

**REAL ESTATE PROFESSIONALS  
ERRORS AND OMISSIONS  
POLICY**



**IMPORTANT NOTE: THIS IS CLAIMS MADE AND REPORTED COVERAGE.  
PLEASE READ THIS POLICY CAREFULLY.**

**THIS POLICY IS WRITTEN ON A CLAIMS MADE AND REPORTED BASIS. TO BE COVERED, A CLAIM OR SUIT MUST BE FIRST MADE OR BROUGHT AND REPORTED TO THE COMPANY DURING THE POLICY PERIOD, OR SIXTY (60) DAYS THEREAFTER, OR DURING AN EXTENDED REPORTING PERIOD IF APPLICABLE.**

This Policy is organized into the following sections:

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In consideration of the payment of the premium, and in reliance on all statements made and information furnished to the Underwriter, and subject to all of the terms and conditions of this Policy (including all endorsements hereto), the Underwriter and the **Insured** agree as follows:

## I. INSURING AGREEMENTS

### (A) REAL ESTATE PROFESSIONALS ERRORS AND OMISSIONS

The Underwriter will pay on behalf of the **Insured** any **Damages**, in excess of the deductible amount and up to the applicable limits of liability stated in the Declarations, that the **Insured** is legally obligated to pay as a result of any covered **Claim** for a **Wrongful Act** committed on or after the retroactive date stated in the Declarations; provided, that the **Claim** is first made against the **Insured** during the **Policy Period** or applicable Extended Reporting Period and reported to the Underwriter in accordance with GENERAL CONDITION (C)(1) of this Policy.

### (B) DEFENSE PAYMENTS

- (1) The Underwriter has the right and duty to defend any **Claim** that is covered by this Policy, even if any of the allegations of such **Claim** are groundless, false or fraudulent. In addition to the “Each Claim” and “Aggregate” limits of liability stated in the Declarations, the Underwriter will pay **Claim Expenses** in connection with any covered **Claim**.
- (2) In addition to the “Each Claim” and “Aggregate” limits of liability stated in the Declarations, the Underwriter will pay loss of earnings due to time off from work incurred by the **Insured** at the written request of the Underwriter in connection with the defense of a **Claim**, but not to exceed:
  - (a) \$250 per day per **Insured**;
  - (b) \$10,000 per **Claim**; and
  - (c) \$30,000 in the aggregate for all **Claims** made during the **Policy Period** and any applicable Extended Reporting Period.

### (C) COVERAGE EXTENSIONS

- (1) Fair-Housing Discrimination

Subject to the “Fair Housing Discrimination” limit of liability stated in the Declarations and all other terms and conditions of this Policy, this Policy applies only to **Claim Expenses** incurred in connection with any **Claim** based upon or arising out of **Fair-Housing Discrimination**. This Policy does not apply to any **Damages** the **Insured** is legally obligated to pay as a result of any **Claim** based upon or arising out of **Fair-Housing Discrimination**.

(2) Lockbox Claims

Subject to all of the terms and conditions of this Policy, this Policy applies to **Lockbox Claims**; provided, that no deductible amount applies to payments as a result of **Lockbox Claims**.

## II. SUPPLEMENTARY PAYMENTS

### (A) DISCIPLINARY PROCEEDINGS

The Underwriter will reimburse the **Named Insured** for attorney fees and other reasonable costs, expenses or fees incurred by the **Insured** resulting from the investigation or defense of a **Disciplinary Proceeding** arising out of an act, error, omission or breach of duty in the rendering of **Professional Real Estate Services** by the **Insured**; provided, that such **Disciplinary Proceeding** is first received by the **Insured** during the **Policy Period** and reported to the Underwriter in accordance with GENERAL CONDITION (C)(2) of this Policy. In no event shall the amount payable under this Section II(A) exceed \$15,000 per each **Disciplinary Proceeding** and \$25,000 in the aggregate per **Policy Period**, regardless of the number of **Disciplinary Proceedings** or **Insureds** involved in such proceedings.

### (B) SUBPOENA ASSISTANCE

If, during the **Policy Period**, the **Insured** receives a subpoena for documents or testimony arising out of **Professional Real Estate Services** by the **Insured** and the **Insured** requests the Underwriter's assistance in responding to such subpoena, the **Insured** may provide the Underwriter with a copy of such subpoena and it will retain an attorney to provide advice regarding the production of documents, to prepare the **Insured** for sworn testimony and to represent the **Insured** at the **Insured's** depositions; provided, that:

- (1) the subpoena arises out of a lawsuit to which the **Insured** is not a party; and
- (2) the **Insured** has not been engaged to provide advice or testimony in connection with the lawsuit, nor has the **Insured** provided such advice or testimony in the past.

