

REAL ESTATE ERRORS AND OMISSIONS LIABILITY POLICY

NOTICE - THIS IS A CLAIMS MADE AND REPORTED POLICY.

PLEASE READ IT CAREFULLY.

COVERAGE APPLIES ONLY TO CLAIMS FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD OR APPLICABLE EXTENDED REPORTING PERIOD AND REPORTED IN WRITING TO US IMMEDIATELY BUT IN NO EVENT LATER THAN SIXTY (60) CALENDAR DAYS AFTER THE EXPIRATION DATE OF THE POLICY PERIOD OR WITHIN ANY APPLICABLE EXTENDED REPORTING PERIOD.

All words or phrases (other than captions) that appear in bold face are defined in **SECTION I: B. DEFINITIONS**. The descriptions in the headings and subheadings of this policy are solely for convenience and form no part of the terms, conditions, exclusions and limitations of this policy.

Throughout the policy the words "you" and "your" refer to the **named insured**. The words "we", "us" and "our" refer to the company providing this insurance as shown in the Declarations.

In consideration of the payment of the premium as set forth in the Declarations, and in reliance upon the statements, representations, and warranties in the application which are made part of this policy, and subject to the **limits of liability** as set forth in the Declarations and to all the exclusions, conditions, and other terms of the policy, we agree with you as follows:

SECTION I: SCOPE OF COVERAGE

A. COVERAGE AGREEMENT

We will pay on behalf of an **insured**, subject to the **limit of liability**, such **damages** in excess of the applicable deductible for **claims** made during the **policy period** or applicable **extended reporting period** and reported in writing to us immediately, but in no event later than sixty (60) calendar days after the expiration date of the **policy period** or within any applicable **extended reporting period**. The **damages** must arise out of a negligent act, error, omission or **personal injury** in the rendering of or failure to render **professional real estate services** for others by you or on your behalf provided always that the negligent act, error, omission or **personal injury** occurs on or after the **retroactive date** as stated in the Declarations.

B. DEFINITIONS

Whenever used in the policy:

1. **Bodily injury** means bodily injury, sickness or disease sustained by a person, including the death of any person resulting at any time. **Bodily injury** includes mental anguish and emotional distress.
2. **Claim** means:
 - a. a demand received by an **insured** for money or services, or
 - b. service or receipt of a suit or any alternative dispute resolution proceeding (including, without limitation, an arbitration),

in which **damages** that arise out of a negligent act, error, omission or **personal injury** in the rendering of or failure to render **professional real estate services** for others by you or on your behalf are claimed.

3. **Claims expense** means all reasonable and necessary fees charged by (an) attorney(s) designated or approved in writing by us and all other fees, costs and expenses resulting from the investigation, adjustment, defense and appeal of a **claim**, suit or proceeding arising in connection therewith, if incurred by us or by an **insured** with our written consent.

4. **Damages** mean compensatory damages, that an **insured** becomes legally obligated to pay as a result of any judgment, award or settlement, provided any settlement is negotiated with our assistance and approval.

Damages do not include:

- a. Any fines, sanctions or penalties, or punitive or exemplary damages; or
- b. Restitution, reduction, or set off of any fees, other consideration, and/or expenses paid to or charged by an **insured** for **professional real estate services**; or
- c. Any amounts which are a multiple of compensatory **damages** awarded against an **insured**; or
- d. Matters deemed uninsurable by law; or
- e. Equitable, injunctive or other non-monetary relief.

5. **Extended reporting period** means a period of time, as set forth in **SECTION I: G. EXTENDED REPORTING PERIODS**, immediately following the effective date of termination, cancellation, or non-renewal of this policy in which **claims** may be made against an **insured** and reported to us under this policy and are the result of a negligent act, error, omission, or **personal injury** which occurred prior to the end of the **policy period** and after the **retroactive date** and which are otherwise covered under this policy.

6. **Guaranteed sale listing contract** means a written agreement between an **insured** and the seller of the property, whereby the **insured** agrees to purchase the property if it is not sold within the time frame specified in the listing agreement.

