

CERTIFICATE OF INSURANCE REAL ESTATE SERVICES ERRORS AND OMISSIONS

NOTICE: THIS IS A CLAIMS MADE AND REPORTED CERTIFICATE OF INSURANCE. THIS CERTIFICATE OF INSURANCE APPLIES ONLY TO THOSE CLAIMS THAT ARE FIRST MADE AGAINST THE INSURED AND REPORTED IN WRITING TO THE UNDERWRITERS DURING THE CERTIFICATE OF INSURANCE PERIOD. CLAIMS EXPENSES ARE WITHIN AND REDUCE THE LIMIT OF LIABILITY. PLEASE REVIEW THIS CERTIFICATE OF INSURANCE CAREFULLY.

Words and phrases that appear in **bold print** have special meanings that are defined in Section III., **DEFINITIONS**.

I. INSURING AGREEMENTS

A. Coverage

The **Underwriters** will pay on behalf of the **Insured** all sums in excess of the deductible that the **Insured** becomes legally obligated to pay as **damages** and **claim expenses** as a result of a **claim** first made against the **Insured** and reported in writing to the **Underwriters** during the **Certificate of Insurance period**, by reason of an act or omission including **personal injury** in the performance of **real estate services** by the **Insured**, or by someone for whom the **Insured** is legally responsible, provided that:

1. Such act or omission was committed on or subsequent to the **retroactive date** specified in the Declarations; and
2. Prior to the inception date of this Certificate of Insurance or the inception date of the first Certificate of Insurance issued by the **Underwriters**, if continuously renewed, no **Insured** had a basis to believe that such act or omission, or any **related act or omission**, might reasonably be expected to be the basis of a **claim**.

B. Defense

The **Underwriters** has the right and duty to defend any claim against the **Insured** even if allegations of the **claim** are groundless, false or fraudulent. Defense counsel may be designated by the **Underwriters**, or at the **Underwriters'** option, by the **Insured** with the **Underwriters'** written consent and subject to the **Underwriters'** guidelines.

C. Settlement

The **Underwriters** will have the right to make, with the written consent of the **Named Insured**, any settlement of a **claim** under the Certificate of Insurance. If the **Named Insured** refuses to consent to a settlement within the Certificate of Insurance's applicable limit of liability that is recommended by the **Underwriters** and acceptable to the claimant, then the **Underwriters'** limit of liability under this Certificate of Insurance will be reduced to the amount of damages for which the **claim** could have been settled plus all **claim expenses** incurred up to the time the **Underwriters** made its recommendation, which amount will not exceed the remainder of the limit of liability specified in Section II.A.

D. Exhaustion of Limits of Liability

The **Underwriters** is not obligated to pay any **damages** or **claim expenses** or to defend or to continue to defend any **claim** after the applicable limit of liability has been exhausted by payment of **damages** or **claim expenses**, or any combination thereof, or after the **Underwriters** has deposited the remaining available limit of liability into a court of competent jurisdiction or tendered the remaining available limit of liability to the **Named Insured** or, if applicable, to the excess insurer(s) of the **Named Insured**.

II. LIMITS OF LIABILITY AND DEDUCTIBLE

A. Limit of Liability - Each claim

Subject to paragraph B. below, the **Underwriters'** limit of liability for **damages** and **claim expenses** for each **claim** first made and reported in writing to the **Underwriters** during the **Certificate of Insurance period** will not exceed the amount shown in Item 4. in the Declarations for "Each **claim**."

B. Limit of Liability - Certificate of Insurance Aggregate

The **Underwriters'** limit of liability for **damages** and **claim expenses** for all **claims** first made and reported in writing to the **Underwriters** during the **Certificate of Insurance period** will not exceed the aggregate amount shown in Item 4. in the Declarations as the "Certificate of Insurance Aggregate."

C. Deductible

The deductible amount shown in Item 5. in the Declarations is the **Insured's** obligation for each **claim** and applies to the payment of **damages** and **claim expenses**. The deductible will be paid by the **Named Insured**. The limits of liability set forth in the Declarations are in addition to and in excess of the deductible.

