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## **GREAT AMERICAN E & S INSURANCE COMPANY**

### **PREMISES ENVIRONMENTAL LIABILITY INSURANCE – COMMERCIAL LENDERS**

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**THIS POLICY CONTAINS CLAIMS-MADE AND REPORTED COVERAGES. READ IT CAREFULLY.**

**SOME OF THE COVERAGES CONTAINED WITHIN THIS POLICY REQUIRE 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 AGREEMENTS**

**EACH OF THE FOLLOWING COVERAGES IS IN EFFECT ONLY IF LIMITS OF LIABILITY ARE INDICATED FOR SUCH COVERAGE IN THE DECLARATIONS. EACH COVERAGE THAT IS IN EFFECT IS SUBJECT TO SECTION VI. LIMIT OF LIABILITY AND SELF-INSURED RETENTION.**

##### **A. COVERAGE A – COMMERCIAL LENDER COLLATERAL PROTECTION**

The Company will pay the INSURED the lesser of the applicable CLEAN-UP COSTS or the LOAN BALANCE because of a POLLUTION CONDITION on, at, under, or migrating from a COVERED LOCATION, but only if:

1. a DEFAULT takes place during the POLICY PERIOD; and
2. that POLLUTION CONDITION first commences prior to the end of the POLICY PERIOD; and
3. a CLAIM is reported by the INSURED to the Company, in writing, during the POLICY PERIOD or the EXTENDED REPORTING PERIOD.

##### **B. COVERAGE B – 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, under, or migrating from a COVERED LOCATION, owned by the INSURED, 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:

1. a FORECLOSURE takes place during the POLICY PERIOD; and
2. that POLLUTION CONDITION first commences prior to the end of the POLICY PERIOD; and
3. that CLAIM is reported by the INSURED to the Company, in writing, during the POLICY PERIOD or the EXTENDED REPORTING PERIOD.

However, this Insuring Agreement will not apply, and the Company will have no obligation to pay any CLEAN-UP COSTS under Coverage B, if written notice from the INSURED is received by the Company after DEFAULT seeking the lesser of the applicable CLEAN-UP COSTS or the LOAN BALANCE under Coverage A.

#### **C. COVERAGE C – 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, under, or migrating from a COVERED LOCATION, 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 the EXTENDED REPORTING PERIOD.

#### **D. COVERAGE D – DIMINUTION IN VALUE**

The Company will pay DIMINUTION IN VALUE that is solely because of a POLLUTION CONDITION on, at, or under a COVERED LOCATION, owned by the INSURED, as a result of a CLAIM first made by the INSURED, during the POLICY PERIOD, but only if:

1. such POLLUTION CONDITION is discovered by the INSURED, after FORECLOSURE, but during the POLICY PERIOD;
2. such POLLUTION CONDITION has been reported to the appropriate governmental agency in compliance with applicable environmental laws in effect as of the date of discovery; and
3. the CLAIM is reported by the INSURED to the Company, in writing, during the POLICY PERIOD or the EXTENDED REPORTING PERIOD.

However, this Insuring Agreement will not apply, and the Company will have no obligation to pay any DIMINUTION IN VALUE under Coverage D, if written notice from the INSURED is received by the Company after DEFAULT seeking the lesser of the applicable CLEAN-UP COSTS or the LOAN BALANCE under Coverage A.

#### **E. COVERAGE E – BUSINESS INTERRUPTION**

The Company will pay the INSURED's BUSINESS INTERRUPTION LOSS because of an INTERRUPTION at a COVERED LOCATION, but only if:

1. the INTERRUPTION first commences after DEFAULT, but during the POLICY PERIOD and is caused directly by a POLLUTION CONDITION on, at, under, or migrating from such COVERED LOCATION;
2. the POLLUTION CONDITION identified in Item 1. above is discovered by the INSURED, after DEFAULT, but during the POLICY PERIOD and is otherwise covered by this Policy;
3. all construction and construction-related activities, including but not limited to geo-technical investigation, demolition, soil excavation, site preparation, site grading, de-watering, and utility work have been completed and such COVERED LOCATION has been put to its intended use; and
4. the INSURED reports the INTERRUPTION to the Company, in writing, as soon as practicable, but under no circumstances later than seven (7) days after the end of the DEDUCTIBLE PERIOD.

If an INTERRUPTION is because of a POLLUTION CONDITION and any other cause, the Company shall only pay for that portion of BUSINESS INTERRUPTION LOSS that is solely because of such POLLUTION CONDITION.

The Company's liability for BUSINESS INTERRUPTION LOSS will end on the earliest of:

- (a) the date the POLLUTION CONDITION that caused the INTERRUPTION has been remediated to the extent that the INSURED may reasonably resume its normal operations;
- (b) the date the INSURED may reasonably resume its normal operations at the COVERED LOCATION;
- (c) the date the INSURED should have resumed its normal operations at the COVERED LOCATION had it used reasonable skill, speed, and effort to do so;

- (d) the date the INSURED may reasonably resume its normal operations at a new facility; or
- (e) the date the government entity allows the INSURED to resume its normal operations.

