only in its own name unless and until the use of some other name is approved in writing by Landlord.

(b) Tenant will cause said business to be conducted and operated in good faith and such manner as shall assure the transaction of a maximum volume of business in and at the leased premises, and Tenant shall cause its store to remain open from 10 o'clock A. M. until at least 9 o'clock P. M. six days each week. This obligation of Tenant to cause its store to remain open until at least 9 o'clock P. M. six days each week may be reduced so that Tenant will be required to remain open until 9 o'clock P. M. fewer specifically designated nights each week (or subsequent to such reduction, may be increased or reduced, without limitation on the number of such increases or reductions) upon resolutions to that effect approved by a majority of the members of the Merchants Association at any regular or special meeting of the Association, each member having one vote for each square foot of space leased by it. The aforegoing provisions are intended to establish minimum store hours; Tenant may remain open for such periods of time as it may desire in addition to the established minimum store hours.

(c) It is understood and agreed that the provisions of sub-paragraph (b) shall not be applicable to premises leased to a bank, similar service type operations or other operations as may be designated by Landlord, and tenants leasing premises so designated shall not be entitled to vote for control of store hours as contemplated by subparagraph (b) nor shall they be calculated in arriving at a majority of the members of

the Merchants Association for the purposes of subparagraph (b).

(d) Tenant will not permit, allow, or cause any public or private auction sales to be conducted on or from the leased premises, and will not use or permit any use of the leased premises except in a manner consistent with the general high standards of merchandising in the Center.

Operation By Tenant

SECTION 23. Tenant will keep the inside and outside of all glass in the doors and windows of the leased premises clean; will keep all exterior surfaces clean; will replace promptly at its own expense with glass of like kind and quality any plate glass or window glass of the leased premises which may become cracked or broken, unless by fire; will not, without the consent in writing of Landlord, place or maintain any merchandise or other articles in any vestibule or entry of the premises, on the footwalks adjacent thereto, or elsewhere on the exterior thereof; will maintain the premises at its own expense in a clean, orderly and sanitary condition and free of insects, rodents, vermin and other pests; will not permit undue accumulations of garbage, trash, rubbish and other refuse, but will remove the same at its own expense, and will keep such refuse in rat-proof containers within the interior of the premises until called for to be removed; will not use or permit the use of any apparatus or musical instruments for sound reproduction or transmission in such manner that the sounds so reproduced, transmitted or produced shall be audible beyond the interior of the leased premises; will keep all mechanical apparatus free of vibration and noise which may be transmitted beyond the confines of the premises; will not cause or permit objectionable odors to emanate or be dispelled from the premises; will comply with all laws and ordinances and all valid rules and regulations of governmental authorities, and all recommendations of the Virginia Fire Insurance Rating Bureau, with respect to the use of occupancy of the premises by Tenant; will not receive or ship articles of any kind except through the facilities provided for that purpose by Landlord; will light the show windows of the premises and exterior signs each night of the year to the extent which shall be required by the Landlord until 10 o'clock P. M.; and will conduct its business in the premises in all respects in a dignified manner and in accordance with high standards of store operation.

Exterior Repairs

SECTION 24. Landlord will keep the exterior of the premises, except any doors, windows and glass, in repair, provided that Tenant shall give Landlord written notice of the necessity for such repairs, and provided that the damage thereto shall not have been caused by negligence of Tenant, in which event Tenant shall be responsible therefor. Landlord shall be under no liability for repair, maintenance, alteration or any other action with reference to the leased premises or any part thereof, or any plumbing, heating, electrical, air conditioning or other mechanical installation therein, except as may be expressly set out in this Agreement.

Interior Repairs

SECTION 25. Tenant will keep the interior of the premises, together with all electrical, plumbing, and other mechanical installations therein in good order and repair at its own expense; and will surrender the leased premises at the expiration of the term or at such other time as it may vacate the premises in as good condition as when received, excepting depreciation caused by ordinary wear and tear and damage by fire, unavoidable accident or act of God. Tenant will not overload the electrical wiring serving the premises or within the premises, and will install at its own expense, but only after obtaining Landlord's written approval, any additional electrical wiring which may be required in connection with Tenant's apparatus.

