

DECLARATIONS

BEAZLEY DEVELOPPRO

OWNERS PROTECTIVE PROFESSIONAL & POLLUTION INDEMNITY AND LIABILITY INSURANCE

THIS POLICY PROVIDES COVERAGE ON A CLAIMS MADE AND REPORTED BASIS AND APPLIES ONLY TO ANY PROTECTIVE CLAIM FIRST MADE BY THE NAMED INSURED AND ANY THIRD PARTY CLAIM FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD OR EXTENDED REPORTING PERIOD AND REPORTED IN WRITING TO THE UNDERWRITERS IN ACCORDANCE WITH CLAUSE IX.N. AMOUNTS INCURRED AS THIRD PARTY CLAIMS EXPENSES SHALL REDUCE AND MAY EXHAUST THE LIMIT OF LIABILITY AND ARE SUBJECT TO THE DEDUCTIBLE. THE UNDERWRITERS SHALL NOT BE LIABLE FOR ANY PROTECTIVE LOSS, THIRD PARTY CLAIMS EXPENSES OR THIRD PARTY DAMAGES AFTER THE LIMIT OF LIABILITY HAS BEEN EXHAUSTED. PLEASE READ THIS POLICY CAREFULLY.

These Declarations and the Policy with endorsements shall constitute the contract between the **Insureds** and the Underwriters.

Policy Number:

Item 1. **Named Insured:**

Address:

Item 2. **Policy Period:**

From:

To:

Both dates at 12:01 a.m. Local Time at the Address stated in Item 1.

Item 3. **Limit of Liability:**

(a) Each **Protective Claim** or **Third Party Claim** - includes **Third Party Claims Expenses**

(b) Aggregate for the **Policy Period** - includes **Third Party Claims Expenses**

Item 4. **Third Party Claim Deductible:**

Each **Third Party Claim** Deductible - includes **Third Party Claims Expenses**

Item 5. **Premium:**

Item 6. **Retroactive Date:**

Item 7. **Covered Project:**

Item 8. **Minimum Insurance Requirements:**

Item 9. **Extended Reporting Period:**

Item 10. **Notification under this Policy:**

(a) Notification pursuant to Clause IX.N. shall be given to:

Email a&eclaims@beazley.com
Fax (866) 910-1397
Online http://www.beazley.com/claims_service/ae_claims_form.aspx
Mail Beazley Insurance Company, Inc.
30 Batterson Park Road
Farmington, CT 06032
Attn: A&E Claims

If you have any questions or for additional information, please call (888) 222-1123.

(b) All other notices under this Policy shall be given to:

Beazley Insurance Company, Inc.
30 Batterson Park Road
Farmington, CT 06032
Tel: (860) 677 3700
Fax: (860) 679-0247

Item 11. **Service of process in any suit shall be made upon:**

Item 12. **Choice of Law:**

BEAZLEY DEVELOPPRO

OWNERS PROTECTIVE PROFESSIONAL & POLLUTION INDEMNITY AND LIABILITY INSURANCE

NOTICE: Coverage under this Policy is provided on a Claims Made and Reported Basis and applies only to **Protective Claims** first made by the **Named Insured** and **Third Party Claims** first made against the **Insured** during the **Policy Period** or the **Extended Reporting Period** and reported in writing to the Underwriters pursuant to the terms of this Policy. The Limit of Liability stated in Item 3. of the Declarations available to pay **Protective Loss** and **Third Party Damages** shall be reduced and may be completely exhausted by payment of **Third Party Claims Expenses**.

In consideration of the payment of the premium and reliance upon the **Minimum Insurance Requirements** and the statements in the **Application**, and subject to the Limit of Liability, deductible, exclusions, conditions and other terms of this Policy, the Underwriters agree with the **Named Insured**:

I. INSURING CLAUSES

A. Owners Protective

1. Professional Indemnity

To indemnify the **Named Insured** for **Protective Loss**, in excess of any collectible insurance available to the **Design Professional**, as a result of any **Protective Claim**, provided that:

- (a) such **Protective Claim** is reported in writing to the Underwriters in accordance with Clause IX.N.; and
- (b) such **Protective Claim** arises out of any negligent act, error or omission by a **Design Professional** committed on or after the Retroactive Date and before the end of the **Policy Period**; and
- (c) prior to the inception date of this Policy, no director, officer, principal, partner, insurance manager, project manager or any member of the risk management or legal department of the **Named Insured** had knowledge of any circumstances which could give rise to a **Protective Loss**.

2. Pollution Indemnity

To indemnify the **Named Insured** for **Protective Loss**, in excess of any collectible insurance available to the **Contractor**, as a result of any **Protective Claim**, provided that:

- (a) such **Protective Claim** is reported in writing to the Underwriters in accordance with Clause IX.N.; and
- (b) such **Protective Claim** arises out of one or more of the following events taking place on or after the Retroactive Date and before the end of the **Policy Period**:
 - (i) a **Pollution Condition** caused by a **Contractor**, or

- (ii) a **Pollution Condition** wholly occurring during and resulting solely from **Transportation**, or
 - (iii) a **Pollution Condition** originating from a **Non-Owned Disposal Site** that is on, at, under or migrates from such **Non-Owned Disposal Site**; provided that the **Pollution Condition** arises from waste or materials generated by the performance of **Contracting Services** by a **Contractor**; and
- (c) prior to the inception date of this Policy, no director, officer, principal, partner, insurance manager, project manager or any member of the risk management or legal department of the **Named Insured** had knowledge of any circumstances which could give rise to a **Protective Loss**.

