

**TOWN OF PARADISE
RESOLUTION NO. 16-50**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PARADISE,
CALIFORNIA, CONSENTING TO INCLUSION OF PROPERTIES WITHIN THE
TOWN'S JURISDICTION IN THE CALIFORNIA HERO PROGRAM TO FINANCE
DISTRIBUTED GENERATION RENEWABLE ENERGY SOURCES, ENERGY AND
WATER EFFICIENCY IMPROVEMENTS AND ELECTRIC VEHICLE CHARGING
INFRASTRUCTURE AND APPROVING THE AMENDMENT TO A CERTAIN JOINT
POWERS AGREEMENT RELATED THERETO**

WHEREAS, the Western Riverside Council of Governments ("Authority") is a joint exercise of powers authority established pursuant to Chapter 5 of Division 7, Title 1 of the Government Code of the State of California (Section 6500 and following) (the "Act") and the Joint Power Agreement entered into on April 1, 1991, as amended from time to time (the "Authority JPA"); and

WHEREAS, Authority has established the California HERO Program to provide for the financing of renewable energy distributed generation sources, energy and water efficiency improvements and electric vehicle charging infrastructure (the "Improvements") pursuant to Chapter 29 of the Improvement Bond Act of 1911, being Division 7 of the California Streets and Highways Code ("Chapter 29") within counties and cities throughout the State of California that elect to participate in such program; and

WHEREAS, Town of Paradise (the "Town") is committed to development of renewable energy sources and energy efficiency improvements, reduction of greenhouse gases, protection of our environment, and reversal of climate change; and

WHEREAS, in Chapter 29, the Legislature has authorized cities and counties to assist property owners in financing the cost of installing Improvements through a voluntary contractual assessment program; and

WHEREAS, installation of such Improvements by property owners within the jurisdictional boundaries of the counties and cities that are participating in the California HERO Program would promote the purposes cited above; and

WHEREAS, the Town wishes to provide innovative solutions to its property owners to achieve energy and water efficiency and independence, and in doing so cooperate with Authority in order to efficiently and economically assist property owners the Town in financing such Improvements; and

WHEREAS, Authority has established the California HERO Program, which is such a voluntary contractual assessment program, as permitted by the Act, the Authority JPA, originally made and entered into April 1, 1991, as amended to date, and the Amendment to Joint Powers Agreement Adding the Town of Paradise as an

Associate Member of the Western Riverside Council of Governments to Permit the Provision of Property Assessed Clean Energy (PACE) Program Services within the Town (the "JPA Amendment"), by and between Authority and the Town, a copy of which is attached as Exhibit "A" hereto, to assist property owners within the jurisdiction of the Town in financing the cost of installing Improvements; and

WHEREAS, the Town will not be responsible for the conduct of any assessment proceedings; the levy and collection of assessments or any required remedial action in the case of delinquencies in the payment of any assessments or the issuance, sale or administration of any bonds issued in connection with the California HERO Program.

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Paradise as follows:

1. The Town Council finds and declares that properties in the Town's incorporated area will be benefited by the availability of the California HERO Program to finance the installation of the Improvements.

2. The Town Council consents to inclusion in the California HERO Program of all of the properties in the jurisdictional boundaries of the Town and to the Improvements, upon the request by and voluntary agreement of owners of such properties, in compliance with the laws, rules and regulations applicable to such program; and to the assumption of jurisdiction thereover by Authority for the purposes thereof.

3. The consent of the Town Council constitutes assent to the assumption of jurisdiction by Authority for all purposes of the California HERO Program and authorizes Authority, upon satisfaction of the conditions imposed in this resolution, to take each and every step required for or suitable for financing the Improvements, including the levying, collecting and enforcement of the contractual assessments to finance the Improvements and the issuance and enforcement of bonds to represent such contractual assessments.

4. The Town Council hereby approves the JPA Amendment and authorizes the execution thereof by appropriate Town officials.

5. Town staff is authorized and directed to coordinate with Authority staff to facilitate operation of the California HERO Program within the Town, and report back periodically to this Town Council on the success of such program.

