

Lexington Insurance Company

(Hereinafter referred to as the Company)

Insurance Agents & Brokers Errors and Omissions Liability Insurance

NOTICE: THIS IS A CLAIMS MADE POLICY. THIS POLICY APPLIES ONLY TO THOSE CLAIMS THAT ARE FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD OR EXTENDED REPORTING PERIOD, IF APPLICABLE, AND ARE THE RESULT OF WRONGFUL ACTS COMMITTED ON OR SUBSEQUENT TO THE RETROACTIVE DATE SPECIFIED IN ITEM 6 OF THE DECLARATIONS AND BEFORE THE END OF THE POLICY PERIOD. PLEASE REVIEW THIS POLICY CAREFULLY AND DISCUSS THIS COVERAGE WITH YOUR INSURANCE REPRESENTATIVE.

ALL WORDS OR PHRASES THAT ARE IN BOLD FACE TYPE, OTHER THAN THE CAPTION TITLES, HAVE THE SPECIAL MEANING SET FORTH IN SECTION II, DEFINITIONS.

In consideration of the payment of the premium and in reliance upon the statements made in the Application, which is made a part hereof and deemed attached hereto, and subject to the Declarations and the limitations, conditions, provisions and other terms of the POLICY, the Company and the **Insured** agree as follows:

I. Insuring Agreements

Errors and Omissions Coverage

- A. The Company will pay on behalf of the **Insured** all sums in excess of the Deductible that the **Insured** shall become legally obligated to pay as **Damages and Claims Expenses** because of a **Claim** first made against the **Insured** during the **Policy Period** or extended reporting period, if applicable, by reason of a **Wrongful Act** in the performance of or failure to perform **Professional Services** by the **Insured** or by any other person or entity for whom the **Insured** is legally liable. The **Wrongful Act(s)** must have been committed on or subsequent to the **Retroactive Date** specified in Item 6 of the Declarations and before the end of the **Policy Period**.

B. Defense and **Claims Expenses**

The Company shall have the right and duty to defend any covered **Claim** brought against the **Insured** even if the **Claim** is groundless, false or fraudulent. The **Insured** shall not admit or assume liability or settle or negotiate to settle any **Claim** or incur any **Claims Expenses** without the prior written consent of the Company and the Company shall have the right to appoint counsel and to make such investigation and defense of a **Claim** as it deems necessary.

The Company shall not settle any **Claim** without the written consent of the Named Insured. If the Named Insured refuses to consent to a settlement or a compromise recommended by the Company and acceptable to the Claimant, then the Company's Limit of Liability under this policy with respect to such **Claim** shall be reduced to the amount of **Damages** for which the **Claim** could have been settled plus all **Claims Expenses** incurred up to the time the Company made its recommendation to the Named Insured, which amount shall not exceed the Limit of Liability specified in Item 3 of the Declarations.

The Company shall not be obligated to investigate, defend, pay or settle, or continue to investigate, defend, pay or settle any **Claim** after the applicable Limit of Liability specified in Item 3 of the Declarations has been exhausted by payment of **Damages**.

Claims Expenses are in addition to the Company's Limit of Liability. If the **Insureds** attend hearings, depositions or trials at the request of the Company, the Company shall reimburse the **Insured's** actual loss of earnings and reasonable expenses due to such attendance up to \$250 per day subject to a maximum amount of \$5,000 for all **Claims** covered by this Policy. Such reimbursement payments by the Company to the **Insured** are not subject to the Deductible and shall not reduce the applicable Limit of Liability.

C. **Disciplinary Proceeding(s) Coverage**

If an **Insured's Wrongful Act** results in the commencement during the **Policy Period** of a Disciplinary Proceeding against an **Insured**, the Company will reimburse the **Insured** for **Claims Expenses** incurred in responding to such Disciplinary Proceeding. The maximum payment by the Company pursuant to this extension of coverage shall be \$5,000 for each **Policy Period** regardless of the number of Disciplinary Proceedings or **Insureds**.

