

# Lender Environmental Collateral Protection and Liability Insurance

## Claims Made and Reported Coverage



This policy has certain provisions and requirements unique to it and may be different from other policies the “named insured” may have purchased. With respect to “owned” “covered locations” “claim(s)” must first be made by or against the “insured” during the “policy period”, and “claim(s)” must be reported, in writing, to the Company during the “policy period”, the automatic extended reporting period or an extended reporting period, if applicable. With respect to “covered locations” serving as collateral for “mortgage agreements” “claim(s)” must first be made by or against the “insured” during the “effective period of coverage”, and reported, in writing, to the Company during the “effective period of coverage”. Notice of a potential “claim” is not a “claim” and does not trigger coverage under the policy. The payment of “claim(s)”, “loss(es)”, “outstanding loan balance(s)”, “extra expenses”, “cleanup costs”, “estimated cleanup costs”, and “claim expense(s)”, including defense costs, reduces the limits of insurance. If the policy’s Limit of Liability is exhausted, the Company shall not be liable for “claim expense(s)” or for the amount of any “claim”, “loss”, “cleanup costs”, “estimated cleanup costs”, “outstanding loan balance”, “extra expenses”, judgments or settlements.

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered. Words and phrases that appear in quotation marks have special meanings. Refer to Section II - DEFINITIONS.

In consideration of the payment of premium, the undertaking of the “insured” to pay the Deductible, in reliance upon the statements in the Application and Disclosure Form if applicable for this policy made a part hereof, subject to the Limits of Liability of this policy as set forth in the Declarations, exclusions, conditions and other terms of this policy, the Company agrees with the “named insured” as follows:

### I. INSURING AGREEMENTS

#### COVERAGE A: Lender Collateral Protection For Covered Locations Serving As Collateral For Mortgage Agreements

The Company agrees to pay to the “insured” the lessor of the “estimated cleanup costs” or “outstanding loan balance” and “extra expenses” as a result of a discovery by the “insured” during the “effective period of coverage” of a “pollution event” on, at or under a “covered location(s)” serving as collateral for a “mortgage agreement”, provided the “borrower” for such “covered location” is in “default” and the “claim” is reported to the Company during the “effective period of coverage”. However, if the “estimated cleanup costs” are either equal to or greater than fifty percent (50%) of the “outstanding loan balance”, the “insured” may select either the “estimated cleanup costs” or the “outstanding loan balance and “extra expenses”.

#### COVERAGE B: First Party Cleanup For Owned Covered Locations

The Company agrees to pay on behalf of an “insured” any “cleanup costs” required by “governmental authority” as a result of a discovery, after “foreclosure” and during the “policy period”, by the “insured” of a “pollution event” on, at or under an “owned” “covered location(s)”, provided that the “claim” is reported to the Company during the “policy period” or any applicable extended reporting period. Coverage for “claim(s)” due to changes in “governmental authority” during any applicable extended reporting period is set out in the EXTENDED REPORTING PERIODS (Section V.). The Company shall not, however, pay under this Coverage B for “cleanup costs” resulting from “pollution events” on, at or under such “covered location” if the Company has paid or is obligated, whether actual or alleged, to pay under Coverage A the “estimated cleanup costs” or the “outstanding loan balance” and “extra expenses” with respect to the same “covered location”.

#### COVERAGE C: Third Party Liability For Owned Covered Locations and Covered Locations Serving As Collateral For Mortgage Agreements

The Company agrees to pay on behalf of an “insured” any “loss” caused by a “pollution event” on, at, under or coming from a “covered location” that an “insured” is legally obligated to pay as a result of “claim(s)”:

- 1) with respect to “owned” “covered locations”, first made against the “insured” during the “policy period” provided that the “claim” is reported to the Company during the “policy period” or any applicable extended reporting period; and
- 2) with respect to “covered locations” serving as collateral for “mortgage agreements”, first made by or against the “insured” during the “effective period of coverage” provided that the “claim” is reported to the Company during the “effective period of coverage” or any applicable extended reporting period.

The Company shall not, however, pay under this Coverage C for “cleanup costs” resulting from “pollution events” on, at or under the “covered location” if the Company has paid or is obligated, whether actual or alleged, to pay under Coverage A the “estimated cleanup costs” or the “outstanding loan balance” and “extra expenses” with respect to the same “covered location”.

#### **DEFENSE: COVERAGE C ONLY**

The Company shall have the right and duty to assume the adjustment, defense and settlement of any “claim” brought by or on behalf of any federal, state or local regulatory agency, or by or on behalf of a third party seeking payment for “loss(es)” to which this insurance applies. “Claim expense” reduces the applicable Limits of Liability set out in the Declarations as described in the LIMIT OF LIABILITY AND DEDUCTIBLE (Section VI).

The Company's duty to adjust, defend and settle all “claim(s)” to which this insurance applies, pending and future, ends when the applicable Limit of Liability has been tendered into court or exhausted by payment of “claim expense”, “outstanding loan balance”, “extra expenses”, “cleanup costs”, “estimated cleanup costs”, and/or “loss”.

