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BEFORE THE INSURANCE COMMISSIONER OF THE STATE OF CALIFORNIA

In the Matter of  
THE CALIFORNIA FAIR PLAN ASSOCIATION,  
  
Respondent.

ORDER NO. 2021-4

WHEREAS, the California FAIR Plan Association (“FAIR Plan”) is an involuntary association of all admitted insurers licensed to write and engaged in writing *Basic Property Insurance* in California, governed by Chapter 9 of Part 1, Division 2 of the California Insurance Code<sup>1</sup>, sections 10090 et seq. (“Chapter 9”);

WHEREAS, pursuant to section 10095, subdivision (g), administration of the FAIR Plan is subject to the California Insurance Commissioner’s supervision;

WHEREAS, pursuant to section 10095, subdivision (f), the Commissioner may revoke his or her approval of the FAIR Plan’s Plan of Operation if he or she feels it is necessary to carry out the purposes of Chapter 9;

WHEREAS, pursuant to section 10090, the FAIR Plan’s purposes are:

- (a) to assure stability in the property insurance market for property located in the State of California;
- (b) to assure the availability of *basic property insurance* as defined by [Chapter 9];
- (c) to encourage maximum use, in obtaining *basic property insurance*, of the normal insurance market provided by admitted insurers and licensed surplus line brokers; and
- (d) to provide for the equitable distribution among admitted insurers of the responsibility for insuring qualified property for which *basic property insurance* cannot be obtained through the normal insurance market by the establishment of a FAIR Plan...; (Italics added.)

WHEREAS, pursuant to section 10091, subdivision (c), *basic property insurance* means...

...insurance against direct loss to real or tangible personal property at a fixed location in those geographic or urban areas designated by the commissioner, from perils insured under the standard fire policy and extended coverage endorsement and vandalism and malicious mischief *and such other insurance coverages as may be added with respect to such property* by the industry placement facility with the approval of the commissioner or *by the commissioner*, but shall not include insurance on automobile or farm risks, commercial agricultural commodities or livestock, or equipment used to cultivate or transport agricultural commodities or livestock;

<sup>1</sup> All statutory citations are to Chapter 9 of Part 1, Division 2 of the California Insurance Code, section 10090 et seq.

1 WHEREAS, according to rate filing information reviewed by the Department, the FAIR Plan has  
2 attested that it currently offers, under its Division I Commercial Property Program (“CP”), combined  
3 coverage limits of \$4.5 million, specifically, \$3 million for structures and \$1.5 million for personal property;

4 WHEREAS, the FAIR Plan’s current Plan of Operation (Ed. 12/19/19) requires the FAIR Plan to  
5 offer, under its Division II Businessowners Program (“BOP”), combined coverage limits of \$3.6 million,  
6 specifically, \$2 million for building coverage and \$1 million for business personal property coverage at one  
7 location, and \$300,000/\$600,000 per occurrence/aggregate in liability;

8 WHEREAS, on October 12, 2021, the Commissioner issued Order 2021-3, which revoked the  
9 Commissioner’s approval of the FAIR Plan’s current Plan of Operation (Ed. 12/19/19), to the extent that  
10 such Plan of Operation did not specify that the FAIR Plan’s Division I CP limits should be increased to a  
11 combined coverage limit of \$8.4 million;

12 WHEREAS, on October 12, 2021, the Commissioner issued Order 2021-3, which revoked the  
13 Commissioner’s approval the FAIR Plan’s current Plan of Operation (Ed. 12/19/19), to the extent that such  
14 Plan of Operation did not specify that the FAIR Plan’s Division II BOP limits should be increased to a  
15 combined coverage limit of \$7.2 million;

16 WHEREAS, 30 days has elapsed since Order 2021-3 was issued and the FAIR Plan has failed to  
17 submit a revised Plan of Operation that complies with the Order; and

18 WHEREAS, the Commissioner has prepared a Plan of Operation (Ed. 11/19/21) that complies with  
19 Order 2021-3, attached hereto as Exhibit A.

20 **NOW THEREFORE, IT IS ORDERED:**

- 21 1. Not later than sixty (60) days after the date hereof, the Plan shall submit a separate rule  
22 filing to reflect the increased limit of liability for its Division I commercial property  
23 program that may be purchased through the Plan. Thereafter, the Plan shall implement  
24 the increase in the limit of liability for Division 1 Commercial Property Program policies  
25 no later than ninety (90) days after the rule change to implement the increased limit of  
26 liability for Division I commercial property program is approved by the Commissioner;
- 27 2. Not later than sixty (60) days after the date hereof, the Plan shall submit a separate rule  
28 to reflect the increased limit of liability for Division II BOP program that may be  
purchased through the Plan. Thereafter, the Plan shall implement the increase in the  
limit of liability for Division II BOP program no later than ninety (90) days after the rule  
change necessary to implement the increased limit of liability for Division II BOP  
program is approved by the Commissioner; and
3. The Commissioner’s Plan of Operation as set forth in Exhibit A is hereby promulgated  
pursuant to Insurance Code section 10095, subdivision (f).

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**IT IS SO ORDERED.**

Executed this 19<sup>th</sup> day of November, 2021

California Insurance Commissioner

A handwritten signature in black ink, appearing to read "D. P. ...", is written over a horizontal line.

**EXHIBIT A**  
**- PLAN OF**  
**OPERATION**  
**- ED.11-19-21**

Ed. 11/19/21

## **CALIFORNIA FAIR PLAN ASSOCIATION**

This is the Plan of Operations of the California FAIR Plan as required by Section 10095 of the California Insurance Code.

