

Policy Number: _____

Previous Policy Number: _____

MITIGATION BANK INSURANCE POLICY DECLARATIONS

INSURER	UNDERWRITING OFFICE	PRODUCER
Catlin Specialty Insurance Company 160 Greentree Drive Suite 101 Dover, DE 19904	1600 Market Street Suite 1616 Philadelphia, PA 19103	

CLAIMS MADE AND REPORTED COVERAGE

NOTICE: THIS IS A CLAIMS-MADE POLICY. THIS POLICY HAS CERTAIN PROVISIONS AND REQUIREMENTS UNIQUE TO IT AND MAY BE DIFFERENT FROM OTHER POLICIES A "NAMED INSURED" MAY HAVE PURCHASED. FOR THERE TO BE COVERAGE UNDER THIS POLICY, A "CLAIM" MUST FIRST BE MADE BY THE "REGULATORY BODY" DURING THE "POLICY PERIOD". THIS POLICY INCLUDES NO DUTY TO DEFEND OR PAY DEFENSE COSTS.

PLEASE READ THE ENTIRE POLICY CAREFULLY

ITEM 1:

Named Insured:	
Mailing Address:	

A.)	Mitigation Bank	
B.)	Insured Property	

ITEM 2:

Policy Period: From: _____ To: _____

At 12:01 A.M. both dates at your mailing address shown above.

Note: The following, or similar language, will be stamped to the policy. This is a state regulatory requirement for all non-standard (surplus lines) policies. Surplus Lines policies all require that agents have separate state licenses. This stamp is placed on the policy by the surplus lines licensed agent to identify the surplus lines license and to identify the Non-admitted status of the insurer.

This Company is not licensed to do business in _____ (State), and is not subject to the _____ (State) Insurance Guarantee Act.

Excess & Surplus Lines Broker _____ (Name) _____ (address)
_____ (License #)

ITEM 3: LIMIT OF LIABILITY

The Limit of Liability shown below are for the respective terms. Please refer to the endorsement attached to this policy "Amendment of Limit of Liability Endorsement" (EGWL 401) for the actual limit in force.

Limit of Liability beginning at 12:01 am on the beginning date listed and ending date 12:01 on the ending date listed in the EGWL 401:

LIMIT: \$ _____

ITEM 4: DEDUCTIBLE \$ _____ Per Claim

ITEM 5: RETROACTIVE DATE: _____

ITEM 6:

POLICY PREMIUM \$ _____ **100% minimum and earned on the inception date of the policy**

TRIA PREMIUM \$ Included

STATE TAX OR OTHER (IF APPLICABLE): \$ _____

TOTAL PREMIUM \$ _____ **Total Premium 100% minimum and earned on the inception date of the policy.**

ITEM 7: REGULATORY BODY:

Name:	
Address:	

The name and address above will be used for all notices to the "regulatory body".


ITEM 8:

FORMS AND ENDORSEMENTS FORMING A PART OF THIS POLICY AS OF THE INCEPTION DATE:

See attached schedule of forms and endorsement:

STATE AND FEDERAL REQUIRED AMENDATORY ENDORSEMENTS:

THESE DECLARATIONS, TOGETHER WITH THE COMMON POLICY CONDITIONS AND COVERAGE FORM(S) AND ANY ENDORSEMENT(S), COMPLETE THE ABOVE NUMBERED POLICY.

Countersigned:	By: 
Date:	Authorized Representative: Scott McDougall

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

SCHEDULE OF FORMS AND ENDORSEMENTS

Named Insured: <i>Specimen Form</i>	
Policy Number: <i>Specimen Form</i>	Policy Period From: To:
Forms and Endorsements	
PNAP 002 0112	Privacy Policy
PNAP 003 1208	US Treasury Dept office of Foreign Assets Control (OFAC)
PNAP 041 1211	Mitigation Bank Insurance Coverage Forms (USACE Notice)
ABAP 900 1008	Service of Suit
ABAP 401 0807	In Witness Endorsement
ABAP 302 1007	Schedule of Forms and Endorsements
EGWL 001 0312	Mitigation Bank Insurance Policy Declarations
EGWL 050 0312	Mitigation Bank Insurance Coverage Form
EGWL 600 0311	Nuclear Energy Exclusion Endorsement
EGWL 403 0911	Notice to Named Insured Endorsement
EGWL 401 0312	Amendment of Limit of Liability Endorsement
EGWL 402 0911	Minimum Premium Endorsement
EGWL 300 0911	Scheduled Insured Property and Mitigation Banking Instrument Endorsement
EGWL 601 0611	Exclusion of Certified Nuclear, Biological, Chemical or Radiological Acts of Terrorism and Exclusion of other Acts Terrorism Committed Outside the United States; Cap on losses from Certifies Acts of Terrorism
PNCL N12 0811	Claims Notice

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

MINIMUM PREMIUM ENDORSEMENT

This endorsement modifies insurance provided as follows;

It is understood and agreed the premium designated in the declarations is the minimum premium that applies to the policy period shown in the declarations and is 100% earned at inception.

All other terms, conditions and exclusions remain unchanged.

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective: _____ Policy No.: _____ Endorsement No. _____

Insured: _____ Premium: _____

Insurance Company: _____

Authorized Signature: _____

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

NUCLEAR ENERGY EXCLUSION ENDORSEMENT

In consideration of the payment of the premium for this Policy, it is hereby understood and agreed that the following is added to the Policy:

NUCLEAR ENERGY EXCLUSION

The Company shall not be liable to make any payment in connection with any "claim":

- (a) arising out of, based upon or in consequence of, directly or indirectly resulting from or in any way involving "**HAZARDOUS PROPERTIES**" of "**NUCLEAR MATERIAL**"; or
- (b) which coverage is provided under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability underwriters, or Nuclear Insurance Association of Canada, or would be insured under any such policy but for its termination or exhaustion of its limit of liability; or
- (c) with respect to which:
 - 1. any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof; or
 - 2. the "Named Insured" is, or had this Policy not been issued, would be entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.

