

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

**622A PRESIDENT STREET OWNERS CORP. and
KYLE R. TAYLOR,**

Plaintiffs,

- vs -

EVEREST NATIONAL INSURANCE COMPANY,

Defendant.

COMPLAINT

Jury Trial Demanded

NATURE OF THE ACTION

1. This lawsuit arises out of ongoing litigation among two groups of shareholders over control of a co-operative building in Brooklyn. Plaintiff Kyle R. Taylor, a duly-elected director and officer of Plaintiff 622A President Street Owners Corp. (the “Co-op”), has suffered through several years of litigation, in multiple lawsuits, brought by his litigious fellow Co-op shareholders Kathleen Keske and Brett Wynkoop. Through this lawsuit, Taylor and the Co-op seek to hold Defendant Everest National Insurance Company (“Everest”) accountable for bankrolling Keske and Wynkoop’s vexatious litigation tactics, even as Everest has refused to defend its own insureds.

2. Before the first of several lawsuits among its shareholders was filed, the Co-op purchased a D&O policy from Everest. The policy should have funded Taylor and the Co-op’s defense against Keske and Wynkoop’s multiple frivolous lawsuits. Yet when Keske and Wynkoop brought claims in New York Supreme Court against Taylor and the Co-op, Everest breached the insurance agreement by declining to defend Taylor and the Co-op. And Everest compounded that breach of the insurance agreement by agreeing to fund Keske and Wynkoop’s defense of counterclaims brought by Taylor and the Co-op. In other words, Everest not only

denied coverage *to* its own insureds (Taylor and the Co-op), but it also agreed to bankroll litigation *against* its own insureds.

3. There is no defensible basis for Everest's coverage decisions. Everest knows this—it took nearly a year and a half to respond to Taylor and the Co-op's demand for coverage. Everest presumably hoped that Taylor and the Co-op would give up when they didn't get an answer, or that Keske and Wynkoop would finally exhaust the policy limits, so that Everest could claim that any further discussion of the policy is moot.

4. Plaintiffs Taylor and the Co-op have no intention of walking away from the insurance coverage to which they are entitled. Through this action, they seek compensatory and consequential damages for Everest's clear breaches of the policy and its duty to act in good faith toward its insureds. The fact that Everest wrongfully funded several years of frivolous litigation by Keske and Wynkoop does not relieve Everest of its contractual obligations to the Plaintiffs.

THE PARTIES

5. Plaintiff 622A President Street Owners Corp., or the Co-op, is a domestic corporation overseeing a building located at 622A President Street, Brooklyn, N.Y. 11215. The Co-op building has four floors, each of which consists of one apartment.

6. Plaintiff Kyle R. Taylor is a shareholder in the Co-op, owning 25% of the total issued shares. He currently resides in Toronto, Ontario, Canada.

7. On information and belief, Defendant Everest National Insurance Company, or Everest, is an insurance corporation organized under the laws of the State of Delaware, with a principal place of business at 477 Martinsville Road, Liberty Corner, New Jersey 07938-0830.

JURISDICTION AND VENUE

8. This Court has diversity of citizenship jurisdiction over the subject matter of this

action pursuant to 28 U.S.C. § 1332. The action is between citizens of different states and the amount in controversy exceeds \$75,000, exclusive of interests and costs.

9. Venue is proper in this District pursuant to 28 U.S.C. § 1391(a) in that a substantial part of the acts, events, and transactions alleged herein occurred in substantial part in this District and because a substantial part of property that is the subject of the action is situated here.

FACTUAL BACKGROUND

Everest Issues a Policy to the Co-op and Its Directors and Officers

10. On or about July 6, 2011, Everest issued Policy Number 7300003365-002 to the Co-op and its directors and officers (the “Everest policy”). The policy period ran from July 1, 2011, to July 1, 2014. The D&O Liability Coverage Part is attached hereto as Exhibit A.

11. The policy included Directors and Officers Liability Coverage (“D&O Coverage”). As a “claims-made” policy, the D&O Coverage provided coverage for claims made against the Co-op and its directors and officers during the policy period.

12. Everest represented in the policy: “We will pay on behalf of any ‘insured person’ such ‘loss’ which the ‘insured person’ becomes legally obligated to pay as a result of a ‘claim’ first made against that ‘insured person’ during the ‘policy period’”

13. The Everest policy defines “insured person” to include “any former, present or future director, officer, trustee, employee, volunteer or member of the staff, faculty or any duly constituted committee of the ‘organization.’”

14. The Everest policy defines the “organization” as the Co-op.

15. The Everest policy defines “insured” to mean both the “organization” and the “insured persons.”

16. The Everest policy defines “loss” to include “‘claims expenses,’ compensatory damages, settlement amounts, legal fees and costs awarded pursuant to judgments.”

17. The Everest policy defines “claim” to include “a written demand for monetary damages against any ‘insured’ for a ‘wrongful act,’ including any appeal therefrom.”

18. The Everest policy defines “wrongful act” to include, “[w]ith respect to the ‘insured persons,’ any actual or alleged error, misstatement, misleading statement, neglect or breach of duty, omission or act by the ‘insured persons’ in their insured position or capacity for the ‘organization’; or any matter claimed against them solely by reason of their serving in such insured position or capacity.”

19. The Everest policy defines “wrongful act” to include, “[w]ith respect to the ‘organization,’ any actual or alleged error, misstatement, misleading statement, neglect or breach of duty, omission or act by the ‘organization.’”

20. The Everest policy requires, as a condition precedent to Everest’s obligations under the policy, that insureds must give written notice of any claim made against any insured as soon as practicable, and not later than 60 days after the end of the policy period. But the Everest policy further states that “[f]ailure to provide us with notice within the prescribed timeframes required under this policy, will not invalidate any ‘claim’ made by the ‘insured’ or on behalf of any claimant, if it is shown: (a) Not to have been practicable to provide notice within the prescribed timeframe; and (b) Notice was provided as soon as practicable.”

21. In July 2011, when Everest issued its policy, the Co-op had no board of directors, officers, or formal management. Taylor was not aware of the Everest policy until well after its issuance, and in fact after the expiration of the policy period.

**Wynkoop and Keske Bring Claims Against
The Co-op, Subramanyam, and Taylor**

22. Since late 2010, the only shareholders of the Co-op have been Taylor and non-parties Keske, Wynkoop, and Rajeev Subramanyam.

23. In 2012, Taylor and Subramanyam brought suit against Wynkoop and Keske for breaching their proprietary leases. That action was dismissed on procedural grounds.

24. For many years, the Co-op had been run by the shareholders without a board of directors, officers, or employees. On April 30, 2013, the four shareholders stipulated that each of them was to be a director. There was no appointment of officers at that time.

25. On August 13, 2013, Keske and Wynkoop filed a complaint against Subramanyam, Taylor, and Taylor's wife Hilary in Kings County Supreme Court. In addition to their own direct claims, Keske and Wynkoop also purported to bring claims in the name of the Co-op. Taylor and his co-defendants moved to dismiss, and Keske and Wynkoop withdrew their complaint without prejudice in October 2013.

