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ARCHITECTS, ENGINEERS AND GREEN AND SUSTAINABLE DESIGN PROFESSIONAL LIABILITY INSURANCE POLICY

THIS IS A CLAIMS MADE POLICY. PLEASE READ IT CAREFULLY.

In consideration of the premium paid, the undertaking of the Named Insured to pay the Deductible as described herein and in the amount stated in the Declarations, in reliance upon the statements in the application attached hereto and made a part hereof and the underwriting information submitted on behalf of the Insured, and subject to the terms, conditions and limitations of this policy, the Company and the Insured agree as follows:

Throughout this policy, the term Company refers to the insurance company providing this insurance.

THE INSURED

The unqualified word "Insured", either in the singular or plural, means:

- A. the Named Insured herein defined as the person(s) or organization(s) stated in Item 1. of the Declarations;
- B. any past or current principal, partner, officer, director or shareholder of the Named Insured or Predecessor Firm, solely while acting on behalf of the Named Insured or Predecessor Firm and within the scope of their duties as such;
- C. any past or current employee of the Named Insured or Predecessor Firm solely while acting on behalf of the Named Insured or Predecessor Firm and within the scope of their duties as such;
- D. any temporary or leased professional personnel working on behalf of the Named Insured or Predecessor Firm and under the direct supervision of the Insured solely for Professional Services performed for the Named Insured or Predecessor Firm;
- E. if the Named Insured or Predecessor Firm is a limited liability company, any past or current manager thereof, solely while acting on behalf of the Named Insured or Predecessor Firm and within the scope of their duties as manager of such limited liability company and any past or current member thereof, solely while acting on behalf of the Named Insured or Predecessor Firm and within the scope of their duties as a member of such limited liability company;
- F. any Predecessor Firm of the Named Insured;
- G. the heirs, executors, administrators, assigns and legal representatives of each Insured above in the event of death, incapacity or bankruptcy of such Insured but only for such Insured's liability as is otherwise covered herein.

INSURING AGREEMENT

- A. **Architects and Engineers Professional Liability – Claims Made Coverage:** The Company shall pay on behalf of the Insured all sums in excess of the Deductible stated in Item 5. of the Declarations which the Insured shall become legally obligated to pay as Damages as a result of a Claim first made against the Insured during the Policy Period or during the Extended Reporting Period, if exercised, and reported to the Company pursuant to Section Claims A., Claim Reporting Provision, by reason of a Wrongful Act in the performance of Professional Services rendered or that should have been rendered by the Insured or by any person or organization for whose Wrongful Act the Insured is legally responsible, provided:

1. the entirety of such Wrongful Act happens during the Policy Period or on or after the Retroactive Date stated in Item 6. of the Declarations and before the end of the Policy Period; and
2. prior to the effective date of this policy the Insured had no knowledge of such Wrongful Act or any fact, circumstance, situation or incident which may have led a reasonable person in the Insured's position to conclude that a Claim was likely.

SUPPLEMENTARY PAYMENTS

- A. Regulatory or Administrative Actions:** With respect to Claims which are Regulatory or Administrative Actions, upon submission to the Company of satisfactory written proof of payment, the Company shall reimburse the Named Insured, up to twenty-five thousand dollars (\$25,000) per Policy Period including the Extended Reporting Period, if exercised, for Claim Expenses and Damages incurred and paid by the Named Insured in response to a Regulatory or Administrative Action first initiated during the Policy Period, or the Extended Reporting Period, if exercised.

The Named Insured shall give the Company written notice as stated in Item 10. of the Declarations as soon as practicable of any Regulatory or Administrative Action first initiated against the Insured during the Policy Period or the Extended Reporting Period, if exercised. In any event, such Regulatory or Administrative Action must be reported to Markel Service, Incorporated, within sixty (60) days after the end of the Policy Period or the Extended Reporting Period, if exercised.

Reimbursement pursuant to this Section A. shall be in addition to the Limits of Liability stated in Item 4. of the Declarations and shall not be subject to the Deductible.

