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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

TRAVELERS PROPERTY CASUALTY
COMPANY OF AMERICA, a foreign
insurance company; ST. PAUL SURPLUS
LINES INSURANCE COMPANY, a foreign
insurance company;

Plaintiffs,

vs.

DOME TECHNOLOGY, LLC, an Idaho
limited liability company; NUCOR STEEL
LOUISIANA, LLC, a Louisiana limited
liability company; NUCOR CORPORATION,
a Delaware corporation;

Defendants.

Cause No. 4:17-cv-0134

**COMPLAINT FOR DECLARATORY
RELIEF**

Plaintiffs, Travelers Property Casualty Company of America, and St. Paul Surplus Lines Insurance Company, (hereinafter collectively “Travelers”), allege as follows:

I. PARTIES

1. Travelers Property Casualty Company of America is a foreign insurer organized under the laws of the State of Connecticut, with its principle place of business in the State of

Connecticut.

2. St. Paul Surplus Lines Insurance Company is a foreign insurer organized under the laws of the State of Delaware, with its principle place of business in the State of Connecticut.

3. Upon information and belief, Dome Technology, LLC (hereinafter “Dome Technology”) is an Idaho Limited Liability Company with its principle place of business in the State of Idaho.

4. Nucor Steel Louisiana, LLC (hereinafter “Nucor”) is a Louisiana Limited Liability Company organized under the laws of the State of Delaware, with its principle place of business in the State of Louisiana.

5. Upon information and belief, Nucor Corporation is the sole member of Nucor.

6. Nucor Corporation is a publically traded corporation organized under the laws of the State of Delaware, with its principle place of business in the North Carolina.

II. JURISDICTION AND VENUE

7. This Court has jurisdiction over this action pursuant to 28 U.S.C. Sec. 1332 (a) as the amount in controversy exceeds \$75,000.00, exclusive of interest and costs, and diversity amongst the parties is complete.

8. Venue is proper in this Court pursuant to 28 U.S.C. Sec. 1391(b)(2) as this action involves Dome Technology’s claim for insurance proceeds stemming from insurance policies issued in Idaho, by an Idaho insurance broker, to an Idaho based company.

III. FACTS

A. Background

9. Nucor owns and operates an iron processing facility in Convent, Louisiana.

10. On or about May of 2011, Nucor entered into an Independent Contractor

Agreement (hereinafter the “Dome Technology Agreement”) with Dome Technology to design, engineer, construct, and inspect three new storage domes intended to house iron pellets and their associated conveyance and dust-collection systems (hereinafter the “Subject Project”).

11. The Dome Technology Agreement provided that Dome Technology was responsible for providing engineering services related to the soil stabilization solution and settlement model.

12. Moreover, the Dome Technology Agreement provided that Dome Technology was responsible for geotechnical engineering services, as well as certain mechanical and structural engineering services.

13. The Dome Technology Agreement also provided that Dome Technology was responsible for providing construction services, including but not limited to, installing a 12 inch thick floor slab, installing tunnels and stacking tubes, steel frames, and troughs and beams.

14. Pursuant to the Dome Technology Agreement, Dome Technology also provided to Nucor a Design Functionality Warranty, Constructed Air Form Warranty, and a Dome Shell and Other Materials Warranty.

15. Dome collaborated with E & D Company PLLC, d/b/a ES2 (hereinafter “ES2”) to perform certain services related to the Subject Project.

16. Dome and ES2 had previously entered into an Engineering Services Master Agreement dated January 1, 2006 relating to structural engineering design services to be provided to Dome by ES2 with respect to current and future construction projects.

17. Hall, Blake & Associates – A Division of Geotechnology, Inc. (hereinafter “Geotechnology”) was retained by Nucor as a geotechnical engineer.

18. The design, preparation and construction of the Subject Project began in 2011.

19. Each dome had a concrete foundation, and an underground soil retention ring beam circled the perimeter of the foundation of each dome.

20. Large fabric shell structures were inflated to create the external sphere, and foam insulation, rebar, and concrete were subsequently added to complete the structure.

21. Each dome contained a cylindrical stacking tube and had an underground tunnel.

22. The materials to be stored, raw iron ore pellets, would be offloaded at a barge and then placed onto a long conveyor belt where they would travel to the top of the domes. Once there, they would be released through a head-house on top of each dome into the stacking tube. The pellets would pass through the tube and be dispersed inside the dome via openings at various points along the stacking tube. The pellets would be stored in the domes until they were needed for processing at which time they would be transported to the processing facility by gravity-fed belt conveyors.

23. Nucor began loading dome #1 with approximately 76-77,000 metric tons of iron ore pellets, about one-third full, in July of 2013. Thereafter, Dome Technology and ES2 were contacted in July and August of 2013 to inspect the domes following the initial loading stages.

24. On or about August 29, 2013, ES2 allegedly submitted a report to Nucor advising that the domes were safe and could be loaded to their rated capacity of 250,000 tons.

25. On or about September 10, 2013 through September 16, 2013, Nucor began loading domes #2 and #3 at approximately 75,000 and 78,000 metric tons of iron ore pellets respectively.

26. On or about September 23, 2013, approximately 56,000 additional metric tons of iron ore pellets was added to dome #1.

27. On or about September 25, 2013, dome #1 collapsed.

28. Dome Technology submitted notice of the collapse of dome #1 and claims arising from the collapse of dome #1 and alleged defective condition of the storage domes, and, in October 2013, Travelers agreed to investigate and assign counsel to Dome Technology, subject to reservations of rights. Travelers has been continuously defending Dome Technology since that time.

29. In response to dome #1's collapse and alleged constructive collapses of domes #2 and #3, Nucor submitted a claim to the various insurance companies (hereinafter collectively the "Builders Risk Insurers") who collectively issued to Nucor a builder's risk program for the project effective September 1, 2011 to November 15, 2013, each with a participating share of the program's \$500 million per Occurrence and physical damage limits and other applicable sub-limits.

30. Dome is covered under the builder's risk program as an Additional Named Insured.

31. To date, the Builders Risk Insurers have issued payments to Nucor.

32. Nucor alleges that the Builders Risk Insurers have failed to reimburse all covered losses and that the payments issued to date do not fully compensate Nucor for the total alleged loss.

33. In response to dome #1's collapse and alleged constructive collapses of domes #2 and #3, Nucor also submitted a claim to various insurance companies (hereinafter "Property Insurers") who collectively issued to Nucor a first-party property insurance program, each with a participating share of the program's \$600 million per Occurrence limit and other applicable sub-limits.

34. On information and belief, Nucor's Property Insurers have not issued any

payment associated with the subject loss.

35. Dome Technology provided Travelers notice of claims arising from the collapse of dome #1 and alleged defective condition of the storage domes.

36. In October 2013, Travelers agreed to investigate and to assign counsel to Dome Technology, subject to an express reservation of rights, and, since that time, Travelers has continued to investigate and provide a defense to Dome Technology against claims arising from the collapse of dome #1 and alleged defective condition of the storage domes under express reservations of rights.

37. On or about July 29, 2014, Nucor, Geotechnology, Inc., ES2 and Dome Technology entered into a tolling agreement to toll the running of any applicable statute of limitation and any other time-based limitation periods or defenses which may apply to claims, causes of action and/or defenses against the other relating to the condition of the three storage domes including the collapse of dome #1 and alleged constructive collapses of domes #2 and #3 to allow for Nucor to continue seeking insurance coverage for the alleged loss under Nucor's insurance policies.

38. Thereafter, on or about September 12, 2014, Nucor and the Builders Risk Insurers entered into a tolling agreement to toll the running of any applicable statute of limitation and any other time-based limitation periods or defenses which may apply to claims and/or causes of action against the Builders Risk Insurers for, among other things, losses resulting from the collapse of dome #1 and the alleged constructive collapses of domes #2 and #3.

39. Nucor, Geotechnology, Inc., ES2, Dome Technology, and the Builders Risk Insurers renewed their respective tolling agreements on multiple occasions.

40. On information and belief, all relevant tolling agreements have now lapsed.

B. The Liability Action

41. On February 6, 2016, Nucor filed the lawsuit entitled *Nucor Steel Louisiana, LLC and Nucor Corporation v. Zurich American Insurance Company, et al., Cause No. 37964*, Twenty-Third Judicial District Court for the Parish of St. James, State of Louisiana (the “Liability Action”).

42. The Liability Action seeks damages for losses allegedly incurred by Nucor as a result of the actual collapse of dome #1 and the constructive collapses of domes #2 and #3.

43. Defendants are comprised of the Builders Risk Insurers, certain of the Property Insurers and Dome Technology.

44. In the Liability Action, Nucor asserts that the ring beam of dome #1 was defectively designed and failed, which in turn caused the collapse of dome #1 on September 25, 2013; that the other two domes suffered a serious impairment of structural integrity (i.e., had suffered constructive collapses) because of the same ring beam design defect; and that the cause of the actual collapse of dome #1 and constructive collapses of domes #2 and #3 was the defective design of each dome’s ring beam.

45. Nucor further asserts Nucor’s consultant concluded the dome #1 ring beam failed at 135,000 metric tons because it could not withstand the lateral pressures acting on the inside of the dome wall; ES2 materially underestimated these lateral pressures; and the ring beam failure led to the collapse of dome #1.

46. Nucor claims its damages and losses were caused by the ring beam failure and ensuing collapses.

47. Nucor asserts counts of breach of contract, negligence, breach of express and implied warranties, negligent failure to warn, negligent misrepresentation, and contractual

indemnity against Dome Technology.

48. Supporting its claims against Dome Technology, Nucor makes the following assertions in the Liability Action:

- Dome Technology breached, failed to perform (or otherwise failed to comply with) its contract and is liable to [Nucor] for all resulting damages;
- Dome Technology breached, failed to perform, or otherwise failed to comply with these express warranties and is liable to [Nucor] for all resulting damages;
- Dome Technology breached all implied warranties owed to [Nucor] under the Dome Technology Agreement and law because the Domes Complex failed to perform as intended;
- Dome Technology breached the duty of reasonable care it owed [Nucor] by, among other things, failing to provide structurally sufficient ring beams for the Domes; failing to properly inspect, examine and/or test the Domes; failing to properly supervise ES² (sic); and failing to properly warn [Nucor] regarding the deficiencies of the ring beams;
- Dome Technology made certain negligent misrepresentations to [Nucor] including, but not limited to, statements regarding the structural integrity of the Domes and statements affirming that [Nucor] could safely load the Domes to their intended capacity; and
- Dome Technology agreed to indemnify and hold [Nucor] harmless from and against all damages, liabilities, losses, costs and expenses, including but not limited to attorney fees, arising out of or resulting from the performance of Dome Technology's work under the Dome Technology Agreement. [Nucor] is entitled to be indemnified by Dome Technology and in particular for any uninsured or otherwise unreimbursed losses including, but not limited to, the applicable deductibles under the Builder's Risk and Property Policies.