26. On November 14, 2013, Keske and Wynkoop brought a new lawsuit against the Co-op, Subramanyam, Taylor, and Hilary Taylor in Kings County Supreme Court (the "Wynkoop Action"). In more than twenty separate purported causes of action, Wynkoop and Keske alleged that the defendants should be held liable for negligent misrepresentation, breach of shareholder fiduciary duty, private nuisance, fraud, *prima facie* tort, abuse of process, defamation, trespass, slander of title, and more.

27. Subramanyam and Taylor answered the Wynkoop Action complaint, and brought derivative claims on behalf of the Co-op against Keske, Wynkoop and another party, on December 24, 2013.

28. The parties to the Wynkoop Action have been prosecuting and defending their claims and counterclaims continuously since 2013. The most recent docket entry (as of this

writing) is # 1586, an exhibit filed in connection with the 43rd motion in the lawsuit.

Subramanyam, Taylor, and Hilary Taylor Become the Co-Op Board.

29. At a meeting held in May 27, 2015, Subramanyam, Taylor, and Hilary Taylor were elected to the Co-op board. The Kings County Supreme Court subsequently ordered that Subramanyam and the Taylors were “authorized [and] permitted to take all actions on behalf of 622A President Street Owners Corp. (the ‘Co-op’) that they are permitted to take as the lawfully elected Board of the Co-op.”

30. Subramanyam and the Taylors have constituted the Co-op’s board continuously since 2015. Keske and Wynkoop, by contrast, have been enjoined by several court orders from acting on behalf of the Co-op.

Keske and Wynkoop Bring Frivolous Motions and Lawsuits Against The Co-op, Subramanyam, and Taylor

31. Subramanyam and Taylor have expended extraordinary time and resources defending themselves in the Wynkoop Action. That lawsuit has expanded beyond all reason because of Keske and Wynkoop’s vexatious litigation tactics and frivolous filings.

32. In January 2014, for example, Keske and Wynkoop filed a motion for declaratory judgment seeking dismissal of the counterclaims against them and judgment in their favor on their affirmative claims against the Co-op. That motion was denied in November 2014. Keske and Wynkoop then sought a temporary restraining order to renew or reargue that decision. That motion was denied in April 2015. Keske and Wynkoop raised the same arguments again in a motion for summary judgment that was prematurely filed in June 2015. After that motion was denied, they filed a second motion for summary judgment, again making the same arguments they had made in their January 2014. That motion, too, was denied. In April 2018, Keske and Wynkoop filed three separate motions to vacate, making virtually identical (and frivolous)

arguments as to why everything that had happened in the case since April 2015 should be undone and the case “restored” to the status quo of three years earlier. All of these motions to vacate were either withdrawn or denied.

33. While the Wynkoop Action has been pending, moreover, Keske and Wynkoop have brought numerous additional actions against the Co-op and/or Subramanyam and Taylor in the Supreme Court of Kings County. Each of these additional frivolous lawsuits has been dismissed.

Subramanyam and Taylor Make Demands For Coverage Under the Everest and Aspen Policies

34. Through discovery in the Wynkoop Action, Subramanyam and Taylor became aware, for the first time, of the Everest policy and a subsequent policy, issued by the Aspen American Insurance Company (the “Aspen policy”), that provided D&O coverage for claims made between July 1, 2014, and July 1, 2017. Both policies were administered by the Brownstone Agency, Inc. (“Brownstone”).

35. On April 27, 2017, as soon as practicable after learning of the Everest and Aspen policies, Subramanyam and Taylor wrote to Brownstone demanding coverage under both policies for the defense of the various claims brought by Keske and Wynkoop. Subramanyam and Taylor sent Brownstone two nearly identical letters—one demanding coverage under “Coverage A,” for Management Liability (*i.e.*, D&O coverage), and one demanding coverage under “Coverage C,” for Organization Liability (*i.e.*, coverage for claims against the Co-op).

36. By letter dated May 23, 2017, Brownstone denied coverage on behalf of Aspen. Notably, Brownstone asserted that the complaint in the Wynkoop Matter constituted a “claim” against the Co-op, Subramanyam, and Taylor, and that all subsequent litigations asserted “interrelated wrongful acts.” Brownstone thus denied coverage under the Aspen policy because

the Wynkoop Action was filed in November 2013, “months prior to the inception of the Aspen Policy.”

37. As noted above, the Everest policy covered claims first made in 2013. But Brownstone did not even address Subramanyam and Taylor’s demand for coverage under that policy, let alone convey any coverage decision Everest might have made on their claim. The only reference to Everest in Brownstone’s May 23, 2017, letter was the statement that Everest had “accepted coverage for Wynkoop and his independent counsel, Anthony Hilton in this matter.”

38. Subramanyam and Taylor responded to Brownstone’s denial of coverage in a letter dated June 29, 2017. They noted Brownstone’s failure to address the Everest policy: “[our] insurance claims sought coverage under both the [Aspen policy] and the [Everest policy], but your letter addressed only the Aspen policy and ignored the Everest policy.” They also noted that by that time, Wynkoop and Hilton had received hundreds of thousands of dollars in insurance payments “to fuel their frivolous litigation against the [Co-op], Subramanyam, and the Taylors.”

39. As Subramanyam and Taylor argued to Brownstone:

It was plainly wrong for Brownstone and Everest to agree to pay out hundreds of thousands of dollars in legal expenses to the individuals who were prohibited from acting for the corporation, who were never authorized to act for the corporation, and lacked valid insurance claims, while the lawfully elected directors and officers of the corporation have been forced to respond to frivolous litigation fueled by those very same insurance payments and have received nothing.

Everest Refuses To Make a Coverage Decision for Nearly a Year and a Half Before Finally Denying Coverage

40. Neither Everest nor Brownstone responded to Subramanyam and Taylor’s demands for coverage under the Everest policy for well over a year.

41. Finally, by letter dated August 30, 2018, Brownstone sent a letter to counsel for Plaintiffs denying coverage under the Everest policy. Brownstone’s letter cites multiple

exclusions contained in the Everest policy, but does not even purport to explain why the claims of the Co-op, Subramanyam, and Taylor purportedly come within the scope of those exclusions.

COUNT ONE
(Breach of Contract)

42. Plaintiffs repeat and reallege the allegations in Paragraphs 1 to 41 as if fully set forth herein.

43. Everest breached the Everest policy by wrongfully denying coverage to the Co-op.

44. Plaintiff 622A President Street Owners Corp., or the Co-op, is the “named insured,” the “named organization,” and the “organization” under the Everest policy.

45. Everest contracted to provide insurance coverage to the Co-op for loss that it becomes legally obligated to pay as a result of a claim first made against the Co-op during the policy period—*i.e.*, between July 1, 2011 and July 1, 2014.

46. Keske and Wynkoop first made a claim against the Co-op in 2013, during the policy period.

47. Everest has a clear duty under the Everest policy to provide insurance coverage to the Co-op to defend against the claims Keske and Wynkoop made against the Co-op in the Wynkoop Action and in several subsequent legal actions.

