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SUPREME COURT OF FLORIDA

CASE NO. 85,200

STATE FARM FIRE AND
CASUALTY COMPANY,

Petitioner,

v.

ELICER AND HERMIDA LICEA,

Respondents.

ON DISCRETIONARY REVIEW FROM THE THIRD DISTRICT COURT OF APPEAL

PETITIONER'S AMENDED INITIAL BRIEF ON THE MERITS

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STATEMENT OF THE CASE AND FACTS

Petitioner State Farm Fire and Casualty Company seeks review of a decision from the Third District Court of Appeals which the Third District certified to be in conflict with other Florida appellate decisions. The pertinent facts and history of the case which led to these proceedings are set forth below.

Petitioner State Farm Fire and Casualty Company issued a homeowners policy to Respondents Elicer and Hermid Licea with a policy period from July 19, 1992 through July 19, 1993. (A copy of the policy is attached to this brief as an appendix for case of reference).¹ In August of 1992, the Liceas' home was damaged in hurricane Andrew. (R. 16, 23). State Farm paid for repairs and replacement costs for various items and damages caused by the hurricane,² but the parties were unable to agree on the amount of loss sustained in connection with the roof of the Liceas' home. (R. 16, 23).

The homeowners policy contains a clause which allows the parties to obtain a binding appraisal on the amount of loss if they are unable to agree on an amount between themselves. (R. 43; A.17). The clause provides as follows:

Appraisal. *If you and we fail to agree on the amount of loss, either one can demand that the amount of the loss be set by appraisal.* If either makes a written demand for appraisal, each shall select a competent, independent appraiser. Each shall notify the other of the appraiser's identity within 20 days of receipt of the written demand.

¹All references to the record prepared by the Clerk of the Third District appear as follows: (R.). References to the appendix appear as (A.). All emphasis in this brief is added unless otherwise stated.

²It is undisputed between the parties that State Farm has already paid the Liceas over \$180,000 for hurricane related losses and damages to the Liceas' home and its contents.

The two appraisers shall then select a competent, impartial umpire. If the two appraisers are unable to agree upon an umpire within 15 days, you or we can ask a judge of a court of record in the state where the **residence premises** is located to select an umpire. The appraisers shall then set the amount of the loss. If the appraisers submit a written report of an agreement to us, the amount agreed upon shall be the amount of the loss. If the appraisers fail to agree within a reasonable time, they shall submit their differences to the umpire. **Written agreement signed by any two of these three shall set the amount of the loss.** Each appraiser shall be paid by the party selecting that appraiser. Other expenses of the appraisal and the compensation of the umpire shall be paid equally by you and us.

(R. 43; A.17).

On July 20, 1993, Mr. Licea wrote to State Farm "in response to the appraisal process that has been presented to me as an option for settling on this claim[.]" (R. 19). In his letter, Mr. Licea selected a certain roofing company as the appraiser for the Liceas. (R. 19). The Liceas subsequently selected a different appraiser, and State Farm also selected an appraiser. (R. 16, 54).

The appraisers were unable to agree on an umpire. (R. 16, 20, 24). Accordingly, pursuant to the terms of the appraisal clause, State Farm filed a motion in Dade County circuit court asking a judge to appoint an umpire. (R. 15-21).

Although the Liceas had already selected an appraiser, and although the appraisal process was already well underway — an umpire just needed to be selected — the Liceas answered the motion for appointment of an umpire by *objecting* to such an appointment, and by claiming that the appraisal clause was invalid. (R. 23-25). The Liceas also filed a 'counterclaim', alleging that State Farm had breached the insurance contract by not just replacing the Liceas' roof without an appraisal and agreement as to the amount of loss. (R. 25-27).

The trial court denied the motion for appointment of an umpire, apparently on the basis of the Third District's decision in *American Reliance Insurance Co. v. The Village Homes at Country Walk*, 632 So. 2d 106 (Fla. 3d DC A 1994), *rev. denied*, 640 So. 2d 1106 (Fla. 1994), which held a different appraisal clause from a different casualty policy to be unenforceable for lack of mutuality. (R. 4, 69-73).

State Farm appealed, and a panel of the Third District issued the decision presently under review. *State Farm Fire and Casualty Company v. Licea*, 649 So. 2d 910 (Fla. 3d DCA 1995). (R. 307-313). The Third District panel's opinion began by reciting the pertinent facts and by noting a belief that *American Reliance v. Country Walk* was wrongly decided:

The Liceas' home sustained damage during hurricane Andrew. State Farm was their insurance carrier. A dispute over the amount of damage arose. The Licea's policy contained an appraisal clause. Pursuant to that clause the parties each selected an appraiser but the appraisers could not agree on an umpire. State Farm moved for appointment of an umpire. At hearing on State Farm's motion the Liceas argued that, based on this court's holding in *American Reliance v. Country Walk*, 632 So. 2d 106 (Fla. 3d DCA), *rev. denied*, 640 So. 2d 1106 (Fla. 1994), the appraisal clause lacked mutuality and thus was void. On the authority of this court's decision in *American Reliance v. Country Walk* the court denied State Farm's motion. This appeal followed.

This panel is of the opinion that Judge Cope's dissent in *American Reliance v. Country Walk* sets forth the correct rule of law, to wit: That by participating in an arbitration proceeding to determine the amount of loss suffered by an insured the insurer is in no way deprived of the right to later contest the existence of insurance coverage for that loss.

649 So. 2d at 911. (R. 307-308). The Third District then went on to cite numerous authorities from the United States Supreme Court, the Florida Supreme Court, and the Florida district courts of appeal which allow for — and, indeed, approve of — insurance contract clauses under which the

parties agree to submit some issues (such as amount of loss) to arbitration or appraisal, even though questions of coverage remain as questions to be determined by the courts. 649 So. 2d at 911-912. (R. 308-311). On the basis of these numerous authorities, the Third District concluded its opinion in this case by stating:

Accordingly, a request, addressed to the entire court, was made to set this matter for *en banc* consideration so that [*American Reliance v. Country Walk* could be revisited and possibly receded from. That request was denied. Under the circumstances this panel is compelled by the doctrine of *stare decisis*, to follow this court's earlier decision in [*American Reliance v. Country Walk*.

649 So. 2d at 912. (R. 311). Although compelled to follow the *American Reliance v. Country Walk* decision of which it disapproved, the Third District panel concluded by certifying conflict to this Court:

However, we do, pursuant to Article V Section 3(b)(3)(4) of the Florida Constitution and Rule 9.030(a)(2)(A)(iv)(vi) of the Florida Rules of Appellate Procedure, certify an express and direct conflict between our holding today and *Montalvo v. Travelers*, 643 So. 2d 648 (Fla. 5th DCA 1994); *J.J.F. of Palm Beach v. State Farm*, 634 So. 2d 1089 (Fla. 4th DCA 1994); *U.S.F.&G. v. Woolard*, 523 So. 2d 798 (Fla. 1st DCA 1988); and *Kenilworth Insurance v. Drake*, 396 So. 2d 836 (Fla. 2d DCA 1981) as cited herein.

The order under review is affirmed, the conflict certified.

649 So. 2d at 912. (R. 311-312).

Petitioner State Farm thereupon filed a notice to invoke this Court's discretionary jurisdiction on the basis of the Third District's certification, and also on grounds that the decision expressly and directly conflicts with additional decisions of this Court and of other Florida district courts of appeal. (R. 317-318). This Court issued an order which postponed its decision on

jurisdiction and directed the parties to serve their briefs on the merits (R. 319), and these proceedings ensued.

SUMMARY OF ARGUMENT

Appraisal clauses in insurance policies provide a simple and efficient way for the parties to obtain a binding determination on what is often the only disputed issue between them — the amount of the loss. Appraisals — likened by Florida law to arbitrations — are favored as a matter of public policy because they reduce litigation.

This Court has already determined — as has the United States Supreme Court — that appraisal clauses in insurance policies are valid and enforceable. This Court has also already determined that appraisal clauses are *not* lacking in mutuality simply because they bind the parties only on the issue of the amount of the loss, leaving coverage questions for determination by the courts.

In direct conflict with this Court's decision and numerous Florida district court decisions, a panel of the Third District held in the *American Reliance v. Country Walk* case that an appraisal clause is unenforceable on lack of mutuality grounds because the policy reserved coverage questions for determination by the courts. The panel in the instant case — unable to obtain *en banc* reconsideration of *American Reliance v. Country Walk* — felt constrained to follow it under *stare decisis* principles, but also stated that it was a wrong decision and certified the conflict to this Court.

We here respectfully submit that this Court's conflict jurisdiction should be exercised to reaffirm the validity and enforceability of appraisal clauses. There is every reason to adhere to the long-established law favoring appraisal as a rapid and efficient means for obtaining a mutually

binding determination on the amount of an insurance loss. The *American Reliance v. Country Walk* decision is not only an aberration, but it has no policy considerations to commend it. The decision will only generate completely unnecessary litigation as long as it is allowed to stand.

American Reliance v. Country Walk should be overruled and this case reversed precisely as the Third District panel has indicated the result should be in certifying the conflict to this Court.

ARGUMENT

A. ARGUMENT ON THE MERITS

1. Appraisal clauses and their long history of court approval

At issue in this case is the validity of an appraisal clause in an insurance policy. The clause simply provides a means for the insured and the insurance company to get a binding determination as to the amount of a loss when they are unable to agree on the amount themselves without the necessity of undergoing the expense and delay of litigating the issue within the court system.

The mechanics of the appraisal clause are quite straightforward. Each party selects an independent appraiser, and the two appraisers then select an umpire. If the appraisers cannot agree upon an umpire, then the insured or the insurance company can ask a judge to select an umpire. The appraisers then set the amount of the loss. If they agree "the amount agreed upon shall be the amount of the loss." (R. 43; A.17). If the appraisers fail to agree, they are to submit their differences to the umpire, and "written agreement signed by any two of these three shall set the amount of the loss." (R. 43; A.17).

Appraisal clauses similar to that contained in the State Farm policy here have been used throughout the insurance industry — and approved by the courts — for over 100 years. As the United States Supreme Court stated over a century ago:

Such a stipulation, not ousting the jurisdiction of the Courts, but leaving the general question of liability to be judicially determined, and simply providing a reasonable method of estimating and ascertaining the amount of the loss is unquestionably valid, according to the uniform current of authority in England and in this Country.

Hamilton v. Liverpool & London Globe Insurance Co., 136 U.S. 242, 255, 10 S.Ct. 945, 949, 34 L.Ed.

419 (1890). The Supreme Court similarly stated in another decision issued the same year:

A provision in a contract for the payment of money upon a contingency that the amount to be paid shall be submitted to arbitrators, whose award shall be final as to that amount, but shall not determine the general question of liability, is undoubtedly valid.

Hamilton v. Home Insurance Co., 137 U.S. 370, 385, 11 S.Ct. 133, 138, 34 L.Ed. 708 (1890). Or, as

this Court put it in a decision issued during that same time period:

Ever since the decision in 1853 in the HOUSE OF LORDS BY COLERIDGE J. of *Avery v. Scott*, 8 Exch. 499, *it has been uniformly held in England and in this country that provisions like this in a policy of insurance for the ascertainment and settlement of the amount of loss or damage by submission to arbitrators are proper, legal, and binding on the parties[.]*

Hanover Fire Insurance Co. v. Lewis, 10 So. 297, 302 (Fla. 1891).

These appraisal clauses are favored in the law because they provide the parties with a swift and practical means for obtaining a binding determination of the amount of a loss, which is often the only matter of disagreement between them.

[W]e share in the common knowledge that the amount of loss is a fruitful and often the only subject of controversy between insured and insurer; that speedy determination of the policy liability such as may be secured by arbitration of this issue is a matter of wide concern [cites omitted]; that, in the appraisal of the loss by arbitration, expert knowledge and prompt inspection of the damaged property may be availed of to an extent not ordinarily possible in the course of the more deliberate processes of a judicial proceeding.

Hardware Dealers' Mutual Fire Insurance Co. v. Glidden Co., 284 U.S. 151, 159, 52 S.Ct. 69, 71

(1931). As a leading insurance commentator noted: "Generally policy provisions requiring

arbitration or appraisal of a loss are valid and binding on the parties. Such provisions are upheld on grounds of sound public policy, since they tend to fair dealing and the prevention of litigation.”