For the purpose of this Endorsement, the following is added to Section **VII. DEFINITIONS**:

- "**BYPRODUCT MATERIAL**" shall have the meaning given in the Atomic Energy Act of 1954 or in any law amendatory thereof.
- "**HAZARDOUS PROPERTIES**" shall mean radioactive, toxic or explosive properties.
- "**NUCLEAR FACILITY**" means:
 - 1. any "**NUCLEAR REACTOR**";
 - 2. any equipment or device designed or used for:
 - i. separating the isotopes of uranium or plutonium;
 - ii. processing or utilizing "**SPENT FUEL**"; or
 - iii. handling, processing or packaging "**WASTE**";
 - 3. any equipment or device used for the processing, fabricating or alloying of "**SPECIAL NUCLEAR MATERIAL**" if at any time the total amount of such "**SPECIAL NUCLEAR MATERIAL**" in the custody of the "Named Insured" at the premises where such equipment or device is located consists of or contains more

than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235; or

4. any structure, basin, excavation, premises or place prepared or used for the storage or disposal of **"WASTE"**, and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations.

- **"NUCLEAR REACTOR"** means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material.
- **"NUCLEAR MATERIAL"** means **"SOURCE MATERIAL"**, **"SPECIAL NUCLEAR MATERIAL"** and/or **"BYPRODUCT MATERIAL"**.
- **"SOURCE MATERIAL"** shall have the meaning given in the Atomic Energy Act of 1954 or in any law amendatory thereof.
- **"SPECIAL NUCLEAR MATERIAL"** shall have the meaning given in the Atomic Energy Act of 1954 or in any law amendatory thereof.
- **"SPENT FUEL"** means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a **"NUCLEAR REACTOR"**.
- **"WASTE"** means any waste material:
 1. containing **"BYPRODUCT MATERIAL"**; or
 2. resulting from the operation by any person or organization of any **"NUCLEAR FACILITY"** included within Paragraph 1. or 2. of the definition of **"NUCLEAR FACILITY"**.

All other terms, conditions and exclusions remain unchanged.

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective: _____ Policy No.: _____ Endorsement No. _____

Insured: _____ Premium: _____

Insurance Company: _____

Authorized Signature: _____

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION OF CERTIFIED NUCLEAR, BIOLOGICAL, CHEMICAL OR RADIOLOGICAL ACTS OF TERRORISM AND EXCLUSION OF OTHER ACTS OF TERRORISM COMMITTED OUTSIDE THE UNITED STATES; CAP ON LOSSES FROM CERTIFIED ACTS OF TERRORISM

This endorsement modifies insurance provided as follows:

A. The following exclusion is added:

This insurance does not apply to:

TERRORISM

1. "Any Claim" arising, directly or indirectly, out of a "certified act of terrorism". However, this exclusion applies only when one or more of the following are attributed to such act:
 - a. The terrorism involves the use, release or escape of nuclear materials, or directly or indirectly results in nuclear reaction or radiation or radioactive contamination; or
 - b. The terrorism is carried out by means of the dispersal or application of pathogenic or poisonous biological or chemical materials; or
 - c. Pathogenic or poisonous biological or chemical materials are released, and it appears that one purpose of the terrorism was to release such materials.
2. "Any Claim" arising, directly or indirectly, out of an "other act of terrorism" that is committed outside of the United States (including its territories and possessions and Puerto Rico), but within the "coverage territory". However, this exclusion applies only when one or more of the following are attributed to such act:
 - a. The total of insured damage to all types of property exceeds \$25,000,000 (valued in U.S. dollars). In determining whether the \$25,000,000 threshold is exceeded, we will include all insured damage sustained by property of all persons and entities affected by the terrorism and business interruption losses sustained by owners or occupants of the damaged property. For the purpose of this provision, insured damage means damage that is covered by any insurance plus damage that would be covered by any insurance but for the application of any terrorism exclusions; or
 - b. Fifty or more persons sustain death or serious physical injury. For the purposes of this provision, serious physical injury means:
 - (1) Physical injury that involves a substantial risk of death; or
 - (2) Protracted and obvious physical disfigurement; or
 - (3) Protracted loss of or impairment of the function of a bodily member or organ; or
 - c. The terrorism involves the use, release or escape of nuclear materials, or directly or indirectly results in nuclear reaction or radiation or radioactive contamination; or
 - d. The terrorism is carried out by means of the dispersal or application of pathogenic or poisonous biological or chemical materials; or
 - e. Pathogenic or poisonous biological or chemical materials are released, and it appears that one purpose of the terrorism was to release such materials.

