



**"Common Assurance"  
D&O Liability Program**

**Evidence of Insurance & Purchasing Group  
Membership**

**PRODUCER:** Alliance Insurance Group  
6970 E. Chauncey Lane, Suite 100  
Phoenix, AZ, 85054

**NAMED INSURED:**

Scottsdale Shadows Regime #1  
7800 E. Camelback Rd.  
Scottsdale, AZ, 85251

**PROGRAM ADMINISTRATOR:**

**McGowan & Company, Inc.**  
Old Forge Centre – 20595 Lorain Road  
Fairview Park, OH 44126  
Ph: (440) 333-6300 / F: (440) 333-3214

**ITEM 1. COVERAGE PERIOD:** Effective 07/01/2009 To 07/01/2010 At 12:01 A.M. Standard Time  
At the Named Insured's Mailing Address Shown Above

**POLICY NUMBER:** 02-476-54-08

**ITEM 2. INSURER:** National Union Fire Insurance Company of Pittsburgh, Pa.  
175 Water Street  
New York, NY, 10038

**ITEM 3. LIMIT OF LIABILITY:**

\$ 1,000,000 **Aggregate**  
Aggregate applies to Coverage A, B and C combined (including defense costs)

\$ 1,000,000 **Defense Costs Outside the Limit**

\$ 1,000 **Retention**

**ITEM 4. CONTINUITY DATES:**

**Coverages A and B:** 01/01/1976

**Coverage C:** 01/01/1976

**ITEM 5. FORMS, TERMS & CONDITIONS ATTACHED AT INCEPTION:**

See The "Forms Schedule" In Your Policy.

**ITEM 6. IMPORTANT COVERAGE NOTES & ADDITIONAL TERMS, CONDITIONS & EXCLUSIONS:**

- (1) You Must Notify Us If You Have A Change In Operations Or Exposures Which Increases The Insurance Company's Risk Of Loss.
- (2) This "Evidence Of Insurance & Purchasing Group Membership Agreement" Does Not Convey Or Modify Insurance Coverage. The Policy Is The Controlling Instrument With Regards To The Terms And Conditions Of Insurance Coverage. The Policy Will Also Contain Coverage Enhancement, Coverage Restrictions, And Exclusions. The Application Becomes A Material Part Of The Policy Of Insurance. This "Evidence Of Insurance & Purchasing Group Membership Agreement" Is Intended To Highlight The Pertinent Terms & Conditions Of Coverage, Provide A Detailed Statement Of Charges, And Convey Membership Terms And Conditions.

**ITEM 7. SCHEDULE OF CHARGES:**

**Total Premium, Fees, Surcharges & Taxes (If Applicable): \$713.00**

Premium:	\$	688.00	Charged By Insurance Company
Purchasing Group Membership Fee:	\$	25.00	Charged By Purchasing Group
Surplus Lines Tax:	\$	0.00	Charged By State
Stamping Fee:	\$	0.00	Charged By State
Other State Or Municipal Surcharge:	\$	0.00	Charged By State Or Municipality
Loss Control Inspection Fee:	\$	0.00	Charged By Program Administrator Or Inspection Service

**Purpose & Effect Of "Application For Insurance & Purchasing Group Membership."** By Signing An "Application For Insurance & Purchasing Group Membership" (Hereinafter "Application"), Applicant Agreed: (1) To Become A Member Of Community Associations PG, Inc. (Hereinafter "PG"); (2) To Participate In A Program Of Insurance Designed Exclusively For The Members Of PG; (3) To Accept, Abide By, And Be Bound By The "Terms & Conditions Of Insurance" Posted At [www.purchasinggroups.com](http://www.purchasinggroups.com); (4) To Accept, Abide By, And Be Bound By The "Membership Agreement – Terms & Conditions Of Membership" Posted At [www.purchasinggroups.com](http://www.purchasinggroups.com); (5) To Pay All Premiums (Including Audit And Additional Premiums, If Applicable), Fees (Including Broker & Purchasing Group Membership Fees), And State & Federal Taxes & Surcharges (If Applicable) When Due; (6) That Any Additional Material Supplied By Applicant Or Applicant's Insurance Broker To The Managing General Underwriter For A Given Program Of Insurance Becomes A Material Part Of The Application For Insurance; (7) That The Application Which It Signed Was The Basis Of The Contract [Policy &/Or "Evidence Of Insurance & Purchasing Group Membership" (Hereinafter "EOI")], Whether Or Not Said Application Was/Is Attached To The Policy &/Or EOI; (8) That The Application Is A Material Part Of The Policy &/Or EOI, Whether Or Not It Is Attached To The Policy &/Or EOI; And, (9) That The Application Is Considered Attached To The Policy &/Or EOI For Legal Purposes, Whether Or Not It Is Physically Or Electronically Attached To The Policy &/Or EOI.

**Disclosure Regarding Shared Limits.** Members Do Not Share Limits And Each Member Is Provided With Its Own Policy &/Or EOI.

**Disclosure Pursuant To Federal Law Regarding Purchasing Groups [U.S.C. 15 3901, Et Seq.]** PG Is A "Purchasing Group," As Defined Under Federal Law, Formed To Purchase Liability Insurance On A Group Basis For Its Members To Cover The Similar Or Related Liability Exposure(s) To Which The Members Of PG Are Exposed By Virtue Of Their Related, Similar, Or Common Business Or Service. Members Do Not Share Limits And Each Member Is Provided With Its Own Policy &/Or EOI.

**Disclosure Pursuant To Terrorism Risk Insurance Act Of 2002.** By Signing Below, Applicant Agrees That It Has Read And Understands The "Disclosure Pursuant To The Terrorism Risk Insurance Act Of 2002" Which Appears At [www.purchasinggroups.com](http://www.purchasinggroups.com)

**To Learn More.** Please Visit [www.purchasinggroups.com](http://www.purchasinggroups.com), Which Contains More Information About Your Purchasing Group And Purchasing Groups, In General, As Well As Your Insurance Coverage, Premiums, Fees, Taxes, The MGUs' Income, And Your Insurance Broker's Income.

# AMERICAN INTERNATIONAL COMPANIES®

NOT-FOR-PROFIT INDIVIDUAL AND ORGANIZATION INSURANCE POLICY  
INCLUDING EMPLOYMENT PRACTICES LIABILITY INSURANCE

## NOT-FOR-PROFIT PROTECTOR®

- |  |  |
|--|--|
| <input type="checkbox"/> AIU Insurance Company                             | <input type="checkbox"/> Granite State Insurance Company                                     |
| <input type="checkbox"/> American Home Assurance Company                   | <input type="checkbox"/> Illinois National Insurance Co.                                     |
| <input type="checkbox"/> American International Pacific Insurance Company  | <input checked="" type="checkbox"/> National Union Fire Insurance Company of Pittsburgh, Pa. |
| <input type="checkbox"/> American International South Insurance Company    | <input type="checkbox"/> National Union Fire Insurance Company of Louisiana                  |
| <input type="checkbox"/> Birmingham Fire Insurance Company of Pennsylvania | <input type="checkbox"/> New Hampshire Insurance Company                                     |
- (each of the above being a capital stock company)

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**NOTICE: EXCEPT TO SUCH EXTENT AS MAY OTHERWISE BE PROVIDED HEREIN, THE COVERAGE OF THIS POLICY IS GENERALLY LIMITED TO LIABILITY FOR ONLY THOSE CLAIMS THAT ARE FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD AND REPORTED IN WRITING TO THE INSURER PURSUANT TO THE TERMS HEREIN. PLEASE READ THE POLICY CAREFULLY AND DISCUSS THE COVERAGE THEREUNDER WITH YOUR INSURANCE AGENT OR BROKER.**

**NOTICE: THE LIMIT OF LIABILITY AVAILABLE TO PAY JUDGMENTS OR SETTLEMENTS SHALL BE REDUCED BY AMOUNTS INCURRED FOR LEGAL DEFENSE. AMOUNTS INCURRED FOR LEGAL DEFENSE SHALL BE APPLIED AGAINST THE RETENTION AMOUNT.**

**NOTICE: THE INSURER DOES NOT ASSUME ANY DUTY TO DEFEND. HOWEVER, THE INSURED MAY UNDER CERTAIN CONDITIONS TENDER THE DEFENSE OF A CLAIM. IN ALL EVENTS, THE INSURER MUST ADVANCE DEFENSE COSTS PAYMENTS PURSUANT TO THE TERMS HEREIN PRIOR TO THE FINAL DISPOSITION OF A CLAIM.**

POLICY NUMBER: 02-476-54-08

REPLACEMENT OF POLICY NUMBER: 02-476-20-40

### DECLARATIONS

ITEM 1. NAMED ORGANIZATION:

Scottsdale Shadows Regime #1  
MAILING ADDRESS:  
7800 E. Camelback Rd.  
Scottsdale, AZ, 85251

STATE OF INCORPORATION OF THE NAMED ORGANIZATION: AZ

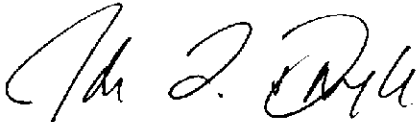
ITEM 2. SUBSIDIARY COVERAGE: any past, present or future Subsidiary of the Named Organization

ITEM 3. POLICY PERIOD: From: 07/01/2009 To: 07/01/2010  
(12:01 A.M. standard time at the address stated in Item 1.)

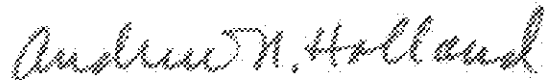


ITEM 8. NAME AND ADDRESS OF INSURER ("Insurer"):  
(This policy is issued only by the insurance company indicated below.)  
National Union Fire Insurance Company of Pittsburgh, Pa.  
175 Water Street  
New York, NY, 10038

**IN WITNESS WHEREOF**, the Insurer has caused this policy to be signed on the Declarations Page by its President, a Secretary and a duly authorized representative of the Insurer.