Heating, Ventilating and Air Conditioning

SECTION 26. Tenant, at its sole cost and expense, shall operate, maintain and repair the heating, ventilating and air conditioning equipment including the making of all necessary replacements thereto throughout the term of this lease and any renewal thereof. Tenant shall pay for all fuel, water, gas and electricity consumed in such operation. *

~~Heating, ventilating and air conditioning shall be thermostatically controlled in the leased premises, and Tenant agrees to operate such controls so that the temperature within the leased premises will be reasonably identical to that within the mall and connecting corridors.~~

Damage to Premises

SECTION 27. Tenant will repair promptly at its own expense any damage to the leased premises caused by bringing into the premises any property for Tenant's use, or by the installation or removal of such property, regardless of fault or by whom such damage shall be caused, unless caused by Landlord, its agents, employees, or contractors; and in default of such repairs by Tenant, Landlord may make the same and Tenant agrees to pay the cost thereof to Landlord promptly upon Landlord's demand therefor.

Alterations by Tenant

SECTION 28. Tenant will not alter the store front of the leased premises and will not make any structural alteration to the premises or any part thereof without first obtaining Landlord's written approval of such alteration; and Tenant agrees that any improvements made by it shall immediately become the property of the Landlord and shall remain upon the premises in the absence of agreement to the contrary. Tenant further will not, except for the installation of fixtures ~~and other work to be performed by it under "Schedule P" hereof,~~ cut or drill into or secure any fixture, apparatus or equipment of any kind to any part of the premises without first obtaining Landlord's written consent.

Signs and Advertising

SECTION 29. Tenant will not place or suffer to be placed or maintained on the exterior of the premises any sign, advertising matter or other thing of any kind, and will not place or maintain any decoration, lettering or advertising matter on the glass of any window or door of the leased premises without first obtaining Landlord's written approval thereof; and Tenant further agrees to maintain such sign, decoration, lettering, advertising matter or other thing as may be approved in good condition and repair at all times.

*Furthermore, Tenant agrees to contract with a reliable mechanical contr tor to maintain the HVAC equipment, the cost of such contract to be borr by the Tenant.

Painting and Decoration

SECTION 30. Tenant will not paint or decorate any part of the exterior of the leased premises, or any part of the interior of the premises which shall be visible from the exterior thereof, without first obtaining Landlord's written approval of such painting or decoration.

Displays by Tenant

SECTION 31. Tenant will install and maintain at all times, subject to the other provisions of this paragraph, displays of merchandise in the show windows (if any) of the leased premises; and Tenant further agrees that all articles and the arrangement, style, color and general appearance thereof, in the interior of the premises which shall be visible from the exterior thereof, including, but not limited to, window displays, advertising matter, signs, merchandise and store fixtures, shall be maintained in the premises subject to the approval of the Landlord with respect to whether the same are in keeping with the character and standards of the Center.

Roof and Walls

SECTION 32. Landlord shall have the exclusive right to use all or any part of the roof of the premises for any purpose; to erect additional stories or other structures over all or any part of the leased premises; and to erect in connection with the construction thereof temporary scaffolds and other aids to construction on the exterior of the premises, provided that access to the premises shall not be denied. Tenant further agrees that Landlord may make any use it desires of the side or rear walls of the premises, provided that there shall be no encroachment upon the interior of the leased premises.

Common Facilities

SECTION 33. Landlord grants to Tenant during the term the right of non-exclusive use, in common with others, of all automobile parking areas within the Center for the accommodation and parking of passenger automobiles of Tenant's customers.

All parking areas, access roads and facilities which may be furnished by Landlord in or near the Center, including employee parking areas, the truck way or ways, loading docks, package pick-up stations, pedestrian sidewalks, malls, courts, and ramps, landscaped areas, retaining walls, first-aid station, comfort stations, lighting facilities, auditorium, public telephone facilities and other areas and improvements which may be provided by Landlord for the general use, in common, of tenants, their officers, agents, employees, and customers, shall at all times be subject to the exclusive control and management of Landlord, and Landlord shall have the right from time to time to establish, modify and enforce reasonable rules and regulations with respect to all facilities and areas mentioned in this section. Landlord shall construct, maintain and operate lighting facilities on all said areas and improvements and shall have the right to police the same. Landlord shall have the right from time to time to change the area, location and arrangement of parking areas and other facilities referred to in this Section 33, to change truck routes to such extent as the Landlord may desire, provided that the leased premises are adequately served by the new route; to restrict parking by tenants, their officers, agents and employees to employee parking areas; to construct surface or elevated parking areas and facilities; to establish and from time to time change the level of parking surfaces; to enforce parking charges (by operation of meters or otherwise) with appropriate provisions for free parking ticket validating by tenants; to close all or any portion of said areas or facilities to such extent as may, in the opinion of the Landlord's counsel, be legally sufficient to prevent a dedication thereof or the accrual of any rights to any person or to the public therein; to close temporarily all or any portion of the parking areas or facilities; to discourage non-customer parking; and to do and perform such other acts in and to said areas and improvements as, in the use of good business judgment, the Landlord shall determine to be advisable with a view to the improvement of the convenience and use thereof by tenants, their officers, agents, employees and customers. Tenant agrees that it will cause its officers, agents and employees to park their automobiles only in such areas as Landlord may from time to time designate as employee parking areas.

