

PROFESSIONAL LIABILITY AND COMMERCIAL GENERAL LIABILITY

(CLAIMS-MADE FORM)

The Company agrees with the Named Insured, in consideration of the payment of the premium and in reliance upon the statements in the Application, a signed copy of which is attached hereto and made a part hereof, and subject to the limit of liability, exclusions, conditions and other terms of this policy as follows:

I. COVERAGE - INSURING AGREEMENT

The Company will pay on behalf of the Insured, those sums which the Insured shall become legally obligated to pay as damages because of:

- A. professional liability
- B. bodily injury
- C. personal injury
- D. property damage

to which this insurance applies, caused by an occurrence, but only such occurrences for which CLAIMS ARE FIRST MADE AGAINST THE INSURED AND REPORTED TO THE COMPANY DURING THE POLICY PERIOD provided such occurrences are:

- (a) subsequent to the Retroactive Date set forth in the Declarations, and
- (b) prior to the expiration date set forth in the Declarations provided that:
 - (1) the Insured had no knowledge of any claim or suit or any occurrence which might reasonably be expected to result in a claim or suit as of the date of signing the application for this insurance; and
 - (2) there are no other certificates or policies pursuant to which the Insured is afforded coverage for such claim or suit.

II. COVERAGE - DEFENSE, SETTLEMENT AND SUPPLEMENTARY PAYMENTS

As respects such insurance as is afforded by the other terms of this policy, the Company shall:

- (a) defend in the Insured's name and behalf any suit against the Insured alleging damages from an occurrence, even if such suit is groundless, false or fraudulent, but the Company shall have the right to make such investigation and negotiation of any

claim or suit as may be deemed expedient by the Company;

- (b) pay all premiums on bonds to release attachments for any amount not in excess of the limit of liability of this policy, all premiums on appeal bonds required in any such defended suit, but without any obligation to apply for or furnish such bonds, all costs taxed against the Insured in any suit, all expenses incurred by the Company, all interest accruing after entry of judgement until the Company has paid, tendered or deposited in court such part of such judgement as does not exceed the limit of the Company's liability thereon;
- (c) reimburse the Insured for all reasonable expenses, other than loss of earnings, incurred at the Company's request, except amounts paid in settlement of any legal liability insured under I. Coverage, which liability shall be governed by the limit of liability stated in the Declarations.

The Company shall not be obligated to pay any claim, judgement or expenses, nor to defend any suit or claim after the applicable limit of liability has been exhausted by payment of judgements, settlements, expenses or any combination thereof.

III. EXTENDED DISCOVERY PERIOD

- (a) If the policy is cancelled or not renewed by the Company for reasons other than the Named Insured's non-payment of premium or deductible amount, or non-compliance with the terms and conditions of this policy, then any claim first made arising from an occurrence subsequent to the Retroactive Date and prior to the expiration or cancellation date may be reported to the Company during the Claims Extension Period stated in the Declarations. The quotation of a different premium or deductible amount or limit of liability for renewal does not constitute a cancellation or refusal to renew.
- (b) If the policy is cancelled or not renewed by the Named Insured an automatic thirty (30) day Claims Extension Period shall apply to claims, provided such claims are not covered under any subsequent insurance purchased by the Named In-

sured, or that would be covered but for exhaustion of the amount of insurance applicable to such claims. If during that period the Named Insured requests in writing and pays an additional premium not to exceed the greater of 175% of the premium stated in the Declarations or the Earned Premium for the policy period, the Claims Extension Period shall apply to CLAIMS FIRST MADE AGAINST THE INSURED during the twelve (12) months following immediately after the effective date of such cancellation or non-renewal, but only by reason of an occurrence subsequent to the Retroactive Date and prior to the expiration or cancellation date.

- (c) The Claims Extension Period in (b) above will not go into effect unless the additional premium is paid when due. Once in effect the Claims Extension Period may not be cancelled and the premium charged is fully earned.
- (d) The Claims Extension Period does not extend the policy or change the scope of coverage provided. The Claims Extension Period does not reinstate or increase the Limit of Liability provided by this policy.

IV. LIMIT OF LIABILITY

Regardless of the number of (1) Insureds under this policy, (2) persons or organizations who sustain loss or damage, or (3) claims made or suits brought because of professional liability, bodily injury, personal injury or property damage, the Company's liability is limited as follows:

The total liability of the Company for I. COVERAGE - INSURING AGREEMENT or II. COVERAGE - DEFENSE, SETTLEMENT AND SUPPLEMENTARY PAYMENTS or both combined shall not exceed the amount specified in Item III.(a) of the Declarations as the result of any one occurrence.