49. Since the filing of the Liability Action, Travelers has advised Dome Technology that it will continue to defend Dome Technology subject to an express reservation of rights.

C. Identification of Policies

50. Travelers Property Casualty Company of America issued a Commercial Insurance

Policy with a Commercial General Liability Coverage Part to Dome Technology, policy number DT-CO-491R7411-TIL-12, with a policy period from October 1, 2012 to October 1, 2013 (hereinafter the “CGL Policy”). A true and correct copy of the CGL Policy is attached hereto as

Exhibit A.

51. St. Paul Surplus Lines Insurance Company issued Contractors Professional Liability Policy to Dome Technology, policy number ZCO-11S74131-12-26, with a policy period from October 1, 2012 to October 1, 2013 (hereinafter the “PL Policy”). A true and correct copy of the PL Policy is attached hereto as **Exhibit B.**

52. Travelers Property Casualty Company of America issued a Commercial Excess Liability (Umbrella) Policy to Dome Technology, policy number DTSM-CUP-491R7411-TIL-12, with a policy period from October 1, 2012 to October 1, 2013 (hereinafter the “Excess Policy”). A true and correct copy of the Excess Policy is attached hereto as **Exhibit C.**

1. The CGL Policy

53. The CGL Policy includes a \$2 million General Aggregate Limit and a \$1 million Each Occurrence Limit.

54. Dome Technology qualifies as a Named Insured under the CGL Policy.

55. The CGL Policy contains the following relevant language relating to the insuring agreement:

SECTION I – COVERAGES

COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY

1. Insuring Agreement

- a.** We will pay those sums that the insured becomes legally obligated to pay as damages because of “bodily injury” or “property damage” to which this

insurance applies. We will have the right and duty to defend the insured against any “suit” seeking those damages. However, we will have no duty to defend the insured against any “suit” seeking damages for “bodily injury” or property damage” to which this insurance does not apply. We may, at our discretion, investigate any “occurrence” and settle any claim or “suit” that may result. But:

- (1) The amount we will pay for damages is limited as described in Section **III** Limits Of Insurance; and
- (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages **A** or **B** or medical expenses under Coverage **C**.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments - Coverages **A** and **B**.

b. This insurance applies to “bodily injury” and “property damage” only if:

- (1) The “bodily injury” or “property damage” is caused by an “occurrence” that takes place in the “coverage territory”;
- (2) The “bodily injury” or “property damage” occurs during the policy period; and
- (3) Prior to the policy period, no insured listed under Paragraph **1.** of Section **II** – Who Is An Insured and no “employee” authorized by you to give or receive notice of an “occurrence” or claim, knew that the “bodily injury” or “property damage” had occurred, in whole or in part. If such a listed insured or authorized “employee” knew, prior to the policy period, that the “bodily injury” or “property damage” occurred, then any continuation, change or resumption of such

“bodily injury” or “property damage” during or after the policy period will be deemed to have been known prior to the policy period.

- c. "Bodily injury" or "property damage" which occurs during the policy period and was not, prior to the policy period, known to have occurred by any insured listed under Paragraph 1. of Section II - Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim, includes any continuation, change or resumption of that "bodily injury" or "property damage" after the end of the policy period.
- d. “Bodily injury” or “property damage” will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph 1. of Section II – Who Is An Insured or any “employee” authorized by you to give or receive notice of an “occurrence” or claim:
 - (1) Reports all, or any part, of the “bodily injury” or “property damage” to us or any other insurer;
 - (2) Receives a written or verbal demand or claim for damages because of the “bodily injury” or “property damage”; or
 - (3) Becomes aware by any other means that “bodily injury” or “property damage” has occurred or has begun to occur.

...

SECTION V – DEFINITIONS

- 13. “Occurrence” means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

...

- 17. “Property damage” means:
 - a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the

physical injury that caused it; or

- b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it.

18. "Suit" means a civil proceeding in which damages because of "bodily injury", "property damage", "personal injury" and "advertising injury" to which this insurance applies are alleged. "Suit" includes:

- a. An arbitration proceeding in which such damages are claimed and to which you must submit or do submit with our consent; or
- b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which you submit with our consent.

Exhibit A, Form CG 00 01 10 01.

56. The CGL Policy also contains the following exclusions:

2. Exclusions

This insurance does not apply to:

- a. **Expected Or Intended Injury**
"Bodily injury" or "property damage" expected or intended from the standpoint of the insured.
- b. **Contractual Liability**
"Bodily injury" or "property damage" for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:
 - (1) That the insured would have in the absence of the contract or agreement; or
 - (2) Assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement. Solely for the purposes of liability assumed in an "insured contract", reasonable attorney fees and necessary litigation expenses incurred by or for a

party other than an insured are deemed to be damages because of "bodily injury" or "property damage", provided:

- (a) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same "insured contract"; and
- (b) Such attorney fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

...

j. Damage To Property

"Property damage" to:

- (1) Property you own, rent, or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;

...

- (5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or

- (6) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

...

Paragraphs (3), (4), (5) and (6) of this exclusion do not apply to liability assumed under a sidetrack

agreement.

Paragraph (6) of this exclusion does not apply to “property damage” included in the “products completed operations hazard”.

k. Damage To Your Product

“Property damage” to “your product” arising out of it or any part of it.

l. Damage To Your Work

“Property damage” to “your work” arising out of it or any part of it and included in the “products-completed operations hazard”.

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

m. Damage To Impaired Property Or Property Not Physically Injured

“Property damage” to “impaired property” or property that has not been physically injured, arising out of:

- (1) A defect, deficiency, inadequacy or dangerous condition in “your product” or “your work”; or
- (2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to “your product” or “your work” after it has been put to its intended use.

n. Recall of Products, Work Or Impaired Property

Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

- (1) “Your product”;
- (2) “Your work”; or
- (3) “impaired property”;

if such product, work, or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, in adequacy or dangerous condition in it.

Exhibit A, Form CG 00 01 10 01.

57. The CGL Policy also contains the following pertinent definitions:

SECTION V – DEFINITIONS

8. “Impaired property” means tangible property, other than “your product” or “your work”, that cannot be used or is less useful because:
 - a. Incorporates “your product” or “your work” that is known or thought to be defective, deficient, inadequate or dangerous; or
 - b. You have failed to fulfill the terms of a contract or agreement;

if such property can be restored to use by:

- a. the repair, replacement, adjustment or removal of “your product” or “your work”; or
- b. Your fulfilling the terms of the contract or agreement.

9. "Insured contract": means

...

- f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for “bodily injury” or “property damage” to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph f. does not include that part of any

contract or agreement:

...

- (2) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
 - a. Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
 - b. Giving directions or instructions or failing to give them, if that is the primary cause of the injury or damage; or
- (3) under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in (2) above and supervisory, inspection, architectural or engineering activities.

...

16. "Products-completed operations hazard":
 - a. Includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:
 - (1) Products that are still in your physical possession; or
 - (2) Work that has not yet been completed or abandoned. However, "your work" will be deemed completed at the earliest of the following times:
 - (a) When all of the work called for in your contract has been completed.
 - (b) When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site.
 - (c) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or

subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

...

21. "Your product":

a. Means:

(1) Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:

(a) You;

(b) Others trading under your name; or

(c) A person or organization whose business or assets you have acquired; and

(2) Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.

b. Includes:

(1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your product" and

(2) The providing or failure to provide warnings or instructions.

...

22. "Your work":

a. Means:

(1) Work or operations performed by you or on your behalf; and

(2) Materials, parts or equipment furnished in connection with such work or operations.

b. Includes:

(1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your work", and

(2) The providing of or failure to provide warnings or instructions.

Exhibit A, Form CG 00 01 10 01.

58. The CGL Policy further contains the following exclusion:

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION – ARCHITECTURAL, ENGINEERING OR SURVEYING PROFESSIONAL SERVICES

This endorsement modifies insurance provided under the following:
COMMERCIAL GENERAL LIABILITY COVERAGE PART

PROVISIONS

1. The following exclusion is added to Paragraph 2., **Exclusions**, of **SECTION I – COVERAGES – COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY**:

Architectural, Engineering Or Surveying Professional Services

“Bodily injury” or “property damage” arising out of the rendering of or failure to render any “professional services” by or on behalf of any insured, but only with respect to any of the following operations:

- a. Providing or hiring independent professionals to provide, architectural, engineering, or surveying services to others in any insured’s capacity as an architect, engineer or “surveyor”; or
- b. Providing, or hiring independent professionals to provide, architectural, engineering, or surveying services in connection with construction work any insured performs.

...

3. The following is added to the **DEFINITIONS** Section:

“Professional services”:

- a. Includes:
 - (1) Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, or change orders, or preparing, approving or failing to prepare or approve, drawings and specifications; and
 - (2) Supervisory or inspection activities performed as part of any related

- architectural, or engineering or surveying activities.
- b. Does not include services within construction means, methods, techniques, sequences and procedures employed by you in connection with your operations in your capacity as a construction contractor.

Exhibit A, Form CG D5 46 10 11.

59. The CGL Policy further contains the following exclusion:

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION – CONSTRUCTION MANAGEMENT ERRORS AND OMISSIONS

This endorsement modifies insurance provided under the following:
COMMERCIAL GENERAL LIABILITY COVERAGE PART

The following exclusion is added to Paragraph 2., **Exclusions of Section I – Coverage A – Bodily Injury And Property Damage Liability** and Paragraph 2., **Exclusions of Section I – Coverage B – Personal And Advertising Injury Liability**:

This insurance does not apply to "bodily injury", "property damage", "personal injury" or "advertising injury" arising out of:

1. The preparing, approving, or failure to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications by any architect, engineer or surveyor performing services on a project on which you serve as construction manager; or
2. Inspection, supervision, quality control, architectural or engineering activities done by or for you on a project on which you serve as construction manager.

This exclusion does not apply to "bodily injury" or "property damage" due to construction or demolition work done by you, your "employees" or your subcontractors.

Exhibit A, Form CG D2 93 11 03.

60. The CGL Policy further contains the following language regarding limits of insurance:

SECTION III – LIMITS OF INSURANCE

1. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:
 - a. Insureds;
 - b. Claims made or "suits" brought; or
 - c. Persons or organizations making claims or bringing "suits".
2. The General Aggregate Limit is the most we will pay for the sum of:
 - a. Medical expenses under Coverage C;
 - b. Damages under Coverage A, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard"; and
 - c. Damages under Coverage B.
3. The Products-Completed Operations Aggregate Limit is the most we will pay under Coverage A for damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard".
- ...
5. Subject to 2. or 3. above, whichever applies, the Each Occurrence Limit is the most we will pay for the sum of:
 - a. Damages under Coverage A; and
 - b. Medical expenses under Coverage Cbecause of all "bodily injury" and "property damage" arising out of any one "occurrence".

