

NOTICE

This is a claims made policy which applies to claims first made during the policy period. The limit of liability available to pay damages or settlements will be reduced and may be exhausted by the payment of claim expenses. Please read the policy carefully and contact your agent or broker with any questions.

Insurance Company _____

Policy Number _____ Renewal of N/A

Item 1 **Named Insured** _____
 Address _____

Item 2 **Policy Period** Start Date _____ End Date _____
 (12:01 a.m. standard time at the address of the **Named Insured**)

Item 3 Retroactive Date _____

Item 4 Limit of Liability \$ _____ aggregate

Item 5 Underlying Policies

A. Other Underlying Policy(ies)

Underlying Insurer(s)	Policy Number	Limit	Policy Period
Not Applicable			
in excess of			
in excess of			

B. Primary Policy

Underlying Primary Insurer	Policy Number	Limit
Policy Period	Deductible/Retention	

Item 6	Premium	\$ _____
	Surplus Lines Tax	\$ _____
	Fees	\$ _____
	Other (_____)	\$ _____
	<u>TOTAL</u>	\$ _____

Item 7	Forms and Endorsements	<u>UpperDeck Excess Liability Policy (Form EUC0105U001)</u>
		<u>Endt 1 -</u>
		<u>Endt 2 -</u>
		<u>Endt 3 -</u>

Producer _____

This Policy is valid only if signed below by an authorized representative of the Insurance Company.

Authorized Representative _____

UpperDeck[®] Claims Made **excess liability** policy

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Introduction

The words “**we**”, “**us**”, and “**our**” mean the insurance company stated on the Declarations Page of this policy.

The words “**you**” and “**your**” mean any person or entity covered under the **primary policy**.

The words “**primary policy**” mean the policy specified in item 5.B. of the Declarations of this policy.

“**Underlying policy**” means a policy listed in item 5.A. of the Declarations of this policy, and “**underlying policies**” means the **primary policy** and all policies listed in item 5.A. of the Declarations.

Except for captions and the definitions referred to above, all other words and phrases in bold type are defined in Part VI – Definitions.

In return for payment of the premium, and subject to all the terms and conditions of this policy, including any changes, additions or deletions made by endorsements that **we** issue forming a part of this policy, **we** agree with the **first named insured** as follows:

Part I – Insuring Agreement

To provide coverage in excess of the **underlying policies** for **claims** first made against **you** during the **policy period**, including the Extended Reporting Period if exercised.

If the **primary policy** is a **claims** first made and reported policy, this policy will also follow form and be in accordance with the reporting and notice requirements of the **underlying policies**.

Except as otherwise provided in this policy, coverage will follow form and be in accordance with:

1. the **primary policy** including endorsements and required notices and,
2. any other **underlying policy** including endorsements, to the extent coverage is further limited or restricted by an **underlying policy** or endorsement.

In no event will this policy provide broader coverage in any respect than would be provided by any of the **underlying policies**.

Part II – Attachment and Limit of Liability

- A. Liability for **loss** for each covered **claim** first made during this **policy period** will attach to this policy only after the insurers of all the **underlying policies** have paid money for **loss** equal to the full amount of the **underlying limit** for such **policy period** and **you** have paid the uninsured retention, if any, applicable under the **primary policy**. **We** will then be liable to pay only **loss** in excess of the **underlying limit** up to this policy's **limit of liability** as set forth in item 4 of the Declarations, which will be **our** maximum aggregate liability under this policy with respect to all covered **claims** first made during this **policy period** against all of **you** regardless of the time of payment by **us**.
- B. In the event, and only in the event, of the reduction or exhaustion of the **underlying limit** by reason of the insurers of the **underlying policies** paying money for **loss**, this policy will:
 1. in the event of reduction, pay excess of the reduced, remaining **underlying limit**, and
 2. in the event of exhaustion, continue in force as primary insurance.

In the event of exhaustion of the **underlying limit** as provided above, this policy will only pay, for that **claim** and for any other covered **claim**, excess of the retention, deductible, co-insurance or risk participation that may apply under terms of the **primary policy**.

- C. Notwithstanding any of the terms of this policy which might be construed otherwise, this policy will drop down only in the event of reduction or exhaustion of the **underlying limit** as described above, and will not drop down for any other reason including, but not limited to, uncollectability (in whole or in part) of any **underlying policy**. The risk of uncollectability of the **underlying policy** (in whole or in part) whether because of financial impairment or insolvency of an underlying insurer or for any other reason, is expressly retained by **you** and is not in any way or under any circumstances insured or assumed by **us**.