7. **Insured** means:

- a. The **named insured**; and
- b. Any person who was, is now or hereafter becomes a principal, partner, officer, director, employee, principal shareholder or member of yours; and
- c. Any of your employees, agents, or personal assistants, including any independent contractors; and
- d. The estate, heirs, executors, administrators, and legal representatives of any **insured** in the event of the **insured's** death, incapacity, insolvency or bankruptcy; and
- e. Any **predecessor firm(s)**, provided a request for such coverage is made to us and accepted in writing prior to the inception of such coverage; and
- f. Any organization you newly acquire or form is an **insured** under this policy provided;
 - i. written notice is given to us within forty-five (45) days of the acquisition or formation; and
 - ii. the new entity meets our underwriting eligibility guidelines; and
 - iii. we provide you with our written acceptance.

This provision applies to any principal, partner, officer, director, employee, principal shareholder or member of such newly acquired or formed organization. However, coverage under this provision does not apply to **claims** for **professional real estate services** provided before you acquired or formed the organization.

8. **Limit of liability** means the most that we will pay for all **damages** for all **claims** to which this insurance applies pursuant to **SECTION I: D. LIMITS OF LIABILITY AND DEDUCTIBLE**.

9. **Named insured** means the individual or entity stated in the Declarations.

10. **Personal injury** means injury, other than **bodily injury**, arising out of one or more of the following offenses:

- a. False arrest, detention or imprisonment; or
- b. Abuse of process or malicious prosecution; or

- c. Wrongful eviction from, wrongful entry into, or the invasion of the right of private occupancy of a room, dwelling or premises that a person occupies by or on behalf of its owner, landlord or lessor; or
 - d. The publication or utterance of a libel or slander or other defamatory or disparaging material or publication or utterance in violation of an individual's right of privacy.
11. **Policy period** means the period from the inception date of this policy to the policy expiration date as stated in the Declarations or the date of cancellation, whichever is earliest.
 12. **Pollutant** means any solid, liquid, gaseous or thermal irritant or contaminant, including without limitation smoke, vapor, soot, fumes, acids, alkalis, chemicals, odors, noise, lead, radon, oil or oil products, radiation, asbestos or asbestos-containing products, waste and any electric, magnetic or electromagnetic field of any frequency. Waste includes, but is not limited to, material to be recycled, reconditioned or reclaimed.
 13. **Predecessor firm** means any real estate firm disclosed to us which has undergone dissolution and to whose financial assets and liabilities the **named insured** is the majority successor in interest.
 14. **Professional real estate services** means services performed by you or on your behalf for others as a real estate agent, real estate broker, real estate salesperson, real estate personal assistant, real estate independent contractor, real estate consultant or counselor, real estate leasing agent, real estate property manager, business broker, **short-term escrow agent** or auctioneer of real property.

Professional real estate services also includes services performed by you or on your behalf for others as a notary public or member of a formal real estate accreditation, real estate standards review or similar real estate board or committee.
 15. **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.
 16. **Retroactive date** means the date specified in the Declarations, or in any endorsement attached to this policy, on or after which the negligent act, error, omission, or **personal injury** must have occurred in order for any **claim** or any notification given to us pursuant to **SECTION III: A. INSURED'S DUTIES IN THE EVENT OF A CLAIM OR CIRCUMSTANCE WHICH MAY GIVE RISE TO A CLAIM** to be covered under this policy.
 17. **Short-term escrow agent** means an **insured**, who in connection with the sale or purchase of real estate receives or holds funds in, or distributes funds from, an escrow or trust account, provided the escrow or trust funds are completely distributed within twelve months from the date first received by the **insured**.

C. DEFENSE AND SETTLEMENT

1. Subject to all terms and conditions of the policy, we shall appoint counsel of our choice to defend any suit against an **insured** seeking **damages** which are payable under the terms and conditions of this policy, even if any of the allegations of the suit are groundless, false, or fraudulent. Other than suits for **damages** as set forth above, we at our sole option shall have the right, but not the obligation, to appoint counsel to defend any suit or other proceeding.
2. We shall not settle a **claim** without an **insured's** consent, but such consent shall not be unreasonably withheld. However, if an **insured** refuses to consent to a settlement recommended by us and acceptable to the claimant and elects to pursue the defense of such **claim** or continue proceedings in connection with the **claim**, then our liability for **damages** and **claim expenses** relating to that **claim** shall not exceed the total amount for **damages** and **claim expenses** which we would have paid up to the date of the **insured's** refusal.

