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**CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY**

**AND**

**ALAN BYER AUTO SALES, INC.**

**AND**

**ALAN I. BYER FAMILY TRUST**

**AND**

**WEST GENESEE REALTY ASSOCIATES, LLC**

**AND**

**STEPHEN G. BYER, individually**

**TRANSCRIPT OF PROCEEDINGS**

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**CLOSING DATE: SEPTEMBER 12, 2019**

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**ALAN BYER AUTO SALES, INC. – VOLVO PROJECT**

**CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY**

**ALAN BYER AUTO SALES, INC. – VOLVO PROJECT**

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8	Company Certification re: Local Labor Policy
9	Certificates of casualty, liability, workers' compensation and other required insurance
10	Environmental Compliance and Indemnification Agreement
11	Closing Receipt
12	Sales Tax Exemption Letter
13	Form ST-60 indicating appointment to act as the agent of the Agency: <ul style="list-style-type: none"><li>a. Alan Byer Auto Sales Inc.</li><li>b. Alan I. Byer Family Trust</li><li>c. West Genesee Realty Associates, Inc.</li><li>d. Steven G. Byer, individually</li><li>e. Parsons-McKenna Construction Co. Inc.</li></ul>
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16	General Certificate of the Agency relating to incumbency and signatures of officers, execution and delivery of Agency Documents to which it is a



party, no litigation and continued existence, with the following items included as exhibits:

Exhibit "A" - Chapter 641 of the Laws of 1979 of the State of New York, as amended

Exhibit "B" - Certificate of Establishment of the Agency and Certificates of appointment of current members

Exhibit "C" - By-laws

Exhibit "D" - Public Hearing Resolution

Exhibit "E" - Notice of Public Hearing with evidence of publication and copies of letters to affected tax jurisdictions

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Exhibit "L" – Amended Inducement Resolution

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#### **Items To Be Delivered By The Company**

17 General Certificate of Alan Byer Auto Sales, Inc. relating to capacity and signatures of officers, execution and delivery of the Documents to which it is a party, no litigation and approval, with the following items included as exhibits:

Exhibit "A" – Certificate of Incorporation

Exhibit "B" – By-Laws

Exhibit "C" - Certificate of Good Standing

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- 18 Waiver re: Local Access Policy
- 19 General Certificate of Alan I. Byer Family Trust relating to capacity and signatures of officers, execution and delivery of the Documents to which it is a party, no litigation and approval, with the following items included as exhibits:
- Exhibit "A" Third Amended and Restated Trust Agreement
  - Exhibit "B" Local Access Agreement
- 20 General Certificate of West Genesee Realty Associates, LLC relating to capacity and signatures of officers, execution and delivery of the documents to which it is a party, no litigation and approval, with the following items included as exhibits:
- Exhibit "A" Articles of Organization
  - Exhibit "B" Operating Agreement
  - Exhibit "C" Certificate of Good Standing
  - Exhibit "D" Resolution
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AMENDED AND RESTATED MASTER LEASE AGREEMENT

between

ALAN I. BYER, as Trustee of the Alan I. Byer Family Trust dated November 27, 1991, and  
STEPHEN GARY BYER, as co-partners, d/b/a Byer Real Estate Enterprises, as Landlord,

and

ALAN BYER AUTO SALES, INC., as Tenant

DATED: as of December 16, 1991

**THIS AMENDED AND RESTATED MASTER LEASE AGREEMENT** (this "**Lease**") entered into as of December 16, 1991, is by and between **ALAN I. BYER**, as Trustee of the Alan I Byer Family Trust dated November 27, 1991, and **STEPHEN GARY BYER**, as co-partners, d/b/a Byer Real Estate Enterprises (collectively, "**Landlord**"), with an address of 1230 West Genesee Street, Syracuse, New York 13204 and **ALAN BYER AUTO SALES, INC.** ("**Tenant**"), with an address of 1230 West Genesee Street, Syracuse, New York 13204.

#### RECITALS:

**WHEREAS**, Landlord is the owner of the property commonly known as 1230 West Genesee Street in the City of Syracuse, Onondaga County, New York bearing tax parcel number 108.1-02-19 (the "**Property**"); and

**WHEREAS**, Tenant maintained agreements with Landlord's predecessors in interest and with Landlord pursuant to which Tenant occupied and operated Tenant's business from the Property (collectively, the "**Prior Agreements**"); and Landlord and Tenant wish to formally terminate and replace the Prior Agreements; and

**WHEREAS**, Landlord, on the terms and conditions set forth in this Lease, wishes to master lease to Tenant the buildings and other improvements located on the Property, together with all easements, rights of way, privileges, appurtenances and other rights in common with others pertaining thereto (the "**Premises**"); and

**WHEREAS**, Tenant, on the terms and conditions set forth in this Lease, desires to lease the Premises from Landlord.

**NOW, THEREFORE**, in consideration of the rents, covenants, and conditions set forth in this Lease, Landlord and Tenant, agree as follows:

#### ARTICLE 1

##### TENANT SPACE, TERM, CONDITION OF PREMISES

Section 1.01 Recitals. The recitals, by reference, are part of this Lease.

Section 1.02 Effective Date. The terms and conditions of this Lease are effective as of January 1, 2019 (the "**Effective Date**").

Section 1.03 Prior Agreements. This Lease replaces, in their entirety, each and all of the Prior Agreements, none of which remains of any force or effect.

Section 1.04 Term. The initial term of this Lease (the "**Initial Term**") will be for a period of Forty (40)-Lease Years' commencing on the Effective Date and terminating on December 31, 2059, subject to earlier termination or extension as provided in this Lease. Provided there is no prior or continuing default, at the option of the Tenant (the "**Renewal Option**"), the Initial Term will renew for an additional period of Five (5)-Lease Years' (the "**Renewal Term**") upon the terms and conditions contained in this Lease as the same may

be amended or modified as hereinafter provided or as otherwise agreed by Landlord and Tenant. Tenant's exercise of the Renewal Option ("**Tenant's Renewal Notice**") must be delivered to Landlord in full compliance with the notice provisions of this Lease at least Sixty (60)-days' prior to the last day of the Initial Term, TIME BEING OF THE ESSENCE. The Initial Term and the Renewal Term, if applicable, are the "**Term**."

**Section 1.05 Lease Year.** "**Lease Year**" means a period of twelve (12)-consecutive full calendar months' (except the first Lease Year, which may be longer). The first Lease Year will commence on the Effective Date. If the Effective Date is any day other than the first day of the calendar month in which the Effective Date occurs, then the partial month in which the Effective Date occurs will be included in the first Lease Year. Each succeeding Lease Year will commence on the first (1st) day following the end of the preceding Lease Year.

**Section 1.06 Premises.** Tenant shall use and occupy the Premises as an automobile dealership and associated office and support services, or, on written notice to Landlord, for any lawful purpose (the "**Permitted Use**").

## ARTICLE 2 RENT

**Section 2.01 Rent.** Beginning on the Effective Date, Tenant shall pay Landlord fixed annual rent for the Premises (the "**Base Rent**"), payable in equal monthly installments of \$3,000 each, in advance, on the first day of each calendar month of the Term, without setoff or counterclaim. Until otherwise directed by Landlord, in writing, Tenant shall remit Base Rent to Alan I. Byer, individually, at 2169 Century Hill, Los Angeles, California 90067.

**Section 2.02 Additional Rent.** Each and every payment and expenditure, other than Base Rent, which is required to be paid by Tenant under this Lease, is "**Additional Rent**," whether or not the provisions requiring payment of such amounts specifically so state, and are payable, unless otherwise provided in this Lease, on demand by Landlord and in the case of the nonpayment of any such amount, Landlord shall have, in addition to all of Landlord's rights and remedies, all of the rights and remedies available to Landlord hereunder or by law in the case of nonpayment of rent.

**Section 2.03 Mortgage Payments.** As an item of Additional Rent, after receipt of written instruction from Landlord (the "**Mortgage Payment Instructions**") detailing the amount(s), the mortgagee(s), the due date(s), frequency for payment(s), and manner(s) of payment (collectively, the "**Mortgage Payment**") and in compliance with the Mortgage Payment Instructions, Tenant shall remit the Mortgage Payment. Within three (3)-Business Days' after receipt of request therefor, Tenant shall provide Landlord with written evidence of such payments. Tenant shall continue making the Mortgage Payment until Tenant receives written instruction from Landlord changing or rescinding the Mortgage Payment Instructions. For purposes of this Lease, "**Business Day**" means any day other than a Saturday, a Sunday, or any day on which federal banks in New York State close in observance of legal holidays or by government directive.

ARTICLE 3  
UTILITIES/MAINTENANCE/REPAIR

Section 3.01 Tenant Maintenance and Repairs Obligations. Tenant, at Tenant's sole cost and expense, shall take good care of and maintain the Premises in good order and repair. Other than repairs necessitated by the gross negligence or willful misconduct on the part of Landlord, Landlord will bear no responsibility whatsoever for any cost or expense of maintaining, repairing, or replacing the whole or any part of the Premises.

Section 3.02 Taxes. Prior to the date of delinquency, Tenant shall pay all real estate taxes, special assessments, or any other taxes or payments in lieu of taxes assessed against the Premises directly to the taxing jurisdiction or as otherwise directed by the taxing jurisdiction or pursuant to written agreement.

Section 3.03 Utilities. Tenant shall pay all expenses, including but not limited to all utilities furnished to the Premises.

Section 3.04 Compliance With All Laws. Tenant shall comply with all present and future laws, ordinances, requirements, and regulations of the federal, state, county, and city governments or other legal or public authorities, boards, bureaus, or departments, and of insurance organizations insofar as they relate to Tenant's use of the Premises, and Tenant shall indemnify and hold harmless Landlord of and from all fines, penalties, claims, suits, and costs of every kind and nature arising out of any violation of, or non-compliance with, the same.

ARTICLE 4  
ALTERATIONS AND IMPROVEMENTS

Section 4.01 Tenant agrees that Tenant may not make any alterations of or improvements to the Premises without Landlord's prior written consent and except upon compliance with the following conditions:

(a) No such alterations, interior additions, or construction (collectively, the "Leasehold Improvements") may reduce the fair market value of the Premises below its value immediately before the same were made, may decrease the size or square foot floor area, or may impair the structural integrity of the buildings that comprise the improvements on the Premises.

(b) Any Leasehold Improvements (i) must be constructed with due diligence, in a good and skillful manner, and in full compliance with all laws, statutes, codes, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, lawful directions, and requirements of all governments, departments, commissions, boards, courts, authorities, and agencies, which now or at any time hereafter may reasonably be applicable to the Premises or any part thereof, or any use or conditions of the Premises or any part thereof (collectively, the "Legal Requirements") and all terms of any insurance policy covering or applicable to the Premises or any part thereof, all reasonable requirements of the issuer of any such policy, and all orders, rules, regulations and other requirements of the National Board of Fire Underwriters (or any other body exercising similar functions) applicable to or affecting the Premises or any part thereof or any use or condition of

the Premises or any part thereof (collectively, the "Insurance Requirements"), and (ii) must be promptly and fully paid for by Tenant.

(c) All Leasehold Improvements made by Tenant will be undertaken at Tenant's sole cost and expense.

(d) Tenant shall have no right at any time to remove any of the Leasehold Improvements absent Landlord's prior written consent, which Landlord may withhold in Landlord's absolute discretion. Any damage caused during removal will be repaired at Tenant's sole cost and expense.

## ARTICLE 5 INDEMNIFICATION, INSURANCE

Section 5.01 Indemnification. Tenant agrees to defend, indemnify, and save harmless Landlord against and from any and all liability, loss, damages, expenses, costs of actions, suits, judgments, and claims, including Landlord's reasonable attorneys' fees, by or on behalf of any person, persons, corporation, corporations, or governmental authority, or any other entity, arising from the use or occupancy of the Premises by Tenant or the negligence or willful omissions or wrongdoing of Tenant, Tenant's agents, servants, or employees, invitees, or any concessionaires, subtenants, or other persons claiming through or under Tenant.

Section 5.02 Insurance. Tenant, at Tenant's sole cost and expense shall obtain and keep in force such insurance coverages in such amounts for the benefit of Landlord, Landlord's mortgagee, or others to whom Landlord is contractually bound, as Landlord may require from time to time.

## ARTICLE 6 ENVIRONMENTAL COMPLIANCE

Section 6.01 Tenant's use and occupancy of the Premises must be in full compliance with all laws, regulations, rules, or requirements of law or regulation of the United States, the State of New York, the municipalities in which the Premises are found, and each and all agencies and subdivisions thereof, relative to the pollution or protection of the environment (collectively, "Environmental Laws"). Tenant shall defend, indemnify, and hold Landlord and any Landlord successors or assigns harmless from and against any and all damages, claims, losses, liabilities and expenses, including without limitation, reasonable legal, accounting, consulting, engineering, and other expenses, which may arise out of any action, suit, claim, or proceeding seeking money damages, injunctive relief, remedial action, or other remedy by reason of a violation or non-compliance with any Environmental Law; or the disposal, discharge, or release of solid wastes, pollutants, or hazardous substances; or exposure to any chemical substances, noises, or vibrations to the extent they arise from Tenant's use and occupancy of the Premises. Tenant's obligations under this Article survive the expiration of this Lease and are binding upon Tenant's heirs, successors, and assigns



ARTICLE 7  
DAMAGE OR DESTRUCTION; CONDEMNATION

Section 7.01 General. If the Premises or any part thereof is taken by condemnation or destroyed or damaged by fire or the elements or other casualty, this Lease, except as otherwise expressly provided, will continue in effect, subject to the provisions of this Article, and Tenant shall continue to pay all rents as provided in this Lease.

Section 7.02 Landlord Sole Negotiator. Landlord will be the sole negotiator in any proceedings for obtaining proceeds, settlements, and awards relating to the Premises and each party will cooperate with the other and will sign all papers reasonably required, and take all other steps reasonably requested, by the other in order to obtain all such settlements and awards.

Section 7.03 Condemnation. If the Premises or any part thereof is taken by condemnation and Landlord elects, by notice served on Tenant, to terminate this Lease, this Lease will terminate upon the condemnor taking possession or as otherwise set forth in such notice and Tenant will be released of and from all further liability under this Lease from and after such termination, except with respect to the obligations accrued prior to such date, or as otherwise set forth in this Lease.

Section 7.04 Partial Damage to Premises. If the Premises is partially damaged by fire or other cause without the fault or negligence of Tenant, Tenant's employees, agents, visitors, or licensees, the damages will be repaired by and at the expense of Tenant, and the rent until such repairs can be made will be apportioned according to the part of the Premises that is usable by Tenant. If the Premises is partially damaged by fire or other casualty with the fault or negligence of Tenant, Tenant's employees, agents, visitors, or licensees, the damages shall be repaired by and at the expense of Tenant and the rent will not be abated or apportioned. No penalty will accrue for reasonable delay on account of labor troubles or any other cause beyond Tenant's control.

Section 7.05 Total Damage to Premises. If the Premises is totally damaged or rendered wholly untenantable by fire or other causes, then Landlord may, within ninety (90)-days' after such fire or other causes, give Tenant a notice in writing terminating this Lease and the Term will expire on the date such notice is given, as if such day was the day of the expiration of the Term, and Tenant shall vacate and surrender the Premises to Landlord.

ARTICLE 8  
DEFAULT AND TERMINATION

Section 8.01 Bankruptcy. If there is filed by or against Tenant in any court pursuant to any statute either of the United States or any state a petition in bankruptcy or insolvency or for reorganization or for the appointment of a receiver or trustee of all or a portion of Tenant's property, or if a judgment taken against Tenant is not satisfied or otherwise removed within sixty (60)-days', or if Tenant makes any assignment for the benefit of creditors, then this Lease, at the option of Landlord, may be canceled and terminated and in that event neither Tenant nor any person claiming through or under Tenant by virtue of any statute or of any order of any court will be entitled to possession or to remain in possession of said Premises but shall forthwith quit

and surrender the same, and Landlord, in addition to the other rights and remedies Landlord has by virtue of any other provision of this Lease, or by virtue of any statute, or rule of law, may retain as partial liquidated damages any rent, security, deposit, or monies, received by Landlord.

Section 8.02 Default. Each of the following, continuing after the giving of requisite notice and after the expiration of the applicable cure period, is an Event of Default:

(a) If Tenant is in default in the payment of rent or other sums under this Lease and Tenant fails to cure such default within seven (7)-days' after the date same is due;

(b) Tenant is in default in the performance of any of the other covenants, terms, conditions, or provisions of this Lease, and Tenant fails to cure or remedy such default within thirty (30)-days' (or such longer period as reasonably is necessary to effect such cure) after written notice thereof from Landlord.

Section 8.03 Remedies on Default.

(a) During the continuance of any one or more Event of Default, in addition to any other remedies available to Landlord under applicable law, Landlord may, at its option, at any time thereafter, give written notice to Tenant specifying the Event or Events of Default and state that this Lease and the Term demised will expire and terminate on the date specified in the notice, which will be at least thirty (30)-days' after the giving of the notice. Upon the date specified in the notice, this Lease and the Term demised and all rights of Tenant under this Lease will expire and terminate. The expiration or termination of this Lease by Landlord will not relieve Tenant of its liability and obligations under this Lease, which will survive.

(b) Upon termination of this Lease pursuant to this Section, Tenant shall quit and peacefully surrender the Premises to Landlord. Landlord, upon, or at any time after, the expiration or termination of this Lease, without equity, may re-enter the Premises and remove from them Tenant, its agents, employees, servants, licensees, and subtenants, and other persons, firms, or corporations, and all or any of its or their property, either by summary dispossession proceedings or by any suitable action or proceeding at law or in equity, or by force, or otherwise, without being liable to indictment, prosecution, or damages for such action, and may repossess and have, hold, and enjoy the Premises.

(c) Upon Landlord's termination of this Lease, re-entry of the Premises, or dispossession of the Tenant by summary proceedings or otherwise:

(i) The Base Rent and additional rent will become due and payable and be paid up to the time of termination, re-entry, or dispossession;

(ii) Landlord at any time and from time to time may relet the Premises or any part or parts thereof, either in the name of the Landlord or otherwise, for a term or terms that may, at Landlord's option, be less than or exceed the period that would otherwise have constituted the balance of the Term and on such conditions, including, without limitation, concessions of free rent and alterations of the Premises, as Landlord in its sole discretion may determine, and Landlord may collect and receive all rents and income from them;

(iii) Notwithstanding any present or future law, statute, or judicial decision, Landlord shall not be responsible or liable for any failure or refusal to relet the Premises or any part of them, or for any failure to collect any rent due upon any reletting;

(iv) Whether or not the Premises or any part of the Premises has been relet, Tenant, until the end of what would have been the Term in the absence of expiration or termination, shall remain liable to and shall pay Landlord, as and for liquidated and agreed current damages (the "Current Damages") for Tenant's default, the amount of all rent that would have been payable under this Lease by Tenant if it were still in effect, less the net proceeds of any reletting of the Premises or Landlord's operation of the Premises pursuant to the provisions of this Section, after deducting all Landlord's expenses in the reletting or operations including, without limitation, all repossession costs, brokerage and management commissions, operating expenses, legal expenses, reasonable attorneys' fees, alteration costs, and expenses of preparation for reletting or operation by Landlord; and

(v) Tenant shall pay the Current Damages to Landlord, and Landlord shall be entitled to recover them from Tenant, by separate action, actions, or proceedings, at such time or times with Base Rent or additional rent would have been payable under this Lease if it were still in effect.

(d) Nothing in this Article will limit or prejudice the right of Landlord to prove and obtain as liquidated damages an amount equal to the maximum allowed by any statute or rule of law in effect at the time those damages are to be proved, whether or not that amount is greater, equal to, or less than the amount provided by this Article.

(e) Tenant hereby waives any right of redemption under any present or future law and, no receipt of monies by Landlord from Tenant after the termination of this Lease in any lawful manner shall reinstate, continue or extend the Term of this Lease, or affect any notice theretofore given to Tenant, or operate as a waiver of the right of Landlord to recover possession of the Premises by proper remedy; it being agreed that after the service of notice to terminate this Lease or the commencement of a suit or summary proceedings, or after final order or judgment for the possession of the Premises, Landlord may demand, receive, and collect any monies due and thereafter falling due without in any manner affecting such notice, proceeding, order, suit or judgment, all such monies collected being deemed payments on account of the use and occupation of the Premises, or at the election of Landlord, on account of Tenant's liability hereunder. Landlord shall have, receive and enjoy as Landlord's sole and absolute property without right or duty of account therefor to Tenant, any and all sums collected by Landlord as rent or otherwise upon re-letting said Premises after Landlord shall resume possession thereof as hereinbefore provided, including, without limitation upon the generality of the foregoing, any amounts by which the sum or sums so collected shall exceed the continuing liability of Tenant under this Lease. In the event of the institution of any action to secure possession of the Premises pursuant to any of the provisions of this Lease because of the default of Tenant, or in the event that this Lease be terminated by Landlord pursuant to any of the provisions of this Lease (except those provisions relating to bankruptcy and insolvency), Tenant will not claim or assert that such termination or any action to secure possession of the Premises has canceled or has affected the liability of Tenant to continue to pay the amount of Base Rent and Additional Rent herein reserved as above provided, it being expressly agreed that notwithstanding any such

action to secure possession of the Premises or termination of this Lease, Tenant shall nevertheless continue to be liable for and to pay when due to Landlord the sums herein reserved as Base Rent and Additional Rent.

Section 8.04 Surrender of Possession. Tenant agrees that at the end of the Term of this Lease or its earlier termination as provided by this Lease, Tenant shall peaceably surrender possession of the Premises and deliver the Premises to Landlord in condition at least as good as the condition on the Rent Commencement Date, normal wear and tear excepted, free of all tenancies, liens and encumbrances and otherwise in full compliance with the terms and conditions of this Lease.

#### ARTICLE 9 SUBORDINATION

Section 9.01 The right of Tenant under this Lease is subject and subordinate to the lien of any mortgage or other current or subsequent encumbrance on the fee ownership without need for a writing memorializing such subordination. Notwithstanding the foregoing, Tenant agrees to execute any document necessary to evidence such subordination from time to time within five (5)-days' after Tenant's receipt of a request to execute the same and, in the event Tenant fails to provide Landlord with such evidence within such time period, Tenant authorizes Landlord as Tenant's attorney-in-fact for purposes of executing such evidence of subordination.

#### ARTICLE 10 ASSIGNMENT AND SUBLETTING

Section 10.01 Throughout the Term:

(a) Tenant shall not sublet all or any part of the Premises, nor any part thereof, nor assign, or otherwise dispose of this Lease or any interest therein, or any part thereof, without Landlord's prior written consent, which Landlord may grant in its sole and absolute discretion. If Landlord consents to any sublet or assignment, Tenant shall remain fully liable under this Lease.

(b) Tenant may not mortgage, pledge or otherwise encumber Tenant's leasehold estate hereunder, without Landlord's prior written consent absent which any attempt to mortgage, pledge or otherwise encumber such estate shall be null and void and of no force or effect.

#### ARTICLE 11 ESTOPPEL LETTER

Section 11.01 Right to Request. Either party shall, without charge, at any time and from time to time, within five (5)-days' after request by the other (a "Certificate Request"), certify by written instrument, duly executed, acknowledged and delivered to such other party:

(a) Whether or not such other party is, to the knowledge of the party giving such certificate, in default, in any way, in the performance of any of the covenants, conditions

and agreements to be performed by such party in accordance with this Lease and if there is any such default, specifying the nature of same.

(b) What the amount of fixed rent is pursuant to the terms of this Lease, and whether there has been any prepayment of rent.

(c) Whether or not this Lease is unmodified and in full force and effect, or in the event that there have been modifications, whether the same is in full force and effect as modified and setting forth the modifications.

(d) Such other matter or matters as the requesting party may reasonably request.

ARTICLE 12  
NO SET-OFFS

Section 12.01 The Base Rent, Additional Rent and all other sums payable by Tenant under this Lease, unless otherwise expressly provided in this Lease, will be paid without notice, demand, counterclaim, set-off, deduction or defense and without abatement, suspension, deferment, diminution or reduction, it being the intention that the obligations of Landlord and Tenant under this Lease are separate and independent covenants and agreements, and the obligations and liabilities of Tenant under this Lease in no way may be released, discharged or otherwise affected by reason of (a) any damage to or destruction of or any condemnation of the Premises or any part thereof except as provided in this Lease; (b) any restriction or prevention of or interference with any use of the Premises or any part thereof provided that Tenant's use is not materially, adversely affected; (c) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding relating to Landlord, or any assignee of Landlord's interest in this Lease; or (d) any claim which Tenant has or might have against Landlord or any such assignee; excluding, however, any total or partial dispossession or eviction of Tenant by reason of the existence of any title in or to the Premises which is superior to that of Landlord.

ARTICLE 13  
FORCE MAJEURE

Section 13.01 If Landlord or Tenant shall be delayed in, or prevented from, the performance of any obligation hereunder by reason of any cause beyond Landlord's or Tenant's reasonable control, including fire or other casualty, strike, lockout, breakdown, abnormally adverse weather conditions, accident, order or regulation of or by any governmental authority, or because of war, insurrection, or other public emergency, or for any cause due to an act of neglect of the other party hereto, then and in such events only the performance of Landlord or Tenant shall be excused during the period of such delay or prevention, and this Lease shall not terminate.

ARTICLE 14  
QUIET ENJOYMENT

Section 14.01 Provided Tenant is not in default of the terms and conditions of this Lease, Tenant may peaceably and quietly enjoy the Premises without nuisance or interference of Landlord or any other person over whom Landlord exercises control, except as is specifically provided in this Lease.

#### ARTICLE 15 HOLDOVER

Section 15.01 If Tenant remains in occupation of the Premises after the expiration or earlier termination of this Lease, and in addition to having the right to remove Tenant in any manner permitted by law, and in addition to all other rights Landlord may have in law, in equity, and under this Lease, Tenant shall pay Landlord Base Rent at One Hundred Fifty percent (150%) of the amount due immediately prior to the period of holding over and the tenancy created by acceptance of the rent will be that of a tenancy at sufferance only.

#### ARTICLE 16 MISCELLANEOUS PROVISIONS

Section 16.01 Notices. No notice, request, demand, consent, approval, objection, document, or other communication authorized or required by this Lease shall be effective unless it is in writing, and either personally delivered, delivered via a nationally recognized overnight carrier such as Federal Express or United Parcel Service, which issues a delivery receipt, or sent postage and registry fees prepaid by United States registered or certified mail, return receipt requested, to the other party at address set forth in the preamble of this Lease or such other address as either may advise the other.

Section 16.02 Entire Agreement. This Agreement contains all of the terms agreed upon between the parties with respect to the subject matter hereof. This Agreement may not be changed, modified or terminated, except by an instrument executed by the parties hereto.

Section 16.03 No Waiver. No waiver by either party of any failure or refusal to comply with its obligations shall be deemed a waiver of any other or subsequent failure or refusal to so comply.

Section 16.04 Successors and Assigns. The provisions herein shall inure to the benefit of, and shall bind, the heirs, executors, administrators, successors and permitted assigns of the respective parties.

Section 16.05 Partial Invalidity. If any term or provision of this Agreement or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or enforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

Section 16.06 Not Construed Against the Drafter. Any presumption of law that provides that an agreement will be construed against the drafter is hereby waived by Landlord and Tenant, each of them being represented by legal counsel.

Section 16.07 Section Headings. The headings of the various sections of this Lease have been inserted only for the purposes of convenience, and are not part of this Lease and shall not be deemed in any manner to modify, explain or restrict any of the provisions of this Agreement.

Section 16.08 Mechanic's Lien. Tenant will not permit any mechanic's, laborers' or material person's liens or any other liens or charges to stand against the Premises for any labor or material furnished or claimed to have been furnished to Tenant in connection with any work of any character performed or claimed to have been performed on said Premises by or at the direction or sufferance of Tenant. Landlord shall have the right, after giving Tenant not less than five (5)-days' notice of Landlord's intention to do so, to cause the same to be discharged, and all amounts paid by Landlord to effect any such discharge, together with interest thereon at the rate of twelve percent (12%) per annum, shall be payable by Tenant to Landlord on demand.

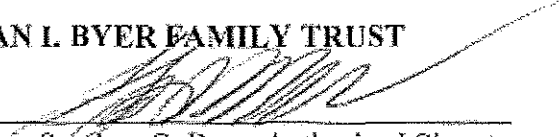
Section 16.09 Governing Law. The laws of New York State govern this Lease.

*[Signature Page Follows]*

IN WITNESS WHEREOF, Landlord and Tenant executed this Lease as of the Effective Date.

**LANDLORD:**

**ALAN L. BYER FAMILY TRUST**

By:   
Stephen G. Byer, Authorized Signatory

  
STEPHEN GARY BYER

**TENANT:**

**ALAN BYER AUTO SALES, INC.**

By:   
Stephen G. Byer, Vice President



MASTER LEASE AGREEMENT

between

WEST GENESEE REALTY ASSOCIATES, LLC, as Landlord,

and

ALAN BYER AUTO SALES, INC., as Tenant

DATED: as of November 30, 2005

THIS MASTER LEASE AGREEMENT (this "Lease") entered into as of November 30, 2005 (the "Effective Date"), is by and between WEST GENESEE REALTY ASSOCIATES, LLC ("Landlord"), with an address of 1230 West Genesee Street, Syracuse, New York 13204 and ALAN BYER AUTO SALES, INC. ("Tenant"), with an address of 1230 West Genesee Street, Syracuse, New York 13204.

#### RECITALS:

WHEREAS, Landlord is the owner of the property commonly known as 1230 West Genesee Street in the City of Syracuse, Onondaga County, New York bearing tax parcel number 108.1-02-35.1 (the "Property"); and

WHEREAS, Landlord, on the terms and conditions set forth in this Lease, wishes to master lease to Tenant the buildings and other improvements located on the Property, together with all easements, rights of way, privileges, appurtenances and other rights in common with others pertaining thereto (the "Premises"); and

WHEREAS, Tenant, on the terms and conditions set forth in this Lease, desires to lease the Premises from Landlord.

NOW, THEREFORE, in consideration of the rents, covenants, and conditions set forth in this Lease, Landlord and Tenant, as of the Effective Date, agree as follows:

#### ARTICLE I

##### TENANT SPACE, TERM, CONDITION OF PREMISES

Section 1.01 Recitals. The recitals, by reference, are part of this Lease.

Section 1.02 Term. The initial term of this Lease (the "Initial Term") will be for a period of Forty (40)-Lease Years' commencing on the Effective Date and terminating on December 31, 2045, subject to earlier termination or extension as provided in this Lease. Provided there is no prior or continuing default, at the option of the Tenant (the "Renewal Option"), the Initial Term will renew for an additional period of Five (5)-Lease Years' (the "Renewal Term") upon the terms and conditions contained in this Lease as the same may be amended or modified as hereinafter provided or as otherwise agreed by Landlord and Tenant. Tenant's exercise of the Renewal Option ("Tenant's Renewal Notice") must be delivered to Landlord in full compliance with the notice provisions of this Lease at least Sixty (60)-days' prior to the last day of the Initial Term, TIME BEING OF THE ESSENCE. The Initial Term and the Renewal Term, if applicable, are the "Term."

Section 1.03 Lease Year. "Lease Year" means a period of twelve (12)-consecutive full calendar months' (except the first Lease Year, which may be longer). The first Lease Year will commence on the Effective Date. If the Effective Date is any day other than the first day of the calendar month in which the Effective Date occurs, then the partial month in which the Effective Date occurs will be included in the first Lease Year. Each succeeding Lease Year will commence on the first (1st) day following the end of the preceding Lease Year.

Section 1.04 Premises. Tenant shall use and occupy the Premises as an automobile dealership and associated office and support services, or, on written notice to Landlord, for any lawful purpose (the "Permitted Use").

## ARTICLE 2

### RENT

Section 2.01 Additional Rent. Each and every payment and expenditure that is required to be paid by Tenant under this Lease, is "Additional Rent," whether or not the provisions requiring payment of such amounts specifically so state, and are payable, unless otherwise provided in this Lease, on demand by Landlord and in the case of the nonpayment of any such amount, Landlord shall have, in addition to all of Landlord's rights and remedies, all of the rights and remedies available to Landlord hereunder or by law in the case of nonpayment of rent.

Section 2.02 Mortgage Payments. As an item of Additional Rent, after receipt of written instruction from Landlord (the "Mortgage Payment Instructions") detailing the amount(s), the mortgagee(s), the due date(s), frequency for payment(s), and manner(s) of payment (collectively, the "Mortgage Payment") and in compliance with the Mortgage Payment Instructions, Tenant shall remit the Mortgage Payment. Within three (3)-Business Days' after receipt of request therefor, Tenant shall provide Landlord with written evidence of such payments. Tenant shall continue making the Mortgage Payment until Tenant receives written instruction from Landlord changing or rescinding the Mortgage Payment Instructions. For purposes of this Lease, "Business Day" means any day other than a Saturday, a Sunday, or any day on which federal banks in New York State close in observance of legal holidays or by government directive.

## ARTICLE 3

### UTILITIES/MAINTENANCE/REPAIR

Section 3.01 Tenant Maintenance and Repairs Obligations. Tenant, at Tenant's sole cost and expense, shall take good care of and maintain the Premises in good order and repair. Other than repairs necessitated by the gross negligence or willful misconduct on the part of Landlord, Landlord will bear no responsibility whatsoever for any cost or expense of maintaining, repairing, or replacing the whole or any part of the Premises.

Section 3.02 Taxes. Prior to the date of delinquency, Tenant shall pay all real estate taxes, special assessments, or any other taxes or payments in lieu of taxes assessed against the Premises directly to the taxing jurisdiction or as otherwise directed by the taxing jurisdiction or pursuant to written agreement.

Section 3.03 Utilities. Tenant shall pay all expenses, including but not limited to all utilities furnished to the Premises.

Section 3.04 Compliance With All Laws. Tenant shall comply with all present and future laws, ordinances, requirements, and regulations of the federal, state, county, and city governments or other legal or public authorities, boards, bureaus, or departments, and of insurance organizations insofar as they relate to Tenant's use of the Premises, and Tenant shall

indemnify and hold harmless Landlord of and from all fines, penalties, claims, suits, and costs of every kind and nature arising out of any violation of, or non-compliance with, the same.

ARTICLE 4  
ALTERATIONS AND IMPROVEMENTS

Section 4.01 Tenant agrees that Tenant may not make any alterations of or improvements to the Premises without Landlord's prior written consent and except upon compliance with the following conditions:

(a) No such alterations, interior additions, or construction (collectively, the "Leasehold Improvements") may reduce the fair market value of the Premises below its value immediately before the same were made, may decrease the size or square foot floor area, or may impair the structural integrity of the buildings that comprise the improvements on the Premises.

(b) Any Leasehold Improvements (i) must be constructed with due diligence, in a good and skillful manner, and in full compliance with all laws, statutes, codes, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, lawful directions, and requirements of all governments, departments, commissions, boards, courts, authorities, and agencies, which now or at any time hereafter may reasonably be applicable to the Premises or any part thereof, or any use or conditions of the Premises or any part thereof (collectively, the "Legal Requirements") and all terms of any insurance policy covering or applicable to the Premises or any part thereof, all reasonable requirements of the issuer of any such policy, and all orders, rules, regulations and other requirements of the National Board of Fire Underwriters (or any other body exercising similar functions) applicable to or affecting the Premises or any part thereof or any use or condition of the Premises or any part thereof (collectively, the "Insurance Requirements"), and (ii) must be promptly and fully paid for by Tenant.

(c) All Leasehold Improvements made by Tenant will be undertaken at Tenant's sole cost and expense.

(d) Tenant shall have no right at any time to remove any of the Leasehold Improvements absent Landlord's prior written consent, which Landlord may withhold in Landlord's absolute discretion. Any damage caused during removal will be repaired at Tenant's sole cost and expense.

ARTICLE 5  
INDEMNIFICATION, INSURANCE

Section 5.01 Indemnification. Tenant agrees to defend, indemnify, and save harmless Landlord against and from any and all liability, loss, damages, expenses, costs of actions, suits, judgments, and claims, including Landlord's reasonable attorneys' fees, by or on behalf of any person, persons, corporation, corporations, or governmental authority, or any other entity, arising from the use or occupancy of the Premises by Tenant or the negligence or willful omissions or wrongdoing of Tenant, Tenant's agents, servants, or employees, invitees, or any concessionaires, subtenants, or other persons claiming through or under Tenant.

Section 5.02 Insurance. Tenant, at Tenant's sole cost and expense shall obtain and keep in force such insurance coverages in such amounts for the benefit of Landlord, Landlord's mortgagee, or others to whom Landlord is contractually bound, as Landlord may require from time to time.

## ARTICLE 6 ENVIRONMENTAL COMPLIANCE

Section 6.01 Tenant's use and occupancy of the Premises must be in full compliance with all laws, regulations, rules, or requirements of law or regulation of the United States, the State of New York, the municipalities in which the Premises are found, and each and all agencies and subdivisions thereof, relative to the pollution or protection of the environment (collectively, "Environmental Laws"). Tenant shall defend, indemnify, and hold Landlord and any Landlord successors or assigns harmless from and against any and all damages, claims, losses, liabilities and expenses, including without limitation, reasonable legal, accounting, consulting, engineering, and other expenses, which may arise out of any action, suit, claim, or proceeding seeking money damages, injunctive relief, remedial action, or other remedy by reason of a violation or non-compliance with any Environmental Law; or the disposal, discharge, or release of solid wastes, pollutants, or hazardous substances; or exposure to any chemical substances, noises, or vibrations to the extent they arise from Tenant's use and occupancy of the Premises. Tenant's obligations under this Article survive the expiration of this Lease and are binding upon Tenant's heirs, successors, and assigns

## ARTICLE 7 DAMAGE OR DESTRUCTION: CONDEMNATION

Section 7.01 General. If the Premises or any part thereof is taken by condemnation or destroyed or damaged by fire or the elements or other casualty, this Lease, except as otherwise expressly provided, will continue in effect, subject to the provisions of this Article, and Tenant shall continue to pay all rents as provided in this Lease.

Section 7.02 Landlord Sole Negotiator. Landlord will be the sole negotiator in any proceedings for obtaining proceeds, settlements, and awards relating to the Premises and each party will cooperate with the other and will sign all papers reasonably required, and take all other steps reasonably requested, by the other in order to obtain all such settlements and awards.

Section 7.03 Condemnation. If the Premises or any part thereof is taken by condemnation and Landlord elects, by notice served on Tenant, to terminate this Lease, this Lease will terminate upon the condemnor taking possession or as otherwise set forth in such notice and Tenant will be released of and from all further liability under this Lease from and after such termination, except with respect to the obligations accrued prior to such date, or as otherwise set forth in this Lease.

Section 7.04 Partial Damage to Premises. If the Premises is partially damaged by fire or other cause without the fault or negligence of Tenant, Tenant's employees, agents, visitors, or licensees, the damages will be repaired by and at the expense of Tenant, and the rent until such repairs can be made will be apportioned according to the part of the Premises that is usable by

Tenant. If the Premises is partially damaged by fire or other casualty with the fault or negligence of Tenant, Tenant's employees, agents, visitors, or licensees, the damages shall be repaired by and at the expense of Tenant and the rent will not be abated or apportioned. No penalty will accrue for reasonable delay on account of labor troubles or any other cause beyond Tenant's control.

Section 7.05 Total Damage to Premises. If the Premises is totally damaged or rendered wholly untenable by fire or other causes, then Landlord may, within ninety (90)-days' after such fire or other causes, give Tenant a notice in writing terminating this Lease and the Term will expire on the date such notice is given, as if such day was the day of the expiration of the Term, and Tenant shall vacate and surrender the Premises to Landlord.

## ARTICLE 8 DEFAULT AND TERMINATION

Section 8.01 Bankruptcy. If there is filed by or against Tenant in any court pursuant to any statute either of the United States or any state a petition in bankruptcy or insolvency or for reorganization or for the appointment of a receiver or trustee of all or a portion of Tenant's property, or if a judgment taken against Tenant is not satisfied or otherwise removed within sixty (60)-days', or if Tenant makes any assignment for the benefit of creditors, then this Lease, at the option of Landlord, may be canceled and terminated and in that event neither Tenant nor any person claiming through or under Tenant by virtue of any statute or of any order of any court will be entitled to possession or to remain in possession of said Premises but shall forthwith quit and surrender the same, and Landlord, in addition to the other rights and remedies Landlord has by virtue of any other provision of this Lease, or by virtue of any statute, or rule of law, may retain as partial liquidated damages any rent, security, deposit, or monies, received by Landlord.

Section 8.02 Default. Each of the following, continuing after the giving of requisite notice and after the expiration of the applicable cure period, is an Event of Default:

(a) If Tenant is in default in the payment of rent or other sums under this Lease and Tenant fails to cure such default within seven (7)-days' after the date same is due;

(b) Tenant is in default in the performance of any of the other covenants, terms, conditions, or provisions of this Lease, and Tenant fails to cure or remedy such default within thirty (30)-days' (or such longer period as reasonably is necessary to effect such cure) after written notice thereof from Landlord.

### Section 8.03 Remedies on Default.

(a) During the continuance of any one or more Event of Default, in addition to any other remedies available to Landlord under applicable law, Landlord may, at its option, at any time thereafter, give written notice to Tenant specifying the Event or Events of Default and state that this Lease and the Term demised will expire and terminate on the date specified in the notice, which will be at least thirty (30)-days' after the giving of the notice. Upon the date specified in the notice, this Lease and the Term demised and all rights of Tenant under this Lease will expire and terminate. The expiration or termination of this Lease by Landlord will not relieve Tenant of its liability and obligations under this Lease, which will survive.

(b) Upon termination of this Lease pursuant to this Section, Tenant shall quit and peacefully surrender the Premises to Landlord. Landlord, upon, or at any time after, the expiration or termination of this Lease, without equity, may re-enter the Premises and remove from them Tenant, its agents, employees, servants, licensees, and subtenants, and other persons, firms, or corporations, and all or any of its or their property, either by summary dispossession proceedings or by any suitable action or proceeding at law or in equity, or by force, or otherwise, without being liable to indictment, prosecution, or damages for such action, and may repossess and have, hold, and enjoy the Premises.

(c) Upon Landlord's termination of this Lease, re-entry of the Premises, or dispossession of the Tenant by summary proceedings or otherwise:

(i) The Additional Rent will become due and payable and be paid up to the time of termination, re-entry, or dispossession;

(ii) Landlord at any time and from time to time may relet the Premises or any part or parts thereof, either in the name of the Landlord or otherwise, for a term or terms that may, at Landlord's option, be less than or exceed the period that would otherwise have constituted the balance of the Term and on such conditions, including, without limitation, concessions of free rent and alterations of the Premises, as Landlord in its sole discretion may determine, and Landlord may collect and receive all rents and income from them;

(iii) Notwithstanding any present or future law, statute, or judicial decision, Landlord shall not be responsible or liable for any failure or refusal to relet the Premises or any part of them, or for any failure to collect any rent due upon any reletting;

(iv) Whether or not the Premises or any part of the Premises has been relet, Tenant, until the end of what would have been the Term in the absence of expiration or termination, shall remain liable to and shall pay Landlord, as and for liquidated and agreed current damages (the "Current Damages") for Tenant's default, the amount of all rent that would have been payable under this Lease by Tenant if it were still in effect, less the net proceeds of any reletting of the Premises or Landlord's operation of the Premises pursuant to the provisions of this Section, after deducting all Landlord's expenses in the reletting or operations including, without limitation, all repossession costs, brokerage and management commissions, operating expenses, legal expenses, reasonable attorneys' fees, alteration costs, and expenses of preparation for reletting or operation by Landlord; and

(v) Tenant shall pay the Current Damages to Landlord, and Landlord shall be entitled to recover them from Tenant, by separate action, actions, or proceedings, at such time or times with Additional Rent that would have been payable under this Lease if it were still in effect.

(d) Nothing in this Article will limit or prejudice the right of Landlord to prove and obtain as liquidated damages an amount equal to the maximum allowed by any statute or rule of law in effect at the time those damages are to be proved, whether or not that amount is greater, equal to, or less than the amount provided by this Article.

(e) Tenant hereby waives any right of redemption under any present or future law and, no receipt of monies by Landlord from Tenant after the termination of this Lease in any lawful manner shall reinstate, continue or extend the Term of this Lease, or affect any notice theretofore given to Tenant, or operate as a waiver of the right of Landlord to recover possession of the Premises by proper remedy; it being agreed that after the service of notice to terminate this Lease or the commencement of a suit or summary proceedings, or after final order or judgment for the possession of the Premises, Landlord may demand, receive, and collect any monies due and thereafter falling due without in any manner affecting such notice, proceeding, order, suit or judgment, all such monies collected being deemed payments on account of the use and occupation of the Premises, or at the election of Landlord, on account of Tenant's liability hereunder. Landlord shall have, receive and enjoy as Landlord's sole and absolute property without right or duty of account therefor to Tenant, any and all sums collected by Landlord as rent or otherwise upon re-letting said Premises after Landlord shall resume possession thereof as hereinbefore provided, including, without limitation upon the generality of the foregoing, any amounts by which the sum or sums so collected shall exceed the continuing liability of Tenant under this Lease. In the event of the institution of any action to secure possession of the Premises pursuant to any of the provisions of this Lease because of the default of Tenant, or in the event that this Lease be terminated by Landlord pursuant to any of the provisions of this Lease (except those provisions relating to bankruptcy and insolvency), Tenant will not claim or assert that such termination or any action to secure possession of the Premises has canceled or has affected the liability of Tenant to continue to pay the amount of Additional Rent herein reserved as above provided, it being expressly agreed that notwithstanding any such action to secure possession of the Premises or termination of this Lease, Tenant shall nevertheless continue to be liable for and to pay when due to Landlord the sums herein reserved as Additional Rent.

Section 8.04 Surrender of Possession. Tenant agrees that at the end of the Term of this Lease or its earlier termination as provided by this Lease, Tenant shall peaceably surrender possession of the Premises and deliver the Premises to Landlord in condition at least as good as the condition on the Rent Commencement Date, normal wear and tear excepted, free of all tenancies, liens and encumbrances and otherwise in full compliance with the terms and conditions of this Lease.

#### ARTICLE 9 SUBORDINATION

Section 9.01 The right of Tenant under this Lease is subject and subordinate to the lien of any mortgage or other current or subsequent encumbrance on the fee ownership without need for a writing memorializing such subordination. Notwithstanding the foregoing, Tenant agrees to execute any document necessary to evidence such subordination from time to time within five (5)-days' after Tenant's receipt of a request to execute the same and, in the event Tenant fails to provide Landlord with such evidence within such time period, Tenant authorizes Landlord as Tenant's attorney-in-fact for purposes of executing such evidence of subordination.

#### ARTICLE 10 ASSIGNMENT AND SUBLETTING



Section 10.01 Throughout the Term:

(a) Tenant shall not sublet all or any part of the Premises, nor any part thereof, nor assign, or otherwise dispose of this Lease or any interest therein, or any part thereof, without Landlord's prior written consent, which Landlord may grant in its sole and absolute discretion. If Landlord consents to any sublet or assignment, Tenant shall remain fully liable under this Lease.

(b) Tenant may not mortgage, pledge or otherwise encumber Tenant's leasehold estate hereunder, without Landlord's prior written consent absent which any attempt to mortgage, pledge or otherwise encumber such estate shall be null and void and of no force or effect.

ARTICLE 11  
ESTOPPEL LETTER

Section 11.01 Right to Request. Either party shall, without charge, at any time and from time to time, within five (5)-days' after request by the other (a "Certificate Request"), certify by written instrument, duly executed, acknowledged and delivered to such other party:

(a) Whether or not such other party is, to the knowledge of the party giving such certificate, in default, in any way, in the performance of any of the covenants, conditions and agreements to be performed by such party in accordance with this Lease and if there is any such default, specifying the nature of same.

(b) What the amount of fixed rent is pursuant to the terms of this Lease, and whether there has been any prepayment of rent.

(c) Whether or not this Lease is unmodified and in full force and effect, or in the event that there have been modifications, whether the same is in full force and effect as modified and setting forth the modifications.

(d) Such other matter or matters as the requesting party may reasonably request.

ARTICLE 12  
NO SET-OFFS

Section 12.01 The Additional Rent and all other sums payable by Tenant under this Lease, unless otherwise expressly provided in this Lease, will be paid without notice, demand, counterclaim, set-off, deduction or defense and without abatement, suspension, deferment, diminution or reduction, it being the intention that the obligations of Landlord and Tenant under this Lease are separate and independent covenants and agreements, and the obligations and liabilities of Tenant under this Lease in no way may be released, discharged or otherwise affected by reason of (a) any damage to or destruction of or any condemnation of the Premises or any part thereof except as provided in this Lease; (b) any restriction or prevention of or interference with any use of the Premises or any part thereof provided that Tenant's use is not materially, adversely affected; (c) any bankruptcy, insolvency, reorganization, composition,

adjustment, dissolution, liquidation or other like proceeding relating to Landlord, or any assignee of Landlord's interest in this Lease; or (d) any claim which Tenant has or might have against Landlord or any such assignee; excluding, however, any total or partial dispossession or eviction of Tenant by reason of the existence of any title in or to the Premises which is superior to that of Landlord.

ARTICLE 13  
FORCE MAJEURE

Section 13.01 If Landlord or Tenant shall be delayed in, or prevented from, the performance of any obligation hereunder by reason of any cause beyond Landlord's or Tenant's reasonable control, including fire or other casualty, strike, lockout, breakdown, abnormally adverse weather conditions, accident, order or regulation of or by any governmental authority, or because of war, insurrection, or other public emergency, or for any cause due to an act of neglect of the other party hereto, then and in such events only the performance of Landlord or Tenant shall be excused during the period of such delay or prevention, and this Lease shall not terminate.

ARTICLE 14  
QUIET ENJOYMENT

Section 14.01 Provided Tenant is not in default of the terms and conditions of this Lease, Tenant may peaceably and quietly enjoy the Premises without nuisance or interference of Landlord or any other person over whom Landlord exercises control, except as is specifically provided in this Lease.

ARTICLE 15  
HOLDOVER

Section 15.01 If Tenant remains in occupation of the Premises after the expiration or earlier termination of this Lease, and in addition to having the right to remove Tenant in any manner permitted by law, and in addition to all other rights Landlord may have in law, in equity, and under this Lease, Tenant shall pay Landlord One Hundred Fifty percent (150%) of the monthly amount due immediately prior to the period of holding over and the tenancy created by acceptance of the rent will be that of a tenancy at sufferance only.

ARTICLE 16  
MISCELLANEOUS PROVISIONS

Section 16.01 Notices. No notice, request, demand, consent, approval, objection, document, or other communication authorized or required by this Lease shall be effective unless it is in writing, and either personally delivered, delivered via a nationally recognized overnight carrier such as Federal Express or United Parcel Service, which issues a delivery receipt, or sent postage and registry fees prepaid by United States registered or certified mail, return receipt requested, to the other party at address set forth in the preamble of this Lease or such other address as either may advise the other.

Section 16.02 Entire Agreement. This Agreement contains all of the terms agreed upon between the parties with respect to the subject matter hereof. This Agreement may not be changed, modified or terminated, except by an instrument executed by the parties hereto.

Section 16.03 No Waiver. No waiver by either party of any failure or refusal to comply with its obligations shall be deemed a waiver of any other or subsequent failure or refusal to so comply.

Section 16.04 Successors and Assigns. The provisions herein shall inure to the benefit of, and shall bind, the heirs, executors, administrators, successors and permitted assigns of the respective parties.

Section 16.05 Partial Invalidity. If any term or provision of this Agreement or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or enforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

Section 16.06 Not Construed Against the Drafter. Any presumption of law that provides that an agreement will be construed against the drafter is hereby waived by Landlord and Tenant, each of them being represented by legal counsel.

Section 16.07 Section Headings. The headings of the various sections of this Lease have been inserted only for the purposes of convenience, and are not part of this Lease and shall not be deemed in any manner to modify, explain or restrict any of the provisions of this Agreement.

Section 16.08 Mechanic's Lien. Tenant will not permit any mechanic's, laborers' or material person's liens or any other liens or charges to stand against the Premises for any labor or material furnished or claimed to have been furnished to Tenant in connection with any work of any character performed or claimed to have been performed on said Premises by or at the direction or sufferance of Tenant. Landlord shall have the right, after giving Tenant not less than five (5)-days' notice of Landlord's intention to do so, to cause the same to be discharged, and all amounts paid by Landlord to effect any such discharge, together with interest thereon at the rate of twelve percent (12%) per annum, shall be payable by Tenant to Landlord on demand.

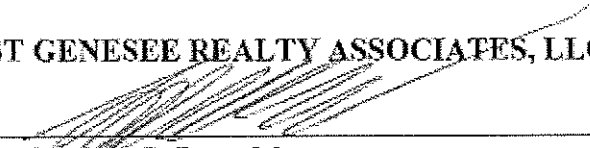
Section 16.09 Governing Law. The laws of New York State govern this Lease.

*[Signature Page Follows]*

IN WITNESS WHEREOF, Landlord and Tenant executed this Lease as of the Effective Date.

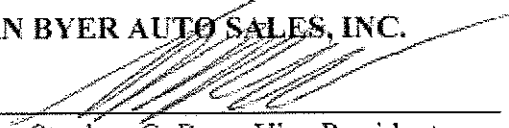
**LANDLORD:**

**WEST GENESEE REALTY ASSOCIATES, LLC**

By:   
\_\_\_\_\_  
Stephen G. Byer, Manager

**TENANT:**

**ALAN BYER AUTO SALES, INC.**

By:   
\_\_\_\_\_  
Stephen G. Byer, Vice President

MASTER LEASE AGREEMENT

between

WEST GENESEE REALTY ASSOCIATES, LLC, as Landlord,

and

ALAN BYER AUTO SALES, INC., as Tenant

DATED: as of November 9, 2010

THIS MASTER LEASE AGREEMENT (this "Lease") entered into as of November 9, 2010 (the "Effective Date"), is by and between WEST GENESEE REALTY ASSOCIATES, LLC ("Landlord"), with an address of 1230 West Genesee Street, Syracuse, New York 13204 and ALAN BYER AUTO SALES, INC. ("Tenant"), with an address of 1230 West Genesee Street, Syracuse, New York 13204.

#### RECITALS:

WHEREAS, Landlord is the owner of the property commonly known as 1288 West Genesee Street in the City of Syracuse, Onondaga County, New York bearing tax parcel number 108.1-02-20 (the "Property"); and

WHEREAS, Landlord, on the terms and conditions set forth in this Lease, wishes to master lease to Tenant the buildings and other improvements located on the Property, together with all easements, rights of way, privileges, appurtenances and other rights in common with others pertaining thereto (the "Premises"); and

WHEREAS, Tenant, on the terms and conditions set forth in this Lease, desires to lease the Premises from Landlord.

NOW, THEREFORE, in consideration of the rents, covenants, and conditions set forth in this Lease, Landlord and Tenant, as of the Effective Date, agree as follows:

#### ARTICLE I TENANT SPACE, TERM, CONDITION OF PREMISES

Section 1.01 Recitals. The recitals, by reference, are part of this Lease.

Section 1.02 Term. The initial term of this Lease (the "Initial Term") will be for a period of Forty (40)-Lease Years' commencing on the Effective Date and terminating on December 31, 2050, subject to earlier termination or extension as provided in this Lease. Provided there is no prior or continuing default, at the option of the Tenant (the "Renewal Option"), the Initial Term will renew for an additional period of Five (5)-Lease Years' (the "Renewal Term") upon the terms and conditions contained in this Lease as the same may be amended or modified as hereinafter provided or as otherwise agreed by Landlord and Tenant. Tenant's exercise of the Renewal Option ("Tenant's Renewal Notice") must be delivered to Landlord in full compliance with the notice provisions of this Lease at least Sixty (60)-days' prior to the last day of the Initial Term, TIME BEING OF THE ESSENCE. The Initial Term and the Renewal Term, if applicable, are the "Term."

Section 1.03 Lease Year. "Lease Year" means a period of twelve (12)-consecutive full calendar months' (except the first Lease Year, which may be longer). The first Lease Year will commence on the Effective Date. If the Effective Date is any day other than the first day of the calendar month in which the Effective Date occurs, then the partial month in which the Effective Date occurs will be included in the first Lease Year. Each succeeding Lease Year will commence on the first (1st) day following the end of the preceding Lease Year.

Section 1.04 Premises. Tenant shall use and occupy the Premises as an automobile dealership and associated office and support services, or, on written notice to Landlord, for any lawful purpose (the "Permitted Use").

## ARTICLE 2

### RENT

Section 2.01 Additional Rent. Each and every payment and expenditure that is required to be paid by Tenant under this Lease, is "Additional Rent," whether or not the provisions requiring payment of such amounts specifically so state, and are payable, unless otherwise provided in this Lease, on demand by Landlord and in the case of the nonpayment of any such amount, Landlord shall have, in addition to all of Landlord's rights and remedies, all of the rights and remedies available to Landlord hereunder or by law in the case of nonpayment of rent.

Section 2.02 Mortgage Payments. As an item of Additional Rent, after receipt of written instruction from Landlord (the "Mortgage Payment Instructions") detailing the amount(s), the mortgagee(s), the due date(s), frequency for payment(s), and manner(s) of payment (collectively, the "Mortgage Payment") and in compliance with the Mortgage Payment Instructions, Tenant shall remit the Mortgage Payment. Within three (3)-Business Days' after receipt of request therefor, Tenant shall provide Landlord with written evidence of such payments. Tenant shall continue making the Mortgage Payment until Tenant receives written instruction from Landlord changing or rescinding the Mortgage Payment Instructions. For purposes of this Lease, "Business Day" means any day other than a Saturday, a Sunday, or any day on which federal banks in New York State close in observance of legal holidays or by government directive.

## ARTICLE 3

### UTILITIES/MAINTENANCE/REPAIR

Section 3.01 Tenant Maintenance and Repairs Obligations. Tenant, at Tenant's sole cost and expense, shall take good care of and maintain the Premises in good order and repair. Other than repairs necessitated by the gross negligence or willful misconduct on the part of Landlord, Landlord will bear no responsibility whatsoever for any cost or expense of maintaining, repairing, or replacing the whole or any part of the Premises.

Section 3.02 Taxes. Prior to the date of delinquency, Tenant shall pay all real estate taxes, special assessments, or any other taxes or payments in lieu of taxes assessed against the Premises directly to the taxing jurisdiction or as otherwise directed by the taxing jurisdiction or pursuant to written agreement.

Section 3.03 Utilities. Tenant shall pay all expenses, including but not limited to all utilities furnished to the Premises.

Section 3.04 Compliance With All Laws. Tenant shall comply with all present and future laws, ordinances, requirements, and regulations of the federal, state, county, and city governments or other legal or public authorities, boards, bureaus, or departments, and of insurance organizations insofar as they relate to Tenant's use of the Premises, and Tenant shall

indemnify and hold harmless Landlord of and from all fines, penalties, claims, suits, and costs of every kind and nature arising out of any violation of, or non-compliance with, the same.

#### ARTICLE 4 ALTERATIONS AND IMPROVEMENTS

Section 4.01 Tenant agrees that Tenant may not make any alterations of or improvements to the Premises without Landlord's prior written consent and except upon compliance with the following conditions:

(a) No such alterations, interior additions, or construction (collectively, the "Leasehold Improvements") may reduce the fair market value of the Premises below its value immediately before the same were made, may decrease the size or square foot floor area, or may impair the structural integrity of the buildings that comprise the improvements on the Premises.

(b) Any Leasehold Improvements (i) must be constructed with due diligence, in a good and skillful manner, and in full compliance with all laws, statutes, codes, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, lawful directions, and requirements of all governments, departments, commissions, boards, courts, authorities, and agencies, which now or at any time hereafter may reasonably be applicable to the Premises or any part thereof, or any use or conditions of the Premises or any part thereof (collectively, the "Legal Requirements") and all terms of any insurance policy covering or applicable to the Premises or any part thereof, all reasonable requirements of the issuer of any such policy, and all orders, rules, regulations and other requirements of the National Board of Fire Underwriters (or any other body exercising similar functions) applicable to or affecting the Premises or any part thereof or any use or condition of the Premises or any part thereof (collectively, the "Insurance Requirements"), and (ii) must be promptly and fully paid for by Tenant.

(c) All Leasehold Improvements made by Tenant will be undertaken at Tenant's sole cost and expense.

(d) Tenant shall have no right at any time to remove any of the Leasehold Improvements absent Landlord's prior written consent, which Landlord may withhold in Landlord's absolute discretion. Any damage caused during removal will be repaired at Tenant's sole cost and expense.

#### ARTICLE 5 INDEMNIFICATION, INSURANCE

Section 5.01 Indemnification. Tenant agrees to defend, indemnify, and save harmless Landlord against and from any and all liability, loss, damages, expenses, costs of actions, suits, judgments, and claims, including Landlord's reasonable attorneys' fees, by or on behalf of any person, persons, corporation, corporations, or governmental authority, or any other entity, arising from the use or occupancy of the Premises by Tenant or the negligence or willful omissions or wrongdoing of Tenant, Tenant's agents, servants, or employees, invitees, or any concessionaires, subtenants, or other persons claiming through or under Tenant.



Section 5.02 Insurance. Tenant, at Tenant's sole cost and expense shall obtain and keep in force such insurance coverages in such amounts for the benefit of Landlord, Landlord's mortgagee, or others to whom Landlord is contractually bound, as Landlord may require from time to time.

## ARTICLE 6 ENVIRONMENTAL COMPLIANCE

Section 6.01 Tenant's use and occupancy of the Premises must be in full compliance with all laws, regulations, rules, or requirements of law or regulation of the United States, the State of New York, the municipalities in which the Premises are found, and each and all agencies and subdivisions thereof, relative to the pollution or protection of the environment (collectively, "**Environmental Laws**"). Tenant shall defend, indemnify, and hold Landlord and any Landlord successors or assigns harmless from and against any and all damages, claims, losses, liabilities and expenses, including without limitation, reasonable legal, accounting, consulting, engineering, and other expenses, which may arise out of any action, suit, claim, or proceeding seeking money damages, injunctive relief, remedial action, or other remedy by reason of a violation or non-compliance with any Environmental Law; or the disposal, discharge, or release of solid wastes, pollutants, or hazardous substances; or exposure to any chemical substances, noises, or vibrations to the extent they arise from Tenant's use and occupancy of the Premises. Tenant's obligations under this Article survive the expiration of this Lease and are binding upon Tenant's heirs, successors, and assigns

## ARTICLE 7 DAMAGE OR DESTRUCTION: CONDEMNATION

Section 7.01 General. If the Premises or any part thereof is taken by condemnation or destroyed or damaged by fire or the elements or other casualty, this Lease, except as otherwise expressly provided, will continue in effect, subject to the provisions of this Article, and Tenant shall continue to pay all rents as provided in this Lease.

Section 7.02 Landlord Sole Negotiator. Landlord will be the sole negotiator in any proceedings for obtaining proceeds, settlements, and awards relating to the Premises and each party will cooperate with the other and will sign all papers reasonably required, and take all other steps reasonably requested, by the other in order to obtain all such settlements and awards.

Section 7.03 Condemnation. If the Premises or any part thereof is taken by condemnation and Landlord elects, by notice served on Tenant, to terminate this Lease, this Lease will terminate upon the condemnor taking possession or as otherwise set forth in such notice and Tenant will be released of and from all further liability under this Lease from and after such termination, except with respect to the obligations accrued prior to such date, or as otherwise set forth in this Lease.

Section 7.04 Partial Damage to Premises. If the Premises is partially damaged by fire or other cause without the fault or negligence of Tenant, Tenant's employees, agents, visitors, or licensees, the damages will be repaired by and at the expense of Tenant, and the rent until such repairs can be made will be apportioned according to the part of the Premises that is usable by

Tenant. If the Premises is partially damaged by fire or other casualty with the fault or negligence of Tenant, Tenant's employees, agents, visitors, or licensees, the damages shall be repaired by and at the expense of Tenant and the rent will not be abated or apportioned. No penalty will accrue for reasonable delay on account of labor troubles or any other cause beyond Tenant's control.

Section 7.05 Total Damage to Premises. If the Premises is totally damaged or rendered wholly untenantable by fire or other causes, then Landlord may, within ninety (90)-days' after such fire or other causes, give Tenant a notice in writing terminating this Lease and the Term will expire on the date such notice is given, as if such day was the day of the expiration of the Term, and Tenant shall vacate and surrender the Premises to Landlord.

## ARTICLE 8 DEFAULT AND TERMINATION

Section 8.01 Bankruptcy. If there is filed by or against Tenant in any court pursuant to any statute either of the United States or any state a petition in bankruptcy or insolvency or for reorganization or for the appointment of a receiver or trustee of all or a portion of Tenant's property, or if a judgment taken against Tenant is not satisfied or otherwise removed within sixty (60)-days', or if Tenant makes any assignment for the benefit of creditors, then this Lease, at the option of Landlord, may be canceled and terminated and in that event neither Tenant nor any person claiming through or under Tenant by virtue of any statute or of any order of any court will be entitled to possession or to remain in possession of said Premises but shall forthwith quit and surrender the same, and Landlord, in addition to the other rights and remedies Landlord has by virtue of any other provision of this Lease, or by virtue of any statute, or rule of law, may retain as partial liquidated damages any rent, security, deposit, or monies, received by Landlord.

Section 8.02 Default. Each of the following, continuing after the giving of requisite notice and after the expiration of the applicable cure period, is an Event of Default:

(a) If Tenant is in default in the payment of rent or other sums under this Lease and Tenant fails to cure such default within seven (7)-days' after the date same is due;

(b) Tenant is in default in the performance of any of the other covenants, terms, conditions, or provisions of this Lease, and Tenant fails to cure or remedy such default within thirty (30)-days' (or such longer period as reasonably is necessary to effect such cure) after written notice thereof from Landlord.

### Section 8.03 Remedies on Default.

(a) During the continuance of any one or more Event of Default, in addition to any other remedies available to Landlord under applicable law, Landlord may, at its option, at any time thereafter, give written notice to Tenant specifying the Event or Events of Default and state that this Lease and the Term demised will expire and terminate on the date specified in the notice, which will be at least thirty (30)-days' after the giving of the notice. Upon the date specified in the notice, this Lease and the Term demised and all rights of Tenant under this Lease will expire and terminate. The expiration or termination of this Lease by Landlord will not relieve Tenant of its liability and obligations under this Lease, which will survive.

(b) Upon termination of this Lease pursuant to this Section, Tenant shall quit and peacefully surrender the Premises to Landlord. Landlord, upon, or at any time after, the expiration or termination of this Lease, without equity, may re-enter the Premises and remove from them Tenant, its agents, employees, servants, licensees, and subtenants, and other persons, firms, or corporations, and all or any of its or their property, either by summary dispossession proceedings or by any suitable action or proceeding at law or in equity, or by force, or otherwise, without being liable to indictment, prosecution, or damages for such action, and may repossess and have, hold, and enjoy the Premises.

(c) Upon Landlord's termination of this Lease, re-entry of the Premises, or dispossession of the Tenant by summary proceedings or otherwise:

(i) The Additional Rent will become due and payable and be paid up to the time of termination, re-entry, or dispossession;

(ii) Landlord at any time and from time to time may relet the Premises or any part or parts thereof, either in the name of the Landlord or otherwise, for a term or terms that may, at Landlord's option, be less than or exceed the period that would otherwise have constituted the balance of the Term and on such conditions, including, without limitation, concessions of free rent and alterations of the Premises, as Landlord in its sole discretion may determine, and Landlord may collect and receive all rents and income from them;

(iii) Notwithstanding any present or future law, statute, or judicial decision, Landlord shall not be responsible or liable for any failure or refusal to relet the Premises or any part of them, or for any failure to collect any rent due upon any reletting;

(iv) Whether or not the Premises or any part of the Premises has been relet, Tenant, until the end of what would have been the Term in the absence of expiration or termination, shall remain liable to and shall pay Landlord, as and for liquidated and agreed current damages (the "Current Damages") for Tenant's default, the amount of all rent that would have been payable under this Lease by Tenant if it were still in effect, less the net proceeds of any reletting of the Premises or Landlord's operation of the Premises pursuant to the provisions of this Section, after deducting all Landlord's expenses in the reletting or operations including, without limitation, all repossession costs, brokerage and management commissions, operating expenses, legal expenses, reasonable attorneys' fees, alteration costs, and expenses of preparation for reletting or operation by Landlord; and

(v) Tenant shall pay the Current Damages to Landlord, and Landlord shall be entitled to recover them from Tenant, by separate action, actions, or proceedings, at such time or times with Additional Rent that would have been payable under this Lease if it were still in effect.

(d) Nothing in this Article will limit or prejudice the right of Landlord to prove and obtain as liquidated damages an amount equal to the maximum allowed by any statute or rule of law in effect at the time those damages are to be proved, whether or not that amount is greater, equal to, or less than the amount provided by this Article.

(e) Tenant hereby waives any right of redemption under any present or future law and, no receipt of monies by Landlord from Tenant after the termination of this Lease in any lawful manner shall reinstate, continue or extend the Term of this Lease, or affect any notice theretofore given to Tenant, or operate as a waiver of the right of Landlord to recover possession of the Premises by proper remedy; it being agreed that after the service of notice to terminate this Lease or the commencement of a suit or summary proceedings, or after final order or judgment for the possession of the Premises, Landlord may demand, receive, and collect any monies due and thereafter falling due without in any manner affecting such notice, proceeding, order, suit or judgment, all such monies collected being deemed payments on account of the use and occupation of the Premises, or at the election of Landlord, on account of Tenant's liability hereunder. Landlord shall have, receive and enjoy as Landlord's sole and absolute property without right or duty of account therefor to Tenant, any and all sums collected by Landlord as rent or otherwise upon re-letting said Premises after Landlord shall resume possession thereof as hereinbefore provided, including, without limitation upon the generality of the foregoing, any amounts by which the sum or sums so collected shall exceed the continuing liability of Tenant under this Lease. In the event of the institution of any action to secure possession of the Premises pursuant to any of the provisions of this Lease because of the default of Tenant, or in the event that this Lease be terminated by Landlord pursuant to any of the provisions of this Lease (except those provisions relating to bankruptcy and insolvency), Tenant will not claim or assert that such termination or any action to secure possession of the Premises has canceled or has affected the liability of Tenant to continue to pay the amount of Additional Rent herein reserved as above provided, it being expressly agreed that notwithstanding any such action to secure possession of the Premises or termination of this Lease, Tenant shall nevertheless continue to be liable for and to pay when due to Landlord the sums herein reserved as Additional Rent.

Section 8.04 Surrender of Possession. Tenant agrees that at the end of the Term of this Lease or its earlier termination as provided by this Lease, Tenant shall peaceably surrender possession of the Premises and deliver the Premises to Landlord in condition at least as good as the condition on the Rent Commencement Date, normal wear and tear excepted, free of all tenancies, liens and encumbrances and otherwise in full compliance with the terms and conditions of this Lease.

#### ARTICLE 9 SUBORDINATION

Section 9.01 The right of Tenant under this Lease is subject and subordinate to the lien of any mortgage or other current or subsequent encumbrance on the fee ownership without need for a writing memorializing such subordination. Notwithstanding the foregoing, Tenant agrees to execute any document necessary to evidence such subordination from time to time within five (5)-days' after Tenant's receipt of a request to execute the same and, in the event Tenant fails to provide Landlord with such evidence within such time period, Tenant authorizes Landlord as Tenant's attorney-in-fact for purposes of executing such evidence of subordination.

#### ARTICLE 10 ASSIGNMENT AND SUBLETTING

Section 10.01 Throughout the Term:

(a) Tenant shall not sublet all or any part of the Premises, nor any part thereof, nor assign, or otherwise dispose of this Lease or any interest therein, or any part thereof, without Landlord's prior written consent, which Landlord may grant in its sole and absolute discretion. If Landlord consents to any sublet or assignment, Tenant shall remain fully liable under this Lease.

(b) Tenant may not mortgage, pledge or otherwise encumber Tenant's leasehold estate hereunder, without Landlord's prior written consent absent which any attempt to mortgage, pledge or otherwise encumber such estate shall be null and void and of no force or effect.

ARTICLE 11  
ESTOPPEL LETTER

Section 11.01 Right to Request. Either party shall, without charge, at any time and from time to time, within five (5)-days after request by the other (a "Certificate Request"), certify by written instrument, duly executed, acknowledged and delivered to such other party:

(a) Whether or not such other party is, to the knowledge of the party giving such certificate, in default, in any way, in the performance of any of the covenants, conditions and agreements to be performed by such party in accordance with this Lease and if there is any such default, specifying the nature of same.

(b) What the amount of fixed rent is pursuant to the terms of this Lease, and whether there has been any prepayment of rent.

(c) Whether or not this Lease is unmodified and in full force and effect, or in the event that there have been modifications, whether the same is in full force and effect as modified and setting forth the modifications.

(d) Such other matter or matters as the requesting party may reasonably request.

ARTICLE 12  
NO SET-OFFS

Section 12.01 The Additional Rent and all other sums payable by Tenant under this Lease, unless otherwise expressly provided in this Lease, will be paid without notice, demand, counterclaim, set-off, deduction or defense and without abatement, suspension, deferment, diminution or reduction, it being the intention that the obligations of Landlord and Tenant under this Lease are separate and independent covenants and agreements, and the obligations and liabilities of Tenant under this Lease in no way may be released, discharged or otherwise affected by reason of (a) any damage to or destruction of or any condemnation of the Premises or any part thereof except as provided in this Lease; (b) any restriction or prevention of or interference with any use of the Premises or any part thereof provided that Tenant's use is not materially, adversely affected; (c) any bankruptcy, insolvency, reorganization, composition,

adjustment, dissolution, liquidation or other like proceeding relating to Landlord, or any assignee of Landlord's interest in this Lease; or (d) any claim which Tenant has or might have against Landlord or any such assignee; excluding, however, any total or partial dispossession or eviction of Tenant by reason of the existence of any title in or to the Premises which is superior to that of Landlord.

ARTICLE 13  
FORCE MAJEURE

Section 13.01 If Landlord or Tenant shall be delayed in, or prevented from, the performance of any obligation hereunder by reason of any cause beyond Landlord's or Tenant's reasonable control, including fire or other casualty, strike, lockout, breakdown, abnormally adverse weather conditions, accident, order or regulation of or by any governmental authority, or because of war, insurrection, or other public emergency, or for any cause due to an act of neglect of the other party hereto, then and in such events only the performance of Landlord or Tenant shall be excused during the period of such delay or prevention, and this Lease shall not terminate.

ARTICLE 14  
QUIET ENJOYMENT

Section 14.01 Provided Tenant is not in default of the terms and conditions of this Lease, Tenant may peaceably and quietly enjoy the Premises without nuisance or interference of Landlord or any other person over whom Landlord exercises control, except as is specifically provided in this Lease.

ARTICLE 15  
HOLDOVER

Section 15.01 If Tenant remains in occupation of the Premises after the expiration or earlier termination of this Lease, and in addition to having the right to remove Tenant in any manner permitted by law, and in addition to all other rights Landlord may have in law, in equity, and under this Lease, Tenant shall pay Landlord at One Hundred Fifty percent (150%) of the monthly amount due immediately prior to the period of holding over and the tenancy created by acceptance of the rent will be that of a tenancy at sufferance only.

ARTICLE 16  
MISCELLANEOUS PROVISIONS

Section 16.01 Notices. No notice, request, demand, consent, approval, objection, document, or other communication authorized or required by this Lease shall be effective unless it is in writing, and either personally delivered, delivered via a nationally recognized overnight carrier such as Federal Express or United Parcel Service, which issues a delivery receipt, or sent postage and registry fees prepaid by United States registered or certified mail, return receipt requested, to the other party at address set forth in the preamble of this Lease or such other address as either may advise the other.

Section 16.02 Entire Agreement. This Agreement contains all of the terms agreed upon between the parties with respect to the subject matter hereof. This Agreement may not be changed, modified or terminated, except by an instrument executed by the parties hereto.

Section 16.03 No Waiver. No waiver by either party of any failure or refusal to comply with its obligations shall be deemed a waiver of any other or subsequent failure or refusal to so comply.

Section 16.04 Successors and Assigns. The provisions herein shall inure to the benefit of, and shall bind, the heirs, executors, administrators, successors and permitted assigns of the respective parties.

Section 16.05 Partial Invalidity. If any term or provision of this Agreement or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or enforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

Section 16.06 Not Construed Against the Drafter. Any presumption of law that provides that an agreement will be construed against the drafter is hereby waived by Landlord and Tenant, each of them being represented by legal counsel.

Section 16.07 Section Headings. The headings of the various sections of this Lease have been inserted only for the purposes of convenience, and are not part of this Lease and shall not be deemed in any manner to modify, explain or restrict any of the provisions of this Agreement.

Section 16.08 Mechanic's Lien. Tenant will not permit any mechanic's, laborers' or material person's liens or any other liens or charges to stand against the Premises for any labor or material furnished or claimed to have been furnished to Tenant in connection with any work of any character performed or claimed to have been performed on said Premises by or at the direction or sufferance of Tenant. Landlord shall have the right, after giving Tenant not less than five (5)-days' notice of Landlord's intention to do so, to cause the same to be discharged, and all amounts paid by Landlord to effect any such discharge, together with interest thereon at the rate of twelve percent (12%) per annum, shall be payable by Tenant to Landlord on demand.

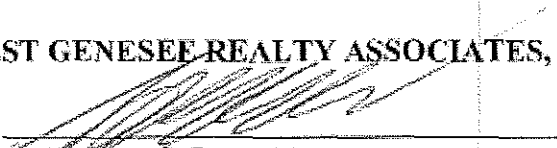
Section 16.09 Governing Law. The laws of New York State govern this Lease.

*[Signature Page Follows]*

IN WITNESS WHEREOF, Landlord and Tenant executed this Lease as of the Effective Date.

**LANDLORD:**

**WEST GENESEE REALTY ASSOCIATES, LLC**

By:   
\_\_\_\_\_  
Stephen G. Byer, Manager

**TENANT:**

**ALAN BYER AUTO SALES, INC.**

By:   
\_\_\_\_\_  
Stephen G. Byer, Vice President





## PROJECT AGREEMENT

**THIS PROJECT AGREEMENT** (the "**Project Agreement**"), made as of September 1, 2019, is made by and between the **CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation of the State of New York, with offices at 201 East Washington Street, 6<sup>th</sup> Floor, Syracuse, New York 13202 (the "**Agency**"), **ALAN BYER AUTO SALES, INC.** ("**Alan Sales**"), **ALAN I. BYER FAMILY TRUST** (the "**Trust**") an Inter Vivos Revocable Trust created pursuant to a Third Amended and Restated Trust Agreement dated October 1, 2015, **STEPHEN G. BYER** ("**Byer**"), and **WEST GENESEE REALTY ASSOCIATES, LLC** ("**Realty**" and together with Alan Sales, the Trust and Byer, collectively, the "**Company**"), each with offices at 1230 West Genesee Street, Syracuse, New York 13204. This Project Agreement replaces an interim project agreement, as amended from time to time, dated as of December 31, 2018 by and between the Agency and the Company.

### WITNESSETH:

**WHEREAS**, Title I of Article 18-A of the General Municipal Law of the State of New York (the "**Enabling Act**") was duly enacted into law as Chapter 1030 of the Laws of 1969 of the State of New York; and

**WHEREAS**, the Enabling Act authorizes and provides for the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State of New York (the "**State**") and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and dispose of land and any building or other improvement, and all real and personal properties, including, but not limited to machinery and equipment deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial, or industrial purposes, in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State and to improve their standard of living; and

**WHEREAS**, the Enabling Act further authorizes each such agency, for the purpose of carrying out any of its corporate purposes, to lease or sell any or all of its facilities, whether then owned or thereafter acquired; and

**WHEREAS**, the Agency was created, pursuant to and in accordance with the provisions of the Enabling Act, by Chapter 641 of the Laws of 1979 of the State, as amended (collectively, with the Enabling Act, the "**Act**") and is empowered under the Act to undertake the Project (as hereinafter defined) in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State and improve their standard of living; and

**WHEREAS**, Alan Sales and the Trust submitted an application on October 23, 2018 and the Company submitted a supplemental application in March 2019 (collectively, the "**Application**") to the Agency requesting the Agency's assistance with respect to a certain project (the "**Project**"), as amended, consisting of: (A)(i) the acquisition of an interest in: (1) approximately 1.89 acres of improved real property bearing tax map number 108.1-02-19 and commonly referred to as 1232-36 West Genesee Street (also known as 1230 West Genesee

Street) ("**Parcel 1**"); (2) approximately 3 acres of improved real property bearing tax map number 108.1-02-35.1 and commonly referred to as 1232 West Genesee Street (rear) ("**Parcel 2**"); and (3) approximately 2 acres of improved real property bearing tax map number 108.1-02-20 and commonly referred to as 1288 West Genesee Street ("**Parcel 3**"), each in the City of Syracuse, New York (collectively, the "**Land**"); (ii) certain improvements, including but not limited to, an existing approximately 25,820 square foot building located on Parcel 1; an existing approximately 17,000-square foot building located on Parcel 2; and an approximately 34,802 square foot building located on Parcel 3, all of which are served by common driveways, parking, and pedestrian walkways, and all of which comprise the Alan Byer Volvo facility (collectively, the "**Improvements**"); (iii) the renovation to the Improvements and the Land include, but are not limited to, the interior showroom, sales offices and reception areas, external replacement of entry, new exterior wall finishes, updated signage, the existing basement, replacement of an area of deteriorating floor slab, refreshed directional pavement graphics and roof replacement (collectively with the Land and Improvements, the "**Facility**"); (iv) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment (the "**Equipment**" and together with the Land, Improvements and the Facility, the "**Project Facility**"); (B) the granting of certain financial assistance in the form of exemptions from real property tax, State and local sales and use tax and mortgage recording tax (in accordance with Section 874 of the General Municipal Law) (collectively the "**Financial Assistance**"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, reconstruction, renovation, equipping and completion of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement; and

**WHEREAS**, the Trust and Byer are the fee owners of Parcel 1. West Genesee Realty Associates, LLC is the fee owner of Parcel 2 and Parcel 3. Alan Sales is the operator of the Project Facility and leases the Project Facility from the Trust, Byer and West Genesee Realty Associates, LLC, as applicable, pursuant to a lease agreements dated December 16, 1991, November 30, 2005 and November 9, 2019 (collectively, the "**Ground Lease**"); and

**WHEREAS**, by resolutions of its members adopted on December 31, 2018, July 16, 2019 and August 20, 2019 (collectively, the "**Resolutions**"), the Agency authorized certain financial assistance for the benefit of the Project consisting of: (a) an exemption from New York State and local sales and use taxes for purchases and rentals related to the Project with respect to qualifying personal property included in or incorporated into the Project Facility or used in the acquisition, reconstruction, renovation or equipping of the Project Facility in an amount not to exceed \$140,000; (b) an exemption from mortgage recording tax; and (c) an abatement from real property taxes through a 10-year payment in lieu of taxes agreement with the Company for the benefit of each municipality and school district having taxing jurisdiction over the Project (collectively referred to as the "**Financial Assistance**"); and

**WHEREAS**, it has been estimated and confirmed by the Company within its Application for Financial Assistance that: (i) the purchase of goods and services relating to the Project, and subject to New York State and local sales and use taxes, are estimated to cost an amount up to **\$1,750,000**; and therefore, the value of the State and local sales and use tax exemption benefits authorized and approved by the Agency cannot exceed **\$140,000**; (ii) the mortgage recording tax

exemption amount shall be approximately **\$26,250** (in accordance with Section 874 of the General Municipal Law); and (iii) real property tax abatement benefits to be provided to the Company over the 10-year benefit period of the anticipated payment in lieu of taxes agreement are estimated to be approximately **\$376,473.00**; and

**WHEREAS**, the Company proposes to lease the Land and Facility to the Agency, and the Agency desires to lease the Land and Facility from the Company pursuant to the terms of a certain Company Lease Agreement dated as of September 1, 2019 (the "**Company Lease**"), by and between the Company and the Agency; and

**WHEREAS**, the Agency proposes to acquire an interest in the Equipment pursuant to a bill of sale dated as of September 1, 2019 from the Company to the Agency; and

**WHEREAS**, prior to or contemporaneously with the execution of this Project Agreement, the Company shall execute and deliver an environmental compliance and indemnification agreement dated as of September 1, 2019 in favor of the Agency (the "**Environmental Compliance and Indemnification Agreement**"); and

**WHEREAS**, the Agency proposes to sublease the Project Facility to the Company, and the Company desires to sublease the Project Facility from the Agency, upon the terms and conditions set forth in a certain Agency Lease Agreement dated as of September 1, 2019 (the "**Agency Lease**"); and

**WHEREAS**, in order to define the obligations of the Trust, Byer and Realty regarding payments in lieu of taxes for the Project Facility, the Agency and the Trust, Byer and Realty will enter into a Payment in Lieu of Tax Agreement, dated as of September 1, 2019 (the "**PILOT Agreement**"); and

**WHEREAS**, by its Resolutions, the Agency authorized the Company to act as its agent for the purposes of undertaking the Project and the Agency delegated to the Company the authority to appoint sub-agents subject to the execution of this Project Agreement and compliance with the terms set forth herein, in the Resolutions and in the Agency Lease; and

**WHEREAS**, in order to define the obligations of the Company regarding its ability to utilize the Agency's State and local sales and use tax exemption benefit as agent of the Agency to acquire, reconstruct, renovate, equip and complete the Project Facility, the Agency and the Company will enter into this Project Agreement; and

**WHEREAS**, the Agency requires, as a condition and as an inducement for it to enter into the transactions contemplated by the Resolutions, and as more particularly described in the PILOT Agreement and this Project Agreement, that the Company provide assurances with respect to the terms and conditions herein set forth; and

**WHEREAS**, this Project Agreement sets forth the terms and conditions under which Financial Assistance shall be provided to the Company; and

**WHEREAS**, no Financial Assistance shall be provided to the Company prior to the effective date of this, or a prior interim, Project Agreement.

**NOW THEREFORE**, in consideration of the covenants herein contained and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, it is mutually agreed as follows:

**ARTICLE I  
PURPOSE OF PROJECT**

**Section 1.01 Recitals**. The foregoing recitals are incorporated herein by referenced as if fully set forth herein.

**Section 1.02 Purpose of Project**. It is understood and agreed by the parties that the purpose of the Agency's provision of Financial Assistance with respect to the Project is to, and the entering by the Agency into the Company Lease, Agency Lease, PILOT Agreement and this Project Agreement is in order to, promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping, furnishing and completing of the Project Facility, to advance job opportunities, health, general prosperity and economic welfare of the people of the City of Syracuse and to otherwise accomplish the public purpose of the Act.

**ARTICLE II  
REAL PROPERTY TAX EXEMPTION**

**Section 2.01. PILOT Agreement**. Attached hereto and made a part hereof as **Exhibit A** is a copy of the PILOT Agreement by and between the Trust, Byer, Realty and the Agency.

**ARTICLE III  
SALES AND USE TAX EXEMPTION**

**Section 3.01. Scope of Agency**. The Company agrees to limit its activities as agents for the Agency under the authority of the Resolutions and this Project Agreement to acquisition, reconstruction, installation and completion of the Project Facility. The right of the Company to act as agent of the Agency shall expire **December 31, 2020**, unless extended by a resolution adopted by the members of the Agency, or unless terminated early in accordance with the terms of the Agency Lease. The value of the sales and use tax exemption benefits shall not exceed the amounts described in the Application and as set forth in Section 3.03(b) unless approved by a resolution adopted by the members of the Agency. All contracts entered into by the Company as agent for the Agency shall include the following language:

“This contract is being entered into by \_\_\_\_\_ (the “**Agent**”), as agent for and on behalf of the City of Syracuse Industrial Development Agency (the “**Agency**”), in connection with a certain project of the Agency for the benefit of the Agent consisting in part of the acquisition and installation of certain machinery, equipment and building materials, all for use in construction and/or incorporation and installation in certain premises located at 1232-36 West Genesee Street (also known as 1230 West Genesee Street), 1232 West Genesee Street (rear), 1288 West Genesee Street, each in the City of Syracuse, New York (the “**Premises**”). The machinery, equipment and building materials (collectively,

the “*Equipment*”) to be used in the construction and/or incorporated and installed in the Premises shall be exempt from the sales and use taxes levied by the State of New York if the use and/or acquisition of the Equipment is effected in accordance with the terms and conditions set forth in the Project Agreement dated as of September 1, 2019 by and between the Agency and the Company (the “*Project Agreement*”); and the Agent represents that this contract is in compliance with the terms of the Project Agreement. This contract is non-recourse to the Agency, and the Agency shall not be directly, indirectly or contingently liable or obligated hereunder in any manner or to any extent whatsoever. By execution or acceptance of this contract, the vendor/contractor acknowledges and agrees to the terms and conditions set forth in this paragraph.”

**Section 3.02. Appointment of Sub-Agents.** Subject to the terms and conditions of this Project Agreement and pursuant to the Resolutions, the Agency hereby delegates to the Company the authority to appoint sub-agents of the Agency in connection with the Project, which may be agents, subagents, contractors, subcontractors, contractors and subcontractors of such agents and subagents and other parties as the Company chooses (each, a “*Sub-Agent*”). The appointment of each such Sub-Agent will be effective only upon: (1) the execution by the Sub-Agent and the Company of the Sub-Agent Appointment Agreement attached as Exhibit F to the Agency Lease (the “*Sub-Agent Agreement*”), the terms and provisions of which are incorporated herein; (2) the receipt by the Agency of a completed Form ST-60 in accordance with Section 3.03(c) below; and (3) receipt of any required insurance as set forth in the Sub-Agent Agreement.

**Section 3.03. Representations and Covenants of the Company.**

(a) Each the Trust and Alan Sales hereby incorporates and restates its representations, covenants and warranties made in the Agency Lease.

(b) The Company further covenants and agrees that the purchase of goods and services relating to the Project and subject to State and local sales and use taxes are estimated in the amount up to \$1,750,000, and, therefore, the value of the sales and use tax exemption benefits authorized and approved by the Agency cannot exceed **\$140,000**.

(c) The Company further covenants and agrees to complete, or cause to be completed, the “IDA Appointment of Project Operator or Agent For Sales Tax Purposes” (Form ST-60) for itself and each Sub-Agent and to provide said form to the Agency within fifteen (15) days of appointment such that the Agency can execute and deliver said form to the State Department of Taxation and Finance within thirty (30) days of appointment.

(d) The Company further covenants and agrees to file an annual statement with the State Department of Taxation and Finance an “Annual Report of Sales and Use Tax Exemptions” (Form ST-340) regarding the value of sales and use tax exemptions the Company and its Sub-Agents have claimed pursuant to the agency conferred on the Company with respect to the Project in accordance with Section 874(8) of the Act. The Company further covenants and agrees that it will, within thirty (30) days of each filing, provide a copy of their filed ST-340 to the Agency, but in no event later than March 29 of each year. The Company understands and

agrees that the failure to file such annual statement will result in the removal of: (1) the Company's authority to act as agents for the Agency; and (2) the authority of any Sub-Agent of the Agency appointed by the Company pursuant to Section 3.02 hereof to act as agent for the Agency.

(e) The Company further acknowledges and agrees that all purchases made in furtherance of the Project by the Company and any Sub-Agent shall be made using "IDA Agent or Project Operator Exempt Purchase Certificate" (Form ST-123, a copy of which is attached to the Sub-Agent Agreement), and it shall be the responsibility of the Company and the Sub-Agent, as the case may be, (and not the Agency) to complete Form ST-123. The Company acknowledges and agrees that it shall identify the Project on each bill and invoice for such purchases and further indicate on such bills or invoices that the Company is making purchases of tangible personal property or services for use in the Project as agent of the Agency. For purposes of indicating who the purchaser is, the Company acknowledges and agrees that the bill of invoice should state, "I, [NAME OF AGENT], certify that I am a duly appointed agent of the City of Syracuse Industrial Development Agency and that I am purchasing the tangible personal property or services for use in the following IDA project and that such purchases qualify as exempt from sales and use taxes under my Project Agreement with the City of Syracuse Industrial Development Agency." The Company further acknowledges and agrees that the following information shall be used by the Company to identify the Project on each bill and invoice: ALAN BYER AUTO SALES, INC. – VOLVO PROJECT, 1232-36 West Genesee Street (also known as 1230 West Genesee Street), 1232 West Genesee Street (rear), 1288 West Genesee Street, IDA Project No. 31021808.

(f) The Company acknowledges and agrees that the Agency shall not be liable, either directly or indirectly or contingently, upon any contract, agreement, invoice, bill or purchase order in any manner and to any extent whatsoever (including payment or performance obligations), and the Company shall be the sole party liable thereunder.

#### **Section 3.04. Hold Harmless Provisions.**

(a) The Company releases the Agency and its members, officers, agents (other than the Company) and employees from, agrees that the Agency and its members, officers, agents (other than the Company) and employees shall not be liable for and agrees to indemnify, defend and hold the Agency and its members, officers, agents (other than the Company) and employees harmless from and against any and all claims, causes of action, judgments, liabilities, damages, losses, costs and expenses arising as a result of the Agency's undertaking the Project, including, but not limited to: (1) liability for loss or damage to property or bodily injury to or death of any and all persons that may be occasioned, directly or indirectly, by any cause whatsoever pertaining to the Project Facility or arising by reason of or in connection with the occupation or the use thereof or the presence of any person or property on, in or about the Project Facility; (2) liability arising from or expense incurred by the Agency's acquiring, constructing, equipping, installing, owning, leasing or selling the Project Facility, including, without limiting the generality of the foregoing, any sales or use taxes which may be payable with respect to goods supplied or services rendered with respect to the Project Facility, all liabilities or claims arising as a result of the Agency's obligations under this Project Agreement or the enforcement of or defense of validity of any provision of this Project Agreement; (3) all claims arising from

the exercise by the Company of the authority conferred on it pursuant to Sections 3.01 and 3.02 hereof; and (4) all causes of action and reasonable attorneys' fees and other expenses incurred in connection with any suits or actions that may arise as a result of any of the foregoing; provided that any such claims, causes of action, judgments, liabilities, damages, losses, costs or expenses of the Agency are not incurred or do not result from the gross negligence or intentional wrongdoing of the Agency or any of its members, officers, agents (other than the Company) or employees. The foregoing indemnities shall apply notwithstanding the fault or negligence in part of the Agency or any of its officers, members, agents (other than the Company) or employees and notwithstanding the breach of any statutory obligation or any rule of comparative or apportioned liability.

(b) In the event of any claim against the Agency or its members, officers, agents (other than the Company) or employees by any employee of the Company or any contractor of the Company or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the obligations of the Company hereunder shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Company or such contractor under workers' compensation laws, disability benefits laws or other employee benefit laws.

(c) To effectuate the provisions of this Section 3.04, the Company agrees to provide for and insure, in the liability policies required by Section 3.05 of this Project Agreement, its liabilities assumed pursuant to this Section 3.04.

(d) Notwithstanding any other provisions of this Project Agreement, the obligations of the Company pursuant to this Section 3.04 shall remain in full force and effect after the termination of this Project Agreement until the expiration of the period stated in the applicable statute of limitations during which a claim, cause of action or prosecution relating to the matters herein described may be brought and the payment in full or the satisfaction of such claim, cause of action or prosecution and the payment of all expenses, charges and costs incurred by the Agency, or its officers, members, agents (other than the Company) or employees, relating thereto.

### **Section 3.05. Insurance Required.**

(a) The Company agrees that it shall maintain all insurance required under the Agency Lease.

(b) The Company agrees that it shall cause its general contractor for the Project to maintain, effective as of the date of its Sub-Agent Agreement until the expiration or termination of the general contractor's employment by the Company, or its designee, with respect to the Project Facility, all of the same insurance with respect to the Project Facility, as set forth in Article 6 of the Agency Lease as if the general contractor were the Company thereunder. The Company further agrees that it shall cause its general contractor for the Project to comply and abide, effective as of the date of the Sub-Agent Agreement and until the expiration or termination of the general contractor's employment by the Company, or its designee, with respect to the Project Facility, with all of the terms and conditions set forth in Article 6 of the Agency Lease with respect to the type, nature and proof of insurance required thereunder.



**ARTICLE IV  
COMMITMENTS AND REPORTING**

**Section 4.01. Compliance Commitments.** The Company agrees and covenants that it shall meet and maintain the commitments set forth in (a) below beginning in the first year after completion of the Project. The Company further agrees and covenants that it shall meet and maintain the commitments set forth in (b) below with respect to retained jobs set forth in and in accordance with the Application starting in the first year in which Financial Assistance is claimed and/or provided; and with respect to new jobs, the Company shall create, in years one (1) through five (5) following completion of the Project the new jobs set forth in the Company's Application. The reporting of, and the commitment to, each of (a), (b) and (c) below continue for the duration of the PILOT Agreement; or if the Agency Lease is terminated early, until the *earlier of five (5) years* from the termination date of the Agency Lease or the stated expiration of the PILOT Agreement (the "**Term**"):

(a) The total investment made with respect to the Project at the Project's completion date shall equal to or exceed \$3,365,000, being the total project cost as stated in the Company's Application for Financial Assistance (the "**Investment Commitment**").

(b) At least eight-one (81) full time equivalent ("**FTE**") employees were retained by the Project Facility as of the date of the Application for Financial Assistance (the "**Baseline FTE**"). The Company agrees to maintain, as of the first year in which Financial Assistance is claimed and/or provided the Baseline FTE. The Company's application estimated the creation of twelve (12) new FTEs (the "**New FTEs**") at the Project Facility within the first two (2) years following completion of the Project Facility. The Company shall be required to meet and maintain all of the foregoing employment commitments during the Term hereof (the "**Employment Commitment**").

(c) The Company shall annually provide to the Agency certain information to confirm that the Project is achieving the investment, job retention, job creation, and other objectives of the Project for the Term (the "**Reporting Commitment**").

**Section 4.02. Reporting Requirement.** As part of the commitments set forth in Section 4.01, the Company shall provide annually, to the Agency, a certified statement and supporting documentation: (i) enumerating the full time equivalent jobs retained and the full time equivalent jobs created as a result of the Financial Assistance, by category, by zip code, including full time equivalent independent contractors or employees of independent contractors that work at the Project location, and (ii) indicating that the salary and fringe benefit averages or ranges for categories of jobs retained and jobs created that was provided in the application for Financial Assistance is still accurate and if it is not still accurate, providing a revised list of salary and fringe benefit averages or ranges for categories of jobs retained and jobs created. **Exhibit B** contains a form of annual certification that the Company must complete and submit to the Agency on an annual basis. The Agency reserves the right to modify such form to require additional information that the Agency must have in order to comply with its reporting requirements under the Act and/or its policies.

**ARTICLE V**  
**SUSPENSION, DISCONTINUATION, RECAPTURE AND/OR TERMINATION OF**  
**FINANCIAL ASSISTANCE**

**Section 5.01. Suspension, Discontinuation, Recapture and/or Termination of Financial Assistance.** It is understood and agreed by the Parties that the Agency is entering into the Company Lease, the Agency Lease, the PILOT Agreement and this Project Agreement in order to provide Financial Assistance to the Company for the Project Facility and to accomplish the public purposes of the Act.

(a) In accordance with Section 875(3) of the New York General Municipal Law, the policies of the Agency, and the Resolutions, the Company covenants and agrees that it is subject to recapture of all State sales and use tax exemption benefits if:

(1) the Company or its Subagents, if any, authorized to make purchases for the benefit of the Project are not entitled to the State sales and use tax exemption benefits; or

(2) the State sales and use tax exemption benefits are in excess of the amounts authorized by the Agency to be taken by the Company or its Subagents, if any; or

(3) the State sales and use tax exemption benefits are for property or services not authorized by the Agency as part of the Project; or

(4) the Project has failed to comply with a material term or condition to use the property or services in the manner required by any project document between the Company and the Agency.

Each of the foregoing four events are hereinafter referred to as a “*State-Mandated Recapture Event*”. The Agency shall evaluate, annually as of December 31, or at any time information is brought to the Agency’s attention, whether a State-Mandated Recapture Event has occurred.

(b) In addition to Section 5.01(a), in accordance with the policies of the Agency and the Resolutions, the Company covenants and agrees that the Agency shall have the right to suspend, discontinue, recapture or terminate all or any portion of any Financial Assistance to the extent any of the following occur (each a “*Deficit*”):

- a) for projects that utilized local sales and use tax exemptions, the project was not entitled to such exemptions, such exemptions were in excess of the amounts authorized by the Agency, and/or such exemptions were for property or services not authorized by the Agency (each, a “*Local Sales Tax Benefit Violation*”);
- b) the company, upon completion of the project, fails to reach and maintain at least 85 percent of its employment requirements for job creation and/or retention (“*Job Deficit*”);

- c) the total investment actually made with respect to the project at the project's completion date is less than 85 percent of its investment requirement ("**Investment Deficit**");
- d) the company fails to provide annually to the Agency certain information to confirm that the project is achieving the investment, job retention, job creation, and other objectives of the Project ("**Reporting Failure**"); or
- e) there otherwise occurs any event of default under any project document (each, an "**Event of Default**") or a material violation of the terms and conditions of any project document (a "**Material Violation**").

The Agency shall evaluate, annually as of December 31, or at any time information is brought to the Agency's attention, whether a Local Sales Tax Benefit Violation, Job Deficit, Investment Deficit, Reporting Failure Event of Default or Material Violation (each a "**Noncompliance Event**") has occurred. Notwithstanding the foregoing, the Agency may determine whether an Event of Default has occurred pursuant to any Project Document in accordance with the terms of the Project Document.

At the time of any Noncompliance Event, the Agency shall determine by resolution whether to exercise its right to suspend, discontinue, recapture or terminate all or any portion of the Financial Assistance in accordance with its Recapture Policy; and shall consider the following criteria in determining whether to proceed to suspend, discontinue, recapture or terminate all or any portion of the Financial Assistance:

- i. Whether the Company has proceeded in good faith.
- ii. Whether the Project has not performed as required due to economic issues, changes in market conditions or adverse events beyond the control of the Company.
- iii. Whether the enforcement by the Agency of its right to suspend, discontinue, recapture or terminate all or any portion of the Financial Assistance would create a more adverse situation for the Company, such as the Company going out of business or declaring bankruptcy, which would not occur if the Agency's rights were not exercised.
- iv. Whether the enforcement by the Agency of its right to suspend, discontinue, recapture or terminate all or any portion of the Financial Assistance would create an adverse situation for the residents of the City of Syracuse.
- v. The assessment prepared in accordance with the Agency's Annual Assessment Policy.
- vi. Such other criteria as the Agency shall determine is a relevant factor in connection with any decision regarding the exercise of its right to suspend,

discontinue, recapture or terminate all or any portion of the Financial Assistance.

The Agency shall document its evaluation of the above criteria in writing and based upon its evaluation, the Agency shall determine whether to suspend, discontinue, recapture or terminate all or any portion of the Financial Assistance (the “*Determination*”). The Determination shall provide terms, if any, by which the Company may remedy any Noncompliance Event upon which the Determination was based. The Company must submit written documentation to the Agency of compliance with all terms and conditions of the Determination in order for the Agency to consider whether to resume Financial Assistance to the Company (which will be at the Agency’s sole discretion).

(c) If a State-Mandated Recapture Event occurs or the Agency makes a Determination, the Company agrees and covenants that it will: (i) cooperate with the Agency in its efforts to recover or recapture any or all Financial Assistance obtained by the Company; and (ii) promptly pay over any or all such amounts to the Agency that the Agency demands in connection therewith. Upon receipt of such amounts, the Agency shall then redistribute such amounts to the appropriate affected tax jurisdictions, unless agreed to otherwise by any local taxing jurisdiction. The Company further understands and agrees that in the event that the Company fails to pay over such amounts to the Agency, the New York State Tax Commissioner may assess and determine the State sales and use tax due from the Company, together with any relevant penalties and interest due on such amounts.

## ARTICLE VI MISCELLANEOUS PROVISIONS

**Section 6.01. Survival.** All warranties, representations, and covenants made by the Company herein shall be deemed to have been relied upon by the Agency and shall survive the delivery of this Project Agreement to the Agency regardless of any investigation made by the Agency. The obligations of the Company to repay, defend and/or provide the indemnity required by Section 3.04 hereof shall survive the termination of this Project Agreement and all such payments after such termination shall be made upon demand of the party to whom such payment is due. The obligations of the Company to repay, defend and/or provide the indemnity required by Section 3.04 hereof shall survive the termination of this Project Agreement until the expiration of the period stated in the applicable statute of limitations during which a claim, cause of action, or prosecution may be brought, and the payment in full or the satisfaction of such claim, cause of action, or prosecution, and the payment of all expenses and charges incurred by the Agency or its officers, members, agents (other than the Company) or employees relating thereto.

**Section 6.02. Notices.** All notices, certificates and other communications under this Project Agreement shall be in writing and shall be deemed given when delivered personally or when sent by certified mail, postage prepaid, return receipt requested, or by overnight delivery service, addressed as follows:

If to the Agency:

City of Syracuse Industrial Development Agency  
201 East Washington Street, 6<sup>th</sup> Floor  
Syracuse, New York 13202  
Attn: Chairman

With a copy to:

Corporation Counsel  
City of Syracuse  
233 East Washington Street  
Syracuse, New York 13202

and

Bousquet Holstein PLLC  
One Lincoln Center  
110 West Fayette Street, Suite 1000  
Syracuse, New York 13202  
Attn: Susan R. Katzoff, Esq.

If to the Company:

Alan Byer Auto Sales, Inc.  
1230 West Genesee Street  
Syracuse, New York 13204  
Attn: Stephen G. Byer

and

Alan I. Byer Family Trust  
1230 West Genesee Street  
Syracuse, New York 13204  
Attn: Stephen G. Byer

and

West Genesee Realty Associates, LLC  
1230 West Genesee Street  
Syracuse, New York 13204  
Attn: Stephen G. Byer

and

Stephen G. Byer  
1230 West Genesee Street  
Syracuse, New York 13204

With a copy to:

Barclay Damon LLP  
Barclay Damon Tower  
125 East Jefferson Street  
Syracuse, New York 13202  
Attn: Kevin R. McAuliffe, Esq.

or at such other address as any party may from time to time furnish to the other party by notice given in accordance with the provisions of this Section.

**Section 6.03. Amendments.** No amendment, change, modification, alteration or termination of this Project Agreement shall be made except in writing upon the written consent of the Company and the Agency.

**Section 6.04. Severability.** The invalidity or unenforceability of any one or more phrases, sentences, clauses or sections in this Project Agreement or the application thereof shall not affect the validity or enforceability of the remaining portions of this Project Agreement or any part thereof.

**Section 6.05. Counterparts.** This Project Agreement may be executed in any number of counterparts each of which shall be deemed an original but which together shall constitute a single instrument.

**Section 6.06. Governing Law.** This Project Agreement shall be governed by, and all matters in connection herewith shall be construed and enforced in accordance with, the laws of the State applicable to agreements executed and to be wholly performed therein and the parties hereto hereby agree to submit to the personal jurisdiction of the federal or state courts located in Onondaga County, New York.

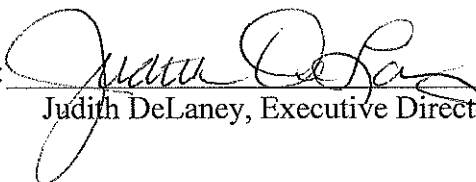
**Section 6.07. Term.** Except as specifically provided otherwise, the term of this Project Agreement shall be as defined in Section 4.01. The Project will remain "active" for purposes of Section 874(12) of General Municipal Law and the Agency's Annual Assessment Policy during the term of this Project Agreement.

**Section 6.08. Section Headings.** The headings of the several Sections in this Project Agreement have been prepared for convenience of reference only and shall not control, affect the meaning of or be taken as an interpretation of any provision of this Project Agreement.

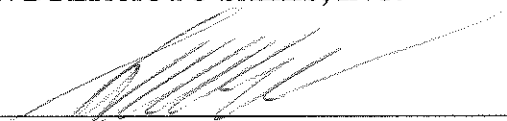
**Section 6.09. Defined terms.** Capitalized terms used herein and not otherwise defined shall have the meaning set forth in the Table of Definitions attached to the Agency Lease as Exhibit "C."

IN WITNESS WHEREOF, the parties hereto have executed this Project Agreement as of the day and year first above written.

**CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY**

By:   
Judith DeLaney, Executive Director

**ALAN BYER AUTO SALES, INC.**

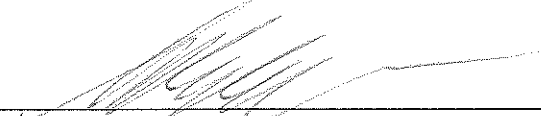
By:   
Stephen G. Byer, Vice President

**ALAN I. BYER FAMILY TRUST**

By:   
Stephen G. Byer, Authorized Signatory

**WEST GENESEE REALTY ASSOCIATES,  
LLC**

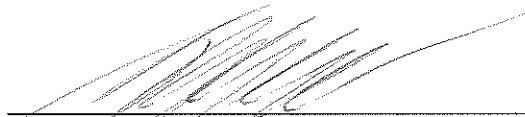
By:   
Stephen G. Byer, Manager

  
Stephen G. Byer, individually

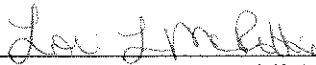
STATE OF NEW YORK )  
COUNTY OF ONONDAGA ) ss.:

Stephen G. Byer, being first duly sworn, deposes and says:

1. That I am the Vice President of Alan Byer Auto Sales, Inc. and I am duly authorized on behalf of Alan Byer Auto Sales Inc. to bind Alan Byer Auto Sales, Inc. and to execute this Project Agreement.
2. That I am an Authorized Signatory of the Alan I. Byer Family Trust and I am duly authorized on behalf of the Alan I. Byer Family Trust to bind the Alan I. Byer Family Trust and to execute this Project Agreement.
3. That I am the Manager of West Genesee Realty Associates, LLC and am duly authorized on behalf of West Genesee Realty Associates, LLC to bind West Genesee Realty Associates, LLC and to execute this Project Agreement.
4. That Alan Byer Auto Sales, Inc., the Alan I. Byer Family Trust, West Genesee Realty, LLC as well as myself, individually, confirm and acknowledge that the owner, occupant and operator receiving Financial Assistance for the Project are in substantial compliance with all applicable local, state and federal tax, worker protection and environmental laws, rules and regulations.

  
\_\_\_\_\_  
Stephen G. Byer

Subscribed and affirmed to me  
under penalties of perjury  
this 22 day of September, 2019.

  
\_\_\_\_\_  
(Notary Public)

LORI L. McROBBIE  
Notary Public, State of New York  
Qualified in Onondaga Co. No. 01MC5055591  
Commission Expires on Feb. 12, 20 20



**EXHIBIT A**

**Executed Copy of PILOT Agreement**

**SEE TAB # 13**

**EXHIBIT B**

FORM OF ANNUAL REPORTING QUESTIONNAIRE

SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY  
201 East Washington Street, 6<sup>th</sup> Floor, Syracuse, New York 13202

Date

COMPANY  
COMPANY ADDRESS

Dear \_\_\_\_\_:

Our auditors, \_\_\_\_\_, CPAs are conducting an audit of our financial statements for the year ended December 31, \_\_\_\_\_. In connection with that audit, we request that you furnish certain information directly to our auditor with regard to the following security issued by/through the City of Syracuse Industrial Development Agency:

Sale - Leaseback Financing

Project: \_\_\_\_\_

Date of Financing:

Principal Amount Financed:

Maturity Date:

Original Interest Rate:

Please provide the following information as of December 31, [year]:

Name of Lender

Debt Retired in [year] Yes/No

Debt Refinanced in [year] Yes/No

(If Yes, please update information in Paragraph 1 above)

D-1

Debt in Default as of [date] Yes/No

Current Interest Rate(s)

Rate range, if Variable

Principal balance outstanding as of [date]

Principal payments made during [year]

Payments in Lieu of Taxes (PILOT)

paid in [year]

Total cost of goods/services purchased: \$ \_\_\_\_\_

New York State Sales Tax Exemptions Claimed [year]

New York Local Sales Tax Exemptions Claimed: [year]

New York State Mortgage Recording

Tax Exemption: [year]

Form of Syracuse Industrial Development Agency — Project Jobs Data [year]

From:

To: \_\_\_\_\_, CPAs

Re:

The following jobs information is furnished to you with regard to the above cited project:

**A. Job Retention/Creation:**

**I. Construction Jobs:**

Provide the name of your general contractor: \_\_\_\_\_.

Provide the address (including county) of your general contractor: \_\_\_\_\_.

Is the general contractor MWBE qualified? \_\_\_\_\_.

Is the general contractor Service-Disabled Veteran-Owned Business Enterprises ( SDVOBE) qualified? \_\_\_\_\_.

For each contractor and/or sub-contractor, provide the following information for the reporting period:

Bid awarded to (Name/Address/County*)	Value of contract	MWBE (Yes/No)	SDVOBE (Yes/No)	Number of jobs (FTE)

**\*Must include county**

**II. Permanent (non-construction) Jobs:**

Number of FTEs retained at the Project prior to date of application: \_\_\_\_\_.

Number of FTEs created by the Project during the reporting calendar year (*exclusive of construction jobs*): \_\_\_\_\_.

Of the jobs created by the Project during the reporting year (*exclusive of construction jobs*) identify how many are in each of the following categories:

**Professional/Managerial/Technical** - includes jobs which involve skill or competence of extraordinary degree and may include supervisory responsibilities (examples: architect, engineer, accountant, scientist, medical doctor, financial manager, programmer). **Number of jobs created in reporting year** \_\_\_\_\_.

**Skilled** - includes jobs that require specific skill sets, education, training, and experience and are generally characterized by high education or expertise level (examples: electrician, computer operator, administrative assistant, carpenter, sales representative). **Number of jobs created in reporting year** \_\_\_\_\_.

**Unskilled or Semi-Skilled** - includes jobs that require little or no prior acquired skills and involve the performance of simple duties that require the exercise of little or no independent judgment (examples: general cleaner, truck driver, typist, gardener, parking lot attendant, line operator, messenger, information desk clerk, crop harvester, retail salesperson, security guard, telephone solicitor, file clerk). **Number of jobs created in reporting year** \_\_\_\_\_.

Identify:

the average annual salary range of the FTEs (*exclusive of construction jobs*) created during the reporting year: \$\_\_\_\_\_.

the total number of jobs (*exclusive of construction jobs*) created by the Project from the date of application through the reporting date: \_\_\_\_\_.

the total number of jobs (retained and created, *but exclusive of construction jobs*) at the Project from the date of application through the reporting date: \_\_\_\_\_.

What is the annual average salary range of the FTEs (*exclusive of construction jobs*) created at the Project to date: \$\_\_\_\_\_.

**B. Geographical Hiring Data:**

1. Construction jobs:

Of the construction jobs created during the reporting period, provide the zip codes for the hires (based upon hire's residence); and, if more than one (1) FTE hired during the reporting period, identify the number of FTEs hired from each zip code.

2. FTEs hired (*exclusive of construction jobs*)

Of the FTE jobs created during the reporting period, provide the zip codes for the hires (based upon hire's residence); and, if more than one (1) FTE hired during the reporting period, identify the number of FTEs hired from each zip code.

Provide the same information reflecting FTEs hired from the date of application through the reporting date at the Project.

Comments:

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Signature

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Print Name

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Title

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Date



**ALAN BYER AUTO SALES, INC.**

**AND**

**ALAN I. BYER FAMILY TRUST**

**AND**

**WEST GENESEE REALTY ASSOCIATES, LLC**

**AND**

**STEPHEN G. BYER, individually**

**AND**

**CITY OF SYRACUSE  
INDUSTRIAL DEVELOPMENT AGENCY**

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**COMPANY LEASE AGREEMENT**

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**DATED AS OF SEPTEMBER 1, 2019**

**(ALAN BYER AUTO SALES, INC. – VOLVO PROJECT)**



## COMPANY LEASE AGREEMENT

THIS COMPANY LEASE AGREEMENT (the "*Company Lease*"), made and entered into as of September 1, 2019, among ALAN BYER AUTO SALES, INC. ("*Alan Sales*"), ALAN I. BYER FAMILY TRUST (the "*Trust*") an Inter Vivos Revocable Trust created pursuant to a Third Amended and Restated Trust Agreement dated October 1, 2015, STEPHEN G. BYER ("*Byer*"), and WEST GENESEE REALTY ASSOCIATES, LLC ("*Realty*" and together with Alan Sales, the Trust and Byer, collectively, the "*Company*"), each with offices at 1230 West Genesee Street, Syracuse, New York 13204 and CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State of New York, duly organized and existing under the laws of the State of New York, with an office at 201 East Washington Street, 6<sup>th</sup> Floor, Syracuse, New York 13202 (the "*Agency*").

### WITNESSETH:

WHEREAS, Title 1 of Article 18-A of the New York General Municipal Law (the "*Enabling Act*") was duly enacted into law as Chapter 1030 of the New York Laws of 1969; and

WHEREAS, the Enabling Act authorizes and provides for the creation of industrial development agencies for the benefit of the several counties, cities, villages, and towns in the State of New York and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip, and dispose of land and any buildings or other improvements, and all real and personal properties, including, but not limited to, machinery and equipment deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial, or industrial purposes, in order to advance the job opportunities, health, general prosperity, and economic welfare of the people of the State of New York and to improve their standard of living; and

WHEREAS, the Enabling Act further authorizes each such agency to lease or sell any or all of its properties, to mortgage and pledge any or all of its properties, whether then owned or thereafter acquired, and to pledge the revenues and receipts from the lease or sale thereof; and

WHEREAS, the Agency was created pursuant to and in accordance with the provisions of the Enabling Act by Chapter 641 of the Laws of 1979 of the State of New York (collectively with the Enabling Act, the "*Act*") and is empowered under the Act to undertake the Project (as hereinafter defined); and

WHEREAS, the Agency, by resolutions adopted on December 18, 2018, July 16, 2019 and August 20, 2019, agreed, at the request of the Company to undertake a project (the "*Project*") consisting of: (A)(i) the acquisition of an interest in: (1) approximately 1.89 acres of improved real property bearing tax map number 108.1-02-19 and commonly referred to as 1232-36 West Genesee Street (also known as 1230 West Genesee Street) ("*Parcel 1*"); (2) approximately 3 acres of improved real property bearing tax map number 108.1-02-35.1 and commonly referred to as 1232 West Genesee Street (rear) ("*Parcel 2*"); and (3) approximately 2 acres of improved real property bearing tax map number 108.1-02-20 and commonly referred to as 1288 West

Genesee Street ("**Parcel 3**"), each in the City of Syracuse, New York (collectively, the "**Land**"); (ii) certain improvements, including but not limited to, an existing approximately 25,820 square foot building located on Parcel 1; an existing approximately 17,000-square foot building located on Parcel 2; and an approximately 34,802 square foot building located on Parcel 3, all of which are served by common driveways, parking, and pedestrian walkways, and all of which comprise the Alan Byer Volvo facility (collectively, the "**Improvements**"); (iii) the renovation to the Improvements and the Land include, but are not limited to, the interior showroom, sales offices and reception areas, external replacement of entry, new exterior wall finishes, updated signage, the existing basement, replacement of an area of deteriorating floor slab, refreshed directional pavement graphics and roof replacement (collectively with the Land and Improvements, the "**Facility**"); (iv) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment (the "**Equipment**" and together with the Land, Improvements and the Facility, the "**Project Facility**"); (B) the granting of certain financial assistance in the form of exemptions from real property tax, State and local sales and use tax and mortgage recording tax (in accordance with Section 874 of the General Municipal Law) (collectively the "**Financial Assistance**"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, reconstruction, renovation, equipping and completion of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement; and

**WHEREAS**, the Trust and Byer are the fee owners of Parcel 1. West Genesee Realty Associates, LLC is the fee owner of Parcel 2 and Parcel 3. Alan Sales is the operator of the Project Facility and leases the Project Facility from the Trust, Byer and West Genesee Realty Associates, LLC, as applicable, pursuant to a lease agreements dated December 16, 1991, November 30, 2005 and November 9, 2019 (collectively, the "**Ground Lease**"); and

**WHEREAS**, the Agency proposes to assist the Company's acquisition, reconstruction, renovation and equipping of the Project Facility, and grant the Financial Assistance to the Project by, among other things: (1) appointing the Company, or its designee, as its agent with respect to the Project Facility; (2) accepting a (sub)leasehold interest in the Land and Facility from the Company pursuant to this Company Lease and acquiring an interest in the Equipment pursuant to a bill of sale from the Company; and (3) (sub)subleasing the Project Facility to the Company pursuant to the Agency Lease; and

**WHEREAS**, the Agency now proposes to sublease the Land and Facility from the Company pursuant to the terms and conditions set forth herein; and

**WHEREAS**, all things necessary to constitute this Company Lease a valid and binding agreement by and between the parties hereto in accordance with the terms hereof have been done and performed, and the creation, execution and delivery of this Company Lease have, in all respects, been duly authorized.

**NOW, THEREFORE**, for and in consideration of the premises and the mutual covenants hereinafter contained, the parties hereto hereby formally covenant, agree and bind themselves as follows, to wit:

**ARTICLE I  
RECITALS AND DEFINITIONS**

**1.0 RECITALS.**

The foregoing recitals are incorporated herein by reference as if fully set forth hereinbelow.

**1.1 DEFINITIONS.**

For all purposes of this Company Lease and any agreement supplemental thereto, all defined terms indicated by the capitalization of the first letter of such term shall have the meanings specified in the Table of Definitions which is attached to the Agency Lease as Exhibit "C" thereto except as otherwise expressly defined herein or the context hereof otherwise requires.

**1.2 INTERPRETATION.**

In this Company Lease, unless the context otherwise requires:

(a) The terms "hereby," "hereof," "herein," "hereunder," and any similar terms as used in this Company Lease refer to this Company Lease; the term "heretofore" shall mean before and the term "hereafter" shall mean after the date of this Company Lease;

(b) Words of masculine gender shall mean and include correlative words of feminine and neuter genders, and words importing the singular number shall mean and include the plural number and vice versa; and

(c) Any certificates, letters, or opinions required to be given pursuant to this Company Lease shall mean a signed document attesting to or acknowledging the circumstances, representations, opinions of law, or other matters therein stated or set forth or setting forth matters to be determined pursuant to this Company Lease.

**ARTICLE II  
DEMISE; PREMISES; TERM**

**2.1 DEMISE.**

The Company hereby leases to the Agency, and the Agency hereby leases from the Company, the Land and the Facility for the stated term for the rents, covenants and conditions set forth herein subject only to the Permitted Encumbrances.

**2.2 DESCRIPTION OF PREMISES LEASED.**

The leased premises is the Land and the Facility described in the recitals of this Company Lease and as more fully described on **Exhibit "A"** attached hereto.

### 2.3 TERM.

The Project is leased for a term which shall commence as of September 1, 2019, and shall end on the expiration or earlier termination of the Agency Lease.

### 2.4 MANDATORY CONVEYANCE.

At the expiration of the term hereof or any extension thereof by mutual agreement, or as otherwise provided in the Agency Lease, this Company Lease shall automatically expire without any further action by the parties hereto. The Company hereby irrevocably designates the Agency as its attorney-in-fact, coupled with an interest, for the purpose of executing, delivering and recording terminations of leases and bill of sale together with any other documents therewith and to take such other and further actions reasonably necessary to confirm the termination of the Agency's interest in the Project, all at the Company's sole cost and expense.

### 2.5 CONSIDERATION.

The Agency is paying to the Company concurrently with the execution hereof consideration of \$1.00 and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Company.

### 2.6 REPRESENTATIONS AND COVENANTS OF THE COMPANY.

The Trust, Alan Sales, Byer and Realty, each as noted or jointly as the Company, make the following representations and covenants as the basis for the undertakings on its part herein contained:

(a) The Trust is an inter vivos revocable trust operating pursuant to a Third Amended and Restated Trust Agreement dated as of October 1, 2015 (the "**Trust Agreement**") with the power to enter into this Company Lease and the other Company Documents and to carry out its obligations hereunder and thereunder, for which the execution, delivery and performance of this Company Lease and the other Company Documents are duly authorized.

(b) Alan Sales is a business corporation duly organized, validly existing and in good standing under the laws of New York, has the power to enter into this Company Lease and the other Company Documents and to carry out its obligations hereunder and thereunder, and has duly authorized the execution, delivery, and performance of this Company Lease and the other Company Documents.

(c) West Genesee Realty Associates, LLC is a limited liability company duly organized, validly existing and in good standing under the laws of New York, has the power to enter into this Company Lease and the other Company Documents and to carry out its obligations hereunder and thereunder, and has duly authorized the execution, delivery, and performance of this Company Lease and the other Company Documents.

(d) This Company Lease and the other Company Documents constitute, or upon their execution and delivery in accordance with the terms thereof will constitute, valid and legally binding obligations of the Trust, Alan Sales, Byer and Realty, enforceable in accordance with their respective terms.

(e) The Trust and Byer have a valid and enforceable fee interest in that portion of the Land and Facility located at 1232-36 West Genesee Street (also known as 1230 West Genesee Street) and shall remain and retain such interests for the term of this Company Lease unless otherwise consented to in writing by the Agency.

(f) Realty has a valid and enforceable interest in those portions of the Land and Facility located at 1232 West Genesee Street (rear) and 1288 West Genesee Street and shall remain and retain such interests for the term of this Company Lease unless otherwise consented to in writing by the Agency.

(g) Alan Sales leases from the Trust, Byer and Realty the Land and Facility and operates the Project Facility and shall remain and retain such interests for the term of this Company Lease unless otherwise consented to in writing by the Agency.

(h) Neither the execution and delivery of this Company Lease and the other Company Documents, the consummation of the transactions contemplated thereby, nor the fulfillment of or compliance with the provisions thereof will:

(1) Result in a breach of, or conflict with any term or provision in, the Trust Agreement or Alan Sales' or Realty's Certificate of Incorporation, By-Laws, Articles of Organization or Operating Agreement, each as applicable;

(2) Require consent under (which has not been heretofore received) or result in a breach of or default under the Ground Lease, any credit agreement, indenture, purchase agreement, mortgage, deed of trust indenture, commitment, guaranty or other agreement or instrument to which either Company is a party or by which either Company or any of its property may be bound or affected; or

(3) Conflict with or violate any existing law, rule, regulation, judgment, order, writ, injunction, or decree of any Governmental Authority or court (domestic or foreign) having jurisdiction over the Company or any of the property of the Company.

(i) So long as the Agency holds an interest in the Project Facility, the Project Facility is and will continue to be a "project" (as such quoted term is defined in the Act), and the Company will not take any action (or omit to take any action required by the Company Documents or which the Agency, together with Agency's counsel, advise the Company in writing should be taken), or allow any action to be taken, which action (or omission) would in any way cause the Project Facility not to constitute a "project" (as such quoted term is defined in the Act).

(j) The Company shall cause all notices as required by law to be given and shall comply or cause compliance with all laws, ordinances, municipal rules, and regulations and requirements of all Governmental Authorities applying to or affecting the construction,

equipping and operation of the Project Facility (the applicability of such laws, ordinances, rules, and regulations to be determined both as if the Agency were the owner of the Project Facility and as if the Company, were the owner of the Project Facility), and the Company will defend and save the Agency and its officers, members, agents (other than the Company), and employees harmless from all fines and penalties due to failure to comply therewith.

(k) The Company shall perform, or cause to be performed, for and on behalf of the Agency, each and every obligation of the Agency (which is within the control of the Company) under and pursuant to the Agency Lease, this Company Lease and the other Company Documents and shall defend, indemnify, and hold harmless the Agency and its members, officers, agents (other than the Company), servants and employees from and against every expense, liability, or claim arising out of the failure of the Company to fulfill its obligations under the provisions of this Section 2.6.

(l) The Company acknowledges, restates and affirms the obligations, representations, warranties and covenants set forth in Sections 2.2 and 11.12 of the Agency Lease as if fully set forth herein.

### **ARTICLE III DISPUTE RESOLUTION**

#### **3.1 GOVERNING LAW.**

This Company Lease shall be governed in all respects by the laws of the State of New York.

#### **3.2 WAIVER OF TRIAL BY JURY.**

THE COMPANY AND THE AGENCY WAIVE THE RIGHT TO TRIAL BY JURY OF ANY DISPUTE ARISING UNDER THIS COMPANY LEASE, AND THIS PROVISION SHALL SURVIVE THE TERMINATION OF THIS COMPANY LEASE.

### **ARTICLE IV MISCELLANEOUS CLAUSES**

#### **4.1 NOTICES.**

All notices, certificates, and other communications hereunder shall be in writing, shall be sufficiently given, and shall be deemed given when (a) sent to the applicable address stated below by registered or certified mail, return receipt requested, and actually received by the intended recipient or by overnight courier or such other means as shall provide the sender with documentary evidence of such delivery, or (b) delivery is refused by the addressee as evidenced by the affidavit of the Person who attempted to effect such delivery. The addresses to which notices, certificates, and other communications hereunder shall be delivered are as follows:

- (a) To the Agency:

City of Syracuse Industrial Development Agency  
201 East Washington Street, 6<sup>th</sup> Floor  
Syracuse, New York 13202  
Attn: Chairman

With copies to:

Corporation Counsel  
City of Syracuse  
233 East Washington Street  
Syracuse, New York 13202

and

Bousquet Holstein PLLC  
110 West Fayette Street, Suite 1000  
Syracuse, New York 13202  
Attn: Susan R. Katzoff, Esq.

(b) To the Company:

Alan Byer Auto Sales, Inc.  
1230 West Genesee Street  
Syracuse, New York 13204  
Attn: Stephen G. Byer

and

Alan I. Byer Family Trust  
1230 West Genesee Street  
Syracuse, New York 13204  
Attn: Stephen G. Byer

and

West Genesee Realty Associates, LLC  
1230 West Genesee Street  
Syracuse, New York 13204  
Attn: Stephen G. Byer

and

Stephen G. Byer  
1230 West Genesee Street  
Syracuse, New York 13204

With a copy to:

Barclay Damon LLP  
Barclay Damon Tower  
125 East Jefferson Street  
Syracuse, New York 13202  
Attn: Kevin R. McAuliffe, Esq.

**4.2 NO RECOURSE UNDER THIS COMPANY LEASE.**

No provision, covenant or agreement contained herein, in any other agreement entered into in connection herewith, or any obligations herein imposed, upon the Agency, or any breach thereof, shall constitute or give rise to or impose upon the Agency, a debt or other pecuniary liability or a charge upon its general credit, and all covenants, stipulations, promises, agreements and obligations of the Agency contained in this Company Lease shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Agency, and not of any member, director, officer, employee or agent of the Agency in his individual capacity.

**4.3 ENTIRE AGREEMENT.**

This Company Lease contains the entire agreement between the parties and all prior negotiations and agreements are merged in this Company Lease. This Company Lease may not be changed, modified or discharged, in whole or in part, except by a written instrument executed by the party against whom enforcement of the change, modification or discharge is sought.

**4.4 AGENCY REPRESENTATIONS.**

The Company expressly acknowledges that neither the Agency nor the Agency's directors, members, employees or agents has made or is making, and the Company, in executing and delivering this Company Lease, is not relying upon warranties, representations, promises or statements, except to the extent that the same are expressly set forth in this Company Lease, and no rights, easements or licenses are or shall be acquired by the Company by implication or otherwise unless expressly set forth in this Company Lease.

**4.5 BINDING EFFECT.**

This Company Lease shall be binding upon and inure to the benefit of the parties, their respective successors and assigns.

**4.6 PARAGRAPH HEADINGS.**

Paragraph headings are for convenience only and shall not affect the construction or interpretation of this Company Lease.



#### **4.7 CONSENT TO AGENCY LEASE; SUBORDINATION.**

The Company hereby consents to the sublease by the Agency of the Project Facility to the Company pursuant to the Agency Lease. The Company acknowledges and agrees that this Company Lease and the Agency Lease shall be subordinate in all respects to the Mortgages.

#### **4.8 HOLD HARMLESS PROVISIONS.**

(a) The Company hereby releases the Agency and its members, officers, agents, and employees from, agree that the Agency and its members, officers, agents, and employees shall not be liable for, and agree to indemnify, defend, and hold the Agency and its members, officers, agents, and employees harmless from and against any and all claims arising as a result of the Agency's undertaking of the Project, including, but not limited to:

(1) Liability for loss or damage to Property or bodily injury to or death of any and all persons that may be occasioned by any cause whatsoever pertaining to the Project Facility, or arising by reason of or in connection with the occupation or the use thereof, or the presence on, in, or about the Project Facility;

(2) Liability arising from or expense incurred by the Agency's acquisition of a leasehold interest in the Project Facility and the subleasing of the Project Facility, including, without limiting the generality of the foregoing, all liabilities or claims arising as a result of the Agency's obligations under the Agency Lease, the Company Lease or the Mortgage;

(3) All claims arising from the exercise by the Company of the authority conferred upon it and performance of the obligations assumed under Article II hereof;

(4) All causes of action and attorneys' fees and other expenses incurred in connection with any suits or actions which may arise as a result of any of the foregoing, provided that any such losses, damages, liabilities, or expenses of the Agency are not incurred or do not result from the intentional wrongdoing of the Agency or any of its members, officers, agents, or employees.

The foregoing indemnities shall apply notwithstanding the fault or negligence (other than gross negligence or willful misconduct) on the part of the Agency or any of its officers, members, agents, servants, or employees and irrespective of any breach of statutory obligation or any rule of comparative or apportioned liability.

(b) In the event of any claim against the Agency or its members, officers, agents, or employees by any employee of the Company, or any contractor of the Company, or anyone directly or indirectly employed by any of them, or any one for whose acts any of them may be liable, the obligations of the Company hereunder shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Company such contractor under workers' compensation laws, disability benefit laws, or other employee benefit laws.

(c) Notwithstanding any other provisions of this Company Lease, the obligations of the Company pursuant to this Section 4.8 shall remain in full force and effect after the termination of the Agency Lease and this Company Lease until the expiration of the period stated in the applicable statute of limitations during which a claim, cause of action, or prosecution relating to the matters herein described may be brought, and the payment in full or the satisfaction of such claim, cause of action, or prosecution, and the payment of all expenses and charges incurred by the Agency, or its officers, members, agents (other than the Company), or employees, relating thereto.

(d) For purposes of this Section 4.8, the Company shall not be deemed to constitute an employee, agent or servant of the Agency or a person under the Agency's control or supervision.

#### **4.9 NO RECOURSE; SPECIAL OBLIGATION.**

The obligations and agreements of the Agency contained herein and in the other Agency Documents and in any other instrument or document executed in connection herewith or therewith, and any instrument or document supplemental hereto or thereto, shall be deemed the obligations and agreements of the Agency and not of any member, officer, agent, or employee of the Agency in his individual capacity; and the members, officers, agents, and employees of the Agency shall not be liable personally hereon or thereon or be subject to any personal liability or accountability based upon or in respect hereof or thereof or of any transaction contemplated hereby or thereby. The obligations and agreements of the Agency contained herein or therein shall not constitute or give rise to an obligation of the State New York or of the City of Syracuse, and neither the State of New York nor the City of Syracuse shall be liable hereon or thereon. Further, such obligations and agreements shall not constitute or give rise to a general obligation of the Agency, but rather shall constitute limited obligations of the Agency, payable solely from the revenues of the Agency derived, and to be derived from, the lease, sale, or other disposition of the Project Facility, other than revenues derived from or constituting Unassigned Rights. No order or decree of specific performance with respect to any of the obligations of the Agency hereunder or thereunder shall be sought or enforced against the Agency unless:

(a) The party seeking such order or decree shall first have requested the Agency in writing to take the action sought in such order or decree of specific performance, and thirty (30) days shall have elapsed from the date of receipt of such request, and the Agency shall have refused to comply with such request (or if compliance therewith would reasonably be expected to take longer than thirty (30) days, shall have failed to institute and diligently pursue action to cause compliance with such request) or failed to respond within such notice period; and

(b) If the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it will incur fees and expenses, the party seeking such order or decree shall have placed in an account with the Agency an amount or undertaking sufficient to cover such reasonable fees and expenses; and

(c) If the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it or any of its members, officers, agents, or

employees shall be subject to potential liability, the party seeking such order or decree shall (1) agree to indemnify and hold harmless the Agency and its members, officers, agents, and employees against any liability incurred as a result of its compliance with such demand; and (2) if requested by the Agency, furnish to the Agency satisfactory security to protect the Agency and its members, officers, agents, and employees against all liability expected to be incurred as a result of compliance with such request.

Any failure to provide notice, indemnity, or security to the Agency pursuant to this Section 4.9 shall not alter the full force and effect of any Event of Default under the Agency Lease.

(d) For purposes of this Section 4.9, the Company shall not be deemed to constitute an employee, agent or servant of the Agency or a person under the Agency's control or supervision.

#### **4.10 MERGER OF AGENCY.**

(a) Nothing contained in this Company Lease shall prevent the consolidation of the Agency with, or merger of the Agency into, or assignment by the Agency of its rights and interests hereunder to any other body corporate and politic and public instrumentality of the State of New York, or political subdivision thereof, which has the legal authority to perform the obligations of the Agency hereunder, provided that upon any such consolidation, merger, or assignment, the due and punctual performance and observance of all the agreements and conditions of this Company Lease to be kept and performed by the Agency shall be expressly assumed in writing by the public instrumentality or political subdivision resulting from such consolidation or surviving such merger or to which the Agency's rights and interests hereunder shall be assigned.

(b) As of the date of any such consolidation, merger, or assignment, the Agency shall give notice thereof in reasonable detail to the Company. The Agency shall promptly furnish to the Company such additional information with respect to any such consolidation, merger, or assignment as the Company reasonably may request.

#### **4.11 EXECUTION OF COUNTERPARTS.**

This Company Lease may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

#### **4.12 EVENT OF DEFAULT.**

A default in the performance or the observance of any covenants, conditions, or agreements on the part of the Company in this Company Lease, the Agency Lease or the Project Agreement.

#### **4.13 REMEDIES.**

Whenever any Event of Default shall have occurred and be continuing, the Agency may, to the extent permitted by law, take any one or more of the following remedial steps:

- 1) Terminate the Company Lease or the Agency Lease; or
- 2) Take any other action at law or in equity, which may appear necessary or desirable to collect any amounts then due, or thereafter to become due, hereunder.

**4.14 AMENDMENTS, CHANGES AND MODIFICATIONS.**

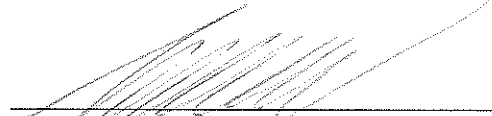
This Company Lease may not be amended, changed, modified, altered, or terminated except by an instrument in writing signed by the parties hereto.

**4.15 JOINT AND SEVERAL.** Notwithstanding anything in this Agreement to the contrary, the Companies shall be jointly and severally liable for all payments and obligations hereunder. A separate action or actions may be brought and prosecuted against each Company, whether or not an action is brought against any other person or Company or whether or not any other person or Company is joined in such action or actions.

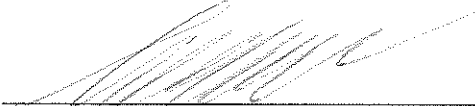
[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Company and the Agency have duly executed this Company Lease, as of the day and year first above written.

**ALAN BYER AUTO SALES, INC.**


By:   
\_\_\_\_\_  
Stephen G. Byer, Vice President

**ALAN I. BYER FAMILY TRUST**

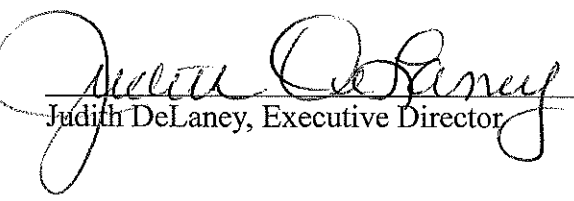
By:   
\_\_\_\_\_  
Stephen G. Byer, Authorized Signatory

**WEST GENESEE REALTY ASSOCIATES,  
LLC**

By:   
\_\_\_\_\_  
Stephen G. Byer, Manager

  
\_\_\_\_\_  
Stephen G. Byer, individually

**CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY**

By:   
\_\_\_\_\_  
Judith DeLaney, Executive Director

STATE OF NEW YORK )  
 ) SS.:  
COUNTY OF ONONDAGA )

On the 12<sup>th</sup> day of September, 2019, before me, the undersigned, personally appeared **Stephen G. Byer**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

*Lori L. McRobbie*

Notary Public

LORI L. McROBBIE  
Notary Public, State of New York  
Qualified in Onondaga Co. No. 01MC505559;  
Commission Expires on Feb. 12, 20 22

STATE OF NEW YORK )  
 ) SS.:  
COUNTY OF ONONDAGA )

On the 12<sup>th</sup> day of September, 2019, before me, the undersigned, personally appeared **Judith DeLaney**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

*Lori L. McRobbie*

Notary Public

LORI L. McROBBIE  
Notary Public, State of New York  
Qualified in Onondaga Co. No. 01MC5055591  
Commission Expires on Feb. 12, 20 22

## EXHIBIT A

### DESCRIPTION OF REAL PROPERTY

#### **Parcel 1 (1232-36 West Genesee Street – 108.1-02-19)**

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Syracuse, County of Onondaga and State of New York, being a portion of Farm Lot #292 and #293 in said City and being more particularly described as follows: Beginning at a point in the present northerly line of West Genesee Street, said point being S. 74° 37' 20" W., a distance of 252.1 feet from the intersection of the westerly line of Eureka Street, with said northerly line of West Genesee Street, said point of beginning also being the southwesterly corner of property now or formerly owned by the Gladding Corporation, as recorded in the Onondaga County Clerk's office in Liber of Deeds # 3102 at Page #7; thence S. 74° 37' 20" W., along said northerly line of West Genesee Street a distance of 196.93 feet to its intersection with the easterly line of Block #1, of the Powell Tract, Filed Map #267, said point also being the southeasterly corner of property now or formerly owned by Vehicles Realty Associates, as recorded in the Onondaga County Clerk's Office in Liber of Deeds #2683, Page 276; thence N. 55° 28' 20" W., along said easterly line of said Vehicles Realty Associates property and said easterly line of said Block #1, a distance of 351.77 feet to a point; thence N. 63° 51' 20" E., a distance of 353.75 feet to a point; thence S. 28° 08' 53" E., along the westerly line of said Gladding Corporation property, a distance of 343.69 feet to the point and place of beginning.

#### **Parcel 2 (1232 West Genesee Street – 108.1-02-35.1)**

ALL THAT TRACT OF PARCEL OF LAND, situate in the City of Syracuse, County of Onondaga, State of New York, being parts of Farm Lot Nos. 292 and 293 as shown on a map of The Hiawatha Tract filed in the Onondaga County Clerk's Office on September 20, 19\_7 as Tract Map No. 1606, bounded and described as follows:

BEGINNING at the northeasterly corner of Alan Byer, reputed owner, according to Book 2497 of Deeds at Page 1012, filed in the Onondaga County Clerk's Office, said point being the following courses and distances from the intersection of the westerly boundary of Eureka Street with the northerly boundary of West Genesee Street: 1) S. 74° 37' 20" W., along said northerly boundary of West Genesee Street, a distance of 253.27 feet to the southeasterly corner of said Alan Byer; 2) N. 28° 08' 40" W., along the easterly boundary of said Alan Byer, a distance of 343.67 feet to said point of beginning; running thence S. 63° 51' 20" W., along the northerly boundary of said Alan Byer, a distance of 341.96 feet to the northwesterly corner thereof; thence N. 46° 11' 32" W., a distance of 156.33 feet to an angle point; thence N. 28° 08' 40" W., a distance of 200.00 feet to a point in the northerly boundary of Warsaw Avenue (not open); thence N. 61° 52' 20" E., along said northerly boundary of Warsaw Avenue (not open), a distance of 400.18 feet to a point in the westerly boundary of Gladding Corp., formerly; thence S. 28° 08' 40" E., along said westerly boundary of Gladding Corp., formerly, a distance of 360.92 feet to a point; thence S. 63° 51' 20" W., a distance of 9.98 feet to the point of beginning.

Containing 3.170 acres of land, more or less.

**Parcel 3 (1288 West Genesee Street – 108.1-02-20)**

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Syracuse, County of Onondaga and State of New York, in the former Town of Geddes, known and distinguished as Lots No. 1, 2, 3, 4 and 5 and part of Lot 7, of the Powell Tract, according to a map thereof filed in the Onondaga County Clerk's Office on August 14, 1876, as Map Number 267, bounded and described as follows:

Beginning at the Intersection of the north line of West Genesee Street, with the east line of Dewey Avenue (formerly North Magnolia Street); thence easterly along the northerly line of West Genesee Street 475.14 feet, more or less to the southeasterly corner of Lot Number 1, of said Powell Tract; thence North  $55^{\circ} 28' 20''$  West on the westerly side of Harbour Brook and the easterly line of Lots 1, 2 and 7 of said Powell Tract according to said Map, 313.73 feet to a point in the northerly line of lands conveyed to the Syracuse Hospital for Women and Children of Syracuse, New York by deed dated November 9, 1904, and recorded in the Onondaga County Clerk's Office on December 12, 1904, in Book Number 360 of Deeds at page 129&c.; thence South  $74^{\circ} 37' 20''$  West parallel to West Genesee Street and along the northerly line of lands so conveyed by said Deed to the Syracuse Hospital for Women and Children as aforesaid and along the northerly line of lands conveyed to the Woman's Hospital and Training School for Nurses by deed dated July 22, 1895, and recorded in the Onondaga County Clerk's Office on September 18, 1895, in Book of Deeds No. 311 at page 4&c., 141.35 feet, more or less, to the northeast corner of a lot formerly owned by Rosa Andrews and thence southerly along the west line of said Lot owned by Rosa Andrews 40 feet to the southeast corner thereof; thence South  $74^{\circ} 37' 20''$  West along the south line of said Andrews Lot, formerly owned by Rosa Andrews, 132 feet to the east line of Dewey Avenue; thence South  $15^{\circ} 22' 40''$  East along the easterly line of Dewey Avenue 200 feet to the point and place of beginning.

Easement for ingress and egress over lands now or formerly owned by Alan Byer, lying east of the above described parcel as set forth in an Easement Agreement between Vehicle Realty Associates and Alan Byer dated March 31, 1989 and recorded in the Onondaga County Clerk's office September 14, 1989 in Book 3562 of Deeds, Page 216, the easement area having been described as follows:

All of that tract or parcel of land situate in the City of Syracuse, County of Onondaga, State of New York, being part of Farm Lots 292 & 293 and more particularly bounded and described as follows:

Beginning at a point at the northwest corner of lands of party of the first part, said point also being N.  $56^{\circ} 29' 03''$  W., along the westerly line of lands of said party of the first part, a distance of 360.10 feet from the Northerly line of W. Genesee Street; running thence N.  $63^{\circ} 51' 40''$  E., along the northerly line of lands of said party of the first part, 25 feet to a point; thence the following 2 courses and distances through and across the lands of said party of the first part: (1) S.  $56^{\circ} 29' 03''$  S., 53.37 feet; and (2) S.  $33^{\circ} 30' 57''$  W., 21.58 feet to a point in said westerly line of lands of party of the first part; thence N.  $56^{\circ} 29' 03''$  W., along said Westerly line, 66 feet to the place of beginning.





Lisa Dell, County Clerk  
401 Montgomery Street  
Room 200  
Syracuse, NY 13202  
(315) 435-2229

## Onondaga County Clerk Recording Cover Sheet

Received From :  
BARCLAY DAMON LLP  
125 E JEFFERSON ST  
SYRACUSE, NY 13202

Return To :  
BOUSQUET HOLSTEIN  
PICK UP BOX

Method Returned : MAIL

**First PARTY 1**

ALAN I BYER FAMILY TRUST

**First PARTY 2**

CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY

Index Type : Land Records

Instr Number : 2019-00037399

Orig Instr #: 1606

Book : Page :

Type of Instrument : Memorandum Of Lease

Type of Transaction : Deed Misc

Recording Fee: \$76.00

Recording Pages : 6

The Property affected by this instrument is situated in Syracuse, in the County of Onondaga, New York

**Real Estate Transfer Tax**

RETT #: 2577

Deed Amount : \$0.00

RETT Amount : \$0.00

Total Fees : \$76.00

State of New York

County of Onondaga

I hereby certify that the within and foregoing was recorded in the Clerk's office for Onondaga County, New York

On (Recorded Date) : 10/04/2019

At (Recorded Time) : 2:44:30 PM



Doc ID - 037167900006

Lisa Dell, County Clerk



THIS IS NOT A BILL

Record and Return to:  
Susan R. Katzoff, Esq.  
Bousquet Holstein PLLC  
110 W. Fayette Street, Suite 1000  
Syracuse, NY 13202

**MEMORANDUM OF  
COMPANY LEASE AGREEMENT**

***NAME AND ADDRESS OF LESSOR:*** Alan I. Byer Family Trust  
1230 West Genesee Street  
Syracuse, New York 13204

Alan Byer Auto Sales, Inc.  
1230 West Genesee Street  
Syracuse, New York 13204

West Genesee Realty Associates, LLC  
1230 West Genesee Street  
Syracuse, New York 13204

Stephen G. Byer  
1230 West Genesee Street  
Syracuse, New York 13204

***NAME AND ADDRESS OF LESSEE:*** City of Syracuse Industrial Development Agency  
201 East Washington Street, 6<sup>th</sup> Floor  
Syracuse, New York 13202

***DESCRIPTION OF LEASED PREMISES:***

All that tract or parcel of land situate in the City of Syracuse, County of Onondaga and State of New York, being more particularly described in **Exhibit "A"** annexed hereto, together with the improvements thereon.

***DATE OF EXECUTION OF COMPANY LEASE AGREEMENT:***

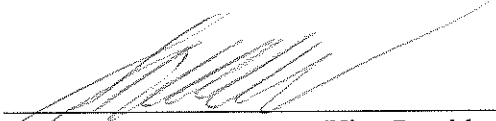
As of September 1, 2019

***TERM OF COMPANY LEASE AGREEMENT:***

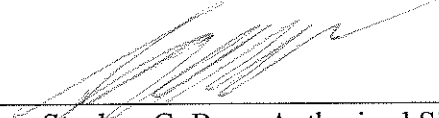
The term of the Company Lease shall commence on the date hereof and continue in full force and effect until **June 30, 2030**, unless earlier terminated as provided in that certain Agency Lease dated of even date herewith between the same parties hereto.

IN WITNESS WHEREOF, the parties hereto have respectively executed this memorandum as of the 1<sup>st</sup> day of September, 2019.

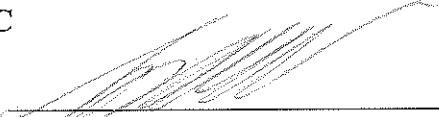
**ALAN BYER AUTO SALES, INC.**

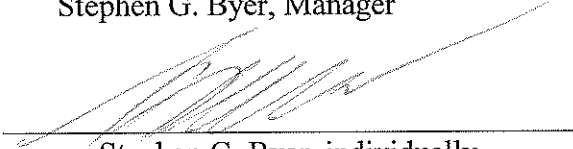
By:   
Stephen G. Byer, Vice President

**ALAN I. BYER FAMILY TRUST**

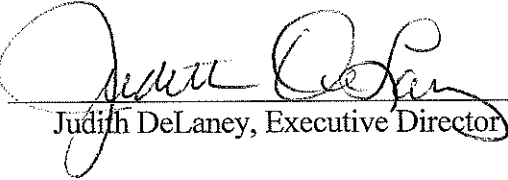
By:   
Stephen G. Byer, Authorized Signatory

**WEST GENESEE REALTY ASSOCIATES,  
LLC**

By:   
Stephen G. Byer, Manager

  
Stephen G. Byer, individually

**CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY**

By:   
Judith DeLaney, Executive Director

STATE OF NEW YORK )  
 ) SS.:  
COUNTY OF ONONDAGA )

On the 12<sup>th</sup> day of September, 2019, before me, the undersigned, a Notary Public in and for said State, personally appeared **STEPHEN G. BYER**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

*Lori L. McRobbie*

Notary Public

LORI L. McROBBIE  
Notary Public, State of New York  
Qualified in Onondaga Co. No. 01MC505591  
Commission Expires on Feb. 12, 20 22

STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF ONONDAGA )

On this 12<sup>th</sup> day of September, 2019, before me, the undersigned, a Notary Public in and for said State, personally appeared **JUDITH DELANEY**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

*Lori L. McRobbie*

Notary Public

LORI L. McROBBIE  
Notary Public, State of New York  
Qualified in Onondaga Co. No. 01MC505591  
Commission Expires on Feb. 12, 20 22



# Combined Real Estate Transfer Tax Return, Credit Line Mortgage Certificate, and Certification of Exemption from the Payment of Estimated Personal Income Tax

Recording office time stamp

See Form TP-584-I, Instructions for Form TP-584, before completing this form. Print or type.

**Schedule A – Information relating to conveyance**

Grantor/Transferor <input checked="" type="checkbox"/> Individual <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Estate/Trust <input type="checkbox"/> Single member LLC <input checked="" type="checkbox"/> Other	Name (if individual, last, first, middle initial) ( <input checked="" type="checkbox"/> check if more than one grantor) Alan I. Byer Family Trust and Stephen G. Byer Mailing address 1230 West Genesee Street City State ZIP code Syracuse NY 13204 Single member's name if grantor is a single member LLC (see instructions)	Social security number [REDACTED] Social security number Federal EIN 30-0097147 Single member EIN or SSN
Grantee/Transferee <input type="checkbox"/> Individual <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Estate/Trust <input type="checkbox"/> Single member LLC <input checked="" type="checkbox"/> Other	Name (if individual, last, first, middle initial) ( <input type="checkbox"/> check if more than one grantee) City of Syracuse Industrial Development Agency Mailing address 201 E. Washington Street, 6th Floor City State ZIP code Syracuse NY 13202 Single member's name if grantee is a single member LLC (see instructions)	Social security number Social security number Federal EIN 52-1380308 Single member EIN or SSN

Location and description of property conveyed

Tax map designation – Section, block & lot (include dots and dashes)	SWIS code (six digits)	Street address	City, town, or village	County
108.1-02-19	311500	1232-36 West Genesee Street	Syracuse	Onondaga

Type of property conveyed (check applicable box)

1 <input type="checkbox"/> One- to three-family house 2 <input type="checkbox"/> Residential cooperative 3 <input type="checkbox"/> Residential condominium 4 <input type="checkbox"/> Vacant land	5 <input checked="" type="checkbox"/> Commercial/Industrial 6 <input type="checkbox"/> Apartment building 7 <input type="checkbox"/> Office building 8 <input type="checkbox"/> Other _____	Date of conveyance <table style="border: 1px solid black; display: inline-table;"> <tr> <td style="padding: 2px 5px;">09</td> <td style="padding: 2px 5px;">01</td> <td style="padding: 2px 5px;">2019</td> </tr> <tr> <td style="font-size: 8px;">month</td> <td style="font-size: 8px;">day</td> <td style="font-size: 8px;">year</td> </tr> </table>	09	01	2019	month	day	year	Percentage of real property conveyed which is residential real property _____ 0% (see instructions)
09	01	2019							
month	day	year							

Condition of conveyance (check all that apply)

- |  |  |  |
|--|--|--|
| a. <input type="checkbox"/> Conveyance of fee interest<br><br>b. <input type="checkbox"/> Acquisition of a controlling interest (state percentage acquired _____%)<br><br>c. <input type="checkbox"/> Transfer of a controlling interest (state percentage transferred _____%)<br><br>d. <input type="checkbox"/> Conveyance to cooperative housing corporation<br><br>e. <input type="checkbox"/> Conveyance pursuant to or in lieu of foreclosure or enforcement of security interest (attach Form TP-584.1, Schedule E) | f. <input type="checkbox"/> Conveyance which consists of a mere change of identity or form of ownership or organization (attach Form TP-584.1, Schedule F)<br><br>g. <input type="checkbox"/> Conveyance for which credit for tax previously paid will be claimed (attach Form TP-584.1, Schedule G)<br><br>h. <input type="checkbox"/> Conveyance of cooperative apartment(s)<br><br>i. <input type="checkbox"/> Syndication<br><br>j. <input type="checkbox"/> Conveyance of air rights or development rights<br><br>k. <input type="checkbox"/> Contract assignment | l. <input type="checkbox"/> Option assignment or surrender<br><br>m. <input type="checkbox"/> Leasehold assignment or surrender<br><br>n. <input checked="" type="checkbox"/> Leasehold grant<br><br>o. <input type="checkbox"/> Conveyance of an easement<br><br>p. <input checked="" type="checkbox"/> Conveyance for which exemption from transfer tax claimed (complete Schedule B, Part III)<br><br>q. <input type="checkbox"/> Conveyance of property partly within and partly outside the state<br><br>r. <input type="checkbox"/> Conveyance pursuant to divorce or separation<br><br>s. <input type="checkbox"/> Other (describe) _____ |
|--|--|--|

For recording officer's use	Amount received	Date received	Transaction number
	Schedule B., Part I \$ _____ Schedule B., Part II \$ _____		

**Schedule B – Real estate transfer tax return (Tax Law, Article 31)**

**Part I – Computation of tax due**

- 1 Enter amount of consideration for the conveyance (if you are claiming a total exemption from tax, check the exemption claimed box, enter consideration and proceed to Part III) .....  **Exemption claimed**
- 2 Continuing lien deduction (see instructions if property is taken subject to mortgage or lien) .....
- 3 Taxable consideration (subtract line 2 from line 1) .....
- 4 Tax: \$2 for each \$500, or fractional part thereof, of consideration on line 3 .....
- 5 Amount of credit claimed for tax previously paid (see instructions and attach Form TP-584.1, Schedule G) .....
- 6 Total tax due\* (subtract line 5 from line 4) .....

1.		0	00
2.		0	00
3.		0	00
4.		0	00
5.		0	00
6.		0	00

**Part II – Computation of additional tax due on the conveyance of residential real property for \$1 million or more**

- 1 Enter amount of consideration for conveyance (from Part I, line 1) .....
- 2 Taxable consideration (multiply line 1 by the percentage of the premises which is residential real property, as shown in Schedule A) ...
- 3 Total additional transfer tax due\* (multiply line 2 by 1% (.01)) .....

1.		
2.		
3.		

**Part III – Explanation of exemption claimed on Part I, line 1 (check any boxes that apply)**

The conveyance of real property is exempt from the real estate transfer tax for the following reason:

- a. Conveyance is to the United Nations, the United States of America, the state of New York, or any of their instrumentalities, agencies, or political subdivisions (or any public corporation, including a public corporation created pursuant to agreement or compact with another state or Canada)..... a
- b. Conveyance is to secure a debt or other obligation..... b
- c. Conveyance is without additional consideration to confirm, correct, modify, or supplement a prior conveyance..... c
- d. Conveyance of real property is without consideration and not in connection with a sale, including conveyances conveying realty as bona fide gifts ..... d
- e. Conveyance is given in connection with a tax sale..... e
- f. Conveyance is a mere change of identity or form of ownership or organization where there is no change in beneficial ownership. (This exemption cannot be claimed for a conveyance to a cooperative housing corporation of real property comprising the cooperative dwelling or dwellings.) Attach Form TP-584.1, Schedule F..... f
- g. Conveyance consists of deed of partition..... g
- h. Conveyance is given pursuant to the federal Bankruptcy Act ..... h
- i. Conveyance consists of the execution of a contract to sell real property, without the use or occupancy of such property, or the granting of an option to purchase real property, without the use or occupancy of such property ..... i
- j. Conveyance of an option or contract to purchase real property with the use or occupancy of such property where the consideration is less than \$200,000 and such property was used solely by the grantor as the grantor's personal residence and consists of a one-, two-, or three-family house, an individual residential condominium unit, or the sale of stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold covering an individual residential cooperative apartment..... j
- k. Conveyance is not a conveyance within the meaning of Tax Law, Article 31, section 1401(e) (attach documents supporting such claim) ..... k

\*The total tax (from Part I, line 6 and Part II, line 3 above) is due within 15 days from the date conveyance. Please make check(s) payable to the county clerk where the recording is to take place. If the recording is to take place in the New York City boroughs of Manhattan, Bronx, Brooklyn, or Queens, make check(s) payable to the **NYC Department of Finance**. If a recording is not required, send this return and your check(s) made payable to the **NYS Department of Taxation and Finance**, directly to the NYS Tax Department, RETT Return Processing, PO Box 5045, Albany NY 12205-5045.

**Schedule C — Credit Line Mortgage Certificate (Tax Law, Article 11)**

Complete the following only if the interest being transferred is a fee simple interest.

I (we) certify that: (check the appropriate box)

1.  The real property being sold or transferred is not subject to an outstanding credit line mortgage.
2.  The real property being sold or transferred is subject to an outstanding credit line mortgage. However, an exemption from the tax is claimed for the following reason:
  - The transfer of real property is a transfer of a fee simple interest to a person or persons who held a fee simple interest in the real property (whether as a joint tenant, a tenant in common or otherwise) immediately before the transfer.
  - The transfer of real property is (A) to a person or persons related by blood, marriage or adoption to the original obligor or to one or more of the original obligors or (B) to a person or entity where 50% or more of the beneficial interest in such real property after the transfer is held by the transferor or such related person or persons (as in the case of a transfer to a trustee for the benefit of a minor or the transfer to a trust for the benefit of the transferor).
  - The transfer of real property is a transfer to a trustee in bankruptcy, a receiver, assignee, or other officer of a court.
  - The maximum principal amount secured by the credit line mortgage is \$3,000,000 or more, and the real property being sold or transferred is **not** principally improved nor will it be improved by a one- to six-family owner-occupied residence or dwelling.

**Please note:** for purposes of determining whether the maximum principal amount secured is \$3,000,000 or more as described above, the amounts secured by two or more credit line mortgages may be aggregated under certain circumstances. See TSB-M-96(6)-R for more information regarding these aggregation requirements.

Other (attach detailed explanation).


3.  The real property being transferred is presently subject to an outstanding credit line mortgage. However, no tax is due for the following reason:
  - A certificate of discharge of the credit line mortgage is being offered at the time of recording the deed.
  - A check has been drawn payable for transmission to the credit line mortgagee or his agent for the balance due, and a satisfaction of such mortgage will be recorded as soon as it is available.
4.  The real property being transferred is subject to an outstanding credit line mortgage recorded in \_\_\_\_\_ (insert liber and page or reel or other identification of the mortgage). The maximum principal amount of debt or obligation secured by the mortgage is \_\_\_\_\_. No exemption from tax is claimed and the tax of \_\_\_\_\_ is being paid herewith. (Make check payable to county clerk where deed will be recorded or, if the recording is to take place in New York City but not in Richmond County, make check payable to the **NYC Department of Finance**.)

**Signature (both the grantor(s) and grantee(s) must sign)**

The undersigned certify that the above information contained in schedules A, B, and C, including any return, certification, schedule, or attachment, is to the best of his/her knowledge, true and complete, and authorize the person(s) submitting such form on their behalf to receive a copy for purposes of recording the deed or other instrument effecting the conveyance.

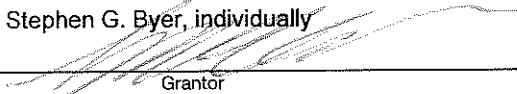
Alan I. Byer Family Trust

City of Syracuse Industrial Development Agency

  
 \_\_\_\_\_  
 Stephen G. Byer Grantor

Authorized Signatory \_\_\_\_\_  
 Title  
 Grantee signature  
 Judith DeLaney

Executive Director  
 \_\_\_\_\_  
 Title

Stephen G. Byer, individually  
  
 \_\_\_\_\_  
 Grantor

\_\_\_\_\_  
 Title

\_\_\_\_\_  
 Title

**Reminder:** Did you complete all of the required information in Schedules A, B, and C? Are you required to complete Schedule D? If you checked e, f, or g in Schedule A, did you complete Form TP-584.1? Have you attached your check(s) made payable to the county clerk where recording will take place or, if the recording is in the New York City boroughs of Manhattan, Bronx, Brooklyn, or Queens, to the **NYC Department of Finance**? If no recording is required, send your check(s), made payable to the **Department of Taxation and Finance**, directly to the NYS Tax Department, RETT Return Processing, PO Box 5045, Albany NY 12205-5045.



**Schedule D - Certification of exemption from the payment of estimated personal income tax (Tax Law, Article 22, section 663)**

Complete the following only if a fee simple interest or a cooperative unit is being transferred by an individual or estate or trust.

If the property is being conveyed by a referee pursuant to a foreclosure proceeding, proceed to Part II, and check the second box under *Exemptions for nonresident transferor(s)/seller(s)* and sign at bottom.

**Part I - New York State residents**

If you are a New York State resident transferor(s)/seller(s) listed in Schedule A of Form TP-584 (or an attachment to Form TP-584), you must sign the certification below. If one or more transferors/sellers of the real property or cooperative unit is a resident of New York State, **each** resident transferor/seller must sign in the space provided. If more space is needed, please photocopy this Schedule D and submit as many schedules as necessary to accommodate all resident transferors/sellers.

**Certification of resident transferor(s)/seller(s)**

This is to certify that at the time of the sale or transfer of the real property or cooperative unit, the transferor(s)/seller(s) as signed below was a resident of New York State, and therefore is not required to pay estimated personal income tax under Tax Law, section 663(a) upon the sale or transfer of this real property or cooperative unit.

Signature	Print full name	Date
Signature	Print full name	Date
Signature	Print full name	Date
Signature	Print full name	Date

**Note:** A resident of New York State may still be required to pay estimated tax under Tax Law, section 685(c), but not as a condition of recording a deed.

**Part II - Nonresidents of New York State**

If you are a nonresident of New York State listed as a transferor/seller in Schedule A of Form TP-584 (or an attachment to Form TP-584) but are not required to pay estimated personal income tax because one of the exemptions below applies under Tax Law, section 663(c), check the box of the appropriate exemption below. If any one of the exemptions below applies to the transferor(s)/seller(s), that transferor(s)/seller(s) is not required to pay estimated personal income tax to New York State under Tax Law, section 663. **Each** nonresident transferor/seller who qualifies under one of the exemptions below must sign in the space provided. If more space is needed, please photocopy this Schedule D and submit as many schedules as necessary to accommodate all nonresident transferors/sellers.

If none of these exemption statements apply, you must complete Form IT-2663, *Nonresident Real Property Estimated Income Tax Payment Form*, or Form IT-2664, *Nonresident Cooperative Unit Estimated Income Tax Payment Form*. For more information, see *Payment of estimated personal income tax*, on page 1 of Form TP-584-I.

**Exemption for nonresident transferor(s)/seller(s)**

This is to certify that at the time of the sale or transfer of the real property or cooperative unit, the transferor(s)/seller(s) (grantor) of this real property or cooperative unit was a nonresident of New York State, but is not required to pay estimated personal income tax under Tax Law, section 663 due to one of the following exemptions:

- The real property or cooperative unit being sold or transferred qualifies in total as the transferor's/seller's principal residence (within the meaning of Internal Revenue Code, section 121) from \_\_\_\_\_ Date to \_\_\_\_\_ Date (see instructions).
- The transferor/seller is a mortgagor conveying the mortgaged property to a mortgagee in foreclosure, or in lieu of foreclosure with no additional consideration.
- The transferor or transferee is an agency or authority of the United States of America, an agency or authority of the state of New York, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association, or a private mortgage insurance company.

Signature	Print full name	Date
Signature	Print full name	Date
Signature	Print full name	Date
Signature	Print full name	Date



# Combined Real Estate Transfer Tax Return, Credit Line Mortgage Certificate, and Certification of Exemption from the Payment of Estimated Personal Income Tax

See Form TP-584-I, Instructions for Form TP-584, before completing this form. Print or type.

**Schedule A – Information relating to conveyance**

Grantor/Transferor <input type="checkbox"/> Individual <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Estate/Trust <input type="checkbox"/> Single member LLC <input checked="" type="checkbox"/> Other	Name (if individual, last, first, middle initial) ( <input checked="" type="checkbox"/> check if more than one grantor) West Genesee Realty Associates, LLC	Social security number
	Mailing address 1230 West Genesee Street	Social security number
	City State ZIP code Syracuse NY 13204	Federal EIN 20-3158317
	Single member's name if grantor is a single member LLC (see instructions)	Single member EIN or SSN
Grantee/Transferee <input type="checkbox"/> Individual <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Estate/Trust <input type="checkbox"/> Single member LLC <input checked="" type="checkbox"/> Other	Name (if individual, last, first, middle initial) ( <input type="checkbox"/> check if more than one grantee) City of Syracuse Industrial Development Agency	Social security number
	Mailing address 201 E. Washington Street, 6th Floor	Social security number
	City State ZIP code Syracuse NY 13202	Federal EIN 52-1380308
	Single member's name if grantee is a single member LLC (see instructions)	Single member EIN or SSN

Location and description of property conveyed

Tax map designation – Section, block & lot (include dots and dashes)	SWIS code (six digits)	Street address	City, town, or village	County
108.1 02 35.1 108.1-02-20	311500	1232 West Genesee Street (rear) 1288 West Genesee Street	Syracuse	Onondaga

Type of property conveyed (check applicable box)

1 <input type="checkbox"/> One- to three-family house 2 <input type="checkbox"/> Residential cooperative 3 <input type="checkbox"/> Residential condominium 4 <input type="checkbox"/> Vacant land	5 <input checked="" type="checkbox"/> Commercial/Industrial 6 <input type="checkbox"/> Apartment building 7 <input type="checkbox"/> Office building 8 <input type="checkbox"/> Other _____	Date of conveyance <table style="border: 1px solid black; display: inline-table;"> <tr> <td style="padding: 2px 5px;">09</td> <td style="padding: 2px 5px;">01</td> <td style="padding: 2px 5px;">2019</td> </tr> <tr> <td style="font-size: 8px;">month</td> <td style="font-size: 8px;">day</td> <td style="font-size: 8px;">year</td> </tr> </table>	09	01	2019	month	day	year	Percentage of real property conveyed which is residential real property _____ 0 % (see instructions)
09	01	2019							
month	day	year							

Condition of conveyance (check all that apply)

a. <input type="checkbox"/> Conveyance of fee interest  b. <input type="checkbox"/> Acquisition of a controlling interest (state percentage acquired _____ %)  c. <input type="checkbox"/> Transfer of a controlling interest (state percentage transferred _____ %)  d. <input type="checkbox"/> Conveyance to cooperative housing corporation  e. <input type="checkbox"/> Conveyance pursuant to or in lieu of foreclosure or enforcement of security interest (attach Form TP-584.1, Schedule E)	f. <input type="checkbox"/> Conveyance which consists of a mere change of identity or form of ownership or organization (attach Form TP-584.1, Schedule F)  g. <input type="checkbox"/> Conveyance for which credit for tax previously paid will be claimed (attach Form TP-584.1, Schedule G)  h. <input type="checkbox"/> Conveyance of cooperative apartment(s)  i. <input type="checkbox"/> Syndication  j. <input type="checkbox"/> Conveyance of air rights or development rights  k. <input type="checkbox"/> Contract assignment	l. <input type="checkbox"/> Option assignment or surrender  m. <input type="checkbox"/> Leasehold assignment or surrender  n. <input checked="" type="checkbox"/> Leasehold grant  o. <input type="checkbox"/> Conveyance of an easement  p. <input checked="" type="checkbox"/> Conveyance for which exemption from transfer tax claimed (complete Schedule B, Part III)  q. <input type="checkbox"/> Conveyance of property partly within and partly outside the state  r. <input type="checkbox"/> Conveyance pursuant to divorce or separation  s. <input type="checkbox"/> Other (describe) _____
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For recording officer's use	Amount received Schedule B., Part I \$ _____ Schedule B., Part II \$ _____	Date received	Transaction number
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**Schedule B – Real estate transfer tax return (Tax Law, Article 31)**

**Part I – Computation of tax due**

1	Enter amount of consideration for the conveyance (if you are claiming a total exemption from tax, check the exemption claimed box, enter consideration and proceed to Part III) ..... <input checked="" type="checkbox"/> <b>Exemption claimed</b>	1.	0	00
2	Continuing lien deduction (see instructions if property is taken subject to mortgage or lien) .....	2.	0	00
3	Taxable consideration (subtract line 2 from line 1) .....	3.	0	00
4	Tax: \$2 for each \$500, or fractional part thereof, of consideration on line 3 .....	4.	0	00
5	Amount of credit claimed for tax previously paid (see instructions and attach Form TP-584.1, Schedule G) .....	5.	0	00
6	Total tax due* (subtract line 5 from line 4) .....	6.	0	00

**Part II – Computation of additional tax due on the conveyance of residential real property for \$1 million or more**

1	Enter amount of consideration for conveyance (from Part I, line 1) .....	1.		
2	Taxable consideration (multiply line 1 by the percentage of the premises which is residential real property, as shown in Schedule A) ...	2.		
3	Total additional transfer tax due* (multiply line 2 by 1% (.01)) .....	3.		

**Part III – Explanation of exemption claimed on Part I, line 1 (check any boxes that apply)**

The conveyance of real property is exempt from the real estate transfer tax for the following reason:

- a. Conveyance is to the United Nations, the United States of America, the state of New York, or any of their instrumentalities, agencies, or political subdivisions (or any public corporation, including a public corporation created pursuant to agreement or compact with another state or Canada) ..... a
- b. Conveyance is to secure a debt or other obligation..... b
- c. Conveyance is without additional consideration to confirm, correct, modify, or supplement a prior conveyance..... c
- d. Conveyance of real property is without consideration and not in connection with a sale, including conveyances conveying realty as bona fide gifts ..... d
- e. Conveyance is given in connection with a tax sale..... e
- f. Conveyance is a mere change of identity or form of ownership or organization where there is no change in beneficial ownership. (This exemption cannot be claimed for a conveyance to a cooperative housing corporation of real property comprising the cooperative dwelling or dwellings.) Attach Form TP-584.1, Schedule F..... f
- g. Conveyance consists of deed of partition..... g
- h. Conveyance is given pursuant to the federal Bankruptcy Act ..... h
- i. Conveyance consists of the execution of a contract to sell real property, without the use or occupancy of such property, or the granting of an option to purchase real property, without the use or occupancy of such property ..... i
- j. Conveyance of an option or contract to purchase real property with the use or occupancy of such property where the consideration is less than \$200,000 and such property was used solely by the grantor as the grantor's personal residence and consists of a one-, two-, or three-family house, an individual residential condominium unit, or the sale of stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold covering an individual residential cooperative apartment..... j
- k. Conveyance is not a conveyance within the meaning of Tax Law, Article 31, section 1401(e) (attach documents supporting such claim) ..... k

\*The total tax (from Part I, line 6 and Part II, line 3 above) is due within 15 days from the date conveyance. Please make check(s) payable to the county clerk where the recording is to take place. If the recording is to take place in the New York City boroughs of Manhattan, Bronx, Brooklyn, or Queens, make check(s) payable to the **NYC Department of Finance**. If a recording is not required, send this return and your check(s) made payable to the **NYS Department of Taxation and Finance**, directly to the NYS Tax Department, RETT Return Processing, PO Box 5045, Albany NY 12205-5045.

**Schedule C – Credit Line Mortgage Certificate (Tax Law, Article 11)**

Complete the following only if the interest being transferred is a fee simple interest.

I (we) certify that: (check the appropriate box)


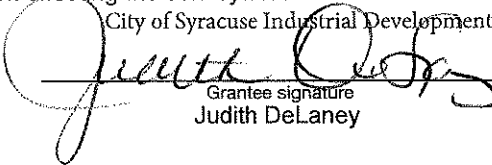
1.  The real property being sold or transferred is not subject to an outstanding credit line mortgage.
2.  The real property being sold or transferred is subject to an outstanding credit line mortgage. However, an exemption from the tax is claimed for the following reason:
  - The transfer of real property is a transfer of a fee simple interest to a person or persons who held a fee simple interest in the real property (whether as a joint tenant, a tenant in common or otherwise) immediately before the transfer.
  - The transfer of real property is (A) to a person or persons related by blood, marriage or adoption to the original obligor or to one or more of the original obligors or (B) to a person or entity where 50% or more of the beneficial interest in such real property after the transfer is held by the transferor or such related person or persons (as in the case of a transfer to a trustee for the benefit of a minor or the transfer to a trust for the benefit of the transferor).
  - The transfer of real property is a transfer to a trustee in bankruptcy, a receiver, assignee, or other officer of a court.
  - The maximum principal amount secured by the credit line mortgage is \$3,000,000 or more, and the real property being sold or transferred is **not** principally improved nor will it be improved by a one- to six-family owner-occupied residence or dwelling.

**Please note:** for purposes of determining whether the maximum principal amount secured is \$3,000,000 or more as described above, the amounts secured by two or more credit line mortgages may be aggregated under certain circumstances. See TSB-M-96(6)-R for more information regarding these aggregation requirements.

- Other (attach detailed explanation).
3.  The real property being transferred is presently subject to an outstanding credit line mortgage. However, no tax is due for the following reason:
    - A certificate of discharge of the credit line mortgage is being offered at the time of recording the deed.
    - A check has been drawn payable for transmission to the credit line mortgagee or his agent for the balance due, and a satisfaction of such mortgage will be recorded as soon as it is available.
  4.  The real property being transferred is subject to an outstanding credit line mortgage recorded in \_\_\_\_\_ (insert liber and page or reel or other identification of the mortgage). The maximum principal amount of debt or obligation secured by the mortgage is \_\_\_\_\_. No exemption from tax is claimed and the tax of \_\_\_\_\_ is being paid herewith. (Make check payable to county clerk where deed will be recorded or, if the recording is to take place in New York City but not in Richmond County, make check payable to the **NYC Department of Finance**.)

**Signature (both the grantor(s) and grantee(s) must sign)**

The undersigned certify that the above information contained in schedules A, B, and C, including any return, certification, schedule, or attachment, is to the best of his/her knowledge, true and complete, and authorize the person(s) submitting such form on their behalf to receive a copy for purposes of recording the deed or other instrument effecting the conveyance.

<p>West Genesee Realty Associates, LLC</p>  <p>_____ Stephen G. Byer Grantor</p>	<p>City of Syracuse Industrial Development Agency</p>  <p>_____ Grantee signature Judith DeLaney</p>	<p>_____ Executive Director</p>
Grantor	Title	Title

**Reminder:** Did you complete all of the required information in Schedules A, B, and C? Are you required to complete Schedule D? If you checked e, f, or g in Schedule A, did you complete Form TP-584.1? Have you attached your check(s) made payable to the county clerk where recording will take place or, if the recording is in the New York City boroughs of Manhattan, Bronx, Brooklyn, or Queens, to the **NYC Department of Finance**? If no recording is required, send your check(s), made payable to the **Department of Taxation and Finance**, directly to the NYS Tax Department, RETT Return Processing, PO Box 5045, Albany NY 12205-5045.

**Schedule D - Certification of exemption from the payment of estimated personal income tax (Tax Law, Article 22, section 663)**

Complete the following only if a fee simple interest or a cooperative unit is being transferred by an individual or estate or trust.

If the property is being conveyed by a referee pursuant to a foreclosure proceeding, proceed to Part II, and check the second box under *Exemptions for nonresident transferor(s)/seller(s)* and sign at bottom.

**Part I - New York State residents**

If you are a New York State resident transferor(s)/seller(s) listed in Schedule A of Form TP-584 (or an attachment to Form TP-584), you must sign the certification below. If one or more transferors/sellers of the real property or cooperative unit is a resident of New York State, **each** resident transferor/seller must sign in the space provided. If more space is needed, please photocopy this Schedule D and submit as many schedules as necessary to accommodate all resident transferors/sellers.

**Certification of resident transferor(s)/seller(s)**

This is to certify that at the time of the sale or transfer of the real property or cooperative unit, the transferor(s)/seller(s) as signed below was a resident of New York State, and therefore is not required to pay estimated personal income tax under Tax Law, section 663(a) upon the sale or transfer of this real property or cooperative unit.

Signature	Print full name	Date
Signature	Print full name	Date
Signature	Print full name	Date
Signature	Print full name	Date

**Note:** A resident of New York State may still be required to pay estimated tax under Tax Law, section 685(c), but not as a condition of recording a deed.

**Part II - Nonresidents of New York State**

If you are a nonresident of New York State listed as a transferor/seller in Schedule A of Form TP-584 (or an attachment to Form TP-584) but are not required to pay estimated personal income tax because one of the exemptions below applies under Tax Law, section 663(c), check the box of the appropriate exemption below. If any one of the exemptions below applies to the transferor(s)/seller(s), that transferor(s)/seller(s) is not required to pay estimated personal income tax to New York State under Tax Law, section 663. **Each** nonresident transferor/seller who qualifies under one of the exemptions below must sign in the space provided. If more space is needed, please photocopy this Schedule D and submit as many schedules as necessary to accommodate all nonresident transferors/sellers.

If none of these exemption statements apply, you must complete Form IT-2663, *Nonresident Real Property Estimated Income Tax Payment Form*, or Form IT-2664, *Nonresident Cooperative Unit Estimated Income Tax Payment Form*. For more information, see *Payment of estimated personal income tax*, on page 1 of Form TP-584-I.

**Exemption for nonresident transferor(s)/seller(s)**

This is to certify that at the time of the sale or transfer of the real property or cooperative unit, the transferor(s)/seller(s) (grantor) of this real property or cooperative unit was a nonresident of New York State, but is not required to pay estimated personal income tax under Tax Law, section 663 due to one of the following exemptions:

- The real property or cooperative unit being sold or transferred qualifies in total as the transferor's/seller's principal residence (within the meaning of Internal Revenue Code, section 121) from \_\_\_\_\_ Date to \_\_\_\_\_ Date (see instructions).
- The transferor/seller is a mortgagor conveying the mortgaged property to a mortgagee in foreclosure, or in lieu of foreclosure with no additional consideration.
- The transferor or transferee is an agency or authority of the United States of America, an agency or authority of the state of New York, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association, or a private mortgage insurance company.

Signature	Print full name	Date
Signature	Print full name	Date
Signature	Print full name	Date
Signature	Print full name	Date

## EXHIBIT "A"

### LEGAL DESCRIPTION OF THE LAND

#### **Parcel 1 (1232-36 West Genesee Street – 108.1-02-19)**

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Syracuse, County of Onondaga and State of New York, being a portion of Farm Lot #292 and #293 in said City and being more particularly described as follows: Beginning at a point in the present northerly line of West Genesee Street, said point being S. 74° 37' 20" W., a distance of 252.1 feet from the intersection of the westerly line of Eureka Street, with said northerly line of West Genesee Street, said point of beginning also being the southwesterly corner of property now or formerly owned by the Gladding Corporation, as recorded in the Onondaga County Clerk's office in Liber of Deeds # 3102 at Page #7; thence S. 74° 37' 20" W., along said northerly line of West Genesee Street a distance of 196.93 feet to its intersection with the easterly line of Block #1, of the Powell Tract, Filed Map #267, said point also being the southeasterly corner of property now or formerly owned by Vehicles Realty Associates, as recorded in the Onondaga County Clerk's Office in Liber of Deeds #2683, Page 276; thence N. 55° 28' 20" W., along said easterly line of said Vehicles Realty Associates property and said easterly line of said Block #1, a distance of 351.77 feet to a point; thence N. 63° 51' 20" E., a distance of 353.75 feet to a point; thence S. 28° 08' 53" E., along the westerly line of said Gladding Corporation property, a distance of 343.69 feet to the point and place of beginning.

#### **Parcel 2 (1232 West Genesee Street – 108.1-02-35.1)**

ALL THAT TRACT OF PARCEL OF LAND, situate in the City of Syracuse, County of Onondaga, State of New York, being parts of Farm Lot Nos. 292 and 293 as shown on a map of The Hiawatha Tract filed in the Onondaga County Clerk's Office on September 20, 19\_\_7 as Tract Map No. 1606, bounded and described as follows:

BEGINNING at the northeasterly corner of Alan Byer, reputed owner, according to Book 2497 of Deeds at Page 1012, filed in the Onondaga County Clerk's Office, said point being the following courses and distances from the intersection of the westerly boundary of Eureka Street with the northerly boundary of West Genesee Street: 1) S. 74° 37' 20" W., along said northerly boundary of West Genesee Street, a distance of 253.27 feet to the southeasterly corner of said Alan Byer; 2) N. 28° 08' 40" W., along the easterly boundary of said Alan Byer, a distance of 343.67 feet to said point of beginning; running thence S. 63° 51' 20" W., along the northerly boundary of said Alan Byer, a distance of 341.96 feet to the northwesterly corner thereof; thence N. 46° 11' 32" W., a distance of 156.33 feet to an angle point; thence N. 28° 08' 40" W., a distance of 200.00 feet to a point in the northerly boundary of Warsaw Avenue (not open); thence N. 61° 52' 20" E., along said northerly boundary of Warsaw Avenue (not open), a distance of 400.18 feet to a point in the westerly boundary of Gladding Corp., formerly; thence S. 28° 08' 40" E., along said westerly boundary of Gladding Corp., formerly, a distance of 360.92 feet to a point; thence S. 63° 51' 20" W., a distance of 9.98 feet to the point of beginning.

Containing 3.170 acres of land, more or less.

**Parcel 3 (1288 West Genesee Street – 108.1-02-20)**

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Syracuse, County of Onondaga and State of New York, in the former Town of Geddes, known and distinguished as Lots No. 1, 2, 3, 4 and 5 and part of Lot 7, of the Powell Tract, according to a map thereof filed in the Onondaga County Clerk's Office on August 14, 1876, as Map Number 267, bounded and described as follows:

Beginning at the Intersection of the north line of West Genesee Street, with the east line of Dewey Avenue (formerly North Magnolia Street); thence easterly along the northerly line of West Genesee Street 475.14 feet, more or less to the southeasterly corner of Lot Number 1, of said Powell Tract; thence North  $55^{\circ} 28' 20''$  West on the westerly side of Harbour Brook and the easterly line of Lots 1, 2 and 7 of said Powell Tract according to said Map, 313.73 feet to a point in the northerly line of lands conveyed to the Syracuse Hospital for Women and Children of Syracuse, New York by deed dated November 9, 1904, and recorded in the Onondaga County Clerk's Office on December 12, 1904, in Book Number 360 of Deeds at page 129&c.; thence South  $74^{\circ} 37' 20''$  West parallel to West Genesee Street and along the northerly line of lands so conveyed by said Deed to the Syracuse Hospital for Women and Children as aforesaid and along the northerly line of lands conveyed to the Woman's Hospital and Training School for Nurses by deed dated July 22, 1895, and recorded in the Onondaga County Clerk's Office on September 18, 1895, in Book of Deeds No. 311 at page 4&c., 141.35 feet, more or less, to the northeast corner of a lot formerly owned by Rosa Andrews and thence southerly along the west line of said Lot owned by Rosa Andrews 40 feet to the southeast corner thereof; thence South  $74^{\circ} 37' 20''$  West along the south line of said Andrews Lot, formerly owned by Rosa Andrews, 132 feet to the east line of Dewey Avenue; thence South  $15^{\circ} 22' 40''$  East along the easterly line of Dewey Avenue 200 feet to the point and place of beginning.

Easement for ingress and egress over lands now or formerly owned by Alan Byer, lying east of the above described parcel as set forth in an Easement Agreement between Vehicle Realty Associates and Alan Byer dated March 31, 1989 and recorded in the Onondaga County Clerk's office September 14, 1989 in Book 3562 of Deeds, Page 216, the easement area having been described as follows:

All of that tract or parcel of land situate in the City of Syracuse, County of Onondaga, State of New York, being part of Farm Lots 292 & 293 and more particularly bounded and described as follows:

Beginning at a point at the northwest corner of lands of party of the first part, said point also being N.  $56^{\circ} 29' 03''$  W., along the westerly line of lands of said party of the first part, a distance of 360.10 feet from the Northerly line of W. Genesee Street; running thence N.  $63^{\circ} 51' 40''$  E., along the northerly line of lands of said party of the first part, 25 feet to a point; thence the following 2 courses and distances through and across the lands of said party of the first part: (1) S.  $56^{\circ} 29' 03''$  S., 53.37 feet; and (2) S.  $33^{\circ} 30' 57''$  W., 21.58 feet to a point in said westerly line of lands of party of the first part; thence N.  $56^{\circ} 29' 03''$  W., along said Westerly line, 66 feet to the place of beginning.





## BILL OF SALE TO AGENCY

**ALAN BYER AUTO SALES, INC.**, a business corporation organized under the laws of the State of New York ("*Alan Sales*"), **ALAN I. BYER FAMILY TRUST**, an Inter Vivos Revocable Trust created pursuant to a Third Amended and Restated Trust Agreement dated October 1, 2015 (the "*Trust*"), **STEPHEN G. BYER ("*Byer*")** and **WEST GENESEE REALTY ASSOCIATES, LLC**, a limited liability company duly organized, validly existing and in good standing under the laws of the State of New York ("*Realty*" and together with Alan Sales, the Trust and Byer, collectively the "*Company*"), each with an office to conduct business at 1230 West Genesee Street, Syracuse, New York 13204 for the consideration of One Dollar (\$1.00), cash in hand paid, and other good and valuable consideration received by the Company from the City of Syracuse Industrial Development Agency, a public benefit corporation organized and existing pursuant to the laws of the State of New York (the "*Agency*"), having its office at 201 East Washington Street, 6<sup>th</sup> Floor, Syracuse, New York 13202, the receipt of which is hereby acknowledged by the Company, hereby sells, transfers, and delivers unto the Agency, its successors and assigns, all those materials, machinery, equipment, fixtures and furnishings now owned or hereafter acquired by the Company in connection with the Project Facility, as described in the Agency Lease entered between the Agency and the Company dated as of September 1, 2019 (the "*Agency Lease*"), and as listed on "**Exhibit A**" attached hereto.

**TO HAVE AND HOLD** the same unto the Agency, its successors and assigns, forever.

The Company hereby represents and warrants that it is the true and lawful owner of the personal property being conveyed hereby, that all of the foregoing are free and clear of all liens, security interests, and encumbrances, except for Permitted Encumbrances, as defined in the Agency Lease, and the Company has the right to sell the same as aforesaid; and the Company covenants that it will warrant and defend title to the same for the benefit of the Agency and its successors and assigns against the claims and demands of all persons.

**IN WITNESS WHEREOF**, the Company has caused this instrument to be executed by its duly authorized representative on the date indicated beneath the signature of such representative and dated as of the 1<sup>st</sup> day of September, 2019.

**ALAN BYER AUTO SALES, INC.**

By: \_\_\_\_\_

Stephen G. Byer, Vice President

**ALAN I. BYER FAMILY TRUST**

By: \_\_\_\_\_

Stephen G. Byer, Authorized Signatory

**WEST GENESEE REALTY ASSOCIATES,  
LLC**

By: \_\_\_\_\_

Stephen G. Byer, Manager

\_\_\_\_\_  
Stephen G. Byer, individually

## **EXHIBIT "A"**

### **DESCRIPTION OF THE EQUIPMENT**

All articles of personal property, all machinery, apparatus, equipment, appliances, floor coverings, furniture, furnishings, supplies, materials, fittings and fixtures of every kind and nature whatsoever and all appurtenances acquired by **ALAN BYER AUTO SALES, INC., ALAN I. BYER FAMILY TRUST, WEST GENESEE REALTY ASSOCIATES, LLC, STEPHEN G. BYER** now or hereafter attached to, contained in or used or acquired in connection with, at or upon, the Project Facility (as defined in the Agency Lease) or placed on any part thereof, though not attached thereto, including, but not limited to, pipes, screens, fixtures, furniture, heating, lighting, plumbing, ventilation, air conditioning, compacting and elevator plants, call systems, stoves, rugs, movable partitions, cleaning equipment, maintenance equipment, shelving, racks, flagpoles, signs, waste containers, drapes, blinds and accessories, sprinkler systems and other fire prevention and extinguishing apparatus and materials, motors, automobiles, parts, machinery and all other equipment used in connection with the Project; and together with any and all products of any of the above, all substitutions, replacements, additions or accessions therefor, and any and all cash proceeds or non-cash proceeds realized from the sale, transfer or conversion of any of the above



**CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY**

**AND**

**ALAN BYER AUTO SALES, INC.**

**AND**

**ALAN I. BYER FAMILY TRUST**

**AND**

**WEST GENESEE REALTY ASSOCIATES, LLC**

**AND**

**STEPHEN G. BYER, individually**

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**AGENCY LEASE AGREEMENT**

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**DATED AS OF SEPTEMBER 1, 2019**

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## AGENCY LEASE AGREEMENT

**THIS AGENCY LEASE AGREEMENT**, dated as of September 1, 2019 (the "**Agency Lease**"), among the **CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY** (the "**Agency**"), a body corporate and politic and a public instrumentality of the State of New York, having its office at 201 East Washington Street, 6<sup>th</sup> Floor, Syracuse, New York 13202, **ALAN BYER AUTO SALES, INC.** ("**Alan Sales**"), **ALAN I. BYER FAMILY TRUST** (the "**Trust**") an Inter Vivos Revocable Trust created pursuant to a Third Amended and Restated Trust Agreement dated October 1, 2015, **STEPHEN G. BYER** ("**Byer**") and **WEST GENESEE REALTY ASSOCIATES, LLC** ("**Realty**" and together with Alan Sales, the Trust and Byer, collectively, the "**Company**"), each with offices at 1230 West Genesee Street, Syracuse, New York 13204.

### WITNESSETH:

**WHEREAS**, the Agency is authorized and empowered by Title I of Article 18-A of the General Municipal Law of the State of New York (the "**State**"), as amended, together with Chapter 641 of the Laws of 1979 of the State of New York, as amended from time to time (collectively, the "**Act**"), to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial, research and recreation facilities, including industrial pollution control facilities, railroad facilities and certain horse racing facilities, for the purpose of promoting, attracting, encouraging and developing recreation and economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State, to improve their recreation opportunities, prosperity and standard of living, and to prevent unemployment and economic deterioration; and

**WHEREAS**, to accomplish its stated purposes, the Agency is authorized and empowered under the Act, among other things, to: (i) make contracts and leases, and to execute such documents as necessary or convenient, with a public or private person, firm, partnership, or corporation; (ii) to acquire, construct, reconstruct, lease, improve, maintain, equip or furnish one or more projects (as defined in the Act); and (iii) to sell, lease and otherwise dispose of any such property; and

**WHEREAS**, the Agency, by resolutions adopted on December 18, 2018, July 16, 2019 and August 20, 2019, agreed, at the request of the Company to undertake a project (the "**Project**") consisting of: (A)(i) the acquisition of an interest in: (1) approximately 1.89 acres of improved real property bearing tax map number 108.1-02-19 and commonly referred to as 1232-36 West Genesee Street (also known as 1230 West Genesee Street) ("**Parcel 1**"); (2) approximately 3 acres of improved real property bearing tax map number 108.1-02-35.1 and commonly referred to as 1232 West Genesee Street (rear) ("**Parcel 2**"); and (3) approximately 2 acres of improved real property bearing tax map number 108.1-02-20 and commonly referred to as 1288 West Genesee Street ("**Parcel 3**"), each in the City of Syracuse, New York (collectively, the "**Land**"); (ii) certain improvements, including but not limited to, an existing approximately 25,820 square

foot building located on Parcel 1; an existing approximately 17,000-square foot building located on Parcel 2; and an approximately 34,802 square foot building located on Parcel 3, all of which are served by common driveways, parking, and pedestrian walkways, and all of which comprise the Alan Byer Volvo facility (collectively, the "**Improvements**"); (iii) the renovation to the Improvements and the Land include, but are not limited to, the interior showroom, sales offices and reception areas, external replacement of entry, new exterior wall finishes, updated signage, the existing basement, replacement of an area of deteriorating floor slab, refreshed directional pavement graphics and roof replacement (collectively with the Land and Improvements, the "**Facility**"); (iv) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment (the "**Equipment**" and together with the Land, Improvements and the Facility, the "**Project Facility**"); (B) the granting of certain financial assistance in the form of exemptions from real property tax, State and local sales and use tax and mortgage recording tax (in accordance with Section 874 of the General Municipal Law) (collectively the "**Financial Assistance**"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, reconstruction, renovation, equipping and completion of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement; and

**WHEREAS**, the Agency proposes to assist the Company's acquisition, reconstruction, renovation and equipping of the Project Facility and grant the Financial Assistance to the Project by, among other things: (1) appointing the Company and/or its designee as its agent with respect to completing the Project; (2) accepting a (sub)leasehold interest in the Land and the Facility from the Company and a fee interest in the Equipment pursuant to a bill of sale from the Company; and (2) (sub)subleasing the Project Facility to the Company pursuant to this Agency Lease; and

**WHEREAS**, the Trust and Byer are the fee owners of Parcel 1. Realty is the fee owner of Parcel 2 and Parcel 3. Alan Sales is the operator of the Project Facility and leases the Project Facility from the Trust, Byer and Realty, as applicable, pursuant to certain lease agreements dated December 16, 1991, November 30, 2005 and November 9, 2019 (collectively, the "**Ground Lease**"); and

**WHEREAS**, the Company has subleased the Land and the Facility to the Agency pursuant to the Company Lease Agreement dated as of September 1, 2019 (the "**Company Lease**"); and

**WHEREAS**, the Company has conveyed title to the Equipment to the Agency pursuant to the Bill of Sale dated as of September 1, 2019 (the "**Bill of Sale**"); and

**WHEREAS**, the Agency now proposes to sublease the Project Facility to the Company pursuant to the terms and conditions herein set forth; and

**WHEREAS**, all things necessary to constitute this Agency Lease a valid and binding agreement by and between the parties hereto in accordance with the terms hereof have been done

and performed, and the creation, execution, and delivery of this Agency Lease have, in all respects, been duly authorized.

**NOW, THEREFORE,** for and in consideration of the premises and the mutual covenants hereinafter contained, the parties hereto hereby formally covenant, agree and bind themselves as follows, to wit:

**ARTICLE I  
RECITALS AND DEFINITIONS**

**1.0 RECITALS.**

The foregoing recitals are incorporated herein by reference as if fully set forth hereinbelow.

**1.1 DEFINITIONS.**

For all purposes of this Agency Lease and any agreement supplemental thereto, all defined terms indicated by the capitalization of the first letter of such term shall have the meanings specified in the Table of Definitions attached hereto as **Exhibit "C"** except as otherwise expressly defined herein or the context hereof otherwise requires.

**1.2 INTERPRETATION.**

In this Agency Lease, unless the context otherwise requires:

(a) The terms "hereby," "hereof," "herein," "hereunder," and any similar terms as used in this Agency Lease refer to this Agency Lease; the term "heretofore" shall mean before and the term "hereafter" shall mean after the date of this Agency Lease;

(b) Words of masculine gender shall mean and include correlative words of feminine and neuter genders, and words importing the singular number shall mean and include the plural number and vice versa; and

(c) Any certificates, letters, or opinions required to be given pursuant to this Agency Lease shall mean a signed document attesting to or acknowledging the circumstances, representations, opinions of law, or other matters therein stated or set forth or setting forth matters to be determined pursuant to this Agency Lease.

**ARTICLE II  
REPRESENTATIONS AND COVENANTS**

**2.1 REPRESENTATIONS OF THE AGENCY.**

The Agency makes the following representations to the Company as the basis for the undertakings on its part herein contained:

(a) The Agency is duly established under the provisions of the Act and has the power to enter into this Agency Lease and to carry out its obligations hereunder. Based upon the representations of the Company as to the utilization of the Project Facility, the Project Facility will constitute a "project," as such quoted term is defined in the Act. By proper official action, the Agency has been duly authorized to execute, deliver, and perform this Agency Lease and the other Agency Documents.

(b) Neither the execution and delivery of this Agency Lease, the consummation of the transactions contemplated thereby, nor the fulfillment of or compliance with the provisions of this Agency Lease and the other Agency Documents by the Agency will conflict with or result in a breach by the Agency of any of the terms, conditions, or provisions of the Act, the By-Laws of the Agency, or any order, judgment, restriction, agreement, or instrument to which the Agency is a party or by which it is bound or will constitute a default by the Agency under any of the foregoing.

(c) This Agency Lease and the other Agency Documents constitute, or upon their execution and delivery in accordance with the terms thereof will constitute, valid and legally binding obligations of the Agency, enforceable in accordance with their respective terms.

## **2.2 REPRESENTATIONS AND COVENANTS OF THE COMPANY.**

The Trust, Alan Sales, Byer and Realty, each as noted or jointly as the Company, make the following representations and covenants as the basis for the undertakings on its part herein contained:

(a) The Trust is an inter vivos revocable trust operating pursuant to a Third Amended and Restated Trust Agreement dated as of October 1, 2015 (the "*Trust Agreement*") with the power to enter into this Agency Lease and the other Company Documents and to carry out its obligations hereunder and thereunder, for which the execution, delivery and performance of this Agency Lease and the other Company Documents are duly authorized.

(b) Alan Sales is a business corporation duly organized, validly existing and in good standing under the laws of New York, has the power to enter into this Agency Lease and the other Company Documents and to carry out its obligations hereunder and thereunder, and has duly authorized the execution, delivery, and performance of this Agency Lease and the other Company Documents.

(c) West Genesee Realty Associates, LLC is a limited liability company duly organized, validly existing and in good standing under the laws of New York, has the power to enter into this Agency Lease and the other Company Documents and to carry out its obligations hereunder and thereunder, and has duly authorized the execution, delivery, and performance of this Agency Lease and the other Company Documents.

(d) This Agency Lease and the other Company Documents constitute, or upon their execution and delivery in accordance with the terms thereof will constitute, valid and legally

binding obligations of the Trust, Alan Sales, Byer and Realty, enforceable in accordance with their respective terms.

(e) The Trust and Byer have a valid and enforceable fee interest in that portion of the Land and Facility located at 1232-36 West Genesee Street (also known as 1230 West Genesee Street) and shall remain and retain such interests for the term of this Agency Lease unless otherwise consented to in writing by the Agency.

(f) Realty has a valid and enforceable interest in those portions of the Land and Facility located at 1232 West Genesee Street (rear) and 1288 West Genesee Street and shall remain and retain such interests for the term of this Agency Lease unless otherwise consented to in writing by the Agency.

(g) Alan Sales leases from the Trust, Byer and Realty the Land and Facility and operates the Project Facility and shall remain and retain such interests for the term of this Agency Lease unless otherwise consented to in writing by the Agency.

(h) Neither the execution and delivery of this Agency Lease and the other Company Documents, the consummation of the transactions contemplated thereby, nor the fulfillment of or compliance with the provisions thereof will:

(1) Result in a breach of, or conflict with any term or provision in, the Trust Agreement or Alan Sales' or Realty's Certificate of Incorporation, By-Laws, Articles of Organization or Operating Agreement, each as applicable;

(2) Require consent under (which has not been heretofore received) or result in a breach of or default under the Ground Lease, any credit agreement, indenture, purchase agreement, mortgage, deed of trust, commitment, guaranty or other agreement or instrument to which the Company is a party or by which the Company or any of its property may be bound or affected; or

(3) Conflict with or violate any existing law, rule, regulation, judgment, order, writ, injunction, or decree of any Governmental Authority or court (domestic or foreign) having jurisdiction over the Company or any of the property of the Company.

(i) The providing of Financial Assistance to the Project by the Agency:

(1) Has been an important consideration in the Company's decision to acquire, reconstruct, renovate, equip and complete the Project Facility in the City of Syracuse;

(2) Will not result in the removal of an industrial or manufacturing plant or commercial activity of any Project Facility occupant from one area of the State to another area of the State or in the abandonment of one or more plants or facilities of any user, occupant, or proposed user or occupant of the Project Facility located within the State, except as permitted by the Act; and

(3) Will preserve or increase the overall number of permanent, private sector jobs in the State and the City.

(j) So long as the Agency holds a leasehold interest in the Project Facility, the Project Facility is and will continue to be a "project" (as such quoted term is defined in the Act), and the Company will not take any action (or omit to take any action required by the Company Documents or which the Agency, together with Agency's counsel, advise the Company in writing should be taken), or allow any action to be taken, which action (or omission) would in any way cause the Project Facility not to constitute a "project" (as such quoted term is defined in the Act).

(k) The Company shall cause all notices as required by law to be given and shall comply or cause compliance with all laws, ordinances, municipal rules, and regulations and requirements of all Governmental Authorities applying to or affecting the construction, equipping and operation of the Project Facility (the applicability of such laws, ordinances, rules, and regulations to be determined both as if the Agency were the owner of the Project Facility and as if the Company, were the owner of the Project Facility), and the Company will defend and save the Agency and its officers, members, agents (other than the Company), and employees harmless from all fines and penalties due to failure to comply therewith.

(l) The Project will not have a significant effect on the environment" (within the meaning of such term as used in SEQRA) and the Company hereby covenants to comply with all mitigating measures, requirements and conditions, if any, enumerated in the SEQRA Resolution under SEQRA applicable to the acquisition, construction and installation of the Project Facility and in any other approvals issued by any other Governmental Authority with respect to the Project. No material changes with respect to any aspect of the Project Facility have arisen from the date of the issuance of such negative declaration which would cause the determination contained therein to be untrue.

(m) The Company acknowledges the Agency's Local Access Policy and the Company's obligation to comply. The Company further understands and agrees that it is the preference of the Agency that the Company provide opportunities for the purchase of goods and services from: (i) business enterprises located in the City; (ii) certified minority and or women-owned business enterprises; and (iii) business enterprises that employ residents of the City. The Company further understands and acknowledges that consideration will be given by the Agency to the Company's efforts to comply, and compliance, with this objective at any time an extension of benefits is sought or involvement by the Agency with the Project is requested by the Company.

(n) The Agency's undertaking of the Project and the provision of Financial Assistance for the Project will not have a significant impact on the environment within the meaning of SEQRA.

(o) The acquisition, reconstruction, renovation, equipping and completion of the Project Facility will promote employment opportunities and help prevent economic deterioration in the City by the creation and/or preservation of both full and part-time jobs.

(p) The Company has, or will have as of the first date of construction and equipping, all then necessary permits, licenses, and governmental approvals and consents (collectively, “**Approvals**”) for the construction and equipping of the Project Facility and has or will have such Approvals timely for each phase of, and throughout the reconstruction, renovation and equipping of the Project Facility.

(q) The Company will not sublease the whole or any portion of the Project Facility for an unlawful purpose.

(r) No part of the Project Facility will be located outside of the City.

(s) The Company shall perform, or cause to be performed, for and on behalf of the Agency, each and every obligation of the Agency (which is within the control of the Company) under and pursuant to this Agency Lease, the Company Lease and the other Company Documents and shall defend, indemnify, and hold harmless the Agency and its members, officers, agents (other than the Company), servants and employees from and against every expense, liability, or claim arising out of the failure of the Company to fulfill its obligations under the provisions of this Section 2.2.

(t) The Company agrees that except as is otherwise provided by collective bargaining contracts or agreements applicable to the Project, new employment opportunities created as a result of the Project shall be listed with the New York State Department of Labor Community Services Division, and with the administrative entity of the service delivery area created by the Federal Job Training Partnership Act (P.L. No. 97-300) in which the Project is located. The Company further agrees that except as is otherwise provided by collective bargaining contracts or agreements applicable to the Project, it will first consider persons eligible to participate in the Federal Job Training Partnership (P.L. No. 97-300) programs who shall be referred by administrative entities of service delivery areas created pursuant to such act or by the Community Services Division of the Department of Labor for such new employment opportunities.

(u) The Company shall provide to the Agency any and all documentation or information requested by the Agency so that the Agency can comply with all of its reporting requirements under the Act.

(v) As a condition precedent to receiving or benefiting from any State sales and use tax exemption benefits, the Company acknowledges and agrees to all terms and conditions of Section 875(3) of the Act. Section 875(3) of the Act is herein incorporated by reference. As part of such conditions precedent:

(1) The Company shall not take any State or local Sales and Use Tax exemptions to which it is not entitled, which are in excess of the amount authorized by the Agency in reliance on the Company’s Application or which are for property or services not authorized.

(2) The Company shall comply with all material terms and conditions to use property or services in the manner required by the Agency Documents.

(3) The Company shall cooperate with the Agency in the Agency's efforts to recover, recapture, receive or otherwise obtain from the Company any Recapture Amount (as defined in Section 8.12(g) hereof), and shall, upon the Agency's request, immediately pay to the Agency any Recapture Amount, together with any interest or penalties thereon imposed by the Agency or by operation of law or by judicial order or otherwise, as provided in Section 8.12(g) hereof. The Company acknowledges and agrees that the failure of the Company to promptly pay such Recapture Amount to the Agency will be grounds for the State Commissioner of Taxation and Finance to collect sales and use taxes from the Company under Article 28 of the State Tax Law, together with interest and penalties.

(w) The amount of State and local sales and use tax benefits comprising the Financial Assistance approved by the Agency shall not exceed **\$140,000**. The Company shall not request, obtain nor claim State and local sales and use tax exemptions in excess of this amount.

(x) The Company hereby acknowledges that the exemption from mortgage recording tax authorized by the Agency as part of the Financial Assistance is limited by Section 874 of the Act.

(y) The Company hereby acknowledges, agrees and covenants to timely pay all costs of reconstruction, renovation, equipping and completing the Project.

(z) The Company hereby represents, warrants and covenants that no properties owned or leased by the Company in the City are currently the subject of any violations, including but not limited to zoning and/or permitting, by any governmental agency nor are any such properties delinquent in any taxes or payments in lieu thereof to any municipality. The Company further represents, warrants and covenants that all Company owned or leased properties are in compliance with, all laws, ordinances, rules, regulations, and requirements of all Governmental Authorities and that there are no pending or threatened law suits against the City or County.

### **ARTICLE III CONVEYANCE OF LEASEHOLD INTEREST IN PROJECT FACILITY**

#### **3.1 AGREEMENT TO CONVEY LEASEHOLD INTEREST TO COMPANY.**

The Company has conveyed to the Agency, pursuant to the Company Lease, a leasehold interest in the Land and Facility, as more fully described in **Exhibit "A"** attached hereto, any improvements now or hereafter constructed and installed thereon, subject to Permitted Encumbrances and all of its right, title and interest in the Equipment via a Bill of Sale, as more fully described in **Exhibit "B"** attached hereto. Under this Agency Lease, the Agency will convey, or will cause to be conveyed, to the Company, a (sub)subleasehold interest in the Project Facility subject to Permitted Encumbrances and exclusive of the Agency's Unassigned Rights.



### 3.2 USE OF PROJECT FACILITY.

Subsequent to the Closing Date, the Company shall be entitled to use the Project Facility in accordance with the terms of this Agency Lease and for the purposes described in the third WHEREAS clause of this Agency Lease; provided that such use causes the Project Facility to qualify or continue to qualify as a "project" under the Act.

## ARTICLE IV RECONSTRUCTION, RENOVATION AND EQUIPPING OF THE PROJECT

### 4.1 RECONSTRUCTION, RENOVATION AND EQUIPPING OF THE PROJECT FACILITY.

(a) The Company shall promptly reconstruct, renovate, equip and complete the Project Facility, all in accordance with the Plans and Specifications on or before the Completion Date. Unless a written waiver is first obtained from the Agency, in accordance with the Agency's Local Access Policy, the Company and its Additional Agents (as defined herein), shall utilize local labor, contractors and suppliers for the reconstruction, renovation, equipping and completion of the Project Facility. For purposes of this Agency Lease, and in particular this Section 4.1, the term "*local*" shall mean Onondaga, Oswego, Oneida, Madison, Cayuga and Cortland Counties. Failure to comply with the local labor requirements of this Section 4.1 (collectively, "*Local Labor Requirements*") may result in the revocation or recapture of all benefits provided/approved to the Project by the Agency. In furtherance thereof, the Agency's Local Access Agreement has been completed and is attached hereto as **Exhibit "D"**.

(b) The Agency hereby confirms the appointment of the Company as its true and lawful agent to perform the following in compliance with the terms, purposes, and intent of this Agency Lease, the Act and the other Company Documents, and the Company hereby accepts such appointment:

(1) To reconstruct, renovate, equip and complete the Project Facility and to acquire the Equipment in accordance with the terms hereof;

(2) To make, execute, acknowledge, and deliver any contracts, orders, receipts, writings, and instructions with any other Persons and, in general, to do all things which may be requisite or proper, all for the reconstruction, renovation, equipping and completion of the Project Facility with the same powers and with the same validity as the Agency could do if acting in its own behalf, provided that the Agency shall have no liability for the payment of any sums due thereunder;

(3) To pay all fees, costs and expenses incurred in the reconstruction, renovation, equipping and completion of the Project Facility from funds made available therefore from the funds of the Company; and

(4) To ask, demand, sue for, levy, recover, and receive all such sums of money, debts, dues, and other demands whatsoever which may be due, owing, and payable to

the Agency under the terms of any contract, order, receipt, or writing in connection with the reconstruction, renovation, equipping and completion of the Project Facility and to enforce the provisions of any contract, agreement, obligation, bond, or other performance security.

(c) The Agency shall enter into, and accept the assignment of, such contracts as the Company may request in order to effectuate the purposes of this Section 4.1, provided, however, that the Agency shall have no liability for the payment of any sums due thereunder.

(d) The Company has given, or will give or cause to be given, all notices and have complied, or will comply or cause compliance with, all laws, ordinances, rules, regulations, and requirements of all Governmental Authorities applying to or affecting the conduct of work on the Project Facility (the applicability of such laws, ordinances, rules, and regulations to be determined both as if the Agency were the owner of the Project Facility and as if the Company were the owner of the Project Facility), and the Company will defend, indemnify, and save the Agency and its officers, members, agents, servants, and employees harmless from all fines and penalties due to failure to comply therewith. All permits and licenses necessary for the prosecution of work on the Project Facility shall be procured promptly by the Company.

(e) The Company understands and agrees that it is the preference of the Agency that the Company provide opportunities for the purchase of goods and services relative to the Project from: (i) business enterprises located in the City; (ii) certified minority and/or women-owned business enterprises; and (iii) business enterprises that employ residents of the City. Consideration will be given by the Agency to the Company's efforts to comply, and compliance with, this objective at any time an extension of benefits is requested, or further involvement by the Agency with the Project, is requested by the Company.

#### **4.2 COMPLETION OF PROJECT FACILITY.**

(a) The Company will proceed with due diligence to acquire, reconstruct, renovate, equip and complete the Project Facility on or before the Completion Date. Completion of the acquisition, reconstruction, renovation and equipping of the Project Facility shall be evidenced by a certificate signed by an Authorized Representative of the Company and approved by the Agency, stating:

- (1) The date of such completion;
- (2) That all labor, services, materials, and supplies used therefor and all costs and expenses in connection therewith have been paid;
- (3) That the Company has good and valid title to all Property constituting the Project Facility subject to the interest of the Agency therein and to this Agency Lease, the Company Lease and the Bill of Sale; and
- (4) That the Project Facility is ready for occupancy, use and operation for its intended purposes.

(b) Notwithstanding the foregoing, such certificate may state that: (1) it is given without prejudice to any rights of the Company against third parties which exist at the date of such certificate or which may subsequently come into being; (2) it is given only for the purposes of this Section 4.2; and (3) no Person other than the Agency may benefit therefrom.

(c) Such certificate shall be accompanied by: (1) a copy of a certificate of occupancy, if required, and any and all permissions, licenses, or consents required of Governmental Authorities for the occupancy, operation, and use of the Project Facility for its intended purposes; and (2) lien releases from the Company's contractor and any subcontractors under a contract with a price in excess of \$100,000.

#### **4.3 COSTS OF COMPLETION PAID BY COMPANY.**

(a) The Company agrees to complete the Project and to pay in full all costs of the reconstruction, renovation, equipping and completion of the Project Facility.

(b) No payment by the Company pursuant to this Section 4.3 shall entitle the Company to any diminution or abatement of any amounts payable by the Company under this Agency Lease.

#### **4.4 REMEDIES TO BE PURSUED AGAINST CONTRACTORS, SUBCONTRACTORS, MATERIALMEN AND THEIR SURETIES.**

In the event of a default by any materialman or Additional Agent (as defined herein) under any contract made by them in connection with reconstruction, renovation, equipping and completion of the Project Facility or in the event of a breach of warranty or other liability with respect to any materials, workmanship, or performance guaranty, the Company shall proceed, either separately or in conjunction with others, to exhaust the remedies of the Company against the materialman or Additional Agent so in default and against each surety for the performance of such contract. The Company may prosecute or defend any action or proceeding or take any other action involving any such materialman or Additional Agent or surety which the Company deems reasonably necessary. The Company shall advise the Agency of any actions or proceedings taken hereunder. No such suit shall relieve the Company of any of its obligations under this Agency Lease and the other Company Documents.

#### **4.5 COOPERATION IN EXECUTION OF ADDITIONAL MORTGAGES AND MODIFICATIONS OF MORTGAGES.**

The Agency agrees, upon written request of an Authorized Representative of the Company and subject to the provisions of the Act, to use its commercially reasonable efforts to execute and deliver one or more Mortgages and such additional instruments and documents may be requested by the Company and approved by counsel to the Agency and as may be required in connection with the Company's financing or refinancing for the costs of reconstruction, renovation and equipping of the Project Facility, provided that:

(a) No Event of Default under this Agency Lease, the Company Lease, the PILOT Agreement, the Project Agreement or the Mortgage shall have occurred and be continuing; and

(b) The execution and delivery of such documents by the Agency (i) is permitted by law in effect at the time; and (ii) will serve the public purposes of the Act; and

(c) The Company will be responsible for and shall pay, from the proceeds thereof or otherwise, the Agency's fee and the costs and expenses of the Agency incidental to such additional financing, refinancing or modification thereof, including without limitation the reasonable attorneys' fees of the Agency; and

(d) The documents to be signed by the Agency shall contain the provisions set forth in Sections 8.2 and 11.11 hereof, and shall not impose any duties or obligations upon the Agency except as may be acceptable to the Agency.

(e) Any and all Mortgages, shall, by its terms, be subordinate to the Agency's right to receive payments under the PILOT Agreement.

## **ARTICLE V AGREEMENT TO LEASE PROJECT FACILITY; RENTAL PAYMENTS**

### **5.1 AGREEMENT TO LEASE PROJECT FACILITY.**

In consideration of the Company's covenant herein to make rental payments, and the other covenants of the Company contained herein, including the covenant to make additional rent and other payments required hereby, the Agency hereby agrees to lease to the Company, and the Company hereby agrees to lease from the Agency, the Project Facility for and during the term provided herein and upon and subject to the terms and conditions herein set forth and subject to Permitted Encumbrances.

The Agency's acceptance of the leasehold interest in and to the Land and Facility pursuant to the Company Lease, and its acquisition of an interest in the Equipment pursuant to the Bill of Sale, and the holding of said interests were effected and performed solely at the request of the Company pursuant to the requirements of the Act. The Agency hereby transfers and conveys all of its beneficial and equitable interests, if any, in the Project Facility to the Company, except for its Unassigned Rights. As a result, the parties hereby acknowledge and agree that subject to the terms and conditions of this Agency Lease, the Company has all of the equitable and beneficial ownership and other interest in the Project Facility (except for the Unassigned Rights), and will have all the equitable and beneficial ownership and other interest in the Project Facility (except for the Unassigned Rights), such that the Company, and not the Agency, shall have an:

(i) unconditional obligation to bear the economic risk of depreciation and diminution in value of the Project Facility due to obsolescence or exhaustion, and shall bear the risk of loss if the Project Facility is destroyed or damaged;

(ii) unconditional obligation to keep the Project Facility in good condition and repair;

(iii) unconditional and exclusive right to the possession of the Project Facility, and shall have sole control of and responsibility for the Project Facility;

(iv) unconditional obligation to maintain insurance coverage on, and such reserves with respect to, the Project Facility as may be required by the Company, the Agency and the Mortgagee with respect to the Project;

(v) unconditional obligation to pay all taxes levied on, or payments in lieu thereof, and assessments made with respect to, the Project Facility;

(vi) subject to the Unassigned Rights, unconditional and exclusive right to receive rental and any other income and other benefits of the Project Facility and from the operation of the Project;

(vii) unconditional obligation to pay for all of the capital investment in the Project Facility;

(viii) unconditional obligation to bear all expenses and burdens of the Project Facility and to pay for all maintenance and operating costs in connection with the Project Facility; and

(ix) unconditional and exclusive right to include all income earned from the operation of the Project Facility and claim all deductions and credits generated with respect to the Project Facility on its annual federal, state and local tax returns.

## **5.2 TERM OF LEASE; EARLY TERMINATION; SURVIVAL.**

(a) The term of this Agency Lease shall commence on the date hereof and continue in full force and effect until the earlier of: (1) **June 30, 2030**; or (2) the early termination of this Agency Lease as provided herein.

(b) The Company hereby irrevocably designates the Agency as its attorney-in-fact, coupled with an interest, for the purpose of executing, delivering and recording terminations of the Agency Lease, the Company Lease, preparing a bill of sale together with any other documents therewith and to take such other and further actions reasonably necessary to confirm the termination date of the Agency's interest in the Project.

(c) The Company shall have the option, at any time during the term of this Agency Lease, to terminate this Agency Lease. In the event that the Company shall exercise its option to terminate this Agency Lease pursuant to this Section 5.2(c), the Company shall file with the Agency a certificate stating the Company's intention to do so pursuant to this Section 5.2(c) and to comply with the requirements set forth in Section 5.2(d) hereof.

(d) As a condition to the effectiveness of the Company's exercise of its right to early termination, the following payments shall be made:

(1) **To the Agency:** an amount certified by the Agency as sufficient to pay all unpaid fees and expenses of the Agency incurred under this Agency Lease, the Company Lease and the PILOT Agreement (including, but not limited to those in connection with the early termination of this Agency Lease); and

(2) **To the Appropriate Person:** an amount sufficient to pay all other fees, expenses or charges, if any, then due and payable under this Agency Lease and the other Agency Documents.

(e) The certificate required to be filed pursuant to Section 5.2(c), setting forth the provision thereof permitting early termination of this Agency Lease shall also specify the date upon which the payments pursuant to subdivision (d) of this Section 5.2 shall be made, which date shall not be less than thirty (30) nor more than sixty (60) days from the date such certificate is filed with the Agency.

(f) Contemporaneously with the termination of this Agency Lease in accordance with Sections 5.1 or 5.2 hereof, the Agency shall transfer, and the Company shall accept, all of the Agency's right, title and interest in the Project Facility, including the Equipment, for a purchase price of One Dollar (\$1.00) plus the payment of all other sums due hereunder and all legal fees and costs associated therewith. Contemporaneously with the termination of this Agency Lease, the Company Lease and the PILOT Agreement shall terminate.

(g) The Agency shall, upon payment by the Company of the amounts pursuant hereto and to Sections 5.2(d) above and Section 5.3, deliver to the Company all documents furnished to the Agency by the Company, or prepared by the Agency at the sole expense of the Company, and reasonably necessary to evidence termination of the Company Lease and the Agency Lease, including, but not limited to, lease terminations and a bill of sale from the Agency with respect to its interest in the Equipment, without representation or warranty, subject to the following: (1) any Liens to which such Project Facility was subject when conveyed to the Agency, (2) any Liens created at the request of the Company or to the creation of which the Company consented or in the creation of which the Company acquiesced, (3) any Permitted Encumbrances, and (4) any Liens resulting from the failure of the Company to perform or observe any of the agreements on its part contained in this Agency Lease.

(h) The obligation of the Agency under this Section 5.2 to convey the Project Facility to the Company will be subject to: (i) there being no Event of Default existing hereunder or under any payment in lieu of tax agreement now or hereafter entered into with respect to all or any portion of the Project Facility or under any other Company Documents, or any other event which would, but for the passage of time or the giving of notice, or both, be such an Event of Default; and (ii) the Company's payment of all expenses, fees and taxes, if any, applicable to or arising from such transfer.

### **5.3 RENTAL PAYMENTS AND OTHER AMOUNTS PAYABLE.**

(a) The Company shall pay basic rental payments for the Project Facility consisting of: (i) to the Agency in an amount sufficient to pay the sums due under the PILOT Agreement at the times and in the manner provides for therein, and an amount sufficient to pay any and all other amounts due hereunder; and (ii) to the Mortgagee, an amount equal to the debt service and amounts becoming due and payable under the Mortgage and the indebtedness secured thereby on the due date thereof.

(b) The Company shall pay to the Agency, as additional rent, within ten (10) days after the receipt of a demand therefor from the Agency, any annual administrative fees of the Agency, the sum of the reasonable fees, costs and expenses of the Agency and the officers, members, agents, and employees thereof incurred by the reason of the Agency's lease or sublease of the Project Facility or in connection with the carrying out of the Agency's duties and obligations under this Agency Lease, the Company Lease or any of the other Agency Documents and any other fee or expense of the Agency with respect to the Project Facility, or any of the other Agency Documents, the payment of which is not otherwise provided for under this Agency Lease, including, without limitation, reasonable fees and disbursements of Agency counsel, including fees and expenses incurred in connection with the Agency's enforcement of any rights hereunder or incurred after the occurrence and during the continuance of an Event of Default, in connection with any waiver, consent, modification or amendment to this Agency Lease or any other Agency Document that may be requested by the Company, or, in connection with any action by the Agency at the request of or on behalf of the Company hereunder or under any other Agency Document. Any additional rent not received within ten (10) business days after demand shall accrue interest after the expiration of such ten days at a rate of ten percent (10%) per annum or the highest rate permitted by law, whichever is less.

(c) The administrative fee payable by the Company to the Agency in conjunction with this Project and the Agency's granting of Financial Assistance and all outstanding counsel fees and costs shall be paid at closing.

(d) The Company agrees to make the above-mentioned payments, without any further notice, in lawful money of the United States of America as, at the time of payment, shall be legal tender for the payment of public and private debts. In the event that the Company shall fail to make or cause to be made any of the payments required under this Agency Lease, the item or installment not so paid shall continue as an obligation of the Company until such item or installment is paid in full.

### **5.4 NATURE OF OBLIGATIONS OF COMPANY HEREUNDER.**

(a) The obligations of the Company to make the payments required by this Agency Lease and to perform and observe any and all of the other covenants and agreements on its part contained herein are joint and several general obligations of the Company and are absolute and unconditional irrespective of any defense or any rights of set-off, recoupment, or counterclaim it may otherwise have against the Agency. The Company agrees that it will not suspend, discontinue, or abate any payment required by, or fail to observe any of its other covenants or agreements contained in this Agency Lease for any cause whatsoever, including,

without limiting the generality of the foregoing, failure to complete the reconstruction, renovation and equipping of the Project Facility, any defect in the title, design, operation, merchantability, fitness, or condition of the Project Facility, or any part thereof, or in the suitability of the Project Facility, or any part thereof, for the Company's purposes or needs, or failure of consideration for, destruction of or damage to, or Condemnation of title to, or the use of all or any part of the Project Facility, any change in the tax or other laws of the United States of America or of the State of New York, or any political subdivision thereof, or any failure of the Agency to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or in connection with this Agency Lease or the Company Lease.

(b) Nothing contained in this Section 5.4 shall be construed to release the Agency from the performance of any of the agreements on its part contained in this Agency Lease or the Company Lease, and in the event the Agency should fail to perform any such agreement, the Company may institute such action against the Agency as the Company may deem necessary to compel performance (subject to the provisions of Section 11.11).

## **ARTICLE VI MAINTENANCE, MODIFICATIONS, TAXES AND INSURANCE**

### **6.1 MAINTENANCE AND MODIFICATIONS OF PROJECT FACILITY.**

The Company shall:

(a) Keep the Project Facility in good condition and repair and preserve the same against waste, loss and damage, ordinary wear and tear excepted;

(b) Make all necessary repairs and replacements to the Project Facility or any part thereof (whether ordinary or extraordinary, structural, or non-structural, foreseen or unforeseen) which is damaged, destroyed, or condemned; and

(c) Operate the Project Facility in a sound and economic manner in general accordance with the Project description as set forth herein and in the Application and the Plans and Specifications the Company previously provided to the Agency in the Application or otherwise.

### **6.2 TAXES, ASSESSMENTS AND UTILITY CHARGES.**

(a) The Company shall pay as the same respectively become due:

(1) Any and all taxes and governmental charges of any kind, whatsoever which may at any time be lawfully assessed or levied against or with respect to the Project Facility;

(2) All utility and other charges, including "service charges," incurred or imposed for the operation, maintenance, use, occupancy, upkeep, and improvement of the Project Facility, the non-payment of which would create, or entitle the obligee to impose, a Lien on the Project Facility;



(3) All assessments and charges of any kind whatsoever lawfully made by any Governmental Authority for public improvements; and

(4) Any and all payments of taxes, if applicable, or all payments in lieu of taxes, if any, required to be made to the Agency under the terms of the PILOT Agreement or any other agreement with respect thereto.

(b) Subject to the terms of the PILOT Agreement, the Trust may in good faith actively contest any such taxes, assessments, and other charges, provided that (1) the Company shall have first notified the Agency of such contest; (2) no Event of Default under this Agency Lease or any of the other Company Documents shall have occurred and be continuing; and (3) the Company shall have set aside adequate reserves for any such taxes, assessments and other charges. If the Company demonstrates to the reasonable satisfaction of the Agency and certifies to the Agency by delivery of a written certificate, that the non-payment of any such items will not endanger any part of the Project Facility or subject the Project Facility, or any part thereof, to loss or forfeiture, the Company may permit the taxes, assessments, and other charges so contested to remain unpaid during the period of such contest and any appeal therefrom. Otherwise, such taxes, assessments, or charges shall be paid promptly by the Company or secured by the Company's posting a bond in form and substance satisfactory to the Agency.