...

The Limits of Insurance of this Coverage Part apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

Exhibit A, Form CG 00 01 10 01.

61. The CGL Policy further contains the following language regarding limits of

insurance:

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

**AMENDMENT NON CUMULATION OF EACH
OCCURRENCE LIMIT OF LIABILITY and
NON CUMULATION OF PERSONAL and ADVERTISING
INJURY LIMIT**

This endorsement modifies insurance provided under the following:
COMMERCIAL GENERAL LIABILITY COVERAGE PART

1. Paragraph 5 of **SECTION III – LIMITS OF INSURANCE**, is amended to include the following:

Non cumulation of Each Occurrence Limit – If one “occurrence” causes “bodily injury” and/or “property damage” during the policy period and during the policy period of one or more prior and/or future policies that include a commercial general liability coverage part for the insured issued by us or any affiliated insurance company, the amount we will pay is limited. This policy’s Each Occurrence Limit will be reduced by the amount of each payment made by us and any affiliated insurance company under the other policies because of such “occurrence”.

Exhibit A, CG D2 03 12 97.

62. The CGL Policy further contains the following language regarding limits of

insurance:

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

**LIMITATION WHEN TWO OR MORE POLICIES APPLY
TO THE SAME CLAIM OR SUIT**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE
PART

The following is added to **SECTION III – LIMITS OF INSURANCE**:

When this Coverage Part and any Coverage Part in any other policy written by us or any of our affiliated insurance companies and issued to:

- a. You;
- b. Any organization in which you own more than a 10% interest; or
- c. Any person or organization that owns more than a 10% interest in you;

apply or applied to the same claim or "suit", the most we will pay for the sum of all amounts subject to the limits of insurance is the highest limit of insurance that applies or applied to such claim or "suit" under any one of those Coverage Parts.

However, this provision does not apply if the other Coverage Part that applies or applied is umbrella insurance, or excess insurance, that was bought specifically to apply in excess of the applicable limits of insurance shown in the Declarations of this Coverage Part.

Exhibit A, Form CG D4 24 07 08.

63. The CGL Policy further contains the following language regarding conditions:

SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS

1. Bankruptcy

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Coverage Part.

2. Duties In The Event Of Occurrence, Offense, Claim Or Suit

- a. You must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:
 - (1) How, when and where the "occurrence" or offense took place;
 - (2) The names and addresses of any injured persons and witnesses; and
 - (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.
- b. If a claim is made or "suit" is brought against any insured, you must:
 - (1) Immediately record the specifics of the claim or "suit" and the date received; and
 - (2) Notify us as soon as practicable.

You must see to it that we receive written notice of the claim or "suit" as soon as practicable.

- c. You and any other involved insured must:
 - (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
 - (2) Authorize us to obtain records and other information;
 - (3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and
 - (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this insurance may also apply.
- d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

3. Legal Action Against Us

No person or organization has a right under this Coverage Part:

- a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or
- b. To sue us on this Coverage Part unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured; but we will not be liable for damages that are not payable under the terms of this Coverage Part or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

4. Other Insurance

If other valid and collectible insurance is available to the insured for a loss we cover under Coverages **A** or **B** of this Coverage Part, our obligations are limited as follows:

a. Primary Insurance

This insurance is primary except when **b.** below applies. If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in **c.** below.

b. Excess Insurance

This insurance is excess over:

- (1) Any of the other insurance, whether primary, excess, contingent or on any other basis:
 - (a) That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";

- (b) That is Fire insurance for premises rented to you or temporarily occupied by you with permission of the owner;
 - (c) That is insurance purchased by you to cover your liability as a tenant for "property damage" to premises rented to you or temporarily occupied by you with permission of the owner; or
 - (d) If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion g. of Section I – Coverage A – Bodily Injury And Property Damage Liability.
- (2) Any other primary insurance available to you covering liability for damages arising out of the premises or operations for which you have been added as an additional insured by attachment of an endorsement.

When this insurance is excess, we will have no duty under Coverages A or B to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

- (1) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
- (2) The total of all deductible and self-insured amounts under all that other insurance.

We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

c. Method Of Sharing

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, 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.

...

7. Separation Of Insureds

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Part to the first Named Insured, this insurance applies:

- a. As if each Named Insured were the only Named Insured; and
- b. Separately to each insured against whom claim is made or "suit" is brought.

8. Transfer Of Rights Of Recovery Against Others To Us

If the insured has rights to recover all or part of any payment we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.

Exhibit A, Form CG 00 01 10 01.

64. The CGL Policy further contains the following language regarding conditions:

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

AMENDMENT – OTHER INSURANCE CONDITION AND MEANING OF OTHER INSURANCE, OTHER INSURER AND INSURER

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE
PART

PROVISIONS

1. The following replaces the part of the first paragraph of Paragraph 4., **Other Insurance**, of **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS** that precedes Paragraph a.:

If valid and collectible other insurance is available to the insured for a loss we cover under Coverages **A** or **B** of this Coverage Part, our obligations are limited as described in Paragraphs **a.** and **b.** below.

As used anywhere in this Coverage Part, other insurance means insurance, or the funding of losses, that is provided by, through or on behalf of:

- (i) Another insurance company;
- (ii) Us or any of our affiliated insurance companies, except when the Non cumulation of Each Occurrence Limit

provision of Paragraph 5. of Section III – Limits Of Insurance or the Non cumulation of Personal and Advertising Injury Limit provision of Paragraph 4. of Section III – Limits of Insurance applies because the Amendment - Non Cumulation Of Each Occurrence Limit Of Liability and Non Cumulation Of Personal and Advertising Injury Limit endorsement is included in this policy;

- (iii) Any risk retention group;
- (iv) Any self-insurance method or program, including any failure to buy insurance, or decision to not buy insurance, for any reason, in which case the insured will be deemed to be the provider of other insurance; or
- (v) Any similar risk transfer or risk management method.

Other insurance does not include umbrella insurance, or excess insurance, that was bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

As used anywhere in this Coverage Part, other insurer means a provider of other insurance. As used in Paragraph c. below, insurer means a provider of insurance.

- 2. The first Subparagraph (2) of Paragraph 4.b., **Excess Insurance**, of **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS** regarding any other primary insurance available to you is deleted.
- 3. The following is added to Paragraph 4.b., **Excess Insurance**, of **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**:

This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis, that is available to the insured when the insured is added as an additional insured under any other policy, including any umbrella or excess policy.

Exhibit A, Form CG D4 20 07 08.

2. **The PL Policy**

65. The PL Policy includes a \$2 million Aggregate Limit and a \$2 million Each Act, Error Or Omission Limit from October 1, 2012 through January 6, 2013, and, effective from January 7, 2013, the limits are increased to \$5 million and \$5 million.

66. The PL Policy includes a \$100,000 Each Act, Error Or Omission Deductible – Contractors Professional Liability.

67. Dome Technology qualifies as Named Insured under the PL Policy.

68. The PL Policy provides claims-made coverage for Coverage A – Contractors Professional Liability and, for such coverage, defense expenses are payable within, and are not in addition to, the Limits Of Insurance. Payment of defense expenses for such coverage will reduce the Limits Of Insurance. *See Exhibit B*, Form RP 01 00 05 10.

69. The PL Policy contains the following insuring agreement:

SECTION I – COVERAGES

COVERAGE A CONTRACTORS PROFESSIONAL LIABILITY

1. Insuring Agreement

- a.** We will pay those sums that the "insured" becomes legally obligated to pay as "damages" because of loss to which this insurance applies. We will have the right and duty to defend the "insured" against any "claim" or "suit" seeking those "damages". However, we will have no duty to defend the "insured" against any "claim" or "suit" seeking "damages" because of loss to which this insurance does not apply.

When we defend a "claim" or "suit" against an "insured", we will pay reasonable "defense expenses". Payment of such "defense expenses" will reduce the available limits of insurance. We may, at our discretion, investigate any act, error or omission, and we may settle any "claim" or "suit" with the "insured's" written consent. But:

- (1)** The amount we will pay for "damages" or "defense expenses" is limited as described in Section II - Limits Of Insurance; and
- (2)** Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of:
 - (a)** Judgments, settlements or "defense expenses" under this Contractors Professional Liability Coverage; or

(b) Loss under Coverage B – Contractors Indemnity For Design Professional’s Liability.

We will have no other obligation or liability to pay sums or perform acts or services unless explicitly provided for under Paragraph 3. Supplementary Payments or Paragraph 4. Right To Appeal A Judgment.

When we defend a "claim" or "suit" against an "insured", we have the right to choose the legal counsel for that defense, unless:

- (1) The "insured" has such right under the law that applies; or
- (2) We and you have agreed otherwise in an endorsement to this Contractors Professional Liability Coverage.

When we defend more than one "insured" against the same "claim" or "suit", we also have the right to require each such "insured" to be defended by the same legal counsel, unless the "insured" or such counsel establishes that a conflict of interest that prevents such joint defense exists.

If we agree with a proposed settlement of a "claim" or "suit" and the "insured" refuses to consent to that proposed settlement, we will not pay more than the amount of that proposed settlement for the combined total of the following for such "claim" or "suit":

- (1) "Damages"; and
- (2) "Defense expenses" incurred after the "insured" refuses to consent to the proposed settlement

b. This insurance applies to loss only if:

- (1) The loss is caused by an act, error or omission that results from the performance of, or failure to perform, "your contractor professional services", by you or on your

- behalf;
- (2) The act, error or omission is committed in the "coverage territory";
 - (3) The act, error or omission was not committed before the Retroactive Date For Contractors Professional Liability Coverage shown in the Declarations or after the end of the "policy period"; and
 - (4) A "claim" or "suit" that seeks "damages" because of the loss is first made or brought against any "insured", in accordance with Paragraph c. below, during the "policy period" or any Extended Reporting Period we provide under Section V - Extended Reporting Periods.
- c. A "claim" or "suit" that seeks "damages" will be deemed to have been first made or brought against any "insured" at the earlier of the following times:
- (1) When we or any "insured" first receives written notice of such "claim" or "suit", whichever is first; or
 - (2) When we first receive written notice from any "insured" of a specific act, error or omission that caused the loss which resulted in such "claim" or "suit", but only if that notice contains all of the following information:
 - (a) How, when and where the act, error or omission was committed;
 - (b) The names and addresses of each "insured" that committed the act, error or omission;
 - (c) The names and addresses of any persons or organizations sustaining loss, and the names and addresses of any witnesses; and
 - (d) The nature and location of any loss caused by the act, error or omission, and a description of the "damages" that may result from the act, error or omission.

