INSURING CLAUSE

In consideration of the payment of Premium stated herein and subject to the Exclusions, Conditions and Limitations contained herein, this Policy insures Property specified in the Schedule against Direct Physical Loss or Damage caused by Earthquake Shock occurring during the Period of Insurance as shown in the Schedule.

Earthquake Shock shall mean physical loss or damage caused by earth movement including landslide, mudflow, earth sinking, earth rising or shifting, only as a direct and immediate result of earthquake, but shall not include any consequential loss or damage from any other ensuing peril.

Each loss by Earthquake Shock shall constitute a single claim hereunder, provided, if more than one Earthquake Shock shall occur within any period of seventy-two hours commencing during the period of this Policy, such Earthquake Shocks shall be deemed to be a single Earthquake Shock within the meaning hereof. Underwriters shall not be liable for any loss or damage caused by any Earthquake Shock occurring before the effective date and time of this Policy, nor for any loss or damage occurring after the expiration date and time of this Policy.

LOSSES EXCLUDED

This Policy DOES NOT INSURE AGAINST:

1. Loss or damage arising directly or indirectly from nuclear reaction, nuclear radiation or radioactive contamination, however such nuclear reaction, nuclear radiation or radioactive contamination may have been caused.

2. Loss or damage occasioned directly or indirectly by war, invasion, hostilities, acts of foreign enemies, civil war, rebellion, insurrection, military or usurped power or martial law or confiscation by order of any Government or public authority.

3. Loss or increased cost occasioned by any Civil Authority’s enforcement of any ordinance or law regulating the reconstruction, repair or demolition of any property insured hereunder.

4. Loss or damage caused directly or indirectly by subsidence or landslip.

5. Loss or damage caused directly or indirectly caused by flood, surface water, waves, tidal waves or tidal water, overflow of streams, rivers, lakes, ponds or other bodies of water, or spray from all of the foregoing all whether driven by wind or not.

6. Loss or damage caused by backing up of sewers and/or drains; or seepage of any substance.

PROPERTY EXCLUDED

This Policy does not insure:

1. land (including but not limited to land on which the property is located) or any other naturally occurring substance; or water (other than water contained in plumbing or firefighting installations);

2. shafts, mines, tunnels, wells, ponds, dams, dikes, wharves, piers, jetties, embankments, bulkheads, earthen structures and the like, and any man made property in or under the ground;
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3. driveways, pavements, curbing, culverts, and sidewalks;

4. building or structures in process of construction or materials and supplies therefor;

5. power transmission distribution or feeder lines not on the Assured’s premises;

6. property in transit;

7. any building or structure, or property contained therein, while such building or structure is vacant and/or unoccupied and/or inoperative for more than thirty (30) days;

8. neon signs and automatic or mechanical and/or electric signs, awnings, glass or any ornamentation or lettering thereon;

9. accounts, bills, currency, money, notes, securities, deeds, evidence of debt and valuable papers;

10. animals, plants and living things of all types;

11. jewellery, precious stones, furs and garments;

12. paintings, object d’art and other items of fine art, trophies and memorabilia;

13. stock that has been left in the open or not contained in buildings which are on permanent foundations and capable of secure storage;

OTHER INSURANCE

If any other insurance provides coverage for loss or damage covered herein, the other insurance shall be primary and this insurance shall be excess to such other insurance. The Underwriters under this Policy shall have no obligation to make any payment until the sum insured of every other applicable insurance has been paid. Under no circumstances shall this Policy become primary or additional insurance because of the insolvency, bankruptcy or refusal to pay for any other reason of any insurer.

LOCATIONS INSURED

This Policy insures at the location(s) as stated in the Schedule.

SUM INSURED

This Policy shall not cover for more than the Sum Insured stated in the Schedule.

DEDUCTIBLE

Each Occurrence shall be adjusted separately and from the amount of each such adjusted Occurrence, the sum stated in the Schedule shall be deducted.

