

**INDIAN HARBOR INSURANCE COMPANY  
STAMFORD, CONNECTICUT**  
(A Stock Insurance Company Herein Called the Company)

**POLLUTION AND REMEDIATION LEGAL LIABILITY-  
REAL ESTATE LENDER'S POLICY**

**THIS IS A "CLAIMS-MADE AND REPORTED" POLICY. THE POLICY REQUIRES THAT A CLAIM BE MADE UPON THE INSURED AND REPORTED TO THE COMPANY DURING THE POLICY PERIOD OR EXTENDED REPORTING PERIOD, IF ANY. PLEASE READ CAREFULLY.**

**THIS POLICY CONTAINS PROVISIONS WHICH LIMIT THE AMOUNT OF LEGAL DEFENSE EXPENSE THE COMPANY IS RESPONSIBLE TO PAY IN CONNECTION WITH CLAIMS. LEGAL DEFENSE EXPENSE SHALL BE APPLIED AGAINST ANY RETENTION AMOUNT AND IS SUBJECT TO THE LIMITS OF LIABILITY STATED IN ITEM 3.A. OF THE DECLARATIONS.**

In consideration of the payment of the Policy Premium stated in Item 6. of the Declarations and in reliance upon the statements contained in the Application and any other supplemental materials and information submitted herewith, and subject to all the terms and conditions of this Policy, the Company agrees with the INSURED as follows:

**I. INSURING AGREEMENT**

**A. Coverage A – POLLUTION LEGAL LIABILITY**

To pay on behalf of the INSURED for LOSS in excess of any Retention Amount stated in Item 3.b. of the Declarations which the INSURED has or will become legally obligated to pay as a result of CLAIMS first made against the INSURED and reported to the Company, in writing, during the POLICY PERIOD, Automatic Extended Reporting Period or Optional Extended Reporting Period, if applicable, from POLLUTION CONDITIONS on, at, under or migrating from the location(s) stated in the Mortgage Schedule.

**B. Coverage B – MORTGAGE IMPAIRMENT**

To pay for MORTGAGE IMPAIRMENT, in excess of any Retention Amount stated in Item 3.b. of the Declarations, as a result of POLLUTION CONDITIONS on, at, under, or migrating from any Covered Locations stated in the Mortgage Schedule, provided that:

1. A DEFAULT occurs during the POLICY PERIOD;
2. POLLUTION CONDITIONS are first discovered, or a CLAIM is first made, during the POLICY PERIOD; and
3. The INSURED notifies the Company, in writing, of either the discovery of the POLLUTION CONDITIONS or the CLAIM, and of the DEFAULT of the BORROWER, during the POLICY PERIOD, Automatic Extended Reporting Period or Optional Extended Reporting Period, if applicable.

**C. Coverage C – LEGAL DEFENSE EXPENSE**

To pay on behalf of the INSURED for LEGAL DEFENSE EXPENSE in excess of any Retention Amount stated in Item 3.b. of the Declarations arising from CLAIMS to which this Policy applies. The Company shall have the right and the duty to defend the INSURED against any CLAIM seeking damages for a LOSS or in connection with MORTGAGE IMPAIRMENT. The Company shall also have the right and duty to defend the INSURED against any CLAIM(S) seeking damages for a LOSS both prior to and after any DEFAULT. However, the Company will have no duty to defend the INSURED against any CLAIM to which this Policy does not apply.

**II. DEFINITIONS**

**A. AUTOMOBILE** means a land motor vehicle, trailer, semi-trailer, MOBILE EQUIPMENT, or off-road motor vehicle, including any machinery or apparatus attached thereto. As used in this definition, MOBILE EQUIPMENT means any of the following types of land vehicles, including any attached machinery or equipment:

1. bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
2. vehicles maintained for use solely on premises owned or rented by the INSURED;
3. vehicles that travel on crawler treads;
4. vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
  - (a) power cranes, shovels, loaders or drills; or
  - (b) road construction or resurfacing equipment such as graders, scrapers or rollers,
5. vehicles not described in (1), (2), or (4) above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
  - (a) air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment, or
  - (b) cherry pickers and similar devices used to raise or lower workers;
6. vehicles not described in (1), (2), (3), or (5) above maintained primarily for purposes other than the transportation of persons or cargo.