B. Third Party Claims

To pay on behalf of the **Insured**, **Third Party Damages** and **Third Party Claims Expenses**, in excess of the Deductible stated in Item 4. of the Declarations, resulting from any **Third Party Claim**, provided that:

1. such **Third Party Claim** is reported in writing to the Underwriters in accordance with Clause IX.N.; and
2. such **Third Party Claim** arises out of one or more of the following acts or events committed or taking place on or after the Retroactive Date and before the end of the **Policy Period**:
 - (a) any negligent act, error or omission by a **Design Professional**; or
 - (b) a **Pollution Condition** caused by a **Contractor**, or
 - (c) a **Pollution Condition** wholly occurring during and resulting solely from **Transportation**, or
 - (d) a **Pollution Condition** originating from a **Non-Owned Disposal Site** that is on, at, under or migrates from such **Non-Owned Disposal Site**; provided that the **Pollution Condition** arises from waste or materials generated by the performance of **Contracting Services** by a **Contractor**; and
3. prior to the inception date of this Policy, no director, officer, principal, partner, insurance manager, project manager or any member of the risk management or legal department of the **Named Insured** had knowledge of any **Circumstances** which could give rise to a **Third Party Claim**.

II. SUPPLEMENTARY PAYMENTS

All payments made under these Clauses shall be limited to an amount of \$25,000 in the aggregate for the **Policy Period** and the **Extended Reporting Period** combined and are not subject to the Deductible stated in Item 4. of the Declarations.

A. Defendants Reimbursement

Upon the Underwriter's request, the **Insured** shall attend mediation meetings, arbitration proceedings, hearings, depositions and trials relative to the defense of a **Third Party Claim**. After the first three (3) days' attendance required for each **Third Party Claim**, the Underwriters shall reimburse the **Insured**, upon written request, for actual loss of earnings and reasonable expenses due to such attendance up to \$500 for each day in the aggregate for all **Insureds**.

B. Disciplinary / Regulatory / Administrative Actions Reimbursement

The Underwriters will reimburse the **Insured**, upon written request, for legal fees and expenses incurred by the **Insured** with the prior written consent of the Underwriters, in responding to a disciplinary, regulatory or administrative action brought directly against the **Insured** during the **Policy Period** and the **Extended Reporting Period** by a government agency, regulatory or professional body provided that the disciplinary, regulatory or administrative action:

1. arises out of a negligent act, error or omission by a **Design Professional**; and
2. is reported pursuant to Section IX.N. of this Policy.

C. Reputation Management Reimbursement

The Underwriters will reimburse the **Named Insured** fifty percent (50%) of any Reputational Management Expenses incurred by the **Named Insured** for reputational management consulting services which are incurred in connection with a **Third Party Claim** covered under this Policy that the **Named Insured** reasonably believes will have a material adverse effect upon the **Named Insured's** reputation.

Reputational Management Expenses means reasonable fees, costs, and expenses incurred by the **Named Insured** for reputational management consulting services provided by a public relations firm to the **Named Insured**.

D. Bankruptcy of Design Professional or Contractor

The Underwriters will reimburse the **Named Insured**, upon written request, for legal fees and expenses of bankruptcy counsel incurred by the **Named Insured** with the prior written consent of the Underwriters, in bringing a **Protective Claim** during the **Policy Period** and the **Extended Reporting Period** seeking amounts payable under Insuring Clause I.A. against a **Design Professional** or **Contractor** who has filed for or been placed into bankruptcy under the United States Bankruptcy Code provided that such **Protective Claim** results in a final non-appealable judgement against the **Design Professional** or the **Contractor** in favour of the **Named Insured**.

E. **Subpoena Expenses**

The Underwriters will reimburse the **Named Insured**, upon written request, for fees and expenses incurred by the **Named Insured** with the prior written consent of the Underwriters, to engage legal counsel to assist the **Named Insured** in connection with the production of documents and the preparation for and giving of testimony, in response to a subpoena first served on the **Named Insured** during the **Policy Period** or the **Extended Reporting Period** (other than a **Protective Claim** or a **Third Party Claim**) arising out of the negligent acts, errors or omissions by a **Design Professional** or **Pollution Conditions** caused by a **Contractor**.

III. **DEFINITIONS**

Wherever used in this Policy in bold face type, the following definitions shall apply:

- A. **"Application"** means all signed applications, including all attachments and other materials submitted therewith or incorporated therein, and any other such documents submitted in connection with the underwriting of this Policy including any endorsement or other part thereof.
- B. **"Bodily Injury"** means physical injury, sickness, disease or death of any person, including any mental anguish or emotional distress resulting therefrom.
- C. **"Cargo"** means any waste or materials transported by motorized land vehicle for delivery by a carrier properly licensed to transport such waste or materials.
- D. **"Circumstance"** means any fact, event or situation that could reasonably be the basis for a **Third Party Claim**.
- E. **"Cleanup Costs"** means:
 - 1. reasonable and necessary costs, charges and expenses incurred in the investigation, removal or neutralization of a **Pollution Condition**, provided that such costs, charges and expenses are caused by a **Pollution Condition** by a **Contractor**; and
 - 2. reasonable and necessary costs, charges and expenses incurred to repair, replace or restore real or personal property to substantially the same condition it was prior to being damaged during work performed in the course of incurring those costs described in 1. above, but shall not include or mean costs, charges and expenses associated with improvements or betterments.
- F. **"Contracting Services"** means the performance of construction, drilling or remediation activities.
- G. **"Contractor"** means any entity, including subcontractors of any tier, who performs **Contracting Services** on behalf of the **Named Insured**.