### **6.3 INSURANCE REQUIRED.**

During the term of this Agency Lease, the Company shall maintain or cause to be maintained insurance with respect to the Project Facility against such risks and for such amounts as are customarily insured against by businesses of like size and type and as required of the Agency, paying (as the same becomes due and payable) all premiums with respect thereto, including:

(a) Insurance against loss or damage by fire, lightning, and other casualties customarily insured against (with a uniform standard extended coverage endorsement), such insurance to be in an amount not less than the full replacement value of the completed Project Facility, exclusive of footings and foundations, as determined by a recognized appraiser or insurer selected by the Company.

(b) Workers' compensation insurance, disability benefits' insurance, and each other form of insurance which the Company is required by law to provide covering loss resulting from injury, sickness, disability, or death of employees of the Company who are located at or assigned to the Project Facility;

(c) A policy of commercial general liability insurance with a limit of liability of not less than \$1,000,000 per occurrence on an "occurrence" basis and \$2,000,000 in the aggregate for bodily injury, including death, and property damage, including but not limited to, contractual liability under this Agency Lease and personal injury, with blanket excess liability coverage in an amount not less than \$2,000,000, covering the Project Facility and Equipment and the Company's and the Agency's use or occupancy thereof against all claims on account of

bodily injury or death and property damage occurring upon, in or about the Project Facility or in connection with the ownership, maintenance, use and/or occupancy of the Project Facility and all appurtenant areas.

#### **6.4 ADDITIONAL PROVISIONS RESPECTING INSURANCE.**

All insurance required by Section 6.3 shall be with insurance companies of recognized financial standing selected by the Company and licensed to write such insurance in the State of New York. Such insurance may be written with deductible amounts comparable to those on similar policies carried by other Persons engaged in businesses similar in size, character, and other respects to those in which the Company are engaged. All policies evidencing such insurance except the Workers' Compensation policy shall name the Company as insured and the Agency as an additional insured, as its interests may appear, and shall provide that such coverage with respect to the Agency be primary and non-contributory with any insurance secured by the Agency and require at least thirty (30) days' prior written notice to the Agency of cancellation, reduction in policy limits, or material change in coverage thereof.

Prior to the Closing Date, the Company shall deliver to the Agency, satisfactory to the Agency in form and substance: (i) certificates evidencing all insurance required hereby; (ii) the additional insured endorsement(s) applicable to the Agency; (iii) the final insurance binder addressed to the Company covering the Project Facility; and (iv) evidence that the insurance so required is on a primary and non-contributory basis. In addition, the Company shall provide, if so requested by the Agency, a final and complete copy of each insurance policy within thirty (30) days of the Closing Date.

The Company shall deliver or cause to be delivered to the Agency on or before the first business day of each January thereafter each of the items set forth in the immediately preceding paragraph, dated not earlier than the immediately preceding month, reciting that there is in full force and effect, with a term covering at least the next succeeding calendar year, insurance in the amounts and of the types required by Sections 6.3 and 6.4. The Company shall furnish to the Agency evidence that the policy has been renewed or replaced or is no longer required by this Agency Lease each year throughout the term of this Agency Lease.

All premiums with respect to the insurance required by Section 6.3 shall be paid by the Company, provided, however, that, if the premiums are not timely paid, the Agency may pay such premiums and the Company shall pay immediately upon demand all sums so expended by the Agency, together with interest at a rate of ten percent (10%) per annum or the highest rate permitted by law, whichever is less.

#### **6.5 APPLICATION OF NET PROCEEDS OF INSURANCE.**

The Net Proceeds of the insurance carried pursuant to the provisions of Section 6.3 shall be applied as follows:

(a) The Net Proceeds of the insurance required by subsection 6.3(a) shall be paid and applied as provided in Section 7.1 hereof; and

(b) The Net Proceeds of the insurance required by subsections 6.3(b) and 6.3(c) shall be applied toward extinguishment or satisfaction of the liability with respect to which such insurance proceeds may be paid.

#### **6.6 PAYMENTS IN LIEU OF REAL ESTATE TAXES.**

The Trust, Byer, Realty and the Agency have entered into a PILOT Agreement with respect to payments in lieu or real estate taxes for the Project Facility.

### **ARTICLE VII DAMAGE, DESTRUCTION, AND CONDEMNATION**

#### **7.1 DAMAGE OR DESTRUCTION.**

(a) If the Mortgage shall be in effect or the Mortgagee shall have any interest in the Project Facility arising under or related to the Mortgage, whether by foreclosure or otherwise and the Project Facility shall be damaged or destroyed, in whole or in part, then insurance proceeds shall be paid in accordance with the relevant provisions of the Mortgage regarding the distribution of such insurance proceeds, provided that there shall be no abatement or reduction in amounts payable to the Agency hereunder. If the Mortgage shall not be in effect and the Mortgagee shall have no interest in the Project Facility and the Project Facility shall be damaged or destroyed, in whole or in part:

(1) There shall be no abatement or reduction in the amounts payable by the Company under this Agency Lease or otherwise (whether or not the Project Facility is replaced, repaired, rebuilt, or restored); and

(2) The Company shall promptly give notice thereof to the Agency;  
and

(3) Except as otherwise provided in subsections 7.1(b) and 7.1(c) hereof, upon receipt of the insurance proceeds, the Company shall promptly replace, repair, rebuild, or restore the Project Facility to substantially the same condition as existed prior to such damage or destruction, with such changes, alterations, and modifications as may be desired by the Company and consented to in writing by the Agency, provided that such changes, alterations, or modifications do not change the nature of the Project Facility, such that it does not constitute a "project" (as such quoted term is defined in the Act); and in the event such Net Proceeds are not sufficient to pay in full the costs of such replacement, repair, rebuilding, or restoration, the Company shall nonetheless complete such work and shall pay from its own moneys that portion of the costs thereof in excess of such Net Proceeds.

(b) If the Mortgage shall not be in effect and the Mortgagee shall have no interest in the Project Facility, then notwithstanding anything to the contrary contained in subsection 7.1(a), the Company shall not be obligated to replace, repair, rebuild, or restore the Project Facility, and the Net Proceeds of any insurance settlement shall not be applied as provided in subsection 7.1(a) if the Company shall notify the Agency that, in the Company's sole judgment, the Company does not deem it practical or desirable to replace, repair, rebuild, or

restore the Project Facility. In such event, the lesser of (1) the total amount of the Net Proceeds collected under any and all policies of insurance covering the damage to or destruction of the Project Facility, or (2) any other sums payable to the Agency pursuant to this Agency Lease and the other Agency and Company Documents, shall be applied to the repayment of all amounts due to the Agency under this Agency Lease, the Company Lease, the PILOT Agreement and other Agency Documents. If the Net Proceeds collected under any and all policies of insurance are less than the amount necessary to repay any and all amounts payable to the Agency, the Company shall pay the difference between such amounts and the Net Proceeds of all such insurance settlements so that any and all amounts payable under this Agency Lease, the Company Lease, the PILOT Agreement and the other Agency Documents to the Agency shall be paid in full. If all amounts due under this Agency Lease, the Company Lease, the Mortgage, the PILOT Agreement and the other Agency Documents are paid in full, all such Net Proceeds, or the balance thereof, shall be paid to the Company for its purposes.

(c) The Company and the Mortgagee may adjust all claims under any policies of insurance required by subsections 6.3(a) and 6.3(c) hereof with the prior written consent of the Agency, which consent shall not be unreasonably withheld.

## 7.2 CONDEMNATION.

(a) If the Mortgage shall be in effect or the Mortgagee shall have any interest in the Project Facility arising under or related to the Mortgage, whether by foreclosure or otherwise and title to, or the use of, all, substantially all or less than substantially all of the Project Facility shall be taken by Condemnation, then Condemnation proceeds shall be paid in accordance with the relevant provisions of the Mortgage regarding the distribution of such Condemnation proceeds, provided that there shall be no abatement or reduction in amounts payable to the Agency hereunder. If the Mortgage shall not be in effect and the Mortgagee shall have no interest in the Project Facility and if title to, or the use of, less than substantially all of the Project Facility shall be taken by Condemnation:

(1) There shall be no abatement or reduction in the amounts payable by the Company under this Agency Lease or otherwise (whether or not the Project Facility is restored); and

(2) The Company shall promptly give notice thereof to the Agency;  
and

(3) Except as otherwise provided in subsections 7.2(b) and 7.2(c) hereof, upon receipt of the Condemnation proceeds, the Company shall promptly restore the Project Facility (excluding any part of the Project Facility taken by Condemnation) to substantially the condition and value as an operating entity as existed prior to such Condemnation; and the Company shall nonetheless complete such restoration and shall pay from its own moneys that portion of the costs thereof in excess of such Net Proceeds.

(b) If the Mortgage shall not be in effect and the Mortgagee shall have no interest in the Project Facility and if title to, or the use of, less than substantially all of the Project Facility shall be taken by Condemnation, then notwithstanding anything to the contrary

contained in subsection 7.2(a), the Company shall not be obligated to restore the Project Facility, and the Net Proceeds of any Condemnation award shall not be applied as provided in subsection 7.2(a) if the Company shall notify the Agency that, in the Company's sole judgment, the Company does not deem it practical or desirable to restore the Project Facility. In such event, the lesser of (1) the Net Proceeds of any Condemnation award, or (2) the amount necessary to pay the Agency pursuant to this Agency Lease, the Company Lease, the PILOT Agreement and the other Agency Documents, shall be applied to payment of all amounts due to the Agency under this Agency Lease, the Company Lease, the PILOT Agreement and other Agency Documents. If the Net Proceeds of any Condemnation award are less than the amount necessary to pay any and all amounts payable to the Agency, the Company shall pay the difference between such amounts and the Net Proceeds of such Condemnation award so that any and all amounts payable under this Agency Lease, the Company Lease, the PILOT Agreement and other Agency Documents to the Agency shall be paid in full. If all amounts due under this Agency Lease, the Company Lease, the PILOT Agreement, the Mortgage and the other Agency Documents have been paid in full, all such Net Proceeds or the balance thereof shall be paid to the Company for its purposes.

(c) The Company and the Mortgagee with the prior written consent of the Agency (which consent shall not be unreasonably withheld), shall have sole control of any Condemnation proceeding with respect to the Project Facility, or any part thereof, and may negotiate the settlement of any such proceeding.

### **7.3 ADDITIONS TO PROJECT FACILITY.**

All replacements, repairs, rebuilding, or restoration made pursuant to Sections 7.1 or 7.2 hereof, whether or not requiring the expenditure of the Company's own moneys, shall automatically become part of the Project Facility as if the same were specifically described herein.

## **ARTICLE VIII SPECIAL COVENANTS**

### **8.1 NO WARRANTY OF CONDITION OR SUITABILITY BY THE AGENCY; ACCEPTANCE "AS IS."**

THE AGENCY MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO THE CONDITION, TITLE, DESIGN, OPERATION, MERCHANTABILITY, OR FITNESS OF THE PROJECT FACILITY, OR ANY PART THEREOF, OR AS TO THE SUITABILITY OF THE PROJECT FACILITY OR ANY PART THEREOF FOR THE COMPANY'S PURPOSES OR NEEDS. NO WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY IS MADE. IN THE EVENT OF ANY DEFECT OR DEFICIENCY OF ANY NATURE, WHETHER PATENT OR LATENT, THE AGENCY SHALL NOT HAVE ANY RESPONSIBILITY OR LIABILITY WITH RESPECT THERETO.

## 8.2 HOLD HARMLESS PROVISIONS.

(a) The Company hereby releases the Agency and its members, officers, agents and employees from, agrees that the Agency and its members, officers, agents and employees shall not be liable for, and agrees to indemnify, defend, and hold the Agency and its members, officers, agents and employees harmless from and against any and all claims arising as a result of the Agency's undertaking the Project, including, but not limited to:

(1) Liability for loss or damage to Project Facility or bodily injury to or death of any and all persons that may be occasioned by any cause whatsoever pertaining to the Project Facility, or arising by reason of or in connection with the occupation or the use thereof, or the presence on, in, or about the Project Facility;

(2) Liability arising from or expense incurred by the Agency's acquisition of a leasehold interest in the Project Facility and the subleasing of the Project Facility, including, without limiting the generality of the foregoing, all liabilities or claims arising as a result of the Agency's obligations under this Agency Lease, the Company Lease, the Mortgage or any other documents executed by the Agency at the direction of the Company in conjunction with the Project Facility;

(3) All claims arising from the exercise by the Company, and or its Additional Agents (as defined herein) of the authority conferred upon it and performance of the obligations assumed under Section 4.1 hereof;

(4) Any and all claims arising from the non-disclosure of information, if any, requested by the Company in accordance with Section 11.14 hereof;

(5) All causes of action and attorneys' fees and other expenses incurred in connection with any suits or actions which may arise as a result of any of the foregoing, provided that any such losses, damages, liabilities, or expenses of the Agency are not incurred or do not result from the intentional wrongdoing of the Agency or any of its members, officers, agents or employees.

To the fullest extent permitted by law, the foregoing indemnities shall apply notwithstanding the fault or negligence (other than gross negligence or willful misconduct) on the part of the Agency or any of its officers, members, agents, servants or employees and irrespective of any breach of statutory obligation or any rule of comparative or apportional liability.

(b) In the event of any claim against the Agency or its members, officers, agents, or employees by any employee of the Company, or any materialman or Additional Agent of the Company, or anyone directly or indirectly employed by any of them, or any one for whose acts any of them may be liable, the obligations of the Company hereunder shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Company or such contractor under workers' compensation laws, disability benefit laws, or other employee benefit laws.

(c) To effectuate the provisions of this Section 8.2, the Company agrees to provide for and insure, in the liability policies required by Section 6.3, its liabilities assumed pursuant to this Section 8.2.

(d) Notwithstanding any other provisions of this Agency Lease, the obligations of the Company pursuant to this Section 8.2 shall remain in full force and effect after the termination of this Agency Lease and the Company Lease until the expiration of the period stated in the applicable statute of limitations during which a claim, cause of action, or prosecution relating to the matters herein described may be brought, and the payment in full or the satisfaction of such claim, cause of action, or prosecution, and the payment of all expenses and charges incurred by the Agency, or its officers, members, agents or employees relating thereto.

(e) For purposes of this Section 8.2 and Section 11.11 hereof, the Company shall not be deemed to constitute an employee, agent or servant of the Agency or a person under the Agency's control or supervision.

### **8.3 RIGHT OF ACCESS TO PROJECT FACILITY.**

During the term of this Agency Lease, the Company agrees that the Agency and its duly authorized agents shall have the right to enter upon and to examine and inspect the Project Facility upon reasonable notice to the Company and with the least disturbance of Project Facility tenants as reasonably possible.

### **8.4 MAINTENANCE OF EXISTENCE.**

During the term of this Agency Lease, the Company will maintain its existence and will not dissolve or otherwise dispose of all or substantially all of its assets.

### **8.5 AGREEMENT TO PROVIDE INFORMATION.**

During the term of this Agency Lease, and no less frequently than annually, the Company agrees, whenever reasonably requested by the Agency or the Agency's auditor, to provide and certify, or cause to be certified, such information concerning the Project and/or the Company, its finances, and for itself and each of its Additional Agents, information regarding job creation<sup>1</sup>, Local Labor Requirements, exemptions from State and local sales and use tax, real property and mortgage recording taxes and other topics as the Agency from time to time reasonably considers necessary or appropriate including, but not limited to those reports, in substantially the form as set forth in **Exhibit "E"** attached hereto, and such other information necessary as to enable the Agency to monitor and/or make any reports required by law or governmental regulation, including but not limited to §875 of the Act.

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<sup>1</sup> To the extent the Project includes commercial space and/or tenants for which the Company calculated job creation as part of its projections in its Application, the Company is obligated, through its lease or other rental agreement with those commercial tenants, to require that such tenants report to the Company, in accordance with the terms of Section 8.5 hereof, the number of full and part time jobs created and maintained by each such tenant for inclusion in the Company's reporting to or at the request of the Agency.

## **8.6 BOOKS OF RECORD AND ACCOUNT; FINANCIAL STATEMENTS.**

During the term of this Agency Lease, the Company agrees to maintain proper accounts, records, and books, in which full and correct entries shall be made in accordance with generally accepted accounting principles, of all business and affairs of the Company.

## **8.7 COMPLIANCE WITH ORDERS, ORDINANCES, ETC.**

(a) The Company agrees that it will, during any period in which the amounts due under this Agency Lease remain unpaid, promptly comply with all statutes, codes, laws, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions, and requirements of all Governmental Authorities, foreseen or unforeseen, ordinary or extraordinary, which now or at any time hereafter affect the Company's obligations hereunder or be applicable to the Project Facility, or any part thereof, or to any use, manner of use, or condition of the Project Facility, or any part thereof, the applicability of the same to be determined both as if the Agency were the owner of the Project Facility and as if the Company were the owner of the Project Facility.

(b) Notwithstanding the provisions of subsection 8.7(a), the Company may, in good faith, actively contest the validity or the applicability of any requirement of the nature referred to in said subsection 8.7(a), provided that the Company shall have first notified the Agency of such contest, no Event of Default shall be continuing under this Agency Lease, or any of the other Company Documents; and such contest and failure to comply with such requirement shall not subject the Project Facility to loss or forfeiture. In such event, the Company may fail to comply with the requirement or requirements so contested during the period of such contest and any appeal therefrom unless the Agency or its members, officers, agents, or employees may be liable for prosecution for failure to comply therewith, in which event the Company shall promptly take such action with respect thereto as shall be satisfactory to the Agency.

## **8.8 DISCHARGE OF LIENS AND ENCUMBRANCES.**

During the term of this Agency Lease, the Company hereby covenants that, except for Permitted Encumbrances, the Company agrees not to create, or suffer to be created, any Lien on the Project Facility, or any part thereof without the prior written consent of the Agency. The Company shall promptly notify the Agency of any Permitted Encumbrances created, or suffered to be created, on the Project Facility.

## **8.9 PERFORMANCE BY AGENCY OF COMPANY'S OBLIGATIONS.**

Should the Company fail to make any payment or to do any act as herein provided, the Agency may, but need not, upon ten (10) days' prior written notice to or demand on the Company and without releasing the Company from any obligation herein, make or do the same, including, without limitation, appearing in and defending any action purporting to affect the rights or powers of the Company, or the Agency and paying all expenses, including, without limitation, reasonable attorneys' fees; and the Company shall pay immediately upon demand all sums so expended by the Agency under the authority hereof, together with the interest thereon at a rate of ten percent (10%) per annum or the highest rate permitted by law, whichever is greater.



## 8.10 DEPRECIATION DEDUCTIONS AND TAX CREDITS.

The parties agree that as between them, the Company shall be entitled to all depreciation deductions and accelerated cost recovery system deductions with respect to any portion of the Project Facility pursuant to Sections 167 and 168 of the Code and to any investment credit pursuant to Section 38 of the Code with respect to any portion of the Project Facility which constitutes "Section 38 Property" and to all other State and/or federal income tax deductions and credits which may be available with respect to the Project Facility.

## 8.11 EMPLOYMENT OPPORTUNITIES.

The Company shall insure that all employees and applicants for employment with regard to the Project are afforded equal employment opportunities without discrimination.

## 8.12 SALES AND USE TAX EXEMPTION.

(a) Pursuant to Section 874 of the Act, the parties understand that the Agency is exempt from certain State and local sales use taxes imposed by the State and local governments in the State, and that the Project may be exempted from those taxes due to the involvement of the Agency in the Project. The Agency makes no representations or warranties that any property is exempt from the payment of State or local sales or use taxes. Any exemption from the payment of State or local sales or use taxes resulting from the involvement of the Agency with the Project shall be subject to Section 875 of the Act and shall be limited to purchases of services and tangible personal property conveyed to the Agency or utilized by the Agency or by the Company as agent of the Agency as a part of the Project prior to the Completion Date, or incorporated within the Project Facility prior to the Completion Date. No operating expenses of the Project Facility, and no other purchases of services or property shall be subject to an exemption from the payment of State sales or use tax. It is the intention of the parties hereto that the Company will receive a State and local sales and use tax exemption with respect to the Project, said sales tax exemption to be evidenced by a letter to be issued by the Agency on the date of the execution of this Agency Lease. The Company acknowledges that as an agent of the Agency, it must complete and provide to each vendor Form ST-123 for purchases. The failure to furnish a completed Form ST-123 (IDA Agent or Project Operator Exempt Purchase Certificate) with each purchase will result in loss of the exemption for that purchase.

(b) The Company may use and appoint a Project operator, contractors, agents, subagents, subcontractors, contractors and subcontractors of such agents and subagents (collectively, "**Additional Agents**") in furtherance of the completion of the Project. However, for each Additional Agent, the Company must first: (i) cause the each such appointed Additional Agent to execute and deliver a sub-agent agreement, in the form attached hereto at **Exhibit "F"**, and provide a fully executed copy to the Agency; and (ii) submit a completed Form ST-60 to the Agency for execution and filing with the New York State Department of Taxation and Finance.

(c) The Company acknowledges and agrees that an Additional Agent must be appointed as an agent of the Agency in order to avail itself of the Agency's sales and use tax exemption for purchases or rentals of equipment, tools and supplies with respect to the Project Facility.

(d) Pursuant to Section 874(8) of the Act, the Company agrees to annually file and cause each Additional Agent or other operator of the Project Facility to file annually, with the New York State Department of Taxation and Finance, and provide the Agency with a copy of same, on a form and in such manner as is prescribed by the New York State Commissioner of Taxation and Finance (the "**Annual Sales Tax Report**"), a statement of the value of all sales and use tax exemptions claimed by the Company and all other Additional Agents under the authority granted to the Company pursuant to Section 4.1(b) of this Agency Lease. Pursuant to Section 874(8) of the Act, the penalty for failure to file the Annual Sales Tax Report shall be removal of authority to act as agent of the Agency. Therefore, if the Company shall fail to comply with the requirements of this subsection (d), irrespective of any notice and cure period afforded, the Company and each Additional Agent shall immediately cease to be the agent of the Agency in connection with the Project. The Company is responsible for obtaining from the New York State Department of Taxation and Finance the current version of such Annual Sales Tax Report.

(e) The Company agrees to furnish to the Agency a copy of each such Annual Sales Tax Report submitted to the New York State Department of Taxation and Finance by the Company pursuant to Section 874(8) of the Act for itself and any Additional Agent.

(f) Pursuant to Section 874(9) of the Act, the Agency agrees to file within thirty (30) days of the Closing Date with the New York State Department of Taxation and Finance, on a form and in such manner as is prescribed by the New York State Commissioner of Taxation and Finance (the "**Thirty-Day Sales Tax Report**"), a statement identifying the Company, or 30 days from the appointment of any Additional Agent appointed in accordance with the terms herein, as agent of the Agency, setting forth the taxpayer identification number of the Company, giving a brief description of the goods and/or services intended to be exempted from sales taxes as a result of such appointment as agent, indicating the estimated value of the goods and/or services to which such appointment as agent relates, indicating the date when such designation as agent became effective and indicating the date upon which such designation as agent shall cease.

(g) Pursuant to Section 875(3) of the Act, and in conjunction with Agency policy, the Agency shall and in some circumstances may, recover, recapture, receive or otherwise obtain from the Company the portion of the Financial Assistance (the "**Recapture Amount**") consisting of State and local sales and use tax exemption in accordance with the Agency's Recapture Policy, a copy of which is attached hereto at **Exhibit "G"**, and the Project Agreement.

### **8.13. IDENTIFICATION OF THE EQUIPMENT.**

All Equipment which is or may become part of the Project Facility pursuant to the provisions of this Lease Agreement shall be properly identified by the Company by such appropriate records, including computerized records, as may be approved by the Agency.

## **ARTICLE IX ASSIGNMENTS; TRANSFERS; MERGER OF AGENCY**

### **9.1 ASSIGNMENT OF AGENCY LEASE.**

This Agency Lease may not be assigned by the Company, in whole or in part, nor all or any part of the Project Facility subleased, nor any part of the Project Facility sold, leased, transferred, conveyed or otherwise disposed of without the prior written consent of the Agency, which consent shall be in the Agency's sole and absolute discretion; provided however, that the Company may enter into leases for individual rental units that are part of the Project Facility without the consent of the Agency. Any assignment or sublease of this Agency Lease shall not effect a release of the Company from its obligations hereunder or under the PILOT Agreement.

### **9.2 TRANSFERS OF INTERESTS.**

Company shall not assign or otherwise transfer or allow an assignment or transfer, of a controlling interest in the Company, whether by operation of law or otherwise (including, without limitation, by way of a merger, consolidation or a change of control whereby the current existing equity holders of the Company, as of the date of the application to the Agency, would own, in the aggregate, less than a majority of the total combined voting power of all classes of equity interest of the Company or any surviving entity), without the prior written consent of Agency, which consent shall be in the Agency's sole and absolute discretion.

### **9.3 MERGER OF AGENCY.**

(a) Nothing contained in this Agency Lease shall prevent the consolidation of the Agency with, or merger of the Agency into, or assignment by the Agency of its rights and interests hereunder to any other body corporate and politic and public instrumentality of the State of New York, or political subdivision thereof, which has the legal authority to perform the obligations of the Agency hereunder, provided that upon any such consolidation, merger, or assignment, the due and punctual performance and observance of all the agreements and conditions of this Agency Lease to be kept and performed by the Agency shall be expressly assumed in writing by the public instrumentality or political subdivision resulting from such consolidation or surviving such merger or to which the Agency's rights and interests hereunder shall be assigned.

(b) Promptly following the effective date of any such consolidation, merger, or assignment, the Agency shall give notice thereof in reasonable detail to the Company. The Agency shall promptly furnish to the Company such additional information with respect to any such consolidation, merger, or assignment as the Company reasonably may request.

**ARTICLE X  
EVENTS OF DEFAULT AND REMEDIES**

**10.1 EVENTS OF DEFAULT DEFINED.**

The following shall be "Events of Default" under this Agency Lease, and the terms "Event of Default" or "Default" shall mean, whenever they are used in this Agency Lease, any one or more of the following events:

(a) A default by the Company in the due and punctual payment of the amounts specified to be paid pursuant to subsection 5.3 or 8.12(g); or

(b) Failure by the Company to maintain the insurance required by Section 6.3;  
or

(c) A default in the performance or the observance of any other of the covenants, conditions, or agreements on the part of the Company in this Agency Lease and the continuance thereof for a period of thirty (30) days after written notice is given by the Agency or, if such covenant, condition, or agreement is capable of cure but cannot reasonably be cured within such thirty-day period, the failure of the Company to commence to cure within such thirty-day period and to prosecute the same with due diligence and cure the same within an additional thirty (30) days; or

(d) A transfer in contravention of Article 9 hereof;

(e) The occurrence of an "Event of Default" under the Mortgage, the PILOT Agreement, the Company Lease, the Project Agreement or any of the other Company Documents which is not timely cured as provided therein; or

(f) The Company shall generally not pay its debts as such debts become due or is unable to pay its debts as they become due.

(g) The Company shall conceal, remove, or permit to be concealed or removed any part of its Property with intent to hinder, delay, or defraud its creditors, or any one of them, or shall make or suffer a transfer of any of its Property which is fraudulent under any bankruptcy, fraudulent conveyance, or similar law, or shall make any transfer of its Property to or for the benefit of a creditor at a time when other creditors similarly situated have not been paid, or shall suffer or permit, while insolvent, any creditor to obtain a Lien upon any of its Property through legal proceedings or distraint which is not vacated within thirty (30) days from the date thereof; or

(h) By order of a court of competent jurisdiction, a trustee, receiver, or liquidator of the Project Facility, or any part thereof, or of the Company shall be appointed and such order shall not be discharged or dismissed within sixty (60) days after such appointment; or

(i) The filing by the Company of a voluntary petition under Title 11 of the United States Code or any other federal or state bankruptcy statute; the failure by the Company

within sixty (60) days to lift any execution, garnishment, or attachment of such consequence as will impair the Company's ability to carry out its obligations hereunder; the commencement of a case under Title 11 of the United States Code against the Company as the debtor, or commencement under any other federal or state bankruptcy statute of a case, action, or proceeding against the Company, and continuation of such case, action, or proceeding without dismissal for a period of sixty (60) days; the entry of an order for relief by a court of competent jurisdiction under Title 11 of the United States Code or any other federal or state bankruptcy statute with respect to the debts of the Company; or in connection with any insolvency or bankruptcy case, action, or proceeding, appointment by final order, judgment, or decree of a court of competent jurisdiction of a receiver or trustee of the whole or a substantial portion of the Property of the Company unless such order, judgment, or decree is vacated, dismissed, or dissolved within sixty (60) days of its issuance.

(j) The imposition of a Lien on the Project Facility other than a Permitted Encumbrance, which the Company fails to satisfy or bond within ten (10) days after the Company's receipt of written notice of the same.

## **10.2 REMEDIES ON DEFAULT.**

(a) Whenever any Event of Default shall have occurred and be continuing, the Agency may, to the extent permitted by law, take any one or more of the following remedial steps:

- 1) Terminate this Agency Lease;
- 2) Terminate the Company Lease;
- 3) Terminate the PILOT Agreement;
- 4) Terminate the Company's appointment as agent of the Agency; or

5) Take any other action at law or in equity which may appear necessary or desirable to collect any amounts then due, or thereafter to become due, hereunder or under the Company Lease, the Project Agreement, or the PILOT Agreement, and/or to enforce the Company's obligations and duties under the Company Documents and the Agency's rights under the Agency Documents, including but not limited to, specific performance; or

6) Seek to recover the recapture amount set forth in Article 8 hereof as well as any and all other components of Financial Assistance provided to the Company in accordance with the Agency's Recapture Policy.

(b) No action taken pursuant to this Section 10.2 shall relieve the Company from its obligations to make all payments required by Sections 5.3(b) and 8.2 hereof.

### **10.3 REMEDIES CUMULATIVE.**

No remedy herein conferred upon or reserved to the Agency is intended to be exclusive of any other available remedy, but each and every such remedy shall be cumulative and in addition to every other remedy given under this Agency Lease, the Company Lease and the other Company Documents or the PILOT Agreement now or hereafter existing at law or in equity to collect any amounts then due, or thereafter to become due, hereunder and thereunder and to enforce the Agency's right to terminate this Agency Lease, the PILOT Agreement and the Company Lease. No delay or omission to exercise any right or power accruing upon any Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised at any time a Default is continuing from time to time and as often as may be deemed expedient. In order to entitle the Agency to exercise any remedy reserved to it in this Article 10, it shall not be necessary to give any notice, other than such notice as may be herein expressly required in this Agency Lease.

### **10.4 AGREEMENT TO PAY ATTORNEYS' FEES AND EXPENSES.**

In the event the Company should Default under any of the provisions of this Agency Lease, or a dispute arises hereunder, and the Agency should employ attorneys or incur other expenses to preserve or enforce its rights hereunder or for the collection of amounts payable hereunder or the enforcement of performance or observance of any obligations or agreements on the part of the Company herein contained, the Company shall, on demand therefor, pay to the Agency the reasonable fees and costs of such attorneys and such other expenses so incurred.

### **10.5 NO ADDITIONAL WAIVER IMPLIED BY ONE WAIVER.**

In the event any agreement contained herein should be breached by either party and thereafter such breach be waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

## **ARTICLE XI MISCELLANEOUS**

### **11.1 NOTICES.**

All notices, certificates, and other communications hereunder shall be in writing, shall be sufficiently given, and shall be deemed given when (a) sent to the applicable address stated below by registered or certified mail, return receipt requested, and actually received by the intended recipient or by overnight courier or such other means as shall provide the sender with documentary evidence of such delivery, or (b) delivery is refused by the addressee as evidenced by the affidavit of the Person who attempted to effect such delivery. The addresses to which notices, certificates, and other communications hereunder shall be delivered are as follows:

(a) If to the Agency, to:

City of Syracuse Industrial Development Agency  
201 East Washington Street, 6<sup>th</sup> Floor  
Syracuse, New York 13202  
Attn: Chairman

With a copy to:

Corporation Counsel  
City of Syracuse  
233 East Washington Street  
Syracuse, New York 13202

and

Bousquet Holstein PLLC  
One Lincoln Center, Suite 1000  
110 West Fayette Street  
Syracuse, New York 13202  
Attn: Susan R. Katzoff, Esq.

(b) If to the Company, to:

Alan Byer Auto Sales, Inc.  
1230 West Genesee Street  
Syracuse, New York 13204  
Attn: Stephen G. Byer

and

Alan I. Byer Family Trust  
1230 West Genesee Street  
Syracuse, New York 13204  
Attn: Stephen G. Byer

and

West Genesee Realty Associates, LLC  
1230 West Genesee Street  
Syracuse, New York 13204  
Attn: Stephen G. Byer

and

Stephen G. Byer  
1230 West Genesee Street  
Syracuse, New York 13204

With a copy to:

Barclay Damon LLP  
Barclay Damon Tower  
125 East Jefferson Street  
Syracuse, New York 13202  
Attn: Kevin R. McAuliffe, Esq.

The Agency and the Company, may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates, and other communications shall be sent.

#### **11.2 BINDING EFFECT.**

This Agency Lease shall inure to the benefit of and shall be binding upon the Agency and the Company and, as permitted by this Agency Lease, upon their respective heirs, successors and assigns.

#### **11.3 SEVERABILITY.**

If any one or more of the covenants or agreements provided herein on the part of the Agency or the Company to be performed shall for any reason be held, or shall in fact be, inoperative, unenforceable, or contrary to law in any particular circumstance; such circumstance shall not render the provision in question inoperative or unenforceable in any other circumstance. Further, if any one or more of the sentences, clauses, paragraphs, or sections herein is contrary to law, then such covenant(s) or agreement(s) shall be deemed severable of remaining covenants and agreements hereof and shall in no way affect the validity of the other provisions of this Agency Lease.

#### **11.4 AMENDMENTS, CHANGES AND MODIFICATIONS.**

This Agency Lease may not be amended, changed, modified, altered, or terminated except by an instrument in writing signed by the parties hereto or in accordance herewith.

#### **11.5 EXECUTION OF COUNTERPARTS.**

This Agency Lease may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.



**11.6 APPLICABLE LAW.**

This Agency Lease shall be governed exclusively by the applicable laws of the State of New York.

**11.7 WAIVER OF TRIAL BY JURY.**

THE COMPANY AND THE AGENCY WAIVE THE RIGHT TO TRIAL BY JURY OF ANY DISPUTE ARISING UNDER THIS AGENCY LEASE, AND THIS PROVISION SHALL SURVIVE THE TERMINATION OF THIS AGENCY LEASE.

**11.8 SUBORDINATION.**

This Agency Lease shall be subject and subordinate to the Company Lease and the Mortgage and all Permitted Encumbrances in all respects.

**11.9 SURVIVAL OF OBLIGATIONS.**

(a) The obligations of the Company to repay, defend and/or provide the indemnity required by Section 8.2 and 8.12 hereof shall survive the termination of this Agency Lease and all such payments and obligations after such termination shall be made upon demand of the party to whom such payment and/or obligation is due.

(b) The obligations of the Company to repay, defend and/or provide the indemnity required by Sections 8.2 and 8.12 shall survive the termination of this Agency Lease until the expiration of the period stated in the applicable statute of limitations during which a claim, cause of action, or prosecution may be brought, and the payment in full or the satisfaction of such claim, cause of action, or prosecution, and the payment of all expenses and charges incurred by the Agency or its officers, members, agents (other than the Company) or employees relating thereto.

(c) The obligations of the Company required by Articles 4 and 5 and Sections 2.2 8.4 and 11.14 hereof shall similarly survive the termination of this Agency Lease.

**11.10 TABLE OF CONTENTS AND SECTION HEADINGS NOT CONTROLLING.**

The Table of Contents and the Section headings in this Agency Lease have been prepared for convenience of reference only and shall not control, affect the meaning of, or be taken as an interpretation of any provision of this Agency Lease.

**11.11 NO RECOURSE; SPECIAL OBLIGATION.**

The obligations and agreements of the Agency contained herein and in the other Agency Documents and in any other instrument or document executed in connection herewith or therewith, and any instrument or document supplemental hereto or thereto, shall be deemed the obligations and agreements of the Agency and not of any member, officer, agent or employee of

the Agency in his individual capacity; and the members, officers, agents and employees of the Agency shall not be liable personally hereon or thereon or be subject to any personal liability or accountability based upon or in respect hereof or thereof or of any transaction contemplated hereby or thereby. The obligations and agreements of the Agency contained herein or therein shall not constitute or give rise to an obligation of the State New York or of the City of Syracuse, and neither the State of New York nor the City of Syracuse shall be liable hereon or thereon. Further, such obligations and agreements shall not constitute or give rise to a general obligation of the Agency, but rather shall constitute limited obligations of the Agency, payable solely from the revenues of the Agency derived, and to be derived from, the lease, sale, or other disposition of the Project Facility, other than revenues derived from or constituting Unassigned Rights. No order or decree of specific performance with respect to any of the obligations of the Agency hereunder or thereunder shall be sought or enforced against the Agency unless:

(a) The party seeking such order or decree shall first have requested the Agency in writing to take the action sought in such order or decree of specific performance, and thirty (30) days shall have elapsed from the date of receipt of such request, and the Agency shall have refused to comply with such request (or if compliance therewith would reasonably be expected to take longer than thirty (30) days, shall have failed to institute and diligently pursue action to cause compliance with such request) or failed to respond within such notice period; and

(b) If the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it will incur fees and expenses, the party seeking such order or decree shall have placed in an account with the Agency an amount or undertaking sufficient to cover such reasonable fees and expenses; and

(c) If the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it or any of its members, officers, agents or employees shall be subject to potential liability, the party seeking such order or decree shall (1) agree to indemnify and hold harmless the Agency and its members, officers, agents and employees against any liability incurred as a result of its compliance with such demand; and (2) if requested by the Agency, furnish to the Agency satisfactory security to protect the Agency and its members, officers, agents and employees against all liability expected to be incurred as a result of compliance with such request.

(d) For purposes of this Section 11.11, neither the Company nor any Additional Agent shall be deemed to constitute an employee, agent or servant of the Agency or a person under the Agency's control or supervision.

Any failure to provide notice, indemnity, or security to the Agency pursuant to this Section 11.11 shall not alter the full force and effect of any Event of Default under this Agency Lease.

#### **11.12 OBLIGATION TO SELL AND PURCHASE THE EQUIPMENT.**

(a) Contemporaneously with the termination of this Agency Lease in accordance with Section 5.2 hereof, the Agency shall sell and the Company shall purchase all the Agency's right,

title and interest in and to all of the Equipment for a purchase price equal to the sum of One Dollar (\$1.00), plus payment of all sums due and payable to the Agency or any other Person pursuant to this Agency Lease and the other Company Documents. The Company hereby irrevocably designates the Agency as its attorney-in-fact, coupled with an interest, for the purpose of executing and delivering the bill of sale together with any other documents therewith, including lease terminations in accordance with Section 5.2 hereof, and to take such other and further actions reasonably necessary to confirm the termination of the Agency's interest in the Equipment.

(b) The sale and conveyance of the Agency's right, title and interest in and to the Equipment shall be effected by the execution and delivery by the Agency to the Company of a bill of sale to Company. The Company hereby agrees to pay all expenses and taxes, if any, applicable to or arising from such transfer of title.

(c) The Company agrees to prepare bills of sale to the appropriate Company and all schedules thereto, together with all necessary documentation, and to forward same to the Agency at least thirty (30) days prior to the date that title to the Equipment is to be conveyed to the Company. The Agency shall have no obligation to determine, as between them, the respective interests of the Companies in and to the Equipment so transferred. In the event the Company fails to prepare such bill(s) of sale, the Agency may prepare one or more bill of sale in the name of any one or more of the Companies without regard to each Company's respective interest.

#### **11.13 ENTIRE AGREEMENT.**

This Agency Lease and the Company Lease contain the entire agreement between the parties and all prior negotiations and agreements are merged therein.

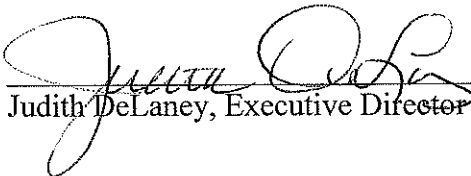
#### **11.14 DISCLOSURE.**

**Section 875(7) of the New York General Municipal Law ("GML") requires that the Agency post on its website all resolutions and agreements relating to the Company's appointment as an agent of the Agency or otherwise related to the Project; and Article 6 of the New York Public Officers Law declares that all records in the possession of the Agency (with certain limited exceptions) are open to public inspection and copying. If the Company feels that there are elements of the Project or information about the Company in the Agency's possession which are in the nature of trade secrets or information, the nature of which is such that if disclosed to the public or otherwise widely disseminated would cause substantial injury to the Company's competitive position, the Company must identify such elements in writing, supply same to the Agency on or before the Closing Date, and request that such elements be kept confidential in accordance with Article 6 of the Public Officers Law. Failure to do so will result in the posting by the Agency of all information in accordance with Section 875 of the GML.**

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**IN WITNESS WHEREOF**, the Agency and the Company have caused this Agency Lease to be executed in their respective names by their duly authorized representatives as of the day and year first written above.

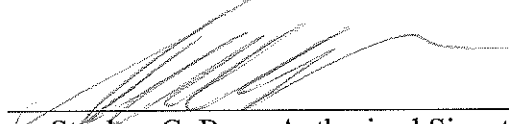
**CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY**

By:   
Judith DeLaney, Executive Director

**ALAN BYER AUTO SALES, INC.**

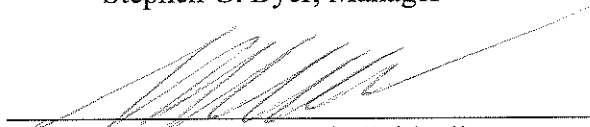
By:   
Stephen G. Byer, Vice President

**ALAN I. BYER FAMILY TRUST**

By:   
Stephen G. Byer, Authorized Signatory

**WEST GENESEE REALTY ASSOCIATES,  
LLC**

By:   
Stephen G. Byer, Manager

  
Stephen G. Byer, individually

STATE OF NEW YORK )  
 ) SS.:  
COUNTY OF ONONDAGA )

On the 12<sup>th</sup> day of September in the year 2019 before me, the undersigned, a Notary Public in and for said State, personally appeared **Judith DeLaney**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

*Lori L. McRobbie*

Notary Public  
LORI L. McROBBIE  
Notary Public, State of New York  
Qualified in Onondaga Co. No. 01MC5055591  
Commission Expires on Feb. 12, 20 22

STATE OF NEW YORK )  
 ) SS.:  
COUNTY OF ONONDAGA )

On the 12<sup>th</sup> day of September in the year 2019 before me, the undersigned, a Notary Public in and for said State, personally appeared **Stephen G. Byer**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

*Lori L. McRobbie*

Notary Public  
LORI L. McROBBIE  
Notary Public, State of New York  
Qualified in Onondaga Co. No. 01MC5055591  
Commission Expires on Feb. 12, 20 22

## EXHIBIT "A"

### REAL PROPERTY DESCRIPTION

#### **Parcel 1 (1232-36 West Genesee Street – 108.1-02-19)**

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Syracuse, County of Onondaga and State of New York, being a portion of Farm Lot #292 and #293 in said City and being more particularly described as follows: Beginning at a point in the present northerly line of West Genesee Street, said point being S. 74° 37' 20" W., a distance of 252.1 feet from the intersection of the westerly line of Eureka Street, with said northerly line of West Genesee Street, said point of beginning also being the southwesterly corner of property now or formerly owned by the Gladding Corporation, as recorded in the Onondaga County Clerk's office in Liber of Deeds # 3102 at Page #7; thence S. 74° 37' 20" W., along said northerly line of West Genesee Street a distance of 196.93 feet to its intersection with the easterly line of Block #1, of the Powell Tract, Filed Map #267, said point also being the southeasterly corner of property now or formerly owned by Vehicles Realty Associates, as recorded in the Onondaga County Clerk's Office in Liber of Deeds #2683, Page 276; thence N. 55° 28' 20" W., along said easterly line of said Vehicles Realty Associates property and said easterly line of said Block #1, a distance of 351.77 feet to a point; thence N. 63° 51' 20" E., a distance of 353.75 feet to a point; thence S. 28° 08' 53" E., along the westerly line of said Gladding Corporation property, a distance of 343.69 feet to the point and place of beginning.

#### **Parcel 2 (1232 West Genesee Street – 108.1-02-35.1)**

ALL THAT TRACT OF PARCEL OF LAND, situate in the City of Syracuse, County of Onondaga, State of New York, being parts of Farm Lot Nos. 292 and 293 as shown on a map of The Hiawatha Tract filed in the Onondaga County Clerk's Office on September 20, 19\_7 as Tract Map No. 1606, bounded and described as follows:

BEGINNING at the northeasterly corner of Alan Byer, reputed owner, according to Book 2497 of Deeds at Page 1012, filed in the Onondaga County Clerk's Office, said point being the following courses and distances from the intersection of the westerly boundary of Eureka Street with the northerly boundary of West Genesee Street: 1) S. 74° 37' 20" W., along said northerly boundary of West Genesee Street, a distance of 253.27 feet to the southeasterly corner of said Alan Byer; 2) N. 28° 08' 40" W., along the easterly boundary of said Alan Byer, a distance of 343.67 feet to said point of beginning; running thence S. 63° 51' 20" W., along the northerly boundary of said Alan Byer, a distance of 341.96 feet to the northwesterly corner thereof; thence N. 46° 11' 32" W., a distance of 156.33 feet to an angle point; thence N. 28° 08' 40" W., a distance of 200.00 feet to a point in the northerly boundary of Warsaw Avenue (not open); thence N. 61° 52' 20" E., along said northerly boundary of Warsaw Avenue (not open), a distance of 400.18 feet to a point in the westerly boundary of Gladding Corp., formerly; thence S. 28° 08' 40" E., along said westerly boundary of Gladding Corp., formerly, a distance of 360.92 feet to a point; thence S. 63° 51' 20" W., a distance of 9.98 feet to the point of beginning. Containing 3.170 acres of land, more or less.

**Parcel 3 (1288 West Genesee Street – 108.1-02-20)**

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Syracuse, County of Onondaga and State of New York, in the former Town of Geddes, known and distinguished as Lots No. 1, 2, 3, 4 and 5 and part of Lot 7, of the Powell Tract, according to a map thereof filed in the Onondaga County Clerk's Office on August 14, 1876, as Map Number 267, bounded and described as follows:

Beginning at the Intersection of the north line of West Genesee Street, with the east line of Dewey Avenue (formerly North Magnolia Street); thence easterly along the northerly line of West Genesee Street 475.14 feet, more or less to the southeasterly corner of Lot Number 1, of said Powell Tract; thence North  $55^{\circ} 28' 20''$  West on the westerly side of Harbour Brook and the easterly line of Lots 1, 2 and 7 of said Powell Tract according to said Map, 313.73 feet to a point in the northerly line of lands conveyed to the Syracuse Hospital for Women and Children of Syracuse, New York by deed dated November 9, 1904, and recorded in the Onondaga County Clerk's Office on December 12, 1904, in Book Number 360 of Deeds at page 129&c.; thence South  $74^{\circ} 37' 20''$  West parallel to West Genesee Street and along the northerly line of lands so conveyed by said Deed to the Syracuse Hospital for Women and Children as aforesaid and along the northerly line of lands conveyed to the Woman's Hospital and Training School for Nurses by deed dated July 22, 1895, and recorded in the Onondaga County Clerk's Office on September 18, 1895, in Book of Deeds No. 311 at page 4&c., 141.35 feet, more or less, to the northeast corner of a lot formerly owned by Rosa Andrews and thence southerly along the west line of said Lot owned by Rosa Andrews 40 feet to the southeast corner thereof; thence South  $74^{\circ} 37' 20''$  West along the south line of said Andrews Lot, formerly owned by Rosa Andrews, 132 feet to the east line of Dewey Avenue; thence South  $15^{\circ} 22' 40''$  East along the easterly line of Dewey Avenue 200 feet to the point and place of beginning.

Easement for ingress and egress over lands now or formerly owned by Alan Byer, lying east of the above described parcel as set forth in an Easement Agreement between Vehicle Realty Associates and Alan Byer dated March 31, 1989 and recorded in the Onondaga County Clerk's office September 14, 1989 in Book 3562 of Deeds, Page 216, the easement area having been described as follows:

All of that tract or parcel of land situate in the City of Syracuse, County of Onondaga, State of New York, being part of Farm Lots 292 & 293 and more particularly bounded and described as follows:

Beginning at a point at the northwest corner of lands of party of the first part, said point also being N.  $56^{\circ} 29' 03''$  W., along the westerly line of lands of said party of the first part, a distance of 360.10 feet from the Northerly line of W. Genesee Street; running thence N.  $63^{\circ} 51' 40''$  E., along the northerly line of lands of said party of the first part, 25 feet to a point; thence the following 2 courses and distances through and across the lands of said party of the first part: (1) S.  $56^{\circ} 29' 03''$  S., 53.37 feet; and (2) S.  $33^{\circ} 30' 57''$  W., 21.58 feet to a point in said westerly line of lands of party of the first part; thence N.  $56^{\circ} 29' 03''$  W., along said Westerly line, 66 feet to the place of beginning.

## EXHIBIT "B"

### DESCRIPTION OF EQUIPMENT

All articles of personal property, all machinery, apparatus, equipment, appliances, floor coverings, furniture, furnishings, supplies, materials, fittings and fixtures of every kind and nature whatsoever and all appurtenances acquired by **ALAN BYER AUTO SALES, INC., ALAN I. BYER FAMILY TRUST, STEVEN GARY BYER, WEST GENESEE REALTY ASSOCIATES, LLC** (collectively, the "*Company*") and now or hereafter attached to, contained in or used or acquired in connection with, at or upon, the Project Facility (as defined in the Agency Lease) or placed on any part thereof, though not attached thereto, including, but not limited to, pipes, screens, fixtures, furniture, heating, lighting, plumbing, ventilation, air conditioning, compacting and elevator plants, call systems, stoves, rugs, movable partitions, cleaning equipment, maintenance equipment, shelving, racks, flagpoles, signs, waste containers, drapes, blinds and accessories, sprinkler systems and other fire prevention and extinguishing apparatus aid materials, motors, automobiles, parts, machinery and all other equipment used in connection with the Project; and together with any and all products of any of the above, all substitutions, replacements, additions or accessions therefor, and any and all cash proceeds or non-cash proceeds realized from the sale, transfer or conversion of any of the above.



## EXHIBIT "C"

### TABLE OF DEFINITIONS

The following terms shall have the meanings set forth below, unless the context or use clearly indicate another or different meaning and the singular form of such defined words and terms shall include the plural and vice versa:

**Act:** means the New York State Industrial Development Agency Act (N.Y. Gen. Municipal Law §§ 850 et seq.) as amended, together with Section 926 of the N.Y. General Municipal Law, as amended from time to time.

**Additional Agents:** means a Project operator, contractors, agents, subagents, subcontractors, contractors and subcontractors of such agents and subagents appointed by the Company in furtherance of the completion of the Project in accordance with the terms of the Agency Lease.

**Agency:** means the City of Syracuse Industrial Development Agency and its successors and assigns.

**Agency Documents:** means the Project Agreement, the Agency Lease, the Company Lease, the Mortgage, the PILOT Agreement and any other documents executed by the Agency in connection with the Project or the Financial Assistance granted in connection therewith.

**Agency Lease:** means the Agency Lease Agreement dated as of September 1, 2019, by and between the Agency and the Company, as the same may be amended or supplemented from time to time.

**Alan Sales:** means Alan Byer Auto Sales, Inc., a business corporation, organized and existing under the laws of the State of New York having an address at 1230 West Genesee Street, Syracuse, New York 13204, and its permitted successors and assigns.

**Application:** means the application submitted by the Company to the Agency dated October 23, 2018, as supplemented or amended on March 18, 2019, requesting the Agency undertake the Project, as same may be further amended or supplemented from time to time.

**Authorized Representative:** means for the Agency, the Chairman or Vice Chairman of the Agency; for Alan Sales, its Vice President or any officer designated in a certificate signed by an Authorized Representative of Alan Sales; for the Trust, that person designated as an authorized signatory under the Trust; for West Genesee Realty Associates, LLC, its manager or any officer designated in a certificate signed by an Authorized Representative of Realty; and for Byer, Steven Gary Byer, individually, and for either the Agency, or the Company, any additional persons designated to act on behalf of the Agency or the Company by written certificate or

resolution furnished by the designating party containing the specimen signature of each designated person, as applicable.

**Bill of Sale:** means the Bill of Sale from the Companies to the Agency dated as of September 1, 2019 in connection with the Equipment.

**Byer:** means Stephen G. Byer, individually, having an address at 1230 West Genesee Street, Syracuse, New York 13204.

**City:** means the City of Syracuse.

**Closing Date:** means September 12, 2019.

**Closing Memorandum:** means the closing memorandum of the Agency relating to the Project.

**Company or Companies:** means the Trust, Alan Sales, Byer and Realty collectively.

**Company Documents:** means the Ground Lease, the Company Lease, the Agency Lease, the Project Agreement, the PILOT Agreement, the Mortgage, the Environmental Compliance and Indemnification Agreement, the Bill of Sale, the Company Certification and any other documents executed by the Company in connection with the Project or the Financial Assistance granted in connection therewith.

**Company Lease:** means the Company Lease Agreement dated as of September 1, 2019 from the Company to the Agency, pursuant to which the Company leased the Project Facility to the Agency, as the same may be amended or supplemented from time to time.

**Completion Date:** means the last day of the eighth full month following the Company's receipt of the building permit by the City of Syracuse but in no event more than eighteen months from the date of this Agency Lease.

**Condemnation:** means the taking of title to, or the use of, Property under the exercise of the power of eminent domain by any governmental entity or other Person acting under governmental authority.

**County:** means the County of Onondaga in the State of New York.

**Environmental Compliance and Indemnification Agreement:** means the Environmental Compliance and Indemnification Agreement dated as of September 1, 2019 by the Company to the Agency.

**Equipment:** means all materials, machinery, furnishings, fixtures and equipment installed or used at the Project Facility, as of the Closing Date and thereafter acquired for or installed in, or upon, the Project Facility, as more fully described in **Exhibit "B"** to the Agency Lease.

**Facility:** means the buildings and other improvements located or to be constructed on the Land.

**Financial Assistance:** has the meaning given to such term in Section 854(14) of the Act.

**Governmental Authority:** means any federal, state, municipal, or other governmental department, commission, board, bureau, agency, or instrumentality, domestic or foreign.

**Ground Lease:** means those certain ground leases between Alan I. Byer, as Trustee of the Alan I. Byer Family Trust and Stephen Gary Byer dated December 16, 2991 and West Genesee Realty Associates, LLC and Alan Byer Auto Sales, Inc. dated November 30, 205 and November 9, 2010.

**Land:** means the improved real property located at 1232-36 West Genesee Street (also known as 1230 West Genesee Street), 1232 West Genesee Street (rear) and 1288 West Genesee Street, each in the City of Syracuse, County of Onondaga, State of New York, more particularly described on **Exhibit "A"** attached to the Agency Lease.

**Lien:** means any interest in Property securing an obligation owed to a Person, whether such interest is based on the common law, statute or contract, and including, but not limited to, a security interest arising from a mortgage, encumbrance, pledge, conditional sale, or trust receipt or a lease, consignment or bailment for security purposes. The term "Lien" includes reservations, exceptions, encroachments, projections, easements, rights of way, covenants, conditions, restrictions, leases, and other similar title exceptions and encumbrances, including, but not limited to mechanics, materialmen, warehousemen, and carriers liens and other similar encumbrances effecting real property. For purposes hereof, a Person shall be deemed to be the owner of any property which it has acquired or holds subject to a conditional sale agreement or other arrangement pursuant to which title to the property has been retained by or vested in some other person for security purposes.

**Mortgage:** means one or more mortgages from the Agency and the Company to the Mortgagee and recorded in the Onondaga County Clerk's office subsequent to the filing and recording of the Memorandum of Agency Lease, securing construction and/or permanent financing for the Project Facility, executed in accordance with Section 4.5 of the Agency Lease, and securing the Note.

**Mortgagee:** means a lender, its successors and assigns, providing financing pursuant to the Note and Mortgage, relative to the costs of construction and/or equipping of the Project Facility.

**Net Proceeds:** means so much of the gross proceeds with respect to which that term is used as remain after payment of all expenses, costs and taxes (including attorneys' fees) incurred in obtaining such gross proceeds.

**Note:** means one or more notes given by the Company to the Mortgagee in connection with the Mortgage for construction or permanent financing relative to the Project Facility.

**Permitted Encumbrances:** means (A) utility, access and other easements and rights of way, and restrictions, encroachments and exceptions, that benefit or do not materially impair the utility or the value of the Property affected thereby for the purposes for which it is intended, (B) artisans', mechanics', materialmen's, warehousemen's, carriers', landlords', bankers', workmen's compensation, unemployment compensation and social security, and other similar Liens to the extent permitted by the Agency Lease, including the lien of the Mortgage, (C) Liens for taxes (1) to the extent permitted by the Agency Lease or (2) at the time not delinquent, (D) any Lien on the Project Facility obtained through any Agency Document or Company Document or the Mortgage, (E) Liens of judgments or awards in respect of which an appeal or proceeding for review shall be pending (or is pending within ten days after entry) and a stay of execution shall have been obtained (or is obtained within ten days after entry), or in connection with any claim or proceeding, (F) Liens on any Property hereafter acquired by the Company or any subsidiary which liens are created contemporaneously with such acquisition to secure or provide for the payment or financing of any part of the purchase price thereof, (G) Liens consisting solely of restrictions under any applicable laws or any negative covenants in any applicable agreements (but only to the extent that such restrictions and covenants do not prohibit the execution, delivery and performance by the Company of the Agency Lease and the Mortgage, (H) existing mortgages or encumbrances on the Project Facility as of the Closing Date and (I) with the consent of the Mortgagee (if any) and the Agency, mortgages or encumbrances placed on the Project Facility after the Closing Date with the consent of the Agency.

**Person:** means an individual, partnership, corporation, limited liability company, trust, or unincorporated organization, and any government or agency or political subdivision or branch thereof.

**PILOT Agreement:** means the Payment in Lieu of Taxes Agreement dated as of September 1, 2019 among the City, the Agency and the Trust, Byer and Realty, as amended or supplemented from time to time.

**Plans and Specifications:** means the representations, plans and specifications presented by the Company to the Agency in its Application and as described in the Project description in the third WHEREAS clause of this Agency Lease, and any other presentation made by the Company to the Agency relating to the construction, reconstruction, renovation, equipping and completion of the Project Facility; and any additional plans and specifications approved by the Mortgagee.

**Project:** shall have the meaning ascribed thereto in the third **WHEREAS** clause of this Agency Lease.

**Project Agreement:** means the Project Agreement dated as of September 1, 2019 between the Company and the Agency setting forth rights and obligations of the parties with respect to the Financial Assistance.

**Project Facility:** means the Land, the Facility and the Equipment.

**Property:** means any interest in any kind of property or asset, whether real, personal, or mixed, or tangible or intangible.

**Realty:** means West Genesee Associates, LLC, a limited liability company, organized and existing under the laws of the State of New York, having an address at 1230 West Genesee Street, Syracuse, New York 13204, and its permitted successors and assigns.

**Resolution or Resolutions:** means the Agency's resolutions adopted on December 18, 2018, March 19, 2019, July 16, 2019 and August 20, 2019 authorizing the undertaking of the Project and the execution and delivery of certain documents by the Agency in connection therewith.

**Sales and Use Tax or State Sales and Use Taxes:** means, when used with respect to State sales and use taxes, sales and compensating use taxes and fees imposed by article twenty-eight or twenty-eight-A of the State tax law but excluding such taxes imposed in a city by section eleven hundred seven or eleven hundred eight of such article twenty-eight.

**SEQRA:** means the State Environmental Quality Review Act constituting Article 8 of the State Environmental Conservation Law and the regulations promulgated thereunder, as amended.

**State:** means the State of New York.

**Trust:** means the Alan I. Byer Family Trust an inter vivos revocable trust created pursuant to a Third Amended and Restated Trust Agreement dated October 1, 2015.

**Unassigned Rights:** means:

(i) the right of the Agency in its own behalf to receive all opinions of counsel, reports, financial statements, certificates, insurance policies, binders or certificates, or other notices or communications, if any, required to be delivered to the Agency under the Agency Lease;

(ii) the right of the Agency to grant or withhold any consents or approvals required of the Agency under the Agency Lease;

(iii) the right of the Agency to enforce or otherwise exercise in its own behalf all agreements of the Company with respect to ensuring that the Project Facility shall always constitute a qualified "project" as defined in and as contemplated by the Act;

(iv) the right of the Agency to require and enforce any right of defense and any indemnity from any Person;

(v) the right of the Agency in its own behalf (or on behalf of the appropriate taxing authorities) to enforce, receive amounts payable under or otherwise exercise its rights under Sections 2.2(f), 2.2(h), 2.2(m), 2.2(q), 4.1, 4.5, 5.3, 5.4, 6.2, 6.3, 6.4, 8.2, 8.3, 8.5,

8.7, 8.9, 8.12, 10.2, 10.4, 11.9, 11.11 and 11.12 of the Agency Lease and Sections 2.6(g), 4.8 and 4.9 of the Company Lease; and

(vi) the right of the Agency in its own behalf to declare an Event of Default and enforce its remedies under Article X of the Agency Lease or with respect to any of the Agency's Unassigned Rights.

**EXHIBIT "D"**  
**LOCAL ACCESS AGREEMENT**

## City of Syracuse

### Industrial Development Agency

#### Local Access Agreement

Alan Byer Auto Sales, Inc., Alan I. Byer Family Trust, Stephen G. Byer, individually, and West Genesee Realty Associates, LLC (collectively, the "Company"), understands and agrees that local labor, contractors and suppliers will be used for the construction, renovation, reconstruction and equipping of the Project unless a written waiver is first received from the Agency, and agrees to provide the information requested below as a way to provide access for local participation.

<b>Company</b>		Alan Byer Auto Sales, Inc., Alan I. Byer Family Trust, Stephen G. Byer, individually, and West Genesee Realty Associates, LLC				<b>General Contractor</b>		Parsons-McKenna Construction Co., Inc.			
<b>Representative for Contract Bids and Awards</b>		Stephen G. Byer				<b>Contact</b>		Jake McKenna			
<b>Address</b>		1230 West Genesee Street				<b>Address</b>		117 Metropolitan Park Drive			
<b>City</b>	Syracuse	<b>ST</b>	NY	<b>Zip</b>	13204	<b>City</b>	Syracuse	<b>ST</b>	NY	<b>Zip</b>	13088
<b>Phone</b>	315.471.6107		<b>Fax</b>				<b>Phone</b>	315.451.7330		<b>Fax</b>	
<b>Email</b>		sbyer@alanbyervolvo.com				<b>Email</b>		jmckenna@parsonsmckenna.com			
<b>Project Address</b>		1232-36 West Genesee Street (a/k/a 1230 West Genesee Street); 1232 West Genesee Street (rear); and 1288 West Genesee Street				<b>Construction Start Date</b>					
<b>City</b>	Syracuse	<b>ST</b>	NY	<b>Zip</b>	13204	<b>Occupancy Date</b>					

**Project Components – Indicate those for which bids will be sought:**

Item	Estimated Value	Bid Date	Contact
Site work/Demolition			
Foundation and footings			
Building			
Masonry			
Metals			
Wood/casework			
Thermal/moisture proof			
Doors, windows, glazing			
Finishes			
Electrical			
HVAC			
Plumbing			
Specialties			
Machinery & Equipment			
Furniture and Fixtures			
Utilities			
Paving			
Landscaping			
Other (identify)			

Date: \_\_\_\_\_

**Company:** Alan Byer Auto Sales, Inc., Alan I. Byer Family Trust, Stephen G. Byer, individually, and West Genesee Realty Associates, LLC

Signature:  \_\_\_\_\_

**Name:** Stephen G. Byer

As Authorized Signatory for each entity



**EXHIBIT "E"**

**FORM OF ANNUAL REPORTING QUESTIONNAIRE**

SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY  
201 East Washington Street, 6<sup>th</sup> Floor, Syracuse, New York 13202

Date

COMPANY  
COMPANY ADDRESS

Dear \_\_\_\_\_:

Our auditors, \_\_\_\_\_, CPAs are conducting an audit of our financial statements for the year ended December 31, \_\_\_\_\_. In connection with that audit, we request that you furnish certain information directly to our auditor with regard to the following security issued by/through the City of Syracuse Industrial Development Agency:

Sale - Leaseback Financing

Project: \_\_\_\_\_

Date of Financing:

Principal Amount Financed:

Maturity Date:

Original Interest Rate:

Please provide the following information as of December 31, [year]:

Name of Lender

Debt Retired in [year] Yes/No

Debt Refinanced in [year] Yes/No

(If Yes, please update information in Paragraph 1 above)

Debt in Default as of [date] Yes/No

Current Interest Rate(s)

Rate range, if Variable

Principal balance outstanding as of [date]

Principal payments made during [year]

Payments in Lieu of Taxes (PILOT)

paid in [year]

Total cost of goods/services purchased: \$ \_\_\_\_\_

New York State Sales Tax Exemptions Claimed [year]

New York Local Sales Tax Exemptions Claimed: [year]

New York State Mortgage Recording

Tax Exemption: [year]

Form of Syracuse Industrial Development Agency — Project Jobs Data [year]

From:

To: \_\_\_\_\_, CPAs

Re:

The following jobs information is furnished to you with regard to the above cited project:

**A. Job Retention/Creation:**

**I. Construction Jobs:**

Provide the name of your general contractor: \_\_\_\_\_.

Provide the address (including county) of your general contractor: \_\_\_\_\_.

Is the general contractor MWBE qualified? \_\_\_\_\_.

Is the general contractor Service-Disabled Veteran-Owned Business Enterprises ( SDVOBE) qualified? \_\_\_\_\_.

For each contractor and/or sub-contractor, provide the following information for the reporting period:

Bid awarded to (Name/Address/County*)	Value of contract	MWBE (Yes/No)	SDVOBE (Yes/No)	Number of jobs (FTE)

**\*Must include county**

**II. Permanent (non-construction) Jobs:**

Number of FTEs retained at the Project prior to date of application: \_\_\_\_\_.

Number of FTEs created by the Project during the reporting calendar year (*exclusive of construction jobs*): \_\_\_\_\_.

Of the jobs created by the Project during the reporting year (*exclusive of construction jobs*) identify how many are in each of the following categories:

**Professional/Managerial/Technical** - includes jobs which involve skill or competence of extraordinary degree and may include supervisory responsibilities (examples: architect, engineer, accountant, scientist, medical doctor, financial manager, programmer). **Number of jobs created in reporting year** \_\_\_\_\_.

**Skilled** - includes jobs that require specific skill sets, education, training, and experience and are generally characterized by high education or expertise level (examples: electrician, computer operator, administrative assistant, carpenter, sales representative). **Number of jobs created in reporting year** \_\_\_\_\_.

**Unskilled or Semi-Skilled** - includes jobs that require little or no prior acquired skills and involve the performance of simple duties that require the exercise of little or no independent judgment (examples: general cleaner, truck driver, typist, gardener, parking lot attendant, line operator, messenger, information desk clerk, crop harvester, retail salesperson, security guard, telephone solicitor, file clerk). **Number of jobs created in reporting year** \_\_\_\_\_.

Identify:

the average annual salary range of the FTEs (*exclusive of construction jobs*) created during the reporting year: \$ \_\_\_\_\_.

the total number of jobs (*exclusive of construction jobs*) created by the Project from the date of application through the reporting date: \_\_\_\_\_.

the total number of jobs (retained and created, *but exclusive of construction jobs*) at the Project from the date of application through the reporting date: \_\_\_\_\_.

What is the annual average salary range of the FTEs (*exclusive of construction jobs*) created at the Project to date: \$ \_\_\_\_\_.

**B. Geographical Hiring Data:**

1. Construction jobs:

Of the construction jobs created during the reporting period, provide the zip codes for the hires (based upon hire's residence); and, if more than one (1) FTE hired during the reporting period, identify the number of FTEs hired from each zip code.

2. FTEs hired (*exclusive of construction jobs*)

Of the FTE jobs created during the reporting period, provide the zip codes for the hires (based upon hire's residence); and, if more than one (1) FTE hired during the reporting period, identify the number of FTEs hired from each zip code.

Provide the same information reflecting FTEs hired from the date of application through the reporting date at the Project.

Comments:

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\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**EXHIBIT "F"**

**FORM OF SUB-AGENT AGREEMENT**

**THIS SUB-AGENT APPOINTMENT AGREEMENT** (the "**Agreement**"), dated as of \_\_\_\_\_, 20\_\_, is by and between [\_\_\_\_\_] (the "**Company**"), with a mailing address of 1230 West Genesee Street, Syracuse, New York 13202 (the "**Company**"), and [NAME OF SUB-AGENT], a \_\_\_\_\_ of the State of New York, having an office for the transaction of business at \_\_\_\_\_ (the "**Sub-Agent**").

**WITNESSETH:**

**WHEREAS**, the City of Syracuse Industrial Development Agency (the "**Agency**") was created by Chapter 641 of the Laws of 1979 of the State of New York pursuant to Title I of Article 18-A of the General Municipal Law of the State of New York (collectively, the "**Act**") as a body corporate and politic and as a public benefit corporation of the State of New York (the "**State**"); and

**WHEREAS**, by resolutions of its members adopted on December 18, 2018, March 19, 2019, July 16, 2019 and August 20, 2019 (the "**Resolution**"), the Agency agreed to undertake a project for the benefit of the Company (the "**Project**") consisting of: (A)(i) the acquisition of an interest in: (1) approximately 1.89 acres of improved real property bearing tax map number 108.1-02-19 and commonly referred to as 1232-36 West Genesee Street (also known as 1230 West Genesee Street) ("**Parcel 1**"); (2) approximately 3 acres of improved real property bearing tax map number 108.1-02-35.1 and commonly referred to as 1232 West Genesee Street (rear) ("**Parcel 2**"); and (3) approximately 2 acres of improved real property bearing tax map number 108.1-02-20 and commonly referred to as 1288 West Genesee Street ("**Parcel 3**"), each in the City of Syracuse, New York (collectively, the "**Land**"); (ii) certain improvements, including but not limited to, an existing approximately 25,820 square foot building located on Parcel 1; an existing approximately 17,000-square foot building located on Parcel 2; and an approximately 34,802 square foot building located on Parcel 3, all of which are served by common driveways, parking, and pedestrian walkways, and all of which comprise the Alan Byer Volvo facility (collectively, the "**Improvements**"); (iii) the renovation to the Improvements and the Land include, but are not limited to, the interior showroom, sales offices and reception areas, external replacement of entry, new exterior wall finishes, updated signage, the existing basement, replacement of an area of deteriorating floor slab, refreshed directional pavement graphics and roof replacement (collectively with the Land and Improvements, the "**Facility**"); (iv) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment (the "**Equipment**" and together with the Land, Improvements and the Facility, the "**Project Facility**"); (B) the granting of certain financial assistance in the form of exemptions from real property tax, State and local sales and use tax and mortgage recording tax (in accordance with Section 874 of the General Municipal Law) (collectively the "**Financial Assistance**"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, reconstruction, renovation, equipping and completion of the Project Facility; and

(D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement; and

**WHEREAS**, under the Resolution and in the Agency Lease Agreement by and between the Company and the Agency dated as of September 1, 2019 (the “*Agency Lease*”) the Agency appointed the Company as its agent for purposes of completing the Project and delegated to the Company the authority to appoint as agents of the Agency a Project operator, contractors, agents, subagents, subcontractors, contractors and subcontractors of such agents and subagents (the “*Additional Agents*” or “*Sub-Agents*”), for the purpose of completing the Project and benefitting from the State and local sales and use tax exemption that forms a portion of the Financial Assistance all in accordance with the terms of the Resolution and the Agency Lease; and

**WHEREAS**, the Company and the Agency entered into a Project Agreement dated as of September 1, 2019 (the “*Project Agreement*”).

**NOW, THEREFORE**, the parties hereto hereby agree as follows:

1. The Company hereby appoints the Sub-Agent as an Additional Agent of the Agency for the purpose of assisting the Company and the Agency in the completion of the Project and benefitting from the State and local sales and use tax exemption relative to expenditures made in furtherance thereof. The Sub-Agent is only an agent of the Agency for the aforementioned purposes. The Sub-Agent hereby agrees to limit its activities as agent for the Agency under the authority of this Agreement to acts reasonably related to the completion of the Project Facility.

2. The Sub-Agent covenants, agrees and acknowledges:

a. to make all records and information regarding State and local sales and use tax exemption benefits claimed by it in connection with the Project available to the Company and the Agency upon request. The Sub-Agent agrees to comply with all procedures and policies established by the State Department of Taxation and Finance, or any similar entity, regarding the documenting or reporting of any State and local sales and use tax exemption benefits, including providing to the Company all information of the Sub-Agent necessary for the Company to complete the State Department of Taxation and Finance’s “Annual Report of Sales and Use Tax Exemptions” (Form ST-340).

b. to be bound by and comply with the terms and conditions of the Agency’s policies, the Resolution and Section 875(3) of the Act (as if such section were fully set forth herein). Without limiting the scope of the foregoing, the Sub-Agent acknowledges and agrees to be bound by the Agency’s Suspension, Discontinuation and Recapture of Benefits Policy (the “*Recapture Policy*”), a copy of which is attached hereto as **Schedule “A”**.

c. that the failure of the Sub-Agent to promptly pay such Recapture Amount to the Agency will be grounds for the Agency, the State Commissioner of Taxation and Finance

or such other entity, to collect sales and use taxes from the Sub-Agent under Article 28 of the Tax Law, or other applicable law, policy or contract, together with interest and penalties. In addition to the foregoing, the Sub-Agent acknowledges and agrees that for purposes of exemption from State sales and use taxation, "sales and use taxation" shall mean sales and compensating use taxes and fees imposed by article twenty-eight or twenty-eight-A of the Tax Law but excluding such taxes imposed in a city by section eleven hundred seven or eleven hundred eight of such article twenty-eight.

d. that all purchases made by the Sub-Agent in connection with the Project shall be made using Form ST-123 (IDA Agent or Project Operator Exempt Purchase Certificate), a copy of which is attached hereto as **Exhibit "A"**). It shall be the responsibility of the Sub-Agent (and not the Company or the Agency) to complete Form ST-123. The failure to furnish a completed Form ST-123 with each purchase will result in loss of the exemption for that purchase.

e. that it shall identify the Project on each bill and invoice for such purchases and further indicate on such bills or invoices that the Sub-Agent is making purchases of tangible personal property or services for use in the Project as agent of the Agency. For purposes of indicating who the purchaser is, the Sub-Agent acknowledges and agrees that the bill of invoice should state, "I, [NAME OF SUB-AGENT], certify that I am a duly appointed agent of the City of Syracuse Industrial Development Agency and that I am purchasing the tangible personal property or services for use in the following Agency project and that such purchases qualify as exempt from sales and use taxes under my Sub-Agent Appointment Agreement." The Sub-Agent further acknowledges and agrees that the following information shall be used by the Sub-Agent to identify the Project on each bill and invoice: ALAN BYER AUTO SALES, INC. – VOLVO PROJECT, 1232-36 West Genesee Street (also known as 1230 West Genesee Street), 1232 West Genesee Street (rear) and 1288 West Genesee Street; IDA Project No. 31021808

f. that for purposes of any exemption from the State sales and use taxation as part of any Financial Assistance requested, "sales and use taxation" shall mean sales and compensating use taxes and fees imposed by article twenty-eight or twenty-eight A of the State tax law but excluding such taxes imposed in a city by section eleven hundred seven or eleven hundred eight of such article twenty-eight.

g. that the Sub-Agent shall indemnify and hold the Agency harmless from all losses, expenses, claims, damages and liabilities arising out of or based on labor, services, materials and supplies, including equipment, ordered or used in connection with the Project Facility (including any expenses incurred by the Agency in defending any claims, suits or actions which may arise as a result of any of the foregoing), for such claims or liabilities that arise as a result of the Sub-Agent acting as agent for the Agency pursuant to this Agreement or otherwise.

The Sub-Agent shall indemnify and hold the Agency, its members, officers, employees and agents and anyone for whose acts or omissions the Agency or any one of them may be liable, harmless from all claims and liabilities for loss or damage to property or any injury to or death of any person that may be occasioned subsequent to the date hereof by any cause whatsoever in relation only to Sub-Agent's work on or for the Project Facility, including any expenses incurred



by the Agency in defending any claims, suits or actions which may arise as a result of the foregoing.

The foregoing defenses and indemnities shall survive expiration or termination of this Agreement and shall apply whether or not the claim, liability, cause of action or expense is caused or alleged to be caused, in whole or in part, by the activities, acts, fault or negligence of the Agency, its members, officers, employees and agents, anyone under the direction and control of any of them, or anyone for whose acts or omissions the Agency or any of them may be liable, and whether or not based upon the breach of a statutory duty or obligation or any theory or rule of comparative or apportioned liability, subject only to any specific prohibition relating to the scope of indemnities imposed by statutory law.

h. that as agent for the Agency or otherwise, the Sub-Agent will comply at the Sub-Agent's sole cost and expense with all the requirements of all federal, state and local laws, rules and regulations of whatever kind and howsoever denominated applicable to the Sub-Agent with respect to the Project Facility.

i. that Section 875(7) of the Act requires the Agency to post on its website all resolutions and agreements relating to the Sub-Agent's appointment as an agent of the Agency or otherwise related to the Project, including this Agreement, and that Public Officers Law Article 6 declares that all records in the possession of the Agency (with certain limited exceptions) are open to public inspection and copying. If the Sub-Agent feels that there is information about the Sub-Agent in the Agency's possession which are in the nature of trade secrets or information, the nature of which is such that if disclosed to the public or otherwise widely disseminated would cause substantial injury to the Sub-Agent's competitive position, the Sub-Agent must identify such elements in writing, supply same to the Agency prior to or contemporaneously with the execution hereof and request that such elements be kept confidential in accordance with Public Officers Law Article 6. Failure to do so will result in the posting by the Agency of all information in accordance with Section 875 of the Act.

j. The Sub-Agent agrees Local contractors and suppliers will be used for the construction and equipping of the Project unless a waiver is first received from the Agency in writing. Such waiver shall be in the Agency's sole discretion. The Sub-Agent agrees that such Local contractors shall be provided the opportunity to bid on contracts related to the Project. Local shall mean, for the purposes of this Agreement, Onondaga, Oswego, Madison, Cayuga, Cortland and Oneida Counties. Failure to comply with the local labor requirements of this Section (j) (collectively, the "**Local Labor Requirements**") may result in the revocation or recapture of benefits provided/approved to the Project by the Agency.

k. that the Sub-Agent must timely provide the Company with the necessary information to permit the Company, pursuant to General Municipal Law §874(8), to timely file an Annual Statement with the New York State Department of Taxation and Finance on "Annual Report of Sales and Use Tax Exemptions" (Form ST-340) regarding the value of sales and use tax exemptions the Additional Agent claimed pursuant to the agency conferred on it by the Company with respect to this Project on an annual basis.

l. that the failure to comply with the foregoing will result in the loss of the exemption.

m. that if the Sub-Agent is the general contractor for the Project, then at all times following the execution of this Agreement, and during the term thereof, the Sub-Agent shall maintain or cause to be maintained the following insurance policies with an insurance company licensed in the State that has an A.M. Best rating of not less than A-:

(a) Insurance against loss or damage by fire, lightning, and other casualties customarily insured against (with a uniform standard extended coverage endorsement), such insurance to be in an amount not less than the full replacement value of the completed Project Facility, exclusive of footings and foundations, as determined by a recognized appraiser or insurer selected by the general contractor.

(b) Workers' compensation insurance, disability benefits' insurance, and each other form of insurance which the general contractor is required by law to provide covering loss resulting from injury, sickness, disability, or death of employees of the general contractor who are located at or assigned to the Project Facility;

(c) A policy of commercial general liability insurance with a limit of liability of not less than \$1,000,000 per occurrence on an "occurrence" basis and \$2,000,000 in the aggregate for bodily injury, including death, and property damage, including but not limited to, contractual liability under this Agency Lease and personal injury, with blanket excess liability coverage in an amount not less than \$2,000,000, covering the Project Facility and Equipment and the Company's and the Agency's use or occupancy thereof against all claims on account of bodily injury or death and property damage occurring upon, in or about the Project Facility or in connection with the ownership, maintenance, use and/or occupancy of the Project Facility and all appurtenant areas.

In addition, all insurance required by this section shall be with insurance companies of recognized financial standing selected by the general contractor and licensed to write such insurance in the State of New York. Such insurance may be written with deductible amounts comparable to those on similar policies carried by other Persons engaged in businesses similar in size, character, and other respects to those in which the general contractor is engaged. All policies evidencing such insurance except the Workers' Compensation policy shall name the general contractor as insured and the Agency as an additional insured, as its interests may appear, and shall provide that such coverage with respect to the Agency be primary and non-contributory with any insurance secured by the Agency and require at least thirty (30) days' prior written notice to the Agency of cancellation, reduction in policy limits, or material change in coverage thereof.

Prior to the effective date of this Agreement, the general contractor shall deliver to the Agency, satisfactory to the Agency in form and substance: (i) Certificates evidencing all insurance required hereby; (ii) the additional insured endorsement(s) applicable to the Agency; (iii) the final insurance binder addressed to the general contractor covering the Project Facility; and (iv) evidence that the insurance so required is on a primary and non-contributory basis. In

addition, the general contractor shall provide, if so requested by the Agency, a final and complete copy of each insurance policy within thirty (30) days of the execution of this Agreement.

The general contractor shall deliver or cause to be delivered to the Agency on or before the first business day of each January thereafter each of the items set forth in the immediately preceding paragraphs, dated not earlier than the immediately preceding month, reciting that there is in full force and effect, with a term covering at least the next succeeding calendar year, insurance in the amounts and of the types required hereby for so long as the general contractor is performing, supervising or causing work to be done on or at the Project Facility. The general contractor shall furnish to the Agency evidence that the policy has been renewed or replaced or is no longer required by this Agreement in each such year.

n. that every controversy, dispute or claim arising out of or relating to this Agreement shall be governed by the laws of the State of New York, without regard to its conflicts-of-laws provisions that if applied might require the application of the laws of another jurisdiction; and that the Sub-Agent irrevocably and expressly submits to the exclusive personal jurisdiction of the Supreme Court of the State of New York and the United States District Court for the Northern District of New York, to the exclusion of all other courts, for the purposes of litigating every controversy, dispute or claim arising out of or relating to this Agreement.

3. Failure of the Sub-Agent to comply with any of the provisions of this Agreement shall result in the immediate nullification of the appointment of the Sub-Agent and the immediate termination of this Agreement and may result in the loss of the Company's State and local sales and use tax exemption with respect to the Project at the sole discretion of the Agency. In addition, such failure may result in the recapture of the State and local sales and use taxes avoided.

4. The Company acknowledges that the assumption of certain obligations by the Sub-Agent in accordance with this Agreement does not relieve the Company of its obligations under any provisions of the Agency Lease or of any other agreement entered into by the Company in connection with the Project.

5. The Company and the Sub-Agent agree that the Agency is a third-party beneficiary of this Agreement.

6. This Agreement shall be in effect until the earlier of: (i) the completion of the work on the Project by the Sub-Agent; or (ii) the Sub-Agent's loss of status as an agent of the Agency as set forth herein. Notwithstanding the foregoing, the provisions of Sections 2(b), 2(c), 2(f), 2(g), 2(j), and 2(l) shall survive the termination of this Agreement.

IN WITNESS WHEREOF, the Company and the Sub-Agent have caused this Agreement to be executed in their respective names by their respective duty authorized officers, all as of the day and year first above written.

[NAME OF COMPANY]

By: \_\_\_\_\_  
Name:  
Title:

[NAME OF SUB-AGENT]

By: \_\_\_\_\_  
Name:  
Title:

**EXHIBIT "A"**  
**to Sub-Agent Agreement**

**FORM ST-123**



New York State Department of Taxation and Finance

New York State Sales and Use Tax

### IDA Agent or Project Operator

## Exempt Purchase Certificate

Effective for projects beginning on or after June 1, 2014

# ST-123

(7/14)

This certificate is not valid unless all entries have been completed.

**Note:** To be completed by the purchaser and given to the seller. Do not use this form to purchase motor fuel or diesel motor fuel exempt from tax. See Form FT-123, *IDA Agent or Project Operator Exempt Purchase Certificate for Fuel*.

Name of seller			Name of agent or project operator		
Street address			Street address		
City, town, or village	State	ZIP code	City, town, or village	State	ZIP code
Agent or project operator sales tax ID number (see instructions)					

Mark an X in one:  Single-purchase certificate  Blanket-purchase certificate (valid only for the project listed below)

To the seller:

You must identify the project on each bill and invoice for such purchases and indicate on the bill or invoice that the IDA or agent or project operator of the IDA was the purchaser.

### Project information

I certify that I am a duly appointed agent or project operator of the named IDA and that I am purchasing the tangible personal property or services for use in the following IDA project and that such purchases qualify as exempt from sales and use taxes under my agreement with the IDA.

Name of IDA		
Name of project	IDA project number (see OSD numbers)	
Street address of project site		
City, town, or village	State	ZIP code
Enter the date that you were appointed agent or project operator (mm/dd/yyyy) .....	/	/
Enter the date that agent or project operator status ends (mm/dd/yyyy) .....	/	/

### Exempt purchases

(Mark an X in boxes that apply)

- A. Tangible personal property or services (other than utility services and motor vehicles or tangible personal property installed in a qualifying motor vehicle) used to complete the project, but not to operate the completed project
- B. Certain utility services (gas, propane in containers of 100 pounds or more, electricity, refrigeration, or steam) used to complete the project, but not to operate the completed project
- C. Motor vehicle or tangible personal property installed in a qualifying motor vehicle

**Certification:** I certify that the above statements are true, complete, and correct, and that no material information has been omitted. I make these statements and issue this exemption certificate with the knowledge that this document provides evidence that state and local sales or use taxes do not apply to a transaction or transactions for which I tendered this document and that willfully issuing this document with the intent to evade any such tax may constitute a felony or other crime under New York State Law, punishable by a substantial fine and a possible jail sentence. I understand that this document is required to be filed with, and delivered to, the vendor as agent for the Tax Department for the purposes of Tax Law section 1839 and is deemed a document required to be filed with the Tax Department for the purpose of prosecution of offenses. I also understand that the Tax Department is authorized to investigate the validity of tax exclusions or exemptions claimed and the accuracy of any information entered on this document.

Signature of purchaser or purchaser's representative (include title and relationship)	Date
Type or print the name, title, and relationship that appear in the signature box	

## Instructions

### To the purchaser

You may use Form ST-123 if you:

- have been appointed as an agent or project operator by an industrial development agency (IDA) and
- the purchases qualify for exemption from sales and use tax as described in the IDA contract.

You may use Form ST-123 as a single-purchase certificate or as a blanket certificate covering the first and subsequent purchases qualifying for the project listed.

**Agent or project operator sales tax ID number** If you are registered with the Tax Department for sales tax purposes, you must enter your sales tax identification number on this certificate. If you are not required to be registered, enter *N/A*.

Industrial development agencies and authorities (IDAs) are public benefit corporations under General Municipal Law Article 18-A and the Public Authorities Law, for the purpose of promoting, developing, encouraging, and assisting in the acquisition, construction, reconstruction, improvement, maintenance, equipping, and furnishing of industrial, manufacturing, warehousing, commercial, research, and recreational facilities in New York State.

IDAs are exempt from the payment of sales and use tax on their purchases, in accordance with Tax Law section 1112(a)(1). However, IDAs do not normally make direct purchases for projects. Commonly, IDAs instead appoint a business enterprise or developer, contractor, or subcontractor as its agent or project operator. Such purchases made by the agent or project operator, acting within the authority granted by the IDA, are deemed to be made by the IDA and therefore exempt from tax.

*Example 1: IDA agreement with its agent or project operator states that contractor X may make all purchases of materials and equipment necessary for completion of the project, as agent for the IDA. Contractor X rents a backhoe and a bulldozer for site preparation, purchases concrete and lumber to construct a building, and purchases machinery to be installed in the building. All these purchases by contractor X as agent of the IDA are exempt from tax.*

*Example 2: IDA agreement with its agent or project operator states that contractor X may make all purchases of materials and equipment to be incorporated into the project, as agent for the IDA. Contractor X makes the same purchases as in Example 1. Since the concrete, lumber, and machinery will actually be incorporated into the project, contractor X may purchase these items exempt from tax. However, rental of the backhoe and bulldozer is not exempt since these transactions are normally taxable and the IDA agreement does not authorize contractor X to make such rentals as agent of the IDA.*

A contractor or subcontractor not appointed as agent or project operator of an IDA must present suppliers with Form ST-120.1, *Contractor Exempt Purchase Certificate*, when making purchases that are ordinarily exempt from tax in accordance with Tax Law sections 1115(a)(15) and 1115(a)(16). For more information, see Form ST-120.1.

### Exempt purchases

To qualify, the purchases must be made within the authority granted by the IDA and used to complete the project (not to operate the completed project).

- Mark box A to indicate you are purchasing tangible personal property and services (other than utility services and motor vehicles or tangible personal property installed in a qualifying motor vehicle) exempt from tax.
- Mark box B to indicate you are purchasing certain consumer utility services used in completing the project exempt from tax. This includes gas, electricity, refrigeration, and steam; and gas, electric, refrigeration, and steam services.
- Mark box C to indicate you are purchasing a motor vehicle or tangible personal property related to a qualifying motor vehicle exempt from tax.

### Misuse of this certificate

Misuse of this exemption certificate may subject you to serious civil and criminal sanctions in addition to the payment of any tax and interest due. These include:

- A penalty equal to 100% of the tax due;
- A \$50 penalty for each fraudulent exemption certificate issued;
- Criminal felony prosecution, punishable by a substantial fine and a possible jail sentence; and
- Revocation of your Certificate of Authority, if you are required to be registered as a vendor. See TSB-M-05(17)S, *Amendments that Encourage Compliance with the Tax Law and Enhance the Tax Department's Enforcement Ability*, for more information.

### To the seller

When making purchases as agent or project operator of an IDA, the purchaser must provide you with this exemption certificate with all entries completed to establish the right to the exemption. You must identify the project on each bill and invoice for such purchases and indicate on the bill or invoice that the IDA or agent or project operator of the IDA was the purchaser.

As a New York State registered vendor, you may accept an exemption certificate in lieu of collecting tax and be protected from liability for the tax if the certificate is valid. The certificate will be considered valid if it is:

- accepted in good faith;
- in your possession within 90 days of the transaction; and
- properly completed (all required entries were made).




An exemption certificate is accepted in good faith when you have no knowledge that the exemption certificate is false or is fraudulently given, and you exercise reasonable ordinary due care. If you do not receive a properly completed certificate within 90 days after the delivery of the property or service, you will share with the purchaser the burden of proving the sale was exempt.

You must also maintain a method of associating an invoice (or other source document) for an exempt sale with the exemption certificate you have on file from the purchaser. You must keep this certificate at least three years after the due date of your sales tax return to which it relates, or the date the return was filed, if later.

### Privacy notification

New York State Law requires all government agencies that maintain a system of records to provide notification of the legal authority for any request, the principal purpose(s) for which the information is to be collected, and where it will be maintained. To view this information, visit our Web site, or, if you do not have Internet access, call and request Publication 54, *Privacy Notification*. See *Need help?* for the Web address and telephone number.

### Need help?

	Visit our Web site at <a href="http://www.tax.ny.gov">www.tax.ny.gov</a>	
	• get information and manage your taxes online	
	• check for new online services and features	
	Sales Tax Information Center:	(518) 485-2659
	To order forms and publications:	(518) 457-5431
	Text Telephone (TTY) Hotline	
	(for persons with hearing and speech disabilities using a TTY):	(518) 485-5392

**SCHEDULE "A"**  
**to Sub-Agent Agreement**

**RECAPTURE POLICY**



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**City of Syracuse**  
**Industrial Development Agency**  
201 East Washington Street, 6<sup>th</sup> Floor  
Syracuse, NY 13202  
Tel (315) 473-3275 Fax (315) 435-3669

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## RECAPTURE POLICY

### **I. STATEMENT OF PURPOSE**

The City of Syracuse Industrial Development Agency (the “Agency”) has adopted this Recapture Policy (the “*Recapture Policy*”) in accordance with Sections 874(10) and 874(11) of the New York State General Municipal Law. This Recapture Policy shall be consistent with and in compliance with the provisions of Chapter 1030 of Laws of 1969 of New York, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the “*Enabling Act*”) and Chapter 641 of the Laws of 1979 of the State of New York, as amended from time to time (said Chapter and the Enabling Act being hereinafter collectively referred to as the “*Act*”), and any other applicable law.

### **II. MANDATORY RECAPTURE OF THE NEW YORK STATE PORTION OF SALES AND USE TAX**

The Agency shall recapture from project applicants New York State sales and use tax benefits, in accordance with the provisions of the General Municipal Law, from projects that utilized State sales and use tax exemptions:

- a) To which the project was not entitled;
- b) In excess of the amounts authorized by the Agency;
- c) For property or services not authorized by the Agency; and/or
- d) For a project that has failed to comply with a material term or condition to use the property or services in the manner required by any of the project documents between the company and the Agency.

The approving resolution(s) and project documents granting financial assistance in the form of State sales and use tax exemption benefits shall include the terms and conditions of the foregoing recapture provision. Within thirty (30) days of the recapture, the recapture amount shall be remitted to the New York State Department of Taxation and Finance. Such remittances shall include interest, at the legal rate, imposed by the Agency. The failure to pay over such amounts to the Agency shall be grounds for the New York State Tax Commissioner to assess and

determine State sales and use taxes due from the company under article twenty-eight of the New York State Tax Law, together with any relevant penalties and interest due on such amounts.

In order to determine if one of the foregoing events have occurred (a "*State Mandated Recapture Event*") and to effectuate this recapture of New York State sales and use tax benefits the Agency shall:

- a) Keep records of the New York State and local sales tax exemptions provided to each project, with such records available to the New York State Tax Commissioner upon request.
- b) Report within thirty days of providing any financial assistance in the form of a sales and use tax exemption, the project, the estimated amount of the exemption and other information as may be required by the New York State Tax Commissioner (Form ST-60).
- c) The Agency shall file an annual report with the New York State Tax Commissioner detailing its terms and conditions and its activities in recapturing any unauthorized New York State sales and use tax exemptions.

### **III. SUSPENSION, DISCONTINUATION, RECAPTURE AND TERMINATION OF OTHER FORMS OF FINANCIAL ASSISTANCE**

With respect to all other financial assistance provided to a project (other than the State portion of sales and use tax exemptions) the Agency shall have the right to suspend, discontinue, recapture or terminate financial assistance to any company for a project to the extent that:

- a) for projects that utilized local sales and use tax exemptions, the project was not entitled to such exemptions, such exemptions were in excess of the amounts authorized by the Agency, and/or such exemptions were for property or services not authorized by the Agency (each, a "*Local Sales Tax Benefit Violation*");
- b) the company, upon completion of the project, fails to reach and maintain at least 85 percent of its employment requirements for job creation and/or retention ("*Job Deficit*");
- c) the total investment actually made with respect to the project at the project's completion date is less than 85 percent of its investment requirement ("*Investment Deficit*");
- d) the company fails to provide annually to the Agency certain information to confirm that the project is achieving the investment, job retention, job creation, and other objectives of the Project ("*Reporting Failure*"); or

- e) there otherwise occurs any event of default under any project document (each, an "Event of Default") or a material violation of the terms and conditions of any project document (a "*Material Violation*").

#### IV. ANNUAL ASSESSMENT

The Agency shall evaluate, annually as of December 31, or at any time information is brought to the Agency's attention, whether a State Mandated Recapture Event, a Local Sales Tax Benefit Violation, Job Deficit, Investment Deficit, Reporting Failure Event of Default or Material Violation (each a "*Noncompliance Event*") has occurred. Notwithstanding the foregoing, the Agency may determine whether an Event of Default has occurred pursuant to any project document in accordance with the terms of the project document.

At the time of any Noncompliance Event (other than a State Mandated Recapture Event), the Agency shall determine by resolution whether to exercise its right to suspend, discontinue, recapture or terminate all or any portion of the financial assistance provided to a project, and shall consider the following in making its determination:

- a) Whether the company has proceeded in good faith.
- b) Whether the project has not performed as required due to economic issues, changes in market conditions or adverse events beyond the control of the company.
- c) Whether the enforcement by the Agency of its right to suspend, discontinue, recapture or terminate all or any portion of financial assistance would create a more adverse situation for the company, such as the company going out of business or declaring bankruptcy, which would not occur if the Agency's rights were not exercised.
- d) Whether the enforcement by the Agency of its right to suspend, discontinue, recapture or terminate all or any portion of financial assistance would create an adverse situation for the residents of the City of Syracuse.
- e) The assessment prepared in accordance with the Agency's Annual Assessment Policy.
- f) Such other criteria as the Agency shall determine is a relevant factor in connection with any decision regarding the exercise of its right to suspend, discontinue, recapture or terminate all or any portion of financial assistance.

The Agency shall document its evaluation of the above criteria in writing and based upon its evaluation, the Agency shall determine whether to suspend, discontinue, recapture or terminate all or any portion of the financial assistance (the "*Determination*"). The Determination shall provide terms, if any, by which a company may remedy any Noncompliance Event (other than a State Mandated Recapture Event) upon which the Determination was based. The

company must submit written documentation to the Agency of compliance with all terms and conditions of the Determination in order for the Agency to consider whether to resume financial assistance to the company (which will be at the Agency's sole discretion).

The project agreement entered into between the Agency and the company (the "*Project Agreement*") shall include the terms and conditions of the foregoing provisions. The Agency shall also include in the Project Agreement a requirement that the company comply with the Agency's right to suspend, discontinue, recapture or terminate the financial assistance and that the company shall repay all or a portion of the financial assistance granted by the Agency to the company pursuant to any Determination.

Any such amount constituting local tax exemptions shall be redistributed to the appropriate affected tax jurisdictions, unless agreed to otherwise by any local taxing jurisdiction.

#### **IV. RECAPTURE PERIOD**

Except as otherwise provided by the General Municipal Law, the recapture period will be the longer of: (1) the term of the Lease Agreement; or (2) five years following the project's completion date. A project will remain "active" for purposes of Section 874(12) of General Municipal Law and the Agency's Annual Assessment Policy during the term of the Project Agreement.

Adopted: June 21, 2016

**EXHIBIT "G"**  
**RECAPTURE POLICY**

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**City of Syracuse**  
**Industrial Development Agency**  
201 East Washington Street, 7<sup>th</sup> Floor  
Syracuse, NY 13202  
Tel (315) 473-3275 Fax (315) 435-3669

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## RECAPTURE POLICY

### **I. STATEMENT OF PURPOSE**

The City of Syracuse Industrial Development Agency (the “Agency”) has adopted this Recapture Policy (the “*Recapture Policy*”) in accordance with Sections 874(10) and 874(11) of the New York State General Municipal Law. This Recapture Policy shall be consistent with and in compliance with the provisions of Chapter 1030 of Laws of 1969 of New York, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the “*Enabling Act*”) and Chapter 641 of the Laws of 1979 of the State of New York, as amended from time to time (said Chapter and the Enabling Act being hereinafter collectively referred to as the “*Act*”), and any other applicable law.

### **II. MANDATORY RECAPTURE OF THE NEW YORK STATE PORTION OF SALES AND USE TAX**

The Agency shall recapture from project applicants New York State sales and use tax benefits, in accordance with the provisions of the General Municipal Law, from projects that utilized State sales and use tax exemptions:

- e) To which the project was not entitled;
- f) In excess of the amounts authorized by the Agency;
- g) For property or services not authorized by the Agency; and/or
- h) For a project that has failed to comply with a material term or condition to use the property or services in the manner required by any of the project documents between the company and the Agency.

The approving resolution(s) and project documents granting financial assistance in the form of State sales and use tax exemption benefits shall include the terms and conditions of the foregoing recapture provision. Within thirty (30) days of the recapture, the recapture amount shall be remitted to the New York State Department of Taxation and Finance. Such remittances shall include interest, at the legal rate, imposed by the Agency. The failure to pay over such amounts to the Agency shall be grounds for the New York State Tax Commissioner to assess and

determine State sales and use taxes due from the company under article twenty-eight of the New York State Tax Law, together with any relevant penalties and interest due on such amounts.

In order to determine if one of the foregoing events have occurred (a “*State Mandated Recapture Event*”) and to effectuate this recapture of New York State sales and use tax benefits the Agency shall:

- d) Keep records of the New York State and local sales tax exemptions provided to each project, with such records available to the New York State Tax Commissioner upon request.
- e) Report within thirty days of providing any financial assistance in the form of a sales and use tax exemption, the project, the estimated amount of the exemption and other information as may be required by the New York State Tax Commissioner (Form ST-60).
- f) The Agency shall file an annual report with the New York State Tax Commissioner detailing its terms and conditions and its activities in recapturing any unauthorized New York State sales and use tax exemptions.

### **III. SUSPENSION, DISCONTINUATION, RECAPTURE AND TERMINATION OF OTHER FORMS OF FINANCIAL ASSISTANCE**

With respect to all other financial assistance provided to a project (other than the State portion of sales and use tax exemptions) the Agency shall have the right to suspend, discontinue, recapture or terminate financial assistance to any company for a project to the extent that:

- f) for projects that utilized local sales and use tax exemptions, the project was not entitled to such exemptions, such exemptions were in excess of the amounts authorized by the Agency, and/or such exemptions were for property or services not authorized by the Agency (each, a “*Local Sales Tax Benefit Violation*”);
- g) the company, upon completion of the project, fails to reach and maintain at least 85 percent of its employment requirements for job creation and/or retention (“*Job Deficit*”);
- h) the total investment actually made with respect to the project at the project’s completion date is less than 85 percent of its investment requirement (“*Investment Deficit*”);
- i) the company fails to provide annually to the Agency certain information to confirm that the project is achieving the investment, job retention, job creation, and other objectives of the Project (“*Reporting Failure*”); or

- j) there otherwise occurs any event of default under any project document (each, an “Event of Default”) or a material violation of the terms and conditions of any project document (a “*Material Violation*”).

#### IV. ANNUAL ASSESSMENT

The Agency shall evaluate, annually as of December 31, or at any time information is brought to the Agency’s attention, whether a State Mandated Recapture Event, a Local Sales Tax Benefit Violation, Job Deficit, Investment Deficit, Reporting Failure Event of Default or Material Violation (each a “*Noncompliance Event*”) has occurred. Notwithstanding the foregoing, the Agency may determine whether an Event of Default has occurred pursuant to any project document in accordance with the terms of the project document.

At the time of any Noncompliance Event (other than a State Mandated Recapture Event), the Agency shall determine by resolution whether to exercise its right to suspend, discontinue, recapture or terminate all or any portion of the financial assistance provided to a project, and shall consider the following in making its determination:

- g) Whether the company has proceeded in good faith.
- h) Whether the project has not performed as required due to economic issues, changes in market conditions or adverse events beyond the control of the company.
- i) Whether the enforcement by the Agency of its right to suspend, discontinue, recapture or terminate all or any portion of financial assistance would create a more adverse situation for the company, such as the company going out of business or declaring bankruptcy, which would not occur if the Agency’s rights were not exercised.
- j) Whether the enforcement by the Agency of its right to suspend, discontinue, recapture or terminate all or any portion of financial assistance would create an adverse situation for the residents of the City of Syracuse.
- k) The assessment prepared in accordance with the Agency’s Annual Assessment Policy.
- l) Such other criteria as the Agency shall determine is a relevant factor in connection with any decision regarding the exercise of its right to suspend, discontinue, recapture or terminate all or any portion of financial assistance.

The Agency shall document its evaluation of the above criteria in writing and based upon its evaluation, the Agency shall determine whether to suspend, discontinue, recapture or terminate all or any portion of the financial assistance (the “*Determination*”). The Determination shall provide terms, if any, by which a company may remedy any Noncompliance Event (other than a State Mandated Recapture Event) upon which the Determination was based. The



company must submit written documentation to the Agency of compliance with all terms and conditions of the Determination in order for the Agency to consider whether to resume financial assistance to the company (which will be at the Agency's sole discretion).

The project agreement entered into between the Agency and the company (the "*Project Agreement*") shall include the terms and conditions of the foregoing provisions. The Agency shall also include in the Project Agreement a requirement that the company comply with the Agency's right to suspend, discontinue, recapture or terminate the financial assistance and that the company shall repay all or a portion of the financial assistance granted by the Agency to the company pursuant to any Determination.

Any such amount constituting local tax exemptions shall be redistributed to the appropriate affected tax jurisdictions, unless agreed to otherwise by any local taxing jurisdiction.

#### **IV. RECAPTURE PERIOD**

Except as otherwise provided by the General Municipal Law, the recapture period will be the longer of: (1) the term of the Lease Agreement; or (2) five years following the project's completion date. A project will remain "active" for purposes of Section 874(12) of General Municipal Law and the Agency's Annual Assessment Policy during the term of the Project Agreement.

Adopted: June 21, 2016



Lisa Dell, County Clerk  
401 Montgomery Street  
Room 200  
Syracuse, NY 13202  
(315) 435-2229

### Onondaga County Clerk Recording Cover Sheet

**Received From :**  
BARCLAY DAMON LLP  
125 E JEFFERSON ST  
SYRACUSE, NY 13202

**Return To :**  
BARCLAY DAMON LLP  
125 E JEFFERSON ST  
SYRACUSE, NY 13202

**First PARTY 1**

CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY

**First PARTY 2**

ALAN I BYER FAMILY TRUST

**Index Type :** Land Records

**Instr Number :** 2019-00037400

**Orig Instr #:** 1606

**Book :** **Page :**

**Type of Instrument :** Memorandum Of Lease

**Type of Transaction :** Deed Misc

**Recording Fee:** \$76.00

**Recording Pages :** 6

The Property affected by this instrument is situated in Syracuse, in the County of Onondaga, New York

**Real Estate Transfer Tax**

**RETT # :** 2578

**Deed Amount :** \$0.00

**RETT Amount :** \$0.00

**Total Fees :** \$76.00

State of New York

County of Onondaga

I hereby certify that the within and foregoing was recorded in the Clerk's office for Onondaga County, New York

On (Recorded Date) : 10/04/2019

At (Recorded Time) : 2:47:19 PM



Doc ID - 037167910006

Lisa Dell, County Clerk



Record and Return to:  
Susan R. Katzoff, Esq.  
Bousquet Holstein PLLC  
110 W. Fayette Street, Suite 1000  
Syracuse, NY 13202

**MEMORANDUM OF  
AGENCY LEASE AGREEMENT**

***NAME AND ADDRESS OF LESSOR:*** City of Syracuse Industrial Development Agency  
201 East Washington Street, 6<sup>th</sup> Floor  
Syracuse, New York 13202

***NAME AND ADDRESS OF LESSEE:*** Alan I. Byer Family Trust  
1230 West Genesee Street  
Syracuse, New York 13204

Alan Byer Auto Sales, Inc.  
1230 West Genesee Street  
Syracuse, New York 13204

West Genesee Realty Associates, LLC  
1230 West Genesee Street  
Syracuse, New York 13204

Stephen G. Byer  
1230 West Genesee Street  
Syracuse, New York 13204

***DESCRIPTION OF LEASED PREMISES:***

All that tract or parcel of land situate in the City of Syracuse, County of Onondaga and State of New York, being more particularly described in **Exhibit "A"** annexed hereto, together with the improvements thereon.

***DATE OF EXECUTION OF AGENCY LEASE AGREEMENT:***

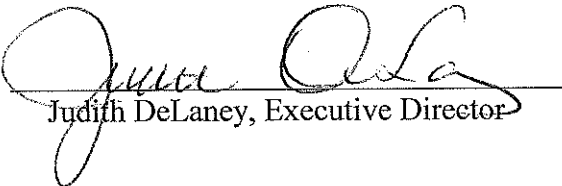
As of September 1, 2019

***TERM OF AGENCY LEASE AGREEMENT:***

The term of the Agency Lease shall commence on the date hereof and continue in full force and effect until **June 30, 2030**, unless earlier terminated as provided herein.

IN WITNESS WHEREOF, the parties hereto have respectively executed this memorandum as of the 1<sup>st</sup> day of September, 2019.

**CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY**

By:   
Judith DeLaney, Executive Director


**ALAN BYER AUTO SALES, INC.**

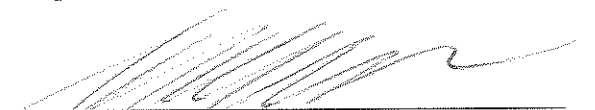
By:   
Stephen G. Byer, Vice President

**ALAN I. BYER FAMILY TRUST**

By:   
Stephen G. Byer, Authorized Signatory

**WEST GENESEE REALTY ASSOCIATES, LLC**

By:   
Stephen G. Byer, Manager

  
Stephen G. Byer, individually

STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF ONONDAGA )

On this 12<sup>th</sup> day of September, 2019, before me, the undersigned, a Notary Public in and for said State, personally appeared, **JUDITH DELANEY**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

*Lori L. McRobbie*  
\_\_\_\_\_  
Notary Public

LORI L. McROBBIE  
Notary Public, State of New York  
Qualified in Onondaga Co. No. 01MC5055591  
Commission Expires on Feb. 12, 20 22

STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF ONONDAGA )

On this 12<sup>th</sup> day of September, 2019, before me, the undersigned, a Notary Public in and for said State, personally appeared, **STEPHEN G. BYER**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

*Lori L. McRobbie*  
\_\_\_\_\_  
Notary Public

LORI L. McROBBIE  
Notary Public, State of New York  
Qualified in Onondaga Co. No. 01MC5055591  
Commission Expires on Feb. 12, 20 22

## EXHIBIT "A"

### LEGAL DESCRIPTION OF THE LAND

#### **Parcel 1 (1232-36 West Genesee Street – 108.1-02-19)**

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Syracuse, County of Onondaga and State of New York, being a portion of Farm Lot #292 and #293 in said City and being more particularly described as follows: Beginning at a point in the present northerly line of West Genesee Street, said point being S. 74° 37' 20" W., a distance of 252.1 feet from the intersection of the westerly line of Eureka Street, with said northerly line of West Genesee Street, said point of beginning also being the southwesterly corner of property now or formerly owned by the Gladding Corporation, as recorded in the Onondaga County Clerk's office in Liber of Deeds # 3102 at Page #7; thence S. 74° 37' 20" W., along said northerly line of West Genesee Street a distance of 196.93 feet to its intersection with the easterly line of Block #1, of the Powell Tract, Filed Map #267, said point also being the southeasterly corner of property now or formerly owned by Vehicles Realty Associates, as recorded in the Onondaga County Clerk's Office in Liber of Deeds #2683, Page 276; thence N. 55° 28' 20" W., along said easterly line of said Vehicles Realty Associates property and said easterly line of said Block #1, a distance of 351.77 feet to a point; thence N. 63° 51' 20" E., a distance of 353.75 feet to a point; thence S. 28° 08' 53" E., along the westerly line of said Gladding Corporation property, a distance of 343.69 feet to the point and place of beginning.

#### **Parcel 2 (1232 West Genesee Street – 108.1-02-35.1)**

ALL THAT TRACT OF PARCEL OF LAND, situate in the City of Syracuse, County of Onondaga, State of New York, being parts of Farm Lot Nos. 292 and 293 as shown on a map of The Hiawatha Tract filed in the Onondaga County Clerk's Office on September 20, 19\_7 as Tract Map No. 1606, bounded and described as follows:

BEGINNING at the northeasterly corner of Alan Byer, reputed owner, according to Book 2497 of Deeds at Page 1012, filed in the Onondaga County Clerk's Office, said point being the following courses and distances from the intersection of the westerly boundary of Eureka Street with the northerly boundary of West Genesee Street: 1) S. 74° 37' 20" W., along said northerly boundary of West Genesee Street, a distance of 253.27 feet to the southeasterly corner of said Alan Byer; 2) N. 28° 08' 40" W., along the easterly boundary of said Alan Byer, a distance of 343.67 feet to said point of beginning; running thence S. 63° 51' 20" W., along the northerly boundary of said Alan Byer, a distance of 341.96 feet to the northwesterly corner thereof; thence N. 46° 11' 32" W., a distance of 156.33 feet to an angle point; thence N. 28° 08' 40" W., a distance of 200.00 feet to a point in the northerly boundary of Warsaw Avenue (not open); thence N. 61° 52' 20" E., along said northerly boundary of Warsaw Avenue (not open), a distance of 400.18 feet to a point in the westerly boundary of Gladding Corp., formerly; thence S. 28° 08' 40" E., along said westerly boundary of Gladding Corp., formerly, a distance of 360.92 feet to a point; thence S. 63° 51' 20" W., a distance of 9.98 feet to the point of beginning.

Containing 3.170 acres of land, more or less.

**Parcel 3 (1288 West Genesee Street – 108.1-02-20)**

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Syracuse, County of Onondaga and State of New York, in the former Town of Geddes, known and distinguished as Lots No. 1, 2, 3, 4 and 5 and part of Lot 7, of the Powell Tract, according to a map thereof filed in the Onondaga County Clerk's Office on August 14, 1876, as Map Number 267, bounded and described as follows:

Beginning at the Intersection of the north line of West Genesee Street, with the east line of Dewey Avenue (formerly North Magnolia Street); thence easterly along the northerly line of West Genesee Street 475.14 feet, more or less to the southeasterly corner of Lot Number 1, of said Powell Tract; thence North  $55^{\circ} 28' 20''$  West on the westerly side of Harbour Brook and the easterly line of Lots 1, 2 and 7 of said Powell Tract according to said Map, 313.73 feet to a point in the northerly line of lands conveyed to the Syracuse Hospital for Women and Children of Syracuse, New York by deed dated November 9, 1904, and recorded in the Onondaga County Clerk's Office on December 12, 1904, in Book Number 360 of Deeds at page 129&c.; thence South  $74^{\circ} 37' 20''$  West parallel to West Genesee Street and along the northerly line of lands so conveyed by said Deed to the Syracuse Hospital for Women and Children as aforesaid and along the northerly line of lands conveyed to the Woman's Hospital and Training School for Nurses by deed dated July 22, 1895, and recorded in the Onondaga County Clerk's Office on September 18, 1895, in Book of Deeds No. 311 at page 4&c., 141.35 feet, more or less, to the northeast corner of a lot formerly owned by Rosa Andrews and thence southerly along the west line of said Lot owned by Rosa Andrews 40 feet to the southeast corner thereof; thence South  $74^{\circ} 37' 20''$  West along the south line of said Andrews Lot, formerly owned by Rosa Andrews, 132 feet to the east line of Dewey Avenue; thence South  $15^{\circ} 22' 40''$  East along the easterly line of Dewey Avenue 200 feet to the point and place of beginning.

Easement for ingress and egress over lands now or formerly owned by Alan Byer, lying east of the above described parcel as set forth in an Easement Agreement between Vehicle Realty Associates and Alan Byer dated March 31, 1989 and recorded in the Onondaga County Clerk's office September 14, 1989 in Book 3562 of Deeds, Page 216, the easement area having been described as follows:

All of that tract or parcel of land situate in the City of Syracuse, County of Onondaga, State of New York, being part of Farm Lots 292 & 293 and more particularly bounded and described as follows:

Beginning at a point at the northwest corner of lands of party of the first part, said point also being N.  $56^{\circ} 29' 03''$  W., along the westerly line of lands of said party of the first part, a distance of 360.10 feet from the Northerly line of W. Genesee Street; running thence N.  $63^{\circ} 51' 40''$  E., along the northerly line of lands of said party of the first part, 25 feet to a point; thence the following 2 courses and distances through and across the lands of said party of the first part: (1) S.  $56^{\circ} 29' 03''$  S., 53.37 feet; and (2) S.  $33^{\circ} 30' 57''$  W., 21.58 feet to a point in said westerly line of lands of party of the first part; thence N.  $56^{\circ} 29' 03''$  W., along said Westerly line, 66 feet to the place of beginning.





# Combined Real Estate Transfer Tax Return, Credit Line Mortgage Certificate, and Certification of Exemption from the Payment of Estimated Personal Income Tax

See Form TP-584-I, Instructions for Form TP-584, before completing this form. Print or type.

**Schedule A – Information relating to conveyance**

<b>Grantor/Transferor</b> <input type="checkbox"/> Individual <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Estate/Trust <input type="checkbox"/> Single member LLC <input checked="" type="checkbox"/> Other	Name (if individual, last, first, middle initial) ( <input type="checkbox"/> check if more than one grantor) City of Syracuse Industrial Development Agency Mailing address 201 East Washington Street, 6th Floor City State ZIP code Syracuse NY 13202 Single member's name if grantor is a single member LLC (see instructions)	Social security number  Social security number  Federal EIN 52-1380308 Single member EIN or SSN
<b>Grantee/Transferee</b> <input checked="" type="checkbox"/> Individual <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Estate/Trust <input type="checkbox"/> Single member LLC <input checked="" type="checkbox"/> Other	Name (if individual, last, first, middle initial) ( <input type="checkbox"/> check if more than one grantee) Alan I. Byer Family Trust and Stephen G. Byer Mailing address 1230 West Genesee Street City State ZIP code Syracuse NY 13204 Single member's name if grantee is a single member LLC (see instructions)	Social security number [REDACTED] Social security number  Federal EIN 30-0097147 Single member EIN or SSN

Location and description of property conveyed

Tax map designation – Section, block & lot (include dots and dashes)	SWIS code (six digits)	Street address	City, town, or village	County
108.1-02-19	311500	1232-36 West Genesee Street	Syracuse	Onondaga

Type of property conveyed (check applicable box)

1 <input type="checkbox"/> One- to three-family house 2 <input type="checkbox"/> Residential cooperative 3 <input type="checkbox"/> Residential condominium 4 <input type="checkbox"/> Vacant land	5 <input checked="" type="checkbox"/> Commercial/Industrial 6 <input type="checkbox"/> Apartment building 7 <input type="checkbox"/> Office building 8 <input type="checkbox"/> Other _____	Date of conveyance <table style="border: 1px solid black; display: inline-table;"> <tr> <td style="padding: 2px 5px;">09</td> <td style="padding: 2px 5px;">01</td> <td style="padding: 2px 5px;">2019</td> </tr> <tr> <td style="font-size: 8px;">month</td> <td style="font-size: 8px;">day</td> <td style="font-size: 8px;">year</td> </tr> </table>	09	01	2019	month	day	year	Percentage of real property conveyed which is residential real property _____ 0 % (see instructions)
09	01	2019							
month	day	year							

Condition of conveyance (check all that apply)

- |  |  |  |
|--|--|--|
| a. <input type="checkbox"/> Conveyance of fee interest<br><br>b. <input type="checkbox"/> Acquisition of a controlling interest (state percentage acquired _____ %)<br><br>c. <input type="checkbox"/> Transfer of a controlling interest (state percentage transferred _____ %)<br><br>d. <input type="checkbox"/> Conveyance to cooperative housing corporation<br><br>e. <input type="checkbox"/> Conveyance pursuant to or in lieu of foreclosure or enforcement of security interest (attach Form TP-584.1, Schedule E) | f. <input type="checkbox"/> Conveyance which consists of a mere change of identity or form of ownership or organization (attach Form TP-584.1, Schedule F)<br><br>g. <input type="checkbox"/> Conveyance for which credit for tax previously paid will be claimed (attach Form TP-584.1, Schedule G)<br><br>h. <input type="checkbox"/> Conveyance of cooperative apartment(s)<br><br>i. <input type="checkbox"/> Syndication<br><br>j. <input type="checkbox"/> Conveyance of air rights or development rights<br><br>k. <input type="checkbox"/> Contract assignment | l. <input type="checkbox"/> Option assignment or surrender<br><br>m. <input type="checkbox"/> Leasehold assignment or surrender<br><br>n. <input checked="" type="checkbox"/> Leasehold grant<br><br>o. <input type="checkbox"/> Conveyance of an easement<br><br>p. <input checked="" type="checkbox"/> Conveyance for which exemption from transfer tax claimed (complete Schedule B, Part III)<br><br>q. <input type="checkbox"/> Conveyance of property partly within and partly outside the state<br><br>r. <input type="checkbox"/> Conveyance pursuant to divorce or separation<br><br>s. <input type="checkbox"/> Other (describe) _____ |
|--|--|--|

For recording officer's use	Amount received Schedule B., Part I \$ _____ Schedule B., Part II \$ _____	Date received	Transaction number
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**Schedule B – Real estate transfer tax return (Tax Law, Article 31)**

**Part I – Computation of tax due**

- 1 Enter amount of consideration for the conveyance (if you are claiming a total exemption from tax, check the exemption claimed box, enter consideration and proceed to Part III) .....  **Exemption claimed**
- 2 Continuing lien deduction (see instructions if property is taken subject to mortgage or lien) .....
- 3 Taxable consideration (subtract line 2 from line 1) .....
- 4 Tax: \$2 for each \$500, or fractional part thereof, of consideration on line 3 .....
- 5 Amount of credit claimed for tax previously paid (see instructions and attach Form TP-584.1, Schedule G) .....
- 6 Total tax due\* (subtract line 5 from line 4) .....

1.		0	00
2.		0	00
3.		0	00
4.		0	00
5.		0	00
6.		0	00

**Part II – Computation of additional tax due on the conveyance of residential real property for \$1 million or more**

- 1 Enter amount of consideration for conveyance (from Part I, line 1) .....
- 2 Taxable consideration (multiply line 1 by the percentage of the premises which is residential real property, as shown in Schedule A) ...
- 3 Total additional transfer tax due\* (multiply line 2 by 1% (.01)) .....

1.		
2.		
3.		

**Part III – Explanation of exemption claimed on Part I, line 1 (check any boxes that apply)**

The conveyance of real property is exempt from the real estate transfer tax for the following reason:

- a. Conveyance is to the United Nations, the United States of America, the state of New York, or any of their instrumentalities, agencies, or political subdivisions (or any public corporation, including a public corporation created pursuant to agreement or compact with another state or Canada) ..... a
- b. Conveyance is to secure a debt or other obligation..... b
- c. Conveyance is without additional consideration to confirm, correct, modify, or supplement a prior conveyance..... c
- d. Conveyance of real property is without consideration and not in connection with a sale, including conveyances conveying realty as bona fide gifts ..... d
- e. Conveyance is given in connection with a tax sale..... e
- f. Conveyance is a mere change of identity or form of ownership or organization where there is no change in beneficial ownership. (This exemption cannot be claimed for a conveyance to a cooperative housing corporation of real property comprising the cooperative dwelling or dwellings.) Attach Form TP-584.1, Schedule F..... f
- g. Conveyance consists of deed of partition..... g
- h. Conveyance is given pursuant to the federal Bankruptcy Act ..... h
- i. Conveyance consists of the execution of a contract to sell real property, without the use or occupancy of such property, or the granting of an option to purchase real property, without the use or occupancy of such property ..... i
- j. Conveyance of an option or contract to purchase real property with the use or occupancy of such property where the consideration is less than \$200,000 and such property was used solely by the grantor as the grantor's personal residence and consists of a one-, two-, or three-family house, an individual residential condominium unit, or the sale of stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold covering an individual residential cooperative apartment..... j
- k. Conveyance is not a conveyance within the meaning of Tax Law, Article 31, section 1401(e) (attach documents supporting such claim) ... See Schedule "A"..... k

\*The total tax (from Part I, line 6 and Part II, line 3 above) is due within 15 days from the date conveyance. Please make check(s) payable to the county clerk where the recording is to take place. If the recording is to take place in the New York City boroughs of Manhattan, Bronx, Brooklyn, or Queens, make check(s) payable to the **NYC Department of Finance**. If a recording is not required, send this return and your check(s) made payable to the **NYS Department of Taxation and Finance**, directly to the NYS Tax Department, RETT Return Processing, PO Box 5045, Albany NY 12205-5045.

**Schedule C – Credit Line Mortgage Certificate (Tax Law, Article 11)**

Complete the following only if the interest being transferred is a fee simple interest.

I (we) certify that: (check the appropriate box)

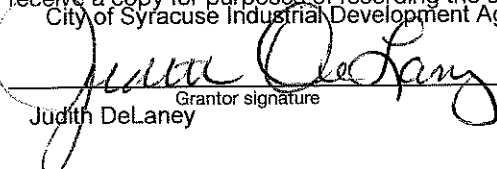

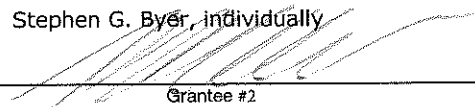
1.  The real property being sold or transferred is not subject to an outstanding credit line mortgage.
  2.  The real property being sold or transferred is subject to an outstanding credit line mortgage. However, an exemption from the tax is claimed for the following reason:
    - The transfer of real property is a transfer of a fee simple interest to a person or persons who held a fee simple interest in the real property (whether as a joint tenant, a tenant in common or otherwise) immediately before the transfer.
    - The transfer of real property is (A) to a person or persons related by blood, marriage or adoption to the original obligor or to one or more of the original obligors or (B) to a person or entity where 50% or more of the beneficial interest in such real property after the transfer is held by the transferor or such related person or persons (as in the case of a transfer to a trustee for the benefit of a minor or the transfer to a trust for the benefit of the transferor).
    - The transfer of real property is a transfer to a trustee in bankruptcy, a receiver, assignee, or other officer of a court.
    - The maximum principal amount secured by the credit line mortgage is \$3,000,000 or more, and the real property being sold or transferred is **not** principally improved nor will it be improved by a one- to six-family owner-occupied residence or dwelling.

**Please note:** for purposes of determining whether the maximum principal amount secured is \$3,000,000 or more as described above, the amounts secured by two or more credit line mortgages may be aggregated under certain circumstances. See TSB-M-96(6)-R for more information regarding these aggregation requirements.

  - Other (attach detailed explanation).
3.  The real property being transferred is presently subject to an outstanding credit line mortgage. However, no tax is due for the following reason:
    - A certificate of discharge of the credit line mortgage is being offered at the time of recording the deed.
    - A check has been drawn payable for transmission to the credit line mortgagee or his agent for the balance due, and a satisfaction of such mortgage will be recorded as soon as it is available.
  4.  The real property being transferred is subject to an outstanding credit line mortgage recorded in \_\_\_\_\_ (insert liber and page or reel or other identification of the mortgage). The maximum principal amount of debt or obligation secured by the mortgage is \_\_\_\_\_. No exemption from tax is claimed and the tax of \_\_\_\_\_ is being paid herewith. (Make check payable to county clerk where deed will be recorded or, if the recording is to take place in New York City but not in Richmond County, make check payable to the **NYC Department of Finance**.)

**Signature (both the grantor(s) and grantee(s) must sign)**

The undersigned certify that the above information contained in schedules A, B, and C, including any return, certification, schedule, or attachment, is to the best of his/her knowledge, true and complete, and authorize the person(s) submitting such form on their behalf to receive a copy for purposes of recording the deed or other instrument effecting the conveyance.

<p>City of Syracuse Industrial Development Agency</p> <p></p> <p>_____ Judith DeLaney Grantor signature</p>	<p>Executive Director</p> <p>_____ Title</p>	<p>Alan I. Byer Family Trust</p> <p></p> <p>_____ Stephen G. Byer, Grantee #1 Title</p>	<p>Authorized Signatory</p> <p>_____ Title</p>
<p>_____ Manager Title</p>	<p>_____ Title</p>	<p>Stephen G. Byer, individually</p> <p></p> <p>_____ Grantee #2 Title</p>	<p>_____ Title</p>

**Reminder:** Did you complete all of the required information in Schedules A, B, and C? Are you required to complete Schedule D? If you checked e, f, or g in Schedule A, did you complete Form TP-584.1? Have you attached your check(s) made payable to the county clerk where recording will take place or, if the recording is in the New York City boroughs of Manhattan, Bronx, Brooklyn, or Queens, to the **NYC Department of Finance**? If no recording is required, send your check(s), made payable to the **Department of Taxation and Finance**, directly to the NYS Tax Department, RETT Return Processing, PO Box 5045, Albany NY 12205-5045.

**Schedule D - Certification of exemption from the payment of estimated personal income tax (Tax Law, Article 22, section 663)**

Complete the following only if a fee simple interest or a cooperative unit is being transferred by an individual or estate or trust.

If the property is being conveyed by a referee pursuant to a foreclosure proceeding, proceed to Part II, and check the second box under Exemptions for nonresident transferor(s)/seller(s) and sign at bottom.

**Part I - New York State residents**

If you are a New York State resident transferor(s)/seller(s) listed in Schedule A of Form TP-584 (or an attachment to Form TP-584), you must sign the certification below. If one or more transferors/sellers of the real property or cooperative unit is a resident of New York State, each resident transferor/seller must sign in the space provided. If more space is needed, please photocopy this Schedule D and submit as many schedules as necessary to accommodate all resident transferors/sellers.

**Certification of resident transferor(s)/seller(s)**

This is to certify that at the time of the sale or transfer of the real property or cooperative unit, the transferor(s)/seller(s) as signed below was a resident of New York State, and therefore is not required to pay estimated personal income tax under Tax Law, section 663(a) upon the sale or transfer of this real property or cooperative unit.

Signature	Print full name	Date
Signature	Print full name	Date
Signature	Print full name	Date
Signature	Print full name	Date

**Note:** A resident of New York State may still be required to pay estimated tax under Tax Law, section 685(c), but not as a condition of recording a deed.

**Part II - Nonresidents of New York State**

If you are a nonresident of New York State listed as a transferor/seller in Schedule A of Form TP-584 (or an attachment to Form TP-584) but are not required to pay estimated personal income tax because one of the exemptions below applies under Tax Law, section 663(c), check the box of the appropriate exemption below. If any one of the exemptions below applies to the transferor(s)/seller(s), that transferor(s)/seller(s) is not required to pay estimated personal income tax to New York State under Tax Law, section 663. Each nonresident transferor/seller who qualifies under one of the exemptions below must sign in the space provided. If more space is needed, please photocopy this Schedule D and submit as many schedules as necessary to accommodate all nonresident transferors/sellers.

If none of these exemption statements apply, you must complete Form IT-2663, *Nonresident Real Property Estimated Income Tax Payment Form*, or Form IT-2664, *Nonresident Cooperative Unit Estimated Income Tax Payment Form*. For more information, see *Payment of estimated personal income tax*, on page 1 of Form TP-584-I.

**Exemption for nonresident transferor(s)/seller(s)**

This is to certify that at the time of the sale or transfer of the real property or cooperative unit, the transferor(s)/seller(s) (grantor) of this real property or cooperative unit was a nonresident of New York State, but is not required to pay estimated personal income tax under Tax Law, section 663 due to one of the following exemptions:

- The real property or cooperative unit being sold or transferred qualifies in total as the transferor's/seller's principal residence (within the meaning of Internal Revenue Code, section 121) from \_\_\_\_\_ Date to \_\_\_\_\_ Date (see instructions).
- The transferor/seller is a mortgagor conveying the mortgaged property to a mortgagee in foreclosure, or in lieu of foreclosure with no additional consideration.
- The transferor or transferee is an agency or authority of the United States of America, an agency or authority of the state of New York, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association, or a private mortgage insurance company.

Signature	Print full name	Date
Signature	Print full name	Date
Signature	Print full name	Date
Signature	Print full name	Date

## **SCHEDULE "A"**

The document being recorded for which this NYS Form TP-584 is being provided is a Memorandum of Lease between the Grantor and the Grantee. The sum of the term of the lease and any options for renewal do not exceed forty-nine (49) years, and therefore said lease is not a Conveyance within the meaning of Article 31 of the Tax Law.



# Combined Real Estate Transfer Tax Return, Credit Line Mortgage Certificate, and Certification of Exemption from the Payment of Estimated Personal Income Tax

Recording office time stamp

See Form TP-584-I, Instructions for Form TP-584, before completing this form. Print or type.

**Schedule A — Information relating to conveyance**

Grantor/Transferor <input type="checkbox"/> Individual <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Estate/Trust <input type="checkbox"/> Single member LLC <input checked="" type="checkbox"/> Other	Name (if individual, last, first, middle initial) ( <input type="checkbox"/> check if more than one grantor) City of Syracuse Industrial Development Agency Mailing address 201 East Washington Street, 6th Floor City State ZIP code Syracuse NY 13202 Single member's name if grantor is a single member LLC (see instructions)	Social security number  Social security number  Federal EIN 52-1380308 Single member EIN or SSN
Grantee/Transferee <input type="checkbox"/> Individual <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Estate/Trust <input type="checkbox"/> Single member LLC <input checked="" type="checkbox"/> Other	Name (if individual, last, first, middle initial) ( <input type="checkbox"/> check if more than one grantee) West Genesee Realty Associates, LLC Mailing address 1230 West Genesee Street City State ZIP code Syracuse NY 13204 Single member's name if grantee is a single member LLC (see instructions)	Social security number  Social security number  Federal EIN 20-3158317 Single member EIN or SSN

Location and description of property conveyed

Tax map designation – Section, block & lot (include dots and dashes)	SWIS code (six digits)	Street address	City, town, or village	County
108.1-02-35.1 108.1-02-20	311500	1232 West Genesee Street (rear) 1288 West Genesee Street	Syracuse	Onondaga

Type of property conveyed (check applicable box)

1 <input type="checkbox"/> One- to three-family house 2 <input type="checkbox"/> Residential cooperative 3 <input type="checkbox"/> Residential condominium 4 <input type="checkbox"/> Vacant land	5 <input checked="" type="checkbox"/> Commercial/Industrial 6 <input type="checkbox"/> Apartment building 7 <input type="checkbox"/> Office building 8 <input type="checkbox"/> Other _____	Date of conveyance <table border="1" style="display: inline-table; text-align: center;"> <tr> <td style="width: 30px;">09</td> <td style="width: 30px;">01</td> <td style="width: 30px;">2019</td> </tr> <tr> <td>month</td> <td>day</td> <td>year</td> </tr> </table>	09	01	2019	month	day	year	Percentage of real property conveyed which is residential real property _____ 0 % (see instructions)
09	01	2019							
month	day	year							

Condition of conveyance (check all that apply)

- |   |  |   |
|---|--|---|
| a. <input type="checkbox"/> Conveyance of fee interest<br><br>b. <input type="checkbox"/> Acquisition of a controlling interest (state percentage acquired _____ %) | f. <input type="checkbox"/> Conveyance which consists of a mere change of identity or form of ownership or organization (attach Form TP-584.1, Schedule F)<br><br>g. <input type="checkbox"/> Conveyance for which credit for tax previously paid will be claimed (attach Form TP-584.1, Schedule G) | i. <input type="checkbox"/> Option assignment or surrender<br><br>m. <input type="checkbox"/> Leasehold assignment or surrender<br><br>n. <input checked="" type="checkbox"/> Leasehold grant                                   |
| c. <input type="checkbox"/> Transfer of a controlling interest (state percentage transferred _____ %)   | h. <input type="checkbox"/> Conveyance of cooperative apartment(s)   | o. <input type="checkbox"/> Conveyance of an easement   |
| d. <input type="checkbox"/> Conveyance to cooperative housing corporation   | i. <input type="checkbox"/> Syndication  | p. <input checked="" type="checkbox"/> Conveyance for which exemption from transfer tax claimed (complete Schedule B, Part III)   |
| e. <input type="checkbox"/> Conveyance pursuant to or in lieu of foreclosure or enforcement of security interest (attach Form TP-584.1, Schedule E)                 | j. <input type="checkbox"/> Conveyance of air rights or development rights<br>k. <input type="checkbox"/> Contract assignment  | q. <input type="checkbox"/> Conveyance of property partly within and partly outside the state<br>r. <input type="checkbox"/> Conveyance pursuant to divorce or separation<br>s. <input type="checkbox"/> Other (describe) _____ |

For recording officer's use	Amount received	Date received	Transaction number
	Schedule B., Part I \$ _____		
	Schedule B., Part II \$ _____		

**Schedule B — Real estate transfer tax return (Tax Law, Article 31)**

**Part I — Computation of tax due**

- 1 Enter amount of consideration for the conveyance (if you are claiming a total exemption from tax, check the exemption claimed box, enter consideration and proceed to Part III) .....  **Exemption claimed**
- 2 Continuing lien deduction (see instructions if property is taken subject to mortgage or lien) .....
- 3 Taxable consideration (subtract line 2 from line 1) .....
- 4 Tax: \$2 for each \$500, or fractional part thereof, of consideration on line 3 .....
- 5 Amount of credit claimed for tax previously paid (see instructions and attach Form TP-584.1, Schedule G) .....
- 6 Total tax due\* (subtract line 5 from line 4) .....

1.		0	00
2.		0	00
3.		0	00
4.		0	00
5.		0	00
6.		0	00

**Part II — Computation of additional tax due on the conveyance of residential real property for \$1 million or more**

- 1 Enter amount of consideration for conveyance (from Part I, line 1) .....
- 2 Taxable consideration (multiply line 1 by the percentage of the premises which is residential real property, as shown in Schedule A) ...
- 3 Total additional transfer tax due\* (multiply line 2 by 1% (.01)) .....

1.		
2.		
3.		

**Part III — Explanation of exemption claimed on Part I, line 1 (check any boxes that apply)**

The conveyance of real property is exempt from the real estate transfer tax for the following reason:

- a. Conveyance is to the United Nations, the United States of America, the state of New York, or any of their instrumentalities, agencies, or political subdivisions (or any public corporation, including a public corporation created pursuant to agreement or compact with another state or Canada)..... a
- b. Conveyance is to secure a debt or other obligation..... b
- c. Conveyance is without additional consideration to confirm, correct, modify, or supplement a prior conveyance..... c
- d. Conveyance of real property is without consideration and not in connection with a sale, including conveyances conveying realty as bona fide gifts ..... d
- e. Conveyance is given in connection with a tax sale..... e
- f. Conveyance is a mere change of identity or form of ownership or organization where there is no change in beneficial ownership. (This exemption cannot be claimed for a conveyance to a cooperative housing corporation of real property comprising the cooperative dwelling or dwellings.) Attach Form TP-584.1, Schedule F..... f
- g. Conveyance consists of deed of partition..... g
- h. Conveyance is given pursuant to the federal Bankruptcy Act..... h
- i. Conveyance consists of the execution of a contract to sell real property, without the use or occupancy of such property, or the granting of an option to purchase real property, without the use or occupancy of such property ..... i
- j. Conveyance of an option or contract to purchase real property with the use or occupancy of such property where the consideration is less than \$200,000 and such property was used solely by the grantor as the grantor's personal residence and consists of a one-, two-, or three-family house, an individual residential condominium unit, or the sale of stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold covering an individual residential cooperative apartment..... j
- k. Conveyance is not a conveyance within the meaning of Tax Law, Article 31, section 1401(e) (attach documents supporting such claim) ...See Schedule "A"..... k

\*The total tax (from Part I, line 6 and Part II, line 3 above) is due within 15 days from the date conveyance. Please make check(s) payable to the county clerk where the recording is to take place. If the recording is to take place in the New York City boroughs of Manhattan, Bronx, Brooklyn, or Queens, make check(s) payable to the **NYC Department of Finance**. If a recording is not required, send this return and your check(s) made payable to the **NYS Department of Taxation and Finance**, directly to the NYS Tax Department, RETT Return Processing, PO Box 5045, Albany NY 12205-5045.

**Schedule C — Credit Line Mortgage Certificate (Tax Law, Article 11)**

Complete the following only if the interest being transferred is a fee simple interest.

I (we) certify that: (check the appropriate box)

1.  The real property being sold or transferred is not subject to an outstanding credit line mortgage.
2.  The real property being sold or transferred is subject to an outstanding credit line mortgage. However, an exemption from the tax is claimed for the following reason:
  - The transfer of real property is a transfer of a fee simple interest to a person or persons who held a fee simple interest in the real property (whether as a joint tenant, a tenant in common or otherwise) immediately before the transfer.
  - The transfer of real property is (A) to a person or persons related by blood, marriage or adoption to the original obligor or to one or more of the original obligors or (B) to a person or entity where 50% or more of the beneficial interest in such real property after the transfer is held by the transferor or such related person or persons (as in the case of a transfer to a trustee for the benefit of a minor or the transfer to a trust for the benefit of the transferor).
  - The transfer of real property is a transfer to a trustee in bankruptcy, a receiver, assignee, or other officer of a court.
  - The maximum principal amount secured by the credit line mortgage is \$3,000,000 or more, and the real property being sold or transferred is **not** principally improved nor will it be improved by a one- to six-family owner-occupied residence or dwelling.

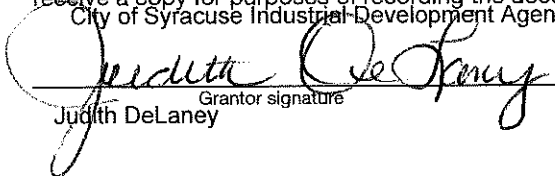
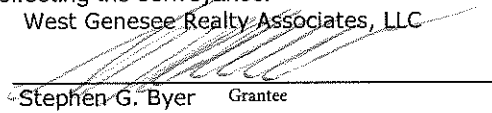
**Please note:** for purposes of determining whether the maximum principal amount secured is \$3,000,000 or more as described above, the amounts secured by two or more credit line mortgages may be aggregated under certain circumstances. See TSB-M-96(6)-R for more information regarding these aggregation requirements.

Other (attach detailed explanation).

3.  The real property being transferred is presently subject to an outstanding credit line mortgage. However, no tax is due for the following reason:
  - A certificate of discharge of the credit line mortgage is being offered at the time of recording the deed.
  - A check has been drawn payable for transmission to the credit line mortgagee or his agent for the balance due, and a satisfaction of such mortgage will be recorded as soon as it is available.
4.  The real property being transferred is subject to an outstanding credit line mortgage recorded in \_\_\_\_\_ (insert liber and page or reel or other identification of the mortgage). The maximum principal amount of debt or obligation secured by the mortgage is \_\_\_\_\_. No exemption from tax is claimed and the tax of \_\_\_\_\_ is being paid herewith. (Make check payable to county clerk where deed will be recorded or, if the recording is to take place in New York City but not in Richmond County, make check payable to the **NYC Department of Finance**.)

**Signature (both the grantor(s) and grantee(s) must sign)**

The undersigned certify that the above information contained in schedules A, B, and C, including any return, certification, schedule, or attachment, is to the best of his/her knowledge, true and complete, and authorize the person(s) submitting such form on their behalf to receive a copy for purposes of recording the deed or other instrument effecting the conveyance.

<p>City of Syracuse Industrial Development Agency</p>  <p>_____ Judith DeLaney Grantor signature</p>	<p>Executive Director</p> <p>_____ Title</p>	<p>West Genesee Realty Associates, LLC</p>  <p>_____ Stephen G. Byer Grantee</p>	<p>Manager</p> <p>_____ Title</p>
Title	Title	Grantee	Title

**Reminder:** Did you complete all of the required information in Schedules A, B, and C? Are you required to complete Schedule D? If you checked e, f, or g in Schedule A, did you complete Form TP-584.1? Have you attached your check(s) made payable to the county clerk where recording will take place or, if the recording is in the New York City boroughs of Manhattan, Bronx, Brooklyn, or Queens, to the **NYC Department of Finance**? If no recording is required, send your check(s), made payable to the **Department of Taxation and Finance**, directly to the NYS Tax Department, RETT Return Processing, PO Box 5045, Albany NY 12205-5045.



**Schedule D - Certification of exemption from the payment of estimated personal income tax (Tax Law, Article 22, section 663)**

Complete the following only if a fee simple interest or a cooperative unit is being transferred by an individual or estate or trust.

If the property is being conveyed by a referee pursuant to a foreclosure proceeding, proceed to Part II, and check the second box under Exemptions for nonresident transferor(s)/seller(s) and sign at bottom.

**Part I - New York State residents**

If you are a New York State resident transferor(s)/seller(s) listed in Schedule A of Form TP-584 (or an attachment to Form TP-584), you must sign the certification below. If one or more transferors/sellers of the real property or cooperative unit is a resident of New York State, **each** resident transferor/seller must sign in the space provided. If more space is needed, please photocopy this Schedule D and submit as many schedules as necessary to accommodate all resident transferors/sellers.

**Certification of resident transferor(s)/seller(s)**

This is to certify that at the time of the sale or transfer of the real property or cooperative unit, the transferor(s)/seller(s) as signed below was a resident of New York State, and therefore is not required to pay estimated personal income tax under Tax Law, section 663(a) upon the sale or transfer of this real property or cooperative unit.

Signature	Print full name	Date
Signature	Print full name	Date
Signature	Print full name	Date
Signature	Print full name	Date

**Note:** A resident of New York State may still be required to pay estimated tax under Tax Law, section 685(c), but not as a condition of recording a deed.

**Part II - Nonresidents of New York State**

If you are a nonresident of New York State listed as a transferor/seller in Schedule A of Form TP-584 (or an attachment to Form TP-584) but are not required to pay estimated personal income tax because one of the exemptions below applies under Tax Law, section 663(c), check the box of the appropriate exemption below. If any one of the exemptions below applies to the transferor(s)/seller(s), that transferor(s)/seller(s) is not required to pay estimated personal income tax to New York State under Tax Law, section 663. **Each** nonresident transferor/seller who qualifies under one of the exemptions below must sign in the space provided. If more space is needed, please photocopy this Schedule D and submit as many schedules as necessary to accommodate all nonresident transferors/sellers.

If none of these exemption statements apply, you must complete Form IT-2663, *Nonresident Real Property Estimated Income Tax Payment Form*, or Form IT-2664, *Nonresident Cooperative Unit Estimated Income Tax Payment Form*. For more information, see *Payment of estimated personal income tax*, on page 1 of Form TP-584-I.

**Exemption for nonresident transferor(s)/seller(s)**

This is to certify that at the time of the sale or transfer of the real property or cooperative unit, the transferor(s)/seller(s) (grantor) of this real property or cooperative unit was a nonresident of New York State, but is not required to pay estimated personal income tax under Tax Law, section 663 due to one of the following exemptions:

- The real property or cooperative unit being sold or transferred qualifies in total as the transferor's/seller's principal residence (within the meaning of Internal Revenue Code, section 121) from \_\_\_\_\_ Date to \_\_\_\_\_ Date (see instructions).
- The transferor/seller is a mortgagor conveying the mortgaged property to a mortgagee in foreclosure, or in lieu of foreclosure with no additional consideration.
- The transferor or transferee is an agency or authority of the United States of America, an agency or authority of the state of New York, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association, or a private mortgage insurance company.

Signature	Print full name	Date
Signature	Print full name	Date
Signature	Print full name	Date
Signature	Print full name	Date

## **SCHEDULE "A"**

The document being recorded for which this NYS Form TP-584 is being provided is a Memorandum of Lease between the Grantor and the Grantee. The sum of the term of the lease and any options for renewal do not exceed forty-nine (49) years, and therefore said lease is not a Conveyance within the meaning of Article 31 of the Tax Law.



## CERTIFICATION

Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Agency Lease Agreement by and between the parties dated as of September 1, 2019.

The undersigned, Stephen G. Byer, individually ("**Byer**"), and as Vice President of **ALAN BYER AUTO SALES, INC. ("Alan Sales")**, an authorized signatory of **ALAN I. BYER FAMILY TRUST**, an Inter Vivos Revocable Trust created pursuant to a Third Amended and Restated Trust Agreement dated October 1, 2015 (the "**Trust**") and as Manager of **WEST GENESEE REALTY ASSOCIATES, LLC ("Realty"** and together with Alan Sales, the Trust and Byer, collectively, the "**Company**"), does hereby certify and confirm on behalf of each of the foregoing:

(1) that each Company has reviewed and understands the Agency's Local Access Policy (the "**Policy**") which states as follows:

The Company understands and agrees that local labor, contractors and suppliers will be used for the construction, renovation and equipping of the Project unless a written waiver is first received in accordance with the terms of the Policy. Failure to comply may result in the revocation or recapture of benefits awarded to the Project by the Agency.

For purposes of this Policy, the term "local" shall mean: Cayuga, Cortland, Madison, Onondaga, Oneida and Oswego Counties.

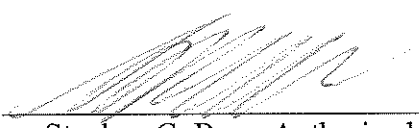
(2) that the Company has complied, and will, for so long as the Agency has an interest in the Project, continue to comply with, the Agency's Local Labor Policy.

Dated: September 12<sup>th</sup>, 2019

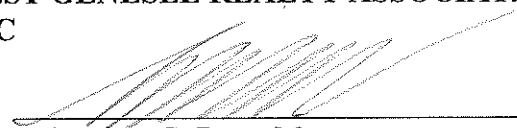
**ALAN BYER AUTO SALES, INC.**

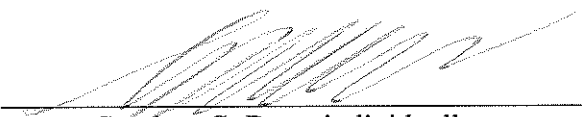
By:   
\_\_\_\_\_  
Stephen G. Byer, Vice President

**ALAN I. BYER FAMILY TRUST**

By:   
\_\_\_\_\_  
Stephen G. Byer, Authorized Signatory

**WEST GENESEE REALTY ASSOCIATES,  
LLC**

By:   
\_\_\_\_\_  
Stephen G. Byer, Manager

  
\_\_\_\_\_  
Stephen G. Byer, individually





# CERTIFICATE OF GARAGE INSURANCE

DATE (MM/DD/YYYY)  
08/01/2019

**THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.**

**IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).**

<b>PRODUCER</b> Steven Asch	<b>CONTACT NAME:</b> Sentry Customer Service <b>PHONE (A/C, No, Ext):</b> 800-473-8879 <b>FAX (A/C, No):</b> 800-514-7191 <b>EMAIL ADDRESS:</b> .businessproducts_direct@sentry.com <b>INSURER(S) AFFORDING COVERAGE:</b> INSURER A : Sentry Select Insurance Company <b>NAIC #:</b> 21180 INSURER B : INSURER C : INSURER D : INSURER E : INSURER F :
<b>INSURED</b> Alen Byer Auto Sales Inc 1230 W Genesee St Syracuse, NY 13204-2104	

**COVERAGES    PROD / CUSTOMER ID:    CERTIFICATE #: 1442683    REVISION #:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSRD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> GARAGE LIABILITY <input checked="" type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS USED IN GARAGE BUSINESS	X		255300904	08/01/2019	08/01/2020	AUTO ONLY (Ea accident) \$ 500,000 OTHER THAN AUTO ONLY EA ACCIDENT \$ 500,000 AGGREGATE \$ 2,600,000
A	<input type="checkbox"/> GARAGE KEEPERS LIABILITY <input checked="" type="checkbox"/> LEGAL LIABILITY DIRECT BASIS <input checked="" type="checkbox"/> PRIMARY <input type="checkbox"/> EXCESS	X		255300904	08/01/2019	08/01/2020	<input checked="" type="checkbox"/> COMP / OTC SPECIFIED PERILS    LOC: 1    \$ 600,000 <input checked="" type="checkbox"/> COLLISION    LOC: 1    \$ 600,000 LOC:    \$
	<input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER						EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED: <input checked="" type="checkbox"/> RETENTION \$ 10,000			255300905	08/01/2019	08/01/2020	EACH OCCURRENCE \$ 7,000,000 AGGREGATE \$ 21,000,000 PRODUCTS - COMP/OP AGG \$ 21,000,000
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory In-NH) Y / N If yes, describe under REMARKS below	N/A					<input type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

REMARKS (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)  
Refer to attached

<b>CERTIFICATE HOLDER</b> City of Syracuse Industrial Development Agency 201 E Washington St 6th Fl Syracuse, NY 13202-1410	<b>CANCELLATION</b> SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 
--	--



AGENCY CUSTOMER ID: XXXXXX0944

LOC #: \_\_\_\_\_

## ADDITIONAL REMARKS SCHEDULE

Page 2 of 2

AGENCY Steven Asch		NAMED-INSURED Alan Byer Auto Sales Inc.	
POLICY NUMBER 2553009004			
CARRIER Sentry Select Insurance Company	NAIC-CODE 21180	EFFECTIVE DATE: 08/01/2019	

## ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,

FORM NUMBER: ACORD 30 FORM TITLE: Certificate Of Garage Insurance

## Auto Dealers/Garagekeepers Liability

1232-1236 West Genesee Street, Syracuse, NY 13204-2104 (a/k/a 1230 West Genesee Street, Syracuse, NY 13204) 1232 West Genesee Street (rear), Syracuse, NY 13204-2104, 1288 West Genesee Street, Syracuse, NY Entities: Alan I. Byer Family Trust and Stephen Gary Byer, co-partners, d/b/a Byer Real Estate Enterprises (these entities own 1232-1236 West Genesee Street) West Genesee Realty Associates, LLC (this entity owns 1232 West Genesee Street (rear) and 1288 West Genesee Street) Alan Byer Auto Sales, Inc. (this entity operates at all locations)

City of Syracuse Industrial Development Agency is named as Additional Insured. Insurance is primary and non contributory



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## ADDITIONAL INSURED - DESIGNATED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

### SCHEDULE

Name of Person or Organization:  
City of Syracuse Industrial  
Development Agency

Start Date of Show:

End Date of Show:

Event Name:

Event Location:

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

Section II - General Liability Coverages, Paragraph D. Who Is An Insured is amended by the addition of the following:

The following are "insureds" for "auto dealer operations";

The person or organization listed in the Schedule above, but only with respect to liability arising out of your "auto dealer operations" or premises owned by or rented to you.

All other terms and provisions of the policy remain unchanged.

Change effective 08/01/2019

CA 88 04 10 13

2563009

Sentry Select Insurance Company

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with its permission.

Page 1 of 1

08/01/2019



# EVIDENCE OF COMMERCIAL PROPERTY INSURANCE

DATE (MM/DD/YYYY)  
08/02/2019

THIS EVIDENCE OF COMMERCIAL PROPERTY INSURANCE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE ADDITIONAL INTEREST NAMED BELOW. THIS EVIDENCE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS EVIDENCE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE ADDITIONAL INTEREST.

PRODUCER NAME CONTACT PERSON AND ADDRESS Steven Asch	PHONE (A/C, No, Ext): 800-473-6879	COMPANY NAME AND ADDRESS Sentry Select Insurance Company 4400 E 53rd St Daytonport, IA 52807	NAIC NO: 21180
FAX (A/C, No): 800-514-7181	EMAIL ADDRESS: businesspro@akula_dj@aol@sentry.com	IF MULTIPLE COMPANIES, COMPLETE SEPARATE FORM FOR EACH	
CODE:	SUB CODE:	POLICY TYPE Commercial Property Coverage	
AGENCY CUSTOMER ID #: XXXXXX0944	NAMED INSURED AND ADDRESS Alpin Byar Auto Sales Inc 1230 W Genesee St Syracuse, NY 13204-2104	LOAN NUMBER	POLICY NUMBER 2853009001
ADDITIONAL NAMED INSURED(S)	EFFECTIVE DATE 08/01/2019	EXPIRATION DATE 08/01/2020	<input type="checkbox"/> CONTINUED UNTIL TERMINATED IF CHECKED
THIS REPLACES PRIOR EVIDENCE DATED:			

PROPERTY INFORMATION (ACORD 101 may be attached if more space is required)  BUILDING OR  BUSINESS PERSONAL PROPERTY

LOCATION/DESCRIPTION:  
1230 W Genesee St  
Syracuse, NY 13204-2104  
Body Shop

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS EVIDENCE OF PROPERTY INSURANCE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

COVERAGE INFORMATION	PERILS INSURED	BASIC	BROAD	SPECIAL	X	DED:
COMMERCIAL PROPERTY COVERAGE AMOUNT OF INSURANCE		\$1,330,000				\$1,000
<input checked="" type="checkbox"/> BUSINESS INCOME <input type="checkbox"/> RENTAL VALUE		X				Actual Loss Sustained; # of months: 12
BLANKET COVERAGE		X				IF YES, LIMIT: IF YES, indicate value(s) reported on property identified above:
TERRORISM COVERAGE						Attach Disclosure Notice / DEC
IS THERE A TERRORISM-SPECIFIC EXCLUSION?						
IS DOMESTIC TERRORISM EXCLUDED?						
LIMITED FUNGUS COVERAGE						IF YES, LIMIT: DED:
FUNGUS EXCLUSION (If "YES", specify organization's form used)						
REPLACEMENT COST						
AGREEQ VALUE					X	
COINSURANCE					X	IF YES, %
EQUIPMENT BREAKDOWN (If Applicable)		X				IF YES, LIMIT: Included DED:
ORDINANCE OR LAW						IF YES, LIMIT: DED:
-Coverage for loss to undamaged portion of bldg						DED:
-Demolition Costs						IF YES, LIMIT: DED:
-Incr. Cost of Construction						IF YES, LIMIT: DED:
EARTH MOVEMENT (If Applicable)					X	IF YES, LIMIT: DED:
FLOOD (If Applicable)						IF YES, LIMIT: DED:
WINDHAIL INCL. <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO Subject to Different Provisions					X	IF YES, LIMIT: DED:
NAMED STORM INCL. <input type="checkbox"/> YES <input type="checkbox"/> NO Subject to Different Provisions						IF YES, LIMIT: DED:
PERMISSION TO WAIVE SUBROGATION IN FAVOR OF MORTGAGE HOLDER PRIOR TO LOSS						

CANCELLATION  
SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

ADDITIONAL INTEREST

<input type="checkbox"/> CONTRACT OF SALE	<input type="checkbox"/> LENDER'S LOSS PAYABLE	<input type="checkbox"/> LOSS PAYEE	LENDER SERVICING AGENT NAME AND ADDRESS
<input type="checkbox"/> MORTGAGEE	<input checked="" type="checkbox"/> OTHERS		
NAME AND ADDRESS City of Syracuse Industrial Development Agency 201 E Washington St 6th Fl Syracuse, NY 13202-1418			AUTHORIZED REPRESENTATIVE <i>John Hayland</i>



# EVIDENCE OF COMMERCIAL PROPERTY INSURANCE

DATE (MM/DD/YYYY)  
08/02/2019

THIS EVIDENCE OF COMMERCIAL PROPERTY INSURANCE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE ADDITIONAL INTEREST NAMED BELOW. THIS EVIDENCE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS EVIDENCE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE ADDITIONAL INTEREST.

PRODUCER NAME CONTACT PERSON AND ADDRESS Steven Asch	PHONE (A/C, No, Ext): 609-473-6679	COMPANY NAME AND ADDRESS Sentry Select Insurance Company 4400 E 53rd St Dayton, IA 52807	NAIC NO: 21180
FAX (A/C, No): 800-514-7181	EMAIL ADDRESS: businessproducts_direct@sentry.com	IF MULTIPLE COMPANIES, COMPLETE SEPARATE FORM FOR EACH	
CODES:	SUB CODE:	POLICY TYPE Commercial Property Coverage	
AGENCY CUSTOMER ID #: XXXXXX0944	NAMED INSURED AND ADDRESS Alan Byer Auto Sales Inc 1230 W Genesee St Syracuse, NY 13204-21D4	LOAN NUMBER	POLICY NUMBER 2553009001
ADDITIONAL NAMED INSURED(S)		EFFECTIVE DATE 08/01/2019	EXPIRATION DATE 08/01/2020
		<input type="checkbox"/> CONTINUED UNTIL TERMINATED IF CHECKED	
		THIS REPLACES PRIOR EVIDENCE DATED:	

PROPERTY INFORMATION (ACORD 101 may be attached if more space is required)  BUILDING OR  BUSINESS PERSONAL PROPERTY

LOCATION/DESCRIPTION  
1288 W Genesee St  
Syracuse, NY 13204-2193  
Used Sales Service

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS EVIDENCE OF PROPERTY INSURANCE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

COVERAGE INFORMATION	PERILS INSURED	BASIC	BROAD	SPECIAL	X
COMMERCIAL PROPERTY COVERAGE AMOUNT OF INSURANCE		\$3,652,000			DED: \$1,000
	YES	NO	N/A		
<input checked="" type="checkbox"/> BUSINESS INCOME <input type="checkbox"/> RENTAL VALUE	X				IF YES, LIMIT: X Actual Loss Sustained; # of months: 12
BLANKET COVERAGE		X			IF YES, indicate value(s) reported on property identified above.
TERROURISM COVERAGE					Attach Disclosure Notice / DEC
IS THERE A TERRORISM-SPECIFIC EXCLUSION?					
IS DOMESTIC TERRORISM EXCLUDED?					
LIMITED FUNGUS COVERAGE					IF YES, LIMIT: DED.
FUNGUS EXCLUSION (If "YES", specify organization's form used)					
REPLACEMENT COST					
AGREED VALUE			X		
COINSURANCE			X		IF YES, %
EQUIPMENT BREAKDOWN (If Applicable)	X				IF YES, LIMIT: Included DED.
ORDNANCE OR LAW - Coverage for loss to undamaged portion of bldg					IF YES, LIMIT: DED.
- Demolition Costs					IF YES, LIMIT: DED.
- Incl. Cost of Construction					IF YES, LIMIT: DED.
EARTH MOVEMENT (If Applicable)		X			IF YES, LIMIT: DED.
FLOOD (If Applicable)					IF YES, LIMIT: DED.
WINDHAIL INCL <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO Subject to Different Provisions;		X			IF YES, LIMIT: DED.
NAMED STORM INCL <input type="checkbox"/> YES <input type="checkbox"/> NO Subject to Different Provisions;					IF YES, LIMIT: DED.
PERMISSION TO WAIVE SUBROGATION IN FAVOR OF MORTGAGE HOLDER PRIOR TO LOSS					

CANCELLATION  
SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

ADDITIONAL INTEREST

<input type="checkbox"/> CONTRACT OF SALE	<input type="checkbox"/> LENDER'S LOSS PAYABLE	<input type="checkbox"/> LOSS PAYEE	LENDER SERVICING AGENT NAME AND ADDRESS
<input type="checkbox"/> MORTGAGEE	<input checked="" type="checkbox"/> OTHERS		
NAME AND ADDRESS City of Syracuse Industrial Development Agency 201 E Washington St 6th Fl Syracuse, NY 13202-1410			AUTHORIZED REPRESENTATIVE <i>John Heyland</i>



# EVIDENCE OF COMMERCIAL PROPERTY INSURANCE

DATE (MM/DD/YYYY)  
08/02/2019

THIS EVIDENCE OF COMMERCIAL PROPERTY INSURANCE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE ADDITIONAL INTEREST NAMED BELOW. THIS EVIDENCE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS EVIDENCE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE ADDITIONAL INTEREST.

PRODUCER NAME CONTACT PERSON AND ADDRESS Steven Asch	PHONE (A/C, No, Ext): 800-473-6879	COMPANY NAME AND ADDRESS Sentry Select Insurance Company 4400 E 53rd St Davenport, IA 52807	NAIC NO: 21180
FAX (A/C, No): 800-614-7191	EMAIL ADDRESS: businessproducts_direct@sentry.com	IF MULTIPLE COMPANIES, COMPLETE SEPARATE FORM FOR EACH	
CODE:	SUB CODE:	POLICY TYPE Commercial Property Coverage	
AGENCY CUSTOMER ID #: XXXXXX0944	NAMED INSURED AND ADDRESS Alan Byer Auto Sales Inc 1230 W Genesee St Syracuse, NY 13204-2104	LOAN NUMBER	POLICY NUMBER 2553009001
ADDITIONAL NAMED INSURED(S)		EFFECTIVE DATE 08/01/2019	EXPIRATION DATE 08/01/2020
		CONTINUED UNTIL TERMINATED IF CHECKED	
		THIS REPLACES PRIOR EVIDENCE DATED:	

PROPERTY INFORMATION (ACORD 101 may be attached if more space is required)  BUILDING OR  BUSINESS PERSONAL PROPERTYLOCATION/DESCRIPTION  
1230 W Genesee St  
Syracuse, NY 13204-2104  
New Sales/Service

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS EVIDENCE OF PROPERTY INSURANCE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

COVERAGE INFORMATION	PERILS INSURED	BASIC	BROAD	SPECIAL	X
COMMERCIAL PROPERTY COVERAGE AMOUNT OF INSURANCE		\$3,134,000			DED: \$1,000
<input checked="" type="checkbox"/> BUSINESS INCOME	<input type="checkbox"/> RENTAL VALUE	X			IF YES, LIMIT: X Actual Loss Sustained; # of months: 12
BLANKET COVERAGE		X			IF YES, indicate value(s) reported on property identified above:
TERRORISM COVERAGE					Attach Disclosure Notice / DEC
IS THERE A TERRORISM-SPECIFIC EXCLUSION?					
IS DOMESTIC TERRORISM EXCLUDED?					
LIMITED FUNGUS COVERAGE					IF YES, LIMIT: DED:
FUNGUS EXCLUSION (If "YES", specify organization's form used)					
REPLACEMENT COST					
AGREE VALUE					
CONSURANCE		X			IF YES, 80. %
EQUIPMENT BREAKDOWN (If Applicable)		X			IF YES, LIMIT: Included DED:
ORDINANCE OR LAW - Coverage for loss to undamaged portion of bldg					IF YES, LIMIT: DED:
- Demolition Costs					IF YES, LIMIT: DED:
- Insr. Cost of Construction					IF YES, LIMIT: DED:
EARTH MOVEMENT (If Applicable)		X			IF YES, LIMIT: DED:
FLOOD (If Applicable)					IF YES, LIMIT: DED:
WIND/HAIL INCL <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO Subject to Different Provisions:		X			IF YES, LIMIT: DED:
NAMED STORM INCL <input type="checkbox"/> YES <input type="checkbox"/> NO Subject to Different Provisions:					IF YES, LIMIT: DED:
PERMISSION TO WAIVE SUBROGATION IN FAVOR OF MORTGAGE HOLDER PRIOR TO LOSS					

### CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

### ADDITIONAL INTEREST

CONTRACT OF SALE	LENDER'S LOSS PAYABLE	LOSS PAYEE	LENDER SERVICING AGENT NAME AND ADDRESS
MORTGAGEE	X	OTHERS	
NAME AND ADDRESS City of Syracuse Industrial Development Agency 201 E Washington St 6th Fl Syracuse, NY 13202-1410			AUTHORIZED REPRESENTATIVE 

ACORD 28 (2016/03)

Page 1 of 2

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2553009  
Sentry Select Insurance Company  
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08/02/2019

ioscd0d-4435-4766-ac64-ed781637b495

0027020044351378157313202141099



AGENCY CUSTOMER ID: XXXXX0644

LOC #: \_\_\_\_\_

## ADDITIONAL REMARKS SCHEDULE

Page 2 of 2

AGENCY Steven Asch		NAMED INSURED Alan Byer Auto Sales Inc	
POLICY NUMBER 2553009001			
CARRIER Sentry Select Insurance Company	NAIC CODE 21180	EFFECTIVE DATE: 08/01/2019	

## ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,

FORM NUMBER: ACORD 28 FORM TITLE: Evidence of Commercial Property Insurance

## Commercial Property

Coverage Provided is Primary and Non Contributory 1230-1236 West Genesee St 1232 West Genesee St 1288 West Genesee St Syracuse, NY 13204

POLICY NUMBER: 2553009001

COMMERCIAL PROPERTY  
CP 70-11 10 12

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## ADDITIONAL INSURED

This endorsement modifies the insurance provided under the following:

BUILDING AND PERSONAL PROPERTY COVERAGE FORM  
BUILDERS' RISK COVERAGE FORM  
CONDOMINIUM ASSOCIATION COVERAGE FORM  
CONDOMINIUM COMMERCIAL UNIT-OWNERS COVERAGE FORM

This endorsement applies to property described in the Additional Interest Supplemental Schedule of the Declaration.

The words "you" and "your" include the Additional Insured named in the schedule.

### SCHEDULE

<b>Premises Number: 3</b>	<b>Building Number: 1</b>
<b>Description Of Property:</b> Coverage Provided Is Primary and Non Contributory 1230-1236 West Genesee St 1232 West Genesee St 1288 West Genesee St Syracuse, NY 13204	
<b>Additional Insured Name:</b> City of Syracuse Industrial Development Agency Byer Real Estate Enterprises & West Genesee Realty Associates, LLC	
<b>Additional Insured Address:</b> 201 E Washington St 6th Fl Syracuse, NY 13202-1410	
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

Change effective 08/02/2019

CP 70 11 10 12

2553009

Sentry Select Insurance Company

1 00001 000000000 19214 0 N

2632b6de-2f59-40c1-b619-f312812987b8

0027020044351378156343202141099

Page 1 of 1

08/02/2019

STATE OF NEW YORK - WORKERS' COMPENSATION BOARD  
ESTADO DE NUEVA YORK - JUNTA DE COMPENSACION OBRERA

www.wcb.ny.gov  
Statewide Fax Line: 877-533-0337

NOTICE OF COMPLIANCE

AVISO DE CUMPLIMIENTO

TO EMPLOYEES

A EMPLEADOS

IMPORTANT INFORMATION FOR EMPLOYEES WHO ARE INJURED OR SUFFER AN OCCUPATIONAL DISEASE WHILE WORKING:

INFORMACION IMPORTANTE PARA EMPLEADOS QUE SEAN LESIONADOS O SUFRAN UNA ENFERMEDAD OCUPACIONAL MIENTRAS TRABAJAN.

1. By posting this notice and information concerning your rights as an injured worker, your employer is in compliance with the Workers' Compensation Law.
2. If you do not notify your employer within 30 days of the date of your injury your claim may be disallowed, so do so immediately.
3. You are entitled to obtain any necessary medical treatment and should do so immediately.
4. You may choose any doctor, podiatrist, chiropractor or psychologist referred by a medical doctor that accepts NY State Workers' Compensation patients and is Board authorized. However, if your employer is involved in a certified preferred provider organization (PPO) you must first be treated by a provider chosen by your employer and your employer must give you a written statement of your rights concerning further medical care.
5. You should tell your doctor to file copies of medical reports concerning your claim with the Workers' Compensation Board and with your employer's insurance company, which is indicated at the bottom of this form.
6. You may be entitled to lost time benefits if your work-related injury keeps you from work for more than seven days, compels you to work at lower wages or results in permanent disability to any part of your body. You may be entitled to rehabilitation services if you need help returning to work.
7. You should not pay any medical providers directly. They should send their bills to your employer's insurance carrier. If there is a dispute, the provider must wait until the Board makes a decision before it attempts to collect payment from you. If you do not pursue your claim or the Board rules that your injury is not work-related, you may be responsible for the payment of the bills.
8. You are entitled to be represented by an attorney or licensed representative, but it is not required. If you do hire a representative do not pay him/her directly. Any fee will be set by the Board and will be deducted from your award.
9. If you have difficulty in obtaining a claim form or need help in filling it out, or if you have any other questions or problems about a job-related injury, contact any office of the Workers' Compensation Board.

1. Su patrono está cumpliendo la Ley de Compensación Obrera cuando despliega este comunicado concierne a sus derechos como trabajador lesionado.
2. Si usted no notifica a su patrono dentro del término de 30 días de haber sufrido su lesión su reclamación podría ser desestimada, por eso notifique inmediatamente.
3. Usted tiene derecho a recibir cualquier tratamiento médico necesario relacionado con su lesión y debe gestionarlo inmediatamente.
4. Para el tratamiento de cualquier lesión o enfermedad relacionada con el trabajo, usted puede escoger cualquier médico, podiatra, quiropráctico o psicólogo (si es referido por un médico autorizado) que esté autorizado y acepte pacientes de la Junta de Compensación Obrera. Sin embargo, si su patrono está autorizado a participar una organización limitada de proveedores preferidos (PPO) usted deberá obtener tratamiento limitado para cualquier lesión o enfermedad relacionada con el trabajo de la correspondiente entidad. Patronos que participan en cualquier de estos programas establecidos por ley están obligados a proveer a sus empleados notificación escrita explicando sus derechos y obligaciones bajo el programa a que esté acogido.
5. Usted deberá requerir de su Médico que radique copias de los informes médicos de su caso en la Junta de Compensación Obrera y en la compañía de seguros de su patrono, que se indica al final de esta forma.
6. Usted tiene derecho a compensación si su lesión relacionada con el trabajo le impide trabajar por más de siete días, le obliga a trabajar a sueldo más bajo o resulta en incapacidad permanente de cualquier parte de su cuerpo. Usted puede tener derecho a servicios de rehabilitación si necesita ayuda para regresar al trabajo.
7. No pague a ningún proveedor médico directamente por tratamiento de su lesión o enfermedad relacionada con el trabajo. Ellos deben enviar sus facturas al asegurador de su patrono. Si el caso es cuestionado, el proveedor deberá esperar hasta que la Junta decida el caso, antes de iniciar gestión de cobro alguna contra usted. Si usted no tramita su caso a la Junta, falla que su lesión o enfermedad no está relacionada con el trabajo, usted podría ser responsable del pago de las facturas.
8. No es obligatorio el estar representado en ninguno de los procedimientos de la Junta, pero es un derecho que usted tiene, si estar representado por abogado o por representante licenciado si usted así lo desea. Si es representado, no pague al abogado o al representante licenciado. Cuando la Junta decida su caso, los honorarios serán determinados por la Junta y descontados de sus beneficios.
9. Si tiene dificultad en conseguir un formulario de reclamación o necesita ayuda para llenarlo, o tiene dudas sobre cualquier situación relacionada con una lesión o enfermedad comuníquese con la oficina más cercana de la Junta.

WORKERS' COMPENSATION BOARD OFFICES  
Albany, 12241 - 100 Broadway-Means - (888) 750-5167  
Brooklyn, 11201 - 111 Livingston St. - Brooklyn - (800) 877-1373  
Binghamton, 13901 - State Office Bldg. - 44 Hawley St. - (609) 802-3604  
Buffalo, 14202 - 389 Franklin Street - (888) 241-0646  
Hauppauge, 11789 - 220 Rabro Drive - Suite 100 - (888) 881-6364  
Hempstead, 11550 - 175 Fulton Avenue - (888) 805-3630  
New York, 10027 - 215 W. 125th St. - Manhattan - (800) 877-1373  
Peekskill, 10586 - 41 North Division St. - (888) 748-0552  
Queens, 11432 - 166-49 91st Ave. - Jamaica (800) 877-1373  
Rochester, 14814 - 130 Main Street West - (866) 211-0644  
Syracuse, 13203 - 935 James St. - (888) 802-3730

\*DOWNSTATE MAIL ADDRESS Claims-related mail for the Hauppauge, Hempstead, Peekskill and all NYC offices should be mailed to: P.O. Box 6206 Binghamton, NY 13902-6206

Clarissa M. Rodriguez  
Chair (Presidenta)

Workers' Compensation Benefits, when due, will be paid by (Los beneficios de Compensación Obrera, cuando debidos, serán pagados por):

<b>THE STATE INSURANCE FUND</b> 199 Church Street, New York, N. Y. 10007 (212) 312-9000			
Effective From (En Vigor Desde)	12/31/2018	To (Hasta cancellation)	cancellation
Policy No. (Póliza No.)	G 489 B34-2		

Name of employer (Nombre de patrono)

ALAN BYER AUTO SALES INC  
1230 W GENESEE ST SYRACUSE NY 13204

THIS NOTICE MUST BE POSTED CONSPICUOUSLY IN AND ABOUT THE EMPLOYER'S PLACE OR PLACES OF BUSINESS.

C-105 (08-2009)

S. I. F. U-30  
"WORKERS"

PREPARED BY GUY  
WORKERS' COMPENSATION BOARD  
STATE OF NEW YORK

www.wcb.ny.gov

Failure by an employer to post this notice in and about the employer's place or places of business may result in a \$250 penalty for each violation.

STATE OF NEW YORK - WORKERS' COMPENSATION BOARD  
ESTADO DE NUEVA YORK - JUNTA DE COMPENSACION OBRERA

www.wcb.ny.gov  
Statewide Fax Line: 877-633-0337

NOTICE OF COMPLIANCE

AVISO DE CUMPLIMIENTO

TO EMPLOYEES

A EMPLEADOS

IMPORTANT INFORMATION FOR EMPLOYEES WHO ARE INJURED OR SUFFER AN OCCUPATIONAL DISEASE WHILE WORKING.

INFORMACION IMPORTANTE PARA EMPLEADOS QUE SEAN LESIONADOS O SUFRAN UNA ENFERMEDAD OCUPACIONAL MIENTRAS TRABAJAN.

1. By posting this notice and information concerning your rights as an injured worker, your employer is in compliance with the Workers' Compensation Law.
2. If you do not notify your employer within 30 days of the date of your injury your claim may be disallowed; so do so immediately.
3. You are entitled to obtain any necessary medical treatment and should do so immediately.
4. You may choose any doctor, podiatrist, chiropractor or psychologist referred by a medical doctor that accepts NY State Workers' Compensation patients and is Board authorized. However, if your employer is involved in a certified preferred provider organization (PPO) you must first be treated by a provider chosen by your employer and your employer must give you a written statement of your rights concerning further medical care.
5. You should tell your doctor to file copies of medical reports concerning your claim with the Workers' Compensation Board and with your employer's insurance company, which is indicated at the bottom of this form.
6. You may be entitled to lost time benefits if your work-related injury keeps you from work for more than seven days, compels you to work at lower wages, or results in permanent disability to any part of your body. You may be entitled to rehabilitation services if you need help returning to work.
7. You should not pay any medical providers directly. They should send their bills to your employer's insurance carrier; if there is a dispute, the provider must wait until the Board makes a decision before it attempts to collect payment from you. If you do not pursue your claim or the Board rules that your injury is not work-related, you may be responsible for the payment of the bills.
8. You are entitled to be represented by an attorney or licensed representative, but it is not required. If you do hire a representative do not pay him/her directly. Any fee will be set by the Board and will be deducted from your award.
9. If you have difficulty in obtaining a claim form or need help in filling it out, or if you have any other questions or problems about a job-related injury, contact any office of the Workers' Compensation Board.

1. Su patrono está cumpliendo la Ley de Compensación Obrera cuando despliega esta información concerniente a sus derechos como trabajador lesionado.
2. Si usted no notifica a su patrono dentro del término de 30 días de haber sufrido su lesión su reclamación podría ser desestimada, por eso notifique inmediatamente.
3. Usted tiene derecho a recibir cualquier tratamiento médico necesario relacionado con su lesión y debe gestionarlo inmediatamente.
4. Para el tratamiento de cualquier lesión o enfermedad relacionada con el trabajo, usted puede escoger cualquier médico, podiatra, quiropráctico o psicólogo (si es referido por un médico autorizado) que esté autorizado y acepte pacientes de la Junta de Compensación Obrera. Sin embargo, si su patrono está autorizado a participar una organización certificada de proveedores preferidos (PPO) usted deberá obtener tratamiento inicial para cualquier lesión o enfermedad relacionada con el trabajo de la correspondiente entidad. Patronos que participen en cualquier de estos programas establecidos por ley están obligados a proveer a sus empleados notificación escrita explicando sus derechos y obligaciones bajo el programa a que está acogido.
5. Usted deberá requerir de su médico que radique copias de los informes médicos de su caso en la Junta de Compensación Obrera y en la compañía de seguros de su patrono, que se indica al final de esta forma.
6. Usted tiene derecho a compensación si su lesión relacionada con el trabajo le impide trabajar por más de siete días, le obliga a trabajar a sueldo más bajo o resulta en incapacidad permanente de cualquier parte de su cuerpo. Usted puede tener derecho a servicios de rehabilitación si necesita ayuda para regresar al trabajo.
7. No pague a ningún proveedor médico directamente por tratamiento de su lesión o enfermedad relacionada con el trabajo. Ellos deben enviar sus facturas al asegurador de su patrono. Si el caso es cuestionado, el proveedor deberá esperar hasta que la Junta decida el caso; antes de iniciar gestión de cobro alguna contra usted. Si usted no tramita su caso o la Junta falla que su lesión o enfermedad no está relacionada con el trabajo, usted podría ser responsable del pago de las facturas.

8. No es obligatorio el estar representado en ninguno de los procedimientos de la Junta, pero es un derecho que usted tiene, el estar representado por abogado o por representante licenciado si usted así lo desea. Si es representado, no pague al abogado o al representante licenciado. Cuando la Junta decida su caso, los honorarios serán determinados por la Junta y descontados de sus beneficios.

9. Si tiene dificultad en conseguir un formulario de reclamación o necesita ayuda para llenarlo o tiene dudas sobre cualquier situación relacionada con una lesión o enfermedad comuníquese con la oficina más cercana de la Junta.

WORKERS' COMPENSATION BOARD OFFICES

Albany, 12241 - 300 Broadway-Monroe - (866) 760-5157  
Brooklyn, 11201 - 111 Livingston St. - Brooklyn - (800) 877-1973  
Binghamton, 13901 - State Office Bldg.-44 Hawley St. - (808) 802-3604  
Buffalo, 14202 - 399 Franklin Street - (866) 211-0645  
Hauppauge, 11788 - 220 Babro Drive - Suite 100 - (800) 681-5354  
Hempstead, 11550 - 178 Fulton Avenue - (866) 805-3630  
New York, 10027 - 216 W. 126th St. - Manhattan - (800) 877-1373  
Peekskill, 10586 - 41 North Division St. - (866) 746-0552  
Queens, 11432 - 168-46 81st Ave. - Jamaica (800) 877-1373  
Rochester, 14614 - 130 Main Street West - (866) 211-0844  
Syracuse, 13203 - 935 James St. - (866) 802-3730

\*DOWNSTATE MAIL ADDRESS Claims-related mail for the Hauppauge, Hempstead, Peekskill and all NYC offices should be mailed to: PO Box 5205 Binghamton, NY 13902-5205

Clarissa M. Rodríguez  
Chair (Presidenta)

Workers' Compensation Benefits, when due, will be paid by (Los beneficios de Compensación Obrera, cuando debidos, serán pagados por):

THE STATE INSURANCE FUND 199 Church Street, New York, N. Y. 10097 (212) 312-9000	
Effective From (En Vigor Desde)	12/31/2018 To (Hasta cancellation)
Policy No. (Póliza No.)	G 489 834-2

Name of employer (Nombre de patrono)

ALAN BYER AUTO SALES INC  
1288 W GENESEE STREET SYRACUSE NY  
13204

THIS NOTICE MUST BE POSTED CONSPICUOUSLY IN AND ABOUT THE EMPLOYER'S PLACE OR PLACES OF BUSINESS.

Failure by an employer to post this notice in and about the employer's place or places of business may result in a \$260 penalty for each violation.

C-105 (08-2009)

S. I. F. LI-30  
UNASSISTED

PRESCRIBED BY CHAIR  
WORKERS' COMPENSATION BOARD  
STATE OF NEW YORK

www.wcb.ny.gov



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

**ADDITIONAL INSURED - GENERAL LIABILITY  
COVERAGES - OWNERS OF LEASED OR  
RENTED LAND OR PREMISES**

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

<b>Named Insured:</b> Alan Byer Auto Sales Inc
<b>Endorsement Effective Date:</b> 10/23/2018

**SCHEDULE**

Description Of Premises Or Land Leased Or Rented To You	Name Of Person Or Organization	Premium
1288 W Genesee St Syracuse, NY 13204-2133	Alan I. Byer Family Trust and West Genesee Realty Associates	\$

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

**A. Paragraph D. Who Is An Insured under Section II - General Liability Coverages** is changed to include as an "insured" the person or organization named in the Schedule, but only for liability arising out of the ownership, maintenance and use of that part of the described land or premises which is leased or rented to you.

**B.** The insurance afforded by this endorsement does not apply to:

1. Any "accident" which occurs after you cease to be a tenant in the premises.
2. Structural alterations, new construction or demolition operations performed by or for the designated person or organization.

Change effective 10/23/2018

CA 25 09 10 13

2553009

Sentry Select Insurance Company

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Page 1 of 1

10/23/2018

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

**ADDITIONAL INSURED - GENERAL LIABILITY  
COVERAGES - OWNERS OF LEASED OR  
RENTED LAND OR PREMISES**

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

<p><b>Named Insured:</b> Alan Byer Auto Sales Inc</p> <p><b>Endorsement Effective Date:</b> 10/23/2018</p>
--

**SCHEDULE**

Description Of Premises Or Land Leased Or Rented To You	Name Of Person Or Organization	Premium
1230 W Genesee St Syracuse, NY 13204-2104	Alan I. Byer Family Trust and West Genesee Realty Associates	\$

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

**A. Paragraph D. Who Is An Insured under Section II - General Liability Coverages** is changed to include as an "insured" the person or organization named in the Schedule, but only for liability arising out of the ownership, maintenance and use of that part of the described land or premises which is leased or rented to you.

**B. The insurance afforded by this endorsement does not apply to:**

1. Any "accident" which occurs after you cease to be a tenant in the premises.
2. Structural alterations, new construction or demolition operations performed by or for the designated person or organization.

Change effective 10/23/2018

CA 25 09 10 13

2553009

Sentry Select Insurance Company

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Page 1 of 1

10/23/2018

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**  
**NOTICE OF CANCELLATION - CERTIFICATE HOLDERS**

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS COVERAGE FORM  
COMMERCIAL AUTOMOBILE COVERAGE PARTS  
COMMERCIAL PROPERTY COVERAGE PART  
CRIME AND FIDELITY COVERAGE PART  
COMMERCIAL INLAND MARINE COVERAGE PART  
COMMERCIAL GENERAL LIABILITY COVERAGE PARTS  
COMMERCIAL EXCESS/UMBRELLA LIABILITY COVERAGE FORM  
EMPLOYMENT RELATED PRACTICES LIABILITY  
POLLUTION LIABILITY COVERAGE  
ERRORS AND OMISSIONS COVERAGE FORM

In the event we cancel this policy, we shall endeavor to also mail to the person(s) or organization(s) listed in the Schedule for this endorsement advance written notice of cancellation.

This notification of cancellation of the policy is intended as a courtesy only. Our failure to provide such notification to the person(s) or organization(s) shown in the Schedule will not extend any policy cancellation date nor impact or negate any cancellation of the policy. This endorsement does not entitle the person(s) or organization(s) listed or described in the Schedule below to any benefit, rights or protection under this policy.

Failure by us to provide this notice of cancellation to the person(s) or organization(s) listed or described in the Schedule below will not impose liability of any kind upon us.

Any of these provisions that conflict with a law that controls the notice of cancellation of the insurance in this endorsement is changed by this statement to comply with the law.

**Schedule**

Person(s) or Organization(s) including mailing address:

City of Syracuse Industrial  
Development Agency  
201 E Washington St 6th Fl  
Syracuse, NY 13202-1410

All other terms and conditions of this policy remain unchanged.

Change effective 01/04/2019

IL 70 58 02 14

2553009

Sentry Select Insurance Company

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## ADDITIONAL INSURED - DESIGNATED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

### SCHEDULE

**Name of Person or Organization:**

City of Syracuse Industrial  
Development Agency  
Industrial Development Agency

**Start Date of Show:**

**End Date of Show:**

**Event Name:**

**Event Location:**

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

**Section II - General Liability Coverages, Paragraph D. Who Is An Insured** is amended by the addition of the following:

The following are "insureds" for "auto dealer operations";

The person or organization listed in the Schedule above, but only with respect to liability arising out of your "auto dealer operations" or premises owned by or rented to you.

All other terms and provisions of the policy remain unchanged.

Change effective 01/04/2019

CA 88 04 10 13

2553009  
Sentry Select Insurance Company

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Page 1 of 1  
01/07/2019

# MMSEA Section 111 - A Federal Statute You Need to Know

Section 111 of the Medicare, Medicaid and SCHIP Extension Act of 2007 (MMSEA) statute institutes mandatory reporting requirements for claims involving a Medicare beneficiary. If you self administer these types of claims, you assume responsibility for reporting.

As your insurance carrier, we handle the reporting requirements for you. However, employers who don't report claims to their insurance carrier and take on the ongoing responsibility for medical payments (ORM) for claimants are subject to federal fines if the claimant is, or becomes, a Medicare beneficiary. Employers may receive a fine of \$1,000 per claim/per day and possible civil penalties, if the employer does not follow all reporting provisions in Section 111.

## For more information

Below are answers to frequently asked questions to help clarify. For complete information, refer to the most recent MMSEA Section 111 Medicare Secondary Payer Mandatory User Guide - search the web by entering **NGHP User Guide** in the search field.

## Why the MMSEA and why would this affect my business?

In December 2007, the MMSEA was signed into law in an effort to curb the rising cost of Medicare by enforcing Medicare's status as a secondary payer. Section 111 of the MMSEA adds new reporting provisions requiring that the Responsible Reporting Entity (RRE), typically the insurance carrier, report all workers' compensation, liability and no fault bodily injury claims within the time frame designated by the Secretary of the Coordination of Benefits Contractor (COBC).

## Who is a Medicare beneficiary?

A Medicare beneficiary, in general, is any person who is 65 years of age or older, has been a legal resident of the United States for at least 5 years and is eligible for Medicare. People with disabilities under the age of 65 may also be eligible if they receive Social Security Disability Insurance (SSDI) benefits. Also, people with specific medical conditions and dependents, including minors, in certain circumstances may become eligible to enroll in Medicare.

## Who is a Responsible Reporting Entity (RRE)?

RREs are typically insurers or self insured entities; however, employers who don't report claims to their insurance carrier and assume the responsibility for ongoing medicals become the RRE and are held to all of the Section 111 reporting provisions, even if the employer has an insurance policy with a carrier.

## What defines Ongoing Responsibility for Medicals (ORM)?

The entity that assumes responsibility for ongoing medicals must monitor the status of their claimants who are Medicare beneficiaries until the claimant dies, a settlement has been made or the Statute of Limitations is met and the claim cannot be reopened. In many cases involving Workers' Compensation, and in certain No Fault states, there is no Statute of Limitations - the claim can be reopened at any time until the individual's death.

## Which claims need to be reported?

All claims involving a Medicare beneficiary where a settlement, judgment, award or other payment is made must be reported. The entity who assumes ongoing responsibility for medicals (ORM) must monitor the status of a claimant for as long as their legal responsibilities for ORM remain open. In such circumstances the claim must be reported when the claimant becomes a Medicare beneficiary.

Every RRE must register with the Centers for Medicare & Medicaid Service (CMS), and once registered will be assigned a CMS liaison to help work through the testing and reporting process. More information regarding Section 111 and the reporting requirements can be found on the CMS website, [cms.gov/MandatoryInsRep](http://cms.gov/MandatoryInsRep).



## Billing Practices

Your commercial insurance protection is critical to your business operations. To ensure continued protection of your assets, we encourage you to pay your invoice promptly. The information below outlines our billing practices.

### Payment Plans

We offer a variety of interest-free premium payment plans for our eligible customers. Multiple late payments may result in the immediate forfeiture of the premium payment plan.

### Invoices

Your invoice provides you with a description of premium transactions that affect your account. It includes the information you need to effectively track your costs and coverage periods. Your invoice will list the date your premium payment is due in our office.

If you default on a premium payment, a notice of cancellation will be sent and may be applicable to your entire account with all of our companies.

We reserve the right to apply any amount owed to you by any of our companies against unpaid amounts owed by you to any of our companies.

In the event of policy cancelation, we reserve the right to request first party claim payment be applied to unpaid and past due earned premium on your account.

### Audited Coverages (estimated)

If any of your coverages have been written on an estimated basis, at the end of the policy period you may be asked to provide information from your records, or an auditor may visit you. The purpose of the audit is to determine earned premium. After the audit, we will either credit your account with any return premium or bill you for any additional premium due.

### Customer Service

If you have any questions or concerns regarding your invoice or about our payment plans, please contact our Customer Service Unit.

## IMPORTANT NOTICE



# What You Should Know About Our Protection of Your Privacy

Protecting the personal information of the individuals we serve is a priority for Sentry Insurance. We collect, retain and use personal information about individuals for the purpose of serving their insurance needs and providing services to them.

This notice describes how we handle personal information of the individuals we serve. It is only for your information. No action on your part is needed.

If you have questions regarding this notice, please write to Corporate Compliance/Privacy, 1800 North Point Drive, Stevens Point, WI 54481.

## What kinds of information are collected and disclosed?

The types of information we may collect about you include:

- Information you provide on applications or other forms, or in your verbal responses to our questions. This may include identifying information such as name, address and information about your assets and income.
- Information about your transactions with us including policies purchased and premium payment history.
- Information we receive from a consumer reporting agency that indicates your credit worthiness and credit history.

We do not sell customer lists or any personal information regarding our customers.

We only disclose nonpublic personal information about customers or former customers to other affiliated or nonaffiliated third parties as permitted or required by law. We may share personal financial information about you between affiliated companies within the Sentry Insurance Group in order to make additional services available to you (e.g. auto insurance customers may receive information about life insurance products, and vice versa).

For those clients of Point Insurance Agency, LLC and/or the Parker Stevens agencies, these agencies may disclose your nonpublic personal information to nonaffiliated insurance companies as reasonably necessary to provide you with insurance products and services.

## How do we safeguard your privacy?

- We maintain physical, electronic and procedural safeguards to protect your personal financial information.
- We restrict access to nonpublic personal financial data to those employees who need to know that information in order to provide products or services to you.
- We communicate to employees in writing the importance of protecting confidential information.
- We may amend our privacy policies at any time. If we do, we will inform you in writing.

This notice applies to each of the following companies. Companies may not be licensed in all states.

Sentry Insurance a Mutual Company	Parker Stevens Agency, L.L.C.	Sentry Equity Services, Inc.
Dairyland County Mutual Insurance Company of Texas	Parker Stevens Insurance Agency of Massachusetts, Inc.	Sentry Life Insurance Company
Dairyland Insurance Company	Patriot General Insurance Company	Sentry Life Insurance Company of New York
Middlesex Insurance Company	Peak Property and Casualty Insurance Corporation	Sentry Lloyds of Texas
Parker Assurance Ltd.	Point Insurance Agency, LLC	Sentry Select Insurance Company
Parker Centennial Assurance Company	Sentry Casualty Company	Viking Insurance Company of Wisconsin
Parker Services, L.L.C.		

**Sentry Insurance**  
1800 North Point Drive  
P.O. Box 8020  
Stevens Point, WI 54481-8020



Alan Byer Auto Sales Inc  
1230 W Genesee St  
Syracuse, NY 13204-2104

Your renewal insurance policy excludes loss caused by "certified acts of terrorism" as classified by the Federal Government.

You have the opportunity to purchase coverage for loss resulting from "certified acts of terrorism", which are defined in the enclosed notice. The offer contained in the enclosed notice pertains only to coverage for certified acts of terrorism. The following lines of business are not subject to the Terrorism Risk Insurance Act and you will not have the option of purchasing coverage for certified acts of terrorism for your Commercial Auto, Garage, Fidelity or Crime, Surety or Errors and Omissions coverages.

If you wish to purchase coverage for certified acts of terrorism, please sign and return the enclosed notice by the date indicated in the notice.

If you have any questions regarding your coverage for terrorism, please contact our Customer Service Unit at 1-800-473-6879.



POLICYHOLDER DISCLOSURE  
OFFER OF TERRORISM COVERAGE  
DISCLOSURE OF PREMIUM

Alan Byer Auto Sales Inc  
1230 W Genesee St  
Syracuse, NY 13204-2104

Sentry Select Insurance Company  
4400 E 53rd St  
PO Box 8024  
Davenport, IA 52807

This notice applies to the following policy

Account Number: 2553009  
Policy Effective: 08/01/2018 to 08/01/2019  
Coverage Provided: Inland Marine  
Property

You are hereby notified that under the Terrorism Risk Insurance Act as amended, you have a right to purchase insurance coverage for losses arising out of acts of terrorism, as defined in Section 102(1) of the Act. The term "act of terrorism" means "any act or acts that are certified by the Secretary of the Treasury, in consultation with the Secretary of Homeland Security, and the Attorney General of the United States - to be an act of terrorism; to be a violent act or an act that is dangerous to human life, property or infrastructure; to have resulted in damage within the United States, or outside the United States in the case of an air carrier or vessel or the premises of a United States mission; and to have been committed by an individual or individuals acting 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." Coverage under your existing policy may be affected as follows:

YOU SHOULD KNOW THAT COVERAGE WE PROVIDE BY THIS POLICY FOR LOSSES CAUSED BY CERTIFIED ACTS OF TERRORISM IS PARTIALLY REIMBURSED BY THE UNITED STATES GOVERNMENT UNDER A FORMULA ESTABLISHED BY FEDERAL LAW. HOWEVER, YOUR POLICY MAY CONTAIN OTHER EXCLUSIONS WHICH MIGHT AFFECT YOUR COVERAGE, SUCH AS AN EXCLUSION FOR NUCLEAR EVENTS. UNDER THE FORMULA, THE UNITED STATES GOVERNMENT GENERALLY REIMBURSES 85% 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 INSURANCE COMPANY PROVIDING THE COVERAGE.

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.

YOU SHOULD ALSO KNOW THAT THE TERRORISM RISK INSURANCE ACT, AS AMENDED, CONTAINS A \$100 BILLION CAP THAT LIMITS U.S. GOVERNMENT REIMBURSEMENT AS WELL AS INSURERS' LIABILITY FOR LOSSES RESULTING FROM CERTIFIED ACTS OF TERRORISM WHEN THE AMOUNT OF SUCH LOSSES IN ANY ONE CALENDAR YEAR EXCEEDS \$100 BILLION. IF THE AGGREGATE INSURED LOSSES FOR ALL INSUREDS EXCEED \$100 BILLION, YOUR COVERAGE MAY BE REDUCED.

In NY, the terrorism exclusion makes an exception for (and thereby provides coverage for) fire losses resulting from an act of terrorism. Therefore, if you reject the offer of terrorism coverage, that rejection does not apply to fire losses arising from an act of terrorism. Coverage for such fire losses will continue to be provided in your policy. The additional premium just for such fire coverage is \$0.00 and is included in the renewal premium charged for this policy.

If you wish to purchase coverage for loss caused by certified acts of terrorism, you must complete this form and return it to us by 09/05/2018.

\_\_\_\_\_ I hereby elect to purchase Terrorism coverage for a premium of \$134.00.

Policyholder's signature \_\_\_\_\_ Date \_\_\_\_\_

Print name \_\_\_\_\_



ACCOUNT NUMBER: 2553009

## COMMON POLICY DECLARATIONS

Sentry Select Insurance Company (A Participating Stock Company) A member of the Sentry Insurance Group 1800 North Point Drive Stevens Point, WI 54481	Producer  Steven Asch 10000277 315-484-6565
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### GENERAL INFORMATION

**First Named Insured:** Alan Byer Auto Sales Inc  
**Address:** 1230 W Genesee St  
 Syracuse, NY 13204-2104  
**Business Type:** Corporation

Unless stated elsewhere, the coverage provided under the policies included in this Contract are effective 08/01/2018 to 08/01/2019 at 12:01 A.M. Standard Time at your mailing address shown above.

In return for the payment of the premium, and subject to the terms of this Contract, we agree to provide the insurance as stated in the policies which are included in this Contract.

### NAMED INSUREDS

The **FIRST NAMED INSURED** shown in the **GENERAL INFORMATION** above, and the person(s) or organization(s) shown as **NAMED INSUREDS** below are named insureds for all policies included in this contract, unless a specific exception is included in the Declarations for an individual policy.

Not Applicable

### COVERED LOCATIONS/SCHEDULE OF PREMISES

Prem.#	Bldg.#	Address	Construction	Occupancy
1	1	1230 W Genesee St Syracuse, NY 13204-2104	Masonry Non-Combustible	Automobile Repair or Service Shops - Major engine or body repair
1	2	1230 W Genesee St Syracuse, NY 13204-2104	Non-Combustible	Automobile Repair or Service Shops - Major engine or body repair
2	1	5622 Horatio St Utica, NY 13502-1402	Joisted Masonry	Automobile Repair or Service Shops - Major engine or body repair
3	1	1288 W Genesee St Syracuse, NY 13204-2133	Masonry Non-Combustible	Automobile Repair or Service Shops - Major engine or body repair
4	1	6985 Collamer Rd East Syracuse, NY 13057-9763	Joisted Masonry	
5	1	512 W Broadway St Fulton, NY 13069-2105	Frame	Automobile Repair or Service Shops - Major engine or body repair

ACCOUNT NUMBER: 2553009

**COVERAGES**

This Contract consists of the following Coverages:

COMMERCIAL PROPERTY COVERAGE	2553009001
COMMERCIAL INLAND MARINE COVERAGE	2553009002
COMMERCIAL CRIME COVERAGE	2553009003
COMMERCIAL AUTO COVERAGE	2553009004
COMMERCIAL EXCESS/UMBRELLA COVERAGE	2553009005
ERRORS AND OMISSIONS COVERAGE	2553009007

**PREMIUM SUMMARY**

The Premium for this policy:	\$	115,113.00
Terrorism:	\$	138.00
New York Fire Insurance Fee:	\$	105.44
Total Cost:	\$	115,356.44

**CONTACT INFORMATION**

For service, please contact your Sentry Account Manager at the number listed above or our Service office at:

<b>Address:</b>	1800 North Point Drive	<b>Phone:</b>	Toll Free	800-473-6879
	Stevens Point, WI 54481		Fax	800-514-7191
<b>Email:</b>	businessproducts_direct@sentry.com			

**COMMON POLICY FORMS AND/OR ENDORSEMENTS**

The following forms and/or endorsements apply to all coverages included as part of this policy:

<b>Form/Endorsement Number and Edition Date</b>	<b>Form/Endorsement Title</b>
80 2314 SSDO 05 00	Additional Conditions - Membership And Participation
IL 00 17 11 98	Common Policy Conditions

These declarations together with the common policy conditions, coverage part declarations, coverage part coverage form(s) and forms and endorsements, if any, issued to form a part thereof, complete the above numbered policy.

## ADDITIONAL CONDITIONS - PARTICIPATION

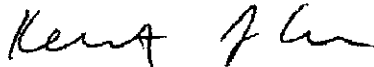
### Participation

You will share in any dividends in accordance with conditions established by the Board of Directors.

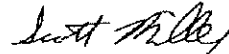
The first page of Declarations names the company issuing this policy. The officer signatures which correspond to That Company are a part of this policy. None of the other signatures apply to this policy.

### SENTRY SELECT INSURANCE COMPANY

Stevens Point, Wisconsin



Secretary



President

## COMMON POLICY CONDITIONS

All Coverage Parts included in this policy are subject to the following conditions.

### A. Cancellation

1. The first Named Insured shown in the Declarations may cancel this policy by mailing or delivering to us advance written notice of cancellation.
2. We may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation at least:
  - a. 10 days before the effective date of cancellation if we cancel for nonpayment of premium; or
  - b. 30 days before the effective date of cancellation if we cancel for any other reason.
3. We will mail or deliver our notice to the first Named Insured's last mailing address known to us.
4. Notice of cancellation will state the effective date of cancellation. The policy period will end on that date.
5. If this policy is cancelled, we will send the first Named Insured any premium refund due. If we cancel, the refund will be pro rata. If the first Named Insured cancels, the refund may be less than pro rata. The cancellation will be effective even if we have not made or offered a refund.
6. If notice is mailed, proof of mailing will be sufficient proof of notice.

### B. Changes

This policy contains all the agreements between you and us concerning the insurance afforded. The first Named Insured shown in the Declarations is authorized to make changes in the terms of this policy with our consent. This policy's terms can be amended or waived only by endorsement issued by us and made a part of this policy.

### C. Examination Of Your Books And Records

We may examine and audit your books and records as they relate to this policy at any time during the policy period and up to three years afterward.

### D. Inspections And Surveys

1. We have the right to:
  - a. Make inspections and surveys at any time;

- b. Give you reports on the conditions we find; and
  - c. Recommend changes.
2. We are not obligated to make any inspections, surveys, reports or recommendations and any such actions we do undertake relate only to insurability and the premiums to be charged. We do not make safety inspections. We do not undertake to perform the duty of any person or organization to provide for the health or safety of workers or the public. And we do not warrant that conditions:
  - a. Are safe or healthful; or
  - b. Comply with laws, regulations, codes or standards.
3. Paragraphs 1. and 2. of this condition apply not only to us, but also to any rating, advisory, rate service or similar organization which makes insurance inspections, surveys, reports or recommendations.
4. Paragraph 2. of this condition does not apply to any inspections, surveys, reports or recommendations we may make relative to certification, under state or municipal statutes, ordinances or regulations, of boilers, pressure vessels or elevators.

### E. Premiums

The first Named Insured shown in the Declarations:

1. Is responsible for the payment of all premiums; and
2. Will be the payee for any return premiums we pay.

### F. Transfer Of Your Rights And Duties Under This Policy

Your rights and duties under this policy may not be transferred without our written consent except in the case of death of an individual named insured.

If you die, your rights and duties will be transferred to your legal representative but only while acting within the scope of duties as your legal representative. Until your legal representative is appointed, anyone having proper temporary custody of your property will have your rights and duties but only with respect to that property.

## COMMERCIAL PROPERTY COVERAGE PART MULTISTATE REVISION OF FORMS AND ENDORSEMENTS POLICYHOLDERS NOTICE

This is a summary of the major changes in your Commercial Property insurance. No coverage is provided by this summary nor can it be construed to replace any provisions of your policy. You should read your policy and review your Declarations Page for complete information on the coverages you are provided. If there is any conflict between the policy and this summary, **THE PROVISIONS OF THIS POLICY SHALL PREVAIL.**

The areas within the policy that broaden or reduce coverage, and other changes, are highlighted below. This notice does not reference every editorial change made in your policy.

The material in this notice makes reference to form and endorsement numbers; however, not all forms and endorsements are included in a particular policy.

### ISO CHANGES

#### COVERAGE FORMS, CAUSES OF LOSS FORMS AND RELATED ENDORSEMENTS

##### 1. Broadenings In Coverage

- Debris Removal (CP 00 10, CP 00 17, CP 00 18, CP 00 20)

The additional Limit of Insurance for debris removal expense is increased from \$10,000 to \$25,000.

Further, coverage for debris removal is expanded to include the expense of removing debris of certain property of others. The total expense for all debris removal is subject to the limitations stated in the policy concerning amount of coverage, including the aforementioned additional Limit of Insurance. However, when no Covered Property sustains direct physical loss or damage, coverage for the removal of debris of others' property is limited to \$5,000.

The Outdoor Property Coverage Extension is revised to include debris removal expense for trees, shrubs and plants that are the property of others, except trees, shrubs and plants owned by the landlord of an insured tenant.

- Extended Business Income, Extended Period Of Indemnity (CP 00 30, CP 00 32)

The number of days' coverage under the Extended Business Income provision is increased from 30 to 60 days. Accordingly, the Extended Period Of Indemnity option, if applicable, is revised to begin after 60 days.

- Coverage Radius For Business Personal Property And Personal Property Of Others (CP 00 10, CP 00 18)

These forms are revised to extend coverage for Business Personal Property and Personal Property of Others to such property to the greater of 100 feet of the building or 100 feet of the described premises.

- Property In Storage Units (CP 00 10, CP 00 17, CP 00 18)

A Coverage Extension for Business Personal Property Temporarily In Portable Storage Units is introduced. Under this Coverage Extension, a 90-day coverage period is provided for business personal property temporarily stored in a portable storage unit located within 100 feet of the described premises, subject to a sub-limit of \$10,000 regardless of the number of storage units.

- Entrusted Property (CP 10 30)

The exclusion of dishonest or criminal acts is revised to distinguish between those who have a role in the insured's business (partners, managers, employees, etc.) and others to whom property may be entrusted (a category that includes tenants and bailees for example). With respect to the latter, the exclusion is narrowed to apply only to theft. Further, the exception to the exclusion (which enables coverage for acts of destruction) is revised to extend applicability to authorized representatives.

- Vegetated Roofs (CP 00 10, CP 00 17, CP 00 20, CP 10 30)

Property Not Covered is revised to make an exception for lawns, trees, shrubs and plants which are part of a vegetated roof, thereby treating such property as an insured part of the building, so that an existing vegetative roof can be replaced with like kind in the event of a loss, subject to policy terms and certain limitations. Accordingly, lawns, trees, shrubs and plants which are part of a vegetated roof are no longer covered under the more limited Outdoor Property Coverage Extension.

- Electronic Data In Building Equipment (CP 00 10, CP 00 17, CP 00 18, CP 00 30, CP 00 32, CP 00 40, CP 00 50)

The Property Damage and related Coverage Forms are revised to remove the \$2,500 limitation on electronic data with respect to loss or damage to electronic data which is integrated in and operates or controls the building's elevator, lighting, heating, ventilation, air conditioning or security system. Coverage for such electronic data will be considered part of the coverage on the building. Further, under property damage forms, the \$2,500 limitation will no longer apply to stock of prepackaged software. Coverage for prepackaged software will be subject to the Limit of Insurance otherwise applicable to such personal property.

The Business Interruption Coverage Forms are revised so that the \$2,500 limitation does not apply when loss or damage to electronic data involves only electronic data which is integrated in and operates or controls a building's elevator, lighting, heating, ventilation, air conditioning or security system. A business interruption caused by loss or damage to such electronic data will be subject to the coverage otherwise applicable to a covered business interruption.

- Specified Causes Of Loss - Water Damage (CP 10 30)

Coverage for water damage under the definition of "specified causes of loss" is expanded to include accidental discharge or leakage of water or waterborne material as the direct result of the breaking apart or cracking of certain off-premises systems due to wear and tear.

## 2. Reduction Of Coverage

### Newly Acquired Property (CP 00 10, CP 00 17, CP 00 18)

Under the Newly Acquired Property Extension, the provision which extends an additional Limit of Insurance to newly acquired business personal property at the described premises is removed. There is no change to the coverage for newly acquired business personal property at newly acquired locations or at newly constructed or acquired buildings at the described location.

## 3. Other Changes

- Earth Movement (CP 10 30)

The Earth Movement Exclusion now makes explicit reference to earth movement caused by an act of nature or otherwise caused. In addition, the term earthquake now incorporates tremors and aftershocks.

With respect to coverage for Volcanic Action (which is a limited exception to the exclusion of volcanic eruption), all such eruptions that occur within any 168-hour period constitute a single occurrence.

- Fire Department Service Charge (CP 00 10, CP 00 17, CP 00 18, CP 00 20)

The Fire Department Service Charge Coverage is revised to specify that the amount of such coverage (\$1,000 or a designated higher limit) applies to each premises described in the Declarations. Further, the language of the coverage provision is revised to make it explicit that the designated limit applies regardless of the number of responders or the number or type of services performed. Your policy includes Special Broadened Property Coverage which sets the limit at the Direct Loss Blanket Limit for this coverage.



- Business Personal Property And Personal Property Of Others In Described Structures (CP 00 10, CP 00 17, CP 00 18)

The coverage provisions for Your Business Personal Property and Personal Property Of Others are revised to make it explicit that such property is covered when located in the building or structure described in the Declarations.

- Coverage Radius With Respect To Business Interruption (CP 00 30, CP 00 32, CP 00 50)

In part, the coverage criteria for Business Interruption Coverage relate to loss or damage to personal property in the open or in a vehicle within a certain distance from the described premises. The language relating to the coverage radius is revised to achieve more similarity between the radius outlined for insureds who are occupants of the entire premises and those who occupy only a part of the premises, and to use terminology similar to that used in property damage forms.

- Water Exclusion (CP 10 30)

The Water Exclusion provided by Endorsement CP 10 32 is incorporated into the aforementioned forms. As a result, CP 10 32 is no longer added to the policy.

- Ordinance Or Law Exclusion (CP 00 10, CP 00 17, CP 00 18, CP 00 20, CP 00 30, CP 00 32, CP 00 50, CP 10 30)

The language of the Ordinance Or Law Exclusion, which relates to enforcement of an ordinance or law, is revised to also refer to compliance with an ordinance or law.

Similar references are revised in the policy's Increased Cost Of Construction (ICC) Additional Coverage, Loss Payment and Valuation Conditions, and in the Period of Restoration definition in the business interruption forms. Further, the ICC coverage grant is revised to explicitly refer to compliance with the minimum standards of an ordinance or law.

- Risk Of Loss (CP 10 30)

The term "risk of" is removed from the provisions related to insured perils in the Causes Of Loss - Special Form CP 10 30.

- Miscellaneous Changes

Condominium Association Coverage Form CP 00 17 is revised to include a definition of "stock", which is "merchandise held in storage or for sale, raw materials and in-process or finished goods, including supplies used in their packing or shipping".

## OTHER ENDORSEMENTS

### 1. Broadenings in Coverage

- Dependent Properties - Business Interruption (CP 15 08, CP 15 09)

Under the following revised endorsements, secondary contributing locations and secondary recipient locations are covered if so indicated in the Schedule of the endorsement. Such locations are defined in the endorsement.

- Utility Services - Time Element Endorsement CP 15 45

This endorsement is revised to provide the means to select a new category of utility service: wastewater removal property. With respect to the coverage provided under this endorsement, wastewater removal property is a utility system for removing wastewater and sewage from the described premises, other than a system designed primarily for draining storm water.

- Food Contamination (Business Interruption And Extra Expense) Endorsement CP 15 05

This new endorsement covers certain extra expenses and business income losses arising out of food contamination. Separate limits apply to advertising expense and all other coverages under the endorsement. These limits apply on an annual aggregate basis.

## 2. Reduction Of Coverage

### Limitations On Coverage For Roof Surfacing Endorsement CP 10 36

This new endorsement includes provisions for covering roof surfacing at actual cash value on a building otherwise subject to replacement cost valuation, and for excluding cosmetic damage by wind to roof surfacing. One or both of these limitations may be indicated on the Schedule of the endorsement.

## 3. Other Changes

- Ordinance Or Law Coverage (CP 04 05, CP 04 38, CP 15 25, CP 15 31)

The coverage grant of Endorsement CP 04 05 Ordinance Or Law Coverage is revised to remove reference to enforcement of an ordinance or law, in favor of referring to a requirement to comply with an ordinance or law. The same revision is made to Endorsement CP 04 38 Functional Building Valuation. In addition, references are added to compliance with an ordinance or law in Endorsement CP 15 31 Ordinance Or Law - Increased Period Of Restoration.

- Protective Safeguards

Endorsement CP 04 11 Protective Safeguards replaces IL 04 15 Protective Safeguards. The new endorsement contains the same provisions as IL 04 15 and adds a symbol and description to recognize hood-and-duct fire extinguishing systems.

- Builders Risk - Theft Of Building Materials, Fixtures, Machinery, Equipment Endorsement CP 11 21

The exclusion of dishonest or criminal acts is revised to add reference to members, officers, managers, temporary employees and leased workers.

- Windstorm Or Hail Percentage Deductible Endorsement CP 03 21

Paragraph D.1. of this endorsement is editorially revised.

## COMPANY (SENTRY) CHANGES

### 1. Broadenings in Coverage

- CP 70 47 Equipment Breakdown Endorsement

- Base sublimits for Pollutant Clean-up and Removal, Spoilage and Refrigeration Contamination are increased from \$100,000 to \$250,000
- Sublimit for Expediting Expenses (currently \$100,000) removed
- Coverage for CFC Refrigerants added
- Coverage for environmental, safety and efficiency improvements added; limits up to 125% of what costs would have been to repair or replace with like kind and quality
- Extended premises definition increased from 1,000 to 1,500 feet

- CP 88 01 Enhanced Building and Personal Property Coverage

Extended premises definition increased from 1,000 to 1,500 feet

- CP 88 02 Enhanced Annual Business Income

Wording added to make equivalent to ISO revised radius definition. With endorsement the radius is increased to 1,500 feet.

### 2. Other Changes

- CP 88 10 Extended Recovery Endorsement

Ordinance or law and debris removal provisions amended to match ISO changes. Various state specific endorsements had equivalent changes made.

- CP 88 01 Enhanced Building and Personal Property Coverage
  - Various instances of premises replaced with building
- Editorial changes were made to the following endorsements:
  - CP 70 11 Additional Insured amended to remove reference to Glass Coverage Form and clarify where references to the additional insured are found.
  - CP 70 24 Contingent Replacement Cost amended to remove manuscripts from list of items optional coverage does not apply to.
  - CP 70 27 Agreed Value amended to clarify coverage intent.
  - CP 70 47 Equipment Breakdown has Jurisdictional Inspections language added. This does not increase or decrease coverage, it clarifies services offered when required to comply with state or municipal law.
  - CP 70 54 Equipment Breakdown Deductible endorsement amended to replace certain references of premises to building
- Business Income - Net Income Clarified
  - Old endorsement number changed from FA000700 02 96 to new endorsement number CP 88 14 10 12. No other changes.

POLICY NUMBER: 2553009001



## COMMERCIAL PROPERTY COVERAGE DECLARATIONS

Sentry Select Insurance Company (A Participating Stock Company) A member of the Sentry Insurance Group 1800 North Point Drive Stevens Point, WI 54481	Producer  Steven Asch 10000277 315-484-6565
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### POLICY INFORMATION

**First Named Insured:** Alan Byer Auto Sales Inc  
**Address:** 1230 W Genesee St  
Syracuse, NY 13204-2104

The Commercial Property Coverage applies from 08/01/2018 to 08/01/2019 at 12:01 A.M. Standard Time at the First Named Insured's mailing address shown above.

### Additional Interests

The persons or organizations listed as Additional Interests, in the Additional Interests Supplemental Schedule, are included as loss payees, lenders loss payees, mortgagees, or additional insureds, but only for the coverages and to the extent of their interest as indicated.

### Applicable Forms And Endorsements

In addition to the common policy forms and endorsements, the following forms and endorsements apply to the Commercial Property Coverage:

Form/Endorsement Number and Edition Date	Form/Endorsement Title
CP 00 10 10 12	Building And Personal Property Coverage Form
CP 00 30 10 12	Business Income (And Extra Expense) Coverage Form
CP 00 90 07 88	Commercial Property Conditions
CP 01 33 05 18	New York Changes
CP 01 64 10 12	New York Changes - Fungus, Wet Rot And Dry Rot
CP 01 78 08 08	New York - Exclusion Of Loss Due To Virus Or Bacteria
CP 04 11 10 12	Protective Safeguards
CP 04 38 10 12	Functional Building Valuation
CP 10 30 10 12	Causes Of Loss - Special Form
CP 12 18 10 12	Loss Payable Provisions
CP 15 31 10 12	Ordinance Or Law - Increased Period Of Restoration
CP 15 45 10 12	Utility Services - Time Element
CP 70 23 10 01	Personal Property Leased
CP 70 24 10 12	Contingent Replacement Cost
CP 70 26 04 02	Annual Business Income
CP 70 27 10 12	Agreed Value
CP 70 47 10 13	Equipment Breakdown
CP 88 01 10 12	Enhanced Building And Personal Property Coverage
CP 88 02 10 12	Enhanced Annual Business Income
CP 88 03 10 01	False Pretense Extension For Stock

**CP 89 01 10 14**  
2553009  
Sentry Select Insurance Company

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07/20/2018

<b>Form/Endorsement Number and Edition Date</b>	<b>Form/Endorsement Title</b>
CP 88 06 04 17	New York Changes
CP 88 10 10 12	Extended Recovery Endorsement - Buildings
IL 01 83 08 08	New York Changes - Fraud
IL 02 68 01 14	New York Changes - Cancellation And Nonrenewal
IL 09 35 07 02	Exclusion Of Certain Computer-Related Losses
IL 09 53 01 15	Exclusion Of Certified Acts Of Terrorism
IL 70 26 07 13	Multiple Line Occurrence Deductible

**COVERAGES**

**PREMISES NO.: 1      BUILDING NO.: 1**

<b>Coverage</b>	<b>Limit of Insurance</b>	<b>Covered Causes Of Loss</b>	<b>Coinsurance</b>	<b>Deductible</b>
<b>Building</b>	\$2,985,000	Special Including Theft Equipment Breakdown	80%	\$1,000

**Optional Coverages**

Inflation Guard 4%  
Contingent Replacement Cost

<b>Coverage</b>	<b>Limit of Insurance</b>	<b>Covered Causes Of Loss</b>	<b>Coinsurance</b>	<b>Deductible</b>
<b>Your Business Personal Property</b>	Blanket 1, See Blanket Limits Schedule	Special Including Theft Equipment Breakdown	100%	\$1,000

**Optional Coverages**

Inflation Guard 4%  
Agreed Value  
Contingent Replacement Cost

<b>Coverage</b>	<b>Limit of Insurance</b>	<b>Covered Causes Of Loss</b>	<b>Coinsurance</b>
<b>Business Income (And Extra Expense) Coverage:</b> Other Than Rental Value	Actual Loss Sustained 12 Months	Special Including Theft Equipment Breakdown	

**Optional Coverages**

Extended Period of Indemnity 90 days

POLICY NUMBER: 2553009001

**COVERAGES**

**PREMISES NO.: 1**

**BUILDING NO.: 2**

Coverage	Limit of Insurance	Covered Causes Of Loss	Coinsurance	Deductible
Building	\$1,267,000	Special Including Theft Equipment Breakdown		\$1,000

**Optional Coverages**

Extended Recovery

Coverage	Limit of Insurance	Covered Causes Of Loss	Coinsurance	Deductible
Your Business Personal Property	Blanket 1, See Blanket Limits Schedule	Special Including Theft Equipment Breakdown	100%	\$1,000

**Optional Coverages**

Inflation Guard 4%  
Agreed Value  
Contingent Replacement Cost

Coverage	Limit of Insurance	Covered Causes Of Loss	Coinsurance
Business Income (And Extra Expense) Coverage: Other Than Rental Value	Actual Loss Sustained 12 Months	Special Including Theft Equipment Breakdown	

Ordinance or Law - Increased  
Period of Restoration Applies

**Optional Coverages**

Extended Period of Indemnity 90 days

**PREMISES NO.: 2**

**BUILDING NO.: 1**

Coverage	Limit of Insurance	Covered Causes Of Loss	Coinsurance	Deductible
Building	\$571,000	Special Including Theft Equipment Breakdown	80%	\$1,000

**Optional Coverages**

Inflation Guard 4%  
Contingent Replacement Cost

**CP 89 01 10 14**

2553009  
Sentry Select Insurance Company

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07/20/2018

POLICY NUMBER: 2553009001

**COVERAGES**

Coverage	Limit of Insurance	Covered Causes Of Loss	Coinsurance	Deductible
<b>Your Business Personal Property</b>	Blanket 1, See Blanket Limits Schedule	Special Including Theft Equipment Breakdown	100%	\$1,000

**Optional Coverages**

Inflation Guard 4%  
 Agreed Value  
 Contingent Replacement Cost

Coverage	Limit of Insurance	Covered Causes Of Loss	Coinsurance
<b>Business Income (And Extra Expense) Coverage:</b> Other Than Rental Value	Actual Loss Sustained 12 Months	Special Including Theft Equipment Breakdown	

**Optional Coverages**

Extended Period of Indemnity 90 days

**PREMISES NO.: 3**

**BUILDING NO.: 1**

Coverage	Limit of Insurance	Covered Causes Of Loss	Coinsurance	Deductible
<b>Building</b>	\$3,488,000	Special Including Theft Equipment Breakdown		\$1,000

**Optional Coverages**

Inflation Guard 4%  
 Functional Valuation

Coverage	Limit of Insurance	Covered Causes Of Loss	Coinsurance	Deductible
<b>Your Business Personal Property</b>	Blanket 1, See Blanket Limits Schedule	Special Including Theft Equipment Breakdown	100%	\$1,000

**Optional Coverages**

Inflation Guard 4%  
 Agreed Value  
 Contingent Replacement Cost

POLICY NUMBER: 2553009001

**COVERAGES**

Coverage	Limit of Insurance	Covered Causes Of Loss	Coinsurance
<b>Business Income (And Extra Expense) Coverage:</b> Other Than Rental Value	Actual Loss Sustained 12 Months	Special Including Theft Equipment Breakdown	

**Optional Coverages**  
Extended Period of Indemnity 90 days

**PREMISES NO.: 4      BUILDING NO.: 1**

Coverage	Limit of Insurance	Covered Causes Of Loss	Coinsurance	Deductible
<b>Building</b>	\$217,000	Special Including Theft Equipment Breakdown	100%	\$1,000

**Optional Coverages**  
Inflation Guard 4%  
Contingent Replacement Cost

**PREMISES NO.: 5      BUILDING NO.: 1**

Coverage	Limit of Insurance	Covered Causes Of Loss	Coinsurance	Deductible
<b>Building</b>	\$221,000	Special Including Theft Equipment Breakdown	100%	\$1,000

**Optional Coverages**  
Contingent Replacement Cost

Coverage	Limit of Insurance	Covered Causes Of Loss	Coinsurance	Deductible
<b>Your Business Personal Property</b>	\$55,000	Special Including Theft Equipment Breakdown	80%	\$1,000

**Optional Coverages**  
Inflation Guard 4%  
Contingent Replacement Cost

Coverage	Limit of Insurance	Covered Causes Of Loss	Coinsurance
<b>Business Income (And Extra Expense) Coverage:</b> Other Than Rental Value	Actual Loss Sustained 12 Months	Special Including Theft Equipment Breakdown	



POLICY NUMBER: 2553009001

**COVERAGES**

**Optional Coverages**

Extended Period of Indemnity 90 days

**BLANKET LIMITS SCHEDULE**

Blanket No.	Blanket Limit of Insurance
1	\$1,591,000

**COMMERCIAL PROPERTY POLICY OPTIONAL COVERAGES**

**Protective Safeguards**

Premises No.	Building No.	Protective Safeguards Symbols Applicable
1	1	P-1
3	1	P-1

**Enhanced Building And Personal Property Coverage Endorsement**

Direct Loss Blanket Limit \$25,000 Per Building Per Occurrence

**Utility Services - Time Element Endorsement**

Premises No.	Building No.	Causes Of Loss Form Applicable	Earthquake Coverage	Utility Service Limit of Insurance	Described Utility Service(s) Only applies to the services Listed
1	1	Special	No	\$63,814	Communications Supply - Including Overhead Transmission Lines Power Supply - Including Overhead Transmission Lines Water Supply
1	2	Special	No	\$31,907	Communications Supply - Including Overhead Transmission Lines Water Supply Power Supply - Including Overhead Transmission Lines
2	1	Special	No	\$31,907	Power Supply - Including Overhead Transmission Lines Water Supply Communications Supply - Including Overhead Transmission Lines
3	1	Special	No	\$63,814	Communications Supply - Including Overhead Transmission Lines Water Supply Power Supply - Including Overhead Transmission Lines
5	1	Special	No	\$27,563	Communications Supply - Including Overhead Transmission Lines Power Supply - Including Overhead Transmission Lines Water Supply



## ADDITIONAL INTEREST - SUPPLEMENTAL SCHEDULE

The following persons or organizations are included as Additional Interests, but only to the extent provided in the listed endorsement:

Additional Interest	Prem.#	Bldg.#	Coverage	Interest*	Endorsement Number
Bank of America 10 Fountain Plz Buffalo, NY 14202-2228	1	1	Building Coverage	Mort	
Bank of America 10 Fountain Plz Buffalo, NY 14202-2228	1	2	Building Coverage	Mort	
Bank of America 10 Fountain Plz Buffalo, NY 14202-2228	3	1	Building Coverage	Mort	
Fulton Savings Bank Its Successors and/or Assigns Loan Officer Center 41 S 1st St Fulton, NY 13069-1704	5	1	Building Coverage Building Coverage	Mort LP	CP 12 18 10 12

**\*Interest Descriptions**

As used in this Supplemental Schedule: "AI" means Additional Insured; "LP" means Loss Payee; "LLP" means Lenders Loss Payable; "Mort" means Mortgage holder; "CSC" means Contract Of Sale Clause; "BLP" means Building Owners Loss Payable Clause

## BUILDING AND PERSONAL PROPERTY COVERAGE FORM

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

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

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

### A. Coverage

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

#### 1. Covered Property

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

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

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

**(b) Materials, equipment, supplies and temporary structures, on or within 100 feet of the described premises, used for making additions, alterations or repairs to the building or structure.**

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

- (1) Furniture and fixtures;
- (2) Machinery and equipment;
- (3) "Stock";
- (4) All other personal property owned by you and used in your business;
- (5) Labor, materials or services furnished or arranged by you on personal property of others;
- (6) Your use interest as tenant in improvements and betterments. Improvements and betterments are fixtures, alterations, installations or additions:
  - (a) Made a part of the building or structure you occupy but do not own; and

- (b) You acquired or made at your expense but cannot legally remove;
- (7) Leased personal property for which you have a contractual responsibility to insure, unless otherwise provided for under Personal Property Of Others.

