

*Fox Meadows  
Homeowners  
Association, Inc.*



*Annual Meeting  
Thursday March 22<sup>nd</sup> 6pm  
C21 Sales Office Training Room  
404 D University Dr. East*

*\*903 S Texas Ave. College Station TX \*[www.c21bcshoa.com](http://www.c21bcshoa.com) \* 979-764-2500*



Brazos Valley Property Management  
903 S. Texas Avenue  
College Station, TX 77840  
Business (979)764-2500  
Fax (979)764-0508

**Foxmeadows Home Owners Association requests your attendance at the 2018 Annual Meeting to be held at BVP Management Inc. office located at, 903 Texas Ave South, College Station, Tx.77840, on Thursday, March 22<sup>nd</sup>, 2018 at 6pm.**

If you cannot be there and would like to have your vote counted should there be a quorum, sign the attached proxy and return by 5:30pm March 22<sup>nd</sup>, 2018. You can mail the completed proxy (below) to BVP Management Inc., 903 Texas Ave. South, College Station, Texas 77840, and Attention: Toni Myers, email to [c21hoa@century21bcs.com](mailto:c21hoa@century21bcs.com) or fax it to (979) 764-0508.

**Agenda**

1. Roll call, owners present and proxies. Determine if quorum.
2. Proof of notice of meeting
3. Reading and approval of minutes of preceding annual meeting.
4. Financial report. (2017 Financial Report, Delinquencies, 2018 Budget, Sales)
5. Election/Reinstatement of Officers & Directors
6. Unfinished business.
7. New business.
8. Adjournment

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**2018 Annual Meeting Proxy Statement**

Know All by these Present: That I \_\_\_\_\_

Do hereby appoint \_\_\_\_\_  
or (circle one)

Ariel Quinones-Rivera   Alyssa Biediger   Jessica Carroll   Ashley Quinones   Luke Greenwalt

As agent for me, and in my name and stead to vote as my Proxy at the 2018 Annual Meeting of the Foxmeadow Home Owners Association, Inc. according to the percentage of votes assigned to act for me on all matters that come before the membership at the meeting as fully as if I were present. This proxy applies only to the March 22<sup>nd</sup> 2018 Annual Meeting and may be revoked by me in writing at any time prior to the meeting.

\_\_\_\_\_  
Owner

\_\_\_\_\_  
Unit number(s)

\_\_\_\_\_  
Email Address

\_\_\_\_\_  
Current Phone Number

This proxy must be received by 5:30pm March 22<sup>nd</sup>, 2018.  
You can mail: BVPM 903 S. Texas Ave. College Station, TX 77840,  
Fax: 979-764-0508 or Email: [c21hoa@century21bcs.com](mailto:c21hoa@century21bcs.com)

BVP Management Inc. 903 S. Texas Avenue College Station, TX 77840  
Business (979)764-2500 Fax (979)764-0508

Minutes  
Fox Meadow HOA Board Meeting  
12/11/2017 5:30PM

Attendance:

PRESIDENT: Ariel Quinones, VP: Alyssa Biediger, SECRETARY: Ashley Quinones, TREASURER: Jessica Carroll, OFFICER: Luke Greenawalt

Introduction:

Meeting called by President.

Board:

The Board met to discuss annual meeting. And talked about hiring a property management company to deal with legal actions on delinquent accounts. It was also discussed that if a company were to take over the HOA then current Board Members would run again at the annual meeting.

Unfinished business:

Secretary is to set up meetings with different property management companies to find the best ones suited for our community.

Next Board meeting 01/18/2018

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12-11-17      sign-in      Board Meeting

Ashley Quinones  
Ariel Quinones-Rivera  
Luke Greenawalt  
Alyssa Biediger  
Jessica B. Carroll

**Attendance:**

**PRESIDENT:** Ariel Quinones, **VP:** Alyssa Biediger, **SECRETARY:** Ashley Quinones, **TREASURER:** Jessica Carroll, **BVPM Assistant:** Toni Myers

**Introduction:**

Meeting with Brazos Valley Property Management Assistant to discuss possible take-over of Fox Meadows HOA.

**Board:**

The Board meet with Toni Myers and talked over the options they had presented.

Option one: pay \$200 monthly with everything included.

Option two: as needed basis; \$50/hour -They would bill the Board

Option three: they would take a percentage of dues that are collected

The Board voted and approved to go with option one and BVPM waved the start up fee. The decided that BVPM will attend their annual meeting and be there to answer any questions the members might have.

Board set the annual meeting date for March 2, 2018

**Unfinished business:**

Toni Myers will email Ashley a contract for the President to sign.

Ashley will collect members information for BVPM

Toni and Ashley will meet on Monday 01/22/2018 to hand over documents and to help write the annual meeting letter to members.

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Sign in

Alyssa Biediger  
Jessica Carroll  
Ariel Quinones  
Ashley Quinones

## Cash Flow

BVP Management, Inc.

Properties: Fox Meadows HOA - Mariposa Court Bryan, TX 77805

Date Range: 01/01/2018 to 03/22/2018

Account Name	Selected Period	% of Selected Period	Fiscal Year To Date	% of Fiscal Year To Date
<b>Operating Income &amp; Expense</b>				
<b>Income</b>				
INCOME	4,169.99	74.87	4,169.99	74.87
Homeowners Association Dues	1,400.00	25.13	1,400.00	25.13
<b>Total Operating Income</b>	<b>5,569.99</b>	<b>100.00</b>	<b>5,569.99</b>	<b>100.00</b>
<b>Expense</b>				
Management Fee	400.00	7.18	400.00	7.18
<b>Total Operating Expense</b>	<b>400.00</b>	<b>7.18</b>	<b>400.00</b>	<b>7.18</b>
<b>NOI - Net Operating Income</b>	<b>5,169.99</b>	<b>92.82</b>	<b>5,169.99</b>	<b>92.82</b>
<b>Total Income</b>	<b>5,569.99</b>	<b>100.00</b>	<b>5,569.99</b>	<b>100.00</b>
<b>Total Expense</b>	<b>400.00</b>	<b>7.18</b>	<b>400.00</b>	<b>7.18</b>
<b>Net Income</b>	<b>5,169.99</b>	<b>92.82</b>	<b>5,169.99</b>	<b>92.82</b>
<b>Cash Flow</b>	<b>5,169.99</b>		<b>5,169.99</b>	
<b>Beginning Cash</b>	<b>0.00</b>		<b>0.00</b>	
<b>Beginning Cash + Cash Flow</b>	<b>5,169.99</b>		<b>5,169.99</b>	
<b>Actual Ending Cash</b>	<b>5,169.99</b>		<b>5,169.99</b>	

# Expense Distribution Report

Property: Fox Meadows HOA - Mariposa Court Bryan, TX 77805

Payee: All

Bill Date Range: 01/01/2018 - 03/22/2018

Reference	Bill Date	Property Name	Unit	Payee	Amount	Check #	Check Date	Description
6540 - Management Fee								
	02/09/2018	Fox Meadows HOA		BVP Management, Inc.	200.00	120939	02/13/2018	Management Fee for 02/2018
	03/01/2018	Fox Meadows HOA		BVP Management, Inc.	200.00	120985	03/01/2018	Management Fee for 03/2018
					400.00			
Total					400.00			

HOA DELIQUENCY

Properties: Fox Meadows HOA - Mariposa Court Bryan, TX 77805

Amount Owed In Account: All

Balance: Greater than 200.00

Unit	Name	30+	60+	90+
Fox Meadows HOA - Mariposa Court Bryan, TX 77805				
3728 Mariposa Court		858.00	0.00	0.00
3736 Mariposa Court		436.00	0.00	0.00
		1,294.00	0.00	0.00
Total		1,294.00	0.00	0.00

## FOX MEADOW HOA 2018 BUDGET

INCOME:	2017 Budget	2017 Actual	2018 Budget	
HOA Dues			4800	96%
Late Fees			0	
Violation Fees			0	
<b>TOTAL INCOME:</b>			<b>4800</b>	
<b>EXPENSES:</b>				
Lawn Maintenance		375	680	17 mows
Insurance		650	650	
Accounting			250	
Management Fees		250	2200	
Legal Fees			500	
Reserves			460	
Maintenance			0	
Misc expenses		273.75	0	
Postage		103.9	0	
<b>TOTAL EXPENSES:</b>		<b>1652.65</b>	<b>4740</b>	
<b>TOTAL SURPLUS:</b>			<b>60</b>	
 Beginning Operating Balance 02/01/2018		 4169.99		
Projected Operating Balance 12/31/2018		4229.99		
 Beginning Reserve Account 02/01/2018		 0		
Projected Reserve Account 12/31/2018		460		



Fox Meadow Budget Sheet  
From May 2016- June 2017

**Balance as of May 31, 2016**

**\$2,822.76**

General Liability for HOA \$650.00

BCR Management Fee \$250.00

BCR Postage Fee \$3.43

**June 30, 2016**

**\$1,919.33**

Booklet of checks for HOA \$16.32

Counter DEPOSIT -From BCR \$50.00

**July 29, 2016 (Community takes over HOA)**

**\$1,953.01**

P.O. Box for HOA \$17.00

County Clerk Office (Fine Schedule) \$29.00

Certified mail and postage for VIOLATIONS \$47.07

Counter DEPOSIT- Due + Late Fee \$236.00

**August 31, 2016**

**\$2,095.94**

Lawn care for Common Area \$75.00

P.O. Box renewal \$17.00

Mailbox 10 – Change of locks \$70.00

Counter DEPOSIT – Administrative transfer Fee \$30.00

**September 30, 2016**

**\$1,963.94**

Lawn care \$100.00

**October 31, 2016**

**\$1,863.94**

**November 30, 2016**

**\$1,863.94**

**December 30, 2016**

**\$1,863.94**

**January 31, 2017**

**\$1,863.94**

P.O. Box Renewal \$17.00

Stamps for HOA \$12.74

Certified mail for VIOLATIONS \$40.66

Counter DEPOSITS- HOA Dues (13 homeowners @ \$200)	\$2,600.00	
<b>February 28, 2017 (New Board Members)</b>		<b>\$4,393.54</b>
Lawn care	\$40.00	
CK #1012	\$18.00	
Counter DEPOSITS- HOA Dues (8 Homes @ \$200 + (1) late fee)	\$1,636.00	
<b>March 31, 2017</b>		<b>\$5,971.54</b>
Counter DEPOSIT- HOA Dues (1 home @ \$200 + late fee)	\$236.00	
<b>April 28, 2017</b>		<b>\$6,207.54</b>
Office supplies- New HOA Folders	\$43.43	
<b>May 2017</b>		<b>\$6,164.11</b>
P.O. Box (1-year fee)	\$64.00	
<b>June 2017</b>		<b>\$6,100.11</b>
Lawn Care Reimbursement to President-		
3/28, 4/11, 4/25, 5/8 @ \$40/each	\$160.00	

Fox Meadows HOA  
Mariposa Court  
Bryan, TX 77808

February 15<sup>th</sup> 2018

This letter is to inform you that your Fox Meadows Board of Directors has selected Brazos Valley Property Management, a Division of Century 21 to be the Property Managers for Fox Meadows.

BVPM assumes responsibility effective March 1<sup>st</sup> 2018.

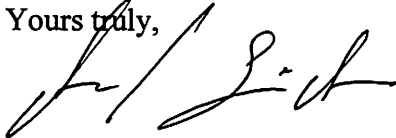
You will pay your 2018 HOA dues to Brazos Valley Property Management. See their enclosed welcome letter for details.

Enclosed with this mailing is BVP Management's contact information and transition process.

Please join the board in welcoming BVP Management's to Fox Meadows and do not hesitate to contact them with any concerns or issues that may arise.

Your Board of Directors is always available to assist you in resolving any issues and answering any questions you may wish to ask.

Yours truly,

A handwritten signature in black ink, appearing to read 'A. Quinones-Rivera', written over the 'Yours truly,' text.

Ariel Quinones-Rivera  
President  
Fox Meadows HOA



BVP Management Inc.  
903 S. Texas Avenue  
College Station, TX 77840  
Business (979)764-2500  
Fax (979)764-0508

February 15<sup>th</sup> 2018

Dear Fox Meadow Home Owners;

We are extremely excited that your HOA Board has chosen our company **BVP Management, Inc.**, located in College Station, Texas to be your new HOA Management company starting **March 1<sup>st</sup> 2018**. Our physical address is **903 S. Texas Ave, College Station, Texas 77840**.

There are several ways to contact us:

Office Phone Number: **979-764-2500**, ask for the **HOA Division**

Fax Number: **979-764-0508**

Email Address: [c21hoa@century21bcs.com](mailto:c21hoa@century21bcs.com)

Emergency Number after Normal Business Hours and weekends: **979-361-7980**

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\*We have a full staff in our HOA Division that will be more than happy to take care of your concerns and questions in a timely manner.

\*We are currently working on your website. We will use this website to post important documents, notices and other events for your HOA community. As soon as we complete the website, we will contact each owner with the website address.

\*As we move forward to complete the transition to BVP Management, Inc., we will be sending you additional information either by emails or letters around the **earlier part of March 2018**, on how to view and participate in our HOA Software that we will be using for your Home Owners Association.

**\*\*\*In March, we will be sending you an invitation through email to have your own owner's portal through our software program Appfolio. You will be able to keep up with your statement(s), set up to pay your dues on line either by bank to bank or by credit card.**

Included with this notification letter, is a letter from your HOA President, notifying you of the management change.

Once again, we would like to thank the Fox Meadow Home Owners Association for choosing us as your HOA Management Company and we look forward to working with you.

Terry Thigpin  
Property Manager  
BVP Management, Inc / Century 21 Beal, Inc.

