

Personal and Business Owner's Umbrella Liability Policy

New Mexico

Various provisions in this policy may restrict coverage. Read the entire policy carefully to determine **your** rights and duties, and what is and is not covered. **We** will not pay sums or perform acts or services unless specially provided for in this policy.

As used in this policy, the words **you** and **your** mean any person or organization who is shown as the Named Insured on the Personal and Business Owner's Umbrella Liability Policy (as shown on the Declarations Page) of this policy. Other persons or organizations covered under this policy, and **our** refer to the Insurance company named on the Declarations Page of this policy.

Other words or phrases that are **boldfaced** in this policy or that are **boldfaced** in endorsements to this policy have special meaning. These are explained in the Definitions section of this policy or in the endorsement if necessary. If **you** have any concerns about this policy, ask **your** agent or broker who will be happy to answer **your** questions.

AGREEMENT

We agree to provide the insurance described in this policy in return for the premium paid. **You** agree to comply with all responsibilities, conditions and terms of this policy.

DEFINITIONS

Certain words in **your** policy and its endorsements are printed in **bold** type. This is to let **you** know these words have a defined meaning. Carefully read these definitions below or in the endorsement if one is included.

1. **Covered person** means:

- a. **Individual.** If this policy is in **your** name as an individual: **you**, any **business** described on the Declarations Page and Umbrella Schedule of which **you** are a sole proprietor, **your** spouse if a resident of the same household, any relative, ward or foster child who lives in **your** household, or any person under the age of 21 who lives in **your** household and who is under **your** care or the care of a relative who lives in **your** household;
- b. **Partnership-joint venture.** If this policy is in the name of a partnership or joint venture: that organization, any individual partners or co-venturers and their spouses, but only for their liability as members of the named organization and with respect to the conduct of such **partnership** or **joint venture**.
- c. **Corporation.** If this policy is in the name of a **corporation** or other type of **business** organization: the organization, its executive officers, directors and stockholders while acting within the scope of their duties for the named organization;
- d. **Employees. Your employees** while they are acting within the scope of their employment by **you** or while performing duties related to the conduct of **your business**; however, **employees** do not include independent contractors;
- e. **Real estate manager.** Any person or organization, other than **your employees**, while acting as a real estate manager for **you**;
- f. **Limited Liability Company. You**, if this policy is in the name of a Limited Liability Company. It also means **your** members but only with respect to the conduct of **your business**; and that of **your** managers but only with respect to their duties as **your** managers;
- g. **Trust. You**, if this policy is in the name of a Trust. It also means **your** trustees but only with respect to their duties as **your** trustees;
- h. Those covered under **your primary insurance**. Any other person or organization who is covered under **your primary insurance**, subject to the same coverage terms, conditions, limitations and exclusions contained in **your primary insurance**.

2. **Advertising injury** means the following offenses committed in the course of **your** advertising activities and while **your** policy is in effect:
 - a. Oral or written publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
 - b. Oral or written publication of material that violates a person's right of privacy;
 - c. Misappropriation of advertising ideas or style of doing **business**;
 - d. Infringement of copyright, title or slogan.
3. **Aircraft** means any contrivance used or designed for flight, except model or hobby aircraft not used for or designed to carry people or cargo.
4. **Auto** means a motorized land vehicle, which requires motor vehicle registration and/or operator licensing, including attached trailers, travel trailers, motor homes and **motorcycles**.
5. **Bodily Injury** means bodily injury, sickness or disease sustained by a person. This includes resulting death from any of these at any time.
6. **Business** includes any trade, profession or occupation. It does not include any farming activities.
7. **Business property** includes:
 - a. Property on which a **business** is conducted;
 - b. Property which is rented or held to be rented to others.This does not include property rented to others for habitational use with fewer than five units at one location, covered by a personal lines **primary insurance** liability policy, and listed in the Personal Umbrella section of the Umbrella Schedule.
8. **Fungi** includes, but is not limited to, any form or type of fungus, including mold or mildew and any mycotoxins, spores, scents or byproducts produced or released by fungi.
9. **Loss** means:
 - a. An accident, including continuous or repeated exposure to substantially the same general harmful conditions, which results in **bodily injury** or **property damage** during the policy period;
 - b. An offense, including a series of similar or related offenses, committed during the policy period, which results in **personal injury** or **advertising injury**.
10. **Motorcycle** means a motor vehicle registered for road use, having a seat or saddle for the use of the rider, designed to travel on not more than three wheels in contact with the ground, and weighing less than 1,500 pounds. A motor vehicle that has four wheels in contact with the ground, two of which are a functional part of a sidecar, is a motorcycle. For purposes of this policy, a motor scooter or moped is considered a motorcycle.
11. **Net loss** means:
 - a. The amount the **covered person** is legally obligated to pay as damages as a result of a **loss**, and includes any **prejudgment interest** awarded against a **covered person**.
 - b. All reasonable expenses the **covered person** incurs in the investigation, settlement, and defense of any claim or **suit** at **our** request. This does not include expenses covered by **primary insurance** or **other insurance**, expenses **we** incur under the Defense and Settlement Section of this policy, or salaries of **employees** of the **covered person**.
12. **Other insurance** means insurance available to any **covered person** that covers a **loss** to which this policy applies, other than either **primary insurance** or insurance specifically purchased by **you** to be excess of the insurance afforded by this policy.
13. **Personal Injury** means physical or mental harm arising out of one or more of the following acts, but only if the act was committed during the policy period:
 - a. False arrest, detention or imprisonment;
 - b. Malicious prosecution;
 - c. Wrongful entry or eviction;
 - d. Any oral or written publication that slanders, libels, disparages, or violates a person's right of privacy;
14. **Prejudgment interest** means interest added to a settlement, verdict, award or judgment based on the time the **loss** occurred to the time of the settlement, verdict, award or judgment, whether or not made part of the settlement, verdict, award or judgment.