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

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

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

**2. Property Not Covered**

Covered Property does not include:

- a. Accounts, bills, currency, food stamps or other evidences of debt, money, notes or securities. Lottery tickets held for sale are not securities;
- b. Animals, unless owned by others and boarded by you, or if owned by you, only as "stock" while inside of buildings;
- c. Automobiles held for sale;
- d. Bridges, roadways, walks, patios or other paved surfaces;
- e. Contraband, or property in the course of illegal transportation or trade;
- f. The cost of excavations, grading, backfilling or filling;
- g. Foundations of buildings, structures, machinery or boilers if their foundations are below:
  - (1) The lowest basement floor; or
  - (2) The surface of the ground, if there is no basement;
- h. Land (including land on which the property is located), water, growing crops or lawns (other than lawns which are part of a vegetated roof);
- i. Personal property while airborne or waterborne;
- j. Bulkheads, pilings, piers, wharves or docks;

- k. Property that is covered under another coverage form of this or any other policy in which it is more specifically described, except for the excess of the amount due (whether you can collect on it or not) from that other insurance;

- l. Retaining walls that are not part of a building;

- m. Underground pipes, flues or drains;

- n. Electronic data, except as provided under the Additional Coverage, Electronic Data. Electronic data means information, facts or computer programs stored as or on, created or used on, or transmitted to or from computer software (including systems and applications software), on hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other repositories of computer software which are used with electronically controlled equipment. The term computer programs, referred to in the foregoing description of electronic data, means a set of related electronic instructions which direct the operations and functions of a computer or device connected to it, which enable the computer or device to receive, process, store, retrieve or send data. This paragraph, n., does not apply to your "stock" of prepackaged software, or to electronic data which is integrated in and operates or controls the building's elevator, lighting, heating, ventilation, air conditioning or security system;

- o. The cost to replace or restore the information on valuable papers and records, including those which exist as electronic data. Valuable papers and records include but are not limited to proprietary information, books of account, deeds, manuscripts, abstracts, drawings and card index systems. Refer to the Coverage Extension for Valuable Papers And Records (Other Than Electronic Data) for limited coverage for valuable papers and records other than those which exist as electronic data;

- p. Vehicles or self-propelled machines (including aircraft or watercraft) that:

- (1) Are licensed for use on public roads; or
- (2) Are operated principally away from the described premises.

This paragraph does not apply to:

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

- (b) Vehicles or self-propelled machines, other than autos, you hold for sale;
  - (c) Rowboats or canoes out of water at the described premises; or
  - (d) Trailers, but only to the extent provided for in the Coverage Extension for Non-owned Detached Trailers; or
- q. The following property while outside of buildings:

- (1) Grain, hay, straw or other crops;
- (2) Fences, radio or television antennas (including satellite dishes) and their lead-in wiring, masts or towers, trees, shrubs or plants (other than trees, shrubs or plants which are "stock" or are part of a vegetated roof), all except as provided in the Coverage Extensions.

### 3. Covered Causes Of Loss

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

### 4. Additional Coverages

#### a. Debris Removal

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

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

**(5) Examples**

The following examples assume that there is no Coinsurance penalty.

**Example 1**

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

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

**Example 2**

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

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

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

**b. Preservation Of Property**

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

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

**c. Fire Department Service Charge**

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

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

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

No Deductible applies to this Additional Coverage.

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

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

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

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

**e. Increased Cost Of Construction**

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

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

(a) The enforcement of or compliance with any ordinance or law which requires demolition, repair, replacement, reconstruction, remodeling or remediation of property due to contamination by "pollutants" or due to the presence, growth, proliferation, spread or any activity of "fungus", wet or dry rot or bacteria; or

(b) Any costs associated with the enforcement of or compliance with an ordinance or law which requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants", "fungus", wet or dry rot or bacteria.

(6) The most we will pay under this Additional Coverage, for each described building insured under this Coverage Form, is \$10,000 or 5% of the Limit of Insurance applicable to that building, whichever is less. If a damaged building is covered under a blanket Limit of Insurance which applies to more than one building or item of property, then the most we will pay under this Additional Coverage, for that damaged building, is the lesser of: \$10,000 or 5% times the value of the damaged building as of the time of loss times the applicable Coinsurance percentage.

The amount payable under this Additional Coverage is additional insurance.

(7) With respect to this Additional Coverage:

(a) We will not pay for the Increased Cost of Construction:

(i) Until the property is actually repaired or replaced at the same or another premises; and

(ii) Unless the repair or replacement is made as soon as reasonably possible after the loss or damage, not to exceed two years. We may extend this period in writing during the two years.

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

**f. Electronic Data**

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

(3) The Covered Causes of Loss applicable to Your Business Personal Property apply to this Additional Coverage, Electronic Data, subject to the following:

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



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

## 5. Coverage Extensions

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

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

### a. Newly Acquired Or Constructed Property

#### (1) Buildings

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

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

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

## (2) Your Business Personal Property

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

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

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

(b) This Extension does not apply to:

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

## (3) Period Of Coverage

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

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

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

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

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

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

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

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

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

**d. Property Off-premises**

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

**e. Outdoor Property**

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

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

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

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

**f. Non-owned Detached Trailers**

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

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

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

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

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

**B. Exclusions And Limitations**

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

**C. Limits Of Insurance**

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

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

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

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

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

**D. Deductible**

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

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

**Example 1**

(This example assumes there is no Coinsurance penalty.)

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

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

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

\$ 60,100
- 250
\$ 59,850

Loss Payable - Building 1

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

Total amount of loss payable:  
\$59,850 + \$80,000 = \$139,850

**Example 2**

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

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

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

**E. Loss Conditions**

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

**1. Abandonment**

There can be no abandonment of any property to us.

**2. Appraisal**

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

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

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

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

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

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

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

#### 4. Loss Payment

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

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

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

#### 5. Recovered Property

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

#### 6. Vacancy

##### a. Description Of Terms

(1) As used in this Vacancy Condition, the term building and the term vacant have the meanings set forth in (1)(a) and (1)(b) below:

(a) When this policy is issued to a tenant, and with respect to that tenant's interest in Covered Property, building means the unit or suite rented or leased to the tenant. Such building is vacant when it does not contain enough business personal property to conduct customary operations.

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

(i) Rented to a lessee or sublessee and used by the lessee or sublessee to conduct its customary operations; and/or

(ii) Used by the building owner to conduct customary operations.

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

##### b. Vacancy Provisions

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

(1) We will not pay for any loss or damage caused by any of the following, even if they are Covered Causes of Loss:

(a) Vandalism;

(b) Sprinkler leakage, unless you have protected the system against freezing;

(c) Building glass breakage;

(d) Water damage;

(e) Theft; or

(f) Attempted theft.

(2) With respect to Covered Causes of Loss other than those listed in b.(1)(a) through b.(1)(f) above, we will reduce the amount we would otherwise pay for the loss or damage by 15%.

#### 7. Valuation

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

a. At actual cash value as of the time of loss or damage, except as provided in b., c., d. and e. below.

b. If the Limit of Insurance for Building satisfies the Additional Condition, Coinsurance, and the cost to repair or replace the damaged building property is \$2,500 or less, we will pay the cost of building repairs or replacement.

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

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

- (1) Awnings or floor coverings;
  - (2) Appliances for refrigerating, ventilating, cooking, dishwashing or laundering; or
  - (3) Outdoor equipment or furniture.
- c. "Stock" you have sold but not delivered at the selling price less discounts and expenses you otherwise would have had.
- d. Glass at the cost of replacement with safety-glazing material if required by law.
- e. Tenants' Improvements and Betterments at:
- (1) Actual cash value of the lost or damaged property if you make repairs promptly.
  - (2) A proportion of your original cost if you do not make repairs promptly. We will determine the proportionate value as follows:
    - (a) Multiply the original cost by the number of days from the loss or damage to the expiration of the lease; and
    - (b) Divide the amount determined in (a) above by the number of days from the installation of improvements to the expiration of the lease.
- If your lease contains a renewal option, the expiration of the renewal option period will replace the expiration of the lease in this procedure.
- (3) Nothing if others pay for repairs or replacement.

## F. Additional Conditions

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

### 1. Coinsurance

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

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

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

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

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

### Example 1 (Underinsurance)

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

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

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

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

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

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

### Example 2 (Adequate Insurance)

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

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

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

**Example 3**

When: The value of the property is:

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

The Coinsurance percentage for it is: 90%

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

The Deductible is: \$ 1,000

The amount of loss is:

Building at Location 2:	\$ 30,000
Personal Property at Location 2:	<u>\$ 20,000</u>
	\$ 50,000

- Step (1):  $\$250,000 \times 90\% = \$225,000$   
(the minimum amount of insurance to meet your Coinsurance requirements and to avoid the penalty shown below)
- Step (2):  $\$180,000 \div \$225,000 = .80$
- Step (3):  $\$50,000 \times .80 = \$40,000$
- Step (4):  $\$40,000 - \$1,000 = \$39,000$
- We will pay no more than \$39,000. The remaining \$11,000 is not covered.

**2. Mortgageholders**

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

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

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

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

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

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

**G. Optional Coverages**

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

**1. Agreed Value**

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



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

**2. Inflation Guard**

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

**Example**

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

**3. Replacement Cost**

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

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

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

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

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

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

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

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

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

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

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

**H. Definitions**

1. "Fungus" means any type or form of fungus, including mold or mildew, and any mycotoxins, spores, scents or by-products produced or released by fungi.
2. "Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.
3. "Stock" means merchandise held in storage or for sale, raw materials and in-process or finished goods, including supplies used in their packing or shipping.

## BUSINESS INCOME (AND EXTRA EXPENSE) COVERAGE FORM

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

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

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

### A. Coverage

#### 1. Business Income

Business Income means the:

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

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

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

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

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

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

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

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

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

#### 2. Extra Expense

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

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

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

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

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

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

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

**4. Additional Limitation - Interruption Of Computer Operations**

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

**5. Additional Coverages**

**a. Civil Authority**

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

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

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

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

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

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

whichever is later.

**b. Alterations And New Buildings**

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

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

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

**c. Extended Business Income**

**(1) Business Income Other Than "Rental Value"**

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

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

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

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

**(2) "Rental Value"**

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

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

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

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

**d. Interruption Of Computer Operations**

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

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

## 6. Coverage Extension

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

### Newly Acquired Locations

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

- (2) 30 days expire after you acquire or begin to construct the property; or
- (3) You report values to us.

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

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

#### B. Limits Of Insurance

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

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

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

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

#### C. Loss Conditions

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

##### 1. Appraisal

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

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

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

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

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

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

- (1) Notify the police if a law may have been broken.
- (2) Give us prompt notice of the direct physical loss or damage. Include a description of the property involved.
- (3) As soon as possible, give us a description of how, when and where the direct physical loss or damage occurred.

(4) Take all reasonable steps to protect the Covered Property from further damage, and keep a record of your expenses necessary to protect the Covered Property, for consideration in the settlement of the claim. This will not increase the Limit of Insurance. However, we will not pay for any subsequent loss or damage resulting from a cause of loss that is not a Covered Cause of Loss. Also, if feasible, set the damaged property aside and in the best possible order for examination.

(5) As often as may be reasonably required, permit us to inspect the property proving the loss or damage and examine your books and records.

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

(6) Send us a signed, sworn proof of loss containing the information we request to investigate the claim. You must do this within 60 days after our request. We will supply you with the necessary forms.

(7) Cooperate with us in the investigation or settlement of the claim.

(8) If you intend to continue your business, you must resume all or part of your "operations" as quickly as possible.

b. We may examine any insured under oath, while not in the presence of any other insured and at such times as may be reasonably required, about any matter relating to this insurance or the claim, including an insured's books and records. In the event of an examination, an insured's answers must be signed.

### 3. Loss Determination

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

### c. Resumption Of Operations

We will reduce the amount of your:

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

### 4. Loss Payment

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

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

### D. Additional Condition

#### COINSURANCE

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

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

1. The Coinsurance percentage shown for Business Income in the Declarations; times
2. The sum of:
  - a. The Net Income (Net Profit or Loss before income taxes), and
  - b. Operating expenses, including payroll expenses,that would have been earned or incurred (had no loss occurred) by your "operations" at the described premises for the 12 months following the inception, or last previous anniversary date, of this policy (whichever is later).



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

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

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

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

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

### Example 1 (Underinsurance)

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

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

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

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

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

### Example 2 (Adequate Insurance)

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

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

This condition does not apply to Extra Expense Coverage.

### E. Optional Coverages

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

#### 1. Maximum Period Of Indemnity

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

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

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

**2. Monthly Limit Of Indemnity**

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

**Example**

When: The Limit of Insurance is: \$ 120,000  
 The fraction shown in the Declarations for this Optional Coverage is: 1/4  
 The most we will pay for loss in each period of 30 consecutive days is: \$ 30,000  
 (\$120,000 x 1/4 = \$30,000)  
 If, in this example, the actual amount of loss is:

Days 1-30:	\$ 40,000
Days 31-60:	\$ 20,000
Days 61-90:	<u>\$ 30,000</u>
	\$ 90,000
We will pay:	
Days 1-30:	\$ 30,000
Days 31-60:	\$ 20,000
Days 61-90:	<u>\$ 30,000</u>
	\$ 80,000

The remaining \$10,000 is not covered.

**3. Business Income Agreed Value**

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

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

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

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

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

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

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

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

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

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

**Example**

When: The Limit of Insurance is: \$100,000  
 The Agreed Value is: \$200,000  
 The amount of loss is: \$ 80,000  
 Step (1): \$100,000 ÷ \$200,000 = .50  
 Step (2): .50 x \$80,000 = \$40,000

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

**4. Extended Period Of Indemnity**

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

## F. Definitions

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

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

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

2. "Operations" means:
  - a. Your business activities occurring at the described premises; and
  - b. The tenantability of the described premises, if coverage for Business Income including "Rental Value" or "Rental Value" applies.
3. "Period of restoration" means the period of time that:
  - a. Begins:
    - (1) 72 hours after the time of direct physical loss or damage for Business Income Coverage; or
    - (2) Immediately after the time of direct physical loss or damage for Extra Expense Coverage; caused by or resulting from any Covered Cause of Loss at the described premises; and
  - b. Ends on the earlier of:
    - (1) The date when the property at the described premises should be repaired, rebuilt or replaced with reasonable speed and similar quality; or
    - (2) The date when business is resumed at a new permanent location.

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

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

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

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

4. "Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.
5. "Rental Value" means Business Income that consists of:
  - a. Net Income (Net Profit or Loss before income taxes) that would have been earned or incurred as rental income from tenant occupancy of the premises described in the Declarations as furnished and equipped by you, including fair rental value of any portion of the described premises which is occupied by you; and
  - b. Continuing normal operating expenses incurred in connection with that premises, including:
    - (1) Payroll; and
    - (2) The amount of charges which are the legal obligation of the tenant(s) but would otherwise be your obligations.
6. "Suspension" means:
  - a. The slowdown or cessation of your business activities; or
  - b. That a part or all of the described premises is rendered untenable, if coverage for Business Income including "Rental Value" or "Rental Value" applies.

## COMMERCIAL PROPERTY CONDITIONS

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

### A. CONCEALMENT, MISREPRESENTATION OR FRAUD

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

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

### B. CONTROL OF PROPERTY

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

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

### C. INSURANCE UNDER TWO OR MORE COVERAGES

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

### D. LEGAL ACTION AGAINST US

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

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

### E. LIBERALIZATION

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

### F. NO BENEFIT TO BAILEE

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

### G. OTHER INSURANCE

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

### H. POLICY PERIOD, COVERAGE TERRITORY

Under this Coverage Part:

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

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

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

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

This will not restrict your insurance.

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

## NEW YORK CHANGES

This endorsement modifies insurance provided under the following:

### COMMERCIAL PROPERTY COVERAGE PART

**A.** If this policy covers the interest of the owner of any of the following types of buildings or structures:

1. Residential, except owner-occupied single-family or owner-occupied two-family buildings or structures;
2. Commercial; or
3. Industrial;

the following provision is added:

Before payment to you for loss or damage to the above buildings or structures caused by or resulting from fire, we will:

- (1) Deduct from your payment the claim of any tax district that issues a certificate of lien in accordance with the Insurance Law; and
- (2) Pay directly to the tax district the amount of the claim.

When we pay that claim, we will have no obligation to pay the amount of that claim to you. Our payment of that claim within 30 days of our receipt of the certificate of lien will be a conclusive presumption that the claim was valid and properly paid.

**B.** The following is added with respect to any Condition of this Coverage Part which requires you to notify us of loss or to notify us of an accident, claim or "suit":

1. Notice given by or on your behalf; or
2. Written notice by or on behalf of any claimant; to any of our agents in New York State, which adequately identifies you, will be the same as notice to us.

### **C. Legal Action Against Us**

1. The **Legal Action Against Us** Loss Condition in the Legal Liability Coverage Form is replaced by the following:

No person or organization has a right under this Coverage Form:

- a. To join us as a party or otherwise bring us into a "suit" asking for damages from you; or
- b. To sue us on this Coverage Form unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against you; but we will not be liable for damages that are not payable under the terms of this Coverage Form or that are in excess of the Limit of Insurance. An agreed settlement means a settlement and release of liability signed by us, you and the claimant or the claimant's legal representative.

2. Paragraph **b.** of Additional Condition **H.5. Legal Action Against Us** in the Mortgageholders Errors And Omissions Coverage Form is replaced by the following:

**b.** No person or organization has a right under Coverages **C** and **D**:

- (1) To join us as a party or otherwise bring us into a "suit" asking for damages from you; or
- (2) To sue us on this Coverage Form unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against you; but we will not be liable for damages that are not payable under the terms of this Coverage Form or that are in excess of the Limit of Insurance. An agreed settlement means a settlement and release of liability signed by us, you and the claimant or the claimant's legal representative.

- D. The Examination Of Your Books And Records**  
Common Policy Condition is replaced by the following:

**Examination Of Your Books And Records**

1. Except as provided in 2. below, we may examine and audit your books and records as they relate to this policy at any time during the policy period and up to three years afterward.
2. We will conduct an audit to determine the final premium due or to be refunded, for coverage for which an advance or deposit premium was paid based on estimated exposure. But the audit may be waived if:
  - a. The total annual premium attributable to the auditable exposure base is not reasonably expected to exceed \$1,500; or
  - b. The policy requires notification to the insurer with the specific identification of any additional exposure units (e.g., buildings) for which coverage is requested.

If the audit is not waived, it must be completed within 180 days after:

- a. The expiration date of the policy; or
- b. The anniversary date, if this is a continuous policy or a policy written for a term longer than one year.

- E.** The following sentence is deleted from Paragraph **A.** in the Legal Liability Coverage Form:

We will have the right and duty to defend any "suit" seeking those damages.

The following sentence is added to Paragraph **A.** in the Legal Liability Coverage Form:

We will have the right and duty to defend any "suit" seeking those damages even if the allegations of the "suit" are groundless, false or fraudulent.

- F.** The following sentence is deleted from Paragraph **A.3.** in the Mortgageholders Errors And Omissions Coverage Form:

We will have the right and duty to defend any "suit" seeking those damages.

The following is added to Paragraph **A.3.** in the Mortgageholders Errors And Omissions Coverage Form:

We will have the right and duty to defend any "suit" seeking those damages even if the allegations of the "suit" are groundless, false or fraudulent.

- G.** The following Condition is added to Paragraph **D.** of the Legal Liability Coverage Form and Paragraph **F.4.** of the Mortgageholders Errors And Omissions Coverage Form:

**Transfer Of Duties When A Limit Of Insurance Is Used Up**

1. If we conclude that, based on claims or "suits" which have been reported to us and to which this insurance may apply, a Limit of Insurance is likely to be used up in the payment of judgments or settlements, we will notify the first Named Insured, in writing, to that effect.
2. When the Limit of Insurance has actually been used up in the payment of judgments or settlements:
  - a. We will notify the first Named Insured, in writing, as soon as practicable, that:
    - (1) Such a limit has actually been used up; and
    - (2) Our duty to defend "suits" seeking damages subject to that limit has also ended.
  - b. We will initiate, and cooperate in, the transfer of control, to any appropriate insured, of all claims and "suits" seeking damages which are subject to that limit and which are reported to us before that limit is used up. That insured must cooperate in the transfer of control of said claims and "suits".

We agree to take such steps, as we deem appropriate, to avoid a default in, or continue the defense of, such "suits" until such transfer is completed, provided the appropriate insured is cooperating in completing such transfer.

We will take no action whatsoever with respect to any claim or "suit" seeking damages that would have been subject to that limit, had it not been used up, if the claim or "suit" is reported to us after that limit of insurance has been used up.

c. The first Named Insured, and any other insured involved in a "suit" seeking damages subject to that limit, must arrange for the defense of such "suit" within such time period as agreed to between the appropriate insured and us. Absent any such agreement, arrangements for the defense of such "suit" must be made as soon as practicable.

3. The first Named Insured will reimburse us for expenses we incur in taking those steps we deem appropriate in accordance with Paragraph 2.b. above.

The duty of the first Named Insured to reimburse us will begin on:

a. The date on which the applicable limit of insurance is used up, if we sent notice in accordance with Paragraph 1. above; or

b. The date on which we sent notice in accordance with Paragraph 2.a. above, if we did not send notice in accordance with Paragraph 1. above.

4. The exhaustion of any limit of insurance by the payments of judgments or settlements, and the resulting end of our duty to defend, will not be affected by our failure to comply with any of the provisions of this Condition.

H. Except as provided in I. below, the **Appraisal** Condition is replaced by the following:

#### **Appraisal**

1. If we and you disagree on the value of the property, the extent of the loss or damage or the amount of the loss or damage, either may make written demand for an appraisal of the loss. In this event, each party will select a competent and impartial appraiser and notify the other of the appraiser selected within 20 days of such demand.

2. If we or you fail to proceed with the appraisal of the covered loss after a written demand is made by either party, then either party may apply to a court having jurisdiction for an order directing the party that failed to proceed with the appraisal to comply with the demand for the appraisal of the loss. In this event, each party will select a competent and impartial appraiser and notify the other of the appraiser selected within 20 days of such order.

3. The two appraisers will select an umpire. If they cannot agree within 15 days upon such umpire, either may request that selection be made by a judge of a court having jurisdiction. The appraisers will state separately the value of the property, the extent of the loss or damage and the amount of the loss or damage. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding.

4. Each party will:

a. Pay its chosen appraiser; and

b. Bear the other expenses of the appraisal and umpire equally.

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

I. The **Appraisal** Condition in:

1. Business Income (And Extra Expense) Coverage Form **CP 00 30**; and

2. Business Income (Without Extra Expense) Coverage Form **CP 00 32**;

is replaced by the following:

#### **Appraisal**

1. If we and you disagree on the amount of Net Income and operating expense, the extent of the loss or damage or the amount of the loss or damage, either may make written demand for an appraisal of the loss. In this event, each party will select a competent and impartial appraiser and notify the other of the appraiser selected within 20 days of such demand.

2. If we or you fail to proceed with the appraisal of the covered loss after a written demand is made by either party, then either party may apply to a court having jurisdiction for an order directing the party that failed to proceed with the appraisal to comply with the demand for the appraisal of the loss. In this event, each party will select a competent and impartial appraiser and notify the other of the appraiser selected within 20 days of such order.

3. The two appraisers will select an umpire. If they cannot agree within 15 days upon such umpire, either may request that selection be made by a judge of a court having jurisdiction. The appraisers will state separately the amount of Net Income and operating expense, the extent of the loss or damage and the amount of the loss or damage. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding.



4. Each party will:
- a. Pay its chosen appraiser; and
  - b. Bear the other expenses of the appraisal and umpire equally.

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

- J. The following provision is added to the Commercial Property Coverage Part:

**Estimation Of Claims**

Upon request, we will furnish you or your representative with a written estimate of damages to real property specifying all deductions, provided such an estimate has been prepared by us or has been prepared on our behalf for our own purposes. This estimate will be provided within 30 days after your request or its preparation, whichever is later.

- K. The following provision is added to the Legal Liability Coverage Form and supersedes any provision to the contrary:

Failure to give prompt notice to us, as required under this Coverage Form, shall not invalidate any claim made by you or any other claimant, unless the failure to provide such timely notice has prejudiced us. However, no claim made by you or any other claimant will be invalidated if it shall be shown not to have been reasonably possible to give such timely notice and that notice was given as soon as was reasonably possible thereafter.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## NEW YORK CHANGES - FUNGUS, WET ROT AND DRY ROT

This endorsement modifies insurance provided under the following:

### COMMERCIAL PROPERTY COVERAGE PART

- A.** In the Causes Of Loss - Basic Form, Causes Of Loss - Broad Form, Causes Of Loss - Special Form, and Mortgageholders Errors And Omissions Coverage Form, the exclusion titled "Fungus", Wet Rot, Dry Rot And Bacteria and the Additional Coverage - Limited Coverage For "Fungus", Wet Rot, Dry Rot And Bacteria are deleted. Under these forms, the following exclusion is added:

We will not pay for loss or damage caused by or resulting from "fungus", wet rot or dry rot. However, this exclusion does not apply when "fungus", wet rot or dry rot results from a Covered Cause of Loss.

- B.** In the Building And Personal Property Coverage Form and the Condominium Association Coverage Form, under the Additional Coverage - Increased Cost Of Construction, Paragraph **A.4.e.(5)** is replaced by the following:

Under this Additional Coverage, we will not pay for:

1. The enforcement of or compliance with any ordinance or law which requires demolition, repair, replacement, reconstruction, remodeling or remediation of property due to contamination by "pollutants"; or
2. Any costs associated with the enforcement of or compliance with an ordinance or law which requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants".

- C.** Paragraph **C.** of Ordinance Or Law Coverage Endorsement **CP 04 05** is replaced by the following:

We will not pay under Coverage **A**, **B** or **C** of this endorsement for:

1. Enforcement of or compliance with any ordinance or law which requires the demolition, repair, replacement, reconstruction, remodeling or remediation of property due to contamination by "pollutants"; or

2. The costs associated with the enforcement of or compliance with any ordinance or law which requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants".

- D.** Paragraph **A.** of Ordinance Or Law - Increased Period Of Restoration Endorsement **CP 15 31** is replaced by the following:

If a Covered Cause of Loss occurs to property at the premises described in the Declarations, coverage is extended to include the amount of actual and necessary loss you sustain during the increased period of "suspension" of "operations" caused by or resulting from a requirement to comply with any ordinance or law that:

1. Regulates the construction or repair of any property;
2. Requires the tearing down of parts of any property not damaged by a Covered Cause of Loss; and
3. Is in force at the time of loss.

However, coverage is not extended under this endorsement to include loss caused by or resulting from the enforcement of or compliance with any ordinance or law which requires:

1. The demolition, repair, replacement, reconstruction, remodeling or remediation of property due to contamination by "pollutants"; or
2. Any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants".

E. Paragraph E.3. of Functional Building Valuation Endorsement **CP 04 38** is replaced by the following:

We will not pay under this endorsement for:

1. Enforcement of or compliance with any ordinance or law which requires the demolition, repair, replacement, reconstruction, remodeling or remediation of property due to contamination by "pollutants"; or
2. The costs associated with the enforcement of or compliance with any ordinance or law which requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants".

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

## **NEW YORK - EXCLUSION OF LOSS DUE TO VIRUS OR BACTERIA**

This endorsement modifies insurance provided under the following:

### COMMERCIAL PROPERTY COVERAGE PART

- A.** The exclusion set forth in Paragraph **B.**, applies to all coverage under all forms and endorsements that comprise this Coverage Part, including but not limited to forms or endorsements that cover property damage to buildings or personal property and forms or endorsements that cover business income, extra expense or action of civil authority.
- B.** We will not pay for loss or damage caused by or resulting from any virus, bacterium or other microorganism that induces or is capable of inducing physical distress, illness or disease.

However, this exclusion does not apply to loss or damage caused by or resulting from "fungus", wet rot or dry rot. Such loss or damage is addressed in a separate exclusion in this Coverage Part.

- C.** The terms of the exclusion in Paragraph **B.**, or the inapplicability of this exclusion to a particular loss, do not serve to create coverage for any loss that would otherwise be excluded under this Coverage Part.

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

## PROTECTIVE SAFEGUARDS

This endorsement modifies insurance provided under the following:

COMMERCIAL PROPERTY COVERAGE PART  
STANDARD PROPERTY POLICY

### SCHEDULE

Premises Number	Building Number	Protective Safeguards Symbols Applicable
Describe Any "P-9":		
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.		

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

**Protective Safeguards**

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

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

Automatic Sprinkler System means:

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

(2) Hydrants, standpipes and outlets.

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

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

**"P-3" Security Service**, with a recording system or watch clock, making hourly rounds covering the entire building, when the premises are not in actual operation.

**"P-4" Service Contract** with a privately owned fire department providing fire protection service to the described premises.

**"P-5" Automatic Commercial Cooking Exhaust And Extinguishing System** installed on cooking appliances and having the following components:

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

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

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

Causes Of Loss - Basic Form  
Causes Of Loss - Broad Form  
Causes Of Loss - Special Form  
Mortgageholders Errors And Omissions Coverage Form  
Standard Property Policy

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

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

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

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

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## FUNCTIONAL BUILDING VALUATION

This endorsement modifies insurance provided under the following:

BUILDING AND PERSONAL PROPERTY COVERAGE FORM  
CONDOMINIUM ASSOCIATION COVERAGE FORM

### SCHEDULE

Premises Number	Building Number	Limit of Insurance
		\$
		\$
		\$

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

- A. The Limit Of Insurance shown in the above Schedule is the only limit of insurance applicable to the building described in the above Schedule.
- B. The **Coinsurance** Additional Condition does not apply to the building described in the above Schedule.
- C. With respect to the building described in the above Schedule, the following replaces Items **a.** and **b.** of the **Valuation** Loss Condition:
  - 1. If you contract for repair or replacement of the loss or damage to restore the building shown in the above Schedule for the same occupancy and use, within 180 days of the damage unless we and you otherwise agree, we will pay the smallest of the following, **a.**, **b.**, **c.** or **d.**:
    - a. The Limit Of Insurance shown in the above Schedule as applicable to the damaged building;
    - b. In the event of a total loss, the cost to replace the damaged building on the same site (or on a different site if relocation is required by an ordinance or law as described in Paragraph **E.2.a.** below), with a less costly building that is functionally equivalent to the damaged building;
    - c. In the event of partial loss:
      - (1) The cost to repair or replace the damaged portion of the building with less costly material, if available, in the architectural style that existed before the loss or damage occurred; and
      - (2) The amount you actually spend to demolish and clear the site of undamaged parts of the building as described in Paragraph **E.2.b.** below.
    - d. The amount you actually spend:
      - (1) That is necessary to repair or replace the lost or damaged building with less costly material if available; and
      - (2) To demolish and clear the site of undamaged parts of the building as described in Paragraph **E.2.b.** below.
  - 2. If you do not make a claim under Paragraph 1. above, we will pay the smallest of the following, **a.**, **b.** or **c.**:
    - a. The Limit Of Insurance shown in the above Schedule as applicable to the damaged building;
    - b. The "market value" of the damaged building, exclusive of the land value, at the time of loss; or

- c. The amount it would cost to repair or replace the damaged building on the same site, with less costly material in the architectural style that existed before the damage occurred, less allowance for physical deterioration and depreciation.

#### D. Other Insurance

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

#### E. Ordinance Or Law Coverage

##### 1. Application Of Coverage

The Ordinance Or Law Coverage provided under this endorsement applies to the building described in the above Schedule only if both **E.1.a.** and **E.1.b.** are satisfied and are then subject to the qualifications set forth in **E.1.c.**

##### a. The ordinance or law:

- (1) Regulates the demolition, construction or repair of buildings, or establishes zoning or land use requirements at the described premises; and
- (2) Is in force at the time of loss.

But Ordinance Or Law Coverage under this endorsement applies only in response to the minimum requirements of the ordinance or law. Losses and costs incurred in complying with recommended actions or standards that exceed actual requirements are not covered under this endorsement.

- b.(1) The building sustains direct physical damage that is covered under this policy and as a result of such damage, you are required to comply with the ordinance or law; or

- (2) The building sustains both direct physical damage that is covered under this policy and direct physical damage that is not covered under this policy, and as a result of the building damage in its entirety, you are required to comply with the ordinance or law.

- (3) But if the building sustains direct physical damage that is not covered under this policy, and such damage is the subject of the ordinance or law, then there is no Ordinance Or Law Coverage under this endorsement even if the building has also sustained covered direct physical damage.

- c. In the situation described in **E.1.b.(2)** above, we will not pay the full amount of loss otherwise payable under the terms of Coverages **A**, **B** and/or **C** of this endorsement. Instead, we will pay a proportion of such loss, meaning the proportion that the covered direct physical damage bears to the total direct physical damage.

(Section **G.** of this endorsement provides an example of this procedure.)

However, if the covered direct physical damage alone would have resulted in a requirement to comply with the ordinance or law, then we will pay the full amount of loss otherwise payable under the terms of Coverages **A**, **B** and/or **C** of this endorsement.

##### 2. Description Of Coverage

The following coverage(s) applies to the building described in the above Schedule, subject to Paragraph **C.** and all other provisions of this endorsement.

This is not additional insurance; losses covered under Coverages **A**, **B** and **C** are included within the Limit Of Insurance shown in the above Schedule as applicable to the building.

##### a. Coverage A - Coverage For Loss To The Undamaged Portion Of The Building

With respect to the building that has sustained covered direct physical damage, we will pay under Coverage A for the loss in value of the undamaged portion of the building as a consequence of a requirement to comply with an ordinance or law that requires the demolition of undamaged parts of the same building.



**b. Coverage B - Demolition Cost Coverage**

With respect to the building that has sustained covered direct physical damage, we will pay the cost to demolish and clear the site of undamaged parts of the same building, as a consequence of a requirement to comply with an ordinance or law that requires demolition of such undamaged property.

**c. Coverage C - Cost To Reconstruct In Compliance With An Ordinance Or Law**

With respect to the building that has sustained covered direct physical damage, the cost to repair, reconstruct or remodel the damaged and/or undamaged portions of the building (whether or not demolition is required) will include costs that are a consequence of a requirement to comply with the minimum standards of the ordinance or law. If the building is repaired or rebuilt, it must be intended for similar occupancy as the current building, unless otherwise required by zoning or land use ordinance or law.

However, we will not pay for the cost to reconstruct in compliance with an ordinance or law if the building is not repaired or replaced.

**3. We will not pay under this endorsement for:**

- a. Enforcement of or compliance with any ordinance or law which requires the demolition, repair, replacement, reconstruction, remodeling or remediation of property due to contamination by "pollutants" or due to the presence, growth, proliferation, spread or any activity of "fungus", wet or dry rot or bacteria; or
- b. The costs associated with the enforcement of or compliance with any ordinance or law which requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants", "fungus", wet or dry rot or bacteria.

**4. Under this endorsement we will not pay for loss due to any ordinance or law that:**

- a. You were required to comply with before the loss, even if the building was undamaged; and
- b. You failed to comply with.

**F. The following definition is added:**

"Market value", as used in this endorsement, means the price which the property might be expected to realize if offered for sale in a fair market.

**G. Example of proportionate loss payment for Ordinance Or Law Coverage losses (procedure as set forth in Section E.1.c. of this endorsement)**

Assume:

- Wind is a Covered Cause Of Loss; Flood is an excluded Cause Of Loss
- The building sustains a partial loss
- Total direct physical damage to building: \$100,000
- Portion of direct physical damage that is covered (caused by wind): \$30,000
- Portion of direct physical damage that is not covered (caused by flood): \$70,000
- The cost to repair the building includes \$60,000 attributable to enforcement of an ordinance (Coverage C)

**Step 1:**

Determine the proportion that the covered direct physical damage bears to the total direct physical damage.

$$\$30,000 \div \$100,000 = .30$$

**Step 2:**

Apply that proportion to the Ordinance or Law loss.

$$\$60,000 \times .30 = \$18,000$$

In this example, the most we will pay under this endorsement for the Coverage C loss is \$18,000, subject to the applicable Limit of Insurance and any other applicable provisions.

**NOTE:** The same procedure applies to losses under Coverages A and B of this endorsement.

## CAUSES OF LOSS - SPECIAL FORM

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

### A. Covered Causes Of Loss

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

### B. Exclusions

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

#### a. Ordinance Or Law

The enforcement of or compliance with any ordinance or law:

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

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

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

#### b. Earth Movement

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

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

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

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

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

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

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

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

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

**c. Governmental Action**

Seizure or destruction of property by order of governmental authority.

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

**d. Nuclear Hazard**

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

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

**e. Utility Services**

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

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

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

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

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

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

**f. War And Military Action**

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or

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

**g. Water**

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

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

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

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

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

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

This exclusion does not apply:

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

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

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

- a. Artificially generated electrical, magnetic or electromagnetic energy that damages, disturbs, disrupts or otherwise interferes with any:
  - (1) Electrical or electronic wire, device, appliance, system or network; or
  - (2) Device, appliance, system or network utilizing cellular or satellite technology.

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

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

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

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

- (5) Nesting or infestation, or discharge or release of waste products or secretions, by insects, birds, rodents or other animals.
- (6) Mechanical breakdown, including rupture or bursting caused by centrifugal force. But if mechanical breakdown results in elevator collision, we will pay for the loss or damage caused by that elevator collision.
- (7) The following causes of loss to personal property:
  - (a) Dampness or dryness of atmosphere;
  - (b) Changes in or extremes of temperature; or
  - (c) Marring or scratching.

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

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

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

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

This exclusion:

- (1) Applies whether or not an act occurs during your normal hours of operation;
  - (2) Does not apply to acts of destruction by your employees (including temporary employees and leased workers) or authorized representatives; but theft by your employees (including temporary employees and leased workers) or authorized representatives is not covered.
- i. Voluntary parting with any property by you or anyone else to whom you have entrusted the property if induced to do so by any fraudulent scheme, trick, device or false pretense.
- j. Rain, snow, ice or sleet to personal property in the open.
- k. Collapse, including any of the following conditions of property or any part of the property:
- (1) An abrupt falling down or caving in;
  - (2) Loss of structural integrity, including separation of parts of the property or property in danger of falling down or caving in; or
  - (3) Any cracking, bulging, sagging, bending, leaning, settling, shrinkage or expansion as such condition relates to (1) or (2) above.

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

This exclusion, k., does not apply:

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

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

- (i) The "specified causes of loss";
- (ii) Breakage of building glass;
- (iii) Weight of rain that collects on a roof; or
- (iv) Weight of people or personal property.

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

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

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

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

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

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

c. Faulty, inadequate or defective:

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

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

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

(4) Maintenance;

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

#### 4. Special Exclusions

The following provisions apply only to the specified Coverage Forms:

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

We will not pay for:

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

This exclusion does not apply to Extra Expense.

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

- (5) Any other consequential loss.

##### b. Leasehold Interest Coverage Form

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

##### c. Legal Liability Coverage Form

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

##### (a) Contractual Liability

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

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

##### (b) Nuclear Hazard

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

## 5. Additional Exclusion

The following provisions apply only to the specified property:

### Loss Or Damage To Products

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

## C. Limitations

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

1. We will not pay for loss of or damage to property, as described and limited in this section. In addition, we will not pay for any loss that is a consequence of loss or damage as described and limited in this section.
  - a. Steam boilers, steam pipes, steam engines or steam turbines caused by or resulting from any condition or event inside such equipment. But we will pay for loss of or damage to such equipment caused by or resulting from an explosion of gases or fuel within the furnace of any fired vessel or within the flues or passages through which the gases of combustion pass.
  - b. Hot water boilers or other water heating equipment caused by or resulting from any condition or event inside such boilers or equipment, other than an explosion.
  - c. The interior of any building or structure, or to personal property in the building or structure, caused by or resulting from rain, snow, sleet, ice, sand or dust, whether driven by wind or not, unless:
    - (1) The building or structure first sustains damage by a Covered Cause of Loss to its roof or walls through which the rain, snow, sleet, ice, sand or dust enters; or
    - (2) The loss or damage is caused by or results from thawing of snow, sleet or ice on the building or structure.
- d. Building materials and supplies not attached as part of the building or structure, caused by or resulting from theft. However, this limitation does not apply to:
  - (1) Building materials and supplies held for sale by you, unless they are insured under the Builders Risk Coverage Form; or
  - (2) Business Income Coverage or Extra Expense Coverage.
- e. Property that is missing, where the only evidence of the loss or damage is a shortage disclosed on taking inventory, or other instances where there is no physical evidence to show what happened to the property.
- f. Property that has been transferred to a person or to a place outside the described premises on the basis of unauthorized instructions.
- g. Lawns, trees, shrubs or plants which are part of a vegetated roof, caused by or resulting from:
  - (1) Dampness or dryness of atmosphere or of soil supporting the vegetation;
  - (2) Changes in or extremes of temperature;
  - (3) Disease;
  - (4) Frost or hail; or
  - (5) Rain, snow, ice or sleet.
2. We will not pay for loss of or damage to the following types of property unless caused by the "specified causes of loss" or building glass breakage:
  - a. Animals, and then only if they are killed or their destruction is made necessary.
  - b. Fragile articles such as statuary, marbles, chinaware and porcelains, if broken. This restriction does not apply to:
    - (1) Glass; or
    - (2) Containers of property held for sale.
  - c. Builders' machinery, tools and equipment owned by you or entrusted to you, provided such property is Covered Property. However, this limitation does not apply:
    - (1) If the property is located on or within 100 feet of the described premises, unless the premises is insured under the Builders Risk Coverage Form; or
    - (2) To Business Income Coverage or to Extra Expense Coverage.

3. The special limit shown for each category, **a.** through **d.**, is the total limit for loss of or damage to all property in that category. The special limit applies to any one occurrence of theft, regardless of the types or number of articles that are lost or damaged in that occurrence. The special limits are (unless a higher limit is shown in the Declarations):
  - a. \$2,500 for furs, fur garments and garments trimmed with fur.
  - b. \$2,500 for jewelry, watches, watch movements, jewels, pearls, precious and semi-precious stones, bullion, gold, silver, platinum and other precious alloys or metals. This limit does not apply to jewelry and watches worth \$100 or less per item.
  - c. \$2,500 for patterns, dies, molds and forms.
  - d. \$250 for stamps, tickets, including lottery tickets held for sale, and letters of credit.

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

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

4. We will not pay the cost to repair any defect to a system or appliance from which water, other liquid, powder or molten material escapes. But we will pay the cost to repair or replace damaged parts of fire-extinguishing equipment if the damage:
  - a. Results in discharge of any substance from an automatic fire protection system; or
  - b. Is directly caused by freezing.

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

#### **D. Additional Coverage - Collapse**

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

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

2. We will pay for direct physical loss or damage to Covered Property, caused by abrupt collapse of a building or any part of a building that is insured under this Coverage Form or that contains Covered Property insured under this Coverage Form, if such collapse is caused by one or more of the following:
  - a. Building decay that is hidden from view, unless the presence of such decay is known to an insured prior to collapse;
  - b. Insect or vermin damage that is hidden from view, unless the presence of such damage is known to an insured prior to collapse;
  - c. Use of defective material or methods in construction, remodeling or renovation if the abrupt collapse occurs during the course of the construction, remodeling or renovation.
  - d. Use of defective material or methods in construction, remodeling or renovation if the abrupt collapse occurs after the construction, remodeling or renovation is complete, but only if the collapse is caused in part by:
    - (1) A cause of loss listed in **2.a.** or **2.b.**;
    - (2) One or more of the "specified causes of loss";
    - (3) Breakage of building glass;
    - (4) Weight of people or personal property; or
    - (5) Weight of rain that collects on a roof.
3. This **Additional Coverage - Collapse** does **not** apply to:
  - a. A building or any part of a building that is in danger of falling down or caving in;
  - b. A part of a building that is standing, even if it has separated from another part of the building; or
  - c. A building that is standing or any part of a building that is standing, even if it shows evidence of cracking, bulging, sagging, bending, leaning, settling, shrinkage or expansion.
4. With respect to the following property:
  - a. Outdoor radio or television antennas (including satellite dishes) and their lead-in wiring, masts or towers;



- b. Awnings, gutters and downspouts;
- c. Yard fixtures;
- d. Outdoor swimming pools;
- e. Fences;
- f. Piers, wharves and docks;
- g. Beach or diving platforms or appurtenances;
- h. Retaining walls; and
- i. Walks, roadways and other paved surfaces;

if an abrupt collapse is caused by a cause of loss listed in 2.a. through 2.d., we will pay for loss or damage to that property only if:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## F. Additional Coverage Extensions

### 1. Property In Transit

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

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

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

### 2. Water Damage, Other Liquids, Powder Or Molten Material Damage

If loss or damage caused by or resulting from covered water or other liquid, powder or molten material damage loss occurs, we will also pay the cost to tear out and replace any part of the building or structure to repair damage to the system or appliance from which the water or other substance escapes. This Coverage Extension does not increase the Limit of Insurance.

### 3. Glass

- a. We will pay for expenses incurred to put up temporary plates or board up openings if repair or replacement of damaged glass is delayed.

- b. We will pay for expenses incurred to remove or replace obstructions when repairing or replacing glass that is part of a building. This does not include removing or replacing window displays.

This Coverage Extension **F.3.** does not increase the Limit of Insurance.

**G. Definitions**

- 1. "Fungus" means any type or form of fungus, including mold or mildew, and any mycotoxins, spores, scents or by-products produced or released by fungi.
- 2. "Specified causes of loss" means the following: fire; lightning; explosion; windstorm or hail; smoke; aircraft or vehicles; riot or civil commotion; vandalism; leakage from fire-extinguishing equipment; sinkhole collapse; volcanic action; falling objects; weight of snow, ice or sleet; water damage.
  - a. Sinkhole collapse means the sudden sinking or collapse of land into underground empty spaces created by the action of water on limestone or dolomite. This cause of loss does not include:
    - (1) The cost of filling sinkholes; or
    - (2) Sinking or collapse of land into man-made underground cavities.
  - b. Falling objects does not include loss or damage to:
    - (1) Personal property in the open; or
    - (2) The interior of a building or structure, or property inside a building or structure, unless the roof or an outside wall of the building or structure is first damaged by a falling object.

- c. Water damage means:

- (1) Accidental discharge or leakage of water or steam as the direct result of the breaking apart or cracking of a plumbing, heating, air conditioning or other system or appliance (other than a sump system including its related equipment and parts), that is located on the described premises and contains water or steam; and
- (2) Accidental discharge or leakage of water or waterborne material as the direct result of the breaking apart or cracking of a water or sewer pipe that is located off the described premises and is part of a municipal potable water supply system or municipal sanitary sewer system, if the breakage or cracking is caused by wear and tear.

But water damage does not include loss or damage otherwise excluded under the terms of the Water Exclusion. Therefore, for example, there is no coverage under this policy in the situation in which discharge or leakage of water results from the breaking apart or cracking of a pipe which was caused by or related to weather-induced flooding, even if wear and tear contributed to the breakage or cracking. As another example, and also in accordance with the terms of the Water Exclusion, there is no coverage for loss or damage caused by or related to weather-induced flooding which follows or is exacerbated by pipe breakage or cracking attributable to wear and tear.

To the extent that accidental discharge or leakage of water falls within the criteria set forth in **c.(1)** or **c.(2)** of this definition of "specified causes of loss," such water is not subject to the provisions of the Water Exclusion which preclude coverage for surface water or water under the surface of the ground.

POLICY NUMBER:

COMMERCIAL PROPERTY  
CP 12 18 10 12

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

## LOSS PAYABLE PROVISIONS

This endorsement modifies insurance provided under the following:

- BUILDERS' RISK COVERAGE FORM
- BUILDING AND PERSONAL PROPERTY COVERAGE FORM
- CONDOMINIUM ASSOCIATION COVERAGE FORM
- CONDOMINIUM COMMERCIAL UNIT-OWNERS COVERAGE FORM
- STANDARD PROPERTY POLICY

### SCHEDULE

<b>Location Number:</b>	<b>Building Number:</b>	<b>Applicable Clause (Enter C.1., C.2., C.3., or C.4.):</b>
<b>Description Of Property:</b>		
<b>Loss Payee Name:</b>		
<b>Loss Payee Address:</b>		
<b>Location Number:</b>	<b>Building Number:</b>	<b>Applicable Clause (Enter C.1., C.2., C.3., or C.4.):</b>
<b>Description Of Property:</b>		
<b>Loss Payee Name:</b>		
<b>Loss Payee Address:</b>		
<b>Location Number:</b>	<b>Building Number:</b>	<b>Applicable Clause (Enter C.1., C.2., C.3., or C.4.):</b>
<b>Description Of Property:</b>		
<b>Loss Payee Name:</b>		
<b>Loss Payee Address:</b>		
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.		

- A. When this endorsement is attached to the Standard Property Policy **CP 00 99**, the term Coverage Part in this endorsement is replaced by the term Policy.
- B. Nothing in this endorsement increases the applicable Limit of Insurance. We will not pay any Loss Payee more than their financial interest in the Covered Property, and we will not pay more than the applicable Limit of Insurance on the Covered Property.
- C. The following is added to the **Loss Payment** Loss Condition, as indicated in the Declarations or in the Schedule:

**1. Loss Payable Clause**

For Covered Property in which both you and a Loss Payee shown in the Schedule or in the Declarations have an insurable interest, we will:

- a. Adjust losses with you; and
- b. Pay any claim for loss or damage jointly to you and the Loss Payee, as interests may appear.

**2. Lender's Loss Payable Clause**

- a. The Loss Payee shown in the Schedule or in the Declarations is a creditor, including a mortgageholder or trustee, whose interest in Covered Property is established by such written instruments as:

- (1) Warehouse receipts;
- (2) A contract for deed;
- (3) Bills of lading;
- (4) Financing statements; or
- (5) Mortgages, deeds of trust, or security agreements.

- b. For Covered Property in which both you and a Loss Payee have an insurable interest:

- (1) We will pay for covered loss or damage to each Loss Payee in their order of precedence, as interests may appear.
- (2) The Loss Payee has the right to receive loss payment even if the Loss Payee has started foreclosure or similar action on the Covered Property.

- (3) If we deny your claim because of your acts or because you have failed to comply with the terms of the Coverage Part, the Loss Payee will still have the right to receive loss payment if the Loss Payee:

- (a) Pays any premium due under this Coverage Part at our request if you have failed to do so;
- (b) Submits a signed, sworn proof of loss within 60 days after receiving notice from us of your failure to do so; and
- (c) Has notified us of any change in ownership, occupancy or substantial change in risk known to the Loss Payee.

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

- (4) If we pay the Loss Payee for any loss or damage and deny payment to you because of your acts or because you have failed to comply with the terms of this Coverage Part:

- (a) The Loss Payee's rights will be transferred to us to the extent of the amount we pay; and
- (b) The Loss Payee's rights to recover the full amount of the Loss Payee's claim will not be impaired.

At our option, we may pay to the Loss Payee the whole principal on the debt plus any accrued interest. In this event, you will pay your remaining debt to us.

- c. If we cancel this policy, we will give written notice to the Loss Payee at least:

- (1) 10 days before the effective date of cancellation if we cancel for your nonpayment of premium; or
- (2) 30 days before the effective date of cancellation if we cancel for any other reason.

- d. If we elect not to renew this policy, we will give written notice to the Loss Payee at least 10 days before the expiration date of this policy.

### 3. Contract Of Sale Clause

- a. The Loss Payee shown in the Schedule or in the Declarations is a person or organization you have entered a contract with for the sale of Covered Property.
- b. For Covered Property in which both you and the Loss Payee have an insurable interest we will:
  - (1) Adjust losses with you; and
  - (2) Pay any claim for loss or damage jointly to you and the Loss Payee, as interests may appear.
- c. The following is added to the **Other Insurance** Condition:  
For Covered Property that is the subject of a contract of sale, the word "you" includes the Loss Payee.

### 4. Building Owner Loss Payable Clause

- a. The Loss Payee shown in the Schedule or in the Declarations is the owner of the described building, in which you are a tenant.
- b. We will adjust losses to the described building with the Loss Payee. Any loss payment made to the Loss Payee will satisfy your claims against us for the owner's property.
- c. We will adjust losses to tenants' improvements and betterments with you, unless the lease provides otherwise.

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

## **ORDINANCE OR LAW - INCREASED PERIOD OF RESTORATION**

This endorsement modifies insurance provided under the following:

BUSINESS INCOME (AND EXTRA EXPENSE) COVERAGE FORM  
BUSINESS INCOME (WITHOUT EXTRA EXPENSE) COVERAGE FORM  
EXTRA EXPENSE COVERAGE FORM

**A.** If a Covered Cause of Loss occurs to property at the premises described in the Declarations, coverage is extended to include the amount of actual and necessary loss you sustain during the increased period of "suspension" of "operations" caused by or resulting from a requirement to comply with any ordinance or law that:

1. Regulates the construction or repair of any property;
2. Requires the tearing down of parts of any property not damaged by a Covered Cause of Loss; and
3. Is in force at the time of loss.

However, coverage is not extended under this endorsement to include loss caused by or resulting from the enforcement of or compliance with any ordinance or law which requires:

1. The demolition, repair, replacement, reconstruction, remodeling or remediation of property due to contamination by "pollutants" or due to the presence, growth, proliferation, spread or any activity of "fungus", wet or dry rot or bacteria; or
2. Any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants", "fungus", wet or dry rot or bacteria.

**B.** The period of restoration definition is replaced by the following:

"Period of restoration" means the period of time that:

**a.** Begins:

- (1) 72 hours after the time of direct physical loss or damage for Business Income coverage; or

(2) Immediately after the time of direct physical loss or damage for Extra Expense coverage;

caused by or resulting from any Covered Cause of Loss at the described premises; and

**b.** Ends on the earlier of:

(1) The date when the property at the described premises should be repaired, rebuilt or replaced with reasonable speed and similar quality; or

(2) The date when business is resumed at a new permanent location.

"Period of restoration" includes any increased period required to repair or reconstruct the property to comply with the minimum standards of any ordinance or law, in force at the time of loss, that regulates the construction or repair, or requires the tearing down of any property.

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

**C.** The following definition is added:

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

POLICY NUMBER:

COMMERCIAL PROPERTY  
CP 15 45 10 12

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

## UTILITY SERVICES - TIME ELEMENT

This endorsement modifies insurance provided under the following:

BUSINESS INCOME (AND EXTRA EXPENSE) COVERAGE FORM  
BUSINESS INCOME (WITHOUT EXTRA EXPENSE) COVERAGE FORM  
EXTRA EXPENSE COVERAGE FORM

### SCHEDULE

Premises Number	Building Number	Utility Services Limit Of Insurance	Enter "X" for each applicable property.					
			Water Supply Property	Waste-water Removal Property	Communication Supply Property (including overhead transmission lines)	Communication Supply Property (not including overhead transmission lines)	Power Supply Property (including overhead transmission lines)	Power Supply Property (not including overhead transmission lines)
		\$						
Causes Of Loss Form Applicable:								
		\$						
Causes Of Loss Form Applicable:								
		\$						
Causes Of Loss Form Applicable:								
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.								



## A. Coverage

Your coverage for Business Income and/or Extra Expense, as provided and limited in the applicable Coverage Form, is extended to apply to a "suspension" of "operations" at the described premises caused by an interruption in utility service to that premises. The interruption in utility service must result from direct physical loss or damage by a Covered Cause of Loss (as provided under the applicable Causes of Loss Form indicated in the Schedule) to the property described in Paragraph C. if such property is indicated by an "X" in the Schedule.

## B. Exception

Coverage under this endorsement does not apply to Business Income loss or Extra Expense related to interruption in utility service which causes loss or damage to electronic data, including destruction or corruption of electronic data. The term electronic data has the meaning set forth in the Coverage Form to which this endorsement applies.

## C. Utility Services

1. Water Supply Property, meaning the following types of property supplying water to the described premises:
  - a. Pumping stations; and
  - b. Water mains.
2. Wastewater Removal Property, meaning a utility system for removing wastewater and sewage from the described premises, other than a system designed primarily for draining storm water. The utility property includes sewer mains, pumping stations and similar equipment for moving the effluent to a holding, treatment or disposal facility, and includes such facilities.

Coverage under this endorsement does not apply to interruption in service caused by or resulting from a discharge of water or sewage due to heavy rainfall or flooding.

3. Communication Supply Property, meaning property supplying communication services, including telephone, radio, microwave or television services, to the described premises, such as:
  - a. Communication transmission lines, including optic fiber transmission lines;
  - b. Coaxial cables; and
  - c. Microwave radio relays except satellites.

It does not include overhead transmission lines unless indicated by an "X" in the Schedule.

4. Power Supply Property, meaning the following types of property supplying electricity, steam or gas to the described premises:
  - a. Utility generating plants;
  - b. Switching stations;
  - c. Substations;
  - d. Transformers; and
  - e. Transmission lines.

It does not include overhead transmission lines unless indicated by an "X" in the Schedule.

- D. As used in this endorsement, the term transmission lines includes all lines which serve to transmit communication service or power, including lines which may be identified as distribution lines.
- E. The **Coinsurance** Additional Condition does not apply to this endorsement.
- F. The Utility Services Limit Of Insurance, as shown in the Schedule, is the only Limit which applies to the coverage provided under this endorsement, and is part of, not in addition to, the Limit Of Insurance stated in the Declarations as applicable to the described premises.

## PERSONAL PROPERTY LEASED TO YOU

This endorsement modifies insurance provided under the following:

BUILDING AND PERSONAL PROPERTY COVERAGE FORM  
CONDOMINIUM ASSOCIATION COVERAGE FORM  
CONDOMINIUM COMMERCIAL UNIT-OWNERS COVERAGE FORM

1. The final sub-paragraph of Section **A.1.b, Your Business Personal Property**, is replaced by the following:  
(7) Leased personal property.
2. Section **A.1.c, Personal Property Of Others**, does not apply to personal property of others in your care, custody or control under a written lease agreement.

## CONTINGENT REPLACEMENT COST

This endorsement modifies the insurance provided under the following:

BUILDING AND PERSONAL PROPERTY COVERAGE FORM  
CONDOMINIUM ASSOCIATION COVERAGE FORM  
CONDOMINIUM COMMERCIAL UNIT-OWNERS COVERAGE FORM

The following provisions apply only to covered property that has a Limit of Insurance which is 80% or more of its replacement cost.

1. We will determine the value of covered property at replacement cost (without deduction for depreciation) as of the time of loss or damage.  
Replacement cost means the cost to replace lost or damaged property with new property or to repair damaged property using new materials.
2. This optional coverage does not apply to:
  - a. Property of others unless the Declarations shows a Personal Property of Others Limit of Insurance. Tenants' improvements and betterments are not considered to be personal property of others;
  - b. Contents of a residence;
  - c. Works of art, antiques or rare articles, including etchings, pictures, statuary, marbles, bronzes, porcelains and bric-a-brac;
  - d. "Stock"; or
  - e. Property subject to functional valuation.
3. You may make a claim for loss or damage covered by this insurance on an actual cash value basis instead of on a replacement cost basis. In the event you elect to have loss or damage settled on an actual cash value basis, you may still make a claim for the additional coverage this endorsement provides if you notify us of your intent to do so within 180 days after the loss or damage.
4. We will not pay on a replacement cost basis for any loss or damage:
  - a. Until the lost or damaged property is actually repaired or replaced; and
  - b. Unless the repairs or replacement is made as soon as reasonably possible after the loss or damage.We will not pay more for loss or damage on a replacement cost basis than the least of:
  - a. The Limit of Insurance applicable to the lost or damaged property;
  - b. The cost to replace, on the same premises, the lost or damaged property with new property:
    - (1) Of comparable material and quality; and
    - (2) Used for the same purpose; or
  - c. The amount you actually spend that is necessary to repair or replace the lost or damaged property.
5. The coinsurance condition applies to the actual cash value of property subject to this endorsement.

## ANNUAL BUSINESS INCOME COVERAGE

This endorsement modifies the insurance provided by the following:

BUSINESS INCOME COVERAGE FORM AND EXTRA EXPENSE  
BUSINESS INCOME COVERAGE FORM WITHOUT EXTRA EXPENSE

### 1. Newly Acquired Locations

The **Coverage Extension** that applies at newly acquired locations is provided by this policy. The introductory paragraph of the **Coverage Extension** does not apply to this policy.

### 2. Period Of Coverage

We will pay for loss that occurs during the shorter of the following:

- a. The period of restoration; or
- b. The period that begins on the first day of the period of restoration and continues for the number of months shown in the Declarations.

Coverage under the **Extended Business Income Additional Coverage** does not extend beyond the end of the period described in Paragraph **b.** above.

These provisions replace Section **b.**, **Limits Of Insurance.**

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

## **AGREED VALUE**

This endorsement modifies insurance provided by the following:

BUILDING AND PERSONAL PROPERTY COVERAGE FORM  
CONDOMINIUM ASSOCIATION COVERAGE FORM  
CONDOMINIUM COMMERCIAL UNIT-OWNERS COVERAGE FORM

- A.** The Optional Coverage, Agreed Value provision of the Coverage Form is replaced by the following:  
The Additional Condition, coinsurance, does not apply to Covered Property to which this endorsement applies.
- B.** The second paragraph of the introduction to Section **A.5, Coverage Extensions**, is replaced by the following:  
You may extend the insurance provided by this Coverage Part as follows:

## EQUIPMENT BREAKDOWN

This endorsement modifies insurance provided under the following:

BUILDING AND PERSONAL PROPERTY COVERAGE FORM  
CONDOMINIUM ASSOCIATION COVERAGE FORM  
CONDOMINIUM COMMERCIAL UNIT-OWNERS COVERAGE FORM  
CAUSES OF LOSS SPECIAL FORM

I. Insurance provided by this endorsement is subject to all of the terms of the Coverage Form and Causes of Loss Form except as specified below.

II. The following changes apply to the Coverage Form:

### A. Coverage

**Pollutant Clean-up and Removal.** For insurance provided by this endorsement, the limit of insurance that applies to **Additional Coverage A.4.d.** is increased to \$250,000 unless otherwise stated in the Declarations.

### B. Additional Conditions

The following is added to Section F of the Coverage Form:

#### Suspension:

Whenever Equipment Breakdown Covered Property is found to be in, or exposed to, a dangerous condition, any of our representatives may immediately suspend the insurance against loss or damage to that Covered Property. This can be done by delivering or mailing a written notice of suspension to:

- a. Your last known address; or
- b. The address where the Covered Property is located.

If we suspend your insurance, you will get a pro rata refund of premium. But the suspension will be effective even if we have not yet made or offered a refund.

### III. Service Interruption Additional Coverage

Any insurance provided for Business Income or Extra Expense is extended to apply to your loss or expense caused by an "Equipment Breakdown" to equipment that is owned by a utility, landlord or other supplier, that is located within 1,000 feet of the described premises, with whom you have a contract to supply you with any of the following services: electrical power, waste disposal, air conditioning, refrigeration, heating, natural gas, compressed air, water, steam, internet access, telecommunications services, wide area networks or data transmission.

The equipment must meet the definition of "Equipment Breakdown" except that it is not Covered Property.

### IV. CFC Refrigerants

We will pay for the additional cost to repair or replace Covered Property because of the use or presence of a refrigerant containing CFC (chlorofluorocarbon) substances.

Additional costs means those in excess of what would have been required to repair or replace covered property, had no CFC refrigerant been involved.

We pay no more than the least of the following:

- A. The cost to repair the damaged property and replace any lost CFC refrigerant;
- B. The cost to repair the damaged property, retrofit the system to accept a non-CFC refrigerant, and charge the system with a non-CFC refrigerant; or
- C. The cost to replace the system with one using a non-CFC refrigerant.

### V. Jurisdictional Inspections

If any Covered Property under this endorsement requires inspection to comply with state or municipal boiler and pressure vessel regulations, we agree to perform such inspections on your behalf. We do not warrant that conditions are safe or healthful.

### VI. Environmental, Safety and Efficiency Improvements

If Covered Property requires replacement due to an equipment breakdown, we will pay your additional costs to replace with equipment that is better for the environment, safer, or more energy efficient than the equipment it replaced.

However, we will not pay more than 125% of what the cost would have been to repair or replace with like kind and quality. This condition does not apply to any property where Actual Cash Value provisions apply.

VII. The following changes apply to the Causes of Loss Special Form:

**A. Exclusions**

**1. Equipment Breakdown Caused by Water.**

If Water, as excluded elsewhere in this policy, results in equipment breakdown, we will pay for the loss or damage caused by that equipment breakdown.

This provision is added to the final paragraph of the Water exclusion in this policy.

**2. Exclusion B.2.b. is replaced by the following:**

**b.** Delay, loss of use or loss of market, except that we will pay for loss of perishable goods due to spoilage resulting from lack of power, light, heat, steam or refrigeration caused by coverages provided by this endorsement to types of property covered by this policy, that are:

**(1)** Located on or within 1,500 feet of your described premises and are:

**(a)** Owned by the building owner at your described premises, or owned by a public utility; and

**(b)** Used to supply telephone, electricity, air conditioning, heating, gas, water or steam to your described premises; or

**(2)** Located on your owned or leased trucks and trailers.

Unless otherwise stated in the Declarations, the most we will pay for loss or damage under this coverage is \$250,000.

**3. The following exclusions do not apply to coverage provided by this endorsement:**

**a.** Exclusion B.2.a;

**b.** Exclusion B.2.d.6.; and

**c.** Exclusion B.2.e.

**B. Limitations**

Limitations C.1.a. and C.1.b. of the Causes of Loss Special Form do not apply to coverage provided by this endorsement.

**C. Additional Coverage Extensions**

The following provisions are added to Section F of the Causes of Loss Special Form:

**1. Expediting Expenses**

For coverage provided by this endorsement, with respect to your damaged Covered Property, we will pay the reasonable extra cost to:

(i) Make temporary repairs;

(ii) Expedite permanent repairs; and

(iii) Expedite permanent replacement.

**2. Refrigerant Contamination**

Contamination by a refrigerant resulting from coverage provided by this endorsement, with respect to your damaged Covered Property to refrigerating, cooling or humidity control equipment, at the described premises and on your owned or leased trucks and trailers.

Unless otherwise stated in the Declarations, the most we will pay for loss or damage under this coverage is \$250,000.

**D. Definitions**

Definition G.2. of the Causes of Loss Special Form is replaced by the following:

**G. Definitions**

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

**a.** Sinkhole collapse means the sudden sinking or collapse of land into underground empty spaces created by the action of water on limestone or dolomite. This cause of loss does not include:

**(1)** The cost of filling sinkholes; or

**(2)** Sinking or collapse of land into man-made underground cavities.

**b.** Falling objects does not include loss or damage to:

**(1)** Personal property in the open;

**(2)** The interior of a building or structure, or property inside a building or structure, unless the roof or an outside wall of the building or structure is first damaged by a falling object.

**c.** Water damage means accidental discharge or leakage of water or steam as the direct result of the breaking apart or cracking of any part of a system or appliance (other than a sump system including its related equipment and parts) containing water or steam.

d. Equipment breakdown means direct damage to Covered Property as follows:

- (1) Mechanical breakdown, including rupture or bursting caused by centrifugal force;
- (2) Artificially generated electrical current; including electrical arcing, that disturbs electrical devices, appliances or wires;
- (3) Explosion of steam boilers, steam piping, steam engines or steam turbines owned or leased by you, or operated under your control;
- (4) Loss or damage to steam boilers, steam pipes, steam engines or steam turbines; or
- (5) Loss or damage to hot water boilers or other water heating equipment.

If covered electrical equipment requires drying out as a result of a flood we will pay for the direct expenses of such drying out.

None of the following are Covered Property as respects equipment breakdown:

- (a) Insulating or refractory material;
- (b) Buried vessel or piping;

(c) Sewer piping, piping forming a part of a fire protection system or water piping other than:

- i. Feed water piping between any boiler and its feed pump or injector; or
- ii. Boiler condensate return piping; or
- iii. Water piping used forming a part of refrigerating and air conditioning vessels and piping used for cooling, humidifying or space heating purposes.

(d) Structure, foundation, cabinet or compartment containing the object;

(e) Power shovel, dragline, excavator, automobiles, mobile equipment held for sale, floating vessel or structure, penstock, draft tube or well casing;

(f) Conveyor, crane, elevator, escalator or hoist, but not excluding any electrical machine or electrical apparatus mounted on or used with this equipment;

(g) Felt, wire, screen, die, extrusion, plate, swing hammer, grinding disc, cutting blade, cable, chain, belt, rope, clutch plate, brake pad, non-metallic part or any part or tool subject to frequent, periodic replacement.



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## ENHANCED BUILDING AND PERSONAL PROPERTY COVERAGE

This endorsement modifies insurance provided under the following:

BUILDING AND PERSONAL PROPERTY COVERAGE FORM  
CAUSES OF LOSS SPECIAL FORM

I. The following changes apply to the Building and Personal Property Coverage Form

**A. Coverage**

**1. Covered Property**

**a. Extended Premises Definition**

Covered personal property (including building materials used for making additions, alterations or repairs to covered buildings) is covered while it is:

- (1) In or on the building described in the Declarations; or
- (2) In the open (or in a vehicle) within 1,500 feet of the described premises.

This provision modifies Sections **A.1.a.(5)(b)**, **A.1.b.** and **A.1.c.(2)** of the Building and Personal Property Coverage Form.

**b. Additions to Your Business Personal Property**

The insurance that applies to Your Business Personal Property includes the following property:

- (1) Data processing equipment;
- (2) Valuable papers and electronic media;
- (3) Fine arts; and
- (4) The following property at a building rented or leased to you if you have a contractual responsibility to pay for repair or replacement after damage by a Covered Cause of Loss:
  - (a) Building glass;
  - (b) Outdoor fixtures; and
  - (c) Heating or air conditioning systems that service only the building leased to you.

The types of property described in this provision are added to Section **A.1.b.** of the Building and Personal Property Coverage Form.

**c. Outdoor Fixtures**

The insurance that applies to Your Business Personal Property includes outdoor fixtures that you own, if they are not covered by any other coverage in a policy issued by us.

**2. Property Not Covered**

**a.** Paragraph **A.2.g.** of the Building and Personal Property Coverage Form does not apply to this policy.

**b.** Paragraph **A.2.m.** of the Building and Personal Property Coverage Form does not apply to this policy.

**c.** Paragraph **A.2.p.** of the Building and Personal Property Coverage Form is replaced by the following:

**p.** "Vehicles" or self-propelled machines (including aircraft and watercraft) that:

- (1) Are licensed for use on public roads
- (2) Are operated principally away from the described premises; or
- (3) You manufacture, process, repair, service, store, warehouse, or hold for sale.

But this paragraph does not apply to:

**(a)** Rowboats or canoes out of the water located at the described premises; or

**(b)** Trailers, but only to the extent provided for in the Coverage Extension for Non-owned Trailers.

**d.** The following is added to Paragraph **A.2.** of the Building and Personal Property Coverage Form:

**r.** Labor, materials or services furnished by you or arranged by you on "vehicles" or self-propelled machines (including vehicles or watercraft) belonging to others.

### 3. Additional Coverages

#### a. Fire Department Service Charge

Coverage provided by the Fire Department Service Charge Additional Coverage is subject to the Direct Loss Blanket Limit. The limit in Section A.4.c. of the Building and Personal Property Coverage Form does not apply to this Additional Coverage.

#### b. Electronic Data

(1) Electronic data are covered for loss or damage by any Covered Cause of Loss. Paragraph A.4.f.(3) of the Building and Personal Property Coverage Form is deleted.

(2) Paragraph A.4.f.(4) of the Building and Personal Property Coverage Form is replaced by the following:

(4) The most we will pay under this Additional Coverage, Electronic Data is \$5,000 at each described building, unless a higher limit is shown in the Declarations.

#### c. Accounts Receivable

We will pay for the following after your records of accounts receivable are damaged or destroyed by a Covered Cause of Loss:

(1) Amounts due from your customers that you are unable to collect;

(2) Interest charges on any loan required to offset amounts you are unable to collect pending our payment of those amounts;

(3) Collection expenses in excess of your normal collection expenses that are made necessary by the loss or damage; and

(4) Other reasonable expenses you incur to reestablish your records of accounts receivable.

The most we will pay for loss or damage to records of accounts receivable in an occurrence at a covered building is \$5,000.

### 4. Coverage Extensions

a. The Coverage Extensions in the Building and Personal Property Coverage Form and in this endorsement apply to property located in or on buildings described in the Declarations or in the open (or within a vehicle) within 1,500 feet of the described premises.

This paragraph replaces the introduction to Section A.5. in the Building and Personal Property Coverage Form.

b. The following provisions modify the Coverage Extensions in the Building and Personal Property Coverage Form:

#### (1) Newly Acquired or Constructed Property

##### (a) Building(s)

1) Paragraph A.5.a.(1)(b) of the Building and Personal Property Coverage Form is replaced by the following:

(b) Buildings you acquire, and buildings while being built, at locations other than the described premises, intended for:

2) The most we will pay for loss or damage under this Extension is \$1,000,000. This replaces the limit displayed in Section A.5.a.(1) of the Building and Personal Property Coverage Form.

##### (b) Your Business Personal Property

The most we will pay for loss or damage to Your Business Personal Property under this Extension is \$500,000. This replaces the limit displayed in Section A.5.a.(2) of the Building and Personal Property Coverage Form.

(c) Paragraph A.5.a.(3)(b) of the Building and Personal Property Coverage Form is replaced by the following:

(b) 180 days expire after you acquire the property or begin construction of that part of the building that would qualify as covered property; or

##### (2) Personal Effects and Property of Others

Paragraph A.5.b. of the Building and Personal Property Coverage Form is replaced by the following:

##### b. Personal Effects and Property of Others

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

(1) Personal effects owned by you or by your officers, partners or members, your managers or your employees.

(2) Personal property of others in your care, custody, or control.

This provision does not apply to tools owned by you or by your officers, partners or members, your managers or your employees.

You may apply up to \$5,000 for each described building.

Our payment for loss or damage under this Extension will only be for the account of the owner of the property.

**(3) Valuable Papers and Records (Other Than Electronic Data)**

(a) Valuable papers and records are covered for loss or damage by any Covered Cause of Loss. Paragraph **A.5.c.(2)** of the Building and Personal Property Coverage Form does not apply to this Extension.

(b) The Limit of Insurance that applies to Coverage Extension **A.5.c** is \$5,000 at each described building. This amount replaces the limit in Subparagraph (4) of the Coverage Extension, but all other provisions contained in Subparagraph (4) apply to this policy.

**(4) Property Off-Premises**

The most we will pay under Coverage Extension **A.5.d.** is \$25,000. This replaces the limit in Section **A.5.d.(3)** of the Building and Personal Property Coverage Form.

**(5) Outdoor Property**

Paragraph **A.5.e.** of the Building and Personal Property Coverage Form is replaced by the following:

**e. Outdoor Property**

(1) You may extend the insurance provided by this Coverage Form to apply to your trees, shrubs, lawns, or growing plants, including debris removal expense, caused by a Covered Cause

of Loss at your described premises.

The most we will pay for loss or damage under this Extension is \$5,000, but not more than \$750 for any one tree, shrub, or plant.

(2) You may extend the insurance provided by this Coverage Form to apply to your radio or television antennas (including satellite dishes) and their lead-in wiring, masts, or towers caused by or resulting from a Covered Cause of Loss at your described premises.

(3) You may extend the insurance provided by this Coverage Form to apply to your outdoor fences caused by or resulting from a Covered Cause of Loss at your described premises. But this Extension does not apply to loss caused by:

(a) Freezing or thawing;

(b) Impact of watercraft; or

(c) Pressure or weight of ice or water, even if driven by wind.

The most we will pay in any one occurrence under Extension **e.(2)** and **e.(3)** is an aggregate of \$10,000.

c. The following Coverage Extensions are added to the Building and Personal Property Coverage Form.

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

**h. Fire Extinguisher Recharge Expense**

We will pay your expense to recharge fire extinguishers used in combating a fire at a described building or immediately adjacent premises. The Building and Personal Property deductible provisions do not apply to this Coverage Extension.

Coverage provided by this Coverage Extension is subject to the Direct Loss Blanket Limit displayed in the Declarations.

**i. Arson Reward**

We will pay up to \$5,000, but not more than 25% of the amount we pay for direct loss or damage, for information which leads to an arson conviction in connection with a fire loss or damage covered under this Coverage Part. Regardless of the number of persons involved in providing information, our liability under this Extension will not be increased.

**j. Business Income and Extra Expense**

(1) We will pay for:

(a) The actual loss of "Business Income" and

(b) "Extra Expense"

you sustain due to the necessary suspension of your "operations" during the "period of restoration". The suspension must be caused by a direct physical loss or damage to property at a building described in the Declarations, including personal property in the open (or in a vehicle) within 1,500 feet, caused by or resulting from a Covered Cause of Loss.

(2) **Business Income Loss Determination**

The amount of "Business Income" loss will be determined based on:

(a) The Net Income of the business before the direct physical loss or damage occurred;

(b) The likely Net Income of the business if no loss occurred;

(c) The operating expenses, including payroll expenses, necessary to resume "operations" with the same quality of service that existed just before the direct physical loss or damage.

The most we will pay under this Extension is \$5,000.

Insurance under this Extension is excess over any other insurance that applies to business income or extra expense.

**k. Property in Transit**

You may extend the insurance provided by this Coverage Form to apply to Covered Property (other than property in the care, custody, or control of your salespersons or property shipped by mail from the time it passes into the custody of the U.S. Postal Service) in transit more than 1,500 feet from the described premises.

Loss or damage must be caused by or result from one of the following:

(1) A Covered Cause of Loss;

(2) Collision, derailment, or overturn of a transporting land conveyance; collision with another "vehicle" or object. This does not include your "vehicle's" contact with the road bed; or

(3) Flood or earthquake.

The most we will pay for loss or damage under this Extension is \$25,000.

**l. Key Replacement and Lock Replacement or Repair**

You may extend the insurance provided by this policy to apply to the following expenses after a covered theft loss:

(1) Replacement of stolen keys; or

(2) Lock repair or replacement.

Coverage under this Coverage Extension is subject to the Direct Loss Blanket Limit.

**m. Employee Tools**

You may extend the insurance that applies to Your Business Personal Property to cover tools owned by your officers, partners or members, your managers or your employees.

You may apply up to \$5,000 for each described building.

Our payment for loss or damage under this Extension will only be for the account of the owner of the property.

**B. Limits of Insurance**

1. The second paragraph of Section C. of the Building and Personal Property Coverage Form does not apply to your policy.

2. The following paragraph is added to Section C. of the Building and Personal Property Coverage Form:

The most we will pay for loss or damage to fine arts is \$50,000 per building in any one occurrence.

### 3. Direct Loss Blanket Limit

The Direct Loss Blanket Limit shown in the Declarations applies separately to each building specifically described in the Declarations.

At the time of loss you may apportion the Direct Loss Blanket Limit to any coverage subject to the limit, or to any combination of coverages subject to the limit. The total amount apportioned at a building may not exceed the Direct Loss Blanket Limit.

If a specific Limit of Insurance is shown in the Declarations for a coverage subject to the Direct Loss Blanket Limit, the specific limit applies in addition to the amount apportioned under the Direct Loss Blanket Limit.

Coverages subject to the Direct Loss Blanket Limit are subject to the Deductible that applies to loss or damage in an occurrence under this policy.

### C. Deductible

The following is added to Section D. of the Building and Personal Property Coverage Form.

#### Glass Deductible

Regardless of the amount of the Deductible, the most we will deduct from any loss to covered building glass in any one occurrence is \$250.

This deductible will not increase the Deductible shown in the Declarations. This deductible will be used to satisfy the requirements of the Deductible shown in the Declarations.

### D. Loss Conditions

1. The following provision replaces Section E.7.d. of the Building and Personal Property Coverage Form:

#### d. Glass

The value of glass is its replacement cost. If safety-glazing material is required by statute the value of glass is the cost of replacement with safety-glazing materials.

2. The following provision is added to Section E.7, **Valuation**, of the Building and Personal Property Coverage Form:

#### f. Fine Arts

The value of fine arts is the lowest of the following amounts:

- (1) The market value of the property;
- (2) The cost of reasonably restoring the property to its condition immediately before loss; or
- (3) The cost of replacing the property with substantially identical property.

### E. Definitions

The following Definitions are added to Section H. of the Building and Personal Property Coverage Form:

1. "Business Income" means the:
  - a. Net Income (Net Profit or Loss before income taxes) that would have been earned or incurred; and
  - b. Continuing normal operating expenses, including payroll, incurred.
2. "Extra Expense" means necessary expenses you incur during the "period of restoration" that you would not have incurred if there had been no direct physical loss or damage caused by or resulting from a Covered Cause of Loss to:
  - a. Avoid or minimize the suspension of business and to continue "operations";
    - (1) At the described premises; or
    - (2) At replacement premises or at temporary locations, including:
      - (a) Relocation expenses; and
      - (b) Costs to equip and operate the replacement or temporary locations.
  - b. Minimize the suspension of business if you cannot continue "operations".
  - c. Pay to:
    - (1) Repair or replace any property; or
    - (2) Research, replace, or restore the lost information on damaged valuable papers and records to the extent it reduces the amount of loss that otherwise would have been payable for Extra Expense.
3. "Operations" means your business activities occurring at the described premises.
4. "Period of restoration" means the period of time that:
  - a. Begins with the date of direct physical loss or damage caused by or resulting from any Covered Cause of Loss at the described premises; and

- b. Ends on the date when the property at the described premises should be repaired, rebuilt, or replaced with reasonable speed and similar quality.

"Period of restoration" does not include any increased period required due to the enforcement of any law that regulates the construction, use or repair, or requires the tearing down of any property.

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

- 5. "Vehicle" means a land motor vehicle, semi-trailer including a mobile home, travel trailer, camper body or other unit designed to be mounted in or on a pickup truck.

II. The following changes apply to the Causes of Loss - Special Form

**Sewer Back Up or Underground Seepage**

We will pay for loss or damage caused by:

1. Water that backs up from a sewer or drain; or
2. Water under the ground surface pressing on, or flowing or seeping through;
  - a. Foundations, walls, floors or paved surfaces;
  - b. Basements, whether paved or not; or
  - c. Doors, windows or other openings.

We will not pay more than \$10,000 for loss or damage by these causes of loss in any one occurrence.

The third and fourth numbered paragraphs of the Water Exclusion in the Causes of Loss Special Form or in an endorsement attached to this policy do not apply to this Coverage.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## ENHANCED ANNUAL BUSINESS INCOME

This endorsement modifies insurance provided under the following:

### BUSINESS INCOME COVERAGE FORM

#### 1. Coverage

The fifth and sixth paragraphs in **Section A.** of the Business Income Coverage Form are replaced by the following:

We will pay for the actual loss of Business Income you sustain due to the necessary "suspension" of your "operations" during the "period of restoration". The "suspension" must be caused by direct physical loss of or damage to property at premises which are described in the Declarations and for which Business Income coverage is indicated in the Declarations. The loss or damage must be caused by or result from a Covered Cause of Loss. With respect to loss of or damage to personal property in the open or personal property in a vehicle, the described premises includes the area within 1,500 feet of such premises.

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

- a. The portion of the building which you rent, lease or occupy; and
- b. The area within 1,500 feet of the building or within 1,500 feet of the premises described in the Declarations, whichever distance is greater (with respect to loss of or damage to personal property in the open or personal property in a vehicle); and
- c. Any area within the building or at the described premises, if that area services, or is used to gain access to, the portion of the building which you rent, lease or occupy.

#### 2. Additional Limitation - Interruption of Computer Operations

We will not pay for loss from a "suspension" of "operations" caused by destruction or corruption of electronic data, or any loss or damage to electronic data, for more than the longer of:

- a. 60 consecutive days from the date of direct physical loss or damage; or

- b. The period, beginning with the date of direct physical loss or damage, necessary to repair, rebuild or replace, with reasonable speed and similar quality, other property at the described premises due to loss or damage caused by the same occurrence.

This limitation does not apply to Extra Expense.

Paragraphs a. and b. of the **Additional Limitation - Interruption of Computer Operations** are deleted.

The Interruption of Computer Operations Additional Coverage is deleted.

#### 3. Additional Coverages

##### a. Civil Authority

1. The Civil Authority Additional Coverage provided by the Business Income Coverage Form applies when access to the area immediately surrounding the damaged property is prohibited by civil authority as the result of the damage and the described premises are within that area. The provision that limits coverage to described premises that are one mile from the damage does not apply to your policy.
2. Coverage for Business Income provided by the Civil Authority Additional Coverage in the Business Income Coverage Form will begin at the time of the first action of civil authority that prohibits access to the described premises and applies for a period of up to 30 days from the date of the action by civil authority unless a longer period is specified in an endorsement included in the policy.

The 72 hour waiting period described in the Civil Authority Additional Coverage in the Business Income Coverage Form does not apply to your policy.

##### b. Alterations and New Buildings

The distance specified in **Section A.5.b.(3)** of the Business Income Coverage Form is changed to 1,500 feet.

**4. Newly Acquired Locations Coverage Extension**

- a. The most we will pay under this Extension, for the sum of Business Income loss and Extra Expense incurred, is \$250,000 at each location. This replaces the limit in **A.6.b** of the Coverage Form.
- b. Paragraph **c.(2)** of the **Newly Acquired Locations Coverage Extension** is replaced by the following:
  - (2) 180 days expire after you acquire or begin to construct the property; or

**5. Coinsurance**

Additional Condition **D.**, **Coinsurance**, of the Business Income Coverage Form does not apply to this policy.

**6. Period of Restoration Definition**

Paragraph **F.3.** of the Business Income Coverage Form is replaced by the following:

- 3. "Period of restoration" means the period of time that:
  - a. Begins with the date of direct physical loss or damage caused by or resulting from any Covered Cause of Loss at the described premises; and

- b. Ends on the date when the property at the described premises should be repaired, rebuilt or replaced with reasonable speed and similar quality.

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

- (1) Regulates the construction, use or repair, or requires the tearing down of any property; or
- (2) Requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants".

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



## FALSE PRETENSE EXTENSION FOR STOCK

This endorsement modifies insurance provided under the following:

### CAUSES OF LOSS - SPECIAL FORM

Section **B. Exclusions**, Exclusion **2.i.** does not apply to your "stock", subject to the following additional conditions:

- a. This extension does not apply to loss resulting from your acceptance of a check which is returned due to insufficient funds.
- b. This extension is subject to the deductible shown on the Declarations subject to a minimum deductible of \$500.

**c. Additional Definition:**

"Stock" means merchandise held in storage or for sale, raw materials and in-process or finished goods, including supplies used in their packing or shipping.

All other terms and provisions of the policy remain unchanged.

## NEW YORK CHANGES

This endorsement modifies the insurance provided by the following:

ENHANCED BUILDING AND PERSONAL PROPERTY COVERAGE  
DEALERS BROADENED BUILDING AND PERSONAL PROPERTY COVERAGE

Coverage Extension i., Arson Reward does not apply.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**  
**EXTENDED RECOVERY ENDORSEMENT - BUILDINGS**

This endorsement modifies insurance provided under the following:

**BUILDING AND PERSONAL PROPERTY COVERAGE FORM**

**A. Guaranteed Replacement Cost**

1. For Covered Property described under Subparagraph 1.a. **Building** of Section A. **Coverage:**

- a. Loss Condition 7. **Valuation** is amended by replacing actual cash value with replacement cost (without deduction for depreciation).
- b. Section C. **Limits of Insurance** is deleted and replaced with the following:

Subject to the conditions in A.2. below, the most we will pay for loss or damage in any one occurrence is the cost to repair or replace the Covered Property with like kind and quality and for a similar purpose or use, regardless of the Limit of Insurance shown in the Declarations.

The limits applicable to the Coverage Extensions and the Fire Department Service Charge and Pollutant Clean-up and Removal Additional Coverages are in addition to the cost to repair or replace the Covered Property.

2. The following additional conditions apply to the Guaranteed Replacement Cost extension:

- a. We will not pay on a replacement cost basis for any loss or damage until the building is actually repaired or replaced and as soon as reasonably possible after the loss or damage.
- b. You may make a claim for loss or damage covered by this insurance on an actual cash value basis, subject to the Limit of Insurance shown on the Declarations, instead of on a replacement cost basis. In the event you elect to have the loss or damage settled on an actual cash value basis, you may still make a claim for the replacement cost, subject to a. above, if you notify us of your intent to do so within 180 days after the loss or damage.
- c. If you replace the building at a different premises, we will not pay more than the cost to replace the building at the original premises.

- d. You must insure the building to 100% of the replacement cost as determined by our building appraisal. You must also accept each annual adjustment to building values calculated at policy renewal or annual anniversary date.
- e. You must notify us of any physical changes you have made to the building in which the costs exceed 10% of the limit of insurance within 90 days from the date work on the changes began. You must also pay any additional premium due to adjust the limit of insurance accordingly.

If you fail to notify us as required, we will not pay more than 110% of the limit shown in the Declarations.

**B. Ordinance or Law Coverage**

If a Covered Cause of Loss occurs to a Building covered by this endorsement, we will pay:

- 1. For loss or damage caused by a requirement to comply with any ordinance or law that:
  - a. Requires the demolition of parts of the same property not damaged by a Covered Cause of Loss;
  - b. Regulates the construction or repair of buildings, or establishes zoning or land use requirements at the described premises; and
  - c. Is in force at the time of loss.
- 2. The increased cost to repair, rebuild or construct the property caused by a requirement to comply with a building, zoning, or land use ordinance or law. If the property is repaired or rebuilt, it must be intended for similar occupancy as the current property, unless otherwise required by zoning or land use ordinance or law.

We will not pay for increased construction costs under this coverage:

- a. Until the property is actually repaired or replaced at the same premises or elsewhere; and

- b. Unless the repairs or replacement are made as soon as reasonably possible after the loss or damage, not to exceed 2 years from the date of loss. We may extend this period in writing during the 2 year period.
- 3. The cost to demolish and clear the site of undamaged parts of the property caused by a requirement to comply with a building, zoning, or land use ordinance or law.
- 4. Under Items 1. through 3. above, we will not pay under this endorsement for the costs associated with the enforcement or compliance with any ordinance or law which requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants".
- 5. We will not pay more:
  - a. If the property is repaired or replaced on the same premises, than the amount you actually spend to:
    - (1) Demolish and clear the site; and
    - (2) Repair, rebuild, or construct the property, but not for more than property of the same height, floor area, and style on the same premises.
  - b. If the property is not repaired or replaced on the same premises, than:
    - (1) The amount you actually spend to demolish and clear the site of the described premises; and
    - (2) The cost to replace on the same premises, the damaged or destroyed property with other property;
      - (a) Of comparable material and quality;
      - (b) Of the same height, floor area, and style; and
      - (c) Used for the same purpose.
  - c. For all loss or damage in any occurrence under Item 1., than the limit of insurance applicable to the covered Building property. For Items 2. and 3., we will not pay more than the Limit of Insurance specified in **D. Limits of Additional Insurance** below.

**C. Debris Removal**

The Additional Coverage, Debris Removal, is deleted and replaced with the following:

- 1. We will pay your expense to remove debris of Covered Property and other debris that is on the described premises, when such debris is caused by or results from a Covered Cause of Loss that occurs during the policy period. The expenses will be paid only if they are reported to us in writing within 180 days of the date of direct physical loss or damage.
- 2. This Additional Coverage does not apply to cost to:
  - a. Remove debris of property of yours that is not insured under this policy, or property in your possession that is not Covered Property;
  - b. Remove debris of property owned by or leased to the landlord of the building where your described premises are located, unless you have a contractual responsibility to insure such property and it is insured under this policy;
  - c. Remove any property that is Property Not Covered, including property addressed under the Outdoor Property Coverage Extension;
  - d. Remove property of others of a type that would not be Covered Property under this Coverage Form;
  - e. Remove deposits of mud or earth from the grounds of the described premises;
  - f. Extract "pollutants" from land or water; or
  - g. Remove, restore or replace polluted land or water.
- 3. The most we will pay under this Additional Coverage is the Limit of Insurance described in **D. Limits of Additional Insurance** below.

**D. Limits of Additional Insurance**

For Coverages **B.2.**, **B.3.**, and **C.** the most we will pay for loss under these coverages is 25% of the Limit of Insurance, as shown in the Declarations, for the Building damaged from a Covered Cause of Loss. This limit applies to any combination of these coverages and not individually for each coverage.

This Limit of Additional Insurance is in addition to the Limit of Insurance or the cost to repair or replace the Covered Property.

All other terms and provisions of the policy remain unchanged.

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

## **NEW YORK CHANGES - FRAUD**

This endorsement modifies insurance provided under the following:

CAPITAL ASSETS PROGRAM (OUTPUT POLICY) COVERAGE PART  
COMMERCIAL AUTOMOBILE COVERAGE PART  
COMMERCIAL INLAND MARINE COVERAGE PART  
COMMERCIAL PROPERTY COVERAGE PART  
EQUIPMENT BREAKDOWN COVERAGE PART  
FARM COVERAGE PART - FARM PROPERTY - OTHER FARM PROVISIONS FORM - ADDITIONAL COVERAGES, CONDITIONS, DEFINITIONS  
FARM COVERAGE PART - LIVESTOCK COVERAGE FORM  
FARM COVERAGE PART - MOBILE AGRICULTURAL MACHINERY AND EQUIPMENT COVERAGE FORM

The **CONCEALMENT, MISREPRESENTATION OR FRAUD** Condition is replaced by the following:

### **FRAUD**

We do not provide coverage for any insured ("insured") who has made fraudulent statements or engaged in fraudulent conduct in connection with any loss ("loss") or damage for which coverage is sought under this policy.

However, with respect to insurance provided under the COMMERCIAL AUTOMOBILE COVERAGE PART, we will provide coverage to such "insured" for damages sustained by any person who has not made fraudulent statements or engaged in fraudulent conduct if such damages are otherwise covered under the policy.

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

## **NEW YORK CHANGES - CANCELLATION AND NONRENEWAL**

This endorsement modifies insurance provided under the following:

CAPITAL ASSETS PROGRAM (OUTPUT POLICY) COVERAGE PART  
COMMERCIAL GENERAL LIABILITY COVERAGE PART  
COMMERCIAL INLAND MARINE COVERAGE PART  
COMMERCIAL PROPERTY COVERAGE PART  
CRIME AND FIDELITY COVERAGE PART  
EQUIPMENT BREAKDOWN COVERAGE PART  
FARM COVERAGE PART  
LIQUOR LIABILITY COVERAGE PART  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

**A. Paragraphs 1., 2., 3. and 5. of the Cancellation Common Policy Condition are replaced by the following:**

1. The first Named Insured shown in the Declarations may cancel this entire policy by mailing or delivering to us advance written notice of cancellation.

**2. Cancellation Of Policies In Effect**

**a. 60 Days Or Less**

We may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation at least:

- (1) 30 days before the effective date of cancellation if we cancel for any reason not included in Paragraph **A.2.b.** below.
- (2) 15 days before the effective date of cancellation if we cancel for any of the reasons included in Paragraph **A.2.b.** below.

**b. For More Than 60 Days**

If this policy has been in effect for more than 60 days, or if this policy is a renewal or continuation of a policy we issued, we may cancel only for any of the reasons listed below, provided we mail the first Named Insured written notice at least 15 days before the effective date of cancellation:

- (1) Nonpayment of premium, provided however, that a notice of cancellation on this ground shall inform the first Named Insured of the amount due;

- (2) Conviction of a crime arising out of acts increasing the hazard insured against;
- (3) Discovery of fraud or material misrepresentation in the obtaining of the policy or in the presentation of a claim;
- (4) After issuance of the policy or after the last renewal date, discovery of an act or omission, or a violation of any policy condition, that substantially and materially increases the hazard insured against, and which occurred subsequent to inception of the current policy period;
- (5) Material physical change in the property insured, occurring after issuance or last annual renewal anniversary date of the policy, which results in the property becoming uninsurable in accordance with our objective, uniformly applied underwriting standards in effect at the time the policy was issued or last renewed; or material change in the nature or extent of the risk, occurring after issuance or last annual renewal anniversary date of the policy, which causes the risk of loss to be substantially and materially increased beyond that contemplated at the time the policy was issued or last renewed;
- (6) Required pursuant to a determination by the Superintendent that continuation of our present premium volume would jeopardize our solvency or be hazardous to the interest of our policyholders, our creditors or the public;

(7) A determination by the Superintendent that the continuation of the policy would violate, or would place us in violation of, any provision of the Insurance Code; or

(8) Where we have reason to believe, in good faith and with sufficient cause, that there is a probable risk of danger that the insured will destroy, or permit to be destroyed, the insured property for the purpose of collecting the insurance proceeds. If we cancel for this reason, you may make a written request to the Department of Financial Services, within 10 days of receipt of this notice, to review our cancellation decision. Also, we will simultaneously send a copy of this cancellation notice to the Department of Financial Services.

3. We will mail or deliver our notice, including the reason for cancellation, to the first Named Insured at the address shown in the policy and to the authorized agent or broker.
5. If this policy is cancelled, we will send the first Named Insured any premium refund due. If we cancel, the refund will be pro rata. If the first Named Insured cancels, the refund may be less than pro rata.

However, when the premium is advanced under a premium finance agreement, the cancellation refund will be pro rata. Under such financed policies, we will be entitled to retain a minimum earned premium of 10% of the total policy premium or \$60, whichever is greater. The cancellation will be effective even if we have not made or offered a refund.

**B. The following is added to the Cancellation Common Policy Condition:**

7. If one of the reasons for cancellation in Paragraph **A.2.b.** or **D.2.b.(2)** exists, we may cancel this entire policy, even if the reason for cancellation pertains only to a new coverage or endorsement initially effective subsequent to the original issuance of this policy.

**C. The following conditions are added:**

**1. Nonrenewal**

If we decide not to renew this policy we will send notice as provided in Paragraph **C.3.** below.

**2. Conditional Renewal**

If we conditionally renew this policy subject to:

- a. A change of limits;

- b. A change in type of coverage;
- c. A reduction of coverage;
- d. An increased deductible;
- e. An addition of exclusion; or
- f. Increased premiums in excess of 10%, exclusive of any premium increase due to and commensurate with insured value added or increased exposure units; or as a result of experience rating, loss rating, retrospective rating or audit;

we will send notice as provided in Paragraph **C.3.** below.

**3. Notices Of Nonrenewal And Conditional Renewal**

- a. If we decide not to renew this policy or to conditionally renew this policy as provided in Paragraphs **C.1.** and **C.2.** above, we will mail or deliver written notice to the first Named Insured shown in the Declarations at least 60 but not more than 120 days before:

(1) The expiration date; or

(2) The anniversary date if this is a continuous policy.

- b. Notice will be mailed or delivered to the first Named Insured at the address shown in the policy and to the authorized agent or broker. If notice is mailed, proof of mailing will be sufficient proof of notice.

- c. Notice will include the specific reason(s) for nonrenewal or conditional renewal, including the amount of any premium increase for conditional renewal and description of any other changes.

- d. If we violate any of the provisions of Paragraph **C.3.a., b.** or **c.** above by sending the first Named Insured an incomplete or late conditional renewal notice or a late nonrenewal notice:

(1) And if notice is provided prior to the expiration date of this policy, coverage will remain in effect at the same terms and conditions of this policy at the lower of the current rates or the prior period's rates until 60 days after such notice is mailed or delivered, unless the first Named Insured, during this 60-day period, has replaced the coverage or elects to cancel;

(2) And if the notice is provided on or after the expiration date of this policy, coverage will remain in effect at the same terms and conditions of this policy for another policy period, at the lower of the current rates or the prior period's rates, unless the first Named Insured, during this additional policy period, has replaced the coverage or elects to cancel.

e. If you elect to renew on the basis of a late conditional renewal notice, the terms, conditions and rates set forth in such notice shall apply:

(1) Upon expiration of the 60-day period, unless Subparagraph (2) below applies; or

(2) Notwithstanding the provisions in Paragraphs d.(1) and d.(2), as of the renewal date of the policy if the conditional renewal notice was sent at least 30 days prior to the expiration or anniversary date of the policy.

f. We will not send you notice of nonrenewal or conditional renewal if you, your authorized agent or broker or another insurer of yours mails or delivers notice that the policy has been replaced or is no longer desired.

D. The following provisions apply when the Commercial Property Coverage Part, the Farm Coverage Part or the Capital Assets Program (Output Policy) Coverage Part is made a part of this policy:

1. Items D.2. and D.3. apply if this policy meets the following conditions:

a. The policy is issued or issued for delivery in New York State covering property located in this state; and

b. The policy insures:

(1) For loss of or damage to structures, other than hotels or motels, used predominantly for residential purposes and consisting of no more than four dwelling units; or

(2) For loss of or damage to personal property other than farm personal property or business property; or

(3) Against damages arising from liability for loss of, damage to or injury to persons or property, except liability arising from business or farming; and

c. The portion of the annual premium attributable to the property and contingencies described in 1.b. exceeds the portion applicable to other property and contingencies.

2. Paragraph 2. of the **Cancellation** Common Policy Condition is replaced by the following:

## 2. Procedure And Reasons For Cancellation

a. We may cancel this entire policy by mailing or delivering to the first Named Insured written notice of cancellation at least:

(1) 15 days before the effective date of cancellation if we cancel for nonpayment of premium, provided however, that a notice of cancellation on this ground shall inform the first Named Insured of the amount due; or

(2) 30 days before the effective date of cancellation if we cancel for any other reason.

b. But if this policy:

(1) Has been in effect for more than 60 days; or

(2) Is a renewal of a policy we issued;

we may cancel this policy only for one or more of the following reasons:

(1) Nonpayment of premium, provided however, that a notice of cancellation on this ground shall inform the first Named Insured of the amount due;

(2) Conviction of a crime arising out of acts increasing the risk of loss;

(3) Discovery of fraud or material misrepresentation in obtaining the policy or in making a claim;

(4) Discovery of willful or reckless acts or omissions increasing the risk of loss;

(5) Physical changes in the covered property that make that property uninsurable in accordance with our objective and uniformly applied underwriting standards in effect when we:

(a) Issued the policy; or

(b) Last voluntarily renewed the policy;



(6) The Superintendent of Financial Services' determination that continuing the policy would violate Chapter 28 of the Insurance Law; or

(7) Required pursuant to a determination by the Superintendent of Financial Services that the continuation of our present premium volume would be hazardous to the interests of our policyholders, our creditors or the public.

3. The following are added:

**a. Conditional Continuation**

Instead of cancelling this policy, we may continue it on the condition that:

- (1) The policy limits be changed; or
- (2) Any coverage not required by law be eliminated.

If this policy is conditionally continued, we will mail or deliver to the first Named Insured written notice at least 20 days before the effective date of the change or elimination. We will mail or deliver our notice to the first Named Insured's last mailing address known to us. If notice is mailed, proof of mailing will be sufficient proof of notice. Delivery of the notice will be the same as mailing.

**b. Nonrenewal**

If, as allowed by the laws of New York State, we:

- (1) Do not renew this policy; or
- (2) Condition policy renewal upon:
  - (a) Change of limits; or
  - (b) Elimination of coverage;

we will mail or deliver written notice of nonrenewal or conditional renewal:

- (a) At least 45 days; but
- (b) Not more than 60 days;

before the expiration date of the policy. We will mail or deliver our notice to the first Named Insured's last mailing address known to us. If notice is mailed, proof of mailing will be sufficient proof of notice. Delivery of the notice will be the same as mailing.

E. The following is added to the Farm Property - Other Farm Provisions Form - Additional Coverages, Conditions, Definitions, the Commercial Property Coverage Part and the Capital Assets Program (Output Policy) Coverage Part:

When the property is subject to the Anti-arson Application in accordance with New York Department of Financial Services' Insurance Regulation No. 96, the following provisions are added:

If you fail to return the completed, signed and affirmed anti-arson application to us:

- 1. Or our broker or agent within 45 days of the effective date of a new policy, we will cancel the entire policy by giving 20 days' written notice to you and to the mortgageholder shown in the Declarations.
- 2. Before the expiration date of any policy, we will cancel the policy by giving written notice to you and to the mortgageholder shown in the Declarations at least 15 days before the effective date of cancellation.

The cancellation provisions set forth in E.1. and E.2. above supersede any contrary provisions in this policy including this endorsement.

If the notice in E.1. or E.2. above is mailed, proof of mailing will be sufficient proof of notice. Delivery of the notice will be the same as mailing.

F. The following applies to the Commercial Property Coverage Part, the Farm Coverage Part and the Capital Assets Program (Output Policy) Coverage Part:

Paragraphs f. and g. of the **Mortgageholders** Condition are replaced by the following:

**f. Cancellation**

- (1) If we cancel this policy, we will give written notice to the mortgageholder at least:
  - (a) 10 days before the effective date of cancellation if we cancel for your nonpayment of premium; or
  - (b) 30 days before the effective date of cancellation if we cancel for any other reason.

(2) If you cancel this policy, we will give written notice to the mortgageholder. With respect to the mortgageholder's interest only, cancellation will become effective on the later of:

(a) The effective date of cancellation of the insured's coverage; or

(b) 10 days after we give notice to the mortgageholder.

**g. Nonrenewal**

(1) If we elect not to renew this policy, we will give written notice to the mortgageholder at least 10 days before the expiration date of this policy.

(2) If you elect not to renew this policy, we will give written notice to the mortgageholder. With respect to the mortgageholder's interest only, nonrenewal will become effective on the later of:

(a) The expiration date of the policy; or

(b) 10 days after we give notice to the mortgageholder.

**G.** The following provisions apply when the following are made a part of this policy:

Commercial General Liability Coverage Part

Employment-Related Practices Liability Coverage Part

Farm Liability Coverage Form

Liquor Liability Coverage Part

Products/Completed Operations Liability Coverage Part

1. The aggregate limits of this policy as shown in the Declarations will be increased in proportion to any policy extension provided in accordance with Paragraph **C.3.d.** above.

2. The last sentence of Limits Of Insurance does not apply when the policy period is extended because we sent the first Named Insured an incomplete or late conditional renewal notice or a late nonrenewal notice.

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

## **EXCLUSION OF CERTAIN COMPUTER-RELATED LOSSES**

This endorsement modifies insurance provided under the following:

COMMERCIAL INLAND MARINE COVERAGE PART  
COMMERCIAL PROPERTY COVERAGE PART  
CRIME AND FIDELITY COVERAGE PART  
STANDARD PROPERTY POLICY

- A.** We will not pay for loss ("loss") or damage caused directly or indirectly by the following. Such loss ("loss") or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss ("loss") or damage.
1. The failure, malfunction or inadequacy of:
    - a. Any of the following, whether belonging to any insured or to others:
      - (1) Computer hardware, including micro-processors;
      - (2) Computer application software;
      - (3) Computer operating systems and related software;
      - (4) Computer networks;
      - (5) Microprocessors (computer chips) not part of any computer system; or
      - (6) Any other computerized or electronic equipment or components; or
    - b. Any other products, and any services, data or functions that directly or indirectly use or rely upon, in any manner, any of the items listed in Paragraph **A.1.a.** of this endorsement;

due to the inability to correctly recognize, process, distinguish, interpret or accept one or more dates or times. An example is the inability of computer software to recognize the year 2000.
  2. Any advice, consultation, design, evaluation, inspection, installation, maintenance, repair, replacement or supervision provided or done by you or for you to determine, rectify or test for, any potential or actual problems described in Paragraph **A.1.** of this endorsement.
- B.** If an excluded Cause of Loss as described in Paragraph **A.** of this endorsement results:
1. In a Covered Cause of Loss under the Crime and Fidelity Coverage Part, the Commercial Inland Marine Coverage Part or the Standard Property Policy; or
  2. Under the Commercial Property Coverage Part:
    - a. In a "Specified Cause of Loss", or in elevator collision resulting from mechanical breakdown, under the Causes of Loss - Special Form; or
    - b. In a Covered Cause of Loss under the Causes Of Loss - Basic Form or the Causes Of Loss - Broad Form;

we will pay only for the loss ("loss") or damage caused by such "Specified Cause of Loss", elevator collision, or Covered Cause of Loss.
- C.** We will not pay for repair, replacement or modification of any items in Paragraphs **A.1.a.** and **A.1.b.** of this endorsement to correct any deficiencies or change any features.

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

**EXCLUSION OF CERTIFIED ACTS OF TERRORISM**

This endorsement modifies insurance provided under the following:

- BOILER AND MACHINERY COVERAGE PART
- COMMERCIAL INLAND MARINE COVERAGE PART
- COMMERCIAL PROPERTY COVERAGE PART
- CRIME AND FIDELITY COVERAGE PART
- EQUIPMENT BREAKDOWN COVERAGE PART
- FARM COVERAGE PART
- STANDARD PROPERTY POLICY

**SCHEDULE**

The **Exception Covering Certain Fire Losses** (Paragraph C) applies to property located in the following state(s), if covered under the indicated Coverage Form, Coverage Part or Policy:

State(s)	Coverage Form, Coverage Part Or Policy
CA, GA, IL, IA, ME, MO, NJ, NY,	Commercial Property Coverage Part
NC, OR, RI, WA, WV, WI	
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

**A.** The following definition is added with respect to the provisions of this endorsement:

"Certified act of terrorism" means an act that is certified by the Secretary of the Treasury, in accordance with the provisions of the federal Terrorism Risk Insurance Act, to be an act of terrorism pursuant to such Act. The criteria contained in the Terrorism Risk Insurance Act for a "certified act of terrorism" include the following:

1. The act resulted in insured losses in excess of \$5 million in the aggregate, attributable to all types of insurance subject to the Terrorism Risk Insurance Act; and
2. The act is a violent act or an act that is dangerous to human life, property or infrastructure and is 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.

**B.** The following exclusion is added:

**CERTIFIED ACT OF TERRORISM EXCLUSION**

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

**C. Exception Covering Certain Fire Losses**

The following exception to the exclusion in Paragraph B. applies only if indicated and as indicated in the Schedule of this endorsement.

If a "certified act of terrorism" results in fire, we will pay for the loss or damage caused by that fire. Such coverage for fire applies only to direct loss or damage by fire to Covered Property. Therefore, for example, the coverage does not apply to insurance provided under Business Income and/or Extra Expense coverage forms or endorsements which apply to those forms, or to the Legal Liability Coverage Form or the Leasehold Interest Coverage Form.

If aggregate insured losses attributable to terrorist acts certified under the Terrorism Risk Insurance Act exceed \$100 billion in a calendar year and we have met our insurer deductible under the Terrorism Risk Insurance Act, we shall not be liable for the payment of any portion of the amount of such losses that exceeds \$100 billion, and in such case insured losses up to that amount are subject to pro rata allocation in accordance with procedures established by the Secretary of the Treasury.

#### **D. Application Of Other Exclusions**

The terms and limitations of any terrorism exclusion, or the inapplicability or omission of a terrorism exclusion, do not serve to create coverage for any loss which would otherwise be excluded under this Coverage Part or Policy, such as losses excluded by the Nuclear Hazard Exclusion or the War And Military Action Exclusion.

## MULTIPLE LINE OCCURRENCE DEDUCTIBLE

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS POLICY  
COMMERCIAL CRIME COVERAGE PART  
COMMERCIAL INLAND MARINE COVERAGE PART  
COMMERCIAL PROPERTY COVERAGE PART

- A.** If an occurrence causes loss or damage insured by more than one policy or coverage part issued by us, only one deductible will apply to the total loss or damage.

We will apply the largest deductible in any policy or coverage part that provides insurance for the loss or damage to the occurrence. The other deductibles that would otherwise apply to the loss or damage will be waived.

- B.** If an occurrence causes loss or damage insured by more than one coverage form in a policy or coverage part issued by us, only one deductible will apply to the total loss or damage.

We will apply the largest deductible in any coverage form that provides insurance for the loss or damage to the occurrence. The other deductibles that would otherwise apply to the loss or damage will be waived.

- C.** We will separately apply the individual deductibles that would otherwise apply to the loss or damage if that would result in a larger total payment to the insured.

If we separately apply the individual deductibles, the provisions in Paragraphs **A.** and **B.** will not apply.

- D.** This endorsement does not apply to loss covered by any of the following:

1. Earthquake
2. Equipment breakdown coverage

## COMMERCIAL INLAND MARINE COVERAGE PART MULTISTATE REVISION OF FORMS AND ENDORSEMENTS POLICYHOLDERS NOTICE

This is a summary of the major changes in your Commercial Inland Marine insurance. No coverage is provided by this summary nor can it be construed to replace any provisions of your policy. You should read your policy and review your Declarations Page for complete information on the coverages you are provided. If there is any conflict between the policy and this summary, **THE PROVISIONS OF THIS POLICY SHALL PREVAIL.**

The areas within the policy that broaden or reduce coverage, and other changes, are highlighted below. This notice does not reference every editorial change made in your policy.

The material in this notice makes reference to form and endorsement numbers; however, not all forms and endorsements are included in a particular policy.

### CM 70 06 Loss Payable Provisions

Language added for Lender's Loss Payable option. The lender's Loss payable option will function exactly as our existing Property Lender's Loss Payable option does. The loss payee and description of property will be included on the endorsement.

### CM 71 08 Installation Coverage Form, CM 88 16 Flood Exclusion – Designated Locations – Special Transit Form), CM 88 32 Flood Exclusion – Designated Locations – Boat Dealers Form

The water exclusion revised to be equivalent to the ISO water exclusion in CP 10 30. The exclusion clarifies that mudslides and mudflows are excluded perils.

### CM 88 04 Equipment Breakdown – Special Transit; CM 88 05 Equipment Breakdown – Boat Dealers

- Base sublimits for Pollutant Clean-up and Removal, Spoilage and Refrigeration Contamination are increased from \$100,000 to \$250,000
  - The Sublimit of \$100,000 for Expediting Expenses was removed
  - Coverage for CFC Refrigerants added
  - Coverage for environmental, safety and efficiency improvements added; limits up to 125% of what costs would have been to repair or replace with like kind and quality
  - Extended premises definition increased from 1,000 to 1,500 feet
- These changes represent a broadening of coverage.

### CM 88 08 Special Transit Coverage Form; CM 88 27 Boat Dealers Coverage Form

The additional Limit of Insurance for debris removal expense is increased from \$10,000 to \$25,000.

Further, coverage for debris removal is expanded to include the expense of removing debris of certain property of others. The total expense for all debris removal is subject to the limitations stated in the policy concerning amount of coverage, including the aforementioned additional Limit of Insurance. However, when no Covered Property sustains direct physical loss or damage, coverage for the removal of debris of others' property is limited to \$5,000.

The Trees, Shrubs, Lawns and Growing Plants Coverage Extension is revised to include debris removal expense for trees, shrubs and plants that are the property of others, except trees, shrubs and plants owned by the landlord of an insured tenant.

The False Pretense Additional Coverage condition #7 has been revised to incorporate less restrictive language, which will liberalize the coverage and potentially allow for more covered False Pretense claims.

These changes represent a broadening of coverage.

CM 88 26 Tool Coverage Form; CM 88 34 Physical Damage Waiver Form

The additional Limit of Insurance for debris removal expense is increased from \$10,000 to \$25,000.

Further, coverage for debris removal is expanded to include the expense of removing debris of certain property of others. The total expense for all debris removal is subject to the limitations stated in the policy concerning amount of coverage, including the aforementioned additional Limit of Insurance. However, when no Covered Property sustains direct physical loss or damage, coverage for the removal of debris of others' property is limited to \$5,000.

These changes represent a broadening of coverage.

CM 88 47 Broadened Boat Dealers Coverage; CM 88 48 Broadened Special Transit Coverage

- Crime additional coverages updated to reflect equivalent ISO crime coverage changes
- Debris removal coverage extension enhancement increased from \$25,000 to \$50,000
- Pollutant Clean-up and Removal coverage extension enhancement increased from \$25,000 to \$100,000





POLICY NUMBER: 2553009002

## COMMERCIAL INLAND MARINE COVERAGE DECLARATION

Sentry Select Insurance Company (A Participating Stock Company) A member of the Sentry Insurance Group 1800 North Point Drive Stevens Point, WI 54481	Producer  Steven Asch 10000277 315-484-6565
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### POLICY INFORMATION

**First Named Insured:** Alan Byer Auto Sales Inc  
**Address:** 1230 W Genesee St  
Syracuse, NY 13204-2104

The Commercial Inland Marine Coverage applies from 08/01/2018 to 08/01/2019 at 12:01 A.M. Standard Time at the First Named Insured's mailing address shown above.

### APPLICABLE FORMS AND ENDORSEMENTS

In addition to the common policy forms and endorsements, the following forms and endorsements apply to the Commercial Inland Marine Coverage:

Form/Endorsement Number and Edition Date	Form/Endorsement Title
CM 00 01 09 04	Commercial Inland Marine Conditions
CM 01 04 09 15	New York Changes
CM 70 13 03 97	Liberalization
CM 88 26 10 12	Tools Coverage Form
IL 01 83 08 08	New York Changes - Fraud
IL 02 68 01 14	New York Changes - Cancellation And Nonrenewal
IL 09 35 07 02	Exclusion Of Certain Computer-Related Losses
IL 09 53 01 15	Exclusion Of Certified Acts Of Terrorism
IL 70 26 07 13	Multiple Line Occurrence Deductible

### COVERAGES

#### TOOLS COVERAGE

##### Limits of Insurance and Deductibles

Employee Owned Tools	
Aggregate Limit for All Employees:	\$ 405,000
Deductible:	\$ 1,000

#### Optional Coverage

Replacement Cost applies

## COMMERCIAL INLAND MARINE CONDITIONS

The following conditions apply in addition to the Common Policy Conditions and applicable Additional Conditions in Commercial Inland Marine Coverage Forms:

### LOSS CONDITIONS

#### A. Abandonment

There can be no abandonment of any property to us.

#### B. Appraisal

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

1. Pay its chosen appraiser; and
2. Bear the other expenses of the appraisal and umpire equally.

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

#### C. Duties In The Event Of Loss

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

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

5. You will not, except at your own cost, voluntarily make a payment, assume any obligation, or incur any expense without our consent.

6. As often as may be reasonably required, permit us to inspect the property proving the loss or damage and examine your books and records.

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

7. We may examine any insured under oath, while not in the presence of any other insured and at such times as may be reasonably required, about any matter relating to this insurance or the claim, including an insured's books and records. In the event of an examination, an insured's answers must be signed.

8. Send us a signed, sworn proof of loss containing the information we request to settle the claim. You must do this within 60 days after our request. We will supply you with the necessary forms.

9. Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or suit.

10. Cooperate with us in the investigation or settlement of the claim.

#### D. Insurance Under Two Or More Coverages

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

#### E. Loss Payment

1. We will give notice of our intentions within 30 days after we receive the sworn proof of loss.

2. We will not pay you more than your financial interest in the Covered Property.

3. We may adjust losses with the owners of lost or damaged property if other than you. If we pay the owners, such payments will satisfy your claim against us for the owners' property. We will not pay the owners more than their financial interest in the Covered Property.

4. We may elect to defend you against suits arising from claims of owners of property. We will do this at our expense.

5. We will pay for covered loss or damage within 30 days after we receive the sworn proof of loss if you have complied with all the terms of this Coverage Part and:
  - a. We have reached agreement with you on the amount of the loss; or
  - b. An appraisal award has been made.
6. We will not be liable for any part of a loss that has been paid or made good by others.

#### F. Other Insurance

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

#### G. Pair, Sets Or Parts

##### 1. Pair Or Set

In case of loss or damage to any part of a pair or set we may:

- a. Repair or replace any part to restore the pair or set to its value before the loss or damage; or
- b. Pay the difference between the value of the pair or set before and after the loss or damage.

##### 2. Parts

In case of loss or damage to any part of Covered Property consisting of several parts when complete, we will only pay for the value of the lost or damaged part.

#### H. Recovered Property

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

#### I. Reinstatement Of Limit After Loss

The Limit of Insurance will not be reduced by the payment of any claim, except for total loss or damage of a scheduled item, in which event we will refund the unearned premium on that item.

#### J. Transfer Of Rights Of Recovery Against Others To Us

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

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

This will not restrict your insurance.

#### GENERAL CONDITIONS

##### A. Concealment, Misrepresentation Or Fraud

This Coverage Part is void in any case of fraud, intentional concealment or misrepresentation of a material fact, by you or any other insured, at any time, concerning:

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

##### B. Control Of Property

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

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

##### C. Legal Action Against Us

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

1. There has been full compliance with all the terms of this Coverage Part; and
2. The action is brought within 2 years after you first have knowledge of the direct loss or damage.

**D. No Benefit To Bailee**

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

**E. Policy Period, Coverage Territory**

We cover loss or damage commencing:

1. During the policy period shown in the Declarations; and
2. Within the coverage territory.

**F. Valuation**

The value of property will be the least of the following amounts:

1. The actual cash value of that property;

2. The cost of reasonably restoring that property to its condition immediately before loss or damage; or

3. The cost of replacing that property with substantially identical property.

In the event of loss or damage, the value of property will be determined as of the time of loss or damage.

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

## **NEW YORK CHANGES**

The **Appraisal** Loss Condition in the Commercial Inland Marine Conditions is replaced by the following:

### **Appraisal**

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

Each party will:

1. Pay its chosen appraiser; and
2. Bear the other expenses of the appraisal and umpire equally.

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

## LIBERALIZATION

This endorsement modifies insurance provided under the following:

### COMMERCIAL INLAND MARINE CONDITIONS

The following general condition is added:

If we adopt any revision that would broaden the coverage under this coverage part without additional

premium within 45 days prior to or during the policy period, the **Broadened Coverage** will apply immediately to this coverage part.

## TOOLS COVERAGE FORM

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

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

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

### A. Coverage

We will pay for direct physical loss of or damage to Covered Property from any of the Covered Causes of Loss.

1. Covered Property, as used in this Coverage Form, means the following types of property for which a limit is shown in the Declarations:
  - a. Tools you own while away from your premises.
  - b. Tools that are owned and used by your employees at your premises or in the operation of your business.

### 2. Property Not Covered

Covered Property does not include:

- a. Contraband or property in the course of illegal transportation or trade.
- b. Tools or equipment that you lease or rent to others.

### 3. Covered Causes of Loss

Covered Causes of Loss means direct physical loss or damage to Covered Property except those causes of loss listed in the Exclusions.

### 4. Additional Coverage - Collapse

The coverage provided under this Additional Coverage - Collapse applies only to an abrupt collapse as described and limited in Paragraphs a. through c.

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

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

- (1) Building decay that is hidden from view, unless the presence of such decay is known to an insured prior to collapse;

- (2) Insect or vermin damage that is hidden from view, unless the presence of such damage is known to an insured prior to collapse;

- (3) Use of defective material or methods in construction, remodeling or renovation if the abrupt collapse occurs during the course of the construction, remodeling or renovation.

- (4) Use of defective material or methods in construction, remodeling or renovation if the abrupt collapse occurs after the construction, remodeling or renovation is complete, but only if the collapse is caused in part by:

- (a) A cause of loss listed in Paragraph (1) or (2);

- (b) One or more of the following causes of loss: Fire; lightning; windstorm; hail; explosion; smoke; aircraft; vehicles; riot; civil commotion; vandalism; leakage from fire extinguishing equipment; sinkhole collapse; volcanic action; breakage of building glass; falling objects; weight of snow, ice or sleet; water damage; all only as insured against in this Coverage Form;

- (c) Weight of people or personal property; or

- (d) Weight of rain that collects on a roof.

- c. This Additional Coverage - Collapse will not increase the Limits of Insurance provided in this Coverage Form.

## 5. Coverage Extensions

### a. Debris Removal

- (1) Subject to Paragraphs (2), (3) and (4), we will pay your expenses to remove debris of Covered Property and other debris that is on the described building, when such debris is caused by or results from a Covered Cause of Loss that occurs during the policy period. The expenses will be paid only if they are reported to us in writing within 180 days of the date of direct physical loss or damage.
- (2) Debris Removal does not apply to costs to:
- (a) Remove debris of property of yours that is not insured under this policy, or property in your possession that is not Covered Property;
  - (b) Remove debris of property owned by or leased to the landlord of the building where your described buildings are located, unless you have a contractual responsibility to insure such property and it is insured under this policy;
  - (c) Remove any property that is Property Not Covered;
  - (d) Remove property of others of a type that would not be Covered Property under this Coverage Form;
  - (e) Remove deposits of mud or earth from the grounds of the described building;
  - (f) Extract "pollutants" from land or water; or
  - (g) Remove, restore or replace polluted land or water.
- (3) Subject to the exceptions in Paragraph (4), the following provisions apply:
- (a) The most we will pay for the total of direct physical loss or damage plus debris removal expense is the Limit of Insurance applicable to the Covered Property that has sustained loss or damage.

(b) Subject to (a) above, the amount we will pay for debris removal expense is limited to 25% of the sum of the deductible plus the amount that we pay for direct physical loss or damage to the Covered Property that has sustained loss or damage. However, if no Covered Property has sustained direct physical loss or damage, the most we will pay for removal of debris of other property (if such removal is covered under this Additional Coverage) is \$5,000 at each location.

- (4) We will pay up to an additional \$25,000 for debris removal expense, for each location, in any one occurrence of physical loss or damage to Covered Property, if one or both of the following circumstances apply:
- (a) The total of the actual debris removal expense plus the amount we pay for direct physical loss or damage exceeds the Limit of Insurance on the Covered Property that has sustained loss or damage.
  - (b) The actual debris removal expense exceeds 25% of the sum of the deductible plus the amount that we pay for direct physical loss or damage to the Covered Property that has sustained loss or damage.

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

### (5) Examples

#### Example #1

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



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

**Example #2**

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

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

The additional amount payable for debris removal expense is provided in accordance with the terms of Paragraph (4), because the debris removal expense (\$40,000) exceeds 25% of the loss payable plus the deductible (\$40,000 is 50% of \$80,000), and because the sum of the loss payable and debris removal expense (\$79,500 + \$40,000 = \$119,500) would exceed the Limit of Insurance (\$90,000). The additional amount of covered debris removal expense is \$25,000, the maximum amount payable under Paragraph (4). Thus the total payment for debris removal expense in this example is \$30,500; \$4,500 of the debris removal expense is not covered.

**b. Pollutant Clean Up and Removal**

We will pay your expenses to extract "pollutants" from land or water if the discharge, dispersal, seepage, migration, release or escape of the pollutants is caused by or results from a Covered Cause of Loss that occurs during the policy period. The expenses will be paid only if they are reported to us in writing within 180 days of the date on which the Covered Cause of Loss occurs. This Coverage Extension does not apply to costs to test for, monitor or assess the existence, concentration or effects of "pollutants". But we will pay for testing which is performed in the course of extracting the "pollutants" from the land or water.

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

The limit for this Coverage Extension is in addition to the Limit of Insurance.

**c. Theft Damage to Buildings**

(1) We will pay for damage caused directly by theft or attempted theft to:

(a) That part of any building containing Covered Property; or

(b) Equipment within the building used to maintain or service the building;

only if you own the building or are legally responsible for the damage.

(2) But, we will not pay for damage:

(a) Caused by fire; or

(b) To glass or to lettering or art work on glass.

This Coverage Extension is included within the Limit of Insurance applicable to the Covered Property at the building where the damage occurs.

**B. Exclusions**

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

**a. Governmental Action**

Seizure or destruction of property by order of governmental authority. But we will pay for acts of destruction ordered by governmental authority and taken at the time of a fire to prevent its spread if the fire would be covered under this Coverage Form.

**b. Nuclear Hazard**

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

But if nuclear reaction or radiation, or radioactive contamination results in fire, we will pay for the direct loss or damage caused by that fire if the fire would be covered under this Coverage Form.

**c. War and Military Action**

(1) War, including undeclared or civil war;

(2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign, or other authority using military personnel or other agents; or

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

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

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

a. Delay, loss of use, loss of market or any other consequential loss.

b. Unexplained disappearance.

c. Shortage found upon taking inventory.

d. Dishonest or criminal act committed by:

(1) You, any of your partners, employees directors, trustees, or authorized representatives;

(2) A manager or a member if you are a limited liability company;

(3) Anyone else with an interest in the property, or their employees or authorized representatives; or

(4) Anyone else to whom the property is entrusted for any purpose.

This exclusion applies whether or not such persons are acting alone or in collusion with other persons or such acts occur during the hours of employment.

This exclusion does not apply to Covered Property that is entrusted to others who are carriers for hire or to acts of destruction by your employees. But theft by employees is not covered.

e. Processing or work upon the property.

But if processing or work upon the property results in fire or explosion, we will pay for the direct loss or damage caused by that fire or explosion, if the fire or explosion would be covered under this Coverage Form.

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

(1) Electrical or electronic wire, device, appliance, system or network; or

(2) Device, appliance, system or network utilizing cellular or satellite technology;

creating a short circuit or other electric disturbance within an article covered under this Coverage Form.

For the purpose of this exclusion, electrical, magnetic or electromagnetic energy includes, but is not limited to, electrical current, including arcing; electrical charge produced or conducted by a magnetic or electromagnetic field; pulse of electromagnetic energy; electromagnetic waves or microwaves.

But if artificially generated electrical, magnetic, or electromagnetic energy, as described above, results in fire or explosion, we will pay for the direct loss or damage caused by that fire or explosion, if the fire or explosion would be covered under this Coverage Form.

This exclusion only applies to loss or damage to that article in which the disturbance occurs.

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

h. Unauthorized instructions to transfer property to any person or to any place.

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

3. We will not pay for loss or damage caused by or resulting from any of the following. But if loss or damage by a Covered Cause of Loss results, we will pay for the loss or damage caused by that Covered Cause of Loss.

- a. Weather conditions but this exclusion only applies if weather conditions contribute in any way with a cause or event excluded in Paragraph 1. above to produce the loss or damage.
- b. Acts or decisions, including the failure to act or decide, of any person, group, organization or governmental body.
- c. Faulty, inadequate or defective:
  - (1) Planning, zoning, development, surveying, siting;
  - (2) Design, specifications, workmanship, repair, construction, renovation, remodeling, grading, compaction;
  - (3) Materials used in repair, construction, renovation or remodeling; or
  - (4) Maintenance; of part or all of any property wherever located.
- d. Collapse including any of the following conditions of property or any part of the property:
  - (1) An abrupt falling down or caving in;
  - (2) Loss of structural integrity, including separation of parts of the property or property in danger of falling down or caving in; or
  - (3) Any cracking, bulging, sagging, bending, leaning, settling, shrinking, or expansion as such condition relates to Paragraph (1) or (2).

This Exclusion, d., does not apply to the extent that coverage is provided under the Additional Coverage - Collapse or to collapse caused by one or more of the following: Fire; lightning; windstorm; hail; explosion; smoke; aircraft; vehicles; riot; civil commotion; vandalism; leakage from fire extinguishing equipment; sinkhole collapse; volcanic action; breakage of building glass; falling objects; weight of snow, ice or sleet; water damage; weight of people or personal property; weight of rain that collects on a roof.

- e. Wear and tear, any quality in the property that causes it to damage or destroy itself, hidden or latent defect, gradual deterioration, depreciation; mechanical breakdown; insects, vermin, rodents; corrosion, rust, dampness, cold, or heat.

**C. Limits of Insurance**

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

**D. Deductible**

We will not pay for loss or damage in any one occurrence until the amount of the adjusted loss or damage before applying the applicable Limits of Insurance exceeds the Deductible shown in the Declarations. We will then pay the amount of the adjusted loss or damage in excess of the Deductible, up to the applicable Limit of Insurance.

**E. Additional Conditions**

The following conditions apply in addition to the Commercial Inland Marine Conditions and the Common Policy Conditions.

Coverage Territory

We will cover property wherever located within:

- 1. The United States of America (including its territories and possessions);
- 2. Puerto Rico; and
- 3. Canada.

**F. Definitions**

"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.

**G. Optional Coverage**

The following optional coverage will apply only if an entry is shown in the Declarations.

Replacement Cost

General Condition F., Valuation, in the Commercial Inland Marine Conditions is replaced by the following:

- 1. The most we will pay for loss or damage to Covered Property shall not exceed the smallest of the following:
  - a. The applicable Limit of Insurance;
  - b. The cost to replace the property at the time of loss or damage without deduction for depreciation; or
  - c. The cost to repair at the time of loss or damage.
- 2. We will not pay on a replacement cost basis for any loss or damage:
  - a. Until you repair or replace the lost or damaged property.
  - b. The repairs or replacement are made as soon as reasonably possible after the loss or damage.
- 3. You may make a claim for the loss or damage covered by this insurance on an actual cash value basis if you decide not to repair or replace the damaged property. You may still make a claim for the replacement cost if you elect, within 180 days after the loss or damage, to repair or replace the damaged property.

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

## **NEW YORK CHANGES - FRAUD**

This endorsement modifies insurance provided under the following:

CAPITAL ASSETS PROGRAM (OUTPUT POLICY) COVERAGE PART  
COMMERCIAL AUTOMOBILE COVERAGE PART  
COMMERCIAL INLAND MARINE COVERAGE PART  
COMMERCIAL PROPERTY COVERAGE PART  
EQUIPMENT BREAKDOWN COVERAGE PART  
FARM COVERAGE PART - FARM PROPERTY - OTHER FARM PROVISIONS FORM - ADDITIONAL  
COVERAGES, CONDITIONS, DEFINITIONS  
FARM COVERAGE PART - LIVESTOCK COVERAGE FORM  
FARM COVERAGE PART - MOBILE AGRICULTURAL MACHINERY AND EQUIPMENT COVERAGE  
FORM

The **CONCEALMENT, MISREPRESENTATION OR FRAUD** Condition is replaced by the following:

### **FRAUD**

We do not provide coverage for any insured ("insured") who has made fraudulent statements or engaged in fraudulent conduct in connection with any loss ("loss") or damage for which coverage is sought under this policy.

However, with respect to insurance provided under the COMMERCIAL AUTOMOBILE COVERAGE PART, we will provide coverage to such "insured" for damages sustained by any person who has not made fraudulent statements or engaged in fraudulent conduct if such damages are otherwise covered under the policy.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## NEW YORK CHANGES - CANCELLATION AND NONRENEWAL

This endorsement modifies insurance provided under the following:

CAPITAL ASSETS PROGRAM (OUTPUT POLICY) COVERAGE PART  
COMMERCIAL GENERAL LIABILITY COVERAGE PART  
COMMERCIAL INLAND MARINE COVERAGE PART  
COMMERCIAL PROPERTY COVERAGE PART  
CRIME AND FIDELITY COVERAGE PART  
EQUIPMENT BREAKDOWN COVERAGE PART  
FARM COVERAGE PART  
LIQUOR LIABILITY COVERAGE PART  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

A. Paragraphs 1., 2., 3. and 5. of the **Cancellation** Common Policy Condition are replaced by the following:

1. The first Named Insured shown in the Declarations may cancel this entire policy by mailing or delivering to us advance written notice of cancellation.

**2. Cancellation Of Policies In Effect**

**a. 60 Days Or Less**

We may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation at least:

- (1) 30 days before the effective date of cancellation if we cancel for any reason not included in Paragraph **A.2.b.** below.
- (2) 15 days before the effective date of cancellation if we cancel for any of the reasons included in Paragraph **A.2.b.** below.

**b. For More Than 60 Days**

If this policy has been in effect for more than 60 days, or if this policy is a renewal or continuation of a policy we issued, we may cancel only for any of the reasons listed below, provided we mail the first Named Insured written notice at least 15 days before the effective date of cancellation:

- (1) Nonpayment of premium, provided however, that a notice of cancellation on this ground shall inform the first Named Insured of the amount due;

(2) Conviction of a crime arising out of acts increasing the hazard insured against;

(3) Discovery of fraud or material misrepresentation in the obtaining of the policy or in the presentation of a claim;

(4) After issuance of the policy or after the last renewal date, discovery of an act or omission, or a violation of any policy condition, that substantially and materially increases the hazard insured against, and which occurred subsequent to inception of the current policy period;

(5) Material physical change in the property insured, occurring after issuance or last annual renewal anniversary date of the policy, which results in the property becoming uninsurable in accordance with our objective, uniformly applied underwriting standards in effect at the time the policy was issued or last renewed; or material change in the nature or extent of the risk, occurring after issuance or last annual renewal anniversary date of the policy, which causes the risk of loss to be substantially and materially increased beyond that contemplated at the time the policy was issued or last renewed;

(6) Required pursuant to a determination by the Superintendent that continuation of our present premium volume would jeopardize our solvency or be hazardous to the interest of our policyholders, our creditors or the public;

(7) A determination by the Superintendent that the continuation of the policy would violate, or would place us in violation of, any provision of the Insurance Code; or

(8) Where we have reason to believe, in good faith and with sufficient cause, that there is a probable risk of danger that the insured will destroy, or permit to be destroyed, the insured property for the purpose of collecting the insurance proceeds. If we cancel for this reason, you may make a written request to the Department of Financial Services, within 10 days of receipt of this notice, to review our cancellation decision. Also, we will simultaneously send a copy of this cancellation notice to the Department of Financial Services.

3. We will mail or deliver our notice, including the reason for cancellation, to the first Named Insured at the address shown in the policy and to the authorized agent or broker.
5. If this policy is cancelled, we will send the first Named Insured any premium refund due. If we cancel, the refund will be pro rata. If the first Named Insured cancels, the refund may be less than pro rata.

However, when the premium is advanced under a premium finance agreement, the cancellation refund will be pro rata. Under such financed policies, we will be entitled to retain a minimum earned premium of 10% of the total policy premium or \$60, whichever is greater. The cancellation will be effective even if we have not made or offered a refund.

**B. The following is added to the Cancellation Common Policy Condition:**

7. If one of the reasons for cancellation in Paragraph **A.2.b.** or **D.2.b.(2)** exists, we may cancel this entire policy, even if the reason for cancellation pertains only to a new coverage or endorsement initially effective subsequent to the original issuance of this policy.

**C. The following conditions are added:**

**1. Nonrenewal**

If we decide not to renew this policy we will send notice as provided in Paragraph **C.3.** below.

**2. Conditional Renewal**

If we conditionally renew this policy subject to:

- a. A change of limits;

- b. A change in type of coverage;
- c. A reduction of coverage;
- d. An increased deductible;
- e. An addition of exclusion; or
- f. Increased premiums in excess of 10%, exclusive of any premium increase due to and commensurate with insured value added or increased exposure units; or as a result of experience rating, loss rating, retrospective rating or audit;

we will send notice as provided in Paragraph **C.3.** below.

**3. Notices Of Nonrenewal And Conditional Renewal**

- a. If we decide not to renew this policy or to conditionally renew this policy as provided in Paragraphs **C.1.** and **C.2.** above, we will mail or deliver written notice to the first Named Insured shown in the Declarations at least 60 but not more than 120 days before:

(1) The expiration date; or

(2) The anniversary date if this is a continuous policy.

- b. Notice will be mailed or delivered to the first Named Insured at the address shown in the policy and to the authorized agent or broker. If notice is mailed, proof of mailing will be sufficient proof of notice.

- c. Notice will include the specific reason(s) for nonrenewal or conditional renewal, including the amount of any premium increase for conditional renewal and description of any other changes.

- d. If we violate any of the provisions of Paragraph **C.3.a., b.** or **c.** above by sending the first Named Insured an incomplete or late conditional renewal notice or a late nonrenewal notice:

(1) And if notice is provided prior to the expiration date of this policy, coverage will remain in effect at the same terms and conditions of this policy at the lower of the current rates or the prior period's rates until 60 days after such notice is mailed or delivered, unless the first Named Insured, during this 60-day period, has replaced the coverage or elects to cancel;

- (2) And if the notice is provided on or after the expiration date of this policy, coverage will remain in effect at the same terms and conditions of this policy for another policy period, at the lower of the current rates or the prior period's rates, unless the first Named Insured, during this additional policy period, has replaced the coverage or elects to cancel.
  - e. If you elect to renew on the basis of a late conditional renewal notice, the terms, conditions and rates set forth in such notice shall apply:
    - (1) Upon expiration of the 60-day period, unless Subparagraph (2) below applies; or
    - (2) Notwithstanding the provisions in Paragraphs d.(1) and d.(2), as of the renewal date of the policy if the conditional renewal notice was sent at least 30 days prior to the expiration or anniversary date of the policy.
  - f. We will not send you notice of nonrenewal or conditional renewal if you, your authorized agent or broker or another insurer of yours mails or delivers notice that the policy has been replaced or is no longer desired.
- D.** The following provisions apply when the Commercial Property Coverage Part, the Farm Coverage Part or the Capital Assets Program (Output Policy) Coverage Part is made a part of this policy:
- 1. Items D.2. and D.3. apply if this policy meets the following conditions:
    - a. The policy is issued or issued for delivery in New York State covering property located in this state; and
    - b. The policy insures:
      - (1) For loss of or damage to structures, other than hotels or motels, used predominantly for residential purposes and consisting of no more than four dwelling units; or
      - (2) For loss of or damage to personal property other than farm personal property or business property; or
      - (3) Against damages arising from liability for loss of, damage to or injury to persons or property, except liability arising from business or farming; and
  - c. The portion of the annual premium attributable to the property and contingencies described in 1.b. exceeds the portion applicable to other property and contingencies.
2. Paragraph 2. of the **Cancellation** Common Policy Condition is replaced by the following:
- 2. Procedure And Reasons For Cancellation**
- a. We may cancel this entire policy by mailing or delivering to the first Named Insured written notice of cancellation at least:
    - (1) 15 days before the effective date of cancellation if we cancel for nonpayment of premium, provided however, that a notice of cancellation on this ground shall inform the first Named Insured of the amount due; or
    - (2) 30 days before the effective date of cancellation if we cancel for any other reason.
  - b. But if this policy:
    - (1) Has been in effect for more than 60 days; or
    - (2) Is a renewal of a policy we issued;
 we may cancel this policy only for one or more of the following reasons:
    - (1) Nonpayment of premium, provided however, that a notice of cancellation on this ground shall inform the first Named Insured of the amount due;
    - (2) Conviction of a crime arising out of acts increasing the risk of loss;
    - (3) Discovery of fraud or material misrepresentation in obtaining the policy or in making a claim;
    - (4) Discovery of willful or reckless acts or omissions increasing the risk of loss;
    - (5) Physical changes in the covered property that make that property uninsurable in accordance with our objective and uniformly applied underwriting standards in effect when we:
      - (a) Issued the policy; or
      - (b) Last voluntarily renewed the policy;

(6) The Superintendent of Financial Services' determination that continuing the policy would violate Chapter 28 of the Insurance Law; or

(7) Required pursuant to a determination by the Superintendent of Financial Services that the continuation of our present premium volume would be hazardous to the interests of our policyholders, our creditors or the public.

3. The following are added:

**a. Conditional Continuation**

Instead of cancelling this policy, we may continue it on the condition that:

(1) The policy limits be changed; or

(2) Any coverage not required by law be eliminated.

If this policy is conditionally continued, we will mail or deliver to the first Named Insured written notice at least 20 days before the effective date of the change or elimination. We will mail or deliver our notice to the first Named Insured's last mailing address known to us. If notice is mailed, proof of mailing will be sufficient proof of notice. Delivery of the notice will be the same as mailing.

**b. Nonrenewal**

If, as allowed by the laws of New York State, we:

(1) Do not renew this policy; or

(2) Condition policy renewal upon:

(a) Change of limits; or

(b) Elimination of coverage;

we will mail or deliver written notice of nonrenewal or conditional renewal:

(a) At least 45 days; but

(b) Not more than 60 days;

before the expiration date of the policy. We will mail or deliver our notice to the first Named Insured's last mailing address known to us. If notice is mailed, proof of mailing will be sufficient proof of notice. Delivery of the notice will be the same as mailing.

E. The following is added to the Farm Property - Other Farm Provisions Form - Additional Coverages, Conditions, Definitions, the Commercial Property Coverage Part and the Capital Assets Program (Output Policy) Coverage Part:

When the property is subject to the Anti-arson Application in accordance with New York Department of Financial Services' Insurance Regulation No. 96, the following provisions are added:

If you fail to return the completed, signed and affirmed anti-arson application to us:

1. Or our broker or agent within 45 days of the effective date of a new policy, we will cancel the entire policy by giving 20 days' written notice to you and to the mortgageholder shown in the Declarations.

2. Before the expiration date of any policy, we will cancel the policy by giving written notice to you and to the mortgageholder shown in the Declarations at least 15 days before the effective date of cancellation.

The cancellation provisions set forth in E.1. and E.2. above supersede any contrary provisions in this policy including this endorsement.

If the notice in E.1. or E.2. above is mailed, proof of mailing will be sufficient proof of notice. Delivery of the notice will be the same as mailing.

F. The following applies to the Commercial Property Coverage Part, the Farm Coverage Part and the Capital Assets Program (Output Policy) Coverage Part:

Paragraphs f. and g. of the **Mortgageholders** Condition are replaced by the following:

**f. Cancellation**

(1) If we cancel this policy, we will give written notice to the mortgageholder at least:

(a) 10 days before the effective date of cancellation if we cancel for your nonpayment of premium; or

(b) 30 days before the effective date of cancellation if we cancel for any other reason.



(2) If you cancel this policy, we will give written notice to the mortgageholder. With respect to the mortgageholder's interest only, cancellation will become effective on the later of:

(a) The effective date of cancellation of the insured's coverage; or

(b) 10 days after we give notice to the mortgageholder.

**g. Nonrenewal**

(1) If we elect not to renew this policy, we will give written notice to the mortgageholder at least 10 days before the expiration date of this policy.

(2) If you elect not to renew this policy, we will give written notice to the mortgageholder. With respect to the mortgageholder's interest only, nonrenewal will become effective on the later of:

(a) The expiration date of the policy; or

(b) 10 days after we give notice to the mortgageholder.

**G.** The following provisions apply when the following are made a part of this policy:

Commercial General Liability Coverage Part

Employment-Related Practices Liability Coverage Part

Farm Liability Coverage Form

Liquor Liability Coverage Part

Products/Completed Operations Liability Coverage Part

1. The aggregate limits of this policy as shown in the Declarations will be increased in proportion to any policy extension provided in accordance with Paragraph **C.3.d.** above.

2. The last sentence of Limits Of Insurance does not apply when the policy period is extended because we sent the first Named Insured an incomplete or late conditional renewal notice or a late nonrenewal notice.

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

## **EXCLUSION OF CERTAIN COMPUTER-RELATED LOSSES**

This endorsement modifies insurance provided under the following:

COMMERCIAL INLAND MARINE COVERAGE PART  
COMMERCIAL PROPERTY COVERAGE PART  
CRIME AND FIDELITY COVERAGE PART  
STANDARD PROPERTY POLICY

- A.** We will not pay for loss ("loss") or damage caused directly or indirectly by the following. Such loss ("loss") or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss ("loss") or damage.
1. The failure, malfunction or inadequacy of:
    - a. Any of the following, whether belonging to any insured or to others:
      - (1) Computer hardware, including micro-processors;
      - (2) Computer application software;
      - (3) Computer operating systems and related software;
      - (4) Computer networks;
      - (5) Microprocessors (computer chips) not part of any computer system; or
      - (6) Any other computerized or electronic equipment or components; or
    - b. Any other products, and any services, data or functions that directly or indirectly use or rely upon, in any manner, any of the items listed in Paragraph **A.1.a.** of this endorsement;
 

due to the inability to correctly recognize, process, distinguish, interpret or accept one or more dates or times. An example is the inability of computer software to recognize the year 2000.
  2. Any advice, consultation, design, evaluation, inspection, installation, maintenance, repair, replacement or supervision provided or done by you or for you to determine, rectify or test for, any potential or actual problems described in Paragraph **A.1.** of this endorsement.
- B.** If an excluded Cause of Loss as described in Paragraph **A.** of this endorsement results:
1. In a Covered Cause of Loss under the Crime and Fidelity Coverage Part, the Commercial Inland Marine Coverage Part or the Standard Property Policy; or
  2. Under the Commercial Property Coverage Part:
    - a. In a "Specified Cause of Loss", or in elevator collision resulting from mechanical breakdown, under the Causes of Loss - Special Form; or
    - b. In a Covered Cause of Loss under the Causes Of Loss - Basic Form or the Causes Of Loss - Broad Form;
 

we will pay only for the loss ("loss") or damage caused by such "Specified Cause of Loss", elevator collision, or Covered Cause of Loss.
- C.** We will not pay for repair, replacement or modification of any items in Paragraphs **A.1.a.** and **A.1.b.** of this endorsement to correct any deficiencies or change any features.

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

**EXCLUSION OF CERTIFIED ACTS OF TERRORISM**

This endorsement modifies insurance provided under the following:

- BOILER AND MACHINERY COVERAGE PART
- COMMERCIAL INLAND MARINE COVERAGE PART
- COMMERCIAL PROPERTY COVERAGE PART
- CRIME AND FIDELITY COVERAGE PART
- EQUIPMENT BREAKDOWN COVERAGE PART
- FARM COVERAGE PART
- STANDARD PROPERTY POLICY

**SCHEDULE**

The **Exception Covering Certain Fire Losses** (Paragraph C) applies to property located in the following state(s), if covered under the indicated Coverage Form, Coverage Part or Policy:

State(s)	Coverage Form, Coverage Part Or Policy
CA, ME, MO, OR, WI	Commercial Inland Marine Coverage
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

**A.** The following definition is added with respect to the provisions of this endorsement:

"Certified act of terrorism" means an act that is certified by the Secretary of the Treasury, in accordance with the provisions of the federal Terrorism Risk Insurance Act, to be an act of terrorism pursuant to such Act. The criteria contained in the Terrorism Risk Insurance Act for a "certified act of terrorism" include the following:

1. The act resulted in insured losses in excess of \$5 million in the aggregate, attributable to all types of insurance subject to the Terrorism Risk Insurance Act; and
2. The act is a violent act or an act that is dangerous to human life, property or infrastructure and is 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.

**B.** The following exclusion is added:

**CERTIFIED ACT OF TERRORISM EXCLUSION**

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

**C. Exception Covering Certain Fire Losses**

The following exception to the exclusion in Paragraph B. applies only if indicated and as indicated in the Schedule of this endorsement.

If a "certified act of terrorism" results in fire, we will pay for the loss or damage caused by that fire. Such coverage for fire applies only to direct loss or damage by fire to Covered Property. Therefore, for example, the coverage does not apply to insurance provided under Business Income and/or Extra Expense coverage forms or endorsements which apply to those forms, or to the Legal Liability Coverage Form or the Leasehold Interest Coverage Form.

If aggregate insured losses attributable to terrorist acts certified under the Terrorism Risk Insurance Act exceed \$100 billion in a calendar year and we have met our insurer deductible under the Terrorism Risk Insurance Act, we shall not be liable for the payment of any portion of the amount of such losses that exceeds \$100 billion, and in such case insured losses up to that amount are subject to pro rata allocation in accordance with procedures established by the Secretary of the Treasury.

#### **D. Application Of Other Exclusions**

The terms and limitations of any terrorism exclusion, or the inapplicability or omission of a terrorism exclusion, do not serve to create coverage for any loss which would otherwise be excluded under this Coverage Part or Policy, such as losses excluded by the Nuclear Hazard Exclusion or the War And Military Action Exclusion.

## MULTIPLE LINE OCCURRENCE DEDUCTIBLE

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS POLICY  
COMMERCIAL CRIME COVERAGE PART  
COMMERCIAL INLAND MARINE COVERAGE PART  
COMMERCIAL PROPERTY COVERAGE PART

- A.** If an occurrence causes loss or damage insured by more than one policy or coverage part issued by us, only one deductible will apply to the total loss or damage.

We will apply the largest deductible in any policy or coverage part that provides insurance for the loss or damage to the occurrence. The other deductibles that would otherwise apply to the loss or damage will be waived.

- B.** If an occurrence causes loss or damage insured by more than one coverage form in a policy or coverage part issued by us, only one deductible will apply to the total loss or damage.

We will apply the largest deductible in any coverage form that provides insurance for the loss or damage to the occurrence. The other deductibles that would otherwise apply to the loss or damage will be waived.

- C.** We will separately apply the individual deductibles that would otherwise apply to the loss or damage if that would result in a larger total payment to the insured.

If we separately apply the individual deductibles, the provisions in Paragraphs **A.** and **B.** will not apply.

- D.** This endorsement does not apply to loss covered by any of the following:

1. Earthquake
2. Equipment breakdown coverage

POLICY NUMBER: 2553009003



## COMMERCIAL CRIME COVERAGE DECLARATIONS

Sentry Select Insurance Company (A Participating Stock Company) A member of the Sentry Insurance Group 1800 North Point Drive Stevens Point, WI 54481	Producer  Steven Asch 10000277 315-484-6565
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### POLICY INFORMATION

**First Named Insured:** Alan Byer Auto Sales Inc  
**Address:** 1230 W Genesee St  
 Syracuse, NY 13204-2104

The Commercial Crime Coverage applies from 08/01/2018 to 08/01/2019 at 12:01 A.M. Standard Time at the First Named Insured's mailing address shown above.

### APPLICABLE FORMS AND ENDORSEMENTS

In addition to the common policy forms and endorsements, the following forms and endorsements apply to the Commercial Crime Coverage:

Form/Endorsement Number and Edition Date	Form/Endorsement Title
CR 00 21 11 15	Commercial Crime Coverage Form (Loss Sustained Form)
CR 01 55 07 17	New York Changes
CR 03 08 04 15	New York Changes - Fraud
IL 02 68 01 14	New York Changes - Cancellation And Nonrenewal
IL 09 35 07 02	Exclusion Of Certain Computer-Related Losses
IL 70 26 07 13	Multiple Line Occurrence Deductible

**Coverage is written:** Primary

### INSURING AGREEMENTS, LIMITS OF INSURANCE AND DEDUCTIBLE

Insuring Agreements	Limit of Insurance Per occurrence	Deductible Amount Per occurrence
1. Employee Theft	\$ 100,000	\$ 1,000
2. Forgery or Alteration	\$ 25,000	\$ 1,000
3. Inside the Premises – Theft of Money and Securities	\$ 25,000	\$ 1,000
4. Inside the Premises – Robbery or Safe Burglary of Other Property	Not Covered	
5. Outside the Premises	\$ 25,000	\$ 1,000
6. Computer and Funds Transfer Fraud	\$ 50,000	\$ 1,000
7. Money Orders and Counterfeit Money	\$ 25,000	\$ 1,000

If "Not Covered" is inserted above opposite any specified Insuring Agreement, such Insuring Agreement and other reference thereto in this policy is deleted.

CR 89 01 10 14

2553009  
 Sentry Select Insurance Company

Page 1 of 1  
 07/20/2018

## COMMERCIAL CRIME COVERAGE FORM (LOSS SUSTAINED FORM)

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

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

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

### A. Insuring Agreements

Coverage is provided under the following Insuring Agreements for which a Limit Of Insurance is shown in the Declarations and applies to loss that you sustain resulting directly from an "occurrence" taking place during the Policy Period shown in the Declarations, except as provided in Condition E.1.k. or E.1.l., which is "discovered" by you during the Policy Period shown in the Declarations or during the period of time provided in the Extended Period To Discover Loss Condition E.1.g.:

#### 1. Employee Theft

We will pay for loss of or damage to "money", "securities" and "other property" resulting directly from "theft" committed by an "employee", whether identified or not, acting alone or in collusion with other persons.

For the purposes of this Insuring Agreement, "theft" shall also include forgery.

#### 2. Forgery Or Alteration

a. We will pay for loss resulting directly from "forgery" or alteration of checks, drafts, promissory notes, or similar written promises, orders or directions to pay a sum certain in "money" that are:

(1) Made or drawn by or drawn upon you;  
or

(2) Made or drawn by one acting as your agent;

or that are purported to have been so made or drawn.

For the purposes of this Insuring Agreement, a substitute check as defined in the Check Clearing for the 21st Century Act shall be treated the same as the original it replaced.

b. If you are sued for refusing to pay any instrument covered in Paragraph 2.a., on the basis that it has been forged or altered, and you have our written consent to defend against the suit, we will pay for any reasonable legal expenses that you incur and pay in that defense. The amount that we will pay for such legal expenses is in addition to the Limit of Insurance applicable to this Insuring Agreement.

### 3. Inside The Premises - Theft Of Money And Securities

We will pay for:

a. Loss of "money" and "securities" inside the "premises" or "financial institution premises":

(1) Resulting directly from "theft" committed by a person present inside such "premises" or "financial institution premises"; or

(2) Resulting directly from disappearance or destruction.

b. Loss from damage to the "premises" or its exterior resulting directly from an actual or attempted "theft" of "money" and "securities", if you are the owner of the "premises" or are liable for damage to it.

c. Loss of or damage to a locked safe, vault, cash register, cash box or cash drawer located inside the "premises" resulting directly from an actual or attempted "theft" of, or unlawful entry into, those containers.

### 4. Inside The Premises - Robbery Or Safe Burglary Of Other Property

We will pay for:

a. Loss of or damage to "other property":

(1) Inside the "premises" resulting directly from an actual or attempted "robbery" of a "custodian"; or

(2) Inside the "premises" in a safe or vault resulting directly from an actual or attempted "safe burglary".

- b. Loss from damage to the "premises" or its exterior resulting directly from an actual or attempted "robbery" or "safe burglary" of "other property", if you are the owner of the "premises" or are liable for damage to it.
- c. Loss of or damage to a locked safe or vault located inside the "premises" resulting directly from an actual or attempted "robbery" or "safe burglary".

**5. Outside The Premises**

We will pay for:

- a. Loss of "money" and "securities" outside the "premises" in the care and custody of a "messenger" or an armored motor vehicle company resulting directly from "theft", disappearance or destruction.
- b. Loss of or damage to "other property" outside the "premises" in the care and custody of a "messenger" or an armored motor vehicle company resulting directly from an actual or attempted "robbery".

**6. Computer And Funds Transfer Fraud**

a. We will pay for:

(1) Loss resulting directly from a fraudulent:

- (a) Entry of "electronic data" or "computer program" into; or
- (b) Change of "electronic data" or "computer program" within;

any "computer system" owned, leased or operated by you, provided the fraudulent entry or fraudulent change causes, with regard to Paragraphs 6.a.(1)(a) and 6.a.(1)(b):

- (i) "Money", "securities" or "other property" to be transferred, paid or delivered; or
  - (ii) Your account at a "financial institution" to be debited or deleted.
- (2) Loss resulting directly from a "fraudulent instruction" directing a "financial institution" to debit your "transfer account" and to transfer, pay or deliver "money" or "securities" from that account.

- b. As used in Paragraph 6.a.(1), fraudulent entry or fraudulent change of "electronic data" or "computer program" shall include such entry or change made by an "employee" acting, in good faith, upon a "fraudulent instruction" received from a computer software contractor who has a written agreement with you to design, implement or service "computer programs" for a "computer system" covered under this Insuring Agreement.

**7. Money Orders And Counterfeit Money**

We will pay for loss resulting directly from your having, in good faith, accepted in exchange for merchandise, "money" or services:

- a. Money orders issued by any post office, express company or "financial institution" that are not paid upon presentation; or
- b. "Counterfeit money" that is acquired during the regular course of business.

**B. Limit Of Insurance**

The most we will pay for all loss resulting directly from an "occurrence" is the applicable Limit Of Insurance shown in the Declarations.

If any loss is covered under more than one Insuring Agreement or coverage, the most we will pay for such loss shall not exceed the largest Limit of Insurance available under any one of those Insuring Agreements or coverages.

**C. Deductible**

We will not pay for loss resulting directly from an "occurrence" unless the amount of loss exceeds the Deductible Amount shown in the Declarations. We will then pay the amount of loss in excess of the Deductible Amount, up to the Limit of Insurance.

**D. Exclusions**

1. This insurance does not cover:

**a. Acts Committed By You, Your Partners Or Your Members**

Loss resulting from "theft" or any other dishonest act committed by:

- (1) You; or
- (2) Any of your partners or "members"; whether acting alone or in collusion with other persons.



**b. Acts Committed By Your Employees Learned Of By You Prior To The Policy Period**

Loss caused by an "employee" if the "employee" had also committed "theft" or any other dishonest act prior to the effective date of this insurance and you or any of your partners, "members", "managers", officers, directors or trustees, not in collusion with the "employee", learned of such "theft" or dishonest act prior to the Policy Period shown in the Declarations.

**c. Acts Committed By Your Employees, Managers, Directors, Trustees Or Representatives**

Loss resulting from "theft" or any other dishonest act committed by any of your "employees", "managers", directors, trustees or authorized representatives:

- (1) Whether acting alone or in collusion with other persons; or
- (2) While performing services for you or otherwise;

except when covered under Insuring Agreement A.1.

**d. Confidential Or Personal Information**

Loss resulting from:

- (1) The disclosure or use of another person's or organization's confidential or personal information; or
- (2) The disclosure of your confidential or personal information. However, this Paragraph 1.d.(2) does not apply to loss otherwise covered under this insurance that results directly from the use of your confidential or personal information.

For the purposes of this exclusion, confidential or personal information includes, but is not limited to, patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of nonpublic information.

**e. Data Security Breach**

Fees, costs, fines, penalties and other expenses incurred by you which are related to the access to or disclosure of another person's or organization's confidential or personal information including, but not limited to, patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of nonpublic information.

**f. Governmental Action**

Loss resulting from seizure or destruction of property by order of governmental authority.

**g. Indirect Loss**

Loss that is an indirect result of an "occurrence" covered by this insurance including, but not limited to, loss resulting from:

- (1) Your inability to realize income that you would have realized had there been no loss of or damage to "money", "securities" or "other property";
- (2) Payment of damages of any type for which you are legally liable. But, we will pay compensatory damages arising directly from a loss covered under this insurance; or
- (3) Payment of costs, fees or other expenses you incur in establishing either the existence or the amount of loss under this insurance.

**h. Legal Fees, Costs And Expenses**

Fees, costs and expenses incurred by you which are related to any legal action, except when covered under Insuring Agreement A.2.

**i. Nuclear Hazard**

Loss or damage resulting from nuclear reaction or radiation, or radioactive contamination, however caused.

**j. Pollution**

Loss or damage caused by or resulting from pollution. Pollution means the discharge, dispersal, seepage, migration, release or escape of 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.

**k. Virtual Currency**

Loss involving virtual currency of any kind, by whatever name known, whether actual or fictitious including, but not limited to, digital currency, crypto currency or any other type of electronic currency.

**i. War And Military Action**

Loss or damage resulting from:

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

- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
  - (3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.
2. Insuring Agreement **A.1.** does not cover:
- a. Inventory Shortages**  
Loss, or that part of any loss, the proof of which as to its existence or amount is dependent upon:
    - (1) An inventory computation; or
    - (2) A profit and loss computation.
 However, where you establish wholly apart from such computations that you have sustained a loss, then you may offer your inventory records and actual physical count of inventory in support of the amount of loss claimed.
  - b. Trading**  
Loss resulting from trading, whether in your name or in a genuine or fictitious account.
  - c. Warehouse Receipts**  
Loss resulting from the fraudulent or dishonest signing, issuing, cancelling or failing to cancel, a warehouse receipt or any papers connected with it.
3. Insuring Agreements **A.3.**, **A.4.** and **A.5.** do not cover:
- a. Accounting Or Arithmetical Errors Or Omissions**  
Loss resulting from accounting or arithmetical errors or omissions.
  - b. Exchanges Or Purchases**  
Loss resulting from the giving or surrendering of property in any exchange or purchase.
  - c. Fire**  
Loss or damage resulting from fire, however caused, except:
    - (1) Loss of or damage to "money" and "securities"; and
    - (2) Loss from damage to a safe or vault.

**d. Money Operated Devices**

Loss of property contained in any money operated device unless the amount of "money" deposited in it is recorded by a continuous recording instrument in the device.

**e. Motor Vehicles Or Equipment And Accessories**

Loss of or damage to motor vehicles, trailers or semitrailers or equipment and accessories attached to them.

**f. Transfer Or Surrender Of Property**

- (1) Loss of or damage to property after it has been transferred or surrendered to a person or place outside the "premises" or "financial institution premises":
  - (a) On the basis of unauthorized instructions; or
  - (b) As a result of a threat including, but not limited to:
    - (i) A threat to do bodily harm to any person;
    - (ii) A threat to do damage to any property;
    - (iii) A threat to introduce a denial of service attack into any "computer system";
    - (iv) A threat to introduce a virus or other malicious instruction into any "computer system" which is designed to damage, destroy or corrupt "electronic data" or "computer programs" stored within the "computer system";
    - (v) A threat to contaminate, pollute or render substandard your products or goods; or
    - (vi) A threat to disseminate, divulge or utilize:
      - i. Your confidential information;
      - ii. Confidential or personal information of another person or organization; or
      - iii. Weaknesses in the source code within any "computer system".

(2) However, this exclusion does not apply under Insuring Agreement A.5. to loss of "money", "securities" or "other property" while outside the "premises" in the care and custody of a "messenger" if you:

- (a) Had no knowledge of any threat at the time the conveyance began; or
- (b) Had knowledge of a threat at the time the conveyance began, but the loss was not related to the threat.

**g. Vandalism**

Loss from damage to the "premises" or its exterior, or to any safe, vault, cash register, cash box, cash drawer or "other property" by vandalism or malicious mischief.

**h. Voluntary Parting Of Title To Or Possession Of Property**

Loss resulting from your, or anyone else acting on your express or implied authority, being induced by any dishonest act to voluntarily part with title to or possession of any property.

**4. Insuring Agreement A.6. does not cover:**

**a. Authorized Access**

Loss resulting from a fraudulent:

- (1) Entry of "electronic data" or "computer program" into; or
- (2) Change of "electronic data" or "computer program" within;

any "computer system" owned, leased or operated by you by a person or organization with authorized access to that "computer system", except when covered under Insuring Agreement A.6.b.

**b. Credit Card Transactions**

Loss resulting from the use or purported use of credit, debit, charge, access, convenience, identification, stored-value or other cards or the information contained on such cards.

**c. Exchanges Or Purchases**

Loss resulting from the giving or surrendering of property in any exchange or purchase.

**d. Fraudulent Instructions**

Loss resulting from an "employee" or "financial institution" acting upon any instruction to:

- (1) Transfer, pay or deliver "money", "securities" or "other property"; or

(2) Debit or delete your account;

which instruction proves to be fraudulent, except when covered under Insuring Agreement A.6.a.(2) or A.6.b.

**e. Inventory Shortages**

Loss, or that part of any loss, the proof of which as to its existence or amount is dependent upon:

- (1) An inventory computation; or
- (2) A profit and loss computation.

**E. Conditions**

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

**1. Conditions Applicable To All Insuring Agreements**

**a. Additional Premises Or Employees**

If, while this insurance is in force, you establish any additional "premises" or hire additional "employees", other than through consolidation or merger with, or purchase or acquisition of assets or liabilities of, another entity, such "premises" and "employees" shall automatically be covered under this insurance. Notice to us of an increase in the number of "premises" or "employees" is not required, and no additional premium will be charged for the remainder of the Policy Period shown in the Declarations.

**b. Concealment, Misrepresentation Or Fraud**

This insurance is void in any case of fraud by you as it relates to this insurance at any time. It is also void if you or any other Insured, at any time, intentionally conceals or misrepresents a material fact concerning:

- (1) This insurance;
- (2) The property covered under this insurance;
- (3) Your interest in the property covered under this insurance; or
- (4) A claim under this insurance.

**c. Consolidation - Merger Or Acquisition**

If you consolidate or merge with, or purchase or acquire the assets or liabilities of, another entity:

- (1) You must give us written notice as soon as possible and obtain our written consent to extend the coverage provided by this insurance to such consolidated or merged entity or such purchased or acquired assets or liabilities. We may condition our consent by requiring payment of an additional premium; but
- (2) For the first 90 days after the effective date of such consolidation, merger or purchase or acquisition of assets or liabilities, the coverage provided by this insurance shall apply to such consolidated or merged entity or such purchased or acquired assets or liabilities, provided that all "occurrences" causing or contributing to a loss involving such consolidation, merger or purchase or acquisition of assets or liabilities, must take place after the effective date of such consolidation, merger or purchase or acquisition of assets or liabilities.

**d. Cooperation**

You must cooperate with us in all matters pertaining to this insurance as stated in its terms and conditions.

**e. Duties In The Event Of Loss**

After you "discover" a loss or a situation that may result in loss of or damage to "money", "securities" or "other property", you must:

- (1) Notify us as soon as possible. If you have reason to believe that any loss (except for loss covered under Insuring Agreement A.1. or A.2.) involves a violation of law, you must also notify the local law enforcement authorities;
- (2) Give us a detailed, sworn proof of loss within 120 days;
- (3) Cooperate with us in the investigation and settlement of any claim;
- (4) Produce for our examination all pertinent records;
- (5) Submit to examination under oath at our request and give us a signed statement of your answers; and

- (6) Secure all of your rights of recovery against any person or organization responsible for the loss and do nothing to impair those rights.

**f. Employee Benefit Plans**

The "employee benefit plans" shown in the Declarations (hereinafter referred to as Plan) are included as Insureds under Insuring Agreement A.1., subject to the following:

- (1) If any Plan is insured jointly with any other entity under this insurance, you or the Plan Administrator is responsible for selecting a Limit of Insurance for Insuring Agreement A.1. that is sufficient to provide a Limit of Insurance for each Plan that is at least equal to that required under ERISA as if each Plan were separately insured.

- (2) With respect to loss sustained or "discovered" by any such Plan, Insuring Agreement A.1. is replaced by the following:

We will pay for loss of or damage to "money", "securities" and "other property" resulting directly from fraudulent or dishonest acts committed by an "employee", whether identified or not, acting alone or in collusion with other persons.

- (3) If the first Named Insured is an entity other than a Plan, any payment we make for loss sustained by any Plan will be made to the Plan sustaining the loss.

- (4) If two or more Plans are insured under this insurance, any payment we make for loss:

- (a) Sustained by two or more Plans; or
- (b) Of commingled "money", "securities" or "other property" of two or more Plans;

resulting directly from an "occurrence", will be made to each Plan sustaining loss in the proportion that the Limit of Insurance required under ERISA for each Plan bears to the total of those limits.

- (5) The Deductible Amount applicable to Insuring Agreement A.1. does not apply to loss sustained by any Plan.

**g. Extended Period To Discover Loss**

We will pay for loss that you sustained prior to the effective date of cancellation of this insurance, which is "discovered" by you:

- (1) No later than one year from the date of that cancellation. However, this extended period to "discover" loss terminates immediately upon the effective date of any other insurance obtained by you, whether from us or another insurer, replacing in whole or in part the coverage afforded under this insurance, whether or not such other insurance provides coverage for loss sustained prior to its effective date.
- (2) No later than one year from the date of that cancellation with regard to any "employee benefit plan".

**h. Joint Insured**

- (1) If more than one Insured is named in the Declarations, the first Named Insured will act for itself and for every other Insured for all purposes of this insurance. If the first Named Insured ceases to be covered, then the next Named Insured will become the first Named Insured.
- (2) If any Insured, or partner, "member", "manager", officer, director or trustee of that Insured has knowledge of any information relevant to this insurance, that knowledge is considered knowledge of every Insured.
- (3) An "employee" of any Insured is considered to be an "employee" of every Insured.
- (4) If this insurance or any of its coverages are cancelled as to any Insured, loss sustained by that Insured is covered only if it is "discovered" by you:
  - (a) No later than one year from the date of that cancellation. However, this extended period to "discover" loss terminates immediately upon the effective date of any other insurance obtained by that Insured, whether from us or another insurer, replacing in whole or in part the coverage afforded under this insurance, whether or not such other insurance provides coverage for loss sustained prior to its effective date.
  - (b) No later than one year from the date of that cancellation with regard to any "employee benefit plan".

- (5) We will not pay more for loss sustained by more than one Insured than the amount we would pay if all such loss had been sustained by one Insured.
- (6) Payment by us to the first Named Insured for loss sustained by any Insured, or payment by us to any "employee benefit plan" for loss sustained by that Plan, shall fully release us on account of such loss.

**i. Legal Action Against Us**

You may not bring any legal action against us involving loss:

- (1) Unless you have complied with all the terms of this insurance;
- (2) Until 90 days after you have filed proof of loss with us; and
- (3) Unless brought within two years from the date you "discovered" the loss.

If any limitation in this condition is prohibited by law, such limitation is amended so as to equal the minimum period of limitation provided by such law.

**j. Liberalization**

If we adopt any revision that would broaden the coverage under this insurance without additional premium within 45 days prior to or during the Policy Period shown in the Declarations, the broadened coverage will immediately apply to this insurance.

**k. Loss Sustained During Prior Insurance Issued By Us Or Any Affiliate**

**(1) Loss Sustained Partly During This Insurance And Partly During Prior Insurance**

If you "discover" loss during the Policy Period shown in the Declarations, resulting directly from an "occurrence" taking place:

- (a) Partly during the Policy Period shown in the Declarations; and
- (b) Partly during the policy period(s) of any prior cancelled insurance that we or any affiliate issued to you or any predecessor in interest;

and this insurance became effective at the time of cancellation of the prior insurance, we will first settle the amount of loss that you sustained during this policy period. We will then settle the remaining amount of loss that you sustained during the policy period(s) of the prior insurance.

**(2) Loss Sustained Entirely During Prior Insurance**

If you "discover" loss during the Policy Period shown in the Declarations, resulting directly from an "occurrence" taking place entirely during the policy period(s) of any prior cancelled insurance that we or any affiliate issued to you or any predecessor in interest, we will pay for the loss, provided:

- (a) This insurance became effective at the time of cancellation of the prior insurance; and
- (b) The loss would have been covered under this insurance had it been in effect at the time of the "occurrence".

We will first settle the amount of loss that you sustained during the most recent prior insurance. We will then settle any remaining amount of loss that you sustained during the policy period(s) of any other prior insurance.

**(3) In settling loss under Paragraphs k.(1) and k.(2):**

- (a) The most we will pay for the entire loss is the highest single Limit of Insurance applicable during the period of loss, whether such limit was written under this insurance or was written under the prior insurance issued by us.
- (b) We will apply the applicable Deductible Amount shown in the Declarations to the amount of loss sustained under this insurance. If no loss was sustained under this insurance, we will apply the Deductible Amount shown in the Declarations to the amount of loss sustained under the most recent prior insurance.

If the Deductible Amount is larger than the amount of loss sustained under this insurance, or the most recent prior insurance, we will apply the remaining Deductible Amount to the remaining amount of loss sustained during the prior insurance.

We will not apply any other Deductible Amount that may have been applicable to the loss.

**(4) The following examples demonstrate how we will settle losses subject to this condition:**

**Example Number 1**

The Insured sustained a covered loss of \$10,000 resulting directly from an "occurrence" taking place during the terms of Policy A and Policy B.

**Policy A**

The current policy. Written at a Limit of Insurance of \$50,000 and a Deductible Amount of \$5,000.

**Policy B**

Issued prior to Policy A. Written at a Limit of Insurance of \$50,000 and a Deductible Amount of \$5,000.

**Settlement Of Loss**

The amount of loss sustained under Policy A is \$2,500 and under Policy B, \$7,500.

The highest single Limit of Insurance applicable to this entire loss is \$50,000 written under Policy A. The Policy A Deductible Amount of \$5,000 applies. The loss is settled as follows:

- (a) The amount of loss sustained under Policy A (\$2,500) is settled first. The amount we will pay is nil (\$0.00) because the amount of loss is less than the Deductible Amount (i.e., \$2,500 loss - \$5,000 deductible = \$0.00).
- (b) The remaining amount of loss sustained under Policy B (\$7,500) is settled next. The amount recoverable is \$5,000 after the remaining Deductible Amount from Policy A of \$2,500 is applied to the loss (i.e., \$7,500 loss - \$2,500 deductible = \$5,000).

The most we will pay for this loss is \$5,000.

**Example Number 2**

The Insured sustained a covered loss of \$250,000 resulting directly from an "occurrence" taking place during the terms of Policy A and Policy B.

**Policy A**

The current policy. Written at a Limit of Insurance of \$125,000 and a Deductible Amount of \$10,000.

### Policy B

Issued prior to Policy A. Written at a Limit of Insurance of \$150,000 and a Deductible Amount of \$25,000.

#### Settlement Of Loss

The amount of loss sustained under Policy A is \$175,000 and under Policy B, \$75,000.

The highest single Limit of Insurance applicable to this entire loss is \$150,000 written under Policy B. The Policy A Deductible Amount of \$10,000 applies. The loss is settled as follows:

- (a) The amount of loss sustained under Policy A (\$175,000) is settled first. The amount we will pay is the Policy A Limit of \$125,000 because \$175,000 loss - \$10,000 deductible = \$165,000, which is greater than the \$125,000 policy limit.
- (b) The remaining amount of loss sustained under Policy B (\$75,000) is settled next. The amount we will pay is \$25,000 (i.e., \$150,000 Policy B limit - \$125,000 paid under Policy A = \$25,000).

The most we will pay for this loss is \$150,000.

#### Example Number 3

The Insured sustained a covered loss of \$2,000,000 resulting directly from an "occurrence" taking place during the terms of Policies A, B, C and D.

#### Policy A

The current policy. Written at a Limit of Insurance of \$1,000,000 and a Deductible Amount of \$100,000.

#### Policy B

Issued prior to Policy A. Written at a Limit of Insurance of \$750,000 and a Deductible Amount of \$75,000.

#### Policy C

Issued prior to Policy B. Written at a Limit of Insurance of \$500,000 and a Deductible Amount of \$50,000.

#### Policy D

Issued prior to Policy C. Written at a Limit of Insurance of \$500,000 and a Deductible Amount of \$50,000.

### Settlement Of Loss

The amount of loss sustained under Policy A is \$350,000; under Policy B, \$250,000; under Policy C, \$600,000; and under Policy D, \$800,000.

The highest single Limit of Insurance applicable to this entire loss is \$1,000,000 written under Policy A. The Policy A Deductible Amount of \$100,000 applies. The loss is settled as follows:

- (a) The amount of loss sustained under Policy A (\$350,000) is settled first. The amount we will pay is \$250,000 (i.e., \$350,000 loss - \$100,000 deductible = \$250,000).
- (b) The amount of loss sustained under Policy B (\$250,000) is settled next. The amount we will pay is \$250,000 (no deductible is applied).
- (c) The amount of loss sustained under Policy C (\$600,000) is settled next. The amount we will pay is \$500,000, the policy limit (no deductible is applied).
- (d) We will not make any further payment under Policy D, as the maximum amount payable under the highest single Limit of Insurance applying to the loss of \$1,000,000 under Policy A has been satisfied.

The most we will pay for this loss is \$1,000,000.

#### I. Loss Sustained During Prior Insurance Not Issued By Us Or Any Affiliate

- (1) If you "discover" loss during the Policy Period shown in the Declarations, resulting directly from an "occurrence" taking place during the policy period of any prior cancelled insurance that was issued to you or a predecessor in interest by another company, and the period of time to discover loss under that insurance had expired, we will pay for the loss under this insurance, provided:
  - (a) This insurance became effective at the time of cancellation of the prior insurance; and
  - (b) The loss would have been covered under this insurance had it been in effect at the time of the "occurrence".

(2) In settling loss subject to this condition:

(a) The most we will pay for the entire loss is the lesser of the Limits of Insurance applicable during the period of loss, whether such limit was written under this insurance or was written under the prior cancelled insurance.

(b) We will apply the applicable Deductible Amount shown in the Declarations to the amount of loss sustained under the prior cancelled insurance.

(3) The insurance provided under this condition is subject to the following:

(a) If loss covered under this condition is also partially covered under Condition E.1.k., the amount recoverable under this condition is part of, not in addition to, the amount recoverable under Condition E.1.k.

(b) For loss covered under this condition that is not subject to Paragraph l.(3)(a), the amount recoverable under this condition is part of, not in addition to, the Limit of Insurance applicable to the loss covered under this insurance and is limited to the lesser of the amount recoverable under:

(i) This insurance as of its effective date; or

(ii) The prior cancelled insurance had it remained in effect.

**m. Other Insurance**

If other valid and collectible insurance is available to you for loss covered under this insurance, our obligations are limited as follows:

**(1) Primary Insurance**

When this insurance is written as primary insurance, and:

(a) You have other insurance subject to the same terms and conditions as this insurance, we will pay our share of the covered loss. Our share is the proportion that the applicable Limit Of Insurance shown in the Declarations bears to the total limit of all insurance covering the same loss.

(b) You have other insurance covering the same loss other than that described in Paragraph m.(1)(a), we will only pay for the amount of loss that exceeds:

(i) The Limit of Insurance and Deductible Amount of that other insurance, whether you can collect on it or not; or

(ii) The Deductible Amount shown in the Declarations;

whichever is greater. Our payment for loss is subject to the terms and conditions of this insurance.

**(2) Excess Insurance**

(a) When this insurance is written excess over other insurance, we will only pay for the amount of loss that exceeds the Limit of Insurance and Deductible Amount of that other insurance, whether you can collect on it or not. Our payment for loss is subject to the terms and conditions of this insurance.

(b) However, if loss covered under this insurance is subject to a deductible, we will reduce the Deductible Amount shown in the Declarations by the sum total of all such other insurance plus any Deductible Amount applicable to that other insurance.

**n. Ownership Of Property; Interests Covered**

The property covered under this insurance is limited to property:

(1) That you own or lease;

(2) That is held by you in any capacity; or

(3) For which you are legally liable, provided you were liable for the property prior to the time the loss was sustained.

However, this insurance is for your benefit only. It provides no rights or benefits to any other person or organization. Any claim for loss that is covered under this insurance must be presented by you.

**o. Records**

You must keep records of all property covered under this insurance so we can verify the amount of any loss.



**p. Recoveries**

(1) Any recoveries, whether effected before or after any payment under this insurance, whether made by us or by you, shall be applied net of the expense of such recovery:

- (a) First, to you in satisfaction of your covered loss in excess of the amount paid under this insurance;
- (b) Second, to us in satisfaction of amounts paid in settlement of your claim;
- (c) Third, to you in satisfaction of any Deductible Amount; and
- (d) Fourth, to you in satisfaction of any loss not covered under this insurance.

(2) Recoveries do not include any recovery:

- (a) From insurance, suretyship, reinsurance, security or indemnity taken for our benefit; or
- (b) Of original "securities" after duplicates of them have been issued.

**q. Territory**

This insurance covers loss that you sustain resulting directly from an "occurrence" taking place within the United States of America (including its territories and possessions), Puerto Rico and Canada.

**r. Transfer Of Your Rights Of Recovery Against Others To Us**

You must transfer to us all your rights of recovery against any person or organization for any loss you sustained and for which we have paid or settled. You must also do everything necessary to secure those rights and do nothing after loss to impair them.

**s. Valuation - Settlement**

The value of any loss for purposes of coverage under this insurance shall be determined as follows:

**(1) Money**

Loss of "money" but only up to and including its face value. We will, at your option, pay for loss of "money" issued by any country other than the United States of America:

- (a) At face value in the "money" issued by that country; or

- (b) In the United States of America dollar equivalent, determined by the rate of exchange published in The Wall Street Journal on the day the loss was "discovered".

**(2) Securities**

Loss of "securities" but only up to and including their value at the close of business on the day the loss was "discovered". We may, at our option:

- (a) Pay the market value of such "securities" or replace them in kind, in which event you must assign to us all your rights, title and interest in and to those "securities"; or

- (b) Pay the cost of any Lost Securities Bond required in connection with issuing duplicates of the "securities". However, we will be liable only for the payment of so much of the cost of the bond as would be charged for a bond having a penalty not exceeding the lesser of the:

- (i) Market value of the "securities" at the close of business on the day the loss was "discovered"; or
- (ii) Limit of Insurance applicable to the "securities".

**(3) Property Other Than Money And Securities**

- (a) Loss of or damage to "other property" or loss from damage to the "premises" or its exterior for the replacement cost of the property without deduction for depreciation. However, we will not pay more than the least of the following:

- (i) The Limit of Insurance applicable to the lost or damaged property;
- (ii) The cost to replace the lost or damaged property with property of comparable material and quality and used for the same purpose; or

- (iii) The amount you actually spend that is necessary to repair or replace the lost or damaged property.

(b) We will not pay on a replacement cost basis for any loss or damage to property covered under Paragraph s.(3)(a):

(i) Until the lost or damaged property is actually repaired or replaced; and

(ii) Unless the repair or replacement is made as soon as reasonably possible after the loss or damage.

If the lost or damaged property is not repaired or replaced, we will pay on an actual cash value basis.

(c) We will, at your option, pay for loss or damage to such property:

(i) In the "money" of the country in which the loss or damage was sustained; or

(ii) In the United States of America dollar equivalent of the "money" of the country in which the loss or damage was sustained, determined by the rate of exchange published in The Wall Street Journal on the day the loss was "discovered".

(d) Any property that we pay for or replace becomes our property.

## 2. Conditions Applicable To Insuring Agreement A.1.

### a. Termination As To Any Employee

This Insuring Agreement terminates as to any "employee":

(1) As soon as:

(a) You; or

(b) Any of your partners, "members", "managers", officers, directors or trustees not in collusion with the "employee";

learn of "theft" or any other dishonest act committed by the "employee" whether before or after becoming employed by you; or

(2) On the date specified in a notice mailed to the first Named Insured. That date will be at least 30 days after the date of mailing.

We will mail or deliver our notice to the first Named Insured's last mailing address known to us. If notice is mailed, proof of mailing will be sufficient proof of notice.

### b. Territory

We will pay for loss caused by any "employee" while temporarily outside the territory specified in Territory Condition E.1.q. for a period of not more than 90 consecutive days.

## 3. Conditions Applicable To Insuring Agreement A.2.

### a. Deductible Amount

The Deductible Amount does not apply to legal expenses paid under Insuring Agreement A.2.

### b. Electronic And Mechanical Signatures

We will treat signatures that are produced or reproduced electronically, mechanically or by other means the same as handwritten signatures.

### c. Proof Of Loss

You must include with your proof of loss any instrument involved in that loss or, if that is not possible, an affidavit setting forth the amount and cause of loss.

### d. Territory

We will cover loss that you sustain resulting directly from an "occurrence" taking place anywhere in the world. Territory Condition E.1.q. does not apply to Insuring Agreement A.2.

## 4. Conditions Applicable To Insuring Agreements A.4. And A.5.

### a. Armored Motor Vehicle Companies

Under Insuring Agreement A.5., we will only pay for the amount of loss you cannot recover:

(1) Under your contract with the armored motor vehicle company; and

(2) From any insurance or indemnity carried by, or for the benefit of customers of, the armored motor vehicle company.

### b. Special Limit Of Insurance For Specified Property

We will only pay up to \$5,000 for any one "occurrence" of loss of or damage to:

(1) Precious metals, precious or semiprecious stones, pearls, furs, or completed or partially completed articles made of or containing such materials that constitute the principal value of such articles; or

- (2) Manuscripts, drawings, or records of any kind, or the cost of reconstructing them or reproducing any information contained in them.

#### 5. Conditions Applicable To Insuring Agreement A.6.

##### a. Special Limit Of Insurance For Specified Property

We will only pay up to \$5,000 for any one "occurrence" of loss of or damage to manuscripts, drawings, or records of any kind, or the cost of reconstructing them or reproducing any information contained in them.

##### b. Territory

We will cover loss that you sustain resulting directly from an "occurrence" taking place anywhere in the world. Territory Condition E.1.q. does not apply to Insuring Agreement A.6.

#### F. Definitions

1. "Computer program" means a set of related electronic instructions, which direct the operation and function of a computer or devices connected to it, which enable the computer or devices to receive, process, store or send "electronic data".
2. "Computer system" means:
  - a. Computers, including Personal Digital Assistants (PDAs) and other transportable or handheld devices, electronic storage devices and related peripheral components;
  - b. Systems and applications software; and
  - c. Related communications networks;by which "electronic data" is collected, transmitted, processed, stored or retrieved.
3. "Counterfeit money" means an imitation of "money" which is intended to deceive and to be taken as genuine.
4. "Custodian" means you, or any of your partners or "members", or any "employee" while having care and custody of property inside the "premises", excluding any person while acting as a "watchperson" or janitor.
5. "Discover" or "discovered" means the time when you first become aware of facts which would cause a reasonable person to assume that a loss of a type covered by this insurance has been or will be incurred, regardless of when the act or acts causing or contributing to such loss occurred, even though the exact amount or details of loss may not then be known.

"Discover" or "discovered" also means the time when you first receive notice of an actual or potential claim in which it is alleged that you are liable to a third party under circumstances which, if true, would constitute a loss under this insurance.

6. "Electronic data" means information, facts, images or sounds stored as or on, created or used on, or transmitted to or from computer software (including systems and applications software) on data storage devices, including hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment

#### 7. "Employee":

##### a. Means:

##### (1) Any natural person:

- (a) While in your service and for the first 30 days immediately after termination of service, unless such termination is due to "theft" or any dishonest act committed by the "employee";

- (b) Whom you compensate directly by salary, wages or commissions; and

- (c) Whom you have the right to direct and control while performing services for you;

##### (2) Any natural person who is furnished temporarily to you:

- (a) To substitute for a permanent "employee", as defined in Paragraph 7.a.(1), who is on leave; or

- (b) To meet seasonal or short-term work load conditions;

while that person is subject to your direction and control and performing services for you;

##### (3) Any natural person who is leased to you under a written agreement between you and a labor leasing firm, to perform duties related to the conduct of your business, but does not mean a temporary "employee" as defined in Paragraph 7.a.(2);

##### (4) Any natural person who is:

- (a) A trustee, officer, employee, administrator or manager, except an administrator or manager who is an independent contractor, of any "employee benefit plan"; or

- (b) Your director or trustee while that person is engaged in handling "money", "securities" or "other property" of any "employee benefit plan";
- (5) Any natural person who is a former "employee", partner, "member", "manager", director or trustee retained by you as a consultant while performing services for you;
- (6) Any natural person who is a guest student or intern pursuing studies or duties;
- (7) Any natural person employed by an entity merged or consolidated with you prior to the effective date of this insurance; and
- (8) Any natural person who is your "manager", director or trustee while:
- (a) Performing acts within the scope of the usual duties of an "employee"; or
- (b) Acting as a member of any committee duly elected or appointed by resolution of your board of directors or board of trustees to perform specific, as distinguished from general, directorial acts on your behalf.
- b. Does not mean:  
Any agent, broker, factor, commission merchant, consignee, independent contractor or representative of the same general character not specified in Paragraph 7.a.
8. "Employee benefit plan" means any welfare or pension benefit plan shown in the Declarations that you sponsor and that is subject to the Employee Retirement Income Security Act of 1974 (ERISA) and any amendments thereto.
9. "Financial institution" means:
- a. With regard to Insuring Agreement A.3.:
- (1) A bank, savings bank, savings and loan association, trust company, credit union or similar depository institution; or
- (2) An insurance company.
- b. With regard to Insuring Agreement A.6.:
- (1) A bank, savings bank, savings and loan association, trust company, credit union or similar depository institution;
- (2) An insurance company; or
- (3) A stock brokerage firm or investment company.
- c. Other than Insuring Agreements A.3. and A.6., any financial institution.
10. "Financial institution premises" means the interior of that portion of any building occupied by a "financial institution" as defined in Paragraph F.9.a.
11. "Forgery" means the signing of the name of another person or organization with intent to deceive; it does not mean a signature which consists in whole or in part of one's own name signed with or without authority, in any capacity, for any purpose.
12. "Fraudulent instruction" means:
- a. With regard to Insuring Agreement A.6.a.(2):
- (1) A computer, telefacsimile, telephone or other electronic instruction directing a "financial institution" to debit your "transfer account" and to transfer, pay or deliver "money" or "securities" from that "transfer account", which instruction purports to have been issued by you, but which in fact was fraudulently issued by someone else without your knowledge or consent; or
- (2) A written instruction (other than those covered under Insuring Agreement A.2.) issued to a "financial institution" directing the "financial institution" to debit your "transfer account" and to transfer, pay or deliver "money" or "securities" from that "transfer account", through an electronic funds transfer system at specified times or under specified conditions, which instruction purports to have been issued by you, but which in fact was issued, forged or altered by someone else without your knowledge or consent.
- b. With regard to Insuring Agreement A.6.b.:
- A computer, telefacsimile, telephone or other electronic, written or voice instruction directing an "employee" to enter or change "electronic data" or "computer programs" within a "computer system" covered under the Insuring Agreement, which instruction in fact was fraudulently issued by your computer software contractor.
13. "Manager" means a natural person serving in a directorial capacity for a limited liability company.
14. "Member" means an owner of a limited liability company represented by its membership interest who, if a natural person, may also serve as a "manager".

15. "Messenger" means you, or your relative, or any of your partners or "members", or any "employee" while having care and custody of property outside the "premises".
16. "Money" means:
  - a. Currency, coins and bank notes in current use and having a face value;
  - b. Traveler's checks and money orders held for sale to the public; and
  - c. In addition, includes:
    - (1) Under Insuring Agreements **A.1.** and **A.2.**, deposits in your account at any financial institution; and
    - (2) Under Insuring Agreement **A.6.**, deposits in your account at a "financial institution" as defined in Paragraph **F.9.b.**
17. "Occurrence" means:
  - a. Under Insuring Agreement **A.1.:**
    - (1) An individual act;
    - (2) The combined total of all separate acts whether or not related; or
    - (3) A series of acts whether or not related; committed by an "employee" acting alone or in collusion with other persons, during the Policy Period shown in the Declarations, except as provided under Condition **E.1.k.** or **E.1.l.**
  - b. Under Insuring Agreement **A.2.:**
    - (1) An individual act;
    - (2) The combined total of all separate acts whether or not related; or
    - (3) A series of acts whether or not related; committed by a person acting alone or in collusion with other persons, involving one or more instruments, during the Policy Period shown in the Declarations, except as provided under Condition **E.1.k.** or **E.1.l.**
  - c. Under all other Insuring Agreements:
    - (1) An individual act or event;
    - (2) The combined total of all separate acts or events whether or not related; or
    - (3) A series of acts or events whether or not related; committed by a person acting alone or in collusion with other persons, or not committed by any person, during the Policy Period shown in the Declarations, except as provided under Condition **E.1.k.** or **E.1.l.**
18. "Other property" means any tangible property other than "money" and "securities" that has intrinsic value. "Other property" does not include "computer programs", "electronic data" or any property specifically excluded under this insurance.
19. "Premises" means the interior of that portion of any building you occupy in conducting your business.
20. "Robbery" means the unlawful taking of property from the care and custody of a person by one who has:
  - a. Caused or threatened to cause that person bodily harm; or
  - b. Committed an obviously unlawful act witnessed by that person.
21. "Safe burglary" means the unlawful taking of:
  - a. Property from within a locked safe or vault by a person unlawfully entering the safe or vault as evidenced by marks of forcible entry upon its exterior; or
  - b. A safe or vault from inside the "premises".
22. "Securities" means negotiable and nonnegotiable instruments or contracts representing either "money" or property and includes:
  - a. Tokens, tickets, revenue and other stamps (whether represented by actual stamps or unused value in a meter) in current use; and
  - b. Evidences of debt issued in connection with credit or charge cards, which cards are not issued by you; but does not include "money".
23. "Theft" means the unlawful taking of property to the deprivation of the Insured.
24. "Transfer account" means an account maintained by you at a "financial institution" from which you can initiate the transfer, payment or delivery of "money" or "securities":
  - a. By means of computer, telefacsimile, telephone or other electronic instructions; or
  - b. By means of written instructions (other than those covered under Insuring Agreement **A.2.**) establishing the conditions under which such transfers are to be initiated by such "financial institution" through an electronic funds transfer system.
25. "Watchperson" means any person you retain specifically to have care and custody of property inside the "premises" and who has no other duties.

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

## **NEW YORK CHANGES**

This endorsement modifies insurance provided under the following:

COMMERCIAL CRIME COVERAGE FORM  
COMMERCIAL CRIME POLICY  
EMPLOYEE THEFT AND FORGERY POLICY  
GOVERNMENT CRIME COVERAGE FORM  
GOVERNMENT CRIME POLICY  
GOVERNMENT EMPLOYEE THEFT AND FORGERY POLICY

**A. The following is added to Exclusion D.1.b. Acts Committed By Your Employees Learned Of By You Prior To The Policy Period:**

However, this Paragraph **D.1.b.** does not apply to an "employee" who was convicted of one or more criminal offenses in this state or any other jurisdiction prior to becoming employed by you if, after learning about the "employee's" past criminal conviction or convictions, you made a determination to hire or retain the "employee" utilizing the factors set out in New York Correction Law Article 23-A.

**B. Under Section E. Conditions:**

1. The following condition is added to Paragraph **1. Conditions Applicable To All Insuring Agreements:**

**Estimation Of Claims**

Upon request, we will furnish you, or your representative, with a written estimate of damages to real property, specifying all deductions, provided such an estimate has been prepared by us or has been prepared on our behalf for our own purposes. This estimate will be provided within 30 days after your request or its preparation, whichever is later.

2. Paragraph **(1) of the Termination As To Any Employee** Condition is replaced by the following and supersedes any provision in this condition to the contrary:

This insurance terminates as to any "employee":

- (1) As soon as:

- (a) You; or

- (b) Any of your partners, "members", "managers", officers, directors or trustees not in collusion with the "employee";

learn of "theft" or any other dishonest act committed by the "employee" whether before or after becoming employed by you.

However, this Paragraph **(1)** does not apply to an "employee" whose "theft" or other dishonest act was committed prior to becoming employed by you and which resulted in the "employee" being convicted of one or more criminal offenses in this state or any other jurisdiction, if, after learning about the "employee's" past criminal conviction or convictions, you made a determination to hire or retain the "employee" utilizing the factors set out in New York Correction Law Article 23-A; or

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

## **NEW YORK CHANGES - FRAUD**

This endorsement modifies insurance provided under the following:

COMMERCIAL CRIME COVERAGE FORM  
COMMERCIAL CRIME POLICY  
EMPLOYEE THEFT AND FORGERY POLICY  
GOVERNMENT CRIME COVERAGE FORM  
GOVERNMENT CRIME POLICY  
GOVERNMENT EMPLOYEE THEFT AND FORGERY POLICY  
KIDNAP/RANSOM AND EXTORTION COVERAGE FORM  
KIDNAP/RANSOM AND EXTORTION POLICY

The **Concealment, Misrepresentation Or Fraud** Condition is replaced by the following:

### **Fraud**

We do not provide coverage for any insured who has made fraudulent statements or engaged in fraudulent conduct in connection with any loss or damage for which coverage is sought under this Policy.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## NEW YORK CHANGES - CANCELLATION AND NONRENEWAL

This endorsement modifies insurance provided under the following:

CAPITAL ASSETS PROGRAM (OUTPUT POLICY) COVERAGE PART  
COMMERCIAL GENERAL LIABILITY COVERAGE PART  
COMMERCIAL INLAND MARINE COVERAGE PART  
COMMERCIAL PROPERTY COVERAGE PART  
CRIME AND FIDELITY COVERAGE PART  
EQUIPMENT BREAKDOWN COVERAGE PART  
FARM COVERAGE PART  
LIQUOR LIABILITY COVERAGE PART  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

A. Paragraphs 1., 2., 3. and 5. of the **Cancellation** Common Policy Condition are replaced by the following:

1. The first Named Insured shown in the Declarations may cancel this entire policy by mailing or delivering to us advance written notice of cancellation.

**2. Cancellation Of Policies In Effect**

**a. 60 Days Or Less**

We may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation at least:

- (1) 30 days before the effective date of cancellation if we cancel for any reason not included in Paragraph **A.2.b.** below.
- (2) 15 days before the effective date of cancellation if we cancel for any of the reasons included in Paragraph **A.2.b.** below.

**b. For More Than 60 Days**

If this policy has been in effect for more than 60 days, or if this policy is a renewal or continuation of a policy we issued, we may cancel only for any of the reasons listed below, provided we mail the first Named Insured written notice at least 15 days before the effective date of cancellation:

- (1) Nonpayment of premium, provided however, that a notice of cancellation on this ground shall inform the first Named Insured of the amount due;

(2) Conviction of a crime arising out of acts increasing the hazard insured against;

(3) Discovery of fraud or material misrepresentation in the obtaining of the policy or in the presentation of a claim;

(4) After issuance of the policy or after the last renewal date, discovery of an act or omission, or a violation of any policy condition, that substantially and materially increases the hazard insured against, and which occurred subsequent to inception of the current policy period;

(5) Material physical change in the property insured, occurring after issuance or last annual renewal anniversary date of the policy, which results in the property becoming uninsurable in accordance with our objective, uniformly applied underwriting standards in effect at the time the policy was issued or last renewed; or material change in the nature or extent of the risk, occurring after issuance or last annual renewal anniversary date of the policy, which causes the risk of loss to be substantially and materially increased beyond that contemplated at the time the policy was issued or last renewed;

(6) Required pursuant to a determination by the Superintendent that continuation of our present premium volume would jeopardize our solvency or be hazardous to the interest of our policyholders, our creditors or the public;



(7) A determination by the Superintendent that the continuation of the policy would violate, or would place us in violation of, any provision of the Insurance Code; or

(8) Where we have reason to believe, in good faith and with sufficient cause, that there is a probable risk of danger that the insured will destroy, or permit to be destroyed, the insured property for the purpose of collecting the insurance proceeds. If we cancel for this reason, you may make a written request to the Department of Financial Services, within 10 days of receipt of this notice, to review our cancellation decision. Also, we will simultaneously send a copy of this cancellation notice to the Department of Financial Services.

3. We will mail or deliver our notice, including the reason for cancellation, to the first Named Insured at the address shown in the policy and to the authorized agent or broker.

5. If this policy is cancelled, we will send the first Named Insured any premium refund due. If we cancel, the refund will be pro rata. If the first Named Insured cancels, the refund may be less than pro rata.

However, when the premium is advanced under a premium finance agreement, the cancellation refund will be pro rata. Under such financed policies, we will be entitled to retain a minimum earned premium of 10% of the total policy premium or \$60, whichever is greater. The cancellation will be effective even if we have not made or offered a refund.

**B.** The following is added to the **Cancellation Common Policy Condition**:

7. If one of the reasons for cancellation in Paragraph **A.2.b.** or **D.2.b.(2)** exists, we may cancel this entire policy, even if the reason for cancellation pertains only to a new coverage or endorsement initially effective subsequent to the original issuance of this policy.

**C.** The following conditions are added:

**1. Nonrenewal**

If we decide not to renew this policy we will send notice as provided in Paragraph **C.3.** below.

**2. Conditional Renewal**

If we conditionally renew this policy subject to:

a. A change of limits;

b. A change in type of coverage;

c. A reduction of coverage;

d. An increased deductible;

e. An addition of exclusion; or

f. Increased premiums in excess of 10%, exclusive of any premium increase due to and commensurate with insured value added or increased exposure units; or as a result of experience rating, loss rating, retrospective rating or audit;

we will send notice as provided in Paragraph **C.3.** below.

**3. Notices Of Nonrenewal And Conditional Renewal**

a. If we decide not to renew this policy or to conditionally renew this policy as provided in Paragraphs **C.1.** and **C.2.** above, we will mail or deliver written notice to the first Named Insured shown in the Declarations at least 60 but not more than 120 days before:

(1) The expiration date; or

(2) The anniversary date if this is a continuous policy.

b. Notice will be mailed or delivered to the first Named Insured at the address shown in the policy and to the authorized agent or broker. If notice is mailed, proof of mailing will be sufficient proof of notice.

c. Notice will include the specific reason(s) for nonrenewal or conditional renewal, including the amount of any premium increase for conditional renewal and description of any other changes.

d. If we violate any of the provisions of Paragraph **C.3.a., b.** or **c.** above by sending the first Named Insured an incomplete or late conditional renewal notice or a late nonrenewal notice:

(1) And if notice is provided prior to the expiration date of this policy, coverage will remain in effect at the same terms and conditions of this policy at the lower of the current rates or the prior period's rates until 60 days after such notice is mailed or delivered, unless the first Named Insured, during this 60-day period, has replaced the coverage or elects to cancel;

- (2) And if the notice is provided on or after the expiration date of this policy, coverage will remain in effect at the same terms and conditions of this policy for another policy period, at the lower of the current rates or the prior period's rates, unless the first Named Insured, during this additional policy period, has replaced the coverage or elects to cancel.
  - e. If you elect to renew on the basis of a late conditional renewal notice, the terms, conditions and rates set forth in such notice shall apply:
    - (1) Upon expiration of the 60-day period, unless Subparagraph (2) below applies; or
    - (2) Notwithstanding the provisions in Paragraphs d.(1) and d.(2), as of the renewal date of the policy if the conditional renewal notice was sent at least 30 days prior to the expiration or anniversary date of the policy.
  - f. We will not send you notice of nonrenewal or conditional renewal if you, your authorized agent or broker or another insurer of yours mails or delivers notice that the policy has been replaced or is no longer desired.
- D.** The following provisions apply when the Commercial Property Coverage Part, the Farm Coverage Part or the Capital Assets Program (Output Policy) Coverage Part is made a part of this policy:
- 1.** Items **D.2.** and **D.3.** apply if this policy meets the following conditions:
    - a. The policy is issued or issued for delivery in New York State covering property located in this state; and
    - b. The policy insures:
      - (1) For loss of or damage to structures, other than hotels or motels, used predominantly for residential purposes and consisting of no more than four dwelling units; or
      - (2) For loss of or damage to personal property other than farm personal property or business property; or
      - (3) Against damages arising from liability for loss of, damage to or injury to persons or property, except liability arising from business or farming; and
  - c. The portion of the annual premium attributable to the property and contingencies described in **1.b.** exceeds the portion applicable to other property and contingencies.
- 2.** Paragraph **2.** of the **Cancellation** Common Policy Condition is replaced by the following:
- 2. Procedure And Reasons For Cancellation**
- a. We may cancel this entire policy by mailing or delivering to the first Named Insured written notice of cancellation at least:
    - (1) 15 days before the effective date of cancellation if we cancel for nonpayment of premium, provided however, that a notice of cancellation on this ground shall inform the first Named Insured of the amount due; or
    - (2) 30 days before the effective date of cancellation if we cancel for any other reason.
  - b. But if this policy:
    - (1) Has been in effect for more than 60 days; or
    - (2) Is a renewal of a policy we issued; we may cancel this policy only for one or more of the following reasons:
      - (1) Nonpayment of premium, provided however, that a notice of cancellation on this ground shall inform the first Named Insured of the amount due;
      - (2) Conviction of a crime arising out of acts increasing the risk of loss;
      - (3) Discovery of fraud or material misrepresentation in obtaining the policy or in making a claim;
      - (4) Discovery of willful or reckless acts or omissions increasing the risk of loss;
      - (5) Physical changes in the covered property that make that property uninsurable in accordance with our objective and uniformly applied underwriting standards in effect when we:
        - (a) Issued the policy; or
        - (b) Last voluntarily renewed the policy;

(6) The Superintendent of Financial Services' determination that continuing the policy would violate Chapter 28 of the Insurance Law; or

(7) Required pursuant to a determination by the Superintendent of Financial Services that the continuation of our present premium volume would be hazardous to the interests of our policyholders, our creditors or the public.

3. The following are added:

**a. Conditional Continuation**

Instead of cancelling this policy, we may continue it on the condition that:

- (1) The policy limits be changed; or
- (2) Any coverage not required by law be eliminated.

If this policy is conditionally continued, we will mail or deliver to the first Named Insured written notice at least 20 days before the effective date of the change or elimination. We will mail or deliver our notice to the first Named Insured's last mailing address known to us. If notice is mailed, proof of mailing will be sufficient proof of notice. Delivery of the notice will be the same as mailing.

**b. Nonrenewal**

If, as allowed by the laws of New York State, we:

- (1) Do not renew this policy; or
- (2) Condition policy renewal upon:
  - (a) Change of limits; or
  - (b) Elimination of coverage;

we will mail or deliver written notice of nonrenewal or conditional renewal:

- (a) At least 45 days; but
- (b) Not more than 60 days;

before the expiration date of the policy. We will mail or deliver our notice to the first Named Insured's last mailing address known to us. If notice is mailed, proof of mailing will be sufficient proof of notice. Delivery of the notice will be the same as mailing.

E. The following is added to the Farm Property - Other Farm Provisions Form - Additional Coverages, Conditions, Definitions, the Commercial Property Coverage Part and the Capital Assets Program (Output Policy) Coverage Part:

When the property is subject to the Anti- arson Application in accordance with New York Department of Financial Services' Insurance Regulation No. 96, the following provisions are added:

If you fail to return the completed, signed and affirmed anti-arson application to us:

1. Or our broker or agent within 45 days of the effective date of a new policy, we will cancel the entire policy by giving 20 days' written notice to you and to the mortgageholder shown in the Declarations.
2. Before the expiration date of any policy, we will cancel the policy by giving written notice to you and to the mortgageholder shown in the Declarations at least 15 days before the effective date of cancellation.

The cancellation provisions set forth in E.1. and E.2. above supersede any contrary provisions in this policy including this endorsement.

If the notice in E.1. or E.2. above is mailed, proof of mailing will be sufficient proof of notice. Delivery of the notice will be the same as mailing.

F. The following applies to the Commercial Property Coverage Part, the Farm Coverage Part and the Capital Assets Program (Output Policy) Coverage Part:

Paragraphs f. and g. of the **Mortgageholders** Condition are replaced by the following:

**f. Cancellation**

- (1) If we cancel this policy, we will give written notice to the mortgageholder at least:
  - (a) 10 days before the effective date of cancellation if we cancel for your nonpayment of premium; or
  - (b) 30 days before the effective date of cancellation if we cancel for any other reason.

(2) If you cancel this policy, we will give written notice to the mortgageholder. With respect to the mortgageholder's interest only, cancellation will become effective on the later of:

(a) The effective date of cancellation of the insured's coverage; or

(b) 10 days after we give notice to the mortgageholder.

**g. Nonrenewal**

(1) If we elect not to renew this policy, we will give written notice to the mortgageholder at least 10 days before the expiration date of this policy.

(2) If you elect not to renew this policy, we will give written notice to the mortgageholder. With respect to the mortgageholder's interest only, nonrenewal will become effective on the later of:

(a) The expiration date of the policy; or

(b) 10 days after we give notice to the mortgageholder.

**G.** The following provisions apply when the following are made a part of this policy:

Commercial General Liability Coverage Part

Employment-Related Practices Liability Coverage Part

Farm Liability Coverage Form

Liquor Liability Coverage Part

Products/Completed Operations Liability Coverage Part

1. The aggregate limits of this policy as shown in the Declarations will be increased in proportion to any policy extension provided in accordance with Paragraph **C.3.d.** above.

2. The last sentence of Limits Of Insurance does not apply when the policy period is extended because we sent the first Named Insured an incomplete or late conditional renewal notice or a late nonrenewal notice.

Tab 9 cont.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## EXCLUSION OF CERTAIN COMPUTER-RELATED LOSSES

This endorsement modifies insurance provided under the following:

COMMERCIAL INLAND MARINE COVERAGE PART  
COMMERCIAL PROPERTY COVERAGE PART  
CRIME AND FIDELITY COVERAGE PART  
STANDARD PROPERTY POLICY

- A.** We will not pay for loss ("loss") or damage caused directly or indirectly by the following. Such loss ("loss") or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss ("loss") or damage.
1. The failure, malfunction or inadequacy of:
    - a. Any of the following, whether belonging to any insured or to others:
      - (1) Computer hardware, including micro-processors;
      - (2) Computer application software;
      - (3) Computer operating systems and related software;
      - (4) Computer networks;
      - (5) Microprocessors (computer chips) not part of any computer system; or
      - (6) Any other computerized or electronic equipment or components; or
    - b. Any other products, and any services, data or functions that directly or indirectly use or rely upon, in any manner, any of the items listed in Paragraph **A.1.a.** of this endorsement;
 

due to the inability to correctly recognize, process, distinguish, interpret or accept one or more dates or times. An example is the inability of computer software to recognize the year 2000.
- 2.** Any advice, consultation, design, evaluation, inspection, installation, maintenance, repair, replacement or supervision provided or done by you or for you to determine, rectify or test for, any potential or actual problems described in Paragraph **A.1.** of this endorsement.
- B.** If an excluded Cause of Loss as described in Paragraph **A.** of this endorsement results:
  1. In a Covered Cause of Loss under the Crime and Fidelity Coverage Part, the Commercial Inland Marine Coverage Part or the Standard Property Policy; or
  2. Under the Commercial Property Coverage Part:
    - a. In a "Specified Cause of Loss", or in elevator collision resulting from mechanical breakdown, under the Causes of Loss - Special Form; or
    - b. In a Covered Cause of Loss under the Causes Of Loss - Basic Form or the Causes Of Loss - Broad Form;
 

we will pay only for the loss ("loss") or damage caused by such "Specified Cause of Loss", elevator collision, or Covered Cause of Loss.
- C.** We will not pay for repair, replacement or modification of any items in Paragraphs **A.1.a.** and **A.1.b.** of this endorsement to correct any deficiencies or change any features.

## MULTIPLE LINE OCCURRENCE DEDUCTIBLE

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS POLICY  
COMMERCIAL CRIME COVERAGE PART  
COMMERCIAL INLAND MARINE COVERAGE PART  
COMMERCIAL PROPERTY COVERAGE PART

- A.** If an occurrence causes loss or damage insured by more than one policy or coverage part issued by us, only one deductible will apply to the total loss or damage.

We will apply the largest deductible in any policy or coverage part that provides insurance for the loss or damage to the occurrence. The other deductibles that would otherwise apply to the loss or damage will be waived.

- B.** If an occurrence causes loss or damage insured by more than one coverage form in a policy or coverage part issued by us, only one deductible will apply to the total loss or damage.

We will apply the largest deductible in any coverage form that provides insurance for the loss or damage to the occurrence. The other deductibles that would otherwise apply to the loss or damage will be waived.

- C.** We will separately apply the individual deductibles that would otherwise apply to the loss or damage if that would result in a larger total payment to the insured.

If we separately apply the individual deductibles, the provisions in Paragraphs **A.** and **B.** will not apply.

- D.** This endorsement does not apply to loss covered by any of the following:

1. Earthquake
2. Equipment breakdown coverage

## **IMPORTANT NOTICE - NEW YORK VEHICLE FEE**

New York motor vehicle law requires every insurance company authorized to do business in New York to charge and collect an **Annual** Motor Vehicle Law Enforcement Fee of \$10 per vehicle. Private passenger type vehicles as well as commercial vehicles are subject to the fee.

The State requires us to collect this fee at policy issue (including renewal) and also whenever a vehicle is replaced on, or added to, your policy. If your policy has been assessed, the fee amount will be displayed on the cover dec and/or invoice.



**NEW YORK  
SUPPLEMENTARY UNINSURED/UNDERINSURED MOTORISTS (SUM) COVERAGE  
SELECTION FORM**

New York law allows you to make coverage selections regarding Statutory Uninsured Motorists Coverage and Supplementary Uninsured/Underinsured (SUM) Motorists Coverage. This selection form describes the coverages and options available.

You must purchase either STATUTORY UNINSURED MOTORISTS COVERAGE or SUPPLEMENTARY UNINSURED/UNDERINSURED MOTORISTS COVERAGE.

YOU SHOULD READ THIS DOCUMENT CAREFULLY AND CONTACT YOUR SENTRY REPRESENTATIVE IF YOU HAVE ANY QUESTIONS REGARDING STATUTORY UNINSURED MOTORISTS COVERAGE OR SUPPLEMENTARY UNINSURED/UNDERINSURED (SUM) MOTORISTS COVERAGE.

**A. STATUTORY UNINSURED MOTORISTS COVERAGE**

Uninsured Motorists Coverage provides coverage for the named insured and occupants of a covered auto for bodily injury caused by a negligent motorist who has no insurance. Also included are damages that result from an automobile accident with a hit-and-run vehicle whose owner or operator cannot be identified.

Your motor vehicle liability insurance policy includes Uninsured Motorists Coverage applicable to motor vehicle accidents that occur only WITHIN the State of New York at limits of at least \$25,000 per person/\$50,000 per accident, unless you elect to purchase Supplementary Uninsured/Underinsured (SUM) Motorists Coverage described below.

**B. SUPPLEMENTARY UNINSURED/UNDERINSURED (SUM) MOTORISTS COVERAGE**

Supplementary Uninsured/Underinsured (SUM) Motorists coverage provides in-state and out-of-state coverage for the named insured and occupants of a covered auto for bodily injury caused by a negligent motorist who has no insurance. Also included are damages that result from an automobile accident with a hit-and-run vehicle whose owner or operator cannot be identified.

Supplementary Uninsured/Underinsured Motorists (SUM) coverage includes coverage for bodily injury caused by an underinsured motorist. An underinsured motorist is a motorist whose bodily injury liability limits are less than the Uninsured Motorists Coverage limits of your Business Auto, Motor Carrier or Auto Dealer Liability policy.

Supplementary Uninsured/Underinsured (SUM) Motorists Coverage can provide protection at higher limits than are available under Statutory Uninsured Motorists Coverage.

**C. BASICS OF SUM COVERAGE**

You should consider purchasing Supplementary Uninsured/Underinsured (SUM) Motorists Coverage in order to protect against the possibility of an accident involving another motor vehicle whose owner or operator was negligent and who:

1. May have no insurance whatsoever; or

2. Even if insured, is only insured for third party bodily injury at relatively low liability limits, in comparison to the policyholder's own liability limits for bodily injury sustained by third parties.

By purchasing SUM Coverage, which cannot be purchased in an amount exceeding the amount of third party liability coverage purchased, the policyholder and any insured under the policy can:

1. Be protected for bodily injury to themselves, up to the limit of the SUM Coverage purchased; and
2. Receive from the policyholder's own insurer payment for bodily injury sustained due to the negligence of the other motor vehicle's owner or operator.

The maximum amount payable under the SUM Coverage shall be the policy's SUM limit reduced and thus offset by motor vehicle bodily injury liability insurance policy or bond payments received from, or on behalf of, any negligent party involved in the accident.

#### D. EXAMPLES

The following examples, unless otherwise noted, illustrate the proper application of SUM coverage:

##### 1. EXAMPLE ONE

Insured's Bodily Injury Damages	\$300,000
Insured's Liability Limit	\$500,000
Insured's SUM Limit	\$250,000
Other Motor Vehicle Liability Limit	\$ 25,000
<p><b>RESULT:</b></p> <p>In this example, the insured has purchased the maximum amount of SUM coverage that must be offered by the insurer, provided that the insured has purchased bodily injury liability limits of at least \$250,000. Insured recovers \$25,000 from the negligent owner or operator of the other motor vehicle, and \$225,000 (\$250,000 minus \$25,000) under the SUM coverage, for a total recovery of \$250,000.</p> <p>In the event that the negligent owner or operator of the other motor vehicle had no liability insurance at all, the insured would collect \$250,000 in SUM coverage from the insured's own insurer. However, if the owner or operator of the other motor vehicle was not negligent, then the insured would receive no SUM payments.</p>	

2. EXAMPLE TWO

Insured's Bodily Injury Damages	\$100,000
Insured's Liability Limit	\$ 25,000
Insured's SUM Limit	\$ 25,000
Other Motor Vehicle Liability Limit	\$ 25,000
<p>RESULT:                      Insured recovers \$25,000 from the negligent owner or operator of the other motor vehicle. The insured receives nothing under the SUM coverage, which equals the mandatory UM coverage, since the liability limits on the other owner or operator's motor vehicle were not lower than the liability insurance limits on the insured's motor vehicle. If the insured's liability and SUM limits were both \$50,000, then the insured would collect another \$25,000 in SUM coverage from the insured's own insurer.</p>	

3. EXAMPLE THREE

Insured's Bodily Injury Damages	\$ 60,000
Insured's Liability Limit	\$100,000
Insured's SUM Limit	\$100,000
Other Motor Vehicle Liability Limit	\$ 50,000
<p>RESULT:                      Insured recovers \$50,000 from the negligent owner or operator of the other motor vehicle and \$10,000 under the SUM coverage, which is the difference between the amount of the insured's SUM coverage and the liability coverage available from the other motor vehicle owner or operator, limited by the amount of the insured's bodily injury damages.</p>	

4. EXAMPLE FOUR

Insured's Bodily Injury Damages	\$150,000
Insured's Liability Limit	\$100,000
Insured's SUM Limit	\$100,000
Other Motor Vehicle Liability Limit	\$ 25,000
<p>RESULT:                      If the insured and the owner or operator of the other motor vehicle were each 50 percent at fault for the accident, then the insured's total recovery would be \$75,000, in light of comparative negligence of the parties involved in the accident. The insured would recover \$25,000 from the negligent owner or operator of the other motor vehicle and \$50,000 under the SUM coverage.</p> <p>On the other hand, if the owner or operator of the other motor vehicle was totally at fault for the accident, then the insured would recover \$25,000 from the negligent owner or operator and would then receive \$75,000 in SUM coverage from the insured's own insurer. Had the insured purchased liability and SUM limits of \$150,000 or more, the SUM recovery would then be \$125,000.</p>	

5. EXAMPLE FIVE

Insured's Bodily Injury Damages	\$ 25,000
Passenger's Bodily Injury Damages	\$ 25,000
Another Passenger's Damages that resulted in death	\$ 50,000
Insured's Combined Single Liability (CSL) Limit	\$ 75,000
Insured's CSL SUM Limit	\$ 75,000
Other Motor Vehicle Liability Limit Uninsured (i.e. no coverage)	
<p>RESULT:                  Since the other motor vehicle was uninsured, the full \$75,000 CSL SUM limit is available for all insured persons from this accident under the policy. However, since the accident involves insured persons who were both injured and killed, the mandatory UM limits of \$25,000 per person and \$50,000 per accident for injured persons and \$50,000 per person and \$100,000 per accident for persons killed in the accident are available. Therefore, the insured and first passenger each recover \$25,000 and the second passenger's estate recovers the full \$50,000 under the SUM coverage.</p> <p>If the insured's CSL and CSL SUM limit were each \$300,000 and the insured's damages amounted to \$200,000, then all insured persons would be covered under the SUM coverage as the total damages (\$200,000 + \$25,000 + \$50,000 = \$275,000) are less than the \$300,000 CSL SUM limit.</p>	

Please initial the line next to the coverage you select.

SELECTION OR REJECTION OF SUM COVERAGE

\_\_\_\_\_ I reject Supplementary Uninsured/Underinsured Motorists (SUM) Coverage and select Statutory Uninsured Motorists Coverage with a \$25,000 per person/\$50,000 per accident limit. I understand that coverage only applies to motor vehicle accidents that occur within the state of New York.

\_\_\_\_\_ I select Supplementary Uninsured/Underinsured Motorists (SUM) Coverage with a coverage limit of:

\_\_\_\_\_ \$50,000 Combined Single Limit (Minimum)

\_\_\_\_\_ \$100,000 Combined Single Limit

\_\_\_\_\_ \$500,000 Combined Single Limit

\_\_\_\_\_ Other - Specify Limit \$ \_\_\_\_\_

\_\_\_\_\_ I select Supplementary Uninsured/Underinsured Motorists (SUM) Coverage equal to the Bodily Injury Liability Limit.

Supplementary Uninsured/Underinsured Motorists Coverage limit may not exceed the bodily injury liability limit on your Business Auto, Motor Carrier or Auto Dealer Liability Policy.

THIS SELECTION FORM DOES NOT PROVIDE COVERAGE. READ THE POLICY FOR DETAILS.

I understand this selection of coverage will apply to all subsequent renewals, reinstatements, and replacement policies until a change is requested by me in writing.

Alan Byer Auto Sales Inc  
Named Insured

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2553009  
Policy Number

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Signature of Named Insured or Authorized Representative

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Print Name and Title

Date

## ADVISORY NOTICE TO POLICYHOLDERS COMMERCIAL AUTO FORM REVISIONS

This is a summary of the major changes to your policy. No coverage is provided by this summary nor can it be construed to replace any provisions of your policy or endorsements. You should read your policy and review your Declarations page for complete information on the coverages you are provided. If there is any conflict between the policy and this summary, THE PROVISIONS OF THE POLICY SHALL PREVAIL.

This notice has been prepared in conjunction with the replacement of your Garage Coverage Form (GCF) with a new Auto Dealers Coverage Form (ADCF). It contains a brief overview of the new organizational structure of the ADCF and a synopsis of the broadenings, restrictions and reinforcements of coverage that may result under the ADCF as compared to the GCF, including a number of related endorsements. Other changes, not directly related to the introduction of the ADCF, are also highlighted. This notice does not reference every change, including editorial changes, made in your policy.

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### AUTO DEALERS COVERAGE FORM (DEALERSHIPS, GARAGES, AND AUTO SERVICES MARKET COVERAGE)

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#### OVERVIEW

The new ADCF, form number CA 81 00 10 13, is designated to provide a variety of insurance coverages tailored to auto dealer operations, garage businesses, and auto service risks. It is organized into five sections as follows:

**A. Section I - Covered Autos Coverages**

1. Covered Autos Liability Coverage
2. Garagekeepers Coverage
3. Physical Damage Coverage;

**B. Section II - General Liability Coverages**

1. Bodily Injury And Property Damage Liability
2. Personal And Advertising Injury Liability
3. Locations And Operations Medical Payments;

**C. Section III - Acts, Errors Or Omissions Liability Coverages;**

**D. Section IV - Conditions; and**

**E. Section V - Definitions.**

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## AUTO DEALERS COVERAGE FORM VS GARAGE COVERAGE FORM

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### BROADENINGS OF COVERAGE

With respect to the coverage provided under the Garage Coverage Form, the Auto Dealers Coverage Form offers the following broadenings of coverage (the location within the ADCF of the provisions listed below is indicated next to each item):

#### Garagekeepers Coverage

Spouses of partners, managers of limited liability companies and executive officers are included as insureds (Section I - Paragraphs E.2.b., c. and d.).

#### General Liability Coverages

- A. Spouses of partners, managers of limited liability companies and executive officers are included as insureds (Section II - Paragraphs D.2., 3. and 4.).
- B. The following coverages, which were formerly available via optional endorsement titled "Broadened Coverage - Garages", are now contained within your policy, either by specific coverage grant or via exceptions to certain exclusions, as follows:
  - 1. Personal And Advertising Injury Liability (Section II - Paragraphs B.);
  - 2. Damages To Rented Premises Liability (exception to **Exclusion 2.e.** of Section II - Paragraph A.);
  - 3. 90-day Automatic Liability Coverage For Newly Acquired Auto Dealerships (Section II - Paragraph D.6.);
  - 4. Limited Worldwide Liability (Section IV - Paragraphs B.7.(5)(b), (c) and (d));
  - 5. Non-owned Watercraft Coverage (exception to Exclusion 2.g. of Section II - Paragraph A.); and
  - 6. Incidental Medical Malpractice (Section II - Paragraph D.5.a.(4)).
- C. Coverage is provided for liability assumed under an "insured contract" for the ownership, maintenance or use of aircraft or watercraft (exception to Exclusion 2.g. of Section II - Paragraph A.).
- D. The coverage that was formerly available via optional Endorsement titled Garage Locations And Operations Medical Payments Coverage is now automatically included in your policy (Section II - Paragraph C.). If you did not have this optional coverage, an exclusion has been added to keep your policy's coverage the same.
- E. In addition to the General Liability Aggregate Limit (formerly called the Aggregate Limit Of Insurance - Garage Operations - Other Than Covered Autos in the GCF), a separate Products And Work You Performed Aggregate Liability Limit is included in the ADCF. It is designed to apply to losses arising out of your products or work you performed which occur away from locations owned, maintained or used for your auto dealer operations (Section II - Paragraph F.b.).

#### Definitions

The "products" definition includes the products of an auto dealership or garage business that you acquire (Section V - Paragraph T.).

## REDUCTIONS OF COVERAGE

With respect to the coverage provided under the Garage Coverage Form, the following reductions of coverage may result from the Auto Dealers Coverage Form (the location within the ADCF of the provisions listed below is indicated next to each item):

### Covered Autos Liability - Impaired Property And Property Not Physically Damaged

The former Loss Of Use Exclusion in the GCF has been retitled "Damage To Impaired Property Or Property Not Physically Damaged" in the ADCF. This ADCF exclusion incorporates an "impaired property" concept and addresses property damage to property that has not sustained direct physical damage (Section I - Paragraph D.4.n.).

### General Liability Coverages

- A. The former Care, Custody Or Control Exclusion in the GCF has been retitled "Damage To Property" in the ADCF. The portion of the exclusion pertaining to property damage to property you own, rent or occupy has been updated in the ADCF to also exclude coverage for any costs or expenses incurred for the repair, replacement, enhancement, restoration or maintenance of such property for any reason, including the prevention of injury to a person or damage to another's property (Section II - Paragraph A.2.e.(1)).
- B. The former Loss Of Use Exclusion in the GCF has been retitled "Damage To Impaired Property Or Property Not Physically Damaged" in the ADCF. This ADCF exclusion incorporates an "impaired property" concept and addresses property damage to property that has not sustained direct physical damage (Section II - Paragraph A.2.j.).
- C. With respect to Locations And Operations Medical Payments, if you formerly had optional GCF Endorsement **CA 25 05** - Garage Locations And Operations Medical Payments Coverage attached to your policy, the following reductions of coverage may result due to the addition of the following exclusions:
  1. **Hired Person** - Generally excludes a person hired to do work for or on behalf of any insured or a tenant of any insured (Section II - Paragraph C.2.c.).
  2. **Injury On Normally Occupied Premises** - Generally excludes a person injured on that part of the premises you own or rent that the person normally occupies (Section II - Paragraph C.2.d.).
  3. **Athletic Activities** - Generally excludes a person injured while practicing, instructing or participating in any physical exercises or games, sports or athletic contests (Section II - Paragraph C.2.e.).
  4. **Bodily Injury And Property Damage Liability** - Generally incorporates the exclusions under Paragraph A. Bodily Injury And Property Damage Liability (Section II - Paragraph C.2.g.).
- D. Employees are not insureds for:
  1. Bodily injury or personal and advertising injury to you, or your partners or members (Section II - Paragraph D.5.a.(1)); and
  2. Property damage to property:
    - a. Owned, occupied or used by; or
    - b. Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by you, or your employees, partners or members (Section II - Paragraph D.5.b.).



- F. The deductible for property damage to an auto as a result of work you performed is increased from \$100 to \$500 (Section II - Paragraph F.7.). This deductible may have already been higher on your current policy and shown as the Broad Form Completed Operations Deductible. If so, your policy has been renewed with the same deductible, now shown as "Damage to Auto Resulting From Work You Performed".

### Physical Damage Coverage

If your inventory is insured under another insurance policy, your Sentry policy may have extended limited coverage in cases where the other policy did not cover a loss but Sentry's policy would cover that loss. If you have this "Floorplan Wraparound" extension of coverage, it has been modified to exclude any loss arising from flood, earthquake or hail, since this extension was not intended to replace other inventory insurance that excludes those perils.

