

**IN THE SUPERIOR COURT OF FULTON COUNTY  
STATE OF GEORGIA**

CERTAIN UNDERWRITERS AT LLOYD’S,  
LONDON, SYNDICATES 2623, 0623, 2987, 2988,  
1084, 1967, 0510, 2001, 4141, 0727, 1183, 0435,  
2791, 1729, 2488, 0609, AND 2007,

Plaintiffs,

v.

PAPPAS RESTAURANTS, INC.,

Defendant.

Civil Action No. 2020CV340943

**COMPLAINT**

Certain UNDERWRITERS AT LLOYD’S, LONDON, Syndicates 2623, 0623, 2987, 2988, 1084, 1967, 0510, 2001, 4141, 0727, 1183, 0435, 2791, 1729, 2488, 0609, 2007 (collectively “Underwriters”), by counsel, files this complaint against Defendant PAPPAS RESTAURANTS, INC. (“Pappas”), alleging the following:

**I. INTRODUCTION**

1. This is an insurance coverage dispute concerning the parties’ rights and obligations under Trade Name Restoration Loss of Business Income and Incident Response Insurance for Food Borne Illness Policy No. TNR 18 8281 that was issued by Underwriters to Pappas for the June 21, 2019 to June 21, 2020 **Period of Insurance** (the “Policy”).<sup>1</sup>

2. Pappas owns and operates restaurants throughout the United States spanning a variety of different cuisines, including seafood restaurants, steakhouses, and barbeque restaurants. One hundred such restaurants are insured as **Covered Locations** under the Policy.

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<sup>1</sup> Terms in bold are defined in the Policy, a true and correct copy of which is attached as Exhibit A.

3. The Policy provides coverage for certain risks that may interrupt Pappas’ business at the **Covered Locations**, such as **Restaurant Events**, **Supplier Events**, and **Extortion Threats**. The Policy contains multiple insuring agreements (for each risk), each of which is subject to a “per **Period of Insurance**” Limit of Indemnity. The per **Period of Insurance** Limit of Indemnity for **Restaurant Events** is \$50 million; the per **Period of Insurance** Limit of Indemnity for **Supplier Events** is \$15 million; and the **Per Period of Insurance** Limit of Indemnity for **Extortion Threats** is \$1 million. The **Total Aggregate Limit of Indemnity** of the Policy is \$50 million.

4. These Limits are set forth in Section B. of the Policy’s Declarations titled “Limits of Indemnity and Deductible”:

**Limits of Indemnity and Deductible:**

Limit of Indemnity for <b>Restaurant Events</b> (Section 2.1):	<u>\$50,000,000</u>	per <b>Period of Insurance</b>
Limit of Indemnity for <b>Supplier Events</b> (Section 2.2):	<u>\$15,000,000</u>	per <b>Period of Insurance</b>
<b>Limit of Indemnity for Incident Response Expenses</b> (Section 2.3):		
as respects <b>Restaurant Events</b> :	<u>50</u>	% of the Limit of Indemnity for <b>Restaurant Events</b>
as respects <b>Supplier Events</b> :	<u>50</u>	% of the Limit of Indemnity for <b>Supplier Events</b>
Limit of Indemnity for <b>Extortion Payments</b> (Section 2.4):	<u>\$1,000,000</u>	per <b>Period of Insurance</b>
Total Policy Aggregate Limit of Indemnity (Section 2.5):	<u>\$50,000,000</u>	per <b>Period of Insurance</b>
Shared Aggregate Limit of Indemnity (Section 2.6):	<u>N/A</u>	per <b>Period of Insurance</b>
<b>Deductible</b> (Section 4.7):		
as respect <b>Restaurant Events</b> and <b>Supplier Events</b> :	<u>\$50,000</u>	Each and Every <b>Incident</b>

5. Pappas also elected to purchase, for an amount equal to 4.49% of the Policy’s total premium, a Pandemic Event Endorsement providing coverage for business interruption losses directly and solely caused by a **Pandemic Event**. The Limit of Indemnity for **Pandemic Events** is \$250,000 per **Covered Location** and Underwriters’ “maximum liability for **Actual Net Loss**

and **Incident Response Expenses** affecting all **Covered Locations** insured hereunder for **Pandemic Events** shall not exceed” \$1 million per **Period of Insurance**.

6. This is a copy of the Pandemic Event Endorsement’s “Limits of Indemnity” provisions:

**PANDEMIC EVENT ENDORSEMENT**

POLICY CERTIFICATE NO.: TNR 18 8281

*This Endorsement changes the Policy – please read it carefully.*

In consideration of the premium charged, it is hereby understood and agreed that, for the purposes of this Endorsement, the Policy is amended as follows:

The following provisions are added to Section B of the Declarations:

**B: Limits of Indemnity and Deductible:**

Limit of Indemnity for <b>Pandemic Events</b> (By Endorsement Only):	<u>\$250,000</u>	per <b>Covered Location</b>
	<u>\$1,000,000</u>	per <b>Period of Insurance</b>
<b>Deductible</b> (Section 4.7):		
as respect <b>Pandemic Events</b> (By Endorsement Only):	<u>\$10,000</u>	Each and Every <b>Incident</b>

Section 2. **LIMITS OF INDEMNITY** is amended to delete and replace the following:

2.3 **"Limit of Indemnity for Incident Response Expenses"** - Underwriters' maximum liability for **Incident Response Expenses** affecting all **Covered Locations** insured hereunder for **Restaurant Events, Supplier Events, and Pandemic Events** shall not exceed the corresponding "Limit of Indemnity for **Incident Response Expenses**" set forth in Section B of the Declarations, as amended, regardless of the number of **Insureds** named in the Declarations.

**Incident Response Expenses** shall be in excess of any applicable **Deductible**; except that **Crisis Management Expenses** paid as part of **Incident Response Expenses** shall not be subject to the **Deductible**. Any amounts paid hereunder with respect to **Incident Response Expenses** shall reduce the remaining applicable Limits of Indemnity payable with respect to **Actual Net Loss**.

Section 2. **LIMITS OF INDEMNITY** is amended to include the following:

2.11 **"Limit of Indemnity for Pandemic Events"** - Underwriters' maximum liability for **Actual Net Loss** and **Incident Response Expenses** affecting all **Covered Location(s)** insured hereunder for **Pandemic Events** shall not exceed the Limit of Indemnity set forth in Section B of the Declarations, as amended, per **Period of Insurance** and shall be in excess of the **Deductible**.

If any indemnity is owed under Section 2.1 (**Restaurant Event**), 2.2 (**Supplier Event**) or 2.13 (**Hospitality Event**), if applicable, for any **Incident**, no indemnity shall be owed under this Section 2.11 for that same **Incident**, regardless of the number of **Pandemic Events**, involved and irrespective of whether an **Insured** sustains any loss, in whole or in part, as a result of any **Pandemic Event**.

7. Following certain stay-at-home and social distancing orders issued by government entities in the wake of the COVID-19 pandemic that precluded in-person dining at Pappas’ restaurants, Pappas submitted a claim to Underwriters under the Policy for alleged business interruption losses.

8. On May 23, 2020, Underwriters agreed to provide coverage for Pappas' losses under the Pandemic Event Endorsement up to the \$1 million per **Period of Insurance** Limit of Indemnity.

9. Pappas thereafter submitted a statement of loss to Underwriters indicating that at least four of its **Covered Locations** had each suffered up to \$250,000 in **Actual Net Loss** under the Pandemic Event Endorsement. Accordingly, Underwriters promptly paid Pappas the entire \$1 million per **Period of Insurance** Limit of Indemnity under the Pandemic Event Endorsement.

10. Unfortunately, Underwriters' payment of the full \$1 million per **Period of Insurance** Limit of Indemnity under the Pandemic Event Endorsement has not resolved this matter. Instead, Pappas has now taken the position that the full amount of the **Total Policy Aggregate Limit of Indemnity** - \$50 million – is available to cover Pappas' losses under the Pandemic Events Endorsement.

11. Under the threat of litigation, Pappas has tried to pressure Underwriters into agreeing with this new and unreasonable interpretation.

12. The Pandemic Event Endorsement, however, plainly states that "Underwriters' maximum liability for **Actual Net Loss** and **Incident Response Expenses** affecting all **Covered Location(s)** insured hereunder for **Pandemic Events** shall not exceed the Limit of Indemnity set forth in Section B of the Declarations, as amended, per **Period of Insurance** and shall be excess of the **Deductible**." In turn, Section B of the Declarations, as amended, provides that the Limit of Indemnity for Pandemic Events is "\$1 million per **Period of Insurance**."

13. The interpretation of the Policy's Pandemic Event Endorsement that Pappas is now advocating is contrary to the plain language of the Pandemic Event Endorsement.

14. That coverage under the Pandemic Event Endorsement is limited to \$1 million per **Period of Insurance** is also reflected by the fact that Pappas paid an amount equal to just 4.49% of the Policy's total premium for the Pandemic Event Endorsement.

15. Indeed, Pappas has paid a modest amount of premium to include this same Pandemic Event Endorsement with a \$1 million per **Period of Insurance** Limit of Indemnity since the 2016-2017 **Period of Insurance**. In all of those years, there is no record of Pappas ever expressing an understanding that it had \$50 million – rather than \$1 million – in coverage for **Actual Net Loss** under the Pandemic Event Endorsement.

16. Rather, since 2016, Pappas, Pappas' insurance broker, Underwriters, and Underwriters' coverholder all have understood and agreed that the **Per Period of Insurance** Limit of Indemnity under the Pandemic Events Endorsement is \$1 million.

17. Underwriters now seek a declaration confirming the rights and obligations of the parties under the Policy – namely that Underwriters' maximum liability for **Actual Net Loss** affecting all **Covered Locations** insured under the Policy for **Pandemic Events** is the \$1 million per **Period of Insurance** Limit of Indemnity identified in the Pandemic Event Endorsement.

#### **PARTIES, JURISDICTION, AND VENUE**

18. Plaintiffs Underwriters are unincorporated associations that, through the Lloyd's of London insurance market located in the United Kingdom, subscribed to and issued the Policy to Pappas.

19. Defendant Pappas is a foreign profit corporation headquartered in Houston, Texas, that transacts business in Georgia and has designated CT Corporation System, 289 S. Culver Street, Lawrenceville, GA, 30046-4805 as its registered agent.

20. This Court has personal jurisdiction over Pappas because Pappas transacts business within Georgia at its various restaurants located in Alpharetta, Lawrenceville, Norcross, and Marietta. See O.C.G.A. § 9-10-91.

21. This Court has subject matter jurisdiction over this matter because Underwriters seek a declaratory judgment, which this Court has jurisdiction to grant pursuant to O.C.G.A. § 9-4-2.

22. Venue is proper in this Court pursuant to O.C.G.A. § 9-10-93 because Pappas owns and operates a Pappadeaux Seafood Kitchen in Alpharetta, Georgia and regularly transacts business there. Pappas' Alpharetta, Georgia location is a **Covered Location** under the Policy for which Pappas seeks \$250,000 in coverage from Underwriters.

23. The amount in controversy in this action is in excess of \$1 million.

## **II. BACKGROUND**

### **A. The Policy**

24. Underwriters issued the Policy to Pappas for the **Period of Insurance** of June 21, 2019 to June 21, 2020.

25. The Policy provides coverage under a Trade Name Restoration Loss of Business Income and Incident Response Insurance for Food Borne Illness form ("TNR Form").

26. The TNR Form, subject to its terms and conditions, generally provides first-party insurance coverage under certain coverage grants including for **Restaurant Events, Supplier Events, and Extortion Payments**.

27. These various coverage grants have different limits of liability, subject to a \$50 million **Total Policy Aggregate Limit of Indemnity** and a relevant Deductible. These limits are set forth in Section B. of the Policy's Declarations titled "Limits of Indemnity and Deductible":

**Limits of Indemnity and Deductible:**

Limit of Indemnity for Restaurant Events (Section 2.1):	<u>\$50,000,000</u>	per Period of Insurance
Limit of Indemnity for Supplier Events (Section 2.2):	<u>\$15,000,000</u>	per Period of Insurance
<b>Limit of Indemnity for Incident Response Expenses (Section 2.3):</b>		
as respects Restaurant Events:	<u>50</u>	% of the Limit of Indemnity for Restaurant Events
as respects Supplier Events:	<u>50</u>	% of the Limit of Indemnity for Supplier Events
Limit of Indemnity for Extortion Payments (Section 2.4):	<u>\$1,000,000</u>	per Period of Insurance
Total Policy Aggregate Limit of Indemnity (Section 2.5):	<u>\$50,000,000</u>	per Period of Insurance
Shared Aggregate Limit of Indemnity (Section 2.6):	<u>N/A</u>	per Period of Insurance
<b>Deductible (Section 4.7):</b>		
as respect Restaurant Events and Supplier Events:	<u>\$50,000</u>	Each and Every Incident

28. The Policy's Insuring Agreement states as follows:

In consideration of the foregoing and payment of the Premium, Underwriters agree, subject to all the terms, conditions, limitations and exclusions set forth herein, to indemnify the **Insured** for the following, provided that such result directly and solely from an **Incident** that occurs within the **Period of Insurance** and is reported to Underwriters in accordance with Section 7.1 of this Policy, which in no event shall be later than ninety (90) days following the termination of the **Period of Insurance**: ... **Actual Net Loss** in excess of any **Deductible** sustained by the **Insured** at each **Affected Covered Location** during a **Period of Restoration**...

29. The Policy defines **Incident** to mean:

a **Restaurant Event**, **Supplier Event**, or **Extortion Threat**. All **Restaurant Events**, **Supplier Events**, or **Extortion Threats** arising out of the same common cause shall be considered one **Incident**, regardless of the number of involved persons, **Public Announcements**, or **Covered Locations**, and the **Incident** shall be deemed to have occurred at the time of the earliest occurrence of the **Restaurant Event**, **Supplier Event**, **Public Announcement** thereof, or **Extortion Threat**. In the event either a **Restaurant Event** or **Extortion Threat** or both is considered one **Incident** with a **Supplier Event** under this provision, the combined **Incident** shall be considered solely as a **Supplier Event**.

30. Section 2 of the Policy defines the Limits of Indemnity for **Restaurant Events**,

**Supplier Events**, **Incident Response Expenses**, and **Extortion Threats** as follows:

- 2.1 “**Limit of Indemnity for Restaurant Events**” - Underwriters’ maximum liability for **Actual Net Loss** and **Incident Response Expenses** affecting all **Covered Locations** insured hereunder for **Restaurant Events** shall not exceed the “Limit of Indemnity for **Restaurant Events**” set forth in Section B of the Declarations and shall be in excess of any **Deductible**. An **Insured** may only recover under this Section 2.1 for an **Incident** that does not include any **Supplier Events**. See DEFINITIONS (Section 4) below.
- 2.2 “**Limit of Indemnity for Supplier Events**” - Underwriters’ maximum liability for **Actual Net Loss** and **Incident Response Expenses** affecting all **Covered Locations** insured hereunder for **Supplier Events** shall not exceed the “Limit of Indemnity for **Supplier Events**” set forth in Section B of the Declarations and shall be in excess of any **Deductible**. If any indemnity is owed under this Section 2.2 for any **Incident**, no indemnity shall be owed under Section 2.1 above for that same **Incident**, regardless of the number of **Restaurant Events** or **Supplier Events** involved and irrespective of whether an **Insured** sustains any loss, in whole or in part, as a result of any **Restaurant Event**.
- 2.3 “**Limit of Indemnity for Incident Response Expenses**” - Underwriters’ maximum liability for **Incident Response Expenses** affecting all **Covered Locations** insured hereunder for **Restaurant Events** and **Supplier Events** shall not exceed the corresponding “Limit of Indemnity for **Incident Response Expenses**” set forth in Section B of the Declarations, regardless of the number of **Insureds** named in the Declarations. **Incident Response Expenses** shall be in excess of any **Deductible**, except that **Crisis Management Expenses** paid as part of **Incident Response Expenses** shall not be subject to the **Deductible**. Any amounts paid hereunder with respect to **Incident Response Expenses** shall reduce the remaining applicable Limits of Indemnity payable with respect to **Actual Net Loss**.
- 2.4 “**Limit of Indemnity for Extortion Payments**” – Underwriters’ maximum liability for **Extortion Payments** during the **Period of Insurance** shall not exceed the “Limit of Indemnity for **Extortion Payment**” set forth in Section B of the Declarations.

31. Section 2.5 of the Policy defines **Total Policy Aggregate Limit of Indemnity** as:

Underwriters maximum liability for all **Actual Net Loss**, **Incident Response Expenses**, and **Extortion Payments** arising from all **Incidents** affecting all **Covered Locations** occurring during the **Period of Insurance** shall not exceed the ‘Total Policy Aggregate Limit of Indemnity’ set forth in Section B of the Declarations, regardless of the number of **Covered Locations** insured hereunder or the number of **Insureds** named in the Declarations, and shall be in excess of any **Deductible** and not reduced by any **Deductible**.

32. Beginning in the 2016-2017 **Period of Insurance** and continuing through the 2019-2020 **Period of Insurance**, Pappas has elected to expand the scope of coverage available under the Policy by purchasing a Pandemic Event Endorsement.

33. For the 2019-2020 **Period of Insurance**, the modest additional premium Pappas paid for the Pandemic Event Endorsement is only 4.49% of the total annual premium that it paid for the Policy.

34. The Pandemic Event Endorsement states, in part, as follows:

PANDEMIC EVENT ENDORSEMENT

POLICY CERTIFICATE NO.: TNR 18 8281

*This Endorsement changes the Policy – please read it carefully.*

In consideration of the premium charged, it is hereby understood and agreed that, for the purposes of this Endorsement, the Policy is amended as follows:

The following provisions are added to Section B of the Declarations:

**B: Limits of Indemnity and Deductible:**

Limit of Indemnity for <b>Pandemic Events</b> (By Endorsement Only):	<u>\$250,000</u>	per <b>Covered Location</b>
	<u>\$1,000,000</u>	per <b>Period of Insurance</b>

<b>Deductible</b> (Section 4.7):	
as respect <b>Pandemic Events</b> (By Endorsement Only):	<u>\$10,000</u> Each and Every <b>Incident</b>

Section 2. LIMITS OF INDEMNITY is amended to delete and replace the following:

- 2.3 "Limit of Indemnity for Incident Response Expenses" - Underwriters' maximum liability for **Incident Response Expenses** affecting all **Covered Locations** insured hereunder for **Restaurant Events**, **Supplier Events**, and **Pandemic Events** shall not exceed the corresponding "Limit of Indemnity for **Incident Response Expenses**" set forth in Section B of the Declarations, as amended, regardless of the number of **Insureds** named in the Declarations.