There is no limit to the number of occurrences during the policy period for which claims may be made, except that (1) the total liability of the Company arising out of either the products hazard, the completed operations hazard or professional liability or any combination thereof, because of all occurrences during each policy year shall not exceed the amount specified in Item III.(b) of the Declarations as aggregate; (2) the total liability of the Company for all damages because of all personal injury to which this coverage applies shall not exceed the amount stated in Item III.(b) of the Declarations as aggregate and (3) the total liability of the Company for all damages because of all property damage to which this coverage applies and described in any of the numbered subparagraphs below shall

not exceed the limit of liability stated in Item III. (b) of the Declarations as aggregate:

- (1) all property damage or expenses arising out of premises or operations, including property damage for which liability is assumed under any incidental contract relating to such premises or operations, but excluding property damage included in subparagraph (2) below;
- (2) all property damage or expenses arising out of and occurring in the course of operations performed for the Named Insured by independent contractors and general supervision thereof by the Named Insured, including any such property damage for which liability is assumed under any incidental contract relating to such operations, but this subparagraph (2) does not include property damage arising out of maintenance or repairs at premises owned by or rented to the Named Insured or structural alterations at such premises which do not involve changing the size of or moving buildings or other structures.

Such aggregate limit shall apply separately to the property damage described in subparagraphs (1) and (2) above, and under subparagraphs (1) and (2), separately with respect to each project away from premises owned by or rented to the Named Insured.

For the purpose of determining the limit of the Company's liability, all damages arising out of continuous or repeated exposure to substantially the same general conditions shall be considered as arising out of one occurrence.

MULTIPLE INSURED, CLAIMS AND CLAIMANTS:

The inclusion herein of more than one Insured or the making of claims by more than one person or organization shall not operate to increase the Company's limit of liability. Two or more claims arising out of a single occurrence, or a series of related occurrences, shall be treated as a single claim. All such claims, whenever made, shall be considered first made and reported to the Company during the policy period in which the earliest claim shall be reported to the Company and all such claims shall be subject to the same limit of liability.

V. DEDUCTIBLE

It is agreed that the Company's obligation to pay damages and expenses on behalf of the Insured applies only up to the total amount of damages and expenses (I. and II. Coverages) in excess of the deductible amount stated in the Declarations. The deductible shall be subtracted from the total amount resulting from each claim, and the Company shall be liable only for the difference between such deductible amount and the limit of liability otherwise applicable to each claim. The Company may pay any part or all of the

deductible amount to effect settlement of any claim or suit, and, upon notification of the action taken, the Named Insured shall promptly reimburse the Company for such part of the deductible amount as has been paid by the Company.

In the event that the Insured shall not promptly reimburse the Company for the deductible amount demanded, then any cost incurred by the Company in collection of the deductible amount shall be added to and applied in addition to the applicable deductible amount without limitation to such costs. These costs shall include but not be limited to collection agency fees, attorney's fees and interest.

VI. POLICY TERRITORY

- (a) the United States of America, its territories or possessions, or Canada, or
- (b) international waters or air space, provided the professional liability, bodily injury, personal injury, or property damage does not occur in the course of travel or transportation to or from any other country, state or nation, or
- (c) anywhere in the world with respect to damages because of professional liability, bodily injury, personal injury, or property damage arising out of a product which was sold for use or consumption within the territory described in paragraph (a) above, provided the original suit for such damages is brought within such territory;

VII. PERSONS OR ENTITIES INSURED

Each of the following is an Insured under this insurance to the extent set forth below:

- (a) if the Named Insured is designated in the Declarations as an individual, the person so designated but only with respect to the conduct of a business of which he is the sole proprietor, and the spouse of the Named Insured with respect to the conduct of such a business, and any employee or volunteer worker while acting within the scope of his duties as such;
- (b) if the Named Insured is designated in the Declarations as a partnership or joint venture, the partnership or joint venture so designated and any partner or member thereof but only with respect to his liability as such, and any employee or volunteer worker while acting within the scope of his duties as such;
- (c) if the Named Insured is designated in the Declarations as other than an individual, partnership or joint venture, the organization so designated and any executive officer, director, stockholder, employee or volunteer worker thereof while acting within the scope of his duties as such;

- (d) any person (other than an employee of the Named Insured) or organization while acting as real estate manager for the Named Insured; and
- (e) with respect to the operation, for the purpose of locomotion upon a public highway, of mobile equipment registered under any motor vehicle registration law, (i) an employee of the Named Insured while operating any such equipment in the course of his employment, and (ii) any other person while operating with the permission of the Named Insured any such equipment registered in the name of the Named Insured and any person or organization legally responsible for such operation, but only if there is no other valid and collectible insurance available, either on a primary or excess basis, to such person or organization; provided that no person or organization shall be an Insured under this paragraph (e) with respect to: (1) bodily injury to any fellow employee of such person injured in the course of his employment, or (2) property damage to property owned by, rented to, in charge of or occupied by the Named Insured or the employer of any person described in subparagraph (ii).

