

Insurer means the Stock Insurance Company named on the Declarations. Other key words and phrases that have special meaning are displayed in bold face type. See the **DEFINITIONS** section of the Policy.

In consideration of the premium, and in reliance upon the application, the Insurer and the **Insured** agree as follows:

I. COVERAGE

A. INSURING AGREEMENTS

1. Professional Liability

The Insurer will pay all amounts in excess of the Retention up to the Limit of Liability that the **Insured** becomes legally obligated to pay because of a **Claim** as a result of a **Wrongful Act** in the performance of **Professional Services**, provided that:

- a. such **Wrongful Act** happened on or after the Retroactive Date specified in the Declarations and before the end of the **Policy Year**;
- b. on the **Knowledge Date**, none of the **Insured's** directors, officers, principals, partners, or insurance managers knew of any act, error or omission that could reasonably be expected to become the basis of such **Claim**; and
- c. such **Claim** is first made against the **Insured** during the **Policy Year** and reported to the Insurer in accordance with section VI, CONDITIONS, paragraph B., The **Insured's** Duties in the Event of a **Claim**. Except as set forth in the Condition entitled The **Insured's** Rights and Duties In the Event of a **Circumstance**, a **Claim** is considered first made on the earlier of the **Insured's** or the Insurer's receipt of notice of the **Claim**;
- d. no **Insured** gave notice to a **prior insurer** of such **Claim** or **Related Claim**; and
- e. no **Insured** gave notice to a **prior insurer** of such **Wrongful Act** or related **Wrongful Acts**.

The Insurer will also pay **Claim Expenses** in connection with such covered **Claim**. **Claim Expenses** are included within and reduce the limits of liability.

2. Pollution Incident Liability

The Insurer will pay all amounts in excess of the Retention up to the Limit of Liability that the **Insured** becomes legally obligated to pay because of a **Claim** as a result of a **Pollution Incident** arising out of:

- a. the **Insured's** activities or the activities of any person or entity for whom the **Insured** is liable;
- b. liability that the **Insured** assumes from an **Insured Client**;
- c. a **Covered Location**; or
- d. a **Non-Owned Disposal Site**;

provided that:

- i. such **Claim** arises solely out of the rendering of **Construction Management Services** or **Design Professional Services**. There shall be no coverage for liability, including strict liability, that arises out of ownership of any location;
- ii. on the **Knowledge Date**, none of the **Insured's** directors, officers, principals, partners, or insurance managers knew of any act, error or omission that could reasonably be expected to become the basis of such **Claim**; and
- iii. such **Claim** is first made against the **Insured** during the **Policy Year** and reported to the Insurer in accordance with section VI, CONDITIONS, paragraph B., The **Insured's** Duties in the Event of a **Claim**. Except as set forth in the Condition entitled The **Insured's** Rights and

Duties In the Event of a **Circumstance**, a **Claim** is considered first made on the earlier of the **Insured's** or the Insurer's receipt of notice of the **Claim**;

- iv. no **Insured** gave notice to a **prior insurer** of such **Claim** or **Related Claim**; and
- v. no **Insured** gave notice to a **prior insurer** of such **Wrongful Act** or related **Wrongful Acts**.

B. SUPPLEMENTAL INSURING AGREEMENT - Protective Gap Demand

The Insurer will reimburse the **Named Insured** for **Protective Gap Loss**, in excess of any **Recoverable Insurance** and in excess of the Retention, up to the applicable **Protective Gap Demand** Limit of Liability, resulting from a **Protective Gap Demand** that arises out of a negligent act, error, or omission in the rendering of **Design Professional Services** or **Construction Management Services** by the **Responsible Entity**, provided that:

- 1. such negligent act, error, or omission happened on or after the Retroactive Date and before the end of the **Policy Year**;
- 2. the **Protective Gap Demand** is first made by the **Named Insured** and reported in writing to the Insurer during the **Policy Year**;
- 3. on the **Knowledge Date**, none of the **Insured's** directors, officers, principals, partners, or insurance managers knew of any act, error, or omission, that could reasonably be expected to become the basis of such **Protective Gap Loss**; and
- 4. the **Named Insured** demonstrates to the Insurer's satisfaction that the **Named Insured** made all efforts to recover **Protective Gap Loss** from the **Responsible Entity**.

C. SUPPLEMENTAL INSURING AGREEMENT – RECTIFICATION EXPENSE

The Insurer will reimburse the **Named Insured** for **Rectification Expense** in excess of the Retention and up to the applicable **Design Defect Circumstance** Limit of Liability, provided that:

- 1. the **Insured** reports the **Design Defect Circumstance** as soon as practicable during the **Policy Year** and in accordance with section VI, CONDITIONS, paragraph C., The **Insured's** Rights and Duties in the Event of a **Circumstance**;
- 2. the **Insured** demonstrates to the Insurer's satisfaction that there is a **Design Defect** which is reasonably likely to give rise to a **Claim** covered under this Policy;
- 3. the **Insured** provides the Insurer with details of the action being contemplated by the **Insured** to minimize any potential liability arising out of such **Design Defect Circumstance** and the amount of **Rectification Expense** that is contemplated in connection with such action:
 - a. as soon as practicable during the **Policy Year** or within sixty (60) days of the expiration of the **Policy Year**; and
 - b. prior to incurring any **Rectification Expense**, except in the event of an **Emergency Response**;
- 4. prior to incurring any **Rectification Expense**, the Insurer consents in writing to such **Rectification Expense**;
- 5. in the event a **Claim** is made arising out of such **Design Defect Circumstance**, then the Insurer may, at its sole discretion, cease paying further **Rectification Expense** associated with such **Design Defect Circumstance**; and
- 6. such **Design Defect Circumstance** does not arise out of the same or similar **Design Defect Circumstances** for which reimbursement expenses have been requested or paid.

Such **Rectification Expense** will be reimbursed within ninety (90) days of the **Insured's** submission of a proof of loss of such **Rectification Expense**.

In the event that the Insurer and the **Named Insured** do not agree that the **Insured's** proposed **Rectification Expense** is reasonable, then the **Insured** and the Insurer agree to submit such dispute to any form of alternative dispute resolution acceptable to both parties. Should the **Named Insured** and the Insurer be unable to agree on the form of alternative dispute resolution, then such

dispute shall be submitted to binding arbitration administered by the American Arbitration Association under its Construction Arbitration Rules, and judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction thereof.

D. DEFENSE AND SETTLEMENT

1. The Insurer will have the right and duty to defend any **Claim** covered by this Policy even if any of the allegations of the **Claim** are groundless, false, or fraudulent. The Insurer will designate counsel or, at its sole option, approve counsel to defend the **Claim**.
2. The Insurer will not settle any **Claim** without the informed consent of the **First Named Insured**.
3. If a **Claim** results in a punitive, exemplary, or multiplied damage award, then the Insurer will pay such award, up to the applicable Limit of Liability, to the fullest extent permitted by law.
4. The Insurer is not obligated to investigate, defend, pay or settle, or continue to investigate, defend, pay or settle a **Claim** after the applicable Limit of Liability has been exhausted or after the Insurer has deposited the remaining available Limits of Liability into a court of competent jurisdiction. In such case, the Insurer shall have the right to withdraw from the further investigation, defense, or settlement of such **Claim** by tendering control of said investigation, defense or settlement of the **Claim** to the **Insured**.