With respect to this exclusion, Paragraphs **a.** and **b.** describe the thresholds used to measure the magnitude of an incident of an "other act of terrorism" and the circumstances in which the threshold will apply for the purpose of determining whether this exclusion will apply to that incident

B. The following definitions are added:

1. For the purposes of this endorsement, "any claim" means a written notice given by the "regulatory body" to the Company setting forth in detail the information required by Section V.A. under this Coverage Part to which this endorsement is applicable, and includes but is not limited to "any claim" as may be defined in this Coverage Part.
2. "Certified act 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. The criteria contained in the Terrorism Risk Insurance Act for a "certified act of terrorism" include the following:
 - a. The act resulted in insured losses in excess of \$5 million in the aggregate, attributable to all types of insurance subject to the Terrorism Risk Insurance Act; and
 - b. The act resulted in damage:
 - (1) Within the United States (including its territories and possessions and Puerto Rico); or
 - (2) Outside of the United States in the case of:
 - (a) An air carrier (as defined in Section 40102 of title 49, United States Code) or United States flag vessel (or a vessel based principally in the United States, on which United States income tax is paid and whose insurance coverage is subject to regulation in the United States), regardless of where the loss occurs; or
 - (b) The premises of any United States mission; and
 - c. The act is a violent act or an act that is dangerous to human life, property or infrastructure and is committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.
3. "Other act of terrorism" means a violent act or an act that is dangerous to human life, property or infrastructure that is committed by an individual or individuals and that appears to be part of an effort to coerce a civilian population or to influence the policy or affect the conduct of any government by coercion, and the act is not a "certified act of terrorism".

Multiple incidents of an "other act of terrorism" which occur within a seventy-two hour period and appear to be carried out in concert or to have a related purpose or common leadership shall be considered to be one incident

C. In the event of any incident of a "certified act of terrorism" or an "other act of terrorism: that is not subject to this exclusion, coverage does not apply to any loss or damage that is otherwise excluded under this Coverage Part.

D. If aggregate insured losses attributable to terrorist acts certified under the federal Terrorism Risk Insurance Act exceed \$100 billion in a Program Year (January 1 through December 31) and we have met our insurer deductible under the Terrorism Risk Insurance Act, we 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, conditions and exclusions remain unchanged.

Specimen

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective: _____ Policy No.: _____ Endorsement No. _____

Insured: _____ Premium: _____

Insurance Company: _____

Authorized Signature: _____

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

SERVICE OF SUIT

The following service of suit provision is added and replaces any other Service of Suit provision contained elsewhere in this policy:

The Superintendent, Commissioner or Director of Insurance of the State is hereby designated the true and lawful attorney of the Company upon whom may be served all lawful process in any action, suit or proceeding arising out of this policy. The Company further designates:

**Steve Adams
Legal Counsel
3340 Peachtree Road N.E.
Suite 2950
Atlanta, GA 30326**

as its agent to whom such process shall be forwarded by the Director of Insurance.

For Illinois exposures, the Insurer further designates the Director of the Illinois Division of Insurance and his successors in office, as its true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the insured or any beneficiary hereunder arising out of an Illinois exposure and this contract of insurance.

All other terms, conditions and exclusions remain unchanged.

IN WITNESS ENDORSEMENT

CATLIN SPECIALTY INSURANCE COMPANY

ADMINISTRATIVE OFFICE: 3340 Peachtree Road N.E.
Tower Place 100
Suite 2950
Atlanta, GA 30326

STATUTORY HOME OFFICE: 160 Greentree Drive
Suite 101
Dover, Delaware 19904

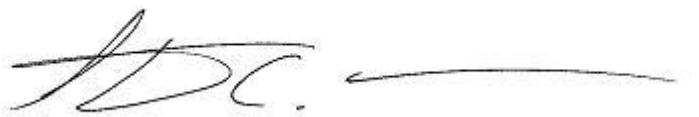
It is hereby agreed and understood that the following In Witness Clause supercedes any and all other In Witness clauses in this policy.

All other provisions remain unchanged.

IN WITNESS WHEREOF, the Company has caused this policy to be executed and attested, and, if required by state law, this policy shall not be valid unless countersigned by a duly authorized representative of the Company.



Richard S. Banas
President



Steven C. Adams
Secretary

NOTICE TO POLICYHOLDERS

CLAIMS NOTICE

All claims must be reported to Catlin at:

Catlin
Attn: Claims
P.O. Box 8049
Scottsdale, AZ 85252

E-mail: CatlinClaims.Energy@catlin.com

Phone: 888-443-4910
Fax: 404-443-4912

U.S. TREASURY DEPARTMENT'S OFFICE OF FOREIGN ASSETS CONTROL ("OFAC")

No coverage is provided by this Policyholder Notice nor can it be construed to replace any provisions of your policy. You should read your policy and review your Declarations page for complete information on the coverages you are provided.

This Policyholder Notice provides information concerning the possible impact on your insurance coverage provided under your policy due to directives issued by OFAC. Please read this Policyholder Notice carefully.

OFAC administers and enforces economic and trade sanctions based on US foreign policy and national security goals based on Presidential declarations of "national emergency." OFAC has identified and listed numerous:

- Foreign agents
- Front organizations
- Terrorists
- Terrorist organizations
- Narcotics traffickers

as "Specially Designated Nationals and Blocked Persons." This list can be found on the United States Treasury's web site – <http://www.treas.gov/ofac>.

In accordance with OFAC regulations, if it is determined that you or any other insured, or any person or entity claiming the benefits of this insurance has violated US sanctions law or is a Specially Designated National and Blocked Person, as identified by OFAC, this insurance will be considered a blocked or frozen contract and all provisions of this insurance will be immediately subject to OFAC. When an insurance policy is considered to be such a blocked or frozen contract, neither payments nor premium refunds may be made without authorization from OFAC. Other limitations on the premiums and payments may also apply.

PRIVACY POLICY

Catlin insurance group [the "Companies"], believes personal information that we collect about our customers, potential customers, and proposed insureds [referred to collectively in this Privacy Policy as "customers"] must be treated with a high degree of confidentiality. For this reason and in compliance with the Title V of the Gramm-Leach-Bliley Act ["GLBA"], we have developed a Privacy Policy that applies to all of our U.S. based companies. For purposes of our Privacy Policy, the term "personal information" includes all nonpublic information we obtain about a customer and maintain in a personally identifiable way. In order to assure the confidentiality of the personal information we collect and in order to comply with applicable laws, all individuals with access to personal information about our customers are required to follow this policy.