48. Subramanyam and Taylor are legally authorized to act on the Co-op’s behalf.

49. The Co-op, acting through Subramanyam and Taylor, complied with the requirements of the Everest policy by notifying Brownstone and Everest of Keske and Wynkoop’s claims against the Co-op as soon as practicable after learning of the existence of the policy for the first time through discovery.

50. Everest failed to provide the Co-op with a defense and indemnity under the

Everest policy with respect to the Wynkoop Action and related proceedings, thereby breaching the Everest policy.

51. Everest's failure even to respond to the Co-op's demand for coverage for over a year and a half constitutes bad faith.

52. Everest finally wrongfully denied the Co-op coverage under the Everest policy, thereby breaching the Everest policy.

53. Everest's failure to explain the basis for its declination of coverage constitutes bad faith.

54. Everest further breached the Everest policy by wrongfully denying coverage to Taylor.

55. Taylor is an "Insured Person" under the Everest policy.

56. Everest contracted to provide insurance coverage to Insured Persons for losses that they become legally obligated to pay as a result of a claim first made against the Insured Persons during the policy period—*i.e.*, between July 1, 2011 and July 1, 2014.

57. Keske and Wynkoop first made a claim against Taylor in 2013, during the policy period.

58. Everest has a clear duty under the Everest policy to provide insurance coverage to Taylor to defend against the claims Keske and Wynkoop made in the Wynkoop Action and in several subsequent legal actions.

59. Taylor complied with the requirements of the Everest policy by notifying Brownstone and Everest of Keske and Wynkoop's claims against them as soon as practicable after becoming aware of the existence of the policy through discovery.

60. Everest failed to provide Taylor with a defense and indemnity under the Everest

policy with respect to the Wynkoop Action and related proceedings, thereby breaching the Everest policy.

61. Everest's failure even to respond to Taylor's demand for coverage for over a year and a half constitutes bad faith.

62. Everest finally wrongfully denied Taylor coverage under the Everest policy, thereby breaching the Everest policy.

63. Everest's failure to explain the basis for its declination of coverage constitutes bad faith.

64. Everest further breached the Everest policy by disbursing the proceeds of the Everest policy to Keske, Wynkoop, and their attorneys.

65. Keske, Wynkoop, and their attorneys are not entitled to insurance coverage under the Everest policy for defending against any claims brought against them by the Co-op, Subramanyam, or Taylor.

66. By wrongfully disbursing the proceeds of the Everest policy to Keske, Wynkoop, and their attorneys, Everest has wrongfully encouraged and bankrolled six years and counting of frivolous litigation against Plaintiffs.

67. Through its unauthorized and unlawful payment of the proceeds of the Everest policy to Keske, Wynkoop, and their attorneys, Everest breached the Everest policy.

68. Plaintiffs have been damaged by Everest's numerous breaches of contract in an amount to be determined at trial, but not less than \$1 million, exclusive of costs and interest.

69. Everest's bad faith in handling Plaintiffs' claims for coverage entitles Plaintiffs to consequential damages in an amount to be determined at trial, including damages in excess of the Everest policy limits.

COUNT TWO
(Breach of the Duty of Good Faith and Fair Dealing)

70. Plaintiffs repeat and reallege the allegations of paragraphs 1-69 as if set forth herein.

71. The Everest policy is a valid and enforceable contract. Implied in this contract is a covenant of good faith and fair dealing.

72. The implied covenant of good faith and fair dealing requires a contracting party to refrain from arbitrary or unreasonable conduct that would prevent its counterparty from enjoying the fruits of the contract.

73. Among other obligations, the implied covenant of good faith and fair dealing obligates an insurer, upon learning of a potential claim from its insureds, to make diligent inquiry into the claim to determine whether its insureds are entitled to coverage, and to advise its insureds accordingly.

74. The implied covenant of good faith and fair dealing also includes a duty not to favor the interests of one insured over another, and this duty is violated where an insurer pays the entire proceeds under an insurance policy to certain insureds while leaving other insureds bereft of coverage.

75. The implied covenant of good faith and fair dealing is also violated where an insurer wrongfully disburses proceeds under a policy and thereby encourages and bankrolls litigation adverse to its own insured.

76. Everest violated the implied covenant of good faith and fair dealing by its actions alleged above. In particular, Everest denied coverage to its own insureds while bankrolling Keske and Wynkoop's litigation against those same insureds.

77. To the extent Everest contends that Keske and Wynkoop were also insureds under

the Everest policy, Everest breached the implied covenant of good faith and fair dealing by arbitrarily favoring Keske and Wynkoop's interests over the interests of the Co-op, Subramanyam, and Taylor.

78. Everest further violated the implied covenant of good faith and fair dealing by failing to make diligent inquiry into the Plaintiffs' claims for coverage to determine whether Plaintiffs were entitled to coverage, and by failing to advise Plaintiffs accordingly.

79. As a result of Everest's breaches of the implied covenant of good faith and fair dealing, Plaintiffs have been harmed in an amount to be proved at trial, but not less than \$1 million, exclusive of costs and interest.

PRAYER FOR RELIEF

WHEREFORE Plaintiffs respectfully pray for the following relief:

- a. Judgment against Defendant awarding Plaintiffs an amount to be determined at trial, but not less than \$1 million, with pre-judgment and post-judgment interest thereon;
- b. The costs and expenses of this action, including reasonable attorney's fees to the extent permitted by law; and
- c. Such other and further relief as the Court may deem just and proper.

Dated: New York, New York
September 21, 2018

LAW OFFICE OF JUDD R. SPRAY

By: /s/ Judd R. Spray
Judd R. Spray, Esq.
450 Seventh Avenue 33rd Floor
New York, New York 10123
(347) 409-0211
*Attorney for Plaintiffs 622A President Street Owners
Corp. and Kyle R. Taylor*

EXHIBIT A

Everest National Insurance Company
 477 Martinsville Road
 P.O. Box 830 Liberty Corner, NJ 07938-0830
 1-800-438-4375



EVEREST.

COMMON POLICY DECLARATIONS

POLICY NUMBER 7300003365-002

POLICY TERM 3 YEAR ACCOUNT NUMBER 586503 ADJ. NO.

PRODUCER 73
 Brownstone Agency, Inc.
 32 Old Slip, 8th Floor
 New York NY 10005
 (212) 962-5620
 Fax (212) 742-7934

NAMED INSURED AND MAILING ADDRESS
 622A PRESIDENT STREET OWNERS
 CORP
 622A PRESIDENT STREET
 BROOKLYN NY 11215

POLICY PERIOD: FROM 07/01/11 TO 07/01/14 AT 12:01 A.M. STANDARD TIME AT YOUR MAILING ADDRESS SHOWN

ADJUSTMENT DATE:

BUSINESS DESCRIPTION: CORPORATION

IN RETURN FOR THE PAYMENT OF THE PREMIUM, AND SUBJECT TO ALL THE TERMS OF THIS POLICY, WE AGREE WITH YOU TO PROVIDE THE INSURANCE AS STATED IN THIS POLICY.

