

Council Meeting of  
September 1, 2009

Honorable Mayor and Members  
of the City Council  
City Hall  
Torrance, California

Members of the Council:

**SUBJECT: City Manager – Approval of purchase of industrial land parcel at  
465 Crenshaw Boulevard, Torrance, California**  
**Expenditure: \$17,650,000 for property acquisition plus not to exceed  
\$340,000 in fees and expenses for a total of \$17,990,000**

### **RECOMMENDATION**

Recommendation of the City Manager that City Council approve the Real Property Purchase and Sale Agreement and Escrow Instruction by and between the City and PPG Industries, Inc for the purchase of the industrial land parcel at 465 Crenshaw Boulevard, Torrance, CA, and appropriate \$17,990,000.

### **Funding**

It is anticipated that the City will issue Certificates of Participation at an estimated annual debt service of \$1.2 - \$1.5 million, which is included in the City's Adopted Operating Budget. The City has applied for state and federal grants to fund the portion of the parcel purchase cost that is proposed to be used for a new regional transit center, which, if awarded, will reduce future annual debt service.

### **BACKGROUND**

Torrance Transit currently operates fixed route bus service within the City and also provides regional connections to Los Angeles, Long Beach, Metro Blue Line Artesia Station and the Los Angeles International Airport. The City has been seeking a land parcel for the construction of a regional transit center for a number of years to replace the former transit center which was located at the Del Amo Fashion Center. Current passenger transfer is on-street at the intersection of Carson Street and Madrona Avenue.

The goal for the new regional transit center is for the center to serve as a hub for convenient access to the City's current fixed route service, regional connectivity to the Metro Rapid Bus, convenient access to the 405 Freeway High Occupancy Vehicle (HOV) lanes for bus traffic, and a collection point for car and van pool users. Additionally, the City sought a site that would allow for the future expansion of the Metro Green Line to Torrance. The parcel size estimated to meet this goal was 5 acres.

During the search for a parcel, it came to the City's attention that PPG Industries, Inc. (PPG) had determined to sell the 15 acre site of their former manufacturing facility at 465 Crenshaw Boulevard. The manufacturing facility, which made paint coatings and resins, had been demolished some years ago, and PPG had begun remediating the site from soils contamination that it caused during its manufacturing operations. The PPG parcel is ideally located for a regional transit hub. The Metro owned rail line, which will be the path for future light rail, is contiguous to the site, and the site is both easily accessed by passengers and car/van pool users and accessible to the freeway system.

The City met with PPG in March 2007 to confirm that the property would be put on the market and indicated its interest. PPG added the City to its list of interested bidders. In July 2007, the City ordered an appraisal for the 14.51 acre portion of the site. The appraisal report was issued September 2007 indicating a value conclusion of \$25,280,000.

On July 24, 2008, PPG listed the 15 acre site for sale. The City determined to place a bid on the parcel, with 5 acres dedicated to a new regional transit center, and the remaining acres to be used for other City purposes. In August 2008, the City entered into a broker's contract with Todd Taugner of The Klabin Company to represent the City's interest for a broker fee of 1% of the purchase price; and with Dr. Heriberto Robles of Enviro-Tox to serve as the City's consulting toxicologist with respect to site remediation by PPG. In September 2008, the City entered into a contract with Henry R. Stiepel of Garrett De Frenza Stiepel, LLP for legal advice and contract negotiation.

### ANALYSIS

The City began formal negotiation with PPG in September 2008 which has concluded with a Letter of Intent (LOI) (Attachment B) signed by both parties on August 5, 2009 for the purchase of the parcel for the price of \$17,650,000. The Letter of Intent set forth the terms for the REAL PROPERTY PURCHASE AND SALE AGREEMENT AND ESCROW INSTRUCTIONS (Purchase Agreement) (Attachment C) which is recommended for approval. The Purchase Agreement is inclusive of a deed restriction that restricts the use of the property to industrial and/or commercial uses only.

The Purchase Agreement provides for a 90-day contingency period for the City to conduct its due diligence with respect to environmental matters, any comment or public review, title and property survey matters, commitment to issuance of an environmental insurance policy, completion of the certificates of issuance to provide funding for the purchase, and/or any other matters that come to the City's attention.

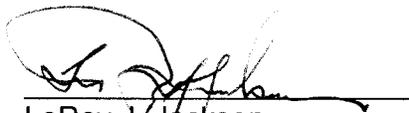
It is the goal of the City and PPG, following Council's approval, to complete the purchase/sale of the site prior to year-end.

Respectfully submitted,

LeROY J. JACKSON  
CITY MANAGER

By   
Mary K. Giordano  
Assistant City Manager

CONCUR:

  
LeRoy J. Jackson  
City Manager

MKG/dle

Attachments: A) Site Map  
B) Letter of Intent  
C) Purchase Agreement (*available August 31, 2009*)

# MAP OF SITE







PPG Industries

PPG Industries, Inc.  
One PPG Place  
Corporate Real Estate - 3SW  
Pittsburgh, PA 15272 USA

August 5, 2009

City of Torrance  
Office of the City Manager  
3031 Torrance Boulevard  
Torrance, California 90503  
Attn: LeRoy J. Jackson, City Manager

The Klabin Company  
19750 S. Vermont Avenue, Suite 100  
Torrance, California 90502  
Attn: Todd N. Taugner, SIOR

Re: The Approximate 15 Acre PPG Site – Torrance, California

Dear Gentleman:

PPG Industries, Inc. is prepared to enter into contract negotiations to sell the Property (defined below) based on the following basic terms and conditions:

1. Buyer: City of Torrance.
2. Seller: PPG Industries, Inc.
3. Property: Approximately 15 acres totaling approximately 653,400 square feet of M2 zoned land.
4. Purchase Price: \$17,650,000 payable in cash at the Close of Escrow.
5. Earnest Money: Buyer shall deposit \$250,000 upon Opening of Escrow (the "**Initial Deposit**"). The Initial Deposit shall be refundable until expiration of the Contingency Period. The \$250,000 Initial Deposit shall be increased by \$250,000 at the end of the Contingency Period. If the transaction closes, the total deposit of \$500,000.00 plus interest earned thereon (collectively, the "**Deposit**"), shall be credited against the Purchase Price at the Close of Escrow; or escrow shall disburse the Deposit to Seller as liquidated damages in the event of a breach of the Purchase Agreement by Buyer; or escrow shall disburse the Deposit to Buyer in the event of failure of a condition to Close of Escrow.
6. Opening of Escrow: Seller shall prepare a draft Purchase and Sale Agreement and Joint Escrow Instructions ("**Purchase Agreement**") for Buyer's review incorporating all the terms and conditions of this letter. Escrow shall be held at Chicago Title Company with title matters to be handled by Chicago Title Company

City of Torrance  
Attn: LeRoy J. Jackson, City Manager

The Klabin Company  
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(Michael Slinger: 213.612.4131). Escrow shall be deemed opened when the following has been completed ("**Opening of Escrow**"):

- a. A mutually executed Purchase Agreement has been delivered to escrow.
  - b. Buyer has placed the Initial Deposit into escrow.
7. Close of Escrow: The close of escrow shall occur no later than thirty (30) days after the expiration of the Contingency Period or by mutual agreement of the parties ("**Close of Escrow**").
8. Contingencies: Buyer shall have ninety (90) days from the Opening of Escrow (the "**Contingency Period**") within which to conduct its due diligence with respect to the Property including, but not limited to, the following: analysis of all environmental matters, any comment or public review, review of title and survey matters, physical inspection, review of zoning and use issues, final commitment for the issuance of the Environmental Insurance Policy, completion of the bond underwriting or any other purchase money financing process, and investigation into the adequacy of utilities and site drainage.

Additionally, during the Contingency Period, the following shall occur:

- a. Title Reports: Upon Opening of Escrow, Seller shall furnish Buyer with a current title commitment for each of the separate properties comprising the Property, together with legible copies of all documents referred to therein.
- b. Buyer's Review of Other Documents Provided by Seller: Upon or by Opening of Escrow, Seller shall deliver or shall have delivered to Buyer for review copies of all of the following documents in Seller's physical possession or control:

(1) The Buyer acknowledges that the Seller's broker is maintaining a password-protected extranet site (the "**Website**") under which certain documents and other inspection items relating to the Property have been posted and as to which the Buyer has been granted access. With respect to any document to be delivered to the Buyer under this Agreement, the posting of such document on the Website site shall be the equivalent of

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delivery of such document to the Buyer. In addition to documents provided on the Website, Buyer will acknowledge receipt of certain documents, to the extent actually received, to be listed as an exhibit to the Purchase and Sale Agreement, and which shall include but not be limited to material soil reports, environmental reports, surveys, maps, orders and "no further action" letters from the from the California Regional Water Quality Control Board – Los Angeles Region and the California Department of Toxic Substances Control that are or come into Seller's possession and are delivered to Buyer (collectively, "**Environmental Documents**"). In the Purchase Agreement, Seller will give the following representation: The documents Seller has delivered or that are available on the protected web site are all the documents in Seller's possession or control that are material to the underwriting and issuance of the Environmental Insurance Policy (defined below). The Buyer shall in turn represent to Seller that Buyer has delivered or will deliver all of the Environmental Documents to the insurance company underwriting and issuing the Environmental Insurance Policy.

(2) Within five (5) days of the Opening of Escrow, the Seller shall provide the Buyer with:

- (a) To the extent not previously posted on the Website or delivered as part of the Environmental Documents, a list and copies of all contracts, insurance policies and service contracts relating to the Property and a schedule of warranties and copies of those listed;
- (b) Property tax bills and assessments for the Property for the past two (2) years;
- (c) To the extent not previously posted on the Website or delivered as a part of the Environmental Documents, any and all physical inspection reports;
- (d) Any leases, subleases and licenses; and
- (e) To the extent not previously posted on the Website or delivered as part of the Environmental Documents, copies of any current litigation, arbitration, or claims affecting the Property or its prior use.

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(3) Without limiting Section 8.b.(1), upon receipt of the Buyer's written request Seller shall promptly provide or make available to the Buyer copies of other non-privileged documents and materials that materially relate to the Property and are in the Seller's possession or control, including, but not limited to, correspondence and data, relating to the Environmental Documents, as necessary for obtaining the Environmental Insurance Policy.

(4) To the extent any of the above-referenced documents in Sections 8.b(1) and 8.b(3) are in existence on the Opening of Escrow but are not delivered to Buyer within five (5) days of the execution of the Purchase Agreement, then the Contingency Period shall be extended one (1) day for every day that such documents are not delivered. Seller will promptly provide Buyer with copies of any additional final reports, surveys, maps, orders and "no further action" letters that it receives from any governmental agencies, which come into existence after the Opening of Escrow. However, such documentation will not extend the Contingency Period.

