

Tenant Discrimination Liability Insurance Policy

NOTICE:

Except to such extent as may otherwise be provided herein, the coverage afforded by this policy is limited to liability for only those **CLAIMS THAT ARE FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD AND REPORTED TO THE COMPANY DURING THE POLICY PERIOD, OR WITHIN SIXTY (60) DAYS AFTER THE EXPIRATION OF THE POLICY PERIOD.**

PLEASE REVIEW THE POLICY CAREFULLY AND DISCUSS THE COVERAGE THEREUNDER WITH YOUR INSURANCE AGENT OR BROKER.

CONDITIONS PRECEDENT

IN CONSIDERATION of the **Insured's** payment of the premium, and expressly relying upon the **Insured's** representation that all information provided to the **Company** by the **Insured** in the **Application**, or otherwise, is true and correct as of the first day of the **Policy Period**, the **Company** and the **Insureds** agree as follows:

I. WHO IS INSURED

1. The **"Named Insured"** is that business entity designated in **Item 1** of the Declarations as the **Named Insured**
2. **"Insured"** or **"Insureds,"** as the context may require, includes:
 - (a) the **Named Insured**;
 - (b) each natural person who is a lawfully appointed director, officer, partner, shareholder, or trustee of the **Named Insured**;
 - (c) any salaried manager or employee acting under the authority of their employment;

Provided, however, that any suit involving a director, trustee, officer, partner, manager or employee must also include the **Named Insured** as a party defendant.

II. THE COVERAGE

1. **Wrongful Discrimination Coverage.** The **Company** will pay on behalf of the **Insured** as a result of a **Claim First Made** and reported to the **Company** during the **Policy Period**, or within sixty (60) days after the expiration of the **Policy Period**:
 - (a) the amount of **Damages**, in excess of the **Co-Insurance Obligation** amount specified in **Item 6** of the Declarations, which the **Insured** shall become legally obligated to pay, and
 - (b) **Expenses**; both of which are the result of a **Claim** for **Wrongful Discrimination** against the **Insured**, whether or not such allegations are false, baseless, unfounded or otherwise without merit;

Provided always that the **Company** will not pay on behalf of the **Insured** with regard to any **Claim** if:

- (a) the act, error, or omission which is the basis of the **Claim** happened prior to the earlier of the first day of the **Policy Period** or the Retroactive Date specified in **Item 4** of the Declarations; or
 - (b) prior to the first day of the **Policy Period** any **Insured** had information from any source which would lead a reasonable person in that **Insured's** position to conclude that a **Claim** was probable.
 - (c) the **Claim** is by a **Tenant** of a property not scheduled in **Item 8 of the Declarations-Schedule of Property Under Management**, or otherwise endorsed on the Policy.
2. **Defense of Insured.** The **Company** will have the right and duty to **Defend** any **Claim** seeking **Damages** and will pay the **Expenses** incurred, subject to the Limit of Liability of this policy. However, the **Company** will have no duty to **Defend** the **Insured** against any **Claim**, to which this Insurance does not apply.

3. **Damages and Expenses Included in Policy Limit.** The maximum amount that the **Company** will pay for **Damages** and **Expenses** is limited as described in **Section V. Limits of Liability and Item 5** of the Declarations. When the Limit of Liability has been depleted by payment of **Damages** and/or **Expenses**, the **Company** will no longer have a right or duty to pay **Damages** or **Expenses** or to **Defend** the **Insured**.
4. **Claim Settlement.** The **Company** may, at its sole discretion, investigate, negotiate and settle any **Claim**. The **Named Insured** will abide by the terms of such settlement and, upon the request of the **Company**, will immediately contribute the amount of any **Co-Insurance Obligation** to conclude the settlement.
5. **Co-Insurance Obligation.** The Co-Insurance amount in **Item 6** of the Declarations is that percentage which the **Insured** must pay toward any **Damages** paid, or agreed to be paid, by the **Company** for any judgment, award, settlement or other payment to resolve a **Claim** against the **Insured**. The payment by the **Named Insured** of the **Co-Insurance Obligation** is a condition precedent to coverage under this policy for any **Claim**.

The **Named Insured** shall tender the **Co-Insurance Obligation** to the **Company**, or at the **Company's** direction to another, within fifteen (15) days after the **Company** makes a written request for payment to the **Named Insured** at the address indicated in **Item 2** of the Declarations. The **Company** may make the request for payment of the **Named Insured's Co-Insurance Obligation** as soon as it agrees to any settlement or partial settlement of any **Claim**, or as soon as any judgment or award is entered against the **Insured**. The **Co-Insurance Obligation** of the **Named Insured** applies to each **Claim**.