6. This Resolution shall take effect immediately upon its adoption. The Town Clerk is directed to send a certified copy of this resolution to the Secretary of the Authority Executive Committee.

PASSED AND ADOPTED by the Town Council of the Town of Paradise on this 9th day of August, 2016, by the following vote:

AYES: Greg Bolin, Steve "Woody" Culleton, Scott Lotter, John J. Rawlings and Jody Jones, Mayor

NOES: None

ABSENT: None

ABSTAIN: None

By: 
Jody Jones, Mayor

ATTEST: *August 10, 2016*

Dina Volenski, CMC, Acting Town Clerk

APPROVED AS TO FORM:

Dwight L. Moore, Town Attorney

EXHIBIT A

**AMENDMENT TO THE JOINT POWERS AGREEMENT
ADDING TOWN OF PARADISE AS
AN ASSOCIATE MEMBER OF THE
WESTERN RIVERSIDE COUNCIL OF GOVERNMENTS
TO PERMIT THE PROVISION OF PROPERTY ASSESSED CLEAN
ENERGY (PACE) PROGRAM SERVICES WITHIN SUCH TOWN**

This Amendment to the Joint Powers Agreement (“JPA Amendment”) is made and entered into on the 10th day of August, 2016, by Town of Paradise (“Town”) and the Western Riverside Council of Governments (“Authority”) (collectively the “Parties”).

RECITALS

WHEREAS, Authority is a joint exercise of powers authority established pursuant to Chapter 5 of Division 7, Title 1 of the Government Code of the State of California (Section 6500 and following) (the “Joint Exercise of Powers Act”) and the Joint Power Agreement entered into on April 1, 1991, as amended from time to time (the “Authority JPA”); and

WHEREAS, as of October 1, 2012, Authority had 18 member entities (the “Regular Members”).

WHEREAS, Chapter 29 of the Improvement Act of 1911, being Division 7 of the California Streets and Highways Code (“Chapter 29”) authorizes cities, counties, and cities and counties to establish voluntary contractual assessment programs, commonly referred to as a Property Assessed Clean Energy (“PACE”) program, to fund certain renewable energy sources, energy and water efficiency improvements, and electric vehicle charging infrastructure (the “Improvements”) that are permanently fixed to residential, commercial, industrial, agricultural or other real property; and

WHEREAS, Authority has established a PACE program designated as the “California HERO Program” pursuant to Chapter 29 which authorizes the implementation of such PACE financing program for cities and counties throughout the state; and

WHEREAS, Town desires to allow owners of property within its jurisdiction to participate in the California HERO Program and to allow Authority under Chapter 29, as it is now enacted or may be amended hereafter, to finance Improvements to be installed on such properties; and

WHEREAS, this JPA Amendment will permit Town to become an Associate Member of Authority and to participate in California HERO Program for the purpose of facilitating the implementation of such program within the jurisdiction of Town; and

WHEREAS, pursuant to the Joint Exercise of Powers Act, the Parties are approving this JPA Agreement to allow for the provision of PACE services through the California HERO Program, including the operation of such PACE financing program, within the incorporated territory of Town; and

WHEREAS, the JPA Amendment sets forth the rights, obligations and duties of Town and Authority with respect to the implementation of the California HERO Program within the incorporated territory of Town.

MUTUAL UNDERSTANDINGS

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions hereinafter stated, the Parties hereto agree as follows:

A. JPA Amendment.

1. The Authority JPA. Town agrees to the terms and conditions of the Authority JPA, attached.

2. Associate Membership. By adoption of this JPA Amendment, Town shall become an Associate Member of Authority on the terms and conditions set forth herein and the Authority JPA and consistent with the requirements of the Joint Exercise of Powers Act. The rights and obligations of Town as an Associate Member are limited solely to those terms and conditions expressly set forth in this JPA Amendment for the purposes of implementing the California HERO Program within the incorporated territory of Town. Except as expressly provided for by the this JPA Amendment, Town shall not have any rights otherwise granted to Authority's Regular Members by the Authority JPA, including but not limited to the right to vote on matters before the Executive Committee or the General Assembly, the right to amend or vote on amendments to the Authority JPA, and the right to sit on committees or boards established under the Authority JPA or by action of the Executive Committee or the General Assembly, including, without limitation, the General Assembly and the Executive Committee. Town shall not be considered a member for purposes of Section 9.1 of the Authority JPA.