Buyer shall have the right in Buyer's sole and absolute discretion to elect, on or before expiration of the Contingency Period, whether or not to proceed with the transaction based on any of the contingencies listed under this Section 8.

9. Expenses: Seller shall pay all costs of a CLTA title insurance policy issued by Chicago Title Company. Buyer will have the right to secure an ALTA policy at its additional expense.
10. Closing Costs Preliminary closing cost estimates shall be provided by Chicago Title Company and allocated as is customary in Los Angeles County.
11. Environmental Indemnification: Seller agrees that it is not released from and agrees to indemnify Buyer solely for those "Claims" (to be defined in the Purchase Agreement) that would otherwise be covered by the Environmental Insurance Policy but for the Pollutant Exclusion Endorsement to be attached to the Environmental Insurance Policy. The indemnity will: (a) be in amount not to exceed ten million dollars; (b) shall expire on the earlier of (i) the date the Pollutant Exclusion Endorsement is removed from the

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Environmental Insurance Policy (or if the Pollutant Exclusion Endorsement is not deleted in its entirety and contaminants remain listed on the Pollutant Exclusion Endorsement, then the indemnity shall continue only as to Claims based on contaminants not removed) or (ii) ten (10) years from the Close of Escrow; (c) only cover liabilities arising directly from Seller's operations on the Property; (d) not cover groundwater Claims except for Claims arising out of the former fuel underground storage tank operated by Seller; (e) not cover clean-up costs except to the extent of costs resulting from any clean-up required to meet current standards for industrial use by any governmental agency exercising its jurisdiction (excluding the City of Torrance, or any agency, authority or special purpose government entity created by or affiliated with the City of Torrance or any governmental agency that is responding to any request or solicitation by the City of Torrance or any agency, authority or special purpose government entity created by or affiliated with the City of Torrance ); and (f) be personal to the Buyer and not assignable. Seller's liabilities under first party claims (per the exclusion to the release) or third party claims (per the indemnity) will be first dollar (i.e., not subject to the equivalent of the \$100,000 SIR). Buyer will indemnify Seller for liabilities arising out of hazardous materials that are released or deposited onto or under the Property during Buyer's ownership, excluding releases or deposits of hazardous materials that originate offsite and migrate under or onto the Property, including through groundwater flow, soil gas diffusion, underground utility conduit, surface water runoff and air diffusion.

12. Environmental Release:

Buyer will provide Seller with a general release for known and unknown environmental liabilities based on hazardous materials that are or were present on the Property prior to Close of Escrow (the "**Environmental Release**"). However, the Environmental Release shall exclude any Claims covered by Seller's indemnification of Buyer set forth in Section 11, above.

13. Contractual Indemnification.

Seller shall indemnify Buyer for any liabilities arising out of Seller's breach of the Purchase Agreement and/or breach of the Access Agreement, and Buyer shall indemnify Seller for any liabilities arising out of Buyer's breach of the Purchase Agreement, the Access Agreement, and/or any use of the Property as a fire station.

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14. Environmental Insurance:

A Pollution Legal Liability insurance policy for cleanup costs and bodily injury/property damage related to “unknown conditions” and bodily injury/property damage/re-opener/changes-in-law related to “known conditions” on terms and conditions set forth on the pro forma manuscript attached hereto as Schedule 1 (the “Quote”) from Great American Insurance Group (the “Insurer”), including a term of ten (10) years, a policy coverage amount of \$10,000,000, a self-insured retention of \$100,000, the designation of Seller as an additional named insured, subject to the limitations therein, and a single premium of \$119,000.

The Quote, as a “base policy”, is accepted by both parties. So long as an environmental insurance policy is issued at the closing providing that or better coverage, then the condition of the issuance of an “acceptable” environmental insurance policy will have been satisfied. Buyer agrees that Buyer and Seller shall use their respective commercially reasonable best efforts to obtain a more favorable quote from Insurer, in particular with respect to limiting the Pollutant Exclusion Endorsement. (Whether a new quote obtained during the Contingency Period is “more favorable” than the quote from the Insurer shall be more particularly defined in the Purchase Agreement.) Further, Buyer agrees that should Buyer or Seller obtain a more favorable insurance quote, i.e., with less or no pollution exclusions, whether from Insurer or another insurance company with equivalent or better rating, then Buyer agrees to purchase such a policy at a cost not to exceed \$119,000; provided however, Seller, in its sole discretion, may agree to pay costs of any premium exceeding \$119,000 on a “more favorable” policy. During the Contingency Period, Seller shall cooperate with the Insurer and with Buyer’s toxicologist (Enviro Tox Services, Inc.) and Buyer’s environmental insurance consultant (Alliant Insurance) to timely and completely respond to the underwriting process of the Insurer in order to effectuate the issuance of the Environmental Insurance Policy as of Close of Escrow, including, without limitation, the delivery of all Environmental Documents in Seller’s possession or control and completion of any applications and questionnaires the Insurer may require. Seller shall have the right to negotiate and interact directly with any environmental insurance companies Seller believes will issue a better or more favorable Environmental Insurance Policy than the policy proposed to be issued by Insurer; provided, however, Seller shall coordinate any such discussions or communications with Buyer, and

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permit Buyer or its authorized representatives to attend or participate in any meetings or telephone conferences with any such prospective carriers and shall copy Buyer on any written communications in that regard. Similarly, Buyer shall coordinate any discussions or communications Buyer may have with Insurer or other prospective insurers with Seller, and permit Seller or its authorized representatives to attend or participate in any meetings or telephone conferences with any prospective carriers selected by Buyer and shall copy Seller on any written communications in that regard.

15. Post-Closing  
Environmental Closures:

15.a. Site-Wide Investigation. Seller has completed the removal of certain soils on the Property pursuant to an approved soil removal plan (the "**Removal Action Workplan**"). Prior to the Closing, Seller will comply with all obligations thereunder, including backfill and compaction of excavations created during the implementation of the Removal Action Workplan. Seller has completed the Human Health Risk Assessment ("**HHRA**") and HHRA report and has delivered a complete copy thereof to Buyer as part of Seller's delivery of the Environmental Documents. Seller shall prepare a soil removal action report and a final site-wide investigation report (collectively, the "**SWI Report**"), which Seller represents are the remaining tasks required before Seller can apply for closure of the site-wide investigation overseen by the Department of Toxic Substances Control ("**DTSC**"). Promptly following the completion of the SWI Report, Seller will file its application with DTSC to obtain a "no further action" letter (the "**NFA**") from the DTSC. As a covenant of Seller that shall survive the close of escrow, Seller shall satisfy any and all conditions of the NFA.

15.b. Ground Water Wells. Seller has installed and sampled seven (7) groundwater wells on the Property as part of the site-wide investigation overseen by DTSC (collectively, the "**Wells**"). Seller represents that it has been informed by DTSC that DTSC does not consider Seller to be a contributor to Hazardous Materials present in groundwater beneath and downgradient of the Property. Seller will use its best efforts to obtain approval from DTSC and to close the Wells as soon as is reasonably possible (preferably prior to the Closing Date). If DTSC requires that certain Wells remain open past the Closing Date, Seller will retain

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The Klabin Company  
Attn: Todd N. Taugner, SIOR

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responsibility for the monitoring and closure of such Wells, but shall use its commercially reasonable best efforts to obtain DTSC approval to close the Wells as soon as possible following the closing and, thereafter, commence and complete closure. Seller will be responsible (first and third party claims) for failure to perform any post-Closing obligations (i.e., to distinguish from the limitations of pre-closing environmental liabilities).

15.c. Development. In the event the Buyer desires to begin grading the Property prior to the issuance of the NFA, Seller agrees to use its reasonable efforts to cooperate with Buyer to obtain a "shallow soils NFA" from DTSC that would permit such grading. Seller also agrees that should it prove necessary to avoid interference with Buyer's reasonable development of the Property, Seller will seek permission from DTSC preferentially to close any open Wells or, in the absence of permission to close, to relocate any of the open Wells and will perform such closure and/or relocation at Seller's cost.

15.d. Cooperation. The Buyer agrees to use its commercially reasonable efforts, and take all necessary actions, at no cost, expense or liability to Buyer, to cooperate with Seller in promptly obtaining the NFA and approval for the closure of the Wells. All post-closing costs and fees incurred by Buyer in connection with procuring the NFA, the closure of the Wells and/or the relocation of any of the Wells will be promptly repaid by the Seller or, if not promptly paid, shall be deducted from the Holdback (defined below) and released to Buyer; provided, however, such post-closing costs and fees shall (i) be limited to the review of documents and consultation in connection with specific matters and tasks (rather than costs for ongoing monitoring) and (ii) not exceed \$50,000 in the aggregate.

15.e. Access. As part of the closing, Seller and Buyer will record an "Access and Indemnification Agreement" (the approved form of which shall be attached as an exhibit to the Purchase Agreement) that runs with the land and provides Seller, at no charge, with access to the Property as needed from time to time to complete (a) sampling, maintenance and, when approved, closure of the Wells; and (b) any other actions required by either the RWQCB and/or the DTSC to obtain the NFAs (the "Access Agreement")

City of Torrance  
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15.f. Security. As a sign of its intention to use its best efforts to obtain the NFA, Seller agrees to a \$500,000.00 holdback ("**Holdback**") until the NFA is obtained. Should Seller obtain the NFA letter within the later of (i) three years from Closing or (ii) one year following the closure of all monitoring wells to the extent to the extent monitoring wells are required by a governmental agency, Buyer shall have the option (to be exercised at any time after this deadline until the NFA letter is issued) to (a) require escrow to release the \$500,000 (plus interest) holdback to Buyer and assume processing for issuance of the NFA letter or (b) exercise any other remedies at law or equity. If Buyer elects disbursement of the \$500,000 and assumes the processing, then the 500,000 shall be liquated damages, in which event Seller will have no further obligations, including but not limited to obtaining the NFA, complying with all conditions of the NFA, and completing the Well closures (if any), and Seller shall receive a complete general release from Buyer, including all obligations under Seller's indemnity. Buyer shall thereafter use its best efforts to obtain the NFA. The form of an escrow agreement pursuant to which Escrow Holder will act as the escrow agent (the "**Holding Escrow**") for the Holdback shall be attached as an exhibit to the Purchase Agreement and which shall be executed and delivered concurrently with the closing. In the event Escrow Holder is unwilling to act as the escrow agent, the Holding Escrow will be handled by Commerce Escrow or another mutually agreed upon escrow agent.

