

**LEXINGTON INSURANCE COMPANY
WILMINGTON, DELAWARE
ADMINISTRATIVE OFFICES: 200 STATE STREET, BOSTON, MA 02109
(A Capital Stock Insurance Company)**

**REAL ESTATE PROPERTY MANAGERS PROFESSIONAL AND EMPLOYMENT
PRACTICES LIABILITY POLICY**

NOTICE: THIS IS A CLAIMS MADE POLICY. THIS COVERAGE REQUIRES THAT A **CLAIM** BE FIRST MADE AGAINST AN **INSURED** AND BE REPORTED TO THE COMPANY WITHIN THE **POLICY PERIOD** OR AN EXTENDED REPORTING PERIOD, IF APPLICABLE. THE LIMITS OF INSURANCE AVAILABLE TO PAY JUDGMENTS OR SETTLEMENTS SHALL BE REDUCED BY AMOUNTS INCURRED FOR **CLAIM EXPENSE**. FURTHER, NOTE THAT AMOUNTS INCURRED FOR **CLAIM EXPENSE** SHALL BE APPLIED AGAINST THE DEDUCTIBLE AMOUNT.

Throughout this policy, unless the context otherwise requires, the words **you** and **your** refer to the **named insured** as identified in the Declarations and any other person qualifying as an **insured** under section III. "WHO IS AN **INSURED**". The words **we**, **us** and **our** refer to Lexington Insurance Company.

Words appearing in boldface print shall have the meaning as defined in Section VI. "DEFINITIONS" section or elsewhere in this policy.

In consideration of the premium charged, and in reliance upon the statements in the application(s) attached hereto and made a part hereof, and subject to the Limits of Insurance stated in the Declarations and the terms and conditions contained herein, **we** agree with **you** as follows:

SECTION I. COVERAGES

COVERAGE A. REAL ESTATE PROPERTY MANAGERS PROFESSIONAL LIABILITY

1. INSURING AGREEMENT

We will pay those sums in excess of the deductible amount as shown in Item___of the Declaration that **you** shall become legally obligated to pay as **damages** because of **wrongful acts** to which this insurance applies, arising out of **professional services** rendered for others by an **insured** or any person or organization for whose acts the **insured** is legally liable. The amount we will pay is limited as described in SECTION V. "LIMITS OF INSURANCE AND DEDUCTIBLE".

This coverage applies only if:

- a. The **claim** arising out of the **wrongful act** is first made against any **insured** and is reported to **us** during the **policy period** or the Extended Reporting Period, if applicable.
- b. The **wrongful act**, arising from **professional services** takes place on or after the **retroactive date** stated in the Declarations, and
- c. The **insured** had no knowledge prior to the effective date of this policy of circumstance likely to give rise to a **claim**, and
- d. The **wrongful act** takes place in the **coverage territory**.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under SECTION II. "DEFENSE AND SETTLEMENT – COVERAGES A AND B" OR SECTION III. "OTHER BENEFITS – COVERAGES A AND B."

2. EXCLUSIONS

This insurance does not apply to:

- a. any **claim** alleging or arising out of a dishonest, fraudulent, criminal or malicious act, error or omission, or any intentional or knowing violation of the law, or gaining of any profit or advantage to which **you** are not legally entitled; however, **we** will defend **claims** alleging any of the forgoing conduct until there is an admission by **you** or a final adjudication against **you** as to such conduct at which time **you** shall reimburse **us** for **claim expense**; **we** will not cover nor provide a defense for any such **claim** to which **you** plead nolo contendere or no contest;
- b. any **claim** in any way arising out of **bodily injury, property damage, advertising injury, or personal injury**; provided, however, that this exclusion will not apply to a **claim** alleging a **wrongful act** in the rendering or failure to render **professional services** unless the **insured** has coverage for such **claim** under a Commercial General Liability insurance policy or would have such coverage except for the exhaustion of available limits;
- c. any **claim** for or arising out of the inability to pay or to make any payment by any bank or banking firm or broker or dealer in real estate, mortgages, or securities, or based upon the insolvency of the **insured**, except that bankruptcy or insolvency of the **insured** shall not relieve **us** of any of **our** obligations hereunder;
- d. any **claim** arising out of:
 1. any **insured(s)** making any warranties or guarantees as to the future value of any property;
 2. any **insured(s)** promising or guaranteeing the future value of investments for specified rate of return and/or interest;
 3. the failure of investments to perform as expected or desired