**Incident Response Expenses** shall be in excess of any applicable **Deductible**; except that **Crisis Management Expenses** paid as part of **Incident Response Expenses** shall not be subject to the **Deductible**. Any amounts paid hereunder with respect to **Incident Response Expenses** shall reduce the remaining applicable Limits of Indemnity payable with respect to **Actual Net Loss**.

Section 2. LIMITS OF INDEMNITY is amended to include the following:

- 2.11 "Limit of Indemnity for Pandemic Events" - Underwriters' maximum liability for **Actual Net Loss** and **Incident Response Expenses** affecting all **Covered Location(s)** insured hereunder for **Pandemic Events** shall not exceed the Limit of Indemnity set forth in Section B of the Declarations, as amended, per **Period of Insurance** and shall be in excess of the **Deductible**.

If any indemnity is owed under Section 2.1 (**Restaurant Event**), 2.2 (**Supplier Event**) or 2.13 (**Hospitality Event**), if applicable, for any **Incident**, no indemnity shall be owed under this Section 2.11 for that same **Incident**, regardless of the number of **Pandemic Events**, involved and irrespective of whether an **Insured** sustains any loss, in whole or in part, as a result of any **Pandemic Event**.

35. Thus, pursuant to Section 2.11, "Underwriters' maximum liability for **Actual Net Loss** and **Incident Response Expenses** affecting all **Covered Location(s)** insured hereunder for **Pandemic Events**" is \$1 million.

36. The Policy defines "**Covered Location**" or "**Covered Locations**" to mean "the place or places of business of the **Insured** described on the **Covered Location** Endorsement hereto as well as new places of business, operating under the same Trade Name(s) as listed in Section A of the Declarations, opened or acquired by the **Insured** during **the Period of Insurance**."

37. Section 4.59 of the Pandemic Event Endorsement defines “**Pandemic Event**” to mean either “(a) the actual presence of an **Infected Person** within a **Covered Location**; or, (b) the announcement by a **Public Health Authority** that a specific **Covered Location** is being closed as a result of an **Epidemic** declared by the CDC or WHO.”

**B. Pappas’ Knowledge Of The Pandemic Event Endorsement’s \$1 Million Per Period of Insurance Limit of Indemnity**

38. During the underwriting process for the Policy, and consistent with the underwriting processes for the 2016-2017, 2017-2018, and 2018-2019 policies, Underwriters advised Pappas that the Pandemic Event Endorsement was subject to an aggregate sublimit of \$1 million.

39. A quote letter dated June 7, 2019 from Underwriters’ coverholder Professional Liability Insurance Services (“PLIS”) to Pappas’ insurance broker, Higginbotham Insurance Group (“Higginbotham”), explains the terms that Underwriters were offering to Pappas. A true and correct copy of the June 7, 2019 quote letter is attached hereto as Exhibit B.

40. The June 7, 2019 letter explains that Underwriters offered Pandemic Event Coverage, for modest additional premium, “sublimited to \$250k per Location, \$1M Aggregate with a \$10k Deductible e/e incident.”

41. A binder provided by PLIS to Higginbotham on June 21, 2019 identifies the aggregate limit of indemnity for **Pandemic Events** as \$1 million. A true and correct copy of the June 21, 2019 binder is attached hereto as Exhibit C.

42. On a call between Paige Cokinos of Higginbotham and Julia Smith of PLIS on April 17, 2020 – over one month after Pappas submitted its claim to Underwriters on March 16, 2020 – Ms. Smith’s contemporaneous call notes reflect that Mr. Cokinos asserted: “For Pappas

they have a 250k per location and a 1M aggregate and 98 locations. Doesn't help them much but at least it would be something. Well if you can find anything to send over would appreciate.”

43. Thus, during the underwriting process and even over one month after Pappas submitted its claim, Underwriters, Pappas, PLIS, and Higginbotham (Pappas' agent) all understood that coverage under the Pandemic Event Endorsement is subject to a \$1 million aggregate sublimit.

**C. Underwriters Accepted Pappas' Claim For Coverage Under The Pandemic Event Endorsement and Paid the Endorsement's Full Aggregate Limit**

44. On March 16, 2020, Pappas submitted a claim to Underwriters under the Policy for its alleged business interruption losses caused by certain stay-at-home and social distancing orders issued by various government entities and health organizations in the wake of the COVID-19 pandemic.

45. On May 23, 2020, Underwriters issued a letter to Pappas explaining Underwriters would adjust Pappas' claim pursuant to the Policy's Pandemic Event Endorsement and requested that Pappas provide additional information so that Underwriters could complete the adjustment of the claim.

46. After not receiving the requested loss information from Pappas, on July 20, 2020, Underwriters issued another letter to Pappas that again requested loss information so that Underwriters could finalize the adjustment of Pappas' claim under the Pandemic Events Endorsement.

47. On July 31, 2020, in response to Underwriter's requests, Pappas provided a loss submission indicating that at least four of its **Covered Locations** had incurred up to \$250,000 in losses under the Pandemic Event Endorsement.

48. On August 10, 2020, Underwriters issued a letter informing Pappas that Underwriters had completed their adjustment of Pappas' claim and was processing payment of \$1

million, which is the full per **Period of Insurance** Limit of Indemnity for the Pandemic Event Endorsement.

49. On August 21, 2020, Underwriters paid Pappas the entire \$1 million available under the Pandemic Event Endorsement.

50. Pappas, however, does not consider this claim resolved. Instead, on several occasions, Pappas has asserted that its total losses are approximately \$25 million and that this entire amount is covered under the Pandemic Endorsement. Because Pappas continues to unreasonably insist that an additional approximately \$24 million in coverage is owed to it under the Pandemic Event Endorsement, Underwriters have filed this action seeking a declaration of the parties' rights and obligations under the Policy.

### **III. COUNT ONE – DECLARATORY JUDGMENT**

#### **(Declaration Regarding Applicability Of The Pandemic Event Endorsement's Limit of Indemnity)**

51. Underwriters re-allege and incorporate by reference the allegations made in paragraphs 1 through 50 above.

52. Coverage under the Pandemic Event Endorsement is limited to \$250,000 per **Covered Location**, while Underwriters' "maximum liability for **Actual Net Loss** and **Incident Response Expenses** affecting all **Covered Location(s)** insured hereunder for **Pandemic Events** shall not exceed the Limit of Indemnity set forth in Section B of the Declarations, as amended, per **Period of Insurance** and shall be excess of the Deductible."

53. In turn, the Limit of Indemnity set forth in Section B of the Declarations, as amended, is \$1 million **Per Period of Insurance**.

54. An actual controversy exists between Underwriters and Pappas in that Underwriters contend that the maximum amount of coverage available under the Pandemic Event Endorsement for Pappas' business interruption losses that were tendered to Underwriters on March 16, 2020 is limited to \$1 million. Pappas disagrees with Underwriters' contention and seeks coverage for over \$25 million under the Pandemic Event Endorsement.

55. Underwriters desire, and are entitled to, a declaration that coverage under the Pandemic Event Endorsement for Pappas' business interruption losses that were tendered to Underwriters on March 16, 2020 is limited to a maximum of \$1 million.

56. Underwriters have no adequate remedy at law.

#### **IV. PRAYER FOR RELIEF**

57. Accordingly, Underwriters respectfully request that the Court enter judgment as follows:

- a. Enter a declaratory judgment in favor of Underwriters and against Pappas, declaring that the maximum amount of coverage available under the Pandemic Event Endorsement for Pappas' business interruption losses that were tendered to Underwriters on March 16, 2020 is \$1 million;
- b. Grant such other, further and additional relief as the Court deems just, equitable and proper.

Dated: September 29, 2020

Respectfully submitted,

TROUTMAN PEPPER HAMILTON SANDERS  
LLP

/s/ Thomas S. Hay

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Attorneys for Plaintiff Certain Underwriters at  
Lloyd's, London

# **EXHIBIT A**

# POLICY ATTACHED

## Your lifeline ...

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Specialty Risk Management, Inc. (SRM)

SRM focuses on minimizing  
the effects of a business  
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Using the services of SRM does not guarantee insurance coverage for the attached policy.

# TRADE NAME RESTORATION LOSS OF BUSINESS INCOME AND INCIDENT RESPONSE INSURANCE FOR FOOD BORNE ILLNESS

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This Insurance is effected with Certain Underwriters at Lloyd's, London (not incorporated).

This Policy Certificate is issued in accordance with the limited authorization granted to the Coverholder by Certain Underwriters at Lloyd's, London whose names and the proportions underwritten by them can be ascertained from the office of said Coverholder (such Underwriters being hereinafter called "Underwriters") and in consideration of the premium specified herein. Underwriters do hereby bind themselves each for his own part, and not one for another, their heirs, executors and administrators.

The Insured is requested to read this certificate, and if not correct, return it immediately to the Coverholder for appropriate alteration.

All inquiries including complaints regarding this policy should be addressed to the following Coverholder:

*Professional Liability Insurance Services, Inc. ®  
5802 Thunderbird, Building 10, Suite 100, Lago Vista, Texas 78645  
Phone: 512-328-0677; Fax: 512-327-5834 Email: underwriting@plisinc.com*

The Coverholder acts as agent for the Underwriters in performing it's duties under this agreement.

UMR# B113518B01324  
Reference #18B01324

(Professional Liability Insurance Services, Inc. dba Professional Liability Insurance Services, Inc. - Underwriting Facilities; Professional Liability Insurance Services - Underwriting Facilities; Texas Professional Liability Insurance Services, Inc. - Underwriting Facilities; Professional Liability Insurance Services, Incorporated - Underwriting Facilities; in the state of New York and California, CA License #0G17062 as Texas Professional Liability Insurance Services)

# DECLARATIONS

## TRADE NAME RESTORATION®, LOSS OF BUSINESS INCOME AND INCIDENT RESPONSE INSURANCE FOR FOOD BORNE ILLNESS

**A. Insured, Trade Name(s), Policy Certificate No. and Period of Insurance:**

	<b>Policy Certificate No.:</b> <u>TNR 18 8281</u>
<b>Insured Name and Address:</b>	<u>Pappas Restaurants, Inc.</u> <u>P.O. Box 41567, Houston, TX 77241</u>
<b>Trade Name(s):</b>	<u>See Additional Trade Name(s) Endorsement</u>
<b>Period of Insurance:</b>	from <u>06/21/19</u> at 12:01 A.M. to <u>06/21/20</u> at 12:01 A.M. (Local Standard Time)

**B. Limits of Indemnity and Deductible:**

Limit of Indemnity for <b>Restaurant Events (Section 2.1):</b>	<u>\$50,000,000</u>	per <b>Period of Insurance</b>
Limit of Indemnity for <b>Supplier Events (Section 2.2):</b>	<u>\$15,000,000</u>	per <b>Period of Insurance</b>
<b>Limit of Indemnity for Incident Response Expenses (Section 2.3):</b>		
as respects <b>Restaurant Events:</b> <u>50</u> % of the Limit of Indemnity for <b>Restaurant Events</b>		
as respects <b>Supplier Events:</b> <u>50</u> % of the Limit of Indemnity for <b>Supplier Events</b>		
Limit of Indemnity for <b>Extortion Payments (Section 2.4):</b>	<u>\$1,000,000</u>	per <b>Period of Insurance</b>
Total Policy Aggregate Limit of Indemnity ( <b>Section 2.5</b> ):	<u>\$50,000,000</u>	per <b>Period of Insurance</b>
Shared Aggregate Limit of Indemnity ( <b>Section 2.6</b> ):	<u>N/A</u>	per <b>Period of Insurance</b>
<b>Deductible (Section 4.7):</b>		
as respect <b>Restaurant Events and Supplier Events:</b>	<u>\$50,000</u>	Each and Every <b>Incident</b>

**C. Period of Restoration (Section 4.24):**

The longest <b>Period of Restoration</b> that may be afforded by this Policy is <u>eighteen (18) months</u>
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**D. Premium:**

Annual:	██████████
Policy Fee:	██████████
Terrorism Coverage without Punitive & Exemplary:	██████████
State Surplus Lines Tax:	██████████
State Stamping Office Fee:	██████████
Total:	██████████

**Covered Locations:** 100

There will be a ██████████	charge per each additional <b>Covered Location</b>
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# DECLARATIONS Continued

Policy Certificate No.: TNR 18 8281

Insured(s) Name and Address: Pappas Restaurants, Inc.  
P.O. Box 41567, Houston, TX 77241

Period of Insurance: from 06/21/19 at 12:01 A.M. to 06/21/20 at 12:01 A.M. (Local Standard Time)

E. **Service of Suit, Claims Notification and Crisis Management:**

Service of Suit: Mendes and Mount, 750 Seventh Avenue, New York, New York 10019-6829

**CLAIMS NOTIFICATION:** Professional Liability Insurance Services, Inc. ®  
5802 Thunderbird, Building 10, Suite 100, Lago Vista, TX 78645  
P: 1-800-761-7547; F: 512-267-6246; Email: [claims@plisinc.com](mailto:claims@plisinc.com)

(d/b/a Professional Liability Insurance Services, Inc. – Underwriting Facilities; Professional Liability Insurance Services - Underwriting Facilities; Texas Professional Liability Insurance Services, Inc. - Underwriting Facilities; Professional Liability Insurance Services, Incorporated - Underwriting Facilities; in the state of New York and California, CA License #0G17062 as Texas Professional Liability Insurance Services)

**CRISIS MANAGEMENT:** Specialty Risk Management, Inc.® ; PHONE: (800) 328-7761; FAX: (512) 328-2486  
**IF YOU BELIEVE THAT AN INCIDENT HAS OCCURRED, PLEASE CONTACT THE 24-HOUR CRISIS HOTLINE**

**Forms Included with this Policy:**

Additional Trade Name(s) Endorsement; Modification of Loss Calculation Endorsement; Covered Locations Endorsement; Inoculations, Vaccinations and Testing Endorsement; Loss of Business Income and Incident Response Endorsement for Theft of Private Customer and Employee Data; Pandemic Event Endorsement; LSW 1001 Several Liability Notice; LMA 5020 Service of Suit Clause (USA); LMA 5021 Applicable Law (USA); CL 380 Institute Cyber Attack Exclusion Clause; NMA 1256 Nuclear Incident Exclusion Clause Liability Direct (Broad); NMA 45 New Short Rate Cancellation Table Endorsement (USA); LMA 5218 U.S. Terrorism Risk Insurance Act of 2002 As Amended New & Renewal Business Endorsement; LMA 3100 Sanction Limitation and Exclusion Clause; TNR Policy Form 02-17.

The Declarations and the forms and any Endorsement(s) listed above and attached hereto, together with the completed and signed Application and supplements, shall constitute the contract between the **Insured(s)** and the Underwriters.

U.S. CLASSIFICATION: Surplus Lines

Professional Liability Insurance Services, Inc.; 5802 Thunderbird, Building 10, Suite 100, Lago Vista, TX 78645

EFFECTED WITH: 100.00% with Certain Underwriters at Lloyd's:

Individual syndicates are as follows:

15.46464%	Syndicate 2623	5.99480%	Syndicate 1183
3.39468%	Syndicate 0623	3.83268%	Syndicate 0510
11.98961%	Syndicate 2987	3.33045%	Syndicate 0435
3.33045%	Syndicate 2988	2.66436%	Syndicate 2791
7.49351%	Syndicate 1967	1.99827%	Syndicate 1729
6.66089%	Syndicate 2001	1.59861%	Syndicate 2488
5.32872%	Syndicate 0510	4.79085%	Syndicate 4141
3.19390%	Syndicate 1084	12.67400%	Syndicate 2007
1.59695%	Syndicate 1084	2.66436%	Syndicate 0609
1.99827%	Syndicate 0727		

Countersigned:

  
Authorized Representative

Syndicate listing as related to Pandemic Event coverage is as follows:

EFFECTED WITH: 100.00% with Certain Underwriters at Lloyd's:

Individual syndicates are as follows:

8.44117%	Syndicate 2623	7.35294%	Syndicate 4141
1.85294%	Syndicate 0623	1.47059%	Syndicate 0727
4.41176%	Syndicate 2987	7.35294%	Syndicate 1183
2.94118%	Syndicate 2988	3.67647%	Syndicate 0435
7.35294%	Syndicate 1084	2.94118%	Syndicate 2791
7.35294%	Syndicate 1967	3.67647%	Syndicate 1729
7.35294%	Syndicate 0510	1.83824%	Syndicate 2488
5.51471%	Syndicate 2001	7.35294%	Syndicate 0609
7.35294%	Syndicate 0510	11.76471%	Syndicate 2007



# TRADE NAME RESTORATION® INSURANCE APPLICATION

Loss of Business Income & Incident Response for Food Borne Illness

PROFESSIONAL LIABILITY INSURANCE SERVICES®, INC.  
UNDERWRITING FACILITY - SINCE 1983

P: 800.761.7547 | F: 512.327.5834 | E: UNDERWRITING@PLISINC.COM | W: WWW.PLISINC.COM

1. **Applicant Company Name:** Pappas Restaurants Inc.  
**Restaurant Trade Name(s):** See Spreadsheet Attached
2. Mailing Address: PO BOX 41567
3. City, State, Zip Code: Houston TX 77241
4. **Risk/Crisis Management Contact Person:** Susan Await  
 Phone: 713-803-5103 E-mail: sawait@pappas.com
5. Type of Operation:  Fast Food  Fast Casual  Casual Dining  Fine Dining  Buffet  Other \_\_\_\_\_
6. **Total Annual Sales All Locations:** \$809,987,505 Number of years in business: 50 years
7. Average store Largest store
- |                  |                     |  |                  |                      |              |
|------------------|---------------------|--|------------------|----------------------|--------------|
| a. Annual Sales  | <u>\$ 7,641,392</u> |  | a. Annual Sales  | <u>\$ 17,357,938</u> |              |
| b. Net Income    | <u>\$ 975,413</u>   | <u>12.8%</u>                             | b. Net Income    | <u>\$ 3,524,185</u>  | <u>20.3%</u> |
| c. Fixed Expense | <u>\$ 1,280,603</u> | <u>16.8% (Rent, Debt, Utility, etc.)</u> | c. Fixed Expense | <u>\$ 1,983,552</u>  | <u>11.4%</u> |
| d. Payroll       | <u>\$ 2,547,690</u> | <u>33.3% (Necessary continuing)</u>      | d. Payroll       | <u>\$ 5,106,661</u>  | <u>29.4%</u> |

8. Total employee count (all locations): Full Time \_\_\_\_\_ Part Time \_\_\_\_\_

9.

