



No. CICA 2751

# Commonwealth Insurance Company of America

Seattle, Washington  
(hereinafter called the "Company")

BROKER: American E & S Insurance Brokers, Kennesaw, GA

REPLACING NO.: CICA 2571

LIMIT OF LIABILITY		TOTAL PREMIUMS PAYABLE UNDER THIS POLICY	TERM	PERIOD OF INSURANCE
\$ 75,000,000	Excess of	Premium: \$ 75,000	12	FROM: 1 July 2008
\$ 200,000,000		TRIPRA: \$ 3,750	MONTHS	TO: 1 July 2009
		Total: \$ 78,750		

THE STATE OF WEST VIRGINIA AND AS MORE FULLY DESCRIBED HEREIN  
(hereinafter called the "Insured")

MAILING ADDRESS:

90 MacCorkle Ave, SW, Ste 203  
South Charleston, West Virginia 25303

In consideration of the premium specified above (or specified in the form or endorsement(s) attached hereto) and of the conditions and other terms of this Policy and of the form or endorsement(s) attached hereto, the Company does insure the above Named Insured (hereafter called the "Insured") from inception date shown above to expiration date shown above, both dates at 12:01 A.M. Standard Time at the mailing address of the Named Insured, to an amount not exceeding the limit(s) of liability specified above (or specified in the form or endorsement(s) attached hereto). To the extent that coverage in this Policy replaces coverage in other policies terminating Noon Standard Time at the inception date of this Policy, coverage under this Policy will not become effective until such other coverage has terminated.

### THE CONDITIONS ATTACHED FORM PART OF THIS POLICY

This Policy is made and accepted subject to the foregoing provisions, and to such other provisions, stipulations, agreements or conditions as may be endorsed hereon or added hereto. No term or condition of this Policy shall be deemed to be waived by the Company in whole or in part unless the waiver is clearly expressed in writing signed by the person(s) authorized for that purpose by the Company. Neither the Company nor the Insured shall be deemed to have waived any term or condition of this Policy by any act relating to the appraisal of the amount of loss or to the delivery and completion of Proofs, or to the investigation or adjustment of any claim under the Policy.

IN WITNESS WHEREOF the Company through its representative(s) duly authorized by it for this purpose have executed and signed this Policy.

COMMONWEALTH INSURANCE COMPANY OF AMERICA

Per .....

THIS POLICY CONTAINS A CLAUSE WHICH MAY LIMIT THE AMOUNT PAYABLE.



## Commonwealth Insurance Company of America

**THIS NOTICE IS ATTACHED TO AND MADE PART OF THIS POLICY IN RESPONSE TO THE DISCLOSURE REQUIREMENTS OF THE TERRORISM RISK INSURANCE ACT. THIS NOTICE DOES NOT GRANT ANY COVERAGE OR CHANGE ANY TERMS AND CONDITIONS OF ANY COVERAGE UNDER THE POLICY.**

### DISCLOSURE PURSUANT TO TERRORISM RISK INSURANCE ACT

Terrorism Premium (Certified Acts) \$ 3,750

Premium for Fire as a result of Terrorism (Certified Acts) in the states listed below \$ Included.

In the states of California, Georgia, Hawaii, Illinois, Iowa, Maine, Massachusetts, Missouri, New Jersey, New York, North Carolina, Oregon, Rhode Island, Washington, West Virginia and Wisconsin a terrorism exclusion makes an exception for fire losses resulting from an act of terrorism. Accordingly, if you reject the offer of terrorism coverage as provided under the program, that rejection is not applicable to fire losses resulting from an act of terrorism. In these states, the coverage in your policy for such fire losses will continue. The premium for such fire coverage is stated above. The premium is due whether or not you reject the offer of terrorism coverage.

#### A. Disclosure Of Premium

In accordance with the federal Terrorism Risk Insurance Act, we are required to provide you with a notice disclosing the portion of your premium, if any, attributable to coverage for terrorist acts certified under the Terrorism Risk Insurance Act. The portion of your premium attributable to such coverage is shown above.

#### B. Disclosure Of Federal Participation In Payment Of Terrorism Losses

The United States Government, Department of the Treasury, will pay a share of terrorism losses insured under the federal program. The federal share equals 85% of that portion of the amount of such insured losses that exceeds the applicable insurer retention. However, if aggregate insured losses attributable to terrorist acts certified under the Terrorism Risk Insurance Act exceed \$100 billion in a Program Year (January 1 through December 31), the Treasury shall not make any payment for any portion of the amount of such losses that exceeds \$100 billion.

#### C. Cap On Insurer Participation In Payment Of Terrorism Losses

If aggregate insured losses attributable to terrorist acts certified under the Terrorism Risk Insurance Act exceed \$100 billion in a Program Year (January 1 through December 31) and we have met our insurer deductible under the Terrorism Risk Insurance Act, we shall not be liable for the payment of any portion of the amount of such losses that exceeds \$100 billion, and in such case insured losses up to that amount are subject to pro rata allocation in accordance with procedures established by the Secretary of the Treasury.

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**Note:**

As our quote for Terrorism coverage was NOT purchased, coverage will NOT include loss or damage caused by an 'Act of Terrorism" as defined under Section 102(1) of the Terrorism Act of 2002.

As our quote for Terrorism coverage was purchased, coverage will include loss or damage caused by an 'Act of Terrorism" as defined under Section 102(1) of the Terrorism Act of 2002.