II. Definitions

- A. **Bodily Injury** means injury to the body, sickness, or disease, including death resulting from any of these **injuries**.
- B. **Claim(s)** means a written demand for money, including any civil proceeding against the **Insured** for a **Wrongful Act**, in the performance of or failure to perform **Professional Services**. **Claim(s)** shall not include any Disciplinary Proceeding.
- C. **Claims Expenses** means:
 - a. attorneys' fees, expert witness fees, and other reasonable fees and costs incurred by the Company, or by the **Insured** with the Company's prior written consent, in the investigation and defense of covered **Claim(s)**;
 - b. premiums for any appeal bond, attachment bond or similar bond, provided the Company shall have no obligation to apply for or furnish such bond; and
 - c. pre-judgment and post judgment interest awarded in any Claims.

Claims Expenses shall not include wages, salaries, fees or costs of directors, officers or employees of the Company or the **Insured**.

- D. **Damages** means any compensatory amount which the **Insured** becomes legally obligated to pay on account of a covered **Claim**, including judgments, awards and settlements and will include Punitive and Exemplary **Damages** as permitted by state law. All settlements must be negotiated and agreed upon with the prior written consent of the Company.

Damages shall not include:

- a. civil or criminal fines, penalties, or sanctions, whether pursuant to law, statute, regulation or court rule;
 - b. any matter, sum or award that is uninsurable under the law pursuant to which this Policy shall be construed; and
 - c. the cost to comply with any injunctive or other non-monetary or declaratory relief or any agreement to provide such relief.
- E. **Disciplinary Proceeding(s)** means any proceeding by a regulatory or disciplinary official, board or agency to investigate charges of professional misconduct in the performance of **Professional Services**.

- F. Insured(s)** means:
- a. the Named Insured shown in Item 1 of the Declarations and any **Predecessor Firm(s)** of the Named Insured;
 - b. any past, present or future principal, partner, officer, director, stockholder, trustee or employee of the Named Insured or its Predecessor Firm(s) but only with respect to **Professional Services** performed on behalf of the Named Insured or its **Predecessor Firm(s)**;
 - c. independent contractors who are natural persons, but only with respect to **Professional Services** performed on behalf of the Named Insured or its Predecessor Firm(s); and
 - d. the estate, heirs, executors, administrators or legal representatives of any **Insured** described in subpart (a), (b) or (c) above in the event of such **Insured's** death, incapacity, insolvency, or bankruptcy but only to the extent that such **Insured** would otherwise be provided coverage under this Policy.
- G. Mediation** means a non-binding process in which a neutral panel or individual assists the parties in reaching their own settlement. To be considered Mediation under this Policy, the process must be as set forth in the Commercial Mediation Rules of the American Arbitration Association or such other process as the Company may in its sole option approve.
- H. Personal Injury** means injury arising out of one or more of the following:
- a. false arrest, detention or imprisonment;
 - b. malicious prosecution;
 - c. libel, slander or other defamatory or disparaging material;
 - d. publication or an utterance in violation of an individual's right to privacy; and
 - e. wrongful entry or eviction, or other invasion of the right to private occupancy, and
 - f. mental injury, mental anguish, mental tension or emotional distress.
- I. Predecessor Firm(s)** means any entity which was engaged in the same essential types of insurance activities as the Named **Insured**, in whose financial assets and liabilities the Named **Insured** is the majority successor in interest.
- J. Policy Period** means the period of time between the effective date stated in Item 2 of the Declarations and the termination, expiration or cancellation date of this Policy, plus any Extended Reporting Period if elected.
- K. Pollutants** means any solid, liquid, gaseous or thermal irritant or contaminant, including without limitation, smoke, vapor, soot, fumes, acids, alkalis, chemicals, and "waste". "Waste" includes materials to be recycled, reconditioned or reclaimed.
- L. Professional Services** means services for others in any of the following capacities:
1. Insurance Wholesaler
 2. Insurance Managing General Agent
 3. Insurance General Agent
 4. Insurance Underwriting Manager
 5. Insurance Program Administrator
 6. Insurance Agent
 7. Insurance Broker
 8. Insurance Surplus Lines Insurance Broker
 9. Insurance Consultant
 10. Insurance Claims Administrator
 11. Insurance Appraiser
 12. Insurance Premium Financier
 13. Notary Public

