

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

No. 29784

NATIONWIDE AGRIBUSINESS
INSURANCE COMPANY,

PLAINTIFF and APPELLEE

v.

BURJES FITCH, CHERYL FITCH, TRUETT
FITCH, THEO FITCH, FITCH FARMS, and BC
FITCH PARTNERSHIP,

DEFENDANTS,
and

HUNTER PETERSON,

DEFENDANT and APPELLANT

APPEAL FROM THE CIRCUIT COURT OF
THE SIXTH JUDICIAL CIRCUIT
HAAKON COUNTY, SOUTH DAKOTA

HONORABLE MARGO D. NORTHRUP
Circuit Court Judge

APPELLANT'S BRIEF

BRET C. MERKLE
P. O. Box 90708
Sioux Falls, South Dakota 57109-0708
605-339-1420-phone
605-339-1423-fax
bret@merklelaw.com

Co-Counsel for Defendant and Appellant

MICHAEL J. MCGILL

Attorney at Law

P.O. Box 32

Beresford, SD 57004

605-763-2057

mjmc@bmtc.net

Co-Counsel for Defendant and Appellant.

MICHAEL F. SHAW

TERRA M. FISHER-LARSON

May, Adam, Gerdes & Thompson LLP

P. O. Box 160

Pierre, SD 57501

Attorneys for Plaintiff

E-Mail: mfs@mayadam.net and tmf@mayadam.net

Attorneys for Plaintiff and Appellee.

NOTICE OF APPEAL FILED ON THE 5TH DAY OF OCTOBER, 2021.

TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
PRELIMINARY STATEMENT	1
JURISDICTIONAL STATEMENT	1
STATEMENT OF ISSUES	1
STATEMENT OF THE CASE	2
STATEMENT OF THE FACTS	3
ARGUMENT	9
CONCLUSION	28

TABLE OF AUTHORITIES

CASES:

<u>Ashby v. Nwtrn Public Service Co.</u> , 490 NW2d 286, 288 (S.D. 1992)	10
<u>Bozied v. City of Brookings</u> , 2001 S.D. 150, 638 N. W. 2d 264 , id	10, 12, 27
<u>Cawthon v. State Farm Fire & Cas. Co.</u> , 965 F. Supp. 1262 (W.D.Mo. 1997)	21, 24
<u>Chord v. Reynolds</u> , 1999 S.D. 1, 587 N.W.2d, 729.	1, 13
<u>Great Western Cas. Co. v. Bergeson</u> , 550 N.W. 2d 418 (S.D. 1996).	1, 2
<u>Houser v. Gilbert</u> , 389 N.W.2d 626, 631 (N.D. 1986)	23, 24
<u>Johnson v. Rapid City Softball Assoc.</u> , 514 N.W.2d 693(S.D. 1994).	1, 2
<u>Kalell v. Mut. Fire Auto Ins. Co.</u> , 471 N.W. 2d, 865 (IA 1991)(MN 1983).	2, 21
<u>Krumvieda v. Hammond</u> , 71 S.D. 544, 549, 27 N.W.2d 583, 586 (1947)	27
<u>North Star Mutual Insurance v. Korzan</u> , 2015 S.D. 97, 873 N.W.2d, 557.	2, 22, 23, 25
<u>Schlueter v. Grinnell Mut. Reins. Co.</u> , 553 N.W.2d 614 (Iowa Ct.App.1996)	22, 27
<u>Wallace v. Brende</u> , 67 S.D. 326, 330, 292 N.W. 870, 872-73 (1940)	27
<u>Wilson v. Great Northern Railroad Company</u> , 83 S.D. 207, 157 N.W.2d (1968).	1, 10

SECONDARY AUTHORITIES:

South Dakota Pattern Jury Instructions, Civil, 20-10-10	26
South Dakota Pattern Jury Instructions, Civil, 20-10-20	26

PRELIMINARY STATEMENT

Appellant Hunter Peterson, Sr. shall be referred to as “Hunter”. Burjes Fitch and Cheryl Fitch shall be referred to as “Burjes” and “Cheryl”. Truett Fitch shall be referred to as “Truett” and Theo Fitch shall be referred to as “Theo”. Appellee Nationwide Agribusiness Insurance Company shall be referred to as “Nationwide” or “Appellee”. The Deposition of Hunter Peterson shall be referred to as “HP” followed by the page number. Reference to the Bates-stamped documents shall be referred to as “Bates” with page number.

JURISDICTIONAL STATEMENT

On August 31, 2021, Margo D. Northrup, Haakon County Circuit Court Judge, Sixth Judicial Circuit, filed a Memorandum Decision granting Summary Judgment to Nationwide. On September 13, 2021 Judge Northrup filed with the Clerk the Order Granting Nationwide’s Motion. The Order is a final Order. Hunter filed a Notice of Appeal on October 5, 2021. Nationwide filed a Notice of Review on October 13, 2021.

STATEMENT OF ISSUES

1. By notice of review, whether the trial court erred in ruling there are genuine issues of disputed material facts concerning whether Hunter Peterson was an “employee” or a “farm employee” as set forth and defined under the policy. The trial court denied Nationwide’s Motion for Summary Judgment and ruled that genuine issues of disputed material fact existed as to whether Hunter was an employee or farm employee.

Great West Casualty Company v. Bergeson, 550 N.W. 2d 418, 420 (S.D. 1996).
Johnson v. Rapid City Softball Association, 514 N.W.2d 693(S.D. 1994).
Wilson v. Great Northern Railroad Company, 83 S.D. 207, 157 N.W.2d (1968).
Chord v. Reynolds, 1999 S.D. 1, 587 N.W.2d, 729.

2. By notice of review, whether the trial court erred when it found there are genuine issues of disputed material fact regarding whether Hunter Peterson was an “insured” under the policy?

North Star Mutual Insurance v. Korzan, 2015 S.D. 97, 873 N.W.2d, 557.
Great Western Casualty Company v. Bergeson, 550 N.W. 2d 418 (S.D. 1996).
Johnson v. Rapid City Softball Association, 514 N.W. 2d 693 (S.D. 1994).

3. By notice of appeal, whether genuine issues of material fact exist with respect to whether Nationwide has a duty to defend and pay claims where Hunter has alleged concurrent and independent causes or theories of causation not intertwined with involvement of the recreational vehicle in the accident, where an endorsement to the policy excludes coverage for use of a recreational vehicle for a farming purpose, or where the accident occurred as a result of a combination of causes independent of the use of the recreational vehicle, including lack of training, supervision, education, and lack of warning regarding dangerous conditions with respect to rugged terrain and steep bank creek bed.

North Star Mutual Insurance v. Korzan, 2015 S.D. 97, 873 N.W.2d, 557.
Kalell v. Mutual Fire Auto Ins. Co., 471 N.W. 2d, 865 (IA 1991)(MN 1983).

STATEMENT OF THE CASE

Hunter’s complaint in the underlying action giving rise to this declaratory judgment action stated a cause of action for negligence for the failure of the Defendant’s to provide proper education and training relating to use of the Gator, for failure to warn of the dangers incident to the uneven and dangerous terrain, steep creek bank, and jagged creek bank where Hunter was to spray, for failure to supervise the safe operation of the Gator, and for failure to provide communication equipment in a remote area. Hunter Peterson Complaint, Exhibit B to Affidavit of Terra M. Larsen, (hereinafter HP

Complaint). Also, see Appendix. Hunter also alleged a second cause of action against the Defendants in the underlying civil case based on the theory of premises liability on the allegations that Hunter was a business invitee on the date of the accident; that the Defendants had reason to know of the dangerous terrain where Hunter would be spraying; that the Defendants owed Hunter a duty of reasonable and ordinary care and that they breached that duty by failing to warn Hunter of the dangerous condition consisting of the uneven terrain, steep and jagged creek bank, and by not establishing and following practices and policies that would assure the safe operation of the Gator by a minor. HP Complaint. Nationwide filed a declaratory judgment action in Haakon County Circuit Court requesting that the Court adjudicate that Nationwide had no duty to defend or indemnify Burjes, Cheryl, Truett, or Theo, Fitch Farms, and BC Fitch Partnership because Hunter was an employee and an insured and the policy provisions excluded coverage on the John Deere Gator that Hunter was operating on the date of the accident. Judge Margo D. Northrup ruled that a genuine issue of disputed material facts existed in the record regarding whether Hunter was an employee and whether he was ‘an insured’, but granted Nationwide Summary Judgment on the duty to defend and indemnify pursuant to a recreational vehicle endorsement to the policy that provided that there was no coverage for a recreational vehicle used in a farming purpose such as the spraying of weeds in a pasture.

FACTS

HUNTER PETERSON WAS NOT AN EMPLOYEE OF BURJES AND CHERYL ON THE DATE OF THE ACCIDENT

Nationwide insured Burjes and Cheryl pursuant to a general Farm Liability Policy effective February 20, 2017 to February 20, 2018. Terra Larson Affidavit, Exhibit

A. On August 13, 2017 Hunter Peterson was spraying noxious weeds on the property owned by Burjes and Cheryl using a 2011 John Deere Gator owned by Burjes and Cheryl. HP Complaint.

On August 13, 2017, Burjes' and Cheryl's son Truett called Hunter, who is the grandson of Burjes and Cheryl and lives in the city of Phillip, South Dakota, and requested Hunter to come out to Burjes' and Cheryl's ranch to help spray weeds in the pasture. HP Complaint, paragraph 6. When Hunter arrived, Truett asked him to spray using the John Deere Gator XUP equipped with a 100-gallon sprayer showing him where to spray. HP Complaint, paragraph 6. Truett provided no instruction or direction and left Hunter with the Gator and the sprayer. HP Complaint, paragraph 9. Hunter was required to both operate the vehicle and use a spray wand to spray weeds at the same time. HP Deposition, page 30, lines 3-12. Prior to August 13, 2017 Hunter had not operated a UTV such as the Gator nor operated a sprayer of any sort. HP Complaint, paragraph 7. At no time prior to August 13, 2017 had any of the Defendants in the underlying action that gives rise to this declaratory judgment action discussed with Hunter any terms of employment such as expected work hours, hourly pay, compensation, scope of employment, or type of work required. HP Complaint, paragraph 8. Neither did any of the Defendants in the underlying action provide Hunter with direction, training, or education on how to safely operate the Gator or sprayer. HP Complaint, paragraph 9. Neither did any of the Defendants provide Hunter with any sort of communication equipment for emergencies. HP Complaint, paragraph 10. Most importantly given the strict language of the insurance policy there was no employment "agreement", either

written or oral as of the date of the accident on August 13, 2017. HP Deposition, page 22, line 6 to page 24, line 23.

Hunter was operating the Gator to spray weed chemical as requested by Truett on the real property owned by Burjes and Cheryl in Haakon County, South Dakota in a pasture along a creek with rugged, uneven terrain, when the Gator tipped over and trapped his legs underneath it. HP Complaint, paragraph 11. Hunter laid trapped with the full weight of the Gator on him, cutting off the blood flow to his legs for several hours until he was discovered. HP Complaint, paragraph 11. Hunter suffered severe permanent bodily injuries. HP Complaint, paragraph 17. Based upon theories of general negligence and premises liability, Hunter has commenced a legal action against Burjes, Cheryl, Truett, Theo, Fitch Farms, and BC Fitch Partnership. HP Complaint. Hunter has suffered severe bodily injuries that required multiple surgeries, was hospitalized for several months, and he underwent extensive physical therapy, incurring Medical expenses in the amount of \$372,881.48 and will continue to incur Medical expenses in the future in an amount that will be proven at trial in the underlying action. HP Complaint, paragraph 17.

Hunter was not an employee as defined by the Insurance Policy because he was an intermittent helper on the farm and there was no written, oral or implied agreement with Burjes and Cheryl for his employment. Hunter Peterson Deposition dated March 25, 2021 (hereinafter HP Deposition) page 22, line 6 to page 28, line 24. Hunter had no discussion with Burjes or Cheryl, regarding any employment agreement on the date of the accident of August 13, 2017. HP Deposition page 26, line 10 to page 28, line 24. Hunter

never worked as an employee for his Uncles Truett Fitch or Theo Fitch or for his Grandfather Burjes. HP Deposition page 22, line 6-9.

On occasion Hunter's uncles or grandfather would call Hunter in the summertime if they needed help branding cattle, but Hunter was never employed on a full-time basis. HP Deposition page 22, line 8. If and when Hunter's grandfather or uncles called him to come out to the farm to help they paid him a minimal amount in the neighborhood of \$50.00. HP Deposition page 22, line 12 – 16. Burjes, Truett and Theo never negotiated an hourly rate with Hunter. HP Deposition page 22, line 20-22. Hunter never kept track of hours and neither did Burjes or Hunter's Uncles Truett or Theo. HP Deposition page 22, line 22-23. In the summers prior to the accident, Hunter drove a tractor on the farm a little bit, three- or four-times moving bales. HP Deposition page 23, lines 1-8. On the date of the accident on August 13, 2017 Hunter had no conversation with Burjes about going to the pasture to spray weeds and he was at home when his Uncle Truett called and asked if Hunter was busy. HP page 26, line 21-22. Hunter's Uncle Truett asked Hunter if he could come out and spray weeds and Hunter stated that he would. HP Deposition page 27, line 12.

On the date of the accident, Truett drove the John Deere Gator to the pasture with Hunter a passenger and showed Hunter how to spray the weeds and how to identify a Canadian thistle. HP Deposition page 28, lines 20-24. After the accident, Burjes issued to Hunter a W-2 for 2017 in the amount of \$3,425.00 but Hunter had no conversation with Burjes regarding the amount of the payment and what it was for. HP Deposition page 90, line 18 through page 91, line 14. Prior to the accident if Hunter were to go to the farm to help his uncles, typically his grandfather was making the payment and it was typically a

minimal payment. HP Deposition page 91, lines 3-6. Hunter was not aware that he received compensation in the amount stated in the W-2 as it was deposited in his bank without his knowledge. HP Deposition page 91, lines 16 – 20.

HUNTER WAS NOT “AN INSURED”

An exclusion exists under the Farm Liability Coverage Form set forth at Bates page 76, et seq, for any bodily injury or property damage arising out of ownership, maintenance, use, operation “loading or unloading”, or entrustment to others of anyrecreational vehicle owned, or operated byany insured. See Farm Liability Coverage Form Provision A. Coverages – Coverage H, (2) exclusions (K.) at Bates page 81. The Recreational Vehicle Liability Coverage Endorsement provides that the basic coverage for Coverage H- Bodily Injury and Property Damage Liability and Coverage J – Medical Payments, including any duty the Insurance Company has to defend suits does not apply to any recreational vehicle while being used for any “business” or “farming” purposes. Bates page 121, Recreational Vehicle Liability Coverage Endorsement. Hunter is not an insured under the Recreational Vehicle Liability Coverage Endorsement because the insurance policy does not apply to any recreational vehicle while being used for any “business” or “farming” purposes. See Bates page 121, Recreational Vehicle Liability Coverage Endorsement.

The Recreational Vehicle Expanded Medical Payments Coverage Endorsement modifies the definition of “WHO IS AN INSURED” in the main policy and any person using a recreational vehicle with the permission of the named insured on either an insured location or off an insured location is an insured, when coverage has been added by endorsement to the policy provided the insurance applies to the recreational vehicle.

Bates page 117, Recreational Vehicle Expanded Medical Payments Coverage Endorsement. (Emphasis added). Hunter cannot be classified as an insured under the “WHO IS AN INSURED” provisions of the Recreational Vehicle Expanded Medical Payments Coverage Endorsement set forth on Bates page 117 because the Recreational Vehicle Liability Coverage Endorsement at Bates page 121 excludes any insurance coverage for any recreational vehicle used for any “business” or “farming” purposes. Bates page 121, Recreational Vehicle Liability Coverage Endorsement.

FARM LIABILITY COVERAGE FORM APPLIES TO NEGLIGENCE AND
PREMISES LIABILITY CLAIMS IRRESPECTIVE OF RECREATIONAL VEHICLE
EXCLUSION

The main policy provides insurance coverage for Hunter’s claims of negligence and premises liability pursuant to Coverage H-Bodily Injury and Property Damage Liability pursuant to section 1., Insuring Agreement that provides at subparagraph (b) that “This insurance applies to “bodily injury” or property damage only if:

1. The “bodily injury” or “property damage” is caused by an occurrence that takes place in the ‘coverage territory’.
2. The “bodily injury” or “property damage” first occurs during the policy period.
3. The “bodily injury” or property damage” occurs out of the “personal activities” or out of operations usual or incidental to “farming”. Bates page 76, Farm Liability Coverage Form.

The accident occurred within the “coverage territory” as the Hillen place where the accident occurred is real property owned by Burjes and Cheryl. Burjes recorded and transcribed statement dated August 16, 2017, Exhibit E, page 1, lines 13-18. The accident occurred during the policy coverage period of February 20, 2017 to February 20, 2018 as the accident occurred on August 13, 2017. Hunter Deposition, page13, lines 1-6 and

Affidavit of Terra M. Larson in support of Plaintiff's motion for summary judgment, paragraph 2.

The bodily injury sustained by Hunter occurred or arose from "personal activities" of the insured Burjes and Cheryl, the named insureds, or out of operations usual or incidental to "farming" as Hunter was injured while engaged in spraying thistles on a recreational vehicle owned by Burjes on rough terrain in a pasture adjoining a creek bed with a very steep bank on real property owned by Burjes and Cheryl where the thistles were at the bottom of the creek bed and Hunter operated the John Deer Gator while using a spray wand to spray the thistles. Burjes recorded and transcribed statement dated August 16, 2017, Exhibit E, page 2, lines 3-5; Burjes recorded and transcribed statement dated August 16, 2017, Exhibit E, page 1, lines 13-18; Hunter Deposition, page 35, line 6 to page 41, line 17; and Exhibit 2 to HP Deposition.

ARGUMENT
SUMMARY JUDGMENT STANDARD

Certain guiding principles on the use of summary judgment have evolved. They are: (1) The evidence must be viewed most favorable to the nonmoving party; (2) The burden of proof is upon the movant to show clearly that there is no genuine issue of material fact and that he is entitled to judgment as a matter of law; (3) Though the purpose of the rule is to secure a just, speedy and inexpensive determination of the action, it was never intended to be used as a substitute for a court trial or for a trial by jury where any genuine issue of material fact exists. (4) A surmise that a party will not prevail upon trial is not sufficient basis to grant the motion on issues which are not shown to be sham, frivolous or so unsubstantial that it is obvious it would be futile to try them. (5) Summary judgment is an extreme remedy and should be awarded only when the truth is clear and

reasonable doubts touching the existence of a genuine issue as to material fact should be resolved against the movant. (6) Where, however, no genuine issue of fact exists it is looked upon with favor and is particularly adaptable to expose sham claims and defenses. Wilson v. Great Northern Ry. Co., 83. S.D. 207, 157 N. W. ed 19 (1968). The evidence must be viewed most favorably to the non-moving party, and reasonable doubt should be resolved against the moving party. Wilson, id. The non-moving party, however, must present specific facts showing that a genuine, material issue for trial exists. The Court's task is to determine only whether a genuine issue or material fact exists. Ashby v. Northwestern Public Service Company, 490 NW2d 286, 288 (S.D. 1992). Summary judgment is not the proper method to dispose of factual questions. Bozied v. City of Brookings, 2001 S.D. 150, 638 N. W. 2d 264, id. Only when fact issues are undisputed will issues become questions of law for the court. Bozied, id.

SUMMARY OF HUNTER'S ARGUMENT THAT PLAINTFF HAS A DUTY
TO DEFEND AND PAY CLAIMS IF HUNTER IS FOUND TO BE A NON-
EMPLOYEE WHERE NO COVERAGE EXISTS ON RECREATIONAL VEHICLE

It is important to understand Hunter's claims in the underlying action and analyze those allegations in the context of Nationwide's arguments in this declaratory judgment action. Nationwide is asking the court to declare that Hunter was an employee under the definitions in the policy and therefore the insurance does not cover his claims. Hunter claims that there is a genuine issue of material fact on the issue of his employment status. The trial court agreed. If the court were to rule that Hunter is an employee that would foreclose any duty on the part of Nationwide to defend or pay claims under the policy on both of Hunter's theories of recovery in the underlying action. However, if the court were to conclude that a fact issue exists on Hunter's employment status, the motion for

summary judgment should be denied and the court can take up the second position advanced by Nationwide. Nationwide's second claim is that even if Hunter is not an employee, that Nationwide has no duty to defend or pay this claim because Hunter is "an insured" under the Recreational Vehicle Medical Payment Endorsement and the Recreational Vehicle Endorsement referred to in this brief. Hunter presents facts and arguments in this action indicating that there is no coverage on the recreational vehicle under the endorsements relied upon by Nationwide and therefore he cannot be defined as "an insured" as there is no insurance coverage on the recreational vehicle when used on the insured location for a farming purpose.

Notwithstanding that there is no coverage on the recreational vehicle under the endorsement, if the court were to conclude that there is a fact issue on the employment status of Hunter, Nationwide is obligated to defend and possibly pay the claims arising out of Hunter's underlying suit based on his theories of general negligence and premises liability that exist irrespective of the fact that the accident occurred while Hunter was operating a recreational vehicle pursuant to Coverage H set out a Bates page 76. Hunter argues that where an accident is caused by both an excluded risk (Hunter's use of the Recreational Vehicle to spray the weeds excluded under the Recreational Vehicle business use exclusion) and an included risk (premises liability related to the failure to warn Hunter and provide guidance and training with respect to operating the John Deer Gator on the uneven terrain, jagged and steep creek bed), coverage under the General Farm Liability Coverage Form, Coverage H is applicable to require Nationwide to defend and pay indemnity claims in this case.

FIRST ISSUE WHETHER HUNTER WAS AN EMPLOYEE UNDER THE TERMS
OF THE POLCY AND THEREFORE BARRED FROM MAKING A CLAIM
AGAINST THE NAMED INSUREDS

Nationwide alleges that Hunter was an Burjes' and Cheryl's employee at the time of the incident. Hunter asserts that a genuine issue of fact exists under South Dakota law and under the terms of the insurance policy as to whether he was an employee. The trial court agreed with Hunter. The definition of employee is found in the insurance policy at Bates page 100: "any person providing a service to the insured, whether the employment agreement is expressed or implied, oral or written, lawful or unlawful, including relatives, aliens, and minors regardless of the duration of employment or whether the person is compensated." (Emphasis added). The key point of the definition is that there must be an "agreement." According to Black's Law Dictionary 89 (4th ed. 1968) an "agreement" is defined as "The act of two or more persons, who unite in expressing a mutual and common purpose, with the view of altering their rights and obligations. The union of two or more minds in a thing done or to be done; a mutual assent to do a thing."

Here there was no "agreement" between Burjes and Cheryl and Hunter to do the spraying that day. Nationwide raised the notion of an implied agreement before the trial court, citing Black's Law Dictionary 62 (5th ed. 1979), that such an agreement is to be "one inferred from the acts or conduct of the parties, instead of being expressed by them in written or spoken words". However, to determine whether an implied agreement exists, the court would have to engage in fact finding which is not the appropriate method to dispose of factual questions. Bozied v. City of Brookings, 2001 S. D. 150, 638 N. W. 2d 264.

This is a situation of an intermittent “grandpa’s helper”. The facts presented in this case are vastly different than the facts presented in Chord v. Reynolds, 1999 S.D., 587 NW2d 729. In Chord, the insurance company had no duty to defend or pay claims to the injured Plaintiff based on a negligence action against the insured because Chord was found to be an employee of the named insured under the facts of that case and under the terms of the policy. The employment relationship in Chord indicated that the employer originally hired Chord as “day help”. Chord earned \$80.00 a day with no benefits. His hours of employment were on a daily basis from 5:00 a.m. or 5:30 a.m. until the work was done. His duties consisted of caring for cattle, fencing, and monitoring and maintaining the ranch. Subsequently Reynolds, the employer, placed Chord in a permanent position. Reynolds changed Chord’s pay to \$2,080.00 a month, told him he would have medical insurance, a house to live in, beef, and the use of the ranch to graze his cattle. He was given a job title of “subforeman”. Chord worked on a daily basis under the supervision and control of his employer. Chord was clearly an employee under the terms of the policy and as a matter of fact. Chord was involved in an accident and severely injured. He sued his employer. The trial court granted the insurance company’s motion for summary judgment dismissing Chord’s claim under the policy on the grounds that Chord was an employee and under the terms of the policy was precluded from filing a claim against the named insured and employer.

Hunter’s factual situation presents a completely different story. Hunter is a minor child. There is no written or oral agreement. Hunter did not have a discussion with the insureds, Burjes and Cheryl regarding his employment. Hunter was not paid a regular monthly salary. Hunter did not work on a daily basis as Chord did. He did not receive

benefits. He was not given a house to live in. He did not receive any training or supervision. There was no established rate of pay, duties, or hours. This was a happenstance situation. The key point is that under the terms of the definition contained in the insurance policy there was no “agreement” for employment. Accordingly, Hunter is not precluded from bringing a claim under the insurance policy because he was an employee. Certainly, a genuine and material dispute of fact exists as to whether Hunter was an employee and therefore it is appropriate for the Court to deny the Motion for Summary Judgment on this issue.

SECOND ISSUE
WHETHER A GENUINE ISSUE OF MATERIAL FACT
EXISTS AS TO WHETHER HUNTER PETERSON IS “AN INSURED” UNDER THE
TERMS OF THE POLICY.

Aside from the factual issue of whether Hunter was an employee, Nationwide is also alleging that Hunter is “an insured” because he was utilizing a recreational vehicle on the business premises. Nationwide argues that the exclusion from coverage set forth in the Farm Liability Coverage Form subparagraph A (2) item U on Bates page 84 applies to Hunter and bars him from making a claim under the policy. This provision excludes coverage for any bodily injury to “any insured”. Nationwide argues that Hunter was an insured by virtue of the various provisions of the policy relating to the use of recreational vehicles, particularly the Recreational Vehicle Expanded Medical Payments Coverage Endorsement set forth on Bates page 117.

Under the facts relating to the accident, Hunter was not an insured at the time of the accident as the term “Insured” is defined in the language of the policy. To analyze the factual background of Nationwide’s position, it is necessary to do a step-by-step analysis of the treatment of recreational vehicle coverage in the policy and the

endorsements. First, the Farm Liability Coverage Form commencing at Bates page 76 sets forth the “Bodily Injury and Property Damages Liability Coverage” referred to as “Coverage H”. Recreational vehicles are excluded from this coverage in subparagraph 2. (K) on Bates page 81. The policy provisions state that “this insurance does not apply to any “Bodily Injury” arising out of ownership or use of a recreational vehicle owned by any insured”. Therefore, the starting point is that there is no insurance coverage on any recreational vehicle.

Next, one must examine “Coverage J”, the Medical Payments Coverage. Coverage J. defines the Medical Payments Provisions. Since recreational vehicles are excluded there would be no medical pay for use of a recreational vehicle absent any modification of the policy by the addition of endorsements. Now we turn to the provision of the policy entitled: “Who Is An Insured” commencing at Bates page 94. In paragraph 6 thereof, the policy provides that “any person using a ‘recreational vehicle’ or “mobile equipment” on the “insured location” with your consent is an insured provided this insurance applies to the recreational vehicle or mobile equipment.” (Emphasis added). However, because recreational vehicles are excluded from coverage in Coverage H, at exclusion 2(K) at Bates page 81, there is no Medical Pay Coverage under Coverage J for a recreational vehicle and therefore Hunter would not be “an insured”.

The next step in the analysis is found at Bates’ page 117, the Recreational Vehicle Expanded Medical Payments Coverage Endorsement. This endorsement does two things. First, it provides medical payments to any person while an occupant of a recreational vehicle with the insured’s permission. But this does not render Hunter “an insured”. The first change made by this endorsement only provides medical pay if anyone is injured

when using an insured recreational vehicle. The second change this endorsement makes to the main policy is to delete Section C, "Who Is An Insured", paragraph 6, of the main policy and replaces it with language that states that as follows:

B. Under Section C. WHO IS AN INSURED, paragraph 6 is deleted and replaced by the following:

6. Any person using a:
- (a.) "recreational vehicle" on "an insured location",
 - (b.) "recreational vehicle" off an "insured location" when coverage has been added by endorsement, or
 - (c.) "mobile equipment" on or off an "insured location"
- with your permission or consent is an insured provided this insurance applies to the "recreational vehicle" or "mobile equipment". (Emphasis added).

Based upon the wording of this endorsement, this endorsement only applies to Coverage J- Medical Payments. It is not clear that the Recreational Vehicle Expanded Medical Payments Coverage Endorsement applies to Coverage H, General Farm Liability. And, importantly, this definition that would include Hunter as an insured only applies if there is insurance applicable to the recreational vehicle under the facts and under the entire policy and all the endorsements!

The next step in the analysis is found at Bates page 121, Recreational Vehicle Liability Coverage Endorsement. This endorsement applies to Coverage H, Bodily Injury and Property Damage Liability, and Coverage J – Medical Payments. This endorsement applies to the recreational vehicles that are listed on and added to the policy on Form 8120, which includes the Gator involved in the accident. The endorsement also restates Section C. "WHO IS AN INSURED". This endorsement states that there will be coverage for a recreational vehicle when used off an insured location except as further

restricted by the endorsement. The endorsement then goes on to state as follows with respect to a recreational vehicle used for farming and business purposes:

C. This insurance, including any duty we have to defend “suits”, does not apply to any “recreational vehicle” ...3. While being used for any “business” or “farming” purposes; ...”

Hunter was operating the recreational vehicle for a farming purpose.

Accordingly, under the Recreational Vehicle Liability Coverage Endorsement set out at Bates page 121 there is no coverage for the Gator. As a result, Hunter is not “an insured” under the language of the policy and endorsements. It follows that he is not defined as “an insured” under the Recreational Vehicle Expanded Medical Payments Coverage Endorsement set out at Bates page 117 because the insurance does not apply to the Gator. Accordingly, the exclusion contained on Bates’ page 84 subsection U, the Exclusion for Bodily Injury to Any Insured, likewise would not be applicable.

Having established that the insurance does not cover the Gator, Hunter argues that the insurance policy still provides general liability coverage and that the Plaintiff has a duty to defend and pay claims under the general farm liability provisions of the policy with respect to Hunter’s claims based on general negligence and premises liability in connection with the dangerous condition that existed at the location of the accident, the Co-Defendants’ failure to warn Hunter about a known dangerous condition on the property where he was to spray, and the failure to provide proper equipment, training, supervision and communication equipment.

Nationwide’s reliance on the terms of the policy is misplaced as the provision in the base policy is not effective because the language has been modified by two endorsements. Coverage H, subparagraph C, Section 6 on page 21 of 29 pages (Bates

page 96), relied upon by the Nationwide, regarding use of a recreational vehicle has been modified by the Recreational Vehicle Liability Endorsement and by Schedule 8120.

Pursuant to the endorsement, the John Deere Gator Utility Vehicle was not an insured vehicle for purposes of Coverage H – Farm Liability where the John Deere Gator was being used for any “business” or “farming” purpose. (See Bates page 121). Yet the Plaintiff is relying upon the language in the base policy to argue that Hunter’s operation of the Gator rendered him “an insured”.

As a result of this analysis, there exists a genuine issue of material fact for the court to resolve by trial with respect to whether Hunter is deemed “an insured” under the terms of the policy and whether the Plaintiff has a duty to defend and pay claims under this policy regarding the general claims of negligence and premises liability,

Although the recreational vehicle is not covered by the policy, the Farm Liability provision of the policy would still remain in existence to provide insurance coverage for the claims made by Hunter against the Defendants in the underlying suit with respect to the claims of negligence and premises liability. The recreational vehicle is not covered by the policy. However, Hunter’s claims go beyond the use of the recreational vehicle and are centered on the negligence related to the lack of supervision, lack of training, lack of proper equipment to permit Hunter to exit the vehicle and spray with a hose and wand rather than operate the Gator as he was spraying with his left hand and exposure to harm related to operating the recreational vehicle,, In addition, under the theory of recovery based on premises liability as stated in his complaint Hunter is asserting a cause of action based upon the Defendants in the underlying action not providing any warning to Hunter

regarding a known dangerous condition on the real property consisting of the rough terrain where Truett requested Hunter to spray weeds.

Hunter concludes that either a general issue of material fact exists with respect to whether Hunter is “an insured” under the policy or Hunter is entitled to a declaration that he is not deemed to be an insured where the Recreational Vehicle Endorsement excludes coverage of recreational vehicles used in a farming purpose.

THIRD ISSUE

COVERAGE H-FARM LIABILITY COVERAGE FORM APPLIES TO HUNTER’S NEGLIGENCE AND PREMISES LIABILITY CLAIMS WHERE CAUSE OF ACCIDENT IS A COMBINATION OF EXCLUDED RISK AND INCLUDED RISK

The main policy provides insurance coverage for Hunter’s claims of negligence and premises liability pursuant to Coverage H-Bodily Injury and Property Damage Liability pursuant to section 1., Insuring Agreement, that provides at subparagraph (b) that “This insurance applies to “bodily injury” or property damage only if:

4. The “bodily injury” or “property damage” is caused by an occurrence that takes place in the ‘coverage territory’.

5. The “bodily injury” or “property damage” first occurs during the policy period.

6. The “bodily injury” or property damage” occurs out of the “personal activities” or out of operations usual or incidental to “farming”. Bates page 76, Farm Liability Coverage Form.

The accident occurred within the “coverage territory” as the Hillen place where the accident occurred is real property owned by Burjes and Cheryl. Burjes recorded and transcribed statement dated August 16, 2017, Exhibit E, page 1, lines 13-18. The accident occurred during the policy coverage period of February 20, 2017 to February 20, 2018 as the accident occurred on August 13, 2017. Hunter Deposition, page 13, lines 1-6 and Affidavit of Terra M. Larson in support of Plaintiff’s motion for summary judgment,

paragraph 2. The bodily injury sustained by Hunter occurred or arose from “personal activities” of the insured Burjes and Cheryl, the named insureds, or out of operations usual or incidental to “farming” as Hunter was injured while engaged in spraying thistles on a recreational vehicle owned by Burjes on rough terrain in a pasture adjoining a creek bed with a very steep bank on real property owned by Burjes and Cheryl where the thistles were at the bottom of the creek bed and Hunter operated the John Deer Gator while using a spray wand to spray the thistles. Burjes recorded and transcribed statement dated August 16, 2017, Exhibit E, page 2, lines 3-5; Burjes recorded and transcribed statement dated August 16, 2017, Exhibit E, page 1, lines 13-18; Hunter Deposition, page 35, line 6 to page 41, line 17; and Exhibit 2 to Hunter Deposition.

The accident occurred as a result of a combination of causes consisting of both excluded and included risks under the insurance policy: These causes were the rough and uneven terrain in the pasture, the jagged creek bed Hunter was following to spray the weeds at the bottom of the dry creek bed, the steep creek bank, Hunter’s use of the spraying wand and the John Deer Gator to traverse the uneven terrain in the pasture and the lack of training, supervision and proper equipment to complete the task. The legal cause of the accident was the result of two risks that are addressed in the insurance policy, general farm operations and the use of a recreational vehicle. One risk is excluded, referring to the business use of the Gator. The other risk, general farm operations, is not excluded from coverage.

Several jurisdictions have addressed whether there is coverage under a policy in the situation where there is an excluded risk and a covered risk. These jurisdictions have

concluded that if both the included and excluded risks contributed to the accident there is coverage. This is known as the concurrent cause doctrine.

In Cawthon v. State Farm Fire & Cas. Co., 965 F. Supp. 1262 (W.D.Mo. 1997), the property owner was attempting to remove a tree limb that was embedded in the ground with a nylon rope that was tied to a trailer hitch of a pickup truck. As the owner drove his truck, the limb came loose, striking and killing his grandson. There was an automobile policy and a homeowners policy in effect. The automobile policy paid, but the homeowners policy had a provision excluding coverage for "bodily injury or property damage arising out of the ownership, maintenance, [or] use of a motor vehicle owned or operated by the insured." Id. at 1264. The United States District Court for the Western District of Missouri held that "the operation of the vehicle and the negligent plan for tying the ropes were, at most, concurrent causes of [the grandson's] death. The use of the truck was an antecedent, independent factor which contributed to [the grandson's] injuries." Id. at 1269. Therefore, the court held that the vehicle exclusion clause did not preclude coverage for the negligent planning and tying of the ropes. Id. at 1270.

In Kalell v. Mut. Fire and Auto. Ins. Co., 471 N.W.2d 865 (Iowa 1991), after cutting two-thirds through a tree limb with a saw, Peterson attached a rope from the limb to a pickup truck. When the truck started to pull, the limb broke, hitting Kalell on the head. The homeowners policy contained an exclusion for occurrences "arising out of the use" of a motor vehicle. Id. at 866. Based on that exclusion, the homeowners insurance carrier asserted that its policy did not provide coverage. The district court held that the exclusion did not relieve the carrier from potential liability. The Supreme Court of Iowa affirmed, holding that "when two independent acts of negligence are alleged, one vehicle-related

and one not vehicle-related, coverage is still provided under the homeowners policy unless the vehicle-related negligence is the sole proximate cause of the injury." Id. at 868.

In Schlueter v. Grinnell Mut. Reinsurance Co., 553 N.W.2d 614 (Iowa Ct.App.1996), a farmer loaded a bale of hay onto a tractor; the tractor was then loaded onto a trailer which was hitched to a pickup truck. During transport, the hay bale fell off and was hit by a car. In addition to an automobile policy, there was a "Farm Guard I insurance policy" which excluded claims "arising out of the ownership, operation, maintenance, rental or use of ... any motor vehicle by any insured person...." Id. at 615. The Court of Appeals of Iowa held that "[a]lthough the accident here arose out of the use of a vehicle that is excluded under the policy, it also allegedly arose out of one or more concurrent nonvehicle-related acts," including the decision to load and secure the bale in the method chosen and the failure to immediately remove the hay bale once it fell off onto the road. Id. at 617. The court said that just because a motor vehicle was involved, the act of transporting the bale of hay did not cease to be farm-related. The court held that the policy exclusion did not preclude Grinnell's duty to defend its insured. Id.

In North Star Mut. Ins. Co. v. Johnson, 352 N.W.2d 791 (Minn.Ct.App. 1984), a farm sprayer was bolted to the bed of a pickup truck. While the truck was being driven for non-farm purposes, the left arm of the sprayer extended and smashed into the windshield of a car traveling in the other direction. The driver of the truck had an automobile policy and a farm policy. The farm policy carrier, North Star, sought a declaratory judgment that its policy did not cover the accident because of a motor vehicle exclusion contained in the farm policy. The Court of Appeals of Minnesota held that the accident "allegedly resulted from two independent causes—[the driver's] negligence in

operating the vehicle and in securing the sprayer arms to the unit. Since negligent maintenance and use of the sprayer is covered by the farm policy, North Star has a duty to defend, notwithstanding that the sprayer was attached to the pickup when the accident occurred." *Id.* at 794. The court held that "[t]he motor vehicle exclusion of the insured's farm policy does not exclude coverage for negligent maintenance of farm equipment solely because the equipment is attached to a motor vehicle." *Id.*

In Vang v. Vang, 490 N.W.2d 647 (Minn.Ct.App.1992), while one brother was backing a truck into a barn, the other brother became pinned between the truck and a defective barn door. The truck involved in the accident was insured by an automobile policy. In addition, the brother driving the truck was a named insured on a farm policy. The farm policy excluded liability coverage for bodily injury "arising out of the ownership, negligent entrustment, maintenance, use, loading or unloading of ... a motor vehicle owned or operated by ... any insured while away from the insured premises." *Id.* at 649. The Court of Appeals of Minnesota held that the negligent failure to warn of the defective door was independent of the negligent driving of the truck and was not "inextricably linked with operation of a motor vehicle." *Id.* at 653. Therefore, the court found that the farm policy applied and the insurer had to indemnify its insured.

The North Dakota Supreme Court in Houser v. Gilbert, 389 N.W.2d 626, 631 (N.D. 1986) held that there is "concurrent coverage under both an auto policy and a general liability policy where a vehicle-related act of negligence and a nonvehicle-related act of negligence are involved in the same accident." In Houser, the Court cites to several Minnesota cases including North Star Mut. Ins. Co. v. Johnson, 352 N.W.2d 791. Houser was a wrongful death action which arose out of a two truck collision. 389 N.W.2d 626. A

sugar beet truck deposited mud and dirt on a highway while hauling sugar beets. Later, a semi-truck traveling on that highway, because of the slippery conditions produced by the mud, lost control of the semi and collided with another semi-truck head on. The owner of the sugar beet truck was insured by two vehicle policies and one farm liability policy. The trial court found that the loss was caused by "both vehicle-related acts (use of the trucks to deposit dirt and mud on the highway) and nonvehicle-related acts (failure to remove the mud from the highway once deposited or to warn of the danger)." Id. at 628. The Court concluded that all three policies provided coverage stating, "[c]overage cannot be defeated simply because a separate excluded risk constitutes an additional cause of the injury." Id. at 631 (quoting State Farm Mut. Auto. Ins. Co. v. Partridge, 10 Cal.3d 94, 109 Cal. Rptr. 811, 514 P.2d 123, 125 (1973)). The rationale of Houser supports the conclusion there is concurrent coverage under the facts of this case. It was the inoperable tractor that gave rise to the need to hitch the tractor up and to tow it. The negligent attachment of the tow rope to the hitch caused the accident.

Under the concurrent cause doctrine, the issue is whether the alleged negligent acts, the premises liability factors and the use of the John Deer Gator, were independent factors which contributed to Hunter's injury. See Cawthon, 965 F.Supp. at 1269; see also Johnson, 352 N.W.2d at 794. Since there were "recreational vehicle"-related acts of causation and non-"recreational vehicle"-related acts of negligence related to the premises liability cause of action both involved in the same accident, concurrent coverage under the Coverage H, General Farm Liability Coverage Form exists. See Houser, 389 N.W.2d at 631.

North Star Mutual Insurance v. Korzan, 2015 S.D. 97, 873 N.W.2d 57, is a South Dakota case where our Court discusses but does not adopt the divisible concurrent cause doctrine. The Court held that in order for the concurrent divisible cause doctrine to apply and defeat the application of the Motorized Vehicle Exclusion, the Korzans must establish that they committed at least one act of negligence that could have caused the damages without the use of the motor vehicle. The independent acts of negligence which the Korzans claimed were distinct from the use of the semi truck that spread the fire to adjoining farmland were their failure to suppress the fire upon discovery, negligently directing the local Fire Department to meet at a location that was not opportune to fight the fire, failing to inspect the truck prior to transporting the hay that caused the fire and resulted in sparking fires in the adjoining land, and deciding to transport the hay when the weather conditions were conducive to wildland fire. The trial court judge ruled that the acts of negligence were inextricably entwined with use of the truck, concluding, “No truck, no fire, no lawsuit” in granting summary judgment. Korzan, Paragraph 17. The Court reasoned that “Even if we were to adopt and apply the divisible concurrent cause doctrine, each of the alleged independent acts of negligence necessarily arose from the use of the motor vehicle and could not have operated independently of the semi-truck to cause the actual injuries that occurred.”

The facts before this court are distinguishable from the facts in Korzan. The facts indicate that the legal cause of Hunter’s injuries in this case stem from the topography of the premises where he was asked to spray and operate the Gator, the lack of adequate equipment, training and supervision to permit Hunter to have exited the Gator and spray the deep creek bed on foot with a hand wand, the steep nature of the creek bed and the

requirement that Truett told Hunter to spray at the bottom of the creek bed to reach the thistles. Truett left a 17 year old boy to do a dangerous activity without any supervision, without proper equipment and without any training. These factors were the legal causes of this accident and the aggravation of the physical injuries and money damages for medical expenses. Hunter laid under the Gator for hours without any communication equipment to seek help. The physical injuries resulting from the accident were aggravated by the lack of a timely rescue response caused by the lack of a communication device as alleged in the complaint. All of these concurrent legal causes have nothing to do with operation of the Gator. Therefore independent legal cause exists separate from the use of the Gator, or in the least, there are disputed and material issues of fact that must be resolved by a trial to resolve this matter and summary judgment was not the proper method to resolve this issue

Further, even though Korzan does not adopt the divisible concurrent cause doctrine, that is not necessary for the Court to reverse the trial court in this case. South Dakota law has firmly established that the legal cause for an injury may act in combination with other causes to create an injury. See Pattern Jury Instruction 20-10-10 and cases cited therein:

A legal cause does not need to be the only cause of the [harm][harmful result]. A legal cause may act in combination with other causes to produce the [harm][harmful result].

And, see Pattern Jury Instruction 20-10-20 and cases cited therein:

The legal cause need not be the only cause, nor the last or nearest cause. It is sufficient if it concurs with some other cause acting at the same time, which in combination with it causes the [harm][harmful result]. However, for legal cause to exist, you must find that the conduct complained of was a substantial factor in bringing about the [harm][harmful result].

The trial court engaged in fact finding to determine which cause was the legal cause in this case. That is a matter for the finder of fact, not the trial court in a summary judgment proceeding. Bozied v. City of Brookings, 2001 S.D. 150, 638 N.W. 2d 264. The Supreme Court has treated the issue of legal cause as a question of fact for the jury in successive accident cases involving contemporaneous acts of negligence, or where there are two or more negligent acts that occur in such a close proximity in time that they may be said to be part of the same unbroken chain of events. See, e.g., Krumvieda v. Hammond, 71 S.D. 544, 549, 27 N.W.2d 583, 586 (1947) (stating that the question whether negligent defendant in first collision was liable for injuries suffered by plaintiff in second collision two minutes later was a question for the jury); Wallace v. Brende, 67 S.D. 326, 330, 292 N.W. 870, 872-73 (1940) (involving contemporaneous acts of negligence combining to produce injury).

The Farm Liability Coverage Form is a general liability policy for farm operations. The activities of filling the sprayer with chemical and spraying thistles in the pasture are activities within the risk the parties contemplated that there would be insurance for under the Coverage H, Farm Liability Coverage Form. Truett's alleged negligence in failing to supervise Hunter, (a 17 year old boy not experienced in operating a Gator or spray equipment), in failing to warn Hunter of the dangerous nature of the creek bed in the pasture located on uneven, rugged terrain with a very steep creek bank, failure to provide Hunter property equipment to exit the Gator and spray the thistles in the creek bed by hand and failure to provide emergency communication equipment never ceased to be farm-related and independent of use of the Gator just because a recreational vehicle was involved in the accident. See Schlueter, 553 N.W.2d at 617. As a result of the legal

causes alleged in the Complaint, Hunter was left in agony, pinned under a 2000 pound John Deer Gator for hours, 30 miles from home in remote Haakon County as a result of Truett's negligence that was not related to use of the Gator

CONCLUSION

Hunter Peterson concludes that genuine issue of material of fact exist for resolution by a court or jury trial on whether he was an "employee", whether he was a "farm employee", whether he was "an insured", and on the legal cause of the accident, irrespective of whether the John Deer Gator is excluded from coverage, where concurrent and independent legal cause exists for the accident and the main policy provides insurance coverage for Hunter's claims of negligence and premises liability pursuant to Coverage H-Bodily Injury and Property Damage Liability.

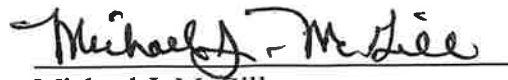
Dated this 19th day of November, 2021.

MERKLE LAW FIRM, PROF. LLC



Bret C. Merkle
P. O. Box 90708
Sioux Falls, South Dakota 57109-0708
605-339-1420-phone
605-339-1423-fax
bret@merklelaw.com
Co-Counsel for Defendant

MCGILL LAW OFFICE

A handwritten signature in black ink, reading "Michael J. McGill", is positioned above a horizontal line.

Michael J. McGill

P. O. Box 32

Beresford, South Dakota 57004

605-763-2057 phone

605-763-2201 fax

mjmc@bmtc.net

Co-Counsel for Defendant

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

NATIONWIDE AGRIBUSINESS
INSURANCE COMPANY,

PLAINTIFF and APPELLEE

v.

TABLE OF CONTENTS
APPENDIX

BURJES FITCH, CHERYL FITCH, TRUETT
FITCH, THEO FITCH, FITCH FARMS, and BC
FITCH PARTNERSHIP,

Appeal No. 29784

DEFENDANTS,
and

HUNTER PETERSON,

DEFENDANT and APPELLANT

Order Granting Plaintiff's Motion for Summary Judgment and Memorandum Decision	1
Memorandum Decision	3
Statement of Undisputed Material Facts in Resistance to Motion for Summary Judgment	12
Complaint	17

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

NATIONWIDE AGRIBUSINESS
INSURANCE COMPANY,

PLAINTIFF and APPELLEE

v.

CERTIFICATE OF COMPLIANCE
Appeal No. 29784

BURJES FITCH, CHERYL FITCH, TRUETT
FITCH, THEO FITCH, FITCH FARMS, and BC
FITCH PARTNERSHIP,

DEFENDANTS,
and

HUNTER PETERSON,

DEFENDANT and APPELLANT.

COMES NOW the undersigned, counsel of record for the Defendant and Appellant above named, and certifies to the Supreme Court of South Dakota pursuant to SDCL 15-26A-66 that the brief submitted herein on behalf of the Appellant complies with the type volume limitations specified in SDCL 15-26A-66 (b) relating to proportionally spaced typeface. Appellant's counsel further certifies that the brief contains 8,875 words consisting of 44,763 characters based upon the word character count of the word processing system used to prepare the brief.

Dated this 17th day of November, 2021.



Michael J. McGill

Attorney for the Defendant and Appellant

P.O. Box 32

Beresford, SD 57004

605-763-2057

605-763-2201 (Fax)

mjmc@bmtc.net

STATE OF SOUTH DAKOTA)
)SS
COUNTY OF HAAKON)

CIRCUIT COURT

SIXTH JUDICIAL CIRCUIT

NATIONWIDE AGRIBUSINESS
INSURANCE COMPANY,

Plaintiff,

vs.

BURJES FITCH, CHERYL FITCH, TRUETT
FITCH, THEO FITCH, FITCH FARMS, BC
FITCH PARTNERSHIP, and HUNTER
PETERSON

Defendants.

27CIV20-19

**ORDER GRANTING PLAINTIFF'S
MOTION FOR SUMMARY OF
JUDGEMENT**

THIS MATTER came before the Court for oral argument on June 23, 2021 through Plaintiff, Nationwide Agribusiness Insurance Company's ("Nationwide's") Motion for Summary Judgement pursuant to SDCL § 15-6-56. The court having considered all records and filings herein, the arguments of counsel, and the briefs herein submitted, the Court finds as follows:

The Court finds that no material of facts or issues exists between the parties precluding the entry of summary judgement and the Court may rule as a matter of law.

The Court further finds Nationwide has no further obligation to defend Burjes Fitch, Cheryl Fitch, Truett Fitch, Theo Fitch, Fitch Farms, or BC Fitch Partnership in the Circuit Court case adverse to Hunter Peterson, numbered 27CIV20-14 in the Sixth Judicial Circuit, Haakon County, South Dakota, as further set forth in the allegations contained in Nationwide's Declaratory Judgment Complaint.

The court finds that no coverage exists under the Nationwide farm liability policy FPK FMPN 3027010948, and subsequent endorsements issued by Nationwide for damages arising out of the August 13, 2017 accident and subsequent injuries of Hunter Peterson, which are the subject to Nationwide's Declaratory Judgement Complaint and 27CIV20-14.

IT IS HEREBY ORDERED, AJUDGED, AND DECREED that Summary Judgement IS GRANTED in favor of Nationwide and against all defendants in this matter and that Nationwide shall have no further obligations to defend any defendants in 27CIV20-14 nor does coverage exist under the farm liability policy FPK FMPN 3027010948 for the alleged injuries

arising out of the August 13, 2017 accident involving Hunter Peterson, which is the subject of the Declaratory Judgement Complaint and 27CIV20-14. The Memorandum Decision issued by the Court on August 31, 2021 is thereby fully incorporated into this Order.

Dated this 13th day of September, 2021.

BY THE COURT:

Margo D Northrup

Hon. Margo Northrup
Circuit Court Judge

Jennifer Jones,
(Attest) *Clerk of Courts*

STATE OF SOUTH DAKOTA
CIRCUIT COURT, HAAKON CO.

FILED

SEP 13 2021

Jennifer Jones CLERK
By _____ Deputy



**CIRCUIT COURT OF SOUTH DAKOTA
SIXTH JUDICIAL CIRCUIT**

HUGHES COUNTY COURTHOUSE
P.O. BOX 1238
PIERRE, SOUTH DAKOTA 57501-1238

MARGO NORTHRUP
CIRCUIT COURT JUDGE
Phone: (605) 773-8228
Fax: (605) 773-6492
Margo.Northrup@ujs.state.sd.us

CARISSA HOPKINS
COURT RECORDER
Phone: (605) 773-8227
Carissa.Hopkins@ujs.state.sd.us

JOSEY BLARE
SIXTH CIRCUIT LAW CLERK
Josey.Blare
@ujs.state.sd.us

August 31, 2021

Via Email only

Terra M. Fisher-Larson
PO Box 160
Pierre SD 57501

Michael J. McGill
PO Box 32
Beresford SD 57004

Joe Erickson
PO Box 1325
Watertown SD 57201

Bret Merkle
PO Box 90708
Sioux Falls SD 57109

Via Mail only

Truett Fitch
21327 211th Avenue
Philip SD 57567

Theo Fitch
21333 210th Avenue
Philip SD 57567

**RE: 27CIV20-19: Nationwide Agribusiness Insurance Co. v. Burjes Ed Fitch,
Cheryl Fitch, Hunter James Peterson, et. al**

Dear Counsel:

MEMORANDUM DECISION

A hearing was held on this matter on June 23, 2021, the Court having considered Plaintiff's Motion for Summary Judgment and the Defendants' Responses thereto, along with the entire file and records herein, now enters the following Memorandum Decision.

BACKGROUND

Nationwide Agribusiness Insurance Company ("Nationwide") issued a Farm Liability Policy FPK FMPN 3027010948 (the "Policy") to Burjes Fitch ("Burjes") and Cheryl Fitch ("Cheryl") (the "Fitches"), providing coverage for the policy period of February 20, 2017, through February 20, 2018. On or about August 13, 2017, Hunter Peterson, the grandson of Burjes and Cheryl, was contacted by Truett Fitch, his uncle, to assist with spraying noxious weeds on property leased by Burjes and Cheryl's ranch and owned by BC Fitch Limited Partnership. Truett provided Peterson with a brief explanation of his task, showing him where to spray weeds and the type of weeds he was to spray.