INSURED NAME: State of West Virginia

POLICY NUMBER: CICA 2751

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## **SCHEDULE**

### **Item**

- 1. Title of Insured:**

  - A. The State of West Virginia;
  - B. West Virginia Parkways, Economic Development and Tourism Authority;
  - C. Each West Virginia County Board of Education, each West Virginia political subdivision or non-profit or for profit non-governmental organization covered by memorandums of insurance issued by Board of Risk and Insurance Management and declared to this Company on statement of values

"The State of West Virginia" means:

"The legislative, judicial and executive branches of the State of West Virginia, including all of its boards, commissions, councils, authorities, institutions, universities, colleges, schools, departments, divisions and agencies; provided, however, the State of West Virginia shall not be considered to include county commissions, municipalities or other political subdivisions of the state regardless of any state aid that may be provided."
- 2. Address of Insured:**

c/o Board of Risk and Insurance Management  
90 MacCorkle Avenue, S.W., Ste 203  
South Charleston, West Virginia 25303
- 3. Perils Covered:**

All Risks of Direct Physical Loss or Damage, including Flood and Earthquake for Turnpike Bridges only.
- 4. Property Covered:**

All Real and Personal Property of the Insured, including Property of Others for which the Insured could be liable, Valuable Papers & Records, Accounts Receivable, Fine Arts, Improvements and Betterments, Stock, EDP (including Gross Earnings and Extra Expense),

Property in Transit, Registered Mail Shipments,  
Money & Securities, Vehicles, Watercraft,  
Mobile Equipment, Property in Course of  
Construction, Erection, Installation or  
Assembly, Gross Earnings, Extra Expense, all  
as more fully described in Primary wording.

**Schedule**  
**The State of West Virginia**  
**Page Two**

5. **Period of Insurance:** July 1, 2008 to July 1, 2009
6. **Annual Premium:** \$ 78,750 (of which \$3,750 represents the Terrorism Premium)
7. **Primary Limits:** \$25,000,000 Per Occurrence with Separate Annual Aggregates as respects Flood and Earthquake
8. **Identification Details Carried in Primary Layer:** Westchester Fire Insurance Company  
Policy No.: D 3 5867 82 A 006  
100% of the Limit
9. **First Excess Limits:** \$175,000,000 Per Occurrence not to exceed  
\$100,000,000 In anyone policy year separately as respects Flood and Earthquake, except  
\$175,000,000 In anyone policy year separately as respects Flood and Earthquake for "Turnpike Bridges"
10. **Identification Details Carried in First Excess Layer:** RSUI Indemnity Company  
Policy No.: NHD358245  
100% of the Limit
11. **Notification of Claims to:** Swett & Crawford  
200 Northcreek, Suite 800  
3715 Northside Parkway, N.W.  
Atlanta, GA 30327
12. **Second Excess Limits:** \$75,000,000 Per Occurrence and in the aggregate annually separately for flood and earthquake, excess of  
\$200,000,000 Per Occurrence and in the aggregate annually separately for flood and earthquake

**13. Identification Details  
Carried in Second  
Excess Layer:**

Commonwealth Insurance Company of  
America  
Policy No.: CICA 2751  
100% of the Limit

**14. Notification of  
Claims to:**

American E & S Insurance Brokers  
1255 Roberts Blvd, Suite 124  
Kennesaw, GA 30144

**ATTACHED TO AND FORMING A PART OF POLICY NO.: CICA 2751**

**IN THE NAME OF: STATE OF WEST VIRGINIA**

**1. INSURING CLAUSE:**

Subject to the limitations, terms and conditions contained in this Policy or added hereto, the Company agrees to indemnify the Insured named in the Schedule herein in respect of loss or damage to the property described in the Schedule while located or contained as described in the Schedule occurring during the period stated in the Schedule and caused by any of such perils as are set forth in Item 3 of the Schedule and which are also covered by and defined in the policies specified in the Schedule and issued by the "Primary Insurers" stated therein.

**2. LIMIT:**

Provided always that liability attaches to the Company only after the Primary Insurers have paid or have admitted liability for the full amount of their respective ultimate net loss liability as set forth in Item 7 of the Schedule and designated "Primary Limits", and then the limits of the Company's liability shall be their proportion of total Limit of Liability set forth in Item 9 under the designation "First Excess Limits" and the Company shall be liable to pay the ultimate net loss up to the full amount of such "First Excess Limits."

**3. DEFINITIONS:**

- a. **LOSS:** The word "loss" shall mean a loss or series of losses arising out of one event or occurrence.
- b. **ULTIMATE NET LOSS:** The words "ultimate net loss" shall mean the loss sustained by the Insured as a result of the happening of the risks covered by this Policy after making deductions for all recoveries and other valid and collectible insurances (other than recoveries under the Policies of the Primary Insurers).

**4. APPLICATION OF RECOVERIES:**

All recoveries or payments recovered or received subsequent to a 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 Insured and the Company, provided always that nothing in this Policy shall be construed to mean that losses under this Policy are not recoverable until the Insured's ultimate net loss has been finally ascertained.

**5. MAINTENANCE OF PRIMARY INSURANCE:**

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, and the renewal agreement, if any, and except as otherwise provided herein) as are contained in or as may be added to the Policies of the Primary Insurers prior to the happening of a loss for which claim is made hereunder, and should any alteration be made in the premium for the Policies of the Primary Insurers, then the premium hereon shall be adjusted accordingly.

It is a condition of this Policy that the Policies of the Primary Insurers shall be maintained in full effect during the currency of this Policy.

**6. NOTIFICATION OF CLAIMS:**

The Insured, 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 the Schedule.