- B. Loss of Earnings and Expense Reimbursement:** Upon submission to the Company of satisfactory written proof of payment, the Company shall reimburse the Named Insured as expense reimbursement all reasonable and necessary expenses incurred by an Insured at the Company's written request for attendance at any arbitration, mediation, deposition, hearing or trial in connection with a Claim to which this policy applies. The Named Insured shall give the Company written notice as stated in Item 10. of the Declarations of written proof of payment of expenses as soon as practicable. In any event, such written proof of payment must be reported to Markel Service, Incorporated on behalf of the Company, within sixty (60) days after incurring such expenses. The Company shall compensate the Named Insured for loss of earnings solely of an Insured a maximum of five hundred dollars (\$500) per day for all Insureds to attend at the Company's written request any arbitration, mediation, deposition, hearing or trial in connection with a Claim to which this policy applies.

The maximum the Company shall pay the Named Insured for compensation of all Insureds for all loss of earnings and expense reimbursements for all Claims to which this policy applies and all attendances at the Company's written request is fifteen thousand dollars (\$15,000).

Payments to the Named Insured pursuant to this Section B. shall be in addition to the Limits of Liability stated in Item 4. of the Declarations and shall not be subject to the Deductible.

- C. Subpoena/Record Request Assistance:** In the event that during the Policy Period:
1. the Insured first receives a subpoena or a request for the Insured's records or files or notice of deposition relative to a Wrongful Act in the performance of Professional Services rendered or that should have been rendered by the Insured or by any person or organization for whose Wrongful Act the Insured is legally responsible; and
 2. the Insured reports the receipt of such subpoena or request in writing to the Company as stated in Item 10. of the Declarations within thirty (30) days of such receipt and prior to a Claim being first made against the Insured arising out of such Wrongful Act;

Then the Company shall pay on behalf of the Insured, up to five thousand dollars (\$5,000) per Policy Period for reasonable and necessary legal fees and legal expenses incurred for engaging the services of legal counsel selected by the Company to assist the Insured in responding to such subpoena, request or notice of deposition.

Payment on behalf of the Insured pursuant to this Section C. shall be in addition to the Limits of Liability stated in Item 4. of the Declarations and shall not be subject to the Deductible.

- D. Professional License and Disciplinary Proceedings Coverage:** With respect to Claims which are Professional License and Disciplinary Proceedings, the Company shall pay on behalf of the Insured, up to fifty thousand dollars (\$50,000) per Policy Period including the Extended Reporting Period, if exercised, for Claim Expenses and Damages incurred in the defense of a Professional License and Disciplinary Proceeding first initiated during the Policy Period, or the Extended Reporting Period, if exercised.

The Insured shall give the Company written notice as stated in Item 10. of the Declarations as soon as practicable of any Professional License and Disciplinary Proceeding first initiated against the Insured during the Policy Period, or the Extended Reporting Period, if exercised, and in any event such written notice shall be provided prior to the Insured incurring any fees or expenses related to such matter.

Payment pursuant to this Section D. shall be in addition to the Limits of Liability stated in Item 4. of the Declarations and shall not be subject to any Deductible.