THIS POLICY CONSISTS OF THE FOLLOWING COVERAGE PARTS:

	<u>PREMIUM</u>
COMMERCIAL PROPERTY COVERAGE	\$4,417.00
COMMERCIAL LIABILITY COVERAGE	\$2,042.00
EQUIPMENT BREAKDOWN	\$162.00
DIRECTORS & OFFICERS LIABILITY	\$612.00
TERRORISM COVERAGE	\$209.00
NY FIF	\$29.03

TOTAL \$7,471.03

FORMS APPLICABLE TO ALL COVERAGE PARTS:

See Schedule of Forms and Endorsements

TOTAL PREMIUM \$7,442.00 + \$29.03 NYFIF

THE POLICY MAY BE SUBJECT TO ADJUSTMENT.

COUNTERSIGNED _____ DATE _____ BY _____ AUTHORIZED REPRESENTATIVE
 Issued: 07-06-11

**DESIGNATION OF PREMISES SCHEDULE
COMMERCIAL LINES POLICY**

Named Insured 622A PRESIDENT STREET OWNERS CORP		Date 07/01/11	Policy Number 7300003365-002	ADJ. NO.
LOC. NO.	BLDG. NO	DESIGNATED PREMISES (ADDRESS, CITY, STATE, ZIP CODE)		OCCUPANCY
1	1	622A PRESIDENT STREET BROOKLYN NY 11215 Applies to:PROPERTY & LIABILITY		4 FAMILIES

COMMERCIAL GENERAL LIABILITY COVERAGE PART DECLARATIONS

ADJ. NO.

NAMED INSURED 622A PRESIDENT STREET OWNERS CORP	EFFECTIVE DATE 07/01/11	POLICY NUMBER 7300003365-002
FORM OF BUSINESS: <input type="checkbox"/> Individual <input type="checkbox"/> Joint Venture <input type="checkbox"/> Limited Liability Company <input type="checkbox"/> Partnership <input type="checkbox"/> Trust <input checked="" type="checkbox"/> Organization including a corporation (but not including a Partnership, Joint Venture or Limited Liability Company)		
ALL PREMISES YOU OWN, RENT OR OCCUPY. (See DESIGNATION OF PREMISES SCHEDULE)		
THESE DECLARATIONS ARE COMPLETED ON THE ATTACHED COMMERCIAL GENERAL LIABILITY COVERAGE PART SCHEDULE(S).		

LIMITS OF INSURANCE	
General Aggregate Limit	\$ <u>\$2,000,000</u>
Products-Completed Operations Aggregate Limit	\$ <u>N/A</u>
Personal Injury and Advertising Injury Limit	\$ <u>\$1,000,000</u> Any one person or organization
Each Occurrence Limit	\$ <u>\$1,000,000</u>
Damage To Premises Rented To You Limit	\$ <u>100,000</u> Any one premises
Medical Expense Limit	\$ <u>\$25,000</u> Any one person

RETROACTIVE DATE (For Claims Made Coverage Only. Claims-made policy not applicable in New York)
This insurance does not apply to any "bodily injury" or "property damage" which occurs, or an offense committed, before the Retroactive Date, if any, shown below: Retroactive Date: _____ <div style="text-align: center;">(Enter date or "None" if no Retroactive Date applies)</div>

FORMS AND ENDORSEMENTS
FORMS AND ENDORSEMENTS ATTACHED TO THIS COVERAGE PART: <div style="text-align: center;"> PLEASE REFER TO SCHEDULE OF FORMS AND ENDORSEMENTS </div>

PREMIUM	
STATE TAX OR OTHER CHARGE (If Applicable):	\$ \$
ADVANCE PREMIUM FOR PREMISES/OPERATIONS	\$ \$2,042.00
ADVANCE PREMIUM FOR PRODUCTS/COMPLETED OPERATIONS	\$
TOTAL COVERAGE PART PREMIUM	\$ \$2,042.00

THIS ENDORSEMENT CLARIFIES THE POLICY. PLEASE READ IT CAREFULLY

ADJ. NO.

NAMED INSURED 622A PRESIDENT STREET OWNERS CORP	DATE 07/01/11	POLICY NUMBER 7300003365-002								
IF THIS ENDORSEMENT IS LISTED IN THE POLICY DECLARATIONS, IT IS IN EFFECT FROM THE TIME COVERAGE UNDER THIS POLICY COMMENCES. OTHERWISE, THE EFFECTIVE DATE OF THIS ENDORSEMENT IS AS SHOWN ABOVE AT THE SAME TIME OR HOUR OF THE DAY AS THE POLICY BECAME EFFECTIVE.	COUNTERSIGNED BY: _____ AUTHORIZED REPRESENTATIVE									
THIS ENDORSEMENT IS USED AS AN OVERFLOW FOR FIELDS ON THE DECLARATIONS PAGE NOT LARGE ENOUGH FOR THE NECESSARY INFORMATION AND TO LIST OPTIONAL COVERAGES.										
<table border="0" style="width: 100%;"> <tr> <td style="width: 10%;"></td> <td style="width: 40%;">Loc Bldg Coverage (Commercial Liability)</td> <td style="width: 20%;">Limit</td> <td style="width: 30%;">Deductible</td> </tr> </table>				Loc Bldg Coverage (Commercial Liability)	Limit	Deductible				
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<table border="0" style="width: 100%;"> <tr> <td style="width: 10%;"></td> <td style="width: 40%;">1 1 WATER DAMAGE LEGAL LIABILITY</td> <td style="width: 20%;">\$250,000</td> <td style="width: 30%;">\$2,500</td> </tr> <tr> <td></td> <td>1 1 DIRECTORS & OFFICERS LIAB</td> <td>\$1,000,000</td> <td>\$1,000 RETENTION</td> </tr> </table>				1 1 WATER DAMAGE LEGAL LIABILITY	\$250,000	\$2,500		1 1 DIRECTORS & OFFICERS LIAB	\$1,000,000	\$1,000 RETENTION
	1 1 WATER DAMAGE LEGAL LIABILITY	\$250,000	\$2,500							
	1 1 DIRECTORS & OFFICERS LIAB	\$1,000,000	\$1,000 RETENTION							

POLICY NUMBER: 7300003365-002

PROFESSIONAL LIABILITY
EDEC 599 01 07

DIRECTORS AND OFFICERS LIABILITY COVERAGE PART DECLARATIONS (NOT-FOR-PROFIT)

Claims Made Disclosure Statement

The D&O Liability Coverage Part is written on a claims-made basis. The Coverage Part provides no coverage for claims arising out of incidents, occurrences or alleged wrongful acts which took place prior to the retroactive date stated in the Coverage Part. The Coverage Part covers only claims actually made against the insured while the Coverage Part remains in effect and all coverage under the Coverage Part ceases upon termination of the Coverage Part except for the sixty (60) day automatic extended reporting period coverage, unless the insured purchases the three (3) year additional extended reporting period option coverage.

Note: Potential coverage gaps may arise upon expiration of the extended reporting period if replacement coverage is not purchased. During the first several years of the claims made relationship, claims made rates are comparatively lower than occurrence rates and the insureds can expect substantial annual premium increases, independent of overall rate increases, until the claims made relationship reaches maturity.

