

# Profits Insurance Policy

## AGREEMENT

**We** will provide the insurance described in this policy in return for the premium and **your**

compliance with all provisions of this policy including endorsements.

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## REPRESENTATIONS

By accepting this policy **you** agree that:

1. the statements on the Declarations Page are accurate and complete;

2. those statements are based upon representations **you** made to **us**;

3. **we** have issued this policy in reliance upon **your** representations.

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## CONCEALMENT, MISREPRESENTATION OR FRAUD

This policy shall be void if any insured, whether before or after a loss, has intentionally concealed or misrepresented any material fact or

circumstance or made false statements or engaged in fraudulent conduct relating to this insurance.

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## DEFINITIONS

Words in bold print are defined herein.

1. In this policy **you** and **your** refer to the named insured shown on the Declarations Page. **We**, **us** and **our** refer to the Company providing this insurance.

2. **Accident** means an undesigned, unexpected and rapidly occurring event.

3. **Business income** means net profit or loss plus normal operating expenses that necessarily continue during the **period of restoration** including payroll.

4. **Organic pathogens** means any bacteria, virus, fungus, mold, mushroom, yeast, mildew, mycotoxin, or other metabolic products or their spores, scent, vapor or gas or byproducts, or any reproductive body they produce.

5. **Period of restoration** means the period of time that begins seventy two (72) hours after the date of the **accident** and ends on the earlier of:

a. the date when the property at the location shown on the Declarations Page could be

repaired or replaced with the exercise of due diligence; or

b. the date when **your** business operations are resumed at a new, permanent location.

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

7. **Sinkhole collapse** means the sudden sinking or collapse of land into underground empty spaces created by the action of water on limestone or similar rock formations. It does not include sinking or collapse of land into manmade underground cavities or the cost of filling sinkholes.

8. **Volcanic action** means lava flow, airborne shock waves, ash, dust or other particulate matter caused by or resulting from volcanic eruption.

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## LIMIT OF INSURANCE

Regardless of the number of persons insured under this policy, the most **we** will pay for any one

loss is the applicable limit of insurance shown on the Declarations Page.

## LOSSES COVERED

Subject to the terms, conditions and limitations of this policy, **we** insure **you** against:

1. **your** net loss of **business income** incurred during the **period of restoration** which results from an interruption or cessation of **your** business operations; and
2. incurring expenses which exceed normal operating expenses actually and necessarily

incurred during the **period of restoration** to prevent or minimize such loss of **business income**;

all resulting from an **accident** that causes direct physical loss of or damage to property at a location shown on the Declarations Page or within five hundred (500) yards thereof.

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## BASIS OF LOSS PAYMENT

Subject to the LIMIT OF INSURANCE section and subject to all other terms and conditions of this policy the amount **we** will pay is calculated as follows:

1. **We** will pay **your** net loss of **business income** actually and necessarily incurred during the **period of restoration** because of the interruption or cessation of **your** business operations including expenses which exceed pre-loss expenses actually and necessarily incurred during the **period of restoration** to prevent or minimize **your** loss of **business income**.
2. **We** will also pay **your** net loss of **business income** actually and necessarily incurred including expenses which exceed pre-loss expenses actually and necessarily incurred to prevent or minimize **your** loss of **business income** which continue beyond the **period of restoration**, for a period of no greater than one hundred eighty (180) days, if:
  - a. the damaged or totally destroyed property is actually repaired or replaced at the

same location with property of like kind, quality and use; and

- b. repair or replacement is accomplished with the exercise of due diligence and dispatch; and
- c. **you** have resumed **your** business operations at the location of the **accident**.

**We** will not pay for any loss or increase of loss resulting from **your** failure to exercise due diligence to minimize the loss of **business income**.

In no event will **we** pay for more than twenty four (24) months of incurred net loss of **business income** or the incurring of expenses.

Coverage for an **accident** which occurs during the policy term is not limited by the expiration date of the policy.

In no event will coverage provided by this policy include costs of repairing or replacing property of any kind including costs for research.

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## LOSSES NOT COVERED

1. **We** do not insure **you** against loss of **business income** or the incurring of expenses resulting from or caused by:
  - a. loss of or damage to land or land values;
  - b. loss of or damage to or the reproduction of stock that **you** have manufactured.

