

In consideration of the payment of the premium and in reliance upon all statements made in the **Application** furnished to the Insurer designated in the Declarations, a stock insurance corporation, hereafter called the Insurer, the Insurer and the **Named Entity Insureds** agree as follows:

## **I. TERMS AND CONDITIONS**

The terms and conditions of each **Coverage Part** apply only to that **Coverage Part** and shall not apply to any other **Coverage Part**. If any provision in these General Terms & Conditions is inconsistent or in conflict with the terms and conditions of any **Coverage Part**, the terms and conditions of that **Coverage Part** shall control for purposes of that **Coverage Part**.

## **II. DEFINITIONS**

Words set forth in bold have the meaning set forth below. However, any bolded word defined in these General Terms & Conditions that is defined differently in a **Coverage Part** shall, for purposes of coverage under that **Coverage Part**, have the meaning defined in that **Coverage Part**.

1. **Application** means all applications for this Policy and for any policy in an uninterrupted series of policies issued by the Insurer or any affiliate of the Insurer of which this Policy is a renewal or replacement. **Application** includes any materials submitted or required to be submitted with the **Application**. An "affiliate of the Insurer" means an insurer controlling, controlled by or under common control with the Insurer.
2. **Coverage Part** means only those coverage parts designated in the Declarations as "Included" in this Policy and attached hereto.
3. **Claims-Made Relationship** means that period of time between the effective date of the first claims-made policy issued by the Insurer to the **Named Entity** and the termination, cancellation or non-renewal of the last consecutive claims-made policy between the **Named Entity** and the Insurer, where there has been no gap in coverage, but does not include any period covered by Extended Reporting Period coverage.
4. **Crime Coverage Part** means the Crime Coverage Part, if such **Coverage Part** is designated as "Included" in the Declarations and attached hereto.
5. **Crime Loss** means loss sustained under the **Crime Coverage Part**.
6. **Defense Costs** means all reasonable and necessary fees charged by attorneys designated by the Insurer, or by the **Named Entity Insureds** with the Insurer's written consent. **Defense Costs** also include all other reasonable and necessary fees, costs and expenses resulting from the investigation, adjustment, defense and appeal of a **Liability Claim** if incurred by the Insurer, or by the **Named Entity Insureds** with the written consent of the Insurer, including the costs of appeal, attachment or similar bonds. However, the Insurer has no obligation to provide such bonds. **Defense Costs** shall not include salaries, wages, fees, overhead or benefit expenses associated with the directors, officers, employees, trustees, committee members, or volunteers of **Named Entity**, any **Subsidiary**, or **Property Manager**.
7. **ERISA or any Similar Act** means the Employee Retirement Income Security Act of 1974, as amended, or any similar common or statutory law of the United States or its states, territories or possessions, or any other jurisdiction anywhere in the world.

8. **Executive Officer** means with respect to **Named Entity**, any **Subsidiary**, or **Property Manager**, its trustees, chairperson, chief executive officer, president, chief financial officer, in-house general counsel, and the director of human resources or equivalent position.
9. **Financial Insolvency** means, with respect to any **Named Entity** covered under any **Coverage Part** designated as “included” in the Declarations attached hereto:
  - a. the appointment by any state or federal official, agency or court of a receiver, conservator, liquidator, trustee, rehabilitator or similar official to take control of, supervise, manage or liquidate such **Named Entity**; or such **Named Entity** becoming a debtor in possession; and
  - b. except with respect to a **Change in Status**, the inability of such organization financially or under applicable law to advance **Defense Costs** or indemnify the **Insureds** for **Liability Loss**.
10. **Insured Person** means any natural person covered under the **Liability Coverage Part**.
11. **Interrelated Wrongful Acts** means any **Wrongful Acts** which are logically or causally connected by reason of any common fact, circumstance, situation, transaction or event.
12. **Liability Claim** means any claim covered under the **Liability Coverage Part**.
13. **Liability Coverage Part** only means the **Association Liability Coverage Part** , if such **Coverage Part** is designated as “Included” in the Declarations attached to this Policy .
14. **Liability Loss** means loss covered under the **Liability Coverage Part**.
15. **Loss** means all **Liability Loss** and all **Crime Loss**.
16. **Named Entity** means the association named in Item 1 of the Declarations, including such association as a debtor in possession under Chapter 11 of the United States Bankruptcy Code or an equivalent status under the law of any other country.
17. **Named Entity Insureds** means the **Named Entity**, **Subsidiaries**, **Property Manager** and **Insured Persons** covered under under any **Coverage Part** designated as “Included” in the Declarations.
18. **Policy Period** means the annual period or longer period from the effective date of this Policy to the Policy expiration date stated in Item 2 of the Declarations, or its earlier cancellation date.
19. **Policy Premium** means the original premium and the fully annualized amount of any additional premiums, other than the Extended Reporting Period premium, charged by the Insurer before or during the **Policy Period**.

20. **Pollutants** mean any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste (including materials to be recycled, reconditioned or reclaimed).
21. **Property Manager** means the entity or natural person specified in Item 6 of the Declarations. If an entity is specified in Item 6, **Property Manager** shall also include **Property Manager Employees** employed by such entity to provide real estate **Property Management Services** to the **Named Entity**.
22. **Property Manager Employee** means any natural person in the regular service of a **Property Manager** in the ordinary course of such **Property Manager's** business, whom such **Property Manager** governs and directs in the performance of such service, including any part-time, seasonal, leased or temporary employee, or any duly elected or appointed director, officer, member of the board of managers or management committee member while performing **Property Management Services** within the usual scope of a **Property Manager Employee**.
23. **Subsidiary** means any entity which qualifies as a non-profit entity under Internal Revenue Code Section 501(c)(3) and any amendment thereto, during any time in which the **Named Entity** owns or controls, directly or through one or more **Subsidiaries**, the right to elect or appoint more than 50% of the entity's directors or trustees.
24. **Change in Status** means the consolidation or merger of the **Named Entity** into or with another entity, or **Financial Insolvency**:
25. **Termination of Coverage** means, whether made by the Insurer or the **Named Entity** at any time:
  1. Cancellation or nonrenewal of this Policy; or
  2. Decrease in limits, reduction of coverage, increased deductible or self-insured retention, new exclusion, or any other change in coverage less favorable to the **Named Entity**.