However, self-propelled vehicles with the following types of permanently attached equipment are not MOBILE EQUIPMENT:

- (a) Equipment designed primarily for:
  - (i) snow removal;
  - (ii) road maintenance, but not construction or resurfacing;
  - (iii) street cleaning;
- (b) cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers, and
- (c) air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

**B. BODILY INJURY** means bodily injury, sickness, disease, mental anguish, shock or building related illness sustained by any person, including death resulting therefrom, caused by POLLUTION CONDITIONS on, at, under or migrating from the location(s) stated in the Mortgage Schedule.

**C. CARRIER** means a person or entity, other than the INSURED or any subsidiary or affiliate company of the INSURED, engaged in the business of transporting property for hire by AUTOMOBILE, WATERCRAFT or rolling stock.

- D. CLAIM(S)** means the assertion of a legal right alleging liability or responsibility on the part of the INSURED, arising out of POLLUTION CONDITIONS, and shall include but not necessarily be limited to lawsuits or petitions filed against the INSURED.
- E. FIRST NAMED INSURED** means the person or entity stated in Item 1. of the Declarations and any director, officer, partner, employee, LEASED WORKER, or TEMPORARY WORKER thereof while acting within the scope of his/her duties as such.
- F. INSURED** means the FIRST NAMED INSURED and any Additional Named INSURED endorsed onto the Policy, and any director, officer, partner, employee, LEASED WORKER or TEMPORARY WORKER thereof while acting within the scope of his/her duties as such.
- G. INSURED CONTRACT(S)** means contract(s) designated in any INSURED CONTRACT(S) Schedule.
- H. LEASED WORKER** means a person leased to the INSURED by a labor leasing firm under an agreement between the INSURED and the labor leasing firm, to perform duties related to the conduct of the INSURED's business. LEASED WORKER does not include TEMPORARY WORKER.
- I. LEGAL DEFENSE EXPENSE** means legal costs, charges and expenses incurred in the investigation, adjustment or defense of CLAIMS.
- J. LOSS** means monetary judgment, award or settlement of compensatory damages arising from:
- a. BODILY INJURY; or
  - b. PROPERTY DAMAGE
- K. LOW-LEVEL RADIOACTIVE WASTE AND MATERIAL** means waste or material that contains radioactivity and is not classified as high-level waste or material, transuranic waste or spent nuclear fuel. LOW-LEVEL RADIOACTIVE WASTE AND MATERIAL includes: 1) test specimens of fissionable material irradiated for research and development only, and not for production of power or plutonium, provided the concentration of transuranic waste is less than 100 nCi/g; and (2) mixed waste containing both radioactive and hazardous components as defined by the Atomic Energy Act and the Resource Conservation and Recovery Act.
- L. POLICY PERIOD** means the Period stated in Item 2. of the Declarations, or any shorter period arising as a result of cancellation.
- M. POLLUTION CONDITIONS** means the discharge, dispersal, release, seepage, migration, or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, hazardous materials, waste materials, including medical, infectious and pathological wastes, electromagnetic fields, LOW LEVEL RADIOACTIVE WASTE and MATERIAL, or other irritants, contaminants or pollutants into or upon land, or structures thereupon, the atmosphere, or any watercourse or body of water including groundwater.
- N. PROPERTY DAMAGE** means:
1. physical injury to or destruction of tangible property, including the resulting loss of use thereof, and including the personal property of third parties; or
  2. loss of use of such property that has not been physically injured or destroyed; or
  3. diminished third party property value

provided that such physical injury or destruction, loss of use, and diminished third party property value are caused by POLLUTION CONDITIONS on, at, under or migrating from location(s) stated in the Mortgage Schedule.