15. **Primary insurance** means the policies listed in this policy's Umbrella Schedule.
16. **Primary Insurer** means any insurer that issues a policy of **primary insurance**.
17. **Property damage** means:
 - a. Physical injury to or destruction of tangible property, including all resulting **loss** of use of that property. All such **loss** of use shall be deemed to occur at the time of the physical injury that caused it; or
 - b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of accident, defined in part a. of the definition of **loss** that caused it.

For the purposes of this insurance, electronic data is not tangible property. As used in this policy, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.
18. **Recreational vehicle** means a motorized land vehicle which is designed for recreational use off public roads. A **recreational vehicle** does not include:
 - a. A motor home or travel trailer which requires motor vehicle registration;
 - b. A motor vehicle not intended for recreational use such as a bulldozer, farm equipment, cranes, forklifts or other construction vehicles, machinery or equipment; or
 - c. A golf cart which is not registered for road use and used primarily on and around a golf facility, around a private residence and/or a private community.
19. **Retained limit** means the greater of:
 - a. The sum of the applicable limit of liability of **your primary insurance** as it is shown in this policy's Umbrella Schedule and the actual amount collectible under any **other insurance** which applies; or
 - b. If this policy applies but **your** required **primary insurance** does not provide coverage for the **loss**, the amount shown on this policy's Declarations Page as the Self Insured Retention.
20. **Suit** means any civil proceeding which alleges damages because of loss. In addition to civil litigation, **suit** includes:
 - a. An arbitration proceeding alleging such damages and to which a **covered person** must submit or submits with **our** consent; or
 - b. Any other alternative dispute resolution proceeding alleging such damages and to which the **covered person** submits with **our** consent.
21. **Watercraft** means a boat or craft principally designed to be propelled on or in the water by wind, engine power or electric motor.

WHAT THIS POLICY COVERS

Coverage A- Bodily Injury, Personal Injury, Advertising Injury and Property Damage Liability.

1. This policy covers a **covered person's** legal obligation to pay damages for a covered **loss** over and above the **retained limit**. If a **covered person** is legally obligated to pay damages for a **loss** to which this policy applies, **we** will pay the **net loss** minus the **retained limit**.
2. The Limit of Liability as shown in this policy's Declarations Page for Coverage A is the most **we** will pay for any one **loss**, regardless of the number of **covered persons**, persons or organizations injured, claims made, **suits** brought, or organizations making claims or bringing **suits**.
3. The Policy Total Limit shown in this policy's Declarations Page for Coverage A is the most **we** will pay for all **losses** arising out of **business** operations and/or **business property** during each policy period. This policy total limit applies separately to the policy period shown on the Declarations Page and to each subsequent consecutive annual period unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the policy total limit.

Coverage B- Excess Uninsured and Underinsured Motorists Bodily Injury Insurance.

1. The terms, conditions and exclusions of the uninsured motorists insurance (including underinsured motorists) of the automobile liability **primary insurer** policy listed in the Umbrella Schedule also apply to this coverage.
2. We will pay those sums which a **covered person** or their legal representative shall become legally entitled to recover as damages because of **loss** which is covered by the uninsured motorists insurance (including underinsured motorists) of the automobile liability **primary insurer** policy listed in the Umbrella Schedule, less the applicable limit of liability of uninsured or underinsured motorists insurance.

3. The Limit of Liability as shown in this policy's Declarations Page for Coverage B is the most **we** will pay for any one **loss**, regardless of the number of **covered persons**, persons or organizations injured, claims made, **autos** covered under this policy, **autos** involved in an accident, coverages under this policy, exposures or premiums charged in the Declarations Page, or persons or organizations making claims or bringing **suits**.
4. The Policy Total Limit as shown in this policy's Declarations Page for Coverage B is the most **we** will pay for all **losses** during each policy period. The policy total limit applies separately to the policy period shown on the Declarations Page and to each subsequent consecutive annual period unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the policy total limit.