### III. EXTENDED REPORTING PERIOD/DISCOVERY

The provisions of this Extended Reporting Period coverage will not apply, except for the 60 day automatic Extended Reporting Period, if the **Claims-Made Relationship** has been less than one year and the policy has been terminated for non-payment of premium or fraud.

1. In the event of **termination of coverage**, a sixty (60) day automatic Extended Reporting Period extension will be granted to the **Named Entity**, at no charge, only with respect to **Claims** made against **Named Entity Insureds** and reported to the Insurer during such extension by reason of any **Wrongful Act** committed before **termination of coverage**

This period shall be referred to as the automatic Extended Reporting Period. There is no separate or additional limit of liability for the automatic Extended Reporting Period

2. In addition, the **Named Entity** has the option to purchase additional Extended Reporting Period coverage, upon payment of an additional premium, but only with respect to;

- a. under the **Liability Coverage Part**,. any **Wrongful Act** committed before the earlier of the end of the **Policy Period** or the effective date of any **Change in Status**;

This period shall be referred to as the optional Extended Reporting Period.

3. Within 30 days after termination, the Insurer will notify the **Named Entity**, in writing, of the automatic Extended Reporting Period and the availability of, the premium for, and the importance of purchasing additional Extended Reporting Period coverage.
4. The **Named Entity** shall have the greater of sixty (60) days from the effective date of **termination of coverage** or thirty (30) days from the date of mailing or delivery of the advice of the availability to purchase additional Extended Reporting Period coverage, to submit written acceptance of the Extended Reporting Period coverage.
5. The premium to be charged for the Extended Reporting Period coverage will be based upon the rates for such coverage in effect on the date the policy was issued or last renewed.
6. Upon **termination of coverage**:
  - a. any return premium due the **Named Company** shall be credited toward the premium for the additional Extended Reporting Period coverage, if the first **Named Company Insured** elects such coverage; or
  - b. where premium is due to the Insurer for coverage during the **Claims-Made Relationship**, any monies received by the Insurer from the **Named Company** named as payment for the Extended Reporting Period coverage, shall be first applied to such premium owing for the policy.
7. Only one such Extended Reporting Period coverage endorsement shall be issued and the extended period for such coverage shall be three (3) years.
8. Limits of liability for such coverage shall be equal to 100% of the terminated Policy's annual aggregate limit where a **Claims-Made Relationship** has continued for three (3) years or more.
9. If the **Claims Made Relationship** has continued for less than three (3) years, the limit of liability shall be equal to the greater of:
  - a. the amount of coverage remaining in such Policy's annual aggregate liability limit; or
  - b. 50 percent of such Policy's annual aggregate liability limit
10. If the **Named Entity** has been placed in receivership, liquidation or bankruptcy or permanently ceases operations, then anyone qualifying as an insured under the

definition of **Named Entity Insureds** has the right to Extended Reporting Period coverage issued in the **Named Entity's** name for the benefit of all who qualify as **Named Entity Insureds**. The request for such Extended Reporting Period coverage must be made within one hundred and twenty (120) days of the **termination of coverage**.

11. In addition, a person employed or otherwise affiliated with the **Named Entity Insured** and covered by the **Named Entity's** policy during such affiliation, shall continue to be covered under this policy and any Extended Reporting Period coverage after such affiliation has ceased for such person's covered wrongful act during such affiliation.

#### IV. ESTATES, LEGAL REPRESENTATIVES AND SPOUSES

The estates, heirs, legal representatives, assigns, spouses and legally recognized domestic partners of **Insured Persons** shall be considered **Named Entity Insureds** under the **Liability Coverage Part**; provided, however, coverage is afforded to such estates, heirs, legal representatives, assigns, spouses and legally recognized domestic partners only for a **Claim** arising solely out of their status as such and, in the case of a spouse, where such **Claim** seeks damages from marital community property, jointly held property or property transferred from the **Insured Person** to the spouse. No coverage is provided for any act, error or omission of an estate, heir, legal representative, assign, spouse or legally recognized domestic partners. All terms and conditions of this Policy, including without limitation the retention applicable to **Liability Loss** incurred by the **Insured Person**, shall also apply to loss incurred by such estates, heirs, legal representatives, assigns, spouses and legally recognized domestic partners.

#### V. LIMIT OF LIABILITY/RETENTIONS

1. Limit of Liability
  - a. The Scheduled Limits of Liability set forth in Item 6 of the Declarations as the Scheduled Limits of Liability for the **Association Liability Coverage Part** shall be the maximum aggregate Limits of Liability of the Insurer for all **Liability Loss** under such **Coverage Part**, regardless of the number of **Claims** made against the **Named Entity Insureds**;
  - b. The Scheduled Limit of Liability set forth in Item 6 of the Declarations as the Scheduled Limit of Liability for the **Crime Coverage Part** shall be the maximum limit of liability of the Insurer for each **Crime Loss** under the **Crime Coverage Part**. Such limit of liability shall not accumulate from **Policy Period** to **Policy Period**
  - c. If the Limit of Liability for any **Coverage Part** is exhausted by payment of **Loss**, the Insurer's obligations under such **Coverage Part** shall be deemed completely fulfilled and extinguished.
  - d. The Insurer shall pay **Liability Loss** on behalf of the **Named Entity Insureds**, and shall pay **Crime Loss** as incurred by the **Named Entity Insureds**, without consideration of other future obligations.

