



POLICY DECLARATIONS
SIDE-A DIRECTORS AND OFFICERS LIABILITY INSURANCE

POLICY NUMBER:
RENEWAL OF POLICY:

Named Insured & Mailing Address:

Broker Name & Mailing Address:

Policy Period: From _____ to _____ at 12:01 A.M. Standard Time at your mailing address shown above.

This policy is issued by the insurance company listed above (herein "Insurer").

UNLESS OTHERWISE PROVIDED IN THE FOLLOWED POLICY, THIS POLICY IS A CLAIMS MADE POLICY WHICH COVERS ONLY CLAIMS FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD. PLEASE READ THIS POLICY CAREFULLY.

LIMITS OF INSURANCE*

Aggregate All Claims \$
*Includes Costs of Defense

UNDERLYING LIMITS

Total Underlying Insurance Program Policy Limits \$

PREMIUM

Premium \$

Notices to Insurer: Notice of Claim or Potential Claim:
Attn: Claims Department
American Safety Claims Services, Inc.
100 Galleria Parkway, Suite 700
Atlanta, GA 30339
Claims@amsafety.com

All other notices:
VP, PL Underwriting Group
American Safety Casualty Insurance Company
100 Galleria Parkway, Suite 700
Atlanta, GA 30339
PL@amsafety.com

POLICY DECLARATIONS
SIDE-A DIRECTORS AND OFFICERS LIABILITY INSURANCE

POLICY NUMBER:
NAMED INSURED:

SCHEDULE OF UNDERLYING INSURANCE

SCHEDULE A

UNDERLYING INSURANCE

Coverage:
Carrier:
Policy Term
Policy Number
Limits:

Coverage:
Carrier:
Policy Term
Policy Number
Limits:

Coverage:
Carrier:
Policy Term
Policy Number
Limits:

SPECIMEN

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THIS IS A CLAIMS MADE AND REPORTED POLICY WITH COSTS OF DEFENSE INCLUDED IN THE LIMIT OF LIABILITY. COVERAGE APPLIES ONLY TO THOSE CLAIMS THAT ARE FIRST MADE DURING THE POLICY PERIOD AND REPORTED DURING THE POLICY PERIOD OR ANY DISCOVERY PERIOD, IF APPLICABLE. WORDS PRINTED IN BOLD FACE, OTHER THAN CAPTIONS, ARE DEFINED IN THE POLICY. VARIOUS PROVISIONS IN THIS POLICY RESTRICT COVERAGE. PLEASE READ THE ENTIRE POLICY CAREFULLY.

SIDE-A DIRECTORS AND OFFICERS LIABILITY INSURANCE POLICY

In consideration of the payment of the premium and in reliance upon all statements made and information furnished to the **Insurer** shown in the Declarations, including the statements made in the **Application**, and subject to all terms, conditions and limitations of this Policy, the **Insured Person** and **Insurer** agree:

SECTION I. INSURING AGREEMENT

The **Insurer** shall pay on behalf of an **Insured Person** all **Loss** which the **Insured Person** shall be legally obligated to pay as a result of a **Claim** first made against the **Insured Person** during the **Policy Period** or the Discovery Period for a **Wrongful Act**, and reported to the **Insurer** pursuant to Section VI, except to the extent that such **Loss** is paid as indemnification or advancement by the **Company** or from any source or by any **Insurance Program**. In the event that **Loss** is not paid by such indemnification or advancement or other **Insurance Program**, this Policy will respond on behalf of the **Insured Person** as if it were primary, subject to all of its terms, conditions and limitations (including, but not limited to, Section **IV D**), and without prejudice to the agreed excess position of the **Insurer**.

