

64337-1

64337-1

NO. 64337-1-I

DIVISION I
COURT OF APPEALS OF THE STATE OF WASHINGTON

CERTAIN UNDERWRITERS AT LLOYD'S, LONDON,

Respondent,

vs.

THE TRAVELERS PROPERTY CASUALTY COMPANY OF
AMERICA,

Appellant,

and

EVERGREEN HEALTHCARE; and LONG-CENT ASSOCIATES, L.P.

Defendants.

2010 MAY 13 PM 3:25
COURT OF APPEALS
CLERK OF COURT

BRIEF OF RESPONDENT

TALMADGE/FITZPATRICK
Philip A. Talmadge WSBA #6973
18010 Southcenter Parkway
Tukwila, WA 98188
Ph: (206) 574-6661

BRUCKMANN & VICTORY, LLP
Arjang Victory, *Admitted Pro Hac*
Jennifer Hoffman, *Admitted Pro Hac*
420 Lexington Avenue, Suite 1621
New York, NY 10170
Ph: (212) 850-8500

GORDON THOMAS HONEYWELL
Michael Ricketts WSBA #9387
One Union Square, 600 University Street, Suite 2100
Seattle, WA 98101-4185
Ph: (206) 676-7500

*Attorneys for Respondent
Certain Underwriters at Lloyd's, London*

TABLE OF CONTENTS

	Page
I. Introduction	1
II. Statement of Issues	1
III. Statement of the Case	2
IV. Summary of Argument	10
V. Argument	12
A. Washington Rules of Insurance Policy Construction Favor Coverage	12
B. Travelers' Policy Insures Ordinance or Law as a Covered Cost and Expense that is "In Addition To" the \$1,000,000 Flood Limit	14
1. Travelers Misreads its Own Policy	14
2. Lloyd's Offers a Reasonable Interpretation that Renders Travelers' Policy Ambiguous	19
3. Travelers' Extrinsic Evidence Does Not Resolve the Ambiguity	26
C. Lloyd's Excess Flood Policy Responds after Travelers' Underlying Policy Pays its Policy Limits	27
VI. Conclusion	30

TABLE OF AUTHORITIES

	Page
<i>Bordeaux, Inc. v. American Safety Ins. Co.</i> , 145 Wn. App. 687, 186 P.3d 1188 (2008), <i>review denied</i> , 165 Wn.2d 1035 (2009)	12
<i>Key Tronic Corp. Inc., v. Aetna (Cigna) Fire Underwriters Ins. Co.</i> , 124 Wn.2d 618, 881 P.2d 201 (1995)	13, 26
<i>Lynott v. National Union Fire Ins. Co. of Pittsburgh</i> , 123 Wn.2d 678, 871 P.2d 146 (1994)	23
<i>McDonald Industries, Inc. v. Rollins Leasing Corp.</i> , 95 Wn.2d 909, 631 P.2d 947 (1981).....	12, 13
<i>Mercer Place Condominium Assoc. v. State Farm Fire & Casualty Co.</i> , 104 Wn. App. 597, 17 P.3d 626 (2000), <i>review denied</i> , 143 Wn.2d 1023 (2001)	22
<i>Morgan v. Prudential Ins. Co.</i> , 86 Wn.2d 432, 545 P.2d 1193 (1976).....	13
<i>Rees v. Viking Ins. Co.</i> , 77 Wn. App. 716, 892 P.2d 1128 (1995)	29
<i>S&K Motors, Inc. v. Harco National Insurance Co.</i> , 151 Wn. App. 633, 213 P.3d 630 (2009)	27
<i>Stuart v. American States Ins. Co.</i> , 134 Wn.2d 814, 953 P.2d 464 (1998).....	12
<i>Transcontinental Insurance Co. v. Washington Public Utilities Districts' Utility System</i> , 111 Wn.2d 452, 760 P.2d 337 (1988)	13, 20, 26

Other Authorities

Eric Mills Holmes and Mark S. Rhodes,
Appleman on Insurance 2d §6.1 (West 1996)12

Scott G. Johnson,
Insurance Coverage for Building Code Upgrades, Tort
Trial & Insurance Practice Law Journal, 44.3-4 (2009)17

I. INTRODUCTION

This appeal concerns just one issue—insurance policy interpretation. Travelers Property Casualty Company of America (“Travelers”) seeks an interpretation that limits all coverages to a flood limit of \$1,000,000. In contrast, Certain Underwriters at Lloyd’s, London (“Lloyd’s”) seek a policy interpretation that provides the insured, Evergreen Healthcare (“Evergreen”), with broader coverage for two main reasons. First, Travelers misreads its own policy. Second, Lloyd’s offers a reasonable interpretation that renders Travelers’ policy ambiguous.

II. STATEMENT OF ISSUES

This appeal concerns the following two policy interpretation issues:

1. Policy limits: Travelers admitted liability for both the physical damage to Covered Property as well as the related Covered Costs and Expenses for Ordinance and Law. But Travelers then restricted coverage to just the \$1,000,000 Flood limit despite its policy wording that specified a \$10,000,000 limit for Ordinance and Law that was “in addition to” the Covered Property Limit. Can Travelers restrict its coverage to just the \$1,000,000 Flood limit?
2. Excess Insurance: Travelers conceded that Lloyd’s provides a following form excess policy. And, the Lloyd’s excess policy stated that

liability attaches only after the underlying insurers paid or admitted full liability. Does Lloyd's liability commence before the Travelers' policy exhausts?

III. STATEMENT OF THE CASE

Evergreen operated a skilled nursing facility in Centralia, Washington. CP 17. In December 2007, Evergreen's facility experienced significant flood damage. CP 19. According to Evergreen, it would have to incur substantial reconstruction costs in order to comply with federal, state and local laws, ordinances and regulations. CP 19. Evergreen estimated its claim, inclusive of code requirements, at more than \$10,000,000. CP 20.

Travelers admitted liability for losses from both Flood and Ordinance or Law. CP 456-463. But Travelers also asserted that all losses were limited to \$1,000,000. CP 462. A dispute then ensued as to coverage for the remaining loss of \$8,500,000 attributable to Ordinance or Law. CP 22-28.

At the time of the flood, Evergreen had insurance with three different insurers. First, Evergreen purchased coverage from the National Flood Insurance Program ("NFIP"). CP 14. This insurer insured against flood and it promptly paid its coverage limit of \$500,000. CP 16.

Second, Evergreen purchased general property coverage from Travelers that covered the flood peril as well as certain covered costs and expenses such as those for ordinance or law. (The relevant portions of the Travelers policy are set out in full in Appendix A.) Travelers issued a general property policy that provided substantial coverage with blanket limits of \$277,120,000 for property damage to Evergreen's buildings. CP 144; Appendix A at 4. This substantial policy contained an index that listed some 39 forms. CP 143; Appendix A at 3. Relevant to this appeal are the terms of just the following four forms:

- PROPERTY COVERAGE FORM (MS C1 00 03 05)
- FLOOD (MS C2 06 03 05)
- Supplemental Coverage Declarations (MS C0 03 07 99)
- GENERAL CONDITIONS (MS C5 01 01 00)

The PROPERTY COVERAGE FORM contained the policy's "Insuring Agreement" that agreed to pay for loss or damage to Covered Property caused by a Covered Cause of Loss as follows:

PROPERTY COVERAGE FORM

A. INSURING AGREEMENT

This Company will pay for direct physical loss or damage to Covered Property . . . caused by or resulting from a Covered Cause of Loss. Covered Cause of Loss

means risks of direct physical loss unless the loss is excluded . . .

CP 150; Appendix A at 10.

The PROPERTY COVERAGE FORM also excluded flood. CP 157; Appendix A at 17. However, Endorsement MS C2 06 03 05, entitled “FLOOD,” separately and specifically made flood a Covered Cause of Loss as follows:

FLOOD

This Endorsement modifies insurance provided under this policy.

- A. The following is added to the Covered Causes of Loss and the “specified causes of loss”:

Flood, meaning:

* * *

- E. The most the Company will pay for the total of all loss or damage caused by Flood in any one policy year is the single highest Annual Aggregate Limit of Insurance specified for Flood shown in the Supplemental Coverage Declarations. This limit is part of, and does not increase, the Limits of Insurance that apply under this policy.

CP 178-79; Appendix A at 24-25.

The PROPERTY COVERAGE FORM also provided coverage for both Covered Property **and** Covered Costs and Expenses as follows:

PROPERTY COVERAGE FORM

* * *

B. COVERAGE

Coverage is provided for Covered Property and Covered Costs and Expenses, as described in Sections B.1 and B.2 . . . Coverage applies only when a Limit of Insurance is shown in the Supplemental Coverage Declarations for the specific type of Covered Property or Covered Costs and Expenses . . .

CP 150; Appendix A at 10.

Section B.1 then defined Covered Property to mean, *inter alia*, the Insured's buildings and other structures at the Insured's premises. CP 150; Appendix A at 10.

In addition to coverage for Covered Property, Travelers also insured Covered Costs and Expenses as defined in Section B.2. CP 154; Appendix A at 14. This additional insurance provided coverage for the following nine Covered Costs and Expenses:

2. COVERED COSTS AND EXPENSES

- a. Debris Removal
- b. Pollutant Cleanup and Removal
- c. Claim Data Expense

- d. Fire Department Service Charge
- e. Fire Protective Equipment Discharge
- f. Ordinance or Law

- g. Preservation of Property
- h. Protection of Property
- i. Water, Other Liquids, Powder or Molten Material Damage

Clause “2.f” above concerned Ordinance or Law and read, in pertinent part, as follows:

f. Ordinance or Law

If a Covered Cause of Loss occurs to Covered Property, the Company will pay for:

* * *

(3) The increased cost to repair, rebuild or construct the Covered Property caused by the enforcement of building, zoning land use or any other ordinance or law when the Covered Property is insured for replacement cost.

(Emphasis in original.) CP 155; Appendix A at 15. Travelers thus provided coverage for the increased cost to repair the property caused by the enforcement of building codes following a Covered Cause of Loss occurring to Covered Property.

The Coverage paragraph of the PROPERTY COVERAGE FORM also stated that coverage applies only when a “Limit of Insurance” was shown in the “Supplemental Coverage Declarations” for the specific type of Covered Property or Covered Costs and Expenses. CP 150; Appendix

A at 10. The Supplemental Coverage Declarations then stated policy limits for 21 different coverages as follows:

Supplemental Coverage Declarations

* * *

B. LIMITS OF INSURANCE – For application of Limits of Insurance refer to Section O. Limits of Insurance in the General Conditions:

- | | | |
|----|----------------------------------|--------------|
| 1. | Electronic Data Processing . . . | \$10,000,000 |
| 2. | Accounts Receivable . . . | \$10,000,000 |
| 3. | Valuable Papers . . . | \$10,000,000 |

* * *

- | | | |
|-----|----------------------|--------------|
| 12. | Ordinance or Law ... | \$10,000,000 |
|-----|----------------------|--------------|

* * *

- | | | |
|-----|-----------|-------------|
| 17. | Flood ... | \$1,000,000 |
|-----|-----------|-------------|

* * *

- | | | |
|-----|------------------------|-------------|
| 21. | Utility Services . . . | \$5,000,000 |
|-----|------------------------|-------------|

CP 144-47; Appendix A at 4-7. Travelers thus specified a \$10,000,000 limit for Ordinance or Law and a separate \$1,000,000 limit for Flood. CP 145-46; Appendix A at 5-6.

The above-quoted **LIMITS OF INSURANCE** also contained the following direction:

For application of Limits of Insurance refer to Section O. Limits of Insurance in the General Conditions.

CP 144; Appendix A at 4. Section O, in turn, stated that the coverage for Ordinance or Law is “in addition to” the Covered Property Limit as follows:

GENERAL CONDITIONS

All coverages included in this policy are subject to the following conditions.

* * *

O. LIMITS OF INSURANCE

1. The most the Company will pay for loss or damage in any one occurrence is the applicable specified Limit(s) of Insurance shown in the Supplemental Coverage Declarations, Schedules, Coverage Form(s) or endorsements(s).
2. Under the Property Coverage Form, unless otherwise stated in the Supplemental Coverage Declarations, or by endorsement:
 - a. Payments under the following Covered Costs and Expenses will not increase the applicable Covered Property Limit(s) of Insurance:
 - (1) Debris Removal. . . .
 - (2) Fire Department Service Charge;
 - (3) Fire Protective Equipment Discharge;
 - (4) Preservation of Property;
 - (5) Protection of Property; and
 - (6) Water Damage, Other Liquids, Powder or Molten Material Damage.

- b. The Limits of Insurance that are specified for the remaining Covered Costs and Expenses are **in addition to** the Covered Property Limit(s) of Insurance.

(Emphasis added). CP 88; Appendix A at 30. As quoted above, Section O explicitly provides that six of the nine Covered Costs and Expenses do not increase the applicable covered property limit. But the remaining three Covered Costs and Expenses—which included Ordinance or Law—are “in addition” to the Covered Property Limit(s) of Insurance.

Third, Evergreen purchased an Excess Flood policy from Lloyd’s. (The relevant portions of the Lloyd’s policy are set out in full in Appendix B.) The Lloyd’s policy, quoted below, insured just the flood peril with a policy limit of \$10,000,000. CP 525-26; Appendix B at 3-4.

SCHEDULE

* * *

4. Perils Insured:

Flood

* * *

10. Excess Limit(s):

USD 10,000,000 Ultimate net loss
per occurrence subject to an
aggregate limit of

USD 10,000,000 any one Policy year

The Lloyd's policy identified the NFIP as a primary insurer and Travelers as an underlying excess insurer. CP 526; Appendix B at 4. The Lloyd's policy then stated that Lloyd's liability attached only after the underlying excess insurer (*i.e.*, Travelers) has paid or admitted liability for the policy's full amount. Specifically, the LIMIT paragraph in the Lloyd's policy read as follows:

3. LIMIT

Provided always that liability attaches to the Underwriters only after the Primary and Underlying Excess Insurer(s) have paid or have admitted liability for the full amount of their respective Ultimate Net Loss liability as set forth in Item 9 of the Schedule and designated "Primary and Underlying Excess Limit(s)" . . .

CP 528; Appendix B at 6.

IV. SUMMARY OF ARGUMENT

Travelers' Supplemental Coverage Declarations states policy limits for 21 different coverages. The dispute here concerns the interplay between two of these coverage limits—the \$10,000,000 limit for Ordinance or Law and the \$1,000,000 limit for Flood. Travelers interpreted the interplay narrowly and argued that Evergreen's entire claim should be limited to the \$1,000,000 Flood limit. But Travelers' policy

covered Ordinance or Law as a Covered Cost and Expense that was **“in addition to”** the Flood limit.

Travelers also argued that Lloyd’s Excess Flood policy should pay for Evergreen’s Ordinance or Law Costs and expenses before Travelers exhausted its combined \$11,000,000 policy limit (\$1,000,000 Flood limit and \$10,000,000 Ordinance or Law limit). However, such an interpretation robs Evergreen of the Ordinance or Law coverage that Travelers explicitly provided.

Travelers’ brief discusses Washington insurance law at length but ignores well established rules that strictly construe policy exclusions/limitations against the insurer and in favor of coverage. These rules prevent Travelers from limiting Evergreen’s claim to just \$1,000,000.

Moreover, Travelers argued that Lloyd’s deflected focus from the Lloyd’s policy to the Travelers policy. Yet, as Travelers pointed out, the Lloyd’s policy followed Travelers’ form. Thus, Travelers argued that the Court should not consider the language of Travelers’ underlying policy wording even though Lloyd’s followed that form. A better approach—and one that gives a fair and reasonable construction—would be to first determine Travelers’ underlying coverage as such would then identify the excess point where the Lloyd’s policy commences.

V. ARGUMENT

A. Washington Rules of Insurance Policy Construction Favor Coverage

Washington rules regarding insurance policy interpretation are well settled. The insurance contract should be given a “fair, reasonable and sensible construction which fulfills the apparent object of the contract rather than a construction which leads to an absurd conclusion or renders a policy nonsensical or ineffective.” *McDonald Industries, Inc. v. Rollins Leasing Corp.*, 95 Wn.2d 909, 913, 631 P.2d 947, 949 (1981).