II. SUPPLEMENTARY PAYMENTS

Except as noted in subparagraph D. below, payments made under this section are the Insurer's costs, are not subject to the Retention, and are in addition to the Limit of Liability shown on the Declarations.

A. Pre-claims Assistance

Until the date a **Claim** is made, the Insurer may pay for all costs or expenses it incurs, at the Insurer's sole discretion, as a result of investigating a **Circumstance** that the **Insured** reports in accordance with section VI, CONDITIONS, paragraph C., The **Insured's** Rights and Duties in the Event of a **Circumstance**.

B. Defendant Reimbursement

If the Insurer requests the **Insured's** presence at a trial, hearing, deposition, mediation, or arbitration, the Insurer will pay up to \$500 a day per person, subject to a maximum amount of \$15,000 per **Claim**.

C. ADA, FHA, and OSHA

The Insurer will reimburse the **Insured** for legal fees and expenses up to \$35,000 per **Policy Year** in responding to regulatory or administrative actions brought directly against the **Insured** by a government agency under the Americans with Disabilities Act of 1990 (ADA), the Fair Housing Act (FHA), or the Occupational Safety and Health Act (OSHA), provided that the regulatory or administrative actions:

1. are first commenced during the **Policy Year**;
2. arise out of the performance of **Professional Services**; and
3. are reported to the Insurer prior to any legal fees or expenses being incurred.

After the Insurer has paid \$35,000 under this provision, any additional amounts the Insurer agrees to pay will be treated as **Claim Expenses** and will be subject to the **Insured's** Retention and be included in the Limit of Liability for the **Policy Year** in which the action was commenced. The Insurer will not be responsible for any fines or penalties.

D. Disciplinary or Licensing Proceedings

The Insurer will reimburse the **Insured** up to \$25,000 in the aggregate per **Policy Year**, regardless of the number of **Disciplinary or Licensing Proceedings**, for attorney fees and other reasonable costs, expenses, or fees incurred by the **Insured** with the Insurer's prior written consent in responding to a **Disciplinary or Licensing Proceeding** commenced against the **Insured** during the

Policy Year, provided that such **Disciplinary or Licensing Proceeding** is reported to the Insurer during such **Policy Year**.

E. Subpoena Assistance

In the event the **Insured** receives a subpoena for documents or testimony arising out of **Professional Services** and the **Insured** would like the Insurer's assistance in responding to the subpoena, the **Insured** may provide the Insurer with a copy of the subpoena and the Insurer will retain an attorney to provide advice regarding the production of documents, to prepare the **Insured** for sworn testimony, and to represent the **Insured** at the **Insured's** depositions, provided that:

1. the subpoena arises out of a lawsuit to which the **Insured** is not a party; and
2. the **Insured** has not been engaged to provide advice or testimony in connection with the lawsuit, nor has the **Insured** provided such advice or testimony in the past.

F. Crisis Event Expenses

The Insurer will reimburse the **Named Insured** for 50% of **Crisis Event Expenses** up to a maximum of \$30,000 per **Crisis Event**, and subject to a maximum reimbursement by the Insurer of \$50,000 per **Policy Year** for all **Crisis Events**, for **Crisis Event Expenses** incurred as a result of a **Crisis Event** that occurs during the **Policy Term**.

III. DEFINITIONS

Bodily Injury means bodily injury, sickness, disease, mental anguish, or emotional distress sustained by a person, including death resulting from any of these at any time.

Circumstance means an event reported to the Insurer during the **Policy Term** from which the **Insured** reasonably expects that a **Claim** could be made.

Claim means a written demand for money or services naming the **Insured** and alleging a **Wrongful Act** or **Pollution Incident**.

Claim Expenses means:

- A. fees charged by an attorney designated or approved by the Insurer to represent the **Insured**;
- B. all other fees, costs, and expenses resulting from the investigation, adjustment, defense, and appeal of a **Claim**, if incurred by:
 1. the designated attorney,
 2. the Insurer, or
 3. the **Insured**, with the Insurer's prior written consent; and
- C. premiums for bonds posted in connection with an appeal. However, the Insurer is not obligated to apply for or furnish any such bonds.

Claim Expenses do not include fees and expenses of independent adjusters or salaries of the Insurer's officials or employees, other than fees and expenses charged by the Insurer's employed attorneys who may be designated to represent the **Insured** with the **Insured's** prior consent.

Construction Management Services means the management, coordination and supervision of the design and construction processes. **Construction Management Services** do not include construction means, methods, techniques, sequences or procedures, or any actual construction.

Coverage Relationship means that period of time between the effective date of the first Real Estate Developers Liability insurance policy issued by the Insurer to the **First Named Insured** and the cancellation or nonrenewal of the last consecutive first Real Estate Developers Liability insurance policy issued by the Insurer to the **First Named Insured**, where there has been no gap in coverage.

Covered Location means a location owned, rented, or leased by the **Named Insured**, provided that such location is scheduled onto this Policy as a **Covered Location** by endorsement issued by the Insurer. **Covered Location** also includes the address shown on the Declarations. **Covered Location**

does not include a location that has been sold, given away or abandoned by the **Named Insured**, or that has been condemned, or a rented location where the lease has expired without renewal or has been terminated.

Crisis Event means any:

- A. **Wrongful Act** or **Pollution Incident**;
 - B. death, departure, or debilitating illness of a partner, officer, director or member of the **Named Insured**;
 - C. potential dissolution of the **Named Insured** for any reason other than bankruptcy; or
 - D. violent act, kidnapping, sexual assault, criminal firearm use or workplace accident resulting in negative local or national media coverage of the **Named Insured**;
- that the **Named Insured** reasonably believes will have a material adverse effect upon the **Named Insured's** reputation.

Crisis Event Expenses means reasonable fees, costs and expenses incurred by the **Named Insured** for consulting services provided by a public relations firm to the **Named Insured** in response to a **Crisis Event**, but only for up to sixty (60) days following a **Crisis Event**.

Design Defect means a **Wrongful Act** arising solely out of **Design Professional Services**, but does not include any actual or alleged negligence in the review of shop drawings and submittals, issuance of change orders, observation of construction or review of any contractors' requests for payment.

Design Defect Circumstance means a **Circumstance** arising out of a **Design Defect** for which the **Insured** has requested reimbursement of a **Rectification Expense** from the Insurer.

Design Professional Services means those services performed by any professionally qualified, certified or licensed person or entity that is retained by or on behalf of the **Named Insured** as an architect, engineer, interior designer, land surveyor, LEED® green building program consultant, landscape architect, scientist, or technical consultant.

Disciplinary or Licensing Proceeding means any pending matter, including an initial inquiry, before a state or federal licensing board or a peer review committee to investigate charges alleging a violation of any rule of professional conduct in the performance of **Professional Services**.

Discrimination Claim means a **Claim** based on or arising out of discrimination, humiliation, harassment, or misconduct that includes but shall not be limited to a **Claim** based on an individual's race, creed, color, age, gender, national origin, religion, disability, marital status or sexual preference.

Domestic Partner means any person qualifying as such under any federal, state or local laws or under the **Insured's** employee benefit plans.

Emergency Response means an action taken by the **Insured** to rectify a **Design Defect** that prevents imminent **Bodily Injury** and/or material physical injury to or destruction of tangible property due to that **Design Defect**, which is otherwise insured under this Policy.