This insurance does not apply:

- (a) to liability of an Insured, if an individual physician, surgeon or dentist, for his personal acts or errors or omissions of a professional nature; or
- (b) to any liability arising out of the conduct of any partnership or joint venture of which the Insured is a partner or member and which is not designated in this policy as a Named Insured.

Firm Changes: Any change among the partners of the Named Insured, even though it results in change in the name or business style of the Named Insured shall not affect the liability hereunder, but such change shall be reported to the Company promptly.

VIII. EXCLUSIONS ONLY WITH RESPECT TO I. COVERAGE B, C, D AND II. COVERAGE

This policy does not apply:

- (a) to any claim made by or against any business enterprise not named in the Declarations:
 - (1) which is wholly or partly owned by any Insured; or
 - (2) which wholly or partly owns any Insured; or
 - (3) which is a parent, subsidiary, affiliated or sister company of any Insured; or
 - (4) which controls, operates or manages any Insured; or

- (5) in which any Insured is a partner, employee, officer, director, sole proprietor, stockholder or trustee; or to any claim made against any Insured solely because an Insured is a partner, employee, officer, director, sole proprietor, stockholder or trustee for any person or legal entity named in the Declarations;
- (b) to any claim for liability assumed by the Insured under any contract or agreement except:
 - (1) an incidental contract, or
 - (2) written contracts requiring indemnification of the indemnitee for all occurrences arising out of the indemnitor's operations, but this exception does not apply to:
 - (aa) the liability of the indemnitee resulting from his sole negligence;
 - (bb) contracts requiring indemnification of a railroad;
 - (cc) (1) if the Insured is an architect, engineer or surveyor, to bodily injury or property damage arising out of professional services performed by such Insured, including (i) the opinions, reports, surveys, change orders, designs or specifications, and (ii) supervisory, inspection or engineering services; (2) if the indemnitee of the Insured is an architect, engineer or surveyor, to the liability of the indemnitee, his agents or employees, arising out of (i) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications, or (ii) the giving of or failure to give directions or instructions by the indemnitee, his agents or employees, provided such giving or failure to give is the primary cause of the bodily injury or property damage;
 - (dd) to any obligation for which the Insured may be held liable in any action on a contract by a third party beneficiary for bodily injury or property damage arising out of a project for a public authority; but this exclusion does not apply to an action by the public authority or any other person or organization engaged in the project;
 - (ee) to liability arising out of construction maintenance or repair of watercraft or the loading or unloading thereof;
 - (ff) to liability arising out of operations within fifty feet of any railroad property or affecting any railroad bridge or trestle, tracks, road beds, tunnel, underpass or crossing;
 - (gg) to liability arising out of the completed operations hazard or the products hazard;
 - (hh) to liability arising out of (1) the explosion hazard, (2) the collapse hazard, or (3) the underground property hazard;
 - (c) to any claim for liability arising out of the ownership, maintenance, operation, use, loading or unloading of (1) any automobile or aircraft owned or operated by or rented or loaned to any Insured, or (2) any other automobile or aircraft operated by any person in the course of his employment by any Insured; but this exclusion does not apply to the parking of an automobile on premises owned by, rented to or controlled by the Named Insured or the ways immediately adjoining, if such automobile is not owned by or rented or loaned to any Insured;
 - (d) to any claim for liability arising out of (1) the ownership, maintenance, operation, use, loading or unloading of any mobile equipment while being used in any prearranged or organized racing, speed or demolition contest or in any stunting activity or in practice or preparation for any such contest or activity or (2) the operation or use of any snowmobile or trailer designed for use therewith;
 - (e) to any claim for liability arising out of and in the course of the transportation of mobile equipment by an automobile owned or operated by or rented or loaned to any Insured;
 - (f) to any claim for liability arising out of the ownership, maintenance, operation, use, loading or unloading of (1) any watercraft owned or operated by or rented or loaned to any Insured, or (2) any other watercraft operated by any person in the course of

his employment by any Insured; but this exclusion does not apply to watercraft while ashore on premises owned by, rented to or controlled by the Named Insured;

