



**NON-PROFIT ORGANIZATION DIRECTORS AND OFFICERS  
LIABILITY DECLARATIONS**



Corporate Office  
945 E. Paces Ferry Rd.  
Suite 1800  
Atlanta, GA 30326

COMPANY SYMBOL N	POLICY PREFIX & NUMBER HP680253
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●THIS IS A CLAIMS MADE AND REPORTED POLICY. PLEASE READ IT CAREFULLY.●

THIS POLICY IS ISSUED BY: RSUI Indemnity Company (hereinafter referred to as the Insurer)

**ITEM 1. INSURED ORGANIZATION'S NAME**

ASSOCIATION OF APARTMENT OWNERS OF THE  
WHALER ON KAA NAPALI BEACH

**ITEM 2. LIMIT OF LIABILITY:**

A. Directors and Officers Limit of Liability \$ 2,000,000  
B. Additional Side-A Limit of Liability \$ Not Applicable

**ITEM 3. RETENTION:**

A. Directors and Officers Liability Retentions  
1) Insuring Agreement A \$ 0  
2) Insuring Agreement B \$ 75,000  
3) Insuring Agreement C \$ 75,000

**ITEM 4. PRIOR AND/OR PENDING LITIGATION DATE:**

Directors and Officers Prior and/or Pending Litigation Date: 01/31/2018

THESE DECLARATIONS TOGETHER WITH THE COMPLETED, SIGNED AND DATED APPLICATION, POLICY FORMS AND ENDORSEMENTS, IF ANY, ISSUED TO FORM A PART THEREOF, COMPLETE THE ABOVE NUMBERED POLICY.

Countersigned: \_\_\_\_\_

February 11, 2019

DATE

AUTHORIZED REPRESENTATIVE

**NON-PROFIT ORGANIZATION EMPLOYMENT PRACTICES  
LIABILITY DECLARATIONS**



Corporate Office  
945 E. Paces Ferry Rd.  
Suite 1800  
Atlanta, GA 30326

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THIS POLICY IS ISSUED BY: RSUI Indemnity Company (hereinafter referred to as the Insurer)

**ITEM 1. INSURED ORGANIZATION'S NAME**

ASSOCIATION OF APARTMENT OWNERS OF THE  
WHALER ON KAA NAPALI BEACH

**ITEM 2. LIMIT OF LIABILITY:**

- A. Employment Practices Limit of Liability \$ 2,000,000  
(Including Third Party Liability, if purchased)
- B. Workplace Violence Expenses Sublimit \$ 250,000

**ITEM 3. RETENTION:**

- A. Employment Practices Liability Retentions
  - 1) Employment Practices Liability \$ 75,000
  - 2) Third Party Liability Coverage \$ 75,000

**ITEM 4. PRIOR AND/OR PENDING LITIGATION DATE:**

Employment Practices Prior and/or Pending Litigation Date: 01/31/2018

THESE DECLARATIONS TOGETHER WITH THE COMPLETED, SIGNED AND DATED APPLICATION, POLICY FORMS AND ENDORSEMENTS, IF ANY, ISSUED TO FORM A PART THEREOF, COMPLETE THE ABOVE NUMBERED POLICY.

Countersigned: \_\_\_\_\_

February 11, 2019  
DATE

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

**NON-PROFIT ORGANIZATION MANAGEMENT LIABILITY POLICY  
SUPPLEMENTAL DECLARATIONS**



POLICY NUMBER:     NHP680253    

**SCHEDULE OF FORMS AND ENDORSEMENTS**

<b><u>TITLE</u></b>	<b><u>FORM NUMBER</u></b>
Disclosure Pursuance to Terrorism Risk Insurance Act	RSG 204123 0116
<b>FORMS APPLICABLE TO MULTIPLE COVERAGE PARTS</b>	
Common Policy Terms and Conditions Coverage Section-Non-Profit	RSG 211003 0118
Amended Notice of Claim or Circumstance-Specific Position Trigger	RSG 204151 0118
Amended Settlement Provision	RSG 204160 0118
Cap on Losses From Certified Acts of Terrorism	RSG 204198 0118
Coverage Extension-Property Managers	RSG 214080 1118
Exclusion-Amended Bodily Injury and Property Damage	RSG 206118 0118
Exclusion-Bankruptcy-Insolvency	RSG 206104 0118
Exclusion-Builder Developer	RSG 206051 0118
Exclusion-Prior Acts	RSG 206108 0118
Extradition Coverage	RSG 204174 0118
Fully Non-Rescindable Coverage	RSG 204157 0118
Mailing-Physical Address	RSG 204199 0118
Sublimit-Defense of Non-Monetary Damages	RSG 204113 0118
Three (3) Year Bilateral Extended Reporting Period	RSG 207002 0118
<b>FORMS APPLICABLE TO DIRECTORS &amp; OFFICERS LIABILITY</b>	
Directors and Officers Liability Coverage Section-Non-Profit	RSG 211009 0118
<b>FORMS APPLICABLE TO EMPLOYMENT PRACTICES LIABILITY</b>	
Employment Practices Liability Coverage Section-Non-Profit	RSG 211010 0118
Sublimit-Defense Expenses-Wage and Hour Claims	RSG 204153 0118
<b>STATE AMENDATORY FORMS</b>	
Hawaii Changes-Cancellation and Nonrenewal	RSG 203053 0118

**THIS ENDORSEMENT IS ATTACHED TO AND MADE A PART OF THIS POLICY IN RESPONSE TO THE DISCLOSURE REQUIREMENTS OF THE TERRORISM RISK INSURANCE ACT. THIS ENDORSEMENT DOES NOT GRANT ANY COVERAGE OR CHANGE THE TERMS AND CONDITIONS OF ANY COVERAGE UNDER THIS POLICY.**

## DISCLOSURE PURSUANT TO TERRORISM RISK INSURANCE ACT

### SCHEDULE\*

<b>Terrorism Premium</b>	<b>\$0</b>
<b>Additional information, if any, concerning the terrorism premium:</b>	
The portion of your premium for the policy term attributable to coverage for all acts of terrorism covered under this policy including terrorist acts certified under the Act is listed above.	
*Information required to complete this Schedule, if not shown above, will be shown in the Declarations Page.	

#### A. Disclosure of Premium

In accordance with the federal Terrorism Risk Insurance Act, as amended, the **Insurer** is required to provide the **Insured** with a notice disclosing the portion of the **Insured's** premium, if any, attributable to coverage for terrorist acts certified under the Terrorism Risk Insurance Act. The portion of the **Insured's** premium attributable to such coverage is shown in the Schedule of this endorsement or in the policy Declarations Page.

As defined in Section 102(1) of the Act: The term "act of terrorism" means any act or acts that are certified by the Secretary of the Treasury – in consultation with the Secretary of Homeland Security, and the Attorney General of the United States – to be an act of terrorism; to be a violent act or an act that is dangerous to human life, property, or infrastructure; to have resulted in damage within the United States, or outside the United States in the case of certain air carriers or vessels or the premises of a United States mission; and to have been 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.

#### B. Disclosure of Federal Participation in Payment of Terrorism Losses

The United States Government, Department of the Treasury, will pay a share of terrorism losses insured under the federal program. Under the formula, the United States Government generally reimburses 85% through 2015; 84% beginning on January 1, 2016; 83% beginning on January 1, 2017; 82% beginning on January 1, 2018; 81% beginning on January 1, 2019 and 80% beginning on January 1, 2020, of covered terrorism losses that exceeds the applicable **Insurer** retention. However, if aggregate insured losses attributable to terrorist acts certified under the Terrorism Risk Insurance Act exceed \$100 billion in a calendar year, the Treasury shall not make any payment for any portion of the amount of such losses that exceeds \$100 billion.

#### C. Cap Insurer Participation in Payment of Terrorism Losses

If aggregate **Insured** losses attributable to terrorist acts certified under the Terrorism Risk Insurance Act exceed \$100 billion in a calendar year and the **Insurer** has met our **Insurer** deductible under the Terrorism Risk Insurance Act, the **Insurer** will 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 Treasury.

**Policy No.:** NHP680253

**Effective:** 1/31/2019



[www.RSUlextra.com](http://www.RSUlextra.com)

## Online Human Resource Loss Prevention Services for Directors and Officers Liability Policyholders

### Key Features

- Best Practice Help Line for call-in assistance
- Checklist database for lowering risk
- Links to important federal and state government sites
- Online library with up-to-date articles on productivity, leadership and loss prevention
- Sample Human Resource policies and forms
- Online reporting function allows the Site Administrator to monitor usage
- Online training modules designed for managers and supervisors with the ability to adapt programs to meet their own needs. Best Practice training modules include:
  - Preventing Sexual Harassment
  - Preventing Discrimination
  - Preventing Wrongful Termination
  - Promoting Ethical Behavior

### How to get started

1. Designate a person to serve as the Site Administrator for your organization.
2. Go to [www.RSUlextra.com](http://www.RSUlextra.com).
3. Click the *Register* link on the left-hand side of the home page.
4. Enter your RSUI policy number as the Passcode/Organization Code (i.e. NHP123456).
5. Complete the Registration Information and click *Submit*.
6. You are now registered as the Site Administrator.

### Who is a Site Administrator?

A Site Administrator is often a person who works with personnel or legal matters and is the person who will oversee the use of [www.RSUlextra.com](http://www.RSUlextra.com). A Site Administrator will have the ability to recruit and add other users as well as make training decisions.

### Questions?

Please call The McCalmon Group at (888) 712-7667 or click *CONTACT US* at [www.RSUlextra.com](http://www.RSUlextra.com) on the upper right hand side of the home page. You will be directed to The McCalmon Group for assistance.

*This site is administered by The McCalmon Group.*

**COMMON POLICY TERMS AND CONDITIONS  
COVERAGE SECTION (NON-PROFIT)  
PLEASE READ YOUR POLICY CAREFULLY**

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Words and phrases that appear in **bold** text have special meaning. Refer to SECTION III. - DEFINITIONS.

In consideration of the payment of premium and in reliance upon all statements made to the **Insurer** in the **Application**, and subject to the terms, conditions, definitions, exclusions and limitations hereinafter provided, the **Insurer** agrees:

**SECTION I. – COMMON POLICY TERMS AND CONDITIONS**

The Common Policy Terms and Conditions Section of this policy shall apply to all **Coverage Sections**. Unless stated to the contrary in any **Coverage Section**, the terms and conditions of each **Coverage Section** of this policy shall apply only to that **Coverage Section** and shall not apply to any other **Coverage Section** of this policy. If any provision in the Common Policy Terms and Conditions sections is inconsistent or in conflict with the terms and conditions in any **Coverage Section**, including any endorsements attached thereto, the terms and conditions of such **Coverage Section** or endorsement, shall supersede for the purposes of that **Coverage Section**.