Tenant and its employees shall not park cars in parking space provided for customers on property of which demised premises are a part or in alleys or service courts serving buildings or stores except in areas which may be designated by Landlord for tenant parking. Where there is a rear entrance, all loading and

unloading of goods shall be made at the rear entrance. Tenant agrees that upon written notice from Landlord it will, within five days, furnish Landlord with the state automobile license numbers assigned to its car and the cars of all its employees. If Tenant or its employees shall park their cars in space provided for customer parking, Tenant shall pay additional rent to the Landlord at the rate of $10.00 per day per car.

It is understood that the Landlord proposes to construct the Center in various stages and some of the common facilities outlined above will not be constructed until the later stage, and further, that construction of later stages may necessitate the rearrangement and alteration of some or all of the facilities referred to in this Section 33. Landlord, therefore, reserves the right in its sole discretion from time to time to change, rearrange, alter or modify any or all of the facilities designed for the common use and convenience of all tenants so long as adequate facilities in common are made available to the Tenant herein.

Expense of Common Facilities

SECTION 34. Landlord will, at its expense (subject to the reimbursement provisions hereinafter set forth), operate and maintain the common facilities referred to in Section 33. In each rental year Tenant will, subject to the limitations below stated, pay to Landlord ~~such proportion of Landlord's inside operating costs as the gross floor area of the premises leased hereby bears to the total gross floor area of all stores in the Center which front on the mall or connecting corridors which are leased and occupied by tenants and will pay to Landlord~~ such proportion of Landlord's outside operating costs as the gross floor area of the premises leased hereby bears to the total gross floor area of all stores in the Center which are leased and occupied by tenants.

For the purpose of this Section 34, the "Landlord's Outside Operating Costs" in connection with the common facilities outside of the shopping center buildings shall be those of operating and maintaining the common facilities in a manner deemed by the Landlord reasonable and appropriate and for the best interests of the tenants in the Center, including without limitation, all costs and expense of operating, repairing, lighting, cleaning, painting, striping, insuring, removing of snow, ice, debris, maintaining landscaped areas, policing, inspecting and all costs and expense other than those of a capital nature of replacement of paving, curbs, walkways, landscapi draining and lighting facilities.

~~For the purpose of this Section 34, the "Landlord's Inside Operating Costs" in connection with the common facilities within the shopping center buildings shall be those of operating and maintaining the common facilities in a manner deemed by the Landlord reasonable and appropriate and for the best interests of the tenants in the Center, including without limitations, all costs and expense of operating, repairing, lighting, cleaning, painting, insuring, policing, inspecting and all costs and expense of heating, ventilating and air conditioning common areas (including interest not to exceed six percentum (6%) per year of the unamortized portion, plus amortization not to exceed ten percentum (10%) per year of the actual costs of the heating, ventilating and air conditioning units, ducts, distribution mains, air handling equipment, cooling system and replacements of all such items properly chargeable to capital account in accordance with good accounting practice). Such costs and expense either inside or outside of the shopping center buildings shall not incude real estate taxes, special assessments or depreciation.~~

The foregoing obligation on the part of the Tenant is subject to the following limitations:

1. In no rental year shall any amount be payable by Tenant for the "Landlord's Operating Costs" in connection with the common facilities outside of the shopping center buildings in excess of

twenty cents (20¢) per square foot of gross store area leased hereby.