In no event shall the amount payable under this Section II(B) exceed \$15,000 per each such subpoena and \$25,000 in the aggregate per **Policy Period**, regardless of the number of subpoenas received or **Insureds** involved.

Any notice the **Insured** gives the Underwriter of such subpoena shall be deemed notification under GENERAL CONDITIONS (C)(3) of this Policy.

Payments made under this Section II are not subject to the deductible amount and are in addition to the limits of liability stated in the Declarations.

### III. DEFINITIONS

Whenever used in this Policy:

- (A) **Bodily Injury** means physical injury, sickness, disease or death of any person, including mental anguish, mental injury and emotional distress; provided, that **Bodily Injury** does not include mental anguish, mental injury or emotional distress arising out of **Personal Injury**.
- (B) **Claim** means:
- (1) a written demand received by the **Insured** for money or services, including the service of a lawsuit or other proceeding, alleging a **Wrongful Act**; or
  - (2) a written request received by the **Insured** to toll or waive a statute of limitations relating to a potential **Claim**.
- (C) **Claim Expenses** means:
- (1) reasonable fees of attorneys, experts and consultants and costs and expenses incurred in the investigation, adjustment, defense or appeal of a **Claim**, with the approval or at the direction of the Underwriter;
  - (2) all costs allocated to the **Insured** in suits or proceedings and all interest which accrues after the entry of any judgment and before the Underwriter has paid, tendered or deposited such judgment, whether in court or otherwise, but only as respects that part of the judgment which is covered by this Policy; and
  - (3) premiums on appeal bonds which are required for the appeal of a covered **Claim**; provided, that the Underwriter shall have no obligation to apply for, guarantee or furnish any such bonds.
- Claim Expenses** do not include the remuneration, salaries, overhead, fees, loss of earning reimbursement or benefit expenses of the **Insured** or the Underwriter.
- (D) **Construction Manager** means a person providing any of the following services in connection with the construction, reconstruction and renovation of real property:
- (1) management of facility construction, reconstruction and renovation plans;
  - (2) development and management of construction, reconstruction and renovation contracts and subcontracts; or
  - (3) development of loss control and risk management plans in connection with such construction, reconstruction, and renovation.
- (E) **Damages** means any monetary judgment or settlement, including any such judgment or settlement for **Personal Injury**, that the **Insured** is legally obligated to pay as a result of a **Claim**. **Damages** do not include:
- (1) any fines, penalties, sanctions or taxes;

- (2) the return, reduction or restitution of fees, commissions, costs or expenses;
  - (3) the multiplied portion of any multiplied damage award;
  - (4) amounts which are uninsurable under applicable law; or
  - (5) relief or redress in any form other than monetary compensation or monetary damages, including without limitation the cost of complying with any injunctive, declaratory or administrative relief.
- (F) **Disciplinary Proceeding** means a proceeding before a real estate licensing commission or board or similar entity or official to determine violations of disciplinary rules or rules of professional conduct, professional misconduct or other matters relating to real estate professional's licensing and discipline.
- (G) **Fair-Housing Discrimination** means any actual or alleged violation of Title VIII of the Civil Rights Act of 1968, the Fair Housing Amendment Act of 1988 or any similar local, state or federal statute or regulation.
- (H) **Fungi** means any form of fungus including, but not limited to, yeast, mold, mildew, rust, smut or mushroom.
- (I) **Guaranteed Sale Listing Contract** means a written agreement between the **Insured** and the seller of real property, in which the **Insured** agrees to purchase such property if it is not sold under the listing agreement in the time frame specified by the agreement.
- (J) **Insured** means:
- (1) the **Named Insured**;
  - (2) any present or former partner, member, officer, director, employee or independent contractor of the **Named Insured** and any of their personal assistants, but only for any act, error, omission or breach of duty in the rendering of **Professional Real Estate Services** on the **Named Insured's** behalf for others;
  - (3) franchise grantors of which the **Named Insured** is a franchisee, but only for **Claims** under this Policy that result from any act, error, omission or breach of duty in the rendering of **Professional Real Estate Services** by the **Insured**; and
  - (4) in the event of the death, incapacity, or bankruptcy of an individual **Insured**, the estates, heirs, legal representatives or assigns of such individual **Insured**.
- (K) **Lockbox Claim** means any **Claim** arising out of the **Insured's** distribution, maintenance, operation or use of a lockbox or keyless entry system used to gain access when showing properties not owned by the **Insured**.
- (L) **Microbes** mean any non-fungal microorganism or non-fungal colony-form organism that causes infection or disease.
- (M) **Named Insured** means the person or entity stated in ITEM 1 of the Declarations.
- (N) **Personal Injury** means any of the following offenses:

- (1) false arrest, humiliation, detention or imprisonment, wrongful entry, eviction or other invasion of private occupancy, malicious prosecution; or
  - (2) the publication or utterance of libel or slander or other defamatory or disparaging material, or a publication or utterance in violation of any individual's right to privacy.
- (O) **Policy Period** means the period from the inception date of this Policy stated in the Declarations to the expiration date of this Policy stated in the Declarations or to any earlier termination date of this Policy.
- (P) **Pollutants** means any solid, liquid, gaseous or thermal irritant or contaminant, including, but not limited to, smoke, vapor, soot, fumes, acids, alkalis, chemicals, lead, radon, asbestos, silica and waste. Waste includes materials to be recycled, reconditioned or reclaimed.
- (Q) **Professional Real Estate Services** means services and activities performed for others in the **Insured's** capacity as a:
- (1) real estate agent or broker, **Referral Agent** or personal assistant thereof;
  - (2) real estate consultant or counselor;
  - (3) leasing agent or **Property Manager**;
  - (4) appraiser or auctioneer of real property;
  - (5) **Short Term Escrow Agent** or notary public; or
  - (6) member of a real estate formal accreditation, standards review, or similar real estate board or committee;
- provided that all necessary licenses or certifications are held by the **Insured** at the time of the act, error, omission or breach of duty giving rise to a **Claim**. Any services as a **Construction Manager** are not **Professional Real Estate Services**.
- (R) **Property Damage** means:
- (1) physical injury to real or personal property, including all resulting loss of use of that property; or
  - (2) loss of use of real or personal property that is not physically injured.
- (S) **Property Manager** means a person providing the following services in connection with the management of commercial or residential real property:
- (1) development and implementation of management plans and budget;
  - (2) oversight of physical maintenance of such property;
  - (3) solicitation, evaluation and securing of tenants and management of tenant relations, collection of rent and processing evictions;

- (4) development, implementation and management of loss control and risk management plans for such property;
  - (5) development, implementation and management of contracts and subcontracts (excluding property and liability insurance contracts) necessary to the daily functioning of such property; or
  - (6) personnel administration and record keeping in connection with such property.
- (T) **Referral Agent** means a real estate agent whose services are limited to referring clients to the **Named Insured** for the purposes of commencing a real estate transaction and does not include the active solicitation or engagement in the sale of real property.
- (U) **Related Claims** means all **Claims** arising out of a single act, error, omission or breach of duty in the rendering of **Professional Real Estate Services** or arising out of a series of related acts, errors, omissions or breaches of duty in the rendering of **Professional Real Estate Services**.
- (V) **Short Term Escrow Agent** means an **Insured** who, in connection with the sale or purchase of real property, receives or holds funds in, or distributes funds from, an escrow or trust account where all such funds are to be fully distributed within twelve (12) months from the date received.
- (W) **Wrongful Act** means any actual or alleged act, error, omission or breach of duty in the rendering of, or the failure to render, **Professional Real Estate Services** by the **Insured**. **Wrongful Act** also means **Personal Injury** arising out of the **Insured's** conduct in rendering **Professional Real Estate Services**.

#### IV. EXCLUSIONS

This Policy does not apply to, and no coverage will be available under this Policy for any **Claim**:

- (A) based upon or arising out of any **Wrongful Act** occurring prior to the **Policy Period** if, prior to the effective date of the first Real Estate Professionals Errors And Omissions Policy issued by the Underwriter to the **Named Insured** and continuously renewed and maintained in effect to the inception of this **Policy Period**:
- (1) the **Insured** gave notice to any prior insurer of any such **Claim** or **Wrongful Act**;
  - (2) the **Insured** knew or reasonably could have foreseen that such **Wrongful Act** might result in a **Claim**; or
  - (3) there is a prior policy or policies which provide insurance for such **Claim** or **Wrongful Act**, unless the available limits of liability of such prior policy or policies are insufficient to pay any liability or **Claim**, in which event this Policy will be excess over any such prior coverage, subject to this Policy's terms, limits of liability, exclusions and conditions;

- (B) based upon or arising out of any intentional, criminal, dishonest, malicious or fraudulent act, error or omission by the **Insured**, except as listed in DEFINITIONS (N) **Personal Injury**. This exclusion does not apply to any **Insured** who is not so adjudged.

This exclusion also does not apply to any **Insured** who did not commit, did not participate in committing, or who did not remain passive after learning about one or more of the acts, errors or omissions described in this exclusion;

- (C) based upon or arising out of **Bodily Injury** or **Property Damage**; provided, that this exclusion does not apply to any **Lockbox Claim**;

- (D) based upon or arising out of:

- (1) the 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; or
- (3) the inability or failure to pay, collect or safeguard funds held for others, unless the **Insured** is acting in the capacity of a **Short Term Escrow Agent**;

- (E) based upon or arising out of:

- (1) the actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to, existence of, growth or presence of;
- (2) the actual or alleged failure to detect, disclose, report, test for, monitor, clean up, remove, contain, dispose of, treat, detoxify or neutralize, or in any way respond to, assess the effects of or advise of the existence of; or
- (3) any governmental or regulatory notification that any **Insured** is a potentially responsible party for liability arising out of,

any **Fungi** or **Microbes**, or of any spores, mycotoxins, odors, or any other substances, products or byproducts produced by, released by, or arising out of the current or past presence of **Fungi** or **Microbes**.