In addition, policy limitations/exclusions, which are contrary to the fundamental protective purpose, will not be extended beyond their “clear and unequivocal” meaning. *Bordeaux, Inc. v. American Safety Ins., Co.*, 145 Wn. App. 687, 694, 186 P.3d 1188 (2008), *review denied*, 165 Wn.2d 1035 (2009); *Stuart v. American States Ins. Co.*, 134 Wn.2d 814, 953 P.2d 462, 464 (1998). *See also, Appleman on Insurance 2d* (West 1996) §6.1 at 173 (stating that “[m]ost American courts apply a rule of construction that coverage terms are construed broadly and exclusions and limitations of coverage are constructed narrowly”). Moreover, an insurer has the burden to phrase exceptions and exclusions in clear and unmistakable language. *See Bordeaux, Inc.*, 145 Wn. App. at 694, 186 P.3d at 1191.

Also, a policy will be considered ambiguous if “it is fairly susceptible to two different interpretations, both of which are reasonable.” *McDonald Industries, Inc.*, 95 Wn.2d at 912, 631 P.2d at 949 quoting *Morgan v. Prudential Ins. Co.*, 86 Wn.2d 432, 435, 545 P.2d 1193 (1976). And, if both interpretations are reasonable, Washington law requires the Court to construe the ambiguity in favor of coverage. See *Transcontinental Ins. Co. v. Washington Public Utilities Districts’ Utility System*, 111 Wn.2d 452, 760 P.2d 337 (1988). Lastly, a court can consider extrinsic evidence in order to clarify an ambiguity. But if the extrinsic evidence does not clarify the ambiguity, then the court construes the ambiguity against the insurer. See *Key Tronic Corp., Inc. v. Aetna (Cigna) Fire Underwriters Ins. Co.*, 124 Wn.2d 618, 630, 881 P.2d 201, 208 (1995).

The above cited rules of construction apply here because this appeal concerns two policy interpretation issues—policy limits and excess insurance. These rules of construction support Lloyd’s argument that Travelers’ policy insures Ordinance or Law as a Covered Cost and Expense “in addition” to the Flood limit and that Travelers must exhaust its underlying policy limits before Lloyd’s excess policy attaches.

B. Travelers' Policy Insures Ordinance or Law as a Covered Cost and Expense that is "In Addition To" the \$1,000,000 Flood Limit

Travelers' appeal can be reduced to one simple objective: Travelers wants this Court to broadly interpret limiting language so that it can avoid paying Evergreen the "Covered Costs and Expenses" attributable to Ordinance or Law. But the rules of construction require this Court to reject Travelers' restrictive interpretation for the following three reasons:

- Travelers misreads its own policy. Travelers unambiguously provides a \$10,000,000 limit for Covered Costs and Expenses attributable to Ordinance or Law that is "in addition to" the \$1,000,000 Flood Limit.
- Lloyd's offers a reasonable interpretation that renders the policy ambiguous.
- Travelers' extrinsic evidence does not clarify the ambiguity.

1. Travelers Misreads its Own Policy

Travelers provided Evergreen with substantial property insurance. The policy contained blanket "all-risk" limits of \$277,120,000 along with many specific coverages and limits that were set forth in some 39 forms.

Fortunately, only the following four forms bear on the coverage issues here:

- PROPERTY COVERAGE FORM (MS C1 00 03 05)
- FLOOD (MS C2 06 03 05)
- Supplemental Coverage Declarations (MS CO 03 07 99)
- GENERAL CONDITIONS (MS C5 01 01 00)

The policy's PROPERTY COVERAGE FORM, contains two relevant clauses, titled Insuring Agreement and Coverage. The Insuring Agreement states that Travelers pays for direct physical damage to Covered Property caused by a Covered Cause of Loss. And, as stated in Travelers' brief, the policy then specifically adds Flood as a Covered Cause of Loss via an endorsement in Form MS C2 06 03 05.¹ CP 178; Appendix A at 24. But this Flood endorsement did not simply add Flood as a peril. It added Flood as a Covered Cause of Loss, which then triggered the coverages in the PROPERTY COVERAGE FORM.

The Coverage paragraph in the PROPERTY COVERAGE FORM identifies the type of coverage that Travelers' policy provides. Specifically, the Coverage paragraph states that "[c]overage is provided for Covered Property **and** Covered Costs and Expenses as described in Policy Sections B.1 and B.2" (Emphasis added). CP 150; Appendix

¹ See Br. of Appellant at 3. Travelers' brief at 3 states that: "The main policy form excludes flood. (CP 575) However, an endorsement to the policy adds flood coverage ..."

A at 10. In making Flood a Covered Cause of Loss Travelers then granted Evergreen coverage for both the physical damage to Covered Property as well as the Covered Costs and Expenses. Thus, contrary to Travelers' argument, Travelers insured Evergreen for more than the physical damage caused by the flood peril.

The correct reading of the Insuring Agreement and the Coverage paragraphs shows that the Travelers policy insured Evergreen against direct physical loss or damage to Covered Property (*i.e.*, Evergreen's nursing facility)² caused by or resulting from a Covered Cause of Loss (*i.e.*, Flood).³ In addition to insuring the Covered Property (*i.e.*, the nursing facility), Travelers also covered various Covered Costs and Expenses as defined in Section B.2. CP 154-156; Appendix A at 14-16. This separate section provided coverage for the following nine Covered Costs and Expenses:

- a. Debris Removal
- b. Pollutant Cleanup and Removal
- c. Claim Data Expense

- d. Fire Department Service Charge
- e. Fire Protective Equipment Discharge
- f. Ordinance or Law

² Travelers does not dispute that Evergreen's nursing facility constitutes "Covered Property." Br. of Appellant at 2-3.

³ Travelers does not dispute that a flood caused damage to Covered Property. Br. of Appellant at 6.

- g. Preservation of Property
- h. Protection of Property
- i. Water, Other Liquids, Powder or Molten Material Damage

Clause “f” above identified Ordinance or Law as a Covered Costs and Expense. Thus, Travelers covered physical damage to the nursing facility as damage to Covered Property as well as increased costs to repair resulting from Ordinance or Law as a Covered Cost and Expense. This additional coverage for Ordinance or Law is common in first party property policies. It insures against the increased costs associated with complying with building codes. See Scott G. Johnson, *Insurance Coverage for Building Code Upgrades*, Tort Trial & Insurance Practice Law Journal, 44.3-4 (2009) at 1031, 1051.

The Coverage paragraph in the PROPERTY COVERAGE FORM goes on to state that Coverage applies only when a “limit of insurance” appears in the “Supplemental Coverage Declarations.” CP 150; Appendix A at 10. The Supplemental Coverage Declarations set forth the various policy limits for some 21 different coverages. CP 144-147; Appendix A at 4-7. The limits for these coverages, as stated *supra* on page 7, show that Travelers stated separate limits for Ordinance or Law (\$10,000,000) and for Flood (\$1,000,000). CP 145-146; Appendix A at 5-6. The existence of these limits means that Travelers provides both coverages.

More importantly, the Limits of Insurance paragraph included the following important direction:

For application of Limits of Insurance refer to Section O, Limits of Insurance in the General Conditions.

CP 144; Appendix A at 4. Section O answers the question of whether the coverage for the Covered Costs and Expenses attributable to Ordinance or Law fall within the \$1,000,000 limit for Flood as Travelers asserted, or whether it constitutes an additional limit of \$10,000,000.

Specifically, Section O provides that six of the nine specific Covered Costs and Expenses do **not** increase the applicable property limit. CP 88; Appendix A at 30. But the remaining three Covered Costs and Expenses—including Ordinance or Law—are “in addition to” the limit otherwise applicable to the damaged property. Thus, Travelers agrees to pay for certain Covered Costs and Expenses that are **in addition to** the Covered Property Limit (here \$1,000,000). For the Court’s convenience, the chart below lists the nine Covered Costs and Expenses and identifies whether they will apply **in addition to** the applicable property limit.

Covered Costs And Expenses	Does the limit apply “in addition to” the property limit?	Limit
1. Debris removal	No	–
2. Pollutant Cleanup and Removal	Yes	\$ 100,000

3. Claim Data Expense	Yes	\$ 25,000
4. Fire Department Service Charge	No	–
5. Fire Protective Equipment Discharge	No	–
6. Ordinance or Law	Yes	\$10,000,000
7. Preservation of Property	No	–
8. Protection of Property	No	–
9. Water, Other Liquids, ...	No	–

The above chart shows that the \$10,000,000 limit for Ordinance or Law applies “in addition to” the \$1,000,000 flood/property limit. The Travelers policy therefore insures Evergreen’s property/buildings up to \$1,000,000 as well as Covered Costs and Expenses up to \$10,000,000 for Ordinance or Law because such applies “in addition to” that \$1,000,000 limit. Travelers, therefore, misreads its policy.

This Court should enforce the unambiguous language and declare that Travelers covers Evergreen’s property/building loss from flood (limited to \$1,000,000) as well as Evergreen’s related Covered Costs and Expenses from Ordinance or Law (limited to \$10,000,000).

2. Lloyd’s Offers a Reasonable Interpretation that Renders Travelers’ Policy Ambiguous

Lloyd’s maintains that Travelers’ clear and unambiguous policy wording provides coverage for Ordinance or Law costs and expenses “**in addition to**” the Flood limit. Travelers disagrees and points to different

policy wording. However, this Court does not have to decide the merits of two competing interpretations. Rather, the Court needs to determine only whether the two interpretations are “reasonable.” *See Transcontinental Ins. Co.*, 111 Wn.2d at 456-57, 760 P.2d at 340. And, if both interpretations are reasonable then the Court must deem Travelers’ policy ambiguous and construe it in Evergreen’s favor. *See id.* at 457, 760 P.2d at 340.

The following two examples illustrate the ambiguity. First, Travelers argued that the phrase “Covered Property Limit(s) of Insurance” that appears in GENERAL CONDITIONS, Section O (2) (b), Appendix A at 30, somehow does not apply to the \$1,000,000 Flood limit. But in making that argument, Travelers concedes that its policy does not define Covered Property Limit.⁴ Travelers’ brief also acknowledged that “the average purchaser of insurance would understand ‘Covered Property Limit’ to refer to a limit specifically applicable to certain Covered Property.”⁵ Thus, a straightforward interpretation of the phrase Covered Property Limit of Insurance means a limit for covered property (*i.e.*, Evergreen’s nursing facility). Moreover, the average purchaser of insurance would reasonably understand the “in addition to” language to

⁴ *See* Br. of Appellant at 26.

⁵ *Id.*

mean that the policy provides coverage for Covered Costs and Expenses **in addition to** Covered Property.

However, Travelers rejects Lloyd's straightforward reading of Covered Property Limit of Insurance. And, despite its failure to define Covered Property Limit of Insurance, Travelers now wants this Court to interpret the phrase Covered Property Limit in a way that limits coverage. But such an interpretation conflicts with well established Washington law that construes policies liberally in favor of coverage.

Second, Travelers wants this Court to disregard the phrase "in addition to" in GENERAL CONDITIONS, Section O (2) (b). Instead, Travelers points to the Flood limit in the Supplemental Coverage Declarations, CP 146; Appendix A at 6, and paragraph E in the Flood endorsement. CP 179; Appendix A at 25. According to Travelers, the phrases "all losses covered under this policy" in the Flood limit and "all loss or damage caused by Flood" in paragraph E of the Flood Endorsement can only mean that the limit for both damage to Covered Property **and** Covered Costs and Expenses are absolutely capped at \$1,000,000. But there are three reasons why this Court should reject such a strained interpretation.

First, the Supplemental Coverage Declaration and the Flood endorsement fail to specifically limit the coverage for Covered Costs and

Expenses. Indeed, the two clauses do not even mention the additional coverage for Covered Costs and Expenses.

Second, Travelers relies on two clauses that both refer to an “aggregate.” The phrase “all losses” in this context is necessary to total (or aggregate) whatever number of flood losses might occur in any one policy year, which then will be limited to \$1,000,000. Such usage does not also mean, or even imply, that “all” other coverages and limits available under different policy provisions become subject to that limit. Here, the vast majority (*i.e.*, \$8,500,000) of Evergreen’s claim concerns Ordinance or Law costs/expenses—not flood damage. Thus, the \$1,000,000 Flood limit does not apply to that aspect of Evergreen’s claim.

Noticeably, Travelers does not discuss the legal principle of construing phrases in context with the entire policy. *See Mercer Place Condominium Assoc. v. State Farm Fire & Casualty Co.*, 104 Wn. App. 597, 603, 17 P.3d 626, 629 (2000), *review denied*, 143 Wn.2d 1023 (2001). Rather, Travelers takes the word “all” out of context and considers it in isolation. Travelers also simplistically insists that “all means all,” and condescendingly cites to a dictionary definition for that term.⁶ This argument highlights Travelers’ inability to support its

⁶ *See* Br. of Appellant at 20.

interpretation in a manner that complies with the basic principles of insurance policy interpretation—that words be considered in context along with the entire policy. *Id.*

Well established Washington law holds that it is the insurer's burden to draft a policy in clear and unequivocal terms. *See Lynott v. National Union Fire Ins. Co. of Pittsburgh*, 123 Wn.2d 678, 694, 871 P.2d 146, 154 (1994). Thus, if Travelers intended for the Flood limit to apply to **both** Covered Property **and** Covered Costs and Expenses it could have provided a clear wording. But contrary to Travelers' assertion, there is nothing in the Supplemental Coverage Declarations, or the Flood Endorsement, that expressly modifies, changes, or eliminates the coverage for Covered Costs and Expenses. Accordingly, there is no basis for this Court to disregard the policy's coverage for Ordinance or Law costs/expenses up to the \$10,000,000 limit.

Third, if Travelers wanted to have the Flood limit apply to "all" losses then it could have inserted appropriate wording. For example, flood is just one of the 21 coverages with a specific limit of insurance. The paragraph immediately following flood, paragraph 18 entitled "Boiler and Machinery," CP 146-47, Appendix A at 6-7, specifically listed three coverages that otherwise had separate limits. But these were "included" as part of the Boiler and Machinery limit. Specifically, Paragraph 18 stated:

B. LIMITS OF INSURANCE

* * *

18. Boiler and Machinery (Insured's Locations only)	
Property Damage, in any one accident:	\$20,000,000
Business Income and Rental Value, in any one accident:	Included
Extra Expense, in any one accident:	Included
Leasehold Interest, in any one accident:	Included
Hazardous Substance, in any one accident:	\$100,000
Ammonia Contamination:	\$100,000
Any other substance:	\$100,000
Water Damage, in any one accident:	\$100,000
Consequential Damage, in any one accident:	\$100,000

Included means, included in the Limit of Insurance that otherwise applies under this policy to the coverage for which included is indicated.

Boiler and Machinery (Insured's Locations only)	
all coverage combined , maximum in any one accident:	\$20,000,000

(Emphasis added). CP 146-47; Appendix A at 6-7. Business Income, Extra Expense and Leasehold Interest are all separately limited under the Travelers' policy Section B, Limits of Insurance, in paragraphs 13, 14 and 15 respectively. CP 145-47; Appendix A at 5-6. Yet, Travelers made clear in the Boiler and Machinery paragraph, quoted above, that Business Income, Extra Expense and Leasehold Interest are specifically "Included" in the Boiler and Machinery \$20,000,000 Limit of Insurance.

Inserting the word “Included” next to the additional coverages demonstrates that Travelers (1) was aware that corollary coverages for Business Income, Extra Expense and Leasehold Interest were not otherwise subject to the \$20,000,000 limit for Boiler and Machinery; and (2) knew how to insert wording to limit those coverages to the Boiler and Machinery’s \$20,000,000 limit. Travelers’ failure to include this type of wording in the Flood limit speaks volumes and supports Lloyd’s argument that Evergreen’s entire claim is **not** subject to a \$1,000,000 Flood limit.

Moreover, the Boiler and Machinery paragraph stated separate limits for Hazardous Substance, Ammonia Contamination, Water Damage, and Consequential Damage. It then stated that “all coverages combined” are limited to \$20,000,000 limit. This phrase also demonstrates that Travelers knew how to insert wording to limit “all coverages” to an overall limit. The fact that Travelers did **not** include this type of wording in the Flood limit further supports Lloyd’s argument that Evergreen’s entire claim is **not** subject to a \$1,000,000 Flood limit.