D. Multiple Insured's, Claims and Claimants

The limits of liability shown in the Declarations is the maximum amount the **Underwriters** will pay under this Certificate of Insurance for **damages** and **claim expenses** regardless of the number of **Insureds**, **claims** made or claimants. **Related claims** made against the **Insured** and reported in writing to the **Underwriters** under this Certificate of Insurance or under any renewal of this Certificate of Insurance will be considered a single **claim** first made and reported to the **Underwriters** during the **Certificate of Insurance period** in which the earliest of the **related claims** was first made and reported in writing to the **Underwriters**.

E. Supplementary Payments

Supplementary payments are not subject to the deductible and are in addition to the limits of liability.

The **Underwriters** will pay:

1. Up to \$500.00 for loss of earnings to the **Insured** for each day or part of a day the **Insured** is in attendance, at the **Underwriters'** request, at a trial, hearing or arbitration proceeding involving a **claim** against the **Insured**. In no event will the amount payable hereunder exceed \$10,000.00 per **Certificate of Insurance period**.
2. Up to \$5,000.00 to the **Insured** for attorneys' fees and other reasonable costs, expenses or fees resulting from the investigation or defense of a proceeding before a real estate licensing board incurred as the result of a notice of proceeding both first received by the **Insured** and reported to the **Underwriters** during the **Certificate of Insurance period**, arising out of an act or omission in the performance of **real estate services** by the **Insured**. In no event will the amount payable hereunder exceed \$5,000.00 per **Certificate of Insurance period**.

III. DEFINITIONS

Bodily Injury means physical injury, sickness, or disease sustained by any person including death resulting from any of these at any time. **Bodily Injury** also means mental illness, mental anguish, emotional distress, pain or suffering, or shock sustained by that person whether or not resulting from physical injury, sickness, disease or death of any person.

Claim means a demand for money or services naming the **Insured** arising out of an act or omission in the performance of **real estate services**. A **claim** also includes the service of suit or the institution of an arbitration proceeding against the **Insured**.

Claim expenses means:

- A. Fees charged by attorneys designated by the **Underwriters** or designated by the **Insured** with the **Underwriters'** prior written consent; and
- B. All other reasonable and necessary fees, costs and expenses resulting from the investigation, adjustment, negotiation, arbitration, mediation, defense or appeal of a **claim**, if incurred by the **Underwriters** or by the **Insured** with the **Underwriters'** prior written consent; and
- C. Premiums on appeal bonds, attachment bond or similar bonds however, the **Underwriters** is not obligated to apply for or furnish any such bond.

Claim expenses will be paid first and reduce the limit of liability available to pay **damages**. **Claim expenses** do not include fees, costs or expenses of employees or officers of the **Underwriters**, salaries, loss of earnings or other remuneration by or to any **Insured**.

Underwriters means certain underwriters at Lloyd's named in the Declarations.

Damages mean any compensatory sum and will include a judgment, award or settlement, provided any settlement is negotiated with the **Underwriters'** written consent, and prejudgment interest awarded against the **Insured** on that part of the judgment the **Underwriters** offers to pay. If the **Underwriters** makes an offer to pay the applicable limits of liability, it will not pay any prejudgment interest based on that period of time after the offer.

Damages do not include:

- A. The return, reduction, or restitution of fees, expenses or costs for **real estate services** performed or to be performed by the **Insured**;
- B. Fines, penalties, forfeitures, or sanctions;
- C. Punitive or exemplary amounts;
- D. The multiplied portion of any multiplied awards;
- E. Injunctive or declaratory relief.

Guaranteed sale listing contract means a written agreement between the **Named Insured** and the seller of a property, in which the **Named Insured** agrees to purchase the property if it is not sold under the listing agreement in the time frame specified by the agreement.

Insured means the **Named Insured** and any of the persons or entities listed below but only in the performance of **real estate services** on behalf of the **Named Insured** for clients of the **Named Insured**:

- A. Any **subsidiary** and any **newly acquired subsidiary**;

- B. Any present or former partner, member, officer, director or employee of the **Named Insured**, a **subsidiary** or **newly acquired subsidiary**;
- C. Any independent contractor, but only if, prior to the date a **claim** is made, the **Named Insured** had agreed to provide insurance for the independent contractor's **real estate services**;
- D. The estate, heirs, executors, administrators, assigns and legal representatives of an **Insured** in the event of such **Insured's** death, incapacity, insolvency or bankruptcy, but only to the extent that such **Insured** would have been provided coverage under this Certificate of Insurance.
- E. **Insured** also means any personal assistant of an **Insured** as set forth in A., B., or C. above, but only in the performance of **real estate services** on behalf of such individual **Insured**.