DEFINITIONS

- A. Building Information Modeling (BIM)** means the process of generating building data and the use and creation of plans and models using building modeling software in the design of buildings by the Insured.
- B. Claim** means the Insured's receipt of:
1. a written demand for money damages or remedial Professional Services involving this policy; or
 2. the service of suit or institution of arbitration proceedings against the Insured;
- provided, Claim shall include Regulatory or Administrative Action and Professional License and Disciplinary Proceeding.
- C. Claim Expenses** means reasonable and necessary amounts incurred by the Company, or by the Insured with the prior written consent of the Company, in the defense of that portion of any Claim for which coverage is afforded under this policy, including costs of investigation, court costs, costs of bonds to release attachments and similar bonds, but without any obligation of the Company to apply for or furnish any such bonds, and costs of appeals; provided, however, that Claim Expenses shall not include: (1) salary, wages, overhead, or benefit expenses of or associated with employees or officials of the Named Insured or employees or officials of the Company; or (2) salary, wages, administration, overhead, benefit expenses, or charges of any kind attributable to any in-house counsel or captive out-of-house counsel for the Named Insured or the Company.
- D. Damages** means the monetary portion of any judgment, award or settlement; provided, however, Damages shall not include: (1) punitive or exemplary damages or any multiplied portions of damages in excess of actual damages, including trebling of damages; (2) taxes, criminal or civil fines, or attorneys' fees of a party other than an Insured or other penalties imposed by law; (3) sanctions; (4) matters which are uninsurable under the law pursuant to which this policy shall be construed; (5) liquidated damages; or (6) the return, withdrawal, reduction, restitution or payment of any fees, profits or charges for services or consideration and/or expenses paid to the Insured for services or goods.
- E. Mediation** means the voluntary process in which an objective third party who is a qualified professional mediator selected by the parties to the Claim, with written agreement of the Company, intervenes between the parties in an attempt to achieve settlement of the Claim. Mediation does not include litigation, arbitration or court mandated proceeding.
- F. Policy Period** means the period from the inception date of this policy to the policy expiration date stated in Item 3. of the Declarations, or the effective date of any earlier cancellation or termination.
- G. Predecessor Firm** means any legal entity which is no longer in operation and which was engaged in the same essential profession in which the Named Insured is currently engaged, provided the Named Insured is the successor in interest to at least seventy-five percent (75%) of the financial assets of such predecessor entity.
- H. Professional License and Disciplinary Proceeding** means the Insured's receipt of notice of:
1. any federal or state inquiry or review involving the Named Insured's professional licensure, with the possibility of

adversely affecting the Insured's license or licensing status;

2. any disciplinary proceeding against the Insured conducted by any federal or state professional regulatory agency; however, Professional License and Disciplinary Proceeding shall not include any criminal proceeding.

I. Professional Services means services performed in any of the following professional capacities:

1. architect, engineer, or design professional; design, technical, planning or environmental consultant; construction manager, land surveyor, landscape architect, scientist, trainer or expert witness; all when such services are rendered for others for a fee;
2. Green, Green Building and sustainable design and consulting services including those services rendered in the role of LEED (Leadership in Energy and Environmental Design) Accredited Professional; all when such services are rendered for others for a fee;
3. Building Information Modeling (BIM) services rendered for others for a fee;
4. Any of the professional capacities listed in Item I.1. above, that are rendered on a volunteer or pro bono basis for a nonprofit organization under Section 501(c) of the Internal Revenue Code of 1986, as amended, or governmental entity, such as those that might be rendered after a natural disaster or relative to a local community-oriented public project.

J. Regulatory or Administrative Action means the Insured's receipt of a regulatory or administrative action against an Insured by a governmental agency:

1. under the Americans with Disabilities Act of 1990 or similar state or local laws;
2. under the Fair Housing Act;
3. under the Occupational Safety and Health Act;
4. pursuant to a zoning designation or variance or any other building approval; or
5. under any environmental ordinance, statute, regulation or rule.

K. Wrongful Act means any negligent act, error or omission in Professional Services.

THE EXCLUSIONS

This policy does not apply to any Claim:

- A.** based upon or arising out of the liability of others assumed by the Insured under any contract or agreement including, but not limited to, hold harmless and indemnity clauses, warranties, guarantees, certifications or penalty clauses; provided, however, this exclusion shall not apply to liability an Insured would have in the absence of the contract or agreement by reason of a Wrongful Act of the Insured in the performance of Professional Services;
- B.** based upon or arising out of a Wrongful Act committed by a person, organization, or joint venture of which an Insured is a principal, partner, officer, director, manager, member, employee or owner, which is not stated in Item 1. of the Declarations, unless specifically endorsed hereon;
- C.** made against the Insured:
 1. by any person or organization or its subrogee, assignee, contractor, subcontractor, or parent company, subsidiary, division or affiliated organization which was or is operated, managed, owned or otherwise controlled, whether directly or indirectly, or in whole or in part, by:
 - (a) any Insured or parent organization or any subsidiary, division or affiliated organization;
 - (b) any principal, partner, officer, director, manager, member, or shareholder of the Named Insured;
 2. by any principal, partner, officer, director, member, manager, employee or shareholder of the Named Insured or any subrogee or assignee of such person; or
 3. by or on behalf of any person or organization included on the definition of the Insured;