Named Organization:	622A PRESIDENT STREET OWNERS CORP		
Mailing Address:	622A PRESIDENT STREET BROOKLYN NY 11215		
Policy Period			
From:	07/01/11		
To:	07/01/14	12:01 A.M. at your mailing address shown above.	

Business Description:

Limit Of Liability
Aggregate for Coverages A, B and C including "claims expenses": \$1,000,000

Retention Amounts	
Coverage A (each claim)	\$ 1,000
Coverage B (each claim)	\$ 1,000
Coverage C (each claim)	\$ 1,000

Retroactive Date	
This insurance does not apply to a "claim" arising out of a "wrongful act" which occurs before the retroactive date, if any, shown below.	
Retroactive Date (Coverages A and B):	07 / 01 / 08 (Enter date or "none" if no retroactive date applies.)
Retroactive Date (Coverage C):	07 / 01 / 08 (Enter date or "none" if no retroactive date applies.)

Pending Or Prior Litigation Date	
Pending Or Prior Date (Coverages A and B):	07 / 01 / 08 (Enter date or "none" if no pending or prior date applies.)
Pending Or Prior Date (Coverage C):	07 / 01 / 08 (Enter date or "none" if no pending or prior date applies.)

Supplemental Extended Reporting Period	
Premium	<u> </u> (Enter premium charge)

SCHEDULE OF FORMS AND ENDORSEMENTS

NAMED INSURED 622A PRESIDENT STREET OWNERS CORP	DATE 07/01/11	POLICY NUMBER 7300003365-002																																																																										
IF THIS ENDORSEMENT IS LISTED IN THE POLICY DECLARATIONS, IT IS IN EFFECT FROM THE TIME COVERAGE UNDER THIS POLICY COMMENCES. OTHERWISE, THE EFFECTIVE DATE OF THIS ENDORSEMENT IS AS SHOWN ABOVE AT THE SAME TIME OR HOUR OF THE DAY AS THE POLICY BECAME EFFECTIVE.	COUNTERSIGNED BY: _____ AUTHORIZED REPRESENTATIVE																																																																											
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This policy is signed by officers of the Company shown on the Declarations page of this policy.

For: Everest National Insurance Company


President


Secretary

PROFESSIONAL LIABILITY
EEO 00 561 01 07

DIRECTORS AND OFFICERS LIABILITY COVERAGE PART (NOT-FOR-PROFIT ORGANIZATIONS)

THIS IS A CLAIMS-MADE POLICY. "CLAIMS EXPENSES" ARE PAYABLE WITHIN AND NOT IN ADDITION TO THE LIMITS OF LIABILITY. THE LIMITS OF LIABILITY CONTAINED IN THIS POLICY SHALL BE REDUCED AND MAY BE COMPLETELY EXHAUSTED BY "CLAIMS EXPENSES".

PLEASE READ THE ENTIRE FORM CAREFULLY

This is a claims-made policy. Under Coverages **A** and **B**, "claims" must be first made against the "insured persons" during the "policy period", the Basic Extended Reporting Period or during the Supplemental Extended Reporting Period, if exercised, and reported to us under the terms of Section **VI**, Paragraphs **A.** and **B.** Under Coverage **C** "claims" must be first made against the "organization" during the "policy period", the Basic Extended Reporting Period or during the Supplemental Extended Reporting Period, if exercised, and reported to us under the terms of Section **VI**, Paragraphs **A.** and **B.** "Claims expenses" are payable within, not in addition to, the Limit of Liability.

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

Throughout this policy the words "you" and "your" refer to the "named organization" shown in the Declarations. The words "we", "us" and "our" refer to the company providing this insurance.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section **VII** – Definitions.

SECTION I – INSURING AGREEMENTS

A. Coverage A – Management Liability

We will pay on behalf of any "insured person" such "loss" which the "insured person" becomes legally obligated to pay as a result of a "claim" first made against that "insured person" during the "policy period", the Basic Extended Reporting Period or during the Supplemental Extended Reporting Period, if exercised, except to the extent that the "organization" has indemnified the "insured person" for such "loss".

However, this insurance applies only to a "claim" arising out of a "wrongful act" committed by the "insured person" which occurs on or after the Retroactive Date, if any, shown in the Declarations, and before the end of the "policy period".

B. Coverage B – Organization Reimbursement

We will pay on behalf of the "organization" such "loss" for which the "organization" has indemnified any "insured person", as permitted or required by law, and which the "insured person" becomes legally obligated to pay as a result of a "claim" first made against that "insured person" during the "policy period", the Basic Extended Reporting Period or during the Supplemental Extended Reporting Period, if exercised.

However, this insurance applies only to a "claim" arising out of a "wrongful act" committed by the "insured person" which occurs on or after the Retroactive Date, if any, shown in the Declarations, and before the end of the "policy period".

C. Coverage C – Organization Liability

We will pay on behalf of the "organization" such "loss" which the "organization" becomes legally obligated to pay as a result of a "claim" first made against the "organization" during the "policy period", the Basic Extended Reporting Period or during the Supplemental Extended Reporting Period, if exercised.

However, this insurance applies only to a "claim" arising out of a "wrongful act" committed by the "organization" which occurs on or after the Retroactive Date, if any, shown in the Declarations, and before the end of the "policy period".

SECTION II – EXTENSIONS

Subject to Section **I**, the following coverage extensions are provided:

A. Spousal Liability

If a "claim" against any "insured person" includes a claim against the "insured person's" spouse (whether such status is derived by reason of statutory or common law, or any other law of any country) solely by reason of:

1. Such spousal status; or

2. Such spouse's ownership interest in property or assets that are sought as recovery for the "wrongful act" committed or allegedly committed by the "insured person";

all loss which such spouse becomes legally obligated to pay by reason of such claim will be treated for the purposes of this policy as "loss" which the "insured person" becomes legally obligated to pay as a result of the "claim" made against such "insured person". Such loss to the spouse will be covered under this policy only if and to the extent such loss would be covered if incurred by the "insured person".

However, this extension will not afford coverage for a "claim" arising out of any "wrongful act" committed or allegedly committed by the spouse.

B. Estates, Heirs And Legal Representatives

This policy will afford coverage for "claims" arising out of the "wrongful acts" of any "insured person" made against:

1. The estate, heirs or legal representatives of that deceased "insured person"; and
2. The legal representative of that "insured person" in the event of incompetency, insolvency or bankruptcy.

This extension will afford coverage only if and to the extent that, in the absence of such death, incompetency, insolvency or bankruptcy of the "insured person", such "claims" would have been covered by this policy according to this policy's terms, conditions and exclusions.

