

PROBUILDERS SPECIALTY INSURANCE COMPANY, RRG, A RISK RETENTION GROUP

SUBSCRIPTION AND SHAREHOLDERS AGREEMENT

05/10/04 Edition

This Subscription and Shareholders Agreement (the "Agreement") is made by and between ProBuilders Specialty Insurance Company, RRG, a Risk Retention Group, a District of Columbia corporation (hereinafter referred to as the "Company"), and the undersigned purchaser (hereinafter referred to as the "Purchaser").

WITNESSETH:

WHEREAS, the Company (formerly know as Builders & Contractors Insurance Company, RRG) has been organized pursuant to the Liability Risk Retention Act of 1986 as a risk retention group, and is a stock captive insurance company underwriting commercial general liability insurance for contractors, subcontractors, developers and other construction-related businesses and professionals;

WHEREAS, the Liability Risk Retention Act of 1986 and applicable state law require that each insured of the Company be a shareholder of the Company and each shareholder of the Company be an insured of the Company; and therefore, each prospective insured of the Company will be required to purchase shares of the Company's common stock ("Shares") upon the Company's acceptance of the applicant as an insured; and

WHEREAS, the Purchaser has made application to obtain insurance from the Company and upon acceptance as an insured will be required to purchase Shares;

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree and covenant as follows:

1. Risk Retention Group. The Purchaser acknowledges and agrees that, as a risk retention group under the Liability Risk Retention Act of 1986 and applicable state law, the Company must require that each insured of the Company be a shareholder of the Company and each shareholder be an insured of the Company.

2. Subscription for Shares. The Purchaser hereby agrees to purchase Shares from the Company, and the Company hereby agrees to sell Shares to the Purchaser, subject to the Company's acceptance of the Purchaser as an insured of the Company, pursuant to the terms and conditions set forth herein and in the Company's Articles of Incorporation. The Purchaser agrees to pay the Initial Subscription Fee (as hereinafter defined) concurrently with the initial premium payment for the Purchaser's policy. In addition, the Purchaser agrees to pay any Subscription Fee Increase (as hereinafter defined) upon receipt of the Company's invoice therefor. The total amount of the Subscription Fee ultimately paid by the Purchaser with respect to a policy shall not be less than the Initial Subscription Fee even if there is a net decrease in the insurance premium due the Company with respect to the policy. The number of Shares to be issued to the Purchaser upon payment of the Initial Subscription Fee or any Subscription Fee Increase, as the case may be, shall be determined by dividing the fee by the Adjusted Book Value per Share (as hereinafter defined) of the Company's Shares as of the last day of the calendar quarter immediately preceding the policy's inception date (not including any retroactive coverage). Failure to pay the Initial Subscription Fee in full at the time the Purchaser's initial policy premium (or the first installment of the policy premium, as the case may be) is due, or to pay any Subscription Fee Increase when due, shall allow the Company to cancel the Purchaser's policy. As used herein, (i) Initial Subscription Fee shall equal 10% of the gross premium initially applicable to the Purchaser's policy, regardless of whether such premium is payable in installments; (ii) Subscription Fee Increase shall equal 10% of any increase in insurance premium for the Purchaser's policy, taking into account all applicable additional premiums and audit premiums (but not taking into account return premiums or other premium reductions); and (iii) Adjusted Book Value per Share shall be the Shareholder's Equity of the Company determined in accordance with generally accepted accounting principles consistently applied (but excluding any value attributable to funds contributed to the Company in consideration of the Company's issuance of any surplus note, subordinated debenture or like instrument, and also excluding any related liabilities) divided by the total number of Shares issued and outstanding.

3. Purchaser Representations. The Purchaser represents and warrants:

(a) that the Purchaser has carefully reviewed the Company's insurance program materials and other information which Purchaser considers necessary or appropriate to evaluate the Company's insurance program and operations as well as the merits and risks of a purchase of the Company's Shares, and has had the opportunity to ask questions of and receive answers from representatives of the Company regarding the Company, the insurance program and the Shares;

(b) that the Purchaser has substantial business experience and is capable of evaluating the Company's insurance program and operations as well as the merits and risks of an acquisition of the Shares;

Insured Initials _____ Date _____

(c) that the Purchaser has made application to obtain insurance from the Company;

(d) that the Purchaser has full power, capacity and authority to execute, deliver and perform this Agreement and that this Agreement has been duly authorized, executed and delivered by the Purchaser and evidences a valid and binding obligation of the Purchaser enforceable in accordance with its terms;

(e) that the Purchaser understands that the purchase price for the Shares is not based upon any projected earnings of the Company and the Company does not represent that the Shares have market value equal to the purchase price;

(f) that the Purchaser is acquiring the Shares for the Purchaser's own account and not with a view to the sale or transfer thereof, and that transfer of the Shares is restricted as provided herein;

(g) that the Purchaser understands that the Shares are exempted as securities for purposes of the registration provisions of the federal and state securities laws; and

(h) that the Purchaser understands that there is no guaranty of a return on the Purchaser's Subscription Fee payment and that, although the Company may be obligated to redeem the Purchaser's Shares under circumstances described herein, there is no guaranty that the Company will have the financial resources to complete any such redemption in the near future or at all, and that the Purchaser therefore must be prepared to hold the Shares for an indefinite period of time.