- (g) to any claim for liability arising out of the actual, alleged or threatened discharge, dispersal, release or escape of pollutants:
 - (1) at or from premises owned, rented or occupied by the Named Insured;
 - (2) at or from any site or location used by or for the Named Insured or others for the handling, storage, disposal, processing or treatment of waste;
 - (3) which are at any time transported, handled, stored, treated, disposed of, or processed as waste by, or for, the Named Insured or any person or organization for whom the Named Insured may be legally responsible; or
 - (4) at or from any site or location on which the Named Insured, or any contractor or subcontractor working directly or indirectly on behalf of the Named Insured, is performing operations:
 - (aa) if the pollutants are brought on, or to, the site or location in connection with such operations; or
 - (bb) if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize the pollutants;
- (h) to any claim for loss, cost or expense arising out of any governmental direction or request that the Named Insured test for, monitor, clean up, remove, contain, treat, detoxify or neutralize pollutants;
- (i) to any claim for liability due to war, whether or not declared, civil war, insurrection, rebellion or revolution or to any act or condition incident to any of the foregoing, with respect to liability assumed by the Insured under contract;
- (j) to any claim for liability for which the Insured or his indemnitee may be held liable if such liability is imposed, (1) by reason of the selling, serving or giving of any alcoholic beverage to a minor or to a person under the influence of alcohol or which causes or contributes to the intoxication of any person; (2) by, or because of the violation of, any statute, ordinance or regulation pertaining to the sale, gift, distribution or use of any alcoholic bev-

erage, or (i) as a person or organization engaged in the business of manufacturing, distributing, selling or serving alcoholic beverages, or (ii) if not so engaged, as an owner or lessor of premises used for such purposes; but part (1) of this exclusion does not apply with respect to liability of the Insured or his indemnitee as an owner or lessor described in (ii) above;

- (k) to any claim for obligation for which the Insured or any carrier as his insurer may be held liable under any workers' compensation, unemployment compensation or disability benefits law, or under any similar law;
- (l) to any claim for injury to:
 - (1) any employee of the Insured arising out of and in the course of employment by the Insured; or
 - (2) the spouse, child, parent, brother or sister of the employee as a consequence of (1) above;
- this exclusion applies:
 - (1) whether the Insured may be liable as an employer or in any other capacity; and
 - (2) to any obligation to share damages with or repay someone else who must pay damages because of the injury;
- (m) to any claim for property damage to (1) property owned or occupied by or rented to the Insured, (2) property used by the Insured, or (3) property in the care, custody or control of the Insured or as to which the Insured is for any purpose, exercising physical control; but parts (2) and (3) of this exclusion do not apply with respect to liability under a written sidetrack agreement and part (3) of this exclusion does not apply with respect to property damage (other than to elevators) arising out of the use of an elevator at premises owned by, rented to or controlled by the Named Insured;
- (n) to any claim for property damage to premises alienated by the Named Insured arising out of such premises or any part thereof;
- (o) to any claim for loss of use of tangible property which has not been physically injured or destroyed resulting from (1) a delay in or lack of performance by or on behalf of the Named Insured of any contract or agreement, or (2) the failure of the Named Insured's products or work performed by or on behalf of the Named Insured to meet the level of performance, quality, fitness or durability warranted or represented by the Named Insured;

but this exclusion does not apply to loss of use of other tangible property resulting from the sudden and accidental physical injury to or destruction of the Named Insured's products or work performed by or on behalf of the Named Insured after such products or work have been put to use by any person or organization other than an Insured;

- (p) to any claim for property damage to the Named Insured's products arising out of such products or any part of such products;
- (q) to any claim for property damage to work performed by or on behalf of the Named Insured arising out of the work or any portion thereof, or out of materials, parts or equipment furnished in connection therewith;
- (r) to any claim for damages for the withdrawal, inspection, repair, replacement, or loss of use of the Named Insured's products or work completed by or for the Named Insured or of any property of which such products or work form a part, if such products, work or property are withdrawn from the market or from use because of any known or suspected defect or deficiency therein;
- (s) to any claim for injury arising out of the willful violation of a penal statute or ordinance committed by or with the knowledge or consent of any Insured;
- (t) to any claim for injury sustained by any person as a result of an offense directly or indirectly related to the employment of such person by the Named Insured;
- (u) to any claim for injury arising out of any publication or utterance described in part (2) of the definition of Personal Injury, if the first injurious publication or utterance of the same or similar material by or on behalf of the Named Insured was made prior to the effective date of this insurance;
- (v) to any claim for injury arising out of a publication or utterance described in part (2) of the definition of Personal Injury, concerning any organization or business enterprise, or its products or services made by or at the direction of any Insured with knowledge of the falsity thereof;
- (w) to any claim for liability including but not limited to bodily injury, disease or sickness, including death at any time resulting therefrom, mental anguish or property damage including loss of use, for past, present or future claims arising in whole or in part, either directly or indirectly, out of the manufacture, distribution, sale, resale, rebranding, installation, repair, removal, encapsulation, abate-

ment, replacement or handling of, exposure to or testing for, asbestos or products containing asbestos whether or not the asbestos is or was at any time airborne as a fiber or particle, contained in a product, carried on clothing, inhaled, transmitted in any fashion or found in any form whatsoever.