All "claims" or "suits" that seek "damages" because of loss caused by the same act, error or omission or

"related acts, errors or omissions" will be deemed to have been first made or brought against any "insured" at the time the first of those "claims" or "suits" is first made or brought against any "insured".

...

- e. Each act, error or omission in a series of "related acts, errors or omissions" will be deemed to have been committed on the date the first act, error or omission in that series is committed.

Exhibit B, Form RP 01 00 05 10; as amended by RP 01 20 05 10.

- 70. The PL Policy issued to Dome Technology contains the following exclusions:

2. Exclusions

This insurance does not apply to:

...

d. Claims Or Suits By Insureds Against Insureds

Loss for which any "claim" or "suit" is made or brought by or on behalf of any "insured" against any "insured".

This exclusion does not apply to any "claim" or "suit" made or brought by or on behalf of any of your "employees" for loss caused by an act, error or omission that is a failure to prevent unauthorized access to, or use of, electronic data containing private or confidential information of such "employee", but only if:

- (1) Such "employee" did not commit or participate in the failure to prevent such unauthorized access or use; and
- (2) The loss does not result from the performance of, or failure to perform, "your contractor professional services" by you or on your behalf.

e. Contractual Liability

Loss for which the "insured" has assumed liability

under any contract or agreement.

This exclusion does not apply to loss for which the "insured" would have liability without the contract or agreement.

This exclusion also does not apply to the tort liability of another to pay "damages" for loss sustained by others if you have assumed such liability under a contract or agreement, but only if:

- (1) The loss is caused by an error, omission or negligent act that:
 - (a) Results from the performance of, or failure to perform, "your contractor professional services" by you or on your behalf; or
 - (b) Is a "network and information security offense"; and
- (2) The contract or agreement was made before such error, omission or negligent act was committed.

Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

...

i. Express Warranties Or Guarantees

Loss arising out of any express warranty or guarantee, including any such warranty or guarantee that:

- (1) Is made in bid preparations or specifications for all or part of a project; or;
- (2) Involves the cost, timing or schedule, quality, revenue or use, or performance of, or for, all or part of a project.

This exclusion does not apply to loss for which the "insured" would have liability without the express warranty or guarantee because of any failure of "your contractor professional services" to conform with the generally accepted standard of care that applies.

j. Faulty Construction Work

Loss arising out of any faulty construction work, including work that is not performed in accordance with a project's design or construction documents that:

- (1) Is performed by any "insured";
- (2) Is performed on behalf of any "insured" if the loss is caused by an act, error or omission that is a "network and information security offense" and that does not result from the performance of, or failure to perform, "your contractor professional services" by you.
- (3) Is performed by or on behalf of any subsidiary of any "insured"; or
- (4) Is performed by or on behalf of any person or organization that owns more than 25% of, or that, in whole or substantially, controls financially, manages or operates, any "insured".

For the purposes of this exclusion, construction work means any assembly, construction, erection, fabrication, installation or remediation work, or any manufacturing or supplying of any equipment, material or part.

...

p. Previously Known Acts, Errors Or Omissions

- (1) Loss arising out of any act, error or omission which any "described authorized person" knew about before the beginning date from which we, or any of our affiliated insurance companies, have continuously provided any of the following to you:
 - (a) Contractors Professional Liability And Indemnity Coverage.
 - (b) Contractors Professional Liability And Indemnity And Contractors Pollution Liability Coverage.
 - (c) Contractors Professional Liability Protection - Claims Made.
 - (d) Contractors Professional Liability Protection And Contractors Pollution

Liability Protection - Claims-Made.

This paragraph does not apply to loss caused by an act, error or omission that is a "network and information security offense" and that does not result from the performance of, or failure to perform, "your contractor professional services" by you or on your behalf.

...

q. Projects For Which You Have Other Professional Liability Insurance

Loss arising out of a project, or any part of a project, for which you are covered by other professional liability insurance issued to you, or for which you would have been covered by that insurance but are not because of:

- (1) An exclusion or other coverage limitation;
- (2) A deductible or self-insured retention;
- (3) The limits of coverage of such insurance being used up; or
- (4) The bankruptcy or insolvency of the insurer providing such insurance.

This exclusion does not apply to loss for which you would have been covered by such insurance but are not only because the "claim" or "suit" was first made or brought after the expiration of such insurance and any extended reporting period applicable to such insurance.

This exclusion also does not apply if the only other professional liability insurance for which you are covered or would have been covered for the project or the part of the project is umbrella insurance, or excess insurance, that you bought specifically to apply in excess of the Limits of Insurance shown in the Declarations.

...

s. Unnamed Partnership, Joint Venture Or Limited Liability Company

Loss arising out of any architect, engineer or

surveyor professional services for any current or past partnership, joint venture or limited liability company of which you are a partner or member that is not shown as a Named Insured in the Declarations.

Exhibit B, Form RP 01 00 05 10.

71. The PL Policy contains the following pertinent definitions:

4. "Claim" means:

a. For the purposes of Coverage A, a demand that seeks "damages".

...

7. "Damages" means:

a. Compensatory damages; and

b. Punitive or exemplary damages, if such damages are insurable under the law that applies.

...

10. "Described authorized person" means:

a. You, if you are an individual; or

b. Any person while he or she is:

- (1)** Your spouse, if you are an individual;
- (2)** Your partner or member, or his or her spouse, if you are a partnership or joint venture;
- (3)** Your manager or member, if you are a limited liability company;
- (4)** Your director or "executive officer", if you are an organization other than a partnership, joint venture or limited liability company;
- (5)** Your "employee" who is or acts as your insurance or risk manager, or holds a position in your insurance, risk management or legal department; or
- (6)** Your "employee" who is or acts as a manager or supervisor.

If you are a partnership, joint venture or limited liability company and any of your partners, members or managers is an organization, "described authorized person" also means any person while he or she is any of that organization's:

- a. Partners or members if it is a partnership or joint venture;
- b. Managers or members if it is a limited liability company; or
- c. Directors or "executive officers" if it is an organization other than a partnership, joint venture or limited liability company.

. . .
25. "Related acts, errors or omissions" means two or more acts, errors or omissions that have as a common connection, tie or link any fact, circumstance, situation, event, transaction, cause or series of related facts, circumstances, situations, events, transactions or causes.
. . .

28. "Suit" means a civil proceeding that seeks "damages". "Suit" includes:

- a. An arbitration proceeding that seeks "damages" and to which the "insured" must submit or submits with our consent; and
- b. Any other alternative dispute resolution proceeding that seeks "damages" and to which the "insured" submits with our consent.

. . .

32. "Your contractor professional services":

- a. Means any of the following services:
 - (1) Architect, engineer or surveyor professional services.
 - (2) Construction management services if you have specifically agreed in a written contract to perform in the capacity of a construction manager.
 - (3) Any other services described in an endorsement which replaces or adds to this definition, if any such endorsement is part of this policy.
- b. Includes "building information modeling services" in connection with any of the services described in Paragraph a. above.

Exhibit B, Form RP 01 00 05 10.

72. The PL Policy contains the following language regarding limits of insurance:

SECTION II - LIMITS OF INSURANCE

1. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:

- a. "Insureds" or "design professionals";
- b. "Claims" made or "suits" brought; or
- c. Persons or organizations making "claims" or bringing "suits".

The limits of insurance will not be reduced by the payment of the applicable deductible or self-insured retention.

2. The Aggregate Limit is the most we will pay for the sum of all:

- a. "Damages" and "defense expenses" under Coverage A; and
 - b. Loss under Coverage B;
- for the combined total of all "claims" or "suits".

...

3. Subject to Paragraph 2. above, the Each Act, Error Or Omission Limit - Contractors Professional Liability is the most we will pay for the sum of all "damages" and "defense expenses" under Coverage A for all "claims" or "suits" for loss caused by:

- a. The same act, error or omission; or
- b. "Related acts, errors or omissions".

...

Exhibit B, Form RP 01 00 05 10.

73. The PL Policy further contains the following language regarding limits of insurance:

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

**AMENDMENT OF LIMITS OF INSURANCE FOR
CONTRACTORS PROFESSIONAL LIABILITY**

This endorsement modifies insurance provided under the following:

CONTRACTORS PROFESSIONAL LIABILITY AND
INDEMNITY COVERAGE FORM

SCHEDULE OF LIMITS OF INSURANCE

Limits Of Insurance Increase Date 01/07/2013

**Aggregate Limit For Acts, Errors Or Omissions
Committed Before The Limits Of Insurance
Increase Date** 2,000,000.

**Each Act, Error Or Omission Limit For
Acts, Errors Or Omissions Committed Before
The Limits Of Insurance Increase Date -
Contractors Professional Liability** 2,000,000.

PROVISIONS

1. The following is added to Paragraph 2. of **SECTION II - LIMITS OF INSURANCE**:

However If the Retroactive Date For Contractors Professional Liability Coverage is before the Limits Of Insurance Increase Date shown in the Schedule Of Limits Of Insurance:

- a. The Aggregate Limit does not apply to "damages" and "defense expenses" under Coverage A for "claims" or "suits" for loss caused by acts, errors or omissions or "related acts, errors or omissions" committed on or after the Retroactive Date For Contractors Professional Liability Coverage and before the Limits Of Insurance Increase Date shown in the Schedule Of Limits Of Insurance;
- b. Instead, the Aggregate Limit For Acts, Errors Or Omissions Committed Before The Limits Of Insurance Increase Date applies to such "damages" and "defense expenses"; and
- c. Subject to the Aggregate Limit, the Aggregate Limit For Acts, Errors Or Omissions Committed Before The Limits Of Insurance Increase Date is the most we will pay for the sum of all "damages" and "defense expenses" under Coverage A for "claims" or "suits" for loss caused by acts, errors or

omissions committed on or after the Retroactive Date For Contractors Professional Liability Coverage and before the Limits Of Insurance Increase Date shown in the Schedule Of Limits Of Insurance.

Each act, error or omission in a series of "related acts, errors or omissions" will be deemed to have been committed on the date the first act, error or omission in that series is committed.

2. The following is added to Paragraph 3. of SECTION II - LIMITS OF INSURANCE:

However, if the Retroactive Date For Contractors Professional Liability Coverage is before the Limits Of Insurance Increase Date shown in the Schedule Of Limits Of Insurance:

- a.** the Each Act, Error Or Omission Limit - Contractors Professional Liability does not apply to "damages" and "defense expenses" under Coverage A for "claims" or "suits" for loss caused by acts, errors or omissions or "related acts, errors or omissions" committed on or after the Retroactive Date For Contractors Professional Liability Coverage and before the Limits Of Insurance Increase Date shown in the Schedule Of Limits Of Insurance And Deductible;
- b.** Instead, the Each Act, Error Or Omission Limit For Acts, Errors Or Omissions Committed Before The Limits Of Insurance Increase Date - Contractors Professional Liability applies to such "damages" and "defense expenses"; and
- c.** Subject to the Aggregate Limit For Acts, Errors Or Omissions Committed Before The Limits Of Insurance Increase Date, the Each Act, Error Or Omission Limit For Acts, Errors Or Omissions Committed Before The Limits Of Insurance Increase Date -Contractors Professional Liability is the most we will pay for the sum of all "damages" and "defense expenses" under Coverage A for all "claims" or "suits" for loss caused by:

- (1)** The same act, error or omission; or
- (2)** "Related acts, errors or omissions";

committed on or after the Retroactive Date For Contractors Professional Liability Coverage and before the Limits Of Insurance Increase Date shown in the Schedule Of Limits Of Insurance And Deductible.