4. Transfer Restrictions. The Purchaser hereby agrees that the Purchaser shall not sell, assign, transfer, gift, hypothecate, pledge, encumber or otherwise dispose of the Shares, and the Shares will not be transferable to any person, corporation, partnership or other entity in any manner, including, without limitation, assignment, gift, bequest, intestacy, seizure or sale by legal process. The foregoing transfer restrictions shall not apply to any transfer by operation of law to any successor-in-interest to the business of the Purchaser pursuant to merger, consolidation, reorganization or other changes in corporate structure, so long as (i) the Company approves the eligibility for insurance of such successor-in-interest, and (ii) such successor-in-interest continues to be insured by the Company. Any transfer or sale, or purported transfer or sale, of Shares in violation of this Agreement or applicable federal or state law shall be null and void and ineffective as against the Company.

5. Restrictive Legend. Any certificates representing the Shares shall have the following legend written, stamped, or printed on the face or reverse thereof reading substantially as follows:

THIS SHARE CERTIFICATE IS ISSUED ONLY TO AN INSURED OF THE COMPANY. THE SHARES EVIDENCED BY THIS CERTIFICATE HAVE BEEN ACQUIRED BY THE HOLDER FOR THE HOLDER'S OWN ACCOUNT, AND NOT WITH A VIEW TO SALE OR TRANSFER THEREOF. THE SHARES EVIDENCED BY THIS CERTIFICATE MAY NOT BE SOLD, ASSIGNED, TRANSFERRED, GIFTED, HYPOTHECATED, PLEDGED OR ENCUMBERED OR OTHERWISE DISPOSED OF EXCEPT IN ACCORDANCE WITH THE TERMS OF THE SUBSCRIPTION AND SHAREHOLDERS AGREEMENT BETWEEN THE COMPANY AND THE REGISTERED HOLDER HEREOF, A COPY OF WHICH IS ON FILE AT THE OFFICES OF THE COMPANY.

PURSUANT TO THE LIABILITY RISK RETENTION ACT OF 1986, THE SHARES EVIDENCED BY THIS CERTIFICATE ARE EXEMPTED FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933 AND STATE SECURITIES LAWS. ACCORDINGLY, NEITHER THE SECURITIES AND EXCHANGE COMMISSION NOR ANY STATE SECURITIES COMMISSION HAS REVIEWED THE MERITS OF OR APPROVED THE ISSUANCE OF THESE SHARES.

Shares of the Company may be uncertificated, as permitted by applicable law.

6. Status of Shareholder/Insured; Redemption. THIS SECTION CONTAINS IMPORTANT INFORMATION CONCERNING, AND LIMITATIONS ON, THE REDEMPTION OF YOUR SHARES – PLEASE READ IT CAREFULLY. The Purchaser acknowledges that no assurance can be given and no representation is hereby made by the Company that the Purchaser will be entitled to continuation of insurance coverage from the Company, or renewal of such coverage, by virtue of the Purchaser's purchase of the Shares. The Purchaser acknowledges that, in the event the Purchaser ceases to be insured by the Company for any reason, the Purchaser's Shares shall automatically be cancelled on the books of the Company effective on the date on which the policy issued by the Company to the Purchaser expired, was non-renewed, or was earlier cancelled or terminated (each of which is referred to herein as the Termination Date). The Purchaser hereby irrevocably constitutes and appoints the Secretary of the Company as the Purchaser's attorney to cancel said Shares on the books of the Company as of the Termination Date. Within two years following the Termination Date, and subject to the other terms and conditions hereof, the Company shall pay to the Purchaser, as consideration for the cancellation and redemption of the Shares, an amount calculated as follows (the Redemption Payment):

Insured Initials _____ Date _____

(a) In the event that the Purchaser was a Company policyholder for a continuous period (prior to the Termination Date) of one year or less, the Redemption Payment shall be 50% of the Adjusted Book Value per Share of the Purchaser's Shares;

(b) In the event that the Purchaser was a Company policyholder for a continuous period (prior to the Termination Date) of more than one year but less than three years, the Redemption Payment shall be 75% of the Adjusted Book Value per Share of the Purchaser's Shares; and

(c) In the event that the Purchaser was a Company policyholder for a continuous period (prior to the Termination Date) of three years or more, the Redemption Payment shall be 100% of the Adjusted Book Value per Share of the Purchaser's Shares.