As he was spraying weeds near a steep creek bed, the Gator tipped over, trapping Peterson's legs underneath it. Peterson was found some hours later on the property after he failed to return to the ranch. Peterson sustained severe, permanent bodily injuries to his legs as a result of the incident. Peterson's injuries required multiple surgeries, hospitalization for several months, and extensive physical therapy.

PROCEDURAL BACKGROUND

Peterson served Fitches, Fitch Farms, BC Limited Partnership, Theo Fitch, and Truett Fitch with a Summons and Complaint on August 3, 2020. Peterson alleged negligence and premises liability stemming from the incident on August 13, 2017. Nationwide issued a reservation of rights letter to Burjes and Cheryl on September 14, 2020. On October 13, 2020, Nationwide filed the present lawsuit. In its Complaint for Declaratory Judgment, Nationwide sought a judgement declaring that Nationwide did not have any obligation to defend Fitches, et. al., and that Nationwide could recover its costs incurred in these proceedings. Nationwide filed a Motion for Summary Judgment on March 18, 2021, against Fitches, et. al. and Peterson, who both resisted the motion. A hearing was held in Hughes County on June 23, 2021, regarding Nationwide's Motion for Summary Judgment.

ISSUES

- I. Whether there are any genuine issues of disputed material facts on the issue of whether Hunter Peterson was an "employee" or a "farm employee" as defined in the Policy.**
- II. Whether Hunter Peterson is considered an "insured" under the terms of the Policy or is otherwise excluded from coverage.**
- III. Whether Coverage H applies to the Negligence and Premise Liability claims.**

STANDARD OF REVIEW

"Summary judgment is not the proper method to dispose of factual questions." *Bozied v. City of Brookings*, 2001 S.D. 150, ¶ 8, 638 N.W.2d 264, 268 (further citation omitted). "A disputed

fact is not 'material' unless it would affect the outcome of the suit under the governing substantive law in that a 'reasonable jury could return a verdict for the nonmoving party.'" *Weitzel v. Sioux Valley Heart Partners*, 2006 S.D. 45, ¶ 17, 714 N.W.2d 884, 891 (further citations omitted). "Only when questions of fact are undisputed will issues become questions of law for the court." *Bozied*, 2001 S.D. 150, ¶ 8, 638 N.W.2d at 268.

Interpretation of an insurance policy contract is a question of law. *Cornelius v. Nat'l Cas. Co.*, 2012 S.D. 29, ¶ 6, 813 N.W.2d 167, 169. There are "special rules of construction that apply when interpreting an insurance policy." *Id.* "The fact that the parties differ as to the contract's interpretation does not create an ambiguity." *Ass Kickin Ranch, LLC v. N. Star Mut. Ins. Co.*, 2012 S.D. 73, ¶ 9, 822 N.W.2d 724, 727 (citing *Zochert v. Nat'l Farmers Union Prop. & Cas. Co.*, 1998 S.D. 34 ¶ 5, 576 N.W.2d 531, 532). An insurance policy must be subject to a "reasonable interpretation and not one that amounts to an absurdity." *Ass Kickin Ranch, LLC*, 2012 S.D. 73, ¶ 10, 822 N.W.2d at 727 (further citation omitted).

An insurer's duty to defend and its duty to indemnify are separate and independent duties. *Hawkeye-Sec. Ins. Co. v. Clifford by Clifford*, 366 N.W.2d 489, 490 (S.D.1985). "The duty to defend is much broader than the duty to pay a judgment rendered against the insured." *Id.* The burden rests with the insurer "to show the claim clearly falls outside of the policy coverages" and that "there is no duty to defend." *De Smet Farm Mut. Ins. Co. of S.D.*, 2010 S.D. 15, ¶ 18, 779 N.W.2d 148, 155. We look to the pleadings in the action and the language of the policy to determine if a duty to defend exists. *Id.* ¶ 19, 779 N.W.2d at 155. If even one claim is covered by the policy, an insurer must defend. *Biegler v. Am. Family Mut. Ins. Co.*, 2001 S.D. 13, ¶ 20, 621 N.W.2d 592, 599.

ANALYSIS

I. There are genuine issues of disputed material facts on the issue of whether Hunter Peterson was an "employee" or a "farm employee" as defined in the Policy.

a. There are genuine issues of disputed material facts that Peterson was an "employee" as defined in the policy.

Nationwide argues no dispute of material fact exists as to the question of whether Peterson was an "employee" or "farm employee" under the definitions provided in the Policy. As a result, Nationwide asks the Court to grant its Motion for Summary Judgment. Fitches and Peterson urge there are genuine disputes of material fact in this case. Namely, Fitches argue there are still material facts regarding whether Peterson is considered an "employee" under the definitions provided in the Policy and specifically whether he had an implied employment agreement with Fitches. Peterson and Fitches urge the Court to deny Nationwide's Motion for Summary Judgment.

Nationwide's first argument is Peterson was both an "employee" and a "farm employee" under the policy and his injuries are excluded from both Coverage H (bodily injury) and Coverage J (medical payments). The Policy does not provide coverage for bodily injury sustained by an employee, "arising out of his or her employment by the insured, or while performing duties related to the conduct of the insured's farming operations."

Section F, DEFINITIONS, of the Policy defines employee as follows:

any person providing a service to the insured, whether the employment agreement is express or implied, oral or written, lawful or unlawful, including relatives, aliens, and minors, regardless of the duration of employment or whether the person is compensated. "Employee" includes a shared, borrowed, or leased worker, including any person hired through an employment agency.

Nationwide characterizes the relationship between the Fitches and Peterson as one of employer/employee. It relies primarily on the recorded unsworn testimony of Burjes on August 16, 2017, wherein he stated Peterson provided part-time help, during the summertime, off and on, when they needed him for jobs such as driving tractor, stacking bales, etc. In that interview he characterized the accident as "work-related". They also rely on a W-2 that was issued to Peterson at the end of the 2017 calendar year in the amount of \$3,425.00 and point to the disputed fact that Burjes indicated in a later unrecorded interview that Peterson was paid \$3,000 per month for services provided at the ranch.

Peterson and the Fitches characterize the relationship between them as one of merely grandson/grandparents. They rely primarily on the Affidavit of Burjes Fitch and the deposition of Hunter Peterson. Burjes Fitch in his Affidavit stated many grandkids came out and completed various tasks on the ranch as part of the family dynamics. There was never any discussion about wages. Peterson on various occasions would come out to help, with or without being asked to by the Fitches. In Peterson's deposition, he stated he was never employed by his grandparents. He believed that any payment made to him in 2017 was a "pity payment" that he was completely unaware of occurring. He stated there was never an hourly rate negotiated, he didn't keep track of hours, and if he helped on the farm he was sometimes given a minimal payment for his services.

The Court finds the definition of "employee" unambiguous. The "plain and ordinary meaning" of the Policy indicates any person providing a service to the insured also must have an "employment agreement" that can be implied, oral, with a relative or a minor, regardless of duration or compensation. *Hanson Farm Mut. Ins. Co. of South Dakota v. Degen*, 2013 S.D. 29, ¶ 17, 829 N.W.2d 474, 478. The Defendants concede Peterson was performing a service for the Fitches on August 13, 2017. It is undisputed Peterson had provided services to the Fitches in the past and was providing a service by helping to spray weeds on the date of his accident. Defendants however dispute whether an employment agreement existed between the Fitches and their grandson. The existence of an employment relationship is ordinarily a question of fact. *Great West Cas. Co. v. Bergeson*, 550 N.W. 2d 418, 420 (S.D. 1996). The Supreme Court has also stated, "A contract is implied in fact where the intention as to it is not manifested by direct or explicit words by the parties, but is to be gathered by implication or proper deduction from the conduct of the parties, language used, or acts done by them or other pertinent circumstances attending the transaction. *Setliff v. Akins*, 2000 S.D. 124, ¶ 12, 616 N.W. 2d 878, 885 (quoting *Mahan v. Mahan*, 80 S.D. 211, 215, 121 N.W.2d 367, 369 (1963)).

It is well settled law that a trial court is not to engage in fact finding at this stage of the proceeding. *Johnson v. Rapid City Softball Ass'n*, 514 N.W. 2d 693 (S.D. 1994). Whether Peterson

and the Fitches had an implied employment agreement is a question of fact. It is plausible after weighing the disputed facts, the factfinder could find the relationship as described by Peterson and Fitches does not meet the definition of "employee" as defined in the policy.¹ The Defendants have put forth enough material facts that could, when viewed most favorable to the nonmoving party, show that Peterson did not have an implied employment agreement with his grandparents and was not an "employee" as defined in the policy. *Wilson v. Great Northern Ry. Co.*, 83 S.D. 207, 212, 157 N.W. 2d 19, 21 (1968). Accordingly, summary judgment on this issue is denied.

b. There are genuine issues of disputed material facts that Peterson was a "farm employee" as defined by the policy.

In addition, the Policy precludes the payment of medical expenses for bodily injury to "farm employees." Section F, DEFINITIONS, of the Policy defines "farm employee", in relevant part, as follows:

[a]ny insured's employee whose duties are principally in connection with the maintenance or use of an "insured location" as a farm. These duties include the maintenance or use of that insured's farm equipment.

The Court finds the definition of "farm employee" is also not ambiguous. *Chord v. Renyolds*, 1999 S.D. 1, 587 N.W. 2d 729. Likewise, for Peterson to be considered a "farm employee", the undisputed material facts would require him to meet the definition of "insured's employee." For the reasons cited above, there are disputed issues of material fact as to this inquiry and whether Peterson is an employee. Accordingly, summary judgment on this issue is denied.

II. There are genuine disputes of material fact that Peterson is an "Insured" under the policy but Peterson is otherwise excluded from coverage under the Recreational Vehicle Liability Coverage Endorsement.

Nationwide next argues regardless of Peterson's employment status, Peterson was an "Insured" under the policy and is excluded from coverage for bodily injury under Section A.2.u of the policy. It argues the Gator drove by Peterson falls under both the definitions of "recreational vehicle" or "mobile equipment" because Peterson was operating what would normally be considered a recreational vehicle for farming purposes. It urges the Court to conclude Peterson is an insured because he was utilizing a recreational vehicle on the business premises.

Defendants, Fitches, argue the accident occurred off the "insured location", so coverage exists under Coverage H and Coverage J under the Recreational Vehicle Liability Coverage Endorsement. Defendant Peterson argues Peterson is not an "insured" under the terms of the policy. Defendant Peterson urges the Court to conclude either a general issue of material fact exists with respect to whether Hunter is an "insured" under the policy or Peterson is entitled to a declaration that he is not deemed to be an "insured" because the Recreational Vehicle Liability Coverage Endorsement excludes coverage of a recreational vehicle used for farming purposes.

¹ See generally *Center Mut. Ins. Co. v. Thompson*, 618 N.W.2d 505, 511 (2000), citing *Hudson v. Allstate Ins. Co.*, 169 So.2d 598, 602 (La.Ct.App. 1964)

In order to resolve this conflict, the Court must review the General Farm Policy and the two relevant endorsements, the Recreational Vehicle Expanded Medical Payments Coverage Endorsement and the Recreational Vehicle Liability Coverage Endorsement. The South Dakota Supreme Court has said endorsements or riders on an insurance policy become part of the policy, and must be construed with it; provisions in the body of the policy are not to be abrogated, waived, limited, or modified by the provisions of an endorsement or rider unless expressly stated therein that such provisions are substituted for those in the body of the policy, or unless the provisions in the policy proper and in the rider or endorsement are conflicting. *North Star Mut. Ins. v. Korzan*, 2015 S.D. 97, ¶ 26, 873 N.W.2d 57, 64.

i. General Farm Policy

Under the General Farm Policy, Coverage H, Nationwide will pay sums the insured becomes legally obligated to pay as damages because of bodily injury or property damage to which the insurance applies. Nationwide has a duty to defend the insured against suits seeking those damages. Nationwide does not have a duty to defend any insured seeking damages to which the insurance does not apply.

The General Farm Policy provides a number of exclusions to this coverage. In addition to excluding an “employee” as discussed above, the policy excludes coverage for 1) any bodily injury arising out of use of a recreational vehicle owned or operated by an insured except “a “recreational vehicle” owned by an insured that is maintained, used, operated by or entrusted to others by any insured provided the “occurrence” is on an “insured location” (exclusion k, subparagraph f) and 2) any bodily injury to any insured (Section A.2.u).

At least initially, Peterson is provided coverage because he was entrusted with a recreational vehicle owned by an insured and his accident occurred on an insured location. Unless of course, he meets the definition of an “insured” under other terms of the policy or there is an exclusion to this coverage. According to the first paragraph of the Farm Liability Form, the word “insured” means any person or organization qualifying as such under Section C. WHO IS AN INSURED. Under Section C, there is a lengthy list of “insureds” including 1) your “farm employees” and 2) “any person using a “recreational vehicle” or “mobile equipment” on the “insured location” with your consent is an insured provided this insurance applies to the “recreational vehicle” or “mobile equipment”.”

Under the General Farm Policy, Peterson is an “insured” if he is ultimately determined to be a “farm employee”. For reasons previously stated, this issue is a disputed material fact that ultimately would be decided by the fact finder. Peterson is also an “insured” if the insurance applies to the recreational vehicle. It is undisputed that the Gator was a “recreational vehicle” and the court finds there are no material disputed facts that the accident occurred on an “insured location²” and Peterson had consent to use the recreational vehicle.

² An “insured location” means, “Vacant land owned by or rented to an insured.” General Farm policy, p 101. The undisputed facts show the accident occurred on pasture rented by Burjes and Cheryl Fitch from BC Fitch Limited Partnership.

Under the General Farm Policy, Coverage J, Nationwide will cover reasonable medical expenses for an accident causing "bodily injury". There are also a number of exclusions from this coverage including medical payments for any "farm employee". Again, this could preclude coverage for the reasons stated above³. However, summary judgement is not proper on these grounds.

Notwithstanding the Endorsements, the coverage for Peterson can be summed up as follows:

1. Peterson is provided coverage under Coverage H for bodily injury under the exception to the exclusion found in exclusion k, subparagraph f of the Farm Policy.
2. Peterson would be denied coverage as an "insured" provided the insurance applies to the "recreational vehicle".
3. There are disputed material facts on whether Peterson is an "insured" as defined under the policy due to his employment status for both Coverage H and Coverage J.
4. Additional analysis of the Endorsements is required to determine if Peterson is an "insured" under coverage H due to his use of the recreational vehicle.
5. Additional analysis of the Endorsements is required to determine if there are additional exclusions that would preclude coverage.

ii. Recreational Vehicle Expanded Medical Payments Coverage Endorsement

Next the Court must determine if the Recreational Vehicle Expanded Medical Payments Coverage Endorsement impacts the initial determination that Peterson is an "insured." The Endorsement modifies the Farm Liability Policy. It first provides medical payments to any person while an occupant of a recreational vehicle with your permission. It also deletes and replaces Section 6. C. WHO IS AN INSURED and provides an "Insured" is:

Any person using a:

- a. "recreational vehicle" on an "insured location",
- b. "recreational vehicle" off an "insured location" when coverage has been added by endorsement, or
- c. "mobile equipment" on or off an "insured location"

with your permission or consent is an insured provided this insurance applies to the recreational vehicle or mobile equipment.

The modification changes who can be considered an "insured" under not only the Medical Payments, but the General Farm Policy because it expressly states it should substitute Paragraph 6. It does expand the definition of who is an "insured", but importantly, it does not change the language that indicates the insurance must apply to the recreational vehicle or mobile equipment. Accordingly, this Endorsement likewise may provide medical payments for Peterson, however, it

³ Even if Peterson is ultimately not found to be a "farm employee" as defined by the policy, he could arguably be considered "a person engaged in work usual or incidental to the maintenance or use of the insured location as a farm". However, a fact question exists as to whether the exclusion (i.e. a person on the insured location in a neighborly exchange of assistance for which no insured is obligated to pay any money) would apply.

does not conclusively mean he is an “insured” unless the insurance applies to the recreational vehicle or mobile equipment.

iii. Recreational Vehicle Liability Coverage Endorsement

Finally the Court must determine if the Recreational Vehicle Liability Coverage Endorsement impacts the determination that Peterson is an “insured.” On its face, the Endorsement does not impact the definition of who is an “insured” for purposes of this analysis. However, it does clearly exclude the recreational vehicles identified on Form 8120, including the Gator, of any insurance for any recreational vehicle while being used for any business or farming purposes. This excludes any coverage for Peterson previously provided in Coverage H or Coverage J. Since the insurance cannot apply to the Gator, it follows Peterson cannot be considered an “Insured” under the revised definition of WHO IS AN INSURED.

Regardless of whether Peterson is an “insured” under the policy, the Endorsement excludes coverage of any kind for recreational vehicles used for farming purposes. Although the Defendants disagree on whether spraying thistles is a farming purpose, the Court finds there are no disputed issues of material fact regarding whether utilizing the Gator to spray thistles is for farming purposes. Farming as defined in the policy means the operation of an agricultural enterprise. Agriculture is not defined in the policy, but the common definition of agriculture is “the science, art, or practice of cultivating the soil, producing crops, and raising livestock and in varying degrees the preparation and marketing of the resulting products.”⁴ The undisputed facts indicate Peterson was spraying noxious weeds which, as admitted by Burjes Fitch, was done to fulfill requirements set forth in state law⁵. The land where the accident occurred was pasture land used for summer grazing of cattle. There are no facts in dispute that indicate spraying thistles can be considered anything but a farming purpose. Accordingly, the Recreational Vehicle Liability Coverage Endorsement excludes any coverage for Peterson for under the Farm Policy including coverage or the duty to defend.

III. Coverage H does not apply to the Negligence and Premise Liability claims.

Defendants argue that despite Peterson being excluded from coverage by use of the recreational vehicle for farming purposes, the policy still provides insurance coverage for Peterson’s claims of negligence and premises liability under Coverage H. They urge the Court to find the accident occurred as a result of a combination of causes consisting of both excluded and included risks under the insurance policy. They argue the two risks are the general farm operations (i.e. the included risk) and the use of the recreational vehicle (i.e. the excluded risk). To support their position, they point to several out of state cases that adopt the concurrent cause doctrine. Plaintiff, relying on *Korzan*, 2015 S.D. 97, 873 N.W.2d 57, urges the court to rule the concurrent cause doctrine does not apply to this accident because any alleged independent acts of negligence

⁴ “Agriculture.” *Merriam-Webster.com Dictionary*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/agriculture>. Accessed 27 Aug. 2021.

⁵ The State Weed Act is administered by the South Dakota Department of Agriculture and Natural Resources and requires landowners to eradicate weed infested lands. SDCL 38-22. Under the Act, “weed” is defined as any plant which the commission has found to be detrimental to the production of crops or livestock or to the welfare of persons residing in the state”. SDCL 38-22-1.2(11)

were inextricably intertwined with the use of the Gator, therefore preventing the application of the doctrine to this case.

When a court evaluates multiple and concurrent causation for insurance coverage, the initial task is determining whether there really are two or more causes at issue or whether there is merely one cause which is being assigned different labels. 7 *Couch on Ins.* § 101.53. Although our South Dakota Supreme Court has not adopted the concurrent cause doctrine, it did discuss its application in the *Korzan* case and failed to apply the doctrine in that case. In the *Korzan* case, the Defendant urged the court to determine a grass fire caused by a vehicle was also caused by nonvehicle-related causes and the fact that they were operating a motor vehicle was not, in and of itself, determinative of the scope of coverage. *Id.* ¶ 19, 873 N.W.2d at 63. The Court found:

None of these acts are distinct from the use of a motor vehicle; rather, each act is inextricably intertwined with its use. As the *Schmitt* court stated, “the district court may consider theoretical possibilities to explain how the accident could have occurred without a motor vehicle in determining whether to apply the divisible, concurrent-cause doctrine. But if those possibilities are too remote, the doctrine will not be applied.” 651 N.W. 2nd at 849. The Korzans have failed to put forth a viable or cognizable theory as to how any of these acts could have led to the fire without the use of the motor vehicle.

Likewise, for the concurrent cause doctrine to apply to this case, the court would need to find at least one independent act of negligence entirely distinct from the use of the Gator by Peterson. Defendant identifies independent acts of negligence to include the rough terrain, the activity of spraying, the failure to warn, and the failure to provide Peterson with emergency communication. If Peterson had not been utilizing the Gator for farming purposes, he would not have been injured. The non-vehicle related causes are “inextricably intertwined” with the use of the Gator. *Id.* It was not the rough terrain, the failure to warn, or the lack of emergency devices, in and of itself, that caused the accident. Accordingly, Nationwide is entitled to summary judgment as a matter of law.

CONCLUSION

There are disputed material facts regarding whether Peterson was an “employee” or “farm employee” as defined by the policy. There are also disputed material facts regarding whether Peterson is an “insured” as defined in the policy due to his employment status. However, the Recreational Vehicle Liability Coverage Endorsement excludes coverage of recreational vehicles used for farming purposes and precludes coverage for Peterson. For the above reasons, Nationwide’s Motion for Summary Judgment is GRANTED. Plaintiff is directed to prepare an Order in accordance with this Memorandum Decision.

BY THE COURT

Margo D Northrup

Hon. Margo Northrup
Circuit Court Judge

*Statement of Disputed Material Facts
in Resistance to Motion for Summary Judgment
27CIV.20-19*

5. If and when Hunter's grandfather or uncles called him to come out to the farm to help they paid him a minimal amount in the neighborhood of \$50.00. Hunter Deposition page 22, line 12 – 16.
6. Hunter's Grandfather Burjes and his Uncles Truett Fitch and Theo Fitch never negotiated an hourly rate. Hunter Deposition page 22, line 20-22.
7. Hunter never kept track of hours and neither did Burjes or Hunter's Uncles Truett Fitch or Theo Fitch. Hunter Deposition page 22, line 22-23.
8. In the summers prior to the accident, Hunter drove a tractor on the farm a little bit, three or four times moving bales. Hunter Deposition page 23, lines 1-8.
9. On the date of the accident on August 13, 2017 Hunter had no conversation with Burjes and instead he was at home when his Uncle Truett Fitch called and asked if Hunter was busy. Hunter Deposition page 26, line 21-22.
10. Hunter's Uncle Truett Fitch asked Hunter if he could come out and spray weeds and Hunter stated that he would. Hunter Deposition page 27, line 12.
11. On the date of the accident, Hunter's Uncle Truett Fitch drove the John Deere Gator to the pasture with Hunter a passenger and showed Hunter how to spray the weeds and how to identify a Canadian thistle. Hunter Deposition page 28, lines 20-24.
12. Burjes issued to Hunter a W-2 for 2017 in the amount of \$3,425.00 but Hunter had no conversation with Burjes regarding the amount of the payment and what it was for. Hunter Deposition page 90, line 18 through page 91, line 14.
13. Prior to the accident if Hunter were to go to the farm to help his uncles, typically his grandfather was making the payment and it was typically a minimal payment. Hunter Deposition page 91, lines 3-6.
14. Hunter was not aware that he received compensation in the amount stated in the W-2 as it was deposited in his bank without his knowledge. Hunter Deposition page 91, lines 16 – 20.

HUNTER WAS NOT "AN INSURED"

15. An exclusion exists under the Farm Liability Coverage Form set forth at Bates page 76, et seq, for any bodily injury or property damage arising out of ownership, maintenance, use, operation "loading or unloading", or entrustment to others of any....recreational vehicle owned, or operated byany insured. See Farm Liability Coverage Form Provision A. Coverages – Coverage H, (2) exclusions (K.) at Bates page 81.
16. The Recreational Vehicle Liability Coverage Endorsement provides that the basic coverage for Coverage H- Bodily Injury and Property Damage Liability and Coverage J – Medical Payments, including any duty the Insurance Company has to defend suits does

*Statement of Disputed Material Facts
in Resistance to Motion for Summary Judgment
27CIV.20-19*

not apply to any recreational vehicle while being used for any "business" or "farming" purposes. Bates page 121, Recreational Vehicle Liability Coverage Endorsement.

17. Hunter is not an insured under the Recreational Vehicle Liability Coverage Endorsement because the insurance policy does not apply to any recreational vehicle while being used for any "business" or "farming" purposes. See Bates page 121, Recreational Vehicle Liability Coverage Endorsement.
18. The Recreational Vehicle Expanded Medical Payments Coverage Endorsement modifies the definition of "WHO IS AN INSURED" in the main policy and any person using a recreational vehicle with the permission of the named insured on either an insured location or off an insured location is an insured, when coverage has been added by endorsement to the policy provided the insurance applies to the recreational vehicle. Bates page 117, Recreational Vehicle Expanded Medical Payments Coverage Endorsement. (Emphasis added).
19. Hunter cannot be classified as an insured under the "WHO IS AN INSURED" provisions of the Recreational Vehicle Expanded Medical Payments Coverage Endorsement set forth on Bates page 117 because the Recreational Vehicle Liability Coverage Endorsement at Bates page 121 excludes any insurance coverage for any recreational vehicle used for any "business" or "farming" purposes. Bates page 121, Recreational Vehicle Liability Coverage Endorsement.

**FARM LIABILITY COVERAGE FORM APPLIES TO NEGLIGENCE AND
PREMISES LIABILITY CLAIMS IRRESPECTIVE OF RECREATIONAL VEHICLE
EXCLUSION**

20. The main policy provides insurance coverage for Hunter's claims of negligence and premises liability pursuant to Coverage H-Bodily Injury and Property Damage Liability pursuant to section 1., Insuring Agreement that provides at subparagraph (b) that "This insurance applies to "bodily injury" or property damage only if:
 1. The "bodily injury" or "property damage" is caused by an occurrence that takes place in the "coverage territory".
 2. The "bodily injury" or "property damage" first occurs during the policy period.
 3. The "bodily injury" or property damage" occurs out of the "personal activities" or out of operations usual or incidental to "farming". Bates page 76, Farm Liability Coverage Form.
21. The accident occurred within the "coverage territory" as the Hillen place where the accident occurred is real property owned by Burjes and Cheryl. Burjes recorded and transcribed statement dated August 16, 2017, Exhibit E, page 1, lines 13-18.
22. The accident occurred during the policy coverage period of February 20, 2017 to February 20, 2018 as the accident occurred on August 13, 2017. Hunter Deposition,

*Statement of Disputed Material Facts
in Resistance to Motion for Summary Judgment
27CIV.20-19*

page 13, lines 1-6 and Affidavit of Terra M. Larson in support of Plaintiff's motion for summary judgment, paragraph 2.

23. The bodily injury sustained by Hunter occurred or arose from "personal activities" of the insured Burjes and Cheryl, the named insureds, or out of operations usual or incidental to "farming" as Hunter was injured while engaged in spraying thistles on a recreational vehicle owned by Burjes on rough terrain in a pasture adjoining a creek bed with a very steep bank on real property owned by Burjes and Cheryl where the thistles were at the bottom of the creek bed and Hunter operated the John Deer Gator while using a spray wand to spray the thistles. Burjes recorded and transcribed statement dated August 16, 2017, Exhibit E, page 2, lines 3-5; Burjes recorded and transcribed statement dated August 16, 2017, Exhibit E, page 1, lines 13-18; Hunter Deposition, page 35, line 6 to page 41, line 17; and Exhibit 2 to Hunter Deposition.

Dated this 26 day of May, 2021.

MERKLE LAW FIRM, PROF. LLC



Bret C. Merkle
P. O. Box 90708
Sioux Falls, South Dakota 57109-0708
605-339-1420-phone
605-339-1423-fax
bret@merklelaw.com
Co-Counsel for Defendant

MCGILL LAW OFFICE



Michael J. McGill
P. O. Box 32
Beresford, South Dakota 57004
605-763-2057 phone
605-763-2201 fax
mjmc@bmtc.net
Co-Counsel for Defendant

CERTIFICATE OF SERVICE

15

*Statement of Disputed Material Facts
in Resistance to Motion for Summary Judgment
27CIV.20-19*

I, the undersigned, hereby certify that I have served a true and correct copy of the foregoing Statement of Disputed Material Facts in Resistance to Motion for Summary Judgment on the following:

Michael F. Shaw
Terra M. Fisher-Larson
May, Adam, Gerdes & Thompson LLP
P. O. Box 160
Pierre, SD 57501
Attorneys for Plaintiff

Lee Schoenbeck
Joe Erickson
P. O. Box 1325
Watertown, SD 57201
Attorneys for Defendants Burjes and Cheryl Fitch, Fitch Farms, and BC Fitch
Limited Partnership

Via electronic service, and upon the following:

Truett Fitch
21327 211th Avenue
Philip, SD 57567
Defendant

Theo Fitch
21333 210th Avenue
Philip, SD 57567
Defendant

via first class U. S. Mail, postage prepaid, this 15th day of June, 2021.

MERKLE LAW FIRM, PROF. LLC



Bret C. Merkle
P. O. Box 90708
Sioux Falls, South Dakota 57109-0708
605-339-1420-phone
605-339-1423-fax
bret@merklelaw.com
Co-Counsel for Defendant

STATE OF SOUTH DAKOTA)
 :SS
 COUNTY OF HAAKON)

IN CIRCUIT COURT
 SIXTH JUDICIAL CIRCUIT

HUNTER PETERSON,

Plaintiff,

v.

FITCH FARMS,

and

BC FITCH LIMITED PARTNERSHIP,

and

BURJES FITCH, CHERYL FITCH,
 TRUETT FITCH, and THEO FITCH,
 Individually,

Defendants.

CIV. _____

27CIV20-000014

COMPLAINT

COMES NOW Plaintiff and for his cause of action against Defendants, jointly and severally, states and alleges as follows:

GENERAL ALLEGATIONS

1.

Plaintiff Hunter Peterson (hereinafter "Hunter") is a resident of Philip, Haakon County, South Dakota.

2.

Defendant Fitch Farms is owned by Defendants Burjes Fitch and Cheryl Fitch, and it operates in the farm and ranch business in Haakon County, South Dakota.

3.

Defendant BC Fitch Limited Partnership (hereinafter "BC Fitch Ltd") is a South Dakota Limited Partnership in good standing, located in Philip, Haakon County, South Dakota, conducting farm and ranch business.

4.

Defendants Burjes Fitch and Cheryl Fitch, husband and wife, (hereafter "Burjes" and "Cheryl") are the residents and owners of certain farm and ranch real property located primarily in Haakon County, South Dakota, (hereafter "the ranch") that was leased to Defendant BC Fitch Ltd at all relevant times herein.

5.

Defendants Truett Fitch and Theo Fitch (hereafter "Truett" and "Theo") are the adult biological sons of Burjes and Cheryl, are a resident of Haakon County, South Dakota, and perform farm and ranch work for themselves individually, and for Defendants Burjes and Cheryl, Fitch Farms, and for BC Fitch Ltd in and around Haakon County, South Dakota, and upon information and belief they have ownership interest in Fitch Farms and/or BC Fitch Ltd.

6.

On August 13, 2017, Defendant Truett called Hunter who is the grandson of Burjes and Cheryl and lives in the city of Philip, South Dakota, to come out on the ranch to help spray weeds in the pasture. When Hunter arrived, Truett asked him to spray using the 2011 John Deere Gator XUV equipped with a chemical sprayer (hereafter "the Gator") showing him where to go spray, and thereafter told Theo to go check on Hunter while he was spraying, which Theo did not do.

7.

Prior to August 13, 2017, Hunter had not operated a UTV such as the Gator nor operated a sprayer of any sort.

8.

At no time prior to August 13, 2017, had any of the Defendants named herein discussed with Hunter any terms of employment such as expected work hours, hourly pay, compensation, scope of employment, or type of work required.

9.

At no time prior to August 13, 2017 did any of the Defendants named herein provide Hunter with direction, training, or education on how to safely operate the Gator or sprayer.

10.

None of the Defendants named herein provided Hunter with any sort of communication equipment for emergencies.

18.

11.

On August 13, 2017, Hunter was operating the Gator to spray weed chemical as requested by Defendants on real property owned by Burjes and Cheryl and leased to BC Fitch Ltd in Haakon County, South Dakota, in a pasture along a creek with rugged, uneven terrain, when the Gator tipped over and trapped his legs underneath it. Hunter laid trapped with the full weight of the Gator on him cutting off the blood flow to his legs for several hours until he was discovered suffering severe permanent bodily injuries.

12.

Hunter was 17 years of age at the time of the incident causing his injuries herein and had no experience with operating UTVs such as the Gator or sprayers prior to that date, and he did not know nor could he have appreciated the risks of danger associated with them.

13.

Hunter had no experience with nor training or education in the safe operation of the Gator or sprayers, and he did not contribute to the negligence that caused the Gator to tip over resulting in his injuries and damages herein.

14.

At the time Defendant Truett requested Hunter to spray weeds as described above, Truett and Theo were agents or employees of Burjes and Cheryl, Fitch Farms, and BC Fitch Ltd, and the Doctrine of Respondeat Superior applies to render them liable for Hunter's damages herein.

15.

The Defendants all acted together in concert to render them jointly and severally liable to Hunter for his damages herein.

16.

Each of the Defendants named herein were negligent as described herein, which negligence was the proximate cause of Hunter's injuries and damages herein.

17.

Due to the negligence of the Defendants, Hunter suffered severe bodily injuries that required multiple surgeries, was hospitalized for several months, and he underwent extensive physical therapy, incurring medical expenses in the amount of \$372,881.48, and will continue to incur medical expenses in the future in the amount proven at trial.

19.

18.

Due to the negligence of the Defendants, Hunter has and will experience physical pain and suffering and mental anguish, together with the loss of enjoyment of his life in the amounts determined by the jury.

19.

Due to the negligence of the Defendants, Hunter has suffered permanent physical scarring, disfigurement, physical impairment, disability, loss of function, and will continue to in the future, all in the amounts to be determined by the jury.

20.

Due to the negligence of the Defendants, Hunter has suffered a loss of earning capacity in the amounts proven at trial.

COUNT 1

NEGLIGENCE

21.

Plaintiff repeats and incorporates herein by this reference all other paragraphs of this Complaint as though fully set forth.

22.

Defendants failed to provide Hunter with proper education and training in the safe operation of the Gator, especially in spraying uneven terrain along the creek.

23.

Defendants failed to warn Hunter of the dangers associated with use and operation of the Gator, especially on uneven terrain along the creek.

24.

Defendants failed to provide Hunter with the proper supervision in the safe operation of the Gator.

20,

25.

Defendants failed to provide Hunter with communication equipment for emergencies.

26.

Defendants failed to equip the Gator with anti-rollover or other safety equipment that could have prevented it from tipping over or provided a warning of its unsafe operation.

27.

Defendants failed to establish and maintain business policies and procedures for the safe operation of the Gator and spraying.

WHEREFORE, Plaintiff prays for judgment against Defendants herein, jointly and severally, as requested below.

COUNT 2

PREMISES LIABILITY

28.

Plaintiff repeats and incorporates herein by this reference all other paragraphs of this Complaint as though fully set forth.

29.

On August 13, 2017, Burjes and Cheryl were the owners of the real property at issue herein where Hunter was injured.

30.

Hunter occupied Defendants Burjes and Cheryl's real property as a business invitee.

31.

Hunter was invited onto the Burjes and Cheryl's real property for the purpose directly related to their farm and ranch business.

21.

32.

Burjes and Cheryl had reason to know or believe that their real property contained a dangerous condition where Hunter was requested to spray chemicals.

33.

Burjes and Cheryl owed Hunter a duty as a business invitee to exercise reasonable and ordinary care for Hunter's safety.

34.

Hunter was injured on Burjes and Cheryl's real property as described herein within the scope of his invitation.

35.

Burjes and Cheryl had reason to know or believe that the condition of their real property was dangerous where Hunter was asked to spray chemicals and they had a duty to warn Hunter regarding the condition or to take other reasonable steps to protect Hunter.

36.

Hunter did not have knowledge of the dangerous condition nor could Hunter reasonably have been expected to discover the dangerous condition or the risk relating to the use of the Gator given his lack of experience or knowledge operating the Gator.

37.

Defendants Burjes and Cheryl failed to establish and maintain policies and procedures for the safe operation of the Gator on their land.

38.

Defendants Burjes and Cheryl failed to establish and maintain policies and procedures for prohibiting the operation of the Gator by minor children under the age of 18 on their land.

22

39.

Defendants Burjes and Cheryl failed to establish and maintain policies and procedures requiring the Gator to be equipped with anti-rollover equipment or other safety equipment preventing it from tipping over or providing a warning of its unsafe operation on their land.

40.

Burjes and Cheryl's negligence described herein was the proximate cause of Hunter's injuries and damages herein.

WHEREFORE, Plaintiff respectfully prays for a money judgment against Defendants herein, jointly and severally, as follows:

1. Past medical expenses in amount of \$372,881.48;
2. Future medical expenses in the amount proven at trial;
3. Past and future physical pain and suffering and mental anguish in an amounts determined by the jury;
4. Past and future loss of thle enjoyment of life in an amount determined by the jury;
5. Loss of earning capacity in an amount to be proven at trial;
6. Permanent physical impairment, disability, and loss of function in an amount determined by the jury;
7. Physical scarring and disfigurement in an amount determined by the jury;
8. Pre and post judgment interest;
9. Plaintiff's costs and attorney fees; and
10. For such other and further relief as the Court may find appropriate.

Dated this 7 day of August 2020.

MERKLE LAW FIRM, PLLC



Bret C. Merkle

P. O. Box 90708

Sioux Falls, SD 57109-0708

605-339-1420 – phone

605-339-1423 – fax

bret@merklelaw.com

Attorney for Plaintiff

PLAINTIFF DEMANDS TRIAL BY JURY

23

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

NATIONWIDE AGRIBUSINESS
INSURANCE COMPANY,

PLAINTIFF and APPELLEE

v.

CERTIFICATE OF SERVICE
Appeal No. 19784

BURJES FITCH, CHERYL FITCH, TRUETT
FITCH, THEO FITCH, FITCH FARMS, and BC
FITCH PARTNERSHIP,

DEFENDANTS,
and

HUNTER PETERSON,

DEFENDANT and APPELLANT

I certify to the above entitled Court that I mailed an original Appellant's
Brief, an original Certificate of Compliance, and two true and correct copies of
Appellant's Brief and Certificate of Compliance by depositing the same in the
United States mail, postage prepaid, on the 19th day of November,
2021, in an envelope properly addressed as follows:

Sarah Gallagher
Deputy Clerk
South Dakota Supreme Court
500 E. Capitol Avenue
Pierre, SD 57501

I further certify that I completed electronic service of process upon the Clerk of the Supreme Court by emailing a true and correct copy of the original Appellant's Brief and Certificate of Compliance to the Deputy Clerk of the Supreme Court of the State of South Dakota at the email address of Sarah.Gallagher@ujs.state.sd.us and SCClerkBriefs@ujs.state.sd.us, on the 22nd day of November, 2021.

I further certify that I have served true and correct copies of the original Appellant's Brief and original Certificate of Compliance and a copy of the email to the South Dakota Supreme Court by which I electronically filed the Appellate Brief and Certificate of Compliance with the South Dakota Supreme Court on the following:

Michael F. Shaw
Terra M. Fisher-Larson
May, Adam, Gerdes & Thompson LLP
P. O. Box 160
Pierre, SD 57501
Attorneys for Plaintiff
E-Mail: mfs@mayadam.net and tmf@mayadam.net;

Lee Schoenbeck
Joe Erickson
P. O. Box 1325
Watertown, SD 57201
Attorneys for Defendants Burjes and Cheryl Fitch, Fitch Farms, and BC Fitch Limited Partnership
E-Mail: lee@schoenbecklaw.com and joe@schoenbecklaw.com;

via electronic service, and upon the following via first class U. S. Mail, postage prepaid, in an envelope properly addressed as follows on the 22nd day of November, 2021:

Burjes Fitch
200 Myrtle Avenue
P.O. Box 16

Phillip, SD 57567
Defendant

Cheryl Fitch
200 Myrtle Avenue
P.O. Box 16
Phillip, SD 57567
Defendant

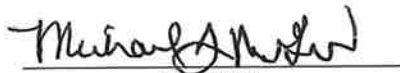
BC Fitch Limited Partnership
200 Myrtle Avenue
P.O. Box 16
Phillip, SD 57567
Defendant

Fitch Farms
200 Myrtle Avenue
P.O. Box 16
Phillip, SD 57567
Defendant

Truett Fitch
21327 211th Avenue
Phillip, SD 57567
Defendant

Theo Fitch
21333 210th Avenue
Phillip, SD 57567
Defendant

MCGILL LAW OFFICE



Michael J. McGill
P. O. Box 32
Beresford, South Dakota 57004
605-763-2057 phone
605-763-2201 fax
mjmc@bmtc.net
Co-Counsel for Defendant Hunter Peterson

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

NATIONWIDE AGRIBUSINESS
INSURANCE COMPANY,

Plaintiff and Appellee,

vs.

Appeal No. #29784

BURJES FITCH, CHERYL FITCH
TRUETT FITCH, THEO FITCH,
FITCH FARMS, BC FITCH LIMITED
PARTERSHIP

Defendants.

and

HUNTER PETERSON

Defendant and Appellant

APPEAL FROM THE CIRCUIT COURT
SIXTH JUDICIAL CIRCUIT
HAAKON COUNTY, SOUTH DAKOTA

THE HONORABLE MARGO D. NORTHRUP
CIRCUIT COURT JUDGE

BRIEF OF APPELLEE

Michael F. Shaw
Terra M. Larson
May, Adam, Gerdes & Thompson LLP
503 South Pierre Street
PO Box 160
Pierre, SD 57501
Attorneys for the Appellee

Michael J. McGill
PO Box 32
Beresford, SD 57004
Attorney for the Appellant

Bret C Merkle
Merkle Law Firm
PO Box 90708
Sioux Falls, SD 57109-0708
Attorney for the Appellant

NOTICE OF APPEAL FILED SEPTEMBER 27, 2021

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES	ii.
JURISDICTIONAL STATEMENT	1
STATEMENT OF ISSUES.....	2
STATEMENT OF THE CASE.....	3
STATEMENT OF FACTS.....	3
STANDARD OF REVIEW	9
ARGUMENT	10
I. THE CIRCUIT COURT CORRECTLY RULED THAT THE CONCURRENT CAUSE DOCTRINE DID NOT APPLY TO THIS CASE AND THEREFORE THE POLICY’S RECREATIONAL VEHICLE EXCLUSION RELIEVED NATIONWIDE FROM THE DUTY TO DEFEND AND COVER.....	10
a. The Circuit Court Correctly Applied the Recreational Vehicle Policy Exclusion	11
b. The Concurrent Cause Doctrine Does Not Apply.....	14
II. THE CIRCUIT COURT ERRED IN FINDING THAT GENUINE ISSUES OF DISPUTED MATERIAL FACTS EXISTED AT TO WHETHER PETERSON WAS AN “EMPLOYEE” AND A “FARM EMPLOYEE” UNDER NATIONWIDE’S POLICY	18
CONCLUSION	25
CERTIFICATE OF SERVICE.....	27
CERTIFICATE OF COMPLIANCE	28
APPENDIX	30

TABLE OF AUTHORITIES

Statutes:	Page No.
SDCL § 15-6-56(c)	9, 10
SDCL Ch. 38-22	12, 13
SDCL § 38-22-1.2	13
SDCL § 38-22-16	12
SDCL § 38-22-16.2.....	12
 Cases:	
<i>Ass Kickin Ranch, LLC v. N. Star Mut. Ins. Co.</i> , 2012 S.D. 73, 822 N.W.2d 724	9
<i>Chord v. Reynolds</i> , 1999 S.D. 1, 587 N.W.2d 729	19, 23
<i>Great W. Cas. Co. v. Bergeson</i> , 1996 S.D. 73, 550 N.W.2d 418.....	20, 21, 23
<i>Houser v. Gilbert</i> , 389 N.W.2d 626 (N.D. 1986).....	17
<i>Johnson v. Rapid City Softball Ass’n</i> , 514 N.W.2d 693 (S.D. 1994).....	23
<i>North Star Mut. Ins. v. Korzan</i> , 2015 S.D. 97, 873 N.W.2d 57	<i>passim</i>
<i>North Star Mut. Ins. Co. v. Johnson</i> , 352 N.W.2d 791 (Minn. Ct. App. 1984)	17
<i>Schlueter v. Grinnell Mut. Reinsurance Co.</i> , 553 N.W.2d 614 (Iowa Ct. App. 1996).....	16
<i>Setliff v. Adkins</i> , 2000 S.D. 124, 616 N.W.2d 878.....	21, 24
<i>U.S. Bank Nat. Ass’n v. Scott</i> , 2003 S.D. 149, 673 N.W.2d 646	10
<i>Vang v. Vang</i> , 490 N.W.2d 647 (Minn. Ct. App. 1992)	17
<i>Weitzel v. Sioux Valley Heart Partners</i> , 2006 S.D. 45, 714 N.W.2d 884.....	10
<i>W. Nat’l Mut. Ins. Co. v. TSP, Inc.</i> , 2017 S.D. 72, 904 N.W.2d 52	19

Secondary Authorities:

BLACK’S LAW DICTIONARY (4th ed. 1968).....	22
BLACK’S LAW DICTIONARY (5th ed. 1979).....	23, 24
“Agriculture,” Merriam-Webster.com Dictionary, Merriam-Webster https://www.merriam-webster.com/dictionary/agriculture (last visited December 22, 2021).....	12
Colorado State University, <i>Colorado State University Guide to Poisonous Plants</i> , https://csuvth.colostate.edu/poisonous_plants/Plants/Details/96 (last visited December 17, 2021).....	13
South Dakota Department of Agriculture & Natural Resources, <i>State Noxious Weeds</i> , https://danr.sd.gov/Conservation/PlantIndustry/WeedPest/ WeedandPestInfo/StateNoxious/default.aspx (last visited December 18, 2021).....	13

PRELIMINARY STATEMENT

Appellee will refer to Appellant, Hunter Peterson, as “Peterson.” Burjes Fitch and Cheryl Fitch will be referred to as “Burjes” and “Cheryl.” Truett Fitch and Theo Fitch will be referred to as “Truett” and “Theo.” Appellee, Nationwide Agribusiness Insurance Company will refer to itself as “Nationwide.”

References to the Settled Record will be indicated by “SR ____.” Appellant’s Appendix will be referred to as “AP ____.” Appellee’s Appendix will be referred to as “AA ____.”

JURISDICTIONAL STATEMENT

Peterson appeals an Order issued by the Haakon County Circuit Court on September, 13 2021 granting summary judgment as to a declaratory judgment action in favor of Appellees, Nationwide. AP. 1-2. The Order Granting Summary Judgment determined that Nationwide possesses no duty to defend or cover Burjes, Cheryl, Truett, Theo, Fitch Farms, or BC Fitch Limited Partnership in Haakon County Circuit Court action 27CIV20-14. *Id.* Nationwide filed Notice of Entry of Order on September 13, 2021. SR 823. On September 27, 2021, Peterson filed a Notice of Appeal seeking review of the September 13, 2021 Order. SR 843. On October 13, 2021 Nationwide filed with this Court a Notice of Review as to whether the trial court erred in ruling there are genuine issues of disputed material facts concerning whether Peterson was an employee or a farm employee as set forth and defined under the policy, and whether the trial court erred when it found there are genuine issues of disputed material fact regarding whether Hunter Peterson is an insured under the policy. Thereafter, upon closer review of the Circuit Court’s Memorandum Decision, Nationwide determined that the Circuit Court

correctly found that Peterson was not an insured because he was a driver of an excluded recreational vehicle. As such, Nationwide seeks review only as to whether disputed material facts exist as to whether Peterson was an employee and a farm employee. Nationwide does not dispute that the September 13, 2021 Order is appealable or that this Court has jurisdiction to hear the appeal.

STATEMENT OF LEGAL ISSUES

1. Whether the Circuit Court correctly ruled that the concurrent cause doctrine did not apply to this case and therefore the policy's recreational vehicle exclusion relieved Nationwide from the duty to defend and cover?

The Circuit Court ruled that the concurrent cause doctrine was inapplicable in this case, and therefore the policy's recreational vehicle exclusion relieved Nationwide from the duty to defend and cover the Fitches in the underlying lawsuit filed by Peterson.

Authorities:

- *N. Star Mut. Ins. v. Korzan*, 2015 S.D. 97, 873 N.W.2d 57.
- Farm Liability policy FPK FMPN 3027010948. AA 001-194.

2. Whether the Circuit Court erred in finding that genuine issues of disputed material facts existed as to whether Peterson was an "employee" and a "farm employee" under Nationwide's policy?

The Circuit Court ruled that genuine issues of disputed material facts exist as to whether Hunter Peterson was an "employee" and a "farm employee" as set forth and defined under Nationwide's policy.

Authorities:

- *W. Nat'l Mut. Ins. Co. v. TSP, Inc.*, 2017 S.D. 72, 904 N.W.2d 52.
- *Chord v. Reynolds*, 1999 S.D. 1, 587 N.W.2d 729.
- Farm Liability policy FPK FMPN 3027010948. AA 001-194.

STATEMENT OF THE CASE

Peterson's sole issue taken by his appeal is whether the facts of this case lead to the application of the concurrent cause doctrine. In appealing the Circuit Court's ruling that the concurrent cause doctrine does not apply, Peterson acknowledges and does not dispute that the policy excludes the vehicle he was driving because it was a recreational vehicle driven for farming purposes. However, Peterson argues that the accident consisted of both included and excluded risks, and therefore the concurrent cause doctrine should be applied. The application of the doctrine, however, is inapplicable in this matter for several reasons further espoused.

This brief will demonstrate that the concurrent cause doctrine cannot apply because the incident in question was inextricably intertwined with the use of the recreational vehicle. Next, though the Circuit Court ultimately granted summary judgment in favor of Nationwide, it requests review of the Circuit Court's conclusions that a dispute of material facts existed as to whether Peterson was an employee and a farm employee under the policy. This brief will demonstrate that the undisputed material facts of this case, as admitted by Peterson, are so "clear" that a Court may find as a matter of law that Peterson was an employee and a farm employee under the policy. This brief will demonstrate Peterson's injuries are not only excluded from coverage because he was using the recreational vehicle he was driving for farm purposes, but also because he was an employee and a farm employee under the policy definitions.

STATEMENT OF FACTS

Nationwide issued a Farm Liability policy FPK FMPN 3027010948 (the "Policy") to Burjes Fitch ("Burjes") and Cheryl Fitch ("Cheryl"), providing coverage for the policy

period from February 20, 2017 to February 20, 2018. AA 007. Burjes and Cheryl are the named insureds on the policy, though the policy provides for others as “insureds,” as well, based on their status as to the farm and their relationship to the named insureds. *Id.* at 007, 094-096. On or about August 13, 2017, Burjes and Cheryl’s grandson, Hunter Peterson (“Peterson”) was spraying noxious weeds on property owned by BC Fitch Limited Partnership and leased to Burjes and Cheryl using a 2011 John Deere Gator (“Gator”) owned Burjes and Cheryl. AA 195 ¶ 2. The Gator tipped over and Peterson was trapped underneath it, causing Peterson to sustain bodily injuries. *Id.* ¶ 3. The August 13, 2017 incident will hereinafter be referred to as “the incident.”

Following the incident, Burjes was interviewed by Nationwide adjuster Michael A. Carter on August 16, 2017 in a recorded conversation. AA 195 ¶ 4-7; SR 501-08. Burjes referred to the incident as a “work-related accident” and stated that “noxious weeds are required by law around here in this county to be sprayed. So it’s a requirement we keep the weeds down, you know, especially the Canadian thistle.” SR 504. Burjes stated, *inter alia*, as to Peterson: “Oh, it’s just part-time help. He’s in high school, so they just, he just helps in the summertime. Yeah, just summertime off and on, just, when we need him for jobs like this. And he’s driving tractors and stacking bales and stuff like that, yes.” SR 503, lines 7-10. As to the Gator, Burjes stated: “Yeah, well, they are all work related, we never have used them for recreational, yeah. We don’t go anywhere with them except to the ranch, that’s it, they are just used for anything and everything.” SR 504, lines 16-19.

During the course of this case, Peterson, through his briefing and submission of “Disputed Material Facts” revealed: (1) that the Fitches would call Peterson in the

summertime to help brand cattle (AP 13 ¶ 8); (2) that he was paid (categorized as minimally) by the Fitches if he helped (*id.* ¶ 5); (3) that after the accident Burjes issued Peterson a W-2 in the amount of \$3,425.00 (*id.* ¶ 12); (4) that if Peterson went out to the farm to help his uncles, Burjes would was typically paying him (*id.* ¶ 13); and (5) that on the day of the incident, “Truett Fitch¹ asked Hunter if he could come out and spray weeds and Hunter stated that he would.” AP 13 ¶ 10.

On August 3, 2020, Burjes, Cheryl, Truett, Theo, Fitch Farms, and BC Fitch Limited Partnership were served with a Summons and Complaint by Peterson alleging negligence and premises liability arising from the August 13, 2017 incident. AP 17-23. On September 14, 2020, Nationwide issued a reservation of rights letter to Burjes and Cheryl stating, among other things, that it would provide a defense for the Complaint subject to their reservation of rights. SR 496. Nationwide filed the present lawsuit on October 13, 2020. SR 1. Nationwide, thereafter, filed a Motion for Summary Judgment on March 18, 2021. SR 270. The Circuit Court issued its Memorandum Decision on August 31, 2021, after reviewing the parties’ briefing and hearing oral arguments. AP 3-11. The Memorandum Decision found questions of material fact as to whether or not Peterson was an employee, farm employee, and an insured under the policy, but ultimately granted summary judgment because the Gator Peterson was operating was excluded from coverage under the policy. *Id.* at 11. The Order Granting Plaintiff’s Motion for Summary Judgment was entered on September 13, 2021. AP 1-2.

The present appeal was taken by Peterson on September 27, 2021. SR 843. The Fitches did not appeal. Nationwide initially requested review of the Circuit Court’s

¹ Truett is the adult son and farm employee/agent of Burjes’. AP 18, ¶ 6.

findings of disputed material facts involving Peterson's status as an employee, a farm employee, and an insured. However, upon closer review of the Circuit Court's Memorandum Decision, Nationwide feels that the Circuit Court correctly found that Peterson was not an insured under the policy, because the policy did not apply to the vehicle he was driving at the time of the incident. Therefore, Nationwide seeks review only as to whether disputed material facts exist as to whether Peterson was an employee and a farm employee.

THE POLICY

The policy states, in applicable part:

FARM LIABILITY COVERAGE FORM

A. COVERAGES H – BODILY INJURY AND PROPERTY DAMAGE LIABILITY

2. EXCLUSIONS

This insurance does not apply to:

...

d. Employers' Liability

"Bodily injury" sustained by:

- 1) Any "employee" . . . arising out of his or her employment by the insured, or while performing duties related to the conduct of the insured's "farming" operations;

...