- e. The liability of the Insurer for all **Crime Loss** sustained by more than one **Named Entity Insured** shall not exceed the amount that the Insurer would pay if all **Crime Loss** had been sustained by one **Named Entity Insured**.
  - f. In the event any loss is covered partly by the **Crime Coverage Part** and partly by any prior canceled or terminated insurance that the Insurer or any affiliate issued to the **Named Entity Insureds**, the Insurer will not pay more than the actual amount of the loss recoverable under the **Crime Coverage Part** or the prior insurance.
  - g. If any loss is covered partly by the **Crime Coverage Part** and partly by any prior canceled or terminated insurance issued by any carrier other than the Insurer or any affiliate: (i) any retention amount applicable to the loss under the **Crime Coverage Part** will be reduced by any deductible or retention amount applicable under the prior insurance, and (ii) the limit applicable to the loss under the **Crime Coverage Part** will be reduced by any amount paid or payable to the **Named Entity Insured** under the prior insurance.
2. Retentions
- a. Subject to paragraph c below, the Insurer is liable to pay only that amount of **Loss** in excess of any applicable retention. The Insurer will have no obligation to pay all or any portion of any applicable retention.
  - b. Separate Retentions as set forth in Item 6 of the Declarations as the Scheduled Retentions shall apply to each **Loss** under each **Coverage Part**.
  - c. No retention applies with respect to any **Liability Loss** in a **Claim** against any **Insured Persons** if the **Named Entity**, or any **Subsidiary** are not permitted to advance **Defense Costs** or to indemnify such **Insured Persons** for **Liability Loss** by reason of **Financial Insolvency**.
  - d. Subject to Section XII below, if a **Loss** is covered under more than one **Coverage Part** and if more than one retention applies to such **Loss**, the maximum total retention amount applicable to such **Loss** shall be the amount of the largest applicable retention.

## VI. DEFENSE AND SETTLEMENT OF LIABILITY CLAIMS

### 1. Defense of Claims

The Insurer has the right and duty to defend all **Liability Claims**, even if the allegations are groundless, false or fraudulent. The Insurer shall have the right to appoint counsel and to make such investigation and defense of a **Liability Claim** as it deems necessary. The **Named Entity Insureds** shall:

- a. have the right to consent to the Insurer's choice of defense attorney, which consent shall not be unreasonably withheld;
- b. participate in and assist in the direction of the defense of any **Liability claim**; and
- c. consent to any settlement, which consent shall not be unreasonably withheld.

Subject to paragraph 2. below, the Insurer's obligation to defend any **Liability Claim** or pay any **Liability Loss**, including **Defense Costs**, shall be completely fulfilled and extinguished if the limit of liability has been exhausted by payment of **Liability Loss**.

2. Limitation on the Insurer's Duty to Defend

If the Insurer concludes that the limit of liability applicable to any **Liability Claim** may become exhausted prior to the conclusion of any **Liability Claim**, the Insurer will notify the **Named Entity Insureds**, in writing, to that effect.

When the limit of liability applicable to any **Liability Claim** has actually been exhausted prior to the conclusion of the **Liability Claim**, the Insurer will notify the **Named Entity**, in writing, as soon as practicable, that such limit has been exhausted and that the Insurer's duty to defend such **Liability Claim** and any other **Liability Claim** has ended.

The Insurer will initiate, and cooperate in, the transfer of control to the **Named Entity** of any **Liability Claims** which were subject to that limit of liability and which were reported to the Insurer prior to the exhaustion of such limit. The **Named Entity Insureds** must cooperate in the transfer of control of such **Liability Claims**.

The Insurer agrees to take the necessary steps as the Insurer deems appropriate to avoid a default in, or continue the defense of, such **Liability Claims** until such transfer has been completed, provided that the **Named Entity Insureds** are cooperating in completing such transfer.

The **Named Entity** must reimburse the Insurer for expenses the Insurer incurs in taking those steps the Insurer deems appropriate to avoid a default in, or continuing the defense of, any **Liability Claim**.

The Insurer will not take any action with respect to any **Liability Claim** that would have been subject to such limit of liability, had it not been exhausted, if the **Liability Claim** is reported to the Insurer after that limit has been exhausted.

The exhaustion of any limit by payment of any **Liability Claim**, and the resulting end of the Insurer's duty to defend, will not be affected by the Insurer's failure to comply with any of the terms and conditions of this provision.

3. Settlement

The Insurer shall not settle a **Liability Claim** without the consent of the **Named Entity Insureds**, other than any **Property Manager**, which shall not be unreasonably withheld. If the **Named Entity Insureds**, other than any **Property Manager** unreasonably refuse to consent to a settlement or compromise recommended by the Insurer, and acceptable to the claimant, then the applicable limit of liability under this Policy shall be reduced to the amount for which the **Liability Claim** could have been settled plus all **Defense Costs** incurred up to the time the Insurer made its recommendation.

4. Cooperation of **Named Entity Insureds**

The **Named Entity Insureds** shall not admit liability, consent to any judgment, agree to any settlement or make any settlement offer without the Insurer's prior written

consent, such consent not to be unreasonably withheld. The Insurer shall not be liable for any **Loss** to which it has not consented. The **Named Entity Insureds** agree that they shall not knowingly take any action which increases the Insurer's exposure for **Loss** under this Policy. The **Named Entity Insureds** shall furnish the Insurer with copies of reports, investigations, pleadings, and all related papers, and such other information, assistance and cooperation as the Insurer may reasonably request.

**VII. NOTICE/DATE OF CLAIM/INTERRELATED CLAIM CLAUSE/ SWORN PROOF OF LOSS**

1. If, during the **Policy Period** or any Extended Reporting Period, if applicable, any **Claim** is first made against the **Named Entity Insureds**, the **Named Entity Insureds** shall, as a condition precedent to the obligations of the Insurer under this Policy, give written notice to the Insurer or the Insurer's licensed agent as soon as reasonably possible.
2. If, during the **Policy Period** the **Named Entity Insureds** first become aware of a specific **Wrongful Act** which may reasonably give rise to a future **Liability Claim** and during such period give written notice to the Insurer of:
  - a. the names of any potential claimants and a description of the **Wrongful Act** which forms the basis of their potential **Claim**;
  - b. the identity of the specific **Named Entity Insureds** allegedly responsible for such specific **Wrongful Act**;
  - c. the consequences that have resulted or may result from such specific **Wrongful Act**;
  - d. the nature of the potential monetary damages or non-monetary relief which may be sought in consequence of such specific **Wrongful Act**; and
  - e. the circumstances by which **Named Entity Insureds** first became aware of such specific **Wrongful Act**;then any **Liability Claim** otherwise covered pursuant to the **Liability Coverage Part** which is subsequently made and which arises out of such **Wrongful Act** shall be deemed to have been first made and reported to the Insurer by the **Named Entity Insureds** at the time such written notice was received by the Insurer. No coverage is provided for fees and expenses incurred prior to the time such notice results in a **Liability Claim**.
3. Except as provided in subsection 2 above, a **Liability Claim** shall be deemed made:
  - a. in the case of a civil, proceeding, on the earliest of the date of service upon or other receipt by any **Named Entity Insured** of a complaint, indictment, notice of charge or similar document against the **Named Entity Insured** in such proceeding ;
  - b. in the case of a written demand for monetary damages, on the **Named Entity Insureds'** receipt of such written demand.
4. More than one **Liability Claim** involving the same **Wrongful Act** or **Interrelated Wrongful Acts** shall be considered as one **Liability Claim** which shall be deemed made on the earlier of:
  - a. the date on which the earliest such **Liability Claim** was first made, or