Named Insured means the persons or entities specified in Item 1. in the Declarations.

Newly acquired subsidiary means any entity newly formed or acquired by the **Named Insured** during the **Certificate of Insurance period** in which the **Named Insured** has more than a 50% legal or beneficial interest, but only upon the conditions that:

- A. Within 60 days of such formation or acquisition, the **Named Insured** has provided the **Underwriters** with full particulars of such **newly acquired subsidiary** and the **Underwriters** has agreed in writing to insure such **newly acquired subsidiary** but the **Underwriters** will not be required to insure such **newly acquired subsidiary**;
- B. The **Named Insured** has paid the additional premium, if any, charged by the **Underwriters** and has agreed to any amendment of the provisions of this Certificate of Insurance; and
- C. The **Underwriters** will only provide coverage with respect to a **claim** arising out of an act or omission in the performance of **real estate services** when the act or omission is committed on or after the date such **newly acquired subsidiary** became a **newly acquired subsidiary** and prior to the date such **newly acquired subsidiary** ceased to be a **newly acquired subsidiary**. An entity ceases to be a **newly acquired subsidiary** under this Certificate of Insurance on the date during the **Certificate of Insurance period** that the **Named Insured's** legal or beneficial interest in such entity becomes less than 50%.

Personal injury means injury other than **bodily injury**, arising out of one or more of the following offenses by reason of an act or omission in the performance of **real estate services**:

- A. False arrest, detention, or imprisonment;
- B. Malicious prosecution;
- C. The wrongful eviction from, wrongful entry into, or invasion of the right of privacy occupancy of a room, dwelling or premises that a person occupies by or on behalf of its owner, landlord or lessor;
- D. The publication or utterance of a libel or slander or other defamatory or disparaging statement or material, or a publication or utterance in violation of a person's right of privacy; except publications or utterances in the course of, which arise out of, result from or relate to advertising, broadcasting or telecasting activities conducted by or on behalf of any **Insured**.

Certificate of Insurance period means the period of time from the effective date shown in Item 3. in the Declarations to the earliest date of termination, expiration or cancellation of this Certificate of Insurance.

Pollutants means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

Property damage means:

- A. Physical injury to tangible property, including all resulting loss of use of that property; or
- B. Loss of use of tangible property that is not physically injured.

Property management services are the following services provided in connection with the management of commercial or residential property:

- A. Development of management plans and budget;
- B. Oversight of physical maintenance of property;
- C. Solicitation, evaluation and securing of tenants and management of tenant relations, collection of rent and processing evictions;
- D. Development, implementation and management of loss control and risk management plans for real property;
- E. Solicitation and negotiation of contracts for sale or leasing of real property;
- F. Development, implementation and management of contracts and subcontracts (excluding property and liability insurance contracts) necessary to the daily functioning of the property
- G. Personnel administration;
- H. Record keeping.

Property management services does not include **renovation services** or analysis or evaluations of, or recommendations concerning, environmental hazards or exposures.

Real estate services are the following services performed by an **Insured** for others provided such **Insured**, if required, is appropriately licensed by the state in which such **Insured** is doing business:

- A. Services as a real estate agent, real estate broker or real estate personal assistant;
- B. Services as a leasing agent; mortgage banker; mortgage broker; real estate auctioneer and real estate appraiser;
- C. **Property management services**;
- D. Services as a real estate consultant or counselor or as an expert witness provided such services are limited to the areas specified in paragraphs A. through C. of this section;
- E. Services as a member of a real estate accreditation, standards review or similar real estate board or committee;
- F. Services as a notary public.

Renovation services are the following services provided in connection with the renovation and reconstruction of commercial or residential property:

- A. Management of facility renovation and reconstruction plans;
- B. Development and management of renovation and reconstruction contracts and subcontracts;
- C. Development of loss control and risk management plans in connection with the reconstruction or renovation.

Residential property means a one to four family dwelling in which the **Insured** or others reside.

Related acts or omissions mean all acts or omissions in the performance of **real estate services** that are reasonably connected by any common fact, circumstance, situation, transaction, event, advice or decision.