The California FAIR Plan (hereinafter referred to as the FAIR Plan) has been formulated by the insurance industry for the purpose of making certain Property Insurance available to responsible applicants who have been unable to secure such insurance in the normal insurance market.

### **DIVISION I – Property Insurance Plan**

#### **Provisions Applicable to Division I**

##### **Section I – Purposes of Plan**

The purposes of the Plan are:

- A. to make available, subject to the conditions hereinafter stated, Basic Property Insurance;
- B. to establish a FAIR Plan (Fair Access to Insurance Requirements), and to provide for the equitable distribution and placement of risks among Insurers in the manner and subject to the conditions hereinafter stated;
- C. to conform with the applicable provisions of the Urban Property Protection and Reinsurance Act of 1968 and California Insurance Code, Chapter 9, Part 1, Division 2; and
- D. to encourage maximum use of the normal insurance market by admitted insurers and licensed surplus brokers.

##### **Section II – Effective Date**

The Plan shall become effective as of July 24, 1968.

##### **Section III – Definitions**

- A. “Insurer” means any insurance company or other organization which is licensed to write and is engaged in writing, Basic Property Insurance and other coverages with respect to such Basic Property Insurance, on a direct basis, in this State.
- B. “Basic Property Insurance” means insurance against direct loss to real or tangible personal property at a fixed location in those geographic or urban areas designated by the Commissioner, from perils insured under the standard fire policy and extended coverage

endorsement, vandalism and malicious mischief and such other insurance coverages as may be added with respect to such property by the Placement Facility with the approval of the Commissioner or by the Commissioner, but shall not include insurance on automobile or farm risks. (Insurance Code section 10091, subd. (c).) For purposes of this Plan, Basic Property Insurance shall also include the Businessowners policy as set out in Division II of this Plan.

C. "Association," "Industry Placement Facility" (herein referred to as the Placement Facility) or "FAIR Plan" means the joint reinsurance association (the California FAIR Plan Association) formed for the following purposes:

1. to formulate and administer the Plan;
2. upon request by or on behalf of any property owner requesting an inspection under the Plan, to distribute the risks involved equitably among the Insurers with which it is doing business; and
3. to place Basic Property Insurance, as defined in Paragraph B of this Section, up to the full insurable value of the risk to be insured subject to the limits of liability stated in Section VI, Paragraph C, with one or more Insurers with which it is doing business, except to the extent that deductibles, percentage participation clauses, and other underwriting devices are employed to meet special problems of insurability.

D. "Inspection Bureau" means the organization designated by the Placement Facility with the approval of the Commissioner to make inspections to determine the condition of the properties for which Basic Property Insurance is sought and to perform such other duties as may be authorized by the Placement Facility.

E. "Urban Area" includes any municipality or other political subdivision of this State, subject to population or other limitations defined in rules and regulations of the Secretary of the United States Department of Housing and Urban Development, and such additional areas as may be designated by the Commissioner.

F. "Geographical Area" means any area designated by the Commissioner or by the Committee with the approval of the Commissioner.

G. "Premiums Written" means gross direct premiums charged with respect to property in this State on all policies of Basic Property Insurance and the Basic Property Insurance premium components of all multiperil policies, less return premiums, dividends paid or credited to policyholders, or the unused or unabsorbed portions of premium deposits.

H. "Commissioner" means the Insurance Commissioner of the State of California.

I. "Plan" means this Plan of Operation and the insurance program it establishes

J. "Profits" for purposes of Insurance Code section 10095, subdivision (c) means Operating Income minus the sum of Operating Expense, incurred losses, and incurred loss adjustment expenses.

K. "Operating Income" means earned premiums plus investment income.

L. "Operating Expense" means income taxes and all other expenses of the Plan.

#### Section IV – FAIR Plan – Inspections and Reports

A. Any person having an insurable interest in real or tangible personal property in the State of California within the area covered under the Plan shall be entitled upon written or oral request therefor to the Placement Facility, to a prompt inspection of the property by the Inspection Bureau without cost.

B. The manner and scope of the inspections of FAIR Plan business shall be prescribed by the Placement Facility with the approval of the Commissioner.

C. An inspection report shall be made for each property inspected. The report shall cover pertinent structural and occupancy features as well as the general condition of the building and surrounding structures. A representative photograph of the property may be taken during the inspection.

D. The inspector shall have no authority to advise whether any Insurer or the FAIR Plan will provide the coverage.

E. After the inspection a copy of the completed inspection report, and any photograph indicating the pertinent features of building, construction, maintenance, occupancy and surrounding property shall be sent to the designated insurer or to the Placement Facility promptly and in any event within five days after the report is completed. The report shall include a description of any conditions for which charges or surcharges may be imposed. A copy of the inspection report shall be sent to the applicant or his agent upon request.

#### Section V – Procedure After Inspection

A. The Placement Facility shall, within three business days after receipt of the inspection report and request, complete an action report, advising that:

1. the risk is acceptable and if surcharged, the improvements necessary before it will provide coverage at an unsurcharged rate;
2. the risk will be acceptable if the improvements noted in the action report are made by the applicant and confirmed by reinspection; or
3. the risk is not acceptable for the reasons stated in the action report.

B. If the risk is accepted, the Placement Facility shall deliver the policy or binder to the applicant upon payment to the Placement Facility of the premium. Not later than February 1, 2020, or such later date approved by the Commissioner, premiums for Division I may be paid by applicants or existing policyholders in full or in monthly installments by personal check, cashier's check, money order, credit card or electronic funds transfer.

