

Insurance is afforded by the company indicated below: (Each a capital stock corporation)

☒ Great American Insurance Company
 Policy Number: **EPPE456396-03**

Policy Form Number: D26100 (2/10)

Item 1. Name of **Organization**: **Arbors at Mountain Shadows Condominium Owners Assoc**
 Mailing Address: **2192 DENTON GRV**

City, State, Zip Code: **COLORADO SPRINGS, CO, 80919-5138**

Item 2. **Policy Period**: From **09-11-2022** To **09-11-2023**
(Month, Day, Year) (Month, Day, Year)
 (Both dates at 12:01 a.m. Standard Time at the address of the **Organization** as stated in Item 1.)

Item 3. (a) Limit of Liability for each **Policy Year**: **\$1,000,000**
 (b) **FLSA Defense Sublimit of Liability**: **\$150,000** – This limit is part of and not in addition to the Limit of Liability provided for in 3(a).

Item 4. Retentions:
 Insuring Agreement A: **\$0** Each **Claim**
 Insuring Agreement B and/or C: **\$1,000** Each **Claim**

Item 5. Premium: **\$2,026.00** Annual Taxes/Surcharges: **\$0.00** Annual Fees: **\$50.00**

Item 6. Endorsements Attached:
ExecPro - Community Association Solution D 26100 (2/10)
Economic and Trade Sanctions Clause
Terrorism Coverage Endorsement DTCV_09P (11/09)
Terrorism Coverage Premium Disclosure DTDP_09P (11/09)
Colorado Amendatory Endorsement D 26326 (02/10)
Deletion of Noise Exclusion D 26714-2 (11/12)
Colorado Disclosure Form Claims-Made Policy D 26053 (2/10)
Data Security Wrongful Acts and Privacy Wrongful Acts Coverage Endorsement D26740 (11/14)

Item 7. Notices: All notices required to be given to the **Insurer** under this policy shall be addressed to:
Great American Insurance Companies
Executive Liability Division
P.O. Box 66943
Chicago, Illinois 60666

Item 8. Prior & Pending Litigation Date: **09-26-2019**

These Declarations along with the completed and signed Proposal Form and community Associations Solution Insurance Policy shall constitute the contract between the **Insureds** and the **Insurer**.

THIS IS A CLAIMS MADE POLICY. READ IT CAREFULLY.



ExecPro®

Community Association Solution



Community Association Solution

Great American Insurance Group – Executive Liability Division
Headquarters: 301 E. Fourth Street, Cincinnati, Ohio 45202

Table of Contents

I.	Insuring Agreements.....	Page 1
II.	Discovery Period.....	Page 1
III.	Definitions.....	Page 2
IV.	Exclusions.....	Page 5
V.	Limit of Liability and Retention.....	Page 7
VI.	Costs of Defense and Settlements.....	Page 8
VII.	Notice of Claim.....	Page 8
VIII.	Coverage Extensions.....	Page 9
	(A) Spousal/Domestic Partner Provision.....	Page 9
	(B) Worldwide Provision.....	Page 9
	(C) Estates and Legal Representatives.....	Page 9
IX.	General Conditions.....	Page 9
	(A) Cancellation or Non-Renewal.....	Page 9
	(B) Proposal Form.....	Page 10
	(C) Order of Payments.....	Page 10
	(D) Merger or Acquisition.....	Page 10
	(E) Conversion to Run-Off Coverage.....	Page 10
	(F) Action Against the Insurer.....	Page 10
	(G) Subrogation.....	Page 11
	(H) Conformity to Law.....	Page 11
	(I) Assignment.....	Page 11
	(J) Representative of the Insurer.....	Page 11
	(K) Organization Represents Insured.....	Page 11
	(L) Entire Agreement.....	Page 11

GREAT AMERICAN INSURANCE GROUP®

Headquarters: 301 E. Fourth Street, Cincinnati, Ohio 45202

THIS IS A CLAIMS MADE POLICY. READ IT CAREFULLY.

In consideration of the payment of the premium and in reliance upon all statements made and information furnished to the company shown in the Declarations (a stock insurance company, hereinafter called the **Insurer**), including the statements made in the Proposal Form and subject to all terms, conditions and limitations of this Policy, the **Insured** and **Insurer** agree:

Section I. Insuring Agreements

- A. If during the **Policy Period** or the **Discovery Period** any **Claim** is first made against any **Insured Persons** for a **Wrongful Act**, the **Insurer** shall pay on behalf of the **Insured Persons**, **Loss** and **Costs of Defense** resulting from such **Claim**, except for any **Loss** and **Costs of Defense** which the **Organization** or any **Subsidiary** actually pays as indemnification.
- B. If during the **Policy Period** or the **Discovery Period** any **Claim** is first made against any **Insured Persons** for a **Wrongful Act**, the **Insurer** shall pay on behalf of the **Organization** or any **Subsidiary**, **Loss** and **Costs of Defense** resulting from such **Claim**, but only to the extent the **Organization** or any **Subsidiary** is required or permitted by law to indemnify the **Insured Persons**.
- C. If during the **Policy Period** or the **Discovery Period** any **Claim** is first made against the **Organization**, any **Subsidiary**, or the **Property Manager** for a **Wrongful Act**, the **Insurer** shall pay on behalf of the **Organization**, any **Subsidiary**, or the **Property Manager**, **Loss** and **Costs of Defense** resulting from such **Claim**.

The **Insurer** has the right and duty to defend any **Claim** to which this insurance applies, even if the allegations of such **Claim** are groundless, false or fraudulent.

Section II. Discovery Period

- A. If this Policy is not renewed or is cancelled by the **Insurer**, for any reason other than non-payment of premium, then without the requirement of any additional premium, the **Organization** shall receive an automatic ninety (90) day extension of the coverage granted by this Policy with respect to any **Claim** first made against any **Insured** during this extended coverage, but only with respect to **Wrongful Acts** committed prior to the end of the **Policy Period**. This extended coverage shall be referred to as the **Automatic Discovery Period**. In addition, if prior to the end of the **Automatic Discovery Period**, the **Organization** pays the **Insurer** an additional amount equal to forty (40%), seventy-five (75%), or one hundred (100%) percent of the annual premium of this Policy, the **Organization** shall receive an extension of the coverage granted by this Policy for an additional twelve (12), twenty-four (24), or thirty-six (36) months respectively from the end of the **Automatic Discovery Period** with respect to any **Claim** first made against any **Insured** during this extended coverage, but only with respect to **Wrongful Acts** committed prior to the end of the **Policy Period**. This extended coverage shall be referred to as the **Discovery Period**. The **Organization** shall have no right to purchase this **Discovery Period** at any later date or to elect more than one **Discovery Period**.

- B.** If this Policy is not renewed or is cancelled by the **Organization**, and if no later than sixty (60) days after the end of the **Policy Period** the **Organization** pays the **Insurer** an additional amount equal to forty (40%), seventy-five (75%), or one hundred (100%) percent of the annual premium of this Policy, the **Organization** shall receive a **Discovery Period** for an additional twelve (12), twenty-four (24), or thirty-six (36) months respectively from the end of the **Policy Period**. The **Organization** shall have no right to purchase this **Discovery Period** at any later date or to elect more than one **Discovery Period**.
- C.** The fact that this Policy may be extended by virtue of the **Automatic Discovery Period** or **Discovery Period** shall not in any way increase the Limit of Liability stated in Item 3 of the Declarations. For purposes of the Limit of Liability, the **Automatic Discovery Period** and the **Discovery Period** is considered to be part of and not in addition to the last **Policy Year**.