BVP Management Inc. 903 S. Texas Avenue College Station, TX 77840  
Business (979)764-2500  
Fax (979)764-0508

Attached to and Forming Part of Policy Number  
BCN-0079116

Effective date of Endorsement  
05/01/2017

Issued to  
FOX MEADOWS HOMEOWNERS ASSOCIATION

## GENERAL CHANGE ENDORSEMENT

This endorsement modifies insurance provided under the following:

BLUE CHIP POLICY.  
FINANCIAL INSTITUTIONS BLUE CHIP POLICY  
HEALTH CARE INSTITUTIONS BLUE CHIP POLICY  
PUBLICLY TRADED COMPANY BLUE CHIP POLICY  
NON - PROFIT ORGANIZATION BLUE CHIP POLICY

Agent: Beal & Winn Insurance Agency, LLC

College Station, TX 77840-260

\_\_\_\_\_  
Authorized Representative Signature

	Additional Premium	Return Premium
Due at Endorsement Effective Date:	N/A	N/A

Subsequent Annual Installments are ☐ Increased ☐ Decreased by \$ \_\_\_\_\_.

Revised Annual Policy Premium is \$ \_\_\_\_\_.

It is agreed that the policy is amended as indicated by ☒

☐ Named Insured amended to:

☒ Principal Address amended to:

P.O. BOX 4374  
BRYAN, TX 77805

☐ Items added as specified below:

☐ Items deleted as specified below:

All other provisions of the policy remain unchanged except as herein expressly modified.

BC 414 09 09



## The Cincinnati Insurance Company

A Stock Insurance Company

Headquarters: 6200 S. Gilmore Road, Fairfield, OH 45014-5141

Mailing address: P.O. Box 145496, Cincinnati, OH 45250-5496

www.cinfin.com ■ 513-870-2000

Policy Number: BCN-0079116

Previous Policy Number: NEW

### NON-PROFIT ORGANIZATION BLUE CHIP POLICY DECLARATIONS

**NOTICE:** THIS INSURANCE COVERAGE CONTAINS CLAIMS MADE COVERAGE. THIS INSURANCE IS LIMITED TO "WRONGFUL ACTS" FOR WHICH "CLAIMS" ARE FIRST MADE AGAINST THE "POLICY INSURED" DURING THE "POLICY PERIOD". PLEASE READ AND REVIEW THIS INSURANCE CAREFULLY.

THE LIMITS OF INSURANCE AVAILABLE TO PAY DAMAGES, JUDGMENTS OR SETTLEMENTS SHALL BE REDUCED BY AMOUNTS INCURRED AS "DEFENSE COSTS".

COVERAGE UNDER ANY PARTICULAR COVERAGE PART IS NOT IN FORCE UNLESS THE CORRESPONDING SECTION OF THE DECLARATIONS HAS BEEN COMPLETED.

#### COVERAGE PARTS

- Part I Directors, Officers, Trustees and Organization Liability Coverage
- Part II Employment Practices Liability Coverage
- Part III Trustee and Fiduciary Liability and Employee Benefits Administration Coverage
- Part IV Internet Security Coverage
- Part V General Provisions Applicable to All Coverage Parts

#### General Declarations

Item 1. Named Insured:  
**FOX MEADOWS HOMEOWNERS ASSOCIATION**

Principal Address:  
700 UNIVERSITY OAKS BLVD  
COLLEGE STATION, TX 77840

Item 2. Total Annual Premium for the Policy (all Coverage Parts combined): \$ 750  
Premium is payable ☒ Annually Paid ☐ Prepaid (for Policy Period as follows):

Advance Premium \$ 750  
Each Subsequent Installment \$ 750

Item 3. Forms and endorsements applicable to this Policy at policy inception:  
BC 505 (07/14), BC 105 (07/14), IP 446 (08/01), IA 4338 (05/11), BC 4061 TX (07/14), IA 4332 TX (03/13), BC 456 (01/15), IA 4234 (01/15), BC 463 (07/14)

## Part I Declarations - Directors, Officers, Trustees and Organization Liability Coverage

Item 1. Insured Entity:

FOX MEADOWS HOMEOWNERS ASSOCIATION

Principal Address:

700 UNIVERSITY OAKS BLVD  
COLLEGE STATION, TX 77840

Item 2. Policy Period: from 12:01 a.m. 04/07/2016 to 12:01 a.m. 04/07/2019 local time at the address set forth in Item 1. of the General Declarations

Item 3. Limit of Insurance: \$ 1,000,000 in the aggregate

Optional Defense Outside Limits Coverage ☒ Applicable ☐ Not Applicable

Item 4. Deductible: \$ 1,000 each "claim"

Item 5. Retroactive Date: N/A

Item 6. Prior and/or Pending Date: 04/07/2016

Item 7. Continuity Date: 04/07/2016

Item 8. Total Annual Premium for this Coverage Part: \$ 750

## Part II Declarations - Employment Practices Liability Coverage

Item 1. Insured Entity:

COVERAGE NOT PURCHASED AS OF POLICY INCEPTION DATE.

Principal Address:

Item 2. Policy Period: from 12:01 a.m. \_\_\_\_\_ to 12:01 a.m. \_\_\_\_\_ local time at the address set forth in Item 1. of the General Declarations

Item 3. Limit of Insurance: \$ \_\_\_\_\_ in the aggregate

Optional Defense Outside Limits Coverage ☐ Applicable ☐ Not Applicable

Optional Third Party Wrongful Acts Coverage ☐ Applicable ☐ Not Applicable

Item 4. Deductible: \$ \_\_\_\_\_ each "claim"

Item 5. Retroactive Date: \_\_\_\_\_

Item 6. Prior and/or Pending Date: \_\_\_\_\_

Item 7. Continuity Date: \_\_\_\_\_

Item 8. Total Annual Premium for this Coverage Part: \$ \_\_\_\_\_

**Part III Declarations - Trustee and Fiduciary Liability and Employee Benefits Administration Coverage**

Item 1. Insured Entity:

COVERAGE NOT PURCHASED AS OF POLICY INCEPTION DATE.

Principal Address:

Item 2. Policy Period: from 12:01 a.m. \_\_\_\_\_ to 12:01 a.m. \_\_\_\_\_ local time at the address set forth in Item 1. of the General Declarations

Item 3. Limit of Insurance: \$ \_\_\_\_\_ in the aggregate

Optional Defense Outside Limits Coverage ☐ Applicable ☐ Not Applicable

Item 4. Deductible: \$ \_\_\_\_\_ each "claim"

Item 5. Retroactive Date: \_\_\_\_\_

Item 6. Prior and/or Pending Date: \_\_\_\_\_

Item 7. Continuity Date: \_\_\_\_\_

Item 8. Total Annual Premium for this Coverage Part: \$ \_\_\_\_\_

**Part IV Declarations - Internet Security Coverage**

Item 1. Insured Entity:

COVERAGE NOT PURCHASED AS OF POLICY INCEPTION DATE.

Principal Address:

Item 2. Policy Period: from 12:01 a.m. \_\_\_\_\_ to 12:01 a.m. \_\_\_\_\_ local time at the address set forth in Item 1. of the General Declarations

Item 3. Limit of Insurance: \$ \_\_\_\_\_ in the aggregate

Item 4. Deductible: \$ \_\_\_\_\_ each "claim"

Item 5. Retroactive Date: \_\_\_\_\_

Item 6. Prior and/or Pending Date: \_\_\_\_\_

Item 7. Continuity Date: \_\_\_\_\_

Item 8. Total Annual Premium for this Coverage Part: \$ \_\_\_\_\_

These Declarations together with the completed "proposal", all applicable Coverage Parts, the General Provisions and any accompanying endorsements shall constitute the contract between the "policy insureds" and The Cincinnati Insurance Company.

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Countersigned \_\_\_\_\_ By \_\_\_\_\_  
(Date) (Authorized Representative)



# NON-PROFIT ORGANIZATION BLUE CHIP POLICY

## PART I

### DIRECTORS, OFFICERS, TRUSTEES AND ORGANIZATION LIABILITY COVERAGE

In consideration of the payment of the premium, in reliance on all statements in the "proposal" and all other information provided to us and subject to all the provisions of this policy, including the General Declarations, the Part I Declarations and Coverage Part V General Provisions, we and the "insureds" agree as set forth below.

#### SECTION I - INSURING AGREEMENT

We will pay on behalf of the "insureds" all "loss" which they shall be legally obligated to pay resulting from any "claim" first made during the "policy period", or any "extended reporting period" included in or endorsed to the policy, for a "wrongful act".

We will have the right and duty to defend the "insureds" against any such "claim".

#### SECTION II - EXCLUSIONS

We are not liable to pay, indemnify or defend any "claim":

- A. For any actual or alleged violation of the Employee Retirement Income Security Act of 1974 as amended or any rules, regulations or orders promulgated thereunder or any similar provisions of any federal, state or local statutory or common law in connection with any pension or welfare plan established for the benefit of employees of the "organization"; or
- B. Brought or maintained by, on behalf of or at the behest of any of the "insureds" in any capacity and regardless of collusion; provided, however, this exclusion does not apply to:
  1. Any "claim" brought or maintained as a derivative action on behalf of the "organization" or any "subsidiary" by one or more persons who are not "directors, officers and trustees" or employees and who bring and maintain the "claim" without the solicitation, assistance or participation of any of the "insureds"; or
  2. Any "claim" brought or maintained by any of the "insureds" for contribution or indemnity, if such "claim" for contribution or indemnity directly results from another "claim" covered by the Coverage Part; or
  3. Any "claim" brought or maintained by an examiner, trustee, receiver, liquidator, rehabilitator, bankruptcy trustee or similar official, or creditors committee of the "organization" in connection with a bankruptcy proceeding of the "organization" or any "subsidiary"; or
  4. A "claim" brought or maintained by "directors, officers and trustees" of the "organization" or any "subsidiary" who has not served as "directors, officers and trustees" of the "organization" or any "subsidiary" for at least a one year period prior to the date the "claim" is first made and who bring and maintain the "claim" without the solicitation, assistance or participation of any "directors, officers and trustees" who has served as "directors, officers and trustees" within such one year period; or
  5. Any "claim" brought or maintained by "employees, volunteers and members" who are not past or present "directors, officers and trustees" of the "organization" if such "claim" is brought and maintained without any active assistance or participation of, or solicitation by, any "directors, officers and trustees"; or
  6. Any "claim" brought by a whistleblower pursuant to any federal, state, or local statutory or common law; or
- C. Based upon, arising out of, or in consequence of any "wrongful act" in the discharge of the duties of any of the "directors, officers and trustees" or employees as a director, officer, trustee, employee, volunteer or member of any entity other than the "organization" or any "subsidiary", even if directed or requested to serve such other entity by the "organization" or any "subsidiary"; provided, however, this exclusion shall not apply to the extent:
  1. Such "claim" is based on the service of any of the "directors, officers and trustees" or employees as a director, officer, governor, trustee or in an executive position equivalent to the foregoing in any "outside organization" if the service is performed at the direction of the "organization" or any "subsidiary"; and

2. The "loss" resulting from such "claim" is not indemnified by the "outside organization" or any of its insurers; or

D. Based upon, arising out of, or in consequence of any actual or alleged violation of:

1. The Securities Act of 1933 as amended or the Securities Exchange Act of 1934 as amended; or
2. Any state Blue Sky or other state securities law applicable to publicly held shares; or
3. Any rule, regulation or order issued pursuant to any of the statutes set forth in Exclusions II.D.1. or II.D.2. of this Coverage Part, or any federal or state common law concerning such acts, laws, rules, regulations or orders; or

E. Based upon, arising out of, or in consequence of a "claim" for a "wrongful act" as defined in Coverage Part II, whether or not such Coverage Part is purchased; or

F. Based upon, arising out of, or in consequence of a "wrongful act" as defined in Coverage Part IV, whether or not such Coverage Part is purchased.

With respect to determining the applicability of the above Exclusions, no "wrongful act" or knowledge possessed by any one of the "insureds" shall be imputed to any other "insured" to determine if coverage is available, except the facts pertaining to and knowledge possessed by any past, present or future Executive Director, Chief Financial Officer or Chief Executive Officer of the "organization" or any "subsidiary" shall be imputed to the "organization" or any "subsidiary" to determine if coverage is available.

### SECTION III - LIMIT OF INSURANCE AND DEDUCTIBLES

A. We will pay 100% of "loss" in excess of the applicable Deductible amount set forth in the Part I Declarations up to the Limit of Insurance set forth in the Part I Declarations.

B. The Deductible shall apply only to, and be paid by, the "organization". Any "loss" paid by us within the Deductible shall be reimbursed by the "organization" within 30 days of our written request for such reimbursement.

C. "Defense costs" shall be part of and not in addition to the Limit of Insurance set forth in the Part I Declarations. "Defense costs" we pay shall reduce the Limit of Insurance. "Defense costs" paid by the "organization" shall be applied against the Deductible.

D. Our maximum aggregate liability for all "loss" resulting from all "claims" under this Coverage Part shall be the Limit of Insurance set forth in the Part I Declarations.

E. It is agreed that:

1. If a "loss" from any "claim" is payable, but such payment would exceed the remaining applicable Limit of Insurance as set forth in Part I Declarations, we will first pay the unpaid portion of such "loss" on behalf of the "directors, officers and trustees"; then to the extent that any amount of the applicable Limit of Insurance shall remain available, we will pay such "loss" on behalf of the "organization" or any "subsidiary".
2. Upon written request of the President or Chairman of the Board of the "insured entity", we shall withhold payment of a covered "loss" on behalf of the "organization" or any "subsidiary" until the President or Chairman of the Board of the "insured entity" directs us to pay such covered "loss". Such request shall not delay any payment on behalf of the "directors, officers and trustees".

### SECTION IV - DEFINITIONS

Where set forth in quotes in this Coverage Part, whether in singular or in plural, the following terms shall have the meanings indicated.