15.g. Deed Restriction. Buyer agrees that the grant deed conveying the Property to Buyer shall include the following Environmental Restriction: The use of the Property shall be restricted to industrial and/or commercial use only, and the Property shall not be used for any of the following purposes: (a) a residence, including but not limited to any mobile home or factory built housing, constructed or installed for use as residential human habitation (provided that a fire station shall be an allowed use); (b) a hospital for humans; (c) a public or private school for persons under 21 years of age; (d) a day care center for children; or (e) extraction of groundwater for drinking water purposes.

16. Expiration: This counter Proposal shall expire at 12:00 p.m. Noon on August 14, 2009.

City of Torrance  
Attn: LeRoy J. Jackson, City Manager

The Klabin Company  
Attn: Todd N. Taugner, SIOR

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17. Consent of Board  
of Directors  
of Seller:

The parties agree that the Purchase Agreement must be approved by the Board of Directors of the Seller (the "**Board Consent**") and that the Seller's obligations hereunder shall be conditioned upon obtaining such consent. The Seller shall use its commercially reasonable efforts to obtain the Board Consent. If the Board Consent cannot be obtained before the Close of Escrow, the Closing shall be extended until such time as the Board Consent can be obtained; provided, however, that the Board Consent must be obtained within thirty (30) days after the scheduled Closing Date or the Purchase Agreement shall terminate.

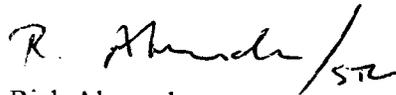
18. Broker  
Commission:

This offer is made with the understanding that only Todd Taugner of The Klabin Company is representing Buyer. Buyer shall be responsible for a commission due to The Klabin Company.

If the foregoing is acceptable to you, please sign where indicated below. This letter agreement shall not, however, create any legal rights or obligation between the Buyer and the Seller. It is intended that all legal rights and obligations between the Buyer and the Seller will come into existence only when the Purchase Agreement is signed and delivered by the Buyer and the Seller. The legal rights and obligations of each of the Buyer and the Seller shall then be only those which are set forth in the Purchase Agreement.

We look forward to working with you toward consummating this transaction.

Sincerely,



Rich Alexander  
Senior Vice President, Coatings

Enclosure

City of Torrance  
Attn: LeRoy J. Jackson, City Manager

The Klabin Company  
Attn: Todd N. Taugner, SIOR

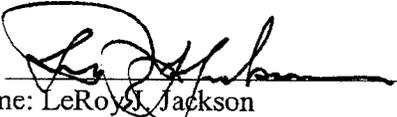
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The undersigned Buyer hereby approves the foregoing counterproposal, and represents and warrants that the person executing this document on behalf of Buyer is fully authorized to do so. However, Buyer's approval of this counterproposal is non-binding and shall continue to be non-binding until an approved Purchase Agreement is duly signed.

**“Buyer”**

CITY OF TORRANCE

By:   
Name: LeRoy J. Jackson  
Title: City Manager

Date: 13 Aug 2009

June 2, 2009

ATTN: SHAWN KRAATZ  
 PRODUCER: ALLIANT INSURANCE SERVICES  
 E-MAIL: SKRAATZ@ALLIANTINSURANCE.COM



ENVIRONMENTAL DIVISION  
 401 PLYMOUTH ROAD, SUITE 100  
 PLYMOUTH MEETING, PA 19462

CUSTOMER #:4293303

FROM: PETE PANTALONE

## GREAT AMERICAN INSURANCE GROUP

### PREMISES ENVIRONMENTAL LIABILITY POLICY PROPOSAL

FOR: CITY OF TORRANCE, CA  
 COMPANY: GREAT AMERICAN E&S INSURANCE COMPANY (GAES)  
 FORM: PEL3001 04/08  
 DOMICILE STATE: CA

#### COVERAGES:

##### Option 1: Policy Term – (10) Year(s)

Coverage	Each POLLUTION CONDITION Limit	Coverage Aggregate Limit	Self-Insured Retention
A. Pollution Legal Liability	\$10,000,000	\$10,000,000	\$250,000
B. On-Site and Off-Site Clean-Up Costs	\$10,000,000	\$10,000,000	\$250,000
C. Contracting Services Pollution Liability	\$0	\$0	\$0
D. Non-Owned Disposal Site	\$10,000,000	\$10,000,000	\$250,000
E. In-Bound and Out-Bound Contingent Transportation	\$10,000,000	\$10,000,000	\$250,000

Policy Aggregate Limit of Liability: \$10,000,000

Premium:	\$93,344	(100% Minimum Earned)
Premium for Certified Acts of Terrorism:	\$9,334	additional premium
State Tax	\$ N/A	Broker Responsibility

PEL Quote

## Option 2: Policy Term – (10) Year(s)

Coverage	Each POLLUTION CONDITION Limit	Coverage Aggregate Limit	Self-Insured Retention
A. Pollution Legal Liability	\$10,000,000	\$10,000,000	\$100,000
B. On-Site and Off-Site Clean-Up Costs	\$10,000,000	\$10,000,000	\$100,000
C. Contracting Services Pollution Liability	\$0	\$0	\$0
D. Non-Owned Disposal Site	\$10,000,000	\$10,000,000	\$100,000
E. In-Bound and Out-Bound Contingent Transportation	\$10,000,000	\$10,000,000	\$100,000

Policy Aggregate Limit of Liability: \$10,000,000

Premium: \$118,881 (100% Minimum Earned)  
 Premium for Certified Acts of Terrorism: \$1,189 additional premium  
 State Tax \$ N/A Broker Responsibility

***Premium above does NOT include Excess and Surplus Lines Tax  
 Excess and surplus lines taxes, fees and filings are additional and the sole responsibility of  
 the broker. Please furnish us with a copy of your surplus lines license prior to binding.***

**COMMISSION:** 15%

**COVERED**

**LOCATION(s):** 465 Crenshaw Blvd, Torrance, CA

**CONTRACTING**

**SERVICES:** N/A

**RETROACTIVE DATE:** N/A

**REVERSE RETROACTIVE DATE:** Policy Inception

PEL Quote

**ENDORSEMENTS and EXCLUSIONS:**

1. PEL3421 Terrorism Exclusion
2. PEL3418 Terrorism Coverage
3. Any applicable state endorsements and notices.
4. MANUS Pollutant Exclusion
5. PEL3136 Coverage B – On-Site Clean-Up Costs Restriction – Governmental Claims Only and Off-Site Third Party Claims Only
6. PEL3003 Additional Named Insured
7. PEL3400 Deed Restrictions Violation Exclusion
8. PEL3624 Document Schedule
9. MANUS Known Conditions Exclusion Amendment
10. MANUS Deletion of Faulty Workmanship/Own Work
11. PEL3908 Choice of Law and Jurisdiction and Venue Conditions Amendment
12. PEL3430 Material Change In Use Exclusion Amendment – Specified Use Excepted
13. MANUS Amendatory Endorsement

***Exclusions in the quotation include, but are not limited to, the terms and conditions outlined above. Please refer to the policy contract for specifics. Any other coverage extensions, deletions, or changes requested in the submission are hereby rejected.***

**QUOTE CONDITIONS:****Receipt and satisfactory underwriter review of the following prior to binding:**

1. Completed and signed Application for Environmental Insurance from both the City of Torrance and PPG Industries.
2. A draft copy of the Purchase & Sale Agreement. Final executed version to follow within 15 days of execution.
3. Signed/dated Terrorism Disclosure Notice.
4. Completed Surplus Lines Tax letter (broker responsibility).
5. All investigation data and correspondence with the regulatory agency since the December 11, 2007 Site-Wide Soil and Groundwater Investigation Report.
6. Final Site-Wide Investigation Report.
7. Development plans for the site.
8. Explanation of who prepared the summaries of the 2008-2009 investigation activities and are the summaries part of a larger formal report.
9. A copy of the report that was used to obtain closure for the UST leak incident in Area 20.

PEL Quote

**GENERAL INFORMATION:**

Who are the Great American Insurance Companies:

- Started in 1872 and has been in continuous operation for over 135 years
- Maintained a Best's Rating of "A" or better for the last 75+ consecutive years
- Member of American Financial Group Inc, (NYSE: AFG) with Total Assets of \$25.8B, GWP of \$3.98B and Policyholders Surplus of \$1.8 B
- Currently 19 separate Specialty Operating Profit Centers and 4 subsidiary Companies
- Involved in various aspects of the Environmental Marketplace since 1981 through various subsidiaries and programs
- A highly experienced Underwriting and Management team focused solely on Environmental and ancillary Product Lines in 2007
- An experienced Environmental Claims team within the Environmental unit and at the Home Office that consists of over 12 professionals with a combined experience level in excess of 185 years of specialized claims handling with specific experience in handling EIL, Asbestos, Superfund and other environmental claims.

**TERMS:**

Quote Expiration Date – 7/15/09

Payment Terms – In order to bind coverage, we must receive your written instructions confirming coverage(s) desired prior to releasing policy numbers. The full premium payment is due thirty (30) days from the effective date of the coverage.



Administrative Offices  
580 Walnut Street  
Cincinnati, Oh 45202  
Tel: 1-513-369-5000

**ENDORSEMENT #**

This endorsement, effective 12.01 a.m., forms a part of Policy No.

issued to By

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**EXCLUSION OF TERRORISM COVERAGE**

Pursuant to the requirements of the federal Terrorism Risk Insurance Act the INSURED has been provided notice that the INSURED may elect to purchase coverage for loss covered under this Policy arising directly or indirectly as a result of CERTIFIED ACT(s) OF TERRORISM and the premium charge for such coverage.

After receiving such notice, the INSURED has elected not to purchase coverage for CERTIFIED ACT(s) OF TERRORISM and has agreed to the following Policy change(s):

SECTION IV. EXCLUSIONS, **Hostile Acts** is deleted and replaced with the following:

**Hostile Acts**

based upon or arising out of any consequence, whether direct or indirect, of declared or undeclared war, invasion, act of foreign enemy, hostilities, CERTIFIED ACT(s) OF TERRORISM, and whether war be declared or not, civil war, rebellion, revolution, insurrection, or military or usurped power, or in defending against any one or more of those.

SECTION II. DEFINITIONS is amended by the addition of the following:

**CERTIFIED ACT(s) OF TERRORISM** means an act that is certified by the Secretary of the Treasury, in concurrence with the Secretary of State and the Attorney General of the United States, to be an act of terrorism pursuant to the federal Terrorism Risk Insurance Act.

All other terms and conditions remain the same.