- e. any **claim** on account of a breach of fiduciary duty, responsibility, or obligation in connection with any employee benefit or pension plan, including violation of the responsibilities, obligations or duties imposed upon fiduciaries by the Employee Retirement Income Security Act of 1974 (ERISA) or amendments thereto, or similar federal, state or local statute or law;
- f. any **claim** arising out of disputes involving fees, commissions or other charges for any **professional services** rendered or required to be rendered by the **insured**; provided, however, that this exclusion shall not apply to **claims expense**;
- g. any **claim** brought by or on the behalf of any person entity:
 - (i) which is owned by or controlled by any **insured**; or,
 - (ii) which owns or controls any **insured**; or,
 - (iii) which is affiliated with any **insured** through any common ownership or control; or,
 - (iv) in which any **insured** is a director, officer, partner or principal stockholder;

however, this exclusion does not apply to any **claim** solely in the claimant's capacity as a client of an **insured** entity, provided such claim is brought and continued independently and without the involvement of any **insured**; provided, further that this exclusion shall only apply to the percentage of ownership interest of the **insured** or the spouse of the **insured** in any property.

- h. any obligations or responsibilities assumed by the **insured** under any contract unless liability therefor would have attached to the **insured** by reason of **wrongful acts** committed by the **insured** in the absence of such a contract;
- i. any **claim** based upon, arising out of, alleging or attributable to the failure to effect or maintain any insurance or bond;
- j. any **claim** based upon, arising out of, alleging or attributable to (1) the failure of the **insured** to investigate a property or building for the existence of asbestos or lead paint, or (2) the alleged failure of the **insured** to properly act in response to the presence of asbestos or lead paint in any property or building or (3) seeking reimbursement from the **insured** for the expense of abatement, replacement, or removal of asbestos or lead paint, or (4) seeking recovery from the **insured** for loss of value of a property or loss of earning derived from a property because of the actual or alleged existence of asbestos or lead paint;
- k. any **claim** based upon, arising out of, alleging or attributable to the discharge, dispersal, release, or escape of smoke, vapors, soot, fumes, acids, alkalis, chemicals, liquids, or gases, waste materials (whether from a nuclear facility or not), into or above ground; or to any claim for the reimbursement of the cost of removal, neutralization, containment, treatment or clean up of any of the aforementioned substances;
- l. any **claim** based upon, arising out of, alleging or attributable to (1) the failure of the **insured** to investigate a property or building for the existence of smoke,

vapors, soot, fumes, acids, alkalis, chemicals, liquids or gases, waste materials, or (2) the failure of the **insured** to recommend or take remedial action to monitor, remove, contain, treat, detoxify, neutralize or clean up any of the aforementioned substances or (3) seeking recovery from the **insured** for loss of value of a property or loss of earnings derived from a property because of actual or alleged presence of any of the aforementioned substances;

- m. any **claim** arising out of syndication or management of any limited or general partnership, or the management of a real estate investment trust;
- n. any **claim** directly involving the purchase, sale, participation, grant, commitment, restructure, termination, transfer, repossession or foreclosure of any loan, lease or extension of credit, or any failure to do any of the foregoing or operating or controlling any property that the insured acquired as security or collateral for any loan, lease or extension of credit;
- o. any **claim** based upon, arising out of, alleging or attributable to a transaction in which any insured has a direct or indirect beneficial ownership interest as a buyer or seller of real property;
- p. any **claim** based upon, arising out of, alleging or attributable to infringement of a copyright, patent, trademark, trade dress or trade secret;
- q. any **claim** based upon, arising out of, alleging or attributable to any actual or alleged commingling of funds.

COVERAGE B. REAL ESTATE PROPERTY MANAGERS EMPLOYMENT PRACTICES LIABILITY

1. INSURING AGREEMENT

We will pay those sums in excess of the deductible amount shown in Item___of the Declarations that **you** shall become legally obligated to pay as **damages** because of an **insured event** to which this insurance applies. The amount we will pay is limited as described in SECTION V. "LIMITS OF INSURANCE AND DEDUCTIBLE"

This coverage applies only if:

- a. the **claim** because of an **insured event** is first made against any **insured** and is reported to **us** during the **policy period** or an Extended Reported Period, if applicable, and
- b. the **insured event** out of which the **claim** arises takes place on or after the **retroactive date**;
- c. the **insured** had no knowledge prior to the effective date of this policy of such actual or alleged **insured event** or circumstances likely to give rise to a **claim** covered hereunder.
- d. the **insured event** takes place in the **coverage territory**.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under SECTION II "DEFENSE AND SETTLEMENT-COVERAGES A AND B" AND SECTION III "OTHER BENEFITS-COVERAGES A AND B".