- H. **“Covered Project”** means the project set forth in Item 7. of the Declarations.
- I. **“Design Professional”** means any person or entity that is professionally qualified, certified or licensed and retained by or on behalf of the **Named Insured** to perform professional services (as that term is defined in such person or entity’s professional liability insurance policy), including subcontractors and sub-consultants of any tier, in connection with the **Covered Project**.
- J. **“Extended Reporting Period”** means the period of time set forth in Item 9. of the Declarations after the end of the **Policy Period** for reporting **Protective Claims** or **Third Party Claims** as provided in Clause IX.H. of this Policy.
- K. **“Insured”** shall mean:
1. the **Named Insured**;
 2. a director or officer of the **Named Insured**, but only with respect to the performance of his or her duties as such on behalf of the **Named Insured**;
 3. an employee or **Temporary Employee** of the **Named Insured**, but only for work done while acting within the scope of his or her employment and related to the conduct of the **Named Insured’s** business;
 4. a principal if the **Named Insured** is a sole proprietorship or a partner if the **Named Insured** is a partnership, but only with respect to the performance of his or her duties as such on behalf of the **Named Insured**;
 5. any person who previously qualified as an **Insured** under 2, 3 or 4 above prior to the termination of the required relationship with the **Named Insured**, but only with respect to the performance of his or her duties as such on behalf of the **Named Insured**;
 6. the lawful spouse or Domestic Partner of any of the persons set forth in 2., 3., 4. or 5. above, but only for **Third Party Claims** arising out of:
 - (a) a negligent act, error or omission actually or allegedly committed by a **Design Professional**; or
 - (b) **Pollution Condition** actually or allegedly committed by a **Contractor**;

and only to the extent that such **Insured** would otherwise be provided coverage under this Policy. The Underwriters have no obligation to make any payment for **Third Party Damages** or **Third Party Claims Expenses** in connection with any **Third Party Claim** made against a spouse or Domestic Partner of an **Insured** for any actual or alleged acts, errors or omissions committed by such spouse or Domestic Partner.

For the purposes of this definition, the term "Domestic Partner" shall mean any natural person qualifying as a domestic partner under the provisions of any applicable Federal, State, or local law; or the provisions of any formal program established by the **Named Insured**; and

7. the estate, heirs, executors, administrators, assigns and legal representatives of any **Insured** in the event of such **Insured's** death, incapacity, insolvency or bankruptcy, but only to the extent that such **Insured** would otherwise be provided coverage under this Policy.
- L. **"Minimum Insurance Requirements"** means the minimum amount of Professional Liability and/or Contractors Pollution Liability Insurance that the Underwriters require the **Named Insured's Design Professionals** and **Contractors** to maintain as set forth in Item 8. of the Declarations.
- M. **"Limitation of Liability Clause"** means a legally enforceable contract provision in a written agreement, in place prior to any **Protective Loss**, between the **Named Insured** and any **Design Professional** or **Contractor** where the **Named Insured** agrees to place a monetary limit on the amount otherwise recoverable from the **Design Professional** or the **Contractor**.
- N. **"Named Insured"** means only those persons, partnerships, corporations or entities specified in Item 1. of the Declarations.
- O. **"Non-Owned Disposal Site"** means any location used by a **Contractor** for the treatment, storage or disposal of waste or material, provided that:
1. such location is not managed, operated, owned or leased by the **Named Insured** or such **Contractor** or an affiliate of the **Named Insured** or such **Contractor**; and
 2. such location is permitted and/or licensed by the applicable federal, state, local or provincial authorities to accept such waste or materials as of the date the waste or materials are treated, stored or disposed of at such location; and
 3. such location is within the United States, its territories or possessions, or in Canada; and
 4. such location is not listed on a proposed or final Federal National Priorities List and/or any state or provincial equivalent National Priority List, Superfund or Hazardous Waste List prior to the treatment, storage or disposal of the waste or material at such location.
- P. **"Policy Period"** means the period of time between the inception date shown in Item 2. of the Declarations and the effective date of termination, expiration or cancellation of this Policy.
- Q. **"Pollution Condition"** means the actual or alleged discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any watercourse or body of water, which results in **Bodily Injury**, **Property Damage** or **Cleanup Costs**.
- Pollution Condition** shall not include or mean any actual, potential, alleged or threatened formation, growth, presence, release or dispersal of any fungi, molds, spores or mycotoxins of any kind.
- R. **"Property Damage"** means:
1. physical injury to or destruction of any tangible property, including the loss of use thereof; or
 2. loss of use of tangible property that has not been physically injured or destroyed.

