

11-28-2008

Villa Highlands, LLC v. Western Community Ins.
Co. Clerk's Record v. 1 Dckt. 35472

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LAW CLERK

Vol. 1 of 5

IN THE
SUPREME COURT
OF THE
STATE OF IDAHO

SEE AUGMENTATION RECORD

VILLA HIGHLANDS, LLC, an Idaho limited liability company,

PLAINTIFF-APPELLANT,

vs.

WESTERN COMMUNITY INSURANCE CO., an Idaho corporation; FARM BUREAU INSURANCE COMPANY OF IDAHO, an Idaho corporation; DALE E. ZIMNEY; and DOES I-V,

DEFENDANTS-RESPONDENTS.

Appealed from the District Court of the Fourth Judicial District of the State of Idaho, in and for ADA County

Hon DARLA S. WILLIAMSON, District Judge

RICHARD C. BOARDMAN

Attorney for Appellant

ROBERT A. ANDERSON

Attorney for Respondent

FILED - VOLUME I

NOV 28 2008

COPY

Supreme Court _____ Court of Appeals
Entered on ATS by: _____

35472

IN THE SUPREME COURT OF THE STATE OF IDAHO

VILLA HIGHLANDS, LLC, an Idaho limited liability company,

Plaintiff-Appellant,

vs.

WESTERN COMMUNITY INSURANCE CO., an Idaho corporation; FARM BUREAU INSURANCE COMPANY OF IDAHO, an Idaho corporation; DALE E. ZIMNEY; and DOES I-V,

Defendants-Respondents.

Supreme Court Case No. 35472

CLERK'S RECORD ON APPEAL

Appeal from the District Court of the Fourth Judicial District, in and for the County of Ada.

HONORABLE DARLA S. WILLIAMSON

RICHARD C. BOARDMAN

ATTORNEY FOR APPELLANT

BOISE, IDAHO

ROBERT A. ANDERSON

ATTORNEY FOR RESPONDENT

BOISE, IDAHO

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Date	Code	User	Judge
11/13/2006	NCOC	CCWOODCL	New Case Filed - Other Claims
	COMP	CCWOODCL	Complaint Filed
	SMFI	CCWOODCL	(2) Summons Filed
12/6/2006	AMCO	CCTEELAL	Amended Complaint Filed
	SMFI	CCTEELAL	Summons Filed (3)
12/27/2006	NOAP	MCBIEHKJ	Notice Of Appearance R Anderson for Western Insurance and Farm Bureau
12/29/2006	ANSW	CCMORAML	Defendant Dale E Zimney's Answer to Plaintiff's Amended Complaint (West for Dale E Zimney)
1/2/2007	RMK9	DCKORSJP	Order for Scheduling Conference & Re: Motion Practice
	HRSC	DCKORSJP	Hearing Scheduled (Scheduling Conference 02/08/2007 01:15 PM)
1/23/2007	ANSW	CCBLACJE	Answer & Counterclaim (Anderson for Western Comm. Ins. & Farm Bureau Mutual Ins.)
	NOTS	CCBLACJE	Notice Of Service
1/26/2007	NOTS	CCNAVATA	Notice Of Service
1/31/2007	NOTD	CCCHILER	(4) Notice Of Taking Deposition
2/8/2007	STIP	CCCHILER	Stipulation for Scheduling and Planning
	CONV	DCKORSJP	Hearing result for Scheduling Conference held on 02/08/2007 01:15 PM: Conference Vacated
2/12/2007	NOTC	DCKORSJP	Notice of Trial Setting
	HRSC	DCKORSJP	Hearing Scheduled (Jury Trial 05/05/2008 09:00 AM)
2/21/2007	CERS	CCCHILER	Certificate Of Service
3/1/2007	NOTD	CCBARCCR	(4) Amended Notice Of Taking Deposition
3/7/2007	AFOS	CCTEELAL	Affidavit Of Service 3.2.07
3/22/2007	CERS	CCDWONCP	Certificate Of Service
	NOTS	CCNAVATA	Notice Of Service
4/4/2007	ANSW	CCWRIGRM	Plaintiffs Answer to Western Community Ins and Farm Bureau Mutual's Counterclaim
4/10/2007	NOSV	CCTEELAL	Notice Of Service of Discovery Requests
4/13/2007	MISC	CCMORAML	Certificate of Service 4/13/07
4/20/2007	MOTN	CCWRIGRM	Motion for Protective Order
	MEMO	CCWRIGRM	Memorandum in Support of Motion
	AFFD	CCWRIGRM	Affidavit of Counsel
	NOTC	CCWRIGRM	Notice of Telephone Conference (04/23/07 @ 2:00pm)
	HRSC	CCWRIGRM	Hearing Scheduled (Motion 04/23/2007 02:00 PM) Telephone Conference re Motion for Protective Order

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Villa Highlands, LLC vs. Western Community Insurance, Farm Bureau Mutual Insurance Company Of Idaho, Dale E Zimney

Date	Code	User	Judge
4/23/2007	HRVC	DCKORSJP	Hearing result for Motion held on 04/23/2007 02:00 PM: Hearing Vacated Telephone Conference re Motion for Protective Order Darla Williamson
5/4/2007	CERS	CCPRICDL	Certificate Of Service Darla Williamson
5/10/2007	CERS	CCCHILER	Certificate Of Service Darla Williamson
5/25/2007	NOTD	CCBARCCR	Notice Vacating Amended Notice Of Taking Deposition Darla Williamson
6/5/2007	NOTS	CCBLACJE	Notice Of Service Darla Williamson
8/23/2007	MOTN	CCCHILER	Plaintiff's Motion for Order to Compel Against Defendant Dale Zimney Darla Williamson
	AFSM	CCCHILER	Affidavit In Support Of Motion for Order to Compel Against Dale Zimney Darla Williamson
	NOHG	CCCHILER	Notice Of Hearing Darla Williamson
	HRSC	CCCHILER	Hearing Scheduled (Motion 09/05/2007 02:45 PM) for Order to Compel Darla Williamson
9/4/2007	HRSC	CCBLACJE	Notice of Hearing Scheduled (Hearing Scheduled 09/12/2007 02:45 PM) Amended Notice Darla Williamson
9/5/2007	HRVC	DCKORSJP	Hearing result for Motion held on 09/05/2007 02:45 PM: Hearing Vacated for Order to Compel Darla Williamson
9/6/2007	CERS	CCBLACJE	(2) Certificate Of Service Darla Williamson
9/12/2007	HRVC	DCKORSJP	Hearing result for Hearing Scheduled held on 09/12/2007 02:45 PM: Hearing Vacated Amended Notice Darla Williamson
10/10/2007	NOTS	CCEARLJD	Notice Of Service of Discovery Documents Darla Williamson
10/16/2007	NOTS	CCAMESLC	Notice Of Service Darla Williamson
	NOTS	CCBLACJE	Notice Of Service Darla Williamson
11/27/2007	MOTN	CCTOWNRD	Plaintiff's Motion for Leave of Court to file Plaintiff's Second Amended Complaint Darla Williamson
	MEMO	CCTOWNRD	Memorandum in Support of Motion Darla Williamson
	NOHG	CCTOWNRD	Notice Of Hearing Darla Williamson
	HRSC	CCTOWNRD	Hearing Scheduled (Motion 12/19/2007 02:45 PM) Motion for Leave of Court to file second amended complaint Darla Williamson
11/29/2007	NOSV	CCBOYIDR	Notice Of Service Darla Williamson
12/3/2007	NOTS	CCMCLILI	Notice Of Service Darla Williamson
12/7/2007	MISC	CCDWONCP	Defendant Dale E Zimney's Non-Opposition to Motion for Leave of Court to File Plaintiff's Second Amended Complaint and Demand for Jury Trial Darla Williamson
12/12/2007	NOTC	CCEARLJD	Notice of Opposition to Motion for Leave to File Second Amended Complaint Darla Williamson
12/14/2007	MOTN	CCMCLILI	Motion to Compel Appraisal Darla Williamson

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Villa Highlands, LLC vs. Western Community Insurance, Farm Bureau Mutual Insurance Company Of Idaho, Dale E Zimney

Date	Code	User	Judge
12/14/2007	AFFD	CCMCLILI	Affidavit of Robert A. Anderson in Support of Motion to Compel Appraisal
	MEMO	CCMCLILI	Memorandum in Support of Motion to Compel Appraisal
	NOHG	CCMCLILI	Notice Of Hearing (1/9/08 @ 2:45 pm)
	HRSC	CCMCLILI	Hearing Scheduled (Motion 01/09/2008 02:45 PM) Motion to Compel Appraisal
12/18/2007	HRVC	DCKORSJP	Hearing result for Motion held on 12/19/2007 02:45 PM: Hearing Vacated Motion for Leave of Court to file second amended complaint
	STIP	CCCHILER	Stipulation to Plaintiff's Motion for Leave of Court of Plaintiff's Second Amended Complaint and Demand for Jury Trial
12/19/2007	ORDR	DCKORSJP	Order Granting Plaintiff's Motion for Leave to File Second Amended Complaint
12/31/2007	NOTS	CCSTROMJ	(2) Notice Of Service
	AFFD	CCWRIGRM	Affidavit of Ed Guerricabeitia in Opposition to Motion to Compel
1/4/2008	REPL	CCBURGBL	Reply Memorandum in Support of Motion to Compel Appraisal
1/8/2008	AMEN	CCSTROMJ	Second Amended Complaint and Demand for Jury Trial
	SMFI	CCSTROMJ	(3) Another Summons Filed
1/9/2008	HRVC	DCKORSJP	Hearing result for Motion held on 01/09/2008 02:45 PM: Hearing Vacated Motion to Compel Appraisal
1/17/2008	STIP	CCMCLILI	Stipulation re:Villa Highlands Appraisal
1/23/2008	MOTN	DCKORSJP	Motion to Extend Summary Judgment Deadline
	ORDR	DCKORSJP	Order Re: Motion to Extend Summary Judgment Deadline
	NOSV	CCBOYIDR	Notice Of Service
1/29/2008	ANSW	CCWRIGRM	Answer to Plaintiffs Second Amended Complaint (Robert Anderson, atty for Defendants Western Community Ins and Farm Bureau Mutual Insurance)
1/30/2008	ANSW	CCWRIGRM	Defendant Dale E Zimneys Answer to Plaintiffs Second Amended Complaint
2/6/2008	STIP	MCBIEHKJ	Stipulation to Extend Deadlines to File Expert Disclosures
	MISC	MCBIEHKJ	Disclosure of Lay Witnesses
2/8/2008	ORDR	DCKORSJP	Order Re: Stipulation to Extend Deadlines to File Expert Disclosures & Depose Plaintiff's Expert Witnesses
	WITN	CCTOWNRD	Defendant Dale E. Zimney's Expert Witness Disclosure

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Darla Williamson

Villa Highlands, LLC vs. Western Community Insurance, Farm Bureau Mutual Insurance Company Of Idaho, Dale E Zimney

Date	Code	User	Judge
2/11/2008	MISC	CCWRIGRM	Defendants Western Community Insurance Co and Farm Bureau Mutual Insurance Company of Idahos Disclosure of Lay Witnesses Darla Williamson
2/12/2008	NOTS	CCWRIGRM	(2) Notice Of Service Darla Williamson
2/15/2008	NOTD	CCCHILER	Notice of the Deposition Upon Oral Examination of William Hodges Darla Williamson
2/20/2008	NOTS	CCCHILER	(2) Notice Of Service Darla Williamson
2/22/2008	NOTS	CCBARCCR	Notice Of Service Darla Williamson
	NOTS	CCWRIGRM	Notice Of Service of Discovery Responses Darla Williamson
2/29/2008	MOSJ	CCWRIGRM	Plaintiffs Motion For Summary Judgment Darla Williamson
	AFFD	CCWRIGRM	Affidavit of William Hodges Darla Williamson
	AFFD	CCWRIGRM	Affidavit of Ed Guerricabeitia Darla Williamson
	MEMO	CCWRIGRM	Memorandum in Support of Plaintiffs Motion for Summary Judgment Darla Williamson
3/3/2008	MOSJ	CCWRIGRM	Defendant Dale E Zimneys Motion for Summary Judgment Darla Williamson
	AFFD	CCWRIGRM	Affidavit of Counsel Darla Williamson
	MEMO	CCWRIGRM	Memorandum in Support of Motion Darla Williamson
	MOSJ	CCWRIGRM	Defendant Western Community Insurance Co and Farm Bureau Insurance Co of Idahos Motion For Summary Judgment Darla Williamson
	AFFD	CCWRIGRM	Affidavit of Richard Peterson in Support of Motion Darla Williamson
	AFFD	CCWRIGRM	Affidavit of Robert A Anderson in Support of Motion Darla Williamson
	MEMO	CCWRIGRM	Memorandum in Support of Motion Darla Williamson
3/4/2008	NOHG	DCKORSJP	Notice Of Hearing On Summary Judgment & Scheduling Order Darla Williamson
	HRSC	DCKORSJP	Hearing Scheduled (Motion for Summary Judgment 03/26/2008 03:15 PM) Darla Williamson
3/6/2008	MOTN	CCSTROMJ	Motion to Vacate Trial and Vacate Briefing Schedule on The Pending Motions for Summary Judgment Darla Williamson
	AFSM	CCSTROMJ	Affidavit of Ed Guerricabeitia In Support Of Motion for Leave of Court to Withdraw as Counsel of Record Darla Williamson
	MOTN	CCSTROMJ	Motion to Shorten Time for Hearing Darla Williamson
	NOHG	CCSTROMJ	Notice Of Hearing RE: Motion to Shorten Time for Hearing, Motion for Leave of Court to Withdraw as Counsel (03-12-2008 @2:45pm) Darla Williamson
	HRSC	CCSTROMJ	Hearing Scheduled (Hearing Scheduled 03/12/2008 02:45 PM) Motion to Shorten Time Motion for Leave of Court to Withdraw as Counsel Darla Williamson
			Motion to Vacate Trial and Vacate Briefing Schedule 00006

Villa Highlands, LLC vs. Western Community Insurance, Farm Bureau Mutual Insurance Company Of Idaho, Dale E Zimney

Date	Code	User	Judge
3/11/2008	RSPN	CCWRIGRM	Defendant Western Community Insurance Co and Farm Bureau Insurance Co Response to Motion for Leave to Withdraw as Counsel and Motion to Vacate Trial Darla Williamson
3/12/2008	DCHH	DCKORSJP	Hearing result for Hearing Scheduled held on 03/12/2008 02:45 PM: District Court Hearing Held Court Reporter: Penny Tardiff Number of Transcript Pages for this hearing estimated: Less than 100 Pages Motion to Shorten Time Motion for Leave of Court to Withdraw as Counsel Motion to Vacate Trial and Vacate Briefing Schedule Darla Williamson
	HRVC	DCKORSJP	Hearing result for Motion for Summary Judgment held on 03/26/2008 03:15 PM: Hearing Vacated Darla Williamson
	HRSC	DCKORSJP	Hearing Scheduled (Motion for Summary Judgment 04/09/2008 03:15 PM) Darla Williamson
3/14/2008	ORDR	DCKORSJP	Supplemental Order Darla Williamson
3/18/2008	NOTS	CCWRIGRM	Notice Of Service of Discovery Responses Darla Williamson
3/21/2008	NOAP	CCSTROMJ	Notice Of Appearance (Boardman and Yee-Wallace for Villa Highland) Darla Williamson
3/24/2008	MOTN	CCCHILER	Plaintiff's Motion for Extension of Time to File Opposition and Reply Briefing (Ex Parte) Darla Williamson
	AFFD	CCCHILER	Affidavit of Cynthia Yee-Wallace in Support of Plaintiff's Motion for Extension of Time to File Opposition and Responsive Briefing (Ex Parte) Darla Williamson
	MEMO	CCCHILER	Memorandum in Support of Plaintiff's Motion for Extension of Time to File Opposition and Reply Briefing (Ex Parte) Darla Williamson
3/25/2008	ORDR	DCKORSJP	Ex Parte Order Granting Pl's Motion for Extension of Time to File Opposition & Reply Briefing (DENIED) Darla Williamson
3/26/2008	BREF	CCWRIGRM	Plaintiffs Brief in Opposition to Defendant Dale E Zimneys Motion for Summary Judgment Darla Williamson
	BREF	CCWRIGRM	Plaintiffs Brief in Opposition to Defendants Western Community Insurance Co and Farm Bureau Insurance Co of Idahos Motion for Summary Judgment Darla Williamson
	AFFD	CCWRIGRM	Affidavit of Cynthia Yee-Wallace Darla Williamson
3/27/2008	MEMO	CCWRIGRM	Defendant Western Community Insurance and Farm Bureau Insurance Memorandum in Opposition to Plaintiffs Motion for Summary Judgment Darla Williamson
4/1/2008	MOTN	CCAMESLC	Motion to Strike Affidavit of Richard Petersen in Support of Defendant Western Community Insurance Co and Farm Bureau Insurance Company of Idaho's Motion for Summary Judgment Darla Williamson

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Villa Highlands, LLC vs. Western Community Insurance, Farm Bureau Mutual Insurance Company Of Idaho, Dale E Zimney

Date	Code	User	Judge
4/1/2008	MOTN	CCAMESLC	Motion to Shorten Time
	MOTN	CCAMESLC	Motion to Vacate Trial Setting and Extend Deadlines
	AFSM	CCAMESLC	Affidavit In Support Of Motion to Vacate Trial Setting and Extend Deadlines (3)
	MEMO	CCAMESLC	Memorandum in Support of Motion to Vacate Trial Setting and Extend Deadlines
4/3/2008	RPLY	CCPRICDL	Reply Brief in Support of Defendant's Dale E. Zimney's Motion for Summary Judgment
	BREF	CCWRIGRM	Plaintiffs Brief in Response to Defendants Western Community Insurance Co and Farm Bureau Insurance Co of Idaho's Memorandum in Opposition to Plaintiffs Motion for Summary Judgment
	AFFD	CCWRIGRM	Supplemental Affidavit of Cynthia Yee-Wallace
	MOTN	CCAMESLC	Motion for Order Shortening Time
	MOTN	CCAMESLC	Motion to Re-Set Hearing on Motion to Compel Appraisal
	MEMO	CCAMESLC	Reply Memo in Support of Motion for Summary Judgment and to Reset Hearing
	HRSC	CCAMESLC	Notice of Hearing (Motion to Compel 04/09/2008 03:00 PM)
4/4/2008	ORDR	DCKORSJP	Order Shortening Time
	MOTN	CCEARLJD	Plaintiffs Supplemental Motion to Extend Deadlines
	MOTN	CCEARLJD	Motion to Shorten Time for Hearing
	AFFD	CCTOONAL	Affidavit of Richard Petersen in Support of Defendant Western Community Insurance Co and Farm Bureau Insurance Company of Idaho's Motion for Summary Judgment
	MEMO	CCTOONAL	Memorandum in Opposition to Plt's Motion to Strike Affidavit of Richard Petersen and Farm Bureau Motion for Summary Judgment
	MEMO	CCTOONAL	Memorandum in Opposition to Plt's Motion to Vacate Trial Setting and Extend Deadlines
4/8/2008	NOTD	CCTEELAL	Notice Of Taking Deposition of Larry Hewitt
	NOTD	CCTEELAL	Notice Of Taking Deposition of Jan Christensen
	NOTD	CCTEELAL	Notice Of Taking Deposition of Alan P Schreiber
	AFFD	CCWRIGRM	Affidavit of karen O Sheehan
	NOTH	CCWRIGRM	Notice Of Hearing (04/09/08 @ 3:00pm)
	HRSC	CCWRIGRM	Hearing Scheduled (Hearing Scheduled 04/09/2008 03:00 PM) Plaintiffs Motion to Vacate Trial Setting
	TRAN	DCKORS.IP	Transcript Filed

Villa Highlands, LLC vs. Western Community Insurance, Farm Bureau Mutual Insurance Company Of Idaho, Dale E Zimney

Date	Code	User	Judge
4/9/2008	DCHH	DCKORSJP	Hearing result for Motion for Summary Judgment held on 04/09/2008 03:15 PM: District Court Hearing Held Court Reporter: Penny Tardiff Number of Transcript Pages for this hearing estimated: More than 100 Pages
	DCHH	DCKORSJP	Hearing result for Hearing Scheduled held on 04/09/2008 03:00 PM: District Court Hearing Held Court Reporter: Penny Tardiff Number of Transcript Pages for this hearing estimated: Less than 100 Pages Plaintiffs Motion to Vacate Trial Setting
4/11/2008	BREF	CCBARCCR	Plaintiff's Supplemental Brief in Opposition to Motion for Summary Judgment
	MEMO	CCBURGBL	Supplemental Memorandum in Support of Motion for Summary Judgment
	NOTC	CCTOONAL	Notice of Deposition Duces Tecum of Farm Bureau Insurance Company of Idaho/Western Community Insurance Co
4/14/2008	AMEN	CCTOWNRD	(2) Amended Notice of Deposition
4/15/2008	MOTN	CCEARLJD	Motion to Compel
	AFFD	CCEARLJD	Affidavit in Support of Motion to Compel
	MEMO	CCEARLJD	Memorandum in Support of Motion to Compel
	MOTN	CCEARLJD	Motion to Shorten Time
	NOHG	CCEARLJD	Notice Of Hearing re Motion to Compel (04.16.08@3:30pm)
	HRSC	CCEARLJD	Hearing Scheduled (Motion to Compel 04/16/2008 03:30 PM)
	MOTN	CCWRIGRM	Defendant Western Communitys Motion for Protective Order
	AFFD	CCWRIGRM	Affidavit of Robert A Anderson
	MEMO	CCWRIGRM	Memorandum in Support of Defendant Western Communitys Motion
4/16/2008	NOTC	MCBIEHKJ	Notice of Joinder Re Supplemental Memorandum in Support of Motion for Summary Judgment
	DCHH	DCKORSJP	Hearing result for Motion to Compel held on 04/16/2008 03:30 PM: District Court Hearing Held Court Reporter: Sue Wolf Number of Transcript Pages for this hearing estimated: More than 100 Pages
4/17/2008	AFFD	DCKORSJP	Supplemental Affidavit of Robert A. Anderson in Support of Motion for Protective Order
	AFFD	DCKORSJP	Affidavit of Cynthia Yee-Wallace
	DCHH	DCKORSJP	District Court Hearing Held Court Reporter: Penny Tardiff Number of Transcript Pages for this hearing estimated: Less than 100 Pages

Villa Highlands, LLC vs. Western Community Insurance, Farm Bureau Mutual Insurance Company Of Idaho, Dale E Zimney

Date	Code	User	Judge
4/18/2008	MISC	CCWRIGRM	Defendant Dale E Zimneys Amended Disclosure of Lay Witnesses Darla Williamson
4/21/2008	TRAN	DCKORSJP	Transcript Filed Darla Williamson
	MOTN	CCEARLJD	Motion in Limine Darla Williamson
	MEMO	CCEARLJD	Memorandum in Support of Motion in Limine Darla Williamson
	MOTN	CCEARLJD	Motion to Clarify Orders and Requesting Decision Darla Williamson
	AFFD	CCEARLJD	Affidavit in Support of Motion to Clarify Darla Williamson
	MEMO	CCEARLJD	Memorandum in Support of Motion to Clarify Darla Williamson
	MOTN	CCEARLJD	Motion to Shorten Time for Hearing Darla Williamson
	NOHG	CCEARLJD	Notice Of Hearing re Motion to Clarify Orders and Requesting Decision (04.23.08@2:45pm) Darla Williamson
	HRSC	CCEARLJD	Hearing Scheduled (Motion 04/23/2008 02:45 PM) Motion to Clarify Orders Darla Williamson
	MISC	CCBARCCR	Defendant Western Community's Amended Disclosure of Lay Witnesses Darla Williamson
	NOTS	CCTOONAL	Notice Of Service Darla Williamson
4/22/2008	HRVC	DCKORSJP	Hearing result for Motion held on 04/23/2008 02:45 PM: Hearing Vacated Motion to Clarify Orders Darla Williamson
	HRSC	DCKORSJP	Hearing Scheduled (Motion 04/24/2008 01:00 PM) Darla Williamson
	HRSC	CCAMESLC	Amended Notice of Hearing (04/24/2008 01:00 PM) Motion to Clarify Orders Darla Williamson
	MOTN	CCTEELAL	Defendant Western Community's First Motion in Limine Darla Williamson
	MOTN	CCTEELAL	Motion for Order Shortening Time Darla Williamson
	MEMO	CCTEELAL	Memorandum in Support of Defendant Western Community's First Motion in Limine Darla Williamson
	MEMO	CCTEELAL	Defendant Western Community's Memorandum in Opposition to Plaintiff's Motion in Limine Darla Williamson
	MEMO	CCTEELAL	Defendant Western Community's Memorandum in Opposition to Plaintiff's Motion to Clarify Orders and requesting Decision Darla Williamson
	NOHG	CCTEELAL	Notice Of Hearing 4.24.08 @ 1pm Darla Williamson
	HRSC	CCTEELAL	Hearing Scheduled (Motion in Limine 04/24/2008 01:00 PM) Darla Williamson
4/23/2008	CONT	DCWHITHD	Continued (Motion 04/24/2008 01:30 PM) Darla Williamson
	CONT	DCWHITHD	Continued (Motion in Limine 04/24/2008 01:30 PM) Darla Williamson
	CONT	DCWHITHD	Continued (Motion 04/24/2008 01:30 PM) Motion to Clarify Orders Darla Williamson
	NOTC	DCWHITHD	Second Amended Notice of Hearing (4/24/2008 @ 1:00, interlineated for 1:30) Darla Williamson

Villa Highlands, LLC vs. Western Community Insurance, Farm Bureau Mutual Insurance Company Of Idaho, Dale E Zimney

Date	Code	User	Judge
4/24/2008	ORDR	DCWHITHD	Order on Defendant Western Community's Motion to Compel Appraisal Darla Williamson
	NOTC	MCBIEHKJ	Second Amended Notice of Hearing (4/24/08 @ 1 pm) Darla Williamson
	HRVC	DCKORSJP	Hearing result for Motion held on 04/24/2008 01:30 PM: Hearing Vacated Motion to Clarify Orders Darla Williamson
	HRVC	DCKORSJP	Hearing result for Motion in Limine held on 04/24/2008 01:30 PM: Hearing Vacated Darla Williamson
	HRVC	DCKORSJP	Hearing result for Motion held on 04/24/2008 01:30 PM: Hearing Vacated Darla Williamson
	HRSC	DCKORSJP	Hearing Scheduled (Motion 04/28/2008 09:00 AM) Darla Williamson
4/25/2008	TRAN	DCKORSJP	Transcript Filed Darla Williamson
	OBJC	CCTOWNRD	Objection to Proposed Order Submitted by Western community Darla Williamson
	AFFD	CCTOWNRD	Affidavit oc Cynthia Yee-Wallace in Opposition to Motion in Limine Darla Williamson
	MEMO	CCTOWNRD	Memorandum in Opposition to Opposition Darla Williamson
	AFFD	CCTOWNRD	Affidavit of Cynthia Yee-Wallace in Support of Reply Darla Williamson
	REPL	CCTOWNRD	Reply to Memo in Oppostion Darla Williamson
	NOTC	MCBIEHKJ	Notice of Joinder in Part Re Motion in Limine Darla Williamson
	NOTC	MCBIEHKJ	Notice of Joinder Re Memorandum in Opposition to Motin to Clarify Order and Request Decision Darla Williamson
	NOTC	MCBIEHKJ	Notice of Joinder in Part Re First Motion in Limine Darla Williamson
4/28/2008	AFFD	DCKORSJP	Affidavit of Robert A. Anderson Darla Williamson
	PLEX	CCAMESLC	Plaintiff's Exhibit List Darla Williamson
	DCHH	DCKORSJP	Hearing result for Motion held on 04/28/2008 09:00 AM: District Court Hearing Held Court Reporter: Penny Tardiff Number of Transcript Pages for this hearing estimated: Less than 100 Pages Darla Williamson
4/29/2008	ORDR	DCKORSJP	Order on Western Community and Farm Bureau's Motion for Summary Judgment Darla Williamson
	EXHI	MCBIEHKJ	Dale Zimneys Exhibit List Darla Williamson
5/2/2008	AMEN	DCWHITHD	Defendant Western Community's Amended Jury Instructions Darla Williamson
	MOTN	CCPRICDL	Defendant's Western Community's Motion to Quash Subpoena of Rodney Saetrum Darla Williamson
	DEEX	CCEARLJD	Defendant's Exhibit List Darla Williamson
	OBJT	CCEARLJD	Objection to Plaintiffs Proposed Jury Instructions Darla Williamson
	BREF	CCEARLJD	Defendant Dale Zimney's Trial Brief Darla Williamson
5/5/2008	MISC	DCKORSJP	Plaintiff's Amended Exhibit List Darla Williamson

Villa Highlands, LLC vs. Western Community Insurance, Farm Bureau Mutual Insurance Company Of Idaho, Dale E Zimney

Date	Code	User	Judge
5/5/2008	MOTN	DCKORSJP	Plaintiff's Motion for Reconsideration Darla Williamson
	AFFD	DCKORSJP	Affidavit of Cynthia Yee-Wallace in Support of Motion for Reconsideration Darla Williamson
	MEMO	DCKORSJP	Memorandum in Support of Motion for Reconsideration Darla Williamson
	JTST	DCKORSJP	Hearing result for Jury Trial held on 05/05/2008 09:00 AM: Jury Trial Started Darla Williamson
	DEEX	DCWHITHD	Defendant Dale E. Zimney's First Supplemental Exhibit List Darla Williamson
	OBJE	DCWHITHD	Defendant Dale E. Zimney's Objection to Plaintiff's Jury Instructions Darla Williamson
	DCHH	DCKORSJP	District Court Hearing Held Court Reporter: Tauna Tonks Number of Transcript Pages for this hearing estimated: More than 100 Pages Darla Williamson
	EXHI	CCTOWNRD	Defendant Zimney's First Supplemental Exhibit List Darla Williamson
	OBJC	CCTOWNRD	Zimney's Objections to Plaintiff's Jury Instructions Darla Williamson
5/6/2008	MISC	DCKORSJP	Plaintiff's Amended/Supplemental Proposed Jury Instructions Darla Williamson
	ORDR	DCKORSJP	Order on Western Community's First Motion in Limine Darla Williamson
	MISC	DCKORSJP	Plaintiff/CounterDefendant's Trial Memorandum Darla Williamson
	DCHH	DCKORSJP	District Court Hearing Held Court Reporter: Penny Tardiff Number of Transcript Pages for this hearing estimated: More than 100 Pages Darla Williamson
5/8/2008	DCHH	DCKORSJP	District Court Hearing Held Court Reporter: Penny Tardiff Number of Transcript Pages for this hearing estimated: More than 100 Pages Darla Williamson
5/9/2008	OPPO	CCWRIGRM	Plaintiffs Opposition to Western Community's Motion for Directed Verdict Darla Williamson
5/12/2008	DCHH	DCKORSJP	District Court Hearing Held Court Reporter: Penny Tardiff Number of Transcript Pages for this hearing estimated: More than 100 Pages Darla Williamson
5/13/2008	DCHH	DCKORSJP	District Court Hearing Held Court Reporter: Penny Tardiff Number of Transcript Pages for this hearing estimated: More than 100 Pages Darla Williamson
	MISC	DCKORSJP	Jury Instructions Darla Williamson
	MISC	DCKORSJP	Special Verdict Darla Williamson
5/22/2008	OBJC	CCTOWNRD	Objection to Proposed Judgment Submitted by Western Community Darla Williamson
5/27/2008	JDMT	DCKORSJP	Judgment as to Dale Zimney Darla Williamson

Villa Highlands, LLC vs. Western Community Insurance, Farm Bureau Mutual Insurance Company Of Idaho, Dale E Zimney

Date	Code	User	Judge
5/27/2008	JDMT	DCKORSJP	Judgment as to Western Community Insurance Company
	CDIS	DCKORSJP	Civil Disposition entered for: Zimney, Dale E, Defendant; Villa Highlands, LLC, Plaintiff. Filing date: 5/27/2008
	CDIS	DCKORSJP	Civil Disposition entered for: Farm Bureau Mutual Insurance Company Of Idaho, Defendant; Western Community Insurance, Defendant; Villa Highlands, LLC, Plaintiff. Filing date: 5/27/2008
	STAT	DCKORSJP	STATUS CHANGED: Closed
6/10/2008	MOTN	CCTEELAL	Defendant Dale E Zimney's Motion for Costs and Fees
	AFFD	CCTEELAL	Affidavit of J Kevin West in Support of Defendant Dale E Zimney's Motion for Costs and Fees Document sealed
	MEMC	CCTEELAL	Memorandum Of Costs And Attorney Fees
	MEMO	CCTEELAL	Defendant Dale E Zimney's Memorandum in Support of Motion for Fees and Costs
6/11/2008	MOTN	MCBIEHKJ	Motion for Costs and Fees
	MEMC	MCBIEHKJ	Memorandum Of Costs And Attorney Fees
	MEMC	MCBIEHKJ	Memorandum Of Costs And Attorney Fees
	AFFD	MCBIEHKJ	Affidavit of Robert A Anderson in Support of Motion for Costs and Fees
6/24/2008	HRSC	CCAMESLC	Notice of Hearing (Motion for Attorney fees and Costs 07/30/2008 02:45 PM)
	MOTN	CCDWONCP	Plaintiff's Motion to Disallow Costs and Fees and Objection to Dale E Zimney's Motion for Costs and Fees
	AFFD	CCDWONCP	Affidavit of Cynthia Yee-Wallace in Support of Motion to Disallow Fees and Costs and Objection to Dale E Zimney's Motion for Costs and Fees
	MEMO	CCDWONCP	Memorandum in Support of Plaintiff's Motion to Disallow Costs and Fees and Objection to Dale E Zimney's Motion for Costs and Fees
6/25/2008	MOTN	CCWRIGRM	Plaintiffs Motion to Disallow Costs and Fees and Objection to Defendant Western Communitys Motion for Costs and Fees
	AFFD	CCWRIGRM	Affidavit of Cynthia Yee-Wallace
	MEMO	CCWRIGRM	Memorandum in Support of Plaintiffs Motion
6/26/2008	NOTH	CCANDEJD	Notice Of Hearing (7.30.08 @ 2:45 pm - already set)
7/8/2008	MOTN	CCCHILER	Plaintiff's Motion for Relief from Judgment
	APSC	CCTHIEBJ	Appealed To The Supreme Court
7/11/2008	MISC	CCGWALAC	Defendant Western Community's Request for Additional Transcript and Documents to be Included in Clerk's Record

Villa Highlands, LLC vs. Western Community Insurance, Farm Bureau Mutual Insurance Company Of Idaho, Dale E
Zimney

Date	Code	User	Judge
7/22/2008	MEMO	CCRANDJD	Reply Memorandum in Support of Western Communitys Motion for Costs and Fees
	REQU	CCTOONAL	Defendant Dale E. Zimney's Request for Additional Documents to be Included in Clerk's Record
	MEMO	MCBIEHKJ	Memorandum in Support of Motion for Relief from Judgment
	AFFD	MCBIEHKJ	Affidavit of Cynthia Yee Wallace in Support of Motion
	AFFD	MCBIEHKJ	Affidavit of William Hodges in Support of Motion
7/23/2008	MEMO	CCTOONAL	Defendant Dale E. Zimney's Memorandum in Opposition to Plaintiff's Motion to Disallow Costs and Fees
	NOTH	CCANDEJD	Notice Of Hearing
	HRSC	CCANDEJD	Hearing Scheduled (Motion 08/20/2008 02:45 PM) for Relief from Judgment
7/30/2008	DCHH	DCKORSJP	Hearing result for Motion for Attorney fees and Costs held on 07/30/2008 02:45 PM: District Court Hearing Held Court Reporter: Nancy Christiansen Number of Transcript Pages for this hearing estimated: Less than 100 Pages
8/1/2008	DEOP	DCKORSJP	Decision & Order on Dale Zimney's Request for Attorney Fees & Costs
	DEOP	DCKORSJP	Decision & Order on Western Community Insurance Co's Request for Attorney Fees & Costs
8/5/2008	MEMO	CCWRIGRM	Defendant Western Communitys Memorandum in Opposition to Plaintiffs Motion for Relief from Judgment
8/11/2008	JDMT	DCKORSJP	Amended Judgment
8/13/2008	NOTC	CCWRIGRM	Defendant Dale Zimneys Notice of Joinder re Defendant Western Communitys Memorandum in Opposition to Plaintiffs Motion for Relief from Judgment
8/15/2008	REPL	CCGWALAC	Reply to Western Community's Opposition to Plaintiff's Motion for Relief from Judgment
	AFFD	CCGWALAC	Affidavit of Cynthia Yee-Wallace in Support of Reply to Western Community's Opposition to Plaintiff's Motion for Relief from Judgment
8/18/2008	MOTN	CCWRIGRM	Defendant Western Communitys Motion to Strike Affidavit of Cynthia Yee Wallace in Support of Reply to Western Communitys Opposition to Plaintiffs Motion for Relief from Judgment
	MEMO	CCWRIGRM	Memorandum in Support of Defendant Western Communitys Motion
8/19/2008	JDMT	DCKORSJP	Amended Judgment

Date: 10/27/2008

Fourth Judicial District Court - Ada County

User: CCTHIEBJ

Time: 07:39 AM

ROA Report

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Case: CV-OC-2006-21175 Current Judge: Darla Williamson
Villa Highlands, LLC vs. Western Community Insurance, etal.

Villa Highlands, LLC vs. Western Community Insurance, Farm Bureau Mutual Insurance Company Of Idaho, Dale E Zimney

Date	Code	User		Judge
8/20/2008	DCHH	DCKORSJP	Hearing result for Motion held on 08/20/2008 02:45 PM: District Court Hearing Held Court Reporter: Penny Tardiff Number of Transcript Pages for this hearing estimated: Less than 100 Pages for Relief from Judgment	Darla Williamson
8/26/2008	DEOP	DCKORSJP	Decision & Order on Plaintiff's Motion for Relief from Judgment	Darla Williamson
	STAT	DCKORSJP	STATUS CHANGED: closed	Darla Williamson

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NO. _____
A.M. _____ FILED 3-5

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J. DAVID NAVARRO, Clerk
By C. WOODSON
DEPUTY

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Attorneys for Plaintiff
Villa Highlands, LLC

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

VILLA HIGHLANDS, LLC, an Idaho limited liability company,	)	Case No. CV 00 0621175
)	
Plaintiff,)	
	)	COMPLAINT FOR BREACH OF
vs.	)	CONTRACT, DECLARATORY RELIEF,
	)	BAD FAITH, BREACH OF FIDUCIARY
	)	DUTY, NEGLIGENCE,
WESTERN COMMUNITY INSURANCE CO.,	)	MISREPRESENTATION, EQUITABLE
an Idaho corporation; FARM BUREAU	)	ESTOPPEL, PROMISSORY ESTOPPEL,
MUTUAL INSURANCE COMPANY OF	)	AND DEMAND FOR JURY TRIAL
IDAHO, an Idaho corporation; and DOES I -	)	Fee Category: A(1)
V,	)	Filing Fee: \$88.00

COMPLAINT FOR BREACH OF CONTRACT, DECLARATORY RELIEF, BAD FAITH, BREACH OF FIDUCIARY DUTY, NEGLIGENCE, MISREPRESENTATION, EQUITABLE ESTOPPEL, PROMISSORY ESTOPPEL, AND DEMAND FOR JURY TRIAL - 1

Defendants.)
)
)

* * *

COMES NOW, Plaintiff Villa Highlands, LLC, an Idaho limited liability company (hereinafter referred to as "Plaintiff Villa Highlands") by and through its attorney of record, Terry C. Copple of the firm Davison, Copple, Copple & Cox of Boise, Idaho, and hereby alleges the following claims and causes of action against Defendants Western Community Insurance Co., an Idaho corporation, and Farm Bureau Mutual Insurance Company of Idaho, an Idaho corporation (hereinafter collectively referred to as "Defendant Western Community") and Does I- V, jointly and severally, as follows:

COUNT ONE

BREACH OF CONTRACT

I.

Plaintiff Villa Highlands is an Idaho limited liability company whose principal place of business is in Boise, Ada County, Idaho. Plaintiff Villa Highlands is a company organized for profit for the purpose of providing an independent living community for the elderly.

COMPLAINT FOR BREACH OF CONTRACT, DECLARATORY RELIEF, BAD FAITH, BREACH OF FIDUCIARY DUTY, NEGLIGENCE, MISREPRESENTATION, EQUITABLE ESTOPPEL, PROMISSORY ESTOPPEL, AND DEMAND FOR JURY TRIAL - 2

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II.

Defendant Western Community is a corporation incorporated under the laws of the State of Idaho and is licensed in the State of Idaho to issue policies of insurance covering various casualties, including specifically fire and related damage. Defendant Farm Bureau Mutual Insurance Company of Idaho is an affiliated company of Defendant Western Community and issues its insurance products and policies and is licensed to engage in such business in the State of Idaho. The true names or capacities, whether individual, corporate, associate or otherwise, of Does I - V, inclusive, are unknown to Plaintiff Villa Highlands and therefore this litigation has been instituted against such Defendants in their fictitious names. Plaintiff Villa Highlands is informed and believes and on that basis alleges that each of the Defendants designated as Does I - V are or may be jointly and severally liable to Plaintiff Villa Highlands along with the named Defendants for the damages as alleged in this Complaint arising out of the events and facts described herein. Plaintiff Villa Highlands reserves the right to amend this Complaint at a later date to set forth the true names of such Defendants.

III.

This litigation has been brought by Plaintiff Villa Highlands for breach of contract damages, consequential and other damages sustained by Plaintiff Villa Highlands as a result of Defendants' refusal to pay Plaintiff Villa Highlands' valid casualty claim arising under a builder's risk policy

from a catastrophic fire at the Villa Highlands Independent Living Facility (hereinafter referred to as "Villa Highlands Building"). The Villa Highlands Building was designed as a three story fifty (50) unit independent living care facility for the elderly containing 62,830 +/- square feet, located at the Northwest corner of 15th Street and Hill Road in Boise, Idaho, 83702.

IV.

