

**SACRAMENTO LOCAL AGENCY FORMATION COMMISSION**  
**1112 I Street #100**  
**Sacramento, California 95814**  
**(916) 874-6458**

October 1, 2008

TO: Sacramento Local Agency Formation Commission

FROM: Peter Brundage, Executive Officer

RE: **Liability Insurance Carrier (LAFC 10-08)**

CONTACT: Don Lockhart, AICP, Assistant Executive Officer (916) 874-2937  
([Don.Lockhart@SacLAFCo.org](mailto:Don.Lockhart@SacLAFCo.org))

**RECOMMENDATION**

1. Adopt Resolution No. LAFC 1362 approving the form of and authorizing the execution of a Sixth Amended Joint Powers Agreement and Authorizing participation in the Special District Risk Management Authority's Property and Liability Program. (Note: This also authorizes your Executive Officer to take the necessary steps to enroll the Commission in membership of the California Special Districts Association.)

**BACKGROUND**

At the direction of your Commission staff conducts ongoing budget and operations diligence. This past fiscal year staff reviewed the Liability Insurance policy first entered into in 2001, when the Sacramento LAFCo became an independent agency. It was found that a change in the liability insurance carrier from the Sacramento County Risk Management Office to the Special District Risk Management Authority (SDRMA) will result in a substantial cost savings.

**DISCUSSION**

Various LAFCos throughout the state have taken steps to become independent agencies. In the course of discussions with other LAFCos, your staff found that fifteen other Commissions have realized significant savings by joining the SDRMA JPA.

The Sacramento County Risk Management Office exercised their fiduciary responsibility and conducted a side by side comparison of the current liability policy and the one offered by SDRMA, (Attachment A.) The outcome of the analysis clearly shows that a

change in carrier will result in a stronger policy, with a considerable cost saving. Commission Counsel has also reviewed the new policy. A summary of the SDRMA Property and Liability Program is provided in Attachment B.

In order to take advantage of this policy, membership in the California Special Districts Association is required (\$427 annual dues.) There is also an initial three year commitment of participation. The policy will renew annually thereafter.

The current policy will expired September 29, 2008, subject to an automatic renewal. By acting this evening, your Commission will provide for a seamless transition between carriers. *The annual savings, including CSDA membership dues, will be approximately \$5000, which is roughly half of the current policy cost of \$10,000+, with an additional 10% administrative fee.* (The new policy does not impose an administrative fee.)

No opposition regarding this proposal has been received by your staff.

**EXECUTIVE OFFICER'S COMMENTS**

I recommend that your Commission:

1. Adopt Resolution No. LAFC 1362 approving the form of and authorizing the execution of a Sixth Amended Joint Powers Agreement and Authorizing participation in the Special District Risk Management Authority's Property and Liability Program. (Note: This also authorizes your Executive Officer to take the necessary steps to enroll the Commission in membership of the California Special Districts Association.)

Respectfully submitted,

**SACRAMENTO LOCAL AGENCY FORMATION COMMISSION**



Peter Brundage  
Executive Officer

Attachments: Exhibit A: Special Liability Insurance Programs Comparison  
Exhibit B: SDRMA Property and Liability Programs Summary  
Exhibit C: Liability Insurance Policy  
Exhibit D: Participating SDRMA Commissions

DL:dl  
(Liability Insurance Carrier #10-08)

# Attachment A

## Special Liability Insurance Program (SLIP) vs Special Districts Risk Management Authority (SDRMA) Program Comparison

	SLIP	SDRMA
<b>Program Type:</b>	Group purchase program	Public entity joint powers authority
<b>Commitment Period:</b>	Annual	Initial 3 year commitment, then annual
<b>Renewal Date:</b>	September 29	July 1
<b>Coverages:</b>	Manuscript Liability including: Bodily Injury Property Damage Public Officials E&O Employment Practices Liability Non-Owned and Hired Auto Liability	Manuscript Liability including: Personal Injury Bodily Damage Public Officials E&O Employee Benefits E&O Employment Practices Liability Non-Owned and Hired Auto Liability Property and Boiler & Machinery Crime
<b>Carriers:</b>	Liability - Everest Indemnity (A+, XV)	Liability - MOC R/I by Munich American (A+, XV) Property - PEP/PIP, various carriers (minimum A- VII) Crime - Great American (A, XIII)
<b>Liability Limits:</b>	\$2,000,000 per occurrence * \$2,000,000 annual aggregate for Products/Completed Operations; Public officials E&O and Employment Practices Liability. No General Aggregate.	\$2,500,000 per occurrence * \$2,500,000 annual aggregate for Products/Completed Operations; Public officials E&O and Employment Practices Liability. No General Aggregate.
<i>* Higher limits available up to \$10,000,000</i>	\$1,000 per occurrence except \$10,000 for Employment Practices Liability	None except \$500 for GL Property Damage and \$1,000 for AL Property Damage
<b>Liability Deductibles:</b>	Employment Practices Liability	
<b>Major Liability Exclusions:</b>	Workers' Compensation Asbestos	Workers' Compensation Asbestos

**Special Liability Insurance Program (SLIP) vs  
Special Districts Risk Management Authority (SDRMA)  
Program Comparison**

Major Liability Exclusions (cont.):	SLIP	SDRMA
	Failure to Supply	Failure to Supply
	Pollution Except for Hostile Fire and Vehicle Upset / Overtum coverage	Pollution Except for caused by Hostile Fire, Lightning, Vehicle Collision, Hazardous Material Transport by Auto, Sewer Backup, Use of Chlorine or disinfectants, Pesticide or herbicide application at non-owned locations.
	Inverse Condemnation / Eminent Domain	Inverse Condemnation/Eminent Domain
	Care, Custody, and Control	Care, Custody an Control
	Medical Payment Coverage	
	Dam Liability	Dam Liability
	Watercraft over 51 feet in length	Aircraft
	Airports	Airports
	Watercraft over 51 feet in length	Watercraft over 51 feet in length
	Medical Malpractice (except incidental)	Medical Malpractice (except incidental)
	Subsidence	Subsidence
	Nuclear Material	Nuclear Material
	ERISA	ERISA
	Fungi or Bacteria	Fungi or Bacteria
	War or Terrorism	War or Terrorism
	Securities and Financial Interest	Securities and Financial Interest
	Mold	Mold
	Transit Operations	Transit Districts
	Montrose Exclusion -- Prior knowledge of incident or loss	Must occur during the policy period
	Contractual	Contractual
	Athletic Participants	Recreation Equipment and Facilities
	Abuse & Molestation (Coverage can be added at an additional cost)	School Districts
	Residential Construction	Law Enforcement

**Special Liability Insurance Program (SLIP) vs  
Special Districts Risk Management Authority (SDRMA)  
Program Comparison**

	<b>SLIP</b>	<b>SDRMA</b>
<b>Major Liability Exclusions (cont.):</b>	Bodily Injury of Tenants or Guests of Tenants for Habitational Risks	Internet and Y2K
<b>Property Limits:</b>	N/A	Replacement cost - \$100,000 scheduled contents
<b>Property Deductible:</b>	N/A	\$2,000
<b>Crime Limits:</b>	N/A	\$400,000
<b>Crime Deductible:</b>	N/A	None
<b>Premium:</b>	\$9,528 (07/08, prorated for 11 month term)	\$5,986
<b>Subject to:</b>	None - current participant	Verification and final underwriting review Resolution of the SLAFC Board of Directors Execution of SDRMA governing documents Submission of 6 years of loss history Completion of crime application Annual membership in California Special Districts Association (\$427 fees) Approval of SLAFC by SDRMA Board of Directors



### Property and Liability Program

Special District Risk Management Authority (SDRMA) offers a straightforward, uncomplicated program for special districts and other public agencies. Coverage documents are broad form manuscript policies written on an "occurrence form" to ensure the highest level of coverage and maximum protection of assets for governmental entities providing municipal services. Established in 1986, this program has a proven reputation for stable, competitive rates, actuarially based fiscal management, and sound underwriting practices.

#### CLAIMS MANAGEMENT PROGRAM

SDRMA recognizes that claims management is a critical component and serves as the strength of our risk management program. Under the supervision of Chief Risk Officer Dennis Timoney, property and liability claims are processed, managed and adjusted "in-house". Our primary objective is to prevent employee injuries and positively impact the overall cost of property and liability coverages, as well as provide employees and employers fair and equitable claims management and resolution. SDRMA uses state-of-the-art claims management software to provide an accurate up-to-date status of each claim, loss run reports and financial information. Moreover, SDRMA's role is not to be adversarial, but to create a partnership with its members.

#### LOSS CONTROL AND PREVENTION PROGRAM

SDRMA believes the key to a successful loss control and prevention program is quality, relevant education. Our members are provided with a variety of loss prevention programs, at no additional cost, including an online certified safety training program, a minimum of three training seminars annually, on-site educational programs (upon request) and access to a library containing more than 130 training videotapes.

#### VALUE ADDED SERVICES

Members participate in a complimentary safety management program including:

- Online Certified Safety Training Program
- On-site Risk Management, Assessment and Loss Control Visits
- Contract Review and Risk Analysis
- Policy Manuals on Safety and Risk Management Issues
- Defensive Driver Training Courses
- DMV Records Review
- Risk Management Videotape Library
- Property Valuations
- Special Events Liability Assistance
- Safety Education and Training Seminars

#### RISK MANAGEMENT SERVICES

Property and liability coverage protection is just one component of SDRMA's overall risk management program. Our risk management program includes risk assessment, risk analysis, risk protection (insurance coverage) and loss control. Asset protection for Agency exposures, assisting in preventing future losses, educating Agency staff, monitoring the Agency's regulatory environment and providing the Agency with access to a risk manager are all elements of the overall risk management program.

#### WITHDRAWAL FROM PROGRAM

In order to withdraw from the Program the member must have completed the three (3) full program year participation requirement. Notice of intention to withdraw from the Program must be given to the Authority at least 90 days prior to the end of the program year.





Attachment C



**PEPIP USA FORM No. 3**  
**MASTER POLICY WORDING**

**COVERAGE INCEPTING**  
**FROM JULY 1, 2007 TO JULY 1, 2008**

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## SECTION I

### GENERAL PROVISIONS

#### A. INSURING AGREEMENT

In consideration of the premium paid by the Insured to the Company, the Company agrees to insure the following per the terms and conditions herein.

#### B. NAME OF INSURED

AS PER DECLARATION PAGE

and its member(s), entity(ies), agency(ies), organization(s), enterprise(s) and/or individual(s) for whom the Named Insured is required to provide coverage, as so named in the "Named Insured – Member Schedule" attached to this policy and/or on file with Alliant Insurance Services, Inc., as their interests may appear which now exist or which hereafter may be created or acquired and which are owned, financially controlled or actively managed by the herein named interest, all jointly, severally or in any combination of their interests, for account of whom it may concern.

Lessors and other party(ies) of interest in all property of every description covered hereunder are included herein as additional Named Insured's for their respective rights and interests, it being understood that the inclusion hereunder of more than one covered party shall not serve to increase the Company's limit of liability.

Mortgagees to whom certificates of coverage have been issued are covered hereunder as additional Named Insured's in accordance with the terms and conditions of Form 438 BFU NS, CP12 18 1091, or equivalent as required by the mortgagee.

Loss, if any, shall be adjusted with the Insured and payable to the Named Insured's as their respective interests may appear, subject however, to the provisions of any mortgagees or payee clauses which may otherwise be herein provided or endorsed hereon.

#### C. MAILING ADDRESS OF INSURED:

AS PER DECLARATION PAGE

#### D. POLICY PERIOD:

AS PER DECLARATION PAGE

#### E. LIMITS OF LIABILITY:

The provisions of the reinstatement clause as stated elsewhere herein, are null and void as respects the perils of earthquake shock and flood.

Subject to specific exclusions, modifications, and conditions hereinafter provided, the liability of the Company in any one occurrence regardless of whether one or more of the coverages of this Policy are involved shall not exceed:

1. SPECIFIC LIMITS OF LIABILITY

The Specific Limits of Liability as described in the Declaration Page apply per occurrence unless indicated otherwise.

2. SUB-LIMITS OF LIABILITY

The following sub-limits of liability are provided as described in the Declaration Page and apply per occurrence unless indicated otherwise. Coverage is provided only if a sub-limit of liability is shown in the Declaration Page for that item, and do not increase the specific limits of liability. The absence of a sub-limit of liability amount in the Declaration Page means that no coverage is provided for that item.

- a. Per occurrence, and in the annual aggregate as respects the peril of flood (for those member(s) / entity(ies) that participate in this optional dedicated coverage);
- b. Per occurrence, and in the annual aggregate as respects the peril of earthquake shock for those member(s) / entity(ies) that participate in this optional dedicated coverage;
- c. Combined Business Interruption, Rental Income, Tax Interruption and Tuition income (and related fees) ;
- d. Extra Expense;
- e. Miscellaneous Unscheduled Property;
- f. Automatic Acquisition. As per policy provisions;
- g. Unscheduled Landscaping, tees, sand traps, greens and athletic fields if specific values for such items have not been reported as part of the member(s) / entity(ies) schedule of values held on file with Alliant Insurance Services, Inc;
- h. Scheduled Landscaping, tees, sand traps, greens and athletic fields if specific values for such items have been reported as part of the Member(s) / Entity(ies) schedule of values held on file with Alliant Insurance Services, Inc;
- i. Errors & Omissions;
- j. Course of Construction and Additions;
- k. Money and Securities for Fire, Wind, Hail, Explosion, Smoke, Lightning, Riot, Civil Commotion, Impact by Aircraft or Objects falling there from, Impact by Vehicles, Water Damage and Theft (other than by an employee of the member(s) / entity(ies));
- l. Prize Giveaways solely as respects member(s) / entity(ies) that participate in this optional coverage;
- m. Unscheduled Fine Arts (as more fully defined herein);
- n. Accidental Contamination including owned land, land values and water owned by the member(s) / entity(ies);
- o. Unscheduled Tunnels, bridges, dams, catwalks (except those not for public use), roadways, highways, streets, sidewalks, culverts, street lights and traffic signals unless specific values for such items have been reported as part of a member(s) / entity(ies) schedule of values held on file in the offices of Alliant Insurance Services, Inc. excluding Federal Emergency Management Agency (F.E.M.A.) and/or any State Office of Emergency Services (O.E.S.) declared disasters;
- p. Increased Cost of Construction due to the enforcement of building codes / ordinance or law;

- q. Transit;
- r. Unscheduled Animals;
- s. Unscheduled Watercraft; up to 27 feet
- t. Research Animals solely as respects Universities;
- u. Off premises services interruption including extra expense resulting from a covered peril at non-owned/operated location(s);
- v. Separately as respects Contingent Business Interruption, Contingent Rental Value, and Contingent Extra Expense;
- w. Per occurrence and in the annual aggregate as respects the peril of Earthquake Shock for licensed vehicles, unlicensed vehicles, contractors equipment and fine arts combined for all member(s) / entity(ies) of this declaration combined that do not purchase optional dedicated Earthquake Shock coverage, and/or where specific values for such items are not covered for optional dedicated Earthquake Shock coverage as part of the member(s) / entity(ies) schedule of values held on file with Alliant Insurance Services, Inc.;
- x. Per occurrence and in the annual aggregate: as respects the peril of Flood for licensed vehicles, unlicensed vehicles, contractors equipment and fine arts combined for all member(s) /entity(ies) of this declaration combined that do not purchase optional Flood coverage, and/or where specific values for such items are not covered for optional dedicated Flood coverage as part of the member(s) / entity(ies) schedule of values held on file with Alliant Insurance Services, Inc.;
- y. Claim Preparation Expenses;
- z. Expediting Expenses;
- aa. Separately as respects Furs, jewelry, precious metals and precious stones;
- ab. Business Interruption for Power Generation Facilities, which is understood to be part of and not additional to the sublimit of liability set forth in Item 2 c. above;
- ac. Terrorism;
- ad. Personal Property outside the U.S.A.;
- ae. Boiler Explosion and Machinery Breakdown (for those member(s) / entity(ies) that participate in this optional dedicated coverage).

**F. OPTIONAL COVERAGE PARTICIPATION**

It is understood and agreed that certain Insured's participate in Optional Coverage on this Policy as set forth below.

**OPTIONAL COVERAGES IDENTIFICATION:**

- 1. Earthquake Shock
- 2. Licensed Vehicles – Off Premises
- 3. Scheduled Fine Arts
- 4Flood
- 5. Boiler Explosion & Machinery Breakdown
- 6. Terrorism Risk Insurance Act of 2002

7CyberSecure – solely as respects the optional coverage provided by AIG / Lexington Insurance Company Limited

8. Homeland Protector – solely as respects the optional coverage provided by AIG / Lexington Insurance Company Limited
9. Prize Giveaways

Such participation in the optional coverage(s) by the Insured is indicated in the Declaration Page, and/or by endorsement to this policy.

**G. DEDUCTIBLE PROVISIONS:**

If two or more deductible amounts provided in the Declaration Page apply for a single occurrence the total to be deducted shall not exceed the largest per occurrence deductible amount applicable.

Deductibles are shown on the Declaration Page, or by endorsement and may vary by member of a joint powers authority (JPA) or risk sharing pool (Pool), or the coverage part pertaining to the loss.

Unless a more specific deductible is applicable for a particular loss, the “Basic Deductible” shown in the Declaration Page, shall apply per occurrence. The company will not pay for loss or damage in any one occurrence until the amount of the loss or damage exceeds the applicable deductible.

The “JPA/Pool Basic Deductible” – when applicable will be in excess of a JPA or Pool member’s deductible amount. The member’s deductible amount will be agreed upon between the JPA or Pool and its members. The “JPA/Pool Basic Deductible” shown in the Declaration Page, shall apply per occurrence. The company will not pay for loss or damage in any one occurrence until the amount of the loss or damage exceeds the applicable constituent members’ deductible and the JPA/Pool Basic Deductible, until the “JPA/Pool Annual Aggregate Amount” is exhausted.

The “JPA/Pool Annual Aggregate Amount” - when applicable- is the accumulation of payments made by the JPA or Pool that are categorized as “JPA/Pool Basic Deductibles” above. Once the annual aggregate amount is reached, all subsequent losses in chronological order are subject to the “JPA/Pool Maintenance Deductible” indicated in the Declaration Page. As with the “JPA/Pool Basic Deductible” this maintenance deductible will be applicable in excess of the applicable JPA or Pool constituent member’s deductible.

**H. UNIT OF INSURANCE DEFINED:**

In the application of the Earthquake Shock, or specified Wind deductibles, in accordance with the provisions of this Policy, each of the following shall be considered a Separate Unit of Insurance:

1. Each Separate Building or Structure;
2. The Contents of each Building or Structure;
3. Applicable Time Element Coverage of each separate Building or Structure; and
4. Property in each Yard.



The Company shall not be liable for loss to any Unit of Insurance covered hereunder unless such loss exceeds the percentages stated in this Policy of the replacement values of such Unit of Insurance at the time when such loss shall happen, and then only for its proportion of such excess.

The Terms and Conditions stated in G (Deductible Provisions) and H (Unit of Insurance Defined) supersede the provisions of any Deductible Clause contained elsewhere in this Policy.

