

**GREAT AMERICAN E & S INSURANCE COMPANY**  
**INDOOR AIR QUALITY AND MOLD LIABILITY INSURANCE POLICY**

**THIS IS A CLAIMS MADE AND REPORTED POLICY. READ IT CAREFULLY.**

**THIS POLICY REQUIRES THAT A CLAIM BE MADE AGAINST THE INSURED DURING THE POLICY PERIOD AND REPORTED TO THE COMPANY DURING THE POLICY PERIOD OR, IF APPLICABLE, THE EXTENDED REPORTING PERIOD.**

**SOME OF THE PROVISIONS CONTAINED IN THIS POLICY RESTRICT COVERAGE, SPECIFY WHAT IS AND IS NOT COVERED AND DESIGNATE RIGHTS AND DUTIES. LEGAL EXPENSE IS SUBJECT TO AND WILL ERODE THE LIMIT OF LIABILITY AND ANY APPLICABLE SELF-INSURED RETENTION.**

In this Policy, "the Company" refers to the company providing this insurance. Some other words and phrases that appear in capital letters have special meaning. Refer to Section II – DEFINITIONS.

In consideration of the payment of the Policy Premium and in reliance upon the statements contained in the Application and any other supplemental materials and information submitted in connection with the Application, and subject to all the terms, conditions, exclusions and limitations of this Policy, the Company agrees to provide insurance coverage to the INSURED as described herein:

**SECTION I. INSURING AGREEMENT**

**EACH OF THE FOLLOWING COVERAGES IS IN EFFECT ONLY IF IT IS SCHEDULED IN THE DECLARATIONS AND IS SUBJECT TO SECTION VI. LIMIT OF LIABILITY AND SELF-INSURED RETENTION.**

**A. COVERAGE A – INDOOR AIR QUALITY POLLUTION LEGAL LIABILITY**

The Company will pay on behalf of the INSURED for LOSS and related LEGAL EXPENSE because of a POLLUTION CONDITION on, at, or within any BUILDING(s) situated on a COVERED LOCATION(S), which the INSURED becomes legally obligated to pay as a result of a CLAIM first made against the INSURED during the POLICY PERIOD, but only if the INSURED reports the CLAIM to the Company, in writing, during the POLICY PERIOD or, if applicable, the EXTENDED REPORTING PERIOD.

**B. COVERAGE B – BUILDING RELATED CLEAN-UP COSTS**

The Company will pay on behalf of the INSURED for CLEAN-UP COSTS and related LEGAL EXPENSE because of a POLLUTION CONDITION on, at, or within any BUILDING(s) situated on a COVERED LOCATION(S):

1. which the INSURED becomes legally obligated to pay as a result of a CLAIM first made against the INSURED during the POLICY PERIOD; or
2. if the POLLUTION CONDITION is first discovered by the INSURED during the POLICY PERIOD;

but only if the INSURED notifies the Company of the CLAIM or POLLUTION CONDITION, in writing, during the POLICY PERIOD, or, if applicable, the EXTENDED REPORTING PERIOD.

**SECTION II. DEFINITIONS**

**A. ADDITIONAL NAMED INSURED** means any organization or entity identified as an ADDITIONAL NAMED INSURED in an endorsement issued by the Company, but solely for their liability as a result of their ownership, maintenance, use, operation, development or financial interest in any BUILDING(s) situated on a COVERED LOCATION(S).

**B. BODILY INJURY** means:

1. physical injury, sickness, disease, or building related illness sustained by any person, including death resulting therefrom, and, solely with regard to this Item B.1., any accompanying medical or environmental monitoring; and/or
2. mental anguish, emotional distress, or shock;

caused by a POLLUTION CONDITION.