Extended Reporting Period means the period of time after the end of the **Policy Term** for reporting **Claims** to the Insurer that are made against the **Insured** during the applicable **Extended Reporting Period** arising out of:

- A. a **Wrongful Act** that took place prior to the end of the **Policy Term** that is otherwise covered by this Policy; or
- B. activities that took place prior to the end of the **Policy Term** that result in a **Pollution Incident** that is otherwise covered by this Policy.

First Named Insured means the person or entity first named in Item 1. of the Declarations.

Fungi means any form of fungus including but not limited to yeast, mold, mildew, rust, smut or mushroom, and including any spores, mycotoxins, odors, or any other substances, products, or byproducts produced by, released by, or arising out of the current or past presence of **Fungi**.

Hostile Fire means a fire that becomes uncontrollable or breaks out from where it was intended to be.

Insured means:

- A. the **Named Insured**;
- B. a **Subsidiary**;
- C. any past or present partner, officer, director, member, stockholder or employee of the **Named Insured** or **Subsidiary** or leased personnel under the direct supervision of the **Named Insured** or **Subsidiary**, but only while acting within the scope of their duties for the **Named Insured** or **Subsidiary**;
- D. an independent contractor of the **Named Insured** or **Subsidiary**, but only for **Real Estate Professional Services** performed on behalf of the **Named Insured** or **Subsidiary**; or
- E. any joint venture entered into, but only for liability arising out of **Professional Services** performed by an **Insured** as a participant in a joint venture project.

Insured does not include the estates, heirs, legal representatives, assigns, spouses, and any **Domestic Partner** of any natural person within the definition of **Insured**. However, coverage is afforded to such persons or entities under this Policy as provided in section VI, CONDITIONS, paragraph N., Estates, Legal Representatives and Spouses.

Insured Client means a client for whom the **Named Insured** performs activities, but only if there is in place an **Insured Client Contract**.

Insured Client Contract means a written contract or agreement that is in effect between the **Named Insured** and a client under which the **Named Insured** assumes the tort liability of the client or owner of the project to pay compensatory damages to a third party for a **Pollution Incident**, but only to the extent that such **Pollution Incident** is caused by the **Named Insured's** activities, or the activities of any person or entity for whom the **Named Insured** is liable, and provided that such written contract or agreement is placed in effect prior to the **Pollution Incident** and:

- A. incorporates an enforceable indemnity provision pertinent to the **Pollution Incident**; or
- B. requires the client or the owner of the project to be made an additional insured under the Policy that insures the **Named Insured** against **Pollution Incidents**.

For purposes of this definition only, "tort liability" means liability for a civil or private wrong imposed by law in the absence of any contract or agreement.

Knowledge Date means the date set forth on the Declarations as the Knowledge Date.

Management Control means owning interests representing more than 50% of the voting, appointment or designation power for the selection of a majority of, or having the right, pursuant to written contract or the by-laws, charter, operating agreement or similar documents, to elect, appoint or designate a majority of the Board of Directors of a corporation; the management committee members of a joint venture; or the members of the management board of a limited liability company, the general partners of a limited partnership or the partnership managers of a general partnership or the Foreign Jurisdiction equivalent of any such entity.

Microbe means any non-fungal microorganism or non-fungal, colony-form organism that causes infection or disease. **Microbe** includes any spores, mycotoxins, odors, or any other substances, products, or byproducts produced by, released by, or arising out of current or past presence of **Microbes**. However, **Microbe** does not mean **Microbes** that were transmitted directly from person to person.

Named Insured means the persons or entities identified on the Declarations as the **Named Insured**.

Non-Owned Disposal Site means a location not owned, operated, leased or rented by the **Insured** that is used by the **Named Insured** for the treatment, storage or disposal of wastes or materials that are generated by activities performed by or on behalf of the **Named Insured**, provided that:

- A. such location is permitted or licensed by the applicable authority to accept such wastes or materials as of the date such wastes or materials are treated, stored or disposed of at the location; and
- B. such location is not listed on a proposed or final Federal National Priorities List or any equivalent National Priority List, Superfund or Hazardous Waste List prior to the treatment, storage or disposal of such wastes or materials at such location.

Nuclear Facility means the site where a nuclear reactor is located or where nuclear waste or material is disposed.

Personal Injury means an injury, other than **Bodily Injury**, arising out of one or more of the following offenses:

- A. false arrest, detention, or imprisonment;
- B. malicious prosecution;
- C. wrongful entry into, wrongful eviction from, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies by or on behalf of its owner, landlord or lessor;
- D. oral or written publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
- E. oral or written publication of material that violates a person's right of privacy.

Policy Term means the period of time from the effective date and time of this Policy to the date and time of termination as shown on the Declarations, or its earlier cancellation date. **Policy Term** does not include any **Extended Reporting Period**. If the length of the **Policy Term** is the same as the **Policy Year**, the terms **Policy Term** and **Policy Year** are used interchangeably herein.

Policy Year means the period of one year following the effective date of the **Policy Term** or any subsequent one-year anniversary thereof. As permitted by individual state law, a **Policy Year** may be extended or reduced by endorsement or by termination of the Policy.

Pollutants means any solid, liquid, gaseous, or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, and waste. Waste includes materials to be recycled, reconditioned, or reclaimed. **Pollutants** does not mean heat, smoke, vapor, soot, or fumes from a **Hostile Fire** or explosion.

Pollution Incident means the actual or alleged:

- A. discharge, dispersal, seepage, migration, release or escape of **Pollutants** into or upon land, the atmosphere, or any watercourse or body of water; or
- B. inhalation of, ingestion of, contact with, exposure to, existence of, growth or presence of **Fungi** or **Microbes**;

which results in **Bodily Injury** or **Property Damage**. However, a **Pollution Incident** cannot arise from dishonest, fraudulent, malicious, or criminal conduct committed by the **Insured** or at the **Insured's** direction or with the **Insured's** prior knowledge.

Prior Insurer means an insurer, including the Insurer and any subsidiary or affiliate of the Insurer, who has issued a real estate developers liability insurance policy that is applicable to a **Claim**, such policy having an inception date prior to the **Policy Term**.

Professional Services means **Construction Management Services, Design Professional Services, Property Management Services, Real Estate Professional Services, and Real Estate Development Services**.

Property Damage means the following:

- A. physical injury to, damage to, or destruction of tangible property, electronic data, soil, surface water, groundwater, plants, or animals, including the resulting loss of use thereof;
- B. clean-up costs incurred by a third party or mandated by any governmental entity; or
- C. loss of use of tangible property that has not been physically injured or destroyed.

Property Management Services means the following services provided in connection with the management of commercial or **Residential Property**:

- A. development of management plans and budget;
- B. oversight of physical maintenance of property except if such physical maintenance is performed by an **Insured** or by an entity owned by an **Insured** in whole or in part;
- C. solicitation, evaluation and securing of tenants and management of tenant relations, collection of rent and processing evictions;
- D. development, implementation and management of loss control and risk management plans for real property;
- E. solicitation and negotiation of contracts for sale and leasing of real property;
- F. development, implementation and management of contracts and subcontracts (excluding property and liability insurance contracts) necessary to the daily functioning of the property;
- G. personnel administration;
- H. record keeping.