6 APPLEMAN INSURANCE LAW AND PRACTICE §3921, pp. 511-512.

Florida courts have equated appraisal clauses like that involved in the State Farm policy here with arbitration clauses, *see, e.g., Intracoastal Ventures Corp. v. Safeco Insurance Co. of America*, 540 So. 2d 162 (Fla. 4th DCA 1989); *U.S. Fire Insurance Co. v. Franko*, 443 So. 2d 170 (Fla. 1st DCA 1983), and have therefore approved enforcement of such clauses as being in keeping with Florida’s public policy which favors arbitration as an alternative to litigation. *Intracoastal, supra*. “The courts favor arbitration to expedite claims and reduce litigation.” *Midwest Mutual Insurance Co. v. Santiesteban*, 287 So. 2d 665, 667 (Fla. 1973).

The only concern initially expressed by some courts over these appraisal clauses was whether they might be deemed an infringement upon litigants’ rights to a jury trial or might be considered an ouster of the courts’ jurisdiction. However, the United States Supreme Court has rejected that concern given public policy considerations which encourage parties to agree to arbitration and appraisal. *See, e.g., Hardware Dealers’ Mutual Fire Insurance Co. v. Glidden, Co.*, 284 U.S. 151, 52 S.Ct. 69, 76 L.Ed. 214(1931). This Court also held that appraisal clauses “do not fall within that class of arbitraments that undertake to oust the courts of their jurisdiction, and that are therefore obnoxious to the law.” *Hanover Fire Insurance Co. v. Lewis, supra*, 10 So. at 302. *See also, e.g., 14 COUCH ON INSURANCE §50.30* (“With respect to constitutionality, no provisions of federal or state constitutions are violated by provisions of standard or other insurance policies for arbitration or appraisal as to the amount of the loss in case of disagreement between the parties.”).

In short, appraisal clauses in insurance policies have long been a functional — and judicially sanctioned — mechanism for resolving disagreements between insured and insurer over the amount of a given loss. As recognized by the authorities cited above, the amount of loss is often the *only* disputed issue between the parties, so the appraisal clause provides a quick and efficient means for dispute resolution which can avoid all litigation between the parties.

2. **The anomalous Third District decision in *American Reliance v. Country Walk***

Against this general — and uniform — backdrop of approval for the smoothly-working dispute-resolution mechanism set up by appraisal clauses, the Florida Third District Court of Appeals' decision in *American Reliance v. Country Walk* stands as a complete anomaly. As set forth above, the Third District panel which decided the instant case, clearly felt — and stated— that the *American Reliance v. Country Walk* decision is wrong and that it conflicts with all of the other applicable law. The Third District accordingly certified the issue to this Court.

The question presented is whether the conflict should be resolved in favor of the established law of this Court and the other courts of this state or in favor of the panel's decision in *American Reliance v. Country Walk*, (Cope, J. dissenting). We turn then to the rationale of the *American Reliance v. Country Walk* decision for purposes of comparing it with the basis of the established law with which it conflicts.

The Third District majority panel in *American Reliance v. Country Walk* held that an appraisal clause was unenforceable because the clause lacked 'mutuality of obligation'. 632 So. 2d at 108. This conclusion was based on the fact that, under the policy's terms, the appraisers'

determination of the amount of loss would be binding only on that issue, and would not affect the insurer's right to deny the claim:

Appraisal provisions in insurance policies may be construed as agreements to arbitrate. [cites omitted]. Here, however, the insurer's reservation of its right to deny the claim destroys mutuality of obligation, is incompatible with the goals of arbitration, and renders illusory any purported agreement to submit to binding arbitration.

632 So. 2d at 107-108.³ However, as Judge Cope pointed out in the dissent, the fact that the policy reserved the right to deny a claim notwithstanding appraisal was intended "to state, quite simply, that if the insured requests an appraisal and the insurer proceeds with the appraisal process, the insurer has not thereby abandoned any coverage defenses which may be available to it." 632 So. 2d at 108.

3. General insurance cases with which this case and *American Reliance v. Country Walk* conflict

Judge Cope's dissent in *American Reliance v. Country Walk* reflects the many years of established Florida insurance law with which the *American Reliance v. Country Walk* majority opinion

³We note that the *American Reliance v. Country Walk* appraisal clause contains a final sentence — not present in the State Farm policy at issue here — which states "If there is an appraisal, we will still retain our right to deny the claim." 632 So. 2d at 107. As indicated in text above, Judge Cope pointed out in the dissent that this language merely stands for the commonplace proposition — reflected in the general case law of Florida cited in this brief — that agreements to arbitrate *some* portions of an insurance dispute do not mean that coverage issues are to be arbitrated or waived, since coverage questions are for the courts. State Farm's policy has a provision in the general conditions section of the policy that: "Our request for an appraisal or examination shall not waive any of our rights." (R. 49; A.23). Insofar as the *American Reliance v. Country Walk* and State Farm clauses simply have the effect of reserving coverage issues and defenses for court determination they are similar in intent, are in accord with Florida law, and should not be held to destroy mutuality of obligation as argued in text. If the wording and placement of the *American Reliance v. Country Walk* "retain our right to deny the claim" sentence is deemed to indicate an intent not to be bound by the appraisers' determination as to amount of loss, we note only that the State Farm policy language is different, so construction of the *American Reliance v. Country Walk* policy should not govern here.

conflicts. For example, there is no question that parties may agree to arbitrate certain issues and not others. *Roe v. Amica Mutual Insurance Co.*, 533 So. 2d 279 (Fla. 1988); *Midwest Mutual Insurance Co. v. Santiesteban*, 287 So. 2d 665 (Fla. 1973); *Hanover Fire Insurance Co. v. Lewis*, 10 So. 297 (Fla. 1891); *Allstate Insurance Co. v. Banaszak*, 561 So. 2d 465 (Fla. 4th DCA 1990).

A perfect example of insurance contracts which validly agree to submit some — but not all — issues to arbitration is found in uninsured motorist policies. There is a large and completely uniform body of Florida law holding that uninsured motorist policy provisions requiring arbitration on the issues of the liability of the uninsured tortfeasor and damages are binding, notwithstanding the fact that the issue of coverage remains one for determination by the courts. See, e.g., *Meade v. Lumberman's Mutual Casualty Co.*, 423 So. 2d 908 (Fla. 1982); *Montalvo v. Travelers Indemnity Co.*, 643 So. 2d 648 (Fla. 5th DCA 1994); *State Farm Fire & Casualty Co. v. Wingate*, 604 So. 2d 578 (Fla. 4th DCA 1992); *United States Fidelity and Guarantee Co. v. Woolard*, 523 So. 2d 798 (Fla. 1st DCA 1988); *Allstate Insurance Co. v. Candreva*, 497 So. 2d 980 (Fla. 4th DCA 1986); *Nationwide Insurance Co. v. Cooperstock*, 472 So. 2d 547 (Fla. 4th DCA 1985); *Kenilworth Insurance Co. v. Drake*, 396 So. 2d 836 (Fla. 2d DCA 1981).⁴ These decisions from the Florida courts in

⁴The Third District case law has always been in complete keeping with the rest of Florida law on this principle, which makes the *American Reliance v. Country Walk* decision all the more inexplicable. See, e.g., *Criterion Insurance Co. v. Amador*, 479 So. 2d 300 (Fla. 3d DCA 1985); *Bradley v. Government Employees Insurance Co.*, 460 So. 2d 981 (Fla. 3d DCA 1984); *Bruno v. Travelers Insurance Co.*, 386 So. 2d 251 (Fla. 3d DCA 1980); *Vigilant Insurance Co. v. Kelps*, 372 So. 2d 207 (Fla. 3d DCA 1979); *Travelers Insurance Co. v. Lee*, 358 So. 2d 88 (Fla. 3d DCA 1978); *Aetna Casualty & Surety Co. v. Goldman*, 346 So. 2d 111 (Fla. 3d DCA 1977); *Government Employees Insurance Co. v. Mirth*, 333 So. 2d 545 (Fla. 3d DCA 1976); *Hayston Insurance Co. v. Allstate Insurance Co.*, 290 So. 2d 67 (Fla. 3d DCA 1974); *American Fidelity Fire Insurance Co. v. Richardson*, 189 So. 2d 486 (Fla. 3d DCA 1966), cert. denied, 200 So. 2d 814 (Fla. 1967); *Cruger v. Allstate Insurance Co.*, 162 So. 2d 690 (Fla. 3d DCA 1964). In *Richardson*, for example, the Third District had no problem whatsoever with the proposition that the arbitrators' award was binding only as to

uninsured motorist cases clearly had already decided the question presented in *American Reliance*, i.e., whether certain issues may validly be sent to binding arbitration while coverage determinations are reserved for the courts. The cited decisions clearly answer the question in the affirmative, hence the obvious conflict created by the *American Reliance* negative answer which conflict has been certified by the Third District here.

4. **This Court's controlling *Hanover Fire* decision, with which the Third District is also in conflict**

Most significantly, however, this Court has already decided *precisely* this issue, not just in the context of an uninsured motorist arbitration clause, but specifically in the context of an appraisal clause. *Hanover Fire Insurance Co. v. Lewis, supra*. In *Hanover*, this Court held that a provision for appraisal as to the amount of loss was binding, enforceable, and **not** lacking in mutuality of obligation despite the fact that the policy reserved the question of coverage from the arbitrators:

[N]either was the agreement to submit such special question [i.e. the amount of the loss] to arbitration a unilateral undertaking binding only on one of the parties thereto; because, upon the face of that covenant, in the policy sued upon that makes provisions for the appraisal of the amount of the loss and also in the subsequent agreement of submitting said special question to two builders, it is expressly stipulated that the findings of such arbitrators as to the amount of the damage should be binding on both parties. Hence, if, after ascertainment of the amount of the loss, it should be found that the insurers were legally liable for such loss, they at once became bound for the "amount" ascertained and awarded by such arbitrators.

the extent of the damages incurred by the insured, but not on the issue of the insurer's liability for the loss which was an issue to be determined by the court. 189 So. 2d at 489. This is precisely the point which the *American Reliance v. Country Walk* majority decided indicated some fatal lack of "mutuality of obligation". Again, the *American Reliance v. Country Walk* majority opinion is plainly wrong, which is why the Third District panel in the instant case seeks its reversal.

* * *

Both in the policy and in the subsequent submission to the appraisors the liability of the insurers was expressly excepted and reserved from the consideration of said arbitrators. *The naked question submitted to them was: What is the amount of the damage here? Whether the insurers were legally liable, or obligated to pay that loss, was not submitted to them, and did not enter into their sphere of inquiry, nor into their award, and depended on the settlement of divers other independent circumstances and conditions gRoeing out of the contract between the parties.*

10 So. at 303.

As the opinion indicates, this Court in deciding *Hanover* concluded that appraisal clauses are not lacking in mutuality of obligation because of the fact that they are binding only as to the amount of the loss and not as to the insurer's liability for coverage. Both parties are bound by the appraisers' conclusion as to the amount of the loss, and that is sufficient mutuality. The fact that other issues have been left for resolution outside the appraisal forum does not affect the mutually binding nature of the appraisal process itself. As one of the leading insurance commentators has put it:

Ordinarily no question arises as to the consideration by one party for the obligation of the other to submit to an arbitration or appraisal, for the reason that both the insurer and the insured have given up a right to have the question determined by a court of law and the promise of each to do so is supported by the consideration of the promise of the other to follow suit.

14 COUCH ON INSURANCE §50.23.

5. The conflict should be resolved in favor of established law

The appraisal clause involved in this case, if invoked by either of the parties, simply required them to obtain a binding determination of the amount of loss through a specified — and

very simple — appraisal process. The fact that the appraisal clause was binding upon both of the parties, but only as to a specific issue — the amount of loss — in no way rendered the clause unenforceable or lacking in mutuality under established law set by this Court. As indicated above, this Court has held (1) that parties may select certain issues and not others to submit to arbitration, in which case the award will be binding only as to the issues submitted, *Roe v. Amica Mutual Insurance Co.*, 533 So. 2d 279, 280 (Fla. 1988); and (2) that provisions in insurance policies may enforceably require the parties to submit some issues to arbitration or appraisal while reserving the question of coverage for the courts. *Meade v. Lumberman's Mutual Casualty Co.*, 423 So. 2d 908 (Fla. 1982); *Hanover Fire Insurance Co. v. Lewis*, 10 So. 297 (Fla. 1891).