A. "Claim" means:

1. A written demand for monetary damages or non-monetary relief; or
2. A civil proceeding commenced by filing of a complaint or similar pleading; or
3. A formal administrative or regulatory proceeding commenced by a filing of charges, formal investigative order or similar document; or
4. An arbitration, mediation or similar alternative dispute resolution proceeding in which monetary damages are sought if the "insured":
  - a. Is required to participate in such proceeding; or

- b. Agrees to participate in such proceeding with our written consent, such consent not to be unreasonably withheld; or
  - 5. A criminal proceeding commenced by the return of an indictment against;
    - a. Any "organization", "subsidiary" or "directors, officers or trustees"; or
    - b. Any "employees, volunteers or members". The maximum Limit of Insurance for all such criminal proceedings against any "employees, volunteers or members" in the aggregate shall be **\$100,000**. This sublimit shall be part of and not in addition to the Limit of Insurance set forth in Part I Declarations and does not increase our maximum liability under this Coverage Part; or
  - 6. A written request to toll or waive a statute of limitations related to a potential "claim" described in Definitions A.1 through A.5. above;
- against any "insured", including any appeal therefrom.
- B. "Directors, officers and trustees" means:
    - 1. All persons who were, now are, or shall become a duly elected or appointed director, officer or trustee of the "organization" or a "subsidiary"; and
    - 2. The lawful spouse or "domestic partner" of a director, officer or trustee, but only to the extent such person is a party to any "claim" solely in such person's capacity as a spouse or "domestic partner" of a director, officer or trustee of the "organization" or a "subsidiary" and only if the "claim" seeks damages recoverable from marital community property, property jointly held by the director, officer or trustee and the spouse or "domestic partner", or property transferred from the director, officer or trustee to the spouse or "domestic partner".
  - C. "Disqualified person" means a "disqualified person" as that term is defined in Section 4958 of the Internal Revenue Code of 1986, as amended.
  - D. "Employees, volunteers and members" means:
    - 1. Any person who was, now is or shall become an employee or committee member, whether or not they are, were or shall be salaried, of the "organization" or a "subsidiary"; and
    - 2. Any person who was, now is or shall become a member or volunteer of the "organization" or a "subsidiary" while acting on behalf of the "organization" or a "subsidiary" in a voluntary capacity at the direction of the board of directors, or board of trustees.
  - E. "Excess benefit transaction" means an "excess benefit transaction" as that term is defined in Section 4958 of the Internal Revenue Code of 1986, as amended.
  - F. "Excess benefit transaction tax" means any excise tax imposed by the Internal Revenue Service on any "insured" who is an "organizational manager" as a result of such "insured's" participation in an "excess benefit transaction".
  - G. "Insureds" means:
    - 1. The "organization";
    - 2. Any "subsidiary";
    - 3. "Directors, officers and trustees"; and
    - 4. "Employees, volunteers and members";

including their estates, heirs, legal representatives or assigns in the event of their death, incapacity or bankruptcy.
  - H. "Loss" means "defense costs" and the total amount of monetary damages which the "insured" becomes legally obligated to pay on account of any "claim" for a "wrongful act" with respect to which coverage hereunder applies, including damages, judgments, settlements, prejudgment and postjudgment interest and punitive or exemplary damages or the multiplied portion of any multiplied damage award if insurable under the applicable law most favorable to the insurability of punitive, exemplary or multiplied damages.
- "Loss" shall also include:
- Any "excess benefit transaction tax" an "insured" is obligated to pay as a result of a "claim". The maximum Limit of Insurance in the aggregate per each "organizational manager" for any "excess benefit transaction tax" shall be \$20,000. This sublimit shall be part of and not in addition to the Limit of Insurance set forth in Part I Declarations and does not increase our maximum aggregate liability under this Coverage Part. The

"excess benefit transaction tax" shall not include the 25% excise tax assessed against any "disqualified person" or the 200% tax assessed for failure to correct an "excess benefit transaction".

"Loss" shall not include:

1. Taxes, criminal or civil fines or penalties imposed by law, except as noted above; or
  2. Any restitution, disgorgement or similar sums; or
  3. Any matter deemed uninsurable under the law pursuant to which this Coverage Part shall be construed.
- I. "Organization" means the entity listed as the "Insured Entity" under Item 1, of the Part I Declarations and any such entity in its capacity as a debtor in possession, as such term is used in Chapter 11 of the United States of America Bankruptcy Code, as amended.
- J. "Organizational manager" means an "organizational manager" as that term is defined in Section 4958 of the Internal Revenue Code of 1986, as amended.
- K. "Outside organization" means any non-profit corporation, community chest, fund or foundation other than the "organization", which is described in Section 501(c)(2), (3), (4), (6), (7), (8), (10), (19), or 501(d) of the Internal Revenue Code of 1985, as amended, and is exempt from federal income taxation.
- L. "Subsidiary" means any entity in which the "insured entity" owns, directly or indirectly, more than 50% of the outstanding securities or voting rights representing the right to vote for election of directors and is disclosed in the "proposal" and any such entity in its capacity as a debtor in possession, as such term is used in Chapter 11 of the United States of America Bankruptcy Code, as amended.
- M. "Wrongful act" means any actual or alleged error, misstatement, misleading statement, act, omission, neglect or breach of duty committed, attempted or allegedly committed or attempted on or after the Retroactive Date, if any, set forth in the Part I Declarations and prior to the end of the "policy period" by:
1. Any of the "directors, officers and trustees" or "employees, volunteers and members" in the discharge of their duties solely in their capacity as a director, officer, trustee or employee of the "organization" or any "subsidiary" or member or volunteer of the "organization" or any "subsidiary" while acting in a voluntary capacity at the direction of the board of directors or board of trustees; or
  2. Any of the "directors, officers and trustees" or "employees, volunteers and members" of the "organization" in the discharge of their duties solely in their capacity as a director, officer, governor, trustee or in an executive position equivalent to the foregoing in any "outside organization" if the service is performed at the direction of the "organization" or any "subsidiary" or with the consent and knowledge of the "organization" or any "subsidiary"; or
  3. Any of the "directors, officers and trustees" or "employees, volunteers and members" solely by reason of their status as such; or
  4. The "organization" or any "subsidiary".

**PART II**  
**EMPLOYMENT PRACTICES LIABILITY COVERAGE**

In consideration of the payment of the premium, in reliance on all statements in the "proposal" and all other information provided to us and subject to all provisions of this policy, including the General Declarations, the Part II Declarations and the Coverage Part V General Provisions, we and the "insureds" agree as set forth below.

**SECTION I - INSURING AGREEMENTS**

- A. We will pay on behalf of the "insureds" all "loss" which they shall be legally obligated to pay resulting from any "claim" first made during the "policy period", or any "extended reporting period" included in or endorsed to the policy, for a "wrongful act".
- B. If Optional Third Party Wrongful Acts Coverage is purchased, as set forth in Part II Declarations, we will pay on behalf of the "insureds" all "loss" which they shall be legally obligated to pay resulting from any "claim" first made during the "policy period", or any "extended reporting period" included in or endorsed to the policy, for a "wrongful act".

We will have the right and duty to defend the "insureds" against any such "claim".

**SECTION II - EXCLUSIONS**

This insurance does not apply to:

- A. "Loss" incurred by the "insured" in making physical changes, modifications, alterations, or improvements as part of an accommodation pursuant to the Americans With Disabilities Act or similar provisions of any federal, state or local statutory or common law; provided, however, this exclusion does not apply to "defense costs"; or
- B. Any "claim" based upon, arising out of, or in consequence of the:
1. Employee Retirement Income Security Act of 1974; or
  2. Fair Labor Standards Act (except the Equal Pay Act), except we shall reimburse the "insureds" for up to a maximum payment of \$100,000 in "defense costs" that exceed the Deductible amount as set forth in the Part II Declarations. Any payment of "defense costs" shall be part of and not in addition to the Limit of Insurance set forth in the Part II Declarations and such payment reduces the Limit of Insurance; or
  3. National Labor Relations Act (including the Labor Management Relations Act of 1947); or
  4. Worker Adjustment and Retraining Notification Act; or
  5. Consolidated Omnibus Budget Reconciliation Act of 1985; or
  6. Occupational Safety and Health Act; or
- any amendments to or rules, regulations or orders promulgated pursuant to these laws, or similar provisions of any federal, state, or local statutory or common law. However, this exclusion shall not apply to a "claim" for retaliatory treatment of a person with respect to actual or threatened disclosures by any person of any actual or alleged violation of the Employee Retirement Income Security Act, the Fair Labor Standards Act, the National Labor Relations Act (including the Labor Management Relations Act of 1947), the Worker Adjustment and Retraining Notification Act, the Consolidated Omnibus Budget Reconciliation Act or the Occupational Safety and Health Act by any "insured"; or
- C. Any "claim" based upon, arising out of, or in consequence of any actual or alleged obligation of any "insured" under any workers' compensation, unemployment insurance, social security, disability benefits or similar law, or derivative actions arising out of any of these. However, this exclusion shall not apply to any "claim" for retaliatory treatment by an "insured" due to the exercise of rights granted under any such law; or
- D. Any "claim" based upon, arising out of, or in consequence of any actual or alleged "wrongful act" committed, attempted, or allegedly committed or attempted concurrent with or after a lockout, strike, picket line, replacement or other similar actions resulting from labor disputes or labor negotiations; or
- E. Any "claim" based upon, arising out of, or in consequence of any actual or alleged labor or grievance arbitration or other proceeding pursuant to a collective bargaining agreement; or
- F. Any "claim" based upon, arising out of, or in consequence of a "wrongful act" as defined in Coverage Part IV, whether or not such Coverage Part is purchased.

With respect to determining the applicability of the above Exclusions, no "wrongful act" or knowledge possessed by any one of the "insureds" shall be imputed to any other "insured" to determine if coverage is available, except that facts pertaining to and knowledge possessed by any past, present or future Executive Director, Chief Financial Officer or Chief Executive Officer of the "organization" or any "subsidiary" shall be imputed to the "organization" or any "subsidiary" to determine if coverage is available.

### **SECTION III - LIMIT OF INSURANCE AND DEDUCTIBLE**

- A.** The Limits of Insurance shown in the Part II Declarations and the rules below fix the most we will pay regardless of the number of:
1. "Insureds" under this Coverage Part;
  2. "Claims" made or suits brought on account of "wrongful acts" or otherwise; or
  3. Persons or organizations making "claims" or bringing suits.
- B.** Our liability shall apply only to that part of each covered "loss" which is excess of the Deductible amount specified in the Part II Declarations and such Deductible amount shall be borne by the "insureds".
- C.** "Defense costs" incurred by us or by the "insured" with our written consent are part of and not in addition to the Limit of Insurance set forth in the Part II Declarations. Our payment of "defense costs" reduces the Limit of Insurance.
- D.** Our maximum aggregate liability for all "loss" resulting from all "claims" under this Coverage Part shall be the Limit of Insurance set forth in the Part II Declarations.

### **SECTION IV - SUPPLEMENTARY PAYMENTS**

We will pay with respect to any "claim" we defend:

- A.** The cost of any appeal bond, attachment bond, or any similar bond, but only for bond amounts within the applicable Limit of Insurance; provided, however, we do not have to apply for or furnish these bonds; and
- B.** All reasonable expenses incurred by the "insured" at our request to assist us in the investigation or defense of the "claim", including actual loss of earnings up to \$250 a day because of time off from work.

These payments will not reduce the Limits of Insurance.

### **SECTION V - DEFINITIONS**

Where set forth in quotes in this Coverage Part, whether in singular or in plural, the following terms shall have the meanings indicated.

- A.** "Benefits" means perquisites, fringe benefits, payments in connection with an "employee" benefit plan and any other payment, other than salary or wages, to or for the benefit of an "employee" arising out of the employment relationship.
- B.** "Claim" means a written demand for monetary damage or non-monetary relief; a civil or administrative proceeding commenced by filing of a complaint, charge or similar pleading; an arbitration, mediation or similar alternative dispute resolution proceeding if the "insured" is required to participate in such proceeding or agrees to participate in such proceeding with our written consent, such consent not to be unreasonably withheld, or a written request to toll or waive a statute of limitations relating to a potential "claim" described above which is brought by or on behalf of:
1. For the purposes of Insuring Agreement I.A., any past, present or prospective "employee(s)" of the "insured entity" against any of the "insureds", including any appeal therefrom, for:
    - a. Wrongful discharge or termination of employment, including constructive discharge; or
    - b. Breach of any oral, written or implied employment contract or quasi-employment contract except for that part of any express contract of employment or an express obligation to make payments in the event of the termination of employment; or
    - c. Employment related misrepresentation; or
    - d. Violation of any federal, state or local law that concerns employment discrimination;
- (1) Including:
- (a) Sexual harassment involving unwelcome sexual advances, requests for sexual favors or other conduct of a sexual nature; or

(b) Workplace bullying or workplace harassment of a non-sexual nature;

(2) That;

(a) Are made a condition of employment; or

(b) Are used as a basis for employment decisions; or

(c) Create a work environment that is intimidating, offensive, hostile or interferes with performance; or

e. Wrongful failure to employ or promote; or

f. Wrongful discipline; or

g. Wrongful deprivation of a career opportunity; or

h. Negligent hiring, supervision, promotion or retention; or

i. Negligent evaluation; or

j. Employment related "personal injury"; or

k. Wrongful failure to grant tenure; or

l. Employment related wrongful infliction of emotional distress; or

m. Violation of the Family Medical Leave Act; or

n. Wrongful retaliation; or

o. Wrongful denial of training, denial or deprivation of seniority or evaluation; or

p. Failure to adopt, create, provide or enforce adequate workplace or employment practices and procedures;

including any actual or alleged assault, battery or loss of consortium in connection with subparagraphs a. through p. above.

2. For the purposes of Insuring Agreement I.B., a "third party" against any of the "insureds" for:

a. Discrimination by any "insured" against a "third party" based upon a "third party's" race, color, religion, creed, age, sex, national origin, disability, pregnancy, sexual orientation or preference, HIV status, Vietnam Veteran status or any other status that is protected pursuant to any federal, state or local statute or ordinance; or

b. Sexual or other harassment by any "insured", including unwelcome sexual advances, requests for sexual favors or other conduct of a sexual nature against a "third party" which violates the civil rights of the "third party".