- S. **“Protective Claim”** means a written demand by the **Named Insured** first made against either a **Design Professional** or a **Contractor** during the **Policy Period** or **Extended Reporting Period** who are under contract with the **Named Insured** in connection with the **Covered Project** seeking a remedy from or alleging liability or responsibility on the part of such **Design Professional** or **Contractor**.
- T. **“Protective Loss”** means any amounts the **Named Insured** is legally entitled to recover from either the **Design Professional** or the **Contractor** as determined by:
1. a final monetary judgment by a court of competent jurisdiction;
 2. a final monetary award resulting from an arbitration or other dispute resolution proceeding, in which the **Named Insured** participates with the Underwriters' prior written consent; or
 3. a settlement to which the Underwriters agree in writing.

In the event that a **Limitation of Liability Clause** exists which limits the **Named Insured's** legal right to recover against either a **Design Professional** or a **Contractor**, **Protective Loss** shall mean the amount the **Named Insured** would have been entitled to in a **Protective Claim** against either the **Design Professional** or the **Contractor** in the absence of such **Limitation of Liability Clause**.

The term **Protective Loss** shall not include or mean:

- (a) any fees charged by an attorney incurred by the **Named Insured** resulting from the investigation, adjustment, prosecution and appeal of a **Protective Claim**, except as provided for in Clause II.D.; or
 - (b) matters deemed uninsurable under the law pursuant to which this Policy shall be construed.
- U. **“Temporary Employee”** means a person furnished, leased or on secondment to the **Named Insured** to meet short term or project specific workloads and for whom the **Named Insured** supervises and controls.
- V. **“Third Party Claim”** means a written demand first made against any **Insured** during the **Policy Period** or **Extended Reporting Period** from any person or organization seeking a remedy from or alleging liability or responsibility on the part of such **Insured** in connection with the **Covered Project**. **Third Party Claim** does not include a written demand received by any **Insured** from a party to any contract or agreement to provide services of any type for the **Covered Projects**.
- W. **“Third Party Claims Expenses”** means:
1. reasonable and necessary fees charged by an attorney designated or consented to by the Underwriters;
 2. all other fees, costs and expenses resulting from the investigation, adjustment, defense and appeal of a **Third Party Claim** arising in connection therewith, if incurred by the Underwriters, or by the **Insured** with the prior written consent of the Underwriters; and
 3. premiums for appeal bonds for covered judgments or bonds to release property used to secure a legal obligation, if required for a **Third Party Claim** against any **Insured** for a

covered act, error or omission, provided, however, that the Underwriters shall have no obligation to appeal or to obtain such bonds.

Third Party Claims Expenses do not include any salary, overhead or other charges of or by the **Insured** for any time spent in cooperating in the defense and investigation of any **Third Party Claim** notified under this Policy, or costs to remediate a negligent act, error or omission without the prior written consent of the Underwriters.

- X. **"Third Party Damages"** means any amounts that any **Insured** is legally obligated to pay arising out of any **Third Party Claim**.
- Y. **"Transportation"** means the movement of **Cargo** from the place where **Contracting Services** are being performed and the **Cargo** is accepted by the carrier toward the place designated for delivery by the **Contractor**.

Transportation includes the carrier's loading and unloading of **Cargo** onto or from a motorized land vehicle provided that the loading and unloading is performed by or on behalf of the **Contractor**.

IV. DEFENSE, SETTLEMENT, AND INVESTIGATION

- A. The Underwriters shall have the right and duty to defend, subject to the Limit of Liability stated in Item 3. of the Declarations, exclusions and other terms and conditions of this Policy, any **Third Party Claim** against the **Insured** seeking **Third Party Damages** which are payable under the terms of this Policy, even if any of the allegations of the **Third Party Claim** are groundless, false or fraudulent.

When the Underwriters defend a **Third Party Claim**, they will pay **Third Party Claims Expenses** incurred with their prior written consent. The Limit of Liability stated in Item 3. of the Declarations available to pay **Third Party Damages** shall be reduced and may be completely exhausted by payment of **Third Party Claims Expenses**. **Third Party Damages** and **Third Party Claims Expenses** shall be applied against the Each **Third Party Claim** Deductible stated in Item 4. of the Declarations.

If the **Insured** shall refuse to consent to any settlement or compromise recommended by the Underwriters and acceptable to the Claimant and elects to contest the **Third Party Claim**, the Underwriters liability for any **Third Party Damages** and **Third Party Claims Expenses** shall not exceed the amount for which the **Third Party Claim** could have been settled, less the remaining Each **Third Party Claim** Deductible stated in Item 4. of the Declarations, plus the **Third Party Claims Expenses** incurred up to the time of such refusal, or the applicable Limit of Liability stated in Item 3. of the Declarations, whichever is less.

- B. The Underwriters have the right but not the duty to participate in the investigation or settlement of any **Protective Claim** which is covered under the terms of this Policy.

The **Named Insured** shall not enter negotiations and/or settlement of a **Protective Claim** with their **Design Professional** or **Contractor** involving the Limits of Liability of this Policy without the Underwriters' knowledge and consent to such negotiation and settlement. However, the Underwriters may, in writing, and at their election, waive its participation and consent to such negotiation and settlement.

If the Underwriters elect to participate in the negotiation and settlement of a **Protective Claim**, the **Named Insured** shall fully cooperate with requests for information by the Underwriters.