Our Privacy Statement

Your privacy and the confidentiality of your business records are important to us. Information and the analysis of information is essential to the business of insurance and critical to our ability to provide to you excellent, cost-effective service and products. We understand that gaining and keeping your trust depends upon the security and integrity of our records concerning you. Accordingly, our practice is to:

1. Follow appropriate standards of security and confidentiality to protect any information you share with us or information that we receive about you;
2. Verify and exchange information regarding your credit and financial status only for the purposes of underwriting, policy administration, risk management, or claims handling and only with reputable references and clearinghouse services;
3. Collect and use information about you and your business to advise you about and deliver to you excellent service and products and to administer our business;
4. Train our employees to handle personal information about you or your business in a secure and confidential manner and maintain reasonable access controls. Not disclose personal information about you or your business to any organization outside the Catlin insurance group of Companies or to third party service providers unless we disclose to you our intent to do so or we are permitted to do so by law;
5. Not disclose medical information about you, your employees, or any claimants under any policy of insurance, unless you provide us with written authorization to do so, or unless the disclosure is for any specific business exception provided in the law;
6. Attempt, with your help, to keep our records regarding you and your business complete and accurate, and will advise you how and where to access your account information [unless prohibited by law], and will advise you how to correct errors or make changes to that information; and
7. Audit and assess our operations, personnel and third party service providers to assure that your privacy is respected.

Collection and Sources of Information

We collect from a customer or potential customer only the personal information that is necessary for [a] determining eligibility for the product or service sought by the customer, [b] administering the product or service obtained, and [c] advising the customer about our products and services. The information we collect generally comes from the following sources:

Submission – During the submission process, you provide us with information about you and your business, such as your name, address, phone number, e-mail address, and other types of personal identification information;

Quotes – We collect information to enable us to determine your eligibility for the particular insurance product and to determine the cost of such insurance to you. The information we collect will vary with the type of insurance you seek. We collect most of our information directly from you through our agents or broker. Depending on the nature of your insurance transaction we may need additional information from outside sources such as motor vehicle records, loss information reports, court records or other public records. In some instances, we may send someone to inspect your property and verify information about its value and condition, and a photo of the property may be taken;

NOTICE TO POLICYHOLDERS

Transactions – We will maintain records of all transactions with us, our affiliates, and our third party service providers, including your insurance coverage selections, premiums, billing and payment information, claims history, and other information related to your account;

Claims – If you obtain insurance from us, we will maintain records related to any claims that may be made under your policies. The investigation of a claim necessarily involves collection of a broad range of information about many issues, some of which does not directly involve you. We will share with you any facts that we collect about your claim unless we are prohibited by law from doing so. The process of claim investigation, evaluation, and settlement also involves, however, the collection of advice, opinions, and comments from many people, including attorneys and experts, to aid the claim specialist in determining how best to handle your claim. In order to protect the legal and transactional confidentiality and privileges associated with such opinions, comments and advice, we will not disclose this information to you; and

Credit and Financial Reports – We may receive information about you and your business regarding your credit. We use this information to verify information you provide during the submission and quote processes and to help underwrite and provide to you the most accurate and cost-effective insurance quote we can provide. If coverage is declined or the charge for coverage is increased because of information contained in a consumer report, we will tell you as required by law. We will also give you the name and address of the consumer reporting agency making the report.

Retention and Correction of Personal Information

We retain personal information only as long as required by our business practices and applicable law. If we become aware that an item of personal information may be materially inaccurate, we will make reasonable effort to re-verify its accuracy and correct any error as appropriate.

Storage of Personal Information

We have in place safeguards to protect electronic data and paper files containing personal information.

Sharing/Disclosing of Personal Information

We maintain procedures to assure that we do not share personal information with an unaffiliated third party for marketing purposes unless such sharing is permitted by law. Personal information may be disclosed to an unaffiliated third party for necessary servicing of the product or service or for other normal business transactions as permitted by law.

We do not disclose personal information to an unaffiliated third party for servicing purposes or joint marketing purposes unless a contract containing a confidentiality/non-disclosure provision has been signed by us and the third party. Unless a consumer consents, we do not disclose “consumer credit report” type information obtained from an application or a credit report regarding a customer who applies for a financial product to any unaffiliated third party for the purpose of serving as a factor in establishing a consumer’s eligibility for credit, insurance or employment. “Consumer credit report type information” means such things as net worth, credit worthiness, lifestyle information [piloting, skydiving, etc.] solvency, etc. We also do not disclose to any unaffiliated third party a policy or account number for use in marketing. We may share with our affiliated companies information that relates to our experience and transactions with the customer.

Policy for Personal Information Relating to Nonpublic Personal Health Information

We do not disclose nonpublic personal health information about a customer unless an authorization is obtained from the customer whose nonpublic personal information is sought to be disclosed. However, an authorization shall not be prohibited, restricted or required for the disclosure of certain insurance functions, including, but not limited to, claims administration, claims adjustment and management, detection, investigation or reporting of actual or potential fraud, misrepresentation or criminal activity, underwriting, policy placement or issuance, loss control and/or auditing.

NOTICE TO POLICYHOLDERS

Access to Your Information

Our employees, employees of our affiliated companies, and third party service providers will have access to information we collect about you and your business as is necessary to effect transactions with you. We may also disclose information about you to the following categories of person or entities:

Your independent insurance agent or broker;

An independent claim adjuster or investigator, or an attorney or expert involved in the claim;

Persons or organizations that conduct scientific studies, including actuaries and accountants;

An insurance support organization;

Another insurer if to prevent fraud or to properly underwrite a risk;

A state insurance department or other governmental agency, if required by federal, state or local laws; or

Any persons entitled to receive information as ordered by a summons, court order, search warrant, or subpoena.

