

**EXTENDED WARRANTY INSURANCE POLICY**

Effected with STRATEGY INSURANCE LIMITED (hereinafter called the "Insurer") through

**SHIELD FINANCIAL SERVICES (CANADA) INC.**

**TORONTO, ONTARIO**

	BROKER <b>SHIELD FINANCIAL SERVICES (CANADA) INC.</b>	POLICY NUMBER <b>SLIFMV00004</b>
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NAMED INSURED AND POSTAL ADDRESS

**SILVER CITY TRADING CORPORATION (FORMERLY SILVER CITY COMIC, INC.)**

3365 HARVESTER ROAD

BURLINGTON, ON

L7N 3N2

(hereinafter called the "Insured Seller")

ATTACHMENT DATE APPLICABLE TO DONATION PROGRAM FOR 2003 CANADIAN TAX YEAR	EFFECTIVE DATE OCTOBER 22, 2004 12:01 A.M.
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**INSURANCE COVERAGE CONDITIONS ARE CONTAINED IN THE WORDING ATTACHED.**

**See attached wording**

**IDENTIFICATION OF INSURER / ACTION AGAINST INSURER**

This insurance has been effected in accordance with the authorization granted to the undersigned by STRATEGY INSURANCE LIMITED. Strategy Insurance Limited, identified in the said contract, shall be liable hereunder.

**NOTICE**

Any notice to the Insurer may be validly given to the undersigned. In witness whereof this policy has been signed, as authorized by the Insurer, by SHIELD FINANCIAL SERVICES (CANADA) INC.

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**Various provisions in this policy restrict coverage. The Insured should read the entire policy carefully to determine rights, duties and what is and is not covered.**

**If any provisions of the policy appear to be incorrect, the Insured should immediately notify Shield Financial Services (Canada) Inc. at the address noted above regarding any required change or correction.**

**In the event of an occurrence likely to result in a claim under this policy, the Insured should provide immediately written notice thereof to Shield Financial Services (Canada) Inc. at the address noted above.**

# EXTENDED WARRANTY INSURANCE POLICY

## ARTICLE 1 Definitions

1.1 In this Policy,

“**Actual Additional Tax Liability**” means the amount by which

(a) the federal and provincial income tax that would have been payable by a particular Buyer in respect of the Applicable Canadian Tax Year if the fair market value of the Property was equal to the Appraised Value

is exceeded by

(b) the federal and provincial income tax that would have been payable by that particular Buyer in respect of the same Applicable Canadian Tax Year if the fair market value of the Property was equal to the Determination Value;

“**Adverse Notice of Reassessment**” means a Notice of Assessment or a Notice of Reassessment issued by the CRA or any provincial tax authority to a Buyer whose Extended Warranty is covered under this policy that reassessed the federal or provincial income tax owing by the particular Buyer on the basis that the fair market value of the Property is less than the Insured Value or the structure of the Charitable Donation Program results in the reduction of the non-refundable tax credit that would be claimed based on the Appraised Value;

“**Applicable Canadian Tax Year**” means the taxation year of a particular Buyer in which the particular Buyer donated the Property to the Charity;

“**Appraised Value**” means the fair market value of the Property as set out in Schedule B to the Purchase Agreement between the Insured Seller and the particular Buyer in respect of the Property;

“**Buyer**” means an individual person who was a participant in the Insured Seller’s charitable donation program who during the calendar year 2003 purchased Property from the Insured Seller pursuant to a Purchase Agreement between the person and the Insured Seller, who selected Option 1 under Section 4 of that Purchase Agreement, who donated the purchased Property to a Charity between 12:01 a.m. (Eastern Standard Time) on January 1, 2003 and 11:59 p.m. (Eastern Standard Time) on February 18, 2003, who claimed a non-refundable tax credit in respect of his or her donation of the purchased Property in his or her 2003 taxation year, and who has subsequently purchased from the Insured Seller an Extended Warranty in respect of the Property;

“**Comic Book Guides**” means *The Overstreet Comic Book Price Guide*, *Comic Buyer’s Guide*, and *Comic Book Check List and Price Guide*;

“**Charity**” means a “registered charity” as that term is defined in the ITA and any reference to the Charity means the particular Charity to which a particular Buyer donated the Property the particular Buyer purchased from the Insured Seller pursuant to a Purchase Agreement between the particular Buyer and the Insured Seller and that is named as the Charity in Deed of Gift to a Charity attached to the particular Purchase Agreement;

“**Determination Value**” means the fair market value of the Property on the date of donation by a particular Buyer to the Charity for purposes of section 118.1 of the ITA as finally determined by the Minister of National Revenue (Canada), the Tax Court of Canada, the Federal Court of Appeal (Canada), or the Supreme Court of Canada;