Part III – Underlying Insurance

- A. The **underlying policies** will be maintained in full effect with solvent insurers during the **policy period**, including the Extended Reporting Period if exercised, except for any reduction or exhaustion of the **underlying limit** by reason of **loss** paid under those policies as provided for in Part II.B. of this policy. If the **underlying policies** are not maintained as required above, **you** will become self-insured for the amount stated in the Declarations as applicable to such insurer(s), and **you** will assume all the obligations of the underlying insurer.
- B. To the extent the terms, conditions, exclusions or limitations of any of the **underlying policies** are changed to limit or restrict coverage, this policy will become subject to such changes upon the effective date of the change in the **underlying policy**. To the extent the terms, conditions, exclusions or limitations of any of the **underlying policies** are changed to expand or broaden coverage, this policy will become subject to such changes only if and to the extent that:
1. **we** agree to such changes by written endorsement **we** issue to this policy and
 2. **you** pay any additional premium reasonably required by **us** for such changes.

As a condition precedent to **your** rights under this policy, **you** must give to **us** as soon as practicable written notice and the full particulars of any change to the **underlying policies** during the **policy period** or the Extended Reporting Period if exercised.

Part IV – Claims

A. Notice of Claim or Circumstances

1. **You** must, as a condition precedent to **your** rights under this policy, give to **us** written notice:
 - a. of all **claims** first made against any of **you** during this **policy period**, regardless of the amount of the **claim** or the **underlying limit** applicable to the **claim**, and the notice must be in accordance with the requirements of the most restrictive of the **underlying policies**; except that in no event will this policy provide coverage for any **claim** first made during the **policy period** if the **claim** is first reported to **us** later than sixty (60) days after the end of this **policy period**;

- b. during the Extended Reporting Period of all **claims** first made against **you** during the Extended Reporting Period, if the Extended Reporting Period option was exercised, notwithstanding any conflicting requirements of the **underlying policies** and regardless of the amount of the **claim** or the **underlying limit** applicable to the **claim**;
 - c. no more than thirty (30) days after **you** provide notice of a **claim** to the **primary insurer** or any underlying insurer acting as the **primary insurer** due to exhaustion of limits of the **primary insurer**; however, in no event will any **claim** be covered if **you** provide written notice to **us** after the periods of time to provide notice as required in Part IV – Claims, subsections A.1.a., and A.1.b. above;
 - d. as required in Part IV – Claims, subsection A.1.a. above of any fact or circumstance that **you** become aware of that may reasonably be expected to lead to a **claim** against any of **you**. Such notice must include a description of the fact or circumstances; names and contact information for all of **you** involved and for all other persons or entities involved; the time and manner in which **you** first became aware of the fact or circumstances; and name, contact information and description of potential claimant(s); and
 - e. of all notices **you** provide to all underlying insurers relating to a **claim** or a fact or circumstance that may reasonably be expected to lead to a **claim**; and **you** will provide to all underlying insurers notices that **you** provide to **us** relating to a **claim** or a fact or circumstance that may reasonably be expected to lead to a **claim**.
2. All such written notices must be provided to **us** in accordance with Part V – General Conditions, subsection B. Notices.

B. Your Other Duties

You must, as a condition precedent to **your** rights under this policy, give to **us** written notice as soon as practicable of all:

1. settlement offers that **you** intend to make and all settlement demands made by all claimants, even if such offers or demands would not implicate coverage under this policy;
2. payments of all **claims** under all **underlying policies**;
3. scheduling court orders (including all scheduled settlement conference and trial dates); and

4. other information and cooperation as **we** may reasonably require with respect to every **claim** or fact or circumstance reported to **us** under this policy.

All such written notices must be provided to **us** in accordance with Part V – General Conditions, subsection B. Notices.

C. Our Participation and Non-Wavier

We may, at **our** sole discretion, participate in the investigation, defense or settlement of any **claim**, fact or circumstance reported to **us** under this policy even if the **underlying limit** has not been exhausted.

Our obligations under this policy will not be increased, expanded or adversely changed as a result of any position taken by any insurer of the **primary policy** or an **underlying policy** with respect to coverage.

Part V – General Conditions

A. Extended Reporting Period

The **first named insured** has the option to purchase an Extended Reporting Period in accordance with the most restrictive terms of the **underlying policies**; however, notwithstanding the requirements of the **underlying policies**, at a minimum, the following will apply to the extent of conflict between this policy and any of the **underlying policies**:

1. an Extended Reporting Period or its equivalent must be exercised and effective in all **underlying policies** before the Extended Reporting Period of this policy can be exercised;
2. any Extended Reporting Period on this policy will not be longer than the term of the shortest Extended Reporting Period among the **underlying policies**;
3. the limit of liability of this policy will not be reinstated by any Extended Reporting Period unless required by state law; and
4. to purchase an Extended Reporting Period, the **first named insured** must request one, and **we** may choose to offer one to **you**, and **you** must pay the additional premium within the time period **we** specify.