\_\_\_\_\_  
PRESIDENT



\_\_\_\_\_  
SECRETARY



\_\_\_\_\_  
AUTHORIZED REPRESENTATIVE

07/01/2009

\_\_\_\_\_  
COUNTERSIGNATURE DATE

Fairview Park, Ohio

\_\_\_\_\_  
COUNTERSIGNED AT



# AMERICAN INTERNATIONAL COMPANIES®

## NOT-FOR-PROFIT INDIVIDUAL AND ORGANIZATION INSURANCE POLICY INCLUDING EMPLOYMENT PRACTICES LIABILITY INSURANCE

### **NOT-FOR-PROFIT PROTECTOR®**

In consideration of the payment of the premium, and in reliance upon the statements made to the Insurer by application forming a part hereof and its attachments and the material incorporated therein, the insurance company designated in Item 8 of the Declarations, herein called the "Insurer", agrees as follows:

#### **1. INSURING AGREEMENTS**

##### **COVERAGE A: INDIVIDUAL INSURED INSURANCE**

This policy shall pay on behalf of each and every Individual Insured Loss arising from a Claim first made against such Individual Insured during the Policy Period or the Discovery Period (if applicable) and reported to the Insurer pursuant to the terms of this policy for any actual or alleged Wrongful Act in his/her respective capacities as an Individual Insured of the Organization, except when and to the extent that the Organization has indemnified the Individual Insured. The Insurer shall, in accordance with and subject to Clause 8, advance Defense Costs of such Claim prior to its final disposition.

##### **COVERAGE B: ORGANIZATION INDEMNIFICATION REIMBURSEMENT INSURANCE**

This policy shall pay on behalf of the Organization Loss arising from a Claim first made against an Individual Insured during the Policy Period or the Discovery Period (if applicable) and reported to the Insurer pursuant to the terms of this policy for any actual or alleged Wrongful Act in his/her respective capacities as an Individual Insured of the Organization, but only when and to the extent that the Organization has indemnified such Individual Insured for such Loss pursuant to law, common or statutory, or contract, or the Charter or By-laws of the Organization duly effective under such law which determines and defines such rights of indemnity. The Insurer shall, in accordance with and subject to Clause 8, advance Defense Costs of such Claim prior to its final disposition.

## **COVERAGE C: ORGANIZATION ENTITY COVERAGE**

This policy shall pay on behalf of the Organization Loss arising from a Claim first made against the Organization during the Policy Period or the Discovery Period (if applicable) and reported to the Insurer pursuant to the terms of this policy for any actual or alleged Wrongful Act of the Organization. The Insurer shall, in accordance with and subject to Clause 8, advance Defense Costs of such Claim prior to its final disposition.

### **DEFENSE PROVISIONS**

The Insurer does not assume any duty to defend; provided, however, the Named Organization may at its sole option, and in accordance with Clause 8, tender to the Insurer the defense of a Claim for which coverage is provided by this policy. Regardless of whether the defense is so tendered, the Insurer shall advance Defense Costs (excess of the Retention amount) of such Claim prior to its final disposition. Selection of counsel to defend a “ Class Action Claim”, as defined in Clause 9, shall be made in accordance with Clause 9 of the policy.

## **2. DEFINITIONS**

(a) “Affiliate” shall mean any not for profit organization other than a Subsidiary which:

- (1) the Named Organization or any Subsidiary controls or otherwise has the ability to direct the financial or managerial decisions of such entity, whether through the operation of law, contract or agreement, stock ownership or membership, charter, articles of incorporation, or by-law provisions; or
- (2) is granted by contract the right to control the financial or managerial decisions of the Organization or any Subsidiary.

Provided, however that such coverage as is provided by sections (1) and (2) above shall be limited solely to Wrongful Acts occurring in the course of the exercise of such control of financial or managerial decisions.

- (b) "Claim" means:
- (1) a written demand for monetary relief; or
  - (2) a civil, criminal, regulatory or administrative proceeding for monetary or non-monetary relief which is commenced by:
    - (i) service of a complaint or similar pleading; or
    - (ii) return of an indictment (in the case of a criminal proceeding); or
    - (iii) receipt or filing of a notice of charges; or
  - (3) any request to toll or waive any statute of limitations.

The term "Claim" shall include an Employment Practices Claim, provided however, that in no event shall the term "Claim" include any labor or grievance proceeding which is subject to a collective bargaining agreement.

- (c) "Continuity Date" means the date set forth in:
- (1) Item 6A of the Declarations with respect to all coverages other than Coverage C; or
  - (2) Item 6B of the Declarations with respect to Coverage C only.
- (d) "Defense Costs" means reasonable and necessary fees, costs and expenses consented to by the Insurer (including premiums for any appeal bond, attachment bond or similar bond, but without any obligation to apply for or furnish any such bond) resulting solely from the investigation, adjustment, defense and appeal of a Claim against the Insureds, but excluding salaries of Individual Insureds.
- (e) "Employee(s)" means any past, present or future employee of the Organization, whether such employee is in a supervisory, co-worker or subordinate position or otherwise, including any full-time, part-time, seasonal and temporary Employee of the Organization in his or her capacity as such.
- (f) "Employment Practices Claim" means a Claim alleging an Employment Practices Violation.

(g) Employment Practices Violation(s) means any actual or alleged:

- (1) wrongful dismissal, discharge or termination (either actual or constructive) of employment, including breach of an implied contract;
- (2) harassment (including sexual harassment whether “quid pro quo”, hostile work environment or otherwise);
- (3) discrimination (including but not limited to discrimination based upon age, gender, race, color, national origin, religion, sexual orientation or preference, pregnancy, or disability);
- (4) Retaliation (including lockouts);
- (5) employment-related misrepresentation(s) to an Employee or applicant for employment with the Organization;
- (6) employment-related libel, slander, humiliation, defamation or invasion of privacy;
- (7) wrongful failure to employ or promote;
- (8) wrongful deprivation of career opportunity, wrongful demotion or negligent Employee evaluation, including the giving of negative or defamatory statements in connection with an employee reference;
- (9) wrongful discipline;
- (10) failure to grant tenure or practice privileges;
- (11) failure to provide or enforce adequate or consistent organization policies or procedures relating to any Employment Practices Violation;
- (12) violation of an individual’s civil rights relating to any of the above,

but only if the Employment Practices Violation relates to an Individual Insured, or applicant for employment, with the Organization or an Outside Entity, whether direct, indirect, intentional or unintentional.

- (h) "Financial Insolvency" means: (1) entering into proceedings in bankruptcy or (2) becoming a debtor in possession; or (3) the taking of control, the supervision of, or the managing or liquidating the financial affairs of such entities by a receiver, conservator, liquidator, trustee, rehabilitator, or similar official.
- (i) "Individual Insured(s)" means a past, present or future duly elected or appointed director, officer, trustee, trustee emeritus, executive director, department head, committee member (of a duly constituted committee of the Organization), staff or faculty member (salaried or non-salaried), Employee or volunteer of the Organization. Coverage will automatically apply to all new persons who become Individual Insureds after the inception date of this policy.
- (j) "Insured(s)" means the Organization and all Individual Insureds.
- (k) "Loss" means damages (including back pay and front pay), judgments, settlements, pre- and post-judgment interest, the multiple or liquidated damages awards under the Age Discrimination in Employment Act and the Equal Pay Act and Defense Costs; however, Loss shall not include: (1) any amount for which the Insureds are not financially liable or which are without legal recourse to the Insureds; (2) employment-related benefits, stock options, perquisites, deferred compensation or any other type of compensation other than salary, wages or bonus compensation; (3) any liability or costs incurred by any Insured to modify any building or property in order to make said building or property more accessible or accommodating to any disabled person, or any liability or costs incurred in connection with any educational, sensitivity or other corporate program, policy or seminar relating to an Employment Practices Claim; or (4) matters which may be deemed uninsurable under the law pursuant to which this policy shall be construed.

If an additional premium is stated in Item 7B of the Declarations page, then Loss shall specifically include, (subject to the policy's other terms, conditions and exclusions) punitive, exemplary and multiple damages. It is further understood and agreed that the enforceability of the foregoing coverage shall be governed by such applicable law which most favors coverage for punitive, exemplary and multiple damages. If an additional premium is not stated in Item 7B of the Declarations, then Loss shall not include punitive, exemplary damages or the multiplied portion of multiple damages. In all events, coverage shall not be provided to any particular Insured who has been adjudicated to have obtained a profit or advantage or committed a fraudulent or dishonest act or a willful violation of any statute, rule or law.

- (l) “No Liability” means: (1) a final judgment of no liability obtained prior to trial, in favor of all Insureds, by reason of a motion to dismiss or a motion for summary judgment, after the exhaustion of all appeals; or (2) a final judgment of no liability obtained after trial, in favor of all Insureds, after the exhaustion of all appeals. In no event shall the term “No Liability” apply to a Claim made against an Insured for which a settlement has occurred.
- (m) “Non-Employment Discrimination” means any actual or alleged sexual harassment or unlawful discrimination, as described in paragraphs (2) and (3) of the definition of Employment Practices Violation, or the violation of the civil rights of a person relating to such sexual harassment or discrimination, when such acts are alleged to be committed against anyone other than an Individual Insured, or applicant for employment with the Organization or an Outside Entity, including, but not limited to: students, patients, members, customers and suppliers.
- (n) The "Organization" means: (1) the Named Organization designated in Item 1 of the Declarations; (2) any Subsidiary thereof; and (3) any Affiliate thereof listed by endorsement to this policy.
- (o) “Outside Entity” means a not-for-profit organization, other than a Subsidiary or listed Affiliate, on which an Individual Insured serves, at the specific written request of the Organization, as a director, trustee, trustee emeritus or governor. Such coverage as is provided by this policy shall be specifically excess of any insurance in force as respects such Outside Entity and any indemnification provided by such Outside Entity.
- (p) "Policy Period" means the period of time from the inception date shown in Item 3 of the Declarations to the earlier of the expiration date shown in Item 3 of the Declarations or the effective date of cancellation of this policy.
- (q) “Policy Year” means a period of one year, within the Policy Period, commencing each year on the day and hour first named in Item 3. of the Declarations, or if the time between the effective date or anniversary and termination of the Policy is less than one year, then such lesser period.
- (r) “Related Wrongful Acts” shall mean Wrongful Acts which are the same, related or continuous, or Wrongful Acts which arise from a common nucleus of facts. Claims can allege Related Wrongful Acts regardless of whether such Claims involve the same or different claimants, Insureds or legal causes of action.

(s) "Retaliation" means a Wrongful Act of an Insured relating to or alleged to be in response to any of the following activities: (1) the disclosure or threat of disclosure by an Employee to a superior or to any governmental agency of any act by an Insured which is alleged to be a violation of any federal, state, local or foreign law, common or statutory, or any rule or regulation promulgated thereunder; (2) the actual or attempted exercise by an Employee of any right that such Employee has under law, including rights under worker's compensation laws, the Family and Medical Leave Act, the Americans with Disabilities Act or any other law relating to employee rights; (3) the filing of any claim under the Federal False Claims Act or any other federal, state, local or foreign "whistle-blower" law; or (4) Employee strikes.