The Third District's decision in this case — and the *American Reliance v. Country Walk* decision which it felt compelled to follow — are in conflict with this Court's decisions and the other decisions identified in this brief because they hold that the parties may not enforceably agree to submit one issue — i.e., the amount of loss — to the appraisal/arbitration process and leave the question of coverage for the courts.

The conflict should be resolved in favor of the settled law established by this Court and the other Florida decisions cited herein rather than in favor of the anomaly created by *American Reliance v. Country Walk*. Not only is this anomaly at odds with the rest of Florida law, but it makes no sense. It is a perfectly good idea for parties to agree to use efficient, extra-judicial means for resolving some of the issues between them, such as the amount of loss. Again, the amount of the loss is often the *only* issue to be resolved so litigation can be avoided altogether.

Even where there are coverage questions, the value of the appraisal process remains undiminished as to the issue within its ambit. The amount of the loss is quickly resolved by experts,

leaving only questions of coverage for the courts. Requiring the parties — simply because there *may* be coverage questions which they may or may not ultimately pursue — to go through the cumbersome and expensive process of selecting experts, having them deposed, and having them present their opinions at a bench or jury trial, with the potential for motions for new trial, appeals, etc. is of no value to *anyone* involved in the process. Neither insurers *nor insureds* stand to benefit from law holding that appraisal clauses are unenforceable. The only possible result of allowing such law to stand on the books is to generate more litigation, more expense, and more delay for all involved.

Hurricane Andrew is apt illustration of the potential for massive clogging of the courts — with concomitant expense and delay for *all* involved — if appraisal clauses are invalidated. Hundreds of thousands of homes and properties sustained damage in the hurricane, thereby generating hundreds of thousands of insurance claims. Under *American Reliance*, the courts could have been called upon to litigate the loss valuations in each and every one of those insurance claims — presumably with the property damage unrepaired pending the outcome. Clearly, the binding appraisal process was — and is — much the better dispute resolution mechanism.

This state has made it very clear that arbitration is a favored means for dispute resolution, *see, e.g., Roe v. Amica Mutual Insurance Co.*, 533 So. 2d 279 (Fla. 1988); *Midwest Mutual Insurance Co. v. Santiesteban*, 287 So. 2d 665 (Fla. 1973); §682.02, Fla. Stat., and that all doubts should be resolved in favor of arbitration. *See, e.g., Ronbeck Construction Co., Inc. v. Savanna Club Corp.*, 592 So. 2d 344 (Fla. 4th DCA 1992). The Third District's decision here, following *American Reliance v. Country Walk*, directly contravenes the Florida public policy favoring arbitration, and it should be reversed precisely as the Third District panel believed it should.

B. JURISDICTION

This Court clearly has a basis for exercise of its discretionary jurisdiction because of the conflicts certified in the Third District's opinion. Other Florida cases which expressly and directly conflict with the Third District's decision have also been identified in the preceding section of this brief.

Petitioner here respectfully urges that this Court has not only a basis for exercise of jurisdiction, but also that the question presented is one of significant public concern such that resolution of the conflict by this Court would be of public benefit. Before the Third District's decision in *American Reliance v. Country Walk*, Florida law was uniform in allowing insureds and their insurance companies to resort to arbitration and appraisal on certain issues which regularly arise between them for more rapid, efficient, and inexpensive means of resolution than the courts have to offer.

The law set by Third District in this case and in *American Reliance v. Country Walk* has now cast doubt upon the enforceability of these — clearly mutually beneficial — clauses.⁵ The reasoning in the *American Reliance v. Country Walk* case is so broadly stated that it appears to apply

⁵*American Reliance v. Country Walk* is already generating unnecessary litigation. Three subsequent panels in the Third District — in addition to the panel in this case — felt constrained by *American Reliance v. Country Walk* to disregard appraisal clauses and order the parties to proceed to litigation. *American Reliance Insurance Co. v. Mandy & Landsman, M.D., P.A.*, 644 So. 2d 1037 (Fla. 3d DCA 1994); *Gables Court Professional Centre, Inc. v. Merrimack Mutual Fire Insurance Co.*, 642 So. 2d 74 (Fla. 3d DCA 1994); *American Reliance Insurance Co. v. Elan at Calusa Condominium I Association, Inc.*, 640 So. 2d 1172 (Fla. 3d DCA 1994). Notably, however, there are other subsequent decisions in the Third District which — appropriately — continue to favor the enforceability of appraisal provisions. See *State Farm Fire & Casualty Co. v. Middleton*, 20 Fla.L.Weekly D99 (Fla. 3d DCA decision dated Jan. 4, 1995); *Preferred Mutual Insurance Co. v. Martinez*, 643 So. 2d 1101 (Fla. 3d DCA 1994).

to all clauses in insurance policies mutually obligating the parties to resolve some of their issues by arbitration — including arbitration clauses in the uninsured motorist policies which abound in this state. There is neither any legally sound reason nor any public policy basis for creating law which discourages people from agreeing to arbitrate as many of their disputes as they are legally permitted. Petitioner thus respectfully submits that this Court should exercise its discretionary jurisdiction, reverse the Third District's decision in this case, and overrule the *American Reliance v. Country Walk* decision on which it was based.

CONCLUSION

Based on the foregoing facts and authorities, Petitioner State Farm Fire and Casualty Company respectfully submits that this Court should exercise its discretionary jurisdiction in this cause and should reverse the decision of the Florida Third District Court of Appeals and the *American Reliance v. Country Walk* decision upon which it was based.

Respectfully submitted,

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-and-

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Attorneys for Petitioner

By: Elizabeth K. Russo
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CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of Petitioner's Amended Initial Brief on the Merits* was mailed this 29th day of August, 1995 to: HAL VOGEL, ESQUIRE, 20801 Biscayne Boulevard, Suite 454, Aventura, Florida 33180 and BARRY FINKEL, ESQUIRE, Frankel & Finkel, P.A., 404 East Atlantic Boulevard, Pompano Beach, Florida 33060.

Elizabeth K. Russo

*Petitioner's Initial Brief on the Merits was originally filed on April 4, 1995. This Amended Initial Brief on the Merits is identical to the original except that accurate record page references have been substituted for incorrectly numbered references in the original.

STATE FARM FIRE AND CASUALTY COMPANY
7401 CYPRESS GRDNS BLVD, WINTER LAKE FL 33888-0007
A STOCK COMPANY WITH HOME OFFICES IN BLOOMINGTON, ILLINOIS



12			
11			LOAN #
10	NAMED INSURED		MORTGAGEE
9	LICEA, ELICER A & HERMID M	0303-28	GMAC MORTGAGE CORP OF IOWA ITS SUCCESSORS AND/OR ASSIGNS P O BOX 780 WATERLOO IA 50504-0780

HOMEOWNERS POLICY - EXTRA FORM 5

AUTOMATIC RENEWAL If the POLICY PERIOD is shown as 12 months, this policy will be renewed automatically subject to the premiums, rules and forms in effect for each succeeding policy period. If this policy is terminated, we will give you and the Mortgagee/Lienholder written notice in compliance with the policy provisions or as required by law.

POLICY PERIOD:	12 MONTHS	THE POLICY PERIOD BEGINS AND ENDS AT 12:01 AM
EFFECTIVE DATE:	07/19/92	STANDARD TIME AT THE RESIDENCE PREMISES
EXPIRATION DATE:	07/19/93	

LOCATION OF PREMISES
SAME AS MAILING ADDRESS

LOAN # 1
2ND MORTGAGEE
UNIVERSAL NATIONAL BANK
17701 BISCAYNE BLVD
N MIAMI BEACH FL 33160-4813

ZONE: 06	CONSTRUCTION: MASONRY	FIRE PROTECTION CLASS: 1
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COVERAGES & PROPERTY	LIMITS OF LIABILITY	INFLATION COVERAGE INDEX: 115.3
SECTION I		DEDUCTIBLES - SECTION I
A DWELLING	\$ 509500	ALL LOSSES \$ 1000
B DWELLING EXTENSION	\$ 50950	
C PERSONAL PROPERTY	\$ 382125	
C LOSS OF USE	ACTUAL LOSS SUSTAINED	
SECTION II		IN CASE OF LOSS UNDER THIS POLICY, THE DEDUCTIBLES WILL BE APPLIED PER OCCURRENCE AND WILL BE DEDUCTED FROM THE AMOUNT OF THE LOSS. OTHER DEDUCTIBLES MAY APPLY - REFER TO POLICY.
L PERSONAL LIABILITY (EACH OCCURRENCE)	\$ 300000	
M DAMAGE TO PROPERTY OF OTHERS	\$ 500	
M MEDICAL PAYMENTS TO OTHERS (EACH PERSON)	\$ 5000	

FORMS, OPTIONS, & ENDORSEMENTS	POLICY PREMIUM \$ 1823.00
EXTRA FORM 5	
AMENDATORY ENDORSEMENT	DISCOUNT APPLIED:
JEWELRY AND FURS \$2500 EACH	HOME ALERT
ARTICLE/\$5000 AGGREGATE	
OPTION JF	

APR 26 1994

THIS IS A TRUE AND COMPLETE COPY OF THE FORMS AND COVERAGES AFFORDED UNDER THIS POLICY FOR THE POLICY PERIOD STATED THEREIN.

OTHER LIMITS AND EXCLUSIONS MAY APPLY - REFER TO YOUR POLICY

PREPARED BY FK
04/19/94

COUNTERSIGNED
BY

RICHARD B BERNDT

19
AGENT
305-661-4213

YOUR POLICY CONSISTS OF THIS PAGE, ANY ENDORSEMENTS AND THE POLICY FORM. PLEASE KEEP THESE TOGETHER.

AMENDATORY ENDORSEMENT (Florida)

SECTION I - COVERAGES

COVERAGE B - PERSONAL PROPERTY

Property Not Covered, the following is added:

We do not cover "mopeds" or similar motorized bicycles of any horsepower.

SECTION I - LOSSES INSURED

COVERAGE A - DWELLING and COVERAGE B - PERSONAL PROPERTY, the following is added:

We insure for accidental direct physical loss to property described in Coverages A and B caused by sinkhole collapse, meaning sudden settlement or collapse of the earth resulting from subterranean voids created by the action of water on limestone or similar rock formations. We do not insure against loss caused by abandonment of the property covered.

SECTION I - LOSSES NOT INSURED

The reference to "sinkhole" is deleted from **Earth Movement**.

SECTION I - CONDITIONS

Suit Against Us, reference to "one year" is changed to "five years".

Loss Payment is replaced with the following:

Loss Payment. We will adjust all losses with you. We will pay you unless some other person is named in the policy or is legally entitled to receive payment. Loss will be payable:

- a. 20 days after we receive your proof of loss and reach agreement with you; or

b. 60 days after we receive your proof of loss and:

- (1) there is an entry of a final judgment; or
- (2) there is a filing of an appraisal award with us.

SECTION I AND SECTION II - CONDITIONS

Cancellation, items b.(2), (3) and (4) are replaced with the following:

- (2) When this policy has been in effect for less than 90 days and is not a renewal with us, we may cancel for any reason. We may cancel, for any reason other than nonpayment of premium, by notifying you at least 20 days before the date cancellation takes effect. If we cancel because you have not paid the premium, we will notify you at least 10 days before the date cancellation takes effect.
- (3) When this policy has been in effect for 90 days or more, or at any time if it is a renewal with us, we may cancel if there has been a:
 - (a) material misstatement;
 - (b) failure to comply with underwriting requirements established by us within 90 days of the date this coverage takes effect;
 - (c) substantial change in the risk covered by this policy; or
 - (d) cancellation by us of all policies for a given class of insureds.

We may cancel this policy by notifying you at least 45 days before the date cancellation takes effect.

STATE FARM FIRE AND CASUALTY COMPANY
STATE FARM GENERAL INSURANCE COMPANY
Offices: Bloomington, Illinois

FP-7925
(12/90)

GUARANTEED REPLACEMENT
COST - DWELLING



YOUR STATE FARM HOMEOWNERS EXTRA POLICY

This policy is one of the broadest forms available today, and provides you with outstanding value for your insurance dollars. However, we want to point out that every policy contains limitations and exclusions. Please read your policy carefully, especially "Losses Not Insured" and all exclusions.