Protective Gap Demand means a written demand for money, including a demand for arbitration, mediation, or a lawsuit instituted by the **Named Insured** against the **Responsible Entity** seeking a remedy and alleging liability or responsibility on the part of such **Responsible Entity**, and arising from a negligent act, error, or omission in the rendering of or failure to render **Design Professional Services** or **Construction Management Services** by that **Responsible Entity**. A **Protective Gap Demand** does not include a demand or proceeding for non-monetary or injunctive relief.

Protective Gap Loss means the amount the **Named Insured** is legally entitled to recover from a **Responsible Entity** as a result of the **Responsible Entity's** negligent act, error, or omission in the rendering of or failure to render **Design Professional Services** or **Construction Management Services**. A **Protective Gap Loss** must be determined by:

- A. final adjudication of a court of competent jurisdiction; provided however, that such adjudication does not include a judgment by default or consent;
- B. arbitration;
- C. any settlement to which the Insurer provides written consent in advance; or
- D. any other method of dispute resolution to which the Insurer provides written consent in advance.

A **Protective Gap Loss** does not include any attorney's fees or other litigation costs or expenses claimed or awarded to an **Insured** in connection with a **Protective Gap Demand**.

Real Estate Development Services means the following services in connection with the development of real property:

- A. preparation, negotiation, transmittal and awarding of design and construction bid packages;
- B. management, coordination and supervision of design and construction;
- C. identifying and obtaining applicable permits, variances, consents, and easements;
- D. land acquisition or securing option rights to purchase land.

Real Estate Professional Services means the following services performed by an **Insured** for others as a:

- A. real estate agent, real estate broker or real estate personal assistant;
- B. title agent or leasing agent;
- C. notary public or member of a formal real estate accreditation, standards review or similar real estate board or committee;

provided such **Insured** is appropriately licensed or certified by the state in which such **Insured** is doing business at the time of the **Wrongful Act** giving rise to the **Claim**.

Recoverable Insurance means all available insurance providing applicable coverage to any **Responsible Entity**, or any person or entity for which the **Responsible Entity** is responsible, in an amount at least equal to the **Recoverable Insurance** amount stated on the Declarations.

Rectification Expense means reasonable and necessary fees, costs and expenses incurred by the **Named Insured** for rectification of a **Design Defect** caused by **Design Professional Services** for any project upon which the **Insured** is responsible for both design and construction.

Related Claims means all **Claims** made against the **Insured** and reported to the Insurer during any **Policy Year** arising out of:

- A. a single **Wrongful Act** or related **Wrongful Acts** that are logically or causally connected by any common fact, situation, event, transaction, advice, or decision;
- B. a single **Design Defect** or related **Design Defects** that are logically or causally connected by any common fact, situation, event, transaction, advice, or decision; or
- C. an activity or related activities that result in a single **Pollution Incident** or multiple **Pollution Incidents** that are logically or causally connected by any common fact, situation, event, transaction, advice, or decision.

Related Protective Gap Demands means all **Protective Gap Demands** reported to the Insurer during any **Policy Year** arising out of a single negligent act, error, or omission or related negligent acts, errors, or omissions that are logically or causally connected by any common fact, situation, event, transaction, advice, or decision.

Residential Property means a one to four family dwelling.

Responsible Entity means those persons or entities, retained by the **Named Insured** or on the **Named Insured's** behalf, rendering **Design Professional Services** or **Construction Management Services**.

Seller's Real Property Disclosure Statement means a written disclosure of the known condition of the real property by the seller including the existence of past or present environmental hazards.

Subsidiary means any entity in which the **Named Insured** has **Management Control** directly or indirectly through one or more other **Subsidiaries**:

- A. on or before the effective date of this Policy; or
- B. after the effective date of this Policy by reason of being created or acquired by the **Insured** after such date, if and to the extent coverage with respect to the entity is afforded pursuant to section VI, CONDITIONS, paragraph Q., Coverage for New **Subsidiaries**.

Takeover means:

- A. the acquisition of **Management Control** of the **Named Insured** by another entity or person, or group of entities or persons acting in concert;
- B. the merger of the **Named Insured** into another entity such that the **Named Insured** is not the surviving entity; or
- C. the consolidation of the **Named Insured** with another entity.

Technology Based Services means **Professional Services** that utilize electronic information technology, including custom software development, modification or integration; provided, however, that such **Technology Based Services** are provided solely to a specific client of the **Named Insured**.

Wrongful Act means a negligent act, error, or omission, that causes liability in the performance of **Professional Services** for others by the **Insured** or by any person or entity, including joint ventures, for whom the **Insured** is liable. A **Wrongful Act** cannot arise from dishonest, fraudulent, malicious, or criminal conduct committed by the **Insured** or at the **Insured's** direction or with the **Insured's** prior knowledge.

IV. EXCLUSIONS

The Insurer will not defend or pay under this Policy for any **Claim** or any **Protective Gap Demand**:

A. **Insured vs. Insured**

brought by the **Insured** or on the **Insured's** behalf against another **Insured** covered by this Policy.

B. Contractual Liability

based on or arising out of:

1. the **Insured's** actual or alleged liability under any oral or written contract or agreement, including but not limited to express warranties or guarantees; or
2. any actual or alleged liability of others that the **Insured** assumes under any oral or written contract or agreement.

However, this exclusion shall not apply to the **Insured's** liability that exists in the absence of such contract or agreement.

In a foreign jurisdiction where the **Insured's** liability to a client is predicated only on contractual liability, subparagraph 1. of this exclusion does not apply except to the extent that the **Insured** has agreed to pay consequential or liquidated damages.

This exclusion does not apply to liability assumed by the **Insured** in an **Insured Client Contract**.

C. Faulty Workmanship

based on or arising out of any actual or alleged cost to repair or replace faulty workmanship the **Insured** performs on any construction, erection, fabrication, installation, assembly, manufacture or remediation, including any materials, parts, or equipment furnished in connection therewith.

D. Excluded Costs and Damages

for any:

1. fines, penalties, taxes, or sanctions;
2. overhead costs, general business expenses, salaries, or wages incurred by an **Insured**;
3. the return, reduction, or restitution of fees, commissions, profits, or charges for goods provided or services rendered;
4. liquidated or multiple damages;
5. disgorgement of profits, any advantage to which an **Insured** was not legally entitled, unjust enrichment or for the failure or refusal of a client to pay money due the **Insured**;
6. the cost of complying with injunctive or non-monetary relief; or
7. any amounts incurred in connection with the making or prosecution of a **Protective Gap Demand**.

E. Nuclear

based on or arising out of any actual or alleged nuclear reaction, radiation, or contamination, under any circumstances and regardless of cause, within or originating from a **Nuclear Facility**.

F. Conversion

based on or arising out of any actual or alleged conversion, misappropriation, commingling, defalcation, embezzlement, theft, disappearance, or insufficiency in amount of any funds or other property, including, but not limited to, any failure to detect, identify, disclose or prevent such conversion, misappropriation, commingling, defalcation, embezzlement, theft, disappearance or

insufficiency in amount, regardless of the identity of the person or entity actually or allegedly engaged in or responsible for the conduct or failure in question.