In April 2005, Plaintiff Villa Highlands contacted Dale E. Zimney of Defendant Farm Bureau Mutual Insurance Company of Idaho as the authorized agent for Defendant Western Community to obtain casualty insurance for the Villa Highlands Building. Plaintiff Villa Highlands advised Defendants that it wanted full and complete casualty coverage for the building in order to provide full indemnity from any loss and damage which may be suffered by a covered casualty. Based upon those discussions, Defendant advised Plaintiff that it would be fully covered for any fire damages to the Villa Highlands Building. Effective April 25, 2005, and in reliance upon Defendants' representations, Plaintiff Villa Highlands obtained a commercial property builder's risk insurance policy, policy number 8C023703 (hereinafter referred to as "Policy"). The face amount of the Policy is \$5,645,000.00. A true and accurate copy of the Policy is attached hereto as Exhibit "A" and is incorporated herein by this reference. The Policy provides coverage for loss occasioned by fire and other casualty. Plaintiff Villa Highlands has paid all premiums due under the policy and has performed all other conditions required by the Policy.

V.

While the foregoing Policy was in effect, on May 21, 2006, the Villa Highlands Building, while under construction, caught fire and suffered catastrophic damage. Attached hereto as Exhibit "B" is a photograph of the fire which substantially destroyed the Villa Highlands Building.

VI.

On July 24, 2006, and again in August, 2006, Plaintiff Villa Highlands filed its notices of claim and sworn proof of loss that complied in all respects with the Policy requirements. The proof of loss documentation set forth in detail the damages sustained by Plaintiff Villa Highlands from the fire. By virtue of the damages sustained by Plaintiff Villa Highlands, it is entitled to payment of the entire amount of insurance protection purchased by it under the Policy in the amount of \$5,645,000.00.

VII.

Following the fire that destroyed the Villa Highlands Building and the submission of the notices of claim and proof of loss, Plaintiff Villa Highlands attempted to negotiate with Defendant Western Community concerning prompt payment of the claim. These attempts to negotiate a settlement of the claim extended for over a period of four (4) months during which time Defendant Western Community retained a law firm on its behalf to adjust the claim rather than negotiate a prompt and just resolution of the claim. Defendant Western Community refused to negotiate in good

faith and submitted letters refusing to pay the full amount of the claim. The Defendants' offers were completely unrealistic and bore no relation to the damages Plaintiff Villa Highlands sustained in the fire.

VIII.

Plaintiff Villa Highlands' attempt to negotiate with Defendant Western Community's representatives proved unavailing and instead of paying the claim required by the terms of the Policy, Defendant Western Community has instead contended that it has no obligation to pay the full amount of damages sustained by Plaintiff Villa Highlands pursuant to the Policy because Defendant Western Community alleges that Plaintiff Villa Highlands underinsured the Villa Highlands Building. Defendant Western Community alleges it has no obligation to pay a greater share of any loss than the proportion that the limit of insurance bears to the value on the date of the completion of the building described in the declarations page of the Policy. As part of its strategy to not pay the full amount of the claim, Defendant Western Community contends that the Policy requires the Villa Highlands Building to be fully insured in the amount set forth in the declarations page. As is known by Defendants, Dale E. Zimney of Defendant Farm Bureau Mutual Insurance Company of Idaho, authorized agent for Defendant Western Community, instructed and advised Plaintiff Villa Highlands as to the dollar amount necessary to be include in the declaration page of the Policy. Dale E. Zimney was at all times acting within the course and scope of his employment with Defendant

Farm Bureau Mutual Insurance Company of Idaho, as the authorized agent and representative of Defendant Western Community. At the time that the policy was applied for, Plaintiff Villa Highlands advised Defendant Western Community that Plaintiff Villa Highlands wanted to be fully insured for all loss arising out of any fire or other casualty to the Villa Highlands Building. At the time of the application, Dale E. Zimney, on behalf of Defendant Western Community, instructed Plaintiff Villa Highlands not to include the fair market value or any soft costs relating to the Villa Highlands Building, but rather to only include therein the hard construction costs since the Policy would only pay for those amounts up to the face amount of the Policy. In reliance upon the foregoing warranties, representations, advice, and instructions of Defendant Western Community, Plaintiff Villa Highlands believed that the amounts of the hard costs set forth for the project were the proper amount to include therein for the property to be fully insured under the Policy. Dale E. Zimney assured Plaintiff that the building located at the Plaintiff Villa Highlands' project would be covered under the Policy of insurance for the full covered amount.

IX.

Defendant Western Community has consistently refused to consider the nature and extent of Plaintiff Villa Highlands' loss and specifically has rejected the fact that the amount of insurance set forth in the Policy was as the result of the instructions, advice and counsel of Defendant Western Community.

X.

Issuance by Defendant Western Community of the Policy of insurance to Plaintiff Villa Highlands created a contractual relationship between Defendant Western Community and Plaintiff Villa Highlands. As a result, Defendant Western Community was subject to an implied-in-law duty to act fairly and in good faith in order not to deprive Plaintiff Villa Highlands of the full benefits of the Policy.

XI.

As a direct and proximate result of Defendant Western Community's intentional refusal to pay Plaintiff Villa Highlands' valid claim and its consequent breach of an implied-in-law duty of good faith and fair dealing, Plaintiff Villa Highlands is entitled to damages pursuant to the terms of the parties' Policy in an amount in excess of \$10,000.00 to be proven at trial plus prejudgment interest thereon at the rate as provided by law.

XII.

Defendant Western Community has acted wilfully, fraudulently, intentionally, gross negligently, in reckless disregard of Plaintiff Villa Highlands' rights and in bad faith in refusing to consider the nature and extent of Plaintiff Villa Highlands' loss in relationship to the Policy and in rejecting Plaintiff Villa Highlands' proof of loss on grounds that it knows to be without foundation. These acts were done knowingly, intentionally, and with the purpose of discouraging, avoiding, or

reducing the payment due Plaintiff Villa Highlands under the terms of the Policy and with the intent to harass, vex, injure and annoy the insured Plaintiff Villa Highlands. Thus, Plaintiff Villa Highlands reserves the right to amend this Complaint pursuant to Idaho Code Section 6-1604 to allege a claim for punitive damages against Defendant Western Community.

XIII.

As a result of Defendant Western Community's failure to pay Plaintiff Villa Highlands its damages and as a result of its acts and omissions as herein set forth, it has been necessary for Plaintiff Villa Highlands to institute this litigation. Plaintiff Villa Highlands is therefore entitled to an award of reasonable costs and attorneys' fees in the amount of \$15,000.00 if this matter is uncontested by Defendants and to an award of reasonable costs and attorneys' fees if this matter is contested by Defendants Western Community pursuant to Idaho Code Sections 12-120, 12-121, 41-1839, and other provisions of Idaho law.

COUNT TWO

DECLARATORY RELIEF

Plaintiff Villa Highlands realleges the allegations set forth in Count One of this Complaint and further alleges the following as a claim and cause of action against Defendant Western Community and Does I - V:

COMPLAINT FOR BREACH OF CONTRACT, DECLARATORY RELIEF, BAD FAITH, BREACH OF FIDUCIARY DUTY, NEGLIGENCE, MISREPRESENTATION, EQUITABLE ESTOPPEL, PROMISSORY ESTOPPEL, AND DEMAND FOR JURY TRIAL - 9

I.

By virtue of the facts as previously described, Plaintiff Villa Highlands is entitled to this Court declaring the relative rights and obligations of the parties hereto under the previously described Policy and thereupon the Court should determine that Plaintiff Villa Highlands is entitled to the payment of the full amount due and owing pursuant to the Policy without reduction, offset, or reduction in any manner.

II.

Plaintiff Villa Highlands seeks a specific ruling and declaration of this Court that any purported underinsurance for the Villa Highlands Building was caused by Defendant Western Community and not by Plaintiff Villa Highlands.

III.

As a result of Defendant Western Community's failure to pay Plaintiff Villa Highlands its covered damages and as a result of its acts and omissions as herein set forth, it has been necessary for Plaintiff Villa Highlands to institute this litigation. Plaintiff Villa Highlands is therefore entitled to an award of reasonable costs and attorneys' fees in the amount of \$15,000.00 if this matter is uncontested by Defendants and to an award of reasonable costs and attorneys' fees if this matter is contested by Defendants Western Community pursuant to Idaho Code Sections 12-120, 12-121, 41-1839, and other provisions of Idaho law.

COUNT THREE

BAD FAITH

Plaintiff Villa Highlands realleges the allegations set forth in Count One and Count Two of this Complaint and further alleges the following as a claim and cause of action against Defendant Western Community and Does I - V:

I.

Defendant Western Community has no legitimate, debatable, or arguable reason for refusing to pay Plaintiff Villa Highlands' valid claim because the amount of insurance protection purchased by Plaintiff Villa Highlands was determined as a result of the warranties, representations, instructions, and advice of Defendant Western Community.

II.

Plaintiff Villa Highlands placed its trust and confidence in Defendant Western Community and its agent to act in good faith and in a reasonable manner in the event Plaintiff Villa Highlands should ever have to make a claim against such insurance.

III.

Defendant Western Community and its agents are in a fiduciary relationship with Plaintiff Villa Highlands and were under a duty to use the skills, care, and knowledge of other claims representatives and insurance companies practicing as insurance agents and claims representatives

in evaluating and investigating claims made by Defendant's insureds in a prompt and thorough manner

IV.

Plaintiff Villa Highlands relied upon Defendant Western Community and its agents to investigate, process, and pay Plaintiff Villa Highlands' claim in accordance with its insured status under the Policy.

V.

Defendant Western Community and its agents have intentionally and knowingly refused and failed to promptly pay Plaintiff Villa Highlands' claim, failed to investigate Plaintiff Villa Highlands' claim in a prompt and thorough manner as they are required to do, and have refused to pay the claim relied upon an argument and contention for which there is no basis in fact or law and by attempting to settle the claim with Plaintiff Villa Highlands for less than the amount which a reasonable man would have believed he was entitled under the described Policy.

VI.

As a proximate result of Defendant Western Community's refusal to pay Plaintiff Villa Highlands' valid claim and Defendant Western Community's consequent breach of the implied-in-law duty of good faith and fair dealing, Plaintiff Villa Highlands has sustained damages in excess of \$10,000.00 in an amount to be proven at trial, which damages include, but are not limited to, the

cost of replacing the building destroyed by the catastrophic fire, lost profits of Plaintiff Villa Highlands' business operation as a result of not being able to open on time proximately caused by Defendant Western Community's failure to promptly adjust Plaintiff Villa Highlands' claim, increased interest expense for Plaintiff Villa Highlands' loans, increased reconstruction costs as a result of time delays in the adjustment of the claim, and other damages to be proven at trial.

VII.

Defendant Western Community has acted wilfully, fraudulently, intentionally, gross negligently, in reckless disregard of Plaintiff Villa Highlands' rights and in bad faith in refusing to consider the nature and extent of Plaintiff Villa Highlands' loss in relationship to the Policy and in rejecting Plaintiff Villa Highlands' proof of loss on grounds that it knows to be without foundation. These acts were done knowingly, intentionally, and with the purpose of discouraging, avoiding, or reducing the payment due Plaintiff Villa Highlands under the terms of the Policy and with the intent to harass, vex, injure and annoy the insured Plaintiff Villa Highlands. Thus, Plaintiff Villa Highlands reserves the right to amend this Complaint pursuant to Idaho Code Section 6-1604 to allege a claim for punitive damages against Defendant Western Community.

VIII.

As a result of Defendant Western Community's failure to pay Plaintiff Villa Highlands its damages and as a result of its acts and omissions as herein set forth, it has been necessary for

Plaintiff Villa Highlands to institute this litigation. Plaintiff Villa Highlands is therefore entitled to an award of reasonable costs and attorneys' fees in the amount of \$15,000.00 if this matter is uncontested by Defendants and to an award of reasonable costs and attorneys' fees if this matter is contested by Defendants Western Community pursuant to Idaho Code Sections 12-120, 12-121, 41-1839, and other provisions of Idaho law.

COUNT FOUR

BREACH OF FIDUCIARY DUTY

Plaintiff Villa Highlands realleges the allegations set forth in Count One, Count Two and Count Three of this Complaint and further alleges the following as a claim and cause of action against Defendant Western Community and Does I - V:

I.

As a result of the acts and omissions of Defendant Western Community as previously described, Defendants Western Community has breached their fiduciary duty owed to Plaintiff Villa Highlands thereby causing damage to Plaintiff Villa Highlands in an amount in excess of \$10,000.00, the amount of which shall be proven at trial, plus accruing prejudgment interest thereon as may be allowed by law.

II.

Defendant Western Community has acted wilfully, fraudulently, intentionally, gross negligently, in reckless disregard of Plaintiff Villa Highlands' rights and in bad faith in refusing to consider the nature and extent of Plaintiff Villa Highlands' loss in relationship to the Policy and in rejecting Plaintiff Villa Highlands' proof of loss on grounds that it knows to be without foundation. These acts were done knowingly, intentionally, and with the purpose of discouraging, avoiding, or reducing the payment due Plaintiff Villa Highlands under the terms of the Policy and with the intent to harass, vex, injure and annoy the insured Plaintiff Villa Highlands. Thus, Plaintiff Villa Highlands reserves the right to amend this Complaint pursuant to Idaho Code Section 6-1604 to allege a claim for punitive damages against Defendant Western Community.

III.

As a result of Defendant Western Community's failure to pay Plaintiff Villa Highlands its damages and as a result of its acts and omissions as herein set forth, it has been necessary for Plaintiff Villa Highlands to institute this litigation. Plaintiff Villa Highlands is therefore entitled to an award of reasonable costs and attorneys' fees in the amount of \$15,000.00 if this matter is uncontested by Defendants and to an award of reasonable costs and attorneys' fees if this matter is contested by Defendants Western Community pursuant to Idaho Code Sections 12-120, 12-121, 41-1839, and other provisions of Idaho law.

COUNT FIVE

NEGLIGENCE

Plaintiff Villa Highlands realleges the allegations set forth in Count One, Count Two, Count Three and Count Four of this Complaint and further alleges the following as a claim and cause of action against Defendant Western Community and Does I - V:

I.

Defendant Western Community owed a duty to Plaintiff Villa Highlands by virtue of the terms of the parties' foregoing Policy, the fiduciary relationship arising therefrom and from the trust placed in Defendant Western Community by Plaintiff Villa Highlands. Defendant Western Community was under an obligation to act in good faith and in a reasonable manner in determining the amount of insurance protection for Plaintiff Villa Highlands, preparing and issuing the Policy for the protection of Plaintiff Villa Highlands, and in promptly investigating and paying Plaintiff Villa Highlands' claim upon the catastrophic fire damage to Plaintiff's Villa Highlands Building.

II.

Defendant Western Community breached that duty of due care as previously described by failing to properly advise Plaintiff Villa Highlands as to the insurance protection being purchased by Plaintiff Villa Highlands, in failing to properly investigate and pay Plaintiff Villa Highlands' claim in accordance with the terms of the Policy, in contending that the Villa Highlands Building

was underinsured, and in failing to insure that the Villa Highlands Building was not fully insured as desired by Plaintiff Villa Highlands and as promised by Defendant.

III.

By virtue of the Defendant Western Community's conduct previously described in which Defendant Western Community negligently failed to discharge its duty owed to Plaintiff Villa Highlands, and as a direct and proximate result thereof, Plaintiff Villa Highlands has suffered monetary damages and will continue to suffer monetary damages in the future in an amount in excess of \$10,000.00 as may be proven at trial, together with accrued prejudgment interest as allowed by law.

IV.

As a result of Defendant Western Community's failure to pay Plaintiff Villa Highlands its damages and as a result of its acts and omissions as herein set forth, it has been necessary for Plaintiff Villa Highlands to institute this litigation. Plaintiff Villa Highlands is therefore entitled to an award of reasonable costs and attorneys' fees in the amount of \$15,000.00 if this matter is uncontested by Defendants and to an award of reasonable costs and attorneys' fees if this matter is contested by Defendants Western Community pursuant to Idaho Code Sections 12-120, 12-121, 41-1839, and other provisions of Idaho law.

COUNT SIX

MISREPRESENTATION

Plaintiff Villa Highlands realleges the allegations set forth in Count One, Count Two, Count Three, Count Four and Count Five of this Complaint and further alleges the following as a claim and cause of action against Defendant Western Community and Does I - V:

I.

Prior to, during and subsequent to procuring the Policy, Defendant Western Community made numerous false and material representations to Plaintiff Villa Highlands regarding the coverage provided by the foregoing insurance Policy. Such representations included, but are not limited to: (a) the insurance Policy should only set forth the hard costs for the project and that it should not set forth the fair market value of the project or any soft or other costs relating thereto and that by setting forth such final costs, Plaintiff Villa Highlands would be fully insured and covered for any casualty loss sustained to the Villa Highlands Building up to \$5,645,000.00; (b) Plaintiff Villa Highlands would be fully insured and that any loss would be promptly adjusted in order that Plaintiff would not sustain any undue loss or construction delays arising from a casualty up to the face amount of insurance of \$5,645,000.00.

II.

At the time the above-mentioned false and material representations were made by Defendant

Western Community to Plaintiff Villa Highlands, Defendant Western Community had no reasonable grounds for believing said representations were true. Said representations were material and relied upon by Plaintiff Villa Highlands in that had said representations not been made or had Plaintiff Villa Highlands known of their falsity, Plaintiff Villa Highlands would not have procured the Policy from Defendant Western Community.

III.

As a direct and proximate result of the previously set forth false and material representations made by Defendant Western Community, Plaintiff Villa Highlands suffered and will continue to suffer monetary damages in an amount in excess of \$10,000.00 as may be proven at trial, together with accrued prejudgment interest on such damages as allowed by law.

IV.

Defendant Western Community have acted wilfully, fraudulently, intentionally, grossly negligent, in reckless disregard of Plaintiff Villa Highlands' rights, in bad faith in refusing to consider the nature and extent of Plaintiff Villa Highlands' loss in relationship to the Policy and in rejecting Plaintiff Villa Highlands' proof of loss. These acts were done knowingly, intentionally, and with the purpose of discouraging, avoiding, or reducing the payment due Plaintiff Villa Highlands under the terms of the Policy and were done with intent to harass, vex, injure and annoy the insured Plaintiff Villa Highlands. Thus, Plaintiff Villa Highlands reserves the right to amend this

Complaint pursuant to Idaho Code Section 6-1604 to allege a claim for punitive damages against Defendant Western Community.

V.

As a result of Defendant Western Community's failure to pay Plaintiff Villa Highlands its damages and as a result of its acts and omissions as herein set forth, it has been necessary for Plaintiff Villa Highlands to institute this litigation. Plaintiff Villa Highlands is therefore entitled to an award of reasonable costs and attorneys' fees in the amount of \$15,000.00 if this matter is uncontested by Defendants and to an award of reasonable costs and attorneys' fees if this matter is contested by Defendants Western Community pursuant to Idaho Code Sections 12-120, 12-121, 41-1839, and other provisions of Idaho law.

COUNT SEVEN

EQUITABLE ESTOPPEL

Plaintiff Villa Highlands realleges the allegations set forth in Count One, Count Two, Count Three, Count Four, Count Five, and Count Six of this Complaint and further alleges the following as a claim and cause of action against Defendant Western Community and Does I - V:

I.

Defendant Western Community made the representations, warranties, promises, and

inducements as previously set forth regarding the coverage provided to Plaintiff Villa Highlands under the Policy which were false and Defendant Western Community concealed material facts with regard to the coverage provided by the Policy with actual or constructive knowledge of the truth and Plaintiff Villa Highlands did not know or could not discover the truth and such false representations or concealments were made with the intent that they be relied upon by Plaintiff Villa Highlands and it did in fact rely and act upon such representations and concealments to its prejudice and damage, thereby entitling Plaintiff Villa Highlands to an award of damages in excess of \$10,000.00 and as may be proven at trial, plus accruing prejudgment interest thereon as may be allowed by law.

II.

Defendant Western Community have acted wilfully, fraudulently, intentionally, grossly negligent, in reckless disregard of Plaintiff Villa Highlands' rights, in bad faith in refusing to consider the nature and extent of Plaintiff Villa Highlands' loss in relationship to the Policy and in rejecting Plaintiff Villa Highlands' proof of loss. These acts were done knowingly, intentionally, and with the purpose of discouraging, avoiding, or reducing the payment due Plaintiff Villa Highlands under the terms of the Policy and were done with intent to harass, vex, injure and annoy the insured Plaintiff Villa Highlands. Thus, Plaintiff Villa Highlands reserves the right to amend this Complaint pursuant to Idaho Code Section 6-1604 to allege a claim for punitive damages against Defendant Western Community.

III.

As a result of Defendant Western Community's failure to pay Plaintiff Villa Highlands its damages and as a result of its acts and omissions as herein set forth, it has been necessary for Plaintiff Villa Highlands to institute this litigation. Plaintiff Villa Highlands is therefore entitled to an award of reasonable costs and attorneys' fees in the amount of \$15,000.00 if this matter is uncontested by Defendants and to an award of reasonable costs and attorneys' fees if this matter is contested by Defendants Western Community pursuant to Idaho Code Sections 12-120, 12-121, 41-1839, and other provisions of Idaho law.

COUNT EIGHT

PROMISSORY ESTOPPEL

Plaintiff Villa Highlands realleges the allegations set forth in Count One, Count Two, Count Three, Count Four, Count Five, Count Six, and Count Seven of this Complaint and further alleges the following as a claim and cause of action against Defendant Western Community and Does I - V:

I.

The acts and omissions of Defendant Western Community as previously set forth herein resulted in Plaintiff Villa Highlands detrimentally suffering damages in reliance thereon, which

detrimental reliance was substantial in an economic sense and which damage and reliance thereon was or should have been foreseeable to Defendant Western Community. Plaintiff Villa Highlands at all times acted reasonably in justifiable reliance on the inducements, promises, and representations of Defendant Western Community. As a result, Plaintiff Villa Highlands is entitled to the entry of judgment against Defendant Western Community in an amount in excess of \$10,000.00 as may be proven at trial plus accruing prejudgment interest thereon.

II.

Defendant Western Community have acted wilfully, fraudulently, intentionally, grossly negligent, in reckless disregard of Plaintiff Villa Highlands' rights, in bad faith in refusing to consider the nature and extent of Plaintiff Villa Highlands' loss in relationship to the Policy and in rejecting Plaintiff Villa Highlands' proof of loss. These acts were done knowingly, intentionally, and with the purpose of discouraging, avoiding, or reducing the payment due Plaintiff Villa Highlands under the terms of the Policy and were done with intent to harass, vex, injure and annoy the insured Plaintiff Villa Highlands. Thus, Plaintiff Villa Highlands reserves the right to amend this Complaint pursuant to Idaho Code Section 6-1604 to allege a claim for punitive damages against Defendant Western Community.

III.

As a result of Defendant Western Community's failure to pay Plaintiff Villa Highlands its

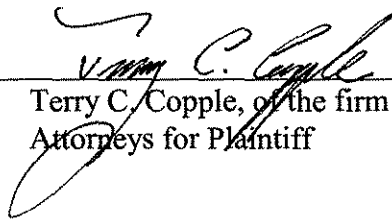
damages and as a result of its acts and omissions as herein set forth, it has been necessary for Plaintiff Villa Highlands to institute this litigation. Plaintiff Villa Highlands is therefore entitled to an award of reasonable costs and attorneys' fees in the amount of \$15,000.00 if this matter is uncontested by Defendants and to an award of reasonable costs and attorneys' fees if this matter is contested by Defendants Western Community pursuant to Idaho Code Sections 12-120, 12-121, 41-1839, and other provisions of Idaho law.

WHEREFORE, Plaintiff Villa Highlands, LLC prays that judgment be entered against Defendants, jointly and severally, for a declaration that Plaintiff is entitled to full coverage under the described Policy for the full amount of \$5,645,000.00 and that such sum should be promptly paid to Plaintiff, damages in excess of \$10,000.00 in an amount to be proven at trial, prejudgment interest as provided by law, \$15,000.00 attorneys' fees and costs if this matter is uncontested by Defendants or reasonable attorneys' fees and costs if this matter is contested by Defendants, and for such other and further relief as the Court may deem just and proper.

PLAINTIFF VILLA HIGHLANDS, LLC, DEMANDS A JURY TRIAL ON ALL ISSUES OF FACT IN THE ABOVE-ENTITLED LITIGATION AND WILL NOT STIPULATE TO A JURY OF LESS THAN TWELVE (12) PERSONS.

DATED this 12 day of November, 2006.

DAVISON, COPPLE, COPPLE & COX, LLP

By: 
Terry C. Copple, of the firm
Attorneys for Plaintiff

VERIFICATION

STATE OF IDAHO)
) ss.
County of Ada)

WILLIAM HODGES, being first duly sworn upon oath, deposes and states:

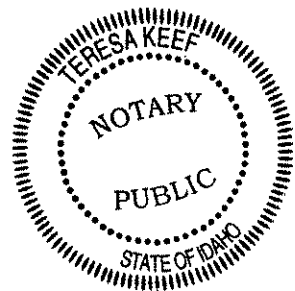
I am the Manager of the Plaintiff Villa Highlands, LLC, an Idaho limited liability company, I have read the foregoing Complaint, know the contents therein, and believe them to be true to the best of my knowledge and belief.

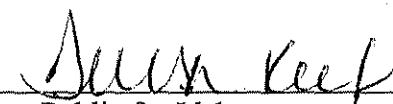
DATED this 13 day of November, 2006.



William Hodges

SUBSCRIBED AND SWORN TO BEFORE ME this 13 day of November, 2006.





Notary Public for Idaho
Residence: Cama, Idaho
Commission Expires:

MY COMMISSION EXPIRES
November 15, 2012
BONDED THRU NOTARY PUBLIC UNDERWRITERS



P INSURED

COMMERCIAL PACKAGE ADDITIONAL POLICY DECLARATION
COMMERCIAL PROPERTY COVERAGE PART

IS1441
10/13/05

EFFECTIVE 4/25/05
POLICY 8C023703 NAME VILLA HIGHLANDS LLC

LOC. NO.	BLD. NO.	DESCRIPTION/ OCCUPANCY	COINS %	DED.	LIMIT OF INSURANCE	ANNUAL PREMIUM	MORT. NO.
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02	01	BPP 702 W IDAHO 322 BOISE ID CLASS CODE: 0567	80	500	5,000	49.00	
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INFLATION = 00%
COVERED CAUSES OF LOSS- SPECIAL FORM INCLUDING THEFT
REPLACEMENT COST COVERAGE APPLIES.

DESCRIPTION-CONTENTS

02	01	BUILDERS RISK S=34 T=4N R=2E ADA		500	5,645,000	8129.00	5265
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LOAN NUMBER: 9645035001
COVERED CAUSES OF LOSS- SPECIAL FORM INCLUDING THEFT
ACTUAL CASH VALUE APPLIES.

NOTE: THIS ITEM ADDED 9/10/05

02	01	BUILDERS RISK S=34 T=4N R=2E ADA		500	5,645,000	8129.00	3173
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LOAN NUMBER: 9645035001
COVERED CAUSES OF LOSS- SPECIAL FORM INCLUDING THEFT
ACTUAL CASH VALUE APPLIES.

NOTE: THIS ITEM ADDED 6/10/05

NOTE: THIS ITEM DELETED 9/10/05

MORTGAGEE

5265
FIRST HORIZON
CONSTRUCTION LENDING
4949 SW MEADOWS RD STE 200
LAKE OSWEGO OR 97035-3162

3173
FIRST HORIZON HOME LOAN CORP
ITS SUCCESSORS AND/OR ASSIGNS
INSURANCE CENTER
PO BOX 7481
SPRINGFIELD OH 45501-7481

TOTAL ANNUAL PREMIUM 8,178.00

FO-10.441 (10/02)

00042
EXHIBIT A

Handwritten signature and date: 5/2/04

COMMERCIAL PROPERTY
CP 00 20 04 02

BUILDERS RISK COVERAGE FORM

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

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

Other words and phrases that appear in quotation marks have special meaning. Refer to Section G. – Definitions.

A. Coverage

We will pay for direct physical loss of or damage to Covered Property at the premises described in the Declarations caused by or resulting from any Covered Cause of Loss.

1. Covered Property

Covered Property, as used in this Coverage Part, means the type of property described in this Section, A.1., and limited in A.2., Property Not Covered, if a Limit of Insurance is shown in the Declarations for that type of property.

Building Under Construction, meaning the building or structure described in the Declarations while in the course of construction, including:

- a. Foundations;
- b. The following property:
 - (1) Fixtures and machinery;
 - (2) Equipment used to service the building; and
 - (3) Your building materials and supplies used for construction;
 provided such property is intended to be permanently located in or on the building or structure described in the Declarations or within 100 feet of its premises;
- c. If not covered by other insurance, temporary structures built or assembled on site, including cribbing, scaffolding and construction forms.

2. Property Not Covered

Covered Property does not include:

- a. Land (including land on which the property is located) or water;
- b. The following property when outside of buildings:
 - (1) Lawns, trees, shrubs or plants;

- (2) Radio or television antennas (including satellite dishes) and their lead-in wiring, masts or towers; or

- (3) Signs (other than signs attached to buildings).

3. Covered Causes Of Loss

See applicable Causes of Loss Form as shown in the Declarations.

4. Additional Coverages

a. Debris Removal

- (1) Subject to Paragraphs (3) and (4), we will pay your expense to remove debris of Covered Property caused by or resulting from a Covered Cause of Loss that occurs during the policy period. The expenses will be paid only if they are reported to us in writing within 180 days of the date of direct physical loss or damage.
- (2) Debris Removal does not apply to costs to:
 - (a) Extract "pollutants" from land or water; or
 - (b) Remove, restore or replace polluted land or water.
- (3) Subject to the exceptions in Paragraph (4), the following provisions apply:
 - (a) The most we will pay for the total of direct physical loss or damage plus debris removal expense is the Limit of Insurance applicable to the Covered Property that has sustained loss or damage.
 - (b) Subject to (a) above, the amount we will pay for debris removal expense is limited to 25% of the sum of the deductible plus the amount that we pay for direct physical loss or damage to the Covered Property that has sustained loss or damage.

(4) We will pay up to an additional \$10,000 for debris removal expense, for each location, in any one occurrence of physical loss or damage to Covered Property, if one or both of the following circumstances apply:

(a) The total of the actual debris removal expense plus the amount we pay for direct physical loss or damage exceeds the Limit of Insurance on the Covered Property that has sustained loss or damage.

(b) The actual debris removal expense exceeds 25% of the sum of the deductible plus the amount that we pay for direct physical loss or damage to the Covered Property that has sustained loss or damage.

Therefore, if (4)(a) and/or (4)(b) apply, our total payment for direct physical loss or damage and debris removal expense may reach but will never exceed the Limit of Insurance on the Covered Property that has sustained loss or damage, plus \$10,000.

(5) Examples

The following examples assume that there is no coinsurance penalty.

Example #1

Limit of Insurance	\$ 90,000
Amount of Deductible	\$ 500
Amount of Loss	\$ 50,000
Amount of Loss Payable	\$ 49,500
	(\$50,000 - \$500)
Debris Removal Expense	\$ 10,000
Debris Removal Expense Payable	\$ 10,000
	(\$10,000 is 20% of \$50,000)

The debris removal expense is less than 25% of the sum of the loss payable plus the deductible. The sum of the loss payable and the debris removal expense (\$49,500 + \$10,000 = \$59,500) is less than the Limit of Insurance. Therefore, the full amount of debris removal expense is payable in accordance with the terms of Paragraph (3).

Example #2

Limit of Insurance	\$ 90,000
Amount of Deductible	\$ 500
Amount of Loss	\$ 80,000
Amount of Loss Payable	\$ 79,500
	(\$80,000 - \$500)
Debris Removal Expense	\$ 30,000
Debris Removal Expense Payable	
	Basic Amount \$ 10,500
	Additional Amount \$ 10,000

The basic amount payable for debris removal expense under the terms of Paragraph (3) is calculated as follows: \$80,000 (\$79,500 + \$500) x .25 = \$20,000; capped at \$10,500. The cap applies because the sum of the loss payable (\$79,500) and the basic amount payable for debris removal expense (\$10,500) cannot exceed the Limit of Insurance (\$90,000).

The additional amount payable for debris removal expense is provided in accordance with the terms of Paragraph (4), because the debris removal expense (\$30,000) exceeds 25% of the loss payable plus the deductible (\$30,000 is 37.5% of \$80,000), and because the sum of the loss payable and debris removal expense (\$79,500 + \$30,000 = \$109,500) would exceed the Limit of Insurance (\$90,000). The additional amount of covered debris removal expense is \$10,000, the maximum payable under Paragraph (4). Thus the total payable for debris removal expense in this example is \$20,500; \$9,500 of the debris removal expense is not covered.

b. Preservation Of Property

If it is necessary to move Covered Property from the described premises to preserve it from loss or damage by a Covered Cause of Loss, we will pay for any direct physical loss or damage to that property:

- (1) While it is being moved or while temporarily stored at another location; and
- (2) Only if the loss or damage occurs within 30 days after the property is first moved.

c. Fire Department Service Charge

When the fire department is called to save or protect Covered Property from a Covered Cause of Loss, we will pay up to \$1,000 for your liability for fire department service charges:

- (1) Assumed by contract or agreement prior to loss; or
- (2) Required by local ordinance.

No Deductible applies to this Additional Coverage.

d. Pollutant Clean Up And Removal

We will pay your expense to extract "pollutants" from land or water at the described premises if the discharge, dispersal, seepage, migration, release or escape of the "pollutants" is caused by or results from a Covered Cause of Loss that occurs during the policy period. The expenses will be paid only if they are reported to us in writing within 180 days of the date on which the Covered Cause of Loss occurs.

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

The most we will pay under this Additional Coverage for each described premises is \$10,000 for the sum of all covered expenses arising out of Covered Causes of Loss occurring during each separate 12 month period of this policy.

5. Coverage Extensions

a. Building Materials And Supplies Of Others

- (1) You may extend the insurance provided by this Coverage Form to apply to building materials and supplies that are:
 - (a) Owned by others;
 - (b) In your care, custody or control;
 - (c) Located in or on the building described in the Declarations, or within 100 feet of its premises; and
 - (d) Intended to become a permanent part of the building.

- (2) The most we will pay for loss or damage under this Extension is \$5,000 at each described premises, unless a higher Limit of Insurance is specified in the Declarations. Our payment for loss or damage to property of others will only be for the account of the owner of the property.

b. Sod, Trees, Shrubs And Plants

You may extend the insurance provided by this Coverage Form to apply to loss or damage to sod, trees, shrubs and plants outside of buildings on the described premises, if the loss or damage is caused by or results from any of the following causes of loss:

- (1) Fire;
- (2) Lightning;
- (3) Explosion;
- (4) Riot or Civil Commotion; or
- (5) Aircraft.

The most we will pay for loss or damage under this Extension is \$1,000, but not more than \$250 for any one tree, shrub or plant. These limits apply to any one occurrence, regardless of the types or number of items lost or damaged in that occurrence.

B. Exclusions And Limitations

See applicable Causes of Loss Form as shown in the Declarations.

C. Limits Of Insurance

The most we will pay for loss or damage in any one occurrence is the applicable Limit of Insurance shown in the Declarations.

The most we will pay for loss or damage to outdoor signs attached to buildings is \$1,000 per sign in any one occurrence.

The limits applicable to the Coverage Extensions and the Fire Department Service Charge and Pollutant Clean Up and Removal Additional Coverages are in addition to the Limits of Insurance.

Payments under the Preservation of Property Additional Coverage will not increase the applicable Limit of Insurance.

D. Deductible

In any one occurrence of loss or damage (hereinafter referred to as loss), we will first reduce the amount of loss if required by the Additional Condition – Need For Adequate Insurance. If the adjusted amount of loss is less than or equal to the Deductible, we will not pay for that loss. If the adjusted amount of loss exceeds the Deductible, we will then subtract the Deductible from the adjusted amount of loss, and will pay the resulting amount or the Limit of Insurance, whichever is less.

When the occurrence involves loss to more than one item of Covered Property and separate Limits of Insurance apply, the losses will not be combined in determining application of the Deductible. But the Deductible will be applied only once per occurrence.

Example No. 1:

(This example assumes there is no penalty for underinsurance.)

Deductible:	\$ 1,000
Limit of Insurance – Bldg. 1:	\$ 60,000
Limit of Insurance – Bldg. 2:	\$ 80,000
Loss to Bldg. 1:	\$ 60,100
Loss to Bldg. 2:	\$ 90,000

The amount of loss to Bldg. 1 (\$60,100) is less than the sum (\$61,000) of the Limit of Insurance applicable to Bldg. 1 plus the Deductible.

The Deductible will be subtracted from the amount of loss in calculating the loss payable for Bldg. 1:

\$ 60,100
– 1,000
\$ 59,100 Loss Payable – Bldg. 1

The Deductible applies once per occurrence and therefore is not subtracted in determining the amount of loss payable for Bldg. 2. Loss payable for Bldg. 2 is the Limit of Insurance of \$80,000.

Total amount of loss payable: \$59,100 + 80,000 = \$139,100.

Example No. 2:

(This example, too, assumes there is no penalty for underinsurance.)

The Deductible and Limits of Insurance are the same as those in Example No. 1.

Loss to Bldg. 1:	\$ 70,000
(exceeds Limit of Insurance plus Deductible)	
Loss to Bldg. 2:	\$ 90,000
(exceeds Limit of Insurance plus Deductible)	
Loss Payable – Bldg. 1:	\$60,000
(Limit of Insurance)	
Loss Payable – Bldg. 2:	\$80,000
(Limit of Insurance)	
Total amount of loss payable:	\$140,000

E. Loss Conditions

The following conditions apply in addition to the Common Policy Conditions and the Commercial Property Conditions.

1. Abandonment

There can be no abandonment of any property to us.

2. Appraisal

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

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

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

3. Duties In The Event Of Loss Or Damage

- You must see that the following are done in the event of loss or damage to Covered Property:
 - Notify the police if a law may have been broken.

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- (2) Give us prompt notice of the loss or damage. Include a description of the property involved.
- (3) As soon as possible, give us a description of how, when and where the loss or damage occurred.
- (4) Take all reasonable steps to protect the Covered Property from further damage, and keep a record of your expenses necessary to protect the Covered Property, for consideration in the settlement of the claim. This will not increase the Limit of Insurance. However, we will not pay for any subsequent loss or damage resulting from a cause of loss that is not a Covered Cause of Loss. Also, if feasible, set the damaged property aside and in the best possible order for examination.
- (5) At our request, give us complete inventories of the damaged and undamaged property. Include quantities, costs, values and amount of loss claimed.
- (6) As often as may be reasonably required, permit us to inspect the property proving the loss or damage and examine your books and records.

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

- (7) Send us a signed, sworn proof of loss containing the information we request to investigate the claim. You must do this within 60 days after our request. We will supply you with the necessary forms.
- (8) Cooperate with us in the investigation or settlement of the claim.

- b. We may examine any insured under oath, while not in the presence of any other insured and at such times as may be reasonably required, about any matter relating to this insurance or the claim, including an insured's books and records. In the event of an examination, an insured's answers must be signed.

4. Loss Payment

- a. In the event of loss or damage covered by this Coverage Form, at our option, we will either:
 - (1) Pay the value of lost or damaged property;

- (2) Pay the cost of repairing or replacing the lost or damaged property, subject to b. below;
- (3) Take all or any part of the property at an agreed or appraised value; or
- (4) Repair, rebuild or replace the property with other property of like kind and quality, subject to b. below.

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

- b. The cost to repair, rebuild or replace does not include the increased cost attributable to enforcement of any ordinance or law regulating the construction, use or repair of any property.
- c. We will give notice of our intentions within 30 days after we receive the sworn proof of loss.
- d. We will not pay you more than your financial interest in the Covered Property.
- e. We may adjust losses with the owners of lost or damaged property if other than you. If we pay the owners, such payments will satisfy your claims against us for the owners' property. We will not pay the owners more than their financial interest in the Covered Property.
- f. We may elect to defend you against suits arising from claims of owners of property. We will do this at our expense.
- g. We will pay for covered loss or damage within 30 days after we receive the sworn proof of loss, if you have complied with all of the terms of this Coverage Part and:
 - (1) We have reached agreement with you on the amount of loss; or
 - (2) An appraisal award has been made.

5. Recovered Property

If either you or we recover any property after loss settlement, that party must give the other prompt notice. At your option, the property will be returned to you. You must then return to us the amount we paid to you for the property. We will pay recovery expenses and the expenses to repair the recovered property, subject to the Limit of Insurance.

6. Valuation

We will determine the value of Covered Property at actual cash value as of the time of loss or damage.

F. Additional Conditions

The following conditions apply in addition to the Common Policy Conditions and the Commercial Property Conditions.

1. Mortgageholders

- a. The term mortgageholder includes trustee.
- b. We will pay for covered loss of or damage to buildings or structures to each mortgageholder shown in the Declarations in their order of precedence, as interests may appear.
- c. The mortgageholder has the right to receive loss payment even if the mortgageholder has started foreclosure or similar action on the building or structure.
- d. If we deny your claim because of your acts or because you have failed to comply with the terms of this Coverage Part, the mortgageholder will still have the right to receive loss payment if the mortgageholder:
 - (1) Pays any premium due under this Coverage Part at our request if you have failed to do so;
 - (2) Submits a signed, sworn proof of loss within 60 days after receiving notice from us of your failure to do so; and
 - (3) Has notified us of any change in ownership, occupancy or substantial change in risk known to the mortgageholder.

All of the terms of this Coverage Part will then apply directly to the mortgageholder.

- e. If we pay the mortgageholder for any loss or damage and deny payment to you because of your acts or because you have failed to comply with the terms of this Coverage Part:
 - (1) The mortgageholder's rights under the mortgage will be transferred to us to the extent of the amount we pay; and
 - (2) The mortgageholder's right to recover the full amount of the mortgageholder's claim will not be impaired.

At our option, we may pay to the mortgageholder the whole principal on the mortgage plus any accrued interest. In this event, your mortgage and note will be transferred to us and you will pay your remaining mortgage debt to us.

f. If we cancel this policy, we will give written notice to the mortgageholder at least:

- (1) 10 days before the effective date of cancellation if we cancel for your non-payment of premium; or
- (2) 30 days before the effective date of cancellation if we cancel for any other reason.

g. If we elect not to renew this policy, we will give written notice to the mortgageholder at least 10 days before the expiration date of this policy.

2. Need For Adequate Insurance

We will not pay a greater share of any loss than the proportion that the Limit of Insurance bears to the value on the date of completion of the building described in the Declarations.

Example No. 1 (Underinsurance):

When:	The value of the building on the date of completion is	\$ 200,000
	The Limit of Insurance for it is	\$ 100,000
	The Deductible is	\$ 500
	The amount of loss is	\$ 80,000

Step 1: $\$100,000 \div \$200,000 = .50$

Step 2: $\$80,000 \times .50 = \$40,000$

Step 3: $\$40,000 - \$500 = \$39,500$

We will pay no more than \$39,500. The remaining \$40,500 is not covered.