This exclusion applies regardless of any other cause or event that contributes concurrently or in any sequence to the **Damages** claimed;

- (F) based upon or arising out of:

- (1) the actual, alleged or threatened emission, discharge, dispersal, seepage, release or escape of **Pollutants**;
- (2) the actual or alleged failure to detect, report, test for, monitor, clean up, remove, contain, dispose of, treat, detoxify or neutralize, or in any way respond to, assess the effects of or advise of the existence of, **Pollutants**; or
- (3) any governmental or regulatory notification that any **Insured** is a potentially responsible party for liability arising out of the existence of **Pollutants**;

provided, that this exclusion does not apply to any **Claim** directly arising out of the **Insured's** failure to advise of the existence of **Pollutants**;

- (G) based upon or arising out of any nuclear reaction, nuclear radiation, radioactive contamination or radioactive substance;
- (H) based upon or arising out of:
  - (1) any promises, warranties or guarantees made by the **Insured** as to the future value or future income of any property or business; or
  - (2) the valuation or performance of a business;
- (I) based upon or arising out of discrimination, humiliation, harassment or misconduct; provided, that this exclusion does not apply to **Claim Expenses**, up to the "Fair Housing Discrimination" limit of liability stated in the Declarations, from **Claims** based upon or arising out of **Fair-Housing Discrimination**;
- (J) based upon or arising out of the formation, syndication, operation or administration of any property syndication, real estate investment trust or any other form of corporation, general or limited partnership or joint venture formed for the purpose of investing in, buying, selling, or maintaining real property;
- (K) based upon or arising out of any actual or attempted purchase of real property by any **Insured**;
- (L) based upon or arising out of any actual or attempted sale, leasing, appraisal, or property management of real property owned, developed, or constructed by:
  - (1) any **Insured**;
  - (2) any entity in which the **Insured** had a financial or a contemplated financial interest;
  - (3) any entity with a financial interest or contemplated financial interest in the **Named Insured**; or
  - (4) any entity under the same financial control as the **Named Insured**.

This exclusion does not apply to any **Claim** based upon or arising out of:

- (a) the actual or attempted sale or leasing of real property in which the combined ownership interest of all **Insureds** was less than 20% at the time of the sale or lease;
- (b) the actual or attempted sale of residential real property, consisting of a 1-4 family dwelling, owned by the **Insured** when all of the following conditions are met in connection with such sale:
  - (i) a seller disclosure form was signed by the **Insured** and acknowledged in writing by the buyer prior to closing;

- (ii) a home warranty was purchased or waived in writing by the buyer prior to closing;
    - (iii) a written Home Inspection Report was issued by a licensed or certified home inspector, or was waived in writing by the buyer prior to closing; and
    - (iv) a state or local board approved standard sales contract was utilized;
  - (c) the actual or attempted sale of real property owned by the **Insured** if the property was acquired by the **Insured** under a **Guaranteed Sale Listing Contract**, and from acquisition to resale the title is held by the **Insured** for twelve (12) months or less, and continually offered for sale by the **Insured**;
  - (d) the actual or attempted sale, leasing, or property management of the **Insured's** residential real property by another **Insured** who is not the owner of such residential property; or
  - (e) the management of real property in which the combined ownership interest of all **Insureds** was less than 50% at the time of the property management services;
- (M) based upon or arising out of any actual or alleged violation of the Securities Act of 1933, the Securities Act of 1934, or any rules, regulations or amendments issued in relation to such acts, or any similar local, state or federal statutes or regulations, including any **Claim** based upon or arising out of common law principles of liability if made in connection with an actual or alleged violation of any such statute or regulation;
- (N) based upon or arising out of any actual or alleged violation of the Employee Retirement Income Security Act of 1974, or any rules, regulations or amendments issued in relation to such act, or any similar local, state or federal statutes or regulations, including any **Claim** based upon or arising out of common law principles of liability;
- (O) based upon or arising out of any failure to purchase, maintain or to advise of the need to effect or maintain any insurance or bonds;
- (P) based upon or arising out of any anti-trust law violation or any agreement or conspiracy to restrain trade;
- (Q) based upon or arising out of any actual or alleged: misappropriation of ideas, information or materials; improper gaining or misuse of confidential or proprietary information, materials or trade secrets; or interference with actual or prospective business relationships, contracts or contractual relations or unfair competition;
- (R) based upon or arising out of any activity relating to any:
- (1) right-of-way appraisal; or
  - (2) proposed construction/ land development appraisal or vacant land appraisal unless appraisal is solely intended for private residential property use;
- (S) based upon or arising out of any liability of others assumed by the **Insured** under any contract or agreement; provided, that this exclusion does not apply to liability for **Damages** the **Insured** would have in the absence of such contract or agreement; or

(T) made by any **Insured** against another **Insured**.