Each act, error or omission in a series of "related acts, errors or omissions" will be deemed to have been committed on the date the first act, error or omission in that series is committed.

Exhibit B, RP 01 52 07 11.

74. The PL Policy contains the following language regarding conditions:

. . .

6. Insured's Duties In The Event Of An Act, Error, Omission, Claim Or Suit

a. The "insured", as a condition precedent to any rights under this policy, must notify us in writing of an act, error or omission which may result in a "claim" or "suit". To the extent possible, notice should include:

- (1) How, when and where the act, error or omission was committed;
- (2) The names and addresses of each "insured" that committed the act, error or omission;
- (3) The names and addresses of any persons or organizations sustaining loss, and the names and addresses of any witnesses; and
- (4) The nature and location of any loss caused by the act, error or omission, and a description of the "damages" that may result from the act, error or omission.

b. If a "claim" or "suit" is made or brought against any "insured", the "insured", as a condition precedent to any rights under Coverage A of this policy, must:

- (1) Immediately record the specifics of the "claim" or "suit" and the date received;
- (2) Notify us of the "claim" or "suit" as soon as practicable;
- (3) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "claim" or "suit";

- (4) Authorize us to obtain records and other information;
- (5) Cooperate with us in the investigation or settlement of, or the defense against, the "claim" or "suit"; and
- (6) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the "insured" because of loss to which this insurance may also apply.

...

- d. No "insured" will, except at that "insured's" own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

...

8. Legal Action Against Us

No person or organization has a right under this policy:

- a. To join us as a party or otherwise bring us into a "suit" asking for "damages" from an "insured"; or
- b. To sue us on this policy unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an "insured", but we will not be liable for "damages" that are not payable under the terms of this policy or that are in excess of the applicable limit of insurance.

As used in this provision, an agreed settlement means a settlement and release of liability signed by us, by the "insured" and by the claimant or the claimant's legal representative.

...

9. Other Insurance

- a. This insurance is excess over any valid and collectible other insurance that is available to the "insured" for a loss we cover under this policy, whether such other insurance is primary, excess, contingent or on any other basis.

As used anywhere in this policy, other insurance means insurance, or the funding of losses, that is provided by, through or on behalf of:

- (1) Another insurance company;
- (2) Us or any of our affiliated insurance companies;
- (3) Any risk retention group;
- (4) Any self-insurance method or program, including any failure to buy insurance, or decision to not buy insurance, for any reason, in which case the "insured" will be deemed to be the provider of other insurance; or
- (5) Any similar risk transfer or risk management method.

Other insurance does not include umbrella insurance, or excess insurance, that you bought specifically to apply in excess of the Limits of Insurance shown in the Declarations.

- b. Under Coverage A, we will have no duty to defend the "insured" against any "claim" or "suit" if any provider of other insurance has a duty to defend the "insured" against that "claim" or "suit". But we will have the right to associate in the defense and control of any "claim" or "suit" that we reasonably believe is likely to involve the insurance provided by Coverage A. If no provider of other insurance defends any "claim" or "suit" for loss to which the insurance provided by Coverage A applies, we will undertake to do so, but we will be entitled to the "insured's" rights against all those providers of other insurance.
- c. We will pay only our share of the amount of the loss, if any, that exceeds the sum of:
 - (1) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
 - (2) The total of all deductible and self-insured amounts under all such other insurance.

...

- 14. Transfer Of Your Rights And Duties Under This Policy**
Your rights and duties under this policy may not be transferred without our written consent except in the case of death of an individual shown in the Declarations as a Named Insured.

If you die, your rights and duties will be transferred to your legal representative but only while acting within the scope of duties as your legal representative. Until your legal representative is appointed, anyone having proper temporary custody of your property will have your rights and duties but only with respect to that property.

15. Transfer Of Rights Of Recovery Against Others To Us

If the "insured" has rights to recover from others all or part of any payment we have made under this policy in connection with a "claim" or "suit", those rights are transferred to us. The "insured" must do nothing after the loss to impair them. At our request, the "insured" will bring suit or initiate an alternative dispute resolution proceeding to enforce those rights, or will transfer those rights to us and help us enforce them.

We will apply any amounts recovered in enforcing those rights of recovery in the following order:

- a.** First, we will reimburse any person or organization (including us or the "insured") any amount that person or organization has paid in excess of the limits of insurance.
- b.** Next, if there is any amount remaining, we will retain an amount equal to the amount we have paid under this policy in connection with the "claim" or "suit".
- c.** Then, if there is any amount remaining, we will pay that amount to the "insured", including any amounts within any applicable deductible or self-insured retention.

If any amounts are recovered in enforcing those rights of recovery, reasonable expenses incurred in enforcing such rights will be shared among all persons or organizations receiving amounts recovered. Each such person's or organization's share of those expenses is based on the ratio of its amount recovered to the total amounts recovered by all such persons or organizations in enforcing such rights.

If the "insured" has agreed in a contract or agreement to waive that "insured's" right of recovery against any person or organization, we waive our right of recovery against such person or organization, but only for payments we make because of loss caused by an act, error or omission committed subsequent to the execution of the contract or agreement.

Exhibit B, Form RP 01 00 05 10.

3. **The Excess Policy**

75. The Excess Policy issued to Dome Technology includes a \$5 million aggregate limit and a \$5 million any one occurrence limit.

76. Dome Technology is a Named Insured under the Excess Policy.

77. The Excess Policy contains the following insuring agreement:

COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY; and COVERAGE B. PERSONAL INJURY AND ADVERTISING INJURY LIABILITY.

1. INSURING AGREEMENT

- a. We will pay on behalf of the insured the “ultimate net loss” in excess of the “applicable underlying limit” which the insured becomes legally obligated to pay as damages because of “bodily injury”, “property damage”, “personal injury” or “advertising injury” to which this insurance applies.

This insurance applies to “bodily injury” or “property damage” only if:

- (i) The “bodily injury” or “property damage” is caused by an “occurrence” that takes place anywhere in the world;
- (ii) The “bodily injury” or “property damage” occurs during the policy period;
- (iii) Prior to the policy period, no insured listed under Paragraph 1. of **SECTION II – Who Is An Insured** and no employee authorized by you to give or receive notice of an “occurrence” or claim, knew that the “bodily injury” or “property damage” had occurred, in whole or in part. If such a listed insured or authorized “employee” knew, prior to the policy period, that the “bodily injury” or “property damage” occurred, then any continuation, change or resumption of such “bodily injury” or “property damage” during or after the policy period will be deemed to have been known prior to the policy period.

...

- c. "Property damage" that is loss of use of tangible property that is not physically injured shall be deemed to occur at the time of the "occurrence" that caused it.
- d. The amount we will pay for damages is limited as described in **SECTION III – LIMITS OF INSURANCE**.

The following provisions apply only with respect to Parts **1.a.(i), (ii) and (iii)** above:

- 1. "Bodily injury" or "property damage" which occurs during the policy period and was not, prior to the policy period, known to have occurred by any insured listed under Paragraph **1.** of **Section II - Who Is An Insured** or any employee authorized by you to give or receive notice of an "occurrence" or claim, includes any continuation, change or resumption of that "bodily injury" or "property damage" after the end of the policy period.
- 2. "Bodily injury" or "property damage" will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph **1.** of **SECTION II - WHO IS AN INSURED** or any employee authorized by you to give or receive notice of an "occurrence" or claim:
 - (a) Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;
 - (b) Receives a written or verbal demand or claim for damages because of "bodily injury" or "property damage"; or
 - (c) Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.

Exhibit C, Form UM 00 01 11 03.

78. The Excess Policy contains the following provision regarding the defense of claims or suits:

- a.** We will have no duty to defend any claim or “suit” that any other insurer has a duty to defend. If we elect to join in the defense of such claims or “suits”, we will pay all expenses we incur.
- b.** We will have the right and duty to defend any “suit” for damages which are payable under Coverages **A** or **B** (including damages wholly or partly within the “retained limit”) but which are not payable by a policy of “underlying insurance”, or any other available insurance, because:

 - (1) Such damages are not covered; or
 - (2) The “underlying insurance” has been exhausted by the payment of claims.
- c.** We may investigate and settle any claim or “suit” in **b.** above at our discretion.
- d.** Our right and duty in **b.** above end when we have used up the “applicable limit of insurance” in the payment of judgments or settlements.

...

Exhibit C, Form UM 00 01 11 03.

79. The Excess Policy contains the following pertinent definitions:

- 3.** “Applicable underlying limit” means:

 - a.** If the policies of “underlying insurance” apply to the “occurrence” or “offense”, the greater of:

 - (1) The amount of insurance stated in the policies of “underlying insurance” in the Declarations or any other available insurance less the amount by which any aggregate limit so stated has been reduced solely due to payment of claims; or
 - (2) The “retained limit” shown in the Declarations; or
 - b.** If the policies of “underlying insurance” do not apply to the “occurrence” or “offense”, the amount stated in the Declarations as the “retained limit”.

The limits of insurance in any policy of “underlying

insurance” will apply even if:

- (i) The “underlying insurer” claims the insured failed to comply with any condition of the policy; or
- (ii) The “underlying insurer” becomes bankrupt or insolvent.

...

7. "Impaired property" means tangible property, other than "your product" or "your work", that cannot be used or is less useful because:

- a.** It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or
- b.** You have failed to fulfill the terms of a contract or agreement;

if such property can be restored to use by the repair, replacement, adjustment or removal of "your product" or "your work"; or your fulfilling the terms of the contract or agreement.

8. “Occurrence” means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

...

12. a. "Products-completed operations hazard" includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:

- (1) Products that are still in your physical possession; or
- (2) Work that has not yet been completed or abandoned.

b. "Your work" will be deemed completed at the earliest of the following times:

- (1) When all of the work called for in your contract has been completed.
- (2) When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site.

- (3) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

- c. "Products-completed operations hazard" does not include "bodily injury" or "property damage" arising out of:

- (1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the loading or unloading of that vehicle by any insured; or

- (2) The existence of tools, uninstalled equipment or abandoned or unused materials.

13. "Property damage" means:

- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
- b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it.

...