SECTION III – EXCLUSIONS

We will not pay for any "loss" resulting from any "claim":

- A. Based upon, attributable to, or arising in fact out of any dishonest, malicious, fraudulent or criminal act or any violation of any statute or regulation;
- B. For bodily injury, mental or emotional distress, sickness, disease or death of any person, or damage to or destruction of any property including the loss of its use;
- C. Based upon, attributable to, or arising in fact out of the gaining of any profit, remuneration or advantage to which any "insured" was not legally entitled;
- D. Based upon, attributable to, or arising out of a "wrongful act" or "interrelated wrongful act" that has occurred before the Retroactive Date, if any, shown in the Declarations;

- E. Based upon, attributable to, or arising out of the same facts, "wrongful acts" or "interrelated wrongful acts", alleged or contained in any "claim" which has been reported, or in any circumstances of which notice has been given, under any insurance policy of which this policy is a renewal or replacement;
- F. Based upon, attributable to, or arising out of any demand, suit, or other proceeding against any "insured" which was pending on or existed prior to the applicable Pending or Prior Litigation Date shown in the Declarations, or arising out of the same or substantially the same facts, circumstances or allegations which are the subject of, or the basis for, such demand, suit, or other proceeding;
- G. Based upon, attributable to, or arising out of any actual or alleged failure or omission on the part of any "insured" to effect or maintain insurance;
- H. Based upon, attributable to, or arising out of any "wrongful act" committed or allegedly committed by any "organization" or its "insured persons" which becomes a "subsidiary", if such actual or alleged "wrongful act" occurred prior to the date such "organization" became a "subsidiary";
- I. Based upon, attributable to, or arising out of any "wrongful act" committed by any "insured person" serving in any position or capacity in any organization other than the "organization" even if the "organization" directed or requested that "insured person" to serve in such other position or capacity;
- J. Based upon, attributable to, or arising out of any demand, suit, or other proceedings against any for-profit entity or its insured persons that the "organization" acquired, merged with, or created before or during the "policy period";
- K. Brought by or on behalf of the "organization" or any "insured person", in any capacity, except a "claim" that is a derivative action brought on behalf of the "organization" by one or more security holders who are not "insured persons" and who bring the "claim" without the solicitation, assistance or participation of any "insured person" or the "organization".
- L. For an actual or alleged violation of the Employee Retirement Income Security Act of 1974 and its amendments, or similar provisions of any federal, state, local or statutory law or common law;
- M. For liability under or breach of any oral, written or implied contract or agreement, or for liability of others assumed by the "organization" under any such contract or agreement, except if the "organization" would have been liable in the absence of such contract or agreement;
- N. Based upon, attributable to, or arising out of "wrongful acts" resulting from:

1. Publication or pronouncement, including material placed on the Internet or on similar electronic means of communication, concerning any organization or business enterprise or their products or services made by or at the direction of any "insured" with the knowledge of its falsity; or
 2. Printing of periodicals, advertising matter, or any or all jobs taken by any "insured" to be printed for a third party when the periodicals, advertising matter or other printing is not within the scope of the "organization's" own activities;
- O.** Based upon, attributable to, or arising out of:
1. The actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" at any time;
 2. Any request, demand, order or statutory or regulatory requirement that any "insured" or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
 3. A claim or suit brought by or on behalf of any governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants";
- including without limitation any "claim" by or on behalf of the "organization" or its securities holders.
- P.** Based upon, attributable to, or arising out of any "insured's" activities in a fiduciary capacity as respects any employee benefit plan;
- Q.** Brought by or on behalf of any "insured" under this policy, or which are brought by any security holder of the "named organization";
- R.** Based upon, attributable to, or arising out of an accounting of profits made from the purchase or sale of securities or the failure to register securities under the Federal Securities Act of 1933; the Securities Exchange Act of 1934; the Public Utilities Holding Company Act of 1935; the Investment Company Act of 1940; the Securities Laws or Blue Sky Laws of any state; and any Amendments of or additions to any of these acts or laws.
- S.** Based upon, attributable to, or arising out of a "wrongful act" or "interrelated wrongful act" expected or intended from the standpoint of any "insured".
- A "wrongful act" committed by any "insured person" shall not be imputed to any other "insured person" for purposes of applying the exclusions set forth in this Section III.

SECTION IV – LIMIT OF LIABILITY, COINSURANCE AND RETENTION

- A.** The most we will pay for all "loss" under Coverage **A**, or Coverage **B**, or Coverage **C**, separately or combined, resulting from all "claims" first made during the "policy period" and the Extended Reporting Period, if exercised, is the aggregate Limit of Liability shown in the Declarations.

If the aggregate Limit of Liability is exhausted by the payment of "loss", we will have no further obligations or liability of any kind under this policy.

- B.** All "claims" arising out of the same "wrongful act" or "interrelated wrongful acts" committed by one or more "insureds" shall be considered a single "claim". Such single "claim" shall be deemed to be first made on the date the initial "claim" arising out of such "wrongful act" or "interrelated wrongful acts" was first made pursuant to Section VI, Paragraph **A.1.** or notice of such "wrongful act" or "interrelated wrongful acts" was first reported pursuant to Section VI, Paragraph **A.2.**
- C.** Subject to Paragraph **A.** above, we will pay only that amount of "loss" which is in excess of the applicable Retention Amount shown in the Declarations. Such Retention Amount will be borne by the "insureds", uninsured and at their own risk. A single Retention Amount will apply to all "loss" resulting from all "claims" alleging the same "wrongful acts" or "interrelated wrongful acts".
- D.** If "loss" resulting from a single "claim" is covered in whole or in part under more than one Coverage, the applicable Retention Amount will be applied separately to that part of the "loss" covered by each Coverage. However, for any one "claim", the sum of the applied Retention Amounts shall not exceed the largest single applicable Retention Amount.
- E.** With respect to Coverage **A** only, the following coinsurance provision applies:
1. We will pay 99.9% of all "loss" under Coverage **A**, less the applicable Coverage **A** Retention Amount shown in the Declarations, for the first one million dollars (\$1,000,000) of coverage; and
 2. 0.1% of all "loss" under Coverage **A** will be borne by the "insured person" uninsured by us and at their own risk;
- The 0.1% coinsurance percentage will apply to all loss under Coverage **A** resulting from all "claims" alleging the same "wrongful acts" or "interrelated wrongful acts". If "loss" resulting from a single "claim" is covered in part under more than Coverage **A**, the 0.1% coinsurance percentage will be applied separately to that part of the "loss" covered under Coverage **A**.

F. "Claims expenses" are part of the "loss" and are not payable by us in addition to the Limit of Liability, but are payable within the Limit of Liability shown in the Declarations, thereby reducing the Limit of Liability shown in the Declarations.

G. If the "organization" is permitted or required by law to indemnify an "insured person" for "loss", but fails or refuses, other than for reason of "financial insolvency", then our payment for such "loss" will not be subject to any Retention Amount; and the "organization" shall be responsible for, and shall hold us harmless from, and shall reimburse us for such "loss" up to the applicable Retention Amount as shown in the Declarations. For purposes of this Paragraph, the "organization" resolutions, operating agreement, organizing agreement, articles of organization, certificate of formation, and other provisions providing indemnification to the "insured persons", shall be deemed to provide indemnification for such "loss" to the fullest extent permitted or required by law.