In conclusion, Lloyd’s asserts that Travelers’ policy unambiguously provided coverage for Ordinance or Law costs/expenses “**in addition to**” the Flood limit. But Travelers disagrees. However, this Court does not have to decide the merits of two competing interpretations. The Court needs to determine only whether the two interpretations are

“reasonable.” *See Transcontinental Ins. Co.*, 111 Wn.2d at 456-57, 760 P.2d at 340. And, if both interpretations are reasonable, Washington law requires the Court to construe Travelers’ policy in favor of coverage. *Id.*

3. Travelers’ Extrinsic Evidence Does Not Resolve the Ambiguity

Travelers argues that the extrinsic evidence resolves any ambiguity in Travelers’ favor. But even a cursory examination of the extrinsic evidence demonstrates only that Lloyd’s agreed to provide flood coverage excess of Travelers’ \$1,000,000 Flood limit. CP 702, 705, 712, 719-20, 735. None of the extrinsic evidence addresses the issues arising here or even mentions Ordinance or Law. Again, the issue is not whether Lloyd’s provided flood coverage excess of Travelers’ \$1,000,000 Flood limit. The issue is whether Travelers provided Ordinance or Law coverage up to \$10,000,000.

The extrinsic evidence shows only that Lloyd’s provided \$10,000,000 flood coverage excess of Travelers’ \$1,000,000. This is not in dispute. Contrary to Travelers’ brief, the extrinsic evidence does not clarify the ambiguity. Thus, this Court should resolve the ambiguity against Travelers and in favor of coverage. *See Key Tronic Corp., Inc.*, 124 Wn.2d at 630, 881 P.2d at 208.

C. Lloyd's Excess Flood Policy Responds after Travelers' Underlying Policy Pays its Policy Limits

Travelers' brief acknowledged Washington's rules of construction, which state a court must "construe insurance policies as a whole" and give them a "fair, reasonable, and sensible construction." *See S&K Motors, Inc. v. Harco National Insurance Co.*, 151 Wn. App. 633, 639, 213 P.3d 630, 633 (2009).

Travelers' brief also argued that Lloyd's deflected focus from the Lloyd's policy to the Travelers policy. Yet, as Travelers pointed out, the Lloyd's policy followed Travelers' form.⁷ Thus, Travelers essentially argued that the Court should not consider the language of Travelers' underlying policy wording even though Lloyd's followed that form/wording.

This Court should reject Travelers' construction for two reasons. First, the Lloyd's wording supports the trial court's decision that Lloyd's Excess Flood policy does not respond to Ordinance or Law coverage until **after** Travelers pays its policy limit. Second, requiring Travelers to exhaust its underlying policy limit construes both policies as a whole and gives both a "reasonable and sensible construction."

⁷ *See* Br. of Appellant at 16.

Concerning the first reason, Travelers acknowledged that Lloyd's provided an "Excess Flood" policy.⁸ And, as Travelers pointed out, Evergreen purchased the Lloyd's policy so that it would have "additional" flood coverage of \$10,000,000.⁹

Lloyd's told Evergreen that they would pay for flood damage in excess of the \$500,000 primary NFIP policy and Travelers' \$1,000,000 Flood limit. CP 465-66. But Evergreen's damages excess of \$1,500,000 concern Ordinance or Law—**not** flood. Thus, the issue in this appeal is whether Lloyd's pays for Evergreen's Ordinance or Law costs/expenses before Travelers exhausts its \$10,000,000 limit for Ordinance or Law.

Lloyd's policy identified the NFIP as a primary insurer and Travelers as an underlying excess insurer. CP 526; Appendix B at 4. The Lloyd's policy then states that Lloyd's liability attaches only **after** the underlying excess insurer (*i.e.*, Travelers) has paid or admitted full liability. Specifically, the LIMIT paragraph in the Lloyd's policy shows that the liability of the Lloyd's underwriters does not attach until **after** Travelers has paid or admitted liability for the loss's full amount. CP 528; Appendix B at 6. The Lloyd's wording therefore requires Travelers to pay the full Ordinance or Law coverage up to \$10,000,000.

⁸ See Br. of Appellant at 13, 16.

⁹ See Br. of Appellant at 4.

Concerning the second reason, Travelers does not explain why Lloyd's "excess policy" should pay before Travelers exhausts its \$10,000,000 policy limit. Instead, Travelers discusses the phrase "Ultimate Net Loss as set forth in Item 9 of the Schedule." And, Item 9 states that the underlying limit of insurance is \$1,000,000 per occurrence. Thus, Travelers argues that Lloyd's begins paying after Travelers admits liability for \$1,000,000. But such language in the Lloyd's policy does not absolve Travelers of its policy obligation to pay for Ordinance or Law coverage. A better approach—and one that gives a fair and reasonable construction—would be to first determine Travelers' underlying coverage as such would then identify the excess point where the Lloyd's policy commences. Moreover, a reasonable and sensible construction would require the excess Lloyd's policy to respond **after** Travelers exhausted its \$1,000,000 limit for Flood and its \$10,000,000 limit for Ordinance or Law. *See Rees v. Viking Ins. Co.*, 77 Wn. App. 716, 719, 892 P.2d 1128 (1995). This Court should therefore reject Travelers' attempt to avoid paying Evergreen the \$10,000,000 of coverage for Ordinance or Law.

In summary, this Court should reject Travelers' attempt to evade its contractual obligations to Evergreen and give both policies a reasonable and sensible construction. The trial court's decision that Lloyd's policy

attaches after Travelers exhausted its \$1,000,000 limit for Flood and its \$10,000,000 limit for Ordinance or Law should be affirmed.

VI. CONCLUSION

Travelers' appeal downplays its contractual obligations and requests a policy interpretation that excuses its coverage for Evergreen's Ordinance or Law damages of \$8,500,000. This Court should reject Travelers' policy interpretation for two main reasons. First, Travelers misreads its own policy and ignores the specific grant of \$10,000,000 for Ordinance or Law coverage that is "in addition to" the limit for Covered Property. Second, Travelers' interpretation, at best, only creates an ambiguity that must be construed against Travelers. This Court should therefore declare that Travelers responds to Evergreen's \$10,000,000 claim with coverage for **both** flood (limited to \$1,000,000) **and** the Covered Costs and Expenses for Ordinance or Law (limited to \$10,000,000).

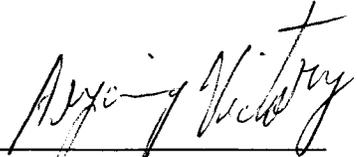
In addition, the Court should affirm that Travelers must pay its \$11,000,000 policy limits before the Lloyd's excess policy attaches.

The trial court's judgment should be affirmed and costs on appeal should be awarded to Lloyd's.

DATED this 3rd day of May 2010.

Respectfully submitted,


TALMADGE/FITZPATRICK
Philip A. Talmadge WSBA #6973
18010 Southcenter Parkway
Tukwila, WA 98188
Ph: (206) 574-6661


BRUCKMANN & VICTORY, LLP
Arjang Victory, *Admitted Pro Hac*
Jennifer Hoffman, *Admitted Pro Hac*
420 Lexington Avenue, Suite 1621
New York, NY 10170
Ph: (212) 850-8500

GORDON THOMAS HONEYWELL
Michael Ricketts WSBA #9387
One Union Square, 600 University Street, Suite 2100
Seattle, WA 98101-4185
Ph: (206) 676-7500

Attorneys for Respondent Certain Underwriters at Lloyd's, London

APPENDIX

APPENDIX A

THE TRAVELERS INSURANCE COMPANIES

One Tower Square
Hartford, CT 06183

DECLARATIONS

Policy Number: KTJ-CMB-545D848-3-07

Issue Date: 06/25/2007

NAMED INSURED AND MAILING ADDRESS:

EVERGREEN HEALTHCARE
4601 NE 77TH AVE STE 300
VANCOUVER, WA 98662

POLICY PERIOD: FROM: 06/01/2007 TO: 06/01/2008

Effective 12:01 a.m. at description and location of property covered.

COVERAGE FORMS AND ENDORSEMENTS FORMING A PART OF THIS POLICY.

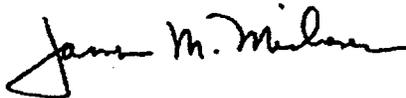
The complete policy consists of this Declarations and the Supplemental Coverage Declarations and the forms listed on MS C0 02 07 99.

PREMIUM: Per Agency Bill Statement 545D8483

INSURING COMPANIES:

In return for payment of the premium, the Company agrees with the Named Insured to provide the insurance afforded by this policy. That insurance will be provided by the Company designated by an "X" below.

Travelers Property Casualty Company of America (a Stock Company)



General Counsel & Secretary



Chairman of the Board & Chief Executive Officer

The company listed above has executed this policy, but it is valid only if countersigned by our authorized representative.

PRODUCER NAME AND ADDRESS
NICHOLSON & ASSOCS
1802 BLACK BLVD SW
OLYMPIA, WA 98512

Countersigned by: _____
(Authorized Representative)
Date: _____

NAMED INSURED

In addition to the first Named Insured shown in the Declarations, the following are added as Named Insured, as their interest may appear with respect to insurance provided under this policy for the first Named Insured shown in the Declarations:

Any subsidiary company or affiliated company over which the first Named Insured has active management or maintains more than fifty percent (50%) ownership interest provided the first Named Insured notifies the Company within ninety (90) days from the date any such subsidiary or affiliate is acquired or formed by the first Named Insured.

INDEX OF FORMS

Named Insured	MS C0 01 07 99
Index of Forms	MS C0 02 07 99
Supplemental Coverage Declarations	MS C0 03 07 99
Property Coverage Form	MS C1 00 03 05
Business Income Coverage Form Excluding Extra Expense	MS C1 02 02 00
Extra Expense	MS C1 03 07 99
Leasehold Interest Coverage Form	MS C1 04 07 99
Earthquake, Volcanic Eruption, Landslide and Mine Subsidence	MS C2 04 03 00
Flood	MS C2 06 03 05
Boiler And Machinery	MS C2 10 01 00
Vacancy Permit	MS C2 15 07 99
Fungus, Wet Rot, Dry Rot and Other Cause of Loss Changes	MS C2 33 02 07
Exclusion Nuclear Hazard War Military Action Electronic VMM & Pathogenic	MS C2 39 12 02
Exclusion of Loss Due to Virus or Bacteria	MS C2 42 02 07
Expediting Expenses	MS C3 19 07 99
Utility Services - Direct Damage	MS C3 27 07 99
Utility Services - Time Element	MS C4 09 07 99
General Conditions	MS C5 01 01 00
Replacement Cost	MS C5 05 07 99
Extra Expense Deductible	MS C5 27 03 00
Claim Data Expense	MS C5 30 10 02
High and Moderate Hazard Earthquake, Volcanic Eruption, Landslide Counties	MS C6 09 02 07
Loss Payable Provisions	MS C6 11 07 99
Additional Insured	MS C6 12 07 99
Exclusion Certain Computer Losses Due to Dates or Times (Prop & BM Coverages)	MS C8 02 07 99
Arizona Changes	MS C8 37 09 06
California Changes	MS C8 43 01 03
Montana Changes	MS C9 10 01 03
Nevada Changes	MS C9 16 01 03
Oregon Changes (Includes Restrictions Or Abridgements)	MS C9 43 01 00
Oregon Changes	MS C9 44 01 03
Utah Changes	MS C9 67 01 00
Washington Changes - Cancellation And Nonrenewal	MS C9 75 01 00
Washington Changes	MS C9 76 01 00
IMPORTANT NOTICE TO OREGON POLICYHOLDERS	PN T3 92 01 04
IMPORTANT NOTICE REGARDING INDEPENDENT AGENT AND BROKER	
COMPENSATION	PN T4 54 09 05
NOTIFICATION OF PENDING CHANGES-FOREIGN TERRORISM/TRIA	PN T4 81 01 07
Terrorism Risk Insurance Act of 2002 Disclosure	TR IA 01 01 06
Cap on Losses from Certified Acts of Terrorism	TR IA 04 12 02

Supplemental Coverage Declarations

READ THE ENTIRE POLICY CAREFULLY TO DETERMINE RIGHTS, DUTIES AND WHAT IS AND IS NOT COVERED.

A. BLANKET LIMITS: Insurance applies on a Blanket basis only to a coverage for which a Limit of Insurance is shown below. But in no event shall liability in any one occurrence for any one Building, any one Structure or Business Personal Property at any one location exceed 130% of the individually stated value for such property as shown in the latest Statement of Values or other documentation on file with the Company, nor shall liability exceed any specific Limit of Insurance applying to any insured loss, coverage or location(s).

If, at the time of loss, the values shown on the latest Statement of Values or other documentation on file with the Company are not individually stated for each Building, each Structure or Business Personal Property at each location:

1. The value for each Building and Structure will be developed by multiplying the total reported Building and Structure value by the proportion that the square footage of the individual Building or Structure bears to the total square footage of all Buildings and Structures contemplated in the total reported Building and Structure value.
2. The value of Business Personal Property at each location will be developed by multiplying the total reported Business Personal Property value by the proportion that the square footage of all Buildings and Structures at the individual location bears to the total square footage of all Buildings and Structures at all locations contemplated in the total reported Business Personal Property value.

Covered Property	Blanket Limit(s) of Insurance
Buildings	\$ 277,120,000
Business Personal Property	\$ 36,488,000

B. LIMITS OF INSURANCE – For application of Limits of Insurance refer to Section O. Limits of Insurance in the General Conditions:

1. Electronic Data Processing Equipment and Electronic Data Processing Data and Media, in any one occurrence:	\$	10,000,000
2. Accounts Receivable, in any one occurrence:	\$	10,000,000
3. Valuable Papers, in any one occurrence:	\$	10,000,000
4. Fine Arts, in any one occurrence: subject to a maximum per item of:	\$	250,000
	\$	2,500
5. Newly Constructed or Acquired Property, at any one building. In any one occurrence: Number of days 120.	\$	5,000,000
6. Outdoor Property including Debris Removal, in any one occurrence: Trees, shrubs and plants are subject to a maximum per item of:	\$	100,000
	\$	1,000

7.	Personal Effects of Officers and Employees of the Insured: per Employee:	\$	1,000
	in any one occurrence:	\$	100,000
8.	Covered Property in Transit, in any one occurrence:	\$	250,000
9.	Debris Removal (additional), in any one occurrence:	\$	5,000,000
10.	Pollutant Cleanup and Removal, aggregate in any one policy year:	\$	100,000
11.	Claim Data Expense, in any one occurrence:	\$	25,000
12.	Ordinance or Law Loss to the Undamaged Portion, in any one occurrence:	\$	10,000,000
	Demolition, in any one occurrence:		Included
	Increased Cost of Construction, in any one occurrence:		Included
	Included means, included in the Limit shown for Loss to the Undamaged Portion.		
13.	Business Income, in any one occurrence:	\$	189,597,000
	Rental Value, in any one occurrence:		Included
	Included means, included in the Limit shown for Business Income.		

Ordinary Payroll: Included

Extended Business Income or Rental Value at 60 days.
Revised to: 90 days.

Civil Authority 30 days.

Ordinance or Law - Increased Period of Restoration, in any one occurrence:	\$	250,000
----------------------------------------------------------------------------	----	---------

Newly Acquired Locations, in any one occurrence: Number of days 120.	\$	500,000
-------------------------------------------------------------------------	----	---------

Claim Data, in any one occurrence:	\$	25,000
------------------------------------	----	--------

The Rental Value Limit shown above is subject to the following limitation:

In no event shall liability in any one occurrence for loss of Rental Value at any one building exceed 130% of the individually stated Rental Value amount for that building shown in the latest Statement of Values or other documentation on file with the Company. If, at the time of loss, the Rental Value amounts shown on the latest Statement of Values or other documentation on file with the Company are not individually stated for each building, the Rental Value amount for each building will be developed by multiplying the applicable reported Rental Value amount by the proportion that the square footage of the individual building bears to the total square footage of all buildings contemplated in the reported Rental Value amount.

14.	Extra Expense, in any one occurrence:	\$	5,000,000
-----	---------------------------------------	----	-----------

Civil Authority 30 days.