## SECTION II. DEFINITIONS

- A. ADDITIONAL NAMED INSURED** means any person, organization, or entity identified as an ADDITIONAL NAMED INSURED in an endorsement issued by the Company.
- B. APPRAISAL** means the process by which DIMINUTION IN VALUE is determined, if the parties cannot agree on such DIMINUTION IN VALUE. The INSURED and the Company will each select a competent and impartial appraiser. The two appraisers will select an umpire. If they cannot agree, either party may request that the selection of an umpire be made by a judge of a court having jurisdiction. The appraisers will state separately their determination of DIMINUTION IN VALUE and FAIR MARKET VALUE. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

1. pay its chosen appraiser; and
2. bear the other expenses of the appraisal and umpire equally.

In connection with an APPRAISAL, no appraiser, nor any umpire shall have the authority to decide questions of law, nor make factual determinations. No appraiser, nor any umpire shall attempt to resolve any issues concerning insurance coverage, policy exclusions, compliance with policy terms and conditions, applicable Limits of Liability, nor any issue related to this policy except for the amount, if any, of DIMINUTION IN VALUE of the applicable COVERED LOCATION.

Even if an APPRAISAL is undertaken, coverage for DIMINUTION IN VALUE is subject to the terms and conditions of the Policy.

- C. 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 C.1., any accompanying medical or environmental monitoring;
2. court-ordered medical monitoring; or
3. mental anguish, emotional distress, or shock,

caused by a POLLUTION CONDITION.

- D. BORROWER** means:

1. each entity that is financially obligated to repay the INSURED pursuant to the LOAN DOCUMENTS applicable to the COVERED LOCATION as of the inception date of this Policy; and
2. any person or legal entity that assumes, pursuant to a written agreement with the originator of the loan and during the POLICY PERIOD, all obligations under the LOAN DOCUMENTS, but only if each such person or legal entity meets or exceeds all eligibility requirements, including the required net worth, used by the LENDER at the time the loan originated, or at the time of the assumption, whichever are more strict, and maintains all such requirements throughout the loan term.

- E. BUSINESS INTERRUPTION LOSS** means:

1. the continuing normal operating expenses, at such COVERED LOCATION, incurred by the INSURED including the payroll expense for employees of the INSURED with the exception of the INSURED's officers, directors, executives and contract employees;
2. rental income from tenant occupancy of such COVERED LOCATION, but only if the rental income is pursuant to a lease signed and dated prior to the date the INTERRUPTION first began; and

3. the total amount of charges that are the legal obligation of the tenant(s) as indicated in Item 2. above pursuant to its lease with the INSURED and that would otherwise be the INSURED's obligation.

**F. CLAIM** means:

1. with regard to Coverage A, written notice from the INSURED that is received by the Company after DEFAULT seeking the lesser of the applicable CLEAN-UP COSTS or the LOAN BALANCE that is solely because of a POLLUTION CONDITION on, at, under, or migrating from a COVERED LOCATION. A copy of the written notice sent by the INSURED and received by the BORROWER setting forth the applicable DEFAULT shall be included by the INSURED as part of its notice to the Company;
2. with regard Coverages B and C, a demand, notice, or assertion of a legal right alleging liability or responsibility on the part of the INSURED because of a POLLUTION CONDITION, including but not limited to lawsuits, orders, petitions, or governmental or regulatory actions; or
3. with regard to Coverage D, written notice from the INSURED that is received by the Company after FORECLOSURE seeking DIMINUTION IN VALUE that is solely because of a POLLUTION CONDITION on, at, or under a COVERED LOCATION that is owned by the INSURED. A copy of the deed or other evidence of ownership of the COVERED LOCATION shall be included by the INSURED as part of its notice to the Company.

**G. CLEAN-UP COSTS** mean:

1. with regard to Coverage A, those expenses set forth in the CLEAN-UP PLAN for the investigation, removal, disposal of, abatement, containment, treatment, or neutralization of a POLLUTION CONDITION, including any associated monitoring and testing costs.
2. with regard to Coverage B, the reasonable and necessary expenses incurred to investigate, remove, dispose of, abate, contain, treat, or neutralize a POLLUTION CONDITION, including any associated monitoring and testing costs to the extent required by applicable 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.

CLEAN-UP COSTS include REPLACEMENT COSTS and EMERGENCY RESPONSE COSTS under Coverage B.

However, CLEAN-UP COSTS do not include:

1. any costs, charges or expenses incurred by or on behalf of the INSURED to test for the presence of, or confirm the presence of, a POLLUTION CONDITION prior to, or in response to, a DEFAULT. Thereafter, any further investigation expenses related to such POLLUTION CONDITION, that are required by applicable environmental laws or are necessary to complete the CLEAN-UP PLAN, are included as CLEAN-UP COSTS;
2. any punitive, exemplary, or multiplied damages;
3. any costs to maintain or upgrade any building-related system, fixture, technology or process at a COVERED LOCATION, even if such upgrade is in response to a LOSS or CLEAN-UP COSTS covered under this Policy, including but not limited to any maintenance or upgrade that is required by law or any applicable governmental agency; or
4. any costs incurred to achieve a clean-up standard that is greater than the standard applicable to the use of the COVERED LOCATION as of the inception date of this Policy.