Administrative Offices  
 680 Walnut Street  
 Cincinnati, Oh 45202  
 Tel: 1-513-369-5000

PEL 34 18 (Ed. 04 08)

**ENDORSEMENT #**

This endorsement, effective 12.01 a.m., forms a part of Policy No.

issued to By

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**TERRORISM COVERAGE ENDORSEMENT**

Pursuant to the requirements of the federal Terrorism Risk Insurance Act the INSURED has been provided notice that the INSURED may elect to purchase coverage for loss covered under this Policy arising directly or indirectly as a result of CERTIFIED ACT(s) OF TERRORISM and the premium charge for such coverage.

After receiving such notice, the INSURED has elected to purchase this Policy with coverage for such CERTIFIED ACT(s) OF TERRORISM. Therefore, in consideration of the premium paid, the INSURED and the Company agree to the following Policy changes;

**SECTION IV. EXCLUSIONS, Hostile Acts** is deleted and replaced with the following:

**Hostile Acts**

based upon or arising out of any consequence, whether direct or indirect, of declared or undeclared war, invasion, act of foreign enemy, hostilities, and whether war be declared or not, civil war, rebellion, revolution, insurrection, or military or usurped power, or in defending against any one or more of those.

This exclusion does not apply to CERTIFIED ACT(s) OF TERRORISM subject to the CAP ON CERTIFIED TERRORISM LOSSES.

**SECTION II. DEFINITIONS** is amended by the addition of the following:

**CERTIFIED ACT(s) OF TERRORISM** means an act that is certified by the Secretary of the Treasury, in concurrence with the Secretary of State and the Attorney General of the United States, to be an act of terrorism as defined in Section 102(1) of the Terrorism Risk Insurance Act.

**CAP ON CERTIFIED TERRORISM LOSSES**, as established in the Terrorism Risk Insurance Act, means if the aggregate insured losses attributable to CERTIFIED ACT(s) OF TERRORISM exceed \$100 billion in a Program Year (defined as January 1 through December 31) and we have met our insurer deductible under the federal Terrorism Risk Insurance Act, the Company shall not be liable for the payment of any portion of the amount of such losses that exceeds \$100 billion, and in such case insured losses up to that amount are subject to pro rata allocation in accordance with procedures established by the Secretary of the Treasury.

All other terms and conditions remain the same.



Administrative Offices  
580 Walnut Street  
Cincinnati, Oh 45202  
Tel: 1-513-369-5000

**ENDORSEMENT #**

This endorsement, effective 12:01 a.m., forms a part of Policy No.

issued to By

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**POLLUTANT EXCLUSION**

This endorsement modifies insurance provided under the following:

**PREMISES ENVIRONMENTAL LIABILITY INSURANCE POLICY**

The INSURED and the Company agree to the following Policy change(s):

1. Solely with regard to COVERAGE B – ON-SITE AND OFF-SITE CLEAN-UP COSTS, Section IV. EXCLUSIONS is amended by the addition of the following:

**Specified Pollutants**

based upon, arising out of or related to the Contaminants in the Associated Media listed below, including any associated breakdown products, daughter products, derivatives and additives that are on, at under or migrating from the specified COVERED LOCATION(S):

Contaminants	Associated Media	COVERED LOCATION(S)
TPH	Soil and Soil Vapor	All COVERED LOCATION(S)
PCBs	Soil and Soil Vapor	All COVERED LOCATION(S)
Benzo(a)pyrene	Soil and Soil Vapor	All COVERED LOCATION(S)
Benzo(b)fluoranthene	Soil and Soil Vapor	All COVERED LOCATION(S)
Dioxins/furans	Soil and Soil Vapor	All COVERED LOCATION(S)
Xylene	Groundwater, Soil and Soil Vapor	All COVERED LOCATION(S)
Toluene	Groundwater, Soil and Soil Vapor	All COVERED LOCATION(S)

2. Upon the Company's receipt and review of a No Further Action letter(s) or similar documentation from the applicable regulatory authority which states that no further action is required with respect to the Contaminants excluded under Item 1. above, the Company may delete or modify this endorsement. Such consent to delete or modify this exclusion shall not be unreasonably withheld, delayed, conditioned, or denied.

It is further agreed that any such deletion or modification shall be contained in an endorsement issued by the Company and that any such endorsement shall indicate that the effective date of the deletion or modification shall be the date of the No Further Action letter(s) or similar documentation from the applicable regulatory authority.

In no event shall the Company be liable for LOSS, CLEAN-UP COSTS, related LEGAL EXPENSE, or any other coverages excluded under Item 1. above, that arose prior to: (a) the date of the No Further Action letter(s) or similar documentation from the applicable regulatory authority; or (b) that were incurred to achieve such No Further Action status.

All other terms and conditions remain the same.

## ENDORSEMENT #

This endorsement, effective 12:01 a.m., forms a part of Policy No.

issued to By

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY**

**COVERAGE B – ON-SITE CLEAN-UP COSTS RESTRICTION – GOVERNMENTAL CLAIMS ONLY AND OFF-SITE THIRD PARTY CLAIMS ONLY**

This endorsement modifies insurance provided under the following:

PREMISES ENVIRONMENTAL LIABILITY INSURANCE POLICY

The INSURED and the Company agree to the following Policy change(s):

Section I. INSURING AGREEMENTS, B. COVERAGE B – ON-SITE AND OFF-SITE CLEAN-UP COSTS is deleted in its entirety and replaced with the following:

**B. COVERAGE B. ON-SITE AND OFF-SITE CLEAN-UP COSTS**

**1. ON-SITE CLEAN-UP COSTS – GOVERNMENTAL CLAIMS ONLY**

The Company will pay on behalf of the INSURED for CLEAN-UP COSTS and related LEGAL EXPENSE because of a POLLUTION CONDITION on, at, or under the COVERED LOCATION(S) which the INSURED becomes legally obligated to pay as a result of a CLAIM first made against the INSURED by a governmental entity acting under the authority of applicable environmental regulations during the POLICY PERIOD, but only if:

- a) the INSURED, or anyone acting on behalf of the INSURED, has not approached or contacted any governmental entity, regarding such POLLUTION CONDITION, to request or solicit such CLAIM; and
- b) the INSURED notifies the Company of the CLAIM in writing, during the POLICY PERIOD or, if applicable, the EXTENDED REPORTING PERIOD.

**2. OFF-SITE CLEAN-UP COSTS – THIRD PARTY CLAIMS ONLY**

The Company will pay on behalf of the INSURED for CLEAN-UP COSTS and related LEGAL EXPENSE because of a POLLUTION CONDITION migrating from the COVERED LOCATION(S) which the INSURED becomes legally obligated to pay as a result of a CLAIM first made against the INSURED by a third party or a governmental entity, during the POLICY PERIOD, but only if the INSURED notifies the Company of the CLAIM or POLLUTION CONDITION, in writing, during the POLICY PERIOD or, if applicable, the EXTENDED REPORTING PERIOD.

All other terms and conditions remain the same.



Administrative Offices  
580 Walnut Street  
Cincinnati, Oh 45202  
Tel: 1-513-369-6000

**ENDORSEMENT #**

This endorsement, effective 12.01 a.m., forms a part of Policy No.

issued to By

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**ADDITIONAL NAMED INSURED**

This endorsement modifies insurance provided under the following:

**PREMISES ENVIRONMENTAL LIABILITY INSURANCE POLICY**

The INSURED and the Company agree to the following Policy change(s):

The following entity(ies) is (are) added as an ADDITIONAL NAMED INSURED:

**PPG Industries**

**All other terms and conditions remain the same.**



PEL 36 24 (Ed. 04 08)

580 Walnut Street  
Cincinnati, Oh 45202  
Tel. 1-513-369-5000

**ENDORSEMENT #**

This endorsement, effective 12:01 a.m., forms a part of  
Policy No. issued to  
By

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**DEED RESTRICTIONS VIOLATION EXCLUSION**

This endorsement modifies insurance provided under the following:

**PREMISES ENVIRONMENTAL LIABILITY INSURANCE POLICY**

The INSURED and the Company agree to the following Policy change(s):

SECTION IV. EXCLUSIONS, is amended by the addition of the following:

**Deed Restrictions**

based upon or arising out of an INSURED's failure to comply with any deed restriction applicable to a COVERED LOCATION(s).

All other terms and conditions remain the same.



PEL 36 24 (Ed. 04 08)

580 Walnut Street  
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**ENDORSEMENT #**

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Policy No. issued to  
By

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**DOCUMENT SCHEDULE**

This endorsement modifies insurance provided under the following:

**PREMISES ENVIRONMENTAL LIABILITY INSURANCE POLICY**

The INSURED and the Company agree to the following Policy change(s):

Any POLLUTION CONDITION identified and described in the following document(s) is deemed to be "expressly reported" to the Company:

1. Letter from PPG Industries to the City of Torrance re: The Approximate 15 Acre PPG Site – Torrance, California (dated October 10, 2008).
2. Site-Wide Soil and Groundwater Investigation Report – Former PPG Industries Inc. Coatings and Resin Group Facility – 465 Crenshaw Blvd., Torrance, California 90509; prepared by Earth Tech (dated December 11, 2007)

All other terms and conditions remain the same.



580 Walnut Street  
Cincinnati, Oh 45202  
Tel: 1-513-369-5000

Manuscript

**ENDORSEMENT #**

This endorsement, effective 12:01 a.m., forms a part of Policy No.  
issued to By

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**KNOWN CONDITIONS EXCLUSION AMENDMENT**

This endorsement modifies insurance provided under the following:

**PREMISES ENVIRONMENTAL LIABILITY INSURANCE POLICY**

The INSURED and the Company agree to the following Policy change(s):

Section IV. EXCLUSIONS, Exclusion 11. Known Condition(s) is amended by the addition of the following:

It is agreed that the failure to report a POLLUTION CONDITION known by a RESPONSIBLE PERSON for one INSURED shall not in itself preclude coverage for such POLLUTION CONDITION for another INSURED. However, it is further agreed that this exception shall not apply to an INSURED who is a parent, subsidiary or affiliate of the INSURED which failed to report the known POLLUTION CONDITION.

All other terms and conditions remain the same.



580 Walnut Street  
Cincinnati, Oh 45202  
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Manuscript

**ENDORSEMENT #**

This endorsement, effective 12:01 a.m., forms a part of Policy No.  
issued to By

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY**

**DELETION OF FAULTY WORKMANSHIP/OWN WORK**

This endorsement modifies insurance provided under the following:

**PREMISES ENVIRONMENTAL LIABILITY INSURANCE POLICY**

The INSURED and the Company agree to the following Policy change(s):

Section IV. EXCLUSIONS, Exclusion 6. Faulty Workmanship/Own Work, is deleted in its entirety.

All other terms and conditions remain the same.