3. Rights of Authority. This JPA Amendment shall not be interpreted as limiting or restricting the rights of Authority under the Authority JPA. Nothing in this JPA Amendment is intended to alter or modify Authority Transportation Uniform Mitigation Fee (TUMF) Program, the PACE Program administered by Authority within the jurisdictions of its Regular Members, or any other programs administered now or in the future by Authority, all as currently structured or subsequently amended.

B. Implementation of California HERO Program within Town Jurisdiction.

1. Boundaries of the California HERO Program within Town Jurisdiction. The boundaries within which contractual assessments may be entered into under the California HERO Program (the "Program Boundaries") shall include the entire incorporated territory of Town.

2. Determination of Eligible Improvements. Authority shall determine the types of distributed generation renewable energy sources, energy efficiency or water conservation improvements, electric vehicle charging infrastructure or such other improvements as may be authorized pursuant to Chapter 29 (the "Eligible Improvements") that will be eligible to be financed under the California HERO Program.

3. Implementation of California HERO Program Within the Program Boundaries. Authority will undertake such proceedings pursuant to Chapter 29 as shall be legally necessary to enable Authority to make contractual financing of Eligible Improvements available to eligible property owners within the Program Boundaries.

4. Financing the Installation of Eligible Improvements. Authority shall implement its plan for the financing of the purchase and installation of the Eligible Improvements under the California HERO Program within the Program Boundaries.

5. Ongoing Administration. Authority shall be responsible for the ongoing administration of the California HERO Program, including but not limited to producing education plans to raise public awareness of the California HERO Program, soliciting, reviewing and approving applications from residential and commercial property owners participating in the California HERO Program, establishing contracts for residential, commercial and other property owners participating in such program, levying and collecting assessments due under the California HERO Program, taking any required remedial action in the case of delinquencies in such assessment payments, adopting and implementing any rules or regulations for the California HERO Program, and providing reports as required by Chapter 29.

Town will not be responsible for the conduct of any proceedings required to be taken under Chapter 29; the levy or collection of assessments or any required remedial action in the case of delinquencies in such assessment payments; or the issuance, sale or administration of any bonds issued in connection with the California HERO Program.

6. Phased Implementation. The Parties recognize and agree that implementation of the California HERO Program as a whole can and may be phased as additional other cities and counties execute similar agreements. Town's entering into this JPA Amendment will obtain the benefits of and incur the obligations imposed by this JPA Amendment in its jurisdictional area, irrespective of whether cities or counties enter into similar agreements.

C. Miscellaneous Provisions.

1. Withdrawal. Authority may withdraw from this JPA Amendment upon six (6) months written notice to the other party; provided, however, there is no outstanding indebtedness of Authority within Town. The provisions of Section 6.2 of the Authority JPA shall not apply to Town under this JPA Amendment. Notwithstanding the foregoing, Town may withdraw, either temporarily or permanently, from its participation in the California HERO Program or either the residential or commercial component of the California HERO Program upon thirty (30) written notice to WRCOG without liability to the Authority or any affiliated entity. Town withdrawal from such participation shall not affect the validity of any voluntary assessment contracts (a) entered prior to the date of such withdrawal or (b) entered into after the date of such withdrawal so long as the applications for such voluntary assessment contracts were submitted to and approved by WRCOG prior to the date of Town's notice of withdrawal.

2. Indemnification and Liability. Authority shall defend, indemnify and hold the Town and its directors, officials, officers, employees and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liabilities, losses, damages or injuries of any kind, in law or equity, to property or persons, including wrongful death, except to the extent arising out of the willful misconduct or grossly negligent acts, errors or omissions of the Town or its directors, officials, officers, employees and agents in connection with the California HERO Program administered under this JPA Amendment, including without limitation the payment of expert witness fees and attorneys fees and other related costs and expenses, but excluding payment of consequential damages. Without limiting the foregoing, Section 5.2 of the Authority JPA shall not apply to this JPA Amendment. In no event shall any of Authority's Regular Members or their officials, officers or employees be held directly liable for any damages or liability resulting out of this JPA Amendment.