Example No. 2 (Adequate Insurance):

When:	The value of the building on the date of completion is	\$ 200,000
	The Limit of Insurance for it is	\$ 200,000
	The Deductible is	\$ 1,000
	The amount of loss is	\$ 80,000

The Limit of Insurance in this Example is adequate and therefore no penalty applies. We will pay no more than \$79,000 (\$80,000 amount of loss minus the deductible of \$1,000).

3. Restriction Of Additional Coverage – Collapse

If the Causes Of Loss – Broad Form is applicable to this coverage form, Paragraph C.2.f. of the Additional Coverage – Collapse does not apply to this coverage form.

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If the Causes Of Loss – Special Form is applicable to this coverage form, Paragraph D.2.f. of the Additional Coverage – Collapse does not apply to this coverage form.

4. When Coverage Ceases

The insurance provided by this Coverage Form will end when one of the following first occurs:

- a. This policy expires or is cancelled;
- b. The property is accepted by the purchaser;
- c. Your interest in the property ceases;
- d. You abandon the construction with no intention to complete it;

e. Unless we specify otherwise in writing:

- (1) 90 days after construction is complete; or
- (2) 60 days after any building described in the Declarations is:
 - (a) Occupied in whole or in part; or
 - (b) Put to its intended use.

G. Definitions

"Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

Handwritten signature and date: 5/25/2014

CAUSES OF LOSS – SPECIAL FORM

Words and phrases that appear in quotation marks have special meaning. Refer to Section F. – Definitions.

A. Covered Causes Of Loss

When Special is shown in the Declarations, Covered Causes of Loss means Risks Of Direct Physical Loss unless the loss is:

1. Excluded in Section B., Exclusions; or
2. Limited in Section C., Limitations; that follow.

B. Exclusions

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

a. Ordinance Or Law

The enforcement of any ordinance or law:

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

This exclusion, Ordinance Or Law, applies whether the loss results from:

- (1) An ordinance or law that is enforced even if the property has not been damaged; or
- (2) The increased costs incurred to comply with an ordinance or law in the course of construction, repair, renovation, remodeling or demolition of property, or removal of its debris, following a physical loss to that property.

b. Earth Movement

- (1) Earthquake, including any earth sinking, rising or shifting related to such event;
- (2) Landslide, including any earth sinking, rising or shifting related to such event;
- (3) Mine subsidence, meaning subsidence of a man-made mine, whether or not mining activity has ceased;

- (4) Earth sinking (other than sinkhole collapse), rising or shifting including soil conditions which cause settling, cracking or other disarrangement of foundations or other parts of realty. Soil conditions include contraction, expansion, freezing, thawing, erosion, improperly compacted soil and the action of water under the ground surface.

But if Earth Movement, as described in b.(1) through (4) above, results in fire or explosion, we will pay for the loss or damage caused by that fire or explosion.

- (5) Volcanic eruption, explosion or effusion. But if volcanic eruption, explosion or effusion results in fire, building glass breakage or Volcanic Action, we will pay for the loss or damage caused by that fire, building glass breakage or Volcanic Action.

Volcanic action means direct loss or damage resulting from the eruption of a volcano when the loss or damage is caused by:

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

All volcanic eruptions that occur within any 168 hour period will constitute a single occurrence.

Volcanic action does not include the cost to remove ash, dust or particulate matter that does not cause direct physical loss or damage to the described property.

c. Governmental Action

Seizure or destruction of property by order of governmental authority.

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

d. Nuclear Hazard

Nuclear reaction or radiation, or radioactive contamination, however caused.

But if nuclear reaction or radiation, or radioactive contamination, results in fire, we will pay for the loss or damage caused by that fire.

e. Utility Services

The failure of power or other utility service supplied to the described premises, however caused, if the failure occurs away from the described premises. Failure includes lack of sufficient capacity and reduction in supply.

But if the failure of power or other utility service results in a Covered Cause of Loss, we will pay for the loss or damage caused by that Covered Cause of Loss.

This exclusion does not apply to the Business Income coverage or to Extra Expense coverage. Instead, the Special Exclusion in Paragraph B.4.a.(1) applies to these coverages.

f. War And Military Action

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

g. Water

- (1) Flood, surface water, waves, tides, tidal waves, overflow of any body of water, or their spray, all whether driven by wind or not;
- (2) Mudslide or mudflow;
- (3) Water that backs up or overflows from a sewer, drain or sump; or
- (4) Water under the ground surface pressing on, or flowing or seeping through:
 - (a) Foundations, walls, floors or paved surfaces;
 - (b) Basements, whether paved or not; or
 - (c) Doors, windows or other openings.

But if Water, as described in g.(1) through g.(4) above, results in fire, explosion or sprinkler leakage, we will pay for the loss or damage caused by that fire, explosion or sprinkler leakage.

h. "Fungus", Wet Rot, Dry Rot And Bacteria

Presence, growth, proliferation, spread or any activity of "fungus", wet or dry rot or bacteria.

But if "fungus", wet or dry rot or bacteria results in a "specified cause of loss", we will pay for the loss or damage caused by that "specified cause of loss".

This exclusion does not apply:

1. When "fungus", wet or dry rot or bacteria results from fire or lightning; or
2. To the extent that coverage is provided in the Additional Coverage – Limited Coverage For "Fungus", Wet Rot, Dry Rot And Bacteria with respect to loss or damage by a cause of loss other than fire or lightning.

Exclusions B.1.a. through B.1.h. apply whether or not the loss event results in widespread damage or affects a substantial area.

2. We will not pay for loss or damage caused by or resulting from any of the following:
 - a. Artificially generated electrical current, including electric arcing, that disturbs electrical devices, appliances or wires.

But if artificially generated electrical current results in fire, we will pay for the loss or damage caused by that fire.
 - b. Delay, loss of use or loss of market.
 - c. Smoke, vapor or gas from agricultural smudging or industrial operations.
 - d.(1) Wear and tear;
 - (2) Rust or other corrosion, decay, deterioration, hidden or latent defect or any quality in property that causes it to damage or destroy itself;
 - (3) Smog;
 - (4) Settling, cracking, shrinking or expansion;
 - (5) Nesting or infestation, or discharge or release of waste products or secretions, by insects, birds, rodents or other animals.

(6) Mechanical breakdown, including rupture or bursting caused by centrifugal force. But if mechanical breakdown results in elevator collision, we will pay for the loss or damage caused by that elevator collision.

(7) The following causes of loss to personal property:

(a) Dampness or dryness of atmosphere;

(b) Changes in or extremes of temperature; or

(c) Marring or scratching.

But if an excluded cause of loss that is listed in 2.d.(1) through (7) results in a "specified cause of loss" or building glass breakage, we will pay for the loss or damage caused by that "specified cause of loss" or building glass breakage.

e. Explosion of steam boilers, steam pipes, steam engines or steam turbines owned or leased by you, or operated under your control. But if explosion of steam boilers, steam pipes, steam engines or steam turbines results in fire or combustion explosion, we will pay for the loss or damage caused by that fire or combustion explosion. We will also pay for loss or damage caused by or resulting from the explosion of gases or fuel within the furnace of any fired vessel or within the flues or passages through which the gases of combustion pass.

f. Continuous or repeated seepage or leakage of water, or the presence or condensation of humidity, moisture or vapor, that occurs over a period of 14 days or more.

g. Water, other liquids, powder or molten material that leaks or flows from plumbing, heating, air conditioning or other equipment (except fire protective systems) caused by or resulting from freezing, unless:

(1) You do your best to maintain heat in the building or structure; or

(2) You drain the equipment and shut off the supply if the heat is not maintained.

h. Dishonest or criminal act by you, any of your partners, members, officers, managers, employees (including leased employees), directors, trustees, authorized representatives or anyone to whom you entrust the property for any purpose:

(1) Acting alone or in collusion with others; or

(2) Whether or not occurring during the hours of employment.

This exclusion does not apply to acts of destruction by your employees (including leased employees); but theft by employees (including leased employees) is not covered.

i. Voluntary parting with any property by you or anyone else to whom you have entrusted the property if induced to do so by any fraudulent scheme, trick, device or false pretense.

j. Rain, snow, ice or sleet to personal property in the open.

k. Collapse, except as provided below in the Additional Coverage for Collapse. But if collapse results in a Covered Cause of Loss at the described premises, we will pay for the loss or damage caused by that Covered Cause of Loss.

l. Discharge, dispersal, seepage, migration, release or escape of "pollutants" unless the discharge, dispersal, seepage, migration, release or escape is itself caused by any of the "specified causes of loss". But if the discharge, dispersal, seepage, migration, release or escape of "pollutants" results in a "specified cause of loss", we will pay for the loss or damage caused by that "specified cause of loss".

This exclusion, l., does not apply to damage to glass caused by chemicals applied to the glass.

m. Neglect of an insured to use all reasonable means to save and preserve property from further damage at and after the time of loss.

3. We will not pay for loss or damage caused by or resulting from any of the following, 3.a. through 3.c. But if an excluded cause of loss that is listed in 3.a. through 3.c. results in a Covered Cause of Loss, we will pay for the loss or damage caused by that Covered Cause of Loss.

a. Weather conditions. But this exclusion only applies if weather conditions contribute in any way with a cause or event excluded in Paragraph 1. above to produce the loss or damage.

b. Acts or decisions, including the failure to act or decide, of any person, group, organization or governmental body.

c. Faulty, inadequate or defective:

- (1) Planning, zoning, development, surveying, siting;
- (2) Design, specifications, workmanship, repair, construction, renovation, remodeling, grading, compaction;
- (3) Materials used in repair, construction, renovation or remodeling; or
- (4) Maintenance;
of part or all of any property on or off the described premises.

4. Special Exclusions

The following provisions apply only to the specified Coverage Forms.

a. **Business Income (And Extra Expense) Coverage Form, Business Income (Without Extra Expense) Coverage Form, Or Extra Expense Coverage Form**

We will not pay for:

- (1) Any loss caused directly or indirectly by the failure of power or other utility service supplied to the described premises, however caused, if the failure occurs outside of a covered building. Failure includes lack of sufficient capacity and reduction in supply.

But if the failure of power or other utility service results in a Covered Cause of Loss, we will pay for the loss resulting from that Covered Cause of Loss.

- (2) Any loss caused by or resulting from:
 - (a) Damage or destruction of "finished stock"; or
 - (b) The time required to reproduce "finished stock".

This exclusion does not apply to Extra Expense.

- (3) Any loss caused by or resulting from direct physical loss or damage to radio or television antennas (including satellite dishes) and their lead-in wiring, masts or towers.
- (4) Any increase of loss caused by or resulting from:
 - (a) Delay in rebuilding, repairing or replacing the property or resuming "operations", due to interference at the location of the rebuilding, repair or replacement by strikers or other persons; or

- (b) Suspension, lapse or cancellation of any license, lease or contract. But if the suspension, lapse or cancellation is directly caused by the "suspension" of "operations", we will cover such loss that affects your Business Income during the "period of restoration" and any extension of the "period of restoration" in accordance with the terms of the Extended Business Income Additional Coverage and the Extended Period Of Indemnity Optional Coverage or any variation of these.

- (5) Any Extra Expense caused by or resulting from suspension, lapse or cancellation of any license, lease or contract beyond the "period of restoration".

- (6) Any other consequential loss.

b. **Leasehold Interest Coverage Form**

- (1) Paragraph B.1.a. Ordinance Or Law, does not apply to insurance under this Coverage Form.
- (2) We will not pay for any loss caused by:
 - (a) Your cancelling the lease;
 - (b) The suspension, lapse or cancellation of any license; or
 - (c) Any other consequential loss.

c. **Legal Liability Coverage Form**

- (1) The following exclusions do not apply to insurance under this Coverage Form:
 - (a) Paragraph B.1.a., Ordinance Or Law;
 - (b) Paragraph B.1.c., Governmental Action;
 - (c) Paragraph B.1.d., Nuclear Hazard;
 - (d) Paragraph B.1.e., Utility Services; and
 - (e) Paragraph B.1.f., War And Military Action.

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(2) The following additional exclusions apply to insurance under this Coverage Form:

(a) Contractual Liability

We will not defend any claim or "suit", or pay damages that you are legally liable to pay, solely by reason of your assumption of liability in a contract or agreement. But this exclusion does not apply to a written lease agreement in which you have assumed liability for building damage resulting from an actual or attempted burglary or robbery, provided that:

- (i) Your assumption of liability was executed prior to the accident; and
- (ii) The building is Covered Property under this Coverage Form.

(b) Nuclear Hazard

We will not defend any claim or "suit", or pay any damages, loss, expense or obligation, resulting from nuclear reaction or radiation, or radioactive contamination, however caused.

C. Limitations

The following limitations apply to all policy forms and endorsements, unless otherwise stated.

1. We will not pay for loss of or damage to property, as described and limited in this section. In addition, we will not pay for any loss that is a consequence of loss or damage as described and limited in this section.

- a. Steam boilers, steam pipes, steam engines or steam turbines caused by or resulting from any condition or event inside such equipment. But we will pay for loss of or damage to such equipment caused by or resulting from an explosion of gases or fuel within the furnace of any fired vessel or within the flues or passages through which the gases of combustion pass.
- b. Hot water boilers or other water heating equipment caused by or resulting from any condition or event inside such boilers or equipment, other than an explosion.

c. The interior of any building or structure, or to personal property in the building or structure, caused by or resulting from rain, snow, sleet, ice, sand or dust, whether driven by wind or not, unless:

- (1) The building or structure first sustains damage by a Covered Cause of Loss to its roof or walls through which the rain, snow, sleet, ice, sand or dust enters; or
- (2) The loss or damage is caused by or results from thawing of snow, sleet or ice on the building or structure.

d. Building materials and supplies not attached as part of the building or structure, caused by or resulting from theft.

However, this limitation does not apply to:

- (1) Building materials and supplies held for sale by you, unless they are insured under the Builders Risk Coverage Form; or
- (2) Business Income coverage or Extra Expense coverage.

e. Property that is missing, where the only evidence of the loss or damage is a shortage disclosed on taking inventory, or other instances where there is no physical evidence to show what happened to the property.

f. Property that has been transferred to a person or to a place outside the described premises on the basis of unauthorized instructions.

2. We will not pay for loss of or damage to the following types of property unless caused by the "specified causes of loss" or building glass breakage:

- a. Animals, and then only if they are killed or their destruction is made necessary.
- b. Fragile articles such as statuary, marbles, chinaware and porcelains, if broken. This restriction does not apply to:
 - (1) Glass; or
 - (2) Containers of property held for sale.
- c. Builders' machinery, tools and equipment owned by you or entrusted to you, provided such property is Covered Property.

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However, this limitation does not apply:

- (1) If the property is located on or within 100 feet of the described premises, unless the premises is insured under the Builders Risk Coverage Form; or
 - (2) To Business Income coverage or to Extra Expense coverage.
3. The special limit shown for each category, a. through d., is the total limit for loss of or damage to all property in that category. The special limit applies to any one occurrence of theft, regardless of the types or number of articles that are lost or damaged in that occurrence. The special limits are:
- a. \$2,500 for furs, fur garments and garments trimmed with fur.
 - b. \$2,500 for jewelry, watches, watch movements, jewels, pearls, precious and semi-precious stones, bullion, gold, silver, platinum and other precious alloys or metals. This limit does not apply to jewelry and watches worth \$100 or less per item.
 - c. \$2,500 for patterns, dies, molds and forms.
 - d. \$250 for stamps, tickets, including lottery tickets held for sale, and letters of credit.

These special limits are part of, not in addition to, the Limit of Insurance applicable to the Covered Property.

This limitation, C.3., does not apply to Business Income coverage or to Extra Expense coverage.

4. We will not pay the cost to repair any defect to a system or appliance from which water, other liquid, powder or molten material escapes. But we will pay the cost to repair or replace damaged parts of fire extinguishing equipment if the damage:
- a. Results in discharge of any substance from an automatic fire protection system; or
 - b. Is directly caused by freezing.

However, this limitation does not apply to Business Income coverage or to Extra Expense coverage.

D. Additional Coverage – Collapse

The term Covered Cause of Loss includes the Additional Coverage – Collapse as described and limited in D.1. through D.5. below.

1. With respect to buildings:
 - a. Collapse means an abrupt falling down or caving in of a building or any part of a building with the result that the building or part of the building cannot be occupied for its intended purpose;
 - b. A building or any part of a building that is in danger of falling down or caving in is not considered to be in a state of collapse;
 - c. A part of a building that is standing is not considered to be in a state of collapse even if it has separated from another part of the building;
 - d. A building that is standing or any part of a building that is standing is not considered to be in a state of collapse even if it shows evidence of cracking, bulging, sagging, bending, leaning, settling, shrinkage or expansion.
2. We will pay for direct physical loss or damage to Covered Property, caused by collapse of a building or any part of a building that is insured under this Coverage Form or that contains Covered Property insured under this Coverage Form, if the collapse is caused by one or more of the following:
 - a. The "specified causes of loss" or breakage of building glass, all only as insured against in this Coverage Part;
 - b. Decay that is hidden from view, unless the presence of such decay is known to an insured prior to collapse;
 - c. Insect or vermin damage that is hidden from view, unless the presence of such damage is known to an insured prior to collapse;
 - d. Weight of people or personal property;
 - e. Weight of rain that collects on a roof;

f. Use of defective material or methods in construction, remodeling or renovation if the collapse occurs during the course of the construction, remodeling or renovation. However, if the collapse occurs after construction, remodeling or renovation is complete and is caused in part by a cause of loss listed in 2.a. through 2.e., we will pay for the loss or damage even if use of defective material or methods, in construction, remodeling or renovation, contributes to the collapse.

The criteria set forth in 1.a. through 1.d. do not limit the coverage otherwise provided under this Causes of Loss Form for the causes of loss listed in 2.a., 2.d. and 2.e.

3. With respect to the following property:

- a. Outdoor radio or television antennas (including satellite dishes) and their lead-in wiring, masts or towers;
- b. Awnings, gutters and downspouts;
- c. Yard fixtures;
- d. Outdoor swimming pools;
- e. Fences;
- f. Piers, wharves and docks;
- g. Beach or diving platforms or appurtenances;
- h. Retaining walls; and
- i. Walks, roadways and other paved surfaces;

if the collapse is caused by a cause of loss listed in 2.b. through 2.f., we will pay for loss or damage to that property only if:

- a. Such loss or damage is a direct result of the collapse of a building insured under this Coverage Form; and
- b. The property is Covered Property under this Coverage Form.

4. If personal property abruptly falls down or caves in and such collapse is not the result of collapse of a building, we will pay for loss or damage to Covered Property caused by such collapse of personal property only if:

- a. The collapse was caused by a Cause of Loss listed in 2.a. through 2.f. above;
- b. The personal property which collapses is inside a building; and
- c. The property which collapses is not of a kind listed in 3. above, regardless of whether that kind of property is considered to be personal property or real property.

The coverage stated in this Paragraph 4. does not apply to personal property if marring and/or scratching is the only damage to that personal property caused by the collapse.

Collapse of personal property does not mean cracking, bulging, sagging, bending, leaning, settling, shrinkage or expansion.

5. This Additional Coverage, Collapse, will not increase the Limits of Insurance provided in this Coverage Part.

E. Additional Coverage – Limited Coverage For "Fungus", Wet Rot, Dry Rot And Bacteria

1. The coverage described in E.2. and E.6. only applies when the "fungus", wet or dry rot or bacteria is the result of one or more of the following causes that occurs during the policy period and only if all reasonable means were used to save and preserve the property from further damage at the time of and after that occurrence.

- a. A "specified cause of loss" other than fire or lightning; or
- b. Flood, if the Flood Coverage Endorsement applies to the affected premises.

2. We will pay for loss or damage by "fungus", wet or dry rot or bacteria. As used in this Limited Coverage, the term loss or damage means:

- a. Direct physical loss or damage to Covered Property caused by "fungus", wet or dry rot or bacteria, including the cost of removal of the "fungus", wet or dry rot or bacteria;
- b. The cost to tear out and replace any part of the building or other property as needed to gain access to the "fungus", wet or dry rot or bacteria; and
- c. The cost of testing performed after removal, repair, replacement or restoration of the damaged property is completed, provided there is a reason to believe that "fungus", wet or dry rot or bacteria are present.

3. The coverage described under E.2. of this Limited Coverage is limited to \$15,000. Regardless of the number of claims, this limit is the most we will pay for the total of all loss or damage arising out of all occurrences of "specified causes of loss" (other than fire or lightning) and Flood which take place in a 12-month period (starting with the beginning of the present annual policy period). With respect to a particular occurrence of loss which results in "fungus", wet or dry rot or bacteria, we will not pay more than a total of \$15,000 even if the "fungus", wet or dry rot or bacteria continues to be present or active, or recurs, in a later policy period.

4. The coverage provided under this Limited Coverage does not increase the applicable Limit of Insurance on any Covered Property. If a particular occurrence results in loss or damage by "fungus", wet or dry rot or bacteria, and other loss or damage, we will not pay more, for the total of all loss or damage, than the applicable Limit of Insurance on the affected Covered Property.

If there is covered loss or damage to Covered Property, not caused by "fungus", wet or dry rot or bacteria, loss payment will not be limited by the terms of this Limited Coverage, except to the extent that "fungus", wet or dry rot or bacteria causes an increase in the loss. Any such increase in the loss will be subject to the terms of this Limited Coverage.

5. The terms of this Limited Coverage do not increase or reduce the coverage provided under Paragraph F.2. (Water Damage, Other Liquids, Powder Or Molten Material Damage) of this Causes Of Loss Form or under the Additional Coverage - Collapse.
6. The following, 6.a. or 6.b., applies only if Business Income and/or Extra Expense coverage applies to the described premises and only if the "suspension" of "operations" satisfies all terms and conditions of the applicable Business Income and/or Extra Expense coverage form.
- a. If the loss which resulted in "fungus", wet or dry rot or bacteria does not in itself necessitate a "suspension" of "operations", but such "suspension" is necessary due to loss or damage to property caused by "fungus", wet or dry rot or bacteria, then our payment under Business Income and/or Extra Expense is limited to the amount of loss and/or expense sustained in a period of not more than 30 days. The days need not be consecutive.
- b. If a covered "suspension" of "operations" was caused by loss or damage other than "fungus", wet or dry rot or bacteria but remediation of "fungus", wet or dry rot or bacteria prolongs the "period of restoration", we will pay for loss and/or expense sustained during the delay (regardless of when such a delay occurs during the "period of restoration"), but such coverage is limited to 30 days. The days need not be consecutive.

F. Additional Coverage Extensions

1. Property In Transit

This Extension applies only to your personal property to which this form applies.

- a. You may extend the insurance provided by this Coverage Part to apply to your personal property (other than property in the care, custody or control of your salespersons) in transit more than 100 feet from the described premises. Property must be in or on a motor vehicle you own, lease or operate while between points in the coverage territory.
- b. Loss or damage must be caused by or result from one of the following causes of loss:
- (1) Fire, lightning, explosion, windstorm or hail, riot or civil commotion, or vandalism.
 - (2) Vehicle collision, upset or overturn. Collision means accidental contact of your vehicle with another vehicle or object. It does not mean your vehicle's contact with the road bed.
 - (3) Theft of an entire bale, case or package by forced entry into a securely locked body or compartment of the vehicle. There must be visible marks of the forced entry.
- c. The most we will pay for loss or damage under this Extension is \$5,000.

This Coverage Extension is additional insurance. The Additional Condition, Coinsurance, does not apply to this Extension.

2. Water Damage, Other Liquids, Powder Or Molten Material Damage

If loss or damage caused by or resulting from covered water or other liquid, powder or molten material damage loss occurs, we will also pay the cost to tear out and replace any part of the building or structure to repair damage to the system or appliance from which the water or other substance escapes. This Coverage Extension does not increase the Limit of Insurance.

3. Glass

- a. We will pay for expenses incurred to put up temporary plates or board up openings if repair or replacement of damaged glass is delayed.

b. We will pay for expenses incurred to remove or replace obstructions when repairing or replacing glass that is part of a building. This does not include removing or replacing window displays.

This Coverage Extension, F.3., does not increase the Limit of Insurance.

G. Definitions

1. "Fungus" means any type or form of fungus, including mold or mildew, and any mycotoxins, spores, scents or by-products produced or released by fungi.
2. "Specified Causes of Loss" means the following: Fire; lightning; explosion; windstorm or hail; smoke; aircraft or vehicles; riot or civil commotion; vandalism; leakage from fire extinguishing equipment; sinkhole collapse; volcanic action; falling objects; weight of snow, ice or sleet; water damage.
 - a. Sinkhole collapse means the sudden sinking or collapse of land into underground empty spaces created by the action of water on limestone or dolomite. This cause of loss does not include:
 - (1) The cost of filling sinkholes; or

(2) Sinking or collapse of land into man-made underground cavities.

b. Falling objects does not include loss or damage to:

- (1) Personal property in the open; or
- (2) The interior of a building or structure, or property inside a building or structure, unless the roof or an outside wall of the building or structure is first damaged by a falling object.

c. Water damage means accidental discharge or leakage of water or steam as the direct result of the breaking apart or cracking of a plumbing, heating, air conditioning or other system or appliance (other than a sump system including its related equipment and parts), that is located on the described premises and contains water or steam.

Willy G...
5-28-2004

COMMERCIAL PROPERTY
CP 00 10 04 02

BUILDING AND PERSONAL PROPERTY COVERAGE FORM

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

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

Other words and phrases that appear in quotation marks have special meaning. Refer to Section H. – Definitions.

A. Coverage

We will pay for direct physical loss of or damage to Covered Property at the premises described in the Declarations caused by or resulting from any Covered Cause of Loss.

1. Covered Property

Covered Property, as used in this Coverage Part, means the type of property described in this Section, A.1., and limited in A.2., Property Not Covered, if a Limit of Insurance is shown in the Declarations for that type of property.

a. **Building**, meaning the building or structure described in the Declarations, including:

- (1) Completed additions;
- (2) Fixtures, including outdoor fixtures;
- (3) Permanently installed:
 - (a) Machinery and
 - (b) Equipment;
- (4) Personal property owned by you that is used to maintain or service the building or structure or its premises, including:
 - (a) Fire extinguishing equipment;
 - (b) Outdoor furniture;
 - (c) Floor coverings; and
 - (d) Appliances used for refrigerating, ventilating, cooking, dishwashing or laundering;
- (5) If not covered by other insurance:
 - (a) Additions under construction, alterations and repairs to the building or structure;

(b) Materials, equipment, supplies and temporary structures, on or within 100 feet of the described premises, used for making additions, alterations or repairs to the building or structure.

b. **Your Business Personal Property** located in or on the building described in the Declarations or in the open (or in a vehicle) within 100 feet of the described premises, consisting of the following unless otherwise specified in the Declarations or on the Your Business Personal Property – Separation of Coverage form:

- (1) Furniture and fixtures;
- (2) Machinery and equipment;
- (3) "Stock";
- (4) All other personal property owned by you and used in your business;
- (5) Labor, materials or services furnished or arranged by you on personal property of others;
- (6) Your use interest as tenant in improvements and betterments. Improvements and betterments are fixtures, alterations, installations or additions:
 - (a) Made a part of the building or structure you occupy but do not own; and
 - (b) You acquired or made at your expense but cannot legally remove;
- (7) Leased personal property for which you have a contractual responsibility to insure, unless otherwise provided for under Personal Property of Others.

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c. Personal Property Of Others that is:

- (1) In your care, custody or control; and
- (2) Located in or on the building described in the Declarations or in the open (or in a vehicle) within 100 feet of the described premises.

However, our payment for loss of or damage to personal property of others will only be for the account of the owner of the property.

2. Property Not Covered

Covered Property does not include:

- a. Accounts, bills, currency, food stamps or other evidences of debt, money, notes or securities. Lottery tickets held for sale are not securities;
- b. Animals, unless owned by others and boarded by you, or if owned by you, only as "stock" while inside of buildings;
- c. Automobiles held for sale;
- d. Bridges, roadways, walks, patios or other paved surfaces;
- e. Contraband, or property in the course of illegal transportation or trade;
- f. The cost of excavations, grading, backfilling or filling;
- g. Foundations of buildings, structures, machinery or boilers if their foundations are below:
 - (1) The lowest basement floor; or
 - (2) The surface of the ground, if there is no basement;
- h. Land (including land on which the property is located), water, growing crops or lawns;
- i. Personal property while airborne or waterborne;
- j. Bulkheads, pilings, piers, wharves or docks;
- k. Property that is covered under another coverage form of this or any other policy in which it is more specifically described, except for the excess of the amount due (whether you can collect on it or not) from that other insurance;
- l. Retaining walls that are not part of a building;
- m. Underground pipes, flues or drains;

- n. Electronic data, except as provided under Additional Coverages – Electronic Data. Electronic data means information, facts or computer programs stored as or on, created or used on, or transmitted to or from computer software (including systems and applications software), on hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other repositories of computer software which are used with electronically controlled equipment. The term computer programs, referred to in the foregoing description of electronic data, means a set of related electronic instructions which direct the operations and functions of a computer or device connected to it, which enable the computer or device to receive, process, store, retrieve or send data. This Paragraph n., does not apply to your "stock" of prepackaged software.

- o. The cost to replace or restore the information on valuable papers and records, including those which exist as electronic data. Valuable papers and records include but are not limited to proprietary information, books of account, deeds; manuscripts, abstracts, drawings and card index systems. Refer to the Coverage Extension for Valuable Papers And Records (Other Than Electronic Data) for limited coverage for valuable papers and records other than those which exist as electronic data.

- p. Vehicles or self-propelled machines (including aircraft or watercraft) that:
 - (1) Are licensed for use on public roads; or
 - (2) Are operated principally away from the described premises.

This paragraph does not apply to:

- (a) Vehicles or self-propelled machines or autos you manufacture, process or warehouse;
- (b) Vehicles or self-propelled machines, other than autos, you hold for sale;
- (c) Rowboats or canoes out of water at the described premises; or
- (d) Trailers, but only to the extent provided for in the Coverage Extension for Non-Owned Detached Trailers.

q. The following property while outside of buildings:

- (1) Grain, hay, straw or other crops;
- (2) Fences, radio or television antennas (including satellite dishes) and their lead-in wiring, masts or towers, signs (other than signs attached to buildings), trees, shrubs or plants (other than "stock" of trees, shrubs or plants), all except as provided in the Coverage Extensions.

3. Covered Causes Of Loss

See applicable Causes of Loss Form as shown in the Declarations.

4. Additional Coverages

a. Debris Removal

- (1) Subject to Paragraphs (3) and (4), we will pay your expense to remove debris of Covered Property caused by or resulting from a Covered Cause of Loss that occurs during the policy period. The expenses will be paid only if they are reported to us in writing within 180 days of the date of direct physical loss or damage.
- (2) Debris Removal does not apply to costs to:
 - (a) Extract "pollutants" from land or water; or
 - (b) Remove, restore or replace polluted land or water.
- (3) Subject to the exceptions in Paragraph (4), the following provisions apply:
 - (a) The most we will pay for the total of direct physical loss or damage plus debris removal expense is the Limit of Insurance applicable to the Covered Property that has sustained loss or damage.
 - (b) Subject to (a) above, the amount we will pay for debris removal expense is limited to 25% of the sum of the deductible plus the amount that we pay for direct physical loss or damage to the Covered Property that has sustained loss or damage.
- (4) We will pay up to an additional \$10,000 for debris removal expense, for each location, in any one occurrence of physical loss or damage to Covered Property, if one or both of the following circumstances apply:

(a) The total of the actual debris removal expense plus the amount we pay for direct physical loss or damage exceeds the Limit of Insurance on the Covered Property that has sustained loss or damage.

(b) The actual debris removal expense exceeds 25% of the sum of the deductible plus the amount that we pay for direct physical loss or damage to the Covered Property that has sustained loss or damage.

Therefore, if (4)(a) and/or (4)(b) apply, our total payment for direct physical loss or damage and debris removal expense may reach but will never exceed the Limit of Insurance on the Covered Property that has sustained loss or damage, plus \$10,000.

(5) Examples

The following examples assume that there is no coinsurance penalty.

Example #1

Limit of Insurance	\$ 90,000
Amount of Deductible	\$ 500
Amount of Loss	\$ 50,000
Amount of Loss Payable	\$ 49,500
	(\$50,000 - \$500)
Debris Removal Expense	\$ 10,000
Debris Removal Expense Payable	\$ 10,000
	(\$10,000 is 20% of \$50,000)

The debris removal expense is less than 25% of the sum of the loss payable plus the deductible. The sum of the loss payable and the debris removal expense (\$49,500 + \$10,000 = \$59,500) is less than the Limit of Insurance. Therefore the full amount of debris removal expense is payable in accordance with the terms of Paragraph (3).

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Example #2

Limit of Insurance	\$ 90,000
Amount of Deductible	\$ 500
Amount of Loss	\$ 80,000
Amount of Loss Payable	\$ 79,500
	(\$80,000 - \$500)
Debris Removal Expense	\$ 30,000
Debris Removal Expense Payable	
Basic Amount	\$ 10,500
Additional Amount	\$ 10,000

The basic amount payable for debris removal expense under the terms of Paragraph (3) is calculated as follows: \$80,000 (\$79,500 + \$500) x .25 = \$20,000; capped at \$10,500. The cap applies because the sum of the loss payable (\$79,500) and the basic amount payable for debris removal expense (\$10,500) cannot exceed the Limit of Insurance (\$90,000).

The additional amount payable for debris removal expense is provided in accordance with the terms of Paragraph (4), because the debris removal expense (\$30,000) exceeds 25% of the loss payable plus the deductible (\$30,000 is 37.5% of \$80,000), and because the sum of the loss payable and debris removal expense (\$79,500 + \$30,000 = \$109,500) would exceed the Limit of Insurance (\$90,000). The additional amount of covered debris removal expense is \$10,000, the maximum payable under Paragraph (4). Thus the total payable for debris removal expense in this example is \$20,500; \$9,500 of the debris removal expense is not covered.

b. Preservation Of Property

If it is necessary to move Covered Property from the described premises to preserve it from loss or damage by a Covered Cause of Loss, we will pay for any direct physical loss or damage to that property:

- (1) While it is being moved or while temporarily stored at another location; and
- (2) Only if the loss or damage occurs within 30 days after the property is first moved.

c. Fire Department Service Charge

When the fire department is called to save or protect Covered Property from a Covered Cause of Loss, we will pay up to \$1,000 for your liability for fire department service charges:

- (1) Assumed by contract or agreement prior to loss; or
- (2) Required by local ordinance.

No Deductible applies to this Additional Coverage.

d. Pollutant Clean Up And Removal

We will pay your expense to extract "pollutants" from land or water at the described premises if the discharge, dispersal, seepage, migration, release or escape of the "pollutants" is caused by or results from a Covered Cause of Loss that occurs during the policy period. The expenses will be paid only if they are reported to us in writing within 180 days of the date on which the Covered Cause of Loss occurs.

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

The most we will pay under this Additional Coverage for each described premises is \$10,000 for the sum of all covered expenses arising out of Covered Causes of Loss occurring during each separate 12 month period of this policy.

e. Increased Cost Of Construction

- (1) This Additional Coverage applies only to buildings to which the Replacement Cost Optional Coverage applies.
- (2) In the event of damage by a Covered Cause of Loss to a building that is Covered Property, we will pay the increased costs incurred to comply with enforcement of an ordinance or law in the course of repair, rebuilding or replacement of damaged parts of that property, subject to the limitations stated in e.(3) through e.(9) of this Additional Coverage.

- (3) The ordinance or law referred to in e.(2) of this Additional Coverage is an ordinance or law that regulates the construction or repair of buildings or establishes zoning or land use requirements at the described premises, and is in force at the time of loss.
- (4) Under this Additional Coverage, we will not pay any costs due to an ordinance or law that:
 - (a) You were required to comply with before the loss, even when the building was undamaged; and
 - (b) You failed to comply with.
- (5) Under this Additional Coverage, we will not pay for:
 - (a) The enforcement of any ordinance or law which requires demolition, repair, replacement, reconstruction, remodeling or remediation of property due to contamination by "pollutants" or due to the presence, growth, proliferation, spread or any activity of "fungus", wet or dry rot or bacteria; or
 - (b) Any costs associated with the enforcement of an ordinance or law which requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants", "fungus", wet or dry rot or bacteria.
- (6) The most we will pay under this Additional Coverage, for each described building insured under this Coverage Form, is \$10,000 or 5% of the Limit of Insurance applicable to that building, whichever is less. If a damaged building is covered under a blanket Limit of Insurance which applies to more than one building or item of property, then the most we will pay under this Additional Coverage, for that damaged building, is the lesser of: \$10,000 or 5% times the value of the damaged building as of the time of loss times the applicable coinsurance percentage.
The amount payable under this Additional Coverage is additional insurance.
- (7) With respect to this Additional Coverage:
 - (a) We will not pay for the Increased Cost of Construction:
 - (i) Until the property is actually repaired or replaced, at the same or another premises; and

- (ii) Unless the repairs or replacement are made as soon as reasonably possible after the loss or damage, not to exceed two years. We may extend this period in writing during the two years.

- (b) If the building is repaired or replaced at the same premises, or if you elect to rebuild at another premises, the most we will pay for the Increased Cost of Construction, subject to the provisions of e.(6) of this Additional Coverage, is the increased cost of construction at the same premises.
- (c) If the ordinance or law requires relocation to another premises, the most we will pay for the Increased Cost of Construction, subject to the provisions of e.(6) of this Additional Coverage, is the increased cost of construction at the new premises.
- (8) This Additional Coverage is not subject to the terms of the Ordinance or Law Exclusion, to the extent that such Exclusion would conflict with the provisions of this Additional Coverage.
- (9) The costs addressed in the Loss Payment and Valuation Conditions, and the Replacement Cost Optional Coverage, in this Coverage Form, do not include the increased cost attributable to enforcement of an ordinance or law. The amount payable under this Additional Coverage, as stated in e.(6) of this Additional Coverage, is not subject to such limitation.

f. Electronic Data

- (1) Under this Additional Coverage, electronic data has the meaning described under Property Not Covered – Electronic Data.
- (2) Subject to the provisions of this Additional Coverage, we will pay for the cost to replace or restore electronic data which has been destroyed or corrupted by a Covered Cause of Loss. To the extent that electronic data is not replaced or restored, the loss will be valued at the cost of replacement of the media on which the electronic data was stored, with blank media of substantially identical type.
- (3) The Covered Causes of Loss applicable to Your Business Personal Property apply to this Additional Coverage – Electronic Data, subject to the following:

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- (a) If the Causes Of Loss – Special Form applies, coverage under this Additional Coverage – Electronic Data is limited to the "specified causes of loss" as defined in that form, and Collapse as set forth in that form.
 - (b) If the Causes Of Loss – Broad Form applies, coverage under this Additional Coverage – Electronic Data includes Collapse as set forth in that form.
 - (c) If the Causes Of Loss Form is endorsed to add a Covered Cause of Loss, the additional Covered Cause of Loss does not apply to the coverage provided under this Additional Coverage – Electronic Data.
 - (d) The Covered Causes of Loss include a virus, harmful code or similar instruction introduced into or enacted on a computer system (including electronic data) or a network to which it is connected, designed to damage or destroy any part of the system or disrupt its normal operation. But there is no coverage for loss or damage caused by or resulting from manipulation of a computer system (including electronic data) by any employee, including a temporary or leased employee, or by an entity retained by you or for you to inspect, design, install, modify, maintain, repair or replace that system.
- (4) The most we will pay under this Additional Coverage – Electronic Data is \$2,500 for all loss or damage sustained in any one policy year, regardless of the number of occurrences of loss or damage or the number of premises, locations or computer systems involved. If loss payment on the first occurrence does not exhaust this amount, then the balance is available for subsequent loss or damage sustained in but not after that policy year. With respect to an occurrence which begins in one policy year and continues or results in additional loss or damage in a subsequent policy year(s), all loss or damage is deemed to be sustained in the policy year in which the occurrence began.

5. Coverage Extensions

Except as otherwise provided, the following Extensions apply to property located in or on the building described in the Declarations or in the open (or in a vehicle) within 100 feet of the described premises.

If a Coinsurance percentage of 80% or more or, a Value Reporting period symbol, is shown in the Declarations, you may extend the insurance provided by this Coverage Part as follows:

a. Newly Acquired Or Constructed Property

(1) Buildings

If this policy covers Building, you may extend that insurance to apply to:

- (a) Your new buildings while being built on the described premises; and
- (b) Buildings you acquire at locations, other than the described premises, intended for:
 - (i) Similar use as the building described in the Declarations; or
 - (ii) Use as a warehouse.

The most we will pay for loss or damage under this Extension is \$250,000 at each building.

(2) Your Business Personal Property

- (a) If this policy covers Your Business Personal Property, you may extend that insurance to apply to:
 - (i) Business personal property, including such property that you newly acquire, at any location you acquire other than at fairs, trade shows or exhibitions;
 - (ii) Business personal property, including such property that you newly acquire, located at your newly constructed or acquired buildings at the location described in the Declarations; or
 - (iii) Business personal property that you newly acquire, located at the described premises.

The most we will pay for loss or damage under this Extension is \$100,000 at each building.

- (b) This Extension does not apply to:
 - (i) Personal property of others that is temporarily in your possession in the course of installing or performing work on such property; or

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- (ii) Personal property of others that is temporarily in your possession in the course of your manufacturing or wholesaling activities.

(3) Period Of Coverage

With respect to insurance on or at each newly acquired or constructed property, coverage will end when any of the following first occurs:

- (a) This policy expires;
- (b) 30 days expire after you acquire the property or begin construction of that part of the building that would qualify as covered property; or
- (c) You report values to us.

We will charge you additional premium for values reported from the date you acquire the property or begin construction of that part of the building that would qualify as covered property.

b. Personal Effects And Property Of Others

You may extend the insurance that applies to Your Business Personal Property to apply to:

- (1) Personal effects owned by you, your officers, your partners or members, your managers or your employees. This extension does not apply to loss or damage by theft.
- (2) Personal property of others in your care, custody or control.