Ordinance or Law - Increased Period of Restoration, in any one occurrence:	\$	50,000
Newly Acquired Locations, in any one occurrence: Number of days 120.	\$	50,000
Claim Data, in any one occurrence:	\$	25,000
15. Leasehold Interest, in any one occurrence:	\$	2,500,000
16. Earthquake, Volcanic Eruption, Landslide and Mine Subsidence - aggregate in any one policy year, for all losses covered under this policy, commencing with the inception date of this policy:		
a. Occurring in Alaska, Hawaii or Puerto Rico:		Not Covered
b. Occurring in California:	\$	2,500,000
c. Occurring in counties identified as High Hazard Counties as per MS C6 09:	\$	5,000,000
d. Occurring in counties identified as Moderate Hazard Counties as per MS C6 09 :	\$	10,000,000
e. Occurring in covered territory other than above:	\$	20,000,000
If more than one Annual Aggregate Limit applies in any one occurrence, the most the Company will pay is the highest involved Aggregate Limit. The most the Company will pay during each annual period is the largest of the Annual Aggregate Limits shown.		
17. Flood – aggregate in any one policy year, for all losses covered under this policy, commencing with the inception date of this policy:		
a. Occurring at Insured Premises within Flood Zones prefixed A as classified under the National Flood Insurance Program:	\$	1,000,000
b. Occurring at all other Insured Premises, except this policy does not cover Flood loss occurring in Zone V as classified under the National Flood Insurance Program:	\$	10,000,000
If more than one Annual Aggregate Limit applies in any one occurrence, the most the Company will pay is the highest involved Aggregate Limit. The most the Company will pay during each annual period is the largest of the Annual Aggregate Limits shown.		
18. Boiler and Machinery (Insured's Locations only) Property Damage, in any one accident:	\$	20,000,000
Business Income and Rental Value, in any one accident:		Included
Extra Expense, In any one accident:		Included

Leasehold Interest, in any one accident:		Included
Hazardous Substance, in any one accident:		
Ammonia Contamination:	\$	100,000
Any other substance:	\$	100,000
Water Damage, in any one accident:	\$	100,000
Consequential Damage, in any one accident:	\$	100,000
Included means, included in the Limit of Insurance that otherwise applies under this policy to the coverage for which included is indicated.		
Boiler and Machinery (Insured's Locations only) all coverages combined, maximum in any one accident:	\$	20,000,000
19. Limited "Fungus," Wet Rot and Dry Rot Coverage:		
a. Direct Damage		
Aggregate, in any one policy year:	\$	25,000
b. Business Income, Rental Value and Extra Expense		
Number of days: 30		
20. Expediting Expenses, in any one occurrence:	\$	50,000
21. Utility Services – in any one occurrence:		
Utility Services Combined Direct Damage and Time Element, including Boiler and Machinery:	\$	5,000,000
C. DEDUCTIBLES: For application of Deductibles refer to Section B. Application of Deductibles in the General Conditions		
1. To Leasehold Interest in any one occurrence:	\$	25,000
2. By Earthquake, Volcanic Eruption, Landslide and Mine Subsidence:		
a. Occurring in California, in any one occurrence:	5 % \$	250,000
Percentage applies per Unit		
b. Occurring in counties identified as High Hazard Counties as per MS C6 09, in any one occurrence:	5 % \$	250,000
Percentage applies per Unit		
c. Occurring in counties identified as Moderate Hazard Counties as per MS C6 09, in any one occurrence:	2 % \$	250,000
Percentage applies per Unit		
d. Occurring in covered territory other than above, in any one occurrence:	\$	250,000

As respects Business Income, any applicable percent deductible shown above applies.

As respects Business Income, if no percent deductible applies, the deductible for Business Income is included in the occurrence deductible.

As respects Rental Value, any applicable percent deductible shown above applies.

As respects Rental Value, if no percent deductible applies, the deductible for Rental Value is included in the occurrence deductible.

As respects Extra Expense, only a 48 hour deductible applies.

3. By Flood:

- a. Occurring at Insured Premises located in Flood Zones prefixed A, as classified under the National Flood Insurance Program, the deductible for each building and its contents separately, will be the amount recoverable under the National Flood Insurance Program when the maximum amount of insurance permitted by the National Flood Insurance Program applies, whether or not the coverage is purchased or maintained. In addition the following deductible will apply to property not eligible and coverages not available under the National Flood Insurance Program that are covered under this policy and any difference in the valuation between the policies. In any one occurrence:

	\$	100,000
--	----	---------

- b. Occurring at Insured Premises within Flood Zones prefixed B or X (shaded) as classified under the National Flood Insurance Program:

To each affected Building, in any one occurrence:	\$	100,000
To Covered Property other than Buildings, at each affected Building Location, in any one occurrence:	\$	100,000

- c. Occurring at all other Insured Premises, in any one occurrence:

	\$	100,000
--	----	---------

As respects Business Income, the deductible is included in the occurrence deductible.

As respects Rental Value, the deductible is included in the occurrence deductible.

As respects Extra Expense, the deductible is included in the occurrence deductible.

- 4. By Boiler and Machinery in any one accident:

	\$	25,000
--	----	--------

Applicable to Direct Damage only.

5.	By Boiler and Machinery to Business Income and Rental Value, in any one accident:	Hours	48
6.	By Boiler and Machinery to Extra Expense, in any one accident:	Hours	48
7.	To Utility Services - Direct Damage, including Boiler and Machinery, in any one occurrence:	\$	25,000
8.	To Utility Services - Time Element, including Boiler and Machinery, in any one occurrence:	Hours	48
9.	To any other covered loss, in any one occurrence: Except \$50,000 at the following location:	\$	25,000

1) 1330 11th Avenue, Longview, WA

D. COINSURANCE:

Direct Damage:

No coinsurance applies.

Time Element:

No coinsurance applies.

E. VALUATION PROVISION:

Replacement Cost applies as per MS C5 05, except as otherwise stated within endorsement MS C5 05, within this Supplemental Declarations or elsewhere in this policy.

F. SOLE AGENT PROVISION: For any insurance afforded by this policy, EVERGREEN HEALTHCARE shall act on behalf of all insureds with respect to the giving and receiving of notice of cancellation or nonrenewal, the payment of premiums and the receiving of return premiums, and accepting of any endorsement issued to form a part of this policy.

G. PREMIUM ADJUSTMENT: This policy will be adjusted Quarterly for any changes in values and premiums.

H. ISSUING COMPANY: Travelers Property Casualty Company of America (a Stock Company)

PROPERTY COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered. Words and phrases that appear in quotation marks have special meaning; refer to Section G., Definitions.

A. INSURING AGREEMENT

The Company will pay for direct physical loss or damage to Covered Property at premises as described in the most recent Statement of Values or other documentation on file with the Company, caused by or resulting from a Covered Cause of Loss. Covered Cause of Loss means risks of direct physical loss unless the loss is excluded in Section D., Exclusions; limited in Section E., Limitations; or excluded or limited in the Supplemental Coverage Declarations or by endorsements.

B. COVERAGE

Coverage is provided for Covered Property and Covered Costs and Expenses, as described in Sections B.1. and B.2., for which the Insured has an insurable interest, unless excluded in Section C., Property and Costs Not Covered. Coverage applies only when a Limit of Insurance is shown in the Supplemental Coverage Declarations for the specific type of Covered Property or Covered Costs and Expenses, except for items B.2. a., d., e., g., h. and i. which do not require a specific Limit of Insurance to be shown.

1. COVERED PROPERTY

a. Building(s), means the buildings or other structures at the Insured's premises, including:

- (1) Completed additions;
- (2) Fixtures, including outdoor fixtures;
- (3) Machinery and equipment permanently attached to the building;
- (4) Personal property owned by the Insured that is used to maintain or service the buildings, structures or grounds; and
- (5) If not covered by other insurance:
 - (a) Additions under construction, alterations and repairs to the buildings or structures; and
 - (b) Materials, equipment, supplies and temporary structures, on or within 1,000 feet of the Insured's premises, used for making alterations or repairs to the buildings or structures.

Building(s) do not include "Outdoor Property" except as provided in Section B.1.h.

b. Business Personal Property located in or on the buildings at the Insured's premises or in the open (or in a vehicle) within 1,000 feet of the Insured's premises, consisting of the following unless otherwise specified in the Supplemental Coverage Declarations:

- (1) Furniture and fixtures;
- (2) Machinery and equipment;
- (3) "Stock";
- (4) All other personal property owned by the Insured and used in the Insured's business;
- (5) Labor, materials or services furnished or arranged by the Insured on personal property of others;
- (6) The Insured's use interest as tenant in improvements and betterments. Improvements and betterments are fixtures, alterations, installations or additions:
 - (a) Made a part of the buildings or structures occupied or leased, but not owned, by the Insured; and
 - (b) Acquired or made at the Insured's expense but which the Insured is not permitted to remove; and
- (7) Personal Property of Others (including the Insured's employees) used in the Insured's business that is in the care, custody, or control of the Insured or for which the Insured has agreed in writing to insure prior to any loss or damage.

However, payment by the Company for loss or damage to Personal Property of Others will only be for the account of the owner of the property.

Business Personal Property does not include:

- (1) "Electronic Data Processing Equipment" or "Electronic Data Processing Data and Media" except as provided in Section B.1.c.;
- (2) Accounts Receivable except as provided in Section B.1.d.;
- (3) Valuable Papers except as provided in Section B.1.e.; or
- (4) "Fine Arts" except as provided in Section B.1.f.

c. "Electronic Data Processing Equipment" and "Electronic Data Processing Data and Media"

This insurance applies to loss or damage to "Electronic Data Processing Equipment" and "Electronic Data Processing Data and Media" at or within 1,000 feet of the Insured's premises.

d. Accounts Receivable

This insurance applies to loss or damage to the accounts receivable records of the Insured while at or within 1,000 feet of the Insured's premises, including records stored on electronic data processing media. Credit card company charge records will be considered accounts receivable records until delivered to the credit card company.

- (1) The Company will pay:
 - (a) Amounts due the Insured from customers that the Insured is unable to collect because of loss or damage to the Insured's accounts receivable records;
 - (b) Interest charges on any loan required to offset amounts the Insured is unable to collect because of loss or damage to the Insured's accounts receivable records, pending the Company's payment of these amounts;
 - (c) Collection expenses in excess of the Insured's normal collection expenses that are made necessary by the loss; and
 - (d) Other reasonable expenses that the Insured incurs to re-establish the Insured's records of Accounts Receivable.
- (2) The following additional exclusions apply to Accounts Receivable:

The Company will not pay for loss or damage caused by or resulting from any of the following:

 - (a) Bookkeeping, accounting or billing errors or omissions; and
 - (b) Alteration, falsification, manipulation, concealment, destruction or disposal of records of accounts receivable committed to conceal the wrongful giving, taking, obtaining or withholding of money, securities or other property but only to the extent of such wrongful giving, taking, obtaining or withholding.
- (3) The Company will not pay for loss or damage that requires an audit of records or any inventory computation to prove its factual existence.
- (4) In the event the Insured cannot accurately establish the amount of Accounts Receivable outstanding as of the time of loss, the following method will be used:
 - (a) The Company will determine the total of the average monthly amounts of Accounts Receivable for the 12 months immediately preceding the month in which the loss occurs;
 - (b) The Company will adjust the total for any normal fluctuations in the amounts of Accounts Receivable for the month in which the loss occurred or for any demonstrated variance from the average for that month; and
 - (c) The following will be deducted from the total amount of Accounts Receivable, however that amount is established:
 - (i) The amount of the accounts for which there is no loss;
 - (ii) The amount of the accounts that the Insured is able to re-establish or collect;
 - (iii) An amount to allow for probable bad debts that the Insured is normally unable to collect; and
 - (iv) All unearned interest and service charges.

e. Valuable Papers and Records

This insurance applies to loss or damage to Valuable Papers and Records while at or within 1,000 feet of the Insured's premises. Coverage does not apply to Valuable Papers and Records that exist on electronic data processing media.

f. "Fine Arts"

This insurance applies to loss or damage to "Fine Arts" while at or within 1,000 feet of the Insured's premises.

g. Newly Constructed or Acquired Property

This insurance applies to:

- (1) New buildings while being built on the Insured's premises or on a newly acquired location including materials, equipment, supplies and temporary structures which are at or within 1,000 feet of the premises;
- (2) Buildings newly acquired by the Insured at locations other than the Insured's premises;
- (3) Buildings the Insured becomes newly required to insure under a written contract; and
- (4) Personal Property of a type insured under this policy at or within 1,000 feet of a newly acquired building or a newly acquired location.

Insurance under this Coverage for each newly constructed or acquired property will end when any of the following first occurs:

- (1) This policy is cancelled or expires;
- (2) 120 days expire after the Insured acquires or begins to construct the building(s);
- (3) The Insured reports the new values to the Company; or
- (4) The property is more specifically insured elsewhere.

The Company will charge the Insured additional premium for values reported from the date construction begins or the Insured acquires the property.

h. "Outdoor Property"

This insurance applies to "Outdoor Property" at the Insured's premises for loss or damage only by the following Covered Causes of Loss:

- (1) Fire;
- (2) Lightning;
- (3) Explosion;
- (4) Riot or civil commotion;
- (5) Vandalism or malicious mischief; or
- (6) Aircraft or vehicles.

This insurance also applies to the necessary and reasonable expense incurred by the Insured to remove debris of "Outdoor Property" at the Insured's premises caused by or resulting from a Covered Cause of Loss listed above that occurs during the policy period. Such expenses will be paid only if reported to the Company in writing within 180 days of the date of direct physical loss or damage. This will not increase the Limit of Insurance that applies to "Outdoor Property".

i. Personal Effects of Officers and Employees of the Insured

This insurance applies to the Personal Effects and "Fine Arts" owned by officers, partners or employees of the Insured. Such property must be located at or within 1000 feet of the Insured's premises. Payment for loss or damage to Personal Effects and "Fine Arts" will only be for the account of the owner of the property.

j. Covered Property At Undescribed Premises

This insurance applies to:

- (1) Covered Property at an "exhibition" including while in transit to and from the "exhibition" site. Coverage for this property applies worldwide except within any country on which the United States government has imposed sanctions, embargoes or any other similar prohibitions.

- (2) Covered Property that will or has become a permanent part of an installation project being performed for others by the Insured, or on the Insured's behalf, while such property is at the installation premises or at other premises where the property is temporarily stored. Coverage for this installation property applies only within the Policy Territory and will apply only until the Insured's interest in the property ceases, the installation is accepted, the installation is abandoned, or this policy is cancelled or expires, whichever occurs first.
- (3) Covered Property at any other premises within the Policy Territory which are not otherwise insured under this policy, and which the Insured does not own, lease or regularly operate.

This Coverage does not apply to Personal Effects of Officers and Employees of the Insured.

k. Covered Property In Transit

This insurance applies to Covered Property in due course of transit at the risk of the Insured between points within the Policy Territory, including inland and coastal waters and air space.

This Coverage will attach when the Covered Property leaves the initial point of shipment and will continue until the property is delivered at its destination. In the event the Covered Property is not deliverable or is rejected by the consignee, such property will be covered while in due course of transit back to the Insured and while temporarily being held by the receiver or carrier awaiting its return to the Insured.

The Company will also pay for:

- (1) Any general average or salvage charges incurred by the Insured as respects losses to waterborne shipments.
- (2) The Insured's contingent interest in shipments sold on a F.O.B. (Free On Board) basis but only in the event that any loss recoverable hereunder is not collectible from the consignee or any other insurance.
- (3) Loss of Covered Property occasioned by the unintentional acceptance of fraudulent bills of lading, shipping receipts or messenger receipts by the Insured or any agent, customer or consignee of the Insured.

This Coverage does not apply to:

- (1) Shipments by a government postal service except by registered mail;
- (2) Any export shipment once the earlier of the following occurs:
 - (a) The shipment is placed on the export conveyance; or
 - (b) Coverage under an Ocean Marine or other insurance policy covering the shipment begins;
- (3) Any import shipment until the later of the following occurs:
 - (a) The shipment is unloaded from the importing vessel or conveyance; or
 - (b) Coverage under an Ocean Marine or other insurance policy covering the shipment ends;
- (4) Theft from a conveyance or container while unattended unless the portion of the conveyance or container containing the Covered Property is fully enclosed and securely locked, and the theft is by forcible entry of which there is visible evidence;
- (5) Property of others for which the Insured is responsible while acting as a common or contract carrier, freight forwarder, freight consolidator, freight broker or public warehouseman; or
- (6) Personal Effects of Officers and Employees of the Insured or to Covered Property in due course of transit to or from an "exhibition".

l. Covered Property Overseas

The Company will pay for loss or damage to Covered Property while in the custody of any officer or employee of the Insured while temporarily traveling outside of the Policy Territory. But this Coverage does not apply to Covered Property at, or in due course of transit to or from, an "exhibition".

