

A Capital Stock Company

DECLARATIONS

Policy Number _____ Renewal of Policy Number _____ Agent No. _____

NOTICE: THIS IS A CLAIMS-MADE POLICY WHICH, SUBJECT TO ITS PROVISIONS, APPLIES ONLY TO ANY CLAIM FIRST MADE AGAINST ANY OF THE **INSUREDS** DURING THE **POLICY PERIOD**. THE **LIMIT OF LIABILITY** AVAILABLE TO PAY DAMAGES, JUDGMENTS OR SETTLEMENTS SHALL BE REDUCED BY AMOUNTS INCURRED AS **DEFENSE COSTS**. ANY **DEFENSE COSTS** THAT ARE INCURRED SHALL BE APPLIED AGAINST THE APPLICABLE RETENTION.

This Policy shall follow all terms, conditions, restrictions, limitations, exclusions, and endorsements of the **Primary Policy** and **Underlying Excess Policies** (collectively, the **Underlying Policies**) except as herein stated. Terms defined in the **Underlying Policies** are used herein with the meaning assigned to them in the **Underlying Policies**, unless otherwise indicated.

ITEM 1. **INSURED ORGANIZATION AND MAILING ADDRESS**

ITEM 2. **POLICY PERIOD**

From _____ to _____ (at 12:01 A.M. Standard Time both dates at the Mailing Address stated in ITEM 1.)

ITEM 3. **COVERAGE** _____

ITEM 4. **LIMIT OF LIABILITY** \$ _____ (Insurer's aggregate **Limit of Liability** per **Policy Period**)

ITEM 5. **PREMIUM** \$ _____

ITEM 6. **SCHEDULE OF UNDERLYING POLICIES**

A. Primary Insurer _____ Policy Number _____
Coverage _____ Limit of Liability _____
Retentions/Deductibles _____ Insured Percentage _____

Policy Period: From _____ to _____

B. Underlying Excess Policies: See Endorsement No. _____

ITEM 7. **UNDERLYING LIMITS OF LIABILITY** _____
(the combined **Limits of Liability** of the **Underlying Policies**)

ITEM 8. NOTICE REQUIRED TO BE GIVEN TO THE INSURER SHALL BE ADDRESSED TO:
Axis Specialty Insurance Company
c/o Professional Risk Facilities, Inc.
1122 Franklin Avenue, Garden City, NY 11530

ITEM 9. **FORMS AND ENDORSEMENTS FORMING A PART OF THIS POLICY AT ISSUANCE:**

These Declarations, along with the completed and signed **Application** (which includes its attachments and any materials submitted therewith) and the Policy containing the Policy provisions, forms and endorsements, if any, shall constitute the contract between the Insurer and the **Insureds**.

Countersigned At

Countersignature Date

Authorized Representative

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In consideration of the payment of premium and in reliance upon all statements made and information furnished to the Company shown on the Declarations, hereinafter the Insurer, including the statements made in the **Application** which are deemed part of this Policy, the Insurer and **Insured(s)** agree as follows:

SECTION I. INSURING AGREEMENT

The Insurer shall provide the **Insured(s)** with insurance during the **Policy Period** (as set forth in Item 2 of the Declarations) which is excess of the **Underlying Limits of Liability** and any applicable underlying retention, deductible or coinsurance contained in the **Underlying Policies**. This Policy will only provide coverage for up to an available maximum aggregate **Limit of Liability** (as set forth in Item 4 of the Declarations) but only after the **Underlying Limits of Liability** (as set forth in Item 7 of the Declarations) have been exhausted and, further, is subject to the terms, conditions, restrictions, limitations, exclusions and endorsements of the **Primary Policy** together with all terms, conditions, restrictions, limitations, exclusions and endorsements of the **Underlying Excess Policies** except as specifically set forth in the terms, conditions, restrictions, limitations, exclusions and endorsements of this Policy.

SECTION II. DEFINITIONS

- A. **Application** means the signed application for this Policy, including any attachments and other materials submitted in conjunction with the signed application (which shall be maintained on file by the Insurer and be deemed attached to this Policy as if physically attached to this Policy), and, in the event that this Policy is a renewal or replacement of a previous continuous policy or policies issued by the Insurer, all such other signed applications which were attached to and became a part of these previous policies which shall also be deemed attached to this Policy as if physically attached thereto.
- B. **Insured(s)** means person or persons or organization or organizations insured under the **Underlying Policies**; provided, however, that the most restrictive definition of **Insured(s)** will apply to this Policy if there is a difference between that of the **Primary Policy** and that of any of the **Underlying Excess Policies**.
- C. **Limit of Liability** shall mean the amount set forth in Item 4 of the Declarations. This amount shall be the maximum amount the Insurer is liable for as a result of covered losses insured under this Policy for any and all claims made under this Policy during the **Policy Period** and reported pursuant to the terms and conditions of the **Underlying Policies**.
- D. **Policy Period** shall mean the period from the inception date set forth in Item 2(a) of the Declarations to the expiration date set forth in Item 2(b) of the Declarations, or its earlier cancellation or termination date, if any.
- E. **Primary Policy** shall mean the policy specified in Item 6(a) of the Declarations.
- F. **Underlying Limits of Liability** shall mean the total combined limits of liability of all of the **Underlying Policies** as set forth in Item 7 of the Declarations, less any reduction or exhaustion of said limits of liability due to payment of loss or losses under such **Underlying Policies**.
- G. **Underlying Excess Policies** shall mean the policy or policies identified in Item 6(b) of the Declarations.
- H. **Underlying Policies** shall mean the policy or policies as collectively identified in Item 6 of the Declarations including the **Primary Policy** and the **Underlying Excess Policies**.