This exclusion applies whether any insured may be held liable as an employer or in any other capacity and to any obligation to share demands with or repay someone else who must pay damages because of the injury.

...

AA 078.

u. "Bodily injury" to you or to any insured.

....

AA 084.

COVERAGE J – MEDICAL PAYMENTS

...

2. EXCLUSIONS

We will not pay expenses for “bodily injury” to:

...

- c. Any “farm employee” or other person engaging in work usual or incidental to the maintenance or use of the “insured location” as a farm.

The only exception to this exclusion are in “occurrences” of “bodily injury” sustained by a “residence employee” or by a person on the “insured location” in a neighborly exchange of assistance for which no insured is obligated to pay any money.

AA 084.

...

C. WHO IS AN INSURED

6.² Any person using a:

- a. “recreational vehicle” on an “insured location”,

...

- c. “mobile equipment” on or off an “insured location.” with your permission or consent is an insured provided that this insurance applies to the “recreational vehicle” or “mobile equipment”. No person is an insured with request to the use of an “auto.”

...

with your permission or consent is an insured provided this insurance applies to the “recreational vehicle” or “mobile equipment”

...

AA 117.

F. DEFINITIONS

...

- 8. “Employee” means any person providing a service to the insured, whether the employment agreement is express or implied, oral or written, lawful or unlawful, including relatives, aliens, and minors, regardless of the duration of employment or whether the person is compensated.

AA 100.

...

² Pursuant to Recreational Vehicle Expanded Medical Payments Coverage Endorsement FL 703 21 01 15. AA 117.

10. “Farm employee” means any insured’s employee whose duties are principally in connection with the maintenance or use of an “insured location” as a farm. These duties include the maintenance or use of that insured’s farm equipment . . .

AA 100.

...

12. “Farming” means the operation of an agricultural or aquacultural enterprise, and includes the operation of roadside stands, on your farm premises, maintained solely for the sale of farm products produced principally by you. . . .

AA 100.

...

- 17.³ “Insured location” also means any other location that you own, rent, or occupy, provided that . . . location is used exclusively for “farming” purposes

AA 128.

...

- 20.⁴ “Mobile Equipment”
- a. Bulldozers, forklifts, farm machinery, farm implements and other vehicles designed for use or used for principally off public roads. This includes motorized golf carts [sic], snowmobiles and other land vehicles designed for recreational use when used for “farming” purposes.

AA 117.

...

- 29.⁵ “Recreational Vehicle” means a motorized golf cart, snowmobile or other motorized land vehicle (including all-terrain vehicles) owned by any insured and designed for recreational use off public roads when used for recreational purposes.

AA 117.

³ Modified by Blanket Coverage Endorsement FO 707 01 (01-01). AA 128.

⁴ Modified by Recreational Vehicle Expanded Medical Payments Coverage Endorsement FL 703 21 01 15. AA 117.

⁵ Modified by Recreational Vehicle Expanded Medical Payments Coverage Endorsement FL 703 21 01 15. AA 117.

**Endorsement FL 706 20 01 01 “Recreational Vehicle Liability Coverage
Endorsement.”**

...

- C. This insurance, including any duty we have to defend “suits”, does not apply to any “recreational vehicle”:

...

3. While being used for any “business” or “farming” purposes;

...

AA 121.

STANDARD OF REVIEW

In reviewing a grant or denial of summary judgment under § SDCL 15-6-56(c), the Supreme Court of South Dakota has limited its scope of review to only determining two issues: (1) “whether genuine issues of material fact exist, and (2) “whether the law was correctly applied.” *Ass Kickin Ranch, LLC v. N. Star Mut. Ins. Co.*, 2012 S.D. 73, ¶ 6, 822 N.W.2d 724, 726 (*citing Zephier v. Catholic Diocese of Sioux Falls*, 2008 S.D. 56, ¶ 6, 752 N.W.2d 658, 662 (*quoting Bordeaux v. Shannon Cnty. Sch.*, 2005 S.D. 117, ¶ 11, 707 N.W.2d 123, 126)). In so doing, the Court will review the circuit court’s order under the *de novo* standard of review. *North Star Mut. Ins. v. Korzan*, 2015 S.D. 97, ¶ 12, 873 N.W.2d 57, 61.

Summary judgment is appropriate “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” SDCL § 15–6–56(c); *see also Korzan*, 873 N.W.2d at 61. The moving party carries the burden of “clearly demonstrate[ing] the absence of genuine issues of material fact and entitlement to judgment as a matter of law.” *Korzan*, 873 N.W.2d at 61 (*citing Titus*, 2004 S.D. 106, ¶ 13, 687 N.W.2d at 923). A disputed fact is not “material,” for purposes of a summary judgment motion, unless it would affect the

outcome of the suit under the governing substantive law in that a reasonable jury could return a verdict for the nonmoving party. SDCL § 15–6–56(c). *Weitzel v. Sioux Valley Heart Partners*, 2006 S.D. 45, 714 N.W.2d 884. A party opposing summary judgment may not rest on mere averments or denials but must set forth *specific facts* that prevent the issuance of a judgment. *U.S. Bank Nat. Ass'n v. Scott*, 2003 S.D. 149, 673 N.W.2d 646, 653 (citation omitted) (emphasis added). “All reasonable inferences drawn from the facts must be viewed in favor of the non-moving party,” such that the benefit of any doubt as to whether there is a material issue of fact goes to the nonmoving party. *Korzan*, 873 N.W.2d at 61 (citing *De Smet Farm Mut. Ins. Co. of S.D. v. Gulbranson Dev. Co.*, 2010 S.D. 15, ¶ 16, 779 N.W.2d 148, 155).

Once it is determined that the material facts are undisputed, this Court’s review is “limited to determining whether the trial court correctly applied the law.” *Ass Kickin Ranch, LLC*, 822 N.W.2d at 726 (internal citations omitted.) “If there is any legal basis to support the circuit court’s decision, the case will be affirmed on appeal.” *Id.* (citing *Bozied v. City of Brookings*, 2001 S.D. 150, ¶ 8, 638 N.W.2d 264, 268).

ARGUMENT AND AUTHORITIES

I. THE CIRCUIT COURT CORRECTLY RULED THAT THE CONCURRENT CAUSE DOCTRINE DID NOT APPLY TO THIS CASE AND THEREFORE THE POLICY’S RECREATIONAL VEHICLE EXCLUSION RELIEVED NATIONWIDE FROM THE DUTY TO DEFEND AND COVER.

Peterson does not dispute that his injuries fall under a valid policy exclusion — that the accident was excluded because the Gator Peterson was driving was a “recreational vehicle” under the policy, and that Peterson’s use of the Gator was for “farming purposes” (hereinafter referred to as “the recreational vehicle exclusion”). *See* AA 121; *see also*

Appellant’s Brief pp. 7 (“the insurance policy does not apply to an [sic] recreational vehicle while being used for any “business” or “farming” purposes.”); 17 (“Hunter was operating the recreational vehicle for a farming purpose.”). However, Peterson claims that such an exclusion is inapposite because, despite being excluded from coverage through his use of the Gator for farming purposes, he is still covered because the policy provides insurance coverage for his claims of negligence and premises liability under Coverage H. *See* Appellant’s Brief p. 19. Peterson argues that the accident occurred as a result of a combination of causes consisting of both excluded and included risks (commonly referred to as the concurrent cause doctrine). *Id.* In this case, however, the allegations made by Peterson are inextricably intertwined with the Gator and the policy exclusion. As such, the concurrent cause doctrine does not apply.

a. The Circuit Court correctly applied the recreational vehicle policy exclusion.

While Peterson does not dispute that the Circuit Court properly determined the recreational vehicle exclusion prevented coverage for his injuries, a reiteration of the exclusion is appropriate for purposes of explaining how the exclusion is inextricably intertwined with the allegations made by Appellants. Policy Endorsement FL 706 20 01 01 “Recreational Vehicle Liability Coverage Endorsement” reads in applicable part:

- C. This insurance, including any duty we have to defend “suits”, does not apply to any “recreational vehicle”:
 ...
 3. While being used for any “business” or “farming” purposes;
 AA 121.

Under the policy “[r]ecreational vehicle” is defined as “a motorized golf cart, snowmobile or other motorized land vehicle (including all-terrain vehicles) owned by any

insured and designed for recreational use off public roads when used for recreational purposes.” AA 117. “Farming” is defined as “the operation of an agricultural or aquacultural enterprise, and includes the operation of roadside stands, on your farm premises, maintained solely for the sale of farm products produced principally by you. . . .” AA 100. While the term “agricultural” is not defined in the policy, the common definition for “agriculture” is “the science, art, or practice of cultivating soil, producing crops, and raising livestock and in varying degrees, the preparation and marketing of the resulting products.” “Agriculture,” Merriam-Webster.com Dictionary, Merriam-Webster <https://www.merriam-webster.com/dictionary/agriculture> (last visited December 22, 2021).

The Fitches raise livestock (cattle) in the pasture where the accident occurred, and the spraying for burdock and thistle was for maintaining that pasture. SR 529. Peterson was spraying for burdock and thistle at the time of the incident. SR 504. The Fitches are mandated to spray weeds, as a requirement of operating their agricultural enterprise. *See generally* SDCL Ch. 38-22; SDCL §§ 38-22-16, 38-22-16.2;⁶ *see also* SR 504.⁷ The State Weed Act is administered under the South Dakota Department of Agriculture and

⁶ Title 38 is titled “Agriculture and Horticulture.”

⁷A: [W]e spray Burdock and thistles and stuff like that, noxious weeds is what we were spraying on the creek lines, yeah.

Q: So was he actually spraying thistle and what have you at the time?

A: Yeah. It was a work-related accident, yes.

Exhibit E, pp. 1-2, lines 24-25; 1-5.

A.: They are just really small 25-, 40-gallon sprayers you put in the back of the box and they are just little electric sprayers with hand wands that you just, you know, drive around spraying noxious weeds are required by law around here in this county to be sprayed. So it’s a requirement that keeps the weeds down, you know, especially the Canadian thistle.

Id. p. 3, lines 4-7.

Natural Resources and requires landowners to eradicate weed infested lands. SDCL Ch. 38-22. Under the Act, “weed” is defined as “any plant which this commission has found to be detrimental to the production of crops or livestock or to the welfare of persons residing in the state.” SDCL § 38-22-1.2(11). Canada thistle is on the list of weeds the South Dakota Weed and Pest Control Commission has found detrimental to crops or livestock. *See* South Dakota Department of Agriculture & Natural Resources, *State Noxious Weeds*, <https://danr.sd.gov/Conservation/PlantIndustry/WeedPest/WeedandPestInfo/StateNoxious/default.aspx> (last visited December 18, 2021). Additionally, “[b]urdock is not toxic but because of its spiny burs it can become attached to animal[']s fur and cause trauma.” Colorado State University, *Colorado State University Guide to Poisonous Plants*, https://csuvth.colostate.edu/poisonous_plants/Plants/Details/96 (last visited December 17, 2021). As such, the grazing of cattle falls within the guise of an agricultural enterprise under the policy and maintaining the area where the cattle are grazing is the part of the operation of that agricultural enterprise. *See* AA 100.⁸ Therefore, the Circuit Court properly found no dispute of material fact that Gator was a

⁸ The conclusion that the spraying of noxious weeds is for “farming purposes” is also supported by the fact that, at least one court has found that spraying constitutes farming under similar policy language. *See Mills v. Agrichemical Aviation*, 250 N.W.2d 663, 668 (N.D. 1977).

“recreational vehicle” being used for “farming purposes,” and that Peterson’s bodily injuries were excluded from coverage under the policy.⁹

b. The Concurrent Cause Doctrine Does Not Apply.

Despite the recreational vehicle exclusion otherwise applying to prevent coverage for Peterson’s injuries, Peterson argues that the concurrent cause doctrine should apply because the accident occurred as a result of a combination of causes consisting of both excluded and included risks. Appellant’s Brief p. 19. The concurrent cause doctrine is a standard that has been considered by the South Dakota Supreme Court, but not adopted. *See Korzan*, 2015 S.D. 97, 873 N.W.2d 57. The doctrine almost always involves motor vehicle exclusions (as evidenced by every case cited by Appellant) where, someone is performing an act that is otherwise covered, but they are performing that act in a motor vehicle.¹⁰ *See, e.g.*, Appellant’s Brief pp. 21-24 (citing cases only involving motor vehicles). To be applicable, the doctrine requires at least one independent act of negligence entirely distinct from the use of the excluded vehicle. *See Korzan*, 2015 S.D. 97, ¶ 18, 873 N.W.2d at 62-63. Additionally, as the Circuit Court correctly indicated, “[w]hen a court evaluates multiple and concurrent causation for insurance coverage, the

⁹ Notwithstanding the policy exclusion, anyone operating a recreational vehicle or mobile equipment —provided the policy applies to the recreational vehicle or mobile equipment— is an “insured” under Section C.6 (with endorsements). AA 117. As such, even if Peterson was to contend that the Gator was somehow not subject to the recreational vehicle exclusion, then the coverage would apply to the Gator, making Peterson an “insured.” *See id.* If Peterson were an insured, he would also be excluded from coverage under the policy (versus as a person injured by a recreational vehicle driven for farming purposes). AA 078.

¹⁰ Such is not the case here, because if the Peterson’s accident was not excluded under the recreational vehicle exclusion, he would be considered an “insured,” and therefore excluded from coverage, not for the Gator exclusion, but because he was an insured. *See supra* note 9.

initial task is determining whether there really are two or more causes at issue or whether there is merely one cause which is being assigned different labels.” AP 11 (citing 7 Couch on Ins. § 101.53).

In *Korzan*, for instance, this Court was presented with an opportunity to adopt the concurrent cause doctrine. *Korzan*, 2015 S.D. 97, 873 N.W.2d 57. The insured parties sought coverage for three separate fires in the Okaton area that occurred after the insureds had loaded hay (which subsequently started on fire as the insureds were driving down the road) onto a flatbed of a semi-truck. *Id.*, 2015 S.D. 97, ¶ 2-4, 873 N.W.2d at 59. The insurer filed a declaratory judgment action and sought summary judgment based on an exclusion that prevented coverage for damage arising from operation, use, loading and unloading, etc. of “motorized vehicles” by the “insured.” *Id.*, 2015 S.D. 97, ¶ 7, 873 N.W.2d at 60. The insured responded by arguing that the Court should adopt the concurrent cause doctrine and find coverage because of independent acts of negligence. *Id.*, 2015 S.D. 97, ¶ 17, 873 N.W.2d at 62. The independent acts of negligence the insured claimed were “entirely distinct from the use of a motor vehicle” included: “failing to ‘contain or suppress the fire’ upon discovery; ‘negligently directing the fire [department] to meet at I-90’; failing ‘to properly, adequately and reasonably inspect the truck and its mechanical equipment’; negligently deciding to haul hay when ‘weather conditions were conducive to wildland fire’; and ‘negligently allowing the unauthorized and wrongful entry of fire from the Korzan truck to property’ of others.” *Id.*, 2015 S.D. 97, ¶ 18, 873 N.W.2d at 62. The Court found that:

None of these acts are distinct from the use of a motor vehicle; rather, each act is inextricably intertwined with its use. As the *Schmitt* court stated, “the district court may consider theoretical possibilities to explain how the accident could have occurred without a motor vehicle in determining

whether to apply the divisible, concurrent-cause doctrine. But if those possibilities are too remote, the doctrine will not be applied.” 651 N.W.2d at 849. The Korzans have failed to put forth a viable or cognizable theory as to how any of these acts could have led to the fire without the use of the motor vehicle.

Id., 2015 S.D. 97, ¶ 19, 873 N.W.2d 57, 62-63.

The cases cited by Peterson in support of finding the concurrent cause doctrine are non-precedential and distinguishable from the present case. However, at least one of the cases is actually instructive as to how the concurrent cause doctrine could be applied in a given situation. For instance, in *Kalell v. Mut. Fire & Auto. Ins. Co.*, the person seeking coverage was injured after tying a rope around a dead tree limb and using a vehicle to pull the rope. 471 N.W.2d 865, 866 (Iowa 1991). The insurer’s policy contained an exclusion for occurrences “arising out of the use” of a motor vehicle. *Id.* In applying the concurrent cause doctrine, the Iowa court reasoned “[r]emoval of a limb with a rope could be negligence without regard to whether a motor vehicle was used to pull the rope.” *Id.* at 868.

The other out-of-state cases cited by Peterson are also distinguishable from the present case because something other than the excluded vehicle was what injured the person seeking coverage. *See, e.g., Schlueter v. Grinnell Mut. Reinsurance Co.*, 553 N.W.2d 614, 615 (Iowa Ct. App. 1996) (involving a bale on a loader that was on a flatbed being pulled by a vehicle down a highway falling off and injuring a motorist)¹¹; *Cawthon v. State Farm Fire & Cas. Co.*, 965 F. Supp. 1262, 1263 (W.D. Mo. 1997) (involving a tree limb pushed by a vehicle striking and killing someone); *North Star Mut. Ins. Co. v.*

¹¹ This case would not be persuasive in South Dakota regardless, as it reached the opposite conclusion that was reached in *Korzan*, 2015 S.D. 97, 873 N.W.2d 57.

Johnson, 352 N.W.2d 791 (Minn. Ct. App. 1984) (involving sprayer on vehicle falling off and striking passing motorist); *Vang v. Vang*, 490 N.W.2d 647, 648 (Minn. Ct. App. 1992) (involving a defective barn door and being pinned against it and a vehicle); *Houser v. Gilbert*, 389 N.W.2d 626, 629 (N.D. 1986) (dealing with coverage “stacking” versus existence of coverage).

This case is demonstrative of the opposite situation to the cases cited by Peterson; without the Gator the incident could not have occurred. As explained in Peterson’s underlying Complaint, “Hunter was operating the Gator to spray weeds . . . when the Gator tipped over and trapped his legs underneath it. Hunter laid trapped with the full weight of the Gator on him cutting off the blood flow to his legs for several hours until he was discovered . . .” AP 19 ¶ 11. While the Court is permitted to “consider theoretical possibilities to explain how the accident could have occurred *without a motor vehicle*” (see *Korzan*, 2015 S.D. 97, ¶ 19, 873 N.W.2d at 62-63 (emphasis added)), the negligence here could not occur without the Gator because, unlike tree limbs, bales, etc. striking and injuring the person, it was the Gator itself that injured Peterson. There is no “theoretical possibilit[y]” that places a Gator on top of Peterson, cutting off his blood flow to his legs, without the use of the Gator. see *Korzan*, 2015 S.D. 97, ¶ 19, 873 N.W.2d at 62-63.

Here, Peterson is assigning different labels to the same cause; namely being injured by the Gator. See AP 11 (citing 7 Couch on Ins. § 101.53). Peterson alleges that “the legal cause of Hunter’s injuries is this case stem from the topography of the premises . . .” Appellant’s Brief p. 25. Yet, the topography of Burjes’ pasture in and of itself could not be the legal cause of the alleged negligence. The alleged legal cause would be use of the Gator on the topography. The same logic is applied to the alleged failure to inform

Peterson to dismount from the Gator to hand spray the creek bed. Appellant's Brief p. 25. The alleged failure to warn involved a lack of instruction to remove himself from the Gator. This is especially true because Peterson's injuries occurred not because he fell down a creek bed, but because the Gator landed on top of him. Additionally, the failure to provide an emergency device cannot be construed as a cause of Peterson's injuries (*see* Appellant's Brief p. 27) is at most applied to damages, not causation. Finally, contrary to Peterson's argument, the Circuit Court did not have to engage in "fact finding" to determine that Peterson was injured because the Gator landed on top of him — he told the Circuit Court as much in his Complaint. *See* AP 19 ¶ 11.

Ultimately, while this Court may consider "theoretical possibilities to explain how the accident could have occurred without [the Gator]," in this case Peterson's injuries would not have occurred without the Gator, as it was the Gator tipping over and pinning Peterson that caused his injuries. *See Korzan*, 2015 S.D. 97, ¶ 19, 873 N.W.2d at 62-63. As such, Peterson has failed to set forth a viable argument as to how the alleged independent acts of negligence could have caused the injury without the presence of the Gator. Therefore, the concurrent cause doctrine is inapplicable in this case and the Circuit Court properly ruled that Nationwide possessed no duty to defend or cover Peterson's injuries.

II. THE CIRCUIT COURT ERRED IN FINDING THAT GENUINE ISSUES OF DISPUTED MATERIAL FACTS EXISTED AS TO WHETHER PETERSON WAS AN "EMPLOYEE" OR A "FARM EMPLOYEE" UNDER NATIONWIDE'S POLICY.

The Circuit Court erred when it found disputed material facts as to whether an employment agreement existed, because Peterson's own admissions demonstrate an employment relationship.

The policy specifically excludes coverage for bodily injury sustained by any employee arising out of his or her employment while performing duties related to farming AA 078. The policy further specifically excludes medical payments coverage for farm employees. AA 090. This Court is required to apply the policy's definition of "employee" and "farm employee," as "[t]he existence of the rights and obligations of parties to an insurance contract are determined by the language of the contract, which must be construed according to the plain meaning of its terms." *W. Nat'l Mut. Ins. Co. v. TSP, Inc.*, 2017 S.D. 72, ¶ 11, 904 N.W.2d 52, 57.

The South Dakota Supreme Court has:

developed special rules of construction that apply when interpreting an insurance policy. Where the provisions of an insurance policy are fairly susceptible of different interpretations, the interpretation most favorable to the insured should be adopted. This rule of liberal construction in favor of the insured and strictly against the insurer applies only where the language of the insurance contract is ambiguous and susceptible of more than one interpretation *This rule does not mean, however, that the court may seek out a strained or unusual meaning for the benefit of the insured.*

Chord v. Reynolds, 1999 S.D. 1, 587 N.W.2d 729, 732 (emphasis added).

Section, F, of the policy defines employee and farm employee as follows:

8. "Employee" means any person providing a service to the insured, whether the employment agreement is express or implied, oral or written, lawful or unlawful, including relatives, aliens, and minors, regardless of the duration of employment or whether the person is compensated.

...

10. "Farm employee" means any insured's employee whose duties are principally in connection with the maintenance or use of an "insured location" as a farm. These duties include the maintenance or use of that insured's farm equipment

...

AA 100.

The Circuit Court correctly found that the definitions of employee and farm employee were unambiguous, but it improperly determined a dispute of material facts existed. Under the undisputed facts in this case, as well as subsequent admissions, Peterson meets both definitions. Peterson was performing a service to Burjes, with his duties principally in connection with the maintenance or use of the insured location as a farm. *Compare* AA 100 with SR 501-08 and Appellant’s Brief p. 17.¹² Coverage H, Section 2, Exclusions, states that insurance for bodily injury does not apply to “‘bodily injury’ sustained by . . . [a]ny ‘employee’ . . . arising out of his or her employment, or while performing duties related to the conduct of the insured’s ‘farming’ operations.” AA 078. The Circuit Court found, and Peterson does not take issue with the fact that, he was performing a service to the insured related to the insured’s farming operations. AP 10; Appellant’s Brief p. 17. Nor can it be disputed that the duties Peterson was performing were in connection with the maintenance of the insured location. AA 128.¹³ The only matter in question is whether a genuine dispute of material facts exists as to whether an employment *agreement*, under the policy definition, existed in this case. *See* AA 100 (definition of “Employee”).

The Circuit Court’s memorandum opinion errs on the side of caution in finding an alleged dispute of material facts involving an employment agreement by citing a sentence from *Great W. Cas. Co. v. Bergeson*, 1996 S.D. 73, ¶ 6, 550 N.W.2d 418, 420, which

¹² The Circuit Court acknowledged this when it correctly ruled that the recreational vehicle exclusion precluded coverage because Peterson was using it for farming purposes. AA 128.

¹³ “Insured location” also means any other location that you own, *rent*, or occupy, provided that . . . location is used exclusively for “farming” purposes” AA 128 (emphasis added).

stated “the existence of an employment relationship is ordinarily a question of fact.” However, the Circuit Court omitted the very next sentence in *Bergeson*, which states: “Yet *when such relationship is clear*, it may be determined by the court. *Id.* (citing *Steen v. Potts*, 61 N.W.2d 825, 828 (S.D. 1953)) (emphasis added). Furthermore, the Circuit Court cited *Setliff v. Adkins*, 2000 S.D. 124, 616 N.W.2d 878. Notably, the Court in *Setliff* reversed the circuit court’s summary judgment based on the circuit court’s finding that a contract did not exist, and expressly ruled that an implied contract did exist, stating it is “nonsensical to conclude that there was no meeting of the minds between the parties to contract.” *Id.*, 2000 S.D. 124, ¶ 15, 616 N.W.2d at 886 (quotations omitted).¹⁴

In the present case, the employment relationship was so “clear, it may be determined by the Court” without implication. *Bergeson*, 1996 S.D. 73, ¶ 6, 550 N.W.2d at 420. Burjes admitted that Peterson was an employee for the summer, that Peterson was working on the insured location, and that Peterson was doing work spraying (farming) at the time of the incident. *See generally* SR 501-08. Furthermore, even excluding Burjes’ recorded conversation with Nationwide’s adjuster, Peterson admits that the Fitches would call Peterson in the summertime to help brand cattle. Appellant’s Brief p. 6; AP 12 ¶ 4. Peterson admits that he was paid (categorized as minimally) by the Fitches if he helped. AP 13 ¶ 5. After the accident Burjes issued Peterson a W-2 in the amount of \$3,425.00. *Id.* ¶ 12. If Peterson went out to the farm to help his uncles, Burjes would typically pay him. *Id.* ¶ 13. Most importantly, on the day of the incident, per Appellant: “*Truett asked Hunter if he could come out and spray weeds and Hunter stated that he would.*” *Id.* ¶ 10

¹⁴ The Court reversed and remanded the case, as the existence of an employment agreement opened the door for the original allegations of breaching various duties, which were fact issues. *Id.*

(emphasis added). After, Hunter agreed to spray weeds, he did, in fact, spray weeds on land rented by Burjes.

Using the BLACK'S LAW DICTIONARY definition provided by Peterson, an "agreement" is defined as "[t]he act of two or more persons, who unite in expressing a mutual and common purpose, with the view of altering rights and obligations. The union of two or more minds in a thing done or to be done; a mutual assent to do a thing." *Agreement*, BLACK'S LAW DICTIONARY 89 (4th ed. 1968). Peterson's acknowledgment — within his Disputed Material Facts submission — of the exchange between him and Truett demonstrates not only an agreement on the day of the incident, specifically, but an express agreement to perform a service for the insured.¹⁵ See AA 100.

The policy defines "employee" as:

[A]ny person providing a service to the insured, whether the employment agreement is express or implied, oral or written, lawful or unlawful, including relatives, aliens, and minors, regardless of the duration of employment or whether the person is compensated.

AA 100. "Truett asked Hunter if he could come out and spray weeds and Hunter stated that he would." AP 13 ¶ 10. Peterson, thereafter, sprayed the weeds pursuant to Truett's request and his acquiescence, and during the commission of providing the service of spraying weeds to the insured, he received the very injuries for which he is seeking coverage. It would be a strained interpretation of the policy language to claim an employment agreement under the definition did not exist when there was an admitted

¹⁵ Peterson appears to make the argument that Peterson was spraying weeds for Truett and not Burgess. However, it cannot be disputed that Truett was an insured under the policy, as he was farm employee and agent of Burjes' pursuant to Peterson's own Complaint. AP 18, ¶ 5. As such, regardless of whether Peterson was performing a service for Truett or Burjes, he was performing a service for the insured, per the definition of "employee" within the policy. AA 100.

request to provide a service to the insured, an admitted acceptance of the request, followed by the accepting person actually performing the agreed-upon task and being injured during that task. *Chord*, 1999 S.D. 1, 587 N.W.2d at 732.

Furthermore, it does not matter whether Peterson's service of spraying weeds was to occur only for a couple of hours or whether it was the first time Peterson had sprayed weeds, as pursuant to the policy, the employment can be of any duration. AA 100. It does not matter if Peterson did not know he was being paid, because no compensation is required under the policy definition. *Id.* It does not matter that Peterson was helping his grandpa, because relatives are included in the definition of employee. *Id.* Thus, Peterson's myriad of arguments that he didn't think of himself as an employee, that he had never sprayed weeds before, that he was just grandpa's "intermittent helper," and so on, are inapposite and merely more-favorable categorizations of undisputed facts which are being assigned different labels by Peterson to provide the essence of a material fact dispute. Finding that an agreement existed, based on the facts admitted to by Peterson is by no means engaging in fact finding. *Johnson v. Rapid City Softball Ass'n*, 514 N.W.2d 693, 698 (S.D. 1994).

Additionally, even if this Court finds that the express agreement with Truett is somehow insufficient to find that Peterson was an employee and a farm employee, the facts are "clear" enough in this situation to allow for this Court to find an employment agreement by implication. *See Bergeson*, 1996 S.D. 73 ¶ 6, 550 N.W.2d at 420. The BLACK'S "Classification" section under the Fifth Addition's¹⁶ definition of "Agreement," aptly defines "Implied Agreement" to be "[o]ne inferred from the acts or conduct of the

¹⁶ Peterson cited the Fourth Addition.

parties, instead of being expressed by them in written or spoken words.” *Implied Agreement*, BLACK’S LAW DICTIONARY 62 (5th ed. 1979). BLACK’S further defines the term “implied” as “[t]he word is used in law in contrast to ‘express’; i.e., where the intention in regard to the subject-matter is not manifested by explicit and direct words, but is gathered by implication or necessary deduction from the circumstances, the general language, or the conduct of the parties. This term differs from ‘inferred’ while the writer or speaker ‘implies.’” *Id.* at 679.

Peterson’s and the Fitches’ actions on the day of the incident, as well as prior conduct (branding, moving bales, etc.), fall in line with the definition of “implied agreement” of performing a service for the insured. *See* BLACK’S 5th ed. at 62; AA 100. It is undisputed that Truett contacted Peterson to spray weeds on Burjes’ rented pasture. AP 13 ¶¶ 9-10. It is additionally undisputed that Peterson was spraying weeds on a Gator owned by Burjes. SR 288 ¶ 2. It is undisputed that Burjes was the one who paid Peterson, though payment is not necessary for the definition of employee under the policy. *Id.* ¶ 12. Furthermore, regardless of who asked Peterson to spray (Truett or Burjes), the spraying was being performed on Burjes’ pasture. The definition of employee does not include a requirement that one must be performing a service “at the insured’s direction.” *See* AA 100. The definition is limited to “performing a service to the insured.” *Id.*

An implied agreement can be “gathered by implication or proper deduction from the conduct of the parties, language used, or acts done by them, or other pertinent circumstances attending the transaction.” *Setliff*, 2000 S.D. 124, ¶ 12, 616 N.W.2d at 885 (quoting *Mahan v. Mahan*, 121 N.W.2d 367, 369 (S.D. 1963)). The parties’ conduct leads

to the conclusion that an employment agreement — which is at the very least implied — existed. Truett contacted, Peterson acted, and Burjes paid. AP 13 ¶¶ 9, 10, 12. The parties’ employment “relationship is clear, [and] it may be determined by the court. *See Bergeson*, 1996 S.D. 73, ¶ 6, 550 N.W.2d at 420.

Finally, Peterson seems to suggest to this Court that without a finding of coverage in this matter, he cannot be compensated for his injuries. *See* Appellant’s Brief p. 10. However, such has never been the case. A finding that Nationwide has no duty to defend or cover Peterson’s injuries is not a barrier to Peterson’s underlying suit against the Fitches. Peterson still possesses every right to sue the Fitches for the injuries he sustained due to their alleged negligence. Nationwide just does not cover those injuries because the Fitches’ farm policy does not cover employees (a workers compensation endorsement would have been required for employees to be covered) nor does it cover recreational vehicles used for farming purposes.

Ultimately, Peterson was an employee and a farm employee under the policy and the Circuit Court erred in finding a dispute of material facts. Peterson is, therefore, additionally excluded from coverage due to his status as an employee and a farm employee. This Court should affirm the Circuit Court’s grant of summary judgment as to recreational vehicle exclusion and should additionally find that Peterson was an employee and a farm employee under the policy.

CONCLUSION

The Circuit Court properly concluded that Nationwide possessed no duty to defend or cover Peterson’s injuries because they arose out of an excluded event; namely, the operation of a recreational vehicle for farming purposes. Because Peterson was

injured by the Gator, which was the excluded vehicle in question, the concurrent cause doctrine would not apply. The alleged independent acts of negligence were inextricably intertwined with the use and operation of the Gator.

Even if this Court somehow decided that the application of the concurrent cause doctrine were applicable as to the recreational vehicle exclusion, Peterson was an employee and a farm employee under the policy. Peterson was performing a service for the insured involving the insured's farming operation, on the insured location, by explicit and implied agreement to perform that service, thereby making him an employee and a farm employee under the policy. Employees and farm employees are excluded from coverage under the policy.

Nationwide respectfully requests that this Court affirm the Circuit Court's summary judgment in favor of Nationwide, but additionally rule that Peterson is also excluded from coverage as an employee and a farm employee.

Dated this 29 day of December, 2021.

MAY, ADAM, GERDES & THOMPSON, LLP

BY: 

TERRA M. LARSON
Attorneys for Plaintiff
503 South Pierre Street
P.O. Box 160
Pierre, SD 57501
(605) 224-8803
terra@mayadam.net

CERTIFICATE OF SERVICE

Terra M. Larson of May, Adam, Gerdes & Thompson LLP hereby certifies that on the 29 day of December, 2021, she served an electronic copy of the foregoing Appellee's Brief in the above-captioned action to the appellant's counsel, to-wit:

Michael J. McGill
PO Box 32
Beresford, SD 57004
Co-Counsel for Defendant Hunter Peterson
mjmc@bmtc.net


Bret Merkle
PO Box 90708
Sioux Falls, SD 57109-0708
Co-Counsel for Defendant Hunter Peterson
bret@merklelaw.com

And to Non-Appealing Defendants:

Lee Schoenbeck
Joe Erickson
PO Box 1325
Watertown, SD 57201
Attorneys for Defendants Burjes and Cheryl Fitch, Fitch Farms, and BC Fitch Limited Partnership

Truett Fitch
21327 211th Avenue
Philip, SD 57567

Theo Fitch
21333 210th Avenue
Philip, SD 57567

BY: 
Terra M. Larson

CERTIFICATE OF COMPLIANCE

Terra M. Larson, counsel for Appellee, hereby certifies that the foregoing Brief of Appellee complies with the type volume limitation provided for in the South Dakota Codified Laws and pursuant to SDCL 15-26A-66(b)(4). This brief contains 7,108 words, exclusive of the Table of Contents, Table of Authorities, Jurisdictional Statement, Statement of Legal Issues, Appendix, Certificate of Service, and Certificates of Counsel. Counsel relied on the word and character count of Microsoft Word, word processing software, used to prepare this Brief at font size 12, Times New Roman, and left justified.

Dated this 29 day of December, 2021.

MAY, ADAM, GERDES & THOMPSON, LLP

BY: 

TERRA M. LARSON
Attorneys for Appellee
503 South Pierre Street
P.O. Box 160
Pierre, SD 57501
(605) 224-8803
terra@mayadam.net


CERTIFICATE OF PROOF OF FILING

The undersigned hereby certifies that pursuant to SDCL 15-26C-3 she served an electronic copy in Word format, and the original and two (2) hard-copies of the above and foregoing Appellee's Brief on the Clerk of the Supreme Court by mailing the same this date to the following address:

Clerk of the Supreme Court
State Capital Building
500 E. Capitol Avenue
Pierre, SD 57501
scclerkbriefs@uj.s.state.sd.us

Dated this 29 day of December, 2021.

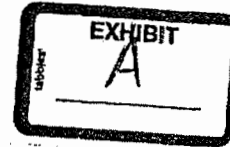
MAY, ADAM, GERDES & THOMPSON, LLP

BY: 
TERRA M. LARSON
Attorneys for Appellees
503 South Pierre Street
P.O. Box 160
Pierre, SD 57501
(605) 224-8803
terra@mayadam.net

Appellee's Appendix Table of Contents

	Page No.
Order	PRODUCED BY APPELLANT
Memorandum Decision	PRODUCED BY APPELLANT
Farm Liability policy FPK FMPN 3027010948	AA 001
Statement of Undisputed Material Facts	AA 195

Nationwide[®]
is on your side



FARM PACKAGE - FPK 30-2-7010948

ES 1 43 PZ

BURJES FITCH
PO BOX 16
PHILIP, SD 57567-0016

==

Your Farmowners Insurance Policy

Courtesy of:

AGENCY - SD 04249

FISCHER ROUNDS AND ASSOC INC
PO BOX 218
PIERRE SD 57501-0218
605-224-9223

POLICY # FPK 30-2-7010948



To Report A Claim Call: 1-800-248-6283

MAIL PAGE (01-02)00

LIC8

R

072618

INSURED COPY

FPK 30-2-7010948

43 0000001

001

002

AA 002

DocuSign Envelope ID: 831E50B5-A894-44D3-9C4C-061F6CF3F011



Certification

I, Dominic Leo, as a duly authorized NATIONWIDE AGRIBUSINESS INSURANCE -NAIC associate entrusted with oversight of the system of record from which this copy was produced, based upon information and belief; certify under the penalty of perjury that this attached copy of FPK FMPN 3027010948 effective 02/20/2017 to 02/20/2018 issued to FITCH, BURJES, FITCH, CHERYL was made at or near the time of certification, as part of regularly conducted business activities, and is a true and accurate copy of the official record kept as part of regular business activities.

DocuSigned by:
Dominic Leo
D99A946718164A8...
Dominic Leo
CL Lead

7/27/2018
Date

003

004

AA 004

DocuSign Envelope ID: 442F56B3-E9BF-44A8-95B4-5CE16CFFA85D



Certification

I, TIM CALVERT, as a duly authorized NATIONWIDE AGRIBUSINESS-NAIC associate entrusted with oversight of the system of record from which this copy was produced, based upon information and belief; certify under the penalty of perjury that this attached copy of FPK FAEN 3027010948 effective 02/20/2017 To 02/20/2018 issued to FITCH, BURJES, FITCH, CHERYL was made at or near the time of certification, as part of regularly conducted business activities, and is a true and accurate copy of the official record kept as part of regular business activities.

DocuSigned by:
CALVERT, TIM
7F156AC41BAA4B3
Tim Calvert
CL Processing Supervisor

8/22/2018

Date

005

006

AA 006

INSURANCE IDENTIFICATION CARDS
PLEASE KEEP A CARD IN EACH VEHICLE
DO NOT USE IF YOUR POLICY OR COVERAGE IS NOT IN FORCE

SOUTH DAKOTA INSURANCE IDENTIFICATION CARD

COMPANY NUMBER COMPANY ☒ COMMERCIAL ☐ PERSONAL
NAIC 028223 NATIONWIDE AGRIBUSINESS INSURANCE
POLICY NUMBER EFFECTIVE DATE EXPIRATION DATE
FPK FMPN 30-2-7010948 02/20/17 02/20/18
YEAR MAKE/MODEL VEHICLE IDENTIFICATION NUMBER
14 RANGER S BY S 4XAUH88A4EG864741
AGENCY/COMPANY ISSUING CARD
FISCHER ROUNDS AND ASSOC INC
PO BOX 218
PIERRE SD 57501
INSURED
FITCH, BURJES
FITCH, CHERYL
PO BOX 16
PHILIP, SD 57567-0016

Coverage Provided by this Policy Meets the
Minimum Liability Limits Prescribed by Law.

Nationwide
Insurance

SEE IMPORTANT NOTICE ON REVERSE SIDE

Nationwide
Insurance

FISCHER ROUNDS AND ASSOC INC
PIERRE SD 57501
INSURED FITCH, BURJES
FITCH, CHERYL
POLICY NUMBER FPK FMPN 30-2-7010948
ACCOUNT NUMBER 991442183
Customer Service: (800)418-3188
Claims Reporting: (866)322-3214

SOUTH DAKOTA INSURANCE IDENTIFICATION CARD

COMPANY NUMBER COMPANY ☒ COMMERCIAL ☐ PERSONAL
NAIC 028223 NATIONWIDE AGRIBUSINESS INSURANCE
POLICY NUMBER EFFECTIVE DATE EXPIRATION DATE
FPK FMPN 30-2-7010948 02/20/17 02/20/18
YEAR MAKE/MODEL VEHICLE IDENTIFICATION NUMBER
11 JOHN DEERE GATOR 4XAUH88A4EG864741
AGENCY/COMPANY ISSUING CARD
FISCHER ROUNDS AND ASSOC INC
PO BOX 218
PIERRE SD 57501
INSURED
FITCH, BURJES
FITCH, CHERYL
PO BOX 16
PHILIP, SD 57567-0016

Coverage Provided by this Policy Meets the
Minimum Liability Limits Prescribed by Law.

Nationwide
Insurance

SEE IMPORTANT NOTICE ON REVERSE SIDE

Nationwide
Insurance

FISCHER ROUNDS AND ASSOC INC
PIERRE SD 57501
INSURED FITCH, BURJES
FITCH, CHERYL
POLICY NUMBER FPK FMPN 30-2-7010948
ACCOUNT NUMBER 991442183
Customer Service: (800)418-3188
Claims Reporting: (866)322-3214

ID 0040C (01-10)
L108

18206

INSURED COPY

991442183

43 (00000002)

007

THIS CARD MUST BE KEPT IN THE INSURED
VEHICLE AND PRESENTED UPON DEMAND

IN CASE OF ACCIDENT: Report all accidents to your Agent/Company as soon as possible.
Obtain the following information:

1. Name and address of each driver, passenger and witness.
2. Name of Insurance Company and policy number for each vehicle involved.

ACORD 50 SD (2007/02)

©ACORD CORPORATION 2007. All rights reserved.

THIS CARD MUST BE KEPT IN THE INSURED
VEHICLE AND PRESENTED UPON DEMAND

IN CASE OF ACCIDENT: Report all accidents to your Agent/Company as soon as possible.
Obtain the following information:

1. Name and address of each driver, passenger and witness.
2. Name of Insurance Company and policy number for each vehicle involved.

ACORD 50 SD (2007/02)

©ACORD CORPORATION 2007. All rights reserved.

0000003

008

INSURANCE IDENTIFICATION CARDS
PLEASE KEEP A CARD IN EACH VEHICLE
DO NOT USE IF YOUR POLICY OR COVERAGE IS NOT IN FORCE

SOUTH DAKOTA INSURANCE IDENTIFICATION CARD

COMPANY NUMBER NAIC 028223 COMPANY ☒ COMMERCIAL ☐ PERSONAL
NATIONWIDE AGRIBUSINESS INSURANCE
POLICY NUMBER EFFECTIVE DATE 02/20/17 EXPIRATION DATE 02/20/18
FPK FMPN30-2-7010948
YEAR MAKE/MODEL 07 HONDA CRF230 VEHICLE IDENTIFICATION NUMBER 9C2ME09027R003827
AGENCY/COMPANY ISSUING CARD
FISCHER ROUNDS AND ASSOC INC
PO BOX 218
PIERRE SD 57501
INSURED
FITCH, BURJES
FITCH, CHERYL
PO BOX 16
PHILIP, SD 57567-0016

Coverage Provided by this Policy Meets the
Minimum Liability Limits Prescribed by Law.

Nationwide
NATIONWIDE

SEE IMPORTANT NOTICE ON REVERSE SIDE

Nationwide
NATIONWIDE

FISCHER ROUNDS AND ASSOC INC
PIERRE SD 57501
INSURED FITCH, BURJES
FITCH, CHERYL
POLICY NUMBER FPK FMPN 30-2-7010948
ACCOUNT NUMBER 991442183
Customer Service: (800)418-3188
Claims Reporting: (866)322-3214

SOUTH DAKOTA INSURANCE IDENTIFICATION CARD

COMPANY NUMBER NAIC 028223 COMPANY ☒ COMMERCIAL ☐ PERSONAL
NATIONWIDE AGRIBUSINESS INSURANCE
POLICY NUMBER EFFECTIVE DATE 02/20/17 EXPIRATION DATE 02/20/18
FPK FMPN30-2-7010948
YEAR MAKE/MODEL 10 POLARIS SNO 800RMK VEHICLE IDENTIFICATION NUMBER SNIPL8ES2AC652281
AGENCY/COMPANY ISSUING CARD
FISCHER ROUNDS AND ASSOC INC
PO BOX 218
PIERRE SD 57501
INSURED
FITCH, BURJES
FITCH, CHERYL
PO BOX 16
PHILIP, SD 57567-0016

Coverage Provided by this Policy Meets the
Minimum Liability Limits Prescribed by Law.

Nationwide
NATIONWIDE

SEE IMPORTANT NOTICE ON REVERSE SIDE

Nationwide
NATIONWIDE

FISCHER ROUNDS AND ASSOC INC
PIERRE SD 57501
INSURED FITCH, BURJES
FITCH, CHERYL
POLICY NUMBER FPK FMPN 30-2-7010948
ACCOUNT NUMBER 991442183
Customer Service: (800)418-3188
Claims Reporting: (866)322-3214

ID 0040C (01-10)
L108

18206

INSURED COPY

991442183

43 (0000004)

009

Filed: 3/18/2021 10:50 AM CST Haakon County, South Dakota 27CIV20-000019

- Page 303 -

AA 009

THIS CARD MUST BE KEPT IN THE INSURED
VEHICLE AND PRESENTED UPON DEMAND

IN CASE OF ACCIDENT: Report all accidents to your Agent/Company as soon as possible.
Obtain the following information:

1. Name and address of each driver, passenger and witness.
2. Name of Insurance Company and policy number for each vehicle involved.

ACORD 50 SD (2007/02)

©ACCORD CORPORATION 2007. All rights reserved.

THIS CARD MUST BE KEPT IN THE INSURED
VEHICLE AND PRESENTED UPON DEMAND

IN CASE OF ACCIDENT: Report all accidents to your Agent/Company as soon as possible.
Obtain the following information:

1. Name and address of each driver, passenger and witness.
2. Name of Insurance Company and policy number for each vehicle involved.

ACORD 50 SD (2007/02)

©ACCORD CORPORATION 2007. All rights reserved.

0000005

010

INSURANCE IDENTIFICATION CARDS
PLEASE KEEP A CARD IN EACH VEHICLE
DO NOT USE IF YOUR POLICY OR COVERAGE IS NOT IN FORCE

SOUTH DAKOTA INSURANCE IDENTIFICATION CARD

COMPANY NUMBER COMPANY ☒ COMMERCIAL ☐ PERSONAL
NAIC 028223 NATIONWIDE AGRIBUSINESS INSURANCE
POLICY NUMBER EFFECTIVE DATE EXPIRATION DATE
FPK FMPN30-2-7010948 02/20/17 02/20/18
YEAR MAKE/MODEL VEHICLE IDENTIFICATION NUMBER
16 POLARIS ATV 4XASEA572GA270199
AGENCY/COMPANY ISSUING CARD
FISCHER ROUNDS AND ASSOC INC
PO BOX 218
PIERRE SD 57501
INSURED
FITCH, BURJES
FITCH, CHERYL
PO BOX 16
PHILIP, SD 57567-0016

Coverage Provided by this Policy Meets the
Minimum Liability Limits Prescribed by Law.

Nationwide
a part of

SEE IMPORTANT NOTICE ON REVERSE SIDE

Nationwide
a part of

FISCHER ROUNDS AND ASSOC INC
PIERRE SD 57501
INSURED FITCH, BURJES
FITCH, CHERYL
POLICY NUMBER FPK FMPN 30-2-7010948
ACCOUNT NUMBER 991442183
Customer Service: (800)418-3188
Claims Reporting: (866)322-3214

SOUTH DAKOTA INSURANCE IDENTIFICATION CARD

COMPANY NUMBER COMPANY ☒ COMMERCIAL ☐ PERSONAL
NAIC 028223 NATIONWIDE AGRIBUSINESS INSURANCE
POLICY NUMBER EFFECTIVE DATE EXPIRATION DATE
FPK FMPN30-2-7010948 02/20/17 02/20/18
YEAR MAKE/MODEL VEHICLE IDENTIFICATION NUMBER
16 HONDA ATV 1HFTE44D8G4201348
AGENCY/COMPANY ISSUING CARD
FISCHER ROUNDS AND ASSOC INC
PO BOX 218
PIERRE SD 57501
INSURED
FITCH, BURJES
FITCH, CHERYL
PO BOX 16
PHILIP, SD 57567-0016

Coverage Provided by this Policy Meets the
Minimum Liability Limits Prescribed by Law.

Nationwide
a part of

SEE IMPORTANT NOTICE ON REVERSE SIDE

Nationwide
a part of

FISCHER ROUNDS AND ASSOC INC
PIERRE SD 57501
INSURED FITCH, BURJES
FITCH, CHERYL
POLICY NUMBER FPK FMPN 30-2-7010948
ACCOUNT NUMBER 991442183
Customer Service: (800)418-3188
Claims Reporting: (866)322-3214

ID 0040C (01-10)
L108

18206

INSURED COPY

991442183

43 (0000006)

011

Filed: 3/18/2021 10:50 AM CST Haakon County, South Dakota 27CIV20-000019

- Page 305 -

AA 011

THIS CARD MUST BE KEPT IN THE INSURED
VEHICLE AND PRESENTED UPON DEMAND

IN CASE OF ACCIDENT: Report all accidents to your Agent/Company as soon as possible.
Obtain the following information:

1. Name and address of each driver, passenger and witness.
2. Name of Insurance Company and policy number for each vehicle involved.

ACORD 50 SD (2007/02)

ACORD CORPORATION 2007. All rights reserved.

THIS CARD MUST BE KEPT IN THE INSURED
VEHICLE AND PRESENTED UPON DEMAND

IN CASE OF ACCIDENT: Report all accidents to your Agent/Company as soon as possible.
Obtain the following information:

1. Name and address of each driver, passenger and witness.
2. Name of Insurance Company and policy number for each vehicle involved.

ACORD 50 SD (2007/02)

ACORD CORPORATION 2007. All rights reserved.

0000007

012

Nationwide® Privacy Statement

Thank you for choosing Nationwide

Our privacy statement explains how we collect, use, share, and protect your personal information. So just how do we protect your privacy? In a nutshell, we respect your right to privacy and promise to treat your personal information responsibly. It's as simple as that. Here's how.

Confidentiality and security

We follow all data security laws. We protect your information by using physical, technical, and procedural safeguards. We limit access to your information to those who need it to do their jobs. Our business partners are legally bound to use your information for permissible purposes.

Collecting and using your personal information

We collect information about you when you ask about or buy one of our products or services. The information comes from your application, business transactions with us, consumer reports, and publicly available sources. Please know that we only use that information to sell, service, or market products to you.

We may collect the following types of information:

- Name, address, and Social Security number
- Assets and income
- Property address and value
- Account and policy information
- Credit reports and other consumer report information
- Family member and beneficiary information
- Public information

Sharing your information for business purposes

We share your information with other Nationwide companies and business partners. When you buy a product, we may share your personal information for everyday business purposes. Some examples include mailing your statements or processing transactions that you request. You cannot opt out of these. We also share your information with your agent or producer. They use your personal information to manage your policy or account. We may also share your personal information as federal and state law requires.

Sharing your information for marketing purposes

We don't sell your information to anyone – period. We may share your personal information with Nationwide companies or business partners to market products to you. We have joint marketing agreements with our business partners. This means that we have partnered with them to offer you a product that might interest you. They may use your personal information to market their products. If you would like to learn more about opting out, please read the next section.

Opting Out

You can ask us not to share your personal information with the Nationwide family of companies listed below or our business partners to market products to you. Remember, these companies offer many different types of products and services. If you would like to learn about these products from one of our companies, you may not want to opt out. You can opt out of sharing with other Nationwide affiliates and sharing with third parties.



Nationwide®
is on your side.

FPK FMPN 3027010948

INSURED'S COPY

43 0000008

013

Opting Out (continued ...)

To opt out of sharing for marketing purposes, please call us toll free at 1-866-280-1809. You may opt out at any time and your request will take effect in 30 days. An opt out request from one joint customer will apply to all joint customers on the policy or account. If you have already opted out, you don't need to opt out again because your request will never expire.

We will not share the personal information of Vermont customers with the Nationwide family of companies or third parties for marketing purposes without your consent.

Using your medical information

We sometimes collect medical information. We may use this medical information for a product or service you're interested in, to pay a claim, or to provide a service. We may share this medical information for these business purposes if required or permitted by law. But we won't use it for marketing purposes unless you give us permission.

Accessing your information

You can always ask us for a copy of your personal information. Please send your privacy inquiry to the address below and have your signature notarized. This is for your protection so we may prove your identity. We don't charge a fee for giving you a copy of your information now, but we may charge a small fee in the future.

You can change your personal information at MyNationwide.com or by calling your agent. But we can't update information that other companies, like credit agencies, provide to us. So you'll need to contact these other companies to change and correct your information.

Send your privacy inquiries to the address below. Please include your name, address, and policy number. If you know it, include your agent's name and number.

Nationwide Insurance
Attn: Customer Relations - Privacy
One Nationwide Plaza, 3-04-101
Columbus, OH 43260

A parting word ...

These are our privacy practices. They apply to all current, past, and former clients of Nationwide Mutual Insurance Company, Nationwide Agents, and the affiliates and subsidiaries that offer auto, home, property, life insurance, banking services, and investments. This includes the following companies:

Nationwide Insurance Company of America
Nationwide Agribusiness Insurance Company
Nationwide Assurance Company
Nationwide Property and Casualty Insurance Company
Nationwide Affinity Insurance Company of America
Nationwide Securities, LLC
Nationwide Sales Solutions, Inc.
Nationwide Mutual Insurance Company
Nationwide Mutual Fire Insurance Company
Nationwide General Insurance Company
Nationwide Insurance Company of Florida
Nationwide Lloyds
Nationwide Life Insurance Company
Nationwide Bank
Nationwide Advantage Mortgage Company
Titan Holdings, Inc.
Colonial County Mutual Insurance Company
Insurance Intermediaries, Inc.
Crestbrook Insurance Company

IN0000N (04-09)

Effective Date: April 20, 2009

Nationwide, the Nationwide N and Eagle and Nationwide logos on your side are service marks of Nationwide Mutual Insurance Company. © 2015 Nationwide

FPK FMPN 3027010948

INSURED'S COPY

43 0000009

014

Named Insured:

Address:

★★★★★★

IMPORTANT INSURANCE INFORMATION

★★★★★★

IMPORTANT NOTICE FOR RENEWAL POLICIES

In an effort to keep your insurance premium as low as possible, we have streamlined your renewal policy. We have not included printed copies of policy forms and endorsements that have not changed from your expiring policy unless they include variable information that is unique to you. Please refer to your prior policies for printed copies of these forms. If you desire copies, they are available upon request from your agent.

