

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA**

THE LAST RESORT- MOBILE LLC,  
individually and on behalf of all others  
similarly situated,

Plaintiff,

v.

WESTCHESTER SURPLUS LINES  
INSURANCE COMPANY,

Defendant.

Civil Action No. \_\_\_\_\_

Complaint - Class Action

**JURY TRIAL DEMANDED**

**CLASS ACTION COMPLAINT**

Plaintiff The Last Resort- Mobile LLC (d/b/a Poindexters) (“Poindexters”), individually and on behalf of the other members of the below-defined nationwide classes (collectively, the “Class”), brings this class action against Defendant Westchester Surplus Lines Insurance Company (“Westchester”), and in support there of states the following:

**I. NATURE OF THE ACTION**

1. Plaintiff owns and operates Poindexters, a bar and grill located in Mobile, Alabama. Poindexters’ existence, however, is now threatened by SARS-

CoV-2, sometimes called “Coronavirus” or by one of the names of the disease that it causes and that spreads it. For ease of reference, SARS-CoV-2 will be referred to as “COVID-19” herein.

2. To protect its business in the event that it suddenly had to suspend operations for reasons outside of its control, or in order to prevent further property damage, Plaintiff purchased insurance coverage from Westchester, including property coverage, as set forth in Westchester’s Business Income (And Extra Expense) Coverage Form (Form No. CP 00 30 10 12) (“Special Property Coverage Form”).

3. Westchester’s Special Property Coverage Form provides “Business Income” coverage, which promises to pay for loss due to the necessary suspension of operations caused by physical loss of or damage to the insured premises.

4. Westchester’s Special Property Coverage Form also provides “Civil Authority” coverage, which promises to pay for actual loss of Business income and necessary Extra Expense caused by the action of a civil authority that prohibits access to the insured premises because of damage at other property.

5. Westchester’s Special Property Coverage Form also provides “Extra Expense” coverage, which promises to pay the expense incurred to minimize the suspension of business and to continue operations.

6. Westchester's Special Property Coverage Form, under a section entitled "Duties in the Event of Loss" mandates that Westchester's insureds "must see that the following are done in the event of loss. . . [t]ake all reasonable steps to protect the Covered Property from further damage, and keep a record of your expenses necessary to protect the Covered Property, for consideration in the settlement of the claim."

7. Unlike many policies that provide Business Income coverage (also referred to as "business interruption" coverage), Westchester's Special Property Coverage Form does not include, and is not subject to, any exclusion for losses caused by viruses or communicable diseases.

8. Plaintiff was forced to suspend or reduce business at its restaurant and bar due to COVID-19 (a.k.a. the "coronavirus" or "SARS-CoV-2") and the resultant Closure Orders mandating the closure of businesses like Poindexters for on-site services, as well as in order to take necessary steps to prevent further damage and minimize the suspension of business and continue operations.

9. The presence of COVID-19 on property damages the property. It makes it unsafe.

10. Moreover, due to COVID-19, Plaintiff's property at Poindexters has suffered direct physical loss and damage under the plain meaning of those words.

COVID-19 has impaired Plaintiff's property by making it unusable in the way that it had been used before COVID-19.

11. For months, Poindexters was limited to serving carry-out. Instead of being able to pack in patrons, Poindexters can now, at most, only (1) serve takeout or (2) serve a severely limited number of customers at any one time, provided that tables are spaced for six feet social distancing. To do anything else would lead to the emergence or reemergence of COVID-19 at the restaurants. Until COVID-19 was brought even slightly under control, even such limited use as this was not possible.

12. The loss is "direct." Poindexters is not, for example, asking Westchester to reimburse Poindexters after someone obtained a judgment against Poindexters for getting them sick. Rather, Poindexters directly lost the functionality of its property for business purposes due to COVID-19.

13. The loss is "physical." The physical space of Plaintiff's property is unable to function in the manner in which it had previously functioned prior to the COVID-19 pandemic. Also, the loss is physical because COVID-19 is transmittable in aerosols and on physical surfaces. The probability of illness prevents the functioning of the physical space in no different of a way than how, on a rainy day,

an open roof caused by a tornado would make the interior space of a business unusable.

14. The loss is a “loss.” Poindexters has lost the use and function of physical space. While its property could once accommodate many, now they can physically only accommodate a few.

15. Westchester has, on a widescale and uniform basis, refused to pay its insureds under its Business Income, Civil Authority, Extra Expense, and Sue and Labor coverages for losses suffered due to COVID-19, any orders by civil authorities that have required the necessary suspension of business, and any efforts to prevent further property damage or to minimize the suspension of business and continue operations.

## **II. JURISDICTION AND VENUE**

16. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(d), because Plaintiff and Defendant are citizens of different states, and because: (a) the Class consists of at least 100 members; (b) the amount in controversy exceeds \$5,000,000 exclusive of interest and costs; and (c) no relevant exceptions apply to this claim.

17. This Court has personal jurisdiction over Defendant because Westchester is organized under the laws of Georgia and maintains its principal place of business within the State of Georgia.

18. Venue is proper in this District under 28 U.S.C. § 1391, because Defendant resides in this District and a substantial portion of the acts and conduct giving rise to the claims occurred within the District.

### **III. THE PARTIES**

19. Plaintiff The Last Resort- Mobile LLC is a limited liability company organized and existing under the laws of Alabama, which is located at 5955 Old Shell Road, Mobile, Alabama 36608.

20. Upon information and belief, Defendant Westchester Surplus Lines Insurance Company is an insurance company organized under the laws of Georgia, with its principal place of business at 11575 Great Oaks Way, Suite 200, Alpharetta, Georgia 30022. At all times material hereto, Westchester conducted and transacted business through the selling and issuing of insurance policies within Alabama, including, but not limited to, selling and issuing property and business coverage to Plaintiff.

#### **IV. FACTUAL BACKGROUND**

##### **A. *The Special Property Coverage Form***

21. In return for the payment of a premium, Westchester issued Policy Number F15253113 001 to Plaintiff for a policy period of January 24, 2020, to January 24, 2021, including a Business Income (And Extra Expense) Coverage Form (For Number CP 00 30 10 12). Policy Number F15253113 001 is attached hereto as Exhibit A. Plaintiff has performed all of its obligations under Policy Number F15253113 001, including the payment of premiums. The Covered Property, with respect to the Special Property Coverage Form, is Poindexters at 5955 Old Shell Road, Mobile, Alabama 36608.

22. In many parts of the world, property insurance is sold on a specific peril basis. Such policies cover a risk of loss if that risk of loss is specifically listed (e.g., hurricane, earthquake, H1N1, etc.). Most property policies sold in the United States, however, including those sold by Westchester, are all-risk property damage policies. These types of policies cover all risks of loss except for risks that are expressly and specifically excluded. With respect to the Special Property Coverage Form provided to Plaintiff, Westchester agreed to pay “Covered Causes of Loss,” meaning “direct physical loss” to Covered Property “unless the loss is excluded or limited” by the policy.

23. In the policy, Westchester did not exclude or limit coverage for losses from the spread of viruses or communicable diseases.

24. Losses due to COVID-19 are a Covered Cause of Loss under Westchester policies with the Special Property Coverage Form.

25. In the Special Property Coverage Form, Westchester agreed to pay for its insureds' actual loss of Business Income sustained due to the necessary suspension of its operations during the "period of restoration" caused by direct physical loss or damage. A "slowdown or cessation" of business activities at the Covered Property is a "suspension" under the policy, for which Westchester agreed to pay for loss of Business Income during the "period of restoration" that begins seventy-two hours after the time of direct physical loss.

26. "Business Income" means net income (net profit or loss before income taxes) that Plaintiff and the other Class Members would have earned or incurred, as well as continuing normal operating expenses incurred.

27. Plaintiff and the other Class Members' Covered Property suffered direct physical loss or damage. Due to COVID-19, their Covered Property has become unsafe, and thus does not function, for its intended purpose. Their Covered Properties' business functions have been impaired. If they were to conduct business as usual, the disease and virus would show up and people would get sick. This is



not a non-physical or remote loss such as one occasioned by a breach of contract, loss of a market, or the imposition of a governmental penalty.

28. The presence of virus or disease can constitute physical damage to property, as the insurance industry has recognized since at least 2006. When preparing so-called “virus” exclusions to be placed in some policies, but not others, the insurance industry drafting arm, Insurance Services Office (“ISO”), circulated a statement to state insurance regulators that included the following:

Disease-causing agents may render a product impure (change its quality or substance), or enable the spread of disease by their presence on interior building surfaces or the surfaces of personal property. When disease-causing viral or bacterial contamination occurs, potential claims involve the cost of replacement of property (for example, the milk), cost of decontamination (for example, interior building surfaces), and business interruption (time element) losses. Although building and personal property could arguably become contaminated (often temporarily) by such viruses and bacteria, the nature of the property itself would have a bearing on whether there is actual property damage. An allegation of property damage may be a point of disagreement in a particular case.

29. Plaintiff and the other Class Members’ Covered Property suffered direct physical loss or damage in the manner insurers anticipated in paragraph 28 above, as well.

30. In the Special Property Coverage Form, Westchester also agreed to pay necessary Extra Expense that its insureds incur during the “period of restoration”

that the insureds would not have incurred if there had been no direct loss or damage to the Covered Property.

31. “Extra Expense” includes expenses to avoid or minimize the suspension of business, continue operations, and to repair or replace property.

32. Westchester also agreed to “pay for the actual loss of Business Income” that its insureds sustain and necessary Extra Expense “caused by action of civil authority that prohibits access to” the Covered Property when a Covered Cause of Loss causes damage to property other than the Covered Property, the civil authority prohibits access to property immediately surrounding the damaged property, the Covered Property is within the prohibited area, and the civil authority action is taken “in response to dangerous physical conditions.”

33. COVID-19 caused damage to property near Plaintiff’s Covered Property and the Covered Property of the other Class Members in the same manner described above that it did so with Plaintiff’s Covered Property.

34. Westchester’s Special Property Coverage Form, under a section entitled “Duties in the Event of Loss” mandates that Westchester’s insureds “must see that the following are done in the event of loss. . . [t]ake all reasonable steps to protect the Covered Property from further damage, and keep a record of your expenses necessary to protect the Covered Property, for consideration in the

settlement of the claim.” This type of coverage has historically been known as “sue and labor” coverage or a “sue and labor” provision, and property policies have long provided coverage for these types of expenses.

35. Losses caused by COVID-19 and the related orders issued by local, state, and federal authorities triggered the Business Income, Extra Expense, Civil Authority, and Sue and Labor provisions of the Westchester policy.

36. Indeed, many governmental bodies specifically found that COVID-19 causes property damage when issuing stay at home orders. *See* N.Y.C. Emergency Exec. Order No. 100, at 2 (Mar. 16, 2020)<sup>1</sup> (emphasizing the virulence of COVID-19 and that it “physically is causing property loss and damage”); Broward Cty. Fla. Administrator’s Emergency Order No. 20-01, at 2 (Mar. 22, 2020)<sup>2</sup> (noting that COVID-19 “constitutes a clear and present threat to the lives, health, welfare, and safety of the people of Broward County”); Harris Cty. Tex. Office of Homeland Security & Emergency Mgmt., Order of Cty. J. Lina Hidalgo, at 2 (Mar. 24, 2020)<sup>3</sup> (emphasizing that the COVID-19 virus can cause “property loss or damage” due to its contagious nature and transmission through “person-to-person contact, especially in group settings”); Napa Cty. Cal. Health & Human Service Agency, Order of the

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<sup>1</sup> <https://www1.nyc.gov/assets/home/downloads/pdf/executive-orders/2020/eeo-100.pdf>

<sup>2</sup> <https://www.broward.org/CoronaVirus/Documents/BerthaHenryExecutiveOrder20-01.pdf>

<sup>3</sup> [https://www.taa.org/wp-content/uploads/2020/03/03-24-20-Stay-Home-Work-Safe-Order\\_Harris-County.pdf](https://www.taa.org/wp-content/uploads/2020/03/03-24-20-Stay-Home-Work-Safe-Order_Harris-County.pdf)

Napa Cty. Health Officer (Mar. 18, 2020)<sup>4</sup> (issuing restrictions based on evidence of the spread of COVID-19 within the Bay Area and Napa County “and the physical damage to property caused by the virus”); City of Key West Fla. State of Local Emergency Directive 2020-03, at 2 (Mar. 21, 2020)<sup>5</sup> (COVID-19 is “causing property damage due to its proclivity to attach to surfaces for prolonged periods of time”); City of Oakland Park Fla. Local Public Emergency Action Directive, at 2 (Mar. 19, 2020)<sup>6</sup> (COVID-19 is “physically causing property damage”); Panama City Fla. Resolution No. 20200318.1 (Mar. 18, 2020)<sup>7</sup> (stating that the resolution is necessary because of COVID-19’s propensity to spread person to person and because the “virus physically is causing property damage”); Exec. Order of the Hillsborough Cty. Fla. Emergency Policy Group, at 2 (Mar. 27, 2020)<sup>8</sup> (in addition to COVID-19’s creation of a “dangerous physical condition,” it also creates “property or business income loss and damage in certain circumstances”); Colorado Dep’t of Pub. Health & Env’t, Updated Public Health Order No. 20-24, at 1 (Mar. 26, 2020)<sup>9</sup> (emphasizing the danger of “property loss, contamination, and damage”

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<sup>4</sup> <https://www.countyofnapa.org/DocumentCenter/View/16687/3-18-2020-Shelter-at-Home-Order>

<sup>5</sup> [https://www.cityofkeywest-fl.gov/egov/documents/1584822002\\_20507.pdf](https://www.cityofkeywest-fl.gov/egov/documents/1584822002_20507.pdf)

<sup>6</sup> <https://oaklandparkfl.gov/DocumentCenter/View/8408/Local-Public-Emergency-Action-Directive-19-March-2020-PDF>

<sup>7</sup> <https://www.pcgov.org/AgendaCenter/ViewFile/Item/5711?fileID=16604>

<sup>8</sup> <https://www.hillsboroughcounty.org/library/hillsborough/media-center/documents/administrator/epg/saferathomeorder.pdf>

<sup>9</sup> <https://www.pueblo.us/DocumentCenter/View/26395/Updated-Public-Health-Order---032620>

due to COVID-19’s “propensity to attach to surfaces for prolonged periods of time”); Sixth Supp. to San Francisco Mayoral Proclamation Declaring the Existence of a Local Emergency, 26 (Mar. 27, 2020)<sup>10</sup> (“This order and the previous orders issued during this emergency have all been issued ... also because the virus physically is causing property loss or damage due to its proclivity to attach to surfaces for prolonged periods of time”); and City of Durham NC, Second Amendment to Declaration of State of Emergency, at 8 (effective Mar. 26, 2020)<sup>11</sup> (prohibiting entities that provide food services from allowing food to be eaten at the site where it is provided “due to the virus’s propensity to physically impact surfaces and personal property”).

***B. The Covered Cause of Loss***

37. The threat and presence of COVID-19 with respect to other property has caused civil authorities throughout the country to issue orders requiring the suspension of business at a wide range of establishments, including civil authorities with jurisdiction over Plaintiff’s business (the “Closure Orders”).

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<sup>10</sup> [https://sfgov.org/sunshine/sites/default/files/sotf\\_061020\\_item3.pdf](https://sfgov.org/sunshine/sites/default/files/sotf_061020_item3.pdf)

<sup>11</sup> [https://durhamnc.gov/DocumentCenter/View/30043/City-of-Durham-Mayor-Emergency-Dec-Second-Amdmt-3-25-20\\_FINAL](https://durhamnc.gov/DocumentCenter/View/30043/City-of-Durham-Mayor-Emergency-Dec-Second-Amdmt-3-25-20_FINAL)

**1. The COVID-19 Pandemic**

38. On March 11, 2020, the World Health Organization declared that COVID-19 constituted a global pandemic.

39. According to the CDC, “COVID-19 is caused by a coronavirus called SARS-CoV-2. Coronaviruses are a large family of viruses that are common in people and [many] different species of animals, including camels, cattle, cats, and bats. Rarely, animal coronaviruses can infect people and then spread between people.”<sup>12</sup> “The virus that causes COVID-19 is thought to spread mainly from person to person, mainly through respiratory droplets produced when an infected person coughs or sneezes. These droplets can land in the mouths or noses of people who are nearby or possibly be inhaled into the lungs. Spread is more likely when people are in close contact with one another (within about 6 feet).”<sup>13</sup>

40. “It may be possible that a person can get COVID-19 by touching a surface or object that has the virus on it and then touching their own mouth, nose, or possibly their eyes.”<sup>14</sup> A scientific study investigating the stability of COVID-19 in different environmental conditions found that, following COVID-19 contamination,

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<sup>12</sup> <https://www.cdc.gov/coronavirus/2019-ncov/faq.html#Coronavirus-Disease-2019-Basics>. All websites last visited June 28, 2020.

<sup>13</sup> *Id.*

<sup>14</sup> <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html>.

the virus could be detected hours later for tissues and paper, days later for wood, cloth and glass, or even a week later for stainless steel and plastic.<sup>15</sup>

## **2. The Closure Orders**

41. The presence of COVID-19 has caused civil authorities throughout the country to issue orders requiring the suspension of business at a wide range of establishments, including civil authorities with jurisdiction over Plaintiff's business (the "Closure Orders").

42. On March 19, 2020, the Alabama State Health Officer issued a civil authority order suspending all gatherings, events, or activities of twenty-five or more persons and gatherings of any size where six-foot distance between persons could not be maintained. The Order also prohibited on-premises consumption of food or drink at all restaurants and bars, effective March 19, 2020. The Order recognizes that "COVID-19 in the State poses the potential of widespread exposure to an infectious agent that poses significant risk of substantial harm to a large number of people."

43. On March 20, 2020, the Alabama State Health Officer issued another civil authority order amending the March 19, 2020, Order to implement more

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<sup>15</sup> See Alex W.H. Chin, et al., "Stability of SARS-CoV-2 in different environmental conditions," *The Lancet Microbe* (April 2, 2020), available at [https://doi.org/10.1016/S2666-5247\(20\)30003-3](https://doi.org/10.1016/S2666-5247(20)30003-3).

stringent measures, prohibiting all non-work related gatherings of twenty-five persons or more, or non-work related gatherings of any size where a six-foot distance between persons could not be maintained. The Order reiterated the prohibition of on-premises consumption of food or drink at all restaurants and bars.

44. On March 27, 2020, the Alabama State Health Officer issued a civil authority order requiring the closure of all nonessential businesses and services and prohibiting all non-work related gathering of 10 or more persons. The Order reiterated the prohibition of on-premises consumption of food or drink at all restaurants and bars. This order has been in effect since March 28, 2020. The Order recognizes that “COVID-19 in the State poses the potential of widespread exposure to an infectious agent that poses significant risk of substantial harm to a large number of people.”

45. On April 3, 2020, the Alabama State Health Officer issued a civil authority Stay-at-Home order requiring Alabama residents to “stay at his or her place of residence except as necessary to perform . . . ‘essential activities.’” The Order reiterated the prohibition of on-premises consumption of food or drink at all restaurants and bars.

46. On April 28, 2020, the Alabama State Health Officer issued a civil authority Safer-at-Home order allowing certain businesses to re-open with



restrictions but maintained the prohibition of on-premises consumption of food or drink at all restaurants and bars.

47. On May 8, 2020, the Alabama State Health Officer issued a civil authority Safer-at-Home order allowing on-premises consumption of food and drink at restaurants and bars beginning on May 11, 2020, subject to compliance with CDC and Alabama Department of Public Health guidelines.

48. These Closure Orders and proclamations, as they relate to the closure of all “non-essential businesses,” evidence an awareness on the part of both state and local governments that COVID-19 causes damage to property. This is particularly true in places where business is conducted, such as Plaintiff’s, as the requisite contact and interaction causes a heightened risk of the property becoming infected with COVID-19.

49. The Closure Orders were issued in response to the rapid spread and presence of COVID-19 throughout Alabama.

50. The Closure Orders prohibited access to Plaintiff’s Covered Property and the area immediately surrounding Covered Property, in response to dangerous physical conditions resulting from a Covered Cause of Loss under the Policy, *i.e.* the COVID-19 pandemic.

**3. The Impact of COVID-19 and the Closure Orders**

51. On March 19, 2020, as a result of the COVID-19 pandemic and the Civil Authority Orders referenced herein, Plaintiff was forced to close its doors to on-premises food and drink consumption at its restaurant and bar. The Civil Authority Orders expressly precluded Plaintiff from operating its business.

52. Indeed, the March 19, 2020, the Closure Order issued by the Alabama State Health Officer required restaurants and bars—including Plaintiff—to suspend on-premises consumption of food and drink.

53. The March 19th order and other Closure Orders prohibited access to the Covered Property by requiring Plaintiff to completely cease its on-premises business operations and by prohibiting Plaintiff from using the Covered Property to operate its business.

54. The threat and presence of COVID-19 caused direct physical loss of or damage to the each “Covered Property” under the Plaintiff and Class Members’ policies, and the policies of the other Class Members, by impairing the function of and damaging the Covered Property, and by causing a necessary suspension of operations during a period of restoration.

55. Plaintiff and Class Members’ actual and immediate loss of the functionality its Covered Property and loss of business income due to the COVID-

19 pandemic rendering the Covered Property uninhabitable or unfit for its intended use constitutes “direct physical loss” under the plain meaning of those words and a Covered Cause of Loss under the Policy. This direct physical loss or damage caused Plaintiff and Class Members to suspend operations at the Covered Property.

56. The Closure Orders prohibited access to Plaintiff’s and the other Class Members’ Covered Property, and the area immediately surrounding Covered Property, in response to dangerous physical conditions described above resulting from a Covered Cause of Loss.

57. As a result of the threat and presence of COVID-19 and the Closure Orders, Plaintiff and the other Class Members lost Business Income and incurred Extra Expense.

58. On or about March 30, 2020, Plaintiff submitted a claim for loss to Westchester under its policy due to the presence of COVID-19 and the Closure Orders.

59. On or about April 28, 2020, Defendant denied Plaintiff’s claim. *See* Exhibit B.

60. Indeed, Westchester has, on a widescale basis refused to provided Business Income, Extra Expense, Civil Authority, or Sue and Labor coverage due

the COVID-19 and the resultant orders by civil authorities that have required the suspension of business.

## **V. CLASS ACTION ALLEGATIONS**

61. Plaintiff brings this action pursuant to Rules 23(a), 23(b)(1), 23(b)(2), 23(b)(3), and 23(c)(4) of the Federal Rules of Civil Procedure, individually and on behalf of all others similarly situated.

62. Plaintiff seeks to represent nationwide classes defined as:

- All persons and entities that: (a) had Business Income coverage under a property insurance policy issued by Westchester; (b) suffered a suspension of business related to COVID-19, at the premises covered by their Westchester property insurance policy; (c) made, or attempted to make, a claim under their property insurance policy issued by Westchester; and (d) were denied Business Income coverage, or otherwise told no covered loss existed, by Westchester for the suspension of business resulting from the presence or threat of COVID-19 (the “Business Income Breach Class”).
- All persons and entities that: (a) had Civil Authority coverage under a property insurance policy issued by Westchester; (b) suffered loss of Business Income and/or Extra Expense caused by action of a civil authority; (c) made, or attempted to make, a claim under their property insurance policy issued by Westchester; and (d) were denied Civil Authority coverage, or otherwise told that no covered loss existed, by Westchester for the loss of Business Income and/or Extra Expense caused by a Closure Order (the “Civil Authority Breach Class”).

- All persons and entities that: (a) had Extra Expense coverage under a property insurance policy issued by Westchester; (b) sought to minimize the suspension of business in connection with COVID-19 at the premises covered by their Westchester property insurance policy; (c) made, or attempted to make, a claim under their property insurance policy issued by Westchester; and (d) were denied Extra Expense coverage, or otherwise told that no covered loss existed, by Westchester despite their efforts to minimize the suspension of business caused by COVID-19 (the “Extra Expense Breach Class”).
- All persons and entities that: (a) had Ingress and Egress coverage under a property insurance policy issued by Westchester; (b) suffered a suspension of business, caused by COVID-19, at the premises covered by their Westchester property insurance policy; (c) made, or attempted to make, a claim under their property insurance policy issued by Westchester; and (d) were denied Ingress and Egress coverage, or otherwise told that no covered loss existed, by Westchester for the suspension of business caused by COVID-19 (the “Ingress and Egress Breach Class”).
- All persons and entities that: (a) had a Sue and Labor provision under a property insurance policy issued by Westchester; (b) sought to prevent property damage caused by COVID-19 by suspending or reducing business operations, at the premises covered by their Westchester property insurance policy; (c) made, or attempted to make, a claim under their property insurance policy issued by Westchester; and (d) were denied Sue and Labor coverage, or otherwise told that no covered loss existed, by Westchester in connection with the suspension of business caused by COVID-19 (the “Sue and Labor Breach Class”).

63. Plaintiff seeks to represent nationwide classes defined as:

- All persons and entities with Business Income coverage under a property insurance policy issued by Westchester that suffered a suspension of business due to COVID-19 at the premises covered by the business income coverage (the “Business Income Declaratory Judgment Class”).
- All persons and entities with Civil Authority coverage under a property insurance policy issued by Westchester that suffered loss of Business Income and/or Extra Expense caused by a Closure Order (the “Civil Authority Declaratory Judgment Class”).
- All persons and entities with Extra Expense coverage under a property insurance policy issued by Westchester that sought to minimize the suspension of business in connection with COVID-19 at the premises covered by their Westchester property insurance policy (the “Extra Expense Declaratory Judgment Class”).
- All persons and entities with a Sue and Labor provision under a property insurance policy issued by Westchester that sought to prevent property damage caused by COVID-19 by suspending or reducing business operations at the premises covered by their Westchester property insurance policy (the “Sue and Labor Declaratory Judgment Class”).

64. Excluded from each defined Class is Defendant and any of its members, affiliates, parents, subsidiaries, officers, directors, employees, successors, or assigns; governmental entities; and the Court staff assigned to this case and their immediate family members. Plaintiff reserves the right to modify or amend each of the Class definitions, as appropriate, during the course of this litigation.

65. This action has been brought and may properly be maintained on behalf of each Class proposed herein under the criteria of Rule 23 of the Federal Rules of Civil Procedure.

66. **Numerosity—Federal Rule of Civil Procedure 23(a)(1).** The members of each defined Class are so numerous that individual joinder of all Class Members is impracticable. While Plaintiff is informed and believes that there are thousands of members of each Class, the precise number of Class Members is unknown to Plaintiff but may be ascertained from Defendant's books and records. Class Members may be notified of the pendency of this action by recognized, Court-approved notice dissemination methods, which may include U.S. Mail, electronic mail, internet postings, and/or published notice.

67. **Commonality and Predominance—Federal Rule of Civil Procedure 23(a)(2) and 23(b)(3).** This action involves common questions of law and fact, which predominate over any questions affecting only individual Class Members, including, without limitation:

- a. Westchester issued all-risk policies to the members of the Class in exchange for payment of premiums by the Class Members;
- b. whether the Class suffered a covered loss based on the common policies issued to members of the Class;

- c. whether Westchester wrongfully denied all claims relating to COVID-19;
- d. whether Westchester's Business Income coverage applies to a suspension of business caused by COVID-19;
- e. whether Westchester's Civil Authority coverage applies to a loss of Business Income caused by the orders of state governors requiring the suspension of business as a result of COVID-19;
- f. whether Westchester's Extra Expense coverage applies to efforts to minimize a loss caused by COVID-19; and
- g. whether Westchester's Sue and Labor provision applies to require Westchester to pay for efforts to reduce damage caused by COVID-19;
- h. whether Westchester has breached its contracts of insurance through a blanket denial of all claims based on business interruption, income loss, or closures related to COVID-19 and the related Closure Orders; and
- i. whether Plaintiff and Class Members are entitled to an award of reasonable attorney fees, interest, and costs.