- M. Property Damage** means:
- a. physical injury to, or loss or destruction of, tangible property, including the loss of use thereof, and
 - b. loss of use of tangible property which has not been physically injured or destroyed.
- N. Related Claims** mean all **Claims** arising out of a single **Wrongful Act** or a series of Related **Wrongful Acts** in the performance of or failure to perform **Professional Services**.
- O. Related Wrongful Acts** mean all **Wrongful Acts** that are temporally, logically, or causally connected by any common fact, circumstance, situation, transaction, event, advice or decision.
- P. Retroactive Date** means the date specified in Item 6 of the Declarations.
- Q. Standard Agency or Brokerage Agreement** means any formal executed written contract entered into by the Named **Insured** with any insurance carrier, the purpose of which is to establish a relationship whereby the Named **Insured** represents the insurance carrier in an agent, broker, wholesaler, general agent, managing general agent, or underwriting manager capacity.
- R. Wrongful Act(s)** means any actual or alleged act, error, omission, misstatement, misleading statement, **Personal Injury**, neglect or breach of duty to provide **Professional Services** by the **Insured** or by any other person or entity for whom the **Insured** is legally liable.

III. Limits of Liability and Deductible

1. Limit of Liability - Each **Claim**

The Limit of Liability stated in Item 3 (a) of the Declarations is the Company's maximum liability for all **Damages** with respect to a single **Claim** or **Related Claims**.

2. Limit of Liability - Aggregate

The Limit of Liability stated in Item 3 (b) of the Declarations is the Company's maximum liability for all **Damages** in respect of all **Claims** for which this Policy applies regardless of the number of **Insureds**, **Claims** made or persons or entities making **Claims**.

The Company shall not be obligated to pay any **Damages** or **Claims Expenses** or to defend any **Claim** after the applicable Limit of Liability has been exhausted by payment of **Damages**.

3. Deductible

The Deductible amount stated in Item 4 of the Declarations is applicable to each **Claim** and applies to **Damages** and **Claims Expenses** alone or in combination. The Deductible shall be paid by the Named **Insured** and shall be uninsured and shall remain uninsured during the **Policy Period**. The Limits of Liability set forth in Item 3 of the Declarations are in addition to and in excess of the Deductible.

4. Multiple **Claims**

All **Related Claims** shall be deemed a single **Claim**, and such **Claim** shall be deemed to be first made on the date the earliest such **Related Claims** is first made against the **Insured**, regardless of whether such date is before or during the **Policy Period**.

IV. Exclusions

This policy does not apply to any **Claim** against the **Insured**:

- A. based on or arising out of any actual dishonest, fraudulent, criminal or malicious act or omission by an **Insured**, however, this exclusion shall not apply to any **Insured** who:
 - 1. did not personally commit, participate in, or acquiesce in the act, error or omission; and
 - 2. did not remain silent or passive after having personal knowledge of the act, error, or omission; and
 - 3. notified the Company immediately upon becoming aware of the act, error, or omission.
- B. based on or arising out of any actual or alleged **Bodily Injury or Property Damage**.
- C. based on or arising out of any actual or alleged liability 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,

This Exclusion does not apply to any liability the **Insured** assumes under any formal written **Standard Agency or Brokerage Agreement** to indemnify any insurance carrier whom the **Insured** represents for Loss or defense expenses the insurance carrier incurs solely and exclusively due only to **Wrongful Acts** committed by an **Insured**, or by any other person or entity for whom the **Insured** is legally liable.