**H. CLEAN-UP PLAN** means a plan to remove, dispose of, abate, contain, treat, or neutralize a POLLUTION CONDITION to the extent required by applicable 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, but only if such plan has been approved by both the FIRST NAMED INSURED and the Company.

**I. CLEAN-UP PLAN COMPLETION** means the date:

1. when the governmental agency, acting under authority of applicable environmental laws, with responsibility for overseeing the implementation of the CLEAN-UP PLAN issues a No Further Action Letter or similar documentation indicating that no further action is required with regard to the POLLUTION CONDITION in question; or
2. if there is no governmental agency as described in item 1. above, or if such entity does not issue a No Further Action Letter or similar documentation after written request to do so, when the INSURED, with the written consent of the Company, has determined that all necessary steps to address the POLLUTION CONDITION in question have been completed to the extent required by applicable environmental laws.

**J. COVERED LOCATION** means any location stated in the Declarations or any location scheduled as such onto this Policy by an endorsement issued by the Company, but only with regard to the loan number indicated in the Declarations or location schedule.**K. DEDUCTIBLE PERIOD** means the length of time shown in Item 3.E. of the Declarations, as of the date the INTERRUPTION first commences, for which BUSINESS INTERRUPTION LOSS is to be borne by an INSURED.**L. DEFAULT** means the failure of the BORROWER to make any required payment, in accordance with the time requirements in the LOAN DOCUMENTS that, once declared by the INSURED to the BORROWER, in writing, and thereafter left uncured by the BORROWER, allows the INSURED to exercise its legal right to foreclose against, or otherwise seek title to, the COVERED LOCATION.**M. DIMINUTION IN VALUE** means the difference between:

1. the FAIR MARKET VALUE of a COVERED LOCATION where a POLLUTION CONDITION has been discovered, as of CLEAN-UP PLAN COMPLETION; and
2. the FAIR MARKET VALUE of the same COVERED LOCATION as of CLEAN-UP PLAN COMPLETION, had there been no POLLUTION CONDITION,

but only to the extent that the difference is attributable to the existence of such POLLUTION CONDITION at such COVERED LOCATION.

**N. EMERGENCY RESPONSE COSTS** mean the reasonable and necessary remediation expenses incurred by the INSURED on an emergency basis to investigate, remove, dispose of, abate, contain, treat, or neutralize a POLLUTION CONDITION, 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.**O. ENVIRONMENTAL PROFESSIONAL** means an individual 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 may require that any such professional meet certain minimum qualifications and maintain errors and omissions insurance.**P. EXTENDED REPORTING PERIOD** means the Automatic Extended Reporting Period described in Section V. of this Policy.**Q. FAIR MARKET VALUE** means the price in cash that a COVERED LOCATION would bring, if then offered for sale in the open market, in competition with similar properties at or near such COVERED LOCATION, with a reasonable time allowed to find a purchaser.**R. FIRST NAMED INSURED** means the person or entity stated in Item 1. of the Declarations.**S. FORECLOSURE** means the acquisition by the INSURED of clear title to the COVERED LOCATION by foreclosure, deed in lieu of foreclosure, or other legal process following an uncured default or event of default as those terms are defined in the LOAN DOCUMENTS.

**T. GREEN BUILDING MATERIALS** mean any building products or construction materials that are recognized by The Leadership in Energy and Environmental Design (LEED®) or Energy Star as: (a) being environmentally preferable or sustainable; or (b) providing enhanced energy efficiency.

**U. INSURED** means:

1. the FIRST NAMED INSURED;
2. any ADDITIONAL NAMED INSURED added to this Policy by an endorsement issued by the Company;
3. the Servicer, Master Servicer, Special Servicer, Trust, or Trustee as indicated in a fully executed Pooling and Servicing Agreement, but only with regard to the applicable COVERED LOCATION and associated Loan Number; and
4. any present or former director, officer, partner, member, employee, leased or temporary worker of the FIRST NAMED INSURED, any ADDITIONAL NAMED INSURED, or any entity identified in Item 3. above, but only while acting within the scope of his/her duties as such.

**V. INTERRUPTION** means the necessary suspension of the INSURED's business operations.

**W. 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. 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 the regular employees or officers 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, including but not limited to the costs of the INSURED's in-house counsel.

**X. LOAN BALANCE** means the amount of unpaid principal and interest as set forth in the LOAN DOCUMENTS as of the date that the INSURED notifies the BORROWER, in writing, of a DEFAULT. However, LOAN BALANCE shall not include any assessed penalties or any other fees, costs, charges, or expenses incurred in association with a DEFAULT or FORECLOSURE, including legal fees, nor any interest that may accrue after DEFAULT.

