

## **CORRESPONDENT AGREEMENT**

**THIS CORRESPONDENT AGREEMENT** (the "Agreement"), made as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between **Capitol Special Risks, Inc.**, a Georgia corporation, and \_\_\_\_\_, a [state] [corporation or LLC] (the "Correspondent").

### **WITNESSETH:**

**WHEREAS**, Capitol Special Risks, Inc. is a licensed insurance and surplus lines agency in Georgia and other states and places contracts of insurance with various insurers who may or may not be admitted to do business in the State of the insured's residence or the location of the risk; and

**WHEREAS**, Correspondent is a licensed property casualty agent and may from time to time request Capitol Special Risks, Inc. to obtain insurance coverage for customers of Correspondent.

**NOW, THEREFORE**, in consideration of the mutual covenants and conditions contained herein and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, Capitol Special Risks, Inc. and Correspondent intending to be legally bound, hereby agree as follows:

#### **1. SCOPE OF AGREEMENT**

This Agreement shall govern the relationship between Capitol Special Risks, Inc. and Correspondent with respect to all policies of insurance insuring clients of Correspondent heretofore or hereafter obtained by Capitol Special Risks, Inc. at the request of Correspondent. Nothing contained herein shall be construed to require Correspondent to obtain insurance through Capitol Special Risks, Inc. or to require Capitol Special Risks, Inc. to accept orders for insurance from Correspondent.

#### **2. DURATION AND TERMINATION**

This Agreement shall continue in effect until either party chooses to terminate it, which must be done by written notice to the other party at the address set forth in the signature block or such other address as provided by a party. Termination will be effective upon the date stated in such notice. Notwithstanding such termination, this Agreement shall continue to apply to all policies requested by Correspondent through Capitol Special Risks, Inc. prior to the effective date of termination.

#### **3. CORRESPONDENT'S AUTHORITY**

Nothing contained in this Agreement shall be construed to make Correspondent an agent for Capitol Special Risks, Inc. in any respect, and Correspondent shall have no authority to, and agrees that it will not, make representations on behalf of Capitol Special Risks, Inc., or obligate Capitol Special Risks, Inc., to clients of Correspondent, to insurers represented by Capitol Special Risks, Inc., or to any other third parties. It is understood and agreed that each party to this Agreement is an independent contractor.

#### **4. OWNERSHIP OF BUSINESS AND EXPIRATIONS**

Correspondent shall retain ownership of all insurance business subject to this Agreement and the use and control of all expirations with respect to insurance obtained through Capitol Special Risks, Inc., except that if Correspondent shall at any time be in default in any of its obligations hereunder, then Capitol Special Risks, Inc. shall have the right for so long as such default shall continue to the exclusive use and control of any or all such expirations and to apply proceeds thereof to the fulfillment of Correspondent's obligations; provided, however, that minor accounting discrepancies shall not be deemed to constitute a default for purposes of this Paragraph.

## **5. LICENSE OF CORRESPONDENT**

Correspondent represents and warrants to Capitol Special Risks, Inc. that Correspondent is licensed as a property and casualty insurance agent in the jurisdictions where Correspondent seeks to sell insurance and Correspondent shall continue to be so licensed during the duration of this Agreement with respect to all insurance business which Correspondent shall submit to Capitol Special Risks, Inc.

## **6. PLACEMENT OF ORDERS**

Correspondent agrees that it shall not place an order with Capitol Special Risks, Inc. for insurance unless Correspondent shall have first complied with all applicable state laws requiring Correspondent to attempt to procure such insurance from admitted insurers.

## **7. PAYMENT OF PREMIUM**

Correspondent shall be obligated to pay to Capitol Special Risks, Inc. all premiums and taxes (if any) with respect to policies of insurance ordered through Capitol Special Risks, Inc. whether or not Correspondent shall have actually collected such premiums and taxes from the insured. *Unless otherwise agreed in writing with respect to a particular premium and tax*, the entire premium and tax on each policy shall be due and payable within fifteen (15) days following the date of binding, provided, that, as long as Correspondent is not in breach in any of its obligations hereunder, Correspondent may withhold therefrom any commission payable to Correspondent with respect thereto pursuant to Paragraph 8 hereof. If Correspondent is in breach of this Agreement, Correspondent hereby authorizes Capitol Special Risks, Inc. to deduct any amounts owed to it from any commissions, return premiums or return taxes that would otherwise be paid to Correspondent. If any insured and/or the Correspondent shall default in the payment of any premium and/or tax as and when due, Capitol Special Risks, Inc. shall have the right, and is hereby authorized by Correspondent, to take all necessary action, including legal action, to collect the premium and tax directly from the insured, but the taking of any such action by Capitol Special Risks, Inc. shall not relieve Correspondent of its obligation to pay such premium and tax to Capitol Special Risks, Inc. Nothing in this subsection shall limit Capitol Special Risks, Inc.'s right to pursue means other than or in addition to offset to recover the full amount of any outstanding obligations due it.