“**Extended Warranty**” means each extended warranty (in a form identical to the document attached and annexed hereto as Exhibit B and entitled “Limited Extended Warranty Regarding Fair Market Value of Assets”) sold to a Buyer by the Insured Seller pursuant to which the Insured Seller makes a representation and warranty to the Buyer regarding the fair market value of the Property as of the date of donation by the Buyer to the Charity for purposes of section 118.1 of the ITA;

“**Insured Seller**” means Silver City Trading Corporation, the seller of Property and the seller of the Extended Warranty;

**“Insured Value”** means the amount which is equal to (i) if the Property is comic books, the average of the prices for Similar Merchandise as determined by the Insurer as set out in the annual edition for the Applicable Canadian Tax Year of the following publications: *The Overstreet Comic Book Price Guide*, *Comic Buyer’s Guide*, and *Comic Book Check List and Price Guide*, (ii) if the Property is trading cards, the average of the prices for Similar Merchandise as determined by the Insurer as set out in the annual edition for the Applicable Canadian Tax Year of the following publications: *The Sports Cards Magazine & Price Guide*, *Tuff Stuff Price Guide*, *Becket Baseball Card Monthly Becket Publications*, and (iii) if the Property is educational supplies or medical supplies, the lesser of (a) the Appraised Value of the Property, and (b) the lowest price generally available to the Government of Canada from major Canadian retailers or distributors for Similar Merchandise during the Applicable Canadian Tax Year as determined by the Insurer;

**“Invoice”** means the invoice prepared by the Insured Seller pursuant to section 3 of the Purchase Agreement between a particular Buyer and the Insured Seller detailing the Property purchased by the particular Buyer from the Insured Seller;

**“ITA”** means the Income Tax Act, Revised Statutes of Canada 1985, c. 1 (5th Supplement), as amended;

**“Loss”** means any liability of the Insured Seller to a Buyer for damages for breach of the Extended Warranty sold by the Insured Seller to the Buyer that are measured solely by and are equal to

- (a) the particular Buyer’s Notional Additional Tax Liability, and
- (b) any interest or penalties payable by the particular Buyer pursuant to the ITA or provincial income tax legislation that is calculated based upon the Buyer’s Notional Additional Tax Liability;

**“Non-covered Issues”** means any and all issues that may be raised by CRA unrelated to the specific donation made to the charity;

**“Notional Additional Tax Liability”** means the amount by which

- (a) the federal and provincial income tax that would have been payable by a particular Buyer in respect of the Applicable Canadian Tax Year if
  - (i) the fair market value of the Property was equal to the Insured Value, and
  - (ii) the particular Buyer did not use, claim, or apply any “capital loss” (as that term is defined for purposes of the ITA and provincial income tax legislation) that may have been available to the particular Buyer against or in any way in respect of any “capital gain” (as that term is defined for purposes of the ITA and provincial income tax legislation) which the particular Buyer may have realized on the donation of the Property to the Charity,

is exceeded by

- (b) the federal and provincial income tax that would have been payable by that particular Buyer in respect of the same Applicable Canadian Tax Year if
  - (i) the fair market value of the Property was equal to the Determination Value, and
  - (ii) the particular Buyer did not use, claim, or apply any “capital loss” (as that term is defined for purposes of the ITA and provincial income tax legislation) that may have been available to the particular Buyer against or in any way in respect of any “capital gain” (as that term is defined for purposes of the ITA and provincial income tax legislation) which the particular Buyer may have realized on the donation of the Property to the Charity,

and for greater certainty, if (b) is equal to or less than (a), the particular Buyer’s Notional Additional Tax Liability is zero;

**“Official Tax Receipt”** means the official tax receipt issued by the Charity to the Buyer in respect of the Buyer’s donation of the Property to the Charity and includes all documents and schedules attached to or referenced in the

official tax receipt, and includes any charitable donation receipt received by the Insured Seller on behalf of a Particular Buyer pursuant to the Purchase Agreement between the Insured Seller and that particular Buyer;

“**Property**” means that particular property purchased by a particular Buyer from the Insured Seller pursuant to a Purchase Agreement between the particular Buyer and the Insured Seller as listed in the Invoice issued by the Insured Seller to the particular Buyer pursuant to that Purchase Agreement;

“**Purchase Agreement**” means a Purchase Agreement in the identical form as the agreement attached hereto as Exhibit A made between a Buyer and the Insured Seller, and includes all documents signed, made, issued, or executed there under, including for greater certainty the Deed of Gift to a Charity completed and signed by the Buyer, the Invoice prepared by the Insured Seller, and Schedule “B” prepared by the Insured Seller;

“**Schedule “B”**” means the Schedule “B” prepared by the Insured Seller pursuant to the Purchase Agreement between a particular Buyer and the Insured Seller detailing the Property purchased by the particular Buyer from the Insured Seller;

“**Similar Merchandise**” means goods that are of identical kind, quality, and quantity as the Property on the date of donation by the Buyer to the Charity;

“**Trading Card Guides**” means *The Sports Cards Magazine & Price Guide*, *Tuff Stuff Price Guide*, and *Becket Baseball Card Monthly Becket Publications*.