SECTION II. DEFINITIONS

- A. **"Application"** shall mean each and every signed application submitted to the **Insurer** for consideration of insurance together with any attachments to such applications and other materials submitted therewith or incorporated therein.
- B. **"Claim"** shall mean: a civil, criminal, governmental, regulatory, administrative or arbitration proceeding made against any **Insured Person** seeking monetary or non-monetary relief and commenced by the service of a complaint or similar pleading, the return of an indictment, or the receipt of filing of notice of charges or similar document; or other written demand for monetary or non-monetary relief made against any **Insured Person**. However, in no event shall the term **"Claim"** include any labor or grievance proceeding which is subject to a collective bargaining agreement.
- C. **"Company"** shall mean the **Corporation** and any **Subsidiary**.
- D. **"Corporation"** shall mean the entity identified as the Named Insured on the Declarations.
- E. **"Costs of Defense"** shall mean reasonable and necessary legal fees, costs and expenses incurred in the investigation, defense or appeal of any **Claim** including the costs of an appeal bond, attachment bond or similar bond (but without obligation on the part of the **Insurer** to apply for or furnish such bonds); provided, however, **Costs of Defense** shall not include salaries, wages, overhead or benefit expenses associated with any **Insured Person**.
- F. **"Directors"** and **"Officers"** shall mean all duly appointed and elected persons who were, now are, or shall be directors and/or officers (or foreign equivalent) of the **Company**.
- G. **"Domestic Partners"** shall mean any natural person qualifying as a domestic partner under the provisions of any applicable federal, state or local law or under the provisions of any formal program established by the **Company**.
- H. **"Employment Practices Claim"** shall mean any **Claim** brought by or on behalf of any past, present or future employee of the **Company** or **Outside Entity**, including any part-time, seasonal or temporary employee or any applicant for employment with the **Company** or **Outside Entity** alleging an **Employment Practices Wrongful Act**.

- I. **“Employment Practices Wrongful Act”** shall mean:
- 1) adverse or unfair reprimand of an employee;
 - 2) denial of interview or position;
 - 3) denial of training to an employee;
 - 4) derogatory or disparaging remarks to an employee;
 - 5) violation of any federal, state or local law concerning discrimination in employment, including but not limited to the Americans with Disabilities Act of 1992; the Civil Rights Act of 1991, the Age Discrimination in Employment Act of 1967, Title VII of the Civil Rights Act of 1964, the Pregnancy Discrimination Act of 1978, the Civil Rights Act of 1866, the Family and Medical Leave Act of 1993, the Older Workers Benefit Protection Act of 1990, the Equal Pay Act, the Lilly Ledbetter Fair Pay Restoration Act of 2009, or any rule or regulation promulgated thereunder, or any amendments thereto;
 - 6) employment-related misrepresentations or omissions;
 - 7) employment-related libel, slander, or defamation;
 - 8) failure to grant tenure;
 - 9) failure to provide an adequate employment policy or grievance procedure for employees;
 - 10) failure to provide training, mentoring, or advancement opportunities to an employee;
 - 11) improper discipline of an employee;
 - 12) improper performance review of an employee;
 - 13) improper transfer, change of position or change of work hours or shift of an employee;
 - 14) improper treatment of an employee for their actions as a whistleblower;
 - 15) negligent evaluation of an employee;
 - 16) negligent release of medical information of an employee;
 - 17) **Retaliation** against an employee;
 - 18) sexual or other workplace harassment of any kind;
 - 19) wrongful deprivation of career opportunity of an employee, including defamatory statements made in connection with an employee reference;
 - 20) wrongful dismissal, discharge or termination of employment, whether actual or constructive;
 - 21) negligent hiring, discipline, supervision or retention;
 - 22) breach of any oral, written, or implied employment contract;
 - 23) invasion of privacy;
 - 24) false imprisonment;
 - 25) infliction of emotional distress;
 - 26) failure or refusal to provide equal treatment or opportunities;
 - 27) wrongful failure to promote, transfer or employ; or
 - 28) violation of an employee’s civil rights relating to any of the above.
- J. **“Insurance Program”** shall mean any existing insurance, other than this Policy, under which coverage may be owed to an **Insured Person**, including, without limitation, any existing Directors and Officers Liability insurance, Management Liability insurance or similar insurance as designated in Schedule A (Schedule of Underlying Insurance) as attached to the Declarations.
- K. **“Insured Person”** shall mean any past, present, or future **Director** or **Officer**, general counsel, or member of the Board of Managers of the **Company** and any person serving in a functionally equivalent role for the **Company**;
- L. **“Insurer”** shall mean the insurance company identified on the Declarations.
- M. **“Loss”** shall mean compensatory damages, punitive or exemplary damages, the multiple portions of any multiplied damage award, judgments, settlements (including pre- and post- judgment interest) and **Costs of Defense**. It is understood and agreed that the enforceability of the foregoing coverage shall be governed by such applicable law which most favors coverage for punitive or exemplary damages or the multiple portion of any multiplied damage award.