The most we will pay for loss or damage under this Extension is \$2,500 at each described premises. Our payment for loss of or damage to personal property of others will only be for the account of the owner of the property.

c. Valuable Papers And Records (Other Than Electronic Data)

- (1) You may extend the insurance that applies to Your Business Personal Property to apply to the cost to replace or restore the lost information on valuable papers and records for which duplicates do not exist. But this Extension does not apply to valuable papers and records which exist as electronic data. Electronic data has the meaning described under Property Not Covered – Electronic Data.
- (2) If the Causes Of Loss – Special Form applies, coverage under this Extension is limited to the "specified causes of loss" as defined in that form, and Collapse as set forth in that form.
- (3) If the Causes Of Loss – Broad Form applies, coverage under this Extension includes Collapse as set forth in that form.
- (4) Under this Extension, the most we will pay to replace or restore the lost information is \$2,500 at each described premises, unless a higher limit is shown in the Declarations. Such amount is additional insurance. We will also pay for the cost of blank material for reproducing the records (whether or not duplicates exist), and (when there is a duplicate) for the cost of labor to transcribe or copy the records. The costs of blank material and labor are subject to the applicable Limit of Insurance on Your Business Personal Property and therefore coverage of such costs is not additional insurance.

d. Property Off-Premises

- (1) You may extend the insurance provided by this Coverage Form to apply to your Covered Property while it is away from the described premises, if it is:
 - (a) Temporarily at a location you do not own, lease or operate;
 - (b) In storage at a location you lease, provided the lease was executed after the beginning of the current policy term; or
 - (c) At any fair, trade show or exhibition.
- (2) This Extension does not apply to property:
 - (a) In or on a vehicle; or

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(b) In the care, custody or control of your salespersons, unless the property is in such care, custody or control at a fair, trade show or exhibition.

(3) The most we will pay for loss or damage under this Extension is \$10,000.

e. Outdoor Property

You may extend the insurance provided by this Coverage Form to apply to your outdoor fences, radio and television antennas (including satellite dishes), signs (other than signs attached to buildings), trees, shrubs and plants (other than "stock" of trees, shrubs or plants), including debris removal expense, caused by or resulting from any of the following causes of loss if they are Covered Causes of Loss:

- (1) Fire;
- (2) Lightning;
- (3) Explosion;
- (4) Riot or Civil Commotion; or
- (5) Aircraft.

The most we will pay for loss or damage under this Extension is \$1,000, but not more than \$250 for any one tree, shrub or plant. These limits apply to any one occurrence, regardless of the types or number of items lost or damaged in that occurrence.

f. Non-Owned Detached Trailers

(1) You may extend the insurance that applies to Your Business Personal Property to apply to loss or damage to trailers that you do not own, provided that:

- (a) The trailer is used in your business;
- (b) The trailer is in your care, custody or control at the premises described in the Declarations; and
- (c) You have a contractual responsibility to pay for loss or damage to the trailer.

(2) We will not pay for any loss or damage that occurs:

- (a) While the trailer is attached to any motor vehicle or motorized conveyance, whether or not the motor vehicle or motorized conveyance is in motion;

(b) During hitching or unhitching operations, or when a trailer becomes accidentally unhitched from a motor vehicle or motorized conveyance.

(3) The most we will pay for loss or damage under this Extension is \$5,000, unless a higher limit is shown in the Declarations.

(4) This insurance is excess over the amount due (whether you can collect on it or not) from any other insurance covering such property.

Each of these Extensions is additional insurance unless otherwise indicated. The Additional Condition, Coinsurance, does not apply to these Extensions.

B. Exclusions And Limitations

See applicable Causes of Loss Form as shown in the Declarations.

C. Limits Of Insurance

The most we will pay for loss or damage in any one occurrence is the applicable Limit of Insurance shown in the Declarations.

The most we will pay for loss or damage to outdoor signs attached to buildings is \$1,000 per sign in any one occurrence.

The limits applicable to the Fire Department Service Charge and Pollutant Clean Up and Removal Additional Coverages are in addition to the Limits of Insurance.

Payments under the Preservation of Property Additional Coverage will not increase the applicable Limit of Insurance.

D. Deductible

In any one occurrence of loss or damage (hereinafter referred to as loss), we will first reduce the amount of loss if required by the Coinsurance Condition or the Agreed Value Optional Coverage. If the adjusted amount of loss is less than or equal to the Deductible, we will not pay for that loss. If the adjusted amount of loss exceeds the Deductible, we will then subtract the Deductible from the adjusted amount of loss, and will pay the resulting amount or the Limit of Insurance, whichever is less.

When the occurrence involves loss to more than one item of Covered Property and separate Limits of Insurance apply, the losses will not be combined in determining application of the Deductible. But the Deductible will be applied only once per occurrence.

Example No. 1:

(This example assumes there is no coinsurance penalty.)

Deductible:	\$ 250
Limit of Insurance – Bldg. 1:	\$ 60,000
Limit of Insurance – Bldg. 2:	\$ 80,000
Loss to Bldg. 1:	\$ 60,100
Loss to Bldg. 2:	\$ 90,000

The amount of loss to Bldg. 1 (\$60,100) is less than the sum (\$60,250) of the Limit of Insurance applicable to Bldg. 1 plus the Deductible.

The Deductible will be subtracted from the amount of loss in calculating the loss payable for Bldg. 1:

\$ 60,100
– 250
<u>\$ 59,850</u> Loss Payable – Bldg. 1

The Deductible applies once per occurrence and therefore is not subtracted in determining the amount of loss payable for Bldg. 2. Loss payable for Bldg. 2 is the Limit of Insurance of \$80,000.

Total amount of loss payable: \$59,850 + 80,000 = \$139,850

Example No. 2:

(This example, too, assumes there is no coinsurance penalty.)

The Deductible and Limits of Insurance are the same as those in Example No. 1.

Loss to Bldg. 1:	\$ 70,000
(exceeds Limit of Insurance plus Deductible)	
Loss to Bldg. 2:	\$ 90,000
(exceeds Limit of Insurance plus Deductible)	
Loss Payable – Bldg. 1:	\$60,000
(Limit of Insurance)	
Loss Payable – Bldg. 2:	\$80,000
(Limit of Insurance)	
Total amount of loss payable:	\$140,000

E. Loss Conditions

The following conditions apply in addition to the Common Policy Conditions and the Commercial Property Conditions.

1. Abandonment

There can be no abandonment of any property to us.

2. Appraisal

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

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

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

3. Duties In The Event Of Loss Or Damage

- a. You must see that the following are done in the event of loss or damage to Covered Property:

- (1) Notify the police if a law may have been broken.
- (2) Give us prompt notice of the loss or damage. Include a description of the property involved.
- (3) As soon as possible, give us a description of how, when and where the loss or damage occurred.
- (4) Take all reasonable steps to protect the Covered Property from further damage, and keep a record of your expenses necessary to protect the Covered Property, for consideration in the settlement of the claim. This will not increase the Limit of Insurance. However, we will not pay for any subsequent loss or damage resulting from a cause of loss that is not a Covered Cause of Loss. Also, if feasible, set the damaged property aside and in the best possible order for examination.
- (5) At our request, give us complete inventories of the damaged and undamaged property. Include quantities, costs, values and amount of loss claimed.
- (6) As often as may be reasonably required, permit us to inspect the property proving the loss or damage and examine your books and records.

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

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

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

b. We may examine any insured under oath, while not in the presence of any other insured and at such times as may be reasonably required, about any matter relating to this insurance or the claim, including an insured's books and records. In the event of an examination, an insured's answers must be signed.

4. Loss Payment

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

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

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

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

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

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

b. The cost to repair, rebuild or replace does not include the increased cost attributable to enforcement of any ordinance or law regulating the construction, use or repair of any property.

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

d. We will not pay you more than your financial interest in the Covered Property.

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

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

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

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

(2) An appraisal award has been made.

5. Recovered Property

If either you or we recover any property after loss settlement, that party must give the other prompt notice. At your option, the property will be returned to you. You must then return to us the amount we paid to you for the property. We will pay recovery expenses and the expenses to repair the recovered property, subject to the Limit of Insurance.

6. Vacancy

a. Description Of Terms

(1) As used in this Vacancy Condition, the term building and the term vacant have the meanings set forth in (1)(a) and (1)(b) below:

(a) When this policy is issued to a tenant, and with respect to that tenant's interest in Covered Property, building means the unit or suite rented or leased to the tenant. Such building is vacant when it does not contain enough business personal property to conduct customary operations.

(b) When this policy is issued to the owner or general lessee of a building, building means the entire building. Such building is vacant unless at least 31% of its total square footage is:

(i) Rented to a lessee or sub-lessee and used by the lessee or sub-lessee to conduct its customary operations; and/or

(ii) Used by the building owner to conduct customary operations.

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- (2) Buildings under construction or renovation are not considered vacant.

b. Vacancy Provisions

If the building where loss or damage occurs has been vacant for more than 60 consecutive days before that loss or damage occurs:

- (1) We will not pay for any loss or damage caused by any of the following even if they are Covered Causes of Loss:
- (a) Vandalism;
 - (b) Sprinkler leakage, unless you have protected the system against freezing;
 - (c) Building glass breakage;
 - (d) Water damage;
 - (e) Theft; or
 - (f) Attempted theft.
- (2) With respect to Covered Causes of Loss other than those listed in b.(1)(a) through b.(1)(f) above, we will reduce the amount we would otherwise pay for the loss or damage by 15%.

7. Valuation

We will determine the value of Covered Property in the event of loss or damage as follows:

- a. At actual cash value as of the time of loss or damage, except as provided in b., c., d. and e. below.
- b. If the Limit of Insurance for Building satisfies the Additional Condition, Coinsurance, and the cost to repair or replace the damaged building property is \$2,500 or less, we will pay the cost of building repairs or replacement.
- The cost of building repairs or replacement does not include the increased cost attributable to enforcement of any ordinance or law regulating the construction, use or repair of any property. However, the following property will be valued at the actual cash value even when attached to the building:
- (1) Awnings or floor coverings;
 - (2) Appliances for refrigerating, ventilating, cooking, dishwashing or laundering; or
 - (3) Outdoor equipment or furniture.
- c. "Stock" you have sold but not delivered at the selling price less discounts and expenses you otherwise would have had.

- d. Glass at the cost of replacement with safety glazing material if required by law.

e. Tenant's Improvements and Betterments at:

- (1) Actual cash value of the lost or damaged property if you make repairs promptly.
 - (2) A proportion of your original cost if you do not make repairs promptly. We will determine the proportionate value as follows:
 - (a) Multiply the original cost by the number of days from the loss or damage to the expiration of the lease; and
 - (b) Divide the amount determined in (a) above by the number of days from the installation of improvements to the expiration of the lease.
- If your lease contains a renewal option, the expiration of the renewal option period will replace the expiration of the lease in this procedure.
- (3) Nothing if others pay for repairs or replacement.

F. Additional Conditions

The following conditions apply in addition to the Common Policy Conditions and the Commercial Property Conditions.

1. Coinsurance

If a Coinsurance percentage is shown in the Declarations, the following condition applies.

- a. We will not pay the full amount of any loss if the value of Covered Property at the time of loss times the Coinsurance percentage shown for it in the Declarations is greater than the Limit of Insurance for the property.
- Instead, we will determine the most we will pay using the following steps:
- (1) Multiply the value of Covered Property at the time of loss by the Coinsurance percentage;
 - (2) Divide the Limit of Insurance of the property by the figure determined in Step (1);

(3) Multiply the total amount of loss, before the application of any deductible, by the figure determined in Step (2); and

(4) Subtract the deductible from the figure determined in Step (3).

We will pay the amount determined in Step (4) or the limit of insurance, whichever is less. For the remainder, you will either have to rely on other insurance or absorb the loss yourself.

Example No. 1 (Underinsurance):

When: The value of the property is \$ 250,000
 The Coinsurance percentage for it is 80%
 The Limit of Insurance for it is \$ 100,000
 The Deductible is \$ 250
 The amount of loss is \$ 40,000

Step (1): $\$250,000 \times 80\% = \$200,000$
 (the minimum amount of insurance to meet your Coinsurance requirements)

Step (2): $\$100,000 \div \$200,000 = .50$

Step (3): $\$40,000 \times .50 = \$20,000$

Step (4): $\$20,000 - \$250 = \$19,750$

We will pay no more than \$19,750. The remaining \$20,250 is not covered.

Example No. 2 (Adequate Insurance):

When: The value of the property is \$ 250,000
 The Coinsurance percentage for it is 80%
 The Limit of Insurance for it is \$ 200,000
 The Deductible is \$ 250
 The amount of loss is \$ 40,000

The minimum amount of insurance to meet your Coinsurance requirement is \$200,000 ($\$250,000 \times 80\%$). Therefore, the Limit of Insurance in this Example is adequate and no penalty applies. We will pay no more than \$39,750 (\$40,000 amount of loss minus the deductible of \$250).

b. If one Limit of Insurance applies to two or more separate items, this condition will apply to the total of all property to which the limit applies.

Example No. 3:

When: The value of property is:
 Bldg. at Location No. 1 \$ 75,000
 Bldg. at Location No. 2 \$ 100,000
 Personal Property at Location No. 2 \$ 75,000
 \$ 250,000

The Coinsurance percentage for it is 90%

The Limit of Insurance for Buildings and Personal Property at Location Nos. 1 and 2 is \$ 180,000
 The Deductible is \$ 1,000

The amount of loss is:
 Bldg. at Location No. 2 \$ 30,000
 Personal Property at Location No. 2 \$ 20,000
 \$ 50,000

Step (1): $\$250,000 \times 90\% = \$225,000$
 (the minimum amount of insurance to meet your Coinsurance requirements and to avoid the penalty shown below)

Step (2): $\$180,000 \div \$225,000 = .80$

Step (3): $\$50,000 \times .80 = \$40,000$

Step (4): $\$40,000 - \$1,000 = \$39,000$

We will pay no more than \$39,000. The remaining \$11,000 is not covered.

2. Mortgageholders

- a. The term mortgageholder includes trustee.
- b. We will pay for covered loss of or damage to buildings or structures to each mortgageholder shown in the Declarations in their order of precedence, as interests may appear.
- c. The mortgageholder has the right to receive loss payment even if the mortgageholder has started foreclosure or similar action on the building or structure.
- d. If we deny your claim because of your acts or because you have failed to comply with the terms of this Coverage Part, the mortgageholder will still have the right to receive loss payment if the mortgageholder:
 - (1) Pays any premium due under this Coverage Part at our request if you have failed to do so;
 - (2) Submits a signed, sworn proof of loss within 60 days after receiving notice from us of your failure to do so; and

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- (3) Has notified us of any change in ownership, occupancy or substantial change in risk known to the mortgageholder.

All of the terms of this Coverage Part will then apply directly to the mortgageholder.

- e. If we pay the mortgageholder for any loss or damage and deny payment to you because of your acts or because you have failed to comply with the terms of this Coverage Part:

- (1) The mortgageholder's rights under the mortgage will be transferred to us to the extent of the amount we pay; and
- (2) The mortgageholder's right to recover the full amount of the mortgageholder's claim will not be impaired.

At our option, we may pay to the mortgageholder the whole principal on the mortgage plus any accrued interest. In this event, your mortgage and note will be transferred to us and you will pay your remaining mortgage debt to us.

- f. If we cancel this policy, we will give written notice to the mortgageholder at least:

- (1) 10 days before the effective date of cancellation if we cancel for your non-payment of premium; or
- (2) 30 days before the effective date of cancellation if we cancel for any other reason.

- g. If we elect not to renew this policy, we will give written notice to the mortgageholder at least 10 days before the expiration date of this policy.

G. Optional Coverages

If shown as applicable in the Declarations, the following Optional Coverages apply separately to each item.

1. Agreed Value

- a. The Additional Condition, Coinsurance, does not apply to Covered Property to which this Optional Coverage applies. We will pay no more for loss of or damage to that property than the proportion that the Limit of Insurance under this Coverage Part for the property bears to the Agreed Value shown for it in the Declarations.
- b. If the expiration date for this Optional Coverage shown in the Declarations is not extended, the Additional Condition, Coinsurance, is reinstated and this Optional Coverage expires.

- c. The terms of this Optional Coverage apply only to loss or damage that occurs:

- (1) On or after the effective date of this Optional Coverage; and
- (2) Before the Agreed Value expiration date shown in the Declarations or the policy expiration date, whichever occurs first.

2. Inflation Guard

- a. The Limit of Insurance for property to which this Optional Coverage applied will automatically increase by the annual percentage shown in the Declarations.
- b. The amount of increase will be:
 - (1) The Limit of Insurance that applied on the most recent of the policy inception date, the policy anniversary date, or any other policy change amending the Limit of Insurance, times
 - (2) The percentage of annual increase shown in the Declarations, expressed as a decimal (example: 8% is .08), times
 - (3) The number of days since the beginning of the current policy year or the effective date of the most recent policy change amending the Limit of Insurance, divided by 365.

Example:

If:	The applicable Limit of Insurance is	\$ 100,000
	The annual percentage increase is	8%
	The number of days since the beginning of the policy year (or last policy change) is	146
	The amount of increase is \$100,000 x .08 x 146 ÷ 365 =	\$ 3,200

3. Replacement Cost

- a. Replacement Cost (without deduction for depreciation) replaces Actual Cash Value in the Loss Condition, Valuation, of this Coverage Form.
- b. This Optional Coverage does not apply to:
 - (1) Personal property of others;
 - (2) Contents of a residence;

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(3) Works of art, antiques or rare articles, including etchings, pictures, statuary, marbles, bronzes, porcelains and bric-a-brac; or

(4) "Stock", unless the Including "Stock" option is shown in the Declarations.

Under the terms of this Replacement Cost Optional Coverage, tenants' improvements and betterments are not considered to be the personal property of others.

c. You may make a claim for loss or damage covered by this insurance on an actual cash value basis instead of on a replacement cost basis. In the event you elect to have loss or damage settled on an actual cash value basis, you may still make a claim for the additional coverage this Optional Coverage provides if you notify us of your intent to do so within 180 days after the loss or damage.

d. We will not pay on a replacement cost basis for any loss or damage:

(1) Until the lost or damaged property is actually repaired or replaced; and

(2) Unless the repairs or replacement are made as soon as reasonably possible after the loss or damage.

With respect to tenants' improvements and betterments, the following also apply:

(3) If the conditions in d.(1) and d.(2) above are not met, the value of tenants' improvements and betterments will be determined as a proportion of your original cost, as set forth in the Valuation Condition of this Coverage Form; and

(4) We will not pay for loss or damage to tenants' improvements and betterments if others pay for repairs or replacement.

e. We will not pay more for loss or damage on a replacement cost basis than the least of (1), (2) or (3), subject to f. below:

(1) The Limit of Insurance applicable to the lost or damaged property;

(2) The cost to replace the lost or damaged property with other property:

(a) Of comparable material and quality; and

(b) Used for the same purpose; or

(3) The amount actually spent that is necessary to repair or replace the lost or damaged property.

If a building is rebuilt at a new premises, the cost described in e.(2) above is limited to the cost which would have been incurred if the building had been rebuilt at the original premises.

f. The cost of repair or replacement does not include the increased cost attributable to enforcement of any ordinance or law regulating the construction, use or repair of any property.

4. Extension Of Replacement Cost To Personal Property Of Others

a. If the Replacement Cost Optional Coverage is shown as applicable in the Declarations, then this Extension may also be shown as applicable. If the Declarations show this Extension as applicable, then Paragraph 3.b.(1) of the Replacement Cost Optional Coverage is deleted and all other provisions of the Replacement Cost Optional Coverage apply to replacement cost on personal property of others.

b. With respect to replacement cost on the personal property of others, the following limitation applies:

If an item(s) of personal property of others is subject to a written contract which governs your liability for loss or damage to that item(s), then valuation of that item(s) will be based on the amount for which you are liable under such contract, but not to exceed the lesser of the replacement cost of the property or the applicable Limit of Insurance.

H. Definitions

1. "Fungus" means any type or form of fungus, including mold or mildew, and any mycotoxins, spores, scents or by-products produced or released by fungi.

2. "Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

3. "Stock" means merchandise held in storage or for sale, raw materials and in-process or finished goods, including supplies used in their packing or shipping.



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EXHIBIT
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 J. DAWSON, Clerk
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Attorneys for Plaintiff
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IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

VILLA HIGHLANDS, LLC, an Idaho	)	Case No. CV OC 0621175
limited liability company,)	
	)	AMENDED COMPLAINT FOR
Plaintiff,	)	BREACH OF CONTRACT,
	)	DECLARATORY RELIEF,
vs.	)	BAD FAITH, BREACH OF FIDUCIARY
	)	DUTY, NEGLIGENCE,
WESTERN COMMUNITY INSURANCE CO.,	)	MISREPRESENTATION, EQUITABLE
an Idaho corporation; FARM BUREAU	)	ESTOPPEL, PROMISSORY ESTOPPEL,
MUTUAL INSURANCE COMPANY OF	)	AND DEMAND FOR JURY TRIAL
IDAHO, an Idaho corporation; DALE E.)	
ZIMNEY; and DOES 1 - V,)	

AMENDED COMPLAINT FOR BREACH OF CONTRACT, DECLARATORY RELIEF, BAD FAITH, BREACH OF FIDUCIARY DUTY, NEGLIGENCE, MISREPRESENTATION, EQUITABLE ESTOPPEL, PROMISSORY ESTOPPEL, AND DEMAND FOR JURY TRIAL - 1

Defendants.)
)
_____)

* * *

COMES NOW, Plaintiff Villa Highlands, LLC, an Idaho limited liability company (hereinafter referred to as "Plaintiff Villa Highlands") by and through its attorney of record, Terry C. Copple of the firm Davison, Copple, Copple & Cox of Boise, Idaho, and hereby alleges the following claims and causes of action against Defendants Western Community Insurance Co., an Idaho corporation; Farm Bureau Mutual Insurance Company of Idaho, an Idaho corporation, and Dale E. Zimney (hereinafter all three named Defendants shall collectively be referred to as "Defendant Western Community") and Does I - V, jointly and severally, as follows:

COUNT ONE

BREACH OF CONTRACT

I.

Plaintiff Villa Highlands is an Idaho limited liability company whose principal place of business is in Boise, Ada County, Idaho. Plaintiff Villa Highlands is a company organized for profit for the purpose of providing an independent living community for the elderly.

from a catastrophic fire at the Villa Highlands Independent Living Facility (hereinafter referred to as "Villa Highlands Building"). The Villa Highlands Building was designed as a three story fifty (50) unit independent living care facility for the elderly containing 62,830 +/- square feet, located at the Northwest corner of 15th Street and Hill Road in Boise, Idaho, 83702.

IV.

In April 2005, Plaintiff Villa Highlands contacted Dale E. Zimney of Defendant Farm Bureau Mutual Insurance Company of Idaho as the authorized agent for Defendant Western Community to obtain casualty insurance for the Villa Highlands Building. Plaintiff Villa Highlands advised Defendants that it wanted full and complete casualty coverage for the building in order to provide full indemnity from any loss and damage which may be suffered by a covered casualty. Based upon those discussions, Defendant advised Plaintiff that it would be fully covered for any fire damages to the Villa Highlands Building. Effective April 25, 2005, and in reliance upon Defendants' representations, Plaintiff Villa Highlands obtained a commercial property builder's risk insurance policy, policy number 8C023703 (hereinafter referred to as "Policy"). The face amount of the Policy is \$5,645,000.00. A true and accurate copy of the Policy is attached hereto as Exhibit "A" and is incorporated herein by this reference. The Policy provides coverage for loss occasioned by fire and other casualty. Plaintiff Villa Highlands has paid all premiums due under the policy and has performed all other conditions required by the Policy.

II.

Defendant Western Community is a corporation incorporated under the laws of the State of Idaho and is licensed in the State of Idaho to issue policies of insurance covering various casualties, including specifically fire and related damage. Defendant Farm Bureau Mutual Insurance Company of Idaho is an affiliated company of Defendant Western Community and issues its insurance products and policies and is licensed to engage in such business in the State of Idaho. The true names or capacities, whether individual, corporate, associate or otherwise, of Does I - V, inclusive, are unknown to Plaintiff Villa Highlands and therefore this litigation has been instituted against such Defendants in their fictitious names. Plaintiff Villa Highlands is informed and believes and on that basis alleges that each of the Defendants designated as Does I - V are or may be jointly and severally liable to Plaintiff Villa Highlands along with the named Defendants for the damages as alleged in this Complaint arising out of the events and facts described herein. Plaintiff Villa Highlands reserves the right to amend this Complaint at a later date to set forth the true names of such Defendants.

III.

This litigation has been brought by Plaintiff Villa Highlands for breach of contract damages, consequential and other damages sustained by Plaintiff Villa Highlands as a result of Defendants' refusal to pay Plaintiff Villa Highlands' valid casualty claim arising under a builder's risk policy

V.

While the foregoing Policy was in effect, on May 21, 2006, the Villa Highlands Building, while under construction, caught fire and suffered catastrophic damage. Attached hereto as Exhibit "B" is a photograph of the fire which substantially destroyed the Villa Highlands Building.

VI.

On July 24, 2006, and again in August, 2006, Plaintiff Villa Highlands filed its notices of claim and sworn proof of loss that complied in all respects with the Policy requirements. The proof of loss documentation set forth in detail the damages sustained by Plaintiff Villa Highlands from the fire. By virtue of the damages sustained by Plaintiff Villa Highlands, it is entitled to payment of the entire amount of insurance protection purchased by it under the Policy in the amount of \$5,645,000.00.

VII.

Following the fire that destroyed the Villa Highlands Building and the submission of the notices of claim and proof of loss, Plaintiff Villa Highlands attempted to negotiate with Defendant Western Community concerning prompt payment of the claim. These attempts to negotiate a settlement of the claim extended for over a period of four (4) months during which time Defendant Western Community retained a law firm on its behalf to adjust the claim rather than negotiate a prompt and just resolution of the claim. Defendant Western Community refused to negotiate in good

faith and submitted letters refusing to pay the full amount of the claim. The Defendants' offers were completely unrealistic and bore no relation to the damages Plaintiff Villa Highlands sustained in the fire.

VIII.

Plaintiff Villa Highlands' attempt to negotiate with Defendant Western Community's representatives proved unavailing and instead of paying the claim required by the terms of the Policy, Defendant Western Community has instead contended that it has no obligation to pay the full amount of damages sustained by Plaintiff Villa Highlands pursuant to the Policy because Defendant Western Community alleges that Plaintiff Villa Highlands underinsured the Villa Highlands Building. Defendant Western Community alleges it has no obligation to pay a greater share of any loss than the proportion that the limit of insurance bears to the value on the date of the completion of the building described in the declarations page of the Policy. As part of its strategy to not pay the full amount of the claim, Defendant Western Community contends that the Policy requires the Villa Highlands Building to be fully insured in the amount set forth in the declarations page. As is known by Defendants, Dale E. Zimney of Defendant Farm Bureau Mutual Insurance Company of Idaho, authorized agent for Defendant Western Community, instructed and advised Plaintiff Villa Highlands as to the dollar amount necessary to be include in the declaration page of the Policy. Dale E. Zimney was at all times acting within the course and scope of his employment with Defendant

Farm Bureau Mutual Insurance Company of Idaho, as the authorized agent and representative of Defendant Western Community. At the time that the policy was applied for, Plaintiff Villa Highlands advised Defendant Western Community that Plaintiff Villa Highlands wanted to be fully insured for all loss arising out of any fire or other casualty to the Villa Highlands Building. At the time of the application, Dale E. Zimney, on behalf of Defendant Western Community, instructed Plaintiff Villa Highlands not to include the fair market value or any soft costs relating to the Villa Highlands Building, but rather to only include therein the hard construction costs since the Policy would only pay for those amounts up to the face amount of the Policy. In reliance upon the foregoing warranties, representations, advice, and instructions of Defendant Western Community, Plaintiff Villa Highlands believed that the amounts of the hard costs set forth for the project were the proper amount to include therein for the property to be fully insured under the Policy. Dale E. Zimney assured Plaintiff that the building located at the Plaintiff Villa Highlands' project would be covered under the Policy of insurance for the full covered amount.

IX.

Defendant Western Community has consistently refused to consider the nature and extent of Plaintiff Villa Highlands' loss and specifically has rejected the fact that the amount of insurance set forth in the Policy was as the result of the instructions, advice and counsel of Defendant Western Community.

X.

Issuance by Defendant Western Community of the Policy of insurance to Plaintiff Villa Highlands created a contractual relationship between Defendant Western Community and Plaintiff Villa Highlands. As a result, Defendant Western Community was subject to an implied-in-law duty to act fairly and in good faith in order not to deprive Plaintiff Villa Highlands of the full benefits of the Policy.

XI.

As a direct and proximate result of Defendant Western Community's intentional refusal to pay Plaintiff Villa Highlands' valid claim and its consequent breach of an implied-in-law duty of good faith and fair dealing, Plaintiff Villa Highlands is entitled to damages pursuant to the terms of the parties' Policy in an amount in excess of \$10,000.00 to be proven at trial plus prejudgment interest thereon at the rate as provided by law.

XII.

Defendant Western Community has acted wilfully, fraudulently, intentionally, gross negligently, in reckless disregard of Plaintiff Villa Highlands' rights and in bad faith in refusing to consider the nature and extent of Plaintiff Villa Highlands' loss in relationship to the Policy and in rejecting Plaintiff Villa Highlands' proof of loss on grounds that it knows to be without foundation. These acts were done knowingly, intentionally, and with the purpose of discouraging, avoiding, or

reducing the payment due Plaintiff Villa Highlands under the terms of the Policy and with the intent to harass, vex, injure and annoy the insured Plaintiff Villa Highlands. Thus, Plaintiff Villa Highlands reserves the right to amend this Complaint pursuant to Idaho Code Section 6-1604 to allege a claim for punitive damages against Defendant Western Community.

XIII.

As a result of Defendant Western Community's failure to pay Plaintiff Villa Highlands its damages and as a result of its acts and omissions as herein set forth, it has been necessary for Plaintiff Villa Highlands to institute this litigation. Plaintiff Villa Highlands is therefore entitled to an award of reasonable costs and attorneys' fees in the amount of \$15,000.00 if this matter is uncontested by Defendants and to an award of reasonable costs and attorneys' fees if this matter is contested by Defendants Western Community pursuant to Idaho Code Sections 12-120, 12-121, 41-1839, and other provisions of Idaho law.

COUNT TWO

DECLARATORY RELIEF

Plaintiff Villa Highlands realleges the allegations set forth in Count One of this Complaint and further alleges the following as a claim and cause of action against Defendant Western Community and Does I - V:

AMENDED COMPLAINT FOR BREACH OF CONTRACT, DECLARATORY RELIEF, BAD FAITH, BREACH OF FIDUCIARY DUTY, NEGLIGENCE, MISREPRESENTATION, EQUITABLE ESTOPPEL, PROMISSORY ESTOPPEL, AND DEMAND FOR JURY TRIAL - 9

I.

By virtue of the facts as previously described, Plaintiff Villa Highlands is entitled to this Court declaring the relative rights and obligations of the parties hereto under the previously described Policy and thereupon the Court should determine that Plaintiff Villa Highlands is entitled to the payment of the full amount due and owing pursuant to the Policy without reduction, offset, or reduction in any manner.

II.

Plaintiff Villa Highlands seeks a specific ruling and declaration of this Court that any purported underinsurance for the Villa Highlands Building was caused by Defendant Western Community and not by Plaintiff Villa Highlands.

III.

As a result of Defendant Western Community's failure to pay Plaintiff Villa Highlands its covered damages and as a result of its acts and omissions as herein set forth, it has been necessary for Plaintiff Villa Highlands to institute this litigation. Plaintiff Villa Highlands is therefore entitled to an award of reasonable costs and attorneys' fees in the amount of \$15,000.00 if this matter is uncontested by Defendants and to an award of reasonable costs and attorneys' fees if this matter is contested by Defendants Western Community pursuant to Idaho Code Sections 12-120, 12-121, 41-1839, and other provisions of Idaho law.

COUNT THREE

BAD FAITH

Plaintiff Villa Highlands realleges the allegations set forth in Count One and Count Two of this Complaint and further alleges the following as a claim and cause of action against Defendant Western Community and Does I - V:

I.

Defendant Western Community has no legitimate, debatable, or arguable reason for refusing to pay Plaintiff Villa Highlands' valid claim because the amount of insurance protection purchased by Plaintiff Villa Highlands was determined as a result of the warranties, representations, instructions, and advice of Defendant Western Community.

II.

Plaintiff Villa Highlands placed its trust and confidence in Defendant Western Community and its agent to act in good faith and in a reasonable manner in the event Plaintiff Villa Highlands should ever have to make a claim against such insurance.

III.

Defendant Western Community and its agents are in a fiduciary relationship with Plaintiff Villa Highlands and were under a duty to use the skills, care, and knowledge of other claims representatives and insurance companies practicing as insurance agents and claims representatives

in evaluating and investigating claims made by Defendant's insureds in a prompt and thorough manner

IV.

Plaintiff Villa Highlands relied upon Defendant Western Community and its agents to investigate, process, and pay Plaintiff Villa Highlands' claim in accordance with its insured status under the Policy.

V.

Defendant Western Community and its agents have intentionally and knowingly refused and failed to promptly pay Plaintiff Villa Highlands' claim, failed to investigate Plaintiff Villa Highlands' claim in a prompt and thorough manner as they are required to do, and have refused to pay the claim relied upon an argument and contention for which there is no basis in fact or law and by attempting to settle the claim with Plaintiff Villa Highlands for less than the amount which a reasonable man would have believed he was entitled under the described Policy.

VI.

As a proximate result of Defendant Western Community's refusal to pay Plaintiff Villa Highlands' valid claim and Defendant Western Community's consequent breach of the implied-in-law duty of good faith and fair dealing, Plaintiff Villa Highlands has sustained damages in excess of \$10,000.00 in an amount to be proven at trial, which damages include, but are not limited to, the

cost of replacing the building destroyed by the catastrophic fire, lost profits of Plaintiff Villa Highlands' business operation as a result of not being able to open on time proximately caused by Defendant Western Community's failure to promptly adjust Plaintiff Villa Highlands' claim, increased interest expense for Plaintiff Villa Highlands' loans, increased reconstruction costs as a result of time delays in the adjustment of the claim, and other damages to be proven at trial.

VII.

Defendant Western Community has acted wilfully, fraudulently, intentionally, gross negligently, in reckless disregard of Plaintiff Villa Highlands' rights and in bad faith in refusing to consider the nature and extent of Plaintiff Villa Highlands' loss in relationship to the Policy and in rejecting Plaintiff Villa Highlands' proof of loss on grounds that it knows to be without foundation. These acts were done knowingly, intentionally, and with the purpose of discouraging, avoiding, or reducing the payment due Plaintiff Villa Highlands under the terms of the Policy and with the intent to harass, vex, injure and annoy the insured Plaintiff Villa Highlands. Thus, Plaintiff Villa Highlands reserves the right to amend this Complaint pursuant to Idaho Code Section 6-1604 to allege a claim for punitive damages against Defendant Western Community.

VIII.

As a result of Defendant Western Community's failure to pay Plaintiff Villa Highlands its damages and as a result of its acts and omissions as herein set forth, it has been necessary for

Plaintiff Villa Highlands to institute this litigation. Plaintiff Villa Highlands is therefore entitled to an award of reasonable costs and attorneys' fees in the amount of \$15,000.00 if this matter is uncontested by Defendants and to an award of reasonable costs and attorneys' fees if this matter is contested by Defendants Western Community pursuant to Idaho Code Sections 12-120, 12-121, 41-1839, and other provisions of Idaho law.

COUNT FOUR

BREACH OF FIDUCIARY DUTY

Plaintiff Villa Highlands realleges the allegations set forth in Count One, Count Two and Count Three of this Complaint and further alleges the following as a claim and cause of action against Defendant Western Community and Does I - V:

I.

As a result of the acts and omissions of Defendant Western Community as previously described, Defendants Western Community has breached their fiduciary duty owed to Plaintiff Villa Highlands thereby causing damage to Plaintiff Villa Highlands in an amount in excess of \$10,000.00, the amount of which shall be proven at trial, plus accruing prejudgment interest thereon as may be allowed by law.

II.

Defendant Western Community has acted wilfully, fraudulently, intentionally, gross negligently, in reckless disregard of Plaintiff Villa Highlands' rights and in bad faith in refusing to consider the nature and extent of Plaintiff Villa Highlands' loss in relationship to the Policy and in rejecting Plaintiff Villa Highlands' proof of loss on grounds that it knows to be without foundation. These acts were done knowingly, intentionally, and with the purpose of discouraging, avoiding, or reducing the payment due Plaintiff Villa Highlands under the terms of the Policy and with the intent to harass, vex, injure and annoy the insured Plaintiff Villa Highlands. Thus, Plaintiff Villa Highlands reserves the right to amend this Complaint pursuant to Idaho Code Section 6-1604 to allege a claim for punitive damages against Defendant Western Community.

III.

As a result of Defendant Western Community's failure to pay Plaintiff Villa Highlands its damages and as a result of its acts and omissions as herein set forth, it has been necessary for Plaintiff Villa Highlands to institute this litigation. Plaintiff Villa Highlands is therefore entitled to an award of reasonable costs and attorneys' fees in the amount of \$15,000.00 if this matter is uncontested by Defendants and to an award of reasonable costs and attorneys' fees if this matter is contested by Defendants Western Community pursuant to Idaho Code Sections 12-120, 12-121, 41-1839, and other provisions of Idaho law.

COUNT FIVE

NEGLIGENCE

Plaintiff Villa Highlands realleges the allegations set forth in Count One, Count Two, Count Three and Count Four of this Complaint and further alleges the following as a claim and cause of action against Defendant Western Community and Does I - V:

I.

Defendant Western Community owed a duty to Plaintiff Villa Highlands by virtue of the terms of the parties' foregoing Policy, the fiduciary relationship arising therefrom and from the trust placed in Defendant Western Community by Plaintiff Villa Highlands. Defendant Western Community was under an obligation to act in good faith and in a reasonable manner in determining the amount of insurance protection for Plaintiff Villa Highlands, preparing and issuing the Policy for the protection of Plaintiff Villa Highlands, and in promptly investigating and paying Plaintiff Villa Highlands' claim upon the catastrophic fire damage to Plaintiff's Villa Highlands Building.

II.

Defendant Western Community breached that duty of due care as previously described by failing to properly advise Plaintiff Villa Highlands as to the insurance protection being purchased by Plaintiff Villa Highlands, in failing to properly investigate and pay Plaintiff Villa Highlands' claim in accordance with the terms of the Policy, in contending that the Villa Highlands Building

was underinsured, and in failing to insure that the Villa Highlands Building was not fully insured as desired by Plaintiff Villa Highlands and as promised by Defendant.

III.

By virtue of the Defendant Western Community's conduct previously described in which Defendant Western Community negligently failed to discharge its duty owed to Plaintiff Villa Highlands, and as a direct and proximate result thereof, Plaintiff Villa Highlands has suffered monetary damages and will continue to suffer monetary damages in the future in an amount in excess of \$10,000.00 as may be proven at trial, together with accrued prejudgment interest as allowed by law.

IV.

As a result of Defendant Western Community's failure to pay Plaintiff Villa Highlands its damages and as a result of its acts and omissions as herein set forth, it has been necessary for Plaintiff Villa Highlands to institute this litigation. Plaintiff Villa Highlands is therefore entitled to an award of reasonable costs and attorneys' fees in the amount of \$15,000.00 if this matter is uncontested by Defendants and to an award of reasonable costs and attorneys' fees if this matter is contested by Defendants Western Community pursuant to Idaho Code Sections 12-120, 12-121, 41-1839, and other provisions of Idaho law.

COUNT SIX

MISREPRESENTATION

Plaintiff Villa Highlands realleges the allegations set forth in Count One, Count Two, Count Three, Court Four and Count Five of this Complaint and further alleges the following as a claim and cause of action against Defendant Western Community and Does I - V:

I.

Prior to, during and subsequent to procuring the Policy, Defendant Western Community made numerous false and material representations to Plaintiff Villa Highlands regarding the coverage provided by the foregoing insurance Policy. Such representations included, but are not limited to: (a) the insurance Policy should only set forth the hard costs for the project and that it should not set forth the fair market value of the project or any soft or other costs relating thereto and that by setting forth such final costs, Plaintiff Villa Highlands would be fully insured and covered for any casualty loss sustained to the Villa Highlands Building up to \$5,645,000.00; (b) Plaintiff Villa Highlands would be fully insured and that any loss would be promptly adjusted in order that Plaintiff would not sustain any undue loss or construction delays arising from a casualty up to the face amount of insurance of \$5,645,000.00.

II.

At the time the above-mentioned false and material representations were made by Defendant

Western Community to Plaintiff Villa Highlands, Defendant Western Community had no reasonable grounds for believing said representations were true. Said representations were material and relied upon by Plaintiff Villa Highlands in that had said representations not been made or had Plaintiff Villa Highlands known of their falsity, Plaintiff Villa Highlands would not have procured the Policy from Defendant Western Community.

III.

As a direct and proximate result of the previously set forth false and material representations made by Defendant Western Community, Plaintiff Villa Highlands suffered and will continue to suffer monetary damages in an amount in excess of \$10,000.00 as may be proven at trial, together with accrued prejudgment interest on such damages as allowed by law.

IV.

Defendant Western Community have acted wilfully, fraudulently, intentionally, grossly negligent, in reckless disregard of Plaintiff Villa Highlands' rights, in bad faith in refusing to consider the nature and extent of Plaintiff Villa Highlands' loss in relationship to the Policy and in rejecting Plaintiff Villa Highlands' proof of loss. These acts were done knowingly, intentionally, and with the purpose of discouraging, avoiding, or reducing the payment due Plaintiff Villa Highlands under the terms of the Policy and were done with intent to harass, vex, injure and annoy the insured Plaintiff Villa Highlands. Thus, Plaintiff Villa Highlands reserves the right to amend this

Complaint pursuant to Idaho Code Section 6-1604 to allege a claim for punitive damages against Defendant Western Community.

V.

As a result of Defendant Western Community's failure to pay Plaintiff Villa Highlands its damages and as a result of its acts and omissions as herein set forth, it has been necessary for Plaintiff Villa Highlands to institute this litigation. Plaintiff Villa Highlands is therefore entitled to an award of reasonable costs and attorneys' fees in the amount of \$15,000.00 if this matter is uncontested by Defendants and to an award of reasonable costs and attorneys' fees if this matter is contested by Defendants Western Community pursuant to Idaho Code Sections 12-120, 12-121, 41-1839, and other provisions of Idaho law.

COUNT SEVEN

EQUITABLE ESTOPPEL

Plaintiff Villa Highlands realleges the allegations set forth in Count One, Count Two, Count Three, Court Four, Count Five, and Count Six of this Complaint and further alleges the following as a claim and cause of action against Defendant Western Community and Does I - V:

I.

Defendant Western Community made the representations, warranties, promises, and

inducements as previously set forth regarding the coverage provided to Plaintiff Villa Highlands under the Policy which were false and Defendant Western Community concealed material facts with regard to the coverage provided by the Policy with actual or constructive knowledge of the truth and Plaintiff Villa Highlands did not know or could not discover the truth and such false representations or concealments were made with the intent that they be relied upon by Plaintiff Villa Highlands and it did in fact rely and act upon such representations and concealments to its prejudice and damage, thereby entitling Plaintiff Villa Highlands to an award of damages in excess of \$10,000.00 and as may be proven at trial, plus accruing prejudgment interest thereon as may be allowed by law.