14. "Retained limit" is the sum stated in the Declarations as such. If the policies of "underlying insurance" do not apply to the "occurrence" or "offense", the insured shall retain this amount as self insurance with respect to:

- a. "Bodily injury" or "property damage" caused by each "occurrence"; or
- b. "Personal injury" or "advertising injury" sustained by any one person or organization and caused by an "offense".

- 15.** "Suit" means a civil proceeding in which damages because of "bodily injury", "property damage", "personal injury" or "advertising injury" to which this insurance applies are alleged. "Suit" includes:
- a.** An arbitration proceeding alleging such damages to which the insured must submit or does submit with our consent; or
 - b.** Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.
- 16.** "Ultimate net loss" means the sum actually paid or payable due to a claim for which the insured is liable either by a settlement to which we agreed or a final judgment. Such sum will include proper adjustments for recoveries and salvage.
- 17.** "Underlying insurance" means the policies listed in the Schedule of Underlying Insurance and includes:
- (a)** Any renewal or replacement of such policies; and
 - (b)** Any other insurance available to the insured.
- 18.** "Underlying insurer" means any insurer which provides a policy listed in the Schedule of Underlying Insurance or any other insurance available to the insured.
- 19.** "Your product":
- a.** Means:
 - (1)** Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
 - (a)** You;
 - (b)** Others trading under your name; or
 - (c)** A person or organization whose business or assets you have acquired; and
 - (2)** Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.

- b.** Includes:
 - (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your product"; and
 - (2) The providing of or failure to provide warnings or instructions.
- c.** Does not include vending machines or other property rented to or located for the use of others but not sold.

20. "Your work":

- a.** Means:
 - (1) Work or operations performed by you or on your behalf; and
 - (2) Materials, parts or equipment furnished in connection with such work or operations.
- b.** Includes:
 - (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your work"; and
 - (2) The providing of or failure to provide warnings or instructions.

Exhibit C, Form UM 00 01 11 03, as modified by UM 04 04 11 03.

80. The Excess Policy contains the following exclusions:

3. EXCLUSIONS.

This insurance does not apply to:

a. Expected or Intended Injury

"Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" resulting from the use of reasonable force to protect persons or property.

d. Contractual Liability

"Bodily injury", "property damage", "personal injury"

or "advertising injury" for which the insured assumed liability under a contract or agreement. This exclusion does not apply to "bodily injury", "property damage", "personal injury" or "advertising injury" to which any policy of "underlying insurance" listed in the SCHEDULE OF UNDERLYING INSURANCE of the DECLARATIONS of this insurance, or any renewal or replacement thereof, applies or would apply but for the exhaustion of its limits of liability. Coverage provided will follow the same provisions, terms, definitions, exclusions, limitations and conditions of the policy(ies) of "underlying insurance" listed in the SCHEDULE OF UNDERLYING INSURANCE of the DECLARATIONS of this insurance.

i. Damage To Property

"Property damage" to:

(6) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

Paragraphs (3), (4), (5) and (6) of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraph (6) of this exclusion does not apply to "property damage" included in the "products-completed operations hazard".

j. Damage To Your Product

"Property damage" to "your product" arising out of it or any part of it.

k. Damage To Your Work

"Property damage" to "your work" arising out of it or any part of it and included in the "products-completed operations hazard".

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

l. Damage To Impaired Property Or Property Not Physically Injured

"Property damage" to "impaired property" or property that has not been physically injured, arising out of:

- (1) A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or
- (2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to "your product" or "your work" after it has been put to its intended use.

m. Recall Of Products, Work Or Impaired Property

Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

- (1) "Your product";
- (2) "Your work"; or
- (3) "Impaired property";

if such product, work, or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

Exhibit C, Form UM 00 01 11 03, as modified by UM 00 30 03 12.

81. The Excess Policy further contains the following exclusion:

EXCLUSION – ARCHITECTURAL, ENGINEERING OR SURVEYING PROFESSIONAL SERVICES

This endorsement modifies insurance provided under the following:

COMMERCIAL EXCESS LIABILITY (UMBRELLA)
INSURANCE

1. The following exclusion is added to Paragraph 3. **EXCLUSIONS of SECTION I – COVERAGES, COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY; and COVERAGE B. PERSONAL INJURY AND ADVERTISING INJURY LIABILITY:**

Architectural, Engineering Or Surveying Professional Services

"Bodily injury", "property damage", "personal injury" or "advertising injury" arising out of the rendering of or failure to render any professional services by or on behalf of any insured, but only with respect to either or both of the following operations:

- a. Providing, or hiring independent professionals to provide, architectural, engineering or surveying services to others in any insured's capacity as an architect, engineer or surveyor; and

- b. Providing, or hiring independent professionals to provide, architectural, engineering or surveying services in connection with construction work any insured performs.
2. Subject to Paragraph 3. below, professional services include:
 - a. Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders or change orders, or preparing, approving, or failing to prepare or approve, drawings and specifications; and
 - b. Supervisory or inspection activities performed as part of any related architectural, or engineering or surveying activities.
3. Professional services do not include services within construction means, methods, techniques, sequences and procedures employed by you in connection with your operations in your capacity as a construction contractor.

Exhibit C, Form UM 05 65 12 09.

82. The Excess Policy further contains the following exclusion:

**EXCLUSION – CONSTRUCTION MANAGEMENT
ERRORS AND OMISSIONS**

This endorsement modifies insurance provided under the following:

COMMERCIAL EXCESS LIABILITY (UMBRELLA)
INSURANCE

The following exclusion is added to Paragraph 3. **EXCLUSIONS** of **SECTION I – COVERAGES, COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY; and COVERAGE B. PERSONAL INJURY AND ADVERTISING INJURY LIABILITY:**

This insurance does not apply to "bodily injury", "property damage", "personal injury" or "advertising injury" arising out of:

1. The preparing, approving, or failure to prepare or approve maps, drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications by any architect, engineer or surveyor performing services on a project on which you serve as construction manager; or
2. Inspection, supervision, quality control or engineering services done by or for you on a project on which you serve as construction manager.

This exclusion does not apply to "bodily injury" or "property damage" due to construction or demolition work done by you, your employees or your subcontractors

Exhibit C, Form UM 01 16 11 03.

83. The Excess Policy further contains the following exclusion:

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION – ALL PROJECTS SUBJECT TO A WRAP-UP INSURANCE PROGRAM WITH LIMITED COVERAGE EXCEPTION

This endorsement modifies insurance provided under the following:

COMMERCIAL EXCESS LIABILITY (UMBRELLA) INSURANCE

1. The following exclusion is added to Paragraph 3., **EXCLUSIONS of SECTION I – COVERAGES, COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY; and COVERAGE B. PERSONAL INJURY AND ADVERTISING INJURY LIABILITY:**

This insurance does not apply to "bodily injury" or "property damage" arising out of any project that is or was subject to a "wrap-up insurance program".

This exclusion does not apply to "bodily injury" or "property damage" to which any policy of "underlying insurance" listed in the SCHEDULE OF UNDERLYING INSURANCE of the DECLARATIONS of this insurance, or any renewal or replacement thereof, applies or would apply but for the exhaustion of its limits of liability.

2. Only as respects the Provisions of this endorsement, the following is added to **Section V – Definitions:**

"Wrap-up insurance program" means any agreement or arrangement, including any contractor-controlled, owner-controlled or similar insurance program, under which some or all of the contractors working on a specific project, or specific projects, are required to participate in a program to obtain insurance that:

- a. Includes the same or similar insurance as that provided by this policy; and
- b. Is issued specifically for injury or damage arising out of such project or projects.

Exhibit C, Form UM 04 56 03 07.

84. The Excess Policy contains the following language regarding limits of insurance:

SECTION III – LIMITS OF INSURANCE.

1. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:
 - a. Insureds;
 - b. Claims made or "suits" brought; or
 - c. Persons or organizations making claims or bringing "suits".
2. The Products-Completed Operations Aggregate Limit is the most we will pay under Coverage **A** for damages because of injury and damage included in the "products-completed operations hazard".
3. The General Aggregate Limit is the most we will pay for damages under Coverage **A** and Coverage **B**, except:
 - a. Damages because of injury and damage included in the "products-completed operations hazard"; and
 - b. Damages because of injury and damage included in the "auto hazard".
- ...
5. Subject to 2. or 3. above, whichever applies, the Each Occurrence Limit is the most we will pay for the sum of damages under Coverage **A** because of all "bodily injury" and "property damage" arising out of any one "occurrence".

Non cumulation of Each Occurrence Limit – If one "occurrence" causes "bodily injury" and/or "property damage" during the policy period and during the policy period of one or more prior and/or future policies that include a **COMMERCIAL EXCESS LIABILITY (UMBRELLA) INSURANCE** policy for the insured issued by us or any affiliated insurance company, the amount we will pay is limited. This policy's Each Occurrence Limit will be reduced by the amount of each payment made by us and any affiliated insurance company under the other policies because of such "occurrence".

To determine the limit of our liability, all "bodily injury" and "property damage" arising out of continuous or repeated exposure to the same general conditions shall be considered one "occurrence".

The limits of this insurance apply separately to each consecutive annual period and to any remaining period of

less than 12 months.

The policy period begins with the effective date shown in the Declarations. If the policy period is extended after issuance for an additional period of less than 12 months, the additional period will be deemed part of the last preceding period.

Exhibit C, Form UM 00 01 11 03.

85. The Excess Policy contains the following language regarding conditions:

SECTION IV – CONDITIONS.

...

5. DUTIES IN THE EVENT OF OCCURRENCE OR OFFENSE, CLAIM OR SUIT.

- a.** You must see to it that we are notified promptly of an "occurrence" or an "offense" which may result in a claim under this insurance. Notice should include:
 - (1)** How, when and where the "occurrence" or "offense" took place; and
 - (2)** The names and addresses of any injured persons and witnesses.
- b.** If a claim is made or "suit" is brought against any insured which may result in a claim against this insurance, you must see to it that we receive prompt written notice of the claim or "suit".
- c.** The insured must:
 - (1)** Cooperate with the "underlying insurers";
 - (2)** Comply with the terms of the "underlying insurance"; and
 - (3)** Pursue all rights of contribution or indemnity against any person or organization who may be liable to the insured because of "bodily injury", "property damage", "personal injury" or "advertising injury" with respect to which insurance is provided under this or any policy of "underlying insurance".
- d.** When we believe that a claim may exceed the "underlying insurance", we may join with the insured and the "underlying insurer" in the investigation, settlement and defense of all claims and "suits" in connection with such "occurrence" or "offense". In such event, the insured must cooperate with us.

...

8. LEGAL ACTION AGAINST US.

No person or organization has a right under this insurance:

- a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or
- b. To sue us on this insurance unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured. We will not be liable for damages that are not payable under the terms of this insurance; or are in excess of the "applicable limit of insurance".