## **8. COMMISSIONS**

Capitol Special Risks, Inc. shall pay Correspondent commissions upon premiums paid over to Capitol Special Risks, Inc. with respect to policies of insurance ordered through Capitol Special Risks, Inc. by Correspondent, at rates agreed to in writing between Capitol special Risks, Inc. and Correspondent on a case by case basis. Capitol Special Risks, Inc. shall deduct from each return premium (including any return premium arising from a cancellation ordered by Capitol Special Risks, Inc.), a return commission calculated at the same rate as Correspondent's original commission thereon.

## **9. CANCELLATIONS OF INSURANCE**

Nothing contained herein shall be construed to limit or restrict any rights of cancellation contained in any binder, cover note, policy or contract of insurance. Correspondent shall not be entitled to any flat cancellation, and Correspondent shall be liable to Capitol Special Risks, Inc. for any earned premium and taxes (if any) thereon, whether or not Correspondent has collected from the insured.

## **10. CLAIMS**

Correspondent shall cooperate fully with Capitol Special Risks, Inc. and the insurer to facilitate the investigation, adjustment, settlement and payment of any claim.

## **11. INSPECTIONS AND ADJUSTMENTS**

Capitol Special Risks, Inc. and/or its duly authorized representatives shall have the right to verify Correspondent's compliance with its obligations under this Agreement through audit of the any insurance

subject to this Agreement and to inspect Correspondent's books and records in connection therewith.. Correspondent shall promptly report and pay to Capitol Special Risks, Inc. any additional or return premiums which may become due as a result of any audit.

## **12. INDEMNIFICATION**

- a) Correspondent shall indemnify and hold harmless Capitol Special Risks, Inc. with respect to any and all claims, actions, liabilities, losses, suits and expenses, including attorneys' fees (hereinafter, "CSR Loss"), in any manner arising or resulting from any breach by Correspondent of any provision of this Agreement or from any warranty or representation by Correspondent contained herein being false in any respect. Capitol Special Risks, Inc. shall promptly notify Correspondent of any CSR Loss upon Capitol Special Risk, Inc. becoming aware of such CSR Loss.
- b) Capitol Special Risks, Inc. shall indemnify and hold harmless Correspondence with respect to any and all claims, actions, liabilities, losses, suits and expenses, including attorneys' fees (hereinafter, "Correspondent Loss"), in any manner arising or resulting from any breach by Capitol Special Risks, Inc. of any provision of this Agreement or from any warranty or representation by Capitol Special Risks, Inc. contained herein being false in any respect. Correspondent shall promptly notify Capitol Special Risks, Inc. of any Correspondent Loss upon Correspondent becoming aware of such Correspondent Loss.
- c) IN NO EVENT SHALL ANY PARTY OR ANY OF ITS REPRESENTATIVES BE LIABLE UNDER THIS AGREEMENT TO THE OTHER PARTY OR ANY THIRD PARTY FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL OR PUNITIVE DAMAGES, INCLUDING ANY DAMAGES FOR BUSINESS INTERRUPTION, LOSS OF USE, REVENUE OR PROFIT, WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT THE BREACHING PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING THE FOREGOING, THE LIMITATIONS AND EXCLUSIONS CONTAINED IN THIS PARAGRAPH 12 SHALL NOT APPLY TO (I) THIRD PARTY CLAIMS THAT ARE SUBJECT TO INDEMNIFICATION UNDER PARAGRAPH 12, (II) THE WILLFUL MISCONDUCT OF A PARTY IN PERFORMING ITS OBLIGATIONS UNDER THIS AGREEMENT, OR (III) DAMAGES OR LIABILITIES TO THE EXTENT COVERED BY THE BREACHING PARTY'S INSURANCE.