3. Environmental Review. Authority shall be the lead agency under the California Environmental Quality Act for any environmental review that may required in implementing or administering the California HERO Program under this JPA Amendment.

4. Cooperative Effort. Town shall cooperate with Authority by providing information and other assistance in order for Authority to meet its obligations hereunder. Town recognizes that one of its responsibilities related to the California HERO Program will include any permitting or inspection requirements as established by Town.

5. Notice. Any and all communications and/or notices in connection with this JPA Amendment shall be either hand-delivered or sent by United States first class mail, postage prepaid, and addressed as follows:

Authority:

Western Riverside Council of Governments
4080 Lemon Street, 3rd Floor. MS1032
Riverside, CA 92501-3609
Att: Executive Director

Town:

Town of Paradise
5555 Skyway
Paradise, CA 95969

6. Entire Agreement. This JPA Amendment, together with the Authority JPA, constitutes the entire agreement among the Parties pertaining to the subject matter hereof. This JPA Amendment supersedes any and all other agreements, either oral or in writing, among the Parties with respect to the subject matter hereof and contains all of the covenants and agreements among them with respect to said matters, and each

Party acknowledges that no representation, inducement, promise of agreement, oral or otherwise, has been made by the other Party or anyone acting on behalf of the other Party that is not embodied herein.

7. Successors and Assigns. This JPA Amendment and each of its covenants and conditions shall be binding on and shall inure to the benefit of the Parties and their respective successors and assigns. A Party may only assign or transfer its rights and obligations under this JPA Amendment with prior written approval of the other Party, which approval shall not be unreasonably withheld.

8. Attorney's Fees. If any action at law or equity, including any action for declaratory relief is brought to enforce or interpret the provisions of this Agreement, each Party to the litigation shall bear its own attorney's fees and costs.

9. Governing Law. This JPA Amendment shall be governed by and construed in accordance with the laws of the State of California, as applicable.

10. No Third Party Beneficiaries. This JPA Amendment shall not create any right or interest in the public, or any member thereof, as a third party beneficiary hereof, nor shall it authorize anyone not a Party to this JPA Amendment to maintain a suit for personal injuries or property damages under the provisions of this JPA Amendment. The duties, obligations, and responsibilities of the Parties to this JPA Amendment with respect to third party beneficiaries shall remain as imposed under existing state and federal law.

11. Severability. In the event one or more of the provisions contained in this JPA Amendment is held invalid, illegal or unenforceable by any court of competent jurisdiction, such portion shall be deemed severed from this JPA Amendment and the remaining parts of this JPA Amendment shall remain in full force and effect as though such invalid, illegal, or unenforceable portion had never been a part of this JPA Amendment.

12. Headings. The paragraph headings used in this JPA Amendment are for the convenience of the Parties and are not intended to be used as an aid to interpretation.

13. Amendment. This JPA Amendment may be modified or amended by the Parties at any time. Such modifications or amendments must be mutually agreed upon and executed in writing by both Parties. Verbal modifications or amendments to this JPA Amendment shall be of no effect.

14. Effective Date. This JPA Amendment shall become effective upon the execution thereof by the Parties hereto.

IN WITNESS WHEREOF, the Parties hereto have caused this JPA Amendment to be executed and attested by their officers thereunto duly authorized as of the date first above written.

