

**MEMORANDUM OF LIABILITY COVERAGE
FORM B
(HEREINAFTER REFERRED TO AS MEMORANDUM)
FOR THE
MONTANA MUNICIPAL INSURANCE AUTHORITY
(MMIA)
(HEREINAFTER REFERRED TO AS ASSOCIATION)**

IN CONSIDERATION OF THE PAYMENT OF THE PREMIUM, IF PAID, IN RELIANCE UPON THE STATEMENTS IN THE DECLARATIONS MADE A PART HEREOF AND SUBJECT TO ALL OF THE TERMS OF THIS MEMORANDUM, THE ASSOCIATION AGREES WITH THE MEMBER AS FOLLOWS:

COVERAGE AGREEMENT

THE ASSOCIATION WILL PAY ON BEHALF OF THE COVERED PARTY FOR **ULTIMATE NET LOSS** IN EXCESS OF THE RETAINED LIMIT HEREINAFTER STATED WHICH THE COVERED PARTY SHALL BECOME LEGALLY OBLIGATED TO PAY AS **DAMAGES** BY REASON OF LIABILITY IMPOSED BY LAW OR LIABILITY ASSUMED BY CONTRACT BECAUSE OF:

- COVERAGE A. **PERSONAL INJURY OR**
- COVERAGE B. **PROPERTY DAMAGE OR**
- COVERAGE C. **PUBLIC OFFICIALS ERRORS AND OMISSIONS LIABILITY OR**
- COVERAGE D. **UNFAIR EMPLOYMENT PRACTICES LIABILITY**

TO WHICH THIS MEMORANDUM APPLIES, CAUSED BY AN **OCCURRENCE**.

DEFENSE COSTS

AFTER THE AMOUNT OF THE **COVERED PARTY'S** RETAINED LIMIT HAS BEEN EXHAUSTED BY PAYMENT OF JUDGMENTS, SETTLEMENTS AND/OR **DEFENSE COSTS**, THE ASSOCIATION WILL REIMBURSE THE **COVERED PARTY** FOR **EXCESS DEFENSE COSTS** INCURRED BY THE **COVERED PARTY**. THE ASSOCIATION'S LIABILITY FOR **EXCESS DEFENSE COSTS** IS SUBJECT TO, AND NOT IN ADDITION TO, THE LIMIT OF THE ASSOCIATION'S LIABILITY.

THE ASSOCIATION, AT ITS OWN EXPENSE, SHALL HAVE THE RIGHT TO ASSOCIATE ITSELF WITH THE **COVERED PARTY** IN THE CONTROL, INVESTIGATION, DEFENSE OR APPEAL OF ANY CLAIM OR PROCEEDING, WHICH, IN THE OPINION OF THE ASSOCIATION, IS OR MAY BE COVERED BY THE MEMORANDUM. THE **COVERED PARTY**

SHALL FULLY COOPERATE IN ALL MATTERS PERTAINING TO SUCH CLAIM OR PROCEEDING.

NO CLAIM SHALL BE SETTLED FOR AN AMOUNT IN EXCESS OF THE **COVERED PARTY'S** RETAINED LIMIT WITHOUT THE PRIOR WRITTEN CONSENT OF THE ASSOCIATION.

RETAINED LIMIT - THE ASSOCIATION'S LIMIT OF LIABILITY

REGARDLESS OF THE NUMBER OF (1) **COVERED PARTIES** UNDER THIS MEMORANDUM, (2) PERSONS OR ORGANIZATIONS WHO SUSTAIN INJURY OR DAMAGE, (3) CLAIMS MADE OR SUITS BROUGHT ON ACCOUNT OF **PERSONAL INJURY, PROPERTY DAMAGE, PUBLIC OFFICIALS ERRORS AND OMISSIONS** OR **UNFAIR EMPLOYMENT PRACTICES LIABILITY**, THE ASSOCIATION'S LIABILITY IS LIMITED AS FOLLOWS:

- (A) WITH RESPECT TO **PERSONAL INJURY, PROPERTY DAMAGE, PUBLIC OFFICIALS ERRORS AND OMISSIONS**, AND **UNFAIR EMPLOYMENT PRACTICES LIABILITY**, OR ANY COMBINATION THEREOF, THE ASSOCIATION'S LIABILITY SHALL BE ONLY FOR THE **ULTIMATE NET LOSS** IN EXCESS OF THE **COVERED PARTY'S** RETAINED LIMIT AS SPECIFIED IN ITEM 1 OF THE LIMITS OF LIABILITY SECTION OF THE DECLARATIONS AS THE RESULT OF ANY ONE **OCCURRENCE**, AND THEN FOR AN AMOUNT NOT EXCEEDING THE AMOUNT SPECIFIED IN ITEM 1A OF THE LIMITS OF LIABILITY SECTION OF THE DECLARATIONS AS THE RESULT OF ANY ONE **OCCURRENCE**.
- (B) THERE IS NO LIMIT TO THE NUMBER OF **OCCURRENCES** DURING THE MEMORANDUM PERIOD FOR WHICH CLAIMS MAY BE MADE, EXCEPT THAT THE LIABILITY OF THE ASSOCIATION ARISING OUT OF THE **COMPLETED OPERATIONS HAZARD** OR OUT OF **PUBLIC OFFICIALS ERRORS AND OMISSIONS** OR OUT OF **UNFAIR EMPLOYMENT PRACTICES**, BECAUSE OF ALL **OCCURRENCES** DURING EACH MEMORANDUM PERIOD SHALL NOT EXCEED THE AMOUNT SPECIFIED IN ITEM 1A OF THE LIMITS OF LIABILITY SECTION OF THE DECLARATIONS.
- (C) FOR THE PURPOSE OF DETERMINING THE LIMIT OF THE ASSOCIATION'S LIABILITY, ALL **DAMAGES** ARISING OUT OF CONTINUOUS OR REPEATED EXPOSURE TO SUBSTANTIALLY THE SAME GENERAL CONDITIONS SHALL BE CONSIDERED AS ARISING OUT OF ONE **OCCURRENCE**.
- (D) **PUBLIC OFFICIALS ERRORS AND OMISSIONS** OR **UNFAIR EMPLOYMENT PRACTICES** TAKING PLACE OVER MORE THAN ONE MEMORANDUM PERIOD SHALL BE DEEMED TO HAVE TAKEN PLACE DURING THE LAST MEMORANDUM PERIOD AND ONLY THAT LIMIT SHALL APPLY.

MEMORANDUM PERIOD; TERRITORY

THIS MEMORANDUM APPLIES TO **PERSONAL INJURY, PROPERTY DAMAGE, PUBLIC OFFICIALS ERRORS AND OMISSIONS** OR **UNFAIR EMPLOYMENT PRACTICES** WHICH OCCURS ANYWHERE IN THE WORLD DURING THE MEMORANDUM PERIOD.

COVERED PARTY
COVERED PERSONS OR ENTITIES

- (A) THE MEMBER
- (B) THOSE INDIVIDUALS WHO WERE OR ARE NOW ELECTED OR APPOINTED OFFICIALS OF THE MEMBER, WHETHER OR NOT COMPENSATED (INCLUDING VOLUNTEERS), INCLUDING MEMBERS OF THE MEMBER'S GOVERNING BODY OR ANY OTHER COMMITTEES, BOARDS, COMMISSIONS OR SPECIAL DISTRICTS OF THE MEMBER, WHILE ACTING FOR OR ON BEHALF OF THE MEMBER.
- (C) ALL SPECIAL DISTRICTS **GOVERNED DIRECTLY** BY THE MEMBER BOARD AND OTHER DISTRICTS OR AGENCIES WHICH ARE NAMED ON THE MEMORANDUM.
- (D) PAST OR PRESENT EMPLOYEES OF THE MEMBER OR OTHER COVERED ENTITY, WHETHER OR NOT COMPENSATED, (INCLUDING VOLUNTEERS), WHILE ACTING FOR OR ON BEHALF OF THE MEMBER OR OTHER COVERED ENTITY.