#### **II. DEFINITIONS**

- A.** “Bodily injury” means physical injury, sickness, disease, mental anguish, or emotional distress sustained by any person including death resulting therefrom.
- B.** “Borrower” means a person or entity that is financially obligated to the “insured” pursuant to a “mortgage agreement” pertaining to a “covered location”.
- C.** “Claim(s)” means:

1. Under Coverage A, notice by the “insured” to the Company following:
  - i) the discovery of a “pollution event” by the “insured” on, at or under a “covered location” serving as collateral for a “mortgage agreement” which results in liability or responsibility for “cleanup cost(s)” required by “governmental authority”; and
  - ii) a “default” by the “borrower”; andwhich notice seeks the payment of the “estimated cleanup costs” or the “outstanding loan balance” and “extra expenses”; or
2. Under Coverage B, notice by the “insured” to the Company following the discovery of a “pollution event” by the “insured” on, at or under an “owned” “covered location” which results in “cleanup costs” that are required by “governmental authority”; or
3. Under Coverage C, any demand or notice received by the “insured” alleging liability or responsibility on the part of the “insured” for “loss(es)” caused by a “pollution event” on, at, under or coming from an “owned” “covered location” or a “covered location” serving as collateral for a “mortgage agreement”.

- D.** “Claim expense(s)” means:

1. fees charged by an attorney designated by the:
  - a. Company; or
  - b. “insured”, with the prior written consent of the Company; and
2. all other fees, costs and expenses incurred by the Company, or incurred by the “insured” with the consent of the Company, which result from the defense, settlement and appeal of a “claim” including interest on the full amount of any judgment that accrues after entry of the judgment and before we get paid, offered to pay, or deposited in court the amount available for the judgment under the policy.

However, “claim expense(s)” does not include the salaries or expenses of regular employees or officials of the Company or the “insured” or the expenses of adjusters of the Company. The “insured” shall be entitled to \$250 per day but not more than \$5,000 in total as allowable expenses for the compensation of its officers or employees for personally attending any legal proceeding or meeting at the request of the Company. Notwithstanding anything to the contrary contained in this policy, these allowable expenses for the compensation of officers and employees shall not reduce the applicable Deductible or Limit of Liability set out in the Declarations.

- E.** “Cleanup costs” means:

1. the reasonable and necessary expenses incurred in the investigation, treatment, monitoring, removal, remediation, neutralization or immobilization of contaminated soil, surface water, groundwater, or other contamination; and
2. for a "claim" under Coverage B only, the legal fees and costs to represent the "insured" before any federal, state or local regulatory agency provided such fees and costs are reasonable and necessary and incurred with the prior written consent of the Company.

However, any costs, charges or expenses incurred by the "insured" to confirm the existence of a "pollution event" shall not be considered "cleanup costs".

- F.** "Covered location(s)" means the real property shown on the Covered Location Schedule Endorsement attached to this policy and includes any "fixed assets" or "leasehold" interest situated upon such "covered location".
- G.** "Default" means the existence and declaration by the "insured" of a "default" or event of "default" as those terms are defined by and in accordance with the provisions of the "mortgage agreement" between the "insured" and the "borrower". For the purposes of this Policy, the presence of a "pollution event" on, at or under a "covered location" shall not be deemed a cause or event of "default" under this insurance, even if defined to be a cause or event of "default" as defined in the "mortgage agreement".
- H.** "Effective period of coverage" means a period of time for which coverage is provided by the Company to the "insured" under the terms and conditions of this policy. The "effective period of coverage" shall begin for each "covered location" serving as collateral for such "mortgage agreements" on the effective date indicated on the Covered Location(s) Schedule Endorsement and end on the earlier date of the following:
1. the maturity date of a "mortgage agreement" applicable to such "covered location" indicated on the Covered Location(s) Schedule Endorsement; or
  2. the date of foreclosure upon a "mortgage agreement" serving as collateral for a "covered location";
  3. the date of any discharge or release of a security interest or lien on such "covered location" that was created by a "mortgage agreement"; or
  4. our payment of a "claim" under Coverage A with respect to such "covered location"; or
  5. the deletion of such "covered location" from this policy by the Company upon the "named insured's" request; or
  6. the cancellation or termination of this policy either by the "named insured" or by the Company.
- I.** "Emergency action" means the reasonable and necessary costs incurred to prevent or mitigate an imminent and substantial endangerment to public health or the environment.
- J.** "Estimated cleanup costs" means
1. the reasonable and necessary expenses incurred in the investigation, treatment, monitoring, removal, remediation, neutralization or immobilization of contaminated soil, surface water, groundwater, or other contamination; and
  2. for a "claim" under Coverage B only, the legal fees and costs to represent the "insured" before any federal, state or local regulatory agency provided such fees and costs are reasonable and necessary and incurred with the prior written consent of the Company.

However, any costs, charges or expenses incurred by the "insured" to confirm the existence of a "pollution event" shall not be considered "cleanup costs".

- K.** "Extra expenses" means the sum of the following:
1. the lesser of the actual amount incurred or six (6) months of interest accrued and unpaid with respect to a "mortgage agreement";
  2. the lesser of the actual amount incurred or ten thousand dollars (\$10,000.00) for advances and interest on advances actually paid by the "insured" which the Company agrees are necessary to protect the "covered location" pursuant to the "mortgage agreement"; and
  3. the lesser of the actual amount incurred or ten thousand dollars (\$10,000.00) for legal fees;
- which shall all begin to accrue as of the date of the "insured's" declaration of "default".
- L.** "Fixed assets" means fixtures, plant, equipment, inventory, stock in trade situated upon the "covered location".