**CANCELLATION CLAUSE**

NOTWITHSTANDING anything contained in this Insurance to the contrary, this Insurance may be cancelled by the Insured at any time by written notice or by surrender of this contract of insurance. This Insurance may also be cancelled by or on behalf of the Underwriters by delivering to the Insured, or by mailing to the Insured by registered, certified or other first class mail, at the Insured's address as shown in this Insurance, written notice stating when, not less than 120 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. However, in event of nonpayment of premium, only ten days prior written notice shall be given.

If this Insurance shall be cancelled by the Insured, 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 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.

**ENDORSEMENT NUMBER A**

DROP DOWN PROVISION

It is also understood and agreed that this contract will become excess of a reduced underlying flood or earthquake limit if that underlying flood or earthquake limit is reduced due to the application of the aggregate annual flood or earthquake limit provision in the underlying insurance coverage. It is further understood that the above "drop down provision" will be subject to a per occurrence deductible as set forth in primary policy.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

ATTACHED TO AND MADE PART OF POLICY NO. CICA 2751  
OF THE COMMONWEALTH INSURANCE COMPANY OF AMERICA  
ISSUED TO: STATE OF WEST VIRGINIA

## **ENDORSEMENT NUMBER B**

**Named of Insured:** State of West Virginia

**Effective Date of This Endorsement:** July 1, 2008

**Policy:** CICA 2751 of COMMONWEALTH INSURANCE COMPANY OF AMERICA  
(Number) (Insurance Company)

In consideration of premium charged, it is agreed that the Perils of Flood and Earthquake apply only to property indicated below as described in the Primary Policy of Westchester Fire Insurance Company – Policy No.: D 3 58 67 82 A 006, Section (8) PERILS EXCLUDED, Item K.

1. Licensed automotive vehicles, other similar property of a mobile nature not intended for sale.
2. Property which is in course of transit.
3. "Coal mines subsidence".
4. Bridges of the West Virginia Turnpike owned by West Virginia Parkways, Economic Development and Tourism Authority.
5. Property in the custody of processors.

All Other Terms and Conditions Remain Unchanged.

Attached to and Made Part of the Policy of the Company Shown Above.

*This Endorsement Changes the Policy. Please Read it Carefully.*

## **CERTIFICATES OF INSURANCE**

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This endorsement modifies insurance provided under the following:

### **ALL COVERAGE PARTS**

Holders of Certificates of Insurance issued against this policy that are shown as Additional Insureds, Mortgagees, or Loss Payees are added to this policy as interest may appear as respects the property listed on the certificate

*This Endorsement Changes the Policy. Please Read it Carefully.*

**CANCELLATION OR EXPIRATION OF A PRIMARY POLICY**

This endorsement modifies Insurance provided under the following:

**ALL COVERGAE PARTS**

It is agreed that in the event that the primary policy is cancelled or expires during the term of this policy, this policy shall respond in the same manner as if the primary policy were not cancelled or expired.

*This Endorsement Changes the Policy. Please Read it Carefully.*

## **SCHEDULED LIMIT OF LIABILITY**

This endorsement modifies insurance provided under the following:

### **ALL OF COVERAGE PARTS**

It is understood and agreed that the following special terms and conditions apply to this policy:

1. In the event of loss hereunder, liability of the Company shall be limited to the least of the following in any one "occurrence":
  - a. The actual adjusted amount of the loss, less applicable deductibles and primary and underlying excess limits;
  - b. 100% of the individually stated value for each scheduled item of property insured at the location which had the loss as shown ~~on the~~ latest Statement of Values on file with this Company, less applicable deductibles and primary and excess limits. If no value is shown for a scheduled item then there is no coverage for that item; or
  - c. The Limit of Liability as shown on the Declarations page of this policy or as endorsed to this policy.
2. Coverage under this policy is provided only at the locations listed on the latest Statement Values on file with this Company or as endorsed on to this policy.
3. The premium for this policy is based upon the Statement of Values on file with this Company or attached to this policy.

The term "occurrence", where used in this policy, shall mean any one loss, disaster, casualty or series of losses, disasters, or casualties arising from one event.

When the term "occurrence" applies to a loss or series of losses from the perils of a tornado, cyclone, hurricane, windstorm, hail, flood, earthquake, volcanic eruption, riot, riot attending a strike, civil commotion and vandalism and malicious mischief, one event shall be construed to be all losses arising during a continuous period of 72 hours. When filing a proof of loss the insured may elect the moment at which the 72 hour period shall be deemed to have commenced, which shall not be earlier than the first loss to occur at any covered location.

**SEEPAGE AND/OR POLLUTION AND/OR CONTAMINATION EXCLUSION**  
**including DEBRIS REMOVAL AND COST OF CLEAN UP EXTENSION**  
**and AUTHORITIES EXCLUSION**

and

**ASBESTOS MATERIAL REMOVAL LIMITATION**

**SEEPAGE AND/OR POLLUTION AND/OR CONTAMINATION EXCLUSION**

Notwithstanding any provision in the Policy to which this Endorsement is attached, this Policy does not insure against loss, damage, costs or expenses in connection with any kind or description of seepage and/or pollution and/or contamination, direct or indirect, arising from any cause whatsoever.

Nevertheless if fire is not excluded from this Policy and a fire arises directly or indirectly from seepage and/or pollution and/or contamination, any loss or damage insured under this Policy arising directly from that fire shall (subject to the terms, conditions and limitations of the Policy) be covered.