- b. the first date valid notice was given by the **Named Entity Insureds** to the Insurer under this Policy of any **Wrongful Act** or under any prior policy of any **Wrongful Act**, or any fact, circumstance, situation, event or transaction which underlies any such **Liability Claim**.
5. With respect to the **Crime Coverage Part**, within 90 days after discovery the **Named Entity Insured** sustained a loss, the **Named Entity Insured** shall provide a detailed sworn proof of loss. The **Named Entity Insureds** will, upon request of the Insurer, submit to an examination under oath. The **Named Entity Insureds** will also notify the police if they have reason to believe that any loss involves a violation of law.
6. The **Named Entity Insureds** shall give written notice to the Insurer or the Insurer's licensed agent under this Policy as specified in Item 4 of the Declarations, which shall be effective upon receipt.

#### **VIII. CANCELLATION/NONRENEWAL**

##### 1. Cancellation by the **Named Entity**

The **Named Entity** has the right to cancel this Policy at any time by giving notice to the Insurer stating when thereafter the cancellation shall be effective. If this Policy is so canceled, earned premium shall be computed pro rata.

##### 2. Cancellation by the Insurer

The Insurer has the right to cancel this Policy at any time and for any reason within the first sixty (60) days. The Insurer must mail or deliver notice of cancellation to the **Named Entity** and to the **Named Entity's** authorized agent or broker at least twenty (20) days prior to the effective date of such cancellation.

After this Policy has been in effect for sixty (60) days or more, or if this is a renewal Policy, it may be canceled only for one of the following reasons:

- a. Nonpayment of premium provided, however, that a notice of cancellation on this ground shall inform the **Named Entity** of the amount due;
- b. conviction of a crime arising out of acts increasing the hazard insured against;
- c. Any discovery of fraud or material misrepresentation relating to the obtaining of this Policy or to a **claim** made under this Policy;
- 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. Determination by the Superintendent of Insurance that the continuation of the Insurer's present premium volume would jeopardize the solvency of the Insurer or be hazardous to the interests of the Policyholders, the Insurer's creditors or the public.
  - g. Determination by the Superintendent that the continuation of the Policy would violate, or would place the Insurer in violation of State Insurance laws.
3. The Insurer must mail notice of cancellation to the **Named Entity** and the **Named Entity's** authorized agent or broker at least fifteen (15) days prior to the effective date of such cancellation. Notice of cancellation will state the effective date of cancellation. The Policy will end on that date. The grounds for such cancellation shall also be stated, and upon written request, the Insurer shall furnish the facts upon which the cancellation is based.
4. Non-Renewal by the Insurer

The Insurer has the right to non-renew this Policy effective on any Policy anniversary date. All notices of non-renewal must be mailed to the **Named Entity** at the last mailing address known to us, and to the **Named Entity's** authorized agent or broker, at least sixty (60) days but not more than 120 days prior to the effective date of non-renewal and shall provide a specific explanation of the reason(s) for non-renewal

5. Conditional Renewal or Increased Premium

If the Insurer conditions renewal of this Policy upon:

- a. Change of limits;
- b. Change in type of coverage;
- c. Reduction of coverage;
- d. Increased deductible;
- e. Addition of exclusion;
- 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;

If the Insurer decides not to renew this Policy or to conditionally renew this Policy as provided in paragraphs 4. and 5 above, the Insurer will mail or deliver written notice to the **Named Entity** at the address shown in the Policy and to the **Named Entity's** authorized agent or broker 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.

If notice is mailed, proof of mailing will be sufficient proof of notice. 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.

If the Insurer violates any of the provisions of this subsection by sending the **Named Entity** an incomplete or late conditional renewal notice or a late nonrenewal notice:

(1) 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 **Named Entity**, during this 60 day period, has replaced the coverage or elects to cancel.

(2) 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 **Named Entity** during this additional Policy period, has replaced the coverage or elects to cancel.

The aggregate limit of the expiring Policy will be increased in proportion to the Policy extension as a result of an incomplete or late conditional renewal notice or a late nonrenewal notice.

The Insurer will not send notice of nonrenewal or conditional renewal if the **Named Entity** or their authorized agent or broker or another insurer of the **Named Entity** mails or delivers notice that the Policy has been replaced or is no longer desired.

#### **IX. NOTICES TO THE NAMED ENTITY**

Any notices required under Section VIII, **CANCELLATION**, shall be provided to **Named Entity** at the address set forth in Item 1 of the Declarations and to the **Property Manager** if and at the address, specified in Item of the Declarations for this Policy and to the **Named Entity's** insurance agent or broker. The mailing of such notice shall be sufficient.

#### **X. OTHER INSURANCE**

If any **Loss** resulting from any **Claim** is insured under any other policies, this Policy shall apply only to the extent the **Loss** exceeds the amount paid under such other valid and collectible insurance whether such other valid and collectible insurance is stated to be primary, contributory, excess, contingent or otherwise, unless such other valid and collectible insurance is written only as specific excess insurance over this Policy.

#### **XI. APPLICATION**

The **Named Entity Insureds** represent and acknowledge that the statements contained in the **Application** are true, are the basis of this Policy and are to be considered as incorporated into and constituting a part of this Policy. No misrepresentation shall avoid or defeat recovery unless such misrepresentation was material. In the event the **Application** contains any misrepresentation which materially affects either the acceptance of this risk or the hazard assumed by the Insurer under this Policy, which if known by the Insurer would have led to the refusal by the Insurer to make this contract or provide coverage for a **Claim**.. This Policy is issued in reliance upon the truth of such representations.