EXCLUSIONS

AS RESPECTS **ULTIMATE NET LOSS**, THIS MEMORANDUM DOES NOT APPLY:

- (A) TO ANY OBLIGATION FOR WHICH ANY COVERED PARTY OR ANY CARRIER AS ITS INSURER MAY BE HELD LIABLE UNDER ANY WORKERS' COMPENSATION, UNEMPLOYMENT COMPENSATION OR DISABILITY BENEFITS LAW, OR UNDER ANY SIMILAR LAW;
- (B) TO BODILY INJURY TO ANY EMPLOYEE OF ANY **COVERED PARTY** ARISING OUT OF AND IN THE COURSE OF HIS/HER EMPLOYMENT BY SUCH **COVERED PARTY**; BUT THIS EXCLUSION DOES NOT APPLY TO LIABILITY ASSUMED BY THE **COVERED PARTY** UNDER ANY WRITTEN CONTRACT;
- (C) TO INJURY TO OR DESTRUCTION OF (1) PROPERTY OWNED BY A **COVERED PARTY**, OR (2) PROPERTY RENTED TO OR LEASED TO THE COVERED PARTY WHERE THE COVERED PARTY HAS ASSUMED LIABILITY FOR DAMAGE TO OR DESTRUCTION OF SUCH PROPERTY UNLESS THE "MEMBER" WOULD HAVE BEEN LIABLE IN THE ABSENCE OF SUCH ASSUMPTION OF LIABILITY, OR (3) **AIRCRAFT** OR **WATERCRAFT** IN THE CARE, CUSTODY OR CONTROL OF ANY **COVERED PARTY**;
- (D) AS RESPECTS LIABILITY ASSUMED BY THE COVERED PARTY UNDER ANY CONTRACT:
 - (1) TO ANY CLAIM, JUDGMENT OR AGREEMENT FROM ANY ARBITRATION PROCEEDING WHEREIN THE ASSOCIATION IS NOT ENTITLED TO EXERCISE WITH THE **COVERED PARTY**, THE **COVERED PARTY'S** RIGHTS IN THE CHOICE OF ARBITRATORS, AND IN THE CONDUCT OF SUCH PROCEEDINGS.

- (2) TO ANY OBLIGATION FOR THE RENDERING OR FAILURE TO RENDER PROFESSIONAL SERVICES FOR THE **COVERED PARTY**, IF THE INDEMNITEE OF THE COVERED PARTY IS AN ARCHITECT, ENGINEER OR SURVEYOR, ARISING OUT OF:
- (a) THE PREPARATION OR APPROVAL OF CONTRACTS, MAPS, PLANS, DRAWINGS, OPINIONS, REPORTS, TESTS, SURVEYS, CHANGE ORDERS, DESIGNS OR SPECIFICATIONS;
 - (b) THE GIVING OR THE FAILURE TO GIVE DIRECTIONS OR INSTRUCTIONS BY THE INDEMNITEE, THE INDEMNITEE'S AGENTS OR EMPLOYEES, PROVIDED SUCH GIVING OR FAILURE TO GIVE IS THE PRIMARY CAUSE OF **PERSONAL INJURY OR PROPERTY DAMAGE**;
- (E) TO BODILY INJURY AND **PROPERTY DAMAGE** ARISING OUT OF THE OWNERSHIP, MAINTENANCE, LOADING OR UNLOADING, USE OR OPERATION OF ANY:
- (1) **AIRCRAFT**;
 - (2) AIRFIELDS;
 - (3) RUNWAYS;
 - (4) HANGARS;
 - (5) BUILDINGS OR OTHER PROPERTIES IN CONNECTION WITH AVIATION ACTIVITIES.

THIS EXCLUSION SHALL NOT APPLY, HOWEVER, (1) TO LIABILITY ARISING OUT OF THE OWNERSHIP, OPERATION, RENTAL, OR LOAN OF VEHICLES LICENSED FOR HIGHWAY USE WHILE BEING OPERATED AWAY FROM THE PREMISES OF ANY AIRFIELD;

- (F) TO LIABILITY ARISING OUT OF OR IN CONNECTION WITH THE OPERATION OF ANY HOSPITALS, CLINICS, OR ESTABLISHED HEALTH CARE FACILITIES OWNED OR OPERATED BY THE "MEMBER" DUE TO:
- (1) THE RENDERING OF OR FAILURE TO RENDER:
 - (a) MEDICAL, SURGICAL, DENTAL, X-RAY OR NURSING SERVICE TREATMENT;
 - (b) ANY SERVICE OR TREATMENT RELATED TO PHYSICAL OR MENTAL HEALTH OR OF A PROFESSIONAL NATURE; OR
 - (c) ANY COSMETIC OR TONSORIAL SERVICE OR TREATMENT.
 - (2) THE FURNISHING OF OR DISPENSING OF DRUGS OR MEDICAL, DENTAL OR SURGICAL SUPPLIES OR APPLIANCES.

THIS EXCLUSION SHALL NOT APPLY, HOWEVER, TO ANY PROFESSIONAL ACTIVITIES ARISING OUT OF THE PERFORMANCE OF OCCUPATION PHYSICAL EXAMINATIONS, PARAMEDICS, EMERGENCY FIRST AID, ALCOHOLISM TREATMENT CENTERS, AND DRUG ABUSE TREATMENT CENTERS;

- (G) TO LIABILITY ARISING OUT OF OR IN CONNECTION WITH THE PRINCIPLES OF EMINENT DOMAIN, CONDEMNATION PROCEEDINGS OR INVERSE CONDEMNATION BY WHATEVER NAME REGARDLESS OF WHETHER SUCH CLAIMS ARE MADE DIRECTLY AGAINST THE COVERED PARTY OR BY VIRTUE OF ANY AGREEMENT ENTERED INTO BY OR ON BEHALF OF THE **COVERED PARTY**.

THIS EXCLUSION DOES NOT APPLY TO PHYSICAL INJURY TO OR DESTRUCTION OF TANGIBLE PROPERTY, CAUSED BY AN OCCURRENCE, EVEN THOUGH A LEGAL THEORY UPON WHICH A CLAIMANT SEEKS RECOVERY IS THE PRINCIPLE OF INVERSE CONDEMNATION;

- (H) TO LIABILITY ARISING OUT OF THE FAILURE TO SUPPLY OR PROVIDE AN ADEQUATE SUPPLY OF GAS OR WATER OR ELECTRICITY WHEN SUCH FAILURE IS A RESULT OF THE INADEQUACY OF THE COVERED PARTY 'S FACILITIES TO SUPPLY OR PRODUCE SUFFICIENT GAS OR WATER OR ELECTRICITY TO MEET THE DEMAND;

- (I) TO **PROPERTY DAMAGE** ARISING OUT OF **SUBSIDENCE**;

- (J) TO LIABILITY ARISING OUT OF THE HAZARDOUS PROPERTIES OF **NUCLEAR MATERIAL**;

- (K) TO LIABILITY IMPOSED UPON A COVERED PARTY (OR WHICH IS IMPUTED TO A **COVERED PARTY**) UNDER THE "EMPLOYMENT RETIREMENT INCOME SECURITY ACT OF 1974" AND ANY LAW AMENDATORY THEREOF;

- (L) TO LIABILITY ARISING OUT OF THE RUPTURE, BURSTING, OVERTOPPING, ACCIDENTAL DISCHARGE OR PARTIAL OR COMPLETE FAILURE OF ANY **DAM(S)**;

- (M) TO ANY LIABILITY FOR **PROPERTY DAMAGE, PERSONAL INJURY**, SICKNESS, DISEASE, OCCUPATIONAL DISEASE, DISABILITY, SHOCK, DEATH, MENTAL ANGUISH AND MENTAL INJURY AT ANY TIME ARISING OUT OF THE MANUFACTURE OF, MINING OF, USE OF, SALES OF, INSTALLATION OF, REMOVAL OF, DISTRIBUTION OF, OR EXPOSURE TO ASBESTOS, ASBESTOS PRODUCTS, ASBESTOS FIBERS OR ASBESTOS DUST, OR TO ANY OBLIGATION OF THE COVERED PARTY TO INDEMNIFY ANY PARTY BECAUSE OF **DAMAGES** ARISING OUT OF SUCH **PROPERTY DAMAGE, BODILY INJURY**, SICKNESS, DISEASE, OCCUPATIONAL DISEASE, DISABILITY, SHOCK, DEATH, MENTAL ANGUISH OR MENTAL INJURY AT ANY TIME AS A RESULT OF THE MANUFACTURE OF, MINING OF, USE OF, SALES OF, INSTALLATION OF, REMOVAL OF, DISTRIBUTION OF, OR EXPOSURE TO ASBESTOS, ASBESTOS PRODUCTS, ASBESTOS FIBERS OR ASBESTOS DUST.