Related claims means all **claims** arising out of a single act or omission or arising out of **related acts or omissions** in the performance of **real estate services**.

Retroactive date means the date, shown in Item 7. in the Declarations, on or after which an act or omission must have been committed for coverage under this Certificate of Insurance to apply.

Subsidiary means any entity of which the **Named Insured** owns, either legally or beneficially, more than a 50% interest in such entity. On the date during the **Certificate of Insurance period** that the **Named Insured's**, legal or beneficial interest in such entity becomes less than 50%, such entity will cease to be a **subsidiary** under this Certificate of Insurance. In such event, coverage will be provided under this Certificate of Insurance but only with respect to acts or omissions committed prior to such date in accordance with all other terms and conditions of this Certificate of Insurance. No coverage will be afforded under this Certificate of Insurance with respect to **claims** made against an **Insured** based on any act or omission committed on or subsequent to such date.

IV. EXCLUSIONS

This Certificate of Insurance does not apply to any **claim**:

- A. Based on or arising out of **bodily injury**;
- B. Based on or arising out of **property damage**;
- C. Based on or arising out of any dishonest, intentionally wrongful, fraudulent, criminal or malicious act or omission by the **Insured**. The **Underwriters** will provide the **Insured** with a defense of such claim unless or until the dishonest, intentionally wrongful, fraudulent, criminal or malicious act has been determined, found or adjudicated by or in any trial verdict, court or arbitration ruling, regulatory ruling or legal admission, whether appealed or not. Such defense will not waive any of the **Underwriters'** rights under this Certificate of Insurance. Criminal proceedings are not covered under this Certificate of Insurance regardless of the allegations made against the **Insured**;
- D. Based on or arising out of:
 - 1. Any conversion, commingling, defalcation, misappropriation or improper use of funds or other property;
 - 2. The gaining of any personal profit or advantage to which the **Insured** is not legally entitled;
 - 3.
 - a. Any inability or failure to pay, collect or safeguard funds held for others, or
 - b. The disposition, management, or investment of any funds; or any advice or recommendation, direct or indirect, concerning the disposition, management or investment of any funds.
- E. Based on or arising out of any advice or representation as to the future value of any property;
- F. Based on or arising out of the sale of a business;
- G. Based on or arising out of:
 - 1. Nuclear reaction, contamination or radiation, including but not limited to radon, regardless of cause;

2. Whether suddenly or over a long period of time the actual, alleged or threatened emission, discharge, dispersal, seepage, release or escape of **pollutants**; or any injury, damage, payments, costs or expense incurred as a result of any testing for, monitoring, removal, containment, treatment, detoxification, neutralization or cleanup of **pollutants**;
3. Lead, whether or not the lead was at any time: airborne as a particle; contained in or formed a part of a product, structure or other real or personal property; ingested or inhaled or transmitted in any fashion; or found in any form whatsoever;
4. Asbestos, whether or not the asbestos was at any time airborne as a fiber, particle or dust; contained in or formed a part of a product, structure or other real or personal property; carried on clothing; ingested or inhaled or transmitted in any fashion; or found in any form whatsoever.

Notwithstanding anything to the contrary in paragraph G., above, it is agreed that the **Underwriters** will pay **claim expenses** and **damages** for **claims** based on or arising out of an **Insured's** failure to advise of the existence of **pollutants**, asbestos, lead or radon in connection with the sale of real property.

- H. Based on or arising out of discrimination, humiliation, harassment, or misconduct, including but not limited to **claims** based on an individual's race, creed, color, age, gender, national origin, religion, disability, marital status or sexual preference. However, nothing in this exclusion will be deemed to exclude **claims** against an **Insured** based on or arising out of **property management services**;
- I. By or on behalf of:
 1. Any **Insured** under this Certificate of Insurance against any other **Insured** hereunder;
 2. Any investor in any property, at any time, owned, managed or developed by any **Insured**.
- J. Based on or arising out of the formation, syndication, operation or administration of any property syndication, real estate investment trust or any corporation, general or limited partnership or joint venture formed for the purpose of investing in, buying, selling, or maintaining real property including those syndications, trusts, real estate investment trusts, corporations, partnerships or joint ventures in which the **Insured** has, had or intended to have a participating interest directly or indirectly in the profits or losses thereof;
- K. Based on or arising out of the purchase of property by, or the sale, leasing, appraisal, or property management of property developed, constructed or owned by:
 1. Any **Insured**;
 2. Any entity in which any **Insured** had a financial interest or a contemplated financial interest;
 3. Any entity which had a financial interest or a contemplated financial interest in the **Named Insured**;
or
 4. Any entity which was under the same financial control as the **Named Insured**.