Top 5 Food Suppliers (non-distributors):	Product Supplied:
a. Sysco	a. Groceries, beef, dairy, chicken
b. JBS	b. Beef
c. Cargill	c. Beef
d. Slade Gordon	d. Fresh Seafood
e. Challenge Dairy	e. Butter

Distributor(s) Utilized:  Sysco/Sysco  US Food Service  McLane  Ben E Keith  Other \_\_\_\_\_

10. Please complete the following for all stores (or, submit in an accompanying Excel Format spreadsheet):

State	Number of Owned Stores	Number of Franchised Stores
See Spreadsheet Attached	100%	None

Do you have any locations outside of the United States? YES  NO  If yes, please complete the following:

# of Locations	Country	Trade Name

11. a. Average number of meals served per week/per location: 5,309  
 b. Average dollar (\$) value of guest check: \$50.32

12. Metropolitan area (city) with the largest Number of Locations: Houston

13. a. Planned number of new locations in next 12 months (include expected open date and city/state of new location):  
Pappas Delta Blues, Plano, TX, August 2019
- b. Planned number of locations to be closed in next 12 months (include expected close date and city/state of location):  
None

14. Do you have a written procedure for the following?
- a. Food Handling..... YES  NO   
 b. Cooking Methods..... YES  NO   
 c. Sanitation..... YES  NO
- Does the Franchise Agreement (if any) require compliance with the above written procedures? ..... YES  NO  N/A   
 If no, which procedures are not required and why? \_\_\_\_\_

15. Are all newly hired employees trained in kitchen sanitation practices including, the following:
- a. Equipment sanitation..... YES  NO  d. Food temperatures..... YES  NO   
 b. Cross contamination..... YES  NO  e. Storage..... YES  NO   
 c. Cutting boards..... YES  NO  f. Personal hygiene..... YES  NO

16. Are there refresher courses or ongoing training for existing employee? ..... YES  NO   
 Explain Food handler courses; webinars; area of responsibility workshops; E-learning

17. Do you check to ensure that employees continue to use good food handling procedures and hygiene? ..... YES  NO   
 How? Sanitation Audits; webinars; E-Learning; Concept leader audits

18. a. Do you have any catering operations? ..... YES  NO

b. Percentage of total revenues derived from catering: 14.1 %  
c. Number of locations that provide catering services: 106

19. Do any location(s) provide "pick up"/"take out" orders? ..... YES  NO   
Which locations? All  
Are containers labeled with Food Handling instructions (e.g. storing, reheating, etc.)? *If yes, please provide a sample of the Food Handling instructions* ..... YES  NO
20. Do you currently have a HACCP plan and/or ServSafe procedures in place? ..... YES  NO
21. Do you (or a third party) test food received from suppliers for contamination? ..... YES  NO   
*If yes, please describe.*  
a. If tests are performed by a third party, who is it? \_\_\_\_\_  
b. Who verifies that suppliers are meeting their standards, for testing, storing, or transportation of products? QA team via 3rd party audits
22. Is there a written crisis management plan in effect to counteract media coverage for a food borne illness? ..... YES  NO   
Who is the designated media spokesperson & what is his/her everyday job title? Christina Pappas, Director of Marketing and Public Relations
23. During the last five years, has any location experienced or been involved in the following?:  
a. An accidental or malicious contamination incident resulting in a business interruption ..... YES  NO   
b. An extortion attempt ..... YES  NO   
c. Cited or closed down by any public health authority or civil authority ..... YES  NO   
d. A food borne illness incident resulting in a business interruption ..... YES  NO   
e. A workplace violent event ..... YES  NO   
f. A data breach event ..... YES  NO   
g. A supplier recall event ..... YES  NO   
h. A pandemic event ..... YES  NO   
*If Yes to any of the above, provide complete the Claims Supplement with dates, details, and amount of the loss, if applicable.*
24. Provide information about similar or comparable Insurance carried during the past year. *If no current coverage is in force, check the box:*   
Carrier: PLIS Coverage: \$ \_\_\_\_\_ /\$ \_\_\_\_\_ Ded/SIR: \$ \_\_\_\_\_  
Premium: \$ \_\_\_\_\_ Policy Period: \_\_\_\_\_ to \_\_\_\_\_ Number of Insured Locations: \_\_\_\_\_

**ATTACHMENTS REQUIRED WITH THE APPLICATION:** *(Additional information may be required for final underwriting approval based on Underwriting requirements)*

See attachment List of Locations, Separated by Corporate Owned and Franchised Owned (if applicable), By Trade Name in an **Excel Format** spreadsheet

**NOTICE**

The Applicant represents to the best of its knowledge and belief that the statements set forth are true and include all material information, and that there has been no attempt at suppression or misstatement of any material facts known, or which should be known, which might affect the judgment of Underwriters in their rating and/or acceptance of this risk.

The Applicant agrees that if a contract of insurance is provided by Underwriters, this Application and any other previous Applications, along with any additional supplemental applications, any attachments and supplied information shall be the basis for the formation of such contract and shall be a material and integral part of the Policy, whether or not they are attached to the Policy and/or signed by the Applicant.

Any representations made in the application process for any Policy that may be issued by Underwriters, and the statements made within this Application, any additional supplemental applications, any attachments and supplied information shall be construed as representations of the Applicant.

The Applicant represents that the person signing and initializing this Application and any additional supplemental applications has been authorized to do so by the Applicant.

Signing of this Application and any additional supplemental applications does not bind the Insurer to an offer nor the Applicant to accept insurance.

The Applicant further agrees that if the information supplied on this Application, any additional supplemental applications, any attachments and supplied information changes between the date of this Application and the inception date of the Policy, the Applicant will immediately notify Underwriters of such change prior to inception of the Policy. JA (Initials)

Applicant further understands and agrees that no person or entity other than Underwriters has the right to waive or change any part of the Policy. Furthermore, notice to any agent or knowledge possessed by any agent or other persons acting on behalf of the Applicant shall not effect a waiver or a change in any part of the Policy nor estop Underwriters from asserting any right under the terms of the Policy.

By signing this Application and any additional supplemental applications, the Applicant confirms that they have been provided with and inspected a specimen of the Trade Name Restoration Insurance wording and any applicable endorsements. Underwriters expect that the Applicant will take time to review the Policy to ensure that they fully understand the coverages provided. The Applicant should feel free to consult with any source, including legal advisors, regarding coverage.

**CRISIS MANAGEMENT/RISK MANAGEMENT:** The proposed policy is designed for risks that agree to use the crisis management/risk management services as approved and appointed by Underwriters as defined in the Policy Declarations. The Applicant Company agrees to immediately contact the designated 24-hour crisis management services as defined in the Declarations in the event of any actual or potential food borne illness event.

**CANADIAN NOTICE**

- > All indications are stated in U.S. dollars.
- > Premium indicated and bound will be the amount to be paid in US Dollars no later than 30 days from the effective date insurance.
- > Any claims payments will be in U.S. dollars
- > By signing this application, the undersigned confirms that the present document, and any other document(s) or correspondence pertaining to the present insurance or application for insurance is accepted in the English language.

**In addition to all other terms and conditions: Applicable in Kentucky.** Any person who knowingly and with intent to defraud any insurance company or other person files an Application for insurance containing any materially false information or conceals for the purpose of misleading, information concerning any fact material thereto commits a fraudulent insurance act, which is a crime.

[Signature]  
Applicant's authorized signature of a Principal, Partner or Officer

6/5/19  
Date

Ernie Pekmezaris  
Printed Name of Applicant's authorized signature of a Principal, Partner or Officer

**POLICYHOLDER DISCLOSURE  
NOTICE OF TERRORISM  
INSURANCE COVERAGE**

You are hereby notified that under the Terrorism Risk Insurance Act of 2002, as amended ("TRIA"), that you now have a right to purchase insurance coverage for losses arising out of acts of terrorism, **As defined in section 102(1) of the Act, as amended:** The term "acts of terrorism" means any act that is 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 an air carrier or vessel 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. Any coverage you purchase for "acts of terrorism" shall expire at 12:00 midnight December 31, 2020, the date on which the TRIA Program is scheduled to terminate, or the expiry date of the policy whichever occurs first, and shall not cover any losses or events which arise after the earlier of these dates.

YOU SHOULD KNOW THAT COVERAGE PROVIDED BY THIS POLICY FOR LOSSES CAUSED BY CERTIFIED ACTS OF TERRORISM IS PARTIALLY REIMBURSED BY THE UNITED STATES 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 THIS FORMULA, THE UNITED STATES PAYS 85% THROUGH 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 INSURER(S) PROVIDING THE COVERAGE. YOU SHOULD ALSO KNOW THAT THE TERRORISM RISK INSURANCE ACT, AS AMENDED, CONTAINS A USD100 BILLION CAP THAT LIMIT 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 USD100 BILLION. IF THE AGGREGATE INSURED LOSSES FOR ALL INSURERS EXCEED USD100 BILLION, YOUR COVERAGE MAY BE REDUCED.

THE PREMIUM CHARGED FOR THIS COVERAGE IS PROVIDED BELOW AND DOES NOT INCLUDE ANY CHARGES FOR THE PORTION OF LOSS COVERED BY THE FEDERAL GOVERNMENT UNDER THE ACT.

I hereby elect to purchase coverage for acts of terrorism for a prospective premium of USD \$ 4608.90

I hereby elect to have coverage for acts of terrorism excluded from my policy. I understand that I will have no coverage for losses arising from acts of terrorism.

*Susan Awalt*  
Policyholder/Applicant's Signature

6/20/19      Certain Underwriters at Lloyd's  
Date

Susan Awalt  
Print Name

6/21/19  
Requested Effective Date of Coverage

LMA 9104

**Professional Liability Insurance Services, Inc. dba Professional Liability Insurance Services, Inc. - Underwriting Facilities; Professional Liability Insurance Services - Underwriting Facilities; Texas Professional Liability Insurance Services, Inc. - Underwriting Facilities; Professional Liability Insurance Services, Incorporated - Underwriting Facilities; in the state of New York and California, CA License #0G17062 as Texas Professional Liability Insurance Services**

**ADDITIONAL TRADE NAME(S) ENDORSEMENT**

**POLICY CERTIFICATE NO.:** TNR 18 8218

***This Endorsement changes the Policy – please read it carefully.***

It is hereby understood and agreed, **TRADE NAME(S)** as stated on the **DECLARATIONS** is amended to include the following:

Pappadeaux Seafood Kitchen; Pappas Bar-B-Q; Pappas Bros. Steakhouse; Pappas Burger; Pappasito's Cantina; Little Sita's; Dot Coffee Shop; Yia Yia Mary's Greek Kitchen; Pappas Seafood Kitchen; Little Pappas; Pappas Delta Blues Smokehouse; Pappas Catering; Pappas Shrimp Shack

*All other terms and conditions of this policy remain unchanged*

Countersigned:



Authorized Representative

## MODIFICATION OF LOSS CALCULATION ENDORSEMENT

POLICY CERTIFICATE NO.: TNR 18 8281

*This Endorsement changes the Policy – please read it carefully.*

In consideration of the premium charged, it is agreed and accepted that:

**Section 3. Loss Adjustment. 3.4 (Actual Net Loss)** is deleted in its entirety and replaced with the following

**3.4 Actual Net Loss** for each **Affected Covered Location** shall be calculated in accordance with the following formula:

$$[(A - B) \times 58\%]$$

Where **A** =       The **Insured's Normal Gross Revenue**  
      **B** =       The **Insured's Affected Gross Revenue**

The Policy is amended to delete and replace in their entirety the following correspondingly numbered provisions in **Section 4. Definitions** with the following:

- 4.14** “**Incident Response Expenses**” means the following reasonable and necessary expenses incurred by the **Insured** after the occurrence of an **Incident**, that are additional to those usual and customary expenses that would have been incurred in the absence of the **Incident**, exclusively for the purpose of preventing, mitigating or minimizing a loss covered by this insurance:
- (a) the cost of public relations specialists, radio or television announcements and newspaper advertising, as approved in writing in advance by Underwriters;
  - (b) **Crisis Management Expenses**;
  - (c) **Product Recall Expenses**; and
  - (d) similar, directly-related mitigation expenses as approved in writing in advance by Underwriters.

The Policy is amended to delete and replace in their entirety the following correspondingly numbered provisions in **Section 7. Duties in the Event of an Incident** with the following:

- 7.3** In the event of any **Actual Net Loss** under Section 1.1, any **Incident Response Expenses** under Section 1.2, or **Extortion Payments** under Section 1.3, the **Insured** shall, as soon as practicable, but in no event later than six months after the maximum time allotted for the **Period of Restoration**, provide Underwriters with a **Loss Submission**, which sets out for each **Affected Covered Location**:
- (a) historical and actual gross sales, in a format and covering a time period that is requested by Underwriters;
  - (b) historical, detailed profit and loss statements, covering a period of three years prior to the **Incident**;
  - (c) a list of **Incident Response Expenses** with full supporting documentation.

The **Insured** shall maintain and produce any documentary evidence, books of account, bills, invoices and other vouchers and copies of the same related to the **Incident** which Underwriters may require, and the **Insured** shall afford Underwriters and their Appointed Representative every assistance in their investigations including reasonable access to the **Insured's** premises, personnel and necessary documents for the purpose of the computation of any **Actual Net Loss**, **Incident Response Expenses**, or **Extortion Payments**.

The Policy is amended to delete the following in their entirety:

- 4.22 “**Normal Operating Margin**” means the percentage of **Insured’s Normal Gross Revenues** remaining after subtracting variable costs of sales from the corresponding period in the year prior to the **Incident**, which include without limitation, costs of food, beverages, paper, labor (including payroll taxes), credit card fees, and other costs which fluctuate with sales, but before taxes and other indirect fixed or semi-fixed costs from the corresponding period in the year prior to the **Incident**, which include without limitation rent, utilities, management or executive compensation, bonuses and interest.
- 4.28 “**Recoverable Necessary Costs of Sales**” means those reasonable and necessary variable costs, incurred by the **Insured** to generate **Affected Gross Revenues**, that (a) are in excess of the Insured’s normal variable costs of production, derived from the calculation of the **Insured’s Normal Operating Margin**, and (b) could not have been reasonably reduced or eliminated because, as determined by Underwriters in their sole discretion, the expenses were necessary to maintain the **Insured’s** normal and customarily means of operating each **Affected Covered Location** and reducing or eliminating the costs would cause the **Insured** undue hardship. **Recoverable Necessary Costs of Sales** shall never include any **Incident Response Expenses**.

*All other terms, conditions and exclusions of this Policy remain unchanged.*

Countersigned: David J. Hanley  
Authorized Representative

**COVERED LOCATIONS ENDORSEMENT**

POLICY CERTIFICATE NO.: TNR 18 8281

*This Endorsement changes the Policy – please read it carefully.*

In consideration of the premium charged, listed below are the **Covered Locations** under this Policy:

See attached listing.