Loss shall not include: (1) civil or criminal fines or penalties imposed by law; (2) taxes; (3) any amount for which an **Insured Person** is not financially liable or which is without legal recourse to the **Insured Person**; (4) employment-related benefits of any kind, including, but not limited to, stock, stock options, commissions, profit sharing, termination payments, severance, perquisites, deferred compensation or any other type of compensation other than back pay, front pay or bonus compensation; (5) any liability or costs incurred by any **Insured Person** to modify any buildings or property in order to make a building or property more accessible or accommodating to any disabled person, or any liability or costs incurred in connection with any educational, sensitivity or other

corporate program, policy, seminar or monitoring (including, but not limited to any consulting fees paid to any law firm) relating to or arising out of an **Employment Practices Claim**; (6) any portion of damages, judgments or settlements arising out of any **Claim** alleging that the **Company** paid an inadequate price or consideration for the purchase of securities or other ownership interest; (7) contractually owed amounts; or (8) matters which are uninsurable under the law pursuant to which this Policy shall be construed.

N. "**Outside Entity**" shall mean:

- (1) any not-for-profit entity classified as such by the Internal Revenue Code;
- (2) any private organization whose securities are not publicly traded; and
- (3) any public company, but only upon the condition that the **Corporation** shall have provided the **Insurer** with full particulars of the public company and agreed, as evidenced by an endorsement to this Policy, to any amendment of the provisions of this Policy required by the **Insurer** and paid when due any additional premium.

O. "**Policy Period**" shall mean the policy period as set forth in the Declarations, or its earlier termination, if applicable.

P. "**Pollutant**" means any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to:

- 1) smoke, vapor, soot, fumes, acids, alkalis, chemicals, metals, lead or materials containing lead, silica, radon, mold or asbestos;
- 2) hazardous, toxic or radioactive matter or nuclear radiation;
- 3) waste, which includes material to be recycled, reconditioned or reclaimed; or
- 4) any other pollutant as defined by applicable federal, state or local statutes, regulations, rulings or ordinances.

Q. "**Pollution**" shall mean the actual, alleged or threatened discharge, release, migration, escape or disposal of **Pollutants** into or on real or personal property, water or the atmosphere. **Pollution** also means any direction or request that the **Insured Person** test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**, or any voluntary decision to do so.

R. "**Related Wrongful Acts**" shall mean **Wrongful Acts** which are the same or continuous and which arise from a common nucleus of facts, regardless of whether such **Wrongful Acts** are alleged by way of a single or multiple **Claims** under this Policy or any other policy in effect prior to the inception of this **Policy Period**.

S. "**Securities Claim**" shall mean any **Claim** (including a civil lawsuit or criminal proceeding or administrative or regulatory proceeding brought by the Securities and Exchange Commission, or by any similar state or foreign governmental or securities regulatory entity) made against an **Insured Person** alleging a violation of any law, regulation or rule, whether statutory or common law, which is:

- 1) brought by any person or entity alleging, arising out of, based upon or attributable to the: (a) purchase or sale of, or (b) offer or solicitation of an offer to purchase or sell, any securities issued by the **Company**, or
- 2) brought by a security holder of the **Company**, arising solely with respect to such security holder's interest in such securities of the **Company**, whether directly, by class action, or derivatively on behalf of the **Company**.

The **Insurer** shall not assert that a **Loss** incurred in a **Securities Claim** alleging violations of Section 11 or 12 of the Securities Act of 1933, as amended, constitutes uninsurable loss and, subject to all other terms and conditions of the Policy, shall treat that portion of all such settlements, judgments and **Costs of Defense** as constituting **Loss** under the Policy.