**C. BUILDING(s)** means any man-made structure used or intended for supporting or sheltering any use or continuous occupancy.**D. CLAIM** means a demand, notice or assertion of a legal right alleging liability or responsibility on the part of the INSURED, arising out of a POLLUTION CONDITION, and shall include but not be limited to lawsuits, orders, petitions or governmental or regulatory actions, filed against the INSURED.**E. CLEAN-UP COSTS** means reasonable and necessary expenses incurred to investigate, remove, dispose of, abate, contain, treat or neutralize a POLLUTION CONDITION, including any monitoring and testing costs:

1. to the extent required by Federal, State, Local or Provincial Laws, including but not limited to statutes, rules, ordinances, guidance documents, regulations and all amendments thereto, including state voluntary cleanup or risk based corrective action guidance, governing the liability or responsibilities of the INSURED; or
2. in the absence of items in 1. above, to the extent recommended by a ENVIRONMENTAL PROFESSIONAL;

with respect to a POLLUTION CONDITION.

CLEAN-UP COSTS includes REPLACEMENT COSTS and also includes any associated punitive, exemplary or multiplied damages, where insurable by law.

**F. COVERED LOCATION(S)** means any location(s) stated in the Declarations or any location(s) scheduled as such onto this Policy by an endorsement issued by the Company.**G. ENVIRONMENTAL PROFESSIONAL** means an individual designated by the Company who is duly certified or licensed in a recognized field of environmental science as required by a state board, a professional association, or both. The Company shall consult with the INSURED in conjunction with the selection of the ENVIRONMENTAL PROFESSIONAL. The Company may require that such professional meet certain minimum qualifications and maintain errors and omissions insurance.**H. EXTENDED REPORTING PERIOD** means the Automatic Extended Reporting Period or, if applicable, the Optional Extended Reporting Period described in Section V. of this Policy.**I. FIRST NAMED INSURED** means the person or entity stated in the Declarations.**J. INSURED** means the FIRST NAMED INSURED, any ADDITIONAL NAMED INSURED added to this Policy by an endorsement issued by the Company, and any present or former director, officer, partner, member, employee, leased or temporary worker thereof, while acting within the scope of his/her duties as such.**K. LEGAL EXPENSE** means attorneys' fees and other charges and expenses incurred in the investigation, adjustment, defense, or settlement of any CLAIM for LOSS or CLEAN-UP COSTS, or in connection with the payment of any CLEAN-UP COSTS. LEGAL EXPENSE includes the fees and expenses of consultants, expert witnesses, accountants, court reporters, and other vendors, for goods or services in connection with such investigation, adjustment, defense, or settlement, whether incurred by the INSURED, defense counsel, or the Company.

LEGAL EXPENSE does not include salary charges of regular employees or officials of the Company, fees and expenses of supervisory counsel retained by the Company, or the time and expense incurred by the INSURED in assisting in the investigation or resolution of a CLAIM or in connection with CLEAN-UP COSTS, including but not

limited to the costs of the INSURED's in-house counsel.

**L. LOSS** means a monetary judgment, award or settlement of:

1. compensatory damages, or
2. punitive, exemplary or multiplied damages, civil fines, penalties and assessments, where insurable by law, because of BODILY INJURY and/or PROPERTY DAMAGE.

**M. MOLD MATTER** means mold, mildew or any type or form of fungus; including any mycotoxins, spores, or byproducts produced or released by fungi.

**N. POLICY PERIOD** means the period stated in the Declarations. However, if this Policy is cancelled, by either the FIRST NAMED INSURED or the Company, the policy period ends at the effective date and time of the cancellation.

**O. POLLUTANTS** mean any solid, liquid, or gaseous irritant or contaminant, including but not limited to smoke, vapors, odors, soot, fumes, dusts, acids, alkalis, toxic chemicals, hazardous substances, allergens, asbestos, lead, arsenic, mercury, pcbs, legionella, or MOLD MATTER.

**P. POLLUTION CONDITION** means any one or more of the following:

1. the discharge, dispersal, release, seepage, migration, or escape of POLLUTANTS;
2. the illicit abandonment of POLLUTANTS provided that such abandonment was committed by a person(s) or entity(ies) other than an INSURED and without any knowledge by a RESPONSIBLE PERSON;
3. the existence of MOLD MATTER.

**Q. PROPERTY DAMAGE** means:

1. physical injury to or destruction of tangible property of any person or organization other than an INSURED, including the resulting loss of use of such property, and including the personal property of such parties; or
2. loss of use of such property that has not been physically injured or destroyed; or
3. diminution in the value of such property;

caused by a POLLUTION CONDITION. However, PROPERTY DAMAGE does not include CLEAN-UP COSTS.