C. In the event a risk is declined because it fails to meet reasonable underwriting standards, the Placement Facility shall notify the applicant and shall include a copy of the inspection report and the action report. Reasonable underwriting standards shall include, but not be limited to, the following:

1. physical condition of the property, such as its construction, heating, wiring, evidence of previous fires or general deterioration;

2. its present use or housekeeping, such as vacancy, overcrowding, storage of rubbish or flammable materials; or

3. other specific characteristics of ownership, condition, occupancy, or maintenance which are violative of public policy and result in unreasonable exposures to loss.

Neighborhood or area location or any hazard beyond the control of the property owner shall not be deemed to be acceptable criteria for declining a risk.

D. In the event the risk is conditionally declined because the property does not meet reasonable underwriting standards but can be improved to meet such standards, the Placement Facility shall promptly advise the applicant what improvements noted in the action report should be made to the property, and the notification and advices to the applicant shall include a copy of the inspection report and the action report. Upon completion of the improvements by the applicant or property owner, the Placement Facility, when so notified, will have the property promptly reinspected.

E. If the inspection of the property reveals that there are one or more substandard conditions, surcharges may be imposed in conformity with any applicable substandard rating plan.

#### Section VI – California FAIR Plan Association – Placement Distribution

A. The California FAIR Plan Association (herein referred to as the Association or the FAIR Plan) is hereby created consisting of all Insurers.

B. The Association shall be authorized:

1. to write and issue policies of insurance as provided in this Plan on behalf of its Insurers; the respective liabilities of the Insurers shall be several and not joint, except as stated in Provisions Applicable to Division I and Division II, Section IX of this Plan, and each such Insurer shall be considered to be a direct insurer for its share in such writings, such share to be determined for each Insurer pursuant to the provisions of Paragraphs D and E of Division I, Section VI and other pertinent provisions of the Plan;

2. to assume and cede reinsurance pursuant to Insurance Code section 10095, subdivision(b).

3. to arrange for determination and collection of premium charges consistent with Section V, Paragraph B of this Plan of Operation and disbursement of return premiums, commissions and return commissions;

4. to direct and control the investigation, adjustment, defense, and payment of the losses and claims arising under the policies of insurance issued pursuant to this Plan.

C. Not later than April 1, 2020, the maximum limit of liability for Division I fire and allied lines policies which may be placed through this Plan is \$3,000,000 at one location. "Location" means each building or structure which is separately rated by the local insurance rating authority.



Upon approval by the Commissioner of the rule change to increase the limit of liability for Division I commercial property program, the maximum limit of liability for Division I commercial property policies which may be placed through this Plan is \$8,400,000, consisting of \$5,600,000 for building coverage and \$2,800,000 for business personal property coverage at one location.

Higher limits of liability may be placed through the Plan under written guidelines adopted by a majority of the Governing Committee present and voting. The FAIR Plan may file any rate or rule application necessary to implement the maximum limits of liability required by this Paragraph. As to risks beyond these limits, the Placement Facility shall endeavor to place the balance of these risks.

D. Except as modified in Paragraph E. of Division I, Section VI and in Provisions Applicable to Division I and Division II, Section IX, each insurer shall participate in the writings, expenses, profits and losses of Division I of this Plan (including assessments for operating the Placement Facility) in the same proportion that its Premiums Written during the second preceding calendar year bear to the aggregate Premiums Written by all Insurers in the Plan, excluding that portion of the Premiums Written attributable to the operation of the Association.

E. Insurers who voluntarily write Basic Property Insurance on risks located in areas designated as brush hazard areas by the Insurance Services Office, inner city areas designated by the Commissioner, and high or very high fire hazard severity zones as determined and mapped by the Department of Forestry and Fire Protection, pursuant to Section 51178 of the Government Code, will to that extent, be proportionately relieved of the liability to participate in the Plan.

F. A group of Insurers under the same management or ownership shall have the option of designating an Insurer from within the group to assume all obligations on behalf of the entire group.

#### Section VII – Standard Policy Coverage

All policies issued for Basic Property Insurance, as defined in Section III, Paragraph B of Division I of this Plan of Operation, shall be on standard policy forms.

#### Section VIII – Cancellation

- A. No policy or binder issued under this Plan shall be cancelled except:
1. for cause which would have been grounds for non-acceptance of the risk under the Plan had such cause been known to the Placement Facility at the time of acceptance;
  2. for non-payment of premium; or
  3. with the approval of the Governing Committee.

Notice of Cancellation, together with a statement of the reason therefor, shall be sent to the insured, accompanied by a statement that the insured has a right of appeal as hereinafter provided.

B. Notice of cancellation of policies on risks eligible for Plan inspection or coverage, sent by the Placement Facility or by any Insurer participating in the Plan shall be sent to the insured not less than thirty days in advance of the effective date of cancellation, together with information concerning Facility placement procedures; provided, however, that this Paragraph B shall be inapplicable in cases of non-payment of premiums, evidence of incendiarism, or evidence of material misrepresentation or concealment.

C. The provisions of Paragraph B immediately above shall also be applicable to notice of non-renewal of such policies.

### Section IX – Rates

A. All rates charged by the FAIR Plan shall be subject to Commissioner's prior written approval. The FAIR Plan's rates shall not be excessive, inadequate, or unfairly discriminatory and shall be actuarially sound so that premiums are adequate to cover expected losses, expenses, and taxes, and shall reflect the FAIR Plan's investment income.