Bankruptcy, insolvency, or dissolution of an **insured** or of an **insured's** estate shall not relieve us or the **insured** of its obligations under this policy. In the event of your bankruptcy, insolvency, or dissolution, we shall have, at our sole option, the right to settle any **claim** without obtaining consent.

We shall not be obligated to pay **damages** or **claim expenses** or defend or continue to defend any **claim** after the applicable **limit of liability** as stated in the Declarations has been exhausted.

D. LIMITS OF LIABILITY AND DEDUCTIBLE

Regardless of the number of **insureds** under this policy, the number of persons or organizations seeking **damages**, the number of **claims** made or the number of **extended reporting periods** purchased, our liability is limited as follows:

1. Limits of liability

- a. The amount stated in the Declarations as applicable to each **claim** is the most we will pay for all **damages** arising out of the same or related negligent acts, errors, omissions or **personal injury**. All **claims** arising out of the same or related negligent acts, errors, omissions or **personal injury** will be deemed to have been made when the first of such **claims** is made whether such demands are made against one or more **insureds** or whether such demands are made by one or more persons and will be treated as a single **claim**.
- b. The amount shown in the Declarations, as the aggregate limit is the most we will pay for all **damages** for all **claims** to which this insurance applies.

2. Deductible

- a. Our obligation to pay **damages** and **claims expenses** under this policy applies only to the amount of **damages** and **claims expenses** which are in excess of the deductible amount stated in the Declarations.
- b. The deductible amount applies to all **damages** and **claims expenses** incurred as the result of each **claim**; however, the **limits of liability** will not be reduced by the amount of any **damages** and/or **claims expenses** within the deductible amount.
- c. The terms of the policy, including those with respect to our right and duty to defend suits and your duties in the event of a **claim**, suit or circumstances, which may give rise to a **claim**, apply irrespective of the application of the deductible.
- d. We may pay any part or all of the deductible amount in the investigation or settlement of any **claim**. Upon notification of the action we have taken, you shall reimburse us for that part of the deductible amount we have paid. If we make a payment under the deductible and you do not reimburse us within sixty (60) days, we will be entitled to recover reasonable attorney's fees incurred in collecting the amount we have paid.

E. SUPPLEMENTARY PAYMENTS

We will pay, in addition to the applicable **limits of liability**:

1. All **claims expenses** in connection with any **claim** or suit we defend; and
2. Costs taxed against an **insured** in **claims** or suits; and
3. Interest on the entire amount of any judgment which accrues after the entry of judgment and before we have paid or tendered or deposited into court that part of the judgment which does not exceed the applicable **limit of liability** shown in the Declarations; and
4. Prejudgment interest awarded against any **insured** on that part of the judgment we pay. If we make an offer to pay the applicable **limit of liability**, we will not pay any prejudgment interest based on that period of time after the offer; and
5. Premiums on appeal bonds in any suit and premium on bonds to release attachments in any suit for an amount not in excess of the applicable **limit of liability** shown in the Declarations. We shall not be obligated to apply for or furnish any bonds; and

6. Reasonable and necessary expenses incurred by an **insured** at our request to assist us in the investigation of a **claim**, including actual loss of earnings up to \$500 a day for each **insured** because of time off from work, subject to a limit of \$10,000 for each individual **insured** and subject to a maximum limit of \$25,000 per **policy period**; and
7. Reasonable legal expenses, incurred by an **insured** resulting from the defense of a proceeding by a regulatory or disciplinary official or agency to investigate charges of professional misconduct in the rendering of or failure to render **professional real estate services** subject to a maximum limit of \$25,000 for each individual **insured** and subject to a maximum limit of \$50,000 per **policy period**.

The deductible applies to all expenses other than those referenced in sub-paragraphs E6 and E7.

F. TERRITORY

This policy applies to any negligent act, error, omission or **personal injury** in the rendering of or failure to render **professional real estate services** anywhere in the world, provided that a **claim** is made and suit, if any, is brought within the United States of America (including its territories or possessions), Puerto Rico or Canada.