SECTION III. FOLLOW FORM OF PRIMARY AND UNDERLYING EXCESS INSURANCE

- A. It is expressly agreed that this Policy, except as herein stated, is subject to all terms, conditions, agreements, restrictions, limitations, exclusions and endorsements of the **Primary Policy** together with all terms, conditions, agreements, restrictions, limitations, exclusions and endorsements of the **Underlying Excess Policies** in all respects as in effect on the date hereof. The most restrictive terms, conditions, agreements, limitations, exclusions and endorsements of the **Underlying Policies** shall apply as respects this Policy and in no event shall this Policy grant broader coverage than is provided by the most restrictive of the **Primary** or **Underlying Excess Policies**.
- B. The **Insured** agrees to provide true and accurate copies of the **Underlying Policies** to the Insurer. The **Insured** shall also furnish to the Insurer copies of all proposed renewals, rewrites or changes by endorsement or otherwise to the **Underlying Policies** prior to such renewals, rewrites or changes. The **Insured** also understands and agrees that should any change to any or all of the **Underlying Policies** be made by rewrite, endorsement or otherwise, this Policy shall not be changed without the prior written consent of the Insurer.

It is further understood and agreed that:

1. The **Insured** accepts any special terms, conditions, exclusions or additional premium charge as may be required by the Insurer; and
 2. The Insurer, at its sole discretion, agrees in writing to provide such coverage.
- C. It is a condition precedent to this Policy that the **Underlying Policies** shall be maintained in full effect while this Policy is in force except for any reduction or exhaustion of the **Underlying Limits of Liability** of the **Underlying Policies** solely as a result of payments of losses thereunder.

SECTION IV. LIMITS OF LIABILITY

- A. It is expressly agreed that the Insurer's liability under this Policy for any loss shall attach only after the insurers who have issued the **Underlying Policies** have duly admitted liability and the **Underlying Limits of Liability** have been paid in full, including full payment by the **Insureds** of any retention, deductible or coinsurance obligation thereunder. The Insurer shall then be liable to pay only such additional amounts up to the **Limit of Liability** set forth in Item 4 of the Declarations, which shall be the maximum liability of the Insurer for the **Policy Period**.
- B. In the event of the reduction of the **Underlying Limits of Liability** solely as a result of payment of losses under the **Primary Policy** and/or **Underlying Excess Policies** for claims first made while this Policy is in force, this Policy shall, subject to the maximum aggregate **Limit of Liability** set forth in Item 4 of the Declarations and further subject to the other terms, conditions, restrictions, limitations, exclusions and endorsements of this Policy, continue to apply for subsequent losses as excess insurance over the reduced limits of liability remaining under such **Underlying Policies**.

In the event of the exhaustion of the **Underlying Limits of Liability** solely as a result of payment of losses under the **Underlying Policies** for claims first made while this Policy is in force, this Policy shall, subject to the maximum aggregate **Limit of Liability** set forth in Item 3 of the Declarations and to the other terms, conditions, restrictions, limitations, exclusions and endorsements of this Policy, continue as primary insurance for subsequent losses; provided always that this Policy shall only pay excess of the retention or deductible of the **Primary Policy** and coinsurance obligation specified in Item 6(a) of the Declarations, which shall be applied to any subsequent losses in the same manner outlined in such **Primary Policy**. The **Insured(s)** must provide written notice of exhaustion of the **Underlying Limits of Liability** to the Insurer immediately upon such exhaustion.

- C. It is further agreed that nothing herein shall be construed to obligate the Insurer to pay any defense or claim expenses in addition to the **Limit of Liability** set forth in Item 4 of the Declarations.
- D. It is understood and agreed that this Policy does not provide coverage for any loss not covered by all or any of the **Underlying Policies** except and to the extent that such loss is not paid under all or any of the **Underlying Policies** solely by reason of the reduction or exhaustion of the **Underlying Limits of Liability** through payments of loss thereunder. It is further understood and agreed that the Insurer's obligation under

this Policy shall not be increased, expanded or otherwise changed as a result of the receivership, insolvency, inability or refusal to pay of any insurer of any of the **Underlying Policies** and the **Insured** shall be deemed self-insured for the limit of liability provided by such **Underlying Policies**.