~~2. In no rental year shall any amount be payable by Tenant for the "Landlord's Operating Costs" in connection with the common facilities within the shopping center buildings in excess of ( ) per square foot of the gross store area leased hereby.~~

The charges to Tenant under this Section 34 shall be computed on a basis of twelve (12) consecutive calendar months commencing and ending on such dates as may be designated by Landlord and shall be paid by Tenant in monthly installments on the first day of each calendar month in an amount estimated and billed by Landlord. Within sixty (60) days after the end of each twelve (12) consecutive calendar months the Landlord shall render to Tenant an annual statement showing thereon its costs as defined in Section 34 in sufficient detail to permit checking and the monthly payments to be made by Tenant shall be adjusted and revised accordingly. Landlord shall make available for Tenant's inspection at the office of the Landlord, Landlord's records relating to the operating expenses of the common facilities for such preceding period.

Merchants Association

SECTION 35. The Tenant agrees to maintain a membership in a Merchants Association, when established, paying such reasonable assessments as may be fixed from time to time by the Association for the purpose of creating and maintaining a fund for the general promotion and welfare of the Center, with the proviso that

the payments required of the Tenant shall not exceed in any rental year a maximum of ten cents (10¢) per square foot of the gross area leased to Tenant, ~~except in the case of Tenants whose premises contain less than one thousand (1,000) square feet, who shall pay dues in the amount of ( ) dollars.~~

Public Liability Insurance

SECTION 36. Tenant will keep in force at its own expense so long as this lease remains in effect public liability insurance with respect to the leased premises in companies and in form acceptable to Landlord, covering Tenant, Landlord, and Landlord's agents, with minimum limits of One Hundred Thousand Dollars ($100,000) on account of bodily injuries to or death of one person, and Three Hundred Thousand Dollars ($300,000) on account of bodily injuries to or death of more than one person as the result of any one accident or disaster; and property damage insurance with minimum limits of Ten Thousand Dollars ($10,000); and Tenant will further deposit the policy or policies of such insurance or certificates thereof, with Landlord. If Tenant shall not comply with its covenants made in this Section 36, Landlord may, at its option, cause insurance as aforesaid to be issued, and in such event Tenant agrees to pay the premium for such insurance promptly upon Landlord's demand.

Indemnity by Tenant

SECTION 37. Tenant will indemnify Landlord and Landlord's agents and save them harmless from and against any and all claims, actions, damages, liability and expense in connection with loss of life, personal injury and/or damage to property arising from or out of the occupancy or use by Tenant of the leased premises or any part thereof or any other part of the Landlord's property, or occasioned wholly or in part by any act or omission of Tenant, its agents, contractors, or employees.

Fire Insurance

SECTION 38. Tenant will not do or suffer to be done, or keep or suffer to be kept, anything in, upon or about the leased premises which will contravene Landlord's policies insuring against loss or damage by fire or other hazards (including, but not limited to, public liability) or which will prevent Landlord from procuring such policies in companies acceptable to Landlord provided Tenant is first given adequate notice of the requirements of such policies. If anything done, omitted to be done or suffered to be done by Tenant, or kept or suffered by Tenant to be kept, in, upon or about the premises shall cause the rate of fire or other insurance on the leased premises or other property of Landlord in companies acceptable to Landlord to be increased beyond the minimum rate from time to time applicable to the premises for use for the purposes permitted under this Agreement or to such other property for the use or uses made thereof, Tenant will pay the amount of such increase promptly upon Landlord's demand.

Fire or Other Casualty

SECTION 39. If the leased premises shall be damaged by fire, the elements, unavoidable accident or other casualty, but are not thereby rendered untenantable in whole or in part, Landlord shall promptly at its own expense cause such damage to be repaired, and the rent shall not be abated; if by reason of such occurrence, the premises shall be rendered untenantable only in part, Landlord shall promptly at its own expense cause the damage to be repaired, and the minimum rent meanwhile shall be abated proportionately as to the portion of the premises rendered untenantable; if by reason of such occurrence the premises shall be rendered wholly untenantable, Landlord shall promptly at its own expense cause such damage to be repaired, and the minimum annual rent meanwhile shall be abated in whole, unless within sixty (60) days after said occurrence Landlord shall give Tenant written notice that it has elected not to reconstruct the destroyed premises, in which event this lease and the tenancy hereby created shall cease as of the date of said occurrence, the minimum rental and the percentage rental to be adjusted as of such date.