VALUES DECLARED (AND INCORRECT DECLARATION PENALTY)

The premium for this Policy has been based on a statement of individual values declared to and agreed by the Underwriters at the inception of this Policy and stated in the Schedule.
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If any of the individual values declared are less than the equivalent amount of the Co-insurance percentage, as stated in the Schedule, of the replacement cost values (See Condition 4 “Valuation”), then any recovery otherwise due hereunder shall be reduced in the same proportion that the individual value(s) declared bear to the value(s) that should have been declared and the Assured shall co-insure for the balance.

DEBRIS REMOVAL

This Policy also covers, within the Sum Insured, expenses incurred in the removal of debris of property covered hereunder which may be directly destroyed or damaged by Earthquake Shock.

The cost of removal of debris shall not be considered in determination of the valuation of the Property Insured.

CONDITIONS

1. Due Diligence

The Assured shall use due diligence and do and concur in doing all things reasonable to avoid or diminish any loss of or damage to the Property Insured.

2. Protection Maintenance

It is agreed that any protection provided for the safety of the Property Insured shall be maintained in good order throughout the currency of this Policy and shall be in use at all relevant times, and that such protection shall not be withdrawn or varied to the detriment of the interests of the Underwriters without their consent.

3. Access To Records

The Assured shall make available to the Underwriters at all reasonable times, and the Underwriters through their designated representatives shall have the right to inspect and copy at their own expense, during the Period of Insurance and thereafter, all books, papers and other records of the Assured and its agents or brokers in connection with this Policy or the subject matter hereof.

4. Valuation (see also Values Declared and Incorrect Declaration Penalty)

For the assessment of premium and for adjustment in the event of loss or damage, settlement of claims shall be based upon the cost of repairing, replacing or reinstating (whichever is the least) on the same site with material of like kind and quality without deduction for depreciation, subject to the following provisions:

(a) The repairs, replacement or reinstatement (all hereinafter referred to as “replacement”) must be executed with due diligence and dispatch;

(b) Until replacement has been effected the amount of liability under this Policy in respect of loss shall be limited to the actual cash value at the time of loss or damage;
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(c) If replacement with material of like kind and quality is restricted or prohibited by any by-laws, ordinance or law, any increased cost of replacement due thereto shall not be covered by this Policy.

The Underwriters’ liability for loss or damage under this Policy shall not exceed the smallest of the following amounts:

(i) the amount of the Policy limit applicable to the destroyed or damaged property;

(ii) the replacement cost of the property or any part thereof identical with such property and intended for the same occupancy and use;

(iii) the amount actually and necessarily expended in replacing said property or any part thereof.

5. Notification of Claims and Proof of Loss

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 that purpose in the Schedule.

The Assured shall render a signed and sworn proof of loss or damage within sixty (60) days after the occurrence of the loss or damage (unless such period be extended by the written agreement of the Underwriters) stating the time, place and cause of the loss or damage, the interest of the Assured and of all others in the property, the sound value thereof and the amount of loss or damage thereto.

6. Abandonment

There shall be no abandonment to the Underwriters of any property.

7. Examination under Oath

If required by the Underwriters, in the event of a claim being made under this Policy, the Assured, or if a company or other body, then the appropriate representatives, shall submit to examination on oath at such reasonable times and places as may be arranged.

8. Misrepresentation and Fraud

This entire Policy shall be void if the Assured has wilfully concealed or misrepresented, in writing or otherwise, any material facts or circumstances concerning this Policy or the subject matter thereof, or if the Assured shall make any attempt to defraud either before or after the loss or damage.

9. Subrogation and Subrogation Waiver

If the Underwriters become liable for any payment under this Policy in respect of loss or damage, the Underwriters shall be subrogated, to the extent of such payment, to all the rights and remedies of the Assured against any party in respect of such loss or damage and shall be entitled at their own expense to sue in the name of the Assured. The Assured shall give to the Underwriters all such assistance in his power as the Underwriters may require to secure their
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rights and remedies and, at the Underwriters request, shall execute all documents necessary to enable the Underwriters effectively to bring suit in the name of the Assured including the execution and delivery of the customary form of loan receipt.