Notwithstanding the foregoing, the maximum **Co-Insurance Obligation** of the **Insured** under this policy shall not exceed three percent (3%) of the Aggregate policy limit identified in **Item 3 Limit of Liability - Aggregate** in the declarations.

The **Coinsurance Obligation** does not apply to **Expenses**.

6. **Acquisitions.** Coverage will be provided for any properties acquired subsequent to the issuance of this **Policy** for up to 60 days from the date of acquisition. In order for coverage to be provided beyond the 60 days, the **Named Insured** must notify the **Company** in writing listing the property name, address, and number of units. The **Company** may determine that additional premium is due from the **Named Insured**.
7. **Public Relations Coverage.** In addition to the Limits of Liability of the policy, the **Company** will, upon approval by the **Company**, pay the reasonable cost actually incurred by the **Named Insured** for the services of a public relations professional, or other publicity expenses that are recommended by a public relations professional to respond to any actual adverse publicity in the media, that arises from a **Claim** by any regulatory organization or other organization that purports to represent the interest of a group of tenants. In no event shall the **Company's** total liability for this **Public Relations Coverage** exceed **two and one half percent (2.5%)** of the aggregate Limit of Liability of the policy during the Policy Period.

III. DEFINITIONS

1. **"Application"** means the Application for Tenant Discrimination Insurance attached hereto and forming a part of this policy, including any materials submitted in connection therewith, all of which are on file with the **Company** and are a part of this policy as if physically attached. No inconsistency between any term used in the **Application** and any term used in this policy will waive or otherwise modify any portion of this policy.
2. **"Authority"** means the United States Department of Housing and Urban Development or any similar federal, state or local agency charged with the administration of fair housing laws.
3. **"Bodily Injury"** means bodily injury, sickness or disease sustained by a person, including death resulting from any of these.
4. **"Claim"** shall mean a written demand for money or services by a **Tenant** as a result of **Wrongful Discrimination** by the **Insured**, including the **Institution** in a court of general jurisdiction of any lawsuit against the **Insured** by a **Tenant** alleging discrimination against the **Tenant** on the basis of race, religion, age, sex, sexual preference, national origin, familial status or disability. **Claim** shall also include the **Institution** of a charge against the **Insured** with any

- Authority** by a **Tenant** or an administrative action initiated by an **Authority** including any investigations, conciliation meetings or hearings on behalf of a **Tenant**.
5. **“Damages”** means the monetary portion of any judgment, award or settlement, including an award of reasonable attorney’s fees and costs to a party making a **Claim** against the **insured** for **Wrongful Discrimination**. With regard to judgments, awards or settlements resulting from a **Wrongful Discrimination**, **Damages** does not include:
 - (a) the return of rent or security deposits or expenses paid to the **Insured**;
 - (b) any damages deemed uninsurable under the law pursuant to which this policy will be construed; or
 - (c) the cost of any modifications to the property leased, or to be leased, necessary to comply with any statute or required under the terms of any judgment or settlement.
 6. **“Defend”** means to investigate and evaluate a **Claim** and to represent the **Insureds** in advocating orally and in writing, to all persons who have or claim a legally enforceable interest in the subject matter of a **Claim**, that all **Insureds** properly performed all of their respective duties and fulfilled all of their respective obligations and that the **Claim** is unfounded, baseless, or otherwise without merit.
 7. **“Expenses”** means the aggregate of all fees and expenses paid by the **Company** to all attorneys the **Company** designates to **Defend** the **Insured** against a **Claim** and all other fees and expenses paid by the **Company** in the investigation, defense or appeal of a **Claim**; **provided, however**, that no portion of the compensation or other cost of regular employees or officers of the **Company**, nor any sums paid by the **Company** to any supervisory counsel retained by the **Company** with respect to any **Claim**, are **Expenses** for any purpose under this policy.
 8. **“First Made”** means the earliest date upon which any **Insured** receives any written:
 - (a) information from any source which would lead a reasonable person in the **Insured’s** position to conclude a **Claim** was probable; or
 - (b) service of process, demand for arbitration or similar notice of the commencement of a civil action against, or other adjudicatory proceeding with respects to an **Insured**; or
 - (c) receipt of notice by any **Authority** of an investigation to be conducted by the **Authority** or the request or demand for the **Insured** to attend any meeting or hearing brought by the **Authority**.
 9. **“Institution”** means, when referring to the commencement of any lawsuit, the time legal process is served on the **Insured**. With respect to administrative proceedings, the term means the time written notice is received by the **Insured**.
 10. **“Personal Injury”** means injury other than **Bodily Injury** to a **Tenant** and is limited to one or more of the following offenses: humiliation, infliction of emotional distress, wrongful entry or eviction, and violation of the right of privacy. A **Claim** for **Personal Injury** must also include an allegation of **Wrongful Discrimination** by the **Tenant** or a guest of a **Tenant** and be the result of:
 - (a) enforcement of the terms of a lease by the **Insured**, or
 - (b) refusal by the **Insured** to lease the premises to a **Tenant**, or
 - (c) refusal to allow a guest of a **Tenant** access to the leased property, or
 - (d) eviction of a guest of a **Tenant** from the leased property.
 - (e) a violation of the Fair Credit Reporting Act (15 U.S.C. § 1681 *et. Seq.*).
 11. **“Policy Period”** means the period from the earliest date identified in **Item 3** of the Declarations to the earlier of:
 - (a) the date upon which this policy is terminated in accordance with **Section VIII. General Conditions, Paragraph 3, Cancellation**; or
 - (b) the latest date identified in **Item 3** of the Declarations.