POLICY TERRITORY

Coverage A- Bodily Injury, Personal Injury, Advertising Injury and Property Damage Liability.

1. This insurance applies to a **loss** anywhere in the world.

Coverage B- Excess Uninsured and Underinsured Motorists Bodily Injury Insurance.

1. Applies to **loss** which is sustained during the policy period within the policy territory defined in the uninsured motorists insurance (including underinsured motorists) of the automobile liability **primary insurer** listed in the Umbrella Schedule.

DEFENSE AND SETTLEMENT

Coverage A- Bodily Injury, Personal Injury, Advertising Injury and Property Damage Liability.

1. If a claim is made or a **suit** is brought against a **covered person** for damages because of a **loss** to which this insurance applies:
 - a. At **our** discretion, **we** may investigate any **loss** and settle any claim or **suit**. **We** have a duty to provide a defense at **our** expense by counsel of **our** choice unless the **loss** is covered by **your primary insurance** or **other insurance**.
 - b. **We** have the right but not the duty to join, at **our** expense, with the **covered person** or any **primary insurer** in the investigation, defense, or settlement of any claim or **suit** which we believe may require a payment under this policy. When we have no duty to provide a defense, **we** will not contribute to costs and expenses incurred by the **covered person** or any **primary insurer**, or which any **primary insurer** is obligated to provide.
 - c. **Our** duty to defend any claim or **suit** arising out of a single **loss** ends when the applicable limit of liability is exhausted in the payment of judgments or settlements.
 - d. In any country where **we** are prevented from defending a **covered person** because of laws or other reasons, **we** will pay any expense incurred with **our** written consent for that defense.
2. When **we** have the duty to defend a claim or **suit** under this policy, **we** will:
 - a. Pay premiums on bonds to release attachments up to the limit of this policy. **We** will also pay premiums on appeal bonds and the cost of bail bonds but **we** will not apply for or furnish such bonds.
 - b. Pay interest, which accrues after the date of judgment and before **we** pay or tender, or deposit in court, that part of any judgment within this policy's applicable limit of liability.
 - c. Pay all reasonable expenses incurred at **our** request. **We** will pay the **covered person** up to \$200 per day, but not to exceed \$10,000 in total for loss of earnings for attending hearings or trials at **our** request.
 - d. Pay all expenses we incur and costs taxed against a **covered person** in any suit we defend.
3. When **we** settle a claim, **we** will pay all settlement expenses **we** have agreed to pay.

Coverage B- Excess Uninsured and Underinsured Motorists Bodily Injury Insurance.

1. **We** have no duty or obligation to assume the responsibility for the investigation, settlement or defense of any claim made or any **suit** brought by or on behalf of any **covered person**.
2. However, **we** shall have the right and shall be given the opportunity to investigate and to be associated in the control of any claim or **suit** or **loss** which may, in **our** opinion, create liability on **our** part under the terms of this policy.

WHAT IS EXCLUDED

Under Coverage A- Bodily Injury, Personal Injury, Advertising Injury and Property Damage Liability.

1. **WE DO NOT PROVIDE COVERAGE UNLESS COVERED BY YOUR PRIMARY INSURANCE LISTED IN THE UMBRELLA SCHEDULE AND DESCRIBED IN THE UMBRELLA SCHEDULE FOR:**
 - a. **Loss** arising out of **business** operations or **business property**.
 - b. **Loss** arising out of:
 - i. **Autos** which are owned by, leased to, rented to, or provided for the regular use of a **covered person**;
 - ii. **Recreational vehicles** which are owned by, leased to, rented to, or provided for the regular use of a **covered person**;
 - iii. **Watercraft** which are owned by, leased to, rented to, or provided for the regular use of a **covered person**.

However, the following **watercraft** do not need to be described in the Umbrella Schedule as long as coverage is provided in **your primary insurance** which is listed in the Umbrella Schedule:
Watercraft of the following types if under 27 feet in overall length:

 - Without motors,
 - Rented inboard and inboard/outdrive of 50 horsepower or less,
 - Owned of 25 horsepower or less, or
 - Owned or rented sailboats; or
 - iv. Residential property (including occasional residences).

This exclusion (part 1.b) does not apply if newly acquired, leased or rented by **you** during the policy period and are covered by the **primary insurance** listed in the Umbrella Schedule.
2. **WE DO NOT PROVIDE COVERAGE UNLESS COVERED BY YOUR PRIMARY INSURANCE LISTED IN THE UMBRELLA SCHEDULE FOR:**
 - a. **Personal Injury or Advertising Injury**.

