



**DIRECTORS, OFFICERS AND COMPANY LIABILITY POLICY
FOR MEMBERS OF THE
NATIONAL ASSOCIATION OF REAL ESTATE INVESTMENT TRUSTS®**

In consideration of, and subject to, the payment of the premium, and in reliance upon the particulars, statements, attachments and exhibits contained in and submitted with the Proposal and which shall be the basis of this Policy and shall be deemed to be incorporated herein, and subject to all the terms and conditions of this Policy, the Insurer and the **Insureds** agree as follows:

I. INSURING AGREEMENTS

This Policy affords the following coverages:

(A) DIRECTORS' AND OFFICERS' LIABILITY

Except for **Loss** which the Insurer pays pursuant to Insuring Agreement B of this Policy, the Insurer will pay on behalf of the **Directors** and **Officers** **Loss** which the **Directors** and **Officers** shall become legally obligated to pay as a result of a **Claim** first made during the **Policy Period** or **Discovery Period**, if applicable, against the **Directors** and **Officers** for a **Wrongful Act** which takes place during or prior to the **Policy Period**;

(B) COMPANY REIMBURSEMENT AND MANAGEMENT LIABILITY

The Insurer will pay on behalf of the **Company Loss**:

- (1) for which the **Company** has, to the extent permitted or required by law, indemnified the **Directors** and **Officers**, and which the **Directors** and **Officers** have become legally obligated to pay as a result of a **Claim**; or
- (2) which the **Company** shall become legally obligated to pay as a result of a **Claim** against the **Company** solely with respect to such **Company's** activities as a trustee, trust manager, manager, member, general partner, partnership manager or joint venture manager of an **Operating Entity**,

where such **Claim** is first made during the **Policy Period** or **Discovery Period**, if applicable, against the **Directors** and **Officers** (with respect to subpart (1) above) or the **Company** (with respect to subpart (2) above) for a **Wrongful Act** which takes place during or prior to the **Policy Period**;

(C) COMPANY SECURITIES CLAIM LIABILITY

If Insuring Agreement C coverage is granted pursuant to Item E of the Declarations, the Insurer will pay on behalf of the **Company Loss** not otherwise covered under Insuring Agreement B(2) which the **Company** shall become legally obligated to pay as a result of a **Securities Claim** first made during the **Policy Period** or **Discovery Period**, if applicable, against the **Company** for a **Wrongful Act** which takes place during or prior to the **Policy Period**;

(D) COMPANY NON-SECURITIES CLAIM LIABILITY

If Insuring Agreement D coverage is granted pursuant to Item G of the Declarations, the Insurer will pay on behalf of the **Company Loss** not otherwise covered under Insuring Agreement B(2) which the **Company** shall become legally obligated to pay as a result of a **Non-Securities Claim** first made during the **Policy Period** or **Discovery Period**, if applicable, against the **Company** for a **Wrongful Act** which takes place during or prior to the **Policy Period**;

provided, however, as a condition precedent to any such coverage, the **Insureds** shall report any such **Claim** (including such **Securities Claim** or **Non-Securities Claim**) to the Insurer as soon as practicable but in no event later than sixty (60) days after the termination of the **Policy Period** or **Discovery Period**, if applicable.

II. EXTENSIONS

(A) DEATH, INCAPACITY OR BANKRUPTCY

In the event of the death, incapacity or bankruptcy of a **Director** or **Officer**, any **Claim** made against the estate, legal representatives, heirs or the assigns of such **Director** or **Officer** for a **Wrongful Act** of such **Director** or **Officer** shall be deemed to be a **Claim** against such **Director** or **Officer**.

(B) DISCOVERY PERIOD

If the Insurer or the **Named REIT** fails or refuses to renew this Policy or if the **Named REIT** cancels this Policy, any **Insured** shall have the right, upon payment of the applicable Discovery Period Premium set forth in Item I of the Declarations, to an extension of the coverage granted by this Policy for the corresponding period set forth in Item I of the Declarations following the effective date of such cancellation or non-renewal but only with respect to any **Wrongful Act** taking place before the date of such cancellation or non-renewal. A written request for this extension, together with payment of the applicable Discovery Period Premium set forth in Item I of the Declarations, must be made within sixty (60) days after the effective date of cancellation or non-renewal of the Policy. Such Discovery Period Premium shall be deemed to be fully earned as of such date. This extension shall not apply if this Policy is terminated by the Insurer for failure to pay any premium when due.