- O. REMEDIATION EXPENSE** means expenses incurred for or in connection with the investigation, monitoring, removal, disposal, treatment or neutralization of POLLUTION CONDITIONS, including REPLACEMENT COSTS, to the extent required by (1) Federal, State, Local or Provincial Laws, Regulations or Statutes, or any subsequent amendments thereof, enacted to address POLLUTION CONDITIONS, and/or (2) a legally executed state voluntary program governing the cleanup of POLLUTION CONDITIONS.
- P. TEMPORARY WORKER** means a person who is furnished to the INSURED to substitute for a permanent employee on leave or to meet seasonal or short-term workload conditions.
- Q. WATERCRAFT** means any vessel or other contrivance used or capable of being used as a means of transportation upon water, whether self-propelled or otherwise, including barges and tugs.
- R. REPLACEMENT COSTS** means costs necessarily incurred by the INSURED to repair or replace real or personal property damaged during the course of REMEDIATION EXPENSE in order to restore the property to the condition it was in prior to REMEDIATION EXPENSE. These costs shall not exceed the net present value of such property prior to the investigation, removal, disposal, treatment or neutralization of POLLUTION CONDITIONS. REPLACEMENT COSTS do not include costs associated with improvements or betterments.
- S. TRANSPORTATION** means the movement by a CARRIER of the INSURED's product or waste generated by the INSURED, after a CARRIER leaves the covered location(s) stated in the Mortgage Schedule until the INSURED's waste is unloaded at its final disposal point or the INSURED'S product is delivered, at its final delivery point.
- T. BORROWER** means the obligor on a commercial real estate loan at a Covered Location stated in the Mortgage Schedule, and any other person, entity or organization controlled by or under common control of the obligor.
- U. DEFAULT** occurs when the BORROWER has failed to make any part of a scheduled, periodic or final payment within ninety (90) days of the due date of such payment and the INSURED has issued a default notice to the BORROWER.
- V. MORTGAGE IMPAIRMENT** means the lesser of the following amounts:
1. the amount of REMEDIATION EXPENSE; or
  2. any outstanding balance of the loan owed to the INSURED by the BORROWER, which shall include the principal and accrued interest from the date that the DEFAULT is reported to the Company until the date that the outstanding balance is paid. However, the outstanding balance of the loan shall be exclusive of all interest, penalties or miscellaneous costs, charges, and expenses related to DEFAULT and foreclosure at a Covered Location.

### III. TERRITORY

This Policy only applies to CLAIMS made or brought in the United States, its territories or possessions or in Canada.

### IV. EXCLUSIONS

**With respect to Section I. Insuring Agreement, Coverage A and Coverage B, and any LEGAL DEFENSE EXPENSE provided under Coverage C arising from a CLAIM under Coverages A or B, this Insurance does not apply to LOSS, MORTGAGE IMPAIRMENT, LEGAL DEFENSE EXPENSE or any other coverages provided by endorsement:**

- 1. Known Condition(s)**  
arising from POLLUTION CONDITIONS existing prior to the inception of this Policy, and reported to any officer, director, partner or other employee responsible for environmental affairs of the INSURED, which were not disclosed in writing to the Company in the application or related materials prior to the inception of this Policy or prior to the location being placed on the Mortgage Schedule. Only conditions described in the documents listed in the Known Condition(s) Document Schedule are disclosed to the Company;
- 2. Multiplied Damages/Fines/Penalties**  
based upon or arising out of civil, administrative or criminal fines or penalties, assessments, punitive, exemplary or multiplied damages;
- 3. Employer's Liability/Workers' Compensation**  
based upon or arising out of injury to any employee, director, officer, partner, LEASED WORKER or TEMPORARY WORKER of the INSURED if such injury occurs during and in the course of said employment or arising out of any Workers' Compensation, unemployment compensation, unemployment compensation or disability benefits law or similar law;
- 4. Contractual Liability**  
based upon or arising as a result of liability of others assumed by the INSURED under any contract or agreement unless the liability would exist in the absence of a contract or agreement. This exclusion does not apply to liability of others assumed by the INSURED in INSURED CONTRACT(S), if any, stated in the INSURED CONTRACT(S) Schedule;
- 5. INSURED's Property/Bailee Liability**  
based upon or arising as a result of 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 which may be covered under this Policy. This exclusion does not apply to REPLACEMENT COSTS;
- 6. Vehicles**  
based upon or arising out of the ownership, maintenance, use, operation, loading or unloading of any AUTOMOBILE, aircraft, WATERCRAFT, rolling stock or all transportation, including any cargo carried thereby, beyond the legal boundaries of location(s) stated in the Mortgage Schedule;
- 7. Divested Property**  
based upon or arising from POLLUTION CONDITIONS on, at, under or migrating from the location(s) stated in the Mortgage Schedule, where the actual discharge, dispersal, release, seepage, migration or escape of POLLUTION CONDITIONS begins subsequent to the time such location(s) are sold, given away, or abandoned by the FIRST NAMED INSURED, or condemned;
- 8. Nuclear Hazard:**
  - a.** Under any Liability Coverage, to BODILY INJURY, PROPERTY DAMAGE or MORTGAGE IMPAIRMENT
    - (1)** with respect to which an INSURED under this Policy is also an INSURED under a nuclear energy liability policy issued by the Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada, or would be an INSURED under any such Policy but for its termination upon exhaustion of its Limits of Liability; or