T. "**Subsidiary**" shall mean any entity in which the **Company** owns, directly or indirectly, more than fifty percent (50%) of the voting stock. This Policy will only apply to the **Wrongful Act** or **Related Wrongful Acts** of an **Insured Person** of a **Subsidiary**, or of any entity that merges with the **Company**, that first occur subsequent to the date such entity becomes a **Subsidiary** or is merged with the **Company** and prior to the date the **Corporation** ceased to own, directly or indirectly, more than fifty percent (50%) of the voting stock of such **Subsidiary**.

U. "**Wrongful Act**" shall mean:

- 1) any actual or alleged act, omission, error, misstatement, misleading statement, neglect or breach of duty, or **Employment Practices Wrongful Act**, by any **Insured Person** in their capacity as such with the **Company**;
- 2) any matter claimed against any **Insured Person** solely by reason of their capacity as such with the **Company**;
- 3) any matter claimed against any **Insured Person** arising out of their service as a director, officer, trustee or governor of an **Outside Entity**, but only if such service is at the request of the **Company**.

SECTION III. EXCLUSIONS

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

- A. alleging, arising out of, based upon, relating to, or attributable to:
- 1) an **Insured Person** gaining any profit, advantage or remuneration to which they were not legally entitled; provided however, this exclusion shall only apply where it is finally adjudicated that such conduct occurred; or
 - 2) the deliberate fraudulent or criminal acts of an **Insured Person**; provided, however, this exclusion shall only apply where it is finally adjudicated that such conduct occurred;
- Provided, however,
- a) Exclusions A(1) and (2) shall not apply to **Costs of Defense** until such judgment or final adjudication in the underlying action;
 - b) Exclusion A(1) shall not apply to any **Securities Claim** alleging violations of Section 11 or 12 of the Securities Act of 1933, as amended, to the portion of any **Loss** attributable to such violations.
- B. alleging, arising out of, based upon, relating to, attributable to, directly or indirectly resulting from or in consequence of, or in any way involving any **Wrongful Act** or **Related Wrongful Act** or any fact, circumstance or situation which has been the subject of any **Claim** or notice or circumstance reported under any other policy of which this Policy is a renewal, replacement, or which this Policy may succeed in time;
- C. for any actual or alleged;
- 1) bodily injury, sickness, disease, or death of any person;
 - 2) damage to or destruction of any property, including the loss of use thereof; or
 - 3) mental anguish, emotional distress, invasion of privacy, wrongful entry, eviction, false arrest, false imprisonment, malicious prosecution, libel or slander.
- Provided, however,
- a) Exclusions C.1) and 2) shall not apply to any **Claim** for any actual or alleged violation of the Securities Act of 1933, the Securities Exchange Act of 1934 or any state securities statute or to any **Claim** in the form of a derivative action provided such derivative action is brought and maintained independently of the **Company**, any **Insured Person** or any **Outside Entity**.
 - b) Exclusion C.3) shall not apply to an **Employment Practices Claim**.
- D. which is brought by or on behalf of the **Company** or by any **Insured Person**; or which is brought by any security holder or member of the **Company**, whether directly or derivatively, unless such security holder's or member's **Claim** is instigated and continued totally independent of, and totally without solicitation of, or assistance of, or active participation of, or intervention of, the **Company** or any **Director** or **Officer** of the **Company** or which is brought by or on behalf of an **Outside Entity**, or by any director, officer, trustee, or governor thereof, for any **Wrongful Act** of an **Insured Person** serving as a director, officer, trustee or governor of such **Outside Entity**;
- Provided, however, this exclusion shall not apply to:
- 1) any **Claim** brought by an **Insured Person** in the form of a cross-claim or third-party claim for contribution or indemnity which is part of, and results directly from, a **Claim** that is covered by this Policy;
 - 2) any **Employment Practices Claim** brought by an **Insured Person**, other than an **Insured Person** who is or was a member of the Board of Directors (or equivalent governing body) of the **Company**;
 - 3) any **Claim** brought by the examiner, trustee, receiver, liquidator, rehabilitator or creditors' committee (or any assignee thereof) of the **Company**, in any bankruptcy proceeding by or against the **Company**;
 - 4) any **Claim** brought by any past **Director** or **Officer** of the **Company** who has not served as a duly elected or appointed director, officer, trustee, governor, management committee member, member of the management board, General Counsel or Risk Manager (or equivalent position) of or consultant for the **Company** for at least three (3) years prior to such **Claim** being first made against any person;
 - 5) any **Claim** brought by a **Director** or **Officer** (or equivalent position) of a **Company** formed and operating in a foreign jurisdiction, provided that such **Claim** is brought and maintained outside the United States, Canada or any other common law country (including any territories thereof); or
 - 6) any **Claim** brought against an **Insured Person** engaging in any protected activity specified in 18 U.S.C. 1514A(a) ("whistleblower" protection pursuant to the Sarbanes-Oxley Act of 2002) or any protected activity specified in any other "whistleblower" protection pursuant to any similar state, local or foreign securities laws.
- E. alleging, arising out of, based upon, relating to, attributable to, directly or indirectly resulting from, or in consequence of, or in any way involving, **Pollution**, including but not limited to, any **Claim** for financial loss to the