However, if the insured property is the subject of direct physical loss or damage for which the Company has paid or agreed to pay, then this Policy (subject to its terms, conditions and limitations) insures against direct physical loss or damage to the property insured hereunder caused by resulting seepage and/or pollution and/or contamination.

The Insured shall give notice to the Company of intent to claim NO LATER THAN 12 MONTHS AFTER THE DATE OF THE ORIGINAL PHYSICAL LOSS OR DAMAGE.

**DEBRIS REMOVAL AND COST OF CLEAN UP EXTENSION**

Notwithstanding the provisions of the preceding Exclusion in this Endorsement or any provision respecting seepage and/or pollution and/or contamination, and/or debris removal and/or clean up in the Policy to which this Endorsement is attached, in the event of direct physical loss or damage to the property insured hereunder, this Policy (subject otherwise to its terms, conditions and limitations, including but not limited to any applicable deductible) also insures, within the sum insured:

- (a) Expenses incurred in removal of debris of the property insured hereunder destroyed or damaged from the premises of the Insured; and/or
- (b) Cost of clean up, at the premises of the Insured, made necessary as a result of such loss or damage.

Provided that this Policy does not insure against the costs of decontamination or removal of water, soil or any other substance on or under such premises.

It is a condition precedent to recovery under this Extension that the Company shall have paid or agreed to pay for physical loss or damage to the property insured hereunder unless such payment is precluded solely by the operation of any deductible and that the Insured shall give notice to the Company of intent to claim for cost of removal of debris or cost of clean up NO LATER THAN 12 MONTHS AFTER THE DATE OF SUCH PHYSICAL LOSS OR DAMAGE.

#### AUTHORITIES EXCLUSION

Notwithstanding any of the preceding provisions of this Endorsement or any provision of the Policy to which this Endorsement is attached, this Policy does not insure against loss, damage, costs, expenses, fines or penalties incurred or sustained by or imposed on the Insured at the order of any Government Agency, Court or other Authority arising from any cause whatsoever. Without restricting the generality of the foregoing, the Policy does not cover claims arising out of the following U.S. legislation or amendments thereto:

- (a) Resource Conservation and Recovery Act (R.C.R.A.) commonly known as Solid Waste Disposal Act.
- (b) Comprehensive Environmental Response, Compensation and Liability Act (C.E.R.C.L.A.) commonly known as Superfund.
- (c) Superfund Amendments and Reauthorization Act (S.A.R.A.) commonly known as Superfund Two.

#### ASBESTOS MATERIAL REMOVAL LIMITATION

This Policy does not insure loss, damage or expense to remove, or replace asbestos materials unless such materials are themselves damaged by an insured peril.

Notwithstanding that competent Government Authority may declare all or parts of the insured premises unfit for occupancy without removal or modifications to asbestos materials, the Company's liability is limited to the proportion represented by the cost to repair the damaged part of the premises, not the entire property.

Similarly, if the policy provides any coverage for business interruption, rental value or other loss of use or occupancy, such coverage shall be limited to the time necessary to repair or replace only the damaged portion(s) of the premises.

Nothing in this Endorsement shall override any radioactive contamination exclusion clause in the Policy to which this Endorsement is attached.

Attached to and forming part of Policy No. CICA 2751 of the Commonwealth Insurance Company of America.

NMA 1999 (B) (Modified - Edition 6/91)

## ELECTRONIC DATE RECOGNITION ENDORSEMENT

THIS POLICY DOES NOT INSURE:

- A. Loss resulting directly or indirectly from the failure of any computer, data processing equipment or media microchip, operation system, microprocessor (computer chip), integrated circuit or similar device, or any computer software, whether the property of the Insured or not; and whether occurring before, during or after the year 2000 that results from the inability to:
1. correctly recognize any date as its true calendar date;
  2. capture, save, or retain, and/or correctly manipulate, interpret or process any data or information or command or instruction as a result of treating any date otherwise than as its true calendar date; and/or
  3. capture, save, retain or correctly process any data as a result of the operation of any command which has been programmed into any computer software, being a command which causes the loss of data or the inability to capture, save, retain or correctly process such data on or after any date;
- B. Any costs incurred for the repair or modification of any part of an electronic data processing system or its related equipment, to correct deficiencies or failures of logic or operation;
- C. Loss resulting from the failure, inadequacy, or malfunction of any advice, consultation, design evaluation, inspection, installation, maintenance, repair or supervision done by the Insured or for the Insured or done by or for others to determine, rectify or test, any potential or actual failure, malfunction or inadequacy described in A above.

Attached to and forming part of Policy No. CICA 2751 of the Commonwealth Insurance Company of America.

## ELECTRONIC DATA ENDORSEMENT

### 1. Electronic Data Exclusion

Notwithstanding any provision to the contrary within the Policy or any endorsement thereto, it is understood and agreed as follows:-

- a) This Policy does not insure, loss, damage, destruction, distortion, erasure, corruption or alteration of ELECTRONIC DATA from any cause whatsoever (including but not limited to COMPUTER VIRUS) or loss of use, reduction in functionality, cost, expense of whatsoever nature.

ELECTRONIC DATA means facts, concepts and information converted to a form useable for communications, interpretation or processing by electronic and electromechanical data processing or electronically controlled equipment and includes programmes, software, and other coded instructions for the processing and manipulation of data or the direction and manipulation of such equipment.

COMPUTER VIRUS means a set of corrupting, harmful or otherwise unauthorised instructions or code including a set of maliciously introduced unauthorised instructions or code, programmatic or otherwise, that propagate themselves through a computer system or network of whatsoever nature. COMPUTER VIRUS includes but is not limited to 'Trojan Horses', 'worms' and 'time or logic bombs'.