B. The FAIR Plan shall file a rate application for the dwelling line of business within 24 months after the effective date of any approved change to dwelling rates, unless otherwise directed by the Commissioner. The FAIR Plan shall file a rate application for the commercial line of business within 36 months after the effective date of any approved change to the commercial rates, unless otherwise directed by the Commissioner. The first such rate application subject to this requirement shall occur no later than July 1, 2020 for Division I lines of business. The FAIR Plan shall provide all information and data required by the Commissioner to determine whether the rate proposed by the FAIR Plan complies with Insurance Code section 10100.2, subdivision (a).

C. Pursuant to Insurance Code section 10100.2, subdivision (c), all information considered by the FAIR Plan to establish rates shall be public records.

## **Division II – Businessowners Policy**

### Provisions Applicable to Division II

#### Section I – Purposes of Plan

The purposes of the Plan are:

A. to make available, subject to conditions hereinafter stated, Basic Property Insurance and such other insurance coverages as are usual to Businessowners Insurance policies.

B. to provide for the equitable distribution and placement of such risks among Insurers in the manner and subject to the conditions stated herein.

#### Section II – Effective Date

The Plan shall become effective upon approval of the Commissioner.

### Section III – Definitions

A. “Insurer” means any insurance company or other organization which is licensed to write and is engaged in writing Basic Property Insurance and other coverages with respect to such Basic Property Insurance on a direct basis in this state.

B. “Businessowners Policy” (“BOP”) means Basic Property Insurance as defined in Division I Section IIIB of the Plan and shall include a combination of the Insurance Services Office’s Standard Businessowners Property Coverage Form and Insurance Services Office’s Standard Businessowners Liability Coverage Form for coverage on certain small business operations necessary and incidental to the occupancy of the property.

C. “Association,” “Industry Placement Facility” (herein referred to as the Placement Facility) or “FAIR Plan” means the joint reinsurance association (the California FAIR Plan Association) formed for the following purposes:

1. to formulate and administer the Plan;
2. upon request by or on behalf of any qualified business owner requesting an inspection under the Plan, to distribute the risks involved equitably among the Insurers with which it is doing business; and
3. to place Commercial Multiperil Businessowners Insurance up to the full insurable value of the risk to be insured with one or more insurers with which it is doing business, except to the extent that deductibles, percentage participation clauses, and other underwriting devices are employed to meet special problems on insurability.

D. “Inspection Bureau” means the organization designated by the Placement Facility with the approval of the Commissioner to make inspections to determine the condition of the properties or businesses for which Basic Property Insurance and Commercial Multiperil Businessowners Insurance is sought and to perform such other duties as may be authorized by the Placement Facility.

E. “Urban Area” includes any municipality or other political subdivision of this State, subject to population or other limitations defined in rules and regulations of the Secretary of the United States Department of Housing and Urban Development, and such additional areas as may be designated by the Commissioner.

F. “Geographical Area” means any area designated by the Commissioner or by the Governing Committee with the approval of the Commissioner.

G. “Premiums Written” means gross direct premiums charged with respect to property in this State on all policies of Basic Property Insurance and the premium components of Basic Property Insurance and of such other insurance coverages as are usual to Commercial Multiperil Businessowners Insurance policies, less return premiums, dividends paid or credited to policyholders, or the unused or unabsorbed portions of premium deposits.

H. “Commissioner” means the Insurance Commissioner of the State of California.

- I. "Plan" means this Plan of Operation and the insurance program it establishes.
- J. "Profits" for purposes of Insurance Code section 10095, subdivision (c) means Operating Income minus the sum of Operating Expense, incurred losses, and incurred loss adjustment expenses.
- K. "Operating Income" means earned premiums plus investment income.
- L. "Operating Expense" means income taxes and all other expenses of the Plan.

#### Section IV – FAIR Plan – Inspections and Reports

A. Any person owning and operating a business who has an insurable interest in real or tangible personal property and who desires Basic Property Insurance and such other insurance coverages as are usual to Businessowners Insurance policies, in the State of California within the area covered under the Plan shall be entitled upon written or oral request therefor to the Placement Facility, to a prompt inspection of the property by the Inspection Bureau without cost.

B. The manner and scope of the inspections of FAIR Plan business shall be prescribed by the Placement Facility with the approval of the Commissioner.

C. An inspection report shall be made for each business inspected. The report shall cover pertinent structural, occupancy and business operations features as well as the general condition of the building, premises and surrounding structures. A representative photograph of the business property and premises may be taken during the inspection.

D. The inspector shall have no authority to advise whether any Insurer or the FAIR Plan will provide the coverage.

E. After the inspection a copy of the completed inspection report, and any photograph indicating the pertinent features of building, construction, maintenance, occupancy, business operations and surrounding property and premises shall be sent to the designated insurer or to the Placement Facility promptly and in any event within five days after the report is completed. The report shall include a description of any conditions for which charges or surcharges may be imposed. A copy of the inspection report shall be sent to the applicant or his agent upon request.

#### Section V – Procedure After Inspection

A. The Placement Facility shall, within three business days after receipt of the inspection report and request, complete an action report, advising that:

1. the risk is acceptable and if surcharged, the improvements necessary before it will provide coverage at an unsurcharged rate;
2. the risk will be acceptable if the improvements noted in the action report are made by the applicant and confirmed by reinspection; or
3. the risk is not acceptable for the reasons stated in the action report.

B. If the risk is accepted, the Placement Facility shall deliver the policy or binder to the applicant upon payment to the Placement Facility of the premium.