FP-7925
(12/90)

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DECLARATIONS

Your Name
Location of Your Residence
Policy Period
Coverages
Limits of Liability
Deductibles

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Includes copyrighted material of State Farm Fire and Casualty Company.
Copyright, State Farm Fire and Casualty Company, 1983.
And also,
Includes copyrighted material of Insurance Services Office with its permission.
Copyright, Insurance Services Office, 1975, 1977.

HOMEOWNERS POLICY - EXTRA FORM 5

DECLARATIONS CONTINUED

We agree to provide the insurance described in this policy:

1. based on your payment of premium for the coverages you chose;
2. based on your compliance with all applicable provisions of this policy; and
3. in reliance on your statements in these **Declarations**.

You agree, by acceptance of this policy, that:

1. you will pay premiums when due and comply with the provisions of the policy;
2. the statements in these **Declarations** are your statements and are true;

3. we insure you on the basis your statements are true; and
4. this policy contains all of the agreements between you and us and any of our agents.

Unless otherwise indicated in the application, you state that during the three years preceding the time of your application for this insurance your Loss History and Insurance History are as follows:

1. Loss History: you and the members of your household have not had any insured losses, whether paid or not, that would have been covered under the terms of this or a similar policy; and
2. Insurance History: no insurance company has cancelled or refused to renew your homeowners or fire insurance.

DEFINITIONS

"You" and "your" mean the "named insured" shown in the **Declarations**. Your spouse is included if a resident of your household. "We", "us" and "our" mean the Company shown in the **Declarations**.

Certain words and phrases are defined as follows:

1. "bodily injury" means physical injury, sickness, or disease to a person. This includes required care, loss of services and death resulting therefrom.

Bodily injury does not include:

- a. any of the following which are communicable: disease, bacteria, parasite, virus, or other organism, any of which are transmitted by any insured to any other person;
- b. the exposure to any such disease, bacteria, parasite, virus, or other organism by any insured to any other person; or
- c. emotional distress, mental anguish, humiliation, mental distress, mental injury, or any similar injury unless it arises out of actual physical injury to some person.

2. "business" means a trade, profession or occupation. This includes farming.
3. "Declarations" means the policy **Declarations**, any amended **Declarations**, the most recent renewal notice or certificate, an Evidence of Insurance form or any endorsement changing any of these.
4. "insured" means you and, if residents of your household:
 - a. your relatives; and
 - b. any other person under the age of 21 who is in care of a person described above.

Under Section II, "insured" also means:

- c. with respect to animals or watercraft to which this policy applies, the person or organization legally responsible for them. However, the animal or watercraft must be owned by you or a person included in 4.a. or 4.b. A person or organization using or having custody of these animals or watercraft in the course of a **business**, or without permission of the owner, is not an insured; and

d. with respect to any vehicle to which this policy applies, any person while engaged in your employment or the employment of a person included in 4.a. or 4.b.

5. "insured location" means:

- a. the residence premises;
- b. the part of any other premises, other structures and grounds used by you as a residence. This includes premises, structures and grounds you acquire while this policy is in effect for your use as a residence;
- c. any premises used by you in connection with the premises included in 5.a. or 5.b.;
- d. any part of a premises not owned by an insured but where an insured is temporarily residing;
- e. vacant land owned by or rented to an insured. This does not include farm land;
- f. land owned by or rented to an insured on which a one or two family dwelling is being constructed as a residence for an insured;
- g. individual or family cemetery plots or burial vaults of an insured;
- h. any part of a premises occasionally rented to an insured for other than business purposes; and
- i. 500 acres or less of farm land (without buildings) rented to others.

6. "motor vehicle", when used in Section II of this policy, means:

- a. a motorized land vehicle designed for travel on public roads or subject to motor vehicle registration. A motorized land vehicle in dead storage on an insured location is not a motor vehicle;
- b. a trailer or semi-trailer designed for travel on public roads and subject to motor vehicle registration. A boat, camp, home or utility trailer not being towed by or carried on a vehicle included in 6.a. is not a motor vehicle;

c. a motorized golf cart, snowmobile, or other motorized land vehicle owned by an insured and designed for recreational use off public roads, while off an insured location. A motorized golf cart while used for golfing purposes is not a motor vehicle;

- d. a motorized bicycle, tricycle or similar type of equipment owned by an insured while off an insured location; and
- e. any vehicle while being towed by or carried on a vehicle included in 6.a., 6.b., 6.c. or 6.d.

7. "occurrence", when used in Section II of this policy, means an accident, including exposure to conditions, which results in:

- a. bodily injury; or
- b. property damage;

during the policy period. Repeated or continuous exposure to the same general conditions is considered to be one occurrence.

8. "property damage" means physical damage to or destruction of tangible property, including loss of use of this property. Theft or conversion of property by an insured is not property damage.

9. "residence employee" means an employee of an insured who performs duties, including household or domestic services, in connection with the maintenance or use of the residence premises. This includes employees who perform similar duties elsewhere for you. This does not include employees while performing duties in connection with the business of an insured.

10. "residence premises" means:

- a. the one, two, three or four-family dwelling, other structures, and grounds; or
- b. that part of any other building;

where you reside and which is shown in the Declarations.

SECTION I - COVERAGES

COVERAGE A - DWELLING

1. We cover:

- a. the dwelling used principally as a private residence on the **residence premises** shown in the **Declarations**. This includes structures attached to the dwelling;
- b. materials and supplies located on or adjacent to the **residence premises** for use in the construction, alteration or repair of the dwelling or other structures on the **residence premises**;
- c. wall-to-wall carpeting attached to the dwelling on the **residence premises**; and
- d. outdoor antennas.

2. **Dwelling Extension**. We cover other structures on the **residence premises**, separated from the dwelling by clear space. Structures connected to the dwelling by only a fence, utility line, or similar connection are considered to be other structures.

We do not cover other structures:

- a. not permanently attached to or otherwise forming a part of the realty;
- b. used in whole or in part for **business purposes**; or
- c. rented or held for rental to a person not a tenant of the dwelling, unless used solely as a private garage.

3. Except as specifically provided in **SECTION I - ADDITIONAL COVERAGES, Land**, we do not cover land, including the land necessary to support any Coverage A property. We do not cover any costs required to replace, rebuild, stabilize, or otherwise restore the land, nor do we cover the costs of repair techniques designed to compensate for or prevent land instability.

COVERAGE B - PERSONAL PROPERTY

1. We cover personal property owned or used by an **insured** while it is anywhere in the world. This includes structures not permanently attached to or otherwise forming a part of the realty. At your request, we will cover personal property owned by others while the property is

on the part of the **residence premises** occupied exclusively by an **insured**. At your request, we will also cover personal property owned by a guest or a **residence employee**, while the property is in any other residence occupied by an **insured**.

We cover personal property usually situated at an **insured's residence**, other than the **residence premises**, for up to \$1,000 or 10% of the Coverage B limit, whichever is greater. This limitation does not apply to personal property in a newly acquired principal residence for the first 30 days after you start moving the property there. If the **residence premises** is a newly acquired principal residence, personal property in your immediate past principal residence is not subject to this limitation for the first 30 days after the inception of this policy.

Special Limits of Liability. These limits do not increase the Coverage B limit. The special limit for each of the following categories is the total limit for each loss for all property in that category:

- a. \$200 on money, bank notes, coins and medals;
- b. \$1,000 on property used or intended for use in a **business**, including merchandise held as samples or for sale or for delivery after sale, while on the **residence premises**. This coverage is limited to \$250 on such property away from the **residence premises**.

Electronic data processing equipment or the recording or storage media used with that equipment is included under this coverage;
- c. \$1,000 on securities, accounts, deeds, evidences of debt, letters of credit, notes other than bank notes, manuscripts, passports, tickets and stamps;
- d. \$1,000 on watercraft of all types and outboard motors, including their trailers, furnishings and equipment;
- e. \$1,000 on trailers not used with watercraft;
- f. \$2,500 for loss by theft of firearms;

- g. \$2,500 for loss by theft of silverware and goldware;
- h. \$5,000 on electronic data processing equipment and the recording or storage media used with that equipment. There is no coverage for said equipment or media while located away from the residence premises except when said equipment or media are removed from the residence premises for the purpose of repair, servicing or temporary use. An insured student's equipment and media are covered while at a residence away from home; and
- i. \$5,000 on any one article and \$10,000 in the aggregate for loss by theft of any rug, carpet (except wall-to-wall carpet), tapestry, wall-hanging or other similar article.

See SECTION I - ADDITIONAL COVERAGES for special limits on jewelry, watches, fur garments and garments trimmed with fur, precious and semi-precious stones, gold other than goldware, silver other than silverware, and platinum.

2. Property Not Covered. We do not cover:

- a. articles separately described and specifically insured in this or any other insurance;
- b. animals, birds or fish;
- c. any engine or motor propelled vehicle or machine, including the parts, designed for movement on land. We do cover those not licensed for use on public highways which are:
 - (1) used solely to service the insured location; or
 - (2) designed for assisting the handicapped;
- d. devices or instruments for the recording or reproduction of sound permanently installed in an engine or motor propelled vehicle. We do not cover tapes, wires, records or other mediums that may be used with these devices or instruments while in the vehicle;
- e. aircraft and parts;
- f. property of roomers, boarders, tenants and other residents not related to an insured. We do cover property of roomers, boarders and other residents related to an insured;

- g. property regularly rented or held for rental to others by an insured. This exclusion does not apply to property of an insured in a sleeping room rented to others by an insured;
- h. property rented or held for rental to others away from the residence premises;
- i. any citizens band radios, radio telephones, radio transceivers, radio transmitters, radar detectors, antennas and other similar equipment. This exclusion applies only while the property is located in or upon an engine or motor propelled vehicle, whether attached or not;
- j. books of account, abstracts, drawings, card index systems and other records. This exclusion does not apply to film, tape, disc, drum, cell and other magnetic recording or storage media for electronic data processing. We will cover the cost of blank books, cards or other blank material plus the cost of labor you incur for transcribing or copying such records; or
- k. recording or storage media for electronic data processing that cannot be replaced with other of like kind and quality on the current retail market.

COVERAGE C - LOSS OF USE

- 1. Additional Living Expense. If a Loss Insured causes the residence premises to become uninhabitable, we cover the necessary increase in cost to maintain your standard of living. Payment is for the shortest time required (a) to repair or replace the premises or (b) for you household to settle elsewhere, but not to exceed 12 months. This period of time is not limited by the expiration of this policy.
- 2. Fair Rental Value. If a Loss Insured causes that part of the residence premises rented to others or held for rental by you to become uninhabitable, we cover its fair rental value. Payment shall be for the shortest time required to repair or replace the part of the premises rented or held for rental but not to exceed 12 months. This period of time is not limited by expiration of this policy. Fair rental value shall not include any expense that does not continue while that part of the residence premises rented or held for rental is uninhabitable.

3. **Prohibited Use.** If a civil authority prohibits your use of the residence premises because of direct damage to a neighboring premises by a Loss Insured, we cover any resulting Additional Living Expense and Fair Rental Value. Coverage is for a period not exceeding two weeks while use is prohibited.

We do not cover loss or expense due to cancellation of a lease or agreement.

SECTION I - ADDITIONAL COVERAGES

1. **Debris Removal.** We will pay the reasonable expenses you incur in the removal of debris of covered property damaged by a Loss Insured. This expense is included in the limit applying to the damaged property.

We will pay up to \$500 in the aggregate for each loss to cover the reasonable expenses you incur in the removal of tree debris from the residence premises when the tree has damaged property covered under Coverage A.

When the amount payable for the property damage plus the debris removal exceeds the limit for the damaged property, an additional 5% of that limit is available for debris removal expense.

2. **Temporary Repairs.** If damage is caused by a Loss Insured, we will pay the reasonable and necessary cost you incur for temporary repairs to covered property to protect the property from further immediate damage or loss. This coverage does not increase the limit applying to the property being repaired.