IT IS FURTHER AGREED THAT THE **ASSOCIATION** IS NOT OBLIGATED TO DEFEND ANY SUIT OR CLAIM AGAINST THE COVERED PARTY ALLEGING **PERSONAL INJURY** OR **PROPERTY DAMAGE** AND SEEKING **DAMAGES**, IF SUCH SUIT OR CLAIM ARISES FROM BODILY INJURY OR **PROPERTY DAMAGE** RESULTING FROM

OR CONTRIBUTED TO, BY ANY AND ALL MANUFACTURE OF, MINING OF, USE OF, SALES OF, INSTALLATION OF, REMOVAL OF, DISTRIBUTION OF, OR EXPOSURE TO ASBESTOS, ASBESTOS PRODUCTS, ASBESTOS FIBERS, OR ASBESTOS DUST;

- (N)
- (1) TO LIABILITY ARISING OUT OF THE ACTUAL OR THREATENED DISCHARGE, DISPERSAL, SEEPAGE, MIGRATION, RELEASE OR ESCAPE OF POLLUTANTS ANYWHERE IN THE WORLD;
 - (2) TO **ULTIMATE NET LOSS** ARISING OUT OF ANY GOVERNMENTAL DIRECTION OR REQUEST THAT THE ASSOCIATION, THE COVERED PARTY OR ANY OTHER PERSON OR ORGANIZATION TEST FOR, MONITOR, CLEAN-UP, REMOVE, CONTAIN, TREAT, DETOXYFY, NEUTRALIZE OR ASSESS THE EFFECTS OF POLLUTANTS; OR
 - (3) TO **ULTIMATE NET LOSS**, INCLUDING BUT NOT LIMITED TO COSTS OF INVESTIGATION OR ATTORNEYS' FEES, INCURRED BY A GOVERNMENTAL UNIT OR ANY OTHER PERSON OR ORGANIZATION TO TEST FOR, MONITOR, CLEAN-UP, REMOVE, CONTAIN, TREAT, DETOXYFY OR NEUTRALIZE POLLUTANTS.

AS USED IN THIS EXCLUSION, POLLUTANTS MEANS ANY SOLID, LIQUID, GASEOUS OR THERMAL IRRITANT OR CONTAMINANT, INCLUDING SMOKE, VAPOR, SOOT, FUMES, ACIDS, ALKALIS, CHEMICALS AND WASTE MATERIAL. WASTE MATERIAL INCLUDES MATERIALS WHICH ARE INTENDED TO BE OR HAVE BEEN RECYCLED, RECONDITIONED OR RECLAIMED. HOWEVER, THIS EXCLUSION DOES NOT APPLY TO WATER, WHETHER RECYCLED, RECONDITIONED OR RECLAIMED.

HOWEVER, THIS EXCLUSION DOES NOT APPLY TO LIABILITY ARISING OUT OF

- (1) ANY DISCHARGE, DISPERSAL, SEEPAGE, MIGRATION, RELEASE OR ESCAPE DIRECTLY OR INDIRECTLY CAUSED BY FIRE, EXPLOSION, LIGHTNING, WINDSTORM, VANDALISM OR MALICIOUS MISCHIEF, RIOT AND CIVIL COMMOTION, FLOOD, COLLISION, OR UPSET OF A MOTOR VEHICLE, RAILROAD VEHICLE, MOBILE EQUIPMENT, AUTOMATIC SPRINKLER LEAKAGE OR **AIRCRAFT**;
- (2) THE **COMPLETED OPERATIONS HAZARD**; OR
- (3) ANY DISCHARGE, DISPERSAL, SEEPAGE, MIGRATION, RELEASE OR ESCAPE OF POLLUTANTS THAT MEETS ALL OF THE FOLLOWING CONDITIONS:
 - (a) IT WAS ACCIDENTAL AND NEITHER EXPECTED NOR INTENDED BY THE **COVERED PARTY**. THIS CONDITION WOULD NOT SERVE TO DENY COVERAGE FOR A SPECIFIC INCIDENT WHERE SUCH DISCHARGE, DISPERSAL, SEEPAGE, MIGRATION, RELEASE OR ESCAPE OF POLLUTANTS WAS A RESULT OF AN ATTEMPT BY THE COVERED PARTY TO MITIGATE OR AVOID A SITUATION WHERE SUBSTANTIAL THIRD PARTY BODILY INJURY, **PROPERTY DAMAGE** OR **PERSONAL INJURY** COULD OCCUR; AND

- (b) IT WAS DEMONSTRATED AS HAVING COMMENCED ON A SPECIFIC DATE DURING THE TERM OF THIS MEMORANDUM; AND
- (c) ITS COMMENCEMENT BECAME KNOWN TO THE COVERED PARTY WITHIN TEN (10) CALENDAR DAYS AND WAS FURTHER REPORTED TO THE PERSON RESPONSIBLE FOR RISK MANAGEMENT AT THE "MEMBER" WITHIN A REASONABLE TIME FRAME; AND
- (d) ITS COMMENCEMENT WAS REPORTED IN WRITING TO THE ASSOCIATION WITHIN THIRTY-ONE (31) CALENDAR DAYS OF BECOMING KNOWN TO THE PERSON RESPONSIBLE FOR RISK MANAGEMENT AT THE "MEMBER"; AND
- (e) REASONABLE EFFORT WAS EXPENDED BY THE COVERED PARTY TO TERMINATE THE SITUATION AS SOON AS CONDITIONS PERMITTED.

HOWEVER, NOTHING CONTAINED IN THIS PROVISION 3, SHALL OPERATE TO PROVIDE ANY COVERAGE WITH RESPECT TO:

- (a) ANY SITE OR LOCATION PRINCIPALLY USED BY THE **COVERED PARTY**, OR BY OTHERS ON THE **COVERED PARTY'S** BEHALF, FOR THE HANDLING, STORAGE, DISPOSAL, DUMPING, PROCESSING OR TREATMENT OF WASTE MATERIAL;
- (b) ANY FINES OR PENALTIES;
- (c) ANY CLEAN UP COSTS ORDERED BY THE SUPERFUND PROGRAM, OR ANY FEDERAL, STATE OR LOCAL GOVERNMENTAL ASSOCIATION. HOWEVER, THIS SPECIFIC EXCLUSION C. SHALL NOT SERVE TO DENY COVERAGE FOR THIRD PARTY CLEAN UP COSTS OTHERWISE COVERED BY THIS ENDORSEMENT SIMPLY BECAUSE OF THE INVOLVEMENT OF A GOVERNMENTAL ASSOCIATION;
- (d) ACID RAIN;
- (e) CLEAN UP, REMOVAL, CONTAINMENT, TREATMENT, DETOXIFICATION OR NEUTRALIZATION OF POLLUTANTS SITUATED ON PREMISES THE COVERED PARTY OWNS, RENTS OR OCCUPIES AT THE TIME OF THE ACTUAL DISCHARGE, DISPERSAL, SEEPAGE, MIGRATION, RELEASE OR ESCAPE OF SAID POLLUTANTS; OR
- (f) WATER POLLUTION CAUSED BY OIL OR ITS DERIVATIVES.

IT IS FURTHER AGREED THAT IN THE EVENT OF A DISAGREEMENT AS TO THE INTERPRETATION OF THIS EXCLUSION, THE DISAGREEMENT SHALL BE SUBMITTED TO BINDING ARBITRATION BEFORE A PANEL OF THREE (3) ARBITRATORS. WITHIN THIRTY (30) DAYS OF A WRITTEN REQUEST FOR ARBITRATION BY EITHER THE COVERED PARTY OR THE ASSOCIATION, EACH PARTY WILL CHOOSE AN ARBITRATOR. IF THE TWO ARBITRATORS ARE UNABLE TO AGREE WITHIN ONE (1) MONTH UPON THE THIRD ARBITRATOR, SUCH

ARBITRATOR SHALL AT THE REQUEST OF EITHER PARTY BE SELECTED BY THE AMERICAN ARBITRATION ASSOCIATION IN ACCORDANCE WITH ITS RULES AND PROCEDURES.

