



Meeting Date: 09/01/09

ACTION	TYPE OF ITEM
<input type="checkbox"/> Approved Recommendation	<input checked="" type="checkbox"/> Info/Consent
<input type="checkbox"/> Ord. No(s). _____	<input type="checkbox"/> Report
<input type="checkbox"/> Res. No(s). _____	<input type="checkbox"/> Public Hearing (Info/consent)
<input type="checkbox"/> Other _____	<input type="checkbox"/> Other

Prepared By: Stephen M. Fischer, Asst. City Attorney SMF

Agenda Item No. I-1

Reviewed By: City Manager City Attorney SMF Finance

Other: Public Works

**DATE:** August 20, 2009

**TO:** City Council

**FROM:** Stephen M. Fischer, Asst. City Attorney   
City Attorney's Office

**SUBJECT:** License Agreement for Use of City Property Adjacent to 1100 Mercantile St.

**RECOMMENDATION**

That City Council approve and authorize the Mayor to execute an agreement (A-7210) granting 1100 Mercantile LLC a license to use the surface of City property and preserving City access to subsurface facilities.

**DISCUSSION**

The City's property located adjacent to 1100 Mercantile St. contains subsurface water and wastewater facilities. A concrete pad serving the building located on 1100 Mercantile St. has been poured over the City's property. Because the pad does not currently interfere with the City's subsurface facilities, staff does not see the need to require its removal. However, staff seeks the Council's approval of a license agreement to formalize the continued use of the pad while preserving the City's ability to access the subsurface facilities at any time.

**FINANCIAL IMPACT**

There is no estimated financial impact to the current FY 2009-10 budget.

Attachment #1 - License Agreement (Agreement No. A-7210)

RECORDING REQUESTED BY  
AND WHEN RECORDED RETURN TO:

City of Oxnard  
City Clerk  
305 W. Third Street  
Oxnard, California 93030

Request recording without fee. Record for the benefit of the  
City of Oxnard pursuant to Section 6103 of the Government Code.

---

Space Above This Line For Recorder's Use

Agreement No. A-7210

**LICENSE AGREEMENT**

THIS LICENSE AGREEMENT ("**Agreement**") is made this 1<sup>st</sup> day of September, 2009, between the CITY OF OXNARD, a municipal corporation ("**City**"), and 1100 Mercantile LLC, a California limited liability company ("**Mercantile**").

**RECITALS:**

A. Mercantile owns real property located at 1100 Mercantile St. in the City of Oxnard, County of Ventura, State of California. Said property is adjacent to real property owned by the City, on which the City maintains water and wastewater facilities (the "**City Facilities**"). The City's property is more particularly described on Exhibit "A" attached hereto (the "**Property**").

B. Mercantile has constructed a concrete slab over a portion of the Property more particularly described on Exhibit "B" attached hereto (the "**License Area**"), and has used the License Area to facilitate access to 1100 Mercantile St.

C. Mercantile desires to formalize its use of the License Area by obtaining a license from the City subject to the terms described herein.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Grant of License. Subject to the conditions contained herein, the City hereby grants to Mercantile a license (the "**License**") for the purposes of constructing, using, maintaining, operating, altering, adding to, repairing, replacing, reconstructing, inspecting and/or removing its facilities over and across the License Area. The foregoing License is granted without any representations or warranties of any kind, including, without limitation, any representations or warranties of any kind with respect to conditions of the License Area or its fitness for a particular purpose. Mercantile accepts the License Area in its "as-is, where-is" condition, with all faults. City shall retain all normal rights and incidents of ownership of the

---

ATTACHMENT NO. 1  
PAGE 1 OF 11

License Area not inconsistent with this Agreement. City shall not be obligated to maintain or repair any portion of the License Area.

2. Termination.

a. The City may terminate this License, with or without cause, on one hundred twenty (120) days written notice to Mercantile.

b. If Mercantile shall at any time fail or refuse to comply with or carry out any of the conditions of this License, the City may, at its election, immediately revoke this License by written notice to Mercantile.

c. Upon termination of the License, Mercantile shall remove its facilities from the License Area within ten (10) days. In the event Mercantile does not remove its facilities within the time allowed, the City, without incurring liability, may remove said installation at Mercantile's expense.

3. Permits, Licenses and Certificates. Mercantile, at Mercantile's expense, shall obtain and maintain during the term of this License, all permits, licenses and certificates required in connection with the exercise of its rights under this License.