G. EXTENDED REPORTING PERIODS

1. We will provide one or more **extended reporting periods**, as set forth below, if you or we cancel or non-renew the policy for any reason other than non-payment of premium or reimbursement of the deductible amount.

a. **Extended reporting period**

You will have the right to purchase an **extended reporting period**. You must exercise such right by providing written notice to us accompanied by the additional premium within sixty (60) days after the termination of the policy. If any **extended reported period** is exercised, an endorsement will be processed. This endorsement will cover **claims** first made during the **extended reporting period** for negligent acts, errors, omissions, or **personal injury**, which occurred prior to the end of the **policy period** and are otherwise covered by the policy. The additional premium for the **extended reporting period** is based on a percentage of the full annual premium for the **policy period** and shall be:

- i. 100% of the policy's annual premium for one year;
- ii. 165% of the policy's annual premium for three years;
- iii. 200% of the policy's annual premium for five years;
- iv. 250% of the policy's annual premium for an unlimited period.

b. Retiree **extended reporting period** for a sole proprietor

If you are a sole proprietor and have been continuously insured for coverage with a member of the Hartford Financial Services Group, Inc. group of companies for three or more full consecutive years, an unlimited **extended reporting period** will be provided without additional charge if you:

- i. Cancel or fail to renew this policy due to the retirement from active real estate business within the **policy period**; and
- ii. Cease the performance of all **professional real estate services** covered by this policy; and
- iii. Are fifty-five (55) years of age or older.

You must, within sixty (60) days after the termination of this policy, notify us in writing if this coverage is desired. This retiree **extended reporting period** does not apply to **claims** that are covered under any subsequent insurance you purchase, or that would be covered but for exhaustion of the amount of insurance applicable to such **claims**.

c. Death or disability **extended reporting period** for a sole proprietor

If you die or become totally and permanently disabled during the **policy period**, a death or disability **extended reporting period** for a sole proprietor shall be provided without additional charge. Coverage for reporting **claims** is extended until the executor or administrator of your estate is discharged or your disability ends. You or your estate must, within sixty (60) days after the termination of this policy, notify us in writing if this coverage is desired. This death or disability **extended reporting period** for a sole proprietor does not apply to **claims** that are covered under any subsequent insurance available to you, or that would be covered but for exhaustion of the amount of insurance applicable to such **claims**. We also require:

- i. Written proof of your permanent and total disability, including the date it happened, certified by your attending physician. You agree to submit to medical examination(s) by any physician(s) we designate if requested; or
- ii. Written proof of the date of your death.

2. **Extended reporting period** coverage

The **limit of liability** available for any **extended reporting period** is part of, and not in addition to, the **limits of liability** as shown in the Declarations. The deductible shown on the Declarations will apply separately to each claim reported under any **extended reporting period**. The deductible will be waived in the event of the **insured's** death or if the **insured** becomes totally and permanently disabled.

None of the **extended reporting periods** are cancelable or renewable. The additional premium for the **extended reporting period** is fully earned at the inception of the **extended reporting period**.

SECTION II: EXCLUSIONS

EXCLUSIONS

This insurance does not apply to **claims**:

1. Arising out of any dishonest, fraudulent, criminal or malicious act, error, omission or **personal injury** committed by, at the direction of, or with the knowledge of an **insured**. This exclusion does not apply to the **damages** of an **insured** who did not personally commit or personally participate in committing any of the knowingly wrongful acts, errors, omissions or **personal injury**, provided that:
 - a. Such **insured** had neither notice nor knowledge of such knowingly wrongful act, error, omission or **personal injury**; and
 - b. Such **insured**, upon receipt of notice or knowledge of such knowingly wrongful act, error, omission or **personal injury**, immediately notifies us.
2. Arising out of **bodily injury** or **property damage**; however, subject to the annual aggregate limit stated below, this exclusion shall not apply to **property damage** arising out of the use, operation, maintenance or distribution of a lockbox or keyless entry system on a property not owned, occupied by or leased to an **insured** (herein "Lockbox or Keyless Entry System **Property Damage**"). Such Lockbox or Keyless Entry System **Property Damage** shall be subject to an aggregate sub-limit of \$50,000. This aggregate sub-limit is included within and not in addition to the applicable **limits of liability** and is subject to the deductible stated in the Declarations. The aggregate sub-limit is the most we shall pay for all such **damages** and **claims expenses** for all **claims** to which this insurance applies.
3. Arising out of the misappropriation of advertising ideas or style of doing business or infringement or violation of copyright, patent, trademark or any other intellectual property rights or laws.
4. Arising out of the actual or alleged violation of any state or federal antitrust, restraint of trade, unfair or deceptive business practices, unfair competition or other consumer protection laws.
5. Arising out of the failure to effect or maintain adequate levels or types of insurance.
6. Arising out of any express or implied contract of employment with you and alleging a breach thereof.