II.

Defendant Western Community have acted wilfully, fraudulently, intentionally, grossly negligent, in reckless disregard of Plaintiff Villa Highlands' rights, in bad faith in refusing to consider the nature and extent of Plaintiff Villa Highlands' loss in relationship to the Policy and in rejecting Plaintiff Villa Highlands' proof of loss. These acts were done knowingly, intentionally, and with the purpose of discouraging, avoiding, or reducing the payment due Plaintiff Villa Highlands under the terms of the Policy and were done with intent to harass, vex, injure and annoy the insured Plaintiff Villa Highlands. Thus, Plaintiff Villa Highlands reserves the right to amend this Complaint pursuant to Idaho Code Section 6-1604 to allege a claim for punitive damages against Defendant Western Community.

III.

As a result of Defendant Western Community's failure to pay Plaintiff Villa Highlands its damages and as a result of its acts and omissions as herein set forth, it has been necessary for Plaintiff Villa Highlands to institute this litigation. Plaintiff Villa Highlands is therefore entitled to an award of reasonable costs and attorneys' fees in the amount of \$15,000.00 if this matter is uncontested by Defendants and to an award of reasonable costs and attorneys' fees if this matter is contested by Defendants Western Community pursuant to Idaho Code Sections 12-120, 12-121, 41-1839, and other provisions of Idaho law.

COUNT EIGHT

PROMISSORY ESTOPPEL

Plaintiff Villa Highlands realleges the allegations set forth in Count One, Count Two, Count Three, Court Four, Count Five, Count Six, and Count Seven of this Complaint and further alleges the following as a claim and cause of action against Defendant Western Community and Does I - V:

I.

The acts and omissions of Defendant Western Community as previously set forth herein resulted in Plaintiff Villa Highlands detrimentally suffering damages in reliance thereon, which


damages and as a result of its acts and omissions as herein set forth, it has been necessary for Plaintiff Villa Highlands to institute this litigation. Plaintiff Villa Highlands is therefore entitled to an award of reasonable costs and attorneys' fees in the amount of \$15,000.00 if this matter is uncontested by Defendants and to an award of reasonable costs and attorneys' fees if this matter is contested by Defendants Western Community pursuant to Idaho Code Sections 12-120, 12-121, 41-1839, and other provisions of Idaho law.

WHEREFORE, Plaintiff Villa Highlands, LLC prays that judgment be entered against Defendants, jointly and severally, for a declaration that Plaintiff is entitled to full coverage under the described Policy for the full amount of \$5,645,000.00 and that such sum should be promptly paid to Plaintiff, damages in excess of \$10,000.00 in an amount to be proven at trial, prejudgment interest as provided by law, \$15,000.00 attorneys' fees and costs if this matter is uncontested by Defendants or reasonable attorneys' fees and costs if this matter is contested by Defendants, and for such other and further relief as the Court may deem just and proper.

PLAINTIFF VILLA HIGHLANDS, LLC, DEMANDS A JURY TRIAL ON ALL ISSUES OF FACT IN THE ABOVE-ENTITLED LITIGATION AND WILL NOT STIPULATE TO A JURY OF LESS THAN TWELVE (12) PERSONS.

DATED this 6th day of December, 2006.

DAVISON, COPPLE, COPPLE & COX, LLP

By: 
Terry C. Copple, of the firm
Attorneys for Plaintiff

VERIFICATION

STATE OF IDAHO)
) ss.
County of Ada)

WILLIAM HODGES, being first duly sworn upon oath, deposes and states:

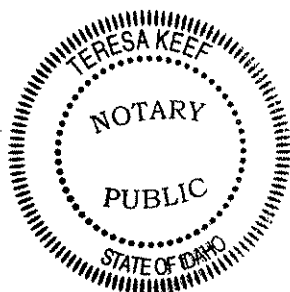
I am the Manager of the Plaintiff Villa Highlands, LLC, an Idaho limited liability company, I have read the foregoing Complaint, know the contents therein, and believe them to be true to the best of my knowledge and belief.

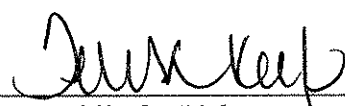
DATED this 9 day of December, 2006.

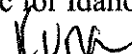


William Hodges

SUBSCRIBED AND SWORN TO BEFORE ME this 9 day of December, 2006.





Notary Public for Idaho
Residence: 
Commission Expires: _____

MY COMMISSION EXPIRES
November 15, 2012
BONDED THRU NOTARY PUBLIC UNDERWRITERS

AMENDED COMPLAINT FOR BREACH OF CONTRACT, DECLARATORY RELIEF, BAD FAITH, BREACH OF FIDUCIARY DUTY, NEGLIGENCE, MISREPRESENTATION, EQUITABLE ESTOPPEL, PROMISSORY ESTOPPEL, AND DEMAND FOR JURY TRIAL - 26

00099



COMMERCIAL PACKAGE ADDITIONAL POLICY DECLARATION
COMMERCIAL PROPERTY COVERAGE PART

IS1441
10/13/05

EFFECTIVE 4/25/05
POLICY 8C023703 NAME VILLA HIGHLANDS LLC

LOC. NO.	BLD. NO.	DESCRIPTION/ OCCUPANCY	COINS %	DED.	LIMIT OF INSURANCE	ANNUAL PREMIUM	MORT. NO.
02	01	BPP 702 W IDAHO 322 BOISE ID CLASS CODE: 0567	80	500	5,000	49.00	

INFLATION = 00%
COVERED CAUSES OF LOSS- SPECIAL FORM INCLUDING THEFT
REPLACEMENT COST COVERAGE APPLIES.

DESCRIPTION-CONTENTS

02	01	BUILDERS RISK S=34 T=4N R=2E ADA		500	5,645,000	8129.00	5265
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LOAN NUMBER: 9645035001
COVERED CAUSES OF LOSS- SPECIAL FORM INCLUDING THEFT
ACTUAL CASH VALUE APPLIES.

NOTE: THIS ITEM ADDED 9/06/05

02	01	BUILDERS RISK S=34 T=4N R=2E ADA		500	5,645,000	8129.00	3173
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LOAN NUMBER: 9645035001
COVERED CAUSES OF LOSS- SPECIAL FORM INCLUDING THEFT
ACTUAL CASH VALUE APPLIES.

NOTE: THIS ITEM ADDED 6/01/05

NOTE: THIS ITEM DELETED 9/06/05

MORTGAGEE
5265
FIRST HORIZON
CONSTRUCTION LENDING
4949 SW MEADOWS RD STE 200
LAKE OSWEGO OR 97035-3162

3173
FIRST HORIZON HOME LOAN CORP
ITS SUCCESSORS AND/OR ASSIGNS
INSURANCE CENTER
PO BOX 7481
SPRINGFIELD OH 45501-7481

TOTAL ANNUAL PREMIUM 8,178.00

FO-10.441 (10/02)

00100
EXHIBIT A

BUILDERS RISK COVERAGE FORM

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

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

Other words and phrases that appear in quotation marks have special meaning. Refer to Section G. – Definitions.

A. Coverage

We will pay for direct physical loss of or damage to Covered Property at the premises described in the Declarations caused by or resulting from any Covered Cause of Loss.

1. Covered Property

Covered Property, as used in this Coverage Part, means the type of property described in this Section, A.1., and limited in A.2., Property Not Covered, if a Limit of Insurance is shown in the Declarations for that type of property.

Building Under Construction, meaning the building or structure described in the Declarations while in the course of construction, including:

- a. Foundations;
- b. The following property:
 - (1) Fixtures and machinery;
 - (2) Equipment used to service the building; and
 - (3) Your building materials and supplies used for construction;provided such property is intended to be permanently located in or on the building or structure described in the Declarations or within 100 feet of its premises;
- c. If not covered by other insurance, temporary structures built or assembled on site, including cribbing, scaffolding and construction forms.

2. Property Not Covered

Covered Property does not include:

- a. Land (including land on which the property is located) or water;
- b. The following property when outside of buildings:
 - (1) Lawns, trees, shrubs or plants;

- (2) Radio or television antennas (including satellite dishes) and their lead-in wiring, masts or towers; or

- (3) Signs (other than signs attached to buildings).

3. Covered Causes Of Loss

See applicable Causes of Loss Form as shown in the Declarations.

4. Additional Coverages

a. Debris Removal

- (1) Subject to Paragraphs (3) and (4), we will pay your expense to remove debris of Covered Property caused by or resulting from a Covered Cause of Loss that occurs during the policy period. The expenses will be paid only if they are reported to us in writing within 180 days of the date of direct physical loss or damage.

- (2) Debris Removal does not apply to costs to:

- (a) Extract "pollutants" from land or water; or
- (b) Remove, restore or replace polluted land or water.

- (3) Subject to the exceptions in Paragraph (4), the following provisions apply:

- (a) The most we will pay for the total of direct physical loss or damage plus debris removal expense is the Limit of Insurance applicable to the Covered Property that has sustained loss or damage.

- (b) Subject to (a) above, the amount we will pay for debris removal expense is limited to 25% of the sum of the deductible plus the amount that we pay for direct physical loss or damage to the Covered Property that has sustained loss or damage.

(4) We will pay up to an additional \$10,000 for debris removal expense, for each location, in any one occurrence of physical loss or damage to Covered Property, if one or both of the following circumstances apply:

(a) The total of the actual debris removal expense plus the amount we pay for direct physical loss or damage exceeds the Limit of Insurance on the Covered Property that has sustained loss or damage.

(b) The actual debris removal expense exceeds 25% of the sum of the deductible plus the amount that we pay for direct physical loss or damage to the Covered Property that has sustained loss or damage.

Therefore, if (4)(a) and/or (4)(b) apply, our total payment for direct physical loss or damage and debris removal expense may reach but will never exceed the Limit of Insurance on the Covered Property that has sustained loss or damage, plus \$10,000.

(5) Examples

The following examples assume that there is no coinsurance penalty.

Example #1

Limit of Insurance	\$ 90,000
Amount of Deductible	\$ 500
Amount of Loss	\$ 50,000
Amount of Loss Payable	\$ 49,500
	(\$50,000 – \$500)
Debris Removal Expense	\$ 10,000
Debris Removal Expense Payable	\$ 10,000
	(\$10,000 is 20% of \$50,000)

The debris removal expense is less than 25% of the sum of the loss payable plus the deductible. The sum of the loss payable and the debris removal expense (\$49,500 + \$10,000 = \$59,500) is less than the Limit of Insurance. Therefore, the full amount of debris removal expense is payable in accordance with the terms of Paragraph (3).

Example #2

Limit of Insurance	\$ 90,000
Amount of Deductible	\$ 500
Amount of Loss	\$ 80,000
Amount of Loss Payable	\$ 79,500
	(\$80,000 – \$500)
Debris Removal Expense	\$ 30,000
Debris Removal Expense Payable	
	Basic Amount \$ 10,500
	Additional Amount \$ 10,000

The basic amount payable for debris removal expense under the terms of Paragraph (3) is calculated as follows: \$80,000 (\$79,500 + \$500) x .25 = \$20,000; capped at \$10,500. The cap applies because the sum of the loss payable (\$79,500) and the basic amount payable for debris removal expense (\$10,500) cannot exceed the Limit of Insurance (\$90,000).

The additional amount payable for debris removal expense is provided in accordance with the terms of Paragraph (4), because the debris removal expense (\$30,000) exceeds 25% of the loss payable plus the deductible (\$30,000 is 37.5% of \$80,000), and because the sum of the loss payable and debris removal expense (\$79,500 + \$30,000 = \$109,500) would exceed the Limit of Insurance (\$90,000). The additional amount of covered debris removal expense is \$10,000, the maximum payable under Paragraph (4). Thus the total payable for debris removal expense in this example is \$20,500; \$9,500 of the debris removal expense is not covered.

b. Preservation Of Property

If it is necessary to move Covered Property from the described premises to preserve it from loss or damage by a Covered Cause of Loss, we will pay for any direct physical loss or damage to that property:

- (1) While it is being moved or while temporarily stored at another location; and
- (2) Only if the loss or damage occurs within 30 days after the property is first moved.

c. Fire Department Service Charge

When the fire department is called to save or protect Covered Property from a Covered Cause of Loss, we will pay up to \$1,000 for your liability for fire department service charges:

- (1) Assumed by contract or agreement prior to loss; or
- (2) Required by local ordinance.

No Deductible applies to this Additional Coverage.

d. Pollutant Clean Up And Removal

We will pay your expense to extract "pollutants" from land or water at the described premises if the discharge, dispersal, seepage, migration, release or escape of the "pollutants" is caused by or results from a Covered Cause of Loss that occurs during the policy period. The expenses will be paid only if they are reported to us in writing within 180 days of the date on which the Covered Cause of Loss occurs.

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

The most we will pay under this Additional Coverage for each described premises is \$10,000 for the sum of all covered expenses arising out of Covered Causes of Loss occurring during each separate 12 month period of this policy.

5. Coverage Extensions

a. Building Materials And Supplies Of Others

- (1) You may extend the insurance provided by this Coverage Form to apply to building materials and supplies that are:
 - (a) Owned by others;
 - (b) In your care, custody or control;
 - (c) Located in or on the building described in the Declarations, or within 100 feet of its premises; and
 - (d) Intended to become a permanent part of the building.

- (2) The most we will pay for loss or damage under this Extension is \$5,000 at each described premises, unless a higher Limit of Insurance is specified in the Declarations. Our payment for loss of or damage to property of others will only be for the account of the owner of the property.

b. Sod, Trees, Shrubs And Plants

You may extend the insurance provided by this Coverage Form to apply to loss or damage to sod, trees, shrubs and plants outside of buildings on the described premises, if the loss or damage is caused by or results from any of the following causes of loss:

- (1) Fire;
- (2) Lightning;
- (3) Explosion;
- (4) Riot or Civil Commotion; or
- (5) Aircraft.

The most we will pay for loss or damage under this Extension is \$1,000, but not more than \$250 for any one tree, shrub or plant. These limits apply to any one occurrence, regardless of the types or number of items lost or damaged in that occurrence.

B. Exclusions And Limitations

See applicable Causes of Loss Form as shown in the Declarations.

C. Limits Of Insurance

The most we will pay for loss or damage in any one occurrence is the applicable Limit of Insurance shown in the Declarations.

The most we will pay for loss or damage to outdoor signs attached to buildings is \$1,000 per sign in any one occurrence.

The limits applicable to the Coverage Extensions and the Fire Department Service Charge and Pollutant Clean Up and Removal Additional Coverages are in addition to the Limits of Insurance.

Payments under the Preservation of Property Additional Coverage will not increase the applicable Limit of Insurance.

D. Deductible

In any one occurrence of loss or damage (hereinafter referred to as loss), we will first reduce the amount of loss if required by the Additional Condition – Need For Adequate Insurance. If the adjusted amount of loss is less than or equal to the Deductible, we will not pay for that loss. If the adjusted amount of loss exceeds the Deductible, we will then subtract the Deductible from the adjusted amount of loss, and will pay the resulting amount or the Limit of Insurance, whichever is less.

When the occurrence involves loss to more than one item of Covered Property and separate Limits of Insurance apply, the losses will not be combined in determining application of the Deductible. But the Deductible will be applied only once per occurrence.

Example No. 1:

(This example assumes there is no penalty for underinsurance.)

Deductible:	\$ 1,000
Limit of Insurance – Bldg. 1:	\$ 60,000
Limit of Insurance – Bldg. 2:	\$ 80,000
Loss to Bldg. 1:	\$ 60,100
Loss to Bldg. 2:	\$ 90,000

The amount of loss to Bldg. 1 (\$60,100) is less than the sum (\$61,000) of the Limit of Insurance applicable to Bldg. 1 plus the Deductible.

The Deductible will be subtracted from the amount of loss in calculating the loss payable for Bldg. 1:

\$ 60,100
– 1,000
<u>\$ 59,100</u> Loss Payable – Bldg. 1

The Deductible applies once per occurrence and therefore is not subtracted in determining the amount of loss payable for Bldg. 2. Loss payable for Bldg. 2 is the Limit of Insurance of \$80,000.

Total amount of loss payable: \$59,100 + 80,000 = \$139,100.

Example No. 2:

(This example, too, assumes there is no penalty for underinsurance.)

The Deductible and Limits of Insurance are the same as those in Example No. 1.

Loss to Bldg. 1:	\$ 70,000
(exceeds Limit of Insurance plus Deductible)	
Loss to Bldg. 2:	\$ 90,000
(exceeds Limit of Insurance plus Deductible)	
Loss Payable – Bldg. 1:	\$60,000
(Limit of Insurance)	
Loss Payable – Bldg. 2:	\$80,000
(Limit of Insurance)	
Total amount of loss payable:	\$140,000

E. Loss Conditions

The following conditions apply in addition to the Common Policy Conditions and the Commercial Property Conditions.

1. Abandonment

There can be no abandonment of any property to us.

2. Appraisal

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

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

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

3. Duties In The Event Of Loss Or Damage

- You must see that the following are done in the event of loss or damage to Covered Property:

- (1) Notify the police if a law may have been broken.

- (2) Give us prompt notice of the loss or damage. Include a description of the property involved.
- (3) As soon as possible, give us a description of how, when and where the loss or damage occurred.
- (4) Take all reasonable steps to protect the Covered Property from further damage, and keep a record of your expenses necessary to protect the Covered Property, for consideration in the settlement of the claim. This will not increase the Limit of Insurance. However, we will not pay for any subsequent loss or damage resulting from a cause of loss that is not a Covered Cause of Loss. Also, if feasible, set the damaged property aside and in the best possible order for examination.
- (5) At our request, give us complete inventories of the damaged and undamaged property. Include quantities, costs, values and amount of loss claimed.
- (6) As often as may be reasonably required, permit us to inspect the property proving the loss or damage and examine your books and records.
Also permit us to take samples of damaged and undamaged property for inspection, testing and analysis, and permit us to make copies from your books and records.
- (7) Send us a signed, sworn proof of loss containing the information we request to investigate the claim. You must do this within 60 days after our request. We will supply you with the necessary forms.
- (8) Cooperate with us in the investigation or settlement of the claim.

b. We may examine any insured under oath, while not in the presence of any other insured and at such times as may be reasonably required, about any matter relating to this insurance or the claim, including an insured's books and records. In the event of an examination, an insured's answers must be signed.

4. Loss Payment

- a. In the event of loss or damage covered by this Coverage Form, at our option, we will either:
 - (1) Pay the value of lost or damaged property;

- (2) Pay the cost of repairing or replacing the lost or damaged property, subject to b. below;
- (3) Take all or any part of the property at an agreed or appraised value; or
- (4) Repair, rebuild or replace the property with other property of like kind and quality, subject to b. below.

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

- b. The cost to repair, rebuild or replace does not include the increased cost attributable to enforcement of any ordinance or law regulating the construction, use or repair of any property.
- c. We will give notice of our intentions within 30 days after we receive the sworn proof of loss.
- d. We will not pay you more than your financial interest in the Covered Property.
- e. We may adjust losses with the owners of lost or damaged property if other than you. If we pay the owners, such payments will satisfy your claims against us for the owners' property. We will not pay the owners more than their financial interest in the Covered Property.
- f. We may elect to defend you against suits arising from claims of owners of property. We will do this at our expense.
- g. We will pay for covered loss or damage within 30 days after we receive the sworn proof of loss, if you have complied with all of the terms of this Coverage Part and:
 - (1) We have reached agreement with you on the amount of loss; or
 - (2) An appraisal award has been made.

5. Recovered Property

If either you or we recover any property after loss settlement, that party must give the other prompt notice. At your option, the property will be returned to you. You must then return to us the amount we paid to you for the property. We will pay recovery expenses and the expenses to repair the recovered property, subject to the Limit of Insurance.

6. Valuation

We will determine the value of Covered Property at actual cash value as of the time of loss or damage.

F. Additional Conditions

The following conditions apply in addition to the Common Policy Conditions and the Commercial Property Conditions.

1. Mortgageholders

- a. The term mortgageholder includes trustee.
- b. We will pay for covered loss of or damage to buildings or structures to each mortgageholder shown in the Declarations in their order of precedence, as interests may appear.
- c. The mortgageholder has the right to receive loss payment even if the mortgageholder has started foreclosure or similar action on the building or structure.
- d. If we deny your claim because of your acts or because you have failed to comply with the terms of this Coverage Part, the mortgageholder will still have the right to receive loss payment if the mortgageholder:
 - (1) Pays any premium due under this Coverage Part at our request if you have failed to do so;
 - (2) Submits a signed, sworn proof of loss within 60 days after receiving notice from us of your failure to do so; and
 - (3) Has notified us of any change in ownership, occupancy or substantial change in risk known to the mortgageholder.

All of the terms of this Coverage Part will then apply directly to the mortgageholder.

- e. If we pay the mortgageholder for any loss or damage and deny payment to you because of your acts or because you have failed to comply with the terms of this Coverage Part:
 - (1) The mortgageholder's rights under the mortgage will be transferred to us to the extent of the amount we pay; and
 - (2) The mortgageholder's right to recover the full amount of the mortgageholder's claim will not be impaired.

At our option, we may pay to the mortgageholder the whole principal on the mortgage plus any accrued interest. In this event, your mortgage and note will be transferred to us and you will pay your remaining mortgage debt to us.

f. If we cancel this policy, we will give written notice to the mortgageholder at least:

- (1) 10 days before the effective date of cancellation if we cancel for your non-payment of premium; or
- (2) 30 days before the effective date of cancellation if we cancel for any other reason.

g. If we elect not to renew this policy, we will give written notice to the mortgageholder at least 10 days before the expiration date of this policy.

2. Need For Adequate Insurance

We will not pay a greater share of any loss than the proportion that the Limit of Insurance bears to the value on the date of completion of the building described in the Declarations.

Example No. 1 (Underinsurance):

When:	The value of the building on the date of completion is	\$ 200,000
	The Limit of Insurance for it is	\$ 100,000
	The Deductible is	\$ 500
	The amount of loss is	\$ 80,000

Step 1: $\$100,000 \div \$200,000 = .50$

Step 2: $\$80,000 \times .50 = \$40,000$

Step 3: $\$40,000 - \$500 = \$39,500$

We will pay no more than \$39,500. The remaining \$40,500 is not covered.

Example No. 2 (Adequate Insurance):

When:	The value of the building on the date of completion is	\$ 200,000
	The Limit of Insurance for it is	\$ 200,000
	The Deductible is	\$ 1,000
	The amount of loss is	\$ 80,000

The Limit of Insurance in this Example is adequate and therefore no penalty applies. We will pay no more than \$79,000 (\$80,000 amount of loss minus the deductible of \$1,000).

3. Restriction Of Additional Coverage – Collapse

If the Causes Of Loss – Broad Form is applicable to this coverage form, Paragraph C.2.f. of the Additional Coverage – Collapse does not apply to this coverage form.

If the Causes Of Loss – Special Form is applicable to this coverage form, Paragraph D.2.f. of the Additional Coverage – Collapse does not apply to this coverage form.

4. When Coverage Ceases

The insurance provided by this Coverage Form will end when one of the following first occurs:

- a. This policy expires or is cancelled;
- b. The property is accepted by the purchaser;
- c. Your interest in the property ceases;
- d. You abandon the construction with no intention to complete it;

e. Unless we specify otherwise in writing:

- (1) 90 days after construction is complete; or
- (2) 60 days after any building described in the Declarations is:
 - (a) Occupied in whole or in part; or
 - (b) Put to its intended use.

G. Definitions

"Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

Handwritten signature and date: 5/25/2001

CAUSES OF LOSS – SPECIAL FORM

Words and phrases that appear in quotation marks have special meaning. Refer to Section F. – Definitions.

A. Covered Causes Of Loss

When Special is shown in the Declarations, Covered Causes of Loss means Risks Of Direct Physical Loss unless the loss is:

1. Excluded in Section B., Exclusions; or
2. Limited in Section C., Limitations; that follow.

B. Exclusions

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

a. Ordinance Or Law

The enforcement of any ordinance or law:

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

This exclusion, Ordinance Or Law, applies whether the loss results from:

- (1) An ordinance or law that is enforced even if the property has not been damaged; or
- (2) The increased costs incurred to comply with an ordinance or law in the course of construction, repair, renovation, remodeling or demolition of property, or removal of its debris, following a physical loss to that property.

b. Earth Movement

- (1) Earthquake, including any earth sinking, rising or shifting related to such event;
- (2) Landslide, including any earth sinking, rising or shifting related to such event;
- (3) Mine subsidence, meaning subsidence of a man-made mine, whether or not mining activity has ceased;

- (4) Earth sinking (other than sinkhole collapse), rising or shifting including soil conditions which cause settling, cracking or other disarrangement of foundations or other parts of realty. Soil conditions include contraction, expansion, freezing, thawing, erosion, improperly compacted soil and the action of water under the ground surface.

But if Earth Movement, as described in b.(1) through (4) above, results in fire or explosion, we will pay for the loss or damage caused by that fire or explosion.

- (5) Volcanic eruption, explosion or effusion. But if volcanic eruption, explosion or effusion results in fire, building glass breakage or Volcanic Action, we will pay for the loss or damage caused by that fire, building glass breakage or Volcanic Action.

Volcanic action means direct loss or damage resulting from the eruption of a volcano when the loss or damage is caused by:

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

All volcanic eruptions that occur within any 168 hour period will constitute a single occurrence.

Volcanic action does not include the cost to remove ash, dust or particulate matter that does not cause direct physical loss or damage to the described property.

c. Governmental Action

Seizure or destruction of property by order of governmental authority.

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

d. Nuclear Hazard

Nuclear reaction or radiation, or radioactive contamination, however caused.

But if nuclear reaction or radiation, or radioactive contamination, results in fire, we will pay for the loss or damage caused by that fire.

e. Utility Services

The failure of power or other utility service supplied to the described premises, however caused, if the failure occurs away from the described premises. Failure includes lack of sufficient capacity and reduction in supply.

But if the failure of power or other utility service results in a Covered Cause of Loss, we will pay for the loss or damage caused by that Covered Cause of Loss.

This exclusion does not apply to the Business Income coverage or to Extra Expense coverage. Instead, the Special Exclusion in Paragraph B.4.a.(1) applies to these coverages.

f. War And Military Action

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

g. Water

- (1) Flood, surface water, waves, tides, tidal waves, overflow of any body of water, or their spray, all whether driven by wind or not;
- (2) Mudslide or mudflow;
- (3) Water that backs up or overflows from a sewer, drain or sump; or
- (4) Water under the ground surface pressing on, or flowing or seeping through:
 - (a) Foundations, walls, floors or paved surfaces;
 - (b) Basements, whether paved or not; or
 - (c) Doors, windows or other openings.

But if Water, as described in g.(1) through g.(4) above, results in fire, explosion or sprinkler leakage, we will pay for the loss or damage caused by that fire, explosion or sprinkler leakage.

h. "Fungus", Wet Rot, Dry Rot And Bacteria

Presence, growth, proliferation, spread or any activity of "fungus", wet or dry rot or bacteria.

But if "fungus", wet or dry rot or bacteria results in a "specified cause of loss", we will pay for the loss or damage caused by that "specified cause of loss".

This exclusion does not apply:

1. When "fungus", wet or dry rot or bacteria results from fire or lightning; or
2. To the extent that coverage is provided in the Additional Coverage – Limited Coverage For "Fungus", Wet Rot, Dry Rot And Bacteria with respect to loss or damage by a cause of loss other than fire or lightning.

Exclusions B.1.a. through B.1.h. apply whether or not the loss event results in widespread damage or affects a substantial area.

2. We will not pay for loss or damage caused by or resulting from any of the following:
 - a. Artificially generated electrical current, including electric arcing, that disturbs electrical devices, appliances or wires.

But if artificially generated electrical current results in fire, we will pay for the loss or damage caused by that fire.
 - b. Delay, loss of use or loss of market.
 - c. Smoke, vapor or gas from agricultural smudging or industrial operations.
 - d.(1) Wear and tear;
 - (2) Rust or other corrosion, decay, deterioration, hidden or latent defect or any quality in property that causes it to damage or destroy itself;
 - (3) Smog;
 - (4) Settling, cracking, shrinking or expansion;
 - (5) Nesting or infestation, or discharge or release of waste products or secretions, by insects, birds, rodents or other animals.

- (6) Mechanical breakdown, including rupture or bursting caused by centrifugal force. But if mechanical breakdown results in elevator collision, we will pay for the loss or damage caused by that elevator collision.
- (7) The following causes of loss to personal property:
- (a) Dampness or dryness of atmosphere;
 - (b) Changes in or extremes of temperature; or
 - (c) Marring or scratching.
- But if an excluded cause of loss that is listed in 2.d.(1) through (7) results in a "specified cause of loss" or building glass breakage, we will pay for the loss or damage caused by that "specified cause of loss" or building glass breakage.
- e. Explosion of steam boilers, steam pipes, steam engines or steam turbines owned or leased by you, or operated under your control. But if explosion of steam boilers, steam pipes, steam engines or steam turbines results in fire or combustion explosion, we will pay for the loss or damage caused by that fire or combustion explosion. We will also pay for loss or damage caused by or resulting from the explosion of gases or fuel within the furnace of any fired vessel or within the flues or passages through which the gases of combustion pass.
 - f. Continuous or repeated seepage or leakage of water, or the presence or condensation of humidity, moisture or vapor, that occurs over a period of 14 days or more.
 - g. Water, other liquids, powder or molten material that leaks or flows from plumbing, heating, air conditioning or other equipment (except fire protective systems) caused by or resulting from freezing, unless:
 - (1) You do your best to maintain heat in the building or structure; or
 - (2) You drain the equipment and shut off the supply if the heat is not maintained.
 - h. Dishonest or criminal act by you, any of your partners, members, officers, managers, employees (including leased employees), directors, trustees, authorized representatives or anyone to whom you entrust the property for any purpose:
 - (1) Acting alone or in collusion with others; or

- (2) Whether or not occurring during the hours of employment.

This exclusion does not apply to acts of destruction by your employees (including leased employees); but theft by employees (including leased employees) is not covered.

- i. Voluntary parting with any property by you or anyone else to whom you have entrusted the property if induced to do so by any fraudulent scheme, trick, device or false pretense.
 - j. Rain, snow, ice or sleet to personal property in the open.
 - k. Collapse, except as provided below in the Additional Coverage for Collapse. But if collapse results in a Covered Cause of Loss at the described premises, we will pay for the loss or damage caused by that Covered Cause of Loss.
 - l. Discharge, dispersal, seepage, migration, release or escape of "pollutants" unless the discharge, dispersal, seepage, migration, release or escape is itself caused by any of the "specified causes of loss". But if the discharge, dispersal, seepage, migration, release or escape of "pollutants" results in a "specified cause of loss", we will pay for the loss or damage caused by that "specified cause of loss".

This exclusion, l., does not apply to damage to glass caused by chemicals applied to the glass.
 - m. Neglect of an insured to use all reasonable means to save and preserve property from further damage at and after the time of loss.
3. We will not pay for loss or damage caused by or resulting from any of the following, 3.a. through 3.c. But if an excluded cause of loss that is listed in 3.a. through 3.c. results in a Covered Cause of Loss, we will pay for the loss or damage caused by that Covered Cause of Loss.
- a. Weather conditions. But this exclusion only applies if weather conditions contribute in any way with a cause or event excluded in Paragraph 1. above to produce the loss or damage.
 - b. Acts or decisions, including the failure to act or decide, of any person, group, organization or governmental body.

c. Faulty, inadequate or defective:

- (1) Planning, zoning, development, surveying, siting;
- (2) Design, specifications, workmanship, repair, construction, renovation, remodeling, grading, compaction;
- (3) Materials used in repair, construction, renovation or remodeling; or
- (4) Maintenance;
of part or all of any property on or off the described premises.

4. Special Exclusions

The following provisions apply only to the specified Coverage Forms.

a. **Business Income (And Extra Expense) Coverage Form, Business Income (Without Extra Expense) Coverage Form, Or Extra Expense Coverage Form**

We will not pay for:

- (1) Any loss caused directly or indirectly by the failure of power or other utility service supplied to the described premises, however caused, if the failure occurs outside of a covered building. Failure includes lack of sufficient capacity and reduction in supply.

But if the failure of power or other utility service results in a Covered Cause of Loss, we will pay for the loss resulting from that Covered Cause of Loss.

- (2) Any loss caused by or resulting from:
 - (a) Damage or destruction of "finished stock"; or
 - (b) The time required to reproduce "finished stock".

This exclusion does not apply to Extra Expense.

- (3) Any loss caused by or resulting from direct physical loss or damage to radio or television antennas (including satellite dishes) and their lead-in wiring, masts or towers.
- (4) Any increase of loss caused by or resulting from:
 - (a) Delay in rebuilding, repairing or replacing the property or resuming "operations", due to interference at the location of the rebuilding, repair or replacement by strikers or other persons; or

- (b) Suspension, lapse or cancellation of any license, lease or contract. But if the suspension, lapse or cancellation is directly caused by the "suspension" of "operations", we will cover such loss that affects your Business Income during the "period of restoration" and any extension of the "period of restoration" in accordance with the terms of the Extended Business Income Additional Coverage and the Extended Period Of Indemnity Optional Coverage or any variation of these.

- (5) Any Extra Expense caused by or resulting from suspension, lapse or cancellation of any license, lease or contract beyond the "period of restoration".

- (6) Any other consequential loss.

b. **Leasehold Interest Coverage Form**

- (1) Paragraph B.1.a. Ordinance Or Law, does not apply to insurance under this Coverage Form.

- (2) We will not pay for any loss caused by:

- (a) Your cancelling the lease;
- (b) The suspension, lapse or cancellation of any license; or
- (c) Any other consequential loss.

c. **Legal Liability Coverage Form**

- (1) The following exclusions do not apply to insurance under this Coverage Form:

- (a) Paragraph B.1.a., Ordinance Or Law;
- (b) Paragraph B.1.c., Governmental Action;
- (c) Paragraph B.1.d., Nuclear Hazard;
- (d) Paragraph B.1.e., Utility Services; and
- (e) Paragraph B.1.f., War And Military Action.

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(2) The following additional exclusions apply to insurance under this Coverage Form:

(a) Contractual Liability

We will not defend any claim or "suit", or pay damages that you are legally liable to pay, solely by reason of your assumption of liability in a contract or agreement. But this exclusion does not apply to a written lease agreement in which you have assumed liability for building damage resulting from an actual or attempted burglary or robbery, provided that:

- (i) Your assumption of liability was executed prior to the accident; and
- (ii) The building is Covered Property under this Coverage Form.

(b) Nuclear Hazard

We will not defend any claim or "suit", or pay any damages, loss, expense or obligation, resulting from nuclear reaction or radiation, or radioactive contamination, however caused.

C. Limitations

The following limitations apply to all policy forms and endorsements, unless otherwise stated.

1. We will not pay for loss of or damage to property, as described and limited in this section. In addition, we will not pay for any loss that is a consequence of loss or damage as described and limited in this section.

- a. Steam boilers, steam pipes, steam engines or steam turbines caused by or resulting from any condition or event inside such equipment. But we will pay for loss of or damage to such equipment caused by or resulting from an explosion of gases or fuel within the furnace of any fired vessel or within the flues or passages through which the gases of combustion pass.
- b. Hot water boilers or other water heating equipment caused by or resulting from any condition or event inside such boilers or equipment, other than an explosion.

c. The interior of any building or structure, or to personal property in the building or structure, caused by or resulting from rain, snow, sleet, ice, sand or dust, whether driven by wind or not, unless:

- (1) The building or structure first sustains damage by a Covered Cause of Loss to its roof or walls through which the rain, snow, sleet, ice, sand or dust enters; or
- (2) The loss or damage is caused by or results from thawing of snow, sleet or ice on the building or structure.

d. Building materials and supplies not attached as part of the building or structure, caused by or resulting from theft.

However, this limitation does not apply to:

- (1) Building materials and supplies held for sale by you, unless they are insured under the Builders Risk Coverage Form; or
- (2) Business Income coverage or Extra Expense coverage.

e. Property that is missing, where the only evidence of the loss or damage is a shortage disclosed on taking inventory, or other instances where there is no physical evidence to show what happened to the property.

f. Property that has been transferred to a person or to a place outside the described premises on the basis of unauthorized instructions.

2. We will not pay for loss of or damage to the following types of property unless caused by the "specified causes of loss" or building glass breakage:

- a. Animals, and then only if they are killed or their destruction is made necessary.
- b. Fragile articles such as statuary, marbles, chinaware and porcelains, if broken. This restriction does not apply to:

- (1) Glass; or
- (2) Containers of property held for sale.

c. Builders' machinery, tools and equipment owned by you or entrusted to you, provided such property is Covered Property.

However, this limitation does not apply:

- (1) If the property is located on or within 100 feet of the described premises, unless the premises is insured under the Builders Risk Coverage Form; or
 - (2) To Business Income coverage or to Extra Expense coverage.
3. The special limit shown for each category, a. through d., is the total limit for loss of or damage to all property in that category. The special limit applies to any one occurrence of theft, regardless of the types or number of articles that are lost or damaged in that occurrence. The special limits are:
- a. \$2,500 for furs, fur garments and garments trimmed with fur.
 - b. \$2,500 for jewelry, watches, watch movements, jewels, pearls, precious and semi-precious stones, bullion, gold, silver, platinum and other precious alloys or metals. This limit does not apply to jewelry and watches worth \$100 or less per item.
 - c. \$2,500 for patterns, dies, molds and forms.
 - d. \$250 for stamps, tickets, including lottery tickets held for sale, and letters of credit.

These special limits are part of, not in addition to, the Limit of Insurance applicable to the Covered Property.

This limitation, C.3., does not apply to Business Income coverage or to Extra Expense coverage.

4. We will not pay the cost to repair any defect to a system or appliance from which water, other liquid, powder or molten material escapes. But we will pay the cost to repair or replace damaged parts of fire extinguishing equipment if the damage:
- a. Results in discharge of any substance from an automatic fire protection system; or
 - b. Is directly caused by freezing.

However, this limitation does not apply to Business Income coverage or to Extra Expense coverage.

D. Additional Coverage – Collapse

The term Covered Cause of Loss includes the Additional Coverage – Collapse as described and limited in D.1. through D.5. below.

1. With respect to buildings:

- a. Collapse means an abrupt falling down or caving in of a building or any part of a building with the result that the building or part of the building cannot be occupied for its intended purpose;
- b. A building or any part of a building that is in danger of falling down or caving in is not considered to be in a state of collapse;
- c. A part of a building that is standing is not considered to be in a state of collapse even if it has separated from another part of the building;
- d. A building that is standing or any part of a building that is standing is not considered to be in a state of collapse even if it shows evidence of cracking, bulging, sagging, bending, leaning, settling, shrinkage or expansion.

2. We will pay for direct physical loss or damage to Covered Property, caused by collapse of a building or any part of a building that is insured under this Coverage Form or that contains Covered Property insured under this Coverage Form, if the collapse is caused by one or more of the following:

- a. The "specified causes of loss" or breakage of building glass, all only as insured against in this Coverage Part;
- b. Decay that is hidden from view, unless the presence of such decay is known to an insured prior to collapse;
- c. Insect or vermin damage that is hidden from view, unless the presence of such damage is known to an insured prior to collapse;
- d. Weight of people or personal property;
- e. Weight of rain that collects on a roof;

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f. Use of defective material or methods in construction, remodeling or renovation if the collapse occurs during the course of the construction, remodeling or renovation. However, if the collapse occurs after construction, remodeling or renovation is complete and is caused in part by a cause of loss listed in 2.a. through 2.e., we will pay for the loss or damage even if use of defective material or methods, in construction, remodeling or renovation, contributes to the collapse.

The criteria set forth in 1.a. through 1.d. do not limit the coverage otherwise provided under this Causes of Loss Form for the causes of loss listed in 2.a., 2.d. and 2.e.

3. With respect to the following property:

- a. Outdoor radio or television antennas (including satellite dishes) and their lead-in wiring, masts or towers;
 - b. Awnings, gutters and downspouts;
 - c. Yard fixtures;
 - d. Outdoor swimming pools;
 - e. Fences;
 - f. Piers, wharves and docks;
 - g. Beach or diving platforms or appurtenances;
 - h. Retaining walls; and
 - i. Walks, roadways and other paved surfaces;
- if the collapse is caused by a cause of loss listed in 2.b. through 2.f., we will pay for loss or damage to that property only if:

- a. Such loss or damage is a direct result of the collapse of a building insured under this Coverage Form; and
- b. The property is Covered Property under this Coverage Form.

4. If personal property abruptly falls down or caves in and such collapse is not the result of collapse of a building, we will pay for loss or damage to Covered Property caused by such collapse of personal property only if:

- a. The collapse was caused by a Cause of Loss listed in 2.a. through 2.f. above;
- b. The personal property which collapses is inside a building; and
- c. The property which collapses is not of a kind listed in 3. above, regardless of whether that kind of property is considered to be personal property or real property.

The coverage stated in this Paragraph 4. does not apply to personal property if marring and/or scratching is the only damage to that personal property caused by the collapse.

Collapse of personal property does not mean cracking, bulging, sagging, bending, leaning, settling, shrinkage or expansion.

5. This Additional Coverage, Collapse, will not increase the Limits of Insurance provided in this Coverage Part.

E. Additional Coverage – Limited Coverage For "Fungus", Wet Rot, Dry Rot And Bacteria

1. The coverage described in E.2. and E.6. only applies when the "fungus", wet or dry rot or bacteria is the result of one or more of the following causes that occurs during the policy period and only if all reasonable means were used to save and preserve the property from further damage at the time of and after that occurrence.

- a. A "specified cause of loss" other than fire or lightning; or
- b. Flood, if the Flood Coverage Endorsement applies to the affected premises.

2. We will pay for loss or damage by "fungus", wet or dry rot or bacteria. As used in this Limited Coverage, the term loss or damage means:

- a. Direct physical loss or damage to Covered Property caused by "fungus", wet or dry rot or bacteria, including the cost of removal of the "fungus", wet or dry rot or bacteria;
- b. The cost to tear out and replace any part of the building or other property as needed to gain access to the "fungus", wet or dry rot or bacteria; and
- c. The cost of testing performed after removal, repair, replacement or restoration of the damaged property is completed, provided there is a reason to believe that "fungus", wet or dry rot or bacteria are present.