- b) However, in the event that a peril listed below results from any of the matters described in paragraph a) above, this Policy, subject to all its terms, conditions and exclusions will cover physical damage occurring during the Policy period to property insured by this Policy directly caused by such listed peril.

Listed Perils

Fire  
Explosion

### 2. Electronic Data Processing Media Valuation

Notwithstanding any provision to the contrary within the Policy or any endorsement thereto, it is understood and agreed as follows:-

Should electronic data processing media insured by this Policy suffer physical loss or damage insured by this Policy, then the basis of valuation shall be the cost of the blank media plus the costs of copying the ELECTRONIC DATA from back-up or from originals of a previous generation. These costs will not include research and engineering nor any costs of recreating, gathering or assembling such ELECTRONIC DATA. If the media is not repaired, replaced or restored the basis of valuation shall be the cost of the blank media. However this Policy does not insure any amount pertaining to the value of such ELECTRONIC DATA to the Assured or any other party, even if such ELECTRONIC DATA cannot be recreated, gathered or assembled.

Attached to and forming part of Policy No. CICA 2751 of the Commonwealth Insurance Company of America.

## JOINT LOSS ADJUSTMENT AGREEMENT

In consideration of the premium charged, it is understood and agreed that the following changes are made to this Policy:

1. In the event of damage to property at a location that is covered by both Property and Boiler policies, and there is disagreement between the insurance carriers as to whether the damage:
  - (a) Was caused by an "Accident" insured under the Boiler Policy or;
  - (b) Was caused by a peril insured under the Property Policy or;
  - (c) Is partially covered by either;
  
2. This Company will pay, after the Insured's written request, the amount of loss that this Company has accepted as covered by the Property Policy and one-half (1/2) the amount of loss that is in disagreement but no more than this Company would have paid had there been no Boiler Policy in effect at the time of the occurrence subject to the following conditions:
  - (a) The amount of loss is agreed to by the Insured, the Boiler Insurers and this Company;
  - (b) Any payment under the terms of this Endorsement is limited to the smallest amount payable under either the Boiler or Property Policies.
  - (c) The Boiler Insurer(s) will pay the Insured the amount of loss they have accepted as covered by the Boiler Policy and for one-half the amount of loss that is in disagreement, but no more than they would have paid had there been no Property Policy in effect at the time of the occurrence.
  - (d) After payment of the loss under the terms of this Endorsement the Boiler Insurers and this Company agree to submit our difference to arbitration within Ninety (90) days of such payment.
  - (e) The Insured agrees to cooperate with any arbitration procedures. There will be three arbitrators; one will be appointed by the Property Insurers and one will be appointed by the mutual consent of the other two. The arbitrators decision shall be binding on the Insurers. Judgement on any award can be entered in any court that has jurisdiction.
  - (f) The provisions of this Endorsement will not apply unless such other policies by the Boiler Insurance Companies are similarly endorsed.
  - (g) Acceptance by the Insured of sums paid under this Endorsement does not alter, waive or surrender the Insured's right against this Company.

- (h) If this Company participates for an amount less than 100% of the Property insurance applicable to a disputed loss as described above, then this Company shall be liable only for its pro-rata share of the Property Insurers' portion of the amount of loss which is in disagreement as defined in this Joint Loss Adjustment Agreement.

Attached to and forming part of Policy No. CICA 2751 of the Commonwealth Insurance Company of America.

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

**EXCLUSION OF CERTIFIED ACTS OF TERRORISM  
INVOLVING NUCLEAR, BIOLOGICAL, CHEMICAL OR  
RADIOLOGICAL TERRORISM; CAP ON COVERED  
CERTIFIED ACTS LOSSES**

**A.** The following definition is added with respect to the provisions of this endorsement:

"Certified act of terrorism" means an act that is certified by the Secretary of the Treasury, in concurrence with the Secretary of State and the Attorney General of the United States, to be an act of terrorism pursuant to the federal Terrorism Risk Insurance Act. The criteria contained in the Terrorism Risk Insurance Act for a "certified act of terrorism" include the following:

1. The act resulted in insured losses in excess of \$5 million in the aggregate, attributable to all types of insurance subject to the Terrorism Risk Insurance Act; and
2. The act is a violent act or an act that is dangerous to human life, property or infrastructure and is committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

**B.** The following exclusion is added:

**LIMITED EXCLUSION OF CERTIFIED ACTS OF TERRORISM**

Loss or damage caused directly or indirectly by a "certified act of terrorism" is excluded by this policy. Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss. But this exclusion applies only when one or more of the following are attributed to such act:

1. The terrorism is carried out by means of the dispersal or application of radioactive material, or through the use of a nuclear weapon or device that involves or produces a nuclear reaction, nuclear radiation or radio-active contamination; or
2. Radioactive material is released, and it appears that one purpose of the terrorism was to release such material; or
3. The terrorism is carried out by means of the dispersal or application of pathogenic or poisonous biological or chemical material; or
4. Pathogenic or poisonous biological or chemical material is released, and it appears that one purpose of the terrorism was to release such material.

**C.** Exception Covering Certain Fire Losses

The following exception to the exclusion in Paragraph B. applies to property located in the states of California, Georgia, Hawaii, Illinois, Iowa, Maine, Massachusetts, Missouri, New Jersey, New York, North Carolina, Oregon, Rhode Island, Washington, West Virginia and Wisconsin.