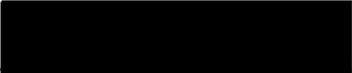
[SIGNATURES ON FOLLOWING PAGES]

WESTERN RIVERSIDE COUNCIL OF GOVERNMENTS

By: _____
Name: _____
Title: _____

Date: _____

TOWN OF PARADISE

By:  _____
Name: Jody Jones
Title: Mayor

Date: August 9, 2016

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**INDEMNIFICATION AND INSURANCE AGREEMENT
BY AND BETWEEN
THE TOWN OF PARADISE
AND
RENOVATE AMERICA, INC.**

This Indemnification and Insurance Agreement (the "Agreement") is entered into by and between the Town of Paradise, a municipal corporation ("Agency") and Renovate America, Inc., a Delaware Corporation, authorized to conduct business in California (the "Administrator"), the administrator of the Residential HERO Program, which is a program of the Western Riverside Council of Governments, a California joint exercise of powers authority (the "Authority").

RECITALS

WHEREAS, the Authority is a joint exercise of powers authority whose members of which include the Agency in addition to other cities and counties in the State of California; and

WHEREAS, the Authority established the HERO Program ("PACE Program") with a residential component (the "Residential PACE Program") and a commercial component (the "Commercial PACE Program") to allow the financing of certain renewable energy, energy efficiency and water efficiency improvements that are permanently affixed to real property through the levy of assessments voluntarily agreed to by the participating property owners pursuant to Chapter 29 of Division 7 of the Streets and Highways Code ("Chapter 29") and the issuance of improvement bonds under the Improvement Bond Act of 1915 upon the security of the unpaid assessments; and

WHEREAS, the Authority has conducted or will conduct proceedings required by Chapter 29 with respect to the territory within the boundaries of the Agency; and

WHEREAS, the Agency adopted a resolution authorizing the Agency to join the PACE Program, authorizing the Authority to accept applications from eligible property owners, conduct assessment proceedings and levy assessments within the territory of the Agency and authorizing related actions; and

WHEREAS, the Authority is solely responsible for the formation, operation and administration of the PACE Program as well as the sale and issuance of any bonds in connection therewith, including the conduct of assessment proceedings, the levy and collection of assessments and any remedial action in the case of such assessment payments, and the offer, sale and administration of any bonds issued by the Authority on behalf of the PACE Program; and

WHEREAS, the Administrator is the administrator of the Residential PACE Program and agrees to indemnify the Agency and provide insurance and add the Agency as an additional insured on its insurance policy or policies in connection with the operations of the Residential PACE Program as set forth herein; and

NOW, THEREFORE, in consideration of the above premises and of the Agency's agreement to join the PACE Program, the parties agree as follows:

1. Agreement to Indemnify. The Administrator agrees to defend, indemnify and hold harmless the Agency, its officers, elected or appointed officials, employees, agents and volunteers from and against any and all claims, damages, losses, expenses, fines, penalties, judgments, demands and defense costs (including, without limitation, actual, direct, out-of-pocket costs and expenses and amounts paid in compromise or settlement and reasonable outside legal fees arising from litigation of every nature or liability of any kind or nature including civil, criminal, administrative or investigative) arising out of or in connection with the Residential PACE Program except such loss or damage which was caused by the sole negligence or willful misconduct on the part of the Agency, its officers, elected or appointed officials, employees, or agents. The Administrator will conduct all defenses at its sole cost and expense and the Agency shall reasonably approve selection of the Administrator's counsel. This indemnity shall apply to all claims and liability regardless of whether any insurance policies of the Administrator, its affiliates or any other parties are applicable thereto. The policy limits of any insurance of the Administrator, its affiliates or other parties are not a limitation upon the obligation of the Administrator including without limitation the amount of indemnification to be provided by the Administrator.

2. Insurance. The Administrator agrees that, at no cost or expense to the Agency, at all times during the operation of the Residential PACE Program, to maintain the insurance coverage set forth in Exhibit A to this Agreement.

3. Amendment/Interpretation of this Agreement. This Agreement, including all Exhibits attached hereto, represents the entire understanding of the parties as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by both of the parties hereto. This Agreement shall not be interpreted for or against any party by reason of the fact that such party may have drafted this Agreement or any of its provisions.

4. Section Headings. Section headings in this Agreement are included for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

5. Waiver. No waiver of any of the provisions of this Agreement shall be binding unless in the form of a writing signed by the party against whom enforcement is sought, and no such waiver shall operate as a waiver of any other provisions hereof (whether or not similar), nor shall such waiver constitute a continuing waiver. Except as specifically

provided herein, no failure to exercise or any delay in exercising any right or remedy hereunder shall constitute a waiver thereof.