C. "Directors, officers and trustees" means:

1. All persons who were, now are, or shall become a duly elected or appointed director, officer or trustee of the "organization" or a "subsidiary", but only for acts with respect to their duties as directors, officers or trustees of the "organization" or any "subsidiary"; and

2. The lawful spouse or "domestic partner" of a director, officer or trustee, but only to the extent such person is a party to any "claim" solely in such person's capacity as a spouse or "domestic partner" of a director, officer or trustee of the "organization" or a "subsidiary" and only if the "claim" seeks damages recoverable from marital community property, property jointly held by the director, officer or trustee and the spouse or "domestic partner", or property transferred from the director, officer or trustee to the spouse or "domestic partner".

D. "Employee" includes, but is not limited to, full-time, part-time, seasonal, volunteer, contingent or leased workers as determined by the federal, state or local law. "Employee" does not include independent contractors as determined by federal, state or local law.

E. "Employees, volunteers and members" means:

1. Any person who was, now is or shall become an "employee", or committee member, whether or not they were, are or shall be salaried, of the "organization" or a "subsidiary", but only for acts within the scope of their employment with the "organization" or a "subsidiary" or while performing duties related to the conduct of the business of the "organization" or any "subsidiary"; and

2. Any person who was, now is or shall become a member or volunteer of the "organization" or a "subsidiary" while acting on behalf of the "organization" or a "subsidiary" in a voluntary capacity at the direction of the board of directors, or board of trustees.

F. "Insureds" means:

1. The "organization";
2. Any "subsidiary";
3. "Directors, officers and trustees";
4. "Employees, volunteers and members"; and
5. Any natural person who is an independent contractor as determined by federal, state or local law, but only while acting in the capacity as such for the "insured entity" or any "subsidiary" pursuant to an express written agreement between the independent contractor, or any entity on behalf of the independent contractor, and the "insured entity" or "subsidiary" and only if the "insured entity" or "subsidiary" agrees in writing to provide indemnification to such independent contractor; provided, however, any coverage under this Coverage Part for any such independent contractor shall be excess of any indemnification or insurance otherwise available to such independent contractor from any other source;

including their estates, heirs, legal representatives or assigns in the event of their death, incapacity or bankruptcy.

G. "Loss" means "defense costs" and the total amount of monetary damages which the "insured" becomes legally obligated to pay on account of any "claim" for a "wrongful act" with respect to which coverage hereunder applies, including damages (including back pay and front pay), judgments, settlements, prejudgment and postjudgment interest and punitive or exemplary damages or the multiplied portion of any multiplied damage award if insurable under the applicable law most favorable to the insurability of punitive, exemplary or multiplied damages.

Loss shall not include any amount for which an "insured" is not financially liable, compensation earned in the course of employment but not paid by an "insured" or matters which are deemed uninsurable under the law pursuant to which this Coverage Part shall be construed.

"Loss" shall not include, (other than "defense costs"):

1. "Benefits" or the equivalent value, however, this provision does not apply to "loss" resulting solely from wrongful termination of employment; or
2. Amounts, which arise out of, are based upon, or are attributable to the employment reinstatement of the claimant by an "insured" or the continued employment of the claimant; or
3. Future compensation, including salary or "benefits" for an "employee", if the "insured" is ordered in accordance with a judgment or other final adjudication but fails to reinstate the claimant as an "employee"; or
4. Civil or criminal fines or penalties imposed by law, liquidated damages, payroll or other taxes, or damages, penalties or types of relief deemed uninsurable under applicable law; or
5. Future compensation, including salary or "benefits" for an "employee" who has been or will be hired, promoted or reinstated to employment pursuant to a settlement, court order, judgment, award or other resolution of a "claim"; or
6. Medical, pension, disability, life insurance, stock option or other "employee" type "benefit".

H. "Organization" means the entity listed as the Insured Entity under Item 1. of the Part II Declarations and any such entity in its capacity as a debtor in possession, as such term is used in Chapter 11 of the United States of America Bankruptcy Code, as amended.

I. "Personal injury" means injury, other than bodily injury, arising out of one or more of the following offenses:

1. False arrest, detention or imprisonment; or
2. Oral or written publication of material that libels, slanders or defames a past, present or prospective "employee"; or
3. Invasion of a past, present or prospective "employee's" right of privacy; or
4. Malicious prosecution; or
5. Abuse of process.



- J. "Subsidiary" means any entity in which the "insured entity" owns, directly or indirectly, more than 50% of the outstanding securities or voting rights representing the right to vote for election of directors and is disclosed in the "proposal" and any such entity in its capacity as a debtor in possession, as such term is used in Chapter 11 of the United States of America Bankruptcy Code, as amended.
- K. "Third party" means any natural person who is not an "employee" of the "insured entity".
- L. "Wrongful act" means any actual or alleged error, misstatement, misleading statement, act, omission, neglect or breach of duty committed, attempted or allegedly committed or attempted on or after the Retroactive Date, if any, set forth in the Part II Declarations and prior to the end of the "policy period" by an "insured" or any person for whose acts the "insured" is legally liable.

### **PART III**

#### **TRUSTEE AND FIDUCIARY LIABILITY AND EMPLOYEE BENEFITS ADMINISTRATION COVERAGE**

In consideration of the payment of the premium, in reliance on all statements in the "proposal" and all other information provided to us and subject to all the provisions of this policy, including the General Declarations, the Part III Declarations and the Coverage Part V General Provisions, we and the "insureds" agree as set forth below.

#### **SECTION I - INSURING AGREEMENTS**

- A. We will pay on behalf of the "insureds" all "loss" which they shall be legally obligated to pay resulting from any "claim" first made during the "policy period", or any "extended reporting period" included in or endorsed to the policy, for a "wrongful act". We will have the right and duty to defend the "insureds" against any such "claim".
- B. We will pay on behalf of the "insureds" the "settlement fees" and "defense costs" in an amount not to exceed \$100,000 with respect to a "settlement program notice"; provided we shall pay no "settlement fees" to satisfy or settle any investigation or "claim" about which any "insureds" first received notice prior to the inception date set forth in the Declarations or subsequent to the expiration date set forth in the Declarations or any effective date of cancellation. Such amount shall be subject to the Deductible amount set forth in the Part III Declarations and shall be part of and not in addition to the applicable Limit of Insurance set forth in the Part III Declarations.

#### **SECTION II - EXCLUSIONS**

- A. We are not liable to pay, indemnify or defend any "claim":
  - 1. Based upon, arising out of, or in consequence of any actual or alleged obligation of any "insured" under any workers' compensation, unemployment insurance, social security, disability benefits or similar law; or
  - 2. Based upon, arising out of, or in consequence of any actual or alleged:
    - a. Calculation, timing or manner of payment of minimum wages, prevailing wage rates, overtime pay or other compensation alleged to be due and owing; or
    - b. Classification of any organization or person for wage and hour purposes, garnishments, withholdings or other deductions from wages; or
    - c. Child labor laws, pay equity or comparable worth, or any similar policies or practices; or
  - 3. Based upon, arising out of, or in consequence of the:
    - a. Fair Labor Standards Act; or
    - b. National Labor Relations Act (including the Labor Management Relations Act of 1947); or
    - c. Worker Adjustment and Retraining Notification Act; or
    - d. Occupational Safety and Health Act; or
  - 4. Based upon, arising out of, or in consequence of a "claim" for a "wrongful act" as defined in Coverage Part II unless the "claim" is for discrimination in violation of "ERISA" as amended; or
  - 5. Based upon, arising out of, or in consequence of the service of any of the "insureds" as a fiduciary or administrator of any plan other than a sponsored "employee benefit plan(s)" or the status of any of the "insureds" as a fiduciary of such other plan(s).
- B. We are not liable to pay for or indemnify that part of "loss" other than "defense costs":
  - 1. Based upon, arising out of, or in consequence of the failure to collect contributions owed by an employer to the sponsored "employee benefit plan(s)" unless such failure is due to the negligence of any of the "insureds"; or
  - 2. Which constitutes the return or reversion of any contributions or assets of the sponsored "employee benefit plan(s)" to an employer.

With respect to determining the applicability of the above Exclusions, no "wrongful act" or knowledge possessed by any one of the "insureds" shall be imputed to any other "insureds" to determine if coverage is available, except for facts pertaining to and knowledge possessed by any past, present or future Executive Director, Chief Financial Officer or Chief Executive Officer of the "sponsor" shall be imputed to any "sponsor" to determine if coverage is available.

### SECTION III - LIMIT OF INSURANCE AND DEDUCTIBLE

- A. We will pay 100% of "loss" in excess of the Deductible amount set forth in the Part III Declarations up to the Limit of Insurance set forth in the Part III Declarations.
- B. The Deductible amount set forth in the Part III Declarations shall apply to each and every "claim". The Deductible shall be paid by the "insureds".
- C. "Defense costs" shall be part of and not in addition to the Limit of Insurance set forth in the Part III Declarations. "Defense costs" we pay shall reduce the Limit of Insurance. "Defense costs" paid by the "insureds" shall be applied against the Deductible.
- D. Our maximum aggregate liability for all "loss" resulting from all "claims" under this Coverage Part shall be the Limit of Insurance set forth in the Part III Declarations.

### SECTION IV - DEFINITIONS

Where set forth in quotes in this Coverage Part, whether in singular or in plural, the following terms shall have the meanings indicated.

A. "Administration" means:

- 1. Giving counsel, advice or notice to participants or beneficiaries with respect to the sponsored "employee benefit plan(s)";
- 2. Interpreting the sponsored "employee benefit plan(s)";
- 3. Handling records of the sponsored employee benefit plan(s); and
- 4. Effecting enrollment, termination, or cancellation of participants or beneficiaries under the sponsored "employee benefit plan(s)".

B. "Claim" means:

- 1. A written demand for monetary damages or non-monetary relief; or
- 2. A civil proceeding commenced by filing of a complaint or similar pleading; or
- 3. A formal administrative or regulatory proceeding commenced by a filing of charges, formal investigative order or similar document; or
- 4. An arbitration, mediation or similar alternative dispute resolution proceeding in which monetary damages are sought if the "insured":
  - a. Is required to participate in such proceeding; or
  - b. Agrees to participate in such proceeding with our written consent, such consent not to be unreasonably withheld; or
- 5. A criminal proceeding commenced by the return of an indictment; or
- 6. A written request to toll or waive a statute of limitations relating to a potential "claim" described in Definitions B.1. through B.5. above;

against any "insured", including any appeal therefrom.

"Claim" shall not include any internal claim or appeal process provided for in the sponsored "employee benefit plan(s)" documents or otherwise required by law.

- C. "Employee benefit plan" means any "employee pension plan" or "employee welfare plan" sponsored solely by the "sponsor" exclusively for the benefit of employees of the "sponsor" including benefits provided under workers' compensation insurance, unemployment insurance, Social Security, disability insurance, and the Consolidated Omnibus Budget Reconciliation Act of 1985 and amendments thereto. "Employee benefit plan" does not include any multiemployer plan (as defined by "ERISA").
- D. "Employee pension plan" means any plan as defined in Section 3(2) of "ERISA" or any similar or related federal, state or local law or regulation.
- F. "ERISA" means the Employee Retirement Income Security Act of 1974, including amendments thereto and regulations promulgated thereunder.
- G. "Employee welfare plan" means any plan as defined in Section 3(1) of "ERISA" or any similar or related federal, state or local law or regulation.

H. "Insureds" means:

1. The sponsored "employee benefit plan(s)"; and
2. The "sponsor" and any such entity in its capacity as a debtor in possession, as such term is used in Chapter 11 of the United States of America Bankruptcy Code, as amended; and
3. Any past, present, or future director, officer, trustee, employee or management committee member of the "sponsor" or of the sponsored "employee benefit plan(s)" while acting in their capacities as such; and
4. Any individual trustee named in the "proposal" while acting in a fiduciary capacity for the sponsored "employee benefit plan(s)" provided such individual trustee is not prohibited by law from acting as a fiduciary and is not a firm, corporation, or partnership; and
5. The lawful spouse or "domestic partner" of a director, officer, trustee or employee, but only to the extent such person is a party to any "claim" solely in such person's capacity as a spouse or "domestic partner" of a director, officer, trustee or employee of the "sponsor" and only if the "claim" seeks damages recoverable from marital community, property jointly held by the director, officer, trustee or employee and the spouse or "domestic partner", or property transferred from the director, officer, trustee or employee to the spouse or "domestic partner";

including their estates, heirs, legal representatives or assigns in the event of their death, incapacity or bankruptcy.

- I. "Loss" means "defense costs" and the total amount of monetary damages which the "insured" becomes legally obligated to pay on account of any "claim" for a "wrongful act" with respect to which coverage hereunder applies, including damages, judgments, settlements prejudgment and post judgment interest, and punitive or exemplary damages or the multiplied or the multiplied portion of any multiplied damage award if insurable under the applicable law most favorable to the insurability of punitive, exemplary or multiplied damages.

"Loss" shall not include:

1. Taxes, civil or criminal fines, sanctions, liquidated damages, payroll or penalties except for:
  - a. The 5% or less or 20% or less civil penalties imposed upon any of the "insureds" as a fiduciary under Sections 502(i) or 502(l), respectively, of "ERISA"; or
  - b. Civil money penalties imposed upon any "insured" for violation of the privacy provisions of the Health Insurance Portability and Accountability Act. The maximum Limit of Insurance for all such civil money penalties in the aggregate shall be \$150,000. This sublimit shall be part of and not in addition to the Limit of Insurance set forth in Part III Declarations and does not increase our maximum aggregate liability under this Coverage Part; or
  - c. Civil penalties imposed upon any "insured" as a fiduciary under Section 502(c) of ERISA, as amended (including any amendments pursuant to Section 507 of Title V of the Pension Protection Act of 2006). The maximum Limit of Insurance for all such civil money penalties in the aggregate shall be \$50,000. This sublimit shall be part of and not in addition to the Limit of Insurance set forth in Part III Declarations and does not increase our maximum aggregate liability under this Coverage Part; or
2. Any matter deemed uninsurable under the law pursuant to which this Coverage Part shall be construed; or
3. Any amount for which the "insureds" are not financially liable whether the "insureds" are absolved from payment by any covenant, agreement, court order or otherwise; or
4. Benefits due or to become due under the terms of the sponsored "employee benefit plan(s)" except to the extent that recovery for such benefits is based on a "wrongful act" and the payment constitutes a personal obligation of the "insured"; or
5. Payment of medical, pension and/or severance benefits which are or may become due.