Section III. Definitions

A. "Claim" shall mean:

- (1) a written demand for monetary relief made against any **Insured**;
- (2) a civil proceeding, including any appeals therefrom made against any **Insured** seeking monetary or non-monetary (including injunctive) relief commenced by service of a complaint or similar pleading;
- (3) a criminal proceeding, including any appeals therefrom made against any **Insured** commenced by the return of an indictment or the filing of notice of charge or similar document; or
- (4) a formal administrative proceeding, including any proceeding before the Equal Employment Opportunity Commission (EEOC) or any similar governmental body, made against any **Insured** commenced by the receipt of charges, formal investigative order, service of summons or similar document.

B. "Claimant" shall mean:

- (1) any past, present, and future **Insured Persons** or applicants for employment with the **Organization** or any **Subsidiary**;
- (2) a government entity or agency, including but not limited to the Equal Employment Opportunity Commission (EEOC) or any similar governmental body, when acting on behalf of or for the benefit of any individual in (1) above; or
- (3) all persons who were, now are, or shall be independent contractors, but only to the extent such individuals perform work or services for or on behalf of the **Organization** or any **Subsidiary** and only to the extent such individuals are indemnified by the **Organization** or any **Subsidiary**.

It is further understood and agreed that **Claimant** shall not include any employee of any **Property Manager**.

- C. **"Construction Defect(s)"** shall mean any actual or alleged defective, faulty or delayed construction or any other matter constituting a construction defect under applicable law regardless of whether it results from:
- (1) defective or incorrect architectural plans or other designs;
 - (2) defective or improper soil testing;
 - (3) defective, inadequate or insufficient protection from subsoil or earth movement or subsidence;
 - (4) construction, manufacture or assembly of any tangible property;
 - (5) the failure to provide or pay for any construction-related goods or services; or
 - (6) the supervision or management of any construction-related activities.
- D. **"Costs of Defense"** shall mean reasonable and necessary legal fees, costs and expenses incurred in the investigation or defense of any **Claim**, including the costs of any appeal or appeal bond, attachment bond or similar bond (but without any obligation on the part of the **Insurer** to apply for or furnish such bonds); provided, however, **Costs of Defense** shall not include: (1) salaries, wages, overhead or benefit expenses associated with any **Insured Persons**, and (2) any amounts incurred in defense of any **Claim** which any other insurer has a duty to defend, regardless of whether or not such other insurer undertakes such duty.
- E. **"Employment Practices Wrongful Act"** shall mean any of the following acts related to employment, but only if alleged by or on behalf of a **Claimant**:
- (1) wrongful dismissal, discharge or termination of employment, whether actual or constructive;
 - (2) misrepresentation;
 - (3) violation of employment laws;
 - (4) sexual or workplace harassment;
 - (5) discrimination;
 - (6) wrongful failure to employ or promote;
 - (7) wrongful discipline;
 - (8) wrongful deprivation of career opportunity including a wrongful failure to hire or promote;
 - (9) failure to grant tenure;
 - (10) negligent employee evaluation;
 - (11) retaliation;
 - (12) failure to provide adequate workplace or employment policies or procedures;
 - (13) defamation (including libel and slander);
 - (14) invasion of privacy;
 - (15) wrongful demotion;
 - (16) negligent reassignment;
 - (17) violation of any federal, state or local civil rights laws;
 - (18) negligent hiring;
 - (19) negligent supervision;
 - (20) negligent training;
 - (21) negligent retention; or
 - (22) acts described in (1) through (21) above arising from the use of the **Organization's** or **Subsidiary's** Internet, e-mail, telecommunication or similar systems, including the failure to provide and enforce adequate policies and procedures relating to such use of the **Organization's** or **Subsidiary's** Internet, e-mail, telecommunication or similar systems.
- F. **"Financial Insolvency"** shall mean the **Organization** becoming a Debtor in Possession, or the appointment of a receiver, conservator, liquidator, trustee, rehabilitator or similar official to control, supervise, manage or liquidate the **Organization**.
- G. **"Fungi"** shall mean any type or form of fungus, including mold or mildew and any mycotoxins, spores, scents, or byproducts produced or released by fungi.

H. **"Insured"** shall mean:

- (1) the **Organization**;
- (2) any **Subsidiary**;
- (3) in the event of **Financial Insolvency**, the resulting Debtor in Possession (or foreign equivalent status), if any;
- (4) all **Insured Persons**; and
- (5) any **Property Manager**, but only if such **Property Manager** is acting pursuant to the written authority granted by the **Organization** or on behalf of and at the direction of the **Organization** or any **Subsidiary**.

I. **"Insured Persons"** shall mean all persons who were, now are, or shall be directors, trustees, officers, employees, leased employees, temporary or seasonal employees, volunteers or staff members of the **Organization** or any **Subsidiary**, including any executive board members and committee members, whether salaried or not. It shall also mean all persons who were, now are, or shall be directors, trustees, officers, employees, leased employees, temporary or seasonal employees, volunteers or staff members of any **Property Manager**, but only if such persons are acting within the scope of their employment with the **Property Manager** and on behalf of the **Organization** or any **Subsidiary**.

J. **"Loss"** shall mean settlements, judgments, pre-judgment and post-judgment interest, front and back pay, compensatory damages, punitive or exemplary damages, the multiple portion of any multiplied damage award, and subject to the provisions of Section V. and VI., **Costs of Defense** incurred by the **Insured**. **Loss** shall not include:

- (1) criminal or civil fines or penalties imposed by law or taxes;
- (2) the value of perquisites, deferred compensation or any other type of compensation earned in the course of employment or the equivalent value thereof; and
- (3) any amounts which may be deemed uninsurable under the law pursuant to which this Policy shall be construed.

It is understood and agreed that the enforceability of the foregoing coverage shall be governed by such applicable law which most favors coverage for punitive or exemplary damages or the multiple portion of any multiplied damage award.

K. **"Organization"** shall mean the entity named in Item 1 of the Declarations.

L. **"Policy Year"** shall mean the period of one year following the effective date and hour of this Policy or the period of one year following any anniversary date thereof falling within the **Policy Period**; or if the time between the effective date or any anniversary date and the termination of this Policy is less than one year, such lesser period. Any **Discovery Period** or **Automatic Discovery Period** shall be considered part of and not in addition to the last **Policy Year**.

M. **"Policy Period"** shall mean the period from the inception of this Policy to the expiration date stated in Item 2 of the Declarations or its earlier termination, if applicable.

N. **"Property Manager"** shall mean any entity providing real estate property management services to the **Organization** or any **Subsidiary** pursuant to a written contract.

O. **"Related Wrongful Acts"** shall mean **Wrongful Acts** which are causally connected by reason of any common fact, circumstance, situation, transaction, casualty, event or decision.

P. "Subsidiary" shall mean:

- (1) any entity 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 amendments thereto), and for which the **Organization** has or controls the right to elect or appoint more than fifty percent (50%) of the Board of Directors or other governing body of such entity as of the inception date of this Policy;
- (2) any similar entity which was created or acquired by the **Organization** after the inception date of this Policy, if the entity's total assets do not exceed thirty-five percent (35%) of the total consolidated assets of the **Organization** as of the inception date of this Policy; or
- (3) any other entity added as a **Subsidiary** by written endorsement to this Policy.

Coverage shall apply to a **Subsidiary** only for **Wrongful Acts** allegedly committed during the time such entity qualified as a **Subsidiary**.

Q. "Wrongful Act" shall mean:

- (1) any of the following by the **Organization**, and/or any **Subsidiary**, and/or any **Insured Persons** acting in their capacity with the **Organization** or a **Subsidiary**:
 - (a) actual or alleged error, misstatement, misleading statement, act or omission, neglect or breach of duty;
 - (b) **Employment Practices Wrongful Act**;
- (2) any matter claimed against any **Insured Persons** solely by reason of their status with the **Organization** or any **Subsidiary**.