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If a "certified act of terrorism" excluded under Paragraph B. results in fire, the company will pay for the loss or damage caused by that fire, subject to all applicable policy provisions including the Limit of Liability on the affected property. Such coverage for fire applies only to direct loss or damage by fire to insured property. Therefore, the coverage does not apply to insurance provided under Business Income and/or Extra Expense coverage forms or endorsements that apply to any time element or business interruption coverage.

**D. Cap On Certified Terrorism Losses**

The following limitation applies to coverage for any one or more "certified acts of terrorism" that are not excluded by the terms of the exclusion in Paragraph B. and to any loss or damage that is covered and to which the exception in Paragraph C. applies:

If aggregate insured losses attributable to terrorist acts certified under the Terrorism Risk Insurance Act exceed \$100 billion in a Program Year (January 1 through December 31) and we have met our insurer deductible under the Terrorism Risk Insurance Act, we shall not be liable for the payment of any portion of the amount of such losses that exceeds \$100 billion, and in such case insured losses up to that amount are subject to pro rata allocation in accordance with procedures established by the Secretary of the Treasury.

**E. Application Of Exclusions**

The terms and limitations of any terrorism exclusion, or the non-applicability or omission of a terrorism exclusion, do not serve to create coverage for any loss which would otherwise be excluded under this Coverage Part or Policy, such as losses excluded by the war, military action or nuclear hazard or any other exclusion.

Nothing herein contained shall vary, alter or extend any provision or condition of the Policy other than as above stated.

Attached to and forming part of Policy No. CICA 2751 of the Commonwealth Insurance Company of America.

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**BACTERIA, FUNGI, VIRUS, WET & DRY ROT AND**  
**EXTREMES OF TEMPERATURE OR HUMIDITY**  
**EXCLUSION ENDORSEMENT**

IT IS HEREBY UNDERSTOOD AND AGREED that this policy does not insure against loss, destruction, or damage caused directly or indirectly by bacteria of all kinds or any other similar organism, including, but not limited to anthrax; fungi of all kinds or any similar organism, including, but not limited to mold, spores and mildew; viruses of all kinds or any similar organism, including, but not limited to small pox; wet and dry rot and extremes of temperature or humidity.

Nothing herein contained shall be held to vary, alter, waive or change any of the terms, limits or conditions of the policy except as herein above set forth.

(Rev. 0403/CICA/3043)

## OCCURRENCE LIMIT OF LIABILITY ENDORSEMENT

It is hereby understood and agreed that the following special terms and conditions apply to this Policy:

1. The Limit of Liability or amount of insurance shown on the face of this Policy, or endorsed onto this Policy, is a limit or amount per occurrence. Notwithstanding anything to the contrary contained herein, in no event shall the liability of this Company exceed this limit or amount in one disaster, casualty or event, irrespective of the number of locations involved.
2. The premium for this Policy is based upon the statement of values on file with the Company. In the event of loss hereunder, liability of this Company shall be limited to the least of the following:
  - (a) The actual adjusted amount of loss, less applicable deductible(s).
  - (b) The total stated value for the property involved, as shown on the latest statement of values on file with the Company, less applicable deductible(s).
  - (c) The Limit of Liability or amount of insurance shown on the face of this Policy or endorsed into this Policy.

Attached to and forming part of Policy No. CICA 2751 of the Commonwealth Insurance Company of America.

(Rev. 0101/CICA/3024)

## GENERAL CONDITIONS

### 1. TERRITORIAL LIMITS

This Policy covers only within the Fifty (50) States of the United States of America, the District of Columbia, Puerto Rico, the Virgin Islands, and Canada.

### 2. VALUATION

Unless otherwise stated in the policy of which these conditions form a part, this Company shall not be liable beyond the actual cash value of the property at the time any loss or damage occurs and the loss or damage shall be ascertained or estimated according to such actual cash value with proper deduction for depreciation, however caused, and shall in no event exceed what it would then cost to repair or replace the same with material of like kind and quality.

### 3. WAR RISK AND NUCLEAR EXCLUSIONS

This Policy does not insure against loss or damage caused by or resulting from:

- (a) Hostile or warlike action in time of peace or war, including action in hindering, combating or defending against an actual, impending or expected attack:
  - (i) by any government or sovereign power (de jure or de facto), or any authority maintaining or using military, naval or air forces; or
  - (ii) by military, naval or air forces; or
  - (iii) by an agent of any government, power, authority or forces;
- (b) Any weapon of war employing atomic fission or radioactive force whether in time of peace or war;
- (c) Insurrection, rebellion, revolution, civil war, usurped power, or action taken by governmental authority in hindering, combating or defending against such an occurrence, seizure or destruction under quarantine or customs regulations, confiscation by order of any government or public authority, or risks of contraband or illegal transportation or trade;
- (d) Nuclear reaction or nuclear radiation or radioactive contamination, all whether controlled or uncontrolled, and whether such loss be direct or indirect, proximate or remote or be in whole or in part caused by, contributed to or aggravated by the peril(s) insured against in this Policy; however, subject to the foregoing and all provisions of this Policy, direct loss by fire resulting from nuclear reaction or nuclear radiation or radioactive contamination is insured against by this Policy.

### 4. OTHER INSURANCE

If at the time of loss or damage there is available to a named or unnamed Insured or any other interested party any other insurance which would apply in the absence of this Policy, the insurance under this Policy shall apply only as excess insurance over such other insurance, except that to the extent required by the State wherein this Policy is issued, this policy shall contribute pro-rata with such other insurance.