THE PARTIES SHALL SUBMIT THEIR CASES TO THE PANEL BY WRITTEN AND ORAL EVIDENCE AT A HEARING TIME AND PLACE SELECTED BY THE THIRD ARBITRATOR. THE PANEL SHALL BE RELIEVED OF ALL JUDICIAL FORMALITY, SHALL NOT BE OBLIGATED TO ADHERE TO THE STRICT RULES OF LAW OR OF EVIDENCE, SHALL SEEK TO ENFORCE THE INTENT OF THE PARTIES HERETO AND MAY REFER TO, BUT ARE NOT LIMITED TO RELEVANT LEGAL PRINCIPLES. THE DECISION OF AT LEAST TWO (2) OF THE THREE (3) PANEL MEMBERS SHALL BE BINDING AND FINAL AND NOT SUBJECT TO APPEAL EXCEPT FOR GROUNDS OF FRAUD AND GROSS MISCONDUCT BY THE ARBITRATORS. THE AWARD WILL BE ISSUED WITHIN THIRTY (30) DAYS OF THE CLOSE OF THE HEARINGS. EACH PARTY SHALL BEAR THE EXPENSES OF ITS DESIGNATED ARBITRATOR AND SHALL JOINTLY AND EQUALLY SHARE WITH THE OTHER THE EXPENSE OF THE THIRD ARBITRATOR AND OF THE ARBITRATION.

THE ARBITRATION PROCEEDINGS SHALL TAKE PLACE IN OR IN THE VICINITY OF HELENA, MONTANA. THE PROCEDURAL RULES APPLICABLE TO THIS ARBITRATION SHALL, EXCEPT AS PROVIDED OTHERWISE HEREIN, BE IN ACCORDANCE WITH THE COMMERCIAL ARBITRATION RULES OF THE AMERICAN ARBITRATION ASSOCIATION;

- (O) TO LIABILITY ARISING OUT OF THE OPERATION OR USE OF ANY **OFF HIGHWAY VEHICLE PARK OR AREA**;
- (P) TO ANY LIABILITY ARISING OUT OF OR IN CONNECTION WITH THOSE CAUSES OF ACTION OR COUNTS IN ANY SUIT WHICH DO NOT CONTAIN DEMANDS OR PRAYERS FOR MONETARY DAMAGE;
- (Q) UNDER COVERAGE C TO:
 - (1) **PERSONAL INJURY OR PROPERTY DAMAGE OR UNFAIR EMPLOYMENT PRACTICES** AS DEFINED IN THE MEMORANDUM;
 - (2) THE REFUND OF TAXES, FEES OR ASSESSMENTS;
 - (3) (a) LIABILITY OF A COVERED PARTY ARISING IN WHOLE OR IN PART, OUT OF ANY COVERED PARTY OBTAINING REMUNERATION OR FINANCIAL GAIN TO WHICH THE COVERED PARTY WAS NOT LEGALLY ENTITLED;
 - (b) LIABILITY ARISING OUT OF THE WILLFUL VIOLATION OF A PENAL STATUTE, CODE OR ORDINANCE COMMITTED BY OR WITH THE KNOWLEDGE OR CONSENT OF ANY **COVERED PARTY**; EXCEPT THAT ANY ACT FOR WHICH A COVERED PARTY IS RESPONSIBLE SHALL NOT BE IMPUTED TO ANY OTHER COVERED PARTY FOR PURPOSES OF THIS SUBPART (Q)(3);
 - (4) LIABILITY OF ANY COVERED PARTY ARISING OUT OF ESTIMATES OF PROBABLE COSTS OR COST ESTIMATES BEING EXCEEDED OR FOR

FAULTY PREPARATION OF BID SPECIFICATIONS OR PLANS OR FAILURE TO AWARD CONTRACTS IN ACCORDANCE WITH STATUTE OR ORDINANCE WHICH UNDER LAW MUST BE SUBMITTED FOR BIDS;

- (5) INJURY TO, DESTRUCTION OR DISAPPEARANCE OF ANY TANGIBLE PROPERTY (INCLUDING MONEY) OR THE LOSS OF USE THEREOF;
- (6) FAILURE TO PERFORM OR BREACH OF, A CONTRACTUAL OBLIGATION;

NOTHING CONTAINED IN THIS EXCLUSION SHALL LIMIT THE **COVERED PARTY'S** RIGHTS OF RECOVERY, WHERE APPLICABLE, UNDER COVERAGES A AND B OF THIS MEMORANDUM;

- (R) TO BENEFITS PAYABLE UNDER AN EMPLOYEE BENEFIT PLAN (WHETHER THE PLAN IS VOLUNTARILY ESTABLISHED BY THE **COVERED PARTY OR** MANDATED BY STATUTE) BECAUSE OF UNLAWFUL DISCRIMINATION;
- (S) TO ANY LIABILITY ARISING OUT OF OR IN CONNECTION WITH ANY CLAIM FOR PUNITIVE DAMAGES;
- (T) TO LIABILITY ARISING OUT OF OR BY REASON OF:
 - (1) THE PURCHASE, OR SALE, OR OFFER OF SALE, OR SOLICITATION OF ANY SECURITY, DEBT, BANK DEPOSIT OR FINANCIAL INTEREST OR INSTRUMENT;
 - (2) ANY REPRESENTATION MADE AT ANY TIME IN RELATION TO THE PRICE OR VALUE OF ANY SECURITY, DEBT, BANK DEPOSIT OR FINANCIAL INTEREST OR INSTRUMENT;
 - (3) ANY DEPRECIATION OR DECLINE IN PRICE OR VALUE OF ANY SECURITY, DEBT, BANK DEPOSIT OR FINANCIAL INTEREST OR INSTRUMENT.

IT IS FURTHER AGREED THAT THE ASSOCIATION HAS NO OBLIGATIONS TO DEFEND OR PAY FOR THE DEFENSE OF ANY CLAIM THAT MAY ALLEGE ANY OF THE FOREGOING;

- (U) UNDER COVERAGE D, **UNFAIR EMPLOYMENT PRACTICES LIABILITY**, FOR:
 - (1) STRIKES AND LOCKOUTS. THIS MEMORANDUM DOES NOT APPLY TO ANY CLAIM OR CLAIMS FOR LOSS ARISING OUT OF A LOCKOUT, STRIKE, PICKET LINE, REPLACEMENT OR SIMILAR ACTIONS IN CONNECTION WITH LABOR DISPUTES OR LABOR NEGOTIATIONS.
 - (2) W.A.R.M. ACT. THIS MEMORANDUM DOES NOT APPLY TO ANY CLAIM OR CLAIMS FOR LOSS ARISING OUT OF THE WORKERS ADJUSTMENT AND RETRAINING NOTIFICATION ACT, PUBLIC LAW 100-379 (1988), OR ANY AMENDMENT THERETO, OR ANY SIMILAR FEDERAL, STATE OR LOCAL LAW.
 - (3) ANY CLAIM OR CLAIMS FOR **OCCURRENCE** INCURRED BY THE COVERED PARTY TO MODIFY ANY BUILDING OR PROPERTY IN ORDER TO MAKE SAID

BUILDING OR PROPERTY MORE ACCESSIBLE OR ACCOMMODATING TO ANY DISABLED PERSON;

- (V) TO LIABILITY ARISING OUT OF ANY TRANSIT AUTHORITY, TRANSIT SYSTEM OR PUBLIC TRANSPORTATION SYSTEM OWNED OR OPERATED BY ANY **COVERED PARTY**, THIS EXCLUSION SHALL NOT APPLY TO TRANSIT OR PUBLIC TRANSPORTATION SYSTEMS OPERATING OVER NON-FIXED ROUTES SUCH AS DIAL-A-RIDE, SENIOR CITIZEN TRANSPORTATION, OR HANDICAPPED PERSONS TRANSPORTATION.

DEFINITIONS

THE FOLLOWING DEFINITIONS SHALL GOVERN THE MEANING OF THE DEFINED TERMS FOR THE PURPOSES OF THIS MEMORANDUM. THE DEFINED TERMS ARE SET FORTH IN "**BOLD FACE**" TYPE WHERE USED HEREIN.

"**AIRCRAFT**" MEANS A VEHICLE DESIGNED FOR THE TRANSPORT OF PERSONS OR PROPERTY PRINCIPALLY IN THE AIR.