Coverages j. Covered Property At Undescribed Premises, k. Covered Property in Transit and l. Covered Property Overseas are each subject to the applicable Limit of Insurance specified in the Supplemental Coverage Declarations for the coverage, but in no event will the Company pay more for loss or damage to any type of Covered Property than the amount that would have been paid if the loss or damage had occurred at or within 1000 feet of the Insured's premises.

2. COVERED COSTS AND EXPENSES

a. Debris Removal

(1) The Company will pay the necessary and reasonable expense incurred by the Insured to remove debris of Covered Property, other than "Outdoor Property", caused by or resulting from a Covered Cause of Loss that occurs during the policy period. Such expenses will be paid only if reported to the Company in writing within 180 days of the date of direct physical loss or damage. Coverage for the expense to remove debris of "Outdoor Property" is provided separately under Section B.1.h. of this Coverage Form.

(2) For this Debris Removal Coverage, the Company will pay up to 25% of:

- (a) The amount the Company pays for the direct physical loss or damage to the Covered Property; plus
- (b) The deductible in this policy applicable to that direct physical loss or damage.

This limit is part of and not in addition to the Limit of Insurance that applies to the lost or damaged Covered Property. But if:

- (a) (i) The sum of direct physical loss or damage and debris removal expense exceeds the Limit of Insurance; or
- (ii) The debris removal expense exceeds the above 25% limitation; and
- (b) A Limit of Insurance is specified in the Supplemental Coverage Declarations for Debris Removal (additional);

the Company will also pay an additional amount, up to the Limit of Insurance specified in the Supplemental Coverage Declarations for Debris Removal (additional)

(3) In no event will this Debris Removal Coverage apply to:

- (a) Costs to extract "pollutants" from land or water; or
- (b) Costs to remove, restore or replace polluted land or water.

b. Pollutant Cleanup and Removal

The Company will pay the necessary and reasonable expense incurred by the Insured to extract "pollutants" from land or water at the Insured's premises if the discharge, dispersal, seepage, migration, release or escape of the "pollutants" is caused by or results from a "specified cause of loss" which occurs during the policy period.

Such expenses will be paid only if reported to the Company in writing within 180 days of the date on which the "specified cause of loss" occurs.

This Coverage does not apply to costs to test for, monitor or assess the existence, concentration or effects of "pollutants". But the Company will pay for testing which is performed in the course of extracting the "pollutants" from the land or water.

The most the Company will pay under this Coverage for the sum of all covered expenses arising out of all "specified cause of loss" occurrences that occur during each separate 12 month period of this policy is the Limit of Insurance specified for Pollutant Cleanup and Removal shown in the Supplemental Coverage Declarations.

c. Claim Data Expense

The Company will pay the reasonable expenses incurred by the Insured in preparing claim data required by the Company. This includes the cost of taking inventories, making appraisals and preparing other documentation to show the extent of loss. The Company will not pay for any expenses incurred, directed, or billed by or payable to insurance adjusters or their associates or subsidiaries, or any costs as provided in the General Conditions - Section C. Appraisal.

d. Fire Department Service Charge

When the fire department is called to save or protect Covered Property from a Covered Cause of Loss, the Company will pay for any fire department service charges incurred by the Insured that are:

- (1) Assumed by contract or agreement prior to loss; or

(2) Required by local ordinance.

e. Fire Protective Equipment Discharge

If fire protective equipment discharges accidentally or to control a Covered Cause of Loss, the Company will pay the Insured's cost to:

- (1) Refill or recharge the system with the extinguishing agents that were discharged; and
- (2) Replace or repair faulty valves or controls that caused the discharge.

f. Ordinance or Law

If a Covered Cause of Loss occurs to Covered Property, the Company will pay for:

- (1) **The loss to the undamaged portion of a covered building** caused by the enforcement of any ordinance or law that:

- (a) Requires the demolition of parts of the same property not damaged by a Covered Cause of Loss;
- (b) Regulates the construction or repair of buildings, or establishes zoning or land use requirements at the Insured's premises; and
- (c) Is in force at the time of loss.

The most the Company will pay for loss or damage under this portion of Ordinance or Law is the Limit of Insurance specified for Ordinance or Law – Undamaged Portion shown in the Supplemental Coverage Declarations.

- (2) **The cost to demolish and clear the site of undamaged parts of the covered building** caused by the enforcement of building, zoning or land use ordinance or law.

The Company will not pay more for loss or damage under this portion of Ordinance or Law than the lesser of:

- (a) The amount the Insured actually spends to demolish and clear the site; or
- (b) The Limit of Insurance specified for Ordinance or Law – Demolition shown in the Supplemental Coverage Declarations.

- (3) **The increased cost to repair, rebuild or construct the Covered Property** caused by enforcement of building, zoning, land use or any other ordinance or law when the Covered Property is insured for replacement cost. If the covered building is repaired or rebuilt, it must be intended for similar occupancy as the current building, unless otherwise required by zoning or land use ordinance or law.

The Company will not pay for increased construction costs until the Covered Property is actually repaired or replaced, at the same location or elsewhere; and unless the repairs or replacement are made as soon as reasonably possible after the loss or damage but not to exceed 2 years. The Company may extend this period in writing during the 2 years.

The most the Company will pay for loss or damage under this portion of Ordinance or Law is the increased cost of construction repair or replacement:

- (a) Of a building of the same size and at the same premises, or another premises if required by the ordinance or law; and
- (b) Limited to the minimum requirements of such ordinance or law regulating the repair or reconstruction of the damaged property on the same site.

not to exceed the Limit of Insurance specified for Ordinance or Law – Increased Cost of Construction shown in the Supplemental Coverage Declarations.

- (4) Ordinance or Law Coverages do not apply to:

- (a) "Vacant" properties;
- (b) Any loss due to the Insured's failure to comply with any ordinance or law that the Insured was required to comply with before the loss, even if the Covered Property was undamaged; and
- (c) Costs associated with the enforcement of any ordinance or law that requires the Insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants".

g. Preservation of Property

If it becomes necessary to move Covered Property from an insured premises to preserve it from loss or damage by a Covered Cause of Loss, the Company will pay for:

- (1) The necessary and reasonable expenses actually incurred by the Insured to remove the Covered Property from an insured premises and to move the Covered Property back to an insured premises; and
- (2) Any direct physical loss or damage to Covered Property while it is being moved from an insured premises, while temporarily stored at another location or while it is being moved back to an insured premises.

However, this Coverage will apply only if the loss or damage occurs within 90 days after the property is first moved and will cease when the policy is amended to provide insurance at the new location, the property is returned to the existing location, or this policy is cancelled or expires, whichever occurs first.

h. Protection of Property

The Company will pay the necessary and reasonable expenses actually incurred by the Insured to temporarily safeguard Covered Property against the threat of imminent direct physical loss or damage by a "specified cause of loss". This Coverage does not apply to any expenses to which the above Preservation of Property coverage applies.

i. Water, Other Liquids, Powder or Molten Material Damage

If covered loss or damage caused by or resulting from water or other liquid, powder or molten material damage occurs, the Company will also pay the cost to tear out and replace any part of the building or structure to repair damage to the system or appliance from which the water or other substance escapes.

When a Limit of Insurance is specified in the Supplemental Coverage Declarations for Water, Other Liquids, Powder or Molten Material Damage, that Limit of Insurance is the most the Company will pay under this Coverage. Otherwise, this coverage is provided subject to the Limit of Insurance that applies to the covered water or other liquid, powder or molten material damage loss.

C. PROPERTY AND COSTS NOT COVERED

Unless the following property or costs are added by endorsement to this Coverage Form, Covered Property and Covered Costs and Expenses do not include:

1. Currency, deeds or other evidences of debt, money, notes, checks, drafts, or securities;
2. Contraband or property in the course of illegal transportation or trade;
3. Water whether in its natural state or otherwise, above or below ground (except water normally contained in plumbing, the process of manufacture or fire protection equipment) watercourses, aquifers or the cost of reclaiming or restoring water;
4. Land whether in its natural state or otherwise (including land on which the property is located), land improvements, grain, hay straw or other harvested crops while outside of buildings, growing crops or standing timber;
5. The cost of excavations, grading, backfilling or filling;
6. Property sold by the Insured under an installment plan, conditional sale, trust agreement or other deferred payment plan after delivery to the purchasers;
7. Vehicles or self-propelled machines that:
 - (a) Are licensed for use on public roads; or
 - (b) Are operated principally away from the insured premises;
8. Aircraft or watercraft;
9. Live animals or birds;

10. Bulkheads, pilings, piers, wharves, docks, dikes, dams, canals, sea walls or vehicular bridges;
11. Underground tanks, pipes, flues, drains or tunnels, all whether or not connected to buildings, mines or mining property;
12. Any "Electronic Data Processing Data and Media" which is obsolete or unused by the Insured;
13. Property that is covered under another coverage form or endorsement of any other policy in which it is more specifically described, except for the excess of the amount due (whether the Insured can collect on it or not) from that other insurance;
14. Any of the specific types of Covered Property described in Sections B.1.a. through B.1.i. of this Coverage Form for which a Limit of Insurance is not shown in the Supplemental Coverage Declarations; or
15. Any of the following Covered Costs and Expenses for which a Limit of Insurance is not shown in the Supplemental Coverage Declarations:
 - a. Pollutant Clean Up and Removal, as described in Section B.2.b.;
 - b. Claim Data Expense, as described in Section B.2.c.; or
 - c. Ordinance or Law, as described in Section B.2.f.

D. EXCLUSIONS

1. The Company will not pay for loss or damage caused directly or indirectly by any of the following. Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss.

a. EARTH MOVEMENT

- (1) Any earth movement (other than "sinkhole collapse") including earthquake, mine subsidence, landslide, erosion, the expansion or contraction of soil due to the presence of moisture or water, or the lack thereof, and any other earth sinking, rising, shifting or movement, all whether naturally occurring or due to man made or other artificial causes.

But if earth movement results in fire or explosion, the Company will pay for the loss or damage caused by that fire or explosion.

- (2) Volcanic eruption, explosion or effusion. But if volcanic eruption, explosion or effusion results in "volcanic action" or fire, the Company will pay for the loss or damage caused by that "volcanic action" or fire.

All "volcanic action" that results from all volcanic eruptions or explosions that occur within any 168 consecutive hours period will constitute a single occurrence.

b. FLOOD

Flood meaning:

- (1) Flood, surface water, underground water, waves, tides, tidal waves, tsunamis, overflow of any body of water, or their spray, all whether driven by wind or not;
- (2) Mudslide or mudflow;
- (3) Release of water impounded by a dam; and
- (4) Water or sewage which backs up through sewers, drains or sumps.

This exclusion will not apply to direct loss or damage from resulting fire, explosion or leakage from fire protective equipment; however, the Company will be liable only for such resulting loss or damage.

c. GOVERNMENTAL ACTION

Seizure or destruction of property by order of governmental authority except as provided for under the Covered Costs and Expenses, Section B.2.f. Ordinance or Law.

But the Company will pay for loss or damage caused by or resulting from acts of destruction ordered by governmental authority and taken at the time of a fire to prevent its spread, if the fire would be covered under this Coverage Form.

d. NUCLEAR HAZARD

Nuclear reaction or radiation, or radioactive contamination however caused.

This exclusion will not apply to direct loss or damage by:

- (1) Fire resulting from nuclear reaction or radiation, or radioactive contamination; or
- (2) Sudden and accidental radioactive contamination, including resultant radiation damage to Covered Property provided:
 - (a) Such radioactive contamination arises out of material at the Insured's premises;
 - (b) Such radioactive material is kept at an Insured's premises for the purpose of the Insured's operations; and
 - (c) At the time of such loss at the Insured's premises there is neither a nuclear reactor capable of sustaining nuclear fission in a self-supporting chain reaction, nor any new or used nuclear fuel which is intended for or which has been used in a nuclear reaction.

But the most the Company will pay for Sudden and Accidental Radioactive Contamination as provided in d. (2)(a), (b) and (c) above is the specified Limit of Insurance shown in the Supplemental Coverage Declarations. This is not additional insurance.

e. WAR AND MILITARY ACTION

- (1) Hostile or warlike action in time of peace or war, including action in hindering, combating or defending against an actual, impending or expected attack:
 - (a) By any government or sovereign power (de jure or de facto), or by any authority maintaining or using military, naval or air forces;
 - (b) By military, naval or air forces; or
 - (c) By an agent of any such government, power, authority or forces.
- (2) Insurrection, rebellion, revolution, civil war, usurped power, or action taken by governmental authority in hindering, combating or defending against such an occurrence.
- (3) Any discharge, explosion or use of any weapon of war employing nuclear fission or fusion will be conclusively presumed to be such a hostile or warlike action by such a government, power, authority or forces.

f. COMPUTER VIRUS

Computer Virus means intrusive codes or programming that are entered into a computer system causing direct physical loss or damage to, or destruction of, "Electronic Data Processing Equipment" or "Electronic Data Processing Data and Media".

This exclusion will not apply in the event the Computer Virus results in a "specified cause of loss"; however, the Company will be liable only for such resulting loss or damage.

g. PROGRAMMING ERRORS OR OMISSIONS

Programming errors, omissions or incorrect instructions to a machine.

This exclusion will not apply in the event Programming errors, omissions or incorrect instructions to a machine results in a "specified cause of loss", however, the Company will be liable only for such resulting loss or damage.

h. ORDINANCE OR LAW

The enforcement of any ordinance or law:

- (1) Regulating the construction, use or repair of any property; or
- (2) Requiring the tearing down of any property, including the cost of removing its debris;

except as provided in the Covered Costs and Expenses, item B.2.f. Ordinance or Law.

The Ordinance or Law exclusion applies whether the loss results from an ordinance or law that is enforced even if the property has not been damaged; or from the increased costs incurred to comply with an ordinance or law in the course of construction, remodeling or demolition of property, or removal of its debris, following a physical loss to that property.

i. OFF PREMISES UTILITY SERVICES

The interruption, failure or fluctuation of power or other utility service(s) provided to an insured premises if the cause of the interruption, failure or fluctuation occurs off an insured premises.

This exclusion will not apply in the event the interruption, failure or fluctuation of power or other utility service(s) results in a Covered Cause of Loss; however, the Company will be liable only for such resulting loss or damage.

j. COLLAPSE OF BUILDINGS

Collapse of buildings meaning an abrupt falling down or caving in of a building or substantial portion of a building with the result being that the building or substantial portion of a building cannot be occupied for its intended purpose.

(1) This exclusion will not apply to collapse of buildings if caused only by one or more of the following:

- (a) A "specified cause of loss";
- (b) Decay or insect or vermin damage that is hidden from view, unless the presence of such decay or insect or vermin damage is known to the Insured prior to collapse;
- (c) Weight of people or personal property;
- (d) Weight of rain that collects on a roof;
- (e) Use of defective material or methods in construction, remodeling or renovation if the collapse occurs during the course of construction, remodeling or renovation; or
- (f) Use of defective material or methods in construction, remodeling or renovation if the collapse occurs after construction, remodeling, or renovation is complete and is caused in part by a cause of loss listed in j. (1) (a) through (d) above.

In the event collapse results in a Covered Cause of Loss, the Company will be liable only for such resulting loss or damage by that Covered Cause of Loss.

(2) A building or portion of a building that:

- (a) Is in imminent danger of abruptly falling down or caving in; or
 - (b) Suffers a substantial impairment of structural integrity;
- is not considered a collapse but is considered to be in a state of imminent collapse.

(3) As respects buildings in a state of imminent collapse, the Company will not pay for loss or damage unless the state of imminent collapse first manifests itself during the policy period and is caused only by one or more of the following which occurs during the policy period:

- (a) Fire; lightning; explosion; windstorm or hail; aircraft or vehicles; riot or civil commotion; "sinkhole collapse"; weight of snow, ice or sleet;
- (b) Weight of people or personal property;
- (c) Weight of rain that collects on a roof; or
- (d) Use of defective material or methods in construction, remodeling or renovation if the state of imminent collapse occurs during the course of construction, remodeling or renovation.