(C) SPOUSAL EXTENSION

If a **Claim** against a **Director** or **Officer** includes a **Claim** against the lawful spouse of such **Director** or **Officer** solely by reason of (a) such spousal status, or (b) such spouse's ownership interest in property or assets that are sought as recovery for **Wrongful Acts**, any **Loss** for which such spouse becomes legally obligated to pay on account of such **Claim** shall be deemed **Loss** which such **Director** or **Officer** of the spouse becomes legally obligated to pay as a result of such **Claim**.

All terms and conditions of this Policy, including the Retention, applicable to **Loss** sustained by such **Director** or **Officer** in the **Claim** shall also apply to such spousal loss.

The extension of coverage afforded by this Section II(C) shall not apply to the extent the **Claim** alleges any wrongful act or omission by such spouse.

(D) OUTSIDE POSITION LIABILITY EXTENSION

Subject to all of its terms and conditions, this Policy covers any **Director** or **Officer** serving in an **Outside Position**, but such coverage shall be specifically excess of any indemnity or insurance available from or provided by the entity in which the **Director** or **Officer** serves in such **Outside Position**.

Payment by the Insurer or any member company of The Hartford Group of Insurance Companies under another policy as a result of a **Claim** against a **Director** or **Officer** in an **Outside Position** shall reduce, by the amount of such payment, the Insurer's Limit of Liability under this Policy with respect to such **Claim**.

“**Outside Position**” means the position of director, officer, trustee, or other equivalent executive position held by a **Director** or **Officer** in:

- (1) any **Non-Profit Entity**, or
- (2) any other entity, provided such coverage is specifically granted by endorsement to this Policy,

if service in such position is with the knowledge and consent or at the request of the **Company**.

“**Non-Profit Entity**” means any non-profit corporation, community chest, fund or foundation that (i) is not included in the definition of **Company**, and (ii) is exempt from federal income tax as an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended.

III. CLAIMS EXPENSES, SETTLEMENTS AND COOPERATION

- (A) No **Claims Expenses** shall be incurred or settlements made, contractual obligations assumed or liability admitted with respect to any **Claim** without the Insurer's written consent, which shall not be unreasonably withheld. The Insurer shall not be liable for any **Claims Expenses**, settlement, assumed obligation or admission to which it has not consented.
- (B) The Insurer shall have the right to associate itself in the defense and settlement of any **Claim** that appears reasonably likely to involve this Policy. The Insurer may make any investigation it deems appropriate. However, it shall be the duty of the ~~Insureds~~, not the Insurer, to defend any **Claim**.
- (C) Subject to Section VII of this Policy, the Insurer shall advance on behalf of the **Insureds Claims Expenses** which the **Directors** and **Officers** or, solely with respect to Insuring Agreements B(2), C and D, the **Company**, have incurred in connection with **Claims** made against them, prior to disposition of such **Claims**, provided always that to the extent it is finally established that any such **Claims Expenses** are not covered under this Policy, the **Insureds**, as appropriate, agree to repay the Insurer such non-covered **Claims Expenses**.
- (D) The **Insureds** shall, as a condition precedent to their rights under this Policy, give to the Insurer all information and cooperation as the Insurer may reasonably require and shall do nothing intentionally that may prejudice the Insurer's position or its potential or actual rights of recovery.