Section IV. Exclusions

This Policy does not apply to any **Claim** made against any **Insured**:

- A.** brought about or contributed to by: (1) any **Insured** gaining any profit, advantage or remuneration to which they were not legally entitled; or (2) the deliberate fraudulent or criminal acts of any **Insured**; however, this exclusion shall not apply unless it is finally adjudicated such conduct in fact occurred, nor shall it apply to coverage provided under Insuring Agreement I.B.;
- B.** to the extent it is insured in whole or in part by any other valid and collectible policy or policies, (except with respect to any excess beyond the amount or amounts of coverage under such other policy or policies), whether such other policy or policies are stated to be primary, contributory, excess, contingent, or otherwise;
- C.** based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving:
 - (1) any **Wrongful Act** or **Related Wrongful Act** or any fact, circumstance or situation which has been the subject of any notice or **Claim** given under any other policy of which this Policy is a renewal or replacement;
 - (2) any **Wrongful Act** or any circumstance known by any **Insured Person** prior to the date stated in Item 8 of the Declarations which would indicate the probability of such **Claim** being made, provided, however, this exclusion shall only apply to the **Organization**, its **Subsidiaries** and those **Insured Persons** having such knowledge; or

- (3) any civil, criminal, administrative or investigative proceeding involving any **Insured** pending as of or prior to the date stated in Item 8 of the Declarations, or any fact, circumstance or situation underlying or alleged in such proceeding;
- D. based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving: (1) bodily injury, sickness, disease or death of any person, assault or battery; (2) damage to or destruction of any tangible property or the loss of use of any tangible property; or (3) humiliation, mental anguish, emotional distress, invasion of privacy, wrongful entry, trespassing, eviction, false arrest, false imprisonment, malicious prosecution, abuse of process, libel or slander; provided, however, that part (3) of this exclusion shall not apply to any **Claim** for an **Employment Practices Wrongful Act**;
- E. for any actual or alleged violation by any **Insured** of the Employee Retirement Income Security Act of 1974, the National Labor Relations Act, the Worker Adjustment and Retraining Notification Act, the Consolidated Omnibus Budget Reconciliation Act of 1985, the Occupational Safety and Health Act or any rules or regulations promulgated under these acts or any similar provisions of any federal, state, local or foreign law, except a **Claim** alleging retaliation for the exercise of any rights under such laws;
- F. for any **Wrongful Act** of any **Insured Persons** in their respective capacity as a director, officer, trustee, or equivalent position of an entity other than the **Organization** or any **Subsidiary**;
- G. based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving actual or alleged seepage, pollution, radiation, emission, contamination or irritant of any kind, including but not limited to smoke, vapor, dust, fibers, mold, spores, fungi, germs, soot, fumes, acids, alkalis, asbestos, chemicals or waste of any kind, provided, however, this exclusion shall not apply to coverage provided under Insuring Agreement 1.A.;
- H. by, or for the benefit of, or at the behest of the **Organization** or any **Subsidiary** or any entity which controls, is controlled by, or is under common control with the **Organization** or any **Subsidiary**, or any person or entity which succeeds to the interests of the **Organization** or any **Subsidiary**, provided, however, this exclusion shall not apply to any **Claim** brought by the receiver, conservator, liquidator, trustee, rehabilitator, examiner or similar official of the **Organization**, if any, in the event of **Financial Insolvency**;
- I. other than **Costs of Defense**:
- (1) for any obligation of the **Organization** or any **Subsidiary**, as a result of a **Claim**, seeking relief or redress in any form other than money damages, including but not limited to any obligations of the **Organization** or any **Subsidiary** to modify any building or property;
 - (2) for any obligation of the **Organization** or any **Subsidiary** to pay compensation earned by any **Insured Person** in the course of employment, but not paid by the **Organization** or any **Subsidiary**, including any unpaid salary, bonus, wages, severance pay, retirement benefits, vacation days or sick days, provided, however, this exclusion shall not apply to front pay and back pay;
 - (3) for any actual or alleged violation by any **Insured** of the Fair Labor Standards Act or any similar state or local law, provided, however, this exclusion shall not apply to the Equal Pay Act. **Costs of Defense** provided pursuant to this section, I.(3), shall be subject to the FLSA Defense Sublimit of Liability stated in Item 3 of the Declarations, if any; or
 - (4) for any actual or alleged liability of any **Insured** under any contract or agreement, express or implied, written or oral; provided, however this exclusion shall not apply to employment related obligations which would have attached absent such contract or agreement;

- J. for any obligations under a worker's compensation, disability benefits, insurance benefits or unemployment compensation law, or any similar law; provided, however this exclusion shall not apply to a **Claim** for an **Employment Practices Wrongful Act** involving retaliation with regard to benefits paid or payable;
- K. based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving:
- (1) actual, alleged or threatened:
 - (a) inhalation of, ingestion of, contact with, or exposure to any **Fungi** or bacteria; or
 - (b) existence of or presence of any **Fungi** or bacteria on or within a building or structure including its contents, regardless of whether any other cause, event, material, or product contributed concurrently or in any sequence to any injury or damage; or
 - (2) any loss, cost or expense arising out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating, disposing of, or in any way responding to, or assessing the effects of **Fungi** or bacteria by any **Insured** or by any other person or entity;
- L. based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving actual or alleged **Construction Defect(s)**;
- M. based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving any actual or alleged liability of an **Insured**, in whole or in part, in the capacity as a builder or developer, or in the capacity of a sponsor of the **Organization**, or of an **Insured** affiliated with such a builder, developer or sponsor, and which is related to actual or alleged misconduct on the part of such builder, developer or sponsor, including but not limited to actual or alleged conflict of interest, self-dealing, or disputes concerning conversion, construction or development;
- N. based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving actual or alleged noise.

With respect to this section of the Policy, no fact pertaining to or conduct by any **Insured Person** shall be imputed to any other **Insured Person**; and only facts pertaining to or conduct by any past, present, or future Executive Director, President, or Chairman of the **Organization** shall be imputed to the **Organization** or any **Subsidiary** to determine if coverage is available.

Section V. Limits of Liability and Retention

- A. The **Insurer** shall be liable to pay one hundred percent (100%) of **Loss** in excess of the Retention stated in Item 4 of the Declarations. The **Insurer's** maximum Limit of Liability for the aggregate amount of **Loss** resulting from all **Claims** deemed to have been made in a **Policy Year** shall be shown in Item 3 of the Declarations.
- B. One Retention shall apply to each and every **Claim**. More than one **Claim** involving the same **Wrongful Act** or **Related Wrongful Acts** of one or more **Insureds** shall be considered a single **Claim**, and only one Retention shall be applicable to such single **Claim**. All such **Claims**, constituting a single **Claim**, shall be deemed to have been made on the earlier of the following dates: (1) the earliest date on which any such **Claim** was first made; or (2) the earliest date on which any such **Wrongful Act** or **Related Wrongful Act** was reported under this Policy or any other policy providing similar coverage.

- C. **Costs of Defense** incurred by the **Insurer** shall be in addition to the Limit of Liability, and such **Costs of Defense** shall not be subject to the Retention amount. If **Costs of Defense** are incurred by the **Insured** with the **Insurer's** consent, such **Costs of Defense** shall be considered **Loss** and thus subject to the Limit of Liability and Retention.
- D. With respect to all **Claims** deemed to have been made in a **Policy Year**, should the Limit of Liability be exhausted by payment of **Loss** resulting from one or more such **Claims**, the **Insurer's** duty to defend shall cease and any and all obligations of the **Insurer** hereunder shall be deemed to be completely fulfilled and extinguished and the **Insurer** shall have no further obligations.
- E. For the purpose of applying the Retention, **Loss** applicable to Insuring Agreement I.B. includes that for which indemnification is legally permissible, regardless of whether actual indemnification is granted. The certificate of incorporation, charter or other organizational document of the **Organization**, including by-laws and resolutions, shall be deemed to require indemnification and advancement of **Loss** to the **Insured Persons** to the fullest extent permitted by law.