2. EXCLUSIONS

This insurance does not apply to:

- a. any obligation for which **you** or any carrier as **your** insurer may be held liable under a workers' compensation, disability benefits or unemployment compensation law, or any similar law.
- b. any **damages or claim expense** which the **insured** is obligated to pay by reason of the assumption of another's liability for an **insured event** in a contract or agreement. This exclusion shall not apply to liability for damages because of an **insured event** that the **insured** would have had even in the absence of such contract or agreement.
- c. any **claim** on account of breach of fiduciary duty, responsibility or obligation in connection with any employee benefit or pension plan including violation of the responsibilities, obligations or duties imposed upon fiduciaries under the Employee Retirement Income Security Act of 1974 (ERISA) or amendments thereto or similar statutory or common law of the United States of America or any state or jurisdiction therein.
- d. any **damages** or costs arising out of or associated with a lockout, strike, picket line, replacement or other similar actions in connection with labor disputes or labor negotiations. This exclusion shall not apply to a **claim** brought by an **employee(s)** alleging **wrongful termination** or retaliation as a result of strike activity or union involvement.
- e. any **claim** arising out of the Workers' Adjustment and Retraining Notification Act, Public Law 100-379 (2988), or any amendment thereto, or any similar federal, state or local law.
- f. Any liability or costs incurred by any **insured** to modify any building or property in order to make said building or property more accessible or accommodating to any disabled person.
- g. Any liability alleged to be owing under, or arising out of, or related to an express contract of employment or an express obligation to make payments.

SECTION II. DEFENSE AND SETTLEMENT - COVERAGES A AND B (DEFENSE INCLUDED WITHIN LIMITS)

- A. 1. **We** have the right and duty to defend any **claim** brought against **you** that is covered under this policy even if the **claim** is groundless or fraudulent. **We** have the right to select defense counsel. However, **claim expense** is part of and subject to the Limits of Insurance as set forth in Item ____ of the Declarations and

as described in SECTION IV, "LIMITS OF INSURANCE AND DEDUCTIBLE" The Deductible applies to all **damages** and **claim expenses**.

- B.
1. Our duty to defend any **claim** ends when the applicable Limits of Insurance applicable to that **claim** (Item 3A of the Declarations) or to the **Policy Period** (Item 3B of the Declarations) have been exhausted by the payment of settlements, judgments and **claim expense**.
 2. If the Policy Period Limit (Item 3B of the Declarations) is so exhausted, **we** will notify the **named insured** of all outstanding **claims** so that the **insured** can assume control of the defense of all such **claims**.
 3. In the event of such exhaustion of the per Claim Limit and/or the total Policy Period Limit (Items 3A and 3B of the Declarations, respectively,) so that a transfer of the control of the defense from **us** to **you** becomes appropriate, **we** agree to continue the defense of the **claim(s)** during that reasonable period of time necessary for you to assume control of the defense. However, **you** agree that, by so doing, **we** do not waive or surrender any of **our** rights including the right to withdraw from the defense of such **claim(s)**. **You** also agree to promptly reimburse **us** for the **claim expense we** incur in continuing to conduct the defense during the transition period from the time the applicable Limits of Insurance were exhausted until the time **you** have assumed such defense.
 4. **We** shall not settle or compromise any **claim** without **your** consent. However, in the event that a claimant offers a settlement and **we** recommend that such settlement be accepted, but **you** withhold consent to so settle and the **claim** later results in a judgment or settlement in excess of the amount of the earlier settlement offer, then **our** liability shall be limited to the amount of such settlement offer. In such event, **you** shall also reimburse **us** for all **claim expense we** paid subsequent to the date **you** withheld **your** consent to settle.
- C. **We** have the right to investigate and settle up to the applicable Limits of Insurance any **claim** in the manner and to the extent **we**, in **our** sole discretion, deem proper. Upon receipt by **us** of notice of circumstances which are likely to give rise to a **claim**, **we** also have the right (but not the duty) to investigate and make such a settlement even before a **claim** is made.

SECTION III. OTHER BENEFITS – COVERAGES A AND B

A. **Pre-judgment Interest**

We shall pay the amount of pre-judgment interest imposed on a verdict. However, **our** obligation to pay pre-judgment interest shall be subject to and not be in addition to the applicable Limits of Insurance.