An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

...

10. OTHER INSURANCE.

This insurance is excess over any valid and collectible other insurance whether such other insurance is stated to be primary, contributing, excess, contingent or otherwise. This provision does not apply to a policy bought specifically to apply excess of this insurance.

As used anywhere in this policy, other insurance means insurance, or the funding of losses, that is provided by, through or on behalf of:

- (i) Another insurance company;
- (ii) Us or any of our affiliated insurance companies, except when the Non cumulation of Each Occurrence Limit provision of Paragraph 5. of **SECTION III – LIMITS OF INSURANCE** or the Non cumulation of Personal and Advertising Injury Limit provision of Paragraph 4. of **SECTION III – LIMITS OF INSURANCE** applies;
- (iii) Any risk retention group;
- (iv) Any self-insurance method or program, including any failure to buy insurance, or decision to not buy insurance, for any reason, in which case the insured will be deemed to be the provider of other insurance; or
- (v) Any similar risk transfer or risk management method.

As used anywhere in this policy, other insurer means a provider of other insurance.

11. OUR RIGHT TO RECOVER FROM OTHERS.

If we make a payment under this insurance, the insured will assist us and the "underlying insurer" in recovering what

we paid by using the insured's rights of recovery. Reimbursement will be made in the following order:

- a. First, to any interest (including the insured) who has paid any amount in excess of the limits of this insurance;
- b. Next to us; and
- c. Then to any interest (including the insured and the "underlying insurer") as are entitled to claim the remainder, if any.

A different order may apply if agreed upon by all interests. Expenses incurred in the process of recovery will be divided among all interests according to the ratio of their respective recoveries.

...

16. TRANSFER OF YOUR RIGHTS AND DUTIES UNDER THIS INSURANCE.

Your rights and duties under this insurance may not be transferred without our written consent except in the case of death of an individual named insured.

If you die, your rights and duties will be transferred to your legal representative but only while acting within the scope of duties as your legal representative. Until your legal representative is appointed, anyone having proper temporary custody of your property will have your rights and duties but only with respect to that property.

17. WHEN LOSS IS PAYABLE.

If we are liable under this insurance, we will pay for "ultimate net loss" after:

- a. (1) The insured's liability is established by court decision; or
(2) There is a written agreement between the claimant, the insured, any "underlying insurer" and us; and
- b. The amount of the "applicable underlying limit" is paid by or on behalf of the insured.

We will pay all claims within thirty days provided all terms of this insurance are met.

The insured will reimburse us for any payment we make for damages which are within the "retained limit".

Exhibit C, Form UM 00 01 11 03, as modified by UM 04 79 07 08.

IV. THERE IS AN ACTUAL AND JUSTICIABLE CONTROVERSY AS TO TRAVELERS' COVERAGE OBLIGATIONS

86. There may be no coverage available to Dome Technology for the claims asserted

by Nucor under any policies issued by Travelers.

A. The Travelers' CGL Policy

87. The rights and obligations of Travelers under the CGL Policy are defined by the terms and conditions of the CGL Policy issued by Travelers to Dome Technology. **Exhibit A.**

88. Travelers requests that the Court grant declaratory relief by entering a judicial determination regarding Travelers' obligations under the CGL Policy to provide defense or indemnity coverage for the claims asserted against Dome Technology.

89. The CGL Policy provides coverage according to its terms and conditions and not otherwise.

90. The CGL Policy provides coverage only for damages because of "property damage" to which this insurance applies and this insurance applies to "property damage" only if the "property damage" is caused by an "occurrence", the "property damage" occurs during the policy period and, prior to the policy period, Dome Technology did not know that the "property damage" had occurred, in whole or in part.

91. There is an actual and justiciable controversy as to whether the claims against Dome Technology involve "property damage" as that term is defined by the CGL Policy.

92. There is an actual and justiciable controversy as to whether the claims against Dome Technology involve an "occurrence" as that term is defined by the CGL Policy.

93. There is an actual and justiciable controversy as to whether the claims against Dome Technology are for damages because of "property damage" caused by an "occurrence."

94. There is an actual and justiciable controversy as to whether the claims against Dome Technology involve "property damage" that occurred during the policy period of the CGL Policy.

95. There is an actual and justiciable controversy as to whether, prior to the policy period of the CGL Policy, Dome Technology knew any alleged “property damage” had occurred, in whole or in part.

96. Pursuant to the CGL Policy, coverage is excluded for “property damage” that is expected or intended from the standpoint of the insured.

97. There is an actual and justiciable controversy as to whether the claims against Dome Technology involve “property damage” expected or intended from the standpoint of Dome Technology.

98. Pursuant to the CGL Policy, coverage is excluded for “property damage” for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement.

99. There is an actual and justiciable controversy as to whether Dome Technology is obligated to pay for any alleged damages because of “property damage” due to an assumption of liability in a contract or agreement.

100. Pursuant to the CGL Policy, coverage is excluded for “property damage” to that particular part of real property on which the insured or anyone working directly for the insured are performing operations and the property damage arises out of those operations.

101. There is an actual and justiciable controversy as to whether the claims against Dome Technology involve “property damage” to property on which operations were being performed by Dome Technology or any contractor or subcontractor working on Dome Technology’s behalf.

102. Pursuant to the CGL Policy, coverage is excluded for “property damage” to any property that must be restored, repaired, or replaced because “your work”, as that term is defined by the CGL Policy, was performed incorrectly.

103. There is an actual and justiciable controversy as to whether the claims against Dome Technology involve “property damage” to property that must be restored, repaired, or replaced because “your work”, as defined by the CGL Policy, was performed incorrectly.

104. Pursuant to the CGL Policy, coverage is excluded for “property damage” to “your product”, as that term is defined by the CGL Policy, arising out of it or any part of it.

105. There is an actual and justiciable controversy as to whether the claims against Dome Technology involve “property damage” to Dome Technology’s product.

106. Pursuant to the CGL Policy, coverage is excluded for “property damage” to “your work”, as that term is defined by the CGL Policy, arising out of it or any part of it and included in the “products-completed operations hazard”, as that term is defined by the CGL Policy.

107. There is an actual and justiciable controversy as to whether the claims against Dome Technology involve “property damage” to Dome Technology’s work.

108. Pursuant to the CGL Policy, coverage is excluded for “property damage” to “impaired property” or other property has not been physically injured arising out of a defect, deficiency, inadequacy or dangerous condition in the insured’s product or the insured’s work or a delay or failure by the insured or anyone acting on the insured’s behalf to perform a contract or agreement in accordance with its terms.

109. There is an actual and justiciable controversy as to whether the claims against Dome Technology involve “property damage” to any “impaired property” or property that has not been physically injured arising out of a defect, deficiency, inadequacy or other dangerous

condition in Dome Technology's work or product or a delay or failure by Dome Technology or anyone acting on Dome Technology's behalf to perform a contract or agreement in accordance with its terms.

110. Pursuant to the CGL Policy, coverage is excluded for damages claimed for any loss, cost or expense incurred for any product, work, or property recalled from the market or use because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

111. There is an actual and justiciable controversy as to whether the claims against Dome Technology involve damages arising out of any product, work, or property recalled from the market or use.

112. Pursuant to the CGL Policy, coverage is excluded for any claim for "property damage" arising out of construction management errors or omissions.

113. There is an actual and justiciable controversy as to whether the claims against Dome Technology involve claims for damage arising out of construction management errors or omissions.

114. Pursuant to the CGL Policy, coverage is excluded for any claim for "property damage" arising out of the rendering of or failure to render architectural, engineering or surveying professional services by or on behalf of the insured.

115. There is an actual and justiciable controversy as to whether the claims against Dome Technology involve claims for damage arising out of architectural, engineering or surveying professional services by or on behalf of Dome Technology.

116. Pursuant to the CGL Policy, coverage is excluded for any claim for "property damage" arising out of any project that is or was subject to a "wrap-up insurance program".

117. Pursuant to the CGL Policy, the CGL Policy is excess over any other insurance, whether primary, excess, contingent or on any other basis, that is Builder's Risk or similar coverage or that is available to the insured when the insured is added as an additional insured under any other policy, including any umbrella or excess policy.

118. There is an actual and justiciable controversy as to whether the CGL Policy is excess over other insurance.

119. Pursuant to the CGL Policy, the insured is required to comply with certain terms and conditions as a condition precedent to coverage, including but not limited to the policy cooperation provisions and voluntary payment provisions.

120. There is an actual and justiciable controversy as to whether Dome Technology complied with the cooperation provisions in the CGL Policy and whether any failure to comply on the part of Dome Technology prejudiced Travelers.

121. Travelers reserves the right to assert any other exclusions or grounds for which coverage for the claims against Dome Technology may be precluded under the CGL Policy issued by Travelers.

B. The Travelers' PL Policy

122. The rights and obligations of Travelers under the PL Policy are defined by the terms and conditions of the PL Policy of insurance issued by Travelers to Dome Technology.

Exhibit B.

123. Travelers requests that the Court grant declaratory relief by entering a judicial determination regarding Travelers' obligations under the PL Policy to provide defense or indemnity coverage for the claims asserted against Dome Technology.

124. The PL Policy provides coverage according to its terms and conditions and not

otherwise.

125. The PL Policy provides coverage for sums that the insured becomes legally obligated to pay as "damages" because of loss to which this insurance applies and this insurance applies to loss only if the loss is caused by an act, error or omission that results from the performance or failure to perform "your contractor professional services", as that term is defined by the PL Policy, by Dome Technology or on Dome Technology's behalf, provided that the act, error or omission was not committed before the Retroactive Date For Contractors Professional Liability Coverage shown in the Declarations or after the end of the "policy period" and a "claim" or "suit" that seeks "damages" because of the loss was first made or brought against Dome Technology in accordance with Paragraph 1.c. of the Insuring Agreement of Coverage A.

126. There is an actual and justiciable controversy as to whether Dome Technology has or will become legally obligated to pay "damages" because of loss caused by an act, error or omission resulting from the performance of, or failure to perform, "your contractor professional services" by Dome Technology or on Dome Technology's behalf.

127. There is an actual and justiciable controversy as to whether any such act, error or omission was committed before the Retroactive Date for Contractors Professional Liability Coverage shown in the Declarations or after the end of the "policy period".

128. There is an actual and justiciable controversy as to the time a "claim" or "suit" seeking "damages" because of loss caused by an act, error or omission resulting from the performance, or failure to perform, "your contractor professional services" by Dome Technology or on Dome Technology's behalf was first made or brought against Dome Technology.

129. Pursuant to the PL Policy, coverage is excluded for any "claim" made by or on behalf of any "insured" against any "insured".

130. Pursuant to the PL Policy, coverage is excluded for loss for which the "insured" has assumed liability under any contract or agreement.