Section VI. Costs of Defense and Settlements

- A. The **Insureds** shall not incur **Costs of Defense**, or admit liability, offer to settle, or agree to any settlement in connection with any **Claim** without the express written consent of the **Insurer**, which consent shall not be unreasonably withheld. The **Insureds** shall provide the **Insurer** with full cooperation and all information and particulars it may reasonably request in order to reach a decision as to such consent. Any **Loss** resulting from any admission of liability, agreement to settle, or **Costs of Defense** incurred prior to the **Insurer's** consent shall not be covered hereunder.
- B. The **Insurer** has the right to investigate and settle any **Claim** as it deems expedient. If the **Insurer** recommends a settlement and the **Insured** refuses to consent thereto, the **Insurer's** liability for such **Claim** is limited to the amount in excess of the Retention, which the **Insurer** would have contributed had the **Insured** consented to the settlement, the **Costs of Defense** covered by the Policy and incurred prior to the date of such refusal to settle, and fifty percent (50%) of any additional covered **Loss**, including **Costs of Defense**, incurred subsequent to such refusal and subject to the Limit of Liability.

If the **Insured** refuses to consent to a settlement as contemplated above, **Costs of Defense** shall be subject to the Retention.

Section VII. Notice of Claim

- A. The **Insureds** shall, as a condition precedent to their rights under this Policy, give the **Insurer** notice in writing of any **Claim** made during the **Policy Period**. Such notice shall be given as soon as practicable after the date a Board Member or an employee of the **Property Manager** has knowledge of the **Claim**, and in no event later than ninety (90) days after the end of the **Policy Period**.
- B. If during the **Policy Period** or **Discovery Period**, any **Insured** first becomes aware of a specific **Wrongful Act** and gives notice to the **Insurer** of: (1) the specific **Wrongful Act**; (2) the injury or damage which has or may result therefrom; and (3) the circumstances by which the **Insured** first became aware thereof; then any **Claim** arising out of such **Wrongful Act** which is subsequently made against the **Insured** shall be deemed to have been made at the time the **Insurer** received such written notice from the **Insured**.

- C. In addition to furnishing the notice as provided in Section VII A or B, the **Insured** shall, as soon as practicable, provide the **Insurer** with copies of reports, investigations, pleadings and other documents in connection therewith, and shall provide all information, assistance and cooperation which the **Insurer** reasonably requests and do nothing to prejudice the **Insurer's** position or its potential or actual rights of recovery.
- D. Notice to the **Insurer** as provided in Section VII A or B shall be emailed to **ELDClaims@gaig.com** or mailed to **GREAT AMERICAN INSURANCE GROUP, EXECUTIVE LIABILITY DIVISION, CLAIMS DEPARTMENT, P.O. BOX 66943, CHICAGO, IL 60666.**

Section VIII. Coverage Extensions

A. Spousal/Domestic Partner Provision

The coverage provided by this Policy shall also apply to the lawful spouse or "Domestic Partner" of any **Insured Person**, but only for **Claims** arising out of any actual or alleged **Wrongful Acts** of any **Insured Person**. The term "Domestic Partner" shall mean any natural person qualifying as a domestic partner under the provisions of any applicable federal, state or local law.

B. Worldwide Provision

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

C. Estates and Legal Representatives

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

Section IX. General Conditions

A. Cancellation or Non-Renewal

- (1) This Policy may be cancelled by the **Organization** at any time by written notice to the **Insurer**. In the event the **Organization** cancels this Policy for reasons other than the downgrade of the **Insurer's** rating by A.M. Best, the **Insurer** shall retain the customary short rate portion of the premium. However, if the **Organization** cancels the Policy due to a downgrade of the **Insurer's** rating to below [A-] by A.M. Best, the **Insurer** shall refund any unearned premium on a pro rata basis. Payment of any unearned premium by the **Insurer** shall not be a condition precedent of the effectiveness of cancellation but such payment shall be made as soon as practicable.
- (2) This Policy will only be cancelled by the **Insurer** if the **Organization** does not pay the premium when due.
- (3) If the **Insurer** elects not to renew this Policy, the **Insurer** shall provide the **Organization** with at least sixty (60) days advance notice thereof.

B. Proposal Form

It is agreed the particulars and statements contained in Proposal Forms submitted to the **Insurer** (and any material submitted therewith) are the representations of the **Insured** and are to be considered as incorporated in and constituting part of this Policy. It is also agreed this Policy is issued in reliance upon the truth of such representations. However, coverage shall not be excluded as a result of any untrue statement in the Proposal Form, except as to the **Organization**, its **Subsidiaries**, and any **Insured Person** making such untrue statement or having knowledge of its falsity.

In no event shall Insuring Agreement I.A. of this Policy be rescinded by the **Insurer**.

C. Order of Payments

In the event of **Loss** arising from a covered **Claim** for which payment is due under the provisions of this Policy, the **Insurer** shall first, pay **Loss** for which coverage is provided under Insuring Agreement I.A. of this Policy; and thereafter with respect to whatever remaining amount of the Limit of Liability is available after such payment, pay such other **Loss** for which coverage is provided under any other applicable Insuring Agreements in Section I of this Policy.

D. Merger or Acquisition

If, during the **Policy Period**, the **Organization** acquires the assets of another entity, by merger or otherwise, and the acquired assets of such other entity exceed thirty-five percent (35%) of the assets of the **Organization** as of the inception date of the Policy, written notice thereof shall be given to the **Insurer** as soon as practicable, but in no event later than ninety (90) days from the effective date of the transaction, together with such information as the **Insurer** may request. Premium adjustment and coverage revisions shall be effected as may be required by the **Insurer**.

E. Conversion to Run-Off Coverage

If prior to the end of the **Policy Period**, the **Organization** merges into another organization and the **Organization** is not the surviving entity, another organization or person acquires the right to elect or appoint more than fifty percent (50%) of the Board of Directors or other governing body of the **Organization**, or the **Organization** ceases to qualify as a not-for-profit organization under any federal, provincial and territorial legislation and/or the Internal Revenue Code (such events hereinafter referred to as **Transaction**), then:

- (1) the **Organization** must give written notice of such **Transaction** to the **Insurer** within thirty (30) days after the effective date of such **Transaction**, and provide the **Insurer** with such information as the **Insurer** may deem necessary; and
- (2) this Policy, including the **Discovery Period** if elected, shall apply, but only with respect to any **Wrongful Act** committed prior to the effective date of such **Transaction**.

F. Action Against the Insurer

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

G. Subrogation

In the event of payment under this Policy, the **Insurer** shall be subrogated to all the **Insureds'** rights of recovery. The **Insureds** shall do everything necessary to secure such rights, including the execution of such documents necessary to enable the **Insurer** to effectively bring suit in the name of any **Insured**. In no event, however, shall the **Insurer** exercise its rights to subrogation against an **Insured Person** under this Policy unless, such **Insured Person**:

- (1) has been convicted of a deliberate criminal act, or
- (2) has been determined by a final adjudication adverse to the **Insured Person** to have committed a deliberate fraudulent act, or to have obtained any profit, advantage or remuneration to which such **Insured Person** was not legally entitled.

In the event the **Insurer** shall for any reason pay indemnifiable **Loss** on behalf of an **Insured Person**, the **Insurer** shall have the contractual right hereunder to recover from the **Organization** or any **Subsidiary** the amount of such **Loss** equal to the amount of the Retention not satisfied by the **Organization** or any **Subsidiary** and shall be subrogated to rights of the **Insured Persons** hereunder.

H. Conformity to Law

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

I. Assignment

Assignment of interest under this Policy shall not bind the **Insurer** until its consent is endorsed hereon.