B. **Post-judgment Interest**

We shall pay post-judgment interest calculated upon the amount for which **we** are liable under this policy until such time as **we** have paid or tendered such amount.

SECTION IV. WHO IS AN INSURED

- A. **Individual.** If **you** are shown in the Declarations as an individual, **you** are insured only for the conduct of a business of which **you** are the sole owner. **Your** legal representatives are **insureds** if **you** die or become incapacitated but only with respect to duties as such. Such representatives will have **your** rights and duties under this policy.
- B. **Corporation.** If **you** are shown in the Declarations as a corporation or organization other than a partnership or joint venture, **you**, and any entity in which **you** own a 50.1% or greater interest at the time of inception date of this policy or which is identified in the Declarations or by endorsement to this policy, are an **insured**. **Your** officers and directors are **insureds**, but only with respect to their duties as **your** officers or directors.
- C. **Partnership or joint venture.** If **you** are shown in the Declarations as a partnership or joint venture, **you** are an **insured**. **Your** partners or joint venturers are also **insureds** but only for the conduct of **your** business.

However, no person or organization is covered for the conduct of any current or past partnership or joint venture not named in the Declarations.

- D. **Acquisitions.** Any organization that **you** newly acquire or form during the **policy period** which at the time of acquisition or formation constitutes less than 20% of the overall total employee count of the **insured** becomes an **insured** when **you** own at least 50.1% of it. But no newly acquired or formed organization is covered for:
 - a) any **damages or claim expense** that results from an act or incident that happened or commenced before **you** acquired or formed it,
 - b) any **damages or claim expense** covered under other insurance.

Any newly acquired or formed organization which at the time of acquisition or formation constitutes 20% or more of the overall total employee count of the **insured** becomes an **insured** when **you** own at least 50.1% of it, but no newly acquired or formed organization is covered for

- a) any **damages** that results from an act or incident that happened or commenced before you acquired or formed it,
 - b) any **damages** covered under other insurance,
 - c) more than ninety (90) days or the remainder of the **policy period**, whichever is less, unless the **insured** first named in the Declarations gives **us** written acceptance of any special terms, conditions, exclusions, or additional premium charge **we** may require,
- E. **Employees.** **Your employees** are **insureds** but only for the conduct of **your** business within the scope of their employment. **Your employees'** status as **insureds** will be determined as of the date of the alleged **wrongful act, discrimination, sexual harassment, wrongful termination** or **workplace torts**.

SECTION V. LIMITS OF INSURANCE AND DEDUCTIBLE

A. LIMITS OF INSURANCE

1. Each **claim** Limit

The amount shown as the Each **claim** Limit in Item 3A of the Declarations is the most we will pay for all **claims** made or brought arising out of one **insured event** or one **wrongful act**, regardless of the number of **claims** made, claimants, or **insureds** against whom such **claims** are made.

All **claims** arising out of the same **wrongful act** or the same **insured event** or series of related **wrongful acts** or series of related **insured events** shall be deemed to be one **claim** and shall be deemed to have been made at the time the first such **claim** was made and to have occurred at the time the first such **wrongful act** or **insured event** took place without regard to the inception date of this policy or the **retroactive date**.

2. Total **policy period** Limit

Subject to the Each **claim** Limit the amount shown as the Total **policy period** Limit in Item 3B of the Declarations is the most **we** will pay under this policy for all **claims** made or brought during the **policy period**.

B. DEDUCTIBLE

1. **Our** obligation to pay under this policy applies only to amounts in excess of the deductible amount stated in Item 3C of the Declarations. The deductible shall apply separately to each **claim**.
2. The **named insured** shall reimburse **us** promptly for any amounts **we** have paid which are within the deductible amount.
3. Amounts incurred for **claim expense** shall be applied against the deductible amount.

SECTION VI. DEFINITIONS

A. **Advertising injury** means injury arising out of one or more of the following offenses:

1. Oral or written publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
2. Oral or written publication of material that violates a person's right of privacy;
3. Misappropriation of advertising ideas or style of doing business; or
4. Infringement of copyright, title or slogan.