This exclusion will not apply to any **claim** based on or arising out of:

- i. The sale or leasing of real property in which the combined ownership interest of all **Insured's** hereunder was at the time of sale or lease less than 15%; or
- ii. **Property management services** for property in which an **Insured's** or all **Insureds'** controlling, legal or beneficial interest at the time **property management services** were performed is less than 50%;

- iii. The sale of **residential property** by an **Insured** who is the owner of such residential property for more than 365 days and all of the following conditions are met in connection with such sale:
 - a. A seller disclosure form was signed by the **Insured** and acknowledged in writing by the buyer prior to closing;
 - b. A written Home Inspection Report is issued by a home inspector accredited by a recognized state or regional home inspection association;
 - c. A state or local board approved standard sales contract was utilized; or
 - d. A home warranty Certificate of Insurance was purchased by the buyer prior to closing; or
- iv. The sale of an **Insured's residential property** by an **Insured** who is not the owner of such **residential property** provided that the **residential property** owner was not the selling, listing, or closing agent;
- v. The sale of real property 100% owned by the **Named Insured** at the time of sale if all of the following conditions are met:
 - a. The property was acquired by the **Named Insured** under a written guaranteed sale listing contract; and
 - b. From the date of acquisition to the date of resale:
 - i. The title to the property was held by the **Named Insured** for less than twelve months; and
 - ii. The property was continually offered for sale by the **Named Insured**;
- L. Based on or arising out of actual or alleged violation of:
 - 1. The Employee Retirement Income Security Act of 1974;
 - 2. The Securities Act of 1933;
 - 3. The Securities Exchange Act of 1934;
 - 4. Any state Blue Sky or Securities law;or any rules, regulations or amendments issued in relation to such acts, or any similar state or federal statutes or regulations, including any **claim** based upon common law principles of liability;
- M. Based on, arising out of, or related to actual or alleged misappropriation of ideas, information or materials; infringement of copyright, title or slogan; improper gaining or misuse of confidential or proprietary information, materials or trade secrets; interference with actual or prospective business relationships, contracts or contractual relationships; or unfair competition;
- N. Based on or arising out of the failure to purchase or maintain any property or casualty insurance;
- O. Based on or arising out of any anti-trust law violation or any agreement or conspiracy to restrain trade;
- P. Based on or arising out of liability of others assumed by the **Insured** under any contract or agreement unless such liability would have attached to the **Insured** even in the absence of such contract or agreement;
- Q. Based on or arising out of rendering of or failure to render an opinion on the financial condition of any individual or entity;

- R. Based on or arising out of:
 - 1. An appraisal of real property prepared on behalf of any real estate syndication, or any securities related activity, including but not limited to a sale, exchange, trade or development of such real property on behalf of others and which is required to be registered with the Securities and Exchange Commission or any state regulatory agency which regulates investment made as a public offering;
 - 2. Any activity relating to-a-Right-of-Way Appraisal; Proposed Construction/Land Development appraisal or Vacant Land appraisal; however, this paragraph 2. does not apply to a Proposed Construction/Land Development appraisal or Vacant Land appraisal performed by a residential Real Estate Appraiser wherein the construction or development of land is solely intended for use as a private residential dwelling (one-to-four family home).
- S. Based on or arising out of any defect in lien, title or deed not disclosed in the public record or any opinion of title or deed;
- T. Based on or arising out of any notarized certification or acknowledgment of a signature without the physical appearance before the **Insured** of the person who is, or claims to be, the person signing the instrument;
- U. Based on or arising out of a cease and desist order, the insolvency, bankruptcy, licensing, liquidation or inability to pay of any insurer, trust, bank or other entity directly or indirectly in which any **Insured** has placed or obtained insurance coverage or placed the funds of a client;
- V. Based on or arising out of:
 - 1. Failure to repurchase any loans, or
 - 2. Any transaction involving a loan funded in whole or in part with any **Insured's** own funds.
- W. based on, arising out of, or related to any:
 - 1. **Bodily injury, property damage, personal injury**, or any other loss, liability or liability arising out of any:
 - a. “Organic pathogen”;
 - b. Material, product, building, building component, or structure that contains, harbors, nurtures, or acts as a medium for any “organic pathogen”; or
 - c. Solid or liquid substance, vapor, fume or gas arising from or generated by any “organic pathogen”;

nor do the Underwriters have any duty to defend any **claim**, suit, action, demand, arbitration, or alternative dispute resolution arising from or contributed to, directly or indirectly by any of the above.