**I. DEFINITION OF MEMBER:**

The term "member" as used in this policy, shall mean any member(s), entity(ies), agency(ies), organization(s), enterprise(s) and/or individual(s) so named on the "Named Insured – Member Schedule" attached to this policy and/or on file with Alliant Insurance Services, Inc.

**J. STATUTES:**

If any of the articles of this Policy conflict with the laws or statutes of any jurisdictions in which this Policy applies this Policy is amended to conform to such laws or statutes.

## SECTION II

### PHYSICAL DAMAGE TO PROPERTY

#### A. COVERAGE:

Subject to the terms, conditions and exclusions hereinafter contained, this Policy insures all property of every description of an insurable nature, both real and personal (including improvements, betterments and remodeling), of the Insured or property of others in the care, custody or control of the Insured, for which the Insured is liable or under obligation to insure.

It is also understood and agreed that the interest of additional covered parties and/or loss payees are automatically included.

#### B. EXTENSIONS OF COVERAGE:

##### 1. PERSONAL EFFECTS

This Policy is extended to cover only such personal effects and wearing apparel of any of the officials, employees, students and personal effects of the Insured named in this Policy for which the Insured may elect to assume liability while located in accordance with the coverage hereof, but loss, if any, on such property shall be adjusted with and payable to the Insured.

##### 2. PROPERTY IN COURSE OF CONSTRUCTION AND ADDITIONS

It is understood and agreed that as respects course of construction projects and additions, this Policy will provide automatic coverage subject to the following conditions:

- a. Project involves only real property on new or existing locations (excluding dams, roads, and bridges)
- b. Value of the project at the location does not exceed USD as per Declaration Page. Projects that exceed this amount are subject to approval prior to binding. However, inadvertent failure to report shall not void coverage of said Project.
- c. Additional Expense Soft Cost: This coverage applies to new buildings or structures in the course of construction up to the time that the new building (s) or structure (s) is initially occupied or put to its intended use whichever occurs first.

The Company will cover the additional expenses of the Insured as defined below for up to 25% of the estimated completed value of the project which results from a delay in the completion of the project beyond the date it would have been completed had no loss or damage occurred. The delay must be due to direct physical loss or damage to property insured and be caused by or result from a peril not excluded by this Policy. The Company will pay covered expenses when they are incurred.

- a. Additional Interest Coverage – The Company will pay the additional interest on money the Insured borrows to finance construction or repair.
- b. Rent or Rental Value Coverage – The Company will pay the actual loss of net rental income that results from delay beyond the projected completion date. But the Company will not pay more than the reduction in rental income less charges and expenses that do not necessarily continue.
- c. Additional Real Estate Taxes or Other Assessments – The Company will pay the additional real estate taxes or other assessments the Insured incurs for the period of time that construction is extended beyond the completion date.
- d. Additional Advertising and Promotional Expenses – The Company will pay the additional advertising and promotional expense that becomes necessary as a result of a delay in the completion of the project.
- e. Additional Commissions Expense – The Company will pay the additional expenses, which result from the renegotiating of leases following an interruption in the project.
- f. Additional Architectural and Engineering Fees – The Company will pay the additional architectural and engineering fees that become necessary as a result of a delay in the completion of the project.
- g. Additional License and Permit Fees – The Company will pay the additional license and permit fees that become necessary as a delay in the completion of the project.
- h. Legal and Accounting Fees – The Company will pay the additional legal and accounting fees the Insured incurs as a result of a delay in the completion of the project.

**3. FIRE FIGHTING EXPENSES**

It is understood and agreed that the Company shall be liable for the actual charges of fire fighting expenses including but not limited to those charged by municipal or private fire departments responding to and fighting fire in / on, and/or protecting property included in coverage provided by this Policy.

**4. OFF PREMISES SERVICES INTERRUPTION**

It is understood and agreed that coverage under this Policy is extended to include physical damage, business interruption loss and/or extra expense incurred and/or sustained by the Insured as a result of physical damage to or destruction of property, by the perils insured against occurring during the policy period of any suppliers furnishing heat, light, power, gas, water, telephone or similar services to an Insured's premises. The coverage provided by this clause is sublimited to USD as per Declaration Page, and Section 1 (General Provisions) of this form.

**5. ARCHITECTS AND ENGINEERS FEES AND LOSS ADJUSTMENT EXPENSES**

This Policy also insures as a direct result of physical loss or damage insured hereunder, any of the following:

- a. Architects and engineers fees
- b. Loss adjustment expenses including, but not limited to, auditors, consultants and accountants. However the expenses of public adjusters are specifically excluded.

**6. EXPEDITING EXPENSES**

In the event of physical loss or damage insured hereunder, it is understood and agreed that coverage under this Policy includes the reasonable extra cost of temporary repair and of expediting the repair of such damaged property of the Insured, including overtime and the extra costs of express or other rapid means of transportation. This coverage provided by this clause is sublimited to USD as per the Declaration Page.

**7. DEBRIS REMOVAL**

This Policy also covers expenses incurred in the removal of debris of the property covered hereunder from the premises of the Insured that may be destroyed or damaged by a covered peril(s). This debris removal coverage does not apply to the cost to extract pollutants from land or water, or to remove, restore or replace polluted land or water.

**8. BUILDING LAWS**

In the event of physical damage to property insured by a covered peril, this Policy is extended to cover the loss occasioned by the enforcement of any local or state ordinance or law regulating the construction, repair or demolition of buildings or structures, which is in force at the time such a loss occurs, which necessitates the demolition of any portion of the covered building not damaged by the covered peril(s).

**9. DEMOLITION COST**

In the event of physical damage to property insured by a covered peril, this policy is extended to cover the cost of demolishing any undamaged portion of the covered property including the cost of clearing the site thereof, caused by loss from any covered peril(s) under this Policy and resulting from enforcement of any local or state ordinance or law regulating the construction, repair or demolition of buildings or structures and in force at the time of loss which necessitates such demolition.

**10. INCREASED COST OF CONSTRUCTION**

In the event of physical damage to property insured by a covered peril this Policy is extended to cover the increased cost of repair or replacement occasioned by the enforcement of any local state ordinance or law regulating the construction, repair or demolition of buildings or structures, which is in force at the time such a loss occurs or which comes into force within 12 months after such a loss occurs, which necessitates in repairing or replacing the building covered hereunder which has suffered damage or destruction by the covered peril(s) or which has undergone demolition, limited, however, to the minimum requirements of such ordinance or law.

The maximum amount of additional loss insured by this policy which results from the above referenced 12 month period is not to exceed 20% of the amount of the physical damage loss or USD25,000,000 whichever is greater from which this additional loss results.

**11. ERRORS & OMISSIONS**

No unintentional errors or unintentional omissions in description, location of property or valuation of property will prejudice the Insured's right of recovery but will be reported to the Company as soon as practicable when discovered. The coverage provided by this clause is sublimited to USD as per Declaration Page, and Section 1 (General Provisions) Clause E of this form.

**12. ANIMALS**

This policy is extended to cover retraining expenses associated with the loss of specially trained animals. Re-training expenses are included within the sublimit provided, unless otherwise scheduled.

**Notwithstanding the foregoing it is hereby understood and agreed that solely as respects Universities the following shall apply:**

This policy is extended to cover physical loss or damage to animals used for research subject to applicable exclusions under Section IV (General Conditions) B. Perils Excluded.

**13. VALUABLE PAPERS**

This policy is extended to cover Valuable Papers or the cost to reconstruct valuable papers (including but not limited to research, redrawing or duplicating) physically lost or damaged by a peril insured against during the term of this Policy.

**14. TRANSIT**

This policy is extended to cover Personal Property of the Insured or property held by the Insured in trust or on commission or on consignment for which the Insured may be held legally liable while in due course of transit, worldwide, against all risks of Direct Physical Loss or Damage not excluded by this Policy to the property insured occurring during the period of this Policy.

The coverage provided by this clause is sublimited to USD as per Declaration Page, and Section 1 (General Provisions) Clause E of this form.

**15. VEHICLES WHILE ON INSURED PREMISES**

This policy is extended to cover Vehicles while on premises of the Insured against physical loss or damage by a peril insured against during the term of this Policy.

**16. ASBESTOS CLEAN UP AND REMOVAL**

a. This policy specifically excludes Asbestos materials clean-up or removal, unless asbestos is itself damaged by a peril covered by this policy, then asbestos clean up or removal within the damaged area, and applicable time element coverages, will be covered by this policy.

b. In no event will coverage be extended to cover undamaged asbestos, including undamaged asbestos in any portion of the building mandated by any governmental direction or request declaring that asbestos material present in any undamaged portion of the Insured's property must be removed or modified, or;

any loss or expense including investigation or defense costs, caused by, resulting from, or arising out of asbestos, exposure to asbestos, or any product containing asbestos, or;

any loss or expense normally provided by demolition, increased cost or building ordinance.

**C. PROPERTY NOT COVERED:**

Except as for that which may be provided as an Extension of Coverage, this policy does not cover:

1. Aircraft, watercraft over 27 feet in length, and rolling stock, except scheduled watercraft, and rolling stock, light rail vehicles, subway trains and related track maintenance vehicles for light rail and subway lines.
2. Standing timber, bodies of water, growing crops.

3. Land, (including land on which covered property is located), and land values (except athletic fields, landscaping, sand traps, tees and greens).
4. Property in due course of ocean marine transit.
5. Shipment by mail after delivery into the custody of the United States Post Office.
6. Power transmission lines, feeder lines and underground pipes more than 1,000 feet from the premises of the Insured unless specifically approved by the Company.
7. Unscheduled tunnels, bridges, dams, catwalks (except those not for public use), roadways, highways, streets, sidewalks, culverts, streetlights, and traffic signals, excess of the sublimit terms provided on the Declaration Page,
8. Offshore property, oilrigs, underground mines, caverns and their contents. Railroad track is excluded unless values have been reported by the Insured.

**D. LOSS PAYMENT BASIS / VALUATION**

In case of loss to property of an Insured covered hereunder, the basis of adjustment shall be as of the time and place of loss as follows:

1. On all real and personal property, including property of others in the care or control of the Insured at the replacement cost (as defined below) at the time of the loss without deduction for depreciation. If property is not replaced within a reasonable period of time, then the actual cash value shall apply.
2. On improvements and betterments at the replacement cost at time of loss without deduction for depreciation. If property is not repaired or replaced within a reasonable period of time, then the actual cash value shall apply. If replaced or repaired by others for the use of the Insured, there shall be no liability hereunder. The Company agrees to accept and consider the Insured as sole and unconditional owner of all improvements and betterments, any contract or lease the Insured may have made to the contrary notwithstanding.
3. On manuscripts, mechanical drawings, patterns, electronic data processing media, books of accounting and other valuable papers, the full replacement cost of the property at the time of loss (including expenses incurred to recreate the information lost, damaged or destroyed, except as may be limited by any separate policy provision) or what it would then cost to repair, replace or reconstruct the property with other of like kind and quality. If not repaired, replaced or reconstructed within a reasonable period of time, then not to exceed the cost of blank or unexposed material.

4. On antique, restored or historical buildings, the cost of acquisition, relocation to the site and renovation or reconstruction. In the event of a partial loss, replacement cost for antique, restored or historical buildings shall mean the cost of repairing, replacing, constructing or reconstructing (whichever is less) the property on the same site using materials of like kind and quality necessary to preserve or maintain a buildings' historical significance without deduction for depreciation.
5. On property of others for which the Insured is liable under contract or lease agreement the Company's liability in the event of loss is limited to the Insured's obligation as defined in said contract or lease agreement but not to exceed the replacement cost.
6. On library contents, at replacement cost, or as follows, whichever is greater:

Category		Value (per item)
Juvenile Picture Book	USD	42.00
Juvenile Book	USD	31.62
Juvenile Reference Book	USD	43.00
Pamphlets	USD	5.00
Magazines	USD	10.00
Fiction	USD	25.39
Law Periodical	USD	126.25
Non-Fiction	USD	83.28
Reference	USD	147.15
Law Reference	USD	118.32
Art	USD	60.18
Film (16mm)	USD	1,200.00
Film (8mm)	USD	53.41
Film (Super 8mm)	USD	390.00
Strips	USD	8.00
Cassette Film Strips	USD	60.00
Records	USD	143.88
Videos (Tapes and CDs)	USD	135.00
Audio Cassette	USD	25.00
Computer Software (incl. CDs)	USD	1,417.00
(Law) CD ROM	USD	228.00
Books on Tape	USD	53.50
Law Magazines	USD	126.25
Compact Discs	USD	38.14
Paperback Books	USD	31.97

The figures above do not include the "shelving cost" of each book. Therefore, the formula for adjusting a library contents loss is:

"Number of items in a category that are replaced multiplied by the valuation figure plus associated shelving costs".



The actual cost per item in the final adjustment is to be computed as of the time and place of loss or damage.

7. On Vehicles, and Contractors Equipment (whether self propelled or not), on or off premises, where Replacement Cost (New) values are specified, loss or damage shall be based on 100% of the Replacement Cost (New) at the time of loss. Partial losses shall be based on the cost of repairing or replacing the damaged portion, up to the fair market value of the Vehicle and/or Equipment. However, should these costs exceed the fair market value then recovery shall be based upon the Replacement Cost (New).

If the values, provided by the Insured, provides a valuation based on replacement cost, then recovery will be on the same basis, if replaced. If not replaced, the basis of recovery shall be actual cash value.

8. Animals: The stated value as per schedule on file with the Insured.

**Notwithstanding the foregoing it is hereby understood and agreed that solely as respects Universities the following shall apply:**

The stated value as per schedule on file with the Insured except Research Animals shall be valued at the cost to replace with like kind and quality; including the increased value as a result of prior research or experiments performed on the animal(s), accumulated cost of care and maintenance, and the value of labor expended by research assistants and/or laboratory technicians.

9. Landscaping, sand traps, tees, putting greens and athletic fields; the actual replacement cost of sod, shrubs, sand, plants and trees; however the Company's liability for replacement of trees, plants and shrubs will be limited to the actual size of the destroyed plant, tree or shrub at the time of the loss up to a maximum size of 25 gallons per item but not to exceed USD 25,000 per item.

For the purpose of determining coverage under this policy landscaping, trees, plants and shrubs are only insured if their position and planting was undertaken by human agency for cosmetic effect.

Wherever the term "actual cash value" is used as respects real property or improvements and betterment's in this clause, or elsewhere herein, it shall mean replacement cost less depreciation.

The aforementioned valuations shall also be used for the purpose of the assessment adjustment clause of this Policy.

"Replacement cost" shall mean the cost of repairing, replacing, constructing or reconstructing (whichever is the least) the property on the same site, using new materials of like kind and quality and for like occupancy without deduction for depreciation, subject to the following:

- (i) Until the property is actually repaired, replaced or reconstructed, the maximum amount recoverable shall be the actual cash value of the lost or damaged property;
- (ii) Replacement shall be effected by the Insured with due diligence and dispatch;

- (iii) Replacement need not be on same site, or of same or similar construction or occupancy provided that the Company shall not be liable for any additional costs that are directly attributable to the inclusion of this provision.
- (iv.) For historical buildings as more specifically defined in this Section.

It is understood and agreed that as respects replacement cost, the Insured shall have the option of replacement with electrical and mechanical equipment having technological advantages and/or representing an improvement in function and/or forming part of a program of system enhancement provided that such replacement can be accomplished without increasing the Company's liability. The Company shall be allowed to dispose of, as salvage, any non-proprietary property deemed unusable by the Named Insured.

In the event the Insured should fail to comply with any of the foregoing provisions settlement shall be made as if this Replacement Cost provision had not been in effect.

**E. SPECIAL CONDITION – AUTOMATIC COVERAGE / REPORTING CONDITIONS**

Subject to the terms, conditions and limitations in the Additional Conditions Section entitled “Automatic Acquisition Clause,”

It is understood and agreed that:

- i. This Policy is automatically extended to cover all additional property as described in this Policy and associated Business Interruption / Extra Expense which may be purchased, leased, acquired or otherwise become at the risk of the Insured during the term of this Policy
- ii. The Company shall automatically cover such property and/or properties, subject to all the terms and conditions of the Policy to which this clause is attached; provided, however, that if there shall be any other insurance covering such additional property this Policy shall not attach or provide coverage thereon until liability of all such other insurance shall have first been exhausted and shall then attach and cover only for its proportion of the excess of loss, if any, over and above the amount due from such other insurance, whether valid or invalid or by solvent or insolvent insurers.
- iii. It is understood and agreed as respects earthquake shock at Policy annual inception, for those members that purchase the earthquake shock peril only, per the sublimit that appears on the Declaration Page, automatic coverage applies for the peril of earthquake shock for a period of 30 days from date of contractual requirement by any bond, certificate of participation or any similar investment, for any new locations where there is such a contractual requirement to provide earthquake shock coverage. Otherwise there is no Automatic Coverage for Earthquake Shock for any other new locations.

**F. DEFINITIONS:**

**1. OCCURRENCE**

Each occurrence is defined as a loss, incident or series of losses or incidents not otherwise excluded by this Policy and arising out of a single event or originating cause and includes all resultant or concomitant insured losses. When the term applies to loss or losses from earthquake shock, flood and/or windstorm, the following provisions shall apply:

**a. Windstorm**

Each loss by windstorm shall constitute a single claim hereunder; provided, if more than one windstorm shall occur within any period of seventy-two (72) hours during the term of this Policy, such windstorm shall be deemed to be a single windstorm within the meaning thereof. The Insured may elect the moment from which each of the aforesaid periods of seventy-two (72) hours shall be deemed to have commenced but no two such seventy-two (72) hour periods shall overlap. The Company shall not be liable for any loss occurring before the effective date and time of the Policy. The Company will be liable for any losses occurring for a period of up to seventy-two (72) hours after the expiration of this Policy provided that the first windstorm loss or damage within that seventy-two (72) hours occurs prior to the date and time of expiration of this Policy.

In the event of there being a difference of opinion between the Insured and the Company as to whether or not all windstorm losses sustained by the Insured during an elected period of seventy-two (72) hours arose out of, or was caused by a single atmospheric disturbance, the stated opinion of the United States Weather Bureau or comparable Authority in any other country or locality shall govern as to whether or not a single atmospheric disturbance continued throughout the period at the location(s) involved.

**b. Flood**

Each loss by flood shall constitute a single loss hereunder.

1. If any flood occurs within a period of the continued rising or overflow of any river(s) or stream(s) and the subsidence of same within the banks of such river(s) or stream(s); or
2. If any flood results from any tidal wave or series of tidal waves caused by any one disturbance;

such flood shall be deemed to be a single occurrence within the meaning of this Policy.

Should any time period referred to above extend beyond the expiration date of this Policy and commence prior to expiration, the Company shall pay all such flood losses occurring during such period as if such period fell entirely within the term of this Policy.

The Company shall not be liable, however, for any loss caused by any flood occurring before the effective date and time of this Policy or commencing after the expiration date and time of this Policy.

Flood shall mean a general condition of partial or complete inundation of normally dry land area from:

1. overflow of inland or tidal water;
2. unusual and rapid accumulation or run off of surface waters from any natural source.

Flood shall also mean mudslide or mudflow, which is a river or flow of liquid mud caused by flooding as defined in 1. or 2. above.

The definition of flood does not include ensuing loss or damage not otherwise excluded.

