

ONYX INSURANCE COMPANY, INC., A RISK RETENTION GROUP

SUBSCRIPTION AND SHAREHOLDERS AGREEMENT

INSURED: _____ **POLICY #** _____

THIS SUBSCRIPTION AND SHAREHOLDERS AGREEMENT (“Agreement”) is made and entered into the effective date of the Policy identified above by and between ONYX INSURANCE COMPANY, INC., A RISK RETENTION GROUP, a Tennessee corporation (the “Company”), and the Shareholder shown on the signature page of this Agreement (the “Shareholder”).

BACKGROUND

A. The Company is a stock corporation and was formed in 2013 as a risk retention group under the federal Liability Risk Retention Act of 1986, as amended, and the laws of the State of Tennessee pertaining to captive insurance companies for the purpose of providing liability insurance to the shareholders and affiliated public livery businesses thereof. The Company is regulated by the Tennessee Department of Commerce and Insurance (the “Department”).

B. The Shareholder is a public livery provider or related entity that, as of the effective date of this Agreement, meets the eligibility requirements to be a shareholder of the Company.

C. In order to be an insured of the Company, the Shareholder is required to purchase common stock of the Company, par value Two Dollars (\$2.00), in such quantity and for such price as are set forth below. The total price being paid by the Shareholder to purchase common stock in the Company shall be called the “Capital Contribution.”

D. This Agreement is required to be signed by each of the shareholders of the Company.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the sufficiency of which are hereby acknowledged, the Company and the Shareholder hereby agree as follows:

1. Eligibility. The Company has established eligibility requirements that each person or entity insured by the Company is required to meet in order to become a shareholder, which shall include without limitation that each shareholder shall at all times be an insured of the Company, and the Company retains the exclusive right to modify such requirements as it deems appropriate. The Shareholder and the Company agree and acknowledge that they have reviewed the eligibility requirements applicable on the effective date of this Agreement, and that the Shareholder meets such requirements.

2. Shares and Capital Contribution. The Capital Contribution and amount of shares are taken from and calculated on the initial insurance premium. The formula used by the Company to determine the total amount of shares issued is as follows: initial premium amount x .12 ÷ 2. The Capital Contribution is taken from the initial premium.

3. Transfers and Holding of Shares.

(a) This Agreement at all times shall apply to any and all shares of stock in the Company, whether now held, purchased hereunder, or acquired hereafter by the Shareholder (collectively, the “Shares”);

(b) The Shareholder shall not assign, sell, exchange, give, bequeath, encumber, pledge, alienate, hypothecate, or otherwise in any manner whatsoever, either voluntarily or involuntarily, transfer any of the Shareholder’s Shares (any such disposition being hereinafter referred to as a “Transfer”), except (i) in accordance with this Agreement, or (ii) by operation of law in the event of a merger or business combination in which the Shareholder is a party, *provided, however*, that following the merger or business combination, the Shares are held by an individual or entity whose ownership of the Shares satisfies the requirements of the Liability Risk Retention Act of 1986, as amended, as well as the eligibility requirements of the Company. The Company shall not honor or give effect on the books of the Company to any Transfer of, or any attempt to Transfer any Shares until it is satisfied that the requirements of this Agreement have been met;

(c) If the Company so determines, it may cause to be placed on the certificates for Shares the following notation, and the Shareholder shall cooperate with the Company in the placement of such notation on his certificate(s):

The holder’s power to transfer this stock is limited by an Agreement between the Company and the Shareholder, a copy of which (together with any amendments to the Agreement) is on file at the principal office of the Company.

4. Certain Obligations of the Shareholder. In addition to the other obligations set forth in this Agreement, the Shareholder agrees to perform and comply with all of the following:

(a) Pay promptly when due the amounts agreed to be paid for the purchase of the Shares;

(b) Maintain insurance coverage with the Company and pay all premiums in respect of such insurance coverage in full and when due, in accordance with the terms and conditions quoted to the Shareholder for such insurance coverage;

(c) Comply with the terms of this Agreement and the Company’s Charter and Bylaws, copies of which have been made available to the Shareholder, provisions of any contract of insurance between the Shareholder and the Company, applicable underwriting

standards, and any applicable risk management/loss prevention program developed by the Company.

5. Dividends. The Shareholder acknowledges that the Company may from time to time declare and pay shareholder dividends to the shareholders. The Shareholder further acknowledges and agrees to the following:

(a) The amount, timing and payment of dividends are within the sole discretion of the Company. No dividends will be paid by the Company unless the Board of Directors determines that such payment is prudent and in the best interests of the Company and unless the Company shall be permitted to make such payment pursuant to Tennessee law;

(b) The Company may elect in its sole discretion to retain its profits rather than distribute them as dividends;

(c) Any payment of dividends is not assured;

(d) Shareholder dividends shall be declared and payable only from the profits of the Company as a whole, and shareholder dividends may not be paid to the Shareholder even if the Shareholder's individual results are profitable.