- (2)** resulting from the "HAZARDOUS PROPERTIES" of "NUCLEAR MATERIAL" and with respect to which
- (a)** any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or
  - (b)** the INSURED is, or had this Policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.
- b.** Under any Liability Coverage, to BODILY INJURY or PROPERTY DAMAGE resulting from the "HAZARDOUS PROPERTIES" of "NUCLEAR MATERIAL", if:
- (1)** the "NUCLEAR MATERIAL"
    - (a)** is at any "NUCLEAR FACILITY" owned by, or operated by or on behalf of, an INSURED or
    - (b)** has been discharged or dispersed therefrom;
  - (2)** the "NUCLEAR MATERIAL" is contained in "SPENT FUEL" or "WASTE" at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of an INSURED; or
  - (3)** the BODILY INJURY or PROPERTY DAMAGE arises out of the furnishing by an INSURED of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any "NUCLEAR FACILITY", but if such facility is located within the United States of America, its territories or possessions or Canada, this exclusion 10.b.(3) applies only to PROPERTY DAMAGE to such "NUCLEAR FACILITY" and any property thereat.
- c.** As used in this exclusion:
- (1)** "HAZARDOUS PROPERTIES" includes radioactive, toxic or explosive properties;
  - (2)** "NUCLEAR MATERIAL" means SOURCE MATERIAL, SPECIAL NUCLEAR MATERIAL or BYPRODUCT MATERIAL;
  - (3)** "SOURCE MATERIAL", "SPECIAL NUCLEAR MATERIAL" and "BYPRODUCT MATERIAL" have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof;
  - (4)** "SPENT FUEL" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a NUCLEAR REACTOR;
  - (5)** "WASTE" means any waste material
    - (a)** containing BYPRODUCT MATERIAL; and
    - (b)** resulting from the operation by any person or organization of any NUCLEAR FACILITY included within the definition of NUCLEAR FACILITY under paragraph (6) (a) or (6) (b) thereof;

- (6) "NUCLEAR FACILITY" means:
- (a) any NUCLEAR REACTOR,
  - (b) any equipment or device designed or used for separating the isotopes of uranium or plutonium, processing or utilizing SPENT FUEL, or handling, processing or packaging WASTE,
  - (c) any equipment or device used for the processing, fabricating or alloying of SPECIAL NUCLEAR MATERIAL, if at any time the total amount of such material in the custody of the INSURED at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235,
  - (d) any structure, basin, excavation, premises or place prepared or used for the storage or disposal of WASTE, and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations;
- (7) "NUCLEAR REACTOR" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material;
- (8) "PROPERTY DAMAGE" includes all forms of radioactive contamination of property;

**9. Products Liability**

based upon or arising out of goods or products manufactured, sold, handled, distributed, altered or repaired by the INSURED or by others trading under the 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, but only if the POLLUTION CONDITIONS occur away from the location(s) owned, operated, or leased by the INSURED and after physical possession of such has been relinquished to others.

**10. Intentional Acts**

arising from POLLUTION CONDITIONS that result from intentional disregard of, or the deliberate, willful or dishonest non-compliance with any statute, regulation, ordinance, administrative complaint, notice letter or instruction by any governmental agency or representative, by any officer, director, partner, or other employee responsible for environmental affairs of the INSURED,

**11. Hostile Acts**

based upon or arising out of any consequence, whether direct or indirect, of war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power;

**12. Lead Based Paint and Asbestos**

based upon or arising out of the existence, required removal or abatement of lead based paint or asbestos, in any form, including but not limited to products containing asbestos, asbestos fibers, asbestos dust, and asbestos containing materials;

**13. Underground Storage Tank(s)**

based upon or arising out of the existence of any underground storage tank(s) and associated piping on, at, or under the location(s) stated in the Mortgage Schedule, but only if the existence of such is known by any officer, director, partner or other employee responsible for environmental affairs of the INSURED. This exclusion does not apply to underground storage tank(s) and associated piping either closed or abandoned in place, in accordance with all applicable federal and state regulations or to any underground storage tank(s) and associated piping, if any, stated in the Underground Storage Tank(s) and Associated Piping Schedule;

**14. Natural Radioactive Material**

based upon or arising out of the existence, required removal or abatement of naturally occurring radioactive materials, including but not limited to radon.