**R. REPLACEMENT COSTS** means reasonable and necessary costs incurred by the INSURED with the Company's written consent, to repair, restore or replace damaged real or personal property in order to restore the property to the condition it was in prior to being damaged in the course of incurring CLEAN-UP COSTS. REPLACEMENT COSTS shall not exceed the actual cash value of such real or personal property prior to incurring the CLEAN-UP COSTS. For the purposes of this definition, actual cash value means replacement cost reduced by physical depreciation and obsolescence.

**S. RESPONSIBLE PERSON** means any officer, director or partner of the INSURED; the manager or supervisor of the INSURED responsible for environmental or health and safety affairs, control or compliance; or any manager of a COVERED LOCATION(S).

**T. UNDERGROUND STORAGE TANK** means any container or vessel, including the associated piping connected thereto, which is ten percent (10%) or more beneath the surface of the ground.

### SECTION III. TERRITORY

This Policy applies only to CLAIMS first made or brought in the United States, its territories or possessions, Puerto Rico or Canada, but only if the INSURED'S responsibility to pay for LOSS is determined in:

- A. a proceeding on the merits conducted in the United States, its territories or possessions, Puerto Rico or Canada, or
- B. a settlement agreed to by the Company.

#### SECTION IV. EXCLUSIONS

**This Insurance does not apply to any LOSS, CLEAN-UP COSTS, LEGAL EXPENSE or other coverage afforded under this Policy or any endorsement issued by the Company:**

**1. Asbestos**

based upon or arising out of any asbestos or asbestos containing materials, in, on, or applied to any BUILDING(s) or other structure(s) within such BUILDING(s). This exclusion does not apply to: (a) Coverage A; or (b) CLEAN-UP COSTS under Coverage B that arise out of the inadvertent disturbance of asbestos or asbestos containing materials. In no event shall this Policy pay CLEAN-UP COSTS to remove or otherwise abate asbestos or asbestos containing materials that were not inadvertently disturbed.

**2. Communicable Diseases**

based upon or arising out of any exposure to infected humans or animals, or contact with bodily fluids of infected humans or animals.

**3. Contractual Liability**

based upon or arising from the INSURED's assumption, under any contract or agreement, of the liability of another. This exclusion does not apply to liability the INSURED would have had in the absence of the contract or agreement.

**4. Criminal Fines, Penalties and Assessments**

based upon or arising out of any criminal fine, criminal penalty, or criminal assessment.

**5. Employer's Liability/Workers' Compensation**

based upon or arising out of any BODILY INJURY to an INSURED or an employee of its parent, subsidiary or affiliate arising out of and in the course of employment by the INSURED or its parent or subsidiary or affiliate including BODILY INJURY or pecuniary loss to the spouse, child, parent, brother or sister of such injured employee. This exclusion applies whether the INSURED may be liable as an employer or in any other capacity and to any obligation to share damages with or repay another who must pay damages as a result of the BODILY INJURY.

**6. Hostile Acts**

based upon or arising out of any consequence, whether direct or indirect, of declared or undeclared war, invasion, act of foreign enemy, hostilities, civil war, rebellion, revolution, insurrection, or military or usurped power, or in defending against any one or more of those.

**7. Insured vs. Insured**

based upon or arising out of any CLAIM by one INSURED against any other INSURED. This exclusion does not apply to a CLAIM that arises out of an indemnification given by one INSURED to another INSURED as specified in a contract that was submitted and approved by the Company and added to this Policy by endorsement.

**8. Insured's Property/Bailee Liability**

with respect to property damage to property owned, leased or operated by, or in the care, custody or control of, the INSURED, even if such property damage is incurred to avoid or mitigate LOSS or CLEAN-UP COSTS which may be covered under this Policy. This exclusion does not apply to REPLACEMENT COSTS.

**9. Intentional Acts**

based upon or arising out of a POLLUTION CONDITION that results from any RESPONSIBLE PERSON's intentional disregard of, or deliberate, willful, or dishonest non-compliance with, any statute, regulation, ordinance, administrative complaint, notice letter, or instruction by or on behalf of any governmental agency or representative.