68. **Typicality—Federal Rule of Civil Procedure 23(a)(3).** Plaintiff's claims are typical of the other Class Members' claims because Plaintiff and the other Class Members are all similarly affected by Defendant's refusal to pay under its Business Income, Civil Authority, Extra Expense, and Sue and Labor coverages. Plaintiff's claims are based upon the same legal theories as those of the other Class Members. Plaintiff and the other Class Members sustained damages as a direct and proximate result of the same wrongful practices in which Defendant engaged.

69. **Adequacy of Representation—Federal Rule of Civil Procedure 23(a)(4).** Plaintiff is an adequate Class representative because its interests do not conflict with the interests of the other Class Members who it seeks to represent, Plaintiff has retained counsel competent and experienced in complex class action litigation, including successfully litigating class action cases similar to this one, where insurers breached contracts with insureds by failing to pay the amounts owed under their policies, and Plaintiff intends to prosecute this action vigorously. The interests of the above-defined Classes will be fairly and adequately protected by Plaintiff and their counsel.

70. **Inconsistent or Varying Adjudications and the Risk of Impediments to Other Class Members' Interests—Federal Rule of Civil Procedure 23(b)(1).** Plaintiff seeks class-wide adjudication as to the interpretation,

and resultant scope, of Defendant's Business Income, Civil Authority, Extra Expense, and Sue and Labor coverages. The prosecution of separate actions by individual members of the Classes would create an immediate risk of inconsistent or varying adjudications that would establish incompatible standards of conduct for the Defendant. Moreover, the adjudications sought by Plaintiff could, as a practical matter, substantially impair or impede the ability of other Class Members, who are not parties to this action, to protect their interests.

**71. Declaratory and Injunctive Relief—Federal Rule of Civil Procedure 23(b)(2).** Defendant acted or refused to act on grounds generally applicable to Plaintiff and the other Class Members, thereby making appropriate final injunctive relief and declaratory relief, as described below, with respect to the Class Members.

**72. Superiority—Federal Rule of Civil Procedure 23(b)(3).** A class action is superior to any other available means for the fair and efficient adjudication of this controversy, and no unusual difficulties are likely to be encountered in the management of this class action. Individualized litigation creates a potential for inconsistent or contradictory judgments and increases the delay and expense to all parties and the court system. By contrast, the class action device presents far fewer

management difficulties, and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

## **VI. CLAIMS FOR RELIEF**

### **COUNT I**

#### **BREACH OF CONTRACT -- BUSINESS INCOME COVERAGE** **(Claim Brought on Behalf of the Business Income Breach Class)**

73. Plaintiff repeats, realleges, and incorporates by reference the allegations set forth in paragraphs 1-72 as if fully set forth herein.

74. Plaintiff brings this Count individually and on behalf of the other members of the Business Income Breach Class.

75. Plaintiff's Westchester policy, as well as those of the other Business Income Breach Class Members, are contracts under which Westchester was paid premiums in exchange for its promise to pay Plaintiff's and the other Business Income Breach Class Members' losses for claims covered by the policy.

76. In the Businessowner's Coverage Form, Westchester agreed to pay for its insureds' actual loss of Business Income sustained due to the necessary suspension of its operations during the "period of restoration."

77. In the Businessowner's Coverage Form, Westchester agreed to pay for its insureds' actual loss of Business Income sustained due to the necessary "suspension of [their] operations" during the "period of restoration" caused by direct

physical loss or damage. A “partial slowdown or complete cessation” of business activities at the Covered Property is a “suspension” under the policy, for which Westchester agreed to pay for loss of Business Income during the “period of restoration” “that occurs within 24 consecutive months after the date of direct physical loss or damage.”

78. “Business Income” under the policy means the “Net Income (Net Profit or Loss before income taxes) that would have been earned or incurred if no physical loss or damage had occurred.”

79. COVID-19 caused direct physical loss and damage to Plaintiff’s and the other Business Income Breach Class Members’ Covered Properties, requiring suspension of operations at the Covered Properties. Losses caused by COVID-19 thus triggered the Business Income provision of Plaintiff’s and the other Business Income Breach Class Members’ Westchester policies.

80. Plaintiff and the other Business Income Breach Class Members have complied with all applicable provisions of their policies and/or those provisions have been waived by Westchester or Westchester is estopped from asserting them, and yet Westchester has abrogated its insurance coverage obligations pursuant to the Policies’ clear and unambiguous terms.

81. By denying coverage for any Business Income losses incurred by Plaintiff and the other Business Income Breach Class Members in connection with the COVID-19 pandemic, Westchester has breached its coverage obligations under the Policies.

82. As a result of Westchester's breaches of the Policies, Plaintiff and the other Business Income Breach Class Members have sustained substantial damages for which Westchester is liable, in an amount to be established at trial.

**COUNT II**  
**BREACH OF CONTRACT – CIVIL AUTHORITY COVERAGE**  
**(Claim Brought on Behalf of the Civil Authority Breach Class)**

83. Plaintiff repeats, realleges, and incorporates by reference the allegations set forth in paragraphs 1-72 as if fully set forth herein.

84. Plaintiff brings this Count individually and on behalf of the other members of the Civil Authority Breach Class.

85. Plaintiff's Westchester policy, as well as those of the other Civil Authority Breach Class Members, are contracts under which Westchester was paid premiums in exchange for its promise to pay Plaintiff's and the other Civil Authority Breach Class Members' losses for claims covered by the policy.

86. Westchester's Businessowner's Coverage Form provides "Civil Authority" coverage, which promises to pay "the actual loss of Business Income you

sustain and necessary Extra Expense caused by action of civil authority that prohibits access to the described premises due to direct physical loss of or damage to property, other than at the described premises, caused by or resulting from any Covered Cause of Loss.”

87. The Closure Orders triggered the Civil Authority provision under Plaintiff’s and the other members of the Civil Authority Breach Class’s Westchester policies. COVID-19 caused direct physical loss or damage to property near the Covered Property in the same manner described above that it caused direct physical loss or damage to the Covered Property. The civil authority orders were actions taken in response to the dangerous physical conditions resulting from the direct physical loss or damage to such properties. And, the civil authority orders prohibited access to an immediately surrounding area that included the Covered Property.

88. Plaintiff and the other members of the Civil Authority Breach Class have complied with all applicable provisions of the Policies and/or those provisions have been waived by Westchester or Westchester is estopped from asserting them, and yet Westchester has abrogated its insurance coverage obligations pursuant to the Policies’ clear and unambiguous terms.

89. By denying coverage for any business losses incurred by Plaintiff and other members of the Civil Authority Breach Class in connection with the Closure

Orders and the COVID-19 pandemic, Westchester has breached its coverage obligations under the Policies.

90. As a result of Westchester's breaches of the Policies, Plaintiff and the other members of the Civil Authority Breach Class have sustained substantial damages for which Westchester is liable, in an amount to be established at trial.

**COUNT III**  
**BREACH OF CONTRACT – EXTRA EXPENSE COVERAGE**  
**(Claim Brought on Behalf of the Extra Expense Breach Class)**

91. Plaintiff repeats, realleges, and incorporates by reference the allegations set forth in paragraphs 1-72 as if fully set forth herein.

92. Plaintiff brings this Count individually and on behalf of the other members of the Extra Expense Breach Class.

93. Plaintiff's Westchester policy, as well as those of the other Extra Expense Breach Class Members, are contracts under which Westchester was paid premiums in exchange for its promise to pay Plaintiff's and the other Extra Expense Breach Class Members' losses for claims covered by the policy.

94. In the Businessowner's Coverage Form, Westchester also agreed to pay necessary Extra Expense that its insureds incur during the "period of restoration" that the insureds would not have incurred if there had been no direct physical loss or damage to the described premises. "Extra Expense" means expenses "to avoid or

minimize the suspension of business and to continue ‘operations,’” and to repair or replace property.

95. Due to COVID-19 and the Closure Orders, Plaintiff and the other members of the Extra Expense Breach Class incurred Extra Expense at Covered Property

96. Plaintiff and the other members of the Extra Expense Breach Class have complied with all applicable provisions of the Policies and/or those provisions have been waived by Westchester or Westchester is estopped from asserting them, and yet Westchester has abrogated its insurance coverage obligations pursuant to the Policies’ clear and unambiguous terms.

97. By denying coverage for any business losses incurred by Plaintiff and the other members of the Extra Expense Breach Class in connection with the Closure Orders and the COVID-19 pandemic, Westchester has breached its coverage obligations under the Policies.

98. As a result of Westchester’s breaches of the Policies, Plaintiff and the other members of the Extra Expense Breach Class have sustained substantial damages for which Westchester is liable, in an amount to be established at trial.



**COUNT IV**  
**BREACH OF CONTRACT – SUE AND LABOR COVERAGE**  
**(Claim Brought on Behalf of the Sue and Labor Breach Class)**

99. Plaintiff repeats, realleges, and incorporates by reference the allegations set forth in paragraphs 1-72 as if fully set forth herein.

100. Plaintiff bring this Count individually and on behalf of the other members of the Sue and Labor Breach Class.

101. Plaintiff's Westchester policies, as well as those of the other Sue and Labor Breach Class Members, are contracts under which Westchester was paid premiums in exchange for its promise to pay Plaintiff's and the other Sue and Labor Breach Class Members' losses for claims covered by the policy.

102. In the Businessowner's Coverage Form, Westchester agreed to give due consideration in settlement of a claim to expenses incurred in taking all reasonable steps to protect Covered Property from further damage.

103. In complying with the Closure Orders and otherwise suspending or limiting operations, Plaintiff and other members of the Sue and Labor Breach Class incurred expenses in connection with reasonable steps to protect Covered Property.

104. Plaintiff and the other members of the Sue and Labor Breach Class have complied with all applicable provisions of the Policies and/or those provisions have been waived by Westchester or Westchester is estopped from asserting them, and

yet Westchester has abrogated its insurance coverage obligations pursuant to the Policies' clear and unambiguous terms.

105. By denying coverage for any Sue and Labor expenses incurred by Plaintiff and the other members of the Sue and Labor Breach Class in connection with the Closure Orders and the COVID-19 pandemic, Westchester has breached its coverage obligations under the Policies.

106. As a result of Westchester's breaches of the Policies, Plaintiff and the other members of the Sue and Labor Breach Class have sustained substantial damages for which Westchester is liable, in an amount to be established at trial.

**Count V**  
**DECLARATORY JUDGMENT – BUSINESS INCOME COVERAGE**  
**(Claim Brought on Behalf of the Business Income**  
**Declaratory Judgment Class)**

107. Plaintiff repeats and realleges Paragraphs 1-72 as if fully set forth herein.

108. Plaintiff brings this Count individually and on behalf of the other members of the Business Income Declaratory Judgment Class.

109. Plaintiff's Westchester policy, as well as those of the other Business Income Declaratory Judgment Class members, are contracts under which Westchester was paid premiums in exchange for its promise to pay Plaintiff's and

the other Business Income Declaratory Judgment Class members' losses for claims covered by the Policies.

110. Plaintiff and the other Business Income Declaratory Judgment Class Members have complied with all applicable provisions of the Policies and/or those provisions have been waived by Westchester or Westchester is estopped from asserting them, and yet Westchester has abrogated its insurance coverage obligations pursuant to the policies' clear and unambiguous terms and has wrongfully and illegally refused to provide coverage to which Plaintiff and the other Business Income Declaratory Judgment Class Members are entitled.

111. Westchester has denied claims related to COVID-19 on a uniform and class wide basis, without individual bases or investigations, such that the Court can render declaratory judgment irrespective of whether members of the Class have filed a claim.

112. An actual case or controversy exists regarding Plaintiff's and the other Business Income Declaratory Judgment Class Members' rights and Westchester's obligations under the policies to reimburse Plaintiff for the full amount of Business Income losses incurred by Plaintiff and the other Business Income Declaratory Judgment Class Members in connection with the suspension of their businesses stemming from the COVID-19 pandemic.

113. Pursuant to 28 U.S.C. § 2201, Plaintiff and the other Business Income Declaratory Judgment Class Members seek a declaratory judgment from this Court declaring the following:

- i. Plaintiff's and the other Business Income Declaratory Judgment Class Members' Business Income losses incurred in connection with the Closure Orders and the necessary interruption of their businesses stemming from the COVID-19 pandemic are insured losses under their policies; and
- ii. Westchester is obligated to pay Plaintiff and the other Business Income Declaratory Judgment Class members for the full amount of the Business Income losses incurred and to be incurred in connection with the Closure Orders during the period of restoration and the necessary interruption of their businesses stemming from the COVID-19 pandemic.

**COUNT VI**  
**DECLARATORY JUDGMENT – CIVIL AUTHORITY COVERAGE**  
**(Claim Brought on Behalf of the Civil Authority Declaratory Judgment Class)**

114. Plaintiff repeats and realleges Paragraphs 1-72 as if fully set forth herein.

115. Plaintiff brings this Count individually and on behalf of the other members of the Civil Authority Declaratory Judgment Class.

116. Plaintiff's Westchester insurance policy, as well as those of the other Civil Authority Declaratory Judgment Class Members, are contracts under which Westchester was paid premiums in exchange for its promise to pay Plaintiff's and the other Civil Authority Declaratory Judgment Class Members' losses for claims covered by the policy.

117. Plaintiff and the other Civil Authority Declaratory Judgment Class Members have complied with all applicable provisions of the policies and/or those provisions have been waived by Westchester or Westchester is estopped from asserting them, and yet Westchester has abrogated its insurance coverage obligations pursuant to the policies' clear and unambiguous terms and has wrongfully and illegally refused to provide coverage to which Plaintiff and the other Class Members are entitled.

118. Westchester has denied claims related to COVID-19 on a uniform and class wide basis, without individual bases or investigations, such that the Court can render declaratory judgment irrespective of whether members of the Class have filed a claim.

119. An actual case or controversy exists regarding Plaintiff's and the other Civil Authority Declaratory Judgment Class Members' rights and Westchester's obligations under the policies to reimburse Plaintiff and the other Civil Authority Declaratory Judgment Class Members for the full amount of covered Civil Authority losses incurred by Plaintiff and the other Civil Authority Declaratory Judgment Class Members in connection with Closure Orders and the necessary interruption of their businesses stemming from the COVID-19 pandemic.

120. Pursuant to 28 U.S.C. § 2201, Plaintiff and the other Civil Authority Declaratory Judgment Class Members seek a declaratory judgment from this Court declaring the following:

- i. Plaintiff's and the other Civil Authority Declaratory Judgment Class Members' Civil Authority losses incurred in connection with the Closure Orders and the necessary interruption of their businesses stemming from the COVID-19 pandemic are insured losses under their policies; and
- ii. Westchester is obligated to pay Plaintiff and the other Civil Authority Declaratory Judgment Class Members the full amount of the Civil Authority losses incurred and to be incurred in connection with the covered losses related to the Closure Orders and the necessary

interruption of their businesses stemming from the COVID-19 pandemic.

**COUNT VII**  
**DECLARATORY JUDGMENT – EXTRA EXPENSE COVERAGE**  
**(Claim Brought on Behalf of the Extra Expense Declaratory Judgment Class)**

121. Plaintiff repeats and realleges Paragraphs 1-72 as if fully set forth herein.

122. Plaintiff brings this Count individually and on behalf of the other members of the Extra Expense Declaratory Judgment Class.

123. Plaintiff's Westchester insurance policy, as well as those of the other Extra Expense Declaratory Judgment Class Members, are contracts under which Westchester was paid premiums in exchange for its promise to pay Plaintiff's and the other Extra Expense Declaratory Judgment Class Members' losses for claims covered by the policy.

124. Plaintiff and the other Extra Expense Declaratory Judgment Class Members have complied with all applicable provisions of the policies and/or those provisions have been waived by Westchester or Westchester is estopped from asserting them, and yet Westchester has abrogated its insurance coverage obligations pursuant to the policies' clear and unambiguous terms and has wrongfully and

illegally refused to provide coverage to which Plaintiff and the other Class Members are entitled.

125. Westchester has denied claims related to COVID-19 on a uniform and class wide basis, without individual bases or investigations, such that the Court can render declaratory judgment irrespective of whether members of the Class have filed a claim.

126. An actual case or controversy exists regarding Plaintiff's and the other Extra Expense Declaratory Judgment Class Members' rights and Westchester's obligations under the policies to reimburse Plaintiff and the other Extra Expense Declaratory Judgment Class Members for the full amount of Extra Expense losses incurred in connection with Closure Orders and the necessary interruption of their businesses stemming from the COVID-19 pandemic.

127. Pursuant to 28 U.S.C. § 2201, Plaintiff and the other Extra Expense Declaratory Judgment Class Members seek a declaratory judgment from this Court declaring the following:

- i. Plaintiff's and the other Extra Expense Declaratory Judgment Class Members' Extra Expense losses incurred in connection with the Closure Orders and the necessary interruption of their businesses



stemming from the COVID-19 pandemic are insured losses under their policies; and

- ii. Westchester is obligated to pay Plaintiff and the other Extra Expense Declaratory Judgment Class Members for the full amount of the Extra Expense losses incurred and to be incurred in connection with the covered losses related to the Closure Orders during the period of restoration and the necessary interruption of their businesses stemming from the COVID-19 pandemic.

**COUNT VIII**  
**DECLARATORY JUDGMENT – SUE AND LABOR COVERAGE**  
**(Claim Brought on Behalf of the Sue and Labor Declaratory Judgment Class)**

128. Plaintiff repeats and realleges Paragraphs 1-72 as if fully set forth herein.

129. Plaintiff brings this Count individually and on behalf of the other members of the Sue and Labor Declaratory Judgment Class.

130. Plaintiff's Westchester insurance policy, as well as those of the other Sue and Labor Declaratory Judgment Class Members, are contracts under which Westchester was paid premiums in exchange for its promise to pay Plaintiff's and the other Sue and Labor Declaratory Judgment Class Members' reasonably incurred expenses to protect Covered Property.

131. Plaintiff and the other Sue and Labor Declaratory Judgment Class Members have complied with all applicable provisions of the policies and/or those provisions have been waived by Westchester or Westchester is estopped from asserting them, and yet Westchester has abrogated its insurance coverage obligations pursuant to the policies' clear and unambiguous terms and has wrongfully and illegally refused to provide coverage to which Plaintiff is entitled.

132. Westchester has denied claims related to COVID-19 on a uniform and class wide basis, without individual bases or investigations, such that the Court can render declaratory judgment irrespective of whether members of the Class have filed a claim.

133. An actual case or controversy exists regarding Plaintiff's and the other Sue and Labor Declaratory Judgment Class Members' rights and Westchester's obligations under the policies to reimburse Plaintiff and the other Sue and Labor Declaratory Judgment Class Members for the full amount Plaintiff and the other members of the Sue and Labor Declaratory Judgment Class reasonably incurred to protect Covered Property from further damage by COVID-19.

134. Pursuant to 28 U.S.C. § 2201, Plaintiff and the other Sue and Labor Declaratory Judgment Class Members seek a declaratory judgment from this Court declaring the following:

- i. Plaintiff's and the other Sue and Labor Declaratory Judgment Class Members' reasonably incurred expenses to protect Covered Property from further damage by COVID-19 are insured losses under their policies; and
- ii. Westchester is obligated to pay Plaintiff and the other Sue and Labor Declaratory Judgment Class Members for the full amount of the expenses they reasonably incurred to protect Covered Property from further damage by COVID-19.

## **VII. REQUEST FOR RELIEF**

WHEREFORE, Plaintiff, individually and on behalf of the other Class Members, respectfully requests that the Court enter judgment in its favor and against Defendant as follows:

- a. Entering an order certifying the proposed nationwide Classes, as requested herein, designating Plaintiff as Class representative, and appointing Plaintiff's undersigned attorneys as Counsel for the Classes;
- b. Entering judgment on Counts I-IV in favor of Plaintiff and the Members of the Business Income Breach Class, the Civil Authority Breach Class, the Ingress and Egress Breach Class, the Extra Expense Breach Class, and the Sue and Labor

Breach Class; and awarding damages for breach of contract in an amount to be determined at trial;

c. Entering declaratory judgments on Counts V-VIII in favor of Plaintiff and the members of the Business Income Declaratory Judgment Class, the Civil Authority Declaratory Judgment Class, the Extra Expense Declaratory Judgment Class, and the Sue and Labor Declaratory Judgment Class as follows:

- i. Business Income, Civil Authority, Extra Expense, and Sue and Labor losses incurred in connection with the Closure Orders and the necessary interruption of their businesses stemming from the COVID-19 pandemic are insured losses under their policies; and
- ii. Westchester is obligated to pay for the full amount of the Business Income, Civil Authority, Extra Expense, and Sue and Labor losses incurred and to be incurred related to COVID-19, the Closure Orders and the necessary interruption of their businesses stemming from the COVID-19 pandemic;

d. Ordering Defendant to pay both pre- and post-judgment interest on any amounts awarded;

e. Ordering Defendant to pay attorneys' fees and costs of suit; and

f. Ordering such other and further relief as may be just and proper.

**VIII. JURY DEMAND**

Plaintiff hereby demands a trial by jury on all claims so triable.

Respectfully submitted on this 25th day of August, 2020,

/s/ Chris D. Glover

Chris D. Glover

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*Counsel for Plaintiff and the Proposed Class*

# EXHIBIT A

**State of Alabama  
Policy Cover Page**

Named Insured: The Last Resort - Mobile, LLC DBA: Poindexters

Policy Number: FSF15253113001

Surplus Lines Agent's Name: Jonathan C. Perloff

Surplus Lines Agent's Address: 6951 W. Sunrise Blvd  
Plantation, FL 33313

Surplus Lines Agent's License: 0052836

**This contract is registered and delivered as a surplus line coverage under the  
Alabama Surplus Line Insurance Law.**

Total Premium:	\$4,640.00
Fees:	Insp Fee \$150.00
	Policy Fee \$100.00
Surplus Lines Tax:	\$293.40

Total: \$5,183.40

Surplus Lines Agent's Countersignature:



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☐ Illinois Union Insurance Company

☐ INA Surplus Insurance Company

☒ Westchester Surplus Lines Insurance Company

Insured: The Last Resort - Mobile, LLC

Attached To Policy No.: FSF15253113 001

Effective Date: 2020-01-24

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### **ALABAMA SURPLUS LINES NOTIFICATION**

**THIS CONTRACT IS REGISTERED AND DELIVERED AS A SURPLUS LINE COVERAGE UNDER THE ALABAMA SURPLUS LINES INSURANCE LAW.**

NOTHING HEREIN CONTAINED SHALL BE HELD TO VARY, ALTER, WAIVE OR EXTEND ANY OF THE TERMS, CONDITIONS, OR LIMITATIONS OF THE POLICY TO WHICH THIS NOTICE IS ATTACHED OTHER THAN AS STATED ABOVE.

**Policy Declarations****Westchester**  
A Chubb Company

Policy No. FSF15253113 001	Renewal of: New
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**NAMED INSURED & MAILING ADDRESS**

The Last Resort - Mobile, LLC  
 DBA:Poindexters  
 5955 Old Shell Rd  
 Mobile, AL 36608

**POLICY PERIOD**

When Coverage Begins:	01/24/2020	12:01 A. M. Local Time At Named Insured's Address
When Coverage Ends:	01/24/2021	12:01 A. M. Local Time At Named Insured's Address

**INSURING COMPANY**

**Westchester Surplus Lines  
 Insurance Company (A.M. Best  
 Rating A++)**

**Producer's Name & Address:**

**BASS UNDERWRITERS INC  
 161 DAUPHIN STREET**

**MOBILE  
 AL  
 36602  
 Producer No.:Z04099**

**ATTACHED FORMS****Authorization Information**

Dated: 01/24/2020



Authorized Representative

**This contract is registered and delivered as a surplus line coverage under the Alabama Surplus Line Insurance Law.**

**CHUBB Westchester Binding  
Common Policy Declarations****Westchester**  
A Chubb Company

Policy Number:	FSF15253113 001	Renewal of:	New
Company Name:	Westchester Surplus Lines Insurance Company (A.M. Best Rating A++)		
Named Insured & Mailing Address:	The Last Resort - Mobile, LLC <b>DBA:</b> Poindexters 5955 Old Shell Rd Mobile, AL 36608	Producer's Name & Address:	BASS UNDERWRITERS INC  161 DAUPHIN STREET MOBILE, AL 36602
		Producer No.:	Z04099

**General Policy  
Information And  
Policy Period**

Form of Business:  
When Coverage Begins: 01/24/2020  
When Coverage Ends: 01/24/2021

Business Description:  
12:01 A.M. Local Time at Named  
Insured's Address  
12:01 A.M. Local Time at Named  
Insured's Address

**In return for the payment of premium, and subject to all the terms and conditions of this policy, we agree to provide the insurance as stated in this policy.**

The premium for this policy is indicated below next to the applicable Coverage Form(s).  
Premiums may be subject to adjustment.

*Coverage Form*

Property	\$4,640.00
<b>Total Policy Term Premium:</b>	<b>\$4,640.00</b>

**Total Amount Due:** \$4,640.00

**Attached Forms  
Information**See Forms Schedule CPFS2Date Issued: 01/24/2020

These Declarations together with the Coverage Declarations, Common Policy Conditions and Coverage Conditions (if applicable), Coverage Form(s) and Forms and Endorsements, if any, issued to form a part thereof, complete the above numbered policy.