#### **XII. COORDINATION AMONG COVERAGE PARTS**

Should two or more **Coverage Parts** apply to the same **Loss**, the Insurer will not pay more than the actual **Loss** incurred by the **Named Entity Insureds**.

### XIII. COVERAGE FOR NEW SUBSIDIARIES

1. If, after the effective date of this Policy, (i) **Named Entity**, or any **Subsidiary** creates or acquires an entity, or (ii) **Named Entity**, or any **Subsidiary** merges with another entity such that **Named Entity**, or any **Subsidiary** is the surviving entity, then such entity, and any subsidiaries, directors, officers, trustees or employees of such entity who otherwise would thereby become a **Named Entity Insured**, shall be covered under this Policy, subject to its terms and conditions, only if the Insurer, at its sole option, upon submission of such information as the Insurer may require and payment of any additional premium and/or amendment of the provisions of the Policy, agrees to provide coverage for such entity, subsidiaries, directors, officers or employees.
2. There shall be no coverage under the **Liability Coverage Part** for any **Wrongful Act** by such created, acquired or merged entity, or by any persons or entities considered to be **Named Entity Insureds** pursuant to Section XII.1 above, where such **Wrongful Act** occurred in whole or in part before the effective date of such acquisition or merger or for any **Wrongful Act** occurring on or after such date which, together with any **Wrongful Acts** occurring before such date, would be considered **Interrelated Wrongful Acts**. There is no coverage under the **Crime Coverage Part** (if included) for any event discovered prior to the effective date of such creation, merger or acquisition either by **Named Entity Insured**, or by the created, acquired or merged entity.

### XIV. CHANGE OF STATUS

#### 1. Change in Status of Named Entity

In the event of a **Change in Status** of **Named Entity**, coverage under this Policy shall continue until this Policy is otherwise terminated, but only with respect to **Wrongful Acts** occurring, or **Loss** under the **Crime Coverage Part** sustained, before the effective date of the **Change in Status**, unless (i) the Insurer is notified in writing of the **Change in Status** prior to the **Change in Status** effective date and agrees in writing to provide coverage for **Wrongful Acts** occurring, or **Crime Loss** sustained, on or after such effective date, and (ii) **Named Entity** accepts any special terms, conditions, exclusions or additional premium charge required by the Insurer.

#### 2. Cessation of Subsidiary

If any organization ceases to be a **Subsidiary**:

- a. there shall be no coverage under the **Liability Coverage Part** for any **Wrongful Act** by such organization or any **Insured Person** of such organization occurring after the date such organization ceased to be a **Subsidiary**; and
- b. there shall be no coverage under the **Crime Coverage Part** (if included) for **Crime Loss** sustained by the **Subsidiary** after the date it ceased to be a **Subsidiary**.

#### 3. Transfer of a Plan

If the sponsorship of a **Plan** is transferred so that **Named Entity**, or any **Subsidiary** is no longer the sole employer sponsor of such **Plan**, there shall be no coverage under the **Crime Coverage Part** (if included) for **Crime Loss** sustained by or with respect to such **Plan** after the date of such transfer.

#### XV. SUBROGATION AND RECOVERY

1. To the extent it pays any **Loss**, the Insurer shall be subrogated to all the **Named Entity Insureds'** rights of recovery therefor. The **Named Entity Insureds** shall execute all papers necessary to secure such rights, including executing any documents necessary to enable the Insurer effectively to bring suit in their name, and shall not act or fail to act in any way that impairs the Insurer's rights of subrogation or recovery.
2. If a **Loss** is in part insured and in part uninsured under this Policy or is in an amount in excess of the applicable limit of liability, the **Named Entity Insureds** and the Insurer shall attempt to agree upon an equitable allocation of any recoveries made, whether before or after payment of the **Loss** by the Insurer, from any person or source responsible for causing the **Loss**. Reasonable expenses incurred in making a recovery shall always have priority of payment from all such recoveries. If, after exerting their best efforts, the **Named Entity Insureds** and the Insurer are unable to agree upon such an allocation after taking into account due consideration for the respective parties' willingness to pay the expenses of making any recovery, the Insurer, if requested by the **Named Entity Insureds**, shall submit the dispute to binding arbitration. The rules of the American Arbitration Association shall apply with respect to the selection of the arbitration panel, which shall consist of one arbitrator selected by the **Named Entity Insureds**, one arbitrator selected by the Insurer, and a third independent arbitrator selected by the first two arbitrators.
3. In no event shall the **Named Entity Insureds** be entitled to recoup from recoveries any amount to satisfy any retention until after all amounts which the Insurer is required to pay or pays under any applicable **Coverage Part** are reimbursed to the Insurer.
4. Any allocation of recoveries for purposes of this Section **XV** shall not change any provisions dealing with calculation of insured **Crime Loss** under the **Crime Coverage Part**.

#### XVI. CHANGES

Notice to or knowledge possessed by any agent or other person acting on behalf of the Insurer shall not effect a waiver or a change in any part of this Policy or stop the Insurer from asserting any right under the provisions of this Policy, nor shall the provisions be waived or changed except by written endorsement issued to form a part of this Policy.

#### XVII. NAMED ENTITY AUTHORIZATION

1. The **Named Entity Insureds** agree that **Named Entity** will act on behalf of the **Named Entity Insureds** with respect to giving of all notice to the Insurer (except notices provided in Section VII.1 or 2), the receipt of notices from the Insurer, the payment of the premiums, the receipt of any return premiums that may become due under this Policy, and the acceptance of endorsements.

2. Payment of **Crime Loss** covered under the **Crime Coverage Part** to **Named Entity** shall discharge the Insurer from all further obligations under the **Crime Coverage Part** with respect to such **Crime Loss**, regardless of which **Named Entity Insured** sustained the **Crime Loss**.