12. **“Property Damage”** means physical injury to tangible property, including all resulting loss of use of that property or loss of use of tangible property that is not physically injured.
13. **“Tenant”** means a current tenant, former tenant or applicant for tenancy or any individual or group that purports to have standing to bring a **Claim** on its own behalf or to represent any tenant, former tenants or applicants for tenancy. **Tenant** also includes the guest of any lessee under a written lease to occupy property owned by the **Named Insured**.
14. **“Wrongful Discrimination”** means:
 - (a) The wrongful treatment of a **Tenant** (i) in refusing a lease; (ii) during the leasing process; (iii) during the course of the lease; or, the refusal to allow a guest of a **Tenant** access to the leased property, or the eviction of a guest of a **Tenant** from the leased property because of discrimination on the basis of race, religion, age, sex, sexual preference, national origin, familial status or disability, or
 - (b) The violation of the Fair Credit Reporting Act (15 U.S.C. § 1681 *et. Seq.*) or any similar state or local statute in connection with any **Tenant**, prospective **Tenant** or former **Tenant**.

Wrongful Discrimination includes **Personal Injury** only if such **Personal Injury** is the result of alleged Wrongful Discrimination by the **Insured** against the **Tenant**.

IV. EXCLUSIONS

THIS POLICY DOES NOT APPLY TO ANY CLAIM OR PORTION OF ANY CLAIM:

1. brought by, in the name of, or on behalf of any **Insured**; or
2. for **Bodily Injury**, or **Property Damage**; or
3. for **Personal Injury** unless there is also a **Claim** for **Wrongful Discrimination**; or
4. which has been finally determined to be based upon, arising out of, in consequence of or directly or indirectly resulting from any dishonest, fraudulent, criminal or malicious act or omission committed by any **Insured**; *provided, however*, that this exclusion shall not apply to **Damages** which result solely from the vicarious liability of the **Named Insured**; or
5. arising from actual, alleged or threatened exposure to, or generation, storage, transportation, discharge, emission, release, dispersal, escape, treatment, removal or disposal of, any smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials (including materials which are intended to be or have been recycled, reconditioned or reclaimed) or other irritants, pollutants or contaminants, or any regulation, order, direction or request, or any action taken in contemplation of, or anticipation of any regulation, order, direction or request, to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize any of the foregoing; or
6. for any cost or charges associated with repairing, building or modifying the leased property, or property to be leased, to accommodate or comply with the American with Disabilities Act, or any other anti-discrimination law or to any cost required to modify property to comply with any award by a court, administrative order, arbitration award or any similar judgments; or
7. for the return of rents, security deposits or any other funds held by an **Insured**.

V. LIMITS OF LIABILITY

1. **Limit of Liability - Each Claim.** The liability of the **Company** for the combined total **Damages** and **Expenses** for each **Claim First Made** against the **Insured** and reported to the **Company** during the **Policy Period**, or within sixty (60) days after the expiration of the policy, shall not exceed the amount stated in the Declarations **Item 5 Limits of Liability for Each Claim**.
2. **Limit of Liability - Aggregate.** The total Limit of Liability of the **Company** for the combined total of **Damages** and **Expenses** for all **Claims First Made** and reported to the **Company** either during the **Policy Period**, or within sixty (60) days after the expiration of the **Policy Period**, shall not exceed the amount stated in the Declarations **Item 5 Limits of Liability Aggregate**.

3. **Multiple Insureds, Claims and Claimants.** The making of claims or the bringing of suits by more than one person or organization during the **Policy Period** shall not operate to increase the limit of the **Company's** liability for each **Claim**, regardless of the number or type of acts, errors or omissions alleged, the number of **Insureds** who allegedly committed such acts, errors or omissions or the number of persons or organizations bringing a suit.