**V. EXTENDED REPORTING PERIOD**

**A. Automatic Extended Reporting Period**

In the event of the termination of this insurance by any reason of cancellation or non-renewal, the INSURED shall be entitled to an Automatic Sixty (60) Day Extended Reporting Period for no additional premium. The extension of coverage granted hereunder shall be subject to the terms and conditions of this Policy and shall apply to CLAIMS first made against the INSURED during the sixty (60) days immediately following the effective date of such cancellation or non-renewal, but only by reason of POLLUTION CONDITIONS existing as of or prior to the applicable termination or expiration date otherwise covered by this insurance. The Automatic Sixty (60) Day Extended Reporting Period does not apply to POLLUTION CONDITIONS on, at, under, or migrating from the location(s) stated in the Mortgage Schedule subsequent to the applicable termination or expiration date otherwise covered by this insurance. This provision does not apply if the Policy is terminated for fraud or non-payment of premium.

**B. Optional Extended Reporting Period**

Except in the event that this Policy is terminated for fraud, the FIRST NAMED INSURED shall be entitled to purchase an extension of coverage upon cancellation or non-renewal of the Policy subject to the following terms and conditions:

For Policy terms in effect less than three-hundred and sixty-five (365) days, the FIRST NAMED INSURED shall be entitled to purchase an Optional Extended Reporting Period upon payment of an additional premium of not more than 200% of the full Policy Premium stated in Item 6 of the Declarations.

For Policy terms equal to or greater than three-hundred and sixty-five (365) days, 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 stated in Item 6. of the Declarations. The Optional Extended Reporting Period shall be effective for three (3) consecutive three-hundred and sixty-five (365) day periods 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 sixty (60) days will be merged into this period and is not in addition to this period. The extension of coverage granted hereunder shall only apply as respects POLLUTION CONDITIONS existing as of or prior to the date of cancellation or non-renewal of this Policy, and otherwise covered by this Policy. It is a condition precedent to the operation of the rights granted under this clause 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.

In the event that the Policy is terminated for non-payment of premium, the FIRST NAMED INSURED may purchase the Optional Extended Reporting Period; however, any premium paid by the FIRST NAMED INSURED will first be applied to the owed payment of premium under the Policy and then will be applied to the purchase of the Optional Extended Reporting Period.

For purposes of this Section the quotation of different terms and conditions by the Company shall not be construed as non-renewal.

## VI. LIMIT OF LIABILITY AND RETENTION

- A. For Coverages A, B & C under I. Insuring Agreement, this Policy will pay 100% of any covered LOSS, MORTGAGE IMPAIRMENT, LEGAL DEFENSE EXPENSE or any other coverages provided by endorsement in excess of the applicable combined Retention Amount stated in Item 3.b. of the Declarations, subject to the combined Limits of Liability stated in Item 3.a. of the Declarations and the other terms and conditions of this Policy.
- B. The 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. All LOSS, MORTGAGE IMPAIRMENT, LEGAL DEFENSE EXPENSE or any other coverages provided by endorsement arising out of the same or related POLLUTION CONDITIONS at any one location shall be considered a single LOSS, MORTGAGE IMPAIRMENT, LEGAL DEFENSE EXPENSE or any other coverages provided by endorsement. The applicable Limit of Liability stated in Item 3.a. of the Declarations shall apply.
- C. The Company's total liability for all LOSS, MORTGAGE IMPAIRMENT, LEGAL DEFENSE EXPENSE or any other coverages provided by endorsement during the POLICY PERIOD, Automatic Extended Reporting Period or Optional Extended Reporting Period, if applicable, shall not exceed the Limit of Liability stated in Item 3.a. of the Declarations.
- D. Noncumulation of Limits of Liability for Multiple CLAIMS That Are Reported in Different POLICY PERIODS: Any LOSS, MORTGAGE IMPAIRMENT, LEGAL DEFENSE EXPENSE or any other coverages provided by endorsement incurred because of one or more CLAIMS arising out of the same or related POLLUTION CONDITIONS made against the INSURED and reported to the Company, in writing, over more than one POLICY PERIOD shall be considered a single CLAIM. The CLAIM will be subject to the same Limits of Liability in effect at the time of the first reported POLLUTION CONDITIONS. Further, only the Retention Amount in effect at the time of the first reported POLLUTION CONDITIONS will apply.