J. Representative of the Insurer

Great American Insurance Group, Executive Liability Division, Post Office Box 66943, Chicago, Illinois, 60666 shall act on behalf of the **Insurer** for all purposes including, but not limited to, the giving and receiving of all notices and correspondence.

K. Organization Represents Insured

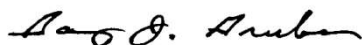
By acceptance of this Policy, the **Organization** shall be designated to act on behalf of the **Insureds** for all purposes including, but not limited to, giving and receiving of all notices and correspondence, the cancellation or non-renewal of this Policy, the payment of premiums, and the receipt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

L. Entire Agreement

By acceptance of this Policy, the **Insured** and the **Insurer** agree that this Policy (including the Proposal Forms submitted to the **Insurer** and any materials submitted therewith) and any written endorsements attached hereto constitute the entire agreement between the parties.

In witness whereof the **Insurer** has caused this Policy to be signed by its President and Secretary and countersigned, if required, on the Declarations page by a duly authorized agent of the **Insurer**.

GREAT AMERICAN INSURANCE COMPANY®



President



Secretary

AMENDMENT TO DECLARATIONS PAGE

It is understood and agreed that the Declarations is amended by the addition of the following:

Act of Terrorism Premium: \$0.00

It is further understood and agreed the Policyholder Disclosure of Terrorism Coverage is attached to and is to be considered as incorporated in and constituting a part of this Policy.

Other than as stated above, nothing herein contained shall be held to vary, alter, waive or extend any of the terms, conditions, provisions, agreements or limitations of the Policy to which this endorsement is attached.

Insured: **Arbors at Mountain Shadows Condominium Owners Assoc**

Policy Period **09-11-2022 - 09-11-2023**

Policy Number: **EPPE456396-03**

Countersigned by: **Not Required**
Authorized Representative

Endorsement Effective Date: **09-11-2022**

COVERAGE FOR ACTS OF TERRORISM

It is understood and agreed that the General Conditions of the Policy are amended by the addition of the following:

Act of Terrorism Coverage

Subject to all other terms and conditions of this Policy, coverage is available for **Loss** caused by an **Act of Terrorism** as defined below.

“**Act of Terrorism**” means any act that is certified by the Secretary of the Treasury, in concurrence with the Secretary of State and the Attorney General of the United States –

- (i) to be an act of terrorism;
- (ii) to be a violent act or an act that is dangerous to –
 - (a) human life;
 - (b) property; or
 - (c) infrastructure;
- (iii) to have resulted in damage within the United States, or outside of the United States in the case of -
 - (a) an air carrier or vessel described in Section (5)(B) of the Terrorism Risk Insurance Act; or
 - (b) the premises of a United States mission; and
- (iv) to have been committed by an individual or individuals, as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

With respect to any one or more **Acts of Terrorism** under the Terrorism Risk Insurance Act, as amended in 2007, we will not pay any amounts for which we are not responsible under the terms of that Act (including subsequent action of Congress pursuant to the Act) due to the application of any clause which results in a cap on our liability for payments for terrorism losses.

No act shall be certified by the Secretary as an **Act of Terrorism** if (i) the act is committed as part of the course of a war declared by the Congress, except that this clause shall not apply with respect to any coverage for workers compensation; or (ii) property and casualty insurance losses resulting from the act, in the aggregate, do not exceed \$5,000,000.

Other than as stated above, nothing herein contained shall be held to vary, alter, waive or extend any of the terms, conditions, provisions, agreements or limitations of the Policy to which this endorsement is attached.

Insured: **Arbors at Mountain Shadows Condominium Owners Assoc**

Policy Period **09-11-2022 - 09-11-2023**

Policy Number: **EPPE456396-03**

Countersigned by: **Not Required**
Authorized Representative

Endorsement Effective Date: **09-11-2022**



ECONOMIC AND TRADE SANCTIONS CLAUSE

This insurance does not apply to the extent that trade or economic sanctions or other laws or regulations prohibit us from providing insurance.

Insured: **Arbors at Mountain Shadows Condominium Owners Assoc**

Policy Period **2022-09-11 - 2023-09-11**

Policy Number: **EPPE456396-03**

Countersigned by: _____

Endorsement Effective Date: **2022-09-11**

Authorized Representative

DELETION OF NOISE EXCLUSION

It is understood and agreed that Section IV.N. of the policy is deleted in its entirety.

Nothing herein contained shall be held to vary, alter, waive or extend any of the terms, conditions, provisions, agreements or limitations of the above mentioned Policy other than as above stated.

Insured:

Policy Period

-

Policy Number:

Countersigned by: _____

Authorized Representative

Endorsement Effective Date:



COLORADO AMENDATORY ENDORSEMENT

In compliance with the insurance regulations of the state of Colorado, the following Sections of the Policy are amended as follows:

Section V.(C)

It is understood and agreed that the following sentence is deleted from Section V.(C): If **Costs of Defense** are incurred by the **Insured** with the **Insurer's** consent, such **Costs of Defense** shall be considered **Loss** and thus shall be subject to the Limit of Liability and Retention.

Section IX. General Conditions

It is understood and agreed that the following is added to Section IX: Upon request by the **Organization** and within thirty (30) days thereafter, the **Insurer** shall furnish sufficient information relating to closed or paid **Claims, Claims** for which the **Insurer** has established reserves, and notices of **Wrongful Acts** received by the **Insurer** which may give rise to **Claims**, to allow the **Insured** to determine the amount of aggregate coverage remaining under this Policy.

Nothing herein contained shall be held to vary, alter, waive or extend any of the terms, conditions, provisions, agreements or limitations of the above mentioned Policy other than as above stated.

Insured: **Arbors at Mountain Shadows Condominium Owners Assoc**

Policy Period **09-11-2022 - 09-11-2023**

Policy Number: **EPPE456396-03**

Countersigned by: **Not Required**
Authorized Representative

Endorsement Effective Date: **09-11-2022**



COLORADO DISCLOSURE FORM CLAIMS-MADE POLICY

IMPORTANT NOTICE TO POLICYHOLDER

THIS DISCLOSURE FORM IS NOT YOUR POLICY. IT DESCRIBES SOME OF THE MAJOR FEATURES OF OUR CLAIMS-MADE POLICY FORM. READ YOUR POLICY CAREFULLY TO DETERMINE RIGHTS, DUTIES, AND WHAT IS AND IS NOT COVERED. ONLY THE PROVISIONS OF YOUR POLICY DETERMINE THE SCOPE OF YOUR INSURANCE PROTECTION.

DEFINITIONS

1. "Claims-made coverage" means an insurance policy that provides coverage only if a claim is made during the policy period or any applicable extended reporting period. A claim made during the policy period could be charged against a claims-made policy even if the injury or loss occurred many years prior to the policy period. If a claims-made policy has a retroactive date, an occurrence prior to that date is not covered.
2. "Extended reporting period" means a period allowing for making claims after expiration of a claims-made policy. This is also known as a "tail".
3. "Occurrence coverage" means an insurance policy that provides liability coverage only for injury or damage that occurs during the policy terms, regardless of when the claim is actually made. A claim in the current policy year could be charged against a prior policy year, or may not be covered, if it arises from an occurrence prior to the effective date.
4. "Retroactive date" means the date on a claims-made policy which denotes the commencement date of coverage under the policy.

YOUR POLICY

Your policy is a claims-made policy. It provides coverage only for injury or damage occurring after the policy retroactive date (if any) shown on your policy and the incident is reported to your insurer prior to the end of the policy period. Upon termination of your claims-made policy an extended reporting period option is available from your insurer.