This exclusion does not apply to stock that **you** have manufactured that is held for sale at a retail outlet at a location for which coverage is provided under this policy.
2. **We** do not insure **you** against loss of **business income** or the incurring of expenses resulting from loss of or damage to property that is caused, directly or indirectly,

proximately or remotely, by any of the following. Such loss is not covered regardless of any **accident** that contributes concurrently or in any sequence to such loss of or damage to property:

- a. earth movement other than **sinkhole collapse**. Earth movement includes earthquake, volcanic eruption, landslide, mudflow, subsidence and earth sinking, rising or shifting.

If fire, explosion or **volcanic action** ensues, **we** will be liable only for the loss of **business income** resulting from direct physical damage from the ensuing fire, explosion or **volcanic action**;

## LOSSES NOT COVERED (CONTINUED)

- b. (1) flood, overflow of any body of water, surface water, waves, tides, tidal waves or spray from any of them even if driven by wind; or
- (2) water that backs up through or overflows from a sewer, drain or sump if such backup or overflow is caused by any of the causes of loss stated in (1) above; or
- (3) underground water including water which presses on or flows or seeps through foundations, walls, floors or paved surfaces, or into basements.

If fire or explosion ensues, **we** will be liable only for the loss of **business income** resulting from direct physical damage from the ensuing fire or explosion;

- c. insects, rodents or other vermin.

If fire or explosion ensues, **we** will be liable only for the loss of **business income** resulting from direct physical damage from the ensuing fire or explosion;

- d. pollution caused by or resulting from the presence of or the release, discharge, escape, dispersal, seepage or migration of **pollutants**.

If the presence, release, discharge, escape, dispersal, seepage or migration is caused by or results from fire, lightning, explosion, windstorm, hail, aircraft, riot or civil commotion, vandalism or malicious mischief, sprinkler leakage, falling objects, **volcanic action** or weight of snow, sleet or ice, **we** will be liable only for the loss of **business income** resulting from direct physical damage caused by any of these;

- e. error in design, plans or specifications; faulty or defective workmanship or materials; latent or patent defect; or mechanical breakdown.

If fire, explosion, sprinkler leakage, falling objects, weight of snow, sleet or ice ensues, **we** will be liable only for the loss

of **business income** resulting from direct physical damage ensuing from any of these;

- f. war, including undeclared or civil war; warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these;
- g. nuclear reaction or radiation, or radioactive contamination, however caused.

But if nuclear reaction or radiation, or radioactive contamination results in fire, **we** will be liable only for the loss of **business income** resulting from direct physical damage from the ensuing fire.

- 3. In addition, **we** do not insure **you** against loss of **business income** or the incurring of expenses resulting from or caused by any of the following, however caused:

- a. wear and tear, deterioration, rust, **organic pathogens**, mold, wet or dry rot.

If fire, explosion or damage from water not otherwise excluded ensues, **we** will be liable only for the loss of **business income** resulting from direct physical damage from the ensuing fire, explosion or water not otherwise excluded;

- b. settling, cracking, shrinking, bulging or expanding of structures.

If fire, explosion or damage from water not otherwise excluded ensues, **we** will be liable only for the loss of **business income** resulting from direct physical damage from the ensuing fire, explosion or water not otherwise excluded;

- c. the enforcement of any ordinance, law or code in effect at the time of an **accident** which requires **your** compliance even in the absence of damage to the property.

## YOUR DUTIES FOLLOWING A LOSS

1. **You** shall at **your** expense:
    - a. give **us** written notice of any loss as soon as practicable;
    - b. file with **us** a detailed sworn statement of loss within ninety (90) days after the loss, unless this time is extended by **us** in writing, setting forth to the best of **your** knowledge and belief:
      - (1) the time and cause of loss;
      - (2) **your** interest and that of all others in the property involved and in the loss of **business income** incurred;
      - (3) other policies of insurance that may cover the loss;
    - (4) changes in title of the property and of interest in the **business income** during the term of this policy;
    - (5) the amount claimed for loss of **business income** and expenses accompanied by all exhibits necessary to support that amount;
  - c. do all things and produce all documents reasonably required to establish values, loss and damage and coverage for the loss.
2. **You** shall at **our** expense submit to examinations under oath by any person named by **us** and sign transcripts thereof.