## VII. REPORTING, DEFENSE, SETTLEMENT AND COOPERATION

- A. As a condition precedent to the coverage hereunder, in the event of BODILY INJURY, PROPERTY DAMAGE, POLLUTION CONDITIONS, MORTGAGE IMPAIRMENT, or any CLAIM, written or oral notice containing particulars sufficient to identify the INSURED and also reasonable 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 FIRST NAMED INSURED to the Company or any of its authorized agents as soon as practicable. In the event of oral notice, the FIRST NAMED INSURED agrees to furnish a written report as soon as practicable.
- B. As a condition precedent to the coverage hereunder, if a CLAIM is made against the INSURED, the FIRST NAMED INSURED shall 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.
- C. 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 any delay on the part of the INSURED would cause injury to persons or damage to property. The INSURED shall notify the Company immediately thereafter. 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 INSURED shall not admit liability or settle any CLAIM without the Company's consent. If the Company recommends a settlement of a CLAIM:

1. for an amount within the Retention and the INSURED refuses such settlement, the Company shall not be liable for any LOSS, MORTGAGE IMPAIRMENT, LEGAL DEFENSE EXPENSE or any other coverages provided by endorsement in excess of the Retention; or
  2. for a total amount in excess of the balance of the Retention and the INSURED refuses such settlement, the Company's liability for LOSS, MORTGAGE IMPAIRMENT, LEGAL DEFENSE EXPENSE or any other coverages provided by endorsement shall be limited to that portion of the recommended settlement and the costs, charges and expenses as of the INSURED's refusal which exceed the Retention and fall within the Limit of Liability.
- D. The Company shall have the right and the duty to assume the investigation, adjustment or defense of any CLAIM. In case of the exercise of this right, the FIRST NAMED INSURED, on demand of the Company, shall promptly reimburse the Company for any element of LOSS, MORTGAGE IMPAIRMENT, LEGAL DEFENSE EXPENSE or any other coverages provided by endorsement falling within the INSURED's Retention.
- E. The INSURED shall cooperate with the Company and upon the Company's request shall submit to examination and interrogation by a representative of the Company, under oath if required, and shall attend hearings, depositions and trials and shall assist in affecting 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 affect any rights of indemnity, contribution or apportionment which the INSURED may have.
- F. The amount of REMEDIATION EXPENSE under Coverage B - MORTGAGE IMPAIRMENT under I. Insuring Agreement is determined by the following procedures:
- 1) The FIRST NAMED INSURED and the Company shall mutually agree upon a neutral environmental consultant who shall determine the amount of REMEDIATION EXPENSE after reviewing all relevant information provided by the INSURED and Company.
  - 2) In the event the FIRST NAMED INSURED and Company fail to agree upon a neutral environmental consultant or disagree with the amount of REMEDIATION EXPENSE determined by the environmental consultant, the FIRST NAMED INSURED and Company shall agree upon a neutral mediator. The mediator shall engage the INSURED and Company in non-binding mediation in an attempt to resolve the dispute.
  - 3) If the FIRST NAMED INSURED and Company are unable to resolve the dispute after mediation, the FIRST NAMED INSURED and Company shall each submit a list of three environmental consultants to the mediator. The mediator shall select one environmental consultant from each list as well as a third environmental consultant not on either list. The panel of three environmental consultants shall determine the amount of REMEDIATION EXPENSE after a hearing subject to the American Arbitration Association procedures or other procedures as shall be mutually agreed upon by the FIRST NAMED INSURED and Company. The INSURED and Company shall be bound by the determination of REMEDIATION EXPENSE by the panel of environmental consultants.

