

7



this exclusion provided that these are not part of a transmitter's or distributor's policy.

- (2) Pools, Associations, or Syndicates, including State Insurance Guaranty Associations. However, such operations which Sheboygan Falls is obliged to cover by reason of membership or participation in any Automobile Assigned Risk Pool, Plan or Facility, any FAIR Plan or any Coastal Pool are not to be excluded.
- (3) Insurance on Growing and/or Standing Crops.
- (4) Reinsurance of any kind assumed by Sheboygan Falls, except local agency reinsurance accepted in the normal course of business.
- (5) Bridges, tunnels and art collections.
- (6) Aviation.
- (7) Insolvency Funds, as per clause attached.
- (8) Flood, when written as such.

B. Extra Contractual Obligations and Losses in Excess of Original Policy Limits – "Extra Contractual Obligations" are defined as those liabilities not covered under any other provision of this Agreement and which arise from the handling of any claim on business covered hereunder, such liabilities arising because of, but not limited to, the following: failure by Sheboygan Falls to settle within the policy limit, or by reason of alleged or actual negligence, fraud or bad faith in rejecting an offer of settlement or in the preparation of the defense or in the trial of any action against its Insured or Reinsured or in the preparation or prosecution of an appeal consequent upon such action.

The term "Losses in Excess of Original Policy Limits" shall mean a net loss of Sheboygan Falls which is in excess of the limit of its original policy, such loss in excess of the limit having been incurred because of the following: failure by Sheboygan Falls to settle within the policy limit or by reason of alleged or actual negligence, fraud or bad faith in rejecting an offer or settlement or in the preparation of the defense or in the trial of any action against its Insured or Reinsured or in the preparation or prosecution of an appeal consequent upon such action.

- C. Fidelity, Surety, Credit, Title, Insolvency and Financial Guaranty.
- D. Loss or Liability excluded by the provisions of the Nuclear Incident Exclusion Clause – Physical Damage – Reinsurance, as per clause attached hereto.

E. War, as defined in the original policy.

F. Ocean Marine.

**Article 4**

**Term**

This Agreement shall become effective on \_\_\_\_\_, 2007 at 12:01 A.M. Standard Time. It is unlimited as to its duration and may be terminated by either party upon giving twelve months notice of cancellation in writing. In the event either party terminates in accordance with the above, it is understood that all transactions coming within the terms of this Agreement will continue in effect within the said twelve months. In addition coverage will be provided on a "run-off" basis for policies incepted prior to the effective date of the termination.

**Article 5**

**Definition of Loss Occurrence**

The term "Loss Occurrence" shall mean any one occurrence or series of occurrences arising out of one event.

**Article 6**

**Net Retained Lines**

This Agreement applies only to that portion of any insurance or reinsurance covered by this Agreement which Sheboygan Falls retains net for its own account, and in calculating the amount of any loss hereunder and also in computing the amount in excess of which this Agreement attaches, only loss or losses in respect of that portion of any insurance or reinsurance which Sheboygan Falls retains net for its own account shall be included. It being understood and agreed that the amount of Donegal Mutual's liability hereunder in respect of any loss or losses shall not be increased by reason of the inability of Sheboygan Falls to collect from any other reinsurer, whether specific or general, any amounts which may have become due from them whether such inability arises from the insolvency of such other reinsurer or otherwise.

**Article 7**

**Ultimate Net Losses Incurred**

The term "Ultimate Net Losses Incurred" shall mean the actual losses sustained by Sheboygan Falls during the term of this Agreement or the "run-off" period under Article 4 hereof under its policies, regardless of whether such policies were written before or after the effective date of this Agreement, and includes (i) all sums paid in settlement of claims and



**Article 10**

**Access to Records**

Sheboygan Falls and Donegal Mutual, by their duly appointed representatives, shall have the right at any reasonable time, to examine all papers in the possession of the other referring to business effected hereunder.

**Article 11**

**Errors and Omissions**

Any inadvertent delay, omission or error shall not be held to relieve either party hereto from any liability which would attach to it hereunder if such delay, omission or error had not been made. Such delay, omission or error shall be rectified immediately upon discovery.

**Article 12**

**Arbitration**

As a precedent to any right of action hereunder, if any dispute shall arise between Sheboygan Falls and Donegal Mutual with reference to the interpretation of this Agreement or their rights with respect to any transaction involved, whether such dispute arises before or after termination of this Agreement, such dispute upon the written request of either party, shall be submitted to three arbitrators, one to be chosen by each party, and the third by the two so chosen. If either party refuses or neglects to appoint an arbitrator within thirty days after the receipt of written notice from the other party requesting it to do so, the requesting party may appoint two arbitrators. If the two arbitrators fail to agree in the selection of a third arbitrator within thirty days of their appointment, each of them shall name two, of whom the other shall decline one and the decision shall be made by drawing lots. All arbitrators shall be disinterested active or retired executive officers of insurance or reinsurance companies or Underwriters at Lloyd's, London not under the control of either party of this Agreement.

The Arbitrators shall interpret the Agreement and make their decision with regard to the custom and usage of the insurance and reinsurance business. They shall issue their decision in writing based upon a hearing in which evidence may be introduced without following strict rules of evidence, but in which cross examination and rebuttal shall be allowed. They shall make their award with a view to effecting the general purpose of this Agreement in a reasonable manner rather than in accordance with a literal interpretation of the language.

The decision in writing of any two arbitrators, when filed with the parties hereto, shall be final and binding on both parties. Judgment may be entered upon the final decision of the arbitrators in any court having jurisdiction. Each party shall bear the expense of its own arbitrator and shall jointly and equally bear with the other party the expense of the third arbitrator and of the arbitration. Said arbitration shall take place in the State of Wisconsin unless some other place is mutually agreed upon by Sheboygan Falls and Donegal Mutual.

**Article 13**

**Insolvency Funds Exclusion Clause**

This Agreement excludes all liability of Sheboygan Falls arising, by contract, operation of law, or otherwise, from its participation or membership, whether voluntary or involuntary, in any insolvency fund. "Insolvency fund" includes any guaranty fund, insolvency fund, plan, pool, association, fund or other arrangement, howsoever denominated, established or governed; which provides for any assessment of or payment or assumption by Sheboygan Falls of part or all of any claim, debt, charge, fee, or other obligation of an insurer, or its successors or assigns, which has been declared by any competent authority to be insolvent, or which is otherwise deemed unable to meet any claim, debt, charge, fee or other obligation in whole or in part.

**Article 14**

**Insolvency**

In the event of the insolvency of Sheboygan Falls, the right of the parties under this Agreement shall be governed by the Wisconsin Insurance Code.

This agreement made and executed in duplicate effective \_\_\_\_\_, 2007

DONEGAL MUTUAL INSURANCE COMPANY

By: \_\_\_\_\_  
Donald H. Nikolaus, President

SHEBOYGAN FALLS MUTUAL INSURANCE COMPANY

By: \_\_\_\_\_  
Lee F. Wilcox, President