



The RCA Insurance Group

1333 Broad Street • Clifton, New Jersey 07013

(Rev 12/2009)

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BROKER AGREEMENT

THIS AGREEMENT, designated Broker Agreement number _____ made between Restaurant Coverage Associates, Inc. (hereinafter called the "Manager"), and

(hereinafter called "Broker") shall, upon execution of the Manager grant the Broker the authority to exercise the powers stated in this Agreement, and exhibit or addendum thereto and any underwriting guideline, bulletin or instruction as may be issued from time-to-time by the Manager.

1. Underlying Authority

The Broker shall have the authority to select and place with the Manager the business described in Exhibit A. The Broker's authority to write and issue policies and to retain commissions shall be as described in Exhibit A. The Broker shall also have the authority to collect premiums, pay return premiums and to cancel policies at Broker's discretion when cancellation is legally permissible.

- (a) The Broker does not represent the company, but does represent the Insured or retail agents as per State Statute, "Insurance Broker Defined."

2. Limitations on Broker's Authority

In addition to any other limitations contained in this Agreement, any exhibit or addendum thereto or any underwriting guideline, bulletin or instruction which may be issued from time-to-time by the Manager, the Broker, except as described in Exhibit A:

- (a) Does not have exclusive right to represent the Manager in any geographical area or product line unless specifically stipulated in Exhibit A of this agreement.
- (b) Shall have no authority to assign or delegate its rights and duties hereunder or to appoint additional producers for the Manager, unless otherwise agreed to in writing by the Manager.
- (c) Shall not publish or distribute any advertisement, circulars or other materials referring to the Manager without first securing the Manager's written approval.
- (d) Shall not effect or authorize a flat cancellation after the effective date of the policy.
- (e) Shall not endorse checks payable to the Manager.
- (f) **DOES NOT HAVE BINDING AUTHORITY!**

3. Premium Collection

- (a) The Broker agrees to pay the Manager all premiums, except audit premiums, on business produced by Broker, **whether or not collected** by the Broker from sub-producers or the insured. Broker agrees to use reasonable effort to collect audit premiums due the Manager and to advise the Manager in writing, if requested, of those results. Audit premiums collected through the Broker are subject to commission. If after 30 days from invoicing the Broker is unsuccessful in collecting audit premium the Manager will then attempt collection and no commission will be due the Broker on the audit premium. All premiums received by the Broker pursuant to this Agreement shall be held in a **Fiduciary Capacity** as trustee for the Manager. The privilege of taking commissions from the premium monies received by the broker shall not be construed as an alteration of this fiduciary capacity. The Broker **shall not commingle premium monies** collected pursuant to this agreement with operating funds or funds held by the Broker in any other capacity.
- (b) Premiums on each policy are due on an account current statement on the 20th of the month.

4. Indemnification

- (a) The Broker shall indemnify, defend and hold the Manager harmless for any civil liability for damages and expenses, including legal fees, resulting from alleged error or omission or breach of this Agreement by the Broker except to the extent that such error or omission or breach has been caused by or contributed to by any error or omission of the Manager.
- (b) The Manager shall indemnify, defend and hold the Broker harmless for any civil liability for damages and expenses, including legal fees, resulting from alleged error or omission or breach of the Agreement by the Manager except to the extent that such error or omission or breach has been caused by or contributed to by any error or omission of the Broker.

5. Expirations

In the event the Manager terminates this Agreement for failure of terms of remittance, then until payment of all premiums due and owing, including cost of collection of such premiums:

- (a) The Broker relinquishes to the Manager all right or claim to subsequent expirations, and renewals, and all additional premiums and commissions thereon.
- (b) The Broker waives any right to premiums or commissions which it has not received on the effective date of termination.

6. Licenses

- (a) The Broker warrants that it now has and shall maintain during the term of this Agreement the license or licenses necessary to place the business described in this Agreement. In the event that such license or licenses expire or terminate for any reason, this Agreement shall terminate automatically.

7. Insurance

The Broker shall furnish a Certificate of Insurance and/or other satisfactory proof of Errors And Omissions insurance coverage with a limit no less than \$500,000 each occurrence and \$1,000,000 aggregate with a deductible no greater than \$50,000. This coverage must be maintained in force during the term of this Agreement.