(t) "Subsidiary" means:

a) any organization which, on or before the inception of the Policy Period, the Organization owns more than fifty percent (50%) of the voting interest, either directly, or indirectly through one or more of its Subsidiaries, or has, on or before the inception of the Policy Period, the right to elect or appoint more than fifty percent (50%) of the voting directors, or trustees, either directly or indirectly through one or more of its Subsidiaries;

b) automatically any not for profit organization which becomes a Subsidiary during the Policy Period and where the book value of such entity's assets determined in accordance with Generally Accepted Accounting Principles ("GAAP") totals less than 30% of the similarly calculated assets of the Named Organization as of the inception date of the Policy Period; or

c) any for profit organization which becomes a Subsidiary during the Policy Period and where the book value of such entity's assets determined in accordance with "GAAP" totals less than 20% of the similarly calculated assets of the Named Organization as of the inception date of the Policy Period.

With regard to paragraphs b) and c) above, the Named Organization shall provide the Insurer with full particulars of the Subsidiary before the end of the Policy Period.

Any organization which becomes a Subsidiary during the Policy Period but exceeds the asset limitations stated in b) or c) above, (hereinafter "New Subsidiary") shall be provided coverage under this policy, but only upon the condition that within 90 days after the date of its becoming a Subsidiary, the Named Organization shall have provided the Insurer with full particulars of the New Subsidiary and agreed to any additional premium or amendment of the provisions of this policy required by the Insurer relating to such New Subsidiary. Further, such coverage as shall be afforded to the New Subsidiary is conditioned

upon the Named Organization paying when due any additional premium required by the Insurer relating to such New Subsidiary.

An organization becomes a Subsidiary when the Named Organization owns more than fifty percent (50%) of the voting interest, either directly, or indirectly through one or more of its Subsidiaries, or has, on or before the inception of the Policy Period, the right to elect or appoint more than fifty percent (50%) of the voting directors, or trustees, either directly or indirectly through one or more of its Subsidiaries.

In all events, such coverage as is afforded under this policy with respect to a Claim made against any Subsidiary, or any Individual Insured of a Subsidiary, shall only apply for Wrongful Acts committed or allegedly committed after the effective time that such Subsidiary became a Subsidiary and prior to the time that such Subsidiary ceased to be a Subsidiary.

(u) "Wrongful Act" means:

- (1) with respect to Individual Insureds, any breach of duty, neglect, error, misstatement, misleading statement, omission or act by such Insureds in his/her respective capacities as such, or any matter claimed against such Individual Insured solely by reason of his/her status as Individual Insureds of the Organization;
- (2) with respect to the Organization under Coverage C, any breach of duty, neglect, error, misstatement, misleading statement, omission or act by or on behalf of the Organization;
- (3) with respect to service on an Outside Entity, any matter claimed against such Individual Insureds arising out of such Insured serving as a director, trustee, trustee emeritus or governor of an Outside Entity in such capacity, but only if such service is at the specific written request or direction of the Organization;
- (4) with respect to both the Individual Insureds and the Organization and subject to paragraphs 1,2 and 3 above, "Wrongful Act" shall specifically include:
  - (a) Employment Practices Claims;
  - (b) Non-Employment Discrimination;
  - (c) violation of the Sherman Antitrust Act or similar federal, state or local statutes or rules;
  - (d) libel, slander, defamation or publication or utterance in violation of an individual's right of privacy;
  - (e) wrongful entry or eviction or other invasion of the right of occupancy;
  - (f) false arrest or wrongful detention;

- (g) plagiarism; and
- (h) infringement of copyright or trademark or unauthorized use of title.

### **3. EXTENSIONS**

Subject otherwise to the terms hereof, this policy shall cover Loss arising from any Claims made against the estates, heirs, or legal representatives of deceased Individual Insureds, and the legal representatives of Individual Insureds in the event of an Individual Insured's incompetency, insolvency or bankruptcy, who were Individual Insureds at the time the Wrongful Acts upon which such Claims are based were committed.

Subject otherwise to the terms hereof, this policy shall cover Loss arising from all Claims made against the lawful spouse (whether such status is derived by reason of statutory law, common law or otherwise of any applicable jurisdiction in the world) of an Individual Insured for all Claims arising solely out of his or her status as the spouse of an Individual Insured, including a Claim that seeks damages recoverable from marital community property, property jointly held by the Individual Insured and the spouse, or property transferred from the Individual Insured to the spouse; provided, however, that this extension shall not afford coverage for any Claim for any actual or alleged Wrongful Act of the spouse, but shall apply only to Claims arising out of any actual or alleged Wrongful Acts of an Individual Insured, subject to the policy's terms, conditions and exclusions.

### **4. EXCLUSIONS**

The Insurer shall not be liable to make any payment for Loss in connection with a Claim made against an Insured:

- (a) arising out of, based upon or attributable to the gaining in fact of any profit or advantage to which an Insured was not legally entitled;
- (b) arising out of, based upon or attributable to the committing in fact of any criminal, or deliberate fraudulent act;

[The Wrongful Act of an Insured shall not be imputed to any other Insured for the purpose of determining the applicability of exclusions 4(a) through 4(b).]

- (c) alleging, arising out of, based upon or attributable to the facts alleged, or to the same or Related Wrongful Act alleged or contained in any Claim which has been reported, or in any circumstances of which notice has been given, under any policy of which this policy is a renewal or replacement or which it may succeed in time;
- (d) alleging, arising out of, based upon or attributable to as of the Continuity Date, any pending or prior: (1) litigation; or (2) administrative or regulatory

proceeding or investigation; or the alleging of any Wrongful Act which is the same or a Related Wrongful Act to that alleged in such pending or prior litigation or administrative or regulatory proceeding or investigation;

- (e) alleging, arising out of, based upon or attributable to any actual or alleged act or omission of an Individual Insured serving in any capacity, other than with the Organization or as a director, trustee, trustee emeritus or governor of an Outside Entity;
- (f) which is brought by or on behalf of the Organization against any Individual Insured; provided however, this exclusion shall not apply to any derivative Claim made on behalf of the Organization by a member, an attorney general or any other such representative party if such action is brought and maintained independently of and without the solicitation of or assistance of, or active participation of or intervention of any Individual Insured or the Organization or any Affiliate thereof;
- (g) for any Wrongful Act arising out of an Individual Insured serving as a director, trustee, trustee emeritus or governor of an Outside Entity if such Claim is brought by the Outside Entity or by any director, trustee, trustee emeritus or governor thereof;
- (h) for bodily injury, sickness, disease, or death of any person, or damage to or destruction of any tangible property, including the loss of use thereof;
- (i) alleging, arising out of, based upon, attributable to, or in any way involving, directly or indirectly:
  - (1) the actual, alleged or threatened discharge, dispersal, release or escape of pollutants; or
  - (2) any direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize pollutants,

including but not limited to a Claim alleging damage to the Organization or its members.

Pollutants include (but are not limited to) any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes (but is not limited to) materials to be recycled, reconditioned or reclaimed;

- (j) for violation(s) of any of the responsibilities, obligations or duties imposed by the Employee Retirement Income Security Act of 1974, the Fair Labor Standards Act (except the Equal Pay Act), the National Labor Relations Act, the Worker Adjustment and Retraining Notification Act, the Consolidated Omnibus Budget Reconciliation Act, the Occupational Safety and Health Act, any rules or regulations of the foregoing promulgated thereunder, and

amendments thereto or any similar provisions of any federal, state or local statutory law or common law; provided, however, that this exclusion shall not apply to Loss arising from a Claim for Retaliation;

- (k) alleging, arising out of, based upon or attributable to any actual or alleged contractual liability of an Insured under any express contract or agreement; provided, however, that this exclusion shall not apply to liability which would have attached in the absence of such express contract or agreement;
- (l) for any civil or criminal fines imposed by law and any taxes (whether imposed by federal, state, local or other governmental authority); or
- (m) alleging, arising out of, or in any way relating to any purchase or sale of securities by the Named Organization, Subsidiary or Affiliate or Claims brought by securities holders of the Organization in their capacity as such; provided, however, this exclusion shall not apply to the issuance by the Organization of tax exempt bond debt or Claims brought by tax exempt bond debt holders.

#### **5. LIMIT OF LIABILITY (FOR ALL LOSS - INCLUDING DEFENSE COSTS)**

The Limit of Liability stated in Item 4 of the Declarations is the limit of the Insurer's liability for all Loss, under Coverage A, Coverage B and Coverage C combined, arising out of all Claims first made against the Insureds during a Policy Year or the Discovery Period (if applicable); however, the Limit of Liability for the Discovery Period shall be part of, and not in addition to, the Limit of Liability for the Policy Year in which the Discovery Period is elected. Further, any Claim which is made subsequent to a Policy Year or the Discovery Period (if applicable) which, pursuant to Clause 7(b) or 7(c) is considered made during the Policy Year or Discovery Period shall also be subject to the one applicable aggregate Limit of Liability stated in Item 4 of the Declarations.

**Defense Costs are not payable by the Insurer in addition to the Limit of Liability. Defense Costs are part of Loss and as such are subject to the Limit of Liability for Loss.**

**This policy provides one aggregate Limit of Liability for each Policy Year. In no event shall the Limit of Liability for any one Policy Year exceed the aggregate Limit of Liability as stated in Item 4 of the Declarations.**

## 6. RETENTION CLAUSE

The Insurer shall only be liable for the amount of Loss arising from a Claim which is in excess of the Retention amount stated in Item 5(B) of the Declarations, such Retention amount to be borne by the Organization and shall remain uninsured, with regard to all Loss for which the Organization has indemnified or is permitted or required to indemnify the Individual Insureds (“Indemnifiable Loss”) and Loss under Coverage C. A single Retention amount shall apply to Loss arising from all Claims alleging the same Wrongful Act or Related Wrongful Acts.

Except as hereinafter stated, no Retention shall apply to a Claim in the event of the Financial Insolvency of the Named Organization and all Subsidiaries or Affiliates which are permitted or required to indemnify the Individual Insured with regard to such Claim. Provided, however, the Organization hereby agrees to indemnify the Insureds to the fullest extent permitted by law taking all steps necessary in furtherance thereto, including the making in good faith of any required application for court approval and the passing of any required corporate resolution or the execution of any contract. The Named Organization and all Subsidiaries and Affiliates will be conclusively deemed to have indemnified the Individual Insureds to the extent that the Organization is permitted or required to indemnify them pursuant to law, common or statutory, or contract, or the charter or by-laws of the Organization.

