

EXCESS PROPERTY INSURANCE

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

Throughout this policy, the words “you” and “your” refer to the Named Insured shown in the Declarations. The words “we”, “us” and “our” refer to the Company providing this insurance.

A. INSURING AGREEMENT

This insurance is subject to the same conditions, limitations, deductibles and exclusions (except as shown below or endorsed onto this policy) as the primary and underlying policy(ies) issued by the company(ies) shown in Section **D. SCHEDULE OF UNDERLYING LIMITS AND INSURERS** in the Declarations, and hereinafter referred to as the primary and underlying insurer(s).

The following coverages, conditions, limitations, deductibles and exclusions issued on the primary and underlying policies will not apply to this Excess Property Insurance:

Any revision to the policy(ies) shown in Section **D. SCHEDULE OF UNDERLYING LIMITS AND INSURERS** attached to this policy, made after the effective date of those primary and underlying policy(ies) will not be binding on this Excess Property Insurance unless this policy is endorsed to approve that revision.

B. POLICY CONDITIONS

1. Attachment Of Liability

- a. Liability under this policy will not attach unless and until the primary and underlying insurer(s) have paid or have been held liable to pay the full amount of their limits as shown in Section **D. SCHEDULE OF UNDERLYING LIMITS AND INSURERS** in the Declarations.
- b. We will then be liable to pay only such additional amounts as will provide you with further coverage up to the Limits of Insurance shown in the Declarations.

2. Bankruptcy Or Insolvency Of Primary Or Underlying Insurers

In the event of the bankruptcy, insolvency or other financial impairment, of any primary or underlying insurer, we will not be liable for the obligations of the primary and/or underlying

insurer(s). This policy will apply as if the primary and/or underlying policy(ies) were valid and collectible. This policy will not replace the primary and /or underlying policy(ies).

3. Cancellation

- a. The first Named Insured shown in the Declarations may cancel this policy by mailing or delivering to us advance written notice of cancellation.
- b. We may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation at least 10 days before the effective date of cancellation.
- c. We will mail or deliver our notice to the first Named Insured's last mailing address known to us.
- d. Notice of cancellation will state the effective date of cancellation. The policy period will end on that date.
- e. If this policy is canceled, we will send the first Named Insured any premium refund due. If we cancel, 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 we have not made or offered a refund.
- f. If notice is mailed, proof of mailing will be sufficient proof of notice.

5. Underlying Sub-limits

Underlying insurance policies may impose a dollar or percentage limit on some aspects of coverage (commonly called a sub-limit) at less than the total limit over which this policy is excess. This policy will not drop down over any such sub-limits and will always be excess over the maximum limits of the primary and underlying policy(ies).

6. Warranty

It is a condition of this policy that the primary or underlying policy(ies) shown in Section **D. SCHEDULE OF UNDERLYING LIMITS AND INSURERS** in the Declarations are maintained in full force and effect during the Policy Period. Your failure to comply with the foregoing condition will not invalidate this policy, but in the event of such failure, this policy will apply as if the primary or underlying policy(ies) were valid and collectible and our liability will attach in excess of the combined limits of all primary or underlying policy(ies) stated in Section **D. SCHEDULE OF UNDERLYING LIMITS AND INSURERS** in the Declarations..

C. ADDITIONAL CONDITIONS

1. Concealment, Misrepresentation Or Fraud

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

- a. This policy;
- b. The covered property;
- c. Your interest in the covered property; or
- d. A claim under this policy.

2. Examination Of Your Books And Records

You will keep accurate books, records and accounts in the following manner:

A detailed and itemized inventory record of all property covered hereunder will be maintained and physical inventory will be taken periodically at intervals not more than 12 months apart.

We may examine and audit your books and records as they relate to this policy at any time during the Policy Period and up to three years afterward.

3. Excess Insurance

Permission is granted to you to have excess insurance over the Limits of Insurance shown in the Declarations without prejudice to this policy, and the existence of such insurance, if any, will not reduce any liability under this policy.

4. Legal Action Against Us

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

- a. There has been full compliance with all of the terms of this policy; and
- b. The action is brought within 12 months after the date on which the direct physical loss or damage occurred.

However, if by the laws of the state within which this policy is issued such limitation is invalid, then any such claims will be void unless such action, suit or proceeding be commenced within the shortest limit of time permitted by the laws of such state.

5. No Benefit To Bailee

No person or organization, other than you, having custody of covered property will benefit from this insurance.

6. Policy Period, Coverage Territory

Under this policy:

- a. We cover loss or damage commencing:
 - (1) During the Policy Period shown in the Declarations; and
 - (2) Within the coverage territory.
- b. The coverage territory is the "state" in which the premises described in the Declarations is located.