Lienholder, mortgagee, assignee, lessor, or other person shown on our records or our agent's as having a legal or beneficial interest in a policy of insurance.

Parties acting in a fiduciary or representative capacity to you or parties administering transactions as requested or authorized by you.

Violation of the Privacy Policy

Any person violating the Privacy Policy will be subject to discipline, up to and including termination.

For more information or to address questions regarding this privacy statement, please contact your broker.

NOTICE TO POLICYHOLDERS

MITIGATION BANK INSURANCE COVERAGE FORM

The US Army Corps of Engineers (Corps) has the authority to require financial assurances for the establishment of mitigation banks, which are designed to offset unavoidable impacts to the waters of the United States authorized through the issuance of Department of the Army permits pursuant to section 404 of the Clean Water Act (33U.S.C. 1344) and/or sections 9 or 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 401,403).

The Named Insured proposed a Mitigation Banking Instrument for Corps approval, as described more specifically attached hereto Wetland Mitigation Bank Insurance Coverage Form and affixed endorsements.

The “regulatory body” has the sole obligation, responsibility and accountability for determining compliance with “compensatory mitigation” requirements for the aforementioned mitigation bank.

MITIGATION BANK INSURANCE COVERAGE FORM

CATLIN

CLAIMS MADE AND REPORTED COVERAGE

NOTICE: THIS IS A CLAIMS-MADE POLICY. THIS POLICY HAS CERTAIN PROVISIONS AND REQUIREMENTS UNIQUE TO IT AND MAY BE DIFFERENT FROM OTHER POLICIES A "NAMED INSURED" MAY HAVE PURCHASED. FOR THERE TO BE COVERAGE UNDER THIS POLICY, A "CLAIM" MUST FIRST BE MADE BY THE "REGULATORY BODY" DURING THE "POLICY PERIOD". THIS POLICY INCLUDES NO DUTY TO DEFEND OR PAY DEFENSE COSTS.

PLEASE READ THE ENTIRE POLICY CAREFULLY.

Various provisions in this Policy restrict coverage. Read the entire Policy carefully to determine rights, duties, and what is and is not covered.

Words and phrases that appear in quotation marks have special meaning. Refer to **DEFINITIONS (Section VII.)** The word "Company" when used throughout this policy refers to the Company identified as the insurer in the Declarations.

In consideration of the payment of the premium by the "Named Insured", in reliance upon the statements in the Application made a part hereof, and subject to the Limits of Liability of this insurance as set forth in the Declarations, and the exclusions, conditions, and other terms of this Policy, the Company agrees with the "Named Insured" as follows:

I. INSURING AGREEMENT

In the event of the "Named Insured's" failure during the "policy period" to meet "performance standards" under the "mitigation banking instrument" at the "insured property," the Company agrees to undertake and complete or secure through payment, whether directly or through a "Third Party," the 'compensatory mitigation' for which the 'Named Insured' is legally responsible under the "Mitigation Banking Instrument," provided the 'regulatory body' first makes a 'claim' to the Company in writing and during the 'policy period'."

II. TERRITORY

This Policy only applies to a "claim" made or brought in the United States of America.

III. EXCLUSIONS

This insurance does not apply to "claims" or to any costs arising out of any "claims" based upon, arising out of, or to any extent comprised of any of the following:

- A. An Act of God, including any natural catastrophe or disaster;
- B. Any property or location other than the "insured property"
- C. Liability of the "Named Insured" under or pursuant to any document, contract or agreement other than (i) the "mitigation banking instrument," (ii) any contract entered into to perform work required by the "mitigation banking instrument" and/or (iii) any other contract required by the "regulatory body" to provide for restoration, rehabilitation, adaptive management and/or any contingency plan at the "insured property."

- D. Any legal fees, attorneys' fees, costs, or expenses including expert or consultant fees incurred in the defense of the "Named Insured" for any reason other than for liability under the mitigation banking instrument;
- E. Fluctuation in, short fall of, or devaluation (in whole or in part) of, the monetary value of, or marketability of, mitigation credits or other equivalent credits;
- F. Any "claim" (i) not first made during the "policy period" or (ii) for which notice thereof was not provided by the "regulatory body" to the Company in writing during the "policy period."