## V. GENERAL CONDITIONS

### (A) LIMITS OF LIABILITY

- (1) Limits of Liability – Each Claim: The “Each Claim” amount stated in ITEM 3 of the Declarations will be the Underwriter’s maximum limit of liability for all **Damages** from each **Claim** covered by this Policy.
- (2) Limits of Liability – Aggregate: The “Aggregate” amount stated in ITEM 3 of the Declarations will be the Underwriter’s maximum aggregate limit of liability for all **Damages** from all **Claims** covered by this Policy.
- (3) Limits of Liability – Fair-Housing Discrimination: The “Fair Housing Discrimination” amount stated in ITEM 3 of the Declarations will be the Underwriter’s maximum aggregate limit of liability for all **Claim Expenses** from all **Claims** based upon or arising out of **Fair-Housing Discrimination**. Such limit of liability is in addition to the “Each Claim” and “Aggregate” limits of liability described in paragraphs (1) and (2) above.
- (4) Each limit of liability described in paragraphs (1) through (3) above shall apply regardless of the time of payment by the Underwriter, the number of persons or entities included within the definition of **Insured**, or the number of claimants, and regardless of whether such **Claims** are first made during the **Policy Period** or during any Extended Reporting Period.

### (B) DEDUCTIBLES

- (1) The deductible amount stated in ITEM 4 of the Declarations is applicable to all **Damages** and **Claim Expenses** for each and every **Claim** (subject to the “Aggregate” deductible amount, if any) and will be paid by the **Insured** as a condition precedent to payment of any **Damages** or **Claim Expenses** by the Underwriter. The limits of liability stated in the Declarations are in addition to the deductible amount.
- (2) Mediation Incentive: If a **Claim** is resolved by mediation prior to, or within 180 days of, the institution of arbitration proceedings or service of suit, the deductible amount applying to such **Claim** will be reduced by 50% or \$5,000, whichever is less.
- (3) Deductible Waiver: The **Insured’s** obligation to pay the deductible amount stated in ITEM 4 of the Declarations shall be waived, in an amount not to exceed \$2,500, if the following conditions are met and evidence of such is provided to the Underwriter when notice of a **Claim** is received by the Underwriter:
  - (a) a seller disclosure form was signed by the seller and acknowledged by the buyer prior to closing, except in circumstances where the disclosure form is not applicable, such as the sale of estate and/ or trust properties and new home construction;

- (b) a home warranty was purchased or waived in writing by the buyer prior to or at closing (for new homes the warranty provided by the builder is acceptable);
- (c) a written Home Inspection Report is issued by a licensed or certified home inspector or waived in writing by the buyer prior to closing; and
- (d) a state or local board approved standard sales contract or a sales contract drafted by a licensed attorney was utilized.

The obligation to pay the deductible amount will not be waived if any **Insured** individually acted as both buyer's and seller's agent in the transaction which gives rise to such **Claim**.

**(C) REPORTING OF CLAIMS, DISCIPLINARY PROCEEDINGS AND WRONGFUL ACTS**

**(1) Notice of Claims**

If, during the **Policy Period** or any Extended Reporting Period, any **Claim** for a **Wrongful Act** is first made against the **Insured**, as a condition precedent to its right to any coverage under this Policy, the **Insured** shall give the Underwriter written notice of such **Claim** as soon as practicable thereafter, but in no event later than:

- (a) sixty (60) days after the expiration date or earlier cancellation date of this Policy; or
- (b) the expiration of any Extended Reporting Period.

Timely and sufficient notice by one **Insured** of a **Claim** shall be deemed timely and sufficient notice for all **Insureds** involved in the **Claim**. Such notice shall give full particulars of the **Claim**, including, but not limited to: a description of the **Claim** and **Wrongful Act**; the identity of all potential claimants and any **Insureds** involved; a description of the injury or damages that resulted from such **Wrongful Act**; information on the time, place and nature of the **Wrongful Act**; and the manner in which the **Insured** first became aware of such **Claim**.

**(2) Notice of Disciplinary Proceedings**

If, during the **Policy Period**, the **Insured** is subject to any **Disciplinary Proceeding** arising out of an act, error, omission or breach of duty in the rendering of **Professional Real Estate Services** by the **Insured**, as a condition precedent to its right to any coverage under Section II(A) of this Policy, the **Insured** shall give the Underwriter written notice of such **Disciplinary Proceeding** as soon as practicable thereafter, but in no event later than the expiration date or earlier cancellation date of this Policy.