**c. Earthquake Shock**

With respect to the peril of earthquake shock, any and all losses from this cause within a one hundred sixty-eight (168) hour period shall be deemed to be one loss. The Insured may elect the moment from which each of the aforesaid periods of one hundred sixty eight (168) hours shall be deemed to have commenced but no two such one hundred sixty eight (168) hour periods shall overlap.

The Company shall not be liable for any loss caused by an earthquake shock occurring before the effective date and time of this Policy. The Company will be liable for any losses occurring for a period of up to one hundred sixty eight (168) hours after the expiration of this Policy provided that the first earthquake shock loss or damage within that one hundred sixty eight (168) hours occurs prior to the date and time of the expiration of this Policy.

In the event of there being a difference of opinion between the Insured and the Company as to whether or not all earthquake shock losses sustained by the Insured during an elected period of one hundred sixty eight (168) hours arose out of, or were caused by a single earthquake shock, the stated opinion of the National Earthquake Shock Information Service of the United States Department of the Interior or comparable Authority in any other country or locality shall govern as to whether or not a single earthquake shock continued throughout the period at the locations involved.

The term earthquake shock is defined as: earth movement meaning natural faulting of land masses, but not including subsidence, landslide, rock slide, earth rising, earth sinking, earth shifting or settling unless as a direct result of such earth movement. The definition of earthquake shock does not include ensuing loss or damage not otherwise excluded. Further Earthquake Sprinkler Leakage is covered outside of the "Earthquake Shock" definition and subject to the basic peril deductible.

## **2. PERSONAL PROPERTY OF OTHERS**

Means, any property (other than real property) belonging to others for which an Insured has assumed liability. This includes but is not limited to:

- Articles of Clothing
- Jewelry
- Sound Equipment
- Fine Arts (up to the sub-limit of unscheduled fine arts)
- EDP Media & Hardware
- Valuable Papers
- Portable Electronic Equipment
- Employee Tools

## **3. IMPROVEMENTS AND BETTERMENTS**

Means, additions or changes made by an Insured / lessee at their own expense to a building they are occupying that enhance the building's value.

## SECTION III

### BUSINESS INTERRUPTION, RENTAL INCOME, TAX INTERRUPTION AND TUITION INCOME / EXTRA EXPENSE

Subject to the terms, conditions and exclusions stated elsewhere herein, this Policy provides coverage for:

#### A. COVERAGE:

##### 1. BUSINESS INTERRUPTION

Against loss resulting directly from interruption of business, services or rental value caused by direct physical loss or damage, as covered by this Policy to real and/or personal property insured by this Policy, occurring during the term of this Policy.

In the event of such loss or damage the Company shall be liable for the actual loss sustained by the Insured for gross earnings as defined herein and rental value as defined herein resulting from such interruption of business, services, or rental value; less all charges and expenses which do not necessarily continue during interruption of business for only such length of time as would be required with the exercise of due diligence and dispatch to rebuild, repair or replace such part of the property as has been damaged or destroyed, commencing with the date of such damage or destruction and not limited by the date of expiration of this Policy. Due consideration shall be given to the continuation of normal charges and expenses including payroll expenses to the extent necessary to resume operations of the Insured with the same quality of service which existed immediately preceding the loss.

With respect to business interruption for power generation facilities, the coverage provided hereunder is sublimited to USD as per Declaration Page.

**Notwithstanding the foregoing it is hereby understood and agreed that solely as respects Universities the following shall apply:**

In determining the amount of tuition income and related fees covered hereunder for the purpose of ascertaining the amount of loss sustained, due consideration shall be given to:

- (i) Tuition income and related fees which are prevented from being earned or received.
- (ii) Other income derived from:
  - (a) routine and special services;
  - (b) other operating and non-operating revenues, including but not limited to :
    - (1) research grants
    - (2) income under research contracts all dependent on continued operations.
- (iii) Donations and fund raising proceeds:
  - (a) If a regularly scheduled fund raising drive for the sole benefit of the Insured occurs during the period of interruption of operations, the

revenue produced by such drive shall be considered as follows in determining the amount of loss:

- (1) If the drive fails to produce an amount at least equal to the same drive in the most recent prior solicitation, the shortage, to the extent that it can be attributed to the interruption of the Insured's operations, shall be considered as loss of income;
  - (2) If the drive produces an amount equal to the same drive in the most recent prior solicitation, there shall be considered no loss of income from this source of revenue;
  - (3) If the drive produces an amount larger than the same drive in the most recent prior solicitation, the excess shall be applied to reduce the loss from other sources of revenue;
  - (4) If the drive is cancelled or postponed, such loss of revenue shall not be considered as loss of income.
- (b) The following shall be disregarded in determining the amount of loss:
- (1) Donations and contributions which are a direct result of the interruption of the Insured's operations and are received by the Insured during the period of interruption.
  - (2) Proceeds for fund raising drives or solicitations which are for the sold benefit of the Insured and occur as a result of interruption of the Insured's operations.

## **2. EXTRA EXPENSE**

This Policy is extended to cover the necessary extra expenses occurring during the term of this Policy at any location as hereinafter defined, incurred by the Insured in order to continue as nearly as practicable the normal operation of the Insured's business following damage to or destruction of real or personal property by a covered peril which is on premises owned, leased or occupied by the Insured. In the event of such damage or destruction, the Company shall be liable for such necessary extra expense incurred for only such length of time as would be required with the exercise of due diligence and dispatch to rebuild, repair or replace such part of the property as has been damaged or destroyed commencing with the date of damage or destruction and not limited by the date of expiration of this Policy (hereinafter referred to as the period of restoration).

## **B. EXTENSIONS OF COVERAGE:**

### **1. INGRESS / EGRESS**

This Policy is extended to insure the actual loss sustained during the period of time not exceeding 30 days when, as a direct result of physical loss or damage caused by a covered peril(s) specified by this Policy and occurring at property located within a 10 mile radius of covered property, ingress to or egress from the covered property covered by this Policy is prevented. Coverage under this extension is subject to a 24-hour waiting period.

### **2. INTERRUPTION BY CIVIL AUTHORITY**

This Policy is extended to include the actual loss sustained by the Insured, as covered hereunder during the length of time, not exceeding 30 days, when as a direct result of damage to or destruction of property by a covered peril(s) occurring at property located within a 10 mile radius of covered property, access to the covered

property is specifically prohibited by order of a civil authority. Coverage under this extension is subject to a 24-hour waiting period.

**3. DEMOLITION AND INCREASED TIME TO REBUILD**

The Company shall, in the case of loss covered under this Policy, be liable also for loss to the interest covered by the Policy, occasioned by the enforcement of any local or state ordinance or law regulating the construction, repair or demolition of buildings or structures and in force at the time such loss occurs, which necessitates the demolition of any portion of the described building(s) not damaged by the covered peril(s). The Company shall also be liable for loss due to the additional period of time required for repair or reconstruction in conformity with the minimum standards of such ordinance or law of the building(s) described in this Policy damaged by a covered peril.

THE COMPANY SHALL NOT BE LIABLE UNDER THIS CLAUSE FOR:

- a. More than the limit of liability as shown elsewhere in this Policy.
- b. Any greater proportion of any loss to the interest covered by this Policy than the amount covered under this Policy on said interest bears to the total insurance and coverage on said interest, whether all such insurance contains this clause or not

**4. NON PRODUCTIVE PROPERTY**

In the event that Real and/or Personal Property that does not normally produce an income sustain damage covered under this policy, the actual recovery under this policy shall be the continuing fixed charges and expenses directly attributable to such non-productive property.

**5. CONTINGENT BUSINESS INTERRUPTION AND/OR EXTRA EXPENSE AND/OR RENTAL VALUE**

Business interruption, including rental income, tax interruption, tuition income and extra expense coverage provided by this Policy is extended to cover loss directly resulting from physical damage to property of the type not otherwise excluded by this Policy at direct supplier or direct customer locations (whether such location is owned by the Insured or not) that prevents a supplier of goods and/or services to the Insured from supplying such goods and/or services, or that prevents a recipient of goods and/or services from the Insured from accepting such goods and/or services. The coverage provided by this clause separately as respects each of these coverage's is sublimited to USD as per Declaration Page.

**6. EXTENDED PERIOD OF INDEMNITY EXTENSION**

Business interruption including rental income, tax interruption, tuition income and extra expense coverage provided by this Policy is extended for the additional length of time required to restore the business of the Insured to the condition that would have existed had no loss occurred commencing on either;

- a. the date on which the Company's liability would otherwise terminate or;
- b. the date on which rebuilding, repairing or replacement of such property as has been lost, damaged or destroyed is actually completed, whichever is later.



The Company's liability under this extension shall terminate no later than the number of days indicated in the Declarations Page for this item:

**7. EXPENSES TO REDUCE LOSS:**

This Policy also covers such expenses as are necessarily incurred for the purpose of reducing loss under this section (except incurred to extinguish a fire); but in no event to exceed the amount by which loss is thereby reduced.

**C. EXCLUSIONS**

1. The Company shall not be liable for any increase of loss which may be occasioned by the suspension, lapse, or cancellation of any lease or license, contract or order, unless such suspension, lapse, or cancellation results directly from the interruption of business and, then the Company shall only be liable for such loss as affects the Insured's earnings during and limited to, the period of indemnity covered under this Policy.

With respect to loss resulting from damage to or destruction of media for, or programming records pertaining to, electronic data processing or electronically controlled equipment, including data thereon, by the perils insured against, the length of time for which the Company shall be liable hereunder shall not exceed:

- i. Thirty (30) consecutive calendar days or the time required with exercise of due diligence and dispatch to reproduce the data thereon from duplicates or from originals of the previous generation, whichever is less; or,
- ii. the length of time that would be required to rebuild, repair or replace such other property herein described as has been damaged or destroyed, but not exceeding eighteen (18) calendar months, whichever is the greater length of time.

**D. CONDITIONS APPLICABLE TO THIS SECTION**

If the Insured could reduce the loss resulting from the interruption of business:

1. by complete or partial resumption of operation of the property whether or not such property be lost or damaged, or;
2. by making use of merchandise or other property at the Insured's location or elsewhere;

such reduction shall be taken into account in arriving at the amount of the loss hereunder.

**E. DEFINITIONS:**

**1. GROSS EARNINGS**

"Gross Earnings" is defined as the sum of:

- a. total net sales and;

- b. other earnings derived from the operation of the business

*less the cost of;*

- c. merchandise sold including packaging materials and;
- d. materials and supplies consumed directly in supplying the service(s) sold by the Insured, and;
- e. service(s) purchased from outside (not employees of the Insured) for resale that does not continue under contract.

No other cost shall be deducted in determining gross earnings.

In determining gross earnings, due consideration shall be given to the experience of the business before the date of loss or damage and the probable experience thereafter, had no loss occurred.

## **2. MERCHANDISE**

Shall be understood to mean, goods kept for sale by the Insured, which are not the products of manufacturing operations conducted by the Insured.

## **3. EXTRA EXPENSE**

The term "extra expense", whenever used in this Policy, is defined as the excess (if any) of the total cost incurred during the period of restoration chargeable to the operation of the Insured's business over and above the total cost that would normally have been incurred to conduct the business during the same period had no damage or destruction occurred. Any salvage value of property obtained for temporary use during the period of restoration, which remains after the resumption of normal operations, shall be taken into consideration in the adjustment of any loss hereunder.

## **4. RENTAL VALUE**

The term "rental value" is defined as the sum of:

- a. the total anticipated gross rental income from tenant occupancy as furnished and equipped by the Insured, and;
- b. the amount of all charges which are the legal obligation of the tenant(s) and which would otherwise be obligations of the Insured, and;
- c. the fair rental value of any portion of said property which is occupied by the Insured, and;
- d. any amount in excess of a., b. and c. (above) which is an obligation due under the terms and conditions of any revenue bond, certificate of participation or other financial instrument.

In determining rental value, due consideration shall be given to the experience before the date of loss or damage and the probable experience thereafter had no loss occurred.

**5. PERIOD OF RESTORATION**

The period during which business interruption and or rental interruption applies will begin on the date direct physical loss occurs and interrupts normal business operations and ends on the date that the damaged property should have been repaired, rebuilt or replaced with due diligence and dispatch (i.e. "normal speed").

**SECTION IV**  
**GENERAL CONDITIONS**

**A. PERILS COVERED**

Subject to the terms, conditions and exclusions stated elsewhere herein, this Policy provides insurance against all risk of direct physical loss or damage occurring during the period of this Policy.

**B. PERILS EXCLUDED**

This Policy does not insure against any of the following:

1. Loss or damage caused by or resulting from moths, vermin, termites, or other insects, inherent vice, latent defect, faulty materials, error in design, faulty workmanship, wear, tear or gradual deterioration, contamination, rust, corrosion, wet or dry rot, unless physical loss or damage not otherwise excluded herein ensues and then only for such ensuing loss.
2. Physical loss or damage by normal settling, shrinkage or expansion in building or foundation.
3. Delay or loss of markets (this exclusion shall be inapplicable to the extent inconsistent with any time element coverage provided elsewhere herein).
4. Breakdown or derangement of machinery and/or steam boiler explosion, unless physical loss or damage not otherwise excluded herein ensues and then only for such ensuing loss. This exclusion does not apply to data processing equipment or media.
5. Loss or damage caused by or resulting from misappropriation, conversion, inventory shortage, unexplained disappearance, infidelity or any dishonest act on the part of the Insured, it's employees or agents or others to whom the property may be entrusted (bailees and carriers for hire excepted) or other party of interest.
6. Loss or damage caused by or resulting from electrical injury or disturbance from artificial causes to electrical appliances, devices of any kind or wiring, unless physical loss or damage not otherwise excluded herein ensues and then only for such ensuing loss. This exclusion does not apply to data processing equipment or media.
7. Loss or damage to personal property resulting from shrinkage, evaporation, loss of weight, leakage, breakage of fragile articles, marring, scratching, exposure to light or change in color, texture or flavor, unless such loss is caused directly by fire or the combating thereof, lightning, windstorm, hail, explosion, strike, riot, or civil commotion, aircraft, vehicles, breakage of pipes or apparatus, sprinkler leakage, vandalism and malicious mischief, theft, attempted theft, flood or earthquake shock. (Earthquake Shock, and Flood, in the states of Alaska, California and Washington shall only apply to locations that are scheduled for Earthquake Shock and Flood).

8. Loss or shortage disclosed upon taking inventory and/or mysterious disappearance of property (except property in the custody of carriers or bailees for hire).
9. Loss or damage caused by rain, sleet or snow to personal property in the open (except in the custody of carriers or bailees for hire).
10. Loss caused directly or indirectly, by:
  - a. hostile or warlike action in time of peace or war, including action in hindering, combating or defending against an actual, impending or expected attack
    - i. by any government or sovereign power (de jure or de facto), or by any Authority maintaining or using military, naval or air forces; or
    - ii. by military, naval or air forces; or
    - iii. by an agent of any such government, power, authority or forces;
  - b. any weapon of war employing atomic fission or radioactive force whether in time of peace or war;
  - c. insurrection, rebellion, revolution, civil war, usurped power, or action taken by governmental Authority or hindering, combating or defending against such an occurrence, seizure or destruction under quarantine or customs regulations, confiscation by order of any government or public authority, or risks of contraband or illegal transportation or trade.
11. Loss by nuclear reaction or nuclear radiation or radioactive contamination, all whether controlled or uncontrolled, and whether such loss be direct or indirect, proximate or remote, or be in whole or in part caused by, contributed to, or aggravated by the covered peril(s) in this Policy; however, subject to the foregoing and all provisions of this Policy, direct loss by fire resulting from nuclear reaction or nuclear radiation or radioactive contamination is insured by this Policy.
12. As respects course of construction, the following exclusions shall apply:
  - a. The cost of making good: faulty or defective workmanship, materials, construction and/or design, but this exclusion shall not apply to damage by a peril not excluded resulting from such faulty or defective workmanship, materials, construction and/or design.
  - b. The cost of non-compliance of, or delay in completion of contract.
  - c. The cost of non-compliance with contract conditions.
  - d. Contractors' equipment or tools not a part of or destined to become a part of the installation.

13. The following additional exclusions apply to loss or damage to animals covered under this Policy:
- a. Death of any animal(s) from natural causes.
  - b. Death of any animal(s) that dies from an unknown cause unless:
    - i. upon the death of such animal a post-mortem examination conducted on the animal by a licensed veterinarian, and if
    - ii. the veterinarian's post-mortem report shows the cause of death to clearly fall within the coverages of this Policy.
  - c. Death of any animal(s) as a result of surgical operation, including inoculation, unless the necessity for same arises from an event covered by this Policy.
  - d. The death or destruction of any animal(s) caused by, resulting from, or made necessary by physical injury caused by or resulting from the activities of the injured animal or other animals unless such death or destruction is the result of any event otherwise covered by this Policy.
  - e. The death of any animal(s) caused directly or indirectly by the neglect or abuse of the Insured, his agent, employees or bailees (carriers for hire excepted) unless such loss is a result of an event otherwise covered by this Policy.
  - f. The loss by death of any animal(s) as a result of parturition or abortion.
  - g. Loss resulting from depreciation in value caused by any animal(s) covered hereunder becoming unfit for or incapable of filling the function or duties for which it is kept, employed or intended unless such loss is the result of an event otherwise covered by this Policy.
  - h. Loss by destruction of any animal(s) on the order of the federal or any state government, or otherwise as a result of having contracted or been exposed to any contagious or communicable disease.
  - i. The removal or disposal of the remains of any animal(s) or the expense thereof unless such loss is the result of an event otherwise covered by this Policy.
  - j. The loss of any animal(s) that has been unnerved (the term "unnerved" to be considered as meaning the operation of neurotomy for lameness.)
  - k. Any claim consequent upon delay, deterioration, or loss of use or loss of market arising from an event covered by this Policy.

**C. TERRITORIAL LIMITS**

This Policy insures Real and Personal Property within the United States. Personal Property while in transit therein is extended to Worldwide coverage. The coverage provided by this clause is sublimited to USD as per Declaration Page.

**D. REINSTATEMENT**

Any reduction in the amount insured hereunder due to payment of any loss or losses shall be automatically reinstated for the balance of the term of this contract except as respects to those perils that are subject to annual aggregate limitation.

**E. FREE ON BOARD (F.O.B.) SHIPMENTS**

The Company shall be liable for the interest of the Insured at sole option of the Insured, the interest of the consignee in merchandise, which has been sold by the Insured under terms of F.O.B. point of origin or other terms usually regarded as terminating shippers' responsibility short of point of delivery.

**F. PROTECTION AND PRESERVATION OF PROPERTY**

In the event of loss likely to be covered by this Policy, the Insured shall endeavor to protect covered property from further damage and shall separate the damaged and undamaged personal property and store in the best possible order, and shall furnish a complete inventory of the destroyed, damaged and undamaged property to the Insurer.

In case of actual or imminent physical loss or damage of the type insured against by this Policy, the expenses incurred by the Insured in taking reasonable and necessary actions for the temporary protection and preservation of property insured hereunder shall be added to the total physical loss or damage otherwise recoverable under the Policy and be subject to the applicable deductible and without increase in the limit provisions contained in this Policy.