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## WAIVER OR CHANGE OF POLICY CONDITIONS

This policy contains all the agreements between **you** and **us** concerning this insurance. A waiver

or change of any provision of this policy must be in writing by **us** to be valid.

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## TIME OF LOSS

This policy applies only to losses which occur during the policy period shown on the

Declarations Page.

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## MANDATORY ARBITRATION

In case **we** fail to agree with **you** as to the meaning of any provision of this policy, or as to the amount payable in accordance with the express terms of this policy for any covered loss, the disagreement shall be resolved by binding arbitration in accordance with the statutory rules and procedures of the state in which the property is located. Should an arbitration under the terms of this clause result in any of the following, **we** shall reimburse **you** for expenses actually incurred by **you** with respect to the arbitration, including reasonable attorney's fees, in a sum to be determined by the arbitrator(s):

1. a finding of coverage for claimed loss or damage for which coverage is denied by **us**;
2. a finding that **you** are entitled to a loss payment in accordance with the express terms of this policy and exclusive of costs or attorney's fees in an amount that exceeds the amount of any offer made by **us** in writing to settle **your** claim at any time up to thirty (30) days prior to the commencement of the arbitration hearing.

The provisions of this clause are mandatory and may be enforced either by **you** or by **us**.

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## TIME LIMITATION FOR ACTION

No suit, demand for arbitration or other action on this policy for the recovery of any claim shall be sustainable in any court or other forum unless all

the requirements of this policy shall have been complied with and unless commenced within twelve (12) months after the inception of the loss.

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## INSPECTION OF PROPERTY AND AUDIT

**We** may inspect property and examine books and records at any reasonable time. Inspections are

for **our** benefit only.

## OTHER INSURANCE

**We** will not pay a greater portion of any loss than the limit of insurance for the loss under this policy bears to the total of the limits of insurance for the loss under all policies which cover the loss or

which would cover the loss but for the existence of this policy, except insurance written specifically to cover as excess over the limits of insurance that apply in this policy.

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## RECOVERY FROM THIRD PARTIES

1. **You** may waive **your** rights of recovery against any party in writing before an **accident**.
2. Within ninety (90) days after an **accident**, **you** may waive **your** rights of recovery against any party who at the time of the **accident**:
  - a. is shown on the Declarations Page;

- b. is **your** tenant;
- c. owns a controlling financial interest in **your** business or in whose business **you** own a controlling financial interest.

Subject to the above **we** may require an assignment of **your** rights of recovery against any party for loss to the extent that payment for that loss is made by **us**.

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## WHEN LOSS IS PAYABLE

The amount for which **we** are liable will be payable within thirty (30) days after the required statement of loss is received and agreed to in

writing by **us** or an arbitration award is received by **us**.

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## CANCELLATION AND NON-RENEWAL

1. **You** may cancel this policy at any time by returning it to **us** or by notifying **us** in writing of the date cancellation is to take effect.
2. **We** may:
  - a. cancel this policy for non-payment of premium by giving **you** fifteen (15) days of written notice; or
  - b. non-renew this policy for any reason by giving **you** at least sixty (60) days, but not more than one hundred twenty (120) days, written notice to be effective at the next anniversary or the expiration date of the policy whichever is first.

**We** will also mail such notice of cancellation or non-renewal to each mortgagee or other person or entity shown on this policy to have an insurable interest.

**We** will state the reason for cancellation or non-renewal on the written notice.
3. **We** are not required to send notice of non-renewal if:
  - a. the policy has been extended for ninety (90) days or less provided that written notice of non-renewal has been given at least sixty (60) days, but not more than one hundred twenty (120) days, before the expiration date of the policy after it was extended;

- b. **you** have obtained replacement coverage or if **you** have agreed in writing within sixty (60) days of the expiration date of this policy to obtain replacement coverage;
- c. the policy is for a period of sixty (60) days or less and **you** are notified at the time of issuance of the policy that it will not be renewed;
- d. **you** request a change in terms, conditions or coverage within sixty (60) days of the expiration date of the policy;
- e. **we** have made **you** a written offer to renew the policy under changed terms or conditions or at an increase in premium in excess of twenty five (25) per cent. Such offer must be made at least sixty (60) days, but not more than one hundred twenty (120) days, before the expiration date of the policy.

Any premium due **you** will be refunded within a reasonable time after the cancellation takes effect.