H. Misappropriation of Ideas

based on or arising out of any actual or alleged misappropriation of ideas, information or materials; improper gaining or misuse of confidential or proprietary information, materials or trade secrets; interference with actual or prospective business relationships, contracts or contractual relationships or unfair competition.

I. Prior Notice

based on or arising out of any actual or alleged:

1. **Wrongful Act, Pollution Incident**, or any matter, fact, situation, transaction, or event, for which notice was given by the **Insured** under any professional liability or pollution insurance coverage prior to the effective date of this Policy; or
2. other **Wrongful Act** or **Pollution Incident** whenever occurring, which is logically or causally connected by any common fact, situation, transaction, or event to the **Wrongful Act** or **Pollution Incident** specified in paragraph 1. of this exclusion.

J. Sale or Distribution of Goods

based on or arising out of any actual or alleged:

1. sale or distribution of goods or products by the **Insured**; or
2. design or manufacture of any goods or products which are sold or supplied by an **Insured**; or by anyone under license from an **Insured**;

This exclusion does not apply to furniture, furnishings, or equipment, created or modified specifically for a client in connection with the **Insured's Professional Services** for that client, or to software created or modified specifically for a client in connection with **Technology Based Services** for that client.

K. Transportation

based on or arising out of any actual or alleged ownership, entrustment, maintenance, use, operation, loading or unloading, or entrustment, of any automobile, mobile equipment, aircraft, watercraft or rolling stock. However this exclusion shall not apply to:

1. **Pollution Incident** arising out of the ownership, entrustment, maintenance, use, operation, loading or unloading of any automobile, aircraft, watercraft or rolling stock or arising from wastes or materials transported by or on behalf of the **Named Insured**:
 - a. by an automobile, aircraft, watercraft or rolling stock during the course of activities; or
 - b. to a **Non-Owned Disposal Site**;
2. amounts the **Insured** becomes legally obligated to pay as a result of a **Wrongful Act** for which this Policy otherwise provides coverage, even if the **Professional Services** were performed using or operating an automobile, aircraft, watercraft or rolling stock.

L. Employment

based on or arising out of any actual or alleged employment obligations, decisions, conduct, practices or policies as an employer, including but not limited to any obligation for which any party shall be liable under any worker's compensation, unemployment compensation, employer's liability, obligation to pay fair wages or benefits, or disability benefits law or under any similar law.

M. **Bodily Injury, Property Damage or Personal Injury**

based on or arising out of any actual or alleged **Bodily Injury, Property Damage** or **Personal Injury**, regardless of cause, except that this exclusion shall not apply to **Design Professional Services** or **Pollution Incidents**.

N. **Pollutants, Mold, Fungi or Microbes**

based on or arising out of whether suddenly or over a long period of time:

1. any actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to, existence of, growth or presence of; or
2. any actual, alleged or threatened emission, discharge, dispersal, seepage, release or escape of; or
3. any actual or alleged failure to detect, report, test for, monitor, clean-up, remove, contain, dispose of, treat, detoxify or neutralize, or in any way respond to, assess the effects of or advise of the existence of;

any **Pollutants, Fungi or Microbes**, or of any spores, mycotoxins, odors, or any other substances, products or byproducts produced by, released by, or arising out of the current or past presence of mold, **Fungi or Microbes**. This exclusion applies regardless of any other cause or event that contributes concurrently or in any sequence to the damages claimed.

However, this exclusion does not apply to:

- a. **INSURING AGREEMENT A.2.**;
- b. any **Claim** against an **Insured** based on or arising out of the **Insured's** failure, in any way, to advise of the existence of **Pollutants**; or
- c. based on or arising out of the **Insured's** failure, in his or her capacity as a real estate agent or broker, to advise buyers or sellers of real property of the existence of mold, **Fungi or Microbes** at such **Residential Property**, but if, and only if the following conditions were met:
 - (i) neither the **Insured** nor the **Insured's** spouse had an ownership interest in such **Residential Property**;
 - (ii) a **Seller's Real Property Disclosure Statement** was completed by the seller and receipt acknowledged by the buyer in writing prior to closing and a copy was retained in the **Insured's** transaction file; and
 - (iii) if the **Insured** acted as agent for the buyer, a statement or disclosure regarding a buyer's right to request testing or inspection for the existence of mold, **Fungi or Microbes** was provided to and acknowledged by the buyer in writing, and a copy was retained in the **Insured's** transaction file.

O. **Failure to Maintain Insurance**

based on or arising out of any actual or alleged:

1. failure to effect or maintain any insurance, financing or bond;
2. failure to advise of the need for adequate amount or type of insurance, financing or bond; provided that this exclusion will not apply to a covered **Protective Gap Demand**.

P. **Purchase or Sale of Business**

based on or arising out of any actual or alleged sale or purchase or attempted sale or purchase of a business, except that this exclusion does not apply to that portion of a **Claim** which relates to the purchase, sale or leasing of real property.

Q. **Valuation**

based on or arising out of any actual or alleged:

1. promises, warranties, or guarantees; or
2. valuation, performance, or income of any property, project, or business; or any representation thereof.

R. Investment and Financing

based on or arising out of any actual or alleged:

1. formation, syndication, operation, promotion, offer, sale, management, or administration of any limited or general partnership, property syndication, or real estate investment trust or any interest therein;
2. acquisition or procurement of any investment or investors in, or any temporary or permanent financing for, any real property for development; or
3. promotion or marketing of any interest in the arrangements by which an Insured participates in the development of any real property.

S. Securities

based on or arising out of:

1. the filing of any registration statement under the Securities Acts of 1933, or the Securities Exchange Act of 1934, any State Blue Sky Law, or any other state or local securities law; or
2. the Securities Act of 1933, the Securities and Exchange Act of 1934, rules or regulations of the Securities Exchange Commission under either or both acts, similar securities laws or regulations of state, or any laws of any state relating to any transaction arising out of, involving, or relating to the public offering of securities.

T. Violation of Law

based on or arising out of any:

1. charges of price fixing, restraint of trade, monopolization or unfair trade; or
2. actual or alleged violation of:
 - a. the Federal Trade Commission Act, the Sherman Act, the Clayton Act, or any federal statutory provision regarding anti-trust law, monopoly, price fixing, price discrimination, predatory pricing, or restraint of trade;
 - b. Telephone Consumer Protection Act (TCPA) 47 U.S.C. Section 227 Federal Communications Commission (FCC) rules prohibiting facsimile, electronic mail or any other means of communication;
 - c. any rules or regulations promulgated under or in connection with the above statutes; or
 - d. any similar provision of any state, federal or local statutory law or common law.

U. Prior **Wrongful Acts** of Subsidiaries

based on or arising out of any actual or alleged **Wrongful Act**:

1. by or on behalf of any **Subsidiary** whether such **Subsidiary** qualified as such prior to the inception date of the Policy, or after the inception date of this Policy by virtue of section VI, CONDITIONS, paragraph Q., Coverage for New **Subsidiaries**, or by natural person **Insureds** of any such **Subsidiary** where such **Wrongful Act** occurred in whole or in part before the date the **Insured** first had **Management Control**; or
2. occurring on or after the date the **Insured** first had **Management Control** of any **Subsidiary** described in paragraph 1. above, which, together with any **Wrongful Acts** described in paragraph 1. above, would be considered related **Wrongful Acts**.