**G. BREACH OF CONDITIONS**

If any breach of a clause, condition or warranty of this Policy shall occur prior to a loss affected thereby under this Policy, such breach shall not void the Policy nor avail the Company to avoid liability unless such breach shall exist at the time of such loss under this contract or Policy, and be a contributing factor to the loss for which claim is presented hereunder, it being understood that such breach of clause or condition is applicable only to the property affected thereby. Notwithstanding the foregoing, if the Insured establishes that the breach, whether contributory or not, occurred without its knowledge or permission or beyond its control, such breach shall not prevent the Insured from recovering under this Policy.

**H. PERMITS AND PRIVILEGES**

Anything in the printed conditions of this Policy to the contrary notwithstanding, permission is hereby granted:

1. to maintain present and increased hazards;

2. to make additions, alterations, extensions, improvements and repairs, to delete, demolish, construct and reconstruct, and also to include all materials, equipment and supplies incidental to the foregoing operations of the property covered hereunder, while in, on and/or about the premises or adjacent thereto;
3. for such use of the premises as usual and/or incidental to the business as conducted therein and to keep and use all articles and materials usual and/or incidental to said business in such quantities as the exigencies of the business require;
4. to be or become vacant or unoccupied without limit of time.

This Policy shall not be prejudiced by:

1. any error in stating the name, number, street, or location of any building(s) and contents covered hereunder, or any error or omission involving the name or title of the Insured;
2. any act or neglect of the owner of the building, if the Insured hereunder is not the owner, or of any occupant of the within described premises other than the Insured, when such act or neglect is not within the control of the Insured, named herein; or
3. by failure of the Insured to comply with any of the warranties or conditions endorsed hereon in any portion of the premises over which the Insured has no control.

**I. PROTECTIVE SAFEGUARDS**

The Insured shall exercise due diligence in maintaining in complete working order all protective safeguard equipment and services.

**J. NOTICE OF LOSS**

In the event of loss or damage insured against under this Policy, the Insured shall give notice thereof to ALLIANT INSURANCE SERVICES, INC., 600 Montgomery Street, 9<sup>th</sup> Floor, San Francisco, CA 94111-1073. TEL NO. (415) 403-1486, FAX NO. (415) 402-0773 of such loss. Such notice is to be made as soon as practicable upon knowledge within the risk management or finance division of the insured that a loss has occurred.

**K. ARBITRATION OF VALUE**

In case the Insured and the Company shall fail to agree as to the amount of loss, then, on the written demand of either, each shall select a competent and disinterested appraiser and notify the other of the appraisers selected. The appraiser shall first select a competent and disinterested umpire, and failing to agree upon such umpire, then, on request of the Insured or the Company such umpire shall be selected by judge of a court of record in the state in which the property covered is located.



The appraisers shall as soon as practicable, appraise the loss stating separately the loss of each item and failing to agree, shall submit their differences only to the umpire. An award in writing so itemized, of any two appraisers when filed with the Company shall determine the amount of loss. The party selecting him shall pay each appraiser and the expenses of appraisal and umpire shall be paid by the parties equally.

**L. PROOF OF LOSS**

The Insured shall render a signed and sworn proof of loss as soon as practical after the occurrence of a loss, stating the time, place and cause of loss, the interest of the Insured and of all others in the property, the value thereof and the amount of loss or damage thereto.

**M. SUBROGATION**

In the event of any loss payment under this Policy, the Company, shall be subrogated to all the Insured's rights of recovery thereof against any person or organization and the Insured shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights.

As respects subrogation it is agreed that, after expenses incurred in subrogation are deducted, the Insured and the Company shall share proportionately to the extent of their respective interests as determined by the amount of their net loss. Any amount thus found to be due to either party from the other shall be paid promptly.

This Policy shall not be prejudiced by agreement made by the Insured releasing or waiving the Insured's right to recovery against third parties responsible for the loss, under the following circumstances only:

1. If made before the loss has occurred, such agreement may run in favor of any third party;
2. If made after loss has occurred, such agreement may run only in favor of a third party falling within one of the following categories at the time of loss:
  - a. a third party covered under this Policy; or
  - b. a corporation, firm, or entity
    - i. owned or controlled by the Insured or in which the Insured owns capital stock or other proprietary interest, or
    - ii. owning or controlling the Insured or owning or controlling capital stock or other proprietary interest in the Insured
    - iii. whether made before or after loss had occurred, such agreement must release or waive the entire Right of Recovery of the Named Insured against such Third party or
    - iv. a Tenant of the Named Insured.

**N. CANCELLATION**

This Policy may be cancelled by the Insured at any time by written notice or surrender of this Policy. This Policy may also be cancelled by or on behalf of the Company 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 this Policy, written notice, not less than ninety (90) days prior to the effective date of cancellation. The mailing of such notice as aforesaid shall be sufficient proof and this Policy and shall terminate at the date and hour specified in such notice. Notwithstanding what has been stated above, however, should this Policy be cancelled for non-payment of assessment, the Company shall only be required to give the Insured ten (10) days notice.

It is further agreed that the Company will abide by all the laws regulating the non-renewal or cancellation of insurance instituted by the State Department of Insurance, regardless of whether or not the Company is an admitted carrier in the State having jurisdiction over the Named Insured.

If this insurance in total shall be cancelled by the Insured, the Company shall retain the customary short rate proportion of the premium hereon. If the Company elects to cancel coverage mid-term, then such cancellation shall be handled on a pro-rata basis without short rate penalty.

In the event of cancellation the aggregate retention and specific limit amount shall be applied pro rata with the balance, if any, to be paid to the Insured.

Payment or tender of any unearned premium by the Company shall not be condition precedent to the effectiveness of cancellation but such payment shall be made forthwith.

Cancellation shall not effect coverage on any shipment in transit on date of cancellation. Coverage will continue in full force until such property is safely delivered and accepted at place of final destination.

**O. ABANDONMENT**

There shall be no abandonment to the Company of any property.

**P. ASSIGNMENT**

Assignment or transfer of this Policy shall not be valid except with the written consent of the Company.

**Q. SALVAGE**

When, in connection with any loss hereunder, any salvage is received prior or subsequent to the payment of such loss, the loss shall be figured on the basis on which it would have been settled had the amount of salvage been known at the time the loss was originally determined.

**R. OTHER INSURANCE**

Permission is hereby granted to the Insured to carry more specific insurance on any property covered under this Policy. This Policy shall not attach or become insurance upon any property which at the time of loss is more specifically described and covered under any other policy form until the liability of such other insurance has first been exhausted and shall then cover only the excess of value of such property over and above the amount payable under such other insurance, whether collectible or not. This Policy, subject to its conditions and limitations, shall attach and become insurance upon such property as respects any peril not covered by such other insurance and not otherwise excluded herein.

In the event of a loss that is covered by other insurance, wherein this Policy is excess of any amount paid by such other insurer, the other insurance shall be applied to the deductible amount stated elsewhere. Should the amount paid by such other insurance exceed these deductibles, no further deductibles shall be applied under this Policy.

**S. EXCESS INSURANCE**

Permission is granted for the Insured to maintain excess insurance over the limit of liability set forth in this Policy without prejudice to this Policy and the existence of such insurance, if any, shall not reduce any liability under this Policy. Also it is understood and agreed as respects earthquake shock or flood, that in the event of reduction or exhaustion of the aggregate limits of liability under the underlying Policy(s) by reason of loss(es) hereunder, this Policy shall:

1. in the event of reduction, pay out excess of the reduced underlying limit and
2. in the event of exhaustion, continue in force as the underlying Policy.

**T. RIGHT TO REVIEW RECORDS FOLLOWING AN INSURED LOSS**

The Insured as often as may be reasonably required, shall submit and so far as within their power, cause all other persons interested in the property or employees to submit to examination under oath by any person named by the Company relative to any and all matters in connection with a claim, and produce for examination all books of account, bills, invoices and other vouchers or certified copies thereof if originals be lost, at such reasonable time and place as may be designated by the Company or their representatives and shall permit extracts and copies thereof to be made.

**U. CONCEALMENT AND FRAUD**

This entire Policy shall be void, if whether before or after a loss, the Insured has willfully concealed or misrepresented any material facts or circumstance concerning this Policy of the subject thereof, or the interest of the Insured therein, or in case of any fraud or false swearing by the Insured relating thereto.

**V. LOSS PAYABLE CLAUSE**

In the event of a loss occurring under this Policy, the loss payment will be made in favor of the Insured(s) submitting the claim alone, and not to the program name.

**W. FULL WAIVER**

The terms and conditions of this form and endorsements attached thereto are substitute for those of the Policy to which it is attached, all terms, conditions and endorsements of latter being waived.

**X. SUIT AGAINST COMPANY**

No suit, action or proceeding for the recovery of any claim under this Policy shall be sustainable in any court of law or equity unless the Insured shall have complied with all the requirements of this Policy, nor unless the suit is commenced within twelve (12) months after the date that the Company has made its final offer of settlement or denial of the loss. However, that if under the laws of the jurisdiction in which the property is located such limitation is invalid, then any such claims shall be void unless such action, suit or proceedings be commenced within the shortest limit of time permitted by the laws of such jurisdiction.

## SECTION V

### FINE ARTS

#### A. COVERAGE:

This policy insures against all risks of physical loss of or damage occurring during the policy period to fine arts, which are the property of the Insured or the property of others in the custody or control of the Insured while on exhibition or otherwise within the limits of the United States, except as hereinafter provided.

If any of the property covered by this Section is also covered under any other provisions of the Policy of which this Section is made a part, those provisions are hereby amended to exclude such property, the intent being that the coverage under this Section is the sole coverage on such property.

#### 1. PROPERTY COVERED

Objects of art of every kind and description, and property incidental thereto, which are the property of the Insured, or the property of others in the custody and control of the Insured, or in transit at the Insured's risk, and property in which the Insured shall have a fractional ownership interest which are owned by or have been leased, loaned, rented or otherwise made available to the Insured. "Property" shall mean paintings, drawings, etchings, prints, rare books, manuscripts, rugs, tapestries, furniture, pictures, bronzes, potteries, porcelains, marbles statuary and all other bonafide works of art and other objects of rarity, historic value, cultural interest or artistic merit, which are part of the collections of the Insured, or in the care, custody or control of the Insured, and their frames, glazing and shadow boxes.

#### 2. "WALL TO WALL" ("NAIL TO NAIL") COVERAGE

This Section covers the Insured's property on a "Wall to Wall" ("Nail to Nail") basis, or domicile to domicile basis, as applicable, from the time said property is removed from its normal repository incidental to shipment until returned thereto or other point designated by the owner or owner's agent prior to return shipment, including while in transit to or from points of consolidation or deconsolidation, packing, repacking or unpacking, while at such locations during such processes or awaiting shipment.

Coverage shall terminate upon arrival of the covered property at the final destination designated by the owner or owner's agent, or upon expiration of this Policy, whichever may occur first, except that expiration of this Policy shall not prejudice coverage of any risk then in transit.

**B. EXTENSIONS OF COVERAGE:**

None

**C. EXCLUSIONS:**

1. Loss or damage occasioned by: wear and tear, gradual deterioration, insects, vermin, inherent vice or damage sustained due to and resulting from any repairing, restoration or retouching process;
2. Loss or damage caused by or resulting from:
  - a. Hostile or warlike action in time of peace or war, including action in hindering, combating or defending against an actual, impending or expected attack;
    - i. by any government or sovereign power (de jure or de facto), or by any authority maintaining or using military, naval or air forces; or
    - ii. by military, naval or air forces; or
    - iii. by an agent of any such government, power, authority or forces;
  - b. Any weapon of war employing atomic fission or radioactive force whether in time of peace or war;
  - c. Insurrection, rebellion, revolution, civil war, usurped power, or action taken by governmental authority in hindering, combating or defending against such an occurrence, seizure or destruction under quarantine or customs regulations, confiscation by order of any government or public authority, or risks of contraband or illegal transportation or trade.
3. Loss by nuclear reaction or nuclear radiation or radioactive contamination, all whether controlled or uncontrolled and whether such loss be direct or indirect, proximate or remote, or be in whole or in part caused by, contributed to, or aggravated by the covered perils covered against in this endorsement; however, subject to the foregoing and all provisions of this endorsement, direct loss by fire resulting from nuclear reaction or nuclear radiation or radioactive contamination is covered against by this endorsement.
4. Any dishonest, fraudulent or criminal act by the Insured, a partner therein or an officer, director, employee or trustee thereof, whether acting alone or in collusion with others.

For the purpose of this exclusion an act of vandalism or malicious damage by an employee shall not constitute a dishonest, fraudulent or criminal act.

**D. LOSS PAYMENT BASIS / VALUATION**

The valuation of each article of property covered by this Section shall be determined as follows:

- a. Property of the Insured shall be covered for and valued at the current fair market value of each article indicated on the books and records of the Insured prior to loss, according to the Insured's valuation of each object covered.
- b. Property of others loaned to the Insured and for which the Insured may be legally liable, or which the Insured has been instructed to insure, shall be covered for and valued at the amount agreed upon for each article by the Insured and owner(s) as recorded on the books and records of the Insured prior to loss.
- c. Otherwise, in the absence of recorded current fair market values or agreed values for each article covered, the Company shall not be liable beyond the fair market value of the property at the time any loss or damage occurs. Said value shall be ascertained by the Insured and the Company or, if they differ, then the amount of value or loss shall be determined as provided in the following appraisal clause.

**E. SPECIAL CONDITIONS:**

1. **Misrepresentation and Fraud:** This entire Section shall be void if, whether before or after a loss, the Insured has concealed or misrepresented any material fact or circumstance concerning this Policy or the subject thereof, or the interest of the Insured therein, or in case of any fraud or false swearing by the Insured relating thereto.
2. **Notice of Loss:** The Insured shall as soon as practicable report in writing to the Company or its agent every loss, damage or occurrence which may give rise to a claim under this Section and shall also file with the Company or its agent within ninety (90) days from the date of discovery of such loss, damage or occurrence, a detailed sworn proof of loss.
3. **Examination under Oath:** The Insured, as often as may be reasonably required, shall exhibit to any person designated by the Company all that remains of any property herein described, and shall submit, and insofar as is within its power cause its employees, Insured and others to submit to examination under oath by any person named by the Company and subscribe the same; and, as often as may be reasonably required, shall produce for examination all writings, books of account, bills, invoices and other vouchers, or certified copies thereof if originals be lost, at such reasonable time and place as may be designated by the Company or its representative and shall permit extracts and copies thereof to be made. No such examination under oath or examination of books or documents, nor any act of the Insured or any of its employees or representatives in connection with the investigation of any loss or claim hereunder, shall be deemed a waiver of any defense which the Insured might otherwise have with respect to any loss or claim, but all such examinations and acts shall be deemed to have been made or done without prejudice to the Company's liability.

4. Settlement of Loss: All adjusted claims shall be paid or made good to the Insured within sixty (60) days after presentation and acceptance of satisfactory proof of interest and loss at the office of the Company. No loss shall be paid or made good if the Insured has collected the same from others.
5. No Benefit to Bailee: This Section shall in no way inure directly or indirectly to the benefit of any carrier or other bailee.
6. Subrogation or Loan: If in the event of loss or damage the Insured shall acquire any right of action against any individual, firm or corporation for loss of, or damage to, property covered hereunder, the Insured will, if requested by the Company, assign and transfer such claim or right of action to the Company or, at the Company's option, execute and deliver to the Company the customary form of loan receipt upon receiving an advance of funds in respect of the loss or damage; and will subrogate the Company to, or will hold in trust for the Company, all such rights of action to the extent of the amount paid or advanced, and will permit suit to be brought in the Insured's name under the direction of and at the expense of the Company.
7. Loss Clause: Any loss hereunder shall not reduce the amount of this Section, except in the event of payment of claim for total loss of an item specifically scheduled hereon.
8. Protection and Preservation of Property: In case of actual or imminent physical loss or damage of the type insured against by this Policy, the expenses incurred by the Insured in taking reasonable and necessary actions for the temporary protection and preservation of property insured hereunder shall be added to the total physical loss or damage otherwise recoverable under the Policy and be subject to the applicable deductible and without increase in the limit provisions contained in this Policy.
9. Appraisal: If the Insured and the Company fail to agree as to the amount of loss, each shall on the written demand of other, made within sixty (60) days after receipt of proof of loss by the Company, select a competent and disinterested appraiser, and the appraisal shall be made at a reasonable time and place. The appraisers shall first select a competent and disinterested umpire, and failing for fifteen (15) days to agree upon such umpire, then on the request of the Insured or the Company, such umpire shall be selected by a judge of a court of record in the state in which such appraisal is pending. The appraisers shall then appraise the loss, stating separately the fair market value at the time of loss and the amount of loss, and failing to agree shall submit their differences to the umpire. An award in writing of any two shall determine the amount of loss. The Insured and the Company shall each pay their chosen appraiser and shall bear equally the other expenses of the appraisal and umpire. The Insured shall not be held to have waived any of its rights by any act relating to appraisal.
10. Civil Authority: Property covered under this Section against the peril of fire is also covered against the risk of damage or destruction by Civil authority during a conflagration and for the purpose of retarding the same; provided that neither such conflagration nor such damage or destruction is caused or contributed to by a peril otherwise excluded herein.



11. **Conformity to Statute:** Terms of this Section that are in conflict with the statutes of the state wherein this Section is issued are hereby amended to conform to such statutes.
12. **Changes:** Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this Section or stop the Insured from asserting any right under the terms of this Section, nor shall the terms of this Section be waived or changed except by endorsement issued to form a part of this Section.
13. **Additional Covered Party(ies):** The owner and owners defined as associations, corporations, firms, institutions, museums, persons and others who own or control collections, objects or articles who make them available to the Insured, and temporary borrowers or custodians (but not carriers, packers or shippers) of property covered, are additional Insured(s) hereunder, but only as respects coverage afforded said Insured's property.
14. **Packing:** It is agreed by the Insured that the property covered hereunder be packed and unpacked by competent packers.
15. **Other Insurance:** This fine arts floater Section is excess coverage over any other valid and collectible insurance which may apply to any objects of art for which coverage would apply under this Policy.
16. **Pair And Set:** In the event of the total loss of any article or articles which are a part of a set, the Company agrees to pay the Insured the full amount of the value of such set and the Insured agrees to surrender the remaining article or articles of the set to the Company.

## SECTION VI

### CONTRACTORS EQUIPMENT

#### A. COVERAGE:

This Policy insures contractors equipment, whether self propelled or not, including equipment thereof while attached thereto or located thereon, such as bulldozers, drag lines, power shovels, derricks, drills, concrete mixers and other machinery of a similar nature, and not subject to motor vehicle registration.

#### B. PERILS EXCLUDED

This Section insures against all risks of direct physical loss or damage occurring during the policy period to the above described property from any external cause except as provided below.