B. **Bodily injury** means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.

C. **Claim** means a written demand or notice received by an **insured** in which damages likely to be covered by this policy are alleged. **Claim** includes the commencement of a civil action, an administrative proceeding and an alternative dispute resolution proceeding. Under COVERAGE B, **claim** shall include an action brought by a person or entity acting on behalf of **your employee(s)** to which **you** must submit or to which **you** submit with **our** consent. **Claim** shall include a proceeding for injunctive or non-monetary relief, although **we** are not liable for the cost of complying with such injunctive or non-monetary relief. **Claim** shall not include labor or grievance arbitration subject to a collective bargaining agreement. A class action lawsuit is considered one **claim**. A **claim** shall be considered to be made on the earlier of:

1. The date any **insured** receives a written notice of a **claim** being made against any **insured** seeking **damages** covered by this policy; or
2. the date **we** make a settlement on account of an **insured event** or **wrongful act** but in advance of written **claim** being made.

D. **Claim expense** means those reasonable and necessary expenses incurred by **us** with respect to the investigation, settlement and defense of a **claim**, including attorney fees and expenses, the cost of legal, administrative, or alternative dispute resolution proceedings, the cost of appeal bonds, the cost of bonds to release property being used to secure a legal obligation (but only for bond amounts within the each **claim** Limit of Insurance that applies—**we** have no obligation to furnish such bonds) all reasonable expenses that **you** incur at **our** request while helping **us** investigate or defend a **claim** and, subject to Section III. "OTHER BENEFITS—COVERAGES A AND B" of this policy, all costs taxed against **you** in a suit.

Salaries and expenses of **your employees** shall not be deemed to be covered **claim expense**.

E. **Damages** means any amount which **you** are legally obligated to pay as compensatory **damages** for any **claim** to which this insurance applies and shall include judgments and settlements, provided that **damages** shall not include the return or withdrawal of professional fees or sanctions.

With respect only to **claims** under Coverage B alleging **discrimination, sexual harassment, wrongful termination** or **workplace torts**, **damages** shall also include punitive and exemplary damages and the multiple portion of multiple damages. For this purpose, it is agreed that the law of the jurisdiction most favorable to the insurability of punitive or exemplary damages shall control for the purpose of resolving any issue or dispute regarding whether these damages are insurable under this policy.

Damages shall not include:

1. civil or criminal fines or penalties;

2. payment of insurance plan benefits claimed by or on behalf of any retired **employee**, or that a claimant would have been entitled to as an **employee** had the **insured** provided the claimant with a continuation of insurance;
 3. amounts awarded pursuant to a labor or grievance arbitration pursuant to a collective bargaining agreement;
 4. vested and non-vested stock options, retirement benefits, severance pay, bonus, prerequisites, fringe benefits, vacation days or sick days.
- F. **Discrimination** means termination of an employment relationship or a demotion or a failure or refusal to hire or promote or otherwise to take any action against any individual with respect to his or her compensation, terms, conditions, privileges or opportunities of employment because of race, color, religion, age, sex, disability, pregnancy, national origin, sexual orientation or other protected category or characteristic established pursuant to any applicable United States federal, state, or local statute or ordinance.
- G. **Employee** means an individual whose labor or service is engaged by and directed by an **insured**. This includes part-time, seasonal and temporary **employees** as well as any individual employed in a supervisory, managerial or confidential position. **Supervisory employee** means an officer or director of an **insured** or any **employee** of an **insured** who has the authority to employ or terminate the employment of other **employees** of an **insured**. An individual who is leased to the **insured** or who is contracted to perform work for the **insured** or who is an independent contractor for the **insured** shall be deemed to be an **employee**.
- H. **Insured event** means (1) **your employee** or former **employee**, or an applicant for employment with **you**, alleging **discrimination** by an **insured**, or (2) **your employee** or former **employee** alleging **sexual harassment** by an **insured**, or (3) **your former employee** alleging **wrongful termination** by an **insured**, (4) **your employee** or former **employee** or an applicant for employment with **you** alleging **workplace torts** by an **insured**. Alleging means lodging an oral or written complaint or charge with **your** management or **supervisory employee(s)** or with **your** corporate legal or human resource departments.
- I. **Personal injury** means injury, other than “bodily injury”, arising out of one or more of the following offenses:
- a. False arrest, detention or imprisonment;
 - b. Malicious prosecution;
 - c. The wrongful eviction from, wrongful entry into, or 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;
 - d. Oral or written publication of material that slanders or libels a person or organization or disparages a person’s or organization’s goods, products or services; or