3. **Trees, Shrubs and Other Plants.** We cover outdoor trees, shrubs, plants or lawns, on the residence premises, for loss caused by the following: Fire or lightning, Explosion, Riot or civil commotion, Aircraft, Vehicles not owned or operated by a resident of the residence premises, Vandalism or Malicious Mischief or Theft. The limit for this coverage, including the removal of debris, shall not exceed 5% of the limit applying to the dwelling. We will not pay more than \$500 for any one outdoor tree, shrub or plant, including debris removal expense. This coverage may increase the limit otherwise applicable. We do not cover property grown for business purposes.

4. **Fire Department Service Charge.** We will pay up to \$500 for your liability assumed by contract or agreement

for fire department charges. This means charges incurred when the fire department is called to save or protect covered property from a Loss Insured. No deductible applies to this coverage. This coverage may increase the limit otherwise applicable.

5. **Property Removed.** Covered property, while being removed from a premises endangered by a Loss Insured, is covered for any accidental direct physical loss. This coverage also applies to the property for up to 30 days while removed. We will also pay for reasonable expenses incurred by you for the removal and return of the covered property. This coverage does not increase the limit applying to the property being removed.

6. **Credit Card, Bank Fund Transfer Card, Forgery and Counterfeit Money.**

a. We will pay up to \$1,000 for:

- (1) the legal obligation of an insured to pay because of the theft or unauthorized use of credit cards and bank fund transfer cards issued to or registered in an insured's name. If an insured has not complied with all terms and conditions under which the cards are issued, we do not cover use by an insured or anyone else;
- (2) loss to an insured caused by forgery or alteration of any check or negotiable instrument; and
- (3) loss to an insured through acceptance in good faith of counterfeit United States or Canadian paper currency.

No deductible applies to this coverage.

We will not pay more than the limit stated above for forgery or alteration committed by any one person. This limit applies when the forgery or alteration involves one or more instrument in the same loss.

b. We do not cover loss arising out of business pursuits or dishonesty of an insured.

c. Defense:

- (1) We may make any investigation and settle any claim or suit that we decide is appropriate. Our obligation to defend claims or suits ends when

the amount we pay for the loss equals our limit of liability.

(2) If claim is made or a suit is brought against an insured for liability under the Credit Card or Bank Fund Transfer Card coverage, we will provide a defense. This defense is at our expense by counsel of our choice.

(3) We have the option to defend at our expense an insured or an insured's bank against any suit for the enforcement of payment under the Forgery coverage.

7. **Power Interruption.** We cover accidental direct physical loss caused directly or indirectly by a change of temperature which results from power interruption that takes place on the residence premises. The power interruption must be caused by a Loss Insured occurring on the residence premises. The power lines off the residence premises must remain energized. This coverage does not increase the limit applying to the damaged property.

8. **Refrigerated Products.** Coverage B is extended to cover the contents of deep freeze or refrigerated units on the residence premises for loss due to power failure or mechanical failure. If mechanical failure or power failure is known to you, all reasonable means must be used to protect the property insured from further damage or this coverage is void. Power failure or mechanical failure shall not include:

- a. removal of a plug from an electrical outlet; or
- b. turning off an electrical switch unless caused by a Loss Insured.

This coverage does not increase the limit applying to the damaged property.

9. **Arson Reward.** We will pay \$1,000 for information which leads to an arson conviction in connection with a fire loss to property covered by this policy. This coverage may increase the limit otherwise applicable. However, the \$1,000 limit shall not be increased regardless of the number of persons providing information.

10. **Jewelry and Furs.** Jewelry, watches, fur garments and garments trimmed with fur, precious and semi-precious

stones, gold other than goldware, silver other than silver ware, and platinum are insured for accidental direct physical loss or damage.

We do not cover loss or damage caused by mechanical breakdown, wear and tear, gradual deterioration, insects vermin, inherent vice, or seizure or destruction under quarantine or customs regulations.

In addition to limitations and exclusions otherwise applicable, the following also apply:

- a. our limit for loss by any Coverage B peril except the shall be the limit stated in the Declarations for Coverage B, plus \$2,500; and
- b. our limit for loss by theft and any covered peril, except those in item a., shall be \$1,500 on any one article and \$2,500 in the aggregate.

11. **Land.** If a single event results in both a Loss Insured to the insured dwelling, other than the breakage of glass or safety glazing material, and a loss of land stability, we will pay up to \$10,000 as an additional amount of insurance for repair costs associated with the land. This includes the costs required to replace, rebuild, stabilize or otherwise restore the land. This Additional Coverage applies only to the land necessary to support that part of the insured dwelling sustaining the Loss Insured.

The SECTION I - LOSSES NOT INSURED reference to earth movement does not apply to the loss of land stability provided under this Additional Coverage.

12. **Volcanic Action.** We cover direct physical loss to covered building or covered property contained in building resulting from the eruption of a volcano when the loss is directly and immediately caused by:

- a. volcanic blast or airborne shock waves;
- b. ash, dust or particulate matter; or
- c. lava flow.

We will also pay for the removal of that ash, dust or particulate matter which has caused direct physical loss to a covered building or covered property contained in building.

One or more volcanic eruptions that occur within a 72-hour period shall be considered one volcanic eruption.

This coverage does not increase the limit applying to the damaged property.

13. **Collapse.** We insure for direct physical loss to covered property involving collapse of a building or any part of a building caused only by one or more of the following:

- a. perils described in **SECTION I - LOSSES INSURED, COVERAGE B - PERSONAL PROPERTY**. These perils apply to covered building and personal property for loss insured by this Additional Coverage;
- b. hidden decay;
- c. hidden insect or vermin damage;
- d. weight of contents, equipment, animals or people;
- e. weight of ice, snow, sleet or rain which collects on a roof; or
- 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.

Loss to an awning, fence, patio, pavement, swimming pool, underground pipe, flue, drain, cesspool, septic tank, foundation, retaining wall, bulkhead, pier, wharf or dock is not included under items b., c., d., e., and f. unless the loss is a direct result of the collapse of a building.

Collapse does not include settling, cracking, shrinking, bulging or expansion.

This coverage does not increase the limit applying to the damaged property.

14. **Locks.** We will pay the reasonable expenses you incur to re-key locks on exterior doors of the dwelling located on the **residence premises**, when the keys to those locks are a part of a covered theft loss.

No deductible applies to this coverage.

15. **Temporary Living Expense Allowance.** If the **residence premises** becomes uninhabitable because of a loss caused by earthquake, landslide or volcanic explosion, or if a civil authority prohibits your use of the

residence premises because an earthquake, landslide or volcanic explosion has occurred, we will pay up to \$2,000 to cover the necessary increase in cost which you incur to maintain your standard of living.

The **SECTION I - LOSSES NOT INSURED** references to earthquake, landslide and volcanic explosion do not apply to this Additional Coverage.

This coverage is excess over any other valid and collectible insurance which is in force at the time of the loss.

No deductible applies to this coverage.

INFLATION COVERAGE

The limits of liability shown in the **Declarations** for Coverages A and B will be increased at the same rate as the increase in the Inflation Coverage Index shown in the **Declarations**.

To find the limits on a given date:

1. divide the Index on that date by the Index as of the effective date of this Inflation Coverage provision; then
2. multiply the resulting factor by the limits of liability for Coverages A and B separately.

The limits of liability will not be reduced to less than the amounts shown in the **Declarations**.

If during the term of this policy the Coverage A limit of liability is changed at your request, the effective date of this Inflation Coverage provision is changed to coincide with the effective date of such change.

GUARANTEED EXTRA COVERAGE

We will settle covered losses to the dwelling under Coverage A and other building structures under Dwelling Extension at replacement cost without regard to the limit of liability, subject to the **Loss Settlement** provisions in **SECTION I - CONDITIONS**.

Except as specifically provided in **SECTION I - ADDITIONAL COVERAGES, Land**, we will not pay for land, including the land necessary to support any Coverage A property, or any costs required to replace, rebuild, stabilize, or otherwise restore the land, nor will we pay the costs of repair techniques designed to compensate for or prevent land instability.

Report Increased Values.

You must notify us within 90 days of the start of any new building valued at \$5,000 or more or any additions to or remodeling of buildings which increase their values by \$5,000

or more and pay any additional premium due for the increase in value. If you fail to notify us within 90 days, our payment will not exceed the limit of liability applying to the building. See SECTION I - CONDITIONS, Loss Settlement for additional provisions.

SECTION I - LOSSES INSURED

COVERAGE A - DWELLING

We insure for accidental direct physical loss to the property described in Coverage A, except as provided in SECTION I - LOSSES NOT INSURED.

COVERAGE B - PERSONAL PROPERTY

We insure for accidental direct physical loss to property described in Coverage B caused by the following perils, except as provided in SECTION I - LOSSES NOT INSURED:

1. Fire or lightning.
2. Windstorm or hail. This peril does not include loss to property contained in a building caused by rain, snow, sleet, sand or dust. This limitation does not apply when the direct force of wind or hail damages the building causing an opening in a roof or wall and the rain, snow, sleet, sand or dust enters through this opening.

This peril includes loss to watercraft of all types and their trailers, furnishings, equipment, and outboard motors, only while inside a fully enclosed building.
3. Explosion.
4. Riot or civil commotion.
5. Aircraft, including self-propelled missiles and spacecraft.
6. Vehicles.
7. Smoke, meaning sudden and accidental damage from smoke.

This peril does not include loss caused by smoke from agricultural smudging or industrial operations.
8. Vandalism or malicious mischief, meaning only willful and malicious damage to or destruction of property.

9. Theft, including attempted theft and loss of property from a known location when it is probable that the property has been stolen.

This peril does not include:

- a. loss of a precious or semi-precious stone from its setting;
- b. loss caused by theft:
 - (1) committed by an insured or by any other person regularly residing on the insured location. Property of a student who is an insured is covered while located at a residence away from home, if the theft is committed by a person who is not an insured;
 - (2) in or to a dwelling under construction or materials and supplies for use in the construction until the dwelling is completed and occupied; or
 - (3) from the part of a residence premises rented to others:
 - (a) caused by a tenant, members of the tenant's household, or the tenant's employees;
 - (b) of money, bank notes, bullion, gold, goldware, silver, silverware, pewterware, platinum, coins and medals;
 - (c) of securities, checks, cashier's checks, traveler's checks, money orders and other negotiable instruments, accounts, deeds, evidences of debt, letters of credit, notes other than bank notes, manuscripts, passports, tickets and stamps; or
 - (d) of jewelry, watches, fur garments and garments trimmed with fur, precious and semi-precious stones;

c. loss caused by theft that occurs away from the residence premises of:

- (1) property while at any other residence owned, rented to, or occupied by an insured, except while an insured is temporarily residing there. Property of a student who is an insured is covered while at a residence away from home;
- (2) watercraft of all types, including their furnishings, equipment and outboard motors; or
- (3) trailers and campers designed to be pulled by or carried on a vehicle.

If the residence premises is a newly acquired principal residence, property in the immediate past principal residence shall not be considered property away from the residence premises for the first 30 days after the inception of this policy.

10. **Falling objects.** This peril does not include loss to property contained in a building unless the roof or an exterior wall of the building is first damaged by a falling object. Damage to the falling object itself is not included.
11. **Weight of ice, snow or sleet** which causes damage to property contained in a building.
12. **Sudden and accidental discharge or overflow** of water or steam from within a plumbing, heating, air conditioning or automatic fire protective sprinkler system, or from within a household appliance.

This peril does not include loss:

- a. to the system or appliance from which the water or steam escaped;
- b. caused by or resulting from freezing;
- c. caused by or resulting from water from outside the plumbing system that enters through sewers or drains, or water which enters into and overflows from within a sump pump, sump pump well or other type

system designed to remove subsurface water which is drained from the foundation area; or

- d. caused by or resulting from continuous or repeated seepage or leakage of water or steam which occurs over a period of time and results in deterioration, corrosion, rust, mold, or wet or dry rot.

13. **Sudden and accidental tearing asunder, cracking, burning or bulging** of a steam or hot water heating system, an air conditioning or automatic fire protective sprinkler system, or an appliance for heating water.

This peril does not include loss:

- a. caused by or resulting from freezing; or
- b. caused by or resulting from continuous or repeated seepage or leakage of water or steam which occurs over a period of time and results in deterioration, corrosion, rust, mold, or wet or dry rot.

14. **Freezing** of a plumbing, heating, air conditioning or automatic fire protective sprinkler system, or of a household appliance.