**XVIII. NO ACTION AGAINST INSURER**

1. No action shall be taken against the Insurer unless, as a condition precedent, there shall have been full compliance with all the provisions of this Policy nor until the amount of the **Named Entity Insureds'** obligation to pay shall have been finally determined by judgment against the **Named Entity Insureds** or by written agreement of the **Named Entity Insureds**, the claimant and the Insurer.

A person or organization may sue the Insurer to recover an agreed settlement or on a final judgment against the **Named Entity Insureds**, but the Insurer will not be liable for **Loss** that are not payable under the terms of this Policy or that are in excess of the applicable limits of liability under this Policy. An agreed settlement means a settlement and release of liability signed by the Insurer, the **Named Entity Insureds** and the claimant or the claimant's legal representative.

2. No person or organization shall have any right under this Policy to join the Insurer as a party to any **Liability Claim** against the **Named Entity Insureds** to determine the **Named Entity Insureds'** liability, nor shall the Insurer be impleaded by the **Named Entity Insureds** or their legal representatives in any such **Liability Claim**.
3. Legal proceedings for the recovery of any **Loss** claimed under the **Crime Coverage Part** shall not be brought prior to the expiration of 90 days after proof of loss was received by the Insurer nor more than two years after the loss was discovered.

**XIX. ASSIGNMENT OF INTEREST**

Assignment of interest under this Policy shall not bind the Insurer unless its consent is endorsed to this Policy.

**XX. BANKRUPTCY/INSOLVENCY**

The insolvency or bankruptcy of the **Named Entity Insureds** or the insolvency of their estate, shall not release the Insurer from the payment of damages for injury sustained or loss occasioned during the life of and with the coverage of this Policy.

**XXI. TERRITORY**

Coverage shall apply solely to **Claims** brought and maintained entirety within and subject to the laws of the United States of America or any territory, possession, state, province or subdivision thereof.

**XXII. ENTIRE AGREEMENT**

The **Named Entity Insureds** agree that this Policy, consisting of the **Application**, the **Coverage Parts**, and all endorsements listed in the Declarations, constitute the entire contract existing between them and the Insurer or any of its agents relating to this insurance.

**XXIII. ECONOMIC AND TRADE SANCTIONS**

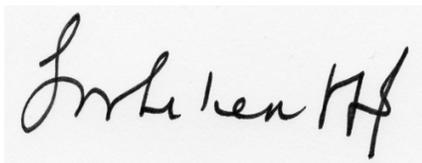
In accordance with laws and regulations of the United States concerning economic and trade embargoes, this Policy is void from its inception with respect to any term or condition of this Policy that violates any laws or regulations of the United States concerning economic and trade embargoes including, but not limited to the following:

1. Any **Named Entity Insured**, or any person or entity claiming the benefits of a **Named Entity Insured**, who is or becomes a Specially Designated National or Blocked Person or who is otherwise subject to U.S. economic or trade sanctions;
2. Any **Claim** that is brought in a Sanctioned Country or by a Sanctioned Country Government, where any action in connection with such **Claim** is prohibited by U.S. economic or trade sanctions;
3. Any **Claim** that is brought by any Specially Designated National or Blocked Person or any person or entity who is otherwise subject to U.S. economic or trade sanctions;
4. Property that is located in a Sanctioned Country or that is owned by, rented to or in the care, custody or control of a Sanctioned Country Government, where any activities related to such property are prohibited by U.S. economic or trade sanctions; or
5. Property that is owned by, rented to or in the care, custody or control of a Specially Designated National or Blocked Person, or any person or entity who is otherwise subject to U.S. economic or trade sanctions.

As used in this Policy, a Specially Designated National or Blocked Person is any person or entity that is on the list of Specially Designated Nationals and Blocked Persons issued by the U.S. Treasury Department's Office of Foreign Asset Control (O.F.A.C.) as it may be from time to time amended.

As used in this Policy, a Sanctioned Country is any country that is the subject of trade or economic embargoes imposed by the laws or regulations of the United States of America.

IN WITNESS WHEREOF, the Insurer has caused this Policy to be signed by its Chairman and Secretary at Chicago, Illinois, but the same shall not be binding upon the Insurer unless countersigned by a duly authorized representative of the Insurer.



Chairman



Secretary

**THIS IS A "DEFENSE WITHIN LIMITS" COVERAGE PART, UNDER THIS COVERAGE PART, "DEFENSE COSTS" ARE INCLUDED WITHIN THE APPLICABLE LIMIT OF LIABILITY AND SUBJECT TO A RETENTION. THIS COULD RESULT IN THE LIMIT OF LIABILITY BECOMING COMPLETELY EXHAUSTED BY THE PAYMENT OF DEFENSE COSTS AND TO THE EXTENT THAT THE POLICY LIMITS ARE THEREBY EXCEEDED, THE INSURER SHALL NOT BE LIABLE FOR DEFENSE COSTS OR FOR THE AMOUNT OF ANY JUDGMENT OR SETTLEMENT. PLEASE REVIEW THIS COVERAGE CAREFULLY AND DISCUSS THE COVERAGE WITH YOUR INSURANCE AGENT OR BROKER.**

## **I. INSURING AGREEMENT**

The Insurer shall pay all **Loss** resulting from any **Claim** first made against any **Named Entity, Subsidiary, Insured Person** or **Property Manager** during the **Policy Period** or the Extended Reporting Period, if applicable, for a **Wrongful Act** committed, attempted, or allegedly committed or attempted, by such **Named Entity Insured** before or during the **Policy Period**.