7. Arising out of the inability or failure to pay, collect or safeguard funds held or to be held for others or any conversion, misappropriation, commingling or defalcation of funds or other property.
8. Arising out of the failure to pay or collect commissions, including finder's fees.
9. Arising out of or based upon feasibility studies, future market valuations or any promise, guaranty, representation or warranty, either expressed or implied, made by an **insured**, pertaining to the future values of real property or investments.
10. Arising out of or based upon any alleged unsolicited fax, electronic mail or any other means where prohibited by law.
11. Arising out of or based upon the **insured's** activities as a dual agent in real estate transactions where the **insured** failed to fully disclose its dual agency status in writing to all parties and where all parties did not consent to the dual agency in writing.
12. Made by one **insured** under this policy against another **insured** under this policy.
13. Arising out of an **insured's** activities and/or capacity as a fiduciary under The Employee Retirement Income Security Act of 1974 as amended, or similar responsibility under state statutory or common law.
14. Arising out of or based upon any actual or alleged violation of the Securities Act of 1933, the Securities Exchange Act of 1934, any Rules or Regulations of the Securities Exchange Commission adopted there under, any like Federal, State or provincial statute regulating securities similar to the foregoing, all as they may be amended, any rules or regulations adopted pursuant thereto, or any other state law, provincial law or common law relating to securities.
15. Arising out of or based upon the actual or alleged discrimination, humiliation, harassment or misconduct by an **insured** because of race, creed, color, age, gender, sex, sexual preference or orientation, national origin, religion, disability, handicap, marital status or any other class protected under federal, state, local or other law; however, subject to the annual aggregate limit stated below, this exclusion shall not apply to **damages** for alleged violations of Title VIII of the Civil Rights Act of 1968 [42 U.S.C. 3601 et seq.] or the Fair Housing Amendment of 1988 or any similar state or local law or ordinance prohibiting discrimination in housing: (hereinafter "**Civil Rights damages**"). In the event that the **Limit of liability** of the Policy is greater than \$250,000, such **Civil Rights damages** shall be subject to an aggregate sub-limit of \$250,000. This aggregate sub-limit is included within and not in addition to the applicable **limits of liability** and is subject to the deductible stated in the Declarations. The aggregate sub-limit is the most we shall pay for all such **damages** and **claims expenses** for all **claims** to which this insurance applies. With respect to coverage afforded for covered **claims** including **Civil Rights damages**, Section I. SCOPE OF COVERAGE, paragraph E.1 of SUPPLEMENTARY PAYMENTS, shall not apply.
16. Arising out of or based upon the formation, promotion, 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 syndication, 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.
17. Arising out of or based upon the rendering of **professional real estate services** for property developed, constructed, owned or to be purchased by any **insured** or by any entity in which any **insured** has a financial interest, or by any entity coming under the same financial control as an **insured**. This exclusion shall not apply to **damages** arising out of:
 - a. The sale of real property that was acquired by you under a written **guaranteed sale listing contract**; and the title was held by you for less than one year from the acquisition to resale; and the property was continually offered for sale by you from acquisition to resale.
 - b. The rendering of **professional real estate services** for real property where the combined ownership of all **insureds** is less than 10 percent.

- c. The sale of a real property owned by any **insured** for more than 180 days provided a state or local board approved standard sales contract was utilized in conjunction with the sale and prior to the closing the buyers received all of the following:
 - i. A written Home Inspection Report issued by a certified and/or State Licensed inspector; and
 - ii. A home warranty policy; and
 - iii. A seller disclosure form signed by the **insured**.