Such notice shall give full particulars of the **Disciplinary Proceeding**, including, but not limited to: a description of the **Professional Real Estate Services** at issue; the identity of all **Insureds** involved; information on the time, place and nature of such **Professional Real Estate Services**; and the manner in which the **Insured** first became aware of such **Disciplinary Proceeding**.

(3) Notice of Wrongful Acts

If, during the **Policy Period**, the **Insured** first becomes aware of any **Wrongful Act** that may subsequently give rise to a **Claim** and:

- (a) gives the Underwriter written notice of such **Wrongful Act** with full particulars as soon as practicable thereafter but in any event before the expiration date or earlier cancellation date of this Policy; and
- (b) requests coverage under this Policy for any **Claim** subsequently arising from such **Wrongful Act**;

then any **Claim** not otherwise excluded by this Policy subsequently made against the **Insured** arising out of such **Wrongful Act** shall be treated as if it had been first made during the **Policy Period**. Full particulars shall include, but are not limited to: a description of the **Wrongful Act**; the identity of all potential claimants and any **Insureds** involved; information on the time, place and nature of the **Wrongful Act**; the manner in which the **Insured** first became aware of such **Wrongful Act**; and the reasons the **Insured** believes the **Wrongful Act** is likely to result in a **Claim**.

(4) All notices required under this GENERAL CONDITION (C) shall be sent to the Underwriter at the following address:

OneBeacon Insurance Company  
One Beacon Lane  
Canton, MA 02021  
Attn. New Real Estate Claim  
866-213-2802 fax  
commercialloss@onebeacon.com

- (5) Whenever coverage under this Policy would be excluded, suspended or lost because of noncompliance with GENERAL CONDITION (C)(1) or (C)(2) above, the Underwriter agrees to waive such exclusion, suspension or loss of coverage with respect to any **Insured** who did not personally fail to comply, did not participate in failing to comply, or did not remain passive after learning about non-compliance with the requirements of GENERAL CONDITION (C)(1) or (C)(2) above.

**(D) RELATED CLAIMS**

All **Related Claims**, whenever made, shall be deemed to be a single **Claim**, regardless of:

- (1) the number of **Related Claims**;
- (2) the number or identity of claimants;
- (3) the number or identity of the **Insureds** involved or against whom **Related Claims** have been or could be made;
- (4) whether the **Related Claims** are asserted in a class action or otherwise; and
- (5) the number and timing of the **Related Claims**, even if the **Related Claims**

comprising such single **Claim** were made in more than one **Policy Period**.

All **Related Claims** will be treated as a single **Claim** made when the earliest of such **Related Claims** was first made, or when the earliest of such **Related Claims** is treated as having been made in accordance with GENERAL CONDITION (C)(3) above, whichever is earlier.

**(E) DEFENSE AND SETTLEMENT**

- (1) No **Insured** shall, except at its own cost, incur any expense, make any payment, admit liability for, assume any obligation, or settle any **Claim** without the Underwriter's written consent. With respect to any **Claim**, the Underwriter will have the right to investigate, direct the defense, and conduct settlement negotiations it deems appropriate. The Underwriter may make any settlement of any **Claim** which it deems appropriate.
- (2) The Underwriter will have no obligation to pay **Damages** or **Claim Expenses**, or to defend or continue to defend any **Claim**, after the applicable limits of liability have been exhausted by the payment of **Damages** or **Claim Expenses**, as applicable.

**(F) ASSISTANCE AND COOPERATION**

In the event of a **Claim**, the **Insured** shall provide the Underwriter with all information, assistance and cooperation that the Underwriter reasonably requests. At the Underwriter's request, the **Insured** shall assist in: investigating, defending and settling **Claims**; enforcing any right of contribution or indemnity against another who may be liable to the **Insured**; the conduct of actions, suits, appeals or other proceedings, including, but not limited to, attending trials, hearings and depositions; securing and giving evidence; and obtaining the attendance of witnesses.

**(G) FALSE OR FRAUDULENT CLAIMS**

If the **Insured** commits fraud in proffering any **Claim** under this Policy, the insurance provided under this Policy will become void as to any **Insured** who proffered such **Claim** from the date such fraudulent **Claim** is proffered.

**(H) POLICY TERRITORY**

This Policy applies to **Wrongful Acts** taking place anywhere in the world. **Claim** or suit must be made against the **Insured**, however, in the United States of America, including its territories or possessions, Puerto Rico, or Canada.