Insured: **Arbors at Mountain Shadows Condominium Owners Assoc**

Policy Period **09-11-2022 - 09-11-2023**

Policy Number: **EPPE456396-03**

Countersigned by: **Not Required**
Authorized Representative

Endorsement Effective Date: **09-11-2022**



COLORADO DISCLOSURE FORM CLAIMS-MADE POLICY

There is no difference in the kind of injury or damage covered by occurrence or claims-made policies. Claims for damages may be assigned to different policy periods, depending on which type policy you have.

If you make a claim under your claims-made policy, the claim must be a demand for damages by an injured party and does not have to be in writing. Under most circumstances, a claim is considered made when it is received and recorded by you or by us. Sometimes, a claim may be deemed made at an earlier time. This can happen when another claim for the same injury or damage has already been made, or when the claim is received and recorded during an extended reporting period.

PRINCIPAL BENEFITS

This policy provides for coverage for the Non-Profit Organization, its Subsidiaries and their Insured Persons for Loss from Wrongful Acts claimed against them up to the maximum dollar limit specified in the policy.

The principal benefits and coverages are explained in detail in your claims-made policy. Please read them carefully and consult your insurance producer about any questions you might have.

RENEWAL AND EXTENDED REPORTING PERIODS

Your claims-made policy has some unique features relating to renewal, extended reporting periods and coverage for events with long periods of potential liability exposure.

If there is a retroactive date in your policy, no event occurrence prior to that date will be covered under the policy even if reported during the policy period. It is therefore important for you to be certain that there are no gaps in your insurance coverage. These gaps can occur in several ways. Among the most common are:

1. If your switch from an occurrence policy to a claims-made policy, the retroactive date in your claims-made policy should be no later than the expiration date of the occurrence policy.
2. When replacing a claims-made policy with a claims-made policy, you should consider the following:
 - a. The retroactive date in the replacement policy should extend far enough back in time to cover events with long periods of liability exposure, or
 - b. If the retroactive date in the replacement policy does not extend far enough back in time to cover events with long periods of liability exposure, you should consider purchasing extended reporting period coverage under the old claims-made policy.



**COLORADO DISCLOSURE FORM
CLAIMS-MADE POLICY**

3. If you replace this claims-made policy with an occurrence policy, you may not have insurance coverage for a claim arising during the period of claims-made coverage unless you have purchased an extended reporting period under the claims-made policy. Extended reporting period coverage must be offered to you by law for at least one year after the expiration of the claims-made policy at a premium not to exceed 200% of your last policy premium.

CAREFULLY REVIEW YOUR POLICY REGARDING THE AVAILABLE EXTENDED REPORTING PERIOD COVERAGE, INCLUDING THE LENGTH OF COVERAGE, THE PRICE AND THE TIME PERIOD DURING WHICH YOU MUST PURCHASE OR ACCEPT ANY OFFER FOR EXTENDED COVERAGE.

Nothing herein contained shall be held to vary, alter, waive or extend any of the terms, conditions, provisions, agreements or limitations of the above mentioned Policy other than as above stated.



Community Association Solution
Insurance Policy

**DATA SECURITY WRONGFUL ACTS AND PRIVACY
WRONGFUL ACTS COVERAGE ENDORSEMENT**

Solely for purposes of coverage provided by this endorsement, it is understood and agreed that the following changes are made to the Policy:

THIRD PARTY COVERAGE

Section I. is deleted and replaced with the following:

Section I. Insuring Agreements

- A. If during the **Policy Period** or the **Discovery Period** any **Claim**, including a **Regulatory Action**, is first made against any **Insured Persons** for a **Data Security Wrongful Act** or a **Privacy Wrongful Act**, the **Insurer** shall pay on behalf of the **Insured Persons**, **Loss and Costs of Defense** resulting from such **Claim**, except for any **Loss and Costs of Defense** which the **Organization** or any **Subsidiary** actually pays as indemnification.
- B. If during the **Policy Period** or the **Discovery Period** any **Claim**, including a **Regulatory Action**, is first made against any **Insured Persons** for a **Data Security Wrongful Act** or a **Privacy Wrongful Act** the **Insurer** shall pay on behalf of the **Organization**, **Subsidiary** or **Property Manager**, **Loss and Costs of Defense** resulting from such **Claim**, but only to the extent the **Organization** or any **Subsidiary** is required or permitted by law to indemnify the **Insured Persons**.
- C. If during the **Policy Period** or the **Discovery Period** any **Claim**, including a **Regulatory Action**, is first made against the **Organization**, **Subsidiary** or **Property Manager** for a **Data Security Wrongful Act** or a **Privacy Wrongful Act**, the **Insurer** shall pay on behalf of the **Organization** or any **Subsidiary**, **Loss and Costs of Defense** resulting from such **Claim**.

The **Insurer** has the right and duty to defend any **Claim** to which this insurance applies, even if the allegations of such **Claim** are groundless, false or fraudulent.

FIRST PARTY COVERAGE FOR ORGANIZATION AND SUBSIDIARIES

Section VIII. is amended by the addition of the following:

D. Privacy Event Expenses Provision

The **Insurer** shall reimburse or pay on behalf of the **Organization** or any **Subsidiary** all **Privacy Event Expenses** in excess of the applicable Retention stated in Item 4. of the Declarations and up to the applicable Limits of Liability stated in Item 3. of the Declarations that the **Organization** or any **Subsidiary** incurs as a direct result of a **Data Breach** provided:

Insured: Arbors at Mountain Shadows Condominium Owners Assoc

Policy Period: 09-11-2022 - 09-11-2023

Policy Number: EPPE456396-03

Countersigned by: _____

Authorized Representative

Endorsement Effective Date: 09-11-2022

**DATA SECURITY WRONGFUL ACTS AND PRIVACY
WRONGFUL ACTS COVERAGE ENDORSEMENT**

- (1) such **Data Breach** is first discovered during the **Policy Period**;
- (2) prior to the inception date of the first policy issued by the **Insurer** to the **Organization** and continuously renewed, no **Insured** had a basis to believe that any such **Data Breach** might reasonably be expected;
- (3) the **Insured** reports such **Data Breach** in accordance with the Reporting Obligations for a **Data Breach** section below; and
- (4) the **Insured** obtains the **Insurer's** advance written consent to incur such **Privacy Event Expenses**.

AMENDMENT TO DEFINITIONS

1. Section III.A. is amended by the addition of the following:
Claim shall also mean a **Regulatory Action**.
2. Section III.J. is amended by the addition of the following:
Loss shall also mean **Privacy Regulatory Fines and Penalties, Privacy Event Expenses and Regulatory Restitution Funds**.
3. Section III. is amended by the addition of the following:
"Computer Systems" shall mean any computer, network of computers, mobile device, or internet-enabled or networked telephone, printer, copier or other device, if owned, leased or operated by or on behalf of the **Organization** or any **Subsidiary** in connection with the **Insured's** ordinary business activities, including if operated by a cloud computer provider on behalf of the **Organization** or any **Subsidiary**.
"Data Asset" shall mean software and electronic data, including but not limited to databases, audio files, video files or other image files, maintained by or on behalf of the **Organization** or any **Subsidiary** in connection with the **Organization** or any **Subsidiary's** business operations.
"Data Breach" shall mean the unauthorized access to, loss of control over or disclosure of **Protected Information** maintained by the **Insured** or by those acting on behalf of the **Insured**.
"Data Security Wrongful Act" shall mean an actual or alleged negligent act, error or omission by or on behalf of the **Insured** in the performance of the **Organization** or any **Subsidiary's** business that causes or fails to prevent:
 - (1) the theft of, or unauthorized access to, or disclosure or use of, the **Data Asset** of a client or customer of the **Organization** or any **Subsidiary** stored on the **Computer Systems**;

DATA SECURITY WRONGFUL ACTS AND PRIVACY WRONGFUL ACTS COVERAGE ENDORSEMENT

- (2) unauthorized access to or use of the **Computer Systems** that results in the alteration, corruption, destruction, deletion or damage to **Data Asset** of a client or customer of the **Organization** or any **Subsidiary** stored on the **Computer Systems**;
- (3) the transmission of any virus, worm, trojan horse, backdoor or similar malicious software program or code from the **Computer Systems** to a third party's computer systems;
- (4) unauthorized access to or use of the **Computer Systems** that results in damage or disruption to computer systems of any third party or any **Data Asset** on such third party computer systems, including through a denial-of-service attack or similar action by an unauthorized person; or
- (5) a denial-of-service attack or similar action by any unauthorized person that makes the **Computer Systems** unavailable to authorized clients or customers of the **Organization** or any **Subsidiary**.