- D. based on or arising out of **Professional Services** performed for any entity if at the time the **Professional Services** were performed:
 - a. any **Insured** operated or managed such entity;
 - b. any **Insured** was a partner, director, officer or employee of such entity; or
 - c. any **Insured** owned, directly or indirectly, 10% or more of any such entity that is a privately held company, or 30% or more of any such entity that is a privately held company.
- E. by or on behalf of another **Insured**,
- F. based on or arising out of any actual or alleged:
 - a. illegal discrimination of any kind, or
 - b. humiliation, harassment, or misconduct arising out of or related to any such discrimination; however, this exclusion shall not apply to **Claims Expenses** or the Company's duty to defend any such **Claim**,
- G. based on or arising out of any actual or alleged violation of any anti-trust, restraint of trade or other law, rule or regulation which protects competition.
- H. based on or arising out of any actual or alleged violation of
 - a. Employee Retirement Income Security Act of 1974;
 - b. Securities Act of 1933;
 - c. Securities Exchange Act of 1934;

- d. any state securities law;
 - e. any rules or regulations promulgated under a. – d. above or any other similar federal, state or common law; or
 - f. any amendments thereof.
- I. based on or arising out of a **Wrongful Act** actually or allegedly committed prior to the beginning of the **Policy Period**, if, on or before the earlier of the effective date of this Policy or the effective date of any Policy issued by the Company to which this Policy is a continuous renewal or replacement, the **Insured** knew or reasonably could have foreseen that the **Wrongful Act** did or could lead to a **Claim**.
- J. based on or arising out of a **Wrongful Act**, fact or circumstance which before the effective date of the Policy was reported to the Company or any other Insurer.
- K. based on or arising out of:
- a. any actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of **Pollutants** by any **Insured** at any time; or
 - b. any request, demand or order that any **Insured** or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of **Pollutants**; including without limitation any **Claim**, suit or proceeding by or on behalf of a governmental authority, a potentially responsible party or any other person or entity for **Damages** because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of **Pollutants**.
- L. based on or arising out of the inability, failure, or refusal of any insurance company, self insurance trust, group insurance trust, or other risk assuming entity of any kind that is incorporated, domiciled, or has or had at any time their principal place of business located anywhere outside of the fifty states of the United States of America, to pay all or any part of any **Claim** or any kind of legal or financial obligation due to insolvency, bankruptcy, or going into, or being in any conservatorship, receivership, rehabilitation or liquidation status or proceeding. This Exclusion will not apply to any foreign entity rated B+ or better by A.M. Best Company.
- M. based on or arising out of the actual or alleged failure to collect, pay, or return to anybody any policy premium, return premium, commission, tax, or policy fee of any kind.
- N. based on or arising out of the placement of insurance on any property in the care, custody or control of the **Insured** at any time.

V. Conditions

A. Notice of **Claims**

The **Insured**, as a condition precedent to the obligations of the Company under this Policy, shall give written notice to the Company immediately, but in no event later than 60 days after the end of the **Policy Period** of any **Claim** made against the **Insured**.

The **Insured** shall immediately forward to the Company, at the address indicated in Item 7 of the Declarations, every demand, notice, summons, or other process or pleadings received by the **Insured** or its representatives.

B. Notice of Potential **Claims**

If during the **Policy Period**, any **Insured** becomes aware of any **Wrongful Act** which may reasonably be expected to be the basis of a **Claim** against the **Insured**, and during the **Policy Period** gives written notice thereof to the Company with all available particulars, including but not limited to:

1. the specific **Wrongful Act**;
2. the dates and persons involved;
3. the identity of anticipated or possible Claimants;
4. the circumstances by which the **Insured** first became aware of the possible **Claim**; then any **Claim** which is subsequently made against the **Insured** arising from such **Wrongful Act**, and properly reported to the Company, shall be deemed to have been made at the time such written notice is given to the Company.

C. Assistance and Cooperation

The **Insured** shall cooperate with the Company, and provide to the Company all information and assistance which the Company reasonably requests including without limitation attending hearings, depositions and trials and assisting in effecting settlements, securing and giving evidence, obtaining the attendance of witnesses and conducting the defense of any **Claim** covered by this Policy. The **Insured** shall do nothing that may prejudice the Company's position.