## REINFORCEMENTS OF COVERAGE

### Covered Auto Liability Coverages

- A. The title of the insuring agreement for "Garage Operations" - Covered "Autos" in the GCF is replaced with "Covered Autos Liability Coverage" in the ADCF to distinguish such coverage from other types of liability coverages included in your policy.
- B. The following GCF Liability Coverage exclusions, which were formerly contained under Liability Coverage in the GCF, are now contained under Paragraph A. Bodily Injury And Property Damage Liability of Section II - General Liability Coverages:
1. Expected Or Intended Injury - The exception to the exclusion pertaining to reasonable force to protect persons or property;
  2. Employee Indemnification And Employer's Liability - The portion of the exclusion pertaining to employment-related practices;
  3. Pollution Exclusion Applicable To "Garage Operations" - Other Than Covered "Autos";
  4. Watercraft Or Aircraft; and
  5. Distribution Of Material In Violation Of Statutes Exclusion Applicable To "Garage Operations" - Other Than Covered "Autos".
- D. Exclusions concerning Handling Of Property and Movement Of Property By Mechanical Device have been included to reinforce that damages arising out of the exposure of handling property before loading begins and after unloading ends are not covered under this section. Rather, coverage for such loading and unloading exposure is generally addressed under Section II - General Liability Coverages.
- E. An "Acts, Errors Or Omissions" Exclusion is added to reinforce that damages arising out an insured's "acts, errors or omissions" are not included under this section.
- F. Language is added to reinforce that the Limit Of Insurance for Covered Autos Liability Coverage does not include damages payable under Section II - General Liability Coverages or Section III - Acts, Errors Or Omissions Coverages.

### Physical Damage Coverage

Paragraph F.4.a. of the Limits Of Insurance provision under Physical Damage Coverage is reinforced to reflect that "loss" rather than "accident" triggers coverage under this section.

## General Liability Coverages

### A. Bodily Injury And Property Damage Liability

1. References to "garage operations" have been replaced with the defined term "auto dealer operations" which includes garage businesses.
2. References to "garage operations" - other than covered "autos" have either been deleted or replaced with "General Liability Coverages", as appropriate.
3. The insuring agreement includes references to Personal And Advertising Injury Liability and Locations And Operations Medical Payments Coverages, as a result of the incorporation of these coverages directly into base the ADCF.
4. Auto-related provisions have been moved to the Covered Autos Liability section, such as the "Out-of-state Coverage Extensions" and exclusions pertaining to Leased Autos, Racing, and Pollution applicable to covered autos.
5. The GCF exception for bodily injury to domestic employees contained in the Employee Indemnification And Employer's Liability Exclusion is relocated to the Covered Autos Liability section, as this exception relates to the auto exposure only.
6. The GCF exclusion for Watercraft Or Aircraft has been retitled "Aircraft, Auto Or Watercraft" in the ADCF. The ADCF exclusion newly precludes coverage for liability arising out of the ownership, maintenance, use or entrustment to others of autos, since coverage for the auto exposure is addressed under Section I - Covered Autos Coverages. Additionally, the ADCF exclusion under the General Liability section reinforces that the exclusion is designed to apply even if claims against an insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured with respect to liability arising out of the ownership, maintenance, use or entrustment to others of any aircraft, auto or watercraft that is owned or operated by or rented or loaned to any insured.
7. An exclusion addressing Personal And Advertising Injury Liability is added for consistency with the similar exclusion contained in former optional endorsement titled "Broadened Coverages - Garages".

### B. Personal And Advertising Injury Liability Coverage

As compared to the coverage formerly provided in optional Endorsement "Broadened Coverage - Garages":

1. The insuring agreement includes references to Personal And Advertising Injury Liability and Locations And Operations Medical Payments Coverages, as a result of the incorporation of these coverages directly into the base ADCF.
2. Exclusion titles are added.
3. An Acts, Errors Or Omissions Exclusion is added to reinforce that damages arising out of an insured's acts, errors or omissions are not included under Personal And Advertising Injury Liability Coverage. Coverage with respect to an insured's acts, errors or omissions is addressed under Section III - Acts, Errors Or Omissions Liability Coverage.

### C. Locations And Operations Medical Payments

As compared to the coverage formerly provided in optional GCF Endorsement "Garage Locations And Operations Medical Payments Coverage", the insuring agreement has been updated to reinforce that coverage applies regardless of fault and to specify the type of reasonable expenses that are covered.

#### D. Limits Of Insurance - General Liability Coverages

1. Language is added to differentiate between losses arising out of the Named Insured's products or performed work which occur on premises and product or performed work-related losses which occur off premises for the purposes of determining whether the General Liability Aggregate or the Products/Work You Performed Aggregate Limit applies in a given loss situation.
2. Language is added to reinforce that damages payable under any applicable limits of insurance for General Liability Coverages are not payable under Section I - Covered Autos Coverages or Section III - Acts, Errors Or Omissions Liability Coverages.

#### Definitions

The definition of "garage operations" is changed to "auto dealer operations" which includes a dealership or a garage business. Additionally, the GCF reference to "the ownership, maintenance or use of the 'autos' indicated in Section I" is removed since the insuring agreements and exclusions for the Covered Autos Liability and Commercial General Liability Coverages are now located in separate coverage sections.

#### Acts, Errors Or Omissions Liability Coverage Section

The Coverage Form includes a section for Acts, Errors Or Omissions Liability (Section III). However this optional coverage is not provided on this policy. If you have this optional coverage, it will continue to be provided on your separate Dealers Errors and Omissions policy.

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### ENDORSEMENTS

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The endorsements and forms attached to your policy have been revised, in general and where appropriate, to:

1. Add reference to "Auto Dealers Coverage Form" and delete references to the "Business Auto Physical Damage Coverage Form", "Garage Coverage Form" and/or "Truckers Coverage Form" in the list of the Coverage Forms to which the endorsement modifies,
2. Update paragraph references, Schedules, headers and lead-in statements to track with the relevant provisions in the ADCF, Business Auto Coverage Form and the Motor Carrier Coverage Form; and/or
3. Replace references to "Liability Coverage" with respect to auto liability with "Covered Autos Liability Coverage" to distinguish such coverage from the other types of liability coverages included in your policy.

### BROADENINGS OF COVERAGE

#### ENDORSEMENTS THAT MAY APPLY TO YOUR POLICY

##### **CA 20 47 - Additional Insured - Lessor Of Leased Equipment (Newly Titled Additional Insured - General Liability Coverages - Lessor Of Leased Equipment)**

This endorsement has been revised, in part, to reflect the inclusion of Personal And Advertising Injury Liability Coverage.

##### **CA 20 54 - Employee Hired Autos**

This endorsement is revised to reinforce that any employee of yours is an insured while operating a rental or hired vehicle taken out in another employee's name for the purposes of performing duties related to the conduct of your business and with your permission.

##### **CA 25 09 - Owners Of Garage Premises (Newly Titled Additional Insured - General Liability Coverages - Owners Of Leased Or Rented Land Or Premises)**

This form is generally revised to extend additional insured status, not only to owners of premises, but to owners of land with respect to their liability arising out of the ownership, maintenance or use of that portion of the described land which is leased or rented to you.

**CA 81 01 - Auto Services Market Endorsement**

This new endorsement will be attached to every auto service risk that is not an auto dealership, to extend physical damage coverage for towing, transportation expenses, and include a deductible exception for physical damage loss by fire and lightning.

**CA 81 15 - Full Covered Autos Liability Limit For Customers**

In general, this new endorsement is designed to provide liability coverage for your customers for amounts up to the full limit of liability provided under your policy.

**CA 99 16 - Hired Autos Specified As Covered Auto You Own**

This endorsement has been revised to remove the wording which limits coverage with respect to the lessor solely to liability arising out of the acts or omissions of the lessee or any else acting on the lessee's behalf.

**REDUCTIONS OF COVERAGE**

**ENDORSEMENT THAT MAY APPLY TO YOUR POLICY**

**CA 87 67 - Broad Form Products**

This endorsement is revised to generally increase the deductible amount for property damage to your products from \$250 to \$500.

**CA 25 37 - Fungi Or Bacteria Exclusion - General Liability Coverages**

An exclusion is added for bodily injury or property damage liability, including personal injury or personal and advertising injury related to fungi, including but not limited to mold, or bacteria on or in a building or structure. This exclusion applies whether or not any other cause, event, material or product contributed in any sequence to the injury or damage. Coverage is also excluded for any loss, cost or expense arising out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating or disposing of, or in any way responding to, or assessing the effects of, fungi or bacteria. However, there is an exception with respect to fungi or bacteria that are, are on, or are contained in a good or product intended for bodily consumption, such as mushrooms.

**REINFORCEMENTS OF COVERAGE**

**CA 25 63 - Exclusion - Acts, Errors Or Omissions Liability Coverages**

The new ADCF includes an optional coverage for Acts, Errors or Omissions Liability Coverages, relating to truth in lending, odometer, insurance agents and brokers and title coverages. If you have Dealers Errors and Omissions coverage, it is being provided by a separate policy and will continue to be provided that way. This exclusion is to clarify this coverage is not provided under the ADCF.



July 20, 2018

## NOTICE TO POLICYHOLDERS INSURANCE UPDATE PROGRAM - RENEWAL ACCOUNT

Thank you for once again choosing Sentry Insurance as your insurance provider.

Our records indicate that you have again chosen to use our Insurance Update Program (IUP). As you already know, this program has been established to provide you with an improved method of adjusting your variable premium. This approach eliminates the yearend audit as long as the updates are accurate and received in a timely manner. If you fail to report, Sentry Insurance reserves the right to estimate the values for the reporting period and/or perform an annual audit of your account.

Please note that Workers' Compensation coverage will be adjusted on an annual basis, due to mandated regulations, and is not included in this program.

The IUP will adjust your variable premium on either a monthly (MIU) or quarterly (QIU) basis - based on your selection at policy issuance. The IUP will correlate with your recent month/quarter end inventory values and number of employees. This will be accomplished through timely and accurate reporting from a contact person at your dealership(s). NOTE: Your policy was renewed using the contact person(s) and address(s) we had on the expiring policy. If any of this information has changed, please inform your Account Manager so that we can update your file and mail/email your IUP reporting forms to the correct location.

Assembling the employee count and inventory value information while completing your monthly operating statement(s), can easily help you complete the IUP form. The IUP forms can be mailed to your contact person(s), delivered by your Account Manager, or you can access/submit the reports online through our customer service website, *SentryConnect*. This site is accessed through [www.sentry.com](http://www.sentry.com) or directly by using the web address <https://customer.Sentry.com>.

Once we receive the monthly/quarterly information, we will calculate an adjustment to your premium and fax or email you an Insurance Update Confirmation Notice. This notice is not an invoice or a bill. Any adjustments applicable will be billed separately on your next invoice.

An instruction sheet is provided with each reporting form to assist you in the completion of the form. If you should require further assistance, please contact your Sentry Insurance Account Manager.

Attention

Alan Byer Auto Sales Inc  
1230 W Genesee St  
Syracuse, NY 13204-2104

POLICY NUMBER: 2553009004

We have reviewed the MVR on the following individual(s):

Patrick Trivison  
XXXXX5343

Based on their MVR, we will be taking the following action.

We will require a statement on company letterhead signed by BOTH a corporate officer/owner and the individual(s) listed above stating they will not be allowed to drive any vehicles for company business. Please include your account number and a separate statement for each individual listed above.

We recognize the importance of evaluating an employee's driving record before allowing them to drive your vehicles, or even their own vehicles, on company business. The experience and track record of persons driving for business purposes is an important factor in controlling property damage and physical damage losses, employee injuries, costly liability suits and ultimately, the dollars you pay for auto insurance.

In addition to liability for property damage and bodily injury, you could also be held liable for punitive damages under negligent entrustment laws. Negligent entrustment is assigning duties to someone without exercising proper care. The biggest exposure to negligent entrustment claims is in driver selection. The possibility of a negligent entrustment lawsuit can be reduced by selecting good drivers.

You most likely have heard of Federal and State legislation regarding privacy issues. In fact, you have probably received numerous pieces of mail from various companies explaining their privacy policy and how they protect information. This same legislation has changed the way we handle an individual's Motor Vehicle Record and the information we can share with our policyholders. Due to this legislation, we are unable to provide you with a copy of specific MVR information regarding the above individual(s).

Although we cannot provide you with copies of MVRs, you can still obtain them from a variety of sources. A good tool to use is the agency that licenses drivers in the state the person is licensed. In addition there are several independent vendors available online that provide this service on a fee basis. These websites will provide information on how to obtain MVRs and their cost. The information they provide will help you in making important decisions that relate to your vehicle loss control program.

If you have any questions regarding this issue, please contact your sales representative or the Customer Service Department at 1-800-473-6879.

**STMTNODRIVE**

2553009  
Sentry Select Insurance Company

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Page 1 of 1

07/20/2018

POLICY NUMBER: 2553009004



## AUTO DEALERS DECLARATIONS

Sentry Select Insurance Company (A Participating Stock Company) A member of the Sentry Insurance Group 1800 North Point Drive Stevens Point, WI 54481	Producer  Steven Asch 10000277 315-484-6565
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### ITEM ONE

#### POLICY INFORMATION

**First Named Insured:** Alan Byer Auto Sales Inc  
**Address:** 1230 W Genesee St  
 Syracuse, NY 13204-2104

The Auto Dealers Coverage applies from 08/01/2018 to 08/01/2019 at 12:01 A.M. Standard Time at the First Named Insured's mailing address shown above.

#### Additional Interests

For additional interests applicable to a scheduled covered "auto" refer to the Schedule of Covered Autos. For all other additional interests applicable to Section I Covered Auto Coverages, or additional insureds applicable to Section II - General Liability Coverages, refer to the Additional Interests Supplemental Declarations.

#### APPLICABLE FORMS AND ENDORSEMENTS

In addition to the common policy forms and endorsements, the following forms and endorsements apply to the Auto Dealers Coverage:

Form/Endorsement Number and Edition Date	Form/Endorsement Title
CA 02 25 08 14	New York Changes - Cancellation
CA 03 02 10 13	Deductible Liability Coverage
CA 04 20 08 14	New York Supplemental Spousal Bodily Injury Liability Coverage
CA 22 32 11 13	New York Mandatory Personal Injury Protection Endorsement
CA 25 63 10 13	Exclusion - Acts, Errors Or Omissions Liability Coverages
CA 31 07 05 18	New York Supplementary Uninsured/Underinsured Motorists Endorsement
CA 81 00 10 13	Auto Dealers Coverage Form
CA 81 02 10 13	Broad Form Work You Performed And Faulty Work Endorsement
CA 81 03 10 13	Deductible - Damage To Auto Resulting From Work Performed
CA 81 10 10 13	Fellow Employee Coverage
CA 81 20 11 17	Sold Autos - Temporary Physical Damage For Contingent Sales
CA 81 26 05 15	Exclusion - Access Or Disclosure Of Confidential Or Personal Information And Data-Related Liability - With Limited Bodily Injury Exception
CA 82 52 04 17	New York Changes In Auto Dealers Coverage Form
CA 87 26 10 13	Floorplan Exclusion Endorsement
CA 87 59 04 17	New York Vicarious Liability Coverage - Identity Theft

**CA 89 05 07 15**  
 2553009  
 Sentry Select Insurance Company

POLICY NUMBER: 2553009004

**ITEM ONE  
APPLICABLE FORMS AND ENDORSEMENTS**

<b>Form/Endorsement Number and Edition Date</b>	<b>Form/Endorsement Title</b>
CA 87 67 10 13	Broad Form Products Coverage
CA 87 73 01 11	Data Compromise Coverage
CA 87 76 01 11	Identity Recovery Coverage - New York
CA 88 04 10 13	Additional Insured - Designated Person Or Organization
CA 88 56 10 17	ADPD - False Pretense Coverage
CA 88 80 10 13	Asbestos Exclusion
CA 88 93 10 13	New York Employment Practices Endorsement
CA 99 03 10 13	Auto Medical Payments Coverage
CA 99 44 10 13	Loss Payable Clause
IL 01 83 08 08	New York Changes - Fraud

**ITEM TWO**

**Schedule of Coverages and Covered Autos**

This policy provides only those coverages, shown below. Each of the "auto"-related coverages will apply only to those "autos" shown as covered "autos". "Autos" are shown as covered "autos" for a particular coverage by the entry of one or more of the symbols from **Section I - Covered Autos Coverages** of the Auto Dealers Coverage Form next to the "auto"-related coverage.

<b>Coverages</b>	<b>Covered Autos</b>	<b>Limit</b>	<b>Premium</b>
Covered Autos Liability	21	\$500,000 Each Accident	\$ 20,078.00
General Liability Bodily Injury and Property Damage Liability		\$500,000 Each Accident	
Damages To Premises Rented To You		\$500,000 Any One Premises	
Personal And Advertising Injury Liability		\$500,000 Any One Person or Organization \$2,500,000 General Liability Aggregate \$2,500,000 Products and Work You Performed Aggregate	
Locations and Operations Medical Payments		\$5,000 Any One Person	\$ 377.00
New York Supplemental Spousal Bodily Injury Liability Coverage		Included in Covered Autos Liability	



POLICY NUMBER: 2553009004

**ITEM TWO**

**Schedule of Coverages and Covered Autos**

Coverages	Covered Autos	Limit	Premium
New York Personal Injury Protection (No Fault)	25		
Mandatory Personal Injury Protection		\$50,000 Per Person Minus \$0 Deductible	\$ 2,319.00
Optional Basic Economic Loss			
Additional Personal Injury Protection			
Aggregate No Fault Benefits Available		\$50,000 Per Person	
Maximum Monthly Work Loss		\$2,000 Per Person	
Other Necessary Expenses (Per Day)		\$25 Per Person	
Death Benefit		\$2,000 Per Person	
Auto Medical Payments	21	\$5,000 Each Insured "Refer to ITEM SEVEN for Scheduled Autos"	\$ 101.00
New York Supplementary Uninsured/Underinsured Motorists	26	\$50,000 The maximum amount payable under Supplementary Uninsured/Underinsured Motorists (SUM) shall be the policy's SUM limits reduced and thus offset by motor vehicle bodily injury liability insurance policy or bond payments received from, or on behalf of, any negligent party involved in the accident, as specified in the SUM endorsement.	\$ 207.00
Garagekeepers Comprehensive Coverage	30	Separately stated for each location in ITEM FIVE	\$ 800.00
Garagekeepers Collision Coverage	30	Separately stated for each location in ITEM FIVE	\$ 1,025.00
Physical Damage - Comprehensive Coverage	28 31	See ITEM SIX and ITEM SEVEN of the Declarations for applicable Limits of Insurance and Deductibles.	\$ 12,690.00
Physical Damage - Collision Coverage	28 31	See ITEM SIX and ITEM SEVEN of the Declarations for applicable Limits of Insurance and Deductibles.	\$ 14,320.00
<b>Premium for endorsements</b>			<b>\$ 17,126.00</b>

POLICY NUMBER: 2553009004

**ITEM TWO**

**Schedule of Coverages and Covered Autos**

**Estimated Total Premium**      \$      69,043.00

**ITEM THREE**

**Locations where you conduct Auto Dealer Operations**

Locations where you conduct "auto dealers operations" include the following premises numbers, from Covered Location/Schedule of Premises found in the Common Declarations: 1, 2 & 3

**ITEM FOUR**

**Liability and Personal Injury Protection (or Equivalent or Similar No-Fault) Coverages Premium Rating Basis Designated Individuals and Optional Coverages**

**Premium Rating Basis for Dealers (service shop employees all use class I-C)**

**Operator Classification**

- Class I-A                      Proprietors, partners, and officers active in the business, sales people, general or service managers and other employees if provided a furnished "auto".\*
- Class I-B                      Proprietors, partners, and officers active in the business, sales people, general or service managers not provided a furnished "auto" and employees whose principal duty is operation of "autos".\*
- Class I-C                      All other dealership employees not provided a furnished "auto".\*

\* Part time employees averaging 20 working hours or more per week are counted as 1 employee. Part time employees averaging less than 20 working hours per week are counted as 1/2 of an employee.

- Class II-A                      Non-employees under age 25 provided a furnished "auto".
- Class II-B                      Non-employees age 25 and over provided a furnished "auto".
- Contract Drivers              Contract drivers or a person:
  - Under contract with the named insured to drive covered "autos" to a location specified by the named insured; or
  - Employed by an organization the named insured hires to provide drivers to drive covered "autos" to a specified location.

Location Number	Class	Factor	Number of Persons	Rating Units
1	I-A	1.00	5.00	5.00
	I-B	0.70	6.00	4.20
	I-C	0.40	39.50	15.80
Estimated Rating Units				25.00
Liability Rate per Unit				567.2180
Personal Injury Protection per Unit				68.4680

POLICY NUMBER: 2553009004

**ITEM FOUR**

Location Number	Class	Factor	Number of Persons	Rating Units
				11.1760
				2.9800
2	I-B	0.70	1.00	0.70
	I-C	0.40	4.00	1.60
Estimated Rating Units				2.30
Medical Payments Coverage per Unit				2.8680
Personal Injury Protection per Unit				70.4820
Liability Rate per Unit				545.7560
Medical Payments Location and Operations per Unit				10.7530
3	I-B	0.70	3.00	2.10
	I-C	0.40	11.00	4.40
Estimated Rating Units				6.50
Personal Injury Protection per Unit				68.4680
Medical Payments Coverage per Unit				2.9800
Medical Payments Location and Operations per Unit				11.1760
Liability Rate per Unit				567.2180

**LIABILITY OPTIONAL COVERAGES**

For information not shown below, refer to the individual endorsements.

**Deductible Liability Coverage**

Liability Deductible	\$2,500 Per "Accident"
Damage to auto resulting from work you performed	\$2,500 Per "Auto"

**Employment Practices Endorsement** \$ 2,991.00

Limit of Liability:	
Each Act	\$ 500,000
Annual Aggregate	\$ 2,500,000

Deductible Percentage 5.0%

**Data Compromise Coverage** \$ 294.00

Data Compromise Coverage - Aggregate Limit	\$ 100,000
Legal and Forensic Information Technology Review Sublimit (Any One "Personal Data Compromise")	\$ 5,000
Data Compromise Deductible (Any One "Personal Data Compromise")	\$ 2,500

**Vicarious Liability Coverage - Identity Theft** \$ 67.00

Each Customer Limit of Insurance – "Vicarious Liability" – Identity Theft	\$ 50,000
Aggregate Limit of Insurance - "Vicarious Liability" - Identity Theft	\$ 100,000

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Sentry Select Insurance Company

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**ITEM FOUR  
LIABILITY OPTIONAL COVERAGES**

**Broad Form Work You Performed and Faulty Work Endorsement** \$ 1,798.00

Deductible – Refer to ITEM FOUR Liability Deductibles – Damages to Auto Resulting From Work You Performed

**ITEM FIVE**

**Garagekeepers Coverage**

Location Number	Coverages	Limit Of Insurance And Deductible For Each Location	Premium									
1	Comprehensive	\$600,000 Limit of Insurance  A deductible applies to each "customer auto" subject to maximum (if applicable) for all loss in any one event. Deductible are shown by cause of loss.  <table border="1"> <thead> <tr> <th>Causes of Loss</th> <th>Each Auto</th> <th>Maximum any one event</th> </tr> </thead> <tbody> <tr> <td>Wind or Hail</td> <td>\$ 500</td> <td>No Maximum</td> </tr> <tr> <td>All Other Covered Causes</td> <td>\$ 1,000</td> <td>\$5,000</td> </tr> </tbody> </table>	Causes of Loss	Each Auto	Maximum any one event	Wind or Hail	\$ 500	No Maximum	All Other Covered Causes	\$ 1,000	\$5,000	\$ Included
Causes of Loss	Each Auto	Maximum any one event										
Wind or Hail	\$ 500	No Maximum										
All Other Covered Causes	\$ 1,000	\$5,000										
	Collision	\$600,000 minus \$1,000 deductible for each "customer auto".	\$ Included									
2	Comprehensive	\$120,000 Limit of Insurance  A deductible applies to each "customer auto" subject to maximum (if applicable) for all loss in any one event. Deductible are shown by cause of loss.  <table border="1"> <thead> <tr> <th>Causes of Loss</th> <th>Each Auto</th> <th>Maximum any one event</th> </tr> </thead> <tbody> <tr> <td>Wind or Hail</td> <td>\$ 500</td> <td>No Maximum</td> </tr> <tr> <td>All Other Covered Causes</td> <td>\$ 1,000</td> <td>\$5,000</td> </tr> </tbody> </table>	Causes of Loss	Each Auto	Maximum any one event	Wind or Hail	\$ 500	No Maximum	All Other Covered Causes	\$ 1,000	\$5,000	\$ Included
Causes of Loss	Each Auto	Maximum any one event										
Wind or Hail	\$ 500	No Maximum										
All Other Covered Causes	\$ 1,000	\$5,000										
	Collision	\$120,000 minus \$1,000 deductible for each "customer auto".	\$ Included									
3	Comprehensive	\$240,000 Limit of Insurance  A deductible applies to each "customer auto" subject to maximum (if applicable) for all loss in any one event. Deductible are shown by cause of loss.  <table border="1"> <thead> <tr> <th>Causes of Loss</th> <th>Each Auto</th> <th>Maximum any one event</th> </tr> </thead> <tbody> <tr> <td>Wind or Hail</td> <td>\$ 500</td> <td>No Maximum</td> </tr> <tr> <td>All Other Covered Causes</td> <td>\$ 1,000</td> <td>\$5,000</td> </tr> </tbody> </table>	Causes of Loss	Each Auto	Maximum any one event	Wind or Hail	\$ 500	No Maximum	All Other Covered Causes	\$ 1,000	\$5,000	\$ Included
Causes of Loss	Each Auto	Maximum any one event										
Wind or Hail	\$ 500	No Maximum										
All Other Covered Causes	\$ 1,000	\$5,000										
	Collision	\$240,000 minus \$1,000 deductible for each "customer auto".	\$ Included									

**Special Repair Percentages**

Repair Percentages applicable to "customer's auto": Parts 75% Labor 75%

POLICY NUMBER: 2553009004

**ITEM FIVE**

**Garagekeepers Coverage**

**Faulty Work Deductible**

Each "Customers Auto" \$2,500

**Garagekeepers Customers' Personal Property**

The most we will pay for any one "loss" to "customer's personal property" is: \$7,000

**Direct Coverage Options**

**Direct Insurance**

Garagekeepers Coverage is changed to apply without regard to your legal liability for "loss" to a "customer's auto" and is primary insurance.

**ITEM SIX**

**DEALERS PHYSICAL DAMAGE COVERAGE**

**Physical Damage Limits and Coverages**

Location Number	Coverage	Limit of Insurance and Deductibles for Each Location	
1	Comprehensive	\$9,190,000 Limit	\$ 9,303.00

A deductible applies to each covered auto, subject to a maximum (if applicable) for all loss in any one event. Deductibles are shown by cause of loss.

Causes of Loss	Each Auto	Maximum any one event
Wind or Hail	\$ 1,500	No Maximum
All Other Covered Causes	\$ 1,000	\$5,000
Loc 1 Rate per \$100 Value		
Buildings	0.1100	
Non-Standard	0.1390	

2	Comprehensive	\$340,000 Limit	\$ 338.00
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A deductible applies to each covered auto, subject to a maximum (if applicable) for all loss in any one event. Deductibles are shown by cause of loss.

Causes of Loss	Each Auto	Maximum any one event
Wind or Hail	\$ 1,500	No Maximum
All Other Covered Causes	\$ 1,000	\$5,000

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**ITEM SIX**

**DEALERS PHYSICAL DAMAGE COVERAGE**

Location Number	Coverage	Limit of Insurance and Deductibles for Each Location		
		Causes of Loss	Each Auto	Maximum any one event
		Loc 2 Rate per \$100 Value		
		Buildings	0.1020	
		Non-Standard	0.1280	
3	Comprehensive	\$2,990,000 Limit		\$ 3,024.00
		A deductible applies to each covered auto, subject to a maximum (if applicable) for all loss in any one event. Deductibles are shown by cause of loss.		
		Causes of Loss	Each Auto	Maximum any one event
		Wind or Hail	\$ 1,500	No Maximum
		All Other Covered Causes	\$ 1,000	\$5,000
		Loc 3 Rate per \$100 Value		
		Buildings	0.1100	
		Non-Standard	0.1390	
	Blanket Collision	\$12,520,000 Limit of Insurance		\$ 14,320.00
	(All Locations)	\$1,000 Deductible for each covered auto, subject to a maximum \$5,000 for all such loss in any one event.		

**Other Locations and In Transit**

For "loss" at locations other than those locations listed above, a limit \$4,173,333 applies to covered "autos" in transit and any locations where you store covered "autos" that are not otherwise excluded by this policy. The highest deductibles for any one location listed above apply.

**Dealers Special Repair Percentages**

Hail Damage Repair Percentages:	Parts 75%	Labor 75%
Other Than Hail Damage Repair Percentages:	Parts 75%	Labor 75%

**Auto Dealers Physical Damage Reporting Basis**

**Monthly Reporting**

You must give us your reports by the fifteenth of every month. Your reports will contain the total value of all covered "autos" and the total value of "autos" insured under a Floorplan or other physical damage insurance, for each coverage, you had on the last business day of the preceding month.

**DEALERS PHYSICAL DAMAGE OPTIONAL ENDORSEMENTS**

<b>False Pretense Coverage</b>	\$	<b>10,109.00</b>
Per Person Limit:	\$	75,000
Deductible:	\$	500 For Each Covered Auto

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**ITEM SEVEN**

**Schedule of Covered Autos which are insured on a Specified Car basis**  
No schedule "autos"

**ITEM EIGHT**

**Schedule of Hired or Borrowed Covered Auto Coverage and Premium**

**Covered Autos Liability Coverage – Cost Of Hire Basis (Other Than Mobile or Farm Equipment)**

Covered Autos Liability Coverage	Estimated Annual Cost of Hire For Each State	Premium
Primary Coverage	If Any	\$ Included

Cost of hire means the total amount you incur for the hire of "autos" you don't own (not including "autos" you borrow or rent from your partners or "employees" or their family members). Cost of hire does not include charges for services performed by motor carriers of property or passengers.

**Physical Damage Coverage – Cost of Hire Rating Basis For All Autos (Other Than Mobile Equipment or Farm Equipment)**

Coverage	Limit of Insurance	Estimated Annual Cost of Hire Rating Basis For Each State (Excluding Auto Hired With A Driver)	Premium
Comprehensive	Actual cash value or cost of repair, whichever is less, minus \$100 deductible for each covered auto, but no deductible applies to loss caused by fire or lightning.	If Any	\$ Included
Collision	Actual cash value or cost of repair, whichever is less, minus \$250 deductible for each covered auto.	If Any	\$ Included
Total Hired Auto Premium			\$ Included

For Physical Damage Coverages, cost of hire means the total amount you incur for the hire of "autos" you don't own (not including "autos" you borrow or rent from your partners or "employees" or their family members). Cost of hire does not include charges for any "auto" that is leased, hired, rented or borrowed with a driver.

POLICY NUMBER: 2553009004



## ADDITIONAL INTEREST SUPPLEMENTAL DECLARATIONS

The following additional interests apply to this policy.

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American Honda Finance Corporation  
PO Box 650201  
Hunt Valley, MD 21065-0201

CA 88 04 10 13	Additional Insured - Designated Person Or Organization
CA 99 44 10 13	Loss Payable Clause
CA 99 44 10 13	Loss Payable Clause
CA 99 44 10 13	Loss Payable Clause

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Carousel Center Company LP C/O Pyramid Management Group, LLC  
9090 Destiny USA Dr  
Syracuse, NY 13204-6090

CA 88 04 10 13	Additional Insured - Designated Person Or Organization
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Destiny USA Holdings LLC C/O Pyramid Management Group LLC  
9090 Destiny USA Dr  
Syracuse, NY 13204-6090

CA 88 04 10 13	Additional Insured - Designated Person Or Organization
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Esurance  
49 Wireless Blvd Ste 110  
Hauppauge, NY 11788-3946

CA 88 04 10 13	Additional Insured - Designated Person Or Organization
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Fulton Savings Bank Its Successors and/or Assigns Loan  
Officer Center  
41 S 1st St  
Fulton, NY 13069-1704

CA 88 04 10 13	Additional Insured - Designated Person Or Organization
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POLICY NUMBER: 2553009004

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Liberty Mutual  
3 Lear Jet Ln  
Latham, NY 12110-2314

CA 88 04 10 13      Additional Insured - Designated Person Or Organization

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Progressive Direct Insurance Company & Its Affiliates  
Network Shop Insurance Compliance Department  
6300 Wilson Mills Rd E6G  
Mayfield Hts, OH 44143-2109

CA 88 04 10 13      Additional Insured - Designated Person Or Organization

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Safeco Insurance Company  
PO Box 515097  
Los Angeles, CA 90051-5097

CA 88 04 10 13      Additional Insured - Designated Person Or Organization

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Toyota Financial Services  
Po Box 3025  
Coraopolis, PA 15108

CA 88 04 10 13      Additional Insured - Designated Person Or Organization

CA 99 44 10 13      Loss Payable Clause

CA 99 44 10 13      Loss Payable Clause

CA 99 44 10 13      Loss Payable Clause

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Bank of America NA NC4-105-03-17  
4161 Piedmont Pkwy  
Greensboro, NC 27410-8110

CA 99 44 10 13      Loss Payable Clause

CA 99 44 10 13      Loss Payable Clause

CA 99 44 10 13      Loss Payable Clause

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Carousel Center C/O Pyramid Companies  
4 S Clinton Sq  
Syracuse, NY 13202

CA 99 44 10 13      Loss Payable Clause

POLICY NUMBER: 2553009004

CA 99 44 10 13      Loss Payable Clause

CA 99 44 10 13      Loss Payable Clause

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Honda Financial Services  
600 Kelly Way  
Holyoke, MA 01040-9681

CA 99 44 10 13      Loss Payable Clause

CA 99 44 10 13      Loss Payable Clause

CA 99 44 10 13      Loss Payable Clause

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Lynxselect Collision Repair Program  
6351 Bayshore Rd Ste 18  
Fort Myers, FL 33917-3195

CA 99 44 10 13      Loss Payable Clause

CA 99 44 10 13      Loss Payable Clause

CA 99 44 10 13      Loss Payable Clause

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Solvay Bank Its Successors  
1537 Milton Ave  
Solvay, NY 13209-1621

CA 99 44 10 13      Loss Payable Clause

CA 99 44 10 13      Loss Payable Clause

CA 99 44 10 13      Loss Payable Clause

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United Rentals  
7178 Schuyler Rd  
East Syracuse, NY 13057-9743

CA 99 44 10 13      Loss Payable Clause

CA 99 44 10 13      Loss Payable Clause

CA 99 44 10 13      Loss Payable Clause

**CA 89 04 10 14**

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Sentry Select Insurance Company

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**Page 3 of 3**

07/20/2018

## AUTO DEALERS COVERAGE FORM (DEALERSHIPS, GARAGES, AND AUTO SERVICES MARKET COVERAGE)

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

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

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

### Section I - Covered Autos Coverages

#### A. Description Of Covered Auto Designation Symbols

Item Two of the Declarations shows the "autos" that are covered "autos" for each of your coverages. The following numerical symbols describe the "autos" that may be covered "autos". The symbols entered next to a coverage on the Declarations designate the only "autos" that are covered "autos".

SYMBOL	DESCRIPTION OF COVERED AUTO DESIGNATION SYMBOLS	
21	Any "Auto"	
22	Owned "Autos" Only	Only those "autos" you own (and for Covered Autos Liability Coverage any "trailers" you don't own while attached to power units you own). This includes those "autos" you acquire ownership of after the policy begins.
23	Owned Private Passenger "Autos" Only	Only the private passenger "autos" you own. This includes those private passenger "autos" you acquire ownership of after the policy begins.
24	Owned "Autos" Other Than Private Passenger "Autos" Only	Only those "autos" you own that are not of the private passenger type (and for Covered Autos Liability Coverage any "trailers" you don't own while attached to power units you own). This includes those "autos" not of the private passenger type you acquire ownership of after the policy begins.
25	Owned "Autos" Subject To No-Fault	Only those "autos" you own that are required to have no-fault benefits in the state where they are licensed or principally garaged. This includes those "autos" you acquire ownership of after the policy begins provided they are required to have no-fault benefits in the state where they are licensed or principally garaged.

SYMBOL	DESCRIPTION OF COVERED AUTO DESIGNATION SYMBOLS	
26	Owned "Autos" Subject To A Compulsory Uninsured Motorists Law	Only those "autos" you own that because of the law in the state where they are licensed or principally garaged are required to have and cannot reject Uninsured Motorists Coverage. This includes those "autos" you acquire ownership of after the policy begins provided they are subject to the same state uninsured motorists requirement.
27	Specifically Described "Autos"	Only those "autos" described in Item Seven of the Declarations and only for those coverages shown (and for Covered Autos Liability Coverage any "trailers" you don't own while attached to a power unit described in Item Seven that is provided liability coverage).
28	Hired "Autos" Only	Only those "autos" you lease, hire, rent or borrow. This does not include any "auto" you lease, hire, rent or borrow from any of your "employees", partners (if you are a partnership), members (if you are a limited liability company) or members of their households.
29	Non-owned "Autos" Used In Your "Auto" Dealership Or Garage Business	Any "auto" you do not own, lease, hire, rent or borrow used in connection with your "auto" dealership or garage business described in the Declarations. This includes "autos" owned by your "employees" or partners (if you are a partnership), members (if you are a limited liability company) or members of their households while used in your "auto" dealership or garage business.
30	"Autos" Left With You For Service, Repair, Storage Or Safe Keeping	Any land motor vehicle, trailer or semitrailer lawfully within your possession for service, repair, storage or safekeeping, with or without the vehicle owner's knowledge or consent. This also includes "autos" left in your care by your "employees" and members of their households who pay for the services performed.
31	Dealers "Autos" Scheduled "Autos" And Other "Autos" Held For Sale (Physical Damage Coverages)	An "auto" you own and hold for sale or use in your dealership or garage business, a "consented auto", and any auto described in Item Seven of the Declarations for which physical damage coverage is designated to apply.

SYMBOL	DESCRIPTION OF COVERED AUTO DESIGNATION SYMBOLS	
32	Owned "Autos" Only (Uninsured /Underinsured Motorists	Only those "autos" you own and which are covered for liability under <b>Section I., Coverage D. Covered Autos Liability Coverage.</b> This includes those "autos" you acquire ownership of after the policy begins.

**B. Owned Autos You Acquire After The Policy Begins**

1. If Symbols **21, 22, 23, 24, 25, or 26** are entered next to a coverage in Item Two of the Declarations, then you have coverage for "autos" that you acquire of the type described for the remainder of the policy period.
2. But, if Symbol **27** is entered next to a coverage in Item Two of the Declarations, an "auto" you acquire will be a covered "auto" for that coverage only if:
  - a. We already cover all "autos" that you own for that coverage or it replaces an "auto" you previously owned that had that coverage; and
  - b. You tell us within 30 days after you acquire it that you want us to cover it for that coverage.

**C. Certain Trailers And Temporary Substitute Autos**

If Covered Autos Liability Coverage is provided by this Coverage Form, the following types of vehicles are also covered "autos" for Covered Autos Liability Coverage:

1. "Trailers" with a load capacity of 2,000 pounds or less designed primarily for travel on public roads.
2. Any "auto" you do not own while used with the permission of its owner as a temporary substitute for a covered "auto" you own that is out of service because of its:
  - a. Breakdown;
  - b. Repair;
  - c. Servicing;
  - d. "Loss"; or
  - e. Destruction.

**D. Covered Autos Liability Coverage**

**1. Coverage**

We will pay all sums an "insured" legally must pay as damages, including punitive damages where insurable by law, because of "bodily injury" or "property damage" to which this insurance applies, caused by an "accident" and resulting from the ownership, maintenance or use of covered "autos".

We will also pay all sums an "insured" legally must pay as a "covered pollution cost or expense" to which this insurance applies, caused by an "accident" and resulting from ownership, maintenance or use of covered "autos". However, we will only pay for the "covered pollution cost or expense" if there is either "bodily injury" or "property damage" to which this insurance applies that is caused by the same "accident".

We have the right and duty to defend any "insured" against a "suit" asking for such damages or a "covered pollution cost or expense". However, we have no duty to defend any "insured" against a "suit" seeking damages for "bodily injury" or "property damage" or a "covered pollution cost or expense" to which this insurance does not apply. We may investigate and settle any claim or "suit" as we consider appropriate. Our duty to defend or settle ends when the Covered "Autos" Liability Coverage Limit of Insurance has been exhausted by payment of judgments or settlements.

**2. Who Is An Insured**

**a. The Following Are "Insureds":**

- (1) You for any covered "auto".

- (2) Your partners (if you are a partnership), members (if you are a limited liability company), shareholders, officers, directors, "employees", "temporary workers" and members of their or your households while using or legally responsible for the use of a covered "auto" you own, hire (a covered "auto" you hire includes an "auto" rented by your "employee" or "temporary worker" for use in your company business) or borrow, if the use is within the scope of your permission.
- (3) Except as provided in b.(2) below, your "employee" or "temporary worker" while using a covered "auto" you do not own, hire or borrow in your garage business.
- (4) Individuals, including members of their households, furnished a covered "auto" by you for their regular use, but only if the individual is specifically named in the Declarations and only while using or legally responsible for the use of the furnished covered "auto".
- (5) Any "contract driver".
- (6) Anyone else required by law to be an insured while using a covered "auto" you own, hire or borrow, if the use is within the scope of your permission.
- (7) Anyone liable for the conduct of an "insured" described above, but only to the extent of that liability.

**b. The Following Are Not "Insureds":**

- (1) The owner or anyone else from whom you hire or borrow a covered "auto". This exception does not apply if the covered "auto" is a "trailer" connected to a covered "auto" you own.
- (2) Your "employee" or a "temporary worker" if the covered "auto" is owned by that "employee" or "temporary worker" or a member of his or her household.
- (3) Someone using a covered "auto" while he or she is working in a business of selling, servicing, repairing, parking, or storing "autos" unless that business is your garage operations.
- (4) A partner (if you are a partnership) or a member (if you are a limited liability company) for a covered "auto" owned by him or her or a member of his or her household.

**3. Coverage Extensions**

**a. Supplementary Payments**

We will pay for the "insured":

- (1) All expenses we incur.
- (2) Up to \$2,000 for the cost of bail bonds (including bonds for related traffic law violations) required because of an "accident" we cover. We do not have to furnish these bonds.
- (3) The cost of bonds to release attachments in any "suit" against the "insured" we defend, but only for bond amounts within our Limit of Insurance.
- (4) All reasonable expenses incurred by the "insured" at our request, including actual loss of earnings up to \$250 a day because of time off from work.
- (5) All court costs taxed against the "insured" in any "suit" against the "insured" we defend. However, these payments do not include attorneys' fees or attorneys' expenses taxed against the "insured".
- (6) All interest on the full amount of any judgment that accrues after entry of the judgment in any "suit" against the "insured" we defend; but our duty to pay interest ends when we have paid, offered to pay or deposited in court the part of the judgment that is within our Limit of Insurance.

The payments will not reduce the Limit of Insurance.

**b. Out-of-state Coverage Extensions**

While a covered "auto" is away from the state where it is licensed, we will:

- (1) Increase the Limit of Insurance for Covered Autos Liability Coverage to meet the limits specified by compulsory or financial responsibility law of the jurisdiction where the covered "auto" is being used. This extension does not apply to the limit or limits specified by any law governing motor carriers of passengers or property.
- (2) Provide the minimum amounts and types of other coverages, such as no-fault, required of out-of-state vehicles by the jurisdiction where the covered "auto" is being used.

We will not pay anyone more than once for the same elements of loss because of these extensions.

#### 4. Exclusions

This insurance does not apply to any of the following:

##### a. Expected Or Intended Injury

"Bodily injury" or "property damage" expected or intended from the standpoint of the "insured".

##### b. Contractual

Liability assumed under any contract or agreement. But this exclusion does not apply to liability for damages:

- (1) Assumed in a contract or agreement that is an "insured contract" provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement; or
- (2) That the "insured" would have in the absence of the contract or agreement.

##### c. Workers' Compensation

Any obligation for which the "insured" or the "insured's" insurer may be held liable under any workers' compensation, disability benefits or unemployment compensation law or any similar law.

##### d. Employee Indemnification And Employer's Liability

"Bodily injury" to:

- (1) An "employee" of the "insured" arising out of and in the course of:
  - (a) Employment by the "insured"; or
  - (b) Performing the duties related to the conduct of the "insured's" business; or
- (2) The spouse, child, parent, brother or sister of that "employee" as a consequence of Paragraph (1) above.

This exclusion applies:

- (a) Whether the "insured" may be liable as an employer or in any other capacity; and
- (b) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

But this exclusion does not apply to "bodily injury" to domestic "employees" not entitled to workers' compensation benefits or to liability assumed by the "insured" under an "insured contract". For the purposes of Covered Autos Liability Coverage, a domestic "employee" is a person engaged in household or domestic work performed principally in connection with a residence premises.

##### e. Fellow Employee

"Bodily injury" to:

- (1) Any fellow "employee" of the "insured" arising out of and in the course of the fellow "employee's" employment or while performing duties related to the conduct of your business; or
- (2) The spouse, child, parent, brother or sister of that fellow "employee" as a consequence of Paragraph (1) above.

##### f. Care, Custody Or Control

"Property damage" to or "covered pollution cost or expense" involving:

- (1) Property owned, rented or occupied by the "insured";
- (2) Property loaned to the "insured";
- (3) Property held for sale or being transported by the "insured"; or
- (4) Property in the "insured's" care, custody or control.

But this exclusion does not apply to liability assumed under a sidetrack agreement.

##### g. Leased Autos

Any covered "auto" while leased or rented to others. But this exclusion does not apply to:

- (1) A covered "auto" you rent to one of your customers while their "auto" is left with you for service or repair or while the customer is awaiting delivery of an "auto" after signing a written purchase agreement with you.

- (2) You or your "employee" or "temporary worker" while a leased or rented "auto" is in your custody for service, repair, pickup or delivery in the course of your business.

**h. Pollution**

"Bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":

- (1) That are, or that are contained in any property that is:
- (a) Being transported or towed by, handled, or handled for movement into, onto or from, the covered "auto";
  - (b) Otherwise in the course of transit by or on behalf of the "insured"; or
  - (c) Being stored, disposed of, treated or processed in or upon the covered "auto".
- (2) Before the "pollutants" or any property in which the "pollutants" are contained are moved from the place where they are accepted by the "insured" for movement into or onto the covered "auto"; or
- (3) After the "pollutants" or any property in which the "pollutants" are contained are moved from the covered "auto" to the place where they are finally delivered, disposed of or abandoned by the "insured".

Paragraph (1) above does not apply to fuels, lubricants, fluids, exhaust gases or other similar "pollutants" that are needed for or result from the normal electrical, hydraulic or mechanical functioning of the covered "auto" or its parts, if the "pollutants" escape, seep, migrate, or are discharged, dispersed or released directly from an "auto" part designed by its manufacturer to hold, store, receive or dispose of such "pollutants".

Paragraphs (2) and (3) above of this exclusion do not apply to "accidents" that occur away from premises owned by or rented to an "insured" with respect to "pollutants" not in or upon a covered "auto" if:

- (a) The "pollutants" or any property in which the "pollutants" are contained

are upset, overturned or damaged as a result of the maintenance or use of a covered "auto"; and

- (b) The discharge, dispersal, seepage, migration, release or escape of the "pollutants" is caused directly by such upset, overturn or damage.

**i. Racing**

Covered "autos" while used in any professional or organized racing or demolition contest or stunting activity, or while practicing for such contest or activity. This insurance also does not apply while that covered "auto" is being prepared for such a contest or activity.

**j. Handling Of Property**

"Bodily injury" or "property damage" resulting from the handling of property:

- (1) Before it is moved from the place where it is accepted by the "insured" for movement into or onto the covered "auto"; or
- (2) After it is moved from the covered "auto" to the place where it is finally delivered by the "insured".

**k. Movement Of Property By Mechanical Device**

"Bodily injury" or "property damage" resulting from the movement of property by a mechanical device (other than a hand truck) unless the device is attached to the covered "auto".

**l. Defective Products**

"Property damage" to any of your "products", if caused by a defect existing in your "products" or any part of your "products", at the time it was transferred to another.

**m. Work You Performed**

"Property damage" to "work you performed" if the "property damage" results from any part of the work itself or from the parts, materials or equipment used in connection with the work.

**n. Damage To Impaired Property Or Property Not Physically Damaged**

"Property damage" to "impaired property" or other property not physically damaged if caused by:

- (1) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.



(2) A defect, deficiency, inadequacy or dangerous condition in your "products" or "work you performed". But this Exclusion, n.(2) does not apply if the loss of use was caused by sudden or accidental damage to or destruction of your "products" or "work you performed" after they have been put to their intended use.

**o. Products Recall**

Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of your "products" or "work you performed" or other property of which they form a part, if such product, work or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

**p. War**

"Bodily injury" or "property damage" arising directly or indirectly out of:

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power or action taken by governmental authority in hindering or defending against any of these.

**q. Acts, Errors Or Omissions**

"Bodily injury" or "property damage" arising out of "acts, errors or omissions".

**5. Limits Of Insurance - Covered Autos Liability**

For "accidents" resulting from the ownership, maintenance or use of covered "autos", the following applies:

- a. Regardless of the number of covered "autos", "insureds", premiums paid, claims made or vehicles involved in the "accident", the most we will pay for the total of all damages and "covered pollution cost or expense" combined resulting from any one "accident" involving a Covered "auto" is the Limit of Insurance for Covered "Autos" Liability Coverage shown in the Declarations.

b. The most we will pay for "Contract Drivers" and anyone required by law to be an "insured" for use of a covered "auto" is that portion of the Limit of Insurance for covered "Autos" Liability Coverage that is needed to comply with the minimum limits provision of the law in the jurisdiction where the "accident" took place. When there is other insurance applicable to the "accident", we will only pay the amount needed to comply with these minimum limits after the other insurance is exhausted.

c. Damages and "covered pollution cost or expense" payable under the Limit of Insurance for Covered "Autos" Liability Coverage are not payable under any applicable Limits of Insurance under **Section II - General Liability Coverages** or **Section III - Acts, Errors Or Omissions Liability Coverage**.

d. All "bodily injury", "property damage" and "covered pollution cost or expense" resulting from continuous or repeated exposure to substantially the same conditions will be considered as resulting from one "accident".

e. No one will be entitled to receive duplicate payments for the same elements of "loss" under this Coverage Form and any Auto Medical Payments Coverage endorsement, Uninsured Motorists Coverage endorsement or Underinsured Motorists Coverage endorsement attached to this Coverage Part.

**E. Garagekeepers Coverage**

**1. Coverage**

a. We will pay all sums the "insured" legally must pay as damages for "loss" to a "customer's auto" or "customers auto" equipment left in the "insured's" care while the "insured" is attending, servicing, repairing, parking or storing it in your "Auto Dealer Operations" under:

**(1) Comprehensive Coverage**

From any cause except:

- (a) The "customer's auto's" collision with any object; or
- (b) The "customer's auto's" overturn.

**(2) Specified Causes Of Loss Coverage**

Caused by:

- (a) Fire, lightning or explosion;

- (b) Theft; or
- (c) Mischief or vandalism.

**(3) Collision Coverage**

Caused by:

- (a) The "customer's auto's" collision with another object; or
- (b) The "customer's auto's" overturn.

We will also pay all sums the "insured" legally must pay as damages for "loss" to "customer's personal property" that is left in the "insured's" care in the course of your garage operations. This coverage is on a legal liability basis only, unless the Declarations indicates that Garagekeepers Coverage is provided on a direct primary or direct excess basis.

- b. We have the right and duty to defend any "insured" against a "suit" asking for these damages. However, we have no duty to defend any "insured" against a "suit" seeking damages for any loss to which this insurance does not apply. We may investigate and settle any claim or "suit" as we consider appropriate. Our duty to defend or settle ends for a coverage when the Limit of Insurance for that coverage has exhausted by payment of judgments or settlements.

**2. Who Is An Insured**

The following are "insureds" for "loss" to "customer's autos" and "customer's auto" equipment:

- a. You.
- b. Your partners and their spouses, if you are a partnership, but only with respect to the conduct of your "auto dealer operations".
- c. Your members, if you are a limited liability company, but only with respect to the conduct of your "auto dealer operations". Your managers are also "insureds", but only with respect to their duties as your managers.
- d. Your "executive officers" and directors, if you are an organization other than a partnership or limited liability company, but only with respect to their duties as your officers or directors. Your stockholders are also "insureds", but only with respect to their liability as stockholders.

- e. Your "employees", other than either your "executive officers" (if you are an organization other than a partnership or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of employment by your or while performing duties related to the conduct of your "auto dealer operations".

**3. Coverage Extensions**

The following apply as **Supplementary Payments**. We will pay for the "insured":

- a. All expenses we incur.
- b. The cost of bonds to release attachments in any "suit" against the "insured" we defend, but only for bond amounts within our Limit of Insurance.
- c. All reasonable expenses incurred by the "insured" at our request, including actual loss of earnings up to \$250 a day because of time off from work.
- d. All court costs taxed against the "insured" in any "suit" against the "insured" we defend. However, these payments do not include attorneys' fees or attorneys' expenses taxed against the "insured".
- e. All interest on the full amount of any judgment that accrues after entry of the judgment in any "suit" against the "insured" we defend; but our duty to pay interest ends when we have paid, offered to pay or deposited in court the part of the judgment that is within our Limit of Insurance.

These payments will not reduce the Limit of Insurance.

**4. Exclusions**

- a. This insurance does not apply to any of the following:

**(1) Contractual**

Liability resulting from any contract or agreement by which the "insured" accepts responsibility for "loss". But this exclusion does not apply to liability for "loss" that the "insured" would have in the absence of the contract or agreement.

**(2) Theft**

"Loss" due to theft or conversion caused in any way by you, your "employees" or by your shareholders.

**(3) Defective Parts**

Defective parts or materials.

**(4) Faulty Work**

Faulty "work you performed".

**(5) Theft Of "Customers Personal Property"**

"Loss" due to theft of "customers' personal property" if there is no evidence of forced entry into the "customer's auto" or the building in which the "customer's auto" is located. This exclusion does not apply in the case of total theft of the "customer's auto".

**(6) Diminution Of Value**

"Loss" caused by or resulting from depreciation or "diminution of value".

b. We will not pay for "loss" to any of the following:

- (1) Electronic equipment or devices that reproduce, receive, transmit or display audio, visual, or data content unless permanently installed in a "customer's auto".
- (2) Tapes, records, disks and other media or devices designed to store audio, visual, or data content.
- (3) Sound-receiving equipment designed for use as a citizens' band radio, two-way mobile radio or telephone or scanning monitor receiver, including its antennas and other accessories, unless permanently installed in the dash or console opening normally used by the "customer's auto" manufacturer for the installation of a radio.
- (4) Any device designed or used to detect speed-measuring equipment, such as radar or laser detectors, and any jamming apparatus intended to elude or disrupt speed-measuring equipment.

Provisions 1., 2. and 3. above do not apply to "loss" to "Customers Personal Property".

c. We will not pay for "loss" caused by or resulting from the following. Such "loss" is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the "loss".

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

(2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or

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

**5. Limit Of Insurance And Deductibles**

a. Regardless of the number of "customer's autos", "insureds", premiums paid, claims made or "suits" brought;

(1) The most we will pay for each "loss" at each location is the Garagekeepers Coverage Limit Of Insurance shown in the Declarations for that location.

(2) When you replace a "customer's auto" the most we will pay will be your actual cost, exclusive of your profit, holdback or overhead expenses.

b. Whether or not repairs are made, the most we will pay is a percentage of the customary retail parts and labor charges in your area that it would cost to repair the auto. The applicable parts (including materials) and labor percentages are shown in the Declarations as Special Repair Percentages.

(1) If the repairs are made by someone with whom you have no affiliation or contractual repair arrangement with, and:

(a) the "loss" occurred more than 100 miles from your location;

(b) the "loss" is caused by collision, fire, lightning, theft, mischief or vandalism, and your business does not have the expertise or facilities to perform the repairs and we give you prior approval to have someone else make them; or

(c) The customer will not allow you to perform the repairs;

then the applicable percentage will be no less than 100% of the customary charges for parts, materials, and labor, regardless of the percentage shown in the Declarations.

(2) If your business is a recreational vehicle dealership of motor homes, travel trailers or camping vehicles the parts percentages shown in the Declarations does not apply and the most we will pay is your actual net cost, plus up to 10% additional payment for shipping and handling.

- c. We will subtract an amount for depreciation as well as the applicable deductible shown in the Declarations. Regardless of the number of "customer's autos" damaged or stolen, the maximum deductible shown in the Declarations is the maximum deductible applicable to all "loss" in any one event. Refer to the Declarations for the applicable deductibles and the causes of loss to which they apply.
- d. The application of a deductible and repair percentages will not reduce the applicable limit of insurance.
- e. Sometimes to settle a claim or "suit", we may pay all or any part of the deductible or repair percentage. If this happens you must reimburse us for the amount we have paid on your behalf.
- f. Regardless of the number of "customer's autos" or customers involved, the most we will pay in any one "loss" for "customers' personal property" will be the Garagekeepers Customers' Personal Property Limit of Insurance shown in the Declarations. The amount paid for any one "loss" will be reduced by the per "auto" Comprehensive or Specified Causes of Loss deductible that applies.

## F. Physical Damage Coverage

### 1. Coverage

- a. We will pay for "loss" to a covered "auto" or its equipment under:

#### (1) Comprehensive Coverage

From any cause except:

- (a) The covered "auto's" collision with another object; or
- (b) The covered "auto's" overturn.

#### (2) Specified Causes Of Loss Coverage

Caused by:

- (a) Fire, lightning or explosion;
- (b) Theft;
- (c) Windstorm, hail or earthquake;

(d) Flood;

(e) Mischief or vandalism; or

(f) The sinking, burning, collision or derailment of any conveyance transporting the covered "auto".

### (3) Collision Coverage

Caused by:

(a) The covered "auto's" collision with another object; or

(b) The covered "auto's" overturn.

### b. Glass Breakage - Hitting A Bird Or Animal - Falling Objects Or Missiles

If you carry Comprehensive Coverage for the damaged covered "auto", we will pay for the following under Comprehensive Coverage:

(1) Glass breakage;

(2) "Loss" caused by hitting a bird or animal; and

(3) "Loss" caused by falling objects or missiles.

However, you have the option of having glass breakage caused by a covered "auto's" collision or overturn considered a "loss" under Collision Coverage.

### c. Coverage Extension - Loss Of Use Expenses

For Hired Auto Physical Damage, we will pay expenses for which an "insured" becomes legally responsible to pay for loss of use of a vehicle rented or hired without a driver, under a written rental contract or agreement. We will pay for loss of use expenses if caused by:

(1) Other than collision only if the Declaration indicates that Comprehensive Coverage is provided for any covered "auto";

(2) Specified Causes of Loss only if the Declarations indicates that Specified Causes Of Loss Coverage is provided for any covered "auto"; or

(3) Collision only if the Declarations indicates that Collision Coverage is provided for any covered "auto".

However, the most we will pay for any expenses for loss of use is \$20 per day, to a maximum of \$600.

**d. Watercraft Held For Sale Coverage Extension**

If your business is shown in the Declarations as a dealership, we will also pay for "loss" to a watercraft that is part of your inventory and held for sale. This extension will only apply if the watercraft is located at a premises, described in the Declarations, for which we have provided physical damage coverage and "loss" caused by:

- (1) Other than collision only if the Declarations indicates that Comprehensive coverage is provided for a covered "auto" for the location at which the watercraft is located;
- (2) Specified Causes of Loss only if the Declarations indicates that Specified Causes of Loss Coverage is provided for a covered "auto" for the location at which the watercraft is located; or
- (3) Collision only if the Declarations indicates that Collision Coverage is provided for your inventory.

The amount we pay under this Coverage Extension is subject to the applicable limit of insurance described in Paragraph 4. **Limits Of Insurance** and the Deductible provision described in Paragraph 5. **Deductible.**

If the **Physical Damage Coverage** is written on a monthly or quarterly reporting basis, include the value of watercraft to which this extension applies in your monthly or quarterly reports of values.

**2. Who Is An Insured**

The following are "insureds" for covered "autos":

- a. You are an "insured" for covered "autos";
- b. If Hired Auto Physical Damage coverage is provided, your "employee" for an "auto" rented or hired by an "employee" for use in your business.

**3. Exclusions**

- a. We will not pay for "loss" caused by or resulting from any of the following. Such "loss" is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the "loss".

**(1) Nuclear Hazard**

- (a) The explosion of any weapon employing atomic fission or fusion; or
- (b) Nuclear reaction or radiation, or radioactive contamination, however caused.

**(2) War Or Military Action**

- (a) War, including undeclared or civil war;
- (b) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (c) Insurrection, rebellion, revolution, usurped power or action taken by governmental authority in hindering or defending against any of these.

- b. We will not pay for "loss" to any of the following:

- (1) Any covered "auto" leased or rented to others. This exclusion does not apply to:

- (a) A covered "auto" rented to one of your customers while their "auto" is left with you for service or repair, or while the customer is awaiting delivery of an "auto" after signing a written purchase agreement with you; or
- (b) You or your "employee" while a leased or rented "auto" is in your custody for service, repair, pickup or delivery in the course of your business.

- (2) Any covered "auto" while used in any professional or organized racing or demolition contest or stunting activity, or while practicing for such contest or activity. We will also not pay for "loss" to any covered "auto" while that covered "auto" is being prepared for such contest or activity.

- (3) Tapes, records, discs and other media or other devices designed to store audio, visual or data content.

- (4) Any device designed or used to detect speed-measuring equipment, such as radar or laser detectors, and any jamming apparatus intended to elude or disrupt speed-measuring equipment.
- (5) Any electronic equipment, without regard to whether this equipment is permanently installed, that reproduces, receives or transmits audio, visual or data signals.
- (6) Any accessories used with the electronic equipment described in Paragraph (5) above.

Exclusions **b.(5)** and **b.(6)** do not apply to equipment designed to be operated solely by use of the power from the "auto's" electrical system that, at the time of "loss", is:

- (a) Permanently installed in or upon the covered "auto";
- (b) Removable from a housing unit which is permanently installed in or upon the covered "auto";
- (c) An integral part of the same unit housing any electrical equipment described in Paragraphs (a) and (b) above; or
- (d) Necessary for the normal operation of the covered "auto" or the monitoring of the covered "auto's" operating system.

**c. False Pretense**

We will not pay for "loss" to a covered "auto" caused by or resulting from:

- (1) Someone causing you to voluntarily part with it by trick or scheme or under false pretenses; or
- (2) Your acquiring an "auto" from a seller who did not have legal title.

**d. We will not pay for:**

- (1) Your expected profit, including loss of market value or resale value.
- (2) "Loss" to any covered "auto" displayed or stored at any location not shown in Item Three of the Declarations if the "loss" occurs more than 60 days after your use of the location begins.
- (3) Under the Specified Causes of Loss Coverage, "loss" to any covered "auto" caused by or resulting from the collision or upset of any vehicle transporting it.

e. We will not pay for "loss" to a covered "auto" due to "diminution in value".

**f. Other Exclusions**

We will not pay for "loss" due and confined to:

- (1) Wear and tear, freezing, mechanical or electrical breakdown.
- (2) Blowouts, punctures or other road damage to tires.

This exclusion does not apply to such "loss" resulting from the total theft of a covered "auto".

**g. Auto Insured Under A Floorplan**

We will not pay for "loss" to any "auto" insured under any floorplan insurance or other physical damage insurance program that is provided by a manufacturer, floor-planer, lender, or other inventory insurance provider.

This exclusion applies without exception to all "loss" caused by hail, flood, or earthquake. However, for other Covered Causes Of "Loss" this exclusion will not apply to the extent of your interest in:

- (1) The value of additional options or other improvements you have made to the covered "auto" if the value of these improvements or options is not covered by the floorplan or other physical damage insurance;
- (2) A "loss" caused by a Covered Cause of "Loss" under this policy but excluded under the floorplan or other physical damage insurance; or
- (3) The amount of a false pretense "loss", if false pretense is covered under this policy, that exceeds the Limit of Insurance for false pretense coverage of the floorplan or other physical damage insurance.

But we will not pay under these exceptions for any part of a "loss" that is subject to any deductible provision of the floorplan or other physical damage insurance.

**h. "Diminution Of Value"**

We will not pay for "loss" to a covered "auto" due to "diminution of value".

#### 4. Limits Of Insurance

a. The most we will pay for "loss" to any one covered "auto" is the lesser of:

- (1) Your actual cost, exclusive of your profit, holdback or overhead expenses;
- (2) For damage caused by hail the cost of using paintless dent repair in place of traditional repair costs;
- (3) Whether or not repairs are made, the customary retail charges in your area that it would cost to repair the "auto" multiplied by the Dealers Special Repair Percentages shown in the Declarations.

Different repair percentages may apply to parts (including materials) and labor, and to "loss" caused by hail, as shown in the Declarations. Hail damage is subject to the Dealer Special Repair percentages if it is not repairable using paintless dent repair methods. If a specific hail damage repair percentage applies, that percentage applies to all "loss" caused by hail, including wind-driven hail, regardless of any other cause or event that contributes concurrently or in any sequence to the "loss".

(a) The applicable repair percentage will be no less than 100% regardless of the percentage shown in the Declarations if repairs are made by someone else with whom you have no affiliation or contractual repair arrangement with, and:

- (i) The "loss" occurs more than 100 miles from your location, or;
- (ii) The "loss" is caused by collision, fire, lightning, theft, mischief, or vandalism and your business does not have the expertise or facilities to perform the repairs and we give you prior approval to have someone else make them.

(b) If your business is a recreational vehicle dealership (other than snowmobiles, motorcycles, ATVS or residence type mobile home trailers):

- (i) The percentage for parts does not apply; and

(ii) For parts, the most we will pay is your actual net cost plus up to 10% additional payment for shipping and handling.

(c) If the "loss" is to an "auto" scheduled in Item Seven of the Declarations, the Auto Dealer Special Repair Percentages will not be applied to your cost of repairing the damaged covered "auto".

- b. An adjustment for depreciation and physical condition will be made in determining actual cash value in the event of a total "loss".
- c. If a repair or replacement results in better than like kind or quality, we will not pay for the amount of the betterment.
- d. The following provisions also apply to Item Six - Dealers Physical Damage Coverages in the Declarations:

(1) Regardless of the number of covered "autos" involved in the "loss", the most we will pay for all "loss" at any one location is the amount shown in the Declarations for that location. Regardless of the number of covered "autos" involved in the "loss", the most we will pay for all "loss" at other locations and in transit is the amount shown in the Declarations for "loss" at Other Locations and In Transit.

#### (2) Quarterly Or Monthly Reporting Premium Basis

If, on the date of your last report, the actual value of the covered "autos" at the covered locations exceeds what you last reported, when a "loss" occurs we will pay only a percentage of what we would otherwise be obligated to pay. We will determine this percentage by dividing your total reported value for all covered locations by the total actual value at all covered locations on the date of your last report.

If the first report due is delinquent on the date of "loss", the most we will pay will not exceed 75 percent of the Limit Of Insurance shown in the Declarations for the applicable location.

### (3) Nonreporting Premium Basis

If, when "loss" occurs, the total value of your covered "autos" exceeds the Limit Of Insurance shown in the Declarations, we will pay only a percentage of what we would otherwise be obligated to pay. We will determine this percentage by dividing the Limit Of Insurance by the total actual value at the time the "loss" occurred.

## 5. Deductible

- a. For each covered "auto", our obligation to pay for, repair, return or replace damaged or stolen property will be reduced by the applicable deductible shown in the Declarations prior to the application of the Limit Of Insurance shown in the Declarations.
- b. Regardless of the number of covered "autos" damaged or stolen, the deductible shown in the Declarations as the Maximum Any One Event is the maximum deductible applicable for all "loss" in any one event. If the Declarations states No Maximum, there is no limitation to the deductible amount that applies to all "loss" in any one event.
- c. Refer to the Declarations to determine the deductibles that apply to a covered cause of "loss".

(1) If a Fire, Explosion, or Lightning deductible is shown in the Declarations, this deductible applies to all "loss" caused by fire, lightning, or explosion, regardless of any other cause or event that contributes concurrently or in any sequence to the loss.

(2) If a Hail deductible is shown in the Declarations, this deductible applies to all "loss" caused by hail, including wind-driven hail, regardless of any other cause or event that contributes concurrently or in any sequence to the "loss".

If paintless dent repair is the sole method of repair used for all damage to an "auto" caused by hail, that "auto's" hail deductible will be reduced by \$250.

(3) If a Wind deductible is shown in the Declarations, this deductible applies to all "loss" caused by a windstorm (including collapse of a structure caused by a windstorm), wind-driven objects, or wind-driven debris. However, the Wind deductible does not apply to any "loss" caused by wind-driven hail.

(4) If an "auto's" damage is subject to both Hail and Wind deductibles for the same "loss", only the Hail deductible will apply to that "auto".

(5) If for any one event, some "autos" are subject to Hail deductibles and other autos are subject to Wind deductibles, the maximum deductible for that one event will be subject to the Hail "Maximum For Any One Event". The "Maximum For Any One Event" for Wind will not apply in that case.

d. If a specific "auto" is individually scheduled in the Declarations with its own Comprehensive or Collision deductible amount, that deductible will apply to that "auto" instead of the deductibles listed in the Dealers Physical Damage Limits and Coverages section of the Declarations.

## Section II - General Liability Coverages

### A. Bodily Injury And Property Damage Liability

#### 1. Coverage

- a. We will pay all sums an "insured" legally must pay as damages, including punitive damages where insurable by law, because of "bodily injury" or "property damage" to which this insurance applies caused by an "accident", and resulting from your "Auto Dealer Operations" other than the ownership, maintenance or use of covered "autos".

We have the right and duty to defend any "insured" against a "suit" asking for these damages. However, we have no duty to defend any "insured" against a "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. We may investigate and settle any claim or "suit" as we consider appropriate. But:



(1) The amount we will pay for damages is limited as described in Paragraph F. **Limits Of Insurance - General Liability Coverages**; and

(2) Our duty to defend or settle ends when the applicable limit of insurance has been exhausted by payment of judgments or settlements under Paragraph A. **Bodily Injury And Property Damage Liability** or B. **Personal And Advertising Injury Liability** or medical expenses under Paragraph C. **Locations And Operations Medical Payments**.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments.

b. This insurance applies to "bodily injury" and "property damage" only if:

(1) The "accident" occurs in the coverage territory;

(2) The "bodily injury" or "property damage" occurs during the policy period; and

(3) Prior to the policy period, no "insured" listed under Paragraphs D.1 through D.4. of the Who Is An Insured provision and no "employee" authorized by you to give or receive notice of an "accident" or claim, knew that the "bodily injury" or "property damage" had occurred, in whole or in part. If such a listed "insured" or authorized "employee" knew, prior to the policy period, that the "bodily injury" or "property damage" occurred, then any continuation, change or resumption of such "bodily injury" or "property damage" during or after the policy period will be deemed to have been known prior to the policy period.

c. "Bodily injury" or "property damage" which occurs during the policy period and not, prior to the policy period, known to have occurred by any "insured" listed under Paragraphs D.1. through D.4. of the Who Is An Insured provision or any "employee" authorized by you to give or receive notice of an "accident" or claim, includes any continuation, change or resumption of that "bodily injury" or "property damage" after the end of the policy period.

d. "Bodily injury" or "property damage" will be deemed to have been known to have occurred at the earliest time when any "insured" listed under Paragraphs D.1. through D.4. of the Who Is An Insured provision or any "employee" authorized by you to give or receive notice of an "accident" or claim:

(1) Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;

(2) Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage"; or

(3) Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.

## 2. Exclusions

This insurance does not apply to any of the following:

### a. Expected Or Intended Injury

"Bodily injury" or "property damage" expected or intended from the standpoint of the "insured". This exclusion does not apply to "bodily injury" resulting from the use of reasonable force to protect persons or property.

### b. Contractual

Liability assumed under any contract or agreement. But this exclusion does not apply to liability for damages:

(1) Assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement; or

(2) That the "insured" would have in the absence of the contract or agreement.

### c. Workers' Compensation

Any obligation for which the "insured" or the "insured's" insurer may be held liable under any workers' compensation, disability benefits or unemployment compensation law or any similar law.

**d. Employee Indemnification And Employer's Liability**

"Bodily injury" to:

- (1) An "employee" of the "insured" arising out of and in the course of:
  - (a) Employment by the "insured"; or
  - (b) Performing the duties related to the conduct of the "insured's" business;
- (2) The spouse, child, parent, brother or sister of that "employee" as a consequence of Paragraph (1) above.
- (3) A person arising out of any:
  - (a) Refusal to employ that person;
  - (b) Termination of that person's employment; or
  - (c) Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination or malicious prosecution directed at that person; or
- (4) The spouse, child, parent, brother or sister of that person as a consequence of "bodily injury" to that person at whom any of the employment-related practices described in Paragraph (3)(a), (b) or (c) above are directed.

This exclusion applies:

- (a) Whether the injury-causing event described in Paragraph (3)(a), (b) or (c) above occurs before employment, during employment or after employment of that person;
- (b) Whether the "insured" may be liable as an employer or in any other capacity; and
- (c) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

Paragraphs (1) and (2) of this exclusion do not apply to liability assumed by the "insured" under an "insured contract".

**e. Damage To Property**

"Property damage" to:

- (1) Property you own, rent or occupy, including any costs or expenses by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;
  - (2) Property loaned to the "insured";
  - (3) Property held for sale or being transported by the "insured"; or
  - (4) Property in the "insured's" care, custody or control.
- (5) Paragraphs (1), (2) and (4) of this exclusion do not apply to "property damage" to:
- (a) A premises leased or rented to you, or temporarily occupied by you with the permission of the owner; and
  - (b) The contents of such premises if at the time of the "accident" you have occupied it for a period of seven or fewer consecutive days.
  - (c) The above Exceptions (a) and (b) are subject to a separate Limit Of Insurance for Damage To Premises Rented To You, as described in Paragraph F. **Limits Of Insurance - General Liability Coverages.**
  - (d) Except for damage arising from fire, explosion, water damage or vehicle damage, our obligation to pay on your behalf for "property damage" under Exceptions (a) or (b) above only applies in excess of a \$5,000 per "accident" deductible, but only if you have occupied the damaged premises for over 7 days. The terms of this insurance, including those with respect to:
    - (i) Our right and duty to defend the "insured" against any "suit" seeking damages to which this insurance applies; and
    - (ii) Your duties in the event of an "accident", claim, or suit

apply irrespective the application of the deductible.

If a higher deductible applies to **Section II - General Liability Coverages**, that higher deductible will apply to the "accident" instead of the \$5,000 deductible.

We may pay any part or all of the deductible amount to effect settlement of any claim or "suit" and upon notification of the action taken, you shall promptly reimburse us for such part of the deductible amount as has been paid by us.

- (6) This exclusion does not apply to liability assumed under a sidetrack agreement.

#### f. Pollution

(1) "Bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":

(a) At or from any premises, site or location that is or was at any time owned or occupied by, or rented or loaned to, any "insured";

(b) At or from any premises, site or location that is or was at any time used by or for any "insured" or others for the handling, storage, disposal, processing or treatment of waste;

(c) At or from any premises, site or location on which any "insured" or any contractors or subcontractors working directly or indirectly on any "insured's" behalf are performing operations:

(i) To test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of the "pollutants"; or

(ii) If the "pollutants" are brought on or to the premises, site or location in connection with such operations by such "insured", contractor or subcontractor; or

(d) That are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for any "insured" or any person or organization for whom you may be legally responsible.

Paragraphs (1)(a) and (1)(c)(ii) do not apply to "bodily injury" or "property damage" arising out of heat, smoke or fumes from a hostile fire. A hostile fire means one that becomes uncontrollable, or breaks out from where it was intended to be.

Paragraph (1)(a) does not apply to "bodily injury" if sustained within a building and caused by smoke, fumes, vapor or soot produced by or originating from equipment that is used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use, by the building's occupants or their guests.

Paragraph (1)(c)(ii) does not apply to "bodily injury" or "property damage" sustained within a building and caused by the release of gases, fumes or vapors from material brought into that building in connection with operations being performed by you or on your behalf by a contractor or subcontractor.

(2) Any loss, cost or expense arising out of any:

(a) Request, demand, order or statutory or regulatory requirement that any "insured" or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants"; or

(b) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to or assessing the effects of "pollutants".

However, this paragraph does not apply to liability for damages because of "property damage" that the "insured" would have in the absence of such request, demand, order or statutory or regulatory requirement, or such claim or "suit" by or on behalf of a governmental authority.

- (3) This exclusion applies whether or not such irritant or contaminant has any function in your business, operations, premises, site or location.

It is understood that this exclusion is not limited to "bodily injury" or "property damage" arising out of environmental damage or pollution of the environment. Rather, it applies to all "bodily injury" or "property damage" within the scope of this exclusion, including, for example only and without limitation, exposure to "pollutants" within a residential or commercial building.

**g. Aircraft, Auto Or Watercraft**

"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft owned or operated by or rented or loaned to any "insured". Use includes operation and "loading or unloading".

This exclusion applies even if the claims against any "insured" allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that "insured", if the "accident" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft that is owned or operated by or rented or loaned to any "insured".

This exclusion does not apply to:

- (1) A watercraft while ashore on premises where you conduct "auto dealer operations";
- (2) A watercraft you do not own that is:
- (a) Less than 51 feet long; and
  - (b) Not being used to carry persons or property for a charge; or

- (3) Liability assumed under any "insured contract" for the ownership, maintenance or use aircraft or watercraft.

**h. Defective Products**

"Property damage" to any of your "products, if caused by a defect existing in your "products" or any part of your "products", at the time it was transferred to another.

**i. Work You Performed**

"Property damage" to "work you performed" if the "property damage" results from any part of the work itself or from the parts, materials or equipment used in connection with the work.

**j. Damage To Impaired Property Or Property Not Physically Damaged**

"Property damage" to "impaired property" or other property not physically damaged if caused by:

- (1) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.
- (2) A defect, deficiency, inadequacy or dangerous condition in your "products" or "work you performed". But this Exclusion, j.(2), does not apply if the loss of use was caused by sudden and accidental damage to or destruction of your "products" or "work you performed" after they have been put to their intended use.

**k. Products Recall**

Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of your "products" or "work you performed" or other property of which they form a part, if such product, work or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

**l. War**

"Bodily injury" or "property damage" arising directly or indirectly out of:

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

- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign, or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

**m. Recording And Distribution Of Material Or Information In Violation Of Law**

"Bodily injury" or "property damage" arising directly or indirectly out of any action or omission that violates or is alleged to violate:

- (1) The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law; or
- (2) The CAN-SPAM Act of 2003, including any amendment of or addition to such law; or
- (3) The Fair Credit Reporting Act (FCRA), and any amendment of or addition to such law, including the Fair And Accurate Credit Transaction Act (FACTA); or
- (4) The Fair Debt Collection Practices Act (FDCPA), including any amendment of or addition to such law; or
- (5) Any federal, state or local statute, ordinance or regulation, other than the TCPA or CAN-SPAM Act of 2003, FCRA, FDCPA and their amendments and additions, that addresses, prohibits or limits the printing, dissemination, disposal, collecting, recording, sending, transmitting, communicating or distribution of material or information.

**n. Personal And Advertising Injury**

"Bodily Injury" arising out of "personal and advertising injury".

**o. Liquor Liability**

"Bodily injury" or "property damage" for which any "insured" may be held liable by reason of:

- (1) Causing or contributing to the intoxication of any person;
- (2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or

- (3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

This exclusion applies only if you are in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages.

**B. Personal And Advertising Injury Liability**

**1. Coverage**

We will pay all sums the "insured" legally must pay as damages, including punitive damages where insurable by law, because of "personal and advertising injury" to which this insurance applies, caused by an offense arising out of your "Auto Dealer Operations", but only if the offense was committed in the coverage territory during the policy period.

We will have the right and duty to defend any "insured" against a "suit" asking for these damages. However, we have no duty to defend any "insured" against a "suit" seeking damages for "personal and advertising injury" to which this insurance does not apply. We may investigate and settle any claim or "suit" as we consider appropriate. But:

- a. The amount we will pay for damages is limited as described in Paragraph **F. Limits Of Insurance - General Liability Coverages**; and
- b. Our duty to defend or settle ends when the applicable limit of insurance has been exhausted by payment of judgments or settlements under Paragraph **A. Bodily Injury And Property Damage Liability** or Paragraph **B. Personal And Advertising Injury Liability** or medical expenses under Paragraph **C. Locations And Operations Medical Payments**.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments.

**2. Exclusions**

This insurance does not apply to:

**a. Knowing Violation Of Rights Of Another**

"Personal and advertising injury" caused by or at the direction of the "insured" with the knowledge that the act would violate the rights of another and would inflict "personal and advertising injury".

**b. Material Published With Knowledge Of Falsity**

"Personal and advertising injury" arising out of oral or written publication of material, if done by or at the direction of the "insured" with knowledge of its falsity.

**c. Material Published Prior To Policy Period**

"Personal and advertising injury" arising out of oral or written publication of material whose first publication took place before the beginning of the policy period.

**d. Criminal Acts**

Arising out of any dishonest, malicious, fraudulent, criminal or intentional act, however, this exclusion does not apply to you if such act was committed by your "employee" (other than a partner, member, director, or executive officer) without your direction or your knowledge.

**e. Contractual**

"Personal and advertising injury" for which the "insured" has assumed liability in a contract or agreement. This exclusion does not apply to liability for damages that the "insured" would have in the absence of the contract or agreement.

**f. Breach Of Contract**

"Personal and advertising injury" arising out of a breach of contract, except:

- (1) An implied contract to use another's advertising idea in your "advertisement".
- (2) Any alleged breach of contract in a joint advertising venture.

**g. Quality Or Performance Of Goods - Failure To Conform To Statements**

"Personal and advertising injury" arising out of the failure of goods, products or services to conform with any statement of quality or performance made in your "advertisement".

**h. Wrong Description Of Prices**

"Personal and advertising injury" arising out of the wrong description of the price of goods, products or services stated in your "advertisement". However, this exclusion does not apply to errors in the description of a product, prize or price committed in a joint advertising venture.

**i. Infringement Of Copyright, Patent, Trademark Or Trade Secret**

"Personal and advertising injury" arising out of the infringement of copyright, patent, trademark, trade secret or other intellectual property rights. Under this exclusion, such other intellectual property rights do not include the use of another's advertising idea in your "advertisement".

However, this exclusion does not apply to infringement, in your "advertisement", of copyright, trade dress or slogan.

**j. Electronic Chat Rooms Or Bulletin Boards**

"Personal and advertising injury" arising out of an electronic chat room or bulletin board the "insured" hosts, owns, or over which the "insured" exercises control.

**k. Unauthorized Use Of Another's Name Or Product**

"Personal and advertising injury" arising out of the unauthorized use of another's name or product in your e-mail address, domain name or metatag, or any other similar tactics to mislead another's potential customers.

**l. Pollution**

"Personal and advertising injury" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" at any time.

This exclusion applies whether or not such irritant or contaminant has any function in your business, operations, premises, site or location.

It is understood that this exclusion is not limited to "personal and advertising injury" arising out of environmental damage or pollution of the environment. Rather, it applies to all "personal and advertising injury" within the scope of this exclusion, including, for example only and without limitation, exposure to "pollutants" within a residential or commercial building.

**m. Pollution-Related**

Any loss, cost or expense arising out of any:

- (1) Request, demand, order or statutory or regulatory requirement that any "insured" or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
- (2) Claim or "suit" by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

This exclusion applies whether or not the "pollutants" have any function in your business, operations, premises, site or location.

It is understood that this exclusion is not limited to loss, cost, or expense arising out of environmental damage or pollution of the environment. Rather, it applies to all loss, cost, or expense within the scope of this exclusion, including, for example only and without limitation, exposure to "pollutants" within a residential or commercial building.

**n. War**

"Personal and advertising injury" arising, directly or indirectly, out of:

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

**o. Recording And Distribution Of Material Or Information In Violation Of Law**

"Personal and advertising injury" arising directly or indirectly out of any action or omission that violates or is alleged to violate:

- (1) The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law; or

- (2) The CAN-SPAM Act of 2003, including any amendment of or addition to such law; or
- (3) The Fair Credit Reporting Act (FCRA), and any amendment of or addition to such law, including the Fair And Accurate Credit Transaction Act (FACTA); or
- (4) The Fair Debt Collection Practices Act (FDCPA), including any amendment of or addition to such law; or
- (5) Any federal, state, or local statute, ordinance or regulation, other than the TCPA, CAN-SPAM Act of 2003, FCRA or FDCPA and their amendments and additions, that addresses, prohibits or limits the printing, dissemination, disposal, collecting, recording, sending, transmitting, communicating or distribution of material or information.

**p. Employment-related Practices**

"Personal and advertising injury" to:

- (1) A person arising out of any:
  - (a) Refusal to employ that person;
  - (b) Termination of that person's employment; or
  - (c) Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination or malicious prosecution directed at that person; or
- (2) The spouse, child, parent, brother or sister of that person as a consequence of "personal and advertising injury" to that person at whom any of the employment-related practices described in Paragraph (1)(a), (b) or (c) above are directed.

This exclusion applies:

- (a) Whether the injury-causing event described in Paragraph (1)(a), (b) or (c) above occurs before employment, during employment or after employment of that person;
- (b) Whether the "insured" may be liable as an employer or in any other capacity; and

(c) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

**q. Acts, Errors Or Omissions**

"Personal and advertising injury" arising out of "acts, error or omissions"

**r. Discrimination Or Harassment Beginning Prior To The Policy Period**

"Personal and advertising injury" arising out of discrimination or harassment that includes an act that took place before the beginning of the policy period.

**s. Privacy Law Violation**

"Personal and advertising injury" arising directly or indirectly out of any action or omission that violates or is alleged to violate any ordinance, statute, or law pertaining to a person's right of privacy (except a common law violation of a person's right to privacy).

**t. American With Disabilities Act**

"Personal and advertising injury" arising directly or indirectly out of failure to comply with any responsibilities or duties required by the Americans With Disabilities Act, any amendments or additions to such law, and any similar state or local law.

**C. Locations And Operations Medical Payments**

**1. Coverage**

- a. We will pay medical expenses as described below to or for each person who sustains "bodily injury" to which this coverage applies, caused by an "accident" and resulting from your "Auto Dealer Operations".
- b. We will pay only those expenses incurred for services rendered within one year from the date of the "accident".
- c. We will make these payments regardless of fault. These payments will not exceed the applicable limit of insurance. We will pay reasonable expenses for:
  - (1) First aid administered at the time of an "accident";
  - (2) Necessary medical, surgical, diagnostic imaging and dental services, including prosthetic devices; and
  - (3) Necessary ambulance, hospital, professional nursing and funeral services.

**2. Exclusions**

This insurance does not apply to "bodily injury":

**a. Workers' Compensation**

To a person, whether or not an "employee" of any "insured", if benefits for the "bodily injury" are payable or must be provided under a workers' compensation or disability benefits law or a similar law.

**b. Insured**

To any "insured".

**c. Hired Person**

To a person hired to do work for or on behalf of any "insured" or a tenant of any "insured".

**d. Injury On Normally Occupied Premises**

To a person injured on that part of the premises you own or rent that the person normally occupies.

**e. Athletic Activities**

To a person injured while practicing, instructing or participating in any physical exercises or games, sports or athletic contests.

**f. Injury Away From Auto Dealer Locations**

That is both:

- (1) Sustained by a person away from locations owned, maintained or used for your "Auto Dealer Operations" and
- (2) Arises out of your "products" or "work you performed".

**g. Bodily Injury And Property Damage Liability**

Excluded under Paragraph A. Bodily Injury And Property Damage Liability.

**D. Who Is An Insured**

The following are "insureds" for General Liability Coverages:

- 1. You,
- 2. Your partners and their spouses, if you are a partnership, but only with respect to the conduct of your "Auto Dealer Operations".
- 3. Your members, if you are a limited liability company, but only with respect to the conduct of your "Auto Dealer Operations". Your managers are also "insureds", but only with respect to their duties as your managers.



4. Your "executive officers" and directors, if you are an organization other than a partnership or limited liability company, but only with respect to their duties as your officers or directors. Your stockholders are also "insureds", but only with respect to their liability as stockholders.
5. Your "employees", other than either your "executive officers" (if you are an organization other than a partnership or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of employment by you or while performing duties related to the conduct of your "Auto Dealer Operations". However, no "employee" is an "insured" for:
  - a. "Bodily injury" or "personal and advertising injury":
    - (1) To you (if you are an individual), your partners (if you are a partnership), your members (if you are a limited liability company) or a fellow "employee" of the "insured" while in the course of his or her employment or while performing duties related to the conduct of your "Auto Dealer Operations";
    - (2) To the spouse, child, parent, brother or sister of that fellow "employee" as a consequence of Paragraph (1) above;
    - (3) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraph (1) or (2) above; or
    - (4) Arising out of his or her providing or failing to provide professional health care services.
  - b. "Property damage" to property:
    - (1) Owned, occupied or used by;
    - (2) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by  
you, any of your "employees", any partner or member (if you are a partnership), or any member (if you are a limited liability company).
6. Any "auto" dealership or garage business that is acquired or formed by you (other than a partnership, limited liability company, or Joint Venture) and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that "auto" dealership or garage business. However:
  - a. Coverage under this provision is afforded only until the 90th day after you acquire or form the "auto" dealership or garage business or the end of the policy period, whichever is earlier; and
  - b. Coverage does not apply to:
    - (1) "Bodily injury" or "property damage" that occurred; or
    - (2) "Personal and advertising injury" arising out of an offense committed  
before you acquired or formed the "auto" dealership or garage business.

No person or organization is an "insured" with respect to the conduct of any current or past partnership or limited liability company that is not shown as a Named Insured in the Declarations.

#### E. Supplementary Payments

With respect to coverage provided under Bodily Injury And Property Damage Liability and Personal And Advertising Injury Liability Coverages, we will pay for the "insured":

1. All expenses we incur.
2. The cost of bonds to release attachments in any "suit" against the "insured" we defend, but only for bond amounts within our Limit of Insurance.
3. All reasonable expenses incurred by the "insured" at our request, including actual loss of earnings up to \$250 a day because of time off from work.
4. All court cost taxed against the "insured" in any "suit" against the "insured" we defend. However, these payments do not include attorneys' fees or attorneys' expenses taxed against the "insured".

5. All interest on the full amount of any judgment that accrues after entry of the judgment in any "suit" against the "insured" we defend; but our duty to pay interest ends when we have paid, offered to pay or deposited in court the part of the judgment that is within our Limit of Insurance.

These payments will not reduce the Limit of Insurance.

#### F. Limits Of Insurance - General Liability Coverages

1. Regardless of the number of "insureds", claims made or "suits" brought or persons or organizations making claims or bringing "suits", the:
  - a. General Liability Aggregate Limit shown in the Declarations is the most we will pay for the sum of all:
    - (1) Damages under Paragraph A. **Bodily Injury And Property Damage Liability**, except damages because of "bodily injury" and "property damage" that are both:
      - (a) Sustained away from locations owned, maintained or used for your "Auto Dealer Operations"; and
      - (b) Arising out of your "products" or "work you performed";
    - (2) Damages under Paragraph B. **Personal And Advertising Injury Liability**; and
    - (3) Medical expenses under Paragraph C. **Locations And Operations Medical Payments**.
  - b. The Products And Work You Performed Aggregate Liability Limit is the most we will pay under Paragraph A. **Bodily Injury And Property Damage Liability** for "bodily injury" and "property damage" that are both:
    - (1) Sustained away from locations owned, maintained or used for your "Auto Dealer Operations", and
    - (2) Arising out of your "products" or "work you performed".
2. Subject to Paragraph 1.a. above, the Personal And Advertising Injury Liability Limit is the most we will pay for the sum of all damages because of all "personal and advertising injury" sustained by any one person or organization under Paragraph B. **Personal And Advertising Injury Liability**.

3. Subject to Paragraph 1.a. above, the Locations And Operations Medical Payments Limit is the most we will pay for all medical expenses because of "bodily injury" for each person injured in any one "accident" under Paragraph C. **Locations And Operations Medical Payments**.

4. Subject to Paragraph 1.a. or 1.b. above, whichever applies, the General Liability Bodily Injury And Property Damage Liability Each "Accident" Limit shown in the Declarations is the most we will pay for the sum of all damages under Paragraph A. **Bodily Injury And Property Damage Liability** resulting from any one "accident".

Damages payable under any applicable **Limits of Insurance for General Liability Coverages** are not payable under **Section I - Covered Autos Coverages** or **Section III - Acts, Errors Or Omissions Liability Coverage**.

5. Subject to Paragraph 4. above, the Damage To Premises Rented To You Limit is the most we will pay under Paragraph A. **Bodily Injury And Property Damage Liability** for damages because of "property damage" for any one "accident" to a premises, while leased or rented to you, or temporarily occupied by you with permission of the owner.
6. The Aggregate Limits of Insurance for General Liability Coverages apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Aggregate Limits of Insurance - General Liability Coverages.
7. We will deduct \$500 from the damages in any "accident" resulting from "property damage" to an "auto" as a result of "work you performed" on that "auto". No other deductible applies to that "auto's" "property damage".

When other damages resulting from the same "accident" are subject to a deductible, the maximum amount subject to all deductibles under **Section II - Liability Coverage** for that "accident" will be equal to the largest applicable deductible.

### Section III - Acts, Errors Or Omissions Liability Coverages

#### A. Coverage

We will pay all sums that an "insured" legally must pay as damages because of any "act, error or omission" of the "insured" to which this insurance applies and arising out of the conduct of your "Auto Dealer Operations", but only if the "act, error or omission" is committed in the coverage territory during the policy period.

We will have the right and duty to defend any "insured" against a "suit" asking for these damages. However, we have no duty to defend any "insured" against a "suit" seeking damages for "acts, errors or omissions" to which this insurance does not apply. We may investigate and settle any claim or "suit" as we consider appropriate. But:

1. The amount we will pay for damages is limited as described in Paragraph **E. Limits Of Insurance And Deductible**; and
2. Our duty to defend or settle ends when we have used up the applicable limit of insurance in the payment of judgments or settlements.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Paragraph **D. Supplementary Payments**.

#### B. Exclusions

This insurance does not apply to:

##### 1. Criminal, Fraudulent, Malicious, Dishonest Or Intentional Acts

Damages arising out of any criminal, fraudulent, malicious, dishonest or intentional "act, error or omission" by an "insured", including the willful or reckless violation of any law or regulation. However, this exclusion does not apply to any "insured" who did not:

- a. Personally commit;
- b. Personally participate in;
- c. Personally acquiesce to; or
- d. Remain passive after having knowledge of; any such "act, error or omission".

##### 2. Bodily Injury, Property Damage Or Personal And Advertising Injury

"Bodily injury", "property damage" or "personal and advertising injury".

#### 3. Profit Gain

Damages based upon, attributable to or arising in fact out of the gaining of any profit, remuneration or advantage to which any "insured" was not entitled.

#### 4. Contractual

Liability for which the "insured" has assumed in a contract or agreement. This exclusion does not apply to liability for damages that the "insured" would have in the absence of the contract or agreement.

#### 5. Noncompensatory Damages

Criminal fines or penalties imposed by law or regulation, punitive or exemplary damages or demands for injunctive or equitable relief.

#### 6. Quality Or Performance Of Goods - Failure To Conform To Statements

Damages arising out of the failure of goods, products or services to conform with any statement of quality or performance.

#### 7. Recording And Distribution Of Material Or Information In Violation Of Law

Damages arising directly or indirectly out of any "act, error or omission" that violates or is alleged to violate:

- a. The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law; or
- b. The CAN-SPAM Act of 2003, including any amendment of or addition to such law;
- c. The Fair Credit Reporting Act (FCRA), and any amendment of or addition to such law, including the Fair and Accurate Credit Transaction Act (FACTA); or
- d. The Fair Debt Collection Practices Act (FDCPA), including any amendment of or addition to such law; or
- e. Any federal, state or local statute, ordinance or regulation, other than the TCPA, CAN-SPAM Act of 2003 or FCRA and their amendments and additions, that addresses, prohibits, or limits the printing, dissemination, disposal, collecting, recording, sending, transmitting, communicating or distribution of material or information.

## 8. Discrimination

Damages arising directly or indirectly out of any "act, error or omission" that violates a person's civil rights with respect to such person's race, color, national origin, religion, gender, marital status, age, sexual orientation or preference, physical or mental condition, or any other protected class or characteristic established by an federal, state, or local statutes, rules or regulations.

## 9. Bankruptcy Or Insolvency

Damages arising out of the:

- a. Bankruptcy;
- b. Financial inability to pay;
- c. Insolvency;
- d. Liquidation; or
- e. Receivership;

of any insurance company, reinsurer or other risk-assuming entity in which the "insured" has placed or obtained insurance for a customer.

However, this exclusion does not apply if the insurance company, reinsurer or other risk-assuming entity was rated "B+" or higher by A.M. Best Company, Inc. at the time the insurance was placed or obtained.

## C. Who Is An Insured

The following are "insureds" for "acts, errors or omissions":

1. You.
2. Your partners and their spouses, if you are a partnership, but only with respect to the conduct of your "Auto Dealer Operations".
3. Your members, if you are a limited liability company, but only with respect to the conduct of your "Auto Dealer Operations". Your managers are also "insureds", but only with respect to their duties as your managers.
4. Your "executive officers" and directors, if you are an organization other than a partnership or limited liability company, but only with respect to their duties as your officers or directors. Your stockholders are also "insureds", but only with respect to their liability as stockholders.

5. Your "employees", other than either your "executive officers" (if you are an organization other than a partnership or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of employment by you or while performing duties related to the conduct of your "Auto Dealer Operations".

6. Any "auto" dealership or garage business that is acquired or formed by you, other than a partnership or limited liability company, and over which you maintain ownership of majority interest, will qualify as a Named Insured if there is no other similar insurance available to that "auto" dealership or garage business. However:

- a. Coverage under this provision is afforded only until the 90th day after you acquire or form the "auto" dealership or garage business or the end of the policy period, whichever is earlier; and
- b. Coverage does not apply to "acts, errors or omissions" that were committed before you acquired or formed the "auto" dealership or garage business.

No person or organization is an "insured" with respect to the conduct of any current or past partnership or limited liability company that is not shown as a Named Insured in the Declarations.

## D. Supplementary Payments

With respect to "Acts, Errors Or Omissions" Liability Coverage, we will pay for the "insured":

1. All expenses we incur.
2. The cost of bonds to release attachments in any "suit" against the "insured" we defend, but only for bond amounts within our Limit of Insurance.
3. All reasonable expenses incurred by the "insured" at our request, including actual loss of earnings up to \$250 a day because of time off from work.
4. All court costs taxed against the "insured" in any "suit" against the "insured" we defend. However, these payments do not include attorneys' fees or attorneys' expenses taxed against the "insured".

5. All interest on full amount of any judgment that accrues after entry of the judgment in any "suit" against the "insured" we defend; but our duty to pay interest ends when we have paid, offered to pay or deposited in court the part of the judgment that is within our Limit of Insurance.

These payments will not reduce the Limit of Insurance.

#### E. Limit Of Insurance And Deductible

1. Regardless of the number of:
  - a. "Insureds";
  - b. Claims made or "suits" brought;
  - c. Persons or organizations making claims or bringing "suits"; or
  - d. "Acts, errors or omissions",the "Acts, Errors Or Omissions" Liability Aggregate Limit shown in the Declarations is the most we will pay for all damages because of "acts, errors or omissions" under **Section III**.
2. Damages payable under the Limits of Insurance for "Acts, Errors Or Omissions" Liability Coverage are not payable under any applicable Limits of Insurance under **Section I - Covered Autos Coverages** or **Section II - General Liability Coverages**.
3. Our obligation to pay damages applies only to the amount of damages in excess of any deductible amount stated in the Declarations as applicable to this coverage. The Limits of Insurance for "Acts, Errors Or Omissions" Liability Coverage will not be reduced by the amount of this deductible.

To settle a claim or "suit", we may pay all or any part of the deductible. If this happens, you must reimburse us for the deductible or that part of the deductible that we paid.
4. The "Acts, Errors Or Omissions" Liability Aggregate Limit applies separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the "Acts, Errors Or Omissions" Liability Aggregate Limit.

#### Section IV - Conditions

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

##### A. Loss Conditions

###### 1. Appraisal For Physical Damage Loss

If you and we disagree on the amount of "loss", either may demand an appraisal of the "loss". In this event, each party will select a competent appraiser. The two appraisers will select a competent and impartial umpire.

The appraisers will state separately the actual cash value and amount of "loss". If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

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

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

###### 2. Duties In The Event Of Accident, Claim, Offense, Suit, Loss Or Acts, Errors Or Omissions

We have no duty to provide coverage under this policy unless there has been full compliance with the following duties:

- a. In the event of "accident", claim, "suit", offense, "loss" or "act, error or omission", you must give us or our authorized representative prompt notice of the "accident", offense, "loss" or "act, error or omission". Include:
  - (1) How, when and where the "accident", offense, "loss" or "act, error or omission" occurred;
  - (2) What the "act, error or omission" was;
  - (3) The "insured's" name and address;
  - (4) To the extent possible, the names and addresses of:
    - (a) Any injured persons and witnesses; or
    - (b) Anyone who may suffer damages as a result of an "act, error or omission".

b. Additionally, you and any other involved "insured" must:

- (1) Assume no obligation, make no payment or incur no expense without our consent, except at the "insured's" own cost.
- (2) Immediately send us copies of any request, demand, order, notice, summons or legal paper received concerning the claims or "suit".
- (3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit".
- (4) Authorize us to obtain medical records or other pertinent information.
- (5) Submit to examination at our expense, by physicians of our choice, as often as we reasonably require.
- (6) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the "insured" because of an "act, error or omission" to which this insurance may also apply.

c. If there is "loss" to a covered "auto" or its equipment, you must also do the following:

- (1) Promptly notify the police if the covered "auto" or any of its equipment is stolen.
- (2) Take all reasonable steps to protect the covered "auto" from further damage. Also keep a record of your expenses for consideration in the settlement of the claim.
- (3) Permit us to inspect the covered "auto" and records proving the "loss" before its repair or disposition.
- (4) Agree to examinations under oath at our request and give us a signed statement of your answers.

### 3. Legal Action Against Us

No one may bring a legal action against us under this Coverage Form until:

- a. There has been full compliance with all the terms of this Coverage Form; and
- b. Under any liability coverage, we agree in writing that the "insured" has an obligation to pay or until the amount of that obligation has finally been determined by judgment after trial. No one has the right under this policy to bring us into an action to determine the "insured's" liability.

### 4. Loss Payment - Physical Damage Coverages

At our option, we may:

- a. Pay for, repair or replace damaged or stolen property;
- b. Return the stolen property, at our expense. We will pay for any damage that results to the "auto" from the theft; or
- c. Take all or any part of the damaged or stolen property at an agreed or appraised value.

If we pay for the "loss", our payment will include the applicable sales tax for the damaged or stolen property.

### 5. Transfer Of Rights Of Recovery Against Others To Us

If any person or organization to or for whom we make payment under this Coverage Form has rights to recover damages from another, those rights are transferred to us. That person or organization must do everything necessary to secure our rights and must do nothing after "accident" or "loss" to impair them.

This condition does not apply to damages under Paragraph C. Locations And Operations Medical Payments Coverage of Section II - General Liability Coverages.

## B. General Conditions

### 1. Bankruptcy

Bankruptcy or insolvency of the "insured" or the "insured's" estate will not relieve us of any obligations under this Coverage Form.

### 2. Concealment, Misrepresentation Or Fraud

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

- a. This Coverage Form;
- b. The covered "auto";
- c. Your interest in the covered "auto"; or
- d. A claim under this Coverage Form.

### 3. Liberalization

If we revise this Coverage Form to provide more coverage without additional premium charge, your policy will automatically provide the additional coverage as of the day the revision is effective in your state.

#### 4. No Benefit To Bailee - Physical Damage Coverages

We will not recognize any assignment or grant any coverage for the benefit of any person or organization holding, storing or transporting property for a fee regardless of any other provision of this Coverage Form.

#### 5. Other Insurance

a. For any covered "auto" you own, this Coverage Form provides primary insurance, except it provides excess insurance while the covered "auto" is in the care, custody, or control of any person or organization other than you, your partners (if you are a partnership), members (if you are a limited liability company), stockholders, officers, directors, "employees", "temporary workers", individuals furnished a covered "auto" and named in the Declarations, or members of their and your household.

For any covered "auto" you don't own, the insurance provided by this Coverage Form is excess over any other collectible insurance. However, while a covered "auto" which is a "trailer" is connected to another vehicle, the Covered Autos Liability Coverage this Coverage Form provides for the "trailer" is:

- (1) Excess while it is connected to a motor vehicle you do not own; or
- (2) Primary while it is connected to covered "auto" you own.

b. For Hired Auto Physical Damage Coverage, any covered "auto" you lease, hire, rent or borrow, including an "auto" rented or hired by your "employee" for use in your "Auto Dealer Operations", is deemed to be a covered "auto" you own. However, any "auto" that is leased, hired, rented or borrowed with a driver is not a covered "auto".

c. Regardless of the provision of Paragraph a. above, this Coverage Form's Covered Autos Liability Coverage is primary for any liability assumed under an "insured contract".

d. For General Liability and "Acts, Errors Or Omissions" Liability Coverages, this insurance is primary except when e. below applies. If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in f. below.

e. This Coverage Form is excess over any other insurance, whether primary, excess, contingent or on any other basis:

- (1) That is fire insurance for premises rented to you or temporarily occupied by you with permission of the owner;
- (2) That is insurance purchased by you to cover your liability as a tenant for "property damage" to premises rented to you or temporarily occupied by you with permission of the owner;
- (3) If the "loss" arises out of the maintenance or use of aircraft or watercraft to the extent not subject to Exclusion g. of Paragraph A. Bodily Injury And Property Damage Liability of **Section II - General Liability Coverages**;
- (4) That is specifically written to apply as primary insurance for liability arising out of your "acts, error or omissions".

f. When this Coverage Form and any other Coverage Form or policy covers on the same basis, either excess or primary, we will pay only our share. Our share is the proportion that the Limit of Insurance of our Coverage Form bears to the total of the limits of all the Coverage Forms and policies covering on the same basis.

#### 6. Premium Audit

a. The estimated premium for this Coverage Form is based on the exposures you told us you would have when this policy began. We will compute the final premium due when we determine your actual exposures. The estimated total premium will be credited against the final premium due and the first Named Insured will be billed for the balance, if any. The due date for the final premium or retrospective premium is the date shown as the due date on the bill. If the estimated total premium exceeds the final premium due, the first Named Insured will get a refund.

- b. If this policy is issued for more than one year, the premium for this Coverage Form will be computed annually based on our rates or premiums in effect at the beginning of each year of the policy.

#### 7. Policy Period, Coverage Territory

Under this Coverage Form, we cover:

- a. "Bodily injury", "property damage" and "losses" occurring;
- b. "Personal and advertising injury" offenses and "acts, errors or omissions" committed; and
- c. "Covered pollution cost or expense" arising out of "accidents" occurring

during the policy period shown in the Declarations and within the coverage territory.

The coverage territory is:

- (1) The United States of America;
- (2) The territories and possessions of the United States of America;
- (3) Puerto Rico;
- (4) Canada; and
- (5) Anywhere in the world if:
  - (a) A covered "auto" of the private passenger type is leased, hired, rented or borrowed without a driver for a period of 30 days or less;
  - (b) The "bodily injury", "property damage" or "personal and advertising injury" is caused by an "insured" who permanently lives within the United States of America, its territories or possessions, Puerto Rico or Canada while the "insured" is temporarily outside of one of those places;
  - (c) The "personal and advertising injury" offense takes place through the Internet or similar electronic means of communication; or
  - (d) The "bodily injury" or "property damage" is caused by one of your "products" which is sold for use in the United States of America, its territories or possessions, Puerto Rico or Canada;

provided that the "insured's" responsibility to pay damages is determined in a "suit" on the merits, in the United States of America, the territories and possessions of the United States of America, Puerto Rico or Canada, or in a settlement we agree to.

However, the coverage territory described in Paragraph (5) above does not apply to "work you performed".

We also cover "bodily injury", "property damage", "covered pollution cost or expense" and "losses" while a covered "auto" is being transported between the United States of America, the territories and possessions of the United States of America, Puerto Rico or Canada.

#### 8. Two Or More Coverage Forms Or Policies Issued By Us

If this Coverage Form and any other Coverage Form or policy issued to you by us or any company affiliated with us applies to the same "accident", the aggregate maximum Limit of Insurance under all the Coverage Forms or policies shall not exceed the highest applicable Limit of Insurance under any one Coverage Form or policy. This condition does not apply to any Coverage Form or policy issued by us or an affiliated company specifically to apply as excess insurance over this Coverage Form.

#### Section V - Definitions

- A. "Accident" includes continuous or repeated exposure to the same conditions resulting in "bodily injury" or "property damage".
- B. "Act, error or omission" means any actual or alleged negligent act, error or omission committed by an "insured" in the course of your "Auto Dealer Operations" arising:
  - 1. Out of an "insured's" failure to comply with any local, state or federal law or regulation concerning the disclosure of credit or lease terms to consumers in connection with the sale or lease of an "auto" in your "Auto Dealer Operations", including, but not limited to, the Truth In Lending and Consumer Leasing Acts;



2. Out of an "insured's" failure to comply with any local, state or federal law or regulation concerning the disclosure of accurate odometer mileage to consumers in connection with the sale or lease of an "auto" in your "Auto Dealer Operations";
  3. In an "insured's" capacity as an insurance agent or broker in the offering, placement or maintenance of any "auto" physical damage, auto loan/lease gap, credit life or credit disability insurance sold in connection with the sale or lease of an "auto" in your "Auto Dealer Operations", but only if the "insured" holds a valid insurance agent or broker license at the time the "act, error or omission" is committed, in the jurisdiction in which your "Auto Dealer Operations" is located, if required to do so by such jurisdiction; and
  4. Out of a defect in title in connection with the sale or lease of an "auto" in your "Auto Dealer Operations".
- C. "Advertisement"** means a notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters. For the purposes of this definition:
1. Notices that are published include materials placed on the Internet or on similar electronic means of communication; and
  2. Regarding web sites, only that part of a web site that is about your goods, products, or services for the purposes of attracting customers or supporters is considered an advertisement.
- D. "Auto"** means a land motor vehicle, "trailer" or semitrailer.
- E. "Auto Dealer Operations"** means the ownership, maintenance or use of locations for an "auto" dealership or garage business and that portion of the roads or other accesses that adjoin these locations. "Auto Dealer Operations" also include all operations necessary or incidental to an "auto" dealership or garage business.
- F. "Bodily injury"** means bodily injury, sickness or disease sustained by a person including death resulting from any of these.
- G. "Consigned auto"** means an "auto" you do not own in your, care, custody or control and held for sale under a consignment agreement.
- H. "Contract driver"** means:
- Any person or organization using a covered "auto" within the scope of your permission and while under contract with you to drive a covered "auto" to a location you specify; and

any person or organization hired by you to provide drivers who, with your permission and while under contract to you, will transport a covered "auto" to a location you specify.

- I. "Covered pollution cost or expense"** means any cost or expense arising out of:
1. Any request, demand, order or statutory or regulatory requirement that the "insured" or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants"; or
  2. Any claim or "suit" by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to or assessing the effects of "pollutants".
- "Covered pollution cost or expense" does not include any cost or expense arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":
- a. That are, or that are contained in any property that is:
    - (1) Being transported or towed by, handled, or handled for movement into, onto or from the covered "auto";
    - (2) Otherwise in the course of transit by or on behalf of the "insured";
    - (3) Being stored, disposed of, treated or processed in or upon the covered "auto"; or
  - b. Before the "pollutants" or any property in which the "pollutants" are contained are moved from the place where they are accepted by the "insured" for movement into or onto the covered "auto"; or
  - c. After the "pollutants" or any property in which the "pollutants" are contained are moved from the covered "auto" to the place where they are finally delivered, disposed of or abandoned by the "insured".

Paragraph a. above does not apply to fuels, lubricants, fluids, exhaust gases or other similar "pollutants" that are needed for or result from the normal electrical, hydraulic or mechanical functioning of the covered "auto" or its parts, if the "pollutants" escape, seep, migrate, or are discharged, dispersed or released directly from an "auto" part designed by its manufacturer to hold, store, receive or dispose of such "pollutants".

Paragraphs **b.** and **c.** above do not apply to "accidents" that occur away from premises owned by or rented to an "insured" with respect to "pollutants" not in or upon a covered "auto" if:

- (1) The "pollutants" or any property in which the "pollutants" are contained are upset, overturned or damaged as a result of the maintenance or use of a covered "auto"; and
  - (2) The discharge, dispersal, seepage, migration, release or escape of the "pollutants" is caused directly by such upset, overturn or damage.
- J.** "Customer's auto" means a land motor vehicle, "trailer" or semitrailer lawfully within your possession for service, repair, storage or safekeeping, with or without the vehicle owner's knowledge or consent. A "customer's auto" also includes any such vehicle left in your care by your "employees" and members of their households who pay for services performed.
- K.** "Customers' personal property" means personal property left in a "customer's auto" except:
1. Money which includes:
    - a. Currency, coins, and bank notes in current use having face value;
    - b. Travelers checks, register checks, and money orders held for sale to the public.
  2. Securities, which means any negotiable and non-negotiable instruments or contracts representing either money or other property. Securities also includes evidence of debt issued in connection with credit or charge cards.
  3. Jewelry; and
  4. Fine art.
- L.** "Diminution in value" means the actual or perceived loss in market value or resale value which results from a direct and accidental "loss".
- M.** "Employee" includes a "leased worker". "Employee" does not include a "temporary worker" or "contract driver".
- N.** "Executive officer" means a person holding any of the officer positions created by your charter, constitution, bylaws or any other similar governing document.

**O.** "Impaired property" means tangible property, other than your "product" or "work you performed", that cannot be used or is less useful because:

1. It incorporates your "product" or "work you performed" that is known or thought to be defective, deficient, inadequate or dangerous; or
2. You have failed to fulfill the terms of a contract or agreement;

if such property can be restored to use by the repair, replacement, adjustment or removal of your "product" or "work you performed" or your fulfilling the terms of the contract or agreement.

**P.** "Insured" means any person or organization qualifying as an insured in the Who Is An Insured provision of the applicable coverage. Except with respect to the Limit of Insurance, the coverage afforded applies separately to each insured who is seeking coverage or against whom a claim or "suit" is brought.

**Q.** "Insured Contract"

1. "Insured contract" means:

- a. A lease of premises;
- b. A sidetrack agreement;
- c. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
- d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
- e. That part of any other contract or agreement pertaining to your "auto" dealership or garage business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another to pay for "bodily injury" or "property damage" to a third party or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement;
- f. An elevator maintenance agreement; or

- g. That part of any contract or agreement entered into, as part of your "auto" dealership or garage business, pertaining to the rental or lease, by you or any of your "employees", of any "auto". However, such contract or agreement shall not be considered an "insured contract" to the extent that it obligates you or any of your "employees" to pay "property damage" to any "auto" rented or leased by you or any of your "employees".
2. An "insured contract" does not include that part of any contract or agreement:
- a. That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
    - (1) Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders or drawing and specifications; or
    - (2) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.
  - b. That indemnifies any person or organization for damage to premises rented or loaned to you or temporarily occupied by you with permission of the owner.
  - c. That pertains to the loan, lease or rental of an "auto", to you or any of your "employees", if the "auto" is loaned, leased or rented with a driver.
  - d. That holds a person or organization engaged in the business of transporting property by "auto" for hire harmless for your use of a covered "auto" over a route or territory that person or organization is authorized to serve by public authority.
  - e. That indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, roadbeds, tunnel, underpass or crossing.
- R. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".
- S. "Loading or unloading" means the handling of property:
1. After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or "auto";
  2. While it is in or on an aircraft, watercraft or "auto"; or
  3. While it is being moved from an aircraft, watercraft or "auto" to the place where it is finally delivered;
- but "loading or unloading" does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, watercraft or "auto".
- T. "Loss" means direct and accidental loss or damage. But for a "customer's auto" only, "loss" also includes any resulting loss of use.
- U. "Mental Anguish" means extreme pain or distress inflicted upon an individual's emotional and intellectual condition with regard to the individual's response to the environment.
- V. "Mental Injury" means humiliation, shock, fright, hurt, or damage as it relates to an individual's emotional and intellectual well-being.
- W. "Personal and advertising injury" means injury, including consequential "bodily injury", "mental anguish", or "mental injury", arising out of one or more of the following offenses:
1. False arrest, detention or imprisonment;
  2. Malicious prosecution;
  3. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;
  4. Oral or written publication, in any manner, of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
  5. Oral or written publication, in any manner, of material that violates a person's right of privacy;
  6. Common law violation of a person's right of privacy.
  7. The use of another's advertising idea in your "advertisement";
  8. Infringing upon another's copyright, trade dress or slogan in your "advertisement"; or
  9. Discrimination or harassment, except employment related discrimination or harassment.

X. "Pollutants" means any solid, liquid, gaseous, bacterial, viral, electromagnetic or thermal irritant or contaminant, including but not limited to, smoke, vapor, soot, fumes, acids, alkalis, chemicals, fuels, motor oil, petroleum products, cleaning solvents, brake fluid, transmission fluid, antifreeze, exhaust gases, lead, lead paint, carbon monoxide, sewage, waste and fumes, including but not limited welding fumes and paint fumes. Waste includes materials to be recycled, reconditioned or reclaimed.

A substance does not lose its character of being a "pollutant" by virtue of having a useful function.

Y. "Products" includes:

1. The goods or products made or sold in an "auto" dealership or garage business by:
  - a. You; or
  - b. An "auto" dealership or garage business you have acquired; and
2. The providing of or failure to provide warnings or instructions.

Z. "Property damage" means damage to or loss of use of tangible property.

A.A. "Suit" means a civil proceeding in which:

1. Damages because of "bodily injury", "property damage", "personal and advertising injury" or "acts, errors or omissions"; or
2. A "covered pollution cost or expense", to which this insurance applies, are claimed.

"Suit" includes:

- a. An arbitration proceeding in which such damages or "covered pollution costs or expenses" are claimed and to which the "insured" must submit or does submit with our consent; or

b. Any other alternative dispute resolution proceeding in which such damages or "covered pollution costs or expenses" are claimed and to which the "insured" submits with our consent.

A.B. "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short term workload conditions. "Temporary worker" does not include a "contract driver".

A.C. "Trailer" includes a semitrailer.

A.D. "Work you performed" includes:

1. Work that someone performed on your behalf; and
2. The providing of or failure to provide warnings or instructions.

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

## **NEW YORK CHANGES - CANCELLATION**

For a covered "auto" licensed or principally garaged in, or for "auto dealer operations" conducted in, New York, this endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM  
MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

- I. If you are an individual and a covered "auto" you own is predominantly used for nonbusiness purposes, the **Cancellation** Common Policy Condition does not apply. The following condition applies instead:

### **Ending This Policy**

#### **A. Cancellation**

1. You may cancel the entire policy by returning it to us or by giving us advance notice of the date cancellation is to take effect.
2. When this policy is in effect less than 60 days and is not a renewal or continuation policy, we may cancel the entire policy for any reason provided we mail you notice within this period. If we cancel for nonpayment of premium, we will mail you at least 15 days' notice and such notice of cancellation on this ground shall inform the first Named Insured of the amount due. Payment of premium will be considered on time if made within 15 days after we mail you notice of cancellation. If we cancel for any other reason, we will mail you at least 20 days' notice.

3. When this policy is in effect 60 days or more or is a renewal or continuation policy, we may cancel it or any insurance deemed severable only for one or more of the following reasons:

- a. Nonpayment of premium, provided, however, that a notice of cancellation on this ground shall inform the first Named Insured of the amount due. If we cancel for this reason, we will mail you at least 15 days' notice. Payment of premium will be considered on time if made within 15 days after we mail you notice of cancellation.
- b. Your driver's license or that of a driver who lives with you or customarily uses the covered "auto" has been suspended or revoked during the policy period, other than a suspension issued pursuant to Subdivision (1) of Section 510(b) of the Vehicle and Traffic Law, or one or more administrative suspensions arising out of the same incident which has or have been terminated prior to the effective date of cancellation. If we cancel for this reason, we will mail you at least 20 days' notice.

- c. We replace this policy with another one providing similar coverages and the same limits for a covered "auto" of the private passenger type. The replacement policy will take effect when this policy is cancelled, and will end a year after this policy begins or on this policy's expiration date, whichever is earlier.
- d. This policy has been written for a period of more than one year or without a fixed expiration date. We may cancel for this reason, subject to New York Laws, only at an anniversary of its original effective date. If we cancel for this reason, we will mail you at least 45 but not more than 60 days' notice.
- e. This policy was obtained through fraud or material misrepresentation. If we cancel for this reason, we will mail you at least 20 days' notice.
- f. Any "insured" made a fraudulent claim. If we cancel for this reason, we will mail you at least 20 days' notice.

If one of the reasons listed in this Paragraph 3. exists, we may cancel the entire policy.

- 4. Instead of cancellation, we may condition continuation of this policy on a reduction of Covered Autos Liability Coverage or elimination of any other coverage. If we do this, we will mail you notice at least 20 days before the date of the change.
- 5. Notice of cancellation will state the effective date of cancellation. The policy period will end on that date.
- 6. If this policy is cancelled, we will send you any premium refund due. The refund will be pro rata.

However, when the premium is advanced under a premium finance agreement, we will be entitled to retain a minimum earned premium of 10% of the total policy premium or \$60, whichever is greater. The cancellation will be effective even if we have not made or offered a refund.

## B. Nonrenewal

- 1. If this policy is written for a period of less than one year and we decide, subject to New York Laws, not to renew or continue it, or to condition renewal or continuation on a reduction of Covered Autos Liability Coverage or elimination of any other coverage, we will mail or deliver to you written notice at least 45 but not more than 60 days before the end of the policy period.
- 2. We will have the right not to renew or continue a particular coverage, subject to New York Laws, only at the end of each 12-month period following the effective date of the first of the successive policy periods in which the coverage was provided.
- 3. We do not have to mail notice of nonrenewal if you, your agent or broker or another insurance company informs us in writing that you have replaced this policy or that you no longer want it.

## C. Mailing Of Notices

We will mail or deliver our notice of cancellation, reduction of limits, elimination of coverage or nonrenewal to the address shown on the policy. However, we may deliver any notice instead of mailing it. If notice is mailed, a United States Postal Service certificate of mailing will be sufficient proof of notice.

- II. For all policies other than those specified in Section I., the **Cancellation** Common Policy Condition is completely replaced by the following:

### Ending This Policy

#### A. Cancellation

- 1. The first Named Insured shown in the Declarations may cancel the entire policy by returning it to us or by giving us advance notice of the date cancellation is to take effect.
- 2. When this policy is in effect 60 days or less and is not a renewal or continuation policy, we may cancel the entire policy by mailing to the first Named Insured written notice at least 15 days before the effective date of cancellation if we cancel for any of the reasons included in Paragraph 3. below. We will provide the first Named Insured with 20 days' written notice if we cancel for any other reason.

3. When this policy is in effect more than 60 days or is a renewal or continuation policy, we may cancel only for any of the reasons listed below, provided we mail the first Named Insured written notice at least 15 days before the effective date of cancellation:
  - a. Nonpayment of premium, provided, however, that a notice of cancellation on this ground shall inform the first Named Insured of the amount due;
  - b. Conviction of a crime arising out of acts increasing the hazard insured against;
  - c. Discovery of fraud or material misrepresentation in the obtaining of the policy or in the presentation of a claim thereunder;
  - d. After issuance of the policy or after the last renewal date, discovery of an act or omission, or a violation of any policy condition, that substantially and materially increases the hazard insured against, and which occurred subsequent to inception of the current policy period;
  - e. Material physical change in the property insured, occurring after issuance or last annual renewal anniversary date of the policy, which results in the property becoming uninsurable in accordance with our objective, uniformly applied underwriting standards in effect at the time the policy was issued or last renewed; or material change in the nature or extent of the risk, occurring after issuance or last annual renewal anniversary date of the policy, which causes the risk of loss to be substantially and materially increased beyond that contemplated at the time the policy was issued or last renewed;
  - f. Required pursuant to a determination by the Superintendent that continuation of our present premium volume would jeopardize our solvency or be hazardous to the interest of our policyholders, our creditors or the public;
  - g. A determination by the Superintendent that the continuation of the policy would violate, or would place us in violation of, any provision of the Insurance Code;
  - h. Where we have reason to believe, in good faith and with sufficient cause, that there is a probable risk of danger that the "insured" will destroy, or permit to be destroyed, the insured property for the purpose of collecting the insurance proceeds. However, if we cancel for this reason, the first Named Insured may make a written request to the Department of Financial Services, within 10 days of receipt of this notice, to review our cancellation decision. We will also send a copy of this notice, simultaneously, to the Department of Financial Services; or
  - i. Suspension or revocation during the required policy period of the driver's license of any person who continues to operate a covered "auto", other than a suspension issued pursuant to Subdivision (1) of Section 510(b) of the Vehicle and Traffic Law or one or more administrative suspensions arising from the same incident which has or have been terminated prior to the effective date of cancellation.
4. Regardless of the number of days this policy has been in effect, if:
  - a. This policy covers "autos" subject to the provisions of Section 370 (a) and (b) of the New York Vehicle and Traffic Law; and
  - b. The Commissioner of the Department of Motor Vehicles deems this policy to be insufficient for any reason;
 we may cancel this policy by giving you notice of such insufficiency 45 days before the effective date of cancellation to permit you to replace this policy.
5. If this policy is cancelled, we will send the first Named Insured any premium refund due. The refund will be pro rata.
 

However, when the premium is advanced under a premium finance agreement, we will be entitled to retain a minimum earned premium of 10% of the total policy premium or \$60, whichever is greater. The cancellation will be effective even if we have not made or offered a refund.
6. The effective date of cancellation stated in the notice shall become the end of the policy period.

7. Notice will include the reason for cancellation. We will mail or deliver our notice to the first Named Insured at the address shown in the policy and to the authorized agent or broker. However, we may deliver any notice instead of mailing it. Proof of mailing will be sufficient proof of notice.

**B. Notices Of Nonrenewal And Conditional Renewal**

1. If we decide not to renew or continue this policy, we will send notice as provided in Paragraph 3. below.
2. If we conditionally renew this policy upon:
  - a. A change of limits;
  - b. A change in type of coverage;
  - c. A reduction of coverage;
  - d. An increased deductible;
  - e. An addition of exclusion; or
  - f. Increased premiums in excess of 10%, exclusive of any premium increase due to and commensurate with insured value added; or as a result of experience rating, retrospective rating or audit;

we will send notice as provided in Paragraph 3. below.

3. If we decide not to renew or continue this policy, or to conditionally renew this policy as provided in Paragraphs 1. and 2. above, we will mail the first Named Insured notice at least 60 but not more than 120 days before the end of the policy period. If the policy period is other than one year, we will have the right not to renew or continue it only at an anniversary of its original effective date.
4. We will not send you notice of nonrenewal or conditional renewal if you, your authorized agent or broker or another insurer of yours mails or delivers notice that you have replaced this policy or no longer want it.
5. Any notice of nonrenewal or conditional renewal will be mailed to the first Named Insured at the address shown in the policy and to the authorized agent or broker. However, we may deliver any notice instead of mailing it. Proof of mailing of any notice shall be sufficient proof of notice.
6. Notice will include the specific reason(s) for nonrenewal or conditional renewal, including the amount of any premium increase, and description of any other changes.

7. If we violate any of the provisions of Paragraph 3., 5. or 6. above by sending the first Named Insured an incomplete or late conditional renewal notice or a late nonrenewal notice:

- a. And if notice is provided prior to the expiration date of this policy, coverage will remain in effect at the same terms and conditions of this policy at the lower of the current rates or the prior period's rates until 60 days after such notice is mailed or delivered, unless the first Named Insured, during this 60-day period, has replaced the coverage or elects to cancel.
- b. And if the notice is provided on or after the expiration date of this policy, coverage will remain in effect at the same terms and conditions of this policy for another policy period, at the lower of the current rates or the prior period's rates, unless the first Named Insured, during this additional policy period, has replaced the coverage or elects to cancel.

8. If you elect to renew on the basis of a late conditional renewal notice, the terms, conditions and rates set forth in such notice shall apply:
  - a. Upon expiration of the 60-day period, unless Subparagraph b. below applies; or
  - b. Notwithstanding the provisions in Paragraphs 7.a. and 7.b., as of the renewal date of the policy if the conditional renewal notice was sent at least 30 days prior to the expiration or anniversary date of the policy.

**C. Paragraph C.1. Aggregate Limit Of Insurance - Garage Operations - Other Than Covered "Autos" is amended as follows:**

1. The Aggregate Limit Of Insurance - "Garage Operations" - Other Than Covered "Autos" as shown in the Declarations will be increased in proportion to any policy extension provided in accordance with Section II, Paragraph B.7. above.
2. The last sentence of Aggregate Limits - "Garage Operations" - Other Than Covered "Autos" does not apply when the policy period is extended because we sent the first Named Insured an incomplete or late conditional renewal notice or a late nonrenewal notice.



POLICY NUMBER:

COMMERCIAL AUTO  
CA 03 02 10 13

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

## DEDUCTIBLE LIABILITY COVERAGE

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM  
BUSINESS AUTO COVERAGE FORM  
MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

<b>Named Insured:</b>
<b>Endorsement Effective Date:</b>

### SCHEDULE

Covered Autos Liability Coverage and Paragraph A. Bodily Injury And Property Damage Liability of Section II - General Liability Coverages in the Auto Dealers Coverage Form are subject to one of the following two deductibles shown below:

<b>Liability Deductible:</b>	<b>\$</b>	<b>Per "Accident"</b>
<b>OR</b>		
<b>"Property Damage" Only Liability Deductible:</b>	<b>\$</b>	<b>Per "Accident"</b>
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.		

#### A. Liability Deductible

If a Liability Deductible, and not a "Property Damage" Only Liability Deductible, is shown in the Schedule, the damages resulting from any one "accident" that are otherwise payable will be reduced by the Liability Deductible shown in the Schedule prior to the application of the Limit of Insurance provision.

#### B. Property Damage Only Liability Deductible

If a "Property Damage" Only Liability Deductible, and not a Liability Deductible, is shown in the Schedule, the damages resulting from any one "accident" that are otherwise payable for "property damage" will be reduced by the "Property Damage" Only Liability Deductible shown in the Schedule prior to the application of the Limit of Insurance provision.

#### C. Our Right To Reimbursement

To settle any claim or "suit", we will pay all or any part of any deductible shown in the Schedule. You must reimburse us for the deductible or the part of the deductible we paid.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## NEW YORK SUPPLEMENTAL SPOUSAL BODILY INJURY LIABILITY COVERAGE

If your covered "auto" is licensed or principally garaged in, or "auto dealer operations" are conducted in, New York, this endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM  
BUSINESS AUTO COVERAGE FORM  
MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

The **Spousal Liability** Exclusion does not apply to "bodily injury".

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## NEW YORK MANDATORY PERSONAL INJURY PROTECTION ENDORSEMENT

The Company agrees with the named insured, as follows:

### Section I

#### Mandatory Personal Injury Protection

The Company will pay first-party benefits to reimburse for basic economic loss sustained by an eligible injured person on account of personal injuries caused by an accident arising out of the use or operation of a motor vehicle or a motorcycle during the policy period and within the United States of America, its territories or possessions, or Canada.

#### First-party Benefits

First-party benefits, other than death benefits, are payments equal to basic economic loss, reduced by the following:

- (a) 20 percent of the eligible injured person's loss of earnings from work to the extent that an eligible injured person's basic economic loss consists of such loss of earnings;
- (b) Amounts recovered or recoverable on account of personal injury to an eligible injured person under State or Federal laws providing social security disability or workers' compensation benefits, or disability benefits under article 9 of the New York Workers' Compensation Law;
- (c) The amount of any applicable deductible, provided that such deductible shall apply to each accident, but only to the total of first-party benefits otherwise payable to the named insured and any relative as a result of that accident.

#### Basic Economic Loss

Basic economic loss shall consist of medical expense, work loss, other expense and, when death occurs, a death benefit as herein provided. Except for such death benefit, basic economic loss shall not include any loss sustained on account of death. Basic economic loss of each eligible injured person on account of any single accident shall not exceed \$50,000, except that any death benefit hereunder shall be in addition thereto.

#### Medical Expense

Medical expense shall consist of necessary expenses for:

- (a) Medical, hospital (including services rendered in compliance with article 41 of the Public Health Law, whether or not such services are rendered directly by a hospital), surgical, nursing, dental, ambulance, X-ray, prescription drug and prosthetic services;
- (b) Psychiatric, physical and occupational therapy and rehabilitation;
- (c) Any nonmedical remedial care and treatment rendered in accordance with a religious method of healing recognized by the laws of New York; and
- (d) Any other professional health services.

These medical expenses will not be subject to a time limitation, provided that, within one year after the date of the accident, it is ascertainable that further medical expenses may be sustained as a result of the injury. Payments hereunder for necessary medical expenses shall be subject to the limitations and requirements of section 5108 of the New York Insurance Law.

### Work Loss

Work loss shall consist of the sum of the following losses and expenses, up to a maximum payment of \$2,000 per month for a maximum period of three years from the date of the accident:

- (a) Loss of earnings from work which the eligible injured person would have performed had such person not been injured, except that an employee who is entitled to receive monetary payments, pursuant to statute or contract with the employer, or who receives voluntary monetary benefits paid for by the employer, by reason of such employee's inability to work because of personal injury arising out of the use or operation of a motor vehicle or a motorcycle, shall not be entitled to receive first-party benefits for loss of earnings from work to the extent that such monetary payments or benefits from the employer do not result in the employee suffering a reduction in income or a reduction in such employee's level of future benefits arising from a subsequent illness or injury; and
- (b) Reasonable and necessary expenses sustained by the eligible injured person in obtaining services in lieu of those which such person would have performed for income.

### Other Expenses

Other expenses shall consist of all reasonable and necessary expenses, other than medical expense and work loss, up to \$25 per day for a period of one year from the date of the accident causing injury.

### Death Benefit

Upon the death of any eligible injured person, caused by an accident to which this coverage applies, the Company will pay to the estate of such person a death benefit of \$2,000.

### Eligible Injured Person

Subject to the exclusions and conditions set forth below, an eligible injured person is:

- (a) The named insured and any relative who sustains personal injury arising out of the use or operation of any motor vehicle;
- (b) The named insured and any relative who sustains personal injury arising out of the use or operation of any motorcycle, while not occupying a motorcycle;
- (c) Any other person who sustains personal injury arising out of the use or operation of the insured motor vehicle in the State of New York while not occupying another motor vehicle; or

- (d) Any New York State resident who sustains personal injury arising out of the use or operation of the insured motor vehicle outside of New York State while not occupying another motor vehicle.

### Exclusions

This coverage does not apply to personal injury sustained by:

- (a) The named insured while occupying, or while a pedestrian through being struck by, any motor vehicle owned by the named insured with respect to which the coverage required by the New York Comprehensive Motor Vehicle Insurance Reparations Act is not in effect;
- (b) Any relative while occupying, or while a pedestrian through being struck by, any motor vehicle owned by the relative with respect to which the coverage required by the New York Comprehensive Motor Vehicle Insurance Reparations Act is not in effect;
- (c) The named insured or relative while occupying, or while a pedestrian through being struck by, a motor vehicle in New York State, other than the insured motor vehicle, with respect to which the coverage required by the New York Comprehensive Motor Vehicle Insurance Reparations Act is in effect; however, this exclusion does not apply to personal injury sustained in New York State by the named insured or relative while occupying a bus or school bus, as defined in sections 104 and 142 of the New York Vehicle and Traffic Law, unless that person is the operator, an owner, or an employee of the owner or operator, of such bus or school bus;
- (d) Any person in New York State while occupying the insured motor vehicle which is a bus or school bus, as defined in sections 104 and 142 of the New York Vehicle and Traffic Law, but only if such person is a named insured or relative under any other policy providing the coverage required by the New York Comprehensive Motor Vehicle Insurance Reparations Act; however, this exclusion does not apply to the operator, an owner, or an employee of the owner or operator, of such bus or school bus;
- (e) Any person while occupying a motorcycle;
- (f) Any person who intentionally causes his or her own personal injury;

(g) Any person as a result of operating a motor vehicle while in an intoxicated condition or while his or her ability to operate the vehicle is impaired by the use of a drug (within the meaning of section 1192 of the New York Vehicle and Traffic Law) except that coverage shall apply to necessary emergency health services rendered in a general hospital, as defined in section 2801(10) of the New York Public Health Law, including ambulance services attendant thereto and related medical screening. However, where the person has been convicted of violating section 1192 of the New York Vehicle and Traffic Law while operating a motor vehicle in an intoxicated condition or while his or her ability to operate such vehicle is impaired by the use of a drug, and the conviction is a final determination, the Company has a cause of action against such person for the amount of first-party benefits that are paid or payable; or

(h) Any person while:

- (i) Committing an act which would constitute a felony, or seeking to avoid lawful apprehension or arrest by a law enforcement officer;
  - (ii) Operating a motor vehicle in a race or speed test;
  - (iii) Operating or occupying a motor vehicle known to that person to be stolen; or
  - (iv) Repairing, servicing or otherwise maintaining a motor vehicle if the conduct is within the course of a business of repairing, servicing or otherwise maintaining a motor vehicle and the injury occurs on the business premises.
- (i) The named insured or relative while not occupying a motor vehicle or a motorcycle when struck by a motorcycle in New York State with respect to which the coverage required by the New York Comprehensive Motor Vehicle Insurance Reparations Act is in effect;
- (j) Any New York State resident, other than the named insured or relative injured through the use or operation of the insured motor vehicle outside of New York State if such resident is the owner or a relative of the owner of a motor vehicle insured under another policy providing the coverage required by the New York Comprehensive Motor Vehicle Insurance Reparations Act;

(k) Any New York State resident, other than the named insured or relative injured through the use or operation of the insured motor vehicle outside of New York State, if such resident is the owner of a motor vehicle for which the coverage required by the New York Comprehensive Motor Vehicle Insurance Reparations Act is not in effect.

#### Other Definitions

When used in reference to this coverage:

- (a) The "insured motor vehicle" means a motor vehicle owned by the named insured and to which the bodily injury liability insurance of this policy applies and for which a specific premium is charged;
- (b) "Motorcycle" means a vehicle as defined in section 123 of the New York Vehicle and Traffic Law and which is required to carry financial security pursuant to article 6, 8 or 48-A of the Vehicle and Traffic Law;
- (c) "Motor vehicle" means a motor vehicle, as defined in section 311 of the New York Vehicle and Traffic Law, and also includes fire and police vehicles, but shall not include any motor vehicle not required to carry financial security pursuant to article 6, 8 or 48-A of the Vehicle and Traffic Law, or a motorcycle as defined above;
- (d) "Named insured" means the person or organization named in the Declarations;
- (e) "Occupying" means in or upon or entering into or alighting from;
- (f) "Personal injury" means bodily injury, sickness or disease;
- (g) "Relative" means a spouse, child, or other person related to the named insured by blood, marriage, or adoption (including a ward or foster child), who regularly resides in the insured's household, including any such person who regularly resides in the household, but is temporarily living elsewhere; and
- (h) "Use or operation" of a motor vehicle or a motorcycle includes the loading or unloading of such vehicle.

#### Conditions

**Action Against Company.** No action shall lie against the Company unless, as a condition precedent thereto, there shall have been full compliance with the terms of this coverage.

**Notice.** In the event of an accident, written notice setting forth details sufficient to identify the eligible injured person, along with reasonably obtainable information regarding the time, place and circumstances of the accident, shall be given by, or on behalf of, each eligible injured person, to the Company, or any of the Company's authorized agents, as soon as reasonably practicable, but in no event more than 30 days after the date of the accident, unless the eligible injured person submits written proof providing clear and reasonable justification for the failure to comply with such time limitation. If an eligible injured person or that person's legal representative institutes a proceeding to recover damages for personal injury under section 5104(b) of the New York Insurance Law, a copy of the summons and complaint or other process served in connection with such action shall be forwarded as soon as practicable to the Company or any of the Company's authorized agents by such eligible injured person or that person's legal representative.

**Proof of Claim; Medical, Work Loss, and Other Necessary Expenses.** In the case of a claim for health service expenses, the eligible injured person or that person's assignee or representative shall submit written proof of claim to the Company, including full particulars of the nature and extent of the injuries and treatment received and contemplated, as soon as reasonably practicable but, in no event later than 45 days after the date services are rendered. The eligible injured person or that person's representative shall submit written proof of claim for work loss benefits and for other necessary expenses to the Company as soon as reasonably practicable but, in no event, later than 90 days after the work loss is incurred or the other necessary services are rendered. The foregoing time limitations for the submission of proof of claim shall apply unless the eligible injured person or that person's representative submits written proof providing clear and reasonable justification for the failure to comply with such time limitation. Upon request by the Company, the eligible injured person or that person's assignee or representative shall:

- (a) Execute a written proof of claim under oath;
- (b) As may reasonably be required submit to examinations under oath by any person named by the Company and subscribe the same;
- (c) Provide authorization that will enable the Company to obtain medical records; and
- (d) Provide any other pertinent information that may assist the Company in determining the amount due and payable.

The eligible injured person shall submit to medical examination by physicians selected by, or acceptable to, the Company, when, and as often as, the Company may reasonably require.

**Arbitration.** In the event any person making a claim for first-party benefits and the Company do not agree regarding any matter relating to the claim, such person shall have the option of submitting such disagreement to arbitration pursuant to procedures promulgated or approved by the Superintendent of Financial Services.

**Reimbursement and Trust Agreement.** To the extent that the Company pays first-party benefits, the Company is entitled to the proceeds of any settlement or judgment resulting from the exercise of any right of recovery for damages for personal injury under section 5104(b) of the New York Insurance Law. The Company shall have a lien upon any such settlement or judgment to the extent that the Company has paid first-party benefits. An eligible injured person shall:

- (a) Hold in trust, for the Company, all rights of recovery which that person shall have for personal injury under section 5104(b) of the New York Insurance Law;
- (b) Do whatever is proper to secure, and shall do nothing to prejudice, such rights; and
- (c) Execute, and deliver to the Company, instruments and papers as may be appropriate to secure the rights and obligations of such person and the Company established by this provision.

An eligible injured person shall not compromise an action to recover damages brought under section 5104(b) of the New York Insurance Law, except:

- (a) With the written consent of the Company;
- (b) With approval of the court; or
- (c) Where the amount of the settlement exceeds \$50,000.

**Other Coverage.** Where more than one source of first-party benefits required by article 51 of the New York Insurance Law and article 6 or 8 of the New York Vehicle and Traffic Law is available and applicable to an eligible injured person in any one accident, this Company is liable to an eligible injured person only for an amount equal to the maximum amount that the eligible injured person is entitled to recover under this coverage, divided by the number of available and applicable sources of required first-party benefits. An eligible injured person shall not recover duplicate benefits for the same elements of loss under this coverage or any other mandatory first-party motor vehicle or no-fault motor vehicle insurance coverage issued in compliance with the laws of another state.

If the eligible injured person is entitled to benefits under any such mandatory first-party motor vehicle or no-fault motor vehicle insurance for the same elements of loss under this coverage, this Company shall be liable only for an amount equal to the proportion that the total amount available under this coverage bears to the sum of the amount available under this coverage and the amount available under such other mandatory insurance for the common elements of loss. However, where another state's mandatory first-party or no-fault motor vehicle insurance law provides unlimited coverage available to an eligible injured person for an element of loss under this coverage, the obligation of this Company is to share equally for that element of loss with such other mandatory insurance until the \$50,000, or \$75,000 if Optional Basic Economic Loss (OBEL) coverage is purchased, limit of this coverage is exhausted by the payment of that element of loss and any other elements of loss.

### **Section II**

#### **Excess Coverage**

If motor vehicle medical payments coverage or any disability coverages or uninsured motorists coverage are afforded under this policy, such coverages shall be excess insurance over any Mandatory PIP, OBEL or Additional PIP benefits paid or payable or which would be paid or payable but for the application of a deductible under this or any other motor vehicle No-Fault insurance policy.

### **Section III**

#### **Constitutionality**

If it is conclusively determined by a court of competent jurisdiction that the New York Comprehensive Motor Vehicle Insurance Reparations Act, or any amendment thereto, is invalid or unenforceable in whole or in part, then, subject to the approval of the Superintendent of Financial Services, the Company may amend this policy and may also recompute the premium for the existing or amended policy.

These amendments and recomputations will be effective retroactively to the date that such act or any amendment is deemed to be invalid or unenforceable in whole or in part.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**EXCLUSION -  
ACTS, ERRORS OR OMISSIONS LIABILITY COVERAGES**

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

**Section III - Acts, Errors Or Omissions Liability Coverages** does not apply and none of the references to "Acts, Errors Or Omissions" Liability Coverages or Acts, Errors Or Omissions Liability in the Coverage Form, Declarations or any endorsement attached to the Coverage Form apply.



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## NEW YORK SUPPLEMENTARY UNINSURED/UNDERINSURED MOTORISTS ENDORSEMENT

We, the company, agree with you, as the named insured, in return for payment of the premium for this coverage, to provide Supplementary Uninsured/Underinsured Motorists (SUM) coverage, subject to the following terms and conditions:

### INSURING AGREEMENTS

#### 1. Definitions

For purposes of this SUM endorsement, the following terms have the following meanings:

##### a. Insured

The unqualified term "insured" means:

- (1) You, as the named insured and, while residents of the same household, your spouse and the relatives of either you or your spouse;
- (2) Any person while acting in the scope of that person's duties for you, except with respect to the use and operation by such person of a motor vehicle not covered under this policy, where such person is:
  - (a) Your employee and you are a fire department;
  - (b) Your member and you are a fire company, as defined in General Municipal Law section 100;
  - (c) Your employee and you are an ambulance service, as defined in Public Health Law section 3001; or
  - (d) Your member and you are a voluntary ambulance service, as defined in Public Health Law, section 3001;
- (3) Any other person while occupying:
  - (a) A motor vehicle insured for SUM under this policy; or
  - (b) Any other motor vehicle while being operated by you or your spouse; and
- (4) Any person, with respect to damages such person is entitled to recover, because of bodily injury to which this coverage applies sustained by an insured under Paragraph (1), (2) or (3) above.

##### b. Bodily Injury

The term "bodily injury" means bodily harm, including sickness, disease or death resulting therefrom.

##### c. Uninsured Motor Vehicle

The term "uninsured motor vehicle" means a motor vehicle that, through its ownership, maintenance or use, results in bodily injury to an insured, and for which:

- (1) No bodily injury liability insurance policy or bond applies to such motor vehicle (including a vehicle that was stolen, operated without the owner's permission or unregistered) at the time of the accident; or
- (2) The owner and operator cannot be identified (including a hit-and-run motor vehicle), and which causes bodily injury to an insured by physical contact with the insured or with a motor vehicle occupied by the insured at the time of the accident, provided that:
  - (a) The insured or someone on the insured's behalf:
    - (i) Reported the accident within 24 hours or as soon as reasonably possible to a police, peace or judicial officer or to the Commissioner of Motor Vehicles; and
    - (ii) Filed with the Company a statement under oath that the insured or the insured's legal representative has a cause or causes of action arising out of such accident for damages against a person or persons whose identity is unascertainable, and setting forth the facts in support thereof; and

- (b) At the request of the Company, the insured or the insured's legal representative makes available for inspection the motor vehicle the insured was occupying at the time of the accident; or
- (3) There is a bodily injury liability insurance coverage or bond applicable to such motor vehicle at the time of the accident, but:
  - (a) The amount of such insurance coverage or bond is less than the third-party bodily injury liability limit of this policy; or
  - (b) The amount of such insurance coverage or bond has been reduced, by payments to other persons injured in the accident, to an amount less than the third-party bodily injury liability limit of this policy; or
  - (c) The insurer writing such insurance coverage or bond denies coverage or such insurer is or becomes insolvent.

The term "uninsured motor vehicle" shall not include a motor vehicle that is:

- (1) Insured under the liability coverage of this policy; or
- (2) Owned by you, the named insured, or your spouse residing in your household; or
- (3) Self-insured within the meaning of the financial responsibility law of the state in which the motor vehicle is registered, or any similar state or federal law, to the extent that the required amount of such coverage is equal to, or greater than, the third-party bodily injury liability limits of this policy; or
- (4) Owned by the United States of America, Canada, a state, a political subdivision of any such government or an agency of any of the foregoing; or
- (5) A land motor vehicle or trailer, while located for use as a residence or premises and not as a motor vehicle or while operated on rails or crawler-treads; or
- (6) A farm type vehicle or equipment designed for use principally off public roads, except while actually upon public roads.

**d. Occupying**

The term "occupying" means in, upon, entering into or exiting from a motor vehicle.

**e. State**

The term "state" means a state, territory or possession of the United States, the District of Columbia or a province of Canada.

**2. Damages For Bodily Injury Caused By Uninsured Motor Vehicles**

We will pay all sums that the insured or the insured's legal representative shall be legally entitled to recover as damages from the owner or operator of an uninsured motor vehicle because of bodily injury sustained by the insured, caused by an accident arising out of such uninsured motor vehicle's ownership, maintenance or use, subject to the Exclusions, Conditions, Limits and other provisions set forth in this SUM endorsement.

**3. SUM Coverage Period And Territory**

This SUM coverage applies only to accidents that occur:

- a. During the policy period shown in the Declarations; and
- b. In the United States, its territories or possessions, or Canada.

**EXCLUSIONS**

This SUM coverage does **not** apply to:

- 1. Bodily injury to an insured, including care or loss of services recoverable by an insured, if such insured, such insured's legal representatives or any person entitled to payment under this coverage, without our written consent, settles any lawsuit against any person or organization that may be legally liable for such injury, care or loss of services, however this provision shall be subject to Condition 9.;
- 2. Bodily injury to an insured incurred while occupying a motor vehicle owned by that insured, if such motor vehicle is not insured for SUM coverage by the policy under which a claim is made or is not a newly acquired or replacement motor vehicle covered under the terms of this policy; or
- 3. Non-economic loss resulting from bodily injury to an insured arising from an accident in New York State, unless the insured has sustained serious injury as defined in Section 5102(d) of the New York Insurance Law.

## CONDITIONS

### 1. Policy Provisions

None of the Insuring Agreements, Exclusions or Conditions of the policy shall apply to this SUM coverage except: "Duties In The Event Of Accident, Claim, Suit Or Loss", "Fraud" and "Ending This Policy" if applicable.

### 2. Notice And Proof Of Claim

As soon as practicable, the insured or other person making a claim shall give us written notice of claim under this SUM coverage.

- a. As soon as practicable after our written request, the insured or other person making claim shall give us written proof of claim, under oath if required, including full particulars of the nature and extent of the injuries, treatment and other details we need to determine the SUM amount payable.
- b. The insured and every other person making claim hereunder shall, as may reasonably be required, submit to examinations under oath by any person we name and subscribe the same. Proof of claim shall be made upon forms we furnish unless we fail to furnish such forms within 15 calendar days after receiving notice of claim.

### 3. Medical Reports

The insured shall submit to physical examinations by physicians we select when and as often as we may reasonably require. The insured, or in the event of the insured's incapacity, the insured's legal representative (or in the event of the insured's death, the insured's legal representative or the person or persons entitled to sue therefor), shall upon each request from us authorize us to obtain copies of relevant medical reports and records.

### 4. Notice Of Legal Action

If the insured or the insured's legal representative brings any lawsuit against any person or organization legally responsible for the use of a motor vehicle involved in the accident, a copy of the summons and complaint or other process served in connection with the lawsuit shall be forwarded immediately to us by the insured or the insured's legal representative.

## 5. SUM Limits And Maximum Payments

- a. The SUM limit payable under this endorsement shall be determined as follows:

- (1) If an accident results in bodily injury excluding death to one or more persons, then we will provide the SUM limit stated in the Declarations; or

- (2) If an accident results in the death of one or more persons, then we will provide the greater of the SUM limit stated in the Declarations or \$50,000 for such bodily injury resulting in death sustained by one person as the result of any one accident and, subject to this per person limit, \$100,000 for such bodily injury resulting in death sustained by two or more persons as the result of any one accident; or

- (3) If an accident results in both bodily injury to one or more persons and the death of one or more persons, then we will provide the greater of the SUM limits stated in the Declarations or the limits required by the mandatory uninsured motorists (UM) coverage as follows:

\$25,000 per injured person and, subject to this per person limit,

\$50,000 to two or more persons injured as the result of any one accident; and

\$50,000 per person for bodily injury resulting in death and, subject to this per person limit,

\$100,000 to two or more persons for bodily injury resulting in death as the result of any one accident.

- b. Regardless of the number of insureds, our maximum payment under this SUM endorsement shall be the difference between:

- (1) The SUM limit; and

- (2) The motor vehicle bodily injury liability insurance or bond payments received by the insured or the insured's legal representative, from or on behalf of all persons that may be legally liable for the bodily injury sustained by the insured.

- c. The SUM limit shown on the Declarations is the amount of coverage for all damages due to bodily injury in any one accident.

## 6. Non-Stacking

Regardless of the number of motor vehicles involved, persons covered, claims made, motor vehicles or premiums shown in this policy or premium paid, the limits, whether for UM coverage or SUM coverage, shall never be added together or combined for two or more motor vehicles to determine the extent of insurance coverage available to an insured who was injured in the same accident.

## 7. Priority Of Coverage

If an insured is entitled to UM coverage or SUM coverage under more than one policy, the maximum amount such insured may recover shall not exceed the highest limit of such coverage for any one motor vehicle under any one policy and the following order of priority shall apply:

- a. A policy covering a motor vehicle occupied by the injured person at the time of the accident;
- b. A policy covering a motor vehicle not involved in the accident under which the injured person is a named insured; and
- c. A policy covering a motor vehicle not involved in the accident under which the injured person is an insured other than a named insured.

Coverage available under a lower priority policy applies only to the extent that it exceeds the coverage of a higher priority policy.

## 8. Exhaustion Required

Except as provided in Condition 9., we will pay under this SUM coverage only after the limits of liability have been exhausted under all motor vehicle bodily injury liability insurance policies or bonds applicable at the time of the accident in regard to any one person who may be legally liable for the bodily injury sustained by the insured.

## 9. Release Or Advance

- a. In accidents involving the insured and one or more negligent parties, if such insured settles with any such party for the available limit of the motor vehicle bodily injury liability coverage of such party, a release may be executed with such party after thirty calendar days from our receipt of your written notice to us, unless within this time period we agree to advance such settlement amounts to the insured in return for the cooperation of the insured in our lawsuit on behalf of the insured.
- b. We shall have a right to the proceeds of any such lawsuit equal to the amount advanced to the insured and any additional amounts paid under this SUM coverage. Any excess above those amounts shall be paid to the insured.
- c. An insured shall not otherwise settle with any negligent party, without our written consent, such that our rights would be impaired.

## 10. Non-Duplication

This SUM coverage shall not duplicate any of the following:

- a. Benefits payable under workers' compensation or other similar laws;
- b. Non-occupational disability benefits under New York Workers' Compensation Law article nine or other similar law;
- c. Any amounts recovered or recoverable pursuant to New York Insurance Law article fifty-one or any similar motor vehicle insurance payable without regard to fault;
- d. Any valid or collectible motor vehicle medical payments insurance; or
- e. Any amounts recovered as bodily injury damages from sources other than motor vehicle bodily injury liability insurance policies or bonds.

## 11. Arbitration

- a. If any insured makes a claim under this SUM coverage and we do not agree that such insured is legally entitled to recover damages from the owner or operator of an uninsured motor vehicle because of bodily injury sustained by the insured, or we do not agree as to the amount of payment that may be owing under this SUM coverage, then, at the option and upon written demand of such insured, the matter or matters upon which such insured and we do not agree shall be settled by arbitration, administered by the \_\_\_\_\_ (*insert name of designated organization*), pursuant to procedures approved by the Superintendent of Financial Services for this purpose.
- b. If the maximum amount of SUM coverage provided by this endorsement equals the amount of coverage required to be provided by New York Insurance Law section 3420(f)(1) and New York Vehicle and Traffic Law Article 6 or 8, then such disagreement shall be settled by such arbitration procedures upon written demand of either the insured or us. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof, and any such insured and we each agree to be bound by any award made by the arbitrator as to this SUM coverage. For purposes of this Condition, the term "insured" includes any person authorized to act on behalf of the insured.

## 12. Subrogation

If we make a payment under this SUM coverage, then we have the right to recover the amount of the payment from any person legally responsible for the bodily injury or loss of the person to whom, or for whose benefit, such payment was made to the extent of the payment. The insured or any person acting on behalf of the insured must do whatever is necessary to transfer this right of recovery to us. Except as permitted by Condition 9., such person shall do nothing to prejudice this right.

## 13. Payment Of Loss By Company

We shall pay any amount due under this SUM coverage to the insured or, at our option, to a person authorized by law to receive such payment or to a person legally entitled to recover the damages which the payment represents.

## 14. Action Against Company

No lawsuit shall lie against us unless the insured or the insured's legal representative has first fully complied with all the terms of this SUM coverage.

## 15. Survivor Rights

If you or your spouse, if a resident of the same household, dies, then this SUM endorsement shall cover:

- a. The survivor as named insured;
- b. The decedent's legal representative as named insured, but only while acting within the scope of such representative's duties as such; and
- c. Any relative who was an insured at the time of such death.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## BROAD FORM WORK YOU PERFORMED AND FAULTY WORK ENDORSEMENT

This endorsement modifies the coverage provided under the following:

### AUTO DEALERS COVERAGE FORM

With respect to the coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

**A. Section II - General Liability Coverages, Part A. Bodily Injury And Property Damage Liability**, is amended by deleting exclusion **i. Work You Performed**.

**B. If the Declarations indicates Garagekeepers Coverage** is provided by this policy, that coverage is modified by the following:

#### Faulty Work Coverage:

1. Exclusions **(3) Defective Parts** and **(4) Faulty Work** do not apply.
2. The following is added to Paragraph **5. Limit Of Insurance And Deductibles**:

We will only pay for "loss" to a "customer's auto" under Faulty Work Coverage that exceeds the Faulty Work deductible indicated in the Declarations. This deductible applies separately to each "customer's auto". To settle a claim or "suit", we may pay all or any part of the deductible. If this happens you must reimburse us for the deductible or that portion of the deductible we have paid.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## DEDUCTIBLE - DAMAGE TO AUTO RESULTING FROM WORK PERFORMED

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

### SCHEDULE

Deductible - Damage to Auto Resulting From Work You Performed: \$ _____ Each Auto
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Information required to complete this Schedule, if not shown above, will be shown in the Declarations.
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**Section II, Paragraph F.7. - Limits Of Insurance - General Liability Coverages** is replaced by the following:

7. We will deduct the amount shown in the Schedule (or Declarations) from the damages in any "accident" resulting from "property damage" to an "auto" as a result of "work you performed" on that "auto". No other deductible applies to that "auto's" "property damage".

When other damage resulting from the same "accident" is subject to a deductible, the maximum amount subject to all deductibles under Section II - Liability Coverage for that "accident" will be equal to the largest applicable deductible.

To settle a claim or "suit", we may pay all or any part of the deductible. If this happens you must reimburse us for the deductible or that portion of the deductible we have paid.

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

## FELLOW EMPLOYEE COVERAGE

This endorsement modifies insurance provided under the following:

### AUTO DEALERS COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

- A. Under Section I - Covered Autos Liability Coverage**, the **Fellow Employee** Exclusion does not apply.
- B. Under Section II - General Liability Coverages**, Paragraph **D.5.** of the **Who Is An Insured** section is replaced by the following:
5. Your "employees", other than either your "executive officers" (if you are an organization other than a partnership or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of employment by you or while performing duties related to the conduct of your "auto dealer operations". However, no "employee" is an "insured" for:
- a. "Personal and Advertising Injury":**
- (1) To you (if you are an individual), your partners (if you are a partnership), your members (if you are a limited liability company) or a fellow "employee" of the "insured" while in the course of his or her employment or while performing duties related to the conduct of your "auto dealer operations";
- (2) To the spouse, child, parent, brother or sister of that fellow "employee" as a consequence of Paragraph (1) above;
- (3) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraph (1) or (2) above; or
- (4) Arising out of his or her providing or failing to provide professional health care services.
- b. "Property damage" to property:**
- (1) Owned, occupied or used by;
- (2) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by you, any of your "employees", any partner or member (if you are a partnership), or any member (if you are a limited liability company).



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

## **SOLD AUTOS - TEMPORARY PHYSICAL DAMAGE FOR CONTINGENT SALES**

This endorsement modifies insurance provided under the following:

### AUTO DEALERS COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by this endorsement.

**A. The following is added to Physical Damage Coverage for covered "autos":**

**Coverage**

1. If you have sold an "auto" under a "contingent sales agreement" and the "purchaser" of the "auto" fails to pay for a "loss" to that "auto", we will reimburse you for the "loss" if:
  - a. The "purchaser" is not complying with the conditions of the "contingent sales agreement";
  - b. The "auto" was in the "purchaser's" custody and presumed sold when the "loss" occurred;
  - c. The "purchaser" failed to obtain physical damage insurance required under the "contingent sales agreement" or the "purchaser's" physical damage insurance is not valid and collectible;
  - d. The "loss" was caused by a covered cause of loss; and
  - e. The "auto" has returned to your custody (except in the case of total theft of the "auto").
2. This coverage begins at the time the "auto" is first released to the "purchaser" and ends after 7 days or once the conditions of the "contingent sales agreement" have been met, whichever comes first.

3. Payment under this coverage extension does not imply a change in the "purchaser's" legal ownership of the "auto" or a recession of the "contingent sales agreement". The "purchaser" remains legally responsible for any damages from use of the "auto" during the period of the "contingent lease agreement".

**4. We will not pay for:**

- a. "Loss" due to any fraudulent scheme, trick, device, or false pretense.
- b. Any indirect or consequential loss, including loss arising out of your assuming liability from a bank, finance company, or other lender under a recourse loan or note.
- c. Any direct or consequential loss incurred by the "purchaser".
- d. A wholesale agreement involving another dealer, a wholesaler, auction or similar intermediary.

**B. The following is added to Section V - Definitions and only applies to the coverage provided by this endorsement:**

"Contingent sales agreement" means a retail sales contract or other purchase agreement for an "auto" which is contingent or conditional due to financing, insurance, co-signer or other conditions or contingencies included in the contract or agreement.

"Purchaser" means the party purchasing the "auto" under the "contingent sales agreement".

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## EXCLUSION – ACCESS OR DISCLOSURE OF CONFIDENTIAL OR PERSONAL INFORMATION AND DATA-RELATED LIABILITY – WITH LIMITED BODILY INJURY EXCEPTION

This endorsement modifies the coverage provided under the following:

AUTO DEALERS COVERAGE FORM

With respect to the coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

**Section II – General Liability Coverages** is modified by the following:

A. The following exclusion is added to Paragraph 2. **Exclusions of Coverage A – Bodily Injury And Property Damage Liability:**

**2. Exclusions**

This insurance does not apply to:

**Access Or Disclosure Of Confidential Or Personal Information And Data-related Liability**

Damages arising out of:

(a) Any access to or disclosure of any person's or organization's confidential or personal information, including patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of nonpublic information; or

(b) The loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate electronic data.

This exclusion applies even if damages are claimed for notification costs, credit monitoring expenses, forensic expenses, public relations expenses or any other loss, cost or expense incurred by you or others arising out of that which is described in Paragraph (a) or (b) above.

However, unless Paragraph (a) above applies, this exclusion does not apply to damages because of "bodily injury".

As used in this exclusion, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

B. The following exclusion is added to Paragraph 2. **Exclusions of Coverage B – Personal And Advertising Injury Liability:**

**2. Exclusions**

This insurance does not apply to:

**Access Or Disclosure Of Confidential Or Personal Information**

"Personal and advertising injury" arising out of any access to or disclosure of any person's or organization's confidential or personal information, including patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of nonpublic information.

This exclusion applies even if damages are claimed for notification costs, credit monitoring expenses, forensic expenses, public relations expenses or any other loss, cost or expense incurred by you or others arising out of any access to or disclosure of any person's or organization's confidential or personal information.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## NEW YORK CHANGES IN AUTO DEALERS COVERAGE FORM

For "auto dealer operations" conducted in New York, this endorsement modifies insurance provided under the following:

### AUTO DEALERS COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by this endorsement.

#### A. Changes In Covered Autos Liability Coverage

##### 1. D.1. Coverage is replaced by the following:

We will pay all sums an "insured" legally must pay as damages because of "bodily injury" or "property damage" to which this insurance applies, caused by an "accident" and resulting from the ownership, maintenance or use of covered "autos".

We will also pay all sums an "insured" legally must pay as a "covered pollution cost or expense" to which this insurance applies, caused by an "accident" and resulting from ownership, maintenance or use of covered "autos". However, we will only pay for the "covered pollution cost or expense" if there is either "bodily injury" or "property damage" to which this insurance applies that is caused by the same "accident".

We have the right and duty to defend any "insured" against a "suit" asking for such damages or a "covered pollution cost or expense", even if the allegations of the "suit" are groundless, false or fraudulent. However, we have no duty to defend any "insured" against a "suit" seeking damages for "bodily injury" or "property damage" or a "covered pollution cost or expense" to which this insurance does not apply. We may investigate and settle any claim or "suit" as we consider appropriate. Our duty to defend or settle ends when the Covered "Autos" Liability Coverage Limit of Insurance has been exhausted by payment of judgments or settlements.

This Paragraph D.1. does not apply to any damages because of "bodily injury" or "property damage" caused by an "accident" and resulting from "other auto dealer activities".

2. Who Is An Insured does not include anyone loading or unloading a covered "auto" except you, your "employees", a lessee or borrower or any of their "employees".

3. **Supplementary Payments** is amended as follows:

a. Paragraph (5) is replaced by the following:

(5) All costs taxed against the "insured" in any "suit" against the "insured" we defend.

b. The following paragraphs are added:

(7) All expenses incurred by an "insured" for first aid to others at the time of an "accident".

(8) The cost of appeal bonds.

4. Paragraph **b. Out-of-state Coverage Extensions** is replaced by the following:

**b. Out-of-state Coverage Extensions**

While a covered "auto" is used or operated in any other state or Canadian province, we will provide at least the minimum amount and kind of coverage which is required in such cases under the laws of such jurisdiction.

5. **Exclusions** is changed as follows:

a. The **Employee Indemnification And Employer's Liability** Exclusion is replaced by the following:

#### **Employee Indemnification And Employer's Liability**

This insurance does not apply to:

"Bodily injury" to an "employee" of the "insured" arising out of and in the course of:

(1) Employment by the "insured"; or

(2) Performing the duties related to the conduct of the "insured's" business.

But this exclusion does not apply to "bodily injury" to domestic "employees" not entitled to workers' compensation benefits or to liability assumed by the "insured" under an "insured contract". For the purposes of Covered Autos Liability Coverage, a domestic "employee" is a person engaged in household or domestic work performed principally in connection with a residence premises.

b. The **Fellow Employee** Exclusion is replaced by the following:

**Fellow Employee**

This insurance does not apply to:

"Bodily injury" to any fellow "employee" of the "insured" arising out of and in the course of the fellow "employee's" employment or while performing duties related to the conduct of your business.

However, this exclusion only applies if the fellow "employee" is entitled to benefits under any of the following: workers' compensation, unemployment compensation or disability benefits law, or any similar law.

c. The **Leased Autos** Exclusion does not apply.

d. The **Pollution** Exclusion does not apply.

e. The **Racing** Exclusion does not apply.

f. The **Handling Of Property** Exclusion does not apply.

g. The **Movement Of Property By Mechanical Device** Exclusion does not apply.

h. The **War** Exclusion is replaced by the following:

**War**

"Bodily injury" or "property damage" caused by war, whether or not declared, civil war, insurrection, rebellion or revolution, or any act or condition incident to any of the foregoing.

i. The following exclusion is added:

**Spousal Liability**

"Bodily injury" to or "property damage" of the spouse of an "insured". However, we will pay all sums an "insured" legally must pay if named as a third-party defendant in a legal action commenced by his or her spouse against another party.

6. The **Limit Of Insurance - Covered Autos Liability** section is changed by deleting paragraph 5.b. addressing the most we will pay for "Contract Drivers" and anyone required by law to be an insured.

7. If the Limit Of Insurance for Covered Autos Liability Coverage shown in the Declarations is equal to or greater than \$160,000, the **Limit Of Insurance - Covered Autos Liability** provision is changed by the following:

**Limit Of Insurance - Covered Autos Liability** applies except that we will apply the Limit Of Insurance for Covered Autos Liability Coverage shown in the Declarations to first provide the separate limits required by the New York Motor Vehicle Safety Responsibility Act for:

a. "Bodily injury" not resulting in death of any one person caused by any one "accident";

b. "Bodily injury" not resulting in death of two or more persons caused by any one "accident";

c. "Bodily injury" resulting in death of any one person caused by any one "accident";

d. "Bodily injury" resulting in death of two or more persons caused by any one "accident"; and

e. "Property damage" in any one "accident".

This provision will not change our total Limit of Insurance for Covered Autos Liability Coverage.

8. If the Limit Of Insurance for Covered Autos Liability Coverage shown in the Declarations is less than \$160,000, the **Limit Of Insurance - Covered Autos Liability** provision is replaced by the following:

**Limit Of Insurance - Covered Autos Liability**

Regardless of the number of covered "autos", "insureds", premiums paid, claims made or vehicles involved in the "accident", the most we will pay for the total of all damages and "covered pollution cost or expense" combined, resulting from any one "accident", is the Limit Of Insurance for Covered Autos Liability Coverage shown in the Declarations, except for those damages for "bodily injury" resulting in death. We will apply the Limit Of Insurance for Covered Autos Liability Coverage shown in the Declarations to first provide the separate limits required by the New York Motor Vehicle Safety Responsibility Act as follows:

a. "Bodily injury" not resulting in death of any one person caused by any one "accident";

- b. "Bodily injury" not resulting in death of two or more persons caused by any one "accident"; and
- c. "Property damage" in any one "accident".

This provision will not change our total Limit of Insurance for Covered Autos Liability Coverage.

All "bodily injury" and "property damage" resulting from continuous or repeated exposure to substantially the same conditions will be considered as resulting from one "accident".

In addition, our Limit of Insurance for Covered Autos Liability Coverage for "bodily injury" resulting in death is as follows:

- a. Up to \$50,000 for "bodily injury" resulting in death of any one person caused by any one "accident"; and
- b. Up to \$100,000 for "bodily injury" resulting in death of two or more persons caused by any one "accident", subject to a \$50,000 maximum for any one person.

If the Limit Of Insurance for Covered Autos Liability Coverage shown in the Declarations is not exhausted by payment of damages for:

- a. "Bodily injury" not resulting in death;
- b. "Property damage"; or
- c. "Covered pollution cost or expense";

any remaining amounts will be used to pay damages for "bodily injury" resulting in death, to the extent the Limit Of Insurance for Covered Autos Liability Coverage shown in the Declarations is not increased.

- 9. If forming part of the Policy, the Nuclear Energy Liability Exclusion (Broad Form) Endorsement does not apply to the Commercial Auto Coverage Part.

## B. Changes In Garagekeepers Coverage

- 1. Paragraph 1.b. is replaced by the following:
  - b. We have the right and duty to defend any "insured" against a "suit" asking for these damages, even if the allegations of the "suit" are groundless, false or fraudulent. However, we have no duty to defend any "insured" against a "suit" seeking damages for any loss to which this insurance does not apply. We may investigate and settle any claim or "suit" as we consider appropriate. Our duty to defend or settle ends for a coverage when the Limit of Insurance for that coverage has been exhausted by payment of judgments or settlements.

- 2. Exclusion 4.c. is replaced by the following:

- c. We will not pay for "loss" caused by war, whether or not declared, civil war, insurrection, rebellion or revolution, or any act or condition incident to any of the foregoing.

## C. Changes In Physical Damage Coverage

- 1. The **Owned Autos You Acquire After The Policy Begins** provision of **Section I - Covered Autos Coverages** is replaced by the following:

### Owned Autos You Acquire After The Policy Begins

- a. If Symbols **21, 22, 23, 24, 25** or **26** are entered next to a coverage in Item Two of the Declarations, then you have coverage for "autos" that you acquire of the type described for the remainder of the policy period.
- b. But, if Symbol **27** is entered next to a coverage in Item Two of the Declarations, an "auto" you acquire will be a covered "auto" for that coverage only if:
  - (1) We already cover all "autos" that you own for that coverage or it replaces an "auto" you previously owned that had that coverage; and
  - (2) You tell us within 30 days after you acquire it that you want us to cover it for that coverage.
- c. Notwithstanding the provisions of Paragraphs **a.** and **b.**, during the term of the Coverage Part, Physical Damage Coverage for an additional or replacement private passenger "auto" shall not become effective until you notify us and request coverage for the "auto".

However, if you replace a private passenger "auto" currently insured with us for a continuous period of at least 12 months, we will provide the same coverage which applied to the replaced "auto", without a coverage request, for five calendar days beginning on the date you acquired the replacement "auto". After five calendar days, coverage will not apply until you request coverage for the "auto".

- 2. The **War Or Military Action** Exclusion is replaced by the following:

### War Or Military Action

War, whether or not declared, civil war, insurrection, rebellion or revolution, or any act or condition incident to any of the foregoing.

3. The **Deductible** section is modified by the following:

a. Provision 5.a. is replaced with the following:

For each covered "auto", our obligation to pay for, return or replace damaged or stolen property will be reduced by the applicable deductible shown in the Declarations.

b. The following is added to provision C.2.:

But in no case will the hail deductible be reduced below a minimum of \$50.

4. The following provisions are added to **Physical Damage Coverage** and apply in place of any conflicting policy provisions:

a. **Mandatory Inspection For Physical Damage Coverage**

(1) We have the right to inspect any private passenger "auto", including a non-owned "auto", insured or intended to become insured under this Coverage Part before physical damage coverage shall be effective, except to the extent that this right is prescribed and limited by New York State Department of Financial Services' Insurance Regulation No. 79 (11 NYCRR 67) or Section 3411 of the New York Insurance Law.

(2) When an inspection is required by us, you must cooperate and make the "auto" available for the inspection.

b. **"Auto" Repairs Under Physical Damage Coverage**

Payment of a physical damage "loss" shall not be conditioned upon the repair of the "auto". We may not require that repairs be made by a particular repair shop or concern.

c. **Recovery Of Stolen Or Abandoned "Autos"**

If a private passenger "auto" insured under this Coverage Part for physical damage coverage is stolen or abandoned, we or our authorized representative shall, when notified of the location of the "auto", have the right to take custody of the "auto" for safekeeping.

#### D. Changes In General Liability Coverages

1. Paragraph A.1.a. **Coverage under Bodily Injury And Property Damage Liability** is replaced by the following:

We will pay all sums an "insured" legally must pay as damages because of "bodily injury" or "property damage" to which this insurance applies caused by an "accident", and resulting from your "Auto Dealer Operations" other than the ownership, maintenance or use of covered "autos".

We have the right and duty to defend any "insured" against a "suit" asking for these damages, even if the allegations of the "suit" are groundless, false or fraudulent. However, we have no duty to defend any "insured" against a "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. We may investigate and settle any claim or "suit" as we consider appropriate. But:

(1) The amount we will pay for damages is limited as described in Paragraph F. **Limits Of Insurance - General Liability Coverages**; and

(2) Our duty to defend or settle ends when the applicable limit of insurance has been exhausted by payment of judgments or settlements under Paragraph A. **Bodily Injury And Property Damage Liability** or B. **Personal And Advertising Injury Liability** or medical expenses under Paragraph C. **Locations And Operations Medical Payments**.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments.

2. Paragraph B.1. **Coverage under Personal And Advertising Injury Liability** is replaced by the following:

We will pay all sums the "insured" legally must pay as damages because of "personal and advertising injury" to which this insurance applies, caused by an offense arising out of your "Auto Dealer Operations", but only if the offense was committed in the coverage territory during the policy period.

We will have the right and duty to defend any "insured" against a "suit" asking for these damages, even if the allegations of the "suit" are groundless, false or fraudulent. However, we have no duty to defend any "insured" against a "suit" seeking damages for "personal and advertising injury" to which this insurance does not apply. We may investigate and settle any claim or "suit" as we consider appropriate. But:

- a. The amount we will pay for damages is limited as described in Paragraph F. Limits Of Insurance - General Liability Coverages; and
- b. Our duty to defend or settle ends when the applicable limit of insurance has been exhausted by payment of judgments or settlements under Paragraph A. **Bodily Injury And Property Damage Liability** or Paragraph B. **Personal And Advertising Injury Liability** or medical expenses under Paragraph C. **Locations And Operations Medical Payments**.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments.

**E. Changes In Acts, Errors Or Omissions Liability Coverages**

- 1. The second paragraph of A. **Coverage** is replaced by the following:

We will have the right and duty to defend any "insured" against a "suit" asking for these damages, even if the allegations of the "suit" are groundless, false or fraudulent. However, we have no duty to defend any "insured" against a "suit" seeking damages for "acts, errors or omissions" to which this insurance does not apply. We may investigate and settle any claim or "suit" as we consider appropriate. But:

- a. The amount we will pay for damages is limited as described in Paragraph E. Limits Of Insurance And Deductible; and
  - b. Our duty to defend or settle ends when we have used up the applicable limit of insurance in the payment of judgments or settlements.
- 2. The **Noncompensatory Damages** Exclusion is replaced by the following:

**Noncompensatory Damages**

This insurance does not apply to:

- a. Criminal fines or penalties imposed by law or regulation, punitive or exemplary damages or demands for injunctive or equitable relief;
- b. Civil fines or penalties levied by any governmental agency against the "insured" for "acts, errors or omissions" to which this insurance applies; or
- c. Any "suit" by any governmental agency seeking fines or penalties described in Paragraph a. or b. above.

- 3. The **Bankruptcy Or Insolvency** Exclusion is replaced by the following:

**Bankruptcy Or Insolvency**

This insurance does not apply to:

Damages arising out of the:

- a. Bankruptcy;
- b. Financial inability to pay;
- c. Insolvency;
- d. Liquidation; or
- e. Receivership;

of any insurance company, reinsurer or other risk-assuming entity in which the "insured" has placed or obtained insurance for a customer.

However, this exclusion does not apply if the insurance company, reinsurer or other risk-assuming entity was:

- (1) Rated "B+" or higher by A. M. Best Company, Inc. at the time the insurance was placed or obtained; or
- (2) Authorized or operated by a government body or bodies pursuant to statute or regulation, including assigned risk plans, joint underwriting associations, pools, FAIR Plans, or other residual market mechanisms, but only with respect to such entity in its capacity or operation in such programs.

**F. Changes In Conditions**

- 1. Paragraphs a. and b.(2) of **Duties In The Event Of Accident, Claim, Offense, Suit, Loss Or Acts, Errors Or Omissions** are replaced by the following:

We have no duty to provide coverage under this Policy if the failure to comply with the following duties is prejudicial to us:

- a. In the event of "accident", claim, "suit", offense, "loss" or "act, error or omission", you or someone on your behalf must give us or our authorized representative notice as soon as reasonably possible of the "accident", offense, "loss" or "act, error or omission". Include:
  - (1) How, when and where the "accident", offense, "loss" or "act, error or omission" occurred;
  - (2) What the "act, error or omission" was;
  - (3) The "insured's" name and address; and
  - (4) To the extent possible, the names and addresses of:
    - (a) Any injured persons and witnesses;
    - or

- (b) Anyone who may suffer damages as a result of an "act, error or omission".

Written notice by or on behalf of the injured person or any other claimant to our authorized representative shall be deemed notice to us.

- b. Additionally, you and any other involved "insured" must:

- (2) Send us copies of any request, demand, order, notice, summons or legal paper received concerning the claim or "suit" as soon as reasonably possible.

2. The **Legal Action Against Us** Condition is replaced by the following:

**Legal Action Against Us**

- a. Except as provided in Paragraph b., no one may bring a legal action against us until:

- (1) There has been full compliance with all of the terms of the Coverage Form; and  
(2) Under any liability coverage, we, by written agreement with the "insured" and the claimant, agree that the "insured" has an obligation to pay or until the amount of that obligation has finally been determined by judgment after trial. No person or organization has any right under this Policy to bring us into any action to determine the "insured's" liability.

- b. With respect to "bodily injury", "personal and advertising injury" and "act, error or omission" claims, if we deny coverage or do not admit liability because an "insured" or the injured person, someone acting for the injured person or other claimant fails to give us written notice as soon as practicable, then the injured person, someone acting for the injured person or other claimant may bring an action against us, provided the sole question is whether the denial of coverage or nonadmission of liability is based on the failure to provide timely notice.

However, the injured person, someone acting for the injured person or other claimant may not bring an action if within 60 days after we deny coverage or do not admit liability, we or an "insured":

- (1) Brings an action to declare the rights of the parties under the Policy; and  
(2) Names the injured person, someone acting for the injured person or other claimant as a party to the action.

3. The following provision is added and supersedes any provision to the contrary:

Failure to give notice to us as soon as practicable, as required under this Coverage Part, shall not invalidate any claim made by the "insured", injured person or any other claimant, unless the failure to provide such timely notice has prejudiced us. However, no claim made by the "insured", injured person or other claimant will be invalidated if it shall be shown not to have been reasonably possible to give such timely notice and that notice was given as soon as was reasonably possible thereafter.

4. The **Loss Payment - Physical Damage Coverages** Condition is replaced by the following:

**Loss Payment - Physical Damage Coverages**

At our option we may:

- a. Pay for or replace damaged or stolen property; or  
b. Return the stolen or damaged property, at our expense. We will pay for any damage that results to the "auto" from the "loss".

If we pay for the "loss", our payment will include the applicable sales tax for the damaged or stolen property.

5. The **Other Insurance** Condition is replaced by the following:

**Other Insurance**

- a. For any covered "auto" you own, this Coverage Form provides primary insurance, except it provides excess insurance while the covered "auto" is in the care, custody, or control of any person or organization other than you, your partners (if you are a partnership), members (if you are a limited liability company), stockholders, officers, directors, "employees", "temporary workers", individuals furnished a covered "auto" and named in the Declarations, or members of their and your household.

For any covered "auto" you don't own, the insurance provided by this Coverage Form is excess over any other collectible insurance. However, while a covered "auto" which is a "trailer" is connected to another vehicle, the Covered Autos Liability Coverage this Coverage Form provides for the "trailer" is:

- (1) Excess while it is connected to a motor vehicle you do not own; or  
(2) Primary while it is connected to a covered "auto" you own.



b. For Hired Auto Physical Damage Coverage, any covered "auto" you lease, hire, rent or borrow (including an "auto" rented or hired by your "employee" for use in your "Auto Dealer Operations") is deemed to be a covered "auto" you own. However, any "auto" that is leased, hired, rented or borrowed with a driver is not a covered "auto".

c. Regardless of the provisions of Paragraph a. above, this Coverage Form's Covered Autos Liability Coverage is primary for any liability assumed under an "insured contract".

If other valid and collectible insurance is available to the "insured" for a loss we cover under General Liability or Acts, Errors Or Omissions Liability Coverages, our obligations are limited as provided in Paragraphs d. and e. below:

d. This insurance is primary except when e. below applies. If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in f. below.

e. This Coverage Form is excess over any other valid and collectible insurance, whether primary, excess, contingent or on any other basis:

- (1) That is fire insurance for premises rented to you or temporarily occupied by you with permission of the owner;
- (2) That is insurance purchased by you to cover your liability as a tenant for "property damage" to premises rented to you or temporarily occupied by you with permission of the owner;
- (3) If the "loss" arises out of the maintenance or use of aircraft or watercraft to the extent not subject to Exclusion g. of Paragraph A. **Bodily Injury And Property Damage Liability of Section II - General Liability Coverages**; or
- (4) That is specifically written to apply as primary insurance for liability arising out of your "acts, errors or omissions".

f. When this Coverage Form and any valid and collectible insurance under any other Coverage Form or policy covers on the same basis, either excess or primary, we will pay only our share. Our share is the proportion that the Limit of Insurance of our Coverage Form bears to the total of the limits of all the Coverage Forms and policies covering on the same basis.

6. The **Two Or More Coverage Forms Or Policies Issued By Us** Condition is changed as follows:

This condition does not apply to liability coverage.

7. The **Premium Audit** Condition is amended by the addition of the following:

An audit to determine the final premium due or to be refunded will be completed within 180 days after the expiration date of the Policy or anniversary date, if this is a continuous policy or a policy written for a term longer than one year. But the audit may be waived if:

- a. The total annual premium attributable to the auditable exposure base is not reasonably expected to exceed \$1,500; or
- b. The Policy requires notification to the insurer with the specific identification of any additional exposure units (e.g., "autos") for which coverage is requested.

c. Except as provided in Paragraphs a. and b. above, the **Examination Of Your Books And Records** Common Policy Condition continues to apply.

8. The following condition is added:

**Transfer Of Duties When A Limit Of Insurance Is Used Up**

a. If we conclude that, based on "accidents", claims, "suits", offenses or "acts, errors or omissions" which have been reported to us and to which this insurance may apply, the:

- (1) General Liability Aggregate Limit;
- (2) Products And Work You Performed Aggregate Liability Limit;
- (3) Personal And Advertising Injury Liability Limit;
- (4) Each "Accident" Limit;
- (5) Damage To Premises Rented To You Limit; or
- (6) "Acts, Errors Or Omissions" Liability Aggregate Limit;

is likely to be used up in the payment of judgments or settlements, we will notify the

first Named Insured, in writing, to that effect.

However, this Paragraph a. does not apply to **Section I - Covered Autos Coverages.**

- b. When any limit of insurance described in Paragraphs a.(1) through a.(6) above has actually been used up in the payment of judgments or settlements:

(1) We will notify the first Named Insured, in writing, as soon as possible, that:

(a) Such limit has actually been used up; and

(b) Our duty to defend "suits" seeking damages subject to that limit has also ended.

(2) We will initiate, and cooperate in, the transfer of control, to any appropriate "insured", of all claims and "suits" seeking damages which are subject to that limit and which are reported to us before that limit is used up. That "insured" must cooperate in the transfer of control of said claims and "suits".

We agree to take such steps, as we deem appropriate, to avoid a default in, or continue the defense of, such "suits" until such transfer is completed, provided the appropriate "insured" is cooperating in completing such transfer.

We will take no action whatsoever with respect to any claim or "suit" seeking damages that would have been subject to that limit, had it not been used up, if the claim or "suit" is reported to us after that Limit of Insurance has been used up.

(3) The first Named Insured, and any other "insured" involved in a "suit" seeking damages subject to that limit, must arrange for the defense of such "suit" within such time period as agreed to between the appropriate "insured" and us. Absent any such agreement, arrangements for the defense of such "suit" must be made as soon as possible.

- c. The first Named Insured will reimburse us for expenses we incur in taking those steps we deem appropriate in accordance with Paragraph b.(2) above.

The duty of the first Named Insured to reimburse us will begin on:

(1) The date on which the applicable Limit of Insurance is used up, if we sent

notice in accordance with Paragraph a. above; or

(2) The date on which we sent notice in accordance with Paragraph b.(1) above, if we did not send notice in accordance with Paragraph a. above.

d. The exhaustion of any limit of insurance described in Paragraphs a.(1) through a.(6) above by the payments of judgments or settlements, and the resulting end of our duty to defend, will not be affected by our failure to comply with any of the provisions of this condition.

#### G. Changes In Definitions

1. The "covered pollution cost or expense" definition is replaced by the following:

"Covered pollution cost or expense" means any cost or expense arising out of:

a. Any request, demand, order or statutory or regulatory requirement; or

b. Any claim or "suit" by or on behalf of a governmental authority demanding;

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

2. The "insured contract" definition is replaced by the following:

"Insured contract" means:

1. A lease of premises;

2. A sidetrack agreement;

3. An easement or license agreement in connection with vehicle or pedestrian private railroad crossing at grade;

4. Any other easement agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;

5. An indemnification of a municipality as required by ordinance, except in connection with work for a municipality;

6. An elevator maintenance agreement;

7. That part of any contract or agreement entered into, as part of your "auto" dealership, by you or any of your employees, pertaining to the rental or lease of any "auto"; or

8. That part of any other contract or agreement pertaining to your "auto" dealership under which you assume the tort liability of another to pay damages because of "bodily injury" or "property damage" to a third person or organization, if the contract or agreement is made prior to the "bodily

injury" or "property damage". Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

An "insured contract" does not include that part of any contract or agreement:

1. That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
  - a. Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawing and specifications; or
  - b. Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.
2. That indemnifies any person or organization for damage by fire to premises rented or loaned to you or temporarily occupied by you with permission of the owner.
3. That pertains to the loan, lease or rental of the "auto" to you or any of your employees if the "auto" is loaned, leased or rented with a driver.
4. That holds a person or organization engaged in the business of transporting property by "auto" for hire harmless for your use of a covered "auto" over a route or territory that person or organization is authorized to serve by public authority.
5. Under which the "insured" assumes liability for injury or damage caused by the dumping, discharge or escape of:
  - a. Irritants, pollutants or contaminants that are, or that are contained in, any property that is:
    - (1) Being moved from the place where such property or pollutants are accepted by the "insured" for movement into or onto the covered "auto";
    - (2) Being transported or towed by the covered "auto";
    - (3) Being moved from the covered "auto" to the place where such property or pollutants are finally delivered, disposed of or abandoned by the "insured";
    - (4) Otherwise in the course of transit; or
    - (5) Being stored, disposed of, treated or processed in or upon the covered "auto" other than fuels, lubricants, fluids, exhaust gases or other similar pollutants that are needed for, or

result from, the normal electrical, hydraulic or mechanical functioning of the covered "auto" or its parts.

- b. Irritants, pollutants or contaminants not described in Paragraph a. above unless:

- (1) The pollutants or any property in which the pollutants are contained are upset, overturned or damaged as a result of the maintenance or use of the covered "auto"; and
- (2) The discharge, dispersal, release or escape of the pollutants is caused directly by such upset, overturn or damage.

3. The "loading or unloading" definition does not apply.

4. The following definition is added:

"Other auto dealer activities" means the leasing or rental of covered "autos", to others, other than the leasing or rental of covered "autos" to customers while their "autos" are left with you for service or repair.

5. The following changes are made to the definition of "Personal and Advertising Injury":

- a. Item 9 of the definition is deleted and replaced by the following:

Discrimination arising out of "disparate impact" or the insured's "vicarious liability" arising out of an act of discrimination or harassment of a person. This does not include the insured's "vicarious liability" for acts of discrimination or harassment committed by or at the direction of you or an insured partner, member of a joint advertising venture, member or manager if you are a limited liability company, executive officer, director, stockholder or an insured spouse if you are an insured individual or partner.

- b. These offenses are added:

10. Errors in the description of any product, prize or price committed in a joint advertising venture; or

11. Any alleged breach of contract in a joint advertising venture.

6. The following definitions are added:

"Disparate impact" means the adverse impact of a practice which appears to be neutral, which has the effect of discriminating against a group of individuals due to their race, sex, national origin, age or disability and not justified by business necessity.

"Vicarious liability" means liability that a person or organization bears for the actions of a subordinate or associate.

5. If the Stated Amount Insurance endorsement is attached, then Paragraph C.2. of that endorsement does not apply.

#### H. Changes In Forms And Endorsements

1. All references to Underinsured Motorists Coverage shall mean Supplementary Uninsured/Underinsured Motorists Coverage.

2. If the Garagekeepers Coverage - Customers' Sound-receiving Equipment endorsement is attached, then:

a. Paragraph B.2. is replaced by the following:

2. We have the right and duty to defend any "insured" against a "suit" asking for these damages, even if the allegations of the "suit" are groundless, false or fraudulent. However, we have no duty to defend any "insured" against a "suit" seeking damages for any loss to which this insurance does not apply. We may investigate and settle any claim or "suit" as we consider appropriate. Our duty to defend or settle ends for a coverage when the Limit of Insurance for that coverage has been exhausted by payment of judgments or settlements.

b. Exclusion 3. is replaced by the following:

3. We will not pay for "loss" caused by war, whether or not declared, civil war, insurrection, rebellion or revolution, or any act or condition incident to any of the foregoing.

3. If the Auto Medical Payments Coverage endorsement is attached, the exclusion which refers to declared or undeclared war or insurrection is replaced by the following:

This insurance does not apply to "bodily injury" caused by war, whether or not declared, civil war, insurrection, rebellion or revolution, or any act or condition incident to any of the foregoing.

4. If the Single Interest Automobile Physical Damage Insurance Policy is attached, the War Exclusion is replaced by the following:

This insurance does not apply to "loss" caused by war, whether or not declared, civil war, insurrection, rebellion or revolution, or any act or condition incident to any of the foregoing.

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

## **FLOORPLAN EXCLUSION ENDORSEMENT**

This endorsement modifies insurance provided under the following:

### AUTO DEALERS COVERAGE FORM

With respect to the coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

Exclusion f. of **Section I, Coverage F - Physical Damage Coverage**, under Paragraph **3. Exclusions**, is replaced by the following:

- g.** We will not pay for "loss" to any "auto" insured under any:
  - (1)** Floorplan or other physical damage insurance program provided by the manufacturer, floorplanner or other lender; or
  - (2)** Other physical damage insurance coverage.

All other terms and provisions of this policy remain unchanged.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## NEW YORK VICARIOUS LIABILITY COVERAGE - IDENTITY THEFT

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by this endorsement.

### SCHEDULE

**Vicarious Liability - Identity Theft Each Customer Limit of Insurance:** \$

**Vicarious Liability - Identity Theft Aggregate Limit of Insurance:** \$

(If no entry appears above, the information needed to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

**Section II - General Liability Coverages** is amended by the addition of the following:

#### A. Vicarious Liability Coverage - Identity Theft

1. We will also pay sums you must pay as damages arising out of your "vicarious liability" due to the actions of your "employees" other than:
  - a. Your partners (if you are a partnership);
  - b. Your members or managers (if you are a limited liability company);
  - c. Your directors; or
  - d. Your executive officers;

resulting from the theft or misuse of a customer's social security number, credit history or other personal information.

2. We have the right and duty to defend you against any "suit" asking for these damages, even if the allegations of the "suit" are groundless, false or fraudulent. However, we have no duty to defend you against a "suit" to which this insurance does not apply. We may investigate or settle any claim or "suit" as we consider appropriate. Our duty to defend or settle ends when the applicable "**Vicarious Liability**" - **Identity Theft Each Customer Limit of Insurance** has been exhausted by payment of judgments or settlements.

3. This insurance only applies to "employees" actions, involving a particular customer's social security number, credit history or other personal information, only if those actions take place during the policy period and you or any other "employee" authorized by you to give or receive notice of a claim or "suit" knew that the actions had taken place. If you or any such authorized "employee" knew of such actions prior to the effective date of the policy period, then any continuation, change or resumption of such actions, by an "employee" or group of "employees", during or after the policy period will be deemed to have been known prior to the effective date of the policy.

An "employee's" actions will be deemed to have been known when you or an "employee" authorized by you to receive notice of a claim or "suit":

- a. Reports all or any part of the actions to us or any other insurer;
- b. Receives a written or verbal demand or claim for damages because of the misuse of a customer's social security number, credit history or other personal information.
- c. Becomes aware by any other means of the misuse of a customer's social security number, credit history or other personal information.

4. You are the only "insured" for the coverage provided by this endorsement.

#### B. Exclusions

The coverage provided by this endorsement does not apply to:

1. Claims or "suits" arising out of the actions committed by or with the knowledge or at the direction of you, your partners (if you are a partnership), members or managers (if you are a limited liability company), directors or executive officers.
2. Liability assumed under any contract or agreement. This exclusion will not apply to "vicarious liability" you would have had in the absence of the contract or agreement.
3. Damages or other amounts you must pay under any recourse or other agreement to become responsible in the event of default by the purchaser of any credit you have arranged or placed.

#### C. Who Is An Insured

1. For the coverage provided by this endorsement, Part D. **Who Is An Insured** is replaced by the following:

You are the only insured for Vicarious Liability Coverage - Identity Theft.

#### D. Limits Of Insurance

1. **F. Limits Of Insurance - General Liability Coverages** is amended by adding the following to Paragraph 1.a.:  
(4) Damages for "Vicarious Liability" Coverage - Identity Theft.
2. Subject to the **General Liability Aggregate Limit**, and regardless of the number of "insureds", claims made, "suits" brought or persons or organizations making a claim or bringing "suits", the most we will pay for the sum of all damages involving your "vicarious liability" from the theft or misuse of a customers social security number, credit history or other personal information is the **Aggregate Limit Of Insurance - "Vicarious Liability" - Identity Theft** shown in the Declarations.
3. Subject to Paragraphs C.1. and C.2. above, and regardless of the number of "insureds" or "employees" involved, the most we will pay for a claim or "suit" brought by a customer is the **"Vicarious Liability" - Identity Theft Each Customer Limit of Insurance** shown in the Declarations.

4. The **"Vicarious Liability" - Identity Theft Aggregate Limit Of Insurance** applies separately to each consecutive annual policy period and to any remaining period of less than 12 months starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months.

If the policy period is extended after issuance for an additional period of less than 12 months, the additional period will be deemed part of the last preceding period for purposes of determining the **"Vicarious Liability" - Identity Theft Aggregate Limit Of Insurance**, unless we sent the First Named Insured an incomplete or late conditional renewal notice, or a late nonrenewal notice. In that case, the **"Vicarious Liability" - Identity Theft Aggregate Limit Of Insurance** will be increased in proportion to any policy extension provided in accordance with the New York Cancellation Provisions attached to this policy by separate endorsement.

#### E. Changes In Conditions

1. The following condition is added:

##### **Transfer Of Duties When A Limit Of Insurance Is Used Up**

- a. If we conclude that, based on "accidents", claims or "suits" which have been reported to us and to which this insurance may apply, the **General Liability Aggregate Limit** is likely to be used up in the payment of judgments or settlements, we will notify the first Named Insured, in writing, to that effect.
- b. When the **General Liability Aggregate Limit** has actually been used up in the payment or judgments or settlements:
  - (1) We will notify the first Named Insured, in writing, as soon as possible, that:
    - (a) Such limit has actually been used up; and
    - (b) Our duty to defend "suits" seeking damages subject to that limit has also ended.
  - (2) We will initiate, and cooperate in, the transfer of control, to any appropriate "insured", of all claims and "suits" seeking damages which are subject to that limit and which are reported to us before that limit is used up. That "insured" must cooperate in the transfer of control of said claims and "suits".

We agree to take such steps, as we deem appropriate, to avoid a default in, or continue the defense of, such "suits" until such transfer is completed, provided the appropriate "insured" is cooperating in completing such transfer.

We will take no action whatsoever with respect to any claim or "suit" seeking damages that would have been subject to that limit, had it not been used up, if the claim or "suit" is reported to us after that limit of insurance has been used up.

- (3) The first Named Insured, and any other "insured" involved in a "suit" seeking damages subject to that limit, must arrange for the defense of such "suit" within such time period as agreed to between the appropriate "insured" and us. Absent any such agreement, arrangements for the defense of such "suit" must be made as soon as possible.
- c. The first Named Insured will reimburse us for expenses we incur in taking those steps we deem appropriate in accordance with Paragraph b.(2) above.

The duty of the first Named Insured to reimburse us will begin on:

- (1) The date on which the applicable limit of insurance is used up, if we sent notice in accordance with Paragraph a. above; or
  - (2) The date on which we sent notice in accordance with Paragraph b.(1) above, if we did not send notice in accordance with Paragraph a. above.
- d. The exhaustion of the **General Liability Aggregate Limit** by the payments of judgments or settlements, and the resulting end of our duty to defend, will not be affected by our failure to comply with any of the provisions of this Condition.

#### F. Additional Definitions

**Section V - Definitions** is amended by the addition of the following:

"Vicarious liability" means liability that a person or organization bears for the actions of a subordinate or associate.

All other terms and provisions of this policy remain unchanged.



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## BROAD FORM PRODUCTS COVERAGE

This endorsement modifies the coverage provided under the following:

### AUTO DEALERS COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

Paragraph **A. Bodily Injury And Property Damage Liability of Section II - General Liability Coverage** is changed as follows:

Exclusion **2.h. Defective Products** does not apply.

However, subject to the **General Liability Bodily Injury And Property Damage Liability** Each "Accident" Limit, the coverage only applies to that amount of "property damage" to your "products" that exceeds a \$500 deductible for any one "accident". If the policy is subject to a higher Liability Coverage Deductible or Property Damage Only Liability Deductible, then that higher deductible will apply to the "accident" instead of the \$500 deductible.

To settle any claim or "suit", we may pay all or any part of the deductible. If this happens you must reimburse us for the deductible or the part of the deductible we have paid.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## DATA COMPROMISE COVERAGE

This endorsement modifies insurance provided under the following:

GARAGE COVERAGE FORM

### SCHEDULE

Data Compromise Coverage - Aggregate Limit:	\$
Legal And Forensic Information Technology Review Sublimit	\$
	Any one "Personal Data Compromise"
Data Compromise Deductible:	\$
	Any one "Personal Data Compromise"

**A. The following is added to Section II - Liability Coverage, A. Coverage:**

**Data Compromise Coverage**

**1. Insuring Agreement**

If the following requirements are met, we will pay for the costs to which this additional insurance applies. Under this additional insurance, we have no duty to defend you from claims or suits. The limits and deductible applicable to Data Compromise Coverage are separate from and in addition to the limits and deductibles that apply to your Commercial Auto coverage. If there is an overlap between the coverage provided by this endorsement and coverage provided elsewhere in this policy, the coverage provided by this endorsement is primary. Coverage under this Data Compromise Coverage endorsement applies only if all of the following requirements are met:

- a. There has been a "personal data compromise"; and
- b. Such "personal data compromise" is first discovered by you during the policy period for which this Data Compromise Coverage is applicable; and
- c. Such "personal data compromise" is reported to us within 60 days after the date it is first discovered by you.

**2. If all three of the requirements listed above have been met, then we will provide you with the following coverages. Please note that service providers must be approved by us as described in Additional Condition 4. - Service Providers.**

**a. Legal And Forensic Information Technology Review**

We will pay your necessary and reasonable costs for the following outside professional services:

**(1) Legal Services**

Professional legal counsel review of the "personal data compromise" and how you should best respond to it.

**(2) Forensic Information Technology Services**

Professional information technologies review if needed to determine, within the constraints of what is possible and reasonable, the nature and extent of the "personal data compromise" and the number and identities of the "affected individuals".

**b. Notification To Affected Individuals**

We will pay your necessary and reasonable costs to provide notification of the "personal data compromise" to "affected individuals".

DATA COMPROMISE COVERAGE - CONTINUED

**c. Services To Affected Individuals**

We will pay your necessary and reasonable costs to provide the following services to "affected individuals":

**(1) Informational Materials**

A packet of loss prevention and customer support information.

**(2) Help Line**

A toll-free telephone line for "affected individuals" to contact with questions about the "personal data compromise" or to request additional services as listed in (3) and (4).

**(3) Credit Report And Monitoring**

A credit report and an electronic service which monitors for activities that may affect an individual's credit records. This service is subject to the "affected individual" enrolling for this service with the designated service provider.

**(4) Identity Restoration Case Management**

With respect to any "affected individual" who is or appears to be a victim of "identity theft" that may reasonably have arisen from the "personal data compromise", the services of an identity restoration professional who will assist the "affected individual" through the process of correcting credit and other records; and, within the constraints of what is possible and reasonable, restoring control over the "affected individual's" personal identity.

**3. Exclusions**

With respect to the provisions of this endorsement only, the following is added to **Section II - Liability Coverage, B. Exclusions:**

The coverage provided by this endorsement does not apply to:

- a. Any "personal data compromise" involving intentional or willful complicity by the sole proprietor (if you are a sole proprietorship), your partners (if you are a partnership), your members (if you are a limited liability company), or your "executive officer" or directors (if you are a corporation). However, this exclusion shall not apply if you have no knowledge of or involvement in such complicity.

- b. Any "personal data compromise" arising out of any criminal, fraudulent or dishonest act, error or omission, or any intentional or knowing violation of the law by the sole proprietor (if you are a sole proprietorship), your partners (if you are a partnership), your members (if you are a limited liability company), or your "executive officers" or directors (if you are a corporation). However, this exclusion shall not apply if you have no knowledge of or involvement in such fraud, dishonesty or criminal act.

- c. Any "personal data compromise" occurring prior to the first inception of this Data Compromise Coverage endorsement. However,

(1) If you had continuous coverage under your prior policy that is substantially similar to the coverage provided by this endorsement; and

(2) The prior coverage would not apply to a "personal data compromise" that was discovered after that prior coverage ended;

this exclusion will not apply to a "personal data compromise" which occurred after the first inception date of the prior continuous coverage.

- d. Any third party liability or defense costs.

- e. Except as specifically provided under Coverage A.2.a.(2) **Forensic Information Technology Review Services**, costs to research any deficiency. This includes, but is not limited to, any deficiency in your systems, procedures or physical security that may have contributed to a "personal data compromise".

- f. Costs to correct any deficiency. This includes, but is not limited to, any deficiency in your systems, procedures or physical security that may have contributed to a "personal data compromise".

- g. Any fines or penalties. This includes, but is not limited to, fees or surcharges from affected financial institutions.

- h. Any criminal investigations or proceedings.

- i. Any "personal data compromise" involving threat, extortion or blackmail. This includes, but is not limited to, ransom payments and private security assistance.

## DATA COMPROMISE COVERAGE - CONTINUED

- j. Any "personal data compromise" involving any virus or other malicious code that is or becomes named and recognized by the CERT Coordination Center, McAfee, Secunia, Symantec or other comparable third party monitors of malicious code activity.
- k. Any "personal data compromise" arising out of your reckless disregard for the security of "personally identifying information" in your care, custody or control.

### B. Who Is An Insured

With respect to the provisions of this endorsement only, **Section II - Liability Coverage, A.3. Who Is An Insured** is replaced by the following:

You are the only "insured" for the Data Compromise Coverage.

### C. Limits Of Insurance

With respect to the provisions of this endorsement only, **Section II - Liability Coverage, C. Limit Of Insurance** is replaced by the following:

1. The most we will pay under this Data Compromise Coverage is the Data Compromise Coverage - Aggregate Limit indicated in the Schedule of this endorsement. This is an aggregate limit, and is the most we will pay for the total of all covered costs arising out of all "personal data compromise" events which are first discovered by you during the policy period shown in the Declarations. This limit applies regardless of the number of "personal data compromise" events discovered during that period.
2. The most we will pay under Legal and Forensic Information Technology Review coverage is the Legal and Forensic Information Technology Sublimit indicated in the Schedule of this endorsement. This sublimit is part of, and not in addition to, the Data Compromise Coverage - Aggregate Limit.
3. A "personal data compromise" may be first discovered by you in one policy period but cause covered costs in one or more subsequent policy periods. If so, all covered costs arising from such "personal data compromise" will be subject to the Data Compromise Coverage - Aggregate Limit and Legal and Forensic Information Technology Sublimit applicable to the policy period when the "personal data compromise" was first discovered by you.

4. Coverage for services to "affected individuals" is limited to costs to provide such services for a period of up to one year from the date of the notification to the "affected individuals". Notwithstanding, coverage for Identity Restoration Case Management services initiated within such one year period may continue for a period of up to one year from the date such Identity Restoration Case Management services are initiated.

### D. Deductible

With respect to the provisions of this endorsement only, the following replaces **Section II - Liability Coverage, D. Deductible**:

All coverages provided under this Data Compromise Coverage endorsement are jointly subject to the Data Compromise Deductible indicated in the Schedule of this endorsement.

You shall be responsible for such deductible amount with respect to each "personal data compromise" covered under this endorsement.

### E. Additional Conditions

With respect to the provisions of this endorsement only, the following additional conditions are added to **Section V - Garage Conditions**, and apply to all coverages provided under this endorsement:

#### 1. Due Diligence

You agree to use due diligence to prevent and mitigate costs covered under this endorsement. This includes, but is not limited to, complying with reasonable and industry-accepted protocols for:

- a. Providing and maintaining appropriate physical security for your premises, computer systems and hard copy files;
- b. Providing and maintaining appropriate computer and Internet security;
- c. Maintaining and updating at appropriate intervals backups of computer data;
- d. Protecting transactions, such as processing credit card, debit card and check payments; and
- e. Appropriate disposal of files containing "personally identifying information", including shredding hard copy files and destroying physical media used to store electronic data.

## DATA COMPROMISE COVERAGE - CONTINUED

### 2. Legal Advice

We are not your legal advisor and do not provide legal counsel to you. None of the services we provide under this coverage constitute legal advice to you. Our determination of what is or is not covered under this Data Compromise Coverage endorsement does not represent advice or counsel from us about what you should or should not do.

### 3. Pre-notification Consultation

You agree to consult with us prior to the issuance of notification to "affected individuals". We assume no responsibility under this Data Compromise Coverage for any services promised to "affected individuals" without our prior agreement. If possible, this pre-notification consultation will also include the designated service provider(s) as agreed to under Additional Condition 4. **Service Providers.** You must provide the following at our pre-notification consultation with you:

- a. The exact list of "affected individuals" to be notified, including contact information;
- b. Information about the "personal data compromise" that may appropriately be communicated with "affected individuals"; and
- c. The scope of services that you desire for the "affected individuals". For example, coverage may be structured to provide fewer services in order to make those services available to more "affected individuals" without exceeding the available Data Compromise Coverage - Aggregate Limit.

### 4. Service Providers

- a. We will only pay under this Data Compromise Coverage for services that are provided by service providers approved by us. You must obtain our prior approval for any service provider whose expenses you want covered under this Data Compromise Coverage. We will not unreasonably withhold such approval.
- b. Prior to the Pre-Notification Consultation described in Additional Condition 3. above, you must come to agreement with us regarding the service provider(s) to be used for the Notification to Affected Individuals and Services to Affected Individuals. We will suggest a service provider. If you prefer to use an alternate service provider, our coverage is subject to the following limitations:

(1) Such alternate service provider must be approved by us; and

(2) Our payment for services provided by any alternate service provider will not exceed the amount that we would have paid using the service provider we had suggested.

### 5. Services

The following conditions apply with respect to any services provided to you or any "affected individual" by us, our designees or any service firm paid for in whole or in part under this Data Compromise Coverage:

- a. The effectiveness of such services depends on your cooperation and assistance;
- b. All services may not be available or applicable to all individuals. For example, "affected individuals" who are minors or foreign nationals may not have credit records that can be provided or monitored. Service in Canada will be different from service in the United States and Puerto Rico in accordance with local conditions;
- c. We do not warrant or guarantee that the services will end or eliminate all problems associated with the covered events; and
- d. You will have a direct relationship with the professional service firms paid for in whole or in part under this coverage. Those firms work for you.

### F. Definitions

With respect to the provisions of this endorsement only, the following definitions are added to **Section VI - Definitions**:

1. "Affected individual" means any person who is your current, former or prospective customer, client, member, owner, director or employee and whose "personally identifying information" is lost, stolen, accidentally released or accidentally published by a "personal data compromise" covered under this endorsement. This definition is subject to the following provisions:
  - a. "Affected individual" does not include any business or organization. Only an individual person may be an "affected individual".

DATA COMPROMISE COVERAGE - CONTINUED

- b. An "affected individual" must have a direct relationship with your interests as an insured under this policy. The following are examples of individuals who would not meet this requirement:
- (1) If you aggregate or sell information about individuals as part of your business, the individuals about whom you keep such information do not qualify as "affected individuals". However, specific individuals may qualify as "affected individuals" for another reason; including, but not limited to, being an "employee" of yours.
  - (2) If you store, process, transmit or transport records, the individuals whose "personally identifying information" you are storing, processing, transmitting or transporting for another entity do not qualify as "affected individuals". However, specific individuals may qualify as "affected individuals" for another reason; including, but not limited to, being an "employee" of yours.
  - (3) You may have operations, interests or properties that are not insured under this policy. Individuals who have a relationship with you through such other operations, interests or properties do not qualify as "affected individuals". However, specific individuals may qualify as "affected individuals" for another reason; including, but not limited to, being an "employee" of the operation insured under this policy.
- c. An "affected individual" may reside anywhere in the world.
2. "Identity theft" means the fraudulent use of "personally identifying information". This includes fraudulently using such information to establish credit accounts, secure loans, enter into contracts or commit crimes.
- "Identity theft" does not include the fraudulent use of a business name, d/b/a or any other method of identifying a business activity.
3. "Personal data compromise" means the loss, theft, accidental release or accidental publication of "personally identifying information" with respect to any one or more "affected individuals" if such loss, theft, accidental release or accidental publication has or could reasonably result in the fraudulent use of such information. This definition is subject to the following provisions:
- a. At the time of the loss, theft, accidental release or accidental publication, the "personally identifying information" must be in your direct care, custody or control.
  - b. "Personal data compromise" does not include the loss, theft, release or publication of information that is in the care, custody or control of a third party to whom you have directly or indirectly turned over such information for any reason. This includes, but is not limited to, storage, processing, transmission or transportation of such information.
  - c. "Personal data compromise" includes disposal or abandonment of "personally identifying information" without appropriate safeguards such as shredding or destruction, subject to the following provisions:
    - (1) Your failure to use appropriate safeguards must be accidental and not reckless or deliberate; and
    - (2) Such disposal or abandonment must take place during the time period for which this Data Compromise Coverage endorsement is effective.
  - d. "Personal data compromise" includes situations where there is a reasonable cause to suspect that such "personally identifying information" has been lost, stolen, accidentally released or accidentally published, even if there is no firm proof.
  - e. All incidents of "personal data compromise" that are discovered at the same time or arise from the same cause will be considered one "personal data compromise".
4. "Personally identifying information" means information that could be used to commit fraud or other illegal activity involving the credit or identity of an "affected individual". This includes, but is not limited to, Social Security numbers or account numbers correlated with names and addresses.
- "Personally identifying information" does not mean or include information that is otherwise available to the public, such as names and addresses with no correlated Social Security numbers or account numbers.
- All other terms and provisions of this policy remain unchanged.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## IDENTITY RECOVERY COVERAGE - NEW YORK

This endorsement modifies insurance provided under the following:

### GARAGE COVERAGE FORM

**A. The following is added to Section II - Liability Coverage, A. Coverage:**

**Identity Recovery Coverage**

**1. Insuring Agreement**

We will provide reimbursement of necessary and reasonable "identity recovery expenses" incurred as a direct result of an "identity theft" to which this additional insurance applies. Under this additional insurance, we have no duty to defend you or any "identity recovery insured" from claims or suits. The limits and deductible applicable to Identity Recovery Coverage are separate from and in addition to the limits and deductibles that apply to your Commercial Auto coverage. Coverage provided under this additional insurance applies only if all of the following requirements are met:

There has been an "identity theft" involving the personal identity of an "identity recovery insured" under this policy; and

- a. Such "identity theft" is first discovered by the "identity recovery insured" during the policy period for which this Identity Recovery Coverage is applicable; and
- b. Such "identity theft" is reported to us within 60 days after it is first discovered by the "identity recovery insured"; and
- c. Such "identity theft" is reported in writing to the police.

**B. Exclusions**

With respect to the provisions of this endorsement only, the following is added to **Section II - Liability Coverage, B. Exclusions:**

1. We will not reimburse an "identity recovery insured" for "identity recovery expenses" arising from any of the following:
  - a. The theft of a professional or business identity; or

- b. Any fraudulent, dishonest or criminal act by an "identity recovery insured" or any person aiding or abetting an "identity recovery insured", or by any authorized representative of an "identity recovery insured", whether acting alone or in collusion with others. However, this exclusion shall not apply to the interests of an "identity recovery insured" who has no knowledge of or involvement in such fraud, dishonesty or criminal act.

**C. Who Is An Insured**

With respect to the provisions of this endorsement only, **Section II - Liability Coverage, A.3. Who Is An Insured** is replaced by the following:

Only an "identity recovery insured" is an "insured" under Identity Recovery Coverage.

**D. Limits Of Insurance**

With respect to the provisions of this endorsement only, **Section II - Liability Coverage, C. Limit Of Insurance** is replaced by the following:

1. The most we will reimburse an "identity recovery insured" for under this additional coverage is the Identity Recovery Coverage Limit of \$15,000 per "identity recovery insured". Regardless of the number of claims, this limit is the most we will pay for the total of all "identity recovery expenses" arising out of all "identity thefts" to any one "identity recovery insured", which are first discovered by the "identity recovery insured" during the policy period shown in the Declarations. If an "identity theft" is first discovered in one policy period and continues into other policy periods, all "identity recovery expenses" arising from such "identity theft" will be subject to the aggregate limit applicable to the policy period in which the "identity theft" was first discovered.

IDENTITY RECOVERY COVERAGE - NEW YORK - CONTINUED

2. Legal costs as provided under Item d. of the definition of "identity recovery expenses" are part of, and not in addition to, the Identity Recovery Coverage Limit.
3. Item e. (**Lost Wages**) and Item f. (**Child and Elder Care Expenses**) of the definition of "identity recovery expenses" are jointly subject to a sublimit of \$5,000. This sublimit is part of, and not in addition to, the Identity Recovery Coverage Limit. Coverage is limited to wages lost and expenses incurred within 12 months after the first discovery of the "identity theft" by the "identity recovery insured".
4. Item g. (**Miscellaneous Unnamed Costs**) of the definition of "identity recovery expenses" is subject to a sublimit of \$1,000. This sublimit is part of, and not in addition to, the Identity Recovery Coverage Limit. Coverage is limited to costs incurred within 12 months after the first discovery of the "identity theft" by the "identity recovery insured".

**E. Supplementary Payments**

With respect to the provisions of this endorsement only, **Section II - Liability Coverages, A.4.a. Supplementary Payments** is replaced by the following:

**Supplementary Payments - Case Management Service**

We will provide the services of an "identity recovery case manager" as needed to respond to an "identity theft".

Case Management Service is available as needed for any one "identity theft" for up to 12 consecutive months from the inception of the service. Expenses we incur to provide Case Management Service do not reduce the limit available for Identity Recovery Coverage.

**F. Deductible**

With respect to the provisions of this endorsement only, the following replaces **Section II - Liability Coverage, D. Deductible**:

Case Management Service is not subject to a deductible.

Identity Recovery Coverage is subject to a deductible of \$250. Anyone "identity recovery insured" shall be responsible for only one deductible under this Identity Recovery Coverage during any one policy period.

**G. Additional Conditions**

With respect to the provisions of this endorsement only, the following additional conditions are added to **Section V - Garage Conditions**, and apply to all coverages provided under this endorsement:

**1. Case Management Services**

In some cases, we may provide Case Management Services at our expense to an "identity recovery insured" prior to a determination that a covered "identity theft" has occurred. Our provision of such services is not an admission of coverage under the policy. We reserve the right to deny further coverage or service if, after investigation, we determine that a covered "identity theft" has not occurred.

**2. Supporting Documentation**

With respect to Identity Recovery Coverage, the "identity recovery insured" must send to us, within 60 days after our request, receipts, bills or other records that support his or her claim for "identity recovery expenses".

**3. Services**

The following conditions apply with respect to any services provided by us or our designees to any "identity recovery insured" under this endorsement:

- a. Our ability to provide helpful services in the event of an "identity theft" depends on the cooperation, permission and assistance of the "identity recovery insured".
- b. All services may not be available or applicable to all individuals. For example, "identity recovery insureds" who are minors or foreign nationals may not have credit records that can be provided or monitored. Service in Canada will be different from service in the United States and Puerto Rico in accordance with local conditions.
- c. We do not warrant or guarantee that our services will end or eliminate all problems associated with an "identity theft" or prevent future "identity thefts".



IDENTITY RECOVERY COVERAGE - NEW YORK - CONTINUED

**H. Definitions**

With respect to the provisions of this endorsement only, the following definitions are added to **Section VI - Definitions**:

1. "Identity recovery case manager" means one or more individuals assigned by us to assist an "identity recovery insured" with communications we deem necessary for re-establishing the integrity of the personal identity of the "identity recovery insured". This includes, with the permission and cooperation of the "identity recovery insured", written and telephone communications with law enforcement authorities, governmental agencies, credit agencies and individual creditors and businesses.
  2. "Identity recovery expenses" means the following when they are reasonable and necessary expenses that are incurred as a direct result of an "identity theft":
    - a. Costs for re-filing applications for loans, grants or other credit instruments that are rejected solely as a result of an "identity theft".
    - b. Costs for notarizing affidavits or other similar documents, long distance telephone calls and postage solely as a result of an "identity recovery insured's" efforts to report an "identity theft" or amend or rectify records as to their true name or identity as a result of an "identity theft".
    - c. Costs for credit reports from established credit bureaus.
    - d. Fees and expenses for an attorney approved by us for the following:
      - (1) The defense of any civil suit brought against an "identity recovery insured".
      - (2) The removal of any civil judgment wrongfully entered against an "identity recovery insured".
      - (3) Legal assistance for an "identity recovery insured" at an audit or hearing by a governmental agency.
      - (4) Legal assistance in challenging the accuracy of the "identity recovery insured's" consumer credit report.
      - (5) The defense of any criminal charges brought against an "identity recovery insured" arising from the actions of a third party using the personal identity of the "identity recovery insured".
  - e. Actual lost wages of the "identity recovery insured" for time reasonably and necessarily taken away from work and away from the work premises. Time away from work includes partial or whole work days. Actual lost wages may include payment for vacation days, discretionary days, floating holidays and paid personal days. Actual lost wages do not include sick days or any loss arising from time taken away from self employment. Necessary time off does not include time off to do tasks that could reasonably have been done during non-working hours.
  - f. Actual costs for supervision of children or elderly or infirm relatives or dependants of the "identity recovery insured" during time reasonably and necessarily taken away from such supervision. Such care must be provided by a professional care provider who is not a relative of the "identity recovery insured."
  - g. Any other reasonable costs necessarily incurred by an "identity recovery insured" as a direct result of the "identity theft".
    - (1) Such costs include:
      - (a) Costs by the "identity recovery insured" to recover control over his or her personal identity.
      - (b) Deductibles or service fees from financial institutions.
    - (2) Such costs do not include:
      - (a) Costs to avoid, prevent or detect "identity theft" or other loss.
      - (b) Money lost or stolen.
      - (c) Costs that are restricted or excluded elsewhere in this endorsement or policy.
3. "Identity recovery insured" means the following:
  - a. When the entity insured under this policy is a sole proprietorship, the "identity recovery insured" is the individual person who is the sole proprietor of the insured entity.
  - b. When the entity insured under this policy is a partnership, the "identity recovery insureds" are the current partners.

IDENTITY RECOVERY COVERAGE - NEW YORK - CONTINUED

c. When the entity insured under this policy is a corporation or other organization, the "identity recovery insureds" are all individuals having an ownership position of 20% or more of the insured entity. However, if and only if there is no one who has such an ownership position, then the "identity recovery insured" shall be:

- (1) The chief executive of the insured entity; or
- (2) With respect to a religious institution, the senior ministerial employee.

An "identity recovery insured" must always be an individual person. The entity insured under this policy is not an "identity recovery insured".

4. "Identity theft" means the fraudulent use of the Social Security number or other method of identifying an "identity recovery insured". This includes fraudulently using the personal identity of an "identity recovery insured" to establish credit accounts, secure loans, enter into contracts or commit crimes.

"Identity theft" does not include the fraudulent use of a business name, d/b/a or any other method of identifying a business activity.

All other terms and provisions of this policy remain unchanged.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## ADDITIONAL INSURED - DESIGNATED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

### SCHEDULE

**Name of Person or Organization:**

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

**Section II - General Liability Coverages, Paragraph D. Who Is An Insured** is amended by the addition of the following:

The following are "insureds" for "auto dealer operations";

The person or organization listed in the Schedule above, but only with respect to liability arising out of your "auto dealer operations" or premises owned by or rented to you.

All other terms and provisions of the policy remain unchanged.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## FALSE PRETENSE COVERAGE

This endorsement modifies insurance provided under the following:

### AUTO DEALERS COVERAGE FORM

With respect to the coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

A. Paragraph F. **Physical Damage Coverage** of **Section I - Covered Autos Coverages** is changed as follows:

1. The following is added to Paragraph 1. **Coverage**:

#### False Pretense Coverage

- a. We will pay for "loss" to a covered "auto" caused by "false pretense".
- b. For "loss" caused by "false pretense", a covered "auto" shall include any "auto" you have acquired and, if coverage symbol 30 is indicated for the Physical Damage Coverage, a "customer's auto" in your possession for service or repair.

2. Paragraph 3. **Exclusions** is amended as follows:

a. Exclusion c. **False Pretense** is replaced with the following:

We will not pay for "loss" caused by or resulting from someone causing you to voluntarily part with a covered "auto" by any fraudulent scheme, trick or device, except for "loss" caused by "false pretense".

b. The following exclusion is added:

We will not pay for a "false pretense" "loss":

- (1) After the first installment payment has been made;
- (2) Due solely to an insufficient funds check;
- (3) Due solely to an undisclosed lien;
- (4) Due to incorrect information on a credit application or rental or lease agreement other than false or forged name, social security number or signature;

(5) As the result of your contractual obligation to become liable in the event of default by the purchaser;

(6) Due to non-payment for any reason, of any credit you extend;

(7) Due to bankruptcy.

3. Paragraph 4. **Limits Of Insurance** is amended by the addition of the following:

The most we will pay for "loss" caused by "false pretense" is the **False Pretense Coverage** Per Person Limit shown in the Declarations for all "loss" caused by any one person, group of individuals, or organization within the policy period.

4. Paragraph 5. **Deductible** is amended by the addition of the following:

Our obligation to pay for repair or to replace a covered "auto" due to a "false pretense" "loss" will be reduced by the deductible for this coverage indicated in the Declarations. We will also deduct the actual value of any property or cash down payment delivered to you in full or partial payment for title to or possession of a covered "auto". This reduction does not apply to a "loss" arising out of receiving an "auto" from a seller who did not have legal title to the "auto".

B. **Section IV - Conditions** is amended as follows:

1. The following is added to Loss Condition 2. **Duties In The Event Of Accident, Claim, Offense, Suit, Loss Or Acts, Errors Or Omissions** of Paragraph A. **Loss Conditions**:

If there is a "loss" to a covered "auto" due to "false pretense" you must notify the police and agree to file a complaint with the proper authorities (empowered to issue warrants) against the person(s) or organization(s) causing the "loss".

2. The following is added to General Condition 5. **Other Insurance** of Paragraph B. **General Conditions**:

The "false pretense" coverage provided by this endorsement does not apply to "autos" owned or acquired by you and insured through a floor plan or finance source. However, "false pretense" coverage does apply to the value of improvements you have made to the covered "auto" (after you acquire it) which increase its value and exceeds the amount due from such other insurance.

C. For the coverage provided by this endorsement, **Section V - Definitions** is amended by the addition of the following:

"False pretense" means "loss" to a covered "auto" resulting from any of the following:

1. Someone causing you to voluntarily part with possession of or evidence of title to a covered "auto" when induced, at the time of sale, lease or rental by:
  - a. Receipt of a forged or counterfeit instrument in payment;
  - b. Receipt of a check or other instrument written on an account closed before the instrument is presented for payment;
  - c. A false or forged name, social security number or signature on a credit application or if coverage is provided for leased or rented "autos", a rental or lease agreement;
  - d. Any other criminal scheme, criminal trick or criminal device.

Except for a "consigned auto", you must have had legal title to and possession of the covered "auto" immediately prior to the "loss". For a "consigned auto", you must have had possession of the covered "auto" immediately prior to the "loss".

2. Having acquired an "auto" from a seller who did not have legal title.
3. Confiscation of a covered "auto" you own by a governmental or civil authority, for alleged or actual violations of laws governing the distribution, sale or use of a controlled substance, if the alleged or actual violations were committed by your customer or your "employee" without the knowledge or consent of you, your partners (if you are a partnership), members (if you are a limited liability company), directors or executive officers.
4. If a covered "auto", your voluntarily parting with a "customer's auto" resulting from a fraudulent scheme, trick or device. The "customer's auto" must have been in your possession immediately prior to the "loss".
5. Criminal conversion of a covered "auto" by:
  - a. Any person to whom you furnish a covered "auto" for their regular use; or
  - b. Your customer.

All other terms and provisions of the policy remain unchanged.

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

## **ASBESTOS EXCLUSION**

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM

With respect to coverage provided by this endorsement or to any amendment to or replacement thereof, the provisions of the Coverage Form apply unless modified by this endorsement.

**A. Section II - General Liability Coverages** is amended by the addition of the following exclusion to Coverage A. **Bodily Injury and Property Damage Liability** and Coverage B. **Personal and Advertising Injury Liability**:

### **Asbestos Exclusion**

This insurance does not apply to:

1. "Bodily injury", "property damage" or "personal and advertising injury" caused in whole or in part by the actual, alleged or threatened:
  - a. Inhalation of, ingestion of, or physical exposure to "asbestos";
  - b. Use of "asbestos" in construction, or manufacture of any goods, "products" or structures;
  - c. Removal of "asbestos" from any goods, "products", or structures;
  - d. Manufacture, sale, transport, storage, or disposal of "asbestos"; or
  - e. Discharge, dispersal, seepage, migration, release, or escape of "asbestos".