C. In the event a risk is declined because it fails to meet reasonable underwriting standards, the Placement Facility shall notify the applicant and shall include a copy of the inspection report and the action report. Reasonable underwriting standards shall include, but not be limited to, the following:

1. physical condition of the property, such as its construction, heating, wiring, evidence of previous fires or general deterioration;
2. its present use or housekeeping, such as vacancy, overcrowding, storage of rubbish or flammable materials; or
3. other specific characteristics of ownership, condition, occupancy, business operations or maintenance which are violative of public policy and result in unreasonable exposures to loss.

Neighborhood or area location or any hazard beyond the control of the property or business owner shall not be deemed to be acceptable criteria for declining a risk.

D. In the event the risk is conditionally declined because the property does not meet reasonable underwriting standards but can be improved to meet such standards, the Placement Facility shall promptly advise the applicant what improvements noted in the action report should be made to the property, and the notification and advices to the applicant shall include a copy of the inspection report and action report. Upon completion of the improvements by the applicant or property owner, the Placement Facility, when so notified, will have the property promptly reinspected.

E. If the inspection of the property reveals that there are one or more substandard conditions, surcharges may be imposed in conformity with any applicable substandard rating plan.

#### Section VI- California FAIR Plan Association – Placement Distribution

A. The Association shall be authorized:

1. to write and issue policies of insurance as provided in this Plan on behalf of its Insurers; the respective liabilities of the Insurers shall be several and not joint, except as stated in Provisions Applicable to Division I and Division II, Section IX of this Plan, and each such Insurer shall be considered to be a direct insurer for its share in such writings, such share to be determined for each Insurer pursuant to the provisions of Paragraphs C and D of Division II, Section VI and other pertinent provisions of the Plan;
2. to assume and cede reinsurance pursuant to Insurance Code section 10095, subdivision(b);
3. to arrange for determination and collection of premium charges and disbursement of return premiums, commissions and return commissions; and
4. to direct and control the investigation, adjustment, defense, and payment of the losses and claims arising under the policies of insurance issued pursuant to Division II of this Plan.

B. Upon approval by the Commissioner of the rule change to increase the limit of liability for Division II Commercial Multiperil Businessowners Program (or “BOP”) policies that may be purchased through the Plan, the maximum limit of liability for Commercial Multiperil Businessowners Program policies which may be placed through Division II of this Plan as part of a Businessowners Insurance policy is \$4,000,000 for building coverage and \$2,000,000 for business personal property coverage at one location. The maximum applicable limit of business liability insurance which may be placed through Division II of this Plan with respect to such property as part of a Commercial Multiperil Businessowners Insurance policy is: \$600,000 per-occurrence and \$1,200,000 in the aggregate per policy. “Location” means each building, structure, or business premises which is separately rated by the local insurance rating authority. Other limits of insurance may be placed through the FAIR Plan under written guidelines adopted by a majority of the Governing Committee present and voting.

C. Except as modified in Paragraph D. of Division II, Section VI and in Provisions Applicable to Division I and Division II, Section IX, each Insurer shall participate in the writings, expenses, profits and losses of the business written pursuant to Division II of this Plan (including assessments for operating the Placement Facility) in the same proportion as its Commercial Multiperil premiums written during the second preceding calendar year bear to the aggregate Commercial Multiperil premiums written by all Insurers in the Plan, excluding that portion of the premiums written attributable to the operation of the Association pursuant to Division II of this Plan.

D. Insurers which voluntarily write Commercial Multiperil Insurance on risks located in specific areas designated by the Governing Committee or by the Commissioner will, to that extent, be proportionately relieved of the liability to participate in Division II of this Plan.

E. A group of Insurers under the same management or ownership shall have the option of designating an Insurer from within the group to assume all obligations on behalf of the entire group.

#### Section VII –Standard Policy Coverage

All Businessowners Insurance policies (“BOP”) issued pursuant to Division II of this Plan shall be on standard policy forms, except as modified with permission of the Commissioner, and shall be issued for a term of one year.

#### Section VIII – Cancellation

- A. No policy or binder issued under Division II of this Plan shall be canceled except:
1. for cause which would have been grounds for non-acceptance of the risk under the Plan had such cause been known to the Placement Facility at the time of acceptance;
  2. for nonpayment of premium; or
  3. with the approval of the Governing Committee.

Notice of Cancellation, together with a statement of the reason therefor, shall be sent to the insured, accompanied by a statement that the insured has a right of appeal as hereinafter provided.

B. Notice of cancellation of policies on risks eligible pursuant to Division II for Plan inspection or coverage, sent by the Placement Facility or by any Insurer participating in the Plan shall be sent to the insured not less than thirty days in advance of the effective date of cancellation, together with information concerning Facility placement procedures; provided, however, that this Paragraph B shall be inapplicable in cases of nonpayment of premiums, evidence of incendiarism, or evidence of material misrepresentation or concealment.

C. The provisions of Paragraph B immediately above shall also be applicable to notice of non-renewal of such policies.

### Section IX – Rates

A. All rates charged by the FAIR Plan shall be subject to Commissioner's prior written approval. The FAIR Plan's rates shall not be excessive, inadequate, or unfairly discriminatory and shall be actuarially sound so that premiums are adequate to cover expected losses, expenses, and taxes, and shall reflect the FAIR Plan's investment income.