## **ARTICLE 2 Coverage**

**2.1** In consideration of the representations and agreements contained herein and in each application for coverage made by the Insured Seller pursuant to this policy, and of the payment of premiums as provided herein, the Insurer offers to provide the coverage set out herein to the Insured Seller in respect of each Extended Warranty sold by the Insured Seller on or before June 30, 2005 that upon application is approved for coverage by the Insurer. Specifically, the Insurer will pay on behalf of the Insured Seller the Loss the Insured Seller incurs as a direct result of a claim being made on or before September 30, 2008 against the Insured Seller by a Buyer, subject to the Policy Limits and to all provisions, conditions and exceptions contained herein, endorsed hereon or attached hereto.

**2.2** The Insurer shall have a duty and right to conduct any assessment appeal and resulting court proceedings that are the subject matter of the Extended Warranties.

**2.3** Coverage shall only apply to Extended Warranties sold by the Insured Seller to Buyers who

- (a) purchased Property from the Insured Seller directly, or through their spouse, from the Insured Seller during the 2003 calendar year
- (b) donated that Property to a Charity between 12:01 a.m. (Eastern Standard Time) on January 1, 2003 and 11:59 p.m. (Eastern Standard Time) on February 18, 2003, and
- (c) claimed a non-refundable tax credit in respect of the donation of that Property to the Charity in the particular Buyer's Canadian federal income tax return filed in respect of the particular Buyer's 2003 or 2004 Canadian taxation year,

and only to those Extended Warranties that are in respect of Property purchased by the particular Buyer from the Insured Seller during the 2003 calendar year.

**2.4** Coverage shall only apply to Extended Warranties sold by the Insured Seller to Buyers in respect of Property that, both at the time of purchase by the Buyer from the Insured Seller and at the time of donation by the Buyer to the Charity, was new (other than near mint and like new comic books and trading cards), genuine, of merchantable quality, and had not been used, damaged, or altered in any way.

**2.5** Coverage shall only apply to Extended Warranties sold by the Insured Seller to Buyers in respect of Property that was comic books, trading cards, educational supplies, or medical supplies. Extended Warranties sold by the Insured Seller to Buyers in respect of any other Property is not and shall not be covered.

**2.6** Coverage shall only apply to Extended Warranties sold by the Insured Seller to Buyers in respect of Property that was comic books or trading cards to the extent that a price for Similar Merchandise to the particular comic books or trading cards purchased by a particular Buyer is published in an edition of a Comic Book Guide or a Trading Card Guide for the Applicable Canadian Tax Year.

**ARTICLE 3**  
**Policy Limits**

**3.1 Policy Limit:** The maximum liability of the Insurer per Extended Warranty insured hereunder shall be limited to the lesser of (a) the amount equal to the product of the particular Buyer's Notional Additional Tax Liability multiplied by 4, and (b) two-hundred-and-fifty-thousand dollars (\$250,000.00).

**ARTICLE 4**  
**Premium**

**Premium:** The premium payable by the Insured Seller for the insurance coverage provided in respect of each Extended Warranty to which the coverage is extended pursuant to this policy is an amount equal to five-and one-tenth per cent (5.10%) of the Appraised Value of the Property sold by the Insured Seller to the Buyer (inclusive of any applicable taxes) to which the particular Extended Warranty applies.

**ARTICLE 5**  
**Conditions Precedent**

**5.1** It is a condition precedent to insurance coverage under this policy that the Insured Seller has truthfully declared all material facts now actually known to it and known to it at the time of application for coverage in respect of each Extended Warranty, likely to influence a reasonable Insurer in determining:

- (a) whether or not to accept the risk,
- (b) the amount of the Premium,
- (c) the conditions, exclusions and limitations of this policy, or
- (d) indemnification or payment on behalf of the Insured Seller.

**5.2** Except as otherwise specifically provided herein or required by applicable law, this policy shall be void if, whether before or after a Loss, the Insured Seller has concealed or misrepresented any material fact or circumstances concerning this insurance or the subject matter hereof, or the interest of the Insured Seller therein, or in case of any fraud, attempted fraud, or false swearing by the Insured Seller relating thereto.

**ARTICLE 6**  
**General Exclusions And Exceptions**

**6.1** This insurance does not cover any loss resulting from:

- (a) Any fraud, misrepresentation, or concealment by the Insured Seller,
- (b) Any happening which is insured or would, but for the existence of this insurance, be insured by any other insurance except for any excess insurance coverage provided herein beyond the amount which would have been payable under such other insurance had this insurance not been effected,
- (c) This insurance shall not apply where the Insured Seller has committed any dishonest, illegal or criminal act, the result of which created or increased any claim otherwise due under this insurance, but only to the extent of the amount of the claim thereby created or the amount of the increase, and

Notwithstanding anything to the contrary in the above, a claim hereunder shall be invalidated by the failure of the Insured Seller or any agent of any Insured Seller to satisfy the conditions precedent or other conditions specified herein.