**SECTION II. - COVERAGE EXTENSIONS**

**A. Marital Estate**

This policy shall cover **Loss** arising from any **Claim** made against the lawful spouse or any legally recognized domestic partner of an **Insured Person** for **Claims** arising solely out of his or her status as the spouse or domestic partner of an **Insured Person** (where such status is derived by reason of statutory law or common law) where such **Insured Person** is entitled to coverage under this policy. Such coverage shall extend to any **Claim** in which a recovery is sought from marital community property, property jointly held by the **Insured Person** and the spouse or domestic partner, or property transferred from the **Insured Person** to the spouse or domestic partner.

Provided, however, that this COVERAGE EXTENSION shall not extend coverage to any **Claim** for, arising from, based upon or attributable to any actual or alleged **Wrongful Act** of the spouse or domestic partner.

**B. Extended Reporting Period**

If the **Insurer** shall refuse to renew this policy or the **Insured Organization** shall cancel or refuse to renew this policy, the **Insured Organization** shall have the right, upon payment of seventy five percent (75%) of the Full Annual Premium, to a period of three hundred and sixty five (365) days following the effective date of such cancellation or nonrenewal (herein referred to as the "Extended Reporting Period") in which to give written notice to the **Insurer** of any **Claim** first made against the **Insured** during said three hundred and sixty five (365) day period for any **Wrongful Act** occurring prior to the end of the **Policy Period** and otherwise covered by this policy. As used herein, "Full Annual Premium" means the premium stated in Item 5. of the Common Policy Declarations Page and any additional premium(s) charged during the **Policy Period**. The rights contained in this clause shall terminate unless written notice of such election together with the additional premium due is received by the **Insurer** at its address shown on the Declarations Page within thirty (30) days of the effective date of cancellation or nonrenewal.

The Extended Reporting Period is not cancelable and the additional premium charged shall be fully earned at the inception of the Extended Reporting Period.

The Limit of Liability available under the Extended Reporting Period is part of and not in addition to the Limit of Liability stated in Item 4. of the Declarations Page.

The rights contained in this clause shall not apply in the event of cancellation resulting from non-payment of premium.

**C. Estates and Legal Representatives**

This policy shall cover **Loss** arising from any **Claim** made against the estates, heirs, legal representatives or assigns of an **Insured Person** who is deceased, or against the legal representatives or assigns of an **Insured Person** who is incompetent, insolvent or bankrupt, for the **Wrongful Act** of such **Insured Person**.

### SECTION III. – DEFINITIONS

- A. Application** means the application attached to and forming a part of this policy, including any materials submitted or requested in connection with such application within 12 months prior to the inception date of this policy, all of which are deemed a part of this policy.
- B. Claim** shall have the meaning set forth in each applicable **Coverage Section** or any applicable endorsements attached to this policy.
- C. Coverage Section** means, individually or collectively, the purchased coverage sections listed in Item 3. of the Declarations, including all endorsements attached thereto.
- D. Defense Expenses** means reasonable and necessary legal fees and expenses incurred, with the **Insurer's** consent, by any **Insured** in defense of a **Claim**, including any appeal therefrom. **Defense Expenses**, however, shall not include:
1. Remuneration, overhead or benefit expenses associated with any **Insured Person**; or
  2. Any obligation to apply for or furnish any appellate or similar bond.
- E. Employment Practices Wrongful Act** shall have the meaning set forth in the Employment Practices Liability Coverage Section, whether or not purchased.
- F. Fiduciary Wrongful Act** shall have the meaning set forth in the Fiduciary Liability Coverage Section, whether or not purchased.
- G. Insured** shall have the meaning set forth in each applicable **Coverage Section** or any applicable endorsements attached to this policy.
- H. Insured Organization** means:
1. The organization named in Item 1. of the Declarations Page and any **Subsidiary** existing prior to or at the inception date of this policy; or
  2. Subject to SECTION V. - CONDITIONS, G. Merger, Consolidation or Acquisition of this policy, **Insured Organization** shall include any **Subsidiary** created or acquired after the inception date of this policy; or
  3. In the event a bankruptcy proceeding shall be instituted by or against the foregoing entities, the resulting debtor-in-possession (or equivalent status outside the United States), if any.
- I. Insured Person** shall have the meaning set forth in each applicable **Coverage Section** or any applicable endorsements attached to this policy.
- J. Insurer** means the Company providing this insurance as shown on the Declarations Page.
- K. Loss** shall have the meaning set forth in each applicable **Coverage Section** or any applicable endorsements attached to this policy.
- L. Policy Period** means the period beginning at the inception date and ending at the expiration date stated in Item 2. of the Declarations Page or to any earlier policy cancellation or termination date.
- M. Subsidiary** means any entity of which the **Insured Organization**, either directly or indirectly, or through one or more of its **Subsidiaries**:
1. Owns more than fifty percent (50%) of the voting interest; or
  2. Has the right to elect or appoint more than fifty percent (50%) of the voting directors or trustees.
- A **Subsidiary** ceases to be a **Subsidiary** when the **Insured Organization** no longer owns more than fifty percent (50%) of the voting interest, or no longer has the right to elect or appoint more than fifty percent (50%) of the voting directors, or trustees, either directly or indirectly, or through one or more of its **Subsidiaries**.
- N. Wrongful Act** shall have the meaning set forth in each applicable **Coverage Section** or any applicable endorsements attached to this policy.



## SECTION IV. - EXCLUSIONS

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

1. Alleging, arising out of, based upon or attributable to, directly or indirectly, the same or essentially the same facts underlying or alleged in any matter which, prior to the inception date of this policy, has been the subject of notice to any insurer of a **Claim**, or a potential or threatened **Claim**, or an occurrence or circumstance that might give rise to a **Claim** under any policy of which this insurance is a renewal or replacement or which it may succeed in time;
2. Based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any nuclear reaction, nuclear radiation, or radioactive contamination, or any related act or incident;
3. Any **Telecommunications Claim**, as defined below.

A **Telecommunications Claim** is any **Claim**:

- a. Arising from, based upon, attributable to, or in consequence of any proceeding against any **Insured** brought by the Federal Trade Commission or any other federal, state or local regulatory agency or other administrative body alleging the violation of any federal, state or local laws or regulation pertaining to unsolicited or non-consensual advertising, through faxes, telephone calls, texting or any other medium; and/or
- b. Arising from, based upon, attributable to, or in consequence of, any actual or alleged violation of:
  - (1) The Fair Debt Collection Practices Act or any amendments thereto or any rules or regulations promulgated thereunder, or any similar provisions of any federal, state or local statutory law or common law anywhere in the world;
  - (2) The CAN-SPAM Act of 2003 or any amendments thereto or any rules or regulations promulgated thereunder, or any similar provisions of any federal, state or local statutory law or common law anywhere in the world;
  - (3) The Telephone Consumer Protection Act (TCPA) of 1991 or any amendments thereto or any rules or regulations promulgated thereunder, or any similar provisions of any federal, state or local statutory law or common law anywhere in the world; or
  - (4) Any other law, ordinance, regulation, statute or common law relating to any communication, distribution, publication, sending or transmission via telephone, telephone facsimile machine, computer or other telephonic or electronic devices.

The **Wrongful Act** of an **Insured** shall not be imputed to any other **Insured** for the purpose of determining the applicability of the EXCLUSIONS set forth in SECTION IV.

## SECTION V. - CONDITIONS

### A. Duty to Defend

It shall be the right and duty of the **Insurer** to defend any **Claim** against any **Insured** for which coverage applies under this policy, and the **Insurer** shall have the right to appoint counsel of its choosing. No **Insured** may incur any **Defense Expenses**, admit liability for or settle any **Claim** or negotiate any settlement without the **Insurer's** prior written consent; such consent not to be unreasonably withheld. Any **Defense Expenses** incurred or settlements made without the prior written consent of the **Insurer** will not be covered under this policy. The **Insurer** shall have the right to appoint counsel, investigate and conduct negotiations and, with the consent of the **Insured**, to enter into the settlement of any **Claim** that the **Insurer** deems appropriate. If the **Insured** refuses to consent to a settlement acceptable to the claimant in accordance with the **Insurer's** recommendations, the **Insurer's** liability for all **Loss** on account of such **Claim** shall not exceed:

1. The amount for which the **Insurer** could have settled such **Claim** plus **Defense Expenses** incurred as of the date such settlement was proposed in writing by the **Insurer** ("Settlement Opportunity Amount"); plus
2. Seventy percent (70%) of covered **Loss** in excess of such Settlement Opportunity Amount subject to the policy's Limit of Liability.

In no event shall the **Insurer** be liable under this policy for more than the Limit of Liability shown in Item 4. of the Common Policy Declarations Page.

## **B. Limit of Liability; Retention; Payment of Loss**

### **1. Aggregate Limit of Liability**

Regardless of **Coverage Sections** purchased, as stated in Item 3. of the Common Policy Declarations Page, the amount shown in Item 4. of the Common Policy Declarations Page is the maximum aggregate limit that the **Insurer** will pay for all **Loss** under all **Coverage Sections** combined, arising out of any and all **Claims** first made against the **Insured** during the **Policy Period** and the Extended Reporting Period (if purchased) and reported in accordance with the terms and conditions of this policy.

The **Insurer** will have no obligation to pay **Loss** or to defend or continue to defend any **Claim** after the aggregate Limit of Liability, stated in Item 4. of the Common Policy Declarations Page, has been exhausted by payment of **Loss**. **Defense Expenses** shall be part of and not in addition to the Limit of Liability and payment of **Defense Expenses** by the **Insurer** will reduce the Limit of Liability.

### **2. Separate Limit of Liability**

Regardless of any Separate Limit(s) of Liability purchased, as stated in Item 3. of the Common Policy Declarations, the maximum limit of the **Insurer's** liability for all **Loss** for each applicable **Coverage Section** purchased shall not exceed the Separate Limit of Liability as stated in Item 2. of each applicable Declarations for each applicable **Coverage Section**. Where two or more Separate Limits of Liability are or could be applicable to one **Claim** or series of interrelated **Claims** deemed to be a single **Claim** pursuant to Section V.B.4. below, the larger of the applicable Separate Limits of Liability shall apply, but in no event shall more than one Separate Limit of Liability apply to any **Claim** or series of interrelated **Claims** and in no event shall the Insurer be obligated to pay **Loss** or to defend or continue to defend any **Claim** after the Insurer has paid the applicable Separate Limit of Liability or the Aggregate Limit of Liability per Section V.B.1. of these Common Policy Terms and Conditions.