- d. The sale of real property owned by any of your employees, agents, or personal assistants, including any independent contractors, provided that this exception does not apply:
 - i. to a principal, partner, officer, director, principal shareholder or member of any **insured**; or
 - ii. if any **insured** with an ownership or financial interest renders **professional real estate services** for the property; or
 - iii. to **insureds** who have an ownership interest in the property.

- 18. Arising out of the interests, operations or activities of any **insured** as an insurance agent, insurance broker, lawyer, mortgage banker, asset manager, title agent, title abstractor, general contractor, construction manager or property developer.

- 19. Arising out of or based upon any allegation that **damages** were suffered as a result of:
 - a. The presence of, suspected presence of or exposure to:
 - i. Fungi, including but not limited to mold, mildew and yeast; or
 - ii. Bacteria or viruses; or
 - iii. Dust, spores, odors, particulates or byproducts, including but not limited to mycotoxins and endotoxins, resulting from any of the organisms listed in i., ii. or iii. above, from any source whatsoever; or
 - b. The failure to discover or disclose the existence of any of the organisms listed in a. above, from any source whatsoever; or
 - c. Any loss, cost or expense arising out of the testing for, monitoring of, cleaning up of, removal of, containment of, treatment of, detoxification of, neutralization of, remediation of, disposal of or any other response to or assessment of the effects of any of the items in a. above, from any source whatsoever.

- 20. Arising out of or based upon:
 - a. Any actual, alleged or threatened discharge, dispersal, release or escape of **pollutants**; or
 - b. Any directive, request or voluntary decision that any **insured** monitor, clean up, remove, contain, treat, detoxify or neutralize **pollutants**; or
 - c. Any governmental or regulatory directive or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **pollutants**; or
 - d. The failure to discover, disclose, report or advise of the existence or amount of **pollutants**.

- 21. Arising out of a negligent act, error, omission or **personal injury** occurring prior to the inception date of this policy if any **insured** prior to the inception date knew or could have reasonably foreseen that such negligent act, error, omission or **personal injury** might be expected to be the basis of a **claim**.

- 22. Arising out of liability assumed by an **insured** under an indemnity, hold harmless or similar provisions or agreements, but this exclusion does not apply to liability an **insured** would have in the absence of such agreements.

23. Arising out of the alleged notarized certification or acknowledgment by any **insured**, in their capacity as a notary public, of a signature on a document, when the **insured** did not witness the signature being placed on the document.

SECTION III: CONDITIONS – CLAIMS

A. INSURED’S DUTIES IN THE EVENT OF A CLAIM OR CIRCUMSTANCES WHICH MAY GIVE RISE TO A CLAIM

1. You and any other involved **insured** must see to it that we are notified immediately, but in no event later than sixty (60) calendar days after the expiration date of the **policy period** or within any applicable **extended reporting period** of any circumstance which may give rise to a **claim**. To the extent possible, written notice should include:
 - a. The specific negligent act, error, omission or **personal injury** including the date(s) thereof; and
 - b. The **damages** that may reasonably result; and
 - c. The date and circumstances by which an **insured** became aware of the negligent act, error, omission or **personal injury**.
2. If a **claim** is received by an **insured** you must:
 - a. Immediately record the specifics of the **claim** and the date received; and
 - b. Notify us as soon as practicable.
 - c. You and any other involved **insured** must see to it that we receive written notice of the **claim** immediately, but in no event later than sixty (60) calendar days after the expiration date of the **policy period** or within any applicable **extended reporting period**.
3. You and any other involved **insured** must:
 - a. Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the **claim**; and
 - b. Authorize us to obtain records and other information; and
 - c. Cooperate with us in the investigation, settlement or defense of the **claim**; and
 - d. Assist us, upon our request, in the enforcement of any right against any person or organization that may be liable to an **insured** because of **damages** to which this insurance may also apply.
4. No **insured** will, except at their own cost, voluntarily make a payment, assume any obligation, or incur any expense without our written consent.

B. FALSE OR FRAUDULENT CLAIMS

If any **insured** notifies us of a **claim** knowing it to be false or fraudulent, this policy shall become void.