- J. "Settlement fees" means any fees, penalties or sanctions imposed by law under a "settlement program" that any "insured" becomes legally obligated to pay as a result of a "wrongful act". The "settlement fees" shall not include any costs or expenses other than such fees, penalties or sanctions.

- K. "Settlement program" means any voluntary compliance resolution program or similar voluntary "settlement program" administered by the Internal Revenue Service or Department of Labor of the United States, including, but not limited to, the Employee Plans Compliance Resolution System, the Self Correction

Program, the Audit Closing Agreement Plan, the Delinquent Filer Voluntary Compliance Program, and the Voluntary Fiduciary Correction Program, Tax Sheltered Annuity Voluntary Correction Program, Walk-in Closing Agreement Program, Voluntary Compliance Resolution Program or any similar program entered into by the "insured entity".

- L. "Settlement program notice" means a written notice to us by the "insured" of the "insured's" intent to enter into a "settlement program".
- M. "Sponsor" means the "insured entity" and any "subsidiary".
- N. "Subsidiary" means any entity in which the "insured entity" owns, directly or indirectly, more than 50% of the outstanding securities or voting rights representing the right to vote for election of directors and is disclosed in the "proposal".
- O. "Wrongful act" means:
  - 1. Any actual or alleged breach of fiduciary duty, neglect, error, misstatement, misleading statement, omission or other act done or wrongfully attempted by the "insureds" in the discharge of their duties solely in their capacity as:
    - a. A fiduciary of the "employee benefit plan(s)" (as the term fiduciary is defined in the "ERISA" and amendments thereto) in connection with the management and/or administration of any sponsored "employee benefit plan(s)" or assets of the "employee benefit plan(s)"; or
    - b. An authorized agent of the "sponsor" with respect to the "administration" of any sponsored "employee benefit plan(s)"; or
  - 2. Any matter claimed against any of the "insureds" solely by reason of their fiduciary capacity with any sponsored "employee benefit plan(s)" or by reason of their capacity as authorized agent of the "sponsor" with respect to the "administration" of the "employee benefit plan(s)";

provided the breach of fiduciary duty, neglect, error, misstatement, misleading statement, omission or other act or the conduct that is the subject of such matter was committed, attempted or allegedly committed or attempted on or after the Retroactive Date, if any, and set forth in the Part III Declarations and prior to the end of the "policy period".

**PART IV**  
**INTERNET SECURITY COVERAGE**

In consideration of the payment of the premium, in reliance on all statements in the "proposal" and all other information provided to us and subject to all the provisions of this policy, including the General Declarations, the Part IV Declarations and the Coverage Part V General Provisions, we and the "insureds" agree as set forth below.

**SECTION I - INSURING AGREEMENT**

We will pay on behalf of the "insureds" all "loss" which they shall be legally obligated to pay resulting from any "claim" first made during the "policy period", or any "extended reporting period" included in or endorsed to the policy, for a "wrongful act". We will have the right and duty to defend the "insureds" against any such "claim".

**SECTION II - EXCLUSIONS**

We are not liable to pay, indemnify or defend any "claim":

- A. Based upon, arising out of, or in consequence of a failure to effect or maintain any insurance or bond including the failure to effect or maintain adequate limits of coverage of insurance or bond; or
- B. Based upon, arising out of, or in consequence of a "claim" for a "wrongful act" as defined in Coverage Part II, whether or not such Coverage Part is purchased; or
- C. Based upon, arising out of, or in consequence of any actual or alleged violation of the Employee Retirement Income Security Act of 1974 as amended or any rules, regulations or orders promulgated thereunder or any similar provisions of any federal, state or local statutory or common law in connection with any pension or welfare plan established for the benefit of employees of the "company"; or
- D. Brought or maintained by or on behalf of or at the behest of any of the "insureds" in any capacity and regardless of collusion; provided, however, this exclusion does not apply to:
  - 1. Any "claim" brought or maintained as a derivative action on behalf of the "company" by one or more persons who are not "individual insureds" and who bring and maintain the "claim" without the solicitation, assistance, or participation of any of the "insureds"; or
  - 2. Any "claim" brought or maintained by any of the "insureds" for contribution or indemnity, if such "claim" for contribution or indemnity directly results from another "claim" covered by this Coverage Part; or
  - 3. Any "claim" brought or maintained by an examiner, trustee, receiver, liquidator, rehabilitator, bankruptcy trustee or similar official of the "company" in connection with a bankruptcy proceeding of the "company"; or
  - 4. Any "claim" brought or maintained by an "individual insured" who has not served as an "individual insured" of the "company" for at least a four year period prior to the date the "claim" is first made and who bring and maintain the "claim" without the solicitation, assistance or participation of any "individual insured" who has served as an "individual insured" within such four year period; or
- E. Based upon, arising out of, or in consequence of any actual or alleged violation of the Racketeer Influenced and Corrupt Organizations Act as amended or any regulations promulgated thereunder or any similar provisions of any state or federal common law involving any of the foregoing; or
- F. Based upon, arising out of, or in consequence of any actual or alleged violation of:
  - 1. Any federal, state or foreign securities laws; or
  - 2. Any rule, regulation or order issued pursuant to any federal, state or foreign securities law or common law concerning such acts, laws, rules, regulations or orders; or
- G. Based upon, arising out of, or in consequence of the rendering or failure to render the following services:
  - 1. Advice or recommendations provided by the "insured" with respect to the sale of insurance or the services of an insurance agent or broker; or
  - 2. Financial advisory services including investment or financial advice, investment banking or brokerage services; or
- H. Based upon, arising out of, or in consequence of the failure of any goods, products or services to perform according to any representation or warranty with respect to durability, fitness, performance, quality, or use; or

- I. Based upon, arising out of, or in consequence of the rendering or failure to render any "internet professional services"; or
- J. Based upon, arising out of, or in consequence of the inability to use, or lack of performance of software programs; or
- K. Based upon, arising out of, or in consequence of any errors or omissions in the entry of "electronic data" maintained within the "insured's computer system"; or
- L. Based upon, arising out of, or in consequence of the infringement of patent, trade secret or other intellectual property rights. However, this exclusion shall not apply to any "claim" for infringement of any copyright, trademark, trade name or service mark; or
- M. Based upon, arising out of, or in consequence of any actual or alleged violation of any federal, state or local antitrust, restraint of trade, unfair competition or price-fixing law or any rules or regulations promulgated thereunder.

With respect to determining the applicability of the above Exclusions, no "wrongful act" or knowledge possessed by any one of the "insureds" shall be imputed to any other "insured" to determine if coverage is available, except for facts pertaining to and knowledge possessed by any past, present or future Executive Director, Chief Financial Officer or Chief Executive Officer of the "company" shall be imputed to the "company" to determine if coverage is available.

### **SECTION III - LIMIT OF INSURANCE AND DEDUCTIBLE**

- A. We will pay 100% of "loss" in excess of the applicable Deductible amount set forth in Part IV Declarations up to the Limit of Insurance set forth in Part IV Declarations.
- B. The Deductible amount set forth in Part IV Declarations shall apply to each and every "claim". The Deductible shall be paid by the "insureds". Any "loss" paid by us within the Deductible shall be reimbursed by the "insureds" within 30 days of our written request for such reimbursement.
- C. "Defense costs" shall be part of and not in addition to the Limit of Insurance set forth in Part IV Declarations. "Defense costs" we pay shall reduce the Limit of Insurance. "Defense costs" paid by the "insureds" shall be applied against the Deductible.
- D. Our maximum aggregate liability for all "loss" resulting from all "claims" under this Coverage Part shall be the Limit of Insurance set forth in the Part IV Declarations.

### **SECTION IV - DEFINITIONS**

Where set forth in quotes in this Coverage Part, whether in singular or in plural, the following terms shall have the meanings indicated.

- A. "Claim" means:
  - 1. A written demand for monetary damages or non-monetary relief; or
  - 2. A civil proceeding commenced by filing of a complaint or similar pleading; or
  - 3. A formal administrative or regulatory proceeding commenced by a filing of charges, formal investigative order or similar document; or
  - 4. An arbitration, mediation or similar alternative dispute resolution proceeding in which monetary damages are sought if the "insured":
    - a. Is required or agrees to participate in such proceeding; or
    - b. Agrees to participate in such proceeding with our written consent, such consent not to be unreasonably withheld; or
  - 5. A criminal proceeding against any "individual insureds" of the "company" or any "subsidiary" commenced by a return of an indictment; or
  - 6. A written request to toll or waive a statute of limitations related to a potential "claim" described in Definitions A.1 through A.5. above;
 against any "insured", including any appeal therefrom.
- B. "Company" means the "insured entity", any "subsidiary" and any such entity in its capacity as a debtor in possession, as such term is used in Chapter 11 of the United States of America Bankruptcy Code, as amended.

C. "Electronic data" means digital information, facts, images, or sounds stored as or on, created or used on, or transmitted to or from computer software, (including systems and applications software) on electronic storage devices of all types including, but not limited to, hard or floppy disks, CD-ROMS, DVDS, tapes, drives, flash drives, cells, data processing devices or any other type of media developed which are used with electronically controlled equipment. "Electronic data" does not include the "insured's" "electronic data" licensed, or contractually provided to others. "Electronic data" does not include tangible property.

D. "Individual insureds" means:

1. All persons who were, now are, or shall be directors, officers or employees of the "company"; and
2. The lawful spouse or "domestic partner" of a director, officer or employee, but only to the extent such person is a party to any "claim" solely in such person's capacity as a spouse or "domestic partner" of a director, officer or employee of the "company" and only if the "claim" seeks damages recoverable from marital community property, property jointly held by the director, officer or employee and the spouse or "domestic partner", or property transferred from the director, officer or employee to the spouse or "domestic partner";

including their estates, heirs, legal representatives or assigns in the event of their death, incapacity or bankruptcy.

E. "Insured" means the "company" and its "individual insureds".

F. "Insured's computer system" means computers and related peripheral components including, but not limited to, electronic storage devices of all types; systems and applications software; terminal devices; and related communications networks; by which "electronic data" is electronically collected, transmitted, processed, stored and retrieved. "Insured's computer system" is limited to the computer systems owned, licensed or leased to the "company".

G. "Internet and electronic services" means the activities allowed by law which are performed for or on behalf of any client or customer of the "company" through the transmission of "electronic data" to or from the "company's" internet website or through a private computer network controlled by the "company".

H. "Internet professional services" means any of the following services the "insured entity" provides to others including application service provider, domain name registration services, electronic exchange and auction services, internet hosting services, internet media services, internet service provider service, managed and network security services, public key infrastructure services, search engine services, web portal services, website development, software development and internet access provider.

I. "Loss" means "defense costs" and the total amount of monetary damages which the "insured" becomes legally obligated to pay on account of any "claim" for a "wrongful act" with respect to which coverage hereunder applies, including damages, judgments, settlements, prejudgment and postjudgment interest and punitive or exemplary damages or the multiplied portion of any multiplied damage award if insurable under the applicable law most favorable to the insurability of punitive, exemplary or multiplied damages.

"Loss" shall not include:

1. Taxes, criminal or civil fines, or penalties imposed by law; or
2. Any restitution, disgorgement or similar sums; or
3. Any matter deemed uninsurable under the law pursuant to which this Coverage Part shall be construed; or
4. That portion of "loss" other than "defense costs" that constitutes costs to comply with any non-monetary or injunctive relief of any kind.

J. "Subsidiary" means any entity in which the "insured entity" owns, directly or indirectly, more than 50% of the outstanding securities or voting rights representing the right to vote for election of directors and is disclosed in the "proposal".

K. "Wrongful act" means any actual or alleged error, misstatement, misleading statement, act, omission, neglect or breach of duty committed, attempted or allegedly committed or attempted on or after the Retroactive Date, if any, set forth in Part IV Declarations and prior to the end of the "policy period" by the "insureds" in the performance of "internet and electronic services".



## PART V

### GENERAL PROVISIONS APPLICABLE TO ALL COVERAGE PARTS FORMING THIS POLICY

Throughout this policy, the words "we", "us" and "our" refer to The Cincinnati Insurance Organization.