The duty of the **Named Insured** to cooperate with the Underwriters is a condition precedent to coverage under this Policy and the **Named Insured's** failure to cooperate shall relieve the Underwriters of their obligations and liability under this Policy.

- C. The Underwriters shall have the right to make any investigation it deems necessary, including, without limitation, any investigation with respect to the **Application** and statements made in the **Application** and with respect to coverage.
- D. It is further provided that the Underwriters shall not be obligated to pay any **Protective Loss, Third Party Damages** or **Third Party Claims Expenses**, or to undertake or continue defense of any suit or proceeding after the applicable Limit of Liability stated in Item 3. of the Declarations has been exhausted by payment of **Protective Loss, Third Party Damages** and/or **Third Party Claims Expenses** or after deposit of the applicable Limit of Liability stated in Item 3. of the Declarations in a court of competent jurisdiction, and that upon such payment, the Underwriters shall have the right to withdraw from the further defense of any **Third Party Claim** thereof by tendering control of said defense to the **Insured**.
- E. To the extent that the Underwriters pay any **Protective Loss, Third Party Damages, Third Party Claims Expenses** or other sums that are not covered under this Policy, the Underwriters are entitled to reimbursement from the **Named Insured** and any **Insured** (or other party) on whose behalf such **Protective Loss, Third Party Damages, Third Party Claims Expenses**, or sums are paid.

V. TERRITORY

This Policy applies to **Protective Claims** and **Third Party Claims** made and acts, errors or omissions or **Pollution Conditions** committed or arising anywhere in the world.

VI. EXCLUSIONS

The coverage under this Policy does not apply to **Protective Loss, Third Party Damages** or **Third Party Claims Expenses** in connection with or resulting from any **Protective Claim** or **Third Party Claim**:

A. **Construction Means, Methods and Techniques**

under Insuring Clause I.A.1. and I.B.1., for **Bodily Injury** or **Property Damage** arising out of construction means, methods or techniques, site safety, crane erection, use, maintenance or operation, scaffolding or demolition.

B. **Contractual Assumption of Liability**

arising out of or resulting from liability assumed by the **Insured, Design Professional** or **Contractor** under any contract or agreement either oral or written, including any hold harmless or indemnity agreements, except to the extent the **Insured** would have been liable in the absence of such contract or agreement.

C. **Criminal, Dishonest, Intentional, Fraudulent, Malicious, Willful or Knowing Acts**

arising out of or resulting from any criminal, dishonest, intentional, fraudulent, malicious, willful or knowing act, error or omission; however, this Policy shall apply to **Third Party Claims Expenses** incurred in defending any **Third Party Claim** alleging the foregoing until such time as there is a final adjudication, judgment, binding arbitration decision or conviction against the **Insured**, or admission by the **Insured**, establishing such criminal, dishonest, intentional, fraudulent, malicious willful or knowing conduct, or a plea of *nolo contendere* or no contest regarding such conduct, at which time the **Named Insured** shall reimburse the Underwriters for all **Third Party Claims Expenses** incurred defending the **Third Party Claim** and the Underwriters shall have no further liability for **Third Party Claims Expenses**.

D. **Default Judgment**

arising out of or resulting from a default judgment or other proceeding in which any **Design Professional** or **Contractor** has failed to answer, plead or otherwise defend or indemnify the **Named Insured**; provided, that this exclusion shall not apply if the **Named Insured** cooperates with the Underwriters to determine how much the amount of **Third Party Damages** would have been in the absence of such default judgment or failure of cooperation from the **Design Professional** or **Contractor**.

E. **Discrimination, Humiliation, Harassment and Misconduct**

for or arising out of or resulting from any actual or alleged discrimination, humiliation, harassment or misconduct because of age, color, race, sex, creed, national origin, marital status, sexual preference or orientation, religion, disability or pregnancy.

F. **Employers Liability and Workers Compensation**

for or arising out of or resulting from:

1. **Bodily Injury** to any employee of the **Named Insured** arising out of and in the course of employment by the **Named Insured**; or
2. the **Named Insured's** employment obligations, decisions, practices or policies as an employer; or
3. any obligation which the **Insured** or any carrier as insurer may be liable under any workers' compensation, unemployment compensation or disability benefits law or similar law.

G. **Express Warranties, Representations, Guarantees and Promises**

arising out of or resulting from:

1. breach of any express warranty or representation; or
2. a demand for satisfaction of or breach of guarantee or any promises including, without limitation, cost savings, cost of construction, maximum construction price, financing, profits, or return on investment.

H. **Faulty Workmanship and Deleterious Materials**

arising out of or resulting from any faulty workmanship performed in whole or in part by any **Design Professional** or **Contractor** or arising for the incorporation of deleterious materials into any works.

I. **Insured versus Insured**

by any **Insured** against any other **Insured**.

J. **Ownership Interest**

against any **Design Professional** or **Contractor** that the **Named Insured** wholly or partially owns.

K. **Products Liability**

arising out of or resulting from the design or manufacture of any goods or products which are sold or supplied by or on behalf of a **Design Professional** or a **Contractor**; provided, that this exclusion shall not apply to:

1. any goods or products installed or incorporated into the **Covered Project** which have been specially designed, but not manufactured, by a **Design Professional**; or
2. any goods or products installed or incorporated into the **Covered Project** that cause a **Pollution Condition** by a **Contractor**.