2. Any "loss", cost or expense arising out of any:

- a. Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize or in any way respond to or assess the effects of "asbestos"; or
- b. Claim or "suit" by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to or assessing the effects of "asbestos".

**B. Section V - Definitions** is amended by the addition of the following:

"Asbestos" means not only the natural fibrous mineral forms of impure magnesium silicate, but also any material, good, "products" or structure of which it is a part.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## NEW YORK EMPLOYMENT PRACTICES ENDORSEMENT

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM

### SCHEDULE

Limit of Liability	\$	/Each Act \$	/Annual Aggregate
Deductible	% or \$		

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

This policy is amended by the addition of the following:

#### A. Coverage

1. We will pay those sums an "insured" becomes legally obligated to pay as damages because of a "wrongful act" to which this insurance applies. This insurance only applies to "wrongful acts" that results from your employment practices.
2. We will have the right and duty to defend any "insured" against any "suit" asking for these damages even if the allegations of the "suit" are groundless, false or fraudulent. However, we have no duty to defend any "insured" against a "suit" seeking damages for a "wrongful act" to which this additional insurance does not apply. We may investigate and settle any claim or "suit" as we consider appropriate. Our duty to defend or settle ends when the applicable Limit of Liability has been exhausted by the payments of judgments or settlements.
3. Paragraph E. **Supplementary Payments of Section II - General Liability Coverages** applies to the coverage provided by this endorsement, subject to the provisions below in Paragraph D. **Deductible**.
4. **Who Is An Insured**

For the purposes of this endorsement only, the following are "insureds":

- a. You, the Named Insured;
- b. If you are an individual, your spouse is also an "insured";
- c. If you are a partnership, your partners and their spouses are "insureds", but only with respect to the conduct of your business;

- d. If you are a limited liability company, your members are "insureds" but only with respect to the conduct of your business;
- e. Your directors and stockholders, but only with respect to the conduct of your business; and
- f. Your executive officers and other "employees" but only while acting within the course and scope of their employment.

Except with respect to the Limit of Liability, the additional insurance provided by this endorsement applies separately to each "insured".

#### B. Exclusions

The additional insurance provided by this endorsement does not apply to:

1. Arising out of a criminal act committed by or at the direction of any "insured".
2. Any dishonest, malicious, fraudulent, "wrongful act". However, this exclusion does not apply to you if the "wrongful act" was committed by your "employees" (other than a partner, director, executive officer or if you are a limited liability company, your member or manager) without the direction or the knowledge of you or your partner, director, executive officer or if you are a limited liability company, your member or manager, and was not a criminal act.
3. Any liability of others assumed by any "insured" under a contract or formal agreement.
4. Any "wrongful act" that includes a "wrongful act" which took place before the effective date of this insurance.

5. "Discrimination" or "harassment" against any person in connection with the administration of your employee benefits program.
6. Expenditures to modify, repair, or replace any workplace or facilities to accommodate the physical or emotional disabilities of any "employee" or prospective "employee".
7. Liability arising out of any strikes, lockouts, downsizing actions, or facility closings.
8. Fines, penalties, assessments or duties imposed by state or federal laws including, but not limited to, the Employment Retirement Income Security Act of 1974, the Fair Labor Standards Act, the National Labor Relations Act, the Worker Adjustment and Retraining Notification Act, the Occupational Safety and Health Act, the Americans With Disabilities Act, COBRA, ERISA, Worker's Compensation Act, or any similar laws.

#### C. Limits Of Liability

The most we will pay under this additional insurance for all damages resulting from:

1. Any one "wrongful act" is the Each Act Limit of Liability
2. All "wrongful acts" committed during the policy period is the Annual Aggregate Limit of Liability

Both as indicated in the Schedule.

#### D. Deductible

1. Our obligation to pay damages will be reduced by a deductible as shown in the Schedule (or Declarations) for each "suit" or claim filed against you.
2. If the Deductible is shown as a percentage;
  - a. Our obligation to pay damages will be reduced by a deductible equal to the deductible percentage shown for each "suit" or claim filed against you, multiplied by the total of all damages awarded or payments made to settle the claim or suit.
  - b. The most we will deduct for all damages for each claim or "suit" is the deductible percentage multiplied by the Each Act Limit of Liability shown in the Schedule or Declarations.
3. If the Deductible is shown as a dollar amount, we will not pay our share of damages until the amount of damages exceeds the Deductible dollar amount shown. We will then pay the amount of damages in excess of that deductible up to the limit of insurance.

4. The terms of this insurance, including those with respect to:
  - a. The available Limits Of Liability;
  - b. Our right and duty to defend the "insured" against any "suit" seeking those damages; and
  - c. Your duties in the event of a claim or "suit" Apply irrespective of the application of the deductible.
5. We may pay any part or all of the deductible amount to effect settlement of any claim or "suit" and upon notification of the action taken, you shall promptly reimburse us for such part of the deductible amount that has been paid by us.

#### E. Policy Period, Coverage Territory

This endorsement applies to "wrongful acts" occurring while this additional insurance is in effect and only in the United States of America, its territories or possessions, Puerto Rico or Canada.

#### F. Definitions

1. The following definition replaces the definition in the Auto Dealers Coverage Form and applies only to the coverage provided by this endorsement.

"Suit" means:

- a. (1) A civil proceeding; or
- (2) An arbitration proceeding, or other alternative dispute resolution proceeding to which the "insured" must submit or does submit with our consent in which damages because of a "wrongful act" to which this insurance applies are alleged.
- b. An administrative proceeding by a federal, state or local governmental entity investigating a "wrongful act" which will result in a claim for damages to which this extension applies.

2. The following definitions apply in addition to the Definitions included in the Auto Dealers Coverage Form and apply to the coverage provided by this endorsement only:

"Discrimination" is to distinguish by discerning or exposing differences based on sex, sexual orientation, age, race, religion, national origin or physical capabilities.



"Disparate impact" means the adverse impact of a practice which appears to be neutral, which has the effect of discriminating against a group of individuals due to their race, sex, sexual orientation, national origin, age, or disability and is not justified by business necessity.

"Harassment" is unwelcome advances, whether verbal or physical, requests for sexual favors and other verbal or physical conduct when:

- a. Submission to such conduct by an individual is made explicitly or implicitly a term or condition of employment.
- b. Submission to, or rejection of such conduct by an "employee" is used as the basis for an employment decision.
- c. Such conduct has the purpose or effect to interfere with an "employee's" work performance or creates a hostile or intimidating environment.

"Vicarious liability" means liability that a person or organization bears for the actions of a subordinate or associate.

"Wrongful act" means one or more of the following employment related offenses:

- a. The "insured's" "vicarious liability" that results from an act of "discrimination", "wrongful termination" or "harassment"; or
- b. An alleged act of "discrimination" involving "disparate impact" only.

A single "wrongful act" shall include all conduct including continuous or repeated exposure to substantially the same generally harmful conduct by an individual or group of individuals whether directed at an individual or group of individuals.

"Wrongful termination" is termination of an employment relationship in a manner which is against the law, or in breach of an implied agreement to continue employment. Wrongful termination does not include damages legally owed under an express contract of employment or an express obligation to make payments in the event of the termination of employment.

All other terms and provisions of the policy remain unchanged.

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

## **AUTO MEDICAL PAYMENTS COVERAGE**

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM  
BUSINESS AUTO COVERAGE FORM  
MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

### **A. Coverage**

We will pay reasonable expenses incurred for necessary medical and funeral services to or for an "insured" who sustains "bodily injury" caused by "accident". We will pay only those expenses incurred, for services rendered within three years from the date of the "accident".

### **B. Who Is An Insured**

1. You while "occupying" or, while a pedestrian, when struck by any "auto".
2. If you are an individual, any "family member" while "occupying" or, while a pedestrian, when struck by any "auto".
3. Anyone else "occupying" a covered "auto" or a temporary substitute for a covered "auto". The covered "auto" must be out of service because of its breakdown, repair, servicing, loss or destruction.

### **C. Exclusions**

This insurance does not apply to any of the following:

1. "Bodily injury" sustained by an "insured" while "occupying" a vehicle located for use as a premises.
2. "Bodily injury" sustained by you or any "family member" while "occupying" or struck by any vehicle (other than a covered "auto") owned by you or furnished or available for your regular use.

3. "Bodily injury" sustained by any "family member" while "occupying" or struck by any vehicle (other than a covered "auto") owned by or furnished or available for the regular use of any "family member".
4. "Bodily injury" to your "employee" arising out of and in the course of employment by you. However, we will cover "bodily injury" to your domestic "employees" if not entitled to workers' compensation benefits. For the purposes of this endorsement, a domestic "employee" is a person engaged in household or domestic work performed principally in connection with a residence premises.
5. "Bodily injury" to an "insured" while working in a business of selling, servicing, repairing or parking "autos" unless that business is yours.
6. "Bodily injury" arising directly or indirectly out of:
  - a. War, including undeclared or civil war;
  - b. Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
  - c. Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

7. "Bodily injury" to anyone using a vehicle without a reasonable belief that the person is entitled to do so.
8. "Bodily Injury" sustained by an "insured" while "occupying" any covered "auto" while used in any professional racing or demolition contest or stunting activity, or while practicing for such contest or activity. This insurance also does not apply to any "bodily injury" sustained by an "insured" while the "auto" is being prepared for such a contest or activity.

#### **D. Limit Of Insurance**

Regardless of the number of covered "autos", "insureds", premiums paid, claims made or vehicles involved in the "accident", the most we will pay for "bodily injury" for each "insured" injured in any one "accident" is the Limit Of Insurance for Auto Medical Payments Coverage shown in the Declarations.

No one will be entitled to receive duplicate payments for the same elements of "loss" under this coverage and any Liability Coverage Form, Uninsured Motorists Coverage Endorsement or Underinsured Motorists Coverage Endorsement attached to this Coverage Part.

#### **E. Changes In Conditions**

The **Conditions** are changed for **Auto Medical Payments Coverage** as follows:

1. The **Transfer Of Rights Of Recovery Against Others To Us** Condition does not apply.
2. The reference in **Other Insurance** in the Auto Dealers and Business Auto Coverage Forms and **Other Insurance - Primary And Excess Insurance Provisions** in the Motor Carrier Coverage Form to "other collectible insurance" applies only to other collectible auto medical payments insurance.

#### **F. Additional Definitions**

As used in this endorsement:

1. "Family member" means a person related to you by blood, marriage or adoption who is a resident of your household, including a ward or foster child.
2. "Occupying" means in, upon, getting in, on, out or off.

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

## **LOSS PAYABLE CLAUSE**

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM  
BUSINESS AUTO COVERAGE FORM  
MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

- A.** We will pay, as interest may appear, you and the loss payee named in the policy for "loss" to a covered "auto".
  - B.** The insurance covers the interest of the loss payee unless the "loss" results from conversion, secretion or embezzlement on your part.
  - C.** We may cancel the policy as allowed by the Cancellation Common Policy Condition.
  - D.** If we make any payments to the loss payee, we will obtain his or her rights against any other party.
- Cancellation ends this agreement as to the loss payee's interest. If we cancel the policy, we will mail you and the loss payee the same advance notice.

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

## **NEW YORK CHANGES - FRAUD**

This endorsement modifies insurance provided under the following:

CAPITAL ASSETS PROGRAM (OUTPUT POLICY) COVERAGE PART  
COMMERCIAL AUTOMOBILE COVERAGE PART  
COMMERCIAL INLAND MARINE COVERAGE PART  
COMMERCIAL PROPERTY COVERAGE PART  
EQUIPMENT BREAKDOWN COVERAGE PART  
FARM COVERAGE PART - FARM PROPERTY - OTHER FARM PROVISIONS FORM - ADDITIONAL  
COVERAGES, CONDITIONS, DEFINITIONS  
FARM COVERAGE PART - LIVESTOCK COVERAGE FORM  
FARM COVERAGE PART - MOBILE AGRICULTURAL MACHINERY AND EQUIPMENT COVERAGE  
FORM

The **CONCEALMENT, MISREPRESENTATION OR FRAUD** Condition is replaced by the following:

### **FRAUD**

We do not provide coverage for any insured ("insured") who has made fraudulent statements or engaged in fraudulent conduct in connection with any loss ("loss") or damage for which coverage is sought under this policy.

However, with respect to insurance provided under the COMMERCIAL AUTOMOBILE COVERAGE PART, we will provide coverage to such "insured" for damages sustained by any person who has not made fraudulent statements or engaged in fraudulent conduct if such damages are otherwise covered under the policy.



POLICY NUMBER: 2553009007

## ERRORS AND OMISSIONS LIABILITY COVERAGE DECLARATION

Sentry Select Insurance Company (A Participating Stock Company) A member of the Sentry Insurance Group 1800 North Point Drive Stevens Point, WI 54481	Producer  Steven Asch 10000277 315-484-6565
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### POLICY INFORMATION

**First Named Insured:** Alan Byer Auto Sales Inc  
**Address:** 1230 W Genesee St  
 Syracuse, NY 13204-2104

The Errors and Omissions Liability coverage applies from 08/01/2018 to 08/01/2019 at 12:01 A.M. Standard Time at the First Named Insured's mailing address shown above

### COVERAGES

#### Coverage E Employee Benefits Errors and Omissions

<b>Employee Benefit Aggregate Limit</b>	<b>Each Employee Limit</b>	<b>Each Employee Deductible</b>
\$ 1,000,000	\$ 500,000	\$ 1,000

#### All Other Errors and Omissions

Coverage A Truth-In-Lending and Truth-In-Leasing  
 Coverage B Odometer Hour Meter and Prior Damage Disclosure Errors and Omissions  
 Coverage C Dealership Insurance Agents' Errors and Omissions  
 Coverage D Title Errors and Omissions

<b>General Aggregate Limit</b>	<b>Per Occurrence Limit</b>	<b>Errors and Omissions Deductible</b>
\$ 500,000	\$ 250,000	\$ 500

### APPLICABLE FORMS AND ENDORSEMENTS

In addition to the common policy forms and endorsements, the following forms and endorsements apply to the Errors and Omissions Liability Coverage:

Form/Endorsement Number and Edition Date	Form/Endorsement Title
PA 0001NY 01 14	New York Changes - Cancellation And Nonrenewal
PA 0005NY 03 11	New York Changes
PF000100 02 11	Errors And Omissions Coverage Form

## ERRORS AND OMISSIONS COVERAGE FORM

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

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

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

### Section I - Coverages

Only those coverages indicated in the Declarations apply.

#### Coverage A. Truth-In-Lending And Truth-In-Leasing Errors And Omissions

##### 1. Insuring Agreement

- a. We will pay sums an "insured" legally must pay as "damages" arising from negligent errors or omissions which result in civil violation of:
  - (1) Any federal, state, or local Truth-In-Leasing statute; or
  - (2) Any federal, state, or local Truth-In-Lending statute.
- b. The amount we will pay for "damages" is limited as described in **Section III - Limits Of Insurance**.
- c. We have the right and duty to defend the "insured" against any "suit" seeking "damages" to which this coverage applies or to investigate or settle any claim or "suit" for these "damages". However, we have no duty to investigate, defend the "insured" against or settle a claim or "suit" not covered by this insurance. Our payment of the Limit Of Insurance ends our duty to investigate, defend or settle.

##### 2. Exclusions

This coverage does not apply to:

- a. "Bodily injury", "property damage" or "personal and advertising injury";
- b. Loss, claims or "suits" arising from:

- (1) Dishonest, malicious, fraudulent, criminal, or intentional acts or omissions; however, this exclusion does not apply to you if such act or omission was committed by your "employee" (other than a partner if you are a partnership, member or manager if you are a limited liability company, director, or "executive officer"), without your direction or your knowledge; or
- (2) Liability of others assumed by an "insured" under a contract or agreement.

#### Coverage B. Odometer Hour Meter And Prior Damage Disclosure Errors And Omissions

##### 1. Insuring Agreement

- a. We will pay sums an "insured" legally must pay as "damages" arising from:
  - (1) Negligent errors or omissions which result in civil violation of any federal, state or local statute regarding:
    - (a) Accurate odometer or hour meter readings;
    - (b) Disclosure of prior damage; or
    - (c) Used car disclosure or aftermarket automotive parts disclosure.
  - (2) Inaccurate hour meter disclosures due to:
    - (a) Mechanical failure of an hour meter;
    - (b) Anyone other than an "insured" tampering with an hour meter or otherwise misrepresenting an hour meter reading; or
    - (c) Negligent errors or omissions by an "insured".
- b. The amount we will pay for "damages" is limited as described in **Section III - Limits Of Insurance**.
- c. We have the right and duty to defend the "insured" against any "suit" seeking "damages" to which this coverage applies or to investigate or settle any claim or "suit" for these "damages". However, we have no duty to investigate, defend the "insured" against or settle a claim or "suit" not covered by this insurance. Our payment of the Limit of Insurance ends our duty to investigate, defend or settle.

ERRORS AND OMISSIONS COVERAGE FORM - CONTINUED

**2. Exclusions**

This coverage does not apply to:

- a. "Bodily injury", "property damage" or "personal and advertising injury";
- b. Loss, claims or "suits" arising out of:
  - (1) Dishonest, malicious, fraudulent, criminal or intentional acts or omissions committed or permitted by:
    - (a) You the Named Insured;
    - (b) Your partners (if you are a partnership), members (if you are a joint venture), members or managers (if you are a limited liability company), "executive officers", your "employees" or your agents; or
    - (c) Any other "insured".
  - (2) Liability of others assumed by an "insured" under a contract or agreement.

**Coverage C. Dealership Insurance Agents' Errors And Omissions**

**1. Insuring Agreement**

- a. We will pay sums an "insured" legally must pay as "damages" arising from negligent errors or omissions committed by an "insured" while acting as an "insurance agent" selling in the conduct of your business:
  - (1) Credit life insurance;
  - (2) Credit accident and health insurance; or
  - (3) Credit physical damage insurance.
- b. The amount we will pay for "damages" is limited as described in **Section III - Limits Of Insurance**.
- c. We have the right and duty to defend the "insured" against any "suit" seeking "damages" to which this coverage applies or to investigate or settle any claim or "suit" for these "damages". However, we have no duty to investigate, defend the "insured" against, or settle a claim or "suit" not covered by this insurance. Our payment of the Limit of Insurance ends our duty to investigate, defend or settle.

**2. Exclusions**

This coverage does not apply to:

- a. "Bodily injury", "property damage" or "personal and advertising injury";
- b. Loss, claims or "suits" arising out of:
  - (1) An "insured's" willful violation of:
    - (a) An "insured's" contract with an insurer; or

(b) Any law, regulation or directive of a state or regulatory authority;

- (2) Dishonest, malicious, fraudulent, criminal or intentional acts or omissions; however, this exclusion does not apply to you if such act or omission was committed by your "employee" (other than a partner if you are a partnership, member or manager if you are a limited liability company, director, or "executive officer"), without your direction or your knowledge; or
- (3) Liability of others assumed by any "insured" under a contract or agreement.

**Coverage D. Title Errors And Omissions**

**1. Insuring Agreement**

- a. We will pay sums an "insured" legally must pay as "damages" arising from negligent errors or omissions committed by an "insured" during "title paper preparation" in the conduct of your business. However, this additional insurance applies only if the lienholder(s) or legal owner(s) make claim or bring "suit" against the "insured" for "damages" resulting from the "insured's" error or omission in the title registration.
- b. The amount we will pay for "damages" is limited as described in **Section III - Limits Of Insurance**.
- c. We have the right and duty to defend the "insured" against any "suit" seeking "damages" to which this coverage applies or to investigate or settle any claim or "suit" for these "damages". However, we have no duty to investigate, defend the "insured" against or settle a claim or "suit" not covered by this insurance. Our payment of the Limit of Insurance ends our duty to investigate, defend or settle.

**2. Exclusions**

This coverage does not apply to:

- a. "Bodily injury", "property damage" or "personal and advertising injury";
- b. Loss arising out of:
  - (1) Dishonest, malicious, fraudulent, criminal, or intentional acts or omissions; however, this exclusion does not apply to you if such act or omission was committed by your "employee" (other than a partner if you are a partnership, member or manager if you are a limited liability company, director, or "executive officer"), without your direction or your knowledge; or



ERRORS AND OMISSIONS COVERAGE FORM - CONTINUED

- (2) Liability of others assumed by any "insured" under a contractor agreement.

**Coverage E. Employee Benefit Liability Errors And Omissions**

**1. Insuring Agreement**

- a. We will pay sums an "insured" legally must pay as "damages" arising from negligent errors or omissions in the "administration" of your "employee benefits" committed by:
- (1) An "insured"; or
  - (2) Any other person for whose acts or omissions an "insured" is legally liable.
- b. The amount we will pay for "damages" is limited as described in **Section III - Limits Of Insurance**.
- c. We have the right and duty to defend the "insured" against any "suit" seeking "damages" to which this coverage applies or to investigate or settle any claim or "suit" for these "damages". However, we have no duty to investigate, defend the "insured" against or settle a claim or "suit" not covered by this insurance. Our payment of the Limit of Insurance ends our duty to investigate, defend or settle.

**2. Exclusions**

This coverage does not apply to:

- a. "Bodily injury", "property damage" or "personal and advertising injury";
- b. Loss, claims, or "suits" arising out of:
  - (1) Libel, slander, discrimination or humiliation committed by an "insured";
  - (2) Liability assumed by the "insured" under any contract or agreement;
  - (3) Failure of performance of a contract by any insurer or other fiduciary entrusted with monies intended to fund "employee benefits";
  - (4) Insufficiency of funds to meet any obligation under any "employee benefits";
  - (5) Inadequacy of performance of investment; errors in providing information on past performance of investment vehicles or advice given with respect to participation; or
  - (6) Advice given to any person to participate or not to participate in any plan included in your "employee benefits" plan;

- (7) Your failure to establish "employee benefits" in compliance with the mandatory provisions of any law governing workers' compensation, unemployment insurance, social security or disability benefits or to similar state or federal laws;

- (8) Taxes, fines or penalties, including those imposed under the Internal Revenue Code or any similar state or local law;

- (9) Employment-Related Practices - "Damages" arising out of wrongful termination of employment, discrimination, or other employment-related practices.

- (10) Liability based on:

- (a) Medical malpractice of any physician or surgeon;
- (b) Dishonest, fraudulent, criminal, or malicious acts or omissions committed by any "insured";
- (c) The Employee Retirement Income Security Act of 1974 or any amendment thereof;
- (d) Circumstances of which you were aware, or should have been aware, at the inception of this insurance.

**Supplementary Payments**

In addition to the Limit of Insurance, we will pay with respect to any claim we investigate or settle or any "suit" against an "insured" we defend:

1. All expenses we incur.
2. The cost of bonds to release attachments in any "suit" we defend, but only for bond amounts within our Limit of Insurance. We do not have to furnish these bonds.
3. All reasonable expenses incurred by the "insured" at our request, including actual loss of earnings up to \$250 a day because of time off from work.
4. All costs taxed against the "insured" in any "suit" we defend. However, these payments do not include attorneys' fees or attorneys' expenses taxed against the "insured".
5. All interest on the full amount of any judgment that accrues after entry of the judgment in any "suit" against the "insured" we defend; but our duty to pay interest ends when we have paid, offered to pay or deposited in court the part of the judgment that is within our Limit of Insurance.
6. Prejudgment interest awarded against the "insured" on that part of the judgment we pay. If we make an offer to pay the applicable Limit of Insurance, we will not pay any prejudgment interest based on that period of time after the offer.

## ERRORS AND OMISSIONS COVERAGE FORM - CONTINUED

### **Section II - Who Is An Insured**

#### **1. Coverages A. through D.**

The following are "insureds" for these coverages:

- a. You;
- b. Any of your directors, "executive officers", or "employee's", but with respect to the conduct of your business.
- c. If you are a partnership or joint venture, any partner or member thereof, but only with respect to their liability for the conduct of your business.
- d. If you are a limited liability company, your members or managers, but only with respect to their liability for the conduct of your business.

#### **2. Coverage E.**

The following are "insured's" for this coverage:

- a. You; and
  - b. Your partners (if you are a partnership), members or managers (if you are a limited liability company), "executive officers" and "employee's" who are authorized to administer your "employee benefits".
3. No person or organization is an "insured" under this additional insurance with respect to the conduct of any current or past partnership, limited liability company or joint venture that is not shown as a Named Insured in the Declarations.

### **Section III - Limits Of Insurance**

1. For the coverages provided, the Limits of Insurance shown in the Declarations fix the most we will pay, regardless of the number of:
  - a. "Insureds";
  - b. Errors or omissions which result in "damages";
  - c. Benefits included in your "Employee Benefits";
  - d. Claims made or "suits" brought; or
  - e. Persons or organizations making claims or bringing "suits".
2. The General Aggregate Limit is the most we will pay for the sum of all "damages" covered under Coverages A., B., C. and D.
3. Subject to 2. above, the Per Occurrence Limit shown in the Declarations is the most we will pay for the sum of "damages" under Coverages A., B., C. and D. arising out of any one error or omission negligently committed.

4. The Employee Benefits Aggregate Limit is the most we will pay for the sum of all "damages" covered under Coverage E.
5. Subject to 4. above, the Each Employee Limit shown in the Declarations is the most we will pay for the sum of "damages" arising out of any one error or omission negligently committed. The Each Employee Limit is the most we will pay for all "damages" sustained by any one "employee", including "damages" sustained by such "employee's" dependents and beneficiaries a result of:
  - a. An error or omission; or
  - b. A series of related errors or omissions negligently committed in the "administration" of your "employee benefits".
6. The limits of this policy apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last additional preceding period for purposes of determining the Limits of Insurance.

### **Section IV - Deductibles**

1. Our obligation to pay "damages" on your behalf applies only to the amount of "damages" in excess of the deductible amount stated in the Declarations. This deductible will be deducted from the amount of each claim prior to the application of the Limits of Insurance provision. The deductible applies to each error or omission negligently committed.
2. The terms of this insurance, including those with respect to our right and duty to defend any "suits" seeking those "damages" and your duties in the event of a claim or "suit", apply regardless of the application of the deductible.
3. To settle a claim or "suit", we may pay all or any part of the deductible. If this happens, you must reimburse us for the deductible or that portion of the deductible that we have paid.
4. The Each Employee Deductible amount stated in the Declarations applies to all "damages" sustained by any one "employee", including such employee's dependents and beneficiaries, as a result of:
  - a. An error or omission; or
  - b. A series of related errors or omissions negligently committed in the "administration" of your "employee benefits".

## ERRORS AND OMISSIONS COVERAGE FORM - CONTINUED

### Section V - Conditions

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

#### 1. Loss Conditions

##### a. Duties In The Event Of Occurrence, Error Or Omission

- (1) You must see to it that we are promptly notified of an error or omission which may result in a claim or "suit". To the extent possible, notice should include:
  - (a) How, when, and where the occurrence error or omission took place;
  - (b) The names and addresses of any witnesses and persons or organizations who claim or may claim "damages"; and
  - (c) The nature of "damages" arising out of the error or omission.
- (2) If a claim or a "suit" is brought, you must:
  - (a) Immediately record the specifics of the claim and the date received; and
  - (b) Notify us and see to it that we receive written of the claim as soon as practicable.
- (3) You and any other involved "insured" must:
  - (a) Immediately send us copies of any demands, notices, summonses, and legal papers received in connection with the claim or "suit"; and
  - (b) Authorize us to obtain records and other information; and
  - (c) Cooperate with us in the investigation, settlement, or defense of the claim or "suit"; and
  - (d) Assist us, upon our request, in the enforcement of any right against any person or organization who or which may be liable to an "insured" because of injury or "damages" to which this additional insurance may also apply.
- (4) No "insured" will, except at their own cost, voluntarily make a payment, assume any obligation, or incur any expense without our written consent

##### b. Legal Action Against Us

No one may bring a legal action against us under this Coverage Form until:

- (1) There has been full compliance with all the terms of this Coverage Form; and
- (2) The "insured's" obligation to pay has finally been determined by judgment after trial. No one has the right under this policy to bring us into an action to determine the "insured's" liability.

##### c. Transfer Of Rights Of Recovery Against Others To Us

If any person or organization to or for whom we make payment under this Coverage Form has rights to recover "damages" from another, those rights are transferred to us. That person or organization must do everything necessary to secure our rights and must do nothing after an incident that may result in a claim or "suit" to impair them.

#### 2. General Conditions

##### a. Bankruptcy

Bankruptcy or insolvency of the "insured" or the "insured's" estate will not relieve us of any obligations under this coverage form.

##### b. Concealment, Misrepresentation Or Fraud

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

- (1) The coverage provided by this Coverage Form; or
- (2) A claim under this Coverage Form.

##### c. Liberalization

If we revise this Coverage Form to provide more coverage without additional premium charge, your policy will automatically provide the additional coverage as of the day the revision is effective in your state.

##### d. Other Insurance

- (1) The additional insurance provided by this Coverage Form is excess of any other valid and collectible insurance. If our additional insurance is excess, it will apply for the amount by which our limits exceed the limits of the other insurance.

## ERRORS AND OMISSIONS COVERAGE FORM - CONTINUED

(2) When the additional insurance provided by this Coverage Form is excess of other available insurance, we will have no duty to defend any claim or "suit" that any other insurer has a duty to defend. If no other insurer defend, we may undertake to do so, but we will be entitled to all of the "insured's" rights against all other insurers.

### **e. Premium Audit**

(1) The estimated premium for this Coverage Form is based on the exposures you told us you would have when this policy began. We will compute the final premium due when we determine your actual exposures. The estimated total premium will be credited against the final premium due and the first Named Insured will be billed for the balance, if any. If the estimated total premium exceeds the final premium due, the first Named Insured will get a refund.

(2) If this policy is issued for more than one year, the premium for this Coverage Form will be computed annually based on our rates or premiums in effect at the beginning of each year of the policy.

### **f. Policy Period, Coverage Territory**

This Coverage Form applies only to covered errors and omissions which occur while this Coverage Form is in effect within the coverage territory. The coverage territory will be limited to the United States of America, its territories or possessions, Puerto Rico, or Canada.

### **g. Two Or More Coverage Forms Or Policies Issued By Us**

If this Coverage Form and any other Coverage Form or policy issued to you by us or any company affiliated with us apply to the same error or omission, the aggregate maximum Limit of Insurance under all the Coverage Forms or policies shall not exceed the highest applicable Limit of Insurance under any one Coverage Form or policy. This condition does not apply to any Coverage Form or policy issued by us or an affiliated company specifically to apply as excess insurance over this Coverage Form.

### **h. Separation Of Insureds**

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this policy to the first Named Insured, this insurance applies:

(1) As if each Named Insured were the only Named Insured; and

(2) Separately to each "insured" against whom claim is made or "suit" is brought.

i. For additional conditions, **Cancellation, Changes, Examination Of Your Books And Records, Inspections, And Surveys, Premiums and Transfer Of Your Rights And Duties Under This Policy**, see form **IL 00 17** and any amendments there to. References in these forms to the **Commercial General Liability Coverage Form** will apply to the **Errors And Omissions Coverage Form** also.

### **Section VI - Definitions:**

"Administration" means:

1. Providing information to your "employees", including their dependents and beneficiaries, with respect to eligibility for or the scope of "employee benefits";
2. Interpreting your "employee benefits";
3. Handling records in connection with your "employee benefits"; or
4. Effecting, continuing or terminating any "employee's" participation in any benefit included in the "employee benefits" by you or a person or organization authorized by you to perform such acts.

However, "administration" does not include handling payroll deductions.

"Advertisement" means a notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters.

"Auto" means a land motor vehicle, trailer or semitrailer.

"Bodily injury" means bodily injury, mental injury, sickness or disease sustained by a person, including death resulting from any of these at any time.

"Damages" as used in **Coverage A., C., D. and E.** only means:

1. Those sums that the "Insured" is legally obligated to pay as a result of negligent errors or omissions as defined in the Insuring Agreement for the applicable coverage. For the purposes of these coverages, "damages" will not include punitive or exemplary damages, requests for restitution (including costs associated with restoring credit status), requests for injunctive or declarative relief including associated requests for costs or fees or any other costs, fees or penalties that are not insurable by law; or

ERRORS AND OMISSIONS COVERAGE FORM - CONTINUED

2. Other costs, fees or penalties required to be paid by order of enforcement of any federal state or local statutes to the extent they are insurable by law.

"Damages" as used in **Coverage B.** only, means:

1. The difference between the represented market retail value of an "auto" or other equipment when sold to your customer and the actual market retail value of such "auto" or other equipment at the time of sale; or
2. Other costs, fees, or penalties to be paid by order of enforcement of any federal, state, or local statutes to the extent they are insurable by law.

"Employee" as used in **Coverages A., B., C.** and **D.** means a person actively employed by you. "Employee" includes a leased worker but not a temporary worker.

"Employee" as used in **Coverage E.** means a person that you have actively employed, formerly employed, on leave of absence or disabled, or retired. "Employee" does not include a leased worker or temporary worker.

"Employee benefits" means:

1. Insurance programs for:
  - a. Group Life;
  - b. Group accident and health;
  - c. Dental, vision and hearing plans;
  - d. Flexible Spending Accounts;
  - e. Workers' compensation;
  - f. Unemployment; and
  - g. Social security and disability benefits.
2. Group Plans for:
  - a. Profit Sharing;
  - b. Pension;
  - c. Employee stock subscription;
  - d. Employee savings plans; and
  - e. Employee stock ownership plans
3. Vacation plans, including buy and sell programs; leave of absence programs, including military, maternity, family, and civil leave; tuition assistance plans; transportation and health club subsidies; and
4. Other similar employee benefits identified by separate endorsement.

The above plans must be provided by you and are applicable only to you and your "employees".

"Insured" means any person or organization qualifying as such under **Section II - Who Is An Insured**

"Executive Officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.

"Insurance agent" means a person or organization duly licensed as an insurance agent, or the equivalent, by the regulatory authority in the state(s) in which you engage in the insurance business. "Insurance agent" does not mean an insurance solicitor, broker or consultant.

"Personal and advertising injury" means injury, including consequential "bodily injury" arising out of one or more of the following offenses:

1. False arrest, detention, or imprisonment;
2. Malicious prosecution;
3. Wrongful entry into, or eviction of a person from a room, dwelling or premises that the person occupies;
4. Oral or written publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services; or
5. Oral or written publication of material that violates a person's right of privacy.
6. The use of another's advertising idea in your "advertisement"; or
7. Infringing upon another's copyright, trade dress or slogan in your "advertisement"

"Property damage" means:

1. Physical injury to tangible property, including any resulting use of that property; or
2. Loss of use of tangible property that is not physically injured.

"Suit" means a civil proceeding in which "damages" are alleged. "Suit" includes:

1. An arbitration proceeding alleging such "damages" to which you must submit or submit with our consent; or
2. Any other alternative dispute resolution proceeding in which such "damages" are claimed and to which the "insured" submits with our consent.

"Title paper preparation" means the preparation of official title papers for registering an "auto" sold by an "insured", including the designation of a lienholder or legal owner having a financial interest in such "auto".

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## NEW YORK CHANGES - CANCELLATION AND NONRENEWAL

This endorsement modifies insurance provided under the following:

### ERRORS AND OMISSIONS COVERAGE FORM

A. Paragraphs 1., 2., 3. and 5. of the **Cancellation Common Policy Condition** are replaced by the following:

1. The first Named Insured shown in the Declarations may cancel this entire policy by mailing or delivering to us advance written notice of cancellation.

**2. Cancellation Of Policies In Effect**

**a. 60 Days Or Less**

We may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation at least:

- (1) 30 days before the effective date of cancellation if we cancel for any reason not included in Paragraph **A.2.b.** below.
- (2) 15 days before the effective date of cancellation if we cancel for any of the reasons included in Paragraph **A.2.b.** below.

**b. For More Than 60 Days**

If this policy has been in effect for more than 60 days, or if this policy is a renewal or continuation of a policy we issued, we may cancel only for any of the reasons listed below, provided we mail the first Named Insured written notice at least 15 days before the effective date of cancellation:

- (1) Nonpayment of premium, provided however, that a notice of cancellation on this ground shall inform the first Named Insured of the amount due;
- (2) Conviction of a crime arising out of acts increasing the hazards insured against;
- (3) Discovery of fraud or material misrepresentation in the obtaining of the policy or in the presentation of a claim;

(4) After issuance of a policy or after the last renewal date, discovery of an act or omission, or a violation of any policy condition, that substantially and materially increases the hazard insured against, and which occurred subsequent to inception of the current policy period;

(5) Material physical change in the property insured, occurring after issuance or last annual renewal anniversary date of the policy, which results in the property becoming uninsurable in accordance with our objective uniformly applied underwriting standards in effect at the time the policy was issued or last renewed; or material change in the nature or extent of the risk, occurring after issuance or last annual renewal anniversary date of the policy, which causes the risk of loss to be substantially and materially increased beyond that contemplated at the time the policy was issued or last renewed.

(6) Required pursuant to a determination by the Superintendent that continuation of our present premium volume would jeopardize our solvency or be hazardous to the interest of our policyholders, our creditors or the public;

(7) A determination by the Superintendent that the continuation of the policy would violate or would place us in violation of, any provision of the Insurance Code; or

(8) Where we have reason to believe, in good faith and with sufficient cause, that there is a probable risk of danger that the insured will destroy, or permit to be destroyed, the insured property for the purpose of collecting the insurance proceeds. If we cancel for this reason, you may make a written request to the Department of Financial Services, within 10 days of receipt of this notice, to review our cancellation decision. Also, we will simultaneously send a copy of this cancellation notice to the Department of Financial Services.

3. We will mail or deliver our notice, including the reason for cancellation, to the first Named Insured at the address shown in the policy and to the authorized agent or broker.
5. If this policy is cancelled, we will send the first Named Insured any premium refund due. If we cancel, the refund will be pro rata. If the first Named Insured cancels the refund may be less than pro rata.

However, when the premium is advanced under a premium finance agreement, the cancellation refund will be pro rata. Under such financed policies, we will be entitled to retain a minimum earned premium of 10% of the total policy premium or \$60, whichever is greater. The cancellation will be effective even if we have not made or offered a refund.

**B. The following is added to the Cancellation Common Policy Condition:**

7. If one of the reasons for cancellation in paragraph **A.2.b.** exists, we may cancel this entire policy, even if the reason for cancellation pertains only to a new coverage or endorsement initially effective subsequent to the original issuance of this policy.

**C. The following conditions are added:**

**1. Nonrenewal**

If we decide not to renew this policy, we will send notice as provided in Paragraph **C.3.** below.

**2. Conditional Renewal**

If we conditionally renew this policy subject to:

- a. A change of limits;
- b. A change in type of coverage;
- c. A reduction of coverage;
- d. An increased deductible;
- e. An addition of exclusion; or

- f. Increased premiums in excess of 10% exclusive of any premium increase due to and commensurate with insured value added or increased exposure units; or as a result of experience rating, loss rating, retrospective rating or audit;

we will send notice as provided in Paragraph **C.3.** below.

**3. Notices Of Nonrenewal And Conditional Renewal**

- a. If we decide not to renew this policy or to conditionally renew this policy as provided in Paragraphs **C.1.** and **C.2.** above, we will mail or deliver written notice to the first Named Insured shown in the Declarations at least 60 but not more than 120 days before:

- (1) The expiration date; or
- (2) The anniversary date if this is a continuous policy.

- b. Notice will be mailed or delivered to the first Named Insured at the address shown in the policy and to the authorized agent or broker. If notice is mailed, proof of mailing will be sufficient proof of notice.

- c. Notice will include the specific reason(s) for nonrenewal or conditional renewal, including the amount of any premium increase for conditional renewal and description of any other changes.

- d. If we violate any of the provisions of Paragraph **C.3.a. b.** or **c.** above, by sending the first Named Insured an incomplete or late conditional renewal notice or a late nonrenewal notice:

- (1) And if the notice is provided prior to the expiration date of this policy, coverage will remain in effect at the same terms and conditions of this policy at the lower of the current rates or the prior period's rates until 60 days after such notice is mailed or delivered, unless the first Named Insured, during this 60 day period, has replaced the coverage or elects to cancel;

- (2) And if the notice is provided on or after the expiration date of this policy, coverage will remain in effect at the same terms and conditions of this policy for another policy period, at the lower of the current rates or the prior period's rates, unless the first Named Insured, during this additional policy period, has replaced the coverage or elects to cancel.

e. If you elect to renew on the basis of a late conditional renewal notice, the terms, conditions and rates set forth in such notice shall apply:

(1) Upon expiration of the 60-day period unless Subparagraph (2) below applies; or

(2) Notwithstanding the provisions in Paragraphs d.(1) and d.(2), as of the renewal date of the policy if the conditional renewal notice was sent at least 30 days prior to the expiration or anniversary date of the policy.

f. We will not send you notice of nonrenewal or conditional renewal if you, your authorized agent or broker or another insurer of yours mails or delivers notice that the policy has been replaced or is no longer desired.

D. The following provisions are added:

1. The aggregate limits of this policy as shown in the Declarations will be increased in proportion to any policy extension provided in accordance with Paragraph C.3.d. above.

2. The last sentence of Limits Of Insurance does not apply when the policy period is extended because we sent the first Named Insured an incomplete or late conditional renewal notice or a late nonrenewal notice.



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

## NEW YORK CHANGES

This endorsement modifies insurance provided under the following:

### ERRORS AND OMISSIONS COVERAGE FORM

- A. Section I - Coverages** is amended by replacing paragraph 1.c. of Coverage A. through Coverage E. with the following:
- c. We have the right and duty to defend the "insured" against any "suit" seeking "damages" to which this coverage form applies or to investigate or settle any claim or "suit" for these "damages" even if the allegations of the claim or "suit" are groundless, false or fraudulent. However, we have no duty to investigate, defend the "insured" against or settle a claim or "suit" not covered by this insurance. Our payment of the Limit of Insurance in judgments or settlements ends our duty to investigate, defend, or settle.
- B. Section I - Coverages** is amended by the addition of the following exclusion to paragraph 2. **Exclusions** of Coverage A. through Coverage E.:
- This coverage does not apply to:
- 1. Civil fines and penalties levied by any governmental agency against the insured for the commission of acts to which this insurance applies.
  - 2. Damages for any suit seeking criminal penalties or any action by any governmental agency against the insured for the commission of acts which are the subject of this insurance, whether civil or criminal.
- C. Paragraph 1.a.3. of Coverage C. Dealership Insurance Agents' Errors And Omissions** is replaced by the following:
- c. Credit Property Insurance as defined in Section 2340 of New York Insurance Law.
- D. Exclusion B.(10)(d) of Coverage E. Employee Benefit Liability Errors And Omissions** is replaced by the following:
- (d) Circumstances of which you were aware at the inception of this insurance.
- E. Paragraph 6. of Section III - Limits Of Insurance** is replaced by the following:
- 6.** The limits of this policy apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. The additional period will be deemed part of the last additional preceding period for purposes of determining the Limits of Insurance.
- However, if the policy period is extended as the result of an incomplete or late conditional renewal notice or a late nonrenewal notice, the aggregate limits of this policy as shown in the Declarations will be increased in proportion to such an extension.
- F. The Duties In The Event Of Occurrence, Error, Or Omission Loss Condition under Section V - Conditions** is amended as follows:
- 1. Paragraph (1) is replaced by the following:
    - (1) You must see to it that we are notified as soon as practicable of an error or omission which may result in a claim or "suit". To the extent possible, notice should include:
      - (a) How, when, and where the occurrence, error or omission took place;
      - (b) The names and addresses of any witnesses and persons or organizations who claim or may claim "damages"; and
      - (c) The nature of "damages" arising out of the error or omission.
  - 2. The following paragraph is added:

Notice given by or on behalf of the "insured" or written notice by or on behalf of the injured person or any other claimant to any agent of ours in New York State, with particulars sufficient to identify the "insured", shall be considered to be notice to us.

NEW YORK CHANGES - CONTINUED

G. The **Legal Action Against Us** Loss Condition under **Section V - Conditions** is replaced by the following:

**Legal Action Against Us**

1. Except as provided in paragraph 2., no one may bring a legal action against us under this Coverage Form until:

- (a) There has been full compliance with all the terms of this Coverage Form; and
- (b) The "insured's" obligation to pay has finally been determined by judgment against an "insured". No one has the right under this policy to bring us into an action to determine the "insured's" liability.

2. With respect to claims to which this insurance applies, if we deny coverage or do not admit liability because an insured or the injured person, someone acting for the injured person or other claimant fails to give us written notice as practicable, then the injured person, someone acting for the injured person or other claimant may bring an action against us, provided the sole question is whether the denial of coverage or nonadmission of liability is based on the failure to provide timely notice.

However, the injured person, someone acting for the injured person or other claimant may not bring an action if within 60 days after we deny coverage or do not admit liability, we or an insured:

- (a) Brings an action to declare the rights of the parties under the policy; and
- (b) Names the injured person, someone acting for the injured person or other claimant as a party to the action.

H. The following Condition is added to paragraph A. **Loss Conditions of Section V - Conditions**

**Transfer Of Duties When A Limit Of Insurance Is Used Up**

(1) If we conclude that, based on claims, "suits", errors or omissions which have been reported to us and to which this insurance may apply, the applicable aggregate limit, per occurrence limit or each employee limit is likely to be used up in the payment of judgments or settlements, we will notify the first Named Insured, in writing, to that effect.

(2) When a limit of insurance described in paragraph (1) above has actually been used up in the payment of judgments or settlements:

(a) We will notify the first Named Insured, in writing, as soon as practicable; that:

- (i) Such limit has actually been used up; and
- (ii) Our duty to defend "suits" seeking "damages" subject to that limit has also ended.

(b) We will initiate, and cooperate in, the transfer of control, to any appropriate insured, of all claims and "suits" seeking "damages" which are subject to that limit and which are reported to us before the limit is used up. The "insured" must cooperate in the transfer of control of said claims and "suits".

We agree to take such steps, as we deem appropriate, to avoid a default in, or continue the defense of, such "suits" until such transfer is completed, provided the appropriate "insured" is cooperating in completing such transfer.

We will take no action whatsoever with respect to any claim or "suit" seeking "damages" that would have been subject to that limit, had it not been used up, if the claim or "suit" is reported to us after that limit of insurance has been used up.

(c) The first Named Insured, and any other "insured" involved in a "suit" seeking "damages" subject to that limit, must arrange for the defense of such "suit" within such time period as agreed to between the appropriate "insured" and us. Absent any such agreement, arrangements for the defense of such "suit" must be made as soon as practicable.

(3) The first Named Insured will reimburse us for expense we incur in taking those steps we deem appropriate in accordance with paragraph (2)(b) above.

The duty of the first Named Insured to reimburse us will begin on:

(a) The date of which the applicable limit of insurance is used up, if we sent notice in accordance with paragraph (1) above.

(b) The date on which we sent notice in accordance with paragraph (2)(a) above, if we did not send notice in accordance with paragraph (1) above.

(4) The exhaustion of any limit of insurance by the payments of judgments or settlement and the resulting end of our duty to defend, will not be affected by our failure to comply with any of the provisions of this Condition.

NEW YORK CHANGES - CONTINUED

- I. The **Concealment, Misrepresentation Or Fraud** General Condition in **Section V - Conditions** is deleted.
- J. The **Two Or More Coverage Forms Or Policies Issued By Us** General Condition in **Section V - Conditions** is deleted.
- K. Paragraph (1) of the **Premium Audit** General Condition in **Section V - Conditions** is replaced by the following:
- (1) The estimated premium for this Coverage Form is based on the exposures you told us you would have when this policy began. At the close of each audit period we will compute the earned premium for that period. An audit to determine the final premium due or to be refunded will be completed within 180 days after the expiration date of the policy and may not be waived. Audit premiums are due and payable on notice to the first Named Insured. If the sum of the advance and audit premiums paid for the policy term is greater than the earned premium, we will return the excess to the first Named Insured.
- Except as provided above, the **Examination Of Your Books And Records** Common Policy Condition continues to apply.
- L. The following Condition is added and supersedes any provision to the contrary:
- Failure to give notice to us as required under this Coverage Part shall not invalidate any claim made by the insured, injured person, or any other claimant, unless the failure to provide such timely notice has prejudiced us. However, no claim made by the insured, injured person or other claimant will be invalidated if it shall be shown not to have been reasonably possible to give such timely notice and that notice was given as soon as was reasonably possible thereafter.
- M. The definition of "Administration" under **Section VI - Definitions** is replaced by the following:
- "Administration" means:
1. Providing information to your "employees", including their dependents and beneficiaries, with respect to your "employee benefits";
  2. Interpreting your "employee benefits";
  3. Handling records in connection with your "employee benefits"; or
  4. Effecting, continuing or terminating any "employee's" participation in any benefit in the "employee benefits" by you or a person or organization authorized by you to perform such acts.
- However, "administration" does not include handling payroll deductions or providing legal advice with regard to "employee benefits".
- N. Paragraph 2. of the definition of "damages" applicable to Coverage **A., C., D. and E.** and paragraph 2. of the definition of "damages" applicable to Coverage **B.** under **Section VI - Definitions** are deleted and do not apply.
- O. The definition of "employee benefits" is replaced by the following:
- "Employee benefits" mean:
- a. Insurance programs for:
    - (1) Group life;
    - (2) Group accident and health;
    - (3) Dental, vision, and hearing plans; and
    - (4) Flexible spending accounts.
  - b. Group plans for:
    - (1) Profit sharing;
    - (2) Pension;
    - (3) Employee stock subscription;
    - (4) Employee savings plans; and
    - (5) Employee stock ownership plans.
  - c. Vacation plans, including buy and sell programs; leave of absence programs, including military, maternity, family and civil leave; tuition assistance plans; transportation and health club subsidiaries; and
  - d. Other similar employee benefits identified by separate endorsement.
- The above plans must be provided by you and are applicable only to you and your "employees".
- All other terms and conditions of the policy remain unchanged.

POLICY NUMBER: 2553009005



## COMMERCIAL EXCESS/UMBRELLA LIABILITY COVERAGE DECLARATIONS

Sentry Select Insurance Company (A Participating Stock Company) A member of the Sentry Insurance Group 1800 North Point Drive Stevens Point, WI 54481	Producer  Steven Asch 10000277 315-484-6565
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### POLICY INFORMATION

**First Named Insured:** Alan Byer Auto Sales Inc  
**Address:** 1230 W Genesee St  
Syracuse, NY 13204-2104

The Commercial Excess/Umbrella Liability Coverage provided under this policy is effective 08/01/2018 to 08/01/2019 at 12:01 A.M. Standard Time at your mailing address shown above.

### LIMITS OF INSURANCE AND RETAINED LIMIT

General Aggregate Limit	\$	21,000,000
Products/Completed Operations Aggregate Limit	\$	21,000,000
Each Occurrence Limit	\$	7,000,000
Retained Limit (Each Occurrence)	\$	10,000

### APPLICABLE FORMS AND ENDORSEMENTS

In addition to the common policy forms and endorsements, the following forms and endorsements apply to the Commercial Excess/Umbrella Liability Coverage:

Form/Endorsement Number and Edition Date	Form/Endorsement Title
EU 21 73 01 15	Exclusion Of Certified Acts Of Terrorism
EU 70 35 01 14	New York Changes - Cancellation And Nonrenewal
EU 70 89 05 14	Exclusion - Access Or Disclosure Of Confidential Or Personal Information And Data Related Activity
EU 88 00 12 07	Commercial Excess/Umbrella Liability Coverage
EU 88 04 12 09	New York Changes
EU 88 06 12 04	Excess Legal Liability - Customer's Auto

Basis of Premium is not subject to audit.

### PREMIUMS

Annual Premium: \$15,007.00

POLICY NUMBER: 2553009005

## SCHEDULE OF UNDERLYING INSURANCE

### Policy, Insurer and Limits of Liability

**Auto Dealers Liability Coverage**                      Sentry Select Insurance Company                      2553009004

Including products and work you performed coverage

Covered Autos Liability - Each Accident Limit	\$ 500,000
General Liability Bodily Injury and Property Damage Liability - Each Accident Limit	\$ 500,000
Personal and Advertising Injury Liability - Any One Person or Organization	\$ 500,000
General Liability Aggregate Limit	\$ 2,500,000
Products and Work You Performed General Aggregate Limit	\$ 2,500,000

### OPTIONAL COVERAGE ENDORSEMENTS

#### Designated Insureds

Under Coverage E only, the following are Designated Insured's for liability arising out of the ownership, maintenance or use of an "auto" for which coverage under Coverage E of this policy applies.

Alan Byer  
Stephen Byer

President  
Vice President

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

## **EXCLUSION OF CERTIFIED ACTS OF TERRORISM**

This endorsement modifies insurance provided under the following:

### COMMERCIAL EXCESS/UMBRELLA LIABILITY COVERAGE PART

**A. Coverage U - Umbrella Liability of Section I - Coverages** is amended by the addition of the following exclusion to Paragraph **C. Exclusions**:

#### **Certified Acts Of Terrorism**

This insurance does not apply to any "bodily injury" or "property damage" arising, directly or indirectly out of a "certified act of terrorism".

**B. Section V - Definitions** is amended by the addition of the following definition:

1. "Certified act of terrorism" means an act that is certified by the Secretary of the Treasury, in accordance with the provisions of the federal Terrorism Risk Insurance Act, to be an act of terrorism pursuant to such Act. The criteria contained in the Terrorism Risk Insurance Act for a "certified act of terrorism" include the following:

a. The act resulted in insured losses in excess of \$5 million in the aggregate, attributable to all types of insurance subject to the Terrorism Risk Insurance Act; and

b. The act is a violent act or an act that is dangerous to human life, property or infrastructure and is 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.

**C.** The terms and limitations of any terrorism exclusion, or the inapplicability or omission of a terrorism exclusion, do not serve to create coverage for injury or damage that is otherwise excluded under this Coverage Part.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## NEW YORK CHANGES - CANCELLATION AND NONRENEWAL

This endorsement modifies insurance provided under the following:

### COMMERCIAL EXCESS/UMBRELLA LIABILITY COVERAGE FORM

**A. Paragraphs 1., 2., 3. and 5. of the Cancellation Common Policy Condition are replaced by the following:**

1. The first Named Insured shown in the Declarations may cancel this entire policy by mailing or delivering to us advance written notice of cancellation.

**2. Cancellation Of Policies In Effect**

**a. 60 Days Or Less**

We may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation at least:

- (1) 30 days before the effective date of cancellation if we cancel for any reason not included in Paragraph **A.2.b.** below.
- (2) 15 days before the effective date of cancellation if we cancel for any of the reasons included in Paragraph **A.2.b.** below.

**b. For More Than 60 Days**

If this policy has been in effect for more than 60 days, or if this policy is a renewal or continuation of a policy we issued, we may cancel only for any of the reasons listed below, provided we mail the first Named Insured written notice at least 15 days before the effective date of cancellation:

- (1) Nonpayment of premium, provided however, that a notice of cancellation on this ground shall inform the first Named Insured of the amount due;
- (2) Conviction of a crime arising out of acts increasing the hazards insured against;
- (3) Discovery of fraud or material misrepresentation in the obtaining of the policy or in the presentation of a claim;

(4) After issuance of a policy or after the last renewal date, discovery of an act or omission, or a violation of any policy condition, that substantially and materially increases the hazard insured against, and which occurred subsequent to inception of the current policy period;

(5) Material physical change in the property insured, occurring after issuance or last annual renewal anniversary date of the policy, which results in the property becoming uninsurable in accordance with our objective uniformly applied underwriting standards in effect at the time the policy was issued or last renewed; or material change in the nature or extent of the risk, occurring after issuance or last annual renewal anniversary date of the policy, which causes the risk of loss to be substantially and materially increased beyond that contemplated at the time the policy was issued or last renewed.

(6) Required pursuant to a determination by the Superintendent that continuation of our present premium volume would jeopardize our solvency or be hazardous to the interest of our policyholders, our creditors or the public;

(7) A determination by the Superintendent that the continuation of the policy would violate or would place us in violation of, any provision of the Insurance Code; or

(8) Where we have reason to believe, in good faith and with sufficient cause, that there is a probable risk of danger that the insured will destroy, or permit to be destroyed, the insured property for the purpose of collecting the insurance proceeds. If we cancel for this reason, you may make a written request to the Department of Financial Services, within 10 days of receipt of this notice, to review our cancellation decision. Also, we will simultaneously send a copy of this cancellation notice to the Department of Financial Services.

3. We will mail or deliver our notice, including the reason for cancellation, to the first Named Insured at the address shown in the policy and to the authorized agent or broker.
5. If this policy is cancelled, we will send the first Named Insured any premium refund due. If we cancel, the refund will be pro rata. If the first Named Insured cancels the refund may be less than pro rata.

However, when the premium is advanced under a premium finance agreement, the cancellation refund will be pro rata. Under such financed policies, we will be entitled to retain a minimum earned premium of 10% of the total policy premium or \$60, whichever is greater. The cancellation will be effective even if we have not made or offered a refund.

**B.** The following is added to the **Cancellation Common Policy Condition**:

7. If one of the reasons for cancellation in paragraph **A.2.b.** exists, we may cancel this entire policy, even if the reason for cancellation pertains only to a new coverage or endorsement initially effective subsequent to the original issuance of this policy.

**C.** The following conditions are added:

**1. Nonrenewal**

If we decide not to renew this policy, we will send notice as provided in Paragraph **C.3.** below.

**2. Conditional Renewal**

If we conditionally renew this policy subject to:

- a. A change of limits;
- b. A change in type of coverage;
- c. A reduction of coverage;
- d. An increased deductible;
- e. An addition of exclusion; or

- f. Increased premiums in excess of 10% exclusive of any premium increase due to and commensurate with insured value added or increased exposure units; or as a result of experience rating, loss rating, retrospective rating or audit;

we will send notice as provided in Paragraph **C.3.** below.

**3. Notices Of Nonrenewal And Conditional Renewal**

- a. If we decide not to renew this policy or to conditionally renew this policy as provided in Paragraphs **C.1.** and **C.2.** above, we will mail or deliver written notice to the first Named Insured shown in the Declarations at least 60 but not more than 120 days before:

(1) The expiration date; or

(2) The anniversary date if this is a continuous policy.

- b. Notice will be mailed or delivered to the first Named Insured at the address shown in the policy and to the authorized agent or broker. If notice is mailed, proof of mailing will be sufficient proof of notice.

- c. Notice will include the specific reason(s) for nonrenewal or conditional renewal, including the amount of any premium increase for conditional renewal and description of any other changes.

- d. If we violate any of the provisions of Paragraph **C.3.a., b.** or **c.** above, by sending the first Named Insured an incomplete or late conditional renewal notice or a late nonrenewal notice:

(1) And if the notice is provided prior to the expiration date of this policy, coverage will remain in effect at the same terms and conditions of this policy at the lower of the current rates or the prior period's rates until 60 days after such notice is mailed or delivered, unless the first Named Insured, during this 60 day period, has replaced the coverage or elects to cancel;

(2) And if the notice is provided on or after the expiration date of this policy, coverage will remain in effect at the same terms and conditions of this policy for another policy period, at the lower of the current rates or the prior period's rates, unless the first Named Insured, during this additional policy period, has replaced the coverage or elects to cancel.



e. If you elect to renew on the basis of a late conditional renewal notice, the terms, conditions and rates set forth in such notice shall apply:

(1) Upon expiration of the 60-day period unless Subparagraph (2) below applies; or

(2) Notwithstanding the provisions in Paragraphs d.(1) and d.(2), as of the renewal date of the policy if the conditional renewal notice was sent at least 30 days prior to the expiration or anniversary date of the policy.

f. We will not send you notice of nonrenewal or conditional renewal if you, your authorized agent or broker or another insurer of yours mails or delivers notice that the policy has been replaced or is no longer desired.

D. The following provisions are added:

1. The aggregate limits of this policy as shown in the Declarations will be increased in proportion to any policy extension provided in accordance with Paragraph C.3.d. above.

2. The last sentence of Limits Of Insurance does not apply when the policy period is extended because we sent the first Named Insured an incomplete or late conditional renewal notice or a late nonrenewal notice.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## EXCLUSION - ACCESS OR DISCLOSURE OF CONFIDENTIAL OR PERSONAL INFORMATION AND DATA RELATED ACTIVITY

This endorsement modifies insurance provided under the following:

### COMMERCIAL EXCESS/UMBRELLA LIABILITY COVERAGE PART

**Section I – Coverages, Coverage U – Umbrella Liability, Exclusion C. 17. Electronic Data**, is replaced by the following:

#### C. Exclusions

This insurance does not apply to:

#### 17. Access Or Disclosure Of Confidential Or Personal Information And Data Related Liability

Damages arising out of:

- a. Any access to or disclosure of any person's or organization's confidential or personal information, including patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of nonpublic information; or

- b. The loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate "electronic data".

This exclusion applies even if damages are claimed for notification costs, credit monitoring expenses, forensic expenses, public relations expenses, or any other loss cost or expense incurred by you or others arising out of that which is described in Paragraph a. or b. above.

## COMMERCIAL EXCESS/UMBRELLA LIABILITY COVERAGE

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

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as a Named Insured under this policy. The words "we", "us" and "our" refer to the company providing this insurance.

The word "insured" means any person or organization qualifying as such under **Section II - Who Is An Insured**.

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

### Section I - Coverages

#### Coverage E - Excess Liability

##### A. Insuring Agreement

1. We will pay on behalf of the insured the "ultimate net loss" in excess of "underlying insurance" because of:
  - a. "Bodily injury";
  - b. "Property damage";
  - c. "Personal and advertising injury"; or
  - d. "Error or omission"to which this insurance applies.
2. This insurance applies to "bodily injury", "property damage", "personal and advertising injury" and "error or omission" only if:
  - a. Caused by an "occurrence";
  - b. The "bodily injury", "property damage", "personal and advertising injury" or "error or omission" occurs during the policy period; and
  - c. "Underlying insurance" applies.
3. This insurance is subject to the same terms, conditions, agreements, exclusions and definitions as the "underlying insurance" except:
  - a. We will have no obligation under this insurance with respect to any claim that is settled without our consent; and
  - b. With respect to any provisions to the contrary contained in this insurance.

4. We will be liable only for "ultimate net loss" resulting from any one "occurrence" in excess of:
  - a. The applicable limits of liability of the "underlying insurance" as stated in the Declarations; or
  - b. The limits of "underlying insurance" that have been reduced or exhausted by payment of loss.
5. The amount we will pay for the "ultimate net loss" is limited as described in **Section III - Limits of Insurance**.
6. We will have no other obligation or liability to pay sums or perform acts or services unless such obligation or liability is explicitly provided for under **Coverage E Defense or Supplementary Payments - Coverage E and U**.

##### B. Defense

1. When the limits of the "underlying insurance" have been used up in the payment of judgments or settlements, we will have the:
  - a. Right and duty to defend the insured against any "suit"; or
  - b. Right, at our discretion, to investigate and settle any claim to which this insurance applies.
2. When the limits of "underlying insurance" have not been used up in the payment of judgments or settlements, but the claim is likely to involve us, we will have the right and shall be given the opportunity to associate with the insured and the "insured's" "underlying insurer" in the investigation or settlement of a claim or defense of a "suit".
3. We will have no duty to defend any insured against any "suit":
  - a. Seeking damages to which this insurance does not apply; or
  - b. After the applicable Limit of Insurance of this Coverage Part has been used up in the payment of judgments or settlements.

##### C. Exclusions

This insurance does not apply to:

COMMERCIAL EXCESS/UMBRELLA LIABILITY COVERAGE - CONTINUED

**1. No Underlying Insurance**

"Bodily injury", "property damage", "personal and advertising injury" or "error or omission" to which "underlying insurance" does not apply for any reason other than the exhaustion of "underlying insurance" limits of liability.

**2. Unscheduled Underlying Insurance**

Except as provided in the definition of "underlying insurance", any injury, damage, loss, cost or expense to which "underlying insurance" applies if the injury, loss, cost or expense is the subject of a separate limit of liability which is not stated in the Declarations of this Coverage Part under the schedule of "underlying insurance".

**3. Pollution**

a. "Bodily injury", "property damage", "personal and advertising injury" or "error or omission" which would not have occurred in whole or in part but for the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" at any time. This exclusion does not apply:

- (1) To "bodily injury" if sustained within a building which is or was at any time owned or occupied by, or rented or loaned to any insured and caused by smoke, fumes, vapor or soot produced by or originating from equipment that is used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use, by the building's occupants or their guests;
- (2) To "bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire"; or
- (3) To "bodily injury" to any "employee" of the insured arising out of and in the course of:
  - (a) Employment by the insured; or
  - (b) Performing duties related to the conduct of the insured's business.

b. Any loss, cost or expense arising out of any:

- (1) Request, demand, order or statutory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or

- (2) Claim or "suit" by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

c. This Pollution Exclusion applies whether or not:

- (1) Such irritant or contaminant has any function in your business, operations, premises, site or location; or
- (2) The "bodily injury", "property damage", "personal and advertising injury" or "error or omission" arises from environmental damage or pollution of the environment. This exclusion applies to all "bodily injury", "property damage", "personal and advertising injury" or "error or omission" within the scope of this exclusion, including, for example and without limitation, from exposure to "pollutants" within a residential or commercial building or from discharges of "pollutants" from "your product".

**4. Asbestos**

a. "Bodily injury", "property damage", "personal and advertising injury" or "error or omission" caused in whole or in part by the actual, alleged or threatened:

- (1) Inhalation of, ingestion of, or physical exposure to "asbestos";
- (2) Use of "asbestos" in construction or manufacture of any goods, products or structures;
- (3) Removal of "asbestos" from any goods, products or structures;
- (4) Manufacture, sale, transport, storage or disposal of "asbestos"; or
- (5) Discharge, dispersal, seepage, migration, release or escape of "asbestos".

b. Any loss, cost or expense arising out of any:

- (1) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "asbestos"; or

COMMERCIAL EXCESS/UMBRELLA LIABILITY COVERAGE - CONTINUED

(2) Claim or "suit" by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to or assessing the effects of, "asbestos".

**5. Employment-Related Practices**

"Bodily injury" or "personal and advertising injury" to:

- a. A person arising out of any:
  - (1) Refusal to employ that person;
  - (2) Termination of that person's employment; or
  - (3) Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination or malicious prosecution directed at that person; or
- b. The spouse, child, parent, brother or sister of that person as a consequence of "bodily injury" or "personal and advertising injury" to that person at whom any of the employment-related practices described in Paragraph a.(1), a.(2) or a.(3) above is directed.

This exclusion applies:

- (1) Whether the injury-causing event, described in Paragraphs a.(1), a.(2) or a.(3) above occurs before employment, during employment or after employment of that person;
- (2) Whether the insured may be liable as an employer or in any other capacity; and
- (3) To any obligation to share damages with or repay someone else who must pay damages because of injury.

**6. Laws**

Any liability or obligation for which the insured or the insured's "underlying insurer" may be held liable under:

- a. Workers' Compensation, disability benefits or unemployment compensation law;
- b. The Employee's Retirement Income Security Act (E.R.I.S.A.), and any amendments thereto;
- c. Any "auto" no-fault, personal injury protection or uninsured or underinsured motorist law;
- d. Any federal, state or local odometer law, auto damage disclosure law, used car disclosure law or aftermarket parts disclosure law;

- e. Any federal, state or local truth in lending, truth in leasing, consumer credit protection or consumer leasing law; or
- f. Any other similar federal, state or local law.

**7. Title Paper Preparation**

Liability arising out of any negligent act, omission or other error in "title paper preparation".

**8. Warranties And Damage To Your Product Or Your Work**

"Property damage":

- a. To the extent "your product" or "your work" does not meet a level of performance, quality, fitness or durability warranted or represented by the insured. This exclusion does not apply to any resulting accidental physical injury to tangible property other than "your product" or "your work".
- b. To "your product" arising out of it or any part of it.
- c. To "your work" arising out of it or any part of it, but this exclusion does not apply if the damaged work or the work out of which the damage arises was performed on behalf of an insured by a subcontractor.
- d. To the extent that a written warranty, extended warranty or service agreement provides for the repair or replacement of "your product" or "your work".

**Coverage U - Umbrella Liability**

**A. Insuring Agreement**

- 1. We will pay on behalf of the insured the "ultimate net loss" in excess of the Retained Limit stated in the Declarations because of "bodily injury" or "property damage" to which this insurance applies.
- 2. This insurance applies to "bodily injury" and "property damage" only if:
  - a. Caused by an "occurrence" anywhere in the world;
  - b. The "bodily injury" or "property damage" occurs during the policy period;
  - c. "Underlying insurance" does not apply; and

COMMERCIAL EXCESS/UMBRELLA LIABILITY COVERAGE - CONTINUED

- d. Prior to the policy period, no insured listed under Paragraph A.1. of **Section II - Who Is An Insured Coverage U - Umbrella Liability** and no "employee" authorized by you to give or receive notice of an "occurrence" or claim, knew that the "bodily injury" or "property damage" had occurred, in whole or in part. If such a listed insured or authorized "employee" knew, prior to the policy period, that the "bodily injury" or "property damage" occurred, then any continuation, change or resumption of such "bodily injury" or "property damage" during or after the policy period will be deemed to have been known prior to the policy period.
3. "Bodily injury" or "property damage" which occurs during the policy period and was not, prior to the policy period, known to have occurred by any insured listed under Paragraph A.1. of **Section II - Who Is An Insured Coverage U - Umbrella Liability** or any "employee" authorized by you to give or receive notice of an "occurrence" or claim, includes any continuation, change or resumption of that "bodily injury" or "property damage" after the end of the policy period.
4. "Bodily injury" or "property damage" will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph A.1. of **Section II - Who Is An Insured Coverage U - Umbrella Liability** or any "employee" authorized by you to give or receive notice of an "occurrence" or claim:
- a. Reports all or any part of the "bodily injury" or "property damage" to us or any other insurer;
  - b. Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage"; or
  - c. Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.
5. The amount we pay for the "ultimate net loss" is limited as described in **Section III - Limits of Insurance**.
6. No other obligation or liability to pay sums or perform acts is covered unless explicitly provided for under **Coverage U Defense or Supplementary Payments - Coverages E and U**.
- B. Defense**
- 1. In the absence of "underlying insurance", we will have the:
    - a. Right and duty to defend the insured against any "suit"; or
    - b. Right, at our discretion, to investigate and settle any claim to which this insurance applies.
  - 2. We will have no duty to defend any insured against any "suit":
    - a. Seeking damages to which this insurance does not apply; or
    - b. After the applicable Limit of Insurance of this Coverage Part has been used up in the payment of judgments or settlements.
- C. Exclusions**
- This insurance does not apply to:
- 1. **Expected Or Intended**  
"Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" or "property damage" resulting from the use of reasonable force to protect persons or property.
  - 2. **Contractual**  
Damages which the insured is obligated to pay by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability that the insured would have in the absence of the contract or agreement.
  - 3. **Employers Liability**  
"Bodily injury" to:
    - a. An "employee" or "temporary worker" of the insured arising out of and in the course of:
      - (1) Employment by the insured; or
      - (2) Performing duties related to the conduct of the insured's business; or
    - b. The spouse, child, parent, brother or sister of that "employee" or "temporary worker" as a consequence of Paragraph a. above.

This exclusion applies whether the insured may be liable as an employer or in any other capacity and to any obligation to share damages with or repay someone else who must pay damages because of the injury.
  - 4. **Auto**  
"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any "auto" within the United States (including its territories and possessions), Puerto Rico and Canada. Use includes operation and "loading and unloading".

## COMMERCIAL EXCESS/UMBRELLA LIABILITY COVERAGE - CONTINUED

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved in the ownership, maintenance, use or entrustment to others of any "auto".

### 5. Aircraft Or Watercraft

"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft or watercraft owned or operated by or rented or loaned to any insured. Use includes operation and "loading and unloading".

This exclusion does not apply to an aircraft that is:

- a. Chartered by, loaned to, or hired by you with a paid crew; and
- b. Not owned by any insured.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, in the "occurrence" which caused the "bodily injury" or "property damage" involved in the ownership, maintenance, use or entrustment to others of any aircraft or watercraft that is owned or operated by or rented or loaned to any insured.

### 6. Damage To Property

"Property damage" to:

- a. Property you own, rent or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;
- b. Property loaned to you;
- c. Personal property in the care, custody or control of the insured;
- d. That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or
- e. That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

### 7. Damage To Your Product

"Property Damage" to "your product" arising out of it or any part of it.

### 8. Damage To Impaired Property Or Property Not Physically Injured

"Property damage" to "impaired property" or property that has not been physically injured, arising out of:

- a. A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or
- b. A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

### 9. Recall Of Products, Work Or Impaired Property

Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

- a. "Your product";
- b. "Your work"; or
- c. "Impaired property";

if such product, work, or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

### 10. Personal And Advertising Injury

"Personal and advertising injury".

### 11. Excess Liability

Any damages or expenses to which Coverage E applies.

### 12. Electronic Year Recognition

"Bodily injury" or "property damage" arising directly or indirectly out of:

- a. Any actual or alleged failure, malfunction or inadequacy of:
  - (1) Any of the following, whether belonging to any insured or to others:
    - (a) Computer hardware, including microprocessors;
    - (b) Computer application hardware;
    - (c) Computer operating systems and related software;
    - (d) Computer networks;
    - (e) Microprocessors (computer chips) not part of any computer system; or
    - (f) Any other computerized or electronic equipment or components; or

COMMERCIAL EXCESS/UMBRELLA LIABILITY COVERAGE - CONTINUED

(2) Any other products and any services, data, or functions that directly or indirectly use or rely upon in any manner, any of the items listed in Paragraph a.(1) above;

due to the inability to correctly recognize, process, distinguish, interpret or accept any calendar date or time of day.

- b. Any advice, consultation, design, evaluation, inspection, installation, maintenance, repair, replacement or supervision provided or done by you or for you to determine, rectify or test for, any potential or actual problems described in Paragraph a. of this exclusion.

**13. Products -Completed Operations Hazard**

"Bodily injury" or "property damage" included within the "products-completed operations hazard".

**14. Employee Benefits**

Damages arising out of an "error or omission" committed in the "administration" of "employee benefits".

**15. Professional Services**

"Bodily injury" or "property damage" due to the rendering or failure to render any professional service, including but not limited to:

- a. Legal, accounting or advertising services;
- b. Preparing, approving, or failing to prepare or approve maps, drawings, opinions, reports, surveys, change orders, designs or specifications;
- c. Electronic data processing, computer consulting, computer programming or computer software services, advice or instruction;
- d. Supervisory, inspection or engineering services;
- e. Medical, surgical, dental, x-ray or nursing services; treatment, advice or instruction;
- f. Any health or therapeutic service, treatment, advice or instruction;
- g. Any service, treatment, advice or instruction for the purpose of appearance or skin enhancement, hair removal or replacement or personal grooming;
- h. Optometry or optical or hearing aid services including the prescribing, preparation, fitting, demonstration or distribution of ophthalmic lenses or similar products or hearing aid services;
- i. Body piercing services;

- j. Services in the practice of pharmacy;
- k. Law enforcement or fire fighting services;
- l. Handling, embalming, disposal, burial, cremation or disinterment of dead bodies; and
- m. Any insured's activities as an "insurance agent".

**16. War**

"Bodily injury" or "property damage", however caused, arising directly or indirectly out of:

- a. War, including undeclared or civil war;
- b. Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- c. Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

**17. Electronic Data**

Damages arising out of the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate "electronic data".

**18. Fungi Or Bacteria**

- a. "Bodily injury" or "property damage" which would not have occurred, in whole or in part, but for the actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to, existence of, or presence of, any "fungi" or bacteria on or within a building or structure, including its contents, regardless of whether any other cause, event, material or product contributed concurrently or in any sequence to such injury or damage.
- b. Any loss, cost or expenses arising out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating or disposing of, or in any way responding to, or assessing the effects of, "fungi" or bacteria, by any insured or by any other person or entity.

**19. Racing Activities**

"Bodily injury" or "property damage" arising out of the sponsorship or use of "all terrain vehicles", "mobile equipment", watercraft or "autos" in or while in practice for or while being prepared for, any prearranged professional or organized racing, speed, demolition, or stunting activity or contest.



COMMERCIAL EXCESS/UMBRELLA LIABILITY COVERAGE - CONTINUED

**20. Pollution**

- a. "Bodily injury" or "property damage", which would not have occurred in whole or in part but for the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" at any time.
- b. Any loss, cost or expense arising out of any:
- (1) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to or assess the effects of "pollutants"; or
  - (2) Claim or "suit" by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of "pollutants".
- c. This Pollution Exclusion applies whether or not:
- (1) Such irritant or contaminant has any function in your business, operations, premises, site or location; or
  - (2) The "bodily injury" or "property damage" arises from environmental damage or pollution of the environment. This exclusion applies to all "bodily injury" and "property damage" within the scope of this exclusion, including, for example and without limitation, from exposure to "pollutants" within a residential or commercial building or from discharges of "pollutants" from "your product".

**21. Asbestos**

- a. "Bodily injury" or "property damage" caused in whole or in part by the actual, alleged or threatened:
- (1) Inhalation of, ingestion of, or physical exposure to "asbestos";
  - (2) Use of "asbestos" in construction or manufacture of any goods, products or structures;
  - (3) Removal of "asbestos" from any goods, products or structures;
  - (4) Manufacture, sale, transport, storage or disposal of "asbestos"; or
  - (5) Discharge, dispersal, seepage, migration, release or escape of "asbestos".

- b. Any loss, cost or expense arising out of any:

- (1) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "asbestos"; or
- (2) Claim or "suit" by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to or assessing the effects of "asbestos".

**22. Employment-Related Practices**

"Bodily injury" to:

- a. A person arising out of any:
- (1) Refusal to employ that person;
  - (2) Termination of that person's employment; or
  - (3) Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, harassment, humiliation, discrimination or malicious prosecution directed at that person; or
- b. The spouse, child, parent, brother or sister of that person as a consequence of "bodily injury" to that person at whom any of the employment-related practices described in Paragraph a.(1), a.(2) or a.(3) above is directed.

This exclusion applies:

- (1) Whether the injury-causing event described in Paragraphs a.(1), a.(2) or a.(3) above occurs before employment, during employment or after employment of that person.
- (2) Whether the insured may be liable as an employer or in any other capacity; and
- (3) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

**23. Laws**

Any liability or obligation for which the insured may be held liable under:

- a. Workers' Compensation, disability benefits or unemployment compensation law;
- b. The Employee's Retirement Income Security Act (E.R.I.S.A.), and any amendments thereto;
- c. Any "auto" no-fault, Personal Injury Protection or Uninsured or Underinsured Motorist Law;

COMMERCIAL EXCESS/UMBRELLA LIABILITY COVERAGE - CONTINUED

- d. Any federal, state or local odometer law, auto damage disclosure law, used car disclosure law or aftermarket parts disclosure law;
- e. Any federal, state or local truth in lending, truth in leasing or consumer leasing law;
- f. Recording and distribution of material or information in violation of:
  - (1) The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law;
  - (2) The CAN-SPAM Act of 2003, including any amendment of or addition to such law; or
  - (3) Any statute, ordinance or regulation, other than the TCPA or CAN-SPAM Act of 2003, that prohibits or limits the sending, transmitting, communicating, or distribution of material or information; or
  - (4) The Fair Credit Reporting Act (FCRA), including any amendment of or addition to such law including the Fair and Accurate Credit Transaction Act (FACTA);
  - (5) The Fair Debt Collection Practices Act (FDCPA), including any amendment of or addition to such law; or
  - (6) Any federal, state or local statute, ordinance or regulation other than TCPA, CAN-SPAM Act of 2003, FCRA or FDCPA and their amendments and additions that addresses, prohibits or limits the printing, dissemination, disposal, collecting, recording, sending, transmitting, communicating or distribution of material or information; or
- g. Any other similar federal, state or local law.

**24. All Terrain Vehicle**

"Bodily injury" or "property damage" arising out of the ownership, maintenance or use, lease, rental or other entrustment to others of any "all terrain vehicle" snowmobile, miniature motorcycle (also known as a mini-bike or pocket bike) or motorcycle (designed exclusively for off public road use) that is owned or operated by or rented or loaned to any insured.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by the insured if the "occurrence" which caused the "bodily injury" or "property damage" involved in the ownership, maintenance or use, lease, rental or other entrustment to others of an "all terrain vehicle" that is owned or operated by or rented or loaned to any insured.

**25. Terrorism**

"Bodily injury" or "property damage" caused directly or indirectly by "terrorism", including action in hindering or defending against an actual or expected incident of "terrorism". This exclusion applies regardless of any other cause or event that contributes concurrently or in any sequence to such injury or damage.

**26. Silica Or Silica-Related Dust**

- a. "Bodily injury" arising, in whole or in part, out of the actual, alleged, threatened or suspected inhalation of or ingestion of, "silica" or "silica-related dust".
- b. "Property damage" arising, in whole or in part, out of the actual, alleged, threatened or suspected contact with, exposure to, existence of, or presence of, "silica" or "silica-related dust".
- c. Any loss, cost or expense arising in whole or in part, out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating or disposing of, or in any way responding to or assessing the effects of "silica" or "silica-related dust" by any insured or by any other person or entity.

**27. Nuclear Energy**

- a. To "bodily injury" or "property damage"
  - (1) With respect to which an insured under Coverage U is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters, Nuclear Insurance Association of Canada or any of their successors or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability; or

## COMMERCIAL EXCESS/UMBRELLA LIABILITY COVERAGE - CONTINUED

- (2) Resulting from the "hazardous properties" of "nuclear material" and with respect to which:
- (a) Any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof; or
  - (b) 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.
- b. To "bodily injury" or "property damage" resulting from "hazardous properties" of "nuclear material", if:
- (1) The "nuclear material":
    - (a) Is at any "nuclear facility" owned by or operated by or on behalf of an insured; or
    - (b) Has been discharged or dispersed there from.
  - (2) The "nuclear material" is contained in "spent fuel" or "waste material" at any time possessed, handled, used, processed, stored, transported or disposed of, by or on behalf of an insured; or
  - (3) The "bodily injury" or "property damage" 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 (3) applies only to "property damage" to such "nuclear facility" and any property thereat.
- c. The cost of bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.
- d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit" including actual loss of earnings up to \$300 a day because of time off from work.
- e. All court costs taxed against the insured in the "suit". However, these payments do not include attorney's fees or attorneys' expenses taxed against the insured.
- f. Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.
- g. All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.
2. When we have the right but not the duty to defend the insured and elect to participate in the defense, we will pay our own expenses but will not contribute to the expenses of the insured or the "underlying insurer".
3. These payments will not reduce the limits of insurance.
4. Under Coverage U, these payments are not subject to the Retained Limit stated in the Declarations.

### Section II - Who Is An Insured

The following persons or organizations are insureds under this Coverage Part:

### Coverage E - Excess Liability

- A. Except for liability arising out of the ownership, maintenance or use of an "auto":
- 1. The Named Insured shown in the Declarations; and
  - 2. Any person or organization who is an insured or an additional insured in the "underlying insurance", but only to the extent the "underlying insurance" applies. If coverage provided to an additional insured is required by contract or agreement, the most we will pay on behalf of the additional insured is the lesser of the amount payable under **Section III - Limits of Insurance** or the amount of insurance required by the contract or agreement, less any amounts payable by "underlying insurance".

### Supplementary Payments - Coverages E And U

1. When we have the duty to defend, we will pay with respect to any claim we investigate or settle, or any "suit" against an insured we defend.
- a. All expenses we incur.
  - b. Up to \$2,000 for the cost of bail bonds (including bonds for related traffic law violations) required because of an "occurrence" we cover. We do not have to furnish these bonds.

COMMERCIAL EXCESS/UMBRELLA LIABILITY COVERAGE - CONTINUED

B. For liability arising out of the ownership, maintenance or use of an "auto":

1. The Named Insured shown in the Declarations; and
2. Any person, including their "family members", or organization scheduled as a Designated Insured in the Declarations but only with respect to:
  - a. Any "auto" used in your business except an "auto" owned by a Designated Insured or, if an individual, his or her "family members"; or
  - b. Personal use of any "auto" you own, borrow or hire except an "auto" you borrow or hire from the Designated Insured or, if an individual, his or her "family members".

**Coverage U - Umbrella Liability**

A. Except for liability arising out of the ownership, maintenance or use of an "auto":

1. If you are designated in the Declarations as:
  - a. An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
  - b. A partnership or joint venture, you are an insured. Your members, your partners and their spouses are also insureds, but only with respect to the conduct of your business.
  - c. A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
  - d. An organization other than a partnership, joint venture, or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.
  - e. A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.

2. Each of the following is also an insured:

- a. Your "volunteer workers" only while performing duties related to the conduct of your business, your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business. However, none of these "employees" or "volunteer workers" are an insured for:

(1) "Bodily injury":

- (a) To you or your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company) to a co-"employee" in the course of his or her employment or performing duties related to the conduct of your business or to your other "volunteer workers" while performing duties related to the conduct of your business;
- (b) To the spouse, child, parent, brother or sister of that co-"employee" or "volunteer worker" as a consequence of Paragraph (1)(a) above;
- (c) For which there is an obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraphs (1)(a) or (b) above; or
- (d) Arising out of his or her providing or failing to provide professional health care services.

(2) "Property damage" to property:

- (a) Owned, occupied or used by;
- (b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by

you, any of your "employees", "volunteer workers", any partner or member (if you are a partnership or joint venture), or any member (if you are a liability company).

- b. Any person (other than your "employee" or "volunteer worker") or any organization while acting as your real estate manager.

## COMMERCIAL EXCESS/UMBRELLA LIABILITY COVERAGE - CONTINUED

c. Any person or organization having proper temporary custody of your property if you die, but only:

(1) With respect to liability arising out of the maintenance or use of that property; and

(2) Until your legal representative has been appointed.

d. Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this Coverage Part.

3. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to the organization. However:

a. Coverage under this provision is afforded only until the 90th day after you acquire or form the organization or the end of the policy period whichever is earlier; and

b. Coverage does not apply to "bodily injury", "property damage" or "personal and advertising injury" that occurred before you acquired or formed the organization.

B. Only a Named Insured is an insured with respect to liability arising out of the ownership, maintenance or use of an "auto".

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

### Section III - Limits Of Insurance

A. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay under **Coverages E** and **U** combined regardless of the number of:

1. Insureds;
2. Coverages provided by this Coverage Part;
3. Claims made, "suits" brought, or number of vehicles or watercraft involved; or
4. Persons or organizations making claims or bringing "suits".

B. The General Aggregate Limit is the most we will pay for the sum of all "ultimate net loss" under **Coverages E** and **U**, except "ultimate net loss" because of "bodily injury" or "property damage":

1. Arising out of the ownership, maintenance, use, "loading or unloading" or entrustment to others of an "auto"; or
2. Included in the "products-completed operations hazard".

C. The Products-Completed Operations Aggregate Limit is the most we will pay for the sum of all "ultimate net loss" under **Coverage E** because of "bodily injury" or "property damage" included in the "products-completed operations hazard".

D. Subject to Paragraph B or Paragraph C above, whichever applies, the Each Occurrence Limit is the most we will pay for the sum of all "ultimate net loss" under **Coverages E** and **U** because of all damages arising out of any one "occurrence".

The Aggregate Limits, as described in Paragraphs B and C above, apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining Limits of Insurance.

### Section IV - Conditions

We have no duty to provide coverage under this Coverage Part unless you and any other involved insured have fully complied with the Conditions contained in this Coverage Part.

#### A. Appeals

If the "underlying insurer" or insured elects not to appeal a judgment in excess of the available limit of "underlying insurance" or the retained limit stated in the Declarations, we may do so at our own expense. We will be liable for taxable costs, interest and disbursements. Such appeal does not increase the Limits of Insurance.

#### B. Bankruptcy

##### 1. Bankruptcy Of Insured

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Coverage Part.

##### 2. Bankruptcy Of Underlying Insurer

Bankruptcy of the "underlying insurer" will not relieve us of our obligation under **Coverage E**. However, this insurance will apply as if the "underlying insurance" were in full effect.

#### C. Duties In The Event Of Occurrence, Claim Or Suit

1. You must see to it that we are notified as soon as practicable of an "occurrence", regardless of the amount, which may result in a claim. To the extent possible, notice should include:

- a. How, when and where the "occurrence" took place;
- b. The names and addresses of any injured persons and witnesses; and
- c. The nature and location of any injury or damage arising out of the "occurrence".

COMMERCIAL EXCESS/UMBRELLA LIABILITY COVERAGE - CONTINUED

2. If a claim is made or "suit" is brought against any insured, you must:

- a. Immediately record the specifics of the claim or "suit" and the date received; and
- b. Notify us as soon as practicable.

You must see to it that we receive written notice of the claim or "suit" as soon as practicable.

3. You and any other involved insured must:

- a. Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
- b. Authorize us to obtain records and other information;
- c. Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and
- d. Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this insurance may also apply.

4. No insured will, except as the insured' own cost, voluntarily make a payment, assume any obligation or incur any expense, without our consent.

**D. Expanded Coverage Territory**

1. If a "suit" to which this insurance applies is brought outside the United States of America (including its territories and possessions), Puerto Rico or Canada, we will have the right but not the duty to defend the insured against such "suit".

In any such case in which we elect not to defend, the insured will at our option and under our supervision:

- a. Make or cause to be made such investigation and defense as are reasonably necessary; and
- b. To the extent possible, effect such settlement or settlements as we shall deem proper.

We will reimburse the insured, under **Supplementary Payments - Coverage E** and **U**, for the reasonable cost of such investigation and defense and, within the limits of liability, for the amounts of such authorized settlement.

2. All payments or reimbursements we make for damages because of judgments or settlements will be made in U.S. currency at the prevailing exchange rate at the time the insured became legally obligated to pay such sums. All payments or reimbursements we make for expenses under **Supplementary Payments - Coverages E** and **U** will be made in U.S. currency at the prevailing exchange rate at the time the expenses were incurred.

3. Any disputes between you and us as to whether there is coverage under this Coverage Part must be filed in the courts of the United States of America (including its territories and possessions), Puerto Rico or Canada.

**E. Legal Action Against Us**

No person or organization has a right under this Coverage Part.

1. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or
2. To sue us on this Coverage Part unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured; but we will not be liable for damages that are not payable under the terms of this Coverage Part or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured, and the claimant or the claimant's legal representative.

**F. Loss Payable**

We will have no liability under **Coverage E** unless and until the insured' "underlying insurer" has become obligated to pay the underlying limit. We will have no obligation under **Coverage U** unless and until the insured has become obligated to pay the retained limit.

Such obligation to pay part of the "ultimate net loss" shall have been previously determined by a final settlement or judgment after an actual trial or written agreement between the insured, claimant, and us. The first Named Insured shown in the Declarations will promptly reimburse us for any damages we pay which are within the Retained Limit stated in the Declarations.

**G. Maintenance Of Underlying Insurance - Coverage E - Excess Liability**

You shall maintain in full force and effect during the term of this Coverage Part all "underlying insurance" stated in the Declarations. In the event you fail to do so:

1. **Coverage E** will apply only to the extent that it would have applied if the "underlying insurance" had been maintained as specified; and

COMMERCIAL EXCESS/UMBRELLA LIABILITY COVERAGE - CONTINUED

2. Coverage will not fill the "underlying insurance" gap created by your failure to maintain **Coverage E** "underlying insurance".

Failure to reinstate any aggregate limit reduced or exhausted solely by "occurrences" which take place during the term of this Coverage Part shall not be interpreted as failure to maintain "underlying insurance" in force.

**H. Other Insurance**

1. This insurance is excess over, and shall not contribute with, any other insurance, whether primary, excess, contingent or on any other basis. This condition will not apply to insurance specifically written as excess over this Coverage Part.

When this insurance is excess, we will have no duty to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

2. When this insurance is excess over other insurance, we will pay only our share of the "ultimate net loss" that exceeds the sum of:
  - a. The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
  - b. The total of all deductible and self-insured amounts under all that other insurance.

**I. Premium Audit**

1. We will compute all premiums for the Coverage Part in accordance with our rules and rates.
2. The premium for this Coverage Part is designated in the Declarations as an Advance Premium or a Flat Charge Premium:
  - a. An Advance Premium is a deposit premium only. At the close of each audit period we will compute the earned premium for that period. Audit premiums are due and payable on notice to the first Named Insured. If the sum of the advance and audit premiums paid for the policy period is greater than the earned premium, we will return the excess to the first Named Insured.
  - b. A Flat Charge Premium is not subject to audit or adjustment.
3. The first Named Insured must keep records of the information we need for premium computation and send us copies at such times as we may request.

**J. Representations Or Fraud**

By accepting this policy, you agree:

1. The statements in the Declarations 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; and
4. This policy is void in any case of fraud by you as it relates to this policy or any claim under this policy.

**K. Separation Of Insureds**

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned to the first Named Insured, this insurance applies:

1. As if each Named Insured were the only Named Insured; and
2. Separately to each insured against whom claim is made or "suit" is brought.

**L. Coverage E - Transfer Of Defense**

When the underlying limits of insurance have been used up in the payment of judgments or settlements, the duty to defend will be transferred to us. We will cooperate in the transfer of control to us of any outstanding claims or "suits" seeking damages to which this insurance applies which would have been covered by the "underlying insurance" had the applicable limit not been used up.

**M. Transfer Of Rights Of Recovery Against Others To Us**

If the insured has rights to recover all or part of any payment we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us to enforce them.

Any amounts recovered shall be apportioned in reverse order of payment, as follows:

1. The payer of any amount over and above our payment shall first be reimbursed;
2. We shall be reimbursed for the amount paid hereunder; and
3. Lastly, any remainder shall be applied to the interests of those to whom this coverage is excess.

Each concerned interest will share expenses of recovery in proportion to the amounts recovered.

**N. When We Do Not Renew**

If we decide not to renew this Coverage Part, we will mail or deliver to the first Named Insured shown in the Declarations written notice of the nonrenewal not less than 30 days before the expiration date.

If notice is mailed, proof of mailing will be sufficient proof of notice.

**O. Two Or More Coverage Forms Or Policies Issued By Us**

If this Coverage Form and any other Coverage Form or policy issued to you by us or any company affiliated with us apply to the same "occurrence", the aggregate maximum Limit of Insurance under all the Coverage Forms or policies shall not exceed the highest applicable Limit of Insurance under any one Coverage Form or policy. This condition does not apply to any Coverage Form or policy issued by us or an affiliated company to apply:

1. As "underlying insurance"; or
2. Specifically as excess insurance over this Coverage Form or Policy.

**Section V - Definitions**

1. "Administration" means:

- a. Providing information to "employees", including their dependents and beneficiaries, with respect to eligibility for or scope of "employee benefit";
- b. Interpreting "employee benefit";
- c. Handling of records in connection with "employee benefit"; or
- d. Effecting, continuing or terminating any "employee's" participation in any benefit included in "employee benefits"

by you or a person or organization authorized by you to perform such acts.

However, "administration" does not include handling payroll deductions.

2. "Advertisement" means a notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters. For the purposes of this definition:

- a. Notices that are published include material placed on the internet or on similar electronic means of communication; and
- b. Regarding web-sites, only that part of a web-site that is about your goods, products or services for the purposes of attracting customers or supporters is considered an advertisement.

3. "All terrain vehicle" means a land motor vehicle whether or not subject to motor vehicle registration:

- a. With three or four broad, low pressure tires (less than 10 pounds per square inch);
- b. With a seat to be straddled by the operator and, where applicable, a passenger;
- c. With handlebars for steering; and
- d. Designed for off-road use.

4. "Asbestos" means not only the natural fibrous mineral forms of impure magnesium silicate, but also any material, good, product or structure of which it is a part.

5. "Auto" means:

- a. A land motor vehicle, trailer or semitrailer designed for travel on public roads, including any attached machinery or equipment; or
- b. Any other land motor vehicle that is subject to compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged.

However, "auto" does not include "mobile equipment".

6. "Bodily injury" means bodily injury, disability, sickness or disease sustained by a person, including death resulting from any of these at any time. "Bodily injury" includes mental anguish or other mental injury resulting from "bodily injury".

Damages because of "bodily injury" include damages claimed by any person or organization for care, loss of services, or death resulting at any time from the "bodily injury".

7. "Electronic data" means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

8. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".

However, with respect to "employee benefits" to which:

- a. **Coverage E** may apply, "employee" does not include a "leased worker" or a "temporary worker".
- b. **Coverage U** does not apply, "employee" means a person actively employed, formerly employed, or on leave of absence, disabled or retired. "Employee" includes a "leased worker" or a "temporary worker".



COMMERCIAL EXCESS/UMBRELLA LIABILITY COVERAGE - CONTINUED

9. "Employee benefits" means:

- a. Insurance programs for:
  - (1) Group life;
  - (2) Group accident and health;
  - (3) Dental vision and hearing plans;
  - (4) Flexible Spending Accounts;
  - (5) Social Security and disability benefits;
  - (6) Workers' compensation; and
  - (7) Unemployment.

b. Group plans for:

- (1) Profit sharing;
- (2) Pension;
- (3) Employee stock subscription;
- (4) Employee savings plans; and
- (5) Employee stock ownership plans.

c. Vacation plans, including buy and sell programs; leave of absence programs, including military, maternity, family and civil leave; tuition assistance plans; transportation and health club subsidies; and

d. Other similar employee benefits identified by separate endorsement.

The above plans must be provided by you and are applicable only to you and your "employees".

10. "Error or omission" means an act negligently committed:

- a. In the "administration" of your "employee benefits"; or
- b. An insured's activities as an "insurance agent";

specifically identified in the Declarations of this Coverage Part under the schedule of "underlying insurance".

11. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.

12. "Family member" means a person related to an individual by blood, marriage or adoption who is a resident of the individual's household, including a ward or foster child.

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

14. "Hazardous properties" includes radioactive, toxic or explosive properties.

15. "Hostile fire" means one which becomes uncontrollable or breaks out from where it was intended to be.

16. "Impaired property" means tangible property, other than "your product" or "your work", that cannot be used or is less useful because:

a. It incorporates "your product" or "your work", that is known or thought to be defective, deficient, inadequate or dangerous; or

b. You have failed to fulfill the terms of a contract or agreement;

if such property can be restored to use by:

a. The repair, replacement, adjustment or removal of "your product" or "your work"; or

b. Your fulfilling the terms of the contract or agreement.

17. "Insurance agent" means a person or organization duly licensed as an insurance agent, or the equivalent, by the regulatory authority in the state(s) in which you engage in the insurance business. "Insurance agent" does not mean an insurance solicitor, broker or consultant.

18. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".

19. "Loading or unloading" means the handling of property:

a. After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or "auto";

b. While it is in or on an aircraft, watercraft or "auto"; or

c. While it is being moved from an aircraft, watercraft or "auto" to the place where it is finally delivered;

but "loading or unloading" does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, watercraft or "auto".

20. "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:

a. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;

b. Vehicles maintained for use solely on or next to premises you own or rent;

c. Vehicles that travel on crawler treads;

d. Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:

- (1) Power cranes, shovels, loaders, diggers or drills; or

COMMERCIAL EXCESS/UMBRELLA LIABILITY COVERAGE - CONTINUED

- (2) Road construction or resurfacing equipment such as graders, scrapers or rollers;
- e. Vehicles not described in Paragraph a., b., c. or d. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
- (1) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
- (2) Cherry pickers and similar devices used to raise or lower workers;
- f. Vehicles not described in Paragraph a., b., c. or d. above maintained primarily for purposes other than the transportation of persons or cargo.

However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":

- (1) Equipment designed primarily for:
- (a) Snow removal;
- (b) Road maintenance, but not construction or resurfacing; or
- (c) Street cleaning;
- (2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
- (3) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

However, "mobile equipment" does not include any land vehicles that are subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged. Land vehicles subject to a compulsory or financial responsibility law or other motor vehicle insurance law are considered "autos".

21. "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 material";

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 material";

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.

22. "Nuclear material" means "source material", "special nuclear material" or "by-product material". "Source material", "special nuclear material" and "by-product material" have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof.
23. "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.
24. "Occurrence" means:
- a. With respect to "bodily injury" and "property damage", an accident, including continuous or repeated exposure to substantially the same general harmful conditions;
- b. With respect to "personal and advertising injury", an offense; and
- c. With respect to "error and omission", a negligent act.
25. "Personal and advertising injury" means, injury, including consequential "bodily injury", arising out of one or more of the following offenses:
- a. False arrest, detention or imprisonment;
- b. Malicious prosecution;
- c. The wrongful eviction from, wrongful entry into or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;
- d. Oral or written publication, in any manner, of material that slanders a person or organization or disparages a person's or organization's goods, products or services;
- e. Common law violation of a person's right of privacy;
- f. Discrimination against or harassment of a person if:
- (1) Coverage for such discrimination or harassment is permitted by law; and

COMMERCIAL EXCESS/UMBRELLA LIABILITY COVERAGE - CONTINUED

(2) The discrimination or harassment is not committed by or at the direction of:

- (a) You;
- (b) If you are an individual, your spouse;
- (c) If you are a partnership, a partner or his or her spouse;
- (d) If you are a joint venture, a member of the joint venture or his or her spouse;
- (e) If you are a limited liability company, any or your members or managers; or
- (f) If you are an organization other than a partnership, joint venture, or limited liability company, any of your "executive officers", directors, or stockholders.

- g. The use of another's advertising idea in your "advertisement"; or
- h. Infringing upon another's copyright, trade dress or slogan in your "advertisement".

26. "Pollutants" means any solid, liquid, gaseous, bacterial, viral, electromagnetic or thermal irritant or contaminant, including but not limited to, smoke, vapor, soot, acids, alkalis, harmful or toxic chemicals, fuels, motor oil, petroleum products, cleaning solvents, dry cleaning fluids, brake fluid, transmission fluid, antifreeze, exhaust gases, lead, lead paint, carbon monoxide, sewage, ink, toner, waste and fumes, including but not limited to welding fumes, and glue fumes.

Waste includes, but is not limited to, material to be recycled, reconditioned or reclaimed.

A substance does not lose its character of being a "pollutant" by virtue of having a useful function.

27. "Products-completed operations hazard":

- a. Includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your products" or "your work" except:
  - (1) Products that are still in your physical possession; or
  - (2) Work that has not yet been completed or abandoned. However, "your work" will be deemed completed at the earliest of the following times:
    - (a) When all of the work called for in your contract has been completed.
    - (b) When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site.

(c) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair, or replacement, but which is otherwise complete, will be treated as completed.

b. Does not include "bodily injury" or "property damage" arising out of:

- (1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the "loading or unloading" of that vehicle by any insured;
- (2) The existence of tools, uninstalled equipment or abandoned or unused materials; or
- (3) Products or operations for which the classification on the Declarations of a policy of "underlying insurance" states that products-completed operations are subject to the General Aggregate Limit.

28. "Property damage" means:

- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
- b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it.

"Property damage" includes all forms of radioactive contamination of property.

For the purpose of this insurance, "electronic data" is not tangible property.

29. "Silica" means silicon dioxide (occurring in crystalline, amorphous and impure forms), silica particles, silica dust or silica compounds.

30. "Silica-related dust" means a mixture or combination of silica or other dust or particles.

31. "Spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a "nuclear reactor".

32. "Suit" means a civil proceeding in which damages because of "bodily injury", "property damage", "personal or advertising injury" or "errors and omissions" damages to which this insurance applies are alleged. "Suit" includes:

- a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or

COMMERCIAL EXCESS/UMBRELLA LIABILITY COVERAGE - CONTINUED

- b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent or the "underlying insurer" consent.
33. "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.
34. "Terrorism" means activities against persons, organizations or property of any nature:
- a. That involve the following or preparation for the following:
- (1) Use or threat of force or violence;
  - (2) Commission or threat of a dangerous act; or
  - (3) Commission or threat of an act that interferes with or disrupts an electronic, communication, information, or mechanical system; and
- b. When one or both of the following applies:
- (1) The effect is to intimidate or coerce a government or the civilian population or any segment thereof, or to disrupt any segment of the economy; or
  - (2) It appears that the intent is to intimidate or coerce a government, or to further political, ideological, religious, social or economic objectives or to express (or express opposition to) a philosophy or ideology.
35. "Title paper preparation" means the preparation of official title papers for registering an "auto" sold by an insured, including the designation of a lienholder or legal owner having a financial interest in such "auto".
36. "Ultimate net loss" means the total sum, after reduction for recoveries or salvages collectible, that the insured becomes legally obligated to pay as damages by reason of settlement or judgments or any arbitration or other alternative dispute method entered into with our consent.
37. "Underlying insurance" means any policies of insurance listed in the Declarations under the schedule of "underlying insurance". "Underlying insurance" that would apply but for the exhaustion of its Limit of Insurance is still considered to be applicable "underlying insurance".
38. "Underlying insurer" means any insurer who provides any policy of insurance listed in the Declarations under the schedule of "underlying insurance".
39. "Volunteer worker" means a person who is not your "employee", and who donates his or her work and acts at the discretion of and within the scope of duties determined by you, and is not paid a fee, salary or other compensation by you or anyone else for their work performed by you.
40. "Waste material" means any waste material:
- a. Containing "by-product material" other than the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its "source material" content; and
  - b. Resulting from the operation by any person or organization of any "nuclear facility" included under the first two paragraphs of the definition of "nuclear facility".
41. "Your product":
- a. Means:
- (1) Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
    - (a) You;
    - (b) Others trading under your name; or
    - (c) A person or organization whose business or assets you have acquired; and
  - (2) Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.
- b. Includes:
- (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your product"; and
  - (2) The providing of or the failure to provide warnings or instructions.
- c. Does not include vending machines or other property rented to or located for the use of others but not sold.
42. "Your work":
- a. Means:
- (1) Work or operations performed by you or on your behalf; and
  - (2) Materials, parts or equipment furnished in connection with such work or operations.
- b. Includes:
- (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your work"; and
  - (2) The providing of or failure to provide warnings or instructions.

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

## NEW YORK CHANGES

This endorsement modifies insurance provided under the following:

COMMERCIAL EXCESS/UMBRELLA LIABILITY COVERAGE FORM

**A. Section I - Coverage** is amended as follows:

1. Item 1.b. of **Coverage E - Excess Liability**, Paragraph **B. Defense** is replaced by the following:

b. The right at our discretion to investigate and with the consent of the insured to settle the claim or "suit". If the insured does not consent to our written recommendation of a settlement agreement, and elects to continue or to contest legal proceedings, our liability shall not exceed our share of the amount for which the claim or "suit" could have been settled.

2. **Coverage U - Umbrella Liability** Paragraph **A. Insuring Agreement** is amended by replacing the phrase "bodily injury" or "property damage" with the phrase "bodily injury", "personal and advertising injury" or "property damage".

3. Item 1.b. of **Coverage U - Umbrella Liability**, Paragraph **B. Defense** is replaced by the following:

b. The right at our discretion to investigate and with the consent of the insured to settle the claim or "suit". If the insured does not consent to our written recommendation of a settlement agreement, and elects to continue or to contest legal proceedings, our liability shall not exceed our share of the amount for which the claim or "suit" could have been settled.

4. The following is added to **Coverage E - Excess Liability**, Paragraph **B. Defense** and **Coverage U - Umbrella Liability**, Paragraph **B. Defense**:

Our right or duty to defend the insured against a "suit" applies to any "suit" asking for damages to which this insurance applies even if the allegations of the "suit" are groundless, false or fraudulent.

5. Exclusion 1. **Expected or Intended of Coverage U - Umbrella Liability**, Paragraph **C. Exclusions** is replaced by the following:

### Expected or Intended

"Bodily injury", "personal and advertising injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" or "property damage" resulting from the use of reasonable force to protect person or property.

6. Exclusion 10. **Personal and Advertising Injury of Coverage U - Umbrella Liability**, Paragraph **C. Exclusions** is replaced by the following:

### Personal and Advertising Injury

Except as provided in item f. of the definition of "personal and advertising injury", this insurance does not apply to claims or "suits" arising out of or alleging "personal and advertising injury".

7. Exclusion 18. **Fungi or Bacteria of Coverage U - Umbrella Liability** Paragraph **C. Exclusions** is deleted and does not apply.

8. Exclusion 22. **Employment-Related Practices of Coverage U - Umbrella Liability** Paragraph **C. Exclusions** is replaced by the following:

### Employment-Related Practices

"Bodily injury" or "personal and advertising injury" to:

a. A person arising out of any:

(1) Refusal to employ that person;

(2) Termination of that person's employment; or

## NEW YORK CHANGES - CONTINUED

(3) Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation or discrimination directed at that person; or

b. The spouse, child, parent, brother or sister of that person as a consequence of "bodily injury" or "personal and advertising injury" to that person at whom any of the employment-related practices described in Paragraph (1), (2) or (3) above is directed.

This exclusion applies whether the insured may be liable as an employer or in any other capacity, and to any obligation to share damages with or repay someone else who must pay damages because of the injury.

9. Exclusion 25. **Terrorism of Coverage U - Umbrella Liability Paragraph C. Exclusions** is deleted and does not apply.

10. Exclusion 26. **Silica or Silica Related Dust of Coverage U - Umbrella Liability Paragraph C. Exclusions** is deleted and does not apply.

11. The following exclusion is added to **Coverage U - Umbrella Liability, Paragraph C. Exclusions**:

### **Discrimination**

Except as provided in item f. of the definition of "personal and advertising injury", this insurance shall not apply to claims or "suits" arising out of acts or allegations of discrimination.

**B. Section IV - Conditions** is amended as follows:

1. The following is added to **Condition C. Duties in the Event of Occurrence Claim or Suit**:

Notice given by or on behalf of the insured, or written notice by or on behalf of the injured person or any other claimant with particulars sufficient to identify the insured, to any licensed agent of ours in the state of New York, shall be deemed notice to us.

The following supersedes any provision to the contrary:

Failure to give notice to us as required under this Coverage Part shall not invalidate any claim made by the insured, injured person or any other claimant, unless the failure to provide such timely notice has prejudiced us.

However, no claim made by the insured, injured person or other claimant will be invalidated if it shall be shown not to have been reasonably possible to give such timely notice and that notice was given as soon as was reasonably possible thereafter.

2. The following **Conformity with New York Law Condition** is added:

### **Conformity with New York Law**

It is hereby understood and agreed that, notwithstanding anything in this policy to the contrary, with respect to such insurance as afforded by this Policy, the terms of this Policy as respects coverage for operations in the State of New York shall conform to the coverage requirements of the applicable insurance Laws of the State of New York or the applicable regulations of the New York Insurance Department, provided, however, that the Company's limit of liability as stated in this policy shall be excess of the limit of liability of any underlying insurance or self-insurance as stated in the Declarations or in any endorsement attached hereto.

3. The following **Transfer of Duties When a Limit of Insurance is Used Up Condition** is added:

### **Transfer of Duties When a Limit of Insurance is Used Up**

a. If we conclude that based on "occurrences", claims or "suits" which have been reported to us and to which this insurance may apply, the policy limit is likely to be used up in the payment of judgments or settlements, we will notify the first Named Insured, in writing, to that effect.

b. When a limit of insurance has actually been used up in the payment of judgments or settlements:

(1) We will notify the first Named Insured, in writing, as soon as practicable, that:

(a) Such limit has actually been used up; and

(b) Our duty to defend "suits" seeking damages subject to that limit has also ended.

(2) We will initiate, and cooperate in, the transfer of control, to an appropriate insured, of all claims and "suits" seeking damages which are subject to that limit and which are reported to us before that limit is used up. That insured must cooperate in the transfer of control of said claims and "suits".

## NEW YORK CHANGES - CONTINUED

We agree to take such steps, as we deem appropriate, to avoid a default in, or continue the defense of, such "suits" until such transfer is completed, provided the appropriate insured is cooperating in completing such transfer.

We will take no action whatsoever with respect to any claim or "suit" seeking damages that would have been subject to that limit, had it not been used up, if the claim or "suit" is reported to us after that limit of insurance has been used up.

- (3) The first Named Insured, and any other insured involved in a "suit" seeking damages subject to that limit, must arrange for the defense of such "suit" within such time period as agreed to between the appropriate insured and us. Absent any such agreement, arrangements for the defense of such "suit" must be made as soon as practicable.
- c. The first Named Insured will reimburse us for expenses we incur in taking those steps we deem appropriate in accordance with paragraph b.(2) above.
- The duty of the first Named Insured to reimburse us will begin on:
- (1) The date on which the applicable limit of insurance is used up, if we sent notice in accordance with paragraph a. above; or
- (2) The date on which we sent notice in accordance with paragraph b.(1) above, if we did not send notice in accordance with paragraph a. above.
- d. The exhaustion of any limit of insurance by the payments of judgments or settlement, and the resulting end of our duty to defend, will not be affected by our failure to comply with any of the provisions of this Condition.
4. The **Representations or Fraud Condition** is replaced by the following:
- Representations**
- By accepting this policy, you agree:
1. The statements in the Declarations are accurate and complete;
  2. Those statements are based upon representations you made to us; and
  3. We have issued this policy in reliance upon your representations.

5. Paragraph 1. of the **Expanded Coverage Territory Condition** is replaced by the following:

1. If a "suit" to which this insurance applies is brought outside the United States of America (including its territories and possessions), Puerto Rico or Canada and we:
  - a. Are prohibited from defending the insured against the "suit"; or
  - b. We lack the expertise to properly defend the insured against the "suit";the insured will at our option and under our supervision:
  - (1) Make or cause to be made such investigation and defense as are reasonably necessary; and
  - (2) To the extent possible, effect such settlement or settlements as we shall deem proper.

We will reimburse the insured, under **Supplementary Payments - Coverages E and U** for the reasonable cost of such investigation and defense and, within the limits of liability, for the amounts of such authorized settlement.

6. The **Loss Payable Condition** is replaced by the following:

### Loss Payable

We will have no liability under **Coverage E** unless and until the insured's "underlying insurer" has become obligated to pay the underlying limit. We will have no liability under **Coverage U** unless and until the insured has become obligated to pay the retained limit. Such obligation to pay part of the "ultimate net loss" shall have been previously determined by a final settlement or judgment or written agreement between the insured, claimant and us. The first Named Insured shown in the Declarations will promptly reimburse us for any damages we pay which are within the Retained Limit stated in the Declarations.

7. Paragraph 1. of the **Other Insurance Condition** is replaced by the following:

1. This insurance is excess over, and shall not contribute with, any other valid and collectible insurance, whether primary, excess, contingent or on any other basis. This condition will not apply to insurance specifically written as excess over this Coverage Part.

## NEW YORK CHANGES - CONTINUED

When this insurance is excess, we will have no duty to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against those other insurers.

**8. Paragraph 2.a. of the Premium Audit Condition is replaced by the following:**

- a. An Advance premium is a deposit premium only. At the close of each audit period we will compute the earned premium for that period and send notice to the first Named Insured. The due date for audit and retrospective premiums is the date shown as the due date on the bill. An audit to determine the final premium due or to be refunded will be completed within 180 days after expiration date of the policy. But an audit may be waived if the total annual premium attributable to the auditable exposure base is not reasonably expected to exceed \$1,500. If the sum of the advance and audit premiums paid for the policy term is greater than the earned premium, we will return the excess to the first Named Insured.

**9. Condition O. Two or More Coverage Forms or Policies Issued by Us is deleted.**

**10. Condition E. Legal Action Against Us is replaced by the following:**

**Legal Action Against Us**

- a. Except as provided in Paragraph b., no person or organization has a right under this Coverage Part:

(1) To join us at a party or otherwise bring us into a "suit" asking for damages from an insured; or

(2) To sue us on this Coverage Part unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement of on a final judgment against an insured; but we will not be liable for damages that are not payable under the terms of this Coverage Part or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured, and the claim or the claimant's legal representative.

- b. If we deny coverage or do not admit liability because an insured or the injured person, someone acting for the injured person or other claimant fails to give us written notice as soon as practicable, then the injured person, someone acting for the injured person or other claimant may bring an action against us, provided the sole question is whether the denial of coverage or nonadmission of liability is based on the failure to provide timely notice.

However, the injured person, someone acting for the injured person or other claimant may not bring an action if within 60 days after we deny coverage or do not admit liability, we or an insured:

- (1) Brings an action to declare the rights of the parties under the policy; and
- (2) Names the injured person, someone acting for the injured person or other claimant as a party to the action.

**C. Section V - Definitions is amended as follows:**

1. The definition of "administration" is replaced by the following:

"Administration" means:

- a. Providing information to "employees", including their dependents and beneficiaries, with respect to eligibility for or scope of "employee benefit";
- b. Interpreting "employee benefit";
- c. Handling of records in connection with the "employee benefit"; or
- d. Effecting, continuing or terminating any "employee's" participation in any benefit included in "employee benefits"

by you or a person or organization authorized by you to perform such acts.

However, "administration" does not include:

- (1) Handling payroll deductions; or
- (2) Giving legal advice to employees.

2. Paragraph f. of the definition of "personal and advertising injury" is replaced by the following:

- f. Discrimination arising out of "disparate impact" or the insured's "vicarious liability" arising out of an act of discrimination or harassment against a person. This does not include the insured's "vicarious liability" for acts of discrimination or harassment committed by or at the direction of you or an insured partner, member of a joint advertising venture, member or manager if you are a limited liability company, executive officer, director, stockholder or an insured spouse if you are an insured individual or partner;



NEW YORK CHANGES - CONTINUED

3. The following definitions are added:

"Disparate impact" means the adverse impact of a practice which appears to be neutral, which has the effect of discriminating against a group of individuals due to their race, sex, national origin, age or disability and not justified by business necessity.

"Vicarious liability" means liability that a person or organization bears for the actions of a subordinate or associate.

4. The "loading and unloading" definition is deleted and does not apply.

5. The definition of "pollutants" is replaced by the following:

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

## EXCESS LEGAL LIABILITY - CUSTOMER'S AUTOS

This endorsement modifies insurance provided under the following:

### COMMERCIAL EXCESS/UMBRELLA LIABILITY COVERAGE PART

**Section V - Definitions** is amended as follows:

1. The following is added to the definition of "underlying insurance":

"Underlying insurance" shall include any coverage we provide for loss of or damage to "customer's autos" or "customer's auto" equipment left in your care for servicing, repairing, storing or safekeeping as part of your business operations.

2. The following definition is added:

"Customer's auto" means a customer's land motor vehicle trailer or semitrailer while left with you for service, repair, storage or safekeeping. Customers include your "employees" and members of their households who pay for services performed.

**NEW YORK  
SUPPLEMENTARY UNINSURED/UNDERINSURED MOTORISTS (SUM) COVERAGE  
SELECTION FORM**

New York law allows you to make coverage selections regarding Statutory Uninsured Motorists Coverage and Supplementary Uninsured/Underinsured (SUM) Motorists Coverage. This selection form describes the coverages and options available.

You must purchase either STATUTORY UNINSURED MOTORISTS COVERAGE or SUPPLEMENTARY UNINSURED/UNDERINSURED MOTORISTS COVERAGE.

YOU SHOULD READ THIS DOCUMENT CAREFULLY AND CONTACT YOUR SENTRY REPRESENTATIVE IF YOU HAVE ANY QUESTIONS REGARDING STATUTORY UNINSURED MOTORISTS COVERAGE OR SUPPLEMENTARY UNINSURED/UNDERINSURED (SUM) MOTORISTS COVERAGE.

**A. STATUTORY UNINSURED MOTORISTS COVERAGE**

Uninsured Motorists Coverage provides coverage for the named insured and occupants of a covered auto for bodily injury caused by a negligent motorist who has no insurance. Also included are damages that result from an automobile accident with a hit-and-run vehicle whose owner or operator cannot be identified.

Your motor vehicle liability insurance policy includes Uninsured Motorists Coverage applicable to motor vehicle accidents that occur only WITHIN the State of New York at limits of at least \$25,000 per person/\$50,000 per accident, unless you elect to purchase Supplementary Uninsured/Underinsured (SUM) Motorists Coverage described below.

**B. SUPPLEMENTARY UNINSURED/UNDERINSURED (SUM) MOTORISTS COVERAGE**

Supplementary Uninsured/Underinsured (SUM) Motorists coverage provides in-state and out-of-state coverage for the named insured and occupants of a covered auto for bodily injury caused by a negligent motorist who has no insurance. Also included are damages that result from an automobile accident with a hit-and-run vehicle whose owner or operator cannot be identified.

Supplementary Uninsured/Underinsured Motorists (SUM) coverage includes coverage for bodily injury caused by an underinsured motorist. An underinsured motorist is a motorist whose bodily injury liability limits are less than the Uninsured Motorists Coverage limits of your Business Auto, Motor Carrier or Auto Dealer Liability policy.

Supplementary Uninsured/Underinsured (SUM) Motorists Coverage can provide protection at higher limits than are available under Statutory Uninsured Motorists Coverage.

**C. BASICS OF SUM COVERAGE**

You should consider purchasing Supplementary Uninsured/Underinsured (SUM) Motorists Coverage in order to protect against the possibility of an accident involving another motor vehicle whose owner or operator was negligent and who:

1. May have no insurance whatsoever; or

2. Even if insured, is only insured for third party bodily injury at relatively low liability limits, in comparison to the policyholder's own liability limits for bodily injury sustained by third parties.

By purchasing SUM Coverage, which cannot be purchased in an amount exceeding the amount of third party liability coverage purchased, the policyholder and any insured under the policy can:

1. Be protected for bodily injury to themselves, up to the limit of the SUM Coverage purchased; and
2. Receive from the policyholder's own insurer payment for bodily injury sustained due to the negligence of the other motor vehicle's owner or operator.

The maximum amount payable under the SUM Coverage shall be the policy's SUM limit reduced and thus offset by motor vehicle bodily injury liability insurance policy or bond payments received from, or on behalf of, any negligent party involved in the accident.

#### D. EXAMPLES

The following examples, unless otherwise noted, illustrate the proper application of SUM coverage:

##### 1. EXAMPLE ONE

Insured's Bodily Injury Damages	\$300,000
Insured's Liability Limit	\$500,000
Insured's SUM Limit	\$250,000
Other Motor Vehicle Liability Limit	\$ 25,000
<b>RESULT:</b>	
<p>In this example, the insured has purchased the maximum amount of SUM coverage that must be offered by the insurer, provided that the insured has purchased bodily injury liability limits of at least \$250,000. Insured recovers \$25,000 from the negligent owner or operator of the other motor vehicle, and \$225,000 (\$250,000 minus \$25,000) under the SUM coverage, for a total recovery of \$250,000.</p> <p>In the event that the negligent owner or operator of the other motor vehicle had no liability insurance at all, the insured would collect \$250,000 in SUM coverage from the insured's own insurer. However, if the owner or operator of the other motor vehicle was not negligent, then the insured would receive no SUM payments.</p>	

2. EXAMPLE TWO

Insured's Bodily Injury Damages	\$100,000
Insured's Liability Limit	\$ 25,000
Insured's SUM Limit	\$ 25,000
Other Motor Vehicle Liability Limit	\$ 25,000
<p>RESULT:                      Insured recovers \$25,000 from the negligent owner or operator of the other motor vehicle. The insured receives nothing under the SUM coverage, which equals the mandatory UM coverage, since the liability limits on the other owner or operator's motor vehicle were not lower than the liability insurance limits on the insured's motor vehicle. If the insured's liability and SUM limits were both \$50,000, then the insured would collect another \$25,000 in SUM coverage from the insured's own insurer.</p>	

3. EXAMPLE THREE

Insured's Bodily Injury Damages	\$ 60,000
Insured's Liability Limit	\$100,000
Insured's SUM Limit	\$100,000
Other Motor Vehicle Liability Limit	\$ 50,000
<p>RESULT:                      Insured recovers \$50,000 from the negligent owner or operator of the other motor vehicle and \$10,000 under the SUM coverage, which is the difference between the amount of the insured's SUM coverage and the liability coverage available from the other motor vehicle owner or operator, limited by the amount of the insured's bodily injury damages.</p>	

4. EXAMPLE FOUR

Insured's Bodily Injury Damages	\$150,000
Insured's Liability Limit	\$100,000
Insured's SUM Limit	\$100,000
Other Motor Vehicle Liability Limit	\$ 25,000
<p>RESULT:                      If the insured and the owner or operator of the other motor vehicle were each 50 percent at fault for the accident, then the insured's total recovery would be \$75,000, in light of comparative negligence of the parties involved in the accident. The insured would recover \$25,000 from the negligent owner or operator of the other motor vehicle and \$50,000 under the SUM coverage.</p> <p>On the other hand, if the owner or operator of the other motor vehicle was totally at fault for the accident, then the insured would recover \$25,000 from the negligent owner or operator and would then receive \$75,000 in SUM coverage from the insured's own insurer. Had the insured purchased liability and SUM limits of \$150,000 or more, the SUM recovery would then be \$125,000.</p>	

5. EXAMPLE FIVE

Insured's Bodily Injury Damages	\$ 25,000
Passenger's Bodily Injury Damages	\$ 25,000
Another Passenger's Damages that resulted in death	\$ 50,000
Insured's Combined Single Liability (CSL) Limit	\$ 75,000
Insured's CSL SUM Limit	\$ 75,000
Other Motor Vehicle Liability Limit Uninsured (i.e. no coverage)	
<p><b>RESULT:</b>                  Since the other motor vehicle was uninsured, the full \$75,000 CSL SUM limit is available for all insured persons from this accident under the policy. However, since the accident involves insured persons who were both injured and killed, the mandatory UM limits of \$25,000 per person and \$50,000 per accident for injured persons and \$50,000 per person and \$100,000 per accident for persons killed in the accident are available. Therefore, the insured and first passenger each recover \$25,000 and the second passenger's estate recovers the full \$50,000 under the SUM coverage.</p> <p>If the insured's CSL and CSL SUM limit were each \$300,000 and the insured's damages amounted to \$200,000, then all insured persons would be covered under the SUM coverage as the total damages (\$200,000 + \$25,000 + \$50,000 = \$275,000) are less than the \$300,000 CSL SUM limit.</p>	

Please initial the line next to the coverage you select.

SELECTION OR REJECTION OF SUM COVERAGE

\_\_\_\_\_ I reject Supplementary Uninsured/Underinsured Motorists (SUM) Coverage and select Statutory Uninsured Motorists Coverage with a \$25,000 per person/\$50,000 per accident limit. I understand that coverage only applies to motor vehicle accidents that occur within the state of New York.

\_\_\_\_\_ I select Supplementary Uninsured/Underinsured Motorists (SUM) Coverage with a coverage limit of:

\_\_\_\_\_ \$50,000 Combined Single Limit (Minimum)

\_\_\_\_\_ \$100,000 Combined Single Limit

\_\_\_\_\_ \$500,000 Combined Single Limit

\_\_\_\_\_ Other - Specify Limit \$ \_\_\_\_\_

\_\_\_\_\_ I select Supplementary Uninsured/Underinsured Motorists (SUM) Coverage equal to the Bodily Injury Liability Limit.

Supplementary Uninsured/Underinsured Motorists Coverage limit may not exceed the bodily injury liability limit on your Business Auto, Motor Carrier or Auto Dealer Liability Policy.

THIS SELECTION FORM DOES NOT PROVIDE COVERAGE. READ THE POLICY FOR DETAILS.

I understand this selection of coverage will apply to all subsequent renewals, reinstatements, and replacement policies until a change is requested by me in writing.

Stephen Byer	2553009
Named Insured	Policy Number

\_\_\_\_\_  
Signature of Named Insured or Authorized Representative

_____ Print Name and Title	_____ Date
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## 2013 COMMERCIAL AUTO MULTISTATE FORMS REVISION ADVISORY NOTICE TO BUSINESS AUTO AND MOTOR CARRIER COVERAGE FORM POLICYHOLDERS

This is a summary of the major changes to your policy. No coverage is provided by this summary nor can it be construed to replace any provisions of your policy or endorsements. You should read your policy and review your Declarations page for complete information on the coverages you are provided. If there is any conflict between the Policy and this summary, THE PROVISIONS OF THE POLICY SHALL PREVAIL.

Highlighted below are the areas within the Policy that broaden, reduce or reinforce coverage. This notice does not reference every change, including editorial changes, made in your policy.

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### COVERAGE FORMS

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#### REINFORCEMENTS OF COVERAGE

The endorsements and forms attached to your policy have been revised, in general and where appropriate to:

- A. Add reference to "Auto Dealer Coverage Form" and delete references to the "Business Auto Physical Damage Coverage Form", "Garage Coverage Form" and/or "Truckers Coverage Form" in the list of the coverage forms to which the endorsement modifies; and or
- B. Replace references to "Liability Coverage" with respect to auto liability with "Covered Autos Liability Coverage" to distinguish such coverage from the other types of liability coverages included in your policy.
- C. Revise various provisions and schedules applicable to physical damage coverage to reflect that "loss" rather than "accident" triggers coverage under this section.

#### Revision To "Liability Coverage" Form References

**CA 00 01 - Business Auto Coverage Form**

**CA 00 20 - Motor Carrier Coverage Form**

References to "Liability Coverage" that pertain to auto liability in the Business Auto Coverage Form and Motor Carrier Coverage Form are replaced with "Covered Autos Liability Coverage" to distinguish such coverage from the other types of liability coverages that may be included in your policy.

#### Revisions To Physical Damage Coverage

**CA 00 01 - Business Auto Coverage Form**

**CA 00 20 - Motor Carrier Coverage Form**

The Limits Of Insurance provision under Physical Damage Coverage is reinforced to reflect that "loss" rather than "accident" triggers coverage under this section.



2013 COMMERCIAL AUTO MULTISTATE FORMS REVISION ADVISORY NOTICE TO BUSINESS  
AUTO AND MOTOR CARRIER COVERAGE FORM POLICYHOLDERS - CONTINUED

**Revision to Fellow Employee Coverage**

CA 70 00 - Fellow Employee Endorsement is withdrawn and replaced with CA 20 55 - Fellow Employee Coverage for applicable policies. There is no change in coverage.

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**MULTISTATE ENDORSEMENTS**

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**BROADENINGS OF COVERAGE**

**NEW OPTIONAL ENDORSEMENTS**

**CA 23 30 - Motor Carrier Endorsement**

In general, this endorsement may be used to convert the Business Auto Coverage Form into a Motor Carrier Coverage Form for autos used in your operations as a motor carrier.

**EXISTING OPTIONAL ENDORSEMENTS**

**CA 20 54 - Employee Hired Autos**

This endorsement is revised to reinforce that any employee of yours is an insured while operating a rental or hired vehicle taken out in another employee's name for the purposes of performing duties related to the conduct of your business and with your permission.

**CA 99 16 - Hired Autos Specified As Covered Auto You Own**

This endorsement has been revised to remove the wording which limits coverage with respect to the lessor solely to liability arising out of the acts or omissions of the lessee or anyone else acting on the lessee's behalf.

**CA 99 37 - Garagekeepers Coverage**

Spouses of partners, managers of limited liability companies and executive officers are included as insureds with respect to the conduct of your garage operations.

**CA 23 97 - Amphibious Vehicles**

This endorsement, in general, is revised to reinforce that insurance is not applicable to amphibious vehicles while being launched into, used in or beached from the water. This includes, but is not limited to, coverages such as liability and physical damage coverages.

**CA 23 98 - Trailer Interchange Coverage**

The Supplementary Payments provision is revised to reinforce that it applies to court costs taxed against the insured that do not include the attorney's fees or expenses taxed against the insured. A definition of the term "trailer" is added to reinforce that such term includes a semitrailer, container or a dolly used to convert a semitrailer into a trailer.



ACCOUNT NUMBER: 2553009

## COMMON POLICY DECLARATIONS

Sentry Select Insurance Company (A Participating Stock Company) A member of the Sentry Insurance Group 1800 North Point Drive Stevens Point, WI 54481	Producer  Steven Asch 10000277 315-484-6565
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### GENERAL INFORMATION

**First Named Insured:** Stephen Byer  
**Address:** 1230 W Genesee St  
 Syracuse, NY 13204  
**Business Type:** Individual

Unless stated elsewhere, the coverage provided under this policy is effective 08/01/2018 to 08/01/2019 at 12:01 A.M. Standard Time at your mailing address shown above.

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

### NAMED INSUREDS

The **FIRST NAMED INSURED** shown in the **GENERAL INFORMATION** above, and the person(s) or organization(s) shown as **NAMED INSUREDS** below are named insureds for this policy.

Not Applicable

### COVERAGES

This Contract consists of the following Coverages:

COMMERCIAL AUTO COVERAGE 2553009006

### PREMIUM SUMMARY

The Premium for this policy:	\$	257.00
Terrorism:	\$	0.00
Total Cost:	\$	257.00

### CONTACT INFORMATION

For service, please contact your Sentry Account Manager at the number listed above or our Service office at:

<b>Address:</b>	1800 North Point Drive Stevens Point, WI 54481	<b>Phone:</b>	Toll Free 800-473-6879 Fax 800-514-7191
<b>Email:</b>	businessproducts_direct@sentry.com		

ACCOUNT NUMBER: 2553009

**COMMON POLICY FORMS AND/OR ENDORSEMENTS**

The following forms and/or endorsements apply to all coverages included as part of this policy:

<b>Form/Endorsement Number and Edition Date</b>	<b>Form/Endorsement Title</b>
80 2314 SSDO 05 00	Additional Conditions - Membership And Participation
IL 00 17 11 98	Common Policy Conditions

These declarations together with the common policy conditions, coverage part declarations, coverage part coverage form(s) and forms and endorsements, if any, issued to form a part thereof, complete the above numbered policy.

## ADDITIONAL CONDITIONS - PARTICIPATION

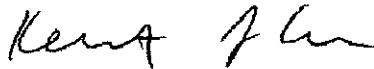
### Participation

You will share in any dividends in accordance with conditions established by the Board of Directors.

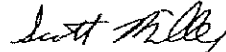
The first page of Declarations names the company issuing this policy. The officer signatures which correspond to That Company are a part of this policy. None of the other signatures apply to this policy.

### SENTRY SELECT INSURANCE COMPANY

Stevens Point, Wisconsin



Secretary



President

## COMMON POLICY CONDITIONS

All Coverage Parts included in this policy are subject to the following conditions.

### A. Cancellation

1. The first Named Insured shown in the Declarations may cancel this policy by mailing or delivering to us advance written notice of cancellation.
2. We may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation at least:
  - a. 10 days before the effective date of cancellation if we cancel for nonpayment of premium; or
  - b. 30 days before the effective date of cancellation if we cancel for any other reason.
3. We will mail or deliver our notice to the first Named Insured's last mailing address known to us.
4. Notice of cancellation will state the effective date of cancellation. The policy period will end on that date.
5. If this policy is cancelled, we will send the first Named Insured any premium refund due. If we cancel, the refund will be pro rata. If the first Named Insured cancels, the refund may be less than pro rata. The cancellation will be effective even if we have not made or offered a refund.
6. If notice is mailed, proof of mailing will be sufficient proof of notice.

### B. Changes

This policy contains all the agreements between you and us concerning the insurance afforded. The first Named Insured shown in the Declarations is authorized to make changes in the terms of this policy with our consent. This policy's terms can be amended or waived only by endorsement issued by us and made a part of this policy.

### C. Examination Of Your Books And Records

We may examine and audit your books and records as they relate to this policy at any time during the policy period and up to three years afterward.

### D. Inspections And Surveys

1. We have the right to:
  - a. Make inspections and surveys at any time;

- b. Give you reports on the conditions we find; and
  - c. Recommend changes.
2. We are not obligated to make any inspections, surveys, reports or recommendations and any such actions we do undertake relate only to insurability and the premiums to be charged. We do not make safety inspections. We do not undertake to perform the duty of any person or organization to provide for the health or safety of workers or the public. And we do not warrant that conditions:
  - a. Are safe or healthful; or
  - b. Comply with laws, regulations, codes or standards.
3. Paragraphs 1. and 2. of this condition apply not only to us, but also to any rating, advisory, rate service or similar organization which makes insurance inspections, surveys, reports or recommendations.
4. Paragraph 2. of this condition does not apply to any inspections, surveys, reports or recommendations we may make relative to certification, under state or municipal statutes, ordinances or regulations, of boilers, pressure vessels or elevators.

### E. Premiums

The first Named Insured shown in the Declarations:

1. Is responsible for the payment of all premiums; and
2. Will be the payee for any return premiums we pay.

### F. Transfer Of Your Rights And Duties Under This Policy

Your rights and duties under this policy may not be transferred without our written consent except in the case of death of an individual named insured.

If you die, your rights and duties will be transferred to your legal representative but only while acting within the scope of duties as your legal representative. Until your legal representative is appointed, anyone having proper temporary custody of your property will have your rights and duties but only with respect to that property.

POLICY NUMBER: 2553009006



## BUSINESS AUTO COVERAGE DECLARATIONS

Sentry Select Insurance Company (A Participating Stock Company) A member of the Sentry Insurance Group 1800 North Point Drive Stevens Point, WI 54481	Producer  Steven Asch 10000277 315-484-6565
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### ITEM ONE

#### POLICY INFORMATION

**First Named Insured:** Stephen Byer  
**Address:** 1230 W Genesee St  
 Syracuse, NY 13204

The Business Auto Coverage applies from 08/01/2018 to 08/01/2019 at 12:01 A.M. Standard Time at the First Named Insured's mailing address shown above.

#### APPLICABLE FORMS AND ENDORSEMENTS

In addition to the common policy forms and endorsements, the following forms and endorsements apply to the Business Auto Coverage:

<b>Form/Endorsement Number and Edition Date</b>	<b>Form/Endorsement Title</b>
CA 00 01 10 13	Business Auto Coverage Form
CA 01 02 08 14	New York Changes - For Hire Autos
CA 01 12 12 15	New York Changes In Business Auto And Motor Carrier Coverage Forms
CA 02 25 08 14	New York Changes - Cancellation
CA 31 07 05 18	New York Supplementary Uninsured/Underinsured Motorists Endorsement
CA 87 16 10 13	Individual Named Insured
CA 99 03 10 13	Auto Medical Payments Coverage
IL 01 83 08 08	New York Changes - Fraud

**ITEM TWO**

**Schedule of Coverages and Covered Autos**

This policy provides only those coverages, shown below. Each of these coverages will apply only to those "autos" shown as covered "autos". "Autos" are shown as covered "autos" for a particular coverage by the entry of one or more of the symbols from the **Covered Autos** Section of the Business Auto Coverage Form next to the name of the coverage.

Coverages	Covered Autos	Limit	Premium
Covered Autos Liability	08	\$500,000	\$ 109.00
New York Supplemental Spousal Bodily Injury Liability Coverage			
New York Personal Injury Protection (No Fault)			
Mandatory Personal Injury Protection			
Optional Basic Economic Loss			
Additional Personal Injury Protection			
Aggregate No Fault Benefits Available			
Maximum Monthly Work Loss			
Other Necessary Expenses (Per Day)			
Death Benefit			
Auto Medical Payments	08	\$5,000 Each Insured	\$ 2.00
New York Supplementary Uninsured/Underinsured Motorists	08	\$500,000 The maximum amount payable under Supplementary Uninsured/Underinsured Motorists (SUM) shall be the policy's SUM limits reduced and thus offset by motor vehicle bodily injury liability insurance policy or bond payments received from, or on behalf of, any negligent party involved in the accident, as specified in the SUM endorsement.	\$ 121.00
Physical Damage - Comprehensive Coverage	08	Actual cash value or cost of repair, whichever is less, minus a \$100 deductible for each covered auto.	\$ 25.00

POLICY NUMBER: 2553009006

**ITEM TWO**

**Schedule of Coverages and Covered Autos**

Coverages	Covered Autos	Limit	Premium
Physical Damage – Collision Coverage	08	Actual cash value or cost of repair, whichever is less, minus a \$250 deductible for each covered auto.	\$ 0.00
<b>Premium for endorsements</b>			\$
<b>Estimated Total Premium</b>			\$ 257.00



## BUSINESS AUTO COVERAGE FORM

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

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

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

### Section I - Covered Autos

Item Two of the Declarations shows the "autos" that are covered "autos" for each of your coverages. The following numerical symbols describe the "autos" that may be covered "autos". The symbols entered next to a coverage on the Declarations designate the only "autos" that are covered "autos".

#### A. Description Of Covered Auto Designation Symbols

Symbol	Description Of Covered Auto Designation Symbols	
1	Any "Auto"	
2	Owned "Autos" Only	Only those "autos" you own (and for Covered Autos Liability Coverage any "trailers" you don't own while attached to power units you own). This includes those "autos" you acquire ownership of after the policy begins.
3	Owned Private Passenger "Autos" Only	Only the private passenger "autos" you own. This includes those private passenger "autos" you acquire ownership of after the policy begins.
4	Owned "Autos" Other Than Private Passenger "Autos" Only	Only those "autos" you own that are not of the private passenger type (and for Covered Autos Liability Coverage any "trailers" you don't own while attached to power units you own). This includes those "autos" not of the private passenger type you acquire ownership of after the policy begins.
5	Owned "Autos" Subject To No-fault	Only those "autos" you own that are required to have no-fault benefits in the state where they are licensed or principally garaged. This includes those "autos" you acquire ownership of after the policy begins provided they are required to have no-fault benefits in the state where they are licensed or principally garaged.
6	Owned "Autos" Subject To A Compulsory Uninsured Motorists Law	Only those "autos" you own that because of the law in the state where they are licensed or principally garaged are required to have and cannot reject Uninsured Motorists Coverage. This includes those "autos" you acquire ownership of after the policy begins provided they are subject to the same state uninsured motorists requirement.
7	Specifically Described "Autos"	Only those "autos" described in Item Three of the Declarations for which a premium charge is shown (and for Covered Autos Liability Coverage any "trailers" you don't own while attached to any power units described in Item Three).
8	Hired "Autos" Only	Only those "autos" you lease, hire, rent or borrow. This does not include any "auto" you lease, hire, rent or borrow from any of your "employees", partners (if you are a partnership), members (if you are a limited liability company) or members of their households.
9	Non-owned "Autos" Only	Only those "autos" you do not own, lease, hire, rent or borrow that are used in connection with your business. This includes "autos" owned by your "employees", partners (if you are a partnership), members (if you are a limited liability company) or members of their households but only while used in your business or your personal affairs.

<b>19</b>	Mobile Equipment Subject To Compulsory Or Financial Responsibility Or Other Motor Vehicle Insurance Law Only	Only those "autos" that are land vehicles and that would qualify under the definition of "mobile equipment" under this policy if they were not subject to a compulsory or financial responsibility law or other motor vehicle insurance law where they are licensed or principally garaged.
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**B. Owned Autos You Acquire After The Policy Begins**

1. If Symbols **1, 2, 3, 4, 5, 6** or **19** are entered next to a coverage in Item Two of the Declarations, then you have coverage for "autos" that you acquire of the type described for the remainder of the policy period.
2. But, if Symbol **7** is entered next to a coverage in Item Two of the Declarations, an "auto" you acquire will be a covered "auto" for that coverage only if:
  - a. We already cover all "autos" that you own for that coverage or it replaces an "auto" you previously owned that had that coverage; and
  - b. You tell us within 30 days after you acquire it that you want us to cover it for that coverage.

**C. Certain Trailers, Mobile Equipment And Temporary Substitute Autos**

If Covered Autos Liability Coverage is provided by this Coverage Form, the following types of vehicles are also covered "autos" for Covered Autos Liability Coverage:

1. "Trailers" with a load capacity of 2,000 pounds or less designed primarily for travel on public roads.
2. "Mobile equipment" while being carried or towed by a covered "auto".
3. Any "auto" you do not own while used with the permission of its owner as a temporary substitute for a covered "auto" you own that is out of service because of its:
  - a. Breakdown;
  - b. Repair;
  - c. Servicing;
  - d. "Loss"; or
  - e. Destruction.

**Section II - Covered Autos Liability Coverage**

**A. Coverage**

We will pay all sums an "insured" legally must pay as damages because of "bodily injury" or "property damage" to which this insurance applies, caused by an "accident" and resulting from the ownership, maintenance or use of a covered "auto".

We will also pay all sums an "insured" legally must pay as a "covered pollution cost or expense" to which this insurance applies, caused by an "accident" and resulting from the ownership, maintenance or use of covered "autos". However, we will only pay for the "covered pollution cost or expense" if there is either "bodily injury" or "property damage" to which this insurance applies that is caused by the same "accident".

We have the right and duty to defend any "insured" against a "suit" asking for such damages or a "covered pollution cost or expense". However, we have no duty to defend any "insured" against a "suit" seeking damages for "bodily injury" or "property damage" or a "covered pollution cost or expense" to which this insurance does not apply. We may investigate and settle any claim or "suit" as we consider appropriate. Our duty to defend or settle ends when the Covered Autos Liability Coverage Limit of Insurance has been exhausted by payment of judgments or settlements.

**1. Who Is An Insured**

The following are "insureds":

- a. You for any covered "auto".
- b. Anyone else while using with your permission a covered "auto" you own, hire or borrow except:

- (1) The owner or anyone else from whom you hire or borrow a covered "auto".

This exception does not apply if the covered "auto" is a "trailer" connected to a covered "auto" you own.

- (2) Your "employee" if the covered "auto" is owned by that "employee" or a member of his or her household.
  - (3) Someone using a covered "auto" while he or she is working in a business of selling, servicing, repairing, parking or storing "autos" unless that business is yours.
  - (4) Anyone other than your "employees", partners (if you are a partnership), members (if you are a limited liability company) or a lessee or borrower or any of their "employees", while moving property to or from a covered "auto".
  - (5) A partner (if you are a partnership) or a member (if you are a limited liability company) for a covered "auto" owned by him or her or a member of his or her household.
- c. Anyone liable for the conduct of an "insured" described above but only to the extent of that liability.

## 2. Coverage Extensions

### a. Supplementary Payments

We will pay for the "insured":

- (1) All expenses we incur.
- (2) Up to \$2,000 for cost of bail bonds (including bonds for related traffic law violations) required because of an "accident" we cover. We do not have to furnish these bonds.
- (3) The cost of bonds to release attachments in any "suit" against the "insured" we defend, but only for bond amounts within our Limit of Insurance.
- (4) All reasonable expenses incurred by the "insured" at our request, including actual loss of earnings up to \$250 a day because of time off from work.
- (5) All court costs taxed against the "insured" in any "suit" against the "insured" we defend. However, these payments do not include attorneys' fees or attorneys' expenses taxed against the "insured".
- (6) All interest on the full amount of any judgment that accrues after entry of the judgment in any "suit" against the "insured" we defend, but our duty to pay interest ends when we have paid, offered to pay or deposited in court the part of the judgment that is within our Limit of Insurance.

These payments will not reduce the Limit of Insurance.

### b. Out-of-state Coverage Extensions

While a covered "auto" is away from the state where it is licensed, we will:

- (1) Increase the Limit of Insurance for Covered Autos Liability Coverage to meet the limits specified by a compulsory or financial responsibility law of the jurisdiction where the covered "auto" is being used. This extension does not apply to the limit or limits specified by any law governing motor carriers of passengers or property.
- (2) Provide the minimum amounts and types of other coverages, such as no-fault, required of out-of-state vehicles by the jurisdiction where the covered "auto" is being used.

We will not pay anyone more than once for the same elements of loss because of these extensions.

## B. Exclusions

This insurance does not apply to any of the following:

### 1. Expected Or Intended Injury

"Bodily injury" or "property damage" expected or intended from the standpoint of the "insured".

### 2. Contractual

Liability assumed under any contract or agreement.

But this exclusion does not apply to liability for damages:

- a. Assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement; or
- b. That the "insured" would have in the absence of the contract or agreement.

### 3. Workers' Compensation

Any obligation for which the "insured" or the "insured's" insurer may be held liable under any workers' compensation, disability benefits or unemployment compensation law or any similar law.

#### 4. Employee Indemnification And Employer's Liability

"Bodily injury" to:

- a. An "employee" of the "insured" arising out of and in the course of:
  - (1) Employment by the "insured"; or
  - (2) Performing the duties related to the conduct of the "insured's" business; or
- b. The spouse, child, parent, brother or sister of that "employee" as a consequence of Paragraph a. above.

This exclusion applies:

- (1) Whether the "insured" may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

But this exclusion does not apply to "bodily injury" to domestic "employees" not entitled to workers' compensation benefits or to liability assumed by the "insured" under an "insured contract". For the purposes of the Coverage Form, a domestic "employee" is a person engaged in household or domestic work performed principally in connection with a residence premises.

#### 5. Fellow Employee

"Bodily injury" to:

- a. Any fellow "employee" of the "insured" arising out of and in the course of the fellow "employee's" employment or while performing duties related to the conduct of your business; or
- b. The spouse, child, parent, brother or sister of that fellow "employee" as a consequence of Paragraph a. above.

#### 6. Care, Custody Or Control

"Property damage" to or "covered pollution cost or expense" involving property owned or transported by the "insured" or in the "insured's" care, custody or control. But this exclusion does not apply to liability assumed under a sidetrack agreement.

#### 7. Handling Of Property

"Bodily injury" or "property damage" resulting from the handling of property:

- a. Before it is moved from the place where it is accepted by the "insured" for movement into or onto the covered "auto"; or

- b. After it is moved from the covered "auto" to the place where it is finally delivered by the "insured".

#### 8. Movement Of Property By Mechanical Device

"Bodily injury" or "property damage" resulting from the movement of property by a mechanical device (other than a hand truck) unless the device is attached to the covered "auto".

#### 9. Operations

"Bodily injury" or "property damage" arising out of the operation of:

- a. Any equipment listed in Paragraphs 6.b. and 6.c. of the definition of "mobile equipment"; or
- b. Machinery or equipment that is on, attached to or part of a land vehicle that would qualify under the definition of "mobile equipment" if it were not subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged.

#### 10. Completed Operations

"Bodily injury" or "property damage" arising out of your work after that work has been completed or abandoned.

In this exclusion, your work means:

- a. Work or operations performed by you or on your behalf; and
- b. Materials, parts or equipment furnished in connection with such work or operations.

Your work includes warranties or representations made at any time with respect to the fitness, quality, durability or performance of any of the items included in Paragraph a. or b. above.

Your work will be deemed completed at the earliest of the following times:

- (1) When all of the work called for in your contract has been completed;
- (2) When all of the work to be done at the site has been completed if your contract calls for work at more than one site; or
- (3) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

## 11. Pollution

"Bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":

a. That are, or that are contained in any property that is:

- (1) Being transported or towed by, handled or handled for movement into, onto or from the covered "auto";
- (2) Otherwise in the course of transit by or on behalf of the "insured"; or
- (3) Being stored, disposed of, treated or processed in or upon the covered "auto";

b. Before the "pollutants" or any property in which the "pollutants" are contained are moved from the place where they are accepted by the "insured" for movement into or onto the covered "auto"; or

c. After the "pollutants" or any property in which the "pollutants" are contained are moved from the covered "auto" to the place where they are finally delivered, disposed of or abandoned by the "insured".

Paragraph a. above does not apply to fuels, lubricants, fluids, exhaust gases or other similar "pollutants" that are needed for or result from the normal electrical, hydraulic or mechanical functioning of the covered "auto" or its parts if:

- (1) The "pollutants" escape, seep, migrate or are discharged, dispersed or released directly from an "auto" part designed by its manufacturer to hold, store, receive or dispose of such "pollutants"; and
- (2) The "bodily injury", "property damage" or "covered pollution cost or expense" does not arise out of the operation of any equipment listed in Paragraphs 6.b. and 6.c. of the definition of "mobile equipment".

Paragraphs b. and c. above of this exclusion do not apply to "accidents" that occur away from premises owned by or rented to an "insured" with respect to "pollutants" not in or upon a covered "auto" if:

- (a) The "pollutants" or any property in which the "pollutants" are contained are upset, overturned or damaged as a result of the maintenance or use of a covered "auto"; and
- (b) The discharge, dispersal, seepage, migration, release or escape of the "pollutants" is caused directly by such upset, overturn or damage.

## 12. War

"Bodily injury" or "property damage" arising directly or indirectly out of:

- a. War, including undeclared or civil war;
- b. Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- c. Insurrection, rebellion, revolution, usurped power or action taken by governmental authority in hindering or defending against any of these.

## 13. Racing

Covered "autos" while used in any professional or organized racing or demolition contest or stunting activity, or while practicing for such contest or activity. This insurance also does not apply while that covered "auto" is being prepared for such a contest or activity.

## C. Limit Of Insurance

Regardless of the number of covered "autos", "insureds", premiums paid, claims made or vehicles involved in the "accident", the most we will pay for the total of all damages and "covered pollution cost or expense" combined resulting from any one "accident" is the Limit Of Insurance for Covered Autos Liability Coverage shown in the Declarations.

All "bodily injury", "property damage" and "covered pollution cost or expense" resulting from continuous or repeated exposure to substantially the same conditions will be considered as resulting from one "accident".

No one will be entitled to receive duplicate payments for the same elements of "loss" under this Coverage Form and any Medical Payments Coverage endorsement, Uninsured Motorists Coverage endorsement or Underinsured Motorists Coverage endorsement attached to this Coverage Part.

### Section III - Physical Damage Coverage

#### A. Coverage

1. We will pay for "loss" to a covered "auto" or its equipment under:

##### a. Comprehensive Coverage

From any cause except:

- (1) The covered "auto's" collision with another object; or
- (2) The covered "auto's" overturn.

##### b. Specified Causes Of Loss Coverage

Caused by:

- (1) Fire, lightning or explosion;
- (2) Theft;
- (3) Windstorm, hail or earthquake;
- (4) Flood;
- (5) Mischief or vandalism; or
- (6) The sinking, burning, collision or derailment of any conveyance transporting the covered "auto".

##### c. Collision Coverage

Caused by:

- (1) The covered "auto's" collision with another object; or
- (2) The covered "auto's" overturn.

#### 2. Towing

We will pay up to the limit shown in the Declarations for towing and labor costs incurred each time a covered "auto" of the private passenger type is disabled. However, the labor must be performed at the place of disablement.

#### 3. Glass Breakage - Hitting A Bird Or Animal - Falling Objects Or Missiles

If you carry Comprehensive Coverage for the damaged covered "auto", we will pay for the following under Comprehensive Coverage:

- a. Glass breakage;
- b. "Loss" caused by hitting a bird or animal; and
- c. "Loss" caused by falling objects or missiles.

However, you have the option of having glass breakage caused by a covered "auto's" collision or overturn considered a "loss" under Collision Coverage.

#### 4. Coverage Extensions

##### a. Transportation Expenses

We will pay up to \$20 per day, to a maximum of \$600, for temporary transportation expense incurred by you because of the total theft of a covered "auto" of the private passenger type. We will pay only for those covered "autos" for which you carry either Comprehensive or Specified Causes Of Loss Coverage. We will pay for temporary transportation expenses incurred during the period beginning 48 hours after the theft and ending, regardless of the policy's expiration, when the covered "auto" is returned to use or we pay for its "loss".

##### b. Loss Of Use Expenses

For Hired Auto Physical Damage, we will pay expenses for which an "insured" becomes legally responsible to pay for loss of use of a vehicle rented or hired without a driver under a written rental contract or agreement. We will pay for loss of use expenses if caused by:

- (1) Other than collision only if the Declarations indicates that Comprehensive Coverage is provided for any covered "auto";
- (2) Specified Causes Of Loss only if the Declarations indicates that Specified Causes Of Loss Coverage is provided for any covered "auto"; or

- (3) Collision only if the Declarations indicates that Collision Coverage is provided for any covered "auto".

However, the most we will pay for any expenses for loss of use is \$20 per day, to a maximum of \$600.

## B. Exclusions

1. We will not pay for "loss" caused by or resulting from any of the following. Such "loss" is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the "loss".
  - a. **Nuclear Hazard**
    - (1) The explosion of any weapon employing atomic fission or fusion; or
    - (2) Nuclear reaction or radiation, or radioactive contamination, however caused.
  - b. **War Or Military Action**
    - (1) War, including undeclared or civil war;
    - (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
    - (3) Insurrection, rebellion, revolution, usurped power or action taken by governmental authority in hindering or defending against any of these.
2. We will not pay for "loss" to any covered "auto" while used in any professional or organized racing or demolition contest or stunting activity, or while practicing for such contest or activity. We will also not pay for "loss" to any covered "auto" while that covered "auto" is being prepared for such a contest or activity.
3. We will not pay for "loss" due and confined to:
  - a. Wear and tear, freezing, mechanical or electrical breakdown.
  - b. Blowouts, punctures or other road damage to tires.

This exclusion does not apply to such "loss" resulting from the total theft of a covered "auto".
4. We will not pay for "loss" to any of the following:
  - a. Tapes, records, discs or other similar audio, visual or data electronic devices designed for use with audio, visual or data electronic equipment.

- b. Any device designed or used to detect speed-measuring equipment, such as radar or laser detectors, and any jamming apparatus intended to elude or disrupt speed-measuring equipment.
  - c. Any electronic equipment, without regard to whether this equipment is permanently installed, that reproduces, receives or transmits audio, visual or data signals.
  - d. Any accessories used with the electronic equipment described in Paragraph c. above.
5. Exclusions 4.c. and 4.d. do not apply to equipment designed to be operated solely by use of the power from the "auto's" electrical system that, at the time of "loss", is:
    - a. Permanently installed in or upon the covered "auto";
    - b. Removable from a housing unit which is permanently installed in or upon the covered "auto";
    - c. An integral part of the same unit housing any electronic equipment described in Paragraphs a. and b. above; or
    - d. Necessary for the normal operation of the covered "auto" or the monitoring of the covered "auto's" operating system.
  6. We will not pay for "loss" to a covered "auto" due to "diminution in value".

## C. Limits Of Insurance

1. The most we will pay for:
  - a. "Loss" to any one covered "auto" is the lesser of:
    - (1) The actual cash value of the damaged or stolen property as of the time of the "loss"; or
    - (2) The cost of repairing or replacing the damaged or stolen property with other property of like kind and quality.
  - b. All electronic equipment that reproduces, receives or transmits audio, visual or data signals in any one "loss" is \$1,000, if, at the time of "loss", such electronic equipment is:
    - (1) Permanently installed in or upon the covered "auto" in a housing, opening or other location that is not normally used by the "auto" manufacturer for the installation of such equipment;

- (2) Removable from a permanently installed housing unit as described in Paragraph b.(1) above; or
  - (3) An integral part of such equipment as described in Paragraphs b.(1) and b.(2) above.
2. An adjustment for depreciation and physical condition will be made in determining actual cash value in the event of a total "loss".
  3. If a repair or replacement results in better than like kind or quality, we will not pay for the amount of the betterment.

**D. Deductible**

For each covered "auto", our obligation to pay for, repair, return or replace damaged or stolen property will be reduced by the applicable deductible shown in the Declarations. Any Comprehensive Coverage Deductible shown in the Declarations does not apply to "loss" caused by fire or lightning.

**Section IV - Business Auto Conditions**

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

**A. Loss Conditions**

**1. Appraisal For Physical Damage Loss**

If you and we disagree on the amount of "loss", either may demand an appraisal of the "loss". In this event, each party will select a competent appraiser. The two appraisers will select a competent and impartial umpire. The appraisers will state separately the actual cash value and amount of "loss". If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

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

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

**2. Duties In The Event Of Accident, Claim, Suit Or Loss**

We have no duty to provide coverage under this policy unless there has been full compliance with the following duties:

- a. In the event of "accident", claim, "suit" or "loss", you must give us or our authorized representative prompt notice of the "accident" or "loss". Include:
  - (1) How, when and where the "accident" or "loss" occurred;

- (2) The "insured's" name and address; and
- (3) To the extent possible, the names and addresses of any injured persons and witnesses.

**b. Additionally, you and any other involved "insured" must:**

- (1) Assume no obligation, make no payment or incur no expense without our consent, except at the "insured's" own cost.
- (2) Immediately send us copies of any request, demand, order, notice, summons or legal paper received concerning the claim or "suit".
- (3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit".
- (4) Authorize us to obtain medical records or other pertinent information.
- (5) Submit to examination, at our expense, by physicians of our choice, as often as we reasonably require.

**c. If there is "loss" to a covered "auto" or its equipment, you must also do the following:**

- (1) Promptly notify the police if the covered "auto" or any of its equipment is stolen.
- (2) Take all reasonable steps to protect the covered "auto" from further damage. Also keep a record of your expenses for consideration in the settlement of the claim.
- (3) Permit us to inspect the covered "auto" and records proving the "loss" before its repair or disposition.
- (4) Agree to examinations under oath at our request and give us a signed statement of your answers.

**3. Legal Action Against Us**

No one may bring a legal action against us under this Coverage Form until:

- a. There has been full compliance with all the terms of this Coverage Form; and
- b. Under Covered Autos Liability Coverage, we agree in writing that the "insured" has an obligation to pay or until the amount of that obligation has finally been determined by judgment after trial. No one has the right under this policy to bring us into an action to determine the "insured's" liability.



#### 4. Loss Payment - Physical Damage Coverages

At our option, we may:

- a. Pay for, repair or replace damaged or stolen property;
- b. Return the stolen property, at our expense. We will pay for any damage that results to the "auto" from the theft; or
- c. Take all or any part of the damaged or stolen property at an agreed or appraised value.

If we pay for the "loss", our payment will include the applicable sales tax for the damaged or stolen property.

#### 5. Transfer Of Rights Of Recovery Against Others To Us

If any person or organization to or for whom we make payment under this Coverage Form has rights to recover damages from another, those rights are transferred to us. That person or organization must do everything necessary to secure our rights and must do nothing after "accident" or "loss" to impair them.

### B. General Conditions

#### 1. Bankruptcy

Bankruptcy or insolvency of the "insured" or the "insured's" estate will not relieve us of any obligations under this Coverage Form.

#### 2. Concealment, Misrepresentation Or Fraud

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

- a. This Coverage Form;
- b. The covered "auto";
- c. Your interest in the covered "auto"; or
- d. A claim under this Coverage Form.

#### 3. Liberalization

If we revise this Coverage Form to provide more coverage without additional premium charge, your policy will automatically provide the additional coverage as of the day the revision is effective in your state.

#### 4. No Benefit To Bailee - Physical Damage Coverages

We will not recognize any assignment or grant any coverage for the benefit of any person or organization holding, storing or transporting property for a fee regardless of any other provision of this Coverage Form.

#### 5. Other Insurance

- a. For any covered "auto" you own, this Coverage Form provides primary insurance. For any covered "auto" you don't own, the insurance provided by this Coverage Form is excess over any other collectible insurance. However, while a covered "auto" which is a "trailer" is connected to another vehicle, the Covered Autos Liability Coverage this Coverage Form provides for the "trailer" is:
    - (1) Excess while it is connected to a motor vehicle you do not own; or
    - (2) Primary while it is connected to a covered "auto" you own.
  - b. For Hired Auto Physical Damage Coverage, any covered "auto" you lease, hire, rent or borrow is deemed to be a covered "auto" you own. However, any "auto" that is leased, hired, rented or borrowed with a driver is not a covered "auto".
  - c. Regardless of the provisions of Paragraph a. above, this Coverage Form's Covered Autos Liability Coverage is primary for any liability assumed under an "insured contract".
  - d. When this Coverage Form and any other Coverage Form or policy covers on the same basis, either excess or primary, we will pay only our share. Our share is the proportion that the Limit of Insurance of our Coverage Form bears to the total of the limits of all the Coverage Forms and policies covering on the same basis.
- #### 6. Premium Audit
- a. The estimated premium for this Coverage Form is based on the exposures you told us you would have when this policy began. We will compute the final premium due when we determine your actual exposures. The estimated total premium will be credited against the final premium due and the first Named Insured will be billed for the balance, if any. The due date for the final premium or retrospective premium is the date shown as the due date on the bill. If the estimated total premium exceeds the final premium due, the first Named Insured will get a refund.
  - b. If this policy is issued for more than one year, the premium for this Coverage Form will be computed annually based on our rates or premiums in effect at the beginning of each year of the policy.

## 7. Policy Period, Coverage Territory

Under this Coverage Form, we cover "accidents" and "losses" occurring:

- a. During the policy period shown in the Declarations; and
- b. Within the coverage territory.

The coverage territory is:

- (1) The United States of America;
- (2) The territories and possessions of the United States of America;
- (3) Puerto Rico;
- (4) Canada; and
- (5) Anywhere in the world if a covered "auto" of the private passenger type is leased, hired, rented or borrowed without a driver for a period of 30 days or less,

provided that the "insured's" responsibility to pay damages is determined in a "suit" on the merits, in the United States of America, the territories and possessions of the United States of America, Puerto Rico or Canada, or in a settlement we agree to.

We also cover "loss" to, or "accidents" involving, a covered "auto" while being transported between any of these places.

## 8. Two Or More Coverage Forms Or Policies Issued By Us

If this Coverage Form and any other Coverage Form or policy issued to you by us or any company affiliated with us applies to the same "accident", the aggregate maximum Limit of Insurance under all the Coverage Forms or policies shall not exceed the highest applicable Limit of Insurance under any one Coverage Form or policy. This condition does not apply to any Coverage Form or policy issued by us or an affiliated company specifically to apply as excess insurance over this Coverage Form.

### Section V - Definitions

- A. "Accident" includes continuous or repeated exposure to the same conditions resulting in "bodily injury" or "property damage".
- B. "Auto" means:
  1. A land motor vehicle, "trailer" or semitrailer designed for travel on public roads; or

2. Any other land vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged.

However, "auto" does not include "mobile equipment".

- C. "Bodily injury" means bodily injury, sickness or disease sustained by a person, including death resulting from any of these.

- D. "Covered pollution cost or expense" means any cost or expense arising out of:

1. Any request, demand, order or statutory or regulatory requirement that any "insured" or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
2. Any claim or "suit" by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

"Covered pollution cost or expense" does not include any cost or expense arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":

- a. That are, or that are contained in any property that is:
  - (1) Being transported or towed by, handled or handled for movement into, onto or from the covered "auto";
  - (2) Otherwise in the course of transit by or on behalf of the "insured"; or
  - (3) Being stored, disposed of, treated or processed in or upon the covered "auto";
- b. Before the "pollutants" or any property in which the "pollutants" are contained are moved from the place where they are accepted by the "insured" for movement into or onto the covered "auto"; or
- c. After the "pollutants" or any property in which the "pollutants" are contained are moved from the covered "auto" to the place where they are finally delivered, disposed of or abandoned by the "insured".

Paragraph **a.** above does not apply to fuels, lubricants, fluids, exhaust gases or other similar "pollutants" that are needed for or result from the normal electrical, hydraulic or mechanical functioning of the covered "auto" or its parts, if:

- (1) The "pollutants" escape, seep, migrate or are discharged, dispersed or released directly from an "auto" part designed by its manufacturer to hold, store, receive or dispose of such "pollutants"; and
- (2) The "bodily injury", "property damage" or "covered pollution cost or expense" does not arise out of the operation of any equipment listed in Paragraph **6.b.** or **6.c.** of the definition of "mobile equipment".

Paragraphs **b.** and **c.** above do not apply to "accidents" that occur away from premises owned by or rented to an "insured" with respect to "pollutants" not in or upon a covered "auto" if:

- (a) The "pollutants" or any property in which the "pollutants" are contained are upset, overturned or damaged as a result of the maintenance or use of a covered "auto"; and
- (b) The discharge, dispersal, seepage, migration, release or escape of the "pollutants" is caused directly by such upset, overturn or damage.

- E.** "Diminution in value" means the actual or perceived loss in market value or resale value which results from a direct and accidental "loss".
- F.** "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".
- G.** "Insured" means any person or organization qualifying as an insured in the Who Is An Insured provision of the applicable coverage. Except with respect to the Limit of Insurance, the coverage afforded applies separately to each insured who is seeking coverage or against whom a claim or "suit" is brought.
- H.** "Insured contract" means:
1. A lease of premises;
  2. A sidetrack agreement;
  3. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
  4. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;

5. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another to pay for "bodily injury" or "property damage" to a third party or organization. Tort Liability means a liability that would be imposed by law in the absence of any contract or agreement; or
6. That part of any contract or agreement entered into, as part of your business, pertaining to the rental or lease, by you or any of your "employees", of any "auto". However, such contract or agreement shall not be considered an "insured contract" to the extent that it obligates you or any of your "employees" to pay for "property damage" to any "auto" rented or leased by you or any of your "employees".

An "insured contract" does not include that part of any contract or agreement:

- a. That indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, roadbeds, tunnel, underpass or crossing;
  - b. That pertains to the loan, lease or rental of an "auto" to you or any of your "employees", if the "auto" is loaned, leased or rented with a driver; or
  - c. That holds a person or organization engaged in the business of transporting property by "auto" for hire harmless for your use of a covered "auto" over a route or territory that person or organization is authorized to serve by public authority.
- I.** "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".
- J.** "Loss" means direct and accidental loss or damage.
- K.** "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:
1. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
  2. Vehicles maintained for use solely on or next to premises you own or rent;
  3. Vehicles that travel on crawler treads;

4. Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
  - a. Power cranes, shovels, loaders, diggers or drills; or
  - b. Road construction or resurfacing equipment such as graders, scrapers or rollers;
5. Vehicles not described in Paragraph 1., 2., 3. or 4. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
  - a. Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well-servicing equipment; or
  - b. Cherry pickers and similar devices used to raise or lower workers; or
6. Vehicles not described in Paragraph 1., 2., 3. or 4. above maintained primarily for purposes other than the transportation of persons or cargo. However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":
  - a. Equipment designed primarily for:
    - (1) Snow removal;
    - (2) Road maintenance, but not construction or resurfacing; or
    - (3) Street cleaning;
  - b. Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
  - c. Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting or well-servicing equipment.

However, "mobile equipment" does not include land vehicles that are subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged. Land vehicles subject to a compulsory or financial responsibility law or other motor vehicle insurance law are considered "autos".

- L. "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.
- M. "Property damage" means damage to or loss of use of tangible property.
- N. "Suit" means a civil proceeding in which:
  1. Damages because of "bodily injury" or "property damage"; or
  2. A "covered pollution cost or expense"; to which this insurance applies, are alleged.
 "Suit" includes:
  - a. An arbitration proceeding in which such damages or "covered pollution costs or expenses" are claimed and to which the "insured" must submit or does submit with our consent; or
  - b. Any other alternative dispute resolution proceeding in which such damages or "covered pollution costs or expenses" are claimed and to which the insured submits with our consent.
- O. "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.
- P. "Trailer" includes semitrailer.

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

## INDIVIDUAL NAMED INSURED

This endorsement modifies insurance provided under the following:

### BUSINESS AUTO COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

If you are an individual, the policy is changed as follows:

#### A. Changes In Covered Autos Liability Coverage

1. The **Fellow Employee Exclusion** does not apply to "bodily injury" to you or any "family member's" fellow "employees".

2. **Personal Auto Coverage**

If a Covered Auto Liability Coverage covered "auto" symbol is entered in the Declarations:

- a. The following is added to the **Who Is An Insured** provision:

"Family members" are "insureds" for any covered "auto" you own of the "private passenger type" and any other "auto" described in Paragraph **2.b.** of this endorsement.

- b. Any "auto" you don't own is a covered "auto" while being used by you or by any "family member" except:

- (1) Any "auto" owned by any "family members".

- (2) Any "auto" furnished or available for your or any "family members" regular use.

- (3) Any "auto" used by you or by any of your "family members" while working in a business of selling, servicing, repairing or parking "autos".

- (4) Any "auto" other than an "auto" of the "private passenger type" used by you or any of your "family members" while working in any other business or occupation.

- c. The Pollution Exclusion and, if forming a part of the policy, the Nuclear Energy Liability Exclusion (Broad Form), do not apply to any covered "auto" of the "private passenger type".

- d. The following exclusion is added and applies only to "private passenger type" covered "autos":

This insurance does not apply to:

"Bodily injury" or "property damage" for which an "insured" under the policy is also an "insured" under a nuclear energy liability policy or would be an "insured" but for its termination upon its exhaustion of its limit of liability. A nuclear energy liability policy is a policy issued by the Nuclear Energy Liability Insurance Association, Mutual Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or any of their successors. This exclusion does not apply to "autos" registered or principally garaged in New York.

#### B. Changes In Physical Damage Coverage Personal Auto Coverage

If a Physical Damage coverage covered "auto" symbol is shown in the Declarations, a "non-owned auto" will also be considered a covered "auto". However, the most we will pay for "loss" to a "non-owned auto" which is a "trailer" is \$500.

#### C. Additional Definitions

As used in this endorsement:

1. "Family member" means a person related to you by blood, marriage, or adoption who is a resident of your household, including a ward or foster child.
2. The words "you" and "your" include your spouse if a resident of the same household except for notice of cancellation.
3. When the phrase "private passenger type" appears in quotation marks it includes any covered "auto" you own of the pickup or van type not used for business purposes, other than farming or ranching.

4. "Non-owned auto" means any "private passenger type" "auto", pickup, van or trailer not owned by or furnished or available for the regular use of you or any "family member", while it is in the custody of or being operated by you or any "family member".

All other terms and provisions of this policy remain unchanged.

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

## NEW YORK CHANGES - FOR HIRE AUTOS

For a covered "auto" subject to the provisions of Sections 370 (a) and (b) of the New York Vehicles and Traffic Laws that is licensed or principally garaged in New York, this endorsement modifies insurance provided under the following:

### BUSINESS AUTO COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

The following is added to Paragraph C. **Limit Of Insurance of Section II – Covered Autos Liability Coverages:**

1. If the insurance provided by this Policy covers "autos" subject to the provisions of Sections 370 (a) and (b) of the New York Vehicles and Traffic Laws, we will apply the limit shown in the Declarations to first provide the separate limits required by the New York Motor Vehicle Safety Responsibility Act as follows:
  - a. \$25,000 for "bodily injury" to any one person caused by any one "accident";
  - b. \$50,000 for "bodily injury" to two or more persons caused by any one "accident"; and
  - c. \$10,000 for "property damage" caused by any one "accident".
2. Our minimum liability for damages for and incident to death or injuries to persons is based upon the seating capacity for passengers of the covered "auto" described as set forth in the following table:

Seating capacity of motor vehicle.	For a judgment or judgments for damages, including damages for care and loss of services, because of "bodily injury" to any one person in any one "accident".	For a judgment or judgments for damages, including damages for care and loss of services because of "bodily injury" to two or more persons in any one "accident", upon claims arising out of the same transactions connected with the same subject of action, to be apportioned ratably among the judgment creditors according to the amount of their prospective judgments.	For a judgment or judgments for damages because of death of any one person in any one "accident".	For a judgment or judgments for damages because of death of two or more persons in any one "accident", upon claims arising out of the same transactions connected with the same subject of action to be apportioned ratably among the judgment creditors according to the amount of their respective judgments.
1 to 7	\$25,000	\$ 50,000	\$50,000	\$100,000
8 to 12	\$25,000	\$ 80,000	\$50,000	\$150,000
13 to 20	\$25,000	\$120,000	\$50,000	\$150,000
21 to 30	\$25,000	\$160,000	\$50,000	\$200,000
over 30	\$25,000	\$200,000	\$50,000	\$250,000

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## NEW YORK CHANGES IN BUSINESS AUTO AND MOTOR CARRIER COVERAGE FORMS

For a covered "auto" licensed or principally garaged in New York, this endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM  
MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

### A. Changes In Covered Autos Liability Coverage

1. The third paragraph of **A. Coverage** is replaced by the following:

We have the right and duty to defend any "insured" against a "suit" asking for such damages or a "covered pollution cost or expense", even if the allegations of the "suit" are groundless, false or fraudulent. However, we have no duty to defend any "insured" against a "suit" seeking damages for "bodily injury" or "property damage" or a "covered pollution cost or expense" to which this insurance does not apply. We may investigate and settle any claim or "suit" as we consider appropriate. Our duty to defend or settle ends when the Covered "Autos" Liability Coverage Limit of Insurance has been exhausted by payment of judgments or settlements.

2. Who Is An Insured does not include anyone loading or unloading a covered "auto" except you, your "employees", a lessee or borrower or any of their "employees".

3. **Supplementary Payments** is amended as follows:

- a. Paragraph (5) is replaced by the following:

(5) All costs taxed against the "insured" in any "suit" against the "insured" we defend.

- b. The following paragraphs are added:

(7) All expenses incurred by an "insured" for first aid to others at the time of an "accident".

(8) The cost of appeal bonds.

4. Paragraph **b. Out-of-state Coverage Extensions** in the Business Auto and Motor Carrier Coverage Forms is replaced by the following:

b. While a covered "auto" is used or operated in any other state or Canadian province, we will provide at least the minimum amount and kind of coverage which is required in such cases under the laws of such jurisdiction.

5. **Exclusions** is changed as follows:

- a. The **Employee Indemnification And Employer's Liability** Exclusion is replaced by the following:

#### **Employee Indemnification And Employer's Liability**

This insurance does not apply to:

"Bodily injury" to an "employee" of the "insured" arising out of and in the course of:

- (1) Employment by the "insured"; or  
(2) Performing the duties related to the conduct of the "insured's" business.



But this exclusion does not apply to "bodily injury" to domestic "employees" not entitled to workers' compensation benefits or to liability assumed by the "insured" under an "insured contract". For the purposes of the Coverage Form, a domestic "employee" is a person engaged in household or domestic work performed principally in connection with a residence premises.

- b. The **Fellow Employee** Exclusion is replaced by the following:

**Fellow Employee**

This insurance does not apply to:

"Bodily injury" to any fellow "employee" of the "insured" arising out of and in the course of the fellow "employee's" employment or while performing duties related to the conduct of your business.

However, this exclusion only applies if the fellow "employee" is entitled to benefits under any of the following: workers' compensation, unemployment compensation or disability benefits law, or any similar law.

- c. The **Handling Of Property** Exclusion does not apply.
- d. The **Movement Of Property By Mechanical Device** Exclusion does not apply.
- e. The **Operations** Exclusion does not apply.
- f. The **Completed Operations** Exclusion does not apply.
- g. The **Pollution** Exclusion does not apply.
- h. The **War** Exclusion is replaced by the following:

**War**

"Bodily injury" or "property damage" caused by war, whether or not declared, civil war, insurrection, rebellion or revolution, or any act or condition incident to any of the foregoing.

- i. The **Racing** Exclusion does not apply.
- j. The following exclusion is added:

**Spousal Liability**

"Bodily injury" to or "property damage" of the spouse of an "insured". However, we will pay all sums an "insured" legally must pay if named as a third-party defendant in a legal action commenced by his or her spouse against another party.

6. If the Limit Of Insurance for Covered Autos Liability Coverage shown in the Declarations is equal to or greater than \$160,000, the **Limit Of Insurance** provision is changed by the following:

**Limit Of Insurance** applies except that we will apply the Limit Of Insurance for Covered Autos Liability Coverage shown in the Declarations to first provide the separate limits required by the New York Motor Vehicle Safety Responsibility Act for:

- a. "Bodily injury" not resulting in death of any one person caused by any one "accident";
- b. "Bodily injury" not resulting in death of two or more persons caused by any one "accident";
- c. "Bodily injury" resulting in death of any one person caused by any one "accident";
- d. "Bodily injury" resulting in death of two or more persons caused by any one "accident"; or
- e. "Property damage" in any one "accident".

This provision will not change our total Limit of Insurance.

7. If the Limit Of Insurance for Covered Autos Liability Coverage shown in the Declarations is less than \$160,000, the **Limit Of Insurance** provision is replaced by the following:

Regardless of the number of covered "autos", "insureds", premiums paid, claims made or vehicles involved in the "accident", the most we will pay for the total of all damages and "covered pollution cost or expense" combined, resulting from any one "accident", is the Limit Of Insurance for Covered Autos Liability Coverage shown in the Declarations, except for those damages for "bodily injury" resulting in death. We will apply the Limit Of Insurance for Covered Autos Liability Coverage shown in the Declarations to first provide the separate limits required by the New York Motor Vehicle Safety Responsibility Act as follows:

- a. "Bodily injury" not resulting in death of any one person caused by any one "accident";
- b. "Bodily injury" not resulting in death of two or more persons caused by any one "accident"; or
- c. "Property damage" in any one "accident".

This provision will not change our total Limit of Insurance.

All "bodily injury" and "property damage" resulting from continuous or repeated exposure to substantially the same conditions will be considered as resulting from one "accident".

In addition, our Limit of Insurance for "bodily injury" resulting in death is as follows:

- a. Up to \$50,000 for "bodily injury" resulting in death of any one person caused by any one "accident"; and
- b. Up to \$100,000 for "bodily injury" resulting in death of two or more persons caused by any one "accident", subject to a \$50,000 maximum for any one person.

If the Limit Of Insurance for Covered Autos Liability Coverage shown in the Declarations is not exhausted by payment of damages for:

- a. "Bodily injury" not resulting in death;
- b. "Property damage"; or
- c. "Covered pollution cost or expense";

any remaining amounts will be used to pay damages for "bodily injury" resulting in death, to the extent the Limit Of Insurance for Covered Autos Liability Coverage shown in the Declarations is not increased.

8. If forming part of the Policy, the Nuclear Energy Liability Exclusion (Broad Form) Endorsement does not apply to the Commercial Auto Coverage Part.

#### **B. Changes In Trailer Interchange Coverage**

Paragraph **A.2.** of **Section III - Trailer Interchange Coverage** in the Motor Carrier Coverage Form is replaced by the following:

2. We have the right and duty to defend any "insured" against a "suit" asking for these damages, even if the allegations of the "suit" are groundless, false or fraudulent. However, we have no duty to defend any "insured" against a "suit" seeking damages for any "loss" to which this insurance does not apply. We may investigate and settle any claim or "suit" as we consider appropriate. Our duty to defend or settle ends when the Limit of Insurance for that coverage has been exhausted by payment of judgments or settlements.

#### **C. Changes In Physical Damage Coverage**

1. The **Owned Autos You Acquire After The Policy Begins** provision of Section I - **Covered Autos** is replaced by the following:

##### **Owned Autos You Acquire After The Policy Begins**

- a. If Symbols **1, 2, 3, 4, 5, 6** or **19** are entered next to a coverage in Item Two of the Declarations, then you have coverage for "autos" that you acquire of the type described for the remainder of the policy period.
- b. But, if Symbol **7** is entered next to a coverage in Item Two of the Declarations, an "auto" you acquire will be a covered "auto" for that coverage only if:
  - (1) We already cover all "autos" that you own for that coverage or it replaces an "auto" you previously owned that had that coverage; and
  - (2) You tell us within 30 days after you acquire it that you want us to cover it for that coverage.
- c. Notwithstanding the provisions of Paragraphs **a.** and **b.**, during the term of the Coverage Part, Physical Damage Coverage for an additional or replacement private passenger "auto" shall not become effective until you notify us and request coverage for the "auto".

However, if you replace a private passenger "auto" currently insured with us for a continuous period of at least 12 months, we will provide the same coverage which applied to the replaced "auto", without a coverage request, for five calendar days beginning on the date you acquired the replacement "auto". After five calendar days, coverage will not apply until you request coverage for the "auto".

2. The **War Or Military Action** Exclusion is replaced by the following:

**War Or Military Action**

War, whether or not declared, civil war, insurrection, rebellion or revolution, or any act or condition incident to any of the foregoing.

3. **Deductible** is replaced by the following:

**Deductible**

For each covered "auto", our obligation to pay for, return or replace damaged or stolen property will be reduced by the applicable deductible shown in the Declarations.

4. The following provisions are added to **Physical Damage Coverage** and apply in place of any conflicting policy provisions:

**a. Mandatory Inspection For Physical Damage Coverage**

- (1) We have the right to inspect any private passenger "auto", including a non-owned "auto", insured or intended to be insured under this Coverage Part before physical damage coverage shall become effective, except to the extent that this right is prescribed and limited by New York State Department of Financial Services' Insurance Regulation No. 79 (11 NYCRR 67) or Section 3411 of the New York Insurance Law.
- (2) When an inspection is required by us, you must cooperate and make the "auto" available for the inspection.

**b. "Auto" Repairs Under Physical Damage Coverage**

Payment of a physical damage "loss" shall not be conditioned upon the repair of the "auto". We may not require that repairs be made by a particular repair shop or concern.

**c. Recovery Of Stolen Or Abandoned "Autos"**

If a private passenger "auto" insured under this Coverage Part for physical damage coverage is stolen or abandoned, we or our authorized representative shall, when notified of the location of the "auto", have the right to take custody of the "auto" for safekeeping.

**D. Changes In Conditions**

1. Paragraphs **a.** and **b.(2)** of the **Duties In The Event Of Accident, Claim, Suit Or Loss** Condition in the Business Auto and Motor Carrier Coverage Forms are replaced by the following:

We have no duty to provide coverage under this Policy if the failure to comply with the following duties is prejudicial to us:

- a.** In the event of "accident", claim, "suit" or "loss", you or someone on your behalf must give us or our authorized representative notice as soon as reasonably possible of the "accident" or "loss". Include:

- (1) How, when and where the "accident" or "loss" occurred;
- (2) The "insured's" name and address; and
- (3) To the extent possible, the names and addresses of any injured persons and witnesses.

Written notice by or on behalf of the injured person or any other claimant to our authorized representative shall be deemed notice to us.

- b.** Additionally, you and any other involved "insured" must:

- (2) Send us copies of any request, demand, order, notice, summons or legal paper received concerning the claim or "suit" as soon as reasonably possible.

2. The **Legal Action Against Us** Condition in the Business Auto and Motor Carrier Coverage Forms is replaced by the following:

**Legal Action Against Us**

- a.** Except as provided in Paragraph **b.**, no one may bring a legal action against us until:

- (1) There has been full compliance with all of the terms of the Coverage Form; and
- (2) Under Covered Autos Liability Coverage, we, by written agreement with the "insured" and the claimant, agree that the "insured" has an obligation to pay or until the amount of that obligation has finally been determined by judgment after trial. No person or organization has any right under this Policy to bring us into any action to determine the "insured's" liability.

- b. With respect to "bodily injury" claims, if we deny coverage or do not admit liability because an "insured" or the injured person, someone acting for the injured person or other claimant fails to give us written notice as soon as practicable, then the injured person, someone acting for the injured person or other claimant may bring an action against us, provided the sole question is whether the denial of coverage or nonadmission of liability is based on the failure to provide timely notice.

However, the injured person, someone acting for the injured person or other claimant may not bring an action if within 60 days after we deny coverage or do not admit liability, we or an "insured":

- (1) Brings an action to declare the rights of the parties under the Policy; and
  - (2) Names the injured person, someone acting for the injured person or other claimant as a party to the action.
3. Paragraph d. of the **Other Insurance** Condition in the Business Auto Coverage Form and Paragraph h. **Other Insurance - Primary And Excess Insurance Provisions** in the Motor Carrier Coverage Form are replaced by the following:

When this Coverage Form and any valid and collectible insurance under any other Coverage Form or policy covers on the same basis, either excess or primary, we will pay only our share. Our share is the proportion that the Limit of Insurance of our Coverage Form bears to the total of the limits of all the Coverage Forms and policies covering on the same basis.

4. The following provision is added and supersedes any provision to the contrary:
- Failure to give notice to us as soon as practicable, as required under this Coverage Part, shall not invalidate any claim made by the "insured", injured person or any other claimant, unless the failure to provide such timely notice has prejudiced us. However, no claim made by the "insured", injured person or other claimant will be invalidated if it shall be shown not to have been reasonably possible to give such timely notice and that notice was given as soon as was reasonably possible thereafter.

5. The **Loss Payment - Physical Damage Coverages** Condition is replaced by the following:

**Loss Payment - Physical Damage Coverages**

At our option, we may:

- a. Pay for or replace damaged or stolen property; or
- b. Return the stolen or damaged property, at our expense. We will pay for any damage that results to the "auto" from the "loss".

If we pay for the "loss", our payment will include the applicable sales tax for the damaged or stolen property.

6. The **Two Or More Coverage Forms Or Policies Issued By Us** Condition in the Business Auto and Motor Carrier Coverage Forms is changed as follows:

This condition does not apply to liability coverage.

7. The **Premium Audit** Condition is amended by the addition of the following:

An audit to determine the final premium due or to be refunded will be completed within 180 days after the expiration date of the Policy or the anniversary date, if this is a continuous policy or a policy written for a term longer than one year. But the audit may be waived if:

- a. The total annual premium attributable to the auditable exposure base is not reasonably expected to exceed \$1,500; or
- b. The Policy requires notification to the insurer with specific identification of any additional exposure units (e.g., autos) for which coverage is requested.
- c. Except as provided in Paragraphs a. and b. above, the **Examination Of Your Books And Records** Common Policy Condition continues to apply.

## E. Changes In Definitions

The **Definitions** section in the Business Auto and Motor Carrier Coverage Forms is changed as follows:

1. The "covered pollution cost or expense" definition is replaced by the following:  
"Covered pollution cost or expense" means any cost or expense arising out of:
  - a. Any request, demand, order or statutory or regulatory requirement; or
  - b. Any claim or "suit" by or on behalf of a governmental authority demanding;  
that the "insured" or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants".
2. The "insured contract" definition is replaced by the following:  
"Insured contract" means:
  - a. A lease of premises;
  - b. A sidetrack agreement;
  - c. An easement or license agreement in connection with vehicle or pedestrian private railroad crossings at grade;
  - d. Any other easement agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
  - e. An indemnification of a municipality as required by ordinance, except in connection with work for a municipality;
  - f. That part of any contract or agreement entered into, as part of your business, by you or any of your employees, pertaining to the rental or lease of any "auto"; or
  - g. That part of any other contract or agreement pertaining to your business under which you assume the tort liability of another to pay damages because of "bodily injury" or "property damage" to a third person or organization, if the contract or agreement is made prior to the "bodily injury" or "property damage". Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

An "insured contract" does not include that part of any contract or agreement:

- a. That pertains to the loan, lease or rental of an "auto" to you or any of your employees, if the "auto" is loaned, leased or rented with a driver;
- b. That holds a person or organization engaged in the business of transporting property by "auto" for hire harmless for your use of a covered "auto" over a route or territory that person or organization is authorized to serve by public authority; or
- c. Under which the "insured" assumes liability for injury or damage caused by the dumping, discharge or escape of:
  - (1) Irritants, pollutants or contaminants that are, or that are contained in, any property that is:
    - (a) Being moved from the place where such property or pollutants are accepted by the "insured" for movement into or onto the covered "auto";
    - (b) Being transported or towed by the covered "auto";
    - (c) Being moved from the covered "auto" to the place where such property or pollutants are finally delivered, disposed of or abandoned by the "insured";
    - (d) Otherwise in the course of transit; or
    - (e) Being stored, disposed of, treated or processed in or upon the covered "auto" other than fuels, lubricants, fluids, exhaust gases or other similar pollutants that are needed for, or result from, the normal electrical, hydraulic or mechanical functioning of the covered "auto" or its parts.
  - (2) Irritants, pollutants or contaminants not described in Paragraph (1) above unless:
    - (a) The pollutants or any property in which the pollutants are contained is upset, overturned or damaged as a result of the maintenance or use of the covered "auto"; and

(b) The discharge, dispersal, release or escape of the pollutants is caused directly by such upset, overturn or damage.

3. The "mobile equipment" definition is replaced by the following:

"Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:

- a. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
- b. Vehicles maintained for use solely on or next to premises you own or rent;
- c. Vehicles that travel on crawler treads;
- d. Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
  - (1) Power cranes, shovels, loaders, diggers or drills; or
  - (2) Road construction or resurfacing equipment such as graders, scrapers or rollers.
- e. Vehicles not described in Paragraph a., b., c. or d. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
  - (1) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well-servicing equipment; or
  - (2) Cherry pickers and similar devices used to raise or lower workers.
- f. Vehicles not described in Paragraph a., b., c. or d. above maintained primarily for purposes other than the transportation of persons or cargo. However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":
  - (1) Equipment designed primarily for:
    - (a) Snow removal;
    - (b) Road maintenance, but not construction or resurfacing; or
    - (c) Street cleaning;
  - (2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and

(3) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting or well-servicing equipment.

"Mobile equipment" does not include land vehicles that are subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged. Land vehicles subject to a compulsory or financial responsibility law or other motor vehicle insurance law are considered "autos".

However, the operation of:

- a. Equipment described in Paragraphs f.(2) and f.(3) above; or
- b. Machinery or equipment that is on, attached to, or part of, a land vehicle that would qualify under the definition of "mobile equipment" if it were not subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged;

is considered operation of "mobile equipment" and not operation of an "auto".

#### F. Changes In Forms And Endorsements

1. All references to Underinsured Motorists Coverage shall mean Supplementary Uninsured/Underinsured Motorists Coverage.
2. If the Garagekeepers Coverage endorsement or the Garagekeepers Coverage - Customers' Sound-receiving Equipment endorsement is attached, then:
  - a. Paragraph B.2. is replaced by the following:
    2. We will have the right and duty to defend any "insured" against a "suit" asking for these damages, even if the allegations of the "suit" are groundless, false or fraudulent. However, we have no duty to defend any "insured" against a "suit" seeking damages for "loss" to which this insurance does not apply. We may investigate and settle any claim or "suit" as we consider appropriate. Our duty to defend or settle ends for a coverage when the Limit of Insurance for that coverage has been exhausted by payment of judgments or settlements.

- b. Exclusion 3. is replaced by the following:
  - 3. We will not pay for "loss" caused by war, whether or not declared, civil war, insurrection, rebellion or revolution, or any act or condition incident to any of the foregoing.
- 3. If the Auto Medical Payments Coverage endorsement is attached, then Exclusion C.6. is replaced by the following:
  - 6. "Bodily injury" caused by war, whether or not declared, civil war, insurrection, rebellion or revolution, or any act or condition incident to any of the foregoing.
- 4. If the Single Interest Automobile Physical Damage Insurance Policy is attached, the **War** Exclusion is replaced by the following:

This insurance does not apply to "loss" caused by war, whether or not declared, civil war, insurrection, rebellion or revolution, or any act or condition incident to any of the foregoing.
- 5. If the Stated Amount Insurance endorsement is attached, then Paragraph C.2. of that endorsement does not apply.
- 6. If the Trailer Interchange Coverage endorsement is attached, then Paragraph A.2. is replaced by the following:
  - 2. We have the right and duty to defend any "insured" against a "suit" asking for these damages, even if the allegations of the "suit" are groundless, false or fraudulent. However, we have no duty to defend any "insured" against a "suit" seeking damages for any "loss" to which this insurance does not apply. We may investigate and settle any claim or "suit" as we consider appropriate. Our duty to defend or settle ends for a coverage when the Limit of Insurance for that coverage has been exhausted by payment of judgments or settlements.
- 7. If the Motor Carrier Endorsement is attached, then Paragraph B.1.c. is replaced by the following:
  - c. We have the right and duty to defend any "insured" against a "suit" asking for these damages, even if the allegations of the "suit" are groundless, false or fraudulent. However, we have no duty to defend any "insured" against a "suit" seeking damages for any "loss" to which this insurance does not apply. We may investigate and settle any claim or "suit" as we consider appropriate. Our duty to defend or settle ends for a coverage when the Limit of Insurance for that coverage has been exhausted by payment of judgments or settlements.

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

## **NEW YORK CHANGES - CANCELLATION**

For a covered "auto" licensed or principally garaged in, or for "auto dealer operations" conducted in, New York, this endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM  
MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

- I. If you are an individual and a covered "auto" you own is predominantly used for nonbusiness purposes, the **Cancellation** Common Policy Condition does not apply. The following condition applies instead:

### **Ending This Policy**

#### **A. Cancellation**

1. You may cancel the entire policy by returning it to us or by giving us advance notice of the date cancellation is to take effect.
2. When this policy is in effect less than 60 days and is not a renewal or continuation policy, we may cancel the entire policy for any reason provided we mail you notice within this period. If we cancel for nonpayment of premium, we will mail you at least 15 days' notice and such notice of cancellation on this ground shall inform the first Named Insured of the amount due. Payment of premium will be considered on time if made within 15 days after we mail you notice of cancellation. If we cancel for any other reason, we will mail you at least 20 days' notice.

3. When this policy is in effect 60 days or more or is a renewal or continuation policy, we may cancel it or any insurance deemed severable only for one or more of the following reasons:

- a. Nonpayment of premium, provided, however, that a notice of cancellation on this ground shall inform the first Named Insured of the amount due. If we cancel for this reason, we will mail you at least 15 days' notice. Payment of premium will be considered on time if made within 15 days after we mail you notice of cancellation.
- b. Your driver's license or that of a driver who lives with you or customarily uses the covered "auto" has been suspended or revoked during the policy period, other than a suspension issued pursuant to Subdivision (1) of Section 510(b) of the Vehicle and Traffic Law, or one or more administrative suspensions arising out of the same incident which has or have been terminated prior to the effective date of cancellation. If we cancel for this reason, we will mail you at least 20 days' notice.



- c. We replace this policy with another one providing similar coverages and the same limits for a covered "auto" of the private passenger type. The replacement policy will take effect when this policy is cancelled, and will end a year after this policy begins or on this policy's expiration date, whichever is earlier.
- d. This policy has been written for a period of more than one year or without a fixed expiration date. We may cancel for this reason, subject to New York Laws, only at an anniversary of its original effective date. If we cancel for this reason, we will mail you at least 45 but not more than 60 days' notice.
- e. This policy was obtained through fraud or material misrepresentation. If we cancel for this reason, we will mail you at least 20 days' notice.
- f. Any "insured" made a fraudulent claim. If we cancel for this reason, we will mail you at least 20 days' notice.

If one of the reasons listed in this Paragraph 3. exists, we may cancel the entire policy.

- 4. Instead of cancellation, we may condition continuation of this policy on a reduction of Covered Autos Liability Coverage or elimination of any other coverage. If we do this, we will mail you notice at least 20 days before the date of the change.
- 5. Notice of cancellation will state the effective date of cancellation. The policy period will end on that date.
- 6. If this policy is cancelled, we will send you any premium refund due. The refund will be pro rata.

However, when the premium is advanced under a premium finance agreement, we will be entitled to retain a minimum earned premium of 10% of the total policy premium or \$60, whichever is greater. The cancellation will be effective even if we have not made or offered a refund.

## B. Nonrenewal

- 1. If this policy is written for a period of less than one year and we decide, subject to New York Laws, not to renew or continue it, or to condition renewal or continuation on a reduction of Covered Autos Liability Coverage or elimination of any other coverage, we will mail or deliver to you written notice at least 45 but not more than 60 days before the end of the policy period.
- 2. We will have the right not to renew or continue a particular coverage, subject to New York Laws, only at the end of each 12-month period following the effective date of the first of the successive policy periods in which the coverage was provided.
- 3. We do not have to mail notice of nonrenewal if you, your agent or broker or another insurance company informs us in writing that you have replaced this policy or that you no longer want it.

## C. Mailing Of Notices

We will mail or deliver our notice of cancellation, reduction of limits, elimination of coverage or nonrenewal to the address shown on the policy. However, we may deliver any notice instead of mailing it. If notice is mailed, a United States Postal Service certificate of mailing will be sufficient proof of notice.

- II. For all policies other than those specified in Section I., the **Cancellation** Common Policy Condition is completely replaced by the following:

### Ending This Policy

#### A. Cancellation

- 1. The first Named Insured shown in the Declarations may cancel the entire policy by returning it to us or by giving us advance notice of the date cancellation is to take effect.
- 2. When this policy is in effect 60 days or less and is not a renewal or continuation policy, we may cancel the entire policy by mailing to the first Named Insured written notice at least 15 days before the effective date of cancellation if we cancel for any of the reasons included in Paragraph 3. below. We will provide the first Named Insured with 20 days' written notice if we cancel for any other reason.

3. When this policy is in effect more than 60 days or is a renewal or continuation policy, we may cancel only for any of the reasons listed below, provided we mail the first Named Insured written notice at least 15 days before the effective date of cancellation:

- a. Nonpayment of premium, provided, however, that a notice of cancellation on this ground shall inform the first Named Insured of the amount due;
- b. Conviction of a crime arising out of acts increasing the hazard insured against;
- c. Discovery of fraud or material misrepresentation in the obtaining of the policy or in the presentation of a claim thereunder;
- d. After issuance of the policy or after the last renewal date, discovery of an act or omission, or a violation of any policy condition, that substantially and materially increases the hazard insured against, and which occurred subsequent to inception of the current policy period;
- e. Material physical change in the property insured, occurring after issuance or last annual renewal anniversary date of the policy, which results in the property becoming uninsurable in accordance with our objective, uniformly applied underwriting standards in effect at the time the policy was issued or last renewed; or material change in the nature or extent of the risk, occurring after issuance or last annual renewal anniversary date of the policy, which causes the risk of loss to be substantially and materially increased beyond that contemplated at the time the policy was issued or last renewed;
- f. Required pursuant to a determination by the Superintendent that continuation of our present premium volume would jeopardize our solvency or be hazardous to the interest of our policyholders, our creditors or the public;
- g. A determination by the Superintendent that the continuation of the policy would violate, or would place us in violation of, any provision of the Insurance Code;

h. Where we have reason to believe, in good faith and with sufficient cause, that there is a probable risk of danger that the "insured" will destroy, or permit to be destroyed, the insured property for the purpose of collecting the insurance proceeds. However, if we cancel for this reason, the first Named Insured may make a written request to the Department of Financial Services, within 10 days of receipt of this notice, to review our cancellation decision. We will also send a copy of this notice, simultaneously, to the Department of Financial Services; or

i. Suspension or revocation during the required policy period of the driver's license of any person who continues to operate a covered "auto", other than a suspension issued pursuant to Subdivision (1) of Section 510(b) of the Vehicle and Traffic Law or one or more administrative suspensions arising from the same incident which has or have been terminated prior to the effective date of cancellation.

4. Regardless of the number of days this policy has been in effect, if:

a. This policy covers "autos" subject to the provisions of Section 370 (a) and (b) of the New York Vehicle and Traffic Law; and

b. The Commissioner of the Department of Motor Vehicles deems this policy to be insufficient for any reason;

we may cancel this policy by giving you notice of such insufficiency 45 days before the effective date of cancellation to permit you to replace this policy.

5. If this policy is cancelled, we will send the first Named Insured any premium refund due. The refund will be pro rata.

However, when the premium is advanced under a premium finance agreement, we will be entitled to retain a minimum earned premium of 10% of the total policy premium or \$60, whichever is greater. The cancellation will be effective even if we have not made or offered a refund.

6. The effective date of cancellation stated in the notice shall become the end of the policy period.

7. Notice will include the reason for cancellation. We will mail or deliver our notice to the first Named Insured at the address shown in the policy and to the authorized agent or broker. However, we may deliver any notice instead of mailing it. Proof of mailing will be sufficient proof of notice.

#### **B. Notices Of Nonrenewal And Conditional Renewal**

1. If we decide not to renew or continue this policy, we will send notice as provided in Paragraph 3. below.
2. If we conditionally renew this policy upon:
  - a. A change of limits;
  - b. A change in type of coverage;
  - c. A reduction of coverage;
  - d. An increased deductible;
  - e. An addition of exclusion; or
  - f. Increased premiums in excess of 10%, exclusive of any premium increase due to and commensurate with insured value added; or as a result of experience rating, retrospective rating or audit;

we will send notice as provided in Paragraph 3. below.

3. If we decide not to renew or continue this policy, or to conditionally renew this policy as provided in Paragraphs 1. and 2. above, we will mail the first Named Insured notice at least 60 but not more than 120 days before the end of the policy period. If the policy period is other than one year, we will have the right not to renew or continue it only at an anniversary of its original effective date.
4. We will not send you notice of nonrenewal or conditional renewal if you, your authorized agent or broker or another insurer of yours mails or delivers notice that you have replaced this policy or no longer want it.
5. Any notice of nonrenewal or conditional renewal will be mailed to the first Named Insured at the address shown in the policy and to the authorized agent or broker. However, we may deliver any notice instead of mailing it. Proof of mailing of any notice shall be sufficient proof of notice.
6. Notice will include the specific reason(s) for nonrenewal or conditional renewal, including the amount of any premium increase, and description of any other changes.

7. If we violate any of the provisions of Paragraph 3., 5. or 6. above by sending the first Named Insured an incomplete or late conditional renewal notice or a late nonrenewal notice:

- a. And if notice is provided prior to the expiration date of this policy, coverage will remain in effect at the same terms and conditions of this policy at the lower of the current rates or the prior period's rates until 60 days after such notice is mailed or delivered, unless the first Named Insured, during this 60-day period, has replaced the coverage or elects to cancel.
- b. And if the notice is provided on or after the expiration date of this policy, coverage will remain in effect at the same terms and conditions of this policy for another policy period, at the lower of the current rates or the prior period's rates, unless the first Named Insured, during this additional policy period, has replaced the coverage or elects to cancel.

8. If you elect to renew on the basis of a late conditional renewal notice, the terms, conditions and rates set forth in such notice shall apply:

- a. Upon expiration of the 60-day period, unless Subparagraph b. below applies; or
- b. Notwithstanding the provisions in Paragraphs 7.a. and 7.b., as of the renewal date of the policy if the conditional renewal notice was sent at least 30 days prior to the expiration or anniversary date of the policy.

#### **C. Paragraph C.1. Aggregate Limit Of Insurance - Garage Operations - Other Than Covered "Autos" is amended as follows:**

1. The Aggregate Limit Of Insurance - "Garage Operations" - Other Than Covered "Autos" as shown in the Declarations will be increased in proportion to any policy extension provided in accordance with Section II, Paragraph B.7. above.
2. The last sentence of Aggregate Limits - "Garage Operations" - Other Than Covered "Autos" does not apply when the policy period is extended because we sent the first Named Insured an incomplete or late conditional renewal notice or a late nonrenewal notice.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## NEW YORK SUPPLEMENTARY UNINSURED/UNDERINSURED MOTORISTS ENDORSEMENT

We, the company, agree with you, as the named insured, in return for payment of the premium for this coverage, to provide Supplementary Uninsured/Underinsured Motorists (SUM) coverage, subject to the following terms and conditions:

### INSURING AGREEMENTS

#### 1. Definitions

For purposes of this SUM endorsement, the following terms have the following meanings:

##### a. Insured

The unqualified term "insured" means:

- (1) You, as the named insured and, while residents of the same household, your spouse and the relatives of either you or your spouse;
- (2) Any person while acting in the scope of that person's duties for you, except with respect to the use and operation by such person of a motor vehicle not covered under this policy, where such person is:
  - (a) Your employee and you are a fire department;
  - (b) Your member and you are a fire company, as defined in General Municipal Law section 100;
  - (c) Your employee and you are an ambulance service, as defined in Public Health Law section 3001; or
  - (d) Your member and you are a voluntary ambulance service, as defined in Public Health Law, section 3001;
- (3) Any other person while occupying:
  - (a) A motor vehicle insured for SUM under this policy; or
  - (b) Any other motor vehicle while being operated by you or your spouse; and
- (4) Any person, with respect to damages such person is entitled to recover, because of bodily injury to which this coverage applies sustained by an insured under Paragraph (1), (2) or (3) above.

##### b. Bodily Injury

The term "bodily injury" means bodily harm, including sickness, disease or death resulting therefrom.

##### c. Uninsured Motor Vehicle

The term "uninsured motor vehicle" means a motor vehicle that, through its ownership, maintenance or use, results in bodily injury to an insured, and for which:

- (1) No bodily injury liability insurance policy or bond applies to such motor vehicle (including a vehicle that was stolen, operated without the owner's permission or unregistered) at the time of the accident; or
- (2) The owner and operator cannot be identified (including a hit-and-run motor vehicle), and which causes bodily injury to an insured by physical contact with the insured or with a motor vehicle occupied by the insured at the time of the accident, provided that:
  - (a) The insured or someone on the insured's behalf:
    - (i) Reported the accident within 24 hours or as soon as reasonably possible to a police, peace or judicial officer or to the Commissioner of Motor Vehicles; and
    - (ii) Filed with the Company a statement under oath that the insured or the insured's legal representative has a cause or causes of action arising out of such accident for damages against a person or persons whose identity is unascertainable, and setting forth the facts in support thereof; and

- (b) At the request of the Company, the insured or the insured's legal representative makes available for inspection the motor vehicle the insured was occupying at the time of the accident; or
- (3) There is a bodily injury liability insurance coverage or bond applicable to such motor vehicle at the time of the accident, but:
  - (a) The amount of such insurance coverage or bond is less than the third-party bodily injury liability limit of this policy; or
  - (b) The amount of such insurance coverage or bond has been reduced, by payments to other persons injured in the accident, to an amount less than the third-party bodily injury liability limit of this policy; or
  - (c) The insurer writing such insurance coverage or bond denies coverage or such insurer is or becomes insolvent.

The term "uninsured motor vehicle" shall not include a motor vehicle that is:

- (1) Insured under the liability coverage of this policy; or
- (2) Owned by you, the named insured, or your spouse residing in your household; or
- (3) Self-insured within the meaning of the financial responsibility law of the state in which the motor vehicle is registered, or any similar state or federal law, to the extent that the required amount of such coverage is equal to, or greater than, the third-party bodily injury liability limits of this policy; or
- (4) Owned by the United States of America, Canada, a state, a political subdivision of any such government or an agency of any of the foregoing; or
- (5) A land motor vehicle or trailer, while located for use as a residence or premises and not as a motor vehicle or while operated on rails or crawler-treads; or
- (6) A farm type vehicle or equipment designed for use principally off public roads, except while actually upon public roads.

**d. Occupying**

The term "occupying" means in, upon, entering into or exiting from a motor vehicle.

**e. State**

The term "state" means a state, territory or possession of the United States, the District of Columbia or a province of Canada.

**2. Damages For Bodily Injury Caused By Uninsured Motor Vehicles**

We will pay all sums that the insured or the insured's legal representative shall be legally entitled to recover as damages from the owner or operator of an uninsured motor vehicle because of bodily injury sustained by the insured, caused by an accident arising out of such uninsured motor vehicle's ownership, maintenance or use, subject to the Exclusions, Conditions, Limits and other provisions set forth in this SUM endorsement.

**3. SUM Coverage Period And Territory**

This SUM coverage applies only to accidents that occur:

- a. During the policy period shown in the Declarations; and
- b. In the United States, its territories or possessions, or Canada.

**EXCLUSIONS**

This SUM coverage does **not** apply to:

- 1. Bodily injury to an insured, including care or loss of services recoverable by an insured, if such insured, such insured's legal representatives or any person entitled to payment under this coverage, without our written consent, settles any lawsuit against any person or organization that may be legally liable for such injury, care or loss of services, however this provision shall be subject to Condition 9.;
- 2. Bodily injury to an insured incurred while occupying a motor vehicle owned by that insured, if such motor vehicle is not insured for SUM coverage by the policy under which a claim is made or is not a newly acquired or replacement motor vehicle covered under the terms of this policy; or
- 3. Non-economic loss resulting from bodily injury to an insured arising from an accident in New York State, unless the insured has sustained serious injury as defined in Section 5102(d) of the New York Insurance Law.

## CONDITIONS

### 1. Policy Provisions

None of the Insuring Agreements, Exclusions or Conditions of the policy shall apply to this SUM coverage except: "Duties In The Event Of Accident, Claim, Suit Or Loss", "Fraud" and "Ending This Policy" if applicable.

### 2. Notice And Proof Of Claim

As soon as practicable, the insured or other person making a claim shall give us written notice of claim under this SUM coverage.

- a. As soon as practicable after our written request, the insured or other person making claim shall give us written proof of claim, under oath if required, including full particulars of the nature and extent of the injuries, treatment and other details we need to determine the SUM amount payable.
- b. The insured and every other person making claim hereunder shall, as may reasonably be required, submit to examinations under oath by any person we name and subscribe the same. Proof of claim shall be made upon forms we furnish unless we fail to furnish such forms within 15 calendar days after receiving notice of claim.

### 3. Medical Reports

The insured shall submit to physical examinations by physicians we select when and as often as we may reasonably require. The insured, or in the event of the insured's incapacity, the insured's legal representative (or in the event of the insured's death, the insured's legal representative or the person or persons entitled to sue therefor), shall upon each request from us authorize us to obtain copies of relevant medical reports and records.

### 4. Notice Of Legal Action

If the insured or the insured's legal representative brings any lawsuit against any person or organization legally responsible for the use of a motor vehicle involved in the accident, a copy of the summons and complaint or other process served in connection with the lawsuit shall be forwarded immediately to us by the insured or the insured's legal representative.

## 5. SUM Limits And Maximum Payments

- a. The SUM limit payable under this endorsement shall be determined as follows:
  - (1) If an accident results in bodily injury excluding death to one or more persons, then we will provide the SUM limit stated in the Declarations; or
  - (2) If an accident results in the death of one or more persons, then we will provide the greater of the SUM limit stated in the Declarations or \$50,000 for such bodily injury resulting in death sustained by one person as the result of any one accident and, subject to this per person limit, \$100,000 for such bodily injury resulting in death sustained by two or more persons as the result of any one accident; or
  - (3) If an accident results in both bodily injury to one or more persons and the death of one or more persons, then we will provide the greater of the SUM limits stated in the Declarations or the limits required by the mandatory uninsured motorists (UM) coverage as follows:
    - \$25,000 per injured person and, subject to this per person limit,
    - \$50,000 to two or more persons injured as the result of any one accident; and
    - \$50,000 per person for bodily injury resulting in death and, subject to this per person limit,
    - \$100,000 to two or more persons for bodily injury resulting in death as the result of any one accident.
- b. Regardless of the number of insureds, our maximum payment under this SUM endorsement shall be the difference between:
  - (1) The SUM limit; and
  - (2) The motor vehicle bodily injury liability insurance or bond payments received by the insured or the insured's legal representative, from or on behalf of all persons that may be legally liable for the bodily injury sustained by the insured.
- c. The SUM limit shown on the Declarations is the amount of coverage for all damages due to bodily injury in any one accident.

## 6. Non-Stacking

Regardless of the number of motor vehicles involved, persons covered, claims made, motor vehicles or premiums shown in this policy or premium paid, the limits, whether for UM coverage or SUM coverage, shall never be added together or combined for two or more motor vehicles to determine the extent of insurance coverage available to an insured who was injured in the same accident.

## 7. Priority Of Coverage

If an insured is entitled to UM coverage or SUM coverage under more than one policy, the maximum amount such insured may recover shall not exceed the highest limit of such coverage for any one motor vehicle under any one policy and the following order of priority shall apply:

- a. A policy covering a motor vehicle occupied by the injured person at the time of the accident;
- b. A policy covering a motor vehicle not involved in the accident under which the injured person is a named insured; and
- c. A policy covering a motor vehicle not involved in the accident under which the injured person is an insured other than a named insured.

Coverage available under a lower priority policy applies only to the extent that it exceeds the coverage of a higher priority policy.

## 8. Exhaustion Required

Except as provided in Condition 9., we will pay under this SUM coverage only after the limits of liability have been exhausted under all motor vehicle bodily injury liability insurance policies or bonds applicable at the time of the accident in regard to any one person who may be legally liable for the bodily injury sustained by the insured.

## 9. Release Or Advance

- a. In accidents involving the insured and one or more negligent parties, if such insured settles with any such party for the available limit of the motor vehicle bodily injury liability coverage of such party, a release may be executed with such party after thirty calendar days from our receipt of your written notice to us, unless within this time period we agree to advance such settlement amounts to the insured in return for the cooperation of the insured in our lawsuit on behalf of the insured.
- b. We shall have a right to the proceeds of any such lawsuit equal to the amount advanced to the insured and any additional amounts paid under this SUM coverage. Any excess above those amounts shall be paid to the insured.
- c. An insured shall not otherwise settle with any negligent party, without our written consent, such that our rights would be impaired.

## 10. Non-Duplication

This SUM coverage shall not duplicate any of the following:

- a. Benefits payable under workers' compensation or other similar laws;
- b. Non-occupational disability benefits under New York Workers' Compensation Law article nine or other similar law;
- c. Any amounts recovered or recoverable pursuant to New York Insurance Law article fifty-one or any similar motor vehicle insurance payable without regard to fault;
- d. Any valid or collectible motor vehicle medical payments insurance; or
- e. Any amounts recovered as bodily injury damages from sources other than motor vehicle bodily injury liability insurance policies or bonds.

## 11. Arbitration

- a. If any insured makes a claim under this SUM coverage and we do not agree that such insured is legally entitled to recover damages from the owner or operator of an uninsured motor vehicle because of bodily injury sustained by the insured, or we do not agree as to the amount of payment that may be owing under this SUM coverage, then, at the option and upon written demand of such insured, the matter or matters upon which such insured and we do not agree shall be settled by arbitration, administered by the \_\_\_\_\_ (insert name of designated organization), pursuant to procedures approved by the Superintendent of Financial Services for this purpose.
- b. If the maximum amount of SUM coverage provided by this endorsement equals the amount of coverage required to be provided by New York Insurance Law section 3420(f)(1) and New York Vehicle and Traffic Law Article 6 or 8, then such disagreement shall be settled by such arbitration procedures upon written demand of either the insured or us. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof, and any such insured and we each agree to be bound by any award made by the arbitrator as to this SUM coverage. For purposes of this Condition, the term "insured" includes any person authorized to act on behalf of the insured.

## 12. Subrogation

If we make a payment under this SUM coverage, then we have the right to recover the amount of the payment from any person legally responsible for the bodily injury or loss of the person to whom, or for whose benefit, such payment was made to the extent of the payment. The insured or any person acting on behalf of the insured must do whatever is necessary to transfer this right of recovery to us. Except as permitted by Condition 9., such person shall do nothing to prejudice this right.

## 13. Payment Of Loss By Company

We shall pay any amount due under this SUM coverage to the insured or, at our option, to a person authorized by law to receive such payment or to a person legally entitled to recover the damages which the payment represents.

## 14. Action Against Company

No lawsuit shall lie against us unless the insured or the insured's legal representative has first fully complied with all the terms of this SUM coverage.

## 15. Survivor Rights

If you or your spouse, if a resident of the same household, dies, then this SUM endorsement shall cover:

- a. The survivor as named insured;
- b. The decedent's legal representative as named insured, but only while acting within the scope of such representative's duties as such; and
- c. Any relative who was an insured at the time of such death.



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## AUTO MEDICAL PAYMENTS COVERAGE

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM  
BUSINESS AUTO COVERAGE FORM  
MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

### A. Coverage

We will pay reasonable expenses incurred for necessary medical and funeral services to or for an "insured" who sustains "bodily injury" caused by "accident". We will pay only those expenses incurred, for services rendered within three years from the date of the "accident".

### B. Who Is An Insured

1. You while "occupying" or, while a pedestrian, when struck by any "auto".
2. If you are an individual, any "family member" while "occupying" or, while a pedestrian, when struck by any "auto".
3. Anyone else "occupying" a covered "auto" or a temporary substitute for a covered "auto". The covered "auto" must be out of service because of its breakdown, repair, servicing, loss or destruction.

### C. Exclusions

This insurance does not apply to any of the following:

1. "Bodily injury" sustained by an "insured" while "occupying" a vehicle located for use as a premises.
2. "Bodily injury" sustained by you or any "family member" while "occupying" or struck by any vehicle (other than a covered "auto") owned by you or furnished or available for your regular use.

3. "Bodily injury" sustained by any "family member" while "occupying" or struck by any vehicle (other than a covered "auto") owned by or furnished or available for the regular use of any "family member".
4. "Bodily injury" to your "employee" arising out of and in the course of employment by you. However, we will cover "bodily injury" to your domestic "employees" if not entitled to workers' compensation benefits. For the purposes of this endorsement, a domestic "employee" is a person engaged in household or domestic work performed principally in connection with a residence premises.
5. "Bodily injury" to an "insured" while working in a business of selling, servicing, repairing or parking "autos" unless that business is yours.
6. "Bodily injury" arising directly or indirectly out of:
  - a. War, including undeclared or civil war;
  - b. Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
  - c. Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

7. "Bodily injury" to anyone using a vehicle without a reasonable belief that the person is entitled to do so.
8. "Bodily Injury" sustained by an "insured" while "occupying" any covered "auto" while used in any professional racing or demolition contest or stunting activity, or while practicing for such contest or activity. This insurance also does not apply to any "bodily injury" sustained by an "insured" while the "auto" is being prepared for such a contest or activity.

#### **D. Limit Of Insurance**

Regardless of the number of covered "autos", "insureds", premiums paid, claims made or vehicles involved in the "accident", the most we will pay for "bodily injury" for each "insured" injured in any one "accident" is the Limit Of Insurance for Auto Medical Payments Coverage shown in the Declarations.

No one will be entitled to receive duplicate payments for the same elements of "loss" under this coverage and any Liability Coverage Form, Uninsured Motorists Coverage Endorsement or Underinsured Motorists Coverage Endorsement attached to this Coverage Part.

#### **E. Changes In Conditions**

The **Conditions** are changed for **Auto Medical Payments Coverage** as follows:

1. The **Transfer Of Rights Of Recovery Against Others To Us** Condition does not apply.
2. The reference in **Other Insurance** in the Auto Dealers and Business Auto Coverage Forms and **Other Insurance - Primary And Excess Insurance Provisions** in the Motor Carrier Coverage Form to "other collectible insurance" applies only to other collectible auto medical payments insurance.

#### **F. Additional Definitions**

As used in this endorsement:

1. "Family member" means a person related to you by blood, marriage or adoption who is a resident of your household, including a ward or foster child.
2. "Occupying" means in, upon, getting in, on, out or off.

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

## **NEW YORK CHANGES - FRAUD**

This endorsement modifies insurance provided under the following:

CAPITAL ASSETS PROGRAM (OUTPUT POLICY) COVERAGE PART  
COMMERCIAL AUTOMOBILE COVERAGE PART  
COMMERCIAL INLAND MARINE COVERAGE PART  
COMMERCIAL PROPERTY COVERAGE PART  
EQUIPMENT BREAKDOWN COVERAGE PART  
FARM COVERAGE PART - FARM PROPERTY - OTHER FARM PROVISIONS FORM - ADDITIONAL  
COVERAGES, CONDITIONS, DEFINITIONS  
FARM COVERAGE PART - LIVESTOCK COVERAGE FORM  
FARM COVERAGE PART - MOBILE AGRICULTURAL MACHINERY AND EQUIPMENT COVERAGE  
FORM

The **CONCEALMENT, MISREPRESENTATION OR FRAUD** Condition is replaced by the following:

### **FRAUD**

We do not provide coverage for any insured ("insured") who has made fraudulent statements or engaged in fraudulent conduct in connection with any loss ("loss") or damage for which coverage is sought under this policy.

However, with respect to insurance provided under the COMMERCIAL AUTOMOBILE COVERAGE PART, we will provide coverage to such "insured" for damages sustained by any person who has not made fraudulent statements or engaged in fraudulent conduct if such damages are otherwise covered under the policy.

# CALIFORNIA AUTO BODY REPAIR CONSUMER BILL OF RIGHTS

A Consumer is entitled to:

1. Select the auto body repair shop to repair auto body damage covered by the insurance company. An insurance company may not require the repairs to be done at a specific auto body repair shop.
2. An itemized written estimate for auto body repairs and, upon completion of repairs, a detailed invoice. The estimate and the invoice must include an itemized list of parts and labor along with the total price for the work performed. The estimate and invoice must also identify all parts as new, used, aftermarket, reconditioned, or rebuilt.
3. Be informed about coverage for towing and storage services.
4. Be informed about the extent of coverage, if any, for a replacement rental vehicle while a damaged vehicle is being repaired.
5. Be informed of where to report suspected fraud or other complaints and concerns about auto body repairs.
6. To seek and obtain an independent repair estimate directly from a registered auto body repair shop for repair of a damaged vehicle, even when pursuing an insurance claim for repair of that vehicle.

## **Complaints within the jurisdiction of the Bureau of Automotive Repair**

Complaints concerning the repair of a vehicle by an auto body repair shop should be directed to:

Toll Free (866)799-3811  
California Department of Consumer Affairs  
Bureau of Automotive Repair  
10949 North Mather Blvd.  
Rancho Cordova, CA 95670

The Bureau of Automotive Repair can also accept complaints over its web site at: [www.autorepair.ca.gov](http://www.autorepair.ca.gov)

## **Complaints within the jurisdiction of the California Insurance Commissioner**

Any concerns regarding how an auto insurance claim is being handled should be submitted to the California Department of Insurance at:

(800)927-4357 or (213)897-8921  
California Department of Insurance  
Consumer Services Division  
300 S. Spring Street  
Los Angeles, CA 90013

The California Department of Insurance can also accept complaints over its web site at [www.insurance.ca.gov](http://www.insurance.ca.gov)



ACCOUNT NUMBER: 2553009

## COMMON POLICY DECLARATIONS

Sentry Select Insurance Company (A Participating Stock Company) A member of the Sentry Insurance Group 1800 North Point Drive Stevens Point, WI 54481	Producer  Steven Asch 10000277 315-484-6565
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### GENERAL INFORMATION

**First Named Insured:** Alan Byer  
**Address:** 1230 W Genesee St  
 Syracuse, NY 13204-2104  
**Business Type:** Individual

Unless stated elsewhere, the coverage provided under this policy is effective 08/01/2018 to 08/01/2019 at 12:01 A.M. Standard Time at your mailing address shown above.

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

### NAMED INSUREDS

The **FIRST NAMED INSURED** shown in the **GENERAL INFORMATION** above, and the person(s) or organization(s) shown as **NAMED INSUREDS** below are named insureds for this policy.

Not Applicable

### COVERAGES

This Contract consists of the following Coverages:

COMMERCIAL AUTO COVERAGE 2553009008

### PREMIUM SUMMARY

The Premium for this policy:	\$	2,401.00
Terrorism:	\$	0.00
Total Cost:	\$	2,401.00

### CONTACT INFORMATION

For service, please contact your Sentry Account Manager at the number listed above or our Service office at:

<b>Address:</b>	1800 North Point Drive Stevens Point, WI 54481	<b>Phone:</b>	Toll Free 800-473-6879 Fax 800-514-7191
<b>Email:</b>	businessproducts_direct@sentry.com		

ACCOUNT NUMBER: 2553009

**COMMON POLICY FORMS AND/OR ENDORSEMENTS**

The following forms and/or endorsements apply to all coverages included as part of this policy:

<b>Form/Endorsement Number and Edition Date</b>	<b>Form/Endorsement Title</b>
80 2314 SSDO 05 00	Additional Conditions - Membership And Participation
IL 00 17 11 98	Common Policy Conditions

These declarations together with the common policy conditions, coverage part declarations, coverage part coverage form(s) and forms and endorsements, if any, issued to form a part thereof, complete the above numbered policy.

## ADDITIONAL CONDITIONS - PARTICIPATION

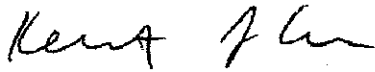
### Participation

You will share in any dividends in accordance with conditions established by the Board of Directors.

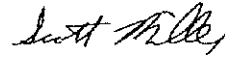
The first page of Declarations names the company issuing this policy. The officer signatures which correspond to That Company are a part of this policy. None of the other signatures apply to this policy.

### SENTRY SELECT INSURANCE COMPANY

Stevens Point, Wisconsin



Secretary



President

## COMMON POLICY CONDITIONS

All Coverage Parts included in this policy are subject to the following conditions.

### A. Cancellation

1. The first Named Insured shown in the Declarations may cancel this policy by mailing or delivering to us advance written notice of cancellation.
2. We may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation at least:
  - a. 10 days before the effective date of cancellation if we cancel for nonpayment of premium; or
  - b. 30 days before the effective date of cancellation if we cancel for any other reason.
3. We will mail or deliver our notice to the first Named Insured's last mailing address known to us.
4. Notice of cancellation will state the effective date of cancellation. The policy period will end on that date.
5. If this policy is cancelled, we will send the first Named Insured any premium refund due. If we cancel, the refund will be pro rata. If the first Named Insured cancels, the refund may be less than pro rata. The cancellation will be effective even if we have not made or offered a refund.
6. If notice is mailed, proof of mailing will be sufficient proof of notice.

### B. Changes

This policy contains all the agreements between you and us concerning the insurance afforded. The first Named Insured shown in the Declarations is authorized to make changes in the terms of this policy with our consent. This policy's terms can be amended or waived only by endorsement issued by us and made a part of this policy.

### C. Examination Of Your Books And Records

We may examine and audit your books and records as they relate to this policy at any time during the policy period and up to three years afterward.

### D. Inspections And Surveys

1. We have the right to:
  - a. Make inspections and surveys at any time;

- b. Give you reports on the conditions we find; and

- c. Recommend changes.

2. We are not obligated to make any inspections, surveys, reports or recommendations and any such actions we do undertake relate only to insurability and the premiums to be charged. We do not make safety inspections. We do not undertake to perform the duty of any person or organization to provide for the health or safety of workers or the public. And we do not warrant that conditions:
  - a. Are safe or healthful; or
  - b. Comply with laws, regulations, codes or standards.

3. Paragraphs 1. and 2. of this condition apply not only to us, but also to any rating, advisory, rate service or similar organization which makes insurance inspections, surveys, reports or recommendations.

4. Paragraph 2. of this condition does not apply to any inspections, surveys, reports or recommendations we may make relative to certification, under state or municipal statutes, ordinances or regulations, of boilers, pressure vessels or elevators.

### E. Premiums

The first Named Insured shown in the Declarations:

1. Is responsible for the payment of all premiums; and
2. Will be the payee for any return premiums we pay.

### F. Transfer Of Your Rights And Duties Under This Policy

Your rights and duties under this policy may not be transferred without our written consent except in the case of death of an individual named insured.

If you die, your rights and duties will be transferred to your legal representative but only while acting within the scope of duties as your legal representative. Until your legal representative is appointed, anyone having proper temporary custody of your property will have your rights and duties but only with respect to that property.



POLICY NUMBER: 2553009008



## BUSINESS AUTO COVERAGE DECLARATIONS

Sentry Select Insurance Company (A Participating Stock Company) A member of the Sentry Insurance Group 1800 North Point Drive Stevens Point, WI 54481	Producer  Steven Asch 10000277 315-484-6565
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### ITEM ONE

#### POLICY INFORMATION

**First Named Insured:** Alan Byer  
**Address:** 1230 W Genesee St  
 Syracuse, NY 13204-2104

The Business Auto Coverage applies from 08/01/2018 to 08/01/2019 at 12:01 A.M. Standard Time at the First Named Insured's mailing address shown above.