*All other terms, conditions and exclusions of this Policy remain unchanged.*

Countersigned: David J. Hanley  
Authorized Representative

19901 Gulf Freeway	Webster	TX	77598
3916 Dallas Pkwy	Plano	TX	75093
6015 Westheimer at Greenridge	Houston	TX	77057
13080 Hwy 290 at Hollister	Houston	TX	77040
6319 I-35 N. at 290	Austin	TX	78752
2525 South Loop West at So. Main	Houston	TX	77054
12711 Hwy 59 S.	Stafford	TX	77477
3520 Oak Lawn	Dallas	TX	75219
725 S. Central Expressway	Richardson	TX	75080
1304 Copeland Rd. at Collins	Arlington	TX	76011
10499 I-10 at Sam Houston Tollway	Houston	TX	77024
7110 FM 1960 West	Houston	TX	77069
10428 Lombardy Ln.	Dallas	TX	75220
76 North East Loop 410	San Antonio	TX	78216
4040 I-10 South	Beaumont	TX	77705
2830 Windy Hill Rd.	Marietta	GA	30067
2708 West Freeway	Ft. Worth	TX	76102
2121 Airport Frwy.	Bedford	TX	76021
5635 Jimmy Carter Blvd.	Norcross	GA	30071
921 Pasquinelli Dr.	Westmont	IL	60559
18349 Dallas Parkway	Dallas	TX	75287
2410 Richmond at Kirby	Houston	TX	77098
7520 E. Progress Place	Greenwood Village	CO	80111
11051 N. Black Canyon Hwy	Phoenix	AZ	85029
5011 Pan American Frwy. NE	Albuquerque	NM	87109
10795 Davis Drive	Alpharetta	GA	30004
18165 I-45 South	Conroe	TX	77385
3950 S. Terminal Rd., Space 33 (IAH)	Houston	TX	77032
800 E. Hwy 67	Duncanville	TX	75137
11975 NW Blvd.	Springdale	OH	45246
12109 Westheimer	Houston	TX	77077
7800 Airport Blvd., Space C11 (HOU)	Houston	TX	77061
1610 W. Expressway 83	Pharr	TX	78577
2610 International Pkwy, Term A Gate 25 (DFW)	Dallas	TX	75261
600 W. State Hwy 114	Grapevine	TX	76051
12420 East Freeway at Federal Rd.	Houston	TX	77015
3500 Grandview Parkway	Birmingham	AL	35243
11617 Research Blvd.	Austin	TX	78759
15715 I-10 West	San Antonio	TX	78257
1001 Avenida De Las Americas Suite E	Houston	TX	77010
2330 International Pkwy, Term C-Gate 14	Dallas	TX	75261
2038 Duluth Hwy.	Lawrenceville	GA	30043
2536 Richmond at Kirby	Houston	TX	77098

6445 Richmond at Hillcroft	Houston	TX	77057
15280 I-45 N. at Airtex	Houston	TX	77090
13750 Southwest Frwy.	Sugar Land	TX	77478
20099 I-45 S. at NASA Rd. 1	Webster	TX	77598
723 S. Central Expressway	Richardson	TX	75080
10005 FM 1960 at Hwy 59 N.	Humble	TX	77338
13070 Hwy 290 at Hollister	Houston	TX	77040
2515 S. Loop West at So. Main	Houston	TX	77054
6513 I-35 N.	Austin	TX	78752
10409 I-10 W. at Sam Houston Tollway	Houston	TX	77024
10501 I-10 W. at Huebner	San Antonio	TX	78230
7050 FM 1960 West at Cutten Rd.	Houston	TX	77069
10433 Lombardy Ln.	Dallas	TX	75220
11831 I-10 East at Federal Rd. 77029	Houston	TX	77029
2704 West Freeway	Ft. Worth	TX	76102
321 W. Road to Six Flags	Arlington	TX	76011
2788 Windy Hill Rd.	Marietta	GA	30067
3950 S. Terminal Rd., Space 4 (IAH)	Houston	TX	77032
7800 Airport Blvd., Space C6 (HOU)	Houston	TX	77061
2610 International Pkwy, Term A Gate 28 (DFW)	Dallas	TX	75261
1600 Lamar St., Hilton Americas	Houston	TX	77010
7800 Airport Blvd., Space F5 (HOU)	Houston	TX	77061
18101 I-45 South	Shenandoah	TX	77385
2330 International Pkwy, Term C-Gate 19	Dallas	TX	75261
1217 Pierce at San Jacinto	Houston	TX	77002
7050 I-45 S. at Woodridge	Houston	TX	77087
9815 Bissonnet at Centre	Houston	TX	77078
7007 Hwy 59 S. at Bellaire	Houston	TX	77074
2231 West NW Hwy at Lombardy Ln.	Dallas	TX	75220
4430 I-45 North	Houston	TX	77022
703 FM 1960 W.	Houston	TX	77090
19713 Hwy. 59	Houston	TX	77338
20794 Gulf Frwy.	Houston	TX	77598
27752 I-45 North	Conroe	TX	77385
8777 South Main	Houston	TX	77025
10810 Eastex Freeway	Houston	TX	77093
9797 Westheimer	Houston	TX	77042
1100 Smith St.	Houston	TX	77002
12917 NW Freeway	Houston	TX	77040
8560 Gulf Freeway	Houston	TX	77017
7800 Airport Blvd., Space T-01 (HOU)	Houston	TX	77061
12424 East Freeway at Federal Rd.	Houston	TX	77015

2336 Oleander Drive	Pasadena	TX	77503
5839 Westheimer at Bering	Houston	TX	77057
10477 Lombardy Ln.	Dallas	TX	75220
1200 McKinney, Suite 106	Houston	TX	77010
5815 Westheimer at Bering	Houston	TX	77057
7800 Airport Blvd., Space C14 (HOU)	Houston	TX	77061
3001 S. Shepherd at Alabama	Houston	TX	77098
11301 I-45 N. at Aldine Bender	Houston	TX	77037
20410 Hwy 59 N. at FM 1960	Humble	TX	77338
19991 I-45 S. at NASA Rd. 1	Webster	TX	77598
6945 I-45 S. at Woodridge	Houston	TX	77087
7006 I-45 S. at Woodridge	Houston	TX	77087
12010 I-10 East at Federal Rd.	Houston	TX	77029
4747 San Felipe	Houston	TX	77056
7800 Airport Blvd., Space F1 (HOU)	Houston	TX	77061

## INOCULATIONS, VACCINATIONS AND TESTING ENDORSEMENT

POLICY CERTIFICATE NO.: TNR 18 8281

*This Endorsement changes the Policy – please read it carefully.*

In consideration of the premium charged, it is hereby understood and agreed that the Policy is amended as follows:

The following provisions are added to Section B of the Declarations:

### **B: Limits of Indemnity and Deductible:**

Limit of Indemnity for **Inoculations, Vaccinations, and Testing (Section 2.7 (IVT))**: \$ 250,000 per **Period of Insurance**

Section 1. INSURING AGREEMENT is deleted in its entirety and replaced with the following:

### **1. (IVT) INSURING AGREEMENT**

In consideration of the foregoing and payment of the Premium, Underwriters agree, subject to all the terms, conditions, limitations and exclusions set forth herein, to indemnify the **Insured** for the following, provided that such result directly and solely from an **Incident** that occurs within the **Period of Insurance** and is reported to Underwriters in accordance with Section 7.1 of this Policy, which in no event shall be later than ninety (90) days following the termination of the **Period of Insurance**:

- 1.1 Actual Net Loss** in excess of any **Deductible** sustained by the **Insured** at each **Affected Covered Location** during a **Period of Restoration**;
- 1.2 Incident Response Expenses** in excess of any **Deductible**, except as to **Crisis Management Expenses**, incurred by the **Insured** during the **Period of Restoration** but only when working in cooperation with the designated crisis management consultant listed in Section E of the Declarations;
- 1.3 Extortion Payments** incurred by the **Insured** during the **Period of Restoration** but only when working in cooperation with the designated crisis management consultant listed in Section E of the Declarations; and
- 1.4 Inoculations, Vaccinations, and Testing.**

Section 2. LIMITS OF INDEMNITY is amended to add the following:

**2.7 (IVT) “Limit of Indemnity for Inoculations, Vaccinations, and Testing”** - Payments made by Underwriters for **Inoculations, Vaccinations, and Testing** shall be in addition to the **Total Policy Aggregate Limit of Indemnity** set forth in Section B of the Declarations, and Underwriters’ maximum limit of liability for all such **Inoculations, Vaccinations, and Testing** during the **Period of Insurance** shall not exceed the “Limit of Indemnity for **Inoculations, Vaccinations, and Testing**” set forth in Section B of the Declarations, as amended, regardless of the number of **Restaurant Events, Supplier Events, or Covered Locations**. No **Deductible** shall apply to this additional **Inoculations, Vaccinations, and Testing** coverage. Payments made by Underwriters under the **Inoculations, Vaccinations, and Testing** coverage will not be applied toward any **Deductible** that is applicable to any other coverage afforded by this Policy.

Where the **Insured** has other insurance that covers **Inoculations, Vaccinations, and Testing**, Underwriters’ indemnity obligation under Section 1.4 is limited to reimbursement of **Inoculations, Vaccinations, and Testing** that (a) the **Insured** has incurred to satisfy the deductible of any other insurance including, but not limited to, any general liability insurance; or (b) the **Insured** has paid in excess of the limit available under such other policies.

Section 4. DEFINITIONS is amended to add the following:

**4.35 (IVT) “Inoculations, Vaccinations, and Testing”** shall mean the expense of preventive inoculations, initial series vaccinations, and current infection testing incurred as a result of **Restaurant Events** or **Supplier Events**, provided such **Inoculations, Vaccinations, and Testing** are administered to:

- (a) employees of a **Covered Location** affected by such **Restaurant Event** or **Supplier Event**, provided, the Policy’s appointed crisis management consultant has recommended the **Inoculations, Vaccinations, and Testing** and/or;
- (b) customers and employees of a **Covered Location** affected by such **Restaurant Event** or **Supplier Event**, provided a **Public Health Authority** has recommended or required the **Inoculations, Vaccinations, and Testing** but only for the exposure time period identified by the **Public Health Authority**.

Section 5. CONDITIONS PRECEDENT TO LIABILITY is amended to add the following:

**5.8 (IVT)** In addition to the requirements set forth in Section 5.1 through 5.7 above, the following are conditions precedent to Underwriters' liability under Section 1.4:

- (a) The **Insured** must first submit claim(s) to its primary insurance carriers as follows:
  - (i) In the event of employee **Inoculations, Vaccinations, and Testing**, the **Insured** must first tender the claim to its workers compensation insurance carrier, and then must provide evidence to Underwriters of both the claim tender and the insurance carrier's coverage determination, within thirty (30) days of the **Insured's** receipt of the coverage determination.
  - (ii) In the event of customer **Inoculations, Vaccinations, and Testing**, the **Insured** must first tender the claim to its general liability insurance carrier, and then must provide evidence to Underwriters of both the claim tender and the insurance carrier's coverage determination, within thirty (30) days of the **Insured's** receipt of the coverage determination.
- (b) Within sixty (60) days of the **Insured's** receipt of all billing statements for **Inoculations, Vaccinations, and Testing**, the **Insured** must submit to Underwriters copies of such billing statements and evidence of the **Insured's** payment.
- (c) In the event that the **Insured** desires to apply this additional coverage to a self-insured retention or deductible of another insurance policy held by the **Insured** that affords coverage for the claim, the **Insured** must, within thirty (30) days of the other insurer's acceptance of the claim, supply Underwriters with a complete copy of the insurance policy containing the self-insured retention or deductible at issue, along with a copy of the insurer's coverage determination.

Section 6. EXCLUSIONS is amended to add the following:

This insurance does not cover any of the following:

- 6.22 (IVT)** Aside from the costs of **Inoculations, Vaccinations, and Testing**, the cost of any other medical or other expense of any kind related to any employee, customer, or third party, such as, but not limited to: other medical testing, treatment, counseling, hospitalization, therapy, loss of earnings, transportation, lodging, or health insurance deductibles or benefits;
- 6.23 (IVT)** The cost of secondary, follow-up, or "booster" Hepatitis A vaccinations, for either employees or customers.

Section 8. CONDITIONS is amended to add the following:

**8.13 (IVT)** In the event that any other insurance carrier of the **Insured** agrees to pay or reimburse the cost of **Inoculations, Vaccinations, and Testing** arising out of **Restaurant Event** or **Supplier Event** covered under this Policy, coverage under Section 1.4 only applies to the amount of any self-insured retention or deductible held by the **Insured** under such insurance policies and to **Inoculations, Vaccinations, and Testing** costs incurred by the **Insured** that exceed the payment and/or reimbursement obligations of any other insurance carrier.

*All other terms, conditions and exclusions of this Policy remain unchanged.*

Countersigned: David J. Hanley  
Authorized Representative

**LOSS OF BUSINESS INCOME AND INCIDENT RESPONSE ENDORSEMENT FOR  
THEFT OF PRIVATE CUSTOMER AND EMPLOYEE DATA**

POLICY CERTIFICATE NO.: TNR 18 8281

In consideration of the premium charged, it is hereby understood and agreed that the Policy is amended as follows:

There shall be no loss threshold or waiting period for **Actual Net Loss** arising solely and directly from **Data Breach Events**.

**For the purposes of this endorsement, Section 2. LIMITS OF INDEMNITY is amended as follows:**

Policy Sections 2.5 “**Total Policy Aggregate Limit of Indemnity**” and 2.6 “**Shared Aggregate Limit of Indemnity**” apply to **Restaurant Events, Supplier Events and Data Breach Events**.

Underwriters’ maximum liability for **Actual Net Loss** and **Incident Response Expenses** affecting all **Covered Locations** insured hereunder for **Data Breach Events** shall not exceed the following amounts:

**B. Limits of Indemnity and Deductible for Data Breach Events:**

Limits of Indemnity:		Deductible Each and Every <b>Incident</b> :
Limit of Indemnity for <b>Customer Data Breach Events</b> :	<u>\$250,000</u> Per <b>Period of Insurance</b>	<u>No Deductible</u>
Limit of Indemnity for <b>Employee Data Breach Events</b> :	<u>\$250,000</u> Per <b>Period of Insurance</b>	<u>No Deductible</u>
Limit of Indemnity for <b>Credit Card Forgery Events</b> :	<u>\$5,000</u> Per <b>Period of Insurance</b>	<u>\$1,000</u>
Limit of Indemnity for <b>Credit Card Slip Theft, Disappearance or Destruction Events</b> :	<u>\$5,000</u> Per <b>Period of Insurance</b>	<u>\$1,000</u>
Total Policy Aggregate Limit of Indemnity for all <b>Data Breach Events</b> :	<u>\$250,000</u> Per <b>Period of Insurance</b>	<u>As Stated Above</u>

If any indemnity is owed under any of the above Limits of Indemnity for **Data Breach Events**, no additional indemnity shall be owed under Section 2.1 or Section 2.2 for that same **Incident**.

The **Limit of Indemnity for Credit Card Forgery Events** and **Limit of Indemnity for Credit Card Slip Theft, Disappearance or Destruction Events** shall be in excess of any **Deductible** set forth in Section B of the Declarations, as amended above.

**For the purposes of this endorsement, Section 4. DEFINITIONS is amended as follows:**

**4.13 “Incident”** is amended to include the following:

**4.13 (DB) “Incident”** shall also include **Data Breach Events**. All **Data Breach Events** arising out of the same common cause shall be considered one **Incident**, regardless of the number of involved persons, **Public Announcements**, or **Covered Locations**, and the **Incident** shall be deemed to have occurred at the time of the earliest occurrence of the **Data Breach Event**.

**4.14 “Incident Response Expenses”** and **4.21 “Period of Restoration”** are deleted in their entirety and replaced with the following:

**4.14 (DB) “Incident Response Expenses”** means the following reasonable and necessary expenses incurred by the **Insured** after the occurrence of an **Incident**, that are additional to those usual and customary expenses that would have been incurred in the absence of the **Incident**, exclusively for the purpose of preventing, mitigating or minimizing a loss covered by this insurance:

- (a) the cost of public relations specialists, radio or television announcements and newspaper advertising, as approved in writing in advance by Underwriters;
- (b) **Crisis Management Expenses**;
- (c) similar, directly-related mitigation expenses as approved in writing in advance by Underwriters.

For **Restaurant Events** and **Supplier Events** only, **Incident Response Expenses** shall also include:

- (d) the cost of hiring temporary replacement staff at a **Covered Location** other than regular employees of the **Insured**. This cost does not include fees or expenses incurred for services of professionals such as attorneys, doctors, accountants, and similar professionals;
- (e) compensation paid to regular employees of the **Insured** for overtime; and
- (f) **Product Recall Expenses**.

For **Data Breach Events** only, **Incident Response Expenses** shall also include the following as approved in writing, in advance by Underwriters:

- (g) Costs of a computer expert appointed by Underwriters to investigate the existence and cause of **Data Breach Event** and attempt to determine the extent to which such information may have been improperly accessed;
- (h) Costs for mailing courtesy notifications to customers or employees where such notifications are not required by contract or law;

For **Credit Card Forgery Event** or **Credit Card Slip Theft, Disappearance or Destruction Events**, **Incident Response Expenses** shall also include reimbursement of the following for customer transactions occurring within the **Period of Insurance** and not more than three (3) months before the **Insured** first becomes aware of such **Credit Card Forgery Event** or **Credit Card Slip Theft, Disappearance or Destruction Event**:

- (i) Payments or credits made by the **Insured** to customers; and
- (j) Debits or charge backs assessed by a credit card company against the **Insured**.

**4.24 (DB) "Period of Restoration"** means either:

- (a) for **Data Breach Events**, a period of three (3) months from the date of the **Data Breach Event**, or
  - (b) for **Restaurant Events, Supplier Events, or Extortion Threats**, the period that commences on the date of the **Incident** and ends on the earlier of the following dates:
    - (i) the first date that the **Gross Revenues** derived from the **Insured's** normal and customary business operations at each **Affected Covered Location** are within ten percent (10%) of the **Normal Gross Revenues** for such **Affected Covered Location** and thereafter remain within ten percent (10%) of the **Normal Gross Revenues** for such **Affected Covered Location** for the next six (6) consecutive days; or
    - (ii) the last date of the period of time set forth in Section C of the Declarations from the date of the **Incident**;
- The **Period of Restoration** shall not be affected by the expiration of the **Period of Insurance**.

The following paragraphs are added:

**4.36 (DB) "Credit Card Forgery Event"** means unauthorized alteration or signing, committed by the **Insured's** employee or former employee or by a Trade Name Location's employee or former employee, of written instruments required in conjunction with any transaction involving the **Insured's** customer's credit cards, charge cards or debit cards, provided the **Credit Card Forgery Event** resulted from operations at a **Covered Location** or at a **Trade Name Location**.

**4.37 (DB) "Credit Card Slip Theft, Disappearance or Destruction Event"** means the theft, disappearance or destruction of written instruments required in conjunction with any transaction involving credit cards, charge cards or debit cards, provided the **Credit Card Slip Theft, Disappearance or Destruction Event** resulted from operations at a **Covered Location** or at a **Trade Name Location**.

**4.38 (DB) "Customer Data Breach Event"** means an occurrence or **Public Announcement** of an actual, suspected or alleged theft of the following **Insured's** or **Trade Name Location's** customer's information:

- (a) Any information that is considered non-public, private personal information as defined under any federal, state or local law; or
- (b) Any information that is defined as private personal information under the statutes enacted to protect such information in foreign countries; or
- (c) Drivers license or state identification number, social security number, unpublished telephone number or credit, debit or other financial account numbers in combination with associated security codes, access codes, passwords or pins; or
- (d) Any information that would allow such customer to be uniquely and reliably identified or contacted. However, this does not include information that is publicly available from government records or public directories.

Provided the **Customer Data Breach Event** resulted from operations at a **Covered Location** or at a **Trade Name Location**.

**4.39 (DB) “Data Breach Event”** means **Credit Card Forgery Event, Credit Card Slip Theft, Disappearance or Destruction Event, Customer Data Breach Event, or Employee Data Breach Event.**

**4.40 (DB) “Employee Data Breach Event”** means an occurrence or **Public Announcement** of an actual, suspected or alleged theft of the following **Insured’s** employee’s or **Trade Name Location’s** employee’s information:

- (a) Any information that is considered non-public, private personal information as defined under any federal, state or local law; or
- (b) Any information that is defined as private personal information under the statutes enacted to protect such information in foreign countries; or
- (c) Drivers license or state identification number, social security number, unpublished telephone number or credit, debit or other financial account numbers in combination with associated security codes, access codes, passwords or pins; or
- (e) Any information that would allow such customer to be uniquely and reliably identified or contacted. However, this does not include information that is publicly available from government records or public directories.