IN 5017 (05-93)

INSURED'S COPY

FPK FMPN 3027010948

43 0000010

015

Filed: 3/18/2021 10:50 AM CST Haakon County, South Dakota 27CIV20-000019

- Page 309 -

AA 015

IN7403 01 07

IMPORTANT FLOOD INSURANCE NOTICE

Thank you for the opportunity to provide your important insurance protection. As your insurance provider, we like to keep you informed of important issues that can potentially impact your property assets. This letter is to remind you of the importance of considering flood insurance and the importance of reviewing your policies on a regular basis.

Your Nationwide Agribusiness Farmowners' and Commercial Property policies do not cover damage from floods to any property resulting directly or indirectly from "water." Excluded "water" losses include, but are not limited to those caused by flood, surface water, waves, tides, tidal waves, overflow of any body of water, or their spray, all whether driven by wind or not. These types of loss or damage caused by "water" are excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss. You will need to read your policy for all of the details about excluded water losses. This is just a summary of the excluded water losses to highlight some important flood-related issues.

In most communities, you can obtain flood insurance through Nationwide that is backed by the federal government's National Flood Insurance Program. In those qualifying communities, you can obtain flood insurance protection for your property regardless of your flood zone or flood risk.

Your Nationwide representative can assist you in 1) determining if your community participates in the National Flood Insurance Program, 2) assessing your flood risk, and 3) understanding flood policy availability. To learn more about flood insurance and your risk of flooding, access the National Flood Insurance Program's consumer website at www.FloodSmart.gov.

As you consider the risk of flooding in your area and consider your options for obtaining valuable protection, consider that:

- All property is in a flood zone, regardless of whether an area has been defined as high risk or low risk.
- Nearly 25% of all flood claims are for properties located in lower-risk flood areas or locations where flooding is not expected.
- Floods can happen anywhere, at any time, causing anguish, destruction, and financial damage.
- Changing weather patterns, as well as residential and business development, may increase your chance of experiencing a flood.
- Flooding can occur as a result of clogged, overtopped, or inadequate storm drains. You don't have to live near a body of water to be flooded.
- Federal disaster assistance is often a loan and must be repaid with interest.
- Your Farmowners' and Commercial Property policies exclude loss by flooding.

Ask your Nationwide representative about obtaining flood insurance today. Thank you for choosing Nationwide Agribusiness. We value your business.

NATIONWIDE INSURANCE COMPANIES
One Nationwide Plaza – Columbus, Ohio 43216-2220
Hearing or Voice Impaired: 1-800-622-2421 (TTY only)
nationwide.com

IN7403 01 07

Page 1 of 1

FPK FMPN 3027010348

INSURED'S COPY

43 000011

016



FARM DECLARATIONS

POLICY NUMBER: FPK FMPN 30 2 7010948
 IS EFFECTIVE FROM: 02/20/17 TO 02/20/18
 12:01 AM STANDARD TIME AT THE
 ADDRESS OF THE NAMED INSURED(S).

NATIONWIDE AGRIBUSINESS INSURANCE -NAIC
 1100 LOCUST ST DEPT 3000
 DES MOINES, IA 50391-3000

CONTINUATION

POLICY NUMBER: FPK FMPN 30 2 7010948

Named FITCH, BURJES
 Insured(s) FITCH, CHERYL
 and PO BOX 16
 Address PHILIP SD 57567-0016

Agent Name FISCHER ROUNDS AND ASSOC INC
 and Address PIERRE SD 57501

Agent Number 04249

Producer: 49

PREVIOUS POLICY NUMBER: FPK FMPN30-1-7010948

Form	Important Notice
IN7231	<p>ATTACHED IS YOUR POLICY RENEWAL WITH NATIONWIDE AGRIBUSINESS! NATIONWIDE AGRIBUSINESS AND MEMBER NATIONWIDE COMPANIES HAVE CONSISTENTLY EARNED "EXCELLENT" OR BETTER RATINGS FROM A.M. BEST COMPANY, AN INDEPENDENT ORGANIZATION WHICH MEASURES FINANCIAL STABILITY OF INSURANCE COMPANIES. WITH THIS RENEWAL YOU RECEIVE OUR PLEDGE TO QUALITY. OUR EMPLOYEES WORK HARD EVERY DAY TO MAKE SURE OUR CUSTOMERS ENJOY VALUE AND SERVICE SECOND TO NONE ANYWHERE.</p>
EARTHQUAKE INFORMATION	PREMIUM INFORMATION
COVERAGE NONE	PROPERTY PREMIUM \$20,718.00 LIABILITY PREMIUM \$1,468.00 TOTAL ANNUAL PREMIUM \$22,186.00
DEDUCTIBLE %	MPD=Y TOTAL PREMIUM DUE \$22,186.00

010038 (01-03) 00

DIRECT BILL

LI08072618

INSURED'S COPY

Page 00012

REPRINT

43

991442183

017

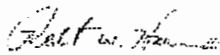
Filed: 3/18/2021 10:50 AM CST Haakon County, South Dakota 27CIV20-000019

- Page 311 -

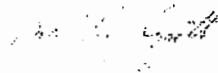
AA 017

NATIONWIDE AGRIBUSINESS INSURANCE COMPANY
(A stock company)

IN WITNESS WHEREOF, the Company has caused this policy to be signed by its president and secretary and countersigned on the declarations page by a duly authorized representative of the company.



SECRETARY



PRESIDENT

SP 00 36 09 16

FPK FMPN 3027010948

INSURED'S COPY

Page 1 of 1

43 0000013

018

FPK FMPN 30 2 7010948

INSURED'S COPY

Additional Interest Schedule

The following named Lienholder(s) retain an interest as specified:

FARM CREDIT SERVICES OF AMERICA, PCA
PO BOX 2409
OMAHA NE 68103-2409

LOAN NUMBER:
LOCATION 001 ITEM 035 FORM Y " LOSS PAYEE
INTEREST: NH T6070 TRACTOR #ZBBD11635

LOAN NUMBER:
LOCATION 001 ITEM 035 FORM Y " LOSS PAYEE
INTEREST: NH H8040 WINDROWER/SWATHER #Y7G660015; JD 9330 TRACTOR #RW9330P011417

LOAN NUMBER:
LOCATION 001 ITEM 035 FORM Y " LOSS PAYEE
INTEREST: NH T6050 TRACTOR #Z8BD16526; CASE IH 9330 TRACTOR #JEE0068421

LOAN NUMBER:
LOCATION 001 ITEM 035 FORM Y " LOSS PAYEE
INTEREST: KNIGHT RC250T FEED WAGON/MIXER #C0086; CASE IH 1250 PLANTER #YDS041240

COMMODITY CREDIT CORPORATION
PO BOX 339
PHILIP SD 57567-0339

LOAN NUMBER:
LOCATION 001 ITEM 005 FORM MORTGAGEE
INTEREST:

LOAN NUMBER:
LOCATION 001 ITEM 006 FORM MORTGAGEE
INTEREST:

8102 10 03

Page 00014

43

019

FPK FMPN 30 2 7010948

INSURED'S COPY

Additional Interest Schedule

The following named Lienholder(s) retain an interest as specified:

PAGE LEFT BLANK - INTENTIONALLY

8102 10 03

Page 00013

43

020

FPK FMPN 30 2 7010948

INSURED'S COPY
FARM LOCATION SCHEDULE

Loc	Acres	Location Information				County Name & Number	State
		Address City Number & Name Fire District Number & Name	Zipcode PC / DWL PC	Terr	Section Township Range		
1	13000	200 MYRTLE AVE 0999 PHILIP	57567-8807 06		-- --	HAAKON COUNTY 027	SD
2	1	21327 211TH AVE PHILIP	57567-8807 10		-- --	HAAKON COUNTY 027	SD
3	1	11100 FITCH TRAIL PHILIP	57564 10		-- --	SULLY 059	SD
4	1	20550 FITCH RD MILESVILLE	57553-3012 10		-- --	HAAKON COUNTY 027	SD

The interest of the Insured in the premises is that of OWNER

Countersigned this _____ day of _____ by _____
8103 (03-13) 00

Authorized Representative

Page 00015

43

021

Filed: 3/18/2021 10:50 AM CST Haakon County, South Dakota 27CIV20-000019

- Page 315 -

AA 021

FPK FMPN 30 2 7010948

INSURED'S COPY

FARM PROPERTY SCHEDULE A

Loc/ Item	Year	Item Description	Limit	Class	Deductible		Const Type	Premium
					Other	W & H		
001/001	1970	DWELLING CHERYL 2840 SF	200,000	10331	2,500	2,500	FRAME	1520
001		COV B - OTHER PRIVATE STRUCT	50,000	99996	2,500	2,500		
001		COV D - LOSS OF USE (ALS)		99997				
002		HOUSEHOLD PERSONAL PROPERTY	272,000	20301	2,500	2,500	FRAME	
005	2012	GRAIN BIN 25000 BU	50,000	33331	1,000	1,000	FRAME	491
006	2012	GRAIN BIN 25000 BU	50,000	33331	1,000	1,000	FRAME	491
007	2012	FRIESEN BULK BIN #3 1 BU	14,700	36931	2,500	2,500	FRAME	101
008	2013	METAL SHOP 1/2 INT 80X90	40,150	33231	1,000	1,000	FRAME	1112
011	2011	MERIDIAN 1620 BIN 4000 BU	17,500	36931	2,500	2,500	FRAME	121
012	2013	BULK BIN #1 1/2 INT 4000 BU	8,250	36931	1,000	1,000	FRAME	61
013	2013	BULK BIN #2 1/2 INT 4000 BU	8,250	36931	1,000	1,000	FRAME	61
016	2012	GRAIN BIN 33000 BU	98,000	33331	1,000	1,000	FRAME	572
017	2012	GRAIN BIN 33000 BU	98,000	33331	1,000	1,000	FRAME	572
035		BLANKET EXCL GRAIN	233,250	72160	2,500	2,500		6072
036	2014	RANGER S BY S 900 CC	20,000	65830	2,500	2,500		508
037	2011	S# 4XAUH88A4EG864741						
		JOHN DEERE GATOR 850 CC	10,000	65830	2,500	2,500		381
		S# 1M0825GSTE028196						
039		GRAIN STORED IN BAGS	100,000	44210	2,500	2,500		1255
040	2016	POLARIS #4XASEA572GA270199	10,000	65830	2,500	2,500		254
041	2016	HONDA #1HFE44D8G4201348	10,000	65830	2,500	2,500		254
002/001	1950	DWELLING TRUETT 1124 SF	91,367	10131	2,500	2,500	FRAME	1076
001		COV B - OTHER PRIVATE STRUCT	91,135	99996	2,500	2,500		
001		COV D - LOSS OF USE (ALS)		99997				
002	1980	QUONSET TRUETT LOC 60X40	10,900	33231	2,500	2,500	FRAME	432
003	1980	OPEN FRONT GARAGE 1 30X24	8,300	33232	2,500	2,500	FRAME	98
		TRUETT LOC						
004	1982	OPEN FRONT GARAGE 2 20X20	4,000	33232	2,500	2,500	FRAME	59
		TRUETT LOC						
005	2005	POLE BARN 112X52	17,700	33231	2,500	2,500	FRAME	506
		TRUETT LOC						
006	1990	GRAIN BIN BUTLER 1 3500 BU	8,200	33331	2,500	2,500	FRAME	84
		TRUETT LOC						
007	1990	GRAIN BIN BUTLER 2 3500 BU	8,200	33331	2,500	2,500	FRAME	84
		TRUETT LOC						
008	1990	GRAIN BIN BUTLER 3 3500 BU	8,200	33331	2,500	2,500	FRAME	84
		TRUETT LOC						
003/001	2014	DWELLING THEO 1280 SF	103,222	10231	2,500	2,500	FRAME	1206
001		COV B - OTHER PRIVATE STRUCT	103,222	99996	2,500	2,500		
001		COV D - LOSS OF USE (ALS)		99997				
002	1980	POLE BUILDING 60X40	18,200	33231	2,500	2,500	FRAME	307
		THEO LOC						
003	1990	RED POLE BARN 40X24	16,500	33231	2,500	2,500	FRAME	170
		THEO LOC						
004	1990	GRAIN BIN 4 8500 BU	15,200	33331	2,500	2,500	FRAME	163
		THEO LOC						
005	1990	GRAIN BIN 5 8500 BU	15,200	33331	2,500	2,500	FRAME	163
		THEO LOC						
006	2012	GRAIN BIN 6 40000 BU	12,900	33331	2,500	2,500	FRAME	654
		THEO LOC						
007	1980	GRAIN BIN 7 5000 BU	14,700	33331	2,500	2,500	FRAME	148
		THEO LOC						
004/001	1990	RED/WHITE POLE SHED 80X40	16,200	33231	2,500	2,500	FRAME	334
		TREVOR LOC						
002	1972	CATTLE BARN 84X42	39,900	33232	2,500	2,500	FRAME	459
		TREVOR LOC						
003	2012	MERIDIAN BULK BIN #1 18X18	15,000	36931	2,500	2,500	FRAME	114
		TREVOR LOC						
004	2012	MERIDIAN BULK BIN #2 18X18	15,000	36932	2,500	2,500	FRAME	142
		TREVOR LOC						

8104 101-01: 03

TOTAL 3,769,236

FPK FMPN 30 2 7010948

INSURED'S COPY

FARM PROPERTY SCHEDULE B

Loc/ Item	Item Description	Cause Of Loss	Class/ Coverage	Roof Type	Prot Device	Aux Heat	EQ Cov	Occup Type	Repl Cost	Cost of Const.	Ord & Law	
001/001	DWELLING CHERYL	SPECIAL	10331	A	O	00	N	NO	O	S	Y	N
001	COV B - OTHER P		99996	B								
001	COV D - LOSS OF		99997	D								
002	HOUSEHOLD PERSON	SPECIAL	20301	C	O	00	N	NO	O	R	Y	N
005	GRAIN BIN	SPECIAL	33331	G	M	00	N	NO	O	A	Y	N
006	GRAIN BIN	SPECIAL	33331	G	M	00	N	NO	O	A	Y	N
007	FRIESEN BULK BI	SPECIAL	36931	G	M	00	N	NO	O	A	Y	N
008	METAL SHOP 1/2	SPECIAL	33231	G	M	00	N	NO	O	A	Y	N
011	MERIDIAN 1620 B	SPECIAL	36931	G	M	00	N	NO	O	A	Y	N
012	BULK BIN #1 1/2	SPECIAL	36931	G	M	00	N	NO	O	A	Y	N
013	BULK BIN #2 1/2	SPECIAL	36931	G	M	00	N	NO	O	A	Y	N
016	GRAIN BIN	SPECIAL	33331	G	M	00	N	NO	O	R	Y	N
017	GRAIN BIN	SPECIAL	33331	G	M	00	N	NO	O	R	Y	N
035	BLANKET EXCL GR	SEE POL	72160	F		00	N	NO		A	N	N
036	RANGER S BY S 9	SPECIAL	65830	E		00	N	NO		A	N	N
	S# 4XAUH88A4EG8											
037	JOHN DEERE GATO	SPECIAL	65830	E		00	N	NO		A	N	N
	S# 1M0825GSTBN0											
039	GRAIN STORED IN	BASIC	44210	E		00	N	NO		A	N	N
040	POLARIS #4XASEA	SPECIAL	65830	E		00	N	NO		A	N	N
041	HONDA #1HFE44D	SPECIAL	65830	E		00	N	NO		A	N	N
002/001	DWELLING TRUETT	SPECIAL	10131	A	O	01	N	NO	T	R	Y	N
001	COV B - OTHER P		99996	B								
001	COV D - LOSS OF		99997	D								
002	QUONSET TRUETT	SPECIAL	33231	G	M	00	N	NO	O	A	Y	N
003	OPEN FRONT GARA	SPECIAL	33232	G	O	00	N	NO	O	A	N	N
	TRUETT LOC											
004	OPEN FRONT GARA	SPECIAL	33232	G	M	00	N	NO	O	A	N	N
	TRUETT LOC											
005	POLE BARN	SPECIAL	33231	G	M	00	N	NO	O	A	Y	N
	TRUETT LOC											
006	GRAIN BIN BUTLE	SPECIAL	33331	G	M	00	N	NO	O	A	Y	N
	TRUETT LOC											
007	GRAIN BIN BUTLE	SPECIAL	33331	G	M	00	N	NO	O	A	Y	N
	TRUETT LOC											
008	GRAIN BIN BUTLE	SPECIAL	33331	G	M	00	N	NO	O	A	Y	N
	TRUETT LOC											
003/001	DWELLING THEO	SPECIAL	10231	A	O	00	N	NO	T	R	Y	N
001	COV B - OTHER P		99996	B								
001	COV D - LOSS OF		99997	D								
002	POLE BUILDING	SPECIAL	33231	G	M	00	N	NO	O	A	Y	N
	THEO LOC											
003	RED POLE BARN	SPECIAL	33231	G	M	00	N	NO	O	A	Y	N
	THEO LOC											
004	GRAIN BIN 4	SPECIAL	33331	G	M	00	N	NO	O	A	Y	N
	THEO LOC											
005	GRAIN BIN 5	SPECIAL	33331	G	M	00	N	NO	O	A	Y	N
	THEO LOC											
006	GRAIN BIN 6	SPECIAL	33331	G	M	00	N	NO	O	A	Y	N
	THEO LOC											
007	GRAIN BIN 7	SPECIAL	33331	G	M	00	N	NO	O	A	Y	N
	THEO LOC											
004/001	RED/WHITE POLE	SPECIAL	33231	G	M	00	N	NO	O	R	Y	N
	TREVOR LOC											
002	CATTLE BARN	SPECIAL	33232	G	M	00	N	NO	O	A	N	N
	TREVOR LOC											
003	MERIDIAN BULK B	SPECIAL	36931	G	M	00	N	NO	O	A	Y	N
	TREVOR LOC											
004	MERIDIAN BULK B	SPECIAL	36932	G	M	00	N	NO	O	A	N	N
	TREVOR LOC											

8105 09 05 10

00018

43

023

LEGEND

Roof Type:		Earthquake Coverage:	
Wood Shake	W	Earthquake Coverage Only	EQ
Hail Resistant	H	Earthquake with Retrofit Coverage	ER
Metal Roof with Metal Siding	M	Earthquake with Engineering Coverage	EE
Metal Roof with Other Than Metal Siding	P	Earthquake w/ Retrofit and Engineering Cov	EB
Other	O	Limited Earthquake Coverage Only	LQ
		Limited Earthquake with Retrofit Coverage	LR
		Limited Earthquake with Engineering Coverage	LE
Protective Device Credit:		Limited Earthquake with Retrofit and	
None	00	Engineering Coverage	LB
1 Smoke Detectors, Dead Bolts, Heat Detector, and Fire Extinguisher	01	No Earthquake Coverage	NO
2 Local Burglar Alarm	02		
3 Local Fire Alarm	03	Occupancy Type:	
4 Central Station Burglary Alarm	04	Owner Occupied - Primary	O
5 Central Station Fire Alarm	05	Owner Occupied - Additional	A
6 Partial Sprinkler System	06	Tenant Occupied	T
7 Total Sprinkler System	07	Seasonally Occupied	S
1 and 6	08	Guest House	G
1 and 7	09	Vacant	V
2 and 3	10	Course of Construction	C
2 and 5	11	Condo & Rented	R
2 and 6	12	Hobby	H
2 and 7	13		
3 and 4	14	Replacement Cost Coverage:	
3 and 6	15	Actual Cash Value	A
3 and 7	16	ACV Dwelling / RC Contents	B
4 and 5	17	Functional RC	F
4 and 6	18	Functional RC Dwelling / RC Cont	G
4 and 7	19	Replacement Cost	R
5 and 6	20	RC Dwelling / RC Cont	S
5 and 7	21	Jelly Value	U
2,3, and 6	22	Utility Dwelling / RC Cont	V
2,3, and 7	23	Extended Replacement Cost	E
4,5, and 6	24	Extended Replacement Cost - 125%	L
4,5, and 7	25	Extended Replacement Cost - 150%	C
8 Wrought Iron Bars on all Doors & Windows	26	Agreed Value	D
2 and 8	27		
4 and 8	28	Cost of Construction;	
9 Permanent Storm Shutters or Impact Resistant Glass	29	Cosmetic Loss Exclusion (Cosm Loss);	
10 Permanent Storm Shutters and Impact Resistant Glass	30	Does Sub ALE Waived:	
		Yes	Y
		No	N
Auxiliary Heating Surcharge:		Wind Excl:	
Wood/Solid Fuel Stove	S	Excluded (Applicable code	E
Wood/Solid Fuel Furnace	F	varies by state	W
Exterior Unit	E	& class code)	X
Other	O	Not Excluded - Mitigation Factor Applies	M
None	N	Not Excluded	N
Ordinance or Law:			
Yes	Y		
(Where Applicable - Regular)	R		
(Where Applicable - Broad)	B		
No	N		

8105 09 05 10

00000

024

FPK FMPN 30 2 7010948

INSURED'S COPY
FARM PROPERTY SCHEDULE C

Loc/ Item	Item Description	Class	Wind Excl	Cosm Loss	
001/001	DWELLING CHERYL	10331	N	N	
001	COV B - OTHER P	99996			
001	COV D - LOSS OF	99997			
002	HOUSEHOLD PERSON	20301	N	N	
005	GRAIN BIN	33331	N	N	
006	GRAIN BIN	33331	N	N	
007	FRIESEN BULK B	36931	N	N	
008	METAL SHOP 1/2	33231	N	N	
011	MERIDIAN 1620 B	36931	N	N	
012	BULK BIN #1 1/2	36931	N	N	
013	BULK BIN #2 1/2	36931	N	N	
016	GRAIN BIN	33331	N	N	
017	GRAIN BIN	33331	N	N	
035	BLANKET EXCL GR	72160	N	N	
036	RANGER S BY S 9 S# 4XAUH88A4EG8	65830	N	N	
037	JOHN DEERE GATO S# 1M0825GSTBN0	65830	N	N	
039	GRAIN STORED IN	44210	N	N	
040	POLARIS #4XASEA	65830	N	N	
041	HONDA #1HFE44D	65830	N	N	
002/001	DWELLING TRUETT	10131	N	N	
001	COV B - OTHER P	99996			
001	COV D - LOSS OF	99997			
002	QUONSET TRUETT	33231	N	N	
003	OPEN FRONT GARA	33232	N	N	
004	TRUETT LOC OPEN FRONT GARA	33232	N	N	
005	TRUETT LOC POLE BARN	33231	N	N	
006	TRUETT LOC GRAIN BIN BUTLE	33331	N	N	
007	TRUETT LOC GRAIN BIN BUTLE	33331	N	N	
008	TRUETT LOC GRAIN BIN BUTLE	33331	N	N	
003/001	DWELLING THEO	10231	N	N	
001	COV B - OTHER P	99996			
001	COV D - LOSS OF	99997			
002	POLE BUILDING	33231	N	N	
003	THEO LOC RED POLE BARN	33231	N	N	
004	THEO LOC GRAIN BIN 4	33331	N	N	
005	THEO LOC GRAIN BIN 5	33331	N	N	
006	THEO LOC GRAIN BIN 6	33331	N	N	
007	THEO LOC GRAIN BIN 7	33331	N	N	
004/001	RED/WHITE POLE	33231	N	N	
002	TREVOR LOC CATTLE BARN	33232	N	N	
003	TREVOR LOC MERIDIAN BULK B	36931	N	N	
004	TREVOR LOC MERIDIAN BULK B	36932	N	N	

8140 11 14 01

00020

43

025

FPK FMPN 30 2 7010948

INSURED'S COPY

FARM PROPERTY SCHEDULE A

Loc/ Item	Year	Item Description	Limit	Class	Deductible		Const Type	Premium
					Other	W & H		
005	2015	HOPPER BIN 4000 BU	55,000	33331	1,000	1,000	FRAME	143

5104 (01-01) 03

Total

Page 0-021

43

026

FPK FMPN 30 2 7010948

INSURED'S COPY

FARM PROPERTY SCHEDULE B

Loc/ Item	Item Description	Cause Of Loss	Class/ Coverage	Roof Type	Prot Device	Aux Heat	EQ Cov	Occup Type	Repl Cost	Cost of Const.	Ord & Law
005	HOPPER BIN	SPECIAL	33331 G	O	00	N	NO	O	R	Y	N

8105 09 05 10

00022

43

027

Filed: 3/18/2021 10:50 AM CST Haakon County, South Dakota 27CIV20-000019

- Page 321 -

AA 027

LEGEND

Roof Type:		Earthquake Coverage:	
Wood Shake	W	Earthquake Coverage Only	EQ
Hail Resistant	H	Earthquake with Retrofit Coverage	ER
Metal Roof with Metal Siding	M	Earthquake with Engineering Coverage	EE
Metal Roof with Other Than Metal Siding	P	Earthquake w/ Retrofit and Engineering Cov	EB
Other	O	Limited Earthquake Coverage Only	LQ
		Limited Earthquake with Retrofit Coverage	LR
		Limited Earthquake with Engineering Coverage	LE
Protective Device Credit:		Limited Earthquake with Retrofit and	
None	00	Engineering Coverage	LB
1 Smoke Detectors, Dead Bolts, Heat	01	No Earthquake Coverage	NO
Detector, and Fire Extinguisher			
2 Local Burglar Alarm	02		
3 Local Fire Alarm	03	Occupancy Type:	
4 Central Station Burglary Alarm	04	Owner Occupied - Primary	O
5 Central Station Fire Alarm	05	Owner Occupied - Additional	A
6 Partial Sprinkler System	06	Tenant Occupied	T
7 Total Sprinkler System	07	Seasonally Occupied	S
1 and 6	08	Guest House	G
1 and 7	09	Vacant	V
2 and 3	10	Course of Construction	C
2 and 5	11	Condo & Rented	R
2 and 6	12	Hobby	H
2 and 7	13		
3 and 4	14	Replacement Cost Coverage:	
3 and 6	15	Actual Cash Value	A
3 and 7	16	ACV Dwelling / RC Contents	B
4 and 5	17	Functional RC	F
4 and 6	18	Functional RC Dwelling / RC Cont	G
4 and 7	19	Replacement Cost	R
5 and 6	20	RC Dwelling / RC Cont	S
5 and 7	21	Utility Value	U
2,3, and 6	22	Utility Dwelling / RC Cont	V
2,3, and 7	23	Extended Replacement Cost	E
4,5, and 6	24	Extended Replacement Cost - 125%	L
4,5, and 7	25	Extended Replacement Cost - 150%	C
8 Wrought Iron Bars on all Doors & Windows	26	Agreed Value	D
2 and 8	27		
4 and 8	28	Cost of Construction;	
9 Permanent Storm Shutters or Impact	29	Cosmetic Loss Exclusion (Cosm Loss):	
Resistant Glass		When Sub ALE Waived:	
10 Permanent Storm Shutters and Impact	30	Yes	Y
Resistant Glass		No	N
Auxiliary Heating Surcharge:		Wind Excl:	
Wood/Solid Fuel Stove	S	Excluded (Applicable code	E
Wood/Solid Fuel Furnace	F	varies by state	W
Exterior Unit	E	& class code)	X
Other	O	Not Excluded - Mitigation Factor Applies	M
None	N	Not Excluded	N
Ordinance or Law:			
Yes	Y		
(Where Applicable - Regular)	R		
(Where Applicable - Broad)	B		
No	N		

8105 09 05 10

09010

028

FPK FMPN 30 2 7010948

INSURED'S COPY
FARM PROPERTY SCHEDULE C

Loc/ Item	Item Description	Class	Wind Excl	Cosm Loss	
005	HOPPER BIN	33331	N	N	

8140 11 14 01

00024

43

029

FPK FMPN 30 2 7010948

INSURED'S COPY

FARM LIABILITY INFORMATION

Coverage is provided only where a premium and limit of liability are shown for that coverage.

COV	DESCRIPTION	LIMIT	PREMIUM
H	Farm Liability & Exchange Labor Bodily Injury And Property Damage Per Occurrence	\$1,000,000	\$661.00
9999999	Total Acres At All Locations		
	Additional Dwellings With Personal Liability		
2	Additional Dwellings Rented To Others On Farm		\$68.00
1	Additional Residence Or Storage Buildings		\$34.00
	Primary Livestock Type	Livestock Number	
	Secondary Livestock Type	Livestock Number	
N	Hobby Farm		
N	Lessor's Risk		
I	Personal Injury And Advertising Injury Per Person Or Entity	\$1,000,000	INCLUDED
	Products And Completed Operations Aggregate All Occurrences	\$2,000,000	INCLUDED
J	Medical Payments Per Person	\$5,000	\$33.00
	Medical Payments Per Occurrence	\$25,000	INCLUDED
	General Annual Aggregate For Coverages H, I, and J All Occurrences	\$2,000,000	INCLUDED
	Farmers Medical Payments Per Person		

INSURED FARM EMPLOYEES RATED AS A PER CAPITA BASIS:
TYPE AND NUMBER EMPL AT ANY TIME DURING THE POLICY.
SAME LIMITS AS COVERAGES H, I AND J

FULL TIME WORKING IN EXCESS OF SIX MONTHS
PART TIME WORKING TWO TO SIX MONTHS
PART TIME WORKING LESS THAN TWO MONTHS
RESIDENCE (NON-FARM) IN EXCESS OF TWO EMPL
INCREASED EMPLOYEE MEDICAL

Total Annual Farm Liability Coverage Premium For State 500

\$796.00

8106 (07-12)

Page 00025

43

030

FPK FMPN 30 2 7010948

INSURED'S COPY
FARM ENDORSEMENTS
SCHEDULE

This policy is subject to the following forms. For additional information refer to Form 8110.

Form	Date	Premium	Title
FP70241	0712	\$ 91	BACKUP FROM SEWERS OR DRAINS OR SUMP PUMP COV A, B
FO70735	1114	\$ 104	FARM PREMIER PROTECTION PLUS COVERAGE
FP70255	0812		COV F - FARM PERSONAL PROPERTY COVERAGE ENDORSEMENT
FP70599	0712		UNSCHEDULED FARM PERS. PROP. LIVESTOCK EXCL. END.
FO70731	1114	\$ 62	FARM PROTECTION PLUS COVERAGE
FL70620	0101	\$ 615	RECREATIONAL VEHICLE LIABILITY COVERAGE END.
FO70701	0101		BLANKET ACREAGE COVERAGE ENDORSEMENT
FO70732	0816	\$ 207	AGRICHOICE ELITE COVERAGE ENDORSEMENT
FP70269	0712		ELECTRICAL GENERATING EQUIPMENT COVERAGE ENDORSEMENT
FP70582	0712		LIMITED FUNGI OR BACTERIA COVERAGE
FL70687	0408		UNWARRANTED CLAIM OF ANIMAL CRUELTY LIMITED DEFENSE
FL70688	0408		EMPLOYMENT RELATED PRACTICES LIMITED DEFENSE EXP.
FL70313	0214		RAW MILK & RAW MILK PRODUCTS EXCLUSION END
FL70658	0102		FUNGI OR BACTERIA EXCLUSION ENDORSEMENT
FL70321	0115		RECREATIONAL VEHICLE EXPANDED MEDICAL PAYMENTS COV
FL70331	0114		AGRICULTURAL UNMANNED AERIAL SYSTEMS LIABILITY EXT
FL70020	0712		FARM LIABILITY COVERAGE FORM
FO70709	0202		COMMON POLICY CONDITIONS
FO70860	0214		POLICY CHANGES
FP70284	1114		AMENDATORY
FO70840	0116		SOUTH DAKOTA AMENDATORY ENDORSEMENT
FP70539	0101		REPLACEMENT COST - HOUSEHOLD PERS. PROP. COV. END.
FP70551	0101		ALARM OR FIRE PROTECTION SYSTEM ENDORSEMENT
CIL0021	0101		NUCLEAR ENERGY LIABILITY EXCLUSION ENDORSEMENT
FP70010	0712		FARM PROPERTY COVERAGE FORM
FP70285	1114		WATER DAMAGE COVERAGE ENDORSEMENT
FO70899	0606		CHANGES IN COV. FORMS - MOBILE EQUIP. SUBJECT TO M
FP70290	0615		SINGLE DED. WITH MULTIPLE FARMOWNER POLICIES END.
FO70717	0108		EXCLUSION OF TERRORISM
13614	1185		SPECIAL CONTINUATION PROVISION
FP70283	0214		NON-OWNED POULTRY AND SWINE LOSS OF INCOME EQUIP.
FO70440	0402		SOUTH DAKOTA CANCELLATION AND NONRENEWAL CONDITION
FP70227	0712		EQUIPMENT BREAKDOWN COVERAGE ENDORSEMENT
FP70230	0107		CONSTRUCTION COST ADJUSTMENT ENDORSEMENT
IN7403	0107		IMPORTANT FLOOD INSURANCE NOTICE
FL70311	0214	\$ 57	LIMITED FARM POLLUTION LIABILITY COV END
FP70555	0712		MOBILE HOME COVERAGE ENDORSEMENT
IN0000N	0409		PRIVACY STATEMENT- NATIONWIDE
FP70509	0109		FARM PROPERTY LOSS PAYABLE CLAUSE ENDORSEMENT
IN5017	0593		IMPORTANT NOTICE FOR RENEWAL POLICIES
FL70334	1215		MARIJUANA EXCLUSION ENDORSEMENT
FP70294	1215		MARIJUANA EXCLUSION ENDORSEMENT
FP70287	0815		EQUIPMENT BREAKDOWN COV END-COVERAGES A, B, C & D
FP70291	0615		FARM BUILDINGS AND STRUCTURES - METAL ROOF & SIDIN

8107 (07-12) 00

Page 00026

43

031

FPK FMPN 30 2 7010948

INSURED COPY

FORM 0110

ADDITIONAL INFORMATION SUPPLEMENTAL DECLARATIONS

Form	DESCRIPTION
FP70241	BACK-UP FROM SEWERS OR DRAINS AND SUMP PUMP OVERFLOW COVERAGE 02 DWELLING(S) LIMIT: \$10,000 002/001 003/001
FO70735	FARM PREMIER PROTECTION PLUS COVERAGE ENDORSEMENT 01 DWELLING(S) 001/001
FO70731	FARM PROTECTION PLUS COVERAGE ENDORSEMENT 01 DWELLING(S) 003/001
FP70582	LIMITED FUNGI OR BACTERIA COVERAGE ENDORSEMENT - PROPERTY LIMIT: \$10,000

0110 (01-01) 00

Page 00027

43

032

FARM
8111 07 12

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ THIS CAREFULLY.

SCHEDULE FOR LIMITED FARM POLLUTION LIABILITY COVERAGE ENDORSEMENT

This endorsement modifies insurance provided under the following:

FARM LIABILITY COVERAGE FORM

SCHEDULE OF LIMITS OF INSURANCE

This Schedule states the Limits of Insurance provided under this endorsement.

COVERAGE	LIMITS OF INSURANCE	PREMIUM
PART 1 – CHEMICAL APPLICATION, STORAGE, AND NON-AUTO TRANSPORTATION LIABILITY COVERAGE		
	\$ <u>1,000,000</u> Occurrence Limit	
	\$ <u>1,000,000</u> Aggregate Limit	
	\$ <u>0</u> Deductible	\$ <u>57</u>
 <u> N </u> (Y/N) – When indicated (Y), additionally includes Part 1 Coverage away from premises.		
PART 2 – LIMITED FARM POLLUTION LIABILITY COVERAGE		
	\$ <u>NO COVERAGE</u> Occurrence Limit	
	\$ <u>NO COVERAGE</u> Aggregate Limit	
	\$ <u>0</u> Deductible	\$ <u>0</u>
 <u> N </u> (Y/N) – Part 2, when indicated (Y), includes optional Waste Coverage under Part 2 Limited Farm Pollution Liability Coverage item 3. and the revised "pollutants" definition under C. 6.		
PART 3 – FARM ENVIRONMENTAL DAMAGE CLEAN UP COVERAGE		
	\$ <u>NO COVERAGE</u> "Incident" Limit	
	\$ <u>0</u> Deductible	\$ <u>0</u>
 \$ <u>1,000,000</u> TOTAL ENDORSEMENT COVERAGE AGGREGATE (Subject to policy Aggregate)		
		TOTAL ENDORSEMENT PREMIUM \$ <u>57</u>

8111 07 12

Page 00028

Page 1 of 1

033

FPK FMPN 30 2 7010948

INSURED'S COPY

FORM 9120
RECREATIONAL VEHICLES SCHEDULE

Unit	TY	YR	Make	Model	Serial Number	Size	Yth Opr	Premium
01	A	14	RANGER	S BY S	4XAM163A4EG864741	900	N	\$89
02	A	11	JOHN DEERE	GATOR	4XAM163A4EG864741	850	N	\$89
03	M	07	HONDA	CRF230	9C212000027R003827	800	N	\$170
04	S	10	POLARIS	SNO 800RMK	SNIP16352AC652281	800	N	\$89
05	A	16	POLARIS	ATV	4XAS16372GA270199	900	N	\$89
06	A	16	HONDA	ATV	1HFT16039G4201348	900	N	\$89

8120 01 01 02

Page 00029

034

FARM
FP 700 10 07 12**FARM PROPERTY COVERAGE FORM**

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

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations. If the Named Insured shown in the Declarations and spouse are members of the same household, the words "you" and "your" also refer to the spouse. The words "we", "us" and "our" refer to the Company providing this insurance.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section L. DEFINITIONS.

A. COVERAGES

We will pay for direct physical loss of or damage to Covered Property at the "insured location" described in the Declarations, or elsewhere as expressly provided below, caused by or resulting from any COVERED CAUSES OF LOSS.

COVERAGE A - DWELLINGS**1. COVERED PROPERTY**

The following are Covered Property under Coverage A of this Coverage Form:

- a. Each "dwelling" owned by you and for which a Limit of Insurance is shown in the Declarations;
- b. Structures attached to covered "dwellings", except structures attached only by a fence, utility line or similar connection;
- c. Materials on the "insured location" intended for use in building, altering or repairing the covered "dwellings" or their attached structures; and
- d. If not otherwise covered in this Coverage Form, building and outdoor equipment used principally for the service of the covered "dwelling", its grounds or structures appurtenant to it, including equipment temporarily away from the premises.

2. PROPERTY NOT COVERED

Under Coverage A, Covered Property does not include:

- a. Land (including land on which the "dwelling" is located);
- b. Water;
- c. Trees, shrubs, plants or lawns, except to the extent provided for in paragraph a. of the B.1. Extensions of Coverages A, B and C; or

- d. "Recreational vehicles".

COVERAGE B - OTHER PRIVATE STRUCTURES APPURTENANT TO DWELLINGS**1. COVERED PROPERTY**

All of the following are Covered Property under Coverage B of this Coverage Form, up to a Limit of Insurance equal to 10% of the Limit of Insurance shown in the Declarations for the Coverage A - Dwelling.

This 10% amount is additional insurance, and therefore use of this coverage will not reduce the Coverage A Limit of Insurance. If a higher Limit of Insurance is specified in the Declarations, the higher limit will apply and will, in its entirety, be part of, not in addition to, the Coverage B Limit of Insurance provided for in the paragraph above.

Private structures you own that are appurtenant to a covered "dwelling" and:

- a. separated from it by a clear space; or
- b. Attached to it only by a fence, utility line or similar connection.

2. PROPERTY NOT COVERED

Under Coverage B, Covered Property does not include:

- a. Land (including land on which the other structures are located);
- b. Water;
- c. Trees, shrubs, plants or lawns, except to the extent provided for in paragraph a. of the B.1. Extensions of Coverages A, B and C; or
- d. Structures (other than private garages) that you rent or hold for rental to any person who is not a tenant of the covered "dwelling" you occupy; or

FP 700 10 07 12

FPK FMPN 3027010948

INSURED'S COPY

Page 1 of 41

43 000030

035

FP 700 10 07 12

- e. Structures (other than private garages) that you use principally for "farming" purposes.

3. SPECIAL LIMITS OF INSURANCE FOR COVERAGE B

Certain private structures appurtenant to dwellings are subject to Special Limits of Insurance. These Special Limits are part of, not in addition to, the applicable Limit of Insurance shown in the Declarations, and apply in excess of any applicable deductible. The Special Limit shown below is the most we will pay for loss of or damage to all property in that category in any one occurrence: \$5,000 on fences (excluding field and pasture fences).

COVERAGE C – HOUSEHOLD PERSONAL PROPERTY

1. COVERED PROPERTY

All of the following are Covered Property under Coverage C of this Coverage Form, provided a Limit of Insurance is shown in the Declarations.

Household personal property meaning:

- a. Household personal property owned or used by you or members of your family who reside with you, while such property is anywhere in the world; and
- b. After a loss and at your request, household personal property of others while the property is:
 - 1) In a part of the "dwelling" you occupy; or
 - 2) On the grounds appurtenant to that "dwelling" if you own it.

The Limit of Insurance for household personal property at any "insured's" "dwelling" other than at an "Insured location" is 10% of the Limit of Insurance for Coverage C, or \$1,000, whichever is greater. This limitation does not apply to household personal property:

- a. Moved from the "insured location" shown in the Declarations because the residence is being repaired, renovated or rebuilt and is not fit to live in or store property in; or
- b. Situated at an "insured's" residence while the "dwelling" at the "insured location" shown in the Declarations is under construction; or

- c. Situated in a newly acquired principal "dwelling" for 30 days immediately after you begin to move the property there.

2. PROPERTY NOT COVERED

Under Coverage C, Covered Property does not include:

- a. Articles separately described and specifically covered, regardless of the limit for which they are covered, under this or any other Insurance;
- b. Aircraft and aircraft parts, except model or hobby aircraft not used or designed to carry an operator(s), any other person(s) or cargo;
- c. Trees, shrubs, plants and lawns that you own as a tenant, except to the extent provided for in paragraph a, of the B.1. Extensions of Coverages A, B and C;
- d. Animals, birds or fish;
- e. "Business property" except to the extent provided for in paragraphs g. and h. under 3. Special Limits of Insurance for Coverage C;
- f. Magnetic recording or storage media for electronic data processing, such as cell, disc, drum, film and tape, over or above their replacement value:
 - 1) As prepackaged software programs; or
 - 2) In unexposed or blank form; whichever is greater.
- g. Electronic apparatus that is designed to be operated solely by use of the power from the electrical system of motor vehicles or motorized land conveyances of any kind, or camp or home trailers. Electronic apparatus includes:
 - 1) Accessories and antennas; and
 - 2) Tapes, wires, records, discs or other media; for use with the electronic apparatus.The exclusion of property described in g.1) and g.2) above applies only while the property is in or upon the vehicle, conveyance, or camp or home trailer. But Covered Property includes items specifically scheduled in the Declarations.
- h. "Farm personal property", other than office fixtures, furniture and office equipment;

Page 2 of 41

FPK FMPN 3027010948

INSURED'S COPY

FP 700 10 07 12

43 0000031

036

FP 700 10 07 12

- i. Any motor vehicle or motorized land conveyance, or its attached equipment or accessories. But Covered Property includes vehicles not licensed for road use that are:
 - 1) Designed for and used only for servicing an "insured's" "dwelling", its grounds or structures appurtenant to it; or
 - 2) Designed and used for assisting the handicapped.The Covered Property exception for servicing an "insured's" "dwelling", its grounds or structures appurtenant to it in 1) above does not include "recreational vehicles".
 - j. Credit cards, electronic fund transfer cards or other access devices used solely for deposit, withdrawal or transfer of funds except as provided in Additional Coverage 2.b. under Section C. Additional Coverages;
 - k. Property of roomers, boarders, and other tenants of an "insured location";
 - l. Property in an apartment or other "dwelling" regularly rented or held for rental to others by an "insured", except as provided in Additional Coverages 1.i. Landlord's Furnishings;
 - m. Property rented or held for rental to others away from the "insured location" or
 - n. Vehicles, (including recreational vehicles), parts, equipment, and accessories, except to the extent provided for in paragraph n. under 3. Special Limits of Insurance for Coverage C.
3. SPECIAL LIMITS OF INSURANCE FOR COVERAGE C
- Certain categories of household personal property are subject to Special Limits of Insurance. These Special Limits are part of, not in addition to, the applicable Limit of Insurance shown in the Declarations, and apply in excess of any applicable deductible. The Special Limit shown with any category listed below is the most we will pay for loss of or damage to all property in that category in any one occurrence:
- a. \$1,000 on gold other than goldware, "money", platinum other than platinumware and silver other than silverware, stamps and stamp collections, bullion and bank notes.
 - b. \$5,000 on letters of credit, manuscripts, passports, accounts, deeds, evidence of debt, notes other than bank notes, personal records, tickets and "securities". This dollar limit applies to these categories regardless of the medium (such as paper or computer software) on which the material exists.
This limit includes the cost to research, replace or restore the information from the lost or damaged material;
 - c. \$2,500 on watercraft, including their equipment, parts, accessories, furnishings, outboard engines or motors, and trailers;
 - d. \$2,500 on trailers not used with watercraft nor for farming operations;
 - e. \$5,000 on gravemarkers, including mausoleums, for loss caused by a Basic or Broad Covered Cause of Loss for actual cash value;
 - f. \$1,000 on equine miscellaneous tack not specifically scheduled under Coverage E;
 - g. \$2,500 on "business property" on the "insured location";
 - h. \$1,500 on "business property", other than landlord's furnishings, off the "insured location". However, this limit does not apply to loss to adaptable electronic apparatus as described in Special Limits of Insurance For Coverage C paragraphs l. and m. below.
 - i. In the event of loss by theft:
 - 1) \$2,500 on furs and garments trimmed with fur, jewelry, precious and semiprecious stones, and watches.
 - 2) \$5,000 on goldware, goldplated ware, silverware, silverplated ware, platinumware, platinum plated ware and pewterware; this property includes platedware, flatware, hollowware, tea sets, trays, trophies and the like; also other utilitarian items made of or containing silver, gold or pewter; and
 - 3) \$5,000 on firearms.

FP 700 10 07 12

FPK FMPN 3027010948

INSURED'S COPY

Page 3 of 41

43 0000032

037

Filed: 3/18/2021 10:50 AM CST Haakon County, South Dakota 27CIV20-000019

- Page 331 -

AA 037

FP 700 10 07 12

- j. \$5,000 on electronic data processing equipment and recording or storage media including software used with that equipment. This coverage includes equipment used in your "farming" operation. Recording or storage media and software will be covered up to:
 - 1) The retail value of the media, if preprogrammed; or
 - 2) The retail value of the media in blank or unexposed form, if blank or self-programmed.
- k. \$10,000 for loss by theft of valuable rugs. Valuable rugs are any handwoven silk or wool rug, tapestry, wall hanging or other similar article, whose principal value is derived from its color, design, quality of silk or wool, quality of weaving, condition or age. The limit for any one item is \$2,500.
- l. \$1,500 for loss to electronic apparatus, while in or upon a motor vehicle, other motorized land conveyance, or camp or home trailer, if the electronic apparatus is equipped to be operated by power from the electrical system of the vehicle, conveyance or trailer while retaining its capability of being operated by other sources of power. Electronic apparatus includes:
 - 1) Accessories and antennas; and
 - 2) Tapes, wires, records, discs and other media;
 for use with the electronic apparatus; and
- m. \$1,500 for loss to electronic apparatus, while not in or upon a motor vehicle, other motorized land conveyance, or camp or home trailer, if the electronic apparatus:
 - 1) Is equipped to be operated by power from the electrical system of the vehicle, conveyance or trailer while retaining its capability of being operated by other sources of power;
 - 2) Is off the "insured location"; and
 - 3) Is used at any time or in any manner in connection with the operation of the farm or a business.
 Electronic apparatus includes:
 - 1) Accessories and antennas; and
 - 2) Tapes, wires, records, discs and other media
 for use with the electronic apparatus.

- n. \$1,500 for vehicle (including recreational vehicle) parts, equipment and accessories not currently attached to a vehicle, while the parts, equipment and accessories are stored on the insured location.

COVERAGE D - LOSS OF USE

The Limit of Insurance for Coverage D is the total limit for the coverages in 1. Additional Living Expense, 2. Fair Rental Value, and 3. Civil Authority Prohibits Use below.

1. ADDITIONAL LIVING EXPENSES

If a loss covered under A. Coverages makes that part of the "dwelling" where you reside not fit to live in, we cover any necessary increase in living expenses incurred by you so that your household can maintain its normal standard of living provided that such uninhabitable "dwelling" is located in:

- a. A "dwelling" covered under Coverage A; or
- b. The "dwelling" in which covered Household Personal Property is located, if you are a tenant.

Payment will be for the shortest time required to repair or replace the damage or, if you permanently relocate, the shortest time required for your household to settle elsewhere. The maximum period for payment shall not exceed 12 consecutive months, unless otherwise shown in the declarations.

2. FAIR RENTAL VALUE

If a loss covered under A. Coverages makes that part of the "dwelling" or appurtenant structure rented to others or held for rental by you not fit to live in, we cover the fair rental value of that part of the "dwelling" or appurtenant structure rented to others or held for rental by you less any expenses that do not continue while the premises is not fit to live in.

Payment will be for the shortest time required to repair or replace that part of the premises rented or held for rental. The maximum period for payment shall not exceed 12 consecutive months, unless otherwise shown in the declarations.

3. CIVIL AUTHORITY PROHIBITS USE

If a civil authority prohibits you from use of the "dwelling" or appurtenant structure as a result of direct damage to neighboring premises by a Covered Cause of Loss we cover the

Page 4 of 41

FPK FMPN 3027010948

INSURED'S COPY

FP 700 10 07 12

43 0000033

038

FP 700 10 07 12

Additional Living Expense and Fair Rental Value loss as provided under 1. Additional Living Expense and 2. Fair Rental Value.

4. LOSS OR EXPENSE NOT COVERED

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

The period of liability under Coverage D – Loss of Use is not limited by expiration of this policy.

No deductible applies to this Coverage D.

COVERAGE E – SCHEDULED FARM PERSONAL PROPERTY

1. COVERED PROPERTY

All of the following are Covered Property under Coverage E of this Coverage Form, provided a Limit of Insurance is shown in the Declarations for the specific type of property:

- a. Farm products are covered against BASIC Covered Causes of Loss and include the following:
 - 1) Grain, threshed seeds and beans, ground feed, silage, and manufactured and blended "livestock" feed in buildings or structures or in sacks, wagons or trucks, at an "insured location".
 - 2) Grain in stacks, shocks, swaths or piles at an "insured location" in the open, but for this property fire and lightning, vandalism, vehicles and theft are the only Covered Causes of Loss.
 - 3) Hay, straw and fodder at an "insured location":
 - a) In buildings or structures; or
 - b) In the open in stacks, windrows or bales, but for this property fire or lightning, windstorm or hail, vandalism, vehicles and theft are the only Covered Causes of Loss.A stack means hay, straw or fodder in one area separated by a clear space of 100 feet or more from any other stack of hay, straw or fodder, whether in buildings, structures, or in the open.
 - 4) Farm products described in the Declarations at an "insured location":
 - a) In buildings or structures; or
 - b) In the open, but for this property fire or lightning, windstorm or hail, vandalism, vehicles and theft are the only Covered Causes of Loss.

Any harvested or unharvested hay, straw, fodder, grain in the open, or any growing crop in the open is not included under this coverage unless in stacks, windrows, bales, shocks, swaths or piles as included in 2) and 3) above.

- 5) Nursery stock including growing plants, trees and shrubs while located within an insured structure scheduled in the Declarations.
- b. "Livestock", "poultry" and other animals are covered against BROAD Covered Causes of Loss and include the following:
 - 1) "Poultry" (excluding turkeys unless specified) at an "insured location":
 - a) In the open; or
 - b) In any building designated for "poultry" in the Declarations.
 - 2) "Livestock" on or away from an "insured location", meaning:
 - a) Groups or types of "livestock" separately described in the Declarations; or
 - b) Individual "livestock" specifically described in the Declarations.But we do not cover "livestock" while:
 - a) In the custody of a common or contract carrier;
 - b) At public stockyards, sales barns or sales yards; or
 - c) At packing plants or slaughterhouses.
 - 3) Bees
 - 4) Worms
 - 5) Fish
 - 6) Other animals
- c. Farm machinery, implements, equipment, vehicles, tools and supplies are covered against SPECIAL Covered Causes of Loss anywhere in the United States and include the following:
 - 1) Farm machinery, implements, equipment, vehicles, tools and supplies which are individually described and specifically covered in the Declarations.

FP 700 10 07 12

FPK FMPN 3027010948

INSURED'S COPY

Page 5 of 41

43 0000034

039

FP 700 10 07 12

Coverage for individually described farm machinery, implements, equipment, vehicles, tools and supplies borrowed, rented or leased from others will apply on a primary basis.

- 2) Miscellaneous equipment, usual or incidental to the operation of a farm, (including machinery, implements, equipment, vehicles, tools and supplies of all kinds), covered under a single Limit of Insurance shown for Miscellaneous Equipment in the Declarations.

Farm machinery, implements, equipment, vehicles, tools and supplies do not include property described in Coverage E1 d. through g. or Coverage E2. Property Not Covered.

- d. Trays, bins, assembled and unassembled boxes are covered against SPECIAL Covered Causes of Loss anywhere in the United States.

Each item or set is covered in the proportion that its value bears to the total value of all trays, bins, boxes and box shock you actually own as of the time of loss.

- e. Farm office equipment, computers and related software used principally as aids in farm management are covered anywhere in the world.
But an item of software is Covered Property only up to the amount required to replace it as a prepackaged program, or in unexposed or blank form, whichever is greater.

- f. Irrigation equipment is covered against SPECIAL Covered Causes of Loss and includes pumps, attached pumphouses, switch boxes, fuse boxes, electrical control panels, pressure tanks, filtration systems, and other equipment attached to a pump. Irrigation equipment also includes water lines, wheel and pivot lines, conduit, and channels for the delivery of water. Irrigation equipment includes permanently installed equipment that is partially or wholly below the surface of the ground. Coverage applies anywhere in the United States.

- g. Portable Fences, Corrals and Other Portable Structures that you own are covered anywhere in the United States.
- h. GPS Global Positioning Systems Equipment, Mobile Radios, Antennas and Towers include the following:
 - 1) GPS Global Positioning Systems equipment and mobile radios are covered while they are anywhere in the world against the SPECIAL Covered Causes of Loss.
 - 2) Antennas and towers are covered on an "insured location" against the BASIC Covered Causes of Loss.
- i. Bee Hives and Boards on or away from an "insured location" are covered against the following Covered Causes of Loss:
 - 1) Fire and lightning;
 - 2) Windstorm; and
 - 3) Collision or upset of a vehicle.