Administrative Offices  
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Cincinnati, Oh 45202  
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PEL 39 08 (Ed. 04 08)

**ENDORSEMENT #**

This endorsement, effective 12.01 a.m., forms a part of Policy No.  
issued to By

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**CHOICE OF LAW AND JURISDICTION AND VENUE CONDITIONS AMENDMENT**

This endorsement modifies insurance provided under the following:

**PREMISES ENVIRONMENTAL LIABILITY INSURANCE POLICY**

The INSURED and the Company agree to the following Policy change(s):

Section IX. CONDITIONS, Item F. CHOICE OF LAW and Item K. JURISDICTION AND VENUE are deleted in their entirety and replaced with the following:

- F. CHOICE OF LAW** – All matters arising hereunder including questions related to the validity, interpretation, performance and enforcement of this Policy, shall be determined in accordance with the law and practice of the State of California (not including California's choice of law rules).
- K. JURISDICTION AND VENUE** – It is agreed that in the event of the failure of the Company to pay any amount claimed to be due hereunder, the Company and the INSURED will submit to the jurisdiction of the State of California and will comply with all the requirements necessary to give such court jurisdiction. Nothing in this clause constitutes or should be understood to constitute a waiver of the Company's right to remove an action to a United States District Court.

All other terms and conditions remain the same.



Administrative Offices  
580 Walnut Street  
Cincinnati, Oh 45202  
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**ENDORSEMENT #**

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issued to By

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**MATERIAL CHANGE IN USE EXCLUSION AMENDMENT – SPECIFIED USE EXCEPTED**

This endorsement modifies insurance provided under the following:

**PREMISES ENVIRONMENTAL LIABILITY INSURANCE POLICY**

The INSURED and the Company agree to the following Policy change(s):

SECTION IV., EXCLUSIONS., Item 13. Material Change in Use is deleted in its entirety and replaced with the following:

**13. Material Change in Use**

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

For purposes of this endorsement, the following use(s) will not be deemed by the Company to represent "a Material Change in Use":

Non-residential use

All other terms and conditions remain the same.



Administrative Offices  
580 Walnut Street  
Cincinnati, Oh 45202  
Tel: 1-513-369-5000

#### ENDORSEMENT #

This endorsement, effective 12.01 a.m., forms a part of Policy No.  
issued to By

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

#### AMENDATORY ENDORSEMENT

This endorsement modifies insurance provided under the following:

**PREMISES ENVIRONMENTAL LIABILITY INSURANCE POLICY**

The INSURED and the Company agree to the following Policy change(s):

1. Section VI. LIMIT OF LIABILITY AND SELF-INSURED RETENTION, Item D. is amended by the addition of the following:

Notwithstanding the forgoing, in the event that a covered CLAIM is made solely against the ADDITIONAL NAMED INSURED, such ADDITIONAL NAMED INSURED shall be responsible for payment of the entire Self-Insured Retention under this Policy and shall be responsible for meeting all CLAIM notice requirements, including timeliness of reporting, and compliance with all other provisions related to the CLAIM and to coverage under this Policy. In the event that a covered CLAIM is made against both the FIRST NAMED INSURED and the ADDITIONAL NAMED INSURED arising from the same or related POLLUTION CONDITION, the FIRST NAMED INSURED and the ADDITIONAL NAMED INSURED shall bear the cost of the Self-Insured Retention in equal shares.

2. Section IX. CONDITIONS, Item D. CANCELLATION is amended by the addition of the following:

It is agreed that fraud or material misrepresentation on the part of one INSURED shall not in itself be grounds for the Company to cancel this Policy as to any other INSURED which did not commit the fraud or material misrepresentation. However, this exception shall not apply to any INSURED that is a parent, subsidiary or affiliate of the INSURED which committed the fraud or material misrepresentation.

No ADDITIONAL NAMED INSURED shall have any right to reimbursement of premium, if any, nor have the right to cancel this Policy.

3. Section IX. CONDITIONS, Item M. SEVERABILITY is amended by the addition of the following:

The ADDITIONAL NAMED INSURED shall follow all the terms and conditions of this Policy, shall be in compliance with all provisions of this Policy and meet all reporting, disclosure and notice requirements under this Policy. Failure of the ADDITIONAL NAMED INSURED to meet such requirements shall affect, reduce, or deny coverage solely with respect to such ADDITIONAL NAMED INSURED and shall not impair or affect coverage with respect to the FIRST NAMED INSURED. Each INSURED shall comply with the requirements of this Policy, and failure by one INSURED to meet such requirements shall not impair or reduce in anyway the rights and coverage of any other INSURED.

All other terms and conditions remain the same.



Administrative Offices  
580 Walnut Street  
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PEL 30 01 (Ed. 04 08)

**GREAT AMERICAN E & S INSURANCE COMPANY**  
**PREMISES ENVIRONMENTAL LIABILITY INSURANCE POLICY**

**THIS IS A CLAIMS MADE AND REPORTED POLICY. READ IT CAREFULLY.**

**THIS POLICY REQUIRES THAT A CLAIM BE MADE AGAINST THE INSURED DURING THE POLICY PERIOD AND REPORTED TO THE COMPANY DURING THE POLICY PERIOD OR, IF APPLICABLE, THE EXTENDED REPORTING PERIOD.**

**SOME OF THE PROVISIONS CONTAINED IN THIS POLICY RESTRICT COVERAGE, SPECIFY WHAT IS AND IS NOT COVERED AND DESIGNATE RIGHTS AND DUTIES. LEGAL EXPENSE IS SUBJECT TO AND WILL ERODE THE LIMIT OF LIABILITY AND ANY APPLICABLE SELF-INSURED RETENTION.**

In this Policy, "the Company" refers to the company providing this insurance. Some other words and phrases that appear in capital letters have special meaning. Refer to SECTION II – DEFINITIONS.

In consideration of the payment of the Policy Premium and in reliance upon the statements contained in the Application and any other supplemental materials and information submitted in connection with the Application, and subject to all the terms, conditions, exclusions and limitations of this Policy, the Company agrees to provide insurance coverage to the INSURED as described herein:

**SECTION I. INSURING AGREEMENTS**

**EACH OF THE FOLLOWING COVERAGES IS IN EFFECT ONLY IF IT IS SCHEDULED IN THE DECLARATIONS. EACH COVERAGE THAT IS IN EFFECT IS SUBJECT TO SECTION VI. LIMIT OF LIABILITY AND SELF-INSURED RETENTION.**

**A. COVERAGE A - POLLUTION LEGAL LIABILITY**

The Company will pay on behalf of the INSURED for LOSS and related LEGAL EXPENSE because of a POLLUTION CONDITION on, at, under or migrating from the COVERED LOCATION(S), which the INSURED becomes legally obligated to pay as a result of a CLAIM first made against the INSURED during the POLICY PERIOD, but only if the INSURED reports the CLAIM to the Company, in writing, during the POLICY PERIOD or, if applicable, the EXTENDED REPORTING PERIOD.

**B. COVERAGE B – ON-SITE AND OFF-SITE CLEAN-UP COSTS**

The Company will pay on behalf of the INSURED for CLEAN-UP COSTS and related LEGAL EXPENSE because of a POLLUTION CONDITION on, at, under or migrating from the COVERED LOCATION(S):

1. which the INSURED becomes legally obligated to pay as a result of a CLAIM first made against the INSURED during the POLICY PERIOD; or
2. if the POLLUTION CONDITION is first discovered by the INSURED during the POLICY PERIOD;

but only if the INSURED notifies the Company of the CLAIM or POLLUTION CONDITION, in writing, during the POLICY PERIOD or, if applicable, the EXTENDED REPORTING PERIOD.

**C. COVERAGE C – CONTRACTING SERVICES POLLUTION LIABILITY**

The Company will pay on behalf of the INSURED for LOSS, CLEAN-UP COSTS, and related LEGAL EXPENSE

which the INSURED becomes legally obligated to pay because of a POLLUTION CONDITION arising from CONTRACTING SERVICES where, during the POLICY PERIOD:

1. a CLAIM for such LOSS and/or CLEAN-UP COSTS is first made against the INSURED; or
2. the POLLUTION CONDITION first begins and is first discovered by the INSURED;

but only if the INSURED notifies the Company of the CLAIM or POLLUTION CONDITION, in writing, during the POLICY PERIOD, or, if applicable, the EXTENDED REPORTING PERIOD.

**D. COVERAGE D - NON-OWNED DISPOSAL SITE**

The Company will pay on behalf of the INSURED for LOSS, CLEAN-UP COSTS, and related LEGAL EXPENSE because of a POLLUTION CONDITION on, at, under or migrating from a NON-OWNED DISPOSAL SITE, which the INSURED becomes legally obligated to pay as a result of a CLAIM first made against the INSURED during the POLICY PERIOD, but only if the INSURED reports the CLAIM to the Company, in writing, during the POLICY PERIOD or, if applicable, the EXTENDED REPORTING PERIOD.

**E. COVERAGE E – IN-BOUND AND OUT-BOUND CONTINGENT TRANSPORTATION COVERAGE**

The Company will pay on behalf of the INSURED for LOSS, CLEAN-UP COSTS, and related LEGAL EXPENSE because of a POLLUTION CONDITION arising from the INSURED's goods, products or waste during the course of transportation by a CARRIER to or from:

1. a JOB SITE where CONTRACTING SERVICES are being performed; or
2. a COVERED LOCATION(S);

including any loading or unloading of such goods, products or waste, which the INSURED becomes legally obligated to pay as a result of a CLAIM first made against the INSURED during the POLICY PERIOD, but only if the INSURED reports the CLAIM to the Company, in writing, during the POLICY PERIOD or, if applicable, the EXTENDED REPORTING PERIOD.

**SECTION II. DEFINITIONS**

- A. ADDITIONAL NAMED INSURED** means any person, organization, or entity identified as an ADDITIONAL NAMED INSURED in an endorsement issued by the Company, but solely for their liability as a result of their ownership, maintenance, use, operation, development or financial interest in a COVERED LOCATION(S).
- B. AUTOMOBILE** means a land motor vehicle, trailer, semi-trailer, mobile equipment, or off-road motor vehicle, including any machinery or apparatus attached thereto.
- C. BODILY INJURY** means:
1. physical injury, sickness, disease, or building related illness sustained by any person, including death resulting therefrom, and, solely with regard to this Item C.1., any accompanying medical or environmental monitoring; and/or
  2. mental anguish, emotional distress, or shock;
- caused by a POLLUTION CONDITION.
- D. CARRIER** means a person or entity, other than the INSURED or any subsidiary or affiliate company of the INSURED, engaged by or on behalf of the INSURED to transport material by AUTOMOBILE, aircraft, watercraft or rolling stock, but only if such person or entity is properly licensed to transport such material and in the business of transporting such material.