The Underwriters hereon agree that this Policy shall not be invalidated should the Assured waive in writing, prior to the loss or damage affected thereby, any or all rights of recovery against any party for loss or damage occurring to the property described herein. The Underwriters expressly waive subrogation against any subsidiary, parent, associated, or affiliated company of the Assured, but the above waivers shall not apply where the party otherwise protected thereunder is supplying or receiving goods or services for which a reward, recompense or consideration passes between the Assured and such other party.

10. Salvage and Recoveries

All salvages, recoveries and payments recovered or received subsequent to a loss settlement under this Policy shall be applied as if recovered or received prior to the said settlement and all necessary adjustments shall be made by the parties hereto.

11. Legal action against the Underwriters

No one may bring a legal action against the Underwriters 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.

12. Arbitration

If the Assured and Underwriters fail to agree in whole or in part regarding any aspect of this Policy, each party shall, within ten (10) days after the demand in writing by either party, appoint a competent and disinterested arbitrator and the two chosen shall before commencing the arbitration select a competent and disinterested umpire. The arbitrators together shall determine such matters in which the Assured and the Underwriters shall so fail to agree and shall make an award thereon, and if they fail to agree, they will submit their differences to the umpire and the award in writing of any two, duly verified, shall determine the same.

The Parties to such arbitration shall pay the arbitrators respectively appointed by them and bear equally the expenses of the arbitration and the charges of the umpire.

13. Service of Suit

This Service of Suit clause will not be read to conflict with or override the obligations of the parties to arbitrate their disputes as provided for in the Arbitration provision within this Policy. This clause is intended as an aid to compelling arbitration or enforcing such arbitration or arbitral award, not as an alternative to such Arbitration provision for resolving disputes arising out of this insurance.
It is agreed that in the event of the failure of the Underwriters hereon to pay any amount claimed to be due hereunder, the Underwriters hereon, at the request of the Assured, will submit to the jurisdiction of a Court of competent jurisdiction within the United States. Nothing in this clause constitutes or should be understood to constitute a waiver of the Underwriter’s rights to commence an action in any Court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another Court as permitted by the laws of the United States or of any State in the United States.

It is further agreed that service of process in such suit may be made upon the person or persons named in the Schedule and that in any suit instituted against any one of them upon this contract, Underwriters will abide by the final decision of such Court or of any Appellate Court in the event of an appeal.

The person or persons named in the Schedule are authorized and directed to accept service of process on behalf of the Underwriters in any such suit and/or upon the request of the Assured to give a written undertaking to the Assured that they will enter a general appearance upon the Underwriters’ behalf in the event such a suit shall be instituted.

Further, pursuant to any statute of any state, territory or district of the United States which makes provision therefore, the Underwriters hereon hereby designate the Superintendent, Commissioner or Director of Insurance or other officer specified for that purpose in the statute, or his successor or successors in office, as their true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the Assured or any beneficiary hereunder arising out of this contract of insurance, and hereby designate the above-named as the person to whom the said officer is authorized to mail such process or a true copy thereof.

14. Choice of Law

This Policy shall be subject to the applicable state law to be determined by the court of competent jurisdiction as determined by the provisions of Condition 13, Service of Suit.

15. Conformity to Statute

Any terms of this Policy which may conflict with statutes or regulations deemed applicable by a court of competent jurisdiction are amended to conform to the minimum requirements of such statutes or regulations.

16. Inspection and Audit

The Underwriters shall be permitted, but not obliged, to inspect the Property Insured at any time. Neither the Underwriters’ right to make inspections nor the making thereof nor any report thereon shall constitute an undertaking, on behalf of or for the benefit of the Assured or others, to determine or warrant that such property is safe.

17. Assignment

Assignment or transfer of this Policy shall not be valid except with the written consent of Underwriters.
18. Cancellation

This Policy may be cancelled by the Assured at any time by written notice or by surrender of this Policy. This Policy 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 Policy, 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 Policy shall terminate at the date and hour specified in such notice.

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

If this Policy 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 Policy 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 any 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.