3. The coverage described under E.2. of this Limited Coverage is limited to \$15,000. Regardless of the number of claims, this limit is the most we will pay for the total of all loss or damage arising out of all occurrences of "specified causes of loss" (other than fire or lightning) and Flood which take place in a 12-month period (starting with the beginning of the present annual policy period). With respect to a particular occurrence of loss which results in "fungus", wet or dry rot or bacteria, we will not pay more than a total of \$15,000 even if the "fungus", wet or dry rot or bacteria continues to be present or active, or recurs, in a later policy period.

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4. The coverage provided under this Limited Coverage does not increase the applicable Limit of Insurance on any Covered Property. If a particular occurrence results in loss or damage by "fungus", wet or dry rot or bacteria, and other loss or damage, we will not pay more, for the total of all loss or damage, than the applicable Limit of Insurance on the affected Covered Property.

If there is covered loss or damage to Covered Property, not caused by "fungus", wet or dry rot or bacteria, loss payment will not be limited by the terms of this Limited Coverage, except to the extent that "fungus", wet or dry rot or bacteria causes an increase in the loss. Any such increase in the loss will be subject to the terms of this Limited Coverage.

5. The terms of this Limited Coverage do not increase or reduce the coverage provided under Paragraph F.2. (Water Damage, Other Liquids, Powder Or Molten Material Damage) of this Causes Of Loss Form or under the Additional Coverage - Collapse.
6. The following, 6.a. or 6.b., applies only if Business Income and/or Extra Expense coverage applies to the described premises and only if the "suspension" of "operations" satisfies all terms and conditions of the applicable Business Income and/or Extra Expense coverage form.
- a. If the loss which resulted in "fungus", wet or dry rot or bacteria does not in itself necessitate a "suspension" of "operations", but such "suspension" is necessary due to loss or damage to property caused by "fungus", wet or dry rot or bacteria, then our payment under Business Income and/or Extra Expense is limited to the amount of loss and/or expense sustained in a period of not more than 30 days. The days need not be consecutive.
- b. If a covered "suspension" of "operations" was caused by loss or damage other than "fungus", wet or dry rot or bacteria but remediation of "fungus", wet or dry rot or bacteria prolongs the "period of restoration", we will pay for loss and/or expense sustained during the delay (regardless of when such a delay occurs during the "period of restoration"), but such coverage is limited to 30 days. The days need not be consecutive.

F. Additional Coverage Extensions

1. Property In Transit

This Extension applies only to your personal property to which this form applies.

- a. You may extend the insurance provided by this Coverage Part to apply to your personal property (other than property in the care, custody or control of your salespersons) in transit more than 100 feet from the described premises. Property must be in or on a motor vehicle you own, lease or operate while between points in the coverage territory.
- b. Loss or damage must be caused by or result from one of the following causes of loss:
- (1) Fire, lightning, explosion, windstorm or hail, riot or civil commotion, or vandalism.
 - (2) Vehicle collision, upset or overturn. Collision means accidental contact of your vehicle with another vehicle or object. It does not mean your vehicle's contact with the road bed.
 - (3) Theft of an entire bale, case or package by forced entry into a securely locked body or compartment of the vehicle. There must be visible marks of the forced entry.

- c. The most we will pay for loss or damage under this Extension is \$5,000.

This Coverage Extension is additional insurance. The Additional Condition, Coinsurance, does not apply to this Extension.

2. Water Damage, Other Liquids, Powder Or Molten Material Damage

If loss or damage caused by or resulting from covered water or other liquid, powder or molten material damage loss occurs, we will also pay the cost to tear out and replace any part of the building or structure to repair damage to the system or appliance from which the water or other substance escapes. This Coverage Extension does not increase the Limit of Insurance.

3. Glass

- a. We will pay for expenses incurred to put up temporary plates or board up openings if repair or replacement of damaged glass is delayed.

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- b. We will pay for expenses incurred to remove or replace obstructions when repairing or replacing glass that is part of a building. This does not include removing or replacing window displays.

This Coverage Extension, F.3., does not increase the Limit of Insurance.

G. Definitions

- 1. "Fungus" means any type or form of fungus, including mold or mildew, and any mycotoxins, spores, scents or by-products produced or released by fungi.
- 2. "Specified Causes of Loss" means the following: Fire; lightning; explosion; windstorm or hail; smoke; aircraft or vehicles; riot or civil commotion; vandalism; leakage from fire extinguishing equipment; sinkhole collapse; volcanic action; falling objects; weight of snow, ice or sleet; water damage.
 - a. Sinkhole collapse means the sudden sinking or collapse of land into underground empty spaces created by the action of water on limestone or dolomite. This cause of loss does not include:
 - (1) The cost of filling sinkholes; or

- (2) Sinking or collapse of land into man-made underground cavities.
- b. Falling objects does not include loss or damage to:
 - (1) Personal property in the open; or
 - (2) The interior of a building or structure, or property inside a building or structure, unless the roof or an outside wall of the building or structure is first damaged by a falling object.
- c. Water damage means accidental discharge or leakage of water or steam as the direct result of the breaking apart or cracking of a plumbing, heating, air conditioning or other system or appliance (other than a sump system including its related equipment and parts), that is located on the described premises and contains water or steam.

Willy G. Murray
5-28-2004

COMMERCIAL PROPERTY
CP 00 10 04 02

BUILDING AND PERSONAL PROPERTY COVERAGE FORM

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

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

Other words and phrases that appear in quotation marks have special meaning. Refer to Section H. – Definitions.

A. Coverage

We will pay for direct physical loss of or damage to Covered Property at the premises described in the Declarations caused by or resulting from any Covered Cause of Loss.

1. Covered Property

Covered Property, as used in this Coverage Part, means the type of property described in this Section, A.1., and limited in A.2., Property Not Covered, if a Limit of Insurance is shown in the Declarations for that type of property.

a. **Building**, meaning the building or structure described in the Declarations, including:

- (1) Completed additions;
- (2) Fixtures, including outdoor fixtures;
- (3) Permanently installed:
 - (a) Machinery and
 - (b) Equipment;
- (4) Personal property owned by you that is used to maintain or service the building or structure or its premises, including:
 - (a) Fire extinguishing equipment;
 - (b) Outdoor furniture;
 - (c) Floor coverings; and
 - (d) Appliances used for refrigerating, ventilating, cooking, dishwashing or laundering;
- (5) If not covered by other insurance:
 - (a) Additions under construction, alterations and repairs to the building or structure;

(b) Materials, equipment, supplies and temporary structures, on or within 100 feet of the described premises, used for making additions, alterations or repairs to the building or structure.

b. **Your Business Personal Property** located in or on the building described in the Declarations or in the open (or in a vehicle) within 100 feet of the described premises, consisting of the following unless otherwise specified in the Declarations or on the Your Business Personal Property – Separation of Coverage form:

- (1) Furniture and fixtures;
- (2) Machinery and equipment;
- (3) "Stock";
- (4) All other personal property owned by you and used in your business;
- (5) Labor, materials or services furnished or arranged by you on personal property of others;
- (6) Your use interest as tenant in improvements and betterments. Improvements and betterments are fixtures, alterations, installations or additions:
 - (a) Made a part of the building or structure you occupy but do not own; and
 - (b) You acquired or made at your expense but cannot legally remove;
- (7) Leased personal property for which you have a contractual responsibility to insure, unless otherwise provided for under Personal Property of Others.

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c. Personal Property Of Others that is:

- (1) In your care, custody or control; and
- (2) Located in or on the building described in the Declarations or in the open (or in a vehicle) within 100 feet of the described premises.

However, our payment for loss of or damage to personal property of others will only be for the account of the owner of the property.

2. Property Not Covered

Covered Property does not include:

- a. Accounts, bills, currency, food stamps or other evidences of debt, money, notes or securities. Lottery tickets held for sale are not securities;
- b. Animals, unless owned by others and boarded by you, or if owned by you, only as "stock" while inside of buildings;
- c. Automobiles held for sale;
- d. Bridges, roadways, walks, patios or other paved surfaces;
- e. Contraband, or property in the course of illegal-transportation or trade;
- f. The cost of excavations, grading, backfilling or filling;
- g. Foundations of buildings, structures, machinery or boilers if their foundations are below:
 - (1) The lowest basement floor; or
 - (2) The surface of the ground, if there is no basement;
- h. Land (including land on which the property is located), water, growing crops or lawns;
- i. Personal property while airborne or waterborne;
- j. Bulkheads, pilings, piers, wharves or docks;
- k. Property that is covered under another coverage form of this or any other policy in which it is more specifically described, except for the excess of the amount due (whether you can collect on it or not) from that other insurance;
- l. Retaining walls that are not part of a building;
- m. Underground pipes, flues or drains;
- n. Electronic data, except as provided under Additional Coverages – Electronic Data. Electronic data means information, facts or computer programs stored as or on, created or used on, or transmitted to or from computer software (including systems and applications software), on hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other repositories of computer software which are used with electronically controlled equipment. The term computer programs, referred to in the foregoing description of electronic data, means a set of related electronic instructions which direct the operations and functions of a computer or device connected to it, which enable the computer or device to receive, process, store, retrieve or send data. This Paragraph n., does not apply to your "stock" of prepackaged software.
- o. The cost to replace or restore the information on valuable papers and records, including those which exist as electronic data. Valuable papers and records include but are not limited to proprietary information, books of account, deeds, manuscripts, abstracts, drawings and card index systems. Refer to the Coverage Extension for Valuable Papers And Records (Other Than Electronic Data) for limited coverage for valuable papers and records other than those which exist as electronic data.
- p. Vehicles or self-propelled machines (including aircraft or watercraft) that:
 - (1) Are licensed for use on public roads; or
 - (2) Are operated principally away from the described premises.This paragraph does not apply to:
 - (a) Vehicles or self-propelled machines or autos you manufacture, process or warehouse;
 - (b) Vehicles or self-propelled machines, other than autos, you hold for sale;
 - (c) Rowboats or canoes out of water at the described premises; or
 - (d) Trailers, but only to the extent provided for in the Coverage Extension for Non-Owned Detached Trailers.

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q. The following property while outside of buildings:

- (1) Grain, hay, straw or other crops;
- (2) Fences, radio or television antennas (including satellite dishes) and their lead-in wiring, masts or towers, signs (other than signs attached to buildings), trees, shrubs or plants (other than "stock" of trees, shrubs or plants), all except as provided in the Coverage Extensions.

3. Covered Causes Of Loss

See applicable Causes of Loss Form as shown in the Declarations.

4. Additional Coverages

a. Debris Removal

- (1) Subject to Paragraphs (3) and (4), we will pay your expense to remove debris of Covered Property caused by or resulting from a Covered Cause of Loss that occurs during the policy period. The expenses will be paid only if they are reported to us in writing within 180 days of the date of direct physical loss or damage.
- (2) Debris Removal does not apply to costs to:
 - (a) Extract "pollutants" from land or water; or
 - (b) Remove, restore or replace polluted land or water.
- (3) Subject to the exceptions in Paragraph (4), the following provisions apply:
 - (a) The most we will pay for the total of direct physical loss or damage plus debris removal expense is the Limit of Insurance applicable to the Covered Property that has sustained loss or damage.
 - (b) Subject to (a) above, the amount we will pay for debris removal expense is limited to 25% of the sum of the deductible plus the amount that we pay for direct physical loss or damage to the Covered Property that has sustained loss or damage.
- (4) We will pay up to an additional \$10,000 for debris removal expense, for each location, in any one occurrence of physical loss or damage to Covered Property, if one or both of the following circumstances apply:

(a) The total of the actual debris removal expense plus the amount we pay for direct physical loss or damage exceeds the Limit of Insurance on the Covered Property that has sustained loss or damage.

(b) The actual debris removal expense exceeds 25% of the sum of the deductible plus the amount that we pay for direct physical loss or damage to the Covered Property that has sustained loss or damage.

Therefore, if (4)(a) and/or (4)(b) apply, our total payment for direct physical loss or damage and debris removal expense may reach but will never exceed the Limit of Insurance on the Covered Property that has sustained loss or damage, plus \$10,000.

(5) Examples

The following examples assume that there is no coinsurance penalty.

Example #1

Limit of Insurance	\$ 90,000
Amount of Deductible	\$ 500
Amount of Loss	\$ 50,000
Amount of Loss Payable	\$ 49,500
	(\$50,000 - \$500)
Debris Removal Expense	\$ 10,000
Debris Removal Expense Payable	\$ 10,000
	(\$10,000 is 20% of \$50,000)

The debris removal expense is less than 25% of the sum of the loss payable plus the deductible. The sum of the loss payable and the debris removal expense (\$49,500 + \$10,000 = \$59,500) is less than the Limit of Insurance. Therefore the full amount of debris removal expense is payable in accordance with the terms of Paragraph (3).

Example #2

Limit of Insurance	\$ 90,000
Amount of Deductible	\$ 500
Amount of Loss	\$ 80,000
Amount of Loss Payable	\$ 79,500
	(\$80,000 - \$500)
Debris Removal Expense	\$ 30,000
Debris Removal Expense Payable	
Basic Amount	\$ 10,500
Additional Amount	\$ 10,000

The basic amount payable for debris removal expense under the terms of Paragraph (3) is calculated as follows: \$80,000 (\$79,500 + \$500) x .25 = \$20,000; capped at \$10,500. The cap applies because the sum of the loss payable (\$79,500) and the basic amount payable for debris removal expense (\$10,500) cannot exceed the Limit of Insurance (\$90,000).

The additional amount payable for debris removal expense is provided in accordance with the terms of Paragraph (4), because the debris removal expense (\$30,000) exceeds 25% of the loss payable plus the deductible (\$30,000 is 37.5% of \$80,000), and because the sum of the loss payable and debris removal expense (\$79,500 + \$30,000 = \$109,500) would exceed the Limit of Insurance (\$90,000). The additional amount of covered debris removal expense is \$10,000, the maximum payable under Paragraph (4). Thus the total payable for debris removal expense in this example is \$20,500; \$9,500 of the debris removal expense is not covered.

b. Preservation Of Property

If it is necessary to move Covered Property from the described premises to preserve it from loss or damage by a Covered Cause of Loss, we will pay for any direct physical loss or damage to that property:

- (1) While it is being moved or while temporarily stored at another location; and
- (2) Only if the loss or damage occurs within 30 days after the property is first moved.

c. Fire Department Service Charge

When the fire department is called to save or protect Covered Property from a Covered Cause of Loss, we will pay up to \$1,000 for your liability for fire department service charges:

- (1) Assumed by contract or agreement prior to loss; or
- (2) Required by local ordinance.

No Deductible applies to this Additional Coverage.

d. Pollutant Clean Up And Removal

We will pay your expense to extract "pollutants" from land or water at the described premises if the discharge, dispersal, seepage, migration, release or escape of the "pollutants" is caused by or results from a Covered Cause of Loss that occurs during the policy period. The expenses will be paid only if they are reported to us in writing within 180 days of the date on which the Covered Cause of Loss occurs.

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

The most we will pay under this Additional Coverage for each described premises is \$10,000 for the sum of all covered expenses arising out of Covered Causes of Loss occurring during each separate 12 month period of this policy.

e. Increased Cost Of Construction

- (1) This Additional Coverage applies only to buildings to which the Replacement Cost Optional Coverage applies.
- (2) In the event of damage by a Covered Cause of Loss to a building that is Covered Property, we will pay the increased costs incurred to comply with enforcement of an ordinance or law in the course of repair, rebuilding or replacement of damaged parts of that property, subject to the limitations stated in e.(3) through e.(9) of this Additional Coverage.

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- (3) The ordinance or law referred to in e.(2) of this Additional Coverage is an ordinance or law that regulates the construction or repair of buildings or establishes zoning or land use requirements at the described premises, and is in force at the time of loss.
- (4) Under this Additional Coverage, we will not pay any costs due to an ordinance or law that:
 - (a) You were required to comply with before the loss, even when the building was undamaged; and
 - (b) You failed to comply with.
- (5) Under this Additional Coverage, we will not pay for:
 - (a) The enforcement of any ordinance or law which requires demolition, repair, replacement, reconstruction, remodeling or remediation of property due to contamination by "pollutants" or due to the presence, growth, proliferation, spread or any activity of "fungus", wet or dry rot or bacteria; or
 - (b) Any costs associated with the enforcement of an ordinance or law which requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants", "fungus", wet or dry rot or bacteria.
- (6) The most we will pay under this Additional Coverage, for each described building insured under this Coverage Form, is \$10,000 or 5% of the Limit of Insurance applicable to that building, whichever is less. If a damaged building is covered under a blanket Limit of Insurance which applies to more than one building or item of property, then the most we will pay under this Additional Coverage, for that damaged building, is the lesser of: \$10,000 or 5% times the value of the damaged building as of the time of loss times the applicable coinsurance percentage.

The amount payable under this Additional Coverage is additional insurance.

- (7) With respect to this Additional Coverage:
 - (a) We will not pay for the Increased Cost of Construction:
 - (i) Until the property is actually repaired or replaced, at the same or another premises; and

- (ii) Unless the repairs or replacement are made as soon as reasonably possible after the loss or damage, not to exceed two years. We may extend this period in writing during the two years.

- (b) If the building is repaired or replaced at the same premises, or if you elect to rebuild at another premises, the most we will pay for the Increased Cost of Construction, subject to the provisions of e.(6) of this Additional Coverage, is the increased cost of construction at the same premises.

- (c) If the ordinance or law requires relocation to another premises, the most we will pay for the Increased Cost of Construction, subject to the provisions of e.(6) of this Additional Coverage, is the increased cost of construction at the new premises.

- (8) This Additional Coverage is not subject to the terms of the Ordinance or Law Exclusion, to the extent that such Exclusion would conflict with the provisions of this Additional Coverage.

- (9) The costs addressed in the Loss Payment and Valuation Conditions, and the Replacement Cost Optional Coverage, in this Coverage Form, do not include the increased cost attributable to enforcement of an ordinance or law. The amount payable under this Additional Coverage, as stated in e.(6) of this Additional Coverage, is not subject to such limitation.

f. Electronic Data

- (1) Under this Additional Coverage, electronic data has the meaning described under Property Not Covered – Electronic Data.

- (2) Subject to the provisions of this Additional Coverage, we will pay for the cost to replace or restore electronic data which has been destroyed or corrupted by a Covered Cause of Loss. To the extent that electronic data is not replaced or restored, the loss will be valued at the cost of replacement of the media on which the electronic data was stored, with blank media of substantially identical type.

- (3) The Covered Causes of Loss applicable to Your Business Personal Property apply to this Additional Coverage – Electronic Data, subject to the following:

- (a) If the Causes Of Loss – Special Form applies, coverage under this Additional Coverage – Electronic Data is limited to the "specified causes of loss" as defined in that form, and Collapse as set forth in that form.
 - (b) If the Causes Of Loss – Broad Form applies, coverage under this Additional Coverage – Electronic Data includes Collapse as set forth in that form.
 - (c) If the Causes Of Loss Form is endorsed to add a Covered Cause of Loss, the additional Covered Cause of Loss does not apply to the coverage provided under this Additional Coverage – Electronic Data.
 - (d) The Covered Causes of Loss include a virus, harmful code or similar instruction introduced into or enacted on a computer system (including electronic data) or a network to which it is connected, designed to damage or destroy any part of the system or disrupt its normal operation. But there is no coverage for loss or damage caused by or resulting from manipulation of a computer system (including electronic data) by any employee, including a temporary or leased employee, or by an entity retained by you or for you to inspect, design, install, modify, maintain, repair or replace that system.
- (4) The most we will pay under this Additional Coverage – Electronic Data is \$2,500 for all loss or damage sustained in any one policy year, regardless of the number of occurrences of loss or damage or the number of premises, locations or computer systems involved. If loss payment on the first occurrence does not exhaust this amount, then the balance is available for subsequent loss or damage sustained in but not after that policy year. With respect to an occurrence which begins in one policy year and continues or results in additional loss or damage in a subsequent policy year(s), all loss or damage is deemed to be sustained in the policy year in which the occurrence began.

5. Coverage Extensions

Except as otherwise provided, the following Extensions apply to property located in or on the building described in the Declarations or in the open (or in a vehicle) within 100 feet of the described premises.

If a Coinsurance percentage of 80% or more or, a Value Reporting period symbol, is shown in the Declarations, you may extend the insurance provided by this Coverage Part as follows:

a. Newly Acquired Or Constructed Property

(1) Buildings

If this policy covers Building, you may extend that insurance to apply to:

- (a) Your new buildings while being built on the described premises; and
- (b) Buildings you acquire at locations, other than the described premises, intended for:
 - (i) Similar use as the building described in the Declarations; or
 - (ii) Use as a warehouse.

The most we will pay for loss or damage under this Extension is \$250,000 at each building.

(2) Your Business Personal Property

- (a) If this policy covers Your Business Personal Property, you may extend that insurance to apply to:
 - (i) Business personal property, including such property that you newly acquire, at any location you acquire other than at fairs, trade shows or exhibitions;
 - (ii) Business personal property, including such property that you newly acquire, located at your newly constructed or acquired buildings at the location described in the Declarations; or
 - (iii) Business personal property that you newly acquire, located at the described premises.

The most we will pay for loss or damage under this Extension is \$100,000 at each building.

- (b) This Extension does not apply to:
 - (i) Personal property of others that is temporarily in your possession in the course of installing or performing work on such property; or

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- (ii) Personal property of others that is temporarily in your possession in the course of your manufacturing or wholesaling activities.

(3) Period Of Coverage

With respect to insurance on or at each newly acquired or constructed property, coverage will end when any of the following first occurs:

- (a) This policy expires;
- (b) 30 days expire after you acquire the property or begin construction of that part of the building that would qualify as covered property; or
- (c) You report values to us.

We will charge you additional premium for values reported from the date you acquire the property or begin construction of that part of the building that would qualify as covered property.

b. Personal Effects And Property Of Others

You may extend the insurance that applies to Your Business Personal Property to apply to:

- (1) Personal effects owned by you, your officers, your partners or members, your managers or your employees. This extension does not apply to loss or damage by theft.
- (2) Personal property of others in your care, custody or control.

The most we will pay for loss or damage under this Extension is \$2,500 at each described premises. Our payment for loss of or damage to personal property of others will only be for the account of the owner of the property.

c. Valuable Papers And Records (Other Than Electronic Data)

- (1) You may extend the insurance that applies to Your Business Personal Property to apply to the cost to replace or restore the lost information on valuable papers and records for which duplicates do not exist. But this Extension does not apply to valuable papers and records which exist as electronic data. Electronic data has the meaning described under Property Not Covered – Electronic Data.
- (2) If the Causes Of Loss – Special Form applies, coverage under this Extension is limited to the "specified causes of loss" as defined in that form, and Collapse as set forth in that form.
- (3) If the Causes Of Loss – Broad Form applies, coverage under this Extension includes Collapse as set forth in that form.
- (4) Under this Extension, the most we will pay to replace or restore the lost information is \$2,500 at each described premises, unless a higher limit is shown in the Declarations. Such amount is additional insurance. We will also pay for the cost of blank material for reproducing the records (whether or not duplicates exist), and (when there is a duplicate) for the cost of labor to transcribe or copy the records. The costs of blank material and labor are subject to the applicable Limit of Insurance on Your Business Personal Property and therefore coverage of such costs is not additional insurance.

d. Property Off-Premises

- (1) You may extend the insurance provided by this Coverage Form to apply to your Covered Property while it is away from the described premises, if it is:
 - (a) Temporarily at a location you do not own, lease or operate;
 - (b) In storage at a location you lease, provided the lease was executed after the beginning of the current policy term; or
 - (c) At any fair, trade show or exhibition.
- (2) This Extension does not apply to property:
 - (a) In or on a vehicle; or

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(b) In the care, custody or control of your salespersons, unless the property is in such care, custody or control at a fair, trade show or exhibition.

(3) The most we will pay for loss or damage under this Extension is \$10,000.

e. Outdoor Property

You may extend the insurance provided by this Coverage Form to apply to your outdoor fences, radio and television antennas (including satellite dishes), signs (other than signs attached to buildings), trees, shrubs and plants (other than "stock" of trees, shrubs or plants), including debris removal expense, caused by or resulting from any of the following causes of loss if they are Covered Causes of Loss:

- (1) Fire;
- (2) Lightning;
- (3) Explosion;
- (4) Riot or Civil Commotion; or
- (5) Aircraft.

The most we will pay for loss or damage under this Extension is \$1,000, but not more than \$250 for any one tree, shrub or plant. These limits apply to any one occurrence, regardless of the types or number of items lost or damaged in that occurrence.

f. Non-Owned Detached Trailers

(1) You may extend the insurance that applies to Your Business Personal Property to apply to loss or damage to trailers that you do not own, provided that:

- (a) The trailer is used in your business;
- (b) The trailer is in your care, custody or control at the premises described in the Declarations; and
- (c) You have a contractual responsibility to pay for loss or damage to the trailer.

(2) We will not pay for any loss or damage that occurs:

- (a) While the trailer is attached to any motor vehicle or motorized conveyance, whether or not the motor vehicle or motorized conveyance is in motion;

(b) During hitching or unhitching operations, or when a trailer becomes accidentally unhitched from a motor vehicle or motorized conveyance.

(3) The most we will pay for loss or damage under this Extension is \$5,000, unless a higher limit is shown in the Declarations.

(4) This insurance is excess over the amount due (whether you can collect on it or not) from any other insurance covering such property.

Each of these Extensions is additional insurance unless otherwise indicated. The Additional Condition, Coinsurance, does not apply to these Extensions.

B. Exclusions And Limitations

See applicable Causes of Loss Form as shown in the Declarations.

C. Limits Of Insurance

The most we will pay for loss or damage in any one occurrence is the applicable Limit of Insurance shown in the Declarations.

The most we will pay for loss or damage to outdoor signs attached to buildings is \$1,000 per sign in any one occurrence.

The limits applicable to the Fire Department Service Charge and Pollutant Clean Up and Removal Additional Coverages are in addition to the Limits of Insurance.

Payments under the Preservation of Property Additional Coverage will not increase the applicable Limit of Insurance.

D. Deductible

In any one occurrence of loss or damage (hereinafter referred to as loss), we will first reduce the amount of loss if required by the Coinsurance Condition or the Agreed Value Optional Coverage. If the adjusted amount of loss is less than or equal to the Deductible, we will not pay for that loss. If the adjusted amount of loss exceeds the Deductible, we will then subtract the Deductible from the adjusted amount of loss, and will pay the resulting amount or the Limit of Insurance, whichever is less.

When the occurrence involves loss to more than one item of Covered Property and separate Limits of Insurance apply, the losses will not be combined in determining application of the Deductible. But the Deductible will be applied only once per occurrence.

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Example No. 1:

(This example assumes there is no coinsurance penalty.)

Deductible:	\$ 250
Limit of Insurance – Bldg. 1:	\$ 60,000
Limit of Insurance – Bldg. 2:	\$ 80,000
Loss to Bldg. 1:	\$ 60,100
Loss to Bldg. 2:	\$ 90,000

The amount of loss to Bldg. 1 (\$60,100) is less than the sum (\$60,250) of the Limit of Insurance applicable to Bldg. 1 plus the Deductible.

The Deductible will be subtracted from the amount of loss in calculating the loss payable for Bldg. 1:

\$ 60,100
– 250
<hr/>
\$ 59,850 Loss Payable – Bldg. 1

The Deductible applies once per occurrence and therefore is not subtracted in determining the amount of loss payable for Bldg. 2. Loss payable for Bldg. 2 is the Limit of Insurance of \$80,000.

Total amount of loss payable: \$59,850 + 80,000 = \$139,850

Example No. 2:

(This example, too, assumes there is no coinsurance penalty.)

The Deductible and Limits of Insurance are the same as those in Example No. 1.

Loss to Bldg. 1:	\$ 70,000
(exceeds Limit of Insurance plus Deductible)	
Loss to Bldg. 2:	\$ 90,000
(exceeds Limit of Insurance plus Deductible)	
Loss Payable – Bldg. 1:	\$60,000
(Limit of Insurance)	
Loss Payable – Bldg. 2:	\$80,000
(Limit of Insurance)	
Total amount of loss payable:	\$140,000

E. Loss Conditions

The following conditions apply in addition to the Common Policy Conditions and the Commercial Property Conditions.

1. Abandonment

There can be no abandonment of any property to us.

2. Appraisal

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

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

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

3. Duties In The Event Of Loss Or Damage

a. You must see that the following are done in the event of loss or damage to Covered Property:

- Notify the police if a law may have been broken.
- Give us prompt notice of the loss or damage. Include a description of the property involved.
- As soon as possible, give us a description of how, when and where the loss or damage occurred.
- Take all reasonable steps to protect the Covered Property from further damage, and keep a record of your expenses necessary to protect the Covered Property, for consideration in the settlement of the claim. This will not increase the Limit of Insurance. However, we will not pay for any subsequent loss or damage resulting from a cause of loss that is not a Covered Cause of Loss. Also, if feasible, set the damaged property aside and in the best possible order for examination.
- At our request, give us complete inventories of the damaged and undamaged property. Include quantities, costs, values and amount of loss claimed.
- As often as may be reasonably required, permit us to inspect the property proving the loss or damage and examine your books and records.

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

- (7) Send us a signed, sworn proof of loss containing the information we request to investigate the claim. You must do this within 60 days after our request. We will supply you with the necessary forms.
- (8) Cooperate with us in the investigation or settlement of the claim.
- b. We may examine any insured under oath, while not in the presence of any other insured and at such times as may be reasonably required, about any matter relating to this insurance or the claim, including an insured's books and records. In the event of an examination, an insured's answers must be signed.

4. Loss Payment

- a. In the event of loss or damage covered by this Coverage Form, at our option, we will either:
 - (1) Pay the value of lost or damaged property;
 - (2) Pay the cost of repairing or replacing the lost or damaged property, subject to b. below;
 - (3) Take all or any part of the property at an agreed or appraised value; or
 - (4) Repair, rebuild or replace the property with other property of like kind and quality, subject to b. below.

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

- b. The cost to repair, rebuild or replace does not include the increased cost attributable to enforcement of any ordinance or law regulating the construction, use or repair of any property.
- c. We will give notice of our intentions within 30 days after we receive the sworn proof of loss.
- d. We will not pay you more than your financial interest in the Covered Property.

- e. We may adjust losses with the owners of lost or damaged property if other than you. If we pay the owners, such payments will satisfy your claims against us for the owners' property. We will not pay the owners more than their financial interest in the Covered Property.
- f. We may elect to defend you against suits arising from claims of owners of property. We will do this at our expense.
- g. We will pay for covered loss or damage within 30 days after we receive the sworn proof of loss, if you have complied with all of the terms of this Coverage Part and:
 - (1) We have reached agreement with you on the amount of loss; or
 - (2) An appraisal award has been made.

5. Recovered Property

If either you or we recover any property after loss settlement, that party must give the other prompt notice. At your option, the property will be returned to you. You must then return to us the amount we paid to you for the property. We will pay recovery expenses and the expenses to repair the recovered property, subject to the Limit of Insurance.

6. Vacancy

a. Description Of Terms

- (1) As used in this Vacancy Condition, the term building and the term vacant have the meanings set forth in (1)(a) and (1)(b) below:
 - (a) When this policy is issued to a tenant, and with respect to that tenant's interest in Covered Property, building means the unit or suite rented or leased to the tenant. Such building is vacant when it does not contain enough business personal property to conduct customary operations.
 - (b) When this policy is issued to the owner or general lessee of a building, building means the entire building. Such building is vacant unless at least 31% of its total square footage is:
 - (i) Rented to a lessee or sub-lessee and used by the lessee or sub-lessee to conduct its customary operations; and/or
 - (ii) Used by the building owner to conduct customary operations.

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- (2) Buildings under construction or renovation are not considered vacant.

b. Vacancy Provisions

If the building where loss or damage occurs has been vacant for more than 60 consecutive days before that loss or damage occurs:

- (1) We will not pay for any loss or damage caused by any of the following even if they are Covered Causes of Loss:
 - (a) Vandalism;
 - (b) Sprinkler leakage, unless you have protected the system against freezing;
 - (c) Building glass breakage;
 - (d) Water damage;
 - (e) Theft; or
 - (f) Attempted theft.
- (2) With respect to Covered Causes of Loss other than those listed in b.(1)(a) through b.(1)(f) above, we will reduce the amount we would otherwise pay for the loss or damage by 15%.

7. Valuation

We will determine the value of Covered Property in the event of loss or damage as follows:

- a. At actual cash value as of the time of loss or damage, except as provided in b., c., d. and e. below.
- b. If the Limit of Insurance for Building satisfies the Additional Condition, Coinsurance, and the cost to repair or replace the damaged building property is \$2,500 or less, we will pay the cost of building repairs or replacement.

The cost of building repairs or replacement does not include the increased cost attributable to enforcement of any ordinance or law regulating the construction, use or repair of any property. However, the following property will be valued at the actual cash value even when attached to the building:

 - (1) Awnings or floor coverings;
 - (2) Appliances for refrigerating, ventilating, cooking, dishwashing or laundering; or
 - (3) Outdoor equipment or furniture.
- c. "Stock" you have sold but not delivered at the selling price less discounts and expenses you otherwise would have had.

- d. Glass at the cost of replacement with safety glazing material if required by law.

e. Tenant's Improvements and Betterments at:

- (1) Actual cash value of the lost or damaged property if you make repairs promptly.
- (2) A proportion of your original cost if you do not make repairs promptly. We will determine the proportionate value as follows:
 - (a) Multiply the original cost by the number of days from the loss or damage to the expiration of the lease; and
 - (b) Divide the amount determined in (a) above by the number of days from the installation of improvements to the expiration of the lease.

If your lease contains a renewal option, the expiration of the renewal option period will replace the expiration of the lease in this procedure.
- (3) Nothing if others pay for repairs or replacement.

F. Additional Conditions

The following conditions apply in addition to the Common Policy Conditions and the Commercial Property Conditions.

1. Coinsurance

If a Coinsurance percentage is shown in the Declarations, the following condition applies.

- a. We will not pay the full amount of any loss if the value of Covered Property at the time of loss times the Coinsurance percentage shown for it in the Declarations is greater than the Limit of Insurance for the property.

Instead, we will determine the most we will pay using the following steps:

 - (1) Multiply the value of Covered Property at the time of loss by the Coinsurance percentage;
 - (2) Divide the Limit of Insurance of the property by the figure determined in Step (1);

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(3) Multiply the total amount of loss, before the application of any deductible, by the figure determined in Step (2); and

(4) Subtract the deductible from the figure determined in Step (3).

We will pay the amount determined in Step (4) or the limit of insurance, whichever is less. For the remainder, you will either have to rely on other insurance or absorb the loss yourself.

Example No. 1 (Underinsurance):

When: The value of the property is \$ 250,000
 The Coinsurance percentage for it is 80%
 The Limit of Insurance for it is \$ 100,000
 The Deductible is \$ 250
 The amount of loss is \$ 40,000

Step (1): $\$250,000 \times 80\% = \$200,000$
 (the minimum amount of insurance to meet your Coinsurance requirements)

Step (2): $\$100,000 \div \$200,000 = .50$

Step (3): $\$40,000 \times .50 = \$20,000$

Step (4): $\$20,000 - \$250 = \$19,750$

We will pay no more than \$19,750. The remaining \$20,250 is not covered.

Example No. 2 (Adequate Insurance):

When: The value of the property is \$ 250,000
 The Coinsurance percentage for it is 80%
 The Limit of Insurance for it is \$ 200,000
 The Deductible is \$ 250
 The amount of loss is \$ 40,000

The minimum amount of insurance to meet your Coinsurance requirement is \$200,000 ($\$250,000 \times 80\%$). Therefore, the Limit of Insurance in this Example is adequate and no penalty applies. We will pay no more than \$39,750 (\$40,000 amount of loss minus the deductible of \$250).

b. If one Limit of Insurance applies to two or more separate items, this condition will apply to the total of all property to which the limit applies.

Example No. 3:

When: The value of property is:
 Bldg. at Location No. 1 \$ 75,000
 Bldg. at Location No. 2 \$ 100,000
 Personal Property at Location No. 2 \$ 75,000
 \$ 250,000

The Coinsurance percentage for it is 90%

The Limit of Insurance for Buildings and Personal Property at Location Nos. 1 and 2 is \$ 180,000

The Deductible is \$ 1,000

The amount of loss is:
 Bldg. at Location No. 2 \$ 30,000

Personal Property at Location No. 2. \$ 20,000
 \$ 50,000

Step (1): $\$250,000 \times 90\% = \$225,000$
 (the minimum amount of insurance to meet your Coinsurance requirements and to avoid the penalty shown below)

Step (2): $\$180,000 \div \$225,000 = .80$

Step (3): $\$50,000 \times .80 = \$40,000$

Step (4): $\$40,000 - \$1,000 = \$39,000$

We will pay no more than \$39,000. The remaining \$11,000 is not covered.

2. Mortgageholders

- a. The term mortgageholder includes trustee.
- b. We will pay for covered loss of or damage to buildings or structures to each mortgageholder shown in the Declarations in their order of precedence, as interests may appear.

c. The mortgageholder has the right to receive loss payment even if the mortgageholder has started foreclosure or similar action on the building or structure.

d. If we deny your claim because of your acts or because you have failed to comply with the terms of this Coverage Part, the mortgageholder will still have the right to receive loss payment if the mortgageholder:

- (1) Pays any premium due under this Coverage Part at our request if you have failed to do so;
- (2) Submits a signed, sworn proof of loss within 60 days after receiving notice from us of your failure to do so; and

- (3) Has notified us of any change in ownership, occupancy or substantial change in risk known to the mortgageholder.

All of the terms of this Coverage Part will then apply directly to the mortgageholder.

- e. If we pay the mortgageholder for any loss or damage and deny payment to you because of your acts or because you have failed to comply with the terms of this Coverage Part:

- (1) The mortgageholder's rights under the mortgage will be transferred to us to the extent of the amount we pay; and
- (2) The mortgageholder's right to recover the full amount of the mortgageholder's claim will not be impaired.

At our option, we may pay to the mortgageholder the whole principal on the mortgage plus any accrued interest. In this event, your mortgage and note will be transferred to us and you will pay your remaining mortgage debt to us.

- f. If we cancel this policy, we will give written notice to the mortgageholder at least:

- (1) 10 days before the effective date of cancellation if we cancel for your non-payment of premium; or
- (2) 30 days before the effective date of cancellation if we cancel for any other reason.

- g. If we elect not to renew this policy, we will give written notice to the mortgageholder at least 10 days before the expiration date of this policy.

G. Optional Coverages

If shown as applicable in the Declarations, the following Optional Coverages apply separately to each item.

1. Agreed Value

- a. The Additional Condition, Coinsurance, does not apply to Covered Property to which this Optional Coverage applies. We will pay no more for loss of or damage to that property than the proportion that the Limit of Insurance under this Coverage Part for the property bears to the Agreed Value shown for it in the Declarations.
- b. If the expiration date for this Optional Coverage shown in the Declarations is not extended, the Additional Condition, Coinsurance, is reinstated and this Optional Coverage expires.

- c. The terms of this Optional Coverage apply only to loss or damage that occurs:

- (1) On or after the effective date of this Optional Coverage; and
- (2) Before the Agreed Value expiration date shown in the Declarations or the policy expiration date, whichever occurs first.

2. Inflation Guard

- a. The Limit of Insurance for property to which this Optional Coverage applied will automatically increase by the annual percentage shown in the Declarations.
- b. The amount of increase will be:
 - (1) The Limit of Insurance that applied on the most recent of the policy inception date, the policy anniversary date, or any other policy change amending the Limit of Insurance, times
 - (2) The percentage of annual increase shown in the Declarations, expressed as a decimal (example: 8% is .08), times
 - (3) The number of days since the beginning of the current policy year or the effective date of the most recent policy change amending the Limit of Insurance, divided by 365.

Example:

If:	The applicable Limit of Insurance is	\$ 100,000
	The annual percentage increase is	8%
	The number of days since the beginning of the policy year (or last policy change) is	146
	The amount of increase is \$100,000 x .08 x 146 ÷ 365 =	\$ 3,200

3. Replacement Cost

- a. Replacement Cost (without deduction for depreciation) replaces Actual Cash Value in the Loss Condition, Valuation, of this Coverage Form.
- b. This Optional Coverage does not apply to:
 - (1) Personal property of others;
 - (2) Contents of a residence;

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- (3) Works of art, antiques or rare articles, including etchings, pictures, statuary, marbles, bronzes, porcelains and bric-a-brac; or
- (4) "Stock", unless the Including "Stock" option is shown in the Declarations.

Under the terms of this Replacement Cost Optional Coverage, tenants' improvements and betterments are not considered to be the personal property of others.

- c. You may make a claim for loss or damage covered by this insurance on an actual cash value basis instead of on a replacement cost basis. In the event you elect to have loss or damage settled on an actual cash value basis, you may still make a claim for the additional coverage this Optional Coverage provides if you notify us of your intent to do so within 180 days after the loss or damage.
- d. We will not pay on a replacement cost basis for any loss or damage:
 - (1) Until the lost or damaged property is actually repaired or replaced; and
 - (2) Unless the repairs or replacement are made as soon as reasonably possible after the loss or damage.

With respect to tenants' improvements and betterments, the following also apply:

 - (3) If the conditions in d.(1) and d.(2) above are not met, the value of tenants' improvements and betterments will be determined as a proportion of your original cost, as set forth in the Valuation Condition of this Coverage Form; and
 - (4) We will not pay for loss or damage to tenants' improvements and betterments if others pay for repairs or replacement.
- e. We will not pay more for loss or damage on a replacement cost basis than the least of (1), (2) or (3), subject to f. below:
 - (1) The Limit of Insurance applicable to the lost or damaged property;
 - (2) The cost to replace the lost or damaged property with other property:
 - (a) Of comparable material and quality; and
 - (b) Used for the same purpose; or
 - (3) The amount actually spent that is necessary to repair or replace the lost or damaged property.

If a building is rebuilt at a new premises, the cost described in e.(2) above is limited to the cost which would have been incurred if the building had been rebuilt at the original premises.

- f. The cost of repair or replacement does not include the increased cost attributable to enforcement of any ordinance or law regulating the construction, use or repair of any property.

4. Extension Of Replacement Cost To Personal Property Of Others

- a. If the Replacement Cost Optional Coverage is shown as applicable in the Declarations, then this Extension may also be shown as applicable. If the Declarations show this Extension as applicable, then Paragraph 3.b.(1) of the Replacement Cost Optional Coverage is deleted and all other provisions of the Replacement Cost Optional Coverage apply to replacement cost on personal property of others.

- b. With respect to replacement cost on the personal property of others, the following limitation applies:

If an item(s) of personal property of others is subject to a written contract which governs your liability for loss or damage to that item(s), then valuation of that item(s) will be based on the amount for which you are liable under such contract, but not to exceed the lesser of the replacement cost of the property or the applicable Limit of Insurance.