- 3.** As a condition precedent to coverage under this policy, the **Insured** shall pay with respect to each **Claim** the applicable Retention amount, as identified in Item 3. of the Declarations Page for each applicable **Coverage Section** or as otherwise identified. The Retention amount shall be reduced solely by covered **Loss** and shall be applied to all **Loss**, including **Defense Expenses**, and the **Insurer** shall only be liable for the amount of **Loss** that is excess of the stated Retention amount.
- 4.** All **Claims** based on, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving the same or related facts, circumstances, situations, transactions or events, or the same or related series of facts, circumstances, situations, transactions or events, shall be deemed to be a single **Claim** for all purposes under this policy, shall be subject to the Retention stated in Item 3. of the Declarations Page for each applicable **Coverage Section**, or other applicable Retention, and shall be deemed first made when the earliest of such **Claims** is first made, regardless of whether such date is before or during the **Policy Period**.
- 5.** In the event that a **Claim** implicates more than one Retention amount, then the largest of the applicable Retention amounts shall be applied, but in no event shall more than one Retention amount be applied to a **Claim**.
- 6.** Any Retention amount applicable to a **Claim** against an **Insured Person** shall apply where indemnification by the **Insured Organization** is permitted or required, regardless of whether the **Insured Organization** has agreed, failed or refused to indemnify such **Insured Person**, provided it shall not apply when indemnification cannot be made by the **Insured Organization** by reason of the **Insured Organization's** financial insolvency.
- 7.** The **Insurer's** duty to defend the **Insured** and pay **Defense Expenses** ends upon exhaustion of the Limit of Liability, which includes paying or tendering the Limit of Liability into court.
- 8.** Except for payment of **Defense Expenses**, the **Insurer** shall pay for **Loss** only upon final disposition of any **Claim**.

## **C. Notice of Claim or Circumstance**

- 1.** If, during the **Policy Period** or Extended Reporting Period (if applicable), any **Claim** is first made, it shall be a condition precedent to the **Insurer's** obligation to pay, that the **Insured** give written notice of such **Claim** to the **Insurer** as soon as practicable after such **Claim** is first made, but in no event shall such notice be given later than sixty (60) days after either the **Policy Period** expires or any earlier cancellation date of this policy.

2. If, during the **Policy Period** or Extended Reporting Period (if applicable), any **Insured** first becomes aware of any facts or circumstances which may reasonably be expected to give rise to a **Claim** against any **Insured** for any **Claim** made against the **Insured** for any **Wrongful Act** occurring prior to the end of the **Policy Period**, and as soon as practicable thereafter, but before the expiration date or any earlier cancellation date of this policy, gives to the **Insurer** written notice, of such facts or circumstances along with the full particulars described below, then any **Claim** subsequently made against any **Insured** arising out of such facts or circumstances will be deemed first made during the **Policy Period**. The written notice shall include, at a minimum:
  - a. The names or identity of the potential claimants and a detailed description of the specific alleged **Wrongful Act**; and
  - b. The circumstances by which the **Insured** first became aware of the specific alleged **Wrongful Act**.

Further, if any **Claim** first made after the **Policy Period** expires is nonetheless deemed to be made during the **Policy Period** pursuant to Section V.B.4., then it is a condition precedent to coverage for such **Claim** that the **Insured** report it to the **Insurer** as soon as practicable.

#### D. Cooperation

In the event of a **Claim** or notice of circumstances under SECTION V. - CONDITIONS, C. Notice of Claim or Circumstance of this policy, the **Insured** will provide the **Insurer** with all information, assistance and cooperation that the **Insurer** reasonably requests, and will take no action, without the **Insurer's** prior written consent, that might prejudice the **Insured's** or the **Insurer's** position, potential or actual rights, or defense under this policy.

#### E. Allocation

If both **Loss** covered under this policy and loss not covered under this policy are jointly incurred either because a **Claim** includes both covered and non-covered matters or covered and non-covered causes of action or because a **Claim** is made against both an **Insured** and any other parties not insured by this policy, then the **Insured** and the **Insurer** shall use their best efforts to fairly and reasonably allocate payment under this policy between covered **Loss** and non-covered loss based on the relative legal exposures of the parties with respect to covered and non-covered matters or covered and non-covered causes of action.

If the **Insurer** and the **Insured** agree on an allocation of **Defense Expenses**, based on covered and non-covered matters or persons, the **Insurer** shall advance **Defense Expenses** allocated to covered **Loss**. If there is no agreement on an allocation of **Defense Expenses**, the **Insurer** shall advance **Defense Expenses** that the **Insurer** believes to be covered under this policy until a different allocation is negotiated, arbitrated, or judicially determined.

Any negotiated, arbitrated or judicially determined allocation of **Defense Expenses** on account of a **Claim** shall be applied retroactively to all **Defense Expenses** on account of such **Claim**, notwithstanding any prior advancement to the contrary. Any advancement or allocation of **Defense Expenses** on account of a **Claim** shall not apply to or create any presumption with respect to the allocation of other loss on account of such **Claim**.

#### F. Cancellation; Renewal Provision

The **Insured Organization** may cancel this policy at any time by written notice or by surrender of this policy to the **Insurer** at its address shown on the Declarations Page.

This policy may only be cancelled by or on behalf of the **Insurer** in the event the **Insured Organization** fails to pay any premium when due. In the event of non-payment of premium by the **Insured Organization**, the **Insurer** may cancel this policy upon ten (10) days written notice. The **Insurer** will mail notice to the **Insured Organization's** address as shown in Item 1. of the Declarations Page. The mailing of such notice as aforesaid shall be sufficient proof of notice.

If the **Insured Organization** cancels this policy, the **Insurer** will retain the customary short rate proportion of the premium hereon.

The **Insurer** shall not be required to renew this policy upon its expiration. The offer by the **Insurer** of renewal terms, conditions, Limit of Liability and/or premiums varying from those of the expiring policy shall not constitute a refusal to renew.

If the **Insurer** decides not to renew this policy, the **Insurer** will mail or deliver to the **Insured Organization** written notice of non-renewal, stating the reasons for non-renewal, at least sixty (60) days prior to the expiration date of this policy.

Any notice of non-renewal will be mailed or delivered to the **Insured Organization's** last mailing address known to the **Insurer**. If notice is mailed, proof of mailing will be sufficient proof of notice.

#### G. Merger, Consolidation or Acquisition

1. If, after this policy's inception date, the **Insured Organization** creates or acquires a **Subsidiary** whose assets do not exceed twenty five percent (25%) of the total consolidated assets of the **Insured Organization**, not including the assets of the created or acquired **Subsidiary**, such **Subsidiary** shall be deemed to qualify as an **Insured Organization**, but solely for a **Wrongful Act** that takes place on or after the effective date of such creation or acquisition.
2. If, after this policy's inception date, the **Insured Organization** creates or acquires a **Subsidiary** whose assets exceed twenty five percent (25%) of the total consolidated assets of the **Insured Organization**, not including the assets of the created or acquired **Subsidiary**, such **Subsidiary** shall be deemed to qualify as an **Insured Organization**, but solely for a **Wrongful Act** that takes place within the first ninety (90) days after the date of such creation or acquisition. After this ninety (90) day period, the created or acquired **Subsidiary** shall no longer be deemed an **Insured Organization**, unless:
  - a. Written notice of the **Subsidiary's** creation or acquisition has been provided to the **Insurer** by the **Insured Organization**, as soon as practicable, and in no event later than ninety (90) days after the date of the creation or acquisition;
  - b. The **Insured Organization** has provided the **Insurer** with any additional information the **Insurer** may request;
  - c. The **Insured Organization** has agreed to the terms, conditions, exclusions and additional premium charge as may be required by the **Insurer**; and
  - d. The **Insurer**, at its sole discretion, has agreed in writing to extend the coverage of this policy to the created or acquired **Subsidiary**.
3. If during the **Policy Period**:
  - a. The **Insured Organization** shall consolidate with or merge into, or sell all or substantially all of its assets to any other person or entity or group of persons or entities acting in concert; or
  - b. Any person or entity or group of persons or entities acting in concert shall acquire an amount of more than fifty percent (50%) of the voting power for the election of directors of the **Insured Organization**;(either of the above events in 3. a. or b. are hereunder referred to as the "Transaction" ),

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

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

#### H. Representations

The **Insured** represents that the information, particulars, documents, representations and statements contained in the **Application** are complete, true and accurate; are deemed incorporated into and constituting part of this policy; are material to the acceptance of the risk assumed by the **Insurer** under this policy. This policy is issued in reliance upon the truth of such representations. No knowledge or information possessed by any **Insured** will be imputed to any other **Insured**. If any of the information, particulars, documents, representations and statements contained in the **Application** are untrue, this policy will be void with respect to any **Insured** who knew of such untruth.

#### I. No Action Against Insurer

No action may be taken against the **Insurer** unless, as a condition precedent thereto, there has been full compliance with all of the terms and conditions of this policy and until the amount of any **Insured's** obligation to pay **Loss** has been finally determined either by judgment against such **Insured** after adjudicatory proceedings, or by written agreement of the **Insured**, the claimant and the **Insurer**.

No **Insured** has any right under this policy to join the **Insurer** as a party to any **Claim** against an **Insured** to determine the liability of such **Insured**, nor shall the **Insurer** be impleaded by an **Insured** or his, her or its legal representative in any such **Claim**.

**J. Subrogation**

In the event the **Insurer** makes any payment under this Policy, the **Insurer** shall be subrogated to all of the rights of recovery of the **Insured**, who shall execute all papers and take all necessary actions to secure such rights, including the execution of any documents necessary to enable the **Insurer** to effectively bring suit in the name of an **Insured**.

**K. Authorization and Notices**

The **Insured Persons** agree that the **Insured Organization** shown in Item 1. of the Declarations Page acts on their behalf with respect to giving and receiving all notices and return of premium from the **Insurer**.

**L. Changes**

Notice to any agent or knowledge possessed by any agent or representations by persons acting on behalf of the **Insurer** do not effect a waiver or change in any part of this policy or estop the **Insurer** from asserting any right under the terms, conditions and limitations of this policy. The terms, conditions and limitations of this policy can only be waived or changed by written endorsement.

**M. Assignment**

Assignment of interest under this policy does not bind the **Insurer** without its prior written consent.

**N. Acceptance**

The **Insureds** agree that this policy, including the **Application** and any endorsements, constitutes the entire agreement between them and the **Insurer** relating to this insurance policy.

**O. Headings**

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

**P. Governing Law Clause**

This policy shall, to the extent permitted by applicable law, be construed in accordance with the laws of the state or jurisdiction of incorporation or organization of the **Insured Organization** shown in Item 1. of the Declarations Page or, in the case of matters pertaining to a **Subsidiary**, the laws of the state or jurisdiction of incorporation or organization thereof.

**Q. Territory**

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

**R. Other Insurance**

Unless specifically stated otherwise, the insurance provided under this policy shall apply only as excess over any other valid and collectible insurance, unless such other insurance is written as specific excess insurance over the Aggregate Limit of Liability or Shared Limit of Liability provided by this policy. Any coverage otherwise available under any **Coverage Section** shall be specifically excess over any other valid and collectible insurance pursuant to which any other insurer has a duty to defend a **Claim** for which this policy may be obligated to pay **Loss**.