4. Maintenance. In consideration for this License, Mercantile shall at all times:

a. Maintain the License Area and the area immediately surrounding the License Area free of litter, trash and other debris.

b. Cooperate with the City staff as requested.

c. Exercise its rights under this License in a safe, sane and reasonable manner so as not to cause injury to persons or property.

5. Mercantile shall not change the existing grade or otherwise modify the topography of the License Area without prior written consent of the City.

6. Insurance.

a. Mercantile shall obtain and maintain during the term of this License the insurance coverages as specified in Exhibit INS-N, attached hereto and incorporated herein by this reference, issued by a company satisfactory to the City's Risk Manager, unless the Risk Manager waives, in writing, the requirement that Mercantile obtain and maintain such insurance coverages.

b. Mercantile shall, prior to use of the Property, file with the Risk Manager evidence of insurance coverage as specified in Exhibit INS-N. Evidence of insurance coverage shall be forwarded to the Risk Manager, addressed as specified in Exhibit INS-N.

7. Indemnification.

Mercantile shall defend, indemnify and hold harmless City and its elected and appointed boards, officers, agents and employees from and against any and all claims, liabilities, and losses of any nature whatsoever, including reasonable attorney's fees and costs, for damage to property or persons, including death, arising out of or in any way connected with Mercantile's exercise of any rights in and to the License Area and any failure, collapse of or damage to the City Facilities. In the event of any such failure, collapse or damage to the City Facilities, Mercantile, in addition to defending, indemnifying and holding the City harmless, shall also reimburse the City for all its costs, direct and indirect, to reconstruct the City Facilities.

The aforesaid indemnity obligation shall apply regardless of the fault or negligence of the indemnitor or indemnitees, excepting only that said indemnity obligation shall not apply if the claim, liability, or loss arises out of the sole, active negligence of the City.

8. City's Right to Perform Maintenance and Repair Work. The City may, in its sole discretion and without notice to Mercantile, access the License Area to perform such work as the City may determine is necessary to maintain and repair the City Facilities, including but not limited to, excavation within the License Area, and destruction and removal of pavement or other improvements to gain access to the City Facilities. Mercantile shall repair all damage to Mercantile's facilities resulting from such maintenance and repair work at no expense to the City.

9. Notices. Except as otherwise provided herein, any notice or other communication which shall be required to be given to any Party in connection with this Agreement shall be duly given if in writing and delivered personally to the person to whom it is authorized to be given at the time of such delivery, or if sent by first class mail or telecopy, to the addresses set forth below. As provided in this Agreement notice shall be deemed to be received three (3) days after deposit with the United States mail, first class, postage prepaid.

Any notices to Mercantile may be delivered by mail addressed to:

1100 Mercantile LLC  
1741 Ives Ave.

Oxnard, California 93033

Attention: RONALD K. Tegland *rw*

with a copy to:

Schroeder Comis et al LLP  
300 Esplanade Drive, Suite 1170  
Oxnard, California 93030  
Attention: Robert Schroeder, Esq.

Any notices to the City may be delivered by mail addressed to:

ATTACHMENT NO. 1  
PAGE 3 OF 11

City of Oxnard  
300 West Third Street, Fourth Floor  
Oxnard, California 93030  
Attention: Edmund F. Sotelo, City Manager

with a copy to:

City of Oxnard  
300 West Third Street, Third Floor  
Oxnard, CA 93030  
Attention: Alan Holmberg, City Attorney

10. Compliance with laws. Mercantile shall comply with all State, federal, and local laws, rules and regulations, now or hereafter in force, pertaining to Mercantile's use of the License Area.

11. Abandonment. In the event of abandonment by Mercantile of the rights granted herein, such rights shall terminate, and Mercantile shall thereupon, without cost to the City, restore the Property to a condition as near possible to that which existed prior to Mercantile's occupancy. Upon request by the City following abandonment of Mercantile's rights, Mercantile will deliver to the City a quitclaim of such rights. Non-use for a period of five (5) years shall constitute conclusive evidence of such abandonment.

12. Taxes. This License may create a taxable property interest in the Property. Mercantile shall pay and be solely responsible for any personal property taxes, possessory interest tax or other tax assessed on, or any portion of such taxes attributable to, Mercantile's use of the License Area.

13. Assignment. Mercantile may not delegate its rights or duties under this License without the written consent of the City, which consent may not be unreasonably withheld for any reason.

14. Successors. This License shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors and assigns of the City and Mercantile, for the benefit of the License Area.

15. Severability. Invalidation of any one restriction contained in this Agreement by judgment, court order, operation of law or otherwise, shall in no way affect the other restrictions contained herein which shall continue in full force and effect.