It is further agreed that this policy does not apply to any liability including expenses for:

- (1) The costs of clean up or removal of asbestos of products and materials containing asbestos; or
- (2) The cost of such actions as may be necessary to monitor, assess and evaluate the release or threat of same, of asbestos or products and material containing asbestos;
- (3) The cost of disposal of asbestos substances or the taking of such other action as may be necessary to temporarily or permanently prevent, minimize or mitigate damage to the public health or welfare or to the environment, which may otherwise result;

- (x) to any claim for liability due to the rendering of or failure to render any professional service to which insurance applies under I. Coverage A, Professional Liability.

IX. EXCLUSIONS ONLY WITH RESPECT TO I. COVERAGE A AND II. COVERAGE

This policy does not apply:

- (a) to any claim arising out of personal injury;
- (b) to any claim arising out of, or contributed to by the dishonest, fraudulent, criminal or malicious act or omission of any Insured, or arising out of willful violation of any penal statute or ordinance;
- (c) to any claim arising out of infringement of trademark, trade name, patent or copyright;
- (d) to any claim arising out of discrimination by the insured including but not limited to age, color, race, sex, creed, national origin, or marital status;
- (e) to any claim for liability assumed by the Insured under any contract or agreement, either oral or in writing, unless such liability would have attached to the Insured even in the absence of such contract or agreement;
- (f) to any claim made by or against any business enterprise not named in the Declarations:
 - (1) which is wholly or partly owned by any Insured; or

- (2) which wholly or partly owns any Insured; or
- (3) which is a parent, subsidiary, affiliated or sister company of any Insured; or
- (4) which controls, operates or manages any Insured; or
- (5) in which any Insured is a partner, employee, officer, director, sole proprietor, stockholder or trustee; or to any claim made against any Insured solely because an Insured is a partner, employee, officer, director, sole proprietor, stockholder or trustee for any person or legal entity named in the Declarations;
- (g) to any claim based upon the insolvency or bankruptcy of any person, firm or organization;
- (h) to any claim arising out of the ownership, maintenance, operation or use, including loading and unloading, by or on behalf of the Insured, or at the direction of the Insured, of watercraft, automobiles or aircraft;
- (i) to any claim arising out of bodily injury, personal injury, sickness, disease or death to any employee of the Insured arising out of and in the course of his employment by the Insured; or any obligation for which the Insured or any carrier as his Insurer may be liable, under any Workers' Compensation, Unemployment Compensation, Disability Benefits Law or under any similar law;
- (j) to any claim for bodily injury to, or sickness, disease or death of any employee or volunteer worker of the Insured arising out of, and in the course of his employment by the Insured;
- (k) to any claim for injury arising out of the performance of a criminal act or caused by a person while under the influence of intoxicants or narcotics;
- (l) to any claim arising out of or resulting from either sexual abuse or licentious, immoral or sexual behavior intended to lead to, or culminating in any sexual act, whether caused by, or at the instigation of, or at the direction of, or omission by, the Insured, his employees, patrons or any causes whatsoever;
- (m) to any claim arising out of, contributed to, by, or resulting from, directly or indirectly:
 - (1) any infection caused by the transmission, testing or failure to test for the presence of any one or more of the following viruses including any counseling related thereto:

- (a) Human Immunodeficiency Virus, and variations thereof;
- (b) Human T Lymphotropic Virus, and variations thereof;
- (c) Lymphadenopathy Associated Virus;
- (2) the transmission of Acquired Immune Deficiency Syndrome (AIDS) or any AIDS like condition caused as a result of the Named Insured's professional services;
- (n) to any claim including but not limited to bodily injury, personal injury, mental anguish or property damage including loss of use, for past, present or future claims arising out of the presence, discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, oil or other petroleum substances or derivatives, waste materials or other irritants, contaminants, pollutants or any substance which are or may be injurious to public health or the environment (herein called "hazardous substances") into or upon land, the atmosphere or any water course or body of water; or
 - (1) the costs of clean up or removal of hazardous substances; or
 - (2) the cost of such actions as may be necessary to monitor, assess and evaluate the presence, discharge, dispersal, escape, release, or threat of same, of hazardous substances; or
 - (3) the cost of disposal of hazardous substances or the taking of such other action as may be necessary to temporarily or permanently prevent, minimize, or mitigate damage to the public health or welfare or to the environment, which may otherwise result; or
 - (4) any loss, cost or expense arising out of any governmental direction or request that the Named Insured test for, monitor, clean up, remove, contain, treat, detoxify or neutralize pollutants.