**(I) EXTENDED REPORTING PERIODS**

If this Policy is canceled for any reason other than fraud, misrepresentation or non-payment of premium or is not renewed by the Underwriter or the **Named Insured**, an additional period of time during which **Claims** may be reported (an "Extended Reporting Period") shall be made available as described in this GENERAL CONDITION (I), but any such Extended Reporting Period shall apply only to **Claims** for **Wrongful Acts** committed or allegedly committed before the effective date of such cancellation or non-renewal (the "Termination Date"). No Extended Reporting Period shall in any way increase the Underwriter's limits of liability stated in ITEM 3

of the Declarations, and the Underwriter's limit of liability for **Claims** made during any Extended Reporting Period shall be part of, and not in addition to, the limits of liability stated in ITEM 3 of the Declarations. The Extended Reporting Periods will apply as follows:

- (1) An Extended Reporting Period of sixty (60) days, beginning as of the Termination Date, will apply automatically and requires no additional premium; provided, that such Extended Reporting Period will remain in effect only as long as no other policy of insurance is in effect that would apply to any **Claim** made during such Extended Reporting Period.
- (2) The **Named Insured** may purchase an additional Extended Reporting Period for one of the periods of time stated in ITEM 7 of the Declarations by notifying the Underwriter in writing of its intention to do so no later than sixty (60) days after the Termination Date. The additional premium for this additional Extended Reporting Period shall be equal to the applicable amount stated in ITEM 7 of the Declarations and must be paid no later than sixty (60) days after the Termination Date. Such additional premium shall be deemed fully earned upon inception of such Extended Reporting Period.

If no election to purchase an additional Extended Reporting Period is made as described in GENERAL CONDITION (I)(2) above, or if the additional premium for any such Extended Reporting Period is not paid within sixty (60) days after the Termination Date, there will be no right to purchase an additional Extended Reporting Period at any later time.

**(J) OTHER CONDITIONS**

- (1) Action Against Us
  - (a) No action shall be taken against the Underwriter by any **Insured** unless, as conditions precedent thereto, the **Insured** have fully complied with all of the terms of this Policy and the amount of the **Insured's** obligation to pay has been finally determined either by judgment against the **Insured** after adjudicatory proceedings or by written agreement of the **Insured**, the claimant and the Underwriter.
  - (b) No individual or entity shall have any right under this Policy to join the Underwriter as a party to any **Claim** to determine the liability of any **Insured**; nor shall the Underwriter be impleaded by the **Insured** or his/ her/ its legal representative in any such **Claim**.
- (2) Application

The **Insureds** represent that the particulars and statements contained in the application attached to this Policy are true, accurate and complete and agree that:

- (a) this Policy is issued and continued in force by the Underwriter in reliance upon the truth of such representation;
- (b) those particulars and statements are the basis of this Policy; and
- (c) the application and those particulars and statements are incorporated in and form a part of this Policy.

No knowledge or information possessed by any **Insured** shall be imputed to any other **Insured**, except for material facts or information known to the person or persons who signed the application. In the event of any material untruth, misrepresentation or omission in connection with any of the particulars or statements in the application, this Policy shall be void with respect to any **Insured** who knew of such untruth, misrepresentation or omission or to whom such knowledge is imputed.

(3) Assignment

No assignment of interest under this Policy shall bind the Underwriter without the Underwriter's written consent issued as a written endorsement to form a part of this Policy.

(4) Cancellation/ Nonrenewal

- (a) The Underwriter may cancel this Policy by mailing written notice to the **Named Insured** at the last known address shown on the Declarations stating when, not less than sixty (60) days thereafter, such cancellation shall be effective; except that, in the event of cancellation for non-payment of premium, the Underwriter may make the cancellation effective upon written notice of only ten (10) days. If the Underwriter cancels this Policy, earned premium will be computed *pro rata*.
- (b) Except as set forth in GENERAL CONDITION (J)(12), the **Named Insured** may cancel this Policy by mailing the Underwriter written notice stating when, not later than the expiration date, such cancellation will be effective. In such event, the earned premium will be computed in accordance with the customary short rate table and procedure.

Premium adjustment may be made either at the time cancellation is effective or as soon as practicable after cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation.

- (c) The Underwriter will not be required to renew this Policy upon its expiration. If the Underwriter elects not to renew this Policy, the Underwriter will mail to the **Named Insured**, at the last mailing address known by the Underwriter, written notice of nonrenewal at least sixty (60) days prior to the expiration date of this Policy. If such notice is not given at least sixty (60) days prior to the expiration date, this Policy will continue in force until sixty (60) days after such notice is received by the **Named Insured**.

Notice of nonrenewal will not be required if the **Named Insured** has obtained replacement coverage or has requested or agreed to nonrenewal.