Provided the **Employee Data Breach Event** resulted from operations at a **Covered Location** or at a **Trade Name Location.**

**For the purposes of this endorsement, Section 6. EXCLUSIONS is amended to include the following:**

This insurance does not cover any **Actual Net Loss, Incident Response Expenses, or Extortion Payments** directly or indirectly caused by, arising out of, contributed to by, in consequence of, or resulting from, any of the following:

**6.24 (DB)** Disclosure of the **Insured’s** confidential and proprietary information including, but not limited to, trademarks, recipes, formulas, current or upcoming products or services, sales, finances, number of employees, strategy or any other information relating to the **Insured’s** business.

**6.25 (DB)** Any dishonest, criminal, fraudulent, malicious or intentional act committed by or at the direction of any current, former, or retired officer, director or owner of the **Insured.**

**6.26 (DB)** Any actual or alleged disclosure or breach involving information protected under the Health Insurance Portability and Accountability Act (HIPAA).

**6.27 (DB)** Any accounting or arithmetical error or omission.

**6.28 (DB)** Any electrical or mechanical failures and or interruption, including an electrical disturbance, surge, spike, brownout or blackout.

This insurance also does not cover any of the following:

**6.29 (DB)** Expenses associated with updating, repairing or replacing the **Insured’s** software, hardware or other system equipment including, but not limited, to point of sale equipment or credit card systems.

**For the purposes of this endorsement, Section 8. CONDITIONS, 8.5 is removed**

**Section 8. CONDITIONS is amended to include the following:**

**8.12 (DB)** Coverage provided under this Policy for **Data Breach Events** shall be in excess of any other applicable insurance, except that this Policy’s coverage for a **Data Breach Event** may apply toward reimbursement of the self-insured retention or deductible of another insurance policy held by the **Insured**, if as a condition precedent, the **Insured:**

- (a) Notifies Underwriters within thirty (30) days of the other insurer’s acceptance of the claim;
- (b) Supplies Underwriters with a complete copy of the insurance policy containing the self-insured retention or deductible at issue; and
- (c) Supplies a copy of the insurer’s coverage determination.

*All other terms, conditions and exclusions of this Policy remain unchanged.*

Countersigned:   
Authorized Representative

**PANDEMIC EVENT ENDORSEMENT**

POLICY CERTIFICATE NO.: TNR 18 8281

*This Endorsement changes the Policy – please read it carefully.*

In consideration of the premium charged, it is hereby understood and agreed that, for the purposes of this Endorsement, the Policy is amended as follows:

The following provisions are added to Section B of the Declarations:

**B: Limits of Indemnity and Deductible:**

Limit of Indemnity for <b>Pandemic Events</b> (By Endorsement Only):	<u>\$250,000</u>	per <b>Covered Location</b>
	<u>\$1,000,000</u>	per <b>Period of Insurance</b>
<b>Deductible</b> (Section 4.7):		
as respect <b>Pandemic Events</b> (By Endorsement Only):	<u>\$10,000</u>	Each and Every <b>Incident</b>

Section 2. LIMITS OF INDEMNITY is amended to delete and replace the following:

**2.3 "Limit of Indemnity for Incident Response Expenses"** - Underwriters' maximum liability for **Incident Response Expenses** affecting all **Covered Locations** insured hereunder for **Restaurant Events, Supplier Events, and Pandemic Events** shall not exceed the corresponding "Limit of Indemnity for **Incident Response Expenses**" set forth in Section B of the Declarations, as amended, regardless of the number of **Insureds** named in the Declarations.

**Incident Response Expenses** shall be in excess of any applicable **Deductible**; except that **Crisis Management Expenses** paid as part of **Incident Response Expenses** shall not be subject to the **Deductible**. Any amounts paid hereunder with respect to **Incident Response Expenses** shall reduce the remaining applicable Limits of Indemnity payable with respect to **Actual Net Loss**.

Section 2. LIMITS OF INDEMNITY is amended to include the following:

**2.11 "Limit of Indemnity for Pandemic Events"** - Underwriters' maximum liability for **Actual Net Loss** and **Incident Response Expenses** affecting all **Covered Location(s)** insured hereunder for **Pandemic Events** shall not exceed the Limit of Indemnity set forth in Section B of the Declarations, as amended, per **Period of Insurance** and shall be in excess of the **Deductible**.

If any indemnity is owed under Section 2.1 (**Restaurant Event**), 2.2 (**Supplier Event**) or 2.13 (**Hospitality Event**), if applicable, for any **Incident**, no indemnity shall be owed under this Section 2.11 for that same **Incident**, regardless of the number of **Pandemic Events**, involved and irrespective of whether an **Insured** sustains any loss, in whole or in part, as a result of any **Pandemic Event**.

Section 4. DEFINITIONS, is amended to include:

**4.59 "Pandemic Event"** means either:

- (a) the actual presence of an **Infected Person** within a **Covered Location**; or,
- (b) the announcement by a **Public Health Authority** that a specific **Covered Location** is being closed as a result of an **Epidemic** declared by the CDC or WHO.

**4.58 "Infected Person"** means an individual who has been confirmed by a licensed physician to be contagious with a **Covered Disease** during an **Epidemic** of that **Covered Disease**.

**4.56 "Covered Disease"** is limited to the following pathogens, their mutations, or variations:

Avian Flu	Measles	Severe Acute Respiratory Syndrome-associated
Bubonic Plague	Meningococcal	Coronavirus (SARS-CoV) disease
Diphtheria	Monkpox	Smallpox
Ebola	Mumps	Swine Flu
Hand, Foot and Mouth Disease	Pertussis	Tuberculosis (TB)
Human Papillomavirus (HPV)	Polio	Varicella (Chickenpox)
Legionellosis	Rabies	Yellow Fever
Leprosy	Rotavirus	Zika Virus
Malaria	Rubella	or, as designated by Underwriters

- 4.57 "Epidemic" means an occurrence of a **Covered Disease** that:
- (a) rapidly and unexpectedly becomes widely distributed and affects or attacks persons simultaneously throughout a geographic location, region, territory, country, continent, or globally as defined by the World Health Organization ("WHO"), or the Center for Disease Control ("CDC"); and
  - (b) would impair normal physical function of any part, organ or system (or a combination thereof) of the body that manifests by a characteristic set of signs and symptoms;
- 4.3 "Affected Covered Location" For **Pandemic Event(s)**, **Affected Covered Location** shall mean only the specific **Covered Location** where the **Pandemic Event** occurred and whose **Normal Gross Revenues** are reduced by at least ten percent (10%) for a period in excess of seven (7) consecutive days, due directly and solely to the occurrence of a **Pandemic Event**.
- 4.13 "Incident" means a **Pandemic Event**. All **Pandemic Events** arising out of one or multiple visits by an **Infected Person** or the simultaneous presence of multiple **Infected Person(s)** within a **Covered Location**, shall be considered one **Incident**; and, the **Incident** shall be deemed to have occurred at the time of the earliest occurrence of the **Pandemic Event**.
- 4.14 "Incident Response Expenses":
- (g) up to \$10,000 for cleaning and sanitization of only the **Affected Covered Location(s)** per **Period of Insurance** for **Pandemic Event(s)**.
- 4.24 "Period of Restoration" for **Pandemic Event** means a period of twelve (12) months. The period commences on the date of the **Incident** and ends on the earlier of the following dates:
- (i) the first date that the **Gross Revenues** derived from the **Insured's** normal and customary business operations at the **Affected Covered Location** are within ten percent (10%) of the **Normal Gross Revenues** for the **Affected Covered Location** and; thereafter, remain within ten percent (10%) of the **Normal Gross Revenues** for the **Affected Covered Location** for the next six (6) consecutive days; or
  - (ii) twelve (12) months from the date of the **Incident**;

The **Period of Restoration** shall not be affected by the expiration of the **Period of Insurance**.

Section 6. EXCLUSIONS is amended to include:

This insurance also does not cover any **Actual Net Loss**, **Incident Response Expenses**, or **Extortion Payments** directly or indirectly caused by, arising out of, contributed to by, in consequence of, or resulting from, any of the following:

- 6.43 at a **Covered Location**, other than the specific **Affected Covered Location** where the **Pandemic Event** occurred.

*All other terms, conditions and exclusions of this Policy remain unchanged.*

Countersigned: David J. Hanley  
Authorized Representative

**SEVERAL LIABILITY NOTICE**

**POLICY CERTIFICATE NO.:** TNR 18 8281

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

*All other terms and conditions of this policy remain unchanged.*

LSW 1001 (Insurance)

Countersigned: *David J. Hanley*  
Authorized Representative

**SERVICE OF SUIT CLAUSE (USA)**

POLICY CERTIFICATE NO.: TNR 18 8281

This Service of Suit Clause will not be read to conflict with or override the obligations of the parties to arbitrate their disputes as provided for in any Arbitration provision within this Policy. This Clause is intended as an aid to compelling arbitration or enforcing such arbitration or arbitral award, not as an alternative to such Arbitration provision for resolving disputes arising out of this contract of insurance (or reinsurance).

It is agreed that in the event of the failure of the Underwriters hereon to pay any amount claimed to be due hereunder, the Underwriters hereon, at the request of the Insured (or Reinsured), will submit to the jurisdiction of a Court of competent jurisdiction within the United States. Nothing in this Clause constitutes or should be understood to constitute a waiver of Underwriters' rights to commence an action in any Court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another Court as permitted by the laws of the United States or of any State in the United States.

It is further agreed that service of process in such suit may be made upon Mendes and Mount, 750 Seventh Avenue, New York, New York 10019-6829 and that in any suit instituted against any one of them upon this contract, Underwriters will abide by the final decision of such Court or of any Appellate Court in the event of an appeal.

The above-named are authorized and directed to accept service of process on behalf of Underwriters in any such suit and/or upon the request of the Insured (or Reinsured) to give a written undertaking to the Insured (or Reinsured) that they will enter a general appearance upon Underwriters' behalf in the event such a suit shall be instituted.

Further, pursuant to any statute of any state, territory or district of the United States which makes provision therefor, Underwriters hereon hereby designate the Superintendent, Commissioner or Director of Insurance or other officer specified for that purpose in the statute, or his successor or successors in office, as their true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the Insured (or Reinsured) or any beneficiary hereunder arising out of this contract of insurance (or reinsurance), and hereby designate the above-named as the person to whom the said officer is authorized to mail such process or a true copy thereof.

14/09/2005

LMA5020

Form approved by Lloyd's Market Association

Countersigned:

  
Authorized Representative

**APPLICABLE LAW (U.S.A.)**

**POLICY CERTIFICATE NO.:** TNR 18 8281

This Insurance shall be subject to the applicable state law to be determined by the court of competent jurisdiction as determined by the provisions of the Service of Suit Clause (U.S.A.)

14/09/2005

LMA 5021

Form approved by Lloyd's Market Association

Countersigned: *David J Hanley*  
Authorized Representative

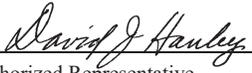
**INSTITUTE CYBER ATTACK EXCLUSION**

**POLICY CERTIFICATE NO.:** TNR 18 8281

- 1.1 Subject to paragraph 1.2 below, this insurance shall not cover loss, damage, liability or expense directly or indirectly caused by or contributed to by or arising from the use or operation, as a means for inflicting harm, of any computer, computer system, computer software program, malicious code, computer virus or process or any other electronic system.
- 1.2 When this exclusion is endorsed on policies covering risks of war, civil war, revolution, rebellion, insurrection, or civil strife arising therefrom, or any hostile act by or against a belligerent power, or terrorism or any person acting from a political motive, paragraph 1.1 shall not operate to exclude losses (which would otherwise be covered) arising from the use of any computer, computer system or computer software program or any other electronic system in the launch and/or guidance system and/or firing mechanism of any weapon or missile.
- 1.3 When this exclusion is endorsed on policies which also have endorsed “Loss of Business Income and Incident Response Endorsement for Theft of Private Customer and Employee Data”, paragraph 1.1 shall not operate to exclude losses (which would otherwise be covered) arising from the use of any computer, computer system or computer software program. If “Loss of Business Income and Incident Response Endorsement for Theft of Private Customer and Employee Data” is not endorsed, paragraphs 1.1 and 1.2 shall apply.

10/11/03  
CL380

Countersigned:

  
Authorized Representative

UMR Number: B113518B01324

## **NUCLEAR INCIDENT EXCLUSION CLAUSE - LIABILITY - DIRECT (BROAD)**

**POLICY CERTIFICATE NO.:** TNR 18 8281

For attachment to insurances of the following classification in the USA., its Territories and Possessions, Puerto Rico and the Canal Zone:

Owners, Landlords and Tenants Liability, Contractual Liability, Elevator Liability, Owners or Contractors (including Railroad) Protective Liability, Manufacturers and Contractors Liability, Product Liability, Professional and Malpractice Liability, Storekeepers Liability, Garage Liability, Automobile Liability (including Massachusetts Motor Vehicle or Garage Liability) not being insurances of the classifications to which the Nuclear Incident Exclusion Clause-Liability-Direct (Limited) applies.

This policy\* does not apply:

- I. Under any Liability Coverage, to injury, sickness, disease, death or destruction:
  - a. with respect to which an insured under the policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability; or
  - b. resulting from the hazardous properties of nuclear material and with respect to which (1) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (2) the insured is, or had this policy not been issued would be entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.
- II. Under any Medical Payments Coverage, or under any Supplementary Payments Provision relating to immediate medical or surgical relief, to expenses incurred with respect to bodily injury, sickness, disease or death resulting from the hazardous properties of nuclear material and arising out of the operation of a nuclear facility by any person or organization.
- III. Under any Liability Coverage, to injury, sickness, disease, death or destruction resulting from the hazardous properties of nuclear material, if:
  - a. the nuclear material (1) is at any nuclear facility owned by, or operated by or on behalf of, an insured or (2) has been discharged or dispersed therefrom;
  - b. the nuclear material is contained in spent fuel or waste at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of an insured; or
  - c. the injury, sickness, disease, death or destruction arises out of the furnishing by an insured of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any nuclear facility, but if such facility is located within the United States of America, its territories or possessions or Canada, this exclusion (c) applies only to injury to or destruction of property at such nuclear facility.
- IV. As used in this endorsement:

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

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

- c. any equipment or device used for the processing, fabricating or alloying of special nuclear material if at any time the total amount of such material in the custody of the insured at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;
- d. any structure, basin, excavation, premises or place prepared or used for the storage or disposal of waste, and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations; "nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material. With respect to injury to or destruction of property, the word "injury" or "destruction" includes all forms of radioactive contamination of property. It is understood and agreed that, except as specifically provided in the foregoing to the contrary, this clause is subject to the terms, exclusions, conditions and limitations of the Policy to which it is attached.

\*NOTE: As respects policies which afford liability coverage and other forms of coverage in addition, the words underlined should be amended to designate the liability coverage to which this clause is to apply.

N.M.A. 1256

Countersigned: David J. Hanley  
Authorized Representative

**NEW SHORT RATE CANCELLATION TABLE ENDORSEMENT (U.S.A.)**

POLICY CERTIFICATE NO.: TNR 18 8281

Notwithstanding anything to the contrary contained herein and in consideration of the premium for which this Insurance is written it is agreed that in the event of cancellation thereof by the Insured the Earned Premium shall be computed as follows:

**SHORT RATE CANCELLATION TABLE**

A. For insurances written for one year:

<b>Days Insurance in Force</b>	<b>Percent of One Year Premium</b>
1	5
2	6
3-4	7
5-6	8
7-8	9
9-10	10
11-12	11
13-14	12
15-16	13
17-18	14
19-20	15
21-22	16
23-25	17
26-29	18
30-32 (1 Month)	19
33-36	20
37-40	21
41-43	22
44-47	23
48-51	24
52-54	25
55-58	26
59-62 (2 Months)	27
63-65	28
66-69	29
70-73	30
74-76	31
77-80	32
81-83	33
84-87	34
88-91 (3 Months)	35
92-94	36
95-98	37
99-102	38
103-105	39
106-109	40
110-113	41
114-116	42
117-120	43
121-124 (4 Months)	44
125-127	45
128-131	46
132-135	47
136-138	48
139-142	49
143-146	50

<b>Days Insurance in Force</b>	<b>Percent of One Year Premium</b>
154-156	53
157-160	54
161-164	55
165-167	56
168-171	57
172-175	58
176-178	59
179-182 (6 Months)	60
183-187	61
188-191	62
192-196	63
197-200	64
201-205	65
206-209	66
210-214 (7 Months)	67
215-218	68
219-223	69
224-228	70
229-232	71
233-237	72
238-241	73
242-246 (8 Months)	74
247-250	75
251-255	76
256-260	77
261-264	78
265-269	79
270-273 (9 Months)	80
247-278	81
279-282	82
283-287	83
288-291	84
292-296	85
297-301	86
302-305 (10 Months)	87
306-310	88
311-314	89
315-319	90
320-323	91
324-328	92
329-332	93
333-337 (11 Months)	94
338-342	95
343-346	96
347-351	97
352-355	98

147-149	51
150-153 (5 Months)	52

356-360	99
361-365 (12 Months)	100

B. For Insurances written for more or less than one year:

1. If insurance has been in force for 12 months or less, apply the standard short rate table for annual insurances to the full annual premium determined as for an insurance written for a term of one year.
2. If insurance has been in force for more than 12 months:
  - (a) Determine full annual premium as for an insurance written for a term of one year.
  - (b) Deduct such premium for the full insurance premium, and on the remainder calculate the pro rata Earned Premium on the basis of the ratio of the length of time beyond one year the insurance has been in force to the length of time beyond one year for which the insurance was originally written.
  - (c) Add premium produced in accordance with items (a) and (b) to obtain Earned Premium during full period insurance has been in force.