This peril does not include loss on the residence premises while the dwelling is vacant, unoccupied or being constructed, unless you have used reasonable care to:

- a. maintain heat in the building; or
 - b. shut off the water supply and drain the system and appliances of water.
15. **Sudden and accidental damage** to electrical appliances, devices, fixtures and wiring from an increase or decrease of artificially generated electrical current. We will pay up to \$1,000 under this peril for each damaged item described above.
 16. **Breakage of glass**, meaning damage to personal property caused by breakage of glass which is a part of a building on the residence premises. There is no coverage for loss or damage to the glass.

SECTION I - LOSSES NOT INSURED

We do not insure for any loss to the property described in Coverage A which consists of, or is directly and immediately caused by, one or more of the perils listed in items a. through m. below, regardless of whether the loss occurs suddenly or gradually, involves isolated or widespread damage, arises from natural or external forces, or occurs as a result of any combination of these:

a. collapse, except as specifically provided in SECTION I - ADDITIONAL COVERAGES, Collapse;

b. freezing of a plumbing, heating, air conditioning or automatic fire protective sprinkler system, or of a household appliance, or by discharge, leakage or overflow from within the system or appliance caused by freezing. This exclusion only applies while the dwelling is vacant, unoccupied or being constructed. This exclusion does not apply if you have used reasonable care to:

(1) maintain heat in the building; or

(2) shut off the water supply and drain the system and appliances of water;

c. freezing, thawing, pressure or weight of water or ice, whether driven by wind or not, to a fence, pavement, patio, swimming pool, foundation, retaining wall, bulkhead, pier, wharf or dock;

d. theft in or to a dwelling under construction, or of materials and supplies for use in the construction, until the dwelling is completed and occupied;

e. vandalism or malicious mischief or breakage of glass and safety glazing materials if the dwelling has been vacant for more than 30 consecutive days immediately before the loss. A dwelling being constructed is not considered vacant;

f. continuous or repeated seepage or leakage of water or steam from a:

(1) heating, air conditioning or automatic fire protective sprinkler system;

(2) household appliance; or

(3) plumbing system, including from, within or around any shower stall, shower bath, tub installation, or other plumbing fixture, including their walls, ceilings or floors;

g. which occurs over a period of time and results in deterioration, corrosion, rust, mold, or wet or dry rot. If loss to covered property is caused by water or steam not otherwise excluded, we will cover the cost of tearing out and replacing any part of the building necessary to repair the system or appliance. We do not cover loss to the system or appliance from which the water or steam escaped;

h. wear, tear, marring, scratching, deterioration, inherent vice, latent defect or mechanical breakdown;

i. corrosion, electrolysis, or rust;

j. mold, or wet or dry rot;

k. contamination;

l. smog, smoke from agricultural smudging or industrial operations;

m. settling, cracking, shrinking, bulging, or expansion of pavements, patios, foundation, walls, floors, roofs or ceilings; or

n. birds, vermin, rodents, insects, or domestic animals. We do cover the breakage of glass or safety glazing material which is a part of a building, when caused by birds, vermin, rodents, insects or domestic animals.

However, we do insure for any resulting loss from items a. through m. unless the resulting loss is itself a Loss Not Insured by this Section.

2. We do not insure under any coverage for any loss which would not have occurred in the absence of one or more of the following excluded events. We do not insure for such loss regardless of: (a) the cause of the excluded event; or (b) other causes of the loss; or (c) whether other causes acted concurrently or in any sequence with the excluded event to produce the loss; or (d) whether the event occurs suddenly or gradually, involves isolated or

widespread damage, arises from natural or external forces, or occurs as a result of any combination of these:

- a. **Ordinance or Law**, meaning enforcement of any ordinance or law regulating the construction, repair or demolition of a building or other structure, unless specifically provided under this policy.
- b. **Earth Movement**, meaning the sinking, rising, shifting, expanding or contracting of earth, all whether combined with water or not. Earth movement includes but is not limited to earthquake, landslide, mudflow, sinkhole, subsidence and erosion. Earth movement also includes volcanic explosion or lava flow, except as specifically provided in **SECTION I - ADDITIONAL COVERAGES, Volcanic Action**.

We do insure for any direct loss by fire, explosion other than explosion of a volcano, theft, or breakage of glass or safety glazing materials which are part of the dwelling resulting from earth movement, provided the resulting loss is itself a Loss Insured.

c. **Water Damage**, meaning:

- (1) flood, surface water, waves, tidal water, overflow of a body of water, or spray from any of these, all whether driven by wind or not;
- (2) water from outside the plumbing system that enters through sewers or drains, or water which enters into and overflows from within a sump pump, sump pump well or any other system designed to remove subsurface water which is drained from the foundation area; or
- (3) natural water below the surface of the ground, including water which exerts pressure on, or seeps or leaks through a building, sidewalk, driveway, foundation, swimming pool or other structure.

However, we do insure for any direct loss by fire, explosion or theft resulting from water damage, provided the resulting loss is itself a Loss Insured.

- d. **Neglect**, meaning neglect of the insured to use all reasonable means to save and preserve property at and after the time of a loss, or when property is endangered.
- e. **War**, including any undeclared war, civil war, insurrection, rebellion, revolution, warlike act by a military force or military personnel, destruction or seizure or use for a military purpose, and including any consequence of any of these. Discharge of a nuclear weapon shall be deemed a warlike act even if accidental.
- f. **Nuclear Hazard**, meaning any nuclear reaction, radiation, or radioactive contamination, all whether controlled or uncontrolled or however caused, or any consequence of any of these. Loss caused by a nuclear hazard shall not be considered loss caused by fire, explosion, or smoke. However, we do insure for direct loss by fire resulting from the nuclear hazard.

3. We do not insure under any coverage for any loss consisting of one or more of the items below. Further, we do not insure for loss described in paragraphs 1. and 2. immediately above regardless of whether one or more of the following: (a) directly or indirectly cause, contribute to or aggravate the loss; or (b) occur before, at the same time, or after the loss or any other cause of the loss:

- a. conduct, act, failure to act, or decision of any person, group, organization or governmental body whether intentional, wrongful, negligent, or without fault; or
- b. defect, weakness, inadequacy, fault or unsoundness in:
 - (1) planning, zoning, development, surveying, siting;
 - (2) design, specifications, workmanship, construction, grading, compaction;
 - (3) materials used in construction or repair; or
 - (4) maintenance;

of any property (including land, structures, or improvements of any kind) whether on or off the residence premises.

However, we do insure for any resulting loss from items a. and b. unless the resulting loss is itself a Loss Not Insured by this Section.

SECTION I - CONDITIONS

1. **Insurable Interest and Limit of Liability.** Even if more than one person has an insurable interest in the property covered, we shall not be liable:

- a. to the insured for an amount greater than the insured's interest; or
- b. for more than the applicable limit of liability.

2. **Your Duties After Loss.** After a loss to which this insurance may apply, you shall see that the following duties are performed:

- a. give immediate notice to us or our agent. Also notify the police if the loss is caused by theft. Also notify the credit card company or bank if the loss involves a credit card or bank fund transfer card;
- b. protect the property from further damage or loss, make reasonable and necessary temporary repairs required to protect the property, keep an accurate record of repair expenditures;
- c. prepare an inventory of damaged or stolen personal property. Show in detail the quantity, description, actual cash value and amount of loss. Attach to the inventory all bills, receipts and related documents that substantiate the figures in the inventory;
- d. as often as we reasonably require:
 - (1) exhibit the damaged property;
 - (2) provide us with records and documents we request and permit us to make copies;
 - (3) submit to and subscribe, while not in the presence of any other insured:
 - (a) statements; and
 - (b) examinations under oath; and
 - (4) produce employees, members of the insured's household or others for examination under oath

to the extent it is within the insured's power to do so; and

e. submit to us, within 60 days after the loss, your signed, sworn proof of loss which sets forth, to the best of your knowledge and belief:

- (1) the time and cause of loss;
- (2) interest of the insured and all others in the property involved and all encumbrances on the property;
- (3) other insurance which may cover the loss;
- (4) changes in title or occupancy of the property during the term of this policy;
- (5) specifications of any damaged building and detailed estimates for repair of the damage;
- (6) an inventory of damaged or stolen personal property described in 2.c.;
- (7) receipts for additional living expenses incurred and records supporting the fair rental value loss
- (8) evidence or affidavit supporting a claim under the Credit Card, Bank Fund Transfer Card, Forgery and Counterfeit Money coverage, stating the amount and cause of loss.

3. **Loss Settlement.** Covered property losses are settled as follows:

- a. We will pay actual cash value at the time of loss for
 - (1) antiques, fine arts, painting, statuary and similar articles which by their inherent nature cannot be replaced with new articles;
 - (2) articles whose age or history contribute substantially to their value including, but not limited to memorabilia, souvenirs and collectors items;
 - (3) property not useful for its intended purpose.

However, we will not pay an amount exceeding the applicable limit of liability or an amount exceeding that necessary to repair or replace the property.

- b. We will pay the cost to repair or replace other personal property, carpeting, domestic appliances, awnings and outdoor antennas whether or not attached to buildings, subject to the following:

(1) loss to property not repaired or replaced within one year after the loss will be settled on an actual cash value basis;

(2) we will not pay an amount exceeding the smallest of the following:

(a) replacement cost at the time of loss;

(b) the full cost of repair;

(c) any special limit of liability described in the policy; or

(d) any applicable Coverage A or Coverage B limit of liability.

- c. We will pay the cost to repair or replace buildings under Coverage A and other structures under Dwelling Extension, subject to the following:

(1) until actual repair or replacement is completed, we will pay the actual cash value of the damage to the buildings or other structures, up to the policy limits, not to exceed the replacement cost of the damaged part of the building or other structures, for equivalent construction and use on the same premises;

(2) you must make claim within 180 days after the loss for any additional payment on a replacement cost basis.

Any additional payment is limited to that amount you actually and necessarily spend to repair or replace the damaged buildings or other structures with equivalent construction and for equivalent use on the same premises;

(3) we will not pay more than the \$10,000 limit on land as provided in **SECTION I - ADDITIONAL COVERAGES**; and

(4) we will not pay for increased costs resulting from enforcement of any ordinance or law regulating the construction, repair, or demolition of a building or other structure, unless specifically provided under this policy.

4. **Loss to a Pair or Set.** In case of loss to a pair or set, we may elect to:

a. repair or replace any part to restore the pair or set to its value before the loss; or

b. pay the difference between actual cash value of the property before and after the loss.

5. **Glass Replacement.** Loss for damage to glass caused by a Loss Insured shall be settled on the basis of repairment with safety glazing materials when required by ordinance or law.

6. **Appraisal.** If you and we fail to agree on the amount of loss, either one can demand that the amount of the loss be set by appraisal. If either makes a written demand for appraisal, each shall select a competent, independent appraiser. Each shall notify the other of the appraiser's identity within 20 days of receipt of the written demand. The two appraisers shall then select a competent, impartial umpire. If the two appraisers are unable to agree upon an umpire within 15 days, you or we can ask a judge of a court of record in the state where the residence premises is located to select an umpire. The appraisers shall then set the amount of the loss. If the appraisers submit a written report of an agreement to us, the amount agreed upon shall be the amount of the loss. If the appraisers fail to agree within a reasonable time, you shall submit their differences to the umpire. Written agreement signed by any two of these three shall set the amount of the loss. Each appraiser shall be paid by the party selecting that appraiser. Other expenses of the appraisal and the compensation of the umpire shall be paid equally by you and us.

7. **Other Insurance.** If a loss covered by this policy is also covered by other insurance, we will pay only our share of the loss. Our share is the proportion of the loss that the applicable limit under this policy bears to the total amount of insurance covering the loss.