SECTION V. NOTICE OF CLAIM/LOSS PROVISIONS

As a condition precedent to the **Insured's** rights to recovery under this Policy, the **Insured** agrees with the following:

- A. The **Insured** shall give written notice to the Insurer of any claim made against any **Insured** during the **Policy Period** or during any applicable Discovery Period, if purchased, in accordance with the notice/claims reporting provisions of the **Underlying Policies**. Notice given under any of the **Underlying Policies** shall not constitute notice under this Policy.
- B. The **Insured** shall give the Insurer such information, assistance and cooperation as the Insurer may reasonably request and as shall be in the **Insured's** power, and shall do nothing which may prejudice the Insurer's position or potential rights of recovery.
- C. If legal proceedings have begun, the **Insured** shall forward to the Insurer a copy of each pleading or document received by the **Insured** or the **Insured's** representatives, together with copies of reports or investigations made by the **Insured** with respect to such proceedings.
- D. The Insurer shall have the right, at its option, to participate in the defense and control of all claims reported under this Policy and the Insurer shall not be bound by any positions taken by the insurers of the **Underlying Policies** with respect to coverage, policy interpretation or settlement which may affect this Policy.

SECTION VI. REPRESENTATIONS AND COVENANTS / STATEMENTS MADE IN THE APPLICATION

As a condition precedent to the **Insured's** rights to recovery under this Policy, the **Insured** agrees with the following:

- A. The statements made in the **Application**, including all attachments thereto, are true and are the basis of this Policy and are to be considered as incorporated into and constituting a part of this Policy; and
- B. The statements made in the **Application**, shall be the representations of the **Insureds** and shall be deemed material to the acceptance of the risk or hazard assumed by the Insurer under this Policy, and that this Policy is issued in reliance upon the truth of such representations.

SECTION VII. CANCELLATION CLAUSE

- A. The **Insured** shall notify the Insurer of any notice of cancellation of any of the **Underlying Policies** within fifteen (15) days of the **Insured's** receipt of such notice. In the event that any of the **Underlying Policies** identified in Item 6 of the Declarations are terminated, whether by the **Insured** or by any insurer issuing one of the **Underlying Policies**, then this Policy shall terminate immediately upon such termination. Notice of cancellation or non-renewal of any of the **Underlying Policies** duly issued to the **Insured** by the applicable insurer(s) of such **Underlying Policy(ies)** shall serve as notice of the cancellation or nonrenewal of this Policy by the Insurer.
- B. Notwithstanding Section VII (A) above, the **Insured** may cancel this Policy at any time by mailing prior written notice to the Insurer or by surrender of this Policy to the Insurer or its authorized agent. This Policy shall terminate at the earlier of the date and time specified in the notice of cancellation or the date and time of surrender, whichever shall be applicable.
- C. Notwithstanding Section VII (A) above, the Insurer may cancel this Policy at any time by delivering to the **Insured** or by mailing to the **Insured** by registered, certified or other first-class mail, at the **Insured's** address as shown in Item 1 of the Declarations, written notice stating when, not less than thirty (30) days thereafter, the cancellation shall become effective. The mailing of such notice as aforesaid shall be sufficient proof of notice and this Policy shall terminate at the date and time specified in such notice. Notwithstanding the foregoing, the Insurer may cancel this Policy for failure to pay a premium when due by mailing to the **Insured**

at the **Insured's** address as shown in Item 1 of the Declarations written notice stating when, not less than ten (10) days thereafter, such cancellation shall be effective.

- D. If this Policy shall be cancelled by the **Insured**, the Insurer shall retain the customary short rate proportion of the premium hereon. If this Policy shall be cancelled by the Insurer, the Insurer shall retain the pro rata proportion of the premium hereon. Payment or tender 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.
- E. If the notice period for cancellation is prohibited or made void by any law controlling the provisions thereof, such period shall be deemed to be amended to be equal to the minimum period permitted by such law.

SECTION VIII. COMPANY AUTHORIZATION CLAUSE

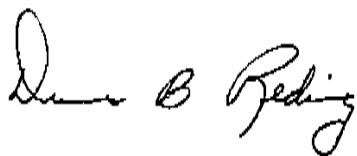
By acceptance of this Policy, the **Insured(s)** agree that the **Insured** named in Item 1 of the Declarations will act on behalf of all **Insureds** with respect to the:

- A. Giving of all notices to the Insurer as provided herein;
- B. Receiving of all notices from Insurer;
- C. Payment of premiums; and
- D. Receiving of any return premiums that may become due under this Policy.

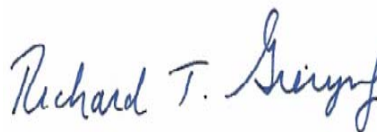
SECTION IX. APPEALS

In the event the **Insured** or any of the insurers of the **Underlying Policies** elects not to appeal a judgment which exceeds the **Underlying Limits of Liability**, the Insurer may elect to do so at its own expense, and shall be liable for the taxable costs, disbursements and interest incidental thereto.

In Witness Whereof, we have caused this Policy to be executed and attested, and, if required by state law, this Policy shall not be valid unless countersigned by our authorized representative.



President



Secretary