*All other terms, conditions and exclusions of this Policy remain unchanged.*

NMA45

Countersigned: David J. Hanley  
Authorized Representative

**U.S. TERRORISM RISK INSURANCE ACT OF 2002 AS AMENDED NEW &  
RENEWAL BUSINESS ENDORSEMENT**

**POLICY CERTIFICATE NO.:** TNR 18 8281

This Endorsement is issued in accordance with the terms and conditions of the "U.S. Terrorism Risk Insurance Act of 2002" as amended as summarized in the disclosure notice.

In consideration of an additional premium of \$4,440.00 paid, it is hereby noted and agreed with effect from inception that the Terrorism exclusion to which this Insurance is subject, shall not apply to any "insured loss" directly resulting from any "act of terrorism" as defined in the "U.S. Terrorism Risk Insurance Act of 2002", as amended ("TRIA").

The coverage afforded by this Endorsement is only in respect of any "insured loss" of the type insured by this Insurance directly resulting from an "act of terrorism" as defined in TRIA. The coverage provided by this Endorsement shall expire at 12:00 midnight December 31, 2020, the date on which the TRIA Program is scheduled to terminate, or the expiry date of the policy whichever occurs first, and shall not cover any losses or events which arise after the earlier of these dates. The Terrorism exclusion, to which this Insurance is subject, applies in full force and effect to any other losses and any act or events that are not included in said definition of "act of terrorism".

This Endorsement only affects the Terrorism exclusion to which this Insurance is subject. All other terms, conditions, insured coverage and exclusions of this Insurance including applicable limits and deductibles remain unchanged and apply in full force and effect to the coverage provided by this Insurance.

Furthermore the Underwriter(s) will not be liable for any amounts for which they are not responsible under the terms of TRIA (including subsequent action of Congress pursuant to the Act) due to the application of any clause which results in a cap on the Underwriter's liability for payment for terrorism losses.

LMA5218  
12 January 2015

Countersigned: *David J. Hanley*  
Authorized Representative

UMR Number: B113518B01324

## **SANCTION LIMITATION AND EXCLUSION CLAUSE**

No (re)insurer shall be deemed to provide cover and no (re)insurer shall be liable to pay any claim or provide any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose that (re)insurer to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America.

15/09/10

**LMA3100**

**TRADE NAME RESTORATION LOSS OF BUSINESS INCOME  
AND INCIDENT RESPONSE INSURANCE  
FOR FOOD BORNE ILLNESS**

It is agreed by the **Insured** and Underwriters that the attached Declarations, Application and any material submitted therewith, and Endorsements are made a part of this insurance, constitute the basis of this Policy, and that the **Insured** warrants that the statements contained in the Application Form are true and complete. PLIS, Inc. is not an Insurer and does not provide this insurance.

**1. INSURING AGREEMENT**

In consideration of the foregoing and payment of the Premium, Underwriters agree, subject to all the terms, conditions, limitations and exclusions set forth herein, to indemnify the **Insured** for the following, provided that such result directly and solely from an **Incident** that occurs within the **Period of Insurance** and is reported to Underwriters in accordance with Section 7.1 of this Policy, which in no event shall be later than ninety (90) days following the termination of the **Period of Insurance**:

- 1.1 Actual Net Loss** in excess of any **Deductible** sustained by the **Insured** at each **Affected Covered Location** during a **Period of Restoration**;
- 1.2 Incident Response Expenses** in excess of any **Deductible**, except as to **Crisis Management Expenses**, incurred by the **Insured** during the **Period of Restoration** but only when working in cooperation with the designated crisis management consultant listed in Section E of the Declarations; and
- 1.3 Extortion Payments** incurred by the **Insured** during the **Period of Restoration** but only when working in cooperation with the designated crisis management consultant listed in Section E of the Declarations.

**2. LIMITS OF INDEMNITY**

- 2.1 “Limit of Indemnity for Restaurant Events”** - Underwriters’ maximum liability for **Actual Net Loss** and **Incident Response Expenses** affecting all **Covered Locations** insured hereunder for **Restaurant Events** shall not exceed the “Limit of Indemnity for **Restaurant Events**” set forth in Section B of the Declarations and shall be in excess of any **Deductible**. An **Insured** may only recover under this Section 2.1 for an **Incident** that does not include any **Supplier Events**. See DEFINITIONS (Section 4) below.
- 2.2 “Limit of Indemnity for Supplier Events”** - Underwriters’ maximum liability for **Actual Net Loss** and **Incident Response Expenses** affecting all **Covered Locations** insured hereunder for **Supplier Events** shall not exceed the “Limit of Indemnity for **Supplier Events**” set forth in Section B of the Declarations and shall be in excess of any **Deductible**. If any indemnity is owed under this Section 2.2 for any **Incident**, no indemnity shall be owed under Section 2.1 above for that same **Incident**, regardless of the number of **Restaurant Events** or **Supplier Events** involved and irrespective of whether an **Insured** sustains any loss, in whole or in part, as a result of any **Restaurant Event**.
- 2.3 “Limit of Indemnity for Incident Response Expenses”** - Underwriters’ maximum liability for **Incident Response Expenses** affecting all **Covered Locations** insured hereunder for **Restaurant Events** and **Supplier Events** shall not exceed the corresponding “Limit of Indemnity for **Incident Response Expenses**” set forth in Section B of the Declarations, regardless of the number of **Insureds** named in the Declarations. **Incident Response Expenses** shall be in excess of any **Deductible**, except that **Crisis Management Expenses** paid as part of **Incident Response Expenses** shall not be subject to the **Deductible**. Any amounts paid hereunder with respect to **Incident Response Expenses** shall reduce the remaining applicable Limits of Indemnity payable with respect to **Actual Net Loss**.
- 2.4 “Limit of Indemnity for Extortion Payments”** – Underwriters’ maximum liability for **Extortion Payments** during the **Period of Insurance** shall not exceed the “Limit of Indemnity for **Extortion Payment**” set forth in Section B of the Declarations.
- 2.5 “Total Policy Aggregate Limit of Indemnity”** - Underwriters’ maximum liability for all **Actual Net Loss**, **Incident Response Expenses**, and **Extortion Payments** arising from all **Incidents** affecting all **Covered Locations** occurring during the **Period of Insurance** shall not exceed the “Total Policy Aggregate Limit of Indemnity” set forth in Section B of the Declarations, regardless of the number of **Covered Locations** insured hereunder or the number of **Insureds** named in the Declarations, and shall be in excess of any **Deductible** and not reduced by any **Deductible**.

2.6 “**Shared Aggregate Limit of Indemnity**” - Notwithstanding the provisions of Sections 2.1 through 2.5 above, if Underwriters have issued Policies to other **Trade Name Operators**, Underwriters’ maximum liability for **Actual Net Loss**, **Incident Response Expenses**, or **Extortion Payments** affecting all business establishments sharing that same trade name (including the **Covered Locations** insured hereunder) shall be limited as set forth in greater detail in any Shared Aggregate Endorsement attached hereto.

### 3. LOSS ADJUSTMENT

3.1 Underwriters shall be under no obligation to pay any **Actual Net Loss**, **Incident Response Expenses**, or **Extortion Payments** until the **Insured** has submitted a complete **Loss Submission** and Underwriters have had a reasonable opportunity to investigate the cause(s) of any **Incident**, allowing necessary time to receive and review of any report(s) from any **Public Health Authority**.

3.2 The premium and any expenses incurred in the formulation of a claim hereunder shall not be recoverable items as **Actual Net Loss**, **Incident Response Expenses**, or **Extortion Payments** under this insurance.

3.3 In the event the **Insured** receives or enters into an agreement to receive any make up of loss, salvage, settlement, recoveries, payments, credits, or other financial benefits in compensation for any loss covered under this Policy from any person or entity other than Underwriters, the amount of **Actual Net Loss**, **Incident Response Expenses**, or **Extortion Payment** will be reduced by the amount of any such make up of loss, salvage, settlement, recoveries, payments, credits, or other financial benefits, regardless of whether any such amounts have been paid to or received by the **Insured** at the time of payment by Underwriters. Nothing in this Section 3.3 shall serve to void Underwriters’ rights or the **Insured’s** obligations under the subrogation provision in Section 8.7.

3.4 **Actual Net Loss** for each **Affected Covered Location** shall be calculated in accordance with the following formula:

$$[(A - B) \times C] + D$$

where    **A**        =        The **Insured’s Normal Gross Revenue**  
          **B**        =        The **Insured’s Affected Gross Revenue**  
          **C**        =        The **Insured’s Normal Operating Margin**  
          **D**        =        The **Insured’s Recoverable Necessary Costs of Sales**

3.5 Underwriters will reduce the amount of the **Insured’s Actual Net Loss** to the extent the **Insured’s** normal and customary business operations can be resumed, in whole or in part, at the **Affected Covered Locations** or elsewhere, and the **Insured** either fails to resume or delays the resumption of such operations. If this happens, Underwriters will indemnify the **Insured** hereunder based on the length of time it would have taken to resume such operations had the **Insured** exercised reasonable due diligence.

3.6 **Incident Response Expenses** shall be calculated separately from **Actual Net Loss** as defined in Section 4.13.

3.7 Following an **Incident** involving a **Restaurant Event** or **Supplier Event**, Underwriters may, at their sole discretion, agree to make interim payments of **Actual Net Loss** and **Incident Response Expenses** in excess of the **Deductible**. Such interim payments shall be without prejudice to any coverage position taken by Underwriters.

### 4. DEFINITIONS

Wherever used herein, the following terms shall have the meanings set forth below

4.1 “**Accidental Contamination**” means an error in the production or preparation of the **Insured’s Products**, or of ingredients used in the production or preparation of the **Insured’s Products** which if consumed or used as intended, could lead to or has led to bodily injury, sickness, disease or death of any person(s) which has or would physically manifest itself by way of clear, obvious or visible symptoms within 365 days of use or consumption.

4.2 “**Actual Net Loss**” means the loss for each **Affected Covered Location** calculated in accordance with Section 3.4.

4.3 “**Affected Covered Location**” means a **Covered Location** whose **Normal Gross Revenues** are reduced due directly and solely to the occurrence of an **Incident**.

4.4 “**Affected Gross Revenues**” means the **Gross Revenues** actually earned by the **Insured** at an **Affected Covered Location** during the **Period of Restoration**.

- 4.5 “**Covered Location**” or “**Covered Locations**” means the place or places of business of the **Insured** described on the **Covered Location** Endorsement hereto as well as new places of business, operating under the same Trade Name(s) as listed in Section A of the Declarations, opened or acquired by the **Insured** during the **Period of Insurance**.
- 4.6 “**Crisis Management Expenses**” means the reasonable and necessary fees and expenses of the crisis management consultant listed in Section E of the Declarations following an **Incident**. The fact that the dedicated crisis management consultant provides assistance does not constitute acceptance by Underwriters that a claim or any loss is covered under this Policy.
- 4.7 “**Deductible**” means the amount that the **Insured** shall bear uninsured for each and every **Incident** as set forth in Section B of the Declarations or any applicable Endorsements.
- 4.8 “**Extortion Expenses**” means expenses paid by the **Insured** as a direct result of an **Extortion Threat**, including:
- (a) the amount paid by the Insured as a reward to an **Informant** for information that mitigates an **Extortion Threat** or results in a recovery of all or any portion of **Extortion Payments**, other than **Extortion Expenses**,
  - (b) interest paid or to be paid on any loan from a financial institution to the Insured for the purpose of paying an **Extortion Payment**;
  - (c) cost of travel and accommodation incurred by or on behalf of the **Insured** while attempting to negotiate an **Extortion Threat**;
  - (d) medical services and hospitalization cost incurred by any person directly involved in the handling or negotiating of an **Extortion Payment** and paid by the **Insured** as a direct result of an **Extortion Threat** within 36 months following the last credible **Extortion Threat** discovered during the **Period of Insurance** including, but not limited to, any costs for treatment by a neurologist or psychiatrist, costs for cosmetic surgery and the additional expenses related to treatment, as approved by underwriters;
  - (e) fees and expenses of an independent forensic analyst engaged by the Insured to determine whether **Malicious Contamination** has occurred;
  - (f) fees and expenses of a qualified interpreter to assist the Insured relating to an **Extortion Threat**;
  - (g) increased cost of security, including hiring of security guards, armored vehicles, and overtime pay for existing security staff for a period of up to 120 days, provided that the designated **Crisis Management** company as stated in the **Declarations** has specifically recommended such additional security measures; and
  - (h) any additional expenses recommended by the designated **Crisis Management** company as stated in the **Declarations** and approved by **Underwriters**.
- 4.9 “**Extortion Payment**” means **Extortion Expenses** and monies or the monetary value of other consideration (net of any recoveries subsequently made) paid or delivered by the insured, under duress, to a third party, following receipt of an **Extortion Threat**.
- 4.10 “**Extortion Threat**” means a threat made by a third party against the **Insured** to commit a **Malicious Contamination** unless the third party’s demand for money or other consideration is met.
- 4.11 “**Food Borne Illness**” means the occurrence of two or more people experiencing similar physical symptoms of bodily injury, sickness, disease or death, resulting from the ingestion of the **Insured’s Products**.
- 4.12 “**Gross Revenues**” means the gross revenues derived from business operations carried on by the **Insured** at a **Covered Location**, as more fully itemized in the Application and as determined by U.S. Generally Accepted Accounting Principles.
- 4.13 “**Incident**” means a **Restaurant Event**, **Supplier Event**, or **Extortion Threat**. All **Restaurant Events**, **Supplier Events**, or **Extortion Threats** arising out of the same common cause shall be considered one **Incident**, regardless of the number of involved persons, **Public Announcements**, or **Covered Locations**, and the **Incident** shall be deemed to have occurred at the time of the earliest occurrence of the **Restaurant Event**, **Supplier Event**, **Public Announcement** thereof, or **Extortion Threat**. In the event either a **Restaurant Event** or **Extortion Threat** or both is considered one **Incident** with a **Supplier Event** under this provision, the combined **Incident** shall be considered solely as a **Supplier Event**.
- 4.14 “**Incident Response Expenses**” means the following reasonable and necessary expenses incurred by the **Insured** after the occurrence of an **Incident**, that are additional to those usual and customary expenses that would have been incurred in the absence of the **Incident**, exclusively for the purpose of preventing, mitigating or minimizing a loss covered by this insurance:
- (a) the cost of public relations specialists, radio or television announcements and newspaper advertising, as approved in writing in advance by Underwriters;

- (b) the cost of hiring temporary replacement staff at a **Covered Location** other than regular employees of the **Insured**. This cost does not include fees or expenses incurred for services of professionals such as attorneys, doctors, accountants, and similar professionals;
- (c) compensation paid to regular employees of the **Insured** for overtime;
- (d) **Crisis Management Expenses**;
- (e) **Product Recall Expenses**; and
- (f) similar, directly-related mitigation expenses as approved in writing in advance by Underwriters.

4.15 “**Informant**” means any person, other than the **Insured** or other member of the **Insured’s Management**, providing material information not otherwise obtainable in return for a reward offered by the **Insured** in connection with an **Extortion Threat**.

4.16 “**Insured**” or “**Insureds**” means the entity or entities designated as the **Insured(s)** in Section A of the Declarations.

4.17 “**Insured’s Management**” means the **Insured’s** past or present Chairman, Chief Executive Officer, Managing Director, any executive or non-executive Director of the **Insured** and any person who holds or has held an equivalent position or who has or had authority to make decisions about the operation or management of the **Insured’s** business on behalf of the **Insured**, including any legal compliance, risk management, internal audit, risk management, or insurance department or division.

4.18 “**Insured’s Products**” means those food and drink products furnished at any **Covered Location** or **Trade Name Location** in the regular course of business at such location.

4.19 “**Loss Submission**” means a statement of **Actual Net Loss** and **Incident Response Expenses** prepared by the **Insured**, with all relevant supporting, verifying and backup documentation required to substantiate any claimed **Actual Net Loss**, **Incident Response Expenses**, or **Extortion Payment** as further set out in Section 7.3.

4.20 “**Malicious Contamination**” means an intentional, malicious and illegal alteration or adulteration of the **Insured’s Products**, or of ingredients used in the production or preparation of the **Insured’s Products**, that is likely to give the **Insured** and/or the public reasonable cause to believe that such products have been rendered unfit or dangerous for the use for which they were intended by the **Insured**.

4.21 “**Normal Gross Revenues**” means **Gross Revenues** the **Insured** can satisfactorily prove would have been generated from its normal and customary business operations at an **Affected Covered Location** in the absence of an **Incident**. **Normal Gross Revenues** shall be determined by Underwriters based on an analysis of the **Gross Revenues** derived from the **Insured’s** normal and customary business operations at the **Covered Location** during the corresponding period in the year prior to the **Incident** (the prior year **Gross Revenues** being adjusted, however, to allow for all material trends, variations or changes in market conditions of any nature whatsoever which would have affected **Gross Revenues** of the **Insured** even in the absence of an **Incident**).

4.22 “**Normal Operating Margin**” means the percentage of **Insured’s Normal Gross Revenues** remaining after subtracting variable costs of sales from the corresponding period in the year prior to the **Incident**, which include without limitation, costs of food, beverages, paper, labor (including payroll taxes), credit card fees, and other costs which fluctuate with sales, but before taxes and other indirect fixed or semi-fixed costs from the corresponding period in the year prior to the **Incident**, which include without limitation rent, utilities, management or executive compensation, bonuses and interest.

4.23 “**Period of Insurance**” means the period of insurance coverage set forth in Section A of the Declarations.

4.24 “**Period of Restoration**” means the period that commences on the date of the **Incident** and ends on the earlier of the following dates:

- (a) the first date that the **Gross Revenues** derived from the **Insured’s** normal and customary business operations at each **Affected Covered Location** return to the **Normal Gross Revenues** for such **Affected Covered Location** and thereafter remain at or above the **Normal Gross Revenues** for such **Affected Covered Location** for the next six (6) consecutive days; or
- (b) the last date of the period of time set forth in Section C of the Declarations from the date of the **Incident**.

The **Period of Restoration** shall not be affected by the expiration of the **Period of Insurance**.

4.25 “**Product Recall Expenses**” means costs incurred by the **Insured** in removing actual or suspected contaminated food products from a **Covered Location**.