As respects "Electronic Data Processing Equipment" and "Electronic Data Processing Data and Media", only exclusions D.1.a. through g. and D.1.i. apply. As respects Accounts Receivable, and Valuable Papers and Records, only exclusions D.1.a. through g. apply. As respects Property in the due course of transit, Exclusions D.1.a. and D.1.b. do not apply.

2. The Company will not pay for loss or damage caused by or resulting from any of the following:

- a. Artificially generated electric current, including electric arcing, that disturbs electrical devices, equipment, appliances or wires.

But in the event artificially generated electric current results in fire or explosion, the Company will be liable only for such resulting loss or damage.

- b. Indirect or remote loss or damage; delay, loss of use or loss of market; or interruption of business;
- c. (1) Wear and tear or depletion;
- (2) Rust, corrosion, erosion, fungus, decay, deterioration, wet or dry rot, mold, hidden or latent defect or any quality in the property that causes it to damage or destroy itself;

- (3) Settling, cracking, shrinking, bulging or expansion;
- (4) Nesting or infestation or discharge or release of waste products or secretions, by insects, birds, rodents or other animals;
- (5) Mechanical or machinery breakdown, including rupture or bursting caused by centrifugal force; and
- (6) The following causes of loss to personal property:
 - (a) Dampness or dryness of atmosphere;
 - (b) Changes in or extremes of temperature;
 - (c) Changes in flavor, color, texture or finish; and
 - (d) Contamination, evaporation or leakage.

However, in the event an excluded cause of loss that is listed in 2.c. (1) through (6) above results in a "specified cause of loss", the Company will pay for the loss or damage caused by that "specified cause of loss".

- d. Explosion of steam boilers, steam pipes, steam engines or steam turbines owned or leased by the Insured, or operated under the Insured's control. But if explosion of steam boilers, steam pipes, steam engines, or steam turbines results in fire or combustion explosion, the Company will pay for loss or damage caused by that fire or combustion explosion. The Company will also pay for loss or damage caused by or resulting from the explosion of gases or fuel within the furnace of any fired vessel or within the flues or passages through which the gases of combustion pass.
- e. Dishonest or criminal act by the Insured, any of the Insured's partners, employees (including leased employees), directors, trustees, authorized representatives or anyone (other than a carrier for hire or bailee) to whom the Insured entrusts the property for any purpose:
 - (1) Acting alone or in collusion with others; and
 - (2) Whether or not occurring during the hours of employment.

This exclusion does not apply to acts of destruction by the Insured's employees, (including leased employees) but theft by the Insured's employees (including leased employees) is not covered.
- f. Rain, snow, sand, dust, ice, or sleet to personal property in the open (other than to property in the custody of a carrier for hire).
- g. The cost of correcting or making good the damage to personal property attributable to such property being processed, manufactured, tested or otherwise being worked upon.
- h. Discharge, dispersal, seepage, migration, release or escape of "pollutants" unless the discharge, dispersal, seepage, migration, release or escape is itself caused by a "specified cause of loss". But in the event the discharge, dispersal, seepage, migration, release or escape of "pollutants" results in a "specified cause of loss", the Company will be liable only for such resulting loss or damage caused by that "specified cause of loss".
- i. Voluntary parting with any property by the Insured or anyone else to whom the Insured has entrusted the property.
- j. Accumulated effects of smog, smoke, vapor, liquid or dust.
- k. If the building or leased premises where loss or damage has occurred has been "vacant" for more than 60 consecutive days before that loss or damage occurs, the Company will not pay for any loss or damage caused by any of the following, even if they are Covered Causes of Loss:
 - (1) Vandalism;
 - (2) Sprinkler leakage;
 - (3) Building glass breakage;
 - (4) Water damage;
 - (5) Theft; or
 - (6) Attempted theft.

Buildings under construction or renovation are not considered "vacant".

- l. Continuous or repeated seepage, leakage or flow of water that occurs over a period of 14 days or more.

- m. Shortage disclosed by audit or upon taking inventory or by a profit and loss statement or other instances where there is no physical evidence to show what happened to the property.

As respects Accounts Receivable, Valuable Papers and Records, "Electronic Data Processing Equipment" and "Electronic Data Processing Data and Media" only the following exclusions in Section D.2 apply:

- (1) Exclusions c. (1), c. (6) (a) and c. (6) (b); but if mechanical breakdown not otherwise excluded results, the Company will pay for that resulting loss or damage by mechanical breakdown; and
 - (2) Exclusions b., e., g., i. and m.
3. The Company will not pay for loss or damage caused by or resulting from any of the following:
- a. Weather conditions. But this exclusion only applies if weather conditions contribute in any way with a cause or event excluded in D.1 above to produce the loss or damage.
 - b. Acts or decisions, including the failure to act or decide, of any person, group, organization or governmental body.
 - c. Faulty, inadequate or defective:
 - (1) Planning, zoning, development, surveying, siting;
 - (2) Design, specifications, workmanship, repair, construction, renovation, remodeling, grading, compaction;
 - (3) Materials used in repair, construction, renovation or remodeling; or
 - (4) Maintenance;
 of part or all of any property on or off an insured premises.

However, in the event an excluded cause of loss that is listed in 3.a. through 3.c. above results in a Covered Cause of Loss, the Company will be liable only for such resulting loss or damage.

E. LIMITATIONS

1. The Company will not pay for loss of or damage to property, as described and limited in this section. In addition, the Company will not pay for any loss that is a consequence of loss or damage as described and limited in this section.
 - a. Steam boilers, steam pipes, steam engines or steam turbines caused by or resulting from any condition or event inside such equipment. But the Company will pay for loss of or damage to such equipment caused by or resulting from an explosion of gases or fuel within the furnace of any fired vessel or within the flues or passages through which the gases of combustion pass.
 - b. Hot water boilers or other water heating equipment caused by or resulting from any condition or event inside such boilers or equipment, other than explosion.
2. As respects furs, fur garments and garments trimmed with fur, jewelry, watches, watch movements, jewels, pearls, precious and semi-precious stones, bullion, gold, silver, platinum and other precious alloys or metals, the most the Company will pay for loss or damage by theft, regardless of the types or number of articles that are lost or damaged is \$50,000.
3. The Company will not pay the cost to repair any defect to a system or appliance from which water, other liquid, powder or molten material escapes. But the Company will pay the cost to repair or replace damaged parts of the fire extinguishing equipment if the damage:
 - a. Results in discharge of any substance from an automatic fire protection systems; or
 - b. Is directly caused by freezing.

F. DEDUCTIBLES

When a deductible(s) is shown in the Supplemental Coverage Declarations, refer to Section B. Application of Deductibles in the General Conditions.

G. DEFINITIONS

1. "Electronic Data Processing Data and Media" means:
 - (a) Electronic data processing, recording or storage media such as films, tapes, discs, drums or cells, or similar magnetic recording or storage devices;

- (b) Data stored on such media; and
 - (c) Original programming materials used to enter data and/or program media.
2. **"Electronic Data Processing Equipment"** means electronic data processing equipment, facsimile machines, word processors, multi-functional telephone equipment, laptop and portable computers; related surge protection devices; and their component parts and peripherals used solely for data processing operations.
 3. **"Exhibition"** means the temporary display of personal property at a convention, exposition, trade show or similar event at a location not owned or regularly occupied by the Insured.
 4. **"Fine Arts"** means paintings, etchings, pictures, tapestries, art glass windows, valuable rugs, statuary, marbles, bronzes, antique furniture, rare books, antique silver, manuscripts, porcelains, rare glass, bric-a-brac and similar property of rarity, historical value, or artistic merit.
 5. **"Finished Stock"** means goods manufactured by the Insured that in the ordinary course of the Insured's business are in their completed state and ready for sale.

"Finished Stock" does not include goods manufactured by the Insured that are held for sale on the premises of any retail outlet insured under this Coverage Form.
 6. **"Outdoor Property"** means retaining walls not part of a building, lawns (including fairways, greens and tees), trees, shrubs, plants, bridges (excluding vehicular bridges), walks, roadways, patios or other paved surfaces.
 7. **"Pollutants"** means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, waste and any unhealthy or hazardous building materials (including but not limited to asbestos and lead products or materials containing lead). Waste includes materials to be recycled, reconditioned or reclaimed.
 8. **"Raw Stock"** means material in the state in which the Insured receives it for conversion by the Insured into "Stock in Process" or "Finished Stock".
 9. **"Sinkhole Collapse"** means the sudden sinking or collapse of land into underground empty spaces created by the action of water on limestone or dolomite.

This cause of loss does not include:

 - a. The cost of filling sinkholes; or
 - b. Sinking or collapse of land into man made underground cavities.
 10. **"Specified Cause of Loss"** means any of the following: Fire; lightning; explosion; windstorm or hail; smoke; aircraft or vehicles; riot or civil commotion; vandalism; leakage from fire extinguishing equipment; "sinkhole collapse"; "volcanic action"; falling objects; weight of snow, ice or sleet; or water damage.
 - a. Falling objects does not include loss or damage to:
 - (1) Personal property in the open; or
 - (2) The interior of a building, or property inside a building, unless the roof or an outside wall of the building is first damaged by a falling object.
 - b. Water damage means accidental discharge or leakage of water or steam as the direct result of the breaking apart or cracking of any part of a system or appliance (other than a sump system including its related equipment and parts) containing water or steam.
 11. **"Stock"** means merchandise held in storage or for sale, "Raw Stock", "Stock in Process" or "Finished Stock" including supplies used in their packing or shipping.
 12. **"Stock in Process"** means "raw stock" which has undergone any aging, seasoning, mechanical or other process of manufacturing but which has not become "finished stock".
 13. **"Vacant"** means:
 - a. When 90% or more of the square footage of the entire building is not rented or is not used to conduct customary operations; or

b. When a unit or suite rented or leased to a tenant does not contain enough Business Personal Property to conduct customary operations.

14. **"Volcanic Action"** means direct loss or damage resulting from the eruption of a volcano when the loss or damage is caused by:

- a. Airborne volcanic blast or airborne shock waves;
- b. Ash, dust or particulate matter; or
- c. Lava flow

"Volcanic Action" does not include the cost to remove ash, dust or particulate matter that does not cause direct physical loss or damage to the Covered Property.

FLOOD

This endorsement modifies insurance provided under this policy.

A. The following is added to the Covered Causes of Loss and the "specified causes of loss":

Flood, meaning:

1. Flood, surface water, underground water, waves, tides, tidal waves, tsunamis, overflow of any body of water, or their spray, all whether driven by wind or not;
2. Mudslide or mudflow;
3. Release of water impounded by a dam; or
4. Water which backs up through sewers, drains or sumps.

B. All Flood loss that occurs:

1. During a period of continued rising or overflow of any river(s), stream(s) or any body of water and the subsidence of same within the banks of such river(s), stream(s) or bodies of water; or
2. Due to any tidal waves or tsunamis that occur within any 168 hour period;

will constitute a single Flood occurrence.

If Flood loss commences prior to the expiration date of this policy and the Flood occurrence, as defined above, extends beyond the expiration date of this policy, the expiration of the policy will not reduce the Flood occurrence period.

C. Under the Exclusions contained in Section D. of the Property Coverage Form:

1. The Earth Movement exclusion does not apply to the insurance otherwise provided under this endorsement for loss or damage caused by or resulting from:
 - a. Mudslide or mudflow that is caused or precipitated by the accumulation of water on or below the ground; or
 - b. Flood that is attributable to an Earth Movement such as a tsunami.
2. The Flood exclusion does not apply to the insurance specifically provided under this endorsement.
3. The Collapse of Buildings exclusion is amended to include Flood in the list of named causes of loss for which coverage for buildings in a state of imminent collapse applies.

All other exclusions and limitations in this policy continue to apply.

D. The following additional exclusions apply to this insurance:

1. This insurance for Flood does not apply to, or modify any limits or deductibles that apply to:
 - a. The insurance otherwise provided for loss or damage by fire, explosion or leakage from fire protective equipment that results from Flood; or
 - b. Any other insurance provided for loss or damage to which the Flood exclusion does not apply.
2. The Company will not pay for loss or damage caused by or resulting from any Flood occurrence that begins before the inception of this insurance.
3. This insurance does not apply to the cost of restoring, recovering or de-watering land or to loss resulting from the time required to restore, recover or de-water land.
4. Unless otherwise specified in the Supplemental Coverage Declarations, this insurance for Flood does not apply to loss or damage to property at any location which is, in whole or part, within Zones prefixed A or V as classified by the National Flood Insurance Program.

- E. The most the Company will pay for the total of all loss or damage caused by Flood in any one policy year is the single highest Annual Aggregate Limit of Insurance specified for Flood shown in the Supplemental Coverage Declarations. This limit is part of, and does not increase, the Limits of Insurance that apply under this policy.

Subject to the single highest Annual Aggregate Limit of Insurance:

1. Any individual Annual Aggregate Limit of Insurance shown in the Supplemental Coverage Declarations for Flood is the most the Company will pay in any one policy year for all loss or damage to which that Limit of Insurance applies.
 2. If more than one Annual Aggregate Limit of Insurance applies to loss or damage under this endorsement in any one occurrence, each limit will be applied separately, but the most the Company will pay under this endorsement for all loss or damage in that occurrence is the single highest Annual Aggregate Limit of Insurance applicable to that occurrence.
- F. Under the Property Coverage Form, when a Building at the Insured's premises is Covered Property insured under this policy, the insurance provided under this endorsement is extended to apply to loss or damage to underground pipes, flues and drains at those premises caused by Flood. But this will not increase the limit that applies to this insurance.

GENERAL CONDITIONS

All coverages included in this policy are subject to the following conditions.

A. ABANDONMENT

There can be no abandonment of any property to the Company.

B. APPLICATION OF DEDUCTIBLES

1. Any deductibles that apply are specified in the Supplemental Coverage Declarations or in the forms or endorsements attached to this policy.

Unless otherwise specified in the Supplemental Coverage Declarations, or by endorsement, when a deductible is specified as applying separately "at each affected location, in any one occurrence", or at a specific location in any one occurrence, each of the following will be considered a "location":

- a. A single address that is not part of a complex described in b. below, regardless of the number of buildings at that address; or
- b. A multiple building complex, such as an apartment complex, office building complex or industrial park, with multiple addresses, provided:
 - (1) All addresses within the complex are under the same ownership or management; and
 - (2) The complex is known by a single name; and
 - (3) All addresses within the complex are insured premises under this policy; and
 - (4) The addresses are adjacent to one another, or separated only by a street.

2. Dollar Deductibles

When the deductible that applies is specified as a dollar amount, the Company will not pay for loss or damage to which the deductible applies until the amount of loss or damage exceeds the specified deductible amount. The Company will then pay the amount of the loss or damage in excess of the specified deductible, up to the applicable Limit of Insurance.

3. Percentage Deductibles

- a. Percentage deductibles may be written as a percentage of total values or as a percentage per unit of insurance.

- b. Total Values Percentage Deductibles

When the deductible that applies is specified as a percentage of total values, the deductible will be equal to the percentage of the total values specified in the most recent Statement of Values on file with the Company for buildings, structures, personal property and rental values to which the deductible applies.

- c. Per Unit of Insurance Percentage Deductibles

When the deductible that applies is specified as a percentage per unit of insurance, the deductible will be equal to the percentage of value(s) calculated for, and applied separately to, each of the following units of insurance:

- (1) Each building or structure sustaining loss or damage;
- (2) Personal property within each building or structure if that personal property sustains loss or damage;
- (3) Personal property in the open if personal property in the open sustains loss or damage;
- (4) Business Income values impacted by the direct loss or damage to property, when the percentage deductible is indicated as applying to Business Income; and
- (5) Rental values impacted by the direct loss or damage to property, when the percentage deductible is indicated as applying to Rental Value.

The values to be used when calculating the deductible for (1), (2), (3), (4) and (5) above are either those as specified for each unit of insurance shown in the most recent Statement of Values on file with the Company or, if not so specified, or if the damaged property is a building in the course of construction or renovation, the values will be determined at the time of loss. When Business Income values or rental values are determined at the time of loss, the values will be calculated for the 12 months following the inception date of the policy term in which the loss occurs.