**Y. LOAN DOCUMENTS** mean the loan contracts, agreements and related documents between the INSURED and the BORROWER that provide the INSURED a security interest in the COVERED LOCATION and obligate the BORROWER to repay the loan amount to the INSURED.

**Z. 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 or PROPERTY DAMAGE.

**AA. MEDIATION** means the process by which CLEAN-UP COSTS under Coverage A are determined, if the parties cannot agree on such CLEAN-UP COSTS. The INSURED and the Company will each select a competent and impartial ENVIRONMENTAL PROFESSIONAL. The two ENVIRONMENTAL PROFESSIONALS will select an umpire. If they cannot agree, either party may request that the selection of an umpire be made by a judge of a court having jurisdiction. The ENVIRONMENTAL PROFESSIONALS will state separately their determination of the amount of CLEAN-UP COSTS. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

1. pay its chosen ENVIRONMENTAL PROFESSIONAL; and

2. bear the other expenses of the appraisal and umpire equally.

In connection with a MEDIATION, no ENVIRONMENTAL PROFESSIONAL, nor any umpire shall have the authority to decide questions of law, nor make factual determinations. No ENVIRONMENTAL PROFESSIONAL, nor any umpire shall attempt to resolve any issues concerning insurance coverage, policy exclusions, compliance with policy terms and conditions, applicable Limits of Liability, nor any issue related to this policy except for the amount of CLEAN-UP COSTS under Coverage A for the applicable COVERED LOCATION.

Even if an MEDIATION is undertaken, coverage for CLEAN-UP COSTS is subject to the terms and conditions of the Policy.

**BB. MICROBIAL MATTER** means any mold, mildew, or any type or form of fungus, including any mycotoxins, spores, or byproducts produced or released thereby as well as any bacteria, including but not limited to legionella, viruses or any other form of microbiological organism or its byproducts.

**CC. NUCLEAR MATERIAL** means "source material," "special nuclear material" or "by-product material," as those terms are defined in Atomic Energy Act of 1954, as amended.

**DD. POLICY PERIOD** means the period stated in Item 2. of 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.

**EE. POLLUTANTS** mean any solid, liquid, gaseous, or thermal pollutant, irritant, or contaminant, including but not limited to smoke, vapors, odors, soot, fumes, acids, alkalis, toxic chemicals, hazardous substances, petroleum hydrocarbons, waste, including medical, infectious, red bag, and pathological wastes, legionella, electromagnetic fields, and low-level radioactive waste and material and MICROBIAL MATTER.

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

1. the discharge, dispersal, release, seepage, migration, or escape of POLLUTANTS into or upon land or structures thereupon, the atmosphere, or any watercourse or body of water including groundwater by an entity other than an INSURED; or
2. the illicit abandonment of uncontained POLLUTANTS at a COVERED LOCATION, but only if such abandonment was committed by a person(s) or entity(ies) other than the INSURED and without the knowledge of any RESPONSIBLE PERSON; or
3. the existence of MICROBIAL MATTER on, at, or within buildings or structures.

**GG. PROPERTY DAMAGE** means:

1. physical injury to, or destruction of, the real property or tangible personal property of any person or organization other than an INSURED, including the resulting loss of use of such property;
2. loss of use of such property that has not been physically injured or destroyed;
3. diminution in the value of such property; or
4. natural resource damage which means the physical injury to, or destruction of, as well as the assessment of such injury or destruction, including the resulting loss of value of land, fish, wildlife, biota, air, water, groundwater, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the fishery conservation zone established by the Magnuson-Stevens Fishery Conservation and Management Act 16 U.S.C. 1801 *et. seq.*), any state, local or provincial government, any foreign government, any Native American tribe, or, if such resources are subject to a trust restriction or alienation, any member of a Native American tribe.

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

**HH. REPLACEMENT COSTS** mean the reasonable and necessary costs incurred by the INSURED, with the Company's written consent, to repair, restore, or replace damaged real property or tangible personal property in order to restore the property to the condition it was in prior to it being damaged, but only if the damage to such real property or tangible personal property occurred in the course of incurring CLEAN-UP COSTS under Coverage B. REPLACEMENT COSTS includes the use of GREEN BUILDING MATERIALS.

REPLACEMENT COSTS shall not exceed the actual cash value of such real property or tangible personal property prior to incurring the CLEAN-UP COSTS, plus the increased costs, if any, for GREEN BUILDING MATERIALS. REPLACEMENT COSTS shall not include any betterments or improvements. For the purposes of this definition, actual cash value means replacement cost reduced by physical depreciation and obsolescence.

**II. RESPONSIBLE PERSON** means:

1. any officer, director, or partner of the INSURED; or
2. the manager, foreman, or supervisor of the INSURED responsible for environmental affairs, legal affairs, health and safety affairs, control or compliance, or pooling and servicing agreements.