## VIII. TRANSFER OF LEGAL DEFENSE DUTIES

- A. If the Company believes that the Limit of Liability stated in Item 3.a. of the Declarations has been or soon will be exhausted in defending CLAIMS or that the Company has paid out or will soon pay out the Aggregate Limit of Liability stated in Item 3.a. of 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 immediate 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 FIRST NAMED INSURED cooperates in the transfer of the duties of the defense.
- C. The exhaustion of the applicable Limit of Liability by the payment of LOSS, MORTGAGE IMPAIRMENT, LEGAL DEFENSE EXPENSE or any other coverages provided by endorsement will not be affected by the Company's failure to comply with any of the provisions of this section.

## IX. CONDITIONS

- A. **INSPECTION AND AUDIT** -- The Company shall be permitted but not obligated to inspect, sample and monitor on a continuing basis any location(s) stated in the Mortgage Schedule or their operations, at any time. Neither the Company's right to make inspections, sample 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.
- B. **CANCELLATION** -- This Policy may be canceled 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. This Policy may be canceled by the Company by mailing to the FIRST NAMED INSURED at the address shown in this Policy, written notice stating when not less than sixty (60) 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. Delivery of such written notice either by the FIRST NAMED INSURED or by the Company shall be equivalent to mailing.
- If the FIRST NAMED INSURED cancels, earned premium shall be computed in accordance with the customary short rate table and procedure. 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.
- C. **DECLARATIONS AND REPRESENTATIONS** -- By acceptance of this Policy, the INSURED agrees that the statements contained in the Declarations and any other supplemental materials and information submitted herewith are the INSURED's agreements and representations, that they shall be deemed material, that this Policy is issued in reliance upon the truth of such representations and that this Policy embodies all agreements existing between the INSURED and the Company or any of its agents relating to this insurance.

- D. ACTION AGAINST COMPANY** -- No action shall lie against the Company unless, as a condition precedent thereto, there shall have been full compliance with all of the terms of this Policy, nor until 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 impeded by the INSURED or his legal representative. Bankruptcy or insolvency of the INSURED or of the INSURED's estate shall not relieve the Company of any of its obligations hereunder.

- E. ASSIGNMENT** -- This Policy shall be void as to the assignee or transferee, if assigned or transferred without written consent of the Company. Such written consent shall not be unreasonably withheld or delayed by the Company.
- F. SUBROGATION** -- In the event of any payment under this Policy, the Company shall be subrogated to all the INSURED's rights of recovery therefor against any person or organization and the INSURED shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights including but not limited to all indemnity agreements, notes, guarantees, or any other documents executed as a condition precedent to the loan. The INSURED shall do nothing after a CLAIM to prejudice such rights.
- G. CHANGES** -- Notice to any agent or knowledge possessed by any agent or by any other person shall not affect a waiver or a change in any part of this Policy or stop the Company from asserting any right under the terms of this Policy; nor shall the terms of this Policy be waived or changed, except by endorsement issued to form a part of this Policy.
- H. SOLE AGENT** -- The FIRST NAMED INSURED stated in Item 1. of 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 in Section V. Extended Reporting Period, B. Optional Extended Reporting Period.
- I. OTHER INSURANCE** -- Subject to Section VI., Limits of Liability and Retention, this insurance shall be in excess of the Retention Amount stated in the Declarations and 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 limits of liability provided in this Policy.
- J. HEADINGS** -- The descriptions in the headings of this Policy are solely for convenience and form no part of the Policy terms and conditions.
- 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. 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 (notwithstanding New York's conflicts of law rules).

**M. SEVERABILITY** -- Except with respect to Limits of Liability 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.

**N. FORECLOSURE** -- For the purposes of Coverage B, MORTGAGE IMPAIRMENT under I. Insuring Agreement:

- (a) If the INSURED elects not to foreclose on a location stated in the Mortgage Schedule and the BORROWER makes any payments in an effort to bring the loan current, any payments made by the BORROWER would be applied first to any MORTGAGE IMPAIRMENT paid or to be paid by the Company.
- (b) If the INSURED elects not to foreclose on a location stated in the Mortgage Schedule and elects not to pursue any of its rights under the loan documents, then the INSURED must assign to the Company all rights under the loan documents, including but not limited to all indemnity agreements, notes, guarantees, mortgages or other documents executed as a condition of the loan.

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