8. **Suit Against Us.** No action shall be brought unless there has been compliance with the policy provisions. The action must be started within one year after the date of loss or damage.
9. **Our Option.** We may repair or replace any part of the property damaged or stolen with equivalent property. Any property we pay for or replace becomes our property.
10. **Loss Payment.** We will adjust all losses with you. We will pay you unless some other person is named in the policy or is legally entitled to receive payment. Loss will be payable 60 days after we receive your proof of loss and:
- reach agreement with you;
 - there is an entry of a final judgment; or
 - there is a filing of an appraisal award with us.
11. **Abandonment of Property.** We need not accept any property abandoned by an insured.
12. **Mortgage Clause.** The word "mortgagee" includes trustee:
- If a mortgagee is named in this policy, any loss payable under Coverage A shall be paid to the mortgagee and you, as interests appear. If more than one mortgagee is named, the order of payment shall be the same as the order of precedence of the mortgages.
 - If we deny your claim, that denial shall not apply to a valid claim of the mortgagee, if the mortgagee:
 - notifies us of any change in ownership, occupancy or substantial change in risk of which the mortgagee is aware;
 - pays any premium due under this policy on demand if you have neglected to pay the premium; or
 - submits a signed, sworn statement of loss within 60 days after receiving notice from us of your failure to do so. Policy conditions relating to Appraisal, Suit Against Us and Loss Payment apply to the mortgagee.
- c. If this policy is cancelled by us, the mortgagee shall be notified at least 10 days before the date cancellation takes effect.
- d. If we pay the mortgagee for any loss and deny payment to you:
- we are subrogated to all the rights of the mortgagee granted under the mortgage on the property; or
 - at our option, we may pay to the mortgagee the whole principal on the mortgage plus any accrued interest. In this event, we shall receive a full assignment and transfer of the mortgage and all securities held as collateral to the mortgage debt.
- e. Subrogation shall not impair the right of the mortgagee to recover the full amount of the mortgagee's claim.
13. **No Benefit to Bailee.** We will not recognize an assignment or grant coverage for the benefit of a person or organization holding, storing or transporting property for a fee. This applies regardless of any other provision of this policy.
14. **Intentional Acts.** If you or any person insured under this policy causes or procures a loss to property covered under this policy for the purpose of obtaining insurance benefits, then this policy is void and we will not pay you or any other insured for this loss.

SECTION II - LIABILITY COVERAGES

COVERAGE L - PERSONAL LIABILITY

If a claim is made or a suit is brought against an insured for damages because of bodily injury or property damage to

which this coverage applies, caused by an occurrence, we will:

- pay up to our limit of liability for the damages for which the insured is legally liable; and

2. provide a defense at our expense by counsel of our choice. We may make any investigation and settle any claim or suit that we decide is appropriate. Our obligation to defend any claim or suit ends when the amount we pay for damages, to effect settlement or satisfy a judgment resulting from the **occurrence**, equals our limit of liability.

COVERAGE M - MEDICAL PAYMENTS TO OTHERS

We will pay the necessary medical expenses incurred or medically ascertained within three years from the date of an accident causing **bodily injury**. Medical expenses means reasonable charges for medical, surgical, x-ray, dental, ambulance, hospital, professional nursing, prosthetic devices and funeral services. This coverage applies only:

1. to a person on the **insured location** with the permission of an **insured**;
2. to a person off the **insured location**, if the **bodily injury**:
 - a. arises out of a condition on the **insured location** or the ways immediately adjoining;
 - b. is caused by the activities of an **insured**;
 - c. is caused by a **residence employee** in the course of the **residence employee's** employment by an **insured**; or
 - d. is caused by an animal owned by or in the care of an **insured**; or
3. to a **residence employee** if the **occurrence** causing **bodily injury** occurs off the **insured location** and arises out of or in the course of the **residence employee's** employment by an **insured**.

SECTION II - ADDITIONAL COVERAGES

We cover the following in addition to the limits of liability:

1. **Claim Expenses**. We pay:
 - a. expenses we incur and costs taxed against an **insured** in suits we defend;
 - b. premiums on bonds required in suits we defend, but not for bond amounts greater than the Coverage L limit. We are not obligated to apply for or furnish any bond;

- c. reasonable expenses an **insured** incurs at our request. This includes actual loss of earnings (but not loss of other income) up to \$100 per day for aiding us in the investigation or defense of claims or suits;
- d. prejudgment interest awarded against the **insured** on that part of the judgment we pay; and
- e. interest on the entire judgment which accrues after entry of the judgment and before we pay or tender, or deposit in court that part of the judgment which does not exceed the limit of liability that applies.

2. **First Aid Expenses**. We will pay expenses for first aid to others incurred by an **insured** for **bodily injury** covered under this policy. We will not pay for first aid to you or any other **insured**.

3. Damage to Property of Others:

- a. We will pay for **property damage** to property of others caused by an **insured**.
- b. We will not pay more than the smallest of the following amounts:
 - (1) replacement cost at the time of loss;
 - (2) full cost of repair; or
 - (3) \$500 in any one occurrence.
- c. We will not pay for **property damage**:
 - (1) if insurance is otherwise provided in this policy;
 - (2) caused intentionally by an **insured** who is 18 years of age or older;
 - (3) to property, other than a rented golf cart, owned by or rented to an **insured**, a tenant of an **insured**, or a resident in your household; or
 - (4) arising out of:
 - (a) **business pursuits**;
 - (b) any act or omission in connection with premises an **insured** owns, rents or controls other than the **insured location**; or

(c) the ownership, maintenance, or use of a motor vehicle, aircraft, or watercraft, includ-

ing airboat, air cushion, personal watercraft, sail board or similar type watercraft.

SECTION II - EXCLUSIONS

1. Coverage L and Coverage M do not apply to:

a. **bodily injury or property damage:**

- (1) which is either expected or intended by an insured; or
- (2) to any person or property which is the result of willful and malicious acts of an insured;

b. **bodily injury or property damage** arising out of business pursuits of any insured or the rental or holding for rental of any part of any premises by any insured. This exclusion does not apply:

- (1) to activities which are ordinarily incident to non-business pursuits;
- (2) with respect to Coverage L to the occasional or part-time business pursuits of an insured who is under 19 years of age;
- (3) to the rental or holding for rental of a residence of yours:
 - (a) on an occasional basis for the exclusive use as a residence;
 - (b) in part, unless intended for use as a residence by more than two roomers or boarders; or
 - (c) in part, as an office, school, studio or private garage;
- (4) when the dwelling on the residence premises is a two, three or four-family dwelling and you occupy one part and rent or hold for rental the other part; or
- (5) to farm land (without buildings) not in excess of 500 acres, rented or held for rental to others;

c. **bodily injury or property damage** arising out of the rendering or failing to render professional services;

d. **bodily injury or property damage** arising out of any premises owned or rented to any insured which is not an insured location. This exclusion does not apply to **bodily injury** to a **residence employee** arising out of and in the course of the **residence employee's** employment by an insured;

e. **bodily injury or property damage** arising out of the ownership, maintenance, use, loading or unloading of:

- (1) an aircraft;
- (2) a motor vehicle owned or operated by or rented or loaned to any insured; or
- (3) a watercraft:
 - (a) owned by or rented to any insured if it has inboard or inboard-outdrive motor power of more than 50 horsepower;
 - (b) owned by or rented to any insured if it is a sailing vessel, with or without auxiliary power, 26 feet or more in overall length;
 - (c) powered by one or more outboard motors with more than 25 total horsepower owned by any insured;
 - (d) designated as an airboat, air cushion, or similar type of craft; or
 - (e) owned by any insured which is a personal watercraft using a water jet pump powered by an internal combustion engine as the primary source of propulsion.

This exclusion does not apply to **bodily injury** to a **residence employee** arising out of and in the course of the **residence employee's** employment by an insured. Exclusion e.(3) does not apply while the watercraft is on the **residence premises**;

f. **bodily injury or property damage** arising out of:

- (1) the entrustment by any **insured** to any person;
- (2) the supervision by any **insured** of any person;
- (3) any liability statutorily imposed on any **insured**;
or
- (4) any liability assumed through an unwritten or written agreement by any **insured**;

with regard to the ownership, maintenance or use of any aircraft, watercraft, or **motor vehicle** (or any other motorized land conveyance) which is not covered under Section II of this policy;

g. **bodily injury or property damage** caused directly or indirectly by war, including undeclared war, or any warlike act including destruction or seizure or use for a military purpose, or any consequence of these. Discharge of a nuclear weapon shall be deemed a warlike act even if accidental;

h. **bodily injury** to you or any **insured** within the meaning of part a. or b. of the definition of **insured**.

This exclusion also applies to any claim made or suit brought against any **insured** to share damages with or repay someone else who may be obligated to pay damages because of the **bodily injury**;

i. any claim made or suit brought against any **insured** by:

- (1) any person who is in the care of any **insured** because of child care services provided by or at the direction of:

- (a) any **insured**;
- (b) any employee of any **insured**; or
- (c) any other person actually or apparently acting on behalf of any **insured**; or

- (2) any person who makes a claim because of **bodily injury** to any person who is in the care of any **insured** because of child care services provided by or at the direction of:

- (a) any **insured**;

- (b) any employee of any **insured**; or

- (c) any other person actually or apparently acting on behalf of any **insured**.

This exclusion does not apply to the occasional child care services provided by any **insured**, or to the part-time child care services provided by any **insured** who is under 19 years of age; or

j. **bodily injury or property damage** arising out of an **insured's** participation in, or preparation or practice for any prearranged or organized race, speed or demolition contest, or similar competition involving a motorized land vehicle or motorized watercraft. This exclusion does not apply to a sailing vessel less than 26 feet in overall length with or without auxiliary power.

2. Coverage L does not apply to:

a. liability:

- (1) for your share of any loss assessment charged against all members of an association of property owners; or
- (2) assumed under any unwritten contract or agreement, or by contract or agreement in connection with a **business** of the **insured**;

b. **property damage** to property owned by any **insured**;

c. **property damage** to property rented to, occupied or used by or in the care of any **insured**. This exclusion does not apply to **property damage** caused by fire, smoke or explosion;

d. **bodily injury** to a person eligible to receive any benefits required to be provided or voluntarily provided by an **insured** under a workers' compensation, non-occupational disability, or occupational disease law;

e. **bodily injury or property damage** for which an **insured** under this policy is also an **insured** under a nuclear energy liability policy or would be an **insured** but for its termination upon exhaustion of its limit of liability. A nuclear energy liability policy is a policy

issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters, Nuclear Insurance Association of Canada, or any of their successors.

3. Coverage M does not apply to **bodily injury**:

- a. to a **residence employee** if it occurs off the **insured location** and does not arise out of or in the course of the **residence employee's** employment by an **insured**;

- b. to a person eligible to receive any benefits required to be provided or voluntarily provided under any workers' compensation, non-occupational disability or occupational disease law;
- c. from nuclear reaction, radiation or radioactive contamination, all whether controlled or uncontrolled or however caused, or any consequence of any of these;
- d. to a person other than a **residence employee** of an **insured**, regularly residing on any part of the **insured location**.

SECTION II - CONDITIONS

Limit of Liability. The Coverage L limit is shown in the **Declarations**. This is our limit for all damages from each **occurrence** regardless of the number of **insureds**, claims made or persons injured.

The Coverage M limit is shown in the **Declarations**. This is our limit for all medical expense for **bodily injury** to one person as the result of one accident.

2. **Severability of Insurance.** This insurance applies separately to each **insured**. This condition shall not increase our limit of liability for any one **occurrence**.

3. **Duties After Loss.** In case of an accident or **occurrence**, the **insured** shall perform the following duties that apply. You shall cooperate with us in seeing that these duties are performed:

- a. give written notice to us or our agent as soon as practicable, which sets forth:

- (1) the identity of this policy and **insured**;
- (2) reasonably available information on the time, place and circumstances of the accident or **occurrence**; and
- (3) names and addresses of any claimants and available witnesses;

- b. immediately forward to us every notice, demand, summons or other process relating to the accident or **occurrence**;

- c. at our request, assist in:

- (1) making settlement;
- (2) the enforcement of any right of contribution or indemnity against a person or organization who may be liable to an **insured**;
- (3) the conduct of suits and attend hearings and trials; and
- (4) securing and giving evidence and obtaining the attendance of witnesses;

- d. under the coverage - **Damage to Property of Others**:

- (1) submit a sworn statement of loss to us within 60 days after the loss; and
- (2) exhibit the damaged property if within the **insured's** control; and

- e. the **insured** shall not, except at the **insured's** own cost, voluntarily make payments, assume obligations or incur expenses. This does not apply to expense for first aid to others at the time of the **bodily injury**.