#### APPLICABLE FORMS AND ENDORSEMENTS

In addition to the common policy forms and endorsements, the following forms and endorsements apply to the Business Auto Coverage:

Form/Endorsement Number and Edition Date	Form/Endorsement Title
CA 00 01 10 13	Business Auto Coverage Form
CA 01 21 10 13	Limited Mexico Coverage
CA 01 43 05 17	California Changes
CA 04 24 10 13	California Auto Medical Payments Coverage
CA 21 54 10 13	California Uninsured Motorists Coverage - Bodily Injury
CA 23 84 10 13	Exclusion Of Terrorism
CA 23 94 10 13	Silica Or Silica-Related Dust Exclusion For Covered Autos Exposure
CA 87 25 10 13	California Individual Named Insured
IL 00 21 09 08	Nuclear Energy Liability Exclusion Endorsement (Broad Form)
IL 02 70 09 12	California Changes - Cancellation And Nonrenewal

### ITEM TWO

#### Schedule of Coverages and Covered Autos

This policy provides only those coverages, shown below. Each of these coverages will apply only to those "autos" shown as covered "autos". "Autos" are shown as covered "autos" for a particular coverage by the entry of one or more of the symbols from the **Covered Autos** Section of the Business Auto Coverage Form next to the name of the coverage.

Coverages	Covered Autos	Limit
Covered Autos Liability	07 08	\$500,000

**CA 89 01 10 14**  
 2553009  
 Sentry Select Insurance Company

**ITEM TWO**

**Schedule of Coverages and Covered Autos**

<b>Coverages</b>	<b>Covered Autos</b>	<b>Limit</b>
Auto Medical Payments	07	\$5,000 Each Insured
Uninsured Motorists	07	\$500,000
Underinsured Motorists		Included in Uninsured Motorists Coverage
Physical Damage - Comprehensive Coverage	07 08	Actual cash value or cost of repair, whichever is less minus deductible shown in ITEM THREE for each covered "auto".  A deductible of \$100 applies to covered "autos" not listed in ITEM THREE. Deductibles do not apply to loss caused by fire or lightning.
Physical Damage – Collision Coverage	07 08	Actual cash value or cost of repair, whichever is less minus deductible shown in ITEM THREE for each covered "auto".  A deductible of \$250 applies to covered "autos" not listed in ITEM THREE.

**ITEM THREE**

**Schedule of Covered Autos You Own**

See attached Schedule of Covered Autos You Own



POLICY NUMBER: 2553009008

ITEM THREE – SCHEDULE OF COVERED AUTOS YOU OWN

For the covered "autos" listed below, only the coverages indicated for a covered "auto" apply to that covered auto. The absence of a coverage for an individual covered "auto" means that the coverage does not apply.

Vehicle Number	Description of Covered Auto		Vehicle ID Number (VIN)	Premium
1	2013 Volvo C30		YV1672MK7D2304511	\$ Included
	Class Code: 7391	Original Cost New: \$ 65,000	Garage Location and Territory Los Angeles, CA 90067	116
<b>License Plate:</b>				
<b>Coverage</b>		<b>Limit of Insurance</b>		<b>Coverage Premium</b>
Covered Autos Liability		\$500,000		\$ Included
Medical Payments		\$5,000 Each Insured		\$ Included
Uninsured Motorists including Underinsured Motorists		See Item Two		\$ Included
Comprehensive		Actual Cash Value minus \$1,000 deductible		\$ Included
Collision		Actual Cash Value minus \$1,000 deductible		\$ Included

CA 89 02 10 14

2553009  
Sentry Select Insurance Company

Page 1 of 1  
07/20/2018

## BUSINESS AUTO COVERAGE FORM

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

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

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

### Section I - Covered Autos

Item Two of the Declarations shows the "autos" that are covered "autos" for each of your coverages. The following numerical symbols describe the "autos" that may be covered "autos". The symbols entered next to a coverage on the Declarations designate the only "autos" that are covered "autos".

#### A. Description Of Covered Auto Designation Symbols

Symbol	Description Of Covered Auto Designation Symbols	
1	Any "Auto"	
2	Owned "Autos" Only	Only those "autos" you own (and for Covered Autos Liability Coverage any "trailers" you don't own while attached to power units you own). This includes those "autos" you acquire ownership of after the policy begins.
3	Owned Private Passenger "Autos" Only	Only the private passenger "autos" you own. This includes those private passenger "autos" you acquire ownership of after the policy begins.
4	Owned "Autos" Other Than Private Passenger "Autos" Only	Only those "autos" you own that are not of the private passenger type (and for Covered Autos Liability Coverage any "trailers" you don't own while attached to power units you own). This includes those "autos" not of the private passenger type you acquire ownership of after the policy begins.
5	Owned "Autos" Subject To No-fault	Only those "autos" you own that are required to have no-fault benefits in the state where they are licensed or principally garaged. This includes those "autos" you acquire ownership of after the policy begins provided they are required to have no-fault benefits in the state where they are licensed or principally garaged.
6	Owned "Autos" Subject To A Compulsory Uninsured Motorists Law	Only those "autos" you own that because of the law in the state where they are licensed or principally garaged are required to have and cannot reject Uninsured Motorists Coverage. This includes those "autos" you acquire ownership of after the policy begins provided they are subject to the same state uninsured motorists requirement.
7	Specifically Described "Autos"	Only those "autos" described in Item Three of the Declarations for which a premium charge is shown (and for Covered Autos Liability Coverage any "trailers" you don't own while attached to any power units described in Item Three).
8	Hired "Autos" Only	Only those "autos" you lease, hire, rent or borrow. This does not include any "auto" you lease, hire, rent or borrow from any of your "employees", partners (if you are a partnership), members (if you are a limited liability company) or members of their households.
9	Non-owned "Autos" Only	Only those "autos" you do not own, lease, hire, rent or borrow that are used in connection with your business. This includes "autos" owned by your "employees", partners (if you are a partnership), members (if you are a limited liability company) or members of their households but only while used in your business or your personal affairs.

19	Mobile Equipment Subject To Compulsory Or Financial Responsibility Or Other Motor Vehicle Insurance Law Only	Only those "autos" that are land vehicles and that would qualify under the definition of "mobile equipment" under this policy if they were not subject to a compulsory or financial responsibility law or other motor vehicle insurance law where they are licensed or principally garaged.
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**B. Owned Autos You Acquire After The Policy Begins**

1. If Symbols **1, 2, 3, 4, 5, 6** or **19** are entered next to a coverage in Item Two of the Declarations, then you have coverage for "autos" that you acquire of the type described for the remainder of the policy period.
2. But, if Symbol **7** is entered next to a coverage in Item Two of the Declarations, an "auto" you acquire will be a covered "auto" for that coverage only if:
  - a. We already cover all "autos" that you own for that coverage or it replaces an "auto" you previously owned that had that coverage; and
  - b. You tell us within 30 days after you acquire it that you want us to cover it for that coverage.

**C. Certain Trailers, Mobile Equipment And Temporary Substitute Autos**

If Covered Autos Liability Coverage is provided by this Coverage Form, the following types of vehicles are also covered "autos" for Covered Autos Liability Coverage:

1. "Trailers" with a load capacity of 2,000 pounds or less designed primarily for travel on public roads.
2. "Mobile equipment" while being carried or towed by a covered "auto".
3. Any "auto" you do not own while used with the permission of its owner as a temporary substitute for a covered "auto" you own that is out of service because of its:
  - a. Breakdown;
  - b. Repair;
  - c. Servicing;
  - d. "Loss"; or
  - e. Destruction.

**Section II - Covered Autos Liability Coverage**

**A. Coverage**

We will pay all sums an "insured" legally must pay as damages because of "bodily injury" or "property damage" to which this insurance applies, caused by an "accident" and resulting from the ownership, maintenance or use of a covered "auto".

We will also pay all sums an "insured" legally must pay as a "covered pollution cost or expense" to which this insurance applies, caused by an "accident" and resulting from the ownership, maintenance or use of covered "autos". However, we will only pay for the "covered pollution cost or expense" if there is either "bodily injury" or "property damage" to which this insurance applies that is caused by the same "accident".

We have the right and duty to defend any "insured" against a "suit" asking for such damages or a "covered pollution cost or expense". However, we have no duty to defend any "insured" against a "suit" seeking damages for "bodily injury" or "property damage" or a "covered pollution cost or expense" to which this insurance does not apply. We may investigate and settle any claim or "suit" as we consider appropriate. Our duty to defend or settle ends when the Covered Autos Liability Coverage Limit of Insurance has been exhausted by payment of judgments or settlements.

**1. Who Is An Insured**

The following are "insureds":

- a. You for any covered "auto".
- b. Anyone else while using with your permission a covered "auto" you own, hire or borrow except:

- (1) The owner or anyone else from whom you hire or borrow a covered "auto".

This exception does not apply if the covered "auto" is a "trailer" connected to a covered "auto" you own.

- (2) Your "employee" if the covered "auto" is owned by that "employee" or a member of his or her household.
- (3) Someone using a covered "auto" while he or she is working in a business of selling, servicing, repairing, parking or storing "autos" unless that business is yours.
- (4) Anyone other than your "employees", partners (if you are a partnership), members (if you are a limited liability company) or a lessee or borrower or any of their "employees", while moving property to or from a covered "auto".
- (5) A partner (if you are a partnership) or a member (if you are a limited liability company) for a covered "auto" owned by him or her or a member of his or her household.

c. Anyone liable for the conduct of an "insured" described above but only to the extent of that liability.

## 2. Coverage Extensions

### a. Supplementary Payments

We will pay for the "insured":

- (1) All expenses we incur.
- (2) Up to \$2,000 for cost of bail bonds (including bonds for related traffic law violations) required because of an "accident" we cover. We do not have to furnish these bonds.
- (3) The cost of bonds to release attachments in any "suit" against the "insured" we defend, but only for bond amounts within our Limit of Insurance.
- (4) All reasonable expenses incurred by the "insured" at our request, including actual loss of earnings up to \$250 a day because of time off from work.
- (5) All court costs taxed against the "insured" in any "suit" against the "insured" we defend. However, these payments do not include attorneys' fees or attorneys' expenses taxed against the "insured".
- (6) All interest on the full amount of any judgment that accrues after entry of the judgment in any "suit" against the "insured" we defend, but our duty to pay interest ends when we have paid, offered to pay or deposited in court the part of the judgment that is within our Limit of Insurance.

These payments will not reduce the Limit of Insurance.

### b. Out-of-state Coverage Extensions

While a covered "auto" is away from the state where it is licensed, we will:

- (1) Increase the Limit of Insurance for Covered Autos Liability Coverage to meet the limits specified by a compulsory or financial responsibility law of the jurisdiction where the covered "auto" is being used. This extension does not apply to the limit or limits specified by any law governing motor carriers of passengers or property.
- (2) Provide the minimum amounts and types of other coverages, such as no-fault, required of out-of-state vehicles by the jurisdiction where the covered "auto" is being used.

We will not pay anyone more than once for the same elements of loss because of these extensions.

## B. Exclusions

This insurance does not apply to any of the following:

### 1. Expected Or Intended Injury

"Bodily injury" or "property damage" expected or intended from the standpoint of the "insured".

### 2. Contractual

Liability assumed under any contract or agreement.

But this exclusion does not apply to liability for damages:

- a. Assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement; or
  - b. That the "insured" would have in the absence of the contract or agreement.
- ### 3. Workers' Compensation

Any obligation for which the "insured" or the "insured's" insurer may be held liable under any workers' compensation, disability benefits or unemployment compensation law or any similar law.

#### 4. Employee Indemnification And Employer's Liability

"Bodily injury" to:

- a. An "employee" of the "insured" arising out of and in the course of:
  - (1) Employment by the "insured"; or
  - (2) Performing the duties related to the conduct of the "insured's" business; or
- b. The spouse, child, parent, brother or sister of that "employee" as a consequence of Paragraph a. above.

This exclusion applies:

- (1) Whether the "insured" may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

But this exclusion does not apply to "bodily injury" to domestic "employees" not entitled to workers' compensation benefits or to liability assumed by the "insured" under an "insured contract". For the purposes of the Coverage Form, a domestic "employee" is a person engaged in household or domestic work performed principally in connection with a residence premises.

#### 5. Fellow Employee

"Bodily injury" to:

- a. Any fellow "employee" of the "insured" arising out of and in the course of the fellow "employee's" employment or while performing duties related to the conduct of your business; or
- b. The spouse, child, parent, brother or sister of that fellow "employee" as a consequence of Paragraph a. above.

#### 6. Care, Custody Or Control

"Property damage" to or "covered pollution cost or expense" involving property owned or transported by the "insured" or in the "insured's" care, custody or control. But this exclusion does not apply to liability assumed under a sidetrack agreement.

#### 7. Handling Of Property

"Bodily injury" or "property damage" resulting from the handling of property:

- a. Before it is moved from the place where it is accepted by the "insured" for movement into or onto the covered "auto"; or

- b. After it is moved from the covered "auto" to the place where it is finally delivered by the "insured".

#### 8. Movement Of Property By Mechanical Device

"Bodily injury" or "property damage" resulting from the movement of property by a mechanical device (other than a hand truck) unless the device is attached to the covered "auto".

#### 9. Operations

"Bodily injury" or "property damage" arising out of the operation of:

- a. Any equipment listed in Paragraphs 6.b. and 6.c. of the definition of "mobile equipment"; or
- b. Machinery or equipment that is on, attached to or part of a land vehicle that would qualify under the definition of "mobile equipment" if it were not subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged.

#### 10. Completed Operations

"Bodily injury" or "property damage" arising out of your work after that work has been completed or abandoned.

In this exclusion, your work means:

- a. Work or operations performed by you or on your behalf; and
- b. Materials, parts or equipment furnished in connection with such work or operations.

Your work includes warranties or representations made at any time with respect to the fitness, quality, durability or performance of any of the items included in Paragraph a. or b. above.

Your work will be deemed completed at the earliest of the following times:

- (1) When all of the work called for in your contract has been completed;
- (2) When all of the work to be done at the site has been completed if your contract calls for work at more than one site; or
- (3) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

#### 11. Pollution

"Bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":

- a. That are, or that are contained in any property that is:
  - (1) Being transported or towed by, handled or handled for movement into, onto or from the covered "auto";
  - (2) Otherwise in the course of transit by or on behalf of the "insured"; or
  - (3) Being stored, disposed of, treated or processed in or upon the covered "auto";
- b. Before the "pollutants" or any property in which the "pollutants" are contained are moved from the place where they are accepted by the "insured" for movement into or onto the covered "auto"; or
- c. After the "pollutants" or any property in which the "pollutants" are contained are moved from the covered "auto" to the place where they are finally delivered, disposed of or abandoned by the "insured".

Paragraph a. above does not apply to fuels, lubricants, fluids, exhaust gases or other similar "pollutants" that are needed for or result from the normal electrical, hydraulic or mechanical functioning of the covered "auto" or its parts if:

- (1) The "pollutants" escape, seep, migrate or are discharged, dispersed or released directly from an "auto" part designed by its manufacturer to hold, store, receive or dispose of such "pollutants"; and
- (2) The "bodily injury", "property damage" or "covered pollution cost or expense" does not arise out of the operation of any equipment listed in Paragraphs 6.b. and 6.c. of the definition of "mobile equipment".

Paragraphs b. and c. above of this exclusion do not apply to "accidents" that occur away from premises owned by or rented to an "insured" with respect to "pollutants" not in or upon a covered "auto" if:

- (a) The "pollutants" or any property in which the "pollutants" are contained are upset, overturned or damaged as a result of the maintenance or use of a covered "auto"; and
- (b) The discharge, dispersal, seepage, migration, release or escape of the "pollutants" is caused directly by such upset, overturn or damage.

#### 12. War

"Bodily injury" or "property damage" arising directly or indirectly out of:

- a. War, including undeclared or civil war;
- b. Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- c. Insurrection, rebellion, revolution, usurped power or action taken by governmental authority in hindering or defending against any of these.

#### 13. Racing

Covered "autos" while used in any professional or organized racing or demolition contest or stunting activity, or while practicing for such contest or activity. This insurance also does not apply while that covered "auto" is being prepared for such a contest or activity.

#### C. Limit Of Insurance

Regardless of the number of covered "autos", "insureds", premiums paid, claims made or vehicles involved in the "accident", the most we will pay for the total of all damages and "covered pollution cost or expense" combined resulting from any one "accident" is the Limit Of Insurance for Covered Autos Liability Coverage shown in the Declarations.



All "bodily injury", "property damage" and "covered pollution cost or expense" resulting from continuous or repeated exposure to substantially the same conditions will be considered as resulting from one "accident".

No one will be entitled to receive duplicate payments for the same elements of "loss" under this Coverage Form and any Medical Payments Coverage endorsement, Uninsured Motorists Coverage endorsement or Underinsured Motorists Coverage endorsement attached to this Coverage Part.

### Section III - Physical Damage Coverage

#### A. Coverage

1. We will pay for "loss" to a covered "auto" or its equipment under:

- a. **Comprehensive Coverage**

From any cause except:

- (1) The covered "auto's" collision with another object; or
- (2) The covered "auto's" overturn.

- b. **Specified Causes Of Loss Coverage**

Caused by:

- (1) Fire, lightning or explosion;
- (2) Theft;
- (3) Windstorm, hail or earthquake;
- (4) Flood;
- (5) Mischief or vandalism; or
- (6) The sinking, burning, collision or derailment of any conveyance transporting the covered "auto".

- c. **Collision Coverage**

Caused by:

- (1) The covered "auto's" collision with another object; or
- (2) The covered "auto's" overturn.

2. **Towing**

We will pay up to the limit shown in the Declarations for towing and labor costs incurred each time a covered "auto" of the private passenger type is disabled. However, the labor must be performed at the place of disablement.

3. **Glass Breakage - Hitting A Bird Or Animal - Falling Objects Or Missiles**

If you carry Comprehensive Coverage for the damaged covered "auto", we will pay for the following under Comprehensive Coverage:

- a. Glass breakage;
- b. "Loss" caused by hitting a bird or animal; and
- c. "Loss" caused by falling objects or missiles.

However, you have the option of having glass breakage caused by a covered "auto's" collision or overturn considered a "loss" under Collision Coverage.

4. **Coverage Extensions**

- a. **Transportation Expenses**

We will pay up to \$20 per day, to a maximum of \$600, for temporary transportation expense incurred by you because of the total theft of a covered "auto" of the private passenger type. We will pay only for those covered "autos" for which you carry either Comprehensive or Specified Causes Of Loss Coverage. We will pay for temporary transportation expenses incurred during the period beginning 48 hours after the theft and ending, regardless of the policy's expiration, when the covered "auto" is returned to use or we pay for its "loss".

- b. **Loss Of Use Expenses**

For Hired Auto Physical Damage, we will pay expenses for which an "insured" becomes legally responsible to pay for loss of use of a vehicle rented or hired without a driver under a written rental contract or agreement. We will pay for loss of use expenses if caused by:

- (1) Other than collision only if the Declarations indicates that Comprehensive Coverage is provided for any covered "auto";
- (2) Specified Causes Of Loss only if the Declarations indicates that Specified Causes Of Loss Coverage is provided for any covered "auto"; or

- (3) Collision only if the Declarations indicates that Collision Coverage is provided for any covered "auto".

However, the most we will pay for any expenses for loss of use is \$20 per day, to a maximum of \$600.

## B. Exclusions

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

### a. Nuclear Hazard

- (1) The explosion of any weapon employing atomic fission or fusion; or
- (2) Nuclear reaction or radiation, or radioactive contamination, however caused.

### b. War Or Military Action

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power or action taken by governmental authority in hindering or defending against any of these.

2. We will not pay for "loss" to any covered "auto" while used in any professional or organized racing or demolition contest or stunting activity, or while practicing for such contest or activity. We will also not pay for "loss" to any covered "auto" while that covered "auto" is being prepared for such a contest or activity.

3. We will not pay for "loss" due and confined to:

- a. Wear and tear, freezing, mechanical or electrical breakdown.
- b. Blowouts, punctures or other road damage to tires.

This exclusion does not apply to such "loss" resulting from the total theft of a covered "auto".

4. We will not pay for "loss" to any of the following:

- a. Tapes, records, discs or other similar audio, visual or data electronic devices designed for use with audio, visual or data electronic equipment.

- b. Any device designed or used to detect speed-measuring equipment, such as radar or laser detectors, and any jamming apparatus intended to elude or disrupt speed-measuring equipment.

- c. Any electronic equipment, without regard to whether this equipment is permanently installed, that reproduces, receives or transmits audio, visual or data signals.

- d. Any accessories used with the electronic equipment described in Paragraph c. above.

5. Exclusions 4.c. and 4.d. do not apply to equipment designed to be operated solely by use of the power from the "auto's" electrical system that, at the time of "loss", is:

- a. Permanently installed in or upon the covered "auto";
- b. Removable from a housing unit which is permanently installed in or upon the covered "auto";
- c. An integral part of the same unit housing any electronic equipment described in Paragraphs a. and b. above; or
- d. Necessary for the normal operation of the covered "auto" or the monitoring of the covered "auto's" operating system.

6. We will not pay for "loss" to a covered "auto" due to "diminution in value".

## C. Limits Of Insurance

1. The most we will pay for:

- a. "Loss" to any one covered "auto" is the lesser of:

- (1) The actual cash value of the damaged or stolen property as of the time of the "loss"; or
- (2) The cost of repairing or replacing the damaged or stolen property with other property of like kind and quality.

- b. All electronic equipment that reproduces, receives or transmits audio, visual or data signals in any one "loss" is \$1,000, if, at the time of "loss", such electronic equipment is:

- (1) Permanently installed in or upon the covered "auto" in a housing, opening or other location that is not normally used by the "auto" manufacturer for the installation of such equipment;

- (2) Removable from a permanently installed housing unit as described in Paragraph b.(1) above; or
  - (3) An integral part of such equipment as described in Paragraphs b.(1) and b.(2) above.
2. An adjustment for depreciation and physical condition will be made in determining actual cash value in the event of a total "loss".
  3. If a repair or replacement results in better than like kind or quality, we will not pay for the amount of the betterment.

**D. Deductible**

For each covered "auto", our obligation to pay for, repair, return or replace damaged or stolen property will be reduced by the applicable deductible shown in the Declarations. Any Comprehensive Coverage Deductible shown in the Declarations does not apply to "loss" caused by fire or lightning.

**Section IV - Business Auto Conditions**

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

**A. Loss Conditions**

**1. Appraisal For Physical Damage Loss**

If you and we disagree on the amount of "loss", either may demand an appraisal of the "loss". In this event, each party will select a competent appraiser. The two appraisers will select a competent and impartial umpire. The appraisers will state separately the actual cash value and amount of "loss". If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

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

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

**2. Duties In The Event Of Accident, Claim, Suit Or Loss**

We have no duty to provide coverage under this policy unless there has been full compliance with the following duties:

- a. In the event of "accident", claim, "suit" or "loss", you must give us or our authorized representative prompt notice of the "accident" or "loss". Include:
  - (1) How, when and where the "accident" or "loss" occurred;

- (2) The "insured's" name and address; and
- (3) To the extent possible, the names and addresses of any injured persons and witnesses.

b. Additionally, you and any other involved "insured" must:

- (1) Assume no obligation, make no payment or incur no expense without our consent, except at the "insured's" own cost.
- (2) Immediately send us copies of any request, demand, order, notice, summons or legal paper received concerning the claim or "suit".
- (3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit".
- (4) Authorize us to obtain medical records or other pertinent information.
- (5) Submit to examination, at our expense, by physicians of our choice, as often as we reasonably require.

c. If there is "loss" to a covered "auto" or its equipment, you must also do the following:

- (1) Promptly notify the police if the covered "auto" or any of its equipment is stolen.
- (2) Take all reasonable steps to protect the covered "auto" from further damage. Also keep a record of your expenses for consideration in the settlement of the claim.
- (3) Permit us to inspect the covered "auto" and records proving the "loss" before its repair or disposition.
- (4) Agree to examinations under oath at our request and give us a signed statement of your answers.

**3. Legal Action Against Us**

No one may bring a legal action against us under this Coverage Form until:

- a. There has been full compliance with all the terms of this Coverage Form; and
- b. Under Covered Autos Liability Coverage, we agree in writing that the "insured" has an obligation to pay or until the amount of that obligation has finally been determined by judgment after trial. No one has the right under this policy to bring us into an action to determine the "insured's" liability.

#### 4. Loss Payment - Physical Damage Coverages

At our option, we may:

- a. Pay for, repair or replace damaged or stolen property;
- b. Return the stolen property, at our expense. We will pay for any damage that results to the "auto" from the theft; or
- c. Take all or any part of the damaged or stolen property at an agreed or appraised value.

If we pay for the "loss", our payment will include the applicable sales tax for the damaged or stolen property.

#### 5. Transfer Of Rights Of Recovery Against Others To Us

If any person or organization to or for whom we make payment under this Coverage Form has rights to recover damages from another, those rights are transferred to us. That person or organization must do everything necessary to secure our rights and must do nothing after "accident" or "loss" to impair them.

### B. General Conditions

#### 1. Bankruptcy

Bankruptcy or insolvency of the "insured" or the "insured's" estate will not relieve us of any obligations under this Coverage Form.

#### 2. Concealment, Misrepresentation Or Fraud

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

- a. This Coverage Form;
- b. The covered "auto";
- c. Your interest in the covered "auto"; or
- d. A claim under this Coverage Form.

#### 3. Liberalization

If we revise this Coverage Form to provide more coverage without additional premium charge, your policy will automatically provide the additional coverage as of the day the revision is effective in your state.

#### 4. No Benefit To Bailee - Physical Damage Coverages

We will not recognize any assignment or grant any coverage for the benefit of any person or organization holding, storing or transporting property for a fee regardless of any other provision of this Coverage Form.

#### 5. Other Insurance

- a. For any covered "auto" you own, this Coverage Form provides primary insurance. For any covered "auto" you don't own, the insurance provided by this Coverage Form is excess over any other collectible insurance. However, while a covered "auto" which is a "trailer" is connected to another vehicle, the Covered Autos Liability Coverage this Coverage Form provides for the "trailer" is:

(1) Excess while it is connected to a motor vehicle you do not own; or

(2) Primary while it is connected to a covered "auto" you own.

- b. For Hired Auto Physical Damage Coverage, any covered "auto" you lease, hire, rent or borrow is deemed to be a covered "auto" you own. However, any "auto" that is leased, hired, rented or borrowed with a driver is not a covered "auto".

- c. Regardless of the provisions of Paragraph a. above, this Coverage Form's Covered Autos Liability Coverage is primary for any liability assumed under an "insured contract".

- d. When this Coverage Form and any other Coverage Form or policy covers on the same basis, either excess or primary, we will pay only our share. Our share is the proportion that the Limit of Insurance of our Coverage Form bears to the total of the limits of all the Coverage Forms and policies covering on the same basis.

#### 6. Premium Audit

- a. The estimated premium for this Coverage Form is based on the exposures you told us you would have when this policy began. We will compute the final premium due when we determine your actual exposures. The estimated total premium will be credited against the final premium due and the first Named Insured will be billed for the balance, if any. The due date for the final premium or retrospective premium is the date shown as the due date on the bill. If the estimated total premium exceeds the final premium due, the first Named Insured will get a refund.
- b. If this policy is issued for more than one year, the premium for this Coverage Form will be computed annually based on our rates or premiums in effect at the beginning of each year of the policy.

## 7. Policy Period, Coverage Territory

Under this Coverage Form, we cover "accidents" and "losses" occurring:

- a. During the policy period shown in the Declarations; and
- b. Within the coverage territory.

The coverage territory is:

- (1) The United States of America;
- (2) The territories and possessions of the United States of America;
- (3) Puerto Rico;
- (4) Canada; and
- (5) Anywhere in the world if a covered "auto" of the private passenger type is leased, hired, rented or borrowed without a driver for a period of 30 days or less,

provided that the "insured's" responsibility to pay damages is determined in a "suit" on the merits, in the United States of America, the territories and possessions of the United States of America, Puerto Rico or Canada, or in a settlement we agree to.

We also cover "loss" to, or "accidents" involving, a covered "auto" while being transported between any of these places.

## 8. Two Or More Coverage Forms Or Policies Issued By Us

If this Coverage Form and any other Coverage Form or policy issued to you by us or any company affiliated with us applies to the same "accident", the aggregate maximum Limit of Insurance under all the Coverage Forms or policies shall not exceed the highest applicable Limit of Insurance under any one Coverage Form or policy. This condition does not apply to any Coverage Form or policy issued by us or an affiliated company specifically to apply as excess insurance over this Coverage Form.

### Section V - Definitions

- A. "Accident" includes continuous or repeated exposure to the same conditions resulting in "bodily injury" or "property damage".
- B. "Auto" means:
  1. A land motor vehicle, "trailer" or semitrailer designed for travel on public roads; or

2. Any other land vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged.

However, "auto" does not include "mobile equipment".

- C. "Bodily injury" means bodily injury, sickness or disease sustained by a person, including death resulting from any of these.

- D. "Covered pollution cost or expense" means any cost or expense arising out of:

1. Any request, demand, order or statutory or regulatory requirement that any "insured" or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
2. Any claim or "suit" by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

"Covered pollution cost or expense" does not include any cost or expense arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":

- a. That are, or that are contained in any property that is:
  - (1) Being transported or towed by, handled or handled for movement into, onto or from the covered "auto";
  - (2) Otherwise in the course of transit by or on behalf of the "insured"; or
  - (3) Being stored, disposed of, treated or processed in or upon the covered "auto";
- b. Before the "pollutants" or any property in which the "pollutants" are contained are moved from the place where they are accepted by the "insured" for movement into or onto the covered "auto"; or
- c. After the "pollutants" or any property in which the "pollutants" are contained are moved from the covered "auto" to the place where they are finally delivered, disposed of or abandoned by the "insured".

Paragraph **a.** above does not apply to fuels, lubricants, fluids, exhaust gases or other similar "pollutants" that are needed for or result from the normal electrical, hydraulic or mechanical functioning of the covered "auto" or its parts, if:

- (1) The "pollutants" escape, seep, migrate or are discharged, dispersed or released directly from an "auto" part designed by its manufacturer to hold, store, receive or dispose of such "pollutants"; and
- (2) The "bodily injury", "property damage" or "covered pollution cost or expense" does not arise out of the operation of any equipment listed in Paragraph **6.b.** or **6.c.** of the definition of "mobile equipment".

Paragraphs **b.** and **c.** above do not apply to "accidents" that occur away from premises owned by or rented to an "insured" with respect to "pollutants" not in or upon a covered "auto" if:

- (a) The "pollutants" or any property in which the "pollutants" are contained are upset, overturned or damaged as a result of the maintenance or use of a covered "auto"; and
  - (b) The discharge, dispersal, seepage, migration, release or escape of the "pollutants" is caused directly by such upset, overturn or damage.
- E.** "Diminution in value" means the actual or perceived loss in market value or resale value which results from a direct and accidental "loss".
- F.** "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".
- G.** "Insured" means any person or organization qualifying as an insured in the Who Is An Insured provision of the applicable coverage. Except with respect to the Limit of Insurance, the coverage afforded applies separately to each insured who is seeking coverage or against whom a claim or "suit" is brought.
- H.** "Insured contract" means:
1. A lease of premises;
  2. A sidetrack agreement;
  3. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
  4. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;

5. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another to pay for "bodily injury" or "property damage" to a third party or organization. Tort Liability means a liability that would be imposed by law in the absence of any contract or agreement; or
6. That part of any contract or agreement entered into, as part of your business, pertaining to the rental or lease, by you or any of your "employees", of any "auto". However, such contract or agreement shall not be considered an "insured contract" to the extent that it obligates you or any of your "employees" to pay for "property damage" to any "auto" rented or leased by you or any of your "employees".

An "insured contract" does not include that part of any contract or agreement:

- a. That indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, roadbeds, tunnel, underpass or crossing;
  - b. That pertains to the loan, lease or rental of an "auto" to you or any of your "employees", if the "auto" is loaned, leased or rented with a driver; or
  - c. That holds a person or organization engaged in the business of transporting property by "auto" for hire harmless for your use of a covered "auto" over a route or territory that person or organization is authorized to serve by public authority.
- I.** "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".
- J.** "Loss" means direct and accidental loss or damage.
- K.** "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:
1. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
  2. Vehicles maintained for use solely on or next to premises you own or rent;
  3. Vehicles that travel on crawler treads;

4. Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
  - a. Power cranes, shovels, loaders, diggers or drills; or
  - b. Road construction or resurfacing equipment such as graders, scrapers or rollers;
5. Vehicles not described in Paragraph 1., 2., 3. or 4. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
  - a. Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well-servicing equipment; or
  - b. Cherry pickers and similar devices used to raise or lower workers; or
6. Vehicles not described in Paragraph 1., 2., 3. or 4. above maintained primarily for purposes other than the transportation of persons or cargo. However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":
  - a. Equipment designed primarily for:
    - (1) Snow removal;
    - (2) Road maintenance, but not construction or resurfacing; or
    - (3) Street cleaning;
  - b. Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
  - c. Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting or well-servicing equipment.

However, "mobile equipment" does not include land vehicles that are subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged. Land vehicles subject to a compulsory or financial responsibility law or other motor vehicle insurance law are considered "autos".

- L. "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.
- M. "Property damage" means damage to or loss of use of tangible property.
- N. "Suit" means a civil proceeding in which:
  1. Damages because of "bodily injury" or "property damage"; or
  2. A "covered pollution cost or expense";
 to which this insurance applies, are alleged. "Suit" includes:
  - a. An arbitration proceeding in which such damages or "covered pollution costs or expenses" are claimed and to which the "insured" must submit or does submit with our consent; or
  - b. Any other alternative dispute resolution proceeding in which such damages or "covered pollution costs or expenses" are claimed and to which the insured submits with our consent.
- O. "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.
- P. "Trailer" includes semitrailer.

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

## LIMITED MEXICO COVERAGE

This endorsement modifies insurance provided under the following:

- AUTO DEALERS COVERAGE FORM
- BUSINESS AUTO COVERAGE FORM
- MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by this endorsement.

**WARNING**

AUTO ACCIDENTS IN MEXICO ARE SUBJECT TO THE LAWS OF MEXICO ONLY - **NOT** THE LAWS OF THE UNITED STATES OF AMERICA. THE REPUBLIC OF MEXICO CONSIDERS ANY AUTO ACCIDENT A **CRIMINAL OFFENSE** AS WELL AS A CIVIL MATTER.

IN SOME CASES THE COVERAGE PROVIDED UNDER **THIS ENDORSEMENT MAY NOT BE RECOGNIZED BY THE MEXICAN AUTHORITIES** AND WE MAY NOT BE ALLOWED TO IMPLEMENT THIS COVERAGE AT ALL IN MEXICO. YOU SHOULD CONSIDER PURCHASING AUTO COVERAGE FROM A LICENSED MEXICAN INSURANCE COMPANY BEFORE DRIVING INTO MEXICO.

THIS ENDORSEMENT DOES **NOT** APPLY TO ACCIDENTS OR LOSSES WHICH OCCUR OUTSIDE OF 25 MILES FROM THE BOUNDARY OF THE UNITED STATES OF AMERICA.

### SCHEDULE

Mexico Coverage	\$	Premium
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.		

**A. Coverage**

1. Paragraph 7. **Policy Period, Coverage Territory** of the **General Conditions** is amended by the addition of the following:

The coverage territory is extended to include Mexico but only for:

- a. "Accidents" or "losses" occurring within 25 miles of the United States border; and
- b. Trips into Mexico of 10 days or less.

2. The **Other Insurance** Condition in the Business Auto and Auto Dealers Coverage Forms and the **Other Insurance - Primary And Excess Insurance Provisions** Condition in the Motor Carrier Coverage Form are replaced by the following:

The insurance provided by this endorsement will be excess over any other collectible insurance.

- B. Physical Damage Coverage** is amended by the addition of the following:

If a "loss" to a covered "auto" occurs in Mexico, we will pay for such "loss" in the United States. If the covered "auto" must be repaired in Mexico in order to be driven, we will not pay more than the actual cash value of such "loss" at the nearest United States point where the repairs can be made.

**C. Additional Exclusions**

For the purposes of this endorsement, the following additional exclusions are added:

This insurance does not apply:

1. If the covered "auto" is not principally garaged and principally used in the United States.
2. To any "insured" who is not a resident of the United States.



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

## CALIFORNIA CHANGES

For a covered "auto" licensed or principally garaged in, or "auto dealer operations" conducted in, California, this endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM  
BUSINESS AUTO COVERAGE FORM  
MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

- A.** The following are added to the **Other Insurance Condition** in the Auto Dealers and Business Auto Coverage Forms and the **Other Insurance - Primary And Excess Insurance Provisions Condition** in the Motor Carrier Coverage Form and supersede any provisions to the contrary:
1. When this Coverage Form and any other Coverage Form or policy providing liability coverage apply to an "auto" and:
    - a. One provides coverage to a Named Insured engaged in the business of selling, repairing, servicing, delivering, testing or road-testing "autos"; and
    - b. The other provides coverage to a person not engaged in that business; and
    - c. At the time of an "accident", a person described in Paragraph 1.b. is operating an "auto" owned by the business described in Paragraph 1.a., then that person's liability coverage is primary and the Coverage Form issued to a business described in Paragraph 1.a. is excess over any coverage available to that person.
  2. When this Coverage Form and any other Coverage Form or policy providing liability coverage apply to an "auto" and:
    - a. One provides coverage to a Named Insured engaged in the business of selling, repairing, servicing, delivering, testing or road-testing "autos"; and
    - b. The other provides coverage to a person not engaged in that business; and
    - c. At the time of an "accident", a person who is not the Named Insured of the Policy described in Paragraph 3.a., and who is not the agent or "employee" of such Named Insured, is operating a "commercial vehicle" provided by the business covered by the Coverage Form or policy described in Paragraph 3.a., then the liability coverage provided by the Coverage Form or policy described in Paragraph 3.b. is primary, and the liability coverage provided by the Coverage Form or policy described in Paragraph 3.a. is excess over any coverage available to that person.
  3. When this Coverage Form and any other Coverage Form or policy providing liability coverage apply to a "commercial vehicle" and:
    - a. One provides coverage to a Named Insured, who in the course of business, rents or leases "commercial vehicles" without operators; and
    - b. The other provides coverage to a person other than as described in Paragraph 3.a.; and
    - c. At the time of an "accident", a person who is not the Named Insured of the Policy described in Paragraph 3.a., and who is not the agent or "employee" of such Named Insured, is operating a "commercial vehicle" provided by the business covered by the Coverage Form or policy described in Paragraph 3.a., then the liability coverage provided by the Coverage Form or policy described in Paragraph 3.b. is primary, and the liability coverage provided by the Coverage Form or policy described in Paragraph 3.a. is excess over any coverage available to that person.

4. Notwithstanding Paragraph A.3., when this Coverage Form and any other Coverage Form or policy providing liability coverage apply to a power unit and any connected "trailer" or "trailers" and:
- a. One provides coverage to a Named Insured engaged in the business of transporting property by "auto" for hire; and
  - b. The other provides coverage to a Named Insured not engaged in that business; and
  - c. At the time of an "accident", a power unit is being operated by a person insured under the Coverage Form or policy described in Paragraph 4.a., then that Coverage Form or policy is primary for both the power unit and any connected "trailer" or "trailers" and the Coverage Form or policy described in Paragraph 4.b. is excess over any other coverage available to such power unit and attached "trailer" or "trailers".

**B.** As used in this endorsement:

"Commercial vehicle" means an "auto" subject to registration or identification under California law which is:

1. Used or maintained for the transportation of persons for hire, compensation or profit;
2. Designed, used or maintained primarily for the transportation of property; or
3. Leased for a period of six months or more.

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

## **CALIFORNIA AUTO MEDICAL PAYMENTS COVERAGE**

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM  
BUSINESS AUTO COVERAGE FORM  
MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

### **A. Coverage**

We will pay reasonable expenses incurred for necessary medical and funeral services to or for an "insured" who sustains "bodily injury" caused by "accident". We will pay only those expenses incurred, for services rendered within three years from the date of the "accident".

### **B. Who Is An Insured**

1. You while "occupying" or, while a pedestrian, when struck by any "auto".
2. If you are an individual, any "family member" while "occupying" or, while a pedestrian, when struck by any "auto".
3. Anyone else "occupying" a covered "auto" or a temporary substitute for a covered "auto". The covered "auto" must be out of service because of its breakdown, repair, servicing, loss or destruction.

### **C. Exclusions**

This insurance does not apply to any of the following:

1. "Bodily injury" sustained by an "insured" while "occupying" a vehicle located for use as a premises.
2. "Bodily injury" sustained by you or any "family member" while "occupying" or struck by any vehicle (other than a covered "auto") owned by you or furnished or available for your regular use.

3. "Bodily injury" sustained by any "family member" while "occupying" or struck by any vehicle (other than a covered "auto") owned by or furnished or available for the regular use of any "family member".
4. "Bodily injury" to your "employee" arising out of and in the course of employment by you. However, we will cover "bodily injury" to your domestic "employees" if not entitled to workers' compensation benefits. For the purposes of this endorsement, a domestic "employee" is a person engaged in household or domestic work performed principally in connection with a residence premises.
5. "Bodily injury" to an "insured" while working in a business of selling, servicing, repairing or parking "autos" unless that business is yours.
6. "Bodily injury" arising directly or indirectly out of:
  - a. War, including undeclared or civil war;
  - b. Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
  - c. Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

7. "Bodily injury" to anyone using a vehicle without a reasonable belief that the person is entitled to do so.
8. "Bodily injury" sustained by an "insured" while "occupying" any covered "auto" while used in any professional racing or demolition contest or stunting activity, or while practicing for such contest or activity. This insurance also does not apply to any "bodily injury" sustained by an "insured" while the "auto" is being prepared for such a contest or activity.

#### D. Limit Of Insurance

Regardless of the number of covered "autos", "insureds", premiums paid, claims made or vehicles involved in the "accident", the most we will pay for "bodily injury" for each "insured" injured in any one "accident" is the Limit Of Insurance for Auto Medical Payments Coverage shown in the Declarations.

No one will be entitled to receive duplicate payments for the same elements of "loss" under this coverage and any Liability Coverage form, Uninsured Motorists Coverage endorsement or Underinsured Motorists Coverage endorsement attached to this Coverage Part.

#### E. Changes In Conditions

The **Conditions** are changed for Auto Medical Payments Coverage as follows:

1. The **Transfer Of Rights Of Recovery Against Others To Us** Condition does not apply.
2. The reference in **Other Insurance** in the Auto Dealers and Business Auto Coverage Forms and **Other Insurance - Primary And Excess Insurance Provisions** in the Motor Carrier Coverage Form to "other collectible insurance" applies only to other collectible auto medical payments insurance.

#### F. Additional Definitions

As used in this endorsement:

1. "Family member" means a person related to you by blood, adoption, marriage or registered domestic partnership under California law, who is a resident of your household, including a ward or foster child.
2. "Occupying" means in, upon, getting in, on, out or off.

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

# CALIFORNIA UNINSURED MOTORISTS COVERAGE - BODILY INJURY

For a covered "auto" licensed or principally garaged in, or "auto dealer operations" conducted in, California, this endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM  
BUSINESS AUTO COVERAGE FORM  
MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

<b>Named Insured:</b>
<b>Endorsement Effective Date:</b>

## SCHEDULE

<b>Limit Of Insurance: \$</b>	<b>Each "Accident"</b>
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

### A. Coverage

1. We will pay all sums the "insured" is legally entitled to recover as compensatory damages from the owner or driver of an "uninsured motor vehicle". The damages must result from "bodily injury" sustained by the "insured" caused by an "accident". The owner's or driver's liability for these damages must result from the ownership, maintenance or use of the "uninsured motor vehicle".
2. We will pay only after the limits of liability under any liability bonds or policies have been exhausted by payment of judgments or settlements.
3. Any judgment for damages arising out of a "suit" brought without our written consent is not binding on us.

### B. Who Is An Insured

If the Named Insured is designated in the Declarations as:

1. An individual, then the following are "insureds":
  - a. The Named Insured and any "family members".
  - b. Anyone else "occupying" a covered "auto" or a temporary substitute for a covered "auto". The covered "auto" must be out of service because of its breakdown, repair, servicing, "loss" or destruction.
  - c. Anyone for damages he or she is entitled to recover because of "bodily injury" sustained by another "insured".

2. A partnership, limited liability company, corporation or any other form of organization, then the following are "insureds":
  - a. Anyone "occupying" a covered "auto" or a temporary substitute for a covered "auto". The covered "auto" must be out of service because of its breakdown, repair, servicing, "loss" or destruction.
  - b. Anyone for damages he or she is entitled to recover because of "bodily injury" sustained by another "insured".

### C. Exclusions

This insurance does not apply to any of the following:

1. Punitive or exemplary damages.
2. Any claim settled without our consent. However, this exclusion does not apply to a settlement made with the insurer of a vehicle described in Paragraph **b.** of the definition of "uninsured motor vehicle".
3. The direct or indirect benefit of any insurer or self-insurer under any workers' compensation, disability benefits or similar law or to the direct benefit of the United States, a state or its political subdivisions.
4. "Bodily injury" sustained by:
  - a. An individual Named Insured while "occupying" or when struck by any vehicle owned by that Named Insured that is not a covered "auto" for Uninsured Motorists Coverage under this Coverage Form;
  - b. Any "family member" while "occupying" or when struck by any vehicle owned by that "family member" that is not a covered "auto" for Uninsured Motorists Coverage under this Coverage Form; or
  - c. Any "family member" while "occupying" or when struck by any vehicle owned by the Named Insured that is insured for Uninsured Motorists Coverage on a primary basis under any other Coverage Form or policy.

However, Exclusion **4.** shall not apply to "bodily injury" sustained by an individual Named Insured or "family member" when struck by a vehicle owned by that "insured" and operated or caused to be operated by a person without that "insured's" consent in connection with criminal activity that has been documented in a police report and to which that "insured" is not a party to.

5. "Bodily injury" sustained by an individual Named Insured or any "family member" while "occupying" any vehicle leased by that Named Insured or any "family member" under a written contract for a period of six months or more that is not a covered "auto".
6. Anyone using a vehicle without a reasonable belief that the person is entitled to do so.
7. "Bodily injury" sustained by an "insured" while "occupying" any "auto" that is rented or leased to that "insured" for use as a public or livery conveyance. However, this exclusion does not apply if the "insured" is in the business of providing public or livery conveyance.
8. "Bodily injury" arising directly or indirectly out of:
  - a. War, including undeclared or civil war;
  - b. Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
  - c. Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

### D. Limit Of Insurance

1. Regardless of the number of covered "autos", "insureds", premiums paid, claims made or vehicles involved in the "accident", the most we will pay for all damages resulting from any one "accident" is the Limit Of Insurance for Uninsured Motorists Coverage shown in the Schedule or Declarations.
2. For a vehicle described in Paragraph **b.** of the definition of "uninsured motor vehicle", our Limit of Insurance shall be reduced by all sums paid because of "bodily injury" by or for anyone who is legally responsible, including all sums paid or payable under this policy's Covered Autos Liability Coverage.
3. No one will be entitled to receive duplicate payments for the same elements of "loss" under this coverage and any Liability Coverage form or Medical Payments Coverage endorsement attached to this Coverage Part.  
We will not make a duplicate payment under this coverage for any element of "loss" for which payment has been made by or for anyone who is legally responsible.

We will not pay for any element of "loss" if a person is entitled to receive payment for the same element of "loss" under any workers' compensation, disability benefits or similar law.

#### **E. Changes In Conditions**

The Conditions are changed for California Uninsured Motorists Coverage - Bodily Injury as follows:

##### **1. Duties In The Event Of Accident, Claim, Suit Or Loss in the Business Auto and Motor Carrier Coverage Forms and Duties In The Event Of Accident, Claim, Offense, Suit, Loss Or Acts, Errors Or Omissions in the Auto Dealers Coverage Form are changed by adding the following:**

- a. Promptly notify the police if a hit-and-run driver is involved; and
- b. Send us copies of the legal papers if a "suit" is brought. In addition, a person seeking coverage under Paragraph b. of the definition of "uninsured motor vehicle" must:
  - (1) Provide us with a copy of the complaint by personal service or certified mail if the "insured" brings an action against the owner or operator of such "uninsured motor vehicle";
  - (2) Within a reasonable time, make all pleadings and depositions available for copying by us or furnish us copies at our expense; and
  - (3) Provide us with proof that the limits of insurance under any applicable liability bonds or policies have been exhausted by payment of judgments or settlements.

##### **2. Legal Action Against Us is replaced by the following:**

###### **Legal Action Against Us**

No legal action may be brought against us under this Coverage Form until there has been full compliance with all the terms of this Coverage Form and with respect to Paragraphs a., c. and d. of the definition of "uninsured motor vehicle" unless within two years from the date of the "accident":

- a. Agreement as to the amount due under this insurance has been concluded;
- b. The "insured" has formally instituted arbitration proceedings against us. In the event that the "insured" decides to arbitrate, the "insured" must formally begin arbitration proceedings by notifying us in writing, sent by certified mail, return receipt requested; or

- c. "Suit" for "bodily injury" has been filed against the uninsured motorist in a court of competent jurisdiction.

Written notice of the "suit" must be given to us within a reasonable time after the "insured" knew, or should have known, that the other motorist is uninsured. In no event will such notice be required before two years from the date of the accident. Failure of the "insured" or his or her representative to give us such notice of the "suit" will relieve us of our obligations under this Coverage Form only if the failure to give notice prejudices our rights.

##### **3. Transfer Of Rights Of Recovery Against Others To Us is replaced by the following:**

###### **Transfer Of Rights Of Recovery Against Others To Us**

- a. With respect to Paragraphs a., c. and d. of the definition of "uninsured motor vehicle", if we make any payment, we are entitled to recover what we paid from other parties. Any person to or for whom we make payment must transfer to us his or her rights of recovery against any other party. This person must do everything necessary to secure these rights and must do nothing that would jeopardize them.
  - b. With respect to Paragraph b. of the definition of "uninsured motor vehicle", if we make any payment and the "insured" recovers from another party, the "insured" shall hold the proceeds in trust for us and pay us back the amount we have paid.
- ##### **4. Other Insurance in the Auto Dealers and Business Auto Coverage Forms and Other Insurance - Primary And Excess Insurance Provisions in the Motor Carrier Coverage Form are replaced by the following:**

If there is other applicable insurance available under one or more policies or provisions of coverage:

- a. The maximum recovery under all Coverage Forms or policies combined may equal but not exceed the highest applicable limit for any one vehicle under any Coverage Form or policy providing coverage on either a primary or excess basis.
- b. Any insurance we provide with respect to a vehicle the Named Insured does not own shall be excess over any other collectible uninsured motorists insurance providing coverage on a primary basis.

c. If the coverage under this Coverage Form is provided:

- (1) On a primary basis, we will pay only our share of the "loss" that must be paid under insurance providing coverage on a primary basis. Our share is the proportion that our limit of liability bears to the total of all applicable limits of liability for coverage on a primary basis.
- (2) On an excess basis, we will pay only our share of the "loss" that must be paid under insurance providing coverage on an excess basis. Our share is the proportion that our limit of liability bears to the total of all applicable limits of liability for coverage on an excess basis.

5. The following condition is added:

**Arbitration**

- a. If we and an "insured" disagree whether the "insured" is legally entitled to recover damages from the owner or driver of an "uninsured motor vehicle" or do not agree as to the amount of damages that are recoverable by that "insured", the disagreement will be settled by arbitration. Such arbitration may be initiated by a written demand for arbitration made by either party. The arbitration shall be conducted by a single neutral arbitrator. However, disputes concerning coverage under this endorsement may not be arbitrated. Each party will bear the expenses of the arbitrator equally.
- b. Unless both parties agree otherwise, arbitration will take place in the county in which the "insured" lives. Local rules of law as to arbitration procedures and evidence will apply. The decision of the arbitrator will be binding.

**F. Additional Definitions**

The following are added to the **Definitions** section:

1. "Family member" means the individual Named Insured's spouse, whether or not a resident of the individual Named Insured's household, and any other person related to such Named Insured by blood, adoption, marriage or registered domestic partnership under California law, who is a resident of such Named Insured's household, including a ward or foster child.

2. "Occupying" means in, upon, getting in, on, out or off.

3. "Uninsured motor vehicle" means a land motor vehicle or "trailer":

- a. For which no liability bond or policy at the time of an "accident" provides at least the amounts required by the applicable law where a covered "auto" is principally garaged;
- b. That is an underinsured motor vehicle. An underinsured motor vehicle is a land motor vehicle or "trailer" for which the sum of all liability bonds or policies at the time of an "accident" provides at least the amounts required by the applicable law where a covered "auto" is principally garaged but that sum is less than the Limit of Insurance for this coverage;
- c. For which an insuring or bonding company denies coverage or refuses to admit coverage except conditionally or with reservation or becomes insolvent;
- d. That is a hit-and-run vehicle and neither the driver nor owner can be identified. The vehicle must make physical contact with an "insured", a covered "auto" or a vehicle an "insured" is "occupying"; or
- e. That is owned by an individual Named Insured or "family member" and operated or caused to be operated by a person without the owner's consent in connection with criminal activity that has been documented in a police report.

However, "uninsured motor vehicle" does not include any vehicle:

- a. Owned or operated by a self-insurer under any applicable motor vehicle law except a self-insurer who is or becomes insolvent and cannot provide the amounts required by that motor vehicle law;
- b. Owned by the United States of America, Canada, a state or political subdivision of any of those governments or an agency of any of the foregoing; or
- c. Designed or modified for use primarily off public roads while not on public roads.



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## EXCLUSION OF TERRORISM

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM  
BUSINESS AUTO COVERAGE FORM  
MOTOR CARRIER COVERAGE FORM  
SINGLE INTEREST AUTOMOBILE PHYSICAL DAMAGE INSURANCE POLICY

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

A. The following definitions are added and apply under this endorsement wherever the term terrorism, or the phrase any injury, damage, loss or expense, is enclosed in quotation marks:

1. "Terrorism" means activities against persons, organizations or property of any nature:

a. That involve the following or preparation for the following:

- (1) Use or threat of force or violence; or
- (2) Commission or threat of a dangerous act; or
- (3) Commission or threat of an act that interferes with or disrupts an electronic, communication, information or mechanical system; and

b. When one or both of the following apply:

- (1) The effect is to intimidate or coerce a government or the civilian population or any segment thereof, or to disrupt any segment of the economy; or
- (2) It appears that the intent is to intimidate or coerce a government, or to further political, ideological, religious, social or economic objectives or to express (or express opposition to) a philosophy or ideology.

2. "Any injury, damage, loss or expense" means any injury, damage, loss or expense covered under any Coverage Form or Policy to which this endorsement is applicable, and includes but is not limited to "bodily injury", "property damage", "personal and advertising injury", "loss", loss of use, rental reimbursement after "loss" or "covered pollution cost or expense", as may be defined under this Coverage Form, Policy or any applicable endorsement.

B. Except with respect to Physical Damage Coverage, Trailer Interchange Coverage, Garagekeepers Coverage, Garagekeepers Coverage - Customers' Sound Receiving Equipment or the Single Interest Automobile Physical Damage Insurance Policy, the following exclusion is added:

### Exclusion Of Terrorism

We will not pay for "any injury, damage, loss or expense" caused directly or indirectly by "terrorism", including action in hindering or defending against an actual or expected incident of "terrorism". "Any injury, damage, loss or expense" is excluded regardless of any other cause or event that contributes concurrently or in any sequence to such injury, damage, loss or expense. **But this exclusion applies only when one or more of the following are attributed to an incident of "terrorism":**

1. The "terrorism" is carried out by means of the dispersal or application of radioactive material, or through the use of a nuclear weapon or device that involves or produces a nuclear reaction, nuclear radiation or radioactive contamination; or

2. Radioactive material is released, and it appears that one purpose of the "terrorism" was to release such material; or
3. The "terrorism" is carried out by means of the dispersal or application of pathogenic or poisonous biological or chemical materials; or
4. Pathogenic or poisonous biological or chemical materials are released, and it appears that one purpose of the "terrorism" was to release such materials; or
5. The total of insured damage to all types of property exceeds \$25,000,000. In determining whether the \$25,000,000 threshold is exceeded, we will include all insured damage sustained by property of all persons and entities affected by the "terrorism" and business interruption losses sustained by owners or occupants of the damaged property. For the purpose of this provision, insured damage means damage that is covered by any insurance plus damage that would be covered by any insurance but for the application of any terrorism exclusions; or
6. Fifty or more persons sustain death or serious physical injury. For the purposes of this provision, serious physical injury means:
  - a. Physical injury that involves a substantial risk of death; or
  - b. Protracted and obvious physical disfigurement; or
  - c. Protracted loss of or impairment of the function of a bodily member or organ.

Multiple incidents of "terrorism" which occur within a 72-hour period and appear to be carried out in concert or to have a related purpose or common leadership will be deemed to be one incident, for the purpose of determining whether the thresholds in Paragraphs **B.5.** and **B.6.** are exceeded.

With respect to this exclusion, Paragraphs **B.5.** and **B.6.** describe the thresholds used to measure the magnitude of an incident of "terrorism" and the circumstances in which the threshold will apply, for the purpose of determining whether this exclusion will apply to that incident. When the exclusion applies to an incident of "terrorism", there is no coverage under this Coverage Form, Policy or any applicable endorsement.

- C. With respect to Physical Damage Coverage, Trailer Interchange Coverage, Garagekeepers Coverage, Garagekeepers Coverage - Customers' Sound Receiving Equipment or the Single Interest Automobile Physical Damage Insurance Policy, the following exclusion is added:

#### **Exclusion Of Terrorism**

We will not pay for any "loss", loss of use or rental reimbursement after "loss" caused directly or indirectly by "terrorism", including action in hindering or defending against an actual or expected incident of "terrorism". **But this exclusion applies only when one or more of the following are attributed to an incident of "terrorism":**

1. The "terrorism" is carried out by means of the dispersal or application of radioactive material, or through the use of a nuclear weapon or device that involves or produces a nuclear reaction, nuclear radiation or radioactive contamination; or
2. Radioactive material is released, and it appears that one purpose of the "terrorism" was to release such material; or
3. The "terrorism" is carried out by means of the dispersal or application of pathogenic or poisonous biological or chemical materials; or
4. Pathogenic or poisonous biological or chemical materials are released, and it appears that one purpose of the "terrorism" was to release such materials; or
5. The total of insured damage to all types of property exceeds \$25,000,000. In determining whether the \$25,000,000 threshold is exceeded, we will include all insured damage sustained by property of all persons and entities affected by the "terrorism" and business interruption losses sustained by owners or occupants of the damaged property. For the purpose of this provision, insured damage means damage that is covered by any insurance plus damage that would be covered by any insurance but for the application of any terrorism exclusions.

Multiple incidents of "terrorism" which occur within a 72-hour period and appear to be carried out in concert or to have a related purpose or common leadership will be deemed to be one incident, for the purpose of determining whether the threshold in Paragraph **C.5.** is exceeded.

With respect to this exclusion, Paragraph **C.5.** describes the threshold used to measure the magnitude of an incident of "terrorism" and the circumstances in which the threshold will apply, for the purpose of determining whether this exclusion will apply to that incident. When the exclusion applies to an incident of "terrorism", there is no coverage under this Coverage Form, Policy or any applicable endorsement.

**D.** In the event of any incident of "terrorism" that is not subject to the exclusion in Paragraph **B.** or **C.**, coverage does not apply to "any injury, damage, loss or expense" that is otherwise excluded under this Coverage Form, Policy or any applicable endorsement.

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

## **SILICA OR SILICA-RELATED DUST EXCLUSION FOR COVERED AUTOS EXPOSURE**

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM  
BUSINESS AUTO COVERAGE FORM  
MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

**A. The following exclusion is added to Covered Autos Liability Coverage:**

**Silica Or Silica-related Dust Exclusion For Covered Autos Exposure**

This insurance does not apply to:

1. "Bodily injury" arising, in whole or in part, out of the actual, alleged, threatened or suspected inhalation of, or ingestion of, "silica" or "silica-related dust".
2. "Property damage" arising, in whole or in part, out of the actual, alleged, threatened or suspected contact with, exposure to, existence of, or presence of, "silica" or "silica-related dust".

3. Any loss, cost or expense arising, in whole or in part, out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating or disposing of, or in any way responding to or assessing the effects of, "silica" or "silica-related dust", by any "insured" or by any other person or entity.

**B. Additional Definitions**

As used in this endorsement:

1. "Silica" means silicon dioxide (occurring in crystalline, amorphous and impure forms), silica particles, silica dust or silica compounds.
2. "Silica-related dust" means a mixture or combination of silica and other dust or particles.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## CALIFORNIA INDIVIDUAL NAMED INSURED

This endorsement modifies insurance provided under the following:

### BUSINESS AUTO COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

If you are an individual, the policy is changed as follows:

#### A. Changes In Covered Autos Liability Coverage

1. The **Fellow Employee** Exclusion does not apply to "bodily injury" to you or any "family member's" fellow "employees".
2. **Personal Auto Coverage**

If a covered "auto" symbol is shown in the Declarations for **Covered Autos Liability Coverage**:

- a. The following is added to **Who Is An Insured**:

"Family members" are "insureds" for any covered "auto" you own of the "private passenger type" and any other "auto" described in Paragraph **2.b.** of this endorsement.

- b. Any "auto" you don't own is a covered "auto" while being used by you or by any "family member" except:

- (1) Any "auto" owned by any "family members".
- (2) Any "auto" furnished or available for your or any "family member's" regular use.
- (3) Any "auto" used by you or by any of your "family members" while working in a business of selling, servicing, repairing or parking "autos".
- (4) Any "auto" other than an "auto" of the "private passenger type" used by you or any of your "family members" while working in any other business or occupation.

- c. The Pollution Exclusion and, if forming a part of the policy, the Nuclear Energy Liability Exclusion (Broad Form), do not apply to any covered "auto" of the "private passenger type".

- d. The following exclusion is added and applies only to "private passenger type" covered "autos":

This insurance does not apply to:

"Bodily injury" or "property damage" for which an "insured" under the policy is also an "insured" under a nuclear energy liability policy or would be an "insured" but for its termination upon its exhaustion of its limit of liability. A nuclear energy liability policy is a policy issued by the Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or any of their successors. This exclusion does not apply to "autos" registered or principally garaged in New York.

#### B. Changes In Physical Damage Coverage Personal Auto Coverage

If a covered "auto" symbol is shown in the Declarations for Physical Damage Comprehensive, Specified Causes of Loss, Collision, or Towing Coverage, then a "non-owned auto" will also be considered a covered "auto" for that coverage. However, the most we will pay for "loss" to a "non-owned auto" which is a "trailer" is \$500.

### C. Additional Definitions

As used in this endorsement:

1. "Family member" means a person related to you by blood, adoption, marriage or registered domestic partnership under California law, who is a resident of your household, including a ward or foster child.
2. The words "you" and "your" include your spouse if a resident of the same household except for notice of cancellation.
3. When the phrase "private passenger type" appears in quotation marks it includes any covered "auto" you own of the pickup or van type not used for business purposes, other than farming or ranching.
4. "Non-owned auto" means any "private passenger type" "auto", pickup, van or "trailer" not owned by or furnished or available for the regular use of you or any "family member", while it is in the custody of or being operated by you or any "family member".

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## NUCLEAR ENERGY LIABILITY EXCLUSION ENDORSEMENT (Broad Form)

This endorsement modifies insurance provided under the following:

COMMERCIAL AUTOMOBILE COVERAGE PART  
COMMERCIAL GENERAL LIABILITY COVERAGE PART  
FARM COVERAGE PART  
LIQUOR LIABILITY COVERAGE PART  
MEDICAL PROFESSIONAL LIABILITY COVERAGE PART  
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART  
POLLUTION LIABILITY COVERAGE PART  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART  
RAILROAD PROTECTIVE LIABILITY COVERAGE PART  
UNDERGROUND STORAGE TANK POLICY

1. The insurance does not apply:

A. Under any Liability Coverage, to "bodily injury" or "property damage":

- (1) 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, Nuclear Insurance Association of Canada or any of their successors, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability; or
- (2) Resulting from the "hazardous properties" of "nuclear material" and with respect to which (a) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (b) 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.

B. Under any Medical Payments coverage, to expenses incurred with respect to "bodily injury" resulting from the "hazardous properties" of "nuclear material" and arising out of the operation of a "nuclear facility" by any person or organization.

C. Under any Liability Coverage, to "bodily injury" or "property damage" resulting from "hazardous properties" of "nuclear material", if:

- (1) The "nuclear material" (a) is at any "nuclear facility" owned by, or operated by or on behalf of, an "insured" or (b) has been discharged or dispersed therefrom;
- (2) 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
- (3) The "bodily injury" or "property damage" 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 (3) applies only to "property damage" to such "nuclear facility" and any property thereat.

2. As used in this endorsement:

"Hazardous properties" includes radioactive, toxic or explosive properties.

"Nuclear material" means "source material", "special nuclear material" or "by-product material".

"Source material", "special nuclear material", and "by-product material" have the meanings given them in the Atomic Energy Act of 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 (a) containing "by-product material" other than the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its "source material" content, and (b) resulting from the operation by any person or organization of any "nuclear facility" included under the first two paragraphs of the definition of "nuclear facility".

"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.

"Property damage" includes all forms of radioactive contamination of property.



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

## **CALIFORNIA CHANGES - CANCELLATION AND NONRENEWAL**

This endorsement modifies insurance provided under the following:

CAPITAL ASSETS PROGRAM (OUTPUT POLICY) COVERAGE PART  
 COMMERCIAL AUTOMOBILE COVERAGE PART  
 COMMERCIAL GENERAL LIABILITY COVERAGE PART  
 COMMERCIAL INLAND MARINE COVERAGE PART  
 COMMERCIAL PROPERTY COVERAGE PART  
 CRIME AND FIDELITY COVERAGE PART  
 EMPLOYMENT-RELATED PRACTICES LIABILITY COVERAGE PART  
 EQUIPMENT BREAKDOWN COVERAGE PART  
 FARM COVERAGE PART  
 LIQUOR LIABILITY COVERAGE PART  
 MEDICAL PROFESSIONAL LIABILITY COVERAGE PART  
 POLLUTION LIABILITY COVERAGE PART  
 PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

**A. Paragraphs 2. and 3. of the Cancellation Common Policy Condition are replaced by the following:**

**2. All Policies In Effect For 60 Days Or Less**

If this policy has been in effect for 60 days or less, and is not a renewal of a policy we have previously issued, we may cancel this policy by mailing or delivering to the first Named Insured, at the mailing address shown in the policy, and to the producer of record, advance written notice of cancellation, stating the reason for cancellation, at least:

- a.** 10 days before the effective date of cancellation if we cancel for:
- (1)** Nonpayment of premium; or
  - (2)** Discovery of fraud by:
    - (a)** Any insured or his or her representative in obtaining this insurance; or
    - (b)** You or your representative in pursuing a claim under this policy.
- b.** 30 days before the effective date of cancellation if we cancel for any other reason.

**3. All Policies In Effect For More Than 60 Days**

- a.** If this policy has been in effect for more than 60 days, or is a renewal of a policy we issued, we may cancel this policy only upon the occurrence, after the effective date of the policy, of one or more of the following:
- (1)** Nonpayment of premium, including payment due on a prior policy we issued and due during the current policy term covering the same risks.
  - (2)** Discovery of fraud or material misrepresentation by:
    - (a)** Any insured or his or her representative in obtaining this insurance; or
    - (b)** You or your representative in pursuing a claim under this policy.
  - (3)** A judgment by a court or an administrative tribunal that you have violated a California or Federal law, having as one of its necessary elements an act which materially increases any of the risks insured against.

- (4) Discovery of willful or grossly negligent acts or omissions, or of any violations of state laws or regulations establishing safety standards, by you or your representative, which materially increase any of the risks insured against.
  - (5) Failure by you or your representative to implement reasonable loss control requirements, agreed to by you as a condition of policy issuance, or which were conditions precedent to our use of a particular rate or rating plan, if that failure materially increases any of the risks insured against.
  - (6) A determination by the Commissioner of Insurance that the:
    - (a) Loss of, or changes in, our reinsurance covering all or part of the risk would threaten our financial integrity or solvency; or
    - (b) Continuation of the policy coverage would:
      - (i) Place us in violation of California law or the laws of the state where we are domiciled; or
      - (ii) Threaten our solvency.
  - (7) A change by you or your representative in the activities or property of the commercial or industrial enterprise, which results in a materially added, increased or changed risk, unless the added, increased or changed risk is included in the policy.
- b. We will mail or deliver advance written notice of cancellation, stating the reason for cancellation, to the first Named Insured, at the mailing address shown in the policy, and to the producer of record, at least:
- (1) 10 days before the effective date of cancellation if we cancel for nonpayment of premium or discovery of fraud; or
  - (2) 30 days before the effective date of cancellation if we cancel for any other reason listed in Paragraph 3.a.

B. The following provision is added to the **Cancellation** Common Policy Condition:

#### 7. Residential Property

This provision applies to coverage on real property which is used predominantly for residential purposes and consisting of not more than four dwelling units, and to coverage on tenants' household personal property in a residential unit, if such coverage is written under one of the following:

Commercial Property Coverage Part  
 Farm Coverage Part - Farm Property - Farm Dwellings, Appurtenant Structures And Household Personal Property Coverage Form

- a. If such coverage has been in effect for 60 days or less, and is not a renewal of coverage we previously issued, we may cancel this coverage for any reason, except as provided in b. and c. below.
- b. We may not cancel this policy solely because the first Named Insured has:
  - (1) Accepted an offer of earthquake coverage; or
  - (2) Cancelled or did not renew a policy issued by the California Earthquake Authority (CEA) that included an earthquake policy premium surcharge.

However, we shall cancel this policy if the first Named Insured has accepted a new or renewal policy issued by the CEA that includes an earthquake policy premium surcharge but fails to pay the earthquake policy premium surcharge authorized by the CEA.

- c. We may not cancel such coverage solely because corrosive soil conditions exist on the premises. This restriction (c.) applies only if coverage is subject to one of the following, which exclude loss or damage caused by or resulting from corrosive soil conditions:
  - (1) Commercial Property Coverage Part - Causes Of Loss - Special Form; or
  - (2) Farm Coverage Part - Causes Of Loss Form - Farm Property, Paragraph D. Covered Causes Of Loss - Special.

C. The following is added and supersedes any provisions to the contrary:

**Nonrenewal**

1. Subject to the provisions of Paragraphs **C.2.** and **C.3.** below, if we elect not to renew this policy, we will mail or deliver written notice, stating the reason for nonrenewal, to the first Named Insured shown in the Declarations, and to the producer of record, at least 60 days, but not more than 120 days, before the expiration or anniversary date.

We will mail or deliver our notice to the first Named Insured, and to the producer of record, at the mailing address shown in the policy.

**2. Residential Property**

This provision applies to coverage on real property used predominantly for residential purposes and consisting of not more than four dwelling units, and to coverage on tenants' household property contained in a residential unit, if such coverage is written under one of the following:

Commercial Property Coverage Part

Farm Coverage Part - Farm Property - Farm Dwellings, Appurtenant Structures And Household Personal Property Coverage Form

- a. We may elect not to renew such coverage for any reason, except as provided in **b.**, **c.** and **d.** below.
- b. We will not refuse to renew such coverage solely because the first Named Insured has accepted an offer of earthquake coverage.

However, the following applies only to insurers who are associate participating insurers as established by Cal. Ins. Code Section 10089.16. We may elect not to renew such coverage after the first Named Insured has accepted an offer of earthquake coverage, if one or more of the following reasons applies:

- (1) The nonrenewal is based on sound underwriting principles that relate to the coverages provided by this policy and that are consistent with the approved rating plan and related documents filed with the Department of Insurance as required by existing law;

- (2) The Commissioner of Insurance finds that the exposure to potential losses will threaten our solvency or place us in a hazardous condition. A hazardous condition includes, but is not limited to, a condition in which we make claims payments for losses resulting from an earthquake that occurred within the preceding two years and that required a reduction in policyholder surplus of at least 25% for payment of those claims; or

- (3) We have:

- (a) Lost or experienced a substantial reduction in the availability or scope of reinsurance coverage; or
- (b) Experienced a substantial increase in the premium charged for reinsurance coverage of our residential property insurance policies; and

the Commissioner has approved a plan for the nonrenewals that is fair and equitable, and that is responsive to the changes in our reinsurance position.

- c. We will not refuse to renew such coverage solely because the first Named Insured has cancelled or did not renew a policy, issued by the California Earthquake Authority, that included an earthquake policy premium surcharge.
- d. We will not refuse to renew such coverage solely because corrosive soil conditions exist on the premises. This restriction (**d.**) applies only if coverage is subject to one of the following, which exclude loss or damage caused by or resulting from corrosive soil conditions:
  - (1) Commercial Property Coverage Part - Causes Of Loss - Special Form; or
  - (2) Farm Coverage Part - Causes Of Loss Form - Farm Property, Paragraph **D.** Covered Causes Of Loss - Special.

3. We are not required to send notice of nonrenewal in the following situations:

- a. If the transfer or renewal of a policy, without any changes in terms, conditions or rates, is between us and a member of our insurance group.

- b. If the policy has been extended for 90 days or less, provided that notice has been given in accordance with Paragraph C.1.
- c. If you have obtained replacement coverage, or if the first Named Insured has agreed, in writing, within 60 days of the termination of the policy, to obtain that coverage.
- d. If the policy is for a period of no more than 60 days and you are notified at the time of issuance that it will not be renewed.
- e. If the first Named Insured requests a change in the terms or conditions or risks covered by the policy within 60 days of the end of the policy period.
- f. If we have made a written offer to the first Named Insured, in accordance with the timeframes shown in Paragraph C.1., to renew the policy under changed terms or conditions or at an increased premium rate, when the increase exceeds 25%.



ACCOUNT NUMBER: 2553009

## COMMON POLICY DECLARATIONS

Sentry Select Insurance Company (A Participating Stock Company) A member of the Sentry Insurance Group 1800 North Point Drive Stevens Point, WI 54481	Producer  Steven Asch 10000277 315-484-6565
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### GENERAL INFORMATION

**First Named Insured:** Alan Byer Auto Sales Inc 401K Savings Plan  
**Address:** 1230 W Genesee St  
 Syracuse, NY 13204-2104  
**Business Type:** Corporation

Unless stated elsewhere, the coverage provided under this policy is effective 08/01/2018 to 08/01/2019 at 12:01 A.M. Standard Time at your mailing address shown above.

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

### NAMED INSUREDS

The **FIRST NAMED INSURED** shown in the **GENERAL INFORMATION** above, and the person(s) or organization(s) shown as **NAMED INSUREDS** below are named insureds for this policy.

Not Applicable

### COVERED LOCATIONS/SCHEDULE OF PREMISES

Prem.#	Bldg.#	Address	Construction	Occupancy
1		1230 W Genesee St Syracuse, NY 13204-2104		
2		5622 Horatio St Utica, NY 13502-1402		
3		1288 W Genesee St Syracuse, NY 13204-2133		
4		6985 Collamer Rd East Syracuse, NY 13057-9763		
5		512 W Broadway St Fulton, NY 13069-2105		

### COVERAGES

This Contract consists of the following Coverages:

COMMERCIAL CRIME COVERAGE 2553009009

### PREMIUM SUMMARY

The Premium for this policy:	\$	100.00
Terrorism:	\$	0.00
Total Cost:	\$	100.00

IL 89 00 10 14

2553009  
Sentry Select Insurance Company

Page 1 of 2  
07/20/2018

ACCOUNT NUMBER: 2553009

**CONTACT INFORMATION**

For service, please contact your Sentry Account Manager at the number listed above or our Service office at:

**Address:** 1800 North Point Drive **Phone:** Toll Free 800-473-6879  
Stevens Point, WI 54481 Fax 800-514-7191

**Email:** businessproducts\_direct@sentry.com

**COMMON POLICY FORMS AND/OR ENDORSEMENTS**

The following forms and/or endorsements apply to all coverages included as part of this policy:

<b>Form/Endorsement Number and Edition Date</b>	<b>Form/Endorsement Title</b>
80 2314 SSDO 05 00	Additional Conditions - Membership And Participation
IL 00 17 11 98	Common Policy Conditions

These declarations together with the common policy conditions, coverage part declarations, coverage part coverage form(s) and forms and endorsements, if any, issued to form a part thereof, complete the above numbered policy.

## ADDITIONAL CONDITIONS - PARTICIPATION

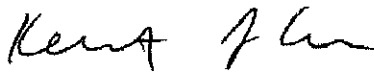
### Participation

You will share in any dividends in accordance with conditions established by the Board of Directors.

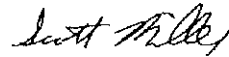
The first page of Declarations names the company issuing this policy. The officer signatures which correspond to That Company are a part of this policy. None of the other signatures apply to this policy.

### SENTRY SELECT INSURANCE COMPANY

Stevens Point, Wisconsin



Secretary



President

## COMMON POLICY CONDITIONS

All Coverage Parts included in this policy are subject to the following conditions.

### A. Cancellation

1. The first Named Insured shown in the Declarations may cancel this policy by mailing or delivering to us advance written notice of cancellation.
2. We may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation at least:
  - a. 10 days before the effective date of cancellation if we cancel for nonpayment of premium; or
  - b. 30 days before the effective date of cancellation if we cancel for any other reason.
3. We will mail or deliver our notice to the first Named Insured's last mailing address known to us.
4. Notice of cancellation will state the effective date of cancellation. The policy period will end on that date.
5. If this policy is cancelled, we will send the first Named Insured any premium refund due. If we cancel, the refund will be pro rata. If the first Named Insured cancels, the refund may be less than pro rata. The cancellation will be effective even if we have not made or offered a refund.
6. If notice is mailed, proof of mailing will be sufficient proof of notice.

### B. Changes

This policy contains all the agreements between you and us concerning the insurance afforded. The first Named Insured shown in the Declarations is authorized to make changes in the terms of this policy with our consent. This policy's terms can be amended or waived only by endorsement issued by us and made a part of this policy.

### C. Examination Of Your Books And Records

We may examine and audit your books and records as they relate to this policy at any time during the policy period and up to three years afterward.

### D. Inspections And Surveys

1. We have the right to:
  - a. Make inspections and surveys at any time;

- b. Give you reports on the conditions we find; and

- c. Recommend changes.

2. We are not obligated to make any inspections, surveys, reports or recommendations and any such actions we do undertake relate only to insurability and the premiums to be charged. We do not make safety inspections. We do not undertake to perform the duty of any person or organization to provide for the health or safety of workers or the public. And we do not warrant that conditions:
  - a. Are safe or healthful; or
  - b. Comply with laws, regulations, codes or standards.

3. Paragraphs 1. and 2. of this condition apply not only to us, but also to any rating, advisory, rate service or similar organization which makes insurance inspections, surveys, reports or recommendations.

4. Paragraph 2. of this condition does not apply to any inspections, surveys, reports or recommendations we may make relative to certification, under state or municipal statutes, ordinances or regulations, of boilers, pressure vessels or elevators.

### E. Premiums

The first Named Insured shown in the Declarations:

1. Is responsible for the payment of all premiums; and
2. Will be the payee for any return premiums we pay.

### F. Transfer Of Your Rights And Duties Under This Policy

Your rights and duties under this policy may not be transferred without our written consent except in the case of death of an individual named insured.

If you die, your rights and duties will be transferred to your legal representative but only while acting within the scope of duties as your legal representative. Until your legal representative is appointed, anyone having proper temporary custody of your property will have your rights and duties but only with respect to that property.



POLICY NUMBER: 2553009009



## COMMERCIAL CRIME COVERAGE DECLARATIONS

Sentry Select Insurance Company (A Participating Stock Company) A member of the Sentry Insurance Group 1800 North Point Drive Stevens Point, WI 54481	Producer  Steven Asch 10000277 315-484-6565
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### POLICY INFORMATION

**First Named Insured:** Alan Byer Auto Sales Inc 401K Savings Plan  
**Address:** 1230 W Genesee St  
 Syracuse, NY 13204-2104

The Commercial Crime Coverage applies from 08/01/2018 to 08/01/2019 at 12:01 A.M. Standard Time at the First Named Insured's mailing address shown above.

### APPLICABLE FORMS AND ENDORSEMENTS

In addition to the common policy forms and endorsements, the following forms and endorsements apply to the Commercial Crime Coverage:

Form/Endorsement Number and Edition Date	Form/Endorsement Title
CR 00 21 11 15	Commercial Crime Coverage Form (Loss Sustained Form)
CR 01 55 07 17	New York Changes
CR 03 08 04 15	New York Changes - Fraud
CR 25 47 09 17	U.S. Department Of Labor - ERISA Plan Coverage Amendments
IL 02 68 01 14	New York Changes - Cancellation And Nonrenewal
IL 09 35 07 02	Exclusion Of Certain Computer-Related Losses

**Coverage is written:** Primary

### INSURING AGREEMENTS, LIMITS OF INSURANCE AND DEDUCTIBLE

Insuring Agreements	Limit of Insurance Per occurrence	Deductible Amount Per occurrence
1. Employee Theft	\$ 500,000	\$ 0
2. Forgery or Alteration	Not Covered	
3. Inside the Premises – Theft of Money and Securities	Not Covered	
4. Inside the Premises – Robbery or Safe Burglary of Other Property	Not Covered	
5. Outside the Premises	Not Covered	
6. Computer and Funds Transfer Fraud	Not Covered	
7. Money Orders and Counterfeit Money	Not Covered	

If "Not Covered" is inserted above opposite any specified Insuring Agreement, such Insuring Agreement and other reference thereto in this policy is deleted.

## COMMERCIAL CRIME COVERAGE FORM (LOSS SUSTAINED FORM)

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

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

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

### A. Insuring Agreements

Coverage is provided under the following Insuring Agreements for which a Limit Of Insurance is shown in the Declarations and applies to loss that you sustain resulting directly from an "occurrence" taking place during the Policy Period shown in the Declarations, except as provided in Condition E.1.k. or E.1.l., which is "discovered" by you during the Policy Period shown in the Declarations or during the period of time provided in the Extended Period To Discover Loss Condition E.1.g.:

#### 1. Employee Theft

We will pay for loss of or damage to "money", "securities" and "other property" resulting directly from "theft" committed by an "employee", whether identified or not, acting alone or in collusion with other persons.

For the purposes of this Insuring Agreement, "theft" shall also include forgery.

#### 2. Forgery Or Alteration

a. We will pay for loss resulting directly from "forgery" or alteration of checks, drafts, promissory notes, or similar written promises, orders or directions to pay a sum certain in "money" that are:

- (1) Made or drawn by or drawn upon you; or
- (2) Made or drawn by one acting as your agent;

or that are purported to have been so made or drawn.

For the purposes of this Insuring Agreement, a substitute check as defined in the Check Clearing for the 21st Century Act shall be treated the same as the original it replaced.

b. If you are sued for refusing to pay any instrument covered in Paragraph 2.a., on the basis that it has been forged or altered, and you have our written consent to defend against the suit, we will pay for any reasonable legal expenses that you incur and pay in that defense. The amount that we will pay for such legal expenses is in addition to the Limit of Insurance applicable to this Insuring Agreement.

### 3. Inside The Premises - Theft Of Money And Securities

We will pay for:

a. Loss of "money" and "securities" inside the "premises" or "financial institution premises":

- (1) Resulting directly from "theft" committed by a person present inside such "premises" or "financial institution premises"; or
- (2) Resulting directly from disappearance or destruction.

b. Loss from damage to the "premises" or its exterior resulting directly from an actual or attempted "theft" of "money" and "securities", if you are the owner of the "premises" or are liable for damage to it.

c. Loss of or damage to a locked safe, vault, cash register, cash box or cash drawer located inside the "premises" resulting directly from an actual or attempted "theft" of, or unlawful entry into, those containers.

### 4. Inside The Premises - Robbery Or Safe Burglary Of Other Property

We will pay for:

a. Loss of or damage to "other property":

- (1) Inside the "premises" resulting directly from an actual or attempted "robbery" of a "custodian"; or
- (2) Inside the "premises" in a safe or vault resulting directly from an actual or attempted "safe burglary".

- b. Loss from damage to the "premises" or its exterior resulting directly from an actual or attempted "robbery" or "safe burglary" of "other property", if you are the owner of the "premises" or are liable for damage to it.
- c. Loss of or damage to a locked safe or vault located inside the "premises" resulting directly from an actual or attempted "robbery" or "safe burglary".

**5. Outside The Premises**

We will pay for:

- a. Loss of "money" and "securities" outside the "premises" in the care and custody of a "messenger" or an armored motor vehicle company resulting directly from "theft", disappearance or destruction.
- b. Loss of or damage to "other property" outside the "premises" in the care and custody of a "messenger" or an armored motor vehicle company resulting directly from an actual or attempted "robbery".

**6. Computer And Funds Transfer Fraud**

a. We will pay for:

(1) Loss resulting directly from a fraudulent:

- (a) Entry of "electronic data" or "computer program" into; or
- (b) Change of "electronic data" or "computer program" within;

any "computer system" owned, leased or operated by you, provided the fraudulent entry or fraudulent change causes, with regard to Paragraphs **6.a.(1)(a)** and **6.a.(1)(b)**:

- (i) "Money", "securities" or "other property" to be transferred, paid or delivered; or
  - (ii) Your account at a "financial institution" to be debited or deleted.
- (2) Loss resulting directly from a "fraudulent instruction" directing a "financial institution" to debit your "transfer account" and to transfer, pay or deliver "money" or "securities" from that account.

- b. As used in Paragraph **6.a.(1)**, fraudulent entry or fraudulent change of "electronic data" or "computer program" shall include such entry or change made by an "employee" acting, in good faith, upon a "fraudulent instruction" received from a computer software contractor who has a written agreement with you to design, implement or service "computer programs" for a "computer system" covered under this Insuring Agreement.

**7. Money Orders And Counterfeit Money**

We will pay for loss resulting directly from your having, in good faith, accepted in exchange for merchandise, "money" or services:

- a. Money orders issued by any post office, express company or "financial institution" that are not paid upon presentation; or
- b. "Counterfeit money" that is acquired during the regular course of business.

**B. Limit Of Insurance**

The most we will pay for all loss resulting directly from an "occurrence" is the applicable Limit Of Insurance shown in the Declarations.

If any loss is covered under more than one Insuring Agreement or coverage, the most we will pay for such loss shall not exceed the largest Limit of Insurance available under any one of those Insuring Agreements or coverages.

**C. Deductible**

We will not pay for loss resulting directly from an "occurrence" unless the amount of loss exceeds the Deductible Amount shown in the Declarations. We will then pay the amount of loss in excess of the Deductible Amount, up to the Limit of Insurance.

**D. Exclusions**

1. This insurance does not cover:

**a. Acts Committed By You, Your Partners Or Your Members**

Loss resulting from "theft" or any other dishonest act committed by:

- (1) You; or
- (2) Any of your partners or "members"; whether acting alone or in collusion with other persons.

**b. Acts Committed By Your Employees Learned Of By You Prior To The Policy Period**

Loss caused by an "employee" if the "employee" had also committed "theft" or any other dishonest act prior to the effective date of this insurance and you or any of your partners, "members", "managers", officers, directors or trustees, not in collusion with the "employee", learned of such "theft" or dishonest act prior to the Policy Period shown in the Declarations.

**c. Acts Committed By Your Employees, Managers, Directors, Trustees Or Representatives**

Loss resulting from "theft" or any other dishonest act committed by any of your "employees", "managers", directors, trustees or authorized representatives:

- (1) Whether acting alone or in collusion with other persons; or
- (2) While performing services for you or otherwise;

except when covered under Insuring Agreement A.1.

**d. Confidential Or Personal Information**

Loss resulting from:

- (1) The disclosure or use of another person's or organization's confidential or personal information; or
- (2) The disclosure of your confidential or personal information. However, this Paragraph 1.d.(2) does not apply to loss otherwise covered under this insurance that results directly from the use of your confidential or personal information.

For the purposes of this exclusion, confidential or personal information includes, but is not limited to, patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of nonpublic information.

**e. Data Security Breach**

Fees, costs, fines, penalties and other expenses incurred by you which are related to the access to or disclosure of another person's or organization's confidential or personal information including, but not limited to, patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of nonpublic information.

**f. Governmental Action**

Loss resulting from seizure or destruction of property by order of governmental authority.

**g. Indirect Loss**

Loss that is an indirect result of an "occurrence" covered by this insurance including, but not limited to, loss resulting from:

- (1) Your inability to realize income that you would have realized had there been no loss of or damage to "money", "securities" or "other property";
- (2) Payment of damages of any type for which you are legally liable. But, we will pay compensatory damages arising directly from a loss covered under this insurance; or
- (3) Payment of costs, fees or other expenses you incur in establishing either the existence or the amount of loss under this insurance.

**h. Legal Fees, Costs And Expenses**

Fees, costs and expenses incurred by you which are related to any legal action, except when covered under Insuring Agreement A.2.

**i. Nuclear Hazard**

Loss or damage resulting from nuclear reaction or radiation, or radioactive contamination, however caused.

**j. Pollution**

Loss or damage caused by or resulting from pollution. Pollution means the discharge, dispersal, seepage, migration, release or escape of 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.

**k. Virtual Currency**

Loss involving virtual currency of any kind, by whatever name known, whether actual or fictitious including, but not limited to, digital currency, crypto currency or any other type of electronic currency.

**i. War And Military Action**

Loss or damage resulting from:

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

(2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or

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

2. Insuring Agreement **A.1.** does not cover:

**a. Inventory Shortages**

Loss, or that part of any loss, the proof of which as to its existence or amount is dependent upon:

(1) An inventory computation; or

(2) A profit and loss computation.

However, where you establish wholly apart from such computations that you have sustained a loss, then you may offer your inventory records and actual physical count of inventory in support of the amount of loss claimed.

**b. Trading**

Loss resulting from trading, whether in your name or in a genuine or fictitious account.

**c. Warehouse Receipts**

Loss resulting from the fraudulent or dishonest signing, issuing, cancelling or failing to cancel, a warehouse receipt or any papers connected with it.

3. Insuring Agreements **A.3.**, **A.4.** and **A.5.** do not cover:

**a. Accounting Or Arithmetical Errors Or Omissions**

Loss resulting from accounting or arithmetical errors or omissions.

**b. Exchanges Or Purchases**

Loss resulting from the giving or surrendering of property in any exchange or purchase.

**c. Fire**

Loss or damage resulting from fire, however caused, except:

(1) Loss of or damage to "money" and "securities"; and

(2) Loss from damage to a safe or vault.

**d. Money Operated Devices**

Loss of property contained in any money operated device unless the amount of "money" deposited in it is recorded by a continuous recording instrument in the device.

**e. Motor Vehicles Or Equipment And Accessories**

Loss of or damage to motor vehicles, trailers or semitrailers or equipment and accessories attached to them.

**f. Transfer Or Surrender Of Property**

(1) Loss of or damage to property after it has been transferred or surrendered to a person or place outside the "premises" or "financial institution premises":

(a) On the basis of unauthorized instructions; or

(b) As a result of a threat including, but not limited to:

(i) A threat to do bodily harm to any person;

(ii) A threat to do damage to any property;

(iii) A threat to introduce a denial of service attack into any "computer system";

(iv) A threat to introduce a virus or other malicious instruction into any "computer system" which is designed to damage, destroy or corrupt "electronic data" or "computer programs" stored within the "computer system";

(v) A threat to contaminate, pollute or render substandard your products or goods; or

(vi) A threat to disseminate, divulge or utilize:

i. Your confidential information;

ii. Confidential or personal information of another person or organization; or

iii. Weaknesses in the source code within any "computer system".

(2) However, this exclusion does not apply under Insuring Agreement A.5. to loss of "money", "securities" or "other property" while outside the "premises" in the care and custody of a "messenger" if you:

(a) Had no knowledge of any threat at the time the conveyance began; or

(b) Had knowledge of a threat at the time the conveyance began, but the loss was not related to the threat.

**g. Vandalism**

Loss from damage to the "premises" or its exterior, or to any safe, vault, cash register, cash box, cash drawer or "other property" by vandalism or malicious mischief.

**h. Voluntary Parting Of Title To Or Possession Of Property**

Loss resulting from your, or anyone else acting on your express or implied authority, being induced by any dishonest act to voluntarily part with title to or possession of any property.

**4. Insuring Agreement A.6. does not cover:**

**a. Authorized Access**

Loss resulting from a fraudulent:

(1) Entry of "electronic data" or "computer program" into; or

(2) Change of "electronic data" or "computer program" within;

any "computer system" owned, leased or operated by you by a person or organization with authorized access to that "computer system", except when covered under Insuring Agreement A.6.b.

**b. Credit Card Transactions**

Loss resulting from the use or purported use of credit, debit, charge, access, convenience, identification, stored-value or other cards or the information contained on such cards.

**c. Exchanges Or Purchases**

Loss resulting from the giving or surrendering of property in any exchange or purchase.

**d. Fraudulent Instructions**

Loss resulting from an "employee" or "financial institution" acting upon any instruction to:

(1) Transfer, pay or deliver "money", "securities" or "other property"; or

(2) Debit or delete your account; which instruction proves to be fraudulent, except when covered under Insuring Agreement A.6.a.(2) or A.6.b.

**e. Inventory Shortages**

Loss, or that part of any loss, the proof of which as to its existence or amount is dependent upon:

(1) An inventory computation; or

(2) A profit and loss computation.

**E. Conditions**

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

**1. Conditions Applicable To All Insuring Agreements**

**a. Additional Premises Or Employees**

If, while this insurance is in force, you establish any additional "premises" or hire additional "employees", other than through consolidation or merger with, or purchase or acquisition of assets or liabilities of, another entity, such "premises" and "employees" shall automatically be covered under this insurance. Notice to us of an increase in the number of "premises" or "employees" is not required, and no additional premium will be charged for the remainder of the Policy Period shown in the Declarations.

**b. Concealment, Misrepresentation Or Fraud**

This insurance is void in any case of fraud by you as it relates to this insurance at any time. It is also void if you or any other Insured, at any time, intentionally conceals or misrepresents a material fact concerning:

(1) This insurance;

(2) The property covered under this insurance;

(3) Your interest in the property covered under this insurance; or

(4) A claim under this insurance.

### c. Consolidation - Merger Or Acquisition

If you consolidate or merge with, or purchase or acquire the assets or liabilities of, another entity:

- (1) You must give us written notice as soon as possible and obtain our written consent to extend the coverage provided by this insurance to such consolidated or merged entity or such purchased or acquired assets or liabilities. We may condition our consent by requiring payment of an additional premium; but
- (2) For the first 90 days after the effective date of such consolidation, merger or purchase or acquisition of assets or liabilities, the coverage provided by this insurance shall apply to such consolidated or merged entity or such purchased or acquired assets or liabilities, provided that all "occurrences" causing or contributing to a loss involving such consolidation, merger or purchase or acquisition of assets or liabilities, must take place after the effective date of such consolidation, merger or purchase or acquisition of assets or liabilities.

### d. Cooperation

You must cooperate with us in all matters pertaining to this insurance as stated in its terms and conditions.

### e. Duties In The Event Of Loss

After you "discover" a loss or a situation that may result in loss of or damage to "money", "securities" or "other property", you must:

- (1) Notify us as soon as possible. If you have reason to believe that any loss (except for loss covered under Insuring Agreement A.1. or A.2.) involves a violation of law, you must also notify the local law enforcement authorities;
- (2) Give us a detailed, sworn proof of loss within 120 days;
- (3) Cooperate with us in the investigation and settlement of any claim;
- (4) Produce for our examination all pertinent records;
- (5) Submit to examination under oath at our request and give us a signed statement of your answers; and

- (6) Secure all of your rights of recovery against any person or organization responsible for the loss and do nothing to impair those rights.

### f. Employee Benefit Plans

The "employee benefit plans" shown in the Declarations (hereinafter referred to as Plan) are included as Insureds under Insuring Agreement A.1., subject to the following:

- (1) If any Plan is insured jointly with any other entity under this insurance, you or the Plan Administrator is responsible for selecting a Limit of Insurance for Insuring Agreement A.1. that is sufficient to provide a Limit of Insurance for each Plan that is at least equal to that required under ERISA as if each Plan were separately insured.
- (2) With respect to loss sustained or "discovered" by any such Plan, Insuring Agreement A.1. is replaced by the following:

We will pay for loss of or damage to "money", "securities" and "other property" resulting directly from fraudulent or dishonest acts committed by an "employee", whether identified or not, acting alone or in collusion with other persons.

- (3) If the first Named Insured is an entity other than a Plan, any payment we make for loss sustained by any Plan will be made to the Plan sustaining the loss.
- (4) If two or more Plans are insured under this insurance, any payment we make for loss:
  - (a) Sustained by two or more Plans; or
  - (b) Of commingled "money", "securities" or "other property" of two or more Plans;resulting directly from an "occurrence", will be made to each Plan sustaining loss in the proportion that the Limit of Insurance required under ERISA for each Plan bears to the total of those limits.
- (5) The Deductible Amount applicable to Insuring Agreement A.1. does not apply to loss sustained by any Plan.

#### **g. Extended Period To Discover Loss**

We will pay for loss that you sustained prior to the effective date of cancellation of this insurance, which is "discovered" by you:

- (1) No later than one year from the date of that cancellation. However, this extended period to "discover" loss terminates immediately upon the effective date of any other insurance obtained by you, whether from us or another insurer, replacing in whole or in part the coverage afforded under this insurance, whether or not such other insurance provides coverage for loss sustained prior to its effective date.
- (2) No later than one year from the date of that cancellation with regard to any "employee benefit plan".

#### **h. Joint Insured**

- (1) If more than one Insured is named in the Declarations, the first Named Insured will act for itself and for every other Insured for all purposes of this insurance. If the first Named Insured ceases to be covered, then the next Named Insured will become the first Named Insured.
- (2) If any Insured, or partner, "member", "manager", officer, director or trustee of that Insured has knowledge of any information relevant to this insurance, that knowledge is considered knowledge of every Insured.
- (3) An "employee" of any Insured is considered to be an "employee" of every Insured.
- (4) If this insurance or any of its coverages are cancelled as to any Insured, loss sustained by that Insured is covered only if it is "discovered" by you:
  - (a) No later than one year from the date of that cancellation. However, this extended period to "discover" loss terminates immediately upon the effective date of any other insurance obtained by that Insured, whether from us or another insurer, replacing in whole or in part the coverage afforded under this insurance, whether or not such other insurance provides coverage for loss sustained prior to its effective date.
  - (b) No later than one year from the date of that cancellation with regard to any "employee benefit plan".

- (5) We will not pay more for loss sustained by more than one Insured than the amount we would pay if all such loss had been sustained by one Insured.
- (6) Payment by us to the first Named Insured for loss sustained by any Insured, or payment by us to any "employee benefit plan" for loss sustained by that Plan, shall fully release us on account of such loss.

#### **i. Legal Action Against Us**

You may not bring any legal action against us involving loss:

- (1) Unless you have complied with all the terms of this insurance;
- (2) Until 90 days after you have filed proof of loss with us; and
- (3) Unless brought within two years from the date you "discovered" the loss.

If any limitation in this condition is prohibited by law, such limitation is amended so as to equal the minimum period of limitation provided by such law.

#### **j. Liberalization**

If we adopt any revision that would broaden the coverage under this insurance without additional premium within 45 days prior to or during the Policy Period shown in the Declarations, the broadened coverage will immediately apply to this insurance.

#### **k. Loss Sustained During Prior Insurance Issued By Us Or Any Affiliate**

##### **(1) Loss Sustained Partly During This Insurance And Partly During Prior Insurance**

If you "discover" loss during the Policy Period shown in the Declarations, resulting directly from an "occurrence" taking place:

- (a) Partly during the Policy Period shown in the Declarations; and
- (b) Partly during the policy period(s) of any prior cancelled insurance that we or any affiliate issued to you or any predecessor in interest;

and this insurance became effective at the time of cancellation of the prior insurance, we will first settle the amount of loss that you sustained during this policy period. We will then settle the remaining amount of loss that you sustained during the policy period(s) of the prior insurance.



**(2) Loss Sustained Entirely During Prior Insurance**

If you "discover" loss during the Policy Period shown in the Declarations, resulting directly from an "occurrence" taking place entirely during the policy period(s) of any prior cancelled insurance that we or any affiliate issued to you or any predecessor in interest, we will pay for the loss, provided:

- (a) This insurance became effective at the time of cancellation of the prior insurance; and
- (b) The loss would have been covered under this insurance had it been in effect at the time of the "occurrence".

We will first settle the amount of loss that you sustained during the most recent prior insurance. We will then settle any remaining amount of loss that you sustained during the policy period(s) of any other prior insurance.

**(3) In settling loss under Paragraphs k.(1) and k.(2):**

- (a) The most we will pay for the entire loss is the highest single Limit of Insurance applicable during the period of loss, whether such limit was written under this insurance or was written under the prior insurance issued by us.
- (b) We will apply the applicable Deductible Amount shown in the Declarations to the amount of loss sustained under this insurance. If no loss was sustained under this insurance, we will apply the Deductible Amount shown in the Declarations to the amount of loss sustained under the most recent prior insurance.

If the Deductible Amount is larger than the amount of loss sustained under this insurance, or the most recent prior insurance, we will apply the remaining Deductible Amount to the remaining amount of loss sustained during the prior insurance.

We will not apply any other Deductible Amount that may have been applicable to the loss.

- (4) The following examples demonstrate how we will settle losses subject to this condition:**

**Example Number 1**

The Insured sustained a covered loss of \$10,000 resulting directly from an "occurrence" taking place during the terms of Policy A and Policy B.

**Policy A**

The current policy. Written at a Limit of Insurance of \$50,000 and a Deductible Amount of \$5,000.

**Policy B**

Issued prior to Policy A. Written at a Limit of Insurance of \$50,000 and a Deductible Amount of \$5,000.

**Settlement Of Loss**

The amount of loss sustained under Policy A is \$2,500 and under Policy B, \$7,500.

The highest single Limit of Insurance applicable to this entire loss is \$50,000 written under Policy A. The Policy A Deductible Amount of \$5,000 applies. The loss is settled as follows:

- (a) The amount of loss sustained under Policy A (\$2,500) is settled first. The amount we will pay is nil (\$0.00) because the amount of loss is less than the Deductible Amount (i.e., \$2,500 loss - \$5,000 deductible = \$0.00).
- (b) The remaining amount of loss sustained under Policy B (\$7,500) is settled next. The amount recoverable is \$5,000 after the remaining Deductible Amount from Policy A of \$2,500 is applied to the loss (i.e., \$7,500 loss - \$2,500 deductible = \$5,000).

The most we will pay for this loss is \$5,000.

**Example Number 2**

The Insured sustained a covered loss of \$250,000 resulting directly from an "occurrence" taking place during the terms of Policy A and Policy B.

**Policy A**

The current policy. Written at a Limit of Insurance of \$125,000 and a Deductible Amount of \$10,000.

### Policy B

Issued prior to Policy A. Written at a Limit of Insurance of \$150,000 and a Deductible Amount of \$25,000.

#### Settlement Of Loss

The amount of loss sustained under Policy A is \$175,000 and under Policy B, \$75,000.

The highest single Limit of Insurance applicable to this entire loss is \$150,000 written under Policy B. The Policy A Deductible Amount of \$10,000 applies. The loss is settled as follows:

- (a) The amount of loss sustained under Policy A (\$175,000) is settled first. The amount we will pay is the Policy A Limit of \$125,000 because \$175,000 loss - \$10,000 deductible = \$165,000, which is greater than the \$125,000 policy limit.
- (b) The remaining amount of loss sustained under Policy B (\$75,000) is settled next. The amount we will pay is \$25,000 (i.e., \$150,000 Policy B limit - \$125,000 paid under Policy A = \$25,000).

The most we will pay for this loss is \$150,000.

### Example Number 3

The Insured sustained a covered loss of \$2,000,000 resulting directly from an "occurrence" taking place during the terms of Policies A, B, C and D.

#### Policy A

The current policy. Written at a Limit of Insurance of \$1,000,000 and a Deductible Amount of \$100,000.

#### Policy B

Issued prior to Policy A. Written at a Limit of Insurance of \$750,000 and a Deductible Amount of \$75,000.

#### Policy C

Issued prior to Policy B. Written at a Limit of Insurance of \$500,000 and a Deductible Amount of \$50,000.

#### Policy D

Issued prior to Policy C. Written at a Limit of Insurance of \$500,000 and a Deductible Amount of \$50,000.

### Settlement Of Loss

The amount of loss sustained under Policy A is \$350,000; under Policy B, \$250,000; under Policy C, \$600,000; and under Policy D, \$800,000.

The highest single Limit of Insurance applicable to this entire loss is \$1,000,000 written under Policy A. The Policy A Deductible Amount of \$100,000 applies. The loss is settled as follows:

- (a) The amount of loss sustained under Policy A (\$350,000) is settled first. The amount we will pay is \$250,000 (i.e., \$350,000 loss - \$100,000 deductible = \$250,000).
- (b) The amount of loss sustained under Policy B (\$250,000) is settled next. The amount we will pay is \$250,000 (no deductible is applied).
- (c) The amount of loss sustained under Policy C (\$600,000) is settled next. The amount we will pay is \$500,000, the policy limit (no deductible is applied).
- (d) We will not make any further payment under Policy D, as the maximum amount payable under the highest single Limit of Insurance applying to the loss of \$1,000,000 under Policy A has been satisfied.

The most we will pay for this loss is \$1,000,000.

### I. Loss Sustained During Prior Insurance Not Issued By Us Or Any Affiliate

- (1) If you "discover" loss during the Policy Period shown in the Declarations, resulting directly from an "occurrence" taking place during the policy period of any prior cancelled insurance that was issued to you or a predecessor in interest by another company, and the period of time to discover loss under that insurance had expired, we will pay for the loss under this insurance, provided:
  - (a) This insurance became effective at the time of cancellation of the prior insurance; and
  - (b) The loss would have been covered under this insurance had it been in effect at the time of the "occurrence".

(2) In settling loss subject to this condition:

(a) The most we will pay for the entire loss is the lesser of the Limits of Insurance applicable during the period of loss, whether such limit was written under this insurance or was written under the prior cancelled insurance.

(b) We will apply the applicable Deductible Amount shown in the Declarations to the amount of loss sustained under the prior cancelled insurance.

(3) The insurance provided under this condition is subject to the following:

(a) If loss covered under this condition is also partially covered under Condition E.1.k., the amount recoverable under this condition is part of, not in addition to, the amount recoverable under Condition E.1.k.

(b) For loss covered under this condition that is not subject to Paragraph I.(3)(a), the amount recoverable under this condition is part of, not in addition to, the Limit of Insurance applicable to the loss covered under this insurance and is limited to the lesser of the amount recoverable under:

(i) This insurance as of its effective date; or

(ii) The prior cancelled insurance had it remained in effect.

**m. Other Insurance**

If other valid and collectible insurance is available to you for loss covered under this insurance, our obligations are limited as follows:

**(1) Primary Insurance**

When this insurance is written as primary insurance, and:

(a) You have other insurance subject to the same terms and conditions as this insurance, we will pay our share of the covered loss. Our share is the proportion that the applicable Limit Of Insurance shown in the Declarations bears to the total limit of all insurance covering the same loss.

(b) You have other insurance covering the same loss other than that described in Paragraph m.(1)(a), we will only pay for the amount of loss that exceeds:

(i) The Limit of Insurance and Deductible Amount of that other insurance, whether you can collect on it or not; or

(ii) The Deductible Amount shown in the Declarations;

whichever is greater. Our payment for loss is subject to the terms and conditions of this insurance.

**(2) Excess Insurance**

(a) When this insurance is written excess over other insurance, we will only pay for the amount of loss that exceeds the Limit of Insurance and Deductible Amount of that other insurance, whether you can collect on it or not. Our payment for loss is subject to the terms and conditions of this insurance.

(b) However, if loss covered under this insurance is subject to a deductible, we will reduce the Deductible Amount shown in the Declarations by the sum total of all such other insurance plus any Deductible Amount applicable to that other insurance.

**n. Ownership Of Property; Interests Covered**

The property covered under this insurance is limited to property:

(1) That you own or lease;

(2) That is held by you in any capacity; or

(3) For which you are legally liable, provided you were liable for the property prior to the time the loss was sustained.

However, this insurance is for your benefit only. It provides no rights or benefits to any other person or organization. Any claim for loss that is covered under this insurance must be presented by you.

**o. Records**

You must keep records of all property covered under this insurance so we can verify the amount of any loss.

**p. Recoveries**

(1) Any recoveries, whether effected before or after any payment under this insurance, whether made by us or by you, shall be applied net of the expense of such recovery:

- (a) First, to you in satisfaction of your covered loss in excess of the amount paid under this insurance;
- (b) Second, to us in satisfaction of amounts paid in settlement of your claim;
- (c) Third, to you in satisfaction of any Deductible Amount; and
- (d) Fourth, to you in satisfaction of any loss not covered under this insurance.

(2) Recoveries do not include any recovery:

- (a) From insurance, suretyship, reinsurance, security or indemnity taken for our benefit; or
- (b) Of original "securities" after duplicates of them have been issued.

**q. Territory**

This insurance covers loss that you sustain resulting directly from an "occurrence" taking place within the United States of America (including its territories and possessions), Puerto Rico and Canada.

**r. Transfer Of Your Rights Of Recovery Against Others To Us**

You must transfer to us all your rights of recovery against any person or organization for any loss you sustained and for which we have paid or settled. You must also do everything necessary to secure those rights and do nothing after loss to impair them.

**s. Valuation - Settlement**

The value of any loss for purposes of coverage under this insurance shall be determined as follows:

**(1) Money**

Loss of "money" but only up to and including its face value. We will, at your option, pay for loss of "money" issued by any country other than the United States of America:

- (a) At face value in the "money" issued by that country; or

(b) In the United States of America dollar equivalent, determined by the rate of exchange published in The Wall Street Journal on the day the loss was "discovered".

**(2) Securities**

Loss of "securities" but only up to and including their value at the close of business on the day the loss was "discovered". We may, at our option:

- (a) Pay the market value of such "securities" or replace them in kind, in which event you must assign to us all your rights, title and interest in and to those "securities"; or
- (b) Pay the cost of any Lost Securities Bond required in connection with issuing duplicates of the "securities". However, we will be liable only for the payment of so much of the cost of the bond as would be charged for a bond having a penalty not exceeding the lesser of the:
  - (i) Market value of the "securities" at the close of business on the day the loss was "discovered"; or
  - (ii) Limit of Insurance applicable to the "securities".

**(3) Property Other Than Money And Securities**

- (a) Loss of or damage to "other property" or loss from damage to the "premises" or its exterior for the replacement cost of the property without deduction for depreciation. However, we will not pay more than the least of the following:
  - (i) The Limit of Insurance applicable to the lost or damaged property;
  - (ii) The cost to replace the lost or damaged property with property of comparable material and quality and used for the same purpose; or
  - (iii) The amount you actually spend that is necessary to repair or replace the lost or damaged property.

(b) We will not pay on a replacement cost basis for any loss or damage to property covered under Paragraph s.(3)(a):

- (i) Until the lost or damaged property is actually repaired or replaced; and
- (ii) Unless the repair or replacement is made as soon as reasonably possible after the loss or damage.

If the lost or damaged property is not repaired or replaced, we will pay on an actual cash value basis.

(c) We will, at your option, pay for loss or damage to such property:

- (i) In the "money" of the country in which the loss or damage was sustained; or
- (ii) In the United States of America dollar equivalent of the "money" of the country in which the loss or damage was sustained, determined by the rate of exchange published in The Wall Street Journal on the day the loss was "discovered".

(d) Any property that we pay for or replace becomes our property.

## 2. Conditions Applicable To Insuring Agreement A.1.

### a. Termination As To Any Employee

This Insuring Agreement terminates as to any "employee":

(1) As soon as:

- (a) You; or
- (b) Any of your partners, "members", "managers", officers, directors or trustees not in collusion with the "employee";

learn of "theft" or any other dishonest act committed by the "employee" whether before or after becoming employed by you; or

(2) On the date specified in a notice mailed to the first Named Insured. That date will be at least 30 days after the date of mailing.

We will mail or deliver our notice to the first Named Insured's last mailing address known to us. If notice is mailed, proof of mailing will be sufficient proof of notice.

### b. Territory

We will pay for loss caused by any "employee" while temporarily outside the territory specified in Territory Condition E.1.q. for a period of not more than 90 consecutive days.

## 3. Conditions Applicable To Insuring Agreement A.2.

### a. Deductible Amount

The Deductible Amount does not apply to legal expenses paid under Insuring Agreement A.2.

### b. Electronic And Mechanical Signatures

We will treat signatures that are produced or reproduced electronically, mechanically or by other means the same as handwritten signatures.

### c. Proof Of Loss

You must include with your proof of loss any instrument involved in that loss or, if that is not possible, an affidavit setting forth the amount and cause of loss.

### d. Territory

We will cover loss that you sustain resulting directly from an "occurrence" taking place anywhere in the world. Territory Condition E.1.q. does not apply to Insuring Agreement A.2.

## 4. Conditions Applicable To Insuring Agreements A.4. And A.5.

### a. Armored Motor Vehicle Companies

Under Insuring Agreement A.5., we will only pay for the amount of loss you cannot recover:

- (1) Under your contract with the armored motor vehicle company; and
- (2) From any insurance or indemnity carried by, or for the benefit of customers of, the armored motor vehicle company.

### b. Special Limit Of Insurance For Specified Property

We will only pay up to \$5,000 for any one "occurrence" of loss of or damage to:

- (1) Precious metals, precious or semiprecious stones, pearls, furs, or completed or partially completed articles made of or containing such materials that constitute the principal value of such articles; or

- (2) Manuscripts, drawings, or records of any kind, or the cost of reconstructing them or reproducing any information contained in them.

**5. Conditions Applicable To Insuring Agreement A.6.**

**a. Special Limit Of Insurance For Specified Property**

We will only pay up to \$5,000 for any one "occurrence" of loss of or damage to manuscripts, drawings, or records of any kind, or the cost of reconstructing them or reproducing any information contained in them.

**b. Territory**

We will cover loss that you sustain resulting directly from an "occurrence" taking place anywhere in the world. Territory Condition **E.1.q.** does not apply to Insuring Agreement **A.6.**

**F. Definitions**

- 1. "Computer program" means a set of related electronic instructions, which direct the operation and function of a computer or devices connected to it, which enable the computer or devices to receive, process, store or send "electronic data".
- 2. "Computer system" means:
  - a. Computers, including Personal Digital Assistants (PDAs) and other transportable or handheld devices, electronic storage devices and related peripheral components;
  - b. Systems and applications software; and
  - c. Related communications networks; by which "electronic data" is collected, transmitted, processed, stored or retrieved.
- 3. "Counterfeit money" means an imitation of "money" which is intended to deceive and to be taken as genuine.
- 4. "Custodian" means you, or any of your partners or "members", or any "employee" while having care and custody of property inside the "premises", excluding any person while acting as a "watchperson" or janitor.
- 5. "Discover" or "discovered" means the time when you first become aware of facts which would cause a reasonable person to assume that a loss of a type covered by this insurance has been or will be incurred, regardless of when the act or acts causing or contributing to such loss occurred, even though the exact amount or details of loss may not then be known.

"Discover" or "discovered" also means the time when you first receive notice of an actual or potential claim in which it is alleged that you are liable to a third party under circumstances which, if true, would constitute a loss under this insurance.

- 6. "Electronic data" means information, facts, images or sounds stored as or on, created or used on, or transmitted to or from computer software (including systems and applications software) on data storage devices, including hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment

**7. "Employee":**

**a. Means:**

**(1) Any natural person:**

- (a) While in your service and for the first 30 days immediately after termination of service, unless such termination is due to "theft" or any dishonest act committed by the "employee";
- (b) Whom you compensate directly by salary, wages or commissions; and
- (c) Whom you have the right to direct and control while performing services for you;

**(2) Any natural person who is furnished temporarily to you:**

- (a) To substitute for a permanent "employee", as defined in Paragraph **7.a.(1)**, who is on leave; or
- (b) To meet seasonal or short-term work load conditions;

while that person is subject to your direction and control and performing services for you;

**(3) Any natural person who is leased to you under a written agreement between you and a labor leasing firm, to perform duties related to the conduct of your business, but does not mean a temporary "employee" as defined in Paragraph **7.a.(2)**;**

**(4) Any natural person who is:**

- (a) A trustee, officer, employee, administrator or manager, except an administrator or manager who is an independent contractor, of any "employee benefit plan"; or

- (b) Your director or trustee while that person is engaged in handling "money", "securities" or "other property" of any "employee benefit plan";
  - (5) Any natural person who is a former "employee", partner, "member", "manager", director or trustee retained by you as a consultant while performing services for you;
  - (6) Any natural person who is a guest student or intern pursuing studies or duties;
  - (7) Any natural person employed by an entity merged or consolidated with you prior to the effective date of this insurance; and
  - (8) Any natural person who is your "manager", director or trustee while:
    - (a) Performing acts within the scope of the usual duties of an "employee"; or
    - (b) Acting as a member of any committee duly elected or appointed by resolution of your board of directors or board of trustees to perform specific, as distinguished from general, directorial acts on your behalf.
- b. Does not mean:
- Any agent, broker, factor, commission merchant, consignee, independent contractor or representative of the same general character not specified in Paragraph 7.a.
8. "Employee benefit plan" means any welfare or pension benefit plan shown in the Declarations that you sponsor and that is subject to the Employee Retirement Income Security Act of 1974 (ERISA) and any amendments thereto.
9. "Financial institution" means:
- a. With regard to Insuring Agreement A.3.:
    - (1) A bank, savings bank, savings and loan association, trust company, credit union or similar depository institution; or
    - (2) An insurance company.
  - b. With regard to Insuring Agreement A.6.:
    - (1) A bank, savings bank, savings and loan association, trust company, credit union or similar depository institution;
    - (2) An insurance company; or
    - (3) A stock brokerage firm or investment company.
- c. Other than Insuring Agreements A.3. and A.6., any financial institution.
10. "Financial institution premises" means the interior of that portion of any building occupied by a "financial institution" as defined in Paragraph F.9.a.
11. "Forgery" means the signing of the name of another person or organization with intent to deceive; it does not mean a signature which consists in whole or in part of one's own name signed with or without authority, in any capacity, for any purpose.
12. "Fraudulent instruction" means:
- a. With regard to Insuring Agreement A.6.a.(2):
    - (1) A computer, telefacsimile, telephone or other electronic instruction directing a "financial institution" to debit your "transfer account" and to transfer, pay or deliver "money" or "securities" from that "transfer account", which instruction purports to have been issued by you, but which in fact was fraudulently issued by someone else without your knowledge or consent; or
    - (2) A written instruction (other than those covered under Insuring Agreement A.2.) issued to a "financial institution" directing the "financial institution" to debit your "transfer account" and to transfer, pay or deliver "money" or "securities" from that "transfer account", through an electronic funds transfer system at specified times or under specified conditions, which instruction purports to have been issued by you, but which in fact was issued, forged or altered by someone else without your knowledge or consent.
  - b. With regard to Insuring Agreement A.6.b.:
 

A computer, telefacsimile, telephone or other electronic, written or voice instruction directing an "employee" to enter or change "electronic data" or "computer programs" within a "computer system" covered under the Insuring Agreement, which instruction in fact was fraudulently issued by your computer software contractor.
13. "Manager" means a natural person serving in a directorial capacity for a limited liability company.
14. "Member" means an owner of a limited liability company represented by its membership interest who, if a natural person, may also serve as a "manager".

15. "Messenger" means you, or your relative, or any of your partners or "members", or any "employee" while having care and custody of property outside the "premises".
16. "Money" means:
- a. Currency, coins and bank notes in current use and having a face value;
  - b. Traveler's checks and money orders held for sale to the public; and
  - c. In addition, includes:
    - (1) Under Insuring Agreements **A.1.** and **A.2.**, deposits in your account at any financial institution; and
    - (2) Under Insuring Agreement **A.6.**, deposits in your account at a "financial institution" as defined in Paragraph **F.9.b.**
17. "Occurrence" means:
- a. Under Insuring Agreement **A.1.:**
    - (1) An individual act;
    - (2) The combined total of all separate acts whether or not related; or
    - (3) A series of acts whether or not related; committed by an "employee" acting alone or in collusion with other persons, during the Policy Period shown in the Declarations, except as provided under Condition **E.1.k.** or **E.1.l.**
  - b. Under Insuring Agreement **A.2.:**
    - (1) An individual act;
    - (2) The combined total of all separate acts whether or not related; or
    - (3) A series of acts whether or not related; committed by a person acting alone or in collusion with other persons, involving one or more instruments, during the Policy Period shown in the Declarations, except as provided under Condition **E.1.k.** or **E.1.l.**
  - c. Under all other Insuring Agreements:
    - (1) An individual act or event;
    - (2) The combined total of all separate acts or events whether or not related; or
    - (3) A series of acts or events whether or not related; committed by a person acting alone or in collusion with other persons, or not committed by any person, during the Policy Period shown in the Declarations, except as provided under Condition **E.1.k.** or **E.1.l.**
18. "Other property" means any tangible property other than "money" and "securities" that has intrinsic value. "Other property" does not include "computer programs", "electronic data" or any property specifically excluded under this insurance.
19. "Premises" means the interior of that portion of any building you occupy in conducting your business.
20. "Robbery" means the unlawful taking of property from the care and custody of a person by one who has:
- a. Caused or threatened to cause that person bodily harm; or
  - b. Committed an obviously unlawful act witnessed by that person.
21. "Safe burglary" means the unlawful taking of:
- a. Property from within a locked safe or vault by a person unlawfully entering the safe or vault as evidenced by marks of forcible entry upon its exterior; or
  - b. A safe or vault from inside the "premises".
22. "Securities" means negotiable and nonnegotiable instruments or contracts representing either "money" or property and includes:
- a. Tokens, tickets, revenue and other stamps (whether represented by actual stamps or unused value in a meter) in current use; and
  - b. Evidences of debt issued in connection with credit or charge cards, which cards are not issued by you; but does not include "money".
23. "Theft" means the unlawful taking of property to the deprivation of the Insured.
24. "Transfer account" means an account maintained by you at a "financial institution" from which you can initiate the transfer, payment or delivery of "money" or "securities":
- a. By means of computer, telefacsimile, telephone or other electronic instructions; or
  - b. By means of written instructions (other than those covered under Insuring Agreement **A.2.**) establishing the conditions under which such transfers are to be initiated by such "financial institution" through an electronic funds transfer system.
25. "Watchperson" means any person you retain specifically to have care and custody of property inside the "premises" and who has no other duties.



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

## **NEW YORK CHANGES**

This endorsement modifies insurance provided under the following:

COMMERCIAL CRIME COVERAGE FORM  
COMMERCIAL CRIME POLICY  
EMPLOYEE THEFT AND FORGERY POLICY  
GOVERNMENT CRIME COVERAGE FORM  
GOVERNMENT CRIME POLICY  
GOVERNMENT EMPLOYEE THEFT AND FORGERY POLICY

**A. The following is added to Exclusion D.1.b. Acts Committed By Your Employees Learned Of By You Prior To The Policy Period:**

However, this Paragraph **D.1.b.** does not apply to an "employee" who was convicted of one or more criminal offenses in this state or any other jurisdiction prior to becoming employed by you if, after learning about the "employee's" past criminal conviction or convictions, you made a determination to hire or retain the "employee" utilizing the factors set out in New York Correction Law Article 23-A.

**B. Under Section E. Conditions:**

1. The following condition is added to Paragraph 1. **Conditions Applicable To All Insuring Agreements:**

**Estimation Of Claims**

Upon request, we will furnish you, or your representative, with a written estimate of damages to real property, specifying all deductions, provided such an estimate has been prepared by us or has been prepared on our behalf for our own purposes. This estimate will be provided within 30 days after your request or its preparation, whichever is later.

2. Paragraph (1) of the **Termination As To Any Employee** Condition is replaced by the following and supersedes any provision in this condition to the contrary:

This insurance terminates as to any "employee":

(1) As soon as:

(a) You; or

(b) Any of your partners, "members", "managers", officers, directors or trustees not in collusion with the "employee";

learn of "theft" or any other dishonest act committed by the "employee" whether before or after becoming employed by you.

However, this Paragraph (1) does not apply to an "employee" whose "theft" or other dishonest act was committed prior to becoming employed by you and which resulted in the "employee" being convicted of one or more criminal offenses in this state or any other jurisdiction, if, after learning about the "employee's" past criminal conviction or convictions, you made a determination to hire or retain the "employee" utilizing the factors set out in New York Correction Law Article 23-A; or

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## NEW YORK CHANGES - FRAUD

This endorsement modifies insurance provided under the following:

COMMERCIAL CRIME COVERAGE FORM  
COMMERCIAL CRIME POLICY  
EMPLOYEE THEFT AND FORGERY POLICY  
GOVERNMENT CRIME COVERAGE FORM  
GOVERNMENT CRIME POLICY  
GOVERNMENT EMPLOYEE THEFT AND FORGERY POLICY  
KIDNAP/RANSOM AND EXTORTION COVERAGE FORM  
KIDNAP/RANSOM AND EXTORTION POLICY

The **Concealment, Misrepresentation Or Fraud**  
Condition is replaced by the following:

### **Fraud**

We do not provide coverage for any insured who has made fraudulent statements or engaged in fraudulent conduct in connection with any loss or damage for which coverage is sought under this Policy.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## U.S. DEPARTMENT OF LABOR- ERISA PLAN COVERAGE AMENDMENTS

This endorsement modifies insurance provided under the following:

COMMERCIAL CRIME COVERAGE FORM  
COMMERCIAL CRIME POLICY  
EMPLOYEE THEFT AND FORGERY POLICY

With regard to coverage provided for "employee benefit plans", the provisions of the Coverage Form or Policy to which this endorsement is attached apply, unless modified by this endorsement.

### A. Under Section D. Exclusions:

#### 1. In Section D.1.:

- a. The **Acts Committed By You, Your Partners Or Your Members** Exclusion is replaced by the following:

#### **Acts Committed By You, Your Partners Or Your Members**

Loss resulting from "theft" or any other dishonest or fraudulent act committed by:

- (1) You; or
- (2) Any of your partners or "members"; whether acting alone or in collusion with other persons, except while handling "money", "securities" or "other property" of an "employee benefit plan".

- b. The **Confidential Or Personal Information** Exclusion is replaced by the following:

#### **Confidential Or Personal Information**

Loss resulting from:

- (1) The disclosure or use of another person's or organization's confidential or personal information, except as provided in Paragraph (2).
- (2) The disclosure of your or an "employee benefit plan" participant's confidential or personal information. However, this Paragraph (2) does not apply to loss otherwise covered under Insuring Agreement A.1. that results directly from the use of your or an "employee benefit plan" participant's confidential or personal information.

For the purposes of this exclusion, confidential or personal information includes, but is not limited to, patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information, retirement or health savings account information or any other type of nonpublic information.

#### 2. In Section D.2.:

- a. The **Trading** Exclusion is deleted.
- b. The **Warehouse Receipts** Exclusion is deleted.

- B. Paragraph (2) of the **Employee Benefit Plans** Condition is replaced by the following:

- (2) With respect to loss sustained or "discovered" by any such Plan, Insuring Agreement A.1. is replaced by the following:

We will pay for loss of or damage to "money", "securities" and "other property" resulting directly from fraudulent or dishonest acts committed by an "employee" whether identified or not, sole proprietor, partner or "member" acting alone or in collusion with other persons while such "employee", sole proprietor, partner or "member" is handling "money", "securities" or "other property" of an "employee benefit plan".

- C. Paragraph a. of the definition of "occurrence" is replaced by the following:

- a. Under Insuring Agreement A.1.:
  - (1) An individual act;
  - (2) The combined total of all separate acts whether or not related; or
  - (3) A series of acts whether or not related;

committed by an "employee", sole proprietor, partner or "member" acting alone or in collusion with other persons, during the Policy Period shown in the Declarations, before such Policy Period or both.

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

## **NEW YORK CHANGES - CANCELLATION AND NONRENEWAL**

This endorsement modifies insurance provided under the following:

CAPITAL ASSETS PROGRAM (OUTPUT POLICY) COVERAGE PART  
COMMERCIAL GENERAL LIABILITY COVERAGE PART  
COMMERCIAL INLAND MARINE COVERAGE PART  
COMMERCIAL PROPERTY COVERAGE PART  
CRIME AND FIDELITY COVERAGE PART  
EQUIPMENT BREAKDOWN COVERAGE PART  
FARM COVERAGE PART  
LIQUOR LIABILITY COVERAGE PART  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

**A. Paragraphs 1., 2., 3. and 5. of the Cancellation Common Policy Condition are replaced by the following:**

1. The first Named Insured shown in the Declarations may cancel this entire policy by mailing or delivering to us advance written notice of cancellation.

**2. Cancellation Of Policies In Effect**

**a. 60 Days Or Less**

We may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation at least:

- (1) 30 days before the effective date of cancellation if we cancel for any reason not included in Paragraph **A.2.b.** below.
- (2) 15 days before the effective date of cancellation if we cancel for any of the reasons included in Paragraph **A.2.b.** below.

**b. For More Than 60 Days**

If this policy has been in effect for more than 60 days, or if this policy is a renewal or continuation of a policy we issued, we may cancel only for any of the reasons listed below, provided we mail the first Named Insured written notice at least 15 days before the effective date of cancellation:

- (1) Nonpayment of premium, provided however, that a notice of cancellation on this ground shall inform the first Named Insured of the amount due;

(2) Conviction of a crime arising out of acts increasing the hazard insured against;

(3) Discovery of fraud or material misrepresentation in the obtaining of the policy or in the presentation of a claim;

(4) After issuance of the policy or after the last renewal date, discovery of an act or omission, or a violation of any policy condition, that substantially and materially increases the hazard insured against, and which occurred subsequent to inception of the current policy period;

(5) Material physical change in the property insured, occurring after issuance or last annual renewal anniversary date of the policy, which results in the property becoming uninsurable in accordance with our objective, uniformly applied underwriting standards in effect at the time the policy was issued or last renewed; or material change in the nature or extent of the risk, occurring after issuance or last annual renewal anniversary date of the policy, which causes the risk of loss to be substantially and materially increased beyond that contemplated at the time the policy was issued or last renewed;

(6) Required pursuant to a determination by the Superintendent that continuation of our present premium volume would jeopardize our solvency or be hazardous to the interest of our policyholders, our creditors or the public;

(7) A determination by the Superintendent that the continuation of the policy would violate, or would place us in violation of, any provision of the Insurance Code; or

(8) Where we have reason to believe, in good faith and with sufficient cause, that there is a probable risk of danger that the insured will destroy, or permit to be destroyed, the insured property for the purpose of collecting the insurance proceeds. If we cancel for this reason, you may make a written request to the Department of Financial Services, within 10 days of receipt of this notice, to review our cancellation decision. Also, we will simultaneously send a copy of this cancellation notice to the Department of Financial Services.

3. We will mail or deliver our notice, including the reason for cancellation, to the first Named Insured at the address shown in the policy and to the authorized agent or broker.
5. If this policy is cancelled, we will send the first Named Insured any premium refund due. If we cancel, the refund will be pro rata. If the first Named Insured cancels, the refund may be less than pro rata.

However, when the premium is advanced under a premium finance agreement, the cancellation refund will be pro rata. Under such financed policies, we will be entitled to retain a minimum earned premium of 10% of the total policy premium or \$60, whichever is greater. The cancellation will be effective even if we have not made or offered a refund.

**B. The following is added to the Cancellation Common Policy Condition:**

7. If one of the reasons for cancellation in Paragraph **A.2.b.** or **D.2.b.(2)** exists, we may cancel this entire policy, even if the reason for cancellation pertains only to a new coverage or endorsement initially effective subsequent to the original issuance of this policy.

**C. The following conditions are added:**

**1. Nonrenewal**

If we decide not to renew this policy we will send notice as provided in Paragraph **C.3.** below.

**2. Conditional Renewal**

If we conditionally renew this policy subject to:

- a. A change of limits;

- b. A change in type of coverage;
- c. A reduction of coverage;
- d. An increased deductible;
- e. An addition of exclusion; or
- f. Increased premiums in excess of 10%, exclusive of any premium increase due to and commensurate with insured value added or increased exposure units; or as a result of experience rating, loss rating, retrospective rating or audit;

we will send notice as provided in Paragraph **C.3.** below.

**3. Notices Of Nonrenewal And Conditional Renewal**

- a. If we decide not to renew this policy or to conditionally renew this policy as provided in Paragraphs **C.1.** and **C.2.** above, we will mail or deliver written notice to the first Named Insured shown in the Declarations at least 60 but not more than 120 days before:

(1) The expiration date; or

(2) The anniversary date if this is a continuous policy.

- b. Notice will be mailed or delivered to the first Named Insured at the address shown in the policy and to the authorized agent or broker. If notice is mailed, proof of mailing will be sufficient proof of notice.

- c. Notice will include the specific reason(s) for nonrenewal or conditional renewal, including the amount of any premium increase for conditional renewal and description of any other changes.

- d. If we violate any of the provisions of Paragraph **C.3.a., b.** or **c.** above by sending the first Named Insured an incomplete or late conditional renewal notice or a late nonrenewal notice:

(1) And if notice is provided prior to the expiration date of this policy, coverage will remain in effect at the same terms and conditions of this policy at the lower of the current rates or the prior period's rates until 60 days after such notice is mailed or delivered, unless the first Named Insured, during this 60-day period, has replaced the coverage or elects to cancel;

(2) And if the notice is provided on or after the expiration date of this policy, coverage will remain in effect at the same terms and conditions of this policy for another policy period, at the lower of the current rates or the prior period's rates, unless the first Named Insured, during this additional policy period, has replaced the coverage or elects to cancel.

e. If you elect to renew on the basis of a late conditional renewal notice, the terms, conditions and rates set forth in such notice shall apply:

(1) Upon expiration of the 60-day period, unless Subparagraph (2) below applies; or

(2) Notwithstanding the provisions in Paragraphs d.(1) and d.(2), as of the renewal date of the policy if the conditional renewal notice was sent at least 30 days prior to the expiration or anniversary date of the policy.

f. We will not send you notice of nonrenewal or conditional renewal if you, your authorized agent or broker or another insurer of yours mails or delivers notice that the policy has been replaced or is no longer desired.

D. The following provisions apply when the Commercial Property Coverage Part, the Farm Coverage Part or the Capital Assets Program (Output Policy) Coverage Part is made a part of this policy:

1. Items D.2. and D.3. apply if this policy meets the following conditions:

a. The policy is issued or issued for delivery in New York State covering property located in this state; and

b. The policy insures:

(1) For loss of or damage to structures, other than hotels or motels, used predominantly for residential purposes and consisting of no more than four dwelling units; or

(2) For loss of or damage to personal property other than farm personal property or business property; or

(3) Against damages arising from liability for loss of, damage to or injury to persons or property, except liability arising from business or farming; and

c. The portion of the annual premium attributable to the property and contingencies described in 1.b. exceeds the portion applicable to other property and contingencies.

2. Paragraph 2. of the **Cancellation** Common Policy Condition is replaced by the following:

**2. Procedure And Reasons For Cancellation**

a. We may cancel this entire policy by mailing or delivering to the first Named Insured written notice of cancellation at least:

(1) 15 days before the effective date of cancellation if we cancel for nonpayment of premium, provided however, that a notice of cancellation on this ground shall inform the first Named Insured of the amount due; or

(2) 30 days before the effective date of cancellation if we cancel for any other reason.

b. But if this policy:

(1) Has been in effect for more than 60 days; or

(2) Is a renewal of a policy we issued;

we may cancel this policy only for one or more of the following reasons:

(1) Nonpayment of premium, provided however, that a notice of cancellation on this ground shall inform the first Named Insured of the amount due;

(2) Conviction of a crime arising out of acts increasing the risk of loss;

(3) Discovery of fraud or material misrepresentation in obtaining the policy or in making a claim;

(4) Discovery of willful or reckless acts or omissions increasing the risk of loss;

(5) Physical changes in the covered property that make that property uninsurable in accordance with our objective and uniformly applied underwriting standards in effect when we:

(a) Issued the policy; or

(b) Last voluntarily renewed the policy;

(6) The Superintendent of Financial Services' determination that continuing the policy would violate Chapter 28 of the Insurance Law; or

(7) Required pursuant to a determination by the Superintendent of Financial Services that the continuation of our present premium volume would be hazardous to the interests of our policyholders, our creditors or the public.

3. The following are added:

**a. Conditional Continuation**

Instead of cancelling this policy, we may continue it on the condition that:

- (1) The policy limits be changed; or
- (2) Any coverage not required by law be eliminated.

If this policy is conditionally continued, we will mail or deliver to the first Named Insured written notice at least 20 days before the effective date of the change or elimination. We will mail or deliver our notice to the first Named Insured's last mailing address known to us. If notice is mailed, proof of mailing will be sufficient proof of notice. Delivery of the notice will be the same as mailing.

**b. Nonrenewal**

If, as allowed by the laws of New York State, we:

- (1) Do not renew this policy; or
- (2) Condition policy renewal upon:
  - (a) Change of limits; or
  - (b) Elimination of coverage;

we will mail or deliver written notice of nonrenewal or conditional renewal:

- (a) At least 45 days; but
- (b) Not more than 60 days;

before the expiration date of the policy. We will mail or deliver our notice to the first Named Insured's last mailing address known to us. If notice is mailed, proof of mailing will be sufficient proof of notice. Delivery of the notice will be the same as mailing.

E. The following is added to the Farm Property - Other Farm Provisions Form - Additional Coverages, Conditions, Definitions, the Commercial Property Coverage Part and the Capital Assets Program (Output Policy) Coverage Part:

When the property is subject to the Anti- arson Application in accordance with New York Department of Financial Services' Insurance Regulation No. 96, the following provisions are added:

If you fail to return the completed, signed and affirmed anti-arson application to us:

1. Or our broker or agent within 45 days of the effective date of a new policy, we will cancel the entire policy by giving 20 days' written notice to you and to the mortgageholder shown in the Declarations.
2. Before the expiration date of any policy, we will cancel the policy by giving written notice to you and to the mortgageholder shown in the Declarations at least 15 days before the effective date of cancellation.

The cancellation provisions set forth in E.1. and E.2. above supersede any contrary provisions in this policy including this endorsement.

If the notice in E.1. or E.2. above is mailed, proof of mailing will be sufficient proof of notice. Delivery of the notice will be the same as mailing.

F. The following applies to the Commercial Property Coverage Part, the Farm Coverage Part and the Capital Assets Program (Output Policy) Coverage Part:

Paragraphs f. and g. of the **Mortgageholders** Condition are replaced by the following:

**f. Cancellation**

- (1) If we cancel this policy, we will give written notice to the mortgageholder at least:
  - (a) 10 days before the effective date of cancellation if we cancel for your nonpayment of premium; or
  - (b) 30 days before the effective date of cancellation if we cancel for any other reason.



(2) If you cancel this policy, we will give written notice to the mortgageholder. With respect to the mortgageholder's interest only, cancellation will become effective on the later of:

- (a) The effective date of cancellation of the insured's coverage; or
- (b) 10 days after we give notice to the mortgageholder.

**g. Nonrenewal**

(1) If we elect not to renew this policy, we will give written notice to the mortgageholder at least 10 days before the expiration date of this policy.

(2) If you elect not to renew this policy, we will give written notice to the mortgageholder. With respect to the mortgageholder's interest only, nonrenewal will become effective on the later of:

- (a) The expiration date of the policy; or
- (b) 10 days after we give notice to the mortgageholder.

**G.** The following provisions apply when the following are made a part of this policy:

Commercial General Liability Coverage Part  
Employment-Related Practices Liability Coverage Part  
Farm Liability Coverage Form  
Liquor Liability Coverage Part  
Products/Completed Operations Liability Coverage Part

- 1. The aggregate limits of this policy as shown in the Declarations will be increased in proportion to any policy extension provided in accordance with Paragraph C.3.d. above.
- 2. The last sentence of Limits Of Insurance does not apply when the policy period is extended because we sent the first Named Insured an incomplete or late conditional renewal notice or a late nonrenewal notice.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## EXCLUSION OF CERTAIN COMPUTER-RELATED LOSSES

This endorsement modifies insurance provided under the following:

COMMERCIAL INLAND MARINE COVERAGE PART  
COMMERCIAL PROPERTY COVERAGE PART  
CRIME AND FIDELITY COVERAGE PART  
STANDARD PROPERTY POLICY

- A.** We will not pay for loss ("loss") or damage caused directly or indirectly by the following. Such loss ("loss") or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss ("loss") or damage.
- 1.** The failure, malfunction or inadequacy of:
    - a.** Any of the following, whether belonging to any insured or to others:
      - (1) Computer hardware, including micro-processors;
      - (2) Computer application software;
      - (3) Computer operating systems and related software;
      - (4) Computer networks;
      - (5) Microprocessors (computer chips) not part of any computer system; or
      - (6) Any other computerized or electronic equipment or components; or
    - b.** Any other products, and any services, data or functions that directly or indirectly use or rely upon, in any manner, any of the items listed in Paragraph **A.1.a.** of this endorsement;
 

due to the inability to correctly recognize, process, distinguish, interpret or accept one or more dates or times. An example is the inability of computer software to recognize the year 2000.
  - 2.** Any advice, consultation, design, evaluation, inspection, installation, maintenance, repair, replacement or supervision provided or done by you or for you to determine, rectify or test for, any potential or actual problems described in Paragraph **A.1.** of this endorsement.
- B.** If an excluded Cause of Loss as described in Paragraph **A.** of this endorsement results:
- 1.** In a Covered Cause of Loss under the Crime and Fidelity Coverage Part, the Commercial Inland Marine Coverage Part or the Standard Property Policy; or
  - 2.** Under the Commercial Property Coverage Part:
    - a.** In a "Specified Cause of Loss", or in elevator collision resulting from mechanical breakdown, under the Causes of Loss - Special Form; or
    - b.** In a Covered Cause of Loss under the Causes Of Loss - Basic Form or the Causes Of Loss - Broad Form;
 

we will pay only for the loss ("loss") or damage caused by such "Specified Cause of Loss", elevator collision, or Covered Cause of Loss.
- C.** We will not pay for repair, replacement or modification of any items in Paragraphs **A.1.a.** and **A.1.b.** of this endorsement to correct any deficiencies or change any features.



## ENVIRONMENTAL COMPLIANCE AND INDEMNIFICATION AGREEMENT

**THIS ENVIRONMENTAL COMPLIANCE AND INDEMNIFICATION AGREEMENT** (the "**Agreement**") is made as of the 1<sup>st</sup> day of September, 2019, among **ALAN BYER AUTO SALES, INC.** ("**Alan Sales**"), **ALAN I. BYER FAMILY TRUST** (the "**Trust**") an Inter Vivos Revocable Trust created pursuant to a Third Amended and Restated Trust Agreement dated October 1, 2015, **STEPHEN G. BYER** ("**Byer**") and **WEST GENESEE REALTY ASSOCIATES, LLC** ("**Realty**" and together with Alan Sales, the Trust and Byer, collectively, the "**Company**"), for the benefit of the **CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY** (the "**Agency**").

### RECITALS

**WHEREAS**, the Agency has undertaken at the request of the Indemnitor, a project (the "**Project**") consisting of: (A)(i) the acquisition of an interest in: (1) approximately 1.89 acres of improved real property bearing tax map number 108.1-02-19 and commonly referred to as 1232-36 West Genesee Street (also known as 1230 West Genesee Street) ("**Parcel 1**"); (2) approximately 3 acres of improved real property bearing tax map number 108.1-02-35.1 and commonly referred to as 1232 West Genesee Street (rear) ("**Parcel 2**"); and (3) approximately 2 acres of improved real property bearing tax map number 108.1-02-20 and commonly referred to as 1288 West Genesee Street ("**Parcel 3**"), each in the City of Syracuse, New York, as more fully described on **Schedule A** annexed hereto (collectively, the "**Land**"); (ii) certain improvements, including but not limited to, an existing approximately 25,820 square foot building located on Parcel 1; an existing approximately 17,000-square foot building located on Parcel 2; and an approximately 34,802 square foot building located on Parcel 3, all of which are served by common driveways, parking, and pedestrian walkways, and all of which comprise the Alan Byer Volvo facility (collectively, the "**Improvements**"); (iii) the renovation to the Improvements and the Land include, but are not limited to, the interior showroom, sales offices and reception areas, external replacement of entry, new exterior wall finishes, updated signage, the existing basement, replacement of an area of deteriorating floor slab, refreshed directional pavement graphics and roof replacement (collectively with the Land and Improvements, the "**Facility**"); (iv) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment (the "**Equipment**" and together with the Land, Improvements and the Facility, the "**Project Facility**"); (B) the granting of certain financial assistance in the form of exemptions from real property tax, State and local sales and use tax and mortgage recording tax (in accordance with Section 874 of the General Municipal Law) (collectively the "**Financial Assistance**"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, reconstruction, renovation, equipping and completion of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement.

**NOW, THEREFORE**, in consideration of the premises, Ten Dollars (\$10.00), and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Indemnitor, intending to be legally bound, hereby agrees as follows:

1. **Recitals; Definitions.**

(a) The foregoing recitals are incorporated into this Agreement by this reference.

(b) Capitalized terms used herein and not otherwise defined shall have the meaning set forth in the Table of Definitions attached to the Agency Lease as Exhibit "C."

2. **Representations and Warranties.**

(a) Except as disclosed in Schedule B annexed hereto, Indemnitor represents and warrants that it has no knowledge of any deposit, storage, disposal, burial, discharge, spillage, uncontrolled loss, seepage or filtration of oil, petroleum or chemical liquids or solids, liquid or gaseous products or any hazardous wastes or hazardous substances at or above levels or in condition requiring investigation, remediation, or other action by any State or federal agency (collectively, "**Hazardous Substances**"), as those terms are used in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 or in any other federal, state or local law governing hazardous substances, as such laws may be amended from time to time (collectively, the "**Hazardous Waste Laws**"), at, upon, under or within the Project Facility or any contiguous real estate, and (ii) it has not caused or permitted to occur, and shall not permit to exist, any condition which may cause a discharge of any Hazardous Substances at, upon, under or within the Project Facility or on any contiguous real estate.

(b) Except as disclosed in the reports listed on Schedule B annexed hereto, Indemnitor further represents and warrants that (i) it has not been nor will be involved in operations at or near the Project Facility which operations could lead to (A) the imposition of liability on Indemnitor or on any subsequent or former owner of the Project Facility or (B) the creation of a lien on the Project Facility under the Hazardous Waste Laws or under any similar laws or regulations; and (ii) it has not permitted, and will not permit, any tenant or occupant of the Project Facility to engage in any activity that could impose liability under the Hazardous Waste Laws on such tenant or occupant, on Agency, the Indemnitor or on any other owner of any of the Project Facility.

3. **Covenants.**

(a) Indemnitor shall comply strictly and in all respects with the requirements of the Hazardous Waste Laws and related regulations and with all similar laws and regulations and shall notify Agency immediately in the event of any discharge or discovery of any Hazardous Substance at, upon, under or within the Project Facility which is not otherwise already disclosed in Schedule B. Indemnitor shall promptly forward to Agency copies of all orders, notices, permits, applications or other communications and reports in connection with any discharge or the presence of any Hazardous Substance or any other matters relating to the Hazardous Waste Laws or any similar laws or regulations, as they may affect the Project Facility.

(b) Promptly upon the written request of Agency, Indemnitor shall provide Agency, at Indemnitor's expense, with an environmental site assessment or environmental audit report prepared by an environmental engineering firm acceptable to the requesting Person, to assess with a reasonable degree of certainty the presence or absence of any Hazardous Substances and the potential costs in connection with abatement, cleanup or removal of any Hazardous Substances found on, under, at or within the Project Facility.

4. **Indemnity.**

(a) Indemnitor shall at all times indemnify and hold harmless Agency against and from any and all claims, suits, actions, debts, damages, costs, losses, obligations, judgments, charges, and expenses, of any nature whatsoever suffered or incurred by Agency, whether as contract vendor, owner, mortgagee, as mortgagee in possession, or as successor-in-interest to Indemnitor by foreclosure deed or deed in lieu of foreclosure, under or on account of the Hazardous Waste Laws or any similar laws or regulations, including the assertion of any lien thereunder, with respect to:

(1) any discharge of Hazardous Substances, the threat of a discharge of any Hazardous Substances, or the presence of any Hazardous Substances affecting the Project Facility whether or not the same originates or emanates from the Project Facility or any contiguous real estate including any loss of value of the Project Facility as a result of any of the foregoing;

(2) any costs of removal or remedial action incurred by the United States Government or any costs incurred by any other person or damages from injury to, destruction of, or loss of natural resources, including reasonable costs of assessing such injury, destruction or loss incurred pursuant to any Hazardous Waste Laws;

(3) liability for personal injury or property damage arising under any statutory or common law tort theory, including, without limitation, damages assessed for the maintenance of a public or private nuisance or for the carrying on of an abnormally dangerous activity at or near the Project Facility; and/or

(4) any other environmental matter affecting the Project Facility within the jurisdiction of the Environmental Protection Agency, any other federal agency, or any state or local agency.

The obligations of Indemnitor under this Agreement shall arise whether or not the Environmental Protection Agency, any other federal agency or any state or local agency has taken or threatened any action in connection with the presence of any Hazardous Substances.

(b) In the event of any discharge of Hazardous Substances, the threat of a discharge of any Hazardous Substances, or the presence of any Hazardous Substances affecting the Project Facility, whether or not the same originates or emanates from the Project Facility or any contiguous real estate, and/or if Indemnitor shall fail to comply with any of the requirements of the Hazardous Waste Laws or related regulations or any other environmental law or regulation, Agency may at its election, but without the obligation so to do, give such notices and/or cause such work to be performed at the Project Facility and/or take any and all other

actions as Agency shall deem necessary or advisable in order to abate the discharge of any Hazardous Substance, remove the Hazardous Substance or cure the noncompliance of Indemnitor.

(c) Indemnitor acknowledges that Agency has relied upon the representations, warranties, covenants and indemnities of Indemnitor in this Agreement. All of the representations, warranties, covenants and indemnities of this Agreement shall survive the repayment of Indemnitor's obligations under the Agency Lease or other Company Documents.

5. **Attorney's Fees.** If Agency retains the services of any attorney in connection with the subject of the indemnity herein, Indemnitor shall pay Agency's costs and reasonable attorneys' fees thereby incurred. Agency may employ an attorney of its own choice.

6. **Interest.** In the event that Agency incurs any obligations, costs or expenses under this Agreement, Indemnitor shall pay such Person on demand, and if such payment is not received within ten (10) days of such demand, interest on such amount shall, after the expiration of the ten-day period, accrue at the interest rate set forth in the Agency Lease until such amount, plus interest, is paid in full.

7. **No Waiver.** Notwithstanding any terms of the Company Documents to the contrary, the liability of Indemnitor under this Agreement shall in no way be limited or impaired by: (i) any extensions of time for performance required by any of the Company Documents; (ii) any sale, assignment or foreclosure of the Agency Lease or any sale or transfer of all or part of the Project Facility; (iii) the accuracy or inaccuracy of the representations and warranties made by Indemnitor under any of the Company Documents; or (iv) the release of Indemnitor or any other person from performance or observance of any of the agreements, covenants, terms or conditions contained in the Company Documents by operation of law, Agency's voluntary act, or otherwise; and, in any such case, whether with or without notice to Indemnitor and with or without consideration.

8. **Waiver by Indemnitor.** Indemnitor waives any right or claim of right to cause a marshalling of Indemnitor's assets or to cause Agency to proceed against any of the security for the Agency Lease before proceeding under this Agreement against Indemnitor or to proceed against Indemnitor in any particular order; Indemnitor agrees that any payments required to be made hereunder shall become due on demand; Indemnitor expressly waives and relinquishes all rights and remedies (including any rights of subrogation) accorded by applicable law to indemnitors or guarantors.

9. **Releases.** Any one or more of Indemnitor and any other party liable upon or in respect of this Agreement or the Agency Lease may be released without affecting the liability of any party not so released.

10. **Amendments.** No provision of this Agreement may be changed, waived, discharged or terminated orally, by telephone or by any other means except by an instrument in writing signed by the party against whom enforcement of the change, waiver, discharge or termination is sought.

11. **Joint and Several Liability.** In the event that this Agreement is executed by more than one party as Indemnitor, the liability of such parties is joint and several. A separate action or actions may be brought and prosecuted against each Indemnitor, whether or not an action is brought against any other person or whether or not any other person is joined in such action or actions.

12. **Consent to Jurisdiction.** Indemnitor consents to the exercise of personal jurisdiction over Indemnitor by any federal or state court in the State of New York and consent to the laying of venue in any jurisdiction or locality in the City of Syracuse. Service shall be effected by any means permitted by the court in which any action is filed.

13. **Notices.** All notices, certificates, and other communications hereunder shall be in writing, shall be sufficiently given, and shall be deemed given when (a) sent to the applicable address stated below by registered or certified mail, return receipt requested, and actually received by the intended recipient or by overnight courier or such other means as shall provide the sender with documentary evidence of such delivery, or (b) delivery is refused by the addressee as evidenced by the affidavit of the Person who attempted to effect such delivery. The addresses to which notices, certificates, and other communications hereunder shall be delivered are as follows:

(a) If to the Agency, to:

City of Syracuse Industrial Development Agency  
201 East Washington Street, 6<sup>th</sup> Floor  
Syracuse, New York 13202  
Attention: Chairman

With a copy to:

City of Syracuse  
233 East Washington Street  
Syracuse, New York 13202  
Attn: Corporation Counsel

and

Bousquet Holstein PLLC  
110 West Fayette Street, Suite 1000  
Syracuse, New York 13202  
Attn: Susan R. Katzoff, Esq.

(b) To the Company:

Alan Byer Auto Sales, Inc.  
1230 West Genesee Street  
Syracuse, New York 13204  
Attn: Stephen G. Byer



and

Alan I. Byer Family Trust  
1230 West Genesee Street  
Syracuse, New York 13204  
Attn: Stephen G. Byer

and

West Genesee Realty Associates, LLC  
1230 West Genesee Street  
Syracuse, New York 13204  
Attn: Stephen G. Byer

Stephen G. Byer  
1230 West Genesee Street  
Syracuse, New York 13204

With a copy to:

Barclay Damon LLP  
Barclay Damon Tower  
125 East Jefferson Street  
Syracuse, New York 13202  
Attn: Kevin R. McAuliffe, Esq.

The Agency and the Company, may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates, and other communications shall be sent.

14. **Waivers.** The parties waive trial by jury in any action brought on, under or by virtue of this Agreement. Indemnitor waives any right to require Agency at any time to pursue any remedy in such Person's power whatsoever. The failure of Agency to insist upon strict compliance with any of the terms hereof shall not be considered to be a waiver of any such terms, nor shall it prevent Agency from insisting upon strict compliance with this Agreement or any other Company Document at any time thereafter.

15. **Severability.** If any clause or provisions herein contained operates or would prospectively operate to invalidate this Agreement in whole or in part, then such clause or provision shall be held for naught as though not contained herein, and the remainder of this Agreement shall remain operative and in full force and effect.

16. **Inconsistencies Among the Company Documents.** Nothing contained herein is intended to modify in any way the obligations of Indemnitor under the Agency Lease or any

other Company Document. Any inconsistencies among the Company Documents shall be construed, interpreted and resolved so as to benefit Agency.


17. **Successors and Assigns.** This Agreement shall be binding upon Indemnitor's successors, assigns, heirs, personal representatives and estate and shall inure to the benefit of Agency and its successors and assigns.

18. **Controlling Laws.** This Agreement shall be governed by and construed in accordance with the laws of the State of New York.

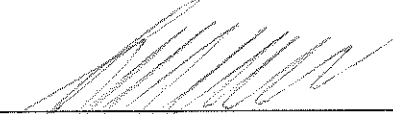
[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, Indemnitor has executed this Agreement as of the date first above written.

**ALAN BYER AUTO SALES, INC.**


By:   
Stephen G. Byer, Vice President

**ALAN I. BYER FAMILY TRUST**

By:   
Stephen G. Byer, Authorized Signatory

**WEST GENESEE REALTY ASSOCIATES, LLC**

By:   
Stephen G. Byer, Manager

  
Stephen G. Byer, individually

STATE OF NEW YORK            )  
  ) SS.:  
COUNTY OF ONONDAGA        )

On the 12<sup>th</sup> day of September, in the year 2019 before me, the undersigned, a notary public in and for said State, personally appeared **Stephen G. Byer**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

  
Notary Public

LORI L. McROBBIE  
Notary Public, State of New York  
Qualified in Onondaga Co. No. 011MC5055591  
Commission Expires on Feb. 12, 20 22

## SCHEDULE "A"

### LEGAL DESCRIPTION

#### **Parcel 1 (1232-36 West Genesee Street – 108.1-02-19)**

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Syracuse, County of Onondaga and State of New York, being a portion of Farm Lot #292 and #293 in said City and being more particularly described as follows: Beginning at a point in the present northerly line of West Genesee Street, said point being S. 74° 37' 20" W., a distance of 252.1 feet from the intersection of the westerly line of Eureka Street, with said northerly line of West Genesee Street, said point of beginning also being the southwesterly corner of property now or formerly owned by the Gladding Corporation, as recorded in the Onondaga County Clerk's office in Liber of Deeds # 3102 at Page #7; thence S. 74° 37' 20" W., along said northerly line of West Genesee Street a distance of 196.93 feet to its intersection with the easterly line of Block #1, of the Powell Tract, Filed Map #267, said point also being the southeasterly corner of property now or formerly owned by Vehicles Realty Associates, as recorded in the Onondaga County Clerk's Office in Liber of Deeds #2683, Page 276; thence N. 55° 28' 20" W., along said easterly line of said Vehicles Realty Associates property and said easterly line of said Block #1, a distance of 351.77 feet to a point; thence N. 63° 51' 20" E., a distance of 353.75 feet to a point; thence S. 28° 08' 53" E., along the westerly line of said Gladding Corporation property, a distance of 343.69 feet to the point and place of beginning.

#### **Parcel 2 (1232 West Genesee Street – 108.1-02-35.1)**

ALL THAT TRACT OF PARCEL OF LAND, situate in the City of Syracuse, County of Onondaga, State of New York, being parts of Farm Lot Nos. 292 and 293 as shown on a map of The Hiawatha Tract filed in the Onondaga County Clerk's Office on September 20, 19\_7 as Tract Map No. 1606, bounded and described as follows:

BEGINNING at the northeasterly corner of Alan Byer, reputed owner, according to Book 2497 of Deeds at Page 1012, filed in the Onondaga County Clerk's Office, said point being the following courses and distances from the intersection of the westerly boundary of Eureka Street with the northerly boundary of West Genesee Street: 1) S. 74° 37' 20" W., along said northerly boundary of West Genesee Street, a distance of 253.27 feet to the southeasterly corner of said Alan Byer; 2) N. 28° 08' 40" W., along the easterly boundary of said Alan Byer, a distance of 343.67 feet to said point of beginning; running thence S. 63° 51' 20" W., along the northerly boundary of said Alan Byer, a distance of 341.96 feet to the northwesterly corner thereof; thence N. 46° 11' 32" W., a distance of 156.33 feet to an angle point; thence N. 28° 08' 40" W., a distance of 200.00 feet to a point in the northerly boundary of Warsaw Avenue (not open); thence N. 61° 52' 20" E., along said northerly boundary of Warsaw Avenue (not open), a distance of 400.18 feet to a point in the westerly boundary of Gladding Corp., formerly; thence S. 28° 08' 40" E., along said westerly boundary of Gladding Corp., formerly, a distance of 360.92 feet to a point; thence S. 63° 51' 20" W., a distance of 9.98 feet to the point of beginning. Containing 3.170 acres of land, more or less.

**Parcel 3 (1288 West Genesee Street – 108.1-02-20)**

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Syracuse, County of Onondaga and State of New York, in the former Town of Geddes, known and distinguished as Lots No. 1, 2, 3, 4 and 5 and part of Lot 7, of the Powell Tract, according to a map thereof filed in the Onondaga County Clerk's Office on August 14, 1876, as Map Number 267, bounded and described as follows:

Beginning at the Intersection of the north line of West Genesee Street, with the east line of Dewey Avenue (formerly North Magnolia Street); thence easterly along the northerly line of West Genesee Street 475.14 feet, more or less to the southeasterly corner of Lot Number 1, of said Powell Tract; thence North  $55^{\circ} 28' 20''$  West on the westerly side of Harbour Brook and the easterly line of Lots 1, 2 and 7 of said Powell Tract according to said Map, 313.73 feet to a point in the northerly line of lands conveyed to the Syracuse Hospital for Women and Children of Syracuse, New York by deed dated November 9, 1904, and recorded in the Onondaga County Clerk's Office on December 12, 1904, in Book Number 360 of Deeds at page 129&c.; thence South  $74^{\circ} 37' 20''$  West parallel to West Genesee Street and along the northerly line of lands so conveyed by said Deed to the Syracuse Hospital for Women and Children as aforesaid and along the northerly line of lands conveyed to the Woman's Hospital and Training School for Nurses by deed dated July 22, 1895, and recorded in the Onondaga County Clerk's Office on September 18, 1895, in Book of Deeds No. 311 at page 4&c., 141.35 feet, more or less, to the northeast corner of a lot formerly owned by Rosa Andrews and thence southerly along the west line of said Lot owned by Rosa Andrews 40 feet to the southeast corner thereof; thence South  $74^{\circ} 37' 20''$  West along the south line of said Andrews Lot, formerly owned by Rosa Andrews, 132 feet to the east line of Dewey Avenue; thence South  $15^{\circ} 22' 40''$  East along the easterly line of Dewey Avenue 200 feet to the point and place of beginning.

Easement for ingress and egress over lands now or formerly owned by Alan Byer, lying east of the above described parcel as set forth in an Easement Agreement between Vehicle Realty Associates and Alan Byer dated March 31, 1989 and recorded in the Onondaga County Clerk's office September 14, 1989 in Book 3562 of Deeds, Page 216, the easement area having been described as follows:

All of that tract or parcel of land situate in the City of Syracuse, County of Onondaga, State of New York, being part of Farm Lots 292 & 293 and more particularly bounded and described as follows:

Beginning at a point at the northwest corner of lands of party of the first part, said point also being N.  $56^{\circ} 29' 03''$  W., along the westerly line of lands of said party of the first part, a distance of 360.10 feet from the Northerly line of W. Genesee Street; running thence N.  $63^{\circ} 51' 40''$  E., along the northerly line of lands of said party of the first part, 25 feet to a point; thence the following 2 courses and distances through and across the lands of said party of the first part: (1) S.  $56^{\circ} 29' 03''$  S., 53.37 feet; and (2) S.  $33^{\circ} 30' 57''$  W., 21.58 feet to a point in said westerly line of lands of party of the first part; thence N.  $56^{\circ} 29' 03''$  W., along said Westerly line, 66 feet to the place of beginning.

**SCHEDULE "B"**

**EXCEPTIONS**

Environmental conditions disclosed in the following report which is on file with the Agency:

Phase I Environmental Site Assessment prepared by LCS, Inc., dated July 9, 2019, being Project Number 19S4196.39.



## CLOSING RECEIPT

### CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY LEASE/SUBLEASE TRANSACTION ALAN BYER AUTO SALES, INC. – VOLVO PROJECT

**CLOSING RECEIPT** executed September 12, 2019 by the City of Syracuse Industrial Development Agency (the "*Agency*"), **ALAN BYER AUTO SALES, INC.** ("*Alan Sales*"), **ALAN I. BYER FAMILY TRUST**, an Inter Vivos Revocable Trust created pursuant to a Third Amended and Restated Trust Agreement dated October 1, 2015 (the "*Trust*"), **STEPHEN G. BYER** ("*Byer*") and **WEST GENESEE REALTY ASSOCIATES, LLC** ("*Realty*" and together with Alan Sales, the Trust and Byer, collectively, the "*Company*"), in connection with a certain project (the "*Project*") consisting of: (A)(i) the acquisition of an interest in: (1) approximately 1.89 acres of improved real property bearing tax map number 108.1-02-19 and commonly referred to as 1232-36 West Genesee Street (also known as 1230 West Genesee Street) ("*Parcel 1*"); (2) approximately 3 acres of improved real property bearing tax map number 108.1-02-35.1 and commonly referred to as 1232 West Genesee Street (rear) ("*Parcel 2*"); and (3) approximately 2 acres of improved real property bearing tax map number 108.1-02-20 and commonly referred to as 1288 West Genesee Street ("*Parcel 3*"), each in the City of Syracuse, New York (collectively, the "*Land*"); (ii) certain improvements, including but not limited to, an existing approximately 25,820 square foot building located on Parcel 1; an existing approximately 17,000-square foot building located on Parcel 2; and an approximately 34,802 square foot building located on Parcel 3, all of which are served by common driveways, parking, and pedestrian walkways, and all of which comprise the Alan Byer Volvo facility (collectively, the "*Improvements*"); (iii) the renovation to the Improvements and the Land include, but are not limited to, the interior showroom, sales offices and reception areas, external replacement of entry, new exterior wall finishes, updated signage, the existing basement, replacement of an area of deteriorating floor slab, refreshed directional pavement graphics and roof replacement (collectively with the Land and Improvements, the "*Facility*"); (iv) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment (the "*Equipment*" and together with the Land, Improvements and the Facility, the "*Project Facility*"); (B) the granting of certain financial assistance in the form of exemptions from real property tax, State and local sales and use tax and mortgage recording tax (in accordance with Section 874 of the General Municipal Law) (collectively the "*Financial Assistance*"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, reconstruction, renovation, equipping and completion of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement.

#### WITNESSETH:

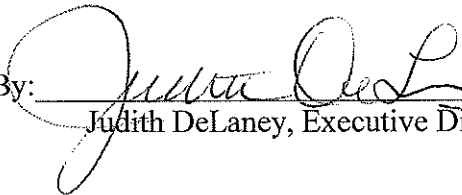
(1) The Agency has executed, delivered, sealed and acknowledged, where appropriate, the documents to which it is a party, and acknowledges receipt from the Company of its administrative fee.

(2) The Company has executed, delivered, sealed and acknowledged, where appropriate, the documents to which it is a party.



(Signature page to Closing Receipt)

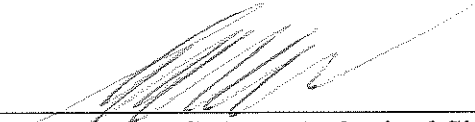
**CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY**

By:   
Judith DeLaney, Executive Director

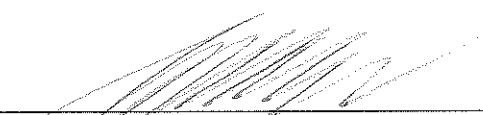
**ALAN BYER AUTO SALES, INC.**

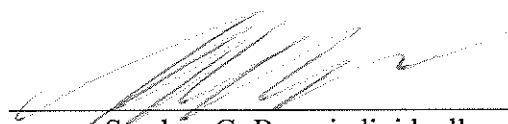
By:   
Stephen G. Byer, Vice President

**ALAN I. BYER FAMILY TRUST**

By:   
Stephen G. Byer, Authorized Signatory

**WEST GENESEE REALTY ASSOCIATES, LLC**

By:   
Stephen G. Byer, Manager

  
Stephen G. Byer, individually



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**City of Syracuse**  
**Industrial Development Agency**  
City Hall Commons, 6<sup>th</sup> Floor  
201 East Washington Street  
Syracuse, NY 13202  
Tel (315) 473-3275 Fax (315) 435-3669

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September 1, 2019

Alan Byer Auto Sales, Inc.  
1230 West Genesee Street  
Syracuse, New York 13204  
Attn: Stephen G. Byer

West Genesee Realty Associates, LLC  
1230 West Genesee Street  
Syracuse, New York 13204  
Attn: Stephen G. Byer

Alan I. Byer Family Trust  
1230 West Genesee Street  
Syracuse, New York 13204  
Attn: Stephen G. Byer

Stephen G. Byer  
1230 West Genesee Street  
Syracuse, New York 13204

Re: City of Syracuse Industrial Development Agency  
Alan Byer Auto Sales, Inc. – Volvo Project  
Sales Tax Appointment Letter

Dear Mr. Byer:

Pursuant to resolutions duly adopted on December 18, 2018, July 16, 2019 and August 20, 2019, the City of Syracuse Industrial Development Agency (the "**Agency**") appointed **ALAN BYER AUTO SALES, INC.**, ("**Alan Sales**"), a business corporation duly organized, validly existing and in good standing under the laws of the State of New York, **ALAN I. BYER FAMILY TRUST**, an Inter Vivos Revocable Trust created pursuant to a Third Amended and Restated Trust Agreement dated October 1, 2015 (the "**Trust**"), **STEPHEN G. BYER** ("**Byer**") and **WEST GENESEE REALTY ASSOCIATES, LLC**, a limited liability company duly organized, validly existing and in good standing under the laws of the State of New York ("**Realty**" and together with Alan Sales, the Trust and Byer, collectively, the "**Company**") the true and lawful agent of the Agency to undertake a project (the "**Project**") consisting of: (A)(i) the acquisition of an interest in: (1) approximately 1.89 acres of improved real property bearing tax map number 108.1-02-19 and commonly referred to as 1232-36 West Genesee Street (also known as 1230 West Genesee Street) ("**Parcel 1**"); (2) approximately 3 acres of improved real property bearing tax map number 108.1-02-35.1 and commonly referred to as 1232 West Genesee Street (rear) ("**Parcel 2**"); and (3) approximately 2 acres of improved real property bearing tax map number 108.1-02-20 and commonly referred to as 1288 West Genesee Street ("**Parcel 3**"), each in the City of Syracuse, New York (collectively, the "**Land**"); (ii) certain improvements, including but not limited to, an existing approximately 25,820 square

Alan Byer Auto Sales, Inc.  
Alan I. Byer Family Trust  
West Genesee Realty Associates, LLC  
Stephen G. Byer  
September 1, 2019  
Page 2

foot building located on Parcel 1; an existing approximately 17,000-square foot building located on Parcel 2; and an approximately 34,802 square foot building located on Parcel 3, all of which are served by common driveways, parking, and pedestrian walkways, and all of which comprise the Alan Byer Volvo facility (collectively, the "**Improvements**"); (iii) the renovation to the Improvements and the Land include, but are not limited to, the interior showroom, sales offices and reception areas, external replacement of entry, new exterior wall finishes, updated signage, the existing basement, replacement of an area of deteriorating floor slab, refreshed directional pavement graphics and roof replacement (collectively with the Land and Improvements, the "**Facility**"); (iv) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment (the "**Equipment**" and together with the Land, Improvements and the Facility, the "**Project Facility**"); (B) the granting of certain financial assistance in the form of exemptions from real property tax, State and local sales and use tax and mortgage recording tax (in accordance with Section 874 of the General Municipal Law) (collectively the "**Financial Assistance**"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, reconstruction, renovation, equipping and completion of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement. The amount of State and local sales and use tax exemption benefits comprising the Financial Assistance approved by the Agency for the benefit of the Project shall not exceed **\$140,000**.

This appointment includes, and this letter evidences, authority to purchase on behalf of the Agency all materials to be incorporated into and made an integral part of the Project Facility and the following activities as they relate to any renovation, improvement, equipping and completion of any of any buildings, whether or not any materials, equipment or supplies described below are incorporated into or become an integral part of such buildings: (1) all purchases, leases, rentals and other uses of tools, machinery and equipment in connection with renovation, improvement and equipping; (2) all purchases, rentals, uses or consumption of supplies, materials, utilities and services of every kind and description used in connection with renovation, improvement and equipping; and (3) all purchases, leases, rentals and uses of equipment, machinery and other tangible personal property (including installation costs), installed or placed in, upon or under such building or facility, including all repairs and replacements of such property, and with respect to such specific purchases or rentals, are exempt from any sales or use tax imposed by the State of New York or any governmental instrumentality located within the State of New York.

This agency appointment includes the power to delegate such agency, in whole or in part, to a Project operator, contractors, agents, subagents, subcontractors, contractors and subcontractors of such agents and subagents (collectively, "**Additional Agents**"). Additional Agents must be specifically appointed by the Company in accordance and compliance with the

Alan Byer Auto Sales, Inc.  
Alan I. Byer Family Trust  
West Genesee Realty Associates, LLC  
Stephen G. Byer  
September 1, 2019  
Page 3

terms of the Agency Lease dated as of September 1, 2019 by and between the Agency and the Company (the "**Agency Lease**"). The Company hereby agrees to complete "IDA Appointment of Project Operator or Agent for Sales Tax Purposes" (Form ST-60) for itself and each Additional Agent who provides materials, equipment, supplies or services to the Project Facility and deliver said form to the Agency within fifteen (15) days of appointment such that the Agency can execute and deliver said form to the State Department of Taxation and Finance within thirty (30) days of appointment. The Agency's obligation to execute any Form ST-60 relative to an Additional Agent is subject to the satisfaction of the conditions in the Agency Lease relative to such appointments.

The Company agrees, whenever requested by the Agency, to provide, or cause its Additional Agents to provide and certify, or cause to be certified, such information regarding use of local labor, job creation, exemptions from State and local sales and use tax, real property taxes and mortgage recording taxes and other topics as the Agency from time to time reasonably considers necessary or appropriate, including, but not limited to, such information as to enable the Agency to make any reports required by law or governmental regulation, including but not limited to those required by §875 of the Act.

The Company acknowledges and agrees that pursuant to Section 875(3) of the Act, and in conjunction with the Agency's Recapture of Benefits Policy (the "**Recapture Policy**") dated as of June 21, 2016 and the Project Agreement between the Agency and the Company dated as of September 1, 2019, the Agency shall, and in some circumstances may, recover, recapture, receive or otherwise obtain from the Company some or all of the Financial Assistance (the "**Recapture Amount**").

Each supplier or vendor should identify the Project Facility on each bill or invoice and indicate thereon which of the Company or its Additional Agents acted as agent for the Agency in making the purchase.

In order to be entitled to use this exemption, you and each Additional Agent should present to the supplier or other vendor of materials for the Project Facility, a completed "IDA Agent or Project Operator Exempt Purchase Certificate" (Form ST-123).

In addition, General Municipal Law §874(8) requires you to file an Annual Statement with the New York State Department of Taxation and Finance ("**NYSDTF**") on "Annual Report of Sales and Use Tax Exemptions" (Form ST-340) regarding the value of sales and use tax exemptions you and your Additional Agents have claimed pursuant to the agency we have conferred on you with respect to this Project. The penalty for failure to file such statement is the removal of your authority to act as our agent. In addition, you must provide a copy of the completed Form ST-340 to the Agency within ten (10) days of the date it is due to be filed with the NYSDTF.

Alan Byer Auto Sales, Inc.  
Alan I. Byer Family Trust  
West Genesee Realty Associates, LLC  
Stephen G. Byer  
September 1, 2019  
Page 4

The agency created by this letter is limited to the Project Facility and will expire on the earlier of: (i) sixty (60) days after the issuance of a certificate of occupancy or similar document by the applicable municipality in which the Project Facility is located; or (i) **December 31, 2020**; unless the Agency Lease is terminated early in accordance with its terms in which case this appointment shall terminate at that time.

This letter is provided for the sole purpose of evidencing, in part, the exemption from New York State Sales and Use Taxes for this Project only. No other principal/agent relationship is intended or may be implied or inferred by this letter.

The Agency shall not be liable, either directly or indirectly or contingently, upon any such contract, agreement, invoice, bill or purchase order in any manner and to any extent whatsoever (including payment or performance obligations), and the Company shall be the sole party liable thereunder. By acceptance of this letter, the vendor hereby acknowledges the limitations on liability described herein.

Very truly yours,

CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY

By:

  
Judith DeLaney, Executive Director





# IDA Appointment of Project Operator or Agent For Sales Tax Purposes

# ST-60

(1/18)

The industrial development agency or authority (IDA) **must** submit this form within **30 days** of the appointment of a project operator or agent, whether appointed directly by the IDA or indirectly by the operator or another agent.

**For IDA use only**

### IDA information

Name of IDA City of Syracuse Industrial Development Agency			IDA project number (use OSC numbering system for projects after 1998) 31021808
Street address 201 E. Washington Street, 6th Floor			Telephone number (315 ) 448-8127
City Syracuse	State NY	ZIP code 13202	Email address (optional)

### Project operator or agent information

Name of IDA project operator or agent Alan Byer Auto Sales Inc.		Mark an X in the box if directly appointed by the IDA: <input checked="" type="checkbox"/>	Employer identification or Social Security number 15-0610944
Street address 1230 West Genesee Street		Telephone number ( 315 ) 472-7806	Primary operator or agent? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
City Syracuse	State NY	ZIP code 13204	Email address (optional)

### Project information

Name of project Alan Byer Auto Sales, Inc. - Volvo Project			
Street address of project site 1232-26 West Genesee Street			
City Syracuse	State NY	ZIP code 13204	Email address (optional)
Purpose of project other - commercial			

Description of goods and services intended to be exempted from New York State and local sales and use taxes

building materials, equipment, fixtures and furnishings installed in and around the Project Facility

Date project operator or agent appointed (mmddyy) 123118	Date project operator or agent status ends (mmddyy) 123120	Mark an X in the box if this is an extension to an original project: <input checked="" type="checkbox"/>
Estimated value of goods and services that will be exempt from New York State and local sales and use tax: 1,750,000.00		Estimated value of New York State and local sales and use tax exemption provided: 140,000.00

**Certification:** I certify that the above statements are true, complete, and correct, and that no material information has been omitted. I make these statements with the knowledge that willfully providing false or fraudulent information with this document may constitute a felony or other crime under New York State Law, punishable by a substantial fine and possible jail sentence. I also understand that the Tax Department is authorized to investigate the validity of any information entered on this document.

Print name of officer or employee signing on behalf of the IDA Judith DeLaney	Print title Executive Director
Signature 	Date 9-12-19
Telephone number ( 315 ) 448-8127	





# IDA Appointment of Project Operator or Agent For Sales Tax Purposes

# ST-60

(1/18)

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**For IDA use only**

### IDA information

Name of IDA City of Syracuse Industrial Development Agency			IDA project number (use OSC numbering system for projects after 1998) 31021808
Street address 201 E. Washington Street, 6th Floor			Telephone number (315 ) 448-8127
City Syracuse	State NY	ZIP code 13202	Email address (optional)

### Project operator or agent information

Name of IDA project operator or agent Alan I. Byer Family Trust		Mark an X in the box if directly appointed by the IDA: <input checked="" type="checkbox"/>	Employer identification or Social Security number 30-0097147
Street address 1230 West Genesee Street		Telephone number ( 315 ) 472-7806	Primary operator or agent? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
City Syracuse	State NY	ZIP code 13204	Email address (optional)

### Project information

Name of project Alan Byer Auto Sales, Inc. - Volvo Project			
Street address of project site 1232-26 West Genesee Street			
City Syracuse	State NY	ZIP code 13204	Email address (optional)
Purpose of project other - commercial			

Description of goods and services intended to be exempted from New York State and local sales and use taxes

building materials, equipment, fixtures and furnishings installed in and around the Project Facility

Date project operator or agent appointed (mmdyy) 123118	Date project operator or agent status ends (mmdyy) 123120	Mark an X in the box if this is an extension to an original project: <input checked="" type="checkbox"/>
Estimated value of goods and services that will be exempt from New York State and local sales and use tax: 1,750,000.00		Estimated value of New York State and local sales and use tax exemption provided: 140,000.00

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Print name of officer or employee signing on behalf of the IDA Judith DeLaney	Print title Executive Director
Signature 	Date 9-12-19
Telephone number ( 315 ) 448-8127	



# IDA Appointment of Project Operator or Agent For Sales Tax Purposes

# ST-60

(1/18)

The industrial development agency or authority (IDA) **must** submit this form within **30 days** of the appointment of a project operator or agent, whether appointed directly by the IDA or indirectly by the operator or another agent.

**For IDA use only**

### IDA information

Name of IDA City of Syracuse Industrial Development Agency			IDA project number (use OSC numbering system for projects after 1998) 31021808
Street address 201 E. Washington Street, 6th Floor			Telephone number (315 ) 448-8127
City Syracuse	State NY	ZIP code 13202	Email address (optional)

### Project operator or agent information

Name of IDA project operator or agent West Genesee Realty Associates, LLC		Mark an X in the box if directly appointed by the IDA: <input checked="" type="checkbox"/>	Employer Identification or Social Security number 20-3158317
Street address 1230 West Genesee Street		Telephone number ( 315 ) 472-7806	Primary operator or agent? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
City Syracuse	State NY	ZIP code 13204	Email address (optional)

### Project information

Name of project Alan Byer Auto Sales, Inc. - Volvo Project			
Street address of project site 1232-26 West Genesee Street			
City Syracuse	State NY	ZIP code 13204	Email address (optional)
Purpose of project other - commercial			

Description of goods and services intended to be exempted from New York State and local sales and use taxes building materials, equipment, fixtures and furnishings installed in and around the Project Facility			
Date project operator or agent appointed (mmdyy) 071619	Date project operator or agent status ends (mmdyy) 123120	Mark an X in the box if this is an extension to an original project <input checked="" type="checkbox"/>	
Estimated value of goods and services that will be exempt from New York State and local sales and use tax: 1,750,000.00		Estimated value of New York State and local sales and use tax exemption provided: 140,000.00	

**Certification:** I certify that the above statements are true, complete, and correct, and that no material information has been omitted. I make these statements with the knowledge that willfully providing false or fraudulent information with this document may constitute a felony or other crime under New York State Law, punishable by a substantial fine and possible jail sentence. I also understand that the Tax Department is authorized to investigate the validity of any information entered on this document.

Print name of officer or employee signing on behalf of the IDA Judith DeLaney		Print title Executive Director	
Signature 		Date 9-12-19	Telephone number ( 315 ) 448-8127



# IDA Appointment of Project Operator or Agent For Sales Tax Purposes

# ST-60

(1/18)

The industrial development agency or authority (IDA) **must** submit this form within **30 days** of the appointment of a project operator or agent, whether appointed directly by the IDA or indirectly by the operator or another agent.

**For IDA use only**

### IDA information

Name of IDA City of Syracuse Industrial Development Agency			IDA project number (use OSC numbering system for projects after 1998) 31021808
Street address 201 E. Washington Street, 6th Floor			Telephone number (315 ) 448-8127
City Syracuse	State NY	ZIP code 13202	Email address (optional)

### Project operator or agent information

Name of IDA project operator or agent Stephen G. Byer		Mark an X in the box if directly appointed by the IDA: <input checked="" type="checkbox"/>	Employer Identification or Social Security number [REDACTED]
Street address 1230 West Genesee Street		Telephone number ( 315 ) 472-7806	Primary operator or agent? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
City Syracuse	State NY	ZIP code 13204	Email address (optional)

### Project information

Name of project Alan Byer Auto Sales, Inc. - Volvo Project			
Street address of project site 1232-26 West Genesee Street			
City Syracuse	State NY	ZIP code 13204	Email address (optional)
Purpose of project other - commercial			

Description of goods and services intended to be exempted from New York State and local sales and use taxes building materials, equipment, fixtures and furnishings installed in and around the Project Facility			
Date project operator or agent appointed (mmdyyy) 071619	Date project operator or agent status ends (mmdyyy) 123120	Mark an X in the box if this is an extension to an original project: <input checked="" type="checkbox"/>	
Estimated value of goods and services that will be exempt from New York State and local sales and use tax: 1,750,000.00		Estimated value of New York State and local sales and use tax exemption provided: 140,000.00	

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Print name of officer or employee signing on behalf of the IDA Judith DeLaney		Print title Executive Director	
Signature 		Date 9-12-19	Telephone number ( 315 ) 448-8127



Department of Taxation and Finance

# IDA Appointment of Project Operator or Agent For Sales Tax Purposes

# ST-60

(1/18)

The industrial development agency or authority (IDA) **must** submit this form within **30 days** of the appointment of a project operator or agent, whether appointed directly by the IDA or indirectly by the operator or another agent.

**For IDA use only**

### IDA information

Name of IDA City of Syracuse Industrial Development Agency			IDA project number (use OSC numbering system for projects after 1998) 31021808
Street address 201 East Washington Street, 6th Floor			Telephone number (315 ) 448-8127
City Syracuse	State NY	ZIP code 13202	Email address (optional)

### Project operator or agent information

Name of IDA project operator or agent Parsons-McKenna Construction Co., Inc.		Mark an X in the box if directly appointed by the IDA: <input type="checkbox"/>	Employer identification or Social Security number 16-1222837
Street address 117 Metropolitan Park Drive		Telephone number ( 315 ) 451-7330	Primary operator or agent? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
City Liverpool	State NY	ZIP code 13204	Email address (optional)

### Project information

Name of project Alan Byer Auto Sales, Inc. - Volvo Project			
Street address of project site 1232-26 West Genesee Street			
City Syracuse	State NY	ZIP code 13204	Email address (optional)
Purpose of project other - commercial			

Description of goods and services intended to be exempted from New York State and local sales and use taxes  
building materials, equipment, fixtures, and furnishings installed in and around the Project Facility

Date project operator or agent appointed (mmddyy) 030119	Date project operator or agent status ends (mmddyy) 123120	Mark an X in the box if this is an extension to an original project: <input checked="" type="checkbox"/>
Estimated value of goods and services that will be exempt from New York State and local sales and use tax: 1,750,000.00		Estimated value of New York State and local sales and use tax exemption provided: 140,000.00

**Certification:** I certify that the above statements are true, complete, and correct, and that no material information has been omitted. I make these statements with the knowledge that willfully providing false or fraudulent information with this document may constitute a felony or other crime under New York State Law, punishable by a substantial fine and possible jail sentence. I also understand that the Tax Department is authorized to investigate the validity of any information entered on this document.

Print name of officer or employee signing on behalf of the IDA Judith DeLaney		Print title Executive Director	
Signature 		Date 9-12-19	Telephone number ( 315 ) 448-8127



# BOUSQUET HOLSTEIN PLLC

110 WEST FAYETTE STREET • ONE LINCOLN CENTER • SUITE 1000 • SYRACUSE, NEW YORK 13202 • PH: 315.422.1500 • FX: 315.422.3549

September 16, 2019

**VIA CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

7018 3090 0002 3323 3543

New York State Tax Department  
IDA Unit  
Building 8, Room 738  
W.A. Harriman Campus  
Albany, New York 12227

Re: IDA Appointment of Project Operator or Agent for Sales Tax Purposes  
City of Syracuse Industrial Development Agency Appointment of  
Alan Byer Auto Sales Inc., Alan I. Byer Family Trust, Stephen G. Byer,  
West Genesee Realty Associates, LLC and Parsons-McKenna Construction Co., Inc.  
Alan Byer Auto Sales, Inc. - Volvo Project; Project No. 31021808

Dear Ladies and Gentlemen:

Enclosed for filing on behalf of the City of Syracuse Industrial Development Agency, please find form ST-60 in connection with the appointment by the IDA of Alan Byer Auto Sales Inc., Alan I. Byer Family Trust, Stephen G. Byer, West Genesee Realty Associates, LLC and Parsons-McKenna Construction Co., Inc. as its agents for sales tax purposes in connection with the IDA project identified therein.

Please do not hesitate to contact me with any questions. Thank you.

Very truly yours,

*SRK*  
/s/ Susan R. Katzoff

Susan R. Katzoff

SRK:ilm  
Enclosures

3923256\_1

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

New York State Tax Department  
 IDA Unit  
 Building 8, Room 738  
 W.A. Harriman Campus  
 Albany, New York 12227



9590 9402 4819 9032 0711 38

2. Article Number (Transfer from previous label)

7018 3090 0002 3323 3543

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature

X

- Agent
- Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1?  Yes  
 If YES, enter delivery address below:  No

ALBANY, NY 12227

SEP 18 2019

3. Service Type

- Adult Signature
- Adult Signature Restricted Delivery
- Certified Mail®
- Certified Mail Restricted Delivery
- Collect on Delivery
- Collect on Delivery Restricted Delivery
- Insured Mail
- Insured Mail Restricted Delivery (over \$500)
- Priority Mail Express®
- Registered Mail™
- Registered Mail Restricted Delivery
- Return Receipt for Merchandise
- Signature Confirmation™
- Signature Confirmation Restricted Delivery

PS Form 3811, July 2015 PSN 7530-02-000-9053

Domestic Return Receipt

7018 3090 0002 3323 3543

**U.S. Postal Service™**  
**CERTIFIED MAIL® RECEIPT**  
 Domestic Mail Only

For delivery information, visit our website at [www.usps.com](http://www.usps.com)

**OFFICIAL RECEIPT**

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

Extra Services & Fees (check box, add fee as appropriate)

Return Receipt (hardcopy) \$

Return Receipt (electronic) \$

Certified Mail Restricted Delivery \$

Adult Signature Required \$

Adult Signature Restricted Delivery \$

Postage \$

Total Postage \$

Sent to

Street and Apt. #

City, State, ZIP

New York State Tax Department  
 IDA Unit  
 Building 8, Room 738  
 W.A. Harriman Campus  
 Albany, New York 12227

SEP 18 2019  
 Postmark  
 Here



**CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY**

**and**

**ALAN I. BYER FAMILY TRUST**

**and**

**STEPHEN G. BYER**

**and**

**WEST GENESEE REALTY ASSOCIATES, LLC**

**PAYMENT IN LIEU OF TAX AGREEMENT**

**Dated as of: September 1, 2019**

Alan I. Byer Family Trust  
Federal Tax ID #: 30-0097147

West Genesee Realty Associates  
Federal Tax ID # 20-3158317

Stephen G. Byer

**Alan Byer Auto Sales, Inc. – Volvo Project**



**THIS PAYMENT IN LIEU OF TAX AGREEMENT**, (this "*Agreement*") dated as of March 1, 2019 by and among the **CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY**, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation organized and existing under the laws of the State of New York (hereinafter referred to as the "*Agency*"), having an office at 201 East Washington Street, 6<sup>th</sup> Floor, Syracuse, New York 13202 and **ALAN I. BYER FAMILY TRUST**, an Inter Vivos Revocable Trust created pursuant to a Third Amended and Restated Trust Agreement dated October 1, 2015 (the "*Trust*"), **STEPHEN G. BYER** ("*Byer*") and **WEST GENESEE REALTY ASSOCIATES, LLC**, a limited liability company duly organized, validly existing and in good standing under the laws of the State of New York ("*Realty*" and together with the Trust and Byer collectively the "*Company*" or "*Companies*"), each with offices at 1230 West Genesee Street, Syracuse, New York 13204.

**WITNESSETH:**

**WHEREAS**, the New York State Industrial Development Agency Act, being Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of the State of New York, as amended (hereinafter referred to as the "*Enabling Act*") authorizes the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State of New York and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and furnish real and personal property, whether or not now in existence or under construction, which shall be suitable for, among others, manufacturing, warehousing, research, commercial or industrial purposes, in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York and to improve their recreation opportunities, prosperity and standard of living; and

**WHEREAS**, the Enabling Act further authorizes each such agency to lease and to sell its projects, to charge and collect rent therefor, to issue its bonds or notes for the purpose of carrying out any of its corporate purposes and, as security for the payment of the principal and redemption price of, and interest on, any such bonds or notes, to mortgage any or all of its facilities and to pledge the revenues and receipts therefrom to the payment of such bonds or notes; and

**WHEREAS**, pursuant to and in accordance with the provisions of the Enabling Act, Chapter 641 of the 1979 Laws of the State of New York, as amended (said chapter and the Enabling Act being hereinafter collectively referred to as the "*Act*") created the Agency for the benefit of the

City of Syracuse (hereinafter referred to as the “*Municipality*”) and the inhabitants thereof; and

**WHEREAS**, the Agency, by resolutions adopted on December 18, 2018 and July 16, 2019 (collectively, the “*Resolution*”), resolved to undertake the “*Project*” (as hereinafter defined) at the request of the Alan Byer Auto Sales, Inc., a business corporation duly organized, validly existing and in good standing under the laws of the State of New York (“*Alan Byer*”) and the Company consisting of: (A)(i) the acquisition of an interest in: (1) approximately 1.89 acres of improved real property bearing tax map number 108.1-02-19 and commonly referred to as 1232-36 West Genesee Street (also known as 1230 West Genesee Street) (“*Parcel 1*”); (2) approximately 3 acres of improved real property bearing tax map number 108.1-02-35.1 and commonly referred to as 1232 West Genesee Street (rear) (“*Parcel 2*”); and (3) approximately 2 acres of improved real property bearing tax map number 108.1-02-20 and commonly referred to as 1288 West Genesee Street (“*Parcel 3*”), each in the City of Syracuse, New York (collectively, the “*Land*”); (ii) certain improvements, including but not limited to, an existing approximately 25,820 square foot building located on Parcel 1; an existing approximately 17,000-square foot building located on Parcel 2; and an approximately 34,802 square foot building located on Parcel 3, all of which are served by common driveways, parking, and pedestrian walkways, and all of which comprise the Alan Byer Volvo facility (collectively, the “*Improvements*”); (iii) the renovation to the Improvements and the Land include, but are not limited to, the interior showroom, sales offices and reception areas, external replacement of entry, new exterior wall finishes, updated signage, the existing basement, replacement of an area of deteriorating floor slab, refreshed directional pavement graphics and roof replacement (collectively with the Land and Improvements, the “*Facility*”); (iv) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment (the “*Equipment*” and together with the Land, Improvements and the Facility, the “*Project Facility*”); (B) the granting of certain financial assistance in the form of exemptions from real property tax, State and local sales and use tax and mortgage recording tax (in accordance with Section 874 of the General Municipal Law) (collectively the “*Financial Assistance*”); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, reconstruction, renovation, equipping and completion of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant

to a sublease agreement; and

**WHEREAS**, the Companies are the fee owners of the Project Facility. Alan Sales is the operator of the Project Facility and leases the Project Facility from one or more of the Companies pursuant to lease agreements dated December 16, 1991, November 30, 2005 and November 9, 2019 (collectively, the "**Ground Lease**").

**WHEREAS**, the Agency will sublease the Land and Facility from the Company and Alan Sales pursuant to that certain Company Lease Agreement dated as of September 1, 2019 (the "**Company Lease**"), between the Company, Alan Sales and the Agency, obtain an interest in the Equipment pursuant to certain bills of sale each dated as of September 1, 2019 from the Company and Alan Sales (collectively, the "**Bill of Sale**"), and (sub)sublease the Project Facility back to the Company and Alan Sales pursuant to that certain Agency Lease Agreement dated as of September 1, 2019 (the "**Agency Lease**"), between the Agency, the Company and Alan Sales (the Company Lease, the Bill of Sale and the Agency Lease are hereinafter collectively referred to as the "**Lease Documents**"); and

**WHEREAS**, under the present provisions of the Act and Section 412-a of the Real Property Tax Law of the State of New York, the Agency is required to pay no taxes or assessments upon any of the property acquired by it or under its jurisdiction or supervision or control; and

**NOW, THEREFORE**, in consideration of the matters above recited, the parties hereto formally covenant, agree and bind themselves as follows, to wit:

## **ARTICLE I**

### **REPRESENTATIONS AND WARRANTIES**

#### **Section 1.01. Representations and Warranties by Agency**

The Agency does hereby represent and warrant as follows:

(a) Existence and Power. The Agency has been duly established under the provisions of the Act and has the power to enter into the transactions contemplated by this Agreement and to carry out its obligations hereunder.

(b) Intentions. The Agency intends to acquire a leasehold interest in the Project Facility from the Company and to (sub)sublease the Project Facility back to the Company, all pursuant to the provisions of the Lease Documents.

(c) Authorization. The Agency is authorized and has the corporate power under the Act, its by-laws and the laws of the State of New York to enter into this Agreement and the transactions

contemplated hereby and to perform and carry out all the covenants and obligations on its part to be performed under and pursuant to this Agreement. By proper corporate action on the part of its members, the Agency has duly authorized the execution, delivery and performance of this Agreement and the consummation of the transactions herein contemplated.

(d) Validity. The Agency is not prohibited from entering into this Agreement and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement by the terms, conditions or provisions of the Act, any other law, any order of any court or other agency or authority of government, or any agreement or instrument to which the Agency is a party or by which the Agency is bound, and this Agreement is a legal, valid and binding obligation of the Agency enforceable in accordance with its terms.

#### **Section 1.02. Representations and Warranties by Trust**

The Trust does hereby represent and warrant as follows:

(a) Existence. The Trust is an Inter Vivos Revocable Trust created pursuant to a Third Amended and Restated Trust Agreement dated October 1, 2015 (the "***Trust Agreement***") and the Trust Agreement is in full force and effect.

(b) Authorization. The Trust was duly created and is validly existing under the laws of the State of New York and in accordance therewith and with the terms of the Trust Agreement, as the authority and power to enter into this Agreement and the transactions contemplated hereby and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement. The Trust is duly authorized to execute, deliver and perform the Lease Documents, this Agreement and the other Company Documents (as that term is defined in the Agency Lease), and the consummation of the transactions therein and herein contemplated. The Trust is not prohibited from entering into this Agreement and discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement by and the execution, delivery and performance of this Agreement, the consummation of the transactions contemplated hereby and the fulfillment of and compliance with the provisions of this Agreement will not conflict with or violate or constitute a breach of or a default under the terms, conditions or provisions of its Trust Agreement or any other restriction or any law, rule, regulation or order of any court or other agency or authority of government, or any contractual limitation, restriction or outstanding indenture, deed of trust, mortgage, loan agreement, Ground Lease (as defined herein) other evidence of indebtedness or any other agreement or instrument to which the Trust is a party or

by which it or any of its property is bound, and the Trust's discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement will neither be in conflict with or result in a breach of or constitute (with due notice and/or lapse of time) a default under any of the foregoing, nor result in the creation or imposition of any lien of any nature upon any of the property of the Trust under the terms of any of the foregoing, and this Agreement is a legal, valid and binding obligation of the Trust enforceable in accordance with its terms.

(c) Title. The Trust has valid and marketable fee title to some or all of the Project Facility, free and clear of all liens and encumbrances except for Permitted Encumbrances (as defined in the Agency Lease).

(d) Governmental Consent. No further consent, approval or authorization of, or filing, registration or qualification with, any governmental or public authority on the part of the Trust is required as a condition to the execution, delivery or performance of this Agreement by the Trust or as a condition to the validity of this Agreement.

## ARTICLE II

### COVENANTS AND AGREEMENTS

#### **Section 2.01. Tax-Exempt Status of the Project Facility**

(a) Assessment of the Project Facility. Pursuant to the Act and Section 412-a of the Real Property Tax Law, the parties hereto understand that, upon acquisition of ownership or control of the Project Facility by the Agency, and for so long thereafter as the Agency shall own or control the Project Facility, the Project Facility shall be entitled to an exemption upon the first available assessment roll of the Municipality prepared subsequent to the acquisition by the Agency of ownership or control of the Project Facility. The time of commencement of the Agency's exemption shall be controlled by the Municipality's taxable status date, in conformity with Section 412-a of the Real Property Tax Law. The Company will be required to pay to the Municipality all taxes and assessments lawfully levied and/or assessed against the Project Facility, in spite of the Agency's actual ownership or control of the Project Facility, until the Project Facility shall be entitled to exempt status on the tax roll of the Municipality.

(b) Special Assessments. The parties hereto understand that the tax exemption extended to the Agency by the Act and Section 412-a of the Real Property Tax Law does not entitle the Agency to exemption from special assessments and special ad valorem levies. The Company will be required at all times to pay all special assessments and special ad valorem levies lawfully levied

and/or assessed against the Project Facility.

**Section 2.02. Payments in Lieu of Taxes**

(a) Agreement to Make Payments. The Company agrees that it shall make periodic payments in lieu of real property taxes in the amounts hereinafter provided. The said payments due to the Agency hereunder shall be paid by the Company, to the Municipality, on behalf of the Agency, by check made payable to "*Commissioner of Finance*". Upon receipt of the Company's payment, the Municipality, on behalf of the Agency, will disburse the appropriate portion of the said payment to the County of Onondaga and the Municipality, or such other taxing jurisdiction, pursuant to the Act. This Company obligation shall exist for so long as the Agency retains an interest in the Project Facility. Notwithstanding the appearance of the Agency's exemption on the Municipality's tax roll for the 2020/2021 City and School portion of the real property tax due on the Land and Facility, the year 1 payment due for the City and School portion of the year 1 payment under **Exhibit "A"** shall commence on July 1, 2020. The year 1 payment due for the County and Water District portion of the year 1 payment under **Exhibit "A"** shall commence on January 1, 2021. Without regard to the Agency exemption, the Company shall continue paying real property tax through June 30, 2020 with respect to the City and School portion of the real property tax and through December 31, 2020 with respect to the County and Water District portion of the real property tax, based upon the assessment and the combined real property tax rate in effect for that period as if the Project Facility were privately owned and the Agency had no interest in the same.

(b) Amount of Payments in Lieu of Taxes. Unless otherwise stated, the Company's agreed upon annual payment in lieu of tax hereunder shall be an amount determined by reference to **Exhibit "A"**, attached hereto and made a part hereof. The payments in lieu of tax due, as set forth in **Exhibit "A"**, include any real property tax exemptions that might be afforded to the Company if the Project Facility were owned by the Company and not the Agency. As consideration for the benefits conferred on the Company pursuant to this Agreement, for so long as this Agreement is in effect (the "**Benefit Period**"), the Company hereby agrees to be bound by any determination by the City of Syracuse Board of Assessment Review resulting from a review of the assessment pertaining to the Project Facility and/or Additional Property throughout the term of this Agreement. Throughout the Benefit Period, the Company hereby agrees to waive any and all right to challenge or contest in a court of law (a "**Legal Challenge**"), those payments or the basis for those payments due pursuant to Exhibit "A." It shall also be an event of default under Article IV of this Agreement

should the Company bring a Legal Challenge during the Benefit Period on the Project Facility and/or Additional Property.

(c) Additional Amounts in Lieu of Taxes. Commencing on the first tax year following the date on which any structural addition shall be made to the Facilities, or any new or additional building shall be constructed on the real property described in **Exhibit "B"** that is in addition to the Facilities (such structural additions and additional buildings being hereinafter referred to as "***Additional Property***"), the Company agrees to make additional periodic payments in lieu of real property taxes (such additional payments being hereinafter collectively referred to as "***Additional Payments***") to the Municipality on behalf of the Agency with respect to such Additional Property. Such Additional Payments shall be computed as follows:

By multiplying (1) the value placed on such Additional Property, as value is determined by the Municipality's assessor by (2) the tax rate or rates of the Municipality that would be applicable to such Additional Property if such Additional Property were owned or controlled by the Company and not the Agency; and (3) then reducing the amount so determined by the amounts of any properly acquired tax exemptions that would be afforded to the Company by the Municipality for such Additional Property as if it was owned or controlled by the Company and not the Agency.

(d) Revaluation. In the event of a real property assessment revaluation by the Municipality, the Company shall continue to make its payments in accordance with this Agreement; however, in the event that Exhibit "A" is no longer in effect, but payments are still being made hereunder for any reason, (including, but not limited to, the Agency still having an interest in the Project Facility), and would be effected by revaluation, each year's payments subsequent to such revaluation shall be adjusted to properly reflect revaluation, it being the intent of the parties that the level of payments following revaluation shall be equal to those payments contemplated by this Agreement.

(e) Damage or Destruction. In the event that all or substantially all of the Project Facility is damaged or destroyed, the Company shall continue to make the payments required by this Agreement for as long as the Agency shall own or control the Project Facility, without regard to such damage or destruction.

(f) Time of Payments. The Company agrees to pay the amounts due the Agency hereunder to the Municipality for each year of this Agreement, within the period that the

Municipality allows payment of taxes levied in such calendar year without penalty. The Company shall be entitled to receive receipts from the Municipality for such payments.

(g) Method of Payment. All payments by the Company hereunder shall be paid to the Municipality in lawful money of the United States of America, cash, money order or check.

**Section 2.03. PILOT Statements**

The Municipality and/or the Agency shall submit to the Company written semi-annual statements specifying the amount and due date or dates of any payments due to the Agency hereunder. Each semi-annual PILOT statement shall be submitted to the Company at the same time that tax statements/bills are mailed by the Municipality to the owners of privately owned property. Failure to receive a PILOT statement shall not relieve the Company of its obligation to make all payments provided for hereunder. If, for any reason, the Company does not receive an appropriate PILOT Statement, the Company shall have the responsibility and obligation to make all reasonable inquiries to the Municipality and the Agency and to have such a statement issued, and thereafter to make payment of the same no later than the due dates provided herein.

**Section 2.04. Obligations of Agency**

Requirement that Mortgagees Subordinate to Payments. The Agency and the Company agree that any mortgages on the Project Facility, given by either of them, shall provide that the rights of the mortgagees thereunder shall be subordinate to this Agreement and to the right of the Municipality to receive payments in lieu of taxes pursuant to Article II hereof.

**Section 2.05. Company to Furnish Information**

The Company agrees to promptly comply with the reporting and information requirements of the Agency and the Act, and to promptly furnish the applicable information required or requested by the Agency and/or the State of New York. The Company further agrees to assist the Agency with the preparation of any reports, or answer any inquiries, required by the State of New York in connection with the Act or the Agency's participation in the Project.

**Section 2.06. Interest**

(a) Agreement to Pay Interest on Missed Payments. If the Company shall fail to make any payment required by this Agreement when due, its obligation to make the payment so in default shall continue as an obligation of the Company until such payment in default shall have been made in full, and the Company shall pay the same together with interest thereon, to the extent permitted by law, at the greater of: **(i) eighteen per cent (18%) per annum; or (ii) the**



**rate per annum which would be payable if such amounts were delinquent taxes, until so paid in full.**

(b) Maximum Legal Rate. It is the intent of the Agency, the Municipality, and the Company that in no event shall interest be payable at a rate in excess of the maximum rate permitted by applicable law (the "*Maximum Legal Rate*"). Solely to the extent necessary to prevent interest under this Agreement from exceeding the Maximum Legal Rate, any amount that would be treated as excessive under a final judicial interpretation of applicable law shall be deemed to have been a mistake and automatically canceled, and, if received by the Agency or Municipality, shall be refunded to the Company.

### **Section 2.07 Joint and Several**

Notwithstanding anything in this Agreement to the contrary, the Companies shall be jointly and severally liable for all payments and obligations hereunder. A separate action or actions may be brought and prosecuted against each Company, whether or not an action is brought against any other person or Company or whether or not any other person or Company is joined in such action or actions.

## **ARTICLE III**

### **LIMITED OBLIGATION OF THE AGENCY**

#### **Section 3.01. No Recourse; Limited Obligation of the Agency**

(a) No Recourse. All covenants, stipulations, promises, agreements and obligations of the Agency contained in this Agreement shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Agency and not of any member, director, officer, agent, servant or employee of the Agency in his individual capacity, and no recourse under or upon any obligation, covenant or agreement contained in this Agreement, or otherwise based on or in respect of this Agreement, or for any claim based thereon or otherwise in respect thereof, shall be had against any past, present or future member, director, officer, agent, servant or employee, as such, of the Agency or any successor public benefit corporation or political subdivision or any person executing this Agreement on behalf of the Agency, either directly or through the Agency or any successor public benefit corporation or political subdivision or any person so executing this Agreement. It is expressly understood that this Agreement is a corporate obligation, and that no

such personal liability whatever shall attach to, or is or shall be incurred by, any such member, director, officer, agent, servant or employee of the Agency or of any successor public benefit corporation or political subdivision or any person so executing this Agreement under or by reason of the obligations, covenants or agreements contained in this Agreement or implied therefrom. Any and all such personal liability of, and any and all such rights and claims against, every such member, director, officer, agent, servant or employee under or by reason of the obligations, covenants or agreements contained in this Agreement or implied therefrom are, to the extent permitted by law, expressly waived and released as a condition of, and as a consideration for, the execution of this Agreement.

(b) Limited Obligation. The obligations and agreements of the Agency contained herein shall not constitute or give rise to an obligation of the State of New York or the Municipality, and neither the State of New York nor the Municipality shall be liable thereon. Furthermore, such obligations and agreements shall not constitute or give rise to a general obligation of the Agency, but rather shall constitute limited obligations of the Agency payable solely from the revenues of the Agency derived and to be derived from the lease, sale or other disposition of the Project.

(c) Further Limitation. Notwithstanding any provision of this Agreement to the contrary, the Agency shall not be obligated to take any action pursuant to any provision hereof unless (i) the Agency shall have been requested to do so in writing by the Company and (ii) if compliance with such request is expected to result in the incurrence by the Agency (or any of its members, directors, officers, agents, servants or employees) of any liability, fees, expenses or other costs, the Agency shall have received from the Company security or indemnity satisfactory to the Agency for protection against all such liability, however remote, and for the reimbursement of all such fees, expenses and other costs.

#### ARTICLE IV

#### EVENTS OF DEFAULT

##### **Section 4.01. Events of Default**

Any one or more of the following events shall constitute an event of default under this Agreement, and the terms “*Event of Default*” or “*Default*” shall mean, whenever they are used in this Agreement, any one or more of the following events:

(a) Failure of the Company to pay any amount due and payable by it pursuant to this Agreement, the Lease Documents or the Company Documents beyond any applicable cure period

under each respective document.

(b) During the Benefit Period, commencement by the Company of a Legal Challenge, as defined in Section 2.02(b), to those payments or the basis for those payments due pursuant to Exhibit "A."

(c) Failure of the Company to observe and perform any other covenant, condition or agreement on its part to be observed and performed under this Agreement (other than as referred to in paragraph (a) above), the Lease Documents, or any other Company Document and continuance of such failure for a period of thirty (30) days after written notice to the Company specifying the nature of such failure hereunder, provided however, with respect to the Lease Documents, the continuance of such failure for the duration of any applicable cure period set forth therein after receipt of any required notice thereunder.

(d) Any warranty, representation or other statement by or on behalf of the Company contained in this Agreement or the Lease Documents shall prove to have been false or incorrect in any material respect on the date when made or on the effective date of this Agreement or the Lease Documents.

(e) The Company violates any federal, state or local environmental law or allows or causes any Hazardous Materials (as Hazardous Materials is defined and described in any federal, state or local law) to be released at, on, to, into or from the Project Facility, except as permitted by the Lease Documents or within the terms and conditions of a permit, certificate, license or other written approval of an authorized governmental body, and fails to remedy such violation within thirty (30) days; or if such failure cannot be cured within thirty (30) days, fails to commence a cure within thirty (30) days and thereafter diligently prosecute the cure thereof.

(f) The occurrence of any Event of Default or Default under this Agreement, the Lease Documents or any other Company Documents.

(g) Failure of the Company to commence the acquisition, construction, renovation, and equipping of the Project Facility within thirty (30) days of the date of this Agreement and failure of the Company to complete the Project Facility on or before the Completion Date in accordance with the terms of the Agency Lease.

#### **Section 4.02. Remedies on Company Default**

Whenever any Event of Default under Section 4.01 shall have occurred and be continuing with respect to this Agreement, and/or the Company shall be in default under the Lease Documents,

the Agency may take whatever action at law or in equity, following applicable notice, as may appear necessary or desirable to collect the amount then in default or to enforce the performance and observance of the obligations, agreements and covenants of the Company under this Agreement and/or the Lease Documents. Notwithstanding anything herein to the contrary, if the Lease Documents are terminated for any reason, this Agreement shall automatically terminate without any further notice or action required hereunder and the Project Facility shall immediately become taxable and revert to the tax roll.

The payment schedule contained in Exhibit "A" is for the benefit of the Company and its Project Facility. In the event that the Company defaults hereunder, and the Lease Documents cannot be terminated, and/or the Agency's participation in the Project and this Agreement is not or cannot be terminated, the Company, or any assignee, or successor shall no longer be entitled to make payments under this Agreement pursuant to Exhibit "A". In such an event, payments shall be made hereunder, for any remaining term of this Agreement, as if the Project Facility was privately owned and assessed and without any further regard to Exhibit "A".

#### **Section 4.03. Recording of Lease Terminations and Other Documents**

Whenever any Event of Default under Sections 4.01 shall have occurred and be continuing with respect to this Agreement or the Lease Documents, the Agency may, upon notice to the Company provided for in this Agreement or the Lease Documents, if any, terminate the Lease Documents and record such termination or other necessary documents in the Onondaga County Clerk's Office, terminating the Agency's interest in the Project Facility thereby terminating this Agreement.

The recording of such a termination and any other documentation shall constitute delivery to, and acceptance of such, by the Company. In order to facilitate such a termination, the Company hereby appoints the Chairman or the Vice Chairman of the Agency as its agent for the purpose of executing and delivering all documents necessary to allow such termination by the Agency.

In the event that the Lease Documents, for any reason, are extended by their terms, or for any reason this Agreement expires or terminates, but the Agency retains an interest or remains in title to the Project Facility, the Company shall continue to make payments in lieu of taxes to the Municipality, on behalf of the Agency, for as long as the Agency retains an interest in, or remains in title to, the Project Facility in accordance with Exhibit "A". Those payments shall be the equivalent of the real property taxes that would be due on the Project Facility if it were owned by the Company

and the Agency had no interest therein. It is the intention of the parties hereto, that for so long as the Agency shall possess title to, or an interest in, the Property, the Company, or any permitted successors or assigns, shall make payments in lieu of taxes to the Municipality, on behalf of the Agency, that are either based upon Exhibit "A", or if Exhibit "A" is no longer applicable for any reason, are the equivalent of the real property taxes that would be due and owing if the Project Facility were privately owned and the Agency had no interest therein.

**Section 4.04. Payment of Attorney's Fees and Expenses**

If the Company should default in performing any of its obligations, covenants and agreements under this Agreement and the Agency or the Municipality should employ attorneys (whether in-house or outside counsel) or incur other expenses for the collection of any amounts payable hereunder or for the enforcement of performance or observance of any obligation or agreement on the part of the Company herein contained, the Company agrees that it will, within ten (10) days after receipt of written demand therefor, pay to the Agency and/or the Municipality the reasonable fees and disbursements of such attorneys and such other reasonable expenses so incurred.

Furthermore, should the Company bring a Legal Challenge on the Project Facility and/or Additional Property during the Benefit Period, and the Agency and/or the Municipality waives its right to declare a default under this Agreement in regard to such Legal Challenge, or such Legal Challenge is determined not to be a default of this Agreement by any Court of competent jurisdiction, the Company agrees that in the event that the Company is unsuccessful in its Legal Challenge, the Company will, on demand, pay to the Agency and/or the Municipality the reasonable fees and disbursements of any attorneys employed (whether in-house or outside counsel) for the defense of such Legal Challenge as well as such other reasonable expenses so incurred.

**Section 4.05. Remedies; Waiver and Notice**

(a) No Remedy Exclusive. No remedy herein conferred upon or reserved to the Agency is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute.

(b) Delay. No delay or omission in exercising any right or power accruing upon the occurrence of any Event of Default hereunder shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time

and as often as may be deemed expedient.

(c) Notice Not Required. In order to entitle the Agency to exercise any remedy reserved to it in this Agreement, it shall not be necessary to give any notice, other than such notice as may be expressly required in this Agreement.

(d) No Waiver. In the event any provision contained in this Agreement should be breached by any party and thereafter duly waived by the other party so empowered to act, such waiver shall be limited to the particular breach so waived and shall not be deemed to be a waiver of any other breach hereunder. No waiver, amendment, release or modification of this Agreement shall be established by conduct, custom or course of dealing.

## **ARTICLE V**

### **MISCELLANEOUS**

#### **Section 5.01. Term of Agreement**

(a) General. This Agreement shall become effective and the obligations of the Agency and the Company shall arise absolutely and unconditionally upon the execution and delivery of this Agreement. This Agreement shall terminate on the earliest to occur of: (i) the same date that the Agency Lease Agreement terminates; (ii) on any earlier date permitted under the Agency Lease Agreement; or (iii) upon the expiration on **June 30, 2030**, of the PILOT Schedule set forth in **Exhibit "A"** hereto. In the event of a termination of the Agency's interest in the Project Facility, the Company's payments due hereunder shall be pro-rated to the extent necessary to allow the Municipality to issue a supplemental PILOT Statement based upon the Agency's transfer of ownership or control of the Project Facility to the Company, and the loss of the Agency's tax exemption on the said Project Facility.

(b) Conflict. In the event of a conflict between this Agreement or any of its terms on the one hand, and the Lease Documents or any other Project documents on the other hand, the provisions most favorable to the Agency shall govern. The Agency and the Company agree that the Agency's participation in this Agreement is for the benefit of the Company and that the Municipality must receive payments from the Company hereunder, during the entire term of this Agreement and/or the Agency's ownership or control of the Project Facility.

#### **Section 5.02. Company Acts**

Where the Company is required to do or accomplish any act or thing hereunder, the Company may cause the same to be done or accomplished with the same force and effect as if done

or accomplished by the Company.

**Section 5.03. Amendment of Agreement**

This Agreement may not be amended, changed, modified or altered unless such amendment, change, modification or alteration is in writing and signed by the Agency and the Company.

**Section 5.04. Notices**

All notices, certificates or other communications hereunder shall be in writing, shall be sufficiently given, and shall be deemed given when (a) sent to the applicable address stated below by registered or certified mail, return receipt requested, and actually received by the intended recipient or by overnight courier or such other means as shall provide the sender with documentary evidence of such delivery, or (b) delivery is refused by the addressee as evidenced by the affidavit of the person who attempted to effect such delivery. The addresses to which notices, certificates, and other communications hereunder shall be delivered are as follows:

- (a) To the Agency:  
City of Syracuse Industrial Development Agency  
201 East Washington Street, 6<sup>th</sup> Floor  
Syracuse, New York 13202  
Attention: Chairman

With a copy to:

Bousquet Holstein PLLC  
110 West Fayette Street, Suite 1000  
Syracuse, New York 13202  
Attn: Susan R. Katzoff, Esq.

And to:  
Corporation Counsel  
City of Syracuse  
233 East Washington Street, Room 300  
Syracuse, New York 13202

- (b) To the Companies:  
  
Alan I. Byer Family Trust  
1230 West Genesee Street  
Syracuse, New York 13204  
Attn: Stephen G. Byer

West Genesee Realty Associates, LLC  
1230 West Genesee Street  
Syracuse, New York 13204  
Attn: Stephen G. Byer

Stephen G. Byer  
1230 West Genesee Street  
Syracuse, New York 13204

With a copy to:

Barclay Damon LLP  
Barclay Damon Tower  
125 East Jefferson Street  
Syracuse, New York 13202  
Attn: Kevin R. McAuliffe, Esq.

The Agency and Company may, by notice given hereunder to each of the others, designate any further or different addresses to which the subsequent notices, certificates or other communications to them shall be sent.

**Section 5.05. Binding Effect**

This Agreement shall inure to the benefit of, and shall be binding upon the Agency and the Company, and their respective successors and assigns.

**Section 5.06. Severability**

If any article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion of this Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction, such article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion so adjudged invalid, illegal or unenforceable shall be deemed separate, distinct and independent and the remainder of this Agreement shall be and remain in full force and effect and shall not be invalidated or rendered illegal or unenforceable or otherwise affected by such holding or adjudication.

**Section 5.07. Counterparts**

This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**Section 5.08. Applicable Law**

This Agreement shall be governed by and construed in accordance with the laws of the State



of New York. Venue of any action or proceeding brought hereunder shall be in the State or Federal Courts located in Onondaga County, New York.

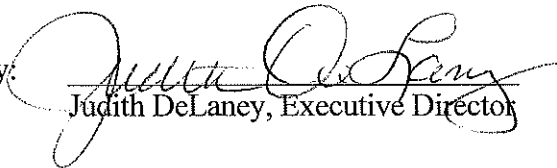
**Section 5.09. Assignment**

This Agreement may not be assigned by the Company without the prior written consent of the Agency.

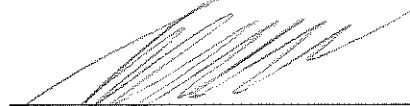
[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Agency and Company have caused this Agreement to be executed in their respective names on the date first above written and the Company hereby acknowledges receipt and review of this Agreement, and consents to, and approves of, the terms and provisions contained herein.



**CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY**

By:   
Judith DeLaney, Executive Director

**ALAN I. BYER FAMILY TRUST**

By:   
Stephen G. Byer  
Authorized Signatory

**WEST GENESEE REALTY ASSOCIATES, LLC**

By:   
Stephen G. Byer, Manager  
  
Stephen G. Byer, individually

STATE OF NEW YORK )  
COUNTY OF ONONDAGA ) ss:

On the 12<sup>th</sup> day of September, in the year 2019, before me the undersigned, a Notary Public in and for said state, personally appeared **Judith DeLaney**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual or he person upon behalf of which the individual acted, executed the instrument.

  
Notary Public

STATE OF NEW YORK            )  
COUNTY OF ONONDAGA        ) ss:


On the 12<sup>th</sup> day of September, in the year 2019, before me the undersigned, a notary public in and for said State, personally appeared **Stephen G. Byer**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or he person upon behalf of which the individual acted, executed the instrument.

Lori L. McRobbie  
Notary Public


LORI L. McROBBIE  
Notary Public, State of New York  
Qualified in Onondaga Co. No. 01MC5055591  
Commission Expires on Feb. 12, 2022

IN WITNESS WHEREOF, the Agency and Company have caused this Agreement to be executed in their respective names on the date first above written and the Company hereby acknowledges receipt and review of this Agreement, and consents to, and approves of, the terms and provisions contained herein.

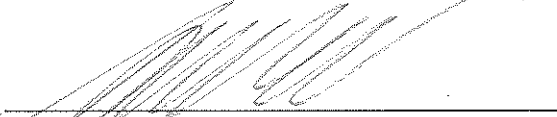
**CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY**

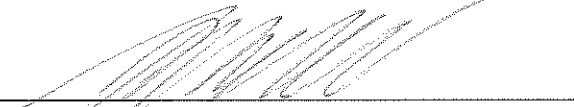
By:   
Judith DeLaney, Executive Director

**ALAN I. BYER FAMILY TRUST**

By:   
Stephen G. Byer  
Authorized Signatory

**WEST GENESEE REALTY ASSOCIATES, LLC**

By:   
Stephen G. Byer, Manager

  
Stephen G. Byer, individually

STATE OF NEW YORK )  
COUNTY OF ONONDAGA ) ss:

On the 12<sup>th</sup> day of September, in the year 2019, before me the undersigned, a Notary Public in and for said state, personally appeared **Judith DeLaney**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual or he person upon behalf of which the individual acted, executed the instrument.

  
Notary Public

LORI L. McROBBIE  
Notary Public, State of New York  
Qualified in Onondaga Co. No. 01MC505591  
Commission Expires on Feb. 12, 20 22

STATE OF NEW YORK            )  
COUNTY OF ONONDAGA        ) ss:

On the 12<sup>th</sup> day of September, in the year 2019, before me the undersigned, a notary public in and for said State, personally appeared **Stephen G. Byer**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or he person upon behalf of which the individual acted, executed the instrument.

Lori L. McRobbie  
Notary Public  
LORI L. McROBBIE  
Notary Public, State of New York  
Qualified in Onondaga Co. No. 01MC5055591  
Commission Expires on Feb. 12, 20 22

**EXHIBIT "A"**

**PILOT SCHEDULE**

<b>Year</b>	<b>Amount</b>
1	\$89,798.97
2	\$91,594.95
3	\$93,426.85
4	\$95,295.39
5	\$97,201.30
6	\$99,145.32
7	\$101,128.23
8	\$114,927.21
9	\$129,237.71
10	\$144,074.65
11 and after	Full taxes*

\*as if the property was privately owned and the Agency had no interest therein.

## EXHIBIT "B"

### LEGAL DESCRIPTION

#### **Parcel 1 (1232-36 West Genesee Street – 108.1-02-19)**

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Syracuse, County of Onondaga and State of New York, being a portion of Farm Lot #292 and #293 in said City and being more particularly described as follows: Beginning at a point in the present northerly line of West Genesee Street, said point being S. 74° 37' 20" W., a distance of 252.1 feet from the intersection of the westerly line of Eureka Street, with said northerly line of West Genesee Street, said point of beginning also being the southwesterly corner of property now or formerly owned by the Gladding Corporation, as recorded in the Onondaga County Clerk's office in Liber of Deeds # 3102 at Page #7; thence S. 74° 37' 20" W., along said northerly line of West Genesee Street a distance of 196.93 feet to its intersection with the easterly line of Block #1, of the Powell Tract, Filed Map #267, said point also being the southeasterly corner of property now or formerly owned by Vehicles Realty Associates, as recorded in the Onondaga County Clerk's Office in Liber of Deeds #2683, Page 276; thence N. 55° 28' 20" W., along said easterly line of said Vehicles Realty Associates property and said easterly line of said Block #1, a distance of 351.77 feet to a point; thence N. 63° 51' 20" E., a distance of 353.75 feet to a point; thence S. 28° 08' 53" E., along the westerly line of said Gladding Corporation property, a distance of 343.69 feet to the point and place of beginning.

#### **Parcel 2 (1232 West Genesee Street – 108.1-02-35.1)**

ALL THAT TRACT OF PARCEL OF LAND, situate in the City of Syracuse, County of Onondaga, State of New York, being parts of Farm Lot Nos. 292 and 293 as shown on a map of The Hiawatha Tract filed in the Onondaga County Clerk's Office on September 20, 19\_7 as Tract Map No. 1606, bounded and described as follows: BEGINNING at the northeasterly corner of Alan Byer, reputed owner, according to Book 2497 of Deeds at Page 1012, filed in the Onondaga County Clerk's Office, said point being the following courses and distances from the intersection of the westerly boundary of Eureka Street with the northerly boundary of West Genesee Street: 1) S. 74° 37' 20" W., along said northerly boundary of West Genesee Street, a distance of 253.27 feet to the southeasterly corner of said Alan Byer; 2) N. 28° 08' 40" W., along the easterly boundary of said Alan Byer, a distance of 343.67 feet to said point of beginning; running thence S. 63° 51' 20" W., along the northerly boundary of said Alan Byer, a distance of 341.96 feet to the northwesterly corner thereof; thence N. 46° 11' 32" W., a distance of 156.33 feet to an angle point; thence N. 28° 08' 40" W., a distance of 200.00 feet to a point in the northerly boundary of Warsaw Avenue (not open); thence N. 61° 52' 20" E., along said northerly boundary of Warsaw Avenue (not open), a distance of 400.18 feet to a point in the westerly boundary of Gladding Corp., formerly; thence S. 28° 08' 40" E., along said westerly boundary of Gladding Corp., formerly, a distance of 360.92 feet to a point; thence S. 63° 51' 20" W., a distance of 9.98 feet to the point of beginning. Containing 3.170 acres of land, more or less.

**Parcel 3 (1288 West Genesee Street – 108.1-02-20)**

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Syracuse, County of Onondaga and State of New York, in the former Town of Geddes, known and distinguished as Lots No. 1, 2, 3, 4 and 5 and part of Lot 7, of the Powell Tract, according to a map thereof filed in the Onondaga County Clerk's Office on August 14, 1876, as Map Number 267, bounded and described as follows:

Beginning at the Intersection of the north line of West Genesee Street, with the east line of Dewey Avenue (formerly North Magnolia Street); thence easterly along the northerly line of West Genesee Street 475.14 feet, more or less to the southeasterly corner of Lot Number 1, of said Powell Tract; thence North  $55^{\circ} 28' 20''$  West on the westerly side of Harbour Brook and the easterly line of Lots 1, 2 and 7 of said Powell Tract according to said Map, 313.73 feet to a point in the northerly line of lands conveyed to the Syracuse Hospital for Women and Children of Syracuse, New York by deed dated November 9, 1904, and recorded in the Onondaga County Clerk's Office on December 12, 1904, in Book Number 360 of Deeds at page 129&c.; thence South  $74^{\circ} 37' 20''$  West parallel to West Genesee Street and along the northerly line of lands so conveyed by said Deed to the Syracuse Hospital for Women and Children as aforesaid and along the northerly line of lands conveyed to the Woman's Hospital and Training School for Nurses by deed dated July 22, 1895, and recorded in the Onondaga County Clerk's Office on September 18, 1895, in Book of Deeds No. 311 at page 4&c., 141.35 feet, more or less, to the northeast corner of a lot formerly owned by Rosa Andrews and thence southerly along the west line of said Lot owned by Rosa Andrews 40 feet to the southeast corner thereof; thence South  $74^{\circ} 37' 20''$  West along the south line of said Andrews Lot, formerly owned by Rosa Andrews, 132 feet to the east line of Dewey Avenue; thence South  $15^{\circ} 22' 40''$  East along the easterly line of Dewey Avenue 200 feet to the point and place of beginning.

Easement for ingress and egress over lands now or formerly owned by Alan Byer, lying east of the above described parcel as set forth in an Easement Agreement between Vehicle Realty Associates and Alan Byer dated March 31, 1989 and recorded in the Onondaga County Clerk's office September 14, 1989 in Book 3562 of Deeds, Page 216, the easement area having been described as follows:

All of that tract or parcel of land situate in the City of Syracuse, County of Onondaga, State of New York, being part of Farm Lots 292 & 293 and more particularly bounded and described as follows:

Beginning at a point at the northwest corner of lands of party of the first part, said point also being N.  $56^{\circ} 29' 03''$  W., along the westerly line of lands of said party of the first part, a distance of 360.10 feet from the Northerly line of W. Genesee Street; running thence N.  $63^{\circ} 51' 40''$  E., along the northerly line of lands of said party of the first part, 25 feet to a point; thence the following 2 courses and distances through and across the lands of said party of the first part: (1) S.  $56^{\circ} 29' 03''$  S., 53.37 feet; and (2) S.  $33^{\circ} 30' 57''$  W., 21.58 feet to a point in said westerly line of lands of party of the first part; thence N.  $56^{\circ} 29' 03''$  W., along said Westerly line, 66 feet to the place of beginning.