2. PROPERTY NOT COVERED

Under Coverage E, Covered Property does not include:

- a. Aircraft or watercraft, their parts and equipment, whether attached to the craft or not;
- b. Automobiles, trucks, mopeds, motorized bicycles, motorcycles, snowmobiles, and all other motorized land conveyances or "recreational vehicles" primarily designed and licensed for public road use and not used exclusively for "farming" purposes, except:
 - 1) Wagons and trailers primarily designed and licensed for "farming" purposes and used principally on the "insured location";
 - 2) Vehicles not licensed or required to be licensed for public road use and used exclusively for "farming" purposes or to service the farm. A vehicle is not licensed for public road use within the meaning of this provision if it is licensed as an implement of husbandry and used exclusively on an "insured location".
- c. Mobile homes, motor homes, or house trailers;
- d. Growing crops;
- e. Trees, plants and shrubs other than as provided in Covered Property a.5) - Nursery Stock;

Page 6 of 41

FPK FMPN 3027010948

INSURED'S COPY

FP 700 10 07 12

43 0000035

040

FP 700 10 07 12

- f. Any device or instrument including any accessories or antennas for the transmitting, recording, receiving or reproduction of sound or pictures whether or not attached to the farm equipment or buildings, other than as provided for in Covered Property h. - GPS Global Positioning Systems Equipment, Mobile Radios, Antennas and Towers;
 - g. Any farm products stored or being processed away from an "insured location";
 - h. Household or personal property usual to a "dwelling";
 - i. Bulk milk tanks, bulk feed tanks or bins attached to buildings or structures; barn cleaners, pasteurizers or boilers; any permanent fixtures within or attached to a building;
 - j. Steam boilers, steam pipes, steam turbines, or steam engines;
 - k. "Livestock" covered under a specific policy of mortality insurance;
 - l. Property that is separately described and specifically insured under this or any other insurance policy or schedule.
 - m. Magnetic recording or storage media for electronic data processing, such as cell, disc, drum, film and tape, over or above their replacement value:
 - 1) As prepackaged software programs; or
 - 2) In unexposed or blank form; Whichever is greater.
 - n. Any permanent fixtures within or attached to a building;
 - o. Outdoor radio or television equipment or wiring; private power and light poles.
- 3. SPECIAL LIMITS OF INSURANCE FOR COVERAGE E**
- Under Coverage E, certain individual items of "farm personal property" are subject to Special Limits of Insurance. These Special Limits are part of, not in addition to, the applicable Limits of Insurance shown in the Declarations, and apply in excess of any applicable deductible.
- a. Sealed grain or grain under Farm Storage Loan is covered, but only for the "insured's" equity value of the grain.
 - b. If no specific stack limit is shown in the Declarations for hay, straw or fodder whether in sheds, barns or in the open, the Limit will be \$100,000 on any one stack of hay, straw, or fodder;
The most we will pay in any one occurrence for loss of hay, straw, or fodder in windrows or bales in the open will not exceed \$100,000.
 - c. For covered "poultry", the Limit of Insurance per bird under any provision of this Coverage Form applicable to "poultry" will be its cash market value as of the time of loss.
 - d. The most we will pay for loss of or damage to any one head of "livestock" (other than animals individually described and specifically covered under this coverage) is the least of the following amounts:
 - 1) The "actual cash value" of the animal destroyed or damaged.
 - 2) \$5,000.
 - 3) 120% of the amount obtained by dividing the total insurance on the class and type of animal involved by the number of head of that class and type owned by you as of the time of loss.
Example: If you have a total limit of \$30,000 on a herd of 30 cattle:
 $120\% \times (\$30,000/30) = 120\% \times \$1,000 = \$1,200$. The most we would pay for a head of cattle, in this example, would be \$1,200 or the "actual cash value" of the animal if that value is less than \$1,200.

Each horse, mule or head of cattle under one year of age as of time of loss will be counted as $\frac{1}{4}$ head.
 - e. The Limit of Insurance for miscellaneous equipment shall not exceed \$15,000 for any one item of farm machinery, implements, equipment, vehicles, tools and supplies.
- COVERAGE F – LIMITED UNSCHEDULED FARM PERSONAL PROPERTY**
- 1. COVERED PROPERTY**
- All of the following are Covered Property under Coverage F of this Coverage Form, provided a Limit of Insurance is shown in the Declarations:

FP 700 10 07 12

FPK FMPN 3027010948

INSURED'S COPY

Page 7 of 41

43 0000036

041

FP 700 10 07 12

- a. All farm machinery, implements, equipment, vehicles, tools and supplies that you either own or lease under a long term lease agreement. A long term lease is defined as a written lease agreement for a term of 6 months or longer.

- b. Newly acquired and replacement farm machinery, implements, equipment, vehicles, tools and supplies will be covered from the date of purchase to the end of the policy period.

In the event you have a loss that exceeds the blanket Limit of Insurance, the Limit is increased by \$250,000 for newly acquired or replacement property that has been purchased no more than 60 days prior to the effective date of the current policy period.

Coverage applies anywhere in the United States against the SPECIAL Covered Causes of Loss.

We reserve the right to examine and audit your books and records as they relate to the reported values of the covered property.

2. PROPERTY NOT COVERED

Under Coverage F, Covered Property does not include:

- a. Grain, hay or straw, farm products or nursery stock;
- b. "Livestock", other animals, poultry, bees, worms or fish;
- c. Trays, bins, assembled or unassembled boxes;
- d. Irrigation equipment;
- e. Farm office equipment; or
- f. Any property listed as not covered under Coverage E 2. Property Not Covered.

COVERAGE G – FARM BUILDINGS AND STRUCTURES

1. COVERED PROPERTY

All of the following are Covered Property under Coverage G of this Coverage Form, provided a Limit of Insurance is shown in the Declarations for the specific type of property:

- a. Farm buildings and structures other than "dwellings", including attached sheds and fixtures used for "farming" purposes.

Farm buildings and structures include, but are not limited to: barns, stables, outbuildings, cold storage buildings, feed and grain mills, grain and rice drying complexes, nut hullers and dryers, packing houses, potato storage sheds, livestock and poultry houses, prune dehydrators and milking parlors.

Coverage for farm buildings and structures includes:

- 1) Water pumps and equipment, including motors and outdoor equipment, pertaining to and used in the service of the building; and
 - 2) Furniture, fixtures, machinery and equipment pertaining to the operation of the building, while located on or in the building or in the open within 100 feet of the building.
- b. Silos individually described in the Declarations or on a schedule, whether or not attached to buildings;
 - c. Portable buildings;
 - d. All fences (including field and pasture fences), corrals, pens, chutes and feed racks;
 - e. Portable structures;
 - f. Private electrical and telephone apparatus including power and telephone poles, outdoor wiring and attachments, including switchboards, fuse boxes, and other electrical equipment mounted on poles.
 - g. Improvements and Betterments. Improvements and betterments are additions, alterations, fixtures or installations made part of the described building, but do not include items that may be legally removed by an "insured". If you are a tenant, we cover your use interest in the improvements and betterments you make at your expense to a building you do not own at the "insured location";
 - h. Building Materials and Supplies:
 - 1) For use in the construction, alteration or repair of farm buildings or structures; and
 - 2) Kept on or adjacent to the "insured location";
 - i. Windmills and Wind Chargers, including towers upon which they may be supported;

Page 8 of 41

FPK FMPN 3027010948

INSURED'S POLICY

FP 700 10 07 12

43 0000037

042

FP 700 10 07 12

- j. Permanent storage tanks, including bases and supports, but not including the stored contents of the tanks (whether liquid or gas). We do not cover storage tanks buried beneath the surface of the ground;

- k. Fire Legal Liability – Nonowned Outbuildings

We will pay those sums that you become legally obligated to pay as damages to the real property of others in your care, custody, or control on an "insured location" and used, rented, or operated by you as part of your farming operations because of direct physical loss or damage to covered structures caused by an accident and arising out of the following Covered Causes of Loss:

- 1) Fire or lightning;
- 2) Explosion; or
- 3) Smoke damage caused by sudden, unusual and faulty operation of a heating or cooking unit.

We will have the right and duty to defend any suit seeking damages, but:

- 1) The amount we pay as damages is limited to the applicable Limit of Insurance shown in the Declarations.
- 2) We may settle and investigate any claim or suit at our discretion.
- 3) Our right and duty to defend ends when we have used up the Limit of Insurance in the payment of judgments and settlements.

In addition to the applicable Limit of Insurance, we will pay with respect to any suit or claim we defend:

- 1) All expenses we incur;
- 2) The cost of bonds to release attachments, but only for bond amounts within our limit of insurance. We do not have to furnish these bonds;
- 3) All reasonable expenses incurred by you at our request, including actual loss of earnings up to \$100 a day for time off from work;
- 4) All costs taxed against you in the suit;

- 5) All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within our Limit of Insurance.

2. PROPERTY NOT COVERED

Under Coverage G, Covered Property does not include:

- a. Land (including land on which a building or structure is located);
- b. Water;
- c. Foundations, if below ground, of buildings or structures;
- d. Pillings, piers, wharves or docks;
- e. the cost of excavations, grading, filling or backfilling;
- f. the plastic exterior coverings of any greenhouses;
- g. Irrigation equipment.

B. COVERAGE EXTENSIONS

1. EXTENSIONS OF COVERAGES A, B AND C

a. Trees, Shrubs, Plants and Lawns

Trees, shrubs, plants and lawns located within 250 feet of a covered "dwelling" are Covered Property but only if loss or damage is caused by or results from any of the following Covered Causes of Loss: fire or lightning, explosion, riot, civil commotion, aircraft, vehicles not owned or operated by a resident of the covered "dwelling", vandalism, or theft.

For all damaged or destroyed trees, shrubs, plants or lawns located within 250 feet of a covered "dwelling", the most we will pay under this Extension is:

- 1) 5% of the Coverage A Limit of Insurance shown in the Declarations for the "dwelling"; or
- 2) 10% of the Coverage C Limit of Insurance shown in the Declarations if you are a tenant.

However, we will not pay more than \$1,000 for any one damaged or destroyed tree, shrub, plant or lawn.

This Extension is additional insurance.

FP 700 10 07 12

FPK FMPN 3027010948

INSURED'S COPY

Page 9 of 41

43 0000038

043

FP 700 10 07 12

We will not pay for loss of or damage to trees, shrubs, plants or lawns grown for business or "farming" purposes.

b. Refrigerated Products - Not "Farm Personal Property"

1) We will pay up to \$1,000 for loss of or damage to contents of freezers or refrigerated units, in the "dwelling" you occupy or a structure appurtenant to it, caused by a change in temperature due to:

- a) Interruption of electrical service to refrigeration equipment, caused by damage to generating or transmission equipment; or
- b) Mechanical or electrical breakdown of a refrigeration system.

2) Under this Coverage Extension we will not pay for loss of or damage to:

- a) "Farm personal property"; or
- b) Property not owned by you.

3) This Coverage Extension will not apply unless you maintain the refrigeration equipment in proper working order.

4) No deductible applies to this Refrigerated Products Extension of Coverage.

c. Building Additions and Alterations

If you are a tenant, your insurance under Coverage C - Household Personal Property includes building additions, alterations, fixtures, improvements or installations made or acquired at your expense to that part of the "dwelling" used exclusively by you. The Limit of Insurance for this Coverage Extension is 10% of the Limit of Insurance that applies to Household Personal Property. But if a higher Limit of Insurance is shown in the Declarations, the higher Limit applies.

This Extension is additional insurance.

2. EXTENSIONS OF COVERAGE E

a. Covered Property Away From the "Insured Location"

1) Coverage is extended to apply to Covered Property while away from the "insured location", for up to 10% of the Limit of Insurance shown in the Declarations for the specific type of property.

2) This Coverage Extension is part of, not in addition to, the applicable Limit of Insurance or Special Limit of Insurance.

3) This Coverage Extension does not apply to:

- a) "Livestock", farm machinery, implements, equipment, tools and supplies, trays, bins, boxes and box shooks, portable irrigation equipment, portable fences, mobile radios, beehives and bee boards;
- b) Property while in the custody of a common or contract carrier;
- c) Property stored or being processed in manufacturing plants, public elevators, warehouses, seed houses or commercial drying plants; or
- d) Property in public sales barns or public sales yards.

4) Under this Coverage Extension, the greatest proportion we will pay of any one loss is the proportion we would have paid if every policy covering the property involved in the loss had provided the same coverage as this Coverage Extension.

b. Additional and Replacement Farm Machinery, Implements, Equipment and Vehicles Newly Purchased

1) A Special Limit of Insurance equal to \$250,000 plus the corresponding limit specified in the Declarations for individually scheduled items of Farm Machinery, Implements, Equipment and Vehicles applies to any item of property purchased as a replacement of such machinery, implement, equipment or vehicle.

2) Coverage on such items of farm machinery, implements, equipment and vehicles such as tractors, combines, harvesters, corn pickers and hay balers, will extend to apply to newly purchased additional farm machinery, implements, equipment and vehicles.

Page 10 of 41

FP 700 10 07 12

FPK FMPN 3027010948

INSURED'S COPY

43 0000039

044

FP 700 10 07 12

The most we will pay under this Coverage Extension is \$250,000 for loss of or damage to all such Newly Purchased Additional Farm Machinery, Implements, Equipment and Vehicles. This \$250,000 Limit is part of, not in addition to, the applicable Limit of Insurance.

- 3) This Coverage Extension will end:
 - a) 60 days after the date of purchase of the replacement or additional item; or
 - b) When this policy expires; whichever comes first.
- 4) When values for Additional and Replacement Newly Purchased Farm Machinery, Implements, Equipment and Vehicles are reported under this Coverage Extension, additional premium for these values will be due and payable from the date of purchase.
- 5) In no event will we pay more than the "actual cash value" as of the time of loss.
- 6) The deductible applicable to the replaced property also applies to coverage provided under this extension.
- 7) A newly purchased vehicle or item of machinery, implement or equipment is covered under this Coverage Extension only to the extent that it is not covered under another Coverage or Coverage Form of this or any other policy of the "insured".
- 8) None of the following is covered under this Coverage Extension:

Any property listed as not covered under Coverage E 2. Property Not Covered.
- c. **Additional Acquired Livestock**
 - 1) If Coverage E covers "livestock"
 - a) Specifically declared and described in the Coverage E Declarations; or
 - b) With separate Limits of Insurance per class shown in the Coverage E Declarations;we will cover additional "livestock" you acquire during the policy period, for up to 30 days from acquisition.

- 2) The most we will pay under this Coverage Extension is the lesser of:
 - a) The "actual cash value" of such property; or
 - b) 25% of the total of the Limits of Insurance shown in the Coverage E Declarations for:
 - i. Specifically declared and described "livestock"; and
 - ii. "Livestock" with separate limits per class.
- 3) You must report such property within 30 days from the date acquired and pay any additional premium due. If you do not report such property, coverage will end 30 days after the date the property is acquired.

3. EXTENSIONS OF COVERAGE E AND COVERAGE F

a. Rental Reimbursement on Farm Machinery, Implements and Equipment

- 1) In the event of loss or damage to farm machinery, implements or equipment under Coverage E or Coverage F, by a Covered Cause of Loss, we will also cover your cost to rent similar farm machinery, implements or equipment to replace the covered property. This applies only if:
 - a) The covered property cannot be used;
 - b) You do not have other equipment available for similar use; and
 - c) It is necessary for you to rent farm machinery, implements and equipment to continue your normal farming operations.
- 2) The amount of coverage provided by this additional coverage is \$1,000 for each day subject to a maximum of \$10,000 for each loss. This coverage is additional insurance.
- 3) Coverage begins upon your notification to us that a covered loss has occurred. It ends at the earlier of the following:
 - a) When the covered property has been replaced or restored to service;
 - b) When the need for rental property no longer exists; or

FP 700 10 07 12

Page 11 of 41

FPK FMPN 3027010948

INSURED'S COPY

43 0000040

045

FP 700 10 07 12

- c) When the Limit of Insurance has been exhausted.
- 4) This additional coverage is not subject to a deductible or the coinsurance provision.
- b. **Rented or Leased Farm Machinery, Implements, Equipment and Vehicles**
 - 1) When we cover farm machinery, implements, equipment and vehicles under Coverage E or Coverage F, we will pay up to \$100,000 during the policy period for loss or damage to rented or leased farm machinery, implements, equipment and vehicles caused by any of the SPECIAL Covered Causes of Loss.
 - 2) None of the following is covered under this Coverage Extension:
 - a) Any items of nonowned property specifically described in the Declarations; or
 - b) Any property listed as not covered under Coverage E 2. Property Not Covered.
 - 3) This Coverage Extension will end:
 - a) 60 days after the date the property was rented or leased; or
 - b) When this policy expires; whichever comes first.
 - 4) A \$500 deductible applies to this Coverage Extension.
- c. **Emergency Roadside Assistance for Farm Machinery, Implements and Equipment**

We will pay all reasonable expenses you incur up to \$250 for towing and labor costs paid due to the disablement of covered farm machinery, implements or equipment on a public roadway. Labor costs are only covered if performed at the place of disablement. No deductible applies to this Extension of Coverage.
- d. **Arson or Crime Information Reward**

We will pay up to \$2,500 reward for information leading to conviction if the covered cause of loss results from arson, vandalism, or theft.
- e. **Refrigerated "Farm Personal Property"**
 - 1) We will pay up to \$1,000 for loss of or damage to the "farm personal property" contents of a freezer or refrigerated unit caused by a change in temperature due to:
 - a) Interruption of electrical service to refrigeration equipment, caused by damage to generating or transmission equipment; or
 - b) Mechanical or electrical breakdown of a refrigeration system.
 - 2) Under this Coverage Extension we will not pay for loss of or damage to property not owned by you.
 - 3) This Coverage Extension will not apply unless you maintain the refrigeration equipment in proper working order.
 - 4) No deductible applies to this Refrigerated Products Extension of Coverage.
- i. **Unharvested Grain or Crops**

When we cover grain or crops under Coverage E, or Coverage F when endorsed to the policy, we will pay up to \$10,000 for loss to unharvested barley, corn, oats, rye, wheat and other grains, flax, soy beans and sunflowers (but not seed or forage crops, straw or stubble), or \$5,000 for loss to unharvested crops other than barley, corn, oats, rye, wheat and other grains, flax, soy beans and sunflowers (but not seed or forage crops, straw or stubble).

Fire, lightning, and vehicle damage are the only Covered Causes of Loss for property under this Coverage Extension.

This Coverage Extension is part of, not in addition to, the applicable Limit of Insurance.

4. EXTENSION OF COVERAGE F

- a. **Farm Building Additions and Alterations**

If you are a tenant, your insurance under Coverage F includes building additions, alterations, fixtures, improvements or installations made or acquired at your

Page 12 of 41

FPK FMPN 3027010948

INSURED'S COPY

FP 700 10 07 12

43 0000841

046

Filed: 3/18/2021 10:50 AM CST Haakon County, South Dakota 27CIV20-000019

- Page 340 -

AA 046

FP 700 10 07 12

expense to that part of a farm building or structure used exclusively by you. The Limit of Insurance for this Coverage Extension is 10% of the Limit of Insurance that applies to Coverage F – Unscheduled Farm Personal Property. But if a higher Limit of Insurance is shown in the Declarations, the higher limit applies.

This Extension is additional insurance.

5. **EXTENSION OF COVERAGE G**

a. **New Construction**

- 1) We will pay up to \$250,000 for direct physical loss of or damage to new, permanent farm structures at the "insured location" including materials and supplies for use in their construction.
- 2) This Coverage Extension applies only:
 - a) To structures that are not otherwise covered under this or any other policy; and
 - b) To loss or damage caused by a BASIC Covered Cause of Loss.
- 3) Insurance on each farm structure covered under this Coverage Extension will end as soon as any of the following takes place:
 - a) You report values to us. (We will charge you an additional premium for values reported from the date construction begins or the materials and supplies are delivered.)
 - b) 60 days have elapsed since the first date of delivery of the materials and supplies.
 - c) This policy expires.
- 4) This Coverage Extension is part of, not in addition to, the applicable Limit of Insurance.

C. **ADDITIONAL COVERAGES**

1. **ADDITIONAL COVERAGES TO COVERAGES A, B, C, D, E, F AND G**

a. **Debris Removal**

- 1) We will pay your expense to remove debris of Covered Property caused by or resulting from a Covered Cause of Loss that occurs during the policy period. The expenses will be paid only if they are reported to us in writing within 180 days of the date of direct physical loss or damage.
- 2) Except as provided in C.1.a.4) below, the most we will pay under this Additional Coverage is 25% of:
 - a) The amount we pay for the direct physical loss of or damage to Covered Property; plus
 - b) The deductible in this policy applicable to that loss or damage.
- 3) This Additional Coverage does not apply to costs to:
 - a) Extract "pollutants" from land or water;
 - b) Remove, restore or replace polluted land or water; or
 - c) Extract "pollutants" from Covered Property.
- 4) Debris removal expense is included in the Limit of Insurance applying to the damaged property. But if:
 - a) The amount payable for the sum of direct physical loss or damage and debris removal expense exceeds the applicable Limit of Insurance; or
 - b) The debris removal expense exceeds the amount payable under the 25% limitation in C.1.a.2) above;
 an additional 10% of the Limit of Insurance applying to the damaged property will be available to cover debris removal expense.

b. **Reasonable Repairs**

We will pay the reasonable cost to make necessary repairs to protect Covered Property from further damage after a loss insured against has occurred.

Payment under this Additional Coverage will be subject to, not in addition to, the Limit of Insurance applying to the property being repaired.

FP 700 10 07 12

FPK FMPN 3027010948

INSURED'S COPY

Page 13 of 41

43 0000042

047

FP 700 10 07 12

- c. **Damage to Property Removed for Safekeeping**
We will pay for loss to Covered Property damaged by any cause during or up to 30 days after its removal from a building endangered by a Covered Cause of Loss. Payment under this Additional Coverage will be subject to, not in addition to, the Limit of Insurance applying to the property being removed.
- d. **Fire Department Service Charge**
We will pay up to \$2,500 for the liability you have assumed by contract or agreement for fire department charges incurred when the fire department is called to save or protect Covered Property from a Covered Cause of Loss. The amount we pay under this Additional Coverage will be in addition to any Limit of Insurance that applies under this Coverage Form. No deductible applies to this Additional Coverage.
- e. **Fire Extinguisher Recharge**
We will pay the expense you incur to recharge portable fire extinguishers when used to combat a covered fire. This Additional Coverage is in addition to the Limit(s) of Insurance. No deductible applies to this Additional Coverage.
- f. **Construction Cost Adjustment**
The Limit of Insurance shown in the Declarations for scheduled items insured under Coverages A, B, C, D and G may be increased or decreased to reflect changes in construction costs. Any such change will be made effective on the renewal date. Payment of the renewal premium when due will constitute your acceptance of the revised Limits of Insurance offered by us at the renewal of the policy.
- g. **Collapse**
This Additional Coverage, as described and limited in g.1) through g.5) below, applies only when the BASIC plus COLLAPSE, BROAD or SPECIAL Covered Causes of Loss are specified as applicable to covered property in the Declarations.
 - 1) With respect to buildings:
 - a) Collapse means an abrupt falling down or caving in of a building or any part of a building with the result that the building or part of the building cannot be occupied for its intended purpose;
 - b) A building or any part of a building that is in danger of falling down or caving in is not considered to be in a state of collapse;
 - c) A part of a building that is standing is not considered to be in a state of collapse even if it has separated from another part of the building;
 - d) A building that is standing or any part of a building that is standing is not considered to be in a state of collapse even if it shows evidence of cracking, bulging, sagging, bending, leaning, settling, shrinkage or expansion.
 - 2) We will pay for direct physical loss or damage to Covered Property, caused by collapse of a building or any part of a building that is insured under this Coverage Form or that contains Covered Property insured under this Coverage Form, if the collapse is caused by one or more of the following:
 - a) The "specified causes of loss" or breakage of building glass, all only as insured against in this Coverage Form;
 - b) Decay that is hidden from view, unless the presence of such decay is known to an insured prior to collapse;
 - c) Insect or vermin damage that is hidden from view, unless the presence of such damage is known to an insured prior to collapse;
 - d) Weight of people or personal property;
 - e) Weight of rain, ice, hail or snow that collects on a roof.

Page 14 of 41

FPK FMPN 3027010948

INSURED'S COPY

FP 700 10 07 12

43 0000043

048

FP 700 10 07 12

- f) Use of defective material or methods in construction remodeling or renovation if the collapse occurs during the course of the construction, remodeling or renovation. However, if the collapse occurs after construction, remodeling or renovation and is caused at least in part by a cause of loss listed in 2)a) through 2)e) above, we will pay for the loss or damage even if use of defective material or methods in construction, remodeling or renovation contributes to the collapse.
- The criteria set forth in 1)a) through 1)d) do not limit the coverage otherwise provided under Section D. COVERED CAUSES OF LOSS of this Coverage Form for the causes of loss listed in 2)a), 2)d) and 2)e).
- 3) With respect to the following property:
- a) Outdoor radio or television antennas (including satellite dishes) and their lead-in wiring, masts or towers;
 - b) Awnings, gutters and downspouts;
 - c) Outdoor equipment including yard fixtures;
 - d) Swimming pools, underground pipes, flues, drains, cesspools, septic tanks including their laterals and related components;
 - e) Fences, patios, decks;
 - f) Piers, wharves, docks;
 - g) Beach or diving platforms or appurtenances;
 - h) Foundations, retaining walls, bulkheads;
 - i) Walks, roadways or other paved surfaces;
- If the collapse is caused by a cause of loss listed in 2)b) through 2)f) above, we will pay for loss or damage to that property in a) through i) above only if:
- i. Such loss or damage is a direct result of the collapse of a building insured under this Coverage Form; and

- ii. The property is Covered Property under this Coverage Form.
- 4) If personal property abruptly falls down or caves in and such collapse is not the result of collapse of a building, we will pay for loss or damage to Covered Property caused by such collapse of personal property only if:
- a) The collapse was caused by a cause of loss listed in 2)a) through 2)f) above;
 - b) The personal property which collapses is inside a building; and
 - c) The property which collapses is not of a kind listed in 3) above, regardless of whether that kind of property is considered to be personal property or real property.
- The coverage stated in this paragraph 4) does not apply to personal property if marring and/or scratching is the only damage to that personal property caused by the collapse.
- Collapse of personal property does not mean cracking, bulging, sagging, bending, leaning, settling, shrinkage or expansion.
- 5) This Additional Coverage - Collapse will not increase the Limits of Insurance provided in this Coverage Form.
- h. Pollutant Clean Up and Removal
- We will pay your expense to extract "pollutants" from land, water, buildings, structures or personal property at the "insured location" if the discharge, dispersal, seepage, migration, release or escape of the "pollutants" is caused by or results from a BROAD Covered Cause of Loss that occurs during the policy period. The expenses will be paid only if they are reported to us in writing within 180 days of the date on which the Covered Cause of Loss occurs.
- This Additional Coverage does not apply to:
- 1) Costs to test for, monitor or assess the existence, concentration or effect of "pollutants"; or

FP 700 10 07 12

FPK FMPN 3027010948

INSURED'S COPY

Page 15 of 41

43 0000044

049

FP 700 10 07 12

- 2) Any penalties or assessments that may be charged against you due to any statute, regulation or ordinance; or
- 3) Any cost or expense to clean up, extract or remove "pollutants" that arise out of their actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape from an underground storage tank or underground receptacle of any kind.

But we will pay for testing which is performed in the course of extracting the "pollutants" from the land or water.

The most we will pay under this Additional Coverage, for each location listed in the Declarations as an "insured location", is \$25,000 for the sum of all covered expenses arising out of Covered Causes of Loss occurring during each separate 12 month period of this policy.

i. **Landlord's Furnishings**

We will pay up to \$5,000 for appliances and other personal property in an apartment or other "dwelling" on an "insured location" regularly rented or held for rental to others by an "insured" for BROAD Covered Causes of Loss other than the peril of theft.

j. **Cost of Restoring Valuable Papers and Farm Operations Records**

For any one loss we will pay up to \$5,000 to cover your cost to research, replace or restore the lost information on valuable papers and farm operations records damaged by a SPECIAL Covered Cause of Loss.

No deductible applies to this Additional Coverage.

k. **Accidental Livestock Death**

- 1) We will pay for loss by death of any "livestock" owned by the "insured" if during the policy period:
 - a) The death is the result of any hunting accident caused by any person other than an "insured" or an employee of an "insured".
 - b) The death is the result of collision with:
 - i. A railroad train; or

- ii. A vehicle while on a public road, by a vehicle not owned or being operated by an "insured" or an employee; all while not being transported in or upon any vehicle;

- 2) The death must occur within 10 days after the date of the accident.
- 3) The Limit of Insurance is \$1,000 or the fair market value of the animal, whichever is less. The most we will pay in any one occurrence will be \$5,000.
- 4) If a higher Limit of Insurance is specified on Form 8110 (Additional Endorsement Information) of this policy, the higher limit will apply.
- 5) No deductible applies to this Additional Coverage.

i. **Borrowed Farm Machinery, Implements, Equipment and Vehicles**

- 1) We will pay up to \$75,000 in any one occurrence for loss or damage to borrowed farm machinery, implements, equipment and vehicles (not licensed for road use) caused by any SPECIAL Covered Cause of Loss. This is primary insurance.
- 2) If a higher Limit of Insurance is specified on Form 8110 (Additional Endorsement Information) of this policy, the higher limit will apply.
- 3) No deductible applies to this Additional Coverage.
- 4) At our option, we will either:
 - a) Pay the "actual cash value" of the property; or
 - b) Repair or replace the property with other property of like quality and kind.
- 5) This coverage does not apply to:
 - a) Property owned by or rented to any "insured", a tenant of any "insured", a landlord of any "insured", or a resident of your household or for which an "insured" has a security or financial interest; or

Page 16 of 41

FPK FMPN 3027010948

INSURED'S COPY

FP 700 10 07 12

43 0000045

050

FP 700 10 07 12

- b) Recreational motor vehicles and motor vehicles (other than wagons and trailers designed for "farming" purposes and used principally on farm premises), watercraft, aircraft and their equipment, tires and parts or dealer demonstration machinery, implements, equipment and vehicles.
- 6) Coverage will cease 30 days from the day you borrowed covered property or when the policy expires, whichever comes first.
- m. **Private Electrical and Telephone Apparatus**
We will pay up to \$2,500 in any one occurrence as an additional amount of insurance for direct physical loss of or damage to private power and telephone poles, outside wiring and attachments. Attachments include attached switch boxes, fuse boxes, and other electrical equipment mounted on poles you own at the "insured location". Coverage applies for loss caused by any BASIC Covered Cause of Loss. No deductible applies to this additional coverage.
If specific private electrical and telephone apparatus coverage is shown in the Declarations, the Limits of Insurance shown for them will be in addition to the \$2,500 Limit.
- n. **Damage to Property of Others**
We will pay up to \$5,000 for damage to "farm personal property" of others caused as a result of a covered cause of loss to covered property. At our option, we will either:
 - 1) pay the actual cash value of the property; or
 - 2) repair or replace the property with other property of like kind and quality.
- 2. **ADDITIONAL COVERAGES TO COVERAGES A, B, C AND D ONLY**
 - a. **Removal of Fallen Trees**
 - 1) We will pay the reasonable expense you incur removing any fallen tree from the grounds appurtenant to your principal residence, provided that, in falling, the tree damaged property covered under Coverage A, B or C, and provided further:

- a) That the tree is located more than 250 feet from a covered "dwelling", and the cause of its falling was a BROAD Covered Cause of Loss; or else
- b) That the tree is located within 250 feet of a covered "dwelling", and the cause of its falling was a Covered Cause of Loss other than fire or lightning, explosion, riot or civil commotion, aircraft, vehicles owned and operated by nonresidents of the covered "dwelling", vandalism, or theft.
- 2) In the event a Covered Cause of Loss, as described in 1)a) or 1)b) above occurs, we will pay the reasonable expense you incur removing any fallen tree from the grounds appurtenant to your residence premises described in the Declarations provided that, in falling, the tree does not damage covered property, and:
 - a) The tree blocks a driveway on the residence premises preventing a motor vehicle, which is subject to motor vehicle registration, from entering or leaving the residence premises; or
 - b) The tree blocks a ramp or other fixture designed to assist a handicapped person who is an "insured" to enter or leave the residence premises.
- 3) The most we will pay under this Additional Coverage is \$2,500 in any one loss regardless of the number of fallen trees. No more than \$1,000 of this limit will be available for the removal of any one tree.
This Additional Coverage is additional insurance.
This Additional Coverage, Removal of Fallen Trees, does not apply to trees covered under the Trees, Shrubs, Plants and Lawns Coverage Extension under Section B.
COVERAGE EXTENSIONS.
 - b. **Credit Cards and Electronic Fund Transfer Cards or Other Access Devices; Forgery; Counterfeit Currency**

FP 700 10 07 12

FPK FMPN 3027010948

INSUREO'S COPY

Page 17 of 41

43 0000046

051

FP 700 10 07 12

- 1) We will pay up to \$5,000, unless a higher limit is indicated in the Declarations, for:
 - a) The legal obligation of any "insured" to pay because of the theft or unauthorized use of credit cards issued to any "insured" or registered in any "insured's" name.
But this Additional Coverage will not apply if any "insured" has not complied with all terms and conditions under which the credit card was issued.
 - b) Loss resulting from theft or unauthorized use of a fund transfer card used for deposit, withdrawal or transfer of funds, issued to any "insured" or registered in any "insured's" name.
But this Additional Coverage will not apply if any "insured" has not complied with all terms and conditions under which the fund transfer card was issued.
 - c) Loss to any "insured" caused by forgery or alteration of any check or negotiable instrument; and
 - d) Loss to any "insured" through acceptance in good faith of counterfeit United States or Canadian paper currency.
 - 2) But we will not pay for loss arising out of business pursuits or dishonesty of any "insured".
 - 3) No deductible applies to this Additional Coverage.
 - 4) Defense
 - a) We may make any investigation and settle any claim or suit that we decide is appropriate. Our obligation to defend any suit ends when the amount we pay for the loss equals the applicable Limit of Insurance.
 - b) If a suit is brought against any "insured" for liability under the Credit Card or Fund Transfer Card Coverage, we will provide a defense at our expense by counsel of our choice.
 - c) We have the option to defend at our expense any "insured" or any "insured's" bank against any suit for the enforcement of a payment under the Forgery Coverage.
 - 5) This Additional Coverage is additional insurance.
- c. Loss Assessment
- We will pay up to \$1,000 for your share of any loss assessment charged during the policy period against all unit owners by a corporation or association of property owners. This only applies when the assessment is made as a result of each direct loss to the property, owned by all members collectively, caused by a SPECIAL Covered Cause of Loss other than earthquake or land shock waves or tremors before, during or after a volcanic eruption.
- This coverage applies only to loss assessments charged against you as owner or tenant of the residence premises and only when such loss assessments are not attributable to any act of an "insured". We do not cover loss assessments charged against you or a corporation or association or property owners by any governmental body.
3. ADDITIONAL COVERAGES TO COVERAGE E AND F ONLY
- Damage in Course of Transit
- We will pay up to \$10,000 per occurrence for loss or damage to insured "farm personal property" in the course of transit, including while in the custody of a common or contract carrier, by a Covered Cause of Loss. Coverage for "farm personal property" in the custody of a common or contract carrier is on an excess basis. This limit is part of, not in addition to, the applicable Limit of Insurance shown in the Declarations.
4. ADDITIONAL COVERAGE TO COVERAGES E, F AND G ONLY
- a. Extra Expense
- 1) We will pay up to \$5,000 for the actual and necessary expenses you incur to resume normal "farming" operations interrupted as the result of direct physical loss of or damage to Covered Property by a Covered Cause of Loss.

Page 18 of 41

FPK FMPN 3027010948

INSURED'S COPY

FP 700 10 07 12

43 0000047

052

FP 700 10 07 12

- 2) Coverage for such extra expense is not limited by the expiration of this policy. But, we will not pay extra expense you incur after the period required for repair, rebuilding or replacement of Covered Property.
- 3) Extra Expense Coverage does not include loss caused by or resulting from the enforcement of any ordinance or law which requires any "insured" or others to test for, monitor, clean up, remove, contain, treat, detoxify, neutralize, or in any way respond to, or assess the effects of, "pollutants".
- 4) No deductible applies to this Additional Coverage.

D. COVERED CAUSES OF LOSS

Covered Causes of Loss means the causes as described and limited under either D.1. or D.2. or D.3. below in accordance with a corresponding entry of either BASIC or BROAD or SPECIAL, respectively, on the Declarations opposite each Coverage or property to which this insurance applies. Covered Causes of Loss are also limited by the Exclusions in Section E.

1. COVERED CAUSES OF LOSS - BASIC

Subject to the provisions in Section D., when BASIC is shown in the Declarations, Covered Causes of Loss means the following:

- a. **Fire Or Lightning**, but not including loss of or damage to buildings, or contents usual to a tobacco barn, if that loss or damage:
 - 1) Results from the use of open fire for curing or drying tobacco in the barn; and
 - 2) Occurs during, or within the five-day period following, open fire curing or drying.
- b. **Windstorm Or Hail**, but not including:
 - 1) Frost or cold weather;
 - 2) Ice (other than hail), snow or sleet, whether driven by wind or not; or
 - 3) Loss of or damage to:
 - a) The interior of any building or structure, or the property inside a building or structure, caused by hail, rain, snow, sleet, sand or dust, whether driven by wind or not, unless the building or structure first sustains wind or hail damage to its roof or

- walls through which the hail, rain, snow, sleet, sand or dust enters; or
- b) Watercraft or their trailers, furnishings, equipment or outboard motors unless within a fully enclosed building.
- c) Covered "Livestock" or Poultry:
 - i. when caused by running into streams, ponds or ditches, or against fences or other objects; or from smothering; or resulting directly or indirectly from fright;
 - ii. when caused by freezing or smothering in blizzards or snowstorms.
 - iii. unless loss or damage is a direct result from physical contact with an object.
- Loss or damage from an airborne virus or disease is not covered.
- d) Dairy or farm products in the open other than hay, straw or fodder.

- c. **Explosion**, including the explosion of gases or fuel within the furnace of any fired vessel or within the flues or passages of such a vessel from which the gases of combustion pass.
But under Coverages E, F and G this cause of loss does not include loss or damage caused by or resulting from:
 - 1) Explosion of alcohol stills, steam boilers, steam pipes, steam engines or steam turbines owned or leased by you, or operated under your control;
 - 2) Electric arcing;
 - 3) Rupture or bursting of water pipes;
 - 4) Rupture, bursting or operation of pressure relief devices; and
 - 5) Rupture or bursting due to expansion or swelling of the contents of any building or structure caused by or resulting from water.
- d. **Riot or Civil Commotion**, including:
 - 1) Acts of striking employees while occupying the "insured location"; and
 - 2) Looting occurring at the time and place of a riot or civil commotion.

FP 700 10 07 12

FPK FMPN 3027010948

INSURED'S COPY

Page 19 of 41

43 0000048

053

FP 700 10 07 12

- e. **Aircraft**, meaning only loss or damage caused by or resulting from:
 - 1) Contact of an aircraft, spacecraft or self-propelled missile with Covered Property or with a building or structure containing Covered Property; or
 - 2) Objects falling from aircraft.
- f. **Vehicles**, meaning only loss or damage caused by contact of a vehicle, or of an object thrown up by a vehicle, with Covered Property or with a building or structure containing Covered Property.
This cause of loss does not include loss or damage to:
 - 1) "Livestock"; or
 - 2) A fence, driveway or walk.However, we will provide coverage under this cause of loss if the fence, driveway or walk is appurtenant to a covered "dwelling" and the vehicle that caused the loss or damage was not owned or operated by a resident of the "dwelling".
- g. **Smoke**, causing sudden and accidental loss or damage, including the emission or puffback of smoke, soot, fumes or vapors from a boiler, furnace or related equipment.
This cause of loss does not include loss or damage by smoke from agricultural smudging or industrial operations or by gaseous "pollutants" originating on an "insured location" to any building, structure or personal property.
- h. **Vandalism**
This cause of loss does not include loss of or damage to:
 - 1) A building or structure, or its contents, if the building or structure has been "vacant" for more than 30 consecutive days immediately before the loss.
 - 2) Any device or instrument, for the transmitting, recording, receiving or reproduction of sound or pictures, that is operated by power from the electrical system of a motor vehicle or mobile agricultural vehicle, unless it is:
 - a) Covered Property; and
 - b) Permanently installed in the motor vehicle or mobile agricultural vehicle.
- 3) While in or upon a motor vehicle or mobile agricultural vehicle, any tape, wire, record, disc or other medium for use with any device or instrument that transmits, records, receives or reproduces sound or pictures and that is operated by power from the electrical system of the motor vehicle or mobile agricultural vehicle.
- i. **Theft**, including attempted theft and loss of property from a known location when it is likely that the property has been stolen.
This cause of loss does not include loss caused by or resulting from theft:
 - 1) Due to unauthorized instructions to transfer property to any person or to any place;
 - 2) Under Coverage A, B or C:
 - a) From that part of your principal residence, including its grounds and appurtenant structures, which you rent to someone who is not an "insured";
 - b) With respect to household personal property away from the "insured location", of:
 - i. Property at any residence owned by, rented to, or occupied by, an "insured", except while an "insured", is temporarily residing there.
But property of a student who is an "insured" is covered at a residence away from home provided the student has been there at any time during the 45 days immediately preceding the loss;
 - ii. Any watercraft, its furnishings, equipment or outboard motors; or
 - iii. Trailers or campers.
- 3) Under Coverage E or F:
 - a) Discovered on taking inventory;
 - b) Due to wrongful conversion or embezzlement;

Page 20 of 41

FPK FMPN 3027010948

INSURED'S COPY

FP 700 10 07 12

43 0000049

054

FP 700 10 07 12

- c) Due to disappearance of any "farm personal property" unless there is evidence that the property was stolen; or
- d) Due to acceptance of counterfeit "money", fraudulent post office or express money orders, or checks or promissory notes not paid upon presentation.
- 4) Of any device or instrument for the transmitting, recording, receiving or reproduction of sound or pictures, that is operated by power from the electrical system of a motor vehicle or mobile agricultural vehicle, unless it is:
 - a) Covered Property; and
 - b) Permanently installed in the motor vehicle or mobile agricultural vehicle.
- 5) While in or upon a motor vehicle or mobile agricultural vehicle, of any tape, wire, record, disc or other medium for use with any device or instrument that transmits, records, receives or reproduces sound or pictures and that is operated by power from the electrical system of the motor vehicle or mobile agricultural vehicle.
- j. Sinkhole Collapse, meaning loss or damage caused by the sudden sinking or collapse of land into underground empty spaces created by the action of water on limestone or dolomite. This cause of loss does not include:
 - 1) The cost of filling sinkholes; or
 - 2) Sinking or collapse of land into man-made underground cavities.
- k. Volcanic Action, meaning direct loss or damage resulting from the eruption of a volcano when the loss or damage is caused by:
 - 1) Airborne volcanic blast or airborne shock waves;
 - 2) Ash, dust or particulate matter; or
 - 3) Lava flow.

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

This cause of loss does not include the cost to remove ash, dust or particulate matter that does not cause direct physical loss or damage to the Covered Property.

l. Collision Causing Damage To Covered Farm Personal Property

We will pay for loss of or damage to covered "farm personal property" in or upon a motor vehicle, caused by collision or overturn of that vehicle. Collision means accidental contact of the motor vehicle with another vehicle or object.

2. COVERED CAUSES OF LOSS – BROAD

Subject to the provisions in Section D., when BROAD is shown in the Declarations, Covered Causes of Loss means the Covered Causes of Loss under Section D.1. Covered Causes of Loss – BASIC, plus the following:

- m. Breakage Of Glass Or Safety Glazing Material that is part of a building or structure, storm door or storm window.

Under this cause of loss, we will not pay for loss if the building or structure which contained the glass, including door or window glass, has been "vacant" for more than 30 consecutive days immediately before the loss.
- n. Falling Objects

But we will not pay for loss or damage to:

 - 1) Personal property in the open;
 - 2) The interior of a building or structure, or property inside a building or structure, unless the roof or an outside wall of the building or structure is first damaged by a falling object; or
 - 3) The falling object itself.
- o. Weight Of Ice, Snow Or Sleet causing damage to a building or to any property inside a building.

But under this cause of loss we will not pay for loss by pressure or weight of water in any form, whether driven by wind or not, to any:

 - 1) Foundation or retaining wall;
 - 2) Pavement or patio;
 - 3) Awning;
 - 4) Fence;
 - 5) Outdoor equipment;
 - 6) Swimming pool, spa and related equipment; or

FP 700 10 07 12

FPK FMPN 3027010948

INSURED'S COPY

Page 21 of 41

43 0000050

055

FP 700 10 07 12

- 7) Bulkhead, dock, pier or wharf.
- p. **Sudden and Accidental Tearing Apart,** cracking, burning or bulging of a steam or hot water heating system, an air conditioning or automatic fire protective system, or an appliance for heating water. Under this cause of loss we will not pay for loss or damage caused by or resulting from freezing.

- q. **Accidental Discharge Or Leakage Of Water Or Steam** from within a plumbing, heating, air conditioning or other system or appliance that is located on the "insured location" and contains water or steam. Under this cause of loss we will pay for loss of or damage to covered personal property provided that BROAD is shown in the Declarations for the coverage applicable to that personal property. If any part of a building or structure to which Coverage A, B or G applies must be torn out and replaced so that repairs can be made to the damaged system or appliance, we will also pay the necessary costs involved, provided that BROAD is shown in the Declarations for the coverage applying to that building or structure.

We will not pay:

- 1) For loss or damage caused by repeated leakage or seepage of water or steam whether continuous or intermittent;
- 2) For loss or damage caused by discharge or leakage from a sump or related equipment and parts, including overflow due to sump pump failure or excessive volume of water;
- 3) The cost to repair any defect that caused the loss or damage;
- 4) For loss or damage caused by discharge or leakage in a building or structure "vacant" for more than 30 consecutive days immediately before the loss; or
- 5) For loss or damage caused by or resulting from freezing.
- 6) For loss or damage caused by or resulting from discharge or leakage from roof drains, gutters, downspouts or similar fixtures or equipment.

- r. **Freezing of a plumbing, heating, air conditioning or automatic fire protective system or of a household appliance but only if you have used reasonable care to:**

- 1) Maintain heat in the building or structure; or
- 2) Shut off the water supply and drain the system or appliance of water.

However, if the building or structure is protected by an automatic fire protective system, you must use reasonable care to continue the water supply and maintain heat in the building or structure for coverage to apply.

A plumbing system does not include a roof drain, gutter, downspout or similar fixtures or equipment.

- s. **Sudden and Accidental Damage from artificially generated electrical current - Applicable Only to Coverages A, B, C and D.**

This cause of loss does not include loss of or damage to:

- 1) Tubes, transistors or integrated circuitry that are a part of appliances, fixtures, computers, home entertainment units or other types of electronic apparatus. Integrated circuitry includes, but is not limited to, chips, transformers, resistors, diodes, wafers and rectifiers; or
- 2) Laser or infrared devices used to operate or assist in the operation of any appliances, fixtures, computers, home entertainment units or other types of electronic apparatus.

- t. **Electrocution Of Covered "Livestock"**

- u. **Attacks On Covered "Livestock" By Dogs Or Wild Animals**

This cause of loss does not include loss or damage:

- 1) To sheep; or
- 2) Caused by dogs or wild animals owned by you, your employees or other persons residing on the "insured location".

- v. **Accidental Shooting Of Covered "Livestock"**

This cause of loss does not include loss or damage caused by you, any other "insured", your employees, or other

Page 22 of 41

FPK FMPN 3027010948

INSURED'S COPY

FP 700 10 07 12

43 0000851

056

FP 700 10 07 12

- persons residing on the "insured location".
- w. **Drowning Of Covered "Livestock" From External Causes**
This cause of loss does not include loss resulting from the drowning of livestock other than swine, under 72 hours old, and the drowning of swine under 30 days old.
- x. **Loading/Unloading Accidents of Covered "Livestock"**, meaning sudden, unforeseen and unintended events causing or necessitating death of covered "livestock" and occurring while they are being unloaded from or loaded onto vehicles used or to be used to transport them.
This cause of loss does not include loss caused by or resulting from disease.
- y. **Collision Causing Death Of Covered "Livestock"**
We will pay for loss of covered "livestock" caused by:
- 1) Collision with a railroad train;
 - 2) Collision or overturn of a vehicle on which the "livestock" are being transported. Collision means accidental contact of that vehicle with another vehicle or object; or
 - 3) "Livestock" running into or being struck by a vehicle while the "livestock" are crossing, moving along or standing in a public road.
- But we will not pay for loss if a vehicle owned or operated by an "insured":
- 1) Collides with the vehicle on which the "livestock" are being transported; or
 - 2) Strikes "livestock" crossing, moving along or standing in a public road.
- z. **Earthquake Loss To Covered "Livestock"**
- aa. **Flood Loss To Covered "Livestock"**, meaning only loss or damage caused by or resulting from flood, surface water, waves (including tidal wave and tsunami), tides, tidal water, overflow of any body of water, or spray from any of these, all whether or not driven by wind (including storm surge).

3. COVERED CAUSES OF LOSS - SPECIAL

Subject to D. above, when Special is shown in the Declarations, Covered Causes of Loss means Risks of Direct Physical Loss unless the loss is excluded in the following paragraphs or in Section E. EXCLUSIONS.

- a. We will not pay for loss or damage caused by or resulting from:
- 1) Collapse, except as provided in the Additional Coverage entitled Collapse. But if collapse results in a Covered Cause of Loss at the "insured location", we will pay for the loss or damage caused by that Covered Cause of Loss.
 - 2) Windstorm or hail to watercraft or their trailers, furnishings, equipment or outboard motors, unless within a fully enclosed building.
 - 3) Rain, snow, ice or sleet to personal property in the open.
 - 4) Rain, snow, sleet, sand or dust, whether driven by wind or not, to the interior of any building or structure or the property inside a building or structure, unless the building or structure first sustains wind or hail damage to its roof or walls through which the rain, snow, sleet, sand or dust enters. This does not apply to Coverage A - Dwellings or Coverage B - Other Private Structures.
 - 5) Freezing, thawing, or pressure of weight of water or ice whether or not driven by wind, to any:
 - a) Footing, foundation, bulkhead, wall, or any other structure or device that supports all or part of any other property covered under Coverages A, B or G;
 - b) Retaining wall or bulkhead that does not support all or part of a building or structure;
 - c) Pavement or patio;
 - d) Fence;
 - e) Swimming pool, spa and related equipment; or
 - f) Bulkhead, dock, pier or wharf.

FP 700 10 07 12

FPK FMPN 3027010948

INSURED'S COPY

Page 23 of 41

43 0000052

057

FP 700 10 07 12

- 6) Discharge or overflow of water or steam from within a plumbing, heating, air conditioning or automatic fire protective system or from within a household appliance:
- Caused by repeated leakage or seepage of water or steam whether continuous or intermittent;
 - That occurs on the "insured location", but is caused by discharge that takes place off the "insured location";
 - Caused by or resulting from freezing, and occurring in a building or structure that is "vacant", "unoccupied", or being constructed, unless you have used reasonable care to:
 - Maintain heat in the building or structure; or
 - Shut off the water supply and drain the system or appliance of water.
- However, if the building or structure is protected by an automatic fire protective system, you must use reasonable care to continue the water supply and maintain heat in the building or structure for coverage to apply.
- d) Due to any cause other than freezing and occurring in a building or structure "vacant" for more than 30 consecutive days immediately before the loss.
- 7) Any of the following occurrences, if they take place in buildings or structures covered under Coverage C or if the property destroyed or damaged is "farm personal property":
- Explosion of alcohol stills, steam boilers, steam pipes or steam engines, if you own, lease or operate them;
 - Conditions or events (other than explosions) inside hot water boilers or other heating equipment, to the extent that they cause loss or damage to these boilers or equipment;
 - Rupture, bursting or operating of pressure relief devices; or
 - Rupture or bursting due to expansion of the contents of any building or structure, if the expansion is caused by or results from water.
- But this exclusion does not apply to loss or damage caused by explosion of gases or fuel within the furnace of any fired vessel or within the flues or passages through which the gases of combustion pass.
- 8) Under Coverage A, B or C, theft from that part of your principal residence, including its grounds and appurtenant structures, which you rent to someone who is not an "insured";
- 9) Under Coverage A, B or C, theft of the following property away from the "insured location":
- Property at any residence owned by, rented to, or occupied by, an "insured", except while an "insured" is temporarily residing there.
- But we will pay for loss by theft of the property of a student who is an "insured" from a residence away from home, provided the student was there at any time during the 45 days immediately preceding the loss.
- Any watercraft, its furnishings, equipment or outboard motors; or
 - Trailers or campers;
- 10) Inventory shortage;
- 11) Disappearance of any "farm personal property" or portable building or structure unless there is evidence that the property was stolen;
- 12) Voluntary parting with any property by you or anyone else to whom you have entrusted the property if induced to do so by any fraudulent scheme, trick, device or false pretense;
- 13) Unauthorized instructions to transfer property to any person or to any place;
- 14) Theft of or vandalism to:

Page 24 of 41

FPK FMPN 3027010948

INSURED'S COPY

FP 700 10 07 12

43 0000053

058

FP 700 10 07 12

- a) Any device or instrument, for the transmitting, recording, receiving or reproduction of sound or pictures, that is operated by power from the electrical system of a motor vehicle or mobile agricultural vehicle, unless it is:
- Covered Property; and
 - Permanently installed in the motor vehicle or mobile agricultural vehicle.
- b) While in or upon a motor vehicle or mobile agricultural vehicle, any tape, wire, record, disc or other medium for use with any device or instrument that transmits, records, receives or reproduces sound or pictures and that is operated by power from the electrical system of the motor vehicle or mobile agricultural vehicle.
- 15) Vandalism, breakage of glass, or breakage of safety glazing material if the building or structure was "vacant" for more than 30 consecutive days immediately before the loss.
- 16) Dishonest or criminal acts (including theft) committed by you, any of your partners, members, officers, managers, employees (including temporary employees and leased workers), directors, trustees, or authorized representatives, whether acting alone or in collusion with each other or with any other party; or theft by any person to whom you entrust the property for any purpose, whether acting alone or in collusion with any other party.
- This exclusion does not apply to acts of destruction by your employees (including temporary employees and leased workers) or authorized representatives; but theft by your employees (including temporary employees and leased workers) or authorized representatives is not covered.
- 17) Transport of "farm personal property", except to the extent of the coverage afforded under Covered Causes of Loss - BASIC and BROAD.
- 18) Collision, upset or overturn of farm machinery, implements or equipment, to the extent of any loss of or damage to the tracks, tires or inner tubes of such machinery, implements or equipment. But we will pay for the loss of or damage to the tracks, tires or inner tubes if the same accident causes other covered loss to the same machinery, implements or equipment.
- Covered farm machinery, implements or equipment does not include farm machinery, implements or equipment being transported by a common or contract carrier, except to the extent that coverage is provided under the Coverage E or Coverage F Coverage Extension for Property in the Custody of a Common or Contract Carrier.
- 19) Artificially generated electric current, including electric arcing, that disturbs any electrical devices, appliances or wires; or under Coverages A, B, C and D, any tubes, transistors or integrated circuitry that are a part of appliances, fixtures, computers, home entertainment units or other types of electronic apparatus, or laser or infrared devices used to operate or assist in the operation of any appliances, fixtures, computers, home entertainment units or other types of electronic apparatus. Integrated circuitry includes, but is not limited to, chips, transformers, resistors, diodes, wafers and rectifiers.
- But:
- Under Coverages A, B, C and D, we will pay for loss of or damage to electric devices, appliances or wires, provided the damage is sudden and accidental.
 - If artificially generated electric current results in fire, we will pay for the loss or damage caused by that fire.
 - This exclusion does not apply to any buildings or structures covered under any Additional Coverage Equipment Breakdown.