**6.2** The Insurer shall have no obligation to defend any claim, suit, action or other proceeding or to indemnify the Insured Seller for any tax liability arising solely by reason of the Insured Seller's or Buyer's assumption of liability in a contract or agreement, unless the Insured Seller or Buyer has entered into such contract or agreement with the prior written approval of the Insurer.

**6.3** No person, entity or organization has a right under this policy to join the Insurer as a party to a legal action seeking to determine the Insured Seller's liability in connection with a claim made pursuant to an Extended Warranty; nor does the Insured Seller or its legal representative have a right to implead the Insurer in any such action.

## **ARTICLE 7**

### **Application For Coverage**

**7.1** The coverage offered by the Insurer pursuant to this Policy to the Insured Seller is not automatic. The Insured Seller must apply for coverage from the Insurer in respect of each Extended Warranty sold by the Insured Seller to a Buyer by providing to the Insurer (or its authorized representatives) within 60 days of the date of sale of the Extended Warranty by the Insured Seller to a Buyer ALL of the following:

- (a) The full payment of the premium in respect of the particular Extended Warranty;
- (b) A true copy of the Warranty Application for Limited Extended Warranty Regarding Fair Market Value of Assets signed and executed by the particular Buyer;
- (c) A true copy of the Purchase Agreement signed and executed by the Insured Seller and the particular Buyer;
- (d) A true copy of both the Invoice and Schedule "B" prepared by the Insured Seller and delivered to the Escrow Agent pursuant to section 4 of the particular Purchase Agreement;
- (e) A true copy of The Deed of Gift to a Charity signed and executed by the particular Buyer;
- (f) A true copy of the Official Tax Receipt issued by the Charity to the particular Buyer in respect of the particular Buyer's donation of the Property, including all attachments and schedules thereto and documents referred to or referenced therein,
- (g) A true and complete copy of the particular Buyer's Canadian federal and provincial tax return(s) (including all schedules, receipts, and other documentation) filed by the particular Buyer with the Canada Revenue Agency ("CRA") or provincial tax authority in which the particular Buyer claimed a non-refundable tax credit pursuant to section 118.1 of the ITA in respect of the particular Buyer's donation of the Property to the Charity shall be supplied only if an Adverse Notice of Reassessment is issued against the Buyer;
- (h) A true copy of the Adverse Notice of Reassessment if issued by the CRA or provincial tax authority to the particular Buyer in respect of the particular Buyer's taxation years in which the particular Buyer claimed a non-refundable tax credit pursuant to section 118.1 of the ITA in respect of the particular Buyer's donation of the Property to the Charity;
- (i) A duly executed certificate from the particular Buyer certifying:
  - (i) the Buyer has not received from the CRA or any provincial tax authority any Adverse Notice of Reassessment in respect of the particular Buyer's Applicable Canadian Tax Year; or
  - (ii) the Buyer has received from the CRA or a provincial tax authority an Adverse Notice of Reassessment in respect of the particular Buyer's Applicable Canadian Tax Year in which case,
    - (A) true copies of all such Notice of Assessment or Notice(s) of Reassessment must be attached to the Certificate;

- (B) true copies of any Notices of Objection filed by or on behalf of the particular Buyer in respect of the Notice of Assessment or Notice(s) of Reassessment must be attached to the Certificate; and
  - (C) true copies of all correspondence between the particular Buyer (or their authorized representative) and the particular tax authority subsequent to the filing of the Notices of Objection (including any Notice of Decision issued by any particular tax authority) must be attached to the Certificate;
- (j) True and complete copies of all appraisal reports received by the particular Buyer, the Insured Seller, or the Charity in respect of the Property; and
  - (k) A true copy of a duly executed Privacy Consent form identical in form to that set out as Exhibit C to this policy.

**7.2** If the Insurer receives all of the items referred to in Article 7.1 within 60 days of the date of sale of the Extended Warranty by the Insured Seller to a particular Buyer and provided all items are not, in the sole discretion of the Insurer, deficient in anyway, the Insurer shall issue to the Insured Seller a Certificate (substantially in the form attached as Exhibit D to this Policy) confirming that the Insurer will provide the coverage set out within this Policy (and subject to the limits set out herein) to the Insured Seller in respect of the particular Extended Warranty and the coverage provided pursuant to this policy by the Insurer to the Insured Seller in respect of the particular Buyer's Extended Warranty shall commence on the date and time of issuance of the Certificate as evidenced by the date and time set out on the Certificate.