However, this insurance will not provide coverage under any circumstance for any **personal injury or advertising injury**:

 - i. caused by or at the direction of a **covered person** with the knowledge that the act would violate the rights of another and would inflict **personal injury or advertising injury**;
 - ii. arising out of oral or written publication of material, if done by or at the direction of a **covered person** with knowledge of its falsity;
 - iii. arising out of oral or written publication of material whose first publication took place before the beginning of the policy period;
 - iv. arising out of a criminal act committed by or at the direction of a **covered person**;
 - v. arising out of the infringement of copyright, patent, trademark, trade secret or other intellectual property rights;
 - vi. committed by a **covered person** whose business is:
 - a. Advertising, broadcasting, publishing or telecasting;
 - b. Designing or determining content of web-sites for others; or
 - c. An Internet search, access, content or service provider; or
 - vii. arising out of an electronic chatroom or bulletin board a **covered person** hosts, owns, or over which a **covered person** exercises control.
 - b. Vicarious parental liability, whether or not statutorily imposed, for the actions of a child or minor.
 - c. **Loss** that results because **you** or any **covered person** is engaged in the **business** of manufacturing, distribution, selling or serving alcoholic beverages if liability is imposed by reason of:
 - i. Causing or contributing to the intoxication of any person;
 - ii. The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
 - iii. Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.
 - d. **Loss** by reason of the assumption of liability in any contract or agreement. This exclusion does not apply to liability for damages, which would have been covered in the absence of the contract or agreement.
 - e. **Loss** arising out of, resulting from, caused by or contributed to by any animal.

- f. **Loss** arising out of, resulting from, caused by or contributed to by trampolines or swimming pools.
- g. Any **loss** resulting from any of the following, even if other events or happenings contributed concurrently or in sequence, to the **loss**:
 Earth movement, due to natural or man-made events, meaning earthquake including land shock waves or tremors, before, during or after a volcanic eruption; mine subsidence; landslide; mud-slide; mud flow; earth sinking; rising or shifting.

3. **WE DO NOT PROVIDE COVERAGE EXCEPT UNDER EXPLICITLY STATED CONDITIONS FOR:**

- a. **Loss** or resulting damage either expected or intended by the **covered person**. This exclusion does not apply to **bodily injury** resulting from the use of reasonable force to protect persons or property.
- b. **Loss** arising out of any **covered person's** act, error or omission as a member of an organization's board of directors or as an officer of an organization. This exclusion does not apply if **you** are an **individual** and the organization:
 - i. Was formed as a not-for-profit organization;
 - ii. Does not involve the **business** of any **covered person**; and
 - iii. Such **covered person** serves without remuneration.
- c. **Loss** arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of pollutants or any **loss**, cost or expense arising out of any:
 - i. Request, demand or order that any **covered person** or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to or assess the effects of pollutants; or
 - ii. Claim or **suit** by or on behalf of a governmental authority or others for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to or assessing the effects of pollutants.

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

This exclusion does not apply to **loss** arising out of heat, smoke, or fumes from a hostile fire if such **loss** is covered by **your primary insurance**. Hostile fire means one which becomes uncontrollable or breaks out from where it was intended to be.

- d. **Loss** arising out of the use, sale, manufacture, delivery, transfer or possession of a controlled substance(s) as defined by the Federal Food and Drug Law at 21 U.S.C.A. sections 811 and 812. Controlled substances include, but are not limited to, cocaine, LSD, marijuana and all narcotic drugs. However, this exclusion does not apply to the legitimate use of prescription drugs by a person following the orders of a licensed physician.

4. **WE NEVER PROVIDE COVERAGE OR DEFENSE FOR:**

- a. Liability that is payable or must be provided under:
 - i. Any workers' or unemployment compensation, disability benefits or similar law; or
 - ii. The Employees Retirement Income Security Act (ERISA) of 1974 as now written or as it may be amended in the future.
- b. Claims for **personal injury** or **bodily injury** to a **covered person**.
- c. Any person or organization for their liability arising from membership in a **partnership** or **joint venture** or **limited liability company** or **trust** which is not a **covered person**.
- d. **Property damage** to any:
 - i. Property owned by, rented to or occupied by any **covered person**;
 - ii. Property which a **covered person** uses, has custody of, controls or manages; or
 - iii. Premises any **covered person** sells, gives away, or abandons, if the **property damage** arises out of any part of those premises.
- e. Ownership, chartering, renting or leasing, maintenance, use, operation (including loading or unloading), entrustment or supervision of any **aircraft**.
- f. Providing or failing to provide any professional service by or on behalf of any **covered person**.