FP 700 10 07 12

Page 25 of 41

FPK FMPN 3027010948

INSURED'S COPY

43 0000054

059

FP 700 10 07 12

20) Smoke, vapor or gas from agricultural smudging or industrial operations, or by gaseous "pollutants" originating on an "insured location" to any building, structure or personal property.

21) Under Coverage C caused by:

a) Breakage of eyeglasses, glassware, statuary, marble, bric-a-brac, porcelains and similar fragile articles other than jewelry, watches, bronzes, cameras and photographic lenses.

There is coverage for breakage of the property by or resulting from:

- i. Fire, lightning, windstorm, hail;
 - ii. Smoke, other than smoke from agricultural smudging or industrial operations;
 - iii. Explosion, riot, civil commotion;
 - iv. Aircraft, vehicles, vandalism; and malicious mischief, or volcanic eruption;
 - v. Collapse of a building or any part of a building;
 - vi. Water not otherwise excluded;
 - vii. Theft or attempted theft; or
 - viii. Sudden and accidental tearing apart, 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.
- b) Dampness or atmosphere or extremes of temperature unless the direct cause of loss is rain, snow, sleet or hail;
- c) Refinishing, renovating or repairing property other than watches, jewelry and furs; or
- d) Collision, other than collision with a land vehicle, sinking, swamping or stranding of watercraft, including their trailers, furnishings, equipment and outboard engines or motors.

22) The following causes of loss to any building, structure or personal property:

- a) Wear and tear;
- b) Rust, corrosion, fungus, decay, deterioration, hidden or latent defect or any quality in property that causes it to damage or destroy itself;
- c) Smog;
- d) Settling, cracking, shrinking, bulging or expansion of driveways, sidewalks, swimming pools, spas, pavements, foundations, walls, floors, roofs, ceilings or any other structure or structural component;
- e) Tree, shrub, or bush roots;
- f) Nesting or infestation, or discharge or release of waste products or secretions by birds, vermin, rodents, insects or domestic animals;
- g) Mechanical breakdown, including rupture or bursting caused by centrifugal force, except as provided under any Additional Coverage Equipment Breakdown;
- h) Dampness or dryness of atmosphere;
- i) Changes in temperature or extremes of heat or cold, including freezing. But this exclusion does not apply to freezing of a plumbing, heating, air conditioning or automatic fire protective system or freezing of a household appliance, if you have used reasonable care to:
 - i. Maintain heat in the building or structure; or
 - ii. Shut off the water supply and drain the system or appliance of water;
- j) Marring or scratching.

If an excluded cause of loss that is listed in 22)a) through 22)j) results in a "specified cause of loss" or building glass breakage, we will pay for the loss or damage caused by that "specified cause of loss" or building glass breakage.

Page 26 of 41

FPK FMPN 3027010948

INSURED'S COPY

FP 700 10 07 12

43 0000055

060

FP 700 10 07 12

If any part of a building or structure covered under Coverage A, B or G must be torn out and replaced so that repairs can be made to the damaged system or appliance, we will also pay the necessary costs involved provided that SPECIAL is shown in the Declarations for the Coverage under which the building or structure is covered. But we will not pay for loss of or damage to the system or appliance from which the water escaped.

- b. We will not pay for loss or damage caused by or resulting from any of the following, b.1) through b.3). But if an excluded cause of loss that is listed in b.1) through b.3) results in a Covered Cause of Loss, we will pay for the loss or damage caused by that Covered Cause of Loss.
 - 1) Weather conditions. But this exclusion applies only if weather conditions contribute in any way with a cause or event excluded in Section E. EXCLUSIONS, to produce the loss or damage.
 - 2) Acts or decisions, including the failure to act or decide, of any person, group, organization or governmental body.
 - 3) Faulty, inadequate or defective:
 - a) Planning, zoning, development, surveying, siting;
 - b) Design, specifications, workmanship, repair, construction, renovation, remodeling, grading, compaction;
 - c) Materials used in repair, construction, renovation or remodeling; or
 - d) Maintenance; of part or all of any property on or off the "insured location".

E. EXCLUSIONS

The following Exclusions apply when any or all of the Covered Causes of Loss, BASIC, BROAD or SPECIAL, are specified in the Declarations.

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

1. Ordinance or Law

The enforcement of any ordinance or law:

- a. Regulating the construction, use or repair of any property; or
- b. Requiring the tearing down of any property, including the cost of removing its debris; or
- c. Requiring the removal or disposal of asbestos, lead or other "pollutants".

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

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

2. Earth Movement

- a. Earthquake, including any earth sinking, rising or shifting related to such event;
- b. Landslide, including any earth sinking, rising or shifting related to such event;
- c. Mine subsidence, meaning subsidence of a man-made mine, whether or not mining activity has ceased; or
- d. Earth sinking (other than sinkhole collapse), rising or shifting including soil conditions that cause settling, cracking or other disarrangement of foundations or other parts of realty. Soil conditions include contraction, expansion, freezing, thawing, erosion, improperly compacted soil and the action of water under the ground surface.

This exclusion applies whether the Earth Movement, as described in Paragraphs a. through d. above, is caused by human or animal forces or any act of nature.

But:

- 1) If earth movement, as described in Paragraphs a. through d. above, results in fire or explosion, we will pay for the loss or damage caused by that fire or explosion; or
- 2) If loss or damage to:
 - a) Farm machinery, implements, equipment and vehicles covered for the SPECIAL Causes of Loss; or

FP 700 10 07 12

FPK FMPN 3027010948

INSURED'S COPY

Page 27 of 41

43 0000056

061

FP 700 10 07 12

- b) Irrigation equipment covered for the SPECIAL Causes of Loss; or
 - c) "Livestock";
is caused by earthquake, this Earth Movement exclusion does not apply to such loss or damage.
 - e. Volcanic eruption, explosion or effusion.
But if volcanic eruption, explosion or effusion results in fire or volcanic action, we will pay for the loss or damage caused by that fire or volcanic action.
Volcanic action means direct loss or damage resulting from the eruption of a volcano when the loss or damage is caused by:
 - 1) Airborne volcanic blast or airborne shock waves;
 - 2) Ash, dust or particulate matter; or
 - 3) Lava flow.All volcanic eruptions that occur within any 168-hour period will constitute a single occurrence.
Volcanic action does not include the cost to remove ash, dust or particulate matter that does not cause direct physical loss or damage to Covered Property.
3. Governmental Action
Seizure or destruction of property by order of governmental authority.
But we will pay for loss or damage caused by or resulting from acts of destruction ordered by governmental authority and taken at the time of a fire to prevent its spread, if the fire would be covered under this Coverage Form.
4. Intentional Loss
We will not pay for loss or damage arising out of any act an "insured" commits or conspires to commit with the intent to cause a loss.
In the event of such loss, no "insured" is entitled to coverage, even "insureds" who did not commit or conspire to commit the act causing the loss.
5. Nuclear Hazard
Nuclear reaction or radiation, or radioactive contamination, however caused.
But if nuclear reaction or radiation, or radioactive contamination, results in fire, we will pay for the loss or damage caused by that fire.

6. Utility Services

The failure of power or other utility service supplied to the "insured location", however caused, if the failure occurs away from the "insured location", except as provided under Coverage C. Failure includes lack of sufficient capacity and reduction in supply, except as provided under any Additional Coverage Equipment Breakdown.

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

7. Neglect
Neglect, meaning neglect of the "insured" to use all reasonable means to save and preserve property at and after the time of a loss.
8. War and Military Action
- a. War, including undeclared or civil war;
 - b. Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
 - c. Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.
9. Water
- a. Flood, surface water, waves (including tidal wave and tsunami), tides, tidal water, overflow of any body of water, or spray from any of these, all whether or not driven by wind including storm surge;
 - b. Mudslide or mudflow;
 - c. Water that backs up from a sewer or drain;
 - d. Water that backs up or overflows or is otherwise discharged from a sump, sump pump or related equipment;
 - e. Water under the ground surface pressing on, or flowing or seeping through:
 - 1) Foundations, walls, floors, swimming pools, or paved surfaces;
 - 2) Basements, whether paved or not; or
 - 3) Doors, windows or other openings; or

Page 28 of 41

FPK FMPN 3027010948

INSURED'S COPY

FP 700 10 07 12

43 0000057

062

FP 700 10 07 12

- f. Waterborne material carried or otherwise moved by any of the water referred to in Paragraph a., c., d. or e., or material carried or otherwise moved by mudslide or mudflow.

This exclusion applies regardless of whether any of the above, in Paragraphs a. through f., is caused by an act of nature or is otherwise caused. An example of a situation to which this exclusion applies is the situation where a dam, levee, seawall or other boundary or containment system fails in whole or in part, for any reason, to contain water.

But:

- 1) If any of the above, in a. through f., results in fire, explosion or sprinkler leakage, we will pay for the loss or damage caused by that fire, explosion or sprinkler leakage; or
- 2) If loss or damage to:
 - a) Farm machinery, implements, equipment, vehicles, tools and supplies covered for the SPECIAL Causes of Loss; or
 - b) Irrigation equipment covered for the SPECIAL Causes of Loss; or
 - c) "Livestock";
 is caused by water as described in a. above, this Water exclusion does not apply to such loss or damage.

Exclusions E.1. through E.9. apply whether or not the loss event results in widespread damage or affects a substantial area.

10. Pollutants

We will not pay for loss or damage caused by or resulting from the discharge, dispersal, seepage, migration, release or escape of "pollutants" unless the discharge, dispersal, seepage, migration, release or escape is itself caused by any of the "specified causes of loss". But if the discharge, dispersal, seepage, migration, release or escape of "pollutants" results in a "specified cause of loss", we will pay for the loss or damage caused by that "specified cause of loss".

F. LIMITS OF INSURANCE

1. The most we will pay for loss or damage in any one occurrence is the applicable Limits of Insurance shown in the Declarations, except as otherwise provided in this Section.

2. The limits applicable to Additional Coverages are in addition to the Limits of Insurance only if so indicated in that Section of this Coverage Form.
3. The limits applicable to the Coverage Extensions are in addition to the Limits of Insurance.
4. The applicable Special Limit of Insurance. Certain categories of property covered under the Farm Property Coverage Form are subject to Special Limits of Insurance. These Special Limits are listed in subparagraph 3. of each Coverage under which those categories of property are covered.

G. DEDUCTIBLE

We will not pay for loss or damage in any one occurrence until the amount of loss or damage exceeds the Deductible shown in the Declarations. We will then pay the amount of loss or damage in excess of the Deductible, up to the applicable Limit of Insurance, after any deduction required by the Coinsurance provision.

If, in any one occurrence, loss or damage occurs to more than one unit of Covered Property on an "insured location", only one deductible will be applied to the loss or damage to all of the units. If the units have different deductibles, the highest deductible will be applied.

In addition to the deductible amount described in the Declarations, a special deductible may apply to certain types of covered property. These special deductibles will be explained in that part of the Coverage Form that describes the coverage afforded that property.

The policy deductible does not apply to breakage of glass contained in the cab of any farm machinery, implement, equipment or vehicle insured under Coverage E or F.

H. COINSURANCE

You agree to insure your property for a minimum amount of insurance. If you fail to do this, we will only pay a percentage of any loss, and you will have to share the loss with us. This percentage will be determined by dividing the Limit of Insurance you purchased by the amount you should have purchased to comply with this requirement.

The applicable coinsurance percentage is stated in the following property loss settlement provisions.

FP 700 10 07 12

FPK FMPN 3027010948

INSURED'S COPY

Page 29 of 41

43 0060058

063

FP 700 10 07 12

EXAMPLE OF UNDERINSURANCE

Total value of scheduled farm personal property is \$100,000
 The Coinsurance percentage for farm personal property 80%
 The Limit of Insurance is \$60,000
 The Deductible is \$1,000
 The amount of loss is \$40,000

1. $\$100,000 \times 80\% = \$80,000$ (the minimum amount you should have carried)
2. $\$60,000 / \$80,000 = \frac{3}{4} = 75\%$
3. $\$40,000 \times .75 = \$30,000$
4. $\$30,000 - \$1,000 = \$29,000$

We will pay no more than \$29,000.

I. LOSS SETTLEMENT CONDITIONS

1. COVERAGE A - DWELLINGS

Coverage A is subject to the following Loss Conditions as well as to the Farm Property Conditions and the General Policy Conditions:

Loss Condition - Valuation

a. Property

- 1) The basis for loss settlement will be determined by the ratio of the Coverage A Limit of Insurance applying to the destroyed or damaged Covered Property to the full "replacement cost". When determining the full "replacement cost", the values of the following will be disregarded:
 - a) Excavations;
 - b) Foundations; and
 - c) Piers and other structures or devices that support all or part of Covered Property and are below the undersurface of the lowest basement floor; or, where there is no basement, those below the surface of the ground inside the foundation walls; also underground flues, pipes, wiring and drains.
- 2) If "Replacement Cost" is expressly indicated in the Declarations for a Primary Owner Occupied Dwelling under Coverage A - Dwelling, we will settle the loss based on the smallest of the following amounts:

- a) The cost to replace the damaged part of the structure with material of like kind and quality and for like use;
- b) The amount actually and necessarily spent to repair or replace the structure.
- c) The applicable Limit of Insurance.

3) If "Replacement Cost" is expressly indicated in the Declarations for other than a Primary Owner Occupied Dwelling under Coverage A - Dwelling, loss valuation will be determined as provided below:

- a) If the Limit of Insurance on the damaged structure is at least 80% of its full "replacement cost" as of the time of loss, we will settle the loss based on the smallest of the following amounts:
 - i. The cost to replace the damaged part of the structure with equivalent construction for use on the same premises.
 - ii. The amount actually and necessarily spent to repair or replace the structure.
 - iii. The applicable Limit of Insurance.
- b) If the Limit of Insurance on the damaged structure is less than 80% of its full "replacement cost" as of the time of loss, we will settle on the basis of i. or ii. below, whichever is larger:
 - i. The "actual cash value", as of time of loss, of the damaged part of the structure.
 - ii. A proportion of the cost to repair or replace the damaged part of the structure, without deduction for depreciation. This proportion will equal the ratio of the applicable Limit of Insurance to 80% of the cost of repair or replacement.

However, we will not pay more than the applicable Limit of Insurance, regardless of whether i. or ii. above applies.

Page 30 of 41

FPK FMPN 3027010948

INSURED'S COPY

FP 700 10 07 12

43 0000059

064

FP 700 10 07 12

- 4) If "Actual Cash Value" is expressly indicated in the Declarations, in the event of loss or damage to Covered Property, we will settle the loss based on the smallest of the following amounts:
 - a) The amount actually and necessarily spent to repair or replace the damaged part of the structure with equivalent construction.
 - b) The "actual cash value", as of time of loss, of the damaged part of the structure.
 - c) The applicable Limit of Insurance.
 - 5) If your loss qualifies for payment on a "replacement cost" basis, but the cost of repair or replacement is more than either \$5,000 or 5% of the applicable Limit of Insurance, the only basis on which we will settle pending completion of repairs or replacement is "actual cash value", as of time of loss, of the damaged part of the structure. In case of such a loss you can make an initial claim for payment on the "actual cash value" basis, and later make a supplementary claim for "replacement cost" payment. If you elect to exercise this option, you must notify us of your intention within 180 days of the occurrence of the loss.
 - 6) If the structure is rebuilt at a new premises, the cost described in Paragraph 1.a.2) and 1.a.3) is limited to the cost that would have been incurred if the structure had been rebuilt at the original premises.
 - 7) The cost of repairs or replacement does not include the increased cost attributable to enforcement of any ordinance or law regulating the construction, use or repair of any property.
- b. **Extended Replacement Cost Coverage for Primary Owner Occupied Coverage A - Dwellings**
- These provisions are applicable only to "dwellings", other than mobile homes, which are identified as Primary Owner Occupied in the Declarations.
- 1) We will settle losses to the Primary Owner Occupied Coverage A - Dwelling, other than a mobile home, at "replacement cost" up to 125% of the Limit of Insurance stated in the Declarations, provided you:
 - a) Insure the Coverage A - Dwelling to an amount of insurance equal to 100% of its "replacement cost";
 - b) Allow us to adjust the Limit of Insurance at renewal with respect to the Coverage A - Dwelling to reflect changes in the cost of construction for your area and that you will pay any resulting additional premium;
 - c) Notify us within 90 days of the commencement of any building addition or other remodeling which increases the "replacement cost" of the Coverage A - Dwelling by \$5,000 or more and that you will pay any resulting additional premium; and
 - d) Notify us of your intent to repair or replace the covered "dwelling" within 180 days of the occurrence of the loss.
 - e) Actually repair or replace the damaged portion of the Coverage A - Dwelling with equivalent construction and use on the same premises.
 - 2) We will pay no more than the amount actually and necessarily spent to repair or replace the damaged Coverage A - Dwelling with equivalent construction and use on the same premises. The cost of repairs or replacement does not include the increased cost attributable to enforcement of any ordinance or law regulating the construction, use or repair of any property.
- c. **Glass Replacement**
- We will settle on the basis of the cost to replace damaged glass with safety glazing material, if required by law.

FP 700 10 07 12

FPK FMPN 3027010948

INSURED'S COPY

Page 31 of 41

43 0000060

065

FP 700 10 07 12

2. **COVERAGE B – OTHER PRIVATE STRUCTURES APPURTENANT TO DWELLINGS**

Coverage B is subject to the Valuation Loss Condition shown in Paragraph 1.a. under Coverage A - Dwellings. It is also subject to the Farm Property Conditions and the General Policy Conditions.

3. **COVERAGE C - HOUSEHOLD PERSONAL PROPERTY**

Coverage C is subject to the following Loss Condition as well as to the Farm Property Conditions and the General Policy Conditions.

Loss Condition – Valuation

In the event of loss of or damage to covered household personal property, we will settle at "actual cash value" as of time of loss, but we will not pay more than the amount necessary for repair or replacement.

4. **COVERAGE D - LOSS OF USE**

Coverage D is subject to the Farm Property Conditions and General Policy Conditions.

5. **COVERAGE E - SCHEDULED FARM PERSONAL PROPERTY**

Coverage E is subject to the following Loss Conditions as well as to the Farm Property Conditions and the General Policy Conditions.

Loss Conditions

a. **Coinsurance**

You must maintain insurance on scheduled "farm personal property" to the extent of at least 80% of its "actual cash value" as of the time of loss. If you fail to do this, the percentage we pay of any loss will be the result produced by dividing the Limit of Insurance actually carried by the required Limit of Insurance.

b. **Portable Fences, Corrals and Other Portable Structures**

The most we will pay for loss of or damage to this property in any one occurrence is the proportion that the applicable Limit of Insurance shown in the Declarations bears to the value of all portable fences, corrals and other portable structures you own as of the time of loss.

c. **Pro Rata Distribution**

Applicable only to grain, hay, straw and fodder, to farm machinery, implements, equipment and vehicles, and to "poultry" in unheated buildings.

This Condition applies only if scheduled "farm personal property" is covered at more than one "insured location". The Limit of Insurance for any category of covered "farm personal property" mentioned in the heading of this Condition will apply at any one "insured location" in the proportion that the value of Covered Property in that category at that location bears to the value of all Covered Property in that category at all "insured locations".

EXAMPLE #1 (ADEQUATE INSURANCE)

The property in the given category is located at locations 1, 2, 3 and 4.

Total value is: \$130,000

The overall Limit of Insurance for this category is: \$150,000

No loss at location 1, 2 or 3; loss at location 4 is: \$12,000

Value of property in this category at location 4 is: \$45,000

The deductible is: \$1,000

Loss minus deductible (\$12,000 - \$1,000) is: \$11,000

Steps in Computing Loss Payment

A. Value of property in this category at location 4:	\$45,000
B. Value of such property at all four locations:	\$130,000
C. Ratio of A to B (\$45,000 ÷ \$130,000):	9/26 or 34.6%
D. Proportion of Limit of Insurance available for covering the loss (C x \$150,000):	\$51,900
Therefore, the proportion of the Limit of Insurance available for payment of the \$12,000 loss (after subtraction of deductible) is adequate and the full loss less the deductible is payable.	
We will pay no more than:	\$11,000
i.e., the \$12,000 amount of loss minus the deductible of \$1,000.	

Page 32 of 41

FP 700 10 07 12

FPK FMPN 3027010948

INSURED'S COPY

43 0000061

066

FP 700 10 07 12

EXAMPLE #2 (UNDERINSURANCE)

The property in the given category is located in silos at locations 1 and 2. Total value is:

Value at location 1 is: \$32,000
Value at location 2 is: \$18,000
Value at location 2 is: \$14,000

The overall Limit of Insurance for this category is: \$15,000

The deductible is: \$1,000

No loss at location 1; loss at location 2 is: \$8,000

Loss minus deductible (\$8,000 - \$1,000) is: \$7,000

Steps in Computing Loss Payment	
A. Value of property in this category at location 2:	\$14,000
B. Value of such property at both locations:	\$32,000
C. Ratio of A to B (\$14,000 ÷ \$32,000):	43.75%
D. Proportion of Limit of Insurance available for covering the loss (C x \$15,000):	\$6,563
E. Determination of payment amount: compare D (\$6,563) with loss minus deductible (\$7,000).	
We will pay no more than:	\$6,563
The remaining \$437 is not covered.	

d. **Livestock, Poultry, Bees, Fish, Worms and Other Animals**

With respect to "livestock", "poultry", bees, fish, worms, and other animals, the term loss means death or destruction caused by, resulting from or made necessary by a covered cause of loss.

In the event of loss to "livestock" and/or "poultry" resulting from lightning or electrocution, no coverage is provided unless you provide us with a post mortem performed by a licensed veterinarian within 48 hours of discovery, verifying the cause of death.

e. **Valuation**

In the event of loss or damage to covered "farm personal property", we will settle at, "actual cash value" as of time of loss, but we will not pay more than the amount necessary for repair or replacement.

6. **COVERAGE F – LIMITED UNSCHEDULED FARM PERSONAL PROPERTY**

Coverage F is subject to the following Loss Conditions as well as to the Farm Property Conditions and the General Policy Conditions.

Loss Conditions

a. **Coinsurance**

You must maintain insurance on unscheduled "farm personal property" to the extent of at least 80% of its "actual cash value" as of the time of loss. If you fail to do this, the percentage we pay of any loss will be the result produced by dividing the Limit of Insurance actually carried by the required Limit of Insurance.

The following provision applies in the event of loss of or damage to machinery, implements or equipment within 60 days after the purchase of additional or replacement machinery, implements or equipment.

If the Limit of Insurance actually carried becomes inadequate due to the purchase of additional or replacement machinery, implements or equipment, then up to \$250,000 of the value of the newly purchased additional or replacement machinery, implements or equipment will be omitted in determining the required Limit of Insurance.

b. **Livestock, Poultry, Bees, Fish, Worms and Other Animals**

When Coverage F is endorsed for "livestock", "poultry", bees, fish, worms, and other animals, the term loss means death or destruction caused by, resulting from or made necessary by a covered cause of loss.

When coverage is endorsed for Coverage F, in the event of loss to "livestock" and/or "poultry" resulting from lightning or electrocution, no coverage is provided unless you provide us with a post mortem performed by a licensed veterinarian within 48 hours of discovery, verifying the cause of death.

FP 700 10 07 12

Page 33 of 41

FPK FMPN 3027010948

INSURED'S COPY

43 0000062

067

FP 700 10 07 12

c. Valuation

In the event of loss of or damage to covered "farm personal property", we will settle at "actual cash value" as of time of loss, but we will not pay more than the amount necessary for repair or replacement.

7. COVERAGE G - FARM BUILDINGS AND STRUCTURES

Coverage G is subject to the following Loss Conditions as well as to the Farm Property Conditions and the General Policy Conditions

Loss Conditions

a. Fences, Corrals, Pens, Chutes, Feed Racks

The most we will pay in any one occurrence of loss of or damage to covered fences, corrals, pens, chutes and feed racks is the proportion that the applicable Limit of Insurance shown in the Declarations bears to the value of all covered fences, corrals, pens, chutes and feed racks you own as of the time of loss.

b. Portable Buildings and Portable Structures

The most we will pay in any one occurrence of loss of or damage to portable buildings or portable structures is the proportion that the applicable Limit of Insurance shown in the Declarations bears to the value of all portable buildings and portable structures you own as of the time of loss.

But this Condition does not apply to any portable building or portable structure individually covered under its own Limit of Insurance shown in the Declarations.

c. Valuation - Property Other than Improvements and Betterments

1) If "Actual Cash Value" is expressly indicated in the Declarations, in the event of loss or damage to Covered Property, we will settle the loss based on the smallest of the following amounts:

- a) The amount actually and necessarily spent to repair or replace the damaged part of the structure with material of like kind and quality and for like use;
- b) The "actual cash value", as of time of loss, of the damaged part of the structure.

c) The applicable Limit of Insurance.

2) If "Replacement Cost" is expressly indicated in the Declarations, loss valuation will be determined as provided below:

a) The basis for loss settlement will be determined by the ratio of the applicable Limit of Insurance for the specific building to the full "replacement cost" of the destroyed or damaged Covered Property. When determining the full "replacement cost", the values of the following will be disregarded:

- i. Excavations;
- ii. Foundations; and
- iii. Piers and other structures or devices that support all or part of Covered Property and are below the undersurface of the lowest basement floor; or, where there is no basement, those below the surface of the ground inside the foundation walls; also underground flues, pipes, wiring and drains.

b) If the Limit of Insurance on the damaged structure is at least 80% of its full "replacement cost" as of the time of loss, we will settle the loss based on the smallest of the following amounts:

- i. The cost to replace the damaged part of the structure with material of like kind and quality and for like use;
- ii. The amount actually and necessarily spent to repair or replace the structure.
- iii. The applicable Limit of Insurance.

c) If the Limit of Insurance on the damaged structure is less than 80% of its full "replacement cost" as of the time of loss, we will settle on the basis of i. or ii. below, whichever is larger:

Page 34 of 41

FPK FMPN 3027010948

INSURED'S COPY

FP 700 10 07 12

43 0000063

068

FP 700 10 07 12

- i. The "actual cash value", as of time of loss, of the damaged part of the structure.
 - ii. A proportion of the cost to repair or replace the damaged part of the structure, without deduction for depreciation. This proportion will equal the ratio of the applicable Limit of Insurance to 80% of the cost of repair or replacement.
- However, we will not pay more than the applicable Limit of Insurance, regardless of whether i. or ii. above applies.
- d) If your loss qualifies for payment on a "replacement cost" basis, but the cost of repair or replacement is more than either \$5,000 or 5% of the applicable Limit of Insurance, the only basis on which we will settle pending completion of repairs or replacement is "actual cash value", as of time of loss, of the damaged part of the structure. In case of such a loss you can make an initial claim for payment on the "actual cash value" basis, and later make a supplementary claim for "replacement cost" payment. If you elect to exercise this option, you must notify us of your intention in writing within 180 days of the occurrence of the loss.
 - 3) If the structure is rebuilt at a new premises, the settlement determined from Paragraph 7.c.1), 7.c.2)b) or 7.c.2)c) is limited to the cost that would have been incurred if the structure had been rebuilt at the original premises.
 - 4) The cost of repairs or replacement does not include the increased cost attributable to enforcement of any ordinance or law regulating the construction, use or repair of any property.

d. Valuation – Improvements and Betterments

- 1) If repair or replacement is done at the expense of the "Insured" within 12 months after the loss, we will settle the loss on the basis of "actual cash value" as of time of loss.
- 2) If repair or replacement is not done within 12 months after loss, we will settle on the basis of a proportion of the cost of repair or replacement. This proportion will equal the ratio of a) below to b) below.
 - a) The period of time from the loss or damage to the expiration of the lease.
 - b) The period of time from the installation of the improvements to the expiration of the lease.Lease means the lease, whether written or oral, in effect at the time of the loss.
If your lease contains a renewal option and if you exercise that option, the expiration of the renewal option period will replace the expiration of the lease in a) and b) above.
- 3) If repair or replacement is done at the expense of others for the use of the "insured", we provide no insurance.

e. Valuation – Glass Replacement

We will settle on the basis of the cost to replace damaged glass with safety glazing material, if required by law.

J. FARM PROPERTY CONDITIONS

The following conditions apply in addition to the General Policy Conditions:

1. Abandonment

There can be no abandonment of any property to us.

2. Appraisal

If we and you disagree on the value of the property or the amount of loss, either may make written demand for an appraisal of the loss. In this event, each party will select a competent and impartial appraiser. The two appraisers will select an umpire. If they cannot agree, either may request that the selection be made by a judge of a court

FP 700 10 07 12

FPK FMPN 3027010948

INSUREO'S COPY

Page 35 of 41

43 0000064

069

FP 700 10 07 12

having jurisdiction. The appraisers will state separately the value of the property and amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

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

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

3. Duties in the Event of Loss or Damage

a. In the event of loss or damage to Covered Property, we have no duty to provide coverage under this policy if the failure to comply with the following duties is prejudicial to us. These duties must be performed either by you, an "insured" seeking coverage, or a representative of either:

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

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

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

b. We may examine any "insured" under oath, while not in the presence of any other "insured" and at such times as may be reasonably required, about any matter relating to this insurance or the claim, including an "insured's" books and records. At our option and expense, any examination under oath may be video or audio taped as well as being recorded by stenographic record. In the event of an examination, an "insured's" answers must be signed.

4. Insurance Under Two or More Coverages

If two or more of this policy's Coverages apply to the same loss or damage, we will not pay more than the actual amount of the loss or damage, up to the highest applicable Limit of Insurance under any one coverage.

5. Legal Action Against Us

No one may bring a legal action against us under this Coverage Form unless:

- a. There has been full compliance with all of the terms of this Coverage Form; and
- b. The action is brought within two years after the date on which the direct physical loss or damage occurred.

6. Loss Payment

Subject to all the terms and conditions under Section I. LOSS SETTLEMENT CONDITIONS.

a. in the event of loss or damage insured against under this Coverage Form, at our option we will either:

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

Page 36 of 41

FPK FMPN 3027010948

INSURED? . . . Y

FP 700 10 07 12

43 0000065

070

FP 700 10 07 12

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

b. The cost to repair, rebuild or replace does not include:

- 1) The Increased cost attributable to enforcement of any ordinance or law regulating the construction, use or repair of any property;
- 2) Matching of color between undamaged material and new material used to replace faded, weathered or oxidized damaged material;
- 3) Matching of undamaged material and new material used to repair or replace damaged material due to outdated, obsolete or discontinued products; or
- 4) Other consequential loss to that part of the property not directly damaged by a covered cause of loss.

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

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

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

- 1) We have reached agreement with you on the amount of loss; or
- 2) An appraisal award has been made.

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

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

7. Pair, Sets or Parts

a. Pair or Set. In case of loss or damage to any part of a pair or set, we may:

- 1) Repair or replace any part to restore the pair or set to its value before the loss; or
- 2) Pay the difference between the value of the pair or set before and after the loss.

b. Parts. In case of loss of or damage to any part of Covered Property consisting of several parts when complete, we will only pay for the value of the lost or damaged part.

8. Other Insurance And Service Agreement

a. You may have other insurance subject to the same plan, terms, conditions and provisions as the insurance under the applicable Coverage Form. If you do, we will pay our share of the covered loss or damage. Our share is the proportion that the applicable Limit of Insurance under the Coverage Form bears to the limits of insurance of all insurance covering on the same basis.

b. If there is other insurance covering the same loss or damage, we will pay only for the amount of covered loss or damage in excess of the amount due from that other insurance, whether you can collect on it or not. But we will not pay more than the applicable Limit of Insurance. This paragraph does not apply in the settlement of loss or damage to farm machinery, implements, equipment, vehicles tools and supplies covered under Coverage E or F that you have borrowed or rented.

c. If loss or damage is also covered by a service agreement, any amounts payable for such loss or damage under this Coverage Form will be excess over any amounts payable under any such agreement. Service agreement means a service plan, property restoration plan, home warranty or other similar service or warranty agreement, even if it is characterized as insurance.

9. Recovered Property

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

FP 700 10 07 12

FPK FMPN 3027010945

INSURED'S COPY

Page 37 of 41

43 0000266

071

FP 700 10 07 12

10. Transfer of Rights of Recovery Against Others to Us

If any person or organization to or for whom we make payment under this Coverage Form has rights to recover damages from another, those rights are transferred to us to the extent of our payment. That person or organization must do everything necessary to secure our rights and must do nothing after loss to impair them. But you may waive your rights against another party in writing:

- a. Prior to loss.
- b. After a loss, only if at the time of loss, that party is one of the following:
 - 1) Someone insured by this insurance:
 - 2) A business firm:
 - a) Owned or controlled by you; or
 - b) That owns or controls you; or
 - 3) Your tenant.

This will not restrict your insurance.

11. Unoccupancy and Vacancy

- a. If a dwelling is "vacant" or "unoccupied" beyond a period of 120 consecutive days, we will reduce the amount we would otherwise pay for damage to the dwelling and its contents by 50%, unless we extend the period of "vacancy" or "unoccupancy" by endorsement made a part of this Coverage Form.
- b. In addition to the penalty described in a. above, "unoccupancy" or "vacancy" results in certain exclusions or limitations applicable to certain causes of loss. See Section D. COVERED CAUSES OF LOSS – BASIC, BROAD and SPECIAL.

K. GENERAL CONDITIONS

1. Concealment, Misrepresentation or Fraud

This insurance is void in any case of fraud by you as it relates to this Coverage Form at any time. It is also void if you or any other "insured", at any time, intentionally conceal or misrepresent a material fact concerning:

- a. This Coverage Form;
- b. Your application for this coverage;
- c. The Covered Property;
- d. Your interest in the Covered Property; or
- e. A claim under this Coverage Form.

2. Control of Property

Any act or neglect of any person other than you beyond your direction or control will not affect this insurance.

The breach of any condition of this Coverage Form at any one or more locations will not affect coverage at any location where, at the time of loss or damage, the breach of condition does not exist.

3. Liberalization

If we adopt any revision that would broaden the coverage under this Coverage Form without additional premium within 60 days prior to or during the policy period, the broadened coverage will immediately apply to this Coverage Form that is affected by the liberalization and is a part of this policy.

4. Mortgageholders

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

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

Page 38 of 41

FPK FMPN 3027010948

INSURED'S COPY

FP 700 10 07 12

43 0000067

072

FP 700 10 07 12

- e. If we pay the mortgageholder for any loss or damage and deny payment to you because of your acts or because you have failed to comply with the terms of this Coverage Form:
 - 1) The mortgageholder's rights under the mortgage will be transferred to us to the extent of the amount we pay; and
 - 2) The mortgageholder's right to recover the full amount of the mortgage holder's claim will not be impaired. At our option, we may pay to the mortgageholder the whole principal on the mortgage plus any accrued interest. In this event, your mortgage and note will be transferred to us and you will pay your remaining mortgage debt to us.
- f. If we cancel this policy, we will give written notice to the mortgageholder at least:
 - 1) 10 days before the effective date of cancellation if we cancel for your nonpayment of premium; or
 - 2) 30 days before the effective date of cancellation if we cancel for any other reason.
- g. If we elect not to renew this policy, we will give written notice to the mortgage holder at least 10 days before the expiration date of this policy.
- 5. **No Benefit to Ballee**
No person or organization, other than you, having custody of Covered Property will benefit from this insurance.
- 6. **Policy Period**
We cover loss or damage commencing during the policy period shown in the Declarations.
- L. **DEFINITIONS**
 - 1. "Accident" means direct physical loss as follows:
 - a. Mechanical breakdown, including rupture or bursting caused by centrifugal force;
 - b. Artificially generated electrical current, including electric arcing, that disturbs electrical devices, appliances or wires;
 - c. Explosion of steam boilers, steam pipes, steam engines or steam turbines owned or leased by you, or operated under your control;
 - d. Loss or damage to steam boilers, steam pipes, steam engines or steam turbines caused by or resulting from any condition or event inside such equipment; or
 - e. Loss or damage to hot water boilers or other water heating equipment caused by or resulting from any condition or event inside such boilers or equipment.
 - 2. "Actual cash value" means the cost to repair or replace Covered Property, at the time of loss or damage, whether that property has sustained partial or total loss or damage, with material of like kind and quality, subject to a deduction for deterioration, depreciation and obsolescence.
 - 3. "Business property" means property pertaining to any trade, profession or occupation other than "farming".
 - 4. "Covered equipment" means Covered Property built to operate under vacuum or pressure, other than weight of contents, or used for the generation, transmission or utilization of energy.

None of the following is "covered equipment":

 - a. Structure, foundation, cabinet, compartment or air supported structure or building;
 - b. Insulating or refractory material;
 - c. Sewer piping, underground vessels or piping, piping forming a part of a sprinkler system or water piping other than boiler feedwater piping, boiler condensate return piping or water piping forming a part of a refrigerating or air conditioning system;
 - d. Vehicle, dragline, excavation or construction equipment;
 - e. Equipment manufactured by you for sale; or
 - f. Alcohol still.
 - 5. "Dwelling" means a building used principally for family residential purposes, and includes mobile homes and modular and prefabricated homes.

"Dwelling" does not mean a building used in such agricultural operations as storage of farm produce, "livestock" or "poultry".

FP 700 10 07 12

FPK FMPN 3027010948

INSURED'S COPY

Page 39 of 41

43 0000068

073

FP 700 10 07 12

6. "Farm personal property" means equipment, supplies and products of "farming" or ranching operations, including but not limited to feed, seed, fertilizer, "livestock", other animals, "poultry", grain, bees, fish, worms, produce and agricultural machinery, implements, equipment and vehicles.
References to agricultural machinery and equipment covered under "farm personal property" in this coverage form and attached endorsements include implements.
7. "Farming" means the operation of an agricultural or aquacultural enterprise.
8. "Hazardous substance" means any substance other than ammonia that has been declared to be hazardous to health by a governmental agency.
9. "Insured" means you and, if you are an individual, the following members of your household:
 - a. Your "relatives";
 - b. Any other person under the age of 21 who is in the care of any person specified above.
 - c. A student enrolled in school full time, as defined by the school, who was a member of your household before moving out to attend school, provided the student is under the age of:
 - 1) 24 and your "relative"; or
 - 2) 21 and in your care or the care of a person specified in Paragraph a.
10. "Insured location" means any location, including its private approaches, described in the Declarations pertaining to this Coverage Form.
11. "Livestock" means cattle, horses, mules, donkeys, swine, sheep, goats, vicuna, llamas, bison, or alpacas owned, rented or leased by the insured.
12. "Money" means currency, coins and bank notes in current use and having a face value; also scrip, stored value cards and smart cards, travelers' checks, register checks and money orders held for sale to the public.
13. "Pollutants" mean any solid, liquid, gaseous or thermal irritant or contaminant including but not limited to smoke, vapor, soot, fumes, acids, alkalis, petroleum products and their derivatives, farm chemicals, chemicals and waste. Farm chemicals include but are not limited to pesticides, herbicides, fungicides, insecticides and fertilizers. Such irritants or contaminants are "pollutants" whether or not they have any function in your operations, premises, sites or locations.
Waste includes but is not limited to materials to be recycled, reconditioned or reclaimed and "livestock", "poultry" or other animal excrement.
14. "Poultry" means fowl kept by you for use or sale.
15. "Recreational Vehicles" means a motorized golf cart, snowmobile, or other motorized land vehicle (including all-terrain vehicles) owned by any insured and designed for recreational use off public roads.
16. "Relative" means any person related to you or your spouse by blood, marriage or adoption including in-laws and stepchildren.
17. "Replacement cost" means:
 - a. In the case of loss or damage to buildings, "replacement cost" means the cost to repair or replace the Covered Property, at the time of loss or damage, with materials of like kind and quality, without deduction for deterioration, depreciation and obsolescence;
 - b. In case of loss to personal property, "replacement cost" means the cost of a new article identical to the one damaged, destroyed, or stolen, at the time of loss. When the identical article is no longer available, "replacement cost" shall mean the cost of a new article similar to the one damaged or destroyed and which is of comparable quality and usefulness, without deduction for deterioration, depreciation, and obsolescence.
18. "Securities" means negotiable and non-negotiable instruments or contracts representing either "money" or other property and includes:
 - a. Tokens, tickets, revenue and other stamps (whether represented by actual stamps or unused value in a meter) in current use; and

Page 40 of 41

FPK FMPN 3027010948

INSURED'S COPY

FP 700 10 07 12

43 0000059

074

Filed: 3/18/2021 10:50 AM CST Haakon County, South Dakota 27CIV20-000019

- Page 368 -

AA 074

FP 700 10 07 12

- b. Evidences of debt issued in connection with credit or charge cards, which cards are not issued by you;
But "securities" does not include "money" or lottery tickets.
- 19. "Specified causes of loss" means the following: Fire, lightning, explosion, windstorm or hail, smoke, including the emission or puffback of smoke, soot, fumes or vapors from a boiler, furnace or related equipment; aircraft or vehicles; riot or civil commotion; vandalism; leakage from fire extinguishing equipment; sinkhole collapse; volcanic action; falling objects; weight of snow, ice or sleet; water damage; as described in Section D. COVERED CAUSES OF LOSS.
 - a. Sinking or collapse of land into underground empty spaces created by the action of water on limestone or dolomite. This cause of loss does not include:
 - 1) The cost of filling sinkholes; or
 - 2) Sinking or collapse of land into manmade underground cavities.
 - b. Falling objects does not include loss or damage to:
 - 1) Personal property in the open;
- 2) The interior of a building or structure, or property inside a building or structure, unless the roof or an outside wall of the building or structure is first damaged by a falling object; or
- 3) The falling object itself.
- c. Water damage means accidental discharge or leakage of water or steam as the direct result of the breaking apart of cracking of a plumbing, heating, air conditioning or other system or appliance (other than a sump system including its related equipment and parts), that is located on the insured location" and contains water or steam.
- 20. "Unoccupancy" or "unoccupied" means the condition of:
 - a. A "dwelling" (except while being constructed) not being lived in; or
 - b. Any other building or structure (except while being constructed) not being used; even if it contains furnishings or other property customary to its intended use or occupancy.
- 21. "Vacancy" or "vacant" means the condition of a building or structure (except while being constructed) not containing sufficient furnishings or other property customary to its intended use or occupancy.

Includes copyrighted material of Insurance Services Office, Inc., with its permission.

FP 700 10 07 12

FPK FMPN 3627010948

INSURED'S COPY

Page 41 of 41

43 0000070

075

FARM
FL 700 20 07 12**FARM LIABILITY COVERAGE FORM**

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered. Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as a Named Insured under this policy. The words "we", "us" and "our" refer to the Company providing this insurance. The word insured means any person or organization qualifying as such under Section C. WHO IS AN INSURED. Other words and phrases that appear in quotation marks in this policy have special meaning. Please refer to Section F. DEFINITIONS.

A. COVERAGES**COVERAGE H - BODILY INJURY AND
PROPERTY DAMAGE LIABILITY****1. INSURING AGREEMENT**

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend any insured against any claim or "suit" seeking damages to which this insurance does not apply. We may, at our discretion, investigate any incidents and settle any claim or "suit" that may result. But:

- 1) The amount we will pay for damages is limited as described in Section D. LIMITS OF INSURANCE; and
- 2) Our right and duty to defend end when we have used up the applicable Limit of Insurance in the payment of judgments or settlements under Coverages H or I or medical expenses under Coverage J.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under B. ADDITIONAL COVERAGES.

- b. This insurance applies to "bodily injury" and "property damage" only if:
- 1) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";
 - 2) The "bodily injury" or "property damage" first occurs during the policy period;

- 3) The "bodily injury" or "property damage" arises out of "personal activities" or out of operations usual or incidental to "farming"; and
- 4) Prior to the policy period, no insured listed under Paragraph 1. of Section C. WHO IS AN INSURED and no "farm employee" or "residence employee" authorized by you to give or receive notice of an "occurrence" or claim, knew that the "bodily injury" or "property damage" had occurred, in whole or in part. If such a listed insured or authorized "farm employee" or "residence employee" knew, prior to the policy period, that the "bodily injury" or "property damage" occurred, then any continuation, change or resumption of such "bodily injury" or "property damage" during or after the policy period will be deemed to have been known prior to the policy period.
- c. "Bodily injury" or "property damage" which occurs during the policy period and was not, prior to the policy period, known to have occurred by any insured listed under Paragraph 1. of Section C. WHO IS AN INSURED or any "farm employee" or "residence employee" authorized by you to give or receive notice of an "occurrence" or claim, includes any continuation, change or resumption of that "bodily injury" or "property damage" after the end of the policy period.
- d. "Bodily injury" or "property damage" will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph 1. of Section C. WHO IS AN INSURED or any "farm employee" or "residence employee" authorized by you to give or

FL 700 20 07 12

FPK FMPN 3027010948

INSURED'S COPY

Page 1 of 29

43 0000971

076

FL 700 20 07 12

receive notice of an "occurrence" or claim:

- 1) Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;
- 2) Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damages"; or
- 3) Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.

e. Damages because of "bodily injury" include damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury".

f. "Property damage" that is loss of use of tangible property that is not physically injured will be deemed to occur at the time of the "occurrence" that caused it.

2. EXCLUSIONS

This insurance does not apply to:

a. Expected Or Intended Injury

"Bodily injury" or "property damage" which is expected or intended from the standpoint of any insured even if the resulting "bodily injury" or "property damage":

- 1) Is of a different kind, quality or degree than initially expected or intended; or
- 2) Is sustained by a different person, organization, real property or personal property than that initially expected or intended.

However, this exclusion does not apply to "bodily injury" resulting from the use of reasonable force to protect persons or property.

b. Contractual Liability

"Bodily injury" or "property damage" for which any insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:

- 1) That the insured would have in the absence of the contract or agreement; or

2) Assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement. Solely for the purposes of liability assumed in an "insured contract", reasonable attorney fees and necessary litigation expenses incurred by or for an insured's "indemnitee" shall be deemed to be damages because of "bodily injury" or "property damage", provided:

a) Liability to such "indemnitee" for, or for the cost of, that "indemnitee's" defense has also been assumed in the same "insured contract"; and

b) Such attorney fees and litigation expenses are for defense of that "indemnitee" against a "suit" in which damages to which this insurance applies are claimed.

c. Laws

Any liability or legal obligation of any insured with respect to "bodily injury" or "property damage" arising directly or indirectly out of any action or omission that violates or is alleged to violate the following:

- 1) Any federal, state, county, municipal or local law, ordinance, order, directive or regulation barring discrimination, including but not limited to those based on race, color, national origin, ancestry, citizenship, gender, sexual, orientation, marital status, parenthood, religion or religious belief, age, economic status, income, medical condition, pregnancy, or mental or physical disability;
- 2) Any workers' compensation, disability benefits, unemployment compensation law, or any similar law;
- 3) The Migrant and Seasonal Agricultural Worker Protection Act;
- 4) Any state, federal or governmental antitrust statute or regulation, including but not limited to the Racketeer Influenced and Corrupt

FL 700 20 07 12

Page 2 of 29

FPK FMPN 3027010946

INSURED'S COPY

43 0000072

077

FL 700 20 07 12

- Organizations Act (RICO), the Securities Act of 1933, the Securities Exchange Act of 1934, or any state Blue Sky law;
- 5) The Employees' Retirement Income Security Act (E.R.I.S.A.) of 1974;
 - 6) The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law;
 - 7) The CAN-SPAM Act of 2003, including any amendment of or addition to such law;
 - 8) Any statute, ordinance or regulation, other than the TCPA or CAN-SPAM Act of 2003, that prohibits or limits the sending, transmitting, communicating or distribution of material or information; or
 - 9) Any claim, demand or action for uninsured motorist or under-insured motorist benefits; or
 - 10) Any other similar statutes, ordinances, orders, directives or regulations.

d. Employers' Liability

"Bodily injury" sustained by:

- 1) Any "employee" (other than a "residence employee") arising out of his or her employment by the insured, or while performing duties related to the conduct of the insured's "farming" operations;
- 2) Any "residence employee", unless the "employee" makes a written claim or brings "suit" no later than 36 months after the end of the policy period; or
- 3) The spouse, child, parent, brother or sister of any "employee" as a consequence of "bodily injury" to that "employee".

This exclusion applies whether any insured may be held liable as an employer or in any other capacity and to any obligation to share damages with or repay someone else who must pay damages because of the injury.

This exclusion does not apply to liability assumed by the insured under an "insured contract".

e. Employment-Related Practices

"Bodily injury" to:

- 1) A person arising out of any:
 - a) Refusal to employ that person;
 - b) Termination of that person's employment; or
 - c) Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination or malicious prosecution directed at that person or the hiring, supervision or training of another person; or
- 2) The spouse, child, parent, brother or sister of that person as a consequence of "bodily injury" to that person at whom any of the employment-related practices described in Paragraphs a), b) or c) above is directed.

This exclusion applies:

- 1) Whether any insured may be liable as an employer or in any other capacity; and
- 2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.
- 3) Whether the injury causing the event described in Paragraphs a), b) or c) above occurs before employment during employment or after employment of that person.

f. Sexual Molestation, Corporal Punishment Or Physical or Mental Abuse

"Bodily injury" or "property damage" arising out of:

- 1) The actual or threatened sexual molestation, sexual harassment, corporal punishment, or physical or mental abuse; or
- 2) the negligent:
 - a) employment;
 - b) investigation;
 - c) supervision;

FL 700 20 07 12

Page 3 of 29

FPK FMPN 3027010948

INSURED'S COPY

43 0000073

078

FL 700 20 07 12

- d) reporting to the proper authorities, or failure to so report; or
- e) retention;
of a person for whom any insured is or ever was legally responsible and whose conduct would be excluded by Paragraph 1) above.
- g. **Communicable Disease**
"Bodily injury" or "property damage" arising out of the transmission of a communicable disease by any insured.
- h. **Controlled Substances**
"Bodily injury" or "property damage" arising out of the use, sale, manufacture, delivery, transfer or possession by any person of a Controlled Substance(s) as defined by the Federal Food and Drug Law at 21 U.S.C.A. Sections 811 and 812. Controlled Substances include but are not limited to cocaine, LSD, marijuana and all narcotic drugs. However, this exclusion does not apply to the legitimate use of prescription drugs by a person following the orders of a licensed physician.
- i. **Pollution**
 - 1) "Bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants";
 - a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, managed or controlled by any insured. However, this subparagraph, 1) a), does not apply to:
 - i. "Bodily injury" if sustained within a building and caused by smoke, fumes, vapor or soot produced by or originating from equipment that is used to heat, cool, or dehumidify the building, or equipment that is used to heat water for personal use, by the building's occupants or their guests;
 - ii. "Bodily injury" or "property damage" for which you may

- be held liable, if you are a contractor and the owner or lessee of such premises, site or location has been added to your policy as an additional insured with respect to your on going operations performed for that additional insured at that premises, site or location and such premises, site or location is not and never was owned or occupied by, or rented or loaned to, any insured, other than that additional insured;
- iii. "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire"; or
- iv. "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a fire set in the normal and usual "farming" practices of burning off crop stubble and other vegetation, provided such practices are not in violation of any ordinance, law or regulation.
- b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;
- c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for any insured or any person or organization for whom you may be legally responsible; or
- d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the "pollutants" are brought on or to the premises, site or location in connection with such operations by such

Page 4 of 29

FPK FMPN 3027010948

INSURED'S COPY

FL 700 20 07 12

43 0000074

079

FL 700 20 07 12

insured, contractor or subcontractor. However, this subparagraph does not apply to:

- i. "Bodily injury" or "property damage" arising out of the escape of fuels, lubricants or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for the operation of "mobile equipment" or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the "bodily injury" or "property damage" arises out of the intentional discharge, dispersal or release of the fuels, lubricants or other operating fluids, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent that they be discharged, dispersed or released as part of the operations being performed by such insured, contractor or subcontractor;
- ii. "Bodily injury" or "property damage" sustained within a building and caused by the release of gases, fumes or vapors from materials brought into that building in connection with operations being performed by you or on your behalf by a contractor or subcontractor;
- iii. "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire"; or
- iv. "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a fire set in the normal and usual "farming" practices of

burning off crop stubble and other vegetation, provided such practices are not in violation of any ordinance, law or regulation.

- e) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the operations are to test for, monitor, cleanup, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants".

Section i.1), a) – e) applies whether the "pollutants" are applied or released upon crops, soil, land, air or water; whether the "pollutants" are applied or released intentionally or accidentally; and regardless of the number of persons injured or the amount of property damaged.

- 2) Any loss, cost or expense arising out of any:
 - a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, cleanup, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
 - b) Claim or "suit" by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

This entire paragraph i.2) applies whether the "pollutants" are applied or released upon crops, soil, land, air or water; whether the "pollutants" are applied or released intentionally or accidentally; and regardless of the number of persons injured or the amount of property damaged.

However, this paragraph does not apply to liability for damages

FL 700 20 07 12

Page 5 of 29

FPK FMPN 3027010948

INSURED'S COPY

43 0006075

080

FL 700 20 07 12

because of "property damage" that any insured would have in the absence of such request, demand, order or statutory or regulatory requirement, or such claim or "suit" by or on behalf of a governmental authority.

- j. **Release Or Discharge From Aircraft**
"Bodily injury" or "property damage" caused by or resulting from any substance released or discharged from any aircraft.

This exclusion does not apply to your model or hobby aircraft unless used or designed to carry an operator(s), any other person(s), or cargo.