- e. Oral or written publication of material that violates a person's right of privacy.
- J. **Policy period** means the period of time commencing with the inception date shown in Item 2 of the Declarations and the earlier of the termination date shown in Item 2 of the Declarations or the date on which this policy is terminated by cancellation by **you** or by **us**.
- K. **Professional services** means real estate management services rendered by an **insured** to its client(s) pursuant to a written agreement or contract or more fully described by attached endorsement to this policy.
- L. **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 **insured**.
- M. **Retroactive date** means the date specified as such in Item__ of the Declarations. If no date is shown in Item__, then the **retroactive date** means the inception date of this policy as shown in Item 2 of the Declarations.
- N. **Sexual harassment** means unwelcome sexual advances and/or requests for sexual favors and/or other verbal or physical conduct of a sexual nature that: (1) are made a condition of employment and/or (2) are used as a basis for employment decisions and/or (3) create a work environment that interferes with performance or creates an intimidating, hostile, or offensive work environment.
- O. **Workplace torts** means retaliation, defamation, infliction of emotional distress, invasion of privacy, negligent evaluation, wrongful discipline, wrongful reference, failure to grant tenure, negligent hiring, employment related misrepresentation, wrongful failure to employ or promote, wrongful deprivation of career opportunity, or wrongful demotion.
- P. **Wrongful act** means any actual or alleged error, omission, neglect, misstatement or misleading statement, or breach of duty unintentionally committed by any **insured**, or a person for whom the **insured** is legally liable, solely in the rendering of **professional services**.
- Q. **Wrongful termination** means termination of an employment relationship in a manner which is against the law and wrongful or in breach of an implied agreement to continue employment. **Wrongful termination** shall include but shall not be limited to breach of an implied employment contract, retaliation, or the filing of a **claim** under federal, state, local or foreign "whistleblower" laws.

SECTION VII. LIMITED AND EXTENDED REPORTING PERIODS

- A. **Limited Reporting Period** means the sixty (60) day period starting with the end of the **policy period**. Any **claim** which is first made during the **Limited Reporting Period** because of an **insured event** or **wrongful act** which happened or commenced on or

after the **retroactive date** but prior to the end of the **policy period** shall be deemed to have been made on the last day of the **policy period**.

- B. When the **Limited Reporting Period** will apply. The **Limited Reporting Period** will apply only if this insurance is cancelled by **us** or not renewed by **us** for any reason other than **your** non-payment of a premium or deductible or non-compliance with the terms and conditions of this policy. An increase in premium or other changes in the terms and conditions of this coverage shall not constitute a non-renewal for the purpose of this provision. However, the **Limited Reporting Period** will not apply to **claims** if other insurance **you** buy covers them or would have covered them if its Limits of Insurance had not been exhausted.
- C. How to add an **Extended Reporting Period**. If the **Limited Reporting Period** applies, an **extended reporting period**, starting at the end of the **Limited Reporting Period**, can be added by means of an **Extended Reporting Period** Endorsement and the payment of an additional premium. The specimen **Extended Reporting Period** Endorsement attached to this policy sets forth the terms and conditions of the **Extended Reporting Period**.

Any **claim** which is first made during the **Extended Reporting Period** because of an **insured event** which happened or commenced after the **retroactive date** but prior to the end of the **policy period** shall be deemed to have been made on the last day of the **policy period**.

The **Extended reporting period** Endorsement will not be issued unless **we** receive a written request for it within sixty (60) days after the end of the **policy period**, nor will it take effect unless the additional premium is paid when due.

The additional premium for the **extended reporting period** will be determined by **us** pursuant to **our** underwriting review and discretion. Once issued, the **extended reporting period** Endorsement cannot be cancelled and the additional premium is fully earned.

- D. How the Limits of Insurance apply to the **limited** and **extended reporting periods**. The Limits of Insurance that remain at the end of the **policy period** after payment of all settlement, judgment and **claim expense** made on account of **claims** made during the **policy period** are not reinstated, renewed or increased for **claims** first made or brought during the **Limited Reporting Period** or the **Extended Reporting Period**. Any **claim** first made during **the Limited Reporting Period** or the **Extended Reporting Period** will be deemed to have been first made on the last day of the **policy period** which terminated immediately prior to the start of the **Limited Reporting Period**.