- g. **Loss** which is covered by a nuclear energy liability policy issued by a group such as one of those listed below, or which would have been covered by such a policy, if such policy had been acquired or if its limits had not been exhausted:
 - i. The American Nuclear Insurers;
 - ii. The Mutual Atomic Energy Liability Underwriters; or
 - iii. The Nuclear Insurance Association of Canada
- h. **Losses** arising out of:
 - i. The toxic or pathological properties of lead, lead compounds or lead contained in any materials;
 - ii. Any cost or expense to abate, mitigate, remove or dispose of lead, lead compounds or materials containing lead;
 - iii. Any supervision, instructions, recommendations, warnings or advice given or which should have been given in connection with i or ii above; or
 - iv. Any obligation to share damages with or repay someone else who must pay damages in connection with i, ii or iii above.
- i. **Losses** arising out of:
 - i. The toxic or pathological properties of asbestos, asbestos compounds or asbestos contained in any materials;
 - ii. Any cost or expense to abate, mitigate, remove or dispose of asbestos, asbestos compounds or materials containing asbestos;
 - iii. Any supervision, instructions, recommendations, warnings or advice given or which should have been given in connection with i or ii above; or
 - iv. Any obligation to share damages with or repay someone else who must pay damages in connection with i, ii or iii above.
- j. **Loss** arising, directly or indirectly, out of:
 - i. War, including undeclared or civil war;
 - ii. Warlike action by a military force, including action in hindering or defending against an actual or expected attack by any government, sovereign or other authority using military personnel or other agents; or
 - iii. Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.
- k. **Loss** arising out of discrimination including, but not limited to sexual preference, pregnancy, marital status, color, race, sex, age, disability, religion or national origin.
- l. **Loss** arising out of employment related practices, policies, acts or omissions, such as coercion, demotion, termination, evaluation, reassignment, discipline, defamation, harassment, humiliation or discrimination.
- m. Transmission or alleged transmission by any **covered person** of a communicable sickness or disease.
- n. Actual or threatened abuse or molestation including, but not limited to, mental, physical or sexual abuse or molestation of any person while in the care, custody or control of any **covered person**.
- o. Ownership or operation of a farm.
- p. Any **covered person's** share of any loss assessments charged against all members of an association, **corporation**, or community of property owners.
- q. **Loss** arising out of any contracting or property development operations by or on behalf of any **covered person**.
- r. Fines, penalties, punitive or exemplary damages of any kind.
- s. **Loss for Bodily Injury, or Property Damage or Personal Injury and/or Advertising Injury** arising directly or indirectly out of any action or omission that violates or is alleged to violate:
 - i. The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law;
 - ii. The CAN-SPAM Act of 2003, including any amendment of or addition to such law; or
 - iii. Any statute, ordinance or regulation, other than the TCPA or CAN-SPAM Act of 2003, that prohibits or limits the sending, transmitting, communicating or distribution of material or information.
- t. **Loss** arising out of any:
 - i. First party automobile personal injury protection, no-fault automobile coverage, or any similar coverage.

- ii. Medical payments as provided under any **primary insurance**.
 - iii. Uninsured or underinsured motorists coverage or any similar coverage.
- u. **Loss** sustained by an **employee**, prospective **employee**, former **employee** (or the beneficiaries or legal representatives of any of them) of any **covered person** caused by or arising out of improperly administering or failing to administer any employee benefit program.
- v. **Loss** arising from **Fungi** or Bacteria:
- i. to any liability which would not have occurred, in whole or in part, but for the actual, alleged or threatened inhalation of, contact with, exposure to, or presence of, any **fungi** or bacteria on or within a building or structure, including its contents, regardless of whether any other cause, event, material or product contributed concurrently or in any sequence to such injury or damage.
 - ii. any **loss**, cost or expenses arising out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating or disposing of, or in any way responding to, or assessing the effects of, **fungi** or bacteria, by any **covered person** or by any other person or entity.
- This exclusion does not apply to any **fungi** or bacteria that are, are on, or are contained in, a good or product intended for consumption.
- w. Any **loss** or claim for damages arising out of or related to **bodily injury** or **property damage**, whether known or unknown by any **covered person**, any claimant or **us** if:
- i. Such **bodily injury** or **property damage** first occurred prior to the inception date of this policy; or
 - ii. Such **bodily injury** or **property damage** is, or is alleged to be, in the process of occurring as of the inception date of this policy.
- x. Any **loss** or claim for damages arising out of or related to **bodily injury** or **property damage**, whether known or unknown by any **covered person**, any claimant or **us**, which is in the process of settlement, adjustment or a civil proceeding in which damages because of **bodily injury** or **property damage** to which this policy applies are alleged.
- y. Employers' liability. If an **employee** of any **covered person** suffers a **loss** arising out of and in the course of their employment, **we** will not cover or defend against:
- i. Claims made against a **covered person** as an employer or in any other capacity;
 - ii. Claims made against a **covered person** by a spouse, child, parent, brother or sister of a **covered person's employee** as a consequence of a **loss** sustained by the **employee**;
 - iii. Any obligation to share damages with or indemnify someone else for damages that arise from **loss**; or
 - iv. Any damages claimed for care or **loss** of services.
- z. **Loss** arising out of racing activities involving the use of **autos**, **recreational vehicles** or **watercraft** while they are being operated in, or practicing for, any prearranged or organized race, speed contest or other similar competition. However, this exclusion does not apply to sailboats.