### **SECTION III. TERRITORY**

This Policy applies only to a CLAIM made or brought in, or a POLLUTION CONDITION located within, the United States, its territories or possessions, Puerto Rico, or Canada, but only if the INSURED's responsibility to pay for damages associated with such CLAIM or POLLUTION CONDITION 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, LOAN BALANCE, DIMINUTION IN VALUE, BUSINESS INTERRUPTION LOSS, or other coverage afforded under this Policy that is:**

**1. Asbestos**

based upon or arising out of the existence of, required removal of, or abatement of, asbestos in any form, including but not limited to, products containing asbestos, asbestos fibers, asbestos dust, and asbestos containing materials. This exclusion shall not apply:

- (a) with respect to Coverages A, B, D, and E, to asbestos in any form, in soil or in any watercourse or body of water including groundwater;
- (b) to CLEAN-UP COSTS and related LEGAL EXPENSE that arise out of the inadvertent disturbance of asbestos or asbestos containing materials; or
- (c) to Coverage C.

**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 out of an INSURED's assumption, under any contract or agreement, of the liability of another. This exclusion does not apply to the LOAN DOCUMENTS or liability the INSURED would have had in the absence of such 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:

(a) BODILY INJURY to any INSURED, or any employee of its parent, subsidiary or affiliate:

- (i) arising out of and incurred in the course of employment by such INSURED or its parent or subsidiary or affiliate; or
- (ii) who is performing duties related to the conduct of the INSURED's business; or

(b) BODILY INJURY or pecuniary loss to the spouse, child, parent, brother or sister of such INSURED or employee of its parent, subsidiary or affiliate, as a consequence of Item (a) above.

This exclusion applies whether an 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 or pecuniary loss.

**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**

based upon or arising out of damage to:

- (a) personal property owned by, leased by, operated by, or loaned to an INSURED; or
- (b) personal property in the care, custody, or control of an INSURED,

even if such 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 issued by or on behalf of any governmental agency or representative.

However, this exclusion shall not apply to any such intentional disregard, or deliberate, willful, or dishonest non-compliance that was based solely upon the good-faith reliance on a written opinion of qualified, outside legal counsel, where such opinion was received by the INSURED prior to the RESPONSIBLE PERSON's intentional disregard, or deliberate, willful, or dishonest non-compliance.

**10. Known Conditions**

based upon or arising out of any POLLUTION CONDITION that was known by, or reported to, any RESPONSIBLE PERSON and not specifically reported, in writing, to the Company prior to the beginning of the POLICY PERIOD.

Any POLLUTION CONDITION identified as being on, at, under, or migrating from COVERED LOCATION in a document listed in the Document Schedule will be deemed specifically reported, in writing, to the Company prior to the beginning of the POLICY PERIOD.

**11. Lead-Based Paint**

based upon or arising out of lead-based paint in, on, or applied to, any building or other structure. This exclusion does not apply to:

- (a) lead-based paint in soil or in any watercourse or body of water including groundwater;

(b) to CLEAN-UP COSTS and related LEGAL EXPENSE that arise out of the inadvertent disturbance of lead-based paint; or

(c) Coverage C.

**12. Material Change in Use**

based upon or arising out of a change in the use of, or operations at, a COVERED LOCATION from the use or operations as of the date the COVERED LOCATION became insured by this Policy, or any other change materially increases the likelihood or severity of a POLLUTION CONDITION or CLAIM.

**13. Naturally Occurring Materials**

based upon or arising out of the existence of, required removal of, or abatement of, any naturally occurring materials. This exclusion does not apply to MICROBIAL MATTER or LOSS and related LEGAL EXPENSE because of radon.

**14. Nuclear Material**

based upon or arising out of the actual, alleged or threatened exposure to, or release of, NUCLEAR MATERIAL.

**15. Property Held for Others**

based upon or arising out of damage to personal property that is warehoused or stored for a fee, by any person, organization or entity that is not an INSURED, in or about any building or structure at a COVERED LOCATION. This exclusion does not apply to CLEAN-UP COSTS under Coverage B.

**16. Products Liability**

based upon or arising out of goods or products manufactured, sold, handled, distributed, altered, or repaired by an INSURED or by others trading under an INSURED's name, including any container thereof, any failure to warn, or any reliance upon a representation or warranty made at any time with respect thereto. This exclusion does not apply to such goods or products while they remain within the legal boundaries of a COVERED LOCATION.

**17. 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.

**18. Reverse Retroactive Date**

based upon or arising out of a POLLUTION CONDITION that first commenced subsequent to the Reverse Retroactive Date stated in the Declarations.

**19. Vehicles**

based upon or arising out of the ownership, maintenance, use, operation, loading or unloading of any AUTOMOBILE, aircraft, watercraft, rolling stock, or any other form of transportation, including any cargo carried thereby, beyond the legal boundaries of a COVERED LOCATION.

**SECTION V. EXTENDED REPORTING PERIOD**

The provisions of Section V. apply only to Coverages B and C.

The INSURED shall be entitled to a ninety (90) day Automatic Extended Reporting Period beginning immediately after the end of the POLICY PERIOD. 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 end of the POLICY PERIOD 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.