B. The FAIR Plan shall file a rate analysis on or before July 1, 2021 for Division II. After such rate analysis is reviewed by the Commissioner, the FAIR Plan shall not be required to file a subsequent rate analysis or application, unless otherwise directed by the Commissioner, except that the FAIR Plan shall be required to file a rate application promptly if Division II reaches 1,000 policies, and so long as Division II retains 1,000 policies, the FAIR Plan shall file a rate application within 36 months after the effective date of the new BOP rates, unless otherwise directed by the Commissioner. The FAIR Plan shall provide all information and data required by the Commissioner to determine whether the rate proposed by the FAIR Plan complies with Insurance Code section 10100.2, subdivision (a).

C. Pursuant to Insurance Code section 10100.2, subdivision (c), all information considered by the FAIR Plan to establish rates shall be public records

### Provisions Applicable to Division I and Division II

#### Section I – Right of Appeal

Any Applicant or Insurer shall have the right of appeal to the Governing Committee. A decision of the Governing Committee may be appealed to the Commissioner within thirty days from the action or decision of the Governing Committee. Each denial of insurance shall be accompanied by a statement that the applicant has the right of appeal to the Governing Committee and the Commissioner and setting forth the procedures to be followed for such appeal.

#### Section II – Commission

Commission, under the Plan shall be determined by the Governing Committee, and shall be paid to the licensed producer designated by the applicant.

### Section III – Administration

A. This Plan shall be administered by a Governing Committee (herein referred to as the Committee) of the Placement Facility, subject to the supervision of the Commissioner, and operated by a Manager appointed by the Committee.

B. The Committee shall consist of nine voting Insurers, which shall be elected as follows:

two members from the American Property Casualty Insurance Association

one member from all other stock insurers

one member from all other non-stock insurers

six members from at-large insurers

Not less than four of the members of the Committee shall be California domiciled companies.

The Committee shall, in addition, have as non-voting members one representative of insurance agents, one representative of insurance brokers, one representative of the public, one representative of surplus line brokers and each to be appointed by the Governor of the State of California.

Not more than one participating Insurer in a group under the same management or ownership shall serve on the Committee at the same time. Representatives on the Committee shall serve for a period of one year or until successors are elected.

All members of the Governing Committee shall execute a Non-Disclosure Agreement, subject to the approval of the Commissioner, agreeing to maintain the confidentiality of (1) any pending or anticipated litigation, and any matters falling within the attorney-client privilege, to the extent that confidentiality is required for the attorney to exercise his/her ethical duties as a lawyer; and (2) any matter involving employment, termination, terms and conditions of employment, evaluation, promotion or disciplining of any prospective or current FAIR Plan employee or contractor, and which shall include a provision that the defense and indemnification obligations contained in Section VI of this Plan will not apply with respect to a breach of the Non-Disclosure Agreement.

C. The Chairman of the Committee shall appoint a Nominating Committee consisting of not less than three voting members who shall place in nomination the voting Insurers for election at the annual meeting. If nominations are made at the annual meeting for voting Insurers other than those nominations made by the Nominating Committee, such nominations shall designate the category of voting Insurers as indicated in Paragraph B of this Section.

D. Voting for election to the Committee at the annual meeting will be on a weighted basis in accordance with Premiums Written (as defined in Division I, Section III, Paragraph G, and in Division II, Section III, Paragraph G.) during the second preceding calendar year as disclosed in the reports filed by the Insurers with the Commissioner.



E. The Governing Committee may establish subcommittees that may convene to deliberate with respect to only those matters specified in the respective charter for each such subcommittee and to make recommendations to the Governing Committee regarding such specified matters. The charters shall be approved by the Governing Committee annually, at a meeting of the Governing Committee at which the Commissioner and/or his or her representatives are present, and such charters shall be provided to the Commissioner in advance of such meeting as part of the Governing Committee packet, at the same time or before the Governing Committee packet is provided to the Governing Committee members. The subcommittees authorized by this Plan of Operation are as follows: Underwriting Subcommittee; Claims Subcommittee; Accounting Subcommittee; Investment Subcommittee; Nominating Subcommittee, Reinsurance Subcommittee, and an Executive Subcommittee. Each subcommittee shall include at least one nonvoting member of the Governing Committee.

F. Only the Executive subcommittee may exercise delegated authority from the Governing Committee. The Executive subcommittee shall include the nonvoting member of the Governing Committee described in Insurance Code section 10094 as the “representative of the public.”

#### Section IV - Meetings

A. There shall be an Annual Meeting of Insurers on a date fixed by the Governing Committee for the purpose of electing the voting members of the Governing Committee in the manner prescribed in Section III above and for the purpose of conducting such other items of business as may be properly brought before it. A majority of Insurers, on a weighted basis, in accordance with each Insurer’s Premiums Written, as specified in Division I, Section VI, Paragraph D and Division II, Section VI, Paragraph C, present in person shall constitute a quorum. The Plan shall provide twenty days’ advance written notice of the Annual Meeting to the Insurers, the non-voting members of the Governing Committee, and the Commissioner and his or her designee(s).

B. The FAIR Plan shall provide advance written notice to the Governing Committee, the Commissioner and the person(s) designated by the Commissioner of the time, date, and place and an agenda for any meeting of the Governing Committee. The Plan shall provide advance written notice to the members of all subcommittees and the person(s) designated by the Commissioner of the time, date, and place and an agenda for any subcommittee meeting, except that notice to the Commissioner and/or his or her designees of Executive Subcommittee meetings shall not be required if such meetings are properly closed to the Commissioner pursuant to Section IV, Paragraph F below. Notice of each such meeting shall be provided to the Commissioner in the same manner and at the same time as the notice provided to the meeting attendees.