V. Resale of Property

based on or arising out of any actual or alleged acquisition of improved or unimproved property for resale, or other arrangements to obtain monetary gain without performing construction or making improvements, including any "flipping" or other procedures or arrangements.

V. LIMITS OF LIABILITY/RETENTION

A. Limits of Liability

1. Subject to paragraph 6. below, each **Claim** the Limit of Liability shown on the Declarations is the maximum the Insurer will pay for each **Claim** first made against the **Insured** and reported to the Insurer during the **Policy Year**.
2. Subject to paragraph 3. below, the each **Protective Gap Demand** Limit of Liability shown on the Declarations is the maximum the Insurer will pay as **Protective Gap Loss** for each **Protective Gap Demand** reported by the **Named Insured** during the **Policy Year**. This limit is a sublimit of liability, which further reduces and in no way increases the applicable Policy Aggregate limits shown on the Declarations.
3. Subject to paragraph 6. below, the aggregate **Protective Gap Demand** Limit of Liability per **Policy Year** shown on the Declarations is the maximum the Insurer will pay as **Protective Gap Loss** for all **Protective Gap Demands** reported by the **Named Insured** during the policy year. This limit is a sublimit of liability, which further reduces and in no way increases the applicable Policy Aggregate limit shown on the Declarations.
4. Subject to paragraph 5. below, the each **Design Defect Circumstance** Limit of Liability shown on the Declarations is the maximum the Insurer will pay as reimbursement expense for each **Design Defect Circumstance** reported by the **Insured** in accordance with section I, COVERAGE, paragraph C., **SUPPLEMENTAL INSURING AGREEMENT – RECTIFICATION EXPENSE**. This limit is a sublimit of liability, which further reduces and in no way increases the applicable Policy Aggregate limits shown on the Declarations.
5. Subject to paragraph 6. below, the aggregate **Design Defect Circumstance** Limit of Liability per **Policy Year** shown on the Declarations is the maximum the Insurer will pay as reimbursement expense for all **Design Defect Circumstances** reported by the **Insured** in accordance with section I, COVERAGE, paragraph C., **SUPPLEMENTAL INSURING AGREEMENT – RECTIFICATION EXPENSE**. This limit is a sublimit of liability, which further reduces and in no way increases the applicable Policy Aggregate limit shown on the Declarations.
6. The Policy Aggregate Limit of Liability shown on the Declarations as the aggregate Limit of Liability per **Policy Year** is the maximum the Insurer will pay for all amounts covered under this Policy during the **Policy Year**.
7. All Limits of Liability set forth above apply on a **Policy Year** basis and are excess over any Retention amount. The **Policy Year** Limits of Liability may not be aggregated or transferred, in whole or in part, so as to provide any additional coverage with respect to **Claims** first made or deemed made, or with respect to any **Protective Gap Demand**, or with respect to any **Design Defect Circumstance**, reported by the **Insured** during any other **Policy Year**. If the Limits of Liability as specified above for any **Policy Year** are exhausted, the Insurer's obligation for that **Policy Year** shall be deemed completely fulfilled and extinguished.
8. All **Related Claims**, whenever made, shall be considered a single **Claim** first made and reported to the Insurer within the **Policy Year** in which the earliest of the **Related Claims** was first made and reported to the Insurer.
9. All **Related Protective Gap Demands**, whenever made, shall be considered a single **Protective Gap Demand** first made by the **Named Insured** and reported to the Insurer within the **Policy Year** in which the earliest of the **Related Protective Gap Demands** was first made and reported to the Insurer.

10. Subject to paragraph 6. above, the Limit of Liability shown on the Declarations as the each **Discrimination Claim** Limit of Liability is the maximum the Insurer will pay for each **Claim** that constitutes a **Discrimination Claim** that is first made against the **Insured** and reported to the Insurer during the **Policy Year**. Such **Discrimination Claim** Limit of Liability is a sublimit included within and not in addition to the limits of liability shown on the Declarations. Such sublimit is subject to the retention.

11. **Claim Expenses** are subject to and included within the applicable Limit of Liability.

B. Retention

The **Insured's** obligation to pay up to the per **Claim** or **Protective Gap Demand** Retention amount shown on the Declarations and the aggregate Retention per **Policy Year** shown on the Declarations, if any, including but not limited to **Claim Expenses**, shall apply to all Insuring Agreements and Supplemental Insuring Agreements under section I, **COVERAGE**.

C. Reimbursement to the Insurer

If the Insurer has paid any amounts in excess of the applicable Limit of Liability, or within the amount of the **Insured's** Retention, the **Insured** shall be liable to the Insurer for all such amounts, and, upon demand, shall pay such amounts to the Insurer.

D. More Than One **Insured**

Neither the applicable Limit of Liability nor the **Insured's** Retention shall be increased because more than one **Insured** is included in a **Claim** or **Protective Gap Demand**.

E. Risk Mitigation Early Resolution Credit

If negotiation or mediation of a **Claim** results in a resolution of such **Claim** within one hundred and eighty (180) days of the time it was reported to the Insurer in accordance with the section VI, **CONDITIONS**, paragraph B., The **Insured's** Duties in the Event of a **Claim**, and such resolution includes an indemnity payment by the Insurer, the Retention applicable to such **Claim** will be reduced by 50%, up to \$10,000.

VI. CONDITIONS

A. The **Insured's** Rights and Duties as the **First Named Insured**

The **First Named Insured**, on behalf of all **Insureds**, will be:

1. authorized to make changes in the terms of this Policy with the Insurer's written consent;
2. authorized to receive any amounts the Insurer refunds; and
3. responsible for:
 - a. the payment of all premiums and Retention obligations due the Insurer;
 - b. keeping records of the information the Insurer needs for premium computation, and sending the Insurer copies as it may request; and
 - c. notifying the Insurer of any cancellation or non-renewal.

B. The **Insured's** Duties in the Event of a **Claim**

If there is a **Claim**, the **Insured** must do the following:

1. promptly notify the Insurer in writing. This notice must be given to the Insurer within the **Policy Year** in which the **Claim** is made or within sixty (60) days after its expiration or termination. All **Claims** reported during any **Extended Reporting Period** shall be considered as having been made during the last **Policy Year** this Policy was in effect. If the **Claim** is made during any

applicable **Extended Reporting Period**, then notice must be given to the Insurer within such **Extended Reporting Period**. Notice of a **Claim** must be sent to the attention of either of the following:

- a. Attn: CNA – Claim Reporting
P.O. Box 8317
Chicago, IL 60680-8317
fax: 866-773-7504
email: SpecialtyProNewLoss@cna.com
 - b. Attn: AE Claims Victor O. Schinnerer & Company, Inc.
Two Wisconsin Circle, Suite 1100
Chevy Chase, Maryland 20815
fax: 301-951-5444
email: Developerclaims@schinnerer.com
2. specify the names and addresses of the persons making a **Claim** against the **Insured** and provide the Insurer with information on the time, place and nature of the **Claim**;
 3. immediately forward to the Insurer all documents that the **Insured** receives in connection with the **Claim**;
 4. fully cooperate with the Insurer or the Insurer's designees in the defense of a **Claim**, including but not limited to assisting the Insurer in: the conduct of suits or other proceedings, settlement negotiations, and the enforcement of any right of contribution or indemnity against another who may be liable to the **Insured**. The **Insured** will attend hearings and trials and assist in securing evidence and obtaining the attendance of witnesses;
 5. refuse, except solely at the **Insured's** own cost, to voluntarily make any payment, admit liability, assume any obligation, or incur any expense, without the Insurer's prior written approval;
 6. pay the Retention amount when due; and
 7. where the **Insured** has the right under any contract to either reject or demand arbitration or other alternative dispute resolution process, the **Insured** will only do so with the Insurer's prior written consent.