6. Termination of Shareholder Status. Each of the following events (hereinafter, a "Termination Event") shall require the Shareholder (or his estate or legal or personal representative, as the case may be) to sell all of the Shares back to the Company, shall cause the Shareholder's rights as a shareholder in the Company to immediately and automatically terminate, and shall likewise require the Company to redeem and repurchase all of the Shares owned by the Shareholder, all in accordance with Section 7 below:

(a) The Shareholder no longer satisfies the eligibility requirements applicable to the Shareholder on the effective date of this Agreement;

(b) The Shareholder's insurance policy from the Company is cancelled or non-renewed for any reason whatsoever, or the Shareholder otherwise ceases to have a current policy of insurance in force from the Company for any reason whatsoever;

(c) The death or dissolution of the Shareholder;

(d) All or any part of the Shares are attached or seized in an execution proceeding and such attachment or execution is not discharged or otherwise dissolved within thirty (30) days;

(e) All or any part of the Shares are attached, seized or subject to any order or decree of any court authorizing or directing any Transfer of all or any part of the Shares in any proceeding for divorce, alimony, separate maintenance or distribution of marital property; or

(f) Any attempt by the Shareholder to Transfer his Shares other than to the Company;

(g) Bankruptcy or other insolvency of the Shareholder; or

(h) Failure of the Shareholder to satisfy any deductible within thirty (30) days of demand.

7. Terms of Redemption.

(a) Upon the occurrence of a Termination Event, the Shareholder or his estate or legal or personal representative, and any other holder of all or any part of the Shares, as the case may be (hereinafter, individually and collectively, the “Transferor”) shall immediately tender all Shares to the Company for redemption at the price specified in Section 7(b) below;

(b) The price to be paid to a Transferor for the redemption of Shares upon a Termination Event shall be determined under the applicable Subsection (i) through (iii) below (as applicable, the “Price”):

(i) If the Termination Event occurs four (4) years or more from the initial inception date of the insurance coverage and such policy has been maintained continuously with no interruption of coverage with respect to the Shareholder (the “Inception Date”), the Price shall be determined by the Board of Directors with a total price not to exceed \$100.00;

(ii) In the event that coverage has not been continuously maintained for at least four (4) years, the Shareholder will not be entitled to any payment;

(iii) All such payments must meet all applicable regulations as set forth by Department;

(c) All amounts due the Company for any reason from the Shareholder may be offset against any distribution to the Shareholder;

(d) Determination of the amount of the redemption, if any, for the Shares shall be held within sixty (60) business days of the latest of (i) the occurrence of the Termination Event, (ii) the date on which the President of the Company actually learns of the Termination Event, or (iii) the preparation of the Company’s regularly-prepared fiscal year-end financial statements;

(e) The payments shall be made annually in equal amounts over five (5) years on each of the five anniversary dates of the Termination Event. Such payments shall be made only in the event that the Shareholder has met all of the obligations of the redemption;

(f) Notwithstanding anything herein to the contrary, the Company shall not be obligated to pay any such amounts in the event that the Company’s Board of Directors, in its sole discretion, determines that any such payment would adversely affect the Company’s operations and/or financial condition. The Company shall have the sole right to eliminate, suspend and/or defer any such payment based upon such determination. Furthermore, any such payment shall be subject to the Company having met any requirements and having obtained any such required approval by the Department.

8. Waiver of Claims Against Shareholders; Rights of Third Parties.

(a) The Shareholder hereby agrees to waive any claim it may have against any other shareholder, the administrator, or the manager based on the insolvency of the Company or any related entity thereof;

(b) No person, except the Company or any shareholder, shall be deemed to have any right conferred upon it by any provision of this Agreement. No term of this Agreement shall be enforceable against the Company or any shareholder except by the Company, its assignee, or one or more shareholders.

9. Shareholder's Representations and Warranties. The Shareholder hereby represents and warrants to the Company that:

(a) The Company has made available to the Shareholder and its advisors the opportunity to evaluate an investment in the Company, and to obtain additional information and to evaluate the merits and risks of this investment and to ask questions of, and receive satisfactory answers from, representatives of the Company concerning the terms and conditions of this investment;

(b) The Shareholder understands the risks involved in an investment in the Company. The Shareholder recognizes that an investment in the Company is speculative and involves substantial risk of loss;

(c) The Shareholder is an "accredited investor" as such term is defined in applicable federal and State securities laws, and the Shareholder can afford a loss of the entire investment in the Company;

(d) The Shareholder represents that its knowledge and experience in financial and business matters in general are such that it is capable of evaluating the merits and risks of an investment in the Company;

(e) The Shareholder is purchasing the Shares solely for its own account and not with a view to distribution, sale or subdivision, or for the account of any other individual, corporation, firm or person;

(f) The Shareholder is purchasing the Shares as part of an insurance program, and for the sole purpose of obtaining insurance coverage which may be otherwise unavailable to Shareholder, and the Shareholder is not making this investment with the expectation of profiting from the operations of the Company or from any sale, redemption or repurchase of stock;

(g) The Shareholder recognizes that there will be no public market for the Shares and that the transferability of the Shares is restricted;

(h) No person or firm is promising or guaranteeing that the Shareholder will receive a return or profit from its investment in the Company, nor is any such return or profit expected or contemplated; and

(i) The person(s) executing this Agreement on behalf of the Shareholder has/have the authority to execute this Agreement, without the necessity of additional signatories.

