

**Endorsement**

**This endorsement effective 12:01 a.m. forms a part of**

**Policy No. issued to**

**By:**

**Commercial Umbrella Liability Policy with CrisisResponse®**

**XSEnhanced<sup>SM</sup> Restaurant Coverage Enhancement Endorsement**

**TO THE EXTENT ANY PROVISION OF THIS ENDORSEMENT CONFLICTS WITH ANY PROVISION OF THE POLICY OR ANY OF ITS OTHER ENDORSEMENTS, THE PROVISIONS OF THIS ENDORSEMENT WILL SUPERSEDE.**

This policy is amended as follows:

**The DECLARATIONS** are amended to add the following Designated Coverage Self Insured Retentions:

**\$** \_\_\_\_\_ Each Occurrence

**\$** \_\_\_\_\_ General Aggregate

**\$** \_\_\_\_\_ Products-Completed Operations Aggregate

as respects all coverages designated in the Restaurant Coverage Enhancement Endorsement as being subject to the Designated Coverage Self Insured Retentions.

The Designated Coverage Self-Insured Retentions will not be reduced by **Defense Expenses**.

The applicable Designated Coverage Self Insured Retentions apply whether or not there is any available **Other Insurance**. If there is **Other Insurance** applicable to a **Loss**, amounts received through such **Other Insurance** for payment of the **Loss** may be applied to reduce or exhaust the above Self-Insured Retention if such policies were purchased by the **Named Insured** to specifically apply as underlying insurance to this policy. However, in no event will amounts received through such **Other Insurance** for the payment of **Defense Expenses** reduce the above Self-Insured Retention.

Solely with respect to the coverage provided by this policy subject to the applicable Designated Coverage Self Insured Retentions set forth above, **Section III. DEFENSE PROVISIONS** Paragraphs A. and D. are deleted in their entirety and Paragraph A. is replaced by the following:

- A. We will have the right and duty to defend any **Suit** against the **Insured** that seeks damages for **Bodily Injury, Property Damage, or Personal Injury and Advertising Injury** (as applicable) arising out of coverage subject to the applicable Designated Coverage Self Insured Retention, once such Designated Coverage Self Insured Retention has been exhausted by **Loss** to which this policy applies and the total applicable limits of **Other Insurance** have been exhausted.

If we are prevented by law or statute from assuming the obligations specified under this provision, we will pay any expenses incurred with our consent.

**Section VII. DEFINITIONS**, Paragraph X., is amended to include the following additional provision:

- X. **Products-Completed Operations Hazard** shall also include **Bodily Injury** or **Property Damage** that arises out of **Your Products** that are manufactured, sold, handled or distributed on, from or in connection with your food or restaurant operations if the **Bodily Injury** or **Property Damage** occurs after you have relinquished possession of **Your Products**, even if such **Bodily Injury** or **Property Damage** occurs at premises you own, rent or manage.

**Section VII. DEFINITIONS**, Paragraph U. is amended to add the following to the definition of **Personal Injury and Advertising Injury**:

Discrimination or humiliation on account of age, gender, race, color, national origin, creed, religion, sexual orientation, marital status, veterans status, pregnancy, sickness, disease, disability, physical capabilities, physical characteristics, physical condition, mental capabilities, mental condition, or any other similar category or class, but only if such discrimination or humiliation is:

- a. not committed by, at the direction of, or with the knowledge of you and or any of your executive officers or directors; and
- b. not directly or indirectly related to the employment of any person or persons by you.

If coverage for such discrimination or humiliation is not provided by any applicable **Scheduled Underlying Insurance**, the coverage shall be provided excess of the Designated Coverage Self Insured Retention listed in the Declarations (as amended by the XSEnhanced<sup>SM</sup> Restaurant Coverage Enhancement Endorsement).