- M.** "Foreclosure" means taking title to an interest in the "covered location" through the enforcement of an "insureds" lien, by way of foreclosure or deed in lieu of foreclosure or such other transfer of title or interest calculated to allow the "insured" the opportunity to recover upon debt evidenced by the "mortgage agreement" and secured, in whole or in part, by such "covered location".
- N.** "Governmental authority" means applicable federal, state, or local regulations, orders or ordinances, including remedial action plans which (i) meet the requirements of a "voluntary cleanup program", (ii) are validly executed with all necessary regulatory entities and (iii) are negotiated with requirements no stricter than those necessary for the actual or intended use set forth in the Application or Disclosure Form.
- O.** "Insured" means:
1. the "named insured" and any of the "named insured's" subsidiaries, and divisions, and all current and former executives, officers, directors, employees, contract or leased employees thereof when acting within the scope of their employment or written agreements with the "named insured"; and
  2. the heirs, executors, administrators, assigns and legal representatives of each of the "insureds" in the event of death, incapacity, or bankruptcy; and
  3. any other person or entity added to the policy by endorsement as an "insured";
- P.** "Leasehold" means a written agreement which gives rise to the relationship of landlord and tenant.
- Q.** "Loss(es)" means:
1. compensatory damages and legal obligations arising from:
    - a. "bodily injury";
    - b. "property damage"; and
  2. related "claim expense".
- R.** "Mediation" means any non-binding intervention by a neutral third party.
- S.** "Mortgage agreement" means any and all such documents, instruments, and certificates, including but not limited to a note, a mortgage or deed of trust, which evidence financial and other obligations of the "borrower" to the "insured" and as a result of which the "insured" obtains from the "borrower" a lien or other security interest upon a "covered location".
- T.** "Named insured" means the person or entity designated in the Declarations.
- U.** "Natural resource damages" means the sum of:
1. reasonable direct costs, including costs of assessment associated with action necessary to restore (including replacement) the natural resources to their baseline condition prior to the "pollution event"; and
  2. the "use value" of injury to or destruction of natural resources, including the land, surface water, groundwater, subsurface strata, air, fish, wildlife, or biota, between the time of a "pollution event" and restoration of the natural resources injured by the "pollution event".
- "Use value" means the value of the natural resources to the public attributable to the direct use of the services provided by the natural resources.
- V.** "Outstanding loan balance" means the unpaid principal as defined in the "mortgage agreement". However, any fees, costs or expenses incurred to confirm the existence of a "pollution event" at the "covered location" shall be specifically excluded from the calculation of the "outstanding loan balance". For the purpose of determining the "claim" payment under Coverage A the "outstanding loan balance" shall be the amount of unpaid principal as of the date of the declaration of "default" by the "insured".
- W.** "Owned" means when the "insured" has title to a "covered location" through the enforcement of an "insureds" lien, by way of "foreclosure" or deed in lieu of "foreclosure" or such other transfer of title or interest calculated to allow the "insured" the opportunity to recover upon debt evidenced by the "mortgage agreement" and secured, in whole or in part, by such "covered location"
- X.** "Policy period" means:

(1) with respect to "owned" "covered locations", the period of time for which coverage is provided by the Company to the "insured" under the terms and conditions of this policy. The "policy period" begins on the effective date shown in the Covered Locations Endorsement and ends on the earlier date of:

- a) the expiration date shown in the Declarations;
- b) the deletion of such "covered location" from this policy by the Company upon the "named insured's" request; or
- c) the abandonment of such "covered location" by the "insured"; or
- d) the cancellation or termination of this policy either by the "named insured" or by the Company; and

(2) with respect to "covered location(s)" serving as collateral for "mortgage agreements", the period of time for which the "named insured" may enter into "mortgage agreements" with its "borrower" for which coverage is provided by the Company to the "insured" during the "effective period of coverage".

**Y.** "Pollution event" means the discharge, dispersal, release, or escape of any solid, liquid, gaseous or thermal irritant, contaminant or pollutant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste, and with respect to Coverages A and B, the "pollution event" must result in "cleanup costs" pursuant to "governmental authority".

**Z.** "Property damage" means:

- 1. physical injury to or destruction of tangible property, including the resulting loss of use thereof;
- 2. "cleanup costs";
- 3. loss of use of tangible property that is not physically injured or destroyed; and
- 4. "natural resource damages".

**AA.** "Underground storage tank" means any tank(s) including associated underground piping connected thereto, that has at least ten (10) percent of its volume below the ground.

**BB.** "Voluntary cleanup program" means a program of a state of the United States which provides (i) mechanisms for the written approval of voluntary remedial action plans protective of human health or the environment and (ii) a certification or similar documentation indicating that such actions are complete.

### III. TERRITORY

The insurance afforded by this policy applies in the United States of America (including its territories and possessions), Puerto Rico or Canada, provided that a "claim" is made within the United States of America (including its territories and possessions), Puerto Rico or Canada.

### IV. EXCLUSIONS

This insurance does not apply to "claim(s)", "loss(es)", "outstanding loan balance(s)", "extra expenses", "cleanup costs", and "claim expense(s)" based upon or arising out of:

- A.** any "pollution event" existing prior to the effective date of coverage for a "covered location" which is known prior to the effective date of coverage for a "covered location" to any "insured's" principal, partner, director, officer, or employee with responsibility for the "mortgage agreement", environmental affairs, legal affairs or risk management;
- B.** any dishonest, fraudulent, intentional or malicious act or those of a knowingly wrongful nature, or the intentional, willful or deliberate non-compliance with any statute, regulation, ordinance, administrative complaint, notice of violation, notice letter, executive order, or instruction of any governmental agency or body by or at the direction of the "insured", except that this exclusion shall not apply to an "insured" who did not commit, participate in, or have knowledge of any of the acts described and provided further, that this exclusion shall not apply to liability for violation of or non-compliance with an environmental law or regulation by an "insured" based on negligence or strict liability;
- C.** fines, penalties, or treble damages;
- D.** a "claim" made
  - 1. by an "insured" against any other "insured"; or
  - 2. against an "insured" by an entity or individual:
    - a. that wholly or partially controls, owns, operates or manages an "insured"; or