SECTION V – DEFENSE AND SETTLEMENT

A. We shall have the right and duty to defend any "claim" made against any "insured" under Section I – Insuring Agreements, even if such "claim" is groundless, false or fraudulent. The "insureds":

1. Shall not admit or assume any liability, enter into any settlement agreement, stipulate to any judgment, or incur any "claims expenses" without our prior written consent. Only those settlements, stipulated judgments and "claims expenses" which have been consented to by us, will be recoverable as "loss" under the terms and conditions of this policy. Our consent shall not be unreasonably withheld.
2. Shall provide us with full cooperation, assistance and all information that would reasonably be required in order to allow us to reach a decision as to such consent.
3. Shall have the option to select the defense attorney or to consent to our choice of defense attorney. The "insureds" consent shall not be unreasonably withheld.
4. Shall have the option to participate in, and assist in the direction of, the defense of any "claim".

B. We may, upon the written consent of the "insureds", make any settlement of any "claim" which we deem reasonable. The "insureds" consent shall not be unreasonably withheld. If any of the "insureds" withhold consent to such settlement, our liability for all "loss" resulting from such "claim" will not exceed the amount for which we could have settled such "claim" plus "claims expenses" incurred as of the date such settlement was proposed in writing by us to the "insureds".

SECTION VI – CONDITIONS

A. Notice To Us

1. As a condition precedent to our obligations under this policy, the "insureds" must give us written notice of any "claim" made against any "insured" as soon as practicable, but in no event:

- (a) Later than sixty (60) days after the end of the "policy period"; or
- (b) After the end of the Extended Reporting Period, if exercised.

2. If during the "policy period" any "insured" becomes aware of a specific "wrongful act" that may reasonably be expected to give rise to a "claim" against any "insured", and during the "policy period" the "insureds" give written notice to us of:

- (a) A description of the specific "wrongful act", including all relevant dates;
- (b) The names of the persons involved in the specific "wrongful act", including names of the potential claimants;
- (c) Particulars as to the reasons for anticipating a "claim" which may result from such specific "wrongful act";
- (d) The nature of the alleged or potential damages arising from such specific "wrongful act"; and
- (e) The circumstances by which the "insureds" first became aware of the specific "wrongful act";

then any "claim" subsequently made against any "insured" arising out of such specific "wrongful act" shall be deemed under this policy to be a "claim" made during the "policy period" in which such specific "wrongful act" was first reported to us.

3. Notice given by or on behalf of the "insured", or written notice by or on behalf of any claimant, to any agent of ours in New York State, which adequately identifies the "insured", shall be considered to be notice to us.

4. Failure to provide us with notice within the prescribed timeframes required under this policy, will not invalidate any "claim" made by the "insured" or on behalf of any claimant, if it is shown:

- (a) Not to have been practicable to provide notice within the prescribed timeframe; and
- (b) Notice was provided as soon as practicable.

B. Extended Reporting Periods

1. We will provide a Basic Extended Reporting Period upon "Termination of coverage".
2. Extended Reporting Periods do not extend the policy period or change the scope of coverage provided. It applies only to a "claim" for a "wrongful act" that occurs before the end of the policy period but not before the Retroactive Date, if any, shown in the Declarations.

Once in effect, the Extended Reporting Period may not be canceled.

3. A Basic Extended Reporting Period is automatically provided without additional charge. This period starts with the end of the policy period and lasts for 60 days with respect to a "claim" that arose out of a "wrongful act". It applies only to "claims" to which the "claim" is first made and reported to us before the end of the Extended Reporting Period; and reported to us, not later than 60 days after the end of the policy period in accordance with the Notice To Use Condition under Paragraph **A.1.** of Section VI – Conditions.
4. The Basic Extended Reporting Period does not reinstate or increase the Limits of Insurance. The Limits of Insurance for the Basic Extended Reporting Period will be the remaining limit applicable to the expiring coverage part.
5. Within 30 days after "Termination of coverage", we will notify you in writing, of the automatic Extended Reporting Period and the availability of purchasing a Supplemental Extended Reporting Period of 3 years. The Supplemental Extended Reporting Period is available by endorsement and for the premium charge shown in the Declarations as follows:
 - (a) Upon "Termination of coverage"; or
 - (b) When the claims-made relationship has continued for more than one year and if we cancel this policy due to:
 - (1) Your failure to pay any amounts owed to us; or
 - (2) Fraud.

The Supplemental Extended Reporting Period includes the automatic 60 days Basic Extended Reporting period specified in **3.** above.

The Supplemental Extended Reporting Period provides a Supplemental General Aggregate Limit of Liability, which will be at least equal to 100 percent of the policy's annual aggregate limit where a claims-made relationship has continued for three years or more.

If the claims-made relationship has continued for less than three years, the Supplemental General Aggregate Limit of Liability will be at least equal to the greater of:

- (a) The amount of coverage remaining in such policy's annual aggregate liability limit; or
- (b) 50 percent of such policy's annual aggregate liability limit.

You will have the greater of 60 days from the effective date of termination of coverage, or 30 days from the date of mailing or delivery of the advice of the availability to purchase the Supplemental Extended Reporting Period, to submit written acceptance of the Supplemental Extended Reporting Period Option.

6. If the "insured" has been placed in receivership, liquidation or bankruptcy, or permanently ceases operations, then any one qualifying as an insured has the right to the Supplemental Extended Reporting Period Option issued in the name of the "insured" for the benefit of all who qualify as you. The request for such Supplemental Extended Reporting Period Option must be made within 120 days of the termination of coverage.

C. Assistance And Cooperation

The "insureds" shall, as a condition precedent to their rights under this policy, give to us all information, assistance and cooperation as we may reasonably require.

D. Subrogation

With respect to any payments made under this policy on behalf of any "insured", we shall be subrogated to the rights of recovery of such "insured", to the extent of those payments. The "insureds" shall execute all papers required and shall do everything necessary to secure and preserve such rights, including the execution of such documents necessary to enable us to bring suit in the name of the "insureds". Any recoveries, less the cost of obtaining them, will be distributed as follows:

1. To the "insured persons" and/or the "organization", until they are reimbursed for any "loss" that they sustain that exceeds the sum of the Limit of Liability and the Retention Amount, if any;
2. Then to us, until we are reimbursed for the payment made under this policy; and
3. Then to the "insured persons" and/or the "organization", until they are reimbursed for that part of the payment equal to the Retention Amount, if any.

E. Other Insurance

If any "loss" resulting from any "claim" is insured by any other valid and collectible policy, then this policy shall apply only in excess of the amount of any deductibles, retentions and limits of liability under such other policy whether such other policy is stated to be primary, contributory, excess, contingent or otherwise, unless such other policy is written specifically excess of this policy by reference in such other policy to this policy's policy number.

F. Assignment

No change in, modification of, or assignment of interest under this policy will be effective without our written consent.

G. Action Against Us

No action shall be taken against us unless, as a condition precedent, there shall have been full compliance with all of the terms and conditions of this policy.

No person or organization shall have the right under this policy to join us as a party to any action against any "insured" to determine the liability of any "insured", nor shall we be impleaded by the "insureds" or their legal representatives.