#### SECTION I - EXCLUSIONS

We are not liable to pay, indemnify or defend any "claim":

**A. Based upon, arising out of, in consequence of, or in any way involving:**

1. The actual, alleged, or threatened exposure to, generation, storage, transportation, discharge, dispersal, seepage, migration, emission, release, treatment, removal, disposal or escape of "pollutants"; or
2. Any direction, regulation, order or request to test for, monitor, clean up, remove, contain, treat, detoxify, or neutralize "pollutants", including, but not limited to, "claims" alleging damage to a "policy insured";

provided, however, this exclusion shall not apply to any "claim" under Coverage Part II for retaliatory treatment of a person with respect to actual or threatened disclosures by such person of matters described in Exclusions I.A.1. or I.A.2. above; or

**B. Based upon, arising out of, or in consequence of, or in any way involving:**

1. Any "wrongful act" or any fact, circumstance or situation which has been the subject of any notice given prior to the "policy period" under any other policy; or
2. Any other "wrongful act" whenever occurring, which, together with a "wrongful act" which has been the subject of such notice, would constitute "interrelated wrongful acts"; or

**C. Based upon, arising out of, or in consequence of any of the "policy insureds" or any person for whose actions the "policy insureds" are legally responsible committing any deliberately fraudulent, dishonest, criminal or malicious act or omission or willful violation of any statute, law, rule, regulation, agreement, or judicial or regulatory order, if a final and non-appealable judgment or adjudication adverse to the "policy insureds" establishes a deliberately fraudulent, dishonest, criminal or malicious act or omission or willful violation of any statute, law, rule, regulation, agreement or judicial or regulatory order; or**

**D. Based upon, arising out of, or in consequence of any of the "policy insureds" or any person for whose actions the "policy insureds" are legally responsible:**

1. Gaining any profit or advantage to which they were not legally entitled; or
2. For the return by any of the "policy insureds" of any remuneration paid to such "policy insureds" if the payment of such remuneration shall be held by the court to have been in violation of law;

if a final and non-appealable judgment or adjudication adverse to the "policy insureds" establishes the "policy insureds" gained profit or advantage they were not legally entitled and/or the "policy insureds" are required to return any remuneration held by the court to be in violation of law; provided, however, this exclusion shall not apply to any "claim" under Coverage Part II; or

**E. Based upon, arising out of, or in consequence of, or in any way involving any "wrongful act" committed, attempted or allegedly committed or attempted prior to the "policy period" of the applicable Coverage Part if:**

1. Prior to the earlier of the following dates:
  - a. The inception of the applicable Coverage Part; or
  - b. The inception of the original Coverage Part of which the applicable Coverage Part is a renewal or replacement; or
  - c. The Continuity Date, if any, stated in the Declarations for the applicable Coverage Part;any of the "named insured's" Executive Director, Chief Financial Officer, President, Chief Executive Officer, Chairman of the Board, In-House General Counsel or person of equivalent position knew or should have reasonably foreseen that such "wrongful act" might be the basis of a "claim"; or
2. There is a previous policy under which the "policy insureds" are entitled to coverage for such "claim"; or

F. Based upon, arising out of, or in consequence of, or in any way involving any prior and/or pending litigation as of the Prior and/or Pending Date stated in the Declarations for the applicable Coverage Part or any fact, circumstance, situation, transaction or event underlying or alleged in such litigation, regardless of the legal theory asserted in such "claim"; or

G. For actual or alleged:

1. Bodily injury, sickness, disease, or death of any person, assault, battery, mental anguish, or emotional distress; or
2. "Property damage", including, but not limited to, physical injury, loss of or loss of use of currency or any negotiable or non-negotiable instruments or contracts representing money; or
3. Invasion of privacy, wrongful entry, eviction, false arrest, false imprisonment, false detention, abuse of process, malicious prosecution, libel, slander, defamation, or disparaging of a person's or organization's goods, products or services;

provided, however, with respect to Coverage Part I, this exclusion shall apply only to "claims" for actual or alleged bodily injury, sickness, disease, or death of any person, assault, battery, mental anguish, emotional distress or "property damage". It is further understood and agreed, with respect to Coverage Part I, that all "claims" for invasion of privacy, wrongful entry, eviction, false arrest, false imprisonment, false detention, abuse of process, malicious prosecution, libel, slander, defamation, or disparaging of a person's or organization's goods, products or services shall be excess of any similar coverage provided by the "organization's" General Liability Policy; and

provided, however, with respect to Coverage Part II, this exclusion shall apply only to "claims" for actual or alleged bodily injury, sickness, disease, or death of any person or "property damage"; and

provided, however, with respect to Coverage Part IV, this exclusion shall apply only to "claims" for actual or alleged bodily injury, sickness, disease, or death of any person, assault, battery, mental anguish, emotional distress, "property damage", wrongful entry, eviction, false arrest, false imprisonment, false detention, abuse of process and malicious prosecution; or

H. For any actual or alleged liability of any "policy insureds" under the terms, conditions or warranties of any oral or written contract or agreement, except to the extent:

1. The liability would have attached to any such "policy insureds" in the absence thereof; or
2. With respect to any "claim" under Coverage Part III, the liability was assumed in accordance with the agreement or declaration of trust pursuant to which the "employee benefit plan" was established; or
3. With respect to any "claim" under Coverage Part II for breach of an employment contract; or
4. With respect to any "claim" under Coverage Part I, this exclusion shall not apply to "defense costs" with respect to any "claim" against any "directors, officers and trustees" or any "employees, volunteers and members"; or

I. Based upon, arising out of, in consequence of, or in any way involving the hazardous properties, including radioactive, toxic or explosive properties, of any nuclear material. Nuclear material means any source material, special nuclear material, or by-product materials as those terms are defined under the Atomic Energy Act of 1954 or any amendments thereto; or

J. Based upon, arising out of, in consequence of, or in any way involving asbestos in any form or transmitted in any manner; or

K. Based upon, arising out of, or in consequence of any actual or alleged infringement of patent or misappropriation of trade secrets or other intellectual property rights; provided, however, this exclusion shall not apply to any "claim" against any "directors, officers and trustees" or any "employees, volunteers and members"; or

L. Based upon, arising out of, in consequence of, or in any way involving:

1. War, including undeclared or civil war; or
2. Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
3. Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these;

regardless of any other cause or event that contributes concurrently or in any sequence to the injury or damage.

With respect to any action that comes within the terms of this exclusion and involves nuclear reaction or radiation, or radioactive contamination, this War and Military Action Exclusion supersedes Exclusion I. above.

With respect to determining the applicability of the above Exclusions, no "wrongful act" or knowledge possessed by any one of the "policy insureds" shall be imputed to any other "policy insureds" to determine if coverage is available, except for facts pertaining to and knowledge possessed by any past, present or future Executive Director, Chief Financial Officer or Chief Executive Officer of the "organization" or any "subsidiary" shall be imputed to the "organization" or any "subsidiary" to determine if coverage is available.

## **SECTION II - LIMITS OF INSURANCE, DEDUCTIBLES, MULTIPLE CLAIMS AND EXHAUSTION**

- A. If a single "claim" is covered under more than one Coverage Part, then our maximum liability for all "loss" resulting from such "claim" shall be the largest applicable Limit of Insurance available under any one of the applicable Coverage Parts.
- B. The Deductibles for each Coverage Part apply separately to the respective Coverage Parts. If a single "claim" is covered under more than one Coverage Part, the applicable Deductibles shall be applied separately to the part of the "claim" covered by each Coverage Part, but the sum of such Deductibles shall not exceed the largest applicable Deductible. The Deductibles shall be borne by the "policy insureds" uninsured and at their own risk.
- C. If the aggregate Limit of Insurance for a particular Coverage Part is exhausted, then all of our obligations under that Coverage Part shall be deemed to be completely fulfilled and extinguished as of the date of such exhaustion.
- D. The Limits of Insurance of each Coverage Part apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the "policy period" set forth in the Declarations of each respective Coverage Part, unless the "policy period" of the respective Coverage Part is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period of the respective Coverage Part for purposes of determining the Limits of Insurance.
- E. Regardless of the number of policies or Coverage Parts involved, all "claims" based upon or arising out of the same "wrongful act" or any "interrelated wrongful acts" shall be considered a single "claim". Each "claim" shall be deemed to be first made at the earliest of the following times:
  - 1. When notice of the earliest "claim" arising out of such "wrongful act" or "interrelated wrongful acts" is received in writing by a "policy insured" or by us, whichever comes first; or
  - 2. When notice pursuant to Section V of the General Provisions of a "wrongful act" giving rise to such "claim" is given.
- F. In the event that more than one of the "policy insureds" is included in the same "claim", the total amount of "loss" resulting from such "claim" and the Deductible shall be apportioned pro-rata among the "policy insureds" in proportion to their respective "loss" unless otherwise mutually agreed upon by the "policy insureds" and us.

## **SECTION III - DUTIES OF THE POLICY INSUREDS IN THE EVENT OF A CLAIM**

As conditions precedent to coverage under this policy:

- A. The "policy insureds" shall give us written notice of any "claim" made against any of the "policy insureds" for a "wrongful act" as soon as practicable after the "named insured's" Executive Director, Chief Financial Officer, President, Chief Executive Officer, Chairman of the Board, In-House General Counsel or person of equivalent position has knowledge of such "claim", and shall give such information and cooperation as we may reasonably require, including, but not limited to, a description of the "claim", the nature of the alleged "wrongful act", the nature of the alleged injury, the names of the claimants, and the manner in which the "policy insureds" first became aware of the "claim". As soon as practicable, the "policy insureds" shall furnish us with copies of reports, investigations, pleadings and other papers in connection with the "claim".
- B. The "policy insureds" shall provide us with all information, assistance and cooperation which we reasonably request and agree that in the event of a "claim" the "policy insureds" will do nothing which may prejudice our position or our potential or actual rights of recovery.

- C. The "policy insureds" shall not settle any "claim", incur any "defense costs" or otherwise assume any obligation or admit any liability with respect to any "claim" without our prior written consent. We shall be entitled to full information and all particulars we may request in order to reach a decision as to such consent. We shall not be liable for any settlement, "defense costs", assumed obligation or admission to which we have not consented.

#### **SECTION IV - DEFENSE, INVESTIGATION AND SETTLEMENT**

- A. We will have the right and duty to defend the "policy insureds" against any "claim"; however, we will have no duty to defend the "policy insureds" against any "claim" to which this insurance does not apply.
- B. We may make any investigation we deem necessary and may, with the consent of the "policy insureds" named in connection with the "claim", make any settlement of any "claim" we deem expedient. If the "policy insureds" withhold consent to such settlement, our liability for all "loss" in connection with such "claim" shall not exceed:
1. The amount of the proposed settlement plus "defense costs" incurred up to the date of the "policy insureds'" refusal to consent to the proposed settlement; plus
  2. 80% of any settlement or judgment in excess of the proposed settlement amount referenced in B.1. above plus 80% of any "defense costs" incurred after the date the "policy insureds" refused to consent to the proposed settlement, subject in all events to the applicable Limit of Insurance and Deductible for such "claim". The remaining 20% of any settlement or judgment in excess of the proposed settlement amount referenced in B.1. above plus 20% of any "defense costs" incurred after the date the "policy insureds" refused to consent to the proposed settlement shall be borne by the "policy insureds", uninsured and at their own risk.
- C. Our right and duty to defend end when we have used up the applicable Limit of Insurance in the defense or payment of damages, judgments or settlements of covered "claims".

#### **SECTION V - NOTICE OF A WRONGFUL ACT**

If prior to the end of the "policy period" of the applicable Coverage Part, any of the "policy insureds" first become aware of a specific "wrongful act" they believe is likely to give rise to a "claim", and if any of the "policy insureds" give us written notice as soon as practicable, but prior to the end of the "policy period" of the applicable Coverage Part, of:

- A. The specific "wrongful act";
- B. The injury or damage which has or may result therefrom; and
- C. The circumstances by which the "policy insureds" first became aware thereof;

then any "claim" subsequently made arising out of such "wrongful act" shall be deemed to have been made when notice of the "wrongful act" was first given.

#### **SECTION VI - DIRECTION OF CORRESPONDENCE TO US**

All notices and other materials provided to us pursuant to the terms of this policy shall be directed to:

Management Liability Claims Manager  
The Cincinnati Insurance Organization  
P.O. Box 145496  
Cincinnati, OH 45250-5496

#### **SECTION VII - PROPOSAL**

The "proposal" is the basis of this policy and is incorporated in and constitutes a part of this policy. It is agreed that the statements in the "proposal" are material and this policy is issued in reliance upon the truth of such representations.

In the event that the "proposal" contains any misrepresentation made with the intent to deceive or which materially affects the acceptability of the risk or hazard assumed by us, then no coverage shall be afforded for any "claim" based upon, arising from or in consequence of any such misrepresentation with respect to:

- A. Any "directors, officers and trustees", "employees, volunteers and members" or "individual insured" who knew of such misrepresentation or the underlying material facts or circumstances which gave rise to the misrepresentation; or
- B. Any "organization", "subsidiary" or "company", if any president, chief executive officer, chief financial officer, or signer of the Application Form of the "proposal" (or any equivalent position to any of the

foregoing) knew of such misrepresentation or the underlying material facts or circumstances which gave rise to the misrepresentation.

We shall not be entitled under any circumstances to void or rescind this policy with respect to any "insured".

## **SECTION VIII - CHANGES IN EXPOSURE**

### **A. Change in Ownership of Insured Entity**

If during the "policy period" of the applicable Coverage Part:

1. An "insured entity" consolidates with or merges into another entity such that such "insured entity" is not the surviving entity;
2. Greater than 50% of the assets of an "insured entity" are sold; or
3. Another entity or person or group of entities and/or persons acting in concert acquires more than 50% ownership of an "insured entity";

then, subject to all the other provisions of this policy, coverage under the applicable Coverage Part shall continue to apply to such "insured entity" and its "insureds" until the end of the applicable "policy period" or any applicable "extended reporting period", but only with respect to "claims" for "wrongful acts" committed, attempted or allegedly committed or attempted prior to such transaction. The "named insured" shall give written notice to us as soon as practicable, but in no event later than 90 days after such transaction.

### **B. Cessation of Subsidiaries**

If during the "policy period" of the applicable Coverage Part any entity ceases to be a "subsidiary" as defined in the applicable Coverage Part, then, subject to all the other provisions of this policy, coverage under the applicable Coverage Part shall continue to apply to such entity and its "insureds" until the end of the applicable "policy period" or any applicable "extended reporting period", but only with respect to "claims" for "wrongful acts" committed, attempted or allegedly committed or attempted prior to the date such entity ceases to be a "subsidiary". The "named insured" shall give written notice to us as soon as practicable, but in no event later than 90 days after the entity ceases to be a "subsidiary".

### **C. Termination of Plan**

If prior to or during the "policy period" of Coverage Part III the "sponsor" terminates a "employee benefit plan", then, subject to all the other provisions of this policy, coverage under Coverage Part III shall continue to apply to such "employee benefit plan" and its "insureds" until the end of the applicable "policy period" or any applicable "extended reporting period", but only with respect to "claims" for "wrongful acts" committed, attempted or allegedly committed or attempted prior to the date such "employee benefit plan" was terminated. The "named insured" shall give written notice to us as soon as practicable, but in no event later than 90 days after the "employee benefit plan" is terminated.