"**COMPLETED OPERATIONS HAZARD**" INCLUDES **PERSONAL INJURY AND PROPERTY DAMAGE** ARISING OUT OF OPERATIONS OR RELIANCE UPON A REPRESENTATION OR WARRANTY MADE AT ANY TIME WITH RESPECT THERETO, BUT ONLY IF THE **PERSONAL INJURY OR PROPERTY DAMAGE** OCCURS AFTER SUCH OPERATIONS HAVE BEEN COMPLETED OR ABANDONED AND OCCURS AWAY FROM PREMISES OWNED BY OR RENTED TO THE **COVERED PARTY**. "OPERATIONS" INCLUDE MATERIALS, PARTS OR EQUIPMENT FURNISHED IN CONNECTION THEREWITH. OPERATIONS SHALL BE DEEMED COMPLETED AT THE EARLIEST OF THE FOLLOWING TIMES:

- (A) WHEN ALL OPERATIONS TO BE PERFORMED BY OR ON BEHALF OF THE COVERED PARTY UNDER THE CONTRACT HAVE BEEN COMPLETED, OR
- (B) WHEN ALL OPERATIONS TO BE PERFORMED BY OR ON BEHALF OF THE COVERED PARTY AT THE SITE OF THE OPERATIONS HAVE BEEN COMPLETED, OR
- (C) WHEN THE PORTION OF THE WORK OUT OF WHICH THE INJURY OR DAMAGE ARISES HAS BEEN PUT TO ITS INTENDED USE BY ANY PERSON OR ORGANIZATION OTHER THAN ANOTHER CONTRACTOR OR SUBCONTRACTOR ENGAGED IN PERFORMING OPERATIONS FOR A PRINCIPAL AS A PART OF THE SAME PROJECT.

OPERATIONS WHICH MAY REQUIRE FURTHER SERVICE OR MAINTENANCE WORK, OR CORRECTION, REPAIR OR REPLACEMENT BECAUSE OF ANY DEFECT OR DEFICIENCY, BUT WHICH ARE OTHERWISE COMPLETE SHALL BE DEEMED COMPLETED.

THE **COMPLETED OPERATIONS HAZARD** DOES NOT INCLUDE LIABILITY ARISING OUT OF:

- (1) OPERATIONS IN CONNECTION WITH THE TRANSPORTATION OF PROPERTY UNLESS THE LIABILITY ARISES OUT OF A CONDITION IN

OR ON A VEHICLE CREATED BY THE LOADING OR UNLOADING THEREOF,

- (2) THE EXISTENCE OF TOOLS, UNINSTALLED EQUIPMENT OR ABANDONED OR UNUSED MATERIALS.

" **COVERED PARTY**" MEANS ANY PERSON OR ORGANIZATION QUALIFYING AS A COVERED PARTY UNDER THE **COVERED PARTY, COVERED PERSONS OR ENTITIES**" SECTION OF THIS MEMORANDUM. THE COVERAGE AFFORDED APPLIES SEPARATELY TO EACH COVERED PARTY AGAINST WHOM CLAIM IS MADE OR SUIT IS BROUGHT, EXCEPT WITH RESPECT TO THE LIMITS OF THE ASSOCIATION'S LIABILITY.

"**DAM**" MEANS ANY ARTIFICIAL BARRIER TOGETHER WITH APPURTENANT WORKS WHICH:

- (1) IS 25 FEET OR MORE IN HEIGHT FROM THE FOOT OF A NATURAL BED OF STREAM OR WATERCOURSE; OR
- (2) HAS WATER IMPOUNDING CAPACITY OF 50 ACRE FEET OR MORE.

EXCEPT THAT NO STRUCTURE SPECIFICALLY EXEMPTED FROM JURISDICTION BY THE STATE OF MONTANA SHALL BE CONSIDERED A **DAM**, UNLESS SUCH STRUCTURE IS UNDER THE JURISDICTION OF ANY AGENCY OF THE FEDERAL GOVERNMENT.

"**DAMAGES**" MEANS MONETARY COMPENSATION: (A) FOR DEATH AND FOR CARE AND LOSS OF SERVICES RESULTING FROM **PERSONAL INJURY**; (B) FOR LOSS OF USE OF PROPERTY RESULTING FROM **PROPERTY DAMAGE**; (C) RESULTING FROM **PUBLIC OFFICIALS ERRORS AND OMISSIONS**, OR (D) **UNFAIR EMPLOYMENT PRACTICES**.

"**DEFENSE COSTS**" MEANS REASONABLE FEES CHARGED BY AN ATTORNEY, INCLUDING EXPENSES OF A CLAIMS SERVICING ORGANIZATION THE COVERED PARTY HAS ENGAGED, AND ALL OTHER REASONABLE FEES, COSTS AND EXPENSES ATTRIBUTABLE TO THE INVESTIGATION, DEFENSE OR APPEAL OF A CLAIM WITHIN THE SCOPE OF COVERAGE AFFORDED BY THIS MEMORANDUM. **DEFENSE COSTS** SHALL INCLUDE ANY ALLOCATED CLAIMS EXPENSES INCURRED BY ATTORNEYS WHO ARE EMPLOYEES OF THE **COVERED PARTY**.

"**EXCESS DEFENSE COSTS**" MEANS **DEFENSE COSTS** INCURRED BY THE COVERED PARTY WITH THE WRITTEN CONSENT OF THE ASSOCIATION AFTER THE SELF-INSURED RETENTION HAS BEEN EXHAUSTED BY PAYMENT OF JUDGMENTS, SETTLEMENTS AND **DEFENSE COSTS**.

"**GOVERNED DIRECTLY**" MEANS THE MEMBER BOARD SITS AS THE GOVERNING BOARD.

"**NUCLEAR MATERIAL**" MEANS SOURCE MATERIAL, SPECIAL **NUCLEAR MATERIAL**, OR BYPRODUCT MATERIAL; "SOURCE MATERIAL", "SPECIAL **NUCLEAR MATERIAL**", AND "BYPRODUCT MATERIAL" HAVE THE MEANINGS GIVEN THEM IN THE ATOMIC ENERGY ACT OF 1954 OR IN ANY LAW AMENDATORY THEREOF.

"**OCCURRENCE**" MEANS AN ACCIDENT OR EVENT, INCLUDING INJURIOUS EXPOSURE TO CONDITIONS, WHICH RESULTS, DURING THE MEMORANDUM PERIOD, IN **PERSONAL**

INJURY, PROPERTY DAMAGE, PUBLIC OFFICIALS ERRORS AND OMISSIONS OR UNFAIR EMPLOYMENT PRACTICES NEITHER EXPECTED NOR INTENDED FROM THE STANDPOINT OF THE **COVERED PARTY**. AS RESPECTS COVERAGES A, B, C AND D, "**OCCURRENCE**" SHALL APPLY SEPARATELY TO EACH "MEMBER" OF THE ASSOCIATION NAMED IN THIS MEMORANDUM.

"**OFF HIGHWAY VEHICLE PARK OR AREA**" MEANS ANY OFF HIGHWAY PARK OR AREA SPECIFICALLY DESIGNATED FOR THE RECREATIONAL OR SPORT ACTIVITIES OF OFF ROAD VEHICLES. RECREATIONAL OR SPORT ACTIVITY IS NOT MEANT TO INCLUDE ACCESS OR EGRESS TO PARK AREAS.

"**PERSONAL INJURY**" MEANS (A) BODILY INJURY, DEATH, SICKNESS, DISEASE, DISABILITY, SHOCK, EMOTIONAL DISTRESS, MENTAL ANGUISH AND MENTAL INJURY RESULTING FROM BODILY INJURY; (B) FALSE ARREST, DETENTION OR IMPRISONMENT OR MALICIOUS PROSECUTION; (C) THE PUBLICATION OR UTTERANCE OF LIBEL OR SLANDER, INCLUDING DISPARAGING STATEMENTS CONCERNING THE CONDITION, VALUE, QUALITY OR USE OF REAL OR PERSONAL PROPERTY, OR PUBLICATION OR UTTERANCE IN VIOLATION OF RIGHTS OF PRIVACY; (D) WRONGFUL ENTRY OR EVICTION, OR OTHER INVASION OF THE RIGHT OF PRIVATE OCCUPANCY; (E) ASSAULT AND BATTERY, NOT COMMITTED BY, AT THE DIRECTION OF OR WITH THE CONSENT OF THE **COVERED PARTY**, UNLESS COMMITTED OR DIRECTED FOR THE PURPOSE OF PROTECTING PERSONS OR PROPERTY FROM INJURY OR DEATH; (F) DISCRIMINATION BASED UPON RACE, RELIGION, NATIONALITY, NATIONAL ORIGIN, COLOR, CREED, SEX, SEXUAL PREFERENCE, AGE, EMPLOYMENT, OR DISABILITY, BUT EXCLUDING UNLAWFUL DISCRIMINATION INTENTIONALLY COMMITTED BY, AT THE DIRECTION OF, OR WITH CONSENT OF THE **COVERED PARTY**.