D. Action Against the Company

No action shall be brought against the Company, unless, as a condition precedent thereto, the **Insured** shall have fully complied with all the terms of this Policy, and the amount of the **Insured's** obligation to pay shall have been fully determined either by judgment against the **Insured** after actual trial and appeal or by written agreement of the **Insured(s)**, the Claimant and the Company.

E. Other Insurance

This Policy shall be excess over any other valid and collectible insurance, self-insurance or indemnification available to the **Insured**, whether such other insurance or indemnification is stated to be primary, contributory, excess, contingent, self-insured or otherwise, unless such other insurance is written only as specific excess insurance over the Limits of Liability of this Policy.

F. Changes

Notice to any agent or broker or knowledge possessed by any agent or broker or by any other person shall not effect a waiver or a change in any part of this Policy or prevent the Company from asserting any right under the terms of this Policy; nor shall the terms of this Policy be waived or changed except by endorsement issued to form a part of this Policy and signed by an authorized representative of the Company.

G. Mediation of Claims

If through **Mediation** a **Claim** is fully and finally resolved to the satisfaction of all parties including the Company, the **Insureds'** Deductible obligation for such **Claim** shall be reduced by fifty (50) percent up to a maximum reduction of \$25,000. If **Claims Expenses** at the time of commencement of such **Mediation** do not exceed the Deductible, all **Claims Expenses** incurred in the **Mediation** shall be paid by the Company.

H. Territory

This Policy applies to **Wrongful Acts** taking place anywhere in the world provided that the **Claim** is made against the **Insured** within the United States of America, its territories or possessions, Puerto Rico or Canada.

I. Subrogation

In the event of any payment under this Policy, the Company shall be subrogated in the amount of such payment to the **Insured's** rights of recovery therefore against any person or entity. The **Insured** shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The **Insured** shall do nothing to prejudice such rights. However, in no event shall the Company be subrogated in a right of action against another **Insured**.

Any recovery (after expenses) shall be used to reduce the Loss, and so much of such recovery shall be paid to the Company as will reduce the Loss ultimately borne by the Company to what it would have been, had the recovery preceded any payment of such Loss by the Company.

J. Bankruptcy

Bankruptcy or insolvency of the **Insured** or the **Insured's** estate shall not relieve the Company of any obligations hereunder.

K. Assignment

No assignment of interest of the **Insured** under this Policy shall be valid unless the written consent of the Company is endorsed hereon.

L. Named Insured sole agent

The entity or person first named in Item 1 of the Declarations shall be the sole agent of all **Insureds** hereunder for the purpose of effecting or accepting any notices hereunder, any amendments to or cancellations of this Policy, for the completing of any Applications and the making of any statements, representations, or for the payment of any premium and the receipt of any return premium that may become due under this Policy, and the exercising or declining to exercise any right under this Policy.

M. Cancellation/Non Renewal

This Policy may be cancelled by the Named **Insured** by surrender of this Policy to the Company or by giving written notice to the Company stating when thereafter such cancellation shall be effective. This Policy may also be cancelled or non renewed by the Company by sending written notice to the Named **Insured**, at the address last known to the Company, at least 60 days before such cancellation or non renewal is effective; however, if the Company cancels this Policy because the **Insured** has failed to pay amounts due under this Policy, this Policy may be cancelled by the Company by sending written notice stating when, not less than 10 days thereafter, such cancellation shall be effective. The mailing of notice as aforesaid shall be sufficient proof of notice. The time of the surrender, or the effective date and hour of cancellation stated in the notice, shall become the end of the **Policy Period** subject to any elected Extended Reporting Period.

If this Policy is cancelled by the Named **Insured**, the Company shall retain the customary short rate proportion of the premium hereon. If this Policy is cancelled by the Company, the Company shall retain the pro-rata proportion of the premium hereon.