- E. CLAIM** means a demand, notice or assertion of a legal right alleging liability or responsibility on the part of the INSURED, arising out of a POLLUTION CONDITION, and shall include but not be limited to lawsuits, orders, petitions or governmental or regulatory actions, filed against the INSURED.
- F. CLEAN-UP COSTS** means reasonable and necessary expenses incurred to investigate, remove, dispose of, abate, contain, treat or neutralize a POLLUTION CONDITION, including any monitoring and testing costs:
1. to the extent required by Federal, State, Local or Provincial Laws, including but not limited to statutes, rules, ordinances, guidance documents, regulations and all amendments thereto, including state voluntary cleanup or risk based corrective action guidance, governing the liability or responsibilities of the INSURED; or
  2. in the absence of items in 1. above, to the extent recommended by a ENVIRONMENTAL PROFESSIONAL;
- with respect to a POLLUTION CONDITION.
- CLEAN-UP COSTS includes REPLACEMENT COSTS and also includes any associated punitive, exemplary or multiplied damages, where insurable by law.
- G. CONTRACTING SERVICES** means any contracting services listed in the Declarations and performed by the INSURED at a JOB SITE.
- H. COVERED LOCATION(S)** means any location(s) stated in the Declarations or any location(s) scheduled as such onto this Policy by an endorsement issued by the Company. COVERED LOCATION(S) does not include a JOB SITE.
- I. ENVIRONMENTAL PROFESSIONAL** means an individual designated by the Company who is duly certified or licensed in a recognized field of environmental science as required by a state board, a professional association, or both. The Company shall consult with the INSURED in conjunction with the selection of the ENVIRONMENTAL PROFESSIONAL. The Company may require that such professional meet certain minimum qualifications and maintain errors and omissions insurance.
- J. EXTENDED REPORTING PERIOD** means the Automatic Extended Reporting Period or, if applicable, the Optional Extended Reporting Period described in Section V. of this Policy.
- K. FIRST NAMED INSURED** means the person or entity stated in the Declarations.
- L. INSURED** means the FIRST NAMED INSURED, any ADDITIONAL NAMED INSURED added to this Policy by an endorsement issued by the Company, and any present or former director, officer, partner, member, employee, leased or temporary worker thereof, while acting within the scope of his/her duties as such.
- M. LEGAL EXPENSE** means attorneys' fees and other charges and expenses incurred in the investigation, adjustment, defense, or settlement of any CLAIM for LOSS or CLEAN-UP COSTS, or in connection with the payment of any CLEAN-UP COSTS. LEGAL EXPENSE includes the fees and expenses of consultants, expert witnesses, accountants, court reporters, and other vendors, for goods or services in connection with such investigation, adjustment, defense, or settlement, whether incurred by the INSURED, defense counsel, or the Company.
- LEGAL EXPENSE does not include salary charges of regular employees or officials of the Company, fees and expenses of supervisory counsel retained by the Company, or the time and expense incurred by the INSURED in assisting in the investigation or resolution of a CLAIM or in connection with CLEAN-UP COSTS, including but not limited to the costs of the INSURED's in-house counsel.
- N. LOSS** means a monetary judgment, award or settlement of:
1. compensatory damages, or
  2. punitive, exemplary or multiplied damages, civil fines, penalties and assessments, where insurable by law,
- because of BODILY INJURY and/or PROPERTY DAMAGE.

- O. JOB SITE** means a location at which CONTRACTING SERVICES are performed. However, JOB SITE does not include any of the following:
1. a COVERED LOCATION(S); or
  2. any location managed, operated, owned or leased by an INSURED or any subsidiary or affiliate of an INSURED.
- P. MOLD MATTER** means mold, mildew or any type or form of fungus; including any mycotoxins, spores, or byproducts produced or released by fungi.
- Q. NON-OWNED DISPOSAL SITE(S) ("NODS")** means a location(s) used for the treatment, storage or disposal of an INSURED'S waste material, but only if:
1. the waste material is generated by CONTRACTING SERVICES or at a COVERED LOCATION(S); and
  2. the NODS is not managed, operated, owned or leased by the INSURED or any subsidiary or affiliate of the INSURED; and
  3. the NODS is permitted and/or licensed by any Federal, State, Local or Provincial authorities to accept such material as of the date of the treatment, storage or disposal; and
  4. the NODS is not listed on a proposed or final Federal National Priorities List ("NPL") and any State or Provincial equivalent NPL, Superfund or Hazardous Waste list prior to the treatment, storage or disposal.
- R. POLICY PERIOD** means the period stated in the Declarations. However, if this Policy is cancelled, by either the FIRST NAMED INSURED or the Company, the policy period ends at the effective date and time of the cancellation.
- S. POLLUTANTS** mean any solid, liquid, gaseous or thermal pollutant, irritant or contaminant, including but not limited to smoke, vapors, odors, soot, fumes, acids, alkalis, toxic chemicals, hazardous substances, petroleum hydrocarbons, waste materials, including medical, infectious and pathological wastes, legionella, electromagnetic fields, MOLD MATTER and low-level radioactive waste and material.
- T. POLLUTION CONDITION** means any one or more of the following:
1. the discharge, dispersal, release, seepage, migration, or escape of POLLUTANTS into or upon land or structures thereupon, the atmosphere, or any watercourse or body of water including groundwater;
  2. the illicit abandonment of POLLUTANTS at a COVERED LOCATION(S) provided that such abandonment was committed by a person(s) or entity(ies) other than an INSURED and without any knowledge by a RESPONSIBLE PERSON;
  3. the existence of MOLD MATTER on, at, or within buildings or structures.
- U. PROPERTY DAMAGE** means:
1. physical injury to or destruction of tangible property of any person or organization other than an INSURED, including the resulting loss of use of such property, and including the personal property of such parties; or
  2. loss of use of such property that has not been physically injured or destroyed; or
  3. diminution in the value of such property; or
  4. natural resource damage which means the physical injury to or destruction of, as well as the assessment of such injury or destruction, including the resulting loss of value of land, fish, wildlife, biota, air, water, groundwater, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the fishery conservation zone established by the Magnuson-Stevens Fishery Conservation and Management Act(16 U.S.C. 1801 et. seq.)), any State, Local

or Provincial government, any foreign government, any Native American tribe, or, if such resources are subject to a trust restriction or alienation, any member of a Native American Tribe.

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

- V. REPLACEMENT COSTS** means reasonable and necessary costs incurred by the INSURED with the Company's written consent, to repair, restore or replace damaged real or personal property in order to restore the property to the condition it was in prior to being damaged in the course of incurring CLEAN-UP COSTS. REPLACEMENT COSTS shall not exceed the actual cash value of such real or personal property prior to incurring the CLEAN-UP COSTS. For the purposes of this definition, actual cash value means replacement cost reduced by physical depreciation and obsolescence.
- W. RESPONSIBLE PERSON** means any officer, director or partner of the INSURED; the manager or supervisor of the INSURED responsible for environmental or health and safety affairs, control or compliance; or any manager of a COVERED LOCATION(S).
- X. UNDERGROUND STORAGE TANK** means any container or vessel, including the associated piping connected thereto, which is ten percent (10%) or more beneath the surface of the ground.

### SECTION III. TERRITORY

This Policy applies only to CLAIMS first made or brought in the United States, its territories or possessions, Puerto Rico or Canada, but only if the INSURED'S responsibility to pay for LOSS is determined in:

- A. a proceeding on the merits conducted in the United States, its territories or possessions, Puerto Rico or Canada, or
- B. a settlement agreed to by the Company.

### SECTION IV. EXCLUSIONS

This Insurance does not apply to any LOSS, CLEAN-UP COSTS, LEGAL EXPENSE or other coverage afforded under this Policy or any endorsement issued by the Company:

1. **Asbestos**  
based upon or arising out of any asbestos or asbestos containing material, in, on, or applied to any building or other structure. This exclusion does not apply to asbestos, or asbestos containing materials, in soil or in any watercourse or body of water including groundwater.
2. **Communicable Diseases**  
based upon or arising out of any exposure to infected humans or animals, or contact with bodily fluids of infected humans or animals.
3. **Contractual Liability**  
based upon or arising from the INSURED'S assumption, under any contract or agreement, of the liability of another. This exclusion does not apply to liability the INSURED would have had in the absence of the contract or agreement.
4. **Criminal Fines, Penalties and Assessments**  
based upon or arising out of any criminal fine, criminal penalty, or criminal assessment.
5. **Employer's Liability/Workers' Compensation**  
based upon or arising out of any BODILY INJURY to an INSURED, or an employee of its parent, subsidiary or affiliate arising out of and in the course of employment by the INSURED or its parent or subsidiary or affiliate including BODILY INJURY or pecuniary loss to the spouse, child, parent, brother or sister of such injured employee. This exclusion applies whether the INSURED may be liable as an employer or in any other capacity and to any obligation to share damages with or repay another who must pay damages as a result of the BODILY INJURY.

**6. Faulty Workmanship/Own Work**

based upon or arising out of the costs to repair or replace faulty workmanship, construction, fabrication, installation, assembly or remediation if such faulty workmanship, construction, fabrication, installation, assembly or remediation was performed in whole or in part by an INSURED.

**7. Hostile Acts**

based upon or arising out of any consequence, whether direct or indirect, of declared or undeclared war, invasion, act of foreign enemy, hostilities, civil war, rebellion, revolution, insurrection, or military or usurped power, or in defending against any one or more of those.

**8. Insured vs. Insured**

based upon or arising out of any CLAIM by one INSURED against any other INSURED. This exclusion does not apply to a CLAIM that arises out of an indemnification given by one INSURED to another INSURED as specified in a contract that was submitted and approved by the Company and added to this Policy by endorsement.

**9. Insured's Property/Bailee Liability**

with respect to property damage to property owned, leased or operated by, or in the care, custody or control of, the INSURED, even if such property damage is incurred to avoid or mitigate LOSS or CLEAN-UP COSTS which may be covered under this Policy. This exclusion does not apply to REPLACEMENT COSTS.

**10. Intentional Acts**

based upon or arising out of a POLLUTION CONDITION that results from any RESPONSIBLE PERSON's intentional disregard of, or deliberate, willful, or dishonest non-compliance with, any statute, regulation, ordinance, administrative complaint, notice letter, or instruction by or on behalf of any governmental agency or representative.