8. Claims

- (a) In the event that the Broker becomes aware of a claim under a policy issued pursuant to this Agreement and has no evidence that said claim has been reported by the insured to the Manager, or his claim service designated, the Broker shall immediately report such claim to the Manager's claim service.
- (b) The Broker agrees to cooperate fully in the investigation and adjustment of claims on policies issued pursuant to the Agreement.
- (c) Except as may otherwise be authorized, the Broker shall have no authority to assign an adjuster or attorney to investigate or defend any claims unless prior approval is given by the Manager.

9. Termination of this Agreement:

- (a) This Agreement shall terminate:
 - (1) Automatically if the State of the Broker's domicile cancels or declines to renew the Broker's license or licenses, pursuant to section 6 (a) hereof.
 - (2) Upon any party giving at least 30 days advance written notice.
 - (3) Immediately upon any party giving written notice to the other in the event of abandonment, fraud, insolvency, intentional failure to remit premiums, pursuant to Section 3 hereof or gross or willful misconduct on the part of any party.
- (b) It is understood and agreed that in the event of termination of this Agreement, for failure to properly remit premium funds, and the amount realized by the Manager pursuant to Section 5 exceeds the total obligations of the Broker to the Manager plus the expense of such realization, the excess, as determined by the Manager, will be promptly paid to the Broker.
- (c) If the Broker is delinquent in either accounting for or payment of monies due to the Manager, then the Manager may, after 15 days written notice to the Broker, immediately terminate or suspend any of the provisions of this Agreement.

- (d) In the event that this agreement is terminated by any party hereto and the Manager does not assume administration of the business pursuant to Section 5, the Broker shall be obligated to perform the duties necessary to the servicing of all policies in force, until all liability under the policies issued pursuant to this Agreement shall have expired or been terminated. Until the policies have expired or terminated the Broker shall have the following limited authority:
 - (1) Collect, receive and remit premiums on policies and authorized endorsements, including but not limited to installment premiums and audit premiums.
 - (2) Receive return premiums from the Manager and remit them to insureds;
 - (3) Report claims;
 - (4) Exercise such other authority as may be provided in writing by the Manager.

10. Miscellaneous

- (a) The failure of any party hereto to exact strict compliance with the terms and conditions of this Agreement or failure to declare any default hereunder when such default becomes known to the such party, shall not operate as a waiver of such terms and conditions or release the Broker from the obligation to perform its duties under this Agreement strictly in accordance thereto.
- (b) It is agreed that the situs of this Agreement is Clifton, New Jersey and that the terms and conditions of this Agreement shall be governed exclusively by the laws of the State of New Jersey.
- (c) It is agreed that the Broker is an independent contractor and that nothing herein shall be construed to create the relation of employer and employee between the Broker and the Manager. All expenses in connection with solicitation of insurance or performance of any duties or obligations of the Broker, or any other expenses of the Broker, including rent, office upkeep, inspection reports and traveling expenses, shall be paid by the Broker and not by the Manager.
- (d) This Agreement is made in good faith and shall supersede any prior or contemporaneous representations, negotiations, statements or agreements written or oral between the parties. This Agreement shall be varied only by written amendment signed by all parties or by underwriting exhibits, guidelines, bulletins or instructions issued by the Manager pursuant to this Agreement. In the event that any part or provision of this Agreement is ruled void or unenforceable for any reason, the remainder of this Agreement shall remain in full force and effect.
- (e) This Agreement shall not become effective until it is accepted and signed by an executive officer of the Manager at Clifton, New Jersey.

11. This Agreement is signed, witnessed and agreed to by the parties affixing their signators below:

By: _____

Witness _____

Title: _____

For: Recreational Coverage Association of NJ, Inc.
 Restaurant Coverage Associates, Inc.
 Clifton, New Jersey, the "Manager"

By: _____

Witness _____

Title: _____

For:

EXHIBIT A

THIS EXHIBIT forms a part of the Broker Agreement dated this _____, 20____ between Restaurant Coverage Associates, Inc. (hereinafter called "Manager") and _____ (hereinafter called "Broker").

1. Authority

The Broker has the authority to preunderwrite and request binding at least within 48 hours of each risk's effective date. The Broker will prepare all necessary documentation for the issuance of policies involving companies managed by the Manager. The Manager will not arbitrarily withhold binding of any risk which qualifies within the program guidelines.

THE BROKER DOES NOT HAVE BINDING AUTHORITY.

2. Commissions:

Commission arrangements will be agreed upon in conjunction with the placement of each individual insurance contract quoted.

3. Policy Forms:

As prescribed by the Manager and filed and approved by the Department of Insurance State of New Jersey.

4. Exclusions:

As defined in policy forms and program guidelines.

Initials:

Broker _____

Manager _____