Payment or tender of any unearned premium by the Company shall not be a condition precedent to the effectiveness of cancellation, but such payment shall be made as soon as practicable.

N. Application

By acceptance of this Policy the **Insured** agrees that:

1. all the information and statements provided to the Company by the **Insured** which are contained herein, attached to or incorporated in the Application for this Policy are true, accurate, and complete and shall be deemed to constitute material representations made by the **Insured**;
2. this Policy is issued in reliance upon such **Insured's** representations;
3. this Policy, including all endorsements hereto, and the completed and signed Application and any and all supplementary information and statements provided by the **Insured** to the Company (all of which are deemed to be incorporated herein) embody all of the agreements existing between the **Insured** and the Company and shall constitute the entire contract between the **Insured** and the Company.

O. Acquisitions and Mergers

In the event of any merger, consolidation, amalgamation or acquisition involving the Named **Insured** any other party, the **Insured** shall notify the Company of such change within 30 days of the effective date of such change. If such notification is not made to the Company all coverage for the merged or acquired entity will cease 30 days after the date of the merger or acquisition. The Company at their sole discretion may charge an additional premium or amend or cancel coverage following any merger or acquisition.

P. Service of Suit

In the event of the Company's failure to pay any amount claimed to be due hereunder, the Company, at the **Insured's** request, will submit to the jurisdiction of a court of competent jurisdiction within the United States. Nothing in this condition constitutes or should be understood to constitute a waiver of the Company's rights to commence an action in any court of competent jurisdiction in the United States to remove an action to a United States District Court or to seek a transfer of a case to another court as permitted by the laws of the United States or of any state in the United States. It is further agreed that service of process in such suit may be made upon Counsel, Legal Department, Lexington Insurance Company, 200 State Street, Boston, Massachusetts, 02109 or his or her representative, and that in any suit instituted against the Company upon this policy, the Company will abide by the final decision of such court or of any appellate court in the event of an appeal.

Further, pursuant to any statute of any state, territory, or district of the United States which makes provision therefor, the Company hereby designates the Superintendent, Commissioner or Director of Insurance, or other officer specified for that purpose in the statute, or his or her successors in office as the Company's true and lawful attorney upon whom may be served any lawful process in any action, suit, or proceeding instituted by the **Insured** or on the **Insured's** behalf or any beneficiary hereunder arising out of this policy of insurance and hereby designate the above named Counsel as the person to whom the said officer is authorized to mail such process or a true copy thereof.

VI. Extended Reporting Period

In case of cancellation or non renewal of this Policy, by either the Named **Insured** or the Company, for reason other than the Named **Insured's** non payment of amount due under this Policy or non compliance with the terms and conditions of this Policy, the Named **Insured** shall have the right to an Extended Reporting Period as follows:

a. Automatic Extended Reporting Period

Coverage as provided under this Policy shall automatically continue for a period of sixty (60) days following the effective date of such cancellation or non renewal, but only with respect to **Claims** for **Wrongful Acts** committed before the effective date of such cancellation or non renewal and subsequent to the **Retroactive Date** stated in Item 6 of the Declarations.

b. Optional Extended Reporting Period

The Named **Insured** shall have the right, upon payment of the additional premium set forth in the table below to an extension of the coverage provided under this Policy following the effective date of such cancellation or non renewal, but only with respect to **Claims** for **Wrongful Acts** committed before the effective date of such cancellation or non renewal and subsequent to the **Retroactive Date** shown in Item 6 of the Declarations.

This right shall terminate, however, unless written notice of such election and payment of the additional premium is received by the Company no later than sixty (60) days after the effective date of cancellation or non renewal.

The first sixty (60) days of the Optional Extended Reporting Period, if it becomes effective, shall run concurrently with the Automatic Extended Reporting Period.

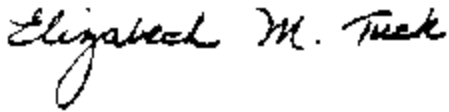
There is no separate or additional Limit of Liability for Claims reported to the Company during the Extended Reporting Period.