- d. When both a percentage deductible and a dollar deductible are specified together as applicable to a coverage or exposure, whether specified as applying in any one occurrence or specified as applying at each affected location in any one occurrence, the percentage deductible will be calculated and applied as described in b. and c. above, but the dollar deductible is the minimum amount the Company will deduct in any one occurrence, or at each affected location in any one occurrence, as specified, for all loss or damage to which the deductible is stated to apply.
- e. When a maximum dollar deductible is also specified as applicable, the specified maximum deductible is the most the Company will deduct in any one occurrence for all loss or damage to which the deductible is stated to apply.

4. Hour Deductibles

If the deductible for Business Income or any other time element coverage is specified in hours, the Company will not be liable for any loss incurred during the specified number of hours immediately following the start of the "period of restoration" or other applicable period during which incurred loss would otherwise be covered. The Company will then pay the amount of loss incurred for the remainder of the "period of restoration" or other applicable period during which incurred loss is covered, up to the Limit of Insurance.

5. Two or More Deductibles in Any One Occurrence

If any causes of loss, coverages or types of property insured against under this policy are subject to separate deductibles and two or more of those causes of loss, coverages and/or types of property are involved in any one loss occurrence, each cause of loss, coverage and type of property loss will be adjusted separately. But the total of the deductible amounts applied will not exceed the highest deductible amount applied in that occurrence for any one involved cause of loss, coverage or type of property.

This provision does not apply to:

- a. Earth Movement, Earthquake, Earthquake Sprinkler Leakage, Flood, Windstorm or Hurricane deductibles; or
- b. Any hour deductible.

6. Application of Earth Movement, Earthquake, Earthquake Sprinkler Leakage, Flood, Sewer Back-Up and Boiler and Machinery Deductibles

Any deductible shown on the Supplemental Coverage Declarations for a cause of loss listed below applies only with respect to loss or damage to which the corresponding cause of loss endorsement applies:

- a. Earth Movement;
- b. Earthquake;
- c. Earthquake Sprinkler Leakage;
- d. Flood;
- e. Sewer Back-Up; or
- f. Boiler and Machinery.

These deductibles do not apply to any loss or damage by these causes of loss that is covered in the absence of such endorsements.

7. Any Other Covered Loss Deductible

Unless otherwise specifically stated in this policy, the deductible shown in the Supplemental Coverage Declarations for "any other covered loss" applies to all causes of loss, coverages and types of property insured against under this policy for which no deductible is specifically shown in the Supplemental Coverage Declarations or in the forms or endorsements attached to this policy, except Extra Expense. No deductible applies to Extra Expense.

C. APPRAISAL

If the Company and the Insured disagree on the value of the property, the amount of net income and operating expense or the amount of loss, either may make written demand for an appraisal of the loss. In this event, each party will select a competent and impartial appraiser. The two appraisers will select an umpire. If they cannot agree, either may request that a judge of a court having jurisdiction make the selection. The appraisers will state separately the value of the property, the amount of loss or the amount of net income and operating expense. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

1. Pay its chosen appraiser; and
2. Bear the other expenses of the appraisal and umpire equally.

If there is an appraisal, the Company will still retain its right to deny the claim.

D. CANCELLATION AND NONRENEWAL**1. Cancellation**

- a. The first Named Insured shown in the Declarations may cancel this policy by mailing or delivering to the Company advance written notice of cancellation.
- b. The Company may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation at least:
 - (1) 10 days before the effective date of cancellation if the Company cancels for nonpayment of premium; or
 - (2) 60 days before the effective date of cancellation if the Company cancels for any other reason.
- c. The Company will mail or deliver notice to the first Named Insured's last mailing address known to the Company.
- d. Notice of cancellation will state the effective date of cancellation. If the policy is cancelled, that date will become the end of the policy period. Cancellation will not affect coverage on any shipment in transit on the date of the cancellation. Coverage will continue in full force for such property in transit until it is delivered and accepted.
- e. If this policy is cancelled, the Company will send to the first Named Insured any premium refund due. If the Company cancels, the refund will be pro rata. If the first Named Insured cancels, the refund may be less than pro rata. The cancellation will be effective even if the Company has not made or offered a refund.
- f. If notice is mailed, proof of mailing will be sufficient proof of notice.

2. Nonrenewal

In the event the Company decides not to renew this policy, the Company will mail or deliver to the first Named Insured shown in the Declarations written notice of the nonrenewal not less than 60 days before the expiration date.

E. CHANGES

This policy contains all the agreements between the Insured and the Company concerning the insurance afforded. The policy terms can be amended or waived only by written endorsement issued by the Company as part of this policy.

F. CONCEALMENT, MISREPRESENTATION OR FRAUD

This policy is void in any case of fraud by the Insured as it relates to this policy at any time. It is also void if the Insured or any other person or entity insured under this policy, at any time, intentionally conceals or misrepresents a material fact concerning:

1. This policy;
2. The Covered Property;
3. The Insured's interest in the Covered Property; or
4. A claim under this policy.

G. CONTROL OF PROPERTY

Any act or neglect of any person other than the Insured beyond the direction or control of the Insured will not affect this insurance.

The breach of any condition of this policy at any one or more locations will not affect coverage at any location where, at the time of loss or damage, the breach of condition does not exist.

H. CURRENCY

It is understood and agreed that all amounts used herein are in the currency of the United States of America and that premiums and losses are payable in United States currency. In the event of a loss adjustment involving foreign currency, the conversion into the currency of the United States of America will be at the rate of exchange quoted in *The Wall Street Journal* as of the date of the loss.

I. EXAMINATION OF THE INSURED'S BOOKS AND RECORDS

The Company may examine and audit the Insured's books and records as they relate to this policy at any time during the policy period and up to three years afterward.

J. IDENTITY OF INTEREST

If the Named Insured under this policy is comprised of more than one legal entity, liability under this policy will not exceed the amount of loss had all such interests comprised a single legal entity.

K. INSPECTIONS AND SURVEYS

The Company has the right but is not obligated to:

1. Make inspections and surveys at any time;
2. Give the Insured reports on the conditions found resulting therefrom; and
3. Recommend changes.

Neither the right to make inspections nor the making thereof, nor any risk analysis, nor any advice or reports resulting therefrom will imply any liability, or constitute an undertaking on behalf of or for the benefit of the Insured. Any inspections, surveys, reports or recommendations relate only to insurability and the premiums to be charged. The Company does not make safety inspections. The Company does not undertake to perform the duty of any person or organization to provide for the health or safety of workers or the public. In addition, the Company does not warrant that the conditions are safe, healthful or in compliance with any law, rule, regulation, code or standard.

This condition applies not only to the Company, but also to any rating, advisory, rate service or similar organization that makes insurance inspections, surveys, reports or recommendations.

L. KNOWLEDGE OF OCCURRENCE

It is hereby understood and agreed that knowledge of an occurrence, accident, claim, loss or damage, or receipt or service of complaint, demand, notice, summons or other legal papers by the agent, servant or employee of the Insured will not in itself constitute knowledge or receipt by the Insured unless an executive officer or risk manager of the Named Insured has such knowledge or receives or is served such documents or notice from its agent, servant or employee.

M. LEGAL ACTION AGAINST THE COMPANY

No one may bring a legal action against the Company under this policy unless:

1. There has been full compliance with all of the terms of this policy; and

2. The action is brought in the United States of America, in a court having proper jurisdiction, within 2 years after the date on which the direct physical loss or damage occurred.

N. LIBERALIZATION

If the Company adopts any revision that would broaden the coverage under this policy without additional premium, within 45 days prior to or during the policy period, the broadened coverage will immediately apply to this policy.

O. LIMITS OF INSURANCE

1. The most the Company will pay for loss or damage in any one occurrence is the applicable specified Limit(s) of Insurance shown in the Supplemental Coverage Declarations, Schedules, Coverage Form(s) or endorsement(s).
2. Under the Property Coverage Form, unless otherwise stated in the Supplemental Coverage Declarations, or by endorsement:
 - a. Payments under the following Covered Costs and Expenses will not increase the applicable Covered Property Limit(s) of Insurance:
 - (1) Debris Removal. But if a Limit of Insurance for Debris Removal (additional) is specified in the Supplemental Coverage Declarations, that Limit of Insurance will apply in addition to the applicable Covered Property Limit of Insurance;
 - (2) Fire Department Service Charge;
 - (3) Fire Protective Equipment Discharge;
 - (4) Preservation of Property;
 - (5) Protection of Property; and
 - (6) Water Damage, Other Liquids, Powder or Molten Material Damage.
 - b. The Limits of Insurance that are specified for the remaining Covered Costs and Expenses are in addition to the Covered Property Limit(s) of Insurance.
3. Under the Business Income Coverage Forms or the Extra Expense Coverage Form, unless otherwise stated in the Supplemental Coverage Declarations, or by endorsement:
 - a. Payments under the following Additional Coverage Extensions will not increase the Limit of Insurance that applies to Business Income, Rental Value and/or Extra Expense:
 - (1) Civil Authority;
 - (2) Extended Business Income or Rental Value (Business Income Coverage Forms only);
 - (3) Expenses to Reduce Loss (Business Income Coverage Form Excluding Extra Expense only).
 - b. The Limits of Insurance that are specified for the remaining Additional Coverage Extensions are additional amounts of insurance.
4. Unless otherwise specified in the Supplemental Coverage Declarations, or by endorsement, when a Limit of Insurance is specified as applying separately "at each affected location, in any one occurrence" or on a per location basis, the description of a "location" contained in provision 1. of the Application Of Deductibles condition in Section B. of this form will apply.

P. LOSS PAYMENT

1. In the event of loss or damage to property covered by this policy, at the option of the Company, the Company will either:
 - a. Pay the value of lost or damaged property;
 - b. Pay the cost of repairing or replacing the lost or damaged property subject to 2. below;
 - c. Take all or any part of the property at an agreed or appraised value; or
 - d. Repair, rebuild, or replace the property with other property of like kind, size and quality subject to 2. below.

2. Except as otherwise specifically provided in this policy, the cost to repair, rebuild or replace does not include the increased cost attributable to enforcement of any ordinance or law regulating the construction, use or repair of any property.
3. The Company will give notice of its intentions within 30 days after the Company receives the proof of loss it requires.
4. The Company will not pay the Insured more than the Insured's financial interest in the Covered Property.
5. The Company may adjust losses with the owners of lost or damaged property if other than the Insured. If the Company pays the owners, such payments will satisfy the Insured's claims against the Company for the owner's property. The Company will not pay the owners more than their financial interest in the Covered Property.
6. The Company may elect to defend the Insured against suits arising from claims of owners of property. The Company will do this at its own expense.
7. The Company will pay for covered loss or damage within 30 days after the Company receives the sworn proof of loss it requires, if:
 - a. The Insured has complied with all of the terms of this policy; and
 - b. The Company has reached agreement with the Insured on the amount of loss or an appraisal award has been made.
8. At the option of the Company, the Company may make a partial payment toward any claims, subject to the policy provisions and the Company's normal adjustment process. To be considered for a partial claim payment, the Insured must submit a partial sworn proof of loss with supporting documentation. Any applicable policy deductibles must be satisfied before any partial payments are made.
9. If two or more of this policy's coverages apply to the same loss or damage, the Company will not pay more than the actual amount of the loss or damage

Q. MORTGAGEE INTERESTS AND OBLIGATIONS

Loss or damage, if any, as covered under this policy, will be payable to each mortgagee (or trustee) designated herein in order of their precedence as their interests may appear. With respect to the mortgagee's (or trustee's) interest, this insurance will not be invalidated by any act of the Insured (mortgagor or owner), nor by any foreclosure or other similar proceedings or notice of sale relating to the property, nor by any change in title or ownership of the property, provided that:

1. In the event the Insured (mortgagor or owner) has neglected to pay any premium due under this policy, the mortgagee (or trustee), at the request of the Company, pays the same;
2. The mortgagee (or trustee) has notified the Company of any change in ownership, occupancy or increase in the risk or hazards known to the mortgagee (or trustee) and, at the request of the Company, pays the premium for such increased risk or hazards; and
3. The mortgagee (or trustee) submits a signed, sworn proof of loss within sixty (60) days after having been notified by the Company that the Insured (mortgagor or owner) has failed to do so.

In the event the Company pays the mortgagee (or trustee) for any loss or damage covered under this policy and therefore claims that as to the Insured (mortgagor or owner) no liability existed, the Company will be subrogated to all the rights, to the extent of such payment, of the party to whom such payment was made. The Company may, at the Company's option, pay to the mortgagee (or trustee) the whole principal due plus any accrued interest. Thereupon, the Company will receive a full assignment and transfer of the mortgage and other such securities and the remaining mortgage debt will be payable by the Insured (mortgagor or owner) to the Company.

The Company reserves the right to cancel this policy at any time as provided by its terms but, in such case, this policy will continue in force for the benefit only of the mortgagee (or trustee) for ten (10) days after notice to the mortgagee (or trustee) of cancellation for nonpayment of premium or sixty (60) days after notice to the mortgagee (or trustee) of cancellation for any other reason. In the event the Company elects not to renew this policy, the Company will give written notice to the mortgagee (or trustee) at least thirty (30) days prior to the expiration of this policy.

R. NO BENEFIT TO BAILEE

No person or organization, other than the Insured, having custody of Covered Property will benefit from this insurance.

S. NO REDUCTION BY LOSS

Except with respect to any aggregate limit(s) or aggregate sublimit(s) of insurance in this policy, it is mutually understood and agreed that the amount of insurance will not be reduced by the payment of losses under this policy.

T. NOTICE OF LOSS AND DUTIES IN THE EVENT OF LOSS OR DAMAGE

1. The Insured must see that the following are done in the event of loss of or damage:
 - a. Notify the police if a law may have been broken.
 - b. Give the Company prompt notice of the loss or damage. Include a description of the property involved.
 - c. As soon as possible, give the Company a description of how, when, and where the loss or damage occurred.
 - d. Promptly make claim in writing against any other party, which had custody of the Covered Property at the time of loss.
 - e. Take all reasonable steps to protect the Covered Property from further damage, and keep a record of expenses necessary to protect the Covered Property, for consideration in the settlement of the claim. This will not increase the Limit of Insurance. However, the Company will not pay for any subsequent loss or damage resulting from a cause of loss that is not a Covered Cause of Loss. Also, if feasible, set the damaged property aside and in the best possible order for examination.
 - f. At the request of the Company, give the Company complete inventories of the damaged and undamaged property. Include quantities, costs, values and amount of loss claimed.
 - g. As often as may be reasonably required, permit the Company to inspect the property and records proving the loss or damage and examine the Insured's books and records.
Also permit the Company to take samples of damaged and undamaged property for inspection, testing and analysis and permit the Company to make copies from the Insured's books and records.
 - h. Send the Company a signed, sworn proof of loss containing the information that the Company requests to investigate the claim. The Insured must do this within 60 days after the Company's request. The Company will supply the Insured with the necessary forms.
 - i. Cooperate with the Company in the investigation or settlement of the claim.
2. The Company may examine any Insured under oath, while not in the presence of any other Insured and at such times as may be reasonably required, about any matter relating to this insurance or the claim, including an Insured's books and records. In the event of an examination, an Insured's answers must be signed.

U. OTHER INSURANCE**1. Underlying Insurance**

Permission is granted to the Insured to purchase insurance on all or any part of the deductibles of this policy, and the existence of such underlying insurance will not prejudice any recovery otherwise payable under this policy. If the limits of such underlying insurance exceed the deductible which would apply under this policy, then the insurance provided by this policy will apply only as excess after the limits applicable to the underlying insurance, including that portion which exceeds such deductible, have been exhausted.

2. Excess Insurance

Permission is granted to the Insured to have excess insurance over the Limit(s) of Insurance set forth in this policy without prejudice to this policy. The existence of such insurance will not reduce the Company's liability under this policy.

3. **Other Insurance Subject to Same Plan, Terms, Conditions and Provisions**

In the event the Insured has other insurance subject to the same plan, terms, conditions and provisions as the insurance under this policy, the Company will pay its share of the covered loss or damage. The Company's share is the proportion that the applicable Limit of Insurance under this policy bears to the Limits of Insurance of all insurance covering on the same basis.

If there is other insurance covering the same loss or damage, other than that described above, the Company will pay only for the amount of covered loss or damage in excess of the amount due from that other insurance, whether the Insured can collect on it or not. But, the Company will not pay more than the applicable Limit of Insurance.