**10. Known Condition(s)**

based on or arising out of any POLLUTION CONDITION that was known by or reported to any RESPONSIBLE PERSON, but was not expressly reported in writing to the Company, before:

- (a) the beginning of the POLICY PERIOD (as respects a POLLUTION CONDITION at any COVERED LOCATION(S) shown in the Declarations at the beginning of the POLICY PERIOD), or
- (b) the Company issues an endorsement to the Policy to add any COVERED LOCATION(S), that was not shown in the Declarations at the beginning of the POLICY PERIOD, at which the POLLUTION CONDITION exists.

Any such expressly reported POLLUTION CONDITION which is not otherwise excluded under this Policy by endorsement is deemed to be first discovered on the date the COVERED LOCATION(S) was added to this Policy.

#### **11. Lead-Based Paint**

based upon or arising out of lead-based paint in, on, or applied to any BUILDING(s) or other structure(s) within such BUILDING(s). This exclusion does not apply to: (a) Coverage A; or (b) CLEAN-UP COSTS under Coverage B that arise out of the inadvertent disturbance of such lead-based paint. In no event shall this Policy pay CLEAN-UP COSTS to remove or otherwise abate lead-based paint that was not inadvertently disturbed.

#### **12. Material Change in Use**

based upon or arising out of a change in the use of, or operations at, any BUILDING(s) situated on a COVERED LOCATION(S) from the use or operations as of the date the COVERED LOCATION(S) became insured by this Policy, if that change materially increases the likelihood or severity of a POLLUTION CONDITION or CLAIM.

#### **13. New Pollution Conditions at Divested Property**

based upon or arising out of a POLLUTION CONDITION on, at, or within any BUILDING(s) situated on a COVERED LOCATION(S), if the discharge, dispersal, release, seepage, migration or escape of those POLLUTANTS begins after such BUILDING(s) and/or COVERED LOCATION(S) is sold, given away, or abandoned by the INSURED, or condemned.

#### **14. Retroactive Date**

based upon or arising out of a POLLUTION CONDITION that first commenced prior to the retroactive date stated in the Declarations, including any further dispersal, migration or movement of that POLLUTION CONDITION on or after that date.

#### **15. Underground Storage Tank(s)**

based upon or arising out of the existence of any UNDERGROUND STORAGE TANK(s).

### **SECTION V. EXTENDED REPORTING PERIOD**

#### **A. Automatic Extended Reporting Period**

In the event of the termination of this insurance before the expiration date shown in the Declarations, the INSURED shall be entitled to a ninety (90) day Automatic Extended Reporting Period for no additional premium. The Automatic Extended Reporting Period shall apply as follows:

- (1) A CLAIM first made against the INSURED during the POLICY PERIOD and reported to the Company, in writing, during the ninety (90) days immediately following the effective date of such termination will be deemed to have been made on the last day of the POLICY PERIOD, provided such CLAIM is otherwise covered by this Policy.
- (2) A CLAIM first made against the INSURED and reported to the Company, in writing, during the ninety (90) days immediately following the effective date of such termination will be deemed to have been made on the last day of the POLICY PERIOD, provided such CLAIM arises from a POLLUTION CONDITION first discovered and reported to the Company, in writing, prior to such termination, and is otherwise covered by this Policy.

The Automatic Extended Reporting Period does not apply where: (1) the Policy is terminated for fraud or non-payment of premium; or (2) the INSURED has purchased other insurance to replace the insurance provided under this Policy.

For the purposes of Section V.A. – Automatic Extended Reporting Period, under this Policy:

- (a) either cancellation or non-renewal shall be deemed to be a termination of this insurance; and
- (b) in the event of non-renewal, the expiration date shown in the Declarations shall be deemed the effective date of the termination.

#### **B. Optional Extended Reporting Period**

The FIRST NAMED INSURED shall be entitled to purchase an Optional Extended Reporting Period upon cancellation or non-renewal of the Policy, subject to the following terms and conditions:

The FIRST NAMED INSURED shall be entitled to purchase an Optional Extended Reporting Period upon payment of an additional premium of not more than 100% of the full Policy Premium.