WHAT IS EXCLUDED

Under Coverage B- Excess Uninsured and Underinsured Motorists Bodily Injury Insurance.

WE NEVER PROVIDE COVERAGE FOR:

1. **Loss** occurring at any time during which **you** do not maintain uninsured motorists (including underinsured motorists) **primary insurance**.
2. **Loss**, which is not covered or collectible for any reason under **your** uninsured motorists (including underinsured motorists) **primary insurance**.
3. Fines, penalties, punitive damages or exemplary damages of any kind.
4. **Loss** arising out of any:
 - a. First party automobile personal injury protection or no-fault automobile coverage or any similar coverage.
 - b. Medical payments as described in your **primary insurance**.
 - c. Uninsured and underinsured motorists property damage, including any collision damage waiver coverage.

YOUR RESPONSIBILITIES

1. **Primary insurance** requirements:

- a. **You** agree that all **primary insurance** described in this policy or Umbrella Schedule is in force for any:
 - i. Personal residence or rental property owned, rented or leased by **you** or any **covered person**.
 - ii. **Business** operations or **business property** owned, rented or leased by **you** or any **covered person**; and
 - iii. **Auto, watercraft or recreational vehicle** owned, leased, rented or provided for the regular use of any **covered person**
- b. **You** agree that all **your primary insurance** will be maintained with the coverages and at the limits declared and described in the Umbrella Schedule for all covered persons. If **your primary insurance** does not provide the limits indicated, the **covered person** will be responsible for the amount of the **net loss** up to the indicated limits of the **primary insurance** as described in the Umbrella Schedule.
- c. In the event of bankruptcy or insolvency of any **primary insurer**, the insurance afforded by this policy shall not replace such **primary insurance**, but shall apply as if the **primary insurance** was valid and collectible.

2. After a **loss**:

- a. If a **loss** seems likely to involve this policy, **you** and any involved **covered person** must:
 - i. Notify **your** broker, **your** agent or **us** as soon as possible. **We** may subsequently require a detailed written notice of **loss**. **We** should be given a full description of the **loss**, including the names and addresses of any persons injured and any witnesses.
 - ii. Promptly send **us** copies of any notices, legal papers or other documents received or sent in connection with the **loss**.
 - iii. Cooperate with **us** in the investigation, settlement and defense of any claim or **suit**. **We** do not have to provide coverage if **you** or any **covered person** involved refuses to assist **us**.
 - iv. Obtain **our** written consent before making any payments, assuming any obligations or incurring any expenses with respect to a **loss** covered by this policy. Any **covered person** who makes any payment, assumes any obligation or incurs any expense with respect to a **loss** covered by this policy without **our** prior written consent undertakes such actions voluntarily and at such **covered person's** own cost.
 - v. Assist **us** in the enforcement of any right against any person or organization who may be liable to **you** in connection with the **loss**.
- b. If the insurer of any **primary insurance** denies coverage for any reason, the **covered person** must immediately notify **us** in writing and tell **us** the reason for such denial as stated by the **primary insurer**. Before making a claim under this policy, if **we** request it, the **covered person** must start legal proceedings at **our** expense against the **primary insurer** to determine, by final judgment, the legality of its position.
- c. If the **covered person** breaches a **primary insurance** policy condition, and if such breach is not a breach of a condition of this policy, the insurance afforded by this policy shall apply as if the **primary insurance** had not been breached.

GENERAL CONDITONS

1. Changing **Your** Policy.

Any change to this policy must be made by endorsement issued by **us**. **We** will adjust the premium if necessary. If **we** broaden the coverage in **our** umbrella liability program without increasing the premium, **we** will also apply the broadened coverage to **your** policy. The broadened coverage will apply only to **loss** that occurs after the date the coverage is added.

2. Premium.

The premium for this policy is a flat charge determined in advance and is based on the exposures declared in the application. Changes which occur after the inception of the policy, in driving records or the number of drivers, **autos, recreational vehicles, watercraft** or residential premises covered by the policy, will not affect the premium.

3. Cancelling **Your** Policy.

We can cancel this policy by giving **you** not less than 30 days' advance written notice that states when the policy coverage will end. If **we** cancel for non-payment of premium or **your** material misrepresentation of facts in obtaining this policy or in presenting a claim, **we** will give **you** 10 days' advance written notice that states when the policy coverage will end. **We** will give **you our** reason for cancelling **your** policy at the same time **we** send **you** notice of cancellation.

i. **You** can cancel this policy at any time by returning it to **us** or **your** agent or broker telling **us**, in writing, at what future time **you** want coverage to end.

ii. If **we** cancel this policy, **we** will compute unearned premium due **you** as soon as possible following cancellation of **your** policy. If **you** cancel this policy, **we** will compute unearned premium at 90% of pro-rata and return any premium due **you** as soon as possible following cancellation of **your** policy. If the result of computing unearned premium shows that **you** owe **us** unpaid premium, **you** agree to pay **us** as soon as **you** receive **our** bill for premium due.