- k. **Aircraft, Auto, Motorcycle Or Motorized Bicycle, Tricycle or Other Recreational Vehicle**

"Bodily injury" or "property damage":

- 1) Arising out of ownership, maintenance, use, operation, "loading or unloading", or entrustment to others of any aircraft, "auto", motorcycle or motorized bicycle, tricycle, or "recreational vehicle" owned, operated by, rented to or loaned to any insured, rented by or loaned by any insured to any other person, including arising out of the maintenance, use, operation, "loading or unloading" for the benefit of or on behalf of any insured; or
- 2) Giving rise to vicarious liability, whether or not imposed by law, for the actions of a child or minor involving any aircraft, "auto", motorcycle, motorized bicycle, tricycle, or other "recreational vehicle".

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" that caused the "bodily injury" or "property damage" involved the ownership, maintenance, use, or entrustment to others of any aircraft, "auto", motorcycle or motorized bicycle, tricycle, or other "recreational vehicle" that is owned, operated by, rented or loaned to any insured, rented or loaned

by any insured to another, or including arising out of the maintenance, use or entrustment, operation, "loading or unloading" for the benefit of or on behalf of any insured.

This exclusion does not apply to:

- a) The "loading and unloading" of any non-owned vehicle;
- b) An aircraft that causes "bodily injury" or "property damage" to a "residence employee" who is not operating or maintaining it;
- c) Parking an "auto", motorcycle, motorized bicycle, tricycle or other "recreational vehicle" on, or on the ways next to, premises you own or rent, provided the vehicle is not owned by, or rented or loaned to you or any insured;
- d) A motor vehicle not subject to motor vehicle registration by reason of its exclusive use as a device for assisting the handicapped;
- e) A "recreational vehicle" not owned by an insured that is maintained, used, operated by or entrusted to others by any insured;
- f) A "recreational vehicle" owned by an insured that is maintained, used, operated by or entrusted to others by any insured provided the "occurrence" is on an "insured location";
- g) A motorized golf cart owned by, loaned or rented to an insured designed to carry up to 4 persons, not built or modified after manufacture to exceed a speed of 25 miles per hour on level ground and, at the time of an "occurrence", is within the legal boundaries of:
 - i. A golfing facility and is parked or stored there, or being used by an insured to:
 - i) Play the game of golf or for other recreational or leisure activity allowed by the facility;
 - ii) Travel to or from an area where "recreational vehicle" or golf carts are parked or stored; or

Page 6 of 29

FPK FMPN 3027010948

INSURED'S COPY

FL 700 20 07 12

43 0000076

081

FL 700 20 07 12

- ii. A private residential community, including its public roads upon which a motorized golf cart can legally travel, which is subject to the authority of a property owners association and contains an insured's residence.
- h) "Bodily injury" or "property damage" arising out of:
 - i. the operation of machinery or equipment that is attached to, or part of, a land vehicle that would qualify under the definition of "mobile equipment" if it were not subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged; or
 - ii. the operation of any of the machinery or equipment listed in Paragraph f.2) or f.3) of the definition of "mobile equipment" (Section F).
- I. Watercraft
 - "Bodily injury" or "property damage":
 - 1) Arising out of ownership, maintenance, use or entrustment, operation, or "loading or unloading" to others of an excluded watercraft described below; or
 - 2) Giving rise to vicarious liability, whether or not imposed by law, for the actions of a child or minor involving an excluded watercraft described below.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured if the "occurrence" that caused the "bodily injury" or "property damage" involved the ownership, maintenance, use, or entrustment to others of an excluded watercraft described below.

Excluded watercraft are those that are principally designed to be propelled by engine power or electric motor or are sailing vessels, whether owned by or

rented to an insured. This exclusion does not apply to:

- 1) Watercraft that are not sailing vessels and are powered by:
 - a) Inboard or inboard-outdrive engine or motor power of 50 horsepower or less not owned by an insured;
 - b) Inboard or inboard-outdrive engine or motor power of more than 50 horsepower not owned by or rented to an insured;
 - c) One or more outboard engines or motors with 50 total horsepower or less;
 - d) One or more outboard engines or motors with more than 50 total horsepower if the outboard engine or motor is not owned by an insured;
 - e) Outboard engines or motors of more than 50 total horsepower owned by an insured if:
 - i. You acquire them prior to the policy period; and
 - ii) You declare them at policy inception; or
 - iii) Your intention to insure is reported to us in writing within 45 days after you acquire the outboard motors.
 - ii. You acquire them during the policy period.

This coverage applies for the policy period.
 - 2) Watercraft that are sailing vessels, with or without auxiliary power:
 - a) Less than 26 feet in over all length;
 - b) 26 feet or more in over all length, not owned by or rented to an insured.
 - 3) Watercraft that are stored; or
 - 4) The "loading and unloading" of non-owned watercraft.
- This exclusion does not apply to "occurrences" of "bodily injury" or "property damage":

FL 700 20 07 12

Page 7 of 29

FPK FMPN 3027010948

INSURED'S COPY

43 0000077

082

FL 700 20 07 12

- 1) That take place on the "insured location"; or
 - 2) Sustained by a "residence employee" in the course of employment by an insured.
- m. **Mobile Equipment**
"Bodily injury" or "property damage" arising out of:
- 1) The transportation of "mobile equipment" by an "auto" owned or operated by any insured, rented or loaned to any insured, or rented or loaned by any insured to another, including or arising out of the maintenance, use, operation, "loading or unloading" for the benefit of or on behalf of any insured; or
 - 2) The use of any self-propelled land vehicle, or "mobile equipment" in, or while in practice or preparation for, a prearranged racing, speed, strength or demolition contest or in any stunting activity.
- n. **Use Of Livestock Or Other Animals**
"Bodily injury" or "property damage" arising out of:
- 1) Any for profit or non-profit equine related "business" activities, including but not limited to equine training, riding instruction, exhibitions, competition, racing or breeding services, or the use of any premises for livery stables, rental equines, dude ranching or equine boarding;
 - 2) The use of any livestock or other animal in, or while in practice or preparation for, a prearranged racing, strength contest, or prearranged stunting activity. But this Exclusion n.2) applies only to "occurrences", arising out of such contests or activities, that take place at the site designated for the contest or activity; or
 - 3) The use of any livestock or other animal, with or without an accessory vehicle, for providing rides to any person for a fee or for providing rides in connection with or during a fair, charitable function or similar type of event.

- o. **Personal Acts**
"Bodily injury" or "Property damage" arising out of any "personal activities" other than "farming" of any insured not regularly residing on the "insured location". This exclusion does not apply to "personal activities" of any insured occurring on the "insured location".
- p. **Business Pursuits**
"Bodily injury" or "property damage" arising out of or in connection with a "business" engaged in by an insured. This exclusion applies but is not limited to an act or omission, regardless of its nature or circumstance, involving a service or duty rendered, promised, owed, or implied to be provided because of the nature of the "business".
This exclusion does not apply to an insured under the age of 21 years involved in a part-time or occasional, self-employed "business" with no employees when gross receipts are less than \$5,000.
But in the event of "property damage" to which this exception may apply, the person who sustains the "property damage" must be someone other than an insured. This exclusion does not apply to the rental of dwellings on an "insured location" and shown in the Declarations.
- q. **Professional Services**
"Bodily injury" or "property damage" arising out of the rendering of, or failure to render "professional services".
- r. **Custom Farming And Farm Management**
"Bodily injury" or "property damage" arising out of an insured's performance of, or failure to perform:
- 1) "Custom farming" operations of any kind, except as provided under Section B., Additional Coverage 4. Custom Farming, or
 - 2) "Farming" operations of another pursuant to a "farm management" contract or agreement, whether written or oral.

Page 8 of 29

FPK FMPN 3027010948

INSURED'S COPY

FL 700 20 07 12

43 0000078

083

FL 700 20 07 12

s. **Rental Of Premises And Ownership Or Control Of Premises**

"Bodily injury" or "property damage" arising out of:

- 1) Any real property or premises that is not an "insured location"; or
- 2) An act or omission in connection with any location, other than an "insured location", that is rented or leased to, rented or leased by, owned or occupied by, or managed or controlled by any insured.

The only exception to this exclusion are in "occurrences" of "bodily injury" or "property damage" sustained by a "residence employee" arising out of and in the course of employment by the insured.

- 3) The rental or holding for rental of an "insured location"

This exclusion does not apply to:

- a) The rental of a farm premises shown in the Declarations, provided the premises is rented for "farming" purposes and the rental commences during the present annual policy period;
- b) The rental of a farm premises acquired during the present annual policy period, provided the rental is for "farming" purposes;
- c) The rental of a residence for residential purposes, provided:
 - i. The residence is located on a farm premises used for "farming" purposes; and
 - ii. Such farm premises is shown in the Declarations or acquired during the present annual policy period; and
 - iii. The rental commences during the present annual policy period;
- d) The occupancy of a part of your principal residence as:
 - i. Living quarters, by no more than two roomers or boarders; or

- ii. An office, school, studio or private garage; or

- e) The occasional occupancy of your principal residence by persons using the residence exclusively as living quarters.

Exclusion p. Business Pursuits does not apply to rentals described in the exceptions to this exclusion provided under Paragraph 3) above.

This exclusion does not apply to the occasional short term rental of facilities by any insured for such events as graduation and wedding receptions, or for your "custom farming" or "farm management" operations.

t. **Building Or Structure Under Construction**

"Bodily injury" arising out of any premises on which a building or structure is being constructed.

The only exception to this exclusion is in an "occurrence" of "bodily injury" sustained by:

- 1) Persons who are not insureds; or
- 2) "Residence employees" of an insured arising out of or in the course of their employment.

But this exception requires that:

- 1) in the case of a building that will be used as a dwelling:
 - a) It is located on an "insured location"; and
 - b) It is intended for occupancy by an insured, or by an insured's "farm employees" or "residence employees".
- 2) In the case of buildings or structures that will be used in "farming" operations, they are located on an "insured location" and intended for the use of an insured.

u. **Bodily Injury To Any Insured**

"Bodily injury" to you or to any insured. This exclusion also applies to any claim made or "suit" brought against you or any insured:

- 1) To repay; or
- 2) Share damages with;

FL 700 20 07 12

FPK FMPN 3027010948

INSURED'S COPY

Page 9 of 29

43 0000079

084

FL 700 20 07 12

another person who may be obligated to pay damages because of such "bodily injury".

If the injured "insured" is an "employee", this exclusion does not apply to liability assumed by the insured under an "insured contract".

v. **Damage To Named Insured's Property**

Any claim or "suit" for "property damage" by you or on your behalf against any other person or organization that is also a Named Insured under this policy.

w. **Damage To Property**

"Property damage" to:

- 1) Property any insured owns, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;
- 2) Property any insured rents or occupies including any costs or expenses incurred by you or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;
- 3) Premises any insured sells, gives away or abandons, if the "property damage" arises out of any part of those premises;
- 4) Property loaned to any insured;
- 5) Personal property in the care, custody or control of any insured;
- 6) That particular part of real property on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations, if the "property damage" arises out of those operations; or
- 7) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

x. **Damage To Your Product And Products Of Others**

"Property damage" to:

- 1) "Your product", arising out of it or any part of it; or
- 2) The property or products of others that are destroyed, impaired, spoiled or ruined because "your product" or "your work" has been included or combined with them, except as provided for under B. ADDITIONAL COVERAGES 6. Spoiled Farm Products-Property Damage to Others Coverage.

y. **Damage To Your Work**

"Property damage" to:

- 1) "Your work", arising out of it or any part of it and included in the "products-completed operations hazard"; or
- 2) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

Exclusion 1) above does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

z. **Damage To Impaired Property Or Property Not Physically Injured**

"Property damage" to "impaired property" or property that has not been physically injured, arising out of:

- 1) A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or
- 2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to "your product" after it has been put to its intended use;

aa. **Recall Of Products, Work Or Impaired Property**

Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

Page 10 of 29

FPK FMPN 3027010948

INSURED'S COPY

FL 700 20 07 12

43 0000080

085

FL 700 20 07 12

- 1) "Your product";
 - 2) "Your work";
 - 3) "Impaired property";
- if such product, work or property is withdrawn or recalled from the market or from use, by any person or organization, because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.
- bb. **Seeds**
- "Property damage" arising out of:
- 1) The erroneous delivery of "seed" which includes:
 - a) The failure to deliver "seed";
 - b) The delivery of the wrong "seed"; or
 - c) The delivery of "seed" at the wrong time or season.
 - 2) Failure of "seeds" to germinate;
 - 3) Failure of "seeds" to conform to the variety specified;
 - 4) Error in the mixture of "seeds";
 - 5) The presence of disease organisms, noxious weeds, or varietal variations in the "seed"; or
 - 6) Any other failure of "seeds" to produce the quality, quantity, type or yield of crop expected, anticipated, promised or warranted.
- cc. **Nursery Stock**
- "Property damage" arising out of:
- 1) The erroneous delivery of "nursery stock", which includes:
 - a) The failure to deliver "nursery stock"
 - b) The delivery of the wrong "nursery stock"; or
 - c) The delivery of "nursery stock" at the wrong time of season.
 - 2) An error related to grafting or propagation;
 - 3) Diseased "nursery stock"; or
 - 4) Any other failure of "nursery stock" to produce the quality, quantity, type or yield of crops expected, anticipated, promised or warranted.
- dd. **Breach of Contract**
- "Bodily injury" or "property damage" arising out of or as a direct result of any alleged or actual breach of a written or oral contract, or agreement, or any express or implied warranty.
- ee. **Asbestos, Electro-magnetic Emissions, Lead And Radon**
- "Bodily injury" or "property damage" arising out of any of the following:
- 1) Asbestos or any asbestos-related injury or damage including, but not limited to, any injury or damage arising out of or alleged to have arisen out of any act, error, omission, failure to warn or failure to disclose the presence of asbestos, or other duty involving asbestos, its use, exposure, existence, detection, removal, elimination or avoidance.
 - 2) Electro-magnetic emissions or radiation related injury or damage including, but not limited to, any injury or damage arising out of or alleged to have arisen out of any act, error, omission, failure to warn or other duty involving any electro-magnetic emissions or radiation from use, exposure, existence, detection, removal, elimination or avoidance of electrical energy.
 - 3) Lead or any lead-related injury or damage including, but not limited to, any injury or damage arising out of or alleged to have arisen out of any act, error, omission, failure to warn, or other duty involving lead or lead products, their use, exposure, existence, detection, removal, elimination or avoidance.
 - 4) Radon or any other radio active emissions, manmade or natural, or any related injury or damage including, but not limited to, any injury or damage arising out of or alleged to have arisen out of any act, omission, failure to warn, or other duty involving radon or any other radioactive emissions, their use, exposure, existence, detection, removal, elimination or avoidance.
- We shall not have a duty to defend any insured against a claim or "suit" seeking

FL 700 20 07 12

Page 11 of 29

FPK FMPN 3027010948

INSURED'S COPY

43 0000081

086

FL 700 20 07 12

damage to which this insurance does not apply.

ff. **Personal And Advertising Injury**
"Bodily injury" arising out of "personal and advertising injury".

gg. **War**

"Bodily injury" or "property damage", however caused, arising, directly or indirectly, out of:

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

hh. **Electronic Data**

Damages arising out of the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate electronic data. As used in this exclusion, electronic data means information, facts, or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CDROMs, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

COVERAGE I – PERSONAL AND ADVERTISING INJURY LIABILITY

1. INSURING AGREEMENT

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "personal and advertising injury" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend any insured against any "suit" seeking damages to which this insurance does not apply. We may at our discretion investigate any incident and settle any claim or "suit" that may result. But:

1) The amount we will pay for damages is limited as described in Section D. LIMITS OF INSURANCE; and

2) Our right and duty to defend end when we have used up the applicable Limit of Insurance in the payment of judgments or settlements under Coverages H or I or medical expenses under Coverage J. No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under B. ADDITIONAL COVERAGES.

b. This insurance applies to "personal and advertising injury" caused by an offense arising out of "personal activities" of any insured regularly residing on the "insured premises" or out of operations usual or incidental to "farming", but only if the offense was committed in the "coverage territory" during the policy period.

2. EXCLUSIONS

This insurance does not apply to:

a. "Personal and advertising injury":

- 1) Caused by or at the direction of any insured with the knowledge that the act would violate the rights of another and would inflict "personal and advertising injury";
- 2) Arising out of oral or written publication of material, if done by or at the direction of the insured with knowledge of its falsity;
- 3) Arising out of oral or written publication of material whose first publication took place before the beginning of the policy period;
- 4) Arising out of a criminal act committed by, or at the direction of, any insured; This exclusion does not affect our duty to defend, in accordance with Paragraph 1.a. under Coverage I above, an insured prior to determining, through the appropriate legal processes, that that insured is responsible for a criminal act;
- 5) For which the insured has assumed liability in a contract or agreement. This exclusion does not apply to liability for damages that the insured would have in the absence of the contract or agreement;
- 6) Arising out of or as a direct result of any alleged or actual breach of a written or

Page 12 of 29

FPK FMPN 3027010948

INSURED'S COPY

FL 700 20 07 12

43 0000082

087

Filed: 3/18/2021 10:50 AM CST Haakon County, South Dakota 27CIV20-000019

- Page 381 -

AA 087

FL 700 20 07 12

- oral contract, any other written or oral contract, or any expressed or implied warranty, except an implied contract to use another's advertising idea;
- 7) Arising out of the failure of goods, products or services to conform with any statement of quality or performance made in your "advertisement";
- 8) Arising out of the wrong quotation or description of the price of goods, products or services stated in your "advertisement";
- 9) Offense committed by an insured whose business is advertising, broadcasting, publishing or telecasting. However, this exclusion does not apply to Paragraphs 24.a. b. and c. of "personal and advertising injury" under the Definitions Section;
- 10) Arising out of the infringement of copyright, patent, trademark, trade secret or other intellectual property rights. However, other intellectual property rights do not include the use of another's advertising idea in your "advertisement".
This exclusion does not apply to infringement in your "advertisement" of copyright trade dress or slogan.
- 11) Arising out of an electronic chat room or bulletin board any insured hosts, owns, or over which any insured exercises control.
- 12) Arising out of the rendering of or failure to render "professional services".
- 13) Arising out of the unauthorized use of another's name or product in any insured's e-mail address, domain name or metatag, or any other similar use to mislead another's customers or potential customers.
- 14) Arising out of civic or public activities performed for pay by the insured; or
- 15) Arising out of:
- a) the actual or threatened sexual molestation, sexual harassment, corporal punishment, or physical or mental abuse; or
 - b) the negligent:
 - i. employment;
 - ii. investigation;
 - iii. supervision;
 - iv. reporting to the proper authorities, or failure to so report; or
 - v. retention;
- of a person for whom any insured is or ever was legally responsible and whole conduct would be excluded by Paragraph a) above.
- 16) Arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" at any time.
This exclusion applies whether the "pollutants" are applied or released upon crops, soil, land, air or water; whether the "pollutants are applied or released intentionally or accidentally; and regardless of the number of persons injured or the amount of property damaged.
- 17) Arising out of any personal acts other than "farming" of any insured not regularly residing on the "insured location".
- 18) For any loss, cost or expense arising out of any:
- a. Request, demand or order that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants"; or
 - b. Claim or "suit" by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of "pollutants".
This exclusion applies whether the "pollutants" are applied or released upon crops, soil, land, air or water; whether the "pollutants are applied or released intentionally or accidentally; and regardless of the number of persons injured or the amount of property damaged.

19) To a person arising out of any:

 - a) Refusal to employ that person;
 - b) Termination of that person's employment; or

FL 700 20 07 12

Page 13 of 29

FPK FMPN 3027010948

INSURED'S COPY

43 0000083

088

FL 700 20 07 12

- c) Employment related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination or malicious prosecution directed at that person or the hiring, supervision or training of another person; or
- 20) To the spouse, child, parent, brother or sister of that person as a consequence of "personal and advertising injury" to that person at whom any of the employment related practices described in Paragraphs 19)a), 19)b) or 19)c) above is directed.
This exclusion applies:
 - a) Whether any insured may be liable as an employer or in any other capacity; and
 - b) To any obligation to share damages with or repay someone else who must pay damages because of the injury;
 - c) Whether the injury causing the event described in Paragraphs a), b) or c) above occurs before employment during employment or after employment of that person.
- 21) For any liability or legal obligation of any insured with respect to "personal and advertising injury" arising out of any of the following:
 - a) Any federal, state, county, municipal or local law, ordinance, order, directive or regulation barring discrimination, including but not limited to those based on race, color, national origin, ancestry, citizenship, gender, sexual orientation, marital status, parenthood, religion or religious belief, age, economic status, income, medical condition, pregnancy, or mental or physical disability;
 - b) Any workers' compensation, unemployment compensation, disability benefits law, or any other statutory benefits law;
 - c) The Migrant and Seasonal Agricultural Worker Protection Act;
 - d) The Racketeer Influenced and Corrupt Organizations Act (RICO), the Securities Act of 1933, the Securities Exchange Act of 1934, or any state Blue Sky law;
 - e) The Employees' Retirement Income Security Act (E.R.I.S.A.) of 1974;
 - f) The telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law;
 - g) The CAN-SPAM Act of 2003, including any amendment of or addition to such law;
 - h) Any statute, ordinance or regulation, other than the TCPA or CAN-SPAM Act of 2003, that prohibits or limits the sending, transmitting, communicating or distribution of material or information;
 - i) Any claim, demand or action for uninsured motorist or underinsured motorist benefits; or
 - j) Any other similar statutes, ordinances, orders, directives or regulations.
- 22) However caused, arising directly or indirectly, out of:
 - a) War, including undeclared or civil war; or
 - b) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
 - c) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.
- 23) Arising out of or in connection with a "business" engaged in by an Insured. This exclusion applies but is not limited to an act or omission, regardless of its nature or circumstance, involving a service or duty rendered, promised, owed, or implied to be provided because of the nature of the "business".
This exclusion does not apply to an insured under the age of 21 years involved in a part-time or occasional,

Page 14 of 29

FPK FMPN 3027010948

INSURED'S COPY

FL 700 20 07 12

43 0000084

089

FL 700 20 07 12

self-employed "business" with no employees when gross receipts are under \$5,000.

24) To you or to any insured.

This exclusion also applies to any claim made or "sue" brought against you or any insured to:

- a) Repay; or
- b) Share damages with:
another person who may be obligated to pay damages because of such "personal and advertising injury".

COVERAGE J - MEDICAL PAYMENTS

1. INSURING AGREEMENT

- a. We will pay reasonable medical expenses incurred or medically ascertained within 3 years from the date of an accident causing "bodily injury".

We will make these payments regardless of fault.

Reasonable medical expenses means expenses incurred or ascertained for:

- 1) First aid administered at the time of an accident;
- 2) Necessary medical, surgical, x-ray and dental services, including prosthetic devices; and
- 3) Necessary ambulance, hospital, professional nursing and funeral services.

- b. This coverage applies only to accidental "bodily injury":

- 1) To a person (other than an insured) who is on the "insured location" with the permission of an insured, or
- 2) To a person (other than an insured) off the "insured location", provided the "bodily injury":
 - a) Arises out of a condition on the "insured location" or the ways immediately adjoining it;
 - b) Is caused by the activities of an insured or by a "farm employee" in the course of employment by an insured;
 - c) Is caused or sustained by a "residence employee" in the course of employment by an insured; or
 - d) Is caused by an animal owned by or in the care of an insured.

FL 700 20 07 12

2. EXCLUSIONS

We will not pay expenses for "bodily injury" to:

- a. Any person injured on the "insured location" by reason of:

- 1) Rendering "professional services" there; or
- 2) Conducting a "business" there. This Exclusion, a.2), applies but is not limited to an act or omission, regardless of its nature or circumstance, involving a service or duty rendered, promised, owed, or implied to be provided by the "insured" because of the nature of the "business".

The only exceptions to a. 1) and 2) are in "occurrences" of "bodily injury" to a "residence employee".

- b. Any person injured due to an act or omission in connection with any location (other than an "insured location") that is owned, rented or controlled by any insured.

The only exceptions to this exclusion are in "occurrences" of "bodily injury" sustained by a "residence employee" arising out of and in the course of employment by any insured, or arising out of the occasional short term rental of any real property or facilities by any insured for such events as graduation or wedding receptions.

- c. Any "farm employee" or other person engaged in work usual or incidental to the maintenance or use of the "insured location" as a farm.

The only exceptions to this exclusion are in "occurrences" of "bodily injury" sustained by a "residence employee" or by a person on the "insured location" in a neighborly exchange of assistance for which no insured is obligated to pay any money.

- d. Any person eligible to receive any benefits that an insured voluntarily provides or is required to provide under any workers' compensation, non-occupational disability or occupational disease law.

- e. Any person regularly residing on any part of the "insured location" or who is a resident member of your household. The only exceptions to this exclusion are in "occurrences" of "bodily injury" to a "residence employee".

- f. Any person, if the "bodily injury" is excluded under Coverage H;

Page 15 of 29

FPK FMPN 3027010948

INSURED'S COPY

43 0000085

090

FL 700 20 07 12

- g. Any person injured due to war, whether or not declared, or due to any act or condition incident to war. War includes civil war, insurrection, rebellion and revolution; or
- h. Arising out of any "personal activities" other than "farming" of any insured not regularly residing on the "insured location".

B. ADDITIONAL COVERAGES

1. Supplementary Payments - Coverages H and I

- a. In addition to the applicable Limit of Insurance, we will pay with respect to any claim we investigate or settle or "suit" against any insured we defend:
 - 1) All expenses we incur.
 - 2) Up to \$500 for the cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Coverage H applies. We do not have to furnish these bonds.
 - 3) The cost of bonds to release attachments, but only for bond amounts within our Limit of Insurance. We do not have to furnish these bonds.
 - 4) All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$250 a day because of time off from work.
 - 5) All costs taxed against the insured in a "suit". However, we do not pay for attorney fees costs and expenses that are taxed against the insured and that arise from claims or causes of action to which this insurance does not apply.
 - 6) Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the Limit of Insurance, we will not pay any prejudgment interest based on any period of time after the offer.
 - 7) All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable Limit of Insurance.

These payments will not reduce the Limits of Insurance.

- b. If we defend an insured against a "suit" in which an "indemnitee" of the insured is also named as a party to the "suit", we will defend that "indemnitee" if all of the following conditions are met:

- 1) The "suit" against the "indemnitee" seeks damages for which the insured has assumed the liability of the "indemnitee" in a contract or agreement that is an "insured contract";
- 2) This insurance applies to such liability assumed by the insured;
- 3) The obligation to defend, or the cost of the defense of that "indemnitee", has also been assumed by the insured in the same "insured contract";
- 4) The allegations in the "suit" and the other information we know about the "occurrence" are such that no conflict appears between the interests of the insured and the interests of the "indemnitee";
- 5) The "indemnitee" and the insured ask us to conduct and control the defense of that "indemnitee" against such "suit" and agree that we can assign the same counsel to defend the insured and the "indemnitee"; and
- 6) The "indemnitee":
 - a) Agrees in writing to:
 - i. Cooperate with us in the investigation, settlement or defense of the "suit";
 - ii. Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "suit";
 - iii. Notify any other insurer whose coverage is potentially available to the "indemnitee"; and
 - iv. Cooperate with us with respect to coordinating other applicable insurance potentially available to the "indemnitee"; and

Page 16 of 29

FL 700 20 07 12

FPK FMPN 3027610948

INSURED'S COPY

43 0000086

091

FL 700 20 07 12

- b) Provides us with written authorization to:
 - i. Obtain records and other information related to the "suit"; and
 - ii. Conduct and control the defense of the "indemnitee" in such "suit".

So long as the above conditions are met, then attorneys' fees incurred by us in the defense of that "indemnitee", necessary litigation expenses incurred by us and necessary litigation expenses incurred by the "indemnitee" at our request, will be paid as Supplementary Payments. Such payments will not be deemed to be damages for "bodily injury" or "property damage" and will not reduce the Limits of Insurance.

Our obligation to defend your "indemnitee" and to pay for attorney's fees and necessary litigation expenses as Supplementary Payments ends when:

- 1) We have used up the applicable Limit of Insurance in the payment of judgments or settlements; or
- 2) The conditions set forth above, or the terms of the agreement described in Paragraph 6) above, are no longer met.

2. Damage To Property Of Others

- a. We will pay up to \$2,500 per "occurrence" for "property damage" to property of others caused by an insured.

At our option, we will either:

- 1) Pay the actual cash value of the property; or
- 2) Repair or replace the property with other property of like kind and quality.

- b. But we will not pay for "property damage":

- 1) Caused intentionally by an insured who is 13 years of age or older;
- 2) To property owned by or rented to an insured, a tenant of an insured, or a member of your household; or

- 3) Arising out of:

- a) Professional services, or a "business" engaged in by any insured;
- b) An act or omission in connection with any premises (other than an "insured location") that are owned, rented or controlled by an insured; or
- c) The ownership, maintenance, operation, use or "loading or unloading" of any "auto", motorcycle, motorized bicycle or tricycle, "recreational vehicle", "mobile equipment", aircraft or watercraft.

No other obligation to pay sums or perform acts or services is covered.

3. Fire Legal Liability Coverage

- a. Coverage H - Bodily Injury and Property Damage Liability is extended to cover "property damage" to premises used, rented or operated by you as part of your "farming" operations with permission of the owner. This additional coverage does not include "property damage" to premises owned by you. The "property damage" must result from:

- 1) Fire or lightning;
- 2) Explosion; or
- 3) Smoke or smudge caused by sudden, unusual and faulty operation of a heating or cooking unit, or other tool or appliance.

- b. We will pay only that part of the loss that exceeds a special deductible amount of \$250. Only one deductible will apply per "occurrence". If we pay the deductible when settling a loss or claim, you must re-pay us for any part of the deductible we pay. The most we will pay under this coverage is \$100,000 per "occurrence".

- c. Under Coverage H - Bodily Injury and Property Damage Liability, 2. Exclusions. Exclusion w. paragraph 2) does not apply to this Additional Coverage.

- d. This Additional Coverage does not include "property damage" to premises owned, rented, used or controlled by any insured to conduct a "business".

FL 700 20 07 12

Page 17 of 29

FPK FMPN 3027010948

INSURED'S COPY

43 0000087

092

FL 700 20 07 12

4. Custom Farming Coverage

- a. Coverage H - Bodily Injury and Property Damage Liability is extended to apply to "custom farming" operations performed by you, subject to the conditions and exclusions below.
- b. This Additional Coverage will apply only when your receipts from "custom farming" operations are less than \$5,000 for the 12 months immediately preceding the date of the "occurrence". We may inspect your books or records at any time, with reasonable notice, to determine your receipts from "custom farming". See Common Policy Conditions for further information on audits and examinations of your books and records.

c. Additional Exclusions

Insurance provided by this Additional Coverage, including any duty we have to defend "suits", does not apply to "bodily injury" or "property damage" arising out of:

- 1) Agricultural burning;
- 2) The use of explosives;
- 3) The grading of land, excavating, contouring, burrowing, filling, backfilling, drilling, tunneling, pile driving, coffer dam work, or caisson work.
- 4) Moving, shoring, underpinning, raising or demolition of any building or structure, or removal or rebuilding of any structural support of any building or structure.
- 5) Machine repair work, including welding, away from an "insured location";
- 6) Managing or controlling a farm operation of another under a "farm management" contract or agreement whether written or oral.

These exclusions are in addition to the exclusions stated under Coverage H, part 2, Exclusions section of the policy.

5. Loss Assessment Coverage

- a. We will pay up to \$5,000 for your share of any loss assessment charged during the policy period against you by a corporation or association of property

owners, when the assessment is made as a result of:

- 1) Each "occurrence" to which Coverage H would apply;
- 2) Liability for each act of a director, officer or trustee in their capacity as a director, officer or trustee, provided:
 - a) The director, officer or trustee is elected by the members of property owners; and
 - b) The director, officer or trustee serves without deriving any income from the exercise of duties which are solely on behalf of a corporation or association of property owners.

This Additional Coverage applies only to loss assessments charged against you as owner or tenant of the "residence premises", and only when such loss assessments are not attributable to any act of any Insured.

- b. We do not cover loss assessments charged against you or a corporation or association of property owners by any governmental body.

6. Spoiled Farm Products-Property Damage to Others Coverage

Coverage H - Bodily Injury and Property Damage Liability is extended to apply when the dairy farm products of others are destroyed, impaired, spoiled or ruined as provided herein. We will share losses that you are legally obligated to pay as damages because of "property damage" equally with you on a dollar for dollar basis, per "occurrence", if that "property damage" results because "your product" has been incorporated, mixed in, or commingled with the dairy products of another person and "your product" is known or thought to be defective, spoiled, dangerous, deficient or inadequate.

We will only provide this coverage if it is physically impossible or economically unreasonable to remove, replace or adjust "your product".

Although we will share these losses on a dollar for dollar basis with you, the most we will pay for any one "occurrence" is \$5,000. This coverage does not apply to "property damage" or losses to "your product".

Page 18 of 29

FPK FMPN 3027010946

INSURED'S COPY

FL 700 20 07 12

43 0000088

093

FL 700 20 07 12

EXAMPLE:

A local dairy adds your milk valued at \$2,000 to a tank truck of previously collected milk valued at \$10,000. It is determined that your milk was spoiled causing all milk in the tank to be unfit for consumption. The total value of the lost milk shipment is \$12,000. We will first deduct the value of "your product" (\$2,000) and then split the loss (\$10,000) on a dollar for dollar basis up to the coverage limit of \$5,000. We will pay \$5,000 and you would pay an amount of \$5,000 to equal the loss of \$10,000.

Total milk shipped:	\$12,000
Less "your product"	\$2,000
Amount of loss	\$10,000
Your payment	\$5,000
Our payment	\$5,000

7. Roadside Stands

Coverage H – Bodily Injury and Property Damage Liability is extended to apply to roadside stand operations, off your farm premises, when the annual gross receipts are less than \$500. A roadside stand is any operation in which any insured is engaged in the direct sale of unprocessed or processed farm products to the public. Examples of a roadside stand may include selling processed or unprocessed farm products from a temporary or portable stand, building or structure, or vehicle or trailer.

8. Farmer's Markets

Coverage H – Bodily Injury and Property Damage Liability is extended to apply to farmers' market operations when the annual gross receipts are less than \$500. A farmers' market is any operation in which any insured is engaged in the direct sale of unprocessed or processed farm products to the public. Examples of a farmers' market may include selling unprocessed or processed farm products from a temporary or portable stand, building or structure, or vehicle or trailer.

C. WHO IS AN INSURED**1. If you are designated in the Declarations as:**

- a. An individual, insured means you and:
 - 1) Your spouse, if residing at the "residence premises";
 - 2) Your "relatives" who are residing at the "residence premises";

- 3) Any other person under the age of 21 who is residing at the "residence premises" and is under the care of you or a person specified in 1) or 2) above.

- 4) A student enrolled in school full time, as defined by the school, who was a member of your household before moving out to attend school, provided the student is under the age of:
 - a) 24 and your relative; or
 - b) 21 and in your care or the care of a person specified in a. 1) or 2).

- b. A partnership or joint venture, you are an insured. Your members, your partners and their spouses are also insureds, but only with respect to the conduct of "farming" operations.
- c. A limited liability company, you are an insured. Your members are insureds, but only with respect to the conduct of your "farming" operations. Your managers are also insureds, but only with respect to their duties as your managers.
- d. A trust, you are an insured. Your trustee or co-trustees are also insureds, but only with respect to their duties as a trustee in connection with the "insured location" and your "farming operations" and "personal activities".
- e. An organization other than a partnership, joint venture, limited liability company or trust, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders, if any, are also insureds, but only with respect to their liability as stockholders.

2. Each of the following is also an insured:

- a. Your "farm employees" or "residence employees", other than either your "executive officers" and directors (if you are an organization other than a partnership, joint venture or limited liability company) or your managers and members (if you are a limited liability company), but only for acts that cause "bodily injury", "property damage", or "personal and advertising injury" to

FL 700 20 07 12

Page 19 of 29

FPK FMPN 3027010946

INSURED'S COPY

43 0000089

094

FL 700 20 07 12

someone other than you, your partners or members (if you are a partnership or joint venture), your members (if you are a limited liability company), or a co-employee; and are within the scope of the employee's employment by you or while performing duties related to the conduct of your "farming" operations. However, none of these "farm employees" or "residence employees" is an insured for:

- 1) "Bodily injury", "property damage" or "personal and advertising injury":
 - a) To you, to your partners, members or their spouses (if you are a partnership or joint venture), to your members or managers (if you are a limited liability company), to your "executive officers" and directors, to a co-employee while in the course of his or her employment or performing duties related to the conduct of your "farming" operations;
 - b) To the spouse, child, parent, brother or sister of that co-employee as a consequence of "bodily injury" or "personal and advertising injury" to that co-employee as described in Paragraph a)1) above;
 - c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraph a)1) or b) above; or
 - d) Arising out of his or her providing or failing to provide professional health care services.
- 2) "Property damage" to property:
 - a) Owned, occupied or used by; or
 - b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by;

You, any of your "farm employees", your "residence employees", any partner or member (if you are a partnership or joint venture), any member or manager (if

you are a limited liability company) or any "executive officer" and director.

- b. Any person (other than your employee), or any organization while acting as your real estate manager.
- c. Any person or organization having proper temporary custody of your property if you die, but only:
 - 1) With respect to liability arising out of the maintenance or use of that property; and
 - 2) Until your legal representative has been appointed.
- d. Your legal representative if you die, but only with respect to their duties as such. That representative will have all your rights and duties under this Coverage Form.

Paragraphs 2.c. and 2.d. above only apply to the Named Insured and no other insureds.

3. With respect to "mobile equipment" to which this insurance applies, any person is an insured while driving such equipment along a public highway with your permission in connection with a "farming" operation. Any other person or organization responsible for the conduct of such person is also an insured, but only with respect to liability arising out of the operation of the equipment, and only if no other insurance of any kind is available to that person or organization for this liability. However, no person or organization is an insured with respect to:
 - a. "Bodily injury" to a co-employee of the person driving the equipment; or
 - b. "Property damage" to property owned by, rented to, in the charge of or occupied by you or any person or organization legally responsible for any person or organization who is an insured and described in paragraph 2 above.
4. Any farming organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other general liability insurance available to that organization. However:
 - a. Coverage under this provision is afforded only until the 90th day after you

Page 20 of 29

FPK FMPN 3027010948

INSURED'S COPY

FL 700 20 07 12

43 0000090

095

FL 700 20 07 12

acquire or form the organization, or until the end of the policy period, whichever is earlier;

- b. Coverage H does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and
 - c. Coverage I does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.
5. With respect to animals or watercraft owned by an insured as defined in paragraph 1. above, insured also means any person or organization legally responsible but only insofar as:
- a. The insurance under this Coverage Form applies to "occurrences" involving animals or watercraft;
 - b. That person's or organization's custody or use of the animals or watercraft does not involve "business"; and
 - c. That person or organization has the custody or use of the animals or watercraft with the owner's permission.
6. Any person using a "recreational vehicle" or "mobile equipment" on the "insured location" with your consent is an insured provided this insurance applies to the "recreational vehicle" or "mobile equipment". No person is an insured with respect to the use of an "auto".
7. No person or organization is an insured with respect to the conduct of any current or past corporation, partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

D. LIMITS OF INSURANCE

1. General Rules

The Limits of Insurance shown in the Declarations and the rules below establish the most we will pay regardless of the number of:

- a. Insureds;
- b. Claims made or "suits" brought; or
- c. Persons or organizations making claims or bringing "suits".

2. COVERAGE H - Bodily Injury and Property Damage and COVERAGE I - Personal and Advertising Injury Limit of Insurance

The most we will pay for the sum of all damages because of all:

- a. "Bodily injury" and "property damage" arising out of or resulting from any one "occurrence"; and
- b. "Personal and advertising injury" sustained by any one person or organization;

is the Coverage H and Coverage I Limit of Insurance shown in the Declarations.

Included within the Each Occurrence Limit is a special Limit of Insurance of \$15,000, which is the most we will pay for all covered damages that the insured becomes legally obligated to pay because of statutorily imposed vicarious liability for the actions of a child or minor. However, we will not pay for those damages excluded by means of 2.l.k. or 2.l.i. of Section A - Coverage H, 2. Exclusions.

3. COVERAGE J - Medical Payments Coverage Limit of Insurance

- a. The most we will pay for all medical expenses because of "bodily injury" sustained by any one person in any one "occurrence" is the Coverage J - Medical Payments Limit of Insurance shown as applicable per person in the Declarations.
- b. The most we will pay for all medical expenses because of a single "occurrence" is the Coverage J - Medical Payments Limit of Insurance shown as applicable per "occurrence" in the Declarations.

4. COVERAGE H - Products-Completed Operations Aggregate Limit of Insurance

The most we will pay for all "bodily injury" and "property damage" under the "products-completed operations hazard" arising out of or resulting from all "occurrences" during the policy period is the Coverage H - Products and Completed Operations Aggregate Limit of Insurance shown in the Declarations.

5. COVERAGES H, I and J - General Aggregate Limit of Insurance (Other than Products-Completed Operations Aggregate)

The most we will pay for all:

- a. "Bodily injury" and "property damage" arising out of or resulting from all

FL 700 20 07 12

Page 21 of 29

FPK FMPN 3027010948

INSURED'S COPY

43 0000091

096

FL 700 20 07 12

"occurrences" during the policy period;
and

- b. "Personal and advertising injury" offenses committed during the policy period; and
- c. Medical expenses resulting from all "occurrences" during the policy period under Coverage J - Medical Payments Coverage;

is the Coverage H, Coverage I and Coverage J General Annual Aggregate Limit shown in the Declarations.

This Limit of Insurance does not apply to "bodily injury" or "property damage" under the "products-completed operations hazard", which is controlled by the Limit of Insurance set forth in Paragraph 4. of this Section, Coverage H - Products-Completed Operations Aggregate Limit of Insurance.

6. Application of Limits to Policy Period

The Limits of Insurance of this Coverage Form apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

E. FARM LIABILITY GENERAL CONDITIONS

The following conditions apply in addition to the Common Policy Conditions:

1. Bankruptcy

Bankruptcy or insolvency of any insured or an insured's estate will not relieve us of our obligations under this Coverage Form.

2. Duties in the Event of "Occurrence", "Offense, Claim or "Suit"

We have no duty to provide coverage under this policy if failure to comply with the following duties is prejudicial to us.

- a. You must see to it that we are notified as soon as practicable of an "occurrence" or of an offense which may result in a claim. To the extent possible, notice should include:
 - 1) How, when, and where the "occurrence" or offense took place;
 - 2) The names and addresses of any injured persons and witnesses; and

- 3) The nature and location of any injury or damage arising out of the "occurrence" or offense.
- b. If claim is made or "suit" is brought against any Insured, you must:
 - 1) Immediately record the specifics of the claim or "suit" and the date received; and
 - 2) Notify us as soon as practicable.

You must see to it that we receive written notice of the claim or "suit" as soon as practicable.
- c. You and any other involved insured must:
 - 1) Notify the police if a law may have been broken;
 - 2) Immediately send us copies of any demands, notices, summons, or legal papers received in connection with the claim or "suit";
 - 3) Authorize us to obtain records and other information;
 - 4) Cooperate with us in the investigation, settlement or defense of the claim or "suit";
 - 5) Agree to be examined under oath, at such times as may be reasonably required, about any matter related to this insurance, a claim or "suit". At our option and expense, any examination under oath may be video or audio taped and recorded by stenographic record. Following an examination an insured's answers must be signed; and
 - 6) Assist us, upon our request, in the enforcement of any right against a person or organization that may be liable to any insured because of injury or damage to which this insurance may also apply.
- d. No Insureds will, except at their own cost voluntarily make any payment, assume any obligation, or incur any expense, including payment for the defense of a claim or "suit", other than for first aid, without our consent.
- e. Any injured person who makes a claim for payment of medical expenses under the provisions of Coverage J must:

Page 22 of 29

FPK FMPN 3027010948

INSURED'S COPY

FL 700 20 07 12

43 0000992

097

FL 700 20 07 12

- 1) Give us written proof of claim, under oath if required, as soon as practicable;
 - 2) Execute authorization to allow us to obtain copies of medical reports and records; and
 - 3) Submit to physical examination by a physician selected by us when and as often as we reasonably require.
- Requirements 1) and 2) above may be carried out by a person acting on behalf of the injured person.
- f. If loss occurs under Additional Coverage 2. - Damage to Property of Others, you must submit to us within 60 days after the loss, a signed, sworn proof of loss, and exhibit the damaged property, if within your control.
3. Insurance Under Two or More Coverages or Policies
If two or more of this policy's coverages apply to the same loss or damage, we will not pay more than the actual loss or damage.
 4. Legal Action Against Us
No person or organization has a right under this Coverage Form:
a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or
b. To sue us on this Coverage Form unless all of its terms have been fully complied with.
A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured after actual trial; but we will not be liable for damages that are not payable under the terms of this Coverage Form or that are in excess of the applicable Limit of Insurance. An agreed settlement means a written settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.
 5. No Admission of Liability with Medical Payments
No payment we make under the provisions of Coverage J constitutes an admission of liability by any insured or us.
 6. Other Insurance

This condition applies only if, in addition to the insurance provided under this Coverage Form, the insured has other insurance under this or any other policy covering the same obligations to pay damages and provide defense against "suits" for damages.

- a. We will pay only the proportion of covered damages and related defense costs that the applicable Limit of Insurance under this Coverage Form bears to the total amount of all your insurance providing the same coverage, in covered "occurrences" arising from any cause except the ownership, maintenance, use, operation or "loading or unloading" of a:
1) "Auto";
2) "Recreational vehicle";
3) Vehicle which qualifies as "mobile equipment" only while used on premises you own or rent; or
4) Watercraft.
- b. In covered "occurrences" arising from the ownership, maintenance, use, operation or "loading or unloading" of a conveyance described in 1), 2), 3), or 4) above, this insurance will not apply to the extent that any collectible insurance, whether primary, excess or contingent, is available to the insured.

7. Transfer to Us of Rights of Recovery Against Others

If any insured has rights to recover all or part of any payment we have made under this Coverage Form, those rights are transferred to us. An insured must do nothing after loss to impair them. At our request, an insured shall bring a "suit" or transfer those rights to us and help us enforce them. This condition does not apply to Coverage J - Medical Payments Coverage.

8. Liberalization

If we adopt any revision that would broaden the coverage under this Coverage Form without additional premium within 60 days prior to or during the policy period, the broadened coverage will immediately apply to this Coverage Form.

9. Representations

By accepting this policy, you agree:

- a. The statements in the Declarations are accurate and complete;

FL 700 20 07 12

Page 23 of 29

FPK FMPN 3027010948

INSURED COPY

43 0000093

098

FL 700 20 07 12

- b. Those statements are based upon representations you made to us; and
- c. We have issued this policy in reliance upon your representations.

10. Separation of Insureds

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Form to the first Named Insured, this Insurance applies:

- a. As if each Named Insured were the only Named Insured; and
- b. Separately to each insured against whom claim is made or "suit" is brought.

F. DEFINITIONS

- 1. **"Advertisement"** means a notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters. For the purposes of this definition:
 - a. Notices that are published include material placed on the Internet or on similar electronic means of communication; and
 - b. Regarding websites, only that part of a website that is about your goods, products or services for the purposes of attracting customers or supporters is considered an advertisement.
- 2. **"Auto"** means a
 - a. Land motor vehicle, trailer or semi-trailer designed for travel on public roads or used on public roads and subject to the motor vehicle registration and financial responsibility laws of the state where it is registered or principally garaged, including any attached machinery or equipment attached to the vehicle, trailer, or semi-trailer.
 - b. Any vehicle, including any attached machinery or equipment, while being towed by or carried on a vehicle included in paragraph a. above.
 - c. But "auto" does not include "mobile equipment", or a boat, camp trailer, home trailer or utility trailer unless it is being towed by or carried on a motorized land vehicle included in paragraph a. above.
- 3. **"Bodily Injury"** means "bodily injury", sickness or disease sustained by a person,

including death resulting from any of these at any time.

- 4. **"Business"** means a trade, profession, occupation, enterprise or activity, other than "farming", which is engaged in for the purpose of monetary compensation or other compensation.
- 5. **"Coverage territory"** means:
 - a. The United States of America (including its territories and possessions), Puerto Rico and Canada;
 - b. International waters or air space, provided the injury or damage does not occur in the course of travel or transportation to or from any place not included in a. above; or
 - c. All parts of the world, if the injury or damage arises out of:
 - 1) Goods or products made or sold by you in the territory described in Paragraph a. above; or
 - 2) The activities of a person whose home is in the territory described in a. above, and who is away from home for a short time; or
 - 3) "Personal and advertising injury" offenses that take place through the internet or similar means of communication;

Provided the insured's responsibility to pay damages is determined in a "suit" on the merits in the territory described in Paragraph a. above or in a settlement we agree to.

- 6. **"Custom farming"** means the performance of one or more agricultural operations by an insured, at a farm that is not an "insured location", at the direction of the owner or operator of the farm or the authorized representative of the owner or operator. But "custom farming" does not mean:
 - a. Operations conducted at a premises rented to, leased to, or controlled by an insured;
 - b. Operations for which no compensation in money or goods is received;
 - c. A neighborly exchange of services; or
 - d. "Custom feeding"."Custom farming" operations include the use or "loading or unloading" of farm tractors, trailers, implements, or other "mobile

Page 24 of 29

FPK FMPN 3027010948

INSURED'S COPY

FL 700 20 07 12

43 0000094

099

FL 700 20 07 12

equipment" while used under the "custom farming" agreement.

7. "Custom feeding" means the raising or feeding of "livestock" for others on an "insured location".
8. "Employee" means any person providing a service to the insured, whether the employment agreement is express or implied, oral or written, lawful or unlawful, including relatives, aliens, and minors, regardless of the duration of employment or whether the person is compensated. "Employee" includes a shared, borrowed or leased worker, including any person hired through an employment agency.
9. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.
10. "Farm employee" means any insured's employee whose duties are principally in connection with the maintenance or use of an "insured location" as a farm. These duties include the maintenance or use of that insured's farm equipment. "Farm employee" includes a "leased worker". But "farm employee" does not mean a "residence employee" or any employee while engaged in an insured's "business".
11. "Farm management" means managing the entire or partial "farming" operations of another for a fee pursuant to a contract or agreement whether written or oral, where by the farm manager directs and administers the culture, care and/or harvest of that "farming" operation.
12. "Farming" means the operation of an agricultural or aquacultural enterprise, and includes the operation of roadside stands, on your farm premises, maintained solely for the sale of farm products produced principally by you. Unless specifically indicated in the Declarations, "farming" does not include:
 - a. Retail activity other than that described above; or
 - b. Mechanized processing operations.

Sales from "farming" operations are primarily wholesale as opposed to retail. Retail marketing is limited to incidental sales of your unprocessed farm production sold by you with the resulting gross income being a

minor portion of your combined "farming" gross income.

13. "Hostile fire" means one which becomes uncontrollable or breaks out from where it was intended to be.
14. "Impaired property" means tangible property, other than "your product" or "your work", that cannot be used or is less useful because:
 - a. It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or
 - b. You have failed to fulfill the terms of a contract or agreement;

If such property can be restored to use by:

 - a. The repair, replacement, adjustment, or removal of "your product" or "your work"; or
 - b. Your fulfilling the terms of the contract or agreement.
15. "Indemnity" means a person or organization whose liability for payment of damages because of "bodily injury" or "property damage" covered under this Coverage Form has been assumed by an insured under an "insured contract".
16. "Insured contract" means:
 - a. A written contract for a lease of premises which is an "insured location" under this Coverage Form;
 - b. A railroad sidetrack agreement in connection with your "farming" operations;
 - c. Any easement or license agreement made in connection with your "farming" operations, except in connection with construction or demolition operations on or within 50 feet of a railroad;
 - d. Any obligation, as required by ordinance, to indemnify a municipality, except in connection with work directly for a municipality. Such obligation must be in connection with your "farming" operations;
 - e. That part of any other written contract or written agreement pertaining to your "farming" operations (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume

FL 700 20 07 12

Page 25 of 29

FPK FMPN 3027010948

INSURED'S POLICY

43 0000095

100

FL 700 20 07 12

tort liability of another to pay damages because of "bodily injury" or "property damage" to a third person or organization arising out of your "farming" operations, if the contract or agreement is made prior to "occurrences" which result in the "bodily injury" or "property damage". Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

An "insured contract" does not include that part of any contract or agreement:

- 1) To perform "custom farming" for others or "farm management" for others;
- 2) For a lease of premises that indemnifies any person or organization for damage by fire to the premises while rented to you or any insured or loaned or temporarily occupied by you or any insured with permission of the owner;
- 3) Pertaining to the "business" of any insured; or
- 4) That indemnifies any person or organization for "bodily injury" or "property damage" arising out of construction or demolition operations, within 50 feet of any railroad bridge or trestle, tracks, roadbeds, tunnel, underpass or crossing.

17. "Insured location" means:

- a. The farm premises (including grounds and private approaches) and "residence premises" shown in the Declarations;
- b. The part of other premises, or of other structures and grounds, that is used by you as a residence and:
 - 1) Shown in the Declarations; or
 - 2) Acquired by you during the present annual policy period for your use as a residence;
- c. Premises used by you in conjunction with the premises included in a. or b. above;
- d. Any part of premises not owned by any insured but where an insured is temporarily residing;
- e. Vacant land owned by or rented to an insured;

f. Land, owned by or rented to an insured, on which:

- 1) A dwelling is being constructed for occupancy by an insured, or by an insured's "farm employees" or "residence employees"; or
- 2) A building or structure is being constructed for use of an insured in "farming" operations.

g. Individual or family cemetery plots or burial vaults of an insured;

h. Any part of premises occasionally rented to any insured for other than "business" purposes; and

i. Any farm premises (including its grounds and private approaches) that you or your spouse acquire during the present annual policy period.

18. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your "farming" operations.

19. "Loading or unloading" means the handling of property:

- a. After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft, "recreational vehicle", or "auto";
- b. While it is in or on an aircraft, watercraft, "recreational vehicle", or "auto"; or
- c. While it is being moved from an aircraft, watercraft, "recreational vehicle", or "auto" to the place where it is finally delivered;

but "loading or unloading" does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, watercraft, "recreational vehicle", or "auto".

20. "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:

- a. Bulldozers, forklifts, farm machinery, farm implements and other vehicles designed for use or used principally off public roads. This includes motorized golf carts, snowmobiles and other land vehicles designed for recreational use when used for "farming" purposes on an "insured location".