**Commercial Property Declarations****Westchester**  
A Chubb CompanyCompany: Westchester Surplus Lines Insurance Company (A.M.  
Best Rating A++)

SYM: FS

Policy ID: FSF15253113 001

Location		
Loc. No.	Bld. No.	Address
1	1	5955 Old Shell Rd, Mobile, AL 36608

**Coverages and Limits Provided**

Insurance at Described Location Applies Only for Coverage for Which a Limit of Insurance is shown

Loc. No.	Bld. No.	Coverage	Rate	Limit of Insurance \$	Premium
1	1	Contents/BPP	0.92	\$50,000	\$460
1	1	Business Interruption	0.92	\$400,000	\$3,680
1	1	Spoilage Coverage (\$10,000 Limit)		N/A	\$250
ALL	ALL	Property Enhancement			\$250
Total Advance Premium This Page :					\$4,640
Total Advance Property Premium :					\$4,640

**Coverage Options****Deductible**

\$1,000

☐

See Multiple Deductible Form

☒

See Windstorm Or Hail Deductible Form

The Replacement Cost and Co-insurance or BI/EE Mo. Limit Of Indemnity options are provided when indicated by an entry below:

Loc. No.	Bld. No.	Coverage	Covered Causes of Loss Form	Replacement Cost	Co-insurance % or BI/EE Mo. Limit Of Indemnity
1	1	Contents/BPP	Special Including Theft	X	90%
1	1	Business Interruption	Special Including Theft	X	BI/EE 1/6

☐

See attached Schedule AWB0103s

## Forms Schedule

Company: Westchester Surplus Lines Insurance Company (A.M. Best Rating A++)

SYM: FS

Policy ID: FSF15253113 001

### Policy Period

When Coverage Begins: 01/24/2020

12:01 A.M. Local Time At Named Insured's Address

When Coverage Ends: 01/24/2021

12:01 A.M. Local Time At Named Insured's Address

Form Number	Form Title
SL17885 (08/04)	ALABAMA SURPLUS LINES NOTIFICATION
SLPD (03/08)	SURPLUS LINES DECLARATIONS
AWB0102 (02/16)	COMMON POLICY DECLARATIONS
AWB0103 (02/16)	COMMERCIAL PROPERTY DECLARATIONS
CPfs2 (01/11)	FORMS SCHEDULE
ACE0204 (05/10)	FUNGUS, WET ROT, DRY ROT AND BACTERIA EXCLUSION
ACE0210 (01/08)	NUCLEAR, BIOLOGICAL, CHEMICAL, RADIOLOGICAL EXCLUSION ENDORSEMENT
ACE0359 (12/10)	EARTHQUAKE SPRINKLER LEAKAGE EXCLUSION
ACE0421 (08/09)	PRE-EXISTING PROPERTY DAMAGE EXCLUSION
ACE0676 (01/12)	COVERAGE PLUS + PROPERTY ENHANCEMENT ENDORSEMENT
ACE0677 (01/12)	COVERAGE PLUS PROPERTY ENHANCEMENT ENDORSEMENT SCHEDULE OF SUB-LIMITS
ACE0681 (10/11)	DEFINITION OF LOSS OCCURRENCE ENDORSEMENT
ACE0755 (02/13)	COMMERCIAL PROPERTY CONDITIONS
AWB0211 (02/16)	WINDSTORM OR HAIL DEDUCTIBLE
CP0010 (10/12)	BUILDING AND PERSONAL PROPERTY COVERAGE FORM
CP0030 (10/12)	BUSINESS INCOME (AND EXTRA EXPENSE) COVERAGE FORM
CP0411 (10/12)	PROTECTIVE SAFEGUARDS
CP0440 (06/07)	SPOILAGE COVERAGE
CP1030 (10/12)	CAUSES OF LOSS - SPECIAL FORM
CP1211 (10/00)	Burglary and Robbery Protective Safeguards
ILP003 (07/05)	FLOOD COVERAGE ADVISORY NOTICE TO POLICYHOLDERS
FA49317 (06/17)	ASBESTOS MATERIAL EXCLUSION
SL34255a (01/16)	SERVICE OF SUIT ENDORSEMENT
ALL39844 (02/13)	CHUBB PRIVACY NOTICE
WSG084 (05/11)	SURPLUS LINES BROKER NOTICE
TRIA24 (01/15)	POLICYHOLDER DISCLOSURE NOTICE OF TERRORISM INSURANCE COVERAGE
ALL10750 (01/15)	TERRORISM EXCLUSION ENDORSEMENT
LD5S23j (03/14)	SIGNATURE ENDORSEMENT
IL0017 (11/98)	COMMON POLICY CONDITIONS
ALL20887 (10/06)	CHUBB PRODUCER COMPENSATION PRACTICES & POLICIES
ALL21101 (11/06)	TRADE OR ECONOMIC SANCTIONS ENDORSEMENT
AWB0311 (02/16)	CLAIMS DIRECTORY
AWB0310 (09/15)	MINIMUM EARNED PREMIUM ENDORSEMENT
ILN013 (02/13)	ALABAMA FRAUD STATEMENT
ALL42490b (07/16)	U.S. FOREIGN ACCOUNT TAX COMPLIANCE ACT ("FATCA")
ILP001 (01/04)	U.S. TREASURY DEPARTMENT'S OFFICE OF FOREIGN ASSETS CONTROL (OFAC) ADVISORY NOTICE TO POLICYHOLDERS

**FUNGUS, WET ROT, DRY ROT AND BACTERIA EXCLUSION**

Named Insured The Last Resort - Mobile, LLC			Endorsement Number
Policy Symbol FS	Policy Number FSF15253113 001	Policy Period 01-24-2020 To 01-24-2021	Effective Date of Endorsement
Issued By (Name of Insurance Company) Westchester Surplus Lines Insurance Company			

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE FOLLOWING:**

**COMMERCIAL PROPERTY COVERAGE PART**

**COMMERCIAL INLAND MARINE COVERAGE PART**

A. The following exclusion is added:

We will not pay for loss, or physical loss or damage, caused directly or indirectly by any of the following. Such loss or physical loss or damage, is excluded regardless of any cause or event that contributes concurrently or in any sequence to the loss, or physical loss or damage:

1. Presence, growth, proliferation, spread or activity of "fungus", wet rot or dry rot or bacteria. But if "fungus" wet rot, dry rot or bacteria results in a "specified cause of loss", we will pay for the loss caused by that "specified cause of loss". This exclusion does not apply when "fungus", wet rot or dry rot, or bacteria results from fire or lightning;
2. Enforcement of any ordinance or law which requires the demolition, repair, replacement, reconstruction, remodeling or remediation of property due to contamination by "pollutants" or due to the presence, growth, proliferation, spread or any activity of "fungus", wet rot or dry rot, or bacteria; or
3. The cost associated with the enforcement of any ordinance or law which requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants", "fungus", wet rot or dry rot, or bacteria.

B. The following are added to the Definitions:

"Fungus" means any type or form of fungus, including mold or mildew, and any mycotoxins, spores, scents or byproducts produced or released by fungi.

"Specified cause of loss" means: fire, lightning, explosion, windstorm or hail, smoke, aircraft or vehicles; riot or civil commotion; vandalism; leakage from fire extinguishing equipment; sinkhole collapse; volcanic action; falling objects; weight of snow, ice, or sleet; water damage.

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

This endorsement may be attached to a coverage form or an endorsement with a different definition from the listed definitions. If there is a different definition, that definition does not apply to this endorsement.

All other terms and conditions remain unchanged.

## NUCLEAR, BIOLOGICAL, CHEMICAL, RADIOLOGICAL EXCLUSION ENDORSEMENT

Named Insured The Last Resort - Mobile, LLC			Endorsement Number
Policy Symbol FS	Policy Number FSF15253113 001	Policy Period 01-24-2020 To 01-24-2021	Effective Date of Endorsement
Issued By (Name of Insurance Company) Westchester Surplus Lines Insurance Company			

Insert the policy number. The remainder of the information is to be completed only when this endorsement is issued subsequent to the preparation of the policy.

### THIS ENDORSEMENT CHANGES YOUR POLICY. PLEASE READ IT CAREFULLY.

**This endorsement modifies insurance provided under the following:**

**BOILER AND MACHINERY COVERAGE PART  
COMMERCIAL INLAND MARINE COVERAGE PART  
COMMERCIAL PROPERTY COVERAGE PART  
CRIME AND FIDELITY COVERAGE PART**

The following exclusions are added to your Policy or Coverage Part.

This insurance does not apply to:

- |   |   |
|---|---|
| <p>A. Loss or damage arising directly or indirectly from nuclear detonation, reaction, nuclear radiation or radioactive contamination, all whether controlled or uncontrolled, or due to any act or condition incident to any of the foregoing, 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 physical loss or damage insured against by this Policy or Coverage Part, however such nuclear detonation, reaction, nuclear radiation or radioactive contamination may have been caused. This exclusion replaces any other nuclear detonation, nuclear reaction, nuclear radiation or radioactive contamination exclusions found elsewhere in this Policy.</p> | <p>B. Loss or damage arising directly or indirectly from the dispersal, application or release of, or exposure to, chemical, radiological, or biological materials or agents, all whether controlled or uncontrolled, or due to any act or condition incident to any of the foregoing, 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 physical loss or damage insured against by this Policy or Coverage Part, however such dispersal, application, release or exposure may have been caused.</p> <p>C. If this endorsement is attached to a Commercial Inland Marine Policy or Coverage Part, the term loss or damage is changed to <i>Loss</i>.</p> |
|---|---|



**EARTHQUAKE SPRINKLER LEAKAGE EXCLUSION**

Named Insured The Last Resort - Mobile, LLC			Endorsement Number
Policy Symbol FS	Policy Number FSF15253113 001	Policy Period 01-24-2020 To 01-24-2021	Effective Date of Endorsement
Issued By (Name of Insurance Company) Westchester Surplus Lines Insurance Company			

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE FOLLOWING:**

**COMMERCIAL PROPERTY COVERAGE PART**

**COMMERCIAL INLAND MARINE COVERAGE PART**

This policy does not insure against loss caused directly or indirectly by any of the following. Such loss is excluded regardless of any other cause or event contributing concurrently or in any sequence to the loss.

Loss or damage by sprinkler leakage caused directly by earthquake, earth movement or volcanic eruption.

Definitions

Sprinkler leakage means:

- A. Leakage or discharge of water or other substances from within any automatic sprinkler system, or
- B. Direct loss caused by collapse or fall of a tank forming a part of such system.

Automatic sprinkler system means:

Any automatic fire protective system including sprinklers, discharge nozzles and ducts, pipes, valves, fittings, tanks (including their component parts and supports), pumps and private fire protection mains, all connected with and constituting a part of an automatic protective system; and non-automatic fire protective systems, hydrants, standpipes or outlets supplied from an automatic fire protective system.

All other terms and conditions remain unchanged.

**PRE-EXISTING PROPERTY DAMAGE EXCLUSION**

Named Insured The Last Resort - Mobile, LLC			Endorsement Number
Policy Symbol FS	Policy Number FSF15253113 001	Policy Period 01-24-2020 To 01-24-2021	Effective Date of Endorsement
Issued By (Name of Insurance Company) Westchester Surplus Lines Insurance Company			

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE FOLLOWING:**

**PROPERTY COVERAGE PART**

**INLAND MARINE COVERAGE PART**

This policy excludes any loss or damage directly or indirectly caused by, resulting from or contributed to by any pre-existing property damage at the time of loss.

**COVERAGE PLUS+ PROPERTY ENHANCEMENT ENDORSEMENT**

Named Insured <b>The Last Resort - Mobile, LLC</b>			Endorsement Number
Policy Symbol <b>FS</b>	Policy Number <b>FSF15253113 001</b>	Policy Period <b>01-24-2020 To 01-24-2021</b>	Effective Date of Endorsement
Issued By (Name of Insurance Company) <b>Westchester Surplus Lines Insurance Company</b>			

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE FOLLOWING:**

**BUILDING AND PERSONAL PROPERTY COVERAGE FORM  
CONDOMINIUM ASSOCIATION COVERAGE FORM  
COMMERCIAL PROPERTY COVERAGE PART**

THIS FORM MUST BE ACCOMPANIED BY A COVERAGE Plus+ PROPERTY ENHANCEMENT ENDORSEMENT  
SCHEDULE OF SUB-LIMITS

**A. Fire Department Service Charge**

- 1. Additional Coverage Fire Department Service Charge, A.4.c.,** is deleted and replaced by the following.

When the fire department is called to save or protect Covered Property from a Covered Cause of Loss, we will pay up to the Fire Department Service Charge Limit of Insurance shown in the Schedule of Sub-Limits for your liability for fire department service charges:

- (1) Assumed by contract or agreement prior to loss; or
- (2) Required by local ordinance, or
- (3) Foam solutions, dry chemicals, halon, or other fire extinguishing materials which have been lost, expanded, damaged or destroyed as a result of or arising out of a Covered Cause of Loss.

**B. Pollution Clean up and Removal**

- 1. Under Additional Coverage Pollution Clean up and Removal, A.4.d.,** the last paragraph is deleted and replaced by the following:

The most we will pay under this Additional Coverage for each described premises is

Limit of Insurance shown in the Schedule of Sub-Limits for the sum of all covered expenses arising out of Covered Causes of Loss occurring during each separate 12-month period of this policy.

**C. Electronic Data**

- 1. Additional Coverages Electronic Data, A.4.f. (4),** is deleted and replaced by the following:

The most we will pay under this Additional Coverage, Electronic Data, for all loss or damage sustained in any one policy year, regardless of the number of occurrences of loss or damage or the number of premises, locations or computer systems involved is the Electronic Data Limit of Insurance shown in the Schedule of Sub-Limits. If loss payment on the first occurrence does not exhaust this amount, then the balance is available for subsequent loss or damage sustained in but not after that policy year. With respect to an occurrence which begins in one policy year and continues or results in additional loss or damage in a subsequent policy year(s), all loss or damage is deemed to be sustained in the policy year in which the occurrence began.

**D. Back Up of Sewers and Drains Coverage**

The following is added as an Additional Coverage under Section A.4.:

**g. Back Up of Sewers and Drains Coverage**

1. Under this Additional Coverage, we will pay for loss or damage arising out of a Covered Cause of Loss to Covered Property at the premises described in the declarations.
2. Under this Additional Coverage, Back Up of Sewers and Drains means water that backs up or overflows or is otherwise discharged from a sewer, drain, sump, sump pump or related equipment.
3. For the purposes of this Additional Coverage only, Exclusion **B.1.g. Water** of the **Cause of Loss – Special Form (CP 10 30)** is deleted and replaced by the following:

**g. Water**

- (1) Flood, surface water, waves (including tidal wave and tsunami), tides, tidal water, overflow of any body of water, or spray from any of these, all whether or not driven by wind (including storm surge);
- (2) Mudslide or mudflow;
- (3) Water under the ground surface pressing on, or flowing or seeping through:
  - (1) Foundations, walls, floors, or paved surfaces;
  - (2) Basements, whether paved or not; or
  - (3) Doors, windows or other openings; or
- (4) Waterborne material carried or otherwise moved by any of the water referred to in Paragraph **1.**, or **3.**, or material carried or other-wise moved by mudslide or mudflow.

This exclusion applies regardless of whether any of the above, in Paragraphs **1.** through **4.**, is caused by an act of nature or is otherwise caused. An example of a situation to which this exclusion applies is the situation where a dam,

levee, sea-wall or other boundary or containment system fails in whole or in part, for any reason, to contain the water.

But if any of the above, in Paragraphs **1.** through **4.**, results in fire, explosion or sprinkler leakage, we will pay for the loss or damage caused by that fire, explosion or sprinkler leakage (if sprinkler leakage is a Covered Cause of Loss).

The most we will pay under this Additional Coverage is the Backup of Sewers and Drains Limit of Insurance shown in the Schedule of Sub-Limits for the sum of all covered expenses arising out of Covered Causes of Loss occurring during each separate 12-month period of this policy.

**E. Personal Effects and Property of Others**

1. **Coverage Extension Personal Effects And Property Of Others, A.5.b.**, is deleted and replaced by the following:

**b. Personal Effects And Property Of Others**  
You may extend the insurance that applies to Your Business Personal Property to apply to:

- (1) Personal effects owned by you, your officers, your partners or members, your managers or your employees. This extension does not apply to loss or damage by theft.
- (2) Personal property of others in your care, custody or control.
- (3) The most we will pay for loss or damage under this Extension at each described premises is the Personal Effects and Property of Others Limit of Insurance shown in the Schedule of Sub-Limits. Our payment for loss of or damage to personal property of others will only be for the account of the owner of the property.

**F. Valuable Papers and Records Coverage**

1. Under **Coverage Extension Valuable Papers and Records (Other Than Electronic Data), A.5.c.(4)**, is deleted and replaced by the following:

- (4) Under this Extension, the most we will pay to replace or restore the lost information at each described premises is the Valuable Papers and Records Limit of Insurance shown in the Schedule of Sub-Limits. Such amount is additional insurance. We will also pay for the cost of blank material for reproducing the records (whether or not duplicates exist), and (when there is a duplicate) for the cost of labor to transcribe or copy the records. The costs of blank material and labor are subject to the applicable Limit of Insurance on Your Business Personal Property and therefore coverage of such costs is not additional insurance.

#### G. Property Off-premises

1. **Coverage Extension Property Off Premises, A.5.d.**, is deleted and replaced by the following:

##### d. Property Off-Premises

1. You may extend the insurance provided by this Coverage Form to apply to your Covered Property while it is away from the described premises, if it is:
  - (a) Temporarily at a location you do not own, lease or operate;
  - (b) In storage at a location you lease, provided the lease was executed after the beginning of the current policy term; or
  - (c) At any fair, trade show or exhibition.
2. This Extension does not apply to property:
  - (a) In or on a vehicle;
  - (b) In the care, custody or control of your salespersons, unless the property is in such care, custody or control at a fair, trade show or exhibition; or
  - (c) Stock

3. The most we will pay for loss or damage under this Extension is the Property Off-premises Limit of Insurance shown in the Schedule of Sub-Limits.

#### H. Outdoor Property

1. Under **Coverage Extension Outdoor Property, A.5.e.**, the last paragraph is deleted and replaced by the following:

The most we will pay for loss or damage under this Extension is the Outdoor Property Limit of Insurance shown in the Schedule of Sub-Limits, but we will not pay more than \$250 for any one tree, shrub or plant. These limits apply to any one occurrence, regardless of the types or number of items lost or damaged in that occurrence.

#### I. Signs

1. The second paragraph of Section **C. Limits Of Insurance** is deleted and replaced by the following::

The most we will pay for loss or damage to outdoor signs, whether or not the sign is attached to a building, is the Outdoor Signs Limit of Insurance shown in the Schedule of Sub-Limits.

#### J. Property In Transit

1. Under **the Causes of Loss - Special Form, CP1030, Additional Coverage Extensions Property in Transit, F.1.c.** is deleted and replaced by the following:

- c. The most we will pay for loss or damage under this Extension is the Property in Transit Limit of Insurance shown in the Schedule of Sub-Limits.

#### K. Accounts Receivable

The following Coverage Extension is added to the Section **A.5. Coverage Extensions** of the **Building and Personal Property Coverage Form (CP 00 10)**:

**g. Accounts Receivable**

1. You may extend the insurance that applies to Business Personal Property to apply to covered losses and expenses that you incur as a result of loss to your records of "accounts receivable." But this extension does not apply to "accounts receivable" which exist as electronic data, unless the loss results from "specified causes of loss." The most we will pay under this coverage extension for all loss or damage sustained in any one policy year, regardless of the number of occurrences of loss or damage or the number of premises, is the limit stated in the Schedule. This additional coverage is provided within, not in addition to, the Limit of Insurance stated in the Declarations as applicable to Business Personal Property.
2. "Accounts Receivable" means:
  - a) All amounts due from your customers that you are unable to collect;
  - b) Interest charges on any loan required to offset amounts you are unable to collect pending our payment of these amounts;
  - c) Collection expenses in excess of your normal collection expenses that are made necessary by the loss; and
  - d) Other reasonable expenses that you incur to re-establish your records of "accounts receivable."
3. If you cannot accurately establish the amount of "accounts receivable" outstanding as of the time of loss, the following method will be used to determine the loss:
  - a) Determine the total of the average monthly amounts of "accounts receivable" for the 12 months immediately preceding the month in which the loss occurred; and
  - b) Adjust that total for any normal fluctuations in the amount of "accounts receivable" for the month in which the loss occurred or for any demonstrated variance from the average for that month.
4. The following will be deducted from the total amount of "accounts receivable," however that amount is established:
  - a) The amount of the accounts for which there is no loss;

- b) The amount of the accounts that you are able to re-establish or collect;
- c) An amount to allow for probable bad debts that you are normally unable to collect; and
- d) All unearned interest and service charges.

5. You will pay us the amount of all recoveries you receive for a loss paid by us. But you will not pay us any recoveries in excess of the amount we have paid.

Under this additional coverage, electronic data has the meaning described under Property Not Covered – Electronic Data in the Building and Personal Property Coverage Form.

The most we will pay for loss or damage under this additional coverage is the Accounts Receivable Limit of Insurance shown in the Schedule of Sub-Limits.

**COVERAGE PLUS+ PROPERTY ENHANCEMENT ENDORSEMENT  
SCHEDULE OF SUB-LIMITS**

Named Insured The Last Resort - Mobile, LLC			Endorsement Number
Policy Symbol FS	Policy Number FSF15253113 001	Policy Period 01-24-2020 To 01-24-2021	Effective Date of Endorsement
Issued By (Name of Insurance Company) Westchester Surplus Lines Insurance Company			

This Schedule Summary is intended to be a general description of coverage. Specific coverage, conditions and exclusions are given in the Coverage Plus+ Property Enhancement Endorsement ACE0676 (01/12) attached to the policy.

**Additional Coverage's**

Fire Department Service Charge  
Pollution Clean Up and Removal  
Electronic Data  
Back-Up of Sewers and Drains

**Sub-Limits of Insurance – Per Occurrence**

\$ 10,000  
\$ 25,000  
\$ 10,000  
\$ 10,000

**Coverage Extensions**

Personal Effects and Property of Others  
Valuable Papers and Records  
Property off Premises  
Outdoor Property  
Signs  
Property in Transit  
Accounts Receivable

**Sub-Limits of Insurance – Per Occurrence**

\$ 10,000  
\$ 25,000  
\$ 25,000  
\$ 5,000  
\$ 10,000  
\$ 10,000  
\$ 25,000

The maximum Limit of Insurance is stated in the Commercial Property coverage part declaration Page; however, if a Sub-limit of Liability is stated above or elsewhere in this Policy, the lesser limit shall apply.

The Sub-limit(s) are the most the Company will pay in any one occurrence for various extensions, endorsements, coverage Parts, Perils, causes of Loss or locations. If an annual aggregate is provided, the occurrence Sub-limit of Insurance is the most the Company will pay in any one-policy year for such extensions, endorsement, coverage parts, Perils, causes of Loss or locations.

The Sub-limit(s) are part of and not in addition to the Limit of Insurance. The Sub-limit(s) do not increase the Limit of Insurance or any other Sub-limit.

All other terms and conditions remain unchanged.



**DEFINITION OF LOSS OCCURRENCE ENDORSEMENT**

Named Insured The Last Resort - Mobile, LLC			Endorsement Number
Policy Symbol FS	Policy Number FSF15253113 001	Policy Period 01-24-2020 To 01-24-2021	Effective Date of Endorsement
Issued By (Name of Insurance Company) Westchester Surplus Lines Insurance Company			

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE FOLLOWING:**

**COMMERCIAL PROPERTY COVERAGE PART**

**COMMERCIAL INLAND MARINE COVERAGE PART**

The following definition is added to this policy; supersedes any other definition, express or implied, of the term "Loss Occurrence" in any term, provision or endorsement to this policy; and applies not withstanding such term, provision or endorsement:

1. "Loss Occurrence" means the sum of all individual losses arising out of and directly caused by any one disaster, accident or loss or series of disasters, accidents or losses arising out of one event which occurs anywhere within the Coverage Territory. The duration and extent of any one Loss Occurrence will be limited to all individual losses sustained by the Insured occurring during any period of 72 consecutive hours arising out of and directly caused by the same event, except:
  - A. As regards Windstorm (including Tier 1 Counties), Flood, Hail or Tornado, including ensuing collapse, Flood and Water Damage: all individual losses sustained by the Insured occurring during any period of 96 consecutive hours arising out of and directly caused by the same event.
  - B. As regards the perils of riot, strike or civil commotion, vandalism and malicious mischief, including losses from all other perils covered hereunder following as a result of the aforesaid perils: all losses or series of losses occurring during any period of 72 consecutive hours arising out of and directly caused by the same event. The maximum duration of 72 consecutive hours may be extended in respect of individual losses which occur beyond such 72 consecutive hours during the continued occupation of the Insured's premises by strikers, provided such occupation commenced during the aforesaid period.
  - C. As regards the peril of Earthquake, including losses from all other perils covered hereunder following as a result of Earthquake: only those individual losses covered hereunder, which commence during the period of 168 consecutive hours, may be included in the Loss Occurrence.
  - D. As regards the peril of freeze: only those individual losses directly caused by collapse, breakage of glass, water and/or liquid damage due to burst pipes tanks or pressure vessels; damage to machinery or equipment, stock and/or work in progress due to freeze; and/or individual losses arising directly out of the lack of supply of power, current, coolant and/or fuel due to frozen pipes and/or frozen feed lines may be included in the Loss Occurrence.

Except for those Loss Occurrences referred to in sub-paragraphs A. and B. above, the Insured may chose the date and time when such period of consecutive hours commences, provided that it is not earlier than the date and time of the occurrence of the first recorded individual loss sustained by the Insured arising out of that disaster, accident or loss and provided that only one such period of consecutive hours will apply with respect to one event.

However, as respects those Loss Occurrences referred to in sub-paragraphs A. and B. above, if the disaster, accident or loss occasioned by the event is of greater duration than the specified period of consecutive hours, then the Insured may divide that disaster, accident or loss into two or more Loss Occurrences, provided no two periods overlap and no individual loss is included in more than one such period and provided that no period commences earlier than the date and time of the occurrence of the first recorded individual loss sustained by the Insured arising from that disaster, accident or loss.



However, we shall not be liable hereunder for any loss or damage:

- a) Occurring before this policy becomes effective; or
- b) Arising from an "occurrence" which is in progress at the time this policy becomes effective, even if such loss or damage occurs after this policy becomes effective; or
- c) Occurring after the expiration of this policy, except loss or damage arising from an "occurrence" in progress at the time this policy expires.

This provision in no way alters any Policy Limit of Liability or Sub-limit of Liability.

All other terms and conditions remain unchanged.

## COMMERCIAL PROPERTY CONDITIONS

This Coverage Part is subject to the following conditions, the Common Policy Conditions and applicable Loss Conditions and Additional Conditions in Commercial Property Coverage Forms.

### A. CONCEALMENT, MISREPRESENTATION OR FRAUD

This Coverage Part is void in any case of fraud by you as it relates to this Coverage Part at any time. It is also void if you or any other insured, at any time, intentionally conceal or misrepresent a material fact concerning:

1. This Coverage Part;
2. The Covered Property;
3. Your interest in the Covered Property; or
4. A claim under this Coverage Part.

### B. CONTROL OF PROPERTY

Any act or neglect of any person other than you beyond your direction or control will not affect this insurance.

The breach of any condition of this Coverage Part at any one or more locations will not affect coverage at any location where, at the time of loss or damage, the breach of condition does not exist.

### C. INSURANCE UNDER TWO OR MORE COVERAGES

If two or more of this policy's coverages apply to the same loss or damage, we will not pay more than the actual amount of the loss or damage.

### D. LEGAL ACTION AGAINST US

No one may bring a legal action against us under this Coverage Part unless:

1. There has been full compliance with all of the terms of this Coverage Part; and
2. The action is brought within 2 years after the date on which the direct physical loss or damage occurred.

### E. LIBERALIZATION

If we adopt any revision that would broaden the coverage under this Coverage Part without additional premium within 45 days prior to or during the policy period, the broadened coverage will immediately apply to this Coverage Part.

### F. NO BENEFIT TO BAILEE

No person or organization, other than you, having custody of Covered Property will benefit from this insurance.

### G. OTHER INSURANCE

1. You may have other insurance subject to the same plan, terms, conditions and provisions as the insurance under this Coverage Part. If you do, we will pay our share of the covered loss or damage. Our share is the proportion that the applicable Limit of Insurance under this Coverage Part bears to the Limits of Insurance of all insurance covering on the same basis.
2. If there is other insurance covering the same loss or damage, other than that described in 1. above, we will pay only for the amount of covered loss or damage in excess of the amount due from that other insurance, whether you can collect on it or not. But we will not pay more than the applicable Limit of Insurance.

### H. POLICY PERIOD, COVERAGE TERRITORY

Under this Coverage Part:

1. We cover loss or damage commencing:
  - a. During the policy period shown in the Declarations; and
  - b. Within the coverage territory.
2. The coverage territory is:
  - a. The United States of America (including its territories and possessions); and
  - b. Puerto Rico.

**I. TRANSFER OF RIGHTS OF RECOVERY  
AGAINST OTHERS TO US**

If any person or organization to or for whom we make payment under this Coverage Part has rights to recover damages from another, those rights are transferred to us to the extent of our payment. That person or organization must do everything necessary to secure our rights and must do nothing after loss to impair them. But you may waive your rights against another party in writing:

1. Prior to a loss to your Covered Property or Covered Income.
2. After a loss to your Covered Property or Covered Income only if, at time of loss, that party is one of the following:
  - a. Someone insured by this insurance;
  - b. A business firm:
    - (1) Owned or controlled by you; or
    - (2) That owns or controls you; or
  - c. Your tenant.

This will not restrict your insurance.

**WINDSTORM OR HAIL DEDUCTIBLE FORM**

Named Insured The Last Resort - Mobile, LLC			Endorsement Number
Policy Symbol FS	Policy Number FSF15253113 001	Policy Period 2020-01-24 To 2021-01-24	Effective Date of Endorsement
Issued By (Name of Insurance Company) WestchesterSurplusLines			

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE FOLLOWING:**

**COMMERCIAL PROPERTY COVERAGE PART**

Minimum Dollar Deductible \$2,500			Per Occurrence (applicable with a Percentage Deductible)			
Location #	Building #	Percentage or Dollar Deductible	Applicable to "Named Storm" Only		Applicable to "Hawaii Hurricane" Only	
1	1	5%	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

With respect to loss or damage caused directly or indirectly by:

1. Windstorm or hail, or
2. Rain damage to the interior of any building or structure, or the property inside the building or structure, whether the rain is driven by wind or not, provided the building or structure first sustains windstorm or hail damage to its roof or walls through which the rain enters,

the Deductibles shown in the Schedule above replace any other applicable deductible.