L. **Property Liability**

arising out of or resulting from the **Insured's** ownership, rental, lease, maintenance, operation, use, repair, voluntary or involuntary sale, transfer, exchange, gift, abandonment or condemnation of any real or personal property including without limitation, automobiles, aircraft, watercraft and other kinds of conveyances.

M. **Return of Fees**

for any return, withdrawal or reduction in professional fees or contractor charges, any equitable obligation, including restitution, disgorgement, or the costs of complying with injunctive relief, or the time and expense in addressing or resolving an actual or potential **Protective Claim** or **Third Party Claim**.

N. **Taxes, Criminal Fines, Criminal Penalties and Liquidated Damages**

for taxes, criminal fines, criminal penalties, or liability for liquidated damages the **Insured**, any **Design Professional** or **Contractor** would not have had in the absence of the agreement for liquidated damages.

VII. **LIMIT OF LIABILITY**

A. The Limit of Liability stated in Item 3.(a) of the Declarations is the limit of the Underwriters liability for all **Protective Loss, Third Party Damages** and **Third Party Claims Expenses** arising out of each **Protective Claim** or **Third Party Claim**.

B. The Aggregate Limit of Liability stated in Item 3.(b) of the Declarations is the Underwriters combined total Limit of Liability for all **Protective Damages, Third Party Damages** and **Third Party Claims**

Expenses arising out of all **Protective Claims** and **Third Party Claims** which are covered under the terms and conditions of this Policy, and neither the inclusion of more than one **Insured** under this Policy, nor the making of **Protective Claims** or **Third Party Claims** by more than one person or entity shall increase the Limit of Liability.

- C. The Limit of Liability for the **Extended Reporting Period** shall be part of and not in addition to the Limit of Liability of the Underwriters for the **Policy Period**.

VIII. THIRD PARTY CLAIM DEDUCTIBLE

- A. The Deductible stated in Item 4. of the Declarations applies separately to each **Third Party Claim**. Such Deductible shall be satisfied by uninsured monetary payments by the **Named Insured** of **Third Party Damages** and **Third Party Claims Expenses** resulting from **Third Party Claims** first made during the **Policy Period** and the **Extended Reporting Period** and reported to the Underwriters pursuant to the terms of this Policy.
- B. Satisfaction of the Deductible stated in Item 4. of the Declarations is a condition precedent to the payment by the Underwriters of any **Third Party Damages** and **Third Party Claims Expenses**, and the Underwriters shall be liable only for the amounts in excess of such Deductible subject to the Underwriters' total liability not exceeding the Limits of Liability stated in Item 3. of the Declarations. The **Named Insured** shall make direct payments within the Deductible stated in Item 4. of the Declarations to appropriate other parties designated by the Underwriters.

Any payments by the **Named Insured** in satisfaction of its deductible obligations under any other valid and collectible insurance shall not satisfy the Deductible stated in Item 4. of the Declarations.

IX. GENERAL CONDITIONS

A. Action Against the Underwriters, Service of Suit and Choice of Law

1. No action shall lie against the Underwriters unless, as a condition precedent thereto, the **Insured** shall have fully complied with all of the terms of this Policy, nor until the amount of the **Insured's** obligation to pay shall have been fully and finally determined either by judgment against them or by written agreement between them, the claimant and the Underwriters. Nothing contained herein shall give any person or organization any right to join the Underwriters as a party to any **Third Party Claim** against the **Insured** to determine their liability, nor shall the Underwriters be impleaded by the **Insureds** or their legal representative in any **Third Party Claim**.
2. It is agreed that in the event of the failure of the Underwriters hereon to pay any amount claimed to be due under this Policy, the Underwriters hereon, at the request of the **Insured**, will submit to the jurisdiction of a court of competent jurisdiction within the United States. Nothing in this Clause constitutes or should be understood to constitute a waiver of the Underwriters' rights to commence an action in any court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another court as permitted by the laws of the United States or of any state in the United States. It is further agreed that service of process in such suit may be made upon the Underwriters' representative, designated in Item 11. of the Declarations, and that in any suit instituted against any one of them upon this contract, the Underwriters will abide by the final decision of such court or of any Appellate Court in the event of an appeal.

The Underwriters' representative designated in Item 11. of the Declarations is authorized and directed to accept service of process on behalf of the Underwriters in any such suit and/or upon the request of the **Insured** to give a written undertaking to the **Insured** that they will enter a general appearance on the Underwriters' behalf in the event such a suit shall be instituted.

Further, pursuant to any statute of any state, territory or district of the United States which makes provision therefore, the Underwriters hereon hereby designate the Superintendent, Commissioner or Director of Insurance or other officer specified for that purpose in the statute, or his successor in office, as their 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 **Insured** or any beneficiary hereunder arising out of this Policy, and hereby designate the Underwriters' representative, designated in Item 11. of the Declarations, as the person to whom the said officer is authorized to mail such process or a true copy thereof.

3. Any disputes involving this Policy shall be resolved applying the law designated in Item 12. of the Declarations.

B. Assignment

The interest hereunder of any **Insured** is not assignable. If an **Insured** shall die or be adjudged incompetent, such insurance shall cover that **Insured's** legal representative as the **Insured** as would be permitted by this Policy.