**7.3** If the Insurer does not receive all of the items referred to in Article 7.1 within 60 days of the date of sale of the Extended Warranty by the Insured Seller to a particular Buyer, the Insurer shall not be required to provide the coverage herein in respect of the particular Buyer's Extended Warranty. If the Insured Seller's application for coverage of a particular Extended Warranty is received by the Insurer more than 60 days after the date of sale, the Insurer shall send a letter to the Insured Seller by fax and by regular mail indicating that the application was not received within time and indicating to the Insured Seller whether (and under what additional terms or conditions) the Insurer would be willing to extend coverage to the Insured Seller in respect of the particular Extended Warranty.

**7.4** If the Insured Seller's application for coverage of a particular Extended Warranty is received by the Insurer within 60 days of the date of sale by the Insured Seller to a particular Buyer but is deficient (as determined in the sole discretion of the Insurer), the Insurer shall send a letter to the Insured Seller by fax and regular mail setting out the deficiencies in the items provided by the Insured Seller and the Insured Seller shall have 15 days from the date of that letter to remedy all deficiencies. If all deficiencies are not remedied by the Insured Seller to the full satisfaction of, and within the sole discretion of, the Insurer, the Insurer may at any time send to the Insured Seller written notice by registered letter to the last known address of the Insured Seller notifying the Seller that coverage will not be offered or extended to the Insured Seller in respect of the particular Extended Warranty.

**7.5** The Insurer shall have no obligation to provide any coverage provided herein in respect of any Extended Warranty in circumstances where the particular Buyer of an Extended Warranty has received an Adverse Notice of Reassessment from the CRA in respect of the particular Buyer's Applicable Canadian Tax Year but where the particular Buyer has failed to inform the Insurer, or their legal counsel, within 60 days of the date of the particular Adverse Notice of Reassessment.

## ARTICLE 8 Claims

**8.1** Claims upon this insurance by the Insured Seller shall be made by presentation to Insurer and to Fasken Martineau DuMoulin, Attention: FMV Tax Litigation Clerk, with a sworn proof of claim substantially in the form attached as Exhibit E to this policy completed and duly executed by the Insured Seller (or its designated authorized representative), with the following documents attached:

- (a) a true copy of the Adverse Notice of Reassessment received by the Buyer claiming against the Insured Seller under the Extended Warranty;
- (b) an original CRA T1013 -- Authorization Form -- completed and duly executed by the particular Buyer.

**8.2** The sworn proof of claim and all documents referred to in Article 8.1 must be provided by the Insured Seller (or its designated authorized representative) and received by the Insurer (or its designated authorized representative) within 45 days of the date of the particular Buyer's Adverse Notice of Reassessment. If the sworn proof of claim and all required documents are not delivered to or received by the Insurer (or its designated authorized representative) within 45 days of the date of the particular Buyer's Adverse Notice of Reassessment, the Insurer may, in its sole discretion, cancel this policy with respect to the particular Buyer's Extended Warranty by providing 15 days written notice by registered letter to the last known address of the Insured Seller and enclosing therewith copies of all of the documents referred to in Article 7.1 and refunding the premium paid in respect of the particular Extended Warranty.

**8.3** If the sworn proof of claim and all documents referred to in Article 8.1 are not delivered to or received by the Insurer (or its designated authorized representative) within 75 days of the date of the particular Buyer's Adverse Notice of Reassessment, this policy in respect of the particular Buyer's Extended Warranty shall automatically terminate.

**8.4** Once a claim is made under this policy, the Insured Seller must provide forthwith to the Insurer (or its designated authorized representative):

- (a) true copies of all correspondence between the particular Buyer and CRA or any provincial tax authority sent or received on or before the date of the particular Buyer's Adverse Notice of Reassessment that in any way relate to or are in respect of the purchase or donation of the Property by the particular Buyer, and
- (b) true copies of all correspondence between the particular Buyer and the CRA or any provincial tax authority sent or received after the date of the particular Buyer's Adverse Notice of Reassessment.

**8.5** Once a claim has been validly made pursuant to this policy, the Insurer or designated authorized representative may file a notice of objection to the particular Buyer's Adverse Notice of Reassessment within 90 days of the date of the Adverse Notice of Reassessment. However, the Insurer and its designated authorized representative shall not be obligated to object to or appeal any issue raised by the Adverse Notice of Reassessment that is a Non-covered Issue, but may object to or appeal any such Non-covered Issues provided the Buyer agrees to comply with Articles 9.2(d).

**8.6** The Insured Seller and the Buyer shall consent to carriage of the Objection and to any proceedings in the Tax Court of Canada or any higher court of competent jurisdiction by the Insurer on behalf of the Buyer. The Insurer may contest the same in the Tax Court of Canada, and shall be entitled to appeal or contest any appeal thereof in higher courts, all with legal counsel of Insurer's choice.