Each location deductible shown in the Schedule above applies separately to such location, regardless of the number of locations that suffer loss or damage.

**A. Calculation of Percentage Deductible:**

If the applicable deductible for a location is shown as a percentage, for each windstorm or hail occurrence, the deductible for such location will be calculated and applied separately to:

1. Each building or structure;
2. The contents in or on each building or structure;
3. Personal Property in the open;
4. Business Income/Extra Expense and/or Rental Value; and
5. All other covered items.

In determining the amount, if any, that we will pay for loss or damage, we will deduct an amount equal to the applicable Percentage Deductible, shown in the Schedule above, to each value listed in the most recent Schedule Of Values, for each covered item that has sustained loss or damage and for which a claim is being made under this policy.

If a covered item is not included in the most recent Schedule Of Values, the total values of such covered item at the time of loss and at the location that suffered loss or damage will be used.

In no event will the deductible amount determined above be less than the applicable Minimum Dollar Deductible shown in the Schedule above.

**B. Calculation of Dollar Deductible:**

If the applicable deductible for a location is shown in dollars, for each windstorm or hail occurrence, in determining the amount, if any, that we will pay for loss or damage, we will deduct an amount equal to the applicable Dollar Deductible shown in the Schedule above from the total amount of loss or damage at such location. This Dollar Deductible does not apply to Extra Expense.

- C. The deductibles calculated above apply after any reduction required by the coinsurance condition, if applicable.
- D. If coverage is provided for Business Income, the deductibles calculated above apply in addition to the 72 hour waiting period as stated in Form CP 0030 "Business Income (and Extra Expense) Coverage Form" or Form CP 0032 "Business Income (without Extra Expense) Coverage Form" as regards to loss or damage described above.
- E. If indicated in the Schedule above, the provisions of this endorsement apply only to "Named Storms" or "Hawaii Hurricanes" as defined in the Named Storm Deductible And Named Storm Definition Endorsement, form ACE0244 or the Hawaii Hurricane Definition And Hawaii Hurricane Deductible Endorsement, form ACE0249 attached to this policy.

All other terms and conditions remain unchanged.

## BUILDING AND PERSONAL PROPERTY COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy, the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we", "us" and "our" refer to the company providing this insurance.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section H. Definitions.

### A. Coverage

We will pay for direct physical loss of or damage to Covered Property at the premises described in the Declarations caused by or resulting from any Covered Cause of Loss.

#### 1. Covered Property

Covered Property, as used in this Coverage Part, means the type of property described in this section, **A.1.**, and limited in **A.2.** Property Not Covered, if a Limit Of Insurance is shown in the Declarations for that type of property.

**a. Building**, meaning the building or structure described in the Declarations, including:

- (1) Completed additions;
- (2) Fixtures, including outdoor fixtures;
- (3) Permanently installed:
  - (a) Machinery; and
  - (b) Equipment;
- (4) Personal property owned by you that is used to maintain or service the building or structure or its premises, including:
  - (a) Fire-extinguishing equipment;
  - (b) Outdoor furniture;
  - (c) Floor coverings; and
  - (d) Appliances used for refrigerating, ventilating, cooking, dishwashing or laundering;
- (5) If not covered by other insurance:
  - (a) Additions under construction, alterations and repairs to the building or structure;
  - (b) Materials, equipment, supplies and temporary structures, on or within 100 feet of the described premises, used for making additions, alterations or repairs to the building or structure.

### b. Your Business Personal Property

consists of the following property located in or on the building or structure described in the Declarations or in the open (or in a vehicle) within 100 feet of the building or structure or within 100 feet of the premises described in the Declarations, whichever distance is greater:

- (1) Furniture and fixtures;
- (2) Machinery and equipment;
- (3) "Stock";
- (4) All other personal property owned by you and used in your business;
- (5) Labor, materials or services furnished or arranged by you on personal property of others;
- (6) Your use interest as tenant in improvements and betterments. Improvements and betterments are fixtures, alterations, installations or additions:
  - (a) Made a part of the building or structure you occupy but do not own; and
  - (b) You acquired or made at your expense but cannot legally remove;
- (7) Leased personal property for which you have a contractual responsibility to insure, unless otherwise provided for under Personal Property Of Others.

### c. Personal Property Of Others that is:

- (1) In your care, custody or control; and
- (2) Located in or on the building or structure described in the Declarations or in the open (or in a vehicle) within 100 feet of the building or structure or within 100 feet of the premises described in the Declarations, whichever distance is greater.

However, our payment for loss of or damage to personal property of others will only be for the account of the owner of the property.

## 2. Property Not Covered

Covered Property does not include:

- a. Accounts, bills, currency, food stamps or other evidences of debt, money, notes or securities. Lottery tickets held for sale are not securities;
- b. Animals, unless owned by others and boarded by you, or if owned by you, only as "stock" while inside of buildings;
- c. Automobiles held for sale;
- d. Bridges, roadways, walks, patios or other paved surfaces;
- e. Contraband, or property in the course of illegal transportation or trade;
- f. The cost of excavations, grading, backfilling or filling;
- g. Foundations of buildings, structures, machinery or boilers if their foundations are below:
  - (1) The lowest basement floor; or
  - (2) The surface of the ground, if there is no basement;
- h. Land (including land on which the property is located), water, growing crops or lawns (other than lawns which are part of a vegetated roof);
- i. Personal property while airborne or waterborne;
- j. Bulkheads, pilings, piers, wharves or docks;
- k. Property that is covered under another coverage form of this or any other policy in which it is more specifically described, except for the excess of the amount due (whether you can collect on it or not) from that other insurance;
- l. Retaining walls that are not part of a building;
- m. Underground pipes, flues or drains;
- n. Electronic data, except as provided under the Additional Coverage, Electronic Data. Electronic data means information, facts or computer programs stored as or on, created or used on, or transmitted to or from computer software (including systems and applications software), on hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other repositories of computer software which are used with electronically controlled equipment. The term computer programs, referred to in the foregoing description of electronic data, means a set of related electronic instructions which direct the operations and functions of a computer or device connected to it, which enable the computer or device to receive, process, store, retrieve or send data. This paragraph, n., does not apply to your "stock" of prepackaged software, or to electronic data which is integrated in and operates or controls the building's elevator, lighting, heating, ventilation, air conditioning or security system;
- o. The cost to replace or restore the information on valuable papers and records, including those which exist as electronic data. Valuable papers and records include but are not limited to proprietary information, books of account, deeds, manuscripts, abstracts, drawings and card index systems. Refer to the Coverage Extension for Valuable Papers And Records (Other Than Electronic Data) for limited coverage for valuable papers and records other than those which exist as electronic data;
- p. Vehicles or self-propelled machines (including aircraft or watercraft) that:
  - (1) Are licensed for use on public roads; or
  - (2) Are operated principally away from the described premises.

This paragraph does not apply to:

  - (a) Vehicles or self-propelled machines or autos you manufacture, process or warehouse;



- (b) Vehicles or self-propelled machines, other than autos, you hold for sale;
  - (c) Rowboats or canoes out of water at the described premises; or
  - (d) Trailers, but only to the extent provided for in the Coverage Extension for Non-owned Detached Trailers; or
- q. The following property while outside of buildings:
- (1) Grain, hay, straw or other crops;
  - (2) Fences, radio or television antennas (including satellite dishes) and their lead-in wiring, masts or towers, trees, shrubs or plants (other than trees, shrubs or plants which are "stock" or are part of a vegetated roof), all except as provided in the Coverage Extensions.

### 3. Covered Causes Of Loss

See applicable Causes Of Loss form as shown in the Declarations.

### 4. Additional Coverages

#### a. Debris Removal

- (1) Subject to Paragraphs (2), (3) and (4), we will pay your expense to remove debris of Covered Property and other debris that is on the described premises, when such debris is caused by or results from a Covered Cause of Loss that occurs during the policy period. The expenses will be paid only if they are reported to us in writing within 180 days of the date of direct physical loss or damage.
- (2) Debris Removal does not apply to costs to:
  - (a) Remove debris of property of yours that is not insured under this policy, or property in your possession that is not Covered Property;
  - (b) Remove debris of property owned by or leased to the landlord of the building where your described premises are located, unless you have a contractual responsibility to insure such property and it is insured under this policy;
  - (c) Remove any property that is Property Not Covered, including property addressed under the Outdoor Property Coverage Extension;
  - (d) Remove property of others of a type that would not be Covered Property under this Coverage Form;
  - (e) Remove deposits of mud or earth from the grounds of the described premises;
  - (f) Extract "pollutants" from land or water; or
  - (g) Remove, restore or replace polluted land or water.
- (3) Subject to the exceptions in Paragraph (4), the following provisions apply:
  - (a) The most we will pay for the total of direct physical loss or damage plus debris removal expense is the Limit of Insurance applicable to the Covered Property that has sustained loss or damage.
  - (b) Subject to (a) above, the amount we will pay for debris removal expense is limited to 25% of the sum of the deductible plus the amount that we pay for direct physical loss or damage to the Covered Property that has sustained loss or damage. However, if no Covered Property has sustained direct physical loss or damage, the most we will pay for removal of debris of other property (if such removal is covered under this Additional Coverage) is \$5,000 at each location.
- (4) We will pay up to an additional \$25,000 for debris removal expense, for each location, in any one occurrence of physical loss or damage to Covered Property, if one or both of the following circumstances apply:
  - (a) The total of the actual debris removal expense plus the amount we pay for direct physical loss or damage exceeds the Limit of Insurance on the Covered Property that has sustained loss or damage.
  - (b) The actual debris removal expense exceeds 25% of the sum of the deductible plus the amount that we pay for direct physical loss or damage to the Covered Property that has sustained loss or damage.



Therefore, if (4)(a) and/or (4)(b) applies, our total payment for direct physical loss or damage and debris removal expense may reach but will never exceed the Limit of Insurance on the Covered Property that has sustained loss or damage, plus \$25,000.

### (5) Examples

The following examples assume that there is no Coinsurance penalty.

#### Example 1

Limit of Insurance:	\$ 90,000
Amount of Deductible:	\$ 500
Amount of Loss:	\$ 50,000
Amount of Loss Payable:	\$ 49,500
	(\$50,000 – \$500)
Debris Removal Expense:	\$ 10,000
Debris Removal Expense Payable:	\$ 10,000
	(\$10,000 is 20% of \$50,000.)

The debris removal expense is less than 25% of the sum of the loss payable plus the deductible. The sum of the loss payable and the debris removal expense (\$49,500 + \$10,000 = \$59,500) is less than the Limit of Insurance. Therefore, the full amount of debris removal expense is payable in accordance with the terms of Paragraph (3).

#### Example 2

Limit of Insurance:	\$ 90,000
Amount of Deductible:	\$ 500
Amount of Loss:	\$ 80,000
Amount of Loss Payable:	\$ 79,500
	(\$80,000 – \$500)
Debris Removal Expense:	\$ 40,000
Debris Removal Expense Payable	
Basic Amount:	\$ 10,500
Additional Amount:	\$ 25,000

The basic amount payable for debris removal expense under the terms of Paragraph (3) is calculated as follows: \$80,000 (\$79,500 + \$500) x .25 = \$20,000, capped at \$10,500. The cap applies because the sum of the loss payable (\$79,500) and the basic amount payable for debris removal expense (\$10,500) cannot exceed the Limit of Insurance (\$90,000).

The additional amount payable for debris removal expense is provided in accordance with the terms of Paragraph (4), because the debris removal expense (\$40,000) exceeds 25% of the loss payable plus the deductible (\$40,000 is 50% of \$80,000), and because the sum of the loss payable and debris removal expense (\$79,500 + \$40,000 = \$119,500) would exceed the Limit of Insurance (\$90,000). The additional amount of covered debris removal expense is \$25,000, the maximum payable under Paragraph (4). Thus, the total payable for debris removal expense in this example is \$35,500; \$4,500 of the debris removal expense is not covered.

#### b. Preservation Of Property

If it is necessary to move Covered Property from the described premises to preserve it from loss or damage by a Covered Cause of Loss, we will pay for any direct physical loss or damage to that property:

- (1) While it is being moved or while temporarily stored at another location; and
- (2) Only if the loss or damage occurs within 30 days after the property is first moved.

#### c. Fire Department Service Charge

When the fire department is called to save or protect Covered Property from a Covered Cause of Loss, we will pay up to \$1,000 for service at each premises described in the Declarations, unless a higher limit is shown in the Declarations. Such limit is the most we will pay regardless of the number of responding fire departments or fire units, and regardless of the number or type of services performed.

This Additional Coverage applies to your liability for fire department service charges:

- (1) Assumed by contract or agreement prior to loss; or
- (2) Required by local ordinance.

No Deductible applies to this Additional Coverage.

**d. Pollutant Clean-up And Removal**

We will pay your expense to extract "pollutants" from land or water at the described premises if the discharge, dispersal, seepage, migration, release or escape of the "pollutants" is caused by or results from a Covered Cause of Loss that occurs during the policy period. The expenses will be paid only if they are reported to us in writing within 180 days of the date on which the Covered Cause of Loss occurs.

This Additional Coverage does not apply to costs to test for, monitor or assess the existence, concentration or effects of "pollutants". But we will pay for testing which is performed in the course of extracting the "pollutants" from the land or water.

The most we will pay under this Additional Coverage for each described premises is \$10,000 for the sum of all covered expenses arising out of Covered Causes of Loss occurring during each separate 12-month period of this policy.

**e. Increased Cost Of Construction**

- (1) This Additional Coverage applies only to buildings to which the Replacement Cost Optional Coverage applies.
- (2) In the event of damage by a Covered Cause of Loss to a building that is Covered Property, we will pay the increased costs incurred to comply with the minimum standards of an ordinance or law in the course of repair, rebuilding or replacement of damaged parts of that property, subject to the limitations stated in **e.(3)** through **e.(9)** of this Additional Coverage.
- (3) The ordinance or law referred to in **e.(2)** of this Additional Coverage is an ordinance or law that regulates the construction or repair of buildings or establishes zoning or land use requirements at the described premises and is in force at the time of loss.
- (4) Under this Additional Coverage, we will not pay any costs due to an ordinance or law that:
  - (a) You were required to comply with before the loss, even when the building was undamaged; and
  - (b) You failed to comply with.

(5) Under this Additional Coverage, we will not pay for:

- (a) The enforcement of or compliance with any ordinance or law which requires demolition, repair, replacement, reconstruction, remodeling or remediation of property due to contamination by "pollutants" or due to the presence, growth, proliferation, spread or any activity of "fungus", wet or dry rot or bacteria; or
  - (b) Any costs associated with the enforcement of or compliance with an ordinance or law which requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants", "fungus", wet or dry rot or bacteria.
- (6) The most we will pay under this Additional Coverage, for each described building insured under this Coverage Form, is \$10,000 or 5% of the Limit of Insurance applicable to that building, whichever is less. If a damaged building is covered under a blanket Limit of Insurance which applies to more than one building or item of property, then the most we will pay under this Additional Coverage, for that damaged building, is the lesser of \$10,000 or 5% times the value of the damaged building as of the time of loss times the applicable Coinsurance percentage.
- The amount payable under this Additional Coverage is additional insurance.
- (7) With respect to this Additional Coverage:
- (a) We will not pay for the Increased Cost of Construction:
    - (i) Until the property is actually repaired or replaced at the same or another premises; and
    - (ii) Unless the repair or replacement is made as soon as reasonably possible after the loss or damage, not to exceed two years. We may extend this period in writing during the two years.

- (b) If the building is repaired or replaced at the same premises, or if you elect to rebuild at another premises, the most we will pay for the Increased Cost of Construction, subject to the provisions of **e.(6)** of this Additional Coverage, is the increased cost of construction at the same premises.
- (c) If the ordinance or law requires relocation to another premises, the most we will pay for the Increased Cost of Construction, subject to the provisions of **e.(6)** of this Additional Coverage, is the increased cost of construction at the new premises.
- (8) This Additional Coverage is not subject to the terms of the Ordinance Or Law Exclusion to the extent that such Exclusion would conflict with the provisions of this Additional Coverage.
- (9) The costs addressed in the Loss Payment and Valuation Conditions and the Replacement Cost Optional Coverage, in this Coverage Form, do not include the increased cost attributable to enforcement of or compliance with an ordinance or law. The amount payable under this Additional Coverage, as stated in **e.(6)** of this Additional Coverage, is not subject to such limitation.

**f. Electronic Data**

- (1) Under this Additional Coverage, electronic data has the meaning described under Property Not Covered, Electronic Data. This Additional Coverage does not apply to your "stock" of prepackaged software, or to electronic data which is integrated in and operates or controls the building's elevator, lighting, heating, ventilation, air conditioning or security system.
- (2) Subject to the provisions of this Additional Coverage, we will pay for the cost to replace or restore electronic data which has been destroyed or corrupted by a Covered Cause of Loss. To the extent that electronic data is not replaced or restored, the loss will be valued at the cost of replacement of the media on which the electronic data was stored, with blank media of substantially identical type.

- (3) The Covered Causes of Loss applicable to Your Business Personal Property apply to this Additional Coverage, Electronic Data, subject to the following:
  - (a) If the Causes Of Loss – Special Form applies, coverage under this Additional Coverage, Electronic Data, is limited to the "specified causes of loss" as defined in that form and Collapse as set forth in that form.
  - (b) If the Causes Of Loss – Broad Form applies, coverage under this Additional Coverage, Electronic Data, includes Collapse as set forth in that form.
  - (c) If the Causes Of Loss form is endorsed to add a Covered Cause of Loss, the additional Covered Cause of Loss does not apply to the coverage provided under this Additional Coverage, Electronic Data.
  - (d) The Covered Causes of Loss include a virus, harmful code or similar instruction introduced into or enacted on a computer system (including electronic data) or a network to which it is connected, designed to damage or destroy any part of the system or disrupt its normal operation. But there is no coverage for loss or damage caused by or resulting from manipulation of a computer system (including electronic data) by any employee, including a temporary or leased employee, or by an entity retained by you or for you to inspect, design, install, modify, maintain, repair or replace that system.

- (4) The most we will pay under this Additional Coverage, Electronic Data, is \$2,500 (unless a higher limit is shown in the Declarations) for all loss or damage sustained in any one policy year, regardless of the number of occurrences of loss or damage or the number of premises, locations or computer systems involved. If loss payment on the first occurrence does not exhaust this amount, then the balance is available for subsequent loss or damage sustained in but not after that policy year. With respect to an occurrence which begins in one policy year and continues or results in additional loss or damage in a subsequent policy year(s), all loss or damage is deemed to be sustained in the policy year in which the occurrence began.

## 5. Coverage Extensions

Except as otherwise provided, the following Extensions apply to property located in or on the building described in the Declarations or in the open (or in a vehicle) within 100 feet of the described premises.

If a Coinsurance percentage of 80% or more, or a Value Reporting period symbol, is shown in the Declarations, you may extend the insurance provided by this Coverage Part as follows:

### a. Newly Acquired Or Constructed Property

#### (1) Buildings

If this policy covers Building, you may extend that insurance to apply to:

- (a) Your new buildings while being built on the described premises; and
- (b) Buildings you acquire at locations, other than the described premises, intended for:
  - (i) Similar use as the building described in the Declarations; or
  - (ii) Use as a warehouse.

The most we will pay for loss or damage under this Extension is \$250,000 at each building.

## (2) Your Business Personal Property

- (a) If this policy covers Your Business Personal Property, you may extend that insurance to apply to:

- (i) Business personal property, including such property that you newly acquire, at any location you acquire other than at fairs, trade shows or exhibitions; or
- (ii) Business personal property, including such property that you newly acquire, located at your newly constructed or acquired buildings at the location described in the Declarations.

The most we will pay for loss or damage under this Extension is \$100,000 at each building.

- (b) This Extension does not apply to:

- (i) Personal property of others that is temporarily in your possession in the course of installing or performing work on such property; or
- (ii) Personal property of others that is temporarily in your possession in the course of your manufacturing or wholesaling activities.

## (3) Period Of Coverage

With respect to insurance provided under this Coverage Extension for Newly Acquired Or Constructed Property, coverage will end when any of the following first occurs:

- (a) This policy expires;
- (b) 30 days expire after you acquire the property or begin construction of that part of the building that would qualify as covered property; or
- (c) You report values to us.

We will charge you additional premium for values reported from the date you acquire the property or begin construction of that part of the building that would qualify as covered property.

**b. Personal Effects And Property Of Others**

You may extend the insurance that applies to Your Business Personal Property to apply to:

- (1) Personal effects owned by you, your officers, your partners or members, your managers or your employees. This Extension does not apply to loss or damage by theft.
- (2) Personal property of others in your care, custody or control.

The most we will pay for loss or damage under this Extension is \$2,500 at each described premises. Our payment for loss of or damage to personal property of others will only be for the account of the owner of the property.

**c. Valuable Papers And Records (Other Than Electronic Data)**

- (1) You may extend the insurance that applies to Your Business Personal Property to apply to the cost to replace or restore the lost information on valuable papers and records for which duplicates do not exist. But this Extension does not apply to valuable papers and records which exist as electronic data. Electronic data has the meaning described under Property Not Covered, Electronic Data.
- (2) If the Causes Of Loss – Special Form applies, coverage under this Extension is limited to the "specified causes of loss" as defined in that form and Collapse as set forth in that form.
- (3) If the Causes Of Loss – Broad Form applies, coverage under this Extension includes Collapse as set forth in that form.
- (4) Under this Extension, the most we will pay to replace or restore the lost information is \$2,500 at each described premises, unless a higher limit is shown in the Declarations. Such amount is additional insurance. We will also pay for the cost of blank material for reproducing the records (whether or not duplicates exist) and (when there is a duplicate) for the cost of labor to transcribe or copy the records. The costs of blank material and labor are subject to the applicable Limit of Insurance on Your Business Personal Property and, therefore, coverage of such costs is not additional insurance.

**d. Property Off-premises**

- (1) You may extend the insurance provided by this Coverage Form to apply to your Covered Property while it is away from the described premises, if it is:
  - (a) Temporarily at a location you do not own, lease or operate;
  - (b) In storage at a location you lease, provided the lease was executed after the beginning of the current policy term; or
  - (c) At any fair, trade show or exhibition.
- (2) This Extension does not apply to property:
  - (a) In or on a vehicle; or
  - (b) In the care, custody or control of your salespersons, unless the property is in such care, custody or control at a fair, trade show or exhibition.
- (3) The most we will pay for loss or damage under this Extension is \$10,000.

**e. Outdoor Property**

You may extend the insurance provided by this Coverage Form to apply to your outdoor fences, radio and television antennas (including satellite dishes), trees, shrubs and plants (other than trees, shrubs or plants which are "stock" or are part of a vegetated roof), including debris removal expense, caused by or resulting from any of the following causes of loss if they are Covered Causes of Loss:

- (1) Fire;
- (2) Lightning;
- (3) Explosion;
- (4) Riot or Civil Commotion; or
- (5) Aircraft.

The most we will pay for loss or damage under this Extension is \$1,000, but not more than \$250 for any one tree, shrub or plant. These limits apply to any one occurrence, regardless of the types or number of items lost or damaged in that occurrence.



Subject to all aforementioned terms and limitations of coverage, this Coverage Extension includes the expense of removing from the described premises the debris of trees, shrubs and plants which are the property of others, except in the situation in which you are a tenant and such property is owned by the landlord of the described premises.

**f. Non-owned Detached Trailers**

- (1) You may extend the insurance that applies to Your Business Personal Property to apply to loss or damage to trailers that you do not own, provided that:
  - (a) The trailer is used in your business;
  - (b) The trailer is in your care, custody or control at the premises described in the Declarations; and
  - (c) You have a contractual responsibility to pay for loss or damage to the trailer.
- (2) We will not pay for any loss or damage that occurs:
  - (a) While the trailer is attached to any motor vehicle or motorized conveyance, whether or not the motor vehicle or motorized conveyance is in motion;
  - (b) During hitching or unhitching operations, or when a trailer becomes accidentally unhitched from a motor vehicle or motorized conveyance.
- (3) The most we will pay for loss or damage under this Extension is \$5,000, unless a higher limit is shown in the Declarations.
- (4) This insurance is excess over the amount due (whether you can collect on it or not) from any other insurance covering such property.

**g. Business Personal Property Temporarily In Portable Storage Units**

- (1) You may extend the insurance that applies to Your Business Personal Property to apply to such property while temporarily stored in a portable storage unit (including a detached trailer) located within 100 feet of the building or structure described in the Declarations or within 100 feet of the premises described in the Declarations, whichever distance is greater.

- (2) If the applicable Covered Causes of Loss form or endorsement contains a limitation or exclusion concerning loss or damage from sand, dust, sleet, snow, ice or rain to property in a structure, such limitation or exclusion also applies to property in a portable storage unit.
- (3) Coverage under this Extension:
  - (a) Will end 90 days after the business personal property has been placed in the storage unit;
  - (b) Does not apply if the storage unit itself has been in use at the described premises for more than 90 consecutive days, even if the business personal property has been stored there for 90 or fewer days as of the time of loss or damage.
- (4) Under this Extension, the most we will pay for the total of all loss or damage to business personal property is \$10,000 (unless a higher limit is indicated in the Declarations for such Extension) regardless of the number of storage units. Such limit is part of, not in addition to, the applicable Limit of Insurance on Your Business Personal Property. Therefore, payment under this Extension will not increase the applicable Limit of Insurance on Your Business Personal Property.
- (5) This Extension does not apply to loss or damage otherwise covered under this Coverage Form or any endorsement to this Coverage Form or policy, and does not apply to loss or damage to the storage unit itself.

Each of these Extensions is additional insurance unless otherwise indicated. The Additional Condition, Coinsurance, does not apply to these Extensions.

**B. Exclusions And Limitations**

See applicable Causes Of Loss form as shown in the Declarations.

**C. Limits Of Insurance**

The most we will pay for loss or damage in any one occurrence is the applicable Limit Of Insurance shown in the Declarations.

The most we will pay for loss or damage to outdoor signs, whether or not the sign is attached to a building, is \$2,500 per sign in any one occurrence.

The amounts of insurance stated in the following Additional Coverages apply in accordance with the terms of such coverages and are separate from the Limit(s) Of Insurance shown in the Declarations for any other coverage:

1. Fire Department Service Charge;
2. Pollutant Clean-up And Removal;
3. Increased Cost Of Construction; and
4. Electronic Data.

Payments under the Preservation Of Property Additional Coverage will not increase the applicable Limit of Insurance.

#### D. Deductible

In any one occurrence of loss or damage (hereinafter referred to as loss), we will first reduce the amount of loss if required by the Coinsurance Condition or the Agreed Value Optional Coverage. If the adjusted amount of loss is less than or equal to the Deductible, we will not pay for that loss. If the adjusted amount of loss exceeds the Deductible, we will then subtract the Deductible from the adjusted amount of loss and will pay the resulting amount or the Limit of Insurance, whichever is less.

When the occurrence involves loss to more than one item of Covered Property and separate Limits of Insurance apply, the losses will not be combined in determining application of the Deductible. But the Deductible will be applied only once per occurrence.

#### Example 1

(This example assumes there is no Coinsurance penalty.)

Deductible:	\$ 250
Limit of Insurance – Building 1:	\$ 60,000
Limit of Insurance – Building 2:	\$ 80,000
Loss to Building 1:	\$ 60,100
Loss to Building 2:	\$ 90,000

The amount of loss to Building 1 (\$60,100) is less than the sum (\$60,250) of the Limit of Insurance applicable to Building 1 plus the Deductible.