- D. based upon, arising out of, or in any way involving:
 - 1. the employment relationship or the nature, terms or conditions of employment or any workplace tort brought by or on behalf of any employee, former employee, prospective employee, independent contractor or consultant of the Insured;
 - 2. any obligation of the Insured under any workers' compensation, unemployment compensation or disability benefits law or under any similar law;
 - 3. any unlawful discrimination;
- E. based upon or arising out of piracy, unfair competition, infringement of or inducement of infringement of copyright, patent, trademark, service mark, trade name, trade secret, title, trade dress, slogan, service name or other intellectual property right, including, but not limited to, intellectual property rights for design plans, building or design related models, software or computer programs or data or database item;
- F. based upon or arising out of the insolvency, receivership, bankruptcy or liquidation of the Named Insured;
- G. based upon or arising out of the ownership, rental, leasing, operation, maintenance, use or repair of any real or personal property, including damage to property at any time owned by, occupied by, or rented or leased to the Insured;
- H. based upon or arising out of the ownership, maintenance, operation or use, including loading and unloading, by, on behalf of, or at the direction of the Insured, of watercraft, automobiles, motor vehicles, aircraft, spacecraft or mobile vehicles of any kind;
- I. based upon or arising out of any kind of warranty or guarantee, express or implied, including but not limited to:
 - 1. any representation that a particular building will be able to obtain any LEED (Leadership in Energy and Environmental Design) certification, or that a particular building will obtain or will be able to obtain any such certification by a stipulated date in time; or
 - 2. any representation relative to the expected or actual specific performance of or specific output of any water, heating, cooling or any other type or nature of energy system;
- J. based upon, arising out of, or in any way involving conduct of the Insured or at the Insured's direction that is intentional, willful, dishonest, fraudulent or constitutes a willful violation of any statute or regulation; or
- K. based upon or arising out of the cost to repair or replace any faulty workmanship, construction, erection, fabrication, installation or remediation if such work is performed in whole or in part by:
 - 1. the Insured;
 - 2. any subcontractor of the Insured; or
 - 3. any parent organization, subsidiary, division or affiliated organization or any organization or any subsidiary of any organization that any Insured controls, manages or operates or holds more than a twenty-five percent (25%) ownership interest.

TERRITORY

The insurance afforded by this policy applies worldwide, provided the Claim is made in the United States of America, its territories or possessions, Puerto Rico or Canada.

LIMITS OF LIABILITY

- A. **Limit of Liability - Each Claim:** The total liability of the Company for the combined total of Damages and Claim Expenses for each Claim, other than a Regulatory or Administrative Action and other than a Professional License and Disciplinary Proceeding, first made against the Insured during the Policy Period or Extended Reporting Period, if exercised, shall not exceed the Limit of Liability stated in Item 4.A. of the Declarations as applicable to Each Claim.

B. Limit of Liability - Policy Aggregate: Subject to the above Limits of Liability A., the total liability of the Company shall not exceed the Policy Aggregate Limit of Liability stated in Item 4.B. of the Declarations for all Damages and Claim Expenses arising out of all Claims, other than Regulatory or Administrative Actions and other than Professional License and Disciplinary Proceedings, first made during the Policy Period and the Extended Reporting Period, if exercised.

C. Deductible – Each Claim: The Deductible amount stated in Item 5.A. of the Declarations shall be paid by the Named Insured and shall be applicable to each Claim, other than a Regulatory or Administrative Action and other than a Professional License and Disciplinary Proceeding, and shall include Damages and Claim Expenses, whether or not any Damages payments are made.

Such amounts shall, upon written demand by the Company, be paid by the Named Insured within ten (10) days. The total payments requested from the Named Insured in respect of each Claim shall not exceed the Deductible amount stated in Item 5.A. of the Declarations. The determination of the Company as to the reasonableness of the Claim Expenses shall be conclusive on the Named Insured.