"Privacy Event Expenses" shall mean the reasonable and necessary:

- (1) legal and forensic fees and costs to investigate the cause of the **Data Breach**, identify persons affected or potentially affected and determine the extent that any law, regulation, statute or contract requires notification of the **Data Breach**;
- (2) costs of notification of the **Data Breach**, if required by law, regulation, statute or contract or voluntarily incurred with the **Insurer's** prior written consent;
- (3) costs to monitor, freeze or thaw credit or provide credit restoration services for persons affected by the **Data Breach**; and
- (4) image consulting costs to minimize damage to reputation of **Organization** or any **Subsidiary**.

"Privacy Wrongful Act" shall mean an actual or alleged negligent act, error or omission by or on behalf of the **Insured** in the performance of the **Organization** or any **Subsidiary's** business that causes or fails to prevent:

- (1) the loss or theft of, or unauthorized access to, disclosure, copying, use or modification of **Protected Information** held or maintained by or on behalf of the **Organization** or any **Subsidiary**, including by a cloud service provider or other vendor for the **Organization** or any **Subsidiary**, if such theft, access, disclosure or use:
 - (a) results in identity theft or other misuse of such **Protected Information**;
 - or

**DATA SECURITY WRONGFUL ACTS AND PRIVACY
WRONGFUL ACTS COVERAGE ENDORSEMENT**

- (b) violates any federal, state, local or foreign law or regulation, or the **Organization** or any **Subsidiary's** published policies, regarding the maintenance, protection, use or disclosure of **Protected Information**;
- (2) violation of any federal, state, local or foreign law or regulation, or any publicly stated policy of the **Organization** or any **Subsidiary**, relating to **Protected Information** that:
 - (a) prohibits or restricts the **Insured's** collection, sharing or selling of **Protected Information**; or
 - (b) requires the **Insured** to provide access to **Protected Information** or upon request, correct incomplete or inaccurate **Protected Information**;
or
- (3) any fraudulent website or electronic communication, including a phishing email, from impersonating the **Insured** and causing financial loss to any customer or client of the **Organization** or any **Subsidiary**.

"Privacy Regulatory Fines and Penalties" shall mean the sums the **Organization** or any **Subsidiary** is required to pay as part of the settlement or judgment of a covered **Regulatory Action**.

"Protected Information" shall mean:

- (1) any non-public personally identifiable information, including financial, medical or health care information, held or maintained by or on behalf of the **Insured** in connection with the **Organization's** or any **Subsidiary's** business operations, whether in electronic form or otherwise, which is protected from unauthorized access or disclosure by any federal, state, local or foreign law or regulation or by any publicly stated policy of the **Insured**; and
- (2) any confidential, non-public business information of a third party that is in the care or custody of the **Organization** or any **Subsidiary** pursuant to a confidentiality agreement between the **Organization** or any **Subsidiary** and such third party.

"Regulatory Action" shall mean a written request for information, civil investigation or administrative proceeding or civil proceeding brought by any local, state, federal or regulatory agency for any **Privacy Wrongful Act** in connection with a **Data Breach**. However, **Regulatory Action** shall not include any written request, investigation or proceeding brought by or on behalf of the Securities and Exchange Commission.

**DATA SECURITY WRONGFUL ACTS AND PRIVACY
WRONGFUL ACTS COVERAGE ENDORSEMENT**

“Regulatory Restitution Fund” shall mean any sums deposited into a fund and used to provide compensation to individuals affected by a **Privacy Wrongful Act** as part of the settlement or judgment of a **Regulatory Action**.

4. Section III.Q. is amended by the addition of the following:

Wrongful Act shall also mean a **Data Security Wrongful Act** and a **Privacy Wrongful Act**.

AMENDMENT TO EXCLUSIONS

1. Section IV.B. is deleted and replaced with the following:

B. to the extent it is insured in whole or in part by any other valid and collectible policy or policies, (except with respect to any excess beyond the amount or amounts of coverage under such other policy or policies), whether such other policy or policies are stated to be primary, contributory, excess, contingent, or otherwise; provided, however, that coverage for all **Data Breaches** and **Claims** for **Personal Injury Wrongful Acts**, **Data Security Wrongful Acts** and/or **Privacy Wrongful Acts** shall be specifically excess of any similar coverage provided pursuant to terms and conditions of any general liability policy, business owner policy or cyber liability policy issued to the **Organization** or any **Subsidiary**.

2. Section IV.D. is deleted and replaced with the following:

D. based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving: (1) bodily injury, sickness, disease or death of any person, assault or battery; (2) damage to or destruction of any tangible property; or (3) humiliation, mental anguish, or emotional distress; provided, however, that part (3) of this exclusion shall not apply to any **Claim** for a **Privacy Wrongful Act**;

3. The **Insurer** shall not be liable for **Loss**, **Costs of Defense** or any other payment for any **Claim** made against any **Insured** or any **Data Breach** based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving actual or alleged:

DATA SECURITY WRONGFUL ACTS AND PRIVACY WRONGFUL ACTS COVERAGE ENDORSEMENT

- (1) mechanical or electrical failure or outage, routine wear and tear, or a disruption or failure of any infrastructure service or utility supplied by a third-party, including but not limited to power, water, gas, communications or connectivity; provided, however, this exclusion shall not apply to a **Claim** for a **Privacy Wrongful Act**;
- (2) fire, smoke, explosion, lightning, wind, flood, earthquake, volcanic eruption, tidal wave, landslide, hail or act of God or any other physical event, however caused;
- (3) price-fixing, restraint of trade or monopolization;
- (4) violation of any federal, provincial, state, local or foreign statute or regulation prohibiting or restricting unsolicited communications, regardless of whether such communication was transmitted via facsimile, email, text, telephone or otherwise, including but not limited to the Controlling the Assault of Non-Solicited Pornography and Marketing (CAN-SPAM) Act of 2003, the Canadian Anti-Spam Law (CASL) and the Telephone Consumer Protection Act (TCPA);
- (5) misappropriation, infringement or theft, or inducement of misappropriation, infringement or theft of trade secrets;
- (6) war including undeclared or civil war, or seizure, confiscation, expropriation, nationalization, or destruction of a **Computer System** by order of any governmental authority;
- (7) potential violation of any federal, state, foreign or local law or regulation and investigated or pursued by a federal, state, foreign or local regulatory agency or other governmental body, provided, however, this exclusion shall not apply to a **Regulatory Action**;
- (8) act, error, omission or circumstance, which was known by the President, Executive Director, Chairman of the Board, Chief Information Officer, Chief Technology Officer, Chief Security Officer, Risk Manager, General Counsel (or the functional equivalent of any of the foregoing) prior to the inception date of the first policy issued by the **Insurer** to the **Organization** and continuously renewed and which could have been reasonably foreseen to be the basis for a **Claim** or **Data Breach**, including, but not limited to, knowledge of security weaknesses, or vulnerabilities in software, hardware or firmware; or
- (9) breach of any express or implied contract, agreement, warranty or guarantee, including, but not limited to, any express or implied contract or agreement to pay royalties or to account for same; provided, however, this exclusion shall not apply to:

**DATA SECURITY WRONGFUL ACTS AND PRIVACY
WRONGFUL ACTS COVERAGE ENDORSEMENT**

- (a) any liability that an **Insured** would have incurred in the absence of such contract, agreement, warranty or guarantee; or
 - (b) a **Privacy Wrongful Act** when the actual or alleged breach of contract or agreement is to secure or maintain **Protected Information**.
- 4. The **Insurer** shall not be liable for **Loss, Costs of Defense** or any other payment for any **Claim** made against any **Insured** or any **Data Breach** for:
 - (1) any fees or costs to restore, replace or re-collect a **Data Asset** or to update or improve a **Data Asset** to a level beyond that which existed prior to any **Data Security Wrongful Act**;
 - (2) any fees or costs to correct or remediate software program errors, vulnerabilities, deficiencies or problems with any **Computer System**;
 - (3) any amounts incurred by any **Insured** prior to the date a **Claim** is reported to the **Insurer** pursuant to Section VII. or a **Data Breach** is reported pursuant to the Reporting Obligations set below;
 - (4) any overhead expenses of the **Organization** or any **Subsidiary**, including but not limited to compensation or benefits; or
 - (5) the economic or market value of any **Data Asset**.

AMENDMENTS TO LIMITS OF LIABILITY AND RETENTIONS

- 1. Item 3. of the Declarations is amended by the addition of the following:
 - (c) \$50,000 Sublimit of Liability for all **Privacy Event Expenses** from all **Data Breaches**. This Sublimit is part of and not in addition to the Limit of Liability provided for in 3(a).
 - (d) \$250,000 Sublimit of Liability for all **Loss** from all **Claims**, including **Regulatory Actions**, for **Data Security Wrongful Acts** or **Privacy Wrongful Acts**. This limit is part of and not in addition to the Limit of Liability provided for in 3(a).



DATA SECURITY WRONGFUL ACTS AND PRIVACY WRONGFUL ACTS COVERAGE ENDORSEMENT

2. Item 4. of the Declarations is deleted and replaced with the following:

Item 4. Retentions

Insuring Agreement:

I.A.:	\$ <u>0</u>	Each Claim for Data Security Wrongful Acts or Privacy Wrongful Acts
I.B. and I.C.:	\$ <u>1,000</u>	Each Claim for Data Security Wrongful Acts or Privacy Wrongful Acts
	\$ <u>1,000</u>	Each Reimbursement for Privacy Event Expenses pursuant to Section VIII.D. of the Policy

3. Section V. of the Policy is amended by the addition of the following:

The “Each Reimbursement for **Privacy Event Expenses**” Retention amount stated in Item 4. of the Declarations is the **Organization’s** obligation for all **Privacy Event Expenses** from each **Data Breach**.

The “Each **Claim** for **Data Security Wrongful Acts** or **Privacy Wrongful Acts**” Retention stated in Item 4. of the Declarations is the **Organization’s** obligation for each **Claim**, including any **Regulatory Action**. If a **Claim** and **Privacy Event Expenses** arise out of the same **Privacy Wrongful Act** or **Data Breach**, any amounts paid by the **Organization** in satisfaction of the “Each Reimbursement **Privacy Event Expenses**” Retention will also erode the “Each **Claim** for **Data Security Wrongful Acts** or **Privacy Wrongful Acts**” Retention with respect to such **Claim**.

4. Section V.C. is deleted and replaced with the following:

C. **Costs of Defense** incurred by either the **Insurer** or **Insured** shall be subject to applicable Retention and the Limit of Liability for all **Claims**, including **Regulatory Actions**, for **Data Security Wrongful Acts** or **Privacy Wrongful Acts**.

REPORTING OBLIGATIONS FOR A DATA BREACH

After a **Data Breach** is first discovered by an **Insured**, the **Insured** shall, as a condition precedent to coverage pursuant to this endorsement:

- (a) notify the **Insurer** of the **Data Breach** as soon as practicable but in no event later than thirty (30) days after the **Data Breach** is first discovered;



Community Association Solution
Insurance Policy

**DATA SECURITY WRONGFUL ACTS AND PRIVACY
WRONGFUL ACTS COVERAGE ENDORSEMENT**

- (b) take reasonable measures to stop or mitigate the damage caused by such **Data Breach**;
- (c) give the **Insurer**, upon request, a detailed proof of the damage caused by such **Data Breach**;
- (d) submit, upon request of the **Insurer**, to examination under oath and give the **Insurer** a signed statement of the **Insured's** answers; and
- (e) cooperate with the **Insurer** in the investigation and settlement of any payments as a result of the **Data Breach**.

For the purposes of coverage extended by this endorsement, a **Data Breach** is “first discovered” when any **Insured** first becomes aware of facts that would cause a reasonable person to assume a **Privacy Wrongful Act** has occurred even though the exact amount or details of loss may not then be known.

Notice of the **Data Breach**, as required in (a) above, shall be given to the **Insurer** at the address indicated in Section VII.D. of the Policy.

Nothing herein contained shall be held to vary, alter, waive or extend any of the terms, conditions, provisions, agreements or limitations of the above mentioned Policy other than as above stated.

Great American Insurance Company Community Association Management Hotline

Great American Insurance Company is pleased to provide its Community Association Management Liability policyholders with limited access to the **Cole, Scott & Kissane Hotline Service**, a toll-free hotline designed to provide quick, practical guidance on day-to-day homeowner and condominium association issues.

This hotline allows eligible policyholders¹ to receive general guidance from Cole, Scott & Kissane. This guidance is included with the policy. The toll-free hotline is available from anywhere in the United States. Callers often will receive a response the same day, but almost always within 24 hours of placing a call. While there may be slight delays due to a particular attorney's trial or travel schedule or other commitments, CSK's policy is to return calls on the day they are received or within one (1) business day. Most hotline calls last about 10-15 minutes. If a call requires more time, additional time will be allotted. While you can call as often as you wish, the hotline is not a substitute for a relationship with counsel. Please remember to have your policy number available when you call.

The hotline is for receiving a general overview about legal issues. It may not be used to report or file a notice of claim. In order to report a claim, it is your responsibility to notify your insurance agent or broker and Great American Insurance Company in accordance with the terms of the insurance policy. If you have any questions about how to report a claim, contact your insurance agent or broker. Cole, Scott & Kissane, P.A., cannot answer any questions relating to whether an event is or is not covered under any policy or to what extent.

This program was developed in conjunction with Cole, Scott & Kissane, a law firm representing homeowner and condominium associations in Florida. With more than 320 attorneys in 11 offices throughout Florida, the firm has a recognized expertise in homeowner and condominium association related issues. Cole, Scott & Kissane is comprised of attorneys licensed to practice law in the State of Florida.²

The firm's attorneys are available to assist policyholders in managing and minimizing homeowner and condominium association management related claims.

1 Eligible D&O policyholders include current board members of an insured association.

2 Please note that Cole, Scott & Kissane and its lawyers are licensed to practice in the state of Florida and cannot provide legal advice as it relates to questions or claims outside of the State of Florida.

Coverage description is summarized. Refer to actual policy for a full description of applicable terms, conditions, limits and exclusions. The general guidelines provided by Cole, Scott & Kissane are not a substitute for complete legal advice and are provided to assist policyholders in the management of potential losses. In making this service available, Great American does not warrant that all losses can be controlled. The liability of Great American and its affiliated insurers is limited to the terms, limits and conditions of the insurance policies underwritten by any of them. © 2016 Great American Insurance Company, 301 E. Fourth St., Cincinnati, OH 45202. 4177-ELD (3/16)



**Access the
Toll-Free Hotline:**

844-280-2480

*Please have your policy number
available when you call.*

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