**In Witness Whereof**, the **Insurer** has caused this policy to be executed and attested, but this policy shall not be valid unless countersigned on the Declarations Page by a duly authorized agent of the **Insurer**.



Secretary



President

*This Endorsement Changes The Policy. Please Read It Carefully.*

## AMENDED NOTICE OF CLAIM OR CIRCUMSTANCE – SPECIFIC POSITION TRIGGER

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This endorsement modifies insurance provided under the following:

**NON-PROFIT ORGANIZATION MANAGEMENT LIABILITY POLICY  
PRIVATE COMPANY MANAGEMENT LIABILITY POLICY**

SECTION V. – CONDITIONS, C. Notice of Claim or Circumstance of the Common Policy Terms and Conditions Coverage Section is deleted and replaced by the following:

**C. Notice of Claim or Circumstance**

1. If, during the **Policy Period** or Extended Reporting Period (if applicable), any **Claim** is first made, it shall be a condition precedent to the **Insurer's** obligation to pay, that the **Insured** give written notice of such **Claim** to the **Insurer** as soon as practicable after the **Insured's** Chief Executive Officer, Chief Financial Officer, General Counsel or Risk Manager first becomes aware of the **Claim**, but in no event shall such notice be given later than sixty (60) days after the expiration or earlier cancellation date of this Policy.
2. If, during the **Policy Period** or Extended Reporting Period (if applicable), any **Insured** first becomes aware of any facts or circumstances which may reasonably be expected to give rise to a **Claim** against any **Insured** for any **Claim** made against the **Insured** for any **Wrongful Act** occurring prior to the end of the **Policy Period**, and as soon as practicable thereafter, but before the expiration date or any earlier cancellation date of this policy, gives to the **Insurer** written notice, of such facts or circumstances along with the full particulars described below, then any **Claim** subsequently made against any **Insured** arising out of such facts or circumstances will be deemed first made during the **Policy Period**. The written notice shall include, at a minimum:
  - a. The names or identity of the potential claimants and a detailed description of the specific alleged **Wrongful Act**; and
  - b. The circumstances by which the **Insured** first became aware of the specific alleged **Wrongful Act**.

Further, if any **Claim** first made after the **Policy Period** expires is nonetheless deemed to be made during the **Policy Period** pursuant to Section V.B.4., then it is a condition precedent to coverage for such **Claim** that the **Insured** report it to the **Insurer** as soon as practicable.

All other terms and conditions of this policy remain unchanged.

*This Endorsement Changes The Policy. Please Read It Carefully.*

## AMENDED SETTLEMENT PROVISION

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This endorsement modifies insurance provided under the following:

**NON-PROFIT ORGANIZATION MANAGEMENT LIABILITY POLICY  
PRIVATE COMPANY MANAGEMENT LIABILITY POLICY**

SECTION V. – CONDITIONS, A. Duty to Defend of the Common Policy Terms and Conditions Coverage Section is deleted and replaced by the following:

**A. Duty to Defend**

It shall be the right and the duty of the **Insurer** to defend any **Claim** against any **Insured** for which coverage applies under this policy, and the **Insurer** shall have the right to appoint counsel of its choosing. No **Insured** may incur any **Defense Expenses**, admit liability for or settle any **Claim** or negotiate any settlement without the **Insurer's** prior written consent; such consent not to be unreasonably withheld. Any **Defense Expenses** incurred or settlements made without the prior written consent of the **Insurer** will not be covered under this policy. The **Insurer** shall have the right to appoint counsel, investigate and conduct negotiations and, with the consent of the **Insured**, to enter into a settlement of any **Claim** that the **Insurer** deems appropriate. If the **Insured** refuses to consent to a settlement acceptable to the claimant in accordance with the **Insurer's** recommendations, the **Insurer's** liability for all **Loss** on account of such **Claim** shall not exceed:

1. The amount for which the **Insurer** could have settled such **Claim** plus **Defense Expenses** incurred as of the date such settlement was proposed in writing by the **Insurer** ("Settlement Opportunity Amount"); plus
2. Eighty percent (80%) of covered **Loss** in excess of such Settlement Opportunity Amount subject to the policy's Limit of Liability.

In no event shall the **Insurer** be liable under this policy for more than the Limit of Liability shown in Item 4. of the Common Policy Declarations Page.

All other terms and conditions of this policy remain unchanged.

*This Endorsement Changes The Policy. Please Read It Carefully.*

## **CAP ON LOSSES FROM CERTIFIED ACTS OF TERRORISM**

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This endorsement modifies insurance provided under the following:

**NON-PROFIT ORGANIZATION MANAGEMENT LIABILITY POLICY  
PRIVATE COMPANY MANAGEMENT LIABILITY POLICY**

The following is added to the Common Policy Terms and Conditions Coverage Section:

If aggregate insured losses attributable to terrorist acts certified under the Terrorism Risk Insurance Act exceed \$100 billion in a calendar year and the **Insurer** has met our insurer deductible under the Terrorism Risk Insurance Act, the **Insurer** 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.

**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 such 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.

The terms and limitations of any terrorism exclusion, or the inapplicability or omission of a terrorism exclusion, do not serve to create coverage for any loss which would otherwise be excluded under this Policy, such as losses excluded by the Nuclear Exclusion.

All other terms and conditions of this policy remain unchanged.



*This Endorsement Changes The Policy. Please Read It Carefully.*

## COVERAGE EXTENSION – PROPERTY MANAGERS

This endorsement modifies insurance provided under the following:

### NON-PROFIT ORGANIZATION MANAGEMENT LIABILITY POLICY

- A. The following is added to SECTION II. – COVERAGE EXTENSIONS, of the Directors and Officers Liability Coverage Section and the Employment Practices Liability Coverage Section:

The amount set forth in Item 4. of the Common Policy Declarations Page shall be the maximum aggregate Limit of Liability for all **Loss** under this policy. Subject to the foregoing, the amount of \$100,000 shall be the maximum aggregate Limit of Liability of the **Insurer** for **Loss** under this policy in connection with any **Claim** made against a **Property Manager**. This sublimit shall be one sublimit only, regardless of the number of Coverage Sections purchased by any or all **Insureds**, and shall be part of and not in addition to the amount set forth in Item 4. of the Common Policy Declarations Page.

A Retention in the amount of \$75,000 shall apply to any **Loss** for any **Claim** made against a **Property Manager**. Such Retention shall be borne by the **Insured**, and the **Insurer** shall only be liable for the amount of **Loss** that is in excess of the above stated Retention.

Notwithstanding anything contained in this endorsement to the contrary, however, solely where coverage for any **Claim** is triggered as “Side A”, or non-indemnifiable or non-indemnified **Loss** in keeping with Policy terms and conditions, the Retention normally applicable in such situations shall apply to such **Claim**, and the Retention stated here shall not apply.

- B. Solely with respect to coverage provided by this endorsement, SECTION III. - DEFINITIONS, H. **Insured Organization** of the Common Policy Terms and Conditions Coverage Section is amended as follows:

**Insured Organization** also means any **Property Manager**, but solely for **Claims** arising out of its **Wrongful Acts**, or the **Wrongful Acts** of another **Insured** for which the **Property Manager** is vicariously liable.

- C. Solely with respect to coverage provided in this endorsement, DEFINITION G., **Wrongful Act** of the Directors and Officers Liability Coverage Section is deleted in its entirety and replaced by the following:

**Wrongful Acts** means any actual or alleged error, misstatement, misleading statement, act or omission or neglect or breach of duty by the **Property Manager**, including any **Personal Injury Wrongful Act**, but solely (i) in the capacity of providing services as a **Property Manager** for the **Insured Organization** specified at Item 1 of the Declarations Page, and (ii) where acting at the specific direction of such **Insured Organization**. **Wrongful Act** does not include any actual or alleged conduct of **Property Manager** in the discharge of its duties as such for any organization other than the **Insured Organization** specified at Item 1 of the Declarations Page, or for its own interests, outside the limited scope described here.

- D. Solely with respect to coverage provided in this endorsement, SECTION III. – DEFINITIONS, of the Employment Practices Liability Coverage Section is amended to include the following:

**Wrongful Acts** means any actual or alleged error, misstatement, misleading statement, act or omission or neglect or breach of duty by the **Property Manager**, including any **Personal Injury Wrongful Act**, but solely (i) in the capacity of providing services as a **Property Manager** for the **Insured Organization** specified at Item 1 of the Declarations Page, and (ii) where acting at the specific direction of such **Insured Organization**. **Wrongful Act** does not include any actual or alleged conduct of **Property Manager** in the discharge of its duties as such for any organization other than the **Insured Organization** specified at Item 1 of the Declarations Page, or for its own interests, outside the limited scope described here.

- E. The following are added to SECTION III. - DEFINITIONS of the Directors and Officers Liability Coverage Section and Employment Practices Liability Coverage Section:

**Property Manager** means a person or entity providing the following services in connection with the management of commercial or residential property for and at the direction of the **Insured Organization** specified at Item 1. of the Declarations Page, for a fee:

- 
1. development and implementation of management plans and budgets for such **Insured Organizations** property;
  2. oversight and physical maintenance of such **Insured Organizations** property;
  3. solicitation evaluation and securing tenants and management of tenant relations, collection of rent and processing eviction with respect to such **Insured Organizations** property;
  4. development, implementation and management of (i) loss control and risk management plans for real property of such **Insured Organization**, and (ii) contracts and subcontracts, excluding property and liability contracts, necessary to the daily functioning of the property of such **Insured Organization**; and
  5. feasibility studies and recommendations regarding maintenance, repairs, renovations or alterations of property of such **Insured Organization**, provided such maintenance, repairs, renovations or alterations do not involve, in whole or in part, the services of an architect;
  6. personnel administrations and record-keeping in connection with managing such **Insured Organizations** property.

Solely with respect to coverage provided in this endorsement, **Personal Injury Wrongful Act** means false arrest, wrongful detention or imprisonment, malicious prosecution, discrimination, other than employment discrimination, and wrongful entry or eviction.

- F. SECTION IV. - EXCLUSIONS, of the Directors and Officers Liability Coverage Section and Employment Practices Liability Coverage Section is amended by adding the following, but solely with respect to a **Claim** against a **Property Manager**:

Based upon, directly or indirectly arising out of, or in any way involving commingling, misappropriation or improper use of, or failure to pay, collect or safeguard funds;

Based upon directly or indirectly arising out of, or in any way involving advice as to property value.