### **D. Acquisition or Formation of Entity**

If during the "policy period" of the applicable Coverage Part an "insured entity" newly acquires or forms another entity (other than a partnership, joint venture or limited liability organization) over which such "insured entity" maintains more than 50% ownership for the purpose of coverage under the Coverage Part applicable to such "insured entity", the newly acquired or formed entity shall be deemed to be an "insured entity"; however, coverage shall be excess of any indemnification or insurance otherwise available to such newly acquired or formed entity from any other source. Furthermore;

1. For newly acquired or formed entities whose assets are greater than 35% of the assets of the "insured entity", coverage is afforded only until the 90th day after the "insured entity" acquires or forms the entity or the end of the "policy period" of the applicable Coverage Part, whichever is earlier. All newly acquired or formed entities whose assets are less than or equal to 35% of the assets of the "insured entity" shall be automatically afforded coverage until the end of the "policy period"; and
2. Coverage does not apply to "claims" for "wrongful acts" committed, attempted or allegedly committed or attempted prior to the date the "insured entity" acquired or formed the entity unless we agree, after presentation of a complete application and all appropriate information, to provide coverage by endorsement for such "claims" and the "named insured" pays any additional premium we require for the endorsement.

## **SECTION IX - OTHER INSURANCE ISSUED BY ANOTHER INSURER**

This insurance is primary except when all or any part of "loss" is also insured under any other prior or current policy. If any other insurance issued by another insurer (with the exception of insurance issued by us, any of

our affiliated companies, or any of our predecessors or their affiliated companies) applies to any "claim", then this insurance is excess over that other insurance, whether primary, excess, contingent or on any other basis, unless that other insurance was purchased specifically to apply excess over the limits provided in this policy.

When this policy is excess:

- A. We will have no duty to defend any "claim" when any other insurer has that duty. If another insurer fails to defend and we incur costs as a result of such failure, we will be entitled to the "policy insureds'" rights against such other insurer; and
- B. We will pay only our share of the amount of the "loss", if any, that exceeds the sum of:
  - 1. The total amount that all such other insurance would pay for the "loss" in the absence of this policy; and
  - 2. The total of all deductible and self-insured amounts under all such other insurance.

#### **SECTION X - MEDIATION AND ALLOCATION**

- A. Any dispute including, but not limited to, tort claims or contract claims between a "policy insured" and us arising out of or relating to this policy shall be submitted to non-binding mediation prior to commencement of an action between the parties. The mediator shall be chosen by agreement. If the parties cannot agree upon a mediator, the mediator shall be chosen by the American Arbitration Association.
- B. If both "loss" covered by this policy and loss not covered by this policy are incurred, either because a "claim" against a "policy insured" includes both covered and uncovered matters or because a "claim" is made against both a "policy insured" and others, we will pay 100% of reasonable and necessary "defense costs" and all remaining loss will be allocated between covered "loss" and uncovered loss based upon the relative legal exposure to the parties to such matters.
- C. If we and the "policy insureds" cannot agree as to matters in Section X.B. above prior to a judgment or finding in the civil or administrative proceeding dealing with "claims" against the "policy insureds", the parties agree that they will, to the extent it is within their control, require that the allocation between covered "loss" and uncovered loss is made in such civil or administrative proceeding. Such efforts shall include, but are not limited to, the submission of special interrogatories to the finder of fact in such proceeding. Such efforts shall not require us to become a party to such civil or administrative proceeding.
- D. Notwithstanding Section X.C. above, if we and the "policy insureds" cannot agree as to matters in Section X.B. above prior to a judgment or finding in any civil or administrative proceeding in which such issues are decided, we may at any time before or after mediation under Section X.A. above settle all "claims" against any or all "policy insureds". Following such settlement, any dispute between us and the "policy insureds" as to the proper allocation of covered and uncovered matters under Section X.B. above shall be submitted to non-binding mediation prior to the commencement of an action between the parties. In any event, only one mediation as to the same issues shall be required.

#### **SECTION XI - ACTION AGAINST US**

- A. No action shall be taken against us unless, as a condition precedent thereto, there shall have been full compliance with all of the terms of this policy and until the obligation of the "policy insureds" to pay shall have been finally determined, either by an adjudication against them or by written agreement of the "policy insureds", the claimant and us. 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. Bankruptcy or insolvency of a "policy insured" or of a "policy insured's" estate shall not relieve us of any of our obligations hereunder.
- B. No person or organization shall have any right under this policy to join us as a party to any "claim". Neither the "policy insureds" nor their legal representative shall implead us in any "claim".

#### **SECTION XII - SUBROGATION**

In the event of any payment under this policy, we shall be subrogated to all of the rights to recovery of the "policy insureds" to the extent of such payment. The "policy insureds" shall execute all papers required and shall do everything that may be necessary to secure and preserve such rights, including the execution of such documents as may be necessary to enable us to effectively bring suit in the name of the "policy insureds".

#### **SECTION XIII - CHANGES IN THIS POLICY**

No change or modification of, or assignment of interest under this policy shall be effective except when made by us through a written endorsement to this policy.

#### **SECTION XIV - CONFORMITY TO STATUTE**

Any terms of this policy which are in conflict with the terms of any applicable laws construing this policy are hereby amended to conform to such laws.

#### **SECTION XV - ENTIRE AGREEMENT**

By acceptance of this policy, we and the "policy insureds" agree that this policy (including the "proposal") and any written endorsements attached hereto constitute the entire agreement between the parties.

#### **SECTION XVI - REPRESENTATION BY NAMED INSURED**

The first "named insured" shall act on behalf of all of the "policy insureds" in purchasing this policy and for any purposes under the policy.

#### **SECTION XVII - CANCELLATION OR NON-RENEWAL**

- A. This policy or any of its Coverage Parts may be cancelled by the first "named insured" at any time by providing written notice to us stating when thereafter the cancellation shall become effective or by surrendering this policy to us.
- B. This policy or any of its Coverage Parts may be cancelled by us only for failure to pay the premium when due. If we cancel the policy or any of its Coverage Parts, written notice shall be provided to the first "named insured" stating when, not less than 10 days thereafter, the cancellation shall be effective.

Such notice may be provided by certified mail, other first class mail, facsimile, or courier, at the address stated in Item 1. of the General Declarations, or by delivery. The dispatch of notice shall be sufficient proof of notice and the coverage that is the subject of the cancellation notice shall terminate at the date and hour specified in such notice.

- C. If this policy or any of its Coverage Parts are cancelled:
  - 1. By the first "named insured", we shall retain the customary pro-rata portion of the premium; or
  - 2. By us or on our behalf, we shall retain the pro-rata portion of the applicable premium. Payment or tender by us of any unearned premium shall not be a condition precedent to the effectiveness of cancellation, but such payment shall be made as soon as practicable.
- D. If we elect not to renew this policy or a particular Coverage Part, we shall provide the first "named insured" with no less than 60 days advance notice.
- E. If any of the foregoing periods of limitation relating to the giving of notice are prohibited or made void by any law controlling the construction thereof, such periods shall be amended so as to equal the minimum period of limitation permitted by such law.

#### **SECTION XVIII - EXTENDED REPORTING PERIODS**

- A. Upon termination of any Coverage Parts for any reason, other than nonpayment of premium, the "insured entity" shall be provided a 90-day Basic Extended Reporting Period and have the option to purchase an additional 12 months of Basic Extended Reporting Period. The "insured entity" may also request an optional Supplemental Extended Reporting Period, which may be provided solely at our discretion.
- B. The Extended Reporting Periods do not extend the "policy period" or change the scope of coverage provided. They extend the "claims" reporting period.
- C. The Extended Reporting Periods extend coverage to "claims" first made during the length of time covered by the applicable Extended Reporting Period provided the "wrongful act" was committed, attempted or allegedly committed or attempted prior to the end of the "policy period" of the applicable Coverage Part, and all such "claims" shall be subject to all other terms, conditions and exclusions of the applicable Coverage Part and the General Provisions. Such "claims" must be reported in writing to us prior to the expiration of the applicable Extended Reporting Period.
- D. A 90-day Basic Extended Reporting Period is automatically provided without additional charge. The Basic Extended Reporting Period starts immediately after the end of the "policy period" of the applicable Coverage Part.

The "insured entity" shall have the option to purchase an additional 12 months of Basic Extended Reporting Period beyond the automatically provided 90 days. The first "named insured" must give us a written request of their intent to purchase additional 12 months of the Basic Extended Reporting Period, together with payment of the additional premium, within 60 days after the "policy period" or such right shall terminate.

The additional premium for the additional 12 months of Basic Extended Reporting Period will not exceed 100% of the expiring annual premium for the applicable Coverage Part.

The 90-day Basic Extended Reporting Period and any additional Basic Extended Reporting Period does not reinstate or increase the Limits of Insurance of the applicable Coverage Part. Our total liability shall not exceed the Limit of Insurance shown in the applicable Declarations for the last consecutive annual period and/or any remaining period of less than 12 months in which coverage is provided hereunder.

- E. A 12-month Supplemental Extended Reporting Period may be available by endorsement and for an extra premium charge. This supplemental period starts when the Basic Extended Reporting Period, as set forth in Sections XVIII.A. and D. above, ends. The first "named insured" must give us a written request of their desire to purchase the Supplemental Extended Reporting Period within 60 days of the termination of any of the Coverage Parts or that option shall terminate. The Supplemental Extended Reporting Period will not go into effect unless the first "named insured" pays the additional premium promptly when due. It is solely our decision whether to permit the first "named insured" to purchase a Supplemental Extended Reporting Period.

If the Supplemental Extended Reporting Period endorsement is in effect, we will provide a Supplemental Aggregate Limit of Insurance, but only for "claims" first made during the Supplemental Extended Reporting Period. The Supplemental Aggregate Limit of Insurance will at our discretion be equal to or less than the dollar amount of the aggregate Limit of Insurance shown in the Declarations for the applicable Coverage Part.

We will determine the additional premium charge for the Supplemental Extended Reporting Period in accordance with our rules and rates. In doing so, we may take into account the following:

1. The exposure insured;
2. Previous types and amounts of insurance; and
3. Other related factors.

The additional premium will not exceed 200% of the expiring annual premium for the applicable Coverage Part.

The Supplemental Extended Reporting Period endorsement shall set forth any terms that differ from the basic coverage applicable to the Supplemental Extended Reporting Period.

- F. Any Extended Reporting Period will immediately terminate on the effective date and hour of any other insurance issued to the "policy insureds" which replaces this insurance. The entire premium for any Extended Reporting Period shall be fully earned at the commencement of any Extended Reporting Period.

## **SECTION XIX - COVERAGE TERRITORY**

This policy applies to any "claim" for a "wrongful act" committed, attempted or allegedly committed or attempted anywhere in the world.

## **SECTION XX - DEFINITIONS**

Where set forth in quotes in this policy, whether in singular or in plural, the following terms shall have the meanings indicated. Any other terms set forth in quotes in the General Provisions will have the meanings indicated in the applicable Coverage Parts.

- A. "Defense costs" means reasonable and necessary fees, costs, and expenses incurred by us or with our consent on behalf of the "policy insureds" or reimbursed to any of the "policy insureds" by us, resulting solely from the investigation, adjustment, defense and appeal of any "claim". "Defense costs" includes, but is not limited to, the cost of expert consultants and witnesses, premiums for appeal, injunction, attachment or supersedeas bonds (but not the obligation to furnish such bonds).

"Defense costs" shall not include:

1. With respect to Coverage Part II only, expenses explicitly provided for under Section IV of Coverage Part II; or
2. Salaries, wages, fees, overhead or expenses of our employees or any "policy insureds", directors, officers, trustees or employees, other than that portion of our employed attorneys' fees, salaries and expenses allocated to a specific "claim"; or
3. Any amount covered by the duty to defend obligation of any other insurer; or
4. Any pre-tender fees, costs or expenses.



- B. "Domestic partner" means a natural person who is not otherwise an "insured", in a committed relationship with an insured person, which is legally recognizable as a marriage, civil union or domestic partnership in the state where the "claim" is made or suit is filed and the legal existence of the relationship is verifiable by legal, government documentation existing prior to the date of the "wrongful act" complained of in the "claim".
- C. "Extended reporting period" means the periods of time described in Section XVIII of the General Provisions.
- D. "Insured entity" means with respect to the coverage under a particular Coverage Part, the entity named in Item 1. of the respective Declarations for such Coverage Part.
- E. "Interrelated wrongful acts" means "wrongful acts" which have as a common nexus any fact, circumstance, situation, event, transaction or series of facts, circumstances, situations, events, or transactions.
- F. "Named insured" means the entity named in Item 1. of the General Declarations.
- G. "Policy insureds" means the natural persons and entities insured under each respective Coverage Part for which coverage is set forth in the Declarations for the policy.
- H. "Policy period" means the period from the inception date to the expiration date as set forth in Item 2. of each Coverage Part Declarations, or to the earlier date of cancellation of the applicable Coverage Part.
- I. "Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant including smoke, vapor, soot, fumes, acid, alkalis, chemicals, petroleum products and their by-products and waste. Waste includes material to be recycled, reconditioned or reclaimed.
- "Pollutants" include, but are not limited to, substances that are generally recognized in industry or government to be harmful or toxic to persons, property or the environment.
- J. "Property damage" means:
1. Injury or damage, of any nature, to tangible or intangible property, including all resulting loss of use of that property; or
  2. Loss of or loss of use of tangible or intangible property that is not otherwise injured or damaged.
- K. "Proposal" means:
1. The Application Form for this policy and any applications for any policies for which this policy provides renewal coverage in whole or in part; and
  2. Any materials submitted with the Application Form and such applications, which shall be maintained on file with us and shall be deemed to be attached hereto as if physically attached.