Condemnation

SECTION 40. If the whole or any part of the leased premises shall be taken under the power of eminent domain, then this lease shall terminate as to the part so taken on the day when Tenant is required to yield possession thereof, and Landlord shall make such repairs and alterations as may be necessary in order to restore the part not taken to useful condition; and the minimum rental shall be reduced proportionately as to the portion of the leased premises so taken. If the amount of the leased premises so taken is such as to impair substantially the usefulness of the leased premises for the purposes for which the same are hereby leased, then either party shall have the option to terminate this lease as of the date when Tenant is required to yield possession. All compensation awarded for such taking of the fee and the leasehold shall belong to and be the property of the Landlord; provided, however, that the Landlord shall not be entitled to any portion of the award made to the Tenant for loss of business and for the cost of removal of stock and fixtures.

Inspections by Landlord

SECTION 41. Tenant will permit Landlord, its agents, employees, and contractors to enter the leased premises and all parts thereof during business hours to inspect the same and to enforce or carry out any provision of this Agreement.

Short Lease Recording

SECTION 42. Landlord agrees that at Tenant's request, it will execute, acknowledge and deliver a short form of lease to the end that the same may be recorded among the Land Records of ~~Henrico County~~ Danville, Virginia.

Recording and probating charges shall be paid by Tenant.

No Assignments or Sub-letting

SECTION 43. Tenant will not assign this lease in whole or in part, nor sublet all or any part of the premises, nor license concessions or leased departments therein, without the written consent of Landlord first obtained. Consent by Landlord to any assignment or subletting shall not constitute a waiver of the necessity for such consent to any subsequent assignment or subletting. This prohibition against assigning or subletting shall be construed to include a prohibition against any assignment or subletting by operation of law.

Bankruptcy, etc. of Tenant

SECTION 44. If any sale of Tenant's interest in the premises created by this Agreement shall be made under execution or similar legal process, or if Tenant shall be adjudicated a bankrupt or insolvent, and such adjudication is not vacated within thirty (30) days, or if a receiver or trustee shall be appointed for its business or property, and such appointment shall not be vacated within thirty (30) days, or if a corporate reorganization of the Tenant or an arrangement with its creditors shall be approved by a court under the Federal Bankruptcy Act, or if Tenant shall make an assignment for the benefit of creditors, or if in any other manner Tenant's interest under this Agreement shall pass to another by operation of law, then, in any of said events, Tenant shall be deemed to have breached a material covenant of this lease and Landlord may, at its option, re-enter the premises and declare this lease and the tenancy hereby created terminated, but notwithstanding such termination Tenant shall remain liable for all rent or damages which may be due at the time of such termination and, further, shall be liable for the liquidated damages set forth in paragraph B of Section 46 of this lease.

Performance by Tenant

SECTION 45. Tenant covenants and agrees that it will perform all agreements herein expressed on its part to be performed, and that it will promptly upon receipt of written notice specifying action desired by Landlord in connection with any such covenant commence to comply with such notice; and further, that if Tenant shall not commence and proceed diligently to comply with such notice to the satisfaction of Landlord within five (5) days after delivery thereof, then Landlord may, at its option enter upon the premises and do the things specified in said notice, and Landlord shall have no liability to Tenant for any loss or damage resulting in any way from such action by Landlord, and Tenant agrees to pay promptly upon demand any expense incurred by Landlord in taking such action.

Remedies of Landlord

SECTION 46. A. If Tenant shall violate any covenant, including the covenant to pay rent, made by it in this Agreement and shall fail to comply or commence compliance with said covenant within fifteen (15) days after being sent written notice of such violation by Landlord, Landlord may, at its option, reenter the premises and declare this lease and the tenancy hereby created terminated; and Landlord shall be entitled to all the provisions of the laws of the State of Virginia respecting summary ejectment and the recovery of land and tenements held over by Tenant.