The Deductible will be subtracted from the amount of loss in calculating the loss payable for Building 1:

$$\begin{array}{r} \$ 60,100 \\ - \quad 250 \\ \hline \end{array}$$

\$ 59,850 Loss Payable – Building 1

The Deductible applies once per occurrence and therefore is not subtracted in determining the amount of loss payable for Building 2. Loss payable for Building 2 is the Limit of Insurance of \$80,000.

Total amount of loss payable:

$$\$59,850 + \$80,000 = \$139,850$$

#### Example 2

(This example, too, assumes there is no Coinsurance penalty.)

The Deductible and Limits of Insurance are the same as those in Example 1.

Loss to Building 1:	\$ 70,000
(Exceeds Limit of Insurance plus Deductible)	
Loss to Building 2:	\$ 90,000
(Exceeds Limit of Insurance plus Deductible)	
Loss Payable – Building 1:	\$ 60,000
(Limit of Insurance)	
Loss Payable – Building 2:	\$ 80,000
(Limit of Insurance)	
Total amount of loss payable:	\$ 140,000

#### E. Loss Conditions

The following conditions apply in addition to the Common Policy Conditions and the Commercial Property Conditions:

##### 1. Abandonment

There can be no abandonment of any property to us.

##### 2. Appraisal

If we and you disagree on the value of the property or the amount of loss, either may make written demand for an appraisal of the loss. In this event, each party will select a competent and impartial appraiser. The two appraisers will select an umpire. If they cannot agree, either may request that selection be made by a judge of a court having jurisdiction. The appraisers will state separately the value of the property and amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

- a. Pay its chosen appraiser; and
- b. Bear the other expenses of the appraisal and umpire equally.

If there is an appraisal, we will still retain our right to deny the claim.

##### 3. Duties In The Event Of Loss Or Damage

- a. You must see that the following are done in the event of loss or damage to Covered Property:

- (1) Notify the police if a law may have been broken.

- (2) Give us prompt notice of the loss or damage. Include a description of the property involved.
  - (3) As soon as possible, give us a description of how, when and where the loss or damage occurred.
  - (4) Take all reasonable steps to protect the Covered Property from further damage, and keep a record of your expenses necessary to protect the Covered Property, for consideration in the settlement of the claim. This will not increase the Limit of Insurance. However, we will not pay for any subsequent loss or damage resulting from a cause of loss that is not a Covered Cause of Loss. Also, if feasible, set the damaged property aside and in the best possible order for examination.
  - (5) At our request, give us complete inventories of the damaged and undamaged property. Include quantities, costs, values and amount of loss claimed.
  - (6) As often as may be reasonably required, permit us to inspect the property proving the loss or damage and examine your books and records.  
Also, permit us to take samples of damaged and undamaged property for inspection, testing and analysis, and permit us to make copies from your books and records.
  - (7) Send us a signed, sworn proof of loss containing the information we request to investigate the claim. You must do this within 60 days after our request. We will supply you with the necessary forms.
  - (8) Cooperate with us in the investigation or settlement of the claim.
- b. We may examine any insured under oath, while not in the presence of any other insured and at such times as may be reasonably required, about any matter relating to this insurance or the claim, including an insured's books and records. In the event of an examination, an insured's answers must be signed.

#### 4. Loss Payment

- a. In the event of loss or damage covered by this Coverage Form, at our option, we will either:
  - (1) Pay the value of lost or damaged property;
  - (2) Pay the cost of repairing or replacing the lost or damaged property, subject to **b.** below;
  - (3) Take all or any part of the property at an agreed or appraised value; or
  - (4) Repair, rebuild or replace the property with other property of like kind and quality, subject to **b.** below.

We will determine the value of lost or damaged property, or the cost of its repair or replacement, in accordance with the applicable terms of the Valuation Condition in this Coverage Form or any applicable provision which amends or supersedes the Valuation Condition.
- b. The cost to repair, rebuild or replace does not include the increased cost attributable to enforcement of or compliance with any ordinance or law regulating the construction, use or repair of any property.
- c. We will give notice of our intentions within 30 days after we receive the sworn proof of loss.
- d. We will not pay you more than your financial interest in the Covered Property.
- e. We may adjust losses with the owners of lost or damaged property if other than you. If we pay the owners, such payments will satisfy your claims against us for the owners' property. We will not pay the owners more than their financial interest in the Covered Property.
- f. We may elect to defend you against suits arising from claims of owners of property. We will do this at our expense.
- g. We will pay for covered loss or damage within 30 days after we receive the sworn proof of loss, if you have complied with all of the terms of this Coverage Part, and:
  - (1) We have reached agreement with you on the amount of loss; or
  - (2) An appraisal award has been made.



- h.** A party wall is a wall that separates and is common to adjoining buildings that are owned by different parties. In settling covered losses involving a party wall, we will pay a proportion of the loss to the party wall based on your interest in the wall in proportion to the interest of the owner of the adjoining building. However, if you elect to repair or replace your building and the owner of the adjoining building elects not to repair or replace that building, we will pay you the full value of the loss to the party wall, subject to all applicable policy provisions including Limits of Insurance, the Valuation and Coinsurance Conditions and all other provisions of this Loss Payment Condition. Our payment under the provisions of this paragraph does not alter any right of subrogation we may have against any entity, including the owner or insurer of the adjoining building, and does not alter the terms of the Transfer Of Rights Of Recovery Against Others To Us Condition in this policy.

## **5. Recovered Property**

If either you or we recover any property after loss settlement, that party must give the other prompt notice. At your option, the property will be returned to you. You must then return to us the amount we paid to you for the property. We will pay recovery expenses and the expenses to repair the recovered property, subject to the Limit of Insurance.

## **6. Vacancy**

### **a. Description Of Terms**

- (1)** As used in this Vacancy Condition, the term building and the term vacant have the meanings set forth in **(1)(a)** and **(1)(b)** below:
- (a)** When this policy is issued to a tenant, and with respect to that tenant's interest in Covered Property, building means the unit or suite rented or leased to the tenant. Such building is vacant when it does not contain enough business personal property to conduct customary operations.

- (b)** When this policy is issued to the owner or general lessee of a building, building means the entire building. Such building is vacant unless at least 31% of its total square footage is:

- (i)** Rented to a lessee or sublessee and used by the lessee or sublessee to conduct its customary operations; and/or
- (ii)** Used by the building owner to conduct customary operations.

- (2)** Buildings under construction or renovation are not considered vacant.

### **b. Vacancy Provisions**

If the building where loss or damage occurs has been vacant for more than 60 consecutive days before that loss or damage occurs:

- (1)** We will not pay for any loss or damage caused by any of the following, even if they are Covered Causes of Loss:
- (a)** Vandalism;
- (b)** Sprinkler leakage, unless you have protected the system against freezing;
- (c)** Building glass breakage;
- (d)** Water damage;
- (e)** Theft; or
- (f)** Attempted theft.
- (2)** With respect to Covered Causes of Loss other than those listed in **b.(1)(a)** through **b.(1)(f)** above, we will reduce the amount we would otherwise pay for the loss or damage by 15%.

## **7. Valuation**

We will determine the value of Covered Property in the event of loss or damage as follows:

- a.** At actual cash value as of the time of loss or damage, except as provided in **b.**, **c.**, **d.** and **e.** below.
- b.** If the Limit of Insurance for Building satisfies the Additional Condition, Coinsurance, and the cost to repair or replace the damaged building property is \$2,500 or less, we will pay the cost of building repairs or replacement.

The cost of building repairs or replacement does not include the increased cost attributable to enforcement of or compliance with any ordinance or law regulating the construction, use or repair of any property.

However, the following property will be valued at the actual cash value, even when attached to the building:

- (1) Awnings or floor coverings;
  - (2) Appliances for refrigerating, ventilating, cooking, dishwashing or laundering; or
  - (3) Outdoor equipment or furniture.
- c. "Stock" you have sold but not delivered at the selling price less discounts and expenses you otherwise would have had.
- d. Glass at the cost of replacement with safety-glazing material if required by law.
- e. Tenants' Improvements and Betterments at:
- (1) Actual cash value of the lost or damaged property if you make repairs promptly.
  - (2) A proportion of your original cost if you do not make repairs promptly. We will determine the proportionate value as follows:
    - (a) Multiply the original cost by the number of days from the loss or damage to the expiration of the lease; and
    - (b) Divide the amount determined in (a) above by the number of days from the installation of improvements to the expiration of the lease.

If your lease contains a renewal option, the expiration of the renewal option period will replace the expiration of the lease in this procedure.

- (3) Nothing if others pay for repairs or replacement.

## F. Additional Conditions

The following conditions apply in addition to the Common Policy Conditions and the Commercial Property Conditions:

### 1. Coinsurance

If a Coinsurance percentage is shown in the Declarations, the following condition applies:

- a. We will not pay the full amount of any loss if the value of Covered Property at the time of loss times the Coinsurance percentage shown for it in the Declarations is greater than the Limit of Insurance for the property.

Instead, we will determine the most we will pay using the following steps:

- (1) Multiply the value of Covered Property at the time of loss by the Coinsurance percentage;
- (2) Divide the Limit of Insurance of the property by the figure determined in Step (1);
- (3) Multiply the total amount of loss, before the application of any deductible, by the figure determined in Step (2); and
- (4) Subtract the deductible from the figure determined in Step (3).

We will pay the amount determined in Step (4) or the Limit of Insurance, whichever is less. For the remainder, you will either have to rely on other insurance or absorb the loss yourself.

### Example 1 (Underinsurance)

When:	The value of the property is:	\$ 250,000
	The Coinsurance percentage for it is:	80%
	The Limit of Insurance for it is:	\$ 100,000
	The Deductible is:	\$ 250
	The amount of loss is:	\$ 40,000

Step (1):  $\$250,000 \times 80\% = \$200,000$   
(the minimum amount of insurance to meet your Coinsurance requirements)

Step (2):  $\$100,000 \div \$200,000 = .50$

Step (3):  $\$40,000 \times .50 = \$20,000$

Step (4):  $\$20,000 - \$250 = \$19,750$

We will pay no more than \$19,750. The remaining \$20,250 is not covered.

### Example 2 (Adequate Insurance)

When:	The value of the property is:	\$ 250,000
	The Coinsurance percentage for it is:	80%
	The Limit of Insurance for it is:	\$ 200,000
	The Deductible is:	\$ 250
	The amount of loss is:	\$ 40,000

The minimum amount of insurance to meet your Coinsurance requirement is \$200,000 ( $\$250,000 \times 80\%$ ). Therefore, the Limit of Insurance in this example is adequate, and no penalty applies. We will pay no more than \$39,750 ( $\$40,000$  amount of loss minus the deductible of \$250).

- b. If one Limit of Insurance applies to two or more separate items, this condition will apply to the total of all property to which the limit applies.

### Example 3

When: The value of the property is:

Building at Location 1:	\$ 75,000
Building at Location 2:	\$ 100,000
Personal Property at Location 2:	<u>\$ 75,000</u>
	\$ 250,000

The Coinsurance percentage for it is: 90%

The Limit of Insurance for Buildings and Personal Property at Locations 1 and 2 is: \$ 180,000

The Deductible is: \$ 1,000

The amount of loss is:

Building at Location 2: \$ 30,000

Personal Property at Location 2: \$ 20,000  
\$ 50,000

Step (1):  $\$250,000 \times 90\% = \$225,000$

(the minimum amount of insurance to meet your Coinsurance requirements and to avoid the penalty shown below)

Step (2):  $\$180,000 \div \$225,000 = .80$

Step (3):  $\$50,000 \times .80 = \$40,000$

Step (4):  $\$40,000 - \$1,000 = \$39,000$

We will pay no more than \$39,000. The remaining \$11,000 is not covered.

## 2. Mortgageholders

- a. The term mortgageholder includes trustee.
- b. We will pay for covered loss of or damage to buildings or structures to each mortgageholder shown in the Declarations in their order of precedence, as interests may appear.
- c. The mortgageholder has the right to receive loss payment even if the mortgageholder has started foreclosure or similar action on the building or structure.
- d. If we deny your claim because of your acts or because you have failed to comply with the terms of this Coverage Part, the mortgageholder will still have the right to receive loss payment if the mortgageholder:
  - (1) Pays any premium due under this Coverage Part at our request if you have failed to do so;

- (2) Submits a signed, sworn proof of loss within 60 days after receiving notice from us of your failure to do so; and
- (3) Has notified us of any change in ownership, occupancy or substantial change in risk known to the mortgageholder.

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

- e. If we pay the mortgageholder for any loss or damage and deny payment to you because of your acts or because you have failed to comply with the terms of this Coverage Part:
  - (1) The mortgageholder's rights under the mortgage will be transferred to us to the extent of the amount we pay; and
  - (2) The mortgageholder's right to recover the full amount of the mortgageholder's claim will not be impaired.

At our option, we may pay to the mortgageholder the whole principal on the mortgage plus any accrued interest. In this event, your mortgage and note will be transferred to us and you will pay your remaining mortgage debt to us.

- f. If we cancel this policy, we will give written notice to the mortgageholder at least:
  - (1) 10 days before the effective date of cancellation if we cancel for your nonpayment of premium; or
  - (2) 30 days before the effective date of cancellation if we cancel for any other reason.
- g. If we elect not to renew this policy, we will give written notice to the mortgageholder at least 10 days before the expiration date of this policy.

## G. Optional Coverages

If shown as applicable in the Declarations, the following Optional Coverages apply separately to each item:

### 1. Agreed Value

- a. The Additional Condition, Coinsurance, does not apply to Covered Property to which this Optional Coverage applies. We will pay no more for loss of or damage to that property than the proportion that the Limit of Insurance under this Coverage Part for the property bears to the Agreed Value shown for it in the Declarations.

- b. If the expiration date for this Optional Coverage shown in the Declarations is not extended, the Additional Condition, Coinsurance, is reinstated and this Optional Coverage expires.
- c. The terms of this Optional Coverage apply only to loss or damage that occurs:
  - (1) On or after the effective date of this Optional Coverage; and
  - (2) Before the Agreed Value expiration date shown in the Declarations or the policy expiration date, whichever occurs first.

## 2. Inflation Guard

- a. The Limit of Insurance for property to which this Optional Coverage applies will automatically increase by the annual percentage shown in the Declarations.
- b. The amount of increase will be:
  - (1) The Limit of Insurance that applied on the most recent of the policy inception date, the policy anniversary date, or any other policy change amending the Limit of Insurance, times
  - (2) The percentage of annual increase shown in the Declarations, expressed as a decimal (example: 8% is .08), times
  - (3) The number of days since the beginning of the current policy year or the effective date of the most recent policy change amending the Limit of Insurance, divided by 365.

### Example

If: The applicable Limit of Insurance is: \$ 100,000  
 The annual percentage increase is: 8%  
 The number of days since the beginning of the policy year (or last policy change) is: 146  
 The amount of increase is:  
 $\$100,000 \times .08 \times 146 \div 365 =$  \$ 3,200

## 3. Replacement Cost

- a. Replacement Cost (without deduction for depreciation) replaces Actual Cash Value in the Valuation Loss Condition of this Coverage Form.
- b. This Optional Coverage does not apply to:
  - (1) Personal property of others;
  - (2) Contents of a residence;
  - (3) Works of art, antiques or rare articles, including etchings, pictures, statuary, marbles, bronzes, porcelains and bric-a-brac; or

- (4) "Stock", unless the Including "Stock" option is shown in the Declarations.

Under the terms of this Replacement Cost Optional Coverage, tenants' improvements and betterments are not considered to be the personal property of others.

- c. You may make a claim for loss or damage covered by this insurance on an actual cash value basis instead of on a replacement cost basis. In the event you elect to have loss or damage settled on an actual cash value basis, you may still make a claim for the additional coverage this Optional Coverage provides if you notify us of your intent to do so within 180 days after the loss or damage.
- d. We will not pay on a replacement cost basis for any loss or damage:
  - (1) Until the lost or damaged property is actually repaired or replaced; and
  - (2) Unless the repair or replacement is made as soon as reasonably possible after the loss or damage.

With respect to tenants' improvements and betterments, the following also apply:

- (3) If the conditions in d.(1) and d.(2) above are not met, the value of tenants' improvements and betterments will be determined as a proportion of your original cost, as set forth in the Valuation Loss Condition of this Coverage Form; and
- (4) We will not pay for loss or damage to tenants' improvements and betterments if others pay for repairs or replacement.
- e. We will not pay more for loss or damage on a replacement cost basis than the least of (1), (2) or (3), subject to f. below:
  - (1) The Limit of Insurance applicable to the lost or damaged property;
  - (2) The cost to replace the lost or damaged property with other property:
    - (a) Of comparable material and quality; and
    - (b) Used for the same purpose; or
  - (3) The amount actually spent that is necessary to repair or replace the lost or damaged property.

If a building is rebuilt at a new premises, the cost described in e.(2) above is limited to the cost which would have been incurred if the building had been rebuilt at the original premises.

- f. The cost of repair or replacement does not include the increased cost attributable to enforcement of or compliance with any ordinance or law regulating the construction, use or repair of any property.

#### **4. Extension Of Replacement Cost To Personal Property Of Others**

- a. If the Replacement Cost Optional Coverage is shown as applicable in the Declarations, then this Extension may also be shown as applicable. If the Declarations show this Extension as applicable, then Paragraph **3.b.(1)** of the Replacement Cost Optional Coverage is deleted and all other provisions of the Replacement Cost Optional Coverage apply to replacement cost on personal property of others.

- b. With respect to replacement cost on the personal property of others, the following limitation applies:

If an item(s) of personal property of others is subject to a written contract which governs your liability for loss or damage to that item(s), then valuation of that item(s) will be based on the amount for which you are liable under such contract, but not to exceed the lesser of the replacement cost of the property or the applicable Limit of Insurance.

#### **H. Definitions**

1. "Fungus" means any type or form of fungus, including mold or mildew, and any mycotoxins, spores, scents or by-products produced or released by fungi.
2. "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.
3. "Stock" means merchandise held in storage or for sale, raw materials and in-process or finished goods, including supplies used in their packing or shipping.



## BUSINESS INCOME (AND EXTRA EXPENSE) COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy, the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we", "us" and "our" refer to the company providing this insurance.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section **F**. Definitions.

### A. Coverage

#### 1. Business Income

Business Income means the:

- a. Net Income (Net Profit or Loss before income taxes) that would have been earned or incurred; and
- b. Continuing normal operating expenses incurred, including payroll.

For manufacturing risks, Net Income includes the net sales value of production.

Coverage is provided as described and limited below for one or more of the following options for which a Limit Of Insurance is shown in the Declarations:

- (1) Business Income Including "Rental Value".
- (2) Business Income Other Than "Rental Value".
- (3) "Rental Value".

If option (1) above is selected, the term Business Income will include "Rental Value". If option (3) above is selected, the term Business Income will mean "Rental Value" only.

If Limits of Insurance are shown under more than one of the above options, the provisions of this Coverage Part apply separately to each.

We will pay for the actual loss of Business Income you sustain due to the necessary "suspension" of your "operations" during the "period of restoration". The "suspension" must be caused by direct physical loss of or damage to property at premises which are described in the Declarations and for which a Business Income Limit Of Insurance is shown in the Declarations. The loss or damage must be caused by or result from a Covered Cause of Loss. With respect to loss of or damage to personal property in the open or personal property in a vehicle, the described premises include the area within 100 feet of such premises.

With respect to the requirements set forth in the preceding paragraph, if you occupy only part of a building, your premises means:

- (a) The portion of the building which you rent, lease or occupy;
- (b) The area within 100 feet of the building or within 100 feet of the premises described in the Declarations, whichever distance is greater (with respect to loss of or damage to personal property in the open or personal property in a vehicle); and
- (c) Any area within the building or at the described premises, if that area services, or is used to gain access to, the portion of the building which you rent, lease or occupy.

#### 2. Extra Expense

- a. Extra Expense Coverage is provided at the premises described in the Declarations only if the Declarations show that Business Income Coverage applies at that premises.
- b. Extra Expense means necessary expenses you incur during the "period of restoration" that you would not have incurred if there had been no direct physical loss or damage to property caused by or resulting from a Covered Cause of Loss.

We will pay Extra Expense (other than the expense to repair or replace property) to:

- (1) Avoid or minimize the "suspension" of business and to continue operations at the described premises or at replacement premises or temporary locations, including relocation expenses and costs to equip and operate the replacement location or temporary location.

- (2) Minimize the "suspension" of business if you cannot continue "operations".

We will also pay Extra Expense to repair or replace property, but only to the extent it reduces the amount of loss that otherwise would have been payable under this Coverage Form.

### 3. Covered Causes Of Loss, Exclusions And Limitations

See applicable Causes Of Loss form as shown in the Declarations.

### 4. Additional Limitation – Interruption Of Computer Operations

- a. Coverage for Business Income does not apply when a "suspension" of "operations" is caused by destruction or corruption of electronic data, or any loss or damage to electronic data, except as provided under the Additional Coverage, Interruption Of Computer Operations.
- b. Coverage for Extra Expense does not apply when action is taken to avoid or minimize a "suspension" of "operations" caused by destruction or corruption of electronic data, or any loss or damage to electronic data, except as provided under the Additional Coverage, Interruption Of Computer Operations.
- c. Electronic data means information, facts or computer programs stored as or on, created or used on, or transmitted to or from computer software (including systems and applications software), on hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other repositories of computer software which are used with electronically controlled equipment. The term computer programs, referred to in the foregoing description of electronic data, means a set of related electronic instructions which direct the operations and functions of a computer or device connected to it, which enable the computer or device to receive, process, store, retrieve or send data.
- d. This Additional Limitation does not apply when loss or damage to electronic data involves only electronic data which is integrated in and operates or controls a building's elevator, lighting, heating, ventilation, air conditioning or security system.

## 5. Additional Coverages

### a. Civil Authority

In this Additional Coverage, Civil Authority, the described premises are premises to which this Coverage Form applies, as shown in the Declarations.

When a Covered Cause of Loss causes damage to property other than property at the described premises, we will pay for the actual loss of Business Income you sustain and necessary Extra Expense caused by action of civil authority that prohibits access to the described premises, provided that both of the following apply:

- (1) Access to the area immediately surrounding the damaged property is prohibited by civil authority as a result of the damage, and the described premises are within that area but are not more than one mile from the damaged property; and
- (2) The action of civil authority is taken in response to dangerous physical conditions resulting from the damage or continuation of the Covered Cause of Loss that caused the damage, or the action is taken to enable a civil authority to have unimpeded access to the damaged property.

Civil Authority Coverage for Business Income will begin 72 hours after the time of the first action of civil authority that prohibits access to the described premises and will apply for a period of up to four consecutive weeks from the date on which such coverage began.

Civil Authority Coverage for Extra Expense will begin immediately after the time of the first action of civil authority that prohibits access to the described premises and will end:

- (1) Four consecutive weeks after the date of that action; or
  - (2) When your Civil Authority Coverage for Business Income ends;
- whichever is later.

**b. Alterations And New Buildings**

We will pay for the actual loss of Business Income you sustain and necessary Extra Expense you incur due to direct physical loss or damage at the described premises caused by or resulting from any Covered Cause of Loss to:

- (1) New buildings or structures, whether complete or under construction;
- (2) Alterations or additions to existing buildings or structures; and
- (3) Machinery, equipment, supplies or building materials located on or within 100 feet of the described premises and:
  - (a) Used in the construction, alterations or additions; or
  - (b) Incidental to the occupancy of new buildings.

If such direct physical loss or damage delays the start of "operations", the "period of restoration" for Business Income Coverage will begin on the date "operations" would have begun if the direct physical loss or damage had not occurred.

**c. Extended Business Income****(1) Business Income Other Than "Rental Value"**

If the necessary "suspension" of your "operations" produces a Business Income loss payable under this policy, we will pay for the actual loss of Business Income you incur during the period that:

- (a) Begins on the date property (except "finished stock") is actually repaired, rebuilt or replaced and "operations" are resumed; and
- (b) Ends on the earlier of:
  - (i) The date you could restore your "operations", with reasonable speed, to the level which would generate the business income amount that would have existed if no direct physical loss or damage had occurred; or
  - (ii) 60 consecutive days after the date determined in (1)(a) above.

However, Extended Business Income does not apply to loss of Business Income incurred as a result of unfavorable business conditions caused by the impact of the Covered Cause of Loss in the area where the described premises are located.

Loss of Business Income must be caused by direct physical loss or damage at the described premises caused by or resulting from any Covered Cause of Loss.

**(2) "Rental Value"**

If the necessary "suspension" of your "operations" produces a "Rental Value" loss payable under this policy, we will pay for the actual loss of "Rental Value" you incur during the period that:

- (a) Begins on the date property is actually repaired, rebuilt or replaced and tenantability is restored; and
- (b) Ends on the earlier of:
  - (i) The date you could restore tenant occupancy, with reasonable speed, to the level which would generate the "Rental Value" that would have existed if no direct physical loss or damage had occurred; or
  - (ii) 60 consecutive days after the date determined in (2)(a) above.

However, Extended Business Income does not apply to loss of "Rental Value" incurred as a result of unfavorable business conditions caused by the impact of the Covered Cause of Loss in the area where the described premises are located.

Loss of "Rental Value" must be caused by direct physical loss or damage at the described premises caused by or resulting from any Covered Cause of Loss.

**d. Interruption Of Computer Operations**

- (1) Under this Additional Coverage, electronic data has the meaning described under Additional Limitation – Interruption Of Computer Operations.



- (2) Subject to all provisions of this Additional Coverage, you may extend the insurance that applies to Business Income and Extra Expense to apply to a "suspension" of "operations" caused by an interruption in computer operations due to destruction or corruption of electronic data due to a Covered Cause of Loss. However, we will not provide coverage under this Additional Coverage when the Additional Limitation – Interruption Of Computer Operations does not apply based on Paragraph **A.4.d.** therein.
- (3) With respect to the coverage provided under this Additional Coverage, the Covered Causes of Loss are subject to the following:
- (a) If the Causes Of Loss – Special Form applies, coverage under this Additional Coverage, Interruption Of Computer Operations, is limited to the "specified causes of loss" as defined in that form and Collapse as set forth in that form.
  - (b) If the Causes Of Loss – Broad Form applies, coverage under this Additional Coverage, Interruption Of Computer Operations, includes Collapse as set forth in that form.
  - (c) If the Causes Of Loss form is endorsed to add a Covered Cause of Loss, the additional Covered Cause of Loss does not apply to the coverage provided under this Additional Coverage, Interruption Of Computer Operations.
  - (d) The Covered Causes of Loss include a virus, harmful code or similar instruction introduced into or enacted on a computer system (including electronic data) or a network to which it is connected, designed to damage or destroy any part of the system or disrupt its normal operation. But there is no coverage for an interruption related to manipulation of a computer system (including electronic data) by any employee, including a temporary or leased employee, or by an entity retained by you or for you to inspect, design, install, maintain, repair or replace that system.
- (4) The most we will pay under this Additional Coverage, Interruption Of Computer Operations, is \$2,500 (unless a higher limit is shown in the Declarations) for all loss sustained and expense incurred in any one policy year, regardless of the number of interruptions or the number of premises, locations or computer systems involved. If loss payment relating to the first interruption does not exhaust this amount, then the balance is available for loss or expense sustained or incurred as a result of subsequent interruptions in that policy year. A balance remaining at the end of a policy year does not increase the amount of insurance in the next policy year. With respect to any interruption which begins in one policy year and continues or results in additional loss or expense in a subsequent policy year(s), all loss and expense is deemed to be sustained or incurred in the policy year in which the interruption began.
- (5) This Additional Coverage, Interruption Of Computer Operations, does not apply to loss sustained or expense incurred after the end of the "period of restoration", even if the amount of insurance stated in (4) above has not been exhausted.