B. Notices

All notices to **us** under this policy will refer to the Policy Number, will be in writing, will be given by certified mail, prepaid express courier or facsimile properly addressed and will be effective upon receipt. E-mail received at the e-mail address shown below shall be considered to have been provided in writing.

Notice to **you** may be given to the **first named insured** at the address as shown in item 1 of the Declarations or its last mailing address known to **us**. Notice to **us** of any **claim**, or of any fact or circumstance that may reasonably be expected to lead to a **claim**, and all other notices under this policy will be given to **us** in care of:

Euclid Managers, LLC
1627 Main Street – Suite 800
Kansas City, MO 64108
E-mail for **claims**: reportclaim@euclidmanagerskc.com

Fax: for **claims** 888.455.4715
 for other matters 816.778.0715

Any notice to an insurer of an **underlying policy** will not constitute notice to **us** unless also given to **us** as provided in this Part V – General Conditions, subsection B. Notices.

C. Application of Recoveries

All recoveries or payments recovered or received subsequent to a **loss** settlement under this policy will be applied as if recovered or received prior to such settlement and all necessary adjustments will then be made between **first named insured** and **us**, provided always that the foregoing will not affect the time when **loss** under this policy will be payable.

D. Appeals

If the **first named insured** or and the insurers of the **underlying policies** elect not to appeal a judgment for which **we** are liable in whole or in part under this policy, **we** may, in **our** sole discretion, appeal such judgment at **our** own expense and will be liable for taxable costs, disbursements and interest incidental thereto, but in no event will **our** liability exceed the **limit of liability** as set forth in item 4 of the Declarations.

E. Alteration and Assignment

No change in, modification of, or assignment of interest under this policy will be effective except when made by a written endorsement to this policy which is signed by an authorized representative of **ours**.

Part VI – Definitions

When used in this policy:

Application means all signed applications, including attachments and materials submitted therewith, for:

1. this policy,
2. all **underlying policies**, and
3. any policy in an uninterrupted series of policies issued by **us** or the insurers for the **underlying policies** of which this policy or any **underlying policy** is a renewal or replacement.

Claim has the same meaning as the definition thereof in the **primary policy**. If the **primary policy** does not contain such a definition, "**Claim**" means a written demand for monetary damages; this includes a suit, administrative action, arbitration or other type of alternative dispute resolution proceeding against any of **you**.

First named insured means the person or entity named first in item 1 of the Declarations.

Limit of liability means the limit of liability specified in item 4 of the Declarations.

Loss means covered damages and claim expenses, or the equivalent as defined in the **primary policy**, that **you** become legally obligated to pay.

Named insured means the person(s) or entity(ies) named in item 1 of the Declarations and any subsidiaries or affiliates thereof insured by the **primary policy**.

Policy period means the period of time specified in item 2 of the Declarations, subject to prior termination. The Extended Reporting Period, if exercised, will be part of and not in addition to the **policy period**.

Underlying limit means an amount equal to the aggregate of all limits, as set forth in item 5 of the Declarations, for all **underlying policies** plus any retention, deductible, co-insurance or risk participation that may apply.

Part VII – Representations

By accepting this policy, **you** agree to all of the following:

1. the representations and statements in the application and all other information and material submitted to **us** in applying for this policy, and submitted to the underlying insurers for the **underlying policies**, are accurate and complete and were made to induce **our** reliance upon them;
2. the representations and statements in the application and all other information and material submitted to **us** and to the insurers for the **underlying policies** were made by the **named insured** on behalf of all of **you**; and:
 - a. are material to **our** decision to provide coverage;
 - b. are considered to be incorporated in and constituting a part of this policy; and
 - c. **we** have issued this policy in reliance upon them;
3. if the application and other information and material submitted to **us** or to the underlying insurers for the **underlying policies** has any misrepresentations or fails to state facts which would affect **our** acceptance of the risk, the hazard **we** assumed, **our** willingness to offer terms, the terms and conditions of this policy or the premium charged for this policy, **we** will not pay any **loss** and **we** may declare the policy null and void; and
4. if **you** report any **claim**, fact or circumstance with the knowledge that it, or any of the representations and statements concerning the **claim**, fact or circumstance, are false or fraudulent, **we** will not pay any **loss** for that **claim** or for any **claim** arising from the fact or circumstance, and **we** may declare the policy null and void.

This policy is executed and attested by the signatures of **our** officers below. If required by state law, this policy can only be valid if countersigned by **our** Authorized Representative.

President

Secretary