- b. that is controlled, owned, operated or managed by the “insured”;
- E.** 1. any obligation of the “insured” which could have been brought in whole or in part under a workers compensation, disability benefits or unemployment compensation law or any similar law; or
2. injury to any employee, contract employee or leased personnel of an “insured” if such injury occurs during and in the course of said employment; or
3. injury to the spouse, child, parent, brother or sister of any employee, contract employee or leased personnel of an “insured” as a consequence of said employment; or
4. any obligation of an “insured” for indemnity or contribution to another because of “loss”, “cleanup costs”, “estimated cleanup costs”, “outstanding loan balance”, “extra expenses”, or “claim expenses” arising out of such injury in the course of employment.
- F.** the liability assumed by an “insured” under any contract or agreement, including but not limited to any agreement to indemnify any person for any “loss”, “cleanup costs”, “estimated cleanup costs”, “outstanding loan balance”, “extra expenses”, “claim expenses” or any other attorneys fees or expenses; however this exclusion does not apply to “loss” “cleanup costs” or “estimated cleanup costs” that the “insured” would have by the operation of law in the absence of the contract or agreement;
- G.** any “pollution event” or “loss(es)” on, at, under or coming from any location to which the “insured” arranges for, sends or has sent materials for treatment, recycling, reclamation, storage or disposal;
- H.** any asbestos containing material and lead based paint which are or were part of any fixtures, buildings, or improvements on the “covered location(s)”;
- I.** 1. the maintenance or upgrading of any property, technology or processes at a “covered location”, including but not limited to upgrading required by any ordinance, code, law or agency directive even if such upgrades are incurred as a result of “loss(es)” otherwise covered under the policy; and
2. any improvement, site enhancement or routine maintenance on, within or under a “covered location”;
- J.** 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, strike, riot or civil commotion;
- K.** goods or products designed, manufactured, sold, handled, distributed, or supplied by the “insured” or by others trading under its name or under license from an “insured” once the goods or products are removed away from the “covered location”.
- L.** the ownership, entrustment, maintenance, use, operation, loading or unloading of any automobile, aircraft, vessel or rolling stock beyond the boundaries of the “covered location(s)”.
- M.** 1. Naturally occurring substance;
2. Any “microbial substance”; or
3. Any man-made genetically modified organism or biological material.

“Microbial substance” shall mean any substance that reproduces through release of “spores” or the splitting of cells, including but not limited to bacteria, viruses, “fungus(i)”, protozoa, chlamydiae, rickettsiae, whether or not the “microbial substance” is living.

“Fungus(i)” includes, but is not limited to:

1. Any form or type of mold, mushroom or mildew;
2. Any other fungal structure; and
3. Any volatile organic compounds, mycotoxins, allergenic proteins or other substances or gases produced by or arising out of any mold, mushroom, mildew, fungal structure or “spores(s)”.

“Spore(s)” means any reproductive body produced by or arising out of any “microbial substance”.

- N.** (a) any coverage for “cleanup costs”, “estimated cleanup costs”, “loss(es)”, “outstanding loan balance”, and “extra expenses”, including “bodily injury”, “property damage” or “claim expense(s)”:

- (1) With respect to which an “insured” under the policy is also an “insured” under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters, Nuclear Insurance Association of Canada or any of their successors, or would be an “insured” under any such policy but for its termination upon exhaustion of its limit 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 Medical Payments coverage, to expenses incurred with respect to “bodily injury” resulting from the “hazardous properties” of “nuclear material” and arising out of the operation of a “nuclear facility” by any person or organization.
- (c) Under any Liability Coverage, to “cleanup costs”, “estimated cleanup costs”, “outstanding loan balance”, and “extra expenses”, or “loss(es)” including “claim expense(s)” resulting from “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 “cleanup costs”, “estimated cleanup costs”, “loss(es)”, “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 (3) applies only to “property damage” to such “nuclear facility” and any property thereat.

As used in this exclusion:

“Hazardous properties” include radioactive, toxic or explosive properties.

“Nuclear material” means “source material”, “special nuclear material” or “by-product material”.

“Source material”, “special nuclear material”, and “by-product material” have the meanings given them in the Atomic Energy act of 1954 or in any law amendatory thereof.

“Spent fuel” means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a “nuclear reactor”.

“Waste” means any waste matter (a) containing “by-product material” other than the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its “source material” content, and (b) resulting from the operation by any person or organization of any “nuclear facility” included under the first two paragraphs of the definition of “nuclear facility”.

“Nuclear facility” means:

- (a) Any “nuclear reactor”;
- (b) Any equipment or device designed or used for (1) separating the isotopes of uranium or plutonium, (2) processing or utilizing “spent fuel”, or (3) 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 onsite 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.

“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. “Property damage” included all forms of radioactive contamination of property.

#### **V. EXTENDED REPORTING PERIODS FOR COVERAGES B and C ONLY.**

A. The “named insured” shall be entitled to an automatic extended reporting period that lasts for sixty (60) days without additional charge that begins:

1. when the “policy period” ends with respect to “owned” “covered locations”; and
2. when the “effective period of coverage” ends with respect to “covered locations” serving as collateral for “mortgage agreements”;

except in the event of nonpayment of premium, fraud or material misrepresentation.

B. In addition to the automatic extended reporting period the “named insured” shall be entitled to purchase an extended reporting period for up to three years in duration that begins when the automatic extended reporting period ends, except in the event of nonpayment of premium, fraud or material misrepresentation. The charge for an extended reporting period of up to three years in duration shall not be more than one hundred percent (100%) of the premium per “policy period” for each “covered location” for each year of extended reporting period purchased. The extended reporting period for up to three years in duration starts when the automatic extended reporting period, set forth in the above paragraph, ends.