C. SUBROGATION

When any payment is made under this policy, we shall be subrogated to the **insured’s** right of recovery in connection with that payment. Each **insured** shall do whatever is necessary to secure the right of recovery and shall do nothing to waive or prejudice such right. Any amount recovered shall be apportioned in the following order of preference and as follows:

1. For the repayment of expenses incurred in effecting such recovery;
2. For any **damages** and **claim expenses** paid by an excess carrier on behalf of the **insured**; and
3. For any **damages** and **claim expenses** paid by the **insured** in excess of the deductible;
4. For **damages** and **claim expenses** paid by us;
5. For repayment of the deductible.

D. NO ACTION AGAINST COMPANY

No action shall lie against us, unless, as a condition precedent, the **insured** has fully complied with all the terms of the policy and the amount of the **insured's** obligation to pay shall have been fully determined either:

1. By written agreement of the **insured**, the claimant, and us; or
2. By final judgment against the **insured**.

SECTION IV: GENERAL CONDITIONS

A. CANCELLATION

1. You may cancel this policy by returning it to us. You may also cancel this policy by written notice to us stating at what future date cancellation is to be effective.
2. We may cancel or non-renew this policy by written notice to you at the address last known to us. We will provide written notice at least sixty (60) days before cancellation is to be effective. If we cancel this policy because you have failed to pay a premium when due or have failed to pay amounts in excess of our **limit of liability** or within the amount of the deductible, this policy may be canceled by us by mailing to you written notice stating when, not less than ten (10) days thereafter, such cancellation shall be effective. The time of surrender of this policy or the effective date and hour of cancellation stated in the notice shall become the end of the current **policy period**. Delivery (where permitted by law) of such written notice either by you or by us shall be the equivalent of mailing.
3. If we cancel this policy, the earned premium shall be computed pro rata. If you cancel this policy, we may retain a proportion of the premium greater than pro rata. 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 shall not constitute a refusal to renew.

B. OTHER INSURANCE

This insurance is excess over any other valid and collectible insurance available to any **insured** unless other insurance is written only as specific excess insurance over the **limits of liability** provided in this policy.

C. ASSIGNMENT

Your rights and duties under this policy may not be transferred without our written consent except in the case of death of an individual **named insured**. In such a case, if you die, your rights and duties will be transferred to your legal representative, but only while acting within the scope of their duties as your legal representative. Until your legal representative is appointed, anyone having proper temporary custody of your property may assume your rights and duties.

D. CHANGES

This policy contains all the agreements between you and us concerning the insurance afforded. The **named insured** shown in the Declarations is authorized to make changes in the terms of this policy with our consent. This policy's terms can be amended or waived only by an endorsement issued by us as part of this policy.

E. APPLICATION

By accepting this policy, you agree:

1. The statements and representations in the application submitted to us are accurate and complete: and
2. We have issued this policy in reliance upon your statements and representations.

F. ARBITRATION

Any controversy arising out of or relating to this policy or its breach shall be settled by binding arbitration in accordance with the rules promulgated by the American Arbitration Association, except as provided herein.

The arbitration will be held in New York, New York unless the arbitrators agree that it be held elsewhere. The laws of the State of New York will govern any dispute resolved by arbitration as provided herein.

G. CONFORMITY TO STATUTE

The terms of this policy, which are in conflict with the statutes of the state wherein this policy is delivered, are hereby amended to conform to such statute.

H. SPOUSAL/DOMESTIC PARTNER EXTENSION

If a covered **claim** against an **insured** also includes a claim against the lawful spouse or **domestic partner** of such **insured** solely by reason of (a) such spousal or **domestic partner** status, or (b) such spouse or **domestic partner's** ownership interest in property or assets that are sought as recovery for such **claim**, then such spouse or **domestic partner** shall be deemed an **insured** for such **claim**. However, this Extension shall not apply to the extent the **claim** alleges any act or omission by such spouse or **domestic partner**. Coverage of the spouse or **domestic partner** shall be on the same terms and conditions, including, but not limited to, any applicable Retention, as apply to coverage of the **insured** for such **claim**.

As used in this paragraph, "**domestic partner**" means any natural person qualifying as a domestic partner under the provisions of any applicable federal, state or local laws.