IV. DEFINITIONS

- (A) “**Claim**” means:
 - (1) a written demand for civil damages or other civil relief, including but not limited to a demand for an arbitration or other alternative dispute resolution proceeding, commenced by the **Insureds'** receipt of such demand,
 - (2) a civil or criminal proceeding commenced by the service of a complaint or similar pleading, or
 - (3) a formal administrative or regulatory proceeding commenced by the filing of a notice of charges, formal investigative order or similar document,against **Directors** or **Officers** or, with respect to Insuring Agreements B(2), C and D, the **Company**, for a **Wrongful Act**, including any appeal therefrom.
- (B) “**Claims Expenses**” means that portion of **Loss** consisting of reasonable and necessary fees (including attorneys' fees and experts' fees) and expenses incurred in the defense or appeal of a **Claim**, but shall not include the wages, salaries, benefits or expenses of any **Directors**, **Officers** or employees of the **Company**.

- (C) **“Company”** means any **Organization** named in Item A of the Declarations and/or any **Operating Entity**.
- (D) **“Directors”** and/or **“Officers”** means:
- (1) one or more natural persons who were, now are or shall hereafter be duly elected, appointed or selected directors, officers, trustees, trust managers, managers, members, general partners, partnership managers or joint venture managers of a **Company**;
 - (2) with respect to a **Company** organized under the laws of a jurisdiction outside the United States, one or more natural persons who were, now are or shall hereafter serve in a position functionally equivalent to the positions described in subpart (1), above; and
 - (3) with respect to **Securities Claims** and **Non-Securities Claims** only, any other natural persons who were, now are or shall hereafter be employees of the **Company**.
- (E) **“Discovery Period”** means either option set forth in Item I of the Declarations, whichever is so elected by the **Insured** pursuant to Section II(B) of this Policy.
- (F) **“Executive Officer”** means the president, chief executive officer, chief operating officer, chief financial officer, in-house general counsel, managing director, any executive vice president and any equivalent executive officer of the **Company**.
- (G) **“Financial Insolvency”** means the status of the **Company** as a result of the appointment of any receiver, conservator, liquidator, trustee, rehabilitator or similar official to control, supervise, manage or liquidate the **Company**, or the **Company** becoming a debtor in possession.
- (H) **“Insured(s)”** means one or more **Directors** or **Officers** and, solely with respect to Insuring Agreements B, C and D, the **Company**.
- (I) **“Interrelated Wrongful Acts”** means **Wrongful Acts** that have as a common nexus any fact, circumstance, situation, event, transaction, cause or series of causally connected facts, circumstances, situations, events, transactions or causes.
- (J) **“Loss”** means sums which the **Directors** and **Officers** or, with respect to Insuring Agreements B(2), C and D, the **Company**, are legally liable to pay solely as a result of any **Claim** insured by this Policy, including **Claims Expenses**, compensatory damages, settlement amounts and legal fees and costs awarded pursuant to judgments, but excluding fines, penalties, taxes, any amount allocated to uncovered loss pursuant to Section VII of this Policy, or matters uninsurable pursuant to any applicable law, and solely with respect to Insuring Agreement D, any expenses incurred to modify any building or property as part of an accommodation of any disabled person pursuant to the Americans with Disabilities Act or any similar federal, state or local law, or any amounts incurred to comply with injunctive or declaratory relief;
- provided this definition does not exclude punitive or exemplary damages or the multiple portion of any multiplied damage award unless such damages are uninsurable pursuant to applicable law.
- (K) **“Named REIT”** means the real estate investment trust first named in Item A of the Declarations.
- (L) **“Non-Securities Claim”** means any **Claim** other than a **Securities Claim** jointly first made against both the **Company** and the **Directors** and **Officers**. If such **Claim** is dismissed or otherwise discontinued as against the **Directors** and **Officers** and is continuously maintained against the **Company**, such **Claim** shall continue to be deemed a **Non-Securities Claim**.
- (M) **“Operating Entity”** means any **Organization** of which the **Company** possesses, directly or indirectly, the power to control, manage or direct by reason of:

- (1) the **Company's** ownership of voting securities in such **Organization**;
- (2) the **Company's** right to elect or select directors, officers, **Executive Officers**, trustees, trust managers, managers, members, general partners, partnership managers, or joint venture managers of such **Organization**; or
- (3) the **Company's** rights and obligations pursuant to any contract relating to such **Organization**.