C. Upon payment of the additional premium for the extended reporting period the Company shall issue an endorsement providing for an extended reporting period for up to three years in duration provided that the “named insured”:

1. makes a written request for such endorsement which the Company receives within sixty (60) days after:
  - a. the “policy period” ends with respect to “owned” “covered locations”; and
  - b. the “effective period of coverage” ends with respect to “covered locations” serving as collateral for “mortgage agreements”; and
2. pays the additional premium when due. If such additional premium is paid when due, the extended reporting period may not be canceled by the Company provided that all other terms and conditions of the policy are met.

D. The “claim” first reported within the automatic extended reporting period and the extended reporting period endorsement, if purchased in accordance with this section, shall be deemed to have been made on the last day of the “policy period” or the “effective period of coverage” as applicable, and coverage shall apply under this policy provided that:

1. under coverage B:
  - a. the “insured” first discovers the “pollution event” and provides notice to the Company during the “policy period” pursuant to CLAIM PROVISIONS (Section VII.B) of the “insured’s” discovery of the “pollution event”; and
  - b. the “pollution event” commenced subsequent to a retroactive date, if any, and before the end of the “policy period”; and
  - c. the “claim” during the extended reporting period arises due to changes in “governmental authority”;
2. under Coverage C, the “pollution event” commenced subsequent to a retroactive date, if any, and before the end of the “policy period” or the “effective period of coverage” as applicable; and
3. with respect to the extended reporting periods, the “insured” has not purchased any other insurance to replace coverage provided by this policy; and the “claim” is otherwise covered under the terms and conditions of this policy.

E. If the automatic extended reporting period or an extended reporting period endorsement is in effect, the Company will provide the Each Claim Limit of Liability and subject to that which is remaining in the Total for all Claims Limit of Liability shown in the Declaration to this policy, but only for “claim(s)” first reported to the Company pursuant to the policy during the automatic extended reporting period or extended reporting period endorsement. The purchase of an extended reporting period does not reinstate or increase the limit of liability shown in the Declarations as applicable to the Total for all Claims.

F. Notwithstanding, CONDITIONS (Section VIII.) Paragraph J., Other Insurance., and Section D.3, above, the insurance afforded for “claim(s)” first reported during the automatic extended reporting period and the extended reporting period endorsement is excess over any other valid and collectible insurance available under policies in force during the automatic extended reporting period and the extended reporting period endorsement.

## VI. LIMIT OF LIABILITY AND DEDUCTIBLE

### A. EACH CLAIM LIMIT OF LIABILITY

The Company’s liability for each loss under Coverage A and C, and for “cleanup costs” under Coverage B is the Each Claim Limit of Liability set out in the Declarations.

### B. TOTAL LIMIT OF LIABILITY

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Subject to paragraph A. above, the Company's total liability for all "loss(es)", including "claim expense(s)", "cleanup costs", "estimated cleanup costs", "outstanding loan balances", "extra expenses", and "claim(s)" shall not exceed the amount set out in the Declarations as the Total for all Claim(s) Limit of Liability. The Company shall not be obligated to pay any "loss(es)", including "claim expense(s)", "cleanup costs", "estimated cleanup costs", or "outstanding loan balances", "extra expenses" and "claim(s)", or undertake or continue the defense of any "claim", whether pending or future, after the Total for all Claims Limit of Liability set out in the Declarations has been tendered into court or exhausted by payments of "loss(es)", including "claim expense(s)", "cleanup costs", "estimated cleanup costs", "outstanding loan balances", "extra expenses" or "claim expenses".

### **C. DEDUCTIBLE**

The Deductible amount set out in the Declarations is the obligation of the "insured" and applies to each "claim" and shall include all "cleanup costs", "estimated cleanup costs", "extra expenses", "loss(es)" or applicable "claim expense(s)" up to the Deductible amount for each "claim". The Deductible amount does not erode the Limits of Liability. The Company may advance payment for "loss(es)", including "claim expense(s)", "cleanup costs", "estimated cleanup costs", "outstanding loan balances", and "extra expenses" within the Deductible but has no duty or obligation to do so in the event of bankruptcy of the "insured". The "insured" shall promptly reimburse the Company for advancing any element of "loss", "cleanup costs", "estimated cleanup costs", and "outstanding loan balances", "extra expenses", and applicable "claim expense(s)" paid by the Company within an "insured's" Deductible.

If the Company and the "insured" agree to use "mediation" to resolve a "claim" provided coverage under INSURING AGREEMENT (Section I.) Coverage C, and a "claim" is resolved thereby, the deductible shall be reduced by fifty percent (50%) for that "claim" only, subject to a maximum reduction of \$25,000.

### **D. MULTIPLE INSURED(S), CLAIM(S), LOSS(ES), CLAIMANTS, POLLUTION EVENTS AND POLICY PERIODS**

#### **1. MULTIPLE INSURED(S) OR CLAIMANTS**

The inclusion of more than one "insured" in the making of a single "claim" or the bringing of a single suit regarding the same "pollution event" shall not increase the Limit of Liability stated in the Declarations, neither shall the making of "claim(s)" or the bringing of suits by more than one person or organization increase the Limit of Liability stated in the Declarations.

#### **2. CLEANUP COSTS ARISING FROM ESTIMATED CLEANUP COSTS**

If under Coverage A, the "insured" and the Company do not consent to the "estimated cleanup costs" payment as a final determination of the "claim" under the policy and the "insured" elects to have a "cleanup" performed at the "covered location" the following shall apply.