- G. SECTION V. – CONDITIONS, B. **Limit of Liability; Retention; Payment of Loss**, of the Common Policy Terms and Conditions Coverage Section is amended to include the following:

If any **Loss** on account of any **Claim** or related **Claims** against, or any **Wrongful Act** or interrelated **Wrongful Acts** by a **Property Manager** is insured under two or more policies issued by the **Insurer** or any affiliate thereof, only the policy with the greatest limit of liability shall apply, whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise, unless such other insurance is written only as specific excess insurance over this policy. A failure by the **Property Manager** to disclose other available insurance, which shall apply as primary in keeping with this policy's other insurance provisions, shall be a material breach of the policy and coverage provided here and shall render coverage available to the **Property Manager** void or voidable at the **Insurers** option.

All other terms and conditions of this policy remain unchanged.

*This Endorsement Changes The Policy. Please Read It Carefully.*

## **EXCLUSION – AMENDED BODILY INJURY AND PROPERTY DAMAGE**

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This endorsement modifies insurance provided under the following:

**NON-PROFIT ORGANIZATION MANAGEMENT LIABILITY POLICY  
PRIVATE COMPANY MANAGEMENT LIABILITY POLICY**

- A. SECTION IV. – EXCLUSIONS, 6. of the Directors and Officers Liability Coverage Section is deleted and replaced with the following:
- 6. Alleging, arising out of, based upon, attributable to, or in any way involving, directly or indirectly:
    - a. Bodily injury, sickness, disease or death of any person, mental anguish or emotional distress; or
    - b. Damage to or destruction of any tangible property, including loss of use thereof, whether or not such property is physically damaged;
- B. The first paragraph of SECTION IV. – EXCLUSIONS, 2. of the Employment Practices Liability Coverage Section is deleted and replaced with the following:
- 2. Alleging, arising out of, based upon, attributable to, or in any way involving, directly or indirectly:
    - a. Bodily injury, sickness, disease or death of any person, mental anguish or emotional distress; provided, this EXCLUSION will not apply to allegations of mental anguish or emotional distress made solely in connection with an **Employment Practices Claim**; or
    - b. Damage to or destruction of any tangible property, including loss of use thereof, whether or not such property is physically damaged;

All other terms and conditions of this policy remain unchanged.

*This Endorsement Changes The Policy. Please Read It Carefully.*

## **EXCLUSION – BANKRUPTCY / INSOLVENCY**

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This endorsement modifies insurance provided under the following:

**NON-PROFIT ORGANIZATION MANAGEMENT LIABILITY POLICY  
PRIVATE COMPANY MANAGEMENT LIABILITY POLICY**

The following is added to SECTION IV. – EXCLUSIONS, of the Common Policy Terms and Conditions Coverage Section:

The **Insurer** shall not be liable to make any payment for **Loss** under this policy in connection with any **Claim** made against any **Insured**:

1. Alleging, arising out of, based upon, attributable to, or in any way involving, directly or indirectly, in whole or in part, any **Wrongful Act** that is alleged to have caused, directly or indirectly, in whole or in part:
  - a. The bankruptcy or insolvency of the **Insured Organization**;
  - b. The **Insured Organization's** filing of a petition, or a petition being filed against the **Insured Organization** pursuant to the federal Bankruptcy Code or any similar state law;
  - c. The **Insured Organization** assigning its assets for the benefit of its creditors; or
  - d. By any other means seeking protection under the common or statutory law as a result of insolvency or financial impairment.
2. Alleging, arising out of, based upon, attributable to, or in any way involving, directly or indirectly, in whole or in part, the **Insured Organization** having sustained a financial loss due to a **Wrongful Act** by or on behalf of any **Insured Person** that actually or allegedly occurred before the date that the **Insured Organization** or other party sought protection of the **Insured Organizations** assets by any means including but not limited to those referenced in sections 1. a. through 1. d. of this endorsement.
3. Brought or maintained by or on behalf of any creditor or debt-holder of the **Insured Organization**, or any **Claim** arising out of any actual or alleged **Wrongful Act**, where such **Wrongful Act** actually or allegedly results in the **Insured Organization's** failure, refusal or inability to pay debts or amounts due and owing, including but not limited to **Claims** alleging misrepresentation in connection with any extension of credit or in connection with the purchase or sale of a debt instrument, or **Claims** alleging any **Wrongful Acts** where such **Wrongful Acts** actually or allegedly result in the deterioration in the value of any debt instrument or security as a result of, wholly or in part the bankruptcy or insolvency of the **Insured Organization**.

The specific limitations on coverage contained in this endorsement should not under any circumstances be interpreted to suggest the existence of coverage under terms and conditions elsewhere in this policy or in contexts other than those referenced in this endorsement.

All other terms and conditions of this policy remain unchanged.

*This Endorsement Changes The Policy. Please Read It Carefully.*

## **EXCLUSION - BUILDER / DEVELOPER**

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This endorsement modifies insurance provided under the following:

**NON-PROFIT ORGANIZATION MANAGEMENT LIABILITY POLICY  
PRIVATE COMPANY MANAGEMENT LIABILITY POLICY**

The following is added to SECTION IV. – EXCLUSIONS, of the Directors and Officers Liability Coverage Section and the Employment Practices Liability Coverage Section:

The **Insurer** shall not be liable to make any payment for **Loss** from any **Claim** alleging, arising out of, based upon or attributable to any actual or alleged dispute with a converter, builder, developer or contractor, including but not limited to disputes arising out of conflicts of interest, or any **Claim** brought by any converter, builder, developer or contractor against any **Insured** arising out of, in whole or in part, a building or construction dispute, including but not limited to architecture or style disputes. This exclusion shall include but not be limited to any dispute with persons (or their agents or representatives) who own but do not reside in properties being constructed or adapted for sale or resale to third parties.

All other terms and conditions of this policy remain unchanged.

*This Endorsement Changes The Policy. Please Read It Carefully.*

## **EXCLUSION – PRIOR ACTS**

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This endorsement modifies insurance provided under the following:

**NON-PROFIT ORGANIZATION MANAGEMENT LIABILITY POLICY  
PRIVATE COMPANY MANAGEMENT LIABILITY POLICY**

The following is added to SECTION IV. – EXCLUSIONS, of the Common Policy Terms and Conditions Coverage Section:

The **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim** made against any **Insured** that alleges, arises out of, is based upon or attributable to, directly or indirectly, in whole or in part, any actual or alleged **Wrongful Acts** which first occurred prior to January 31, 2018.

All other terms and conditions of this policy remain unchanged.

*This Endorsement Changes The Policy. Please Read It Carefully.*

## EXTRADITION COVERAGE

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This endorsement modifies insurance provided under the following:

**NON-PROFIT ORGANIZATION MANAGEMENT LIABILITY POLICY  
PRIVATE COMPANY MANAGEMENT LIABILITY POLICY**

- A. SECTION III. – DEFINITIONS, of the Common Policy Terms and Conditions Coverage Section is amended to include the following:

**Extradition** means any formal process by which an **Insured Person** located in any country is surrendered to any other country for trial or otherwise to answer any criminal accusation.

- B. SECTION III. – DEFINITIONS, **B. Claim**, of the Common Policy Terms and Conditions Coverage Section is amended to include the following:

**Claim** also means any official request for **Extradition** of any **Insured Person**, return of an indictment (in the case of a criminal proceeding), or receipt or filing of a notice of charges.

- C. SECTION III. – DEFINITIONS, **D. Defense Expenses**, of the Common Policy Terms and Conditions Coverage Section is amended to include the following:

**Defense Expenses** also means reasonable and necessary fees, costs and expenses incurred through legal counsel and consented to by the **Insurer** resulting from an **Insured Person** lawfully:

- a. Opposing, challenging, resisting or defending against any request for or any effort to obtain the **Extradition** of that **Insured Person**; or
- b. Appealing any order or other grant of **Extradition** of that **Insured Person**.

All other terms and conditions of this policy remain unchanged.

*This Endorsement Changes The Policy. Please Read It Carefully.*

## **FULLY NON-RESCINDABLE COVERAGE**

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This endorsement modifies insurance provided under the following:

**NON-PROFIT ORGANIZATION MANAGEMENT LIABILITY POLICY  
PRIVATE COMPANY MANAGEMENT LIABILITY POLICY**

The following is added to the Common Policy Terms and Conditions Coverage Section:

Notwithstanding anything contained in this policy to the contrary, the coverage provided under SECTION I., INSURING AGREEMENT A., B. and C. of the Directors and Officers Liability Coverage Section shall be non-rescindable by the **Insurer**.

All other terms and conditions of this policy remain unchanged.



*This Endorsement Changes The Policy. Please Read It Carefully.*

## **MAILING / PHYSICAL ADDRESS**

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This endorsement modifies insurance provided under the following:

**NON-PROFIT ORGANIZATION MANAGEMENT LIABILITY POLICY  
PRIVATE COMPANY MANAGEMENT LIABILITY POLICY**

It is hereby understood and agreed that the **Insured's** Mailing Address, as set forth in Item 1. of the Common Policy Declarations Page, is amended to read as follows:

Mailing Address:

c/o Destination Maui, Inc.  
380 Huku Li'i Place  
#206  
Kihei, HI 96753

Physical Address:

2481 Kaanapali Parkway  
Lahaina, HI 96761

All other terms and conditions of this policy remain unchanged.

*This Endorsement Changes The Policy. Please Read It Carefully.*

## **SUBLIMIT - DEFENSE OF NON-MONETARY DAMAGES**

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This endorsement modifies insurance provided under the following:

**NON-PROFIT ORGANIZATION MANAGEMENT LIABILITY POLICY  
PRIVATE COMPANY MANAGEMENT LIABILITY POLICY**

The following is added to SECTION II. – COVERAGE EXTENSIONS, of the Common Policy Terms and Conditions Coverage Section:

With respect to a **Claim**, solely seeking relief or redress in any form other than monetary damages, this policy shall pay **Defense Expenses** up to a maximum amount of \$75,000 per **Claim** and \$225,000 in the aggregate for the **Policy Period**. A Retention amount of \$75,000 shall be borne by the **Insured**, and the **Insurer** shall only be liable for the amount of **Defense Expenses** which are in excess of the above stated Retention amount.

Notwithstanding anything contained in this endorsement to the contrary, however, solely where coverage for any **Claim** is triggered as "Side A", or non-indemnifiable or non-indemnified **Loss** in keeping with Policy terms and conditions, the Retention normally applicable in such situations shall apply to such **Claim**, and the Retention stated here shall not apply.

Other than as set forth above, there shall be no coverage afforded under this policy for **Loss** in connection with any **Claim** seeking relief or redress in any form other than monetary damages. This sublimit shall be one sublimit only, regardless of the number of Coverage Sections purchased by any or all **Insureds**, and shall be part of and not in addition to the amount set forth in Item 4. of the Common Policy Declarations Page.

All other terms and conditions of this policy remain unchanged.