**11. Known Condition(s)**

based on or arising out of any POLLUTION CONDITION that was known by or reported to any RESPONSIBLE PERSON, but was not expressly reported in writing to the Company, before:

(a) the beginning of the POLICY PERIOD (as respects a POLLUTION CONDITION at any COVERED LOCATION(S), or arising out of any CONTRACTING SERVICES, shown in the Declarations at the beginning of the POLICY PERIOD), or

(b) the Company issues an endorsement to add:

i. the COVERED LOCATION(S) at which the POLLUTION CONDITION exists, or

ii. the CONTRACTING SERVICES from which the POLLUTION CONDITION arises,

to the Policy (as respects a POLLUTION CONDITION at any COVERED LOCATION(S), or arising out of any CONTRACTING SERVICES, that was not shown in the Declarations at the beginning of the POLICY PERIOD).

Any such expressly reported POLLUTION CONDITION which is not otherwise excluded under this Policy by endorsement is deemed to be first discovered on the date the COVERED LOCATION(S) or CONTRACTING SERVICES, as applicable, were added to this Policy.

**12. Lead-Based Paint**

based upon or arising out of lead-based paint in, on, or applied to, any building or other structure. This exclusion does not apply to lead-based paint in soil or in any watercourse or body of water including groundwater.

**13. Material Change in Use**

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

**14. Natural Occurring Material(s)**

based upon or arising out of the existence, required removal, or abatement, of naturally occurring material(s). This exclusion does not apply where such substances are present at a JOB SITE due to the performance of

CONTRACTING SERVICES or at a COVERED LOCATION(S) only because of human activities or processes. This exclusion also does not apply to MOLD MATTER.

**15. New Pollution Conditions at Divested Property**

based upon or arising out of a POLLUTION CONDITION on, at, under or migrating from a COVERED LOCATION(S), if the discharge, dispersal, release, seepage, migration or escape of those POLLUTANTS begins after such COVERED LOCATION(S) is sold, given away, or abandoned by the INSURED, or condemned.

**16. Products Liability**

based upon or arising out of goods or products manufactured, sold, handled, distributed, altered or repaired by the INSURED or by others trading under the INSURED's name, including any container thereof, any failure to warn, or any reliance upon a representation or warranty made at any time with respect thereto, but only if the POLLUTION CONDITION occurs away from the COVERED LOCATION(S) and after physical possession of such goods or products has been relinquished to others.

**17. Retroactive Date**

based upon or arising out of a POLLUTION CONDITION that first commenced prior to the retroactive date stated in the Declarations, including any further dispersal, migration or movement of that POLLUTION CONDITION on or after that date.

**18. Reverse Retroactive Date**

based upon or arising out of a POLLUTION CONDITION that first commenced subsequent to the reverse retroactive date stated in the Declarations.

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

based upon or arising out of the existence of any UNDERGROUND STORAGE TANK(s). This exclusion does not apply to UNDERGROUND STORAGE TANK(s):

- (a) either closed, abandoned in place or removed, in accordance with all applicable federal, state, or provincial regulations, prior to the inception date of this Policy; or
- (b) endorsed to this Policy in the Underground Storage Tank(s) and Associated Piping Schedule, if any; or
- (c) the existence of which is unknown by all RESPONSIBLE PERSONS as of the inception date of this Policy.

**20. Vehicles**

based upon or arising out of the ownership, maintenance, use, operation, loading or unloading of any AUTOMOBILE, aircraft, watercraft, rolling stock or any other form of transportation, including any cargo carried thereby, beyond the legal boundaries of a JOB SITE where CONTRACTING SERVICES are being performed or a COVERED LOCATION(S). This exclusion does not apply to Coverage E – In-Bound and Out-Bound Contingent Transportation Coverage.

**SECTION V. EXTENDED REPORTING PERIOD**

**A. Automatic Extended Reporting Period**

In the event of the termination of this insurance before the expiration date shown in the Declarations, the INSURED shall be entitled to a ninety (90) day Automatic Extended Reporting Period for no additional premium. The Automatic Extended Reporting Period shall apply as follows:

- (1) A CLAIM first made against the INSURED during the POLICY PERIOD and reported to the Company, in writing, during the ninety (90) days immediately following the effective date of such termination will be deemed to have been made on the last day of the POLICY PERIOD, provided such CLAIM is otherwise covered by this Policy.
- (2) A CLAIM first made against the INSURED and reported to the Company, in writing, during the ninety (90) days immediately following the effective date of such termination will be deemed to have been made on the last day of the POLICY PERIOD, provided such CLAIM arises from a POLLUTION CONDITION first discovered and reported to the Company, in writing, prior to such termination, and is otherwise covered by this Policy.

The Automatic Extended Reporting Period does not apply where: (1) the Policy is terminated for fraud or non-payment of premium; or (2) the INSURED has purchased other insurance to replace the insurance provided under this Policy.

For the purposes of Section V.A. – Automatic Extended Reporting Period, under this Policy:

- (a) either cancellation or non-renewal shall be deemed to be a termination of this insurance; and
- (b) in the event of non-renewal, the expiration date shown in the Declarations shall be deemed the effective date of the termination.

#### **B. Optional Extended Reporting Period**

The FIRST NAMED INSURED shall be entitled to purchase an Optional Extended Reporting Period upon cancellation or non-renewal of the Policy, subject to the following terms and conditions:

The FIRST NAMED INSURED shall be entitled to purchase an Optional Extended Reporting Period upon payment of an additional premium of not more than 200% of the full Policy Premium.

The Optional Extended Reporting Period shall be effective for three (3) consecutive three-hundred and sixty-five (365) day periods commencing immediately following the effective date of cancellation or non-renewal. The FIRST NAMED INSURED must elect to purchase this Optional Extended Reporting Period in writing within thirty (30) days from the cancellation or non-renewal of the Policy. The Automatic Extended Reporting Period of ninety (90) days will be merged into this period and is not in addition to this period.

The Optional Extended Reporting Period shall only apply to CLAIMS first made against the INSURED during the Optional Extended Reporting Period, but only by reason of a POLLUTION CONDITION first discovered and reported to the Company, in writing, during the POLICY PERIOD, and is otherwise covered by this Policy.

The Optional Extended Reporting Period does not apply where: (1) the Policy is terminated for fraud or non-payment of premium; or (2) the INSURED has purchased other insurance to replace the insurance provided under this Policy.

For the purposes of Section V.B. – Optional Extended Reporting Period under this Policy:

- (a) either cancellation or non-renewal shall be deemed to be a termination of this insurance; and
- (b) in the event of non-renewal, the expiration date shown in the Declarations shall be deemed the effective date of the termination.

It is a condition precedent to the operation of the rights granted under Section V.B. that payment of the appropriate premium shall be made not later than thirty (30) days after expiration in the case of non-renewal or prior to cancellation in the case of cancellation.

For purposes of Section V., the quotation of different Limits of Liability, Self-Insured Retentions, terms or conditions by the Company shall not be construed as termination or non-renewal of this Policy.

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

- A. The Limits of Liability and Self-Insured Retention shown in the Declarations and the rules below fix the most the Company will pay regardless of the number of INSUREDS, COVERED LOCATION(S), CONTRACTING SERVICES, POLLUTION CONDITIONS, CLAIMS made, or persons or organizations making CLAIMS.
- B. For purposes of this Policy, the same or related POLLUTION CONDITIONS at any one JOB SITE where CONTRACTING SERVICES are performed, or at any one COVERED LOCATION, shall be deemed a single POLLUTION CONDITION.
- C. This Policy will pay covered LOSS, CLEAN-UP COSTS, LEGAL EXPENSE or any other coverages afforded under this Policy or any endorsements attached hereto only (1) in excess of the applicable Self-Insured Retention Amount

stated in the Declarations and (2) subject to the applicable Limit of Liability stated in the Declarations and the other terms and conditions of this Policy.

- D. The Self-Insured Retention Amount is to be borne by the INSURED and is not to be insured unless the Company has expressed its prior consent in writing to the FIRST NAMED INSURED. If the same or related POLLUTION CONDITION results in coverage under more than one coverage section for which a limit is stated in the Declarations or under any other coverage afforded under this Policy or any endorsements attached hereto, only the single highest Self-Insured Retention amongst such applicable coverages shall apply.
- E. Each POLLUTION CONDITION Limit – Subject to Items F. and G. below, the most the Company will pay for the sum of all LOSS, CLEAN-UP COSTS, and LEGAL EXPENSE under each coverage section stated in the Declarations, or under any other coverages afforded under this Policy or any endorsements attached thereto, arising out of the same or related POLLUTION CONDITION is the Each POLLUTION CONDITION Limit applicable to that particular coverage.
- F. Coverage Section Aggregate Limit – Subject to Item G. below, the Company's total liability for the sum of all LOSS, CLEAN-UP COSTS, and LEGAL EXPENSE under each coverage section stated in the Declarations, or under any other coverages afforded under this Policy or any endorsements attached thereto, during the POLICY PERIOD or, if applicable, the EXTENDED REPORTING PERIOD, shall not exceed the Coverage Aggregate Limit of Liability applicable to that particular coverage.
- G. Policy Aggregate Limit - The Company's total liability for the sum of all LOSS, CLEAN-UP COSTS, LEGAL EXPENSE and any other coverages afforded under this Policy or any endorsements attached thereto, shall not exceed the Policy Aggregate Limit of Liability as stated in the Declarations.
- H. Any LOSS, CLEAN-UP COSTS, LEGAL EXPENSE or any other coverages afforded under this Policy or any endorsements attached hereto, incurred and reported to the Company, in writing, over more than one POLICY PERIOD, and resulting from the same or related POLLUTION CONDITION, shall be considered a single POLLUTION CONDITION. The LOSS, CLEAN-UP COSTS, LEGAL EXPENSE or any other coverages afforded under this Policy or any endorsements attached thereto will be subject to the same Limit of Liability and Self-Insured Retention Amount(s) in effect at the time the POLLUTION CONDITION was first reported to the Company, in writing, during the POLICY PERIOD or, if applicable, the EXTENDED REPORTING PERIOD.

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

- A. As a condition precedent to the coverage hereunder, in the event a CLAIM is made against the INSURED for LOSS or CLEAN-UP COSTS, or a POLLUTION CONDITION is first discovered that results in a LOSS or CLEAN-UP COSTS, written or oral notice containing particulars sufficient to identify the INSURED and also reasonably obtainable information with respect to the time, place and circumstances thereof, and the names and addresses of the injured and of available witnesses, shall be given by or for the INSURED to the Company or any of its authorized agents as soon as practicable. In the event of oral notice, the INSURED agrees to furnish a written report as soon as practicable. The INSURED shall also forward to the Company every demand, notice, summons, order or other process received by the INSURED or the INSURED's representative as soon as practicable.
- B. No costs, charges or expenses shall be incurred, nor payments made, obligations assumed or remediation commenced, without the Company's consent which shall not be unreasonably withheld. This provision does not apply to costs incurred by the INSURED on an emergency basis, where delay on the part of the INSURED would cause injury to persons or damage to property or increase significantly the cost of responding to a POLLUTION CONDITION. The INSURED shall notify the Company of all such expenses immediately after the emergency ends.
- C. The Company shall have the right to designate legal counsel for the investigation, adjustment and defense of CLAIMS. The Company shall consult with the INSURED in conjunction with the selection of counsel. The Company shall have the right and duty to defend an INSURED against any CLAIM for LOSS or for CLEAN-UP COSTS, however, the Company will have no duty to defend the INSURED for LOSS or for CLEAN-UP COSTS to which this Policy does not apply.
- D. Once the applicable Limit of Liability has been exhausted, the Company shall not be obligated to defend or continue to defend any CLAIM or pay for any LOSS, CLEAN-UP COSTS or other coverage afforded under this Policy.