C. Assistance and Cooperation of the Insured

The **Insured** shall cooperate with the Underwriters in all investigations, including investigations regarding the **Application** for and coverage under this Policy. The **Insured** shall execute or cause to be executed all papers and render all assistance as is requested by the Underwriters. The **Insured** agrees not to take any action which in any way increases the Underwriters exposure under the Policy.

Upon the Underwriters request, the **Insured** shall assist in making settlements, in the conduct of suits and in enforcing any right of contribution or indemnity against any person or organization who may be liable to the **Insured** because of acts, errors or omissions or **Pollution Conditions** with respect to which insurance is afforded under this Policy; and the **Insured** shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses.

The **Insured** shall not admit liability, make any payment, assume any obligations, incur any expense, enter into any settlement, stipulate to any judgment or award or dispose of any **Third Party Claim** without the written consent of the Underwriters.

Except as provided for in Clause II.A., expenses incurred by the **Insured** in assisting and cooperating with the Underwriters, as described above, do not constitute **Third Party Claims Expenses** and are not reimbursable under the Policy.

D. Authorization

By acceptance of this Policy, the **Insureds** agree that the **Named Insured** will act on their behalf with respect to the giving and receiving of any notice provided for in this Policy, the payment of

premiums and the receipt of any return premiums that may become due under this Policy, and the agreement to and acceptance of endorsements.

E. Bankruptcy

Bankruptcy or insolvency of the **Insured** shall not relieve the Underwriters of their obligations nor deprive the Underwriters of their rights or defenses under this Policy.

F. Cancellation

1. The **Named Insured** may only cancel this Policy during the first twelve (12) months of the **Policy Period** by surrender thereof to the Underwriters, or by mailing to the Underwriters written notice stating when thereafter such cancellation shall be effective. The mailing of such notice shall be sufficient notice and the effective date of cancellation stated in the notice shall become the end of the **Policy Period**. Delivery of such written notice shall be equivalent to mailing.

2. The Underwriters may only cancel this Policy for one or more of the following reasons:

- (a) non-payment of premium, or
- (b) a material misrepresentation or concealment of facts, or
- (c) a material breach of any provision of this Policy;

by mailing or delivering to the **Named Insured** at the address shown in the Declarations written notice stating when, not less than sixty (60) days thereafter, such cancellation shall be effective. However, if the Underwriters cancel this Policy because of non-payment of premium, this Policy may be cancelled by the Underwriters by mailing or delivering a written notice of cancellation to the **Named Insured** at the address shown in the Declarations stating when not less than ten (10) days thereafter such cancellation shall be effective. The mailing of such notice shall be sufficient notice and the effective date of cancellation stated in the notice shall become the end of the **Policy Period**. Delivery of such written notice by the Underwriters shall be equivalent to mailing.

3. If this Policy is cancelled pursuant to 1. hereinabove, the Underwriters shall retain the customary short rate portion of the premium hereon, unless a **Protective Claim, Third Party Claim** or **Circumstance** has been reported under this Policy, in which case the premium shall be deemed fully earned at the inception date of this Policy. If this Policy is cancelled pursuant to 2. hereinabove, the Underwriters shall retain the pro rata portion of the premium hereon. Payment or tender of any unearned premium by the Underwriters shall not be a condition precedent to the effectiveness of cancellation.

G. Entire Agreement

By acceptance of this Policy, all **Insureds** agree that this Policy embodies all agreements existing between them and the Underwriters relating to this Policy. Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this Policy or estop the Underwriters from asserting any right under the terms of this Policy; nor shall the terms of this Policy be waived or changed, except by written endorsement issued to form a part of this Policy, signed by the Underwriters.

H. **Extended Reporting Period**

The **Extended Reporting Period** shall commence immediately upon expiration of the **Policy Period** and shall remain in effect for the period of time set forth in Item 9. of the Declarations.

Upon commencement of the **Extended Reporting Period**, the entire premium for this Policy shall be deemed fully earned.

The Limit of Liability for the **Extended Reporting Period** shall be part of and not in addition to the Limit of Liability of the Underwriters for the **Policy Period**.

I. **Headings**

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

J. **Maintenance of the Design Professionals and Contractors Insurance**

As a condition precedent to coverage hereunder, the **Named Insured** shall contractually require each and every **Design Professional** and **Contractor** to maintain, for the duration of the **Policy Period** and **Extended Reporting Period** Professional Liability and/or Contractors Pollution Liability Insurance with a breadth of coverage no narrower than is the case at the inception date of this Policy for an amount not less than the **Minimum Insurance Requirements**.

K. **Mergers and Acquisitions of the Named Insured**

1. If during the **Policy Period** or the **Extended Reporting Period** the **Named Insured** consolidates or merges with another entity such that the **Named Insured** is not the surviving entity, is acquired by another entity, or sells substantially all of its assets to any other entity, then coverage under this Policy shall automatically terminate, unless:
 - (a) the **Named Insured** shall provide written notice of such consolidation, merger or acquisition to the Underwriters as soon as practicable, together with such information as the Underwriters may require; and
 - (b) the **Named Insured** obtains the written consent of the Underwriters to continue coverage under this Policy.
2. All notices made under this Clause shall be directed to the Underwriters through the entity named in Item 10(b) of the Declarations.