## 6. Coverage Extension

If a Coinsurance percentage of 50% or more is shown in the Declarations, you may extend the insurance provided by this Coverage Part as follows:

### Newly Acquired Locations

- a. You may extend your Business Income and Extra Expense Coverages to apply to property at any location you acquire other than fairs or exhibitions.
- b. The most we will pay under this Extension, for the sum of Business Income loss and Extra Expense incurred, is \$100,000 at each location, unless a higher limit is shown in the Declarations.
- c. Insurance under this Extension for each newly acquired location will end when any of the following first occurs:
  - (1) This policy expires;

(2) 30 days expire after you acquire or begin to construct the property; or

(3) You report values to us.

We will charge you additional premium for values reported from the date you acquire the property.

The Additional Condition, Coinsurance, does not apply to this Extension.

## **B. Limits Of Insurance**

The most we will pay for loss in any one occurrence is the applicable Limit Of Insurance shown in the Declarations.

Payments under the following coverages will not increase the applicable Limit of Insurance:

1. Alterations And New Buildings;
2. Civil Authority;
3. Extra Expense; or
4. Extended Business Income.

The amounts of insurance stated in the Interruption Of Computer Operations Additional Coverage and the Newly Acquired Locations Coverage Extension apply in accordance with the terms of those coverages and are separate from the Limit(s) Of Insurance shown in the Declarations for any other coverage.

## **C. Loss Conditions**

The following conditions apply in addition to the Common Policy Conditions and the Commercial Property Conditions:

### **1. Appraisal**

If we and you disagree on the amount of Net Income and operating expense or the amount of loss, either may make written demand for an appraisal of the loss. In this event, each party will select a competent and impartial appraiser.

The two appraisers will select an umpire. If they cannot agree, either may request that selection be made by a judge of a court having jurisdiction. The appraisers will state separately the amount of Net Income and operating expense or amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

- a. Pay its chosen appraiser; and
- b. Bear the other expenses of the appraisal and umpire equally.

If there is an appraisal, we will still retain our right to deny the claim.

## **2. Duties In The Event Of Loss**

a. You must see that the following are done in the event of loss:

- (1) Notify the police if a law may have been broken.
- (2) Give us prompt notice of the direct physical loss or damage. Include a description of the property involved.
- (3) As soon as possible, give us a description of how, when and where the direct physical loss or damage occurred.
- (4) Take all reasonable steps to protect the Covered Property from further damage, and keep a record of your expenses necessary to protect the Covered Property, for consideration in the settlement of the claim. This will not increase the Limit of Insurance. However, we will not pay for any subsequent loss or damage resulting from a cause of loss that is not a Covered Cause of Loss. Also, if feasible, set the damaged property aside and in the best possible order for examination.
- (5) As often as may be reasonably required, permit us to inspect the property proving the loss or damage and examine your books and records.

Also permit us to take samples of damaged and undamaged property for inspection, testing and analysis, and permit us to make copies from your books and records.

- (6) Send us a signed, sworn proof of loss containing the information we request to investigate the claim. You must do this within 60 days after our request. We will supply you with the necessary forms.
  - (7) Cooperate with us in the investigation or settlement of the claim.
  - (8) If you intend to continue your business, you must resume all or part of your "operations" as quickly as possible.
- b. We may examine any insured under oath, while not in the presence of any other insured and at such times as may be reasonably required, about any matter relating to this insurance or the claim, including an insured's books and records. In the event of an examination, an insured's answers must be signed.

**3. Loss Determination**

- a. The amount of Business Income loss will be determined based on:
  - (1) The Net Income of the business before the direct physical loss or damage occurred;
  - (2) The likely Net Income of the business if no physical loss or damage had occurred, but not including any Net Income that would likely have been earned as a result of an increase in the volume of business due to favorable business conditions caused by the impact of the Covered Cause of Loss on customers or on other businesses;
  - (3) The operating expenses, including payroll expenses, necessary to resume "operations" with the same quality of service that existed just before the direct physical loss or damage; and
  - (4) Other relevant sources of information, including:
    - (a) Your financial records and accounting procedures;
    - (b) Bills, invoices and other vouchers; and
    - (c) Deeds, liens or contracts.
- b. The amount of Extra Expense will be determined based on:
  - (1) All expenses that exceed the normal operating expenses that would have been incurred by "operations" during the "period of restoration" if no direct physical loss or damage had occurred. We will deduct from the total of such expenses:
    - (a) The salvage value that remains of any property bought for temporary use during the "period of restoration", once "operations" are resumed; and
    - (b) Any Extra Expense that is paid for by other insurance, except for insurance that is written subject to the same plan, terms, conditions and provisions as this insurance; and
  - (2) Necessary expenses that reduce the Business Income loss that otherwise would have been incurred.

**c. Resumption Of Operations**

We will reduce the amount of your:

- (1) Business Income loss, other than Extra Expense, to the extent you can resume your "operations", in whole or in part, by using damaged or undamaged property (including merchandise or stock) at the described premises or elsewhere.
- (2) Extra Expense loss to the extent you can return "operations" to normal and discontinue such Extra Expense.
- d. If you do not resume "operations", or do not resume "operations" as quickly as possible, we will pay based on the length of time it would have taken to resume "operations" as quickly as possible.

**4. Loss Payment**

We will pay for covered loss within 30 days after we receive the sworn proof of loss, if you have complied with all of the terms of this Coverage Part, and:

- a. We have reached agreement with you on the amount of loss; or
- b. An appraisal award has been made.

**D. Additional Condition****COINSURANCE**

If a Coinsurance percentage is shown in the Declarations, the following condition applies in addition to the Common Policy Conditions and the Commercial Property Conditions.

We will not pay the full amount of any Business Income loss if the Limit of Insurance for Business Income is less than:

- 1. The Coinsurance percentage shown for Business Income in the Declarations; times
- 2. The sum of:
  - a. The Net Income (Net Profit or Loss before income taxes), and
  - b. Operating expenses, including payroll expenses,

that would have been earned or incurred (had no loss occurred) by your "operations" at the described premises for the 12 months following the inception, or last previous anniversary date, of this policy (whichever is later).

Instead, we will determine the most we will pay using the following steps:

- Step (1): Multiply the Net Income and operating expense for the 12 months following the inception, or last previous anniversary date, of this policy by the Coinsurance percentage;
- Step (2): Divide the Limit of Insurance for the described premises by the figure determined in Step (1); and
- Step (3): Multiply the total amount of loss by the figure determined in Step (2).

We will pay the amount determined in Step (3) or the limit of insurance, whichever is less. For the remainder, you will either have to rely on other insurance or absorb the loss yourself.

In determining operating expenses for the purpose of applying the Coinsurance condition, the following expenses, if applicable, shall be deducted from the total of all operating expenses:

- (1) Prepaid freight – outgoing;
- (2) Returns and allowances;
- (3) Discounts;
- (4) Bad debts;
- (5) Collection expenses;
- (6) Cost of raw stock and factory supplies consumed (including transportation charges);
- (7) Cost of merchandise sold (including transportation charges);
- (8) Cost of other supplies consumed (including transportation charges);
- (9) Cost of services purchased from outsiders (not employees) to resell, that do not continue under contract;
- (10) Power, heat and refrigeration expenses that do not continue under contract (if Form **CP 15 11** is attached);
- (11) All payroll expenses or the amount of payroll expense excluded (if Form **CP 15 10** is attached); and
- (12) Special deductions for mining properties (royalties unless specifically included in coverage; actual depletion commonly known as unit or cost depletion – not percentage depletion; welfare and retirement fund charges based on tonnage; hired trucks).

#### Example 1 (Underinsurance)

When: The Net Income and operating expenses for the 12 months following the inception, or last previous anniversary date, of this policy at the described premises would have been: \$ 400,000  
 The Coinsurance percentage is: 50%  
 The Limit of Insurance is: \$ 150,000  
 The amount of loss is: \$ 80,000

Step (1):  $\$400,000 \times 50\% = \$200,000$   
 (the minimum amount of insurance to meet your Coinsurance requirements)

Step (2):  $\$150,000 \div \$200,000 = .75$

Step (3):  $\$80,000 \times .75 = \$60,000$

We will pay no more than \$60,000. The remaining \$20,000 is not covered.

#### Example 2 (Adequate Insurance)

When: The Net Income and operating expenses for the 12 months following the inception, or last previous anniversary date, of this policy at the described premises would have been: \$ 400,000  
 The Coinsurance percentage is: 50%  
 The Limit of Insurance is: \$ 200,000  
 The amount of loss is: \$ 80,000

The minimum amount of insurance to meet your Coinsurance requirement is \$200,000 ( $\$400,000 \times 50\%$ ). Therefore, the Limit of Insurance in this example is adequate and no penalty applies. We will pay no more than \$80,000 (amount of loss).

This condition does not apply to Extra Expense Coverage.

#### E. Optional Coverages

If shown as applicable in the Declarations, the following Optional Coverages apply separately to each item.

##### 1. Maximum Period Of Indemnity

- a. The Additional Condition, Coinsurance, does not apply to this Coverage Form at the described premises to which this Optional Coverage applies.



- b. The most we will pay for the total of Business Income loss and Extra Expense is the lesser of:

- (1) The amount of loss sustained and expenses incurred during the 120 days immediately following the beginning of the "period of restoration"; or
- (2) The Limit Of Insurance shown in the Declarations.

## 2. Monthly Limit Of Indemnity

- a. The Additional Condition, Coinsurance, does not apply to this Coverage Form at the described premises to which this Optional Coverage applies.
- b. The most we will pay for loss of Business Income in each period of 30 consecutive days after the beginning of the "period of restoration" is:
  - (1) The Limit of Insurance, multiplied by
  - (2) The fraction shown in the Declarations for this Optional Coverage.

### Example

When:	The Limit of Insurance is:	\$ 120,000
	The fraction shown in the Declarations for this Optional Coverage is:	1/4
	The most we will pay for loss in each period of 30 consecutive days is:	\$ 30,000
	(\$120,000 x 1/4 = \$30,000)	
	If, in this example, the actual amount of loss is:	
	Days 1–30:	\$ 40,000
	Days 31–60:	\$ 20,000
	Days 61–90:	\$ 30,000
		<u>\$ 90,000</u>
	We will pay:	
	Days 1–30:	\$ 30,000
	Days 31–60:	\$ 20,000
	Days 61–90:	\$ 30,000
		<u>\$ 80,000</u>

The remaining \$10,000 is not covered.

## 3. Business Income Agreed Value

- a. To activate this Optional Coverage:
  - (1) A Business Income Report/Work Sheet must be submitted to us and must show financial data for your "operations":
    - (a) During the 12 months prior to the date of the Work Sheet; and

- (b) Estimated for the 12 months immediately following the inception of this Optional Coverage.

- (2) The Declarations must indicate that the Business Income Agreed Value Optional Coverage applies, and an Agreed Value must be shown in the Declarations. The Agreed Value should be at least equal to:

- (a) The Coinsurance percentage shown in the Declarations; multiplied by
- (b) The amount of Net Income and operating expenses for the following 12 months you report on the Work Sheet.

- b. The Additional Condition, Coinsurance, is suspended until:

- (1) 12 months after the effective date of this Optional Coverage; or
- (2) The expiration date of this policy; whichever occurs first.

- c. We will reinstate the Additional Condition, Coinsurance, automatically if you do not submit a new Work Sheet and Agreed Value:

- (1) Within 12 months of the effective date of this Optional Coverage; or
- (2) When you request a change in your Business Income Limit of Insurance.

- d. If the Business Income Limit of Insurance is less than the Agreed Value, we will not pay more of any loss than the amount of loss multiplied by:

- (1) The Business Income Limit of Insurance; divided by
- (2) The Agreed Value.

### Example

When:	The Limit of Insurance is:	\$ 100,000
	The Agreed Value is:	\$ 200,000
	The amount of loss is:	\$ 80,000

Step (1):  $\$100,000 \div \$200,000 = .50$

Step (2):  $.50 \times \$80,000 = \$40,000$

We will pay \$40,000. The remaining \$40,000 is not covered.

## 4. Extended Period Of Indemnity

Under Paragraph A.5.c., **Extended Business Income**, the number 60 in Subparagraphs (1)(b) and (2)(b) is replaced by the number shown in the Declarations for this Optional Coverage.

**F. Definitions**

1. "Finished stock" means stock you have manufactured.

"Finished stock" also includes whiskey and alcoholic products being aged, unless there is a Coinsurance percentage shown for Business Income in the Declarations.

"Finished stock" does not include stock you have manufactured that is held for sale on the premises of any retail outlet insured under this Coverage Part.

2. "Operations" means:
  - a. Your business activities occurring at the described premises; and
  - b. The tenantability of the described premises, if coverage for Business Income Including "Rental Value" or "Rental Value" applies.
3. "Period of restoration" means the period of time that:
  - a. Begins:
    - (1) 72 hours after the time of direct physical loss or damage for Business Income Coverage; or
    - (2) Immediately after the time of direct physical loss or damage for Extra Expense Coverage;
 

caused by or resulting from any Covered Cause of Loss at the described premises; and
  - b. Ends on the earlier of:
    - (1) The date when the property at the described premises should be repaired, rebuilt or replaced with reasonable speed and similar quality; or
    - (2) The date when business is resumed at a new permanent location.

"Period of restoration" does not include any increased period required due to the enforcement of or compliance with any ordinance or law that:

- (1) Regulates the construction, use or repair, or requires the tearing down, of any property; or

- (2) Requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants".

The expiration date of this policy will not cut short the "period of restoration".

4. "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.
5. "Rental Value" means Business Income that consists of:
  - a. Net Income (Net Profit or Loss before income taxes) that would have been earned or incurred as rental income from tenant occupancy of the premises described in the Declarations as furnished and equipped by you, including fair rental value of any portion of the described premises which is occupied by you; and
  - b. Continuing normal operating expenses incurred in connection with that premises, including:
    - (1) Payroll; and
    - (2) The amount of charges which are the legal obligation of the tenant(s) but would otherwise be your obligations.
6. "Suspension" means:
  - a. The slowdown or cessation of your business activities; or
  - b. That a part or all of the described premises is rendered untenable, if coverage for Business Income Including "Rental Value" or "Rental Value" applies.

POLICY NUMBER: FSF15253113 001

COMMERCIAL PROPERTY  
CP 04 11 10 12**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.****PROTECTIVE SAFEGUARDS**

This endorsement modifies insurance provided under the following:

COMMERCIAL PROPERTY COVERAGE PART  
STANDARD PROPERTY POLICY**SCHEDULE**

Premises Number	Building Number	Protective Safeguards Symbols Applicable
1	Building #1	P5, P9
Describe Any "P-9": Functioning and operating smoke detectors in all units and/or occupancies		
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.		

**A. The following is added to the Commercial Property Conditions:****Protective Safeguards**

1. As a condition of this insurance, you are required to maintain the protective devices or services listed in the Schedule above.
2. The protective safeguards to which this endorsement applies are identified by the following symbols:

**"P-1" Automatic Sprinkler System**, including related supervisory services.

Automatic Sprinkler System means:

- a. Any automatic fire protective or extinguishing system, including connected:
  - (1) Sprinklers and discharge nozzles;
  - (2) Ducts, pipes, valves and fittings;
  - (3) Tanks, their component parts and supports; and
  - (4) Pumps and private fire protection mains.
- b. When supplied from an automatic fire protective system:
  - (1) Non-automatic fire protective systems; and

- (2) Hydrants, standpipes and outlets.

**"P-2" Automatic Fire Alarm**, protecting the entire building, that is:

- a. Connected to a central station; or
- b. Reporting to a public or private fire alarm station.

**"P-3" Security Service**, with a recording system or watch clock, making hourly rounds covering the entire building, when the premises are not in actual operation.**"P-4" Service Contract** with a privately owned fire department providing fire protection service to the described premises.**"P-5" Automatic Commercial Cooking Exhaust And Extinguishing System** installed on cooking appliances and having the following components:

- a. Hood;
- b. Grease removal device;
- c. Duct system; and
- d. Wet chemical fire extinguishing equipment.

**"P-9"**, the protective system described in the Schedule.

**B.** The following is added to the **Exclusions** section of:

Causes Of Loss – Basic Form

Causes Of Loss – Broad Form

Causes Of Loss – Special Form

Mortgageholders Errors And Omissions Coverage Form

Standard Property Policy

We will not pay for loss or damage caused by or resulting from fire if, prior to the fire, you:

1. Knew of any suspension or impairment in any protective safeguard listed in the Schedule above and failed to notify us of that fact; or

2. Failed to maintain any protective safeguard listed in the Schedule above, and over which you had control, in complete working order.

If part of an Automatic Sprinkler System or Automatic Commercial Cooking Exhaust And Extinguishing System is shut off due to breakage, leakage, freezing conditions or opening of sprinkler heads, notification to us will not be necessary if you can restore full protection within 48 hours.



POLICY NUMBER: FSF15253113 001

COMMERCIAL PROPERTY  
CP 04 40 06 07**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.****SPOILAGE COVERAGE**

This endorsement modifies insurance provided under the following:

BUILDING AND PERSONAL PROPERTY COVERAGE FORM  
CONDOMINIUM COMMERCIAL UNIT-OWNERS COVERAGE FORM**SCHEDULE**

Premises Number	Building Number	Limit Of Insurance
1	1	\$ 10,000
<b>Description Of Property:</b> Building #1 <b>Deductible:</b> \$1,000 <b>Refrigeration Maintenance Agreement:</b> Yes <b>Selling Price:</b> No		
Causes Of Loss		
<b>Breakdown Or Contamination:</b> Yes <b>Power Outage:</b> Yes		

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

The Coverage Form to which this endorsement applies is extended to insure against direct physical loss or damage by the Covered Causes of Loss, but only with respect to coverage provided by this endorsement.

**A. Paragraph A.1., Covered Property,** is replaced by the following:

**1. Covered Property**

Covered Property means "perishable stock" at the described premises owned by you or by others that is in your care, custody or control.

**B.** With respect to the coverage provided by this endorsement, property located on buildings or in the open or in vehicles is considered to be Property Not Covered.

**C. Paragraph A.3., Covered Causes Of Loss,** is replaced by the following:

**3. Covered Causes Of Loss**

Covered Causes of Loss means the following only if indicated by an "X" in the Schedule:

**a.** Breakdown or Contamination, meaning:

- (1) Change in temperature or humidity resulting from mechanical breakdown or mechanical failure of refrigerating, cooling or humidity control apparatus or equipment, only while such equipment or apparatus is at the described premises; and
- (2) Contamination by the refrigerant.

- b. Power Outage, meaning change in temperature or humidity resulting from complete or partial interruption of electrical power, either on or off the described premises, due to conditions beyond your control.

**D. Selling Price**

If Selling Price is indicated by an "X" in the Schedule, the following is added to the **Valuation** Loss Condition:

We will determine the value of finished "perishable stock" in the event of loss or damage at:

1. The selling price, as if no loss or damage had occurred;
2. Less discounts and expenses you otherwise would have had.

**E. Paragraph A.5., Coverage Extensions**, does not apply.

**F. Paragraph B., Exclusions**, is replaced by the following:

**B. Exclusions**

1. Only the following Exclusions contained in Paragraph **B.1.** of the Causes of Loss Form applicable to this Coverage Part apply to Spoilage Coverage:
  - a. Earth Movement;
  - b. Governmental Action;
  - c. Nuclear Hazard;
  - d. War And Military Action; and
  - e. Water.

2. The following Exclusions are added:

We will not pay for loss or damage caused by or resulting from:

- a. The disconnection of any refrigerating, cooling or humidity control system from the source of power.
- b. The deactivation of electrical power caused by the manipulation of any switch or other device used to control the flow of electrical power or current.
- c. The inability of an Electrical Utility Company or other power source to provide sufficient power due to:
  - (1) Lack of fuel; or
  - (2) Governmental order.
- d. The inability of a power source at the described premises to provide sufficient power due to lack of generating capacity to meet demand.
- e. Breaking of any glass that is a permanent part of any refrigerating, cooling or humidity control unit.

G. Paragraph D., **Deductible**, is replaced by the following:

We will not pay for loss or damage in any one occurrence until the amount of loss or damage exceeds the Deductible shown in the Schedule of this endorsement. We will then pay the amount of loss or damage in excess of that Deductible, up to the applicable Limit of Insurance. No other deductible in this policy applies to the coverage provided by this endorsement.

H. Paragraph F., **Additional Conditions**, is replaced by the following:

**ADDITIONAL CONDITION**

The following condition applies in addition to the Common Policy Conditions and the Commercial Property Conditions.

**REFRIGERATION MAINTENANCE AGREEMENTS**

If Breakdown or Contamination is designated as a Covered Cause of Loss and a refrigeration maintenance agreement is shown as applicable by an "X" in the Schedule, the following condition applies:

You must maintain a refrigeration maintenance or service agreement. If you voluntarily terminate this agreement and do not notify us, the insurance provided by this endorsement will be automatically suspended at the involved location.

I. Paragraph G., **Optional Coverages**, does not apply.

J. The following is added to the **Definitions**:

"Perishable stock" means personal property:

- a. Maintained under controlled conditions for its preservation; and
- b. Susceptible to loss or damage if the controlled conditions change.

## CAUSES OF LOSS – SPECIAL FORM

Words and phrases that appear in quotation marks have special meaning. Refer to Section **G**. Definitions.

### A. Covered Causes Of Loss

When Special is shown in the Declarations, Covered Causes of Loss means direct physical loss unless the loss is excluded or limited in this policy.

### B. Exclusions

1. We will not pay for loss or damage caused directly or indirectly by any of the following. Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss.

#### a. Ordinance Or Law

The enforcement of or compliance with any ordinance or law:

- (1) Regulating the construction, use or repair of any property; or
- (2) Requiring the tearing down of any property, including the cost of removing its debris.

This exclusion, Ordinance Or Law, applies whether the loss results from:

- (a) An ordinance or law that is enforced even if the property has not been damaged; or
- (b) The increased costs incurred to comply with an ordinance or law in the course of construction, repair, renovation, remodeling or demolition of property, or removal of its debris, following a physical loss to that property.

#### b. Earth Movement

- (1) Earthquake, including tremors and aftershocks and any earth sinking, rising or shifting related to such event;
- (2) Landslide, including any earth sinking, rising or shifting related to such event;
- (3) Mine subsidence, meaning subsidence of a man-made mine, whether or not mining activity has ceased;

- (4) Earth sinking (other than sinkhole collapse), rising or shifting including soil conditions which cause settling, cracking or other disarrangement of foundations or other parts of realty. Soil conditions include contraction, expansion, freezing, thawing, erosion, improperly compacted soil and the action of water under the ground surface.

But if Earth Movement, as described in **b.(1)** through **(4)** above, results in fire or explosion, we will pay for the loss or damage caused by that fire or explosion.

- (5) Volcanic eruption, explosion or effusion. But if volcanic eruption, explosion or effusion results in fire, building glass breakage or Volcanic Action, we will pay for the loss or damage caused by that fire, building glass breakage or Volcanic Action.

Volcanic Action means direct loss or damage resulting from the eruption of a volcano when the loss or damage is caused by:

- (a) Airborne volcanic blast or airborne shock waves;
- (b) Ash, dust or particulate matter; or
- (c) Lava flow.

With respect to coverage for Volcanic Action as set forth in **(5)(a)**, **(5)(b)** and **(5)(c)**, all volcanic eruptions that occur within any 168-hour period will constitute a single occurrence.

Volcanic Action does not include the cost to remove ash, dust or particulate matter that does not cause direct physical loss or damage to the described property.

This exclusion applies regardless of whether any of the above, in Paragraphs **(1)** through **(5)**, is caused by an act of nature or is otherwise caused.

**c. Governmental Action**

Seizure or destruction of property by order of governmental authority.

But we will pay for loss or damage caused by or resulting from acts of destruction ordered by governmental authority and taken at the time of a fire to prevent its spread, if the fire would be covered under this Coverage Part.

**d. Nuclear Hazard**

Nuclear reaction or radiation, or radioactive contamination, however caused.

But if nuclear reaction or radiation, or radioactive contamination, results in fire, we will pay for the loss or damage caused by that fire.

**e. Utility Services**

The failure of power, communication, water or other utility service supplied to the described premises, however caused, if the failure:

- (1) Originates away from the described premises; or
- (2) Originates at the described premises, but only if such failure involves equipment used to supply the utility service to the described premises from a source away from the described premises.

Failure of any utility service includes lack of sufficient capacity and reduction in supply.

Loss or damage caused by a surge of power is also excluded, if the surge would not have occurred but for an event causing a failure of power.

But if the failure or surge of power, or the failure of communication, water or other utility service, results in a Covered Cause of Loss, we will pay for the loss or damage caused by that Covered Cause of Loss.

Communication services include but are not limited to service relating to Internet access or access to any electronic, cellular or satellite network.

**f. War And Military Action**

- (1) War, including undeclared or civil war;
- (2) 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

- (3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

**g. Water**

- (1) Flood, surface water, waves (including tidal wave and tsunami), tides, tidal water, overflow of any body of water, or spray from any of these, all whether or not driven by wind (including storm surge);
- (2) Mudslide or mudflow;
- (3) Water that backs up or overflows or is otherwise discharged from a sewer, drain, sump, sump pump or related equipment;
- (4) Water under the ground surface pressing on, or flowing or seeping through:
  - (a) Foundations, walls, floors or paved surfaces;
  - (b) Basements, whether paved or not; or
  - (c) Doors, windows or other openings; or
- (5) Waterborne material carried or otherwise moved by any of the water referred to in Paragraph (1), (3) or (4), or material carried or otherwise moved by mudslide or mudflow.

This exclusion applies regardless of whether any of the above, in Paragraphs (1) through (5), is caused by an act of nature or is otherwise caused. An example of a situation to which this exclusion applies is the situation where a dam, levee, seawall or other boundary or containment system fails in whole or in part, for any reason, to contain the water.

But if any of the above, in Paragraphs (1) through (5), results in fire, explosion or sprinkler leakage, we will pay for the loss or damage caused by that fire, explosion or sprinkler leakage (if sprinkler leakage is a Covered Cause of Loss).

**h. "Fungus", Wet Rot, Dry Rot And Bacteria**

Presence, growth, proliferation, spread or any activity of "fungus", wet or dry rot or bacteria.

But if "fungus", wet or dry rot or bacteria result in a "specified cause of loss", we will pay for the loss or damage caused by that "specified cause of loss".

This exclusion does not apply:

- (1) When "fungus", wet or dry rot or bacteria result from fire or lightning; or
- (2) To the extent that coverage is provided in the Additional Coverage, Limited Coverage For "Fungus", Wet Rot, Dry Rot And Bacteria, with respect to loss or damage by a cause of loss other than fire or lightning.

Exclusions **B.1.a.** through **B.1.h.** apply whether or not the loss event results in widespread damage or affects a substantial area.

2. We will not pay for loss or damage caused by or resulting from any of the following:

- a. Artificially generated electrical, magnetic or electromagnetic energy that damages, disturbs, disrupts or otherwise interferes with any:

- (1) Electrical or electronic wire, device, appliance, system or network; or
- (2) Device, appliance, system or network utilizing cellular or satellite technology.

For the purpose of this exclusion, electrical, magnetic or electromagnetic energy includes but is not limited to:

- (a) Electrical current, including arcing;
- (b) Electrical charge produced or conducted by a magnetic or electromagnetic field;
- (c) Pulse of electromagnetic energy; or
- (d) Electromagnetic waves or microwaves.

But if fire results, we will pay for the loss or damage caused by that fire.

- b. Delay, loss of use or loss of market.
- c. Smoke, vapor or gas from agricultural smudging or industrial operations.
- d.(1) Wear and tear;
- (2) Rust or other corrosion, decay, deterioration, hidden or latent defect or any quality in property that causes it to damage or destroy itself;
- (3) Smog;
- (4) Settling, cracking, shrinking or expansion;

- (5) Nesting or infestation, or discharge or release of waste products or secretions, by insects, birds, rodents or other animals.

- (6) Mechanical breakdown, including rupture or bursting caused by centrifugal force. But if mechanical breakdown results in elevator collision, we will pay for the loss or damage caused by that elevator collision.