<u>Optional Extended Reporting Period</u>	<u>Flat Premium (the percent of the annual premium shown on the Declarations)</u>
1 year	85%
2 years	105%
3 years	135%
4 years	160%
5 years	185%
unlimited	225%

IN WITNESS WHEREOF, the Company has caused this Policy to be executed and attested, but this policy shall not be valid unless countersigned in the Declarations by a duly Authorized Representative of the Company.

A handwritten signature in black ink, appearing to read "Mark Berman". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Chairman of the Board & CEO

A handwritten signature in black ink, appearing to read "Elizabeth M. Tuck". The signature is cursive and somewhat compact.

Secretary

This endorsement, effective 12:01 a.m. on:

Forms a part of policy number:

Issued to:

By:

CLAIMS EXPENSES WITHIN THE LIMITS OF LIABILITY ENDORSEMENT

NOTICE: THIS ENDORSEMENT REDUCES THE COVERAGE AVAILABLE UNDER THIS POLICY. THE LIMITS OF LIABILITY AVAILABLE UNDER THIS POLICY SHALL BE REDUCED BY AMOUNTS INCURRED FOR DAMAGES OR CLAIMS EXPENSES OR BOTH. PLEASE READ THIS ENDORSEMENT CAREFULLY.

1. Section **I., Insuring Agreements**, Paragraph B. Defense and Claims Expenses, is deleted in its entirety and replaced with the following new Paragraph B.:

B. Defense and Claims Expenses

The company shall have the right and duty to defend any covered Claim brought against the Insured even if the Claim is groundless, false or fraudulent. The Insured shall not admit or assume liability or settle or negotiate to settle any Claim or incur any Claim Expenses without the prior written consent of the Company and the Company shall have the right to appoint counsel and make such investigation and defense of a Claim as it deems necessary.

The Company shall not settle any Claim without the written consent of the Named Insured. If the Named Insured refuses to consent to a settlement or a compromise recommended by the Company and acceptable to the Claimant, then the Company's Limit of Liability under this Policy with respect to such claim shall be reduced to the amount of Damages and Claims Expenses incurred for which the Claim could have been settled up to the time the Company made its recommendation to the Named Insured, which amount shall not exceed the applicable Limit of Liability specified in Item 3 of the Declarations.

The Company shall not be obligated to investigate, defend, pay or settle, or continue to investigate, defend, pay or settle any Claim after the applicable Limit of Liability specified in Item 3 of the Declarations has been exhausted by payment of Damages or Claims Expenses or both.

Claims Expenses are included within and reduce the applicable Limit of Liability.

2. Section **II., Definitions**, Paragraph C. Claims Expenses is deleted in its entirety and replaced with the following new Paragraph C.

C. Claims Expenses means:

- a. attorney's fees, expert witness fees and other reasonable fees and costs incurred by the Company, or by the Insured with the Company's prior written consent, in the investigation and defense of covered Claim(s);
- b. premiums for any appeal bond, attachment bond, or similar bond, provided the Company shall have no obligation to apply for or furnish such bonds;

- c. pre-judgment and post-judgment interest award in any Claims; and
- d. reimbursement of the Insured's actual loss of earnings and reasonable expenses due to attendance at depositions or trials, but only up to \$250 per day subject to a maximum amount of \$5,000 for all Claims covered under this Policy and only if the Company requests the Insured's attendance at such depositions or trials.

Claims Expenses shall not include the wages, salaries, fees or costs of directors, officers, or employees of the Company or the Insured except, in the case of the Insured, as provided under subparagraph d. above.

Payment of Claims Expenses shall reduce the applicable Limit of Liability.

- 3. Section **III., Limits of Liability and Deductible**, Paragraph 1. is deleted in its entirety and replaced with the following new Paragraph 1.:

- 1. Limit of Liability – Each Claim

The Limit of Liability stated in Item 3(a) of the Declarations is the Company's maximum liability for all Damages or Claims Expenses or both with respect to a single Claim or Related Claims.