The Redemption Payment shall be calculated based on the Adjusted Book Value per Share and the total number of Shares issued and outstanding as of the last day of the calendar quarter immediately preceding the calendar quarter in which the Termination Date occurs. Unaudited financial statements prepared in good faith by the Company may be used in the calculation of Adjusted Book Value per Share. Any determination of Adjusted Book Value per Share based on the financial statements of the Company shall be final and binding on all parties hereto; provided, however, that if such financial statements are unaudited, the Purchaser may, by written notice to the Company given within 30 days following notice to such Purchaser of the Company's determination of Adjusted Book Value per Share, demand an audit of such financial statements by a reputable firm of certified public accountants reasonably acceptable to the Company. The cost of such audit shall be paid by the Purchaser unless, based on such audit, the Adjusted Book Value per Share of the Shares to be redeemed exceeds by more than the greater of (i) fifty cents (\$.50) per Share or (ii) ten percent (10%) of the Adjusted Book Value per Share as determined by the Company, in which case (A) the cost of such audit shall be paid by the Company, and (B) the results of such audit shall be final and binding on all parties.

In the event (i) the Company is precluded by applicable law from redeeming Shares as described above or (ii) the Company determines in good faith that the Redemption Payment will place an unreasonable financial strain on the Company, the Company's failure to redeem such Shares shall not be deemed a breach of this Agreement, and the Company shall make the Redemption Payment required hereunder at such time as such a redemption will not cause the Company to be in violation of applicable law or impose such unreasonable financial strain.

Notwithstanding anything herein to the contrary, in the event that the Purchaser owes any policy deductible amounts, premiums (including audit premiums), Initial Subscription Fees, Subscription Fee Increases or other fees or charges to the Company, any Redemption Payment owed by the Company hereunder may be offset against, and reduced by, all such amounts owed by the Purchaser to the Company.

7. Indemnification and Liability of Directors and Officers; No Preemptive Rights. The Purchaser acknowledges that the Company's Articles of Incorporation and By-Laws contain indemnification provisions pursuant to which the Company will indemnify and hold harmless the Company's directors, officers, employees, and agents, subject to the provisions of applicable law, as amended from time to time. The Purchaser further acknowledges and agrees that the Purchaser shall have no pre-emptive right to acquire any Shares subsequently issued or proposed to be issued by the Company.

8. Miscellaneous Provisions.

(a) This Agreement may not be amended except upon the written consent of the parties to this Agreement.

(b) All representations and warranties contained herein or made in writing by any party in connection herewith will survive (i) the execution and delivery of this Agreement, regardless of any investigation made by the Purchaser or on its behalf, and (ii) the consummation of the purchase of Shares. Except as otherwise provided in the foregoing sentence, this Agreement embodies the entire agreement and understanding between the parties hereto and supersedes all prior agreements and understandings relating to the subject matter hereof.

(c) The Purchaser shall not transfer or assign this Agreement or any of its interest herein, except as set forth in Section 4 hereof. Subject to the foregoing and except as otherwise expressly provided herein, all covenants and agreements contained in this Agreement by or on behalf of any of the parties hereto will bind and inure to the benefit of the respective successors and permitted assigns of the parties hereto.

(d) Whenever possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable law, such provision will be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of this Agreement.

(e) This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument, and any party hereto may execute this instrument by signing any such counterpart.

Insured Initials _____ Date _____

(f) The descriptive headings of the Agreement are inserted for convenience only and do not constitute a part of this Agreement.

(g) This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the District of Columbia, without regard to the conflicts of law rules thereof.

(h) All notices, demands or other communications to be given or delivered under or by reason of the provisions of this Agreement will be in writing and will be deemed to have been given when delivered personally or mailed by certified or registered mail, return receipt requested and postage prepaid, to the recipient. Such notices, demands and other communications will be sent to the Purchaser at the address set forth below and to the Company at 73-726 Alessandro Drive, Suite 200, Palm Desert, California 92260, or to such other address or to the attention of such other person as the recipient party has specified by prior written notice to the sending party.

9. Grant of Proxy. In consideration of the Company's issuance of Shares to the Purchaser hereunder, and for other good and valuable consideration, Purchaser hereby constitutes and appoints the Chairman of the Board (or Secretary if the Chairman is not in attendance) of the Company as the Purchaser's proxy to attend all meetings of shareholders of the Company, with full power to vote as proxy for the Purchaser and act in the Purchaser's name, place and stead, in the same manner, to the same extent and with the same effect that the Purchaser might have if personally present, giving to said Chairman of the Board (or Secretary) full power of substitution. This grant of a proxy shall continue in force for two years following the date hereof or for such longer or shorter period as is permitted under applicable law. THE PURCHASER MAY REVOKE THIS PROXY AT ANY TIME BY ATTENDANCE AT A MEETING OF THE SHAREHOLDERS OF THE COMPANY OR BY SENDING THE COMPANY A WRITTEN NOTICE REVOKING THE PROXY, ADDRESSED TO THE COMPANY AS SET FORTH IN SECTION 8 ABOVE.

IN WITNESS WHEREOF, the parties hereto acknowledge having read this Agreement and understand and consent to be bound by all its terms and conditions as evidenced by their signatures hereto.

PURCHASER

PROBUILDERS SPECIALTY INSURANCE
COMPANY, RRG,
A RISK RETENTION GROUP

(Print Purchaser's Name)

By: _____

Signature

Its: _____

Date

Date: _____

(Print Purchaser's Name)

Signature

Date

Purchaser Address:

-May 10, 2004 Edition-