10. Proxy. The undersigned shareholder of Onyx Insurance Company, Inc., a Risk Retention Group, hereby appoints the Manager of Onyx Transportation Services LLC as the proxy of the undersigned, to attend all shareholders' meetings, and to exercise all shareholder rights of the undersigned, including without limitation the right to vote, for eleven (11) months from the date of the filing of this proxy to the extent permitted under applicable law; provided, however, that the undersigned may revoke this proxy at any time either by (i) attending any such shareholders meeting and declaring this proxy to be revoked, or (ii) submitting a written revocation to the Secretary of the Company at any time prior to any such meeting.

11. Assignment.

(a) By Shareholder. The Shareholder may not assign any right, claim, or interest it may have under this Agreement or under any policy issued by the Company or a subsidiary thereof, except (i) as specifically may be agreed to in writing by the Company, or (ii) subject to the limitations set forth in Section 3.b. above, by operation of law in the event of a merger or business combination to which the Shareholder is a party. No creditor, assignee or third-party beneficiary of the Shareholder shall have any right, claim, or title to any part, share, interest, funds, or assets of the Company except as specifically may be agreed to in writing by the Board of Directors of the Company. Any successor to the assets, liabilities or operations of the Shareholder shall be liable to the Company or its assignee for any amounts due the Company or the Company from such Shareholder;

(b) By Company. This Agreement may be transferred and assigned by operation of law to any successor entity to the Company in connection with any merger or other business combination to which the Company is a party.

12. Severability. Should any portion, term, condition, or provision of this Agreement be determined by a court of competent jurisdiction to be invalid under any applicable law or otherwise rendered unenforceable, the validity of the remaining conditions and provisions shall not be affected thereby.

13. Governing Law. This Agreement shall be construed in accordance with the substantive law of the State of California, without regard to principles of conflicts of laws. The term "person" shall mean any individual, entity, unincorporated association, or other juridical person. Any reference to a gender, masculine, feminine, or neuter, shall refer to all genders.

14. ARBITRATION AND CLASS ACTION WAIVER.

(a) Any controversy or claim arising from or relating to this Agreement or the breach thereof, shall be settled by arbitration in accordance with the Federal Arbitration Act. Arbitration will be venued in San Francisco, California, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Claims within the monetary limit of the small claims court shall be litigated in such court at the request of any party, so long as all parties limit their right to recovery to the jurisdiction of the small claims court;

(b) Any claim filed in small claims court shall not be deemed to be a waiver of the right to arbitrate, and, if a counter claim in excess of the jurisdiction of the small claims court is filed in the municipal or superior court, then the party filing in small claims court may demand arbitration pursuant to this paragraph;

(c) The arbitrators will have authority to award actual monetary damages only. No punitive or equitable relief is authorized. The arbitrators' decision shall be final and legally binding. All parties shall bear their own costs for arbitration and no attorneys' fees or other costs shall be granted to either party; and

(d) Class Action Waiver. No party shall be entitled to join or consolidate claims in arbitration by or against other individuals or entities or arbitrate any claim as a representative member of a class.

15. Term. This Agreement shall continue in effect until it is rescinded by the mutual written consent of the parties hereto or otherwise terminated as provided by this Agreement or applicable law.

16. Amendment. This Agreement may be amended upon the mutual written consent of the parties.

17. Complete Agreement. This Agreement, including all counterparts hereof, the Charter, Bylaws, policy terms, and any applicable rules and regulations that may be adopted from time to time by the Board of Directors, constitutes the full and complete terms of this Shareholders Agreement. There are no oral understandings or agreements not set forth in writing herein or in the aforementioned other writings. Shareholder acknowledges the receipt of a copy of the Charter and Bylaws of the Company. This Agreement may be executed in any number of counterparts, all of which taken together shall be deemed one original.

18. Notice. All offers, acceptances and notices shall be in writing and sent certified mail, return receipt requested, to the principal office of the Company, when addressed to the Company, or to the address of the Shareholder appearing on the Company's books, when addressed to the Shareholder.

IN WITNESS WHEREOF, the parties hereto have caused this Subscription and Shareholders Agreement to be executed and effective as of the date first above written.

THIS CONTRACT CONTAINS A BINDING ARBITRATION PROVISION AND CLASS-ACTION WAIVER WHICH AFFECTS YOUR LEGAL RIGHTS AND MAY BE ENFORCED BY THE PARTIES.

ONYX INSURANCE COMPANY, INC.,
A RISK RETENTION GROUP

Date: _____

By:  _____
Jason Sears, Secretary

SHAREHOLDER

Date: _____

By: _____

Name: _____

Title: _____

Number of Shares Acquired Based Upon Formula: _____