4. Non-Renewal of Your Policy.

We may choose not to renew **your** policy for another year. **We** will give **you** not less than 60 days' advance written notice before **your** policy coverage is due to end. **We** will give **you our** reason for non-renewal of **your** policy at the same time **we** send **you our** notice of non-renewal.

5. Expense Fee.

Regardless of whether **you** or **we** cancel the policy, if one or more days of coverage is provided, the expense fee is fully earned and will not be refunded.

6. Transferring **Your** Policy.

You agree not to transfer or assign any of **your** rights under this policy without **our** written approval.

7. Bankruptcy, Insolvency or Death.

This policy's coverage is not affected by **your** bankruptcy or insolvency. If **you** die or are declared bankrupt or insolvent, **your** estate and **your** legal representatives will be covered until the end of the policy period.

8. Appeals.

If a **covered person** or any insurer providing **primary insurance** elects not to appeal a judgment which exceeds the **retained limit**, **we** may do so at **our** own expense. **We** will pay all costs, taxes, expenses and interest related to **our** appeal. The amounts **we** pay will be in addition to **our** limit of liability.

9. Legal Action Against **Us**.

No **covered person** may bring legal action against **us** concerning this policy unless such **covered person** has fully complied with all of its terms and conditions. No legal action may be brought against **us** until judgment against such **covered person** has been finally determined after trial or by agreement between the claimant or the claimant's legal representative and **us**. This policy does not give anyone the right to make **us** a party to any action to determine the liability of a **covered person**. **We** are not liable for damages that are not payable under this policy or that are in excess of the applicable limits of insurance.

10. **Our** Right to Recover from Others.

After **we** have made payment under this policy, **we** have the right to recover the payment from anyone, other than **you**, who may be held responsible for the **loss**. A **covered person** will be required to sign any papers and do whatever else is necessary to transfer this right to **us**. Neither **you** nor anyone else **we** insure in this policy has the right to do anything after a **loss** to prejudice **our** right.

11. Sole Agent.

The Named Insured first shown on the Declarations Page is authorized to act on behalf of all **covered persons** with respect to giving notice of cancellation or non-renewal, receiving refunds and agreeing to any changes in this policy.

12. **Other Insurance.**

If **other insurance** applies to a **loss** covered by this policy, the insurance under this policy is excess and **we** will not make any payments until such **other insurance** is used up. This condition does not apply if the **other insurance** is specifically excluded by this policy.

13. Representations.

By accepting this policy, **you** agree that the statements in the Declarations Page and Umbrella Schedule are accurate and complete, those statements are based upon representations **you** made to **us** through **your** broker whose name appears on **our** Declarations Page, and **we** have issued this policy in reliance upon **your** representations. This policy is void in any case of material misrepresentation by **you** as it relates to this policy or any claim under this policy.

14. Fraud.

We do not provide coverage for any **covered person** who has made fraudulent statements or engaged in fraudulent conduct in connection with any **loss** for which coverage is sought under this policy. **ANY PERSON WHO KNOWINGLY PRESENTS A FALSE OR FRAUDULENT CLAIM FOR PAYMENT OF A LOSS OR BENEFIT OR KNOWINGLY PRESENTS FALSE INFORMATION IN AN APPLICATION FOR INSURANCE IS GUILTY OF A CRIME AND MAY BE SUBJECT TO CIVIL FINES AND CRIMINAL PENALTIES.**

SAMPLE POLICY

New Mexico - Changes

This endorsement modifies insurance provided under the following:

PERSONAL AND BUSINESS OWNER'S UMBRELLA LIABILITY POLICY

- I. Paragraphs 3. Cancelling **Your** Policy and 4. Non-Renewal of **Your** Policy under **GENERAL CONDITIONS** are deleted and replaced by the following:

3. Cancelling **Your** Policy

- a. **We** may cancel this policy only for the reasons stated below by letting **you** know in writing of the date the cancellation takes effect. **We** may cancel this policy by mail or by delivering written notice to **you** at **your** mailing address shown in the Declarations Page or at **your** last address known to **us**. Proof of mailing will be sufficient proof of notice.

(1) When **you** have not paid the premium **we** may cancel at any time by letting **you** know at least 10 days before the date the cancellation takes effect. **We** will provide the reason for cancellation within **our** notice to **you**.

(2) When this policy has been in effect for 60 days or less and is not a renewal with **us**, **we** may cancel for any reason by letting you know at least 30 days before the date the cancellation takes effect. The effective date of cancellation must fall within such 60 day period. **We** will provide the reason for cancellation within **our** notice to **you**.