C. The **Insured's** Rights and Duties in the Event of a **Circumstance**

If an **Insured** reports a **Circumstance** for which there may be coverage under this Policy and gives the Insurer written notice containing as much detail as reasonably possible regarding:

1. what happened and the activities performed;
2. the nature of any possible injury or damages; and
3. how and when the **Insured** first became aware of such **Circumstance**;

then a **Claim** that is subsequently made against such **Insured** arising out of such **Circumstance** shall be deemed to have been made on the date the Insurer received written notice of the **Circumstance** but only if such **Claim** is made against such **Insured** during the **Coverage Relationship**.

The **Insured** will fully cooperate with the Insurer and the Insurer's designees in addressing the **Circumstance** reported to the Insurer, and refuse, except solely at the **Insureds** own cost, to voluntarily make any payment, admit liability, assume any obligation or incur any expense without the Insurer's prior written approval.

In the event an **Insured** reports a **Circumstance** and such **Insured** has the right under any contract to either reject or demand arbitration or other alternative dispute resolution process, such **Insured** will only do so with our prior written consent.

D. The **Insured's** Duties in the Event of a **Protective Gap Demand**

The **Insured** must provide the Insurer with written notice of a **Protective Gap Demand** at the same time that the **Insured** makes such **Protective Gap Demand** against the **Responsible Entity**. The **Insured** shall promptly forward to the Insurer all documents that the **Insured** sends or receives in connection with such **Protective Gap Demand** and will provide the Insurer with as much detail as reasonably possible regarding:

1. what happened and the activities performed;
2. the nature and extent of any possible injury or damages; and
3. how and when the **Insured** first became aware of the act, error, or omission that is the basis of such **Protective Gap Demand**.

E. Subrogation

If any **Insured** has rights to recover amounts from another, those rights are transferred to the Insurer to the extent of the Insurer's payment. The **Insured** must do everything necessary to secure these rights and must do nothing after a **Claim** or **Protective Gap Demand** is made to jeopardize them. The Insurer hereby waives subrogation rights against the **Insured's** client to the extent that the **Insured** had a written agreement to waive such rights prior to a **Claim** or **Circumstance**.

F. Premium

All premium charges under this Policy will be computed according to the rules, rates and rating plans that apply at the effective date of the current **Policy Term**.

G. Examination and Audit

The **Insured** agrees to allow the Insurer to examine and audit the **Insured's** financial books and records that relate to this insurance. The Insurer may do this at any time during the **Policy Term** or any extensions, and up to three years after the end of the **Policy Term**.

H. Legal Action Limitation

1. The **Insured** agrees not to bring any legal action against the Insurer concerning this Policy unless the **Insured** has fully complied with all the provisions of this Policy.
2. If, after the final adjudication or settlement of a **Claim**, there is any dispute concerning tort allegations against the Insurer regarding the handling or settlement of any **Claim**, the **Insured** and the Insurer agree to submit such dispute to any form of alternative dispute resolution acceptable to both parties. Should the **Insured** and the Insurer be unable to agree on the form of alternative dispute resolution, then such dispute shall be submitted to binding arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction thereof.

I. Changes to Policy

Notice to, or knowledge possessed by, any agent or other person acting on behalf of the Insurer shall not effect a waiver or a change in any part of this Policy or prevent the Insurer from asserting any right under the provisions of this Policy. The provisions of this Policy cannot be waived or changed except by written endorsement issued to form a part of this Policy.

J. Transfer of Interest

For a transfer of interest or an assignment of this Policy to be effective, the **First Named Insured** must obtain the Insurer's written consent.

K. Other Insurance

Where there is other insurance available our obligation is as follows:

1. If liability is assumed by the **Named Insured** in an **Insured Client Contract**, this insurance is primary.
2. If there is other valid and collectible insurance that applies to the **Claim**, then this insurance shall be excess over such other valid and collectible insurance, whether such insurance is stated to be primary, contributory, excess, contingent, self-insured, or otherwise.
3. When there is such other insurance, this Policy shall only apply after the total amounts of any and all underlying insurance and the total of all deductibles and/or self-insured amounts under such other insurance are exhausted.
4. This paragraph does not apply to any other insurance that was bought specifically to apply in excess of the limits of liability shown in the Declarations of this Policy.
5. Payments by other insurance do not satisfy this Policy's self-insured retention.

L. Cancellation/Non-Renewal

The Insurer will make the premium adjustment at the time that cancellation is effective or as soon as practicable after that time. Premium return will be computed pro rata if the Insurer cancels or if the **Insured** cancels at the end of a **Policy Year**. But if the **Insured** cancels at any other time, only 90% of the prorated premium will be returned.

Notwithstanding the foregoing, if an **Insured** reports a **Claim**, **Design Defect Circumstance**, or **Protective Gap Demand** to the Insurer prior to the date of cancellation, the Policy premium will be considered 100% earned, and no premium will be returned upon cancellation.

M. Severability/Innocent Parties

Any **Insured** who did not commit, participate in, or have prior knowledge of dishonest, fraudulent, malicious, or criminal conduct, or who did not fail to comply with section VI, CONDITIONS, paragraph B, The **Insured's** Duties in the Event of a **Claim**, shall have the coverage otherwise provided by this Policy.

N. Estates, Legal Representatives, and Spouses

Coverage is afforded under this Policy to the estates, heirs, legal representatives, assigns, spouses, and any **Domestic Partner** of any natural person within the definition of **Insured**, but only for a **Claim** arising solely out of their status as such. In the case of a spouse or **Domestic Partner**, coverage is also afforded under this Policy where such **Claim** seeks damages from marital community property, jointly held property, or property transferred from any natural person designated in the definition of **Insured** to their spouse or **Domestic Partner**. No coverage is provided for any act, error, or omission, of an estate, heir, legal representative, assign, spouse or **Domestic Partner**. All terms and conditions of this Policy, including without limitation the Retention applicable to any **Claim**, shall also apply to any **Claim** made against such estates, heirs, legal representatives, assigns, spouses, and **Domestic Partners**.

O. Extended Reporting Periods

1. Automatic **Extended Reporting Period**

If this Policy is canceled or non-renewed either by the Insurer or by the **First Named Insured** and the **First Named Insured** has not obtained similar coverage, the Insurer will provide an automatic, non-cancelable **Extended Reporting Period** starting at the termination of the **Policy Term**. This automatic **Extended Reporting Period** will terminate after sixty (60) days.

2. **Optional Extended Reporting Period**

- a. If this Policy is canceled or non-renewed either by the Insurer or by the **First Named Insured**, then the **First Named Insured** shall have the right to purchase a non-cancelable optional **Extended Reporting Period**.

If purchased, the first sixty (60) days of the optional **Extended Reporting Period** run concurrently with the sixty (60) days of the automatic **Extended Reporting Period**.