Operating Entity shall include any other **Organization** listed as such by endorsement to this Policy.

- (N) "**Organization**" means any corporation, trust, limited liability company, limited liability partnership, limited partnership, operating partnership, general partnership or joint venture.
- (O) "**Policy Period**" means the period set forth in Item B of the Declarations, subject to prior termination pursuant to Section IX.(B).
- (P) "**Securities Claim**" means any **Claim** brought against the **Directors** and **Officers** or, with respect to Insuring Agreements B(2) and C, the **Company**, if such **Claim**:
- (1) alleges a violation of the Securities Act of 1933, the Securities Exchange Act of 1934, any similar state statute or similar common law, or any rules or regulations promulgated thereunder;
 - (2) arises from the purchase or sale of, or offer to purchase or sell, any securities issued by the **Company**, whether such purchase, sale or offer involves a transaction with the **Company** or occurs in the open market; or
 - (3) is brought by a securityholder of the **Company** in his, her or its capacity as such, whether directly as a class action or as a derivative action on behalf of the **Company**, or otherwise alleging a **Wrongful Act** of an **Insured**.

Securities Claim shall not mean an administrative proceeding against the **Company**.

- (Q) "**Wrongful Act**" means:
- (1) any actual or alleged error, misstatement, misleading statement, act, omission, neglect or breach of duty, committed or attempted by the **Directors** and **Officers**, in their capacity as such, or in an **Outside Position**, or, with respect to Insuring Agreements B(2), C and D, by the **Company**, or
 - (2) any matter claimed against the **Directors** and **Officers** solely by reason of their serving in such capacity or in an **Outside Position**.

V. EXCLUSIONS

The Insurer shall not be liable to make any payment for **Loss** in connection with any **Claim** made against the **Directors** and **Officers**, or with respect to Insuring Agreements B(2), C and D, the **Company**:

- (A) for bodily injury, sickness, disease, emotional distress, mental anguish, outrage, humiliation, death, false arrest or imprisonment, abuse of process, malicious prosecution, defamation, violation or invasion of any right of privacy or private occupancy, trespass, nuisance or wrongful entry or eviction, or for damage to or destruction of any tangible property including loss of use thereof.

This exclusion shall not apply with respect to any **Claim** brought by a securityholder of the **Company**, whether as a class action or a derivative action on behalf of the **Company**, but only if such **Claim** is brought and maintained without solicitation, assistance or participation of the **Directors** and **Officers** of the **Company**;

- (B) for any actual or alleged **Wrongful Act** by **Directors** and **Officers** of any **Operating Entity** in their capacities as such or, with respect to Insuring Agreements B(2), C and D, by any **Operating Entity** if such **Wrongful Act** actually or allegedly occurred when such **Organization** was not an **Operating Entity**;
- (C) for any **Claim**, **Wrongful Act**, or circumstance if notice thereof is given under any directors and officers liability, general partners liability or equivalent policy, the term of which incepted prior to the Inception Date of this Policy;
- (D) brought or maintained by or on behalf of the **Company** or any **Director** or **Officer**, in any capacity, except:
 - (1) a **Claim** that is a derivative action brought and maintained on behalf of the **Company** by one or more securityholders who are not **Directors** and **Officers** and who bring or maintain the **Claim** without the solicitation, assistance or active participation of any **Director** and **Officer**;
 - (2) a **Claim** by a former **Director** or **Officer** for the actual or alleged wrongful employment termination, employment discrimination or sexual harassment of such **Director** or **Officer**;
 - (3) a **Claim** for contribution or indemnity, if such **Claim** directly results from another **Claim** that is otherwise covered under this Policy; or
 - (4) a **Claim** by any employee(s) of the **Company** described in Section IV(D)(3) of this Policy;
- (E) based upon, arising from, or in any way related to:
 - (1) the actual, alleged or threatened discharge, dispersal, release or escape of pollutants; or
 - (2) any direction, request or voluntary decision to test for, abate, monitor, clean up, remove, contain, treat, detoxify or neutralize pollutants, nuclear material or nuclear waste. Pollutants include, but are not limited to, any solid, liquid, gaseous or thermal irritant or contaminant, including, without limitation, smoke, vapor, soot, fumes, acids, alkalis, chemicals, odors, noise, lead, oil or oil products, radiation, asbestos or asbestos-containing products, waste and any electric, magnetic or electromagnetic field of any frequency. Waste includes, but is not limited to, material to be recycled, reconditioned or reclaimed.