(3) When this policy has been in effect for more than 60 days, or at any time if it is a renewal with **us**, **we** may cancel:

(a) If there has been a material misrepresentation of fact which if known to **us** would have caused **us** not to issue the policy;

(b) If the risk has changed substantially since the policy was issued;

(c) When motor vehicle insurance is provided, if **your** driver's license or that of:

(1) Any driver who lives with **you**; or

(2) Any driver who customarily uses any **auto we** insure;

has been suspended or revoked. This must have occurred:

(1) During the policy period if this is not a renewal; or

(2) If this is a renewal, during the policy period or the 180 days immediately preceding this policy's effective date.

(d) For fraud or material representation affecting this policy or in the presentation of a claim; or

(e) For substantial breach of contractual duties, conditions or warranties.

Our reason for cancelling the policy will be provided within **our** notice to **you** at least 30 days before the date cancellation takes effect.

- b. **You** can cancel this policy at any time by returning it to **us** or **your** agent or broker, telling **us**, in writing, at what future time **you** want coverage to end.

- c. If **we** cancel this policy, **we** will compute unearned premium due to **you** as soon as possible following cancellation of **your** policy. If **you** cancel this policy, **we** will compute unearned premium at 90% of pro-rata and return any premium due to **you** as soon as possible following cancellation of **your** policy. If the result of computing unearned premium shows that **you** owe **us** unpaid premium, **you** agree to pay **us** as soon as **you** receive **our** bill for premium due.

4. Non-Renewal of **Your** Policy:

We may elect not to renew this policy. If **we** do not renew, **we** will deliver to **you**, or mail to **you** at **your** mailing address shown in the Declarations Page or at the last mailing address known to **us**, written notice of non-renewal at least 30 days before the expiration date of this policy. Proof of mailing will be sufficient proof of notice. **We** will provide the reason for non-renewal within **our** notice to **you**.

SAMPLE POLICY

For your protection New Mexico law requires we include the following statement,

“Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance is guilty of a crime and may be subject to civil fines and criminal penalties.”

NOTICE

American Alternative Insurance Corporation's Privacy Policy

Dear Policyholder:

The nature of our insurance business at American Alternative Insurance Corporation ("AAIC") requires that we gather and maintain a variety of information about our current and potential customers and consumers, including nonpublic personal information about individuals. We are committed to keeping confidential and secure any such nonpublic personal information. We will disclose nonpublic personal information obtained in the course of our business only as permitted by law.

Categories of Personal Information We May Obtain

We may obtain nonpublic personal information from the following sources:

- **Applications or other underwriting forms.** These forms provide us with information we need as part of the underwriting process; this includes such nonpublic personal information as individuals' names, addresses, social security numbers and other identifying information that we will use to authorize our agents to underwrite and administer policies on their behalf.
- **Information we obtain from third parties.** The kind of information we may gather from third parties depends on the type of insurance policy or coverage, but may include such nonpublic personal information as motor vehicle reports, claims reports, credit reports, property inspection reports, and medical records or reports.
- **Information about transactions and experiences with us or with our affiliates.** We develop and maintain individuals' personal information, such as policy numbers, premium payments and claims history, obtained on the basis of AAIC's or its affiliates transactions and experiences.

How We May Use and Share Personal Information

We may use and share all of the information that we obtain as described below:

- **Within AAIC**

Within AAIC we only use nonpublic personal information received to service or maintain policies, to effect, process, administer or enforce requested or authorized transactions, or for other purposes as permitted by law. We restrict access to nonpublic personal information to those employees who have a business reason to know that information to provide products and services. We also maintain physical, electronic, and procedural safeguards in order to protect against unauthorized use or disclosure of nonpublic personal information.
- **With Affiliates and Non-Affiliated Third Parties**

We may disclose information about AAIC's customers and consumers to others, including our affiliates (i.e. companies that are related to us by common ownership or control), in order to offer insurance products or services that may be of value.

We may also disclose nonpublic personal information without prior permission to nonaffiliated third parties (i.e., persons or companies that are not related to us by common ownership or control) as necessary to effect, process, administer or enforce a requested or authorized transaction, or for other purposes as permitted by law.

When we provide nonpublic personal information to a nonaffiliated third party who performs services for us, we require that provider to agree to safeguard any nonpublic personal information, to use the information only for the intended purpose, and to abide by applicable law.

Confidentiality of Health and Medical Information

It is often necessary for us to obtain personal health information in order to underwrite and process claims for various types of insurance coverages. We recognize concerns about the security of that information and want to provide assurance that any personal health data provided to us or that we otherwise obtain will be held in strict confidence. We will not disclose or share personal medical information for marketing or any other unauthorized purpose. We may disclose or share personal medical information as permitted by law; for example, in order to underwrite policies or administer policies or claims.

Purpose of and Updates to This Notice

We recognize and respect the privacy concerns of our potential and current customers and consumers. We may amend our privacy policy from time to time. We send this notice of our privacy policy at this time as required for informational purposes, and we will update and distribute it as required by law.