- (7) The following causes of loss to personal property:

- (a) Dampness or dryness of atmosphere;
- (b) Changes in or extremes of temperature; or
- (c) Marring or scratching.

But if an excluded cause of loss that is listed in **2.d.(1)** through **(7)** results in a "specified cause of loss" or building glass breakage, we will pay for the loss or damage caused by that "specified cause of loss" or building glass breakage.

- e. Explosion of steam boilers, steam pipes, steam engines or steam turbines owned or leased by you, or operated under your control. But if explosion of steam boilers, steam pipes, steam engines or steam turbines results in fire or combustion explosion, we will pay for the loss or damage caused by that fire or combustion explosion. We will also pay for loss or damage caused by or resulting from the explosion of gases or fuel within the furnace of any fired vessel or within the flues or passages through which the gases of combustion pass.
- f. Continuous or repeated seepage or leakage of water, or the presence or condensation of humidity, moisture or vapor, that occurs over a period of 14 days or more.
- g. Water, other liquids, powder or molten material that leaks or flows from plumbing, heating, air conditioning or other equipment (except fire protective systems) caused by or resulting from freezing, unless:
  - (1) You do your best to maintain heat in the building or structure; or



(2) You drain the equipment and shut off the supply if the heat is not maintained.

- h. Dishonest or criminal act (including theft) by you, any of your partners, members, officers, managers, employees (including temporary employees and leased workers), directors, trustees or authorized representatives, whether acting alone or in collusion with each other or with any other party; or theft by any person to whom you entrust the property for any purpose, whether acting alone or in collusion with any other party.

This exclusion:

(1) Applies whether or not an act occurs during your normal hours of operation;

(2) Does not apply to acts of destruction by your employees (including temporary employees and leased workers) or authorized representatives; but theft by your employees (including temporary employees and leased workers) or authorized representatives is not covered.

- i. Voluntary parting with any property by you or anyone else to whom you have entrusted the property if induced to do so by any fraudulent scheme, trick, device or false pretense.

- j. Rain, snow, ice or sleet to personal property in the open.

- k. Collapse, including any of the following conditions of property or any part of the property:

(1) An abrupt falling down or caving in;

(2) Loss of structural integrity, including separation of parts of the property or property in danger of falling down or caving in; or

(3) Any cracking, bulging, sagging, bending, leaning, settling, shrinkage or expansion as such condition relates to (1) or (2) above.

But if collapse results in a Covered Cause of Loss at the described premises, we will pay for the loss or damage caused by that Covered Cause of Loss.

This exclusion, k., does not apply:

- (a) To the extent that coverage is provided under the Additional Coverage, Collapse; or

- (b) To collapse caused by one or more of the following:

(i) The "specified causes of loss";

(ii) Breakage of building glass;

(iii) Weight of rain that collects on a roof; or

(iv) Weight of people or personal property.

- l. Discharge, dispersal, seepage, migration, release or escape of "pollutants" unless the discharge, dispersal, seepage, migration, release or escape is itself caused by any of the "specified causes of loss". But if the discharge, dispersal, seepage, migration, release or escape of "pollutants" results in a "specified cause of loss", we will pay for the loss or damage caused by that "specified cause of loss".

This exclusion, l., does not apply to damage to glass caused by chemicals applied to the glass.

- m. Neglect of an insured to use all reasonable means to save and preserve property from further damage at and after the time of loss.

3. We will not pay for loss or damage caused by or resulting from any of the following, 3.a. through 3.c. But if an excluded cause of loss that is listed in 3.a. through 3.c. results in a Covered Cause of Loss, we will pay for the loss or damage caused by that Covered Cause of Loss.

- a. Weather conditions. But this exclusion only applies if weather conditions contribute in any way with a cause or event excluded in Paragraph 1. above to produce the loss or damage.

- b. Acts or decisions, including the failure to act or decide, of any person, group, organization or governmental body.

- c. Faulty, inadequate or defective:

(1) Planning, zoning, development, surveying, siting;

(2) Design, specifications, workmanship, repair, construction, renovation, remodeling, grading, compaction;

(3) Materials used in repair, construction, renovation or remodeling; or

(4) Maintenance;

of part or all of any property on or off the described premises.

**4. Special Exclusions**

The following provisions apply only to the specified Coverage Forms:

**a. Business Income (And Extra Expense) Coverage Form, Business Income (Without Extra Expense) Coverage Form, Or Extra Expense Coverage Form**

We will not pay for:

- (1) Any loss caused by or resulting from:
  - (a) Damage or destruction of "finished stock"; or
  - (b) The time required to reproduce "finished stock".

This exclusion does not apply to Extra Expense.

- (2) Any loss caused by or resulting from direct physical loss or damage to radio or television antennas (including satellite dishes) and their lead-in wiring, masts or towers.
- (3) Any increase of loss caused by or resulting from:
  - (a) Delay in rebuilding, repairing or replacing the property or resuming "operations", due to interference at the location of the rebuilding, repair or replacement by strikers or other persons; or
  - (b) Suspension, lapse or cancellation of any license, lease or contract. But if the suspension, lapse or cancellation is directly caused by the "suspension" of "operations", we will cover such loss that affects your Business Income during the "period of restoration" and any extension of the "period of restoration" in accordance with the terms of the Extended Business Income Additional Coverage and the Extended Period Of Indemnity Optional Coverage or any variation of these.
- (4) Any Extra Expense caused by or resulting from suspension, lapse or cancellation of any license, lease or contract beyond the "period of restoration".

- (5) Any other consequential loss.

**b. Leasehold Interest Coverage Form**

- (1) Paragraph **B.1.a.**, Ordinance Or Law, does not apply to insurance under this Coverage Form.
- (2) We will not pay for any loss caused by:
  - (a) Your cancelling the lease;
  - (b) The suspension, lapse or cancellation of any license; or
  - (c) Any other consequential loss.

**c. Legal Liability Coverage Form**

- (1) The following exclusions do not apply to insurance under this Coverage Form:
  - (a) Paragraph **B.1.a.** Ordinance Or Law;
  - (b) Paragraph **B.1.c.** Governmental Action;
  - (c) Paragraph **B.1.d.** Nuclear Hazard;
  - (d) Paragraph **B.1.e.** Utility Services; and
  - (e) Paragraph **B.1.f.** War And Military Action.

- (2) The following additional exclusions apply to insurance under this Coverage Form:

**(a) Contractual Liability**

We will not defend any claim or "suit", or pay damages that you are legally liable to pay, solely by reason of your assumption of liability in a contract or agreement. But this exclusion does not apply to a written lease agreement in which you have assumed liability for building damage resulting from an actual or attempted burglary or robbery, provided that:

- (i) Your assumption of liability was executed prior to the accident; and
- (ii) The building is Covered Property under this Coverage Form.

**(b) Nuclear Hazard**

We will not defend any claim or "suit", or pay any damages, loss, expense or obligation, resulting from nuclear reaction or radiation, or radioactive contamination, however caused.



**5. Additional Exclusion**

The following provisions apply only to the specified property:

**Loss Or Damage To Products**

We will not pay for loss or damage to any merchandise, goods or other product caused by or resulting from error or omission by any person or entity (including those having possession under an arrangement where work or a portion of the work is outsourced) in any stage of the development, production or use of the product, including planning, testing, processing, packaging, installation, maintenance or repair. This exclusion applies to any effect that compromises the form, substance or quality of the product. But if such error or omission results in a Covered Cause of Loss, we will pay for the loss or damage caused by that Covered Cause of Loss.

**C. Limitations**

The following limitations apply to all policy forms and endorsements, unless otherwise stated:

1. We will not pay for loss of or damage to property, as described and limited in this section. In addition, we will not pay for any loss that is a consequence of loss or damage as described and limited in this section.
  - a. Steam boilers, steam pipes, steam engines or steam turbines caused by or resulting from any condition or event inside such equipment. But we will pay for loss of or damage to such equipment caused by or resulting from an explosion of gases or fuel within the furnace of any fired vessel or within the flues or passages through which the gases of combustion pass.
  - b. Hot water boilers or other water heating equipment caused by or resulting from any condition or event inside such boilers or equipment, other than an explosion.
  - c. The interior of any building or structure, or to personal property in the building or structure, caused by or resulting from rain, snow, sleet, ice, sand or dust, whether driven by wind or not, unless:
    - (1) The building or structure first sustains damage by a Covered Cause of Loss to its roof or walls through which the rain, snow, sleet, ice, sand or dust enters; or
    - (2) The loss or damage is caused by or results from thawing of snow, sleet or ice on the building or structure.
- d. Building materials and supplies not attached as part of the building or structure, caused by or resulting from theft.
 

However, this limitation does not apply to:

  - (1) Building materials and supplies held for sale by you, unless they are insured under the Builders Risk Coverage Form; or
  - (2) Business Income Coverage or Extra Expense Coverage.
- e. Property that is missing, where the only evidence of the loss or damage is a shortage disclosed on taking inventory, or other instances where there is no physical evidence to show what happened to the property.
- f. Property that has been transferred to a person or to a place outside the described premises on the basis of unauthorized instructions.
- g. Lawns, trees, shrubs or plants which are part of a vegetated roof, caused by or resulting from:
  - (1) Dampness or dryness of atmosphere or of soil supporting the vegetation;
  - (2) Changes in or extremes of temperature;
  - (3) Disease;
  - (4) Frost or hail; or
  - (5) Rain, snow, ice or sleet.
2. We will not pay for loss of or damage to the following types of property unless caused by the "specified causes of loss" or building glass breakage:
  - a. Animals, and then only if they are killed or their destruction is made necessary.
  - b. Fragile articles such as statuary, marbles, chinaware and porcelains, if broken. This restriction does not apply to:
    - (1) Glass; or
    - (2) Containers of property held for sale.
  - c. Builders' machinery, tools and equipment owned by you or entrusted to you, provided such property is Covered Property.
 

However, this limitation does not apply:

    - (1) If the property is located on or within 100 feet of the described premises, unless the premises is insured under the Builders Risk Coverage Form; or
    - (2) To Business Income Coverage or to Extra Expense Coverage.

3. The special limit shown for each category, **a.** through **d.**, is the total limit for loss of or damage to all property in that category. The special limit applies to any one occurrence of theft, regardless of the types or number of articles that are lost or damaged in that occurrence. The special limits are (unless a higher limit is shown in the Declarations):

- a.** \$2,500 for furs, fur garments and garments trimmed with fur.
- b.** \$2,500 for jewelry, watches, watch movements, jewels, pearls, precious and semiprecious stones, bullion, gold, silver, platinum and other precious alloys or metals. This limit does not apply to jewelry and watches worth \$100 or less per item.
- c.** \$2,500 for patterns, dies, molds and forms.
- d.** \$250 for stamps, tickets, including lottery tickets held for sale, and letters of credit.

These special limits are part of, not in addition to, the Limit of Insurance applicable to the Covered Property.

This limitation, **C.3.**, does not apply to Business Income Coverage or to Extra Expense Coverage.

4. We will not pay the cost to repair any defect to a system or appliance from which water, other liquid, powder or molten material escapes. But we will pay the cost to repair or replace damaged parts of fire-extinguishing equipment if the damage:

- a.** Results in discharge of any substance from an automatic fire protection system; or
- b.** Is directly caused by freezing.

However, this limitation does not apply to Business Income Coverage or to Extra Expense Coverage.

#### **D. Additional Coverage – Collapse**

The coverage provided under this Additional Coverage, Collapse, applies only to an abrupt collapse as described and limited in **D.1.** through **D.7.**

1. For the purpose of this Additional Coverage, Collapse, abrupt collapse means an abrupt falling down or caving in of a building or any part of a building with the result that the building or part of the building cannot be occupied for its intended purpose.

2. We will pay for direct physical loss or damage to Covered Property, caused by abrupt collapse of a building or any part of a building that is insured under this Coverage Form or that contains Covered Property insured under this Coverage Form, if such collapse is caused by one or more of the following:

- a.** Building decay that is hidden from view, unless the presence of such decay is known to an insured prior to collapse;
- b.** Insect or vermin damage that is hidden from view, unless the presence of such damage is known to an insured prior to collapse;
- c.** Use of defective material or methods in construction, remodeling or renovation if the abrupt collapse occurs during the course of the construction, remodeling or renovation.
- d.** Use of defective material or methods in construction, remodeling or renovation if the abrupt collapse occurs after the construction, remodeling or renovation is complete, but only if the collapse is caused in part by:

- (1) A cause of loss listed in **2.a.** or **2.b.**;
- (2) One or more of the "specified causes of loss";
- (3) Breakage of building glass;
- (4) Weight of people or personal property; or
- (5) Weight of rain that collects on a roof.

3. This **Additional Coverage – Collapse** does not apply to:

- a.** A building or any part of a building that is in danger of falling down or caving in;
- b.** A part of a building that is standing, even if it has separated from another part of the building; or
- c.** A building that is standing or any part of a building that is standing, even if it shows evidence of cracking, bulging, sagging, bending, leaning, settling, shrinkage or expansion.

4. With respect to the following property:

- a.** Outdoor radio or television antennas (including satellite dishes) and their lead-in wiring, masts or towers;

- b. Awnings, gutters and downspouts;
  - c. Yard fixtures;
  - d. Outdoor swimming pools;
  - e. Fences;
  - f. Piers, wharves and docks;
  - g. Beach or diving platforms or appurtenances;
  - h. Retaining walls; and
  - i. Walks, roadways and other paved surfaces;
- if an abrupt collapse is caused by a cause of loss listed in **2.a.** through **2.d.**, we will pay for loss or damage to that property only if:

- (1) Such loss or damage is a direct result of the abrupt collapse of a building insured under this Coverage Form; and
- (2) The property is Covered Property under this Coverage Form.

5. If personal property abruptly falls down or caves in and such collapse is **not** the result of abrupt collapse of a building, we will pay for loss or damage to Covered Property caused by such collapse of personal property only if:
- a. The collapse of personal property was caused by a cause of loss listed in **2.a.** through **2.d.**;
  - b. The personal property which collapses is inside a building; and
  - c. The property which collapses is not of a kind listed in **4.**, regardless of whether that kind of property is considered to be personal property or real property.

The coverage stated in this Paragraph **5.** does not apply to personal property if marring and/or scratching is the only damage to that personal property caused by the collapse.

- 6. This Additional Coverage, Collapse, does not apply to personal property that has not abruptly fallen down or caved in, even if the personal property shows evidence of cracking, bulging, sagging, bending, leaning, settling, shrinkage or expansion.
- 7. This Additional Coverage, Collapse, will not increase the Limits of Insurance provided in this Coverage Part.
- 8. The term Covered Cause of Loss includes the Additional Coverage, Collapse, as described and limited in **D.1.** through **D.7.**

#### **E. Additional Coverage – Limited Coverage For "Fungus", Wet Rot, Dry Rot And Bacteria**

1. The coverage described in **E.2.** and **E.6.** only applies when the "fungus", wet or dry rot or bacteria are the result of one or more of the following causes that occur during the policy period and only if all reasonable means were used to save and preserve the property from further damage at the time of and after that occurrence:

- a. A "specified cause of loss" other than fire or lightning; or
- b. Flood, if the Flood Coverage Endorsement applies to the affected premises.

This Additional Coverage does not apply to lawns, trees, shrubs or plants which are part of a vegetated roof.

2. We will pay for loss or damage by "fungus", wet or dry rot or bacteria. As used in this Limited Coverage, the term loss or damage means:

- a. Direct physical loss or damage to Covered Property caused by "fungus", wet or dry rot or bacteria, including the cost of removal of the "fungus", wet or dry rot or bacteria;
- b. The cost to tear out and replace any part of the building or other property as needed to gain access to the "fungus", wet or dry rot or bacteria; and
- c. The cost of testing performed after removal, repair, replacement or restoration of the damaged property is completed, provided there is a reason to believe that "fungus", wet or dry rot or bacteria are present.

3. The coverage described under **E.2.** of this Limited Coverage is limited to \$15,000. Regardless of the number of claims, this limit is the most we will pay for the total of all loss or damage arising out of all occurrences of "specified causes of loss" (other than fire or lightning) and Flood which take place in a 12-month period (starting with the beginning of the present annual policy period). With respect to a particular occurrence of loss which results in "fungus", wet or dry rot or bacteria, we will not pay more than a total of \$15,000 even if the "fungus", wet or dry rot or bacteria continue to be present or active, or recur, in a later policy period.

4. The coverage provided under this Limited Coverage does not increase the applicable Limit of Insurance on any Covered Property. If a particular occurrence results in loss or damage by "fungus", wet or dry rot or bacteria, and other loss or damage, we will not pay more, for the total of all loss or damage, than the applicable Limit of Insurance on the affected Covered Property.

If there is covered loss or damage to Covered Property, not caused by "fungus", wet or dry rot or bacteria, loss payment will not be limited by the terms of this Limited Coverage, except to the extent that "fungus", wet or dry rot or bacteria cause an increase in the loss. Any such increase in the loss will be subject to the terms of this Limited Coverage.

5. The terms of this Limited Coverage do not increase or reduce the coverage provided under Paragraph F.2. (Water Damage, Other Liquids, Powder Or Molten Material Damage) of this Causes Of Loss form or under the Additional Coverage, Collapse.
6. The following, 6.a. or 6.b., applies only if Business Income and/or Extra Expense Coverage applies to the described premises and only if the "suspension" of "operations" satisfies all terms and conditions of the applicable Business Income and/or Extra Expense Coverage Form:
- a. If the loss which resulted in "fungus", wet or dry rot or bacteria does not in itself necessitate a "suspension" of "operations", but such "suspension" is necessary due to loss or damage to property caused by "fungus", wet or dry rot or bacteria, then our payment under Business Income and/or Extra Expense is limited to the amount of loss and/or expense sustained in a period of not more than 30 days. The days need not be consecutive.
  - b. If a covered "suspension" of "operations" was caused by loss or damage other than "fungus", wet or dry rot or bacteria but remediation of "fungus", wet or dry rot or bacteria prolongs the "period of restoration", we will pay for loss and/or expense sustained during the delay (regardless of when such a delay occurs during the "period of restoration"), but such coverage is limited to 30 days. The days need not be consecutive.

## F. Additional Coverage Extensions

### 1. Property In Transit

This Extension applies only to your personal property to which this form applies.

- a. You may extend the insurance provided by this Coverage Part to apply to your personal property (other than property in the care, custody or control of your salespersons) in transit more than 100 feet from the described premises. Property must be in or on a motor vehicle you own, lease or operate while between points in the coverage territory.
- b. Loss or damage must be caused by or result from one of the following causes of loss:
  - (1) Fire, lightning, explosion, windstorm or hail, riot or civil commotion, or vandalism.
  - (2) Vehicle collision, upset or overturn. Collision means accidental contact of your vehicle with another vehicle or object. It does not mean your vehicle's contact with the roadbed.
  - (3) Theft of an entire bale, case or package by forced entry into a securely locked body or compartment of the vehicle. There must be visible marks of the forced entry.
- c. The most we will pay for loss or damage under this Extension is \$5,000.

This Coverage Extension is additional insurance. The Additional Condition, Coinsurance, does not apply to this Extension.

### 2. Water Damage, Other Liquids, Powder Or Molten Material Damage

If loss or damage caused by or resulting from covered water or other liquid, powder or molten material damage loss occurs, we will also pay the cost to tear out and replace any part of the building or structure to repair damage to the system or appliance from which the water or other substance escapes. This Coverage Extension does not increase the Limit of Insurance.

### 3. Glass

- a. We will pay for expenses incurred to put up temporary plates or board up openings if repair or replacement of damaged glass is delayed.



- b. We will pay for expenses incurred to remove or replace obstructions when repairing or replacing glass that is part of a building. This does not include removing or replacing window displays.

This Coverage Extension **F.3.** does not increase the Limit of Insurance.

#### **G. Definitions**

1. "Fungus" means any type or form of fungus, including mold or mildew, and any mycotoxins, spores, scents or by-products produced or released by fungi.
2. "Specified causes of loss" means the following: fire; lightning; explosion; windstorm or hail; smoke; aircraft or vehicles; riot or civil commotion; vandalism; leakage from fire-extinguishing equipment; sinkhole collapse; volcanic action; falling objects; weight of snow, ice or sleet; water damage.
  - a. Sinkhole collapse means the sudden sinking or collapse of land into underground empty spaces created by the action of water on limestone or dolomite. This cause of loss does not include:
    - (1) The cost of filling sinkholes; or
    - (2) Sinking or collapse of land into man-made underground cavities.
  - b. Falling objects does not include loss or damage to:
    - (1) Personal property in the open; or
    - (2) The interior of a building or structure, or property inside a building or structure, unless the roof or an outside wall of the building or structure is first damaged by a falling object.

#### **c. Water damage means:**

- (1) Accidental discharge or leakage of water or steam as the direct result of the breaking apart or cracking of a plumbing, heating, air conditioning or other system or appliance (other than a sump system including its related equipment and parts), that is located on the described premises and contains water or steam; and
- (2) Accidental discharge or leakage of water or waterborne material as the direct result of the breaking apart or cracking of a water or sewer pipe that is located off the described premises and is part of a municipal potable water supply system or municipal sanitary sewer system, if the breakage or cracking is caused by wear and tear.

But water damage does not include loss or damage otherwise excluded under the terms of the Water Exclusion. Therefore, for example, there is no coverage under this policy in the situation in which discharge or leakage of water results from the breaking apart or cracking of a pipe which was caused by or related to weather-induced flooding, even if wear and tear contributed to the breakage or cracking. As another example, and also in accordance with the terms of the Water Exclusion, there is no coverage for loss or damage caused by or related to weather-induced flooding which follows or is exacerbated by pipe breakage or cracking attributable to wear and tear.

To the extent that accidental discharge or leakage of water falls within the criteria set forth in **c.(1)** or **c.(2)** of this definition of "specified causes of loss," such water is not subject to the provisions of the Water Exclusion which preclude coverage for surface water or water under the surface of the ground.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## BURGLARY AND ROBBERY PROTECTIVE SAFEGUARDS

This endorsement modifies insurance provided under the following:

COMMERCIAL PROPERTY COVERAGE PART

### SCHEDULE\*

Premises No.	Building No.	Protective Safeguards Symbols Applicable
Describe any "BR-4":		
<small>* Information required to complete this Schedule, if not shown on this endorsement, will be shown in the Declarations.</small>		

**A. The following is added to the **Commercial Property** Conditions:**

**BURGLARY AND ROBBERY PROTECTIVE SAFEGUARDS**

1. As a condition of this insurance, you are required to maintain the protective devices and/or services listed in the Schedule above.
2. The protective safeguard(s) to which this endorsement applies are identified by the following symbols:
  - a. "BR-1" Automatic Burglary Alarm, protecting the entire building, that signals to:
    - (1) An outside central station; or
    - (2) A police station.
  - b. "BR-2" Automatic Burglary Alarm, protecting the entire building, that has a loud sounding gong or siren on the outside of the building.

- c. "BR-3" Security Service, with a recording system or watch clock, making hourly rounds covering the entire building, when the premises are not in actual operation.

- d. "BR-4" The protective safeguard described in the Schedule.

**B. The following is added to the **Exclusions** section of the Causes Of Loss – Special Form:**

**BURGLARY AND ROBBERY PROTECTIVE SAFEGUARDS**

We will not pay for loss or damage caused by or resulting from theft if, prior to the theft, you:

1. Knew of any suspension or impairment in any protective safeguard listed in the Schedule above and failed to notify us of that fact; or
2. Failed to maintain any protective safeguard listed in the Schedule above, and over which you had control, in complete working order.

## **FLOOD COVERAGE ADVISORY NOTICE TO POLICYHOLDERS**

THIS POLICY DOES NOT COVER DAMAGE FROM FLOOD.

FOR INFORMATION ABOUT FLOOD INSURANCE, PLEASE CONTACT THE NATIONAL FLOOD INSURANCE PROGRAM OR YOUR INSURANCE AGENT.

## **ASBESTOS MATERIAL EXCLUSION**

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**This endorsement modifies insurance provided under the following:**

### **COMMERCIAL PROPERTY COVERAGE PART**

The following supersedes the terms and conditions of this Coverage Part. We will not pay for:

- 1) Demolition or increased cost of reconstruction, repair, debris removal or loss of use necessitated by the enforcement of any law or ordinance regulating asbestos material; or
- 2) Any government direction or request declaring that asbestos material present in or part of or utilized on any undamaged portion of the insured's property can no longer be used for the purpose for which it was intended or installed and must be removed or modified.

All other terms and conditions of this policy remain unchanged. This endorsement is a part of your policy and takes effect on the effective date of your policy unless another effective date is shown.

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Authorized Representative



**SERVICE OF SUIT ENDORSEMENT**

Named Insured <b>The Last Resort - Mobile, LLC</b>			Endorsement Number
Policy Symbol <b>FS</b>	Policy Number <b>FSF15253113 001</b>	Policy Period <b>01-24-2020 to 01-24-2021</b>	Effective Date of Endorsement
Issued By (Name of Insurance Company) <b>Westchester Surplus Lines Insurance Company</b>			

Insert the policy number. The remainder of the information is to be completed only when this endorsement is issued subsequent to the preparation of the policy.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

Information about service of suits upon the company is given below. Service of process of suits against the company may be made upon the following person, or another person the company may designate:

Mr. Paul Bech, Esq., Associate General Counsel  
Chubb  
436 Walnut Street  
Philadelphia, PA 19106-3703

The person named above is authorized and directed to accept service of process on the company's behalf in any action, suit or proceeding instituted against the company. If the insured requests, the company will give the insured a written promise that a general appearance will be entered on the company's behalf if a suit is brought.

If the insured requests, the company will submit to the jurisdiction of any court of competent jurisdiction. The company will accept the final decision of that court or any Appellate Court in the event of an appeal. However, nothing in this endorsement constitutes a waiver of the company's right to: remove an action to a United States District Court, seek a transfer of a case to another court, or to enforce policy provisions governing choice of law or venue selection, as may be permitted by the laws of the United States, or of any state in the United States.

The law of some jurisdictions of the United States of America requires that the Superintendent, Commissioner or Director of Insurance (or their successor in office) be designated as the company's agent for service of process. In these jurisdictions, the company designates the Director of Insurance as the company's true and lawful attorney upon whom service of process on the company's behalf may be made. The company also authorizes the Director of Insurance to mail process received on the company's behalf to the company person named above.

If the insured is a resident of Canada, the insured may also serve suit upon the company by serving the government official designated by the law of the insured's province.

NOTHING HEREIN CONTAINED SHALL BE HELD TO VARY, ALTER, WAIVE OR EXTEND ANY OF THE TERMS, CONDITIONS, OR LIMITATIONS OF THE POLICY TO WHICH THIS ENDORSEMENT IS ATTACHED OTHER THAN AS ABOVE STATED.

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Authorized Representative



## CHUBB GROUP OF COMPANIES U.S. PRIVACY NOTICE

### FACTS

### WHAT DOES THE CHUBB GROUP OF COMPANIES DO WITH YOUR PERSONAL INFORMATION?

<b>Why?</b>	Insurance companies choose how they share your personal information. Federal and state law gives consumers the right to limit some but not all sharing. Federal and state law also requires us to tell you how we collect, share, and protect your personal information. Please read this notice carefully to understand what we do.
<b>What?</b>	<p>The types of personal information we collect and share depend on the product or service you have with us. This information can include:</p> <ul style="list-style-type: none"> <li>▪ Social Security number and payment history</li> <li>▪ insurance claim history and medical information</li> <li>▪ account transactions and credit scores</li> </ul> <p>When you are no longer our customer, we continue to share information about you as described in this notice.</p>
<b>How?</b>	All insurance companies need to share customers' personal information to run their everyday business. In the section below, we list the reasons insurance companies can share their customers' personal information; the reasons the Westchester chooses to share; and whether you can limit this sharing.