X. DEFINITIONS

When used in this policy (including endorsements forming a part hereof):

"automobile" means a land motor vehicle, trailer or semi-trailer designed for travel on public roads (including any machinery or apparatus attached thereto), but does not include mobile equipment;

"bodily injury" means bodily injury, sickness or disease sustained by any person which occurs during the policy period, including death at any time resulting therefrom;

"claim" means either:

- (a) a demand received by any Insured for money or services; or
- (b) a notice received by an Insured alleging a breach of duty by an Insured; or
- (c) service of suit, or notice received of the initiation of arbitration or other proceedings against an Insured;

"completed operations hazard" includes bodily injury and property damage arising out of operations or reliance upon a representation or warranty made at any time with respect thereto, but only if the bodily injury or property damage occurs after such operations have been completed or abandoned and occurs away from premises owned by or rented to the Named Insured. **"Operations"** include materials, parts or equipment furnished in connection therewith. Operations shall be deemed completed at the earliest of the following times:

- (1) when all operations to be performed by or on behalf of the Named Insured under the contract have been completed,
- (2) when all operations to be performed by or on behalf of the Named Insured at the site of the operations have been completed, or
- (3) when the portion of the work out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

Operations which may require further service or maintenance work, or correction, repair or replacement because of any defect or deficiency, but which are otherwise complete, shall be deemed completed.

The completed operations hazard does not include bodily injury or property damage arising out of:

- (a) operations in connection with the transportation of property, unless the bodily injury or property damage arises out of a condition in or on a vehicle created by the loading or unloading thereof,
- (b) the existence of tools, uninstalled equipment or abandoned or unused materials, or
- (c) operations for which the classification stated in the policy or in the Company's manual specifies **"including completed operations"**;

"contractual liability" means liability expressly assumed under a written contract or agreement; provided, however, that contractual liability shall not be construed as including liability under a warranty of the fitness or quality of the Named Insured's products or a warranty that work performed by or on behalf of the Named Insured will be done in a workmanlike manner;

"damages" means a monetary judgement, award or settlement and does not include:

- (a) punitive or exemplary damages or any damages which are a multiple of compensatory damages, or penalties;
- (b) the restitution of compensation and expenses paid to the Insured for services or goods;
- (c) judgements or awards arising from acts deemed uninsurable by law;

"incidental contract" means any written (1) lease of premises, (2) easement agreement, except in connection with construction or demolition operations on or adjacent to a railroad, (3) undertaking to indemnify a municipality required by municipal ordinance, except in connection with work for the municipality, (4) sidetrack agreement, or (5) elevator maintenance agreement;

"infection" means either:

- (a) the invasion of the body by germs or viruses that reproduce and multiply, causing disease or local injury, release or poison, germ antibody reaction, or virus antibody reaction in the cells;
- (b) a disease caused by the invasion of the body by germs or viruses.

"Insured" means any person or organization qualifying as an Insured in the **"Persons or Entities Insured"** provision of the applicable insurance coverage. The insurance afforded applies separately to each Insured against whom claim is made or suit is brought, except with respect to the limits of "the Company's" liability;

"mobile equipment" means a land vehicle (including any machinery or apparatus attached thereto), whether or not self-propelled, (1) not subject to motor vehicle registration, or (2) maintained for use exclusively on premises owned by or rented to the Named Insured, including the ways immediately adjoining, or (3) designed for use principally off public roads, or (4) designed or maintained for the sole purpose of affording mobility to equipment of the following types forming an integral part of or permanently attached to such vehicle: power cranes, shovels, loaders, diggers and drills; concrete mixers (other than the mix-in-transit type); graders, scrapers, rollers and other road construction or repair equipment; air-compressors, pumps and generators, including spraying, welding and building cleaning equip-

ment; and geophysical exploration and well servicing equipment;

"Named Insured" means the person or organization named in the Declarations of this policy;

"Named Insured's products" means goods or products manufactured, sold, handled or distributed by the Named Insured or by others trading under his name, including any container thereof (other than a vehicle), but **"Named Insured's products"** shall not include a vending machine or any property other than such container, rented to or located for use of others but not sold;

As respects I. Coverage A, **"occurrence"** means any damages sustained during the policy term, by any person or organization and arising out of professional liability as defined herein. As respects I. Coverages B and D, **"occurrence"** means an accident, including continuous or repeated exposure to conditions, which results in bodily injury or property damage, neither expected nor intended from the standpoint of the Insured. As respects I. Coverage C, **"occurrence"** means any injury or damage sustained during the policy term, by any person or organization and arising out of personal injury as defined herein;

"personal injury" means (1) false arrest, detention or imprisonment, or malicious prosecution or, (2) the publication or utterance of a libel or slander or of other defamatory or disparaging material, or a publication or utterance in violation of an individual's right of privacy; except publications or utterances in the course of or related to advertising, broadcasting or telecasting activities conducted by or on behalf of the Named Insured or; (3) wrongful entry or eviction, or other invasion of the right of private occupancy;

"pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste; waste includes materials to be recycled, reconditioned or reclaimed;

"products hazard" includes bodily injury and property damage arising out of the Named Insured's products or reliance upon a representation or warranty made at any time with respect thereto, but only if the bodily injury or property damage occurs away from premises owned by or rented to the Named Insured and after physical possession of such products has been relinquished to others;

"property damage" means (1) physical injury to or destruction of tangible property which occurs during the policy period, including the loss of use thereof at any time resulting therefrom, or (2) loss of use of tangible property which has not been physically injured or destroyed provided such loss of use is caused by an occurrence during the policy period;

"professional liability" means damages by reason of any negligent act or error or omission due to professional services rendered or which should have been rendered by an Insured or by any other person for whose acts the Named Insured is legally liable, arising out of the conduct of the Named Insured's business as described in Item I. on the Declarations.

"transmission" means the transfer or carrying of a condition or disease such as an infectious or inborn disease, or an inborn trait, from one person or place to another.

XI. CONDITIONS

1. Premium

All premiums for this policy shall be computed in accordance with the Company's rules, rates, rating plans, premiums and minimum premiums applicable to the Insurance afforded herein.

Premium designated in this policy as "advance premium" is a deposit premium only which shall be credited to the amount of the earned premium due at the end of the policy period. At the close of each period (or part thereof terminating with the end of the policy period) designated in the policy as the audit period, the earned premium shall be computed for such period and, upon notice thereof to the Named Insured, shall become due and payable. Should it become necessary to institute collection activities, including litigation, in order to collect the additional earned premium, then the insured shall be responsible for 100% of the expense, fees and costs incurred by the Company in that regard plus any collectible interest. If the total computed earned premium for the policy period is less than the premium previously paid, then the Company shall receive and retain no less than the minimum annual premium(s) listed in the Declarations attached hereto.

The Named Insured shall maintain records of such information as is necessary for premium computation, and shall send copies of such records to the Company at the end of the policy period and at such times during the policy period as the Company may direct.

2. Inspection and Audit

The Company shall be permitted but not obligated to inspect the Named Insured's property and operations at any time. Neither the Company's right to make inspections nor the making thereof nor any report thereon shall constitute an undertaking, on behalf of, or for the benefit of the Named Insured or others, to determine or warrant that such

property or operations are safe or healthful, or are in compliance with any law, rule or regulation.

The Company may examine and audit the Named Insured's books and records at any time during the policy period and extensions thereof and within three years after the final termination of this policy, as far as they relate to the subject matter of this insurance.

3. Financial Responsibility Laws

When this policy is certified as proof of financial responsibility for the future under the provisions of any motor vehicle financial responsibility law, such insurance as is afforded by this policy for bodily injury liability or for property damage liability shall comply with the provisions of such law to the extent of the coverage and limits of liability by such law. The Insured agrees to reimburse the Company for any payment made by the Company which it would not have been obligated to make under the terms of this policy except for the agreement contained in this paragraph.

4. Insured's Duties in the Event of Occurrence, Claim or Suit

- (a) In the event of an occurrence, written 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's authorized representative as soon as practicable.
- (b) If claim is made or suit is brought against the Insured, the Insured shall immediately forward to the Company's authorized representative every demand, notice, summons or other process received by him or his representative.
- (c) The Insured shall cooperate with the Company and, upon the Company's request, assist in making settlements, in the conduct of suits and in enforcing any right of contribution or indemnity against any person or organization who may be liable to the Insured because of injury or damage with respect to which insurance is afforded under this policy; and the Insured shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses.

The Insured shall not, except at his own cost, voluntarily make any payment, assume any obligation or incur any expense other than for first aid to others at the time of accident.

5. Action Against the Company

No action shall lie against the Company unless, as a condition precedent thereto, the Insured shall have fully complied with all the terms of this policy, nor until the amount of the Insured's obligation to pay shall have been finally determined either by judgement against the Insured after actual trial or by written agreement of the Insured, the claimant and the Company. The Insured shall make a definite claim for any loss in which the Company may be liable within a reasonable time after such final determination. If any subsequent payments are made by the Insured on account of the same occurrence, the Insured shall make additional claims from time to time and these claims shall be payable within thirty (30) days after proof in conformity with this policy. Any person or organization or the legal representative thereof who has secured such judgement or written agreement shall thereafter be entitled to recover under this policy to the extent of the insurance afforded by this policy. Nothing contained in this policy shall give any person or organization any right to join the Company as a co-defendant in any action against the Insured to determine the Insured's liability. Bankruptcy or insolvency of the Insured shall not relieve the Company of any of its obligations hereunder.