"**PROPERTY DAMAGE**" MEANS (1) PHYSICAL INJURY TO OR DESTRUCTION OF TANGIBLE PROPERTY WHICH OCCURS DURING THE MEMORANDUM PERIOD, INCLUDING THE LOSS OF USE THEREOF AT ANY TIME RESULTING THEREFROM; OR (2) LOSS OF USE OF TANGIBLE PROPERTY WHICH HAS NOT BEEN PHYSICALLY INJURED OR DESTROYED PROVIDED SUCH LOSS OF USE IS CAUSED BY AN **OCCURRENCE** DURING THE MEMORANDUM PERIOD.

"**PUBLIC OFFICIALS ERRORS AND OMISSIONS**" SHALL MEAN ANY ACTUAL OR ALLEGED ERROR OR MISSTATEMENT OR ACT OF OMISSION OR NEGLIGENCE OR BREACH OF DUTY INCLUDING MISFEASANCE, MALFEASANCE OR NONFEASANCE BY THE **COVERED PARTIES** IN THE DISCHARGE OF THEIR DUTIES WITH THE PUBLIC ENTITY INDIVIDUALLY OR COLLECTIVELY, OR ANY MATTER CLAIMED AGAINST THEM SOLELY BY REASON OF THEIR BEING OR HAVING BEEN **COVERED PARTIES**.

"**SUBSIDENCE**" MEANS ANY PROPERTY DAMAGE DIRECTLY OR INDIRECTLY ARISING OUT OF, CAUSED BY, RESULTING FROM, CONTRIBUTED TO OR AGGRAVATED BY THE SETTLING, SINKING, SLIPPING, FALLING AWAY, CAVING IN, SHIFTING, ERODING, MUD FLOW, RISING, TILTING, OR ANY OTHER MOVEMENT OF LAND OR EARTH.

"**ULTIMATE NET LOSS**" MEANS THE TOTAL SUM WHICH THE COVERED PARTY BECOMES LEGALLY LIABLE TO PAY AS **DAMAGES** BY REASON OF JUDGMENTS OR BY REASON OF SETTLEMENTS MADE WITH THE WRITTEN CONSENT OF THE COVERED PARTY AND THE ASSOCIATION, AND SHALL ALSO INCLUDE **DEFENSE COSTS** AND **EXCESS DEFENSE COSTS** WHICH ARE PAID AS A CONSEQUENCE OF ANY **OCCURRENCE** COVERED HEREUNDER.

“UNFAIR EMPLOYMENT PRACTICES”, MEANS ANY CIRCUMSTANCE RELATING TO A PAST, PRESENT, OR PROSPECTIVE EMPLOYEE OF THE COVERED PARTY (AND THE SPOUSE, CHILD, PARENT, BROTHER OR SISTER OF THAT PERSON AS A CONSEQUENCE OF **UNFAIR EMPLOYMENT PRACTICES** THAT PERSON AT WHOM ANY OF THE EMPLOYMENT-RELATED PRACTICES DESCRIBED BELOW IS DIRECTED) FOR OR ARISING OUT OF ANY ACTUAL OR ALLEGED WRONGFUL DISMISSAL, DISCHARGE, OR TERMINATION, EITHER ACTUAL OR CONSTRUCTIVE, OF EMPLOYMENT, EMPLOYMENT RELATED MISREPRESENTATION, WRONGFUL FAILURE OR REFUSAL TO EMPLOY OR PROMOTE, WRONGFUL DEPRIVATION OF CAREER OPPORTUNITY OR REASSIGNMENT, WRONGFUL DISCIPLINE, FAILURE TO GRANT TENURE OR NEGLIGENT EMPLOYEE EVALUATION; OR SEXUAL OR WORKPLACE HARASSMENT OR HUMILIATION OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, THE ALLEGED OPERATION OF A HARASSING WORKPLACE ENVIRONMENT, OR

UNLAWFUL DISCRIMINATION, WHETHER DIRECT, INDIRECT, INTENTIONAL OR UNINTENTIONAL, OR FAILURE TO PROVIDE ADEQUATE EMPLOYEE POLICIES AND PROCEDURES.

UNFAIR EMPLOYMENT PRACTICES SHALL INCLUDE ACTIONS BROUGHT UNDER STATE, LOCAL, OR FEDERAL LAW, WHETHER COMMON OR STATUTORY, AND SHALL INCLUDE, BUT NOT LIMITED TO ALLEGATIONS OF VIOLATIONS OF THE FOLLOWING FEDERAL LAWS, AS AMENDED, INCLUDING REGULATIONS PROMULGATED THEREUNDER:

- (A) AMERICANS WITH DISABILITIES ACT OF 1992 (ADA);
- (B) CIVIL RIGHTS ACT OF 1991;
- (C) AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967 (ADEA), INCLUDING THE OLDER WORKERS BENEFIT PROTECTION ACT OF 1990;
- (D) TITLE VII OF THE CIVIL RIGHTS LAW OF 1964, AS AMENDED (1983), INCLUDING THE PREGNANCY DISCRIMINATION ACT OF 1978;
- (E) CIVIL RIGHTS ACT OF 1866, SECTION 1981; AND
- (F) FIFTH AND FOURTEENTH AMENDMENTS OF THE U.S. CONSTITUTION

"WATERCRAFT" MEANS A VEHICLE DESIGNED FOR THE TRANSPORT OF PERSONS OR PROPERTY PRINCIPALLY ON WATER.

CONDITIONS

(1) INSPECTION

THE ASSOCIATION SHALL BE PERMITTED BUT NOT OBLIGATED TO INSPECT THE **COVERED PARTY'S** PROPERTY AND OPERATIONS AT ANY TIME. NEITHER THE ASSOCIATION'S RIGHT TO MAKE INSPECTIONS NOR THE MAKING THEREOF NOR ANY REPORT THEREON SHALL CONSTITUTE AN UNDERTAKING, ON BEHALF OF OR FOR THE BENEFIT OF THE COVERED PARTY OR OTHERS, TO DETERMINE OR WARRANT THAT SUCH PROPERTY OR OPERATIONS ARE SAFE. THE ASSOCIATION MAY EXAMINE THE **COVERED PARTY'S** BOOKS AND RECORDS AT ANY TIME DURING THE MEMORANDUM PERIOD AND EXTENSIONS THEREOF AND WITHIN THREE YEARS AFTER THE FINAL TERMINATION OF THIS MEMORANDUM, AS FAR AS THEY RELATE TO THE SUBJECT MATTER OF THIS COVERAGE.

(2) CLAIMS REPORTING REQUIREMENT

IT IS AGREED THAT WITH RESPECT TO CLAIM REPORTING, THE **COVERED PARTY**, IN ADDITION TO OUR TERMS SET FORTH IN THIS MEMORANDUM OF COVERAGE, MUST REPORT AN **OCCURRENCE** OF ANY INJURY, DEATH OR DISEASE, PAID OR RESERVED, FOR 50% OR MORE OF THEIR INDIVIDUAL RETAINED LIMIT. IMMEDIATE WRITTEN NOTICE SHALL BE GIVEN BY OR ON BEHALF OF THE COVERED PARTY TO THE ASSOCIATION. IMMEDIATE NOTICE SHALL ALSO BE GIVEN TO THE ASSOCIATION FOR ANY CLAIMS IN WHICH THIS ASSOCIATION IS NAMED AS A DEFENDANT.