5. MISREPRESENTATION AND FRAUD

This entire Policy shall be void if, whether before or after a loss, the Insured has intentionally concealed or failed to disclose or misrepresented any material fact or circumstance concerning this Insurance or the subject thereof, or the interest of the Insured therein, or in case of any fraud or false swearing with intent to deceive by the Insured relating thereto.

6. MACHINERY

In the event of loss of or damage to machinery consisting, when complete for sale or use, of several parts, the Company shall only be liable for the value of the part(s) lost or damaged.

7. LABELS

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

8. PAIR, SET OR PARTS

In event of loss of or damage to:

- (a) Any article or articles which are a part of a pair or set, the measure of loss of or damage to such article or articles shall be a reasonable and fair proportion of the total value of the pair or set, giving consideration to the importance of said article or articles, but in no event shall such loss or damage be construed to mean total loss of the pair or set; or
- (b) any part of property covered consisting, when complete for use or sale, of several parts, the Company shall only be liable for the value of the part lost or damaged.

9. NO BENEFIT TO BAILEE

This Insurance shall in no way inure directly or indirectly to the benefit of any carrier or other bailee.

10. CLAIMS AGAINST THIRD PARTIES

In the event of any loss of or damage to the property covered hereunder the Insured shall immediately make claim in writing against the carrier(s), bailee(s) or others involved.

11. NOTICE OF LOSS

The Insured shall as soon as practicable report in writing to the Company or its agent every loss damage or occurrence which may give rise to a claim under this Policy and shall also file with the Company within Ninety (90) days from date of discovery of such loss, damage or occurrence, a detailed sworn proof of loss.

**The Insured warrants and agrees to give prompt notice to the Local Police Authorities in the event of theft of the insured property, provided theft is covered under this Policy.**

12. PAYMENT OF LOSS

All adjusted claims shall be paid or made good to the Insured within Sixty (60) days after presentation and acceptance of satisfactory proof of interest and loss at the office of the Company. No loss shall be paid or made good if the Insured has collected the same from others.

13. SUBROGATION

If in the event of loss or damage the Insured shall acquire any right of action against any individual, firm or corporation for loss of, or damage to, property covered hereunder, the Insured will, if requested by the Company, assign and transfer such claim or right of action to the Company or, at the Company's option, execute and deliver to the Company the customary form or loan receipt upon receiving an advance of funds in respect of the loss or damage; and will subrogate the Company to, or will hold in trust for the Company, all such rights of action to the extent of the amount paid or advanced, and will permit suit to be brought in the Insured's name under the direction of and at the expense of the Company.

14. SUBROGATION WAIVER CLAUSE

Insofar as the Insured may have waived in writing and prior to any loss or damage, any right of recovery for loss or damage to the property described herein, the Company to that extent, waives its right of recovery under the subrogation clause in this contract; it is further understood and agreed that the Company waives all rights of recovery under the said subrogation clause if it is claimed that loss was occasioned or caused by the act or neglect of any corporation or corporations whose capital stock is owned or controlled by the Insured at the time of such loss, or any corporation parent or subsidiary to or affiliated with the Insured or any of their or either of their affiliated, proprietary or subsidiary companies.

15. SUE AND LABOR

In the event of any loss or damage insured against, it shall be lawful and necessary for the Insured, his or their factors, servants or assigns, to sue, labor and travel for, in and about the defense, safeguard and recovery of the property insured hereunder, or any part thereof, without prejudice of this Insurance, nor shall the acts of the Insured or this Company, in recovering, saving and preserving the property insured in case of loss be considered a waiver or acceptance of abandonment. The expenses so incurred shall be borne by the Insured and Company proportionately to the extent of their respective interests.

16. COMPANY'S OPTIONS

It shall be optional with the Company to take all, or any part, of the property at the agreed or appraised value, and also to repair, replace, or reinstate the property destroyed or damaged with other of like kind and quality within a reasonable time, on giving notice of its intention to do so within Sixty (60) days after the receipt of the proof of loss herein required.

17. IMPAIRMENT OF RECOVERY RIGHTS

Any act or agreement by the Insured before or after loss or damage whereby any right of the Insured to recover in whole or in part for loss or damage to property covered hereunder against any carrier, bailee or other party liable therefor, is released, impaired or lost, shall render this Policy null and void, but the Company's right to retain or recover the premium shall not be affected. The Company is not liable for any loss or damage which, without its written consent, has been settled or compromised by the Insured.

18. ABANDONMENT

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

19. PRIVILEGE TO ADJUST WITH OWNER

In the event of loss or damage to property of others held by the Insured for which claim is made upon the Company, the right to adjust such loss or damage with the owner or owners of the property is reserved to the Company and the receipt of such owner or owners in satisfaction thereof shall be in full satisfaction of any claim of the Insured for which such payment has been made. If legal proceedings be taken to enforce a claim against the Insured as respects any such loss or damage, the Company reserves the right at its option without expense to the Insured, to conduct and control the defense on behalf of and in the name of the Insured. No action of the Company in such regard shall increase the liability of the Company under this Policy, nor increase the Limits of Liability specified in the Policy.

20. EXAMINATION UNDER OATH

The Insured, as often as may be reasonable required, shall exhibit to any person designated by the Company all that remains of any property herein described, and shall submit, and insofar as is within his or their power cause his or their employees, members of the household and others to submit to examinations under oath by any person named by the Company and subscribed the same; and, as often as may be reasonably required, shall produce for examination all writings, books of account, bills, invoices and other vouchers, or certified copies thereof if originals be lost, at such reasonable time and place as may be designated by the Company or its representative, and shall permit extracts and copies thereof to be made. No such examinations under oath or examination of books or documents, nor any other act of the Company or any of its employees or representatives in connection with the investigation of any loss or claim hereunder, shall be deemed a waiver of any defense which the Company might otherwise have with respect to any loss or claim, but all such examinations and acts shall be deemed to have been made or done without prejudice to the Company's liability.