A class action shall be considered one **Claim** regardless of the number of allegations, parties included in the class or the frequency of alleged **Wrongful Discrimination** by the **Insured**.

Any and all appeals shall be considered to be part of the underlying **Claim** and treated as a single **Claim**. Any and all related suits or administrative proceedings or suits arising out of the same **Wrongful Discrimination** shall be treated as a single **Claim**. All such **Claims** whenever made, shall be considered **First Made** on the date of which the earliest **Claim** arising out of the aforementioned conduct was first made and all such **Claims** shall be subject to the same Limit of Liability.

VI. TERRITORY

The insurance provided by this policy shall apply, subject to all other policy provisions and exclusions, to all **Claims** asserted within the United States, its territories and possessions.

VII. CLAIMS

1. **Notice of Claim.** Each **Insured** shall use all reasonable means to assure that each **Claim** is promptly reported to the **Company AND IN NO EVENT LATER THAN SIXTY (60) DAYS FROM THE DATE OF THE INSTITUTION OF ANY LEGAL OR ADMINISTRATIVE PROCEEDING. REPORTING THE CLAIM WITHIN THE SIXTY (60) DAYS FROM THE INSTITUTION OF ANY LEGAL OR ADMINISTRATIVE PROCEEDING IS A CONDITION PRECEDENT TO COVERAGE UNDER THIS POLICY.** All notices, information and documents required to assure each **Claim** is promptly reported must be sent to the **Company** by facsimile or expedited delivery.
2. **Subrogation.** If the **Company** incurs any **Expense** under this policy then, in addition to and not as a limitation of all its other legal rights and privileges, the **Company** will be subrogated to the extent of that payment to all **Insureds'** rights of recovery. The **Insureds** will do everything necessary to secure such rights, including the execution of such documents as are necessary to enable the **Company** to bring suit in the **Insured's** name(s). The **Insured** will do nothing to prejudice such rights. The **Company** may exercise any of the **Insured's** rights of recovery in its sole discretion.
3. **No Action Against the Company.** No action against the **Company** shall lie unless, as a condition precedent thereto, all **Insureds** have complied fully with all the terms of this policy. No person or entity has any right under this policy to join the **Company** as a party to any **Claim** to determine the liability of the **Insureds**. Neither the **Insureds** nor the **Insured's** legal representatives may implead or otherwise join the **Company** in any **Claim**. Bankruptcy or insolvency of any **Insured** or of any **Insured's** estate shall not relieve the **Company** of its obligations under this policy.

VIII. GENERAL CONDITIONS

1. **Notices to the Company.** All notices and information required under the policy must be directed to the **Company** at the address set forth in the Declarations.
2. **Confidentiality.** The parties agree that the existence and conditions of this policy will remain confidential, and each party agrees to take all reasonable efforts to preserve the confidential nature of the existence of the policy and the terms and conditions thereof. Notwithstanding the above, either party may disclose information regarding this policy in responding to any lawful inquiries made by legal tribunals with jurisdiction, regulatory authorities, legal representatives or agents of either party, or any other authorities with jurisdiction over the **Named Insured or the Company**. Disclosure may also be made if both parties extend their written consent to waive this provision.
3. **Cancellation.** This policy may be canceled by the **Named Insured** by surrender thereof to the **Company** or to Shand Morahan & Company, Inc., Ten Parkway North, Deerfield, Illinois 60015 or by mailing to the aforementioned written notice stating when thereafter such cancellation

shall be effective. If canceled by the **Named Insured**, the **Company** shall retain the customary short rate proportion of the earned premium.

This policy may be canceled by the **Company** or by Shand Morahan & Company, Inc., by mailing to the **Named Insured** written notice stating when, not less than thirty (30) days thereafter, such cancellation shall be effective. However, if the **Company** cancels the policy because the **Named Insured** has failed to pay a premium or the **Insured's Co-Insurance Obligation** when due, the policy may be canceled by the **Company** by mailing a written notice of cancellation to the **Named Insured** stating when, not less than ten (10) days thereafter, such cancellation shall be effective. The mailing of notice as aforementioned shall be sufficient notice and the effective date of cancellation stated in the notice shall become the end of the **Policy Period**. Delivery of such written notice by the **Named Insured**, the **Company**, or Shand Morahan & Company, Inc. shall be equivalent to mailing. If canceled by the **Company**, earned premium shall be computed pro rata. Premium adjustment may be made at the time cancellation is effected or as soon as practicable thereafter.