1. Loss or damage due to wear, tear, rust, corrosion, latent defect, mechanical breakage or improper assemblage.
2. Loss or damage due to the weight of the load imposed on the machine exceeding the capacity for which such machine was designed.
3. Loss or damage to crane or derrick boom(s) and jib(s) of lattice construction while being operated unless directly caused by fire, lightning, hail, windstorm, earthquake shock, explosion, riot, riot attending a strike, civil commotion, actual physical contact with an aircraft or airborne missile including objects falling therefrom, collision with other vehicles or other contractors equipment whether or not such other equipment is covered hereunder, landslide, or upset of the unit of which it is a part (but only when and to the same extent that such other perils are covered by the Policy).
4. Loss or damage due to explosion arising from within steam boilers.
5. Loss or damage to dynamos, exciters, lamps, switches, motors or other electrical appliances or devices, including wiring, caused by lightning or other electrical currents (artificial or natural) unless fire ensues and then for the loss by fire only.
6. Loss or damage due to dishonesty of Insured's employees or persons to whom the Insured's property is entrusted.
7. Loss or damage caused by or contributed to failure of the Insured to keep and maintain the property in a thorough state of repair.
8. Loss or damage caused by or resulting from:
  - a. hostile or warlike action in time of peace or, including action in hindering, combating or defending against an actual, impending or expected attack,
    - i. by any government or sovereign power (de jure or de facto) or by any authority maintaining using military, naval or air forces; or

- ii. any military, naval or air forces; or
    - iii. by an agent of any such government, power, authority or forces;
  - b. any weapon of war employing atomic fission or radioactive force whether in time of peace or war;
  - c. insurrection, rebellion, revolution, civil war, usurped power, or action taken by governmental authority in hindering, combating or defending against such an occurrence, seizure or destruction under quarantine or customs regulations, confiscation by order of any government or public authority, or risks of contraband or illegal transportation or trade;
9. Loss by nuclear reaction or nuclear radiation or radioactive contamination, all whether controlled or uncontrolled, and whether such loss be direct or indirect, proximate or remote, or be in whole or in part caused by, contributed to, or aggravated by the peril(s) covered against in this endorsement; however, subject to the foregoing and all provisions of this Policy, direct loss by fire resulting from nuclear reaction or nuclear radiation or radioactive contamination is covered against by this Policy.

**C. EXTENSIONS OF COVERAGE:**

None

**D. PROPERTY EXCLUDED:**

- 1. Automobiles, motorcycles, motor trucks, or parts thereof.
- 2. Buildings
- 3. Machinery or equipment or building materials to be installed in any building for the purpose of becoming a part thereof; nor on any property which has become a permanent part of any structure.
- 4. Property that is located underground.
- 5. Property while waterborne except while being transported on any regular ferry.
- 6. The storage risk of property not owned or required to be insured by the Insured at premises controlled or leased by the Insured, except where incidental to the regular or frequent use of the equipment or property.
- 7. Plans, blue prints, designs or specifications.

**E. LOSS PAYMENT BASIS / VALUATION:**

See specific Sections regarding Loss Payment Basis / Valuation.

**F. SPECIAL CONDITIONS:**

This section covers property only within the limits of the United States of America.

It is a condition of this Policy that all articles covered hereunder are in sound condition at the time of attachment of this Policy.

## SECTION VII

### ACCOUNTS RECEIVABLE

#### A. COVERAGE:

This Policy covers the loss of or damage resulting from insured perils to the Insured's records of accounts receivable as defined below, occurring during the Policy period.

#### B. EXTENSIONS OF COVERAGE:

None

#### C. EXCLUSIONS:

In addition to the exclusions in the General Conditions, this coverage does not apply:

1. To loss due to any fraudulent, dishonest or criminal act by the Insured, a partner therein, or an officer, director, employee or trustee thereof, while working or otherwise and whether acting alone or in collusion with others.

For the purpose of this exclusion an act of vandalism or malicious damage by an employee shall not constitute a dishonest, fraudulent or criminal act.

2. To loss due to bookkeeping, accounting or billing errors or omissions.
3. To loss, the proof of which as to factual existence, is dependent upon an audit of records or an inventory computation; but this shall not preclude the use of such procedures in support of claim for loss which the Insured can prove through evidence wholly apart therefrom, is due solely to a risk of loss to records of accounts receivable not otherwise excluded hereunder.
4. To loss due to alteration, falsification, manipulation, concealment, destruction or disposal of records of accounts receivable committed to conceal the wrongful giving, taking, obtaining or withholding of money, securities or other property, but only to the extent of such wrongful giving, taking, obtaining or withholding.

#### D. LOSS PAYMENT BASIS / VALUATION:

##### DETERMINATION OF RECEIVABLES; DEDUCTIONS

When there is proof that a loss covered by this Policy has occurred but the Insured cannot accurately establish the total amount of accounts receivable outstanding as of the date of such loss, such amount shall be based on the Insured's monthly statements and shall be computed as follows:

- a. Determine the amount of all outstanding accounts receivable at the end of the same fiscal month in the year immediately preceding the year in which the loss occurs;
- b. Calculate the percentage of increase or decrease in the average monthly total of accounts receivable for the twelve (12) months immediately preceding the month in which the loss occurs as compared with such average for the months of the preceding year;
- c. The amount determined under (a) above, increased or decreased by the percentage calculated under (b) above, shall be the agreed total amount of accounts receivable as of the last day of the fiscal month in which said loss occurs;
- d. The amount determined under (c) above shall be increased or decreased in conformity with the normal fluctuations in the amount of accounts receivable during the fiscal month involved, due consideration being given to the experience of the business since the last day of the last fiscal month for which statement has been rendered.

There shall be deducted from the total amount of accounts receivable, however established, the amount of such accounts evidenced by records not lost or damaged or otherwise established or collected by the Insured, and an amount to allow for probable bad debts which would normally have been uncollectible by the Insured. All unearned interest and service charges shall be deducted.

**E. SPECIAL CONDITIONS:**

None

**F. DEFINITIONS:**

**ACCOUNTS RECEIVABLE:**

- a. All sums due the Insured from customers provided the Insured is unable to effect collection thereof as the direct result of loss or damage to records of accounts receivable.
- b. Interest charges on any loan to offset impaired collections pending repayment of such sums made uncollectible by such loss or damage.
- c. Collection expense in excess of normal collection cost and made necessary because of such loss or damage.
- d. Other expenses, when reasonably incurred by the Insured, in re-establishing records of accounts receivable following such loss or damage.

## SECTION VIII

### ADDITIONAL CONDITIONS

#### 1. JOINT LOSS ADJUSTMENT – BOILER & MACHINERY

In the event of damage to or destruction of property, at a location designated in this Policy and also designated in a boiler and machinery insurance policy, and there is a disagreement between the Company and the Insured with respect to:

- (1) Whether such damage or destruction was caused by a peril covered against by this Policy or by an accident covered against by such boiler and machinery insurance policy(ies) or
- (2) The extent of participation of this Policy and of such boiler and machinery insurance policy in a loss that is covered against, partially or wholly, by one or all of said policy(ies).

The Company shall, upon written request of the Insured, pay to the Insured one-half of the amount of the loss which is in disagreement, but in no event more than the Company would have paid if there had been no boiler and machinery insurance policy(ies) in effect, subject to the following conditions:

- (1) The amount of loss which is in disagreement after making provisions for any undisputed claims payable under the said policy(ies) and after the amount of the loss is agreed by the Insured and the Boiler and Machinery Insurer and the Company is limited to the minimum amount remaining payable under either the boiler and machinery insurance policy(ies).
- (2) The boiler and machinery insurer(s) shall simultaneously pay to the Insured, one-half of the said amount, which is in disagreement.
- (3) The payments by the Company and acceptance of the same by the Insured signify the agreement of the Company to submit to and proceed with arbitration within ninety (90) days of such payments:

The arbitrators shall be three (3) in number, one of whom shall be appointed by the boiler insurer(s) and one of whom shall be appointed by the Company hereon and the third appointed by consent of the other two, and the decision by the arbitrators shall be binding on the insurer(s) and the Insured and that judgment upon such award may be entered in any court of competent jurisdiction.

- (4) The Insured agrees to cooperate in connection with such arbitration but not to intervene therein.
- (5) This agreement shall be null and void unless the Policy of the boiler and machinery Insurer is similarly endorsed.

## 2. JOINT LOSS ADJUSTMENT – EXCESS PROPERTY

In the event of damage to or destruction of property at a location designated in this Policy and also designated in an excess insurance policy(ies) and if there is disagreement between the insurers with respect to:

- (1) whether such damage or destruction was caused by a single event or by multiple events or;
- (2) the extent of participation of this Policy and any excess insurance policy in a loss covered against partially or wholly, by one of said Policy or policy(ies).

The Company shall, upon written request of the Insured, pay to the Insured one-half of the amount of the loss which is in disagreement, but in no event more than the Company would have paid if there had been no excess insurance or policy(ies) in effect, subject to the following conditions:

- (1) the amount of loss which is in disagreement after making provisions for any undisputed claims payable under the said policy(ies) and after the amount of the loss is agreed by the Insured and the Company is limited to the minimum amount remaining payable under either the primary insurance policy or excess insurance policy(ies);
- (2) the excess insurers shall simultaneously pay to the Insured one-half of the said amount which is in disagreement; and,
- (3) the payments by the Company hereunder and acceptance of the same by the member signify the agreement of the Company to submit to and proceed with arbitration within ninety (90) days of such payments.

The arbitrators shall be three (3) in number, one of whom shall be appointed by the excess insurer(s) and one of whom shall be appointed by the Company and the third appointed by consent of the other two, and the decision by the arbitrators shall be binding on the Company and the Insured, and that judgment upon such award may be entered in any court of competent jurisdiction.

- (4) The Insured agrees to cooperate in connection with such arbitration but not to intervene therein.



**3. SEEPAGE AND/OR POLLUTION AND/OR CONTAMINATION EXCLUSION;  
DEBRIS REMOVAL AND COST OF CLEAN UP EXTENSION;  
AUTHORITIES EXCLUSION**

**A. SEEPAGE AND/OR POLLUTION AND/OR CONTAMINATION EXCLUSION**

Notwithstanding any provision in the Policy to which the endorsement is attached, this Policy does not insure against loss, damage, costs or expenses in connection with any kind or description of seepage and/or pollution and/or contamination, direct or indirect, arising from any cause whatsoever.

Nevertheless if fire is not excluded from this Policy and a fire arises directly or indirectly from seepage and/or pollution and/or contamination, any loss or damage covered under this Policy arising directly from that fire shall, (subject to the terms, conditions and limitations of the Policy) be covered.

However, if the covered property is the subject of direct physical loss or damage for which the Company has paid or agreed to pay, then this Policy (subject to its terms, conditions and limitations) insures against direct physical loss or damage to the property covered hereunder caused by resulting seepage and/or pollution and/or contamination.

The Insured shall give notice to the Company of intent to claim **NO LATER THAN TWELVE (12) MONTHS AFTER THE DATE OF THE ORIGINAL PHYSICAL LOSS OR DAMAGE.**

**B. DEBRIS REMOVAL AND COST OF CLEAN UP EXTENSION**

Notwithstanding the provisions of the preceding exclusions in this endorsement or any provision respecting seepage and/or pollution and/or contamination, and/or debris removal and/or cost of clean up in the Policy to which this endorsement is attached, in the event of direct physical loss or damage to the property covered hereunder, this Policy (subject otherwise to its terms, conditions and limitations, including but not limited to any applicable deductible) also insures, within the sum covered:

- (a) expenses reasonably incurred in removal of debris of the property hereunder destroyed or damaged from the premises of the Insured; and/or;
- (b) cost of clean up at the premises of the Insured made necessary as a result of such direct physical loss or damage;

PROVIDED that this Policy does not insure against the costs of decontamination or removal of water, soil or any other substance on or under such premises.

It is a condition precedent to recovery under this extension that the Company shall have paid or agreed to pay for direct physical loss or damage to the property covered hereunder unless such payment is precluded solely by the operation of any deductible and that the Insured shall give notice to the Company of intent to claim for cost of removal of debris or cost of clean up **NO LATER THAN TWELVE (12) MONTHS AFTER THE DATE OF SUCH PHYSICAL LOSS OR DAMAGE.**

### **C. AUTHORITIES EXCLUSION**

This Policy does not cover expenses, fines, penalties or cost incurred or sustained by the Insured or imposed on the Insured at the order of any Government Agency, Court of other Authority, in connection with any kind or description of environmental impairment including seepage or pollution or contamination from any cause.

Nothing in this endorsement shall override any radioactive contamination exclusion clause in the Policy to which this endorsement is attached.

#### 4. MINIMUM EARNED ASSESSMENTS AND QUARTERLY ADJUSTMENTS

It is understood and agreed that if the Insured cancels this Policy, the Policy is subject to 25% minimum earned assessments (premium) regardless of the length of time coverage is in force.

Additional, or return premium due for endorsements issued during the policy term, such as those for additions or deletions of values within or greater than as that which is provided in any "automatic acquisition sublimit" (including those for existing members, new members to the PEP/IP program, or new members to existing JPA members) will be processed on a quarterly basis. Issuance of the endorsements and calculation of pro-rata or return premium, for these changes will be processed as of, and at the time of the transaction.

## 5. LENDER'S LOSS PAYABLE

The following provisions (or equivalent) apply as required by "mortgages" and "lenders" to whom certificates of coverage have been issued.

1. Loss or damage, if any, under this policy, shall be paid to the Payee named on the first page of this policy, its successors and assigns, hereinafter referred to as "the Lender," in whatever form or capacity its interests may appear and whether said interest be vested in said Lender in its individual or in its disclosed or undisclosed fiduciary or representative capacity, or otherwise, or vested in a nominee or trustee of said Lender.
2. The insurance under this policy, or any rider or endorsement attached thereto, as to the interest only of the Lender, its successors and assigns, shall not be invalidated nor suspended: (a) by any error, omission, or change respecting the ownership, description, possession, or location of the subject of the insurance or the interest therein, or the title thereto; (b) by the commencement of foreclosure proceedings or the giving of notice of sale of any of the property covered by this policy by virtue of any mortgage or trust deed; (c) by any breach of warranty, act, omission, neglect, or non-compliance with any of the provisions of this policy, including any and all riders now or hereafter attached thereto, by the Named Insured, the borrower, mortgagor, trustor, vendee, owner, tenant, warehouseman, custodian, occupant, or by the agents of either or any of them or by the happening of any event permitted by them or either of them, or their agents, or which they failed to prevent, whether occurring before or after the attachment of this endorsement, or whether before or after a loss, which under the provisions of this policy of insurance or of any rider or endorsement attached thereto would invalidate or suspend the insurance as to the Named Insured, excluding here from, however, any acts or omissions of the Lender while exercising active control and management of the property.
3. In the event of failure of the Insured to pay any premium or additional premium which shall be or become due under the terms of this policy or on account of any change in occupancy or increase in hazard not permitted by this policy, the Company agrees to give written notice to the Lender of such non-payment of premium after sixty (60) days from and within one hundred and twenty (120) days after due date of such premium and it is a condition of the continuance of the rights of the Lender hereunder that the Lender when so notified in writing by this Company of the failure of the Insured to pay such premium shall pay or cause to be paid the premium due within ten (10) days following receipt of the Company's demand in writing therefore. If the Lender shall decline to pay said premium or additional premium, the rights of the Lender under this Lender's Loss Payable Endorsement shall not be terminated before ten (10) days after receipt of said written notice by the Lender.
4. Whenever the Company shall pay to the Lender any sum for loss or damage under this policy and shall claim that as to the Insured no liability therefore exists, the Company, at its option, may pay to the Lender the whole principal sum and interest and other indebtedness due or to become due from the Insured, whether secured or unsecured, (with refund of all interest not accrued), and the Company, to the extent of such payment, shall thereupon receive a full assignment and transfer, without recourse, of the debt and all rights and securities held as collateral thereto.

5. If there be any other insurance upon the within described property, the Company shall be liable under this policy as to the Lender for the proportion of such loss or damage that the sum hereby insured bears to the entire insurance of similar character on said property under policies held by, payable to and expressly consented to by the Lender. Any Contribution Clause included in any Fallen Building Clause Waiver or any Extended Coverage Endorsement attached to this contract of insurance is hereby nullified, and also any Contribution Clause in any other endorsement or rider attached to this contract of insurance is hereby nullified except Contribution Clauses for the compliance with which the Insured has received reduction in the rate charged or has received extension of the coverage to include hazards other than fire and compliance with such Contribution Clause is made a part of the consideration for insuring such other hazards. The Lender upon the payment to it of the full amount of its claim, will subrogate the Company (pro rata with all other insurers contributing to said payment) to all of the Lender's rights of contribution under said other insurance.
6. The Company reserves the right to cancel this policy at any time, as provided by its terms, but in such case this policy shall continue in force for the benefit of the Lender for ten (10) days after written notice of such cancellation is received by the Lender and shall then cease.
7. This policy shall remain in full force and effect as to the interest of the Lender for a period of ten (10) days after its expiration unless an acceptable policy in renewal thereof with loss there under payable to the Lender in accordance with the terms of this Lender's Loss Payable Endorsement, shall have been issued by some insurance company and accepted by the Lender.
8. Should legal title to and beneficial ownership of any of the property covered under this policy become vested in the Lender or its agents, insurance under this policy shall continue for the term thereof for the benefit of the Lender but, in such event, any privileges granted by this Lender's Loss Payable Endorsement which are not also granted the Insured under the terms and conditions of this policy and/or under other riders or endorsements attached thereto shall not apply to the insurance hereunder as respects such property.
9. All notices herein provided to be given by the Company to the Lender in connection with this policy and this Lender's Loss Payable Endorsement shall be mailed to or delivered to the Lender at its office or branch described on the first page of the policy.

Approved:

Board of Fire Underwriters of the Pacific;  
California Bankers' Association – Committee on Insurance

## 6. SEVERAL LIABILITY NOTICE

The subscribing insurers' obligations under contracts of insurance to which they subscribe are several, not joint and are limited solely to the extent of their individual subscriptions. The subscribing insurers are not responsible for the subscription of any co-subscribing insurer who for any reason does not satisfy all or part of its obligations.

## 7. ACCIDENTAL CONTAMINATION EXTENSION

In consideration of the premium charged and notwithstanding the terms, conditions and stipulations contained in the Policy (except as regards the Policy term and Limits of Liability), including all other endorsements attached thereto, (especially Endorsement No. 3 Seepage and/or Pollution and/or Contamination Exclusion; Debris And Cost of Clean Up Extension; Authorities Exclusion to the extent that it is in conflict herewith), to which this endorsement is attached this Policy is hereby extended to cover Business Interruption and Property Damage loss from accidental contamination from any source to insured property, as covered by this Policy, including expenses necessarily incurred to clean up, remove and dispose of contaminated substances so as to restore the Insured Property as covered by this Policy to the same condition as existed prior to loss, all as a result of accidental contamination, discharge or dispersal in an amount not exceeding the sub-limit of liability of USD as per Declaration Page for each occurrence per program declaration unless such contamination or dispersal is itself caused by fire, lightning, impact from aircraft, explosion, riot, civil commotion, smoke, collapse, vehicles, windstorm, hail, vandalism, malicious mischief or leakage and accidental discharge from automatic fire protective systems whereupon this extension shall provide coverage up to full limit of liability provided by this Policy.

For the purposes of this extension the term "insured property" as covered by this Policy, is held to include Land (and Land Values) on which Covered Property is located, as part of the below stated sublimit, whether or not the same are excluded by this Policy. It being specifically understood and agreed that this extension shall not afford coverage to land, (including land on which Covered Property is located), and land Values for loss in excess of USD as per Declaration Page per member and USD as per Declaration Page in the aggregate sublimit liability.

It is further understood and agreed that this extension shall not override anything contained in Asbestos Clean Up and Removal in this Policy.

The sublimit of liability stated above forms part of the limit(s) of liability provided by this Policy and does not increase it (them).