Bankruptcy or insolvency of the "organization", or of any "insured person" or of their estates shall not relieve us of any of our obligations under this policy.

H. Representation And Severability

The "insureds" represent that all information and statements contained in the "application" are true, accurate and complete. All such information and statements are the basis for our issuing this policy and shall be considered as incorporated into and constitute a part of this policy. In the event that the "application" contains any misrepresentation or misstatement of a material fact, this policy shall not afford coverage to any "insured" who knew of such misrepresentation or misstatement.

I. Changes In Exposure**1. Acquisition Or Creation Of Another Not-For-Profit Organization**

If before or during the "policy period" the "organization":

- a. Acquires or creates another not-for-profit entity which as a result of such acquisition or creation becomes a "subsidiary";
- b. Acquires any not-for-profit entity by merger into or consolidation with the "organization";
- c. Acquires all or substantially all of the assets of another not-for-profit entity; or

- d. Acquires voting rights representing the present right to vote for election or to appoint more than fifty percent (50%) of the directors or trustees of a not-for-profit entity;

such entity and its "insured persons" will be covered under this policy but only with respect to "wrongful acts" which occurred after such acquisition or creation. If the annual revenues for the most recent fiscal year of any acquired entity exceed twenty percent (20%) of the total assets of the "named organization" as reflected in the "named organization's" most recent audited consolidated financial statements prior to such acquisition, the "named organization", as a condition precedent to coverage for any new "insured", must give written notice of such acquisition or assumption to us as soon as practicable but in no event more than ninety (90) days after the effective date of such acquisition or assumption, together with such information that we may require, and must pay any additional premium required by us.

2. Acquisition Of Named Organization

If during the "policy period" the "named organization" merges into or consolidates with another organization, such that the "named organization" is not the surviving organization; or another organization, or person or group of organizations and/or persons acting in concert acquires the right to elect, appoint or designate at least fifty percent (50%) of the directors or trustees of the "named organization", then coverage under this policy will continue until the end of the "policy period", but only with respect to "claims" arising out of "wrongful acts" which occurred prior to such merger, consolidation or acquisition.

The full annual premium for the "policy period" will be deemed fully earned immediately upon the occurrence of such merger, consolidation or acquisition of the "named organization".

The "named organization" must give written notice of such merger, consolidation or acquisition to us as soon as practicable, together with such information as we may reasonably require.

3. Cessation Of Subsidiaries

If before or during the "policy period" an organization ceases to be a "subsidiary", coverage with respect to such "subsidiary" and its "insured persons" will continue until the end of the "policy period" but only with respect to "claims" arising out of "wrongful acts" occurring prior to the date such organization ceased to be a "subsidiary".

4. Change In Named Organization Status To For-Profit

If the "named organization":

- a. Changes its status and/or form of organization to become a for-profit entity; or
- b. The "named organization" is deemed to be a for-profit entity by any governmental authority;

then coverage with respect to such "named organization" and its "insured persons" will continue until the end of the "policy period" but only with respect to "claims" arising out of "wrongful acts" occurring prior to the date of such change in status and/or form of organization.

The full annual premium for the "policy period" will be deemed fully earned immediately upon the effective date of such change in status and/or form of organization.

J. Territory And Valuation

1. This policy covers "wrongful acts" which occurred or "claims" made anywhere in the world.
2. All premiums, Limits of Liability, Retention Amounts, "loss" and any other monetary amounts under this policy are expressed and payable in the currency of the United States of America. If judgment is rendered, settlement is denominated or another component of "loss" under this policy is expressed in any currency other than United States of America dollars, payment under this policy shall be made in United States dollars at the rate of exchange published in *The Wall Street Journal* on the date the final judgment is entered, settlement amount is agreed upon, or the other component of "loss" is due, respectively.

K. Bankruptcy

Bankruptcy or insolvency of an "insured", or insolvency of the "insured's" estate, will not relieve us of our obligations under this policy.

SECTION VII – DEFINITIONS

- A. "Application" means all signed applications for this policy, including any attachments and other materials submitted in conjunction with the signed application(s).
- B. "Claim" means a written demand for monetary damages against any "insured" for a "wrongful act", including any appeal therefrom.

- C. "Claims expenses" means that part of a "loss" consisting of reasonable and necessary fees (including attorneys' and experts' fees), expenses incurred in the defense or appeal of a "claim", and the premium for appeal, attachment or similar bonds (without any obligation on our part to provide such bonds), excluding the wages, salaries, benefits or expenses of any "insured person".
- D. "Financial insolvency" means the status of the "organization" resulting from:
 1. The appointment of any receiver, conservator, liquidator, trustee, rehabilitator or similar official to control, supervise, manage or liquidate the "organization"; or
 2. The "organization" becoming a debtor in possession.
- E. "Insured" means the "organization" and the "insured persons".
- F. "Insured person" means any former, present or future director, officer, trustee, employee, volunteer or member of the staff, faculty or any duly constituted committee of the "organization".
- G. "Interrelated wrongful act" means all causally connected "wrongful acts".
- H. "Loss" means "claims expenses", compensatory damages, settlement amounts, legal fees and costs awarded pursuant to judgments. "Loss" does not include civil or criminal fines or penalties imposed by law, punitive or exemplary damages, the multiplied portion of multiplied damages, taxes, or matters that are uninsurable pursuant to applicable law.
- I. "Named organization" means the not-for-profit organization named in the Declarations as the named organization.
- J. "Organization" means the "named organization" and/or any "subsidiary".
- K. "Policy period" means the period of time from the inception date of this policy shown in the Declarations to the expiration date shown in the Declarations, or its earlier cancellation or termination date.
- L. "Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.
- M. "Subsidiary" means any organization:
 1. Which qualifies as a not-for-profit organization under the Internal Revenue Code, other than a political committee organized pursuant to Section 432 of the Federal Election Campaign Act of 1971 and its amendments, or exempt from federal income tax; and

2. For which the "named organization" controls rights representing the present right to elect or to appoint more than fifty percent (50%) of the directors or trustees of such not-for-profit organization:
 - a. On or before the effective date of this policy; or
 - b. After the effective date of this policy by reason of being created or acquired by the "organization" after such date.

N. "Wrongful act" means:

1. With respect to the "insured persons", any actual or alleged error, misstatement, misleading statement, neglect or breach of duty, omission or act by the "insured persons" in their insured position or capacity for the "organization"; or any matter claimed against them solely by reason of their serving in such insured position or capacity. This does not apply to a position or capacity in any entity other than the "organization", even if the "organization" directed or requested the "insured person" to serve in such other position or capacity.
2. With respect to the "organization", any actual or alleged error, misstatement, misleading statement, neglect or breach of duty, omission or act by the "organization".

O. "Termination of coverage" means:

1. Cancellation or nonrenewal of this policy;
2. We renew or replace this policy with insurance that does not apply to a "wrongful act" on a claims-made basis;
3. There is a decrease in the policy's limit of liability;
4. There is a reduction in coverage, or there is a new exclusion attached to the policy, or any other change in coverage that is less favorable to the insured; or
5. There is an increase in self-insured retention.