(3) **COVERED PARTY'S DUTIES IN THE EVENT OF OCCURRENCE, CLAIM OR SUIT**

(A) IN THE EVENT OF AN **OCCURRENCE** REASONABLY LIKELY TO INVOLVE THE ASSOCIATION, WRITTEN NOTICE CONTAINING PARTICULARS SUFFICIENT TO IDENTIFY THE COVERED PARTY AND ALSO REASONABLY OBTAINABLE INFORMATION WITH RESPECT TO THE TIME, PLACE AND CIRCUMSTANCES THEREOF, AND THE NAMES AND ADDRESSES OF THE INJURED AND OF AVAILABLE WITNESSES, SHALL BE GIVEN BY OR FOR THE COVERED PARTY TO THE ASSOCIATION OR ANY OF ITS AUTHORIZED AGENTS AS SOON AS PRACTICABLE, AFTER THE INDIVIDUAL RESPONSIBLE FOR THE COVERAGE AT THE "MEMBER", OR HIS/HER DESIGNEE, HAS KNOWLEDGE OF THE **OCCURRENCE**.

(B) IF CLAIM IS MADE OR SUIT IS BROUGHT AGAINST THE COVERED PARTY WHICH APPEARS LIKELY TO INVOLVE THE ASSOCIATION, THE COVERED PARTY SHALL FORWARD TO THE ASSOCIATION EVERY DEMAND, NOTICE, SUMMONS OR OTHER PROCESS RECEIVED BY HIM/HER OR HIS/HER REPRESENTATIVE, IMMEDIATELY OR WITHIN A REASONABLE AMOUNT OF TIME AFTER THE INDIVIDUAL RESPONSIBLE FOR COVERAGE AT THE "MEMBER" OR HIS/HER DESIGNEE HAS KNOWLEDGE OF THE CLAIM OR SUIT.

(C) THE COVERED PARTY SHALL COOPERATE WITH THE ASSOCIATION AND UPON ITS REQUEST, ASSIST IN MAKING SETTLEMENTS, IN THE CONDUCT OF SUITS AND IN ENFORCING ANY RIGHT TO CONTRIBUTION OR INDEMNITY AGAINST ANY PERSON OR ORGANIZATION WHO MAY BE LIABLE TO THE COVERED PARTY BECAUSE OF LIABILITY WITH RESPECT TO WHICH COVERAGE IS AFFORDED UNDER THIS MEMORANDUM, AND THE COVERED PARTY SHALL ATTEND HEARINGS AND TRIALS AND ASSIST IN SECURING AND GIVING EVIDENCE AND OBTAINING THE ATTENDANCE OF WITNESSES. THE COVERED PARTY SHALL NOT, EXCEPT AT ITS OWN COSTS, VOLUNTARILY MAKE ANY PAYMENT, ASSUME ANY OBLIGATION OR INCUR ANY EXPENSE; HOWEVER, IN THE EVENT THAT THE AMOUNT OF **ULTIMATE NET LOSS** BECOMES CERTAIN EITHER THROUGH TRIAL COURT JUDGMENT OR AGREEMENT AMONG THE **COVERED PARTY**, THE CLAIMANT AND THE ASSOCIATION THEN THE COVERED PARTY MAY PAY THE AMOUNT OF **ULTIMATE NET LOSS** TO THE CLAIMANT TO EFFECT

SETTLEMENT AND, UPON SUBMISSION OF DUE PROOF THEREOF, THE ASSOCIATION SHALL INDEMNIFY THE COVERED PARTY FOR THAT PART OF SUCH PAYMENT WHICH IS IN EXCESS OF THE RETAINED LIMIT, OR

WILL, UPON REQUEST OF THE **COVERED PARTY**, MAKE SUCH PAYMENT TO THE CLAIMANT ON BEHALF OF THE **COVERED PARTY**.

(D) THE ASSOCIATION, AT ITS OPTION, SHALL HAVE THE RIGHT AT ITS OWN EXPENSE TO INVESTIGATE ANY CLAIM AND/OR NEGOTIATE THE SETTLEMENT THEREOF, AS IT DEEMS EXPEDIENT, BUT THE ASSOCIATION SHALL NOT COMMIT THE COVERED PARTY TO ANY SETTLEMENT WITHOUT THE **COVERED PARTY'S** CONSENT. SHOULD THE CLAIMANT OR PLAINTIFF, AS THE CASE MIGHT BE, TENDER A BONA-FIDE, GOOD FAITH, SETTLEMENT DEMAND WHICH WHEN ADDED TO THE INCURRED **DEFENSE COSTS** IS IN EXCESS OF THE **COVERED PARTY'S** RETENTION, THE PAYMENT OF WHICH WOULD RESULT IN THE FULL AND FINAL DISPOSITION OF SAID CLAIM OR SUIT, THEN IF SUCH SETTLEMENT DEMAND IS ACCEPTABLE TO EITHER (1) THE **COVERED PARTY**, OR (2) THE ASSOCIATION (BUT NOT BOTH), THEN WITH REGARD TO THAT SETTLEMENT DEMAND:

(1) IF SUCH SETTLEMENT DEMAND IS NOT ACCEPTABLE TO THE ASSOCIATION AND THE **COVERED PARTY** TENDERS TO THE ASSOCIATION AN AMOUNT EQUAL TO THE **COVERED PARTY'S** RETENTION LESS INCURRED **DEFENSE COSTS**, IF ANY, THE ASSOCIATION SHALL THEN PAY ON BEHALF OF THE COVERED PARTY ALL SUMS WHICH THE COVERED PARTY SHALL BE LEGALLY OBLIGATED TO PAY AS **DAMAGES**, INCLUDING WITHOUT LIMITATION, THE **COVERED PARTY'S** RETENTION, PLUS FUTURE INVESTIGATION, ADJUSTMENT, APPRAISAL, APPEAL, POST JUDGMENT INTEREST AND **DEFENSE COSTS**. SUCH INVESTIGATION, ADJUSTMENT, APPRAISAL, APPEAL, POST JUDGMENT INTEREST AND **DEFENSE COSTS** SHALL BE PAID BY THE ASSOCIATION IN ADDITION TO THE APPLICABLE, MAXIMUM LIMIT OF LIABILITY UNDER THIS MEMORANDUM. HOWEVER, IN NO EVENT SHALL THE ASSOCIATION'S AGREEMENT TO PAY ON BEHALF OF THE COVERED PARTY EXCEED THE LIMIT OF LIABILITY AS STATED IN THE DECLARATIONS IN ADDITION TO SUCH INVESTIGATION, ADJUSTMENT, APPRAISAL, APPEAL, POST-JUDGMENT INTEREST AND **DEFENSE COSTS**. SHOULD THE FULL AND FINAL DISPOSITION OF THE CLAIM, INCLUDING JUDGMENTS, SETTLEMENTS, INVESTIGATION, ADJUSTMENT, APPRAISAL, APPEAL, POST-JUDGMENT INTEREST AND **DEFENSE COSTS** BE LESS THAN THE AMOUNT TENDERED BY THE **COVERED PARTY**, THE UNUSED PORTION OF THE TENDERED AMOUNT SHALL BE RETURNED TO THE COVERED PARTY BY THE ASSOCIATION.

(2) IF SUCH SETTLEMENT DEMAND IS NOT ACCEPTABLE TO THE COVERED PARTY AND THE ASSOCIATION TENDERS TO THE COVERED PARTY AN AMOUNT EQUAL TO THE DIFFERENCE BETWEEN THE **COVERED PARTY'S** RETENTION, LESS INCURRED **DEFENSE COSTS**, AND SAID SETTLEMENT DEMAND, OR THE APPLICABLE AMOUNT SPECIFIED IN THE LIMITS OF LIABILITY SECTION OF THE DECLARATIONS, WHICHEVER IS LESS, THEN THE ASSOCIATION'S AGREEMENT TO PAY ON BEHALF OF THE COVERED PARTY FOR THE **ULTIMATE NET LOSS** HEREUNDER SHALL BE

DISCHARGED AND TERMINATED AND THE ASSOCIATION SHALL HAVE NO FURTHER OBLIGATIONS WITH RESPECT THERETO.