*This Endorsement Changes The Policy. Please Read It Carefully.*

## **THREE (3) YEAR BILATERAL EXTENDED REPORTING PERIOD**

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This endorsement modifies insurance provided under the following:

**NON-PROFIT ORGANIZATION MANAGEMENT LIABILITY POLICY  
PRIVATE COMPANY MANAGEMENT LIABILITY POLICY**

SECTION II. – COVERAGE EXTENSIONS, B. Extended Reporting Period of the Common Policy Terms and Conditions Coverage Section is deleted and replaced with the following:

If the **Insurer** shall refuse to renew this policy or the **Insured Organization** shall cancel or refuse to renew this policy, the **Insured Organization** shall have the right, upon payment of seventy-five percent (75%) of the Full Annual Premium, to a period of three hundred and sixty five (365) days following the effective date of such cancellation or non-renewal (herein referred to as the "Extended Reporting Period") in which to give written notice to the **Insurer** of any **Claim** first made against the **Insured** during said three hundred and sixty five (365) day period for any **Wrongful Act** occurring prior to the end of the **Policy Period** and otherwise covered by this policy. As used herein, "Full Annual Premium" means the premium stated in Item 5. of the Common Policy Declarations Page and any additional premium(s) charged during the **Policy Period**.

Alternatively, the **Insured Organization** shall have the right to elect an Extended Reporting Period greater than the three hundred and sixty five (365) Days referenced above. The following alternative Extended Reporting Period options are as follows:

<u>Extended Reporting Period</u>	<u>Additional Premium</u>
2 Years	<u>125%</u> of Full Annual Premium
3 Years	<u>150%</u> of Full Annual Premium

The rights contained in this clause shall terminate unless written notice of such election together with the additional premium due is received by the **Insurer** at the address shown on the Declarations Page within thirty (30) days of the effective date of cancellation or non-renewal.

The Extended Reporting Period is not cancelable and the additional premium charged shall be fully earned at the inception of the Extended Reporting Period. The Limit of Liability available under the Extended Reporting Period is part of and not in addition to the Limit of Liability stated in Item 4. of the Declarations Page.

The rights contained in this clause shall not apply in the event of cancellation resulting from non-payment of premium.

All other terms and conditions of this policy remain unchanged.

## DIRECTORS AND OFFICERS LIABILITY COVERAGE SECTION (NON-PROFIT) PLEASE READ YOUR POLICY CAREFULLY

Words and phrases that appear in **bold** text have special meaning. Refer to SECTION III. – DEFINITIONS in this Coverage Section or the Common Policy Terms and Conditions.

If purchased, as indicated in Item 3. of the Common Policy Declarations Page, and in consideration of the payment of premium, and in reliance upon all statements made to the **Insurer** in the **Application**, and subject to the terms, conditions, definitions, exclusions and limitations provided hereinafter or in the Common Policy Terms and Conditions, the **Insurer** agrees:

### SECTION I. - INSURING AGREEMENTS

#### Directors and Officers Liability

- A. With the **Insured Person**, that if a **Claim** for a **Wrongful Act** is first made against any **Insured Person** during the **Policy Period** and reported in accordance with SECTION V. – CONDITIONS, C. Notice of Claim or Circumstance in the Common Policy Terms and Conditions of this policy, the **Insurer** will pay on behalf of such **Insured Person** all **Loss** such **Insured Person** is legally obligated to pay, except and to the extent that the **Insured Organization** is required or permitted to indemnify such **Insured Person** for such **Loss**.
- B. With the **Insured Organization**, that if a **Claim** for a **Wrongful Act** is first made against any **Insured Person** during the **Policy Period** and reported in accordance with SECTION V. – CONDITIONS, C. Notice of Claim or Circumstance in the Common Policy Terms and Conditions of this policy, the **Insurer** will pay on behalf of the **Insured Organization** all **Loss** for which the **Insured Organization** is required or permitted to indemnify the **Insured Person**.
- C. With the **Insured Organization**, that if a **Claim** for a **Wrongful Act** is first made against the **Insured Organization** during the **Policy Period** and reported in accordance with SECTION V. – CONDITIONS, C. Notice of Claim or Circumstance in the Common Policy Terms and Conditions of this policy, the **Insurer** will pay on behalf of the **Insured Organization** all **Loss** the **Insured Organization** is legally obligated to pay.

Notwithstanding anything contained in this policy to the contrary, the coverage provided under SECTION I. INSURING AGREEMENTS A. and B. shall be non-rescindable by the **Insurer**.

### SECTION II. – COVERAGE EXTENSIONS

#### A. Outside Board Extension

This policy shall cover **Loss** arising from an **Insured Person** having served, at the direction of and with the consent of the **Insured Organization**, as Director, Officer, or Trustee for any eleemosynary corporation or other not for profit organization where such **Insured Person** is entitled to indemnification by the **Insured Organization**.

This COVERAGE EXTENSION shall be excess of any indemnification and/or insurance that may be permitted or provided by such eleemosynary corporation or organization, regardless of payment made by or on behalf of such eleemosynary corporation or organization, including but not limited to any other Director and Officer Liability Insurance or similar insurance provided for, to, or by any such eleemosynary corporation or organization.

#### B. Additional Side-A Limit of Liability

If a limit is shown in Item 2.B of the Directors and Officers Liability Declarations, then there shall be an addition to the maximum aggregate Limit of Liability available under this Directors and Officers Coverage Section. This amount shall be in addition to the Limit of Liability as set forth in Item 2.A. of the Directors and Officers Liability Declarations Page and shall be available solely for **Loss** resulting from a **Claim** against any **Insured Persons** covered under SECTION I. INSURING AGREEMENT A. of this coverage section, and shall be subject to the following additional conditions:

- (1) Any **Loss** resulting from a **Claim** against any **Insured Persons** covered under SECTION I. INSURING AGREEMENT A. of this Directors and Officers Coverage Section shall first be paid under the Limit of Liability as set forth in Item 2.A. of the Directors and Officers Liability Declarations Page, and such Limit of Liability must be completely exhausted by payment of **Loss** under SECTION I. INSURING

AGREEMENTS A., B., and/or C. of this Directors and Officers Coverage Section before **Loss** shall be paid under the additional Limit of Liability dedicated for **Insured Persons**: and

- (2) The additional Limit of Liability dedicated for **Insured Persons** shall be excess of any insurance available that is specifically excess of this policy and such excess insurance must be completely exhausted by payment of **Loss** thereunder before the **Insurer** shall have any obligation to make any payment on account of the additional Limit of Liability dedicated for **Insured Persons**.

### SECTION III. - DEFINITIONS

**A. Claim**, either in the singular or the plural, means:

1. A written demand for monetary or non-monetary relief;
2. A civil, criminal, administrative, regulatory or arbitration proceeding, or arbitration demand for monetary or non-monetary relief which is commenced by:
  - a. Receipt or service of a complaint or similar pleading;
  - b. Return of an indictment or filing of information; or
  - c. Receipt of a notice of charges;
3. A written request to an **Insured** to toll or waive a statute of limitations regarding a potential **Claim**, commenced by the receipt of such request by the **Insured**.

**B. Employee** means any past, present or future employee of the **Insured Organization**, whether such employee is in a supervisory, co-worker or subordinate position or otherwise, including any full-time, part-time, seasonal, and temporary employee or volunteers of the **Insured Organization**. An individual who is leased or contracted to the **Insured Organization** shall also be an **Employee**, but only if the **Insured Organization** provides indemnification to such leased or contracted individual in the same manner as is provided to the **Insured Organization's** employees.

**C. Insured** means any **Insured Organization** and/or any **Insured Person**.

**D. Insured Person** means:

1. Any past, present or future director, officer, trustee, **Employee**, advisory board member or any committee member of a duly constituted committee of the **Insured Organization**; or
2. In the event the **Insured Organization** or a **Subsidiary** thereof operates outside the United States, then the term **Insured Person** also means those titles, positions or capacities for such foreign **Insured Organization** or **Subsidiary** that are equivalent to the positions of directors or officers in the United States.

**E. Loss** means damages, settlements, judgments (including pre- and post-judgment interest on a covered judgment) and **Defense Expenses**. **Loss** (other than **Defense Expenses**) shall not include:

1. Any amount for which the **Insureds** are not financially liable or for which there is not legal recourse to the **Insureds**;
2. Amounts owed under any contract, partnership, stock or other ownership agreement, or any other type of contract;
3. Disability, social security, workers compensation, medical insurance, retirement or pension benefit payments, or settlement amounts representing employment related benefit payments;
4. The cost of creating or reinstating employment;
5. Any amounts owed to any **Employee** as wages, compensation, severance or benefits previously incurred or vested without regard to any **Claim**;
6. Civil or criminal fines or penalties;
7. Taxes, whether owed to or by any **Insured**;
8. Amounts, including **Defense Expenses**, arising out of, based upon or attributable to actual or alleged liability or costs incurred by any **Insured** to modify any building or property in order to make such building or property more accessible or accommodating to any disabled person;
9. Matters that may be uninsurable under the law pursuant to which this policy shall be construed.

The DEFINITION of **Loss** shall include punitive or exemplary damages and the multiplied portion of any multiplied damage award, if and where insurable. For purposes of determining whether punitive or exemplary damages, or the multiplied portion of any multiplied damage award arising from any **Claim** shall be insurable

by law, the **Insurer** agrees to abide by the law of whichever jurisdiction is applicable to such **Claim** and is most favorable to the **Insured** in that regard.

**F. Personal Injury Wrongful Act** shall mean any actual or alleged:

1. False arrest, wrongful detention or imprisonment, or malicious prosecution;
2. Libel, slander, defamation of character or invasion of privacy;
3. Wrongful entry, eviction or other invasion of the right of occupancy;
4. Infringement of copyright or trademark or other unauthorized use of title; or
5. Plagiarism or misappropriation of ideas.

However, **Personal Injury Wrongful Act** shall not include:

- a. Publication or utterance concerning any organization or business enterprise or its products or services made by or at the direction of an **Insured** with knowledge of the falsity thereof; or
- b. The printing of periodicals, advertising matter, or any or all jobs taken by any **Insured** to be printed for a third party when the periodical, advertising matter or other printing is not a regular part of the **Insured's** own activities.

**G. Wrongful Act** means any actual or alleged act, error, omission, misstatement, misleading statement, neglect or breach of duty, or **Personal Injury Wrongful Act**, by:

1. An **Insured Person** while acting in his or her capacity as such and on behalf of the **Insured Organization** or any matter claimed against them solely by reason of their status as an **Insured Person**; or
2. The **Insured Organization**.