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

- A.** The Limits of Liability and Self-Insured Retention set forth in the Declarations and the rules below fix the most the Company will pay regardless of the number of INSUREDs, COVERED LOCATIONS, POLLUTION CONDITIONS, CLAIMs made, or persons or organizations making a CLAIM.
- 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, LOAN BALANCE, DIMINUTION IN VALUE, or any other coverages afforded under this Policy 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.

This Policy will pay covered BUSINESS INTERRUPTION LOSS only: (1) in excess of amounts incurred during the DEDUCTIBLE PERIOD; and (2) subject to the applicable Limit of Liability and the other terms and conditions of this Policy.

- D.** The Self-Insured Retention Amount are to be borne by the INSURED and are 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 CONDITIONS could result 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, only the single highest Self-Insured Retention amongst such applicable coverages shall apply to that POLLUTION CONDITION.
- E.** Subject to Items F. and H. below, the Each POLLUTION CONDITION Limit set forth in the Declarations is the most the Company will pay for the sum of all LOSS, CLEAN-UP COSTS, LEGAL EXPENSE, LOAN BALANCE, DIMINUTION IN VALUE, or BUSINESS INTERRUPTION LOSS under each applicable coverage section stated in the Declarations, or under any other coverages afforded under this Policy, arising out of the same or related POLLUTION CONDITIONS.
- F.** Subject to Item H. below, the Coverage Section Aggregate Limit set forth in the Declarations is the most the Company will pay for the sum of all LOSS, CLEAN-UP COSTS, LEGAL EXPENSE, LOAN BALANCE, DIMINUTION IN VALUE, or BUSINESS INTERRUPTION LOSS under each applicable coverage section stated in the Declarations, or under any other coverages afforded under this Policy.
- G.** Subject to the Coverage E. Aggregate Limit and Item H. below, the most the Company will pay for the sum of all BUSINESS INTERRUPTION LOSS arising out of the same or related POLLUTION CONDITIONS is the Each POLLUTION CONDITION Limit stated in Item 3.E. of the Declarations less any applicable co-insurance, which is included within the applicable Limits of Liability and shall serve to reduce such limits accordingly.

If an INSURED could reduce the BUSINESS INTERRUPTION LOSS by: (1) the partial or complete resumption of operations; or (2) making use of other space at a COVERED LOCATION or a location otherwise controlled by an INSURED, then such reduction will be taken into account when determining BUSINESS INTERRUPTION LOSS .

- H.** The Company's total liability for the sum of all LOSS, CLEAN-UP COSTS, LEGAL EXPENSE, LOAN BALANCE, DIMINUTION IN VALUE, BUSINESS INTERRUPTION LOSS, and any other coverages afforded under this Policy, shall not exceed the Policy Aggregate Limit of Liability as stated in the Declarations.
- I.** Any LOSS, CLEAN-UP COSTS, LEGAL EXPENSE, LOAN BALANCE, DIMINUTION IN VALUE, BUSINESS INTERRUPTION LOSS and any other coverages afforded under this Policy incurred and reported to the Company, in writing, over more than one Policy Period, and resulting from the same or related POLLUTION CONDITIONS, shall be considered a single POLLUTION CONDITION. The associated LOSS, CLEAN-UP COSTS, LEGAL EXPENSE, LOAN BALANCE, DIMINUTION IN VALUE, BUSINESS INTERRUPTION LOSS and any other coverages afforded under this Policy will be subject only to those Limits of Liability and Self-Insured Retention Amounts as indicated in the Policy in effect at the time the POLLUTION CONDITION was first reported to the Company, in writing.

- J.** The Limits of Liability shown in Item 3. of the Declarations are inclusive of LEGAL EXPENSE. However, an additional Limit for LEGAL EXPENSE in the amount of \$500,000 shall apply collectively to all Coverages. This additional Limit is exclusively for LEGAL EXPENSE. This additional Limit for LEGAL EXPENSE is subject to the Self-Insured Retention shown in Item 3. of the Declarations.

In the event a CLAIM is made against the INSURED for LOSS or CLEAN-UP COSTS, the additional Limit for LEGAL EXPENSE shall be applied first. After the additional Limit for LEGAL EXPENSE has been fully eroded, any other covered LEGAL EXPENSE shall erode the applicable Limits of Liability shown in Item 3. of the Declarations.

Furthermore, the Policy Aggregate Limit of Liability shown in Item 4. of the Declarations shall be increased by \$500,000. However, this increase to the Policy Aggregate Limit of Liability shall only be available for the payment of LEGAL EXPENSE.