SECTION VIII. CONDITIONS

A. INSUREDS DUTIES IN THE EVENT OF AN INCIDENT, CLAIM OR SUIT

1. **Notice of incident** – **You** shall give **us** written notice as soon as practicable after an **insured** becomes aware of any incident which is likely to give rise to a **claim** covered by this policy. Such notice shall include as much detail as possible and shall include, to the extent possible:

- a. the identity of the person(s) alleging **wrongful acts, discrimination, wrongful termination, sexual harassment or workplace torts**;
- b. the identities of the **insured(s)** who allegedly committed the **wrongful act, discrimination, wrongful termination, sexual harassment or workplace torts** and any witnesses;
- c. the date the alleged incident took place; and
- d. any other information or documentation pertinent to the alleged incident.

Notice of such an incident likely to give rise to a **claim** nevertheless does not constitute a **claim** being made. However, if a **claim** is subsequently made arising out of such incidents, it shall be deemed to have been made at the time **you** so reported the incident to **us**.

2. If a **claim** is made or suit is brought against any **insured you** must:
 - a. immediately record the specifics of the **claim** and the date received; and
 - b. notify **us** in writing as soon as practicable;
 - c. immediately send **us** copies of any demands, notices, summonses or legal papers received in connection with the **claim**;
 - d. authorize **us** to obtain records and other information;
 - e. cooperate with **us** in the investigation, settlement or defense of the **claim**; and
 - f. assist **us**, upon **our** request, in the enforcement of any right against any person or organization which may be liable to any **insured** because of injury or damage to which this insurance may also apply.
3. all notices hereunder of **claims**, or of incidents which may reasonably be expected to give rise to a **claim** being made against the **insured**, shall be in writing to Lexington Insurance Company, 200 State Street, Boston, Massachusetts 02109; Attention: Supervisor of Professional Liability Claims.

B. **OTHER INSURANCE**

1. **Coverage A** The insurance provided by Coverage A does not provide coverage for any **claim** covered by any other valid and collectible insurance. The only exception is if such other insurance is written specifically as excess of this policy.
2. **Coverage B.**
 - a. **Primary Insurance**-Unless expressly written to be excess over other applicable insurance, it is intended that Coverage B be primary with

respect to **wrongful termination, discrimination, sexual harassment and workplace torts.**

- b. **Excess Insurance**-When this insurance is specifically written to be excess of other insurance, **we** will have no duty to defend any **claim** that any other insurer has a duty to defend until such time as the underlying insurance is exhausted by payment of **damages** that would, in the absence of such primary policy, be recoverable under this policy. When this policy is excess, **we** will pay only that amount, in excess of the primary insurance, any deductible or self **insured** retention in connection with the primary insurance, and the deductible amount set forth in this policy.

C. **REPRESENTATIONS**

By accepting this policy, **you** agree that:

- 1. the statements in the Application and Declarations are accurate and complete;
- 2. those statements are based upon representations **you** made to **us**;
- 3. **we** have issued this policy in reliance upon **your** representations; and
- 4. the representations made are binding on all **insureds**.

D. **TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US**

If any **insured** has rights to recover all or part of any payment **we** have made under this policy, those rights are transferred to **us**. The **insured** must do nothing after a **wrongful act** an **insured event** or a **claim** to impair them. At **our** request, the **insured** will transfer those rights to **us** and help **us** enforce them.

E. **BANKRUPTCY**

The bankruptcy, insolvency or inability of an **insured** or of an **insured's** estate to pay **damages** will not relieve **us** of **our** obligations under this policy. However, neither shall such bankruptcy, insolvency or inability to pay increase **our** liability with respect to the deductible nor in any other way.

F. **CANCELLATION**

- 1. The **named insured** shown in the Declarations may cancel this policy by mailing or delivering to **us** advance written notice of cancellation.
- 2. **We** may cancel this policy by; mailing or delivering to the **named insured** written notice of cancellation at least:
 - a. 10 days before the effective time of cancellation if **we** cancel for non payment of premium; or

- b. 30 days before the effective time of cancellation if **we** cancel for any other reason.
3. **We** will mail or deliver **our** notice to the **named insured's** last mailing address known to **us**.
4. Notice of cancellation will state the effective time of cancellation. The **policy period** will end at that time.
5. If this policy is cancelled, **we** will send the **named insured** any premium refund due in due course. If **we** cancel, the refund will be pro rata. If the **named insured** cancels, the refund will be on the customary short rate basis. The return or tender of a return premium shall not be a condition precedent to the cancellation becoming effective at the time stated in the cancellation notice.
6. If notice is mailed, proof of mailing will be sufficient proof of notice.
7. If any law controlling requires a longer period of notice by **us**, **we** will give the longer notice.