Further, no Retention shall apply to all coverages for any Claim which is in the form of a civil litigation for monetary relief, and the Insurer shall thereupon reimburse the Defense Costs paid by the Insured, in the event of:

- (1) a determination of No Liability of all Insureds; or
- (2) a dismissal or a stipulation to dismiss the civil litigation Claim without prejudice and without the payment of any consideration by any Insured;

provided, however, that in the case of (2) above, such reimbursement shall occur one hundred twenty (120) days after the date of dismissal or stipulation as long as the Claim is not re-brought (or any other Claim which is subject to the same single retention by virtue of Clause 6 is not brought) within ninety (90) days from the time of such dismissal or stipulation, and further subject to an undertaking by the Organization in a form acceptable to the Insurer that such reimbursement shall be paid back by the Organization to the Insurer in the event the Claim (or any other Claim which is subject to the same single retention by virtue of Clause 6) is brought after such 90 day period and before the expiration of the statute of limitations for such Claim.

## 7. NOTICE/CLAIM REPORTING PROVISIONS

**Notice hereunder shall be given in writing to the Insurer named in Item 8 of the Declarations at the address indicated in Item 8 of the Declarations. If mailed, the date of mailing shall constitute the date that such notice was given and proof of mailing shall be sufficient proof of notice. A Claim shall be considered to have been first made against an Insured when written notice of such Claim is received by any Insured, by the Named Organization on the behalf of any Insured or by the Insurer, whichever comes first.**

- (a) The Insureds shall, as a condition precedent to the obligations of the Insurer under this policy, give written notice to the Insurer of any Claim made against an Insured as soon as practicable and either:
  - (1) anytime during the Policy Year or during the Discovery Period (if applicable); or
  - (2) within 30 days after the end of the Policy Year or the Discovery Period (if applicable), as long as such Claim is reported no later than 30 days after the date such Claim was first made against an Insured.
- (b) If written notice of a Claim has been given to the Insurer pursuant to Clause 7(a) above, then any Claim which is subsequently made against the Insureds and reported to the Insurer alleging, arising out of, based upon or attributable to the facts alleged in the Claim for which such notice has been given, or alleging any Wrongful Act which is the same as or related to any Wrongful Act alleged in the Claim of which such notice has been given, shall be considered made at the time such notice was given.
- (c) If during the Policy Period or during the Discovery Period (if applicable) the Insureds shall become aware of any circumstances which may reasonably be expected to give rise to a Claim being made against the Insureds and shall give written notice to the Insurer of the circumstances and the reasons for anticipating such a Claim, with full particulars as to dates, persons and entities involved, then any Claim which is subsequently made against the Insureds and reported to the Insurer alleging, arising out of, based upon or attributable to such circumstances or alleging any Wrongful Act which is the same as or related to any Wrongful Act alleged or contained in such circumstances, shall be considered made at the time such notice of such circumstances was given.

**8. DEFENSE COSTS, SETTLEMENTS, JUDGMENTS (INCLUDING THE ADVANCEMENT OF DEFENSE COSTS)**

The Insurer does not assume any duty to defend. The Insureds shall defend and contest any Claim made against them.

Notwithstanding the foregoing, the Insureds shall have the right to tender the defense of any Claim to the Insurer, which right shall be exercised in writing by the Named Organization on behalf of all Insureds to the Insurer pursuant to Clause 7 of this policy. This right shall terminate if not exercised within 30 days of the date the Claim is first made against an Insured, pursuant to Clause 7 of the policy. Further, from the date the Claim is first made against the Insureds to the date when the Insurer accepts the tender of the defense of such Claim, the Insureds shall take no action, or fail to take any required action, that prejudices the rights of the Insureds or the Insurer with respect to such Claim. Provided that the Insureds have complied with the foregoing, the Insurer shall be obligated to assume the defense of the Claim, even if such Claim is groundless, false or fraudulent. The assumption of the defense of the Claim shall be effective upon written confirmation thereof sent by the Insurer to the Named Organization. Once the defense has been so tendered, the Insured shall have the right to effectively associate with the Insurer in the defense of such Claim, including, but not limited to, negotiating a settlement, subject to the provisions of this Clause 8. However, the Insurer shall not be obligated to defend such Claim after the Limit of Liability has been exhausted, or after an Insured's rejection of a Settlement Opportunity as described in this Clause 8.

When the Insurer has not assumed the defense of a Claim pursuant to Clause 8, the Insurer shall advance nevertheless, at the written request of the Insured, Defense Costs prior to the final disposition of a Claim. Such advanced payments by the Insurer shall be repaid to the Insurer by the Insureds, severally according to their respective interests, in the event and to the extent that the Insureds shall not be entitled under the terms and conditions of this policy to payment of such Loss.

**The Insureds shall not admit or assume any liability, enter into any settlement agreement, stipulate to any judgment, or incur any Defense Costs without the prior written consent of the Insurer. Only those settlements, stipulated judgments and Defense Costs which have been consented to by the Insurer shall be recoverable as Loss under the terms of this policy. The Insurer's consent shall not be unreasonably withheld, provided that the Insurer, when it has not assumed the defense of a Claim pursuant to this Clause 8, shall be entitled to effectively associate in the defense and the negotiation of any settlement of any Claim, and provided further that in all events the Insurer may withhold consent to any settlement, stipulated judgment or Defense Costs, or any portion thereof, to the extent such Loss is not covered under the terms of this policy.**

The Insurer shall have the right to effectively associate with the Insureds in the defense of any Claim that appears reasonably likely to involve the Insurer, including

but not limited to negotiating a settlement. The Insureds shall give the Insurer full cooperation and such information as it may reasonably require.

If the Insurer recommends a settlement within the policy's applicable Limit of Liability which is acceptable to the claimant (a "Settlement Opportunity"), and the Insureds consent to such settlement, then the Organization's applicable Retention amount shall be retroactively reduced by ten percent (10%) for such Loss. It shall be a condition to such reduction that the Insureds must consent to such settlement within thirty (30) days of the date the Insureds are first made aware of the Settlement Opportunity, or in the case of a Settlement Opportunity which arises from a settlement offer by the claimant, then within the time permitted by the claimant to accept such settlement offer, but in all events no later than thirty (30) days after the settlement offer was made.

However, if a Settlement Opportunity arises and the Insureds do not consent to the settlement within the time prescribed above, the Retention amount shall remain the applicable amount set forth in Item 5 of the Declarations even if consent is given to a subsequent Settlement Opportunity.

Furthermore, in the event the Insureds do not consent to the first Settlement Opportunity within the time prescribed, then, the Insurer's liability for all Loss on account of such Claim shall not exceed: (1) the amount for which the Insurer could have settled such Claim plus Defense Costs incurred as of the date such settlement was proposed in writing by the Insurer, ("Settlement Opportunity Amount") plus (2) 50% of covered Loss in excess of such Settlement Opportunity Amount subject to the policy's Limit of Liability. Notwithstanding the foregoing, this paragraph shall not apply until the Settlement Opportunity Amount exceeds the Retention amount stated in Item 5 of the Declarations.

## **9. PRE-AUTHORIZED CLASS ACTION DEFENSE ATTORNEYS**

This clause applies only to a Claim filed as a class action (hereinafter referred to as a "Class Action Claim").

Affixed as Appendix A hereto and made a part of this policy is a list of Panel Counsel law firms ("Panel Counsel Firms") from which a selection of legal counsel may be made to conduct the defense of any Class Action Claim against an Insured pursuant to the terms set forth below.

In the event the Insurer has assumed the defense pursuant to Clause 8 of this policy, then the Insurer shall be obligated to select a Panel Counsel Firm to defend the Insureds. In the event the Insureds are already defending a Class Action Claim, then the Insureds may at their option select a Panel Counsel firm to defend the Insureds. If the Insured does not select a Panel Counsel firm, such non-Panel Counsel firm

selection shall be subject to the Insurer's consent, which consent shall not be unreasonably withheld.

The selection of the Panel Counsel Firm, when done by the Insurer, shall be from the jurisdiction in which the Class Action Claim is brought.

The list of Panel Counsel Firms may be amended from time to time by the Insurer. However, no change shall be made to the specific list attached to this policy during the Policy Period without the consent of the Named Organization.

## **10. DISCOVERY CLAUSE**

Except as indicated below, if the Named Organization shall cancel or the Insurer or the Named Organization shall refuse to renew this policy, the Named Organization, upon payment of the respective "Additional Premium Amount" described below, shall have the right to a period of one, two or three years after the effective date of such cancellation or nonrenewal (herein referred to as the "Discovery Period") in which to give to the Insurer written notice of Claims first made against the Insureds during the selected period for any Wrongful Act occurring prior to the end of the Policy Period and otherwise covered by this policy. The rights contained in this paragraph shall terminate, however, unless written notice of such election together with the additional premium due is received by the Insurer within 30 days of the effective date of cancellation or nonrenewal. The Additional Premium Amount for the Discovery Period shall be fully earned at the inception of the Discovery Period. The Discovery Period is not cancelable. This clause and the rights contained herein shall not apply to any cancellation resulting from non-payment of premium.

The Additional Premium Amount for: (1) one year shall be 40% of the "full annual premium"; (2) two years shall be 75% of the "full annual premium; (3) three years shall be 100% of the "full annual premium". As used herein, "full annual premium" means the premium level in effect immediately prior to the end of the Policy Period.

In the event of a Transaction, as defined in Clause 12, the Named Organization shall have the right, within 30 days before the end of the Policy Period, to request an offer from the Insurer of a Discovery Period (with respect to Wrongful Acts occurring prior to the effective time of the Transaction) for a period of no less than six years or for such longer or shorter period as the Named Organization may request. The Insurer shall offer such Discovery Period pursuant to such terms, conditions and premium as the Insurer may reasonably decide. In the event of a Transaction, the right to a Discovery Period shall not otherwise exist except as indicated in this paragraph.

## **11. CANCELLATION CLAUSE**

This policy may be canceled by the Named Organization only by mailing written prior notice to the Insurer or by surrender of this policy to the Insurer or its authorized agent. If this policy is canceled by the Named Organization, the Insurer shall retain the customary short rate proportion of the premium herein. However, if the Policy Period as designated in Item 3. of the Declarations is more than one year, this policy may not be cancelled by the Named Organization.

This policy may be canceled by or on the behalf of the Insurer only in the event of nonpayment of premium by the Named Organization. In the event of non-payment of premium by the Named Organization, the Insurer may cancel this policy by delivering to the Named Organization or by mailing to the Named Organization, by registered, certified, or other first class mail, at the Named Organization's address as shown in Item 1 of the Declarations, written notice stating when, not less than 30 days thereafter, the cancellation shall be effective. The mailing of such notice as aforesaid shall be sufficient proof of notice. The Policy Period terminates at the date and hour specified in such notice, or at the date and time of surrender. The Insurer shall have the right to the premium amount for the portion of the Policy Year during which the policy was in effect.