4.26 “**Public Announcement**” an announcement, publication or broadcast in any media (including but not limited to radio, television, internet, social media, newspapers and magazines) or a **Public Health Authority**. .

4.27 “**Public Health Authority**” means any governmental authority having jurisdiction over the **Insured’s** operations relating to health and hygiene standards for the protection of the public.

4.28 “**Recoverable Necessary Costs of Sales**” means those reasonable and necessary variable costs, incurred by the **Insured** to generate **Affected Gross Revenues**, that (a) are in excess of the **Insured’s** normal variable costs of production, derived from the calculation of the **Insured’s Normal Operating Margin**, and (b) could not have been reasonably reduced or eliminated because, as agreed between Underwriters and the **Insured**, the expenses were necessary to maintain the **Insured’s** normal and customarily means of operating each **Affected Covered Location** and reducing or eliminating the costs would cause the **Insured** undue hardship. **Recoverable Necessary Costs of Sales** shall never include any **Incident Response Expenses**.

4.29 “**Restaurant Event**” means either

- (a) an occurrence of or
- (b) **Public Announcement** of an actual, suspected or alleged:

**Food Borne Illness, Accidental Contamination, or Malicious Contamination**, provided the **Food Borne Illness, Accidental Contamination, or Malicious Contamination** resulted from operations at a **Covered Location** or at a **Trade Name Location** and did not result from, directly or indirectly, in whole or in part, a **Supplier Event**.

4.30 “**Supplier**” means any person or entity who delivers, distributes, ships, transports, furnishes, provides, processes, possesses, stores, prepares, packages, creates, manufactures, grows, harvests, sorts, washes, or labels any items or services that are used, have been used, or may be used at any **Covered Location** or any **Trade Name Location** or that are used, have been used, or may be used in the delivery, distribution, shipping, transporting, furnishing, providing, processing, possessing, storing, preparation, packaging, creating, manufacturing, growing, harvesting, sorting, washing, or labeling of any items or services that are used, have been used, or may be used at any **Covered Location** or any **Trade Name Location**. Any such items and services include, but are not limited to, the **Insured’s Products**, any products provided or served at any **Trade Name Location**, any ingredients or commodities used in the creation, production, processing, growing, or preparation of the **Insured’s Products**, products provided or served at any **Trade Name Location** or any component parts thereof.

**Supplier** specifically includes all persons or entities in the chain of supply, downstream or upstream, used by any **Trade Name Location**.

Unless modified by an endorsement attached hereto, an **Insured** or **Trade Name Operator** operating as a commissary, distribution center, or warehouse/storage facility for multiple restaurant locations is considered a **Supplier**. **Supplier** does not include any other **Insured** or **Trade Name Operator**.

4.31 “**Supplier Event**” means either

- (a) an occurrence of or
- (b) **Public Announcement** of an actual, suspected or alleged:

**Food Borne Illness, Accidental Contamination, or Malicious Contamination** provided the **Food Borne Illness, Accidental Contamination, or Malicious Contamination** directly or indirectly was caused by, arose out of, was contributed to by, was in consequence of, or resulted from, in whole or in part, any act, error, or omission of any **Supplier**.

Any occurrence or **Public Announcement** of an actual, suspected, or alleged **Food Borne Illness, Accidental Contamination, or Malicious Contamination** is a **Supplier Event** if one of the following conditions is met:

- (a) any **Public Health Authority** determines the **Food Borne Illness, Accidental Contamination, or Malicious Contamination** was more likely than not caused by, contributed to by, in consequence of, resulting from, or arose out of, in whole or in part, any item or service of any **Supplier**; or
- (b) any **Public Announcement** references or suggests, directly or indirectly, that a suspected or alleged **Food Borne Illness, Accidental Contamination, or Malicious Contamination** was caused by, contributed to by, in consequence of, resulting from, or arose out of, in whole or in part, any item or service of a **Supplier** and there was no actual **Food Borne Illness, Accidental Contamination, or Malicious Contamination**.

4.32 “**Trade Name Location**” means any place of business, other than a **Covered Location**, of any establishment having the same trade name(s) as any trade name(s) set forth in Section A of the Declarations.

4.33 “**Trade Name Operator**” means any person or entity, other than an **Insured**, who operates a business establishment having the same trade name(s) as any trade name(s) set forth in Section A of the Declarations.

## 5. CONDITIONS PRECEDENT TO LIABILITY

It is a condition precedent to Underwriters’ liability under this Insurance that the **Insured** has:

- 5.1 truthfully declared all material facts likely to influence a reasonable Underwriter in determining (a) whether or not to accept the risk, (b) the premium, and (c) the conditions, exclusions and limitations of this insurance; and the **Insured** has diligently made all necessary inquiries to establish these facts;
- 5.2 no knowledge at inception of the **Period of Insurance** of any undisclosed matter, fact or circumstance, actual or threatened, that increases or could increase the possibility of a loss under this insurance;
- 5.3 paid the premium due in accordance with the conditions of the quotation included in the Application and/or in the ensuing quotation;
- 5.4 declared that all information contained in the written Application or in documents supplied in support of such Application in all respects is full, true and complete. Further, the **Insured** agrees that all such information is material and forms the basis of this insurance;
- 5.5 advised Underwriters of any changes in the information described in this Section 5, which took place prior to the inception of the **Period of Insurance**;
- 5.6 in the event of an **Incident**, sought the immediate assistance of and has cooperated with the appointed crisis management consultant as defined in Section E of the Declarations; and
- 5.7 in the event of an **Incident**, complied with all applicable conditions and obligations set forth in Sections 3 and 7 of this Policy.

## 6. EXCLUSIONS

This insurance does not cover any **Actual Net Loss**, **Incident Response Expenses**, or **Extortion Payments** directly or indirectly caused by, arising out of, contributed to by, in consequence of, or resulting from, any of the following:

- 6.1 any cause or reason other than as a direct and sole result of an **Incident**;
- 6.2 actual or threatened war, invasion, acts of foreign enemies, hostilities, insurrection, (whether war be declared or not), civil war, rebellion, revolution, military or usurped power, confiscation, nationalization, requisition or destruction of or damage to property by or under the order of any government or public or local authority;
- 6.3 civil commotion assuming the proportions of or amounting to a popular uprising or riot, martial law or the act of any lawfully constituted authority in the furtherance of maintaining public order;
- 6.4 seizure or destruction under quarantine or customs regulations, confiscation, nationalization or requisition or destruction of or damage to property, by or under the order of any government or public or local authority, or the handling of contraband or the engaging in illicit trade or transportation;
- 6.5 nuclear radiation or contamination, including but not limited to the following:
  - (a) ionizing radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel;
  - (b) the radioactive, toxic, explosive or other hazardous properties of any nuclear assembly or nuclear component thereof; unless caused directly and solely by an **Incident**;
- 6.6 seepage and/or pollution and/or contamination unless it is discovered during the **Period of Insurance** and is the direct and sole cause of an **Incident**;
- 6.7 any of the following:
  - (a) withdrawal, insufficiency or lack of financing, howsoever caused,

- (b) the financial failure or lack of adequate receipts, sales or profits of any venture, other than a **Covered Location** when caused directly and solely by an **Incident**,
  - (c) variations in the rate of exchange, rate of interest or stability of any currency, or
  - (d) financial default, insolvency or failure to pay of any person, firm or corporation, whether a party to this insurance or otherwise;
- 6.8 a delay in resuming business operations at an **Affected Covered Location** due to interference by strikers or other persons (other than media personnel covering an **Incident**);
- 6.9 a suspension, lapse or cancellation of any license, lease or contract unless caused directly and solely by an **Incident**;
- 6.10 any failure to discontinue operations at a **Covered Location** when a product, practice, circumstance, or event creates a situation that requires immediate correction or cessation of operation to prevent injury, as required by any federal, state, or local food code regulation or sanitation standard;
- 6.11 **Accidental Contamination** caused by violation of any federal, state, or local food code regulation or sanitation standard by any **Insured** or **Trade Name Operator**, if such **Accidental Contamination** was willfully committed with a reckless disregard for the health, safety, or welfare of the public;
- 6.12 any announcement, publication, or broadcast by the **Insured**, media, or **Public Health Authority** concerning any health department inspection results or failure to comply with any federal, state or local food code regulation or sanitation standards by a **Covered Location**, unless such announcement, publication, or broadcast occurs solely in direct connection to an **Incident**.
- 6.13 any of the following:
- (a) Bovine Spongiform Encephalopathy (also known as “BSE”) and/or Creutzfeldt-Jakob disease (CJD),
  - (b) Hoof and Mouth disease,
  - (c) Genetically Modified Organisms, or
  - (d) any Influenza, including but not limited to Influenza virus A, B, or C, Avian Flu, H1N1, or any mutant variations thereof;
- 6.14 any act, error, or omission of any person or entity, including but not limited to any **Supplier**, whom any **Insured** has released or agreed to release from liability or for whom any **Insured** has waived or limited or agreed to waive or limit the right of contribution, indemnity, subrogation or any other recovery rights or claims, unless Underwriters consent in writing to the waiver, release, or limitation. This exclusion applies regardless of whether such release, waiver, or limitation occurred before or after the **Incident**;
- 6.15 the delivery of; interruption of; actual, alleged or potential contamination of; or public health authority warning not to consume: water from public utilities, private water services, or wells that supply water to a **Covered Location**. This exclusion shall **not** apply to bottled water served by the **Insured** in the regular course of business;
- 6.16 any level of infestation, as described by any local, state, or federal health or sanitary regulation or code applicable to the infested premises, of rodent, varmint, vermin, or any other noxious or objectionable animals, including but not limited to ants, bees, bedbugs, beetles, cockroaches, fleas, flies, gnats, hornets, lice, mice, mosquitoes, moths, rats, spiders, or termites.

This insurance also does not cover any of the following:

- 6.17 any actual or alleged liability of the **Insured** to third parties arising from bodily injury, sickness, disease or death of any person or animal, or from damage to or destruction of any property, including loss of use thereof, or any other liability of the **Insured**, whether in tort or contract, to third parties, howsoever arising;
- 6.18 fines or penalties of any kind; and
- 6.19 any **Actual Net Loss**, **Incident Response Expenses**, or **Extortion Payment** which is insured by or would, but for the existence of this insurance, be insured by any other insurance(s) except for any excess beyond the amount which would have been payable under such other insurance(s) had this insurance not been effected.
- 6.20 any actual or alleged damages arising from the destruction or impairment of any real or tangible property, including loss of use thereof.

## 7. DUTIES IN THE EVENT OF AN INCIDENT

- 7.1 It is a condition precedent to the liability of Underwriters under this insurance that in the event of any **Incident** occurring during the **Period of Insurance**, **Insured**, or an individual authorized by the **Insured**, shall do all of the following:
- (a) provide Underwriters with immediate notice and a full description of the **Incident**, and diligently endeavor to seek the immediate assistance and cooperate with the appointed crisis management consultant in accordance with Section 5, Conditions 5.6;
  - (b) notify the police or other applicable law enforcement agency if a law may have been broken;
  - (c) resume the **Insured's** normal and customary business operations at the **Affected Covered Locations** as soon as reasonably practicable at the same level of service that existed prior to the **Incident**;
  - (d) take all reasonable steps to reduce the impact of the **Incident** by, without limitation, using the appointed crisis management consultant, and their recommended public relations specialists, advertising and the media to access the public to reestablish the reputation, trade name, and market share of the **Insured's** business operations at each **Affected Covered Location**, cooperating in every reasonable respect with Underwriters and permitting Underwriters or their authorized representatives to, at Underwriters' expense, take whatever actions Underwriters consider necessary to:
    - (i) assess, prevent, mitigate or minimize a loss, and
    - (ii) pursue all rights or remedies available to the **Insured** whether or not payment has been made hereunder;
  - (e) cooperate fully with Underwriters in the investigation of the claim, including but not limited to:
    - (i) maintaining a comprehensive record of the expenses incurred and actions taken to prevent, mitigate or minimize the amount of loss covered under this insurance and furnishing them to Underwriters upon request;
    - (ii) producing any documentary evidence, books of account, bills, invoices and other vouchers and copies of same that Underwriters or their authorized representatives may require; and
    - (iii) affording Underwriters reasonable access to the **Insured's** premises at all **Affected Covered Locations**.
- 7.2 The **Insured** shall make no **Extortion Payment** without the prior consent of Underwriters and in connection therewith shall at all times act in accordance with all applicable laws, regulations and law enforcement instructions.
- 7.3 In the event of any **Actual Net Loss** under Section 1.1, any **Incident Response Expenses** under Section 1.2, or **Extortion Payments** under Section 1.3, the **Insured** shall, as soon as practicable, but in no event later than six months after the maximum time allotted for the **Period of Restoration**, provide Underwriters with a **Loss Submission**, which sets out for each **Affected Covered Location**:
- (a) historical and actual gross sales, in a format and covering a time period that is requested by Underwriters;
  - (b) historical, detailed profit and loss statements, covering a period of up to three (3) years prior to the **Incident**;
  - (c) a list of **Incident Response Expenses** with full supporting documentation.

The **Insured** shall maintain and produce any documentary evidence, books of account, bills, invoices and other vouchers and copies of the same related to the **Incident** which Underwriters may require, and the **Insured** shall afford Underwriters and their Appointed Representative every assistance in their investigations including reasonable access to the **Insured's** premises, personnel and necessary documents for the purpose of the computation of any **Actual Net Loss**, **Incident Response Expenses**, or **Extortion Payments**.

## 8. CONDITIONS

- 8.1 Any fraud, misstatement or concealment in the information required of the **Insured** pursuant to Section 5 or in the making of a claim under this insurance or otherwise howsoever shall render all claims hereunder forfeit.
- 8.2 If the **Insured** shall become aware during the **Period of Insurance** of any specific fact or circumstance which may reasonably be expected to result in an **Incident**, the **Insured** shall give immediate written notice to the Underwriters' representative identified in Section E of the Declarations for Claims Notification of : (i) the specific fact or circumstance, (ii) the loss or damage which has or may result from such fact or circumstance, and (iii) the means by which the **Insured** first became aware of such fact or circumstance.
- If the **Insured** immediately provides the written notice required by this Section 8.2, any **Incident** that may subsequently arise from such fact or circumstance shall be deemed to have occurred on the date when such written notice was received by Underwriters' representative as provided herein.
- 8.3 The **Insured** shall at all times do and concur in doing all things necessary to prevent, mitigate or minimize an **Actual Net Loss** under this insurance.

- 8.4 This insurance, the Declarations and the Application, and all Endorsements thereto, shall be read together as one contract, and any word or expression to which a specific meaning has been attached in any part of these documents shall bear such meaning wherever it may appear.
- 8.5 No other insurance shall be effected by the **Insured** to protect the interests insured hereunder without the prior written approval of the Underwriters hereon. In the event that such other insurance is effected, Underwriters reserve the right to amend the terms and conditions of this insurance.
- 8.6 This insurance may be canceled by the **Insured** at any time by written notice or by surrendering this Policy. This insurance may also be canceled by or on behalf of the Underwriters by delivering to the **Insured**, by registered, certified or other first class mail, at the **Insured's** address as shown in Section A of the Declarations, written notice stating when, not less than ninety (90) days thereafter (ten (10) days for nonpayment of premium), the cancellation shall be effective. The mailing of notice as aforesaid shall be sufficient proof of notice and this insurance shall terminate at the time specified in such notice.

If this insurance shall be canceled by the **Insured**, Underwriters shall retain the customary short rate proportion of the premium hereon, except that if this insurance is on an adjustable basis, the Underwriters shall receive the customary short rate proportion of earned premium.

If this insurance shall be canceled by or on behalf of Underwriters, Underwriters shall retain a pro rata proportion of the premium hereon.

Payment or tender of any unearned premium by the Underwriters shall not be a condition precedent to the effectiveness of cancellation, but such payment shall be made as soon as practicable.

In the event that a claim is made hereunder, then, if the **Insured** or Underwriters shall at any time afterwards cancel this insurance, premium shall be considered as having been earned in the same ratio as the claim made bears to the "Total Policy Aggregate Limit of Indemnity" set forth in Section B of the Declarations, provided that this does not result in a larger return premium than would otherwise have been developed.

If the period set forth above relating to the giving of notice of cancellation by Underwriters is prohibited or made void by any law controlling the construction thereof, such period shall be deemed to be amended so as to be equal to the minimum period of notice permitted by such law.

- 8.7 Underwriters shall be subrogated to the full extent of any actual or claimed payment under this insurance to all of the **Insured's** rights of recovery against any person or entity, and those rights shall be transferred to Underwriters immediately upon presentment of a claim for payment by the **Insured** to Underwriters. The **Insured** shall execute all papers required, shall do everything that may be necessary to secure such rights, and shall do nothing, before or after the loss, to impair such rights. Underwriters reserve the right to pursue an action for recovery from any person or entity, whether before or after payment of a loss, at their sole discretion and in the name of the **Insured** or otherwise. The **Insured** shall fully cooperate with Underwriters in prosecuting such an action, including without limitation, providing relevant documents, information, and testimony.
- 8.8 This insurance may not be assigned in whole or in part without the prior written consent of Underwriters.
- 8.9 If under this insurance the loss payee is other than the **Insured**, all claim payments due under the terms and conditions of this insurance shall be made payable to the party(ies) listed in the Schedule of Loss Payee(s) attached hereto. Payment of such losses by Underwriters to such loss payee(s) shall be a sufficient and complete discharge of all of Underwriters' obligations to the **Insured** and loss payee(s) in connection with said **Incident**.
- 8.10 Underwriters or their appointed representatives have the right, but are not obligated, to:
- (a) Make crisis management inspections, surveys, and plans at any time in connection with this insurance;
  - (b) Provide reports to the **Insured** on the conditions found; and
  - (c) Recommend changes to the **Insured's** operations.

Although crisis management inspections, surveys, plans, or recommendations made by Underwriters or their appointed representatives may serve to reduce a potential loss hereunder, such inspections, surveys, plans and recommendations relate only to insurability and the premiums to be charged. No safety or liability surveys or plans will be made, and there is no undertaking by Underwriters or their appointed representatives to ensure the health or safety of workers or the public, and there is no warranty that any of the **Insured's** premises or operations:

- (i.) Are safe or free from harmful conditions, or

- (ii.) Comply with any laws, regulations, codes, or standards.