Company, its security holders or its creditors. This exclusion shall not apply to a derivative action commenced by a security holder of the **Company** or its creditors.

The **Wrongful Act** of an **Insured Person** shall not be imputed to any other **Insured Person** for purposes of any of the above stated exclusions.

SECTION IV. LIMIT OF LIABILITY

- A. The **Insurer** shall be liable to pay **Loss** up to the Limit of Liability stated in the LIMITS OF INSURANCE section of the Declarations that is in excess of such indemnification or advancement by the **Company** or from any other source and excess any other **Insurance Program**.
- B. **Costs of Defense** shall be part of, and not in addition to, the Limit of Liability stated in the LIMITS OF INSURANCE section of the Declarations. Such **Costs of Defense** shall serve to reduce and may totally exhaust the Limit of Liability.
- C. The liability of the **Insurer** for all **Loss** arising from any and all **Claims** first made and reported pursuant to Section VI of the Policy shall be the amount shown in the LIMITS OF INSURANCE section of the Declarations which shall be the maximum aggregate Limit of Liability of the **Insurer** for the **Policy Period** and Discovery Period, if applicable, regardless of the time of payment or the number of **Claims**.
- D. Other Insurance and Indemnification
- 1) The **Insured Person** and the **Company** understand and agree that all coverage under this Policy shall be specifically excess over, and shall not contribute with:
 - a) any **Insurance Program** maintained by the **Company** or any **Outside Entity**, whether such other insurance is stated to be primary, contributing, excess or otherwise, and
 - b) all indemnification and advancement to which an **Insured Person** may be entitled from any source, including but not limited to the **Company** or any **Outside Entity**.However, if **Loss** is not paid by such **Insurance Program** or as indemnification or advancement, this Policy will respond on behalf of the **Insured Person** as if it were primary, subject to all of its terms, conditions and limitations and without prejudice to the agreed excess position of the **Insurer**.
 - 2) This Policy shall not be subject to the terms or conditions of any other insurance. The **Insurer** does not waive, compromise or release any of its rights to recover **Loss** paid under this Policy from the issuers of any other insurance under which coverage may be owed, or from any person or entity from which an **Insured Person** is entitled to indemnification or advancement, including the **Company** and any **Outside Entity**.