If the period of limitation relating to the giving of notice is prohibited or made void by any law controlling the construction thereof, such period shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.

## **12. CHANGE IN CONTROL OF NAMED ORGANIZATION**

If during the Policy Period:

- a. the Named Organization shall consolidate with or merge into, or sell all or substantially all of its assets to, any other person or entity, or group of persons or entities acting in concert;
- b. any person or entity, or group of persons or entities, acting in concert shall acquire an amount of the voting interest representing more than fifty percent (50%) of the voting power for the election or appointment of directors or trustees of the Named Organization, or acquires the voting rights of such an amount of such interest; or
- c. the Named Organization shall change from not-for-profit to for-profit status;

(any of the above events herein referred to as the "Transaction")

then this policy shall continue in full force and effect as to Wrongful Acts occurring prior to the effective time of the Transaction, but there shall be no coverage afforded by any provision of this policy for any actual or alleged Wrongful Act occurring after the effective time of the Transaction. This policy may not be canceled after the

effective time of the Transaction and the entire premium for this policy shall be deemed earned as of such time. The Named Organization shall also have the right to an offer by the Insurer of a Discovery Period described in Clause 10 of the policy.

The Named Organization shall give the Insurer written notice of the Transaction as soon as practicable, but not later than thirty (30) days after the effective date of the Transaction.

### **13. SUBROGATION**

In the event of any payment under this policy, the Insurer shall be subrogated to the extent of such payment to all the Insureds' rights of recovery thereof, and the Insureds shall execute all papers required and shall do everything that may be necessary to secure such rights including the execution of such documents necessary to enable the Insurer to effectively bring suit in the name of any Insureds. In no event, however, shall the Insurer exercise its rights of subrogation against an Insured under this policy unless such Insured has been convicted of a criminal act, or been determined to have committed a dishonest or fraudulent act, or obtained any profit or advantage to which such Insured was not legally entitled.

### **14. OTHER INSURANCE AND INDEMNIFICATION**

Such insurance as is provided by this policy shall apply only as excess over any valid and collectible insurance. This policy shall be specifically excess of any other policy pursuant to which any other insurer has a duty to defend a Claim for which this policy may be obligated to pay Loss.

In the event of a Claim against a director, trustee, trustees emeritus or governor arising out of his or her service as a director, trustee, trustees emeritus or governor of an Outside Entity, coverage as is afforded by this policy shall be specifically excess of indemnification provided by such Outside Entity and any insurance provided to such Outside Entity with respect to its directors, trustees, trustees emeriti or governors.

Further, in the event such other insurance is provided to an Outside Entity by the Insurer or any member company of American International Group, Inc. (AIG) (or would be provided but for the application of the retention amount, exhaustion of the Limit of Liability or failure to submit a notice of a Claim) then the Insurer's maximum aggregate Limit of Liability for all Losses combined in connection with a Claim covered, in part or in whole, by this policy and such other insurance policy issued by AIG shall not exceed the greater of the Limit of Liability of this policy or the limit of liability of such other AIG insurance policy.

## **15. NOTICE AND AUTHORITY**

It is agreed that the Named Organization shall act on behalf of the Subsidiaries and all Insureds with respect to the giving of notice of Claim or giving and receiving notice of cancellation, the payment of premiums and the receiving of any return premiums that may become due under this policy, the receipt and acceptance of any endorsements issued to form a part of this policy, the exercising or declining to tender the defense of a Class Action Claim to the Insurer and the exercising or declining of any right to a Discovery Period.

## **16. ASSIGNMENT**

This policy and any and all rights hereunder are not assignable without the written consent of the Insurer.

## **17. ACTION AGAINST INSURER**

No action shall lie against the Insurer unless, as a condition precedent thereto, there shall have been full compliance with all of the terms of this policy, nor until the amount of the Insureds' obligation to pay shall have been finally determined either by judgment against the Insureds after actual trial or by written agreement of the Insureds, the claimant and the Insurer.

Any person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this policy to the extent of the insurance afforded by this policy. No person or organization shall have any right under this policy to join the Insurer as a party to any action against the Insureds to determine the Insureds' liability, nor shall the Insurer be impleaded by the Insureds or their legal representatives. Bankruptcy or insolvency of the Insureds or of their estates shall not relieve the Insurer of any of its obligations hereunder.

## **18. REPRESENTATIONS AND SEVERABILITY**

In granting coverage under this policy, it is agreed that the Insurer has relied upon the statements and representations contained in the application for this policy (including materials submitted thereto and, if this is a renewal application, all such previous policy applications for which this policy is a renewal) as being accurate and complete. All such statements and representations shall be deemed to be material to the risk assumed by the Insurer, are the basis of this policy and are to be considered as incorporated into this policy.

With respect to such statements and representations, no knowledge or information possessed by any Individual Insured shall be imputed to any other Individual Insured. If any person who executed the application knew that such statement or representation was inaccurate or incomplete, such statement shall not be imputed to any trustee, trustee emeritus or governor other than such signator and any other Individual Insureds who knew such statement or representation was inaccurate or incomplete.

## **19. HEADINGS**

The descriptions in the headings of this policy are solely for convenience, and form no part of the terms and conditions of coverage.

## **20. WORLDWIDE TERRITORY**

This policy shall apply to Claims made against an Insured anywhere in the world.

This endorsement, effective at 12:01 AM 07/01/2009

forms a part of

Policy number 02-476-54-08

Issued to: Scottsdale Shadows Regime #1

By: National Union Fire Insurance Company of Pittsburgh, Pa.

**NOT-FOR-PROFIT PROTECTOR®  
CONDOMINIUM / COOPERATIVE / HOMEOWNERS ASSOCIATION AMENDATORY**

In consideration of the premium charged, it is hereby understood and agreed that, unless otherwise modified by another endorsement to this policy, coverage as is afforded by this policy is amended as follows:

**1. NOTICE PROVISIONS**

The "Notice" Provisions as set forth in the Declarations are deleted in their entirety and replaced with the following:

**NOTICE: EXCEPT TO SUCH EXTENT AS MAY OTHERWISE BE PROVIDED HEREIN, THE COVERAGE OF THIS POLICY IS GENERALLY LIMITED TO LIABILITY FOR ONLY THOSE CLAIMS THAT ARE FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD AND REPORTED IN WRITING TO THE INSURER PURSUANT TO THE TERMS HEREIN. PLEASE READ THE POLICY CAREFULLY AND DISCUSS THE COVERAGE THEREUNDER WITH YOUR INSURANCE AGENT OR BROKER.**

**NOTICE: EXCEPT AS SET FORTH IN CLAUSE 5, LIMIT OF LIABILITY, BELOW, THE LIMIT OF LIABILITY AVAILABLE TO PAY JUDGMENTS OR SETTLEMENTS SHALL BE REDUCED BY AMOUNTS INCURRED FOR LEGAL DEFENSE. AMOUNTS INCURRED FOR LEGAL DEFENSE SHALL BE APPLIED AGAINST THE RETENTION AMOUNT.**

**2. LIMIT OF LIABILITY**

Item 4. LIMIT OF LIABILITY of the Declarations is deleted in its entirety and replaced with the following:

**ITEM 4. LIMITS OF LIABILITY**

- (a) **AGGREGATE LIMIT OF LIABILITY:** \$ 1,000,000  
Aggregate for each Policy Year for all Loss combined (including Defense Costs greater than the amount set forth in (b) below)
- (b) **ADDITIONAL LIMIT OF LIABILITY FOR DEFENSE COSTS:** \$ 1,000,000  
Aggregate for each Policy Year for all Defense Costs combined

### 3. INSURING AGREEMENT AMENDED

- A. In Clause 1. **INSURING AGREEMENTS**, the paragraph entitled, “**DEFENSE PROVISIONS**,” is deleted in its entirety and replaced with the following:

#### **DEFENSE PROVISIONS**

The Insurer shall have the right and duty to defend and control any Claim made against an Insured based upon or arising out of any actual or alleged Wrongful Act(s), even if such Claim is groundless, false or fraudulent. However, the Insurer shall have no obligation to defend any Claim after the Limit of Liability or any applicable Sublimit of Liability has been exhausted.

- B. Clause 8. **DEFENSE COSTS, SETTLEMENTS AND JUDGMENTS** is deleted in its entirety and replaced with the following:

The Insurer shall have the right to select and appoint an attorney of its choosing to defend any Claim made against any Insured based upon or arising out of any actual or alleged Wrongful Act(s), even if such Claim is groundless, false or fraudulent. The Insurer shall have the right to investigate and/or settle any Claim that the Insurer, in its sole discretion, believes is proper. The Insureds shall give the Insurer their full cooperation and such information as it may reasonably require in connection with its defense, investigation, and/or settlement of any Claim(s).

The Insureds shall not admit or assume any liability, enter into any settlement agreement, stipulate to any judgment, or incur any Defense Costs without the prior written consent of the Insurer. Only those settlements, stipulated judgments and Defense Costs which have been consented to by the Insurer shall be recoverable as Loss under the terms of this policy; provided, however, that in all events the Insurer may withhold consent to any settlement, stipulated judgment or Defense Costs, or any portion thereof, to the extent such Loss is not covered under the terms of this policy.

The Insurer may, in its sole discretion, permit an Insured to assume the defense and control of any outstanding Claim which the Insurer previously defended. Notwithstanding the foregoing, in all events, if the Limit of Liability is exhausted, the Insurer will notify the Insured of all outstanding Claims and the Insured shall assume the defense and control of such Claims. In this case, the Insurer will cooperate to transfer the defense and control of such Claims to the Insured. The Insurer shall take whatever steps are necessary to continue the defense of any outstanding Claim and avoid a default judgment during the transfer of the defense and control to the Insured. If the Insurer does so, the Insurer shall not waive or give up any of its rights. The Insured shall pay all reasonable and necessary expenses the Insurer incurs for taking such steps after the Limit of Liability or any applicable Sublimit of Liability is exhausted.

If the Insurer recommends a settlement within the policy’s applicable Limit of Liability which is acceptable to the claimant (a “Settlement Opportunity”), and the Insureds consent to such settlement, then the Organization’s applicable Retention amount shall be retroactively reduced by ten percent (10%) for such Loss. It shall be a condition to such reduction that the Insureds must consent to such settlement within thirty (30)

days of the date the Insureds are first made aware of the Settlement Opportunity, or in the case of a Settlement Opportunity which arises from a settlement offer by the claimant, then within the time permitted by the claimant to accept such settlement offer, but in all events no later than thirty (30) days after the settlement offer was made.