If new and/or additional "cleanup costs" related to the "pollution event" which was the subject of a "claim" payment of "estimated cleanup costs" are discovered or occur because of the inaccuracy of the "estimated cleanup costs" determination and the "cleanup costs" were not part of the prior "estimated cleanup costs" payment, then the Company may have obligations for payment of the new and/or additional "cleanup costs" covered under the terms and conditions of the policy. The "insured" must notify the Company, in writing, as soon as possible following the discovery of such new and/or additional "cleanup costs". This request for new and/or additional "cleanup costs" shall be considered part of the same "claim" for "estimated cleanup costs" under Coverage A. Therefore, this request shall not be considered a new "claim" and the most the Company will pay for any new and/or additional "cleanup costs" under the policy shall not exceed the amount set out in the Declarations as the Each Claim Limit of Liability for the "covered location" less any "estimated cleanup costs" previously paid or scheduled to be paid to the "insured" by the Company.

If the actual "cleanup costs" incurred or paid by the "insured" are a lesser amount than the "estimated cleanup costs" payment, the "insured" shall reimburse the Company for those amounts up to the amount of the Company's payment for the "estimated cleanup costs" under Coverage A of the policy.

#### **3. MULTIPLE CLAIMS**

Two or more "claim(s)" arising out of the same interrelated, associated, repeated or continuous "pollution event" or a series of related "pollution event(s)" with respect to a "covered location" shall be subject to one Limit of Liability and only one Deductible as stated in the Declarations, regardless of the number of "insureds" or claimants involved or the number or amount of "cleanup costs", "estimated cleanup costs", "loss(es)", "outstanding loan balances" and "extra expenses" "policy periods" or "effective period of coverage" in which "pollution events", "cleanup costs", "estimated cleanup costs", "outstanding loan balance", and "extra expenses", or "loss(es)" occurred and regardless of the number of "pollution events" alleged to have occurred.

#### 4. MULTIPLE POLICY PERIODS

Any "loss" or "claim" which takes place over two or more "policy periods" shall be subject to one Limit of Liability and one Deductible as stated in the Declarations. All such "claims" for "loss(es)", whenever made, shall be considered first made on the date on which the earliest "claim" was first made and reported to the Company and the Limits of Liability applicable to that "policy period" shall apply.

Consistent with paragraph 2., above, all "claims" for new and/or additional "cleanup costs" arising from a "pollution event" which was the subject of a "claim" payment for "estimated cleanup costs" under Coverage A shall be considered one "claim" and therefore, only one Deductible and one applicable Limit of Liability shall apply.

#### 5. CLAIMS ARISING FROM POTENTIAL CLAIMS

Any "pollution event" which results in a "claim" in a subsequent uninterrupted renewal "policy period" shall be subject to the Each Claim and Total for all Claims Limit of Liability applicable to the "policy period" in effect when the "pollution event" was reported to the Company.

#### 6. CLAIMS REPORTED IN THE EXTENDED REPORTING PERIOD

The automatic extended reporting period and the extended reporting period, if purchased by the "named insured", shall not serve to increase or reinstate the Limit of Liability set out in the Declarations to the Policy. The Limit of Liability shall be that which remains at the end of the "policy period".

#### E. EXHAUSTION OF LIMITS AND TRANSFER OF DUTIES

When the Each Claim or Total for all Claims Limit of Liability described above has actually been exhausted in the payment of "loss(es)", "cleanup costs", "estimated cleanup costs", "outstanding loan balance" and "extra expenses" and "claim(s)" the Company will:

1. notify the "insured", in writing, as soon as possible, that such limits have been exhausted and the Company's duty to defend "claim(s)" under INSURING AGREEMENT (Section I.) Coverage C has also ended; and
2. commence and cooperate in the transfer of control to any appropriate "insured" of all "claim(s)" which are subject to that limit and which are reported to the Company before that limit is exhausted.

### VII. CLAIMS PROVISIONS

#### A. NOTICE OF CLAIM

In the event of a "claim", the "insured" must give written or oral notice to the Company as soon as possible.

The notice shall contain particulars sufficient to identify an "insured" and reasonably obtainable information with respect to:

1. the time, place, "covered location" and circumstances of the "claim", including how and when the "insured" first became aware of the "pollution event" and the "claim";
2. the names and addresses of any injured parties and available witnesses;
3. any and all applicable and relevant investigative or engineering reports, data or information about the "pollution event", "loss", "cleanup costs", "estimated cleanup costs", "outstanding loan balances" and "extra expenses" in the possession of the "insured"; and
4. any and all other applicable and relevant information known by the "insured" about the "pollution event", "loss", "cleanup costs", "estimated cleanup costs", "outstanding loan balance(s)", "extra expenses" and "claim(s)";

If a "claim" is made, the "insured" shall forward to the Company as soon as possible every demand, notice, summons, complaint, order or other process received by an "insured" or its representatives.

#### B. NOTICE OF POTENTIAL CLAIM

If during the "policy period" the "insured" has actual knowledge of a "pollution event" which may reasonably be expected to give rise to a "claim", "loss", "cleanup costs", "estimated cleanup costs", "outstanding loan balance" or "extra expenses" under the policy, the "insured" shall provide written notice to the Company as soon as possible, during the "policy period" containing particulars sufficient to identify an "insured" and reasonably obtainable information with respect to:

1. the time, place, "covered location" and circumstances of the "pollution event", including how and when the "insured" first became aware of the "pollution event";

2. the names and addresses of any injured parties and available witnesses;
3. any and all applicable and relevant investigative or engineering reports, data or information about the "pollution event", "loss", "cleanup costs", "estimated cleanup costs", "outstanding loan balance" and "extra expenses" in the possession of the "insured";
4. any and all other applicable and relevant information known by the "insured" about the "claim", "pollution event", "loss", "cleanup costs", "estimated cleanup costs", "outstanding loan balance" "extra expenses" and possible "claim";

and any subsequent "claim", "loss", "cleanup costs", "estimated cleanup costs", "outstanding loan balance" and "extra expenses" arising from the reported "pollution event" made by or against the "insured" and reported to the Company, pursuant to paragraph C., below, during an effective renewal "policy period", or extended reporting period issued by the Company shall be deemed, for the purposes of this insurance, to have been made on the date on which written notice of the "pollution event" was received by the Company and shall be subject to the terms, conditions and Limits of Liability of this policy.