SECTION V. COSTS OF DEFENSE AND SETTLEMENT

- A. The **Insured Person** shall not incur **Costs of Defense**, or admit liability, offer to settle, or agree to any settlement in connection with any **Claim** without the express prior written consent of the **Insurer**, which consent shall not be unreasonably withheld. The **Insured Person** shall provide the **Insurer** with all information and particulars it may reasonably request in order to reach a decision as to such consent. Any **Loss** resulting from any admission of liability, agreement to settle, or **Costs of Defense** incurred prior to the tender of the Claim to and consent of the **Insurer** shall not be covered hereunder.
- B. The **Insured Person**, and not the **Insurer**, has the duty to defend all **Claims**, provided that the **Insured Person** shall only retain counsel as is mutually agreed upon with the **Insurer**.
- C. The **Insurer** shall at all times have the right, but not the duty, to associate with the **Insured Person** in the investigation, defense or settlement of any **Claim** to which coverage under this Policy may apply. The **Insured Person** shall cooperate with the **Insurer** and provide the **Insurer** such information as it may reasonably require in the investigation, defense or settlement of any **Claim**.
- D. The **Insurer** shall advance **Costs of Defense** prior to the final disposition of any **Claim**, provided such **Claim** is covered by this Policy. Any advancement shall be on the condition that if it is finally established that the **Insurer** has no liability under the Policy for such **Claim**, the **Insured Person** will repay the **Insurer** all **Costs of Defense** advanced by virtue of this provision.

SECTION VI. NOTICE OF CLAIM

- A. The **Insured Person** shall, as a condition precedent to their rights under this Policy, give the **Insurer** notice in writing of any **Claim** which is made during the **Policy Period** or **Discovery Period**. Such notice shall be given as soon as practicable but in no event later than thirty (60) days after the end of the **Policy Period** or **Discovery Period**, if applicable. If notice is provided pursuant to this Section, any **Claim** subsequently made against an **Insured Person** and reported to the **Insurer** alleging, arising out of, based upon or attributable to the prior noticed **Claim** or alleging any **Related Wrongful Act**, shall be considered related to the prior **Claim** and made at the time notice of the prior **Claim** was first provided.
- B. If during the **Policy Period** or during the **Discovery Period** (if applicable) an **Insured Person** shall become aware of any circumstances which may reasonably be expected to give rise to a **Claim** being made against an **Insured Person** and shall give written notice to the **Insurer** of the circumstances, the **Wrongful Act** allegations anticipated and the reasons for anticipating such a **Claim**, with full particulars as to dates, persons and entities involved, then a **Claim** which is subsequently made against such **Insured Person** and reported to the **Insurer** alleging, arising out of, based upon or attributable to such circumstances or alleging any **Related Wrongful Act**, shall be considered made at the time such notice of such circumstances was given. Notice of any such subsequent **Claim** shall be given to the **Insurer** as soon as practicable.
- C. In addition to furnishing the notice as provided in Section VI, the **Insured Person** shall, as soon as practicable, furnish the **Insurer** with copies of reports, investigations, pleadings and other papers in connection therewith.
- D. Notice to the **Insurer** as provided in Section VI shall be given to the **Insurer** identified in and to the address stated in Notices to Insurer section of the Declarations.

SECTION VII. DISCOVERY PERIOD

- A. In the event the **Insurer** or the **Corporation** refuses to renew this Policy, the **Corporation** shall have the right, upon payment of one hundred percent (100%) of the annual premium, (or if the **Policy Period** is other than annual, one hundred percent (100%) of the annualized premium), to an extension of the coverage provided by this Policy with respect to any **Claim** first made against any **Insured Person** during the period of twelve (12) months after the end of the **Policy Period** and reported to the **Insurer** pursuant to the provisions of this Policy, but only with respect to any **Wrongful Act** committed or alleged to have been committed before the end of the **Policy Period**. This twelve (12) month period shall be referred to in this Policy as the **Discovery Period**.
- B. As a condition precedent to the right to purchase the **Discovery Period**, the total premium for this Policy must have been paid, and a written request together with payment of the appropriate premium for the **Discovery Period** must be provided to the **Insurer** no later than thirty (30) days after the end of the **Policy Period**, at which time the premium shall be deemed fully earned.
- C. The fact that the coverage provided by this Policy may be extended by virtue of the purchase of the **Discovery Period** shall not in any way increase the Limit of Liability stated in the LIMITS OF INSURANCE section of the Declarations. For purposes of the Limit of Liability, the **Discovery Period** is considered to be part of, and not in addition to, the **Policy Period**.