However, if a Settlement Opportunity arises and the Insureds do not consent to the settlement within the time prescribed above, the Retention amount shall remain the applicable amount set forth in Item 5 of the Declarations even if consent is given to a subsequent Settlement Opportunity.

Furthermore, in the event the Insured(s) do not consent to the First Settlement Opportunity within the time prescribed, then, subject to the applicable Limit of Liability, the Insurer's liability for all Loss on account of such Claim shall not exceed: (1) the amount for which the Insurer could have settled such Claim plus Defense Costs incurred as of the date such settlement was proposed in writing by the Insurer, ("Settlement Opportunity Amount") plus (2) 70% of covered Loss in excess of such Settlement Opportunity Amount, it being a condition of this insurance that the remaining 30% of such Loss excess of the Settlement Opportunity Amount shall be carried by the Organization and the Insured(s) at their own risk and be uninsured. Notwithstanding the foregoing, this paragraph shall not apply until the Settlement Opportunity Amount exceeds the Retention amount stated in Item 5 of the Declarations. The First Settlement Opportunity shall be deemed to include any proposed agreement by the Insurer and claimant(s) or plaintiff(s) to enter into a binding arbitration of the Claim.

- C. Clause 9. **PRE-AUTHORIZED CLASS ACTION DEFENSE ATTORNEYS** is deleted in its entirety.
- D. Clause 5. **LIMIT OF LIABILITY (FOR ALL LOSS - INCLUDING DEFENSE COSTS)** is deleted in its entirety and replaced with the following:

**5. LIMIT OF LIABILITY (FOR ALL LOSS - INCLUDING DEFENSE COSTS)**

The Limit of Liability stated in Item 4(a) of the Declarations is the limit of the Insurer's liability for all Loss under this policy, under Coverage A, Coverage B and Coverage C combined, arising out of all Claims first made against the Insured during each Policy Year or, solely with respect to the final Policy Year preceding the non-renewal or cancellation of the policy, the Discovery Period (if applicable). The Limit of Liability stated in Item 4(b) of the Declarations shall be an Additional Limit of Liability for that part of Loss constituting Defense Costs incurred in connection with all Claims first made against the Insured during each Policy Period or, solely with respect to the final Policy Year preceding the non-renewal or cancellation of the policy, the Discovery Period (if applicable). **THE LIMIT OF LIABILITY FOR DEFENSE COSTS STATED IN ITEM 4(b) OF THE DECLARATIONS SHALL BE IN ADDITION TO, AND NOT PART OF, THE LIMIT OF LIABILITY STATED IN ITEM 4(a) OF THE DECLARATIONS.** Loss constituting Defense Costs shall first reduce the Additional Limit of Liability stated in Item 4(b) of the Declarations. If the Limit of Liability stated in Item 4(b) of the Declarations becomes exhausted or if the Additional Limit of Liability stated in Item 4(b) of the Declarations is zero, then

subsequent Defense Costs will reduce the aggregate Limit of Liability stated in Item 4(a) of the Declarations.

The Limit(s) of Liability for the Discovery Period (if applicable) shall be part of, and not in addition to, the aggregate Limit of Liability for the Policy Year stated in Item 4(a) of the Declarations. Further, any Claim which is made subsequent to the Policy Period or Discovery Period (if applicable) which, pursuant to Clause 7(b) or 7(c), is considered made during the Policy Period or Discovery Period (if applicable) shall also be subject to the aggregate Limit of Liability stated in Item 4(a) of the Declarations.

#### 4. DEFINITIONS AMENDED

Clause 2. **DEFINITIONS** shall be amended as follows:

(a) Paragraph (b), "Claim," is deleted in its entirety and replaced with the following:

(b) "Claim" means:

- (1) a written demand for monetary, non-monetary or injunctive relief (including any request to toll or waive any statute of limitations); or
- (2) a civil, criminal, regulatory or administrative proceeding for monetary, non-monetary or injunctive relief which is commenced by:
  - (i) service of a complaint or similar pleading;
  - (ii) return of an indictment, information or similar document (in the case of a criminal proceeding); or
  - (iii) receipt or filing of a notice of charges.

(b) Paragraph (c), "Continuity Date," is deleted in its entirety and replaced with the following:

(c) "Continuity Date" shall mean the earliest date the Named Organization was formed by the filing of articles of incorporation or other statutory method of formation.

(c) Paragraph (e), "Employee," is hereby deleted in its entirety and replaced with the following:

(e) "Employee(s)" mean any past, present or future employee of the Organization, whether such employee is in a supervisory, co-worker or subordinate position or otherwise, including any part-time, seasonal, and temporary employee of the Organization in his or her capacity as such. Any other individual who is an independent contractor or leased employee for the Organization shall also be an employee, but only if the Organization provides or is required to provide indemnification to such individual, in the same manner as that provided to the Organization's employees, pursuant to a written contract; provided, however, that coverage as is afforded under this endorsement with respect to a Claim made

against an independent contractor shall only apply if such Claim is made and continuously maintained against the Named Organization.

It is further understood and agreed that the coverage provided by this endorsement for independent contractors and leased employees shall only apply to Wrongful Acts of such independent contractors and leased employees occurring when they are acting pursuant to a written contract and in the course and within scope of the performance of work for the Named Organization, but only if and to the extent the Named Organization is contractually required to indemnify such independent contractors or leased employees in the same manner as is provided to its employees.

- (d) Paragraph (k), "Loss," is amended such that the second sub-paragraph thereof is deleted in its entirety and replaced with the following:

Loss shall specifically include (subject to the policy's other terms, conditions and exclusions) punitive, exemplary and multiple damages. It is further understood and agreed that the enforceability of the foregoing coverage shall be governed by such applicable law which most favors coverage for punitive, exemplary and multiple damages. Notwithstanding the foregoing, coverage shall not be provided to any particular Insured who has been adjudicated to have obtained a profit or advantage or committed a fraudulent or dishonest act or a willful violation of any statute, rule or law.

- (e) Paragraph (k), "Loss," is further amended to include the following paragraphs at the end thereof:

- (5) Defense Costs arising out of defense of a Claim seeking injunctive relief or non-monetary damages; provided, however, that Loss shall not include the costs of compliance with any order entered in such a matter; and
- (6) Any 10% "Excess Benefits" penalty assessed by the Internal Revenue Service against any Individual Insured(s) for management involvement in the award of an "Excess Benefit."

It is further understood and agreed that no coverage shall be provided by this policy or endorsement for any Individual Insured(s) subject to the 25% "Excess Benefits" penalty assessed by the Internal Revenue Service against any such Insured as a "disqualified person;" provided, however, that Defense Cost coverage shall be provided to all Insured(s), including such "disqualified person" Insured.

IT IS FURTHER UNDERSTOOD AND AGREED THAT UNDER NO CIRCUMSTANCES SHALL THE INSURER BE LIABLE FOR PAYMENT OF LOSS ATTRIBUTABLE TO ANY 200% PENALTY ASSESSED BY THE INTERNAL REVENUE SERVICE FOR FAILURE TO CORRECT THE AWARD OF AN EXCESS BENEFIT.

For purposes of this endorsement, the terms "Excess Benefits" and "disqualified person" shall be defined as those terms are defined in the "Taxpayer Bill of Rights 2"[H.R. 2337, P.L. 104-168], 26 USC 4958.

(f) Paragraph (m), “Non-Employment Discrimination,” is hereby deleted in its entirety and replaced with the following:

(m) “Non-Employment Discrimination” means any actual or alleged sexual harassment or unlawful discrimination, as described in paragraphs (2) and (3) of the definition of Employment Practices Violation, or the violation of the civil rights of a person relating to such sexual harassment or discrimination, when such acts are alleged to be committed against anyone other than an Individual Insured, or applicant for employment with the Organization or an Outside Entity, including but not limited to: customers, suppliers, invitees, potential renters and purchasers of the Organization’s units and/or apartments.

(g) Paragraph (n), “Organization,” deleted in its entirety and replaced with the following:

(n) The Organization means: (1) the Named Organization designated in Item 1 of the Declarations; (2) any Subsidiary thereof; (3) any Affiliate thereof listed by endorsement to this policy; and (4) any property management entity contracted by the Named Organization for management of the operations of its property (“Property Manager”); provided, however, that coverage under this policy for Claims against Property Managers shall apply solely with regard to Wrongful Acts by the Property Manager or its Individual Insured(s) related to the operation of the property of the Named Organization.

(h) Paragraph (u), “Wrongful Act,” is amended to include the following paragraph at the end thereof:

(5) With respect to the Property Manager or its Individual Insured(s), “Wrongful Act” shall specifically include: (a) errors in the maintenance of the legally required percentage of resident population for communities restricted by age or income; and (b) errors in the provision of legally required disclosure statements to individual secondary purchasers of individual residential units in the property governed by the Named Organization; provided, however, that coverage under this policy shall not apply to any purchaser of the common property governed by the Named Organization or any purchaser of more than 25% of the individual units of the property governed by the Named Organization.

## 5. EXCLUSIONS AMENDED

Clause 4. **EXCLUSIONS** shall be amended as follows:

(a) Exclusions (a) and (b) are deleted in their entirety and replaced with the following:

(a) arising out of, based upon or attributable to the gaining of any profit or advantage to which any judgment, final adjudication adverse to the Insured(s), or alternative dispute resolution proceeding establishes the Insured(s) were not legally entitled;

(b) arising out of, based upon or attributable to the committing of any criminal or deliberate fraudulent act if any judgment, final adjudication adverse to the Insured(s), or alternative dispute resolution proceeding establishes that such criminal or deliberate fraudulent act occurred;

(b) Paragraph (h) is deleted in its entirety and replaced with the following:

(h) alleging, arising out of, based upon or attributable to bodily injury, sickness, disease, or death of any person, or damage to or destruction of any tangible property, including the loss of use thereof; provided, however, that this exclusion shall not apply to emotional distress or mental anguish;

(c) Paragraph (i) is deleted in its entirety and replaced with the following:

(i) alleging, arising out of, based upon, attributable to, or in any way involving, directly or indirectly:

(1) the actual, alleged or threatened discharge, dispersal, release or escape of pollutants; or

(2) any direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize pollutants,

including, but not limited to, a Claim alleging damage to the Organization, its securities holders or members; provided, however, that this exclusion shall not apply to a non-Indemnifiable Loss, other than non-Indemnifiable Loss constituting Cleanup Costs.

As used herein, "Cleanup Costs" means expenses (including, but not limited to, legal and professional fees) incurred in testing for, monitoring, cleaning up, removing, containing, treating, neutralizing, detoxifying or assessing the effects of Pollutants.