#### **C. NOTICE TO THE COMPANY**

All "claim(s)" and potential "claim(s)" shall be reported to the address shown on the Declarations, or any other address as substituted by the Company by endorsement onto the policy.

In the event of oral notice, the "insured" agrees to furnish a written report to the Company as soon as possible.

#### **D. SELECTION OF DEFENSE COUNSEL**

1. We shall have the right and the duty to designate legal counsel to represent the "insured" in the adjustment, defense or settlement of any "claim" provided coverage under Coverage C of this policy. If permitted by applicable law, we have the right to appoint one legal counsel to represent and/or defend all of the "insureds" who are or may be involved in any "claim" provided coverage under Coverage C of this policy.
2. In the event an "insured" is entitled by law to select independent counsel to defend an "insured" at the Company's expense, the attorney's fees and all other litigation expenses the Company must pay to that counsel are limited to rates the Company actually pays to counsel the Company retains in the ordinary course of business in the defense of similar claims in the community where the "claim" arose or is being defended.

Additionally, the Company may exercise the right to require that such counsel have certain minimum qualifications with respect to their legal competency including experience in defending "claim(s)" similar to the one pending against the "insured" and to require such counsel to have errors and omissions insurance coverage. The "insured" agrees that such counsel will respond to our request for information regarding the "claim" in a timely manner. Furthermore, an "insured" may at any time, by its signed consent, waive its right to select independent counsel.

#### **E. SETTLEMENT**

The "insured" shall not admit liability or settle any "claim" without the Company's written consent. If the Company recommends a settlement:

1. for an amount within the Deductible and the "insured" refuses such settlement, then the Company shall not be liable for any "cleanup costs", "estimated cleanup costs", "loss", "outstanding loan balance", "extra expenses" or "claim expenses" in excess of the Deductible; or
2. for a total amount in excess of the balance of the Deductible and an "insured" refuses such settlement, then the Company's liability for "cleanup costs", "estimated cleanup costs", "loss", "outstanding loan balance", "extra expenses" or "claim expenses" shall be limited to that portion of the settlement and the costs, charges and expenses as of an "insured's" refusal which exceed the Deductible and fall within the Limit of Liability.

#### **F. VOLUNTARY PAYMENTS**

No costs, charges or expenses subject to payment under this policy shall be incurred without the Company's written consent.

Notwithstanding the foregoing, an "insured" may take such "emergency action(s)" as reasonably necessary to prevent or mitigate further damage, "cleanup costs" and/or "loss(es)" under Coverages B and/or C provided an "insured" provides notice to the Company within ninety-six (96) hours.

If oral notice is provided, the "insured" agrees to follow up in writing.

### **VIII. CONDITIONS**

- A. ASSIGNMENT** - Assignment of interest under this policy may be freely assigned one time during the "policy period" or "effective period of coverage" as applicable by the "named insured" to a successor lienholder as long as within thirty (30)

days from the effective date of the assignment, the “named insured” provides the Company written notice of the assignment indicating the name and address of the assignee. However, subsequent assignment of interest under this policy to any other entity shall not bind the Company until its consent is endorsed thereon.

In the event of a sale(s) of a “mortgage agreement” in a portfolio provided coverage by this Policy to a lienholder, the Company agrees to offer coverage to the purchaser of the “mortgage agreement” similar to the coverage provided to the “insured” under this policy, provided that such purchaser is approved by the Company.

- B. AUDIT AND INSPECTION** - The Company shall be permitted, upon reasonable prior notice to review and inspect on a continuing basis an “insured’s” underwriting guidelines, policies and procedures applicable to an “insured’s” real estate lending practices. Neither the Company’s right to make inspections, nor the actual undertaking thereof, nor any report thereon shall constitute an undertaking, on behalf of an “insured” or others, to determine or warrant that “insured’s” real estate lending practices are in compliance with any law, rule or regulation.
- C. BANKRUPTCY** - Bankruptcy or insolvency of an “insured” will not relieve the Company of its obligations under this policy.
- D. CANCELLATION** - This policy may be canceled by the “named insured” by surrender to the Company, or any of our authorized brokers, or by mailing to the Company written notice stating when the cancellation shall be effective. This policy may be canceled by the Company by mailing to the “named insured”, at the address shown in this policy, a notice stating when thereafter such cancellation shall be effective.

The Company may cancel this policy for the following reasons only:

1. any “insured’s” failure to comply with the material terms, conditions or contractual obligations under this policy including failure to pay the Deductible when due; or
2. non-payment of premium;

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 “named insured” or by the Company shall be equivalent to mailing. Notice of pending cancellation will be provided not less than sixty (60) days for any “insured’s” failure to comply with the terms, conditions or contractual obligations under this policy including failure to pay the Deductible when due; or ten (10) days for nonpayment of premium. The premium shall be fully earned on the effective date of coverage.