## **II. DEFINITIONS**

For purposes of coverage under this **Coverage Part**:

1. **Claim** means:
  - a. a written demand for monetary damages against a **Named Entity Insured** for a **Wrongful Act**;
  - b. a civil proceeding against a **Named Entity Insured** for a **Wrongful Act**, including any appeal therefrom; or
  - c. a proceeding before the United States Equal Employment Opportunity Commission or any similar state, local or territorial governmental agency, against a **Named Entity Insured** for a **Wrongful Act** which is a **Wrongful Employment Practice**.
2. **Construction Defect** means any alleged or actual defective, faulty or delayed construction or any other matter recognized as a construction defect under applicable common or statutory law, whether or not as a result of (i) faulty or incorrect design or architectural plans, (ii) improper soil testing, (iii) inadequate or insufficient protection from subsoil, ground water or earth movement or subsidence, (iv) the construction, manufacture or assembly of any tangible property, (v) the failure to provide construction related goods or services as represented or to pay for such goods or services, or (vi) the supervision of such activities.
3. **Insured Persons** means all past, present or future duly elected or appointed directors, officers, trustees, employees (including full time, part time, seasonal, temporary, leased or loaned employees), or committee members of **Named Entity** or any **Subsidiary**; volunteers acting on behalf of and at the specific direction of the **Named Entity** or any **Subsidiary**; or **Property Manager Employees**.
4. **Loss** means damages, settlements, judgments (including any award of pre-judgment) and **Defense Costs** for which the **Named Entity Insureds** are legally obligated to pay on account of a covered **Claim**. **Loss** shall not include:
  - a. criminal or civil fines or penalties imposed by law;

- b. taxes;
- c. any amounts for which there is no legal recourse against the **Named Entity Insureds**; or
- d. matters which are uninsurable under the law pursuant to which this Policy is construed.

Additionally, if a judgment is entered against the **Named Entity Insureds**, the principal amount of which is within the applicable Limit of Liability, the Insurer is responsible for any costs, disbursements, and post-judgment interest that accrues after entry of the judgment and before the Insurer has paid, offered to pay, or deposited in court that part of the judgment within the applicable Limit of Liability. These interest payments shall be in excess of the applicable Limit of Liability.

- 5. **Publishers' Wrongful Act** means a **Wrongful Act** that is:
  - a. copyright, trademark, trade name, trade dress or service mark infringement;
  - b. unauthorized use of title;
  - c. plagiarism; or
  - d. misappropriation of ideas.
- 6. **Property Manager Services** means the following services provided by the **Property Manager** for **Named Entity** for a fee:
  - a. development and implementation of management plans and budget;
  - b. oversight of physical maintenance of property;
  - c. solicitation, evaluation and securing of tenants and management of tenant relations, collection of rent and processing evictions;
  - d. development, implementation and management of loss control and risk management plans for real property;
  - e. development, implementation and management of contracts and subcontracts (excluding property and liability insurance contracts) necessary to the daily functioning of the property;
  - f. feasibility studies and recommendations regarding maintenance, repairs, renovations or alterations of managed premises, provided said maintenance, repairs, renovation or alterations do not involve the services of an architect; and
  - g. personnel administration and record keeping, including tax filings, in connection with a managed property.
- 7. **Wrongful Act** means any actual or alleged error, misstatement, misleading statement, act, omission, neglect or breach of duty committed or attempted by:
  - a. the **Insured Persons** in their capacity as such, or any matter claimed against the **Insured Person** solely by reason of serving in such capacity;
  - b. any **Named Entity** or **Subsidiary**; or
  - c. a **Property Manager**, but solely in the capacity as a **Property Manager** performing **Property Manager Services**, including but not limited to any **Publishers' Wrongful Act**, any **Wrongful Employment Practice**, and any **Wrongful Personal Injury**.
- 8. **Wrongful Employment Practice** means any **Wrongful Act** based on either disparate impact or vicarious liability and constituting or relating to:
  - a. wrongful dismissal or discharge or termination of employment, whether actual or constructive;
  - b. employment-related misrepresentation;

- c. violation of any federal, state or local laws (whether common-law or statutory) concerning employment or discrimination in employment, including the Americans with Disabilities Act of 1992, the Civil Rights Act of 1991, the Age Discrimination in Employment Act of 1967, Title VII of the Civil Rights Act of 1964 and the Civil Rights Act of 1866;
  - d. sexual harassment or other unlawful harassment in the work place; however this Policy shall not apply to any person who allegedly or actually: i) participates in, ii) directs, or iii) knowingly allows any act of sexual misconduct or sexual abuse;
  - e. wrongful deprivation of career opportunity or failure to employ or promote;
  - f. wrongful discipline of employees;
  - g. retaliation against employees for the exercise of any legally protected right or for engaging in any legally protected activity;
  - h. negligent evaluation of employees;
  - i. failure to adopt adequate workplace or employment policies and procedures;
  - j. employment-related defamation or invasion of privacy; or
  - k. employment-related wrongful infliction of emotional distress.
9. **Wrongful Personal Injury** means a **Wrongful Act** of :
- a. false arrest, wrongful detention or imprisonment;
  - b. malicious prosecution;
  - c. libel, slander or other defamation;
  - d. publication or an utterance in violation of an individual's right to privacy;
  - e. wrongful entry or eviction, or other invasion of the right to private occupancy; or
  - f. discrimination, other than employment related discrimination.

### III. EXCLUSIONS

1. Exclusions Applicable to all Loss

The Insurer shall not be liable to pay any **Loss** in connection with any **Claim**:

- a. based upon, directly or indirectly arising out of, or in any way involving any:
  - (1) actual or alleged bodily injury, sickness, disease, emotional distress, mental anguish or death of any person (except employment-related wrongful infliction of emotional distress in a **Claim** for a **Wrongful Employment Practice**);
  - (2) **Construction Defect**;
  - (3) damage to tangible property; loss of use or view, or destruction or deterioration of any tangible property; or failure to supervise, repair or maintain tangible property.
- b. based upon, directly or indirectly arising out of, or in any way involving:
  - (1) any **Wrongful Act** or any matter, fact, circumstance, situation, transaction, or event which has been the subject of any notice given under any prior policy, in whole or in part, regardless of whether such prior policy affords coverage; or
  - (2) any other **Wrongful Act** whenever occurring, which, together with a **Wrongful Act** described in (1) above, would constitute **Interrelated Wrongful Acts**;
- c. based upon, directly or indirectly arising out of, or in any way involving or constituting any civil proceeding, investigation or arbitration against any of the **Named Entity Insureds**:

- (1) pending prior to the applicable Prior or Pending Date set forth in the Coverage Schedule of the Declarations; or
  - (2) which has been the subject of any notice given under any prior policy, regardless whether such prior policy affords coverage for such proceeding, investigation, or arbitration;
- or any fact, circumstance, situation, transaction or event underlying or alleged in such proceeding, investigation or arbitration;
- d.(i) based upon, directly or indirectly arising out of, or in any way involving: any actual, alleged or threatened discharge, release, escape, or disposal of, or exposure to, **Pollutants**; any request, direction or order that any of the **Named Entity Insureds** test for, monitor, clean up, remove, contain, treat, detoxify, neutralize or in any way respond to or assess the effect of **Pollutants** or any voluntary decision to do so; or any actual or alleged property damage, or bodily injury, sickness, disease or death of any person, or financial loss to **Named Entity** or any **Subsidiary**, their security holders, or their creditors resulting from any of the aforementioned matters; provided however, this exclusion shall not apply to any **Claim** for retaliatory treatment of the claimant by the **Named Entity Insureds** on account of the claimant's actual or threatened disclosure of the matters described in this exclusion;
  - (ii) based upon, directly or indirectly arising out of, or related to any actual, alleged or threatened discharge, release, escape, or disposal of, or exposure to air emission, odor, waste water, oil or oil products, infectious or medical waste;
  - (iii) based upon, directly or indirectly arising out of, or related to any actual, alleged or threatened discharge, release, escape, or disposal of, or exposure to asbestos or asbestos products;
- e. for any **Wrongful Act** by **Insured Persons** in the discharge of their duties in their capacities, or solely by reason of their status, as directors, officers, trustees, regents, governors or employees of any entity other than **Named Entity**, any **Subsidiary** or the **Property Manager**, even if directed or requested by **Named Entity**, any **Subsidiary** or the **Property Manager** to serve as directors, officers, trustees, regents, governors or employees of such other entity;
  - f. where it is established in such **Claim** that such **Named Entity Insured** gained any profit, remuneration or pecuniary advantage to which they were not legally entitled. For purposes of determining the applicability of this exclusion, the **Wrongful Act** of an **Insured Person** shall not be imputed to any other **Insured Person**, and only facts pertaining to and knowledge possessed by an **Executive Officer** shall be imputed to the **Named Entity**, any **Subsidiary** or **Property Manager** for the purpose of determining if coverage is available;
  - g. where it is established in such **Claim** that such **Named Entity Insured** committed any fraudulent or criminal **Wrongful Act** with actual knowledge of its wrongful nature or with intent to cause damage. For purposes of determining the applicability of this exclusion, the **Wrongful Act** of an **Insured Person** shall not be imputed to any other **Insured Person**, and only facts pertaining to and knowledge possessed by an **Executive Officer** shall be imputed to the **Named Entity**, any **Subsidiary** or **Property Manager** for the purpose of determining if coverage is available;

- h. based upon, directly or indirectly arising out of, or in any way involving a lockout, strike, picket line, replacement or other similar actions resulting from labor disputes or labor negotiations, or the Workers' Adjustment and Retraining Notification Act, Public Law 100-379 (1988), or any amendment thereto, or any similar federal, state, local or common law;
- i. based upon, directly or indirectly arising out of, or in any way involving any actual or alleged violation of (i) **ERISA or any Similar Act**; (ii) any law governing workers' compensation, unemployment insurance, social security, disability or similar law, (iii) the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), (iv) the Fair Labor Standards Act (except the Equal Pay Act), (v) the National Labor Relations Act, (vi) the Occupational Safety and Health Act of 1970 (OSHA), or (vii) any similar federal, state or local law. However, this exclusion shall not apply to any **Claim** for retaliatory treatment of the claimant by the **Named Entity Insureds** on account of claimant's exercise of a right pursuant to any such laws;
- j. by or derivatively on behalf of the **Named Entity** or any **Subsidiary**;
- l. for:
  - (1) any **Wrongful Act** by **Insured Persons** of any **Subsidiary** occurring before the date such entity became a **Subsidiary**, or
  - (2) any other **Wrongful Act** whenever occurring, which, together with a **Wrongful Act** described in (1) above, would constitute **Interrelated Wrongful Acts**;
- m. for:
  - (1) a **Named Entity Insured's** actual or alleged liability under any oral or written contract or agreement, including but not limited to express warranties or guarantees. Provided, however, that this exclusion shall not apply to any **Claim** for liability under an employment contract;
  - (2) liability of others assumed by the **Named Entity Insured** under any oral or written contract or agreement,except that coverage otherwise available to a **Named Entity Insured** shall apply to such **Named Entity Insured's** liability that exists in the absence of such contract or agreement; or
- n. made against any of the **Insureds** in their capacity as sponsors, builders or developers of the **Named Entity**, or based upon, directly or indirectly arising out of, or in any way involving any actual or alleged misconduct of a sponsor, builder or developer of the **Named Entity**, including but not limited to actual or alleged conflict of interest, self-dealing, or disputes concerning conversion, construction or development.

## 2. Exclusions Applicable to **Loss** other than **Defense Costs**

The Insurer shall not be liable to pay that portion of **Loss**, other than **Defense Costs**, which constitutes:

- a. the cost of any non-monetary relief, including without limitation any costs associated with any injunctive relief of any kind or nature imposed by any judgment or settlement;
- b. the costs associated with providing any reasonable accommodations required by, made as a result of, or to conform with the requirements of, the Americans

With Disabilities Act and any amendments thereto or any similar federal, state or local statute, regulation, or common laws;

- c. medical or insurance benefits to which the claimant allegedly was entitled or would have been entitled had **Named Entity** or any **Subsidiary** provided the claimant with a continuation or conversion of insurance; or
- d. **Loss** arising out of the failure to maintain or effect insurance.

**3. Exclusions Applicable to Property Manager**

The Insurer shall not be liable to pay any **Loss** of the **Property Manager** based upon, directly or indirectly arising out of, or in any way involving:

- a. the commingling, misappropriation or improper use of, or failure to pay, collect, or safeguard funds;
- b. advice as to property value;
- c. the transfer or failure to transfer funds;
- d. notarization certification or acknowledgment of a signature;
- e. any cease and desist order; or
- f. the failure to give timely notice of claim or loss under any insurance policy
- g. any **Claim** brought by or derivatively on behalf of the **Named Entity Insured** against a **Property Manager** or a **Property Manager Employee**.