As used herein, "Pollutants" means, but is not limited to, any solid, liquid, gaseous, biological, radiological or thermal irritant or contaminant, or noise, including smoke, vapor, dust, fibers, mold, spores, fungi, germs, soot, fumes, acids, alkalis, chemicals and Waste. "Waste" includes, but is not limited to, materials to be recycled, reconditioned or reclaimed and Nuclear Materials.

(d) Paragraph (j) is deleted in its entirety and replaced with the following:

(j) for violation(s) of any of the responsibilities, obligations or duties imposed by the Employee Retirement Income Security Act of 1974, the Fair Labor Standards Act (except the Equal Pay Act), the National Labor Relations Act, the Worker Adjustment and Retraining Notification Act, the Consolidated Omnibus Budget Reconciliation Act, the Occupational Safety and Health Act, any rules or regulations of the foregoing promulgated there under, and amendments thereto or any similar federal, state, local or foreign statutory law or common law; provided, however, that this exclusion shall not apply to a Claim for Retaliation; provided further, however, there is no coverage provided under this policy for any Claim related to, arising out of, based upon, or attributable to the refusal, failure or inability of any Insured(s) to pay wages or overtime pay for services rendered (hereinafter, "Earned Wages") (as opposed to tort-based back pay or front pay damages) or for improper payroll deductions taken by any Insured(s) from any Employee(s) or purported employee(s), including, but not limited to, (i) any unfair

business practice claim alleged because of the failure to pay Earned Wages, or (ii) any Claim seeking earned Wages because any Employee(s) or purported employee(s) was improperly classified or mislabeled as “exempt;”

(e) Paragraph (k) is deleted in its entirety and replaced with the following:

(k) alleging, arising out of, based upon or attributable to any actual or alleged contractual liability of an Insured under any express contract or agreement; provided, however, that this exclusion shall not apply:

- (i) to liability which would have attached in the absence of such express contract or agreement;
- (ii) to Individual Insureds, provided that this exception for Individual Insureds shall not apply to a Claim (other than for Defense Costs) alleging, arising out of, based upon or attributable to any actual or alleged contractual liability of the Organization or any other Insured under any express employment contract or agreement; or
- (iii) solely with respect to the portion of a Claim for Loss constituting Defense Costs, the Organization;

It is further understood and agreed that with respect to Defense Costs jointly incurred by (i) any joint settlement made by and/or (ii) any judgment of joint and several liability against the Organization and any Individual Insured in connection with a Claim, the Organization and such Individual Insured(s) and the Insurer agree to use their best efforts to determine a fair and proper allocation of the amounts as between the Organization and the Individual Insured(s) and the Insurer, taking into account the relative legal and financial exposures, and the relative benefits obtained by the Individual Insureds and the Organization.

(f) Paragraph (m) is deleted in its entirety and replaced with the following:

(m) alleging, arising out of, or in any way relating to any purchase or sale of securities by the Named Organization, Subsidiary or Affiliate or Claims brought by securities holders of the Organization in their capacity as such; provided, however, that this exclusion shall not apply to:

- (i) the issuance by the Organization of tax exempt bond debt or Claims brought by tax exempt bond debt holders; and
- (ii) any Claim arising out of, or in any way relating to the purchase or sale of any of the Organization’s cooperative shares, if it is instigated and continued totally independent of, and totally without the solicitation of, or assistance of, or active participation of, or intervention of the Organization or any Insured thereof.

(g) Clause 4. **EXCLUSIONS** is further amended to include the following exclusions at the end of that Clause:

(aa) which are:

- (1) brought by, against, or on behalf of the developer of the condominium units, cooperative corporation property or other real or personal property managed by the Insured(s) (hereafter the "Property");
  - (2) brought by, against, or on behalf of the sponsor for conversion of the Property to cooperative or condominium ownership; or
  - (3) which alleges or arises out of any alleged conflict of interest between the fiduciary responsibility of the Individual Insured(s) to the Named Organization and their relationship with the sponsor or developer of the Organization property; provided, however, that this exclusion (aa)(3) shall not apply to any Claim(s) against non-developer Insureds, non-sponsor Insureds, or the Organization;
- (bb) alleging, arising out of, based upon, attributable to, or in any way involving, directly or indirectly, the Hazardous Properties of Nuclear Material, including but not limited to:
- (1) Nuclear Material located at any Nuclear Facility owned by, or operated by, or on behalf of the Organization, or discharged or dispersed there from;
  - (2) Nuclear Material contained in Spent Fuel or Waste which was or is at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of the Organization;
  - (3) the furnishing by an Insured or the Organization of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any Nuclear Facility; or
  - (4) Claims for damages to the Organization or its members which alleges, arises from, is based upon, is attributed to or in any way involves, directly or indirectly, the Hazardous Properties of Nuclear Material;
- (cc) which is insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability underwriters, or Nuclear Insurance Association of Canada, or would be insured under any such policy but for its termination or exhaustion of its Limit of Liability;
- (dd) with respect to which (1) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (2) the Organization or any Insured is, or had this policy not been issued would be entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into the United States of America, or any agency thereof, with any Insured or the Organization.

As used in exclusions (bb), (cc) and (dd) above, the below terms shall mean the following:

"Hazardous Properties" include radioactive, toxic or explosive;

“Nuclear Material” means Source Material, Special Nuclear Material or Byproduct Material;

“Source Material,” “Special Nuclear Material,” and “Byproduct Material” have the meanings given them in the Atomic Energy Act of 1954 or in law amendatory thereof;

“Spent Fuel” means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a Nuclear Reactor;

“Waste” means any Waste material (1) containing Byproduct Material and (2) resulting from the operation by any person or Organization of any Nuclear Facility included within the definition of Nuclear Facility under paragraph (a) or (b) thereof;

“Nuclear Facility” means:

- (a) any Nuclear Reactor,
- (b) any equipment or device designed or used for (1) separating the isotopes of uranium or plutonium, (2) processing or utilizing Spent Fuel, or (3) handling, processing or packaging Waste,
- (c) any equipment or device used for the processing, fabricating or alloying of special Nuclear Material if at any time the total amount of such material in the custody of the Insured(s) at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235; or
- (d) any structure, basin, excavation, premises or place prepared or used for the storage or disposal of Waste, and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations.

“Nuclear Reactor” means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material.

- (ee) arising out of, based upon or attributable to an Individual Insured’s or an Organization’s failure or omission to effect or maintain proper or adequate insurance coverage (“FTMI”); provided, however, that this exclusion shall not apply to covered Defense Costs incurred in the defense of FTMI Claim(s).

In addition, for the purposes of the applicability of this policy to any Loss, the Organization will be conclusively deemed to have indemnified the Insured(s) to the maximum extent that the Organization is permitted or required pursuant to law or contract or the charter, bylaws, operating agreement or similar

documents of the Organization (which are hereby deemed to adopt the broadest provisions of the law which determines or defines such rights of indemnity). The Organization hereby agrees to indemnify the Insured(s) to the fullest extent permitted by law and pursuant to the terms and conditions of this policy, including the making in good faith any required application for court approval.

- (ff) the Insurer shall not be liable to make any payments for Loss in connection with any Claim(s) made against any Insured alleging, arising out of, based upon or attributable to the ownership, management, maintenance and/or control by the Organization of any captive insurance company or entity, including but not limited to any Claim(s) alleging the insolvency or bankruptcy of the Organization as a result of such ownership, operation, management and control.
- (gg) the Insurer shall not be liable to make any payment for Loss in connection with any Claim(s) made against any Insured alleging, arising out of, based upon or attributable to:
  - (i) payments, commissions, gratuities, benefits or any other favors to or for the benefit of any full or part-time domestic or foreign governmental or armed services officials, agents, representatives, employees or any members of their family or any entity with which they are affiliated;
  - (ii) payments, commissions, gratuities, benefits or any other favors to or for the benefit of any full or part-time officials, directors, agents, partners, representatives, members, principal shareholders, owners or employees, or affiliates (as that term is defined in the Securities Exchange Act of 1934, including any of their officers, directors, agents, owners, partners, representatives, principal shareholders or employees) or any customers of the Organization or any members of their family or any entity with which they are affiliated; or
  - (iii) political contributions, whether domestic or foreign.

## **6. CLAUSE 7 AMENDED**

In Clause 7. **NOTICE/CLAIM REPORTING PROVISIONS**, subparagraph 7(a)(2) is deleted in its entirety and replaced with the following:

- (2) within 60 days after the end of the Policy Year or or, solely with respect to the final Policy Year preceding the non-renewal or cancellation of the policy, the Discovery Period (if applicable), as long as such Claim is reported no later than 60 days after the date such Claim was first made against an Insured.

## **7. CLAUSE 18 AMENDED**

Clause 18. **REPRESENTATIONS AND SEVERABILITY** is deleted in its entirety and replaced with the following:

### **18. REPRESENTATIONS AND SEVERABILITY**

In granting coverage under this policy, it is agreed that the Insurer has relied upon the statements, warranties and representations contained in the Application as being accurate and complete. All such statements, warranties and representations are the basis for this policy and are material to the risk assumed by the Insurer, and are to be considered as incorporated into this policy.

The Insured(s) agree that in the event that the particulars and statements contained in the Application are not accurate and complete, then this Policy shall be void as to any Insured who knew as of the inception date of the Policy Period of the facts that were not accurately and completely disclosed in the Application (whether or not such Insured knew that such facts were not accurately and completely disclosed in the Application). Solely for purposes of determining whether the policy shall be void as to an Insured, such aforesaid knowledge possessed by any Insured shall not be imputed to any other Insured.

It is understood and agreed that this Clause supersedes any inconsistent language contained in the Application.

For purposes of this Clause, "Application" means each and every signed application, any attachments to such applications, other materials submitted therewith or incorporated therein and any other documents submitted in connection with the underwriting of this policy or the underwriting of any other directors and officers (or equivalent) liability policy issued by the Insurer, or any of its affiliates, of which this policy is a renewal, replacement or which it succeeds in time, and any public documents filed by a Company with any federal, state, local or foreign regulatory agency (including but not limited to the Securities and Exchange Commission (SEC)).

## **8. ADDITIONAL CLAUSES**

The policy is amended to include the following Clauses at the end of the policy:

### **PC-1. INDEMNIFICATION**

For the purposes of the applicability of this policy to Loss, the Organization will be conclusively deemed to have indemnified the Individual Insured(s) to the maximum extent that the Organization is permitted or required to grant such indemnification pursuant to law, common or statutory, or contract or by the charter or by-laws of the Organization (which are hereby deemed to adopt the broadest provisions of the law which determined or defines such rights of indemnity). The Organization hereby agrees to indemnify the Individual Insured(s) to the fullest extent permitted by law including the making in good faith of any required application for court approval.