7. Premiums

The first Named Insured shown in the Declarations:

- a. Is responsible for the payment of all premiums; and
- b. Will be the payee for any return premiums we pay.

8. Transfer Of Your Rights And Duties Under This Policy

Your rights and duties under this policy may not be transferred without our written consent except in the case of death of an individual Named Insured.

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

D. LOSS CONDITIONS

1. Abandonment

There can be no abandonment of any property to us.

2. Appraisal

If we and you disagree on the values of the property 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 selection be made by a judge of a court having jurisdiction. The appraisers will state separately the value of the property and amount of loss. 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:

- a. Pay its chosen appraiser; and
- b. Bear the other expenses of the appraisal and umpire equally.

If there is an appraisal, we will still retain our right to deny the claim.

3. Application Of Salvage:

All salvages, recoveries or payments recovered or received subsequent to a loss settlement under this policy will be applied as if recovered or received prior to such settlement. Any salvage, recoveries or payments and any costs or expenses incurred in salvaging or recovering will be apportioned between the interests of all parties based on the ratio of their respective recoveries. If there is no recovery and the expenses are incurred solely by one party, the costs will be borne solely by that party.

4. Brands And Labels

In the event of loss of or damage to labels, capsules or wrappers, the loss will be adjusted on the basis of an amount sufficient to pay the cost of new labels, capsules or wrappers.

If branded or labeled merchandise covered by this policy is damaged and we elect to take all or any part of such merchandise at the value established by the terms of this policy, you may, at your own expense, stamp "salvage" on the merchandise or its containers, or may remove or obliterate the brands or labels, if such stamp, removal or obliteration will not physically damage the merchandise; but you must re-label the merchandise or containers in compliance with the requirements of law.

5. Claims Cooperation Agreement

When we are made aware of a loss which may exceed the limits of the primary and/or underlying policy(ies), we have the right, but not the obligation to become involved in the claim investigation, management, decision making process and settlement of the claim, as respects and in protection of our interests.

It is your duty to inform us any time at which the policy aggregate of any primary or underlying policy(ies) has been reduced by fifty percent (50%) or more due to losses.

6. Duties In The Event Of Loss Or Damage

- a. You must see that the following are done in the event of loss or damage to covered property:
 - (1) Notify the police if a law may have been broken.
 - (2) Give us prompt notice of the loss or damage. Include a description of the property involved. It is your duty to inform us any time at which the policy aggregate of any primary or underlying policy(ies) has been reduced by fifty percent (50%) or more due to losses.
 - (3) As soon as possible, give us a description of how, when and where the loss or damage occurred.
 - (4) Take all reasonable steps to protect the covered property from further damage, and keep a record of your expenses necessary to protect the covered property, for consideration in the settlement of the claim. This will not increase the Limits of Insurance. However, we 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.

(5) At our request, give us complete inventories of the damaged and undamaged property. Include quantities, costs, values and amount of loss claimed.

(6) As often as may be reasonably required, permit us to inspect the property proving the loss or damage and examine your books and records.

Also permit us to take samples of damaged and undamaged property for inspection, testing and analysis, and permit us to make copies from your books and records.

(7) Send us a signed, sworn proof of loss containing the information we request to investigate the claim. You must do this within 60 days after our request.

(8) Cooperate with us in the investigation or settlement of the claim.

b. We 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.

7. Loss Payment

a. In the event of loss or damage covered by this policy, at our option, we will either:

(1) Pay the value of lost or damaged property;

(2) Pay the cost of repairing or replacing the lost or damaged property, subject to **b.** below;

(3) Take all or any part of the property at an agreed or appraised value; or

(4) Repair, rebuild or replace the property with other property of like kind and quality, subject to **b.** below.

We will determine the value of lost or damaged property, or the cost of its repair or replacement, in accordance with the applicable terms of the Valuation Condition in this policy or any applicable provision which amends or supersedes the Valuation Condition.

b. 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.

c. We will give notice of our intentions within 30 days after we receive the sworn proof of loss.

d. We will not pay you more than your financial interest in the covered property.

e. We may adjust losses with the owners of lost or damaged property if other than you. If we pay the owners, such payments will satisfy your claims against us for the owners' property. We will not pay the owners more than their financial interest in the covered property.

f. We may elect to defend you against suits arising from claims of owners of property. We will do this at our expense.

g. We will pay for covered loss or damage within 30 days after we receive the sworn proof of loss, if you have complied with all of the terms of this Coverage Part and:

(1) We have reached agreement with you on the amount of loss; or

(2) An appraisal award has been made.