(4) APPEALS

WHEN A LAWSUIT HAS PROCEEDED TO TRIAL COURT JUDGMENT AND NEITHER THE **COVERED PARTY** NOR THE ASSOCIATION HAS INVOKED THE PROVISIONS OF CONDITION 3. D (1) OR (2) ABOVE AND THE COVERED PARTY ELECTS NOT TO APPEAL A JUDGMENT IN EXCESS OF THE RETAINED LIMIT, THE ASSOCIATION MAY ELECT TO DO SO AT ITS OWN EXPENSE, BUT IN NO EVENT SHALL THE LIABILITY OF THE ASSOCIATION FOR **ULTIMATE NET LOSS** EXCEED THE APPLICABLE AMOUNT SPECIFIED IN THE LIMITS OF LIABILITY SECTION OF THE DECLARATIONS INCLUSIVE OF ALL **DEFENSE COSTS** NECESSARY AND INCIDENT TO SUCH APPEAL.

(5) ACTION AGAINST THE ASSOCIATION

NO ACTION SHALL LIE AGAINST THE ASSOCIATION WITH RESPECT TO ANY ONE **OCCURRENCE** UNLESS, AS A CONDITION PRECEDENT THERETO, THE COVERED PARTY SHALL HAVE FULLY COMPLIED WITH ALL THE TERMS OF THIS MEMORANDUM, NOR UNTIL THE AMOUNT OF THE **COVERED PARTY'S** OBLIGATION TO PAY AN AMOUNT OF **ULTIMATE NET LOSS** IN EXCESS OF THE RETAINED LIMIT SHALL HAVE BEEN FINALLY DETERMINED EITHER BY JUDGMENT AGAINST THE COVERED PARTY AFTER ACTUAL TRIAL OR BY WRITTEN AGREEMENT OF THE **COVERED PARTY**, THE CLAIMANT AND THE ASSOCIATION. ANY PERSON OR ORGANIZATION OR THE LEGAL REPRESENTATIVE THEREOF WHO HAS SECURED SUCH JUDGMENT OR WRITTEN AGREEMENT SHALL THEREAFTER BE ENTITLED TO RECOVER UNDER THIS MEMORANDUM THE EXTENT OF THE COVERAGE AFFORDED BY THIS MEMORANDUM. NOTHING CONTAINED IN THIS MEMORANDUM SHALL GIVE ANY PERSON OR ORGANIZATION ANY RIGHT TO JOIN THE ASSOCIATION AS A CO-DEFENDANT IN ANY ACTION AGAINST THE COVERED PARTY TO DETERMINE THE **COVERED PARTY'S** LIABILITY.

BANKRUPTCY OR INSOLVENCY OF THE COVERED PARTY SHALL NOT RELIEVE THE ASSOCIATION OF ANY OF ITS OBLIGATIONS HEREUNDER.

(6) INSURANCE

IF COLLECTIBLE INSURANCE WITH AN INSURER IS AVAILABLE TO THE COVERED PARTY COVERING A LOSS ALSO COVERED HEREUNDER (WHETHER ON A PRIMARY, EXCESS OR CONTINGENT BASIS), THE COVERAGE HEREUNDER SHALL BE IN EXCESS OF, AND SHALL NOT CONTRIBUTE WITH, SUCH INSURANCE; PROVIDED THAT THIS CLAUSE DOES NOT APPLY WITH RESPECT TO EXCESS INSURANCE PURCHASED SPECIFICALLY TO BE IN EXCESS OF THIS MEMORANDUM, OR TO INSURANCE OR REINSURANCE WHICH IS INTENDED TO PROVIDE THE REMAINDER OF THE LIMIT OF LIABILITY STATED IN THE DECLARATIONS OF THIS MEMORANDUM WHEN THE COVERAGE AFFORDED UNDER THIS MEMORANDUM PROVIDES LESS THAN 100 PERCENT OF THE LIMIT SET FORTH IN THE DECLARATIONS.

(7) SUBROGATION

THE ASSOCIATION SHALL BE SUBROGATED TO THE EXTENT OF ANY PAYMENT HEREUNDER TO ALL THE **COVERED PARTY'S** RIGHTS OF RECOVERY THEREFORE; AND THE COVERED PARTY SHALL DO NOTHING AFTER LOSS TO PREJUDICE SUCH RIGHTS AND SHALL DO EVERYTHING NECESSARY TO SECURE SUCH RIGHTS. ANY AMOUNT SO RECOVERED SHALL BE APPORTIONED AS FOLLOWS:

ANY INTEREST (INCLUDING THE **COVERED PARTY'S**) HAVING PAID AN AMOUNT IN EXCESS OF THE RETAINED LIMIT PLUS THE LIMIT OF LIABILITY HEREUNDER SHALL BE REIMBURSED FIRST TO THE EXTENT OF ACTUAL PAYMENT. THE ASSOCIATION SHALL BE REIMBURSED NEXT TO THE EXTENT OF ITS ACTUAL PAYMENT HEREUNDER. IF ANY BALANCE THEN REMAINS UNPAID, IT SHALL BE APPLIED TO REIMBURSE THE **COVERED PARTY**. THE EXPENSES OF ALL SUCH RECOVERY PROCEEDINGS SHALL BE APPORTIONED IN THE RATIO OF RESPECTIVE RECOVERIES. IF THERE IS NO RECOVERY IN PROCEEDINGS CONDUCTED SOLELY BY THE ASSOCIATION, IT SHALL BEAR THE EXPENSES THEREOF.

(8) CHANGES

NOTICE TO THE ASSOCIATION OR ANY AGENT OF THE ASSOCIATION OR KNOWLEDGE POSSESSED BY THE ASSOCIATION OR ANY AGENT OF THE ASSOCIATION OR BY ANY OTHER PERSON SHALL NOT EFFECT A WAIVER OR CHANGE IN ANY PART OF THIS MEMORANDUM OR STOP THE ASSOCIATION FROM ASSERTING ANY RIGHT UNDER THE TERMS OF THIS MEMORANDUM, NOR SHALL THE TERMS OF THIS MEMORANDUM BE WAIVED OR CHANGED, EXCEPT BY ENDORSEMENT ISSUED TO FORM A PART OF THIS MEMORANDUM.

(9) ASSIGNMENT

ASSIGNMENT OF INTEREST UNDER THIS MEMORANDUM SHALL NOT BIND THE ASSOCIATION UNTIL ITS CONSENT IS ENDORSED HEREON; IF, HOWEVER, THE COVERED PARTY SHALL DIE, SUCH COVERAGE AS IS AFFORDED BY THIS MEMORANDUM SHALL APPLY (A) TO THE **COVERED PARTY'S** LEGAL REPRESENTATIVE, AS THE **COVERED PARTY**, BUT ONLY WHILE ACTING WITHIN THE SCOPE OF HIS/HER DUTIES AS SUCH, AND (B) WITH RESPECT TO THE PROPERTY OF THE **COVERED PARTY**, TO THE PERSON HAVING PROPER TEMPORARY CUSTODY THEREOF, AS **COVERED PARTY**, BUT ONLY UNTIL THE APPOINTMENT AND QUALIFICATION OF THE LEGAL REPRESENTATIVE.

(10) MEMBER

THE MEMBER NAMED IN THE DECLARATIONS IS AUTHORIZED TO ACT ON BEHALF OF ALL **COVERED PARTIES** WITH RESPECT TO THE GIVING AND RECEIVING OF NOTICE OF CANCELLATION AND RECEIVING ANY RETURN PREMIUM THAT MAY BECOME PAYABLE UNDER THIS MEMORANDUM. THE MEMBER NAMED IN THE DECLARATIONS IS RESPONSIBLE FOR THE PAYMENT OF ALL PREMIUMS BUT THE OTHER **COVERED PARTIES** JOINTLY AND SEVERALLY AGREE TO MAKE SUCH PREMIUM PAYMENTS IN FULL IF THE "MEMBER" FAILS TO PAY THE AMOUNT DUE

WITHIN THIRTY DAYS AFTER THE ASSOCIATION GIVES A WRITTEN DEMAND FOR PAYMENT TO THE MEMBER.

(11) SEVERABILITY OF INTERESTS

THE TERM "THE **COVERED PARTY**" IS USED SEVERALLY AND NOT COLLECTIVELY, BUT THE INCLUSION HEREIN OF MORE THAN ONE **COVERED PARTY** SHALL NOT OPERATE TO INCREASE THE LIMITS OF THE ASSOCIATION'S LIABILITY.

(12) CANCELLATION

THIS MEMORANDUM MAY BE CANCELLED BY THE ASSOCIATION.