**Section I. INSURING AGREEMENT - COMMERCIAL UMBRELLA LIABILITY**, is amended to include the following additional provisions:

**Fungus, Molds, Spores, Bacteria, Viruses, Mildew and Yeast**

This policy shall provide coverage for liability for those sums in excess of the **Retained Limit** or the Designated Coverage Self Insured Retention (where applicable) that the **Insured** becomes legally obligated to pay as damages by

reason of liability imposed by law for **Bodily Injury** or **Property Damage** arising out of:

- a. Any **Fungus, Mold**, bacteria, virus, mildew or yeast; or
- b. Any **Spore** or toxin created or produced by or emanating from such **Fungus, Mold**, bacteria, virus, mildew or yeast; or
- c. Any substance, vapor, gas, or other emission or organic or inorganic body or substance produced by or arising out of any **Fungus, Mold**, bacteria, virus, mildew or yeast

where such **Fungus** comprises, or such **Fungus, Spore**, bacteria (including but not limited to E. coli, salmonella, C. botulinum and listeria monocytogenes), viruses (including but not limited hepatitis A, hepatitis C, norovirus, rotavirus) that are found on, or contained in, an edible good or edible product intended for human or animal consumption. If coverage for such **Bodily Injury** or **Property Damage** is not provided by any applicable **Scheduled Underlying Insurance**, the coverage for such **Bodily Injury** or **Property Damage** shall be provided excess of the applicable Designated Coverage Self Insured Retention (as amended by the XSEnhanced<sup>SM</sup> Restaurant Coverage Enhancement Endorsement).

The coverage provided by this section is subject to all other terms and conditions of this policy. Nevertheless, it is understood and agreed that any exclusion contained within this policy or any of its endorsements for liability arising from or associated with the substances identified in paragraphs a. b. or c. above shall not apply with respect to the coverage provided by this endorsement.

#### **Pesticide, Herbicide or Fungicide Application**

This policy shall provide coverage for liability for those sums in excess of the **Retained Limit** or the Designated Coverage Self Insured Retention (where applicable) that the **Insured** becomes legally obligated to pay as damages by reason of liability imposed by law for **Bodily Injury** or **Property Damage** arising out of any **Pesticide, Herbicide, or Fungicide Application**.

The coverage provided by this section is subject to all other terms and conditions of this policy. Nevertheless, it is understood and agreed that any pollution exclusion attached to this policy shall not apply to liability for **Bodily Injury** or **Property Damage** arising out of any **Pesticide, Herbicide, or Fungicide Application**.

If coverage for such **Bodily Injury** or **Property Damage** arising out of any **Pesticide, Herbicide, or Fungicide Application** is not provided by any applicable **Scheduled Underlying Insurance**, the coverage for such **Bodily Injury** or **Property Damage** shall be provided excess of the applicable Designated Coverage Self Insured Retention (as amended by the XSEnhanced<sup>SM</sup> Restaurant Coverage Enhancement Endorsement).

**Section VII. DEFINITIONS** is amended to include the following additional definitions:

**Defense Expenses** means a payment allocated to defend a specific **Suit**, including but not limited to:

1. Attorneys' fees and all other investigation, loss adjustment and litigation expenses;
2. Premiums on bonds to release attachments;
3. Premiums on appeal bonds required by law to appeal any claim or **Suit**;
4. Court costs taxed against the **Insured** in any **Suit**;
5. Pre-judgment interest awarded against the **Insured**; and
6. Interest that accrues after entry of judgment.

**Fungus(i)** includes, but is not limited to, any of the plants or organisms belonging to the major group Fungi, lacking chlorophyll, and including molds, rusts, mildews, smuts and mushrooms.

**Mold(s)** includes, but is not limited to, any superficial growth produced on damp or decaying organic matter or on living organisms, and fungi that produce molds.

**Pesticide, Herbicide, or Fungicide Application** means application of any toxic substance designed to destroy animal, plant, or fungal pests, but only if such application meets all of the following preconditions:

1. the contractor or subcontractor applying the pesticide, herbicide or fungicide satisfies all applicable federal, state or local licensing or registration requirements for such applicators; and
2. the application operations, including the use of the pesticides, herbicides or fungicides applied, meet all standards of any statute, ordinance, regulation, licensing or registration requirement of any federal, state or local government which apply to those operations.

**Spore(s)** means any dormant or reproductive body produced by or arising or emanating out of any **Fungus(i)**, **Mold(s)**, bacteria, mildew, plants, organisms or microorganisms.

**Section IV. LIMITS OF INSURANCE**, Paragraph E. is deleted in its entirety.

All other terms, definitions, conditions and exclusions of this policy remain unchanged.

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Authorized Representative or  
Countersignature (Where Applicable)