D. Deductible Credit:

1. For LEED certified buildings the each Claim Deductible will be reduced by fifty percent (50%) or twenty-five thousand dollars (\$25,000), whichever is less, for any Claim arising from any building which at the time Claim was made had formally and officially been granted any of the following LEED certifications: LEED Certified; LEED Silver; LEED Gold; or LEED Platinum.
2. For award winning buildings the each Claim Deductible will be reduced by fifty percent (50%) or twenty-five thousand dollars (\$25,000), whichever is less, for any Claim arising from any building which at the time Claim was made, the Named Insured had received any design award from the American Institute of Architects national organization or from any American Institute of Architects state or local affiliated association or chapter.
3. If a Claim is settled without litigation, arbitration, Mediation or court mandated proceedings, the each Claim Deductible for such Claim will be reduced by seventy-five percent (75%) or twenty-five thousand dollars (\$25,000), whichever is less.
4. If the Named Insured and the Company agree to the use of Mediation and a Claim is settled at that Mediation, the each Claim Deductible for such Claim will be reduced by fifty percent (50%) or twenty-five thousand dollars (\$25,000), whichever is less.
5. The maximum Deductible credit for all Items 1. - 4. above shall not exceed the larger of: fifty percent (50%) or twenty-five thousand dollars (\$25,000) in total; or seventy-five percent (75%) or twenty-five thousand dollars (\$25,000) when a Claim is settled without litigation, arbitration, Mediation or court mandated proceedings. The Deductible credits are not additive or cumulative.

E. Policy Aggregate Deductible: Subject to the above Limits of Liability C. and D., the total Deductible payments to be paid by the Named Insured shall not exceed the Policy Aggregate Deductible stated in Item 5.B. of the Declarations for Damages and Claim Expenses arising out of all Claims, other than Regulatory or Administrative Actions and other than Professional License and Disciplinary Proceedings, first made during the Policy Period and the Extended Reporting Period, if exercised.

F. Multiple Insureds, Claims and Claimants: The inclusion herein of more than one Insured in any Claim or the making of Claims by more than one person or organization shall not operate to increase the Limits of Liability stated in Item 4. of the Declarations. More than one Claim arising out of a single Wrongful Act or a series of related Wrongful Acts shall be considered a single Claim. All such Claims, whenever made, shall be treated as a single Claim. Such single Claim, whenever made, shall be deemed to be first made on the date on which the earliest Claim arising out of such Wrongful Act is made or with regard to notice given to and accepted by the Company pursuant to Section Claims B., Discovery Clause, on the date within the Policy Period on which such notice of potential Claim is first received by the Company.

DEFENSE, SETTLEMENTS AND CLAIM EXPENSES

A. Defense, Investigation and Settlement of Claims: The Company shall have the right and duty to defend and investigate any Claim to which coverage under this policy applies pursuant to the following provisions:

1. Claim Expenses incurred in defending and investigating such Claim shall be a part of and shall not be in addition to the Limits of Liability stated in Item 4. of the Declarations. Such Claim Expenses shall reduce the Limits of Liability and shall be applied against the Deductible. The Company shall have no obligation to pay any Damages or to defend or continue to defend any Claim or to pay Claim Expenses after the Limits of Liability stated in Item 4. of the Declarations have been exhausted by payment(s) of Damages and/or Claim Expenses.
2. The Company shall select defense counsel; provided, however, that if the law of the state of the Named Insured's domicile, stated in Item 2. of the Declarations, allows the Insured to control the selection of defense counsel where a conflict of interest has arisen between the Insured and the Company, the Company will provide a list of attorneys or law firms from which the Insured may designate defense counsel who shall act solely in the interest of the Insured, and the Insured shall direct such defense counsel to cooperate with the Company. Such cooperation shall include:
 - (a) providing on a regular basis, but not less frequently than every three (3) months, written reports on claimed Damages, potential liability, progress of any litigation, any settlement demands, or any investigation developments that materially affect the Claim;
 - (b) providing any other reasonable information requested;
 - (c) fully itemized billing on a periodic basis; and
 - (d) cooperating with the Company and the Insured in resolving any discrepancies;

and the fees and costs incurred by such defense counsel, including those fees and costs generated by cooperation with the Company, as set forth above, shall be included in Claim Expenses. Such Claim Expenses shall be a part of and shall not be in addition to the Limits of Liability stated in Item 4. of the Declarations. Such Claim Expenses shall reduce the Limits of Liability and shall be applied against the Deductible.