IV. LIMIT OF LIABILITY AND DEDUCTIBLE

- A. The Company's total liability for all costs shall not exceed the Limit of Liability set forth (i) in Item 3. of the Declarations or (ii) in any endorsement to this Policy modifying or reducing that Limit of Liability in force at the time when the "claim" is first made.
- B. Regardless of the number of "claims" made to the Company the total liability of the Company for any and all "claim(s)" for costs shall be considered a single "claim" subject to the Limit of Liability set forth (i) in Item 3. of the Declarations or (ii) in any endorsement to this Policy modifying or reducing that Limit of Liability in force at the time when the "claim" is first made.
- C. The Limit of Liability set forth (i) in Item 3. of the Declarations or (ii) in any endorsement to this Policy modifying or reducing that Limit of Liability in force at the time when the "claim" is first made, shall remain unchanged unless the "regulatory body" approves in writing a modification or reduction in the Limit of Liability. In that case, the Company shall reduce or adjust the Limit of Liability accordingly by issuing an endorsement to the Policy setting forth the new Limit of Liability.
- D. The Company's financial obligation under this Policy is, at its sole discretion, to undertake and complete or secure through payment "compensatory mitigation" pursuant to a "claim", which financial obligation extends only to such "compensatory mitigation" or its payment as may be undertaken and completed with the difference between (i) the value of the deductible stated in the Declarations and (ii)(a) the Limit of Liability set forth in Item 3. of the Declarations or (ii)(b) in any endorsement to this Policy modifying or reducing that Limit of Liability in force at the time when the "claim" is first made. However, the "Named Insured's" failure to satisfy the deductible does not release the Company's obligation to respond, investigate, adjust or settle any claim including the Company's obligation to pay deductible amount(s) on behalf of the "Named Insured". Thereby; The Company at its sole election and option, may either:
 - 1) Undertake and complete, or pay any amount or all of the deductible amount to a third party to secure, the "compensatory mitigation" and upon notification of the action taken, the "Named Insured" shall promptly reimburse the Company for such part of the deductible amount as had been paid by the Company; or
 - 2) Simultaneously upon receipt of notice of any "compensatory mitigation" or at any time thereafter, call upon the "Named Insured" to pay or deposit with the Company all or any part of the deductible amount, to be held and applied by the Company as herein provided.

The deductible amount indicated is on a per "claim" basis. A separate deductible amount will be applied to each "claim." The deductible will erode the Limits of Liability.

V. NOTICE PROVISIONS

A. NOTICE OF CLAIM

The "regulatory body" shall provide written notice to the Company of a "claim" as soon as practicable. Such "claim" notification must be in writing and shall contain the following information:

1. a brief explanation of the events and circumstances that resulted in the "claim";
2. any other information the "regulatory body" deems relevant to the "claim".

The "Named Insured" shall make all responsible personnel and all available information of the "Named Insured" available to the Company upon reasonable request.

B. NOTICES

1. All notices required by this Item V. Notice Provisions shall be provided in writing and sent to the Company at the address stated on the Claims Notice.
2. The Company shall provide notice to the "Named Insured" and "regulatory body" of all changes, amendments, endorsements to the policy and shall provide all written correspondence to the "regulatory body", including correspondence regarding any "claim" to the "regulatory body" noted in form EGWL 403 Notice to the Named Insured Endorsement.

VI. CONDITIONS

- A. ASSIGNMENT** — This Policy is not assignable except with the prior written consent of the Company, which consent shall be granted at the Company's sole discretion.
- B. BANKRUPTCY** — Bankruptcy or insolvency of a "Named Insured", or its agents, contractors, or subcontractors, shall not relieve the Company or the "Named Insured" of their obligations under this Policy, including the obligation of the Company to pay "claims" not to exceed the Limit of Liability set forth (i) in Item 3. of the Declarations or (ii) in any endorsement to this Policy modifying or reducing that Limit of Liability in force at the time when the "claim" is first made.
- C. CANCELLATION, TERMINATION AND RELEASE** — Except as provided in paragraph 2 below, the Policy shall remain in effect until cancellation and release is approved by the "regulatory body". The Company shall notify the "regulatory body" of a proposed cancellation and release of the Policy no less than 120 days prior to the proposed cancellation and release date. To approve cancellation of this Policy and a release of the Company, the "regulatory body" shall provide written notice to the Company as soon as practicable that the "regulatory body" has accepted a replacement financial assurance mechanism, deems that such mechanism is no longer required, or has otherwise determined that this Policy is no longer required by law within its authority. The "regulatory body's" written notice to the Company shall include an effective date for the cancellation and release.

On the effective date of the "regulatory body's" approved cancellation and release of the Company, the Company shall be released from any and all liability or obligations under the Policy to the "Named Insured", the "regulatory body" or its designee, including any existing or future liability or obligations arising from "claim(s)" previously reported or pending under the Policy if the "regulatory body" has expressly approved such release from pending "claims" in accordance with the above provisions.

D. TERMINATION OTHER THAN BY CANCELLATION — Coverage shall also terminate at the earlier of the following times without "regulatory body" approval:

1. the "policy period" expiration as shown in Item 2. of the Declarations; or
2. a written acknowledgement, certification or other legally equivalent determination by the "regulatory body" that the "Named Insured" has met the "success criteria" set forth in the "mitigation banking instrument" or in the "contingency plan", if the regulatory body determined in writing that the criteria contained in such "contingency plan" have replaced the "success criteria" contained in the "mitigation banking instrument."

Immediately upon termination of the Policy under this paragraph, the Company is released from all liability or obligations under the Policy, except as to any existing liability or obligations arising from "claim(s)" previously reported or pending under the Policy unless the regulatory body has expressly approved in writing the Company's release from such previously reported and/or pending "claims."

E. CHANGES — Notice to any broker or knowledge possessed by any broker or by any other person or entity shall not affect a waiver or change in any part of this Policy or stop the Company from asserting any right under the terms of this Policy. The terms of this Policy shall not be waived or changed except by endorsement issued to form a part of this Policy.

F. CLAIM ADJUSTMENT — Upon notice of a "Claim" the Company will, as soon as reasonably practicable, perform its due diligence to identify, undertake and complete or secure through payment the "compensatory mitigation" subject to the Limit of Liability. The Company will work with the "Regulatory Body" in good faith to foster agreement concerning all "compensatory mitigation" to be undertaken and completed or secured through payment, including approval of a third party to receive payment, pursuant to a "Claim" and will undertake and complete or secure through payment such "compensatory mitigation" as soon as reasonably practical after notice of a "Claim."

The "Named Insured" shall not be released from any of its obligations to the Company under this Policy by virtue of any such "compensatory mitigation" undertaken and/or completed or secured through payment by the Company or a third party authorized to receive the payment, including the "Named Insured's" duties to pay or reimburse any deductible amount.