- 2. Loss, cost or expense incurred by any person or entity (including any governmental organization) to test for, monitor, remove, abate, mitigate, remediate, dispose of, treat or in any way respond to the actual or potential presence of “organic pathogens”. This includes any obligation, whether set forth by statute, ordinance or order of regulatory or governmental authority associated in any way with these activities.

3. Supervision, instructions, recommendations, warnings, or advice given or which should have been given in connection with 1. or 2. above; or any obligation to share damages or repay someone else who must pay damages because of such injury or damage.

This exclusion applies regardless of any other cause, event, happening, occurrence, material, product or building component that may have also caused, contributed to or aggravated, concurrently or in any sequence, the injury or damage.

“Organic pathogen” includes but is not limited to any type of mold, mildew, fungi, mushrooms, yeasts, dry rot, bacteria, virus, mycotoxin, organisms, or microorganisms of any kind including any spores, scent, byproduct or any reproductive body produced by or arising out there from.

V. CONDITIONS

A. Territory

This Certificate of Insurance applies to an act or omission taking place anywhere in the world provided that suit is brought against the **Insured** within the United States of America, its territories or possessions, Puerto Rico or Canada.

B. Named Insured Sole Agent

The **Named Insured** will be the sole agent and will act on behalf of all **Insureds** for the purpose of giving or receiving any notices, any amendments to or cancellation of this Certificate of Insurance, for the completing of any applications and the making of any statements representations and warranties, for the payment of any premium and the receipt of any return premium that may become due under this Certificate of Insurance, for the payment of the deductible and the exercising or declining to exercise any right under this Certificate of Insurance including the purchase of an **extended reporting period**.

C. Reporting of Claims and Potential Claims

1. The **Insured**, as a condition precedent to the obligations of the **Underwriters** under this Certificate of Insurance, will give written notice to the **Underwriters** as soon as reasonably possible during the **Certificate of Insurance period** of any **claim** made against the **Insured**.

The **Underwriters** further agrees that the **Insured** may have up to, but not to exceed, 60 days after the Certificate of Insurance's expiration to report in writing to the **Underwriters** a **claim** made against the **Insured** during the **Certificate of Insurance period**, if the reporting of such **claim** is as soon as reasonably possible.

2. If during the **Certificate of Insurance period**, any **Insured** becomes aware of any act or omission which may reasonably be expected to be the basis of a **claim** against any **Insured**, including but not limited to any notice, advice or threat, whether written or verbal, that any person or entity intends to hold the **Insured** responsible for any alleged act or omission, and gives written notice to the **Underwriters** with all available particulars, including:
 - a. The specific act or omission;
 - b. The dates and persons involved;
 - c. The identity of anticipated or possible claimants;
 - d. The circumstances by which the **Insured** first became aware of the possible **claim**;
 - e. Potential damages or injury,

then any **claim** that is subsequently made against the **Insured** arising out of such act or omission will be deemed to have been made on the date such written notice was received by the **Underwriters**. Said documents and information should be mailed to the **Underwriters** at the following address:

Mendes and Mount, LLP
750 Seventh Avenue
New York, NY 10019-6829

D. Assistance and Cooperation

1. The **Insured** will cooperate with the **Underwriters** and upon the **Underwriters'** request, attend hearings, depositions and trials and assist in effecting settlements, securing and giving evidence, obtaining the attendance of witnesses and in the conduct of suits and proceedings in connection with a **claim**.
2. The **Insured** will assist in the enforcement of any right of contribution or indemnity against any person or organization who or which may be liable to any **Insured** in connection with a **claim**.
3. The **Insured** will not, except at the **Insured's** own cost, voluntarily make any payment, assume or admit any liability or incur any expense without the written consent of the **Underwriters**.