8. Pair, Set Or Parts

a. Pair or Set

In case of loss or damage to any part of a pair or set we may:

(1) Repair or replace any part to restore the pair or set to its value before the loss; or

(2) Pay the difference between the value of the pair or set before and after the loss.

b. Parts

In case of loss or damage to any part of covered property consisting of several parts when complete, we will only pay for the value of the lost or damaged part.

9. Single Loss Clause

It is agreed that “earthquakes” can occur in a sequence, a series, or a cluster and involve multiple shocks, including foreshocks, mainshocks and aftershocks. With respect to a “loss occurrence” occasioned by “earthquake”, all loss or damage attributable to such “earthquake” shocks that occur within 168 consecutive hours during the Policy Period will be considered a single “loss occurrence”. The 168 hours will commence at the time of the earliest “earthquake” shock. However, we will not be liable for any loss caused by any “earthquake” shock occurring before the effective date and time of this policy, nor for any loss occurring after the expiration date and time of this policy.

All loss or damage attributable to flood that occurs within any period of 72 consecutive hours during the Policy Period, arising out of one event, will be considered a single “loss occurrence”. We will not be liable for any loss caused by any flood occurring before the effective date and time of this policy, nor for any loss occurring after the expiration date and time of this policy.

10. Voluntary Payments

No insured will, except at that insured’s own cost, voluntarily make a payment, assume any obligation, or incur any expense, without our written consent.

11. Stated Values

The stated values of all Coverage Items are represented by the values shown in Section **E. SCHEDULE OF LOCATIONS AND VALUES** in the Declarations. If, at the time of the “loss occurrence”, there is no value stated in Section **E. SCHEDULE OF LOCATIONS AND VALUES** for each individual building at a scheduled location, the stated value for each building will be determined by multiplying the total reported value of all buildings by the proportion that the square footage of the individual building bears to the total square footage of all buildings contemplated in the total reported building value.

The square footage of each separate building will be estimated or ascertained after a “loss occurrence” as necessary. The resulting apportioned values will be considered the stated value for the individual building. The apportioned value will be considered the stated value with respect to the Limits of Insurance as specified in Section **A.2.b. LIMITS OF INSURANCE** in the Declarations.

EXAMPLE

The following example illustrates how a stated value is calculated under the conditions above. The amounts in the example shown may not be applicable to your policy. They are being used only to provide you with an example.

In this example, the **SCHEDULE OF LOCATIONS AND VALUES** shows three buildings at one location, with total building values for the location of \$7,500,000. Building 1 is 10,000 square feet. Building 2 is 25,000 square feet. Building 3 is 15,000 square feet, as reported on the application or submission or otherwise estimated or ascertained. The total square footage for the location is 50,000 square feet (10,000 plus 25,000 plus 15,000). The policy has a 5% deductible that applies to each building separately.

Loc #	Bldg #	Address	Coverage Item	Value
1	Aggregate, 3 buildings	415 Main Street, Springfield, CA 90000	Building	\$ 7,500,000

Step 1: Determine the stated value of each building by multiplying the total reported building value of \$7,500,000 by the proportion that the individual building square footage bears to the total square footage.

Building 1: $\$7,500,000 \times (10,000/50,000) = \$1,500,000$.

Building 2: $\$7,500,000 \times (25,000/50,000) = \$3,750,000$.

Building 3: $\$7,500,000 \times (15,000/50,000) = \$2,250,000$.

Step 2: Determine applicable deductible by multiplying the deductible percentage of 5% times the stated value of the Coverage Item.

Building 1: $5\% \times \$1,500,000 = \$75,000$

Building 2: $5\% \times \$3,750,000 = \$187,500$

Building 3: $5\% \times \$2,250,000 = \$112,500$

Step 3: Determine the maximum amount payable for each building per Section **A.2.b LIMITS OF INSURANCE** in the Declarations, subject always to the entire provisions of that section.

Building 1: stated value minus deductible: $\$1,500,000 - \$75,000 = \$1,425,000$

Building 2: stated value minus deductible: $\$3,750,000 - \$187,500 = \$3,562,500$

Building 3: stated value minus deductible: $\$2,250,000 - \$112,500 = \$2,137,500$

E. DEFINITIONS:

1. "Loss occurrence" as stated in this policy means any one loss or disaster, or series of losses or disasters, arising out of one event.
2. "Earthquake" means a sudden movement of the crust of the earth caused by the release of stress accumulated along geologic faults.
5. "State" means one of the 50 United States of America and the District of Columbia.