#### **SECTION IV. - EXCLUSIONS**

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

1. Based upon, arising out of or attributable to the gaining by any **Insured** of any profit or advantage to which such **Insured** was not legally entitled; provided, this EXCLUSION shall not apply unless a judgment or other final adjudication adverse to such **Insured** establishes that the **Insured** gained such profit or advantage;
2. Based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving any criminal or deliberate fraudulent act; provided, this EXCLUSION shall not apply unless a judgment or other final adjudication adverse to any **Insured** in the **Claim** shall establish that such **Insured** committed such criminal or fraudulent act;
3. Alleging, arising out of, based upon or attributable to, in whole or in part, any liability under or pursuant to any contract or agreement, whether oral, written, express or implied, including the liability of others assumed by an **Insured**, unless such **Insured** would have been liable in the absence of such contract or agreement;
4. Alleging, arising out of, based upon or attributable to, in whole or in part, any litigation involving any **Insured** that was commenced or initiated prior to, or was pending on or before the date referenced in Item 4. of the Directors and Officers Liability Declarations Page, or arising out of or based upon, in whole or in part, any facts or circumstances underlying or alleged in any such prior or pending litigation;
5. Alleging, arising out of, based upon or attributable to any workers' compensation, disability benefits, unemployment compensation, unemployment insurance, retirement benefits, social security benefits or similar law;
6. For actual or alleged bodily injury, sickness, disease or death of any person, mental anguish or emotional distress; damage to or destruction of any tangible property, including loss of use thereof, whether or not such property is physically damaged;
7. Alleging, arising out of, based upon or attributable to, in whole or in part, the performance or rendering of or failure to perform professional services, where such services are undertaken for others for a fee;
8. For violation of any of the responsibilities, obligations or duties imposed by: The Fair Labor Standards Act (except the Equal Pay Act) or any state or local statutory or common law, regulation or ordinance that governs payment or administration of wages, hours worked, or employee entitlements; the Employee Retirement Income Security Act of 1974; the National Labor Relations Act; the Worker Adjustment and Retraining Notification Act; the Consolidated Omnibus Budget Reconciliation Act; the Occupational Safety and Health Act; any rules or regulations of any of the foregoing promulgated thereunder and amendments thereto; or any similar provisions of any federal, state or local statutory or common law that govern the same subject matter governed by the laws

referenced in this section even if particular laws have some additional or different provisions; provided, this EXCLUSION shall not apply to **Loss** arising from a **Claim** for employment related retaliation;

9. Brought by or on behalf of any **Insured**, except:
- a. A derivative action brought by or made on behalf of, or in the name or right of, the **Insured Organization**, if such action is brought and maintained independently of, and without assistance, participation or intervention of any **Insured**;
  - b. Any **Claim** brought by the examiner, trustee, receiver, liquidator or rehabilitator (or any assignee thereof) of such **Insured Organization**, in or after any bankruptcy proceeding by or against an **Insured Organization**;
  - c. Any **Claim** brought by any past director, officer, trustee, manager or equivalent executives of the **Insured Organization** who have not served as a director, officer, trustee, manager or equivalent executive for at least three (3) years prior to the date such **Claim** is first made, but only if the **Claim** is brought and maintained totally independent of and without the solicitation, assistance, active participation or intervention of the **Insured Organization** or any **Insured Person** not described in this paragraph 9.c.; or
  - d. Any instigation of or involvement in any **Claim**, or solicitation, assistance, active participation or intervention by any **Insured** whistleblower under Section 806 of the Sarbanes-Oxley Act of 2002 or any rule or regulation promulgated thereunder, or under any similar whistleblower statute, rule or regulation under any other federal or state law.
10. For the actual, alleged or threatened discharge, dispersal, release or escape of pollutants or any direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize pollutants, including but not limited to **Claims** alleging damage to the **Insured Organization**;

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

11. Alleging, arising out of, based upon or attributable to, in whole or in part, any **Employment Practices Wrongful Act**.
12. Alleging, arising out of, based upon or attributable to, in whole or in part, any **Fiduciary Wrongful Act**.

The **Wrongful Act** of an **Insured** shall not be imputed to any other **Insured** for the purpose of determining the applicability of the EXCLUSIONS set forth in SECTION IV.

## **SECTION V. - CONDITIONS**

### **A. Bankruptcy and Priority of Payments**

The bankruptcy or insolvency of the **Insured Organization** or any **Subsidiary** shall not relieve the **Insurer** of any of its obligations hereunder. The coverage provided by this policy, however, is intended primarily to protect and benefit the **Insured Persons**.

With respect to the payment of the policy proceeds, it is agreed that covered **Loss** due under this policy shall be paid by the **Insurer** in the following order of priority:

1. First pay such **Loss** for which coverage is provided under INSURING AGREEMENT A. of this policy;
2. With respect to any remaining amount of the Limit of Liability still available after payment of such **Loss**, pay **Loss** for which coverage is provided under INSURING AGREEMENT B. of this policy; and
3. With respect to any remaining amount of the Limit of Liability still available after payment of such **Loss**, pay **Loss** for which coverage is provided under INSURING AGREEMENT C. of this policy.

The **Insured Organization** or its representatives and the **Insurer** shall use their best efforts to agree upon the priority of payment of all **Loss** under this policy. If no agreement is reached regarding the priority of payments, then the **Insurer** and **Insured Organization** will submit the issue of such priority, and only that issue, to binding arbitration.

**In Witness Whereof**, the **Insurer** has caused this policy to be executed and attested, but this policy shall not be valid unless countersigned on the Declarations Page by a duly authorized agent of the **Insurer**.



Secretary



President



# EMPLOYMENT PRACTICES LIABILITY COVERAGE SECTION (NON-PROFIT) PLEASE READ YOUR POLICY CAREFULLY

Words and phrases that appear in **bold** text have special meaning. Refer to SECTION III. – DEFINITIONS in this Coverage Section or the Common Policy Terms and Conditions.

If purchased, as indicated in Item 3. of the Common Policy Declarations Page, and in consideration of the payment of premium and in reliance upon all statements made to the **Insurer** in the **Application**, and subject to the terms, conditions, definitions, exclusions and limitations provided hereinafter or in the Common Policy Terms and Conditions, the **Insurer** agrees:

## SECTION I. - INSURING AGREEMENTS

### A. Employment Practices Liability

The **Insurer** shall pay **Loss** up to the Limit of Liability applicable to this **Coverage Section** on behalf of the **Insured** in connection with any **Employment Practices Claim** first made against any **Insured** during the **Policy Period** and reported in accordance with SECTION V. – CONDITIONS, C. Notice of Claim or Circumstance in the Common Policy Terms and Conditions of this policy.

### B. Third Party Liability Coverage

The **Insurer** shall pay for **Loss** up to the Limit of Liability applicable to this **Coverage Section** arising out of or in connection with any **Claim** for **Third Party Discrimination** and/or **Third Party Harassment** first made against any **Insured** during the **Policy Period** and reported in accordance with SECTION V. – CONDITIONS, C. Notice of Claim or Circumstance in the Common Policy Terms and Conditions of this policy.

## SECTION II. – COVERAGE EXTENSIONS

### Workplace Violence Expenses Sublimit

If a sublimit is shown in Item 2.B. of the Employment Practices Liability Declarations Page, the **Insurer** shall provide coverage for **Workplace Violence Expense** the **Insured Organization** incurs resulting directly from any **Workplace Violence**. This sublimit shall be part of and not in addition to the Limit of Liability set forth in Item 2.A. of the Employment Practices Liability Declarations Page.

No Retention shall apply to the **Workplace Violence Expense** Coverage.

## SECTION III. - DEFINITIONS

**A. Claim**, for purposes of this **Coverage Section** shall be an **Employment Practices Claim**, which means:

A written demand for monetary or non-monetary relief solely where alleging an **Employment Practices Wrongful Act**, including:

1. A civil, criminal, administrative, regulatory or arbitration proceeding or arbitration demand for monetary or non-monetary relief which is commenced by:
  - a. Receipt or service of a complaint or similar pleading;
  - b. Return of an indictment or filing of information; or
  - c. Receipt of a notice of charges;
2. A written request to an **Insured** to toll or waive a statute of limitations regarding a potential **Claim**, commenced by the receipt of such request by the **Insured**;
3. An administrative or regulatory investigation when conducted by the Equal Employment Opportunity Commission (“EEOC”) or equivalent state, local or foreign agency, which is commenced by the filing of a notice of charges, service of a complaint or similar document of which notice has been given to the **Insured**.

Provided, such **Employment Practices Claim** shall not include any internal or external labor or grievance proceeding which is pursuant to a collective bargaining agreement.

**B. Employee** means any past, present or future employee of the **Insured Organization**, whether such employee is in a supervisory, co-worker or subordinate position or otherwise, including any full-time, part-time, seasonal, and temporary employee or volunteers of the **Insured Organization**. An individual who is leased or contracted to the **Insured Organization** shall also be an **Employee**, but only if the **Insured Organization** provides indemnification to such leased or contracted individual in the same manner as is provided to the **Insured Organization's** employees.

**C. Employment Practices Claim** means any **Claim** for an **Employment Practices Wrongful Act**.

**D. Employment Practices Wrongful Act** means any actual or alleged:

1. Wrongful dismissal, discharge or termination (either actual or constructive) of employment, including breach of an implied employment contract;
2. Employment related harassment (including but not limited to sexual harassment);
3. Employment related discrimination (including but not limited to discrimination based upon age, gender, race, color, national origin, religion, sexual orientation or preference, pregnancy or disability);
4. Employment-related retaliation;
5. Employment-related misrepresentation to an **Employee** or applicant for employment with the **Insured Organization**;
6. Employment-related libel, slander, humiliation, defamation and/or invasion of privacy;
7. Wrongful failure to employ or promote;
8. Wrongful deprivation of career opportunity, wrongful demotion or negligent **Employee** evaluation, including the giving of defamatory statements in connection with an **Employee** reference;
9. Employment related wrongful discipline;
10. Failure to grant tenure or practice privileges;
11. Failure to provide or enforce adequate or consistent organization policies or procedures relating to employment performance;
12. Violations of the following federal laws (as amended) including all regulations promulgated thereunder:
  - a. Family and Medical Leave Act of 1993;
  - b. Americans with Disabilities Act of 1992 (ADA);
  - c. Civil Rights Act of 1991;
  - d. Age Discrimination in Employment Act of 1967 (ADEA), including the Older Workers Benefit Protection Act of 1990; or
  - e. Title VII of the Civil Rights Law of 1964 (as amended) and 42 U.S.C. Section 1983, as well as the Pregnancy Discrimination Act of 1978;
13. Violation of an **Insured Person's** civil rights relating to any of the above; or
14. Negligent hiring, retention, training or supervision, infliction of emotional distress, or violation of an individual's civil rights, when alleged in conjunction with any of the foregoing items 1. through 13.,

whether such **Employment Practices Wrongful Act** as described in 1-14 above is committed directly, indirectly, intentionally or unintentionally, but only if the **Employment Practices Wrongful Act** actually or allegedly pertains to acts committed by an **Insured** and are alleged against an **Insured** by an **Insured Person** or applicant for employment with the **Insured Organization**.