Limit of Liability – Aggregate

The Limit of Liability stated in Item 3(b) of the Declarations is the Company's maximum liability for all Damages or Claims Expenses or both with respect to all Claims for which the Policy applies regardless of the number of Insureds, Claims made or persons or entities making claims.

The Company shall not be obligated to pay any Damages or Claims Expenses or to defend any Claim after the applicable Limit of Liability has been exhausted by payments of Damages or Claims Expenses or both.

All other terms and conditions shall remain unchanged.

Lexington Insurance Company

ENDORSEMENT NO. _____

This endorsement effective

Forms a part of policy number

Issued to , DBA:

By Lexington Insurance Company

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

TOTAL INSOLVENCY EXCLUSION

It is agreed that Exclusion L is deleted in its entirety and replaced with:

- L. based on or arising out of the inability, failure, or refusal of any insurance company, self insurance trust, group insurance trust, or other risk assuming entity of any kind to pay all or any part of any **Claim** or any kind of legal or financial obligation due to insolvency bankruptcy, or going into, or being in any conservatorship, receivership, rehabilitation or liquidation status or proceeding.

All other terms, conditions and exclusions of this policy shall remain unchanged.

Authorized Representative

Date

THIS ENDORSEMENT CHANGES THE POLICY, PLEASE READ IT CAREFULLY.

ENDORSEMENT

This endorsement, effective 12:01 A.M.

forms a part of

Policy No.

Issued to

By

ADDITIONAL EXCLUSION

This endorsement modifies insurance provided under the following:

This Policy does not provide coverage and the Company will not pay **any claim expenses** or **any damages**, or any other loss, cost or expense, including, but not limited to losses, costs or expenses related to, arising from or associated with clean-up, remediation, containment, removal or abatement, caused directly or indirectly, in whole or in part, by:

- a. Any "fungus(i)", "mold(s)", mildew, yeast;
- b. Any "spore(s)" or toxins created or produced by or emanating from such "fungus(i)", "mold(s)", mildew, yeast;
- c. Any substance, vapor, gas, or other emission or organic or inorganic body or substance produced by or arising out of any "fungus(i)", mold(s)", mildew, yeast;
- d. Any material, product, building component, building or structure, or any concentration of moisture, water or other liquid within such material, product, building component, building or structure, that contains, harbors, nurtures or acts as a medium for any "fungus(i)", "mold(s)", mildew, yeast, or "spore(s)" or toxins emanating therefrom,

regardless of any other cause, event, material, product and/or building component that contributed concurrently or in any sequence to that, loss, cost or expense or to such **claim expenses** or **damages**.

For the purpose of this exclusion, the following definitions are added to the Policy:

"Fungus(i)" includes, but is not limited to, any of the plants or organisms belonging to the major group Fungi, lacking chlorophyll, and including molds, rusts, mildews, smuts, and mushrooms.

"Mold(s)" includes, but is not limited to, any superficial growth produced on damp or decaying organic matter or on living organisms, and fungi that produce molds.

"Spore(s)" means any dormant or reproductive body produced by or arising or emanating out of any "fungus(i)", "mold(s)", mildew, plants, organisms or microorganisms.

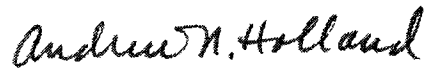
Authorized Representative

ADDENDUM TO THE DECLARATIONS

By signing below, the President and the Secretary of the Insurer agree on behalf of the Insurer to all the terms of this Policy.

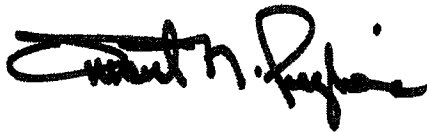


Peter J. Eastwood
PRESIDENT



Andrew Holland
SECRETARY

This policy shall not be valid unless signed at the time of issuance by an authorized representative of the Insurer, either below or on the Declarations page of the policy.



Vincent N. Pugliese
AUTHORIZED REPRESENTATIVE