SPECIMEN

This exclusion shall not apply with respect to any **Claim** brought by a securityholder of the **Company**, whether as a class action or a derivative action on behalf of the **Company**, but only if such **Claim** is brought and maintained without the solicitation, assistance or participation of the **Directors** and **Officers** of the **Company**;

- (F) based upon, arising from, or in any way related to such **Directors** and **Officers** serving as a director, officer, trustee, regent, governor, trust manager, manager, general partner, partnership manager, joint venture manager or employee of any entity other than the **Company** even if such service is at the direction or request of the **Company**, provided this exclusion does not apply with respect to a **Claim** for a **Wrongful Act** by a **Director** or **Officer** while serving in an **Outside Position**;
- (G) for any actual or alleged violation of the Employee Retirement Income Security Act of 1974, amendments thereto or similar federal, state, local or common law;
- (H) based upon, arising from, or in any way related to any demand, suit, or other proceeding against any **Insured** which was pending on or existed prior to the applicable Prior Litigation Date specified by endorsement to this Policy, or 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;
- (I) based upon, arising from, or in any way related to their gaining in fact any profit or remuneration to which they were not legally entitled;

- (J) based upon, arising from, or in any way related to their committing in fact of any criminal or deliberate fraudulent act, provided this exclusion shall apply to Insuring Agreements C and D, if granted, only if a **Director** or **Executive Officer** of the **Company** committed in fact such an act;
- (K) solely with respect to Insuring Agreement D, based upon, arising from, or in any way related to any breach of contract or agreement, whether written or oral, to which the **Company** is or is alleged to be a party; or
- (L) solely with respect to Insuring Agreement D, based upon, arising from, or in any way related to any current or former employee's entitlement to employee benefits or relief, including, but not limited to, benefits or relief provided under workers' compensation, unemployment compensation, disability, social security, the Consolidated Omnibus Budget Reconciliation Act, the Workers' Adjustment and Retraining Notification Act, or similar federal, state, local, or common laws or regulations, or based upon the violation thereof; except that this exclusion shall not apply to any **Claim** for actual or alleged retaliatory discharge or termination based upon an employee's exercise of right pursuant to any such laws.

The **Wrongful Act** of any **Director** or **Officer** shall not be imputed to any other **Director** or **Officer** for purposes of applying the exclusions set forth in this Section V.

VI. LIMITS OF LIABILITY, RETENTION AND COINSURANCE

- (A) The Insurer's aggregate Limit of Liability for all **Loss** otherwise covered under this Policy shall be the amount shown under Item C of the Declarations whether such **Loss** is covered under one or more Insuring Agreements. The Limit of Liability in the **Discovery Period** shall be a part of, and not in addition to, the Limit of Liability shown under Item C of the Declarations.
- (B) Except as provided in paragraph (C) below, the Insurer's liability in respect of **Loss** arising from each **Claim** shall apply only to that part of **Loss** which is excess of the applicable Retention set forth in Item D of the Declarations.
- (C) **Claims** shall be subject to the applicable Retention amount listed in Item D of the Declarations; however, solely with respect to **Securities Claims**, such Retention amount shall apply only to **Claims Expenses** resulting from such **Securities Claim**.

If in a **Securities Claim** all defendant **Insureds** obtain: (1) by reason of a motion to dismiss, motion for summary judgment or trial a final non-appealable judgment of no liability in their favor, or (2) a full and final settlement of such **Claim** with prejudice which imposes no obligation on any **Insured** to pay **Loss** or other consideration (other than **Claims Expenses**), there shall be no Retention or coinsurance percentage applicable to any **Claims Expenses** resulting from such **Securities Claim** and the Insurer shall thereupon reimburse the **Insured** for such **Claims Expenses**.