(5) Policy Period

Any extension of the **Policy Period** will not result in an increase or reinstatement of the limits of liability stated in the Declarations. If the **Policy Period** is extended

beyond its original expiration date, the period of the extension will be deemed part of the **Policy Period** which would have ended on the original expiration date.

(6) Changes

Notice to or knowledge possessed by any agent or other person acting on behalf of the Underwriter shall not effect a waiver or change in any part of this Policy or prevent or estop the Underwriter from asserting any right(s) under this Policy. This Policy can only be altered, waived, or changed by written endorsement issued to form a part of this Policy.

(7) Liberalization

If the Underwriter adopts any revision that would broaden coverage under this Policy without additional premium at any time during the **Policy Period**, the broadened coverage will immediately apply to this Policy, except that it will not apply to **Claims** that were first made against the **Insured** prior to the effective date of such revision.

(8) Mergers, Acquisitions and Other Material Changes

In the event of any merger, acquisition or change in franchise relationship involving the **Named Insured**, or other material change in the **Named Insured's** operations, the **Named Insured** must give the Underwriter written notice of such merger, acquisition, or material change as soon as practicable. There will be no coverage under this Policy with respect to any such merger, acquisition or material change unless the Underwriter has specifically agreed by written endorsement to this Policy to provide coverage with respect to such merger, acquisition or material change, and the **Named Insured** accepts any terms, conditions, exclusions or limitations, including payment of additional premium, as the Underwriter, in its sole discretion, imposes in connection with such merger, acquisition or material change.

(9) Other Insurance

This insurance will apply only as excess of the applicable deductible amount of this Policy and the amount of any other valid and collectible insurance available to the **Insured**, whether such other insurance is stated to be primary, *pro rata*, contributory, excess, contingent or otherwise, unless such other insurance is specifically written as excess insurance over the limits of liability provided in this Policy.

(10) Subrogation

In the event of any payment hereunder, the Underwriter shall be subrogated to the extent of any payment to all of the rights of recovery of the **Insured**. The **Insured** shall execute all papers and do everything necessary to secure such rights, including the execution of any documents necessary to enable the Underwriter effectively to bring suit in its name. The **Insured** shall do nothing that may prejudice the Underwriter's position or potential or actual rights of recovery. The obligations of the **Insured** under this GENERAL CONDITION (J)(10) shall survive the expiration or termination of this Policy.

Any amount recovered upon the exercise of such rights of subrogation will be

applied as follows: first, to the repayment of expenses incurred in recovery by exercise of such subrogation rights; second, to **Damages** and/ or **Claim Expenses** paid by the **Insured** in excess of the limits of liability; third, to **Damages** and/ or **Claim Expenses** paid by the Underwriter; fourth, to **Damages** and/ or **Claim Expenses** paid by the **Insured** in excess of the deductible amount; and last, to the repayment of any deductible amount paid by the **Insured**.

(11) Waiver

The Underwriter's failure to insist on strict compliance with any of the terms, provisions or conditions to coverage of this Policy or the failure to exercise any right or privilege will not operate or be construed as a waiver of any subsequent breach or a waiver of any other terms, provisions, conditions, privileges or rights.

(12) Exhaustion

If the Underwriter's limits of liability are exhausted by the payment of **Damages** or **Claim Expenses**, as applicable, the premium will be fully earned, all of the Underwriter's obligations under this Policy will be completely fulfilled and exhausted, including any obligation to pay **Claim Expenses** or to continue to direct the defense of any **Claim**, and the Underwriter will have no further obligations of any kind or nature whatsoever under this Policy.

(13) Authorization and Notices

The **Named Insured** will act on behalf of all of **Insureds** with respect to: the giving or receiving of any notices under this Policy; the payment of premiums to, and receiving of return premiums from, the Underwriter; the receiving and acceptance of any endorsements issued to form a part of this Policy; and the exercising or declining to exercise any Extended Reporting Period.

(14) Notice

- (a) Notice to the **Insured** shall be sent to the **Named Insured** at the address designated in ITEM 1 of the Declarations.
- (b) All notices to the Underwriter, other than notices required under GENERAL CONDITION (C), shall be sent to the following address:

OneBeacon Professional Partners  
601 Carlson Parkway  
Suite 700  
Minnetonka, MN 55305

(15) Insolvency

The Underwriter will not be relieved of any of its obligations under this Policy by the bankruptcy or insolvency of any **Insured** or his/ her/ its estate.

(16) Examination of Books and Records

The Underwriter, at its request and convenience, may examine and audit the books and records of the **Insured** as they relate to this Policy.

(17) Entire Agreement

The **Insureds** agree that this Policy, including the application and any endorsements, constitutes the entire agreement between them and the Underwriter or any of its agents relating to this insurance.

(18) Headings

The descriptions in the headings and sub-headings of this Policy are solely for convenience, and form no part of the terms and conditions of coverage.

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