The Optional Extended Reporting Period shall be effective for one (1) three-hundred and sixty-five (365) day period commencing immediately following the effective date of cancellation or non-renewal. The FIRST NAMED INSURED must elect to purchase this Optional Extended Reporting Period in writing within thirty (30) days from the cancellation or non-renewal of the Policy. The Automatic Extended Reporting Period of ninety (90) days will be merged into this period and is not in addition to this period.

The Optional Extended Reporting Period shall only apply to CLAIMS first made against the INSURED during the Optional Extended Reporting Period, but only by reason of a POLLUTION CONDITION first discovered and reported to the Company, in writing, during the POLICY PERIOD, and is otherwise covered by this Policy.

The Optional Extended Reporting Period does not apply where: (1) the Policy is terminated for fraud or non-payment of premium; or (2) the INSURED has purchased other insurance to replace the insurance provided under this Policy.

For the purposes of Section V.B. – Optional Extended Reporting Period under this Policy:

- (a) either cancellation or non-renewal shall be deemed to be a termination of this insurance; and
- (b) in the event of non-renewal, the expiration date shown in the Declarations shall be deemed the effective date of the termination.

It is a condition precedent to the operation of the rights granted under Section V.B. that payment of the appropriate premium shall be made not later than thirty (30) days after expiration in the case of non-renewal or prior to cancellation in the case of cancellation.

For purposes of Section V., the quotation of different Limits of Liability, Self-Insured Retentions, terms or conditions by the Company shall not be construed as termination or non-renewal of this Policy.

#### **SECTION VI. LIMIT OF LIABILITY AND SELF-INSURED RETENTION**

- A.** The Limits of Liability and Self-Insured Retention shown in the Declarations and the rules below fix the most the Company will pay regardless of the number of INSUREDS, COVERED LOCATION(S), BUILDINGS, POLLUTION CONDITIONS, CLAIMS made, or persons or organizations making CLAIMS.
- B.** For purposes of this Policy, the same or related POLLUTION CONDITIONS at any one COVERED LOCATION shall be deemed a single POLLUTION CONDITION.
- C.** This Policy will pay covered LOSS, CLEAN-UP COSTS, LEGAL EXPENSE or any other coverages afforded under this Policy or any endorsements attached hereto only (1) in excess of the applicable Self-Insured Retention Amount stated in the Declarations and (2) subject to the applicable Limit of Liability stated in the Declarations and the other terms and conditions of this Policy.

- D. The Self-Insured Retention Amount is to be borne by the INSURED and is not to be insured unless the Company has expressed its prior consent in writing to the FIRST NAMED INSURED. If the same or related POLLUTION CONDITION results in coverage under more than one coverage section for which a limit is stated in the Declarations, or under any other coverage afforded under this Policy or any endorsements attached hereto, only the single highest Self-Insured Retention amongst such applicable coverages shall apply to that POLLUTION CONDITION.
- E. Each POLLUTION CONDITION Limit – Subject to Items F. and G. below, the most the Company will pay for the sum of all LOSS, CLEAN-UP COSTS, and LEGAL EXPENSE under each coverage section stated in the Declarations, or under any other coverages afforded under this Policy or any endorsements attached thereto, arising out of the same or related POLLUTION CONDITION is the Each POLLUTION CONDITION Limit applicable to that particular coverage.
- F. Coverage Section Aggregate Limit – Subject to Item G. below, the Company's total liability for the sum of all LOSS, CLEAN-UP COSTS, and LEGAL EXPENSE under each coverage section stated in the Declarations, or under any other coverages afforded under this Policy or any endorsements attached thereto, during the POLICY PERIOD or, if applicable, the EXTENDED REPORTING PERIOD, shall not exceed the Coverage Aggregate Limit of Liability applicable to that particular coverage.
- G. Policy Aggregate Limit - The Company's total liability for the sum of all LOSS, CLEAN-UP COSTS, LEGAL EXPENSE and any other coverages afforded under this Policy or any endorsements attached hereto, shall not exceed the Policy Aggregate Limit of Liability as stated in the Declarations.
- H. Any LOSS, CLEAN-UP COSTS, LEGAL EXPENSE or any other coverages afforded under this Policy or any endorsements attached hereto, incurred and reported to the Company, in writing, over more than one POLICY PERIOD, and resulting from the same or related POLLUTION CONDITION, shall be considered a single POLLUTION CONDITION. The LOSS, CLEAN-UP COSTS, LEGAL EXPENSE or any other coverages afforded under this Policy or any endorsements attached thereto will be subject to the same Limit of Liability and Self-Insured Retention Amount(s) in effect at the time the POLLUTION CONDITION was first reported to the Company, in writing, during the POLICY PERIOD or, if applicable, the EXTENDED REPORTING PERIOD.