SECTION VIII. GENERAL CONDITIONS

A. Cancellation or Non-Renewal

- 1) This Policy may be cancelled by the **Corporation** at any time by written notice to the **Insurer**. Upon cancellation, the **Insurer** shall retain the customary short rate portion of the premium, unless this Policy is converted to Run-Off pursuant to Section XIII.D. wherein the entire premium for this Policy shall be deemed earned.
- 2) This Policy may only be cancelled by the **Insurer** if the **Corporation** does not pay the premium when due. The **Insurer** shall mail or deliver notice of cancellation to the **Corporation** at least ten (10) days before the effective date of cancellation.
- 3) If the **Insurer** elects not to renew this Policy, the **Insurer** shall provide the **Corporation** with no less than sixty (60) days advance notice thereof.

B. Application

It is agreed by the **Company** and the **Insured Persons** that the particulars and statements contained in the **Application** and any information provided therewith (which shall be on file with the **Insurer** and be deemed attached hereto as if physically attached hereto) are the basis of this Policy and are to be considered as

incorporated in and constituting a part of this Policy. It is further agreed by the **Company** and the **Insured Person(s)** that the statements in the **Application** or in any information provided therewith are their representations, that they are material and that this Policy is issued in reliance upon the truth of such representations. Knowledge of any **Insured Person** of a misstatement or omission in the **Application** shall not be imputed to any other **Insured Person** for purposes of determining the validity of this Policy as to such other **Insured Person**, against whom this policy shall not be rescinded. Only knowledge of the chairman of the board, chief executive officer, chief operating officer, president, chief financial officer, general counsel, director of human resources or equivalent position or risk manager of a misstatement or omission in the **Application** shall be imputed to the **Company** for purposes of determining coverage under this Policy as respects this provision.

C. Separation of Interests

Except with respect to Limits of Liability and any rights and duties assigned in this Policy to the **Company**, this insurance applies as if each **Insured Person** were the only **Insured Person** and separately to each **Insured Person** against whom a **Claim** is made. Any misrepresentation, act or omission that is in violation of a term, duty or condition under this Policy by one **Insured Person** shall not by itself affect coverage for another **Insured Person** under this Policy. However, this condition shall not apply to the **Company** or any **Insured Person** who is the chairman of the board, chief executive officer, chief operating officer, president, chief financial officer, general counsel, director of human resources or equivalent position or risk manager of the **Company** which committed the misrepresentation, act or omission referenced above.

D. Action Against the Insurer

- 1) No action shall be taken against the **Insurer** unless, as a condition precedent thereto, there shall have been full compliance with all the terms of this Policy, and until the obligation of the **Insured Person** to pay shall have been finally determined by an adjudication against the **Insured Person** or by written agreement of the **Insured Person**, claimant and the **Insurer**.
- 2) No person or organization shall have any right under this Policy to join the **Insurer** as a party to any **Claim** against the **Insured Person** nor shall the **Insurer** be impleaded by any **Insured Person** or their legal representative in any such **Claim**.

E. Conversion to Run-Off Coverage

If, during the **Policy Period**, a transaction occurs wherein another entity gains control of the **Corporation** through the ownership of more than fifty percent (50%) of the voting stock of the **Corporation**, or the **Corporation** merges into another entity or consolidates with another entity such that the **Corporation** is not the surviving entity, then:

- 1) this Policy shall only apply to **Wrongful Acts** actually or allegedly committed on or before the effective date of such transaction; and
- 2) the entire premium for this Policy shall be deemed earned as of the date of such transaction.

F. Coverage Extensions

1) Lawful Spouse or **Domestic Partner** Provision

The coverage provided by this Policy shall also apply to the lawful spouse or **Domestic Partner** of an **Insured Person**, but only for **Claims** arising out of any actual or alleged **Wrongful Acts** of such **Insured Person**.

2) Worldwide Provision

The coverage provided under this Policy shall apply worldwide. The term **Directors** and **Officers** is deemed to include individuals who serve in equivalent positions in foreign **Subsidiaries**.

