



DEVON PARK
SPECIALTY INSURANCE

November 9, 2023

Mr. Nance Ceccarelli
High Lonesome Ranch Estates HLR POA
P.O. Box 215
Elfrida, AZ 85610

VIA E-MAIL AT:

RE: Claimants: Robert Barfield, Eileen Ahearn, Pat Green &
Joyce Green
Claim Number: 0-23432
Reported Date of Loss: 3/2/2023
Date Received: 3/2/2023
Named Insured: High Lonesome Ranch Estates HLR POA
Policy Number: CAP1559673E
Policy Effective Dates: 11/8/2022 to 11/8/2023
Issuing Company: United States Liability Insurance Company

Dear Mr. Ceccarelli,

United States Liability Insurance Company (“the Company”) is currently providing a defense in the lawsuit styled Barfield et al. v. High Lonesome Ranch Estates Property Owners Assoc., No. So200CV202300255 (Cochise County Super. Ct.). The Company also acknowledges issuing the above captioned Non-Profit Management Liability Policy (the “Policy”). The Company writes this letter to identify the relevant coverages and to apprise you of its coverage position with respect to the court’s November 2, 2023, order awarding the Claimants \$14,342.40 in attorney fees and \$405.18 for costs. As previously advised and is explained in more detail below, the Policy does not provide coverage for the amounts awarded. After you review this letter, feel free contact me with any questions you may have.

This letter will quote certain Policy provisions pertinent to the Company’s coverage analysis. Please refer to the Policy, as the language of all policy terms, conditions, exclusions and endorsements set forth in the Policy are determinative of the existence of coverage. Please refer to policy form **CAP (08-15) Community Association Directors & Officers Liability Coverage Form** which contains the following relevant language:

I. INSURING AGREEMENT

- A.** The **Company** will pay on behalf of the **Insured**, **Loss** in excess of the Retention not exceeding the Limit of Liability shown in the Policy Declarations for which this coverage applies that the **Insured** shall become legally obligated to pay because of **Claims** first made against the **Insured** during the **Policy Period** or during the Extended

BERKSHIRE HATHAWAY COMPANIES

1190 DEVON PARK DRIVE • P.O. BOX 6700 • WAYNE, PA 19087 • 610-688-2535 • 888-523-5545 • FAX 610-688-4391

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Mount Vernon Specialty Insurance Co. • Radnor Specialty Insurance Co.

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Reporting Period, if applicable, for **Wrongful Acts** or **Wrongful Employment Acts** arising solely out of an **Insured's** duties on behalf of the **Organization**. Such **Claim(s)** must be reported to the **Company** in accordance with Section XIII herein.

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

* * *

III. DEFINITIONS

* * *

- L.** "**Loss**" means damages and settlements which an **Insured** is legally obligated to pay as a result of a **Wrongful Act** or **Wrongful Employment Act**, front pay and back pay, pre-judgment and post judgment interest awarded by a court and punitive or exemplary damages to the extent such damages are insurable under applicable law but does not include fines, penalties, taxes, the multiplied portion of any multiple damage award or an express obligation to make payments in the event of the termination of employment.

For the purpose of determining the insurability of punitive damages and exemplary damages, the laws of the jurisdiction most favorable to the insurability of such damages shall control, provided that such jurisdiction has a substantial relationship to the relevant **Insured** or to the **Claim** giving rise to the damages.

The above-cited Insuring Agreement states that the coverage may apply when an **Insured** becomes legally obligated to pay **Loss** because of a **Claim** for **Wrongful Acts** that is first made against the **Insured** during the **Policy Period**. The above-cited definitions explain what is meant when those terms are used in the Policy. The Policy defines **Loss** as damages and settlements which an **Insured** is legally obligated to pay as a result of a **Wrongful Act**. The attorney fees and costs awarded in this matter are not damages awarded as a result of a **Wrongful Act** but are instead fees and costs awarded to the Claimants as the prevailing party in the litigation.

Please refer again to policy form **CAP (08-15) Community Association Directors & Officers Liability Coverage Form**, which contains the following exclusions:

IV. EXCLUSIONS

* * *

- B.** The **Company** shall be liable to make payment for **Defense Costs** but not **Loss** in connection with any **Claim** made against the **Insured** arising out of, directly or indirectly resulting from or in consequence of, or in any way involving:

- (1) breach of any oral, written or implied contract or agreement by any **Insured**, or any liability of others assumed by any **Insured** under any oral, written or implied contract or agreement; or


Exclusion B.(1) cited above precludes coverage for any Claim arising out of, directly or indirectly resulting from or in consequence of, or in any way involving liability of others assumed by any **Insured** under any oral, written or implied contract or agreement. The Claimants assert that they are entitled to prevailing party attorney fees and costs pursuant to Section 11.1 of the Covenants, Conditions and Restrictions, which constitutes a contract between the owners of a development as a whole and the individual lot owners. Because the Claimants' application for fees and costs is based on contractual liability, Exclusion B.(1) precludes coverage.

For the reasons stated above, the Policy provides no coverage for the attorney fees and costs awarded against the **Insured**. This determination is based upon all information available to the Company at this time. If you have additional information or legal authority that you believe may affect the Company's position regarding coverage for this claim, or you obtain such information or authority in the future, please send me such information or documentation for review. There may be other reasons for which coverage does not exist, and the failure to enumerate each and every potential ground for a coverage denial does not mean that the Company has waived any rights under the Policy. The Company's position may be subject to change if additional facts and legal theories are developed, and the Company reserves all its rights under the Policy and at law.

The Company recommends that you notify any other insurance carriers that may possibly afford coverage for this claim as soon as possible.

If you have questions or disagree with the decision communicated in this letter, please contact me via e-mail at kevin.brown@usli.com or by phone at (888) 523-5545, ext. 7673.

Sincerely,

A handwritten signature in black ink, appearing to read "K. M. B.", with a horizontal line extending to the right.

Kevin M. Brown
Coverage Specialist

cc: Audit & Inspections Allied General
Via email at: nbs@nationwide.com