## **SECTION VII. REPORTING, DEFENSE, SETTLEMENT AND COOPERATION**

- A. As a condition precedent to the coverage hereunder, in the event a CLAIM is made against the INSURED for LOSS or CLEAN-UP COSTS, or a POLLUTION CONDITION is first discovered that results in a LOSS or CLEAN-UP COSTS, written or oral notice containing particulars sufficient to identify the INSURED and also reasonably obtainable information with respect to the time, place and circumstances thereof, and the names and addresses of the injured and of available witnesses, shall be given by or for the INSURED to the Company or any of its authorized agents as soon as practicable. In the event of oral notice, the INSURED agrees to furnish a written report as soon as practicable. The INSURED shall also forward to the Company every demand, notice, summons, order or other process received by the INSURED or the INSURED's representative as soon as practicable.
- B. No costs, charges or expenses shall be incurred, nor payments made, obligations assumed or remediation commenced, without the Company's consent which shall not be unreasonably withheld. This provision does not apply to costs incurred by the INSURED on an emergency basis, where delay on the part of the INSURED would cause injury to persons or damage to property or increase significantly the cost of responding to a POLLUTION CONDITION. The INSURED shall notify the Company of all such expenses immediately after the emergency ends.
- C. The Company shall have the right to designate legal counsel for the investigation, adjustment and defense of CLAIMS. The Company shall consult with the INSURED in conjunction with the selection of counsel. The Company shall have the right and duty to defend an INSURED against any CLAIM for LOSS or for CLEAN-UP COSTS, however, the Company will have no duty to defend the INSURED for LOSS or for CLEAN-UP COSTS to which this Policy does not apply.
- D. Once the applicable Limit of Liability has been exhausted, the Company shall not be obligated to defend or continue to defend any CLAIM or pay for any LOSS, CLEAN-UP COSTS or other coverage afforded under this Policy.

- E. The Company may, where allowable by law, appoint one counsel to defend all of the INSUREDs under this Policy on a joint defense basis.
- F. In the event that the INSURED is entitled by law to select independent counsel (Cumis Counsel) to defend the INSURED at the Company's expense, the attorney's fees and all other litigation expenses incurred by the Company shall be limited to the same rates that the Company would pay to counsel selected by the Company to defend a similar CLAIM in the location where the CLAIM arose or is being defended. The Company may require that such counsel meet certain minimum qualifications and maintain errors and omissions insurance. The INSURED agrees that such counsel will timely respond to the Company's request for information.
- G. The INSURED shall not admit liability or settle any CLAIM without the Company's consent. If the Company recommends a monetary settlement of a CLAIM acceptable to a claimant:
  1. for an amount within the Self-Insured Retention Amount and the INSURED refuses such settlement, the Company shall not be liable for any LOSS, CLEAN-UP COSTS, LEGAL EXPENSE, or any other coverages afforded under this Policy or any endorsements attached hereto, in excess of the Self-Insured Retention Amount; or
  2. for a total amount in excess of the Self-Insured Retention and within the applicable Limits of Liability and the INSURED refuses such settlement, the Company's liability for LOSS, CLEAN-UP COSTS, LEGAL EXPENSE, or any other coverages afforded under this Policy or any endorsements attached hereto, shall be limited to that portion of the sum of (a) the recommended settlement and (b) the costs, charges and expenses already incurred as of the date of the INSURED's refusal, which exceeds the Self-Insured Retention Amount and is within the Limit of Liability.
- H. All INSUREDs shall cooperate with the Company and upon the Company's request shall submit to examination by a representative of the Company, under oath if required, and shall attend hearings, depositions and trials and assist in effecting settlement, securing and giving evidence, obtaining the attendance of witnesses and in the conduct of suits, as well as in the investigation and/or defense, all without charge to the Company. The INSURED shall further cooperate with the Company and do whatever is necessary to secure and enforce any rights of indemnity, contribution or apportionment which the INSURED may have.