E. Action Against the Underwriters

1. No action may be brought against the **Underwriters** unless, as a condition precedent thereto:
 - a. The **Insured** has fully complied with all the terms of this Certificate of Insurance; and
 - b. Until the amount of the **Insured's** obligation to pay has been finally determined either by judgment against the **Insured** after actual trial or by written agreement of the **Insured**, the claimant and the **Underwriters**.
2. Nothing contained in the Certificate of Insurance will give any person the right to join the **Underwriters** as a defendant or co-defendant or other party in any action against the **Insured** to determine the **Insured's** liability.

F. Changes

Notice to any agent of the **Underwriters'** or knowledge possessed by any other person will not effect a waiver or change in any part of this Certificate of Insurance, and will not prevent or preclude the **Underwriters** from asserting any right or provisions of this Certificate of Insurance. None of the provisions of this Certificate of Insurance will be waived, changed or modified except by written endorsement issued by the **Underwriters** to form a part of this Certificate of Insurance.

G. Assignment

No assignment of interest of the **Insured** under this Certificate of Insurance will be valid, unless the **Underwriters'** written consent is endorsed hereon.

H. Bankruptcy

Bankruptcy or insolvency of the **Insured** or of the **Insured's** estate will not relieve the **Underwriters** of any of its obligations hereunder.

I. Acquisitions and Mergers

1. The **Named Insured** must provide prior notice to the **Underwriters** of the following events:
 - a. Acquisition of the **Named Insured** by another entity;
 - b. The merger of the **Named Insured** with another entity;
 - c. The acquisition of all or substantially all of the assets of the **Named Insured** by another entity.

Any notices required to be given by the **Insured** will be submitted in writing to the **Underwriters** or the **Underwriters'** authorized representative to WKF&C Agency at 1 Huntington Quadrangle, Melville NY 11747. If mailed, the date of mailing of such notice will be deemed to be the date such notice was given and proof of mailing will be sufficient proof of notice.

2. Upon receipt of such notice, the **Underwriters** may:
 - a. Adjust the premium to reflect the added exposure; or
 - b. In accordance with the terms of this Certificate of Insurance cancel with respect to **claims** made against the **Insured** based on any act or omission committed on or subsequent to the time and date of said event. In such case, the **Certificate of Insurance period** will remain unaltered and coverage will continue but only with respect to acts or omissions prior to the time and date of any such events in accordance with all other terms and conditions of this Certificate of Insurance.

J. Entire Contract

By acceptance of this Certificate of Insurance the **Insured** warrants that:

1. All of the information and statements provided to the **Underwriters** by the **Insured** including but not limited to the application and any supplemental information are true, accurate and complete and will be deemed to constitute material representations made by the **Insured**;
2. This Certificate of Insurance is issued in reliance upon the **Insured's** representations;
3. This Certificate of Insurance, endorsements thereto, together with the completed and signed application and any and all supplementary information and statements provided by the **Insured** to the **Underwriters** (all of which are attached hereto and deemed to be incorporated herein) embody all of the agreements existing between the **Insured** and the **Underwriters** and will constitute the entire contract between the **Insured** and the **Underwriters**; and
4. Any material misrepresentation or concealment by the **Insured** or the **Insured's** agent will render the Certificate of Insurance null and void and relieve the **Underwriters** from all liability herein.

K. Other Insurance

This Certificate of Insurance is excess over any other valid and collectible insurance, self-insurance or indemnification agreement available to the **Insured**, whether such other insurance or indemnification agreement is stated to be primary, contributory, excess contingent, self-insured or otherwise.

L. Subrogation

In the event of any payment under this Certificate of Insurance, the **Underwriters** will be subrogated in the amount of such payment to all the **Insured's** right of recovery against any person or organization.

The **Insured** will execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The **Insured** will do nothing to prejudice such rights.

M. Cancellation/Nonrenewal

1. This Certificate of Insurance may be canceled by the **Named Insured** by returning it to the **Underwriters**.

The **Named Insured** may also cancel this Certificate of Insurance by written notice to the **Underwriters** stating at what future date cancellation is to be effective.