3) Estates and Legal Representatives

The coverage provided by this Policy shall also apply to the estates, heirs, legal representatives or assigns of any **Insured Person** in the event of their death, incapacity or bankruptcy, but only for **Claims** arising out of any actual or alleged **Wrongful Acts** of any **Insured Person**.

G. Subrogation

In the event of any payment under this policy, the **Insurer** shall be subrogated to the extent of such payment to all the **Company's** and the **Insured Person's** rights of recovery thereof, and the **Company** and the **Insured Person** shall execute all papers required and shall do everything that may be reasonably necessary to secure such rights, including the execution of such documents necessary to enable the **Insurer** to effectively bring suit in the name of the **Company** or the **Insured Person**. In no event, however, shall the **Insurer** exercise its rights of subrogation against an **Insured Person** under this policy unless a final adjudication or binding arbitration adverse to the **Insured Person** in the underlying proceeding establishes that such **Insured Person** committed a deliberate

criminal or deliberate fraudulent act, or such **Insured Person** has been determined, upon a final adjudication or binding arbitration adverse to the **Insured Person**, to have obtained any profit or advantage to which such **Insured Person** was not legally entitled.

H. **Choice of Law**

All matters arising hereunder including questions related to the validity interpretation, performance and enforcement of this Policy shall be determined in accordance with the law and practice of the State of New York notwithstanding New York's conflicts of law rules.

I. **Assignment**

This Policy and any and all rights hereunder are not assignable without the prior written consent of the **Insurer**, which consent shall be in the sole and absolute discretion of the **Insurer**.

J. **Conformity to Statute**

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

K. **Entire Agreement**

By acceptance of this Policy, the **Insured Persons** and the **Insurer** agree that this Policy (including the Declarations, **Application** submitted to the **Insurer** and any information provided therewith) and any written endorsements attached hereto constitute the entire agreement between the parties. The terms, conditions and limitations of this Policy can be waived or changed only by written endorsement.

L. **Corporation Represents Insured Persons**

By acceptance of this Policy, the **Corporation** shall be designated to act on behalf of all **Insured Persons** for all purposes including, but not limited to, the giving and receiving of all notices and correspondence, the cancellation or non-renewal of this Policy, the payment of premiums, and the receipt of any return premiums that may be due under this Policy.

M. **Representative of the Insurer**

American Safety Insurance Services, Inc. (100 Galleria Parkway, Suite 700, Atlanta, GA 30339) shall act on behalf of the **Insurer** for all purposes including, but not limited to, the giving and receiving of all notices and correspondence, provided, however, notice of **Claim** shall be given pursuant to Section **VI** of the Policy.

N. **Bankruptcy**

Bankruptcy or insolvency of the **Company** or any **Insured Person** shall not relieve the **Insurer** of any of its obligations under this Policy.

O. **Premiums**

The Named Insured shown in the Declarations:

- 1) Is responsible for the payment of all premiums; and
- 2) Will be the payee for any return premiums paid by or on behalf of the **Insurer**.

P. **Headings**

The descriptions in the headings of this Policy form no part of the terms and conditions of the coverage under this Policy.

Q. **Dispute Resolution**

In the event any dispute arises in connection with this Policy that cannot be resolved by agreement, prior to commencing a judicial proceeding or arbitration, the **Insured Person** may submit the dispute to binding mediation in which the **Insurer** and the **Insured Person** shall attempt in good faith to resolve such dispute in accordance with the American Arbitration Association's ("AAA") then-prevailing Commercial Mediation Rules. In the event the **Insured Person** does not elect to engage in binding mediation or such binding mediation does not result in a settlement of the subject dispute or difference, either the **Insured Person** or the **Insurer** shall have the right to commence a judicial proceeding or, if the parties agree, a binding arbitration under the then-prevailing AAA Commercial Arbitration Rules, to resolve such dispute no earlier than sixty (60) days after such mediation concludes unsuccessfully. The costs and expenses of mediation, or arbitration, shall be split equally by the parties.