### **PC-2. ORDER OF PAYMENTS**

In the event of a Loss arising from or relating to any Claim(s) for which payment is due under the provisions of this policy, but which Loss, in the aggregate, exceeds the remaining available Limit of Liability of this policy, then this policy shall:

(i) first pay such Loss for which coverage is provided under Coverage A of the policy, then with respect to whatever remaining amount of the Limit of Liability is available after payment of such Loss, then

(ii) pay such Loss for which coverage is provided under Coverage B of the policy.

In the event of Loss arising from a Claim(s) for which payment is due under the provisions of this policy (including those circumstances described in the first paragraph of this Clause), the Insurer shall at the written request of the Named Organization:

(i) first pay such Loss for which coverage is provided under Coverage A of the policy, then

(ii) either pay or hold payment for such Loss for which coverage is provided under Coverage B or Coverage C of the policy.

In the event that the Insurer withholds payment under Coverage B or Coverage C of the policy pursuant to the above request, then the Insurer shall, the written request of the Organization, release such Loss payment to the Organization, or make such Loss payment directly to Individual Insured(s) in the event of covered Loss under any Claim(s) covered under this policy pursuant to Coverage A.

Nothing in this endorsement shall be construed to increase the Limit of Liability of the Insurer as set forth in the Declarations of this policy, which such Limit of Liability shall remain the maximum liability of the Insurer for all Claim(s) under all Coverage under this policy combined.

### PC-3 DOMESTIC PARTNER

The lawful spouse of an Individual Insured under this policy shall also extend to any individual person Domestic Partner of such Individual Insured.

It is further understood and agreed that for purposes of this endorsement and coverage, the term "Domestic Partner" shall mean any individual person qualifying as such either (1) under the provisions of any applicable federal, state, or local law, or (2) under the provisions of any formal program established by the Named Organization or its Subsidiaries.

ALL OTHER TERMS, CONDITIONS, AND EXCLUSIONS REMAIN UNCHANGED.

### **ANTITRUST EXCLUSION**

In consideration of the premium charged, it is hereby understood and agreed that Definition (u) "Wrongful Act" is amended by deleting subparagraph (4), subsection (c) thereof in its entirety.

It is further understood and agreed that the following exclusion is added to the section of the policy entitled EXCLUSIONS:

- alleging, arising out of, based upon or attributable to, or in any way involving, either directly or indirectly, antitrust violations, price fixing, price discriminations, unfair competition, deceptive trade practices and/or monopolies, including any actions, proceedings, claims or investigations related thereto.

**ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.**

ARIZONA  
AMENDATORY ENDORSEMENT

This endorsement, effective 07/01/2009 forms part of  
policy no.:02-476-54-08 issued to Scottsdale Shadows Regime #1  
by: National Union Fire Insurance Company of Pittsburgh, Pa.

Wherever used in this endorsement: 1) "we", "us", "our", and "Insurer" mean the insurance company which issued this policy; and 2) "you", "your", "named Insured", "First Named Insured", and "Insured" mean the Named Corporation, Named Organization, Named Sponsor, Named Insured, or Insured stated in the declarations page; and 3) "Other Insured(s)" means all other persons or entities afforded coverage under the policy.

In consideration of the premium charged, it is hereby understood and agreed that the cancellation paragraph of this policy is deleted in its entirety and is replaced by the following:

CANCELLATION/NONRENEWAL

CANCELLATION BY THE INSURED - This policy may be cancelled by the Insured by surrender of this policy to the Insurer or by giving written notice to the Insurer stating when thereafter such cancellation shall be effective.

CANCELLATION BY THE INSURER - The Insurer may not cancel this policy before the expiration date if this policy has been in effect for sixty (60) days or if the policy is a renewal, effective immediately, unless one or more of the following reasons exist:

- (a) Conviction of the Insured or Other Insured(s) of a crime arising out of acts increasing the hazard insured against.
- (b) Acts or omissions by the Insured or Other Insured(s) or a representative of same constituting fraud or material misrepresentation in obtaining the policy, in continuing the policy, or in presenting a claim under the policy.
- (c) A substantial change in the risk assumed, except to the extent that the Insurer should reasonably have foreseen the change or contemplated the risk in writing the contract.
- (d) A substantial breach of contractual duties or conditions.
- (e) Loss of reinsurance applicable to the risk insured against, but only if the absence of reinsurance has resulted from termination of treaty or facultative reinsurance initiated or implemented by the reinsurer or reinsurers of the Insurer issuing the policy.
- (f) A determination by the Director of Insurance that the continuation of the policy would place the Insurer in violation of the insurance laws of this state or would jeopardize the solvency of the Insurer.

- (g) Acts or omissions by the Insured or Other Insured(s) or a representative of same which materially increase the hazard insured against.

The Insurer may cancel this policy for nonpayment of premium notwithstanding the length of time the policy has been in effect

Notice. The Insurer shall mail a copy of the notice of cancellation to the Insured's agent and written notice of cancellation shall be mailed by certified mail to the named Insured at the address shown in the policy or to the last known address at least sixty (60) days before the effective date of cancellation except that if cancellation is for nonpayment of premium, at least ten (10) days notice of cancellation must be given. The notice shall state the reason for cancellation, and shall state the specific facts which constitute the grounds set forth above which are relied on.

The notice of cancellation shall be accompanied by a refund of unearned premium unless the premium has been financed.

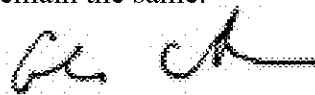
NONRENEWAL - A nonrenewal by the Insurer is effective if the Insurer mails a copy of the notice of nonrenewal to the Insured's agent and a certified written notice to the Named Insured at the address shown in the policy or to the last known address of the Insured at least sixty (60) days before the end of the policy period.

Notice of nonrenewal is not required if either of the following occurs:

1. The Insurer or a company within the same insurance group has offered to issue a renewal policy;
2. The Named Insured has obtained replacement coverage or has agreed in writing to obtain replacement coverage.

Notice Of Change - If the Insurer elects to renew this policy and the renewal is subject to a premium increase, change in deductible, reduction in limits of insurance, or substantial reduction in coverage, then the insurer shall mail written notice of the change(s) to the first Named Insured at mailing address on the policy, at least sixty (60) days before the expiration date of the policy. If the Insurer fails to provide sixty (60) days notice, the present policy will remain in effect for sixty (60) days after the date of mailing the notice or until the effective date of the replacement coverage is obtained by the first Named Insured, whichever occurs first. If the First Insured elects not to renew, any earned premium for the period of extension of the terminated policy will be calculated pro rata at the lower of the current or previous year's rate. If the first Named Insured accepts the renewal, the premium increase, if any, and other changes are effective the day following the expiration date of the current policy.

All other terms, conditions and exclusions of the policy remain the same.



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AUTHORIZED REPRESENTATIVE

This endorsement, effective 12:01 A. M. 07/01/2009

forms a part of Policy

No. 02-476-54-08

issued to Scottsdale Shadows Regime #1

by National Union Fire Insurance Company of Pittsburgh, Pa.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**TERRORISM EXCLUSION ENDORSEMENT**

In consideration of the premium charged, it is hereby understood and agreed that this insurance does not apply to any loss, injury, damage, claim or suit, arising directly or indirectly as a result of a certified "act of terrorism" defined by Section 102. Definitions., of the Terrorism Risk Insurance Act of 2002 and any revisions or amendments.

Wherever used in this endorsement: 1) "Insurer" means the insurance company which issued this policy; and 2) "Insured" means the Named Employer, Named Corporation, Named Sponsor, Named Organization, Named Entity, Named Insured or Insured stated in Item 1. of the Declarations.

For purposes of this endorsement and in compliance with the Terrorism Risk Insurance Act of 2002, an "act of terrorism" shall mean:

(1) Act of Terrorism –

(A) Certification. – The term "act of terrorism" means any act that is certified by the Secretary of the Treasury of the United States of America, in concurrence with the Secretary of State, and the Attorney General of the United States of America --

(i) to be an act of terrorism;

(ii) to be a violent act or an act that is dangerous to --

(I) human life;

(II) property; or

(III) infrastructure;

(iii) to have resulted in damage within the United States of America, or outside of the United States of America in the case of --

(I) an air carrier or vessel described in paragraph (5)(B); [for the convenience of this endorsement, paragraph (5)(B) reads: occurs to an air carrier (as defined in Section 40102 of title 49, United States Code) to a United States flag vessel (or a vessel based principally in the United States of America, on which United States income tax is paid and whose insurance coverage is subject to regulation in the United States of America), regardless of where the loss occurs, or at the premises of any United States of America mission]; or

(II) the premises of a United States of America mission; and

(iv) to have been committed by an individual or individuals acting on behalf of any foreign person or foreign interest, as part of an effort to coerce the civilian population of the United States of America or to influence the policy or affect the conduct of the United States Government by coercion.

- (B) Limitation. -- No act shall be certified by the Secretary as an act of terrorism if --
  - (i) the act is committed as part of the course of a war declared by the Congress, except that this clause shall not apply with respect to any coverage for workers' compensation; or
  - (ii) property and casualty insurance losses resulting from the act, in the aggregate, do not exceed \$5,000,000.
- (C) Determinations Final. -- Any certification of, or determination not to certify, an act as an act of terrorism under this paragraph shall be final, and shall not be subject to judicial review.
- (D) Nondelegation. -- The Secretary may not delegate or designate to any other officer, employee, or person, any determination under this paragraph of whether, during the effective period of the Program, an act of terrorism has occurred.

For the purposes of this endorsement, the Insured: 1) acknowledges that it has received a Policyholder Disclosure Statement Under Terrorism Risk Insurance Act of 2002; 2) has elected not to purchase insurance coverage for losses arising out of an Act of Terrorism; 3) has not paid any premium for such coverage; and 4) has affirmatively authorized the Insurer to attach this exclusion.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.

**ENDORSEMENT**

This endorsement effective 07/01/2009  
Policy number: 02-476-54-08

forms a part of

issued to:

Scottsdale Shadows Regime #1

by: National Union Fire Insurance Company of Pittsburgh, Pa.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**COVERAGE TERRITORY ENDORSEMENT**

Payment of loss under this policy shall only be made in full compliance with all United States of America economic or trade sanction laws or regulations, including, but not limited to, sanctions, laws and regulations administered and enforced by the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC").

A handwritten signature in black ink, appearing to be 'G. A.', is written above a horizontal line.

**AUTHORIZED REPRESENTATIVE**