2. The **Underwriters** may cancel or nonrenew this Certificate of Insurance by written notice to the **Named Insured** at the address last known to the **Underwriters**. The **Underwriters** will provide written notice at least 60 days before cancellation or nonrenewal is to be effective. However, if the **Underwriters** cancels this Certificate of Insurance because the **Insured** has failed to pay a premium when due, this Certificate of Insurance may be canceled by the **Underwriters** by mailing to the **Named Insured** written notice stating when, not less than 10 days thereafter, such cancellation will be effective. The time of surrender of the Certificate of Insurance or the effective date and hour of cancellation stated in the notice will become the end of the **Certificate of Insurance period**. Delivery of such written notice either by the **Named Insured** or by the **Underwriters** will be equivalent to mailing.
3. If the **Underwriters** cancels this Certificate of Insurance, the earned premium will be computed pro rata. If the **Named Insured** cancels this Certificate of Insurance, the **Underwriters** will retain the customary short rate proportion of the premium. Premium adjustment may be made either at the time cancellation is effected or as soon as practicable after cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation.
4. The offering of terms and conditions different from the expiring terms and conditions including limits of liability, deductible, or premiums will not constitute a refusal to renew or a cancellation of this Certificate of Insurance.

N. Innocent Insureds

Whenever coverage under this Certificate of Insurance would be excluded because of dishonest, fraudulent, criminal or malicious acts or omissions, the **Underwriters** agrees that such insurance as would otherwise be afforded under this Certificate of Insurance, will be applicable with respect to those **Insureds** who did not personally participate or personally acquiesce in or remain passive after having knowledge of such conduct. Each **Insured** must promptly comply with all provisions of this Certificate of Insurance upon learning of any concealment.

VI. EXTENDED REPORTING PERIODS

Extended reporting period means the period of time after the end of the **Certificate of Insurance period** for reporting **claims** to the **Underwriters** that are made against the **Insured** during the applicable **extended reporting period** by reason of an act or omission, which was committed prior to the end of the **Certificate of Insurance period** and on or subsequent to the **retroactive date**, and is otherwise covered by this Certificate of Insurance.

A. Automatic Extended Reporting Period

If this Certificate of Insurance is cancelled or nonrenewed by either the **Underwriters** or by the **Named Insured**, the **Underwriters** will provide to the **Named Insured** an automatic, noncancelable **extended reporting period** starting at the termination of the **Certificate of Insurance period** if the **Named Insured** has not obtained another Certificate of Insurance of errors and omissions insurance within sixty (60) days of the termination of the **Certificate of Insurance period**. This automatic **extended reporting period** will terminate after sixty (60) days.

B. Optional Extended Reporting Period

1. If this Certificate of Insurance is cancelled or nonrenewed by either the **Underwriters** or by the **Named Insured**, then the **Named Insured** will have the right to purchase an optional **extended reporting period** of one or two years. Such right must be exercised by the **Named Insured** within sixty (60) days of the termination of the **Certificate of Insurance period** by providing:
 - a. Written notice to the **Underwriters**; and
 - b. With the written notice, the amount of additional premium described below.
2. The additional premium for the optional **extended reporting period** will be:
 - a. For a one (1) year **extended reporting period**, 100% of the annual premium for the Certificate of Insurance; or
 - b. For a two (2) year **extended reporting period**, 200% of the annual premium for the Certificate of Insurance.
3. The first sixty (60) days of the optional **extended reporting period**, if it is purchased, shall run concurrently with the automatic **extended reporting period**.

C. Extended Reporting Period Limits of Liability

The limit of liability of the **Underwriters** for all **claims** reported during the automatic and optional **extended reporting periods** will be part of and not in addition to the limits of liability for the **Certificate of Insurance period** set forth in Item 4. in the Declarations.

D. Elimination of Right to Any Extended Reporting Period

There is no right to any **extended reporting period** if the **Underwriters** cancels or refuses to renew this Certificate of Insurance due to:

1. Nonpayment of amounts due under this Certificate of Insurance;
2. Noncompliance by the **Insured** with any of the terms and conditions of this Certificate of Insurance;
3. Any material misrepresentation or omission in the application or the supplementary information and statements provided by the **Insured** for this Certificate of Insurance.

E. Extended Reporting Period - Not A New Certificate of Insurance

The **extended reporting period** will not be construed to be a new Certificate of Insurance and any **claim** submitted during such period will otherwise be governed by this Certificate of Insurance.