G. **CHANGES**

This policy contains all the agreements between **you** and **us** concerning the insurance afforded. The **named insured** shown in the Declarations is authorized by all other **insureds** to negotiate changes in the terms of this policy with **us** and to receive and give all notices under this policy. This policy's terms can be amended or waived only by endorsement issued by **us** and made part of the policy.

H. **PREMIUMS**

The **named insured**:

1. is responsible for the payment of all premiums; and
2. will be the payee for any return premiums **we** pay.

I. **LEGAL ACTION AGAINST US**

1. No person or organization has a right under this policy:
 - a. to join **us** as a party or otherwise bring **us** into a suit asking for damages from any **insured**; or
 - b. to sue **us** on this policy unless all of its terms have been fully complied with.
2. A person or organization may sue **us** to recover on an agreed settlement or on a final judgment against the **insured** obtained after an actual trial, but **we** will not be liable for any amounts that are not payable under the terms of this policy or that is in excess of the applicable Limits of Insurance. An agreed settlement

means a settlement and release of liability signed by **us**, the **insured** and the claimant or the claimant's legal representative.

J. TAKEOVER OF INSURED

In the event 51% or more of the controlling interest of any **insured** is changed during the **policy period**, then this policy shall automatically terminate upon the completion of such change in control. From that point forward, such insurance as is afforded by this policy shall apply only to **claims** which had first been made prior to that change in control.

K. SERVICE OF SUIT

It is agreed that in the event of our failure to pay any amount claimed to be due hereunder, **we**, at the request of the **insured**, 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 our 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 may be made upon Counsel, Legal Department, Lexington Insurance Company, 200 State Street, Boston, MA 02109, or his or her representative, and that in any suit instituted against **us** upon this policy, **we** will abide by the final decision of such court or of an appellate court in the event of any appeal.

Further, pursuant to any statute of any state, territory, or district of the United States which makes provision therefor, **we** hereby designate the Superintendent, Commissioner, Director of Insurance, or other officer specified for that purpose in the statute, or his or her successor or successors in office as our true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of **you** or any beneficiary hereunder arising out of this contract of insurance, and hereby designate the Counsel, Legal Department, Lexington Insurance Company, 200 State Street, Boston, Massachusetts 02109, as the person to whom the said officer is authorized to mail such process or a true copy thereof.

L. ARBITRATION

Notwithstanding the Service of Suit condition above, in the event of a disagreement as to the interpretation of this policy, it is mutually agreed that such dispute shall be submitted to binding arbitration before a panel of three (3) Arbitrators consisting of two (2) party-nominated (non-impartial) Arbitrators and a third (impartial) Arbitrator (hereinafter "umpire") as the sole and exclusive remedy. The party desiring arbitration of a dispute shall notify the other party, said notice including the name, address and occupation of the Arbitrator nominated by the demanding party. The other party shall, within 30 days following receipt of the demand, notify in writing the demanding party of the name, address and occupation of the Arbitrator nominated by it. The two (2) Arbitrators so selected shall, within 30 days of the appointment of the second Arbitrator, select an umpire. If the Arbitrators are unable to agree upon an umpire, each Arbitrator shall submit to the other Arbitrator a list of three (3) proposed individuals, from which list each Arbitrator shall choose one (1) individual. The names of the two (2) individuals so chosen shall be subject to a draw, whereby the individual drawn shall serve as umpire.

The parties shall submit their cases to the panel by written and oral evidence at a hearing time and place selected by the umpire. Said hearings shall be held within 30 days of the selection of the umpire. The panel shall be relieved of all judicial formality, shall not be obligated to adhere to the strict rules of law or of evidence, shall seek to enforce the intent of the parties hereto and may refer to, but are not limited to, relevant legal principles. The decision of at least two (2) of the three (3) panel members shall be binding and final and not subject to appeal except for grounds of fraud and gross misconduct by the Arbitrators. The award will be issued within 30 days of the close of the hearings. Each party shall bear the expenses of its designated Arbitrator and shall jointly and equally share with the other the expense of the umpire and of the arbitration.

The arbitration proceeding shall take place in or in the vicinity of Boston, Massachusetts. The procedural rules applicable to this arbitration shall, except as provided otherwise herein, be in accordance with the Commercial Arbitration Rules of the American Arbitration Association.

IN WITNESS WHEREOF, we have caused this policy to be signed by our President and Secretary, but this policy shall not be valid unless also signed on the Declarations page by our duly authorized representative.