C. The Commissioner and the person(s) designated by the Commissioner shall be permitted to attend any meeting of the Governing Committee and any subcommittee at which a quorum is present, except any meeting of the Executive Subcommittee closed to the Commissioner as described below in Section IV, Paragraph F, or any portion of a Governing Committee meeting called to discuss: (1) any pending or anticipated litigation, and any matters falling within the attorney-client privilege, to the extent that confidentiality is required for the attorney to exercise his/her ethical duties as a lawyer; or (2) any matter involving employment,

termination, terms and conditions of employment, evaluation, promotion or disciplining of any prospective or current FAIR Plan employee or contractor. Any portion of a Governing Committee meeting called to discuss any matter pertaining to (1) or (2) hereof may be closed to the Commissioner and his/her designees, but not to the nonvoting members, and shall be so declared by a formal motion of the Governing Committee at a meeting the Commissioner and his/her designees are authorized to attend.

D. Except with respect to the Annual Meeting referenced in Paragraph A of this Section IV, and a Special Meeting referenced in Paragraph E of this Section IV, voting by proxy, voting by mail and voting by email shall not be permitted.

E. A Special Meeting of the Insurers other than the Annual Meeting referenced in Paragraph A of this Section IV, may be called at such time and place designated by the Governing Committee, or upon the written request to the Governing Committee by a minimum of ten insurers, none of which are under common control with any of the other requesting insurers. If, at a Special Meeting, a vote of the Insurers is or may be required on any proposal, such votes shall be cast and counted on a weighted basis in accordance with each Insurer's Premiums Written as used to determine its participation in the Association under Division I, Section VI, Paragraph D, and Division II, Section VI, Paragraph C. The FAIR Plan shall provide notice to the Commissioner and the non-voting members of the Governing Committee of any Special Meeting of Insurers in the same manner and at the same time as the Insurers. The Commissioner and/or his or her designee(s) and the non-voting members shall be authorized to attend and participate in any such meeting.

F. The Executive subcommittee may meet in a session closed to the Commissioner only for the purpose of deliberating and deciding matters pertaining to: (1) any pending or anticipated litigation, and any matters falling within the attorney-client privilege, to the extent that confidentiality is required for the attorney to exercise his/her ethical duties as a lawyer; or (2) any matter involving employment, termination, terms and conditions of employment, evaluation, promotion or disciplining of any prospective or current FAIR Plan employee. While the FAIR Plan shall make diligent efforts to schedule meetings of the Executive Committee only if all members of the Executive subcommittee, including the nonvoting "member of the public," are available, any three members of the Executive subcommittee shall be sufficient to constitute a quorum. The Executive subcommittee shall promptly inform the Governing Committee of any final decision of the Executive subcommittee when it becomes public.

G. The Governing Committee shall meet annually with the FAIR Plan's auditors. At the discretion of the Committee, such meeting or a part thereof may be convened outside the presence of FAIR Plan employees or contractors and counsel for the FAIR Plan. All findings and any reports of the auditors shall be provided to the Commissioner and/or his or her designees.

#### Section V – Duties of the Governing Committee

A. The Governing Committee ("Committee") shall meet as often as may be required to perform the general duties of administration of the Plan, or on the call of the Commissioner. A majority of the voting and at least one non-voting member of the Committee shall constitute a quorum.

B. The Committee shall be empowered to appoint a Manager and such other personnel as may be necessary, who shall serve at the pleasure of the Committee; and to budget expenses, levy assessments, disburse funds, and perform all other duties provided herein or necessary or incidental to the proper administration of the Plan. The adoption of or substantive changes in pension plans or employee benefit programs, shall be subject to approval of Insurers.

C. The Committee shall be further empowered to modify or amend any provision of this Plan as required by legislation, or by rule, regulation or administrative determination by the Commissioner, in accordance with Section XII of this Plan.

D. Annually, the Manager shall prepare an operating budget which shall be subject to approval of the Committee. Such budget shall be furnished to the Insurers after approval. Any contemplated expenditures in excess of or not included in the annual budget, shall require prior approval by the Committee.

E. The Committee shall furnish to all Insurers, and to the Commissioner, a written report on operations annually in such form and detail as the Committee may determine.

F. The Committee shall require periodic reports from the Inspection Bureau, and shall furnish copies of such reports to the Commissioner.

G. The Committee shall make every effort to obtain the full cooperation of all California producers licensed to write property lines, in connection with the operations of the Placement Facility and of the Plan.

#### Section VI – Indemnification

A. Except as provided in the Non-Disclosure Agreement to be signed by each member of the Governing Committee, the Association shall indemnify (a) every director, Governing Committee member, member of any other committee or any subcommittee, officer, and employee of the Association, and his heirs, executors, and administrators, and (b) every insurer member of the Association, both as a member or by reason of such insurer having one or more of its representatives or employees serving in any of the capacities or positions specified in clause (a) hereinabove; against all judgments, fines, amounts paid in settlement, reasonable costs and expenses including attorney fees, and any other liabilities that may be incurred as a result of any claim, action, suit, or proceedings, whether civil, criminal, administrative or other, prosecuted or threatened to be prosecuted for or on account of any act performed or omitted or obligation entered into, if done or omitted in good faith and without intent to defraud, and in connection with the administration, management, or conduct of the Association or its affairs.

B. Such indemnification shall be provided whether or not such person or insurer holds office in the Association at the time such claim, action, suit or proceeding is begun, prosecuted, or threatened, and whether or not the liability indemnified against was incurred or the act or omission occurred prior to the adoption of this Section.