4. **Duties of an Injured Person - Coverage M.** The injured person, or, when appropriate, someone acting on behalf of that person, shall:

- a. give us written proof of claim, under oath if required, as soon as practicable;
- b. execute authorization to allow us to obtain copies of medical reports and records; and

- c. submit to physical examination by a physician selected by us when and as often as we reasonably require.
5. **Payment of Claim - Coverage M.** Payment under this coverage is not an admission of liability by an insured or us.
 6. **Suit Against Us.** No action shall be brought against us unless there has been compliance with the policy provisions.

No one shall have the right to join us as a party to an action against an insured. Further, no action with respect

to Coverage L shall be brought against us until the obligation of the insured has been determined by final judgment or agreement signed by us.

7. **Bankruptcy of an Insured.** Bankruptcy or insolvency of an insured shall not relieve us of our obligation under this policy.
8. **Other Insurance - Coverage L.** This insurance is excess over any other valid and collectible insurance except insurance written specifically to cover as excess over the limits of liability that apply in this policy.

SECTION I AND SECTION II - CONDITIONS

1. **Policy Period.** This policy applies only to loss under Section I or **bodily injury or property damage** under Section II which occurs during the period this policy is in effect.
2. **Concealment or Fraud.** This policy is void as to you and any other insured, if you or any other insured under this policy has intentionally concealed or misrepresented any material fact or circumstance relating to this insurance, whether before or after a loss.
3. **Liberalization Clause.** If we adopt any revision which would broaden coverage under this policy without additional premium, within 60 days prior to or during the period this policy is in effect, the broadened coverage will immediately apply to this policy.
4. **Waiver or Change of Policy Provisions.** A waiver or change of any provision of this policy must be in writing by us to be valid. Our request for an appraisal or examination shall not waive any of our rights.
5. **Cancellation.**
 - a. You may cancel this policy at any time by notifying us in writing of the date cancellation is to take effect. We may waive the requirement that the notice be in writing by confirming the date and time of cancellation to you in writing.
 - b. We may cancel this policy only for the reasons stated in this condition. We will notify you in writing of the date cancellation takes effect. This cancellation

notice may be delivered to you, or mailed to your mailing address shown in the Declaration. Proof of mailing shall be sufficient proof of notice:

- (1) When you have not paid the premium, we may cancel at any time by notifying you at least 10 days before the date cancellation takes effect. This condition applies whether the premium is payable to us or our agent or under any finance or credit plan.
- (2) When this policy has been in effect for less than 60 days and is not a renewal with us, we may cancel for any reason. We may cancel by notifying you at least 10 days before the date cancellation takes effect.
- (3) When this policy has been in effect for 60 days or more, or at any time if it is a renewal with us, we may cancel:
 - (a) if there has been a material misrepresentation of fact which, if known to us, would have caused us not to issue this policy; or
 - (b) if the risk has changed substantially since the policy was issued.

We may cancel this policy by notifying you at least 30 days before the date cancellation takes effect.

- (4) When this policy is written for a period longer than one year, we may cancel for any reason at anniversary. We may cancel by notifying you at

least 30 days before the date cancellation takes effect.

c. When this policy is cancelled, the premium for the period from the date of cancellation to the expiration date will be refunded. When you request cancellation, the return premium will be based on our rules for such cancellation. The return premium may be less than a full pro rata refund. When we cancel, the return premium will be pro rata.

d. The return premium may not be refunded with the notice of cancellation or when the policy is returned to us. In such cases, we will refund it within a reasonable time after the date cancellation takes effect.

Nonrenewal. We may elect not to renew this policy. If we elect not to renew, a written notice will be delivered to you, or mailed to you at your mailing address shown in the **Declarations**. The notice will be mailed or delivered at least 30 days before the expiration date of this policy. Proof of mailing shall be sufficient proof of notice.

7. **Assignment.** Assignment of this policy shall not be valid unless we give our written consent.

8. **Subrogation.** An insured may waive in writing before a loss all rights of recovery against any person. If not waived, we may require an assignment of rights of recovery for a loss to the extent that payment is made by us.

OPTIONAL POLICY PROVISIONS

The following Optional Policy Provisions are subject to all the terms and provisions of this policy, unless otherwise indicated in the terms of the option.

Each Optional Policy Provision applies only as indicated in the **Declarations**.

Option AI - Additional Insured. The definition of insured is extended to include the person or organization named in the **Declarations** as an Additional Insured or whose name is on file with us. Coverage is with respect to:

1. Section I - Coverage A; or

If an assignment is sought, an insured shall:

- a. sign and deliver all related papers;
- b. cooperate with us in a reasonable manner; and
- c. do nothing after a loss to prejudice such rights.

Subrogation does not apply under Section II to Medical Payments to Others or Damage to Property of Others.

9. **Death.** If any person named in the **Declarations** or the spouse, if a resident of the same household, dies:

a. we insure the legal representative of the deceased. This condition applies only with respect to the premises and property of the deceased covered under this policy at the time of death;

b. insured includes:

- (1) any member of your household who is an insured at the time of your death, but only while a resident of the residence premises; and
- (2) with respect to your property, the person having proper temporary custody of the property until appointment and qualification of a legal representative.

10. **Conformity to State Law.** When a policy provision is in conflict with the applicable law of the State in which this policy is issued, the law of the State will apply.

2. Section II - Coverages L and M but only with respect to the residence premises. This coverage does not apply to **bodily injury** to an employee arising out of or in the course of the employee's employment by the person or organization.

This option applies only with respect to the location shown in the **Declarations**.

Option BP - Business Property.

COVERAGE B - PERSONAL PROPERTY, Special Limits of Liability, item b. is changed as follows:

The \$1,000 limit is replaced with the amount shown in the Declarations for this option.

Option BU - Business Pursuits.

Section II - Exclusion 1.b. is modified as follows:

1. Section II coverage applies to the **business** pursuits of an **insured** who is a:

- a. clerical office employee, salesperson, collector, messenger; or
- b. teacher (except college, university and professional athletic coaches), school principal or school administrator;

while acting within the scope of the above listed occupations.

2. However, no coverage is provided:

- a. for **bodily injury** or **property damage** arising out of a **business** owned or financially controlled by the **insured** or by a partnership of which the **insured** is a partner or member;
- b. for **bodily injury** or **property damage** arising out of the rendering of or failure to render professional services of any nature (other than teaching or school administration). This exclusion includes but is not limited to:
 - (1) architectural, engineering or industrial design services;
 - (2) medical, surgical, dental or other services or treatment conducive to the health of persons or animals; and
 - (3) beauty or barber services or treatment;
- c. for **bodily injury** to a fellow employee of the **insured** injured in the course of employment; or
- d. when the **insured** is a member of the faculty or teaching staff of a school or college:
 - (1) for **bodily injury** or **property damage** arising out of the maintenance, use, loading or unloading of:

(a) draft or saddle animals, including vehicles for use with them; or

(b) aircraft, **motor vehicles**, recreational motor vehicles or watercraft, airboats, air cushions or personal watercraft which use a water jet pump powered by an internal combustion engine as the primary source of propulsion;

owned or operated, or hired by or for the **insured** or employer of the **insured** or used by the **insured** for the purpose of instruction in the use thereof; or

(2) under Coverage M for **bodily injury** to a pupil arising out of corporal punishment administered by or at the direction of the **insured**.

Option FA - Firearms. Firearms are insured for accidental direct physical loss or damage.

The limits for this option are shown in the Declarations. The first amount is the limit for any one article; the second amount is the aggregate limit for each loss.

The following additional provisions apply:

1. we do not insure for any loss to the property described in this option either consisting of, or directly and immediately caused by, one or more of the following:
 - a. mechanical breakdown, wear and tear, gradual deterioration;
 - b. insects or vermin;
 - c. any process of refinishing, renovating, or repairing;
 - d. dampness of atmosphere or extremes of temperatures;
 - e. inherent defect or faulty manufacture;
 - f. rust, fouling or explosion of firearms;
 - g. breakage, marring, scratching, tearing or denting unless caused by fire, thieves or accidents to conveyances; or

- h. infidelity of an insured's employees or persons to whom the insured property may be entrusted or rented;
- 2. our limit for loss by any Coverage B peril except theft is the limit shown in the **Declarations** for Coverage B, plus the aggregate limit;
- 3. our limits for loss by theft are those shown in the **Declarations** for this option. These limits apply in lieu of the Coverage B theft limit; and
- 4. our limits for loss by any covered peril except those in items 2. and 3. are those shown in the **Declarations**.

Option HC - Home Computer. The Section I - Special Limits of Liability for electronic data processing equipment and the recording or storage media used with that equipment is increased to be the amount shown on the **Declarations** for this option.

Option IO - Incidental Business. The coverage provided by this option applies only to that incidental **business** occupancy on file with us.

- 1. Section I: **COVERAGE B - PERSONAL PROPERTY** is extended to include equipment, supplies and furnishings usual and incidental to this **business** occupancy. This Optional Policy Provision does not include electronic data processing equipment or the recording or storage media used with that equipment or merchandise held as samples or for sale or for delivery after sale.

The Option IO limits are shown in the **Declarations**. The first limit applies to property on the **residence** premises. The second limit applies to property while off the **residence** premises. These limits are in addition to the Section I, **COVERAGE B - PERSONAL PROPERTY, Special Limits of Liability** on property used or intended for use in a **business**.

- 2. Section II: The **residence** premises is not considered **business** property because an insured occupies a part of it as an incidental **business**.
- 3. Section II: Exclusion 1.b. of Coverage L and Coverage M is replaced with the following:
 - b. **bodily injury or property damage** arising out of **business** pursuits of an insured or the rental or

holding for rental of any part of any premises by an insured. This exclusion does not apply:

- (1) to activities which are ordinarily incidental to non-**business** pursuits or to **business** pursuits of an insured which are necessary or incidental to the use of the **residence** premises as an incidental **business**;
- (2) with respect to Coverage L to the occasional or part-time **business** pursuits of an insured who is under 19 years of age;
- (3) to the rental or holding for rental of a residence of yours:
 - (a) on an occasional basis for exclusive use as a residence;
 - (b) in part, unless intended for use as a residence by more than two roomers or boarders; or
 - (c) in part, as an incidental **business** or private garage;
- (4) when the dwelling on the **residence** premises is a two family dwelling and you occupy one part and rent or hold for rental the other part; or
- (5) to farm land (without buildings) not in excess of 500 acres, rented or held for rental to others.

4. This insurance does not apply to:

- a. **bodily injury** to an employee of an insured arising out of the **residence** premises as an incidental **business** other than to a **residence** employee while engaged in the employee's employment by an insured;
- b. **bodily injury** to a pupil arising out of corporal punishment administered by or at the direction of the insured;
- c. liability arising out of any acts, errors or omissions of an insured, or any other person for whose acts an insured is liable, resulting from the preparation or approval of data, plans, designs, opinions, reports

programs, specifications, supervisory inspections or engineering services in the conduct of an insured's incidental business involving data processing, computer consulting or computer programming; or

d. any claim made or suit brought against any insured by:

(1) any person who is in the care of any insured because of child care services provided by or at the direction of:

(a) any insured;

(b) any employee of any insured; or

(c) any other person actually or apparently acting on behalf of any insured; or

(2) any person who makes a claim because of bodily injury to any person who is in the care of any insured because of child care services provided by or at the direction of:

(a) any insured;

(b) any employee of any insured; or

(c) any other person actually or apparently acting on behalf of any insured.

Coverage M does not apply to any person indicated in (1) and (2) above.

This exclusion does not apply to the occasional child care services provided by any insured, or to the part-time child care services provided by any insured who is under 19 years of age.

Option JF - Jewelry and Furs. Under SECTION I - ADDITIONAL COVERAGES, item 10. is changed as follows:

1. the "\$1,500" limit is replaced with the first amount shown in the Declarations for this option; and

2. the "\$2,500" limit is replaced with the second amount shown in the Declarations for this option.

Option SG - Silverware and Goldware Theft. The theft limit on silverware and goldware is increased to be the amount shown in the Declarations for this option.

IN WITNESS WHEREOF, this Company has executed and attested these presents; but this policy shall not be valid unless countersigned by the duly authorized Agent of this Company at the agency hereinbefore mentioned.

Laura P. Sullivan

Secretary

Edward B. Rust, Jr.

President

The Board of Directors, in accordance with Article VI(c) of this Company's Articles of Incorporation, may from time to time distribute equitably to the holders of the participating policies issued by said Company such sums out of its earnings as in its judgment proper.