**E. Insured** means any **Insured Organization** and/or **Insured Person**.

**F. Insured Person** means:

1. Any past, present or future director, officer, trustee, **Employee**, advisory board member or any committee member of a duly constituted committee of the **Insured Organization**; or
2. In the event the **Insured Organization** or a **Subsidiary** thereof operates outside the United States, then the term **Insured Person** also means those titles, positions or capacities for such foreign **Insured Organization** or **Subsidiary** that are equivalent to the positions of directors or officers in the United States.

**G. Loss** means damages (including back pay and front pay), settlements, judgments (including pre- and post-judgment interest on a covered judgment) and **Defense Expenses**. **Loss** (other than **Defense Expenses**) shall not include:

1. Any amount for which the **Insureds** are not financially liable or for which there is not legal recourse to the **Insureds**;
2. Amounts owed under any employment contract, partnership, stock or other ownership agreement, or any other type of contract;
3. Disability, social security, workers compensation, medical insurance, retirement or pension benefit payments, or settlement amounts representing employment related benefit payments;
4. The cost of creating or reinstating employment;
5. Any amounts owed to any **Employee** as wages or compensation previously incurred or vested without regard to any **Claim**;
6. Civil or criminal fines or penalties;
7. Taxes, whether owed to or by any **Insured**;
8. Amounts, including **Defense Expenses**, arising out of, based upon or attributable to actual or alleged liability or costs incurred by any **Insured** to modify any building or property in order to make such building or property more accessible or accommodating to any disabled person, or any actual or alleged liability or costs incurred in connection with any educational, sensitivity or other corporate program, policy or seminar relating to an **Employment Practices Claim**;
9. Matters that may be uninsurable under the law pursuant to which this policy shall be construed.

The DEFINITION of **Loss** shall include punitive or exemplary damages and the multiplied portion of any multiplied damage award, if and where insurable. For purposes of determining whether punitive or exemplary damages, or the multiplied portion of any multiplied damage award arising from any **Claim** shall be insurable by law, the **Insurer** agrees to abide by the law of whichever jurisdiction is applicable to such **Claim** and is most favorable to the **Insured** in that regard.

**H. Premises** means the buildings, facilities or properties occupied by the **Insured Organization** in conducting its business.

**I. Third Party** means any person(s) with whom an **Insured** interacts.

**J. Third Party Discrimination** means any discrimination by an **Insured** in his or her capacity as such against a **Third Party** based on such **Third Party's** race, color, creed, religion, age, gender, national origin, sexual orientation or preference, disability, pregnancy or other protected status that is protected pursuant to any applicable federal, state or local statute or ordinance.

**K. Third Party Harassment** means any type of sexual or gender harassment as well as racial, religious, sexual orientation, pregnancy, disability, age, or national origin-based harassment that is by an **Insured** to a **Third Party**.

**L. Workplace Violence** means any intentional and unlawful act:

1. of deadly force involving the use of lethal weapon; or
2. the threat of deadly force involving the display of a lethal weapon,

which occurs on or in the **Premises** and which did or could result in bodily injury or death to an **Insured Person**.

**M. Workplace Violence Expense** means the reasonable fees and expenses, or cost of:

1. an independent security consultant for ninety (90) days following the date **Workplace Violence** occurs;
2. an independent public relations consultant for ninety (90) days following the date **Workplace Violence** occurs;
3. a counseling seminar for all **Employees** conducted by an independent consultant following **Workplace Violence**;
4. independent security guard services for up to fifteen (15) days; and
5. an independent forensic analyst.

## SECTION IV. - EXCLUSIONS

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

1. Alleging, arising out of, based upon or attributable to, in whole or in part, any litigation involving any **Insured** that was commenced or initiated prior to, or was pending on or before the date referenced in Item 4. of the Employment Practices Liability Declarations Page, or arising out of or based upon, in whole or in part, any facts or circumstances underlying or alleged in any such prior or pending litigation;
2. For actual or alleged bodily injury, sickness, disease or death of any person, mental anguish or emotional distress; damage to or destruction of any tangible property, including loss of use thereof, whether or not such property is physically damaged; provided, this EXCLUSION shall not apply to allegations of mental anguish or emotional distress made solely in connection with an **Employment Practices Claim**;

The **Insurer** shall not be liable to make any payment, and shall have no duty to defend or pay **Loss** of any sort, in connection with any **Workplace Violence**:

- a. which occurs at any location other than the **Insured Organization's Premises**;
  - b. arising from declared or undeclared war, civil war, insurrection, riot, civil commotion, rebellion or revolution, military, naval or usurped power, governmental intervention, expropriation or nationalization;
  - c. that reflects legal costs, judgments and settlements incurred as the result of any **Claim**, suit or judicial action brought against an **Insured Organization** in connection with **Workplace Violence**; or
  - d. resulting from the use or threat of force or violence occurring on the **Premises** for the purpose of demanding money, securities or property.
3. For the actual, alleged or threatened discharge, dispersal, release or escape of pollutants or any direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize pollutants, including but not limited to **Claims** alleging damage to the **Insured Organization**;

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

4. For violation of any of the responsibilities, obligations or duties imposed by: The Fair Labor Standards Act (except the Equal Pay Act) or any state or local statutory or common law, regulation or ordinance that governs payment or administration of wages, hours worked, or employee entitlements; the Employee Retirement Income Security Act of 1974; the National Labor Relations Act; the Worker Adjustment and Retraining Notification Act; the Consolidated Omnibus Budget Reconciliation Act; the Occupational Safety and Health Act; any rules or regulations of any of the foregoing promulgated thereunder and amendments thereto; or any similar provisions of any federal, state or local statutory or common law that govern the same subject matter governed by the laws referenced in this section even if particular laws have some additional or different provisions; provided, this EXCLUSION shall not apply to **Loss** arising from a **Claim** for employment related retaliation;
5. Alleging, arising out of, based upon or attributable to, in whole or in part, any liability under or pursuant to any contract or agreement, whether oral, written, express or implied, including the liability of others assumed by an **Insured**, unless such **Insured** would have been liable in the absence of such contract or agreement; provided this EXCLUSION shall not apply to **Defense Expenses** in connection with an **Employment Practices Claim**;
6. Alleging, arising out of, based upon or attributable to any workers' compensation, disability benefits, unemployment compensation, unemployment insurance, retirement benefits, social security benefits or similar law; provided, this EXCLUSION shall not apply to **Loss** arising from a **Claim** for employment related retaliation;
7. Alleging, arising out of, based upon, directly or indirectly resulting from or in consequence of, or in any way involving any criminal or deliberate fraudulent act; provided this EXCLUSION shall not apply unless a judgment or other final adjudication adverse to any **Insured** in the **Claim** shall establish that such Insured committed such criminal or fraudulent act.

The **Wrongful Act** of an **Insured** shall not be imputed to any other **Insured** for the purpose of determining the applicability of the EXCLUSIONS set forth in SECTION IV.

**In Witness Whereof**, the **Insurer** has caused this policy to be executed and attested, but this policy shall not be valid unless countersigned on the Declarations Page by a duly authorized agent of the **Insurer**.



Secretary



President

*This Endorsement Changes The Policy. Please Read It Carefully.*

## **SUBLIMIT-DEFENSE EXPENSES – WAGE AND HOUR CLAIMS**

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This endorsement modifies insurance provided under the following:

**NON-PROFIT ORGANIZATION MANAGEMENT LIABILITY POLICY  
PRIVATE COMPANY MANAGEMENT LIABILITY POLICY**

The following is added to SECTION II. – COVERAGE EXTENSIONS, of the Employment Practices Liability Coverage Section:

The amount set forth in Item 4. of the Common Policy Declarations Page shall be the maximum aggregate Limit of Liability for all **Loss** under this policy. Subject to the foregoing, this Policy shall allow up to \$100,000 solely for **Defense Expenses** in connection with **Claims** made against any **Insured** for violation of the Fair Labor Standards Act or any similar state or local law or regulation specifically governing the payment of wages or hours worked ("**Wage and Hour Claim**"). This sublimit shall be part of and not in addition to the amount set forth in Item 2.A. of the Employment Practices Liability Declarations Page, and shall not act to create coverage for any form of relief sought or available in any **Wage and Hour Claim**.

A Retention in the amount of \$75,000 shall apply to any **Wage and Hour Claim**. Such Retention shall be borne by the **Insured**, and the **Insurer** shall only be liable for the amount of **Defense Expenses** in excess of the above stated Retention amount.

Notwithstanding anything contained in this endorsement to the contrary, however, solely where coverage for any **Claim** is triggered as "Side A", or non-indemnifiable or non-indemnified **Loss** in keeping with Policy terms and conditions, the Retention normally applicable in such situations shall apply to such **Claim**, and the Retention stated here shall not apply.

All other terms and conditions of this policy remain unchanged.

*This Endorsement Changes The Policy. Please Read It Carefully.*

## **HAWAII CHANGES - CANCELLATION AND NONRENEWAL**

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This endorsement modifies insurance provided under the following:

**NON-PROFIT ORGANIZATION MANAGEMENT LIABILITY POLICY  
PRIVATE COMPANY MANAGEMENT LIABILITY POLICY**

SECTION V. – CONDITIONS, F. Cancellation; Renewal Provision of the Common Policy Terms and Conditions Coverage Section is deleted and replaced by the following:

**F. Cancellation; Renewal Provision**

The **Insured Organization** may cancel this policy at any time by written notice or by surrender of this policy to the **Insurer** at its address shown on the Declarations Page.

This policy may only be cancelled by or on behalf of the **Insurer** in the event the **Insured Organization** fails to pay any premium when due. In the event of non-payment of premium by the **Insured Organization**, the **Insurer** may cancel this policy upon thirty (30) days written notice. The **Insurer** will mail notice to the **Insured Organization's** address as shown in Item 1. of the Declarations Page. The mailing of such notice as aforesaid shall be sufficient proof of notice.

If the **Insured Organization** cancels this policy, the **Insurer** will retain the customary short rate proportion of the premium hereon.

The **Insurer** shall not be required to renew this policy upon its expiration. The offer by the **Insurer** of renewal terms, conditions, Limit of Liability and/or premiums varying from those of the expiring policy shall not constitute a refusal to renew.

**Nonrenewal**

1. If we decide not to renew this policy, we will mail or deliver to the **Insured Organization** written notice of nonrenewal, stating the reasons for nonrenewal, at least forty-five (45) days prior to the expiration of this policy.
2. Any notice of nonrenewal will be mailed or delivered to the **Insured Organization's** last mailing address known to the **Insurer**. If notice is mailed, proof of mailing will be sufficient proof of notice.

All other terms and conditions of this policy remain unchanged.