**8.7** The Insurer or its designated authorized representative may, in its sole discretion exercised reasonably in the circumstances, object to or appeal any Non-covered Issues raised by the Adverse Notice of Reassessment if requested to do so by the particular Buyer, but only if the particular Buyer fully cooperates with the Insurer and its designated authorized representative, and only if the particular Buyer provides to the Insurer's legal counsel a retainer satisfactory to the Insurer's legal counsel in respect of all professional fees, disbursements, and other charges as a consequence of including in the Notice of Objection objections to such other issues.

**8.8** The Insurer, as the authorized representative of a particular Buyer, has the sole and exclusive right to negotiate the fair market value of the Property of the particular Buyer with the CRA, any provincial tax authority, and their counsel. However, the Insurer may not agree to any fair market value on behalf of the particular Buyer without first obtaining the expressed written consent of the particular Buyer. If the Insurer and the CRA or provincial tax authority (as the case may be) at any time reach a tentative agreement as to the fair market value of the particular Buyer's Property and the Insurer recommends to the particular Buyer to accept the tentatively agreed upon fair market value and the particular Buyer refuses to accept the tentatively agreed upon fair market value, then (a) the maximum liability of the Insurer hereunder shall be limited to the amount that the particular Buyer's Notional Additional Tax Liability would have been if the fair market value of the particular Buyer's Property was equal to the tentatively agreed upon fair market value recommended by the Insurer to the Buyer, and (b) the particular Buyer shall be solely responsible for all professional fees, costs, disbursements, and other charges payable in connection with the objection or appeal from the date the Insurer first recommended to the particular Buyer that the particular Buyer accept the tentatively agreed upon fair market value.

**8.9** The Insurer shall have no obligation to pay or secure any claim made pursuant to this policy until 45 days following receipt by the Insurer of the final Adverse Notice of Reassessment issued by the CRA (or provincial tax authority) in which the fair market value of the particular Buyer's Property for purposes of section 118.1 of the ITA (or equivalent provision contained in provincial income tax legislation) is based upon Determination Value. It is within the sole discretion of the Insured Seller or the Buyer whether they choose to pay or secure, in whole or in part, any federal or provincial income tax assessed or reassessed as owing by the particular Buyer pending settlement or resolution of the Determination Value of the particular Buyer's Property. If the Insured Seller or the particular Buyer does choose to pay or secure, in whole or in part, any such taxes, the Insurer shall not be obligated to pay or compensate in any way the Insured Seller or the particular Buyer for any opportunity costs incurred by the Insured Seller or the particular Buyer as a consequence of paying or securing, in whole or in part, any such taxes.

## **ARTICLE 9**

### **Designated Beneficiaries & Subrogation**

**9.1 Designated Beneficiaries:** The Insured Seller may designate any Buyer as a beneficiary under this policy. Each such designation shall be made by the delivery of a completed and duly executed Designation Form to the Insurer that identifies the Buyer, the Extended Warranty, and the Property to which it applies. Upon receipt by the Insurer of the completed and duly executed Designation Form, the policy coverage will become effective with respect to the identified Extended Warranty for that Buyer. The designation of a Buyer shall be irrevocable unless both the Buyer and the Insured Seller otherwise jointly direct the Insurer. Where a Buyer has been designated as a beneficiary under this policy, any coverage amount payable by the Insurer on behalf of the Insured Seller in respect of an Extended Warranty shall be paid to or to the order of the Buyer.

**9.2 Buyer Agreements with Insured Seller:** It is a condition precedent to coverage under this policy in respect of an Extended Warranty sold to a particular Buyer and to the designation of that Buyer as a beneficiary under this policy, that the Buyer has agreed to the following terms and conditions in favour of and enforceable by the Insurer:

- (a) The Buyer acknowledges that it is a condition of the Insured Seller's insurance coverage for the Extended Warranty and the Buyer's designation as a beneficiary under the policy that the Insurer has the right, at the Insurer's own expense, to conduct any objection, appeal, and resulting court proceedings that are the subject matter of the Extended Warranty ("Tax Proceedings"), including the right to select and retain counsel of the Insurer's choice.
- (b) The Buyer agrees that for any claim it makes under the Extended Warranty, the Insurer shall have the right, at the Insurer's own expense, to conduct any Tax Proceedings on behalf of the Buyer, including the right to select and retain counsel of the Insurer's choice.
- (c) The Buyer agrees that the Insurer shall have the right to conduct the Tax Proceedings even if the policy limit payable or the amount paid, if any, by the Insurer in respect of the particular Buyer's Adverse Notice of Reassessment is less than the full amount of the Buyer's Actual Additional Tax Liability.
- (d) The Buyer agrees that the Insurer may select legal counsel regardless of whether some or all of the matters in issue are subject to coverage under the insurance policy. In the event that some issues in the Tax Proceedings are not covered by this policy, the counsel selected by the Insurer will be

retained to conduct the entire Tax Proceedings and counsel's fees and disbursements will be apportioned according to counsel's estimate, acting reasonably, of the fees and disbursements in respect of covered versus Non-covered Issues. The Buyer agrees that it will be responsible for the fees and disbursements apportioned in respect of Non-covered Issues.