**BLUE CHIP POLICY  
CHANGES TEXAS**

This endorsement modifies insurance provided under the following:

**BLUE CHIP POLICY  
FINANCIAL INSTITUTIONS BLUE CHIP POLICY  
HEALTH CARE INSTITUTIONS BLUE CHIP POLICY  
PUBLICLY TRADED COMPANY BLUE CHIP POLICY  
NON PROFIT ORGANIZATION BLUE CHIP POLICY**

- A. Item 1.b. in Definition H. "Loss" of **SECTION IV DEFINITIONS of PART I DIRECTORS, OFFICERS, HOSPITAL STAFF AND HEALTH CARE INSTITUTION LIABILITY COVERAGE of the HEALTH CARE INSTITUTIONS BLUE CHIP POLICY** is deleted in its entirety and replaced by the following:

H. "Loss" means "defense costs" and the total amount of monetary damages which the "insured" becomes legally obligated to pay on account of any "claim" for a "wrongful act" with respect to which coverage hereunder applies, including damages, judgments, settlements, prejudgment and postjudgment interest and punitive or exemplary damages or the multiplied portion of any multiplied damage award if insurable under the applicable law most favorable to the insurability of punitive, exemplary or multiplied damages.

1. "Loss" shall also include:

- a. Civil money penalties imposed upon any "insured" for violation of the privacy provisions of the Health Insurance Portability and Accountability Act. The maximum Limit of Insurance for all such civil money penalties in the aggregate shall be **\$100,000**. This sublimit shall be part of and not in addition to the Limit of Insurance set forth in Part I Declarations and does not increase our maximum aggregate liability under this Coverage Part.
- b. Fines and penalties imposed upon any "insureds" for violation of any provision of the Internal Revenue Code of 1986, as amended. This shall apply only if and to the extent the "insureds" relied upon, with respect to the matters giving rise to such violation, a written "more likely than not" or "will" opinion of the tax counsel licensed to practice law in the United States or Certified Public Accountant or accounting firm, or a tax return prepared by a Certified Public Accountant or accounting firm duly appointed by the "insured". The maximum Limit of Insurance for all such fines and penalties in the aggregate shall be **\$100,000**. This sublimit shall be part of and not in addition to the Limit of Insurance set forth in Part I Declarations and does not increase our maximum liability under this Coverage Part.
- c. Any "excess benefit transaction tax", an "insured" is obligated to pay as a result of a "claim". The maximum Limit of Insurance in the aggregate per each "organizational manager" for any "excess benefit transaction tax" shall be **\$20,000**. This sublimit shall be part of and not in addition to the Limit of Insurance set forth in Part I Declarations and does not increase our maximum aggregate liability under this Coverage Part. The "excess benefit transaction tax" shall not include the 25% excise tax assessed against any "disqualified person" or the 200% tax assessed for failure to correct an "excess benefit transaction".

2. "Loss" shall not include:

- a. Taxes, criminal or civil fines or penalties imposed by law; except as noted above; or
- b. Any restitution, disgorgement or similar sums; or
- c. Any matter deemed uninsurable under the law pursuant to which this Coverage Part shall be construed.

**B. Exclusion A. of SECTION I EXCLUSIONS of the GENERAL PROVISIONS APPLICABLE TO ALL COVERAGE PARTS FORMING THIS POLICY is deleted in its entirety and replaced by the following:**

**A. Based upon, arising out of, in consequence of, in any way involving:**

1. The actual, alleged, or threatened exposure to, generation, storage, transportation, discharge, dispersal, seepage, migration, emission, release, treatment, removal, disposal or escape of "pollutants"; or
2. Any direction, regulation, order or request to test for, monitor, clean up, remove, contain, treat, detoxify, or neutralize "pollutants", including but not limited to "claims" alleging damage to a "policy insured";

provided, however, this exclusion shall not apply to any "claim" under Coverage Part II for retaliatory treatment of a person with respect to actual or threatened disclosures by such person of matters described in Exclusions I.A.1. or I.A.2. above; and

provided, however, this exclusion shall not apply to any security holder demand or security holder derivative "claim" against any "policy insured" for which the "insured entity" does not indemnify the "policy insured" either because the "insured entity" is not permitted by common or statutory law to grant such indemnification, or because of the financial impairment of the "insured entity"; or

**C. Exclusion E. of SECTION I EXCLUSIONS of the GENERAL PROVISIONS APPLICABLE TO ALL COVERAGE PARTS FORMING THIS POLICY is deleted in its entirety and replaced by the following:**

**E. Based upon, arising out of, or in consequence of, or in any way involving any "wrongful act" committed, attempted or allegedly committed or attempted prior to the "policy period" of the applicable Coverage Part if:**

**1. Prior to the earlier of the following dates:**

- a. The inception of the applicable Coverage Part; or
- b. The inception of the original Coverage Part of which the applicable Coverage Part is a renewal or replacement; or
- c. The Continuity Date, if any, stated in the Declarations for the applicable Coverage Part;

any of the "named insured's" Chief Financial Officer, President, Chief Executive Officer, Chairman of the Board, InHouse General Counsel or person of equivalent position knew that such "wrongful act" might be the basis of a "claim"; or

**2. There is a previous policy under which the "policy insureds" are entitled to coverage for such "claim"; or**

**D. SECTION X MEDIATION AND ALLOCATION of the GENERAL PROVISIONS APPLICABLE TO ALL COVERAGE PARTS FORMING THIS POLICY is deleted in its entirety and replaced by the following:**

**SECTION X MEDIATION AND ALLOCATION**

- A. Any dispute including but not limited to tort claims or contract claims between a "policy insured" and us arising out of or relating to this policy shall be submitted to nonbinding mediation prior to commencement of an action between the "policy insureds" and us. The mediator shall be chosen by agreement. If we and the "policy insureds" cannot agree upon a mediator, the mediator shall be chosen by the American Arbitration Association. Unless we and the "policy insureds" agree otherwise, mediation will take place in the county or parish in which the address shown in the Declarations is located.**
- B. If both "loss" covered by this policy and loss not covered by this policy are incurred, either because a "claim" against a "policy insured" includes both covered and uncovered matters or because a "claim" is made against both a "policy insured" and others, we will pay 100% of reasonable and necessary "defense costs" and all remaining loss will be allocated between covered "loss" and uncovered loss based upon the relative legal exposure of the parties to such matters.**
- C. If we and the "policy insureds" cannot agree as to matters in Section X.B. above prior to a judgment or finding in the civil or administrative proceeding dealing with "claims" against the "policy insureds", we and the "policy insureds" agree, to the extent it is within our and the "policy insureds" control, to require that the allocation between covered "loss" and uncovered loss is made in such civil or administrative proceeding. Such efforts shall include but are not limited to the submission of special**

interrogatories to the finder of fact in such proceeding. Such efforts shall not require us to become a party to such civil or administrative proceeding.

- D. Notwithstanding Section X.C. above, if we and the "policy insureds" cannot agree as to matters in Section X.B. above prior to a judgment or finding in any civil or administrative proceeding in which such issues are decided, we may at any time before or after mediation under Section X.A. above settle all "claims" against any or all "policy insureds". Following such settlement, any dispute between us and the "policy insureds" as to the proper allocation of covered and uncovered matters under Section X.B. above shall be submitted to nonbinding mediation prior to the commencement of an action between us and the "policy insureds". In any event, only one mediation as to the same issues shall be required.

- E. **SECTION XIII CHANGES IN THE POLICY** of the **GENERAL PROVISIONS APPLICABLE TO ALL COVERAGE PARTS FORMING THIS POLICY** is deleted in its entirety and replaced by the following:

**SECTION XIII CHANGES IN THIS POLICY**

No change or modification of, or assignment of interest under this policy shall be effective except when made by us through a written endorsement (filed with and approved by the Texas Commissioner of Insurance) to this policy.

- F. **SECTION XVII CANCELLATION OR NONRENEWAL** of the **GENERAL PROVISIONS APPLICABLE TO ALL COVERAGE PARTS FORMING THIS POLICY** is deleted in its entirety and replaced by the following:

**SECTION XVII CANCELLATION OR NONRENEWAL**

- A. The first "named insured" shown in the Declarations may cancel this policy by mailing or delivering to us advance written notice of cancellation.
- B. We may cancel this policy by mailing or delivering to the first "named insured" written notice of cancellation, stating the reason for cancellation, at least 10 days before the effective date of cancellation.

However, if this policy covers a condominium association, and the condominium property contains at least one residence or the condominium declarations conform with the Texas Uniform Condominium Act, then the notice of cancellation, as described above, will be provided to the first "named insured" 30 days before the effective date of cancellation. We will also provide 30 days' written notice to each unitowner to whom we issued a certificate or memorandum of insurance, by mailing or delivering the notice to each last mailing address known to us.

The permissible reasons for cancellation are as follows:

1. If this policy has been in effect for 60 days or less, we may cancel for any reason except, that under the provision of the Texas Insurance Code, we may not cancel this policy solely because the policyholder is an elected official.
  2. If this policy has been in effect for more than 60 days, or if it is a renewal or continuation of a policy issued by us, we may cancel only for one or more of the following reasons:
    - a. Fraud in obtaining coverage;
    - b. Failure to pay premiums when due;
    - c. An increase in hazard within the control of the insured which would produce an increase in rate;
    - d. Loss of our reinsurance covering all or part of the risk covered by the policy; or
    - e. If we have been placed in supervision, conservatorship or receivership and the cancellation is approved or directed by the supervisor, conservator or receiver.
- C. We will mail or deliver our notice to the first "named insured's" last mailing address known to us.
- D. Notice of cancellation will state the effective date of cancellation. The "policy period" will end on that date.
- E. If this policy is cancelled, we will send the first "named insured" any premium refund due. If we cancel, the refund will be pro rata. If the first "named insured" cancels, the refund will be pro rata. The cancellation will be effective even if we have not made or offered a refund.
- F. If notice is mailed, proof of mailing will be sufficient proof of notice.

## **G. NONRENEWAL**

1. We may elect not to renew this policy except, that under the provisions of the Texas Insurance Code, we may not refuse to renew this policy solely because the policyholder is an elected official.
2. This Paragraph 2., applies unless the policy qualifies under Paragraph 3. below.

If we elect not to renew this policy, we may do so by mailing or delivering to the first "named insured", at the last mailing address known to us, written notice of nonrenewal, stating the reason for nonrenewal, at least 60 days before the expiration date. If notice is mailed or delivered less than 60 days before the expiration date, this policy will remain in effect until the 61st day after the date on which the notice is mailed or delivered. Earned premium for any period of coverage that extends beyond the expiration date will be computed pro rata based on the previous year's premium.

3. If this policy covers a condominium association, and the condominium property contains at least one residence or the condominium declarations conform with the Texas Uniform Condominium Act, then we will mail or deliver written notice of nonrenewal, at least 30 days before the expiration or anniversary date of the policy, to:
  - a. The first "named insured"; and
  - b. Each unitowner to whom we issued a certificate or memorandum of insurance.

We will mail or deliver such notice to each last mailing address known to us.

4. If notice is mailed, proof of mailing will be sufficient proof of notice.
5. The transfer of a policyholder between admitted companies within the same insurance group is not considered a refusal to renew.

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

All other provisions of the policy remain unchanged except as herein expressly modified.

Attached to and Forming Part of Policy Number  
BCN-0079116

Effective date of Endorsement  
04/07/2016

Issued to

FOX MEADOWS HOMEOWNERS ASSOCIATION

## CAP ON LOSSES FROM CERTIFIED ACTS OF TERRORISM

This endorsement modifies insurance provided under the following:

BLUE CHIP POLICY  
FINANCIAL INSTITUTIONS BLUE CHIP POLICY  
HEALTH CARE INSTITUTIONS BLUE CHIP POLICY  
PUBLICLY TRADED COMPANY BLUE CHIP POLICY  
NON - PROFIT ORGANIZATION BLUE CHIP POLICY

The **GENERAL PROVISIONS APPLICABLE TO ALL COVERAGE PARTS FORMING THIS POLICY** is amended as follows:

**I. SECTION XX - DEFINITIONS** is amended to include the following:

"Certified act of terrorism" means an act that is certified by the Secretary of the Treasury, in accordance with the provisions of the federal Terrorism Risk Insurance Act, to be an act of terrorism pursuant to the federal Terrorism Risk Insurance Act. The criteria contained in the Terrorism Risk Insurance Act for a "certified act of terrorism" include the following:

1. The act resulted in insured losses in excess of \$5 million in the aggregate, attributable to all types of insurance subject to the Terrorism Risk Insurance Act; and
2. The act is a violent act or an act that is dangerous to human life, property or infrastructure and is committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

**II. SECTION XXI - APPLICATION OF OTHER EXCLUSIONS** is added:

The terms and limitations of any terrorism exclusion, or the inapplicability, omission or absence of a terrorism exclusion does not serve to create coverage for any "loss" which would otherwise be excluded under this policy, such as "losses" excluded by:

1. Exclusions that address war, warlike action, insurrection, rebellion, revolution, military action, nuclear hazard, nuclear materials, nuclear reaction, radiation, or radioactive contamination;
2. Exclusions that address pollutants, contamination, deterioration, fungi or bacteria; or
3. Any other exclusion,

regardless if the "certified act of terrorism" contributes concurrently or in any sequence to the "loss".

**III. SECTION XXII - CAP ON LOSSES FROM CERTIFIED ACTS OF TERRORISM** is added:

If aggregate insured losses attributable to terrorist acts certified under the Terrorism Risk Insurance Act exceed \$100 billion in a calendar year and we have met our insurer deductible under the Terrorism Risk Insurance Act, we shall not be liable for the payment of any portion of the amount of such losses that exceeds \$100 billion, and in such case insured losses up to that amount are subject to pro rata allocation in accordance with procedures established by the Secretary of the Treasury.

#### **IV. SUNSET CLAUSE**

If the federal Terrorism Risk Insurance Act expires or is repealed, then this endorsement is null and void for any act of terrorism that takes place after the expiration or repeal of the Act.

All other provisions of the policy remain unchanged except as herein expressly modified.