## **13. NO THIRD PARTY BENEFICIARIES**

This Agreement is for the exclusive benefit of the parties hereto, and no third party, including, without limitation, any insured, is intended to be or shall be a beneficiary of any provision hereof.

## **14. ADDITIONAL PROVISIONS**

Correspondent may not assign any of its rights or delegate any of its obligations under this Agreement in whole or in part, by operation of law or otherwise, without the prior written consent of Capitol Special Risks, Inc. Any assignment in violation of this Agreement shall be null and void. No failure by either party to require performance by the other party of any provision hereof shall be a waiver of such provision, and no waiver or amendment of provision hereof shall be effective unless in writing. This Agreement constitutes the entire agreement of the parties and supersedes all prior agreements, whether written or oral. Subject to the prohibition against assignment or delegation by Correspondent, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns. This Agreement may not be changed or amended except through a written agreement between the parties.

## 15. ADJUSTABLE POLICIES

Capitol Special Risks, Inc. agrees that, if an audit of an adjustable insurance policy results in additional premium due from the insured and if (a) Correspondent notifies Capitol Special Risks, Inc. in writing that Correspondent has been unable, after reasonable effort, to collect such additional premium from the insured, and (b) the insurer waives Capitol Special Risks, Inc.'s liability for the additional premium, then Capitol Special Risks, Inc. will waive Correspondent's liability for such premium. In the event of such waiver by Capitol Special Risks, Inc., then, notwithstanding the provisions of Paragraph 8 hereof, Correspondent shall not be entitled to any commission with respect to any part of such additional premium which may be collected from the insured.

## 16. MISCELLANEOUS

- (a) The headings contained in this Agreement are for reference and convenience only and shall not affect the meaning or interpretation of this Agreement.
- (b) This Agreement shall be governed by and interpreted in accordance with the laws of the State of Georgia without giving effect to its principles of conflicts of law. The parties each consent to personal jurisdiction in the State of Georgia and agree that the exclusive venue and place for trial for any legal actions or proceedings arising in connection with the interpretation or enforcement of this Agreement shall be the state courts of Georgia sitting in Cobb County, Georgia or the Federal Court for the federal district encompassing Cobb County, Georgia. In the event any provision in this Agreement shall be determined to be invalid, illegal or unenforceable in any respect, the remaining provisions of this Agreement shall not be impaired, and the illegal, invalid or unenforceable provision shall be severed from this Agreement and there shall be automatically added in lieu thereof a provision as similar in terms and intent to such severed provision as may be legal, valid and enforceable under applicable law.
- (c) Correspondent acknowledges and agrees that Capitol Special Risks, Inc. acts as a broker for insurance companies and does not have the power and authority to act on behalf of such issuers, including to bind coverage, accept notice to such issuers, etc. Specifically with respect to notices, any notices to insurance companies or any other third party received by Capitol Special Risks, Inc. from Correspondent, the insured or any other party shall not constitute notice to such insurance company or other third party, and Capitol Special Risks, Inc. is not obligated to provide any notice(s) it receives to the applicable insurance company or other third party.
- (d) Correspondent shall have and maintain (i) Errors & Omissions insurance coverage of not less than \$1,000,000 per occurrence for matters arising out of or relating to any and all aspects of Correspondent's business performed pursuant to this Agreement, and (ii) Fidelity insurance covering Correspondent and its employees. All insurance must be with an insurer with an A.M. Best rating of at least "A-". Correspondent shall provide Capitol Special Risks, Inc. with proof of such coverage upon request and shall provide notice of any material changes to coverage or notices of non-renewal or cancelation from the insurer(s).
- (e) This Agreement may be executed in one or more counterparts, including, but not limited to, facsimiles and scanned images. Each counterpart shall for all purposes be deemed to be an original, and each counterpart shall constitute this Agreement.
- (f) If there is a dispute about the language of this Agreement, the fact that one party drafted the Agreement shall not be used in its interpretation.

[signatures on following page]

[signatures]

**IN WITNESS WHEREOF**, the parties have executed this Correspondent Agreement as of the day and year first above written.

Correspondent

Capitol Special Risks, Inc.

By: \_\_\_\_\_  
Authorized Person (Print Please)

By: Dorothea P. Westin, CIC, CRM, CPIW

Its: \_\_\_\_\_

Its: President

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Street Address

1000 Parkwood Circle, Suite 925  
Atlanta, GA 30339

\_\_\_\_\_  
City, State and Zip