- (e) The Buyer agrees to deliver to the Insurer originals of all demands, notices, summonses, assessments, reassessments or other legal papers received in connection with the subject matter of the Extended Warranty within 45 days of the date of the demand, notice, summons, assessment, reassessment, or other legal papers. In particular, without limiting the generality of the foregoing, the Buyer agrees to deliver to the Insurer the original of each notice of assessment and notice of reassessment issued by the Canada Revenue Agency with respect to the Extended Warranty within 45 days of the date of the particular notice. The Buyer acknowledges that failure to deliver any such documents to the Insurer within 45 days could result in additional liability or preclude the Insurer from being able to conduct Tax Proceedings to dispute the assessment and agrees that any such additional liability or precluded opportunity to dispute liability will exclude such liabilities from coverage under the policy.
- (f) The Buyer agrees to cooperate with the Insurer, including counsel and experts appointed by the Insurer, in all matters concerning the conduct of the Tax Proceedings, including the investigation, settlement or defence of any proceeding relating to the subject matter of the Extended Warranty. The Buyer agrees at all times to do and concur in doing upon the Insured's written request all reasonable things within its power or control to avoid or diminish a loss under this insurance. The Buyer agrees to authorize the Insurer to obtain any records, including tax records, and other information relating to the subject matter of the Extended Warranty.
- (g) The Buyer agrees it will not, except at the Buyer's own cost and expense, voluntarily make any payment, assume any obligation, or incur any expense relating to the Extended Warranty without the Insurer's prior written consent.
- (h) The Buyer agrees to maintain complete and adequate records relating to the subject matter of the Extended Warranty.
- (i) The Buyer assigns to the Insurer any rights the Buyer has, or subsequently obtains, to recover from the Government of Canada or any provincial government in respect of the assessment or reassessment giving rise to the Tax Proceedings ("Assessment Recovery"), to the extent the Insurer has made payments in respect of such assessment or reassessment. The Insurer's right to recovery has priority over any right the Buyer has to the Assessment Recovery and the Insurer shall have a lien on the Assessment Recovery.
- (j) The Buyer agrees to execute and deliver all required instruments and papers as well as doing whatever else is needed to assist the conduct of the Tax Proceedings and to secure the Insurer's rights to Assessment Recovery.
- (k) The Buyer agrees to complete, duly execute, and deliver to the Insurer a Privacy Consent form identical in form to that set out as Exhibit C to this policy.
- (l) The Buyer agrees that the Insurer, as the authorized representative of a particular Buyer, has the sole and exclusive right to negotiate the fair market value of the Property of the particular Buyer with the CRA, any provincial tax authority, and their counsel. However, the Insurer may not agree to any fair market value on behalf of the particular Buyer without first obtaining the expressed written consent of the particular Buyer. If the Insurer and the CRA or provincial tax authority (as the case may be) at any time reach a tentative agreement as to the fair market value of the particular Buyer's Property and the Insurer recommends to the particular Buyer to accept the tentatively agreed upon fair market value and the particular Buyer refuses to accept the tentatively agreed upon fair market value, the maximum liability of the Insurer hereunder shall be limited to the amount that the particular Buyer's Notional Additional Tax Liability would have been if the fair market value of the particular Buyer's Property was equal to the tentatively agreed upon fair market value recommended by the Insurer to the Buyer.

**ARTICLE 10**  
**General**

**10.1** The Insured Seller assigns to the Insurer any rights the Insured Seller has, or subsequently obtains, to recover in respect of any Extended Warranty, to the extent the Insurer has made payments in respect of such Extended Warranty. The Insurer's right to recovery has priority over any right the Insured Seller has to the recovery and the Insurer shall have a lien on the recovery.

**10.2** The Insured has no duty to provide coverage under this policy unless there has been full compliance with all of the terms and conditions of the policy. In addition, no person, entity or organization may commence legal action against the Insured to recover under this policy unless, as a condition precedent to the commencement of such action, there has been full compliance with all of the terms and conditions of the policy.

**10.3** The Buyer must maintain complete and adequate records relating to the subject matter of insurance in connection with the subject matter insured hereunder. The Insurer may, at any time during the term of this insurance with reasonable prior notice to the Insured Seller, require that the Insured Seller provide to the Insurer current copies of all relevant documents, correspondence, tax returns, assessment notices, reassessment notices sent by or received by the Buyer, and upon request by the Insurer, the Insured Seller shall deliver to the Insurer all and any material information relating to this insurance received by the Insured Seller.