B. Tenant further agrees that notwithstanding reentry and termination pursuant to Section 44 or Paragraph A of this Section 46 of this lease, Tenant shall remain liable for any rent or damages which may be due or sustained prior thereto, all reasonable costs, professional fees and expenses incurred by Landlord in leasing the premises to another tenant, and Tenant shall further be liable for a sum of money, as liquidated damages and not as penalty, to be calculated in the following manner: Tenant shall pay an amount of money equal to the total rent which but for such termination would have become payable during the unexpired portion of the term remaining at the time of such termination, less the amount of rent, if any, which Landlord may receive during such period from others to whom the premises may be rented on such terms and conditions and at such rentals as Landlord, in its sole discretion, shall deem proper. If such termination shall take place after the expiration of two or more rental years of this lease, then the percentage rental payable (pursuant to Sections 6 and 10), if any, in each rental year after such termination shall be conclusively presumed to be equal to the average percentage rental payable during such expired rental years. If such termination shall take place after the expiration of less than two rental years of this lease, then the percentage rental payable (pursuant to Sections 6 and 10), if any, in each rental year after such termination shall be conclusively presumed to be equal to twelve (12) times the average monthly payment of percentage rental which would have been paid prior to such termination had Section 8 of this lease required monthly payments of percentage rental, based upon gross sales during each such month. Such liquidated damages shall be payable in monthly installments, in advance. on the first day of each calendar month following such termination, and continuing until the date originally fixed herein for the expiration of the then current term of this lease and any suit or action brought to collect the amount of any deficiency for any month shall not in any manner prejudice the right of Landlord to collect any deficiency for any subsequent month by a similar proceeding. Within one month after the date originally fixed herein for the expiration of the then current term of this lease, Landlord shall give a written statement to Tenant showing all sums received by Landlord by way of liquidated damages

and all sums received from others to whom the premises may have been rented. In the event it appears that Tenant has paid a greater sum of money than is due, as determined by the terms of this Paragraph B of this Section 46, then, and in such event, Landlord will promptly refund to Tenant any such excess.

Remedies Cumulative

SECTION 47. No mention in this lease of any specific right or remedy shall preclude Landlord from exercising any other right or from having any other remedy or from maintaining any action to which it may otherwise be entitled either at law or in equity; and the failure of Landlord to insist in any one or more instances upon a strict performance of any covenant of this Agreement or to exercise any option or right herein contained shall not be construed as a waiver or relinquishment for the future of such covenant, right, or option, but the same shall remain in full force and effect unless the contrary is expressed in writing by Landlord.

Water, Gas and Electricity

SECTION 48. The Tenant covenants that it will promptly pay all utility bills, including but not limited to, water (which may include sewer charge), gas and electricity as the same shall become due. If Landlord shall pay any monies or incur any expenses in correction of violation of Tenant's covenants herein set forth, the amounts so paid or incurred shall, at Landlord's option, and on notice to Tenant, be considered additional rentals payable by Tenant with the first installment of rental thereafter to become due and payable and may be collected or enforced as by law provided in respect of rentals.

Successor and Assigns

SECTION 49. This Agreement and the covenants and conditions herein contained, shall enure to the benefit of and be binding upon Landlord, its successors and assigns, and shall be binding upon Tenant, its successors and assigns, and shall enure to the benefit of Tenant and only such assigns of Tenant to whom the assignment by Tenant has been consented to by Landlord.

SECTION 50. All notices from Tenant to Landlord required or permitted by any provision of this Agreement shall be directed to Landlord % Harrison & Bates, Incorporated, Agents, ~~801 East Main Street~~, Richmond, Virginia 23219. All notices from Landlord to Tenant so required or permitted shall be directed as follows, namely:

111 S. 6th St

Mr. George Martin, Sr.
709 E. Paxton Street
Danville, VA 24541

Either party may, at any time or from time to time, designate in writing a substitute address for that above set forth, and thereafter notices shall be directed to such substitute address.

Virginia Law

SECTION 51. This Lease Agreement shall be construed under the laws of the State of Virginia.

Captions and Headings

SECTION 52. The captions and headings throughout this lease are for convenience and reference only and the words contained therein shall in no way be held or deemed to define, limit, describe, explain, modify, amplify or add to the interpretation, construction or meaning of any provision of or the scope or intent of this lease nor in any way affect this lease.

Joint and Several Liability

SECTION 53. In the event that two or more individuals, corporations, partnerships or other business associations (or any combination of two or more thereof) shall sign this Lease Agreement as Tenant, the liability of each such individual, corporation, partnership, or other business association to pay rent and perform all other obligations hereunder shall be deemed to be joint and several. In like manner, in the event that the Tenant named in this Lease Agreement shall be a partnership or other business association the members of which are, by virtue of statute or general law, subject to personal liability then, and in the event, the liability of each such member shall be deemed to be joint and several.

IN WITNESS WHEREOF, the parties hereto have executed this lease Agreement under their respective seals as of the day and year first above written.

Tenant:

_____
George G. Martin, Sr.

Landlord:

Dan Shopping Center, Inc.

By: _____

Title: _____