**8. ADDITIONAL INSURED'S / LOSS PAYEES**

It is hereby understood and agreed that the interest of Additional Insured's and/or Loss Payees is automatically included, as per schedule held on file with Alliant Insurance Services, Inc.



## 9. EXCLUDED PERILS, EARTHQUAKE & FLOOD

It is hereby understood and agreed that as respects Insured's where Optional Coverage "1" is not shown as applicable on the Optional Coverage Participation List, the following Exclusion is added to the Policy:

Any earth movement, but not including subsidence, landslide, rock slide, earth rising, earth sinking, earth shifting or settling unless as a direct result of such earth movement (this exclusion shall not apply to loss or damage by ensuing fire or explosion or any other perils insured under this Policy).

As respects those Insured's where Optional Coverage "1" is shown as applicable, the terms and conditions of this endorsement are not applicable, but only as respects locations specifically declared and for which a premium has been charged.

### FLOOD EXCLUSION

It is hereby understood and agreed that as respects Insured's where Optional Coverage "5" is not shown as applicable on the Optional Coverage Participation List, the following Exclusion is added to the Policy:

Flood, meaning a general condition of partial or complete inundation of normally dry land area from:

- a) overflow of inland or tidal water;
- b) unusual and rapid accumulation or run off of surface waters from any source.

Flood shall also mean mudslide or mudflow, which is a river or flow of liquid mud caused by flooding as defined in a.) or b.) above.

The definition of flood does not include ensuing loss or damage not otherwise excluded.

As respects those Insured's where Optional Coverage "5" is shown as applicable, the terms and conditions of this endorsement are not applicable, but only as respects locations specifically declared and for which a premium has been charged.

## 10. PRIORITY OF PAYMENTS

In the event of loss caused by or resulting from more than one peril or coverage, the limit of liability of the primary / underlying coverage shall apply first to the peril(s) or coverage(s) not insured by this Policy and the remainder, if any, to the peril(s) or coverage(s) insured hereunder. Upon exhaustion of the limit of liability of the primary / underlying coverage, this Policy shall then be liable for loss uncollected from the peril(s) or coverage(s) insured hereunder, subject to the limit of liability and the other terms and conditions as specified.

## 11. LEASEHOLD INTEREST ENDORSEMENT

In the event of physical loss or damage of the type insured against by this Policy to real property of the type insured this Policy, which is leased by the Insured, this Policy is extended to cover:

- (1) If as a result of such loss or damage the property becomes wholly untenable or unusable and the lease agreement requires continuation of the rent, the Company shall indemnify the Insured for the actual rent payable for the unexpired term of the lease; or
- (2) If as a result of such loss or damage the property becomes partially untenable or unusable and the lease agreement requires continuation of the rent, the Company shall indemnify the Insured for the proportion of the rent applicable thereto; or
- (3) If as a result of such loss or damage the lease is cancelled by the lessor pursuant to the lease agreement or by operation of law, the Company shall indemnify the Insured for its Lease Interest for the first three months following such loss or damage and for its Net Lease Interest for the remaining unexpired term of the lease;

provided, however, that the Company shall not be liable for any increase in the amount recoverable hereunder resulting from the suspension, lapse or cancellation of any license, or from the Insured exercising an option to cancel the lease; or from any act or omission of the Insured which constitutes a default under the lease; and provided further that the Insured shall use any suitable property or service owned or controlled by the Insured or obtainable from another source to reduce the loss hereunder.

The following definitions shall apply to this coverage:

- (1) Lease Interest means the excess rent paid for the same or similar replacement property over actual rent payable plus cash bonuses or advance rent paid (including any maintenance or operating charges) for each month during the unexpired term of the Insured's lease.
- (2) Net Lease Interest means that sum which placed at 8% interest compounded annually would equal the Lease Interest (less any amounts otherwise payable hereunder).

## 12. CONTINGENT TAX REVENUE INTERRUPTION (EXCLUDING EARTHQUAKE AND FLOOD)

Except as hereinafter or heretofore excluded, this Policy insures against loss resulting directly from necessary interruption of sales, property or other tax revenue collected by or due the Insured caused by damage, or destruction by a peril not excluded from this Policy to property which is not operated by the Insured and which wholly or partially prevents the generation of revenue for the account of the Insured.

- 3) In the event of such damage or destruction, the Company shall be liable, with limitations as indicated, if the following conditions (A) and (B) are both met:
- (A) The total revenue is reduced to less than 97.5% of the Insured's anticipated revenue had no loss occurred.
  - (B) The Company shall be liable for the actual loss sustained for only the length of time as would be required with exercise of due diligence and dispatch to rebuild, replace or repair the contributing property commencing with the date of damage to the contributing property, but not limited by the expiration date of this Policy.

If the Insured has reported Revenue Interruption values for which premium has been charged, such loss recovery after deductible shall be limited to whichever is the least of:

1. The limit insured on the Policy;
2. The actual loss sustained;
3. The difference in amount between 97.5% of the anticipated revenue and the actual total revenue after the loss.

If the Insured has not reported Revenue Interruption values for which premium has been charged, such loss recovery after deductible shall be limited to whichever is the least of:

1. The policy sublimit
2. The latest values for these items declared by the member making the claim or USD100,000 per occurrence if no values have been declared by the member making the claim.

- 4) **DEDUCTIBLE:** Each loss or series of losses arising out of one event at each location shall be adjusted separately and from the aggregate amount of all such losses 2.50% of the annual revenue value shall be deducted.

**13. ELECTRONIC DATE RECOGNITION EXCLUSION  
(ALL RISKS WRITE BACK)**

Notwithstanding any provision of this Policy which may appear to the contrary, this Policy does not insure any loss, damage, cost, claim or expense, whether preventative, remedial or otherwise, directly or indirectly arising out of or relating to:

- a) the recognition, interpretation, calculation, comparison, differentiation, sequencing or processing of data involving one or more dates or times, by any computer system, hardware, program or software, or any microchip, integrated circuit or similar device in computer equipment or non-computer equipment, whether the property of the Insured or not; or
- b) any change, alteration, correction or modification involving one or more dates or times, to any such computer system, hardware, program or software, or any microchip, integrated circuit or similar device in computer equipment or non-computer equipment, whether the property of the Insured or not.

Except as provided in the next paragraph, this Electronic Date Recognition Clause shall apply regardless of any other cause or event that contributes concurrently or in any sequence to the loss, damage, cost, claim or expense.

If direct physical loss or damage not otherwise excluded by this Policy results, then subject to all its terms and conditions, this Policy shall be liable only for such resulting loss or damage. Such resulting loss or damage shall not include physical loss or damage to data resulting directly from a) or b) above, nor the cost, claim or expense, whether preventative, remedial, or otherwise, arising out of or relating to any change, alteration, correction or modification relating to the ability of any damaged computer system, hardware, program or software, or any microchip, integrated circuit or similar device in computer equipment or non-computer equipment to recognize, interpret, calculate, compare, differentiate sequence or process any data involving one or more dates or times.

**14. NAMED INSURED - MEMBER SCHEDULE**

The member(s) of the \_\_\_\_\_ (Joint Powers Authority (JPA) / Risk Sharing Pool (Pool) / Hospital) are:

(LIST NAMED INSUREDS / MEMBERS HERE)

\_\_\_\_\_ (Joint Powers Authority (JPA) / Risk Sharing Pool (Pool) / Hospital) shall be deemed the sole agent of each and every Joint Powers Authority (JPA) / Risk Sharing Pool (Pool) / Hospital member for the purpose of:

- (1) Giving notice of cancellation,
- (2) Giving instructions for changes in the Policy and accepting changes in this Policy, and
- (3) The payment of assessments / premiums or receipt of return assessments / premiums.

## 15. AUTOMATIC ACQUISITION CLAUSE

The following automatic acquisition provisions apply only to those Insured's that are provided coverage at the inception of the policy term, unless otherwise endorsed.

This Policy is automatically extended to insure additional property and/or interests as described in this Policy, which may be acquired or otherwise become at the risk of the Insured, or a member entity of an Insured during the Policy Term, within the United States of America, subject to the values of such additional property and/or interests not exceeding USD25,000,000 any one acquisition excluding licensed vehicles, for which a limit of USD10,000,000 applies. This coverage extension does not apply to the peril of Earthquake Shock in the States of California, Alaska, or Washington. If Flood coverage is purchased for all scheduled locations, this extension will extend to include Flood coverage for any location not situated in Flood Zones A or V. In the event that coverage for Earthquake Shock in the States of California, Alaska, or Washington, and/or Flood for any location situated in Flood Zones A or V is required, it is to be agreed by the Company prior to attachment hereunder.

In the event of coverage being required for additional property and/or interest where the value exceeds USD25,000,000 any one acquisition details of said property and/or interest are to be provided to the Company for its agreement not later than ninety (90) days from the date of the said additional property and/or interest have become at the risk of the Insured, this Policy providing coverage automatically for such period of time up to a maximum limit of USD100,000,000. The Company retains the right to determine the acceptability of all such property(ies). Additional premium will be calculated from the date of acquisition.

In the event that the Insured fails to comply with the above reporting provision, then coverage hereunder is sublimited to USD25,000,000 any one occurrence.

## 16. MISCELLANEOUS UNNAMED LOCATIONS

Coverage is extended to include property at any other location (including buildings or structures, owned, occupied or which the Insured is obligated to maintain insurance) located within the territorial limitations set by this declaration. Coverage provided by this clause is limited to any sublimit noted on the Declaration Page attached to this form, and by terms and conditions of this policy form. This coverage extension does not apply to the peril of Earthquake Shock in the states of California, Alaska or Washington. If Flood coverage is purchased for all scheduled locations, this extension will extend to include Flood coverage for any location not situated in Flood Zones A or V.



## 17. LOSS PAYABLE PROVISIONS

This endorsement is a modification of the Insurance Services Office endorsement form number CP 12 18 10 91 and modifies insurance provided as follows:

### A. LOSS PAYABLE

For covered property in which both insured and a Loss Payee shown in the Schedule or in the Declaration Page have an insurable interest, the Company will:

1. Adjust losses with the Insured; and
2. Pay any claim for loss or damage jointly to the Insured and the Loss Payee, as interests may appear.

### B. LENDER'S LOSS PAYABLE

1. The Loss Payee shown in the Schedule or in the Declaration Page is a creditor, including a mortgage holder or trustee, whose interest in Covered Property is established by such written instruments as:

- a. Warehouse receipts;
- b. A contract for deed;
- c. Bills of lading;
- d. Financing statements; or
- e. Mortgages, deeds of trust or security agreements.

2. For Covered Property in which both the Insured and a Loss Payee have an insurable interest:

- a. We will pay for covered loss or damage to each Loss Payee in their order of precedence, as interests may appear.
- b. The Loss Payee has the right to receive loss payment even if the Loss Payee has started foreclosure or similar action on the Covered Property.
- c. If the Company deny the Insured claim because of the insured act or because the Insured have failed to comply with the terms of the Coverage Part, the Loss Payee will still have the right to receive loss payment if the Loss Payee:

- (1) Pays any premium due under this Coverage Part at our request if the Insured have failed to do so;
- (2) Submits a signed, sworn proof of loss within 60 days after receiving notice from us of the Insured failure to do so; and
- (3) Has notified us of any change in ownership, occupancy or substantial change in risk known to the Loss Payee.

All of the terms of this Coverage Part will then apply directly to the Loss Payee.

d. If the Company pays the Loss Payee for any loss or damage and deny payment to the Insured because of the Insured acts or because the Insured have failed to comply with the terms of this Coverage Part:

- (1) The Loss Payee's rights will be transferred to us to the extent of the amount the Company pays; and
- (2) The Loss Payee's rights to recover the full amount of the Loss Payee's claim will not be impaired.

At our option, the Company may pay to the Loss Payee the whole principal on the debt plus any accrued interest. In this event, the Insured will pay the insured remaining debt to us.

3. If the Company cancel this policy, the Company will give written notice to the Loss Payee at least:

- a. Ten (10) days before the effective date of cancellation if the Company cancels for the insured non-payment of premium; or
- b. Thirty (30) days before the effective date of cancellation if the Company cancels for any other reason.

4. If the Company elects not to renew this policy, the Company will give written notice to the Loss Payee at least 10 days before the expiration date of this policy.

#### C. CONTRACT OF SALE

1. The Loss Payee shown in the Schedule or in the Declaration Page is a person or organization the Insured have entered a contract with for the sale of Covered Property.

2. For Covered Property in which both the Insured and the Loss Payee have an insurable interest the Company will:

- a. Adjust losses with the Insured; and
- b. Pay any claim for loss or damage jointly to the Insured and the Loss Payee, as interests may appear:

3. The following is added to the OTHER INSURANCE Condition:

For Covered Property that is the subject of a contract of sale, the word "the Insured" includes the Loss Payee.

## 18. ELECTRONIC DATA ENDORSEMENT A

### 1. Electronic Data Exclusion

Notwithstanding any provision to the contrary within the Policy or any endorsement thereto, it is understood and agreed as follows:

- a) This Policy does not insure, loss, damage, destruction, distortion, erasure, corruption or alteration of ELECTRONIC DATA from any cause whatsoever (including but not limited to COMPUTER VIRUS) or loss of use, reduction in functionality, cost, expense of whatsoever nature resulting therefrom, regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

ELECTRONIC DATA means facts, concepts and information converted to a form useable for communications, interpretation or processing by electronic and electromechanical data processing or electronically controlled equipment and includes program, software, and other coded instructions for the processing and manipulation of data or the direction and manipulation of such equipment.

COMPUTER VIRUS means a set of corrupting, harmful or otherwise unauthorized instructions or code including a set of maliciously introduced unauthorized instructions or code, programmatic or otherwise, that propagate themselves through a computer system or network of whatsoever nature. COMPUTER VIRUS includes but is not limited to 'Trojan Horses', 'worms' and 'time or logic bombs'.

- b) However, in the event that a peril listed below results from any of the matters described in paragraph a) above, this Policy, subject to all its terms, conditions and exclusions will cover physical damage occurring during the Policy period to property insured by this Policy directly caused by such listed peril.

#### Listed Perils

Fire  
Explosion

### 2. Electronic Data Processing Media Valuation

Notwithstanding any provision to the contrary within the Policy or any endorsement thereto, it is understood and agreed as follows:

Should electronic data processing media insured by this Policy suffer physical loss or damage insured by this Policy, then the basis of valuation shall be the cost to repair, replace or restore such media to the condition that existed immediately prior to such loss or damage, including the cost of reproducing any ELECTRONIC DATA contained thereon, providing such media is repaired, replaced or restored. Such cost of reproduction shall include all reasonable and necessary amounts, not to exceed USD10,000,000 any one loss, incurred by the Insured in recreating, gathering and assembling such ELECTRONIC DATA. If the media is not repaired, replaced or restored the basis of valuation shall be the cost of the blank media. However this Policy does not insure any amount pertaining to the value of such ELECTRONIC DATA to the Insured or any other party, even if such ELECTRONIC DATA cannot be recreated, gathered or assembled.

## 19. LOSS ADJUSTMENT SERVICES

McLarens Young, International, 180 Montgomery Street, Suite 2100, San Francisco, California 94101-4231 is hereby authorized to represent the Company in the investigation and adjustment of any loss or damage under this Policy at the expense of the Company and without regard to the amount of loss or damage and/or applicable deductible if any.

However, the Company reserves the right to utilize other adjusting firms if and when they feel it necessary.

## 20. MICROORGANISM EXCLUSION (MAP) (ABSOLUTE)

This policy does not insure any loss, damage, claim, cost, expense or other sum directly or indirectly arising out of or relating to:

mold, mildew, fungus, spores or other microorganism of any type, nature, or description, including but not limited to any substance whose presence poses an actual or potential threat to human health.

This exclusion applies regardless whether there is

- (i) any physical loss or damage to insured property;
- (ii) any insured peril or cause, whether or not contributing concurrently or in any sequence;
- (iii) any loss of use, occupancy, or functionality; or (iv) any action required, including but not limited to repair, replacement, removal, cleanup, abatement, disposal, relocation, or steps taken to address medical or legal concerns.

This exclusion replaces and supersedes any provision in the policy that provides insurance, in whole or in part, for these matters.

## 21. BIOLOGICAL OR CHEMICAL MATERIALS EXCLUSION

It is agreed that this Insurance excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with the actual or threatened malicious use of pathogenic or poisonous biological or chemical materials regardless of any other cause or event contributing concurrently or in any other sequence thereto.

NMA 2962

06/02/03

## 22. TERRORISM COVERAGE EXTENSION

In consideration of the premium charged, it is agreed that this insurance includes physical loss or damage directly caused by any "act of terrorism."

For the purpose of this endorsement an act of terrorism means an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organization(s) or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear.

Coverage provided by this endorsement is limited to:

- a. USD 100,000,000 per member(s) / entity(ies) of declaration number 1 to 10, 12, 13 and 17 per occurrence subject to USD200,000,000 in the annual aggregate which shared by all member(s) / entity(ies) of declaration numbers 1 to 10, 12, 13 and 17 combined; and
- b. USD 25,000,000 per member(s) / entity(ies) of declaration numbers' 15 and 16, per occurrence subject to USD50,000,000 in the annual aggregate which shared by all member(s) / entity(ies) of declaration numbers' 15 and 16 combined.

Upon erosion of the above annual aggregate limit(s), the provisions of the NMA 2920 Terrorism Exclusion Endorsement attached to this policy wording shall apply.

### 23. TERRORISM EXCLUSION

Notwithstanding any provision to the contrary within this insurance or any endorsement thereto it is agreed that except for any sublimit of coverage as indicated on the Declaration Page attached to this form, and Section 1 (General Provisions, Clause E of this form.) this insurance excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any act of terrorism regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

For the purpose of this endorsement an act of terrorism means an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear.

This endorsement also excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to any act of terrorism.

If the Company allege that by reason of this exclusion, any loss, damage, cost or expense is not covered by this insurance the burden of proving the contrary shall be upon the Insured.

In the event any portion of this endorsement is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

NMA 2920  
08/10/2001

ALL OTHER TERMS AND CONDITIONS REMAIN UNALTERED



**24. SERVICE OF SUIT (U.S.A.) - APPLICABLE TO THE COMPANY, LEXINGTON  
INSURANCE COMPANY, ONLY**

In the event of the failure of the Company to pay any amount claimed to be due hereunder, the Company, at the request of the Insured, will submit to the jurisdiction of any court of competent jurisdiction within the United States. Nothing in this condition constitutes or should be understood to constitute a waiver of the Company's rights to commence an action in any court of competent jurisdiction in the United States, to remove an action to a United States District Court or seek a transfer of a case to another court as permitted by the laws of the United States or of any state in the United States.

It is further agreed that service of process in such suit may be made upon Counsel, Legal Department, Lexington Insurance Company, 100 Summer Street, Boston, Massachusetts 02110-2103, U.S.A. or his or her representative, and that in any suit instituted against the Company upon this policy, the Company will abide by the final decision of such court or of any appellate court in the event of an appeal.

Further, pursuant to any statute of any state, territory or district of the United States which makes provision therefore, the Company designates the Superintendent, Commissioner or Director of Insurance, or other officer specified for that purpose in the statute, or his successor or successors in office as its true and lawful attorney upon whom may be served any lawful process in any action, suit, or proceeding instituted by or on behalf of the Insured or any beneficiary hereunder arising out of this policy of insurance, and hereby designates the above named Counsel as the person to whom the said officer is authorized to mail such process or a true copy thereof.