16. Entire Agreement. This License constitutes the entire agreement of the City and Mercantile regarding the subject matter hereof and supersedes all prior communications, agreements and promises, either oral or written.

17. Amendment. This License may be reviewed or amended at any time. Any amendments to this License shall become effective only when agreed to in writing by both Parties.

18. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same instrument.

19. Governing Law. The construction and interpretation of this License and the right and duties of the City and Mercantile hereunder shall be governed by the laws of the State of California.

20. Attorneys' Fees. In the event of any other action or proceeding brought by any party against any other under this Agreement, the prevailing party shall be entitled to recover all costs and expenses including the fees of such party's attorneys in such action or proceeding in such amount as the court may adjudge reasonable.

Dated: \_\_\_\_\_

CITY OF OXNARD

By: \_\_\_\_\_

Dr. Thomas E. Holden  
Mayor

APPROVED AS TO FORM:

By: 

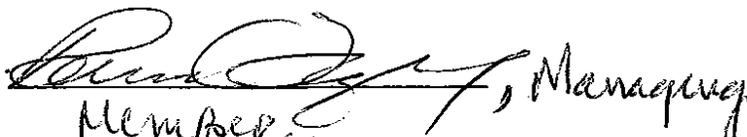
Alan Holmberg  
City Attorney

APPROVED AS TO INSURANCE:

\_\_\_\_\_  
Mike More, Risk Manager

Dated: June 15, 2009

1100 MERCANTILE, LLC

By:  Managing Member

ATTACHMENT NO. 1  
PAGE 5 OF 11

**Exhibit "A"**  
**Property Description**

Those portions of Parcels 1 and 2 of the land described in deed to the City of Oxnard in the City of Oxnard, County of Ventura, State of California, recorded in Book 787, at Pages 149 through 153, inclusive, of Official Records in the office of the County Recorder of said County, lying easterly of and adjacent to the property commonly known as 1100 Mercantile Street.

ATTACHMENT NO. 1  
PAGE 6 OF 11

**Exhibit "B"**  
**License Area Description**

Those portions of Parcels 1 and 2 of the land described in deed to the City of Oxnard in the City of Oxnard, County of Ventura, State of California, recorded in Book 787, at Pages 149 through 153, inclusive, of Official Records in the office of the County Recorder of said County, lying easterly of and adjacent to the property commonly known as 1100 Mercantile Street.

ATTACHMENT NO. 1  
PAGE 7 OF 11

**INSURANCE REQUIREMENTS FOR LEASES OF LAND OR BUILDINGS  
(WITHOUT AUTOMOBILE LIABILITY REQUIREMENT)**

1. Lessee shall obtain and maintain during the term of the lease the following insurance against claims for injuries to persons or damages to property which may arise from or in connection with the lease by lessee, its agents, representatives, employees or sublessees.

a. Commercial General Liability Insurance, including Contractual Liability, in an amount not less than \$1,000,000 combined single limit for bodily injury and property damage for each claimant for general liability with coverage equivalent to Insurance Services Office Commercial General Liability Coverage (Occurrence Form CG 0001). If a general aggregate limit is used, that limit shall apply separately to the project or shall be twice the occurrence amount;

b. Workers' Compensation Insurance in compliance with the laws of the State of California, and Employer's Liability Insurance in an amount not less than \$1,000,000 per claimant.

c. Property Insurance against all risks of loss to any tenant improvements or betterments in the amount of the full replacement cost of the improvement or betterment with no co-insurance provisions.

2. Lessee shall, prior to occupation of the premises, file with the Risk Manager certificates of insurance with original endorsements effecting coverage required by this Exhibit INS-N. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be on the attached forms or on other forms approved by the Risk Manager. All certificates and endorsements are to be received and approved by the Risk Manager before occupation of the premises. City reserves the right to require complete certified copies of all required insurance policies at any time. The certificates of insurance and endorsements shall be forwarded to the Risk Manager, addressed as follows:

City of Oxnard  
Risk Manager  
Reference No.A-7210  
300 West Third Street, Suite 302  
Oxnard, California 93030

3. Lessee agrees that all insurance coverages shall be provided by a California admitted insurance carrier with an A.M. Best rating of A:VII or better and shall be endorsed to state that coverage may not be suspended, voided, canceled by either party, or reduced in coverage or limits without 30 days' prior written notice to the Risk Manager. The Risk Manager shall not approve or accept any endorsement if the endorsement contains "best effort" modifiers or if the insurer is relieved from the responsibility to give such notice.