L. **Multiple Protective and Third Party Claims**

Multiple **Protective Claims** and **Third Party Claims** arising from the same or a series of related or repeated acts, errors, omissions or **Pollution Conditions** or from any continuing acts, errors, omissions or **Pollution Conditions** shall be considered a single **Protective Claim** or **Third Party Claim** for the purposes of this Policy, irrespective of the number of Claimants or **Design Professional** or **Contractors** involved in the **Protective Claim** or **Third Party Claim**. For all purposes, all such **Protective Claims** and **Third Party Claims** shall be deemed to have been made at the time of the first **Protective Claim** or **Third Party Claim**, regardless of whether or not coverage was afforded by the Underwriters when the first **Protective Claim** or **Third Party Claim** was made.

M. **No Limitation of Liability**

The **Named Insured** shall not limit the liability of any **Design Professional** or **Contractor** for an amount less than the **Minimum Insurance Requirements**, without the prior written consent of the Underwriters.

N. **Notice of Protective Claim, Third Party Claim or Circumstance**

1. As a condition precedent to coverage under this Policy, the **Named Insured** shall forward to the Underwriters through the persons named in Item 10.a. of the Declarations written notice of any **Protective Claim** at the same time that the **Named Insured** makes a claim against a **Design Professional** or a **Contractor**.
2. If any **Third Party Claim** is made against an **Insured**, the **Insured** shall forward as soon as practicable to the Underwriters through the persons named in Item 10.a. of the Declarations written notice of such **Third Party Claim** in the form of a facsimile, email or express or certified mail together with every demand, notice, summons or other process received by the **Insured** or the **Insured's** representative, but in no event later than the expiration of the **Extended Reporting Period**.
3. If any director, officer, principal, partner, insurance manager or any member of the risk management or legal department of the **Named Insured** first becomes aware of any **Circumstance** and gives written notice to the Underwriters in the form of a facsimile, email or express or certified mail through persons named in Item 10.a. of the Declarations as soon as practicable during the **Policy Period** or the **Extended Reporting Period** of:
 - (a) the specific details of the act, error or omission or **Pollution Condition** in the provision of professional services or **Contracting Services** or **Transportation** or relating to a **Non-Owned Disposal Site** that gave rise to the **Circumstance**;
 - (b) the injury or damage which may result or has resulted from the **Circumstance**; and
 - (c) the facts by which such director, officer, principal, partner, insurance manager or any member of the risk management or legal department of the **Named Insured** first became aware of the act, error or omission or **Pollution Condition**;

then any subsequent **Third Party Claim** made against the **Insured** arising directly out of such **Circumstance** which is the subject of the written notice will be deemed to have been

made at the time written notice complying with the above requirements was first given to the Underwriters.

4. A **Protective Claim**, a **Third Party Claim** or a **Circumstance** shall be considered to be reported to the Underwriters when written notice is first received by the Underwriters in the form of a facsimile, email or express or certified mail through persons named in Item . of the Declarations if provided in compliance with paragraphs 1., 2., or 3. above.

O. Other Insurance

This Policy shall apply in excess of:

1. any valid and collectible insurance available to the **Design Professional** and the **Contractor**; and
2. any other valid and collectible insurance available to any **Insured**, including any self insured retention or deductible portion thereof, unless such other insurance is written only as specific excess insurance over the Limit of Liability stated in Item 3. of the Declarations.

P. Premium

The amount shown in Item 5. of the Declarations is the minimum and deposit premium charged for this Policy. At the expiration of the **Policy Period**, the **Named Insured** shall provide to the Underwriters details of the final contract value and professional fees for the **Covered Project**, and the Underwriters shall have the right to adjust the premium based on the adjustable rate used for determining the minimum and deposit premium.

Q. Representations

By acceptance of this Policy, all **Insureds** agree that the statements contained in the **Application** are their agreements and representations, that they shall be deemed material to the risk assumed by the Underwriters, and that this Policy is issued in reliance upon the truth thereof.

R. Subrogation

In the event of any payment under this Policy, the Underwriters shall be subrogated to all the **Insureds'** rights of recovery therefore against any person or organization, and the **Insured** shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The **Insured** shall do nothing to prejudice such rights. The Underwriters agree to waive their right of recovery for **Protective Loss** where the **Design Professional** or **Contractor** has satisfied their obligation to maintain the **Minimum Insurance Requirements**. Any recoveries shall be applied first to subrogation expenses, second to **Protective Loss, Third Party Damages** and **Third Party Claims Expenses** paid by the Underwriters, and third to the Deductible stated in Item 4. of the Declarations (as applicable). Any additional amounts recovered shall be paid to the **Named Insured**.

S. Valuation and Currency

All premiums, limits, deductibles, **Protective Loss, Third Party Damages** and other amounts under this Policy are expressed and payable in the currency of the United States. If judgment is rendered, settlement is denominated or another element of **Protective Loss** or **Third Party Damages** under

this Policy is stated in a currency other than United States dollars or if **Third Party Claims Expenses** are paid in a currency other than United States dollars, payment under this Policy shall be made in United States dollars at the rate of exchange published in the *Wall Street Journal* on the date the judgment becomes final or payment of the settlement or other element of **Protective Loss** or **Third Party Damages** is due or the date such **Third Party Claims Expenses** are paid.