## Attachment D

<b>Member Name</b>
El Dorado Local Agency Formation Commission
Local Agency Formation Commission of Butte County
Local Agency Formation Commission of Calaveras County
Local Agency Formation Commission of Humboldt County
Local Agency Formation Commission of Los Angeles County
Local Agency Formation Commission of Mendocino County
Local Agency Formation Commission of Monterey County
Local Agency Formation Commission of Nevada County
Local Agency Formation Commission of San Bernardino County
Local Agency Formation Commission of San Luis Obispo
Marin Local Agency Formation Commission
Plumas County Local Agency Formation Commission
San Mateo Local Agency Formation Commission
Shasta Local Agency Formation Commission
Stanislaus Local Agency Formation Commission



**RESOLUTION No. LAFC 1362**

**SACRAMENTO LOCAL AGENCY FORMATION COMMISSION**

**APPROVING THE FORM OF AND AUTHORIZING THE EXECUTION OF A SIXTH AMENDED JOINT POWERS AGREEMENT AND AUTHORIZING PARTICIPATION IN THE SPECIAL DISTRICT RISK MANAGEMENT AUTHORITY'S PROPERTY AND LIABILITY PROGRAM (LAFC #10-08)**

**WHEREAS**, Sacramento Local Agency Formation Commission (LAFCo), an independent agency organized and existing under and by virtue of the laws of the State of California, the Sacramento Local Agency Formation Commission, has determined that it is in the best interest and to the advantage of the Commission to participate for at least three full years in the property and liability program offered by the Special District Risk Management Authority (the "Authority"); and

**WHEREAS**, California Government Code Section 6500 *et seq.*, provides that two or more public agencies may by agreement jointly exercise any power common to the contracting parties; and

**WHEREAS**, Special District Risk Management Authority was formed in 1986 in accordance with the provisions of California Government Code 6500 *et seq.*, for the purpose of providing its members with risk financing and risk management programs; and

**WHEREAS**, California Government Code Section 990.4 provides that a local public entity may self-insure, purchase insurance through an authorized carrier, or purchase insurance through a surplus lines broker, or any combination of these; and

**WHEREAS**, participation in Special District Risk Management Authority programs requires the Commission to execute and enter into a Sixth Amended Joint Powers Agreement (the "Amended JPA Agreement"); which states the purpose and powers of the Authority; and

**WHEREAS**, all acts, conditions and things required by the laws of the State of California to exist, to have happened and to have been performed precedent to and in connection with the consummation of the transactions authorized hereby do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the Commission is now duly authorized and empowered, pursuant to each and every requirement of law, to consummate such transactions for the purpose, in the manner and upon the terms herein provided.

**NOW, THEREFORE, BE IT RESOLVED BY THE SACRAMENTO LOCAL AGENCY FORMATION COMMISSION AS FOLLOWS:**

Section 1. Findings. The Commission hereby specifically finds and determines that the actions authorized hereby relate to the public affairs of the Sacramento Local Agency Formation Commission .

Section 2. Sixth Amended JPA Agreement. The Amended JPA Agreement proposed to be executed and entered into by and between LAFCo and members of the Special District Risk

Management Authority, in the form presented at this meeting and on file with LAFCo Commission Clerk, is hereby approved. The Commission or Executive Officer is hereby authorized and directed, for and in the name and on behalf of LAFCo, to execute and deliver to the Authority the Amended JPA Agreement in substantially said form, with such changes therein as such officers may require or approve, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 3. Program Participation. The Commission approves participating for three full program years in Special District Risk Management Authority Property and Liability Program.

Section 4. Other Actions. The Executive Officer of LAFCo is hereby authorized and directed to execute and deliver any and all documents which are necessary in order to consummate the transactions authorized hereby and all such actions heretofore taken by such officer are hereby ratified, confirmed and approved.

Section 5. Effective Date. This resolution shall take effect immediately upon its passage.

**ON A MOTION** made by Commissioner \_\_\_\_\_, seconded by Commissioner \_\_\_\_\_, the foregoing Resolution No. LAFCo 1362 was adopted by the **SACRAMENTO LOCAL AGENCY FORMATION COMMISSION**, on this 1st day of October 2008, by the following vote, to wit:

**AYES:**

**NOES:**

**ABSTAIN:**

**ABSENT:**

By:

\_\_\_\_\_  
**Steve Miklos, Chair**  
**SACRAMENTO LOCAL AGENCY FORMATION COMMISSION**

**ATTEST:**

\_\_\_\_\_  
**Diane Thorpe**  
**Commission Clerk**

Attachment: Sixth Amended Joint Powers Agreement

**SIXTH AMENDED  
JOINT POWERS AGREEMENT**

**RELATING TO THE**

**SPECIAL DISTRICT RISK MANAGEMENT AUTHORITY**

Adopted August 1, 1986  
1<sup>st</sup> Amended February 5, 1988  
2<sup>nd</sup> Amended March 31, 1990  
3<sup>rd</sup> Amended July 1, 1993  
4<sup>th</sup> Amended February 9, 1998  
5<sup>th</sup> Amended and Restated  
- Approved March 24, 2003  
- Effective July 1, 2003  
6<sup>th</sup> Amended October 2, 2007

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**SIXTH AMENDED JOINT POWERS AGREEMENT  
RELATING TO THE  
SPECIAL DISTRICT RISK MANAGEMENT AUTHORITY**

**THIS SIXTH AMENDED JOINT POWERS AGREEMENT** (the "Agreement") is made and entered into by and among the public agencies (the "Members") organized and existing under the laws of the State of California, which are signatories to this Agreement.

**RECITALS**

**WHEREAS**, California Government Code Section 6500 *et seq.* (the "Act") provides that two or more public agencies may by agreement jointly exercise any power common to the contracting parties; and

**WHEREAS**, California Labor Code Section 3700(c) permits pooling by public agencies of self insurance for Workers' Compensation liability; and

**WHEREAS**, California Government Code Section 990.4 provides that a local public entity may self-insure, purchase insurance through an authorized carrier, purchase insurance through a surplus line broker, or any combination of these; and

**WHEREAS**, California Government Code Section 990.8 provides that two or more local entities may, by a joint powers agreement, provide insurance for any purpose by any one or more of the methods specified in Government Code Section 990.4; and

**WHEREAS**, the parties to this Agreement desire to join together for the purposes set forth in Article 2 hereof, including establishing pools for self-insured losses and purchasing Excess or Re-Insurance and administrative services in connection with joint protection programs (the "Programs") for members of the California Special Districts Association ("CSDA"); and

**WHEREAS**, it appears economically feasible and practical for the parties to this Agreement to do so; and

**WHEREAS**, the Members have previously executed that certain Fifth Amended and Restated Joint Powers Agreement (the "Original JPA"), which Original JPA the Members desire to amend and restate by this Agreement; provided that such amendment and restatement shall not affect the existence of the Authority; and

**WHEREAS**, CSDA exists to assist and promote special districts, and has been responsible for the original creation of the Special District Risk Management Authority ("Authority") and Special District Workers Compensation Authority ("SDWCA"), and determined the consolidation of SDWCA and the Authority on July 1, 2003 was in the best interests of special districts and other public agencies throughout the State.

**NOW THEREFORE**, for and in consideration of all of the mutual benefits, covenants and agreements contained herein, the parties hereto agree as follows:

**Article 1. Definitions.** The following definitions shall apply to the provisions of this agreement:

“Act” means Articles 1 through 4 (commencing with Section 6500) of Chapter 5, Division 7, Title 1 of the California Government Code, as amended or supplemented.

“Alliance Executive Council” means the council organized pursuant to the MOU.

“Assessment” means an additional amount, in addition to the Member’s or Former Member’s original contribution, which the Board of Directors determines in accordance herewith and/or with the Bylaws that a Member or Former Member owes on account of its participation in a Program for a given Program year.

“Authority” shall mean the Special District Risk Management Authority created by the original version of this Agreement.

“Board of Directors” or “Board” shall mean the governing body of the Authority.

“Bylaws” means the Bylaws of the Authority adopted by the Board of Directors, as they may be amended from time to time.

“Chief Executive Officer” shall mean that employee of the Authority who is so appointed by the Board of Directors.

“Claim” shall mean a demand made by or against a Member, or Former Member which is or may be covered by one of the Programs approved by the Board of Directors.

“Contribution” means the amount determined by the Board of Directors to be the appropriate sum which a Member should pay at the commencement of or during the Program Year in exchange for the benefits provided by the Program.

“Coverage Documents” shall mean the Declarations, Memorandum of Coverages, Coverage Agreements, Endorsements, Policies of Insurance or any other documents that provide the terms, conditions, limits and exclusions of coverage afforded by a Program.

“CSDA” means the California Special Districts Association.

“District” shall mean a special district, public agency or public entity within the State of California which is both a Member of the CSDA and a signatory to this Agreement.

“Duly Constituted Board Meeting” shall mean any Board of Directors meeting noticed and held in the required manner and at which a Quorum was determined to be present at the beginning of the meeting.

“Estimated Contribution” means the amount which the Board of Directors estimates will be the appropriate contribution for a Member’s participation in a Program for a Program Year.

“Excess or Re-Insurance” shall mean that insurance which may be purchased on behalf of the Authority and/or the Members to protect the funds of the Members or Former Members against catastrophic losses or an unusual frequency of losses during a single year in excess of the self-insurance retention maintained by the Authority.

“Fiscal Year” shall mean that period of twelve months which is established as the fiscal year of the Authority.

“Former Member” shall mean a District which was a signatory to the Agreement but which has withdrawn from, or been involuntarily terminated from participating in, the Authority.

“Joint Protection Program” means a Program offered by the Authority, separate and distinct from other Programs, wherein Members will jointly pool their losses and claims, jointly purchase Excess or Re-Insurance and administrative and other services, including claims adjusting, data processing, risk management consulting, loss prevention, legal and related services.

“Member” shall mean a signatory to this Agreement, which is qualified as a Member under the provisions of this Agreement and the Bylaws.

“MOU” means the Memorandum of Understanding - Alliance Executive Council, dated as of September 20, 2001, among the Authority, CSDA, the CSDA Finance Corporation and SDWCA.

“Program” or “Programs” means the specific type of protection plan as set forth in the terms, conditions and exclusions of the Coverage Documents for self-insured losses, and the purchasing of Excess or Re-Insurance and administrative services.

“Program Year” shall mean a period of time, usually 12 months, determined by the Board of Directors, in which a Program is in effect.

“Retained Earnings,” as used herein, shall mean an equity account reflecting the accumulated earnings of a Joint Protection Program.

“SDWCA” means the Special Districts Workers Compensation Authority, and its successors or assigns.

**Article 2. Purposes.** This Agreement is entered into by the Members pursuant to the provisions of California Government Code section 990, 990.4, 990.8 and 6500 *et seq.* in order to provide, subject to the provisions of the Coverage Documents, economical public liability and workers’ compensation coverage, or coverage for other risks which the Board of Directors may determine.

Additional purposes are to reduce the amount and frequency of losses, and to decrease the cost incurred by Members in the handling and litigation of claims. These purposes shall be

accomplished through the exercise of the powers of such Members jointly in the creation of a separate entity, the Special District Risk Management Authority (the "Authority"), to establish and administer Programs as set forth herein and in the Bylaws.

It is also the purpose of this Agreement to provide, to the extent permitted by law, for the inclusion, at a subsequent date, and subject to approval by the Board of Directors, of such additional Members organized and existing under the laws of the State of California as may desire to become parties to the Agreement and Members of the Authority.

**Article 3. Parties to Agreement.** Each party to this Agreement certifies that it intends to and does contract with all other parties who are signatories to this Agreement and, in addition, with such other parties as may later be added as parties to and signatories of this Agreement pursuant to Article 18. Each party to this Agreement also certifies that the withdrawal from or cancellation of membership by any Member, pursuant to Articles 19 and 20 or otherwise, shall not affect this Agreement nor such party's intent, as described above, to contract with the other remaining parties to the Agreement.

**Article 4. Term of Agreement.** This Agreement shall become effective as to existing Members of the Authority as set forth in Article 33 hereof. This Agreement shall continue thereafter until terminated as hereinafter provided. This Agreement shall become effective as to each new Member upon: (i) approval of its membership by the Board of Directors, (ii) the execution of this Agreement by the Member, and (iii) upon payment by the Member of its initial Contribution for a Program. Any subsequent amendments to the Agreement shall be in accordance with Article 27 of this Agreement.

**Article 5. Creation of Authority.** Pursuant to the Act, there is hereby created a public entity separate and apart from the parties hereto, to be known as the Special District Risk Management Authority. Pursuant to Section 6508.1 of the Act, the debts, liabilities and obligations of the Authority, including but not limited to, debts, liabilities and obligations of any of the Programs shall not constitute debts, liabilities or obligations of any party to this Agreement or to any Member or Former Member.

The Authority is not an insurer, and the coverage programs offered by the Authority do not provide insurance, but instead provide for pooled joint protection programs among the members of the Authority. The Joint Protection Programs offered by the Authority constitute negotiated agreements among the Members which are to be interpreted according to the principles of contract law, giving full effect to the intent of the Members, acting through the Board of Directors in establishing the Programs.

**Article 6. Powers of Authority.** (a) The Authority shall have all of the powers common to Members and is hereby authorized to do all acts necessary for the exercise of said common powers, including, but not limited to, any or all of the following:

- (1) to make and enter into contracts, including the power to accept the assignment of contracts or other obligations which relate to the purposes of the Authority, or which were entered into by a Member or Former

Member prior to joining the Authority, and to make claims, acquire assets and incur liabilities;

- (2) to accept an assignment from SDWCA of all its assets, obligations and liabilities prior to the dissolution of SDWCA (including claims and contracts in existence prior to such dissolution) in order to benefit the Members or Former Members participating in the SDWCA workers compensation program; provided, that except for the fair and equitable allocation of administrative and overhead expenses, funds from such assignment shall not be co-mingled and shall be separately accounted for as provided for in this Agreement and the Bylaws.
- (3) to incur debts, liabilities, or other obligations, including those which are not debts, liabilities or obligations of the Members or Former Members, or any of them;
- (4) to charge and collect Contributions and Assessments from Members or Former Members for participation in Programs;
- (5) to receive grants and donations of property, funds, services and other forms of assistance from persons, firms, corporations and governmental entities;
- (6) to acquire, hold, lease or dispose of property, contributions and donations of property and other forms of assistance from persons, firms, corporations and governmental entities
- (7) to acquire, hold or dispose of funds, services, donations and other forms of assistance from persons, firms, corporations and governmental entities;
- (8) to employ agents and employees, and/or to contract for such services;
- (9) to incur debts, liabilities or other obligations to finance the Programs and any other powers available to the Authority under Article 2 or Article 4 of the Act;
- (10) to enter into agreements for the creation of separate public entities and agencies pursuant to the Act;
- (11) to sue and be sued in its own name;
- (12) to exercise all powers necessary and proper to carry out the terms and provisions of this Agreement (including the provision of all other appropriate ancillary coverages for the benefit of the Members or Former Members), or otherwise authorized by law or the Act; and
- (13) to exercise all powers and perform all acts as otherwise provided for in the Bylaws.

(b) Said powers shall be exercised pursuant to the terms hereof, in the manner provided by law and in accordance with Section 6509 of the Act. The foregoing powers shall be subject to the restrictions upon the manner of exercising such powers pertaining to the Member or Former Member designated in the Bylaws.

**Article 7. Board of Directors.** Subject to the limitations of this Agreement and the laws of the State of California, the powers of this Authority shall be vested in and exercised by, and its property controlled and its affairs conducted by, the Board of the Authority, which is hereby established and designated as the agency to administer this Agreement pursuant to Section 6506 of the Act. The powers of the Authority shall be exercised through the Board of Directors, who may, from time to time, adopt and modify Bylaws and other rules and regulations for that purpose and for the conduct of its meetings as it may deem proper. The officers of the Board shall be as set forth in the Bylaws.

So long as the MOU has not been terminated or the Authority has not withdrawn from the MOU, the Board of Directors shall be composed of seven (7) directors elected by the Member entities who have executed the current operative Agreement and are participating in a Joint Protection Program. The terms of directors, procedures for election of directors, procedures for meetings and provisions for reimbursement of Director expenses shall be as set forth in the Bylaws. Each Member of the Board of Directors shall have one vote. Each Member of the Board shall serve as set forth in the Bylaws.

So long as the Authority is a participant in the MOU, the Board of Directors of the Authority shall appoint three (3) members of its board to serve as members of the Alliance Executive Council. No member of the Board of Directors of the Authority shall serve as a director on any other board of directors of an entity or organization that is a signatory to the MOU during the term of the MOU. In the event a director is elected to such a board, that director shall immediately resign from the Board of Directors of the Authority.

In the event SDRMA withdraws from the MOU, the Board of Directors of the Authority shall consist of those seven (7) Directors who hold seats on the Authority's Board of Directors at the time of the withdrawal and who were duly appointed by the Board, or elected or re-elected by the Member entities of SDRMA plus the additional directors appointed by CSDA as provided in Article 25.

**Article 8. Compliance with the Brown Act.** All meetings of the Board, including, without limitation, regular, adjourned regular and special meetings, shall be called, noticed, held and conducted in accordance with the provisions of the Ralph M. Brown Act, California Government Code Section 54950 *et seq.*

**Article 9. Powers of the Board of Directors.** The Board of Directors shall have such powers and functions as provided for pursuant to this Agreement and the Bylaws and such additional powers as necessary or appropriate to fulfill the purposes of this Agreement and the Bylaws, including, but not limited to, the following:

- (a) to determine details of and select the Program or Programs to be offered, from time to time, by the Authority;

- (b) to determine and select all insurance, including Excess or Re-insurance, necessary to carry out the programs of the Authority;
- (c) to contract for, develop or provide through its own employees various services for the Authority;
- (d) to prepare or cause to be prepared the operating budget of the Authority for each fiscal year;
- (e) to receive and act upon reports of committees and from the Chief Executive Officer;
- (f) to appoint staff, including a Chief Executive Officer, and employ such persons as the Board of Directors deems necessary for the administration of this Authority;
- (g) to direct, subject to the terms and conditions of the Coverage Documents, the payment, adjustment, and defense of all claims involving a Member during their period of membership in and coverage under a Program;
- (h) to fix and collect Contributions and Assessments for participation in the Programs;
- (i) to expend funds of the Authority for the purpose of carrying out the provisions of the Agreement and the Bylaws as they now exist or may be hereafter amended;
- (j) to purchase excess insurance, liability insurance, stop loss insurance, officers and directors liability insurance, and such other insurance as the Authority may deem necessary or proper to protect the Program, employees of the Authority and employees of the Members;
- (k) to defend, pay, compromise, adjust and settle all claims as provided for in the Coverage Documents;
- (l) to obtain a fidelity bond in such amount as the Board of Directors may determine for any person or persons who have charge of or the authority to expend funds for the Authority;
- (m) to establish policies and procedures for the operation of the Authority and the Programs;
- (n) to engage, retain, and discharge agents, representatives, firms, or other organizations as the Board of Directors deems necessary for the administration of the Authority;
- (o) to enter into any and all contracts or agreements necessary or appropriate to carry out the purposes and functions of the Authority;

- (p) to acquire, hold, lease, manage and dispose of, as provided by law, any and all property necessary or appropriate to carry out the purposes and functions of the Authority;
- (q) to transact any other business which is within the powers of the Board of Directors;
- (r) to invest funds on hand in a manner authorized by law, the Agreement and the Bylaws;
- (s) to provide financial administration, claims management services, legal representations, safety engineering, actuarial services, and other services necessary or proper to carry out the purposes of the Authority either through its own employees or contracts with one or more third parties;
- (t) to exercise general supervisory and policy control over the Chief Executive Officer;
- (u) to establish committees and sub-committees as it deems necessary to best serve the interests of the Authority; and
- (v) to have such other powers and functions as are provided for pursuant to the Act, this Agreement or necessary or appropriate to fulfill the purpose of this Agreement and the Bylaws.