G. CONFLICTS — In the event of a conflict between (i) any state or federal laws or regulations (including the "Mitigation Banking Instrument") applicable to the "bank" named in this policy and (ii) the "Named Insured's" rights under this policy, the former shall prevail. In no event shall the Company be liable to the "Named Insured" for failure to perform an act precluded by the applicable laws or regulations. Furthermore, any changes in applicable state or federal law or regulations made after the commencement of the "policy period" shall not be deemed to affect the Company's obligations under the Policy unless and until agreed to by the Company and endorsed in writing on this Policy.

H. LIMIT OF LIABILITY CHANGE — Any increase in the Limit of Liability shall only occur by endorsement to the Policy upon the Company's consent in its sole discretion. The Company may request as a condition to increasing the Limit of Liability that the "Named Insured" pay an

additional premium and/or provide collateral to the Company, including providing funds in a nominal commutation account as specified in an endorsement if and when endorsed hereto.

- I. DECLARATIONS** — By acceptance of this Policy, the “Named Insured” agrees that the statements in the Declarations and Application are its agreements and representations, that this Policy is issued in reliance upon the truth of such representations and that this Policy embodies all agreements existing between the “Named Insured” and the Company or any of its agents relating to this insurance. The “Named Insured” expressly agrees that in entering into this Policy it has not relied on any statement by any person, agent, or broker not directly employed by the Company regarding the terms, provisions, coverage or interpretation of this Policy. Misrepresentations by the “Named Insured” do not invalidate the Company’s obligation to the “regulatory body” in the event of a claim. Any misrepresentation may result in a dispute between the “Named Insured” and the Company.
- J. INDEPENDENT AGREEMENT** — This Policy is a separate, independent agreement between the Company and the “Named Insured.” Notwithstanding any other provision of this Policy, the Company and the “Named Insured” hereby agree that no other contract or agreement shall be used to interpret any provision of this Policy nor shall this Policy be used to interpret any other contract or agreement.
- K. INSPECTION, REVIEW AND AUDIT** — The Company shall be permitted but not obligated to inspect, sample, audit, review, and monitor on a continuing basis the “Named Insured”, or the “insured property” upon providing reasonable advance notice with consideration for the timing of such notice and any site access requirements. The Company’s actions permitted hereunder shall not interfere with or delay the completion of the “remedial action” as set forth in the “mitigation banking instrument” and/or the “contingency plan”.
- L. MODIFICATION** — The policy shall remain unchanged unless the “regulatory body” approves in writing any endorsement or modification.
- M. NO THIRD PARTY BENEFICIARY** — No third party beneficiaries are created as a result of this Policy, except to the extent that specific rights are conferred on the “regulatory body” by the Policy. This Policy creates no rights by or on behalf of any other third parties. Should the Company elect to undertake and complete any required “compensatory mitigation” any contracts or agreement between the Company and a party or parties undertaking and completing such “compensatory mitigation” shall be a separate, independent agreement from this Policy, and this Policy shall confer no specific or general rights or benefits to any party to such contract or agreement. The Company has no obligation under this Policy to any third party whatsoever (other than the “regulatory body”) and specifically, without limitation, has no obligation to undertake and complete or otherwise secure through payment “compensatory mitigation” for anyone other than the “regulatory body” or its designee as set forth in Item E. above. Nothing in this paragraph shall be construed to restrict any other interests and rights of the “regulatory body” under this Policy as such interests and rights may exist hereunder or may be conferred under applicable law at the time of issuance of the Policy. However, any changes in the applicable regulations shall not be deemed to affect the Company’s obligations under the Policy, unless agreed to and endorsed in writing on this Policy.
- N. OTHER INSURANCE** — The insurance provided under this Policy is primary insurance, except this insurance shall be excess:
1. Over any surety bond or other financial assurance instrument applicable to the “claim” covered under this Policy.

When this insurance is excess over any surety bond, or other financial assurance instrument, the Company shall be obligated to undertake and complete or otherwise secure through payment “compensatory mitigation” of a value up to the amount which exceeds the total amount of that

other surety bond or other financial assurance instrument available to pay for the "claim" in the absence of this insurance.

When this insurance is primary and the "Named Insured" has other insurance which is applicable on an excess basis to any "claim", the amount of the Company's liability under this Policy shall not be reduced by the existence of such excess insurance.

When both this insurance and other insurance apply to the "claim" on the same basis, whether primary, excess, or contingent, the Company shall not be liable under this Policy for a greater proportion than that set out in the declarations or the following contribution provision, whichever method is lower:

- a. Contribution by Equal Shares — Under this approach, each insurer contributes equal amounts measured by the actual value of (i) "compensatory mitigation" work undertaken or completed or otherwise secured through payment by the company or (ii) any funds paid by any other insurer, until it has paid its applicable limit of insurance; or
 - b. Contribution by Limits — Each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.
- O. PREMIUM** — the Policy Premium stated in Item 6. of the Declarations is fully earned on the inception date of this Policy, and any cancellation or termination of the Policy either by the "Named Insured" or by the Company shall not result in the return of any Policy Premium.
- P. SUBROGATION** — In the event of any payment under this Policy, the Company shall be subrogated to any right of recovery that a "Named Insured" may have against any person or organization other than the "regulatory body" or its designee. A "Named Insured" to the extent permitted by applicable law shall execute and deliver instruments and papers and do whatever else is necessary to secure and protect such rights. The "Named Insured" shall do nothing to prejudice such rights under this paragraph and shall cooperate with respect to any subrogation efforts. In the event that the "Named Insured" commits fraud, the Company and the "Named Insured" agree that the Company may subrogate and/or bring suit against the "Named Insured" who commits such fraud. In the event the Company notifies the "Named Insured" that it intends to assert a claim against the "Named Insured" arising out of fraud, the "Named Insured" shall, upon receipt of such notification, be released from its duty of further cooperation with the Company concerning subrogation as set forth in this paragraph solely concerning matters that are the subject of such fraud claims.