- b. The additional premium for the optional **Extended Reporting Period** shall be fully earned at inception and based upon the rates for such coverage in effect at the beginning of the **Policy Term**.
- c. The **First Named Insured** must provide the Insurer with written notice of its election to purchase the optional **Extended Reporting Period** and pay the full payment for such period within sixty (60) days after the end of the **Policy Term**.

3. **Extended Reporting Periods** limits of liability

The Insurer's liability for all **Claims** reported during any automatic and optional **Extended Reporting Periods** shall be part of and not in addition to the remaining Limits of Liability for the final **Policy Year**.

4. Elimination of right to an **Extended Reporting Period**

There is no right to any **Extended Reporting Period** if the Insurer cancels or refuses to renew this Policy due to:

- a. non-payment of amounts due the Insurer ;
b. non-compliance by the **Insured** with any of the terms and conditions of this Policy; or
c. any misrepresentation or omission in the application for this Policy.

5. **Extended Reporting Period** limitations

No **Extended Reporting Period** shall apply to:

- a. any **Claim** or proceedings pending at the inception date of such **Extended Reporting Period**;
b. any paid **Claim**; or
c. **Claims** that are covered under any subsequent insurance purchased by the **Insured**, or that would be covered but for exhaustion of the Limits of Liability applicable to such **Claims**.

6. **Extended Reporting Period** not a new policy

It is understood and agreed that the **Extended Reporting Period** shall not be construed to be a new policy and any **Claim** submitted during such period shall otherwise be governed by this Policy.

P. Limitation of Liability

With respect to a **Protective Gap Demand**, the **Named Insured** shall not accept any limitation of liability clause in any contract between the **Named Insured** and any person or entity providing **Design Professional Services**, unless and until it receives the Insurer's prior express written consent.

Q. Coverage for New **Subsidiaries**

1. Other than an entity described in paragraph 2. below, if after the effective date of this Policy the **Insured** first obtains **Management Control** of any entity, then such entity and its subsidiaries, directors, officers, trustees, managers, members, partners or employees who otherwise would thereby become an **Insured**, shall be covered under this Policy, subject to its terms and conditions.
2. If, after the effective date of this Policy, the **Named Insured** first obtains **Management Control** of an entity where the total revenues (as reflected in the most recent audited consolidated financial statements of such entity and the **Insured**) exceed ten percent (10%) of the combined total revenues of all **Insureds**, as of the inception date of this Policy, then the Insurer, at its sole option upon submission of such information as the Insurer may require, and payment of any additional premium or amendment of the provisions of the Policy, may agree to provide coverage for such entity and its subsidiaries, directors, officers, trustees, managers, members, partners, or employees; provided, however, that such entity shall be deemed a **Subsidiary** for the first 60 days after the **Named Insured** first has **Management Control** over such entity.

R. Change of Status of Insureds

1. **Takeover** of the **Named Insured**

In the event of a **Takeover** of the **Named Insured**, coverage under this Policy shall continue until this Policy is otherwise terminated, but only with respect to **Claims** for **Wrongful Acts** occurring before the effective date of the **Takeover**, unless:

- a. the Insurer is notified in writing of the **Takeover** prior to the **Takeover** effective date and agrees in writing to provide coverage for **Wrongful Acts** occurring on or after such effective date; and
- b. the **Named Insured** accepts any additional terms, conditions and exclusions and pays any additional premium charge required by the Insurer.

2. Cessation of **Subsidiary**

If any organization ceases to be a **Subsidiary**, coverage under this Policy or any renewal of this Policy, shall continue until this Policy is otherwise terminated, but only with respect to **Claims** for **Wrongful Acts** occurring before the effective date of such cessation, unless:

- a. the Insurer is notified in writing of such cessation prior to the effective date thereof and agrees in writing to provide coverage for **Wrongful Acts** occurring on or after such effective date; and
- b. the **Insured** accepts any special terms, conditions and exclusions and pays any additional premium charge required by the Insurer.

S. Liberalization

If the Insurer adopts any revision to this form during the **Policy Term** that would broaden coverage without additional premium, the broadened coverage will apply to this Policy at the inception date of the next **Policy Year**, but it will not apply to **Claims** that were first made against the **Insured** prior to the effective date of such revision.

T. **Named Insured** Sole Agent

The **Named Insured** shall be the sole agent of all **Insureds** hereunder for the purpose of effecting or accepting any notices hereunder, any amendments to or cancellation of this Policy, for the completing of any applications and the making of any statements, representations and warranties, for the payment of any premium and the receipt of any return premium that may become due under this Policy, and the exercising or declining to exercise any right under this Policy.

U. Entire Contract

By acceptance of this Policy the **Insured** agrees that:

1. all of the information and statements provided to the Insurer by the **Insured** are true, accurate and complete and shall be deemed to constitute material representations made by all of the **Insureds**;
2. this Policy is issued in reliance upon the **Insured's** representations;
3. this Policy, endorsements thereto, together with the completed and signed application and any and all supplementary information and statements provided by the **Insured** to the Insurer (all of which are deemed to be incorporated herein) embody all of the agreements existing between the **Insured** and the Insurer and shall constitute the entire contract between the **Insured** and the Insurer; and
4. the misrepresentation of any material matter by the **Insured** or the **Insured's** agent will render this Policy null and void and relieve the Company from all liability herein.

V. Territory

This Policy applies to a **Wrongful Act** or **Pollution Incident** taking place anywhere in the world, provided that the **claim** is made and suit is brought against the **Insured** within the United States of America, including its territories, possessions, Puerto Rico or Canada.

W. Bankruptcy or Insolvency

Bankruptcy or insolvency of the **Insured** shall not relieve the Insurer of any of its obligations hereunder. The **Insureds** agree not to oppose or object to any efforts by the Insurer or any **Insured** to obtain relief from any stay or injunction applicable to the proceeds of this Policy as a result of the commencement of any bankruptcy or insolvency proceeding.

X. Economic and Trade Sanctions

This Policy does not provide coverage for any **Insured**, any transactions, or any part of a **Claim** or **Protective Gap Demand** if uninsurable under the laws or regulations of the United States concerning trade or economic sanctions.

Y. Headings

The descriptions in the headings of this Policy are solely for convenience, and form no part of the terms and conditions of coverage.

VII. SERVICE OF SUIT

Pursuant to any statute of any state, territory or district of the United States which makes provision therefore, the Insurer hereby designates the Superintendent, Commissioner or Director of Insurance or other officer specified for that purpose in the statute, or his successor or successors in office, as its true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the Named Insured or any beneficiary hereunder arising out of this contract of insurance, and hereby designates the below-named as the person to whom the said officer is authorized to mail such process or true copy thereof.

Service of process in such suit shall be made upon:

General Counsel
Columbia Casualty Company
151 North Franklin Street
Chicago, IL 60606

and in any suit instituted against such person upon this policy, the Insurer will abide by the final decision of such court or of any appellate court in the event of an appeal.

The General Counsel is authorized and directed to accept service of process on behalf of the Insurer in any such suit and, upon the request of the Named Insured, to give a written undertaking to the Named Insured that he will enter a general appearance upon the Insurer's behalf in the event such suit shall be instituted.

IN WITNESS WHEREOF, the Insurer has caused this Policy to be signed by its Chairman and Secretary at Chicago, Illinois, but the same shall not be binding upon the Insurer unless signed by its duly authorized representative.



Chairman



Secretary