- E. CHANGES** - Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or change in any part of this policy or stop the Company from asserting any right under the terms of this policy. The terms of this policy shall not be waived or changed except by endorsement issued by the Company to form a part of this policy.
- F. CHOICE OF LAW** - In the event the “insured” and the Company dispute the meaning, interpretation or operation of any term, condition, definition or provision of this policy resulting in litigation, arbitration or other form of dispute resolution, the “insured” and the Company agree that the law of the State of New York shall apply and that all litigation shall take place in New York without giving effect to any conflicts or choice of law principles. In the event the “insured” and the Company agree to resolve their dispute by arbitration, any such arbitration shall be in accordance with the Commercial Arbitration Rules of the American Arbitration Association.
- G. COOPERATION** - The “insured” and the Company agree to assist and cooperate in the fulfillment of the terms of the policy, including the investigation, adjustment, defense or settlement of “claim(s)”.
- H. DECLARATIONS** - By acceptance of this policy, the “named insured” agrees that the statements in the Declarations and application are their agreements and representations, that this policy is issued in reliance upon the truth of such representations and that this policy embodies all agreements existing between the “named insured” and the Company or any of its agents relating to this insurance.
- I. FRAUD OR MATERIAL MISREPRESENTATION** - This entire policy shall be void if the “insured” willfully misrepresented or fraudulently concealed any fact or circumstance in the Application or Disclosure Form for coverage under this policy. The “effective period of coverage” for a “covered location” serving as collateral for a “mortgage agreement” or “policy period” for an “owned” “covered location” shall be void if the “insured” willfully misrepresented or fraudulently concealed any fact or circumstance concerning the qualifications of such “mortgage agreement” for coverage under this policy; however, such avoidance for such a “mortgage agreement” will not affect coverage for any other “mortgage agreement” scheduled under this policy.
- J. OFFSET AND REIMBURSEMENT** - If, under Coverage A, the Company makes a “claim” payment of the “outstanding loan balance” for a “covered location”, the Company has additional rights to offset and reimbursement as follows:

1. Outstanding Loan Balance

The Company may elect as soon as reasonably possible after making payment of the "outstanding loan balance" and any "extra expenses", to have the "insured" assign to the Company, the "mortgage agreement" 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 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 "costs to collect", from the sale, transfer, foreclosure, or workout of the "mortgage agreement" or "covered location", it shall reimburse the Company up to the payment of the "outstanding loan balance" and "extra expenses" paid by the Company to the "insured", net of "costs to collect", and remit the same to the Company within a commercially reasonable time.

For the purposes of this subsection, the term "costs to collect" shall include costs that relate to the exercise and acquisition of the assignment, any "cleanup costs" to 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 attorneys fees, whether of the "mortgage agreement", the debt or the "covered location" itself.

2. Estimated Cleanup Costs

If, under Coverage A, the Company makes a "claim" payment of the "estimated cleanup costs" for a "covered location", the Company shall have additional rights to offset and reimbursement as follows.

If the "insured" receives funds, net of "costs to collect", from the sale, transfer, foreclosure, or workout of the "mortgage agreement" or "covered location" in excess of the "outstanding loan balance" and "extra expenses", the "insured" shall reimburse the Company with the amount of funds up to the "estimated cleanup costs" paid at the "covered location" 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 "cleanup costs" paid by the "insured" for the "covered location" to the extent that such costs were not part of an "estimated cleanup 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 attorneys fees, whether of the "mortgage agreement", the debt or the "covered location" itself.

For the purpose of this Condition J., 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.

**K. OTHER INSURANCE** - The insurance provided under this policy is primary insurance, except when stated in the Declarations to apply in excess of or contingent upon the absence of other insurance. When this insurance is primary and the "insured" has other insurance which is stated in the Declarations to be applicable to the "claim", "loss", "cleanup costs", "estimated cleanup costs", "outstanding loan balance" or "extra expenses" on an excess basis, the amount of the Company's liability under this policy shall not be reduced by the existence of such excess insurance. When both this insurance and other insurance apply to a "claim", "loss", "cleanup costs", "estimated cleanup costs", "outstanding loan balance" or "extra expenses" on the same basis, whether primary, excess or contingent, the Company shall not be liable under this policy for a greater proportion of the "claim", "loss", "cleanup costs", "estimated cleanup costs", "outstanding loan balance" or "extra expenses" than that set out in the Declarations or the following contribution provision, whichever method is lower:

- a. Contribution by Equal Shares - Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the "loss", "cleanup costs", "estimated cleanup costs" or "outstanding loan balance" or "extra expenses" remains, whichever occurs first; or
- b. Contribution by Limits - each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

**L. SEPARATION OF INSURED** - Except with respect to the Limit of Liability and any rights and duties specifically assigned to the "named insured", this insurance applies:

1. as if each "named insured" were the only "named insured"; and
2. separately to each "insured" against whom "claim" is made.

Misrepresentation, concealment, breach of condition or violation of any duty under this policy by one "insured" shall not prejudice the interest of coverage for another "insured" under this policy.

- M. SOLE AGENT** - The first "named insured" shall act on behalf of all "insureds" for all purposes, including but not limited to the payment or return of premium, deductible, 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 the extended reporting periods section.
- N. SUBROGATION** - In the event of payment under Coverage B or C of this policy, the Company shall be subrogated to all an "insured's" rights of recovery, up to the amount of the Company's payment of a "claim" under the policy, thereof against any person or organization except for rights against a "borrower" in possession of the "covered location". An "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.
- O. THIRD PARTY BENEFICIARY** - This policy shall apply to, inure to the benefit of, and be binding upon the "insured" and the Company. Except for the "insureds" permitted assignees or transferees no third party beneficiaries are anticipated or intended by this policy.

Specimen