#### **SECTION VIII. TRANSFER OF LEGAL DEFENSE DUTIES**

- A. If the Company believes that any of the applicable Limits of Liability stated in the Declarations has been or soon will be exhausted in defending a CLAIM, or that the Company has paid out or will soon pay out the Policy Aggregate Limit of Liability stated in the Declarations, the Company will so notify the FIRST NAMED INSURED in writing as soon as possible. The Company will advise that its duty to defend CLAIMS seeking damages subject to those limits has terminated, subject to payment of the limits, and that it will no longer handle the defense of any CLAIM for which notice is given after the date it sends out such notice. The Company will take prompt and appropriate steps to transfer control of any existing defense prior to exhaustion of the limits to the FIRST NAMED INSURED. The FIRST NAMED INSURED agrees to reimburse the Company for any costs which the Company bears in connection with the transfer of the defense.
- B. The Company will take appropriate steps necessary to defend the CLAIM during the transfer of the defense and avoid any unfavorable legal action provided that the INSURED cooperates in the transfer of the duties of the defense.
- C. The Company's failure to comply with any of the provisions of Section VIII. shall in no way obligate the Company to defend or continue to defend any CLAIM, or to pay any LOSS, CLEAN-UP COSTS or other sum covered under this Policy, after exhaustion of an applicable Limit of Liability.

#### **SECTION IX. CONDITIONS**

- A. **ACTION AGAINST COMPANY** - No action brought by an organization or entity, other than an INSURED, shall lie against the Company unless, as a condition precedent thereto, the INSURED has fully complied with all of the terms of this Policy and, the amount of the INSURED's obligation to pay shall have been finally determined either by judgment against the INSURED after actual trial or by written agreement of the INSURED, the claimant and the Company.

Any person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this Policy to the extent of the insurance afforded by this Policy. No person or organization shall have any right under this Policy to join the Company as a party to any action against the INSURED to determine the INSURED's liability, nor shall the Company be impleaded by the INSURED or his legal representative.

- B. ASSIGNMENT** - This Policy shall be void as to the assignee or transferee, if assigned or transferred without written consent of the Company. This Policy can be assigned automatically without the consent of the Company to any first mortgagee of a COVERED LOCATION(S). The FIRST NAMED INSURED shall notify the Company of such assignment as soon as possible.
- C. BANKRUPTCY** - Bankruptcy or insolvency of the INSURED or of the INSURED's estate shall not relieve the Company of any of its obligations hereunder.
- D. CANCELLATION** - This Policy may be cancelled by the FIRST NAMED INSURED by surrender thereof to the Company or any of its authorized agents or by mailing to the Company written notice stating when thereafter the cancellation shall be effective. In the event of cancellation by the FIRST NAMED INSURED, the return premium shall be computed in accordance with the customary short rate table and procedure after applying the minimum earned premium percentage stated in the Declarations. If a CLAIM is made, a POLLUTION CONDITION is discovered or coverage is otherwise afforded under this Policy, then the premium shall be considered fully earned by the Company and the INSURED is not entitled to a return premium upon cancellation.

This Policy may be cancelled by the Company by mailing to the FIRST NAMED INSURED at the address shown in the Declarations, written notice stating when not less than ninety (90) days [ten (10) days for non-payment of premium] thereafter such cancellation shall be effective. The mailing of notice as aforesaid shall be sufficient proof of notice. The time of surrender or the effective date and hour of cancellation stated in the notice shall become the end of the POLICY PERIOD. If the Company cancels, earned premium shall be computed pro rata. Premium adjustment may be made either at the time cancellation is affected or as soon as practicable after cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation.

This Policy may be cancelled by the Company for the following reasons: (1) Non-payment of premium, or (2) Fraud or material misrepresentation on the part of the INSURED, such as can be proven in a court of law.