NYS DEPARTMENT OF TAXATION & FINANCE  
OFFICE OF REAL PROPERTY TAX SERVICES

RP-412-a (1/95)

RECEIVED

OCT 18 2019

DEPT. OF ASSESSMENT

INDUSTRIAL DEVELOPMENT AGENCIES  
APPLICATION FOR REAL PROPERTY TAX EXEMPTION  
(Real Property Tax Law, Section 412-a and General Municipal Law, Section 874)

1. INDUSTRIAL DEVELOPMENT AGENCY (IDA)

Name City of Syracuse Industrial Development Agency  
Street 201 East Washington Street, 6th Floor  
City Syracuse  
Telephone no. Day (315) 473-3275  
Evening ( ) N/A  
Contact Judith DeLaney  
Title Executive Director

2. OCCUPANT (IF OTHER THAN IDA)

(If more than one occupant attach separate listing)

Name see Schedule A  
Street \_\_\_\_\_  
City Syracuse  
Telephone no. Day ( ) 315-471-6107  
Evening ( ) N/A  
Contact Stephen Byer  
Title \_\_\_\_\_

3. DESCRIPTION OF PARCEL

a. Assessment roll description (tax map no./roll year)  
see attached  
b. Street address see attached  
c. City, Town or Village Syracuse

d. School District Syracuse  
e. County Onondaga  
f. Current assessment see Schedule A  
g. Deed to IDA (date recorded; liber and page)  
N/A lease/leaseback agreement -  
see Schedule A

4. GENERAL DESCRIPTION OF PROPERTY (if necessary, attach plans or specifications)

a. Brief description (include property use) renovation of a commercial facility for use as automotive facility/complex  
b. Type of construction steel/wood  
c. Square footage see attached  
d. Total cost \$3,365,000  
e. Date construction commenced 2019  
f. Projected expiration of exemption (i.e. date when property is no longer possessed, controlled, supervised or under the jurisdiction of IDA)  
June 30, 2030

5. SUMMARIZE AGREEMENT (IF ANY) AND METHOD TO BE USED FOR PAYMENTS TO BE MADE TO MUNICIPALITY REGARDLESS OF STATUTORY EXEMPTION

(Attach copy of the agreement or extract of the terms relating to the project).

a. Formula for payment See attached PILOT Agreement  
\_\_\_\_\_  
\_\_\_\_\_  
b. Projected expiration date of agreement June 30, 2030

c. Municipal corporations to which payments will be made

	Yes	No
County <u>Onondaga</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Town/City <u>Syracuse</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Village _____	<input type="checkbox"/>	<input checked="" type="checkbox"/>
School District <u>Syracuse</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

d. Person or entity responsible for payment

Name see Schedule A  
 Title \_\_\_\_\_  
 Address 1230 West Genesee Street  
Syracuse, NY 13204

e. Is the IDA the owner of the property?  Yes  No (check one)

If "No" identify owner and explain IDA rights or interest in an attached statement. See Schedule A

Telephone (315)471-6107

6. Is the property receiving or has the property ever received any other exemption from real property taxation? (check one)  Yes  No

If yes, list the statutory exemption reference and assessment roll year on which granted: exemption \_\_\_\_\_ assessment roll year \_\_\_\_\_

7. A copy of this application, including all attachments, has been mailed or delivered on 10-16-19 (date) to the chief executive official of each municipality within which the project is located as indicated in Item 3.

**CERTIFICATION**

I, Judith DeLaney, Executive Director of \_\_\_\_\_

Name Title  
City of Syracuse Industrial Development Agency hereby certify that the information  
Organization

on this application and accompanying papers constitutes a true statement of facts.

9-12-19  
Date

Judith A DeLaney  
Signature

**FOR USE BY ASSESSOR**

1. Date application filed \_\_\_\_\_
2. Applicable taxable status date \_\_\_\_\_
- 3a. Agreement (or extract) date \_\_\_\_\_
- 3b. Projected exemption expiration (year) \_\_\_\_\_
4. Assessed valuation of parcel in first year of exemption \$ \_\_\_\_\_
5. Special assessments and special as valorem levies for which the parcel is liable:

\_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_  
Assessor's signature

## SCHEDULE TO 412-A

### Response to Item 2. *Occupant Names*

- a. Alan I. Byer Family Trust
- b. Stephen G. Byer
- c. West Genesee Realty Associates

### Response to Item 3. a. *Assessment roll descriptions (tax map no./roll year)*

- Parcel 1: 1232-36 West Genesee Street (also known as 1230 West Genesee Street):  
108.1-02-19/2019
- Parcel 2: 1232 West Genesee Street (rear): 108.1-02-35.1/2019
- Parcel 3: 1288 West Genesee Street: 108.1-02-20/2019

### Response to Item 3. b. *Street addresses:*

- Parcel 1: 1232-36 West Genesee Street (also known as 1230 West Genesee Street)
- Parcel 2: 1232 West Genesee Street (rear)
- Parcel 3: 1288 West Genesee Street

**Response to Item Response to Item 3.g *Deed to IDA:*** Memorandum of Company Lease and Memorandum of Agency Lease, both dated as of September 1, 2019, were each recorded in the office of the Clerk of Onondaga County on October 4, 2019 as Instrument No. 2019-00037399 and Instrument No. 2019-00037400, respectively.

### Response to Item 4 c. *Square footage:*

- Parcel 1: 1232-36 West Genesee Street (also known as 1230 West Genesee Street):  
176 x 350
- Parcel 1: 1232 West Genesee Street (rear): 351.96 x 360.92
- Parcel 1: 1288 West Genesee Street: 486.5 x 200

**Response to Item 5.d *Person or entity responsible for payment:*** Alan I. Byer Family Trust, Stephen G. Byer and West Genesee Realty Associates, jointly and severally.

### Response to Item 5.e. *Is the IDA the owner of the property?*

No. The City of Syracuse Industrial Development Agency has a leasehold interest in the subject premises pursuant to a lease/leaseback arrangement as set forth in a certain Agency Lease and Company Lease each dated as of September 1, 2019, memorandums of which were filed as set forth above.



# BOUSQUET HOLSTEIN PLLC

110 WEST FAYETTE STREET • ONE LINCOLN CENTER • SUITE 1000 • SYRACUSE, NEW YORK 13202 • PH: 315.422.1500 • FX: 315.422.3549

October 16, 2019

**VIA CERTIFIED MAIL**

7018 3090 0002 3323 3567

Dave Clifford, Assessor  
City of Syracuse, Department of Assessment  
Room 130, City Hall  
233 East Washington Street  
Syracuse, New York 13202

Re: City of Syracuse Industrial Development Agency  
Alan Byer Auto Sales, Inc. – Volvo Project

  
Dear Mr. Clifford:

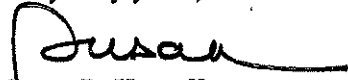
Enclosed herewith please find an original RP-412-a form attendant with the above- referenced Project, as well as a fully executed original PILOT Agreement, to be filed with your office.

Also enclosed for your file are fully executed copies of the Company Lease Agreement and the Agency Lease Agreement regarding this Project.

We have enclosed a copy of the 412-a and ask that you return same, filed-stamped, in the envelope provided.

If you have any questions regarding the foregoing, please do not hesitate to contact me.


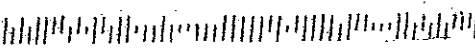
Very truly yours,

  
Susan R. Katzoff

SRK/llm  
Enclosures

cc: *Via Electronic Mail*  
Judy DeLaney, Executive Director (without enclosures)

3938497\_1

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> <li>■ Complete items 1, 2, and 3.</li> <li>■ Print your name and address on the reverse so that we can return the card to you.</li> <li>■ Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>	<p>A. Signature  <input checked="" type="checkbox"/> <i>Edward Wolff</i>      <input type="checkbox"/> Agent  <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) _____</p> <p>C. Date of Delivery _____</p>
<p>1. Article Addressed to:  David Clifford, Assessor  City of Syracuse  Department of Assessment  Room 130, City Hall, Syracuse, NY  13202</p>  	<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes  If YES, enter delivery address below: <input type="checkbox"/> No</p> <p>3. Service Type  <input type="checkbox"/> Adult Signature  <input type="checkbox"/> Adult Signature Restricted Delivery  <input type="checkbox"/> Priority Mail Express®  <input type="checkbox"/> Registered Mail™  <input type="checkbox"/> Registered Mail Restricted Delivery  <input type="checkbox"/> Return Receipt for Merchandise  <input type="checkbox"/> Signature Confirmation™  <input type="checkbox"/> Signature Confirmation Restricted Delivery</p>
<p>PS Form 3811, July 2015 PSN 7530-02-000-9053 <span style="float: right;">Domestic Return Receipt</span></p>	

7018 3090 0002 3323 3567

**U.S. Postal Service™**  
**CERTIFIED MAIL® RECEIPT**  
*Domestic Mail Only*

**OFFICIAL USE**

For delivery information, visit our website at [www.usps.com](http://www.usps.com)

Certified Mail Fee \_\_\_\_\_

Extra Services & Fees (check box and fee as appropriate):

Return Receipt (hardcopy) \$ \_\_\_\_\_

Return Receipt (electronic) \$ \_\_\_\_\_

Certified Mail Restricted Delivery \$ \_\_\_\_\_

Adult Signature Required \$ \_\_\_\_\_

Adult Signature Restricted Delivery \$ \_\_\_\_\_

Postage \_\_\_\_\_

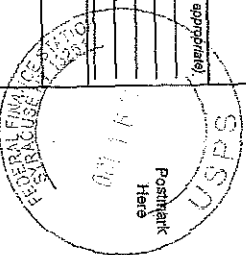
Total Postage and Fees **14.15**

Sent to: *David Clifford, Assessor, City of Syracuse*

Street and Apt. No. *PO Box 130*

City, State, ZIP+4® *Syracuse, NY 13202*

HEAT SENSITIVE MAIL (PSN 7530-02-000-9057) See Reverse for Instructions



Postmark Here



**GENERAL CERTIFICATE OF THE  
CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY**

This certificate is made in connection with the execution by the City of Syracuse Industrial Development Agency (the "**Agency**") of the Project Agreement, the Company Lease, the Agency Lease, the PILOT Agreement and any other document now or hereafter executed by the Agency (collectively, the "**Agency Documents**") with respect to a project (the "**Project**") undertaken at the request of Alan Byer Auto Sales, Inc., ("**Alan Sales**"), Alan I. Byer Family Trust, an Inter Vivos Revocable Trust created pursuant to a Third Amended and Restated Trust Agreement dated October 1, 2015 (the "**Trust**"), Stephen G. Byer ("**Byer**") and West Genesee Realty Associates, LLC ("**Realty**" and together with Alan Sales, the Trust and Byer, collectively, the "**Company**") consisting of: (A)(i) the acquisition of an interest in: (1) approximately 1.89 acres of improved real property bearing tax map number 108.1-02-19 and commonly referred to as 1232-36 West Genesee Street (also known as 1230 West Genesee Street) ("**Parcel 1**"); (2) approximately 3 acres of improved real property bearing tax map number 108.1-02-35.1 and commonly referred to as 1232 West Genesee Street (rear) ("**Parcel 2**"); and (3) approximately 2 acres of improved real property bearing tax map number 108.1-02-20 and commonly referred to as 1288 West Genesee Street ("**Parcel 3**"), each in the City of Syracuse, New York (collectively, the "**Land**"); (ii) certain improvements, including but not limited to, an existing approximately 25,820 square foot building located on Parcel 1; an existing approximately 17,000-square foot building located on Parcel 2; and an approximately 34,802 square foot building located on Parcel 3, all of which are served by common driveways, parking, and pedestrian walkways, and all of which comprise the Alan Byer Volvo facility (collectively, the "**Improvements**"); (iii) the renovation to the Improvements and the Land include, but are not limited to, the interior showroom, sales offices and reception areas, external replacement of entry, new exterior wall finishes, updated signage, the existing basement, replacement of an area of deteriorating floor slab, refreshed directional pavement graphics and roof replacement (collectively with the Land and Improvements, the "**Facility**"); (iv) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment (the "**Equipment**" and together with the Land, Improvements and the Facility, the "**Project Facility**"); (B) the granting of certain financial assistance in the form of exemptions from real property tax, State and local sales and use tax and mortgage recording tax (in accordance with Section 874 of the General Municipal Law) (collectively the "**Financial Assistance**"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, reconstruction, renovation, equipping and completion of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement.

Capitalized terms used herein which are not otherwise defined herein and which are defined in the Agency Lease Agreement dated as of September 1, 2019 (the "**Agency Lease**"), between the Agency and the Company, and shall have the meanings ascribed to such terms in the Agency Lease except that, for purposes of this certificate: (A) all definitions with respect to any document shall be deemed to refer to such document only as it exists as of the date of this



certificate and not as of any future date; and (B) all definitions with respect to any Person shall be deemed to refer to such Person only as it exists as of the date of this certificate and not as of any future date or to any successor or assign.

I, the undersigned Executive Director of the Agency, Do Hereby Certify:

1. I am an officer of the Agency and am duly authorized to execute and deliver this certificate in the name of the Agency.

2. The Agency is an industrial development agency duly established under Title 1 of Article 18-A of the General Municipal Law of the State of New York (the "**State**"), as amended (the "**Enabling Act**") and Chapter 641 of the Laws of 1979 of the State (said Chapter with the Enabling Act, the "**Act**") (a certified copy of Chapter 641 of the Laws of 1979 of the State is attached hereto as **Exhibit "A"**), and it is a corporate governmental agency constituting a public benefit corporation of the State.

3. The Act empowers the Agency, among other things, to acquire, construct reconstruct, lease, improve, maintain, equip, sell and dispose of land and any building or other improvement, and all real and personal property, including, but not limited to, machinery and equipment deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial, recreation or industrial facilities, including industrial pollution control facilities, in order to advance job opportunities, health, general prosperity and the economic welfare of the people of the City of Syracuse and the State and to improve their standard of living. The Act further authorizes the Agency to lease any and all of its facilities on such terms and conditions as it deems advisable, to acquire, construct, lease, improve, and equip one or more projects as defined in the Act, to mortgage any or all of its facilities and to pledge the revenues and receipts from the sale or transfer of its facilities.

4. The Agency has full legal power and authority to own its property, conduct its business and execute, deliver, and perform its obligations under the Agency Documents and has taken all actions and obtained all approvals required in connection therewith by the Act and any other applicable laws and regulations, and no legislation has been enacted affecting the powers or authority of the Agency to execute and deliver the Agency Documents, affecting the financing of the Project, or affecting the validity thereof or of the Agency Documents, or contesting the existence and powers of the Agency or the appointment of the members and officers of the Agency to their respective offices.

5. Pursuant to the Act, the governing body of the City of Syracuse, New York, for whose benefit the Agency was established, duly filed or caused to be filed within six (6) months after the effective date of Chapter 641 of the Laws of 1979 of the State in the office of the Secretary of State of the State the Certificate of Establishment of the Agency pursuant to Section 926 of the New York General Municipal Law. The Certificate of Establishment of the Agency described in the preceding sentence also named the members and officers of the Agency as appointed by the Mayor of the City of Syracuse. Attached hereto as **Exhibit "B"** are certified

copies of said Certificates of Establishment and copies of the Certificates of Appointment relating to all of the current members of the Agency, who are:

Michael Frame, Chairman  
Steven Thompson, Vice Chairman  
Rickey T. Brown, Secretary  
Kathleen Murphy, Treasurer  
Kenneth Kinsey, Member

6. Attached hereto as **Exhibit “C”** is a true, correct and complete copy of the by-laws of the Agency, together with all amendments thereto or modifications thereof; and said by-laws as so amended and modified are in full force and effect in accordance with their terms as of the date of this certificate.

7. That a resolution determining that the acquisition, construction and equipping of the Project constitutes a Project and describing the financial assistance in connection therewith and authorizing a public hearing (the “***First Public Hearing Resolution***”) was adopted by the Agency on November 20, 2018 and remains in full force and effect and has not been rescinded, repealed or modified. A copy of the First Public Hearing Resolution is attached hereto at **Exhibit “D.”**

8. Attached hereto as **Exhibit “E”** is proof of publication of a notice of the public hearing with respect to the Project (the “***First Public Hearing Notice***”), required pursuant to Section 859-a of the Act and held on December 18, 2018, and proof of mailing of notice thereof pursuant to Section 859-a of the Act to the chief executive officers of the affected tax jurisdictions (as defined in Section 854(16) of the Act) on December 3, 2018.

9. That a resolution approving the undertaking of the acquisition, reconstruction, renovation, equipping and completion of a project, appointing the Company as agent of the Agency for the purpose of the acquisition, reconstruction, renovation, equipping and completion of the Project, authorizing the execution and delivery of an agreement between the Agency and the Company and determining that the Project constitutes a "Type II" action as that term in defined pursuant to Article 8 of the Environmental Conservation Law of the State of New York, as amended, and the regulations of the Department of Environmental Conservation of the State of New York promulgated thereunder (the “***Original Inducement Resolution***”) was adopted by the Agency on December 18, 2018 and remains in full force and effect and has not been rescinded, repealed or modified. A copy of the Original Inducement Resolution is attached hereto at **Exhibit “F.”**

10. That a resolution approving a payment in lieu of tax schedule and authorizing the execution and delivery of certain documents by the Agency in connection with the Project was adopted by the Agency on December 18, 2018 (the “***Original PILOT Resolution***”) and remained in full force and effect and has not been rescinded, repealed or modified. A copy of the Original PILOT Resolution is attached hereto to **Exhibit “G”**.

11. That a resolution authorizing the execution and delivery of certain documents by the Agency in connection with the Project was adopted by the Agency on December 18, 2018 (the “*Original Final Approving Resolution*”) and remains in full force and effect and has not been rescinded, repealed or modified. A copy of the Original Final Approving Resolution is attached hereto at **Exhibit “H”**.

12. That a resolution approving an extension of the temporary sales tax appointment of Alan Byer Auto Sales, Inc. and Alan I. Byer Family Trust as agents of the agency until May 31, 2019; and authorizing the execution of any and all necessary documents in conjunction therewith was adopted by the Agency on March 19, 2019 (the “*First Extension Resolution*”) and remains in full force and effect and has not been rescinded, repealed or modified. A copy of the First Extension Resolution is attached hereto at **Exhibit “I”**.

13. That a resolution authorizing a public hearing with respect to modifications to the project being undertaken by the Agency was adopted by the Agency on March 19, 2019 (the “*Second Public Hearing Resolution*”) and remains in full force and effect and has not been rescinded, repealed or modified. A copy of the Second Public Hearing Resolution is attached hereto at **Exhibit “J”**.

14. Attached hereto as **Exhibit “K”** is proof of publication of a notice of the second public hearing with respect to the Project (the “*Second Public Hearing Notice*”), required pursuant to Section 859-a of the Act and held on July 16, 2019, and proof of mailing of notice thereof pursuant to Section 859-a of the Act to the chief executive officers of the affected tax jurisdictions (as defined in Section 854(16) of the Act) on April 3, 2019.

15. That a resolution approving a retroactive extension of the temporary sales tax appointment of Alan Byer Auto Sales, Inc. and Alan I. Byer Family Trust as agents of the Agency until July 16, 2019; and authorizing the execution of any and all necessary documents in conjunction therewith was adopted on July 16, 2019 (the “*Second Extension Resolution*”) and remains in full force and effect and has not been rescinded, repealed or modified. A copy of the Second Extension Resolution is attached hereto at **Exhibit “L”**.

16. That a resolution authorizing the undertaking, acquisition, reconstruction, renovation, equipping and completion of the modified project; appointing the company as agent of the Agency for the purpose of the acquisition, reconstruction, renovation, equipping and completion of the Project; and authorizing the execution and delivery of an amended agreement between the Agency and the Company was adopted by the Agency on July 16, 2019 (the “*Amended Inducement Resolution*”) and remains in full force and effect and has not been rescinded, repealed or modified. A copy of the Amended Inducement Resolution is attached hereto at **Exhibit “M”**.

17. Attached hereto as **Exhibit “N”** is proof of publication of a notice to re-open the public hearing previously held on April 16, 2019 with respect to the Project and in particular the cost benefit analysis for the payment in lieu of taxes (the “*Third Public Hearing Notice*”), required pursuant to Section 859-a of the Act and held on August 20, 2019, and proof of mailing

of notice thereof pursuant to Section 859-a of the Act to the chief executive officers of the affected tax jurisdictions (as defined in Section 854(16) of the Act) on August 5, 2019.

18. That a resolution approving a revised payment in lieu of tax schedule and authorizing the execution and delivery of certain documents by the Agency in connection with the Project was adopted by the Agency on August 20, 2019 (the “*Amended PILOT Resolution*”) and remained in full force and effect and has not been rescinded, repealed or modified. A copy of the Amended PILOT Resolution is attached hereto to **Exhibit “O”**.

19. That a resolution authorizing the execution and delivery of certain documents by the Agency in connection with the Project was adopted by the Agency on August 20, 2019 (the “*Amended Final Approving Resolution*”) and remains in full force and effect and has not been rescinded, repealed or modified. A copy of the Amended Final Approving Resolution is attached hereto at **Exhibit “P”**.

20. The execution, delivery and performance of all Agency Documents, certificates and documents required to be executed, delivered and performed by the Agency in order to carry out, give effect to and consummate the transactions contemplated by the Agency Documents have been duly authorized by all necessary action of the Agency, and the Agency Documents have been duly authorized, executed and delivered. The Agency Documents are in full force and effect on and as of the date hereof, and no authority or proceeding for the execution, delivery or performance of the Agency Documents has been materially amended, repealed, revoked or rescinded; and no event or circumstance has occurred or exists which constitutes, or with the giving of notice or the passage of time would constitute, a default on the part of the Agency under the Agency Documents.

21. The execution, delivery, and performance of the Agency Documents, the consummation of the transactions therein contemplated and compliance with the provisions of each do not and will not: (a) violate the Act or the by-laws of the Agency; (b) require consent (which has not heretofore been received) under or result in a breach or default of any credit agreement, purchase agreement, indenture, deed of trust, commitment, guaranty, lease, or other agreement or instrument to which the Agency is a party or by which the Agency may be bound or affected; or (c) conflict with or violate any existing law, rule, regulation, judgment, order, writ, injunction, or decree of any government, governmental instrumentality, or court, domestic or foreign, having jurisdiction over the Agency or any of its property.

22. The Agency has not received written notice that any event of default has occurred and is continuing, or that any event has occurred which with the lapse of time or the giving of notice or both would constitute an event of default by any party to the Agency Documents.

23. There is no action, suit, proceeding or investigation at law or in equity, before or by any court, public board or body of the United States of America or the State of New York, pending or, to the best of my knowledge, threatened against or affecting the Agency (or to my knowledge any basis therefor): (a) wherein an unfavorable decision or finding would adversely affect: (i) the Amended Inducement Resolution, the Amended Final Approving Resolution, or any other resolution adopted by the Agency in conjunction with the Project, the Company Lease, the Agency Lease or the other Agency Documents; or (ii) the existence or organization of the

Agency; or (iii) restrain or enjoin the financing, acquisition or construction of the Project or the performance by the Agency of the Agency Documents; or (b) in any manner questioning the proceedings or authority of the financing of the Project, or affecting the validity thereof or of the Agency Documents, or contesting the existence and powers of the Agency or the appointment of the directors and officers of the Agency to their respective offices.

24. September 12, 2019 has been duly designated as the date for the closing (the "*Closing Date*").

25. The Agency has complied with all agreements and satisfied all conditions on its part to be performed or satisfied at or prior to the Closing Date.

26. In accordance with the Act, the Agency has determined:

(a) to assist the Company's acquisition, reconstruction, renovation, equipping and completion of the Project Facility;

(b) to grant the Financial Assistance to the Company;

(c) to designate the Company as the Agency's agent for the acquisition, reconstruction, renovation, equipping and completion of the Project Facility and to authorize the Company to appoint additional agents;

(d) that the Project will promote employment opportunities and prevent economic deterioration in the City by the preservation and/or the creation of both full and part-time jobs; and

27. That I did officially cause all certificates necessary for the granting of the Financial Assistance and included in the official transcript of closing, to be executed, as required, in the name of the Agency by the signing of each of such certificates with the signature of the Executive Director of the Agency.

28. That I did officially cause the following Agency Documents to be executed in the name of the Agency by the signing of each of such Agency Documents with the signature of the Honora Spillane, Executive Director of the Agency:

(a) a Project Agreement between the Agency and the Company;

(b) a Company Lease from the Company to the Agency pursuant to which the Company agrees to lease the Land and the Facility to the Agency;

(c) an Agency Lease from the Agency to the Company pursuant to which the Agency agrees to sublease the Project Facility to the Company;

(d) a PILOT Agreement by and between the Agency and the Company.

29. No member, officer or employee of the Agency having power to: (i) negotiate, prepare, authorize or approve any of the Agency Documents; (ii) audit bills or claims under any of the Agency Documents; or (iii) appoint an officer or employee who has any of the powers or duties set forth in (i) or (ii):

(a) directly or indirectly owns any stock of the Company;

(b) is a partner, director or employee of the Company;

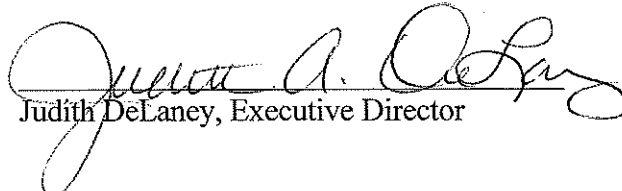
(c) is related to the Company within the meaning of Section 800.3(a) of the New York General Municipal Law.

No member, officer, or employee of the Agency has publicly disclosed, in a writing included as part of the official minutes of the Agency, any Interest (as defined in Section 800.3 of the New York General Municipal Law), direct or indirect, in the Company.

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WITNESS, as of the 1<sup>st</sup> day of September, 2019.

**CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY**

By:   
Judith DeLaney, Executive Director

**EXHIBIT "A"**

**CHAPTER 641 OF THE LAWS OF 1979  
OF THE STATE OF NEW YORK**



LAWS OF NEW YORK, 1979

CHAPTER 641

AN ACT to amend the general municipal law, in relation to creating and establishing for the city of Syracuse industrial development agency and, providing for its functions and duties

Became a law July 11, 1979, with the approval of the Governor. Passed on Home Rule request pursuant to Article IX, section 2 (b) (2) of the Constitution, by a majority vote, three-fifths being present.

*The People of the State of New York, represented in Senate and Assembly, do enact as follows:*

Section 1. The general municipal law is amended by adding a new section nine hundred twenty-six to read as follows:

§ 926. *City of Syracuse industrial development agency. (a) For the benefit of the city of Syracuse and the inhabitants thereof, an industrial development agency, to be known as the CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY, is hereby established for the accomplishment of any or all of the purposes specified in title one of article eighteen-A of this chapter. It shall constitute a body corporate and politic, and be perpetual in duration. It shall consist of five members who shall be appointed by the mayor of the city of Syracuse and its chairman shall be designated by such mayor. It shall have the powers and duties now or hereafter conferred by title one of article eighteen-A of this chapter upon industrial development agencies. It shall organize in a manner prescribed by and be subject to the provisions of title one of article eighteen-A of this chapter. The agency, its members, officers and employees, and its operations and activities shall in all respects be governed by the provisions of title one of article eighteen-A of this chapter.*

*(b) The city shall have the power to make, or contract to make grants or loans, including but not limited to grants or loans of money, to the agency in such amounts, upon such terms and conditions and for such period or periods of time as in the judgment of the city and the agency are necessary or appropriate for the accomplishment of any of the purposes of the agency.*

§ 2. This act shall take effect immediately.

**EXHIBIT "B"**

**AGENCY'S CERTIFICATE OF ESTABLISHMENT  
AND  
CERTIFICATES OF APPOINTMENT OF CURRENT MEMBERS**

**STATE OF NEW YORK**  
**DEPARTMENT OF STATE**

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.

WITNESS my hand and official seal of the  
Department of State, at the City of Albany, on  
April 10, 2018.



A handwritten signature in black ink, appearing to read "B. Fitzgerald", is written over a horizontal line.

Brendan Fitzgerald  
Executive Deputy Secretary of State

CERTIFICATE OF THE CITY OF SYRACUSE  
INDUSTRIAL DEVELOPMENT AGENCY

Pursuant to Article 18-A of the General Municipal Law, Lee Alexander, Mayor of the City of Syracuse, certifies as follows:

1) The name of the industrial development agency herein is the City of Syracuse Industrial Development Agency.

2) Chapter 641 of the Laws of 1979, the special act of the New York State Legislature establishing the City of Syracuse Industrial Development Agency, was adopted by the New York State Legislature on June 16, 1979 and signed by the Governor on July 18, 1979. 11<sup>th</sup>

3) The names of the Chairman and the Members, respectively, of the City of Syracuse Industrial Development Agency and their terms of office are as follows:

(a)	Frank L. Canino	Chairman
	David M. Garber	Member
	David S. Michel	Member
	Erwin G. Schultz	Member
	Irwin L. Davis	Member

(b) The term of office of the Chairman and of the Members of the City of Syracuse Industrial Development Agency is at the pleasure of the Mayor and continues until a successor is appointed and has qualified.

4) The facts establishing the need for the creation of a City of Syracuse Industrial Development Agency are as follows:

Expansion of its industrial-commercial base is essential to the City of Syracuse, especially in a time of mounting economic pressures. To achieve this goal of expansion, the City has designed a comprehensive economic development program, requiring an Industrial Development Agency.

The existing potential for economic development will be augmented by the financial incentives of an Industrial Development Agency. Various City agencies and departments, such as the Department of Community Development and the Office of Federal and State Aid Coordination will interface with the Syracuse Industrial Development Agency to strengthen the business and industrial climate of the community.

Access to the Department of Community Development will make available to the Syracuse Industrial Development Agency an array of staff assistance, technical expertise, and various other development services. The City's Office of Federal and State Aid Coordination will provide assistance to it in locating, analyzing, and obtaining various forms of federal and state assistance and participation.

STATE OF NEW YORK  
DEPARTMENT OF STATE

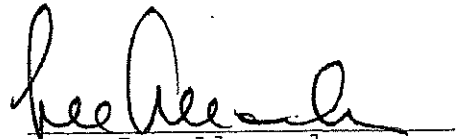
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*Bill Peterson*

Secretary of State

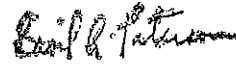
The Syracuse Industrial Development Agency, in combination with, and utilizing these and other resources, will greatly enhance the City's ability to compete for, and successfully attract, the commercial and industrial enterprises necessary for continued economic health and growth.

July 20, 1979

  
Lee Alexander  
Mayor

STATE OF NEW YORK  
DEPARTMENT OF STATE

FILED JUL 20 1979

  
Secretary of State

***STATE OF NEW YORK***  
***DEPARTMENT OF STATE***

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of the  
Department of State, at the City of Albany, on  
April 10, 2018.

A handwritten signature in black ink, appearing to read "B. Fitzgerald", written over a horizontal line.

Brendan Fitzgerald  
Executive Deputy Secretary of State



OFFICE OF THE MAYOR

Ben Walsh, Mayor

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STATE RECORDS

JAN 29 2018

DEPARTMENT OF STATE

CERTIFICATE OF APPOINTMENT TO THE  
CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY

Pursuant to Article 18-A of the General Municipal Law of the State of New York, Ben Walsh, Mayor of the City of Syracuse, hereby certifies the appointment of the following person as an Officer of the City of Syracuse Industrial Development Agency:

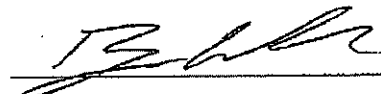
Mr. Steven P. Thompson - Member/Vice Chair

The following Officer of the City of Syracuse Industrial Development Agency shall no longer serve as Officer of said Agency :

Mr. Steven P. Thompson - Member/Secretary

No Member or Officer of the City of Syracuse Industrial Development Agency shall receive any compensation for the discharge of their duties as Member or Officer of the Agency, but shall be entitled to necessary expenses incurred in the discharge of their duties as such Member or Officer.

The appointment herein set forth shall be effective as of January 16, 2018.

  
Ben Walsh  
Mayor, City of Syracuse

**STATE OF NEW YORK**  
**DEPARTMENT OF STATE**

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.

WITNESS my hand and official seal of the  
Department of State, at the City of Albany, on  
April 10, 2018.



A handwritten signature in black ink, appearing to read "Brendan Fitzgerald", written over a horizontal line.

Brendan Fitzgerald  
Executive Deputy Secretary of State





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STATE RECORDS

JAN 29 2018

OFFICE OF THE MAYOR

DEPARTMENT OF STATE

Ben Walsh, Mayor

CERTIFICATE OF APPOINTMENT TO THE  
CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY

Pursuant to Article 18-A of the General Municipal Law of the State of New York, Ben Walsh, Mayor of the City of Syracuse, hereby certifies the appointment of the following person as a member of the City of Syracuse Industrial Development Agency:

Mr. Michael Frame - Member/Chair

The following Member and Officer of the City of Syracuse Industrial Development Agency shall no longer serve as Member or Officer of said Agency :

Mr. William A. Ryan - Member/Chair

No Member or Officer of the City of Syracuse Industrial Development Agency shall receive any compensation for the discharge of their duties as Member or Officer of the Agency, but shall be entitled to necessary expenses incurred in the discharge of their duties as such Member or Officer.

The appointment herein set forth shall be effective as of January 16, 2018.

A handwritten signature in black ink, appearing to read "Ben Walsh", is written over a horizontal line.

Ben Walsh  
Mayor, City of Syracuse

***STATE OF NEW YORK***  
***DEPARTMENT OF STATE***

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of the  
Department of State, at the City of Albany, on  
April 10, 2018.

A handwritten signature in black ink, appearing to read "B. Fitzgerald", written over a horizontal line.

Brendan Fitzgerald  
Executive Deputy Secretary of State



OFFICE OF THE MAYOR

Ben Walsh, Mayor

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STATE RECORDS

JAN 29 2018

DEPARTMENT OF STATE

CERTIFICATE OF APPOINTMENT TO THE  
CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY

Pursuant to Article 18-A of the General Municipal Law of the State of New York, Ben Walsh, Mayor of the City of Syracuse, hereby certifies the appointment of the following person as a member of the City of Syracuse Industrial Development Agency:

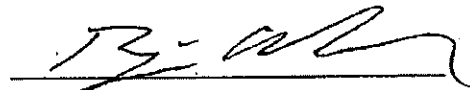
Mr. Rickey Brown - Member/Secretary

The following Member and Officer of the City of Syracuse Industrial Development Agency shall no longer serve as Member or Officer of said Agency :

Ms. M. Catherine Richardson - Member/Vice-Chair

No Member or Officer of the City of Syracuse Industrial Development Agency shall receive any compensation for the discharge of their duties as Member or Officer of the Agency, but shall be entitled to necessary expenses incurred in the discharge of their duties as such Member or Officer.

The appointment herein set forth shall be effective as of January 16, 2018.

  
Ben Walsh  
Mayor, City of Syracuse

**STATE OF NEW YORK**  
**DEPARTMENT OF STATE**

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of the  
Department of State, at the City of Albany, on  
April 10, 2018.

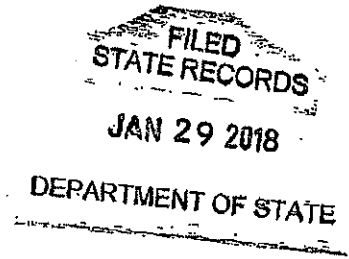
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Brendan Fitzgerald  
Executive Deputy Secretary of State



OFFICE OF THE MAYOR

Ben Walsh, Mayor



CERTIFICATE OF APPOINTMENT TO THE  
CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY

Pursuant to Article 18-A of the General Municipal Law of the State of New York, Ben Walsh, Mayor of the City of Syracuse, hereby certifies the appointment of the following person as a member of the City of Syracuse Industrial Development Agency:

Ms. Kathy Murphy

- Member/Treasurer

The following Member and Officer of the City of Syracuse Industrial Development Agency shall no longer serve as Member or Officer of said Agency:

Mr. Donald Schoenwald

- Member/Treasurer

No Member or Officer of the City of Syracuse Industrial Development Agency shall receive any compensation for the discharge of their duties as Member or Officer of the Agency, but shall be entitled to necessary expenses incurred in the discharge of their duties as such Member or Officer.

The appointment herein set forth shall be effective as of January 16, 2018.

Ben Walsh

Mayor, City of Syracuse

***STATE OF NEW YORK***  
***DEPARTMENT OF STATE***

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.

WITNESS my hand and official seal of the  
Department of State, at the City of Albany, on  
June 20, 2018.



A handwritten signature in black ink, appearing to read "Brendan Fitzgerald", is written over a horizontal line.

Brendan Fitzgerald  
Executive Deputy Secretary of State



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STATE RECORDS

MAR 16 2018

**OFFICE OF THE MAYOR**

DEPARTMENT OF STATE

**Stephanie A. Miner, Mayor**

**CERTIFICATE OF APPOINTMENT TO THE  
CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY**

Pursuant to Article 18-A of the General Municipal Law of the State of New York, Stephanie A. Miner, Mayor of the City of Syracuse, hereby certifies the appointment of the following person as a Member of the City of Syracuse Industrial Development Agency:

Mr. Kenneth Kinsey

- Member

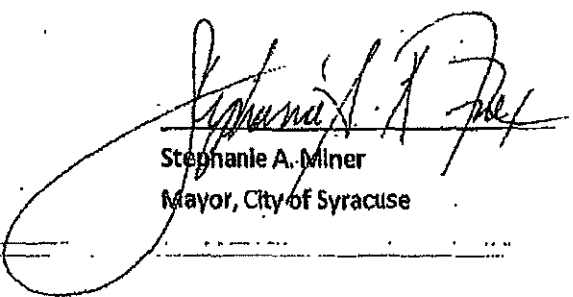
The following Member and Officer of the City of Syracuse Industrial Development Agency shall no longer serve as Member or Officer of said Agency:

Ms. Pamela Hunter

- Member

No Member or Officer of the City of Syracuse Industrial Development Agency shall receive any compensation for the discharge of their duties as Member or Officer of the Agency, but shall be entitled to necessary expenses incurred in the discharge of their duties as such Member or Officer.

The appointment herein set forth shall be effective as of January 13, 2016.

  
Stephanie A. Miner  
Mayor, City of Syracuse

**EXHIBIT "C"**

**AGENCY'S BY-LAWS**



**BY-LAWS OF  
THE CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY  
(as amended August 18, 2009)**

**Article I**

**THE AGENCY**

Section 1. Name

The name of the agency shall be "City of Syracuse Industrial Development Agency", and it shall be referred to in these by-laws as the Agency.

Section 2. Seal

The seal of the Agency shall be in such form as may be determined by the members of the Agency.

Section 3. Office

The principal office of the Agency shall be located in the City of Syracuse, New York, County of Onondaga, and State of New York. The Agency may have such other offices at such other places as the members of the Agency may, from time to time, designate by resolution.

**Article II**

**MEMBERS**

Section 1. Members

(a) There shall be five members of the Agency. All references in these by-laws to members shall be references to Members of the Agency. The persons designated in the certificates of appointment filed in the office of the Secretary of State as members of the Agency and their successors in office and such other persons as may, from time to time, be appointed as

Members of the Agency by the Mayor of the City of Syracuse, or by special act of the Legislature, shall constitute all the members.

(b) Members shall hold office at the pleasure of the Mayor and shall continue to hold office until his or her successor is appointed and has qualified. The Mayor may remove any Member at his discretion, with or without cause.

(c) Upon the resignation or removal of a Member, a successor shall be selected by the Mayor.

(d) Members may resign at any time by giving written notice to the Mayor and to the Chairman of the Agency. Unless otherwise specified in the notice the resignation shall take effect upon receipt of the notice by the Chairman or the Mayor. Acceptance of the resignation shall not be necessary to make it effective.

## Section 2. Meeting of the Members

(a) The Annual Meeting of the members shall be held on such date or dates as shall be fixed, from time to time, by the Members of the Agency. The first Annual Meeting of Members shall be held on a date within twelve (12) months after the filing of the Certificate of the Agency with the Secretary of State as required by General Municipal Law §856 (1) (a). Each successive Annual Meeting of Members shall be held on a date not more than twelve (12) months following the preceding Annual Meeting of Members.

(b) Regular meetings of the Agency may be held at such time and place as, from time to time, may be determined by the Members.

(c) Upon the written request of the Mayor, the Chairman or two (2) Members of the Agency, the Chairman of the Agency shall call a special meeting of the Members. Special meetings may be held on such date or dates as may be fixed in the call for such special meetings.

The call for a special meeting may be personally delivered to each Member of the Agency or may be mailed to the business or home address of such Member. A waiver of notice may be signed by any Member failing to receive a proper notice.

Section 3. Procedure at Meetings of Members

(a) The Chairman shall preside over the meetings of the Agency. In the absence of the Chairman, the Vice-Chairman shall preside. In the absence of both the Chairman and Vice-Chairman, any Member directed by the Chairman may preside.

(b) At all meetings of Members, a majority of the Members of the Agency shall constitute a quorum for the purpose of transacting business. If less than a quorum is present for any meeting, the Members then present may adjourn the meeting to such other time or until a quorum is present. Except to the extent provided for by law, all actions shall be by a majority of the votes cast, provided that the majority of the votes cast shall be at least equal to a quorum.

(c) When determined by the Agency that a matter pending before it is confidential in nature, it may, upon motion, establish an executive session and exclude any non-member from such session.

(d) Order of business

At all meetings of the Agency, the following shall be the order of business:

- (1) Roll Call;
- (2) Proof of Notice of Meeting;
- (3) Reading and approval of the minutes of the previous meeting;
- (4) bills and communications;
- (5) Report of the Treasurer;
- (6) Reports of Committees;

- (7) Unfinished business;
- (8) New business;
- (9) Adjournment.

The order of business may be altered or suspended at any meeting by the Members of the Agency.

(e) All resolutions shall be in writing and shall be recorded in the journal of the proceedings of the Agency.

### Article III

#### OFFICERS AND PERSONNEL

##### Section 1. Officers

The officers of the Agency shall be Chairman or Co-Chairman, Vice-Chairman, Secretary and Treasurer and such other offices as may be prescribed, from time to time, by the Agency. The Chairman or Co-Chairman and other officers shall be appointed by the Mayor of the City of Syracuse and may be removed with or without cause at his discretion. Each officer shall be a Member of the Agency during his or her term of office.

##### Section 2. Chairman or Co-Chairmen

The Chairman shall be chief executive officer of the Agency, and shall serve as an ex officio member of all duly constituted committees, shall supervise the general management and the affairs of the Agency, and shall carry out the orders and resolutions of the Agency. Except as otherwise authorized by resolution of the Agency, the Chairman shall execute (manually and by facsimile signature) all agreements, contracts, deeds, bonds, notes or other evidence of indebtedness and any other instruments of the Agency on behalf of the Agency. The Mayor may from time to time appoint two Co-Chairmen in place of the Chairman. During their term of office the Co-

Chairmen shall share equally the duties, rights, powers and responsibilities of the Chairman. The action of either Co-Chairman or execution (manually or by facsimile signature) by either Co-Chairman of any agreement, contract, deed, bond, note or other evidence of indebtedness or any other instrument of the Agency on behalf of the Agency shall have the same force and effect as such action or execution by the Chairman.

Section 3. Vice-Chairman

The Vice-Chairman shall have all the powers and functions of the Chairman or Co-Chairmen in the absence or disability of the Chairman or Co-Chairmen, as the case may be. The Vice-Chairman shall perform such other duties as the Members of the Agency shall prescribe or as delegated by the Chairman or Co-Chairmen.

Section 4. Secretary

The Secretary shall keep the minutes of the Agency, shall have the custody of the seal of the Agency and shall affix and attest the same to documents when duly authorized by the Agency, shall attest to the giving or serving of all notices of the Agency, shall have charge of such books and papers as the Members of the Agency may order, shall attest to such correspondence as may be assigned, and shall perform all the duties incidental to his office.

Section 5. Treasurer

The Treasurer shall have the care and custody of all the funds and securities of the Agency, shall deposit such funds in the name of the Agency, in such bank or trust company as the members of the Agency may elect, shall sign such instrument as may require the Treasurer's signature, but only with the approval of the Chairman or Co-Chairman, as the case may be, shall at all reasonable times exhibit the books and accounts of the Agency to the Mayor or any Member of

the Agency, and at the end of each fiscal year shall present an annual report setting forth in full the financial condition of the Agency.

Section 6. Additional Personnel

The Agency, with the consent of the Mayor, may appoint an Administrative or Executive Director to supervise the administration of the business and affairs of the Agency, subject to the direction of the Agency. The Agency may, from time to time, employ such other personnel as it deems necessary to execute its powers, duties and functions as prescribed by the New York State Industrial Development Agency Act (General Municipal Law, Article 18-A), as amended, and all other laws of the State of New York applicable thereto.

Section 7. Compensation of Chairman, Co-Chairmen, Members, Officers, and Other Personnel

The Chairman, Co-Chairmen, Members and Officers shall receive no compensation for their services but shall be entitled to the necessary expenses, including traveling expenses, incurred in the discharge of their duties. The compensation of other personnel, including the Administrative Director, shall be determined by the Members of the Agency.

**Article IV**

**AMENDMENTS**

Section 1. Amendments to By-Laws

These by-laws may be amended or revised, from time to time, by a two-third (2/3) vote of the Agency, but no such amendment or revision shall be adopted unless written notice of the proposed action shall have been given by mail to each Member and the Mayor at least ten (10) days prior to the date of the meeting at which it is proposed that such action be taken; provided, however,

that this provision and other provisions relating to the appointment, renewal and terms of office of Members and officers may be amended only with the prior written approval of the Mayor.

## Article V

### MISCELLANEOUS

#### Section 1. Sureties and Bonds

In case the Agency shall so require, any officer, employee or agent of the Agency shall execute to the Agency a bond in such sum and with such surety or sureties as the Agency may direct, conditioned upon the faithful performance of his or her duties to the Agency and including responsibility for negligence and for the accounting for all property, funds or securities of the Agency which may come into the hands of the officer, employee or agent.

#### Section 2. Indemnification

(a) Upon compliance by a Member or Officer of the Agency (including a former Member or Officer, the estate of a Member or Officer or a judicially appointed personal representative thereof) (referred to in this Section 2 collectively as "Member") with the provisions of subdivision (i) of this Section 2, the Agency shall provide for the defense of the Member in any civil action or proceeding, state or federal, arising out of any alleged act or omission which occurred or allegedly occurred while the Member was acting within the scope of the public employment or duties of such Member. This duty to provide for a defense shall not arise where such civil action or proceeding is brought by or at the behest of the Agency.

(b) Subject to the conditions set forth in paragraph (a) of this subdivision, the Member shall be entitled to be represented by private counsel of the Member's choice in any civil action or proceeding whenever the chief legal officer of the Agency or other counsel designated by the

Agency determines that a conflict of interest exists, or whenever a court, upon appropriate motion or otherwise by a special proceeding, determines that a conflict of interest exists and that the Member is entitled to be represented by counsel of the Member's choice, provided, however, that the chief legal officer or other counsel designated by the Agency may require, as a condition to payment of the fees and expenses of such representation, that appropriate groups of such Members be represented by the same counsel. Reasonable attorneys' fees and litigation expenses shall be paid by the Agency to such private counsel from time to time during the pendency of the civil action or proceeding with the approval of a majority of the Members of the Agency eligible to vote thereon.

(c) Any dispute with respect to representation of multiple Members by a single counsel or the amount of litigation expenses or the reasonableness of attorneys' fees shall be resolved by the court upon motion or by way of a special proceeding.

(d) Where the Member delivers process and a written request for a defense to the Agency under subdivision (i) of this Section 2, the Agency shall take the necessary steps on behalf of the Member to avoid entry of a default judgment pending resolution of any question pertaining to the obligation to provide for a defense.

(e) The Agency shall indemnify and save harmless its Members in the amount of any judgment obtained against such Members in a State or Federal court, or in the amount of any settlement of a claim, provided that the act or omission from which such judgment or claim arose occurred while the Member was acting within the scope of the Member's public employment or duties; provided further that in the case of a settlement, the duty to indemnify and save harmless shall be conditioned upon the approval of the amount of settlement by a majority of the Members of the Agency eligible to vote thereon.



(f) Except as otherwise provided by law, the duty to indemnify and save harmless prescribed by this Section 2 shall not arise where the injury or damage resulted from intentional wrongdoing or recklessness on the part of the Member seeking indemnification.

(g) Nothing in this subdivision shall authorize the Agency to indemnify or save harmless any Member with respect to punitive or exemplary damages, fines or penalties; provided, however, that the Agency shall indemnify and save harmless its Members in the amount of any costs, attorneys' fees, damages, fines or penalties which may be imposed by reason of an adjudication that the Member, acting within the scope of the Member's public employment or duties, has, without willfulness or intent on the Member's part, violated a prior order, judgment, consent decree or stipulation of settlement entered in any court of the State or of the United States.

(h) Upon entry of a final judgment against the Member, or upon the settlement of the claim, the Member shall serve a copy of such judgment or settlement, personally or by certified or registered mail within thirty (30) days of the date of entry or settlement, upon the Chairman and the chief administrative officer of the Agency; and if not inconsistent with the provisions of this Section 2, the amount of such judgment or settlement shall be paid by the Agency.

(i) The duty to defend or indemnify and save harmless prescribed by this Section 2 shall be conditioned upon: (i) delivery by the Member to the Chairman of the Agency and the chief legal officer of the Agency or to its chief administrative officer of a written request to provide for such Member's defense together with the original or a copy of any summons, complaint, process, notice, demand or pleading within ten (10) days after the Member is served with such document, and (ii) the full cooperation of the Member in the defense of such action or

proceeding and in defense of any action or proceeding against the Agency based upon the same act or omission, and in the prosecution of any appeal.

(j) The benefits of this Section shall inure only to Members as defined in subdivision (a) of this Section 2 and shall not enlarge or diminish the rights of any other party.

(k) This Section 2 shall not in any way affect the obligation of any claimant to give notice to the Agency under Section 10 of the Court of Claims Act, Section 880 of the General Municipal Law, or any other provision of law.

(l) The Agency is hereby authorized and empowered to purchase insurance from any insurance company created by or under the laws of the State, or authorized by law to transact business in the State, against any liability imposed by the provisions of this Section 2, or to act as a self-insurer with respect thereto. The provisions of this Section 2 shall not be construed to impair, alter, limit or modify the rights and obligations of any insurer under any policy of insurance.

(m) All payments made under the terms of this Section 2, whether for insurance or otherwise, shall be deemed to be for a public purpose and shall be audited and paid in the same manner as other public charges.

(n) Except as otherwise specifically provided in this Section 2, the provisions of this Section 2 shall not be construed in any way to impair, alter, limit, modify, abrogate or restrict any immunity to liability available to or conferred upon any Member of the Agency by, in accordance with, or by reason of, any other provision of State or Federal statutory or common law. The benefits under this Section 2 shall supplement, and be available in addition to, defense or indemnification protection conferred by any law or enactment. This Section 2 is intended to confer upon Members of the Agency all of the benefits of Section 18 of the Public Officers Law

and to impose upon the Agency liability for costs incurred under the provisions hereof and thereof.

Section 3. Fiscal Year

The fiscal year of the Agency shall be fixed by the Members, subject to the applicable law.

Section 4. Powers of the Agency

The Agency shall have all the powers of an Industrial Development Agency authorized by Article 18-A of the General Municipal Law and shall have the power to do all things necessary or convenient to carry out its purposes and exercise the powers authorized herein.

**EXHIBIT "D"**

**FIRST PUBLIC HEARING RESOLUTION**

## RESOLUTION

A regular meeting of the City of Syracuse Industrial Development Agency was convened in public session on November 20, 2018, at 8:30 o'clock a.m. in the Common Council Chambers, City Hall, 233 East Washington Street, Syracuse, New York.

The meeting was called to order by the Chairman and upon the roll being duly called, the following members were:

**PRESENT:** Michael Frame, Steven Thompson, Kathleen Murphy, Rickey T. Brown, Kenneth Kinsey

**THE FOLLOWING PERSONS WERE ALSO PRESENT:** **Staff Present:** Honora Spillane, Meghan Ryan, Esq., Judith DeLaney, John Vavonese, Susan Katzoff, Esq., Debra Ramsey-Burns; **Others Present:** Aggie Lane, Jennifer Granzon, Mitch Latimer, Bob Wilmott, Rich Puchalski, Patrick Portor, Christopher Bianch, Max Eberts, Sue Stanczyk, Steve Case, Timothy Lynn, Esq., Kevin McAuliffe, Esq., Chris Geiger; **Media:** Channel 9.

The following resolution was offered by Rickey T. Brown and seconded by Kenneth Kinsey:

**RESOLUTION DETERMINING THAT THE ACQUISITION, RECONSTRUCTION, RENOVATION, EQUIPPING AND COMPLETION OF A COMMERCIAL FACILITY AT THE REQUEST OF THE COMPANY CONSTITUTES A PROJECT; DESCRIBING THE FINANCIAL ASSISTANCE IN CONNECTION THEREWITH; AND AUTHORIZING A PUBLIC HEARING**

**WHEREAS**, the City of Syracuse Industrial Development Agency (the "**Agency**") is authorized and empowered by Title 1 of Article 18-A of the General Municipal Law of the State of New York (the "**State**"), as amended, together with Chapter 641 of the Laws of 1979 of the State of New York, as amended from time to time (collectively, the "**Act**"), to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial, research and recreation facilities, for the purpose of promoting economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State, to improve their recreation opportunities, prosperity and standard of living; and

**WHEREAS**, to accomplish its stated purposes, the Agency is authorized and empowered under the Act to grant “financial assistance” (as defined in the Act) in connection with the acquisition, reconstruction and equipping of one or more “projects” (as defined in the Act); and

**WHEREAS**, by application dated October 23, 2018 (the “*Application*”), Alan Byer Auto Sales, Inc. and Alan I Byer Family Trust, or an entity to be formed (the “*Company*”), requested the Agency undertake a project (the “*Project*”) consisting of: (A)(i) the acquisition of an interest in approximately 1.89 acres of improved real property located at 1232-36 West Genesee Street (also known as 1230 West Genesee Street), in the City of Syracuse, New York (the “*Land*”); (ii) the renovation of an existing approximately 25,820 square foot building for use as an auto dealership, including but not limited to, renovation of interior showroom, sales offices and reception areas, external replacement of entry, new exterior wall finishes, updated signage and roof replacement, all located on the Land (the “*Facility*”); (iii) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment (the “*Equipment*”) and together with the Land and the Facility, the “*Project Facility*”); (B) the granting of certain financial assistance in the form of exemptions from real property tax, State and local sales and use tax and mortgage recording tax (in accordance with Section 874 of the General Municipal Law) (collectively the “*Financial Assistance*”); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, reconstruction, renovation, equipping and completion of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement; and

**WHEREAS**, pursuant to Article 8 of the Environmental Conservation Law of the State of New York, as amended, and the regulations of the Department of Environmental Conservation of the State of New York promulgated thereunder (collectively referred to hereinafter as “*SEQRA*”), the Agency is required to make a determination with respect to the environmental impact of any “action” (as said quoted term is defined in SEQRA) to be taken by the Agency and the approval of the Project constitutes such an action; and

**WHEREAS**, the Agency has not yet made a determination under SEQRA; and

**WHEREAS**, the Agency has not approved undertaking the Project or granting the Financial Assistance; and

**WHEREAS**, the grant of Financial Assistance to the Project is subject to, among other things, the Agency finding after a public hearing pursuant to Section 859-a of the Act that the Project will serve the public purposes of the Act by promoting economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State or increasing the overall number of permanent, private sector jobs in the State.

**NOW, THEREFORE,** be it resolved by the members of the City of Syracuse Industrial Development Agency, as follows:

(1) Based upon the representations made by the Company to the Agency, the Agency makes the following findings and determinations:

(A) The Project constitutes a “project” within the meaning of the Act;

(B) The Project is located in a “Highly Distressed Area” as defined in Section 854(18) of the Act;

(C) The Financial Assistance contemplated with respect to the Project consists of assistance in the form of exemptions from real property tax, State and local sales and use taxation and mortgage recording tax; and

(2) The Agency hereby directs that pursuant to Section 859-a of the Act, a public hearing with respect to the Project and Financial Assistance shall be scheduled with notice thereof published, and such notice, as applicable, shall further be sent to affected tax jurisdictions within which the Project is located.

(3) The Secretary or the Executive Director of the Agency is hereby authorized to and may distribute copies of this Resolution to the Company and to do such further things or perform such acts as may be necessary or convenient to implement the provisions of this Resolution.

(4) A copy of this Resolution shall be placed on file in the office of the Agency where the same shall be available for public inspection during business hours.

The question of the adoption of the foregoing resolution was duly put to vote on a roll call, which resulted as follows:

	<u>AYE</u>	<u>NAY</u>
Michael Frame	X	
Steven Thompson	X	
Kathleen Murphy	X	
Rickey T. Brown	X	
Kenneth Kinsey	X	

The foregoing Resolution was thereupon declared duly adopted.

STATE OF NEW YORK            )  
  ) SS.:  
COUNTY OF ONONDAGA        )

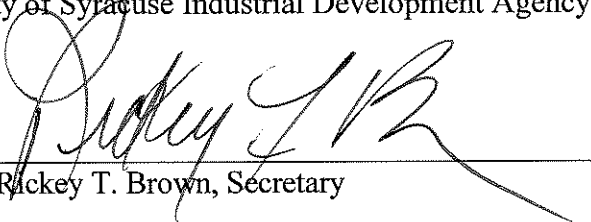
I, the undersigned Secretary of the City of Syracuse Industrial Development Agency, **DO HEREBY CERTIFY** that I have compared the annexed extract of the minutes of the meeting of the City of Syracuse Industrial Development Agency (the “Agency”) held on November 20, 2018, with the original thereof on file in my office, and that the same (including all exhibits) is a true and correct copy of the proceedings of the Agency and of the whole of such original insofar as the same relates to the subject matters referred to therein.

**I FURTHER CERTIFY** that (i) all members of the Agency had due notice of such meeting, (ii) pursuant to Section 104 of the Public Officers Law (Open Meetings Law), such meeting was open to the general public and public notice of the time and place of such meeting was duly given in accordance with such Section 104, (iii) the meeting was in all respects duly held, and (iv) there was a quorum present throughout.

**I FURTHER CERTIFY** that, as of the date hereof, the attached resolution is in full force and effect and has not been amended, repealed or rescinded.

**IN WITNESS WHEREOF**, I have set my hand and affixed the seal of the Agency this 19 day of December, 2018.

City of Syracuse Industrial Development Agency

  
\_\_\_\_\_  
Rickey T. Brown, Secretary

(SEAL)



**EXHIBIT "E"**

**NOTICE OF PUBLIC HEARING WITH EVIDENCE OF PUBLICATION AND COPIES  
OF LETTERS TO AFFECTED TAX JURISDICTIONS PURSUANT TO SECTIONS  
859-a OF THE ACT**

## NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that a public hearing pursuant to Section 859-a of the New York General Municipal Law, will be held by the City of Syracuse Industrial Development Agency (the "Agency") on the 18<sup>th</sup> day of December, 2018, at 8:30 a.m., local time, at 233 East Washington Street, Common Council Chambers, City Hall, Syracuse, New York, in connection with the following matter:

Alan Byer Auto Sales, Inc. and Alan I Byer Family Trust, or an entity to be formed (the "Company"), requested the Agency undertake a project (the "Project") consisting of: (A)(i) the acquisition of an interest in approximately 1.89 acres of improved real property located at 1232-36 West Genesee Street (also known as 1230 West Genesee Street), in the City of Syracuse, New York (the "Land"); (ii) the renovation of an existing approximately 25,820 square foot building for use as an auto dealership, including but not limited to, renovation of interior showroom, sales offices and reception areas, external replacement of entry, new exterior wall finishes, updated signage and roof replacement, all located on the Land (the "Facility"); (iii) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment (the "Equipment" and together with the Land and the Facility, the "Project Facility"); (B) the granting of certain financial assistance in the form of exemptions from real property tax, State and local sales and use tax and mortgage recording tax (in accordance with Section 874 of the General Municipal Law) (collectively the "Financial Assistance"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, reconstruction, renovation, equipping and completion of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement.

The Company is the initial owner or operator of the Project Facility.

The Agency will at the above-stated time and place hear all persons with views with respect to the proposed Financial Assistance to the Company, the proposed owner/operator, the location of the Project Facility and the nature of the Project.

A copy of the application filed by the Company with the Agency with respect to the Project, including an analysis of the costs and benefits of the Project, are available for public inspection during the business hours at the office of the Agency located at 201 East Washington Street, 6<sup>th</sup> Floor, Syracuse, New York.

Dated: December 3, 2018

CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY

# THE POST-STANDARD

## LEGAL AFFIDAVIT

INV#: 0008927157

# ADVANCE

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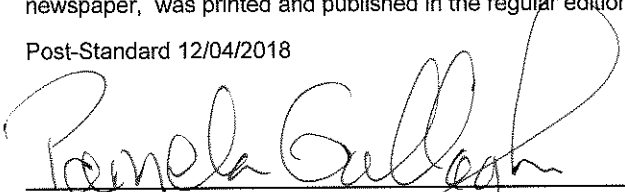
Account Number: 12145

INV#: 0008927157

Date	Position	Description	P.O. Number	Ad Size
12/04/2018	Other Legals NY	NOTICE OF PUBLIC HEARING NOTICE IS HEREBY GIVEN that	C2147L.00024	1 x 127.00 CL

State of New York, County of Onondaga ss. Pamela Gallagher, of the City of Syracuse, in said County, being duly sworn, doth depose and says: this person is the Principal Clerk in the office of THE POST-STANDARD, a public newspaper, published in the City of Syracuse, Onondaga County, New York and that the notice, is an accurate and true copy of the ad as printed in said newspaper, was printed and published in the regular edition and issue of said newspaper on the following days, viz.:

Post-Standard 12/04/2018



Pamela Gallagher

Principal Clerk

An Authorized Designee of the President, Timothy R. Kennedy  
Subscribed and sworn to before me, this 4th day of December  
2018

  
NOTARY PUBLIC

FOR QUESTIONS CONCERNING THIS AFFIDAVIT,  
PLEASE CONTACT PAMELA GALLAGHER AT  
(315) 470-2051 OR Legals@Syracuse.com

ANNE PETRO  
Notary Public - State of New York  
No. 01PE6366489  
Qualified in Onondaga County  
Commission Expires: 10-30-2021

Date	Position	Description	P.O. Number	Ad Size
12/04/2018	Other Legals NY	NOTICE OF PUBLIC HEARING NOTICE IS HEREBY GIVEN that a	C2147L.00024	1 x 127.00 CL

**NOTICE OF PUBLIC HEARING NOTICE IS HEREBY GIVEN** that a public hearing pursuant to Section 859-a of the New York General Municipal Law, will be held by the City of Syracuse Industrial Development Agency (the "Agency") on the 18th day of December, 2018, at 8:30 a.m., local time, at 233 East Washington Street, Common Council Chambers, City Hall, Syracuse, New York, in connection with the following matter: Alan Byer Auto Sales, Inc. and Alan I Byer Family Trust, or an entity to be formed (the "Company"), requested the Agency undertake a project (the "Project") consisting of: (A)(i) the acquisition of an interest in approximately 1.89 acres of improved real property located at 1232-36 West Genesee Street (also known as 1230 West Genesee Street), in the City of Syracuse, New York (the "Land"); (ii) the renovation of an existing approximately 25,820 square foot building for use as an auto dealership, including but not limited to, renovation of interior showroom, sales offices and reception areas, external replacement of entry, new exterior wall finishes, updated signage and roof replacement, all located on the Land (the "Facility"); (iii) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment (the "Equipment" and together with the Land and the Facility, the "Project Facility"); (B) the granting of certain financial assistance in the form of exemptions from real property tax, State and local sales and use tax and mortgage record

and mortgage recording tax (in accordance with Section 874 of the General Municipal Law) (collectively the "Financial Assistance"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, reconstruction, renovation, equipping and completion of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement. The Company is the initial owner or operator of the Project Facility. The Agency will at the above-stated time and place hear all persons with views with respect to the proposed Financial Assistance to the Company, the proposed owner/operator, the location of the Project Facility and the nature of the Project. A copy of the application filed by the Company with the Agency with respect to the Project, including an analysis of the costs and benefits of the Project, are available for public inspection during the business hours at the office of the Agency located at 201 East Washington Street, 6th Floor, Syracuse, New York. Dated: December 3, 2018 CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY



# BOUSQUET HOLSTEIN PLLC

110 WEST FAYETTE STREET • ONE LINCOLN CENTER • SUITE 1000 • SYRACUSE, NEW YORK 13202 • PH: 315.422.1500 • FX: 315.422.3549\*

December 3, 2018

**VIA CERTIFIED MAIL**  
7017 3040 0000 4719 7860

LAURENCE G. BOUSQUET  
PHILIP S. BOUSQUET  
CECELIA R. S. CANNON  
CHRISTINE WOODCOCK DETTOR  
JEAN S. EVERETT \*\*  
AARON D. FRISHMAN \*  
DAVID A. HOLSTEIN \*\*\*\*\*  
SUSAN R. KATZOFF  
EMILEE K. LAWSON HATCH \*\*\*  
SHARON A. McAULIFFE  
L. MICHA ORDWAY, JR.  
STEVEN A. PAQUETTE  
J.P. PARASCHOS  
PAUL M. PREDMORE  
JAMES L. SONNEBORN  
RYAN S. SUSER  
THOMAS E. TAYLOR \*\*  
JOHN L. VALENTINO  
ROBERT K. WEILER  
JOSHUA S. WERBECK

Honorable Benjamin Walsh  
Mayor, City of Syracuse  
City Hall  
233 East Washington Street  
Syracuse, New York 13202

**VIA CERTIFIED MAIL**  
7017 3040 0000 4719 7877

Honorable J. Ryan McMahon, II  
County Executive, Onondaga County  
John Mulroy Civic Center, 14<sup>th</sup> Floor  
421 Montgomery Street  
Syracuse, New York 13202

OF COUNSEL:  
VIRGINIA A. HOVEMAN  
KAVITHA JANARDHAN \*\*\*\*  
GARY J. LAVINE \*\*  
BRYN LOVEJOY-GRINNELL  
SIDNEY L. MANES  
JANA K. McDONALD |  
ANNA V. PUTINTSEVA  
CATERINA A. RANIERI  
EVA K. WOJTALEWSKI \*\*\*\*\*

Re: City of Syracuse Industrial Development Agency (the "*Agency*")  
Alan Byer Auto Sales, Inc. and Alan I Byer Family Trust (the "*Company*")  
Alan Byer Volvo Project

ASSOCIATES:

CAMERON T. BERNARD \*\*\*\*\*  
REBECCA R. COHEN \*\*\*  
GEORGIA G. CRINNIN  
GREGORY D. ERIKSEN  
COLLEEN M. GIBBONS  
GWEN Z. GOU  
NATALIE P. HEMPSON-ELLIOTT  
CASEY A. JOHNSON  
IRENE K. KABUNDUH  
JULIA J. MARTIN  
AIDAN C. MITCHELL-EATON  
KEVIN M. SAYLES  
MICHAEL W. TYSZKO  
JANE YUE ZHANG \*\*\*\*\*

Dear Mayor and County Executive:

Enclosed herewith please find a Notice of Public Hearing in relation to the above-referenced project. The proposed project (the "*Project*") consists of: (A)(i) the acquisition of an interest in approximately 1.89 acres of improved real property located at 1232-36 West Genesee Street (also known as 1230 West Genesee Street), in the City of Syracuse, New York (the "*Land*"); (ii) the renovation of an existing approximately 25,820 square foot building for use as an auto dealership, including but not limited to, renovation of interior showroom, sales offices and reception areas, external replacement of entry, new exterior wall finishes, updated signage and roof replacement, all located on the Land (the "*Facility*"); (iii) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment (the "*Equipment*" and together with the Land and the Facility, the "*Project Facility*"); (B) the granting of certain financial assistance in the form of exemptions from real property tax, State and local sales and use tax and mortgage recording tax (in accordance with Section 874 of the General Municipal Law) (collectively the "*Financial Assistance*"); (C) the appointment of the Company or its designee as an agent of the Agency in connection

ALSO ADMITTED TO CO BAR \*  
ALSO ADMITTED TO DC BAR \*\*  
ALSO ADMITTED TO MA \*\*\*  
ALSO ADMITTED TO IL BAR \*\*\*\*  
ALSO ADMITTED TO FL BAR \*\*\*\*\*  
ALSO ADMITTED TO CA BAR \*\*\*\*\*  
ALSO ADMITTED TO THE NJ BAR \*\*\*\*\*  
ALSO ADMITTED TO DC, FL & NJ BAR |  
ALSO ADMITTED TO DC, MA & PA BAR |  
ALSO ADMITTED TO CO & MA BAR |  
NOT FOR SERVICE OF PROCESS \*

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December 3, 2018

Page 2

with the acquisition, reconstruction, renovation, equipping and completion of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement.

General Municipal Law Section 859-a requires that notice of the Public Hearing be given to the chief executive officer of each affected tax jurisdiction in which the Project is located.

As stated in the notice, the public hearing is scheduled for **December 18, 2018** at 8:30 a.m. in the Common Council Chambers at City Hall.

Very truly yours,

Susan R. Katzoff

SRK/lhm  
Enclosure

cc: Meghan Ryan, Esq., City of Syracuse, via email (w/Enclosure)  
Honora Spillane, City of Syracuse Industrial Development Agency, via email  
(w/Enclosure)  
Judy DeLaney, City of Syracuse Industrial Development Agency, via email  
(w/Enclosure)

## NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that a public hearing pursuant to Section 859-a of the New York General Municipal Law, will be held by the City of Syracuse Industrial Development Agency (the "Agency") on the 18<sup>th</sup> day of December, 2018, at 8:30 a.m., local time, at 233 East Washington Street, Common Council Chambers, City Hall, Syracuse, New York, in connection with the following matter:

Alan Byer Auto Sales, Inc. and Alan I Byer Family Trust, or an entity to be formed (the "Company"), requested the Agency undertake a project (the "Project") consisting of: (A)(i) the acquisition of an interest in approximately 1.89 acres of improved real property located at 1232-36 West Genesee Street (also known as 1230 West Genesee Street), in the City of Syracuse, New York (the "Land"); (ii) the renovation of an existing approximately 25,820 square foot building for use as an auto dealership, including but not limited to, renovation of interior showroom, sales offices and reception areas, external replacement of entry, new exterior wall finishes, updated signage and roof replacement, all located on the Land (the "Facility"); (iii) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment (the "Equipment" and together with the Land and the Facility, the "Project Facility"); (B) the granting of certain financial assistance in the form of exemptions from real property tax, State and local sales and use tax and mortgage recording tax (in accordance with Section 874 of the General Municipal Law) (collectively the "Financial Assistance"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, reconstruction, renovation, equipping and completion of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement.



The Company is the initial owner or operator of the Project Facility.



The Agency will at the above-stated time and place hear all persons with views with respect to the proposed Financial Assistance to the Company, the proposed owner/operator, the location of the Project Facility and the nature of the Project.

A copy of the application filed by the Company with the Agency with respect to the Project, including an analysis of the costs and benefits of the Project, are available for public inspection during the business hours at the office of the Agency located at 201 East Washington Street, 6<sup>th</sup> Floor, Syracuse, New York.

Dated: December 3, 2018

CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> <li>Complete items 1, 2, and 3.</li> <li>Print your name and address on the reverse so that we can return the card to you.</li> <li>Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>	A. Signature  <input type="checkbox"/> Agent <input checked="" type="checkbox"/> Addressee	
	B. Received by (Printed Name) MAYOR	C. Date of Delivery
1. Article Addressed to:  Honorable Benjamin Walsh Mayor, City of Syracuse City Hall 233 East Washington Street Syracuse, New York 13202	D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No	
 9590 9402 3349 7227 5114 44	3. Service Type <input type="checkbox"/> Adult Signature <input type="checkbox"/> Priority Mail Express® <input type="checkbox"/> Adult Signature Restricted Delivery <input type="checkbox"/> Registered Mail™ <input checked="" type="checkbox"/> Certified Mail® <input type="checkbox"/> Registered Mail Restricted Delivery <input type="checkbox"/> Certified Mail Restricted Delivery <input checked="" type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Signature Confirmation™ <input type="checkbox"/> Collect on Delivery Restricted Delivery <input type="checkbox"/> Signature Confirmation Restricted Delivery <input type="checkbox"/> Insured Mail <input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)	
2. Article Number (Transfer from service label) 7017 3040 0000 4719 7860	PS Form 3811, July 2015 PSN 7530-02-000-9053 Domestic Return Receipt	

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> <li>Complete items 1, 2, and 3.</li> <li>Print your name and address on the reverse so that we can return the card to you.</li> <li>Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>	A. Signature  <input type="checkbox"/> Agent <input checked="" type="checkbox"/> Addressee	
	B. Received by (Printed Name) M. Lilly	C. Date of Delivery DEC 04 2015
1. Article Addressed to:  Honorable J. Ryan McMahon, II County Executive, Onondaga County John Mulroy Civic Center, 14th Floor 421 Montgomery Street Syracuse, New York 13202	D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No	
 9590 9402 3349 7227 5114 68	3. Service Type <input type="checkbox"/> Adult Signature <input type="checkbox"/> Priority Mail Express® <input type="checkbox"/> Adult Signature Restricted Delivery <input type="checkbox"/> Registered Mail™ <input checked="" type="checkbox"/> Certified Mail® <input type="checkbox"/> Registered Mail Restricted Delivery <input type="checkbox"/> Certified Mail Restricted Delivery <input checked="" type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Signature Confirmation™ <input type="checkbox"/> Collect on Delivery Restricted Delivery <input type="checkbox"/> Signature Confirmation Restricted Delivery <input type="checkbox"/> Insured Mail <input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)	
2. Article Number (Transfer from service label) 7017 3040 0000 4719 7877	PS Form 3811, July 2015 PSN 7530-02-000-9053 Domestic Return Receipt	



**EXHIBIT "F"**

**ORIGINAL INDUCEMENT RESOLUTION**

## INDUCEMENT RESOLUTION

A regular meeting of the City of Syracuse Industrial Development Agency was convened in public session on December 18, 2018 at 8:30 o'clock a.m., local time, in the Common Council Chambers, City Hall, 233 East Washington Street, Syracuse, New York.

The meeting was called to order by the Chairman and upon roll being called, the following members of the Agency were:

**PRESENT:** Michael Frame, Kenneth Kinsey, Ricky T. Brown, Kathleen Murphy

**EXCUSED:** Steven Thompson

**THE FOLLOWING PERSONS WERE ALSO PRESENT:** Staff Present: Honora Spillane, Susan Katzoff, Esq., Meghan Ryan, Esq., Judith DeLaney, John Vavonese, Debbie Ramsey-Burns; Others Present: Stephanie Pasquale, Timothy Lynn, Esq., Aggie Lane, Rich Puchulski, Sheila Sicilia, Jessica Maxwell, Jonathan Grahman, Ryland Heagerty, Ryan Benz, Philip Maguire, Suzanne Slack, Kenneth Smith, Ariel Halstead, Kevin McAuliffe, Esq., Rebecca Fuentes, M. Kelly; Media: Rick Moriarty

The following resolution was offered by Kenneth Kinsey and seconded by Kathleen Murphy:

**RESOLUTION AUTHORIZING THE UNDERTAKING, ACQUISITION, RECONSTRUCTION, RENOVATION, EQUIPPING AND COMPLETION OF A PROJECT; APPOINTING THE COMPANY AS AGENT OF THE AGENCY FOR THE PURPOSE OF THE ACQUISITION, RECONSTRUCTION, RENOVATION, EQUIPPING AND COMPLETION OF THE PROJECT; AND AUTHORIZING THE EXECUTION AND DELIVERY OF AN AGREEMENT BETWEEN THE AGENCY AND THE COMPANY**

**WHEREAS**, the City of Syracuse Industrial Development Agency (the "**Agency**") is authorized and empowered by Title 1 of Article 18-A of the General Municipal Law of the State of New York (the "**State**"), as amended, together with Chapter 641 of the Laws of 1979 of the State of New York, as amended from time to time (collectively, the "**Act**") to promote, develop, encourage and assist in the acquiring, constructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial, research and recreation facilities, including industrial pollution control facilities, railroad facilities and certain horse racing facilities, for the purpose of promoting, attracting, encouraging and developing recreation and economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State, and to improve their recreation opportunities, prosperity and standard of living; and

**WHEREAS**, to accomplish its stated purposes, the Agency is authorized and empowered under the Act to acquire, lease and sell real property and grant financial assistance in connection with one or more “projects” (as defined in the Act); and

**WHEREAS**, Alan Byer Auto Sales, Inc. and Alan I Byer Family Trust, or an entity to be formed (the “*Company*”), by application dated October 23, 2018 (the “*Application*”), requested the Agency undertake a project (the “*Project*”) consisting of: (A)(i) the acquisition of an interest in approximately 1.89 acres of improved real property located at 1232-36 West Genesee Street (also known as 1230 West Genesee Street), in the City of Syracuse, New York (the “*Land*”); (ii) the renovation of an existing approximately 25,820 square foot building for use as an auto dealership, including but not limited to, renovation of interior showroom, sales offices and reception areas, external replacement of entry, new exterior wall finishes, updated signage and roof replacement, all located on the Land (the “*Facility*”); (iii) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment (the “*Equipment*” and together with the Land and the Facility, the “*Project Facility*”); (B) the granting of certain financial assistance in the form of exemptions from real property tax, State and local sales and use tax and mortgage recording tax (in accordance with Section 874 of the General Municipal Law) (collectively the “*Financial Assistance*”); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, reconstruction, renovation, equipping and completion of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement; and

**WHEREAS**, the Agency adopted a resolution on November 20, 2018 describing the Project and the proposed Financial Assistance and authorizing a public hearing with respect thereto (“*Public Hearing Resolution*”); and

**WHEREAS**, by letter dated December 5, 2018, the Company advised that pursuant to certain contractual obligations with Volvo, they are obligated to acquire certain design elements and equipment before the end of the year to be incorporated into the Project (“*Dealer Work*”); however, the Company may not have all of their financing and/or approvals in place prior to the end of the year; and

**WHEREAS**, in order to timely undertake the Dealer Work, the Company is requesting a temporary appointment as agent of the Agency to allow for the commencement of the Dealer Work prior to the end of the year (the “*Temporary Appointment*”); and

**WHEREAS**, the Agency conducted a public hearing with respect to the Project and the proposed Financial Assistance on December 18, 2018 pursuant to Section 859-a of the Act, notice of which was published on December 4, 2018, in the Post-Standard, a newspaper of general circulation in the City of Syracuse, New York and given to the chief executive officers of the affected tax jurisdictions by letters dated December 3, 2018; and

**WHEREAS**, pursuant to Article 8 of the Environmental Conservation Law of the State of New York, as amended, and the regulations of the Department of Environmental Conservation

of the State of New York promulgated thereunder (collectively referred to hereinafter as “*SEQRA*”), the Agency has examined the EAF prepared by the Company in order to classify the Project and has determined that the Project constitutes a “Type II” action as that term is defined under SEQRA; and

**WHEREAS**, the Agency has considered the policy, purposes and requirements of the Act in making its determinations with respect to taking official action regarding the Project; and

**WHEREAS**, the Agency has given due consideration to the Application and to representations by the Company that the provision of Financial Assistance: (i) will induce the Company to develop the Project Facility in the City of Syracuse (the “*City*”); (ii) will not result in the removal of a commercial, industrial or manufacturing plant or facility of the Company or any other proposed occupant of the Project Facility from one area of the State to another area of the State or in the abandonment of one or more plants or facilities of the Company or any other proposed occupant of the Project Facility located in the State, except as may be permitted by the Act; and (iii) the Project will serve the purposes of the Act by advancing job opportunities and the economic welfare of the people of the State and the City and improve their standard of living.

**NOW, THEREFORE**, be it resolved by the members of the City of Syracuse Industrial Development Agency as follows:

**Section 1.** It is the policy of the State to promote the economic welfare, recreation opportunities and prosperity of its inhabitants and to actively promote, attract, encourage and develop recreation and economically sound commerce and industry for the purpose of preventing unemployment and economic deterioration. It is among the purposes of the Agency to promote, develop, encourage and assist in the acquiring, constructing, improving, maintaining, equipping and furnishing of certain facilities, including commercial facilities, and thereby advance the job opportunities, health, general prosperity and economic welfare of the people of the State and to improve their recreation opportunities, prosperity and standard of living.

**Section 2.** Based upon the representations and projections made by the Company to the Agency, the Agency hereby and makes the following determinations:

(A) The Project constitutes a “*project*” within the meaning of the Act;

(B) The acquisition of a controlling interest in the Project Facility by the Agency and the designation of the Company as the Agency’s agent for completion of the Project will be an inducement to the Company to acquire, reconstruct, renovate, equip and complete the Project Facility in the City, and will serve the purposes of the Act by, among other things, advancing job opportunities, the standard of living and economic welfare of the inhabitants of the City;

(C) The Project will not result in the removal of a commercial, industrial or manufacturing plant or facility of the Company or any other proposed occupant of the Project Facility from one area of the State to another area of the State or result in the abandonment of one or more plants or facilities of the Company or any other proposed occupant of the Project

Facility located in the State, except as may be permitted by the Act;

(D) The Project will help ensure the retention of significant jobs in the City;  
and

(E) The Financial Assistance approved hereby includes an exemption from State and local sales and use taxes and mortgage recording taxes, both the Temporary Appointment and final appointment (the "**Final Appointment**" and together with the Temporary Appointment, the "**Appointment**") of the Company as agent of the Agency as further set forth herein.

**Section 3.** As a condition of the Appointment of the Company as the agent of the Agency, and the conference of any approved Financial Assistance, the Company and the Agency shall first execute and deliver: (i) a project agreement in substantially the same form used by the Agency in similar transactions (the "**Project Agreement**"); (ii) an agreement with the Agency setting forth the preliminary undertakings of the Agency and the Company with respect to the Project, the form and substance of the agreement is attached (as set forth as on **Exhibit "A"** attached hereto and presented at this meeting) (the "**Agreement**"); and (iii) with respect to the Final Appointment, all of the Lease Documents (as defined herein) and with respect to the Temporary Appointment, some of the Lease Documents. The Chairman, Vice Chairman or Executive Director of the Agency are each hereby authorized, on behalf of the Agency, to execute and deliver the Project Agreement, the Agreement and the Lease Documents, with changes in terms and form as shall be consistent with this Resolution and as the Chairman or Vice Chairman shall approve. The execution thereof by the Chairman, Vice Chairman and/or Executive Director shall constitute conclusive evidence of such approval. Subject to the due execution and delivery by the Company of the Project Agreement, the Agreement and the Lease Documents, the satisfaction of the conditions of this Resolution, the Agreement, the Project Agreement, the Lease Documents and the payment by the Company of any attendant fees, the Company and its designees, are appointed the true and lawful agent of the Agency to proceed with the reconstruction, renovation, equipping and completion of the Project, all with the same powers and the same validity as if the Agency were acting in its own behalf. The amount of State and local sales and use tax exemption benefits comprising the Financial Assistance approved herein shall not exceed **\$140,000**.

**Section 4.** Subject to the terms of this Resolution and the execution and delivery of, and the conditions set forth in, the Agreement and the Project Agreement the Agency will: (i) acquire an interest in the Land and Facility pursuant to a lease agreement (the "**Lease**") to be entered into between the Company and the Agency; accept an interest in the Equipment pursuant to a bill of sale from the Company (the "**Bill of Sale**"); (ii) sublease the Project Facility to the Company pursuant to a sublease agreement (the "**Sublease**" and with the Lease and the Bill of Sale, the "**Lease Documents**") to be entered into between the Agency and the Company; (iii) grant the approved Financial Assistance; and (iv) provided that no default shall have occurred and be continuing under the Agreement (as defined herein) and provided the Company has executed and delivered all documents and certificates required by the Agency in conjunction with the Agency's undertaking of the Project, execute and deliver all other certificates and documents necessary or appropriate for the grant of the approved Financial Assistance or requested by the

Agency, in form and substance acceptable to the Agency.

**Section 5.** The terms and conditions of subdivision 3 of Section 875 of the Act are herein incorporated by reference and the Company shall agree to such terms as a condition precedent to receiving or benefiting from an exemption from State and local sales and use tax exemptions benefits.

**Section 6.** The Company may utilize, and subject to the terms of this Resolution, the Agreement and the Project Agreement, is hereby authorized to appoint, a Project operator, contractors, agents, subagents, subcontractors, contractors and subcontractors of such agents and subagents (collectively, "***Additional Agents***") to proceed with the reconstruction, renovation, equipping and completion of the Project, all with the same powers and the same validity as if the Agency were acting in its own behalf, provided the Company execute, deliver and comply with the Agreement. The Company shall provide, or cause its Additional Agents to provide, and the Agency shall maintain, records of the amount of State and local sales and use tax exemption benefits provided to the Project and the Company shall, and cause each Additional Agent, to make such records available to the State Commissioner of Taxation and Finance (the "***Commissioner***") upon request. The Agency shall, within thirty (30) days of providing any State sales and use tax exemption benefits, report to the Commissioner the amount of such benefits for the Project, identifying the Project, along with any such other information and specificity as the Commissioner may prescribe. As a condition precedent to the Company or Project's receipt of, or benefit from, any State or local sales and use tax exemptions, the Company must acknowledge and agree to make, or cause its Additional Agents to make, all records and information regarding State and local sales and use tax exemption benefits realized by the Project available to the Agency or its designee upon request. for purposes of exemption from New York State (the "***State***") sales and use taxation as part of the Financial Assistance requested, "sales and use taxation" shall mean sales and compensating use taxes and fees imposed by article twenty-eight or twenty-eight-A of the New York State tax law but excluding such taxes imposed in a city by section eleven hundred seven or eleven hundred eight of such article twenty-eight.

**Section 7.** The Chairman, Vice Chairman and/or the Executive Director of the Agency, acting individually, are each hereby authorized and directed, for and in the name and on behalf of the Agency, to execute and deliver the documents and agreements identified herein and any such additional certificates, instruments, documents or affidavits, to pay any such other fees, charges and expenses, to make such other changes, omissions, insertions, revisions, or amendments to the documents referred herein as the (Vice) Chairman deems appropriate, and to do and cause to be done any such other acts and things, as they determine, on advice of counsel to the Agency, may be necessary or desirable to consummate the transactions contemplated by this Resolution, the Agreement and/or the Project Agreement.

**Section 8.** The obligation of the Agency to consummate any transaction contemplated herein or hereby is subject to and conditioned upon the Company's execution and delivery of, among other things, the Agreement, the Project Agreement and an Environmental Compliance and Indemnification Agreement in favor of the Agency in form and substance acceptable to the Agency and its counsel, in the discretion of the Chairman and/or Vice Chairman of the Agency.

**Section 9.** No covenant, stipulation, obligation or agreement contained in this resolution or any document referred to herein shall be deemed to be the covenant, stipulation, obligation or agreement of any member, officer, agent or employee of the Agency in his or her individual capacity. Neither the members nor officers of the Agency, nor any person executing any documents referred to above on behalf of the Agency, shall be liable thereon or be subject to any personal liability or accountability by reason of the execution or delivery thereof.

**Section 10.** Should the Agency's participation in the Project, or the appointments made in accordance herewith, be challenged by any party, in the courts or otherwise, the Company shall defend, indemnify and hold harmless the Agency and its members, officers and employees from any and all losses arising from any such challenge including, but not limited to, the fees and disbursement of the Agency's counsel. Should any court of competent jurisdiction determine that the Agency is not authorized under the Act to participate in the Project, this Resolution shall automatically become null, void and of no further force and effect, and the Agency shall have no liability to the Company hereunder or otherwise.

**Section 11.** Bousquet Holstein PLLC, as counsel to the Agency, is hereby authorized to work with the Company and others to prepare for submission to the Agency, all documents necessary to effect the grant of Financial Assistance and consummate the Lease Documents.

**Section 12.** The Secretary and/or the Executive Director of the Agency are hereby authorized and may distribute copies of this Resolution and do such further things or perform such acts as may be necessary or convenient to implement the provisions of this Resolution.

**Section 13.** This Resolution shall take effect immediately. A copy of this Resolution, together with the attachments hereto, shall be placed on file in the office of the Agency where the same shall be available for public inspection during business hours.

The question of the adoption of the foregoing resolution was duly put to vote on a roll call, which resulted as follows:

	<u>AYE</u>	<u>NAY</u>
Michael Frame	X	
Kenneth Kinsey	X	
Ricky T. Brown	X	
Kathleen Murphy	X	

The foregoing Resolution was thereupon declared duly adopted.

STATE OF NEW YORK )  
 ) SS.:  
COUNTY OF ONONDAGA )

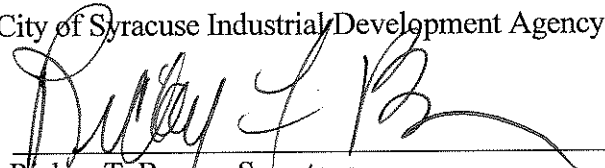
I, the undersigned Secretary of the City of Syracuse Industrial Development Agency, **DO HEREBY CERTIFY** that I have compared the annexed extract of the minutes of the meeting of the City of Syracuse Industrial Development Agency (the "**Agency**") held on December 18, 2018, with the original thereof on file in my office, and that the same (including all exhibits) is a true and correct copy of the proceedings of the Agency and of the whole of such original insofar as the same relates to the subject matters referred to therein.

**I FURTHER CERTIFY** that (i) all members of the Agency had due notice of such meeting, (ii) pursuant to Section 104 of the Public Officers Law (Open Meetings Law), such meeting was open to the general public and public notice of the time and place of such meeting was duly given in accordance with such Section 104, (iii) the meeting was in all respects duly held, and (iv) there was a quorum present throughout.

**I FURTHER CERTIFY** that, as of the date hereof, the attached resolution is in full force and effect and has not been amended, repealed or rescinded.

**IN WITNESS WHEREOF**, I have set my hand and affixed the seal of the Agency this 19 day of December, 2018.

City of Syracuse Industrial Development Agency



Rickey T. Brown, Secretary

(SEAL)



## EXHIBIT "A"

### AGENCY/COMPANY AGREEMENT

**THIS AGREEMENT** is between **CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY** (the "**Agency**"), with an office at 201 East Washington Street, 6<sup>th</sup> Floor, Syracuse, New York 13202 and **ALAN BYER AUTO SALES, INC. AND ALAN I BYER FAMILY TRUST**, with a mailing address of 1230 West Genesee Street, Syracuse, New York 13204 (the "**Company**").

**Article 1. Preliminary Statement.** Among the matters of mutual inducement which have resulted in the execution of this agreement are the following:

1.01. The Agency is authorized and empowered by the provisions of Title 1 of Article 18-A of the General Municipal Law of the State of New York (the "**State**"), as amended, and Chapter 641 of the Laws of 1979 of the State (collectively, the "**Act**") to designate an agent for constructing, renovating and equipping "projects" (as defined in the Act).

1.02. The purposes of the Act are to promote, attract, encourage and develop recreation and economically sound commerce and industry in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State, to improve their recreation opportunities, prosperity and standard of living, and to prevent unemployment and economic deterioration. The Act vests the Agency with all powers necessary to enable it to accomplish such purposes, including the power to acquire and dispose of interests in real property and to appoint agents for the purpose of completion of projects undertaken by the Agency.

1.03. The Company, by application dated October 23, 2018 (the "**Application**"), requested the Agency undertake a project (the "**Project**") consisting of: (A)(i) the acquisition of an interest in approximately 1.89 acres of improved real property located at 1232-36 West Genesee Street (also known as 1230 West Genesee Street), in the City of Syracuse, New York (the "**Land**"); (ii) the renovation of an existing approximately 25,820 square foot building for use as an auto dealership, including but not limited to, renovation of interior showroom, sales offices and reception areas, external replacement of entry, new exterior wall finishes, updated signage and roof replacement, all located on the Land (the "**Facility**"); (iii) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment (the "**Equipment**") and together with the Land and the Facility, the "**Project Facility**"; (B) the granting of certain financial assistance in the form of exemptions from real property tax, State and local sales and use tax and mortgage recording tax (in accordance with Section 874 of the General Municipal Law) (collectively the "**Financial Assistance**"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, reconstruction, renovation, equipping and completion of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement.

1.03(a). All documents necessary to effectuate the Agency's undertaking of the Project and the granting of the approved Financial Assistance between the Agency and the Company, including but not limited to, a project agreement, a company lease agreement, an agency lease agreement, a bill of sale and an environmental compliance and indemnification agreement, shall be collectively referred to herein as the "**Lease Documents**".

1.04. The Company hereby represents to the Agency that undertaking the Project, the designation of the Company as the Agency's agent for the reconstruction, renovation, equipping and completion of the Project Facility, and the use and appointment, as necessary, by the Company of a Project operator, contractors, agents, subagents, subcontractors, contractors and subcontractors of such agents and subagents (collectively, "**Additional Agents**"): (i) will be an inducement to it to reconstruct, renovate and equip the Project Facility in the City of Syracuse (the "**City**"); (ii) will not result in the removal of a commercial, industrial or manufacturing plant or facility of the Company or of any other proposed occupant of the Project Facility from one area of the State to another or in the abandonment of one or more plants or facilities of the Company or of any other proposed occupant of the Project Facility located in the State, except as may be permitted by the Act; and (iii) undertaking the Project Facility will promote, create and/or preserve private sector jobs in the State. The Company hereby further represents to the Agency that the Project Facility is not primarily used in making retail sales to customers who personally visit the Facility.

1.05. The Agency has determined that the acquisition of a controlling interest in, and the reconstruction, renovation and equipping of the Project Facility and the subleasing of the same to the Company will promote and further the purposes of the Act.

1.06. On December 18, 2018, the Agency adopted a resolution (the "**Inducement Resolution**") agreeing, subject to the satisfaction of all conditions precedent set forth in such Resolution, to designate the Company as the Agency's agent for the acquisition, reconstruction, renovation and equipping of the Project Facility and determining that the leasing of the same to the Company will promote further purposes of the Act. For purposes of that designation, the Agency authorized as part of the approved Financial Assistance, State and local sales and use tax exemption benefits in an amount not exceed **\$140,000**.

1.07. In the Resolution, subject to the execution of, and compliance with, this Agreement by the Company, the execution and delivery of a project agreement by the Company, and other conditions set forth in the Resolution and herein, the Agency appointed the Company as its agent for the purposes of reconstruction, renovation and equipping the Project Facility, entering into contracts and doing all things requisite and proper for reconstruction, renovation and equipping the Project Facility.

**Article 2. Undertakings on the Part of the Agency.** Based upon the statement, representations and undertakings of the Company and subject to the conditions set forth herein, the Agency agrees as follows:

2.01. The Agency confirms that it has authorized and designated, pursuant to the terms hereof, the Company as the Agency's agent for reconstructing, renovating and equipping the

Project Facility.

2.02. The Agency will adopt such proceedings and authorize the execution of such Agency documents as may be necessary or advisable for: (i) acquisition of a controlling interest in the Project Facility; (ii) designation by the Company of Additional Agents for reconstruction, renovation and equipping of the Project Facility subject to the terms hereof; and (iii) the leasing or subleasing of the Project Facility to the Company, all as shall be authorized by law and be mutually satisfactory to the Agency and the Company.

2.03. Nothing contained in this Agreement shall require the Agency to apply its funds to Project costs.

2.04. After satisfying the conditions precedent set forth in the Sections 2.05, 3.06 and 4.02 hereof and in the Inducement Resolution, the Company may proceed with the reconstruction, renovation and equipping of the Project Facility and the utilization of and, as necessary the appointment of, Additional Agents.

2.05. Subject to the execution of the Lease Documents and Section 4.02 hereof, the Company is appointed the true and lawful agent of the Agency: (i) for the reconstruction, renovation and equipping of the Project Facility; and (ii) to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions, as the stated agent for the Agency, and in general to do all things which may be requisite or proper for the reconstruction, renovation and equipping of the Project Facility, all with the same powers and the same validity as if the Agency were acting in its own behalf.

2.06. The Agency will take or cause to be taken such other acts and adopt such further proceedings as may be required to implement the aforesaid undertakings or as it may deem appropriate in pursuance thereof. The Agency may in accordance with Article 8 of the Environmental Conservation Law of the State of New York, as amended, and the regulations of the Department of Environmental Conservation of the State of New York promulgated thereunder (collectively referred to hereinafter as "*SEQRA*"), undertake supplemental review of the Project. Such review to be limited to specific significant adverse environmental impacts not addressed or inadequately addressed in the Agency's review under SEQRA that arise from changes in the proposed Project, newly discovered information or a change in the circumstances related to the Project.

**Article 3. Undertakings on the Part of the Company.** Based upon the statements, representations and undertakings of the Agency and subject to the conditions set forth herein the Company agrees as follows:

3.01. (a) The Company shall indemnify and hold the Agency harmless from all losses, expenses, claims, damages and liabilities arising out of or based on labor, services, materials and supplies, including equipment, ordered or used in connection with the acquisition of a controlling interest in, and reconstruction, renovation and equipping of the Project Facility (including any expenses incurred by the Agency in defending any claims, suits or actions which may arise as a result of any of the foregoing), whether such claims or liabilities arise as a result of

the Company or Additional Agents acting as agent for the Agency pursuant to this Agreement or otherwise.

(b) The Company shall not permit to stand, and will, at its own expense, take all steps reasonably necessary to remove, any mechanics' or other liens against the Project Facility for labor or material furnished in connection with the acquisition, reconstruction, renovation and equipping of the Project Facility.

(c) The Company shall indemnify and hold the Agency, its members, officers, employees and agents and anyone for whose acts or omissions the Agency or any one of them may be liable, harmless from all claims and liabilities for loss or damage to property or any injury to or death of any person that may be occasioned subsequent to the date hereof by any cause whatsoever in relation to the Project Facility, including any expenses incurred by the Agency in defending any claims, suits or actions which may arise as a result of the foregoing.

(d) The Company shall defend, indemnify and hold the Agency harmless from all losses, expenses, claims, damages and liabilities arising out of or based on the non-disclosure of information, if any, requested by the Company in accordance with Section 4.05 hereof.

(e) The defense and indemnities provided for in this Article 3 shall survive expiration or termination of this Agreement and shall apply whether or not the claim, liability, cause of action or expense is caused or alleged to be caused, in whole or in part, by the activities, acts, fault or negligence of the Agency, its members, officers, employees and agents, anyone under the direction and control of any of them, or anyone for whose acts or omissions the Agency or any of them may be liable, and whether or not based upon the breach of a statutory duty or obligation or any theory or rule of comparative or apportioned liability, subject only to any specific prohibition relating to the scope of indemnities imposed by statutory law.

(f) The Company shall provide and carry: (i) worker's compensation and disability insurance as required by law; and (ii) comprehensive liability and property insurance with such coverages (including without limitation, owner's protective coverage for the benefit of the Agency, naming the Agency as an additional insured on all policies of coverage regarding the Project; providing the coverage with respect to the Agency be primary and non-contributory; and contractual coverage covering the indemnities herein provided for), with such limits and which such companies as may be approved by the Agency. Upon the request of the Agency, the Company shall provide certificates, endorsements, binders and/or policies of insurance in form satisfactory to the Agency evidencing such insurance.

(g) The Company shall apply and diligently pursue all approvals, permits and consents from the State of New York, the City, the City Planning Commission and any other governmental authority which approvals, permits and consents are required under applicable law for the development, reconstruction, renovation and equipping of the Project and any related site improvements. The Company acknowledges and agrees that the Agency's findings and determinations under SEQRA do not and shall not in and of themselves (except as specifically set forth in SEQRA) satisfy or be deemed to satisfy applicable laws, regulations, rules and procedural requirements applicable to such approvals, permits and consents.

(h) The Company shall complete a Local Access Agreement to be obtained from the City of Syracuse Industrial Development Agency and agrees to utilize, and cause its Additional Agents to utilize, local contractors and suppliers for the reconstruction, renovation, equipping and completion of the Project unless a waiver is received from the Agency in writing. For purposes of this Agency Agreement, the term “*Local*” shall mean Onondaga, Oswego, Oneida, Madison, Cayuga and Cortland Counties. The Company agrees that such Local contractors shall be provided the opportunity to bid on contracts related to the Project Facility.

3.02. The Company agrees that, as agent for the Agency or otherwise, it will comply at the Company’s sole cost and expense with all the requirements of all federal, state and local laws, rules and regulations of whatever kind and howsoever denominated applicable to the Agency and/or Company with respect to the Project Facility, the acquisition of a controlling interest therein, reconstruction, renovation and equipping thereof, the operation and maintenance of the Project Facility, supplemental review of adverse environmental impacts in accordance with SEQRA and the financing of the Project. Every provision required by law to be inserted herein shall be deemed to be set forth herein as if set forth in full, including, but not limited to, Section 875 of the Act; and upon the request of either party, this Agreement shall be amended to specifically set forth any such provision or provisions.

3.03. The Company agrees that, as agent for the Agency or otherwise, to the extent that such provisions of law are in fact applicable (without creating an obligation by contract beyond that which is created by statute) it will comply with the requirements of Section 220 of the Labor Law of the State of New York, as amended.

3.04. The Company will take such further action and adopt such further proceedings as may be required to implement its aforesaid undertakings or as it may deem appropriate in pursuance thereof.

3.05. If it should be determined that any State or local sales or compensatory use taxes are payable with respect to the acquisition, purchase or rental of machinery or equipment, materials or supplies in connection with the Project Facility, or are in any manner otherwise payable directly or indirectly in connection with the Project Facility, the Company shall pay the same and defend and indemnify the Agency from and against any liability, expenses and penalties arising out of, directly or indirectly, the imposition of any such taxes.

3.06 The Company shall proceed with the acquisition, reconstruction, renovation, equipping and completion of the Project Facility and advance such funds as may be necessary to accomplish such purposes. The Company may appoint Additional Agents as agents of the Agency in furtherance thereof. Any appointment of an Additional Agent is conditioned upon the Company first obtaining and providing the Agency the following:

(1) A written, executed agreement, in form and substance acceptable to the Agency, from each Additional Agent which provides for the assumption by the Additional Agent, for itself, certain of the obligations under this Agreement relative to the appointment, work and purchases done and made by each Additional Agent; (ii) a commitment to utilize local contractors and suppliers for the reconstruction, renovation and equipping of the Project (“local”

being defined in Section 3.01(h) hereof); (iii) an acknowledgement that the Additional Agent is obligated, to timely provide the Company with the necessary information to permit the Company, pursuant to General Municipal Law §874(8), to timely file an Annual Statement with the Agency and the New York State Department of Taxation and Finance on "Annual Report of Sales and Use Tax Exemptions" (Form ST-340) regarding the value of sales and use tax exemptions the Additional Agent claimed pursuant to the agency conferred on it by the Company with respect to this Project; (iv) an acknowledgment by the Additional Agent that the failure to comply with the foregoing will result in the loss of the exemption; and (v) such other terms and conditions as the Agency deems necessary; and

(2) A completed "IDA Appointment of Project Operator or Agent for Sales Tax Purposes" (Form ST-60) for each Additional Agent appointed within fifteen (15) days of the appointment of each Additional Agent such that the Agency can execute and deliver said form to the State Department of Taxation and Finance within thirty (30) days of appointment of each such Additional Agent.

Failure of the Company to comply with the foregoing shall nullify the appointment of any Additional Agent and may result in the loss of the Company's exemption with respect to the Project at the sole discretion of the Agency.

The Company acknowledges that the assumption by the Additional Agent in accordance with Section 3.06(1) above, does not relieve the Company of its obligations under those provisions or any other provisions of this Agreement with respect to the Project.

3.07 The Company ratifies and confirms its obligations to pay an annual administrative reporting fee in accordance with the Agency's fee schedule to cover administrative and reporting requirements to comply with New York State reporting regulations on Agency assisted projects.

#### **Article 4. General Provisions.**

4.01. This Agreement shall take effect on the date of the execution hereof by the Agency and the Company and, subject to Section 4.04 hereof, shall remain in effect until the Lease Documents become effective. It is the intent of the Agency and the Company that, except as to those provisions that survive, this Agreement be superseded in its entirety by the Lease Documents.

4.02. (a) It is understood and agreed by the Agency and the Company that the grant of Financial Assistance and the execution of the Lease Documents and related documents are subject to: (i) payment by the Company of the Agency's fee and Agency's counsel fees; (ii) obtaining all necessary governmental approvals, permits and consents of any kind required in connection with the Project Facility; (iii) approval by the members of the Agency; (iv) approval by the Company; and (v) the condition that there are no changes in New York State Law, including regulations, which prohibit or limit the Agency from fulfilling its obligations hereunder; and

(b) the Company, by executing this agreement, acknowledges and agrees to make, or cause its Additional Agents, to make, all records and information regarding State and local sales and use tax exemption benefits given to the Project as part of the Financial Assistance

available to the Agency upon request, including but not limited to the Form ST-340 for itself and each Additional Agent; and

(c) the Company, by executing this Agreement, acknowledges and agrees to the terms and conditions of Section 875(3) of the Act as if such section were fully set forth herein and further agrees to cause all of its Additional Agents to acknowledge, agree and consent to same. Without limiting the scope of the foregoing the Company acknowledges that pursuant to Section 875(3) of the Act, and in accordance with the Agency's Recapture of Benefits Policy, the Agency shall, and in some instances may, recover, recapture, receive or otherwise obtain from the Company some or all of the Financial Assistance (the "**Recapture Amount**") including, but not limited to: (1) (a) that portion of the State and local sales and use tax exemption to which the Company was not entitled, which is in excess of the amount of the State and local sales and use tax exemption authorized by the Agency or which is for property or services not authorized by the Agency; or (b) the full amount of such State and local sales and use tax exemption, if the Company fails to comply with a material term or condition regarding the use of the property or services as represented to the Agency in its Application or otherwise; or (c) the full amount of such State and local sales and use tax exemption in the event the Company fails to execute and deliver the Lease Documents in accordance herewith or fails to complete the Project; and (2) any interest or penalties thereon imposed by the Agency or by operation of law or by judicial order or otherwise; and (d) the failure of the Company to promptly pay such Recapture Amount to the Agency will be grounds for the Commissioner to collect sales and use taxes from the Company under Article 28 of the State Tax Law, together with interest and penalties. In addition to the foregoing, the Company acknowledges and agrees that for purposes of exemption from New York State (the "**State**") sales and use taxation as part of the Financial Assistance requested, "sales and use taxation" shall mean sales and compensating use taxes and fees imposed by article twenty-eight or twenty-eight-A of the New York State tax law but excluding such taxes imposed in a city by section eleven hundred seven or eleven hundred eight of such article twenty-eight. In addition to the foregoing, the Agency may recapture other benefits comprising the Financial Assistance in accordance with the Agency's Recapture Policy (a copy of which is on the Agency's website).

4.03. The Company agrees that it will, within thirty (30) days of a written request for same, regardless of whether or not this matter closes or the Project Facility is completed: (i) reimburse the Agency for all reasonable and necessary expenses, including without limitation the fees and expenses of counsel to the Agency arising from, out of or in connection with the Project, and/or any documents executed in connection therewith, including, but not limited to any claims or actions taken by the Agency against the Company, Additional Agents or third parties; and (ii) indemnify the Agency from all losses, claims, damages and liabilities, in each case which the Agency may incur as a consequence of executing this Agreement or performing its obligations hereunder, including but not limited to, any obligations related to Additional Agents.

4.04. If for any reason the Lease Documents are not executed and delivered by the Company and the Agency on or before **December 18, 2019**, the provisions of this Agreement (other than the provisions of Articles 1.04, 2.02, 2.04, 3.01, 3.02, 3.03, 3.05, 3.06, 4.02, 4.03, 4.04, 4.05 and 4.06, which shall survive) shall unless extended by agreement of the Agency and the Company, terminate and be of no further force or effect, and following such termination

neither party shall have any rights against the other party except:

(a) The Company shall pay the Agency for all expenses incurred by the Agency in connection with the acquisition, reconstruction, renovation and equipping of the Project Facility;

(b) The Company shall assume and be responsible for any contracts for the reconstruction, renovation or purchase of equipment entered into by the Agency at the request of or as agent for the Company in connection with the Project Facility; and

(c) The Company will pay the out-of-pocket expenses of members of the Agency and counsel for the Agency incurred in connection with the Project Facility and will pay the fees of counsel for the Agency for legal services relating to the Project Facility, Additional Agents or the proposed financing thereof.

**4.05. The Company acknowledges that Section 875(7) of the New York General Municipal Law (“GML”) requires the Agency to post on its website all resolutions and agreements relating to the Company’s appointment as an agent of the Agency or otherwise related to the Project, including this Agreement; and Article 6 of the New York Public Officers Law declares that all records in the possession of the Agency (with certain limited exceptions) are open to public inspection and copying. If the Company feels that there are elements of the Project or information about the Company in the Agency’s possession which are in the nature of trade secrets or information, the nature of which is such that if disclosed to the public or otherwise widely disseminated would cause substantial injury to the Company’s competitive position, the Company must identify such elements in writing, supply same to the Agency: (i) with respect to this Agreement, prior to or contemporaneously with the execution hereof; and (ii) with respect to all other agreements executed in connection with the Project, on or before the Closing Date, and request that such elements be kept confidential in accordance with Article 6 of the Public Officers Law. Failure to do so will result in the posting by the Agency of all information in accordance with Section 875 of the GML.**

4.06 That every controversy, dispute or claim arising out of or relating to this Agreement shall be governed by the laws of the State of New York, without regard to its conflict-of-laws provisions that if applied might require the application of the laws of another jurisdiction; and that the Company irrevocably and expressly submits to the exclusive personal jurisdiction of the Supreme Court of the State of New York and the United States District Court for the Northern District of New York, to the exclusion of all other courts, for the purposes of litigating every controversy, dispute or claim arising out of or relating to this Agreement.



**IN WITNESS WHEREOF**, the parties hereto have entered into this Agreement as of the 18<sup>th</sup> day of December, 2018.

**CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY**

By: \_\_\_\_\_  
Honora Spillane, Executive Director

**ALAN BYER AUTO SALES, INC.**

By: \_\_\_\_\_  
Name:  
Title:

**ALAN I BYER FAMILY TRUST**

By: \_\_\_\_\_  
Name:  
Title:

**EXHIBIT "G"**

**ORIGINAL PILOT RESOLUTION**

## PILOT RESOLUTION

A regular meeting of the City of Syracuse Industrial Development Agency was convened in public session on December 18, 2018 at 8:30 o'clock a.m., local time, in the Common Council Chambers, City Hall, 233 East Washington Street, Syracuse, New York.

The meeting was called to order by the Chairman and upon roll being called, the following members of the Agency were:

**PRESENT:** Michael Frame, Kenneth Kinsey, Ricky T. Brown, Kathleen Murphy

**EXCUSED:** Steven Thompson

**THE FOLLOWING PERSONS WERE ALSO PRESENT:** Staff Present: Honora Spillane, Susan Katzoff, Esq., Meghan Ryan, Esq., Judith DeLaney, John Vavonese, Debbie Ramsey-Burns; Others Present: Stephanie Pasquale, Timothy Lynn, Esq., Aggie Lane, Rich Puchulski, Sheila Sicilia, Jessica Maxwell, Jonathan Grahman, Ryland Heagerty, Ryan Benz, Philip Maguire, Suzanne Slack, Kenneth Smith, Ariel Halstead, Kevin McAuliffe, Esq., Rebecca Fuentes, M. Kelly; Media: Rick Moriarty

The following resolution was offered by Kathleen Murphy and seconded by Kenneth Kinsey:

### **RESOLUTION APPROVING AN PAYMENT IN LIEU OF TAX SCHEDULE AND AUTHORIZING THE EXECUTION AND DELIVERY OF CERTAIN DOCUMENTS BY THE AGENCY IN CONNECTION WITH A PILOT AGREEMENT**

**WHEREAS**, the City of Syracuse Industrial Development Agency (the "**Agency**") is authorized and empowered by Title 1 of Article 18-A of the General Municipal Law of the State of New York (the "**State**"), as amended, together with Chapter 641 of the Laws of 1979 of the State of New York, as amended from time to time (collectively, the "**Act**") to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial, research and recreation facilities, including industrial pollution control facilities, railroad facilities and certain horse racing facilities, for the purpose of promoting, attracting, encouraging and developing recreation and economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State, to improve their recreation opportunities, prosperity and standard of living, and to prevent unemployment and economic deterioration; and

**WHEREAS**, to accomplish its stated purposes, the Agency is authorized and empowered under the Act to acquire, lease and sell real property and grant financial assistance in connection with one or more "projects" (as defined in the Act); and by application dated October 23, 2018 (the "**Application**"), Alan Byer Auto Sales, Inc. and Alan I Byer Family Trust, or an entity to be

formed (the "**Company**"), requested the Agency undertake a project (the "**Project**") consisting of: (A)(i) the acquisition of an interest in approximately 1.89 acres of improved real property located at 1232-36 West Genesee Street (also known as 1230 West Genesee Street), in the City of Syracuse, New York (the "**Land**"); (ii) the renovation of an existing approximately 25,820 square foot building for use as an auto dealership, including but not limited to, renovation of interior showroom, sales offices and reception areas, external replacement of entry, new exterior wall finishes, updated signage and roof replacement, all located on the Land (the "**Facility**"); (iii) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment (the "**Equipment**" and together with the Land and the Facility, the "**Project Facility**"); (B) the granting of certain financial assistance in the form of exemptions from real property tax, State and local sales and use tax and mortgage recording tax (in accordance with Section 874 of the General Municipal Law) (collectively the "**Financial Assistance**"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, reconstruction, renovation, equipping and completion of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement; and

**WHEREAS**, pursuant to Article 8 of the Environmental Conservation Law of the State of New York, as amended, and the regulations of the Department of Environmental Conservation of the State of New York promulgated thereunder (collectively referred to hereinafter as "**SEQRA**"), the Agency has examined the EAF prepared by the Company in order to classify the Project and has determined that the Project constitutes a "Type II" action as that term is defined under SEQRA; and

**WHEREAS**, on December 18, 2018, the Agency further resolved to take official action toward the acquisition, reconstruction, renovation, equipping and completion of the Project (the "**Inducement Resolution**"); and

**WHEREAS**, as part of the Financial Assistance, the Company requested the Agency consider a payment in lieu of tax schedule, (the "**PILOT**"), as more fully described on **Exhibit "A"** attached hereto, which schedule conforms with the Agency's Uniform Tax Exemption Policy ("**UTEP**") established pursuant to General Municipal Law Section 874(4); and

**WHEREAS**, the Agency has given due consideration to the Application and to representations by the Company that the proposed PILOT, as part of the Financial Assistance: (i) will induce the Company to develop the Project Facility in the City of Syracuse; and (ii) will not result in the removal of a commercial, industrial or manufacturing plant or facility of the Company or any other proposed occupant of the Project Facility from one area of the State to another area of the State or in the abandonment of one or more plants or facilities of the Company or any other proposed occupant of the Project Facility located in the State, except as may be permitted by the Act; (iii) undertaking the Project will advance job opportunities in the State and promote the general prosperity and economic welfare of the inhabitants of the City of Syracuse in furtherance of the purposes of the Act;

**NOW, THEREFORE**, be it resolved by the members of the City of Syracuse Industrial Development Agency, as follows:

(1) Based upon the representations made by the Company to the Agency, and the reasons presented by the Company in support of its request for the PILOT schedule, the Agency hereby approves and the (Vice) Chairman and Executive Director, acting individually, are each authorized to execute and deliver a PILOT agreement (the "**PILOT Agreement**") providing for the payment schedule attached as **Exhibit "A"** hereto, all in such form and substance as shall be substantially the same as approved by the Agency for other similar transactions and consistent with this Resolution and as approved by the Chairman or Vice Chairman of the Agency upon the advice of counsel to the Agency. As a condition to the execution and delivery of the PILOT Agreement, the Company shall execute and deliver all of the Lease Documents (as defined in the Inducement Resolution) and the Final Appointment shall be in place.

(2) The (Vice)Chairman and/or Executive Director, acting individually, are each hereby authorized and directed, for and in the name and on behalf of the Agency, to execute and deliver the documents and agreements identified herein and any and all such additional certificates, instruments, documents or affidavits, to pay any such other fees, charges and expenses, to make such other changes, omissions, insertions, revisions, or amendments to the documents referred to herein as the (Vice)Chairman shall approve, and to do and cause to be done any such other acts and things, as they determine, on advice of counsel to the Agency, may be necessary or desirable to consummate the transactions contemplated by this Resolution.

(3) No covenant, stipulation, obligation or agreement contained in this resolution or any document referred to above shall be deemed to be the covenant, stipulation, obligation or agreement of any member, officer, agent or employee of the Agency in his or her individual capacity. Neither the members nor officers of the Agency, nor any person executing any documents referred to above on behalf of the Agency, shall be liable thereon or be subject to any personal liability or accountability by reason of the execution or delivery thereof.

(4) The Secretary and/or the Executive Director of the Agency are hereby authorized to distribute copies of this Resolution to the Company and to do such further things or perform such acts as may be necessary or convenient to implement the provisions of this Resolution.

(5) This Resolution shall take effect immediately, but is subject to execution by the Company of a PILOT Agreement and the Agreement (as defined in the Inducement Resolution) and all other resolutions and other related documents adopted and/or approved by the Agency and/or as set forth herein.

(6) A copy of this Resolution, together with the attachments hereto, shall be placed on file in the office of the Agency where the same shall be available for public inspection during business hours.

The question of the adoption of the foregoing Resolution was duly put to vote on a roll call, which resulted as follows:

	<u>AYE</u>	<u>NAY</u>
Michael Frame	X	
Kenneth Kinsey	X	
Ricky T. Brown	X	
Kathleen Murphy	X	

The foregoing Resolution was thereupon declared duly adopted.

STATE OF NEW YORK            )  
  ) SS.:  
COUNTY OF ONONDAGA        )

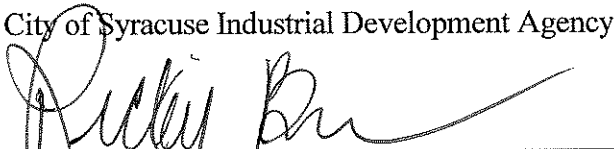
I, the undersigned Secretary of the City of Syracuse Industrial Development Agency, **DO HEREBY CERTIFY** that I have compared the annexed extract of the minutes of the meeting of the City of Syracuse Industrial Development Agency (the “Agency”) held on December 18, 2018, with the original thereof on file in my office, and that the same (including any and all exhibits) is a true and correct copy of the proceedings of the Agency and of the whole of such original insofar as the same relates to the subject matters referred to therein.

**I FURTHER CERTIFY** that (i) all members of the Agency had due notice of such meeting, (ii) pursuant to Section 104 of the Public Officers Law (Open Meetings Law), such meeting was open to the general public and public notice of the time and place of such meeting was duly given in accordance with such Section 104, (iii) the meeting was in all respects duly held, and (iv) there was a quorum present throughout.

**I FURTHER CERTIFY** that, as of the date hereof, the attached resolution is in full force and effect and has not been amended, repealed or rescinded.

**IN WITNESS WHEREOF**, I have set my hand and affixed the seal of the Agency this 19 day of December, 2018.

City of Syracuse Industrial Development Agency

  
\_\_\_\_\_  
Rickey T. Brown, Secretary

(SEAL)

**EXHIBIT "A"**

**PROPOSED PILOT SCHEDULE**

Year	Amount
1	\$52,240.55
2	\$53,285.36
3	\$54,351.07
4	\$55,438.09
5	\$56,546.85
6	\$57,677.79
7	\$58,831.35
8	\$63,568.94
9	\$68,472.50
10	\$73,546.77
Total	\$593,959.27



**EXHIBIT "H"**

**ORIGINAL FINAL APPROVING RESOLUTION**

## FINAL APPROVING RESOLUTION

A regular meeting of the City of Syracuse Industrial Development Agency was convened in public session on December 18, 2018 at 8:30 o'clock a.m., local time, in the Common Council Chambers, City Hall, 233 East Washington Street, Syracuse, New York.

The meeting was called to order by the Chairman and upon roll being called, the following members of the Agency were:

**PRESENT:** Michael Frame, Kenneth Kinsey, Ricky T. Brown, Kathleen Murphy

**EXCUSED:** Steven Thompson

**THE FOLLOWING PERSONS WERE ALSO PRESENT:** Staff Present: Honora Spillane, Susan Katzoff, Esq., Meghan Ryan, Esq., Judith DeLaney, John Vavonese, Debbie Ramsey-Burns; Others Present: Stephanie Pasquale, Timothy Lynn, Esq., Aggie Lane, Rich Puchulski, Sheila Sicilia, Jessica Maxwell, Jonathan Grahman, Ryland Heagerty, Ryan Benz, Philip Maguire, Suzanne Slack, Kenneth Smith, Ariel Halstead, Kevin McAuliffe, Esq., Rebecca Fuentes, M. Kelly; Media: Rick Moriarty

The following resolution was offered by Kenneth Kinsey and seconded by Rickey T. Brown:

### **RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF CERTAIN DOCUMENTS BY THE AGENCY IN CONNECTION WITH A COMMERCIAL PROJECT UNDERTAKEN AT THE REQUEST OF THE COMPANY**

**WHEREAS**, the City of Syracuse Industrial Development Agency (the "**Agency**") is authorized and empowered by Title 1 of Article 18-A of the General Municipal Law of the State of New York (the "**State**"), as amended, together with Chapter 641 of the Laws of 1979 of the State of New York, as amended from time to time (collectively, the "**Act**"), to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial, research and recreation facilities, for the purpose of promoting economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State, to improve their recreation opportunities, prosperity and standard of living; and

**WHEREAS**, Alan Byer Auto Sales, Inc. and Alan I Byer Family Trust, or an entity to be formed (the "**Company**"), by application dated October 23, 2018 (the "**Application**"), requested the Agency undertake a project (the "**Project**") consisting of: (A)(i) the acquisition of an interest in approximately 1.89 acres of improved real property located at 1232-36 West Genesee Street (also known as 1230 West Genesee Street), in the City of Syracuse, New York (the "**Land**"); (ii) the renovation of an existing approximately 25,820 square foot building for use as an auto

dealership, including but not limited to, renovation of interior showroom, sales offices and reception areas, external replacement of entry, new exterior wall finishes, updated signage and roof replacement, all located on the Land (the "**Facility**"); (iii) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment (the "**Equipment**" and together with the Land and the Facility, the "**Project Facility**"); (B) the granting of certain financial assistance in the form of exemptions from real property tax, State and local sales and use tax and mortgage recording tax (in accordance with Section 874 of the General Municipal Law) (collectively the "**Financial Assistance**"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, reconstruction, renovation, equipping and completion of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement; and

**WHEREAS**, the Agency conducted a public hearing with respect to the Project and the proposed Financial Assistance on December 18, 2018 pursuant to Section 859-a of the Act, notice of which was published on December 4, 2018, in the Post-Standard, a newspaper of general circulation in the City of Syracuse, New York and given to the chief executive officers of the affected tax jurisdictions by letters dated December 3, 2018; and

**WHEREAS**, pursuant to Article 8 of the Environmental Conservation Law of the State of New York, as amended, and the regulations of the Department of Environmental Conservation of the State of New York promulgated thereunder (collectively referred to hereinafter as "**SEQRA**"), the Agency has examined the EAF prepared by the Company in order to classify the Project and has determined that the Project constitutes a "Type II" action as that term is defined under SEQRA; and

**WHEREAS**, the Agency adopted a resolution on December 18, 2018 (the "**Inducement Resolution**") entitled:

**RESOLUTION AUTHORIZING THE UNDERTAKING, ACQUISITION, RECONSTRUCTION, RENOVATION, EQUIPPING AND COMPLETION OF A PROJECT; APPOINTING THE COMPANY AS AGENT OF THE AGENCY FOR THE PURPOSE OF THE ACQUISITION, RECONSTRUCTION, RENOVATION, EQUIPPING AND COMPLETION OF THE PROJECT; AND AUTHORIZING THE EXECUTION AND DELIVERY OF AN AGREEMENT BETWEEN THE AGENCY AND THE COMPANY**

which resolution is in full force and effect and has not been amended or modified; and

WHEREAS, the Agency adopted a resolution on December 18, 2018 (the "*PILOT Resolution*") entitled:

**RESOLUTION APPROVING AN PAYMENT IN LIEU OF  
TAX SCHEDULE AND AUTHORIZING THE EXECUTION  
AND DELIVERY OF CERTAIN DOCUMENTS BY THE  
AGENCY IN CONNECTION WITH A PILOT  
AGREEMENT**

which resolution is in full force and effect and has not been amended or modified; and

NOW, THEREFORE, be it resolved by the members of the City of Syracuse Industrial Development Agency, as follows:

**Section 1.** Based upon the representations made by the Company to the Agency and after consideration of the comments received at the public hearing, if any, the Agency hereby ratifies all of its prior resolutions adopted in conjunction with the Project, including but not limited to the Inducement Resolution, the PILOT Resolution and all other action with respect to the Project and Financial Assistance taken by the Agency, and makes the following findings and determinations:

(a) The acquisition of a controlling interest in the Project Facility by the Agency, the granting of the approved Financial Assistance in accordance with the Inducement Resolution and the designation of the Company as the Agency's agent for completion of the Project will be an inducement to, and permit, the Company to develop and operate the Project Facility in the City of Syracuse, thus serving the public purposes of Article 18-A of the General Municipal Law of New York State by promoting and preserving the job opportunities, general prosperity, health and economic welfare of the inhabitants of the City of Syracuse (the "*City*") in furtherance of the purposes of the Act;

(b) The Project will not result in the removal of a commercial, industrial or manufacturing plant or facility of the Company or any other proposed occupant of the Project Facility from one area of the State to another area of the State or result in the abandonment of one or more plants or facilities of the Company or any other proposed occupant of the Project Facility located in the State, except as may be permitted by the Act;

(c) The commitment of the Agency to provide the approved Financial Assistance in accordance with the Inducement Resolution to the Company will enable and induce the Company to acquire, reconstruct, renovate, equip and complete the Project Facility;

(d) The acquisition, reconstruction, renovation, equipping and completion of the Project Facility and the attendant promotion of the local economy will advance the job opportunities, health, prosperity and economic welfare of the people of the City and the granting of the Financial Assistance is a necessary component to the financing of the Project;

(e) The Project Facility constitutes a “project” within the meaning of the Act;  
and

(f) It is desirable and in the public interest for the Agency to grant Financial Assistance in connection with the Project.

**Section 2.** It is the policy of the State to promote the economic welfare, recreation opportunities and prosperity of its inhabitants and to actively promote, attract, encourage and develop recreation and economically sound commerce and industry for the purpose of preventing unemployment and economic deterioration. The Project will serve the public purposes of Article 18-A of the General Municipal Law of the State of New York by advancing job opportunities and promoting economic development.

**Section 3.** It is among the purposes of the Agency to promote, develop, encourage and assist in the acquiring, reconstructing, improving, maintaining, equipping and furnishing of certain facilities, including commercial facilities, and thereby advance the job opportunities, health, general prosperity and economic welfare of the people of the State and to improve their recreation opportunities, prosperity and standard of living.

**Section 4.** Subject to the conditions set forth in this and prior resolutions adopted by the Agency, the Project Agreement, and the Agreement (each as defined in the Inducement Resolution), the Agency will: (A) acquire a controlling interest in the Project Facility; (B) lease or sell the Land and Facility from the Company pursuant to a lease or sale agreement between the Agency and the Company (the “*Company Lease*”); acquire an interest in the Equipment pursuant to a bill of sale from the Company (the “*Bill of Sale*”); and sublease or sell the Project Facility to the Company pursuant to a sublease or sale agreement (the “*Agency Lease*”); (C) secure the Company’s borrowings with respect to the Project Facility by joining in one or more construction or permanent mortgages on the Project Facility in favor of the Company’s lenders(s); (D) provide the approved Financial Assistance; and (E) execute and deliver any other documents necessary to effectuate the actions contemplated by and consistent with this Resolution upon the advice of counsel to the Agency.

**Section 5.** The (Vice) Chairman and the Executive Director of the Agency, acting individually, are each hereby authorized and directed, for and in the name and on behalf of the Agency, to execute and deliver the documents and agreements identified in Section 4 of this Resolution as well as the Lease Documents (as defined in the Inducement Resolution) and any such additional certificates, instruments, documents or affidavits, to pay any such other fees, charges and expenses, to make such other changes, omissions, insertions, revisions, or amendments to the documents referred to in Section 4 of this Resolution and to do and cause to be done any such other acts and things, as they determine, on advice of counsel to the Agency, may be necessary or desirable to consummate the transactions contemplated by this Resolution.

**Section 6.** No covenant, stipulation, obligation or agreement contained in this resolution or any document referred to herein shall be deemed to be the covenant, stipulation, obligation or agreement of any member, officer, agent or employee of the Agency in his or her individual capacity. Neither the members nor officers of the Agency, nor any person executing

any documents referred to above on behalf of the Agency, shall be liable thereon or be subject to any personal liability or accountability by reason of the execution or delivery thereof.

**Section 7.** Bousquet Holstein PLLC, as counsel to the Agency, is hereby authorized to work with the Company and others to prepare, for submission to the (Vice)Chairman and/or the Executive Director, all documents necessary to effect the undertaking of the Project and the grant of Financial Assistance in connection with the Project.

**Section 8.** The approvals provided for herein are contingent upon the Company's payment of all of the Agency's fees and costs, including but not limited to attorneys fees.

**Section 9.** The Secretary and/or Executive Director of the Agency is hereby authorized to distribute copies of this Resolution and do such further things or perform such acts as may be necessary or convenient to implement the provisions of this Resolution.

**Section 10.** This Resolution shall take effect immediately. A copy of this Resolution, together with the attachments hereto, shall be placed on file in the office of the Agency where the same shall be available for public inspection during business hours.

The question of the adoption of the foregoing resolution was duly put to vote on a roll call, which resulted as follows:

	<b><u>AYE</u></b>	<b><u>NAY</u></b>
Michael Frame	X	
Kenneth Kinsey	X	
Ricky T. Brown	X	
Kathleen Murphy	X	

The foregoing Resolution was thereupon declared duly adopted.

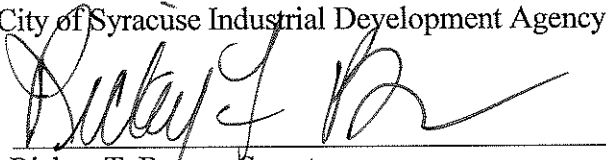
STATE OF NEW YORK            )  
  ) SS.:  
COUNTY OF ONONDAGA        )

I, the undersigned Secretary of the City of Syracuse Industrial Development Agency, **DO HEREBY CERTIFY** that I have compared the annexed extract of the minutes of the meeting of the City of Syracuse Industrial Development Agency (the “**Agency**”) held on December 18, 2018, with the original thereof on file in my office, and that the same (including all exhibits) is a true and correct copy of the proceedings of the Agency and of the whole of such original insofar as the same relates to the subject matters referred to therein.

**I FURTHER CERTIFY** that (i) all members of the Agency had due notice of such meeting, (ii) pursuant to Section 104 of the Public Officers Law (Open Meetings Law), such meeting was open to the general public and public notice of the time and place of such meeting was duly given in accordance with such Section 104, (iii) the meeting was in all respects duly held, and (iv) there was a quorum present throughout.

**I FURTHER CERTIFY** that, as of the date hereof, the attached resolution is in full force and effect and has not been amended, repealed or rescinded.

**IN WITNESS WHEREOF**, I have set my hand and affixed the seal of the Agency this 19 day of December, 2018.

City of Syracuse Industrial Development Agency  
  
\_\_\_\_\_  
Rickey T. Brown, Secretary

(SEAL)

**EXHIBIT "I"**

**FIRST EXTENSION RESOLUTION**



## RESOLUTION

A regular meeting of the City of Syracuse Industrial Development Agency was convened in public session on March 19, 2019 at 8:00 o'clock a.m., local time, in the Common Council Chambers, City Hall, 233 East Washington Street, Syracuse, New York.

The meeting was called to order by the Chairman and upon roll being called, the following members of the Agency were:

**PRESENT:** Steven Thompson, Kenneth Kinsey, Kathleen Murphy, Rickey T. Brown, Michael Frame (via video conference at second location at Nonofab East, 257 Fuller Road, Albany, New York 12203)

**THE FOLLOWING PERSONS WERE ALSO PRESENT:** Staff Present: Honora Spillane, Susan Katzoff, Esq., Meghan Ryan, Esq., Judith DeLaney, John Vavonese, Debra Ramsey-Burns; Others Present: Michael Lisson, Aggie Lane, Gail Montplaisir, Anthony Dipeso, Wendy Rucelli, M. Latimer, Fred Swayze, Richelle Brown, Kevin McAuliffe, Esq., Steve Hillebrand, Norman Smith, Sharon Owens, Lauryn LaBourde, Ebony Farrow, Peter King

The following resolution was offered by Kenneth Kinsey and seconded by Rickey T. Brown:

**RESOLUTION APPROVING AN EXTENSION OF THE SALES TAX APPOINTMENT OF ALAN BYER AUTO SALES, INC. AND ALAN I BYER FAMILY TRUST AS AGENTS OF THE AGENCY UNTIL MAY 31, 2019; AND AUTHORIZING THE EXECUTION OF ANY AND ALL NECESSARY DOCUMENTS**

**WHEREAS**, the City of Syracuse Industrial Development Agency (the "**Agency**") is authorized and empowered by Title 1 of Article 18-A of the General Municipal Law of the State of New York (the "**State**"), as amended, together with Chapter 641 of the Laws of 1979 of the State of New York, as amended from time to time (collectively, the "**Act**") to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial, research and recreation facilities, including industrial pollution control facilities, railroad facilities and certain horse racing facilities, for the purpose of promoting, attracting, encouraging and developing recreation and economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State, to improve their recreation opportunities, prosperity and standard of living, and to prevent unemployment and economic deterioration; and

**WHEREAS**, at the request of Alan Byer Auto Sales, Inc. and Alan I Byer Family Trust (collectively, the "**Company**"), by resolution dated January 16, 2018 (the "**Inducement Resolution**") the Agency agreed to undertake a project (the "**Project**") consisting of: (A)(i) the acquisition of an interest in approximately 1.89 acres of improved real property located at 1232-

36 West Genesee Street (also known as 1230 West Genesee Street) (tax map number 108.1-02-19), in the City of Syracuse, New York (the "**Land**"); (ii) the renovation of an existing approximately 25,820 square foot building for use as an auto dealership, including but not limited to, renovation of interior showroom, sales offices and reception areas, external replacement of entry, new exterior wall finishes, updated signage and roof replacement, all located on the Land (the "**Facility**"); (iii) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment (the "**Equipment**" and together with the Land and the Facility, the "**Project Facility**"); (B) the granting of certain financial assistance in the form of exemptions from real property tax, State and local sales and use tax and mortgage recording tax (in accordance with Section 874 of the General Municipal Law) (collectively the "**Financial Assistance**"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, reconstruction, renovation, equipping and completion of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement; and

**WHEREAS**, on December 18, 2018, the Agency adopted resolutions which, among other things, authorized the Agency to undertake the Project and appoint the Company as its agent for purposes of acquiring, renovating and equipping the Project Facility (collectively, the "**Approving Resolutions**") subject to the terms thereof and the execution of an agency agreement in substantially the same form attached to the Approving Resolutions (the "**Agency Agreement**"); and

**WHEREAS**, following the adoption of Approving Resolutions, but prior to the Company being able to close on the lease transaction with the Agency (the "**Lease Transaction**"), the Company requested the Agency authorize the temporary appointment of the Company as the Agency's agent for purposes of undertaking certain work with respect to the Project Facility including exemptions from State and local sales and use tax in an amount not to exceed **\$140,000** (the "**Temporary Appointment**"); and

**WHEREAS**, pursuant to a resolution dated December 18, 2018 (the "**Inducement Resolution**"), the Agency approved the Company's request for the Temporary Appointment; and

**WHEREAS**, the Agency and Company executed an Interim Project Agreement dated as of December 31, 2018 (the "**Interim Project Agreement**"), the Company executed a Bill of Sale dated as of December 31, 2018 and an Environmental Compliance and Indemnification Agreement dated as of December 31, 2018 and the Agency issued a Temporary Sales Tax Appointment Letter to the Company on December 31, 2018 (the "**Letter**") and a Form ST-60 – IDA Appointment of Project Operator or Agency for Sales Tax Purposes was filed with the New York State Department of Taxation and Finance. The Temporary Appointment expired on March 1, 2019; and

**WHEREAS**, by letter dated March 12, 2019, the Company requested an extension of their Temporary Appointment from March 1, 2019 to May 31, 2019 to allow additional time to close on the lease transaction while still benefitting from the Temporary Appointment (the "**Extension**"); and

**WHEREAS**, the Temporary Appointment is in furtherance of the financial assistance that was previously approved for the Project, which underwent an environmental review by the Agency pursuant to the State Environmental Quality Review Act ("**SEQRA**"), and the present sales tax appointment extension request is insubstantial and does not require reconsideration or further review by the Agency under SEQRA; and

**NOW, THEREFORE**, be it resolved by the members of the City of Syracuse Industrial Development Agency as follows:

(1) Based upon the representations made by the Company to the Agency, the Agency hereby makes the following findings and determinations:

(a) The granting of the Extension of the Temporary Appointment does not require reconsideration or further review by the Agency under SEQRA.

(b) The Agency authorizes the Extension of the Temporary Appointment of the Company through and including **May 31, 2019** contingent upon receipt of certification of Company that Financial Assistance is only being used with respect to the Project as defined herein. By operation of this Resolution, the Temporary Appointment shall be extended through and including **May 31, 2019** but all other terms and conditions of the Interim Project Agreement remain unchanged and in full force and effect.

(c) By accepting the Extension and benefitting therefrom, the Company shall agree that failure to close on the lease transaction on or before **May 31, 2019** will result in the Agency seeking to recapture all of the State and local sales and use tax exemption realized by the Project.

(2) The Agency is authorized to execute any and all documents necessary to effectuate the Extension and the sales tax appointment agent status of the Company and/or its Additional Agents (as that term is defined in the Agency's Appointment Resolution) (collectively, the "**Extension Documents**") including but not limited to revisions or amendments of the Interim Project Agreement, issuance of a new Sales Tax Appointment Extension Letter and an amendment or extension of the appropriate "IDA Appointment of Project Operator or Agent for Sales Tax Purposes" (Form ST-60) for each of the entities; and the Chairman and Vice Chairman of the Agency are each hereby authorized, on behalf of the Agency, to execute and deliver the documents upon the advice of counsel to the Agency. The execution thereof by the Chairman or Vice Chairman constitutes conclusive evidence of such approval.

(3) As a condition of the Extension, the Company will: (i) confirm that all insurance as well as Environmental Compliance and Indemnification Agreement executed and delivered in conjunction with the Interim Project Agreement remains in full force and effect and will continue to do so for so long as the Extension is in effect and in accordance with its terms; (ii) submit to the Agency any applicable information, including but not limited to proof of insurance naming the Agency as an additional insured pursuant to the Agency's requirements, requested by the Agency with respect to the Extension; (iii) certify that any and all Financial Assistance being

provided and/or used pursuant to this Resolution is being used on the Project as described herein; (iv) remit all legal fees incurred by the Agency in exchange for the Agency's grant of the Extension; and (v) submit any proof required by the Agency demonstrating that the Company has not realized State and local sales and use tax exemptions in excess of what was authorized for the Project.

(4) The Company shall execute and deliver any and all documents required by the Agency in connection with the Extension and to carry out the intent of this Resolution; and

(5) The Company shall provide or cause its Additional Agents to provide, and the Agency shall maintain, records of the amount of State and local sales and use tax exemption benefits provided to the Project and the Company shall, and cause each Additional Agent, to make such records available to the Agency and the State Commissioner of Taxation and Finance (the "**Commissioner**") upon request. The Agency shall, within thirty (30) days of providing any State sales and use tax exemption benefits, report to the Commissioner the amount of such benefits for the Project, identifying the Project, along with any such other information and specificity as the Commissioner may prescribe. As a condition precedent to the Company or Project's receipt of, or benefit from, any State or local sales and use tax exemptions, the Company must acknowledge and agree to make, or cause its Additional Agents to make, all records and information regarding State and local sales and use tax exemption benefits realized by the Project available to the Agency or its designee upon request.

(6) No covenant, stipulation, obligation or agreement contained in this resolution or any document referred to herein shall be deemed to be the covenant, stipulation, obligation or agreement of any member, officer, agent or employee of the Agency in his or her individual capacity. Neither the members nor officers of the Agency, nor any person executing any documents referred to above on behalf of the Agency, shall be liable thereon or be subject to any personal liability or accountability by reason of the execution or delivery thereof.

(7) The Secretary of the Agency is hereby authorized and may distribute copies of this Resolution and do such further things or perform such acts as may be necessary or convenient to implement the provisions of this Resolution.

(8) A copy of this Resolution, together with any attachments hereto, shall be placed on file in the office of the Agency where the same shall be available for public inspection during business hours.

The question of the adoption of the foregoing resolution was duly put to vote on a roll call, which resulted as follows:

	<u>AYE</u>	<u>NAY</u>
Michael Frame	X	
Steven Thompson	X	
Kathleen Murphy	X	
Kenneth Kinsey	X	
Rickey T. Brown	X	

The foregoing Resolution was thereupon declared duly adopted.

STATE OF NEW YORK            )  
  ) SS.:  
COUNTY OF ONONDAGA        )

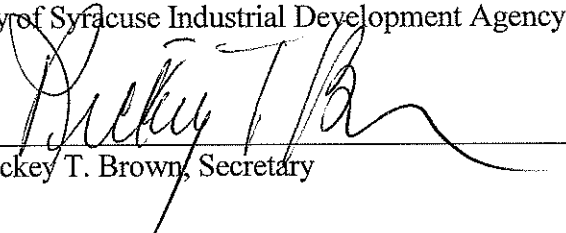
I, the undersigned Secretary of the City of Syracuse Industrial Development Agency, **DO HEREBY CERTIFY** that I have compared the annexed extract of the minutes of the meeting of the City of Syracuse Industrial Development Agency (the “**Agency**”) held on March 19, 2019, with the original thereof on file in my office, and that the same (including any and all exhibits) is a true and correct copy of the proceedings of the Agency and of the whole of such original insofar as the same relates to the subject matters referred to therein.

**I FURTHER CERTIFY** that (i) all members of the Agency had due notice of such meeting, (ii) pursuant to Section 104 of the Public Officers Law (Open Meetings Law), such meeting was open to the general public and public notice of the time and place of such meeting was duly given in accordance with such Section 104, (iii) the meeting was in all respects duly held, and (iv) there was a quorum present throughout.

**I FURTHER CERTIFY** that, as of the date hereof, the attached resolution is in full force and effect and has not been amended, repealed or rescinded.

**IN WITNESS WHEREOF**, I have set my hand and affixed the seal of the Agency this 19 day of April, 2019.

City of Syracuse Industrial Development Agency

  
\_\_\_\_\_  
Rickey T. Brown, Secretary

(SEAL)

**EXHIBIT "J"**  
**SECOND PUBLIC HEARING RESOLUTION**

## RESOLUTION

A regular meeting of the City of Syracuse Industrial Development Agency was convened in public session on March 19, 2019, at 8:00 o'clock a.m. in the Common Council Chambers, City Hall, 233 East Washington Street, Syracuse, New York.

The meeting was called to order by the Chairman and upon the roll being duly called, the following members were:

**PRESENT:** Steven Thompson, Kenneth Kinsey, Kathleen Murphy, Rickey T. Brown, Michael Frame (via video conference at second location at NonoFab East, 257 Fuller Road, Albany, New York 12203)

**THE FOLLOWING PERSONS WERE ALSO PRESENT:** Staff Present: Honora Spillane, Susan Katzoff, Esq., Meghan Ryan, Esq., Judith DeLaney, John Vavonese, Debra Ramsey-Burns; Others Present: Michael Lisson, Aggie Lane, Gail Montplaisir, Anthony Dipeso, Wendy Rucelli, M. Latimer, Fred Swayze, Richelle Brown, Kevin McAuliffe, Esq., Steve Hillebrand, Norman Smith, Sharon Owens, Lauryn LaBourde, Ebony Farrow, Peter King

The following resolution was offered by Rickey T. Brown and seconded by Kenneth Kinsey:

### **RESOLUTION AUTHORIZING A PUBLIC HEARING WITH RESPECT TO MODIFICATIONS TO A PROJECT BEING UNDERTAKEN BY THE AGENCY**

**WHEREAS**, the City of Syracuse Industrial Development Agency (the "**Agency**") is authorized and empowered by Title 1 of Article 18-A of the General Municipal Law of the State of New York (the "**State**"), as amended, together with Chapter 641 of the Laws of 1979 of the State of New York, as amended from time to time (collectively, the "**Act**"), to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial, research and recreation facilities, for the purpose of promoting economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State, to improve their recreation opportunities, prosperity and standard of living; and

**WHEREAS**, to accomplish its stated purposes, the Agency is authorized and empowered under the Act to grant "financial assistance" (as defined in the Act) in connection with the acquisition, reconstruction and equipping of one or more "projects" (as defined in the Act); and

**WHEREAS**, by application dated October 23, 2018 (the "**Application**"), Alan Byer Auto Sales, Inc. and Alan I Byer Family Trust, or an entity to be formed (collectively, the



**“Original Company”**), requested the Agency undertake a project (the **“Original Project”**) consisting of: (A)(i) the acquisition of an interest in approximately 1.89 acres of improved real property located at 1232-36 West Genesee Street (also known as 1230 West Genesee Street), in the City of Syracuse, New York (the **“Original Land”**); (ii) the renovation of an existing approximately 25,820 square foot building for use as an auto dealership, including but not limited to, renovation of interior showroom, sales offices and reception areas, external replacement of entry, new exterior wall finishes, updated signage and roof replacement, all located on the Land (the **“Original Facility”**); (iii) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment (the **“Original Equipment”** and together with the Land and the Facility, the **“Original Project Facility”**); (B) the granting of certain financial assistance in the form of exemptions from real property tax, State and local sales and use tax and mortgage recording tax (in accordance with Section 874 of the General Municipal Law) (collectively the **“Original Financial Assistance”**); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, reconstruction, renovation, equipping and completion of the Original Project Facility; and (D) the lease of the Original Land and Original Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Original Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Original Project Facility back to the Company pursuant to a sublease agreement; and

**WHEREAS**, on December 18, 2018 the Agency held a public hearing, which had been properly noticed, with respect to the Original Company, the Original Project Facility and the Original Financial Assistance; and

**WHEREAS**, pursuant to Article 8 of the Environmental Conservation Law of the State of New York, as amended, and the regulations of the Department of Environmental Conservation of the State of New York promulgated thereunder (collectively referred to hereinafter as **“SEQRA”**), the Agency has examined the EAF prepared by the Original Company in order to classify the Original Project and determined that the Original Project constitutes a “Type II” action as that term is defined under SEQRA; and

**WHEREAS**, by Supplemental Application dated March, 2019, Alan Byer Auto Sales, Inc., Alan I Byer Family Trust, Stephen Gary Byer, d/b/a Byer Real Estate Enterprises and West Genesee Realty Associates, LLC, or an entity to be formed (collectively, the **“Company”**), (the **“Application”**), advised the Agency of certain modifications to the Original Project as well as the Original Company, and requested the Agency undertake, at the request of the Company, the Original Project as modified, (the **“Project”**) consisting of: (A)(i) the acquisition of an interest in: (1) approximately 1.89 acres of improved real property bearing tax map number 108.1-02-19 and commonly referred to as 1232-36 West Genesee Street (also known as 1230 West Genesee Street) (“Parcel 1”); (2) approximately 3 acres of improved real property bearing tax map number 108.1-02-35.1 and commonly referred to as 1232 West Genesee Street (rear) (“Parcel 2”); and (3) approximately 2 acres of improved real property bearing tax map number 108.1-02-20 and commonly referred to as 1288 West Genesee Street (“Parcel 3”), each in the City of Syracuse, New York (collectively, the “Land”); (ii) there is an existing approximately 25,820 square foot building located on Parcel 1; an existing approximately 17,000-square foot building located on Parcel 2; and an approximately 34,802 square foot building located on Parcel 3, all of

which are served by common driveways, parking, and pedestrian walkways, and all of which comprise the Alan Byer Volvo facility (collectively, the "Improvements"); (iii) the renovation to the Improvements include, but are not limited to, the interior showroom, sales offices and reception areas, external replacement of entry, new exterior wall finishes, updated signage, the existing basement, replacement of an area of deteriorating floor slab, refreshed directional pavement graphics and roof replacement (collectively, the "Facility"); (iii) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment (the "Equipment" and together with the Land and the Facility, the "Project Facility"); (B) the granting of certain financial assistance in the form of exemptions from real property tax, State and local sales and use tax and mortgage recording tax (in accordance with Section 874 of the General Municipal Law) (collectively the "Financial Assistance"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, reconstruction, renovation, equipping and completion of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement.

**WHEREAS**, the underlined language above constitutes the proposed changes from the Original Company and Original Project to the newly proposed Company and Project (collectively the "**Modifications**"); and

**WHEREAS**, pursuant to Article 8 of the Environmental Conservation Law of the State of New York, as amended, and the regulations of the Department of Environmental Conservation of the State of New York promulgated thereunder (collectively referred to hereinafter as "**SEQRA**"), the Agency is required to make a determination with respect to the environmental impact of any "action" (as said quoted term is defined in SEQRA) to be taken by the Agency and the approval of the Project, as amended by the Modifications, constitutes such an action; and

**WHEREAS**, the Agency has not yet made a determination under SEQRA with respect to the Project, as amended by the Modifications; and

**WHEREAS**, the Agency has not approved undertaking the amendments to the Original Project or granting the Financial Assistance with respect to the Modifications or portions of the Original Project; and

**WHEREAS**, the grant of Financial Assistance to the Project, as amended by the Modifications, is subject to, among other things, the Agency finding after a public hearing pursuant to Section 859-a of the Act that the Project will serve the public purposes of the Act by promoting economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State or increasing the overall number of permanent, private sector jobs in the State.

**NOW, THEREFORE**, be it resolved by the members of the City of Syracuse Industrial Development Agency, as follows:

(1) Based upon the representations made by the Company to the Agency, the Agency makes the following findings and determinations:

(A) The Project constitutes a “project” within the meaning of the Act;

(B) The Project is located in a “Highly Distressed Area” as defined in Section 854(18) of the Act;

(C) The Financial Assistance contemplated with respect to the Project consists of assistance in the form of exemptions from real property tax, State and local sales and use taxation and mortgage recording tax; and

(2) The Agency hereby directs that pursuant to Section 859-a of the Act, a public hearing with respect to the Project, solely as amended by the Modifications, and the Financial Assistance requested with respect to the Project, as amended by the Modifications, shall be scheduled with notice thereof published, and such notice, as applicable, shall further be sent to affected tax jurisdictions within which the Project is located.

(3) The Secretary or the Executive Director of the Agency is hereby authorized to and may distribute copies of this Resolution to the Company and to do such further things or perform such acts as may be necessary or convenient to implement the provisions of this Resolution.

(4) A copy of this Resolution shall be placed on file in the office of the Agency where the same shall be available for public inspection during business hours.

The question of the adoption of the foregoing resolution was duly put to vote on a roll call, which resulted as follows:

	<u>AYE</u>	<u>NAY</u>
Michael Frame	X	
Steven Thompson	X	
Kathleen Murphy	X	
Kenneth Kinsey	X	
Rickey T. Brown	X	

The foregoing Resolution was thereupon declared duly adopted.

STATE OF NEW YORK            )  
  ) SS.:  
COUNTY OF ONONDAGA        )

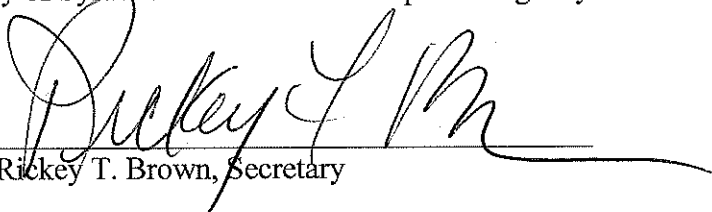
I, the undersigned Secretary of the City of Syracuse Industrial Development Agency, **DO HEREBY CERTIFY** that I have compared the annexed extract of the minutes of the meeting of the City of Syracuse Industrial Development Agency (the “**Agency**”) held on March 19, 2019, with the original thereof on file in my office, and that the same (including all exhibits) is a true and correct copy of the proceedings of the Agency and of the whole of such original insofar as the same relates to the subject matters referred to therein.

**I FURTHER CERTIFY** that (i) all members of the Agency had due notice of such meeting, (ii) pursuant to Section 104 of the Public Officers Law (Open Meetings Law), such meeting was open to the general public and public notice of the time and place of such meeting was duly given in accordance with such Section 104, (iii) the meeting was in all respects duly held, and (iv) there was a quorum present throughout.

**I FURTHER CERTIFY** that, as of the date hereof, the attached resolution is in full force and effect and has not been amended, repealed or rescinded.

**IN WITNESS WHEREOF**, I have set my hand and affixed the seal of the Agency this 19 day of April, 2019.

City of Syracuse Industrial Development Agency

  
\_\_\_\_\_  
Rickey T. Brown, Secretary

(SEAL)

**EXHIBIT "K"**

**SECOND PUBLIC HEARING NOTICE**

## NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that a public hearing pursuant to Section 859-a of the New York General Municipal Law, will be held by the City of Syracuse Industrial Development Agency (the "Agency") on the 16<sup>th</sup> day of April, 2019, at 8:00 a.m., local time, at 233 East Washington Street, Common Council Chambers, City Hall, Syracuse, New York, in connection with the following matter:

Alan Byer Auto Sales, Inc., Alan I Byer Family Trust, Stephen Gary Byer, d/b/a Byer Real Estate Enterprises and West Genesee Realty Associates, LLC (collectively, the "Company"), requested the Agency undertake a project (the "Project") consisting of: (A)(i) the acquisition of an interest in: (1) approximately 1.89 acres of improved real property bearing tax map number 108.1-02-19 and commonly referred to as 1232-36 West Genesee Street (also known as 1230 West Genesee Street) ("Parcel 1"); (2) approximately 3 acres of improved real property bearing tax map number 108.1-02-35.1 and commonly referred to as 1232 West Genesee Street (rear) ("Parcel 2"); and (3) approximately 2 acres of improved real property bearing tax map number 108.1-02-20 and commonly referred to as 1288 West Genesee Street ("Parcel 3"), each in the City of Syracuse, New York (collectively, the "Land"); (ii) there is an existing approximately 25,820 square foot building located on Parcel 1; an existing approximately 17,000-square foot building located on Parcel 2; and an approximately 34,802 square foot building located on Parcel 3, all of which are served by common driveways, parking, and pedestrian walkways, and all of which comprise the Alan Byer Volvo facility (collectively, the "Improvements"); (iii) the renovation to the Improvements including, but are not limited to, the interior showroom, sales offices and reception areas, external replacement of entry, new exterior wall finishes, updated signage, the existing basement, replacement of an area of deteriorating floor slab, refreshed directional pavement graphics and roof replacement (collectively, the "Facility"); (iii) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment (the "Equipment" and together with the Land and the Facility, the "Project Facility"); (B) the granting of certain financial assistance in the form of exemptions from real property tax, State and local sales and use tax and mortgage recording tax (in accordance with Section 874 of the General Municipal Law) (collectively the "Financial Assistance"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, reconstruction, renovation, equipping and completion of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement.

The Company is or will be the initial owner or operator of the Project Facility.

A copy of the application and any supplements filed by the Company with the Agency with respect to the Project, including an analysis of the costs and benefits of the Project, are available for public inspection during the business hours at the office of the Agency located at 201 East Washington Street, 6<sup>th</sup> Floor, Syracuse, New York.

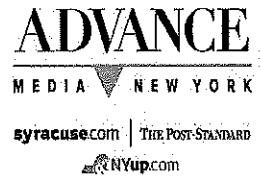
Dated: April 3, 2019

CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY

# THE POST-STANDARD

## LEGAL AFFIDAVIT

INV#: 0009103611



BOUSQUET HOLSTEIN PLLC  
KAREN KELLER  
110 W FAYETTE ST STE 1000  
SYRACUSE, NY 13202

Name: BOUSQUET HOLSTEIN PLLC

Sales Rep: Pamela Gallagher

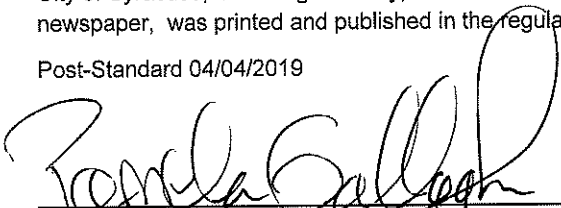
Account Number: 12145

INV#: 0009103611

Date	Position	Description	P.O. Number	Ad Size
04/04/2019	Other Legals NY	NOTICE OF PUBLIC HEARING NOTICE IS HEREBY GIVEN that	C2147L.00025	1 x 161.00 CL

State of New York, County of Onondaga ss. Pamela Gallagher, of the City of Syracuse, in said County, being duly sworn, doth depose and says: this person is the Principal Clerk in the office of THE POST-STANDARD, a public newspaper, published in the City of Syracuse, Onondaga County, New York and that the notice, is an accurate and true copy of the ad as printed in said newspaper, was printed and published in the regular edition and issue of said newspaper on the following days, viz.:

Post-Standard 04/04/2019

  
\_\_\_\_\_  
Pamela Gallagher  
Principal Clerk  
An Authorized Designee of the President, Timothy R. Kennedy  
Subscribed and sworn to before me, this 4th day of April 2019

  
\_\_\_\_\_  
NOTARY PUBLIC

FOR QUESTIONS CONCERNING THIS AFFIDAVIT,  
PLEASE CONTACT PAMELA GALLAGHER AT  
(315) 470-2051 OR Legals@Syracuse.com

**ANNE PETRO**  
Notary Public - State of New York  
No. 01PE6366489  
Qualified in Onondaga County  
Commission Expires: 10-30-2021

Date	Position	Description	P.O. Number	Ad Size
04/04/2019	Other Legals NY	NOTICE OF PUBLIC HEARING NOTICE IS HEREBY GIVEN that a	C2147L.00025	1 x 161.00 CL

**NOTICE OF PUBLIC HEARING** NOTICE IS HEREBY GIVEN that a public hearing pursuant to Section 859-a of the New York General Municipal Law, will be held by the City of Syracuse Industrial Development Agency (the "Agency") on the 16th day of April, 2019, at 8:00 a.m., local time, at 233 East Washington Street, Common Council Chambers, City Hall, Syracuse, New York, in connection with the following matter: Alan Byer Auto Sales, Inc., Alan I Byer Family Trust, Stephen Gary Byer, d/b/a Byer Real Estate Enterprises and West Genesee Realty Associates, LLC (collectively, the "Company"), requested the Agency undertake a project (the "Project") consisting of: (A)(i) the acquisition of an interest in: (1) approximately 1.89 acres of improved real property bearing tax map number 108.1 02 19 and commonly referred to as 1232-36 West Genesee Street (also known as 1230 West Genesee Street) ("Parcel 1"); (2) approximately 3 acres of improved real property bearing tax map number 108.1 02 35.1 and commonly referred to as 1232 West Genesee Street (rear) ("Parcel 2"); and (3) approximately 2 acres of improved real property bearing tax map number 108.1-02-20 and commonly referred to as 1288 West Genesee Street ("Parcel 3"), each in the City of Syracuse, New York (collectively, the "Land"); (ii) there is an existing approximately 25,820 square foot building located on Parcel 1; an existing approximately 17,000 square foot building located on Parcel 2; and

an approximately 34,802 square foot building located on Parcel 3, all of which are served by common driveways, parking, and pedestrian walkways, and all of which comprise the Alan Byer Volvo facility (collectively, the "Improvements"); (iii) the renovation to the improvements including, but are not limited to, the interior showroom, sales offices and reception areas, external replacement of entry, new exterior wall finishes, updated signage, the existing basement, replacement of an area of deteriorating floor slab, refreshed directional pavement graphics and roof replacement (collectively, the "Facility"); (iii) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment (the "Equipment" and together with the Land and the Facility, the "Project Facility"); (B) the granting of certain financial assistance in the form of exemptions from real property tax, State and local sales and use tax and mortgage recording tax (in accordance with Section 874 of the General Municipal Law) (collectively the "Financial Assistance"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, reconstruction, renovation, equipping and completion of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project

Facility back to the Company pursuant to a sublease agreement. The Company is or will be the initial owner or operator of the Project Facility. A copy of the application and any supplements filed by the Company with the Agency with respect to the Project, including an analysis of the costs and benefits of the Project, are available for public inspection during the business hours at the office of the Agency located at 201 East Washington Street, 6th Floor, Syracuse, New York. Dated: April 3, 2019 CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY





# BOUSQUET HOLSTEIN PLLC

110 WEST FAYETTE STREET • ONE LINCOLN CENTER • SUITE 1000 • SYRACUSE, NEW YORK 13202 • PH: 315.422.1500 • FX: 315.422.3549

April 3, 2019

**VIA CERTIFIED MAIL**

7017 0530 0000 5685 7677

Honorable Benjamin Walsh  
Mayor, City of Syracuse  
City Hall  
233 East Washington Street  
Syracuse, New York 13202

**VIA CERTIFIED MAIL**

7017 0530 0000 5693 8512

Honorable J. Ryan McMahon, II  
County Executive, Onondaga County  
John Mulroy Civic Center, 14<sup>th</sup> Floor  
421 Montgomery Street  
Syracuse, New York 13202

Re: City of Syracuse Industrial Development Agency (the "**Agency**")  
Alan Byer Auto Sales, Inc., Alan I Byer Family Trust, Stephen Gary Byer, d/b/a Byer  
Real Estate Enterprises and West Genesee Realty Associates, LLC (collectively, the  
"**Company**")  
Alan Byer Volvo Facility Project

Dear Mayor and County Executive:

Enclosed herewith please find a Notice of Public Hearing in relation to the above-referenced project. The proposed project (the "**Project**") consists of: (A)(i) the acquisition of an interest in: (1) approximately 1.89 acres of improved real property bearing tax map number 108.1-02-19 and commonly referred to as 1232-36 West Genesee Street (also known as 1230 West Genesee Street) ("**Parcel 1**"); (2) approximately 3 acres of improved real property bearing tax map number 108.1-02-35.1 and commonly referred to as 1232 West Genesee Street (rear) ("**Parcel 2**"); and (3) approximately 2 acres of improved real property bearing tax map number 108.1-02-20 and commonly referred to as 1288 West Genesee Street ("**Parcel 3**"), each in the City of Syracuse, New York (collectively, the "**Land**"); (ii) there is an existing approximately 25,820 square foot building located on Parcel 1; an existing approximately 17,000-square foot building located on Parcel 2; and an approximately 34,802 square foot building located on Parcel 3, all of which are served by common driveways, parking, and pedestrian walkways, and all of which comprise the Alan Byer Volvo facility (collectively, the "**Improvements**"); (iii) the renovation to



Honorable Benjamin Walsh  
Honorable J. Ryan McMahon, II  
April 3, 2019  
Page 2

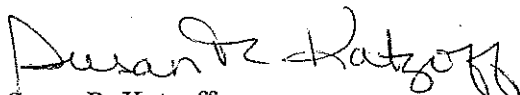
the Improvements including, but are not limited to, the interior showroom, sales offices and reception areas, external replacement of entry, new exterior wall finishes, updated signage, the existing basement, replacement of an area of deteriorating floor slab, refreshed directional pavement graphics and roof replacement (collectively, the "*Facility*"); (iii) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment (the "*Equipment*" and together with the Land and the Facility, the "*Project Facility*"); (B) the granting of certain financial assistance in the form of exemptions from real property tax, State and local sales and use tax and mortgage recording tax (in accordance with Section 874 of the General Municipal Law) (collectively the "*Financial Assistance*"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, reconstruction, renovation, equipping and completion of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement.

The Agency previously held a public hearing with respect to the Project. Following publication, two components of the Project changed; namely, Stephen Gary Byer, d/b/a Byer Real Estate Enterprises and West Genesee Realty Associates, LLC were added to the definition of the Company and Parcels 2 and 3 were added to the project description (the "*Modifications*"). Based upon the Modifications, the Agency resolved to hold a new public hearing.

General Municipal Law Section 859-a requires that notice of the public hearing be given to the chief executive officer of each affected tax jurisdiction in which the Project is located.

As stated in the notice, the public hearing is scheduled for **April 16, 2019** at 8:00 a.m. in the Common Council Chambers at City Hall.

Very truly yours,



Susan R. Katzoff

SRK/llm  
Enclosure

cc: Honora Spillane and Judy DeLaney, City of Syracuse Industrial Development Agency,  
via email (w/Enclosure)

## NOTICE OF PUBLIC HEARING

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Dated: April 3, 2019

CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article

Honorable Benjamin Walsh  
 Mayor, City of Syracuse  
 City Hall  
 233 East Washington Street  
 Syracuse, New York 13202



9590 9402 3386 7227 7182 33

2. Article Number (Transfer from service label)  
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PS Form 3811, July 2015 PSN 7530-02-000-9053

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B. Received by (Printed Name) MAYOR

C. Date of Delivery 4/18/19

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 Certified Mail®  Registered Mail Restricted Delivery  
 Certified Mail Restricted Delivery  Return Receipt for Merchandise  
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 Collect on Delivery Restricted Delivery  Signature Confirmation Restricted Delivery  
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1. Article

Honorable J. Ryan McMahon, II  
 County Executive, Onondaga County  
 John Mulroy Civic Center, 14th Floor  
 421 Montgomery Street  
 Syracuse, New York 13202



9590 9402 3386 7227 7182 26

2. Article Number (Transfer from service label)  
 7017 0530 0000 5693 8512

PS Form 3811, July 2015 PSN 7530-02-000-9053

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature  Agent  Addressee

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C. Date of Delivery 4-4-19

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3. Service Type

Adult Signature  Priority Mail Express®  
 Adult Signature Restricted Delivery  Registered Mail™  
 Certified Mail®  Registered Mail Restricted Delivery  
 Certified Mail Restricted Delivery  Return Receipt for Merchandise  
 Collect on Delivery  Signature Confirmation™  
 Collect on Delivery Restricted Delivery  Signature Confirmation Restricted Delivery  
 Insured Mail  Insured Mail Restricted Delivery (over \$500)

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PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

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 Mayor, City of Syracuse  
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 233 East Washington Street  
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**EXHIBIT "L"**

**SECOND EXTENSION RESOLUTION**

## RESOLUTION

A regular meeting of the City of Syracuse Industrial Development Agency was convened in public session on July 16, 2019 at 8:00 o'clock a.m., local time, in the Common Council Chambers, City Hall, 233 East Washington Street, Syracuse, New York.

The meeting was called to order by the Chairman and upon the roll being duly called, the following members were:

**PRESENT:** Michael Frame, Steven Thompson, Kathleen Murphy, Rickey T. Brown, Kenneth Kinsey

**THE FOLLOWING PERSONS WERE ALSO PRESENT:** Staff Present: Judith DeLaney, Susan R. Katzoff, Esq., John Vavonese, Debra Ramsey-Burns; Others Present: James Trasher, Rich Pascarella, Kevin McAuliffe, Esq., Stephen Byer, Aggie Lane, Stephanie Pasquale, Joe Maricsa, Mitch Lattimer, Deli Vargus, Eric Ennis, Cypris T.; Media: Rick Moriarty

The following resolution was offered by Kathleen Murphy and seconded by Kenneth Kinsey:

**RESOLUTION APPROVING A RETROACTIVE EXTENSION OF THE TEMPORARY SALES TAX APPOINTMENT OF ALAN BYER AUTO SALES, INC. AND ALAN I BYER FAMILY TRUST AS AGENTS OF THE AGENCY UNTIL SEPTEMBER 13, 2019; AND AUTHORIZING THE EXECUTION OF ANY AND ALL NECESSARY DOCUMENTS**

**WHEREAS**, the City of Syracuse Industrial Development Agency (the "*Agency*") is authorized and empowered by Title 1 of Article 18-A of the General Municipal Law of the State of New York (the "*State*"), as amended, together with Chapter 641 of the Laws of 1979 of the State of New York, as amended from time to time (collectively, the "*Act*") to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial, research and recreation facilities, including industrial pollution control facilities, railroad facilities and certain horse racing facilities, for the purpose of promoting, attracting, encouraging and developing recreation and economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State, to improve their recreation opportunities, prosperity and standard of living, and to prevent unemployment and economic deterioration; and

**WHEREAS**, Alan Byer Auto Sales, Inc. and Alan I Byer Family Trust (collectively, the "*Original Company*"), by application dated October 23, 2018 (the "*Original Application*"), requested the Agency undertake a certain project (the "*Original Project*") consisting of: (A)(i) the acquisition of an interest in approximately 1.89 acres of improved real property located at 1232-36 West Genesee Street (also known as 1230 West Genesee Street), in the City of Syracuse, New York (the "*Original Land*"); (ii) the renovation of an existing approximately

25,820 square foot building for use as an auto dealership, including but not limited to, renovation of interior showroom, sales offices and reception areas, external replacement of entry, new exterior wall finishes, updated signage and roof replacement, all located on the Land (the "**Original Facility**"); (iii) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment (the "**Original Equipment**" and together with the Land and the Facility, the "**Original Project Facility**"); (B) the granting of certain financial assistance in the form of exemptions from real property tax, State and local sales and use tax and mortgage recording tax (in accordance with Section 874 of the General Municipal Law) (collectively the "**Original Financial Assistance**"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, reconstruction, renovation, equipping and completion of the Original Project Facility; and (D) the lease of the Original Land and Original Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Original Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Original Project Facility back to the Company pursuant to a sublease agreement. The amount of State and local sales and use tax exemption benefits comprising the Financial Assistance approved in the Original Inducement Resolution was in an amount not exceed **\$140,000**; and

**WHEREAS**, on December 18, 2018 the Agency adopted a resolution which, among other things, authorized the Agency to undertake the Project and appoint the Company as its agent for purposes of acquiring, renovating and equipping the Project Facility (the "**Original Inducement Resolution**") subject to the terms thereof and the execution of an agency agreement in substantially the same form attached to the Inducement Resolution (the "**Agency Agreement**") and authorized the temporary appointment of the Original Company as the Agency's agent for purposes of undertaking certain work with respect to the Project Facility prior to the Original Company being able to close on the lease transaction with the Agency (the "**Lease Transaction**"), including exemptions from State and local sales and use tax in an amount not to exceed **\$140,000** (the "**Temporary Appointment**"); and

**WHEREAS**, by Supplemental Application dated March, 2019, Alan Byer Auto Sales, Inc., Alan I Byer Family Trust, Stephen Gary Byer, d/b/a Byer Real Estate Enterprises and West Genesee Realty Associates, LLC (collectively, the "**Company**"), (the "**Application**"), advised the Agency of certain modifications to the Original Project as well as the Original Company, and requested the Agency undertake, at the request of the Company, the Original Project as modified, (the "**Project**") consisting of: (A)(i) the acquisition of an interest in: (1) approximately 1.89 acres of improved real property bearing tax map number 108.1-02-19 and commonly referred to as 1232-36 West Genesee Street (also known as 1230 West Genesee Street) ("**Parcel 1**"); (2) approximately 3 acres of improved real property bearing tax map number 108.1-02-35.1 and commonly referred to as 1232 West Genesee Street (rear) ("**Parcel 2**"); and (3) approximately 2 acres of improved real property bearing tax map number 108.1-02-20 and commonly referred to as 1288 West Genesee Street ("**Parcel 3**"), each in the City of Syracuse, New York (collectively, the "**Land**"); (ii) there is an existing approximately 25,820 square foot building located on Parcel 1; an existing approximately 17,000-square foot building located on Parcel 2; and an approximately 34,802 square foot building located on Parcel 3, all of which are served by common driveways, parking, and pedestrian walkways, and all of which comprise the Alan Byer Volvo facility (collectively, the "**Improvements**"); (iii) the renovation to the Improvements include, but are not limited to, the interior showroom, sales offices and reception areas, external

replacement of entry, new exterior wall finishes, updated signage, the existing basement, replacement of an area of deteriorating floor slab, refreshed directional pavement graphics and roof replacement (collectively, the "**Facility**"); (iii) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment (the "Equipment" and together with the Land and the Facility, the "**Project Facility**"); (B) the granting of certain financial assistance in the form of exemptions from real property tax, State and local sales and use tax and mortgage recording tax (in accordance with Section 874 of the General Municipal Law) (collectively the "**Financial Assistance**"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, reconstruction, renovation, equipping and completion of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement; and

**WHEREAS**, the Agency and Company executed an Interim Project Agreement dated as of December 31, 2018 (the "**Interim Project Agreement**"), as amended by the First Amendment to Interim Project Agreement dated March 19, 2019 (the "**First Amendment to Interim Project Agreement**"), the Company executed a Bill of Sale dated as of December 31, 2018 and an Environmental Compliance and Indemnification Agreement dated as of December 31, 2018, each in favor of the Agency, and the Agency issued a Temporary Sales Tax Appointment Letter to the Company on December 31, 2018, which was amended and extended by letter dated March 19, 2019 (collectively, the "**Letter**") and a Form ST-60 – IDA Appointment of Project Operator or Agency for Sales Tax Purposes was filed with the New York State Department of Taxation and Finance. The Temporary Appointment expired on May 31, 2019; and

**WHEREAS**, the Company has requested a retroactive extension of the Original Company's Temporary Appointment through and including September 13, 2019 to allow additional time to finalize the PILOT Agreement and close on the lease transaction while benefitting from the Temporary Appointment (the "**Second Extension**"); and

**WHEREAS**, the Second Extension is in furtherance of the financial assistance that was previously approved for the Project, which underwent an environmental review by the Agency pursuant to the State Environmental Quality Review Act ("**SEQRA**"), and the present sales tax appointment extension request is insubstantial and does not require reconsideration or further review by the Agency under SEQRA.

**NOW, THEREFORE**, be it resolved by the members of the City of Syracuse Industrial Development Agency as follows:

(1) Based upon the representations made by the Company to the Agency, the Agency hereby makes the following findings and determinations:

(a) The granting of the Second Extension of the Temporary Appointment does not require reconsideration or further review by the Agency under SEQRA.

(b) The Agency authorizes the Second Extension of the Temporary Appointment of the Original Company through and including **September 13, 2019**. If for any



reason it is determined or decided that the Agency cannot extend the Original Company's appointment retroactively, then in that case, the Agency hereby appoints the Company, effective as of July 16, 2019, to act as its agent in accordance with the terms hereof and the First Amendment to Interim Project Agreement, as may be further amended in accordance with the terms of this Resolution.

(c) By operation of, and subject to the terms of, this Resolution, the Temporary Appointment shall be extended through and including **September 13, 2019** but all other terms and conditions of the Interim Project Agreement, as amended, remain unchanged and in full force and effect.

(d) By accepting the Second Extension and benefitting therefrom, the Company shall execute and deliver a certificate acknowledging: (i) that the Agency makes no representation that the retroactive extension will be effective; (ii) that in such event that the State finds or determines that a retroactive extension is not effective the Company bears all risk related thereto; (iii) that regardless of whether the Company closes on the lease transaction or receives any benefits from the Agency, the Company shall nonetheless be responsible for all legal fees incurred by the Agency; and (iv) that failure to close on the lease transaction on or before **September 13, 2019** will result in the Agency seeking to recapture all of the State and local sales and use tax exemptions realized by the Project from the Company.

(2) The Agency is authorized to execute any and all documents necessary to effectuate the Second Extension and the sales tax appointment agent status of the Original Company and/or the Company, as applicable, and/or its Additional Agents (as that term is defined in the Agency's Inducement Resolution) (collectively, the "*Second Extension Documents*") including but not limited to further revisions or amendments of the Interim Project Agreement, and/or the First Amendment to Interim Project Agreement, issuance of a new Sales Tax Appointment Extension Letter and an amendment or extension of the appropriate "IDA Appointment of Project Operator or Agent for Sales Tax Purposes" (Form ST-60) for each of the applicable entities; and the (Vice) Chairman and Executive Director of the Agency are each hereby authorized, on behalf of the Agency, to execute and deliver the documents upon the advice of counsel to the Agency. The execution thereof by the Executive Director, Chairman or Vice Chairman constitutes conclusive evidence of such approval.

(3) As a further condition of the Second Extension, the Company will: (i) confirm that all insurance as well as Environmental Compliance and Indemnification Agreement executed and delivered in conjunction with the Interim Project Agreement, remains in full force and effect and will continue to do so for so long as the Second Extension is in effect and in accordance with its terms; (ii) submit to the Agency any applicable information, including but not limited to proof of insurance naming the Agency as an additional insured pursuant to the Agency's requirements, requested by the Agency with respect to the Second Extension; (iii) certify that any and all Financial Assistance being provided and/or used pursuant to this Resolution is being used on the Project as described herein; (iv) remit all legal fees incurred by the Agency in exchange for the Agency's grant of the Second Extension; and (v) submit any proof required by the Agency demonstrating that the Company has not realized State and local sales and use tax exemptions in excess of what was authorized for the Project.

(4) The Company shall execute and deliver any and all documents required by the Agency in connection with the Second Extension and to carry out the intent of this Resolution; and

(5) The Company shall provide or cause its Additional Agents to provide, and the Agency shall maintain, records of the amount of State and local sales and use tax exemption benefits provided to the Project and the Company shall, and cause each Additional Agent, to make such records available to the Agency and the State Commissioner of Taxation and Finance (the "**Commissioner**") upon request. The Agency shall, within thirty (30) days of providing any State sales and use tax exemption benefits, report to the Commissioner the amount of such benefits for the Project, identifying the Project, along with any such other information and specificity as the Commissioner may prescribe. As a condition precedent to the Company or Project's receipt of, or benefit from, any State or local sales and use tax exemptions, the Company must acknowledge and agree to make, or cause its Additional Agents to make, all records and information regarding State and local sales and use tax exemption benefits realized by the Project available to the Agency or its designee upon request.

(6) No covenant, stipulation, obligation or agreement contained in this resolution or any document referred to herein shall be deemed to be the covenant, stipulation, obligation or agreement of any member, officer, agent or employee of the Agency in his or her individual capacity. Neither the members nor officers of the Agency, nor any person executing any documents referred to above on behalf of the Agency, shall be liable thereon or be subject to any personal liability or accountability by reason of the execution or delivery thereof.

(7) The Secretary of the Agency is hereby authorized and may distribute copies of this Resolution and do such further things or perform such acts as may be necessary or convenient to implement the provisions of this Resolution.

(8) A copy of this Resolution, together with any attachments hereto, shall be placed on file in the office of the Agency where the same shall be available for public inspection during business hours.

The question of the adoption of the foregoing resolution was duly put to vote on a roll call, which resulted as follows:

	<u>AYE</u>	<u>NAY</u>
Michael Frame	X	
Steven Thompson	X	
Kathleen Murphy	X	
Rickey T. Brown	X	
Kenneth Kinsey	X	

The foregoing Resolution was thereupon declared duly adopted.

STATE OF NEW YORK            )  
  ) SS.:  
COUNTY OF ONONDAGA        )

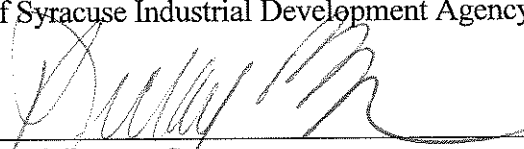
I, the undersigned Secretary of the City of Syracuse Industrial Development Agency, **DO HEREBY CERTIFY** that I have compared the annexed extract of the minutes of the meeting of the City of Syracuse Industrial Development Agency (the “*Agency*”) held on July 16, 2019, with the original thereof on file in my office, and that the same (including any and all exhibits) is a true and correct copy of the proceedings of the Agency and of the whole of such original insofar as the same relates to the subject matters referred to therein.

**I FURTHER CERTIFY** that (i) all members of the Agency had due notice of such meeting, (ii) pursuant to Section 104 of the Public Officers Law (Open Meetings Law), such meeting was open to the general public and public notice of the time and place of such meeting was duly given in accordance with such Section 104, (iii) the meeting was in all respects duly held, and (iv) there was a quorum present throughout.

**I FURTHER CERTIFY** that, as of the date hereof, the attached resolution is in full force and effect and has not been amended, repealed or rescinded.

**IN WITNESS WHEREOF**, I have set my hand and affixed the seal of the Agency this 20 day of August, 2019.

City of Syracuse Industrial Development Agency

  
\_\_\_\_\_  
Rickey T. Brown, Secretary

(SEAL)

**EXHIBIT "M"**  
**AMENDED INDUCEMENT RESOLUTION**

## AMENDED INDUCEMENT RESOLUTION

A regular meeting of the City of Syracuse Industrial Development Agency was convened in public session on July 16, 2019 at 8:00 o'clock a.m., local time, in the Common Council Chambers, City Hall, 233 East Washington Street, Syracuse, New York.

The meeting was called to order by the Chairman and upon the roll being duly called, the following members were:

**PRESENT:** Michael Frame, Steven Thompson, Kathleen Murphy, Rickey T. Brown, Kenneth Kinsey

**THE FOLLOWING PERSONS WERE ALSO PRESENT:** Staff Present: Judith DeLaney, Susan R. Katzoff, Esq., John Vavonese, Debra Ramsey-Burns; Others Present: James Trasher, Rich Pascarella, Kevin McAuliffe, Esq., Stephen Byer, Aggie Lane, Stephanie Pasquale, Joe Maricsa, Mitch Lattimer, Deli Vargus, Eric Ennis, Cypris T.; Media: Rick Moriarty

The following resolution was offered by Kathleen Murphy and seconded by Kenneth Kinsey:

**RESOLUTION AUTHORIZING THE UNDERTAKING, ACQUISITION, RECONSTRUCTION, RENOVATION, EQUIPPING AND COMPLETION OF A PROJECT; APPOINTING THE COMPANY AS AGENT OF THE AGENCY FOR THE PURPOSE OF THE ACQUISITION, RECONSTRUCTION, RENOVATION, EQUIPPING AND COMPLETION OF THE PROJECT; AND AUTHORIZING THE EXECUTION AND DELIVERY OF AN AMENDED AGREEMENT BETWEEN THE AGENCY AND THE COMPANY**

**WHEREAS**, the City of Syracuse Industrial Development Agency (the "**Agency**") is authorized and empowered by Title 1 of Article 18-A of the General Municipal Law of the State of New York (the "**State**"), as amended, together with Chapter 641 of the Laws of 1979 of the State of New York, as amended from time to time (collectively, the "**Act**") to promote, develop, encourage and assist in the acquiring, constructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial, research and recreation facilities, including industrial pollution control facilities, railroad facilities and certain horse racing facilities, for the purpose of promoting, attracting, encouraging and developing recreation and economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State, and to improve their recreation opportunities, prosperity and standard of living; and

**WHEREAS**, to accomplish its stated purposes, the Agency is authorized and empowered under the Act to acquire, lease and sell real property and grant financial assistance in connection with one or more "projects" (as defined in the Act); and

WHEREAS, Alan Byer Auto Sales, Inc. and Alan I Byer Family Trust (collectively, the "**Original Company**"), by application dated October 23, 2018 (the "**Original Application**"), requested the Agency undertake a certain project (the "**Original Project**") consisting of: (A)(i) the acquisition of an interest in approximately 1.89 acres of improved real property located at 1232-36 West Genesee Street (also known as 1230 West Genesee Street), in the City of Syracuse, New York (the "**Original Land**"); (ii) the renovation of an existing approximately 25,820 square foot building for use as an auto dealership, including but not limited to, renovation of interior showroom, sales offices and reception areas, external replacement of entry, new exterior wall finishes, updated signage and roof replacement, all located on the Land (the "**Original Facility**"); (iii) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment (the "**Original Equipment**" and together with the Land and the Facility, the "**Original Project Facility**"); (B) the granting of certain financial assistance in the form of exemptions from real property tax, State and local sales and use tax and mortgage recording tax (in accordance with Section 874 of the General Municipal Law) (collectively the "**Original Financial Assistance**"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, reconstruction, renovation, equipping and completion of the Original Project Facility; and (D) the lease of the Original Land and Original Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Original Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Original Project Facility back to the Company pursuant to a sublease agreement. The amount of State and local sales and use tax exemption benefits comprising the Financial Assistance approved in the Original Inducement Resolution was in an amount not exceed **\$140,000**; and

WHEREAS, the Agency adopted a resolution on November 20, 2018, describing the Original Project and the proposed Financial Assistance and authorizing a public hearing with respect thereto (the "**First Public Hearing Resolution**"); and

WHEREAS, the Agency conducted a public hearing with respect to the project and the proposed Financial Assistance on December 18, 2018 pursuant to Section 859-a of the Act (the "**First Public Hearing**"), notice of which was published; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law of the State of New York, as amended, and the regulations of the Department of Environmental Conservation of the State of New York promulgated thereunder (collectively referred to hereinafter as "**SEQRA**"), the Agency is required to make a determination whether the "action" (as said quoted term is defined in SEQRA) to be taken by the Agency may have a "significant impact on the environment" (as said quoted term is utilized in SEQRA), and the preliminary agreement of the Agency to undertake the Project constitutes such an action; and

WHEREAS, by resolution adopted December 18, 2018 (the "**SEQRA Resolution**"), the Agency determined that the Original Project will not have a significant adverse effect on the environment; and

WHEREAS, by resolution adopted December 18, 2018 (the "**Original Inducement Resolution**"), the Agency authorized the undertaking, acquisition, reconstruction, renovation, equipping and completion of the Original Project and the execution and delivery of an agency agreement by and between the Original Company and the Agency (the "**Original Agency Agreement**"); and

WHEREAS, by Supplemental Application dated March, 2019, Alan Byer Auto Sales, Inc., Alan I Byer Family Trust, Stephen Gary Byer, d/b/a Byer Real Estate Enterprises and West Genesee Realty Associates, LLC (collectively, the "**Company**"), (the "**Application**"), advised the Agency of certain modifications to the Original Project as well as the Original Company, and requested the Agency undertake, at the request of the Company, the Original Project as modified, (the "**Project**") consisting of: (A)(i) the acquisition of an interest in: (1) approximately 1.89 acres of improved real property bearing tax map number 108.1-02-19 and commonly referred to as 1232-36 West Genesee Street (also known as 1230 West Genesee Street) ("**Parcel 1**"); (2) approximately 3 acres of improved real property bearing tax map number 108.1-02-35.1 and commonly referred to as 1232 West Genesee Street (rear) ("**Parcel 2**"); and (3) approximately 2 acres of improved real property bearing tax map number 108.1-02-20 and commonly referred to as 1288 West Genesee Street ("**Parcel 3**"), each in the City of Syracuse, New York (collectively, the "**Land**"); (ii) there is an existing approximately 25,820 square foot building located on Parcel 1; an existing approximately 17,000-square foot building located on Parcel 2; and an approximately 34,802 square foot building located on Parcel 3, all of which are served by common driveways, parking, and pedestrian walkways, and all of which comprise the Alan Byer Volvo facility (collectively, the "**Improvements**"); (iii) the renovation to the Improvements include, but are not limited to, the interior showroom, sales offices and reception areas, external replacement of entry, new exterior wall finishes, updated signage, the existing basement, replacement of an area of deteriorating floor slab, refreshed directional pavement graphics and roof replacement (collectively, the "**Facility**"); (iii) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment (the "**Equipment**" and together with the Land and the Facility, the "**Project Facility**"); (B) the granting of certain financial assistance in the form of exemptions from real property tax, State and local sales and use tax and mortgage recording tax (in accordance with Section 874 of the General Municipal Law) (collectively the "**Financial Assistance**"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, reconstruction, renovation, equipping and completion of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement; and

WHEREAS, the changes to the Original Project necessitated a new public hearing and the reconsideration of the Original Inducement Resolution as well as the original resolution approving the payment in lieu of taxes schedule on the Original Project (the "**Original PILOT Resolution**"). The Agency adopted a resolution on March 19, 2019 describing the Project and authorizing a new public hearing with respect thereto (the "**Second Public Hearing**"); and

WHEREAS, the Agency conducted a public hearing with respect to the changes to the Original Project on April 16, 2019 pursuant to Section 859-a of the Act (the "**Second Public**

*Hearing*"), notice of which was published on April 4, 2019, in the Post-Standard, a newspaper of general circulation in the City of Syracuse, New York and given to the chief executive officers of the affected tax jurisdictions by letters dated April 3 2019; and

**WHEREAS**, the Original Project underwent an environmental review by the Agency pursuant to SEQRA, and the proposed changes to the Original Project are not substantial and do not require reconsideration or further review by the Agency under SEQRA; and

**WHEREAS**, the modifications to the Original Project require additional consideration regarding the structure of the original payment in lieu of taxes benefit approved by the Agency by resolution dated December 18, 2018, however, any modifications are subject to further approval of the Agency. The Agency is not hereby approving an exemption from real property taxes with respect to the Project but rather undertaking further review of the payment in lieu of taxes schedule and structure in conjunction with the City of Syracuse (the "**City**") assessor; and

**WHEREAS**, the Agency has considered the policy, purposes and requirements of the Act in making its determinations with respect to taking official action regarding the Project; and

**WHEREAS**, the Agency has given due consideration to the Application and to representations by the Company that the provision of Financial Assistance: (i) will induce the Company to develop the Project Facility in the City; (ii) will not result in the removal of a commercial, industrial or manufacturing plant or facility of the Company or any other proposed occupant of the Project Facility from one area of the State to another area of the State or in the abandonment of one or more plants or facilities of the Company or any other proposed occupant of the Project Facility located in the State, except as may be permitted by the Act; and (iii) the Project will serve the purposes of the Act by advancing job opportunities and the economic welfare of the people of the State and the City and improve their standard of living.

**NOW, THEREFORE**, be it resolved by the members of the City of Syracuse Industrial Development Agency as follows:

**Section 1.** It is the policy of the State to promote the economic welfare, recreation opportunities and prosperity of its inhabitants and to actively promote, attract, encourage and develop recreation and economically sound commerce and industry for the purpose of preventing unemployment and economic deterioration. It is among the purposes of the Agency to promote, develop, encourage and assist in the acquiring, constructing, improving, maintaining, equipping and furnishing of certain facilities, including commercial facilities, and thereby advance the job opportunities, health, general prosperity and economic welfare of the people of the State and to improve their recreation opportunities, prosperity and standard of living.

**Section 2.** Based upon the representations and projections made by the Company to the Agency, the Agency hereby and makes the following determinations:

(A) The change proposed to the Original Project is not a substantive change for purposes of SEQRA and the Agency hereby ratifies and confirms the SEQRA Resolution with respect to the Project;



(B) The Project constitutes a “*project*” within the meaning of the Act;

(C) The acquisition of a controlling interest in the Project Facility by the Agency and the designation of the Company as the Agency’s agent for completion of the Project will be an inducement to the Company to acquire, reconstruct, renovate, equip and complete the Project Facility in the City, and will serve the purposes of the Act by, among other things, advancing job opportunities, the standard of living and economic welfare of the inhabitants of the City;

(D) The Project will not result in the removal of a commercial, industrial or manufacturing plant or facility of the Company or any other proposed occupant of the Project Facility from one area of the State to another area of the State or result in the abandonment of one or more plants or facilities of the Company or any other proposed occupant of the Project Facility located in the State, except as may be permitted by the Act;

(E) The Financial Assistance approved hereby includes an exemption from State and local sales and use taxes and mortgage recording taxes and the appointment of the Company as agent of the Agency as further set forth herein.

**Section 3.** With respect to the Company's request for a payment in lieu of taxes agreement with respect to the Project, the Agency will continue to review the structure and schedule of such agreement in conjunction with the City's assessor and reconsider the Company's request at a future meeting. The Original PILOT Resolution has no application to the Project.

**Section 4.** As a condition of the appointment of the Company as agent of the Agency, and the conference of any approved Financial Assistance, the Company and the Agency shall first execute and deliver: (i) a project agreement in substantially the same form used by the Agency in similar transactions (the “**Project Agreement**”); (ii) an amended and restated agency/company agreement with the Agency setting forth the preliminary undertakings of the Agency and the Company with respect to the Project, the form and substance of the amended and restated agency/company agreement is attached (as set forth as on **Exhibit “A”** attached hereto) (the “**Amended Agreement**”), which amends and restates the Agency/Company Agreement previously executed by the Agency and the Company dated as of December 18, 2018; and (iii) the Lease Documents (as defined herein). The Chairman, Vice Chairman or Executive Director of the Agency are each hereby authorized, on behalf of the Agency, to execute and deliver the Project Agreement, the Agreement and the Lease Documents, with changes in terms and form as shall be consistent with this Resolution and as the Chairman or Vice Chairman shall approve. The execution thereof by the Chairman, Vice Chairman and/or Executive Director shall constitute conclusive evidence of such approval. Subject to the due execution and delivery by the Company of the Project Agreement, the Amended Agreement and the Lease Documents, the satisfaction of the conditions of this Resolution, the Amended Agreement, the Project Agreement, the Lease Documents and the payment by the Company of any attendant fees, the Company and its designees, are appointed the true and lawful agent of the Agency to proceed with the construction, equipping and completion of the Project, all with the same powers and the same validity as if the Agency were acting in its own behalf. The amount of State and local sales

and use tax exemption benefits comprising the Financial Assistance approved herein shall not exceed \$140,000.

**Section 5.** Subject to the terms of this Resolution, the Financial Assistance and the execution and delivery of, and the conditions set forth in, the Agreement and the Project Agreement the Agency will: (i) acquire an interest in the Land and Facility pursuant to a lease agreement (the "**Lease**") to be entered into between the Company and the Agency; accept an interest in the Equipment pursuant to a bill of sale from the Company (the "**Bill of Sale**"); (ii) sublease the Project Facility to the Company pursuant to a sublease agreement (the "**Sublease**" and with the Lease and the Bill of Sale, and all other documents required by the Agency for similar transactions, including but not limited to, an environmental compliance and indemnification agreement, collectively, the "**Lease Documents**") to be entered into between the Agency and the Company; (iii) grant the approved Financial Assistance; and (iv) provided that no default shall have occurred and be continuing under the Agreement and provided the Company has executed and delivered all documents and certificates required by the Agency in conjunction with the Agency's undertaking of the Project, execute and deliver all other certificates and documents necessary or appropriate for the grant of the approved Financial Assistance, in form and substance acceptable to the Agency.

**Section 6.** The terms and conditions of subdivision 3 of Section 875 of the Act are herein incorporated by reference and the Company shall agree to such terms as a condition precedent to receiving or benefiting from an exemption from State and local sales and use tax exemptions benefits.

**Section 7.** The Company may utilize, and subject to the terms of this Resolution, the Agreement and the Project Agreement, is hereby authorized to appoint, a Project operator, contractors, agents, subagents, subcontractors, contractors and subcontractors of such agents and subagents (collectively, "**Additional Agents**") to proceed with the construction, equipping and completion of the Project, all with the same powers and the same validity as if the Agency were acting in its own behalf, provided the Company execute, deliver and comply with the Agreement. The Company shall provide, or cause its Additional Agents to provide, and the Agency shall maintain, records of the amount of State and local sales and use tax exemption benefits provided to the Project and the Company shall, and cause each Additional Agent, to make such records available to the State Commissioner of Taxation and Finance (the "**Commissioner**") upon request. The Agency shall, within thirty (30) days of providing any State sales and use tax exemption benefits, report to the Commissioner the amount of such benefits for the Project, identifying the Project, along with any such other information and specificity as the Commissioner may prescribe. As a condition precedent to the Company or Project's receipt of, or benefit from, any State or local sales and use tax exemptions, the Company must acknowledge and agree to make, or cause its Additional Agents to make, all records and information regarding State and local sales and use tax exemption benefits realized by the Project available to the Agency or its designee upon request. for purposes of exemption from New York State (the "**State**") sales and use taxation as part of the Financial Assistance requested, "sales and use taxation" shall mean sales and compensating use taxes and fees imposed by article twenty-eight or twenty-eight-A of the New York State tax law but excluding such taxes imposed in a city by section eleven hundred seven or eleven hundred eight of such article twenty-eight.

**Section 8.** The Chairman, Vice Chairman and/or the Executive Director of the Agency, acting individually, are each hereby authorized and directed, for and in the name and on behalf of the Agency, to execute and deliver the documents and agreements identified herein and any such additional certificates, instruments, documents or affidavits, to pay any such other fees, charges and expenses, to make such other changes, omissions, insertions, revisions, or amendments to the documents referred herein as the (Vice) Chairman deems appropriate, and to do and cause to be done any such other acts and things, as they determine, on advice of counsel to the Agency, may be necessary or desirable to consummate the transactions contemplated by this Resolution, the Agreement and/or the Project Agreement.

**Section 9.** The obligation of the Agency to consummate any transaction contemplated herein or hereby is subject to and conditioned upon the Company's execution and delivery of the Lease Documents and as set forth in Section 3 hereof.

**Section 10.** No covenant, stipulation, obligation or agreement contained in this resolution or any document referred to herein shall be deemed to be the covenant, stipulation, obligation or agreement of any member, officer, agent or employee of the Agency in his or her individual capacity. Neither the members nor officers of the Agency, nor any person executing any documents referred to above on behalf of the Agency, shall be liable thereon or be subject to any personal liability or accountability by reason of the execution or delivery thereof.

**Section 11.** Should the Agency's participation in the Project, or the appointments made in accordance herewith, be challenged by any party, in the courts or otherwise, the Company shall defend, indemnify and hold harmless the Agency and its members, officers and employees from any and all losses arising from any such challenge including, but not limited to, the fees and disbursement of the Agency's counsel. Should any court of competent jurisdiction determine that the Agency is not authorized under the Act to participate in the Project, this Resolution shall automatically become null, void and of no further force and effect, and the Agency shall have no liability to the Company hereunder or otherwise.

**Section 12.** Bousquet Holstein PLLC, as counsel to the Agency, is hereby authorized to work with the Company and others to prepare for submission to the Agency, all documents necessary to effect the grant of Financial Assistance and consummate the Lease Documents.

**Section 13.** The Secretary and/or the Executive Director of the Agency are hereby authorized and may distribute copies of this Resolution and do such further things or perform such acts as may be necessary or convenient to implement the provisions of this Resolution.

**Section 14.** This Resolution shall take effect immediately. A copy of this Resolution, together with the attachments hereto, shall be placed on file in the office of the Agency where the same shall be available for public inspection during business hours.

The question of the adoption of the foregoing resolution was duly put to vote on a roll call, which resulted as follows:

	<u>AYE</u>	<u>NAY</u>
Michael Frame	X	
Steven Thompson	X	
Kathleen Murphy	X	
Rickey T. Brown	X	
Kenneth Kinsey	X	

The foregoing Resolution was thereupon declared duly adopted.

STATE OF NEW YORK            )  
  ) SS.:  
COUNTY OF ONONDAGA        )

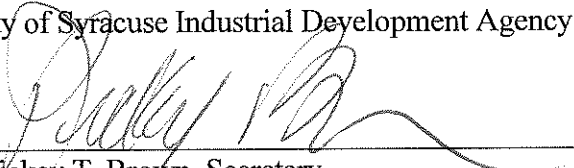
I, the undersigned Secretary of the City of Syracuse Industrial Development Agency, **DO HEREBY CERTIFY** that I have compared the annexed extract of the minutes of the meeting of the City of Syracuse Industrial Development Agency (the “*Agency*”) held on July 16, 2019, with the original thereof on file in my office, and that the same (including all exhibits) is a true and correct copy of the proceedings of the Agency and of the whole of such original insofar as the same relates to the subject matters referred to therein.

**I FURTHER CERTIFY** that (i) all members of the Agency had due notice of such meeting, (ii) pursuant to Section 104 of the Public Officers Law (Open Meetings Law), such meeting was open to the general public and public notice of the time and place of such meeting was duly given in accordance with such Section 104, (iii) the meeting was in all respects duly held, and (iv) there was a quorum present throughout.

**I FURTHER CERTIFY** that, as of the date hereof, the attached resolution is in full force and effect and has not been amended, repealed or rescinded.

**IN WITNESS WHEREOF**, I have set my hand and affixed the seal of the Agency this 20 day of August, 2019.

City of Syracuse Industrial Development Agency



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Rickey T. Brown, Secretary

(SEAL)

## EXHIBIT "A"

### AMENDED AND RESTATED AGENCY/COMPANY AGREEMENT

THIS AMENDED AND RESTATED AGREEMENT is between CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY (the "*Agency*"), with an office at 201 East Washington Street, 6<sup>th</sup> Floor, Syracuse, New York 13202 and ALAN BYER AUTO SALES, INC., ALAN I BYER FAMILY TRUST, STEPHEN GARY BYER, D/B/A BYER REAL ESTATE ENTERPRISES AND WEST GENESEE REALTY ASSOCIATES, LLC, with a mailing address of 1230 West Genesee Street, Syracuse, New York 13204 (collectively, the "*Company*") and amends and restates, in its entirety, that certain agency agreement between Alan Byer Auto Sales, Inc. and Alan I Byer Family Trust (collectively, the "*Original Company*") and the Agency dated as of December 18, 2019.

**Article 1. Preliminary Statement.** Among the matters of mutual inducement which have resulted in the execution of this agreement are the following:

1.01 The Agency is authorized and empowered by the provisions of Title 1 of Article 18-A of the General Municipal Law of the State of New York (the "*State*"), as amended, and Chapter 641 of the Laws of 1979 of the State (collectively, the "*Act*") to designate an agent for constructing, renovating and equipping "projects" (as defined in the Act).

1.02 The purposes of the Act are to promote, attract, encourage and develop recreation and economically sound commerce and industry in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State, to improve their recreation opportunities, prosperity and standard of living, and to prevent unemployment and economic deterioration. The Act vests the Agency with all powers necessary to enable it to accomplish such purposes, including the power to acquire and dispose of interests in real property and to appoint agents for the purpose of completion of projects undertaken by the Agency.

1.03 The Original Company, by application dated October 23, 2018 by application dated October 23, 2018 (the "*Original Application*"), requested the Agency undertake a certain project (the "*Original Project*") consisting of: (A)(i) the acquisition of an interest in approximately 1.89 acres of improved real property located at 1232-36 West Genesee Street (also known as 1230 West Genesee Street), in the City of Syracuse, New York (the "*Original Land*"); (ii) the renovation of an existing approximately 25,820 square foot building for use as an auto dealership, including but not limited to, renovation of interior showroom, sales offices and reception areas, external replacement of entry, new exterior wall finishes, updated signage and roof replacement, all located on the Land (the "*Original Facility*"); (iii) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment (the "*Original Equipment*" and together with the Land and the Facility, the "*Original Project Facility*"); (B) the granting of certain financial assistance in the form of exemptions from real property tax, State and local sales and use tax and mortgage recording tax (in accordance with Section 874 of the General Municipal Law) (collectively the "*Original Financial Assistance*"); (C) the

appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, reconstruction, renovation, equipping and completion of the Original Project Facility; and (D) the lease of the Original Land and Original Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Original Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Original Project Facility back to the Company pursuant to a sublease agreement. The amount of State and local sales and use tax exemption benefits comprising the Financial Assistance approved in the Original Inducement Resolution was in an amount not exceed **\$140,000**.

By Supplemental Application dated March, 2019, Alan Byer Auto Sales, Inc., Alan I Byer Family Trust, Stephen Gary Byer, d/b/a Byer Real Estate Enterprises and West Genesee Realty Associates, LLC (collectively, the "**Company**"), (the "**Application**"), advised the Agency of certain modifications to the Original Project as well as the Original Company, and requested the Agency undertake, at the request of the Company, the Original Project as modified, (the "**Project**") consisting of: (A)(i) the acquisition of an interest in: (1) approximately 1.89 acres of improved real property bearing tax map number 108.1-02-19 and commonly referred to as 1232-36 West Genesee Street (also known as 1230 West Genesee Street) ("**Parcel 1**"); (2) approximately 3 acres of improved real property bearing tax map number 108.1-02-35.1 and commonly referred to as 1232 West Genesee Street (rear) ("**Parcel 2**"); and (3) approximately 2 acres of improved real property bearing tax map number 108.1-02-20 and commonly referred to as 1288 West Genesee Street ("**Parcel 3**"), each in the City of Syracuse, New York (collectively, the "**Land**"); (ii) there is an existing approximately 25,820 square foot building located on Parcel 1; an existing approximately 17,000-square foot building located on Parcel 2; and an approximately 34,802 square foot building located on Parcel 3, all of which are served by common driveways, parking, and pedestrian walkways, and all of which comprise the Alan Byer Volvo facility (collectively, the "**Improvements**"); (iii) the renovation to the Improvements include, but are not limited to, the interior showroom, sales offices and reception areas, external replacement of entry, new exterior wall finishes, updated signage, the existing basement, replacement of an area of deteriorating floor slab, refreshed directional pavement graphics and roof replacement (collectively, the "**Facility**"); (iii) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment (the "Equipment" and together with the Land and the Facility, the "**Project Facility**"); (B) the granting of certain financial assistance in the form of exemptions from real property tax, State and local sales and use tax and mortgage recording tax (in accordance with Section 874 of the General Municipal Law) (collectively the "**Financial Assistance**"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, reconstruction, renovation, equipping and completion of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement.

1.04 All documents necessary to effectuate the Agency's undertaking of the Project, the Sale of the Land and the granting of the Financial Assistance between the Agency and the Company, including but not limited to, a project agreement, a company lease, an agency lease, a bill of sale and an environmental compliance and indemnification agreement, shall be collectively referred to herein as the "**Lease Documents**".

1.05 The Company hereby represents to the Agency that undertaking the Project, the designation of the Company as the Agency's agent for the construction, equipping and completion of the Project Facility, and the use and appointment, as necessary, by the Company of a Project operator, contractors, agents, subagents, subcontractors, contractors and subcontractors of such agents and subagents (collectively, "***Additional Agents***"): (i) will be an inducement to it to construct and equip the Project Facility in the City of Syracuse (the "***City***"); (ii) will not result in the removal of a commercial, industrial or manufacturing plant or facility of the Company or of any other proposed occupant of the Project Facility from one area of the State to another or in the abandonment of one or more plants or facilities of the Company or of any other proposed occupant of the Project Facility located in the State, except as may be permitted by the Act; and (iii) undertaking the Project Facility will promote, create and/or preserve private sector jobs in the State. The Company hereby further represents to the Agency that the Project Facility is not primarily used in making retail sales to customers who personally visit the Facility.

1.06 The Agency has determined that the acquisition of a controlling interest in, and the construction and equipping of the Project Facility and the subleasing of the same to the Company will promote and further the purposes of the Act.

1.07 On December 18, 2018 and July 16, 2019, the Agency adopted resolutions (collectively, the "***Inducement Resolution***") agreeing, subject to the satisfaction of all conditions precedent set forth in such Inducement Resolution, to designate the Company as the Agency's agent for the acquisition, construction and equipping of the Project Facility and determining that the leasing of the same to the Company will promote further purposes of the Act. For purposes of that designation, the Agency authorized as part of the approved Financial Assistance, State and local sales and use tax exemption benefits in an amount not exceed **\$140,000**.

1.08 In the Inducement Resolution, subject to the execution of, and compliance with, this Agreement by the Company, the execution and delivery of a project agreement by the Company, and other conditions set forth in the Inducement Resolution and herein, the Agency appointed the Company as its agent for the purposes of construction and equipping the Project Facility, entering into contracts and doing all things requisite and proper for construction and equipping the Project Facility. For the avoidance of doubt, the parties agree that the Agency's appointment of the Company as its agent shall be effective on the date that all of the following conditions are satisfied (the "***Agency Effective Date***"):

- (a) The Company has purchased the Land from the Agency; and
- (b) The Company and the Agency have executed and delivered the Lease Documents.

**Article 2. Undertakings on the Part of the Agency.** Based upon the statement, representations and undertakings of the Company and subject to the conditions set forth herein, the Agency agrees as follows:

2.01 The Agency confirms that it has authorized and designated, pursuant to the terms hereof, the Company as the Agency's agent for constructing and equipping the Project Facility.



Notwithstanding anything herein to the contrary, the Company shall not be agent of the Agency for any purpose until the Agency Effective Date.

2.02 The Agency will adopt such proceedings and authorize the execution of such Agency documents as may be necessary or advisable for: (i) acquisition of a controlling interest in the Project Facility; (ii) designation by the Company of Additional Agents for construction and equipping of the Project Facility subject to the terms hereof; and (iii) the leasing or subleasing of the Project Facility to the Company, all as shall be authorized by law and be mutually satisfactory to the Agency and the Company.

2.03 Nothing contained in this Agreement shall require the Agency to apply its funds to Project costs.

2.04 After satisfying the conditions precedent set forth in the Sections 2.05, 3.06 and 4.02 hereof and in the Inducement Resolution, the Company may proceed with the construction and equipping of the Project Facility and the utilization of and, as necessary the appointment of, Additional Agents.

2.05 Subject to the execution of the Lease Documents and Section 4.02 hereof, the Company is appointed the true and lawful agent of the Agency: (i) for the construction and equipping of the Project Facility; and (ii) to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions, as the stated agent for the Agency, and in general to do all things which may be requisite or proper for the construction and equipping of the Project Facility, all with the same powers and the same validity as if the Agency were acting in its own behalf.

2.06 The Agency will take or cause to be taken such other acts and adopt such further proceedings as may be required to implement the aforesaid undertakings or as it may deem appropriate in pursuance thereof. The Agency may in accordance with Article 8 of the Environmental Conservation Law of the State of New York, as amended, and the regulations of the Department of Environmental Conservation of the State of New York promulgated thereunder (collectively referred to hereinafter as "**SEQRA**"), undertake supplemental review of the Project. Such review to be limited to specific significant adverse environmental impacts not addressed or inadequately addressed in the Agency's review under SEQRA that arise from changes in the proposed Project, newly discovered information or a change in the circumstances related to the Project.

**Article 3. Undertakings on the Part of the Company.** Based upon the statements, representations and undertakings of the Agency and subject to the conditions set forth herein the Company agrees as follows:

3.01 Commencing on the Agency Effective Date:

(a) The Company shall indemnify and hold the Agency harmless from all losses, expenses, claims, damages and liabilities arising out of or based on labor, services, materials and supplies, including equipment, ordered or used in connection with the acquisition of a controlling interest in, and construction and equipping of the Project Facility (including any

expenses incurred by the Agency in defending any claims, suits or actions which may arise as a result of any of the foregoing), whether such claims or liabilities arise as a result of the Company or Additional Agents acting as agent for the Agency pursuant to this Agreement or otherwise.

(b) The Company shall not permit to stand, and will, at its own expense, take all steps reasonably necessary to remove, any mechanics' or other liens against the Project Facility for labor or material furnished in connection with the acquisition, construction and equipping of the Project Facility.

(c) The Company shall indemnify and hold the Agency, its members, officers, employees and agents and anyone for whose acts or omissions the Agency or any one of them may be liable, harmless from all claims and liabilities for loss or damage to property or any injury to or death of any person that may be occasioned subsequent to the Agency Effective Date by any cause whatsoever in relation to the Project Facility, including any expenses incurred by the Agency in defending any claims, suits or actions which may arise as a result of the foregoing.

(d) The Company shall defend, indemnify and hold the Agency harmless from all losses, expenses, claims, damages and liabilities arising out of or based on the non-disclosure of information, if any, requested by the Company in accordance with Section 4.05 hereof.

(e) The defense and indemnities provided for in this Article 3 shall survive expiration or termination of this Agreement and shall apply whether or not the claim, liability, cause of action or expense is caused or alleged to be caused, in whole or in part, by the activities, acts, fault or negligence, other than intentional wrongdoing, of the Agency, its members, officers, employees and agents, anyone under the direction and control of any of them, or anyone for whose acts or omissions the Agency or any of them may be liable, and whether or not based upon the breach of a statutory duty or obligation or any theory or rule of comparative or apportioned liability, subject only to any specific prohibition relating to the scope of indemnities imposed by statutory law.

(f) The Company shall provide and carry: (i) worker's compensation and disability insurance as required by law; and (ii) comprehensive liability and property insurance with such coverages (including without limitation, owner's protective coverage for the benefit of the Agency, naming the Agency as an additional insured on all policies of coverage regarding the Project; providing the coverage with respect to the Agency be primary and non-contributory; and contractual coverage covering the indemnities herein provided for), with such limits and which such companies as may be approved by the Agency. Upon the request of the Agency, the Company shall provide certificates, endorsements, binders and/or policies of insurance in form satisfactory to the Agency evidencing such insurance.

(g) The Company shall apply and diligently pursue all approvals, permits and consents from the State of New York, the City, the City Planning Commission and any other governmental authority which approvals, permits and consents are required under applicable law for the development, construction and equipping of the Project and any related site improvements. The Company acknowledges and agrees that the Agency's findings and determinations under SEQRA do not and shall not in and of themselves (except as specifically

set forth in SEQRA) satisfy or be deemed to satisfy applicable laws, regulations, rules and procedural requirements applicable to such approvals, permits and consents.

(h) The Company shall complete a Contractor Status Report to be obtained from the City of Syracuse Industrial Development Agency and agrees to utilize, and cause its Additional Agents to utilize, local contractors and suppliers for the construction, equipping and completion of the Project unless a waiver is received from the Agency in writing. For purposes of this Agency Agreement, the term "**Local**" shall mean Onondaga, Oswego, Oneida, Madison, Cayuga and Cortland Counties. The Company agrees that such Local contractors shall be provided the opportunity to bid on contracts related to the Project Facility.

3.02 The Company agrees that, as agent for the Agency or otherwise, commencing on the Agency Effective Date, it will comply at the Company's sole cost and expense with all the requirements of all federal, state and local laws, rules and regulations of whatever kind and howsoever denominated applicable to the Agency and/or Company with respect to the Project Facility, the acquisition of a controlling interest therein, construction and equipping thereof, the operation and maintenance of the Project Facility, supplemental review of adverse environmental impacts in accordance with SEQRA and the financing of the Project. Every provision required by law to be inserted herein shall be deemed to be set forth herein as if set forth in full, including, but not limited to, Section 875 of the Act; and upon the request of either party, this Agreement shall be amended to specifically set forth any such provision or provisions.

3.03 The Company agrees that, as agent for the Agency or otherwise, to the extent that such provisions of law are in fact applicable (without creating an obligation by contract beyond that which is created by statute), commencing on the Agency Effective Date, it will comply with the requirements of Section 220 of the Labor Law of the State of New York, as amended.

3.04 The Company will take such further action and adopt such further proceedings as may be required to implement its aforesaid undertakings or as it may deem appropriate in pursuance thereof.

3.05 If it should be determined that any State or local sales or compensatory use taxes are payable with respect to the acquisition, purchase or rental or machinery or equipment, materials or supplies in connection with the Project Facility, or are in any manner otherwise payable directly or indirectly in connection with the Project Facility, the Company shall pay the same and defend and indemnify the Agency from and against any liability, expenses and penalties arising out of, directly or indirectly, the imposition of any such taxes.

3.06 After the Agency Effective Date, the Company shall proceed with the acquisition, construction, equipping and completion of the Project Facility and advance such funds as may be necessary to accomplish such purposes. The Company may appoint Additional Agents as agents of the Agency in furtherance thereof. Any appointment of an Additional Agent is conditioned upon the Company first obtaining and providing the Agency the following:

(1) A written, executed agreement, in form and substance acceptable to the Agency, from each Additional Agent which provides for the assumption by the Additional Agent, for itself, certain of the obligations under this Agreement relative to the appointment, work and

purchases done and made by each Additional Agent; (ii) a commitment to utilize local contractors and suppliers for the construction and equipping of the Project ("local" being defined in Section 3.01(h) hereof); (iii) an acknowledgement that the Additional Agent is obligated, to timely provide the Company with the necessary information to permit the Company, pursuant to General Municipal Law §874(8), to timely file an Annual Statement with the Agency and the New York State Department of Taxation and Finance on "Annual Report of Sales and Use Tax Exemptions" (Form ST-340) regarding the value of sales and use tax exemptions the Additional Agent claimed pursuant to the agency conferred on it by the Company with respect to this Project; (iv) an acknowledgment by the Additional Agent that the failure to comply with the foregoing will result in the loss of the exemption; and (v) such other terms and conditions as the Agency deems necessary; and

(2) A completed "IDA Appointment of Project Operator or Agent for Sales Tax Purposes" (Form ST-60) for each Additional Agent appointed within fifteen (15) days of the appointment of each Additional Agent such that the Agency can execute and deliver said form to the State Department of Taxation and Finance within thirty (30) days of appointment of each such Additional Agent.

Failure of the Company to comply with the foregoing shall nullify the appointment of any Additional Agent and may result in the loss of the Company's exemption with respect to the Project at the sole discretion of the Agency.

The Company acknowledges that the assumption by the Additional Agent in accordance with Section 3.06(1) above, does not relieve the Company of its obligations under those provisions or any other provisions of this Agreement with respect to the Project.

3.07 The Company ratifies and confirms its obligations to pay an annual administrative reporting fee in accordance with the Agency's fee schedule to cover administrative and reporting requirements to comply with New York State reporting regulations on Agency assisted projects.

#### **Article 4. General Provisions.**

4.01 This Agreement shall take effect on the date of the execution hereof by the Agency and the Company and, subject to Section 4.04 hereof, shall remain in effect until the Lease Documents become effective. It is the intent of the Agency and the Company that, except as to those provisions that survive, this Agreement be superseded in its entirety by the Lease Documents.

4.02 (a) It is understood and agreed by the Agency and the Company that the grant of Financial Assistance and the execution of the Lease Documents and related documents are subject to: (i) payment by the Company of the Agency's fee and Agency's counsel fees; (ii) obtaining all necessary governmental approvals, permits and consents of any kind required in connection with the Project Facility; (iii) approval by the members of the Agency; (iv) approval by the Company; and (v) the condition that there are no changes in New York State Law, including regulations, which prohibit or limit the Agency from fulfilling its obligations hereunder; (b) the Company, by executing this agreement, acknowledges and agrees to make, or cause its Additional Agents, to make, all records and information regarding State and local sales

and use tax exemption benefits given to the Project as part of the Financial Assistance available to the Agency upon request, including but not limited to the Form ST-340 for itself and each Additional Agent; (c) the Company, by executing this Agreement, acknowledges and agrees to the terms and conditions of Section 875(3) of the Act as if such section were fully set forth herein and further agrees to cause all of its Additional Agents to acknowledge, agree and consent to same. Without limiting the scope of the foregoing the Company acknowledges that pursuant to Section 875(3) of the Act, and in accordance with the Agency's Recapture of Benefits Policy, the Agency shall, and in some instances may, recover, recapture, receive or otherwise obtain from the Company some or all of the Financial Assistance (the "**Recapture Amount**") including, but not limited to: (1) (a) that portion of the State and local sales and use tax exemption to which the Company was not entitled, which is in excess of the amount of the State and local sales and use tax exemption authorized by the Agency or which is for property or services not authorized by the Agency; or (b) the full amount of such State and local sales and use tax exemption, if the Company fails to comply with a material term or condition regarding the use of the property or services as represented to the Agency in its Application or otherwise; or (c) the full amount of such State and local sales and use tax exemption in the event the Company fails to execute and deliver the Lease Documents in accordance herewith or fails to complete the Project; and (2) any interest or penalties thereon imposed by the Agency or by operation of law or by judicial order or otherwise; and (d) the failure of the Company to promptly pay such Recapture Amount to the Agency will be grounds for the Commissioner to collect sales and use taxes from the Company under Article 28 of the State Tax Law, together with interest and penalties. In addition to the foregoing, the Company acknowledges and agrees that for purposes of exemption from New York State (the "**State**") sales and use taxation as part of the Financial Assistance requested, "sales and use taxation" shall mean sales and compensating use taxes and fees imposed by article twenty-eight or twenty-eight-A of the New York State tax law but excluding such taxes imposed in a city by section eleven hundred seven or eleven hundred eight of such article twenty-eight. In addition to the foregoing, the Agency may recapture other benefits comprising the Financial Assistance in accordance with the Agency's Recapture Policy (a copy of which is on the Agency's website).

4.03 The Company agrees that it will, within thirty (30) days of a written request for same, regardless of whether or not this matter closes or the Project Facility is completed: (i) reimburse the Agency for all reasonable and necessary expenses, including without limitation the fees and expenses of counsel to the Agency arising from, out of or in connection with the Project, and/or any documents executed in connection therewith, including, but not limited to any claims or actions taken by the Agency against the Company, Additional Agents or third parties; and (ii) indemnify the Agency from all losses, claims, damages and liabilities, in each case which the Agency may incur as a consequence of executing this Agreement or performing its obligations hereunder, including but not limited to, any obligations related to Additional Agents.

4.04 If for any reason the Lease Documents are not executed and delivered by the Company and the Agency on or before **July 16, 2020**, the provisions of this Agreement (other than the provisions of Articles 1.06, 2.02, 2.04, 3.01, 3.02, 3.03, 3.05, 3.06, 4.02, 4.03, 4.04, 4.05 and 4.06, which shall survive) shall unless extended by agreement of the Agency and the Company, terminate and be of no further force or effect, and following such termination neither party shall have any rights against the other party except:

(a) The Company shall pay the Agency for all expenses incurred by the Agency in connection with the Agency's approval of its Financial Assistance for, and the undertaking of, the Project;

(b) The Company shall assume and be responsible for any contracts for the construction or purchase of equipment entered into by the Agency, after the Agency Effective Date, at the request of or as agent for the Company in connection with the Project Facility; and

(c) The Company will pay the out-of-pocket expenses of members of the Agency and counsel for the Agency incurred in connection with the Agency's approval of its Financial Assistance, and the undertaking of, for the Project and will pay the fees of counsel for the Agency for legal services relating to the Agency's approval of its Financial Assistance for, and the undertaking of, the Project.

**4.05 The Company acknowledges that Section 875(7) of the New York General Municipal Law ("GML") requires the Agency to post on its website all resolutions and agreements relating to the Company's appointment as an agent of the Agency or otherwise related to the Project, including this Agreement; and Article 6 of the New York Public Officers Law declares that all records in the possession of the Agency (with certain limited exceptions) are open to public inspection and copying. If the Company feels that there are elements of the Project or information about the Company in the Agency's possession which are in the nature of trade secrets or information, the nature of which is such that if disclosed to the public or otherwise widely disseminated would cause substantial injury to the Company's competitive position, the Company must identify such elements in writing, supply same to the Agency: (i) with respect to this Agreement, prior to or contemporaneously with the execution hereof; and (ii) with respect to all other agreements executed in connection with the Project, on or before the Closing Date, and request that such elements be kept confidential in accordance with Article 6 of the Public Officers Law. Failure to do so will result in the posting by the Agency of all information in accordance with Section 875 of the GML.**

4.06 That every controversy, dispute or claim arising out of or relating to this Agreement shall be governed by the laws of the State of New York, without regard to its conflict-of-laws provisions that if applied might require the application of the laws of another jurisdiction; and that the Company irrevocably and expressly submits to the exclusive personal jurisdiction of the Supreme Court of the State of New York and the United States District Court for the Northern District of New York, to the exclusion of all other courts, for the purposes of litigating every controversy, dispute or claim arising out of or relating to this Agreement.

IN WITNESS WHEREOF, the parties hereto have entered into this Amended Agreement as of the 16<sup>th</sup> day of July, 2019.

**CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY**

By: \_\_\_\_\_  
Judith DeLaney, Executive Director

**ALAN BYER AUTO SALES, INC.**

By: \_\_\_\_\_  
Name:  
Title:

**ALAN I BYER FAMILY TRUST**

By: \_\_\_\_\_  
Name:  
Title:

**STEPHEN GARY BYER, D/B/A BYER REAL  
ESTATE ENTERPRISES**

By: \_\_\_\_\_  
Name:  
Title:

**WEST GENESEE REALTY ASSOCIATES,  
LLC**

By: \_\_\_\_\_  
Name:  
Title:

**EXHIBIT "N"**  
**THIRD PUBLIC HEARING NOTICE**



## NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that the public hearing held on April 16, 2019 pursuant to Section 859-a of the New York General Municipal Law, will be reopened by the City of Syracuse Industrial Development Agency (the "Agency") on the 20<sup>th</sup> day of August, 2019, at 8:00 a.m., local time, at 233 East Washington Street, Common Council Chambers, City Hall, Syracuse, New York, in connection with the following matter:

Alan Byer Auto Sales, Inc. ("Alan Sales"), Alan I Byer Family Trust (the "Trust"), Stephen Gary Byer ("Byer") and West Genesee Realty Associates, LLC ("Realty" and together with Alan Sales, the Trust and Byer collectively, the "Company"), requested the Agency undertake a project (the "Project") consisting of: (A)(i) the acquisition of an interest in: (1) approximately 1.89 acres of improved real property bearing tax map number 108.1-02-19 and commonly referred to as 1232-36 West Genesee Street (also known as 1230 West Genesee Street) ("Parcel 1"); (2) approximately 3 acres of improved real property bearing tax map number 108.1-02-35.1 and commonly referred to as 1232 West Genesee Street (rear) ("Parcel 2"); and (3) approximately 2 acres of improved real property bearing tax map number 108.1-02-20 and commonly referred to as 1288 West Genesee Street ("Parcel 3"), each in the City of Syracuse, New York (collectively, the "Land"); (ii) certain improvements, including but not limited to, an existing approximately 25,820 square foot building located on Parcel 1; an existing approximately 17,000-square foot building located on Parcel 2; and an approximately 34,802 square foot building located on Parcel 3, all of which are served by common driveways, parking, and pedestrian walkways, and all of which comprise the Alan Byer Volvo facility (collectively, the "Improvements"); (iii) the renovation to the Improvements and the Land include, but are not limited to, the interior showroom, sales offices and reception areas, external replacement of entry, new exterior wall finishes, updated signage, the existing basement, replacement of an area of deteriorating floor slab, refreshed directional pavement graphics and roof replacement (collectively with the Land and Improvements, the "Facility"); (iv) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment (the "Equipment" and together with the Land, Improvements and the Facility, the "Project Facility"); (B) the granting of certain financial assistance in the form of exemptions from real property tax, State and local sales and use tax and mortgage recording tax (in accordance with Section 874 of the General Municipal Law) (collectively the "Financial Assistance"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, reconstruction, renovation, equipping and completion of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement.

The Trust and Byer are the fee owners of Parcel 1. Realty is the fee owner of Parcel 2 and Parcel 3.

The Agency will at the above-stated time and place hear all persons with views with respect to the proposed Financial Assistance to the Company.

A copy of the application and any supplements filed by the Company with the Agency with respect to the Project, including an analysis of the costs and benefits of the Project, are

available for public inspection during the business hours at the office of the Agency located at 201 East Washington Street, 6<sup>th</sup> Floor, Syracuse, New York.