4. **Changes.** Notice to any agent or knowledge possessed by any agent or other person acting on behalf of the **Company** shall not waive or otherwise modify any part of this policy or estop the **Company** from asserting any right under the terms of this policy. The terms of this policy can be waived only by written endorsement issued by the **Company** to form a part of this policy.
5. **Service of Suit.** Except with respect to policies issued for Named Insureds domiciled in Illinois, it is agreed that in the event of the failure of the Company hereon to pay any amount claimed to be due hereunder, the Company hereon, at the request of the Named Insured will submit to the jurisdiction of any court of competent jurisdiction within the United States and will comply with all requirements necessary to give such court jurisdiction and all matters arising hereunder shall be determined in accordance with the law and practice of such court. Nothing in this Clause constitutes nor shall be understood to constitute a waiver of the Company's right to commence an action in any court of competent jurisdiction in the United States, to remove an action to United States District Court or to 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 the General Counsel, Shand Morahan & Company, Inc., Ten Parkway North, Deerfield, IL 60015, and that in any suit instituted against them upon this contract, the Company will abide by the final decision of such court or of any appellate court in the event of an appeal.

The above named are authorized and directed to accept service of process on behalf of the Company in any such suit and/or upon the request of the Named Insured that they will enter a general appearance upon the Company's behalf in the event such a suit shall be instituted.

Further, pursuant to any statute of any state, territory, or district of the United States which makes provision therefor, the Company hereon hereby 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 their 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 **Named Insured** or any beneficiary hereunder arising out of this contract of insurance, and hereby designates the above named as the person to whom the said officer is authorized to mail such process or a true copy thereof.

IN WITNESS WHEREOF, the **Company** has caused this policy to be signed by its President and Secretary, but this policy shall not be valid unless countersigned on the Declarations page by a duly authorized representative of the **Company**.

SPECIMEN

Secretary

SPECIMEN

President

NUCLEAR ENERGY LIABILITY EXCLUSION ENDORSEMENT (BROAD FORM)

This endorsement modifies the provisions of this policy.

It is agreed that:

1. This policy does not apply:

- A. Under any Liability Coverage, to bodily injury or property damage
 - (1) with respect to which an Insured under this policy is also an Insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada, or would be an Insured under any such policy but for its termination upon exhaustion of its limit of liability; or
 - (2) resulting from the hazardous properties of nuclear material and with respect to which (a) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (b) the Insured is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.
- B. Under any Medical Payments Coverage, or any Supplementary Payments provision relating to first aid, to expenses incurred with respect to bodily injury resulting from the hazardous properties of nuclear material and arising out of the operation of a nuclear facility by any person or organization.
- C. Under any Liability Coverage, to bodily injury or property damage resulting from the hazardous properties of nuclear material, if
 - (1) the nuclear material (a) is at any nuclear facility owned by, or operated by or on behalf of, an Insured or (b) has been discharged or dispersed therefrom;
 - (2) the nuclear material is contained in spent fuel or waste at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of an Insured; or
 - (3) the bodily injury or property damage arises out of the furnishing by an Insured of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any nuclear facility, but if such facility is located within the United States of America, its territories or possessions or Canada, this exclusion (3) applies only to property damage to such nuclear facility and any property thereat.

2. As used in this endorsement:

"hazardous properties" include radioactive, toxic or explosive properties;

"nuclear material" means source material, special nuclear material or by-product material;

"source material", "special nuclear material", and "by-product material" have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof;

"spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a nuclear reactor;

"waste" means any waste material (1) containing by-product material and (2) resulting from the operation by any person or organization of any nuclear facility within the definition of nuclear facility under paragraph (a) or (b) thereof;

"nuclear facility" means

- (a) any nuclear reactor,
- (b) any equipment or device designed or used for (1) separating the isotopes of uranium or plutonium, (2) processing or utilizing spent fuel, or (3) handling, processing or packaging waste,

- (c) any equipment or device used for the processing, fabricating or alloying of special nuclear material if at any time the total amount of such material in the custody of the Insured at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235.
- (d) any structure, basin, excavation, premises or place prepared or used for the storage or disposal of waste.

and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations;

"nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material;

"property damage" includes all forms of radioactive contamination of property.



EVANSTON INSURANCE COMPANY

Endorsement

Named Insured:

Policy No.:

Endorsement No.: 1

Effective Date:

SCHEDULE OF INSURED PROPERTY UNDER MANAGEMENT

It is understood and agreed that the Schedule of Insured Property Under Management is limited to the following properties:

- X
- X
- X
- X

All other terms and conditions remain unchanged.

SPECIMEN

(Authorized Representative)