B. Consent to Settlement: The Company shall not settle any Claim without the prior written consent of the first Named Insured, but the Company shall have, at all times, the right to recommend a settlement of any Claim. If the first Named Insured shall refuse to settle such Claim pursuant to the Company's recommendations, then any amount in excess of: (1) the amount for which the Claim could have been settled; and (2) the amount of any Claim Expenses incurred up to the date of the first Named Insured's refusal to settle the Claim; shall be borne equally by the Named Insured and the Company. Such amounts are subject to the provisions of the Section Limits of Liability A. and B.

CLAIMS

A. Claim Reporting Provision: It is a condition precedent to coverage afforded by this policy that the Insured shall give to the Company written notice as stated in Item 10. of the Declarations as soon as practicable of any Claim first made against the Insured during the Policy Period or the Extended Reporting Period, if exercised.

In the event suit is brought against the Insured, the Insured shall immediately forward to Markel Service, Incorporated, Ten Parkway North, Deerfield, Illinois, 60015, on behalf of the Company, every demand, notice, summons or other process received by him/her or by his/her representatives.

B. Pre-Claim Reporting Provision: If during the Policy Period, the Insured first becomes aware of a specific Wrongful Act which is reasonably expected to result in a Claim within the scope of coverage of this policy, then the Insured may provide written notice as stated in Item 10. of the Declarations to the Company containing the information listed below. If such written notice is received by the Company during the Policy Period, then any Claim subsequently made against the Insured arising out of such Wrongful Act shall be deemed for the purpose of this insurance to have been first made on the date on which such written notice is received by the Company.

It is a condition precedent to the coverage afforded by this Discovery Clause that written notice be given to the Company containing the following information:

1. the description of the specific Wrongful Act;
2. the date on which such Wrongful Act took place;

3. the injury or damage which has or may result from such Wrongful Act;
4. the identity of any injured persons and/or organization subject to such injury and/or damage; and
5. the circumstances by which the Insured first became aware of such Wrongful Act.

Subject to the paragraphs hereinabove, if during the Policy Period the Insured provides such written notice of a specific Wrongful Act which is reasonably expected to result in a Claim within the scope of coverage of this policy, the Company at its sole option, may investigate such specific Wrongful Act. Such matter shall be subject to all terms, conditions and provisions in this policy as applicable to a Claim.

- C. Assistance and Cooperation of the Insured:** The Insured shall cooperate with the Company and upon the Company's request, the Insured shall: (1) submit to examination and interview by a representative of the Company and while not in the presence of any other Insured, under oath if required; (2) attend hearings, depositions and trials; (3) assist in effecting settlement, securing and giving evidence and obtaining the attendance of witnesses in the conduct of suits; and (4) give a written statement or statements to the Company's representatives and meet with such representatives for the purpose of determining coverage and investigating and/or defending any Claim; all without cost to the Company, other than expense reimbursement provided under Section Supplementary Payments. The Insured shall further cooperate with the Company and do whatever is necessary to secure and effect any right of indemnity, contribution or apportionment which the Insured may have.

The Insured shall not, with respect to any Claim covered under this policy, except at his/her own cost, make any payment, admit any liability, settle any Claims, assume any obligation, agree to arbitration or any similar means of resolution of any dispute, waive any rights or incur Claim Expenses without the Company's prior written consent, such consent not to be unreasonably withheld. Any costs and expenses incurred by the Insured prior to the Insured giving written notice of the Claim to the Company shall be borne by the Insured and will not constitute satisfaction of the Deductible.

- D. False or Fraudulent Claims:** If any Insured shall commit fraud in proffering any Claim, this insurance shall become void from the date such fraudulent Claim is proffered.