Dated: August 5, 2019

CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY

# THE POST-STANDARD

## LEGAL AFFIDAVIT

INV#: 0009277604

# ADVANCE

MEDIA NEW YORK

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nyup.com

BOUSQUET HOLSTEIN PLLC  
KAREN KELLER  
110 W FAYETTE ST STE 1000  
SYRACUSE, NY 13202

Sales Rep: Pamela Gallagher

Name: BOUSQUET HOLSTEIN PLLC

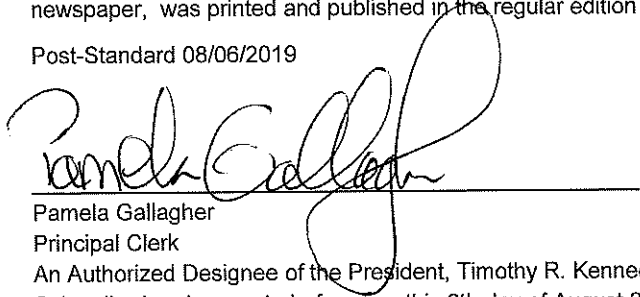
Account Number: 12145

INV#: 0009277604

Date	Position	Description	P.O. Number	Ad Size
08/06/2019	Other Legals NY	NOTICE OF PUBLIC HEARING. NOTICE IS HEREBY GIVEN that	matter C2147L.00025	1 x 177.00 CL

State of New York, County of Onondaga ss. Pamela Gallagher, of the City of Syracuse, in said County, being duly sworn, doth depose and says: this person is the Principal Clerk in the office of THE POST-STANDARD, a public newspaper, published in the City of Syracuse, Onondaga County, New York and that the notice, is an accurate and true copy of the ad as printed in said newspaper, was printed and published in the regular edition and issue of said newspaper on the following days, viz.:

Post-Standard 08/06/2019



\_\_\_\_\_  
Pamela Gallagher  
Principal Clerk  
An Authorized Designee of the President, Timothy R. Kennedy  
Subscribed and sworn to before me, this 6th day of August 2019



\_\_\_\_\_  
NOTARY PUBLIC

FOR QUESTIONS CONCERNING THIS AFFIDAVIT,  
PLEASE CONTACT PAMELA GALLAGHER AT  
(315) 470-2051 OR Legals@Syracuse.com

HEIDI A. STEPHENS  
Notary Public - State of New York  
No. 01ST6290718  
Qualified in Onondaga County,  
My Commission Expires: 10/2/2021

Date	Position	Description	P.O. Number	Ad Size
08/06/2019	Other Legals NY	NOTICE OF PUBLIC HEARING. NOTICE IS HEREBY GIVEN that the	matter C2147L.00025	1 x 177.00 CL

**NOTICE OF PUBLIC HEARING.** NOTICE IS HEREBY GIVEN that the public hearing held on April 16, 2019 pursuant to Section 859-a of the New York General Municipal Law, will be re-opened by the City of Syracuse Industrial Development Agency (the "Agency") on the 20th day of August, 2019, at 8:00 a.m., local time, at 233 East Washington Street, Common Council Chambers, City Hall, Syracuse, New York, in connection with the following matter: Alan Byer Auto Sales, Inc. ("Alan Sales"), Alan Byer Family Trust (the "Trust"), Stephen Gary Byer ("Byer") and West Genesee Realty Associates, LLC ("Realty" and together with Alan Sales, the Trust and Byer collectively, the "Company"), requested the Agency undertake a project (the "Project") consisting of: (A)(i) the acquisition of an interest in: (1) approximately 1.89 acres of improved real property bearing tax map number 108.1 02 19 and commonly referred to as 1232-36 West Genesee Street (also known as 1230 West Genesee Street) ("Parcel 1"); (2) approximately 3 acres of improved real property bearing tax map number 108.1 02 35.1 and commonly referred to as 1232 West Genesee Street (rear) ("Parcel 2"); and (3) approximately 2 acres of improved real property bearing tax map number 108.1-02-20 and commonly referred to as 1288 West Genesee Street ("Parcel 3"), each in the City of Syracuse, New York (collectively, the "Land"); (ii) certain improvements, including but not limited to, an existing approximately 25,820 square foot

25,820 square foot building located on Parcel 1; an existing approximately 17,000 square foot building located on Parcel 2; and an approximately 34,802 square foot building located on Parcel 3, all of which are served by common driveways, parking, and pedestrian walkways, and all of which comprise the Alan Byer Volvo facility (collectively, the "Improvements"); (iii) the renovation to the Improvements and the Land include, but are not limited to, the interior showroom, sales offices and reception areas, external replacement of entry, new exterior wall finishes, updated signage, the existing basement, replacement of an area of deteriorating floor slab, refreshed directional pavement graphics and roof replacement (collectively with the Land and Improvements, the "Facility"); (iv) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment (the "Equipment" and together with the Land, Improvements and the Facility, the "Project Facility"); (B) the granting of certain financial assistance in the form of exemptions from real property tax, State and local sales and use tax and mortgage recording tax (in accordance with Section 874 of the General Municipal Law) (collectively the "Financial Assistance"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, reconstruction, renovation, equipping and completion of the Project Facility; and (D) the lease of the Land and Facility by the Agency

pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement. The Trust and Byer are the fee owners of Parcel 1. Realty is the fee owner of Parcel 2 and Parcel 3. The Agency will at the above-stated time and place hear all persons with views with respect to the proposed Financial Assistance to the Company. A copy of the application and any supplements filed by the Company with the Agency with respect to the Project, including an analysis of the costs and benefits of the Project, are available for public inspection during the business hours at the office of the Agency located at 201 East Washington Street, 6th Floor, Syracuse, New York. Dated: August 5, 2019 CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY



# BOUSQUET HOLSTEIN PLLC

110 WEST FAYETTE STREET • ONE LINCOLN CENTER • SUITE 1000 • SYRACUSE, NEW YORK 13202 • PH: 315.422.1500 • FX: 315.422.3549

August 5, 2019

**VIA CERTIFIED MAIL**  
7017 0530 0000 5685 3921

Honorable Benjamin Walsh  
Mayor, City of Syracuse  
City Hall  
233 East Washington Street  
Syracuse, New York 13202

**VIA CERTIFIED MAIL**  
7018 3090 0000 3323 3505

Honorable J. Ryan McMahon, II  
County Executive, Onondaga County  
John Mulroy Civic Center, 14<sup>th</sup> Floor  
421 Montgomery Street  
Syracuse, New York 13202

Re: City of Syracuse Industrial Development Agency (the "**Agency**")  
Alan Byer Auto Sales, Inc., Alan I Byer Family Trust, Stephen Gary Byer,  
and West Genesee Realty Associates, LLC (collectively, the "**Company**")  
Alan Byer Volvo Facility Project

Dear Mayor and County Executive:

Enclosed herewith please find a notice to reopen a public hearing in relation to the above-referenced project. The proposed project (the "**Project**") consists of: (A)(i) the acquisition of an interest in: (1) approximately 1.89 acres of improved real property bearing tax map number 108.1-02-19 and commonly referred to as 1232-36 West Genesee Street (also known as 1230 West Genesee Street) ("**Parcel 1**"); (2) approximately 3 acres of improved real property bearing tax map number 108.1-02-35.1 and commonly referred to as 1232 West Genesee Street (rear) ("**Parcel 2**"); and (3) approximately 2 acres of improved real property bearing tax map number 108.1-02-20 and commonly referred to as 1288 West Genesee Street ("**Parcel 3**"), each in the City of Syracuse, New York (collectively, the "**Land**"); (ii) certain improvements, including but not limited to, an existing approximately 25,820 square foot building located on Parcel 1; an existing approximately 17,000-square foot building located on Parcel 2; and an approximately 34,802 square foot building located on Parcel 3, all of which are served by common driveways, parking, and pedestrian walkways, and all of which comprise the Alan Byer Volvo facility (collectively, the "**Improvements**"); (iii) the renovation to the Improvements and the Land



Honorable Benjamin Walsh  
Honorable J. Ryan McMahon, II  
August 5, 2019  
Page 2

include, but are not limited to, the interior showroom, sales offices and reception areas, external replacement of entry, new exterior wall finishes, updated signage, the existing basement, replacement of an area of deteriorating floor slab, refreshed directional pavement graphics and roof replacement (collectively with the Land and Improvements, the "*Facility*"); (iv) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment (the "*Equipment*" and together with the Land, Improvements and the Facility, the "*Project Facility*"); (B) the granting of certain financial assistance in the form of exemptions from real property tax, State and local sales and use tax and mortgage recording tax (in accordance with Section 874 of the General Municipal Law) (collectively the "*Financial Assistance*"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, reconstruction, renovation, equipping and completion of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement.

General Municipal Law Section 859-a requires that notice of the Public Hearing be given to the chief executive officer of each affected tax jurisdiction in which the Project is located.

As stated in the notice, the public hearing is scheduled for **August 20, 2019** at 8:00 a.m. in the Common Council Chambers at City Hall.

Very truly yours,

Susan R. Katzoff

SRK/llm  
Enclosure

cc: Judy DeLaney, City of Syracuse Industrial Development Agency, via email  
(w/Enclosure)

## NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that the public hearing held on April 16, 2019 pursuant to Section 859-a of the New York General Municipal Law, will be reopened by the City of Syracuse Industrial Development Agency (the "Agency") on the 20<sup>th</sup> day of August, 2019, at 8:00 a.m., local time, at 233 East Washington Street, Common Council Chambers, City Hall, Syracuse, New York, in connection with the following matter:

Alan Byer Auto Sales, Inc. ("Alan Sales"), Alan I Byer Family Trust (the "Trust"), Stephen Gary Byer ("Byer") and West Genesee Realty Associates, LLC ("Realty" and together with Alan Sales, the Trust and Byer collectively, the "Company"), requested the Agency undertake a project (the "Project") consisting of: (A)(i) the acquisition of an interest in: (1) approximately 1.89 acres of improved real property bearing tax map number 108.1-02-19 and commonly referred to as 1232-36 West Genesee Street (also known as 1230 West Genesee Street) ("Parcel 1"); (2) approximately 3 acres of improved real property bearing tax map number 108.1-02-35.1 and commonly referred to as 1232 West Genesee Street (rear) ("Parcel 2"); and (3) approximately 2 acres of improved real property bearing tax map number 108.1-02-20 and commonly referred to as 1288 West Genesee Street ("Parcel 3"), each in the City of Syracuse, New York (collectively, the "Land"); (ii) certain improvements, including but not limited to, an existing approximately 25,820 square foot building located on Parcel 1; an existing approximately 17,000-square foot building located on Parcel 2; and an approximately 34,802 square foot building located on Parcel 3, all of which are served by common driveways, parking, and pedestrian walkways, and all of which comprise the Alan Byer Volvo facility (collectively, the "Improvements"); (iii) the renovation to the Improvements and the Land include, but are not limited to, the interior showroom, sales offices and reception areas, external replacement of entry, new exterior wall finishes, updated signage, the existing basement, replacement of an area of deteriorating floor slab, refreshed directional pavement graphics and roof replacement (collectively with the Land and Improvements, the "Facility"); (iv) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment (the "Equipment" and together with the Land, Improvements and the Facility, the "Project Facility"); (B) the granting of certain financial assistance in the form of exemptions from real property tax, State and local sales and use tax and mortgage recording tax (in accordance with Section 874 of the General Municipal Law) (collectively the "Financial Assistance"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, reconstruction, renovation, equipping and completion of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement.

The Trust and Byer are the fee owners of Parcel 1. Realty is the fee owner of Parcel 2 and Parcel 3.

The Agency will at the above-stated time and place hear all persons with views with respect to the proposed Financial Assistance to the Company.

A copy of the application and any supplements filed by the Company with the Agency with respect to the Project, including an analysis of the costs and benefits of the Project, are

available for public inspection during the business hours at the office of the Agency located at 201 East Washington Street, 6<sup>th</sup> Floor, Syracuse, New York.

Dated: August 5, 2019

CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY



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Honorable Benjamin Walsh  
Mayor, City of Syracuse  
City Hall  
233 East Washington Street  
Syracuse, New York 13202



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 Addressee

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*MAYOR*

C. Date of Delivery

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1. Article Addressed to:

Honorable J. Ryan McMahon, II  
County Executive, Onondaga County  
John Mulroy Civic Center, 14th Floor  
421 Montgomery Street  
Syracuse, New York 13202



9590 9402 4819 9032 0711 52

2. Article Number (Transfer from service label)

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PS Form 3811, July 2015 PSN 7530-02-000-9053

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature

X *MCM*  Agent  
 Addressee

B. Received by (Printed Name)

*AUG 6 2019*

C. Date of Delivery

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If YES, enter delivery address below:  No

3. Service Type

- Adult Signature
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- Certified Mail Restricted Delivery
- Collect on Delivery
- Collect on Delivery Restricted Delivery
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Honorable J. Ryan McMahon, II  
County Executive, Onondaga County  
John Mulroy Civic Center, 14th Floor  
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Honorable Benjamin Walsh  
Mayor, City of Syracuse  
City Hall  
233 East Washington Street  
Syracuse, New York 13202

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**EXHIBIT "O"**  
**AMENDED PILOT RESOLUTION**

## AMENDED PILOT RESOLUTION

A regular meeting of the City of Syracuse Industrial Development Agency was convened in public session on August 20, 2019 at 8:00 o'clock a.m., local time, in the Common Council Chambers, City Hall, 233 East Washington Street, Syracuse, New York.

The meeting was called to order by the Chairman and upon roll being called, the following members of the Agency were:

**PRESENT:** Michael Frame, Kathleen Murphy, Steven Thompson, Rickey T. Brown, Kenneth Kinsey

**THE FOLLOWING PERSONS WERE ALSO PRESENT:** Staff Present: Judith DeLaney, Susan Katzoff, Esq., John Vavonese, Debra Ramsey-Burns; Others Present: James Trasher, Rich Pascarella, Aggie Lane, Mitch Lattimer, Eric Ennis, Joseph Marua, Peter King, Mark Olsen, Paul Reichel, Esq., Tom Laws, Linda Malik, Gail Montplaisir, NK Smith, Jen Tiffit, Scott Gerharz

The following resolution was offered by Kathleen Murphy and seconded by Steven Thompson:

### **RESOLUTION APPROVING AN AMENDED PAYMENT IN LIEU OF TAX SCHEDULE AND AUTHORIZING THE EXECUTION AND DELIVERY OF CERTAIN DOCUMENTS BY THE AGENCY IN CONNECTION WITH A PILOT AGREEMENT**

**WHEREAS**, the City of Syracuse Industrial Development Agency (the "**Agency**") is authorized and empowered by Title 1 of Article 18-A of the General Municipal Law of the State of New York (the "**State**"), as amended, together with Chapter 641 of the Laws of 1979 of the State of New York, as amended from time to time (collectively, the "**Act**") to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial, research and recreation facilities, including industrial pollution control facilities, railroad facilities and certain horse racing facilities, for the purpose of promoting, attracting, encouraging and developing recreation and economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State, to improve their recreation opportunities, prosperity and standard of living, and to prevent unemployment and economic deterioration; and

**WHEREAS**, to accomplish its stated purposes, the Agency is authorized and empowered under the Act to acquire, lease and sell real property and grant financial assistance in connection with one or more "projects" (as defined in the Act); and by application dated October 23, 2018 (the "**Original Application**"), Alan Byer Auto Sales, Inc. and Alan I Byer Family Trust (collectively, the "**Original Company**"), requested the Agency undertake a certain project (the "**Original Project**") consisting of: (A)(i) the acquisition of an interest in approximately 1.89

acres of improved real property located at 1232-36 West Genesee Street (also known as 1230 West Genesee Street), in the City of Syracuse, New York (the "**Original Land**"); (ii) the renovation of an existing approximately 25,820 square foot building for use as an auto dealership, including but not limited to, renovation of interior showroom, sales offices and reception areas, external replacement of entry, new exterior wall finishes, updated signage and roof replacement, all located on the Land (the "**Original Facility**"); (iii) the acquisition and installation in and at the Original Land and Original Facility of furniture, fixtures and equipment (the "**Original Equipment**" and together with the Original Land and the Original Facility, the "**Original Project Facility**"); (B) the granting of certain financial assistance in the form of exemptions from real property tax, State and local sales and use tax and mortgage recording tax (in accordance with Section 874 of the General Municipal Law) (collectively the "**Original Financial Assistance**"); (C) the appointment of the Original Company or its designee as an agent of the Agency in connection with the acquisition, reconstruction, renovation, equipping and completion of the Original Project Facility; and (D) the lease of the Original Land and Original Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Original Equipment pursuant to a bill of sale from the Original Company to the Agency; and the sublease of the Original Project Facility back to the Original Company pursuant to a sublease agreement; and

**WHEREAS**, the Agency conducted a public hearing with respect to the Project and the Original Financial Assistance on December 18, 2018 pursuant to Section 859-a of the Act (the "**First Public Hearing**"), notice of which was published; and

**WHEREAS**, pursuant to Article 8 of the Environmental Conservation Law of the State of New York, as amended, and the regulations of the Department of Environmental Conservation of the State of New York promulgated thereunder (collectively referred to hereinafter as "**SEQRA**"), the Agency has examined the EAF prepared by the Company in order to classify the Project and has determined that the Project constitutes a "Type II" action as that term is defined under SEQRA; and

**WHEREAS**, by resolution adopted December 18, 2018 (the "**Original Inducement Resolution**"), the Agency authorized the undertaking, acquisition, reconstruction, renovation, equipping and completion of the Original Project and the execution and delivery of an agency agreement by and between the Original Company and the Agency (the "**Original Agency Agreement**"); and

**WHEREAS**, by Supplemental Application dated March, 2019 (the "**Supplemental Application**" and together with the Original Application, the "**Application**"), Alan Byer Auto Sales, Inc., Alan I Byer Family Trust, Stephen Gary Byer and West Genesee Realty Associates, LLC (collectively, the "**Company**"), advised the Agency of certain modifications to the Original Project as well as the Original Company, and requested the Agency undertake, at the request of the Company, a project (the "**Project**") as amended and consisting of: (A)(i) the acquisition of an interest in: (1) approximately 1.89 acres of improved real property bearing tax map number 108.1-02-19 and commonly referred to as 1232-36 West Genesee Street (also known as 1230 West Genesee Street) ("**Parcel I**"); (2) approximately 3 acres of improved real property bearing tax map number 108.1-02-35.1 and commonly referred to as 1232 West Genesee Street (rear)

("Parcel 2"); and (3) approximately 2 acres of improved real property bearing tax map number 108.1-02-20 and commonly referred to as 1288 West Genesee Street ("Parcel 3"), each in the City of Syracuse, New York (collectively, the "Land"); (ii) certain improvements, including but not limited to, an existing approximately 25,820 square foot building located on Parcel 1; an existing approximately 17,000-square foot building located on Parcel 2; and an approximately 34,802 square foot building located on Parcel 3, all of which are served by common driveways, parking, and pedestrian walkways, and all of which comprise the Alan Byer Volvo facility (collectively, the "Improvements"); (iii) the renovation to the Improvements and the Land include, but are not limited to, the interior showroom, sales offices and reception areas, external replacement of entry, new exterior wall finishes, updated signage, the existing basement, replacement of an area of deteriorating floor slab, refreshed directional pavement graphics and roof replacement (collectively with the Land and Improvements, the "Facility"); (iv) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment (the "Equipment" and together with the Land, Improvements and the Facility, the "Project Facility"); (B) the granting of certain financial assistance in the form of exemptions from real property tax, State and local sales and use tax and mortgage recording tax (in accordance with Section 874 of the General Municipal Law) (collectively the "Financial Assistance"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, reconstruction, renovation, equipping and completion of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement; and

WHEREAS, the Agency conducted a second public hearing with respect to the project and the proposed Financial Assistance on April 16, 2019 pursuant to Section 859-a of the Act (the "**Second Public Hearing**"), notice of which was published; and

WHEREAS, by resolution adopted July 16, 2019 (the "**Amended Inducement Resolution**"), the Agency authorized the undertaking, acquisition, reconstruction, renovation, equipping and completion of the Project and the execution and delivery of an agency agreement by and between the Company and the Agency (the "**Agency Agreement**"); and

WHEREAS, as part of the amended Project, the Company requested the Agency consider an amended payment in lieu of tax schedule (the "**PILOT**"), as more fully described on **Exhibit "A"** attached hereto, which schedule conforms with the Agency's Uniform Tax Exemption Policy ("**UTEP**") established pursuant to General Municipal Law Section 874(4) and accounts for the additional parcels included in the Supplemental Application; and

WHEREAS, on August 20, 2019, the Agency reopened the public hearing with respect to the Project and in particular the cost benefit analysis as it relates to the proposed PILOT, which had not been completed at the time of the Second Public Hearing, pursuant to Section 859-a of the Act (the "**Third Public Hearing**"), notice of which was published on August 6, 2019, in the Post-Standard, a newspaper of general circulation in the City of Syracuse, New York and given to the chief executive officers of the affected tax jurisdictions by letters dated August 5, 2019; and

**WHEREAS**, the Agency has given due consideration to the Application and to representations by the Company that the proposed PILOT, as part of the Financial Assistance: (i) will induce the Company to develop the Project Facility in the City of Syracuse; and (ii) will not result in the removal of a commercial, industrial or manufacturing plant or facility of the Company or any other proposed occupant of the Project Facility from one area of the State to another area of the State or in the abandonment of one or more plants or facilities of the Company or any other proposed occupant of the Project Facility located in the State, except as may be permitted by the Act; (iii) undertaking the Project will advance job opportunities in the State and promote the general prosperity and economic welfare of the inhabitants of the City of Syracuse in furtherance of the purposes of the Act.

**NOW, THEREFORE**, be it resolved by the members of the City of Syracuse Industrial Development Agency, as follows:

(1) Based upon the representations made by the Company to the Agency, and the reasons presented by the Company in support of its request for the PILOT schedule, the Agency hereby approves and the (Vice) Chairman and Executive Director, acting individually, are each authorized to execute and deliver a PILOT agreement (the "**PILOT Agreement**") providing for the payment schedule attached as **Exhibit "A"** hereto, all in such form and substance as shall be substantially the same as approved by the Agency for other similar transactions, and in consultation with the assessor for the City of Syracuse, New York, and consistent with this Resolution and as approved by the Chairman or Vice Chairman of the Agency upon the advice of counsel to the Agency. As a condition to the execution and delivery of the PILOT Agreement, the Company shall execute and deliver all of the Lease Documents (as defined in the Amended Inducement Resolution) and the final appointment of the Company as Agency's agent shall be in place.

(2) The (Vice) Chairman and/or Executive Director, acting individually, are each hereby authorized and directed, for and in the name and on behalf of the Agency, to execute and deliver the documents and agreements identified herein and any and all such additional certificates, instruments, documents or affidavits, to pay any such other fees, charges and expenses, to make such other changes, omissions, insertions, revisions, or amendments to the documents referred to herein as the (Vice) Chairman shall approve, and to do and cause to be done any such other acts and things, as they determine, on advice of counsel to the Agency, may be necessary or desirable to consummate the transactions contemplated by this Resolution.

(3) No covenant, stipulation, obligation or agreement contained in this resolution or any document referred to above shall be deemed to be the covenant, stipulation, obligation or agreement of any member, officer, agent or employee of the Agency in his or her individual capacity. Neither the members nor officers of the Agency, nor any person executing any documents referred to above on behalf of the Agency, shall be liable thereon or be subject to any personal liability or accountability by reason of the execution or delivery thereof.

(4) The Secretary and/or the Executive Director of the Agency are hereby authorized to distribute copies of this Resolution to the Company and to do such further things or perform such acts as may be necessary or convenient to implement the provisions of this Resolution.

(5) This Resolution shall take effect immediately, but is subject to execution by the Company of a PILOT Agreement, the Lease Documents and the Agreement (as defined in the Amended Inducement Resolution) and all other resolutions and other related documents adopted and/or approved by the Agency and/or as set forth herein.

(6) A copy of this Resolution, together with the attachments hereto, shall be placed on file in the office of the Agency where the same shall be available for public inspection during business hours.

The question of the adoption of the foregoing Resolution was duly put to vote on a roll call, which resulted as follows:

	<u>AYE</u>	<u>NAY</u>
Michael Frame	X	
Kathleen Murphy	X	
Steven Thompson	X	
Rickey T. Brown	X	
Kenneth Kinsey	X	

The foregoing Resolution was thereupon declared duly adopted.

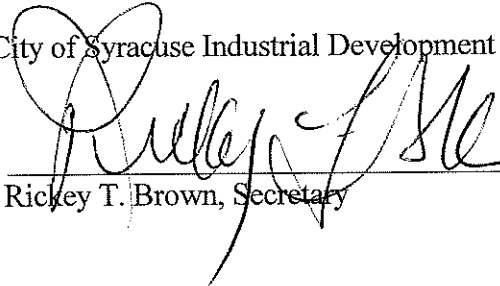
STATE OF NEW YORK            )  
  ) SS.:  
COUNTY OF ONONDAGA        )

I, the undersigned Secretary of the City of Syracuse Industrial Development Agency, **DO HEREBY CERTIFY** that I have compared the annexed extract of the minutes of the meeting of the City of Syracuse Industrial Development Agency (the “Agency”) held on August 20, 2019, with the original thereof on file in my office, and that the same (including any and all exhibits) is a true and correct copy of the proceedings of the Agency and of the whole of such original insofar as the same relates to the subject matters referred to therein.

**I FURTHER CERTIFY** that (i) all members of the Agency had due notice of such meeting, (ii) pursuant to Section 104 of the Public Officers Law (Open Meetings Law), such meeting was open to the general public and public notice of the time and place of such meeting was duly given in accordance with such Section 104, (iii) the meeting was in all respects duly held, and (iv) there was a quorum present throughout.

**I FURTHER CERTIFY** that, as of the date hereof, the attached resolution is in full force and effect and has not been amended, repealed or rescinded.

**IN WITNESS WHEREOF**, I have set my hand and affixed the seal of the Agency this 10 day of September, 2019.

City of Syracuse Industrial Development Agency  
  
\_\_\_\_\_  
Rickey T. Brown, Secretary

(SEAL)



**EXHIBIT "A"**

**PROPOSED PILOT SCHEDULE**

<i>Year</i>	<i>Amount</i>
1	\$89,798.97
2	\$91,594.95
3	\$93,426.85
4	\$95,295.39
5	\$97,201.30
6	\$99,145.32
7	\$101,128.23
8	\$114,927.21
9	\$129,237.71
10	\$144,074.65
<b>Total</b>	<b>\$1,055,830.59</b>

**EXHIBIT "P"**

**AMENDED FINAL APPROVING RESOLUTION**

## AMENDED FINAL APPROVING RESOLUTION

A regular meeting of the City of Syracuse Industrial Development Agency was convened in public session on August 20, 2019 at 8:00 o'clock a.m., local time, in the Common Council Chambers, City Hall, 233 East Washington Street, Syracuse, New York.

The meeting was called to order by the Chairman and upon roll being called, the following members of the Agency were:

**PRESENT:** Michael Frame, Kathleen Murphy, Steven Thompson, Rickey T. Brown, Kenneth Kinsey

**THE FOLLOWING PERSONS WERE ALSO PRESENT:** Staff Present: Judith DeLaney, Susan Katzoff, Esq., John Vavonese, Debra Ramsey-Burns; Others Present: James Trasher, Rich Pascarella, Aggie Lane, Mitch Lattimer, Eric Ennis, Joseph Marua, Peter King, Mark Olsen, Paul Reichel, Esq., Tom Laws, Linda Malik, Gail Montplaisir, NK Smith, Jen Tiff, Scott Gerharz

The following resolution was offered by Kathleen Murphy and seconded by Steven Thompson:

### **RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF CERTAIN DOCUMENTS BY THE AGENCY IN CONNECTION WITH A COMMERCIAL PROJECT UNDERTAKEN AT THE REQUEST OF THE COMPANY**

**WHEREAS**, the City of Syracuse Industrial Development Agency (the "**Agency**") is authorized and empowered by Title 1 of Article 18-A of the General Municipal Law of the State of New York (the "**State**"), as amended, together with Chapter 641 of the Laws of 1979 of the State of New York, as amended from time to time (collectively, the "**Act**"), to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial, research and recreation facilities, for the purpose of promoting economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State, to improve their recreation opportunities, prosperity and standard of living; and

**WHEREAS**, Alan Byer Auto Sales, Inc. and Alan I Byer Family Trust (collectively, the "**Original Company**"), by application dated October 23, 2018 (the "**Original Application**"), requested the Agency undertake a certain project (the "**Original Project**") consisting of: (A)(i) the acquisition of an interest in approximately 1.89 acres of improved real property located at 1232-36 West Genesee Street (also known as 1230 West Genesee Street), in the City of Syracuse, New York (the "**Original Land**"); (ii) the renovation of an existing approximately 25,820 square foot building for use as an auto dealership, including but not limited to, renovation of interior showroom, sales offices and reception areas, external replacement of entry, new

exterior wall finishes, updated signage and roof replacement, all located on the Original Land (the "**Original Facility**"); (iii) the acquisition and installation in and at the Original Land and Original Facility of furniture, fixtures and equipment (the "**Original Equipment**" and together with the Original Land and the Original Facility, the "**Original Project Facility**"); (B) the granting of certain financial assistance in the form of exemptions from real property tax, State and local sales and use tax and mortgage recording tax (in accordance with Section 874 of the General Municipal Law) (collectively the "**Original Financial Assistance**"); (C) the appointment of the Original Company or its designee as an agent of the Agency in connection with the acquisition, reconstruction, renovation, equipping and completion of the Original Project Facility; and (D) the lease of the Original Land and Original Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Original Equipment pursuant to a bill of sale from the Original Company to the Agency; and the sublease of the Original Project Facility back to the Original Company pursuant to a sublease agreement; and

**WHEREAS**, the Agency conducted a public hearing with respect to the project and the proposed Financial Assistance on December 18, 2018 pursuant to Section 859-a of the Act (the "**First Public Hearing**"), notice of which was published; and

**WHEREAS**, pursuant to Article 8 of the Environmental Conservation Law of the State of New York, as amended, and the regulations of the Department of Environmental Conservation of the State of New York promulgated thereunder (collectively referred to hereinafter as "**SEQRA**"), the Agency has examined the EAF prepared by the Company in order to classify the Project and has determined that the Project constitutes a "Type II" action as that term is defined under SEQRA; and

**WHEREAS**, by Supplemental Application dated March, 2019 (the "**Supplemental Application**" and together with the Original Application, the "**Application**"), Alan Byer Auto Sales, Inc., Alan I Byer Family Trust, Stephen Gary Byer and West Genesee Realty Associates, LLC (collectively, the "**Company**"), advised the Agency of certain modifications to the Original Project as well as the Original Company, and requested the Agency undertake, at the request of the Company, a project (the "**Project**") as amended and consisting of: (A)(i) the acquisition of an interest in: (1) approximately 1.89 acres of improved real property bearing tax map number 108.1-02-19 and commonly referred to as 1232-36 West Genesee Street (also known as 1230 West Genesee Street) ("**Parcel 1**"); (2) approximately 3 acres of improved real property bearing tax map number 108.1-02-35.1 and commonly referred to as 1232 West Genesee Street (rear) ("**Parcel 2**"); and (3) approximately 2 acres of improved real property bearing tax map number 108.1-02-20 and commonly referred to as 1288 West Genesee Street ("**Parcel 3**"), each in the City of Syracuse, New York (collectively, the "**Land**"); (ii) certain improvements, including but not limited to, an existing approximately 25,820 square foot building located on Parcel 1; an existing approximately 17,000-square foot building located on Parcel 2; and an approximately 34,802 square foot building located on Parcel 3, all of which are served by common driveways, parking, and pedestrian walkways, and all of which comprise the Alan Byer Volvo facility (collectively, the "**Improvements**"); (iii) the renovation to the Improvements and the Land include, but are not limited to, the interior showroom, sales offices and reception areas, external replacement of entry, new exterior wall finishes, updated signage, the existing basement, replacement of an area of deteriorating floor slab, refreshed directional pavement graphics and

roof replacement (collectively with the Land and Improvements, the "*Facility*"); (iv) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment (the "*Equipment*" and together with the Land, Improvements and the Facility, the "*Project Facility*"); (B) the granting of certain financial assistance in the form of exemptions from real property tax, State and local sales and use tax and mortgage recording tax (in accordance with Section 874 of the General Municipal Law) (collectively the "*Financial Assistance*"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, reconstruction, renovation, equipping and completion of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement; and

**WHEREAS**, the Agency adopted a resolution on July 16, 2019 (the "*Amended Inducement Resolution*") entitled:

**RESOLUTION AUTHORIZING THE UNDERTAKING, ACQUISITION, RECONSTRUCTION, RENOVATION, EQUIPPING AND COMPLETION OF A PROJECT; APPOINTING THE COMPANY AS AGENT OF THE AGENCY FOR THE PURPOSE OF THE ACQUISITION, RECONSTRUCTION, RENOVATION, EQUIPPING AND COMPLETION OF THE PROJECT; AND AUTHORIZING THE EXECUTION AND DELIVERY OF AN AMENDED AGREEMENT BETWEEN THE AGENCY AND THE COMPANY**

which resolution is in full force and effect and has not been amended or modified; and

**WHEREAS**, on August 20, 2019, the Agency reopened the public hearing with respect to the Project and in particular the cost benefit analysis as it relates to the proposed PILOT, which had not been completed at the time of the Second Public Hearing, pursuant to Section 859-a of the Act (the "*Third Public Hearing*"), notice of which was published on August 6, 2019, in the Post-Standard, a newspaper of general circulation in the City of Syracuse, New York and given to the chief executive officers of the affected tax jurisdictions by letters dated August 5, 2019; and

**WHEREAS**, the Agency adopted a resolution on August 20, 2019 (the "*Amended PILOT Resolution*") entitled:

**RESOLUTION APPROVING AN AMENDED PAYMENT IN LIEU OF TAX SCHEDULE AND AUTHORIZING THE EXECUTION AND DELIVERY OF CERTAIN DOCUMENTS BY THE AGENCY IN CONNECTION WITH A PILOT AGREEMENT**

which resolution is in full force and effect and has not been amended or modified; and

**NOW, THEREFORE**, be it resolved by the members of the City of Syracuse Industrial Development Agency, as follows:

**Section 1.** Based upon the representations made by the Company to the Agency and after consideration of the comments received at the public hearing, if any, the Agency hereby ratifies its Amended Inducement Resolution and the Amended PILOT Resolution, and makes the following findings and determinations:

(a) The acquisition of a controlling interest in the Project Facility by the Agency, the granting of the approved Financial Assistance in accordance with the Amended Inducement Resolution, the Amended PILOT Resolution and the designation of the Company as the Agency's agent for completion of the Project will be an inducement to, and permit, the Company to develop and operate the Project Facility in the City of Syracuse, thus serving the public purposes of Article 18-A of the General Municipal Law of New York State by promoting and preserving the job opportunities, general prosperity, health and economic welfare of the inhabitants of the City of Syracuse (the "**City**") in furtherance of the purposes of the Act;

(b) The Project will not result in the removal of a commercial, industrial or manufacturing plant or facility of the Company or any other proposed occupant of the Project Facility from one area of the State to another area of the State or result in the abandonment of one or more plants or facilities of the Company or any other proposed occupant of the Project Facility located in the State, except as may be permitted by the Act;

(c) The commitment of the Agency to provide the approved Financial Assistance in accordance with the Amended Inducement Resolution and the Amended PILOT Resolution to the Company will enable and induce the Company to acquire, reconstruct, renovate, equip and complete the Project Facility;

(d) The acquisition, reconstruction, renovation, equipping and completion of the Project Facility and the attendant promotion of the local economy will advance the job opportunities, health, prosperity and economic welfare of the people of the City and the granting of the Financial Assistance is a necessary component to the financing of the Project;

(e) The Project Facility constitutes a "project" within the meaning of the Act;  
and

(f) It is desirable and in the public interest for the Agency to grant Financial Assistance in connection with the Project.

**Section 2.** It is the policy of the State to promote the economic welfare, recreation opportunities and prosperity of its inhabitants and to actively promote, attract, encourage and develop recreation and economically sound commerce and industry for the purpose of preventing unemployment and economic deterioration. The Project will serve the public purposes of Article 18-A of the General Municipal Law of the State of New York by advancing job opportunities and promoting economic development.

**Section 3.** It is among the purposes of the Agency to promote, develop, encourage and assist in the acquiring, reconstructing, improving, maintaining, equipping and furnishing of certain facilities, including commercial facilities, and thereby advance the job opportunities, health, general prosperity and economic welfare of the people of the State and to improve their recreation opportunities, prosperity and standard of living.

**Section 4.** Subject to the conditions set forth in this and prior resolutions adopted by the Agency, the Project Agreement and the Agreement (each as defined in the Amended Inducement Resolution), the Agency will: (A) acquire a controlling interest in the Project Facility; (B) lease or sell the Land and Facility from the Company pursuant to a lease or sale agreement between the Agency and the Company (the “*Company Lease*”); acquire an interest in the Equipment pursuant to a bill of sale from the Company (the “*Bill of Sale*”); and sublease or sell the Project Facility to the Company pursuant to a sublease or sale agreement (the “*Agency Lease*”); (C) secure the Company’s borrowings with respect to the Project Facility by joining in one or more construction or permanent mortgages on the Project Facility in favor of the Company’s lenders(s); (D) provide the approved Financial Assistance; and (E) execute and deliver any other documents necessary to effectuate the actions contemplated by and consistent with this Resolution upon the advice of counsel to the Agency.

**Section 5.** The (Vice) Chairman and the Executive Director of the Agency, acting individually, are each hereby authorized and directed, for and in the name and on behalf of the Agency, to execute and deliver the documents and agreements identified in Section 4 of this Resolution as well as the Lease Documents (as defined in the Amended Inducement Resolution) and any such additional certificates, instruments, documents or affidavits, to pay any such other fees, charges and expenses, to make such other changes, omissions, insertions, revisions, or amendments to the documents referred to in Section 4 of this Resolution and to do and cause to be done any such other acts and things, as they determine, on advice of counsel to the Agency, may be necessary or desirable to consummate the transactions contemplated by this Resolution.

**Section 6.** No covenant, stipulation, obligation or agreement contained in this resolution or any document referred to herein shall be deemed to be the covenant, stipulation, obligation or agreement of any member, officer, agent or employee of the Agency in his or her individual capacity. Neither the members nor officers of the Agency, nor any person executing any documents referred to above on behalf of the Agency, shall be liable thereon or be subject to any personal liability or accountability by reason of the execution or delivery thereof.

**Section 7.** Bousquet Holstein PLLC, as counsel to the Agency, is hereby authorized to work with the Company and others to prepare, for submission to the (Vice)Chairman and/or the Executive Director, all documents necessary to effect the undertaking of the Project and the grant of Financial Assistance in connection with the Project.

**Section 8.** The approvals provided for herein are contingent upon the Company’s payment of all of the Agency’s fees and costs, including but not limited to attorneys fees.

**Section 9.** The Secretary and/or Executive Director of the Agency is hereby authorized to distribute copies of this Resolution and do such further things or perform such acts as may be necessary or convenient to implement the provisions of this Resolution.

**Section 10.** This Resolution shall take effect immediately. A copy of this Resolution, together with the attachments hereto, shall be placed on file in the office of the Agency where the same shall be available for public inspection during business hours.

The question of the adoption of the foregoing resolution was duly put to vote on a roll call, which resulted as follows:

	<b><u>AYE</u></b>	<b><u>NAY</u></b>
Michael Frame	X	
Kathleen Murphy	X	
Steven Thompson	X	
Rickey T. Brown	X	
Kenneth Kinsey	X	

The foregoing Resolution was thereupon declared duly adopted.



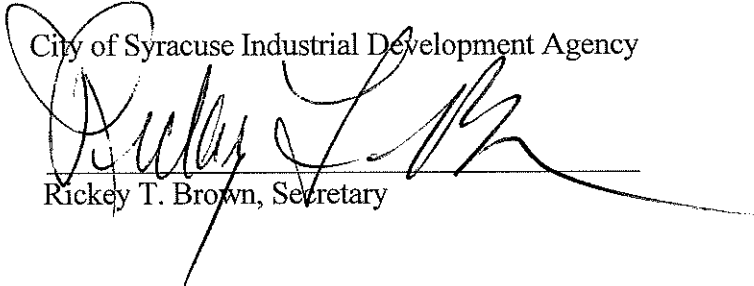
STATE OF NEW YORK            )  
  ) SS.:  
COUNTY OF ONONDAGA        )

I, the undersigned Secretary of the City of Syracuse Industrial Development Agency, **DO HEREBY CERTIFY** that I have compared the annexed extract of the minutes of the meeting of the City of Syracuse Industrial Development Agency (the “Agency”) held on August 20, 2019, with the original thereof on file in my office, and that the same (including all exhibits) is a true and correct copy of the proceedings of the Agency and of the whole of such original insofar as the same relates to the subject matters referred to therein.

**I FURTHER CERTIFY** that (i) all members of the Agency had due notice of such meeting, (ii) pursuant to Section 104 of the Public Officers Law (Open Meetings Law), such meeting was open to the general public and public notice of the time and place of such meeting was duly given in accordance with such Section 104, (iii) the meeting was in all respects duly held, and (iv) there was a quorum present throughout.

**I FURTHER CERTIFY** that, as of the date hereof, the attached resolution is in full force and effect and has not been amended, repealed or rescinded.

**IN WITNESS WHEREOF**, I have set my hand and affixed the seal of the Agency this 10 day of September, 2019.

City of Syracuse Industrial Development Agency  
  
\_\_\_\_\_  
Rickey T. Brown, Secretary

(SEAL)



## GENERAL CERTIFICATE OF

### ALAN BYER AUTO SALES, INC.

This certificate is made in connection with the execution by **ALAN BYER AUTO SALES, INC.**, a New York corporation ("**Alan Sales**") of the Project Agreement, the Company Lease, the Agency Lease, the Mortgage, the Environmental Compliance and Indemnification Agreement and any other document now or hereafter executed by Alan Sales in connection with the City of Syracuse Industrial Development Agency (the "**Agency**") agreeing, at the Company's (as defined herein) request, to undertake a project (the "**Project**") consisting of: (A)(i) the acquisition of an interest in: (1) approximately 1.89 acres of improved real property bearing tax map number 108.1-02-19 and commonly referred to as 1232-36 West Genesee Street (also known as 1230 West Genesee Street) ("**Parcel 1**"); (2) approximately 3 acres of improved real property bearing tax map number 108.1-02-35.1 and commonly referred to as 1232 West Genesee Street (rear) ("**Parcel 2**"); and (3) approximately 2 acres of improved real property bearing tax map number 108.1-02-20 and commonly referred to as 1288 West Genesee Street ("**Parcel 3**"), each in the City of Syracuse, New York (collectively, the "**Land**"); (ii) certain improvements, including but not limited to, an existing approximately 25,820 square foot building located on Parcel 1; an existing approximately 17,000-square foot building located on Parcel 2; and an approximately 34,802 square foot building located on Parcel 3, all of which are served by common driveways, parking, and pedestrian walkways, and all of which comprise the Alan Byer Volvo facility (collectively, the "**Improvements**"); (iii) the renovation to the Improvements and the Land include, but are not limited to, the interior showroom, sales offices and reception areas, external replacement of entry, new exterior wall finishes, updated signage, the existing basement, replacement of an area of deteriorating floor slab, refreshed directional pavement graphics and roof replacement (collectively with the Land and Improvements, the "**Facility**"); (iv) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment (the "**Equipment**" and together with the Land, Improvements and the Facility, the "**Project Facility**"); (B) the granting of certain financial assistance in the form of exemptions from real property tax, State and local sales and use tax and mortgage recording tax (in accordance with Section 874 of the General Municipal Law) (collectively the "**Financial Assistance**"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, reconstruction, renovation, equipping and completion of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement.

Alan I. Byer Family Trust, an Inter Vivos Revocable Trust created pursuant to a Third Amended and Restated Trust Agreement dated October 1, 2015 (the "**Trust**"), and Stephen G. Byer ("**Byer**") are the fee owners of Parcel 1. West Genesee Realty Associates, LLC ("**Realty**") is the fee owner of Parcel 2 and Parcel 3. Alan Sales is the operator of the Project Facility and leases the Project Facility from the Trust, Byer and West Genesee Realty Associates, LLC, as applicable, pursuant to certain lease agreements dated December 16, 1991, November 30, 2005 and November 9, 2019 (collectively, the "**Ground Lease**").

Alan Sales, the Trust, Byer and Realty (collectively, the "**Company**") will sublease the

Land and Facility to the Agency pursuant to a Company Lease Agreement dated as of September 1, 2019 (the "**Company Lease**") and transfer its interest in the Equipment to the Agency pursuant to bill of sale dated as of September 1, 2019 (the "**Bill of Sale**") and the Agency will (sub)sublease the Project Facility back to the Company pursuant to an Agency Lease Agreement dated as of September 1, 2019 (the "**Agency Lease**").

Capitalized terms used herein which are not otherwise defined herein shall have the meanings ascribed to such terms in the Agency Lease, except that, for purposes of this certificate: (A) all definitions with respect to any document shall be deemed to refer to such document only as it exists as of the date of this Certificate and not as of any future date; and (B) all definitions with respect to any Person shall be deemed to refer to such Person only as it exists as of the date of this certificate and not as of any future date or to any successor or assign.

The undersigned does hereby certify as follows:

1. Attached hereto as **Exhibit "A"** is a true, correct and complete copy of the Certificate of Incorporation of Alan Sales and any amendments thereto filed with the New York State Secretary of State with proof of publication thereof attached thereto, which Articles (including any amendments) are in full force and effect on the date hereof.

2. Attached hereto as **Exhibit "B"** is a true, correct and complete copy of the Alan Sales' By-Laws, and any amendments thereto, and such By-Laws, as may have been amended, is in full force and effect on the date hereof.

3. Alan Sales is, and at all times will be, a business corporation, duly organized, validly existing and in good standing under the laws of New York State and authorized and licensed under the laws of New York State to transact business as a business corporation for the purpose of owning and operating the Project Facility in New York State. Attached hereto as **Exhibit "C"** is a true and correct copy of a Certificate of Good Standing of Alan Sales issued by the New York State Secretary of State.

4. Alan Sales has full legal right, power and authority to execute and deliver the Company Documents and to consummate the transactions on the part of Alan Sales contemplated by the Company Documents. The Company Documents have been duly authorized, executed, and delivered by the Vice President on behalf of Alan Sales and are in full force and effect as of the date hereof. Attached hereto as **Exhibit "D"** is a true, correct and complete copy of the authorizing resolution of the Vice President of Alan Sales (the "**Resolution**") in respect of the execution, delivery and performance of the Company Documents.

5. Alan Sales understands and agrees that, unless a written waiver is first obtained from the Agency, Alan Sales and its Additional Agents shall utilize local labor, contractors and suppliers for the construction, renovation, reconstruction and equipping of the Project Facility. The term "**local**" shall mean Onondaga, Oswego, Madison, Cayuga, Oneida and Cortland Counties. Alan Sales further understands and agrees that failure to comply with these local labor requirements may result in the revocation or recapture of benefits provided/approved to the Project by the Agency. In furtherance thereof, the Local Access Agreement has been completed and is attached hereto as **Exhibit "E"**.

6. Alan Sales understands and agrees that it is the preference of the Agency that Alan Sales provide opportunities for the purchase of goods and services from: (i) business enterprises located in the City; (ii) certified minority and or women-owned business enterprises; and (iii) business enterprises that employ residents of the City. Alan Sales further understands and acknowledges that consideration will be given by the Agency to Alan Sales' efforts to comply, and compliance, with this objective at any time an extension of benefits is sought or involvement by the Agency with the Project is requested by Alan Sales.

7. Attached hereto as **Exhibit "F"** is a list of all material pending litigation relating to Alan Sales. Except as set forth in Exhibit "F", there is no action, suit, proceeding, inquiry or investigation, at law or in equity, or before or by any court, public board or body, pending or, to the best of our knowledge, threatened against or affecting Alan Sales, (nor to the best of our knowledge is there any basis therefor), wherein an unfavorable decision, ruling or finding would adversely affect (A) the transactions contemplated by the Resolution, (B) the validity or the enforceability of the authorized signatory of Alan Sales or the Company Documents or the transactions contemplated therein or (C) the organization or existence of Alan Sales.

8. All consents, approvals, authorizations or orders of, notices to, or filings, registrations or declarations with, any court or governmental authority, board, agency, commission or body having jurisdiction which are required on behalf of Alan Sales or for the execution and delivery by Alan Sales of the Company Documents or the consummation on the part of Alan Sales of the transactions contemplated thereby have been obtained.

9. After performing due diligence, there is no legal action, suit, proceeding, inquiry or investigation at law or in equity (before or by any court, agency, arbitrator, public board or body or other entity or person) pending or threatened against or affecting Alan Sales or, to the knowledge of Alan Sales, any basis therefor: (i) in any way affecting the organization, existence or good standing of Alan Sales; (ii) contesting or materially affecting the validity or enforceability of the Company Documents; (iii) contesting the powers of Alan Sales or its authority with respect to the Company Documents; (iv) contesting the authority of Alan Sales to act on behalf of Alan Sales or the authority of the representatives of Alan Sales to act on behalf of Alan Sales; (v) wherein an unfavorable decision, ruling or finding would have a material adverse effect on: (A) the financial condition or operations of Alan Sales; or (B) the consummation on the part of Alan Sales of the transactions contemplated by any Company Documents.

10. The execution and delivery by Alan Sales of the Company Documents and the consummation by Alan Sales of the transactions contemplated thereby are not prohibited by, do not violate any provision of, and will not result in a breach of or default under: (i) the organizational documents of Alan Sales; (ii) any applicable law, rule, regulation, order, writ, injunction, judgment or decree of any court or governmental body or other requirement to which Alan Sales is subject; or (iii) any contract, agreement, mortgage, lease, guaranty, commitment or other obligation or instrument to which Alan Sales is a party or by which Alan Sales or its properties is bound.

11. All information concerning the Project Facility and Alan Sales submitted to the Agency and any Mortgagee by Alan Sales is true and correct in all material respects and does not omit to state a material fact necessary to make the statements therein not misleading.

12. Assuming the valid authorization, execution and delivery of the Agency Lease and the other Company Documents by the other parties thereto, the Agency Lease and the other Company Documents, to which Alan Sales is a party, are legal, valid and binding obligations, enforceable against Alan Sales in accordance with their respective terms, except to the extent that enforcement thereof may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights generally or by the exercise of judicial discretion in accordance with general principles of equity. No default by Alan Sales or, to the best of knowledge of the undersigned, no event of default on the part of any other party to the Company Documents has occurred or is continuing and no event has occurred which, with the giving of notice or passage of time or both, would be such an event of default. Alan Sales has duly authorized the taking of and has taken all actions necessary to carry out and give effect to the transactions contemplated to be performed on its part by the Company Documents.

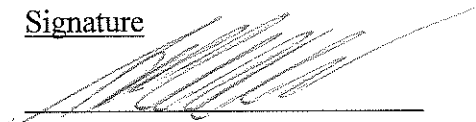
13. All permits (including building permits), licenses and authorizations necessary for the construction, ownership and operation of the Project in the manner contemplated by each of the Company Documents have been obtained or will be obtained, and said construction, ownership and operation will not, to the best knowledge of Alan Sales, conflict with any zoning or similar ordinance applicable to the Project. To the best of Alan Sales' knowledge, the Project conforms to all material environmental regulations.

14. The Project Agreement, the Company Lease, the Agency Lease, the Environmental Compliance and Indemnification Agreement, the PILOT Agreement and the other Company Documents to which Alan Sales is a party have been duly authorized, executed and delivered and are in full force and effect and Alan Sales has not assigned or pledged any of its rights under these documents.

15. Alan Sales acknowledges and restates all of the obligations, representations and covenants in Sections 2.2, 8.12, 11.12 and 11.14 of the Agency Lease and incorporates same herein by reference as if fully set forth herein.

16. Alan Sales further acknowledges its obligation under Section 8.5 of the Agency Lease to provide the additional information as set forth therein and agrees to same.

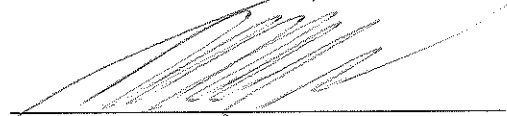
17. The authorized representative of Alan Sales who, pursuant to the Resolution, is authorized to execute the Company Documents and the office held by such person is as set forth below. The signature set opposite the name of such officer, if any, is a genuine specimen of such officer's signature:

<u>Name</u>	<u>Signature</u>	<u>Office/Title</u>
<u>Stephen G. Byer</u>		<u>Vice President</u>

**IN WITNESS WHEREOF**, I have set my hand and signature as officer of Alan Sales as of September 1, 2019.

**ALAN BYER AUTO SALES, INC.**

By:

  
\_\_\_\_\_  
Stephen G. Byer, Vice President

**EXHIBIT "A"**  
**CERTIFICATE OF INCORPORATION**



CERTIFICATE OF INCORPORATION  
OF  
ALAN BYER AUTO SALES, INC.

Pursuant to Article 2 of the Stock Corporation Law,  
WE, the undersigned, for the purpose of forming a corpora-  
tion, pursuant to Article Two of the Stock Corporation Law of the  
State of New York, certify:

1. The name of the Corporation shall be ALAN BYER AUTO  
SALES, INC.
2. The purposes for which the said Corporation is to be  
formed are:

(a) To design, manufacture, assemble, repair, purchase,  
import, export, exhibit, demonstrate, buy and sell at either  
wholesale or retail, rent or lease, transport, and otherwise deal  
in all manner of both new and used automobiles, motor trucks,  
trailers, motorcycles, motor scooters, motor tricycles, motor  
boats, aircraft, and all kinds of vehicles, machines, and contri-  
vances for the transfer, carriage, or transportation of goods,  
passengers, or mails, whether propelled by gas, electricity,  
steam, or other power; motors, engines, chassis, bodies, tires,  
lighting and starting systems, and any and all parts, accessories  
and supplies for motor vehicles, boats, and aircraft of all kinds.  
To contract with manufacturers, dealers, distributors, importers  
and/or exporters of the foregoing, and to act as agent, dealer,  
distributor, or other licensee for the sale of the same at either  
wholesale or retail.

(b) To engage in the business and to operate an automobile  
service station and repair garage, buying and selling gasoline,  
kerosene, lubricating oils and greases, anti-freezes, tires,  
accessories, parts and other supplies for automobiles and tractors.

To establish, maintain, and operate a garage and gasoline-filling station; to do all manner of repairs to automobiles and all manner of self-propelled motor vehicles; to repair tires and to lubricate and wash cars; and to do everything ordinarily done by those engaged in that line of business.

(c) To design, manufacture, buy and sell, import and export, supplies and accessories for automobiles, automobile trucks, and tractors of every make; to repair, reconstruct and overhaul automobiles, automobile trucks, and tractors of all kinds and makes.

(d) To buy or lease real estate and erect thereon a building or buildings for the storage of automobiles, automobile trucks and tractors, or to buy or lease a building or buildings for that purpose and to engage in the business of storing by the hour, day, week, month or year, automobiles, automobile trucks and tractors.

(e) To acquire by purchase or otherwise, and to hold, manage, lease, sell, convey, mortgage and otherwise deal with and dispose of, lands, buildings, tenements, hereditaments, leasehold estates, and other real properties; and to subdivide, plat, improve and develop lands in connection with the purposes hereinbefore set forth and for the purpose of sale or otherwise and to do and perform all things needful and lawful for the development of the same for agriculture, residence, trade and business.

(f) To apply for, purchase or in any manner to acquire; to hold, own, use and operate; to sell or in any manner dispose of; to grant or license other rights in respect of, and in any manner deal with, any and all rights, interests, inventions, improvements and processes used in connection with or secured under letter, patent or copyrights of the United States or other countries; or otherwise, and to work, operate or develop the same.

(g) To purchase, lease or otherwise acquire, and to hold, own, sell or dispose of real and personal property of all kinds

and in particular lands, buildings, business concerns and undertakings, shares of stock, mortgages, bonds, debentures and other securities, merchandise, book debts and claims, trade-marks, trade names, and any interest in real or personal property.

(h) To borrow money for its corporate purposes, and to make, accept, indorse, execute and issue promissory notes, bills of exchange, bonds, debentures or other obligations from time to time, for the purchase of property, or for any purpose in or about the business of the Corporation, and, if deemed proper, to secure the payment of any such obligations by mortgage, pledge, deed of trust or otherwise.

(i) To acquire, and take over as a going concern and thereafter to carry on the business of any person, firm or corporation engaged in any business and in connection therewith to acquire the good will and all or any of the assets, and to assume or otherwise provide for all or any of the liabilities of any such business.

(j) To sell, improve, manage, develop, lease, mortgage, dispose of or otherwise turn to account or deal with all or any part of the property of the Corporation.

(k) To purchase, acquire, hold and dispose of the stocks, bonds, and other evidences of indebtedness of any corporation, domestic or foreign, and to issue in exchange therefor its stock, bonds, or other obligations.

(l) To purchase, hold, sell and transfer the shares of its own capital stock, provided it shall not use its own funds or property for the purchase of its own shares of capital stock when such use would cause an impairment of its capital except as otherwise permitted by law; and provided further that shares of its own capital stock belonging to it shall not be voted upon directly or indirectly.

(m) To carry on business at any place or places within the jurisdiction of the United States, and in any and all foreign countries, and to purchase, hold, mortgage, convey, lease or other-

wise dispose of and deal with real and personal property at any such place or places.

(n) To enter into, make, perform and carry out contracts of every sort and kind which may be necessary or convenient for the business of the Corporation or business of a similar nature with any person, firm, corporation, private, public or municipal body politic under the government of the United States or any state territory or colony thereof or any foreign government, so far as, and to the extent that the same may be done and performed by corporations organized under the Stock Corporation Law.

(o) To do all and everything necessary, suitable or proper for the accomplishment of any of the purposes, the attainment of any of the objects or the furtherance of any of the powers hereinbefore set forth, either alone or in connection with other corporations, firms, or individuals and either as principals, or agents, and to do every other act or acts, thing or things, incidental or appurtenant to or growing out of or connected with the aforesaid objects, purposes or powers of any of them.

(p) The foregoing enumeration of specific powers shall not be deemed to limit or restrict in any manner the general powers of the Corporation, and the enjoyment and exercise thereof, as conferred by the Laws of the State of New York upon corporations organized under the provisions of the Stock Corporation Law.

3. The total number of shares which may be issued by the Corporation is 250 shares of common stock without par value.

The capital of the Corporation shall be at least equal to the sum of the aggregate par value of all issued shares having par value, plus the aggregate amount of consideration received by the Corporation for the issuance of shares without par value, plus such amounts as, from time to time by resolution of the Board of Directors, may be transferred thereto.

The Corporation may issue and sell its authorized shares without par value from time to time and for such consideration as

may be fixed, from time to time, by the Board of Directors. Any and all shares so issued shall be deemed fully paid and non-assessable and the holder of such shares shall not be liable to the Corporation or its creditors in respect hereof.

Each stockholder of record shall be entitled at all meetings of the Corporation and in any other matters requiring a vote, to one vote for each share of stock standing in his name upon the books of the Corporation.

Dividends shall be declared out of the net earnings of the Corporation as and when the Board of Directors shall determine.

4. The Secretary of State is the agent designated for the service of process.

5. The principal office of the Corporation shall be located in the City of Syracuse, County of Onondaga, and State of New York.

6. The duration of the Corporation shall be perpetual.

7. The number of directors of the Corporation shall be three and directors and officers need not be stockholders of the Corporation.

8. The names and post office addresses of the directors until the first annual meeting of the stockholders are:

- Alan I. Byer, 211 Brookford Road, Syracuse, New York
- Lillian M. Byer, 1301 East Genesee Street, Syracuse, New York
- Faye Byer, 211 Brookford Road, Syracuse, New York.

9. The names and post office addresses of the subscribers to this Certificate of Incorporation and the number of shares each agrees to take are as follows:

	<u>No. of Shares</u>
Alan I. Byer, 211 Brookford Rd, Syracuse, N.Y.	One
Lillian M. Byer, 1301 E. Genesee St, Syracuse, N.Y.	One
Faye Byer, 211 Brookford Rd., Syracuse, N.Y.	One.

10. All of the subscribers to this certificate are of full age; at least two-thirds of them are citizens of the United States; at least one of them is a resident of the State of New York and at least one of the persons named as director is a citizen of the United States and a resident of the State of New York.

11. The Secretary of State of New York shall mail a copy

of the process already instituted proceeding against the Corporation  
which may be served upon him to Alan I. Byer, 213 Brookford  
Road, Syracuse, New York.

IN WITNESS WHEREOF, we have made and subscribed this  
Certificate this 18<sup>th</sup> day of December, 1958.

Alan I. Byer

Lillian M. Byer

Faye Byer

STATE OF NEW YORK )  
COUNTY OF ONONDAGA ) SS:  
CITY OF SYRACUSE )

On this 18<sup>th</sup> day of December, 1958, before me, the sub-  
scriber, personally appeared ALAN I. BYER, LILLIAN M. BYER, and  
FAYE BYER, to me personally known and known to me to be the persons  
described in and who executed the foregoing Certificate of Incorpora-  
tion, and they duly severally acknowledged to me what they do,  
severally acknowledged the same.

Notary Public.

HERBERT  
Notary Public  
My commission expires

of the process in any action or proceeding against the Corporation which may be served upon him to Alan I. Byer, 211 Brookford Road, Syracuse, New York.

IN WITNESS WHEREOF, we have made and subscribed this Certificate this 10<sup>th</sup> day of December, 1958.

Alan I. Byer (L.S.)  
 Alan I. Byer

Lillian M. Byer (L.S.)  
 Lillian M. Byer

Faye Byer (L.S.)  
 Faye Byer

STATE OF NEW YORK  
 COUNTY OF ONONDAGA } SS:  
 CITY OF SYRACUSE

On this 10<sup>th</sup> day of December, 1958, before me, the subscriber, personally appeared ALAN I. BYER, LILLIAN M. BYER, and FAYE BYER; to me personally known and known to me to be the persons described in and who executed the foregoing Certificate of Incorporation and their duly sworn affidavits acknowledged to me and they severally acknowledged the same.

State of New York  
 DEPARTMENT OF STATE

11

I CERTIFY That I have compared the preceding copy with the original

Certificate of Incorporation of

ALAN BYER AUTO SALES, INC.,

filed in this department on the 2nd day of January, 1959, and that such copy is a correct transcript therefrom and of the whole of such original.

Witness my hand and the official seal of the Department of State at the City of Albany, this second day of January, one thousand nine hundred and fifty-nine.

Samuel London

Deputy Secretary of State.

**EXHIBIT "B"**

**BY-LAWS**



BY - LAWS

OF

ALAN BYER AUTO SALES, INC.

OFFICES.

1. The principal office of the corporation shall be in the City of Syracuse, County of Onondaga, State of New York.

2. The corporation may also have offices at such other places as the board of directors may from time to time determine or the business of the corporation may require.

MEETINGS OF STOCKHOLDERS.

3. All meetings of the stockholders shall be held at the principal office of the corporation or at such place within the State of New York as the board of directors shall authorize.

4. The annual meeting of the stockholders of the corporation, shall be held on the 12th day of January, at 2:00 o'clock P.M. in each year if not a legal holiday, and, if a legal holiday, then on the next business day following at the same hour, when they shall elect a board of directors and transact such other business as may properly come before the meeting.

5. Written notice of every meeting of stockholders, stating the purpose or purposes for which the meeting is called, the time when and the place within the State of New York where it is to be held, shall be served, either personally or by mail, upon each stockholder entitled to vote at

such meeting and upon each stockholder of record who, by reason of any action proposed at such meeting, would be entitled to have his stock appraised if such action were taken, not less than ten nor more than forty days before the meeting. If mailed, such notice shall be directed to a stockholder at his address as it shall appear on the books of the corporation unless he shall have filed with the secretary of the corporation a written request that notices intended for him be mailed to some other address, in which case it shall be mailed to the address designated in such request. Notice of all meetings may be waived by any stockholder by written waiver or by personal attendance thereat.

6. Special meetings of the stockholders for any purpose or purposes, unless otherwise prescribed by statute or by the certificate of incorporation, may be called by resolution of the board of directors or by the president, and shall be called by the president or secretary at the request in writing of a majority of the board of directors or at the request in writing by stockholders owning a majority in amount of the capital stock of the corporation issued and outstanding. Such request shall state the purpose or purposes of the proposed meeting. The president may, in his discretion, call a special meeting of stockholders upon ten days' notice.

7. Business transacted at all special meetings shall be confined to the purposes stated in the notice of meeting.

8. The holders of a majority of the stock issued and outstanding and entitled to vote thereat, present in person or represented by proxy, shall be requisite and shall constitute a quorum at all meetings of the stockholders for the transaction of business except as otherwise provided by statute or by the certificate of incorporation or by these by-laws.

9. If a quorum shall not be present or represented, the stockholders entitled to vote thereat, present in person or represented by proxy, shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present or represented. At such adjourned meeting at which a quorum shall be present or represented any business may be transacted which might have been transacted at the meeting as originally notified.

10. When a quorum is present or represented at any meeting, the vote of the holders of a majority of the stock having voting power present in person or represented by proxy shall decide any question brought before such meeting, unless the question is one upon which by express provision of the statutes or of the certificate of incorporation or of these by-laws, a different vote is required in which case such express provision shall govern and control the decision of such question.

11. Each stockholder of record having the right to vote shall be entitled at every meeting of the stockholders of the corporation to one vote for each share of stock having voting power standing in the name of such stockholder on the books of the corporation, and such votes may be cast either in person or by written proxy.

12. Every proxy must be executed in writing by the stockholder or by his duly authorized attorney. No proxy shall be valid after the expiration of eleven months from the date of its execution unless it shall have specified therein its duration. Every proxy shall be revocable at the pleasure of the person executing it or of his personal representatives or assigns.

#### DIRECTORS

13. The board of directors shall consist of three (3) directors, who need not be stockholders of the corporation, all of whom shall be of full age and at least one of whom shall be a citizen of the United States and a resident of the State of New York. They shall be elected at the annual meeting of the stockholders and each director shall be elected to serve for one year and until his successor shall be elected and shall qualify.

14. If the office of any director or directors becomes vacant for any reason, the directors in office may choose a successor or successors who shall hold office for the unexpired term in respect to which such vacancy occurred or until the next election of directors, or any vacancy may be filled by the stockholders at any meeting thereof. Any director may be removed either with or without cause, at any time, by vote of the stockholders at any meeting called for the purpose.

15. The business of this corporation shall be managed by its board of directors which may exercise all such powers of the corporation and do all such lawful acts and things as are not by statute or by the certificate of incorporation or by these by-laws required to be exercised or done by the stockholders.

#### MEETINGS OF THE BOARD

16. The directors may hold their meetings at the office of the corporation, or at such other places, either within or without the State of New York, as they may from time to time determine.

17. Regular meetings of the board may be held without notice at such time and place as shall from time to time be determined by resolution of the board.

18. Special meetings of the board may be called by the president on five days' notice to each director either personally or by mail or by wire; special meetings shall be called by the president or secretary in a like manner on the written request of two directors. Notice of meeting may be waived by any director by written waiver or by personal attendance thereat.

19. At any meeting at which every member of the board of directors shall be present, though held without notice, any business may be transacted which might have been transacted if the meeting had been duly called.

20. At all meetings of the board the presence of a majority of the entire number of directors shall be necessary to constitute a quorum and sufficient for the transaction of business.

21. Any act of a majority present at a meeting, at which there is a quorum, shall be the act of the board of directors, except as may be otherwise specifically provided by statute or by the certificate of incorporation or by these by-laws.

22. If a quorum shall not be present at any meeting of directors the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present.

WAIVER OF NOTICE.

23. Whenever by statute, the provisions of the certificate of incorporation or these by-laws, the stockholders or the board of directors are authorized to take any action after notice, such notice may be waived, in writing, before or after the holding of the meeting, by the person or persons entitled to such notice, or, in the case of a stockholder, by his attorney thereunto authorized. Waiver of Notice may be further given by personal attendance at any meeting and a signification of such waiver orally at a meeting, said signification being duly noted upon the minutes of the meeting by the Secretary thereof.

#### OFFICERS.

24. The officers of the corporation shall be a president, a vice-president, a secretary and a treasurer. Any officer may hold more than one office.

25. The directors, immediately after each annual meeting of stockholders, shall elect from their number a president and shall also choose a vice-president, a secretary and a treasurer who need not be members of the board.

26. The board may appoint such other officers, agents and employees as it shall deem necessary who shall have such authority and shall perform such duties as from time to time shall be prescribed by the board.

27. The salaries of all officers of the corporation shall be fixed by the board of directors.

28. The officers of the corporation shall hold office for one year and until their successors are chosen and qualify in their stead. Any officer elected or appointed by the board of directors may be removed at any time by the affirmative vote of a majority of the directors. If the office of any officer becomes vacant for any reason, the vacancy shall be filled by the board of directors.

#### THE PRESIDENT.

29. The president shall be the executive officer of the corporation; he shall preside at all meetings of the stockholders and directors; he shall have the management of the business of the corporation and shall see that all orders and resolutions of the board are carried into effect.

VICE-PRESIDENT.

30. The vice-president in the absence or disability of the president shall perform the duties and exercise the powers of the president and shall perform such other duties as the board of directors shall prescribe.

THE SECRETARY.

31. The secretary shall attend all sessions of the board and all meetings of the stockholders and record all votes and the minutes of all proceedings in a book to be kept for that purpose. He shall give or cause to be given notice of all meetings of stockholders and special meetings of the board of directors and shall perform such other duties as may be prescribed by the board of directors. He shall keep in safe custody the seal of the corporation and affix it to any instrument when authorized by the board of directors.

THE TREASURER.

32. The treasurer shall have the custody of the corporate funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the corporation and shall deposit all moneys and other valuable effects in the name and to the credit of the corporation in such depositories as may be designated by the board of directors. He shall disburse the funds of the corporation as may be ordered by the board, taking proper vouchers for such disbursements, and shall render to the president and directors at the regular meetings of the board, or whenever they may



require it, an account of all his transactions as treasurer and of the financial condition of the corporation.

33. He shall, if required by the board, give the corporation a bond in such sum or sums and with such surety or sureties as shall be satisfactory to the board, conditioned upon the faithful performance of his duties and for the restoration to the corporation in case of his death, resignation, retirement or removal from office of all books, papers, vouchers, money and other property of whatever kind in his possession, or under his control belonging to the corporation.

#### CERTIFICATES OF STOCK.

34. The certificates of stock of the corporation shall be numbered and entered in the books of the corporation as they are issued. They shall exhibit the holder's name and the number of shares and shall be signed by the president or a vice-president and the treasurer or the secretary and shall bear the corporate seal.

#### LOST CERTIFICATES.

35. The board of directors may direct a new certificate or certificates to be issued in place of any certificate or certificates theretofore issued by the corporation, alleged to have been lost or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost or destroyed. When authorizing such issue of a new certificate or certificates, the board of directors may, in its discretion and as a condition precedent to the issuance

thereof, require the owner of such lost or destroyed certificate or certificates, or his legal representative, to advertise the same in such manner as it shall require and/or give the corporation a bond in such sum and with such surety or sureties as it may direct as indemnity against any claim that may be made against the corporation with respect to the certificate alleged to have been lost or destroyed.

#### TRANSFERS OF STOCK.

36. Upon surrender to the corporation or the transfer agent of the corporation of a certificate of stock duly endorsed or accompanied by proper evidence of succession, assignment or authority to transfer, it shall be the duty of the corporation to issue a new certificate to the person entitled thereto, and cancel the old certificate; every such transfer of stock shall be entered on the stock book of the corporation which shall be kept at its principal office. No transfer of stock shall be made within ten days next preceding the annual meeting of stockholders.

37. The corporation shall be entitled to treat the holder of record of any share or shares of stock as the holder in fact thereof and, accordingly, shall not be bound to recognize any equitable or other claim to or interest in such share on the part of any other person whether or not it shall have express or other notice thereof, except as expressly provided by the laws of New York.

### DIVIDENDS.

38. Dividends upon the capital stock of the corporation, subject to any provisions of the certificate of incorporation relating thereto may be declared by the board of directors at any regular or special meeting, pursuant to law.

39. Before payment of any dividend, there may be set aside out of the net profits of the corporation available for dividends such sum or sums as the directors from time to time in their absolute discretion think proper as a reserve fund to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the corporation, or for such other purpose as the directors shall think conducive to the interests of the corporation, and the directors may modify or abolish any such reserve in the manner in which it was created.

### SEAL

40. The seal of the corporation shall be as follows: the name of the corporation, the year of its organization and the words "Corporate Seal, New York." The seal may be used by causing it to be impressed directly on the instrument or writing to be sealed, or upon adhesive substance affixed thereto. The seal on any corporate obligation for the payment of money may be a facsimile, engraved or printed.

#### CHECKS

41. All checks or demands for money and notes of the corporation shall be signed by such officer or officers or such other person or persons as the board of directors may from time to time designate.

#### FISCAL YEAR

42. The fiscal year shall begin the first day of  
in each year.

#### AMENDMENTS

43. These by-laws may be amended, altered or added to by the vote of the Board of Directors of this corporation at any regular meeting of said Board, or at a special meeting of Directors called for that purpose provided a quorum of the Directors as provided by law and by the Certificate of Incorporation, are present at such regular or special meeting. These by-laws, and any amendments thereto and new by-laws added by the directors may be amended, altered or replaced by the stockholders at any annual or special meeting of the stockholders.

State of New York }  
Department of State } ss:

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.

Witness my hand and seal of the Department of State on

SEP 19 1996



A handwritten signature in cursive script, appearing to read "J. Clark", followed by a horizontal line.

Special Deputy Secretary of State

CERTIFICATE OF AMENDMENT  
TO  
CERTIFICATE OF INCORPORATION  
OF

ALAN BYER AUTO SALES, INC.

Under Section 805 of the Business Corporation Law

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The undersigned, being the President and Secretary of ALAN BYER AUTO SALES, INC., hereby certify that:

1. The name of the corporation is ALAN BYER AUTO SALES, INC.
2. The Certificate of Incorporation was filed in the office of the Secretary of State of the State of New York on January 2, 1959.
3. The Certificate of Incorporation is amended as authorized by Section 801 of the Business Corporation Law to change the authorized shares and to fix the relative rights, preferences and limitations of shares of each class.
4. To accomplish the foregoing amendments, paragraph 3 of the Certificate of Incorporation is amended to read as follows:
  - "3. The aggregate number of shares which the corporation shall be authorized to issue is two hundred seventy-five (275) shares of which twenty-five (25) shares without par value shall be designated "Common Stock - Class A" and two hundred fifty (250) shares without par value shall be designated "Common Stock - Class B".

The designation of each class of stock and relative rights, preferences and limitations of the shares of each class are as follows:

(i) The rights, preferences and limitations of the shares of each class shall be identical except as otherwise provided in subparagraph (ii) below.

(ii) The entire voting power of the common stock of the corporation shall be vested exclusively in the holders of outstanding shares of Common Stock - Class A who shall be entitled to one vote for each share of Common Stock - Class A owned. The holders of Common Stock - Class B shall not be entitled to vote."

5. There are presently issued and outstanding two hundred fifty (250) shares of capital stock without par value which shall be changed into twenty-five (25) shares of newly authorized shares of Common Stock - Class A without par value and two hundred fifty (250) shares of newly authorized shares of Common Stock - Class B without par value. Each presently issued and outstanding share and each unissued share of capital stock without par value shall be changed into newly authorized shares of Common Stock - Class A without par value and Common Stock - Class B without par value in the following ratios:

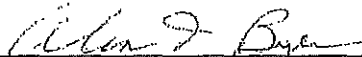
(a) one-tenth (1/10th) share of new Common Stock - Class A for each presently issued and outstanding share of capital stock; and


(b) one (1) share of new Common Stock - Class B for each presently issued and outstanding share of capital stock.

6. The above Amendment to the Certificate of Incorporation was authorized by unanimous vote of the Board of Directors at a meeting of the Board of Directors duly called and held for such

purposes followed by the unanimous vote of the holders of all the outstanding shares entitled to vote thereon at a meeting of the shareholders duly called and held for such purpose.

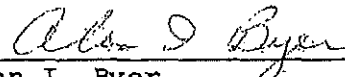
IN WITNESS WHEREOF, we have made and subscribed this Certificate of Amendment this 5<sup>th</sup> day of April, 1995.

  
\_\_\_\_\_  
Alan I. Byer, President

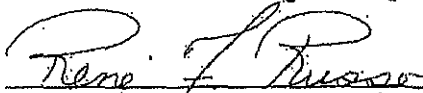
  
\_\_\_\_\_  
Stephen G. Byer, Secretary

STATE OF NEW YORK )  
COUNTY OF ONONDAGA ) SS.:

ALAN I. BYER, being duly sworn, deposes and says that he is the President of ALAN BYER AUTO SALES, INC., the corporation named in the within Certificate of Amendment; that he has been duly authorized to execute and file the foregoing Certificate of Amendment and knows the contents thereof; that the same is true of his own knowledge except as to matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true.

  
\_\_\_\_\_  
Alan I. Byer

Subscribed and sworn to before me this 5<sup>th</sup> day of April, 1995.

  
\_\_\_\_\_  
Notary Public

RENÉ F. RUSSO  
Notary Public in the State of New York  
Qualified in Onondaga County No. 02RU60125211  
My Commission Expires June 15, 1995



**EXHIBIT "C"**  
**GOOD STANDING CERTIFICATE**

**State of New York**  
**Department of State** } **ss:**

*I hereby certify, that the Certificate of Incorporation of ALAN BYER AUTO SALES, INC. was filed on 01/02/1959, fixing the duration as perpetual, and that a diligent examination has been made of the Corporate index for documents filed with this Department for a certificate, order, or record of a dissolution, and upon such examination, no such certificate, order or record has been found, and that so far as indicated by the records of this Department, such corporation is an existing corporation. I further certify the following:*

*A Biennial Statement was filed 03/11/1993.*

*A Certificate of Amendment was filed on 04/12/1995.*

*A Biennial Statement was filed 03/04/1997.*

*A Biennial Statement was filed 01/13/1999.*

*A Biennial Statement was filed 01/17/2001.*

*A Biennial Statement was filed 01/16/2003.*

*A Biennial Statement was filed 02/22/2005.*

*A Biennial Statement was filed 01/26/2007.*

*A Biennial Statement was filed 01/20/2009.*

*A Biennial Statement was filed 01/13/2011.*

*A Biennial Statement was filed 02/20/2013.*

*A Biennial Statement was filed 01/22/2015.*

*A Biennial Statement was filed 01/11/2017.*

*A Biennial Statement was filed 01/02/2019.*

*I further certify that no other documents have been filed by such corporation.*

\*\*\*

*Witness my hand and the official seal  
of the Department of State at the City  
of Albany, this 15th day of August  
two thousand and nineteen.*



*Brendan C. Hughes*

Brendan C. Hughes  
Deputy Secretary of State

201908160465 \* H2

**EXHIBIT "D"**  
**RESOLUTION**

**RESOLVED**, that Stephen Byer, in his capacity as Vice President (an "**Authorized Person**") may, on behalf of and in the name of Alan Byer Auto Sales, Inc. (the "**Company**"), transact with and through the City of Syracuse Industrial Development Agency ("**SIDA**"), all such business as the Authorized Person deems advisable upon such terms as the Authorized Person deems proper including, but not limited to seeking certain financial assistance including (a) an exemption from New York State and local sales and use taxes, (b) an exemption from mortgage recording tax; and (c) a partial abatement from real property taxes ("(a)" through "(c)" immediately above, collectively, the "**Financial Assistance**") with respect to the Company's renovation and equipping (the "**Project**") of the real property and improvements located at 1232-36 West Genesee Street (also known as 1230 West Genesee Street), 1232 West Genesee Street, and 1288 West Genesee Street, each in the City of Syracuse, New York (collectively, the "**Facility**"); and be it further

**RESOLVED**, that the Authorized Person has the power and authority on behalf of the Company to do all such acts and other things as the Authorized Person deems proper, including but not limited to signing and delivering each such document and agreement memorializing the Company's agreements with SIDA in connection with the Financial Assistance, including: (i) an Interim and final Project Agreement; (ii) Bill of Sale; (iii) Environmental Compliance and Indemnification Agreement; (iv) Sales Tax Appointment Letter; (v) General Certificate of Alan Byer Auto Sales, Inc.; (vi) General Certificate of Alan I. Byer Family Trust; (vii) a lease agreement pursuant to which the Company will lease the Facility to SIDA; (viii) a leaseback agreement, pursuant to which SIDA will leaseback the Facility to the Company; (ix) a payment in lieu of taxes agreement; and (x) such other documents as the Company and SIDA deem necessary (li)- (x) collectively referred to as the "Company Documents"; and be it further

**RESOLVED**, upon the due execution by the Authorized Person of the Company Documents, and assuming due execution of same by SIDA, such Company Documents shall be binding upon the Company; and be it further

**RESOLVED**, that the authority given under these Resolutions is retroactive and any and all other actions taken by the Authorized Person acting on behalf of the Company with respect to the Project and/or the Financial Assistance are hereby adopted, ratified and confirmed.

Sign:

  
Stephen Byer, Vice President

Date: As of September 1, 2019

**EXHIBIT "E"**  
**LOCAL ACCESS AGREEMENT**

## City of Syracuse

### Industrial Development Agency

#### Local Access Agreement

Alan Byer Auto Sales, Inc., Alan I. Byer Family Trust, Stephen G. Byer, individually, and West Genesee Realty Associates, LLC (collectively, the "Company"), understands and agrees that local labor, contractors and suppliers will be used for the construction, renovation, reconstruction and equipping of the Project unless a written waiver is first received from the Agency, and agrees to provide the information requested below as a way to provide access for local participation.

<b>Company</b>		Alan Byer Auto Sales, Inc., Alan I. Byer Family Trust, Stephen G. Byer, individually, and West Genesee Realty Associates, LLC				<b>General Contractor</b>		Parsons-McKenna Construction Co., Inc.			
<b>Representative for Contract Bids and Awards</b>		Stephen G. Byer				<b>Contact</b>		Jake McKenna			
<b>Address</b>		1230 West Genesee Street				<b>Address</b>		117 Metropolitan Park Drive			
<b>City</b>	Syracuse	<b>ST</b>	NY	<b>Zip</b>	13204	<b>City</b>	Syracuse	<b>ST</b>	NY	<b>Zip</b>	13088
<b>Phone</b>	315.471.6107		<b>Fax</b>			<b>Phone</b>	315.451.7330		<b>Fax</b>		
<b>Email</b>		sbyer@alanbyervolvo.com				<b>Email</b>		jmckenna@parsonsmckenna.com			
<b>Project Address</b>		1232-36 West Genesee Street (a/k/a 1230 West Genesee Street); 1232 West Genesee Street (rear); and 1288 West Genesee Street				<b>Construction Start Date</b>					
<b>City</b>	Syracuse	<b>ST</b>	NY	<b>Zip</b>	13204	<b>Occupancy Date</b>					

**Project Components – Indicate those for which bids will be sought:**

Item	Estimated Value	Bid Date	Contact
Site work/Demolition			
Foundation and footings			
Building			
Masonry			
Metals			
Wood/casework			
Thermal/moisture proof			
Doors, windows, glazing			
Finishes			
Electrical			
HVAC			
Plumbing			
Specialties			
Machinery & Equipment			
Furniture and Fixtures			
Utilities			
Paving			
Landscaping			
Other (identify)			

Date: \_\_\_\_\_

**Company:** Alan Byer Auto Sales, Inc., Alan I. Byer Family Trust, Stephen G. Byer, individually, and West Genesee Realty Associates, LLC

Signature:  \_\_\_\_\_

**Name:** Stephen G. Byer

As Authorized Signatory for each entity

## **EXHIBIT "F"**

### **PENDING LITIGATION**

Alan Byer Auto Sales, Inc. and North Star Concrete have subjected a payment dispute to arbitration. North Star contends it is due payment of approximately \$148,000 for concrete work performed at the Facility. Sales objected to paying North Star because Sales contends the work was done improperly, causing damages to Sales estimated to be in excess of \$300,000. North Star included Stephen Byer, individually, when filing for arbitration; however, there is no basis for including Byer in the arbitration and counsel requested formal removal of Byer from the process. Each side has submitted its written arguments to the American Arbitration Association and the matter is awaiting assignment to an arbitrator. A decision in favor of North Star will not materially, negatively impact the Project.





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**City of Syracuse**  
**Industrial Development Agency**  
201 East Washington Street, 6<sup>th</sup> Floor  
Syracuse, NY 13202  
Tel (315) 473-3275

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August 22, 2019

Mr. Kevin McAulliffe  
Barclay Damon LLP  
125 East Jefferson Street  
Syracuse, N.Y. 13202  
(via electronic mail)

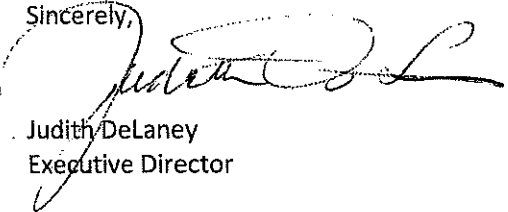
Re: Alan Byer Volvo Facility Project

Dear Kevin,

Please be advised that I have approved the request for a waiver from the Agency's Local Access Policy for the specified contracts outlined in your letter of August 15<sup>th</sup> relative to the above referenced Project.

Should you have any questions or further concerns regarding this please feel free to call.

Sincerely,

  
Judith DeLaney  
Executive Director

BARCLAY DAMON<sup>LLP</sup>

Kevin R. McAuliffe  
Partner

August 15 2019

VIA ELECTRONIC MAIL and US MAIL

Judith DeLaney, Executive Director  
City of Syracuse Industrial Development Agency  
City Hall Commons, 6th Floor  
201 East Washington Street  
Syracuse, New York 13202

RE: City of Syracuse Industrial Development Agency ("SIDA")  
Alan Byer Volvo Facility Project  
Alan Byer Auto Sales, Inc.; Alan I. Byer Family Trust and Stephen Gary Byer, as  
co-partners d/b/a Byer Real Estate Enterprises; West Genesee Realty  
Associates, LLC (collectively, the "Company")

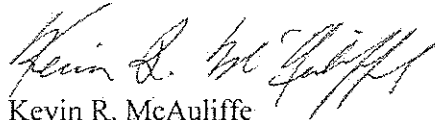
Dear Judy:

As you may recall, the Company is undertaking the Project to satisfy Volvo's standards to maintain the Volvo franchise. Among those standards is the requirement to use certain vendors for signage, entryway construction, and equipment. Because none of the Volvo required vendors satisfy SIDA's Local Access Policy, the Company seeks a waiver of that for the following contracts:

- \$55,320.00 Contract with Pattison Sign Group for construction of Volvo required entryway
- \$109,467.04 Contract with AGI Dealer Solutions for construction and installation of Volvo required signage
- \$162,480.60 Contract with Ideal Image Building Brand Power for Volvo Retail Experience required furniture, fixtures, equipment, and interior signage

If you need additional information to consider the waiver request, please let me know.

Very truly yours,

  
Kevin R. McAuliffe

KRM:ds

cc: Susan R. Katzoff, Esq. (via electronic mail, only)  
Lori L. McRobbie, Paralegal (via electronic mail, only)



**GENERAL CERTIFICATE OF**  
**ALAN I. BYER FAMILY TRUST**

This certificate is made in connection with the execution by **ALAN I. BYER FAMILY TRUST** (the "**Trust**"), a trust duly formed under and pursuant to the laws of the State of New York pursuant to an inter vivos revocable trust agreement dated as of October 1, 2015 (the "**Trust Agreement**") of the Project Agreement, the Company Lease, the Agency Lease, the PILOT Agreement, the Environmental Compliance and Indemnification Agreement and any other document now or hereafter executed by the Trust in connection with the City of Syracuse Industrial Development Agency (the "**Agency**") agreeing, at the Company's (as defined herein) request, to undertake a project (the "**Project**") consisting of: (A)(i) the acquisition of an interest in: (1) approximately 1.89 acres of improved real property bearing tax map number 108.1-02-19 and commonly referred to as 1232-36 West Genesee Street (also known as 1230 West Genesee Street) ("**Parcel 1**"); (2) approximately 3 acres of improved real property bearing tax map number 108.1-02-35.1 and commonly referred to as 1232 West Genesee Street (rear) ("**Parcel 2**"); and (3) approximately 2 acres of improved real property bearing tax map number 108.1-02-20 and commonly referred to as 1288 West Genesee Street ("**Parcel 3**"), each in the City of Syracuse, New York (collectively, the "**Land**"); (ii) certain improvements, including but not limited to, an existing approximately 25,820 square foot building located on Parcel 1; an existing approximately 17,000-square foot building located on Parcel 2; and an approximately 34,802 square foot building located on Parcel 3, all of which are served by common driveways, parking, and pedestrian walkways, and all of which comprise the Alan Byer Volvo facility (collectively, the "**Improvements**"); (iii) the renovation to the Improvements and the Land include, but are not limited to, the interior showroom, sales offices and reception areas, external replacement of entry, new exterior wall finishes, updated signage, the existing basement, replacement of an area of deteriorating floor slab, refreshed directional pavement graphics and roof replacement (collectively with the Land and Improvements, the "**Facility**"); (iv) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment (the "**Equipment**" and together with the Land, Improvements and the Facility, the "**Project Facility**"); (B) the granting of certain financial assistance in the form of exemptions from real property tax, State and local sales and use tax and mortgage recording tax (in accordance with Section 874 of the General Municipal Law) (collectively the "**Financial Assistance**"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, reconstruction, renovation, equipping and completion of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement.

The Trust and Steven Gary Byer ("**Byer**") are the fee owners of Parcel 1. West Genesee Realty Associates, LLC ("**Realty**") is the fee owner of Parcel 2 and Parcel 3. Alan Byer Auto Sales, Inc. ("**Alan Sales**") is the operator of the Project Facility and leases the Project Facility from the Trust, Byer and West Genesee Realty Associates, LLC, as applicable, pursuant to certain lease agreements dated December 16, 1991, November 30, 2005 and November 9, 2019 (collectively, the "**Ground Lease**").

Alan Sales, the Trust, Byer and Realty (collectively, the "*Company*") will sublease the Land and Facility to the Agency pursuant to a Company Lease Agreement dated as of September 1, 2019 (the "*Company Lease*") and transfer its interest in the Equipment to the Agency pursuant to a bill of sale dated as of September 1, 2019 (the "*Bill of Sale*") and the Agency will (sub)sublease the Project Facility back to the Company pursuant to an Agency Lease Agreement dated as of September 1, 2019 (the "*Agency Lease*").

Capitalized terms which are not otherwise defined herein shall have the meanings ascribed to them in the Agency Lease Agreement dated as of September 1, 2019, except that, for purposes of this certificate: (A) all definitions with respect to any document shall be deemed to refer to such document only as it exists as of the date of this certificate and not as of any future date; and (B) all definitions with respect to any Person shall be deemed to refer to such Person only as it exists as of the date of this certificate and not as of any future date or to any successor or assign.

The undersigned does hereby certify as follows:

1. Attached hereto as **Exhibit "A"** is a true, correct and complete copy of the Trust Agreement of the Trust and any amendments thereto which is in full force and effect on the date hereof.

2. The Trust is, and for the term of the Company Documents shall remain, a trust, duly organized and authorized pursuant to the terms of its formation, to own property and transact business as contemplated by the Company Documents.

3. The Trust has full legal right, power and authority to execute and deliver the Company Documents and to consummate the transactions on the part of the Trust contemplated by the Company Documents. The Company Documents have been duly authorized, executed, and delivered by Stephen G. Byer on behalf of the Trust and are in full force and effect as of the date hereof.

4. The Trust understands and agrees that, unless a written waiver is first obtained from the Agency, in accordance with the Agency's Local Access Policy, the Trust and its Additional Agents shall utilize local labor, contractors and suppliers for the construction, renovation, reconstruction and equipping of the Project Facility. The term "*local*" shall mean Onondaga, Oswego, Madison, Cayuga, Oneida and Cortland Counties. The Trust further understands and agrees that failure to comply with these local labor requirements may result in the revocation or recapture of benefits provided/approved to the Project by the Agency. In furtherance thereof, the Local Access Agreement has been completed and is attached hereto as **Exhibit "B"**.

5. The Trust understands and agrees that it is the preference of the Agency that the Trust provide opportunities for the purchase of goods and services from: (i) business enterprises located in the City; (ii) certified minority and or women-owned business enterprises; and (iii) business enterprises that employ residents of the City. the Trust further understands and acknowledges that consideration will be given by the Agency to the Trust's efforts to comply,

and compliance, with this objective at any time an extension of benefits is sought or involvement by the Agency with the Project is requested by the Trust.

6. All consents, approvals, authorizations or orders of, notices to, or filings, registrations or declarations with, any court or governmental authority, board, agency, commission or body having jurisdiction which are required on behalf of the Trust or for the execution and delivery by the Trust of the Company Documents or the consummation on the part of the Trust of the transactions contemplated thereby have been obtained.

7. Attached hereto as **Exhibit "C"** is a list of all material pending litigation relating to the Trust. Except as set forth in Exhibit "C", there is no legal action, suit, proceeding, inquiry or investigation at law or in equity (before or by any court, agency, arbitrator, public board or body or other entity or person) pending or threatened against or affecting the Trust or, to the knowledge of the Trust, any basis therefor: (i) in any way affecting the organization, existence or good standing of the Trust; (ii) contesting or materially affecting the validity or enforceability of the Company Documents; (iii) contesting the powers of the Trust or its authority with respect to the Company Documents; (iv) contesting the authority of the Trust to act on behalf of the Trust or the authority of the representatives of the Trust to act on behalf of the Trust; (v) wherein an unfavorable decision, ruling or finding would have a material adverse effect on: (A) the financial condition or operations of the Trust; or (B) the consummation on the part of the Trust of the transactions contemplated by any Company Documents.

8. The execution and delivery by the Trust of the Company Documents and the consummation by the Trust of the transactions contemplated thereby are not prohibited by, do not violate any provision of, and will not result in a breach of or default under: (i) the Trust Agreement; (ii) any applicable law, rule, regulation, order, writ, injunction, judgment or decree of any court or governmental body or other requirement to which the Trust is subject; or (iii) the Ground Lease, any contract, agreement, mortgage, lease, guaranty, commitment or other obligation or instrument to which the Trust is a party or by which the Trust or its properties is bound.

9. All information concerning the Project Facility and the Trust submitted to the Agency and any Mortgagee by the Trust is true and correct in all material respects and does not omit to state a material fact necessary to make the statements therein not misleading.

10. Assuming the valid authorization, execution and delivery of the Agency Lease and the other Company Documents by the other parties thereto, the Agency Lease and the other Company Documents, to which the Trust is a party, are legal, valid and binding obligations, enforceable against the Trust in accordance with their respective terms, except to the extent that enforcement thereof may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights generally or by the exercise of judicial discretion in accordance with general principles of equity. No default by the Trust or, to the best of knowledge of the undersigned, no event of default on the part of any other party to the Company Documents has occurred or is continuing and no event has occurred which, with the giving of notice or passage of time or both, would be such an event of default. the Trust has duly authorized the taking of and has taken all

actions necessary to carry out and give effect to the transactions contemplated to be performed on its part by the Company Documents.

11. All permits (including building permits), licenses and authorizations necessary for the construction, ownership and operation of the Project in the manner contemplated by each of the Company Documents have been obtained or will be obtained, and said construction, ownership and operation will not, to the best knowledge of the Trust, conflict with any zoning or similar ordinance applicable to the Project. To the best of the Trust's knowledge, the Project conforms to all material environmental regulations.

12. The Project Agreement, the Company Lease, the Agency Lease, the Environmental Compliance and Indemnification Agreement, the PILOT Agreement and the other Company Documents to which the Trust is a party have been duly authorized, executed and delivered and are in full force and effect and the Trust has not assigned or pledged any of its rights under these documents.

13. the Trust acknowledges and restates all of the obligations, representations and covenants in Sections 2.2, 8.12, 11.12 and 11.14 of the Agency Lease and incorporates same herein by reference as if fully set forth herein.

14. the Trust further acknowledges its obligation under Section 8.5 of the Agency Lease to provide the additional information as set forth therein and agrees to same.

15. The authorized representatives of the Trust who, pursuant to the Resolution, is authorized to execute the Company Documents and the office held by such person is as set forth below. The signature set opposite the name of such officer, if any, is a genuine specimen of such officer's signature:

Name

Signature

Office/Title

Stephen G. Byer



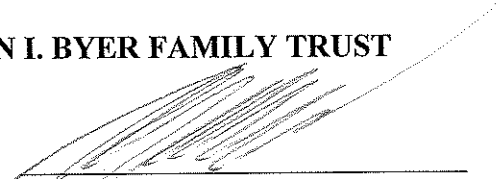
Authorized Signatory



**IN WITNESS WHEREOF**, I have set my hand and signature as officer of the Trust as of September 1, 2019.

**ALAN I. BYER FAMILY TRUST**

By:



---

Stephen G. Byer  
Authorized Signatory

**EXHIBIT "A"**  
**TRUST AGREEMENT**

**THIRD AMENDED AND RESTATED  
ALAN I. BYER FAMILY TRUST AGREEMENT**

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**THIRD AMENDED AND RESTATED  
ALAN I. BYER FAMILY TRUST AGREEMENT**

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**THIRD AMENDED AND RESTATED  
ALAN I. BYER FAMILY TRUST AGREEMENT**

---

TRUST AGREEMENT made effective the 1<sup>st</sup> day of October, 2015, between **ALAN I. BYER**, residing at 7757 Rolling Ridge Drive, Manlius, New York 13104 (hereinafter referred to as "Settlor") and **ALAN I. BYER**, residing at 7757 Rolling Ridge Drive, Manlius, New York 13104 and **STEPHEN G. BYER** residing at 7757 Rolling Ridge Drive, Manlius, New York 13104 (hereinafter referred to individually as a "Trustee" or "Individual Trustee" and collectively as the "Trustees" or "Individual Trustees").

WHEREAS, **ALAN I. BYER**, on or about November 27, 1991 executed the Declaration of Trust known as the **ALAN I. BYER FAMILY TRUST**, which Trust was amended and restated by the **FIRST AMENDED AND RESTATED ALAN I. BYER FAMILY TRUST** dated April 22, 2003 and further modified by a First and Second Amendment and amended and restated by the **SECOND AMENDED AND RESTATED ALAN I. BYER FAMILY TRUST** dated June 1, 2015; and

WHEREAS, pursuant to paragraph 18 of the **SECOND AMENDED AND RESTATED ALAN I. BYER FAMILY TRUST**, Settlor retained the right to amend, modify or revoke the Trust Agreement; and

WHEREAS, Settlor now wishes to amend and restate said Trust Agreement and the Trustees concur with such amendment and restatement in the form following:

1. Trust Fund.

The Trustees hold the property described in Schedule "A" attached hereto and made a part hereof (which property together with any additions thereto is referred to herein as the "Trust Fund"), in trust for the purposes and on the conditions hereinafter set forth. The Trustees agree to

hold and administer the Trust Fund in accordance with the purposes and on the conditions hereinafter set forth. This Trust shall be known as the "ALAN I. BYER FAMILY TRUST."

2. Management and Disposition of Trust Fund.

The Trustees shall hold, manage, invest and reinvest the Trust Fund and shall collect the income therefrom and, after deducting all necessary expenses incidental to the administration of the Trust, shall dispose of the Trust Fund and the net income therefrom as follows:

(a) The Trustees shall pay over or apply to or for the benefit of Settlor from the principal, net income and accumulated income, if any, until the date of death of Settlor (the "Division Date") such amount or amounts as Settlor shall direct in Settlor's absolute and uncontrolled discretion so long as Settlor lives or as the Individual Trustees in their absolute and uncontrolled discretion shall at any time and from time to time determine for the comfortable support, maintenance, welfare, happiness, medical needs, costs of last illness and funeral expenses of Settlor and for any of Settlor's needs in case of any emergency, or to provide fund for or to assist in the entering into or establishment of any business or commercial undertaking or professional office by Settlor. It is the intention and wish of Settlor that the Individual Trustees exercise their discretion liberally with primary regard to the needs of Settlor, even to the extent of exhausting this Trust. No previous distribution of income or principal shall be taken into account by the Individual Trustees in making such distribution of income or principal, intermediate or final. In making distributions of income or principal the Individual Trustees shall be under no obligation to take into account the Settlor's other resources or the obligation of any person to support Settlor.

Any excess net income over and above the amounts so paid over to or applied for the benefit of Settlor shall be accumulated in the Trust as, and be deemed part of, the principal of the Trust Fund.

(b) Upon the Division Date, the Trustees may, in the Trustees' discretion, pay out of the Trust Fund Settlor's just debts, costs of last illness, funeral expenses and approved claims against Settlor's estate, the expenses of administration of Settlor's estate and the payment of any specific bequest or satisfaction of any specific devises contained in Settlor's Last Will and Testament or this Trust Agreement.

(c) After satisfying the matters described in the preceding subparagraph 2(b), Settlor directs as follows:

(i) Settlor shall distribute, free of estate taxes, the following amounts, free of any trust:

(A) Ten Thousand Dollars (\$10,000.00) to each of Settlor's children then living;

(B) Two Thousand Dollars (\$2,000.00) to each of Settlor's grandchildren and great-grandchildren then living, the bequest to any such beneficiary to be paid to a parent of such beneficiary as custodian for the beneficiary under the New York Transfer to Minors Act until the beneficiary attains the age of twenty-one (21) years;

(C) Two Thousand Dollars (\$2,000.00) to **DAVID SILVERMAN**, if he is then living;

(D) One Thousand Dollars (\$1,000.00) to **PAUL MOTOLO**, if he is then living;

(E) Two Thousand Dollars (\$2,000.00) to **RICHARD J. SCHECHTER**, if he is then living;

(F) Five Thousand Dollars (\$5,000.00) to **LEE BARTLETT**, if he is then living;

(G) If **QUINTON BARTLETT** is then living, Two Thousand Dollars (\$2,000.00) to **LEE BARTLETT**, as custodian for **QUINTON BARTLETT**, under the New York Transfer to Minors Act until the age of twenty-one (21) years.

(d) Upon the Division Date, Settlor directs the Trustees to offer to **LEE BARTLETT**, if he is then living, the right to purchase Settlor's Hillcrest Country Club equity bond, if Settlor or the Trust owns such bond on the Division Date for a purchase price of One Hundred Five Thousand Dollars (\$105,000.00). Such offer shall be conditioned upon acceptance and payment of said purchase price within one hundred eighty (180) days following the Division Date. If payment is not received within said period of time, the offer shall be deemed rejected and Trustees shall dispose of such bond as they deem appropriate.

(e) Upon the Division Date, the Trustees shall distribute all of the shares of stock of **ALAN BYER AUTO SALES, INC.** to Settlor's son, **STEPHEN G. BYER**, if he is then living but if he is not then living, then to the Trustee of the **BYER CHILDREN TRUST** dated May 27, 1997 to be held, administered and distributed as provided in that trust instrument. If such trust is not then in existence, then such shares shall be distributed to the issue then living of **STEPHEN G. BYER**, per stirpes.



(f) Upon the Division Date (as defined above) after the distributions described in subparagraphs (b) through (e) above, the Trustees shall divide the Trust Fund as then constituted into a sufficient number of equal shares so that there will be one share for each child of Settlor then living other than **STEPHEN G. BYER** and **JEFFREY BYER**, and one share for the then living descendants collectively of each deceased child of Settlor other than **STEPHEN G. BYER** and **JEFFREY BYER** among whom such share shall be subdivided per stirpes. Each such share or part of a share shall be held by the Trustees as a separate trust and shall be managed and distributed upon the terms and conditions set forth:

(i) In the event a child of Settlor other than **STEPHEN G. BYER** and **JEFFREY BYER** be living at the Division Date, the Trustees shall invest, reinvest and manage such share for the benefit of such child and shall pay over or apply to or for the benefit of Settlor's said child (hereinafter the "beneficiary") so long as such child shall live, the net income quarter-annually or at more frequent intervals, and such principal as the Individual Trustees in the Individual Trustees' absolute and uncontrolled discretion shall at any time and from time to time determine for the comfortable support, maintenance, welfare, happiness, medical needs, costs of last illness and funeral expenses of the beneficiary and for the beneficiary's needs in case of any emergency, or to provide funds for or to assist in the entering into or establishment of any business, commercial undertaking or professional office by any beneficiary. It is the intention and wish of Settlor that the Individual Trustees exercise the Individual Trustees' discretion liberally with primary regard to the needs of the beneficiary, even to the extent of exhausting

this trust. No previous distribution of principal shall be taken into account by the Individual Trustees in making any such distribution of principal, intermediate or final. In making distributions of principal, the Individual Trustees shall be under no duty or obligation to take into account the beneficiary's other resources or the obligation of any person to support the beneficiary.

(ii) Upon the death of Settlor's said child living at the Division Date, the Trustees shall divide the Trust Fund as then constituted into a sufficient number of equal shares so that there will be one share for each child then living of Settlor's said child and one share for the then living descendants collectively of each deceased child of Settlor's said child, among whom such share shall be subdivided per stirpes. Each such share or part of a share for the benefit of such child or descendant of Settlor's child, and each such share or part of a share set aside upon the Division Date for the benefit of a descendant of a child of Settlor which child shall have died before the Division Date leaving descendants surviving, shall be held by the Trustees as a separate trust and shall be managed and distributed upon the terms and conditions set forth:

(A) The Trustees shall pay over or apply to or for the benefit of said child or descendant and the issue of said child or descendant (each of the foregoing hereinafter referred to severally or collectively as a "beneficiary" or the "beneficiaries") such amount or amounts of net income, accumulated income, if any, and principal, whether equally or unequally, proportionally or disproportionately, as the Individual Trustees in the Individual Trustees' absolute and uncontrolled discretion shall at

any time and from time to time determine for the comfortable support, maintenance, welfare, happiness, medical needs, costs of last illness and funeral expenses of any beneficiary and for any beneficiary's needs in case of any emergency, or to provide for the education costs (including undergraduate or graduate at any institution of primary, secondary or higher education) of any beneficiary (which education costs shall include, but without limitation, tuition, board and room, books, fees, clothing and transportation) or to provide funds for or to assist in the entering into or establishment of any business, commercial undertaking or professional office by any beneficiary. It is the intention and wish of Settlor that the Individual Trustees exercise the Individual Trustees' discretion liberally with primary regard to the needs of the beneficiaries, even to the extent of exhausting this trust. No previous distribution of income or principal shall be taken into account by the Individual Trustees in making any such distribution of income or principal, intermediate or final. In making distributions of income or principal, the Trustees shall be under no duty or obligation to take into account any beneficiary's other resources or the obligation of any person to support such beneficiary.

Any excess net income over and above the amounts so paid over to or applied for the benefit of the aforesaid beneficiaries shall be accumulated in the trust as, and be deemed part of, the principal of the Trust Fund.

(B) When such child or descendant (who was in being at the date of death of Settlor) shall attain the age of thirty (30) years (or if such child or descendant shall have attained said age prior to the establishment of this trust, then upon the establishment of this trust), or when a child or descendant who was not in being at the date death of Settlor shall attain the age of twenty-one (21) years (or if such child or descendant shall have attained said age prior to the establishment of this trust, then upon the establishment of this trust), or at any time and from time to time thereafter, such child or descendant is hereby granted the power to direct the Trustees by an instrument in writing subscribed by such child or descendant delivered to the Trustees to pay over and distribute to or apply for the benefit of such child or descendant all of the principal and accumulated income, if any, or such part thereof as may be directed by such child or descendant, as constituted at the date such direction is made, free of this trust, it being the intention hereunder to grant to such child or descendant the right to terminate his or her trust at any time after attaining the age of thirty (30) years, (or twenty-one (21) years in the case of a child or descendant not in being at the date of death of Settlor, as the case may be) (or date of establishment of this trust, as the case may be) if such child or descendant shall so direct.

(C) Each such child or descendant is granted the power to appoint by his or her Last Will and Testament by express reference therein to this power the entire principal and income, if any, of his or her trust free

of this trust, which power shall be exercisable in favor of his or her estate or any other person or persons, corporation or corporations, in such amounts and in such lawful interests or estates whether absolute or in trust, as such child or descendant may by his or her Last Will and Testament appoint.

In default of the exercise of such power of appointment by said child or descendant or to the extent that such power of appointment is not validly exercised by said child or descendant, such principal and accumulated income, if any, shall be paid over and distributed to the then living issue of such child or descendant per stirpes, or if there be no such issue then living, then such principal and accumulated income, if any, shall be divided among and paid over to the other issue of Settlor's children other than **STEPHEN G. BYER** and **JEFFREY BYER** then living per stirpes.

(g) If any Beneficiary under this Trust and Settlor shall die as a result of a common disaster or under circumstances giving rise to any question as to which one died first, it shall be conclusively presumed that Settlor survived such Beneficiary, and this Trust shall be administered accordingly.

Any individual (whether referred to by name, as a member of a class or as my or another's distributee or issue) which individual is not established by clear and convincing evidence to have survived any event (including my death or the death of another individual) by one hundred twenty (120) hours shall be deemed to have predeceased that event.

3. Minority.

(a) If, pursuant to this Trust Agreement, all or any part of the principal of any trust created hereby shall vest in absolute ownership in a minor or minors, married or unmarried, or if at the termination of any trust created hereby, all or a portion of the principal of such trust shall vest in absolute ownership in a minor or minors, the Trustees are authorized and empowered in the Trustees' discretion to hold the property so vested in such minor, notwithstanding that such property may consist of investments not authorized by law for trust funds, and to invest and reinvest the same, collect the income therefrom and during the minority of such minor, to apply so much of the principal thereof, and so much of the net income therefrom and any accumulated income, to the support, maintenance, education and general welfare of such minor as the Individual Trustees shall see fit, without regard to any other funds which may be available for such purposes, provided however, that any Trustee shall not exercise any such discretion with respect to any payments or application to or for the benefit of any person with respect to which such Trustee has a legal obligation of support but any such power to make such payments or applications may be exercised by any other Trustee or Trustees without the participation of the interested Trustee, and to accumulate, invest and reinvest the balance of said income until such minor shall attain majority, and thereupon to pay over the then principal, together with any accumulated income, to such minor and if such minor shall die before attaining the age of majority, the then principal, together with any accumulated income, shall be paid over to the estate of such minor. The authority conferred upon the Trustees by this paragraph shall be construed as a power only and shall not operate to suspend the absolute ownership of such property by such minor or to prevent the absolute vesting thereof in such minor.

(b) Notwithstanding anything herein to the contrary, unless sooner terminated pursuant to the provisions hereof, all trusts established hereunder shall terminate twenty-one (21) years after the death of the last survivor of all beneficiaries in being at the time of the death of Settlor. Upon such termination, the trust property, including accrued and undistributed income, shall vest in and be distributed to the person or persons then entitled to the income of the trust, whether absolute or discretionary.

4. Insurance Policies.

(a) The Trustees are hereby vested with all right, title and interest in and to any policies of life insurance hereby or hereafter transferred to or acquired by the Trust Fund and are authorized and empowered to exercise and enjoy for the purposes of the Trust herein created and as absolute owner of each such policy, all the option benefits, rights and privileges under each such policy, including the right to borrow upon such policy and to pledge it for a loan or loans, the right to elect among settlement options offered by the insurance company which issued any policy, the right to cancel or surrender such policies and to receive their cash surrender value, and the right to convert such policies to paid-up insurance, extended term insurance or to any different form of insurance. The insurer who has issued such policy is hereby authorized and directed to recognize the Trustees as absolute owner of such policy and as fully entitled to all rights, powers, privileges and interest under such policy and any receipts, releases and other instruments executed by the Trustees in connection with such policy shall be binding and conclusive upon the insurer and upon all persons interested in this Trust. Settlor hereby relinquishes all rights and powers in each such policy of insurance which are not assignable and will, at the request of the Trustees, execute all of the instruments reasonably required to effectuate this relinquishment.

(b) The Trustees shall pay premiums on any policies of life insurance owned by the Trustees. In the event the Trust Fund shall contain insufficient cash or other liquid assets to pay premiums which may become due or payable under the provisions of any such policy of insurance, the Trustees shall be under no obligation to pay such premiums or to make certain that such premiums are paid by Settlor or others, or to notify any persons of the non-payment of such premiums, and the Trustees shall be under no responsibility or liability of any kind in case such premiums are not paid, except that the Trustees may apply any dividends received by the Trustees on such policy to the payment of premiums thereon to avoid any nonpayment of premiums. Upon notice at any time during the term of this Trust that the premiums due upon any such policy are in default or that premiums to become due will not be paid, either by Settlor or by any other persons, the Trustees, in the Trustees' sole discretion, may apply any cash values attributable to such policy to the purchase of paid-up insurance or may borrow upon such policy for the payment of premiums due thereon or may accept the cash values of such policy upon its forfeiture.

(c) Except as provided in subparagraph 4(b) above, the Trustees shall be under no obligation or duty whatever with respect to each such policy except to safekeep each such policy of insurance and to receive such sums as may be paid to the Trustees by the insurer issuing such policy and to hold, manage and distribute such proceed subject to the terms of this Trust. Upon the death of the insured under each such policy the Trustees shall make reasonable efforts to carry out the provisions of this Trust, by taking whatever action is necessary to collect the proceeds of the insurance policies, including the maintenance or defense of any suit, provided, however, the Trustees shall be under no duty to maintain or enter into any litigation unless the Trustees' expenses including counsel fees and costs to the extent such fees and costs



exceed the cash or other liquid assets of the Trust have been advanced or guaranteed in an amount and in a manner reasonably satisfactory to the Trustees. The Trustees may repay any advance made by the Trustees or reimburse the Trustees for any such fees and costs out of the assets of the Trust Fund. In order to facilitate prompt collection of the proceeds of the insurance policies the Trustees shall furnish the necessary proof of death to the respective insurance companies and are authorized and empowered to do any and all things that in the Trustees' discretion are necessary to collect such proceeds, including, but not limited to, the power to execute and deliver releases, receipts and all other necessary papers.

No insurance company which has issued a policy of insurance owned by this Trust shall be required to inquire into the terms of this Trust Agreement, nor to see that the policy proceeds are in fact applied or disposed of in accordance with the terms of this Trust. The receipt of the Trustees issued to any insurance company with respect to any policy shall be a complete release of such company from liability with respect to such policy and shall be binding on all persons interested in this Trust.

5. Definitions.

When used in this Trust Agreement, the following words or terms shall be construed in the manner set forth:

- (a) The terms "child", "children", "descendant", "descendants" and "issue" are intended to include children of Settlor born before or after, or adopted before or after, the effective date of this Trust Agreement and persons adopted by any such child, descendant or issue of Settlor and also the issue and descendants of such adopted person; and

(b) The term "per stirpes" with reference to the issue of any individual shall mean that the stocks begin with the children of such individual and that no distribution at any generational level shall be per capita.

6. Powers and Authority.

The Trustees and the Trustees' successors are hereby granted the following powers and authority, which may be exercised by them at any time and from time to time as they shall in their absolute discretion deem advisable:

(a) To hold and retain all or any part of any trust created hereby in the form in which the same may be at the date of the receipt thereof by the Trustees, so long as the Trustees may deem advisable and to continue to conduct any present or former business of Settlor (whether as sole proprietor, partner, shareholder or otherwise). Being aware that in operating a business risks must be taken and that the Trustees are undertaking these duties at Settlor's insistence and request, Settlor directs that the Trustees shall incur no liability for any loss which may be sustained by reason of retaining, selling, managing or in any way administering such business, whether caused by their action or inaction, except as such is the result of their bad faith, deliberate wrong or gross neglect, including specifically but without limitation any interest in any partnership, corporation or other form of business organization.

(b) To invest and reinvest any funds in any stocks, bonds, notes, mortgages and other securities or property, real or personal (including any common or commingled fund maintained by any Corporate Trustee) without being limited or restricted to investments prescribed or authorized for trust funds by the laws of New York or any other state, and to hold any or all investments in the name of a nominee, it being Settlor's

intention to give the Trustees the same powers of investments and reinvestment which Settlor possesses with respect to Settlor's own funds.

(c) To lease, sell, exchange, partition or otherwise dispose of any property, real or personal, which may at any time form part of any trust created hereby, at such times and upon such terms and conditions as the Trustees may deem advisable, and to make, execute and deliver good and sufficient deeds, leases, mortgages and other instruments affecting the same. Any lease made by the Trustees may extend beyond the period fixed by the statute governing leases and made by fiduciaries and beyond the term of any trust created hereby.

(d) To renew or extend the time of payment of any obligation, secured or unsecured, payable to or by any trust created hereby for as long a period or periods of time and upon such terms as the Trustees may determine, and to adjust, settle, compromise and arbitrate claims or demands in favor of or against any trust created hereby, upon such terms as the Trustees may deem advisable.

(e) In respect of any securities forming any part of any trust created hereby, to vote upon any proposition or election at any meeting, and to grant proxies, discretionary or otherwise, to vote at any such meeting, to join in or become a party to any reorganization, recapitalization, readjustment, merger, voting trust, consolidation or exchange and to deposit any such securities with any committee, depository, trustee or otherwise, and to pay out of any trust created hereby any fees, expenses and assessments incurred in connection therewith, and to charge the same to principal or income as the Trustees may see fit; to exercise conversion, subscription or other rights, to sell or abandon such rights, to elect to exchange any securities owned for other securities

(whether or not of like kind and whether or not possessed of voting rights irrespective of the kind of security then owned and irrespective of whether it possessed voting rights); and to receive and retain any new securities or other property issued as a result of such reorganization, recapitalization, readjustment, merger, voting trust, consolidation, exchange or exercise of conversion, subscription or other right, and generally to take all action in respect of any such securities as the Trustees might or could do as absolute owner thereof.

(f) Whenever the Trustees are required or permitted to divide or distribute the property of any trust created hereby, to make such division or distribution in kind or in money, or in part kind and part money, and without reference to, and with no duty to consider or equalize, the tax basis of any property so divided or distributed.

In dividing or distributing any asset of any trust created hereunder which constitutes "income in respect of a decedent" pursuant to Internal Revenue Code Section 691(a)(i) and regulations thereunder, to take into account any income tax liability associated with the asset as well as the deductions and credits pursuant to Internal Revenue Code Sections 691(b) and 691(c) and regulations thereunder, both to minimize the income tax on such trust and/or any beneficiary and to consider the after-tax amount so received. In making any such divisions or distributions, the judgment of the Trustees in the selection and valuation of the assets to be so divided or distributed shall be binding and conclusive.

(g) To engage attorneys, accountants, agents, custodians, clerks, investment counsel and such other persons as the Trustees may deem advisable in the administration

of any trust created hereby and to make payments therefor from income or principal as the Trustees may determine.

(h) To exercise all powers and authority, including any discretion conferred in this Trust Agreement, after the termination of any trust created hereby and until the same is fully distributed.

(i) To take all steps necessary to receive and to receive the proceeds of any policies of insurance upon the life of Settlor or any other beneficiary and to select any settlement option the Trustees may deem advisable.

(j) To carry out and perform and to avail themselves of and to exercise all rights under the provisions of any shareholder, partnership or trust agreement or other agreement relating to any business, partnership, corporation or trust in which Settlor or the Trust may have an interest or to which Settlor or the Trust is a party or beneficiary.

(k) The Trustees in the exercise of the Trustees' absolute and uncontrolled discretion are granted the right and power to deal without limitation with the executor, trustee or other representative of the estate of Settlor or of any trust created pursuant to the Settlor's Last Will and Testament or of any estate or trust in which a beneficiary has an interest, including the purchase of assets from any such aforesaid estate or trust or from any beneficiary, at the fair market value thereof and, further, including the loan of funds to any of the aforesaid estates, trusts or beneficiaries from any trust created hereunder, upon such terms and conditions as the Trustees shall deem advisable, even though one (or more) of the Trustees hereunder shall be acting in a fiduciary capacity in such other estate or trust.

(l) To hold and administer any property in any trust created hereunder for the benefit of the same individual in one single trust in order to facilitate administration of such separate trusts.

(m) The Trustees are hereby authorized to hold and retain in any trust created hereunder any unproductive or underproductive property, whether real or personal, including any property received in exchange or substitution therefor, and the Trustees are directed that no adjustment be made between principal and income because of such property.

(n) To borrow money from any lender, including any Corporate Trustee, mortgage or pledge trust assets and extend or renew any indebtedness.

(o) To make temporary allocations to any trust created under this instrument; to divide or distribute trust assets in undivided interests or wholly or partly in kind; to sell property for the purpose of making allocation, division or distribution.

(p) To hold the assets of any separate trusts for the same beneficiaries in one or more common accounts in which the trusts shall have undivided interests for administration and investment purposes only.

(q) To deal without limitation with the executor, trustee or other representative of any estate or trust in which a beneficiary has an interest, even though the Trustees shall be acting in a fiduciary capacity in such other estate or trust without liability for loss.

(r) To transfer the situs of trust assets to another jurisdiction as often as the Trustees believe desirable, including the appointment of a qualified corporation as a Corporate Trustee or as a substitute Corporate Trustee for such purposes.

(s) To appoint a person or qualified corporation at any time to act as trustee as respects property located outside the State of New York; to delegate to such appointed trustee, who shall act without bond or other security and shall not account to any court, part or all of the powers given to the Trustees; and to remove an appointed trustee and appoint another if desirable.

(t) To accept from any person any transfer of property, by deed or by will, at any time as an addition to the Trust Fund.

(u) To establish and increase one or more reserves from income or principal, or both, for the purpose of meeting present or anticipated future needs for the payment of any debt, whether or not there be a personal obligation of the Trustees with respect to such debt. The amount credited to a reserve established or increased from income shall be deemed to constitute an expense of earning income and such a reserve balance shall be deemed to constitute accumulated income. At such times as the Trustees shall determine that a reserve is not required in part or in full, any excess portion of such reserve shall be restored to the same category, i.e., income or principal, from which it was established.

(v) To establish and increase one or more reserves from income in any amount not exceeding the accumulated depreciation or amortization with respect to any property owned by any trust created hereby in such amounts and upon such method or methods of computation based upon the accounting value of each such property as the Trustees shall determine. The amount credited to such a reserve shall be deemed to constitute an expense of earning income and the reserve balance shall be deemed to constitute either (a) accumulated income, if the property to which it relates is an income asset, or (b) principal, if the property to which it relates is a principal asset. Any such

reserve shall be offset against the accounting value of the property to which it relates upon the disposition of such asset.

(w) To terminate any trust created or existing hereunder in the event the Trustees shall determine in the Trustees' sole discretion that the continued existence of such trust is not advisable due to an insufficiency of assets in relation to the expected future costs of administration of such trust and the economic capacity of the trust to accomplish its purpose.

(x) To enter into an agreement or agreements to pay and/or to pay any estate tax, inheritance tax, gift tax and/or income tax, whether federal, state or local, of Settlor or Settlor's estate in one or more installments with or without interest and to continue the administration of any trust created hereby so long as may, in the judgment of the Trustees, be deemed necessary or advisable.

(y) Except as herein provided otherwise, the Trustees shall have full authority, exercisable without court approval, to: (i) allocate among the assets of the Trust the generation-skipping transfer tax exemption provided by Section 2631 of the Internal Revenue Code of 1986 as amended. The allocation of the exemption shall be within the discretion of the Trustees and may be made to or among assets as to which Settlor is the transferor for purposes of such tax, whether or not such assets pass under this Trust Agreement; and (ii) to file the election provided under Section 2652(a)(3) of the Internal Revenue Code of 1986 as amended to treat Settlor as the transferor, for purposes of the generation-skipping transfer tax, of any assets passing hereunder (or under the terms of Settlor's Last Will and Testament) to a qualified terminable interest property trust for the benefit of Settlor's spouse.



The Trustees are authorized to segregate the assets of any trust established hereunder so as to separate assets covered by a generation-skipping transfer tax exemption under Chapter 13 of the Internal Revenue Code of 1986 as amended from assets that are not so exempt. In all other respects, the provisions governing such separate trusts shall be identical unless herein provided otherwise. The determination to separate exempt and non-exempt assets shall be within the sole discretion of the Trustees. The Trustees are hereby specifically exonerated from all liability or accountability to any beneficiary with respect to the exercise in whole or in part of the non-exercise of the foregoing discretion.

(z) Settlor expressly and specifically authorizes and directs that each of the Trustees (specifically including any Trustee who shares in other fees for services to any trust created hereunder) (if there be more than one (1) Trustee in office hereunder from time to time or at any time) shall be entitled to and shall be paid one (1) full commission, it being Settlor's intention that Section 2313 of the New York Surrogate's Court Procedure Act not apply to any trust created hereunder.

(aa) To the extent not otherwise herein provided, to have and exercise such other powers and authorizations as provided by statute, including without limitation all powers and authority granted by Article 11 of the New York Estates, Powers and Trusts Law, as amended from time to time, in addition to all powers and authority herein granted, anything contained herein to the contrary notwithstanding.

7. Discretionary Powers.

The following provisions shall apply to any Trustee other than Settlor:

(a) No Individual Trustee other than Settlor who is a beneficiary of a trust hereunder or obligated to support a beneficiary hereunder shall participate in deciding whether or to what extent principal or income shall be distributed or applied to or for his or her benefit or for the benefit of any person to which such Trustee has an obligation of support, or whether any receipt or disbursement shall be allocated in whole or in part to or against principal or income, or to terminate any trust hereunder, unless such discretion is limited by an ascertainable standard as defined in IRC § 2041(b). All said powers shall be exercisable by the other Trustee serving hereunder, and if there be none, such discretion shall not be exercised until a Trustee is appointed who is capable of exercising the same. Notwithstanding the foregoing, in no event may any Trustee may exercise any discretion which would discharge his or her legal obligation to support a beneficiary of a trust. This paragraph shall not apply to the Settlor as Trustee.

(b) Unless otherwise indicated in this Trust Agreement, it is Settlor's intention that in any trust created by this Trust Agreement wherein the Trustees are authorized to distribute principal to income beneficiaries of such trusts while they are current income beneficiaries any rules of trust law which may require impartiality between income beneficiaries and remaindermen shall be disregarded, and the Trustees shall exercise the authority given to the Trustees in the interests of the income beneficiaries without regard to the interests of the remaindermen.

(c) In addition to the investment powers conferred under the terms of this Trust Agreement, the Trustees are authorized (but not directed) to acquire and retain investments not regarded as traditional for trusts, including investments that would be forbidden by the "prudent person" or "prudent investor" rule. The Trustees may, in the

exercise of sole and absolute discretion, invest in any type of property, wherever located, including any type of security or option, improved or unimproved real property, and tangible or intangible personal property, and in any manner, including direct purchase, joint ventures, partnerships, limited partnerships, corporations, mutual funds or any other form of participation or ownership whatsoever. In making investments, the Trustees may disregard all of the following factors:

(i) Whether a particular investment, or the trust investments collectively, will produce a reasonable rate of return or result in the preservation of principal.

(ii) Whether the acquisition or retention of a particular investment or the trust investments collectively are consistent with any duty of impartiality as to the different beneficiaries. (The Settlor intends that no such duty shall exist.)

(iii) Whether the trust is diversified. (The Settlor intends that no duty to diversity shall exist.)

(iv) Whether any or all of the trust investments would traditionally be classified as too risky or speculative for trusts. The entire trust estate of any trust created hereunder may be so invested. (The Settlor intends the Trustees to have sole and absolute discretion in determining what constitutes acceptable risk and what constitutes proper investment strategy.) The Settlor's purpose in granting the foregoing authority is to modify the prudent person rule insofar as the rule would prohibit an investment or investments because of one of more factors listed above, or any other factor relating to the nature of the investment itself.

Accordingly, the Trustees shall not be liable for any loss in value of an investment

merely because of the nature of the investment or the degree of risk presented by the investment, but the Trustees shall be liable if the procedures in selecting and monitoring the investment are proved by affirmative evidence to have been negligent, and such negligence was the proximate cause of the loss.

8. Facility of Payment.

The Trustees may make distributions and payments of income or principal to or for the benefit of any beneficiary who is a minor, or who in such fiduciary's judgment is incompetent or incapacitated, in any one or more of the following ways: (1) directly to such beneficiary or to his or her attorney-in-fact; (2) directly in payment of the debts or expenses of such beneficiary; or (3) to the Guardian of the person or property of such beneficiary, the parent or parents of such beneficiary, a custodian for such beneficiary under a Uniform Transfers to Minors Act, or any other person who shall have the care and custody of the person of such beneficiary. There shall be no duty to see to the application of funds so paid, and the receipt of such person shall be full and sufficient discharge.

9. Dealing with Third Parties.

No person, firm or corporation dealing with the Trustee, or any one of them if there shall be more than one Trustee, with reference to any property in this Trust shall be required to ascertain the authority of any Trustee to create any security interest in or to make any sale, transfer, pledge, assignment or other transfer or disposition of or transactions concerning the Trust Fund, nor shall any such person, firm or corporation be permitted or required to inquire into the expediency, propriety, validity or necessity of any sale made by such Trustee, nor shall they be in any way responsible for the proper use or application of funds paid by them or any of them to the Trustees, or any one of them if there shall be more than one Trustee, under the terms

of this Trust. Such persons, firms or corporations so dealing with such Trustee shall be entitled to rely upon the delivery, transfer, assignment or other instrument or act disposing of or pledging or creating a security interest in such property by such Trustees as having been duly authorized in all particulars; and the receipt of the Trustees or any one of them if there shall be more than one Trustee, for any payment made to them or for any assets added hereunder shall be a complete discharge and acquittance to the extent specified in such receipt.

10. Spendthrift Provision.

Notwithstanding the provisions of Section 7-1.5 of the New York Estates, Powers and Trusts Law, as may be amended from time to time, no money or property payable or distributable under this Trust Agreement, whether principal, accumulated income or income, shall be pledged, assigned, transferred, sold or in any manner whatsoever anticipated, charged or encumbered by any beneficiary hereunder or be in any manner liable in the possession of the Trustees for the debts, contracts, obligations or engagements of such beneficiary, voluntary or involuntary, or for any claims, legal or equitable, against any such beneficiary. Any such attempted pledge, assignment, transfer, sale or other disposition by the beneficiary shall be null and void and of no effect.

Settlor expressly directs that the provisions of Section 7-1.6 of the New York Estates, Powers and Trusts Law, as may be amended from time to time, and any other statute or rule of law either now or hereafter in force purporting to give to any court or other person or agency any power to make an allowance for or compel the distribution of either principal or income of an estate or of any trust to any beneficiary otherwise than as expressly set forth herein shall not apply to any trust created hereby and any such power or powers shall not be exercised with respect to any trust created hereby (irrespective of any consent thereto given by any other beneficiary).

11. Accounting.

The Trustees may render an annual accounting of such Trustees' proceedings to all income beneficiaries who have attained the age of majority as of the close of each calendar year, whose written approval thereof shall be final, binding and conclusive upon them and all persons claiming through such beneficiaries. The Trustees may also at any time and from time to time during the continuance of any trust created hereby render a judicial accounting of the Trustees' proceedings.

12. Situs.

The validity, administration, and construction of this Trust shall be the law of the State of New York subject to the following:

(a) Any real property held hereunder deemed by the jurisdiction of its situs to be real property shall nonetheless be governed by the law declared applicable hereunder, except to the extent such situs requires otherwise, whether such be a matter of validity, administration, or construction.

Except as may be provided by the law of situs of any real property held in any limited liability company or partnership held by this Trust, all limited liability companies or partnerships held hereunder shall be deemed to be personal property and this Trust with respect to such assets shall be governed by the law declared applicable hereunder, except to the extent which situs requires otherwise, whether such be a matter of validity, administration, or construction.

All other assets shall be held, administered, and distributed hereunder according to the law of the State of New York subject to the provisions of paragraph (b) below.

(b) The Trustee hereunder may move the situs of administration of this Trust, without limitation to any jurisdiction (in or outside the United States), as the Trustee may from time to time determine to be in the best interests of the Trust and its beneficiaries hereunder, subject only to such court approval as may be required by any applicable state law. Upon any such transfer of situs, the trust estate may thereafter, at the election of Trustee, be administered exclusively under the laws of (and subject, as required, to the exclusive supervision of the courts of) the jurisdiction to which it has been transferred. If the Trustee of any trust created hereunder elects to change the situs of any such trust, the Trustee is hereby relieved of any requirement of having to qualify in any other jurisdiction and of any requirement of having to account in any court of such other jurisdiction. The Trustee may not change the situs of a trust or the trust's governing law in order to limit the Trustee's existing liability to the beneficiaries.

13. Delegation.

Any fiduciary may delegate to the other fiduciaries the right to exercise any power (discretionary, administrative or otherwise) and may revoke the delegation at any time by delivery of an acknowledged instrument to such other fiduciaries.

14. Successor Individual and Corporate Trustee.

(a) Settlor's daughter, **PAMELA MATUSZEWSKI**, shall assume the office of Individual Trustee upon the death, resignation or ceasing to act, (as determined by **PAMELA MATUSZEWSKI**, which shall be deemed to include the mental or physical disability of an Individual Trustee as attested to in writing by a licensed physician selected by **PAMELA MATUSZEWSKI**, which disability shall render the said Individual Trustee for a period reasonably expected to exceed ninety (90) days unable to reasonably carry out such individual's

duties and responsibilities hereunder) as Individual Trustee and upon the execution by **PAMELA MATUSZEWSKI** of an appropriate written instrument whereby she accepts said office pursuant to this Trust Agreement and its delivery to the other Trustee then in office, if any, and to the beneficiaries hereunder who are not minors.

(b) The Individual Trustees or Trustee (or successor Individual Trustees or Trustee as the case may be) then in office may, at any time in the Individual Trustees' or Trustee's sole discretion, jointly (or singly if there be only one (1) such Trustee then in office) designate and appoint a Corporate Trustee or successor Corporate Trustee, and/or one or more Individual Co-Trustees, such appointment to take effect upon such terms and conditions as such Individual Trustees (or successor Individual Trustees, as the case may be) determine in writing in the instrument of designation and appointment, which instrument shall be signed and acknowledged by each said Individual Trustee (or successor Individual Trustee, as the case may be) and delivered to the designated Corporate Trustee or Individual Co-Trustee.

The Individual Trustees or Trustee (or successor Individual Trustees or Trustee as the case may be) then in office are also granted the right to (jointly, if there be more than one (1) such Trustee then in office) revoke a prior designation of any Corporate Trustee or successor Corporate Trustee and/or Individual Co-Trustee who has not assumed office as Trustee pursuant to such designation and, if such Individual Trustees or Trustee (or successor Individual Trustees or Trustee, as the case may be) so determine, to make a new designation, such revocation to be similarly in writing, signed and acknowledged and delivered to the Corporate Trustee and/or Individual Co-Trustee previously designated.

Any Corporate Trustee or Individual Co-Trustee so designated, which designation has not theretofore been revoked, shall become Corporate Trustee or successor



Corporate Trustee or Individual Co-Trustee in accordance with the terms and conditions of the instrument of designation, but in any event where there is no Individual Co-Trustee then in office or no duly designated successor Individual Trustee any Corporate Trustee so designated shall assume the office of Corporate Trustee upon the date of death of the last surviving Individual Trustee (or successor Individual Trustee, as the case may be) or such Individual Trustee's or successor Individual Trustee's resignation or ceasing to act (as determined by the designated Corporate Trustee, which shall be deemed to include the mental or physical disability of such Individual Trustee (or successor Individual Trustee, as the case may be) as attested to in writing by a licensed physician selected by the designated Corporate Trustee, which disability shall render the said Individual Trustee (or successor Individual Trustee, as the case may be), for a period reasonably expected to exceed ninety (90) days unable to reasonably carry out such individual's duties and responsibilities hereunder) as Individual Trustee and upon the execution by such Corporate Trustee so designated of an appropriate written instrument whereby it accepts said office pursuant to this Trust Agreement and its delivery to the beneficiaries hereunder who are not minors.

(c) An Individual Trustee or any successor Individual Trustee or Individual Co-Trustee, or Corporate Trustee (from and after such date a Corporate Trustee assumes office) may resign at any time by serving upon the other Trustees then in office (or if there be none, then upon each beneficiary who is not a minor) by certified mail or in person a notice in writing, in which event the resignation will become effective thirty (30) days after the date of such notice.

The last two (2) surviving Individual Trustees or successor Individual Trustees duly appointed as herein provided, which last two (2) surviving Individual Trustees have assumed the office of Individual Trustee or successor Individual Trustee, as the case may

be, so long as each such individual is in office but not thereafter (each such individual being herein referred to as the "Last Surviving Individual Trustee"), are each hereby granted the separate right and power to designate such Trustee's successor as Individual Trustee with respect to each Trust designated, and the terms and conditions when such designation shall take effect, said instrument to be signed and acknowledged by such designating Last Surviving Individual Trustee and delivered in person or by certified mail to such designated person and to the Corporate Trustee, if any, as the case may be.

Each Last Surviving Individual Trustee is also granted the right so long as such Trustee is Trustee to revoke a prior designation of such Trustee's successor Individual Trustee and to make a new designation, such revocation to be similarly in writing, signed and acknowledged and delivered to the person previously designated.

Any individual so designated, which designation has not theretofore been revoked, shall become successor Individual Trustee upon the date of death of the designating Last Surviving Individual Trustee or such Trustee's resignation or ceasing to act (as determined by the Corporate Trustee, if any, or if there shall be no Corporate Trustee then in office, by such designated successor Individual Trustee) which shall be deemed to include the mental or physical disability of the designating Last Surviving Individual Trustee as attested to in writing by a licensed physician selected by the Corporate Trustee, if any (or if there shall be no Corporate Trustee then in office, by such designated successor Individual Trustee) which disability shall render such designating Last Surviving Individual Trustee for a period reasonably expected to exceed ninety (90) days unable to reasonably carry out such individual's duties and responsibilities hereunder) as Individual Trustee and upon the delivery by such individual so designated of an appropriate written instrument whereby such individual accepts said office

pursuant to this Trust Agreement and its delivery to the Corporate Trustee, if any (or if there be no Corporate Trustee then in office, to the beneficiaries hereunder who are not minors).

Any successor Individual Trustee so appointed and assuming the office of Individual Trustee is hereby granted the same rights to designate such Trustee's successor and to revoke any such designation and to make a new designation in the same manner and to the same extent as herein granted to a Last Surviving Individual Trustee, said designated individual to assume the office of Individual Trustee upon the occurrence of the same events specified above as in the case of a successor to a Last Surviving Individual Trustee.

If for any reason no successor Individual Trustee or Corporate Trustee shall have been duly designated by the sole remaining Last surviving Individual Trustee following the death, resignation or ceasing to act of the sole remaining Last Surviving Individual Trustee, **MANUFACTURERS & TRADERS TRUST COMPANY** with office at 101 South Salina Street, Syracuse, New York 13202 shall act as the sole Trustee from and after the date on which there shall be no duly designated Trustee in office.

With respect to the exercise of powers and authority, any reference herein to the "Individual Trustee" shall be deemed to include any successor Individual Trustee or Individual Co-Trustee and it shall also be deemed to mean the Corporate Trustee or successor Corporate Trustee from and after the date (if any) on which it becomes the sole Trustee hereunder.

Any Trustee herein named (other than Settlor if Settlor is named a Trustee) and in the event a beneficiary shall herein or hereafter be designated as a Trustee then such beneficiary as Trustee, shall not exercise any discretionary powers over principal or income on such Trustee's own behalf as beneficiary of any trust created hereby or on behalf of any other

beneficiary with respect to which other beneficiary such Trustee has a legal obligation of support, but such powers shall be exercised solely by the other Trustees or Trustee, if any, without the participation of the aforesaid interested Trustee.

Wherever discretion is granted to the "Individual Trustees" or the "Trustees", the agreement and concurrence of each Individual Trustee (in the first instance) or the Individual Trustees and the Corporate Trustee, if any, then in office (in the second instance) shall be required, but if they be unable to agree then in such event the matter shall be submitted to a Justice of the New York Supreme Court and the decision of such Justice shall be deemed to constitute the binding decision for all purposes of this Trust Agreement.

(c) The Individual Trustees or Trustee (or successor Individual Trustee or Trustees, as the case may be) then in office are granted the right with respect to any Trust for which such Individual Trustees act as Trustee at any time in such Trustees' joint (or in the event there be only one (1) such Individual Trustee then in office, the sole) and absolute and uncontrolled discretion, with or without cause, to remove the Corporate Trustee theretofore appointed as Corporate Trustee or any successor Corporate Trustee and to appoint a successor Corporate Trustee if such Individual Trustee or Trustees or successor Individual Trustee or Trustees, as the case may be, in their sole discretion shall determine.

Such removal and designation shall be made by serving upon the Corporate Trustee then in office by certified mail or in person a notice in writing, in which event the removal shall become effective upon the expiration of thirty (30) days following the date of such notice.

In the event of the resignation of the Corporate Trustee, the Individual Trustees then in office are granted the right with respect to any Trust for which such Individual Trustees act as Trustee in their sole discretion to jointly appoint a successor Corporate Trustee.

(d) Any Individual Trustee or successor Individual Trustee who accepts appointment as such with respect to any trust created under this Trust Agreement, hereby authorizes the release by any health care provider of medical information regarding such Trustee as may be needed to make the medical determination of mental or physical disability required herein.

15. Other Matters Relating to Successor Trustee.

Any successor Individual Trustee or successor Corporate Trustee upon accepting the trusteeship by an acknowledged writing and upon settlement of the accounts and discharge of the predecessor Trustee, shall succeed to all the title, powers, discretions, rights and duties of the predecessor Trustee without further act on the part of anyone; but until then the predecessor Trustee shall continue to have all such title, powers, discretions, rights and duties. Should any Individual or Corporate Trustee (or either one's successor) resign, such Trustee shall be entitled to such commissions as such Trustee has already duly received and to any further commission then accrued and unpaid, but to no other commission. If an Individual or Corporate Trustee (or either one's successor) be removed, such Trustee shall be entitled to the same commissions as if the trust had then terminated and been distributed by such Trustee while still acting as such Trustee. Such resigned or removed Trustee shall also be entitled to reimbursement from the trust for all reasonable expenses incurred in the settlement of such Trustee's accounts and in the transfer of the trust property to such Trustee's successor.

16. No Bond or Security.

No bond or other security shall be required of any Individual Trustee or Individual Co-Trustee or Corporate Trustee, or of any successor to any Individual Trustee or Individual Co-Trustee or Corporate Trustee.

17. Representation of Person Under a Disability.

Where a party to any proceeding to which Section 315 of the New York Surrogate's Court Procedure Act applies has the same interest therein as a person under a disability it shall not be necessary to serve the person under a disability, it being Settlor's express intention and direction that the provisions of paragraph 5 of Section 315 of the New York Surrogate's Court Procedure Act, together with any subsequent amendment thereto, apply to any proceeding in which all persons interested in this Trust or Settlor's estate, as defined in said Section 315 of the New York Surrogate's Court Procedure Act, are required to be served with process.

18. Powers of Amendment and Revocation; Gender.

(a) Settlor during Settlor's lifetime expressly reserves the right to (i) Settlor, or (ii) any Guardian, Committee or Conservator judicially appointed to act on behalf of Settlor during Settlor's lifetime in the event of Settlor's physical or mental disability or incapacity, to amend, modify or revoke this Trust Agreement and any Trust created hereunder, in whole or in part, at any time and from time to time (with a notice in writing thereof delivered or mailed by registered or certified mail to the other Trustee or Trustees who may have assumed such office or who has been designated as a successor Trustee but who has not assumed such office).

Such amendment, modification or revocation shall be effective in accordance with any provision contained in such notice or, if there be no such provision, then upon execution thereof.

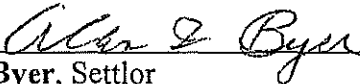
Settlor shall have no right, however, without the consent of all other Trustees, to amend the Trust so as to increase such other Trustees' liabilities.


(b) Upon the death of Settlor, this Trust Agreement shall be irrevocable.

(c) If any beneficiary under this Trust Agreement shall, in any manner, directly or indirectly, attempt to contest or oppose the validity, effect or implementation of this Trust Agreement or any amendment or modification hereto, in any court or commence to prosecute any legal proceeding of any kind in any court to set aside or modify this Trust Agreement or any provision contained herein or any amendment or modification hereto, then and in that event such beneficiary shall forfeit and cease to have any right or interest whatsoever under this Trust Agreement or any amendment or modification hereto, or in any portion of the Trust Fund and, in such event, Settlor hereby directs that the Trust Fund shall be disposed of in all respects as if such beneficiary had predeceased Settlor.

(d) Use herein of the masculine or neuter gender, singular or plural, shall be deemed to include masculine, feminine or neuter gender, singular or plural.

IN WITNESS WHEREOF, this Trust Agreement has been executed the day and year first above written.

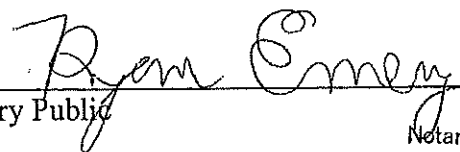
  
\_\_\_\_\_  
Alan I. Byer, Settlor

  
\_\_\_\_\_  
Alan I. Byer, Trustee

  
\_\_\_\_\_  
Stephen G. Byer, Trustee

STATE OF NEW YORK     )  
COUNTY OF ONONDAGA )     SS.:

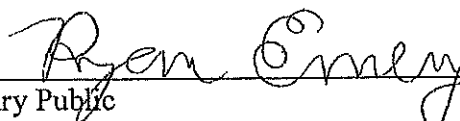
On the 26<sup>th</sup> day of October in the year 2015, before me, the undersigned, personally appeared **ALAN I. BYER**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, and acknowledged to me that he executed the same in his capacity as Settlor, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
\_\_\_\_\_  
Notary Public

RYAN EMERY  
Notary Public in the State of New York  
No. 02EM6185620  
Qualified in Onondaga County  
My Commission Expires April 21, 20 16

STATE OF NEW YORK     )  
COUNTY OF ONONDAGA )     SS.:

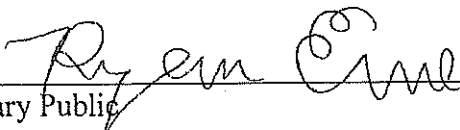
On the 26<sup>th</sup> day of October in the year 2015, before me, the undersigned, personally appeared **ALAN I. BYER**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, and acknowledged to me that he executed the same in his capacity as Trustee, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
\_\_\_\_\_  
Notary Public

RYAN EMERY  
Notary Public in the State of New York  
No. 02EM6185620  
Qualified in Onondaga County  
My Commission Expires April 21, 20 16

STATE OF NEW YORK     )  
COUNTY OF ONONDAGA )     SS.:

On the 26<sup>th</sup> day of October in the year 2015, before me, the undersigned, personally appeared **STEPHEN G. BYER**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, and acknowledged to me that he executed the same in his capacity as Trustee, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
\_\_\_\_\_  
Notary Public

RYAN EMERY  
Notary Public in the State of New York  
No. 02EM6185620  
Qualified in Onondaga County  
My Commission Expires April 21, 20 16



**THIRD AMENDED AND RESTATED  
ALAN I. BYER FAMILY TRUST AGREEMENT**

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Schedule of Trust Property

Description

99% Partnership Interest **BYER REAL ESTATE ENTERPRISES**

70 shares Common Stock – Class B **ALAN BYER AUTO SALES, INC.**

25 shares Common Stock – Class A **ALAN BYER AUTO SALES, INC.**

**EXHIBIT "B"**  
**LOCAL ACCESS AGREEMENT**

## City of Syracuse

### Industrial Development Agency

#### Local Access Agreement

Alan Byer Auto Sales, Inc., Alan I. Byer Family Trust, Stephen G. Byer, individually, and West Genesee Realty Associates, LLC (collectively, the "Company"), understands and agrees that local labor, contractors and suppliers will be used for the construction, renovation, reconstruction and equipping of the Project unless a written waiver is first received from the Agency, and agrees to provide the information requested below as a way to provide access for local participation.

<b>Company</b>		Alan Byer Auto Sales, Inc., Alan I. Byer Family Trust, Stephen G. Byer, individually, and West Genesee Realty Associates, LLC				<b>General Contractor</b>		Parsons-McKenna Construction Co., Inc.			
<b>Representative for Contract Bids and Awards</b>		Stephen G. Byer				<b>Contact</b>		Jake McKenna			
<b>Address</b>		1230 West Genesee Street				<b>Address</b>		117 Metropolitan Park Drive			
<b>City</b>	Syracuse	<b>ST</b>	NY	<b>Zip</b>	13204	<b>City</b>	Syracuse	<b>ST</b>	NY	<b>Zip</b>	13088
<b>Phone</b>	315.471.6107		<b>Fax</b>			<b>Phone</b>	315.451.7330		<b>Fax</b>		
<b>Email</b>		sbyer@alanbyervolvo.com				<b>Email</b>		jmckenna@parsonsmckenna.com			
<b>Project Address</b>		1232-36 West Genesee Street (a/k/a 1230 West Genesee Street); 1232 West Genesee Street (rear); and 1288 West Genesee Street				<b>Construction Start Date</b>					
<b>City</b>	Syracuse	<b>ST</b>	NY	<b>Zip</b>	13204	<b>Occupancy Date</b>					

**Project Components – Indicate those for which bids will be sought:**

Item	Estimated Value	Bid Date	Contact
Site work/Demolition			
Foundation and footings			
Building			
Masonry			
Metals			
Wood/casework			
Thermal/moisture proof			
Doors, windows, glazing			
Finishes			
Electrical			
HVAC			
Plumbing			
Specialties			
Machinery & Equipment			
Furniture and Fixtures			
Utilities			
Paving			
Landscaping			
Other (identify)			

Date: \_\_\_\_\_

**Company:** Alan Byer Auto Sales, Inc., Alan I. Byer Family Trust, Stephen G. Byer, individually, and West Genesee Realty Associates, LLC

Signature:  \_\_\_\_\_

**Name:** Stephen G. Byer

As Authorized Signatory for each entity

**EXHIBIT "C"**

**PENDING LITIGATION**

**NONE**



**GENERAL CERTIFICATE OF  
WEST GENESEE REALTY ASSOCIATES, LLC**

This certificate is made in connection with the execution by **WEST GENESEE REALTY ASSOCIATES, LLC**, a New York limited liability company ("**Realty**") of the Project Agreement, the Company Lease, the Agency Lease, the PILOT Agreement, the Environmental Compliance and Indemnification Agreement and any other document now or hereafter executed by Realty in connection with the appointment by the City of Syracuse Industrial Development Agency (the "**Agency**") of Realty to undertake a project (the "**Project**") consisting of the following: (A)(i) the acquisition of an interest in: (1) approximately 1.89 acres of improved real property bearing tax map number 108.1-02-19 and commonly referred to as 1232-36 West Genesee Street (also known as 1230 West Genesee Street) ("**Parcel 1**"); (2) approximately 3 acres of improved real property bearing tax map number 108.1-02-35.1 and commonly referred to as 1232 West Genesee Street (rear) ("**Parcel 2**"); and (3) approximately 2 acres of improved real property bearing tax map number 108.1-02-20 and commonly referred to as 1288 West Genesee Street ("**Parcel 3**"), each in the City of Syracuse, New York (collectively, the "**Land**"); (ii) certain improvements, including but not limited to, an existing approximately 25,820 square foot building located on Parcel 1; an existing approximately 17,000-square foot building located on Parcel 2; and an approximately 34,802 square foot building located on Parcel 3, all of which are served by common driveways, parking, and pedestrian walkways, and all of which comprise the Alan Byer Volvo facility (collectively, the "**Improvements**"); (iii) the renovation to the Improvements and the Land include, but are not limited to, the interior showroom, sales offices and reception areas, external replacement of entry, new exterior wall finishes, updated signage, the existing basement, replacement of an area of deteriorating floor slab, refreshed directional pavement graphics and roof replacement (collectively with the Land and Improvements, the "**Facility**"); (iv) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment (the "**Equipment**" and together with the Land, Improvements and the Facility, the "**Project Facility**"); (B) the granting of certain financial assistance in the form of exemptions from real property tax, State and local sales and use tax and mortgage recording tax (in accordance with Section 874 of the General Municipal Law) (collectively the "**Financial Assistance**"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, reconstruction, renovation, equipping and completion of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement.

Alan I. Byer Family Trust a trust duly formed under and pursuant to the laws of the State of New York pursuant to an inter vivos revocable trust agreement dated as of October 1, 2015 (the "**Trust**") and Stephen Gary Byer are the fee owners of Parcel 1. Realty is the fee owner of Parcel 2 and Parcel 3. Alan Byer Auto Sales, Inc. ("**Alan Sales**") is the operator of the Project Facility and leases the Project Facility from the Trust, Byer and West Genesee Realty Associates, LLC, as applicable, pursuant to certain lease agreements dated December 16, 1991, November 30, 2005 and November 9, 2019 (collectively, the "**Ground Lease**").

Realty, the Trust, Byer and Alan Sales (collectively, the "**Company**") will sublease the Land and Facility to the Agency pursuant to a Company Lease Agreement dated as of September 1, 2019 (the "**Company Lease**") and transfer its interests in the Equipment to the Agency pursuant to a bill of sale dated as of September 1, 2019 (the "**Bill of Sale**") and the Agency will (sub)sublease the Project Facility back to the Company pursuant to an Agency Lease Agreement dated as of September 1, 2019 (the "**Agency Lease**").

Capitalized terms which are not otherwise defined herein shall have the meanings ascribed to them in the Agency Lease Agreement dated as of September 1, 2019, except that, for purposes of this certificate: (A) all definitions with respect to any document shall be deemed to refer to such document only as it exists as of the date of this certificate and not as of any future date; and (B) all definitions with respect to any Person shall be deemed to refer to such Person only as it exists as of the date of this certificate and not as of any future date or to any successor or assign.

The undersigned does hereby certify as follows:

1. Attached hereto as **Exhibit "A"** is a true, correct and complete copy of the Articles of Organization of Realty and any amendments thereto filed with the New York State Secretary of State, which Articles of Organization (including any amendments) are in full force and effect on the date hereof.

2. Attached hereto as **Exhibit "B"** is a true, correct and complete copy of Realty's Operating Agreement, and any amendments thereto, and such Operating Agreement, as may have been amended, is in full force and effect on the date hereof.

3. Realty is, and at all times will be, a limited liability company, duly organized, validly existing and in good standing under the laws of New York State to transact business as a business corporation for the purpose of owning and operating the Project Facility in the State. Attached hereto as **Exhibit "C"** is a true and correct copy of a Certificate of Good Standing of Realty, which includes the proof of publication of Realty's Articles of Organization, issued by the New York State Secretary of State.

4. Realty has full legal right, power and authority to execute and deliver the Company Documents and to consummate the transactions on the part of Realty contemplated by the Company Documents. The Company Documents have been duly authorized, executed, and delivered by the Manager on behalf of Realty and are in full force and effect as of the date hereof. Attached hereto as **Exhibit "D"** is a true, correct and complete copy of the authorizing resolution of Realty (the "**Resolution**") in respect of the execution, delivery and performance of the Company Documents.

5. Realty understands and agrees that, unless a written waiver is first obtained from the Agency, in accordance with the Agency's Local Access Policy, Realty and its Additional Agents shall utilize local labor, contractors and suppliers for the construction, renovation, reconstruction and equipping of the Project Facility. The term "**local**" shall mean Onondaga, Oswego, Madison, Cayuga, Oneida and Cortland Counties. Realty further understands and agrees that failure to comply with these local labor requirements may result in the revocation or

recapture of benefits provided/approved to the Project by the Agency. In furtherance thereof, the Local Access Agreement has been completed and is attached hereto as **Exhibit "E"**.

6. Realty understands and agrees that it is the preference of the Agency that Realty provide opportunities for the purchase of goods and services from: (i) business enterprises located in the City; (ii) certified minority and or women-owned business enterprises; and (iii) business enterprises that employ residents of the City. Realty further understands and acknowledges that consideration will be given by the Agency to Realty's efforts to comply, and compliance, with this objective at any time an extension of benefits is sought or involvement by the Agency with the Project is requested by Realty.

7. All consents, approvals, authorizations or orders of, notices to, or filings, registrations or declarations with, any court or governmental authority, board, agency, commission or body having jurisdiction which are required on behalf of Realty or for the execution and delivery by Realty of the Company Documents or the consummation on the part of Realty of the transactions contemplated thereby have been obtained.

8. After performing due diligence, there is no legal action, suit, proceeding, inquiry or investigation at law or in equity (before or by any court, agency, arbitrator, public board or body or other entity or person) pending or threatened against or affecting Realty or, to the knowledge of Realty, any basis therefor: (i) in any way affecting the organization, existence or good standing of Realty; (ii) contesting or materially affecting the validity or enforceability of the Company Documents; (iii) contesting the powers of Realty or its authority with respect to the Company Documents; (iv) contesting the authority of Realty to act on behalf of Realty or the authority of the representatives of Realty to act on behalf of Realty; (v) wherein an unfavorable decision, ruling or finding would have a material adverse effect on: (A) the financial condition or operations of Realty; or (B) the consummation on the part of Realty of the transactions contemplated by any Company Documents.

9. The execution and delivery by Realty of the Company Documents and the consummation by Realty of the transactions contemplated thereby are not prohibited by, do not violate any provision of, and will not result in a breach of or default under: (i) the organizational documents of Realty; (ii) any applicable law, rule, regulation, order, writ, injunction, judgment or decree of any court or governmental body or other requirement to which Realty is subject; or (iii) any contract, agreement, mortgage, lease, guaranty, commitment or other obligation or instrument to which Realty is a party or by which Realty or its properties is bound.

10. All information concerning the Project Facility and Realty submitted to the Agency and any Mortgagee by Realty is true and correct in all material respects and does not omit to state a material fact necessary to make the statements therein not misleading.

11. Assuming the valid authorization, execution and delivery of the Agency Lease and the other Company Documents by the other parties thereto, the Agency Lease and the other Company Documents, to which Realty is a party, are legal, valid and binding obligations, enforceable against Realty in accordance with their respective terms, except to the extent that enforcement thereof may be limited by bankruptcy, insolvency or other similar laws affecting



creditors' rights generally or by the exercise of judicial discretion in accordance with general principles of equity. No default by Realty or, to the best of knowledge of the undersigned, no event of default on the part of any other party to the Company Documents has occurred or is continuing and no event has occurred which, with the giving of notice or passage of time or both, would be such an event of default. Realty has duly authorized the taking of and has taken all actions necessary to carry out and give effect to the transactions contemplated to be performed on its part by the Company Documents.

12. All permits (including building permits), licenses and authorizations necessary for the construction, ownership and operation of the Project in the manner contemplated by each of the Company Documents have been obtained or will be obtained, and said construction, ownership and operation will not, to the best knowledge of Realty, conflict with any zoning or similar ordinance applicable to the Project. To the best of Realty's knowledge, the Project conforms to all material environmental regulations.

13. The Project Agreement, the Company Lease, the Agency Lease, the Mortgage, the Environmental Compliance and Indemnification Agreement, the PILOT Agreement and the other Company Documents are in full force and effect and Realty has not assigned or pledged any of its rights under these documents.

14. Realty acknowledges and restates all of the obligations, representations and covenants in Sections 2.2, 8.12, 11.12 and 11.14 of the Agency Lease and incorporates same herein by reference as if fully set forth herein.

15. Realty further acknowledges its obligation under Section 8.5 of the Agency Lease to provide the additional information as set forth therein and agrees to same.

16. The authorized representatives of Realty who, pursuant to the Resolution, are authorized to execute the Company Documents and the office held by each person are as set forth below. The signature set opposite the name of such officer, if any, is a genuine specimen of such officer's signature:

Name

Signature

Office/Title

Stephen G. Byer



Manager

IN WITNESS WHEREOF, I have set my hand and signature as officer of Realty as of September 1, 2019.

**WEST GENESEE REALTY ASSOCIATES, LLC**

By:



---

Stephen G. Byer, Manager

**EXHIBIT "A"**

**ARTICLES OF ORGANIZATION**

FILING RECEIPT

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ENTITY NAME: WEST GENESEE REALTY ASSOCIATES, LLC

DOCUMENT TYPE: ARTICLES OF ORGANIZATION (DOM LLC)

COUNTY: ONON

SERVICE COMPANY: LIBERTY CORPORATE SERVICES, INC.

SERVICE CODE: AL \*

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FILED:07/06/2005 DURATION:\*\*\*\*\* CASH#:050706000187 FILM #:050706000174

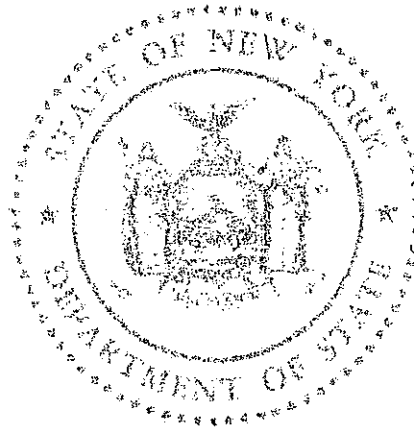
ADDRESS FOR PROCESS

EXIST DATE

-----  
THE LLC  
1230 WEST GENESEE STREET  
SYRACUSE, NY 13204

-----  
07/06/2005

REGISTERED AGENT  
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FILER	FEES		PAYMENTS	
-----	-----	235.00	-----	235.00
	FILING	200.00	CASH	0.00
	TAX	0.00	CHECK	0.00
MACKENZIE HUGHES, LLP	CERT	0.00	CHARGE	0.00
101 SOUTH SALINA STREET	COPIES	10.00	DRAWDOWN	235.00
	HANDLING	25.00	OPAL	0.00
SYRACUSE, NY 13202			REFUND	0.00
			-----	

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ARTICLES OF ORGANIZATION  
OF  
WEST GENESEE REALTY ASSOCIATES, LLC

Under Section 203 of the Limited Liability Company Law

---

FIRST: The name of the limited liability company is:

WEST GENESEE REALTY ASSOCIATES, LLC

SECOND: The county within the state in which the principal office of the limited liability company is to be located is the County of Onondaga.

THIRD: The Secretary of State is designated as agent of the limited liability company upon whom process against it may be served. The post office address within or without this state to which the department of state shall mail a copy of any process served against it is: the LLC, 1230 West Genesee Street, Syracuse, New York 13204.

FOURTH: The limited liability company is to be managed by one or more managers.

IN WITNESS WHEREOF, this certificate has been subscribed this 5th day of July, 2005, by the undersigned.

  
Gina Carney, Organizer

1

JUL 5 2005 4:05PM

LIBERTY

NO. 088 P. 4

F 050706000174

ARTICLES OF ORGANIZATION

OF

WEST GENESEE REALTY ASSOCIATES, LLC

Under Section 203 of the Limited Liability Company Law

ICC

STATE OF NEW YORK  
DEPARTMENT OF STATE

FILED JUL 06 2005

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BY: LB

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Mackenzie Hughes, LLP  
101 South Salina Street  
Syracuse, NY 13202

Customer Reference #6175

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**EXHIBIT "B"**  
**OPERATING AGREEMENT**

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**OPERATING AGREEMENT**  
**OF**  
**WEST GENESEE REALTY ASSOCIATES, LLC**

**DATED AS OF JULY 6, 2005**

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**OPERATING AGREEMENT**  
**OF**  
**WEST GENESEE REALTY ASSOCIATES, LLC**

**THIS OPERATING AGREEMENT** (the "Agreement") is made and entered into as of the 6th day of July, 2005, by and among the Members who have executed the signature page hereof.

The Members hereby form a limited liability company pursuant to and in accordance with the Limited Liability Company Law of the State of New York, as amended from time to time (the "LLCL"), and hereby agree as follows:

1. **Name.** The name of the limited liability company formed hereby is West Genesee Realty Associates, LLC (the "Company").

2. **Term.** The Company commenced on the date of the filing of the articles of organization and shall continue in perpetual existence unless earlier dissolved as may be determined in accordance with the terms of this Agreement or the LLCL.

3. **Purpose.** The Company is formed for the purpose of (i) real estate investment, development and management, and (ii) and any other lawful act or activity for which limited liability companies may be formed under the LLCL.

4. **Members.**

4.1 Names and Addresses. The names and addresses of the Members are as set forth in Exhibit A to this Agreement.

4.2 Additional Members. A person who holds an assignment of a Membership interest is not a Member. An assignee of a membership interest may be admitted as a Member after the date of this Agreement upon the approval of a majority in interest of the Members. New Members will be required to accept and assume this Agreement in writing.

4.3 Books and Records. The Company shall keep books and records of accounts and minutes of all meetings of the Members.

4.4 Information. Each Member may inspect during ordinary business hours and at the principal place of business of the Company the Articles of Organization, the Operating Agreement, the minutes of any meeting of the Members and any tax returns of the Company for the immediately preceding three Fiscal Years.

4.5 Limitation of Liability. Each Member's liability shall be limited as set forth in this Agreement, the LLCL and other applicable law. A Member shall not be personally

liable for any indebtedness, liability or obligation of the Company, except that such Member shall remain personally liable for the payment of his or her Capital Contribution and as otherwise set forth in this Agreement, the LLCL and any other applicable law.

4.6 Sale of all Assets. The Manager shall have the exclusive right, to sell, lease, exchange or otherwise dispose of all or substantially all of the assets of the Company.

4.7 Priority and Return of Capital. No Member shall have priority over any other Member, whether for the return of a Capital Contribution or for Net Profits, Net Losses or a Distribution; provided, however, that this Section shall not apply to a loan or other indebtedness (as distinguished from a Capital Contribution) made by a Member to the Company.

4.8 Liability of a Member to the Company. A Member who or which rightfully receives the return of any portion of a Capital Contribution is liable to the Company only to the extent now or hereafter provided by the LLCL. A Member who or which receives a Distribution made by the Company in violation of this Agreement or made when the Company's liabilities exceed its assets (after giving effect to such Distribution) shall be liable to the Company for the amount of such Distribution.

4.9 Financial Adjustments. No Members admitted after the date of this Agreement shall be entitled to any retroactive allocation of losses, income or expense deductions incurred by the Company. The Members may, at the discretion of the Manager, at the time a Member is admitted, close the books and records of the Company (as though the Fiscal Year had ended) or make pro rata allocations of loss, income and expense deductions to such Member for that portion of the Fiscal Year in which such Member was admitted in accordance with the Code.

## 5. **Management.**

5.1 Management. The business and affairs of the Company shall be managed by one or more Managers (the "Manager"). The Manager is not required to be a Member. The Manager is authorized and directed to manage and control the business of the Company. Except as provided by nonwaivable provisions of the LLCL and as otherwise set forth herein, the Manager has full and complete authority, power and discretion to manage and control the business, affairs, and properties of the Company, to make all decisions regarding those matters and to perform any and all other acts or activities customary or incident to the management of the Company's business.

5.2 Manager. Stephen G. Byer is designated to serve as Manager and shall continue to serve as Manager until his death, resignation, or disability. In the event Stephen G. Byer shall cease to act as a Manager, the succeeding Manager shall be elected by the affirmative vote of the Members owning a majority of the Membership Interests.

5.3 Power and Authority to Bind the Company. Unless authorized to do so by this Agreement or by the Manager, no attorney-in-fact, employee or other agent of the Company shall have any power or authority to bind the Company in any way, to pledge its credit or to render it liable for any purpose. No Member shall have any power or authority to bind the

Company, unless the Member has been authorized by the Manager to act as an agent of the Company in accordance with the preceding sentence. Any Member who takes any action or binds the Company in violation of this Section 5.3 shall be solely responsible for any loss and expense incurred by the Company as a result of the unauthorized action and shall indemnify and hold the Company harmless with respect to such loss or expense.

5.4 Liability for Certain Acts. The Manager shall perform his or her duties as Manager in good faith, in a manner reasonably believed to be in the best interests of the Company, and with such care as an ordinarily prudent person in a like position would use under similar circumstances. The Manager shall not be liable to the Company or to any Member for any loss or damage sustained by the Company or any Member, unless the loss or damage shall have been the result of fraud, deceit, gross negligence or willful misconduct by the Manager.

5.5 Manager Has No Exclusive Duty to Company. The Manager shall not be required to manage the Company as his or her sole and exclusive function and he or she may have other business interests and may engage in other activities in addition to those relating to the Company. Neither the Company nor any Member shall have any right pursuant to this Agreement to share or participate in such other business interests or activities or to the income or proceeds derived therefrom. The Manager shall incur no liability to the Company or any Member as a result of engaging in any other business interests or activities.

5.6 Officers. The Manager may designate one or more individuals, including the Manager, as officers of the Company, who shall have such titles and exercise and perform such powers and duties as shall be assigned to them from time to time by the Manager. Any officer may be removed by the Manager at any time, with or without cause. Each officer shall hold office until his or her successor is designated and qualified. Any number of offices may be held by the same individual. The salaries and other compensation of the officers shall be fixed by the Manager.

5.7 Salaries. The salaries and other compensation of the Officers shall be fixed from time to time by written consent of the Manager. No Officer shall be prevented from receiving such a salary or other compensation because such Officer is also a Member.

5.8 Reimbursement to Manager. The Company shall reimburse the Manager for all ordinary, necessary, and direct expenses incurred by the Manager on behalf of the Company in carrying out the Company's business activities.

5.9 Execution of Documents. Any document or instrument of any and every nature, including without limitation, any agreement, contract, lease, deed, promissory note, mortgage or deed of trust, security agreement, financing statement, pledge, assignment, bill of sale and certificate, which is intended to bind the Company or convey or encumber title to its real or personal property shall be valid and binding for all purposes only if executed by the Manager.

5.10 Resignation. Any Manager of the Company may resign at any time by giving written notice to the Members of the Company. The resignation of any Manager shall take effect upon receipt of notice thereof or at such later date specified in such notice; and unless

otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. The resignation of a Manager who is also a Member shall not affect the Manager's rights as a Member and shall not constitute a withdrawal of a Member.

**6. Meetings of and Voting by Members.**

(a) A meeting of the Members may be called at any time by the Manager. The meeting of Members shall be at the Company's principal place of business or at any other place designated by the Manager. Not less than five (5) nor more than thirty (30) days before each meeting, the Manager shall give written notice of the meeting to each Member entitled to vote at the meeting. The notice shall state the time, place and purpose of the meeting. Notwithstanding the foregoing provisions, each Member who is entitled to notice waives notice if before or after the meeting the Member signs a waiver of notice which is filed with the records of Members' meetings, or is present at the meeting in person or by proxy. Unless this Agreement provides otherwise, at a meeting of Members, the presence in person or by proxy of Members holding not less than two-thirds of the Membership Interests shall constitute a quorum. A Member may vote either in person or by written proxy signed by the Member or by the Member's duly authorized attorney-in-fact.

(b) Except as otherwise provided in this Agreement, the affirmative vote of a majority of the Percentage Interests shall be required to approve any matter coming before the Members.

(c) In lieu of holding a meeting, the Members may vote or otherwise take action by a written instrument indicating the unanimous consent of all Members.

**7. Withdrawal of Member.** Except as otherwise specifically provided in this Agreement, a Member may not voluntarily withdraw from the Company, or assign or otherwise transfer all or part of such Member's Membership Interest prior to the dissolution and winding up of the Company. Any such attempted withdrawal, assignment, or transfer shall be null and void, but the Company shall be entitled to relief for the damages caused by any attempts to withdraw, assign, or transfer, as well as injunctive relief.

**8. Terms of Purchase.**

8.1 Value of Membership Interest. In the event of the death of a Member or if there is an offer to sell or a notice of intention to transfer by a Member in accordance with the provisions of section 12 hereof, the value shall be determined by the independent certified public accountant regularly retained by the Company based upon a fair market appraisal of the real property owned by the Company prepared by a qualified appraiser with at least ten (10) years of experience appraising commercial real property. If no such accountant shall be so retained, said value shall be determined by any certified public accountant selected by the Manager. The value of the Company as above stated, and as determined from time to time hereafter, is and shall be inclusive of the value of goodwill.

8.2 Terms. In the event the right of first refusal is exercised in accordance with Section 12 hereof, the purchase price shall be paid in one sum, or, upon the decision of the Manager, within five (5) years, in equal monthly payments, with interest at a rate to be determined by the Manager, but in no event less than the mid term annual federal rate as provided by the Internal Revenue Service, or its successor, in effect for the month in which the first payment is due, which deferred payments shall be evidenced by a promissory note. Said note may be prepaid in whole or in part, at any time, without premium or penalty.

9. **Capital Contributions.**

9.1 Capital Contributions. Each Member shall contribute the amount set forth in Exhibit A to this Agreement, or as the same may be amended from time to time, as the Capital Contribution to be made by him, her or it.

9.2 Additional Contributions. Except as set forth in Section 9.1 of this Agreement, no Member shall be required to make any Capital Contribution.

9.3 Capital Accounts. A Capital Account shall be maintained for each Member. Each Member's Capital Account shall be increased by the value of each Capital Contribution made by the Member, allocations to such Member of the Net Profits and any other allocations to such Member of income pursuant to the Code. Each Member's Capital Account will be decreased by the value of each Distribution made to the Member by the Company, allocations to such Member of Net Losses and other allocations to such Member pursuant to the Code.

9.4 Transfers. Upon a permitted sale or other transfer of a Membership Interest in the Company, the Capital Account of the Member transferring his, her or its Membership Interest shall become the Capital Account of the Person to which or whom such Membership Interest is sold or transferred in accordance with Section 1.704-1(b)(2)(iv) of the Treasury Regulations.

9.5 Modifications. The manner in which Capital Accounts are to be maintained pursuant to this Section is intended to comply with the requirements of Section 704(b) of the Code. If in the opinion of the Manager the manner in which Capital Accounts are to be maintained pursuant to this Agreement should be modified to comply with Section 704(b) of the Code, then the method in which Capital Accounts are maintained shall be so modified; provided, however, that any change in the manner of maintaining Capital Accounts shall not materially alter the economic agreement between or among the Members.

9.6 Deficit Capital Account. Except as otherwise required in the LLCL or this Agreement, or as otherwise agreed upon by the Manager, no Member shall have any liability to restore all or any portion of a deficit balance in a Capital Account.

9.7 Withdrawal or Reduction of Capital Contributions. A Member shall not receive from the Company any portion of a Capital Contribution until all indebtedness, liabilities and obligations of the Company, except any indebtedness, liabilities and obligations to Members on account of their Capital Contributions, have been paid or there remains property of the Company, in the sole discretion of the Manager, sufficient to pay them. A Member, irrespective of the nature of the Capital Contribution of such Member, has only the right to demand and receive cash in return for such Capital Contribution.

## 10. **Allocations and Distributions.**

10.1 Allocations of Profits and Losses. The Net Profits and the Net Losses for each Fiscal Year shall be allocated to each Member pro rata in proportion to their Membership Interests as of the record date set for such distribution.

10.2 Distributions. The Manager may from time to time declare Distributions to be made to the Members. All Distributions shall be allocated to the Members pro rata in proportion to their Membership Interests as of the record date set for such Distribution.

10.3 Offset. The Company may offset all amounts owing to the Company by a Member against any Distribution to be made to such Member.

10.4 Limitation Upon Distributions. No Distributions shall be declared and paid unless, after such Distribution is made, the assets of the Company are in excess of all liabilities of the Company.

10.5 Interest on and Return of Capital Contributions. No Member shall be entitled to interest on his, her or its Capital Contribution or to a return of his, her or its Capital Contribution, except as specifically set forth in this Agreement.

10.6 Accounting Period. The accounting period of the Company shall be the Fiscal Year.



11. **Indemnification.**

11.1 Indemnity of the Manager.

(a) Subject to the limitations and conditions provided in this Section 11.1, each Person ("Indemnified Person") who was or is made a party or is threatened to be made a party to or is involved in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, arbitrative or investigative ("Proceeding"), or any appeal in such a Proceeding or any inquiry or investigation that could lead to such a Proceeding, by reason of the fact that he, or a Person of whom he is the legal representative, is or was a Manager of the Company or is or was serving as a manager, director, officer, partner, venturer, proprietor, trustee, employee, agent or similar functionary of another entity that is or was a Manager shall be indemnified by the Company against judgments, penalties (including excise and similar taxes and punitive damages), fines, settlements and reasonable costs and expenses (including, without limitation, attorneys' fees) actually incurred by such Indemnified Person in connection with such Proceeding if such Indemnified Person acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interest of the Company, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, in and of itself, create a presumption that the Indemnified Person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Company or, with respect to any criminal action or proceeding, that the Indemnified Person had reasonable cause to believe that his conduct was unlawful.

(b) To the extent that an Indemnified Person has been successful, on the merits or otherwise, in the defense of any action, suit or proceeding referred to in Section 11.1(a), or in defense of any claim, issue or matter therein, he will be indemnified against expenses (including attorneys' fees) actually and reasonably incurred in connection therewith.

(c) Any indemnification under this Section 11.1 (unless ordered by a court) shall be made by the Company only as authorized in the specific case, upon a determination that indemnification is proper in the circumstances because he has met the applicable standard of conduct set forth therein. Such determination shall be made by the holders of a majority of Membership Interests held by Members who were not parties to or subjects of such threatened or actual Proceeding. If there are no disinterested Members, then the determination shall be made by the Company's independent legal counsel, whose fees must be paid by the Company.

(d) Indemnification under this Section 11.1 shall continue as to an Indemnified Person who has ceased to serve in the capacity which initially entitled such Indemnified Person to indemnity hereunder. The rights granted pursuant to this Section 11.1 shall be deemed contract rights, and no amendment, modification or repeal of this Section 11.1 shall have the effect of limiting or denying any such rights with respect to actions taken or Proceedings arising prior to any such amendment, modification or repeal.

(e) The right to indemnification conferred by this Section 11.1 shall include the right to be paid or reimbursed by the Company for the reasonable expenses incurred in advance of the final disposition of the Proceeding and without any determination as to the Indemnified Person's ultimate entitlement to indemnification; provided, however, that the payment of such expenses incurred in advance of the final disposition of a Proceeding shall be made only upon delivery to the Company of a written affirmation by such Indemnified Person of his good faith belief that he has met the standard of conduct necessary for indemnification under this Section 11.1 and a written undertaking, by or on behalf of such Indemnified Person, to repay all amounts so advanced if it shall ultimately be determined that such Indemnified Person is not entitled to be indemnified under this Section 11.1 or otherwise.

## 12. **Transferability.**

12.1 General. Except as set forth in this Agreement, no Member, shall gift, sell, assign, pledge, hypothecate, exchange or otherwise transfer to another Person any portion of or interest in a Membership Interest.

12.2 Offer to Sell. If a Member dies, becomes disabled, desires to gift, sell, assign, pledge, hypothecate or exchange their Membership Interest, or any interest therein, or is ordered by a court of competent jurisdiction to transfer their Membership Interest, or their interest therein, pursuant to a divorce or other action, or otherwise transfer a Membership Interest, or their interest therein, such Member shall be deemed to have offered their Membership Interest to the other Members for sale and shall give written notice to the other Members of his, her or its intention to transfer such Membership Interest.

12.3 Permitted Transfers. Each Member, may sell, give, assign or bequeath an assignment of interest of his, her or its Membership Interest, to any other Member. Additionally, each Member may sell, give, assign or bequeath an assignment of interest of his, her or its Membership Interest, to such Member's spouse, children or heirs, or trusts for his, her or its own or their benefit, or to any entity owned or controlled by such persons or entities. The rights accorded each Member under this Section 12.3 may also be exercised by any successor, executor, administrator, spouse, child or heir who may have succeeded to a Member's interest.

12.4 Right of First Refusal. Except in the case of a Permitted Transfer authorized under Section 12.3, the Company will have the right of first refusal for all units offered to be sold or otherwise transferred, upon the terms and conditions set forth in this Agreement by giving written notification to the Selling Member of its intention to do so within sixty (60) days after receiving written notice from the Selling Member. If the Company does not elect this right within sixty (60) days after receiving written notice from the Selling Member, each Member other than the Selling Member, on a basis pro rata to the Membership Interests of each Member exercising his, her or its right of first refusal, shall have the right to exercise a right of first refusal to purchase all (but not less than all) of the Membership Interest proposed to be sold by the Selling Member, upon the terms and conditions set forth in this Agreement, by giving written notification to the Selling Member of his, her or its intention to do so within ninety (90) days after receiving written notice from the Selling Member. The failure of any Member to so notify the Selling Member of his, her or its election to exercise such right of first refusal within

such ninety (90) day period shall result in the termination of such right of first refusal and the Selling Member shall be entitled to consummate the sale or transfer of his, her or its Membership Interest with respect to which such right of first refusal has not been exercised, to the Person offering to purchase such Membership Interest pursuant to the bona fide written offer. If the Selling Member does not sell his, her or its Membership Interest within thirty (30) days after receiving the right to do so, his, her or its right to do so terminates and the terms and conditions of this Section shall again be in effect.

12.5 Closing. If any Member, or the Company gives written notice to the Selling Member of his, her or its election to exercise such right of first refusal and to purchase all of the Selling Member's Membership Interest upon the terms and conditions as are stated in Section 8 of this Agreement, such other Member, or the Company shall have the right to designate the time, date and place of closing within one hundred and twenty (120) days after receipt of written notification from the Selling Member of the bona fide offer or other event triggering the offer and right of first refusal.

12.6 Transferee Not a Member. No Person acquiring a Membership Interest pursuant to this Section, shall become a Member, without an affirmative vote of the Members owning a majority of the Membership Interests. If no such approval is obtained, such Person's Membership Interest shall only entitle such Person to receive the distributions and allocations of profits and losses to which the Member from whom or which such Person received such Membership Interest would be entitled. Any such approval may be subject to any terms and conditions imposed by the Manager or, if applicable, by the Members owning a majority of the Membership Interests.

12.7 Effective Date. Any transfer of an assignment in a Membership Interest or admission of a Member pursuant to this Article shall be deemed effective as of the last day of the calendar month in which such transfer or admission occurs.

### 13. **Dissolution.**

13.1 Dissolution. The Company shall be dissolved and its affairs shall be wound up upon the first to occur of the following:

- (a) The election to dissolve by the Manager;
- (b) The unanimous written consent of all Members; or
- (c) The entry of a decree of judicial dissolution under LLCL; or
- (d) Any other event causing dissolution under LLCL.

13.2 Incompetent Member. If a Member who is an individual dies or a court of competent jurisdiction adjudges him to be incompetent to manage his person or his property, the Member's executor, administrator, guardian, conservator, or other legal representative may

exercise all of the Member's rights for the purpose of settling his estate or administering his property.

13.3 Winding Up. Upon the dissolution of the Company, the Members may, in the name of and for and on behalf of the Company, prosecute and defend suits, whether civil, criminal or administrative, sell and close the Company's business, dispose of and convey the Company's property, discharge the Company's liabilities and distribute to the Members any remaining assets of the Company, all without affecting the liability of Members. Upon winding up the Company, the assets shall be distributed as follows:

(a) To creditors, including any Member who is a creditor, to the extent permitted by law, in satisfaction of liabilities of the Company, whether by payment or by establishment of adequate reserves, other than liabilities for distributions to Members under Section 507 or Section 509 of the LLCL;

(b) To Members and former Members in satisfaction of liabilities for Distributions under Section 507 or Section 509 of the LLCL; and

(c) To Members first for the return of their Capital Contributions, to the extent not previously returned, and second respecting their Membership Interest, in the proportions in which the Members share in Distributions in accordance with this Agreement.

13.4 Articles of Dissolution. Within ninety (90) days following the dissolution and the commencement of winding up the Company, or at any other time there are no Members, articles of dissolution shall be filed with the New York Secretary of State pursuant to the LLCL.

13.5 Deficit Capital Account. Upon a liquidation of the Company, within the meaning of Section 1.704-1(b)(2)(ii)(g) of the Treasury Regulations, if any Member has a Deficit Capital Account (after giving effect to all contributions, distributions, allocations and other adjustments for all Fiscal Years, including the Fiscal Year in which such liquidation occurs), the Member shall have no obligation to make any Capital Contribution, and the negative balance of any Capital Account shall not be considered a debt owed by the Member to the Company or to any other Person for any purpose.

13.6 Nonrecourse to Other Members. Except as provided by applicable law or as expressly provided in this Agreement, upon dissolution, each Member shall receive a return of his, her or its Capital Contribution solely from the assets of the Company. If the assets of the Company remaining after the payment or discharge of the debts and liabilities of the Company is insufficient to return any Capital Contribution of any Member, such Member shall have no recourse against any other Member.

13.7 Termination. Upon completion of the dissolution, winding up, liquidation, and distribution of the assets of the Company, the Company shall be deemed terminated.

14. **Definitions.**

In this Agreement, the following terms shall have the meanings set forth below:

(a) "Articles of Organization" shall mean the Article of Organization of the Company filed or to be filed with the New York Secretary of State, as they may from time to time be amended.

(b) "Capital Account" as of any date shall mean the Capital Contribution to the Company by a Member, adjusted as of such date pursuant to this Agreement.

(c) "Capital Contribution" shall mean any contribution by a Member to the capital of the Company in cash, property or services rendered or a promissory note or other obligation to contribute cash or property or to render services.

(d) "Code" shall mean the Internal Revenue Code of 1986, as amended, or any superseding federal revenue statute.

(e) "Company" shall refer to West Genesee Realty Associates, LLC.

(f) "Disabled" or "Disability" shall mean the inability to perform the customary duties of a Manager substantially as theretofore performed as a result of physical or mental incapacity by reason of accident or illness, and such incapacity continues for a period of ninety (90) consecutive days or one hundred twenty (120) days in any twelve (12) month period.

(g) "Distribution" means any cash and other property paid to a Member by the Company from the operations of the Company.

(h) "Fiscal Year" shall mean the fiscal year of the Company, which shall be the year ending December 31.

(i) "Manager" shall mean one or more Managers as provided for in paragraph 5 hereof. References to the Manager in the singular or as him, her, it, itself or other like references shall also, where the context so requires, be deemed to include the plural or the masculine, neuter or feminine reference, as the case may be.

(j) "Membership Interests" shall mean those units set forth in Exhibit A of this Agreement.

(k) "Member" shall mean each Person who or which executes a counterpart of this Agreement as a Member and each Person who or which may hereafter become a party to this Agreement.

(l) "Net Losses" shall mean the losses of the Company, if any; determined in accordance with generally accepted accounting principles.

(m) "Net Profits" shall mean the income of the Company, if any, determined in accordance with generally accepted accounting principles.


(n) "Person" shall mean any individual, corporation, governmental authority, limited liability company, partnership, trust, unincorporated association or other entity.

(o) "Sharing Ratio" shall mean the percentage that each Member's Units bears to all outstanding Units.

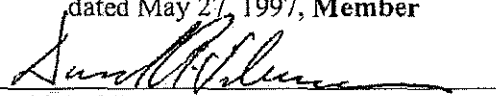
(p) "Selling Member" shall mean a Member desiring to sell a Membership Interest.

(q) "Units" shall mean an Interest of a Member.

**IN WITNESS WHEREOF**, the undersigned, intending to be legally bound hereby, have duly executed this Operating Agreement as of the 6th day of July, 2005.

  
\_\_\_\_\_  
Stephen G. Byer, Member/Manager

Byer Children Trust under agreement  
dated May 27, 1997, Member

By:   
\_\_\_\_\_  
David A. Silverman, Trustee

**EXHIBIT A**

**Members/Contribution by Members/Membership Interests**

<u>Name</u>	<u>Address</u>	<u>Contribution</u>	<u>Membership Interest</u>
Stephen G. Byer	1230 West Genesee Street Syracuse, NY 13204	\$50.00	5%
Byer Children Trust u/a dated May 27, 1997	1100 Marlyn Park Drive Cazenovia, NY 13055-9664	\$950.00	<u>95%</u>
		<u>\$1,000.00</u>	<u>100%</u>

**EXHIBIT "C"**  
**GOOD STANDING CERTIFICATE**



**State of New York**  
**Department of State** } **ss:**

*I hereby certify, that WEST GENESEE REALTY ASSOCIATES, LLC a NEW YORK Limited Liability Company filed Articles of Organization pursuant to the Limited Liability Company Law on 07/06/2005, and that the Limited Liability Company is existing so far as shown by the records of the Department. I further certify the following:*

*An Affidavit of Publication of WEST GENESEE REALTY ASSOCIATES, LLC was filed on 09/20/2005.*

*An Affidavit of Publication of WEST GENESEE REALTY ASSOCIATES, LLC was filed on 09/20/2005.*

*A Biennial Statement was filed 07/31/2007.*

*A Biennial Statement was filed 11/15/2010.*

*A Biennial Statement was filed 07/28/2011.*

*A Biennial Statement was filed 07/19/2013.*

*A Biennial Statement was filed 05/28/2019.*

*A Biennial Statement was filed 07/10/2019.*

*I further certify, that no other documents have been filed by such Limited Liability Company.*



\*\*\*

*Witness my hand and the official seal  
of the Department of State at the City  
of Albany, this 15th day of July  
two thousand and nineteen.*

*Brendan C. Hughes*

Brendan C. Hughes  
Deputy Secretary of State

**EXHIBIT "D"**  
**RESOLUTION**

**RESOLVED**, that any person with the title or position of Manager (an "**Authorized Representative**") may, on behalf of and in the name of West Genesee Realty Associates, LLC (the "**Company**"), transact with and through the City of Syracuse Industrial Development Agency ("**SIDA**"), all such business as the Authorized Representative deems advisable upon such terms as the Authorized Representative deems proper including, but not limited to seeking certain financial assistance including (a) an exemption from New York State and local sales and use taxes, (b) an exemption from mortgage recording tax; and (c) a partial abatement from real property taxes ("(a)" through "(c)" immediately above, collectively, the "**Financial Assistance**") with respect to the Company's redevelopment and equipping (the "**Project**") of the real property and improvements located at 1232-36 West Genesee Street (also known as 1230 West Genesee Street) ("**Parcel 1**"); (2) 1232 West Genesee Street (rear) ("**Parcel 2**"); and (3) 1288 West Genesee Street ("**Parcel 3**"), each in the City of Syracuse, New York, in the City of Syracuse, New York (Parcel 1, Parcel 2, and Parcel 3, together with the improvements now or after located thereon, collectively, the "**Facility**"); and be it further

**RESOLVED**, that the Authorized Representative has the power and authority on behalf of the Company to do all such acts and other things as the Authorized Representative deems proper, including but not limited to signing and delivering each such document and agreement memorializing the Company's agreements with SIDA in connection with the Financial Assistance, including: (i) a Second Amendment to Interim Project Agreement; (ii) a lease agreement pursuant to which the Company will lease the Facility to SIDA; (iii) a lease agreement, pursuant to which SIDA will sublease the Facility to the Company; (iv) a payment in lieu of taxes agreement; (v) an environmental compliance and indemnification agreement, (vi) such other documents as the Company and SIDA deem necessary ("(i)" through "(vi)" immediately above, collectively, the "**IDA Documents**"); and be it further

**RESOLVED**, that the authority given under these Resolutions is retroactive and any and all other actions taken by the Authorized Representative acting on behalf of the Company are hereby adopted, ratified and confirmed.

Sign:

  
Stephen Byer, Manager

Date: As of September 1, 2019

**EXHIBIT "E"**  
**LOCAL ACCESS AGREEMENT**

## City of Syracuse

### Industrial Development Agency

#### Local Access Agreement

Alan Byer Auto Sales, Inc., Alan I. Byer Family Trust, Stephen G. Byer, individually, and West Genesee Realty Associates, LLC (collectively, the "Company"), understands and agrees that local labor, contractors and suppliers will be used for the construction, renovation, reconstruction and equipping of the Project unless a written waiver is first received from the Agency, and agrees to provide the information requested below as a way to provide access for local participation.

<b>Company</b>		Alan Byer Auto Sales, Inc., Alan I. Byer Family Trust, Stephen G. Byer, individually, and West Genesee Realty Associates, LLC				<b>General Contractor</b>		Parsons-McKenna Construction Co., Inc.			
<b>Representative for Contract Bids and Awards</b>		Stephen G. Byer				<b>Contact</b>		Jake McKenna			
<b>Address</b>		1230 West Genesee Street				<b>Address</b>		117 Metropolitan Park Drive			
<b>City</b>	Syracuse	<b>ST</b>	NY	<b>Zip</b>	13204	<b>City</b>	Syracuse	<b>ST</b>	NY	<b>Zip</b>	13088
<b>Phone</b>	315.471.6107		<b>Fax</b>			<b>Phone</b>	315.451.7330		<b>Fax</b>		
<b>Email</b>		sbyer@alanbyervolvo.com				<b>Email</b>		jmckenna@parsonsmckenna.com			
<b>Project Address</b>		1232-36 West Genesee Street (a/k/a 1230 West Genesee Street); 1232 West Genesee Street (rear); and 1288 West Genesee Street				<b>Construction Start Date</b>					
<b>City</b>	Syracuse	<b>ST</b>	NY	<b>Zip</b>	13204	<b>Occupancy Date</b>					

**Project Components – Indicate those for which bids will be sought:**

Item	Estimated Value	Bid Date	Contact
Site work/Demolition			
Foundation and footings			
Building			
Masonry			
Metals			
Wood/casework			
Thermal/moisture proof			
Doors, windows, glazing			
Finishes			
Electrical			
HVAC			
Plumbing			
Specialties			
Machinery & Equipment			
Furniture and Fixtures			
Utilities			
Paving			
Landscaping			
Other (identify)			

Date: \_\_\_\_\_

**Company:** Alan Byer Auto Sales, Inc., Alan I. Byer Family Trust, Stephen G. Byer, individually, and West Genesee Realty Associates, LLC

Signature:  \_\_\_\_\_

**Name:** Stephen G. Byer

As Authorized Signatory for each entity



## CERTIFICATION

Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Agency Lease Agreement by and between the parties dated as of September 1, 2019.

The undersigned, Stephen G. Byer, certify that I am over 18 years of age, of sound mind and otherwise competent to make this Certification and do hereby certify and confirm:

1. this certification is made in connection with my execution of the Project Agreement, the Company Lease, the Agency Lease, the PILOT Agreement, the Environmental Compliance and Indemnification Agreement and any other document now or hereafter executed by me in connection with the City of Syracuse Industrial Development Agency (the "**Agency**") agreeing, at the Company's (as defined herein) request, to undertake a project (the "**Project**") consisting of: (A)(i) the acquisition of an interest in: (1) approximately 1.89 acres of improved real property bearing tax map number 108.1-02-19 and commonly referred to as 1232-36 West Genesee Street (also known as 1230 West Genesee Street) ("**Parcel 1**"); (2) approximately 3 acres of improved real property bearing tax map number 108.1-02-35.1 and commonly referred to as 1232 West Genesee Street (rear) ("**Parcel 2**"); and (3) approximately 2 acres of improved real property bearing tax map number 108.1-02-20 and commonly referred to as 1288 West Genesee Street ("**Parcel 3**"), each in the City of Syracuse, New York (collectively, the "**Land**"); (ii) certain improvements, including but not limited to, an existing approximately 25,820 square foot building located on Parcel 1; an existing approximately 17,000-square foot building located on Parcel 2; and an approximately 34,802 square foot building located on Parcel 3, all of which are served by common driveways, parking, and pedestrian walkways, and all of which comprise the Alan Byer Volvo facility (collectively, the "**Improvements**"); (iii) the renovation to the Improvements and the Land include, but are not limited to, the interior showroom, sales offices and reception areas, external replacement of entry, new exterior wall finishes, updated signage, the existing basement, replacement of an area of deteriorating floor slab, refreshed directional pavement graphics and roof replacement (collectively with the Land and Improvements, the "**Facility**"); (iv) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment (the "**Equipment**" and together with the Land, Improvements and the Facility, the "**Project Facility**"); (B) the granting of certain financial assistance in the form of exemptions from real property tax, State and local sales and use tax and mortgage recording tax (in accordance with Section 874 of the General Municipal Law) (collectively the "**Financial Assistance**"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, reconstruction, renovation, equipping and completion of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement.

2. Myself and Alan I. Byer Family Trust, a trust duly formed under and pursuant to the laws of the State of New York pursuant to an inter vivos revocable trust agreement dated as of October 1, 2015 (the "**Trust**") are the fee owners of Parcel 1. West Genesee Realty Associates, LLC ("**Realty**") is the fee owner of Parcel 2 and Parcel 3. Alan Byer Auto Sales, Inc. ("**Alan Sales**") is the operator of the Project Facility and leases the Project Facility from the Trust, myself and West Genesee Realty Associates, LLC, as applicable, pursuant to certain lease agreements dated December 16, 1991, November 30, 2005 and November 9, 2019 (collectively, the "**Ground**");

*Lease*").

3. Alan Sales, the Trust, myself and Realty (collectively, the "**Company**") will sublease the Land and Facility to the Agency pursuant to a Company Lease Agreement dated as of September 1, 2019 (the "**Company Lease**") and transfer our interests in the Equipment to the Agency pursuant to a bill of sale dated as of September 1, 2019 (the "**Bill of Sale**"); and the Agency will (sub)sublease the Project Facility back to the Company pursuant to an Agency Lease Agreement dated as of September 1, 2019 (the "**Agency Lease**").

4. I understand and agree that, unless a written waiver is first obtained from the Agency, in accordance with the Agency's Local Access Policy, I and my Additional Agents shall utilize local labor, contractors and suppliers for the construction, renovation, reconstruction and equipping of the Project Facility. The term "**local**" shall mean Onondaga, Oswego, Madison, Cayuga, Oneida and Cortland Counties. The Trust further understands and agrees that failure to comply with these local labor requirements may result in the revocation or recapture of benefits provided/approved to the Project by the Agency. In furtherance thereof, the Local Access Agreement has been completed and is attached hereto as **Exhibit "A"**.

5. I understand and agree that it is the preference of the Agency that I provide opportunities for the purchase of goods and services from: (i) business enterprises located in the City; (ii) certified minority and or women-owned business enterprises; and (iii) business enterprises that employ residents of the City. I further understand and acknowledge that consideration will be given by the Agency to my efforts to comply, and compliance, with this objective at any time an extension of benefits is sought or involvement by the Agency with the Project is requested by me.

6. Attached hereto as **Exhibit "B"** is a list of all material pending litigation relating to me. Except as set forth in Exhibit "B", there is no action, suit, proceeding, inquiry or investigation, at law or in equity, or before or by any court, public board or body, pending or, to the best of our knowledge, threatened against or affecting me, (nor to the best of my knowledge is there any basis therefor), wherein an unfavorable decision, ruling or finding would adversely affect (A) the transactions contemplated herein or by the Project; or (B) the validity or the enforceability my signature or the Company Documents or the transactions contemplated therein.

7. All consents, approvals, authorizations or orders of, notices to, or filings, registrations or declarations with, any court or governmental authority, board, agency, commission or body having jurisdiction which are required on behalf of myself or for the execution and delivery by me of the Company Documents or the consummation on my part of the transactions contemplated thereby have been obtained.

8. After performing due diligence, there is no legal action, suit, proceeding, inquiry or investigation at law or in equity (before or by any court, agency, arbitrator, public board or body or other entity or person) pending or threatened against or affecting me or, to my knowledge, any basis therefor: (i) contesting or materially affecting the validity or enforceability of the Company Documents; or (ii) wherein an unfavorable decision, ruling or finding would have a material adverse effect on: (A) my financial condition or operations; or (B) my consummation of the transactions contemplated by any Company Documents.



9. My execution and delivery of the Company Documents and the consummation of the transactions contemplated thereby are not prohibited by, do not violate any provision of, and will not result in a breach of or default under: (i) any applicable law, rule, regulation, order, writ, injunction, judgment or decree of any court or governmental body or other requirement to which I am subject; or (ii) the Ground Lease, any contract, agreement, mortgage, lease, guaranty, commitment or other obligation or instrument to which I am a party or by which I or my properties are bound.

10. All information concerning the Project Facility and myself submitted to the Agency and any Mortgagee by me is true and correct in all material respects and does not omit to state a material fact necessary to make the statements therein not misleading.

11. Assuming the valid authorization, execution and delivery of the Agency Lease and the other Company Documents by the other parties thereto, the Agency Lease and the other Company Documents, to which I am a party, are my legal, valid and binding obligations, enforceable against the me in accordance with their respective terms, except to the extent that enforcement thereof may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights generally or by the exercise of judicial discretion in accordance with general principles of equity. No default by me or, to the best of knowledge of the undersigned, no event of default on the part of any other party to the Company Documents has occurred or is continuing and no event has occurred which, with the giving of notice or passage of time or both, would be such an event of default. I have duly authorized the taking of and have taken all actions necessary to carry out and give effect to the transactions contemplated to be performed on its part by the Company Documents.

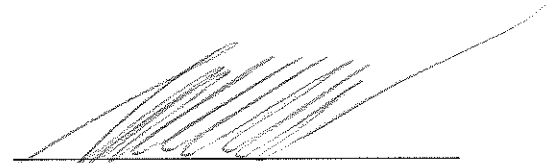
12. All permits (including building permits), licenses and authorizations necessary for the construction, ownership and operation of the Project in the manner contemplated by each of the Company Documents have been obtained or will be obtained, and said construction, ownership and operation will not, to the best of my knowledge, conflict with any zoning or similar ordinance applicable to the Project. To the best of my knowledge, the Project conforms to all material environmental regulations.

13. The Project Agreement, the Company Lease, the Agency Lease, the Environmental Compliance and Indemnification Agreement, the PILOT Agreement and the other Company Documents to which I am a party are in full force and effect and I have not assigned or pledged any of its rights under these documents.

14. I acknowledge and restate all of the obligations, representations and covenants in Sections 2.2, 8.12, 11.12 and 11.14 of the Agency Lease and incorporate same herein by reference as if fully set forth herein.

15. I further acknowledge my obligation under Section 8.5 of the Agency Lease to provide the additional information as set forth therein and agree to same.

Dated: 9-12-19

  
Stephen G. Byer, individually

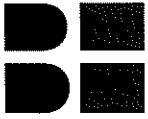
**EXHIBIT "A"**  
**LOCAL ACCESS AGREEMENT**

## **EXHIBIT "B"**

### **PENDING LITIGATION**

Alan Byer Auto Sales, Inc. and North Star Concrete have subjected a payment dispute to arbitration. North Star contends it is due payment of approximately \$148,000 for concrete work performed at the Facility. Sales objected to paying North Star because Sales contends the work was done improperly, causing damages to Sales estimated to be in excess of \$300,000. North Star included Stephen Byer, individually, when filing for arbitration; however, there is no basis for including Byer in the arbitration and counsel requested formal removal of Byer from the process. Each side has submitted its written arguments to the American Arbitration Association and the matter is awaiting assignment to an arbitrator. A decision in favor of North Star will not materially, negatively impact the Project.





# BOUSQUET HOLSTEIN PLLC

110 WEST FAYETTE STREET • ONE LINCOLN CENTER • SUITE 1000 • SYRACUSE, NEW YORK 13202 • PH: 315.422.1500 • FX: 315.422.3549

September 12, 2019

City of Syracuse Industrial Development  
Agency  
201 East Washington Street, 6<sup>th</sup> Floor  
Syracuse, New York 13202

West Genesee Realty Associates, LLC  
1230 West Genesee Street  
Syracuse, New York 13204  
Attn: Stephen G. Byer

Alan Byer Auto Sales, Inc.  
1230 West Genesee Street  
Syracuse, New York 13204  
Attn: Stephen G. Byer

Stephen G. Byer  
1230 West Genesee Street  
Syracuse, New York 13204

Alan I. Byer Family Trust  
1230 West Genesee Street  
Syracuse, New York 13204  
Attn: Stephen G. Byer

Re: City of Syracuse Industrial Development Agency  
Lease/Leaseback Transaction  
Alan Byer Auto Sales, Inc. – Volvo Project

Ladies and Gentlemen:

We have acted as counsel to the City of Syracuse Industrial Development Agency (the "**Agency**") in connection with a project (the "**Project**") undertaken by the Agency at the request of Alan Byer Auto Sales, Inc., ("**Alan Sales**"), Alan I. Byer Family Trust, an Inter Vivos Revocable Trust created pursuant to a Third Amended and Restated Trust Agreement dated October 1, 2015 (the "**Trust**"), Stephen G. Byer ("**Byer**") and West Genesee Realty Associates, LLC ("**Realty**" and together with Alan Sales, the Trust and Byer, collectively, the "**Company**") consisting of: (A)(i) the acquisition of an interest in: (1) approximately 1.89 acres of improved real property bearing tax map number 108.1-02-19 and commonly referred to as 1232-36 West Genesee Street (also known as 1230 West Genesee Street) ("**Parcel 1**"); (2) approximately 3 acres of improved real property bearing tax map number 108.1-02-35.1 and commonly referred to as 1232 West Genesee Street (rear) ("**Parcel 2**"); and (3) approximately 2 acres of improved real property bearing tax map number 108.1-02-20 and commonly referred to as 1288 West Genesee Street ("**Parcel 3**"), each in the City of Syracuse, New York (collectively, the "**Land**"); (ii) certain improvements, including but not limited to, an existing approximately 25,820 square foot building located on Parcel 1; an existing approximately 17,000-square foot building located



City of Syracuse Industrial Development Agency  
Alan Byer Auto Sales, Inc.  
Alan I. Byer Family Trust  
Genesee Realty Associates, LLC  
Stephen G. Byer

September 12, 2019  
Page 2

on Parcel 2; and an approximately 34,802 square foot building located on Parcel 3, all of which are served by common driveways, parking, and pedestrian walkways, and all of which comprise the Alan Byer Volvo facility (collectively, the "**Improvements**"); (iii) the renovation to the Improvements and the Land include, but are not limited to, the interior showroom, sales offices and reception areas, external replacement of entry, new exterior wall finishes, updated signage, the existing basement, replacement of an area of deteriorating floor slab, refreshed directional pavement graphics and roof replacement (collectively with the Land and Improvements, the "**Facility**"); (iv) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment (the "**Equipment**" and together with the Land, Improvements and the Facility, the "**Project Facility**"); (B) the granting of certain financial assistance in the form of exemptions from real property tax, State and local sales and use tax and mortgage recording tax (in accordance with Section 874 of the General Municipal Law) (collectively the "**Financial Assistance**"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, reconstruction, renovation, equipping and completion of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement.

The Trust and Byer are the fee owners of Parcel 1. Realty is the fee owner of Parcel 2 and Parcel 3. Alan Sales is the operator of the Project Facility and leases the Project Facility from the Trust, Byer and Realty, as applicable, pursuant to certain lease agreements dated December 16, 1992, November 30, 2005 and November 9, 2010 (collectively, the "**Ground Lease**"); and

The Agency has acquired an interest in the Project Facility pursuant to that certain Company Lease Agreement dated as of September 1, 2019 (the "**Company Lease**") and an interest in the Equipment pursuant to a bill of sale dated as of September 1, 2019 from the Company (the "**Bill of Sale**") and the Agency will sublease the Project Facility back to the Company pursuant to an Agency Lease Agreement dated as of September 1, 2019 (the "**Agency Lease**"). Capitalized terms used herein and not otherwise defined shall have the meaning given to them in the Agency Lease.

The Company has also requested that the Agency grant "financial assistance" (as defined in Section 854(14) of the New York General Municipal Law) (the "**Financial Assistance**") to the Project in the form of exemptions from real property tax, as evidenced by a payment in lieu of taxes agreement (the "**PILOT Agreement**") dated as of September 1, 2019 between the Agency and the Company and State and local sales and use taxation.



City of Syracuse Industrial Development Agency  
Alan Byer Auto Sales, Inc.  
Alan I. Byer Family Trust  
Genesee Realty Associates, LLC  
Stephen G. Byer

September 12, 2019  
Page 3

Capitalized terms used herein which are not otherwise defined shall have the meanings ascribed to them in the Agency Lease.

As counsel to the Agency, we have examined originals or copies, certified or otherwise identified to our satisfaction, of such instruments, certificates, and documents as we have deemed necessary or appropriate for the purposes of the opinion expressed below. In such examination, we have assumed the genuineness of all signatures, the authenticity of all documents submitted to us as originals, the conformity to the original documents of all documents submitted to us as copies, and have assumed the accuracy and truthfulness of the factual information, expectations, conclusions, representations, warranties, covenants and opinions of the Company and its counsel and representatives as set forth in the various documents executed and delivered by them or any of them and identified in the Closing Memorandum in connection with the Project.

We are of the opinion that:

1. The Agency is a duly organized and existing corporate governmental agency constituting a public benefit corporation of the State of New York.
2. The Agency is duly authorized and empowered by law to acquire, construct, reconstruct, renovate and equip the Project, to lease the Land and the Facility from the Company pursuant to the Company Lease; to accept an interest in the Equipment pursuant to the Bill of Sale; to sublease the Project Facility back to the Company pursuant to the Agency Lease and to appoint the Company as its agent for completion of the Project.
3. The Agency Documents have been authorized by and lawfully executed and delivered by the Agency and (assuming the authorization, execution, and delivery by the other respective parties thereto) are valid and legally binding obligations enforceable against the Agency in accordance with their respective terms.

In rendering this opinion, we advise you of the following:

The enforceability of the Agency Documents may be limited by any applicable bankruptcy, insolvency, reorganization, moratorium, or similar law or enactment now or hereafter enacted by the State of New York or the Federal government affecting the enforcement of creditors' rights generally and the general principles of equity, including limitations on the availability of the remedy of specific performance which is subject to discretion of the court.





City of Syracuse Industrial Development Agency  
Alan Byer Auto Sales, Inc.  
Alan I. Byer Family Trust  
Genesee Realty Associates, LLC  
Stephen G. Byer

September 12, 2019  
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This opinion is rendered to the addressees named above and their successors and/or assigns, and may not be relied upon by any other person without our prior, express written consent.

Very truly yours,

BOUSQUET HOLSTEIN PLLC

*Bousquet Holstein PLLC*



BARCLAY DAMON<sup>LLP</sup>

As of September 1, 2019

City of Syracuse Industrial Development Agency  
201 East Washington Street, 6<sup>th</sup> Floor  
Syracuse, New York 13202

West Genesee Realty Associates, LLC  
1230 West Genesee Street  
Syracuse, New York 13204  
Attn: Stephen G. Byer

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Alan I. Byer Family Trust  
1230 West Genesee Street  
Syracuse, New York 13204  
Attn: Stephen G. Byer

Re: City of Syracuse Industrial Development Agency  
Lease/Leaseback Transaction  
Alan Byer Auto Sales, Inc. – Volvo Project

Ladies and Gentlemen:

We have acted as counsel to Alan Byer Auto Sales, Inc., ("*Alan Sales*"), Alan I. Byer Family Trust, an Inter Vivos Revocable Trust created pursuant to a Third Amended and Restated Trust Agreement dated October 1, 2015 (the "*Trust*"), Stephen G. Byer ("*Byer*") and West Genesee Realty Associates, LLC ("*Realty*" and together with Alan Sales, the Trust and Byer, collectively, the "*Company*") in connection with a certain project (the "*Project*") undertaken by the City of Syracuse Industrial Development Agency (the "*Agency*") at the Company's request. The Project consists of: (A)(i) the acquisition of an interest in: (1) approximately 1.89 acres of improved real property bearing tax map number 108.1-02-19 and commonly referred to as 1232-36 West Genesee Street (also known as 1230 West Genesee Street) ("*Parcel 1*"); (2) approximately 3 acres of improved real property bearing tax map number 108.1-02-35.1 and commonly referred to as 1232 West Genesee Street (rear) ("*Parcel 2*"); and (3) approximately 2 acres of improved real property bearing tax map number 108.1-02-20 and commonly referred to as 1288 West Genesee Street ("*Parcel 3*"), each in the City of Syracuse, New York (collectively, the "*Land*"); (ii) certain improvements, including but not limited to, an existing approximately 25,820 square foot building located on Parcel 1; an

City of Syracuse Industrial Development Agency  
Alan Byer Auto Sales, Inc.  
Alan I. Byer Family Trust  
West Genesee Realty Associates, LLC  
Stephen G. Byer

As of September 1, 2019  
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existing approximately 17,000-square foot building located on Parcel 2; and an approximately 34,802 square foot building located on Parcel 3, all of which are served by common driveways, parking, and pedestrian walkways, and all of which comprise the Alan Byer Volvo facility (collectively, the "**Improvements**"); (iii) the renovation to the Improvements and the Land include, but are not limited to, the interior showroom, sales offices and reception areas, external replacement of entry, new exterior wall finishes, updated signage, the existing basement, replacement of an area of deteriorating floor slab, refreshed directional pavement graphics and roof replacement (collectively with the Land and Improvements, the "**Facility**"); (iv) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment (the "**Equipment**" and together with the Land, Improvements and the Facility, the "**Project Facility**"); (B) the granting of certain financial assistance in the form of exemptions from real property tax, State and local sales and use tax and mortgage recording tax (in accordance with Section 874 of the General Municipal Law) (collectively the "**Financial Assistance**"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, reconstruction, renovation, equipping and completion of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement.

The Trust and Byer are the fee owners of Parcel 1. Realty is the fee owner of Parcel 2 and Parcel 3. Alan Sales is the operator of the Project Facility and leases the Project Facility from the Trust, Byer and Realty, as applicable, pursuant to certain lease agreements dated as of December 16, 1991, November 30, 2005, and November 9, 2010, (collectively, the "**Ground Lease**").

The Agency has acquired an interest in the Project Facility pursuant to that certain Company Lease Agreement dated as of August 1, 2019 (the "**Company Lease**") and an interest in the Equipment pursuant to a bill of sale dated as of August 1, 2019 from the Company (the "**Bill of Sale**") and the Agency will sublease the Project Facility back to the Company pursuant to an Agency Lease Agreement dated as of August 1, 2019 (the "**Agency Lease**"). Capitalized terms used herein and not otherwise defined shall have the meaning given to them in the Agency Lease.

The Company has also requested that the Agency grant the Financial Assistance to the Project. The Agency, the Trust, Byer and Realty entered into a Payment in Lieu of Taxes Agreement dated August 1, 2019 (the "**PILOT Agreement**") with respect to the Project.

City of Syracuse Industrial Development Agency  
Alan Byer Auto Sales, Inc.  
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West Genesee Realty Associates, LLC  
Stephen G. Byer

As of September 1, 2019  
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In that regard, we have examined the Ground Lease, the Project Agreement, the Company Lease, the Agency Lease, the Bill of Sale, the Environmental Compliance and Indemnification Agreement, the PILOT Agreement and all other documents both identified in the Closing Memorandum and as defined in the Agency Lease to which the Company is a party in connection with the Project (collectively, the “*Company Documents*”).

We have also examined corporate documents and records of each Company and made such investigation of law and/or fact that we deem necessary or advisable in order to render this opinion. For purposes of such examination, we have assumed the genuineness of all certificates and the authenticity of all documents submitted to us as original counterparts or as certified or photostatic copies; the genuineness of all signatures of all parties to the Company Documents other than on behalf of the Company; and the due authorization, execution and delivery of the Company Documents by and the enforceability thereof against all parties thereto other than the Company.

As to questions of fact material to our opinion, we have relied upon the representations and warranties made by the Company in the Company Documents and upon one or more certificates of officers or Authorized Signatory of the Company. Whenever the phrase “to the best of our knowledge” is used in this opinion, it refers to actual knowledge of members of this firm obtained from our representation of the Company and inquiries of responsible officers and/or Authorized Signatory of the Company made in connection with this opinion, but no further investigation or review has been conducted.

Based upon the foregoing, it is our opinion that:

1. Alan Sales is a duly formed and validly existing New York business corporation and possesses full corporate power and authority to own its property, to conduct its business, to execute and deliver the Company Documents, and to carry out and perform its obligations thereunder.

2. The Trust is an Inter Vivos Revocable Trust created pursuant to a Third Amended and Restated Trust Agreement dated October 1, 2015 and possesses the power and authority to own its property, to conduct its business, to execute and deliver the Company Documents, and to carry out and perform its obligations thereunder.

3. Realty is a duly formed and validity existing New York limited liability company and possesses full corporate power and authority to own its property, to conduct its business, to

City of Syracuse Industrial Development Agency  
Alan Byer Auto Sales, Inc.  
Alan I. Byer Family Trust  
West Genesee Realty Associates, LLC  
Stephen G. Byer

As of September 1, 2019  
Page 4

execute and deliver the Company Documents, and to carry out and perform its obligations thereunder.

2. The execution, delivery and performance of the Company Documents have been duly authorized by each Company and the Company Documents have been duly executed and delivered by an Authorized Representative of each Company.

3. The Company Documents constitute the legal, valid and binding obligations of the Company, enforceable against each Company in accordance with their terms, except as enforceability may be limited by applicable bankruptcy and insolvency laws and laws affecting creditors' rights generally and to the extent that the availability of the remedy of specific performance or injunctive relief or other equitable remedies is subject to the discretion of the court before which any proceeding therefor may be brought.

4. To the best of our knowledge, in reliance on the certificates and opinions specified herein, the execution and delivery by each Company of the Company Documents, the execution and compliance with the provisions of each and the consummation of the transactions contemplated therein do not and will not constitute a breach of, or default under the Company's, as applicable, Articles of Organization, Operating Agreement, Certificate of Incorporation, By-Laws, Trust Agreement, Ground Lease or any indenture, mortgage, deed of trust, bank loan or credit agreement or other agreement or instrument to which the Company or any of its Property may be bound, for which a valid consent has not been secured; nor is any approval or any action by any governmental authority required in connection with the execution, delivery and performance thereof by the Company.

5. To the best of our knowledge, in reliance on the certificates and opinions specified herein, there is no action, suit, proceeding or investigation at law or in equity before or by any court, public board or body, pending or threatened against, or affecting any Company wherein an unfavorable decision, ruling or finding would in any way adversely affect in a material fashion the validity or enforceability of the Company Documents.

Our examination of law relevant to matters herein is limited to the laws of the State of New York and also the Federal law, where appropriate, and we express no opinion as to matters governed by the laws of any other state or jurisdiction.

This opinion is only for the benefit of and may be relied upon only by the Agency, its successors and assigns. The opinions set forth in this letter are limited to those expressly stated

City of Syracuse Industrial Development Agency  
Alan Byer Auto Sales, Inc.  
Alan I. Byer Family Trust  
West Genesee Realty Associates, LLC  
Stephen G. Byer

As of September 1, 2019  
Page 5

and no other opinion may be inferred nor is any implied. No other use of this opinion may be made without prior written consent. This opinion is given as of the date hereof and we undertake no obligation, and hereby disclaim any obligation, to update or supplement this opinion in response to a subsequent change in the law or future events affecting the documents identified in this letter.

Very truly yours,

A handwritten signature in cursive script that reads "Barday Dannon LLP". The signature is written in black ink and is positioned to the right of the typed name "Barday Dannon LLP".

:ds





## CLOSING MEMORANDUM

### CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY

#### ALAN BYER AUTO SALES, INC. – VOLVO PROJECT

**DATE AND TIME OF CLOSING:** September 12, 2019  
10:00 a.m.

**PLACE OF CLOSING:** Bousquet Holstein PLLC  
110 West Fayette Street  
One Lincoln Center, Suite 1000  
Syracuse, New York 13202

#### **I. Action Taken Prior to Closing**

At the request of Alan Byer Auto Sales, Inc. ("**Alan Sales**"), Alan I. Byer Family Trust (the "**Trust**") an Inter Vivos Revocable Trust created pursuant to a Third Amended and Restated Trust Agreement dated October 1, 2015, Stephen G. Byer ("**Byer**"), and West Genesee Realty Associates, LLC ("**Realty**" and together with Alan Sales, the Trust and Byer, collectively, the "**Company**"), the City of Syracuse Industrial Development Agency (the "**Agency**"), a public benefit corporation organized under the laws of the State of New York, has undertaken a project (the "**Project**") consisting of: (A)(i) the acquisition of an interest in: (1) approximately 1.89 acres of improved real property bearing tax map number 108.1-02-19 and commonly referred to as 1232-36 West Genesee Street (also known as 1230 West Genesee Street) ("**Parcel 1**"); (2) approximately 3 acres of improved real property bearing tax map number 108.1-02-35.1 and commonly referred to as 1232 West Genesee Street (rear) ("**Parcel 2**"); and (3) approximately 2 acres of improved real property bearing tax map number 108.1-02-20 and commonly referred to as 1288 West Genesee Street ("**Parcel 3**"), each in the City of Syracuse, New York (collectively, the "**Land**"); (ii) certain improvements, including but not limited to, an existing approximately 25,820 square foot building located on Parcel 1; an existing approximately 17,000-square foot building located on Parcel 2; and an approximately 34,802 square foot building located on Parcel 3, all of which are served by common driveways, parking, and pedestrian walkways, and all of which comprise the Alan Byer Volvo facility (collectively, the "**Improvements**"); (iii) the renovation to the Improvements and the Land include, but are not limited to, the interior showroom, sales offices and reception areas, external replacement of entry, new exterior wall finishes, updated signage, the existing basement, replacement of an area of deteriorating floor slab, refreshed directional pavement graphics and roof replacement (collectively with the Land and Improvements, the "**Facility**"); (iv) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment (the "**Equipment**")

and together with the Land, Improvements and the Facility, the "**Project Facility**"; (B) the granting of certain financial assistance in the form of exemptions from real property tax, State and local sales and use tax and mortgage recording tax (in accordance with Section 874 of the General Municipal Law) (collectively the "**Financial Assistance**"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, reconstruction, renovation, equipping and completion of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement.

The Company also requested the Agency appoint the Company as its agent for purposes of completing the Project and the granting of certain Financial Assistance.

The Trust and Byer are the fee owners of Parcel 1. West Genesee Realty Associates, LLC is the fee owner of Parcel 2 and Parcel 3. Alan Sales is the operator of the Project Facility and leases the Project Facility from the Trust, Byer and West Genesee Realty Associates, LLC, as applicable, pursuant to certain lease agreements dated December 16, 1991, November 30, 2005 and November 9, 2019 (collectively, the "**Ground Lease**").

The Agency will acquire a (sub)leasehold interest in the Land and Facility from the Company pursuant to a Company Lease Agreement dated as of September 1, 2019 (the "**Company Lease**"), between the Company, as landlord and the Agency, as tenant; and an interest in the Equipment pursuant to one or more bills of sale from the Company dated as of September 1, 2019 (collectively, the "**Bill of Sale**"). The Agency will (sub)sublease the Project Facility back to the Company, pursuant to an Agency Lease Agreement dated as of September 1, 2019 (the "**Agency Lease**") between the Agency, as sublessor and the Company, as sublessee. Capitalized terms used herein and not otherwise defined shall have the meaning given to such terms in Exhibit "C" to the Agency Lease.

Among the actions taken by the Agency with respect to the Project prior to Closing were the following:

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| October 23, 2018  | Alan Sales and the Trust submitted an application for financial assistance for the project.  |
| November 20, 2018 | A resolution determining that the acquisition, reconstruction, renovation, equipping and completion of a commercial facility at the request of Alan Sales and the Trust constitutes a project; describing the financial assistance in connection therewith; and authorizing a public hearing (the " <b>First Public Hearing Resolution</b> "). |
| December 3, 2018  | Notice of the Public Hearing was mailed to the chief executive officers of the affected tax jurisdictions pursuant to Section 859-a of the Act.  |

December 4, 2018 Notice of the Public Hearing was published in the Post-Standard pursuant to Section 859-a of the Act.

December 18, 2018 The Agency conducted the first Public Hearing pursuant to Section 859-a of the Act.

December 18, 2018 A resolution authorizing the undertaking of the acquisition, reconstruction, renovation, equipping and completion of a project; appointing Alan Sales and the Trust agents of the Agency for the purpose of the acquisition, reconstruction, renovation, equipping and completion of the Project; authorizing the execution and delivery of an agreement between the Agency, Alan Sales and the Trust and the temporary appointment of the Company as agent of the Agency (the "**Inducement Resolution**").

December 18, 2018 A resolution approving a payment in lieu of tax schedule and authorizing the execution and delivery of certain documents by the Agency in connection with the Project (the "**PILOT Resolution**").

December 18, 2018 A resolution authorizing the execution and delivery of certain documents by the agency at the request of the Company (the "**Final Approving Resolution**").

March 2019 The Company submitted a supplemental application to the Agency.

March 19, 2019 A resolution approving an extension of the sales tax appointment of Alan Byer Auto Sales, Inc. and Alan I Byer Family Trust as agents of the agency until May 31, 2019; and authorizing the execution and delivery of any and all necessary documents (the "**First Extension Resolution**").

March 19, 2019 A resolution authorizing a public hearing with respect to modifications to the project being undertaken by the Agency at the request of the Company (the "**Second Public Hearing Resolution**").

April 4, 2019 Notice of the second Public Hearing was published in the Post-Standard pursuant to Section 859-a of the Act.

April 16, 2019 The Agency conducted the second Public Hearing pursuant to Section 859-a of the Act.

July 16, 2019 A resolution approving a retroactive extension of the temporary sales tax appointment of Alan Byer Auto Sales, Inc. and Alan I Byer Family Trust as agents of the Agency until September 13, 2019; and authorizing the execution of any and all necessary documents (the "**Second Extension Resolution**").

July 16, 2019

A resolution authorizing the undertaking, acquisition, reconstruction, renovation, equipping and completion of the project; appointing the Company as agent of the Agency for the purpose of the acquisition, reconstruction, renovation, equipping and completion of the Project; and authorizing the execution and delivery of an amended agreement between the Agency and the Company (the "***Amended Inducement Resolution***").

August 20, 2019

A resolution authorizing the undertaking of the acquisition, reconstruction, renovation, equipping and completion of a project; appointing the Company as agents of the Agency for the purpose of the acquisition, reconstruction, renovation, equipping and completion of the Project; authorizing the execution and delivery of an agreement between the Agency and the Company (the "***Amended PILOT Resolution***")

August 20, 2019

A resolution authorizing the execution and delivery of certain documents by the agency at the request of the Company (the "***Amended Final Approving Resolution***")

## II. Action To Be Taken At Closing

The following documents, or copies thereof, are to be delivered (except as indicated) to the Agency (A), Agency's Counsel (AC), the Trust (T), Alan Sales (AS), Realty (R), Stephen Byer (B) and Company's Counsel (CC), as follows:

A.	Basic Documents	Responsible Party	Signatories
1.	Ground Leases	CC	
2.	Project Agreement	AC	AS, T, W, B, A
3.	Company Lease Agreement	AC	AS, T, W, B, A
4.	Memorandum of Company Lease Agreement with TP-584	AC	AS, T, W, B, A
5.	Bill of Sale	AC	AS, T, W, B
6.	Agency Lease Agreement	AC	AS, T, W, B, A
7.	Memorandum of Agency Lease Agreement with Form TP-584	AC	AS, T, W, B, A
8.	Company Certification re: Local Labor Policy	AC	AS, T, W, B
9.	Certificates of casualty, liability, workers' compensation and other required insurance	AC	
10.	Environmental Compliance and Indemnification Agreement	AC	AS, T, W, B
11.	Closing Receipt	AC	AS, T, W, B, A
12.	Sales Tax Exemption Letter	AC	A
13.	Form ST-60 indicating appointment to act as the agent of the Agency:	AC	A
	<ul style="list-style-type: none"> <li>a. Alan Byer Auto Sales Inc.</li> <li>b. Alan I. Byer Family Trust</li> <li>c. West Genesee Realty Associates, Inc.</li> <li>d. Steven G. Byer, individually</li> <li>e. Parsons-McKenna Construction Co. Inc.</li> </ul>		
14.	PILOT Agreement	AC	T, W, B, A

15. 412-a AC A

**B. Items To Be Delivered By The Agency**

1. General Certificate of the Agency relating to incumbency and signatures of officers, execution and delivery of Agency Documents to which it is a party, no litigation and continued existence, with the following items included as exhibits: AC A

Exhibit "A" - Chapter 641 of the Laws of 1979 of the State of New York, as amended A

Exhibit "B" - Certificate of Establishment of the Agency and Certificates of appointment of current members A

Exhibit "C" - By-laws A

Exhibit "D" - Public Hearing Resolution AC

Exhibit "E" - Notice of Public Hearing with evidence of publication and copies of letters to affected tax jurisdictions AC

Exhibit "F" - Inducement Resolution AC

Exhibit "G" - PILOT Resolution AC

Exhibit "H" - Final Approving Resolution AC

Exhibit "I" - First Extension Resolution AC

Exhibit "J" - Second Public Hearing Resolution AC

Exhibit "K" - Second Extension Resolution AC

Exhibit "L" - Amended Inducement Resolution AC

Exhibit "M" - Amended PILOT Resolution AC

Exhibit "N" - Amended Final Approving Resolution AC

**C. Items To Be Delivered By The Company**

1. General Certificate of Alan Byer Auto Sales, Inc. relating to capacity and signatures of officers, execution and delivery of the Documents to which it is a party, no litigation and approval, with the following items included as exhibits:	AC	AS
Exhibit "A" – Certificate of Incorporation	C	
Exhibit "B" – By-Laws	C	
Exhibit "C" - Certificate of Good Standing	C	
Exhibit "D" - Resolution	C	AS
Exhibit "E" – Local Access Agreement	C	
Exhibit "F" Pending Litigation		
2. Waiver re: Local Access Policy		A
3. General Certificate of Alan I. Byer Family Trust relating to capacity and signatures of officers, execution and delivery of the Documents to which it is a party, no litigation and approval, with the following items included as exhibits:	AC	T
Exhibit "A" Third Amended and Restated Trust Agreement	T	
Exhibit "B" Local Access Agreement		
4. General Certificate of West Genesee Realty Associates, LLC relating to capacity and signatures of officers, execution and delivery of the Documents to which it is a party, no litigation and approval, with the following items included as exhibits:		W
Exhibit "A" Articles of Organization	CC	
Exhibit "B" Operating Agreement	CC	
Exhibit "C" Certificate of Good Standing	CC	
Exhibit "D" Resolution		W
Exhibit "E" Local Access Agreement		

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|-------------------------------|---|----|----|
| 5.                            | Certification of Stephen G. Byer  | AC | B  |
|                               | Exhibit "A" Local Access Agreement  | CC |    |
|                               | Exhibit "B" Pending Litigation  | CC |    |
| <b>D. Opinions of Counsel</b> |   |    |    |
| 1.                            | Opinion of Bousquet Holstein PLLC, counsel to the Agency, addressed to the Company and the Agency | AC | AC |
| 2.                            | Opinion of Barclay Damon LLP, counsel to the Company, addressed to the Agency and the Company.    | AC | CC |

**III. Action To Be Required Concurrently With Or After Closing**

Memorandum of Company Lease Agreement and Memorandum of Agency Lease Agreement are to be filed with the Onondaga County Clerk.

The Real Property Tax Exemption Form, with a copy of the Payment in Lieu of Tax Agreement attached, to be mailed to the assessor and the chief executive officer of each affected tax jurisdiction.

The ST-60 for each of the Company and the Sub-Agent to be mailed to the New York State Department of Taxation and Finance, upon finalization and submission of all required documents.

Scan copy of Local Access Agreement to the Agency.



**SCHEDULE "A"**

**PERSONS APPEARING**

For the Agency:	City of Syracuse Industrial Development Agency Judith DeLaney, Executive Director
For the Company:	Alan Byer Auto Sales, Inc. Alan I. Byer Family Trust West Genesee Realty Associates, LLC Stephen G. Byer
Company Counsel:	Barclay Damon PLLC Kevin R. McAuliffe, Esq.
Agency's Counsel:	Bousquet Holstein PLLC Susan R. Katzoff, Esq.