H. Definitions

- 1. "Fungus" means any type or form of fungus, including mold or mildew, and any mycotoxins, spores, scents or by-products produced or released by fungi.
- 2. "Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.
- 3. "Stock" means merchandise held in storage or for sale, raw materials and in-process or finished goods, including supplies used in their packing or shipping.

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EXHIBIT

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DEC 29 2006

J. DAVID NAVARRO, Clerk
By M. MORALES
DEPUTY

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Attorneys for Defendant Dale E. Zimney

ORIGINAL

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

VILLA HIGHLANDS, LLC, an Idaho
limited liability company,

Plaintiff,

vs.

WESTERN COMMUNITY INSURANCE
CO., an Idaho corporation; FARM
BUREAU MUTUAL INSURANCE
COMPANY OF IDAHO, an Idaho
corporation; DALE E. ZIMNEY; and
DOES I-V,

Defendants.

Case No. CV OC 0621175

**DEFENDANT DALE E. ZIMNEY'S
ANSWER TO PLAINTIFF'S
AMENDED COMPLAINT**

COMES NOW defendant, Dale E. Zimney (hereinafter "Zimney"), by and through his
counsel of record, and in answer to plaintiff's Amended Complaint (hereinafter the "Complaint")
on file herein, admits, denies, and alleges as follows:

FIRST DEFENSE

Plaintiff's Complaint fails to state a claim against defendant Zimney upon which relief may be granted.

SECOND DEFENSE

Based either upon a lack of information, defendant Zimney's belief that certain allegations contained in plaintiff's Complaint are untrue and/or because certain allegations of plaintiff's Complaint address the conduct of persons, entities or parties other than defendant Zimney, defendant Zimney denies each and every paragraph and allegation contained in plaintiff's Complaint that is not expressly and specifically admitted hereinafter.

COUNT ONE **BREACH OF CONTRACT**

To the extent the allegations in Paragraphs I through XIII of Count One of plaintiff's Complaint are directed against defendants other than defendant Zimney, defendant Zimney is not required to respond thereto. To the extent such allegations are directed against defendant Zimney, defendant Zimney denies such allegations, except as expressly and specifically admitted below, and responds that plaintiff's allegations fail to state a claim upon which relief can be granted against defendant Zimney.

I.

Defendant Zimney has insufficient knowledge to either admit or deny the allegations set forth in paragraph I of Count One of plaintiff's Complaint.

II.

As to the allegations set forth in paragraph II of Count One of plaintiff's Complaint, defendant Zimney admits only that Western Community Insurance Co. ("Western") is an Idaho corporation licensed in the state of Idaho to issue policies of insurance and that Farm Bureau

Mutual Insurance Company ("Farm Bureau") is also an Idaho corporation licensed in the state of Idaho to issue policies of insurance and is affiliated with Western. Defendant Zimney has insufficient knowledge to either admit or deny the remaining allegations set forth in paragraph II of Count One of plaintiff's Complaint.

III.

As to the allegations set forth in paragraph III of Count One of plaintiff's Complaint, defendant Zimney admits, upon information and belief, that the Villa Highlands Building was designed as a three story fifty (50) unit independent living care facility for the elderly and was being constructed on the Northwest corner of 15th Street and Hill Road in Boise, Idaho. Defendant is without sufficient knowledge as to the specific square footage of the building. Defendant Zimney denies the remaining allegations set forth in paragraph III of Count One of plaintiff's Complaint.

IV.

As to the allegations set forth in paragraph IV of Count One of plaintiff's Complaint, defendant Zimney admits only that he met with a representative of Villa Highlands in the spring of 2005 concerning the purchase of insurance for the Villa Highlands Building. Defendant further admits that he sold the plaintiff a commercial property builder's risk insurance policy (policy no. 8C023703) and that the terms of the policy speak for itself. Defendant Zimney denies all remaining allegations set forth in paragraph IV of Count One of plaintiff's Complaint.

V.

As to the allegations set forth in paragraph V of Count One of plaintiff's Complaint, defendant Zimney admits only that the Villa Highlands Building, while under construction,

caught fire on or about May 21, 2006. Defendant Zimney denies all remaining allegations set forth in paragraph V of Count One of plaintiff's Complaint.

VI.

Defendant Zimney has insufficient knowledge to either admit or deny the allegations set forth in paragraph VI of Count One of plaintiff's Complaint, and therefore denies the same

VII.

Defendant Zimney has insufficient knowledge to either admit or deny the allegations set forth in paragraph VII of Count One of plaintiff's Complaint, and therefore denies the same.

VIII.

As to the allegations set forth in paragraph VIII of Count One of plaintiff's Complaint, defendant Zimney admits only that he is an authorized agent of Western Community and Farm Bureau Mutual Insurance Company of Idaho. Defendant Zimney denies the remaining allegations set forth in paragraph VIII of Count One of plaintiff's Complaint.

IX.

Defendant Zimney denies the allegations set forth in paragraphs IX – XIII of Count One of plaintiff's Complaint.

COUNT TWO
DECLARATORY RELIEF

Defendant Zimney restates and realleges his answers to Count One of plaintiff's Complaint as though the same were set forth in full herein.

To the extent the allegations in Paragraphs I through III of Count Two of plaintiff's Complaint are directed against defendants other than defendant Zimney, defendant Zimney is not required to respond thereto. To the extent such allegations are directed against defendant

Zimney, defendant Zimney denies such allegations and responds that plaintiff's allegations fail to state a claim upon which relief can be granted against defendant Zimney.

COUNT THREE
BAD FAITH

Defendant Zimney restates and realleges his answers to Count One and Count Two of plaintiff's Complaint as though the same were set forth in full herein.

To the extent the allegations in Paragraphs I through VIII of Count Three of plaintiff's Complaint are directed against defendants other than defendant Zimney, defendant Zimney is not required to respond thereto. To the extent such allegations are directed against defendant Zimney, defendant Zimney denies such allegations and responds that plaintiff's allegations fail to state a claim upon which relief can be granted against defendant Zimney.

COUNT FOUR
BREACH OF FIDUCIARY DUTY

Defendant Zimney restates and realleges his answers to Count One, Count Two, and Count Three of plaintiff's Complaint as though the same were set forth in full herein.

To the extent the allegations in Paragraphs I through III of Count Four of plaintiff's Complaint are directed against defendants other than defendant Zimney, defendant Zimney is not required to respond thereto. To the extent such allegations are directed against defendant Zimney, defendant Zimney denies such allegations and responds that plaintiff's allegations fail to state a claim upon which relief can be granted against defendant Zimney.

COUNT FIVE
NEGLIGENCE

Defendant Zimney restates and realleges his answers to Count One, Count Two, Count Three, and Count Four of plaintiff's Complaint as though the same were set forth in full herein.

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To the extent the allegations in Paragraphs I through IV of Count Five of plaintiff's Complaint are directed against defendants other than defendant Zimney, defendant Zimney is not required to respond thereto. To the extent such allegations are directed against defendant Zimney, defendant Zimney denies such allegations and responds that plaintiff's allegations fail to state a claim upon which relief can be granted against defendant Zimney.

COUNT SIX
MISREPRESENTATION

Defendant Zimney restates and realleges his answers to Count One, Count Two, Count Three, Count Four, and Count Five of plaintiff's Complaint as though the same were set forth in full herein.

To the extent the allegations in Paragraphs I through V of Count Six of plaintiff's Complaint are directed against defendants other than defendant Zimney, defendant Zimney is not required to respond thereto. To the extent such allegations are directed against defendant Zimney, defendant Zimney denies such allegations and responds that plaintiff's allegations fail to state a claim upon which relief can be granted against defendant Zimney.

COUNT SEVEN
EQUITABLE ESTOPPEL

Defendant Zimney restates and realleges his answers to Count One, Count Two, Count Three, Count Four, Count Five, and Count Six of Plaintiff's Complaint as though the same were set forth in full herein.

To the extent the allegations in Paragraphs I through III of Count Seven of plaintiff's Complaint are directed against defendants other than defendant Zimney, defendant Zimney is not required to respond thereto. To the extent such allegations are directed against defendant

Zimney, defendant Zimney denies such allegations and responds that plaintiff's allegations fail to state a claim upon which relief can be granted against defendant Zimney.

COUNT EIGHT
PROMISSORY ESTOPPEL

Defendant Zimney restates and realleges his answers to Count One, Count Two, Count Three, Count Four, Count Five, Count Six and Count Seven of plaintiff's Complaint as though the same were set forth in full herein.

To the extent the allegations in Paragraphs I through III of Count Eight of plaintiff's Complaint are directed against defendants other than defendant Zimney, defendant Zimney is not required to respond thereto. To the extent such allegations are directed against defendant Zimney, defendant Zimney denies such allegations and responds that plaintiff's allegations fail to state a claim upon which relief can be granted against defendant Zimney.

AFFIRMATIVE DEFENSES

By pleading certain defenses as "Affirmative Defenses," Defendant Zimney does so for the purpose of completeness and does not intend to suggest that he has the burden of proof for any such defense. Furthermore, as Defendant Zimney has not had the opportunity to conduct discovery in this case, he, by failing to raise an affirmative defense, does not intend to waive any such defense, and specifically reserves the right to amend this answer to include additional affirmative defenses.

FIRST AFFIRMATIVE DEFENSE

Defendant Zimney has, at all times relevant hereto, acted in a reasonable and prudent fashion, satisfying any duty, if any, that he owed to plaintiff under applicable law.

SECOND AFFIRMATIVE DEFENSE

The conduct of Defendant Zimney was not the proximate cause of the damages, if any, suffered by the plaintiff. To the extent that it may be determined that defendant Zimney's conduct was a proximate cause of damages suffered by the plaintiff, such conduct should be compared with the conduct of the plaintiff and/or any culpable third party in accordance with Idaho Code § 6-801, et seq. By asserting this defense, defendant Zimney does not admit negligence in any degree but, to the contrary, specifically denies negligence.

THIRD AFFIRMATIVE DEFENSE

Plaintiff has waived and/or is estopped to assert the claims contained in its Complaint.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the doctrines of laches.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff has failed to act reasonably or to otherwise mitigate its damages, if any.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff and defendant Zimney have not entered into any contract and therefore, Defendant Zimney cannot be liable for breach of contract, as Zimney only sold plaintiff insurance, he did not underwrite such insurance.

SEVENTH AFFIRMATIVE DEFENSE

Defendant Zimney at all times acted in good faith and did not breach any fiduciary duty, if any, owed to plaintiff.

EIGHTH AFFIRMATIVE DEFENSE

Defendant Zimney committed no acts constituting fraud or misrepresentation and plaintiff has asserted no claim for fraud with the particularity required by Rule 9(b) of the Idaho Rules of Civil Procedure.

NINTH AFFIRMATIVE DEFENSE

A declaratory judgment is inappropriate in this matter since there are issues of material fact.

TENTH AFFIRMATIVE DEFENSE

To the extent plaintiff's Complaint asserts claims for punitive damages; such claims are improperly plead under Idaho Code Section 6-1604(2) and should be struck from plaintiff's Complaint.

CLAIM FOR ATTORNEY FEES

Defendant Zimney has been required to retain counsel to defend this action, and is entitled to recover his reasonable attorney fees and costs from plaintiff pursuant to Idaho Code §§ 12-121, 12-123 and Rule 54 of the Idaho Rules of Civil Procedure.

WHEREFORE, this defendant prays for judgment as follows:

1. That plaintiff's Complaint be dismissed against Defendant Zimney with prejudice and that plaintiff takes nothing thereby;
2. That Defendant Zimney be awarded his costs and reasonable attorney fees incurred in this action; and
3. For such other and further relief as the Court deems just and equitable.

DATED this 29th day of December, 2006.

HALL, FARLEY, OBERRECHT
& BLANTON, P.A.

By But West for
J. Kevin West - Of the Firm
Attorneys for Defendant
Dale E. Zimney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 29th day of December, 2006, I caused to be served a true copy of the foregoing DEFENDANT DALE E. ZIMNEY'S ANSWER TO PLAINTIFF'S AMENDED COMPLAINT, by the method indicated below, and addressed to each of the following:

Terry C. Copple
Cynthia Yee-Wallace
Davison, Copple, Copple & Cox, LLP
Washington Mutual Capitol Plaza
199 North Capitol Blvd., Ste. 600
Post Office Box 1583
Boise, Idaho 83701

U.S. Mail, Postage Prepaid
 Hand Delivered
 Overnight Mail
 Telecopy

But West for
J. Kevin West

NO. _____
A.M. _____ FILED P.M. 4:33

JAN 23 2007

J. DAVID NAVARRO, Clerk
By J BLACK
DEPUTY

Robert A. Anderson, ISB No. 2124
ANDERSON, JULIAN & HULL LLP
C. W. Moore Plaza
250 South Fifth Street, Suite 700
Post Office Box 7426
Boise, Idaho 83707-7426
Telephone: (208) 344-5800
Facsimile: (208) 344-5510
E-Mail: raanderson@ajhlaw.com

Attorneys for Defendant/Counterclaimant
Western Community Ins. Co. and
Defendant Farm Bureau Mut. Ins. Co.
of Idaho

IN THE DISTRICT COURT OF
THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND
FOR THE COUNTY OF ADA

VILLA HIGHLANDS, LLC, an Idaho limited
liability company,

Plaintiff,

vs.

**WESTERN COMMUNITY INSURANCE
CO.**, an Idaho corporation; **FARM
BUREAU MUTUAL INSURANCE
COMPANY OF IDAHO**, an Idaho
corporation; **DALE E. ZIMNEY**; and **DOES
I-V**,

Defendants.

Case No. CV OC 0621175

**ANSWER AND COUNTERCLAIM
(DECLARATORY PETITION) AND
DEMAND FOR TRIAL BY JURY**

Fee Categories: I(1)(a) & J(8)(b)
Fee: \$14.00

00142

ANSWER AND COUNTERCLAIM (DECLARATORY PETITION) AND DEMAND FOR
TRIAL BY JURY - 1

**WESTERN COMMUNITY INSURANCE
CO.**, an Idaho corporation,

Counterclaimant,

vs.

VILLA HIGHLANDS, LLC, an Idaho limited
liability company,

Counterdefendant.

COME NOW the above-entitled Defendants, **WESTERN COMMUNITY INSURANCE CO.** and **FARM BUREAU MUTUAL INSURANCE COMPANY OF IDAHO**, by and through their counsel of record, Anderson, Julian & Hull, and answer Plaintiff's Complaint as follows:

FIRST DEFENSE

The Complaint fails to state a claim against these answering Defendants upon which relief can be granted.

SECOND DEFENSE

I.

These answering Defendants deny each and every allegation of the Complaint not herein expressly and specifically admitted.

II.

These answering Defendants admit only the allegations contained in Paragraph 2 of Plaintiff's Complaint concerning the fact that Western Community is an Idaho corporation and is duly licensed to issue policies of insurance and Farm Bureau is an affiliated company of Western Community and is licensed to engage in the business of

issuing insurance products in the State of Idaho. Defendants deny the remainder of the allegations contained in Paragraph 2.

III.

These answering Defendants admit only the allegations contained in Paragraph 2 of Plaintiff's Complaint concerning the fact that Plaintiff obtained a commercial property builder's risk insurance policy from Western Community, effective April 25, 2005. Defendants deny the remainder of the allegations contained in Paragraph 4.

IV.

These answering Defendants admit only the allegations contained in Paragraph 7 of Plaintiff's Complaint concerning the fact that Plaintiff and Western Community attempted to negotiate settlement of a claim initiated by Plaintiff related to the Villa Highlands Building. Defendants deny the remainder of the allegations contained in Paragraph 7.

V.

These answering Defendants admit only the allegations contained in Paragraph 10 of Plaintiff's Complaint concerning the fact that a contractual relationship exists between Plaintiff and Defendant Western Community. Defendants deny the remainder of the allegations contained in Paragraph 10.

VI.

With respect to the allegations contained in Paragraphs 1 and 5 of Plaintiffs' Complaint, these answering Defendants are without sufficient information to admit or deny said allegations, and therefore deny the same.

THIRD DEFENSE

Defendant Farm Bureau did not issue the policy in question and had no role in the evaluation and handling of Plaintiff's claim.

FOURTH DEFENSE

Defendant Western Community fully performed each term of the agreement between it and Plaintiff in good faith and Plaintiff has received the full benefits of the agreement and Western Community attempted to carry out its obligations under the agreement in full and in accordance with the terms and conditions of the agreement.

FIFTH DEFENSE

Plaintiff is not the real party in interest as respects all or a part of their claim, contrary to Rule 17, Idaho Rules of Civil Procedure.

SIXTH DEFENSE

Plaintiff was guilty of bad faith in connection with some or all of the events alleged in Plaintiff's Complaint.

SEVENTH DEFENSE

Plaintiff has, and continues to have, the ability and opportunity to mitigate the damages alleged with respect to the subject matter of this action, and has failed to mitigate said damages, if any were in fact incurred.

EIGHTH DEFENSE

Plaintiff has waived, or by its conduct is estopped from asserting, the causes of action contained in the Complaint.

NINTH DEFENSE

That the full extent of damages claimed by Plaintiff were excepted from coverage under the policy by virtue of an underinsurance condition included in the policy.

TENTH DEFENSE

Without admitting that there was an intentional or unreasonable delay or denial of plaintiff's claim, any alleged delay or denial was fairly debatable or was the result of an honest mistake.

ELEVENTH DEFENSE

Plaintiff has voluntarily waived any right to claim a misrepresentation as to the terms and conditions of the policy of insurance contracted for or in seeking judicial modification of the agreement as they paid premiums under the insuring agreement and accepted the benefits of that agreement as it is presently constituted.

TWELFTH DEFENSE

That a condition precedent of Defendant Western Community's obligation has not occurred and/or that Plaintiffs may have violated or failed to comply with certain conditions of the insuring agreement thereby discharging Western Community from obligations under the insuring agreement with respect to the claims set forth in Plaintiff's Complaint.

THIRTEENTH DEFENSE

That the fault of Plaintiffs was equal to or greater than the fault of Defendants, if any, and that said Plaintiffs' fault was the sole, direct and proximate cause of any damages and/or injuries suffered by Plaintiffs.

FOURTEENTH DEFENSE

Plaintiffs' actions have prevented the Defendant Western Community from performing its contractual obligations, if any.

FIFTEENTH DEFENSE

Plaintiff has breached the contract which forms the basis of its cause of action.

SIXTEENTH DEFENSE

Plaintiff breached the covenant of good faith and fair dealing by refusing to cooperate in good faith with Defendant Western Community's attempts to adjust and/or settle the insurance claim at issue.

SEVENTEENTH DEFENSE

These answering Defendants reserve the right to assert any additional affirmative defenses and matters in avoidance that may be disclosed in the course of additional investigation and discovery.

WHEREFORE, these answering Defendants pray that Plaintiff take nothing by its Complaint, that the same be dismissed, and that these answering Defendants be awarded their costs of suit and attorney fees, and such other and further relief as the Court deems just.

COUNTERCLAIM/DECLARATORY JUDGMENT PETITION

COMES NOW the above-entitled Defendant, **WESTERN COMMUNITY INSURANCE CO.**, by and through its counsel of record, Anderson, Julian & Hull, and for a Counterclaim/Petition for Declaratory Judgment against Villa Highlands, LLC, alleges as follows:

I.

That the Counterclaimant, Western Community, is an insurance company authorized to and actually conducting property and casualty insurance services and business in the State of Idaho.

II.

That Counterdefendant Villa Highlands was, at all times relevant to this controversy, an Idaho corporation duly authorized to conduct business in the State of Idaho with its principal place of business is in Boise, Ada County, Idaho.

III.

All acts and omissions alleged herein occurred in Ada County, Idaho. This Court has jurisdiction to enter a declaratory judgment in this matter pursuant to I.C. § 10-1201, *et. seq.*

IV.

That, in April of 2005, Villa Highlands purchased a policy of insurance from Western Community. The policy of insurance purchased by Villa Highlands was a Commercial Property Builder's Risk insurance policy providing liability coverage for losses occasioned by fire and other casualty in regards to the Villa Highlands

Independent Living Facility located in Boise, Idaho, subject to certain conditions, exceptions, definitions and limitations. Said insurance policy is attached as Exhibit A to the Amended Complaint for Breach of Contract, Declaratory Relief, Bad Faith, Breach of Fiduciary Duty, Negligence, Misrepresentation, Equitable Estoppel, Promissory Estoppel, and Demand for Jury Trial filed on December 6, 2006.

V.

On or about July 24, 2006, Villa Highlands notified representatives of Western Community of a potential covered loss under the insurance policy at issue. After receiving notice of the claim, Western Community began the process of claim investigation and attempts to negotiate a settlement of the claim with Villa Highlands.

VI.

Villa Highlands' insurance policy contains a provision under § E(3)(a)(8) whereby Villa Highlands undertook the duty and agreed to cooperate with Western Community in the investigation and/or settlement of any claim. However, Villa Highlands has refused and/or failed to cooperate with Western Community's efforts to duly investigate and adjust the claimed loss. Villa Highlands' acts have included refusing to cooperate with Western Community's attempts to appraise the building at issue and/or refusing to participate in arbitration proceedings.

VII.

That an actual controversy of a judiciable nature exists between the Plaintiff and the Defendant involving the parties' rights and liabilities under the aforesaid contract and policy of insurance, and dependent upon the construction of said contract of

insurance, the controversy which exists between the parties may be determined by this Court and without other lawsuits.

VIII.

That the combination of Villa Highlands' acts in regards to cooperation with Western Community's claim investigation efforts and Villa Highlands' duties under policy of insurance described in Paragraph IV above creates a legal issue as to Western Community's duty to provide coverage under the policy of insurance and impacts Villa Highlands' claims of bad faith and breach of fiduciary duties in this matter.

IX.

Western Community seeks a specific ruling and declaration of this Court that Western Community is not obligated to provide insurance coverage to Villa Highlands as to claims to which Villas Highlands has not met their obligations under the insurance policy at issue.

WHEREFORE, Counterclaimant prays this Court enter a declaratory judgment declaring that:

1. Villa Highlands' failure to abide by certain terms and conditions of the insurance policy at issue obviates Western Community's duties under the policy to provide insurance coverage for Villa Highlands' claimed losses at issue.

2. That Western Community be awarded its costs of suit incurred herein, reasonable attorney fees, and


3. Such other and further relief as may be warranted.

JURY DEMAND

DEFENDANTS/COUNTERCLAIMANT
DEMANDS A TRIAL BY JURY.

DATED this 23 day of January, 2007.

ANDERSON, JULIAN & HULL LLP

By 

Robert A. Anderson, Of the Firm
Attorneys for Defendant/Counter-
claimant Western Community Ins. Co.
and Defendant Farm Bureau Mut. Ins.
Co. of Idaho

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 22nd day of January, 2007, I served a true and correct copy of the foregoing ANSWER AND COUNTERCLAIM (DECLARATORY PETITION) AND DEMAND FOR TRIAL BY JURY by delivering the same to each of the following attorneys of record, by the method indicated below, addressed as follows:

Terry C. Copple	<input checked="" type="checkbox"/>	U.S. Mail, postage prepaid
Cynthia Yee-Wallace	<input type="checkbox"/>	Hand-Delivered
DAVISON, COPPLE, COPPLE	<input type="checkbox"/>	Overnight Mail
& COX, LLP	<input type="checkbox"/>	Facsimile

Washington Mutual Capitol Plaza
199 N. Capitol Blvd., Ste. 600
P. O. Box 1583
Boise, Idaho 83701
Telephone: (208) 342-3658
Facsimile: (208) 386-9428
Attorneys for Plaintiff

J. Kevin West	<input checked="" type="checkbox"/>	U.S. Mail, postage prepaid
HALL, FARLEY, OBERRECHT	<input type="checkbox"/>	Hand-Delivered
& BLANTON, P.A.	<input type="checkbox"/>	Overnight Mail
Key Financial Center, Suite 700	<input type="checkbox"/>	Facsimile

702 West Idaho Street
P. O. Box 1271
Boise, Idaho 83701
Telephone: (208) 395-8500
Facsimile: (208) 395-8585
Attorneys for Defendant Dale E. Zimney



Robert A. Anderson

NO. _____
FILED P.M. 4:15

APR 04 2007

J. DAVID NAVARRO, Clerk
By KATHY J. SIEHL
DEPUTY

TERRY C. COPPLE (ISB No. 1925)
CYNTHIA YEE-WALLACE (ISB No. 6793)
DAVISON, COPPLE, COPPLE & COX, LLP
Attorneys at Law
Washington Mutual Capitol Plaza
Post Office Box 1583
199 North Capitol Boulevard
Suite 600
Boise, Idaho 83701
Telephone: (208) 342-3658
Facsimile: (208) 386-9428
tccopple@davisoncopples.com
wallace@davisoncopples.com

Attorneys for Plaintiff
Villa Highlands, LLC

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

VILLA HIGHLANDS, LLC, an Idaho	)	Case No. CV OC 0621175
limited liability company,)	
	)	PLAINTIFF'S ANSWER TO WESTERN
Plaintiff,	)	COMMUNITY INSURANCE CO.'S AND
	)	FARM BUREAU MUTUAL INSURANCE
vs.	)	COMPANY OF IDAHO'S
	)	COUNTERCLAIM
WESTERN COMMUNITY INSURANCE CO.,))	
an Idaho corporation; FARM BUREAU)	
MUTUAL INSURANCE COMPANY OF)	
IDAHO, an Idaho corporation; DALE E.)	
ZIMNEY; and DOES 1 - V,)	
)	

PLAINTIFF'S ANSWER TO WESTERN COMMUNITY INSURANCE CO.'S AND FARM BUREAU MUTUAL
INSURANCE COMPANY OF IDAHO'S COUNTERCLAIM - 1

00153
ORIGINAL

Defendants.)
_____)

* * *

COMES NOW, Plaintiff Villa Highlands, LLC, an Idaho limited liability company (hereinafter referred to as "Villa Highlands") by and through its attorneys of record, Davison, Copple, Copple & Cox of Boise, Idaho, and hereby responds to Defendants WESTERN COMMUNITY INSURANCE CO.'S AND FARM BUREAU MUTUAL INSURANCE COMPANY OF IDAHO's (hereinafter collectively referenced as "Counterclaimants") Counterclaim as follows:

I.

FIRST DEFENSE

The Counterclaimants' Counterclaim fails to state a claim against Villa Highlands upon which relief can be granted.

II.

Villa Highlands denies each and every allegation contained in the Counterclaimants' Counterclaim unless specifically admitted herein and denies all relief sought by the Counterclaimants in their prayer for relief.

III.

Villa Highlands admits the allegations contained in Paragraph I of the Counterclaimants' Counterclaim.

IV.

Villa Highlands denies that it is an Idaho corporation as alleged in Paragraph II of the Counterclaimants' Counterclaim, however, admits the remaining allegations set forth in Paragraph

II of Counterclaimants' Counterclaim.

V.

Villa Highlands denies the allegations set forth in Paragraphs III, V, VI, VII, VIII, and IX of the Counterclaimants' Counterclaim.

VI.

Villa Highlands denies that in April it purchased a policy of insurance from Western Community as alleged in Paragraph IV of the Counterclaimants' Counterclaim, however admits the remaining allegations in that Paragraph.

VII.

Villa Highlands reserves the right to allege additional claims and causes of actions and defenses and affirmative defenses against Counterclaimants, as additional information becomes available to Villa Highlands and as discovery progresses in the above case.

VIII.

It has been necessary for Villa Highlands to retain attorneys to protect its rights as herein set forth and thus Villa Highlands should be awarded all of its reasonable costs and attorneys' fees.

AFFIRMATIVE DEFENSES

I.

As an affirmative defense herein, Villa Highlands alleges that Western Community and/or its agents, representatives, and brokers have denied coverage of Villa Highland's claim and Villa Highlands has fully performed each term of the agreement between it and Western Community in good faith.

II.

As an additional affirmative defense herein, Villa Highlands alleges that Western Community and/or its agents, representatives, and brokers were guilty of bad faith in connection with some or all of the events alleged in its Counterclaim.

III.

As an additional affirmative defense herein, Villa Highlands alleges that Western Community and/or its agents, representatives, and brokers has, and continues to have, the ability and opportunity to mitigate the damages alleged with respect to the subject matter of this action, and has failed to mitigate said damages, if any were in fact incurred.

III.

As an additional affirmative defense herein, Villa Highlands alleges that Western Community's claims are barred by waiver, estoppel and laches.

IV.

As an additional affirmative defense herein, Villa Highlands alleges that any alleged delay or denial was fairly debatable or was the result of an honest mistake.

V.

As an additional affirmative defense herein, Villa Highlands alleges that Western Community's claims are barred by its own breach of the contract and/or that of its agents, representatives, and brokers and thus, any alleged relief or damages of Western Community should be excluded or reduced.

VI.

As an additional affirmative defense herein, Villa Highlands alleges that Western Community's claims and damages, if any, are subject to Plaintiff's entitlement to an offset against all amounts allegedly due and owing by Plaintiff to Western Community for those damages, expenses, costs and fees of Plaintiff caused by the acts, omissions, breach of contract, breach of fiduciary duty, and failure to perform of Western Community and/or its agents, representatives, and brokers.

VII.

As an additional affirmative defense herein, Villa Highlands alleges that a condition precedent of Plaintiff's obligations to Western Community has not occurred and/or that Western Community may have violated or failed to comply with certain conditions of the insuring agreement, thereby discharging Plaintiff from obligations under the insuring agreement.

VIII.

As an additional affirmative defense herein, Villa Highlands alleges that the fault of Western Community and/or its agents, representatives, and brokers was equal to or greater than the fault of Plaintiff, if any, and that Western Community's fault was the sole, direct and proximate cause of any damages and/or injuries suffered by Western Community, if any.

IX.

As an additional affirmative defense herein, Villa Highlands alleges that Western Community's actions and/or that of its agents, representatives, and brokers have prevented the Plaintiff from performing its contractual obligations and conditions, if any.

X.

As an additional affirmative defense herein, Villa Highlands alleges that Western Community's claims are barred by the doctrine of unclean hands.

XI.

As an additional affirmative defense herein, Plaintiff alleges that any and all damages alleged by Western Community were caused in whole or in part by the negligence, acts, or omissions of Western Community and/or its agents, representatives, and brokers, and not by the acts and omissions of Plaintiff.

X.

As an additional affirmative defense herein, Villa Highlands alleges that Western Community's claims are limited by contract.

XI.

As an additional affirmative defense herein, Villa Highlands alleges that the contract at issue in this case is voidable due to unilateral mistake and misrepresentation by Western Community and/or its agents, representatives, and brokers.

XII.

As an additional affirmative defense herein, Villa Highlands alleges that the contract at issue is ambiguous.

XIII.

As an additional affirmative defense herein, Villa Highlands alleges that Western Community is jointly and severally liable in damages for the acts of its agents, representatives, and brokers as

alleged in Plaintiff's Amended Complaint filed in the above case.

XIV.

Plaintiff reserves the right to assert any additional affirmative defenses and matters in avoidance that may be disclosed in the course of additional investigation and discovery.

WHEREFORE, Plaintiff Villa Highlands, LLC prays that Western Community's Counterclaim be dismissed with prejudice and that Western Community takes nothing therefrom, and that relief be granted to Plaintiff as alleged herein and in its Amended Complaint filed in this case, including that the Defendants be held liable for their actions alleged therein, jointly and severally, for a declaration that Plaintiff is entitled to full coverage under the described Policy for the full amount of \$5,645,000.00 and that such sum should be promptly paid to Plaintiff, damages in excess of \$10,000.00 in an amount to be proven at trial, prejudgment interest as provided by law, \$15,000.00 attorneys' fees and costs if this matter is uncontested by Defendants or reasonable attorneys' fees and costs if this matter is contested by Defendants, and for such other and further relief as the Court may deem just and proper.

PLAINTIFF VILLA HIGHLANDS, LLC, DEMANDS A JURY TRIAL ON ALL ISSUES OF FACT IN THE ABOVE-ENTITLED LITIGATION AND WILL NOT STIPULATE TO A JURY OF LESS THAN TWELVE (12) PERSONS.

DATED this 9 day of April, 2007.

DAVISON, COPPLE, COPPLE & COX, LLP

By: Cynthia Yee-Wallace
Cynthia Yee-Wallace, of the firm
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

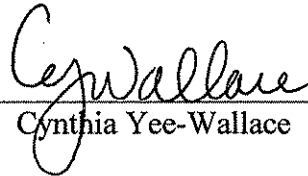
I HEREBY CERTIFY that on the 4 day of April, 2007, I caused to be served a true and accurate copy of the foregoing instrument to the following by the method indicated:

Robert Anderson
Anderson, Julian & Hull
P.O. Box 7426
Boise, Idaho 83707-7426
Fax: 208-344-5510

by U.S. MAIL
 by HAND DELIVERY
 by FACSIMILE:
 by OVERNIGHT MAIL

J. Kevin West
Hall, Farley, Oberrecht & Blanton, P.A.
PO Box 1271
Boise, Idaho 837071
Fax: 208-395-8585

by U.S. MAIL
 by HAND DELIVERY
 by FACSIMILE:
 by OVERNIGHT MAIL


Cynthia Yee-Wallace

DEC 14 2007

J. DAVID NAVARRO, Clerk
By A TOONE
DEPUTY

Robert A. Anderson, ISB No. 2124
ANDERSON, JULIAN & HULL LLP
C. W. Moore Plaza
250 South Fifth Street, Suite 700
Post Office Box 7426
Boise, Idaho 83707-7426
Telephone: (208) 344-5800
Facsimile: (208) 344-5510
E-Mail: raanderson@ajhlaw.com

Attorneys for Defendant/Counterclaimant
Western Community Ins. Co. and
Defendant Farm Bureau Mut. Ins. Co.
of Idaho

IN THE DISTRICT COURT OF
THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND
FOR THE COUNTY OF ADA

VILLA HIGHLANDS, LLC, an Idaho limited
liability company,

Plaintiff,

vs.

**WESTERN COMMUNITY INSURANCE
CO.**, an Idaho corporation; **FARM
BUREAU MUTUAL INSURANCE
COMPANY OF IDAHO**, an Idaho
corporation; **DALE E. ZIMNEY**; and **DOES
I-V**,

Defendants.

Case No. CV OC 0621175

MOTION TO COMPEL APPRAISAL

**WESTERN COMMUNITY INSURANCE
CO.**, an Idaho corporation,

Counterclaimant,

vs.

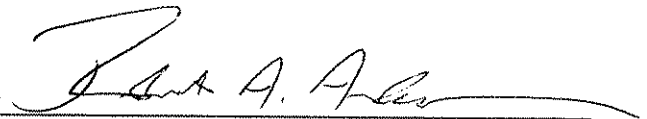
VILLA HIGHLANDS, LLC, an Idaho limited
liability company,

Counterdefendant.

COME NOW the above-entitled Defendants, **WESTERN COMMUNITY INSURANCE CO.** and **FARM BUREAU MUTUAL INSURANCE COMPANY OF IDAHO**, by and through their counsel of record, Anderson, Julian & Hull, and hereby move the Court for an Order compelling Plaintiff, Villa Highlands, LLC, to fulfill its obligations under § E(2) of its Builder's Risk insurance policy by cooperating and participating in the appraisal process as set forth under the Policy. This Motion is supported by the record on file and the memorandum and affidavit filed contemporaneously herewith.

DATED this 12th day of December, 2007.

ANDERSON, JULIAN & HULL LLP

By 

Robert A. Anderson, Of the Firm
Attorneys for Defendant/Counter-
claimant Western Community Ins. Co.
and Defendant Farm Bureau Mut. Ins.
Co. of Idaho

CERTIFICATE OF MAILING

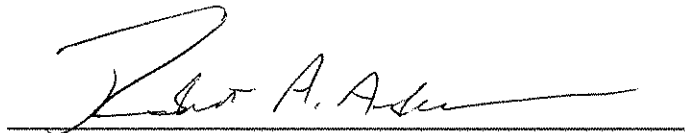
I HEREBY CERTIFY that on this 12th day of December, 2007, I served a true and correct copy of the foregoing **MOTION TO COMPEL APPRAISAL** by delivering the same to each of the following attorneys of record, by the method indicated below, addressed as follows:

E. Don Copple	<input checked="" type="checkbox"/>	U.S. Mail, postage prepaid
Ed Guericabeitia	<input type="checkbox"/>	Hand-Delivered
DAVISON, COPPLE, COPPLE	<input type="checkbox"/>	Overnight Mail
& COX, LLP	<input type="checkbox"/>	Facsimile

Washington Mutual Capitol Plaza
199 N. Capitol Blvd., Ste. 600
P. O. Box 1583
Boise, Idaho 83701
Telephone: (208) 342-3658
Facsimile: (208) 386-9428
Attorneys for Plaintiff

J. Kevin West	<input checked="" type="checkbox"/>	U.S. Mail, postage prepaid
HALL, FARLEY, OBERRECHT	<input type="checkbox"/>	Hand-Delivered
& BLANTON, P.A.	<input type="checkbox"/>	Overnight Mail
Key Financial Center, Suite 700	<input type="checkbox"/>	Facsimile

702 West Idaho Street
P. O. Box 1271
Boise, Idaho 83701
Telephone: (208) 395-8500
Facsimile: (208) 395-8585
Attorneys for Defendant Dale E. Zimney



Robert A. Anderson

TERRY C. COPPLE (ISB No. 1925)
 E DON COPPLE (ISB No. 1085)
 ED GUERRICABEITIA (ISB No. 6148)
 HEATHER A. CUNNINGHAM (ISB No. 5480)
 DAVISON, COPPLE, COPPLE & COX, LLP
 Attorneys at Law
 Washington Mutual Capitol Plaza
 Post Office Box 1583
 199 North Capitol Boulevard
 Suite 600
 Boise, Idaho 83701
 Telephone: (208) 342-3658
 Facsimile: (208) 386-9428

NO. _____ FILED _____
 A.M. _____ P.M. **424**

DEC 18 2007

J. DAVID NAVARRO, Clerk
 By A. GARDEN
 DEPUTY

Attorneys for Plaintiff
 Villa Highlands, LLC

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

VILLA HIGHLANDS, LLC, an Idaho	)	Case No. CV OC 0621175
limited liability company,)	
)	
Plaintiff,)	
	)	STIPULATION TO PLAINTIFF'S
vs.	)	MOTION FOR LEAVE OF COURT TO
	)	PLAINTIFF'S SECOND AMENDED
WESTERN COMMUNITY INSURANCE CO.,	)	COMPLAINT AND DEMAND FOR
an Idaho corporation; FARM BUREAU	)	JURY TRIAL
MUTUAL INSURANCE COMPANY OF)	
IDAHO, an Idaho corporation; DALE E.)	
ZIMNEY; and DOES 1 - V,)	
)	
Defendants.)	
)	

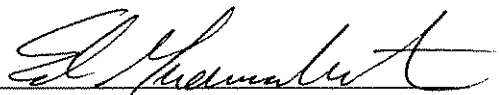
COMES NOW the Plaintiff, Villa Highlands, LLC, by and through its counsel of record, Ed Guerricabeitia of the firm Davison, Copple, Copple & Cox, and Defendants Western Community Insurance Co. and Farm Bureau Mutual Insurance Company of Idaho, by and through its counsel of

STIPULATION TO PLAINTIFF'S MOTION FOR LEAVE OF COURT TO FILE PLAINTIFF'S SECOND AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL - 1

record, Robert Anderson of the firm Anderson, Julian & Hull and Defendant Dale E. Zimney, by and through his counsel of record, Kevin West and Karen Sheehan of the firm Hall, Farley, Oberrecht & Blanton and hereby stipulate and agree that the Court may enter its order granting Plaintiff's Motion for leave of court to file its Second Amended Complaint.

DATED this 18th day of December, 2007.

DAVISON, COPPLE, COPPLE & COX

By: 
Ed Guerricabeitia, of the firm
Attorneys for Plaintiff

DATED this ____ day of December, 2007.

ANDERSON, JULLIAN & HULL

By: _____
Robert Anderson, of the firm
Attorneys for Defendants Western
Community and Farm Bureau

DATED this ____ day of December, 2007.

HALL, FARLEY, OBERRECHT & BLANTON

By: _____
Karen Sheehan, of the firm
Attorneys for Defendant Dale Zimney

record, Robert Anderson of the firm Anderson, Julian & Hull and defendant Dale E. Zimney, by and through his counsel of record, Karen Sheehan of the firm Hall, Farley Oberrecht & Blanton and hereby stipulate and agree that the Court may enter its order granting Plaintiff's Motion for leave of court to file its Second Amended Complaint.

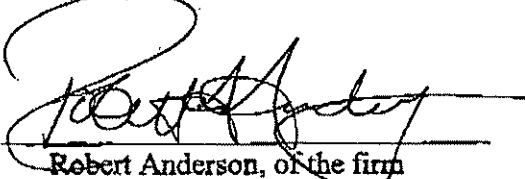
DATED this ____ day of December, 2007.

DAVISON, COPPLE, COPPLE & COX

By: _____
Ed Guericabeitia, of the firm
Attorneys for Plaintiff

DATED this 17th day of December, 2007.

ANDERSON, JULIAN & HULL

By: 
Robert Anderson, of the firm
Attorneys for Defendants Western
Community and Farm Bureau

DATED this ____ day of December, 2007.

HALL, FARLEY, OBERRECHT & BLANTON

By: _____
Karen Sheehan, of the firm
Attorneys for Defendant Dale Zimney

record, Robert Anderson of the firm Anderson, Julian & Hull and Defendant Dale E. Zimney, by and through his counsel of record, Kevin West and Karen Sheehan of the firm Hall, Farley, Oberrecht & Blanton and hereby stipulate and agree that the Court may enter its order granting Plaintiff's Motion for leave of court to file its Second Amended Complaint.

DATED this ___ day of December, 2007.

DAVISON, COPPLE, COPPLE & COX

By: _____
Ed Guericabeitia, of the firm
Attorneys for Plaintiff

DATED this ___ day of December, 2007.

ANDERSON, JULLIAN & HULL

By: _____
Robert Anderson, of the firm
Attorneys for Defendants Western
Community and Farm Bureau

DATED this 17th day of December, 2007.