- (D) All **Claims** arising from the same **Wrongful Act** or **Interrelated Wrongful Acts** of one or more of the **Insureds** shall be considered a single **Claim**. Such **Claims** shall be deemed to be first made when the first such **Claim** is made or deemed to be made pursuant to Section VIII(A) of this Policy.
- (E) If **Loss** arising from a single **Claim** is covered in whole or in part under more than one Insuring Agreement, the applicable Retention shall be applied separately to that part of the **Loss** covered by each Insuring Agreement and the sum of the Retentions so applied shall constitute the Retention applicable to such **Claim**; provided, however, the largest applicable Retention amount set forth in Item D of the Declarations shall be the maximum Retention applicable to such **Claim**.
- (F) If the **Company** is permitted or required by law to ultimately indemnify the **Directors** and **Officers**, or to advance **Claims Expenses** on their behalf, and does not in fact do so other than for reasons of **Financial Insolvency**, then the Insurer's liability under Insuring Agreement A shall be subject to the Insuring Agreement B Retention amount set forth in Item D of the Declarations and the applicable coinsurance percentage set forth

in Item F or Item H of the Declarations (if such **Loss** results from a **Securities Claim** or a **Non-Securities Claim**). For purposes of this paragraph, the resolutions of the **Company** shall be deemed to provide indemnification for such **Loss** to the fullest extent permitted or required by law.

- (G) The Limit of Liability available to pay judgments or settlements shall be reduced by **Claims Expenses**.
- (H) With respect to all **Loss** covered under Insuring Agreements B, C or D which arises from a **Securities Claim** or a **Non-Securities Claim** and which is in excess of the applicable Retention, the **Company** shall bear uninsured the applicable coinsurance percentage of all such **Loss** specified in Item F and Item H of the Declarations. The Insurer's liability shall apply only to the remaining percentage of all such **Loss**.

VII. ALLOCATION

If both **Loss** covered under this Policy and loss not covered under this Policy are incurred, either because a **Claim** against an **Insured** includes both covered and uncovered matters or because a **Claim** not covered under Insuring Agreements B(2), C or D is made against both a **Director** and **Officer** and others, including the **Company**, the **Insureds** and the Insurer shall fairly and reasonably allocate such amount between covered **Loss** and uncovered loss.

If there can be an agreement on an allocation of **Claims Expenses**, the Insurer shall advance on a current basis **Claims Expenses** allocated to covered **Loss**. If there can be no agreement on an allocation of **Loss**:

- (A) in any arbitration, suit or other proceeding, no presumption shall exist concerning what is a fair and reasonable allocation;
- (B) the Insurer shall advance on a current basis **Claims Expenses** which the Insurer believes to be covered under this Policy until a different allocation is negotiated, arbitrated or judicially determined; and
- (C) the Insurer, solely if requested by the **Insureds**, shall submit the dispute to binding arbitration. The rules of the American Arbitration Association shall apply except with respect to the selection of the arbitration panel, which shall consist of one arbitrator selected by the **Insureds**, one arbitrator selected by the Insurer and a third independent arbitrator selected by the first two arbitrators.

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

VIII. NOTICE

- (A) If during the **Policy Period** the **Insureds** become aware of a specific **Wrongful Act** that may reasonably be expected to give rise to a **Claim** against any **Director** or **Officer** or, with respect to Insuring Agreements B(2), C and D, the **Company**, and if such **Wrongful Act** is reported to the Insurer during the **Policy Period** in writing with particulars as to the reasons for anticipating such a **Claim**, the nature and dates of the alleged **Wrongful Act**, the alleged damages sustained, the names of potential claimants, any **Insured** involved in the alleged **Wrongful Act** and the manner in which the **Insureds** first became aware of the specific **Wrongful Act**, then any **Claim** subsequently arising from such duly reported **Wrongful Act** shall be deemed under this Policy to be a **Claim** made during the **Policy Period** in which the **Wrongful Act** is first duly reported to the Insurer.
- (B) Notice of any **Claim** or specific **Wrongful Act** shall be given in writing to **The Hartford, Hartford Plaza, Hartford, CT 06115 Attention: D&O Claims**. All other notices under this Policy shall be given to the same addressee but to the attention of Financial Products Underwriters.