EXTENDED REPORTING PERIOD

- A.** If the Named Insured nonrenews this policy or cancels this policy pursuant to Section Other Conditions A., Cancellation, or if the Company nonrenews this policy or cancels this policy pursuant to Section Other Conditions A., Cancellation, for reasons other than nonpayment of premium, Deductible or non-compliance with the terms and conditions of this policy, then the Named Insured shall have the right upon payment of an additional premium calculated at that percentage stated in Item 8. of the Declarations of the annual premium for the Policy Period, to extend the coverage granted under this policy for the period of months stated in Item 8. of the Declaration, as elected by the Named Insured, to apply to Claims first made against the Insured during the period of months as elected, and reported to the Company pursuant to Section Claims A., Claim Reporting Provision, following immediately upon the effective date of such cancellation or nonrenewal, by reason of any Wrongful Act the entirety of which happened on or after the Retroactive Date stated in Item 6. of the Declarations and prior to the effective date of such cancellation or nonrenewal and which is otherwise covered by this policy.

This extended period of coverage as elected by the Named Insured and described herein shall be referred to in this policy as the Extended Reporting Period.

If, however, this policy is immediately succeeded by similar claims made insurance coverage on which the Retroactive Date is the same as or earlier than that stated in the Item 6. of the Declarations, the succeeding insurance shall be deemed to be a renewal hereof and, in consequence, the Named Insured shall have no right to purchase an Extended Reporting Period.

The quotation of a different premium and/or Deductible and/or Limit of Liability for renewal does not constitute a cancellation or refusal to renew for the purpose of this provision.

- B.** As a condition precedent to the right to purchase the Extended Reporting Period, the Named Insured must have paid: (1) all Deductibles when due; (2) all premiums due for the Policy Period; and (3) all premium and deductibles

due on any other policy(ies) issued by the Company or any of its affiliated companies in an uninterrupted series of policies of which this policy is a renewal or replacement of. The right to purchase the Extended Reporting Period shall terminate unless a written notice as stated in Item 10. of the Declarations of such election for the Extended Reporting Period is received by the Company within thirty (30) days after the effective date of cancellation or nonrenewal together with full payment of the additional premium for the Extended Reporting Period. If such written request and payment of additional premium are not so received by the Company, there shall be no right to purchase the Extended Reporting Period at a later date.

- C. In the event of the purchase of the Extended Reporting Period the entire premium therefor shall be fully earned at its commencement.
- D. The Extended Reporting Period shall not in any way increase the Limits of Liability stated in Item 4. of the Declarations.

OTHER CONDITIONS

- A. **Cancellation:** This policy may be cancelled by the Named Insured on behalf of all Insureds by mailing to the Company written notice as stated in Item 10. of the Declarations stating when thereafter such cancellation shall be effective. If cancelled by the Named Insured, the earned premium shall be computed at the customary short rate. Payment or tender of unearned premium shall not be a condition precedent to the effectiveness of cancellation, but such payment shall be made as soon as practicable.

This policy may be cancelled by the Company or by its underwriting manager, on behalf of the Company, by mailing to the Named Insured, at the address stated in Item 2. of the Declarations, written notice stating when, not less than thirty (30) days thereafter, such cancellation shall be effective. However, if the Company cancels the policy because the Named Insured has failed to pay a premium or Deductible when due, including premium and/or deductible(s) due on any other policy(ies) issued by the Company or any of its affiliated companies in an uninterrupted series of policies of which this policy is a renewal or replacement, this policy may be cancelled by the Company or its underwriting manager, on behalf of the Company, by mailing a written notice of cancellation to the Named Insured stating when, not less than ten (10) days thereafter, such cancellation shall be effective. The mailing of notice as aforementioned shall be sufficient notice and the effective date of cancellation stated in the notice shall become the end of the Policy Period. Such notice shall be conclusive on all Insureds. Delivery of such written notice by the Named Insured, the Company or its underwriting manager shall be equivalent to mailing. If cancelled by the Company or its underwriting manager, earned premium shall be computed pro rata. Premium adjustment may be made at the time cancellation is effected or as soon as practicable thereafter.