6. Other Insurance

The insurance afforded by this policy is primary insurance, except when stated to apply in excess of or contingent upon the absence of other insurance. When this insurance is primary and the Insured has other insurance which is stated to be applicable to the loss on an excess or contingent basis, the amount of the Company's liability under this policy shall not be reduced by the existence of such other insurance.

When both this insurance and other insurance apply to the loss on the same basis, whether primary, excess or contingent, the Company shall not be liable under this policy for a greater proportion of the loss than that stated in the applicable contribution provision below:

- (a) Contribution by Equal Shares. If all of such other valid and collectible insurance provides for contribution by equal shares,

the Company shall not be liable for a greater proportion of such loss than would be payable if each insurer contributes an equal share until the share of each insurer equals the lowest applicable limit of liability under any one policy or the full amount of the loss is paid, and with respect to any amount of loss not so paid the remaining insurers then continue to contribute equal shares of the remaining amount of the loss until each such insurer has paid its limit in full or the full amount of the loss is paid.

- (b) Contribution by Limits. If any of such other insurance does not provide for contribution by equal shares, the Company shall not be liable for a greater proportion of such loss than the applicable limit of liability under this policy for such loss bears to the total applicable limit of liability of all valid and collectible insurance against such loss.

This policy shall not apply to and shall be null and void as to:

- (a) professional services rendered, or which should have been rendered, prior to the effective date hereof for which other insurance exists to provide the Insured any coverage for claims or liabilities resulting therefrom; or
- (b) claims or suits, arising within twelve (12) months from the date of cancellation by the Company, arising from professional services rendered, or which should have been rendered during the policy period prior to the date of cancellation, when there is other available insurance for such claim or suit.

If collectible insurance under any other policy or policies with this Company issued to this Insured is available for any one occurrence or claim, the Company's total liability shall in no event exceed the greater limit of liability applicable to such claim under this or any other such policy or policies.

7. Subrogation

In the event of any payment under this policy, the Company shall be subrogated to all the Insured's rights of recovery therefor against any person or organization and the Insured shall execute and de-

liver instruments and papers and do whatever else is necessary to secure such rights. The Insured shall do nothing after loss to prejudice such rights.

8. Changes

Notice to, or knowledge possessed by, any representative of the Company 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 shall the terms of this policy be waived or changed, except by endorsement issued to form a part of this policy.

9. Assignment

Assignment of interest under this policy shall not bind the Company until its consent is endorsed hereon; if, however, the Named Insured shall die, such insurance as is afforded by this policy shall apply (1) to the Named Insured's legal representative, as the Named Insured, but only while acting within the scope of his duties as such, and (2) with respect to the property of the Named Insured, to the person having proper temporary custody thereof, as Insured, but only until the appointment and qualification of the legal representative.

10. Multi-Year Policy

If this policy is issued for a period of two or more years, any limit of the Company's liability stated in this policy as "aggregate" shall apply separately to each consecutive annual period thereof.

11. Cancellation

This policy may be cancelled by the Named Insured by surrender thereof to the Company's authorized representative or by mailing to the Company or any of its authorized representatives written notice stating when thereafter the cancellation shall be effective. This policy may be cancelled by the Company by mailing to the Named Insured, at the Address shown in this policy, written notice stating when, not less than thirty (30) days thereafter, such cancellation shall be effective. However, in the event of cancellation for non-payment of premium, this policy may be cancelled by the Company after ten (10) days written notice has been sent. The mailing of notice as aforesaid shall be sufficient proof of notice. The time of surrender or the effective date and hour of cancellation stated in the notice shall become the end of the policy period. Delivery of such written notice either by the Named Insured or by the Company shall be equivalent to mailing.

If the Named Insured cancels, earned premium shall be computed in accordance with the customary short rate table and procedure. If the Company cancels, earned premium shall be computed pro rata.

When this policy insures more than one Named Insured cancellation may be effected by the first named of such Named Insureds for the account of all Named Insureds. Notice of cancellation by the Company to the first Named Insured shall be deemed notice to all Named Insureds and payment of any unearned premium to such first Named Insureds shall be for the account of all Named Insureds. Premium adjustment may be made either at the time cancellation is effected or as soon as practicable after cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation.

12. Terms of Policy Conformed to Statute:

The terms of this policy which are in conflict with the statutes of the state wherein this contract is issued are hereby amended to conform to such statutes.

13. Application

By acceptance of this policy, the Named Insured agrees that the statements in the application are his representations, that this policy is issued in reliance upon the truth of such representations and that this policy embodies all agreements existing between himself and the Company, or any of its Agents, relating to this insurance.

This policy shall not be binding upon the Company unless completed by a signed Application and a Declarations Page, countersigned on the aforesaid Declarations Page by a duly authorized representative of the Company.