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

- A.** As a condition precedent to the coverage hereunder, in the event a CLAIM is made by or against an INSURED, the INSURED shall provide:

1. written or oral notice containing particulars sufficient to identify the INSURED,
2. all reasonably obtainable information with respect to the time, place, and circumstances thereof,
3. the names and addresses of the injured and of available witnesses, and
4. the LOAN DOCUMENTS and any and all applicable and relevant investigative or engineering reports, data, or information about the POLLUTION CONDITION, LOSS, CLEAN-UP COSTS, and LOAN BALANCE in the possession of 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 subsequent demand, notice, summons, order or other process received by an INSURED or an 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:

1. EMERGENCY RESPONSE COSTS under Coverage B, but only if the INSURED: (i) reports, in writing, the applicable POLLUTION CONDITION to the Company and solicits the Company's assistance in responding to such POLLUTION CONDITION no later than seven (7) days after the applicable emergency first commences; (ii) immediately provides to the Company, upon request, all information available to the INSURED related to such EMERGENCY RESPONSE COSTS, including but not limited to: a description of the actions taken, reports, sampling results, correspondence and invoices; and (iii) fully complies with terms of Section VII of this Policy.

The Company has no duty to pay EMERGENCY RESPONSE COSTS incurred more than seven (7) days after the applicable emergency first commences unless such EMERGENCY RESPONSE COSTS are consented to by the Company prior to being incurred by the INSURED; and

2. the reasonable and necessary costs and fees incurred by the INSURED (up to a maximum of \$100,000 and subject to a Self-Insured Retention of \$25,000 for each POLLUTION CONDITION) for the hiring of a public relations firm to minimize potential harm to the INSURED and to maintain and restore public confidence in the INSURED, including amounts for printing, advertising, and mailing of materials, and travel expenses by the INSURED's directors, officers, employees or agents or by employees of the public relations firm, but only if:

(A) such costs and fees arise directly from a POLLUTION CONDITION for which coverage is not otherwise excluded under this Policy; and

(B) in the good-faith, reasonable opinion of the INSURED such POLLUTION CONDITION:

- (i) poses an imminent health risk to the public or will result in imminent property damage to any location that is not a COVERED LOCATION; and
- (ii) will result in significant and material adverse publicity to the INSURED.

Subject to: (a) the Company's pre-approval; (b) the Self-Insured Retention and maximum amount indicated above; and (c) the Company's agreement that both conditions 2(A) and (B) above have been fully satisfied, the Company may also consider paying other related reasonable and necessary expenses that are: (i) incurred by any person or entity that is not an INSURED; and (ii) not otherwise covered as EMERGENCY RESPONSE COSTS, including: psychological counseling, temporary living expenses, travel costs, and expenses to secure areas impacted by the POLLUTION CONDITION. Notwithstanding Section VI. LIMIT OF LIABILITY AND SELF-INSURED RETENTION, Item H., the costs and fees indicated in Item 2. above, as well as the other related expenses indicated in this paragraph, will not erode the applicable Limits of Liability.

It is a condition precedent to coverage for all costs and fees outlined in Item 2. above that the INSURED notify the Company of the POLLUTION CONDITION associated with such costs and fees no later than forty-eight (48) hours after the INSURED first becomes aware of such POLLUTION CONDITION.

The payment of costs and fees outlined above by the Company will not be determinative of the Company's obligations under this Policy, nor will it create any inference with regard to the Company's duty to defend or duty to indemnify any INSURED with regard to any CLAIM or POLLUTION CONDITION.

- C. The Company shall have the right to designate legal counsel for the investigation, adjustment, and defense of any CLAIM. The Company shall consult with the FIRST NAMED INSURED in conjunction with the selection of counsel. The Company shall have the right and duty to defend the INSURED against any CLAIM for LOSS or for CLEAN-UP COSTS. However, the Company will have no duty to defend the INSURED against any CLAIM 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, LEGAL EXPENSE, LOAN BALANCE, DIMINUTION IN VALUE, BUSINESS INTERRUPTION LOSS, or any other coverages afforded under this Policy.
- E. The Company may, where allowable by law, appoint one counsel to defend all INSUREDs under this Policy on a joint defense basis.
- F. In the event that an INSURED is entitled by law to select independent counsel (Cumis Counsel) to defend the INSURED at the Company's expense, that counsel's fees and all other litigation expenses charged to or paid 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 adequate errors and omissions insurance. The INSURED agrees that such counsel will timely respond to the Company's request for information.
- G. No INSURED shall 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 an 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, 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 an INSURED refuses such settlement, the Company's liability for LOSS, CLEAN-UP COSTS, LEGAL EXPENSE, or any other coverages afforded under this Policy, 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, and shall attend hearings, depositions, and trials and shall 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 defense, all without charge to the Company. All INSUREDs shall further cooperate with the

Company and do whatever is necessary to transfer the LOAN DOCUMENTS to the Company or its designee; and 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 any CLAIM 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 that 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, LEGAL EXPENSE, LOAN BALANCE, DIMINUTION IN VALUE, BUSINESS INTERRUPTION LOSS 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 any person, or legal 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 an INSURED, the claimant and the Company.

Any person, organization, entity, 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, nor shall the Company be impleaded by the INSURED or its 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.