HALL, FARLEY, OBERRECHT & BLANTON

By: Karen Sheehan
Karen Sheehan, of the firm
Attorneys for Defendant Dale Zimney

RECEIVED
DEC 18 2007

FILED
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TERRY C. COPPLE (County Clerk (ISB No. 1925)
E DON COPPLE (ISB No. 1085)
ED GUERRICABEITIA (ISB No. 6148)
HEATHER A. CUNNINGHAM (ISB No. 5480)
DAVISON, COPPLE, COPPLE & COX, LLP
Attorneys at Law
Washington Mutual Capitol Plaza
Post Office Box 1583
199 North Capitol Boulevard
Suite 600
Boise, Idaho 83701
Telephone: (208) 342-3658
Facsimile: (208) 386-9428

DEC 19 2007

Dianne Holden
CLERK OF DISTRICT COURT

Attorneys for Plaintiff
Villa Highlands, LLC

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

VILLA HIGHLANDS, LLC, an Idaho) Case No. CV OC 0621175
limited liability company,)
)

Plaintiff,)

vs.)

WESTERN COMMUNITY INSURANCE CO.,)
an Idaho corporation; FARM BUREAU)
MUTUAL INSURANCE COMPANY OF)
IDAHO, an Idaho corporation; DALE E.)
ZIMNEY; and DOES 1 - V,)
)

Defendants.)

**ORDER GRANTING PLAINTIFF'S
MOTION FOR LEAVE OF COURT TO
PLAINTIFF'S SECOND AMENDED
COMPLAINT AND DEMAND FOR
JURY TRIAL**


PURSUANT to the Stipulation executed by the parties' counsel and the filings of non-opposition by Defendants, and good cause appearing therefore,

IT IS HEREBY ORDERED that Plaintiff's Motion for Leave of Court to File Plaintiff's

ORDER GRANTING PLAINTIFF'S MOTION FOR LEAVE OF COURT TO FILE PLAINTIFF'S SECOND AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL - 1

Second Amended Complaint and Demand for Jury Trial is granted and may be filed with the Court.

DATED this 19 day of December, 2007.


DARLA S. WILLIAMSON
DISTRICT JUDGE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 19 day of December, 2007, I caused to be served a true and accurate copy of the foregoing instrument to the following by the method indicated:

Robert Anderson
Anderson, Julian & Hull
P.O. Box 7426
Boise, Idaho 83707-7426
Fax: 208-344-5510

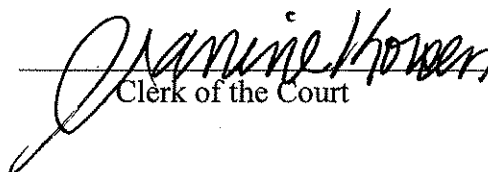
by U.S. MAIL
 by HAND DELIVERY
 by FACSIMILE:
 by OVERNIGHT MAIL

Kevin West
Karen Sheehan
Hall, Farley, Oberrecht & Blanton, P.A.
PO Box 1271
Boise, Idaho 83701
Fax: 208-395-8585

by U.S. MAIL
 by HAND DELIVERY
 by FACSIMILE:
 by OVERNIGHT MAIL

Ed Guerricabeitia
Davison & Copple
P.O. Box 1583
Boise, Idaho 83701

by U.S. MAIL
 by HAND DELIVERY
 by FACSIMILE:
 by OVERNIGHT MAIL


Clerk of the Court

JAN 08 2008

J. DAVID NAVARRO, Clerk
By L. AMES
DEPUTY

TERRY C. COPPLE (ISB No. 1925)
E DON COPPLE (ISB No. 1085)
ED GUERRICABEITIA (ISB No. 6148)
HEATHER A. CUNNINGHAM (ISB No. 5480)
DAVISON, COPPLE, COPPLE & COX, LLP
Attorneys at Law
Washington Mutual Capitol Plaza
Post Office Box 1583
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Suite 600
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Telephone: (208) 342-3658
Facsimile: (208) 386-9428

Attorneys for Plaintiff
Villa Highlands, LLC

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

VILLA HIGHLANDS, LLC, an Idaho
limited liability company,

Plaintiff,

vs.

WESTERN COMMUNITY INSURANCE CO.,
an Idaho corporation; FARM BUREAU
MUTUAL INSURANCE COMPANY OF
IDAHO, an Idaho corporation; DALE E.
ZIMNEY; and DOES 1 - V,

Defendants.

) Case No. CV OC 0621175
)
)
)
)
) **PLAINTIFF'S SECOND AMENDED**
) **COMPLAINT AND DEMAND FOR**
) **JURY TRIAL**

COMES NOW, Plaintiff Villa Highlands, LLC, an Idaho limited liability company by and

through its attorneys of record of the firm Davison, Copple, Copple & Cox of Boise, Idaho, and hereby alleges the following claims and causes of action against Defendants Western Community Insurance Co., an Idaho corporation; Farm Bureau Mutual Insurance Company of Idaho, an Idaho corporation, Dale E. Zimney and Does I - V, jointly and severally, as follows:

GENERAL ALLEGATIONS

I.

Plaintiff Villa Highlands, LLC (hereinafter referred to as "Villa Highlands") is an Idaho limited liability company whose principal place of business is in Boise, Ada County, Idaho. Plaintiff Villa Highlands is a company organized for profit for the purpose of providing an independent living community for the elderly.

II.

Defendant Western Community Insurance Co. (hereinafter referred to as "Western Community") is a corporation incorporated under the laws of the State of Idaho and is licensed in the State of Idaho to issue policies of insurance covering various casualties, including specifically fire and related damage.

III.

Defendant Farm Bureau Mutual Insurance Company of Idaho (hereinafter referred to as "Farm Bureau") is an affiliated company of Defendant Western Community and issues its insurance products and policies and is licensed to engage in such business in the State of Idaho.

IV.

Defendant Dale E. Zimney (hereinafter referred to as "Zimney") is an insurance agent contracted to sell the policies and/or products of Defendants Western Community Insurance Co. and

Farm Bureau Mutual Insurance Company of Idaho.

V.

The true names or capacities, whether individual, corporate, associate or otherwise, of Does I - V, inclusive, are unknown to Plaintiff Villa Highlands and therefore this litigation has been instituted against such Defendants in their fictitious names. Plaintiff Villa Highlands is informed and believes and on that basis alleges that each of the Defendants designated as Does I - V are or may be jointly and severally liable to Plaintiff Villa Highlands along with the named Defendants for the damages as alleged in this Complaint arising out of the events and facts described herein. Plaintiff Villa Highlands reserves the right to amend this Complaint at a later date to set forth the true names of such Defendants.

COUNT ONE

Breach of Contract (against Zimney)

VI.

Villa Highlands was the developer of an elderly living care facility referred to as the Villa Highlands Independent Living Facility (hereinafter referred to as "Villa Highlands Building"). The Villa Highlands Building was designed as a three story fifty (50) unit independent living care facility for the elderly containing 62,830 +/- square feet, located at the Northwest corner of 15th Street and Hill Road in Boise, Idaho, 83702.

VII.

In April 2005, Villa Highlands, through its representatives, contacted and met with Dale E. Zimney, an insurance agent who sells insurance policies and/or products issued by Defendants Farm Bureau and Western Community, to obtain casualty insurance for the Villa Highlands Building.

Villa Highlands advised Zimney that it wanted full and complete casualty coverage for the building in order to provide full indemnity from any loss and damage which may be suffered by a covered casualty. Based upon those discussions, Zimney advised Villa Highlands that it would be fully covered for any fire damages to the Villa Highlands Building. Zimney advised Villa Highlands to provide its construction budget which would establish the policy limits of the policy. Villa Highlands, through its bank, provided Zimney the construction budget he requested. Effective April 25, 2005, and in reliance upon Zimney's representations, Villa Highlands agreed to have Zimney as its insurance agent and obtained a commercial property builder's risk insurance policy, policy number 8C023703 (hereinafter referred to as "Policy"). The face amount of the Policy is \$5,645,000.00, the amount of the construction budget provided to Mr. Zimney. The Policy provides coverage for loss occasioned by fire and other casualty. Villa Highlands has paid all premiums due under the policy and has performed all other conditions required by the Policy.

VIII.

While the foregoing Policy was in effect, on May 21, 2006, the Villa Highlands Building, while under construction, caught fire and suffered catastrophic damage. Western Community and/or Farm Bureau refused to tender payment for the full amount of the policy limits on the grounds that the policy contained a provision which reduced the policy limits by its proportional share if the value of the building on the date of completion was greater than the limits of insurance.

IX.

As a person in the business of selling insurance and holding himself out to the public as being experienced and knowledgeable in the area of new commercial construction, Zimney advised and agreed to represent Villa Highlands with its insurance needs.

X.

By virtue of this advise and instruction, Zimney created a contractual obligation with Villa Highlands to represent it and secure full and complete insurance coverage for a casualty loss.

XI.

Zimney breached its contractual obligation for failing to instruct and advise Villa Highlands to insure the building based upon its appraised full fair market value on the date of completion, not the construction budget.

XII.

As a direct result of Zimney's breach of his contractual obligation, Villa Highlands has suffered substantial damages in excess of \$10,000.00, which amount will be proven at trial.

COUNT TWO

Negligence (against Zimney)

XIII.

Villa Highlands' repeats and realleges each and every allegation set forth in Paragraphs I through XII, inclusive, as though fully set forth herein.

XIV.

By instructing and advising the Villa Highlands of the insurance coverage necessary for the Villa highlands Building, Zimney had a duty to exercise reasonable care, skill and diligence in advising and instructing Villa Highlands of the appropriate kind and extent of insurance coverage to procure.

XV.

Zimney breached his duty of care by failing to procure full and complete coverage of a

casualty loss as requested by Villa Highlands.

XVI.

As a direct result of Zimney's breach of his duty to exercise reasonable care, skill and diligence, Villa Highlands has suffered substantial damages in excess of \$10,000.00, which amount will be proven at trial.

COUNT THREE

Breach of Special Relationship (against Zimney)

XVII.

Villa Highlands' repeats and realleges each and every allegation set forth in Paragraphs I through XVI, inclusive, as though fully set forth herein.

XVIII.

Zimney is an insurance agent who has been in the insurance business for many years and holds himself out as being experienced and knowledgeable concerning one's insurance needs. Zimney met and discussed with Villa Highlands of its insurance needs and how and what information was necessary and required to be obtained by Villa Highlands to procure full and complete coverage. Villa Highlands relied upon Zimney's advise and instructions creating a special relationship between it and Zimney.

XIX.

Villa Highlands reasonably relied upon on Zimney to obtain the appropriate and necessary coverage to be fully indemnified for a covered casualty loss under the policy. Villa Highlands placed its trust in Zimney who is a professional and has particular skills, experience and knowledge in insurance coverages in which Villa Highlands does not possess.

XX.

Zimney breached this relationship by failing to procure full and complete coverage which would have indemnified Villa Highlands of its loss caused by the covered casualty, i.e. fire.

XXI.

As a direct result of Zimney's breach of this relationship, Villa Highlands has suffered substantial damages in excess of \$10,000.00, which amount will be proven at trial.

COUNT FOUR

Zimney Had Apparent Authority to Bind Western Community and Farm Bureau under the Policy
(Breach of Contract)

XXII.

Villa Highlands' repeats and realleges each and every allegation set forth in Paragraphs I through XXI, inclusive, as though fully set forth herein.

XXIII.

Zimney entered into a contract with Western Community and Farm Bureau which gave Zimney authorization and permission to sell its insurance policies and products to consumers. Zimney sold commercial, personal and other forms of insurance on behalf of Farm Bureau and Western Community. Zimney received a commission from Farm Bureau and Western Community from each insurance policy and/or product he procured for a consumer.

XXIV.

In April 2005, Zimney represented to Villa Highlands that he sold insurance policies and/or products issued by Farm Bureau and Western Community. To obtain insurance coverage, Villa Highlands filled out an application prepared by Western Community and/or Farm Bureau provided

by Zimney. Villa Highlands received a policy declaration sheet which broke down the premium for each coverage, in addition to the policy itself issued by Western Community and/or Farm Bureau. The policy limits reflected on the declaration sheet reflected the amount Villa Highland's construction budget as requested by Zimney. Villa Highlands paid the all premiums due on the policy.

XXV.

The conduct and actions of Western Community and/or Farm Bureau gives rise to Zimney having apparent authority to bind Western Community and/or Farm Bureau for the representations and statements made by Zimney to obtain the subject policy on behalf of Villa Highlands.

XXVI.

Villa Highlands had reason to believe and did believe that Zimney had authority from Western Community and/or Farm Bureau to sell the subject policy as represented by Zimney.

XXVII.

Based upon Zimney's apparent authority, Western Community and/or Farm Bureau are bound by his representations concerning the subject policy and failing to tender the amount due arises to a breach of contract.

XXVIII.

As a direct result of Western Community's and/or Farm Bureau's breach of contract, Villa Highlands has suffered substantial damages in excess of \$10,000.00, which amount will be proven at trial.

COUNT FIVE

Zimney Had Apparent Authority to Bind Western Community and Farm Bureau under the Policy (Negligence)

XXIX.

Villa Highlands' repeats and realleges each and every allegation set forth in Paragraphs I through XXVIII, inclusive, as though fully set forth herein.

XXX.

In addition hereto, based upon the apparent authority of Zimney, Zimney's negligence is imputed upon Western Community and/or Farm Bureau for the negligent acts and omissions of Zimney.

XXXI.

As a direct result of Western Community's and/or Farm Bureau's negligence, Villa Highlands has suffered substantial damages in excess of \$10,000.00, which amount will be proven at trial.

COUNT SIX

DECLARATORY RELIEF

Villa Highlands' repeats and realleges each and every allegation set forth in Paragraphs I through XXXI, inclusive, as though fully set forth herein.

XXXII.

In the policy under the Builders Risk Coverage Form, subsection D entitled "Deductible" reads in pertinent part as follows:

In any one occurrence of loss or damage (hereinafter referred to as loss), we will first reduce the amount of loss **if required** by the Additional Condition – Need for

Adequate Insurance. (Emphasis added).

Under the provision entitled "Need For Adequate Insurance," it reads in pertinent part:

We will not pay a greater share of any loss than the proportion that the Limit of Insurance bears **to the value on the date of completion of the building** described in the Declarations. (Emphasis added).

At the time the loss incurred herein, the Villa Highlands Building was approximately 50% constructed.

XXXIII.

Notwithstanding the fact the building had yet to be completed, Western Community and/or Farm Bureau applied the "Need For Adequate Insurance" provision to reduce the amount of the loss against the policy limits provided under the Policy.

XXXIV.

By virtue of the facts as previously described, Villa Highlands is entitled to this Court declaring the relative rights and obligations of the parties hereto under the previously described Policy and thereupon the Court should determine that Villa Highlands is entitled to the payment of the full amount due and owing pursuant to the Policy without reduction, offset, or reduction in any manner.

XXXV.

Villa Highlands seeks a specific ruling and declaration of this Court that any purported underinsurance for the Villa Highlands Building was caused by Zimney's apparent authority with Western Community and/or Farm Bureau and not by Villa Highlands.

COUNT SEVEN

EQUITABLE ESTOPPEL (against All Defendants)

XXXVI.

Villa Highlands' repeats and realleges each and every allegation set forth in Paragraphs I through XXXV, inclusive, as though fully set forth herein.

XXXVII.

Zimney made representations, warranties, promises, and inducements as previously set forth regarding the coverage provided to Villa Highlands under the Policy which were false and Defendants concealed material facts with regard to the coverage provided by the Policy with actual or constructive knowledge of the truth and Villa Highlands did not know or could not discover the truth and such false representations or concealments were made with the intent that they be relied upon by Villa Highlands and it did in fact rely and act upon such representations and concealments to its prejudice and damage, thereby entitling Villa Highlands to an award of damages in excess of \$10,000.00 and as may be proven at trial, plus accruing prejudgment interest thereon as may be allowed by law.

COUNT EIGHT

PROMISSORY ESTOPPEL (against all Defendants)

XXXVIII.

Villa Highlands' repeats and realleges each and every allegation set forth in Paragraphs I through XXXVII, inclusive, as though fully set forth herein.

XXXIX.

The acts and omissions of Defendants as previously set forth herein resulted in Villa

Highlands detrimentally suffering damages in reliance thereon, which detrimental reliance was substantial in an economic sense and which damage and reliance thereon was or should have been foreseeable to Defendants. Villa Highlands at all times acted reasonably in justifiable reliance on the inducements, promises, and representations of Defendants. As a result, Villa Highlands is entitled to the entry of judgment against Defendants in an amount in excess of \$10,000.00 as may be proven at trial plus accruing prejudgment interest thereon.

ATTORNEYS' FEES

As a result of Western Community's, Farm Bureau's and/or Zimney's failure to secure full and complete coverage and to pay Villa Highlands its covered damages and as a result of its acts and omissions as herein set forth, it has been necessary for Villa Highlands to institute this litigation. Villa Highlands is therefore entitled to an award of reasonable costs and attorneys' fees against Defendants pursuant to Idaho Code Sections 12-120, 12-121, 41-1839, and other provisions of Idaho law.

DEMAND FOR JURY TRIAL

Plaintiff Villa Highlands, LLC, demands a jury trial on all issues of fact in the above-entitled litigation and will not stipulate to a jury of less than twelve (12) persons.

WHEREFORE, Plaintiff Villa Highlands, LLC prays that judgment be entered against Defendants, jointly and severally, for a declaration that Plaintiff is entitled to full coverage under the described Policy for the full amount of \$3,967,157.00 and that such sum should be promptly paid to Plaintiff, damages in excess of \$10,000.00 in an amount to be proven at trial, prejudgment interest as provided by law, \$15,000.00 attorneys' fees and costs if this matter is uncontested by Defendants or reasonable attorneys' fees and costs if this matter is contested by Defendants, and for such other

and further relief as the Court may deem just and proper.

DATED this 8th day of January, 2008.

DAVISON, COPPLE, COPPLE & COX, LLP

By: E Don Copple
E Don Copple, of the firm
Attorneys for Plaintiff

VERIFICATION

STATE OF IDAHO)
) ss.
County of Ada)

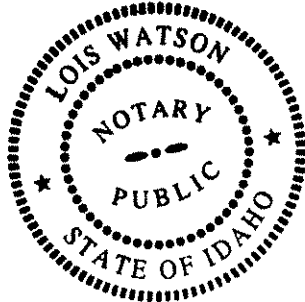
WILLIAM HODGES, being first duly sworn upon oath, deposes and states:

I am the Manager of the Plaintiff Villa Highlands, LLC, an Idaho limited liability company, I have read the foregoing Second Amended Complaint and Demand for Jury Trial, know the contents therein, and believe them to be true to the best of my knowledge and belief.

DATED this 8th day of January, 2008.

William R Hodges
William Hodges

SUBSCRIBED AND SWORN TO BEFORE ME this 8th day of January, 2008.



Lois Watson
Notary Public for Idaho
Residence: Boise, Idaho
Commission Expires: 12/08

ORIGINAL
A.M. FILED P.M. 4:00

JAN 29 2008

J. DAVID NAVARRO, Clerk
By **J. EARLE**
DEPUTY

Robert A. Anderson, ISB No. 2124
ANDERSON, JULIAN & HULL LLP
C. W. Moore Plaza
250 South Fifth Street, Suite 700
Post Office Box 7426
Boise, Idaho 83707-7426
Telephone: (208) 344-5800
Facsimile: (208) 344-5510
E-Mail: raanderson@ajhlaw.com

Attorneys for Defendant/Counterclaimant
Western Community Ins. Co. and
Defendant Farm Bureau Mut. Ins. Co.
of Idaho

IN THE DISTRICT COURT OF
THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND
FOR THE COUNTY OF ADA

VILLA HIGHLANDS, LLC, an Idaho limited
liability company,

Plaintiff,

vs.

**WESTERN COMMUNITY INSURANCE
CO.**, an Idaho corporation; **FARM
BUREAU MUTUAL INSURANCE
COMPANY OF IDAHO**, an Idaho
corporation; **DALE E. ZIMNEY**; and **DOES
I-V**,

Defendants.

Case No. CV OC 0621175

**ANSWER TO PLAINTIFF'S
SECOND AMENDED COMPLAINT
AND DEMAND FOR TRIAL BY
JURY**

**WESTERN COMMUNITY INSURANCE
CO.**, an Idaho corporation,

Counterclaimant,

vs.

VILLA HIGHLANDS, LLC, an Idaho limited
liability company,

Counterdefendant.

COME NOW the above-entitled Defendants, **WESTERN COMMUNITY INSURANCE CO.** and **FARM BUREAU MUTUAL INSURANCE COMPANY OF IDAHO**, by and through their counsel of record, Anderson, Julian & Hull, and answer Plaintiff's Second Amended Complaint as follows:

FIRST DEFENSE

The Second Amended Complaint fails to state a claim against these answering Defendants upon which relief can be granted.

SECOND DEFENSE

I.

These answering Defendants deny each and every allegation of the Second Amended Complaint not herein expressly and specifically admitted.

II.

These answering Defendants admit only the allegations contained in Paragraph 2 of Plaintiff's Second Amended Complaint concerning the fact that Western Community is an Idaho corporation and is duly licensed to issue policies of insurance and Farm Bureau is an affiliated company of Western Community and is licensed to engage in

the business of issuing insurance products in the State of Idaho. Defendants deny the remainder of the allegations contained in Paragraph 2.

III.

These answering Defendants admit only the allegations contained in Paragraph 3 of Plaintiff's Second Amended Complaint concerning the fact that Farm Bureau issues its insurance products and policies and is licensed to engage in such business in the State of Idaho. Defendants deny the remainder of the allegations contained in Paragraph 3.

IV.

These answering Defendants admit only the allegations contained in Paragraph 4 of Plaintiff's Second Amended Complaint concerning the fact that Dale Zimney is an independent insurance agent who contracted to sell insurance policies and/or products for Western Community and Farm Bureau. Defendants deny the remainder of the allegations contained in Paragraph 4.

V.

Since the allegations contained in Paragraphs 6 through 21 are not directed to either Defendant Western Community or Farm Bureau, these answering Defendants are not required to answer such allegations and, on that basis, deny the same.

VI.

These answering Defendants admit only the allegations contained in Paragraph 23 of Plaintiff's Second Amended Complaint concerning the fact that Dale Zimney entered into a contract with these answering Defendants which gave Zimney the

authorization and/or permission to sell certain insurance policies and products to consumers, for which Zimney received a commission from Western Community and/or Farm Bureau for each insurance policy/product sold. Defendants deny the remainder of the allegations contained in Paragraph 23.

THIRD DEFENSE

Defendant Farm Bureau did not issue the policy in question and had no role in the evaluation and handling of Plaintiff's claim.

FOURTH DEFENSE

Defendant Western Community fully performed each term of the agreement between it and Plaintiff in good faith and Plaintiff has received the full benefits of the agreement and Western Community attempted to carry out its obligations under the agreement in full and in accordance with the terms and conditions of the agreement.

FIFTH DEFENSE

Plaintiff is not the real party in interest as respects all or a part of its claim, contrary to Rule 17, Idaho Rules of Civil Procedure.

SIXTH DEFENSE

Plaintiff was guilty of bad faith in connection with some or all of the events alleged in Plaintiff's Complaint.

SEVENTH DEFENSE

Plaintiff has, and continues to have, the ability and opportunity to mitigate the damages alleged with respect to the subject matter of this action, and has failed to mitigate said damages, if any were in fact incurred.

EIGHTH DEFENSE

Plaintiff has waived, or by its conduct is estopped from asserting, the causes of action contained in the Complaint.

NINTH DEFENSE

That the full extent of damages claimed by Plaintiff were excepted from coverage under the policy by virtue of an underinsurance condition included in the policy.

TENTH DEFENSE

Plaintiff's damages, if any, were proximately caused by the superseding, intervening negligence, and omissions or actions, of other third persons not under these Defendants control, and any negligence or breach of duty on the part of these answering Defendants, if any, was not a proximate cause of the alleged loss to Plaintiff. In asserting this defense, these answering Defendants do not admit to any negligence or blameworthy conduct.

ELEVENTH DEFENSE

Plaintiff was guilty of negligent and careless misconduct at the time of and in connection with the matters and damages alleged, which misconduct on its part proximately caused and contributed to said events and resultant damages, if any.

TWELFTH DEFENSE

That a condition precedent of Defendant Western Community's obligation has not occurred and/or that Plaintiff may have violated or failed to comply with certain conditions of the insuring agreement thereby discharging these answering Defendants from obligations under the insuring agreement with respect to the claims set forth in Plaintiff's Second Amended Complaint.

THIRTEENTH DEFENSE

That the fault of Plaintiff was equal to or greater than the fault of these answering Defendants, if any, and that said Plaintiff's fault was the sole, direct and proximate cause of any damages and/or injuries suffered by Plaintiff.

FOURTEENTH DEFENSE

Plaintiff's actions have prevented the Defendant Western Community from performing its contractual obligations, if any.

FIFTEENTH DEFENSE

Plaintiff has breached the contract which forms the basis of its cause of action.

SIXTEENTH DEFENSE

Plaintiff breached the covenant of good faith and fair dealing by refusing to cooperate in good faith with Defendant Western Community's attempts to adjust and/or settle the insurance claim at issue.

SEVENTEENTH DEFENSE

These answering Defendants reserve the right to assert any additional affirmative defenses and matters in avoidance that may be disclosed in the course of additional investigation and discovery.

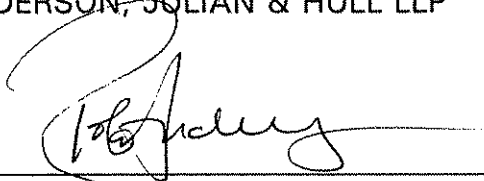
WHEREFORE, these answering Defendants pray that Plaintiff take nothing by its Second Amended Complaint, that the same be dismissed, and that these answering Defendants be awarded their costs of suit and attorney fees, and such other and further relief as the Court deems just.

Further, these answering Defendants incorporate the Counterclaim/Declaratory Judgment Petition previously filed by Western Community Insurance Co. against Plaintiff as part of this Answer to Plaintiff's Second Amended Complaint.

DATED this 28 day of January, 2008.

ANDERSON, JULIAN & HULL LLP

By


Robert A. Anderson, Of the Firm
Attorneys for Defendant/Counter-
claimant Western Community Ins. Co.
and Defendant Farm Bureau Mut. Ins.
Co. of Idaho

CERTIFICATE OF MAILING

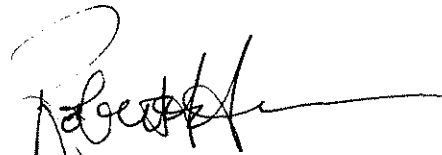
I HEREBY CERTIFY that on this 28 day of January, 2008, I served a true and correct copy of the foregoing ANSWER TO PLAINTIFF'S SECOND AMENDED COMPLAINT AND DEMAND FOR TRIAL BY JURY by delivering the same to each of the following attorneys of record, by the method indicated below, addressed as follows:

Terry C. Copple	<input checked="" type="checkbox"/>	U.S. Mail, postage prepaid
Ed Guerricabeitia	<input type="checkbox"/>	Hand-Delivered
DAVISON, COPPLE, COPPLE & COX, LLP	<input type="checkbox"/>	Overnight Mail
	<input checked="" type="checkbox"/>	Facsimile

Washington Mutual Capitol Plaza
199 N. Capitol Blvd., Ste. 600
P. O. Box 1583
Boise, Idaho 83701
Telephone: (208) 342-3658
Facsimile: (208) 386-9428
Attorneys for Plaintiff

J. Kevin West	<input checked="" type="checkbox"/>	U.S. Mail, postage prepaid
HALL, FARLEY, OBERRECHT & BLANTON, P.A.	<input type="checkbox"/>	Hand-Delivered
	<input type="checkbox"/>	Overnight Mail
	<input type="checkbox"/>	Facsimile

Key Financial Center, Suite 700
702 West Idaho Street
P. O. Box 1271
Boise, Idaho 83701
Telephone: (208) 395-8500
Facsimile: (208) 395-8585
*Attorneys for Defendant Dale E.
Zimney*



Robert A. Anderson

JAN 30 2008

J. DAVID NAVARRO, Clerk
By A TOONE
DEPUTY

J. Kevin West
ISB #3337; jkw@hallfarley.com
Karen O. Sheehan
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ORIGINAL

Attorneys for Defendant Dale E. Zimney

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

VILLA HIGHLANDS, LLC, an Idaho
limited liability company,

Plaintiff,

vs.

WESTERN COMMUNITY INSURANCE
CO., an Idaho corporation; FARM
BUREAU MUTUAL INSURANCE
COMPANY OF IDAHO, an Idaho
corporation; DALE E. ZIMNEY; and
DOES I-V,

Defendants.

WESTERN COMMUNITY INSURANCE
CO., an Idaho corporation,

Counterclaimant,

vs.

VILLA HIGHLANDS, LLC, an Idaho
limited liability company,

Counterdefendant.

Case No. CV OC 0621175

**DEFENDANT DALE E. ZIMNEY'S
ANSWER TO PLAINTIFF'S
SECOND AMENDED COMPLAINT**

COMES NOW defendant, Dale E. Zimney (hereinafter "Zimney"), by and through his counsel of record, and in answer to plaintiff's Second Amended Complaint (hereinafter the "Complaint") on file herein, admits, denies, and alleges as follows:

FIRST DEFENSE

Plaintiff's Complaint fails to state a claim against defendant Zimney upon which relief may be granted.

SECOND DEFENSE

Based either upon a lack of information, defendant Zimney's belief that certain allegations contained in plaintiff's Complaint are untrue and/or because certain allegations of plaintiff's Complaint address the conduct of persons, entities or parties other than defendant Zimney, defendant Zimney denies each and every paragraph and allegation contained in plaintiff's Complaint that is not expressly and specifically admitted hereinafter.

GENERAL ALLEGATIONS

I.

As to the allegations set forth in paragraph I of plaintiff's Complaint, defendant Zimney has insufficient knowledge to either admit or deny the allegations.

II.

As to the allegations set forth in paragraph II of plaintiff's Complaint, defendant Zimney admits the allegations.

III.

As to the allegations set forth in paragraph III of plaintiff's Complaint, defendant Zimney admits the allegations.

IV.

As to the allegations set forth in paragraph IV of plaintiff's Complaint, defendant Zimney admits the allegations.

V.

As to the allegations set forth in paragraph V of plaintiff's Complaint, defendant Zimney has insufficient knowledge to either admit or deny the allegations.

COUNT ONE

ALLEGED BREACH OF CONTRACT (against Zimney)

Defendant Zimney restates and realleges his answers to the General Allegations of plaintiff's Complaint as though the same were set forth in full herein.

VI.

As to the allegations set forth in paragraph VI of Count One of plaintiff's Complaint, defendant Zimney admits, upon information and belief, that the Villa Highlands Building was designed as a three story, fifty (50) unit independent living care facility for the elderly and was being constructed on the Northwest corner of 15th Street and Hill Road in Boise, Idaho. Defendant is without sufficient knowledge as to the specific square footage of the building. Defendant Zimney denies the remaining allegations set forth in paragraph VI of Count One of plaintiff's Complaint.

VII.

As to the allegations set forth in paragraph VII of Count One of plaintiff's Complaint, defendant Zimney admits only that he met with a representative of Villa Highlands in the spring of 2005 concerning the purchase of insurance for the Villa Highlands Building. Defendant further admits that he sold the plaintiff a commercial property builder's risk insurance policy

(policy no. 8C023703) and that the terms of the policy speak for itself. Defendant Zimney denies all remaining allegations set forth in paragraph VII of Count One of plaintiff's Complaint.

VIII.

As to the allegations set forth in paragraph VIII of Count One of plaintiff's Complaint, defendant Zimney admits only that the Villa Highlands Building, while under construction, caught fire on or about May 21, 2006. Defendant Zimney denies all remaining allegations set forth in paragraph VIII of Count One of plaintiff's Complaint.

IX.

As to the allegations set forth in paragraph IX of Count One of plaintiff's Complaint, defendant Zimney admits only that he has been an insurance agent for Western Community and Farm Bureau for many years, and as a result, he is in the business of selling insurance on their behalf. Defendant Zimney further admits that Western Community's builder's risk insurance policy is often sold to insureds at the beginning of new construction. Defendant Zimney denies all remaining allegations set forth in paragraph IX of Count One of plaintiff's Complaint.

X.

As to the allegations set forth in paragraph X of Count One of plaintiff's Complaint, defendant Zimney denies the allegations.

XI.

As to the allegations set forth in paragraph XI of Count One of plaintiff's Complaint, defendant Zimney denies the allegations.

XII.

As to the allegations set forth in paragraph XII of Count One of plaintiff's Complaint, defendant Zimney denies the allegations.

COUNT TWO

ALLEGED NEGLIGENCE (against Zimney)

Defendant Zimney restates and realleges his answers to the General Allegations and Count One of plaintiff's Complaint as though the same were set forth in full herein.

XIII.

As to the allegations set forth in paragraph XIII of Count Two of plaintiff's Complaint, no response is required.

XIV.

As to the allegations set forth in paragraph XIV of Count Two of plaintiff's Complaint, defendant Zimney denies the allegations.

XV.

As to the allegations set forth in paragraph XV of Count Two of plaintiff's Complaint, defendant Zimney denies the allegations.

XVI.

As to the allegations set forth in paragraph XVI of Count Two of plaintiff's Complaint, defendant Zimney denies the allegations.

COUNT THREE

ALLEGED BREACH OF SPECIAL RELATIONSHIP (against Zimney)

Defendant Zimney restates and realleges his answers to plaintiff's General Allegations, Count One and Count Two of plaintiff's Complaint as though the same were set forth in full herein.

XVII.

As to the allegations set forth in paragraph XVII of Count Three of plaintiff's Complaint, defendant Zimney denies the allegations; except as admitted herein.

XVIII.

As to the allegations set forth in paragraph XVIII of Count Three of plaintiff's Complaint, defendant Zimney admits only that he has been an insurance agent for Western Community and Farm Bureau for many years, and as a result, he is in the business of selling insurance on their behalf. Defendant Zimney further admits that Western Community's builder's risk insurance policy is often sold to insureds at the beginning of new construction and that he discussed same with a representative of Villa Highlands. Defendant Zimney denies all remaining allegations set forth in paragraph XVIII of Count Three of plaintiff's Complaint.

XIX.

As to the allegations set forth in paragraph XIX of Count Three of plaintiff's Complaint, defendant Zimney denies the allegations.

XX.

As to the allegations set forth in paragraph XX of Count Three of plaintiff's Complaint, defendant Zimney denies the allegations.

XXI.

As to the allegations set forth in paragraph XXI of Count Three of plaintiff's Complaint, defendant Zimney denies the allegations.

COUNT FOUR

Zimney Had Apparent Authority to Bind Western Community and Farm Bureau under the Policy (Alleged Breach of Contract)

Defendant Zimney restates and realleges his answers to plaintiff's General Allegations, Count One, Count Two, and Count Three of plaintiff's Complaint as though the same were set forth in full herein.

XXII.

As to the allegations set forth in paragraph XXII of Count Four of plaintiff's Complaint, defendant Zimney denies the allegations; except as admitted herein.

XXIII.

As to the allegations set forth in paragraph XXIII of Count Four of plaintiff's Complaint, defendant Zimney admits only that he is an insurance agent for Western Community and Farm Bureau and, as a result, he sells insurance policies on their behalf and receives a commission on such sales. Defendant Zimney denies all remaining allegations set forth in paragraph XXIII of Count Four of plaintiff's Complaint.

XXIV.

As to the allegations set forth in paragraph XXIV of Count Four of plaintiff's Complaint, defendant Zimney admits only that he met with a representative of Villa Highlands in the spring of 2005 to discuss builder's risk insurance and that Villa Highlands completed an application for such coverage. Defendant Zimney further admits, on information and belief, that Villa Highlands received a copy of the policy, as well as the declaration page. Defendant Zimney denies all remaining allegations set forth in paragraph XXIV of Count Four of plaintiff's Complaint.

XXV.

As to the allegations set forth in paragraph XXV of Count Four of plaintiff's Complaint, defendant Zimney has insufficient knowledge to either admit or deny the allegations and therefore, denies same.

XXVI.

As to the allegations set forth in paragraph XXVI of Count Four of plaintiff's Complaint, defendant Zimney has insufficient knowledge to either admit or deny the allegations and therefore, denies same.

XXVII.

As to the allegations set forth in paragraph XXVII of Count Four of plaintiff's Complaint, defendant Zimney has insufficient knowledge to either admit or deny the allegations and therefore, denies same.

XXVIII.

As to the allegations set forth in paragraph XXVIII of Count Four of plaintiff's Complaint, defendant Zimney has insufficient knowledge to either admit or deny the allegations and therefore, denies same.

COUNT FIVE

Zimney Had Apparent Authority to Bind Western Community and Farm Bureau Under the Policy (*Alleged Negligence*)

Defendant Zimney restates and realleges his answers to plaintiff's General Allegations, Count One, Count Two, Count Three and Count four of plaintiff's Complaint as though the same were set forth in full herein.

To the extent the allegations in Paragraphs XXIX through XXXI of Count Five of plaintiff's Complaint are directed against defendants other than defendant Zimney, defendant

Zimney is not required to respond thereto. To the extent such allegations are directed against defendant Zimney, defendant Zimney denies such allegations and responds that plaintiff's allegations fail to state a claim upon which relief can be granted against defendant Zimney.

COUNT SIX

Alleged DECLARATORY RELIEF

Defendant Zimney restates and realleges his answers to plaintiff's General Allegations, Count One, Count Two, Count Three, Count Four, and Count Five of plaintiff's Complaint as though the same were set forth in full herein.

To the extent the allegations in Paragraphs XXXII through XXXV of Count Six of plaintiff's Complaint are directed against defendants other than defendant Zimney, defendant Zimney is not required to respond thereto. To the extent such allegations are directed against defendant Zimney, defendant Zimney denies such allegations and responds that plaintiff's allegations fail to state a claim upon which relief can be granted against defendant Zimney.

COUNT SEVEN

ALLEGED EQUITABLE ESTOPPEL (against All Defendants)

Defendant Zimney restates and realleges his answers to plaintiff's General Allegations, Count One, Count Two, Count Three, Count Four, Count Five, and Count Six of Plaintiff's Complaint as though the same were set forth in full herein.

To the extent the allegations in Paragraphs XXXVI through XXXVII of Count Seven of plaintiff's Complaint are directed against defendants other than defendant Zimney, defendant Zimney is not required to respond thereto. To the extent such allegations are directed against defendant Zimney, defendant Zimney denies such allegations and responds that plaintiff's allegations fail to state a claim upon which relief can be granted against defendant Zimney.

COUNT EIGHT

ALLEGED PROMISSORY ESTOPPEL (against all Defendants)

Defendant Zimney restates and realleges his answers to plaintiff's General Allegations, Count One, Count Two, Count Three, Count Four, Count Five, Count Six and Count Seven of plaintiff's Complaint as though the same were set forth in full herein.

To the extent the allegations in Paragraphs XXXVIII through XXXIX of Count Eight of plaintiff's Complaint are directed against defendants other than defendant Zimney, defendant Zimney is not required to respond thereto. To the extent such allegations are directed against defendant Zimney, defendant Zimney denies such allegations and responds that plaintiff's allegations fail to state a claim upon which relief can be granted against defendant Zimney.

ATTORNEYS' FEES

Defendant Zimney denies Villa Highlands' allegations regarding attorney's fees. Moreover, defendant Zimney has been required to retain counsel to defend this action, and is entitled to recover his reasonable attorney fees and costs from plaintiff pursuant to Idaho Code §§ 12-121, 12-123 and Rule 54 of the Idaho Rules of Civil Procedure.

AFFIRMATIVE DEFENSES

By pleading certain defenses as Affirmative Defenses, Defendant Zimney does so for the purpose of completeness and does not intend to suggest that he has the burden of proof for any such defense. Furthermore, as discovery has not yet been completed in this case, defendant Zimney, by failing to raise an affirmative defense, does not intend to waive any such defense, and specifically reserves the right to amend this answer to include additional affirmative defenses.

FIRST AFFIRMATIVE DEFENSE

Defendant Zimney has, at all times relevant hereto, acted in a reasonable and prudent fashion, satisfying any duty, if any, that he owed to plaintiff under applicable law.

SECOND AFFIRMATIVE DEFENSE

The conduct of Defendant Zimney was not the proximate cause of the damages, if any, suffered by the plaintiff. To the extent that it may be determined that defendant Zimney's conduct was a proximate cause of damages suffered by the plaintiff, such conduct should be compared with the conduct of the plaintiff and/or any culpable third party in accordance with Idaho Code § 6-801, *et seq.* By asserting this defense, defendant Zimney does not admit negligence in any degree but, to the contrary, specifically denies negligence.

THIRD AFFIRMATIVE DEFENSE

Plaintiff has waived and/or is estopped to assert the claims contained in its Complaint.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the doctrines of laches.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff has failed to act reasonably or to otherwise mitigate its damages, if any.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff and defendant Zimney have not entered into any contract and therefore, Defendant Zimney cannot be liable for breach of contract, as Zimney only sold plaintiff insurance, he did not underwrite such insurance.

SEVENTH AFFIRMATIVE DEFENSE

Defendant Zimney at all times acted in good faith and did not breach any fiduciary duty, if any, owed to plaintiff.

EIGHTH AFFIRMATIVE DEFENSE

Defendant Zimney committed no acts constituting fraud or misrepresentation and plaintiff has asserted no claim for fraud with the particularity required by Rule 9(b) of the Idaho Rules of Civil Procedure.

NINTH AFFIRMATIVE DEFENSE

A declaratory judgment is inappropriate in this matter since there are issues of material fact.

WHEREFORE, this defendant prays for judgment as follows:

1. That plaintiff's Complaint be dismissed against Defendant Zimney with prejudice and that plaintiff takes nothing thereby;
2. That Defendant Zimney be awarded his costs and reasonable attorney fees incurred in this action; and
3. For such other and further relief as the Court deems just and equitable.

DATED this 30th day of January, 2008.

HALL, FARLEY, OBERRECHT
& BLANTON, P.A.

By Karen Sheehan
J. Kevin West - Of the Firm
Karen O. Sheehan - Of the Firm
Attorneys for Defendant
Dale E. Zimney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 30th day of January, 2008, I caused to be served a true copy of the foregoing DEFENDANT DALE E. ZIMNEY'S ANSWER TO PLAINTIFF'S SECOND AMENDED COMPLAINT, by the method indicated below, and addressed to each of the following:

Terry C. Copple	<u>XX</u>	U.S. Mail, Postage Prepaid
E. Don Copple	___	Hand Delivered
Ed Guerricabeitia	___	Overnight Mail
Heather A. Cunningham	___	Telecopy

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P.O. Box 7426	___	Telecopy

Boise, Idaho 83707-7426
*Attorneys for defendant/counterclaimant Western
Community Insurance Co. and defendant Farm Bureau
Mutual Insurance Company of Idaho*



J. Kevin West
Karen O. Sheehan