**10.4** The Insured Seller must:

- (a) Immediately send the Insurer copies of any demands, notices, summonses, assessments, reassessments or other legal papers received in connection with the subject matter of this insurance, as well as all documents in the Insured Seller's power, possession, or control related to any Purchase Agreement and Extended Warranty, and the Insured Seller shall obtain the cooperation of any Charity which has received donated Property in providing any and all documentation in their power, possession, or control, and all other evidence in respect of any donation which is the subject of any such demand, notice, summons, assessment, reassessment, or other legal proceeding;
- (b) Authorize the Insurer to obtain any records, including tax records, and other information relating to the subject matter of this insurance;
- (c) Cooperate with the Insurer in the investigation, settlement or defence of any proceeding relating to the subject matter of this insurance;
- (d) Assist the Insurer, upon our request, in the enforcement of any right against Canada Revenue Agency or any other person or organization in respect of any rights to which the Insurer may be subrogated hereunder; and
- (e) Not, except at the Insured Seller's sole cost and expense, voluntarily make any payment, assume any obligation, or incur any expense relating to the subject matter of this insurance without the Insurer's prior written consent.

**10.5** Upon the receipt by Insurer of any information delivered by the Insured Seller pursuant to this policy, the Insurer shall be subject to the same legal and contractual restrictions and obligations as the Insured Seller with respect to the confidentiality of such information.

**10.6** The Insured Seller shall at all times do and concur in doing upon the Insured's written request all reasonable things within its power or control to avoid or diminish a Loss under this insurance.

**10.7** In the event of any payment under this insurance, the Insurer shall be subrogated to the extent of such payment to all rights of recovery of the Insured Seller and the Insured Seller shall execute all papers required and shall do everything that may be necessary to secure such rights.

**10.8** In the event of the failure of the Insured Seller to remedy any material breach of this agreement by the Insured Seller within 30 days of written notice of such breach from the Insurer, the Insurer may cancel coverage to the Insured Seller by registered letter to the Insured Seller at its last known address.

**10.9** This insurance shall be subject to the laws of the Province of Ontario, Canada.

**10.10** All amounts set out in this policy are expressed in Canadian dollars.

**10.11** In the case of a Buyer who is a resident of the Province of Quebec, all references to Canada Revenue Agency, Tax Court of Canada and Income Tax Act (Canada) herein shall be construed so as to include Revenu du Quebec, Court of Quebec (Civil Division) and Taxation Act (Quebec) respectively.

**10.12** If the Insured Seller makes a claim under this policy, the Insurer will select legal counsel regardless of whether some or all of the matters in issue are subject to coverage under this insurance policy. In the event that some issues are not covered by this policy, counsel selected by the Insurer will be retained to conduct all proceedings. However, neither the Insurer nor legal counsel selected by the Insurer shall not be obligated to object to or appeal any matter in issue that is not subject to coverage under this insurance policy. The Insurer and legal counsel selected by the Insurer may object to or apply any issue that is not subject to coverage under this insurance policy provided either the Insured Seller or a particular Buyer agrees to be responsible for and pay all of the legal counsel's fees and disbursements that relate to or are in respect of any issue or issue that are not covered by this policy, and to provide to legal counsel such retainer as may be reasonably required. Counsel's fee and disbursements will be apportioned according to counsel's estimate, acting reasonably, of the fees and disbursements in respect of covered versus Non-covered Issues.

**10.13** The Insured Seller agrees that this policy, including any riders, endorsements, exhibits, and schedules and every application, constitutes the entire agreement between the Insured Seller and the Insurer (or any of their agents) relating to the insurance provided hereby.

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

**10.15** Any coverage dispute or other controversy between the Insurer and the Insured Seller or any Designated Beneficiary that arises in connection with, or that relates to, this policy will be resolved as follows:

- (a) The parties will first endeavour to resolve the dispute by non-binding mediation under such rules and procedures, and using such mediator, as the parties may agree. If the parties do not otherwise agree, the mediation will be administered by the ADR Institute of Ontario under its mediation rules.
- (b) If the parties cannot resolve the dispute by non-binding mediation, the dispute will be referred to a panel of three arbitrators for final and binding arbitration under the national arbitration rules of the ADR Institute of Ontario as adopted by the ADR Institute of Ontario. In any arbitration proceeding commenced under this Article 10.15, the Insurer will select one arbitrator, the Insured Seller will select one arbitrator, and the two arbitrators so selected will select the third arbitrator. The parties may agree in writing to utilize a different arbitral tribunal or to proceed under a different set of arbitration rules. In any event, however, the award issued by the arbitrator or arbitrators in a proceeding under this Article 10.15 will be final and binding, will be enforceable in any court of competent jurisdiction, and will not be subject to judicial review.