21. APPRAISAL

If the Insured and the Company fail to agree as to the amount of loss, each shall, on the written demand of either, made within Sixty (60) days after receipt of proof of loss by the Company, select a competent appraiser, and the appraisal shall be made at a reasonable time and place. The appraisers shall first select a competent and disinterested umpire, and failing for Fifteen (15) days to agree upon such umpire, then, on the request of the Insured or the Company, such shall be selected by a judge of a court of record in the state in which such appraisal is pending. The appraisers shall then appraise the loss, stating separately the actual cash value at the time of loss and the amount of loss, and failing to agree shall submit their differences to the umpire. An award in writing of any two shall determine the amount of loss. The Insured and the Company shall each pay his or its chosen appraiser and shall bear equally the other expenses of the appraisal and umpire. The Company and the Insured shall not be held to have waived any of its rights by any act relating to appraisal.

22. SUIT

No suit, action or proceeding for the recovery of any claim under this Policy shall be sustainable in any court of law or equity unless the same be commenced within Twelve (12) months next after discovery by the Insured of the occurrence which gives rise to the claim.

Provided however, that if by the laws of the State within which this Policy is issued such limitation is invalid, then any such claims shall be void unless such action, suit or proceeding be commenced within the shortest limit of time permitted by the laws of such State.

23. RECORDS AND INVENTORY

The Insured shall keep accurate books, records and accounts in the following manner:

- (i) A detailed and itemized inventory record of all property covered hereunder shall be maintained and physical inventory shall be taken periodically at intervals not more than twelve months apart;
- (ii) A set of books shall be maintained showing a complete record of the business transacted including all purchases and sales for both cash and credit;
- (iii) Detailed records shall be maintained of:
  - (a) the property of others in his or their custody and control;
  - (b) all travelers stocks; and
  - (c) property sent to others for any purpose;
- (iv) All such books, records and accounts shall be preserved for not less than one year following the termination of this Policy and any renewal thereof.

24. EXAMINATION OF RECORDS

The Insured shall, as often as may be reasonably required during the term of this Policy and for one year thereafter, produce for examination by the Company or its duly authorized representative all the books and records, inventories and accounts referred to above, relating to the property covered hereunder.

25. AUTOMATIC REINSTATEMENT

Each claim paid hereunder reduces the amount of insurance by the sum paid, but the amount of such loss shall be reinstated automatically and a pro rata additional premium shall be payable from the date of the occurrence when the amount of such loss is determined.

26. CANCELLATION

This Policy may be cancelled by the Insured by surrender thereof to the Company or by mailing to the Company written notice stating when thereafter such cancellation shall be effective. This Policy may be cancelled by the Company upon compliance with the following:

- (i) Written notice of such cancellation, must be actually delivered or mailed to the Insured and to his or her representative in charge of the subject of the insurance not less than sixty days prior to the effective date of cancellation except for cancellation for nonpayment of premiums, which notice shall be not less than ten days prior to such date.

- (ii) Like notice of not less than sixty days must also be so delivered or mailed to each mortgagee, pledgee, or other person shown by the policy to have an interest in any loss which may occur thereunder.

The mailing of any such notice shall be effected by depositing it in a sealed envelope, directed to the addressee at his or her last address as known to the insurer or as shown by the insurer's records, with proper prepaid postage affixed, in a letter depository of the United States post office. The Company shall retain in its records any such item so mailed, together with its envelope, which was returned by the post office upon failure to find, or deliver the mailing to, the addressee.

The affidavit of the individual making or supervising such a mailing, shall constitute prima facie evidence of such facts of the mailing as are therein affirmed.

The portion of any premium paid to the insurer on account of the policy, unearned because of the cancellation and in amount as computed on the pro rata basis, must be actually paid to the insured or other person entitled thereto as shown by the policy or by any endorsement thereon, or be mailed to the insured or such person as soon as possible, and no later than sixty days after the date of notice of cancellation to the insured for homeowners', dwelling fire, and private passenger auto. Any such payment may be made by cash, or by check, bank draft, or money order.

27. CHANGES

Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this Policy or stop the Company from asserting any right under the terms of this Policy, nor shall the terms of this Policy be waived or changed, except by endorsement issued to form a part of this Policy.

28. CONFORMITY TO STATUTE

Terms of this Policy which are in conflict with the statutes of the state wherein this Policy is issued are hereby amended to conform to such statutes.

29. ASSIGNMENT

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

30. ACTION

Every action or proceeding against the Insurer for the recovery of any claim under or by virtue of this contract is absolutely barred unless commenced within one year next after the loss or damage occurs.

31. 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.

32. PARAMOUNT CLAUSE

When in conflict, the conditions contained in the policy wordings, and endorsements thereto, supercede those in these General Conditions.

Attached to and forming part of Policy No. CICA 2751 of the Commonwealth Insurance Company of America.



# Commonwealth Insurance Company of America

## RECEIPT FOR CANCELLATION

\$ \_\_\_\_\_ 20

In consideration of \_\_\_\_\_ Dollars,

Return Premium, the Receipt of which is hereby acknowledged, this Policy is cancelled and surrendered to THE INSURERS.

INSURED

PAYEE