(C) All notices under this Policy shall refer to the Policy Number, shall be in writing, shall be given by mail, prepaid express courier or facsimile (at **212.858.6686**) properly addressed and shall be effective upon receipt.

IX. GENERAL CONDITIONS

(A) TERRITORY

This Policy extends to **Wrongful Acts** taking place or **Claims** made anywhere in the world.

(B) CANCELLATION OF POLICY

The Insurer may cancel this Policy for non-payment of premium by sending not less than thirty (30) days notice to the **Named REIT** at its last known address. The Insurer may not otherwise cancel this Policy. The **Named REIT** may cancel this Policy by sending contemporaneous notice to the Insurer, provided the **Named REIT** may not cancel this Policy after the effective date of the acquisition of the **Named REIT** as described in Section IX(H)(2) of this Policy. In the event the **Named REIT** cancels this Policy, the Insurer shall retain the customary short rate premium. Payment of any unearned premium by the Insurer shall not be a condition precedent to the effectiveness of cancellation but such payment shall be made as soon as practicable.

(C) SUBROGATION

In the event of any payment under this Policy, the Insurer shall be subrogated to the extent of such payment to all rights of recovery thereof, and the **Insureds** shall execute all papers required and shall do everything that may be necessary to secure and preserve such rights including the execution of such documents necessary to enable the Insurer effectively to bring suit in the name of the **Insureds**. The obligations of the **Insureds** pursuant to this Section IX(C) survive the termination of the **Policy Period**.

(D) COMPANY AUTHORIZATION

By acceptance of this Policy, the **Insureds** agree that the **Named REIT** may act on behalf of all **Insureds** with respect to the giving and receiving of notice of **Claim** or cancellation, the payment of premiums and the receiving of any return premium, the negotiation, agreement to and acceptance of any endorsements to this Policy, and the exercising of the **Discovery Period** option.

(E) OTHER INSURANCE

If any **Loss** arising from any **Claim** is insured by another valid policy or policies, then this Policy shall apply only in excess of the amount of any deductibles, retentions and limits of liability under such other policy or policies, whether such other policy or policies are stated to be primary, contributory, excess, contingent or otherwise, unless such other insurance is written specifically excess of this Policy by reference in such other policy to this Policy's Policy Number.

(F) ALTERATION AND ASSIGNMENT

No change in, modification of, or assignment of interest under this Policy shall be effective except when made by written endorsement signed by an authorized representative of the Insurer.

The titles and headings to various paragraphs and sections in this Policy, including endorsements attached, are included solely for ease of reference and do not in any way limit, expand or otherwise affect the provisions of such paragraphs and sections to which they relate.

(G) ACTION AGAINST INSURER

No action shall be taken against the Insurer unless, as a condition precedent thereto, there shall have been full compliance with all of the terms of this Policy, and the amount of the **Insureds'** obligation to pay shall have been finally determined either by judgment against the **Insureds** after actual trial, or by written agreement of the **Insureds**, the claimant and the Insurer.

No person or entity shall have the right under this Policy to join the Insurer as a party to any action against the **Insureds** to determine the **Insureds'** liability, nor shall the Insurer be impleaded by the **Insureds** or their legal representative. Bankruptcy or insolvency of an **Insured** or of an **Insured's** estate shall not relieve the Insurer of any of its obligations hereunder.

(H) CHANGES IN EXPOSURE

(1) Acquisition or Creation of an Operating Entity

If during the **Policy Period** an **Organization** is created or acquired by the **Company** and such **Organization** qualifies as an **Operating Entity**, such **Organization** and its **Insureds** shall be **Insureds** under this Policy but only with respect to **Wrongful Acts** taking place after such creation or acquisition.