V. POLICY PERIOD AND TERRITORY

Under this policy, the Company will cover loss or damage that commences during the policy period as specified in the Declarations and, except as otherwise specifically provided, within the Policy Territory. The Policy Territory is:

1. The United States of America (including its territories and possessions);
2. Puerto Rico; and
3. Canada.

W. RECOVERED PROPERTY

In the event either the Insured or the Company recovers any property after loss settlement, that party must give the other prompt notice. At the option of the Insured, the property will be returned to the Insured. The Insured must then return to the Company the amount the Company paid to the Insured for the property.

1. The Company will pay:
 - a. Recovery expenses; and
 - b. Costs to repair the recovered property;
2. But the amount the Company pays will not exceed:
 - a. The total of 1. a. and 1. b. above;
 - b. The value of the recovered property; or
 - c. The Limit of Insurance;
 whichever is less.

X. SUBROGATION AND SUBROGATION WAIVER

1. **Subrogation – Transit**

The following subrogation provisions apply to any transit coverage provided under this policy:

- a. If any person or organization to or for whom the Company makes payment under any transit coverage provisions of this policy has rights to recover damages from another, those rights are transferred to the Company to the extent of such payment. That person or organization must do everything necessary to secure the Company's rights and must do nothing after the loss to impair them.
- b. Insurance under the transit coverage provisions will be null and void if any Insured does any act or enters into any agreement, before or after loss, which in any way releases, impairs or destroys the right to recover against any carrier for hire, or other party liable for the loss, or transfers such right to anyone other than the Company. Even if the transit coverage becomes null and void, the Company has the right to retain and recover the premium for this coverage. The Insured does have permission to accept the limited liability form receipts or bills of lading commonly used by carriers for hire without prejudice to this coverage. The Company is not liable however, for any loss that is settled or compromised without the written consent of the Company.
- c. If the Company pays for loss or advances or loans money under the transit coverage, the Insured will, upon request and at the expense of the Company, make claim upon and

institute legal proceedings against any carrier, bailee or other party liable for the loss. At the option of the Company, such claims or legal proceedings may be instituted in the name of the Insured. The Insured agrees to fully cooperate with the Company in making such claims and prosecuting such legal proceedings.

2. Subrogation – All Other Coverages

If any person or organization to or for whom the Company makes payment under this policy has rights to recover damages from another, those rights are transferred to the Company to the extent of such payment. That person or organization must do everything necessary to secure the Company's rights and must do nothing after the loss to impair them. The Company will be entitled to priority of recovery against any such third party (including interest) to the extent payment has been made by the Company, plus attorney's fees, expenses or costs incurred by the Company.

But, the Insured may waive its rights against another party by specific written agreement:

- a. Prior to a loss to Covered Property.
- b. After a loss to Covered Property or Covered Income only if, at time of loss, that party is one of the following:
 - (1) Someone insured by this insurance;
 - (2) A business firm owned or controlled by the Insured or that owns or controls the Insured; or
 - (3) The Insured's tenant.

Such waiver will not invalidate or restrict this insurance.

Y. TRANSFER OF THE INSURED'S RIGHTS AND DUTIES UNDER THIS POLICY

The Insured's rights and duties under this policy may not be transferred without the written consent of the Company except in the case of death of an Individual Named Insured. If an individual Named Insured dies, the Insured's rights and duties will be transferred to the Insured's legal representative but only while acting within the scope of duties as the Insured's legal representative. Until the Insured's legal representative is appointed, anyone having proper temporary custody of the Insured's property will have rights and duties but only with respect to that property.

Z. UNINTENTIONAL ERRORS IN DESCRIPTION

The insurance provided by this policy is extended to apply with respect to loss or damage to property at locations within the Policy Territory that are owned, leased or operated by the Insured, if such loss or damage is not payable under this policy due solely to any unintentional error in the description of the address of the property. But this will not increase any Limits of Insurance that apply under this policy.

Upon discovery of the unintentional error, the Insured will report the correct information to the Company. An additional premium may be charged based upon the corrected information.

APPENDIX B



Lloyd's Certificate

Effected Through

This is to Certify that in accordance with the authorisation granted under the contract numbered B066406THB028 to the undersigned by certain Underwriters at Lloyd's, whose names and the proportions underwritten by them, which will be supplied on application, can be ascertained by reference to the said Contract, and in consideration of the premium specified herein, the said Underwriters are hereby bound, each for his own part and not one for another, their Heirs, Executors and Administrators, to insure in accordance with the terms and conditions contained herein or endorsed hereon.

The Underwriters hereby agree, to insure against loss including but not limited to associated expenses specified herein, if any, to the extent and in the manner herein provided.

If the Assured shall make any claim knowing the same to be false or fraudulent, as regards amount or otherwise, this Certificate shall become void and all claim hereunder shall be forfeited.

IN WITNESS WHEREOF
this certificate has been signed by

A. E. Tully

S. W. Cuthbert

Date 12th June 2007

Date 12th June 2007

The Assured is requested to read this certificate and, if it is incorrect, return it immediately for alteration. Please quote the Certificate Number on all Communications

Appendix B p.1

SECURITY

Attaching to and forming part of Certificate Number: B066447256A07

Effective with certain Underwriters at Lloyd's, London. Participation: 100%

Signed Line	Syndicate No.	Underwriter
20.00 %	2020	Wellington Underwriting
17.50 %	2488	Ace Global Markets
17.50 %	1200	Heritage PLC
4.20 %	2623	A.F. Beazley & Others
1.18 %	623	A.F. Beazley & Others
5.38 %	2003	S.J.O. Catlin & Others
7.54 %	2001	AMLIN
3.23 %	1225	Aegis Energy Syndicate 1225
7.54 %	2121	Argenta Syndicate Management Ltd
6.48 %	4472	Liberty Syndicate Management Limited
3.01 %	2000	Harrington & Others
6.46 %	2987	Brit Syndicate
100.00 %		

This insurance is subject to the acceptance and acknowledgement by the Assured that the terms and conditions offered (in part or in full) have been underwritten within an authority to transact business as detailed in a Binding authority granted by certain Underwriters at Lloyd's of London or Insurance Companies to Thompson Heath and Bond Ltd., and therefore all Thompson Heath & Bond Ltd records relating to this insurance are available for inspection by those participating certain Underwriters at Lloyd's of London or Insurance Companies.

Wherever the words 'Policy' or 'Certificate' appears herein they shall be deemed to be synonymous.

Wherever the words 'Insured' and 'Assured' appears herein they shall be deemed to be synonymous.

SCHEDULE

Policy No: B066447256A07

1. Title of Assured:

EVERGREEN HEALTHCARE

2. Address of Assured:

4601 NE 77th Avenue, Suite 300, Vancouver, WA 98662

3. Policy Period:

From: 1st June 2007

To: 1st June 2008

both days at 12:01 a.m. Local Standard Time at the location of the property insured.

4. Perils Insured:

Flood

5. The Property of Interest:

Buildings and Business Income other than Rental Value

6. The Property is located or contained at:

Location 1: 328 Campus Drive, Arvin, CA 93203
Location 2: 1015 Long Road, Centralia, WA 98531
Location 3: 1291 Craig Avenue, Lakeport, CA 95463

7. Premium:

USD22,500 being this Policy's premium payable

8. (a) PRIMARY INSURER(S)

Coverage Layer	Total Limit of Liability for Primary Insurer(s)	Insurer	Participation	Policy No
I. Location 1	USD500,000	Travelers Flood	100%	6003859979
Location 2	USD500,000	National Flood Insurance Program	100%	2027267182
Location 3	USD500,000	Travelers Flood	100%	6002809371

(b) UNDERLYING EXCESS INSURER(S)

Coverage Layer	Total Limit of Liability for all Underlying Excess Insurer(s)	Insurer	Participation	Policy No
II.	USD1,000,000	Travelers Insurance Company	100%	KTJCMB4508483-07
III:				
IV:				

9. Primary and Underlying Excess Limit(s)

USD1,000,000 Ultimate net loss per occurrence subject to an aggregate limit of

USD1,000,000 any one Policy year

Which in turn is excess of

USD500,000 per occurrence, per Building in respect of Buildings.

USD290,000 per occurrence, in respect of Business Income at Location 1 (Self Insured Retention)

USD175,000 per occurrence, in respect of Business Income at Location 2 (Self Insured Retention)

USD275,000 per occurrence, in respect of Business Income at Location 3 (Self Insured Retention)

10. Excess Limit(s):

USD10,000,000 Ultimate net loss per occurrence subject to an aggregate limit of

USD10,000,000 any one Policy year

11. Notification of Claims to:

Crump Insurance Services Northwest
21540 30th Drive SE, Suite 100, Bothell, WA 98021

Dated in London: 8th June 2007

If Business Interruption or other Time Element or Accounts Receivable, Royalty or Leasehold Insurance or similar coverage is afforded by this Insurance, Business Interruption Extension must be attached hereto.

**EXCESS FLOOD
(WITH UNDERLYING AGGREGATE)
(U.S.A. AND CANADA)**

1. INSURING CLAUSE

Subject to the limitations, terms and conditions contained in this Policy or added hereto, the Underwriters agree to indemnify the Assured named in the Schedule herein in respect of Direct Physical loss or damage to the property described in Item 5 of the Schedule while located or contained as described in the Schedule, occurring during the period stated in the Schedule and caused by any such perils as are set forth in Item 7 of the Schedule and which are also covered by and defined in the Policy/ies specified in the Schedule and issued by the "Primary Insurer(s)" stated therein.

2. APPLICATION OF UNDERLYING PROVISIONS

In respect of the perils hereby insured against this Policy is subject to the same warranties, terms and conditions (except as regards the premium, the amount and Limits of Liability other than the deductible or self-insurance provision where applicable, and the renewal agreement, if any, (AND EXCEPT AS OTHERWISE PROVIDED HEREIN) as are contained in or as may be added to the Policy/ies of the Primary Insurer(s) prior to the happening of a loss for which claim is made hereunder and should any alteration be made in the premium for the Policy/ies of the Primary Insurer(s), then the premium hereon may be adjusted accordingly.

3. LIMIT

Provided always that liability attaches to the Underwriters only after the Primary and Underlying Excess Insurer(s) have paid or have admitted liability for the full amount of their respective Ultimate Net Loss liability as set forth in Item 9 of the Schedule and designated "Primary and Underlying Excess Limit(s)" and then the limits of Underwriters Liability shall be those set forth in Item 10 of the Schedule under the designation "Excess Limit(s)" and the Underwriters shall be liable to pay the ultimate net loss up to the full amount of such "Excess Limit(s)".

4. MAINTENANCE OF PRIMARY AND UNDERLYING EXCESS POLICY(IES) AND LIMITS

It is a condition precedent to recovery under this Policy that the Policy(ies) and Limit(s) of the Primary and Underlying Excess Insurer(s) set forth in Items 8 and 9 of the Schedule shall be maintained in full force and effect, except for any reduction or exhaustion of any underlying aggregate Limits of Liability contained therein, solely by the amount of loss(es) paid or admitted during the Policy year. Only losses which, except for the amount thereof, would have been payable under this Policy may contribute to the satisfaction, reduction or exhaustion of underlying amounts and/or deductibles.

In the event of such reduction of the aggregate Limits of Liability of the Primary and Underlying Excess Insurances this Policy shall pay excess over the reduced aggregate limit. In the event of exhaustion of the aggregate Limits of Liability of the Primary and Underlying Excess Insurances this Policy, subject to all its provisions, shall continue in force as Primary Insurance in respect of the peril for which the aggregate Limit of Liability has been so exhausted and the deductible or self-insured amount if applicable to that peril, as set forth in the Policy of the Primary Insurer, shall apply to this Policy.

5. UNCOLLECTIBILITY OF OTHER INSURANCE

Notwithstanding any of the terms of the Policy that might be construed otherwise, the insurance provided by this Policy shall always be excess over the maximum monetary limits set forth in Item 9 of the Schedule (reduced only by reduction of any underlying aggregate limits as provided for in Clause 4 herein) regardless of the uncollectibility (in whole or in part) of any underlying insured amounts for any reason, including, but not limited to, the financial impairment or insolvency of an underlying Insurer(s).

The risk of uncollectibility (in whole or part) of other insurance, whether because of financial impairment or insolvency of an underlying or other insurer(s) or for any other reason, is expressly retained by the Assured and is not in any way or under any circumstances insured or assumed by Underwriters.

6. DEFINITIONS

- (a) **Ultimate Net Loss** The words "ultimate net loss" shall mean the loss sustained by the Assured as a result of the perils insured against by this Policy, limited by
- (i) any sublimits contained within this Policy or the Policy/ies of the Primary and/or Underlying Excess Insurer(s), and
 - (ii) making deductions for all salvages, recoveries and other insurances (other than recoveries under the Policy/ies of the Primary and Underlying Excess Insurer(s)).
- (b) **Policy Year** The words "Policy year" shall be understood to mean the period in Item 3 of the Schedule

7. APPLICATION OF RECOVERIES:

All salvages, recoveries or payments recovered or received subsequent to loss settlement under this Policy shall be applied as if recovered or received prior to such settlement and all necessary adjustments shall then be made between the Assured and the Underwriters, provided always that nothing in this Policy shall be construed to mean that losses under this Policy are not recoverable until the Assured's ultimate net loss has been finally ascertained.

8. CANCELLATION:

This insurance may be cancelled by the Assured at any time by written notice or by surrender of this Policy. This insurance may also be cancelled by or on behalf of the Underwriters by delivering to the Assured or by mailing to the Assured, by registered, certified or other first class mail, at the Assured's address as shown in this insurance written notice stating when, not less than thirty (30) days thereafter, the cancellation shall be effective. The mailing of such notice as aforesaid shall be sufficient proof of notice and this insurance shall terminate at the date and hour specified in such notice.

If this insurance shall be cancelled by the Assured, the Underwriters shall retain the customary short rate proportion of the premium hereon, except that if this insurance is on an adjustable basis, the Underwriters shall receive the earned premium hereon, or the customary short rate proportion of any minimum premium stipulated herein, whichever is the greater

If this insurance shall be cancelled by or on behalf of the Underwriters, the Underwriters shall retain the pro rata proportion of the premium hereon, except that if this insurance is on an adjustable basis the Underwriters shall receive the earned premium hereon, or the pro rata proportion of any minimum premium stipulated herein whichever is the greater.

Payment or tender of unearned premium by the Underwriters shall not be a condition precedent to the effectiveness of cancellation but such payment shall be made as soon as practicable.

If the period of limitation relating to the giving of notice is prohibited or made void by any law controlling the construction thereof, such period shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.

9. NOTIFICATION OF CLAIMS:

The Assured upon knowledge of any occurrence likely to give rise to a claim hereunder shall give immediate written advice thereof to the person(s) or firm named for the purpose in Item 11 of the Schedule.

DECLARATION OF SERVICE

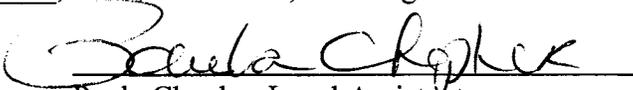
On said day below I emailed and deposited with the US Postal Service a true and accurate copy of the following document: Brief of Respondent in Court of Appeals Cause No. 64337-1-I to the following:

Arjang Victory Jennifer Hoffman Bruckmann & Victory 420 Lexington Ave., Suite 1621 New York, NY 10170	Michael E. Ricketts Gordon Thomas Honeywell 600 University Street, Suite 2100 Seattle, WA 98101-4185
Lawrence Gottlieb Lisa C. Neal Betts Patterson & Mines One Convention Place 701 Pike Street, Suite 1400 Seattle, WA 98101-3927	Pamela Okano Reed McClure Two Union Square 601 Union Street, Suite 1500 Seattle, WA 98101-1363
Susannah C. Carr Dale L. Kingman Gordon Tilden Thomas & Cordell, LLP 1001 4 th Avenue, Suite 4000 Seattle, WA 98154-1007	

Original sent by ABC Legal Messenger for filing with:
Court of Appeals, Division I
Clerk's Office
600 University Street
Seattle, WA 98101-4170

I declare under penalty of perjury under the laws of the State of Washington and the United States that the foregoing is true and correct.

DATED: May 3, 2010, at Tukwila, Washington.


Paula Chapler, Legal Assistant
Talmadge/Fitzpatrick