Reasons we can share your personal information	Does Westchester share?	Can you limit this sharing?
<b>For our everyday business purposes</b> – such as to process your transactions, maintain your account(s), respond to court orders and legal investigations, or report to credit bureaus	Yes	No
<b>For our marketing purposes</b> – to offer our products and services to you	Yes	No
<b>For joint marketing with other financial companies</b>	Yes	No
<b>For our affiliates' everyday business purposes</b> – information about your transactions and experiences	Yes	No
<b>For our affiliates' everyday business purposes</b> – information about your creditworthiness	No	We don't share
<b>For our affiliates to market to you</b>	No	We don't share
<b>For nonaffiliates to market to you</b>	No	We don't share

**Questions?** Call 1-800-352-4462 or go to [www.acegroup.com/us-en/contact-us/general-inquiry-form.aspx](http://www.acegroup.com/us-en/contact-us/general-inquiry-form.aspx)

**Who we are**

<b>Who is providing this notice?</b>	The Chubb Group of Companies. A list of these companies is located at the end of this document.
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**What we do**

<b>How does Westchester protect my personal information?</b>	<p>To protect your personal information from unauthorized access and use, we use security measures that comply with federal law. These measures include computer safeguards and secured files and buildings.</p> <p>We restrict access to personal information to our employees, affiliates' employees, or others who need to know that information to service the account or to conduct our normal business operations.</p>
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<b>How does Westchester collect my personal information?</b>	<p>We collect your personal information, for example, when you</p> <ul style="list-style-type: none"> <li>▪ apply for insurance or pay insurance premiums</li> <li>▪ file an insurance claim or provide account information</li> <li>▪ give us your contact information</li> </ul> <p>We also collect your personal information from others, such as credit bureaus, affiliates, or other companies.</p>
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<b>Why can't I limit all sharing?</b>	<p>Federal law gives you the right to limit only</p> <ul style="list-style-type: none"> <li>▪ sharing for affiliates' everyday business purposes – information about your creditworthiness</li> <li>▪ affiliates from using your information to market to you</li> <li>▪ sharing for nonaffiliates to market to you</li> </ul> <p>State laws and individual companies may give you additional rights to limit sharing. See below for more on your rights under state law.</p>
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**Definitions**

<b>Affiliates</b>	<p>Companies related by common ownership or control. They can be financial and nonfinancial companies.</p> <ul style="list-style-type: none"> <li>▪ Our affiliates include those with an Westchester name and financial companies, such as Westchester Fire Insurance Company and ESIS, Inc.</li> </ul>
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<b>Nonaffiliates</b>	<p>Companies not related by common ownership or control. They can be financial and nonfinancial companies.</p> <ul style="list-style-type: none"> <li>▪ Westchester does not share with nonaffiliates so they can market to you.</li> </ul>
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<b>Joint Marketing</b>	<p>A formal agreement between nonaffiliated financial companies that together market financial products or services to you.</p> <ul style="list-style-type: none"> <li>▪ Our joint marketing partners include categories of companies such as banks.</li> </ul>
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### Other important information

**For Insurance Customers in CA, CT, GA, IL, MA, ME, MN, MT, NC, NJ, OH, OR, and VA only:** Under state law, you have the right see the personal information about you that we have on file. To see your information, write Chubb US Customer Services, P.O. Box 1000, 436 Walnut Street, WA04B, Philadelphia, PA 19106. Chubb may charge a reasonable fee to cover the costs of providing this information. If you think any of the information is wrong, you may write us. We will let you know what actions we take. If you do not agree with our actions, you may send us a statement. If you want a full description of privacy rights that we will protect in accordance with the law in your home state, please contact us and we will provide it. We may disclose information to certain third parties, such as law enforcement officers, without your permission.

**For Nevada residents only:** We may contact our existing customers by telephone to offer additional insurance products that we believe may be of interest to you. Under state law, you have the right to opt out of these calls by adding your name to our internal do-not-call list. To opt out of these calls, or for more information about your opt out rights, please contact our customer service department. You can reach us by calling **1-800-352-4462**, emailing us at [info@acegroup.com](mailto:info@acegroup.com), or writing to P.O. Box 1000, 436 Walnut Street, WA04B, Philadelphia, PA 19106. You are being provided this notice under Nevada state law. In addition to contacting Westchester, Nevada residents can contact the Nevada Attorney General for more information about your opt out rights by calling 775-684-1100, emailing [bcpinfo@ag.state.nv.us](mailto:bcpinfo@ag.state.nv.us), or by writing to: Office of the Attorney General, Nevada Department of Justice, Bureau of Consumer Protection: 100 North Carson Street, Carson City, NV 89701.

**For Vermont residents only:** Under state law, we will not share information about your creditworthiness within our corporate family except with your authorization or consent, but we may share information about our transactions or experiences with you within our corporate family without your consent.

### Chubb Group of Companies legal entities

Chubb Group of Companies use the names: ACE American Insurance Company, ACE Fire Underwriters Insurance Company, ACE Insurance Company of the Midwest, ACE Property and Casualty Insurance Company, Atlantic Employers Insurance Company, Bankers Standard Fire and Marine Company, Bankers Standard Insurance Company, Century Indemnity Company, Illinois Union Insurance Company, Indemnity Insurance Company of North America, Insurance Company of North America, Pacific Employers Insurance Company, Westchester Fire Insurance Company, Westchester Surplus Lines Insurance Company, ESIS, Inc., Combined Insurance Company of America, Combined Life Insurance Company of New York, Penn Millers Insurance Company, Agri General Insurance Company

# *Westchester Surplus Lines Insurance Company*

INSURANCE COMPANY

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11575 Great Oaks Way  
Suite 200  
Alpharetta, GA 30022

## **NOTICE**

POLICY NO: FSF15253113 001

NAME OF NSURED: The Last Resort - Mobile, LLC

ADDRESS: 5955 Old Shell Rd  
Mobile, AL 36608

We are pleased to enclose your policy for this account.

Please be advised that by binding this risk with the above referenced Surplus Lines Insurance Company, you agree that as the Surplus Lines Broker responsible for the placement of this insurance policy, it is your obligation to comply with all States Surplus Lines Laws including completion of any declarations/affidavits that must be filed as well as payment of any and all Surplus Lines taxes that must be remitted to the State(s). We will look to you for indemnification if controlling Surplus Lines Laws are violated by you as the Surplus Lines broker responsible for the placement.

You further confirm that any applicable state requirement concerning a diligent search for coverage by admitted carriers has been fulfilled in accordance with state law.

Thank you for this placement and your regulatory compliance.

Date: 02-26-2020




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Westchester Surplus Lines Insurance Company  
Insurance Company

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The Last Resort - Mobile, LLC  
Policyholder

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FSF15253113 001  
Policy Number

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BASS UNDERWRITERS INC  
Broker/Producer

## POLICYHOLDER DISCLOSURE NOTICE OF TERRORISM INSURANCE COVERAGE

You were notified that under the Terrorism Risk Insurance Act, as amended, you have a right to purchase insurance coverage for losses resulting from acts of terrorism. *As defined in Section 102(1) of the Act:* The term "act of terrorism" means any act or acts that are certified by the Secretary of the Treasury---in consultation with the Secretary of Homeland Security, and the Attorney General of the United States---to be an act of terrorism; to be a violent act or an act that is dangerous to human life, property, or infrastructure; to have resulted in damage within the United States, or outside the United States in the case of certain air carriers or vessels or the premises of a United States mission; and to have been committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

**YOU SHOULD KNOW THAT WHERE COVERAGE IS PROVIDED BY YOUR POLICY FOR LOSSES RESULTING FROM CERTIFIED ACTS OF TERRORISM, SUCH LOSSES MAY BE PARTIALLY REIMBURSED BY THE UNITED STATES GOVERNMENT UNDER A FORMULA ESTABLISHED BY FEDERAL LAW. HOWEVER, YOUR POLICY MAY CONTAIN OTHER EXCLUSIONS WHICH MIGHT AFFECT YOUR COVERAGE, SUCH AS AN EXCLUSION FOR NUCLEAR EVENTS. UNDER THE FORMULA, THE UNITED STATES GOVERNMENT GENERALLY REIMBURSES 85% FOR YEAR 2015, 84% BEGINNING ON JANUARY 1, 2016; 83% BEGINNING ON JANUARY 1, 2017, 82% BEGINNING ON JANUARY 1, 2018; 81% BEGINNING ON JANUARY 1, 2019 AND 80% BEGINNING ON JANUARY 1, 2020, OF COVERED TERRORISM LOSSES EXCEEDING THE STATUTORILY ESTABLISHED DEDUCTIBLE PAID BY THE INSURANCE COMPANY PROVIDING THE COVERAGE. THE PREMIUM THAT WOULD BE CHARGED FOR THIS COVERAGE IS PROVIDED BELOW AND DOES NOT INCLUDE ANY CHARGES FOR THE PORTION OF LOSS THAT MAY BE COVERED BY THE FEDERAL GOVERNMENT UNDER THE ACT.**

**YOU SHOULD ALSO KNOW THAT THE TERRORISM RISK INSURANCE ACT, AS AMENDED, CONTAINS A \$100 BILLION CAP THAT LIMITS U.S. GOVERNMENT REIMBURSEMENT AS WELL AS INSURERS' LIABILITY FOR LOSSES RESULTING FROM CERTIFIED ACTS OF TERRORISM WHEN THE AMOUNT OF SUCH LOSSES IN ANY ONE CALENDAR YEAR EXCEEDS \$100 BILLION. IF THE AGGREGATE INSURED LOSSES FOR ALL INSURERS EXCEED \$100 BILLION, YOUR COVERAGE MAY BE REDUCED.**

You elected **NOT** to purchase terrorism coverage under the Act at the price indicated. ACCORDINGLY, WE WILL **NOT** PROVIDE THIS COVERAGE AND YOU DO NOT OWE THE ADDITIONAL PREMIUM FOR THAT COVERAGE INDICATED BELOW.

Terrorism coverage described by the Act under your policy was made available to you for additional premium in the amount of \$418, however you elected to decline such coverage.

**TERRORISM EXCLUSION ENDORSEMENT**

Named Insured The Last Resort - Mobile, LLC			Endorsement Number
Policy Symbol FS	Policy Number FSF15253113 001	Policy Period 01-24-2020 To 01-24-2021	Effective Date of Endorsement
Issued By (Name of Insurance Company) Westchester Surplus Lines Insurance Company			

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE FOLLOWING:**

**BOILER AND MACHINERY COVERAGE PART**  
**BUSINESS AUTO COVERAGE FORM**  
**GARAGE COVERAGE FORM**  
**MOTOR CARRIER COVERAGE FORM**  
**TRUCKERS COVERAGE FORM**  
**BUSINESS AUTO PHYSICAL DAMAGE COVERAGE FORM**  
**COMMERCIAL INLAND MARINE COVERAGE PART**  
**COMMERCIAL PROPERTY COVERAGE FORM**  
**COMMERCIAL PROPERTY COVERAGE PART**  
**STANDARD PROPERTY POLICY**

The following exclusion is added to this policy and applies to all coverages, additional coverages, and coverage extensions, notwithstanding any provision to the contrary in this policy or any other endorsement hereto:

- A. This insurance does not cover loss, damage, injury, expense, cost, or legal obligation directly or indirectly caused by or resulting from any of the following, regardless of any other cause or event, whether or not insured under this policy, contributing concurrently or in any other sequence thereto:
1. "Act of Terrorism"; or
  2. Actions taken by or on behalf of any government or any branch or division thereof (including, without limitation, the uniformed armed forces, militia, police, state security, and anti-terrorism agencies) in responding to, preventing, combating, defending or retaliating against any "Act of Terrorism; or
  3. dispersal, application, or release of any actual or alleged pathogen, poison, biologic or chemical product, material, waste or substance as a result of an Act of Terrorism, and it reasonably appears that one purpose of the Act of Terrorism was to release such product, material, waste or substance.

This exclusion applies whether or not the "Act of Terrorism" was committed in concert with or on behalf of any organization or government.

The terms and limitations of this exclusion do not serve to create coverage for any loss which would otherwise be excluded under this Policy, such as, but not limited to, losses excluded by the "Nuclear Exclusion" or the "War Exclusion" or similar provision.

B. As used in this endorsement:

1. "Act of Terrorism" means any act against persons, organizations or property of any nature that involves the following or preparation for the following:
  - a. Use or threat of force or violence; or
  - b. Commission or threat of a dangerous act; or
  - c. Commission or threat of an act that interferes with or disrupts an electronic, communication, information, or mechanical system; and

2. Appears to be intended, in whole or in part, to:

- a. Intimidate or coerce a government or the civilian population; or
- b. Disrupt any segment of a nation's economy; or
- c. Influence the policy of a government by intimidation or coercion; or
- d. Affect the conduct of a government by mass destruction, assassination, kidnapping or hostage-taking; or
- e. Further political, ideological, religious, social or economic objectives or to express (or express opposition to) a philosophy or ideology; or
- f. Respond to governmental action or policy.

"Act of Terrorism" shall also include any incident determined to be such by an official, department or agency that has been specifically authorized by federal statute to make such a determination.

C. Exception Covering Certain Fire Losses

If an Act of Terrorism results in a fire and the direct physical loss or damage to property insured hereunder located in any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, each of the United States Virgin Islands and any territory or possession of the United States, that, either pursuant to the Standard Fire Policy or otherwise, prohibits exclusions for acts of terrorism that result in fire, this Company will pay for the loss or damage caused by that fire. Such coverage for fire applies only to direct loss or damage to property insured hereunder and may be limited, in accordance with the Standard Fire Policy, to the lesser of the actual cash value of the property at the time of the loss or the amount which it would cost to repair or replace the property, without allowance for any increased cost of repair or replacement by reason of any ordinance or law, and without any compensation for business interruption, extra expense to continue business activities, or any other coverage for loss or damage other than direct physical loss or damage to the property insured hereunder.

All other terms and conditions remain unchanged.



**SIGNATURES**

Named Insured <b>The Last Resort - Mobile, LLC</b>			Endorsement Number
Policy Symbol <b>FS</b>	Policy Number <b>FSF15253113 001</b>	Policy Period <b>01-24-2020 to 01-24-2021</b>	Effective Date of Endorsement
Issued By (Name of Insurance Company) <b>Westchester Surplus Lines Insurance Company</b>			

Insert the policy number. The remainder of the information is to be completed only when this endorsement is issued subsequent to the preparation of the policy.


THE ONLY SIGNATURES APPLICABLE TO THIS POLICY ARE THOSE REPRESENTING THE COMPANY NAMED ON THE FIRST PAGE OF THE DECLARATIONS.

By signing and delivering the policy to you, we state that it is a valid contract.

**ILLINOIS UNION INSURANCE COMPANY** (A stock company)  
525 W. Monroe Street, Suite 400, Chicago, Illinois 60661

**WESTCHESTER SURPLUS LINES INSURANCE COMPANY** (A stock company)  
Royal Centre Two, 11575 Great Oaks Way, Suite 200, Alpharetta, GA 30022

  
REBECCA L. COLLINS, Secretary

  
JOHN J. LUPICA, President

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Authorized Representative

## COMMON POLICY CONDITIONS

All Coverage Parts included in this policy are subject to the following conditions.

### A. Cancellation

1. The first Named Insured shown in the Declarations may cancel this policy by mailing or delivering to us advance written notice of cancellation.
2. We may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation at least:
  - a. 10 days before the effective date of cancellation if we cancel for nonpayment of premium; or
  - b. 30 days before the effective date of cancellation if we cancel for any other reason.
3. We will mail or deliver our notice to the first Named Insured's last mailing address known to us.
4. Notice of cancellation will state the effective date of cancellation. The policy period will end on that date.
5. If this policy is cancelled, we will send the first Named Insured any premium refund due. If we cancel, the refund will be pro rata. If the first Named Insured cancels, the refund may be less than pro rata. The cancellation will be effective even if we have not made or offered a refund.
6. If notice is mailed, proof of mailing will be sufficient proof of notice.

### B. Changes

This policy contains all the agreements between you and us concerning the insurance afforded. The first Named Insured shown in the Declarations is authorized to make changes in the terms of this policy with our consent. This policy's terms can be amended or waived only by endorsement issued by us and made a part of this policy.

### C. Examination Of Your Books And Records

We may examine and audit your books and records as they relate to this policy at any time during the policy period and up to three years afterward.

### D. Inspections And Surveys

1. We have the right to:
  - a. Make inspections and surveys at any time;

- b. Give you reports on the conditions we find; and
- c. Recommend changes.

2. We are not obligated to make any inspections, surveys, reports or recommendations and any such actions we do undertake relate only to insurability and the premiums to be charged. We do not make safety inspections. We do not undertake to perform the duty of any person or organization to provide for the health or safety of workers or the public. And we do not warrant that conditions:
  - a. Are safe or healthful; or
  - b. Comply with laws, regulations, codes or standards.

3. Paragraphs 1. and 2. of this condition apply not only to us, but also to any rating, advisory, rate service or similar organization which makes insurance inspections, surveys, reports or recommendations.

4. Paragraph 2. of this condition does not apply to any inspections, surveys, reports or recommendations we may make relative to certification, under state or municipal statutes, ordinances or regulations, of boilers, pressure vessels or elevators.

### E. Premiums

The first Named Insured shown in the Declarations:

1. Is responsible for the payment of all premiums; and
2. Will be the payee for any return premiums we pay.

### F. Transfer Of Your Rights And Duties Under This Policy

Your rights and duties under this policy may not be transferred without our written consent except in the case of death of an individual named insured.

If you die, your rights and duties will be transferred to your legal representative but only while acting within the scope of duties as your legal representative. Until your legal representative is appointed, anyone having proper temporary custody of your property will have your rights and duties but only with respect to that property.



### **Chubb Producer Compensation Practices & Policies**

Chubb believes that policyholders should have access to information about Chubb's practices and policies related to the payment of compensation to brokers and independent agents. You can obtain that information by accessing our website at <http://www.chubbproducercompensation.com> or by calling the following toll-free telephone number: 1-866-512-2862.

**TRADE OR ECONOMIC SANCTIONS ENDORSEMENT**

Named Insured <b>The Last Resort - Mobile, LLC</b>			Endorsement Number
Policy Symbol <b>FS</b>	Policy Number <b>FSF15253113 001</b>	Policy Period <b>01-24-2020 to 01-24-2021</b>	Effective Date of Endorsement
Issued By (Name of Insurance Company) <b>Westchester Surplus Lines Insurance Company</b>			

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

This insurance does not apply to the extent that trade or economic sanctions or other laws or regulations prohibit us from providing insurance, including, but not limited to, the payment of claims. All other terms and conditions of policy remain unchanged.

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 Authorized Agent



## Claims Directory

**Claims or Loss Notices related to this policy should be reported to the following:**

Claim Office	Email and Fax	Location
Chubb North American Claims	First Notices Email: ChubbClaimsFirstNotice@Chubb.com  First Notices Fax: 215-640-5041 or 1-877-395-0310 General Correspondence Fax: 1-866-635-5688	P.O. Box 5122 Scranton, PA 18505-0554

**MINIMUM EARNED PREMIUM ENDORSEMENT**

Named Insured <b>The Last Resort - Mobile, LLC</b>			Endorsement Number
Policy Symbol <b>FS</b>	Policy Number <b>FSF15253113 001</b>	Policy Period <b>01-24-2020to 01-24-2021</b>	Effective Date of Endorsement
Issued By (Name of Insurance Company) <b>Westchester Surplus Lines Insurance Company</b>			

Insert the policy number. The remainder of the information is to be completed only when this endorsement is issued subsequent to the preparation of the policy.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**This endorsement modifies insurance provided under the following:**

**COMMERCIAL PROPERTY COVERAGE PART****COMMERCIAL GENERAL LIABILITY COVERAGE PART**

The following is added to **Section IV - Conditions:**

**Cancellation by You; Minimum Earned Premium**

If this policy is cancelled at your request, there will be a minimum earned premium retained by us, determined as follows:

- (i) Minimum Earned Premium at inception: \$ \_\_\_\_\_, or
- (ii) Minimum Earned Premium at inception: 25% of Policy Term Premium

whichever is greater.

All other terms and conditions of this policy remain unchanged.

IL N 013 02 13

## **ALABAMA FRAUD STATEMENT**

Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or who knowingly presents false information in an application for insurance is guilty of a crime and may be subject to restitution, fines or confinement in prison, or any combination thereof.



## **U.S. FOREIGN ACCOUNT TAX COMPLIANCE ACT (“FATCA”)**

The U.S. Foreign Account Tax Compliance Act, commonly known as “FATCA”, became the law in the U.S. in March of 2010 and becomes effective July 1, 2014. Pursuant to FATCA, brokers, producers, agents and/or clients may need to obtain withholding certificates from insurance companies. For information on how to obtain the applicable withholding certificate from Chubb U.S. insurance companies, please go to the following web site:

<http://www2.chubb.com/us-en/u-s-foreign-account-tax-compliance-act-fatca.aspx>



IL P 001 01 04

## U.S. TREASURY DEPARTMENT'S OFFICE OF FOREIGN ASSETS CONTROL ("OFAC") ADVISORY NOTICE TO POLICYHOLDERS

No coverage is provided by this Policyholder Notice nor can it be construed to replace any provisions of your policy. You should read your policy and review your Declarations page for complete information on the coverages you are provided.

This Notice provides information concerning possible impact on your insurance coverage due to directives issued by OFAC. **Please read this Notice carefully.**

The Office of Foreign Assets Control (OFAC) administers and enforces sanctions policy, based on Presidential declarations of "national emergency". OFAC has identified and listed numerous:

- Foreign agents;
- Front organizations;
- Terrorists;
- Terrorist organizations; and
- Narcotics traffickers;

as "Specially Designated Nationals and Blocked Persons". This list can be located on the United States Treasury's web site – <http://www.treas.gov/ofac>.

In accordance with OFAC regulations, if it is determined that you or any other insured, or any person or entity claiming the benefits of this insurance has violated U.S. sanctions law or is a Specially Designated National and Blocked Person, as identified by OFAC, this insurance will be considered a blocked or frozen contract and all provisions of this insurance are immediately subject to OFAC. When an insurance policy is considered to be such a blocked or frozen contract, no payments nor premium refunds may be made without authorization from OFAC. Other limitations on the premiums and payments also apply.

# EXHIBIT B

**CHUBB®**

Western Claim Services Center  
600 Independence Parkway  
Chesapeake, VA 23320  
O: (800) 252-4670  
F: (800) 664-5358  
E: USPropertyClaims@chubb.com

Mailing Address  
P.O. Box 4700  
Chesapeake, VA 23327-4700

April 28, 2020

The Last Resort- Mobile, LLC  
DBA Poindexters  
5955 Old Shell Rd  
Mobile, AL 36608  
Attention: Mr. Joel Knain

Re: Insured: The Last Resort- Mobile, LLC DBA Poindexters  
Policy Number: F15253113  
Claim Number: KY20K2260016  
Date of Loss: March 30, 2020 as reported  
Cause of Loss: COVID-19/Coronavirus  
Loss Location: 5955 Old Shell Rd, Mobile, AL 36608  
Date Reported: March 30, 2020  
Writing Company: Westchester Surplus Lines Insurance Company

Dear Mr. Knain,

Thank you for your communication regarding the state mandated closure of your restaurant business and the related income loss. Westchester Surplus Lines Insurance Company ("Westchester") has completed its factual investigation given the information provided and offers the following comments with respect to coverage for this loss.

### **The Loss**

On March 30, 2020, we received report of your business interruption claim for income loss resulting from the COVID-19/Coronavirus. On April 1, 2020 we spoke, and you advised that Alabama government authorities initially restricted capacity and later advised all non-essential businesses to close. You have a full-service restaurant at the address indicated above which was impacted by the mandates. On March 18, 2020 you closed the restaurant.

We have reviewed the facts of the loss as presented and the orders of civil authority impacting your business. This included a review of the Orders issued by the Alabama Department of Public Health in place at the time of this letter. Based upon this review, Westchester has determined the Orders issued by governmental officials impacting your operations were issued to curtail the spread of the COVID-19 virus. We have not received any information establishing any direct physical loss or damage at your restaurant.

### **The Policy**

Westchester Surplus Lines Insurance Company (Westchester) issued Policy No. F15253113 to The Last Resort- Mobile, LLC DBA Poindexters, with the effective dates of coverage January 24,

2020 to January 24, 2021 (“the policy”). Coverage is written on **CP 00 10 10/12 BUILDING AND PERSONAL PROPERTY COVERAGE FORM** and **CP 00 30 10/12 BUSINESS INCOME AND EXTRA EXPENSE COVERAGE FORM**. The reported loss locations have Business Income and Extra Expense Coverage limits in the amounts of \$400,000.00. Coverage is subject to the term and conditions of the policy. The policy wording is cited below in order of reference.

**Analysis of Policy Provisions Relevant to Claim**

**CP 00 10 10/12 BUILDING AND PERSONAL PROPERTY COVERAGE FORM**

**A. Coverage**

We will pay for direct physical loss of or damage to Covered Property at the premises described in the Declarations caused by or resulting from any Covered Cause of Loss.

**CP 00 30 10/12 BUSINESS INCOME (AND EXTRA EXPENSE) COVERAGE FORM**

**A. Coverage**

**1. Business Income**

...

We will pay for the actual loss of Business Income you sustain due to the necessary “suspension” of your “operations” during the “period of restoration”. The “suspension” must be caused by direct physical loss of or damage to property at premises which are described in the Declarations and for which a Business Income Limit Of Insurance is shown in the Declarations. The loss or damage must be caused by or result from a Covered Cause of Loss. With respect to loss of or damage to personal property in the open or personal property in a vehicle, the described premises include the area within 100 feet of such premises.

**5. Additional Coverages**

**a. Civil Authority**

In this Additional Coverage, Civil Authority, the described premises are premises to which this Coverage Form applies, as shown in the Declarations.

When a Covered Cause of Loss causes damage to property other than property at the described premises, we will pay for the actual loss of Business Income you sustain and necessary Extra Expense caused by action of civil authority that prohibits access to the described premises, provided that both of the following apply:

- (1) Access to the area immediately surrounding the damaged property is prohibited by civil authority as a result of the damage, and the described premises are within that area but are not more than one mile from the damaged property; and
- (2) The action of civil authority is taken in response to dangerous physical conditions resulting from the damage or continuation of the Covered Cause of

Loss that caused the damage, or the action is taken to enable a civil authority to have unimpeded access to the damaged property.

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As indicated above, we have not received any information which suggests that there was or is any direct physical loss of or damage to Covered Property at your restaurant. Additionally, as it relates to the policy's Additional Coverage for Civil Authority, no evidence has been provided that would indicate that any direct physical loss of or damage to other property within one mile of your premise has occurred. Rather, it is our understanding that governmental authorities issued an order for all nonessential business to close as a precaution to prevent the spread of the COVID-19 virus. Accordingly, the terms of the quoted Business Income and Civil Authority insuring agreements have not been met, and the coverage does not apply.

Based on the above cited policy wording and analysis, Westchester must deny coverage under your policy of insurance.

This letter only addresses those provisions that appear pertinent at this time in light of the facts currently known to us. If there is any additional information that may affect our position or analysis, please forward such information.

Westchester reserves all rights with regard to the above referenced provisions as well as all other rights, remedies and defenses under the Policy, at law and in equity. Nothing contained in this letter, and no action on our part or the part of independent adjusters or experts retained on our behalf in investigating and adjusting your claim, should be construed as an admission of coverage or as a waiver of any right, remedy or defense that may be available to Westchester.

If you have any questions or disagree with any aspect of the aforementioned, please do not hesitate to contact the undersigned immediately.

Sincerely,

*Ben Kusmak*

Ben Kusmak  
Senior Claims Specialist  
Westchester Surplus Lines Insurance Company  
(615) 785-2149 Phone  
(800) 664-5358 Fax  
Ben.kusmak@chubb.com

cc: Bass Underwriters Inc  
161 Dauphin St  
Mobile, AL 36602