- E. The Company may, where allowable by law, appoint one counsel to defend all of the INSUREDs under this Policy on a joint defense basis.
- F. In the event that the INSURED is entitled by law to select independent counsel (Cumis Counsel) to defend the INSURED at the Company's expense, the attorney's fees and all other litigation expenses incurred by the Company shall be limited to the same rates that the Company would pay to counsel selected by the Company to defend a similar CLAIM in the location where the CLAIM arose or is being defended. The Company may require that such counsel meet certain minimum qualifications and maintain errors and omissions insurance. The INSURED agrees that such counsel will timely respond to the Company's request for information.
- G. The INSURED shall not admit liability or settle any CLAIM without the Company's consent. If the Company recommends a monetary settlement of a CLAIM acceptable to a claimant:
  - 1. for an amount within the Self-Insured Retention Amount and the INSURED refuses such settlement, the Company shall not be liable for any LOSS, CLEAN-UP COSTS, LEGAL EXPENSE, or any other coverages afforded under this Policy or any endorsements attached thereto in excess of the Self-Insured Retention Amount; or
  - 2. for a total amount in excess of the Self-Insured Retention and within the applicable Limits of Liability and the INSURED refuses such settlement, the Company's liability for LOSS, CLEAN-UP COSTS, LEGAL EXPENSE, or any other coverages afforded under this Policy or any endorsements attached hereto, shall be limited to that portion of the sum of (a) the recommended settlement and (b) the costs, charges and expenses already incurred as of the date of the INSURED's refusal, which exceeds the Self-Insured Retention Amount and is within the Limit of Liability.
- H. All INSUREDs shall cooperate with the Company and upon the Company's request shall submit to examination by a representative of the Company, under oath if required, and shall attend hearings, depositions and trials and assist in effecting settlement, securing and giving evidence, obtaining the attendance of witnesses and in the conduct of suits, as well as in the investigation and/or defense, all without charge to the Company. The INSURED shall further cooperate with the Company and do whatever is necessary to secure and enforce any rights of indemnity, contribution or apportionment which the INSURED may have.

#### **SECTION VIII. TRANSFER OF LEGAL DEFENSE DUTIES**

- A. If the Company believes that any of the applicable Limits of Liability stated in the Declarations has been or soon will be exhausted in defending a CLAIM, or that the Company has paid out or will soon pay out the Policy Aggregate Limit of Liability stated in the Declarations, the Company will so notify the FIRST NAMED INSURED in writing as soon as possible. The Company will advise that its duty to defend CLAIMS seeking damages subject to those limits has terminated, subject to payment of the limits, and that it will no longer handle the defense of any CLAIM for which notice is given after the date it sends out such notice. The Company will take prompt and appropriate steps to transfer control of any existing defense prior to exhaustion of the limits to the FIRST NAMED INSURED. The FIRST NAMED INSURED agrees to reimburse the Company for any costs which the Company bears in connection with the transfer of the defense.
- B. The Company will take appropriate steps necessary to defend the CLAIM during the transfer of the defense and avoid any unfavorable legal action provided that the INSURED cooperates in the transfer of the duties of the defense.
- C. The Company's failure to comply with any of the provisions of Section VIII. shall in no way obligate the Company to defend or continue to defend any CLAIM, or to pay any LOSS, CLEAN-UP COSTS or other sum covered under this Policy, after exhaustion of an applicable Limit of Liability.

#### **SECTION IX. CONDITIONS**

- A. **ACTION AGAINST COMPANY** - No action brought by an organization or entity, other than an INSURED, shall lie against the Company unless, as a condition precedent thereto, the INSURED has fully complied with all of the terms of this Policy and, the amount of the INSURED's obligation to pay shall have been finally determined either by judgment against the INSURED after actual trial or by written agreement of the INSURED, the claimant and the Company.

Any person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this Policy to the extent of the insurance afforded by this Policy. No person or organization shall have any right under this Policy to join the Company as a party to any action against the INSURED to determine the INSURED's liability, nor shall the Company be impleaded by the INSURED or his legal representative.

- B. **ASSIGNMENT** - This Policy shall be void as to the assignee or transferee, if assigned or transferred without written consent of the Company. This Policy can be assigned automatically without the consent of the Company to any first mortgagee of a COVERED LOCATION(S). The FIRST NAMED INSURED shall notify the Company of such assignment as soon as possible.
- C. **BANKRUPTCY** - Bankruptcy or insolvency of the INSURED or of the INSURED's estate shall not relieve the Company of any of its obligations hereunder.
- D. **CANCELLATION** - This Policy may be cancelled by the FIRST NAMED INSURED by surrender thereof to the Company or any of its authorized agents or by mailing to the Company written notice stating when thereafter the cancellation shall be effective. In the event of cancellation by the FIRST NAMED INSURED, the return premium shall be computed in accordance with the customary short rate table and procedure after applying the minimum earned premium percentage stated in the Declarations. If a CLAIM is made, a POLLUTION CONDITION is discovered or coverage is otherwise afforded under this Policy, then the premium shall be considered fully earned by the Company and the INSURED is not entitled to a return premium upon cancellation.

This Policy may be cancelled by the Company by mailing to the FIRST NAMED INSURED at the address shown in the Declarations, written notice stating when not less than ninety (90) days [ten (10) days for non-payment of premium] thereafter such cancellation shall be effective. The mailing of notice as aforesaid shall be sufficient proof of notice. The time of surrender or the effective date and hour of cancellation stated in the notice shall become the end of the POLICY PERIOD. If the Company cancels, earned premium shall be computed pro rata. Premium adjustment may be made either at the time cancellation is affected or as soon as practicable after cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation.

This Policy may be cancelled by the Company for the following reasons: (1) Non-payment of premium, or (2) Fraud or material misrepresentation on the part of the INSURED, such as can be proven in a court of law.

- E. **CHANGES** - Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this Policy or estop the Company from asserting any right under the terms of this Policy; nor can the terms of this Policy be waived or changed, except by an endorsement issued by the Company to form a part of this Policy.
- F. **CHOICE OF LAW** - All matters arising hereunder, including questions related to the validity, interpretation, performance and enforcement of this Policy, shall be determined in accordance with the law and practice of the State of New York (not including New York's choice of law rules).
- G. **CONSENT** - Where the consent of the Company or the INSURED is required under this Policy, such consent shall not be unreasonably withheld, delayed, conditioned or denied.
- H. **DECLARATIONS AND REPRESENTATIONS** - By acceptance of this Policy, the INSURED agrees that the statements contained in the Declarations, the application and any other supplemental materials and information submitted in connection with the application or any amendments to the Policy during the POLICY PERIOD are the INSURED's declarations and representations, that they shall be deemed material, that this Policy is issued in reliance upon the truth of such declarations and representations and that this Policy embodies all agreements existing between the INSURED and the Company or any of its agents relating to this insurance.
- I. **HEADINGS** - The descriptions in the headings of this Policy are solely for convenience and form no part of the Policy terms and conditions.
- J. **INSPECTION AND AUDIT** - The Company shall be permitted but not obligated to inspect and monitor on a continuing basis the INSURED's property or operations and any JOB SITE and COVERED LOCATION(S), at any time. Neither the Company's right to make inspections and monitor, nor the actual undertaking thereof, nor any report thereon, shall

constitute an undertaking, on behalf of the INSURED or others, to determine or warrant that property or operations are safe, healthful or conform to acceptable engineering practice or are in compliance with any law, rule or regulation. Access for the inspection and audit will be coordinated through the broker or agent of the FIRST NAMED INSURED.

- K. JURISDICTION AND VENUE** - It is agreed that in the event of the failure of the Company to pay any amount claimed to be due hereunder, the Company and the INSURED will submit to the jurisdiction of the State of New York and will comply with all the requirements necessary to give such court jurisdiction. Nothing in this clause constitutes or should be understood to constitute a waiver of the Company's right to remove an action to a United States District Court.
- L. OTHER INSURANCE** - Subject to Section VI., Limit of Liability and Self-Insured Retention, this insurance shall apply only in excess of the sum of the Self-Insured Retention amount stated in the Declarations and the applicable limits of any other valid and collectible insurance available to the INSURED, whether such other insurance is stated to be primary, pro rata, contributory, excess, contingent or otherwise, unless such other insurance is written only as specific excess insurance over the applicable Limits of Liability of this Policy.
- M. SEVERABILITY** - Except with respect to the Limits of Liability, Self-Insured Retention, Exclusion 8. ("Insured vs. Insured") and any rights and duties assigned in this Policy to the FIRST NAMED INSURED, this insurance applies as if each INSURED were the only INSURED and separately to each INSURED against whom a CLAIM is made. Any misrepresentation, act or omission that is in violation of a term, duty or condition under this Policy by one INSURED shall not by itself affect coverage for another INSURED under this Policy. This Condition M. shall not apply to an INSURED who is a parent, subsidiary or affiliate of the INSURED which committed the misrepresentation, act or omission referenced above.
- N. SOLE AGENT** - The FIRST NAMED INSURED stated in the Declarations shall act on behalf of all INSUREDS for the payment or return of premium, receipt and acceptance of any endorsement issued to form a part of this Policy, giving and receiving notice of cancellation or non-renewal, and the exercise of the rights provided under Section V. - EXTENDED REPORTING PERIOD.
- O. SUBROGATION** - If the INSURED has rights to recover, from another person or organization, all or any part of a payment the Company makes under this Policy, those rights are transferred to the Company. The INSURED shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The INSURED shall do nothing to prejudice such rights. Any monies recovered as a result of subrogation proceedings shall accrue first to the INSURED to the extent of any payments it made in excess of the limits of liability, then to the Company to the extent of its payment under the Policy, and then to the INSURED to the extent of its payment of the self-insured retention. Expenses incurred in such subrogation proceedings shall be apportioned amongst the INSURED and Company in the proportion that each interested party's share in the recovery bears to the total recovery.



# PURCHASE AGREEMENT

**AVAILABLE MONDAY**