This condition applies not only to Underwriters, but also to any other person or entity that makes crisis management inspections, surveys, plans, or recommendations for or on behalf of Underwriters.

- 8.11 Underwriters agree to pay the reasonable costs of **Crisis Management Expenses** during the coverage investigation of an **Incident**. In the event that coverage for the **Incident** is denied by Underwriters, Underwriters may elect to pay reasonable cost of **Crisis Management Expenses** incurred after the denial but such expenses shall not exceed \$300,000 USD or the applicable **Incident Response Expenses** limit outlined in Section B of the Declarations, whichever is less, and shall include the **Crisis Management Expenses** already incurred as of the date of the denial of coverage.

## 9. CHOICE OF LAW, PRECEDENTS TO BRINGING SUIT, JURISDICTION AND APPRAISAL:

- 9.1 The rights and obligations of the **Insured** and Underwriters, under the Policy, including, but not limited to, the validity of this Policy, interpretation of its terms and conditions and disputes in any way arising under or relating to the Policy shall be construed and interpreted in accordance with the laws of the state of Texas without regard to any choice of law statutes or common law of the State of Texas, any other state, or the United States and without regard to the place of residence or business of the **Insured** or Underwriters or of the place where the loss arose.
- 9.2 No **Insured** shall take any action, including the filing of a lawsuit against Underwriters or Underwriters' Appointed Representative, until the **Insured** is in full compliance with all of the terms and conditions contained in this policy.
- 9.3 Any suit by any **Insured** brought under this insurance must be commenced within twenty-four (24) months after a claim or cause of action under this Policy has accrued.
- 9.4 If Underwriters and the **Insured** fail to agree on the amount of **Actual Net Loss, Incident Response Expenses, or Extortion Payments** payable under this insurance, either party may make a written demand to the other for an independent appraisal of the **Actual Net Loss, Incident Response Expenses, or Extortion Payments**. If such a written demand is made, Underwriters and the **Insured** will each select a competent and impartial appraiser who shall be a Certified Public Accountant with a professional background in the food and restaurant business.

The two appraisers will then select an umpire. In the event the two appraisers are unable to agree on an umpire, either may request that the selection of the umpire be made by a judge of a court of competent jurisdiction.

The appraisers will each make an independent determination of the **Actual Net Loss, Incident Response Expenses, or Extortion Payments**. If they fail to agree on the **Actual Net Loss, Incident Response Expenses, or Extortion Payments**, the umpire will decide the **Actual Net Loss, Incident Response Expenses, or Extortion Payments**, which decision will be binding upon the **Insured** and Underwriters. Each party will bear the expenses of its own appraiser and shall share equally in the expenses of the appraisal and for the umpire.

This Section 9.4 applies solely to the determination of the amount of **Actual Net Loss, Incident Response Expenses, or Extortion Payments** payable under this insurance and does not constitute a waiver of Underwriters' right to deny coverage under this insurance. Any decision by Underwriters to deny a claim hereunder may not be challenged by the **Insured** under the procedures set forth in this Section 9.4.

# **EXHIBIT B**



PROFESSIONAL LIABILITY INSURANCE SERVICES, INC.,  
CORPORATE HEADQUARTERS  
AUSTIN, TEXAS

512/328-0677 Fax 512/327-5834  
http://www.plisinc.com E-Mail info@plisinc.com

Professional Liability Insurance Services, Inc. (PLIS, Inc.) disclaims and undertakes no responsibility for quote letters that are altered or issued with errors by any party other than PLIS, Inc. It is understood PLIS, Inc. is a Coverholder on behalf of Certain Underwriters at Lloyd's and PLIS, Inc. is not a risk bearer on any issued policy. Any changes to this letter become the responsibility of the Agent and will not be honored by PLIS, Inc. or Underwriters except by prior written approval.

**Insuring International and Domestic Locations since 1998**

Date: June 7, 2019  
To: Higginbotham & Associates - Houston, TX  
Attn: Nicole Paul  
From: PLIS Product Team (underwriting@plisinc.com)

Commission: 17.5%  
Re: Pappas Restaurants, Inc.  
Trade Name(s): Pappadeaux Seafood Kitchen; Pappas Bar-B-Q; Pappas Bros. Steakhouse; Pappas Burger; Pappasito's Cantina/Little Sito's; Dot Coffee Shop; Yia Yia Mary's Greek Kitchen; Pappas Seafood Kitchen; Little Pappas; Pappas Delta Blues Smokehouse; Pappas Catering

I am pleased to present the following indication for Trade Name Restoration® Loss of Business Interruption Insurance with Certain Underwriters at Lloyd's (A.M. Best Rating "A") (Surplus Lines Insurance Policy):

**Limit of Indemnity for:**

	Restaurant Events Per Period of Insurance:	Supplier Events Per Period of Insurance:	Extortion Payments:	Total Policy Aggregate Limit of Indemnity:	Shared Agg Limit of Indemnity:	Ded. e/e Incident	Pd. of Restoration (Months):	Base Premium Per Loc.:	Total Premium based on 104 loc.:
1.	50M	15M	1M	50M	N/A		18		
2.	50M	15M	1M	50M	N/A	50K	18		
3.	55M	15M	1M	55M	N/A		18		
4.	55M	15M	1M	55M	N/A	50K	18		

Limit of Indemnity for Incident Response expenses as respects:  
Restaurant Events: 50% of the Limit of Indemnity for Restaurant Events  
Supplier Events: 50% of the Limit of Indemnity for Supplier Events

- With Terrorism Coverage (No Punitive & Exemplary Damages) -- Additional Premium of [REDACTED] or 5% (whichever is greater) applies

**Policy Fee & State Surplus Lines Taxes**

- A. Add [REDACTED] policy fee and (5%) applicable State Surplus Lines Taxes for Total Premium
- B. PLIS, Inc. is responsible for filing Surplus Lines Taxes.
- C. When PLIS is responsible for filing taxes, agent is responsible for advising our office of any and all fees charged at time of binding which may affect the Surplus Lines Taxes for Total Premium.

### **Optional Coverage (Included in Premium)**

- Workplace Violence Coverage
  - Sublimited to 2M/2M with a 5K Deductible per Covered Location
  - Period of Restoration for Workplace Violence: 3 Months
- Inoculation Vaccination and Current Infection Testing Expense Coverage
  - Sublimited to 250K Outside the Limits of Indemnity
- (Data Breach Coverage) Loss of Business Income and Incident Response Endorsement for Theft of Private Customer and Employee Data
  - Sublimited to 250K/250K with a 0K Deductible e/e Incident

### **Optional Coverage (Available for Additional Premium)**

- Pandemic Event Coverage, Additional Premium of [REDACTED]
  - Sublimited to 250K per Location, 1M Aggregate with a 10K Deductible e/e Incident

### **Terms & Conditions:**

- TNR Policy Form 02/17
- Policy Term: 12 months
- LSW 1001 Several Liability Notice
- LMA 5020 Service of Suit Clause (USA)
- LMA 5021 Applicable Law (USA)
- CL380 Institute Cyber Attack Exclusion Clause
- NMA 1256 Nuclear Incident Exclusion Clause Liability Direct (Broad)
- NMA 45 Short Rate Cancellation Table Endorsement (USA)
- LMA 3100 Sanction Limitation and Exclusion Clause
- LMA 5219 as amended U.S. Terrorism Risk Insurance Act of 2002 As Amended Not Purchased Clause
- LMA 5218 U.S. Terrorism Risk Insurance Act of 2002 As Amended New & Renewal Business Endorsement
- Covered Locations Endorsement
- Workplace Violence Endorsement
- Inoculations, Vaccinations and Current Infection Testing Expense Endorsement
- Loss of Business Income and Incident Response Endorsement for Theft of Private Customer and Employee Data
- Pandemic Event Endorsement, if purchased
- Claims Notification Clause in Declaration Naming Appointed Representative: Professional Liability Insurance Services, Inc.
- Crisis Management Clause in Declaration Naming Appointed Representative: If you believe that an Incident or Covered Event has occurred, please contact the 24-hour crisis hotline Specialty Risk Management, Inc.
- Modification of Loss Calculation Endorsement

### **Subject To (due within 30 days of effective date unless otherwise noted):**

- Further Claim Details, if any
- Terrorism Coverage Election Form -- Under Federal Law, agents must inform potential insureds of the option to purchase Terrorism Coverage and its price, prior to binding. An election form must be provided regardless of whether the Applicant is declining or electing coverage.

There may be more subjectivities once the above information has been received and reviewed by underwriters. This indication is not intended to be representative of, or a guarantee of coverage. Underwriters reserve the right to review applications, attachments and any subjectivity materials upon receipt. Underwriters also reserve the right to modify or withdraw the terms indicated after such review.

**Note: Quotes may be generated off short form work sheets or competitive applications and some of the above requirements, or new additional information requirements, may or may not be applicable once full applications and information are received. The fulfillment of subjectivities and any other compliance issues will be a requirement for the coverage to remain in force. Failure to complete these items within 30 days from the effective date may subject the policy and its coverage terms to flat cancellation (voidance).**

These terms shall in no event be valid beyond **06/21/2019**.

### **Payment Terms:**

- Premium is due in full **within 30 days** of effective date. Policy cannot be released until payment is received.
- Premium financing does not alter our payment terms.

Timely submittance of all materials is to the advantage of the applicant. If coverage is bound, it would be subject to all terms and conditions of the policy issued. These terms are subject to receipt and acceptability of the above required "Subject To" items within thirty (30) days of the effective date. The Applicant confirms that they have been provided with and inspected a specimen of the applicable policy wording. It is recommended that the Applicant take time to review the Policy to ensure that they fully understand the coverages provided. The Applicant should feel free to consult with any source, including legal advisors, regarding coverage. Please feel free to call, should there be any further questions.

Note: This insurance contract is with an insurer not licensed to transact insurance in this state and is issued and delivered as surplus line coverage under the Texas insurance statutes. The Texas Department of Insurance does not audit the finances or review the solvency of the surplus lines insurer providing this coverage, and the insurer is not a member of the property and casualty insurance guaranty association created under Chapter 462, Insurance Code. Chapter 225, Insurance Code, requires payment of a 4.85 percent tax on gross premium.

**Professional Liability Insurance Services, Inc. (PLIS, Inc.) is a Coverholder on behalf of Certain Underwriters at Lloyd's. Any requests for alternate or additional coverage will need to be requested through your agent.**

**Professional Liability Insurance Services, Inc. dba Professional Liability Insurance Services, Inc. - Underwriting Facilities; Professional Liability Insurance Services - Underwriting Facilities; Texas Professional Liability Insurance Services, Inc. - Underwriting Facilities; Professional Liability Insurance Services, Incorporated - Underwriting Facilities; in the state of New York and California, CA License #0G17062 as Texas Professional Liability Insurance Services**

# **EXHIBIT C**

This binder is a temporary insurance contract, subject to conditions shown on the face of this form.

Please check your records and advise PLIS<sup>®</sup> of any corrections which may need to be made prior to issuance of the policy.

**Binder Number:** TNR 18 8281  
**UMR #:** B113518B01324

**Issue Date:** 06/21/2019

<b>Producer:</b> Nicole Paul, Higginbotham & Associates - Houston, TX 11700 Katy Freeway Ste 1100 Houston, TX 77079 Ph: 713-693-1690	<b>Insured Name and Address:</b> Pappas Restaurants, Inc. P.O. Box 41567 Houston, Texas 77241
<b>Company:</b> Certain Underwriters at Lloyd's - Surplus Lines Insurance Policy	<b>Type of Insurance:</b> Trade Name Restoration Loss of Business Income and Incident Response Insurance for Food Borne Illness
<b>Effective Date:</b> 06/21/2019 <b>Effective Time:</b> 12:01 AM	<b>Expiration Date:</b> 07/21/2019 <b>Expiration Time:</b> 12:01 AM
<b>Premium:</b> ██████████ <b>Surplus Lines Taxes &amp; Fees:</b> ██████████	<b>Policy Fee:</b> ██████████

This binder provides coverage for the following trade names only :

- Pappadeaux Seafood Kitchen
- Pappas Bar-B-Q
- Pappas Bros. Steakhouse
- Pappas Burger
- Pappasito's Cantina/Little Sito's
- Dot Coffee Shop
- Yia Yia Mary's Greek Kitchen
- Pappas Seafood Kitchen; Little Pappas
- Pappas Delta Blues Smokehouse; Pappas Catering; Pappas Shrimp Shack

**Limits of Indemnity and Deductible :**

1. Limit of Indemnity for <b>Restaurant Events (Section 3.1):</b>	1. \$50,000,000 Per <b>Period of Insurance</b>
2. Limit of Indemnity for <b>Supplier Events (Section 3.2):</b>	2. \$15,000,000 Per <b>Period of Insurance</b>
3. <b>Limit of Indemnity for Incident Response Expenses (Section 3.3):</b>	
3a. as respects <b>Restaurant Events</b>	3a. 50% of the Limit of Indemnity for <b>Restaurant Events</b>
3b. as respects <b>Supplier Events</b>	3b. 50% of the Limit of Indemnity for <b>Supplier Events</b>
4. Limit of Indemnity for <b>Extortion Payments (Section 3.4):</b>	4. \$1,000,000 Per <b>Period of Insurance</b>
5. Total Policy Aggregate Limit of Indemnity <b>(Section 3.5)</b>	5. \$50,000,000 Per <b>Period of Insurance</b>
6. Shared Aggregate Limit of Indemnity <b>(Section 3.6)</b>	6. N/A Per <b>Period of Insurance</b>
7. Deductible <b>(Section 5.7)</b>	7. \$50,000 Each and Every per Incident

**Period of Restoration :**

**Period of Restoration (Section 5.21)** The longest **Period of Restoration** that may be afforded by this Policy is 18 months.

**Inoculations, Vaccinations & Testing**

**Endorsement** 250K  
**Coverage Limits:**

**Data Breach Endorsement** 250K/250K  
**Coverage Limits:** \$0  
**Deductible:**

<b>Pandemic Event Endorsement</b>	250K
<b>Per Location Limit:</b>	1M
<b>Aggregate Limit:</b>	\$10,000
<b>Deductible:</b>	

**Special Terms and Conditions :**

TNR Policy Form 02/17  
LSW 1001 Several Liability Notice  
LMA 3100 Sanction Limitation and Exclusion Clause  
LMA 5020 Service of Suit Clause (USA)  
LMA 5021 Applicable Law (USA)  
CL380 Institute Cyber Attack Exclusion Clause  
NMA 1256 Nuclear Incident Exclusion Clause Liability Direct (Broad)  
NMA 45 Short Rate Cancellation Table Endorsement (USA)  
Covered Locations Endorsement  
LMA 5218 U.S. Terrorism Risk Insurance Act of 2002 As Amended New & Renewal Business Endorsement  
Inoculations, Vaccinations & Testing Endorsement  
Loss of Business Income and Incident Response Endorsement for Theft of Private Customer and Employee Data  
Pandemic Event Endorsement  
Modification of Loss Calculation Endorsement

**Claims Notification and Crisis Management :**

**CLAIMS NOTIFICATION:** Professional Liability Insurance Services, Inc.®  
5802 Thunderbird, Building 10, Suite 100, Lago Vista, TX 78645  
PHONE: 512-328-0677 or 1-800-761-7547; FAX: 512-327-5834; Email: [claims@plisinc.com](mailto:claims@plisinc.com)

**CRISIS MANAGEMENT:**  
Specialty Risk Management, Inc.®; PHONE: 800-328-7761; FAX: 512-328-2486  
**IF YOU BELIEVE THAT AN INCIDENT HAS OCCURRED , PLEASE CONTACT THE 24-HOUR CRISIS HOTLINE**

**Subject To:**

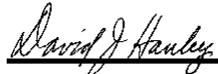
The Following Items are due within 30 days of the effective date of coverage unless otherwise noted:  
- Premium Payment

Professional Liability Insurance Services, Inc. (PLIS, Inc.) disclaims and undertakes no responsibility for binders that are altered or issued with errors by any party other than PLIS, Inc. Any changes to the binder shall be the responsibility of the Agent and will not be honored by PLIS, Inc. or the carrier except by prior written approval.

This binder does not affirmatively or negatively amend, extend, or alter the coverage afforded by the insurance policy. **Any request to change, endorse or modify the terms of this binder or the insurance policy must be submitted in writing to Underwriters for advanced approval and shall not be effective without written consent from Underwriters .**

Coverage is bound subject to all terms and conditions of the policy and replaces this binder when issued. Premium is due in full immediately upon binding. Coverage is subject to voidance if premium is not received by PLIS, Inc.'s office within 30 days from the effective date except where noted. The agent should work with the insured to complete the subjectivity and compliance issues as defined. Failure to comply with the above subjectivity items and any other compliance issues within 30 days from the effective date of this account may subject the policy and its coverage terms to flat (retroactive) voidance of coverage. The agent is required to collect the Surplus Lines Taxes. Thank you for binding with Professional Liability Insurance Services®, Inc.

**Authorized Representative :**



**Note:** *This insurance contract is with an insurer not licensed to transact insurance in this state and is issued and delivered as a Surplus Lines Coverage.*

*This insurance contract is with an insurer not licensed to transact insurance in this state and is issued and delivered as surplus line coverage under the Texas insurance statutes. The Texas Department of Insurance does not audit the finances or review the solvency of the surplus lines insurer providing this coverage, and the insurer is not a member of the property and casualty insurance guaranty association created under Chapter 462, Insurance Code. Chapter 225, Insurance Code, requires payment of a*

*4.85 percent tax on gross premium.*

**Professional Liability Insurance Services , Inc. dba Professional Liability Insurance Services , Inc. - Underwriting Facilities; Professional Liability Insurance Services - Underwriting Facilities; Texas Professional Liability Insurance Services, Inc. - Underwriting Facilities; Professional Liability Insurance Services , Incorporated - Underwriting Facilities; in the state of New York and California , CA License #0G17062 as Texas Professional Liability Insurance Services**