However, prior to DEFAULT, the FIRST NAMED INSURED may assign its interest in this Policy, without the prior consent of the Company, to a lending institution that purchases the loan evidenced by the LOAN DOCUMENTS, but only if:

1. there will be no material changes to the terms of the LOAN DOCUMENTS as part of the purchase; and
2. all remedies in the LOAN DOCUMENTS available to INSURED, including but not limited to any applicable indemnity protection, are unconditionally assigned to the purchasing lending institution and in force at the time of such assignment.

The INSURED shall notify the Company of any such assignment as soon as practicable. Thereafter, the Company shall issue an endorsement, effective as of the date of the assignment, assigning the FIRST NAMED INSURED's interest in this Policy to the purchasing lending institution.

- 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, delivering, emailing, or faxing 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, delivering, emailing, or faxing written notice to the FIRST NAMED INSURED at the address shown in the Declarations which states when, not less than ninety (90) days (ten (10) days for non-payment of premium) thereafter such cancellation shall be effective. The mailing, delivering, emailing, or faxing 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 an 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. The terms of this Policy cannot be waived or changed, except by an endorsement issued by the Company to form a part of this Policy.
  - F. 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.
  - G. 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.
  - H. DISPUTE RESOLUTION** - In the event of a dispute between the FIRST NAMED INSURED and the Company as to the applicable CLEAN-UP COSTS under Coverage A, the dispute will be resolved through MEDIATION.
- In the event of a dispute between the FIRST NAMED INSURED and the Company over the amount of DIMINUTION IN VALUE of the COVERED LOCATION or the FAIR MARKET VALUE of the COVERED LOCATION under Coverage D, the dispute will be resolved by an APPRAISAL.
- 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 COVERED LOCATION, 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. MINIMUM EARNED PREMIUM** - Upon cancellation of this Policy, earned premium will be calculated using the appropriate pro-rata or short-rate method as outlined in Section IX. CONDITIONS, Item D. CANCELLATION. The amount of premium earned under this Policy will be the greater of: (1) the calculated pro-rata or short rate premium; or (2) the Minimum Earned Premium percentage set forth in Item 9. of the Declarations.
  - L. OFFSET AND REIMBURSEMENT –**

LOAN BALANCE

If, under Coverage A, the Company pays the LOAN BALANCE, the Company has additional rights to offset and reimbursement as follows:

The Company may elect, as a condition precedent to the payment of the LOAN BALANCE, to have the INSURED assign to the Company, or its designee, all its rights, title and interest in the COVERED LOCATION and all rights under the LOAN DOCUMENTS and any and all other related documents including, but not limited to, documents which evidence the INSURED's extension of credit to the BORROWER. Once this election is made, in writing, by the Company, the INSURED will execute all necessary documents to effect such an assignment or transfer in a commercially reasonable time.

If no assignment or transfer is made because the Company has not elected to have the INSURED make an assignment or transfer, then if the INSURED receives funds, net of the costs to collect from the sale, transfer, foreclosure, or workout of the LOAN DOCUMENTS or COVERED LOCATION, it shall reimburse the Company up to the full LOAN BALANCE payment made by the Company to the INSURED, net of the costs to collect, and remit the same to the Company within a commercially reasonable time.

For the purposes this condition, the term costs to collect shall include costs that relate to the exercise and acquisition of the assignment, any CLEAN-UP COSTS for the COVERED LOCATION, any costs incurred for the protection and preservation of the value of collateral, satisfaction of taxes, assessments and liens of third parties, and all sale costs, including reasonable attorney's fees, whether of the LOAN DOCUMENTS, the debt or the COVERED LOCATION itself.

#### CLEAN-UP COSTS

If, under Coverage A, the Company makes a payment of CLEAN-UP COSTS, the Company shall have additional rights to offset and reimbursement as follows:

If the INSURED receives funds, net of the costs to collect, from the sale, transfer, foreclosure, or workout of the LOAN DOCUMENTS or COVERED LOCATION in excess of the LOAN BALANCE, the INSURED shall reimburse the Company with the excess funds up to the full amount of CLEAN-UP COSTS paid by the Company within a commercially reasonable time following receipt of such funds.

For the purposes of this subsection, the term costs to collect shall include only those CLEAN-UP COSTS paid by the INSURED for the COVERED LOCATION to the extent that such costs were not part of an CLEAN-UP COSTS payment under the policy, for the protection and preservation of collateral, satisfaction of taxes, assessments and liens of third parties, and all sale costs, including reasonable attorney's fees, whether for the LOAN DOCUMENTS, the debt, or the COVERED LOCATION itself.

For the purpose of this Condition L., it is understood and agreed, between the INSURED and the Company that each party makes no promises or representations with respect to any efforts to achieve collection of funds.

- M. OTHER INSURANCE** - Subject to Section VI. Limit of Liability and Self-Insured Retention, this insurance is primary.
- N. SEVERABILITY** - Except with regard 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 N. 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.
- O. SOLE AGENT** - The FIRST NAMED INSURED stated in the Declarations shall act on behalf of each and every INSURED 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.
- P. SUBROGATION** - If the INSURED has rights to recover, from another person or organization, all or any part of a payment the Company makes under Coverage B, C, D or E of 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.