4. Lessee agrees that the Commercial General Liability and Business Automobile Liability Insurance policies shall be endorsed to name City, its City Council, officers, employees and volunteers as additional insureds as respects: liability arising out of activities performed by or on behalf of lessee; products and completed operations of lessee; premises owned, occupied or used by lessee; or automobiles owned, leased, hired or borrowed by lessee. The coverage shall contain no special limitations on the scope of protection afforded to City, its City Council, officers, employees and volunteers. **The General Liability Special Endorsement Form attached to this Exhibit INS-N or substitute form containing the same information and acceptable to the Risk Manager shall be used to provide the endorsements (ISO form CG 2010 1//85 or if not available, CG 2010 with an edition date prior to 01/04 and CG 2037).**

5. The coverages provided to City shall be primary and not contributing to or in excess of any existing City insurance coverages (**this must be endorsed**). Any failure to comply with reporting provisions of the policies shall not affect coverage provided to City, its City Council, officers, employees and volunteers. The insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

6. Any deductibles or self-insured retentions must be declared to and approved by the Risk Manager. At the option of the Risk Manager, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City, its City Council, officers, employees and volunteers, or the lessee shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

7. All insurance standards applicable to lessee shall also be applicable to lessee's sublessees. Lessee agrees to maintain appropriate agreements with sublessees and to provide proper evidence of coverage upon receipt of a written request from the Risk Manager.

8/09

ATTACHMENT NO. 1  
PAGE 8 OF 11

## INSTRUCTION FOR SUBMITTING INSURANCE CERTIFICATES AND ENDORSEMENT FORMS

### *Certificates of Insurance*

The sample accord form on the following page is provided to facilitate your preparation and submission of certificates of insurance. You may use this or any industry form that shows coverage as broad as that shown on the attached sample. **Please note the certificate holder address must be as shown on the attached sample accord form with the contract number and insurance exhibit identification information completed.** Improperly addressed certificates may delay the contract start-up date because the City's practice is to return unidentifiable insurance certificates to the insured for clarification as to the contract number. **Cancellation provisions must be endorsed to the policy. Modifying the certificate does not change coverage or obligate the carrier to provide notice of cancellation.**

### *Endorsement Forms*

Original endorsement is required for commercial general liability insurance policies and must be attached to the applicable certificate of insurance. City preference is that you use the endorsement forms which are attached. Substitute forms will be accepted, however, as long as they include provisions comparable to the attached.

INS-N.doc

ATTACHMENT NO. 1  
PAGE 9 OF 11

# ACCORD CERTIFICATE OF INSURANCE ISSUE DATE (MM/DD/YY)

**PRODUCER**

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

**CODESUB-CODE**

## COMPANIES AFFORDING INSURANCE COVERAGE

**INSURED**

COMPANY  
LETTER A SPECIFY COMPANY NAMES IN THIS SPACE

COMPANY  
LETTER B

## COVERAGES

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	<b>GENERAL LIABILITY</b> <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> OWNER'S & CONTRACTOR'S PROT.				GENERAL AGGREGATE \$1,000,000 PRODUCTS COMP/OP AGG. \$1,000,000 PERSONAL & ADV. INJURY \$1,000,000 EACH OCCURRENCE \$1,000,000 FIRE DAMAGE (Any one fire) \$ MED. EXPENSE (Any one person) \$
A	<b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO ALL OWNED AUTOS SCHEDULED AUTOS HIRED AUTOS NON-OWNED AUTOS GARAGE LIABILITY				COMBINED SINGLE LIMIT \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE \$
A	<b>EXCESS LIABILITY</b> UMBRELLA FORM OTHER THAN UMBRELLA FORM				EACH OCCURRENCE \$ AGGREGATE \$
A	<b>WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY</b>				STATUTORY LIMITS EACH ACCIDENT \$1,000,000 DISEASE-POLICY LIMIT \$1,000,000 DISEASE-EACH EMPLOYEE \$1,000,000
A	<b>OTHER</b>				

**DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/RESTRICTIONS/SPECIAL ITEMS**

**CERTIFICATE HOLDER**  
 City of Oxnard  
 Attn: Risk Manager  
 Reference No. A-7210  
 300 W. Third Street, Suite 302  
 Oxnard, CA 93030