However, if on the date of the creation or acquisition the fair value of (i) all cash, securities, assumed liabilities and other consideration paid by the **Company** for any such acquisition, or (ii) all assets acquired or liabilities assumed by the **Company** in any single transaction or series of related transactions, exceeds 40% of the **Named REIT's** total consolidated assets as reflected in the **Named REIT's** last audited consolidated financial statements held by the Insurer prior to such creation or acquisition, the **Named REIT** as a condition precedent to coverage with respect to such new **Insureds**, shall give written notice of such creation or acquisition to the Insurer as soon as practicable after the effective date of such creation or acquisition, but in no event later than the termination of the **Policy Period**, together with such information as the Insurer may require and shall agree to pay any additional premium so required and any modification to the coverage otherwise provided under this Policy. If the **Named REIT** fails to comply with such condition precedent, coverage otherwise afforded by this Section IX(H)(1) shall terminate as of the termination of the **Policy Period**.

(2) Acquisition of Named REIT

If during the **Policy Period** (i) the **Named REIT** merges into or consolidates with another entity such that the **Named REIT** is not the surviving entity, or (ii) another entity, or person or group of entities and/or persons acting in concert acquires securities or voting rights which result in ownership or voting control by the other entity(ies) or person(s) of more than 50% of the outstanding securities or voting rights representing the present right to vote for the election of or to select directors, officers or trustees of the **Named REIT**, then coverage under this Policy shall continue until the later of:

- (a) termination of the **Policy Period**, or
- (b) any subsequent date to which the Insurer may agree by endorsement,

but only with respect to **Claims** for **Wrongful Acts** taking place prior to such merger, consolidation or acquisition. Any coverage extension pursuant to (b) above shall be conditioned upon any premium paid or to be paid under this Policy being deemed fully earned upon inception of such coverage extension. Any **Claim** made during such coverage extension shall be deemed to have been made during the **Policy Period** in which such merger, consolidation or acquisition occurred.

The **Named REIT** shall give written notice of such merger, consolidation or acquisition to the Insurer as soon as practicable together with such information as the Insurer may reasonably require.

(3) Cessation of an Operating Entity

If before or during the **Policy Period** an **Organization** ceases to be an **Operating Entity**, coverage with respect to such **Operating Entity** and its **Insureds** shall continue until the later of:

- (a) termination of the **Policy Period**, or
- (b) any subsequent date to which the Insurer may agree by endorsement,

but only with respect to **Claims** for **Wrongful Acts** taking place prior to the date such **Organization** ceased to be an **Operating Entity**. Any coverage extension pursuant to (b) above shall be conditioned upon any premium paid or to be paid under this Policy being deemed fully earned upon inception of such coverage extension. Any **Claim** made during such coverage extension shall be deemed to have been made during the **Policy Period** in which such cessation of an **Operating Entity** occurred.

The **Named REIT** shall give written notice of such cessation of an **Operating Entity** to the Insurer as soon as practicable together with such information as the Insurer may reasonably require.

(I) REPRESENTATIONS AND SEVERABILITY

The **Insureds** represent that the particulars and statements contained in the Proposal are true and shall be deemed material to the acceptance of the risk or the hazard assumed by the Insurer under this Policy. This Policy is issued in reliance upon the truth of such representations.

The **Insureds** agree that in the event that the particulars and statements contained in the Proposal are untrue, this Policy shall not afford any coverage with respect to any of the following **Insureds**:

- (1) any **Director** or **Officer** who knew as of the Inception Date of this Policy the facts that were not truthfully disclosed in the Proposal,
- (2) the **Company**, under Insuring Agreement B(1), to the extent it indemnifies any **Director** or **Officer** referenced in (1), above, and
- (3) the **Company**, under Insuring Agreements B(2), C and D if a **Director** or any **Executive Officer** knew as of the Inception Date of this Policy the facts that were not truthfully disclosed in the Proposal,

whether or not such **Director**, **Officer** or **Executive Officer** knew of such untruthful disclosure in the Proposal.