VII. DEFINITIONS

- A. "Mitigation Bank" means the mitigation project referenced in the "mitigation banking instrument" and set forth in Item 1. of the Declarations.
- B. "Claim" means a written notice given by the "regulatory body" to the Company setting forth in detail the information required by Section V.A. of this Policy.
- C. "Adaptive Management plan" as defined in 33 CFR 332.4(c)(12) means the written plan that specifies the remedial actions or adaptive management measures that must be taken to meet the "Performance Standards" set forth in the "mitigation banking instrument" and/or approved mitigation plans for the "mitigation bank", provided that such plan is prepared, documented, approved and filed in compliance with applicable law, including "regulatory body" approval.
- D. "Inception date" means the beginning of the "policy period" set forth in the Item 2. of the Declarations.

- E.** "Named Insured" means the person or entity set forth in Item 1. of the Declarations.
- F.** "Policy period" means the period set forth in Item 2. of the Declarations, or any shorter period arising as a result of cancellation or termination of the policy.
- G.** "Regulatory body" means the lead agency or entity set forth in Item 7 of the Declarations.
- H.** "Remedial or Adaptive Management measures" means those expenses necessary to implement the "Adaptive Management plan" endorsed to the Policy.

The "remedial action" shall include:

- a. All costs incurred including costs billed by and paid to any contractor(s) or subcontractor(s);
 - b. Administrative and management costs incurred by designated contractor(s) and approved subcontractor(s) directly and exclusively in furtherance of the items set forth in Item a. above, including but not limited to the preparation of mitigation monitoring reports;
 - c. A deposit of sums of money, subject to the limit of liability or remaining limit of liability, sufficient to cover costs described in this section VII(K) into an account with or controlled by the designee of the "regulatory body;" and/or
 - d. The cost to purchase appropriate replacement mitigation credits at another mitigation bank.
- I.** "Performance Standards" as defined in 33 CFR 332.2 means those specific performance criteria for restoration set forth in the "mitigation banking instrument" or the "Adaptive Management Plan".
- J.** "Mitigation banking instrument" as defined in 33 CFR 332.2 means the written instrument that is set forth in the declarations or endorsed to the Policy, provided that such plan is prepared, approved, filed, and documented in compliance with applicable law.
- K.** "Compensatory Mitigation" as defined in 33 CFR 332.2 means the restoration (re-establishment or rehabilitation), establishment (creation), enhancement, and/or in certain circumstances preservation of aquatic resources for the purposes of offsetting unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved."
- L.** "Insured Property" means the property where coverage solely responds to and that is scheduled to this policy.
- M.** "Third party" means the party selected from a list of qualified vendors provided by the Company and approved by and subject to the regulatory oversight of the U.S. Army Corps of Engineers as the District's designee (as used in 33 C.F.R 332.3(n)(6)) to receive payment from the Company, within the limits of the Policy, to secure or complete the "compensatory mitigation" agreed to within the "Mitigation Banking Instrument."

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

NOTICE TO NAMED INSURED ENDORSEMENT

This endorsement modifies insurance provided as follows;

The Company shall provide notice to the "Named Insured" and "regulatory body" of all changes, amendments, endorsements to the policy and shall provide all written correspondence to the "regulatory body", including correspondence regarding any claim to the "regulatory body" at:

[To the "Regulatory Body"] at:

[Insert Corp of Engineers contact point here]

To the: [Named Insured"] at:

[Insert named insured contact point here]

All other terms, conditions and exclusions remain unchanged.

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective: _____ Policy No.: _____ Endorsement No. _____

Insured: _____ Premium: _____

Insurance Company: _____

Authorized Signature: _____

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

AMENDMENT OF LIMIT OF LIABILITY ENDORSEMENT

This endorsement modifies insurance provided as follows:

It is agreed the Limit of Liability shown in Item 3. of the Declarations page is revised as follows:

ITEM 3: LIMIT OF LIABILITY

Limit of Liability beginning at 12:01 am on the beginning date listed and ending date 12:01 on the ending date listed:

Limit: \$

Beginning
Ending

All other terms, conditions and exclusions remain unchanged.

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective: _____ Policy No.: _____ Endorsement No. _____

Insured: _____ Premium: _____

Insurance Company: _____

Authorized Signature: _____

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

SCHEDULED INSURED PROPERTY AND MITIGATION BANKING INSTRUMENT ENDORSEMENT

This endorsement modifies insurance provided as follows:

It is agreed the following are considered scheduled "Insured Property" under the policy and the applicable coverage as noted:

Mitigation Bank and Property Location	Mitigation Banking Instrument

All other terms, conditions and exclusions remain unchanged.

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective: _____ Policy No.: _____ Endorsement No. _____

Insured: _____ Premium: _____

Insurance Company: _____

Authorized Signature: _____

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**AMENDATORY ENDORSEMENT-
AN ACT OF GOD**

This endorsement modifies insurance provided as follows:

It is hereby agreed and understood that Section **III. EXCLUSIONS**, Paragraph A. is deleted in its entirety.

All other terms, conditions and exclusions remain unchanged.

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective: _____ Policy No.: _____ Endorsement No. _____

Insured: _____ Premium: _____

Insurance Company: _____

Authorized Signature: _____