- E. CHANGES** - Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this Policy or estop the Company from asserting any right under the terms of this Policy; nor can the terms of this Policy be waived or changed, except by an endorsement issued by the Company to form a part of this Policy.
- F. CHOICE OF LAW** - All matters arising hereunder, including questions related to the validity, interpretation, performance and enforcement of this Policy, shall be determined in accordance with the law and practice of the State of New York (not including New York's choice of law rules).
- G. CONSENT** - Where the consent of the Company or the INSURED is required under this Policy, such consent shall not be unreasonably withheld, delayed, conditioned or denied.
- H. DECLARATIONS AND REPRESENTATIONS** - By acceptance of this Policy, the INSURED agrees that the statements contained in the Declarations, the application and any other supplemental materials and information submitted in connection with the application or any amendments to the Policy during the POLICY PERIOD are the INSURED's declarations and representations, that they shall be deemed material, that this Policy is issued in reliance upon the truth of such declarations and representations and that this Policy embodies all agreements existing between the INSURED and the Company or any of its agents relating to this insurance.
- I. HEADINGS** - The descriptions in the headings of this Policy are solely for convenience and form no part of the Policy terms and conditions.
- J. INSPECTION AND AUDIT** - The Company shall be permitted but not obligated to inspect and monitor on a continuing basis the INSURED's property or operations and any BUILDING or COVERED LOCATION(S), at any time. Neither the Company's right to make inspections and monitor, nor the actual undertaking thereof, nor any report thereon, shall

constitute an undertaking, on behalf of the INSURED or others, to determine or warrant that property or operations are safe, healthful or conform to acceptable engineering practice or are in compliance with any law, rule or regulation. Access for the inspection and audit will be coordinated through the broker or agent of the FIRST NAMED INSURED.

- K. JURISDICTION AND VENUE** - It is agreed that in the event of the failure of the Company to pay any amount claimed to be due hereunder, the Company and the INSURED will submit to the jurisdiction of the State of New York and will comply with all the requirements necessary to give such court jurisdiction. Nothing in this clause constitutes or should be understood to constitute a waiver of the Company's right to remove an action to a United States District Court.
- L. OTHER INSURANCE** - Subject to Section VI., Limit of Liability and Self-Insured Retention, this insurance shall apply only in excess of the sum of the Self-Insured Retention amount stated in the Declarations and the applicable limits of any other valid and collectible insurance available to the INSURED, whether such other insurance is stated to be primary, pro rata, contributory, excess, contingent or otherwise, unless such other insurance is written only as specific excess insurance over the applicable Limits of Liability of this Policy.
- M. SEVERABILITY** - Except with respect to the Limits of Liability, Self-Insured Retention, Exclusion 7. ("Insured vs. Insured") and any rights and duties assigned in this Policy to the FIRST NAMED INSURED, this insurance applies as if each INSURED were the only INSURED and separately to each INSURED against whom a CLAIM is made. Any misrepresentation, act or omission that is in violation of a term, duty or condition under this Policy by one INSURED shall not by itself affect coverage for another INSURED under this Policy. This Condition M. shall not apply to an INSURED who is a parent, subsidiary or affiliate of the INSURED which committed the misrepresentation, act or omission referenced above.
- N. SOLE AGENT** - The FIRST NAMED INSURED stated in the Declarations shall act on behalf of all INSUREDS for the payment or return of premium, receipt and acceptance of any endorsement issued to form a part of this Policy, giving and receiving notice of cancellation or non-renewal, and the exercise of the rights provided under Section V. – EXTENDED REPORTING PERIOD.
- O. SUBROGATION** – If the INSURED has rights to recover, from another person or organization, all or any part of a payment the Company makes under this Policy, those rights are transferred to the Company. The INSURED shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The INSURED shall do nothing to prejudice such rights. Any monies recovered as a result of subrogation proceedings shall accrue first to the INSURED to the extent of any payments it made in excess of the limits of liability, then to the Company to the extent of its payment under the Policy, and then to the INSURED to the extent of its payment of the self-insured retention. Expenses incurred in such subrogation proceedings shall be apportioned amongst the INSURED and Company in the proportion that each interested party's share in the recovery bears to the total recovery.