**Article 10. Officers of the Authority.** The officers of the Authority shall be as set forth in the Bylaws. The Board may elect or authorize the appointment of such other officers than those described in the Bylaws as the business of the Authority may require, each of whom shall hold office for such period, have such authority and perform such duties as are provided in this Agreement, or as the Board, from time to time, may authorize or determine.

Any officer may be removed, either with or without cause, by a majority of the directors of the Board at any regular or special meeting of the Board. Should a vacancy occur in any office as a result of death, resignation, removal, disqualification or any other cause, the Board may delegate the powers and duties of such office to any officers or to any Members of the Board until such time as a successor for said office has been appointed.

**Article 11. Provision for Bylaws.** The Board shall promulgate Bylaws to govern the day-to-day operations of the Authority. The Board may amend the Bylaws from time to time as it deems necessary, and as provided in the Bylaws. Each Member shall receive a copy of any Bylaws and agrees to be bound by and to comply with all of the terms and conditions of the Bylaws as they exist or as they may be modified. The Bylaws shall be consistent with the terms of this Agreement. In the event any provision of the bylaws conflicts with a provision of this Agreement, the provision contained in this Agreement shall control.

**Article 12. [Reserved].**



**Article 13. Coverage Programs.**

(a) The Authority shall maintain such types and levels of coverage for Programs as determined by the Board of Directors. Such coverage may provide for binding arbitration before an independent arbitration panel of any disputes concerning coverage between the Authority and a Member.

(b) The coverage afforded under one or more Programs may include protection for general liability, auto liability, property, boiler and machinery, public officials errors and omissions, employment practices, employee benefits liability coverage, employee dishonesty coverage, public officials personal liability coverage and workers' compensation, as well as coverage for other risks which the Board of Directors may determine to be advisable. More than one type of coverage may be afforded under a single Program.

(c) The Board of Directors may arrange for group policies to be issued for Members, their board members and employees interested in obtaining additional coverage, at an appropriate additional cost to those participating Members.

(d) The Board of Directors may arrange for the purchase of Excess or Re-Insurance. The Authority shall not be liable to any Member or to any other person or organization if such excess or reinsurance policies are terminated, canceled or non-renewed without prior notice to one or more Members, or if there is a reduction in the type of coverage afforded under a program by reason of any change in coverage in a succeeding excess or reinsurance policy, even if such reduction occurs without prior notice to one or more Members.

**Article 14. Implementation of the Programs.** The Board of Directors shall establish the coverage afforded by each Program, the amount of Contributions and Assessments, the precise cost allocation plans and formulas, provide for the handling of claims, and specify the amounts and types of Excess or Re-Insurance to be procured. The Contributions and Assessments for each Program shall be determined by the Board of Directors as set forth herein, in the Bylaws or in the operating policies established for a Program.

**Article 15. Accounts And Records.**

(a) **Annual Budget.** The Authority shall, pursuant to the Bylaws, annually adopt an operating budget, including budgets for each Joint Protection Program.

(b) **Funds and Accounts.** The Authority shall establish and maintain such funds and accounts as required by the Board of Directors and as required by generally accepted accounting principles, including separate funds and accounts for each Program, including Joint Protection Programs. Books and records of the Authority shall be open to any inspection at all reasonable times by authorized representatives of Members, or as otherwise required by law.

(c) **Investments.** Subject to the applicable provisions of any indenture or resolution providing for the investment of moneys held thereunder, the Authority shall have the power to invest any money in the treasury that is not required for the immediate necessities of the Authority, as the Board determines is advisable, in the same manner as local agencies pursuant to

California Government Code Sections 53601 *et seq.* (as such provisions may be amended or supplemented).

(d) **No Commingling.** The funds, reserves and accounts of each Program shall not be commingled and shall be accounted for separately; provided, however, that administration and overhead expenses of the Authority not related to a specific Program or Programs may be fairly and equitably allocated among Programs as determined by the Board of Directors. Investments and cash accounts may be combined for administrative convenience, but a separate accounting shall be made for balances of individual funds and Program revenues and expenses.

(e) **Annual Audit.** The Board shall provide for a certified, annual audit of the accounts and records of the Authority, in the manner set forth in the Bylaws.

**Article 16. Services Provided by the Authority.** The Authority may provide, at the sole discretion of the Board of Directors, the following services in connection with this Agreement:

(a) to provide or procure coverage, including but not limited to self-insurance funds and commercial insurance, as well as excess coverage, re-insurance and umbrella insurance, by negotiation or bid, and purchase;

(b) to assist Members in obtaining insurance coverage for risks not included within the coverage of the Authority;

(c) to assist risk managers with the implementation of risk management functions as it relates to risks covered by the Programs in which the Member participates;

(d) to provide loss prevention and safety consulting services to Members;

(e) to provide claims adjusting and subrogation services for Claims covered by the Programs;

(f) to provide loss analysis and control by the use of statistical analysis, data processing, and record and file keeping services, in order to identify high exposure operations and to evaluate proper levels of self-retention and deductibles;

(g) to review Member contracts to determine sufficiency of indemnity and insurance provisions when requested;

(h) to conduct risk management audits relating to the participation of Members in the Programs; and

(i) to provide such other services as deemed appropriate by the Board of Directors.

**Article 17. Responsibilities of Members.** Members or Former Members shall have the following responsibilities, which shall survive the withdrawal from, or involuntary termination of participation in, this Agreement:

(a) Each Member shall designate a person to be responsible for the risk management function within that Member and to serve as a liaison between the Member and the Authority as to risk management.

(b) Each Member shall maintain an active safety officer and/or committee, and shall consider all recommendations of the Authority concerning unsafe practices and/or hazard mitigation.

(c) Each Member shall maintain its own set of records, including a loss log, in all categories of risk covered by each Program in which it participates to insure accuracy of the Authority's loss reporting system, unless it is no longer deemed necessary by the Board of Directors.

(d) Each Member shall pay its Contribution, and any adjustments thereto, and any Assessments within the specified period set forth in the invoice, or as otherwise may be set forth herein or in the Bylaws. After withdrawal or termination, each Former Member or its successor shall pay promptly to the Authority its share of any additional Contribution, adjustments or Assessments, if any, as required of it by the Board of Directors under Article 21 or 22 of this Agreement or the Bylaws.

(e) Each Member or Former Member shall provide the Authority with such other information or assistance as may be necessary for the Authority to carry out the Programs under this Agreement in which the Member or Former Member participates or has participated.

(f) Each Member or Former Member shall in any and all ways cooperate with and assist the Authority and any insurer of the Authority, in all matters relating to this Agreement and covered claims.

(g) Each Member or Former Member will comply with all Bylaws, rules and regulations adopted by the Board of Directors.

(h) Each Member shall remain a member in good standing of CSDA.

**Article 18. New Members.** The Authority shall allow entry into its Programs of new Members only upon approval of the Board, with any conditions or limitations as the Board deems appropriate. In order to become a Member and remain a Member, any District must be a member in good standing of CSDA, shall participate in at least one (1) Joint Protection Program and shall be authorized to exercise the common powers set forth in this Agreement.

**Article 19. Withdrawal.**

(A) Any Member may voluntarily withdraw from this Agreement only at the end of any applicable Program Year and only if:

- (i) The Member has been a signatory to this Agreement for not less than three (3) full Program Years as of the date of the proposed withdrawal;

- (ii) The Member submits a written withdrawal notification in accordance with the Bylaws;
  - (iii) In order to withdraw from the agreement the member must have completed the three (3) full program year participation requirement for each Joint Protection Program the member participated in at the time of withdrawal.
- (B) Any Member may voluntarily withdraw from any particular Joint Protection Program; and
- (i) It has participated in such Joint Protection Program for at least three (3) full Program Years;
  - (ii) it is a participant in another Joint Protection Program; and
  - (iii) the Member submits a written withdrawal notification in accordance with the Bylaws.
- (C) In the event that the three year participation requirement as required by (A)(i) or (B)(i) as to any such Joint Protection Program above has not been met, for each Program the withdrawing Member participated in at the time of its withdrawal, for less than three years such withdrawing member shall be obligated to pay all Contributions and Assessments as if that Member had remained in each such Program for the full three years from the inception of its membership in the Authority.
- (D) In the event that the notice is not provided as required by (A)(ii) or (B)(iii) above, any such withdrawing Member shall, with respect to each Program the Member participated in, be obligated to pay any and all Contributions and Assessments for the next full Program Year.
- (E) A Member may withdraw from any Program (other than a Joint Protection Program) as provided by the Coverage Documents relating to such Program.
- (F) Withdrawal of one or more Members shall not serve to terminate this Agreement.
- (G) A Member may not withdraw as a party to this Agreement until it has withdrawn, as provided in the Bylaws from all of the Programs of the Authority.

**Article 20. Involuntary Termination.**

(a) Notwithstanding the provisions of Article 19, the Authority shall have the right to involuntarily terminate any Member's participation in any Program, or terminate membership in the Authority, as provided in the Bylaws.

(b) Notwithstanding any other provisions of this Agreement, the participation of any Member of the Authority, including participation in any of the Authority's Programs, may be involuntarily terminated at the discretion of the Board of Directors whenever such Member is dissolved, consolidated, merged or annexed. A reasonable time shall be afforded, in the

discretion of the Board of Directors, to place coverage elsewhere. Any such involuntary termination shall not relieve the Member or Former Member of its responsibilities as provided for in Articles 17 or 21.

**Article 21. Effect of Withdrawal or Involuntary Termination.** The withdrawal from or involuntary termination of any Member from this Agreement shall not terminate this Agreement, and such Member, by withdrawing or being involuntarily terminated, shall not be entitled to payment, return or refund of any Contribution, Assessment, consideration, or other property paid, or donated by the Member to the Authority, or to any return of any loss reserve contribution, or to any distribution of assets (except payment of any Retained Earnings, as set forth in the following paragraph).

The withdrawal from or involuntary termination of any Member after the effective date of any Program shall not terminate its responsibility to pay its unpaid Contribution adjustments, or Assessments to such Program. The Board of Directors shall determine the final amount due from the Member or Former Member by way of contribution or assessments, if any, or any credit due on account thereof, to the Member or Former Member for the period of its participation. Such determination shall not be made by the Board of Directors until all Claims, or other unpaid liabilities, have been finally resolved. In connection with this determination, the Board of Directors may exercise similar powers to those provided for in Article 22(b) of this Agreement, or as otherwise set forth in the Bylaws. Upon such withdrawal from or cancellation of participation in any Program by any Member, said Member shall be entitled to receive its pro rata share of any Retained Earnings declared by the Board of Directors after the date of said Member withdraws or is involuntarily terminated.

**Article 22. Termination and Distribution; Assignment.**

(a) This Agreement may be terminated any time with the written consent of two-thirds of the voting Members; provided, however, that this Agreement and the Authority shall continue to exist for the purpose of disposing of all claims, distribution of net assets and all other functions necessary to wind up the affairs of the Authority.

(b) The Board of Directors is vested with all powers of the Authority for the purpose of winding up and dissolving the business affairs of the Authority. These powers shall include the power to require Members or Former Members, including those which were signatory hereto at the time the subject Claims arose or was/were incurred, to pay any Assessment in accordance with loss allocation formulas for final disposition of all Claims and losses covered by this Agreement or the Bylaws. A Member or Former Member's Assessment shall be determined as set forth in the Bylaws or the applicable Coverage Documents.

(c) Upon termination of a Program, all net assets of such Program other than Retained Earnings shall be distributed only among the Members that are participating in such Program at the time of termination, in accordance with and proportionate to their cash payments (including Contributions, adjustments, Assessments and other property at market value when received) made during the term of this Agreement for such Program. The Board of Directors shall determine such distribution within six (6) months after disposal of the last pending Claim or loss covered by such Program, or as otherwise set forth in the Bylaws.

(d) Upon termination of this Agreement all net assets of the Authority, other than of any Program distributed pursuant to (c) above, shall be distributed only among the Members in good standing at the time of such termination in accordance with and proportionate to their cash contributions and property at market value when received. The Board of Directors shall determine such distribution within six (6) months after disposal of the last pending Claim or loss covered by this Agreement, or as otherwise set forth in the Bylaws.

(e) In the event the Board of Directors is no longer able to assemble a quorum, the Chief Executive Officer shall exercise all powers and authority under this Article. The decision of the Board of Directors or Chief Executive Officer under this Article shall be final.

(f) In lieu of terminating this Agreement, the Board, with the written consent of two-thirds of the voting Members, may elect to assign and transfer all of the Authority's rights, assets, liabilities and obligations to a successor joint powers authority created under the Act.

**Article 23. Enforcement.** The Authority is hereby granted authority to enforce this Agreement. In the event action is instituted to enforce the terms of this Agreement, the Bylaws and/or any policies and/or procedures of the Board of Directors and the nondefaulting party(s) should employ attorneys or incur other expenses for the collection of moneys or the enforcement or performance or observance of any obligation or agreement on the part of the defaulting party(s) herein contained, the defaulting party agrees that it will on demand therefore pay to the nondefaulting party(s) the reasonable fees of such attorneys and such other expenses so incurred by the nondefaulting party(s).

**Article 24. Nonliability of Directors, Officers and Employees.** The Board of Directors, and the officers and employees of the Authority, including former directors, officers and employees, shall not be liable to the Authority, to any Member or Former Member, or to any other person, for actual or alleged breach of duty, mistake of judgment, neglect, error, misstatement, misleading statement, or any other act or omission in the performance of their duties hereunder; for any action taken or omitted by any employee or independent contractor; for loss incurred through the investment or failure to invest funds; or for loss attributable to any failure or omission to procure or maintain insurance; except in the event of fraud, gross negligence, or intentional misconduct of such director, officer or employee. No director, officer or employee, including former directors, officers and employees, shall be liable for any action taken or omitted by any other director, officer or employee. The Authority shall defend and shall indemnify and hold harmless its directors, officers and employees, including former directors, officers and employees, from any and all claims, demands, causes of action, and damages arising out of their performance of their duties as such directors, officers or employees of the Authority except in the event of fraud, gross negligence, corruption, malice or intentional misconduct, and the funds of the Authority shall be used for such purpose. The Authority may purchase conventional insurance to protect the Authority, and its participating Members or Former Members, against any such acts or omissions by its directors, officers and employees, including former directors, officers and employees.

**Article 25. Provisions Relating to CSDA.** It is agreed and understood the mandatory membership in CSDA provision in Article 18 is in consideration of CSDA's exclusive endorsement of SDRMA's programs as they exist or may be modified. CSDA and the Authority

may from time to time exchange services or enter into separate service agreements pursuant to Section 6505 of the Act, including, but not limited to, services relating to educational programs, marketing, web-site graphics and conferences.

So long as the Authority is a participant in the MOU, the Board of the Authority shall appoint three members of the Board to serve as members of the Alliance Executive Council. In the event the MOU has been terminated or the Authority has withdrawn from the MOU, the composition of the Authority Board of Directors shall be increased by two (2) additional directors to be appointed by CSDA. CSDA appointees shall be a director serving on the CSDA Board of Directors and said director(s) shall be a member of an agency who is a signatory to the current SDRMA Joint Powers Agreement.

CSDA shall be a third party beneficiary to Sections 18, 25, 27 of this Agreement.

**Article 26. Notices.** Notices to Members or Former Members hereunder shall be sufficient if delivered to the principal office of the respective Member or Former Member.

**Article 27. Amendment.** This Agreement may be amended at any time by a two-thirds vote of the Members; provided, that any amendment to Article 18, Article 25, or Article 27 shall require the prior written consent of CSDA. The Bylaws may be amended as provided therein. Upon the effective date of any validly approved amendment to this Agreement, such amendment shall be binding on all Members.

**Article 28. Prohibition Against Assignment.** No person or organization shall be entitled to assert the rights, either direct or derivative, of any Member or Former Member under any coverage agreement or memorandum. No Member or Former Member may assign any right, claim or interest it may have under this Agreement, and no creditor, assignee or third party beneficiary of any Member or Former Member shall have any right, claim or title or any part, share, interest, fund, contribution or asset of the Authority.

**Article 29. Agreement Complete.** The foregoing constitutes the full and complete Agreement of the parties. There are no oral understandings or agreements not set forth in writing herein. This Agreement supersedes and replaces the Fifth Amended Joint Powers Amendment.

**Article 30. Counterparts.** This Agreement may be executed in one or more counterparts and shall be as fully effective as though executed in one document.

**Article 31. California Law.** This Agreement shall be governed by the laws of the State of California.

**Article 32. Severability.** Should any part, term or provisions of this Agreement be determined by any court of component jurisdiction to be illegal or in conflict with any law of the State of California or otherwise be rendered unenforceable or ineffectual, the validity of the remaining portions or provisions shall not be affected thereby.

**Article 33. Effective Date.** This Agreement shall become effective as to existing Members of the Authority on the date on which the last of two-thirds of such Members have executed this Agreement.

**IN WITNESS WHEREOF**, the parties hereto have first executed this Agreement by authorized officials thereof on the date indicated below:

Acknowledgement:

\_\_\_\_\_  
Ken Sonksen, President  
Board of Directors  
SPECIAL DISTRICT RISK MANAGEMENT AUTHORITY

\_\_\_\_\_  
Date

I hereby certify this Amended Joint Powers Agreement has also received the required approval of not less than two-thirds of the Member entities then parties to the Fifth Amended Joint Powers Agreement.

\_\_\_\_\_  
James W. Towns, Chief Executive Officer  
SPECIAL DISTRICT RISK MANAGEMENT AUTHORITY

\_\_\_\_\_  
Date



**EXECUTION BY MEMBER**

The Amended and Restated Joint Powers Agreement of the Special District Risk Management Authority, has been approved by the Board of Directors of the Member listed below, on the date shown, and said Member agrees to be subject to all of the terms and conditions set forth in said Agreement.

Entity Name: \_\_\_\_\_

By: \_\_\_\_\_ President

By: \_\_\_\_\_ Clerk

Date: \_\_\_\_\_

**EXECUTION BY AUTHORITY**

The Special District Risk Management Authority (the "Authority"), operating and functioning pursuant to this Sixth Amended Joint Powers Agreement, hereby accepts the entity named above as a participating member in the Authority, subject to all of the terms and conditions set forth in this Sixth Amended Joint Powers Agreement and in the Bylaws, effective as of

\_\_\_\_\_.

**SPECIAL DISTRICT RISK MANAGEMENT AUTHORITY**

By: \_\_\_\_\_  
Ken Sonksen, President  
Board of Directors

Date: \_\_\_\_\_