**CANCELLATION**  
 SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

ATTACHMENT NO. 1  
 PAGE 10 OF 11

**GENERAL LIABILITY SPECIAL ENDORSEMENT FOR THE CITY OF OXNARD (the "City")**

**SUBMIT IN DUPLICATE**

ENDORSEMENT NO. \_\_\_\_\_ ISSUE DATE (MM/DD/YY) \_\_\_\_\_

**PRODUCER**  
  
Telephone: \_\_\_\_\_

**POLICY INFORMATION:**  
Insurance Company: \_\_\_\_\_  
Policy No.: \_\_\_\_\_  
Policy Period: (from) \_\_\_\_\_ (to) \_\_\_\_\_  
LOSS ADJUSTMENT EXPENSE  Included in Limits  
 In Addition to Limits

**NAMED INSURED**

Deductible  Self-Insured Retention (check which) of \$ \_\_\_\_\_  
with an Aggregate of \$ \_\_\_\_\_ applies to \_\_\_\_\_  
coverage.  Per Occurrence  Per Claim (which) \_\_\_\_\_

**APPLICABILITY.** This insurance pertains to the operations, products and/or tenancy of the named insured under all written agreements and permits in force with the City unless checked here  
 In which case only the following specific agreements and permits with the City are covered:

CITY AGREEMENTS/PERMITS \_\_\_\_\_

**TYPE OF INSURANCE**

**GENERAL LIABILITY**  
 COMMERCIAL GENERAL LIABILITY  Claims Made  
 COMPREHENSIVE GENERAL LIABILITY Retroactive Date \_\_\_\_\_  
 OWNERS & CONTRACTORS PROTECTIVE  Occurrence

**OTHER PROVISIONS**

**COVERAGES**

LIABILITY LIMITS IN THOUSANDS \$

GENERAL  
 PRODUCTS/COMPLETED OPERATIONS  
 PERSONAL & ADVERTISING INJURY  
 FIRE DAMAGE  
 \_\_\_\_\_  
 \_\_\_\_\_

EACH OCCURRENCE	AGGREGATE

**CLAIMS:** Underwriter's representative for claims pursuant to this insurance.  
Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone: (\_\_\_\_) \_\_\_\_\_

In consideration of the premium charged and notwithstanding any inconsistent statement in the policy to which this endorsement is attached or any endorsement now or hereafter attached thereto, insurance company agrees as follows:

- INSURED.** The City, its officers, agents, employees and volunteers are included as insureds with regard to liability and defense of suits arising from the operations, products and activities performed by or on behalf of the named insured.
- CONTRIBUTION NOT REQUIRED.** As respects: (a) work performed by the named insured for or on behalf of the City; or (b) products sold by the named insured to the City; or (c) premises leased by the named insured from the City, the insurance afforded by this policy shall be primary insurance as respects the City, its officers, agents, employees or volunteers; or stand in an unbroken chain of coverage excess of the named insured's scheduled underlying primary coverage. In either event, any other insurance maintained by the City, its officers, agents, employees or volunteers shall be in excess of this insurance and shall not contribute with it.
- SEVERABILITY OF INTEREST.** This insurance applies separately to each insured against whom claim is made or suit is brought except with respect to the company's limits of liability. The inclusion of any person or organization as an insured shall not affect any right which such person or organization would have as a claimant if not so included.
- CANCELLATION NOTICE.** With respect to the interests of the City, this insurance shall not be canceled, or materially reduced in coverage or limits except after thirty (30) days prior written notice by receipted delivery has been given to the City.
- PROVISIONS REGARDING THE INSURED'S DUTIES.** Any failure to comply with reporting provisions of the policy or breaches or violations of warranties shall not affect coverage provided to the City, its officers, agents, employees or volunteers.
- SCOPE OF COVERAGE.** This policy, if primary, affords coverage at least as broad as:
  - Insurance Services Office Commercial General Liability Coverage, "occurrence" form CG 0001; or
  - If excess, affords coverage which is at least as broad as the primary insurance form CG 0001.

Except as stated above nothing herein shall be held to waive, alter or extend any of the limits, conditions, agreements or exclusions of the policy to which this endorsement is attached.

**ENDORSEMENT HOLDER**

**CITY OF OXNARD**  
**Attn: Risk Manager**  
**Reference No. A-7210**  
**300 W. Third Street, Suite 302**  
**Oxnard, CA 93030**

**AUTHORIZED REPRESENTATIVE**  
 Broker/Agent  Underwriter  \_\_\_\_\_  
I, \_\_\_\_\_ (print/type name), warrant that I have authority to bind the above-mentioned insurance company and by my signature hereon do so bind this company to this endorsement.  
Signature \_\_\_\_\_  
(original signature required)  
Telephone: (\_\_\_\_) \_\_\_\_\_ Date Signed \_\_\_\_\_