131. There is an actual and justiciable controversy as to whether the claims against Dome Technology are for "damages" because of loss for which Dome Technology has assumed liability under a contract or agreement.

132. Pursuant to the PL Policy, coverage is excluded for loss arising out of any express warranty or guarantee.

133. There is an actual and justiciable controversy as to whether the claims against Dome Technology are for "damages" because of loss arising out of any express warranty or guarantee.

134. Pursuant to the PL Policy, coverage is excluded for loss arising out of any faulty construction work, including work that is not performed in accordance with a project's design or construction documents, that is performed by Dome Technology, by or on behalf of any subsidiary of any "insured", or by or on behalf of any person or organization that owns more than 25% of, or that, in whole or substantially, controls financially, manages or operates, any "insured".

135. There is an actual and justiciable controversy as to whether the claims against Dome Technology are for "damages" because of loss arising out of any faulty construction work, including work that is not performed in accordance with a project's design or construction documents, performed by Dome Technology, by or on behalf of any subsidiary of any "insured", or by or on behalf of any person or organization that owns more than 25% of, or that, in whole or substantially, controls financially, manages or operates, any "insured".

136. Pursuant to the PL Policy, coverage is excluded for loss arising out of any act, error or omission known prior to the applicable policy period by any manager, member, or employee of Dome Technology.

137. There is an actual and justiciable controversy as to whether the claims against Dome Technology arise out of any act, error or omission known prior to the applicable policy period by any manager, member, or employee of Dome Technology.

138. Pursuant to the PL Policy, coverage is excluded for loss if a professional liability policy, other than the PL Policy, provides coverage to Dome Technology for the same loss, or would have provided coverage but for an exclusion, deductible or self-insured retention, exhaustion of policy limits, or bankruptcy or insolvency.

139. There is an actual and justiciable controversy as to whether the claims against Dome Technology involve loss that is covered under a professional liability policy, other than the PL Policy, providing coverage to Dome Technology for the same loss, or that would have provided coverage but for an exclusion, deductible or self-insured retention, exhaustion of policy limits, or bankruptcy or insolvency.

140. Pursuant to the PL Policy, coverage is excluded for any loss arising out of the professional services of any partnership, joint venture or limited liability company not identified as a named insured in the Declarations, of which Dome Technology is a partner or member.

141. There is an actual and justiciable controversy as to whether the claims against Dome Technology arise of the professional services of any partnership, joint venture or limited liability company not identified as a named insured in the Declarations, of which Dome Technology is a partner or member.

142. Pursuant to the PL Policy, the PL Policy is excess over any valid and collectible other insurance that is available to Dome Technology, whether such other insurance is primary, excess, contingent or on any other basis.

143. There is an actual and justiciable controversy as to whether the PL Policy is excess over other insurance.

144. Pursuant to the PL Policy, the insured is required to comply with certain terms and conditions as a condition precedent to coverage, including but not limited to the policy cooperation provisions and voluntary payment provisions.

145. There is an actual and justiciable controversy as to whether Dome Technology complied with the cooperation provisions in the PL Policy and whether any failure to comply on the part of Dome Technology prejudiced Travelers.

146. Travelers reserves the right to assert any other exclusions or grounds for which coverage for the claims against Dome Technology may be excluded under the PL Policy issued by Travelers.

C. The Travelers' Excess Policy

147. Travelers reasserts paragraphs 1 through 146 as fully set forth herein.

148. The rights and obligations of Travelers are defined by the terms and conditions of Excess Policy issued by Travelers to Dome Technology. **Exhibit C.**

149. Travelers requests that the Court grant declaratory relief by entering a judicial determination regarding Travelers' obligations under the Excess Policy to provide defense or indemnity coverage for the claims asserted against Dome Technology.

150. The Excess Policy provides coverage according to its terms and conditions and not otherwise.

151. The Excess Policy provides coverage only for the “ultimate net loss” in excess of the “applicable underlying limit” which Dome Technology becomes legally obligated to pay as damages because of “property damage” to which this insurance applies and this insurance applies to “property damage” only if the “property damage” is caused by an “occurrence”, occurs during the policy period and was not known to have occurred, in whole or in part, by Dome Technology prior to the policy period of the Excess Policy.

152. There is an actual and justiciable controversy as to whether the claims against Dome Technology involve “property damage” as that term is defined.

153. There is an actual and justiciable controversy as to whether the claims against Dome Technology involve an “occurrence” as that term is defined.

154. There is an actual and justiciable controversy as to whether the claims against Dome Technology are for damages because of “property damage” caused by an “occurrence.”

155. There is an actual and justiciable controversy as to whether any “property damage” that was caused by an “occurrence” occurred during the Excess Policy period.

156. There is an actual and justiciable controversy as to whether Dome Technology had knowledge that any alleged “property damage” had occurred, in whole or in part, prior to the policy period of the Excess Policy.

157. Pursuant to the Excess Policy, Travelers has no obligation to defend Dome Technology until the “underlying insurance” has been exhausted.

158. “Underlying insurance” is defined as the policies listed in the Schedule of Underlying Insurance and includes any renewal or replacement of such policies and any other insurance available to the insured.

159. There is an actual and justiciable controversy as to whether the “underlying

insurance” applicable to the Excess Policy will be exhausted.

160. There is an actual and justiciable controversy whether the PL Policy qualifies as “underlying insurance” to the Excess Policy.

161. Pursuant to the Excess Policy, the Excess Policy provides coverage for the “ultimate net loss” in excess of the “applicable underlying limit” which the insured becomes legally obligated to pay as damages because of “property damage” to which the Excess Policy applies.

162. “Ultimate net loss” is defined as the sum actually paid or payable due to a claim for which the insured is liable either by a settlement to which Travelers agreed, or a final judgment.

163. There is an actual and justiciable controversy as to whether Dome Technology is or will be liable either by a settlement to which Travelers agreed, or a final judgment.

164. “Applicable underlying limit” is defined as the greater of the amount of insurance stated in the policies of “underlying insurance” in the Declarations or any other available insurance less the amount by which any aggregate limit so stated has been reduced solely due to payment of claims, or the “retained limit” shown in the Declarations.

165. There is an actual and justiciable controversy as to whether the “underlying insurance” applicable to the Excess Policy will be exhausted.

166. Pursuant to the Excess Policy, coverage is excluded for “property damage” that is expected or intended from the standpoint of the insured.

167. There is an actual and justiciable controversy as to whether Dome Technology expected or intended any alleged “property damage.”

168. Pursuant to the Excess Policy, coverage is excluded for “property damage” arising

out of the rendering or failure to render any architectural, engineering or surveying professional services by or on behalf of any insured.

169. There is an actual and justiciable controversy as to whether the claims against Dome Technology arise out of the rendering or failure to render any architectural, engineering or surveying professional services by or on behalf of Dome Technology.

170. Pursuant to the Excess Policy, coverage is excluded for “property damage” to property that must be restored, repaired, or replaced because “your work” was performed incorrectly.

171. There is an actual and justiciable controversy as to whether the work of the insured or any work on the insured’s behalf was incorrectly performed and caused the property to be restored, repaired, or replaced.

172. Pursuant to the Excess Policy, coverage is excluded for “property damage” to “your product”.

173. There is an actual and justiciable controversy as to whether the claims against Dome Technology involve “property damage” to “your product” as defined by the Excess Policy.

174. Pursuant to the Excess Policy, coverage is excluded for liability for “property damage” to “your work” arising out of it or any part of it and included in the “products-completed operations hazard”.

175. There is an actual and justiciable controversy as to whether the claims against Dome Technology involve “property damage” to “your work”.

176. Pursuant to the Excess Policy, coverage is excluded for “property damage” for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement.

177. There is an actual and justiciable controversy as to whether Dome Technology is obligated to pay for any alleged “property damage” due to an assumption of liability in a contract or agreement.

178. Pursuant to the Excess Policy, coverage is excluded for any loss, cost or expense incurred for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of Dome Technology’s product, work, or “impaired property” if such product, work, or property is withdrawn or recalled from the market due to known or suspected defect, deficiency, inadequacy or dangerous condition in it.

179. There is an actual and justiciable controversy as to whether any claims against Dome Technology consist of damages arising out of any product, work, or property recalled from the market or use.

180. Pursuant to the Excess Policy, coverage is excluded for any claim for “property damage” arising out of construction management errors or omissions.

181. There is an actual and justiciable controversy as to whether the claims against Dome Technology involve claims for damage arising out of construction management errors or omissions.

182. Pursuant to the Excess Policy, the insured is required to comply with certain terms and conditions as a condition precedent to coverage, including but not limited to the policy cooperation provisions and voluntary payment provisions.

183. There is an actual and justiciable controversy as to whether Dome Technology complied with the cooperation provisions in the Excess Policy and whether any failure to comply on the part of Dome Technology prejudiced Travelers.

184. Pursuant to the Excess Policy, the Excess Policy is excess over any other valid and collectible other insurance.

185. There is an actual and justiciable controversy as to whether the Excess Policy is excess over other insurance.

186. Travelers reserves the right to assert any other exclusions or grounds for which coverage for the claims against Dome Technology may be excluded under the Excess Policy issued by Travelers.

V. CAUSE OF ACTION

187. Travelers incorporates by reference as though fully set forth herein, and restates and re-alleges paragraphs 1 through 186 above.

188. Travelers is entitled to Declaratory Judgment in its favor, specifically including a judicial determination regarding its coverage obligations to Dome Technology under the CGL Policy issued to Dome Technology for the claims asserted against Dome Technology in regard to the Subject Project that is the subject of this lawsuit.

189. Travelers is entitled to Declaratory Judgment in its favor, specifically including a judicial determination regarding its coverage obligations to Dome Technology under the PL Policy issued to Dome Technology for the claims asserted against Dome Technology in regard to the Subject Project that is the subject of this lawsuit.

190. Travelers is entitled to Declaratory Judgment in its favor, specifically including a judicial determination regarding its coverage obligations to Dome Technology under the Excess

Policy issued to Dome Technology for the claims asserted against Dome Technology in regard to the Subject Project that is the subject of this lawsuit.

VI. PRAYER FOR RELIEF

1. Declaratory Judgment including a judicial declaration regarding Travelers' coverage obligations to Dome Technology for any of the claims asserted against Dome Technology in the lawsuit entitled *Nucor Steel Louisiana, LLC and Nucor Corporation v. Zurich American Insurance Company, et al., Cause No. 37964*, Twenty-Third Judicial District Court for the Parish of St. James, State of Louisiana.

2. For recovery of any and all attorney's fees, costs, defense fees or costs, indemnity payments, or other amounts that are allowed under Idaho law.

3. Pre-judgment interest or post-judgment interest as allowed by law.

4. Any other such relief that the Court deems to be just and equitable.

Dated this 24th day of March, 2017.

LEATHER & ASSOCIATES, PLLC

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