The adjudication or termination or any such claim, action, suit, or proceeding by judgment, settlement, conviction, or plea of nolo contendere or its equivalent, shall not be deemed to create a presumption that such person or insurer did not act in good faith or acted with intent to defraud.

If any such claim, action, suit or proceeding is compromised or settled, this must be done with the approval of the Governing Committee of the Association.

C. Any such person or insurer shall be conclusively entitled to rely upon an opinion of legal counsel for the Association; and if the act or omission involved was reasonably done in reliance upon such an opinion, such person or insurer shall be entitled to the indemnification provided for by this Section. Such person or insurer shall also be entitled to indemnification provided for by this section hereunder. Such person or insurer shall also be entitled to indemnification hereunder if his, her or its defense to the claim, action, suit or proceedings has been wholly successful, whether on the merits or otherwise.

D. The right of indemnification hereunder shall not be exclusive of other rights such person or insurer may have.

E. In each instance in which a question of indemnification hereunder arises, determination in the first instance of the right to indemnification hereunder, and of the time and manner of payment thereof, shall be made by the Governing Committee. In the event that a majority of the members of the Governing Committee are seeking indemnification hereunder as a result of the same occurrence, such determination in the first instance shall be made by vote of the membership of the Association taken on a weighted basis as provided in Division I, Section VI, Paragraph D, and Division II, Section VI, Paragraph C hereof.

Nothing contained in this Paragraph E is intended to make an adverse determination finally binding upon the person or insurer seeking indemnity under this Section, or to preclude any such person or insurer from appealing an adverse determination against him, her or it, or from instituting legal proceedings to enforce a right of indemnification under this Section.

F. The indemnification provided for in this Section shall be deemed to be an expense of the Association to which all of the members of the Association shall contribute in the proportion that each member participates according to law in the writings, expenses, profits and losses of the Association.

#### Section VII – Public Education

All Insurers agree to undertake a continuing public education program, in cooperation with producers and others, to assure that the Plan receives adequate public attention.

#### Section VIII – Termination of the Plan

Any obligations incurred by the Association shall not be impaired by the termination of the Plan and such Association shall be continued for the purpose of performing such obligations.

#### Section IX – Insolvency

Any member that, due to insolvency, is no longer licensed and authorized to write in California, or that, due to insolvency, is no longer engaged in writing in California, upon a direct basis, basic property insurance or any component thereof in homeowners or other multiperil policies, shall cease to be a member of the California FAIR Plan Association, as of the date that the member's

license is revoked or suspended, the date upon which the member became no longer so authorized, or the date upon which the member ceased writing such insurance, whichever date occurs first.

Such member's proportionate share of expenses and/or losses shall be paid by the remaining members, each of which shall contribute such payment in the same proportion as specified in Division I, Section VI, Paragraphs D and E, and in Division II, Section VI, Paragraphs C and D of this Plan, calculated without reference to Premiums Written by such member. In calculating said payment for each remaining member, such member's Premiums Written from its voluntary writings as set forth in Division I, Section VI, Paragraphs D and E, and Division II, Section VI, Paragraphs C and D, shall be excluded.

If the Association elects to make a distribution of funds to its members, no amount that would otherwise be distributed under the Plan of Operations shall be distributed to such member subject to an order of liquidation entered with the county clerk, or to its liquidator, receiver, conservator or statutory successor.

#### Section X – Citation to the Commissioner

Failure of any member to comply with this Plan of Operation or with any rules prescribed there under by the Governing Committee or to pay any assessment levied within 30 days after notice thereof shall be grounds for Citation of such member to the Commissioner.

#### Section XI – Distributions of Profits, and Assessments to Operate the Facility

Pursuant to Insurance Code section 10095, subdivision (c), the Insurers shall participate in the writing, expenses, Profits, and losses of the FAIR Plan in the same proportion that its premiums written during the second preceding calendar year bear to the aggregate premiums written by all Insurers in the program, excluding that portion of the premiums written attributable to the operation of the FAIR Plan.

No distributions of Profits, as defined in Division I, Section III, Paragraph J and Division II, Section III, Paragraph J shall be made to the Insurers without the Commissioner's prior written approval.

Pursuant to Insurance Code section 10094, the Insurers shall not be subject to any assessment without the Commissioner's prior written approval.

#### Section XII – Amendments to this Plan

Any Insurer may propose an amendment to the Plan and present that proposed amendment to the Governing Committee for consideration. The proposal shall be considered at the next meeting of the Governing Committee. If the proposed amendment to the Plan is approved by a majority of the members of the Governing Committee present and voting at the Governing Committee meeting at which the proposed amendment to the Plan is considered, notice of the proposed amendment to the Plan shall be mailed to the Insurers not less than twenty days prior to the final date fixed by the Governing Committee for Insurers to vote thereon. Any vote of the Insurers on

a proposed amendment to this Plan or any other Insurer proposal may be taken by mail and such votes shall be cast and counted on a weighted basis in accordance with each Insurer's Premiums Written as used to determine its participation in the Association under Division I, Section VI, Paragraph D, and Division II, Section VI, Paragraph C. Any amendment to this Plan shall be approved by at least two-thirds of the votes cast by Insurers on such weighted basis before it is submitted to the Commissioner for review and approval.

No amendment to this Plan of Operation shall be effective without the prior written approval of the Commissioner.

Pursuant to Insurance Code section 10095, subdivision (f), the Commissioner may revoke his or her approval of this Plan of Operation if he or she feels it is necessary to carry out the purposes of Chapter 9 of the Insurance Code.