- B. **Representations:** By acceptance of this policy, the Insureds agree as follows:
 - 1. that the information and statements contained in the application(s) are the basis of this policy and are to be considered as incorporated into and constituting a part of this policy; and
 - 2. that the information and statements contained in the application(s) are their representations, that they shall be deemed material to the acceptance of the risk or hazard assumed by the Company under this policy, and that this policy is issued in reliance upon the truth and accuracy of such representations.
- C. **Entire Agreement:** This policy, the Declarations, the application(s) and any written endorsements attached hereto shall be deemed to be a single unitary contract.
- D. **Other Insurance:** This insurance shall be in excess of the Deductible stated in Item 5. of the Declarations and any other insurance available to the Insured whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise, unless such other insurance is written only as a specific excess insurance over the Limits of Liability provided in this policy.
- E. **Changes:** Notice to any agent or knowledge possessed by any agent or other person acting on behalf of the Company shall not effect a waiver or a change in any part of this policy and shall not estop the Company from asserting any right under the terms of the policy. The terms of this policy shall not be waived or changed, except by written endorsement issued to form a part of this policy, and this policy embodies all agreements existing between the Insureds and the Company or any of its agents relating to this insurance.

- F. **Assignment of Interest:** Assignment of interest under this policy shall not bind the Company unless its consent is endorsed hereon.
- G. **Subrogation:** In the event of any payment under this policy, the Company shall be subrogated to the right of recovery of all Insureds to the extent of such payment. The Insured shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The Insured shall do nothing after the Claim to prejudice such rights. The Company shall waive any right of subrogation to the extent the Named Insured waived its right to subrogate against such person or organization by a formal written contract which was fully executed prior to any Claim arising from such contract being made.

Any amount recovered from subrogation, whether by the Company or by the Insured, shall first be used for the repayment of expenses incurred toward subrogation; second, for any Damages and Claim Expenses payment by the Insured which is in excess of the amount of the Limit of Liability under this policy and which is excess of any amount paid by any insurer under any other policy; third, for any damages and claims expenses payment by any excess carrier on behalf of the Insured; fourth, for any damages and claim expenses payment by any primary carrier on behalf of the Insured; and, last, for repayment of the Insured's Deductible.

- H. **Audit:** The Company shall have the right to require of the Named Insured an audit by a duly authorized representative of the Company, who shall have the right and opportunity to examine the books and records of the Named Insured, and such examination may be made at any time during the Policy Period and within three (3) years thereafter.
- I. **Action Against the Company:** No action shall lie against the Company unless, as a condition precedent thereto, the Insured shall have fully complied with all of the terms and conditions of this policy, nor until the amount of the Insured's obligation to pay shall have been fully and finally determined either by judgment against the Insured after actual trial or by written agreement of the Insured, the claimant and the Company.

Nothing contained in this policy shall give any person or organization any right to join the Company as a co-defendant in any action against the Insured to determine the Insured's liability. Bankruptcy or insolvency of the Insured or of the Insured's estate shall not relieve the Company of any of its obligations hereunder.

- J. **Authorization:** By acceptance of this policy, the first person or organization named in Item 1. of the Declarations shall act on behalf of all Insureds with respect to the giving and receiving of all notices to and from the Company as provided herein: the exercising of the Extended Reporting Period; the cancellation of this policy in whole or part; the payment when due of premiums and Deductibles; the receiving of any return premiums that may become due under this policy; and the Insureds agree that such person or organization shall act on their behalf.

- K. **Service of Suit:** Except with respect to any policy issued in any state in which the Company is licensed as an admitted insurer to transact business, it is agreed that in the event of the failure of the Company to pay any amount claimed to be due hereunder, the Company, at the request of the Named Insured, will submit to the jurisdiction of a court of competent jurisdiction within the United States and will comply with all requirements necessary to give such court jurisdiction and all matters arising hereunder shall be determined in accordance with the law and practice of such court. Nothing in this clause constitutes or should be understood to constitute a waiver of the Company's rights to commence an action in any court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another court as permitted by the laws of the United States or of any state in the United States. It is further agreed that service of process in such suit may be made upon Secretary, Legal Department, Markel Midwest, Ten Parkway North, Deerfield, Illinois 60015 and that in any suit instituted against the Company upon this policy, the Company will abide by the final decision of such court or of any appellate court in the event of an appeal.

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