6. Severability and Governing Law. If any provision or portion thereof of this Agreement shall be held by a court of competent jurisdiction to be invalid, void, or otherwise unenforceable, the remaining provisions shall remain enforceable to the fullest extent permitted by law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of California applicable to contracts made and to be performed in California.

7. Notices. All notices, demands and other communications required or permitted hereunder shall be made in writing and shall be deemed to have been duly given if delivered by hand, against receipt, or mailed certified or registered mail and addressed as follows:

If to the Administrator:

Renovate America, Inc.
15073 Avenue of Science, Suite 200
San Diego, California 92128

If to the Agency:

Town of Paradise
5555 Skyway
Paradise, CA 95969

The Agency and the Administrator may, by notice given pursuant to this section 7, designate other addresses to which subsequent notices, demands or other communications shall be directed.

8. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, which together shall constitute the same instrument.

9. Effective Date. This Agreement will be effective as of the date of the signature of Agency's representative as indicated below in the Agency's signature block.

IN WITNESS HEREOF, the parties hereto duly executed this Agreement as of the date above.

APPROVED AS TO FORM:

Town of Paradise, a municipal corporation



Dwight L. Moore, Town Attorney
Town of Paradise

By 

Jody Jones
Mayor

Renovate America, Inc., a Delaware Corporation authorized to conduct business in California

By _____

Name:

Title:

Date: _____

EXHIBIT A INSURANCE

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. The coverage provided by Insurance Services Office Commercial General Liability coverage ("occurrence") Form Number CG 0001; and
2. The coverage provided by Insurance Services Office Form Number CA 0001 covering Automobile Liability. Coverage shall be included for all owned, nonowned and hired automobiles; and
3. Workers' Compensation insurance as required by the California Labor Code and Employers Liability insurance; and
4. Professional Liability Errors & Omissions for all professional services.

There shall be no endorsement reducing the scope of coverage required above unless approved by the Agency.

B. Minimum Limits of Insurance

Administrator shall maintain limits no less than:

1. Commercial General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit; and
2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage; and
3. Workers' Compensation and Employers Liability: Workers' Compensation limits as required by the California Labor Code and Employers Liability limits of \$1,000,000 per accident; and
4. Professional Liability Errors & Omissions \$1,000,000 per occurrence/ aggregate limit.

C. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

1. Commercial General Liability and Automobile Liability Coverages

a. The Agency, its officers, employees, agents and contractors are to be covered as additional insureds as respects: Liability arising out of activities performed by or on behalf of, Administrator; products and completed operations of Administrator; premises owned, leased or used by Administrator; and automobiles owned, leased, hired or borrowed by Administrator. The coverage shall contain no special limitations on the scope of protection afforded to Agency, its officers, employees, agents and contractors.

b. Administrator's insurance coverage shall be primary insurance as respects to the Agency, its officers, employees, agents and contractors. Any insurance or self-insurance maintained by Agency, its officers, employees, agents or contractors shall be excess of Administrator's insurance and shall not contribute with it.

c. Any failure to comply with reporting provisions of the policies by Administrator shall not affect coverage provided Agency, its officers, employees, agents, or contractors.

d. Coverage shall state that Administrator's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

e. Coverage shall contain a waiver of subrogation in favor of the Agency, its officers, employees, agents and contractors.

2. Workers' Compensation and Employers' Liability

Coverage shall contain waiver of subrogation in favor of the Agency, its officers, employees, agents and contractors.

3. All Coverages

Administrator shall not be suspend, void, cancel, or reduce the coverage in its insurance policy required by this AGREEMENT except after thirty (30) days' prior written notice has been given to Agency, except that ten (10) days' prior written notice shall apply in the event of cancellation for nonpayment of premium.

D. Verification of Coverage

Administrator shall furnish the Agency with certificates of insurance and with original endorsements affecting coverage required by this AGREEMENT. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.