Page 26 of 29

FPK FMPN 3027010948

INSURED'S COPY

FL 700 20 07 12

43 0000096

FL 700 20 07 12

- b. Vehicles not licensed under motor vehicle registration, subject to a compulsory or financial responsibility law, or subject to other motor vehicle insurance law while being used on an "insured location" or premises immediately adjacent to an "insured location" for "farming" purposes. Vehicles subject to a compulsory or financial responsibility law, or other motor vehicle insurance law are considered "autos".
- c. Vehicles, other than snowmobiles, that travel on crawler treads;
- d. Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
 - 1) Power cranes, shovels, loaders, diggers or drills; or
 - 2) Road construction or resurfacing equipment such as graders, scrapers or rollers.
- e. Vehicles not described in Paragraphs a., b., c. or d. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
 - 1) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well-servicing equipment; or
 - 2) Cherry pickers and similar devices used to raise or lower workers;
- f. Vehicles not described in Paragraphs a., b., c. or d. above, maintained primarily for purposes other than the transportation of persons or cargo. However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":
 - 1) Equipment designed primarily for:
 - a) Snow removal;
 - b) Road maintenance, but not for construction or resurfacing;
 - c) Street cleaning;
 - 2) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting or well-servicing equipment; and
 - 3) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers.
- 21. "Nursery Stock" means trees, vines, rootstocks, stems, seedlings, cuttings, grafts, scion, wood, stolen or other similar means of plant propagation.
- 22. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.
- 23. "Personal Activities" means any act, omission, decision or transaction that does not arise from any insured's "farming" or "business" activities.
- 24. "Personal and advertising injury" means injury, including consequential "bodily injury", arising out of one or more of the following offenses:
 - a. False arrest, detention or imprisonment;
 - b. Malicious prosecution;
 - c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupation of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;
 - d. Oral or written publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
 - e. Oral or written publication of material that violates a person's right of privacy;
 - f. The use of another's advertising idea in your "advertisement"; or
 - g. Infringing upon another's copyright, trade dress or slogan in your "advertisement".
- 25. "Pollutants" mean any solid, liquid, gaseous or thermal irritant or contaminant including but not limited to pesticides, herbicides, insecticides, agricultural dust, smoke, vapor, soot, fumes or odors, acids, alkalis, petroleum products and their derivatives, chemicals (including those applied or intended for application to soil, crops, water or livestock) and waste. Such irritants or contaminants are "pollutants" whether or not

FL 700 20 07 12

Page 27 of 29

FPK FMPN 3027010948

INSURED'S COPY

43 0000097

FL 700 20 07 12

they have any function in your operations, premises, sites or locations, and whether they are applied or released intentionally or by accident. Waste includes but is not limited to materials to be recycled, reconditioned or reclaimed and livestock, poultry or other animal excrement.

26. "Products-completed operations hazard":

- a. Includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:
 - 1) Products that are still in your physical possession; or
 - 2) Work that has not yet been completed or abandoned. However, "your work" will be deemed completed at the earliest of the following times:
 - a) When all of the work called for in your contract has been completed.
 - b) When all of the work to be done at the job site has been completed, if your contract calls for work at more than one job site.
 - c) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.
- Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.
- b. Does not include "bodily injury" or "property damage" arising out of:
 - 1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the "loading or unloading" of that vehicle by any insured; or
 - 2) The existence of tools, uninstalled equipment or abandoned or unused materials.

27. "Professional Services" means any professional service, treatment, advice or instruction, including but not limited to:

- a. Legal, accounting, insurance, real estate, financial, advertising or consulting service, advice or instruction;
- b. Preparing, approving, or failing to prepare or approve maps, drawings, opinions, reports, surveys, change orders, designs or specifications;
- c. Supervisory, inspection, engineering, or architectural service, advice or instruction;
- d. Medical, surgical, psychiatric, chiropractic, chiropody, physiotherapy, osteopathy, acupuncture, dental, x-ray, nursing or any other health service, treatment, advice or instruction;
- e. Any psychological therapy or any other counseling or mental health service, treatment, advice or instruction;
- f. Any service, treatment, advice or instruction for the purpose of appearance or skin enhancement, hair removal or replacement or personal grooming, including but not limited to cosmetology, tansorial, tattooing, tanning or massage.
- g. Optometry or optical or hearing aid service, treatment, advice or instruction, including the prescribing, preparation, fitting, demonstration or distribution of ophthalmic lenses and similar products or hearing aid devices;
- h. Ear or other body piercing service, treatment, advice or instruction; or
- i. Service, treatment, advice or instruction in the practice of pharmacy; or
- j. Electronic data processing, computer consulting or computer programming services, advice or instruction.
- k. Any service for which a license is required by local, state or federal law.

28. "Property damage" means:

- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
- b. Loss of use of tangible property that is not physically injured. All such loss of

Page 28 of 29

FPK FMPN 3027010948

INSURED'S COPY

FL 700 20 07 12

43 0000098

103

Filed: 3/18/2021 10:50 AM CST Haakon County, South Dakota 27CIV20-000019

- Page 397 -

AA 103

FL 700 20 07 12

use shall be deemed to occur at the time of the "occurrence" that caused it.

For the purpose of this Insurance, electronic data is not tangible property. As used in this definition, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media, which are used with electronically controlled equipment.

29. "Recreational vehicle" means a motorized golf cart, snowmobile or other motorized land vehicle (including all-terrain vehicles) owned by any insured and designed for recreational use off public roads when used for recreational purposes off an "insured location".
30. "Relative" means any person related to you or your spouse by blood, marriage or adoption including in-laws and stepchildren.
31. "Residence employee" means an insured's employee whose duties are principally in connection with the maintenance or use of the "residence premises", including household or domestic services, or who performs duties elsewhere of a similar nature not in connection with the "farming" operations or any "business" of any insured.
32. "Residence premises" means your principal residence and the grounds and structures appurtenant to it.
"Residence premises" does not include any part or parts of a building or structure that are used for "business".
33. "Seeds" includes seeds, bulbs, sprouts, plants, growing stock, root stock, tubers, stolons, scion, cuttings, seedlings or any other similar means of plant propagation.
34. "Suit" means a civil proceeding in which damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies are alleged. "Suit" includes:

- a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or
- b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.

35. "Your product" means:

- a. Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
 - 1) You; and
 - 2) Others trading under your name.
- b. Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.
- c. "Your Product":
 - 1) Includes warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your product"; and
 - 2) Includes the providing of, or failure to provide, warnings or instructions.
- d. Does not include property rented to or located for the use of others but not sold.

36. "Your work" means:

- a. Work or operations performed by you or on your behalf; and
- b. Materials, parts or equipment furnished in connection with such work or operations.
- c. "Your work" includes:
 - 1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your work"; and
 - 2) The providing of, or failure to provide, warnings or instructions.

Includes copyrighted material of Insurance Services Office, Inc, with its permission.

FL 700 20 07 12

Page 29 of 29

FPK FMPN 3027010948

INSURED'S COPY

43 0000099

104

EFFECTIVE DATE: 12:01 AM Standard Time,
(at your principal place of business)

FARM
CIL 0021 (01-01)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ THIS CAREFULLY.

NUCLEAR ENERGY LIABILITY EXCLUSION ENDORSEMENT

This endorsement modifies insurance provided under the following:

FARM LIABILITY COVERAGE FORM

A. This insurance does not apply:

1. Under any Liability Coverage, to "bodily injury" or "property damage":

a. With respect to which an insured under the policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters, Nuclear Insurance Association of Canada or any of their successors, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability; or

b. Resulting from the "hazardous properties" of "nuclear material" and with respect to which:

1) Any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof; or

2) The insured is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.

2. Under any Medical Payments coverage, to expenses incurred with respect to "bodily injury" resulting from the "hazardous properties" of "nuclear material" and arising out of the operation of a "nuclear facility" by any person or organization.

3. Under any Liability Coverage, to "bodily injury" or "property damage" resulting from "hazardous properties" of "nuclear material", if:

a. The "nuclear material":

1) Is at any "nuclear facility" owned by, or operated by or on behalf of, an "insured"; or

2) Has been discharged or dispersed therefrom;

b. The "nuclear material" is contained in "spent fuel" or "waste" at any time possessed, handled, used, processed, stored, transported or disposed of, by or on behalf of an insured; or

c. The "bodily injury" or "property damage" arises out of the furnishing by an insured of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any "nuclear facility", but if such facility is located within the United States of America, its territories or possessions or Canada, this exclusion c. applies only to "property damage" to such "nuclear facility" and any property thereat.

B. As used in this endorsement:

1. "Hazardous properties" includes radioactive, toxic or explosive properties.

2. "Nuclear material" means "source material", "special nuclear material" or "by-product material".

3. "Source material", "special nuclear material", and "by-product material" have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof.

4. "Spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a "nuclear reactor".

5. "Waste" means any waste material:

a. Containing "by-product material" other than the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore proc-

CIL 0021 (01-01)

Page 1 of 2

FPK FMPN 3027010948

INSURED'S COPY

43 0000100

105

Filed: 3/18/2021 10:50 AM CST Haakon County, South Dakota 27CIV20-000019

- Page 399 -

AA 105

CIL 00 21 (01-01)

essed primarily for its "source material" content; and

- b. Resulting from the operation by any person or organization of any "nuclear facility" included under the first two paragraphs of the definition of "nuclear facility".

6. "Nuclear facility" means:

- a. Any "nuclear reactor":
b. Any equipment or device designed or used for:
1) Separating the isotopes of uranium or plutonium;
2) Processing or utilizing "spent fuel"; or
3) Handling, processing or packaging "waste";
c. Any equipment or device used for the processing, fabricating or alloying of "special nuclear material" if at any

time the total amount of such material in the custody of the "insured" at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;

- d. Any structure, basin, excavation, premises or place prepared or used for the storage or disposal of "waste";

and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations.

7. "Nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material.

8. "Property damage" includes all forms of radioactive contamination of property.

All terms and conditions of this policy apply unless modified by this endorsement.

Includes copyrighted material of Insurance Services Office, Inc., with its permission.
Copyright, Insurance Services Office, Inc., 1997

CIL 0021 (01-01)

FPK FMPN 3027010948

INSURED'S COPY

Page 2 of 2

43 0000107

106

Filed: 3/18/2021 10:50 AM CST Haakon County, South Dakota 27CIV20-000019

- Page 400 -

AA 106

FARM
FL 703 11 02 14

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ THIS CAREFULLY.

LIMITED FARM POLLUTION LIABILITY COVERAGE ENDORSEMENT

This endorsement modifies insurance provided under the following:

FARM LIABILITY COVERAGE FORM

The following coverages are included only when a Limit of Insurance is identified on Form 8111 (Additional Endorsement Information) of this policy.

A. COVERAGE

PART 1 - CHEMICAL APPLICATION, STORAGE, AND NON-"AUTO" TRANSPORTATION LIABILITY COVERAGE

1. OPERATION OF THE ENDORSEMENT

This endorsement provides a limited exception to Exclusion i. Pollution, under 2. Exclusions, of Section A. COVERAGES, COVERAGE H - BODILY INJURY AND PROPERTY DAMAGE LIABILITY. This endorsement provides limited coverage only for a "covered farm chemical application Incident" as defined under PART 1 - CHEMICAL APPLICATION, STORAGE, AND NON-"AUTO" TRANSPORTATION LIABILITY COVERAGE on Form 8111 (Additional Endorsement Information) of this policy.

2. LIMITED FARM CHEMICAL APPLICATION COVERAGE

Under Section A. COVERAGES, COVERAGE H - BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. EXCLUSIONS, Exclusion i. Pollution, Paragraph 1) are amended to add the following:

Paragraph 1) of this exclusion does NOT apply to "bodily injury" or "property damage" that arises out of and is the direct result of a "covered farm chemical application Incident".

3. EXCLUSIONS

A "covered farm chemical application incident" does NOT include:

- a. "Property damage", or any other injury or damage, to any farm products or

crops you, or someone on your behalf, grows, handles, processes, stores, sells, distributes, transports, or uses, anywhere, at any time, under any circumstances;

- b. "Bodily injury", "Property damage", or any other injury or damage, that arises out of or is a result of the storage, transport, use, presence or existence anywhere, at any time, under any circumstances, of any "agricultural chemicals, liquids or gases" not governmentally approved for current use, or which are no longer fit for the original purposes or uses for which they were intended;
- c. "Bodily injury" or "Property damage" that arises out of or is the direct result of the accidental discharge, dispersal, seepage, migration, release or escape of waste "pollutants" stored in a container of any kind including lagoons or other permanent storage facilities at or from any premises that you own, lease or rent and to which this Coverage Form applies;
- d. "Bodily injury", "Property damage", or any other injury or damage, sustained or claimed by any person or organization, which arises out of or is a result of, or is in any way connected with, such person's or organization's work for, contract or agreement with, or participation in providing or performing services or operations for or on behalf of, any insured, involving the application, storage, transport, spraying, handling, or other use of any kind, of any "agricultural chemicals, liquids or gases"; or
- e. "Bodily injury", "Property damage", or any other injury or damage excluded by any exclusion in Section A.

FL 703 11 02 14

FPK FMPN 3027010948

INSURED'S COPY

Page 1 of 9

43 0000102

107

Filed: 3/18/2021 10:50 AM CST Haakon County, South Dakota 27CIV20-000019

- Page 401 -

AA 107

FL 703 11 02 14

COVERAGES, 2. EXCLUSIONS of
COVERAGE H – BODILY INJURY
AND PROPERTY DAMAGE
LIABILITY, other than as specifically
excepted by this endorsement.

4. LIMITS OF INSURANCE

With respect to "bodily injury" or "property
damage" arising out of the actual, alleged or
threatened discharge, dispersal, seepage,
migration, release or escape of "pollutants":

- a. Subject to the each Occurrence Limit
shown in the Declarations and included
under paragraph 2. of Section D.
LIMITS OF INSURANCE, the PART 1 -
CHEMICAL APPLICATION,
STORAGE, AND NON-"AUTO"
TRANSPORTATION LIABILITY
COVERAGE Occurrence Limit shown
on Form 8111 (Additional Endorsement
Information) of this policy is the most we
will pay for the sum of:

- 1) Damages under Coverage H; and
- 2) Medical expenses under Coverage
J for any one "occurrence".

- b. The following is added to Section D.
LIMITS OF INSURANCE:

The PART 1 - CHEMICAL
APPLICATION, STORAGE, AND NON-
"AUTO" TRANSPORTATION
LIABILITY COVERAGE Aggregate
Limit shown on Form 8111 (Additional
Endorsement Information) of this policy
is the most we will pay for the sum of:

- 1) Damages under Coverage H; and
- 2) Medical expenses under Coverage
J;

regardless of the number of insured's,
claims made or "suits" brought, or
persons or organizations making claims
or bringing "suits".

- c. Paragraph 3. of Section D. LIMITS OF
INSURANCE is replaced by the
following:

Subject to the PART 1 - CHEMICAL
APPLICATION, STORAGE, AND NON-
"AUTO" TRANSPORTATION
LIABILITY COVERAGE Aggregate
Limit, the Medical Payments Limit

shown in the Declarations is the most
we will pay under Coverage J for all
medical expenses because of "bodily
injury" sustained by any one person.

- d. Under no circumstances shall the Limit
of Insurance under this endorsement be
used to cover accidents which happen
outside this policy period.

e. Deductible for PART 1 - CHEMICAL
APPLICATION, STORAGE, AND NON-
"AUTO" TRANSPORTATION
LIABILITY COVERAGE

When a deductible amount is stated for
this coverage in the Schedule of Limits
of Insurance, the following applies:

- 1) Our obligation to pay PART 1 -
CHEMICAL APPLICATION,
STORAGE, AND NON-"AUTO"
TRANSPORTATION LIABILITY
COVERAGE on your behalf applies
only to the amount in excess of any
deductible amount stated on Form
8111 (Additional Endorsement
Information) of this policy. The
deductible amount applies to each
occurrence regardless of the
number of:

- a) Claims made or "suits" brought;
- b) Persons or organizations
making claims or bringing
"suits"; or
- c) Governmental actions taken
with respect to PART 1 -
CHEMICAL APPLICATION,
STORAGE, AND NON-"AUTO"
TRANSPORTATION LIABILITY
COVERAGE.

The Aggregate Limit of Insurance on
Form 8111 (Additional Endorsement
Information) of this policy for PART
1 - CHEMICAL APPLICATION,
STORAGE, AND NON-"AUTO"
TRANSPORTATION LIABILITY
COVERAGE shall not be reduced
by the application of the deductible
amount.

- 2) We may, or will if required by law,
pay any part or the entire deductible
amount to effect settlement of any
claim or "suit" or governmental
action, and upon notification of the
action taken, you shall promptly
reimburse us for such part of the
deductible amount paid by us.

FL 703 11 02 14

Page 2 of 9

FPK FMPN 3027010948

INSURED'S COPY

43 0000103

108

FL 703 11 02 14

5. **OPTIONAL AWAY FROM PREMISES COVERAGE**

When Away From Premises Coverage is indicated "Yes" under **PART 1 - CHEMICAL APPLICATION, STORAGE, AND NON-"AUTO" TRANSPORTATION LIABILITY COVERAGE** on Form 8111 (Additional Endorsement Information) of this policy, the definition for "Covered farm chemical application Incident" is deleted and replaced with the following:

- a. "Covered farm chemical application incident", except as further limited in Part 1, Section 2. **LIMITED FARM CHEMICAL APPLICATION COVERAGE** of this endorsement above means the following:

"Bodily Injury" or "property damage" that arises out of and is the direct result of the accidental discharge, dispersal, seepage, migration, release or escape of "pollutants" during a lawful and proper application of farm chemicals governmentally approved for application on, at, or from any premises to which this Coverage Form applies:

- 1) to crop ground by some means other than the use of an aircraft; or
- 2) by spraying immediately in and around your "residence premises", farm buildings, outbuildings or other farm structures provided that such spraying is:
 - a) For the purpose of killing, repelling or controlling pests, rodents or insects; or
 - b) For the purpose of killing or controlling weeds.
- 3) that are stored, other than in an underground storage tank or underground storage container of any kind, in a lawful manner; or
- 4) while being transported in other than an "auto" by you or your employees.

PART 2 - LIMITED FARM POLLUTION LIABILITY COVERAGE

1. **OPERATION OF THE ENDORSEMENT**

This endorsement provides limited pollution coverage through the deletion and replacement of the pollution exclusion. Under Section A. **COVERAGES**, **COVERAGE H - BODILY INJURY AND PROPERTY DAMAGE LIABILITY**, 2. **EXCLUSIONS**, Exclusion i. Pollution, is deleted and replaced with the following with respects to **PART 2 - LIMITED FARM POLLUTION LIABILITY COVERAGE** of this endorsement:

i. **Pollution**

- 1) "Bodily Injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants";

- a) At or from a storage tank, other container, duct or piping;

- i) Which is below or partially below the surface of the ground or water; or

- ii) Which, at any time, has been buried under the surface of the ground or water and then subsequently exposed by erosion, excavation or any other means;

If the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" arises at or from any premises, site or location:

- i) Which is or was at any time owned or occupied by, or rented or loaned to, any insured; or

- ii) On or at which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations, if the "pollutants" are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor;

FL 703 11 02 14

FPK FMPN 3027010948

INSURED'S COPY

Page 3 of 9

43 0000104

FL 703 11 02 14

Subparagraph a) does not apply to "bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire".

- b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;
 - c) Which are, or were at any time, transported, handled, stored, treated or otherwise disposed of or processed as waste, by or for any insured or any person or organization for whom you may be legally responsible;
 - d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly on any insured's behalf are performing operations if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to or assess the effects of "pollutants".
- 2) "Bodily injury" or "property damage" arising out of "pollutants" actually or allegedly released, discharged or dispersed from an aircraft.
- 3) Any loss, cost or expense arising out of any:
- a) Request, demand or order that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to or assess the effects of "pollutants"; or
 - b) Claim or "suit" by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to or

assessing the effects of "pollutants".

2. LIMIT OF INSURANCE

With respect to "bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":

- a. Subject to the each Occurrence Limit shown in the Declarations and included under paragraph 2. of Section D. LIMITS OF INSURANCE, the PART 2 - LIMITED FARM CHEMICAL APPLICATION COVERAGE Occurrence Limit shown on Form 8111 (Additional Endorsement Information) of this policy is the most we will pay for the sum of:

- 1) Damages under Coverage H; and
- 2) Medical expenses under Coverage J for any one "occurrence".

- b. The following is added to Section D. LIMITS OF INSURANCE:

The PART 2 - LIMITED FARM POLLUTION LIABILITY COVERAGE Aggregate Limit shown on Form 8111 (Additional Endorsement Information) of this policy is the most we will pay for the sum of:

- 1) Damages under Coverage H; and
- 2) Medical expenses under Coverage J;

regardless of the number of insured's, claims made or "suits" brought, or persons or organizations making claims or bringing "suits".

- c. Paragraph 3. of Section D. LIMITS OF INSURANCE is replaced by the following:

Subject to the PART 2 - LIMITED FARM POLLUTION LIABILITY COVERAGE Aggregate Limit, the Medical Payments Limit shown in the Declarations is the most we will pay under Coverage J for all medical expenses because of "bodily injury" sustained by any one person.

- d. Under no circumstances shall the Limit of Insurance under this endorsement be

Page 4 of 9

FPK FMPN 3027010948

INSURED'S COPY

FL 703 11 02 14

43 0000105

110

FL 703 11 02 14

used to cover accidents which happen outside this policy period.

e. Deductible For Limited Farm Pollution Liability Coverage

When a deductible amount is stated for this coverage on Form 8111 (Additional Endorsement Information) of this policy, the following applies:

- 1) Our obligation to pay Limited Farm Pollution Liability Coverage on your behalf applies only to the amount in excess of any deductible amount stated on Form 8111. The deductible amount applies to each occurrence regardless of the number of:

- a) Claims made or "suits" brought;
- b) Persons or organizations making claims or bringing "suits"; or
- c) Governmental actions taken with respect to Limited Farm Pollution Liability Coverage.

The Aggregate Limit of Insurance for Limited Farm Pollution Liability Coverage shall not be reduced by the application of the deductible amount.

- 2) We may, or will if required by law, pay any part or the entire deductible amount to effect settlement of any claim or "suit" or governmental action, and upon notification of the action taken, you shall promptly reimburse us for such part of the deductible amount paid by us.

3. OPTIONAL WASTE COVERAGE

This optional coverage is only applicable when Waste Coverage is indicated "Yes" **PART 2 - LIMITED FARM POLLUTION LIABILITY COVERAGE** on Form 8111 (Additional Endorsement Information) of this policy. This includes the revised definition of "pollutants" under C. DEFINITIONS.

- a. When limits are shown on the Schedule of Limits of Insurance, Part 2 **OPERATION OF THE ENDORSEMENT** i. Pollution 1) a) is deleted and replaced with the following:

- a) At or from a storage tank, other container, duct or piping, other than such equipment used exclusively for the movement or temporary storage of manure:

- i) Which is below or partially below the surface of the ground or water; or
- ii) Which, at any time, has been buried under the surface of the ground or water and then subsequently exposed by erosion, excavation or any other means;

if the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" arises at or from any premises, site or location:

- i) Which is or was at any time owned or occupied by, or rented or loaned to, any insured; or
- ii) On or at which any Insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations, if the "pollutants" are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor;

Subparagraph a) does not apply to "bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire".

- b. Subject to the each Occurrence Limit shown in the Declarations and included under paragraph 2. of Section D. **LIMITS OF INSURANCE, the PART 2 - LIMITED FARM POLLUTION LIABILITY COVERAGE** Occurrence Limit shown on Form 8111 (Additional Endorsement Information) of this policy is the most we will pay for the sum of:
 - 1) Damages under Coverage H; and
 - 2) Medical expenses under Coverage J for any one "occurrence".
- c. The following is added to Section D. **LIMITS OF INSURANCE:**

FL 703 11 02 14

FPK FMPN 3027010948

INSURED'S COPY

Page 5 of 9

43 0000105

111

FL 703 11 02 14

The **PART 2 - LIMITED FARM POLLUTION LIABILITY COVERAGE** Aggregate Limit shown on Form 8111 (Additional Endorsement Information) of this policy is the most we will pay for the sum of:

- 1) Damages under Coverage H; and
- 2) Medical expenses under Coverage J;

regardless of the number of insured's, claims made or "suits" brought, or persons or organizations making claims or bringing "suits".

- d. Paragraph 3, of Section D. **LIMITS OF INSURANCE** is replaced by the following:

Subject to the **PART 2 - LIMITED FARM POLLUTION LIABILITY COVERAGE** Aggregate Limit, the Medical Payments Limit shown in the Declarations is the most we will pay under Coverage J for all medical expenses because of "bodily injury" sustained by any one person.

- e. Under no circumstances shall the Limit of Insurance under this endorsement be used to cover accidents which happen outside this policy period.

- f. **Deductible For Limited Farm Pollution Liability Coverage Wastes Coverage**

When a deductible amount is stated for **PART 2 - LIMITED FARM POLLUTION LIABILITY COVERAGE** on Form 8111 (Additional Endorsement Information) of this policy, the following applies:

- 1) Our obligation to pay Limited Farm Pollution Liability Coverage Waste Coverage on your behalf applies only to the amount in excess of any deductible amount stated on Form 8111 (Additional Endorsement Information) of this policy. The deductible amount applies to each occurrence regardless of the number of:
 - a) Claims made or "suits" brought;
 - b) Persons or organizations making claims or bringing "suits"; or

- c) Governmental actions taken with respect to Limited Farm Pollution Liability Coverage.

The Aggregate Limit of Insurance for **PART 2 - LIMITED FARM POLLUTION LIABILITY COVERAGE** shall not be reduced by the application of the deductible amount.

- 2) We may, or will if required by law, pay any part or the entire deductible amount to effect settlement of any claim or "suit" or governmental action, and upon notification of the action taken, you shall promptly reimburse us for such part of the deductible amount paid by us.

PART 3 - FARM ENVIRONMENTAL DAMAGE CLEAN UP COVERAGE

1. OPERATION OF THE ENDORSEMENT

This endorsement provides a limited exception to Exclusion i. **Pollution**, under 2. **EXCLUSIONS**, of Section A. **COVERAGES**, **COVERAGE H - BODILY INJURY AND PROPERTY DAMAGE LIABILITY** for **FARM ENVIRONMENTAL DAMAGE CLEAN-UP COST COVERAGE** as described and limited by **PART 3 - FARM ENVIRONMENTAL DAMAGE CLEAN UP COVERAGE** of this endorsement.

2. FARM ENVIRONMENTAL DAMAGE CLEAN-UP COST COVERAGE

- a. We will pay for "clean-up costs" that the insured becomes legally obligated to pay for because of "environmental damage" to which this coverage applies. We have the right but not the duty to investigate, settle, contest or appeal, at our expense, any obligation asserted against an insured to pay "clean-up costs". But the amount we will pay for such "clean-up costs" is limited as described below in 4. Aggregate Limit of Insurance For Farm Environmental Damage Clean-up Cost Coverage.
- b. This insurance applies to "environmental damage" only if:
 - 1) The "environmental damage" is caused by the sudden and abrupt discharge, release or escape of "agricultural chemicals, liquids or gases" or waste in an "incident".

Page 6 of 9

FPK FMPN 3027010948

INSURED'S COPY

FL 703 11 02 14

43 0000107

112

Filed: 3/18/2021 10:50 AM CST Haakon County, South Dakota 27CIV20-000019

- Page 406 -

AA 112

FL 703 11 02 14

For purposes of this PART 3 –
**FARM ENVIRONMENTAL
DAMAGE CLEAN UP COVERAGE**
Section only, "waste" includes
materials to be recycled,
reconditioned or reclaimed and
livestock, poultry or other animal
excrement.

- 2) The "incident" occurs during the policy period.
- 3) The "incident" occurs off the "Insured location".
- 4) The "incident" was not as a result of a deliberate or intentional act by the insured.
- 5) The insured's obligation to pay "clean-up costs" because of the "environmental damage" is asserted under the statutory authority of the government of the United States of America and/or any governmental subdivisions of the United States.

- c. No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under paragraph 1. Supplementary Payments, of Section B. **ADDITIONAL COVERAGES** in the Farm Liability Coverage Form.

3. EXCLUSIONS

**FARM ENVIRONMENTAL DAMAGE
CLEAN-UP COST COVERAGE** does not apply to:

- a. "Environmental damage" expected or intended from the standpoint of the insured.
- b. "Environmental damage" for which the insured is obligated to pay as a result of an assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the insured would have in the absence of the contract or agreement.
- c. "Environmental damage" arising out of an "incident" that occurred on any "Insured location".
- d. "Environmental damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft,

"auto" or watercraft owned and operated by, or rented or loaned to, any insured. Use includes operation and "loading or unloading".

- e. "Environmental damage" arising out of an "incident" which results from or is directly or indirectly attributable to failure to comply with any applicable statute, regulation, ordinance, directive or order relating to the protection of the environment and promulgated by any governmental body, provided that failure to comply is a willful or deliberate act or omission of:

- 1) The insured, or
- 2) You or any of your members, partners or executive officers.

**4. AGGREGATE LIMIT OF INSURANCE for
FARM ENVIRONMENTAL DAMAGE
CLEAN-UP COST COVERAGE**

- a. Our total liability **FARM ENVIRONMENTAL DAMAGE CLEAN-UP COST COVERAGE** is the stated "Incident" Limit of Insurance shown on Form 8111 (Additional Endorsement Information) of this policy.
- b. The stated "Incident" Limit of Insurance applies separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the "Incident" Limit of Insurance.
- c. Therefore, the stated "Incident" Limit of Insurance is the most we will pay for the applicable periods of time as described in 2. above, regardless of the number of:
 - 1) "Incidents";
 - 2) Insured's;
 - 3) Claims made or "suits" brought;
 - 4) Persons or organizations making claims or bringing "suits"; or
 - 5) Governmental actions taken with respect to "clean-up costs".

FL 703 11 02 14

FPK FMPN 3027010948

INSURED'S COPY

Page 7 of 9

43 0000108

113

FL 703 11 02 14

5. DEDUCTIBLE for FARM
ENVIRONMENTAL DAMAGE CLEAN-UP
COST COVERAGE

When a deductible amount is stated for this coverage on Form 8111 (Additional Endorsement Information) of this policy, the following applies:

- a. Our obligation to pay "clean-up costs" on your behalf applies only to the amount of "clean-up costs" in excess of any deductible amount stated on Form 8111. The deductible amount applies to each "incident" of "environmental damage" regardless of the number of:

- 1) Claims made or "suits" brought;
- 2) Persons or organizations making claims or bringing "suits"; or
- 3) Governmental actions taken with respect to "clean-up costs".

The "Incident" Limit of Insurance for FARM ENVIRONMENTAL DAMAGE CLEAN-UP COST COVERAGE shall not be reduced by the application of the deductible amount.

- b. We may, or will if required by law, pay any part or the entire deductible amount to effect settlement of any claim or "suit" or governmental action, and upon notification of the action taken, you shall promptly reimburse us for such part of the deductible amount paid by us.

6. Section E, FARM LIABILITY GENERAL CONDITIONS of the Farm Liability Coverage Form apply to this FARM ENVIRONMENTAL DAMAGE CLEAN-UP COST COVERAGE.

7. Words and phrases that appear in quotation marks in this endorsement have meaning as defined in Section F, DEFINITIONS of the Farm Liability Coverage Form, unless otherwise defined in this endorsement.

B. SCHEDULE OF LIMITS OF INSURANCE

1. "No Coverage" shown for any Occurrence, Aggregate, or "Incident" Limit on Form 8111 (Additional Endorsement Information) of this policy for Coverage Part 1, Part 2, or Part 3 indicates that coverage was specifically declined and intended not to be included by you.

2. The limit shown under TOTAL ENDORSEMENT COVERAGE AGGREGATE on Form 8111 (Additional Endorsement Information) of this policy is the most we will pay for the combined sums of:

- a. Damages under Coverage H; and
- b. Medical expenses under Coverage J; regardless of the number of "incidents", insured's, claims made or "suits" brought, or persons or organizations making claims or bringing "suits" under Part 1, Part 2, or Part 3 of this endorsement.

3. If there is applicable coverage under more than one coverage Part in this endorsement, any recovery for damages may equal but not exceed the highest applicable limit for any one coverage Part in this endorsement to which coverage applies. Limits under two or more coverage Parts may not be combined.

C. DEFINITIONS

1. "Covered farm chemical application incident", except as further limited in Part 1, Section 2, LIMITED FARM CHEMICAL APPLICATION COVERAGE of this endorsement above means the following:

"Bodily injury" or "property damage" that arises out of and is the direct result of the accidental discharge, dispersal, seepage, migration, release or escape of "pollutants" during a lawful and proper application of farm chemicals governmentally approved for application on, at, or from any premises that you own, lease or rent and to which this Coverage Form applies:

- a. to crop ground by some means other than the use of an aircraft; or
- b. by spraying immediately in and around your "residence premises", farm buildings, outbuildings or other farm structures provided that such spraying is:
 - 1) For the purpose of killing, repelling or controlling pests, rodents or insects; or
 - 2) For the purpose of killing or controlling weeds.
- c. that are stored, other than in an underground storage tank or underground storage container of any kind, in a lawful manner; or

Page 8 of 9

FL 703 11 02 14

FPK FMPN 3027010948

INSURED'S COPY

43 0000109

114

FL 703 11 02 14

- d. while being transported in other than an "auto" by you or your employees.
2. "Agricultural chemicals, liquids or gases" means pesticides, herbicides, insecticides, poisons, fertilizers, plant nutrients and similar chemical compounds used to increase the yield of farm products or crops, to kill, repel or control pests, rodents or insects, or to kill or control weeds; and petroleum products used to operate farm machinery and vehicles. It does not include waste or animal byproducts being transported or stored for disposal, recycling, reconditioning or reclaiming.
3. "Clean-up costs" means expenses for the removal, clean-up or neutralization of "agricultural chemicals, liquids or gases".
4. "Environmental damage" means the injurious presence in or upon land, the atmosphere, or any watercourse or body of water of "agricultural chemicals, liquids or gases".
5. "Incident" means a sudden and abrupt release or escape of "agricultural chemicals, liquids or gases" into or upon land, the atmosphere, or any watercourse or body of water, provided that such discharge, release, or escape results in "environmental damage". The entirety of any such discharge, release, or escape shall be deemed to be one "Incident".
6. "Pollutants" -- This "Pollutants" definition is only applicable to Part 2 of this Coverage Form ONLY when the optional "Waste Coverage" box on Form 8111 (Additional Endorsement Information) of this policy indicates a "Yes".

"Pollutants" under Section F. of the Farm Liability Coverage Form is amended to include manure from livestock, poultry or other animals, generated or used in the normal course of the insured's "farming" operations. Waste, as described in the "Pollutants" definition, does not include manure from livestock, poultry or other animals, generated or used in the normal course of the insured's "farming" operations.

All terms and conditions of this policy apply unless modified by this endorsement.

Includes copyrighted material of ISO Properties, Inc., 2006 with its permission.

FL 703 11 02 14

FPK FMPN 3027010948

INSURED'S COPY

Page 9 of 9

43 0000110

115

Filed: 3/18/2021 10:50 AM CST Haakon County, South Dakota 27CIV20-000019

- Page 409 -

AA 115

FARM
FL 703 13 02 14

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY

“RAW MILK” AND “RAW MILK” PRODUCTS EXCLUSION ENDORSEMENT

The endorsement modifies insurance provided under the following:

FARM LIABILITY COVERAGE FORM

Under Section A, COVERAGES, COVERAGE H – BODILY INJURY AND PROPERTY DAMAGE LIABILITY, COVERAGE I – PERSONAL AND ADVERTISING INJURY LIABILITY, and COVERAGE J – MEDICAL PAYMENTS, the following exclusion is added: This insurance, including any duty we have to defend “suits”, does not apply to “bodily injury”, “property damage”, or “personal and advertising injury” which arises out of, is caused by or attributable to, in whole or in part; or is a result of, in whole or in part; the direct consumption of “raw milk”, organic “raw milk” or certified “raw milk”.

For purposes of this endorsement, the following Definition applies:

“Raw milk” means unpasteurized milk from hoofed mammals (such as cows, sheep, or goats).

All terms and conditions of this policy apply unless modified by this endorsement.

FL 703 13 02 14

FPK FMPN 3027010948

INSURED'S COPY

Page 1 of 1

43 0000111

116

Filed: 3/18/2021 10:50 AM CST Haakon County, South Dakota 27CIV20-000019

- Page 410 -

AA 116

FARM
FL 703 21 01 15

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

RECREATIONAL VEHICLE EXPANDED MEDICAL PAYMENTS COVERAGE ENDORSEMENT

This endorsement modifies insurance provided under the following:

FARM LIABILITY COVERAGE FORM

The Farm Liability Coverage Form is modified as follows:

- A. Under Section A. COVERAGES, Coverage J – Medical Payments 1. Insuring Agreement paragraph b. is deleted and replaced by the following:
- b. This coverage applies only to accidental "bodily injury":
- 1) To a person (other than an insured described under Paragraph 1. under WHO IS AN INSURED) who is on the "Insured location" with the permission of an insured, or
 - 2) To a person (other than an insured described under Paragraph 1. under WHO IS AN INSURED) who is off the "Insured location", provided the "bodily injury":
 - a) arises out of a condition on the "Insured location" or the ways immediately joining it;
 - b) is caused by the activities of an insured or by a "farm employee" in the course of employment by an insured;
 - c) is caused or sustained by a "residence employee" in the course of employment by an insured;
 - d) is caused by an animal owned by or in the care of an insured; or
 - e) arising out of "farming" activities done by or on behalf of the insured.
 - 3) To you, any family member, or any other person while an occupant of a "recreational vehicles" with your permission.

- B. Under Section C. WHO IS AN INSURED, paragraph 6. is deleted and replaced by the following:
6. Any person using a:
- a. "recreational vehicle" on an "Insured location".
 - b. "recreational vehicle" off an "Insured location" when coverage has been added by endorsement, or
 - c. "mobile equipment" on or off an "Insured location" with your permission or consent is an insured provided this insurance applies to the "recreational vehicle" or "mobile equipment". No person is an insured with respect to the use of an "auto".
- C. Under Section F. DEFINITIONS, paragraph a. under 20. "Mobile Equipment" and 29. "Recreational Vehicle" are deleted and replaced with the following:
20. "Mobile equipment"
- a. Bulldozers, forklifts, farm machinery, farm implements and other vehicles designed for use or used principally off public roads. This includes motorized golf carts, snowmobiles and other land vehicles designed for recreational use when used for "farming" purposes.
29. "Recreational Vehicle" means a motorized golf cart, snowmobile or other motorized land vehicle (including all-terrain vehicles) owned by any insured and designed for recreational use off public roads when used for recreational purposes.
- D. Section A. COVERAGES, Coverage J – Medical Payments 2. EXCLUSIONS, Exclusion f. does not apply to coverage provided by this endorsement.

FL 703 21 01 15

FPK FMPN 3027010948

INSURED'S COPY

Page 1 of 2

43 0000112

117

FL 703 21 01 15

All terms and conditions of this policy apply unless modified by this endorsement.

Includes copyrighted material of Insurance Services Office, Inc., 2012 with its permission.

Page 2 of 2

FPK FMPN 3027010948

INSURED'S COPY

FL 703 21 01 15

43 0000113

118

Filed: 3/18/2021 10:50 AM CST Haakon County, South Dakota 27CIV20-000019

- Page 412 -

AA 118

FARM
FL 703 31 01 14

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

AGRICULTURAL UNMANNED AERIAL SYSTEMS LIABILITY EXTENSION

This endorsement modifies insurance provided under the following:

FARM LIABILITY COVERAGE FORM

- A. The following is added to the exceptions to Paragraph k. Aircraft, Auto, Motorcycle Or Motorized Bicycle, Tricycle Or Other Recreational Vehicle of 2. Exclusions of SECTION I – COVERAGES, COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY:
- k. Aircraft, Auto, Motorcycle Or Motorized Bicycle, Tricycle Or Other Recreational Vehicle
This exclusion does not apply to:
An "Unmanned Aerial System" used in "precision agricultural operations".
- B. For the purposes of coverage provided under this endorsement, the following Definitions apply:
"Unmanned Aerial System" means an aircraft, either fixed-wing or rotary-wing, without a human pilot on board, weighing less than 20 pounds. Its flight is controlled by computers in the aircraft or under the remote control of a pilot on the ground.
"Precision agricultural operations" means aerial imaging, data acquisition and mapping. Imaging includes photographic, video, and infrared images. "Precision agricultural operations" does not include the aerial application of chemicals.

All terms and conditions of this policy apply unless modified by this endorsement.

FL 703 31 01 14
FPK FMPN 3027010948

INSURED'S COPY

Page 1 of 1
43 0000114

119

FARM
FL 703 34 12 15

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

MARIJUANA EXCLUSION ENDORSEMENT

This endorsement modifies insurance provided under the following:

FARM LIABILITY COVERAGE FORM

The FARM LIABILITY COVERAGE FORM is amended as follows:

- A. Under Section A, COVERAGES, COVERAGE H – BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. EXCLUSIONS, is amended to add the following:

Marijuana

"Bodily injury" or "property damage" arising, or allegedly arising, in whole or in part, out of the:

- 1) Inhalation, ingestion, absorption or use of;
- 2) Growing, manufacture, storage, distribution or disposal of;
- 3) Prescribing of or failure to prescribe;
- 4) Sale, handling, delivery, transfer or possession of; or
- 5) Exposure to marijuana or "marijuana products".

- B. Under Section A, COVERAGE I – PERSONAL AND ADVERTISING INJURY LIABILITY, 2. EXCLUSIONS, is amended to add the following:

Marijuana

"Personal and advertising injury" arising, or allegedly arising, in whole or in part, out of the:

- 1) Inhalation, ingestion, absorption or use of;
- 2) Growing, manufacture, storage, distribution or disposal of;
- 3) Prescribing of or failure to prescribe;
- 4) Sale, handling, delivery, transfer or possession of; or
- 5) Exposure to marijuana or "marijuana products".

- C. As used in this endorsement, "marijuana products" means any product containing the controlled substance marijuana.

All terms and conditions of this policy apply, unless modified by this endorsement.

FL 703 34 12 15

FPK FMPN 3027010948

INSURED'S COPY

Page 1 of 1

43 0800115

120

FARM
FL 706 20 01 01

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

RECREATIONAL VEHICLE LIABILITY COVERAGE ENDORSEMENT

This endorsement modifies insurance provided under the following:
FARM LIABILITY COVERAGE FORM

This endorsement applies only to "recreational vehicles" identified on Form 8120 (Additional Endorsement Information) of this policy

- A. Under Section A. COVERAGES, Coverage H - Bodily Injury and Property Damage Liability and Coverage J - Medical Payments apply to "bodily injury" or "property damage" caused by an "occurrence" arising out of the ownership, maintenance, use, "loading or unloading" of the "recreational vehicle(s)" shown on Form 8120 while off an "insured location", except as further restricted by this endorsement below.
- B. Under Section C. WHO IS AN INSURED, an Insured also includes any person or organization legally responsible for a "recreational vehicle" owned by any insured and shown on Form 8120, but does not include a person or organization using or having custody or possession of the "recreational vehicle" without the permission of the owner, or outside the scope of the owner's permission.
- C. This insurance, including any duty we have to defend "suits", does not apply to any "recreational vehicle":
 - 1. Which is subject to Motor Vehicle Registration for regular or recurring use on public streets or roads;
 - 2. While being used to carry persons for a charge;
 - 3. While being used for any "business" or "farming" purposes;
 - 4. While rented or leased to others; or
 - 5. While being operated in any prearranged or organized race, speed contest or other competition.
- D. We cover newly acquired "recreational vehicles" under the provisions of this endorsement, provided we insure all "recreational vehicles" owned by an insured, and the insured reports the newly acquired "recreational vehicle" to us within 30 days of acquisition, and pays us the additional premium owed from the date acquired.
- E. This endorsement does not provide Uninsured Motorist or Underinsured Motorist Coverage.
- F. Except for Exclusion k. in Coverage H, 2. Exclusions, all exclusions in Coverage H, 2. Exclusions, and all the exclusions in Coverage J, 2. Exclusions, apply to the insurance provided by this endorsement.

All terms and conditions of this policy apply unless modified by this endorsement.

FL 706 20 01 01
FPK FMPN 3027010948

INSURED'S COPY

Page 1 of 1
43 0000116

121

EFFECTIVE DATE: 12:01 AM Standard Time.
(at your principal place of business)

FARM
FL 706 58 (01-02)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

FUNGI OR BACTERIA EXCLUSION ENDORSEMENT

This endorsement modifies insurance provided under the following:

FARM LIABILITY COVERAGE FORM

- A. The following exclusion is added under Paragraph 2. Exclusions of Section A - Coverage 1 - Bodily Injury And Property Damage Liability:

This insurance does not apply to:

"Fungi" or Bacteria

- a. "Bodily injury" or "property damage" which would not have occurred, in whole or in part, but for:

- 1) the actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to, existence of, or presence of any "fungi" or bacteria; or
- 2) the failure to warn or to disclose the presence of "fungi" or bacteria

regardless of whether any other cause, event, material or product contributed concurrently or in any sequence to such injury or damage.

HOWEVER, this exclusion does not apply to "bodily injury" or "property damage" arising out of or resulting from "fungi" or bacteria that is on or contained in "your product" intended for human or animal consumption.

- b. Any loss, cost or expenses arising out of the testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating or disposing of or in any way responding to, or assessing the effects of, "fungi" or bacteria by any insured or by any other person or entity.

- B. The following exclusion is added under Paragraph 2. Exclusions of Section A - Coverage 1 - Personal And Advertising Injury Liability:

This insurance does not apply to:

"Fungi" or Bacteria

- a. "Personal and advertising injury" which would not have occurred, in whole or in part, but for:

- 1) the actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to, existence of, or presence of any "fungi" or bacteria; or
- 2) the failure to warn or to disclose the presence of "fungi" or bacteria

regardless of whether any other cause, event, material or product contributed concurrently or in any sequence to such injury or damage.

- b. Any loss, cost or expense arising out of the testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating or disposing of, or in any way responding to, or assessing the effects of, "fungi" or bacteria, by any insured or by any other person or entity.

- C. The following definition is added to Section F. Definitions:

"Fungi" means any type or form of fungus including mold or mildew and any mycotoxin, spores, scents or byproducts produced or released by fungi.

All terms and conditions of this policy apply unless modified by this endorsement.

FL 706 58 (01-02)

FPK FMPN 3027010948

INSURED'S COPY

43 0000117

FARM
FL 706 87 04 08

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

UNWARRANTED CLAIM OF ANIMAL CRUELTY LIMITED DEFENSE EXPENSE REIMBURSEMENT

This endorsement modifies insurance provided under the following:

FARM LIABILITY COVERAGE FORM

THIS ENDORSEMENT PROVIDES CLAIMS-MADE COVERAGE. PLEASE READ THE ENTIRE
ENDORSEMENT CAREFULLY.

Schedule

Coverage Description	Limit of Insurance	Retention
"Animal Cruelty Claim"	\$20,000	\$2,000

Annual Aggregate Limit – Retention is shown in the Schedule

1. Operation of this Additional Provision

We provide only for reimbursement of certain "defense expenses" you incur in defending an "animal cruelty claim" brought against you.

We have no duty to provide you with a defense. It is your obligation to retain counsel and defend any "animal cruelty claim" brought against you.

We do not provide reimbursement for any settlement, damages or other relief that may be awarded against you arising from an "animal cruelty claim".

This endorsement does not provide reimbursement for any expenses related to any divorce or estate proceedings.

Reimbursement for "defense expenses" is only provided if the insured prevails in the "animal cruelty claim" and the matter is finally adjudicated without a finding of guilt or liability. There will be no reimbursement under this endorsement if the "animal cruelty claim" is settled for consideration, if the insured admits guilt or wrongdoing, or is convicted or pleads guilty. If the insured has already received payment of defense costs under this endorsement, the insured agrees to reimburse us for all payments we made before the settlement for consideration, admission of guilt or wrongdoing, guilty plea or criminal conviction of an "animal cruelty claim".

2. Reimbursement - Certain Defense Expenses

We will reimburse you for reasonable and necessary "defense expenses" that you have paid in the defense of a "animal cruelty claim" brought against you, up to the Limit of Insurance shown in the schedule of this endorsement, only if the "animal cruelty claim" is first made against you during the policy period and reported to us in accordance with paragraph 5.

We will not reimburse "defense expenses" paid in any "animal cruelty claim" until they exceed your Retention shown in the schedule.

All similar and related "animal cruelty claims" that are brought against you will be considered to have been made at the time the first "animal cruelty claim" is brought against you.

3. Other Insurance

If there is any other insurance that provides coverage or defense for any "animal cruelty claim" to which this endorsement otherwise applies, then benefits provided by this endorsement shall be excess over such other insurance whether that other insurance is primary, excess, contingent or provided on any other basis.

4. Limits of Insurance – Annual Aggregate

The Limit of Insurance shown in the Schedule of this endorsement is the most we will reimburse you for covered "defense expenses" that exceed your Retention shown in the Schedule.

FL 706 87 04 08

FPK FMPN 3027010948

INSURED'S COPY

Page 1 of 2

43 0000118

123

FL 706 87 04 08

The Limit of Insurance shown in the Schedule of this endorsement is the most we will reimburse you for the defense of an "animal cruelty claim" regardless of the number of:

- a. named insureds; or
- b. persons or organizations who incur expenses

This Limit of Insurance is also an Annual Aggregate, meaning it is the most we will reimburse you under this endorsement for all "defense expenses", regardless of the number of covered claims made during the policy period.

5. Duties in the Event of "animal cruelty claim"

We have no duty to provide reimbursement under this Endorsement unless you comply with the following duties:

- a. You must provide us with a copy of the written notice of an "animal cruelty claim" if you reasonably believe you are eligible for the "defense expense" reimbursement provided by this endorsement. You must give us notice as soon as practicable and either:
 - 1) anytime during the policy period, or
 - 2) within thirty (30) days after the end of the policy period as long as such claim

is reported no later than thirty (30) days after the date such claim is first made against the "insured".

- b. You must provide us copies of any demands, notices, summonses or legal papers received in connection with the "animal cruelty" claim; and
- c. You must provide us copies of bills and proof of your payment of "defense expenses" in connection with the "animal cruelty claim".

6. Additional Definitions

As used in this Endorsement, the following Definitions are added:

- a. "Defense expenses" means reasonable and necessary attorney fees and legal costs incurred in defending an "animal cruelty claim" to which this Unwarranted Animal Cruelty Limited Defense Expense Reimbursement endorsement applies.
- b. "Animal cruelty claim" means a criminal or civil proceeding that alleges damages or criminal charges due to violations in the treatment or standards of care that cause or is alleged to have caused unwarranted or unnecessary suffering or harm to animals.

All terms and conditions of this policy apply unless modified by this endorsement.

Page 2 of 2

FPK FMPN 3027010948

INSURED'S COPY

FL 706 87 04 08

43 0000119

124

Filed: 3/18/2021 10:50 AM CST Haakon County, South Dakota 27CIV20-000019

- Page 418 -

AA 124

FARM
FL 706 88 04 08

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY

EMPLOYMENT RELATED PRACTICES LIMITED DEFENSE EXPENSE REIMBURSEMENT

The endorsement modifies insurance provided under the following:

FARM LIABILITY COVERAGE FORM

THIS ENDORSEMENT PROVIDES CLAIMS-MADE COVERAGE. PLEASE READ THE ENTIRE
ENDORSEMENT CAREFULLY.

Schedule

Coverage Description	Limit of Insurance	Retention
"Employment Practices Liability Claim"	\$20,000	\$2,000

Annual Aggregate Limit – Retention is shown in the Schedule

1. Operation of this Additional Provision

We provide only for reimbursement of certain "defense expenses" you incur in defending an "employment related practices claim" brought against you.

We have no duty to provide you with a defense. It is your obligation to retain counsel and defend any "employment related practices claim" brought against you.

We do not provide reimbursement for any settlement, damages or other relief that may be awarded against you arising from an "employment related practices claim".

This endorsement does not provide reimbursement for any expenses related to any criminal proceedings.

This endorsement does not apply to cover any expenses or damages payable under the Migrant and Seasonal Agricultural Worker Protection Act (29 USC Sections 1801-1872) and any similar state or federal law.

2. Reimbursement – Certain Defense Expenses

We will reimburse you for reasonable and necessary "defense expenses" that you have paid in the defense of an "employment related practices claim" brought against you, up to the Limit of Insurance shown in the schedule of this endorsement, only if the "employment related practices claim" is first made during the policy

period and reported to us in accordance with paragraph 5.

We will not reimburse "defense expenses" paid in any "employment related practices claim" until they exceed your Retention shown in the schedule.

All similar and related "employment related practices claims" brought against you will be considered to have been made at the time the first "employment related practices claim" is brought against you.

3. Other Insurance

If there is any other insurance that provides coverage or defense for any "employment related practices claim" to which this endorsement otherwise applies, then benefits provided by this endorsement shall be excess over such other insurance whether that other insurance is primary, excess, contingent or provided on any other basis.

4. Limits of Insurance – Annual Aggregate

The Limit of Insurance shown in the Schedule of this endorsement is the most we will reimburse you for covered "defense expenses" that exceed your Retention shown in the schedule.

The Limit of Insurance shown in the Schedule of this endorsement is the most we will reimburse you in any "employment related practices claim" regardless of the number of:

FL 706 88 04 08

Page 1 of 2

FPK FMPN 3027010948

INSURED'S COPY

43 0000120

125

FL 706 88 04 08

- a. named insureds; or
- b. persons or organizations who incur expenses.

This Limit of Insurance is also an Annual Aggregate, meaning it is the most we will reimburse you under this endorsement for all "defense expenses", regardless of the number of covered claims made during the policy period.

- 5. Duties in the Event of "employment related practices claim"

We have no duty to provide reimbursement under this Endorsement unless you comply with the following duties:

- a. You must provide us written notice of a "employment related practices claim" as soon as practicable and either:
 - 1) anytime during the policy period, or
 - 2) within thirty (30) days after the end of the policy period as long as such claim is reported no later than thirty (30) days after the date such claim is first made against the "insured".
 - b. You must provide us copies of bills and proof of payment for "defense expenses" in connection with the "employment related practices claim"; and
 - c. You must provide us copies of any demands, notices, summonses or legal papers received in connection with the "employment related practices claim". This includes copies of the final disposition of the matter.
- 6. Additional Definitions
- As used in this Endorsement, the following Definitions are added:
- a. "Defense expenses" means reasonable and necessary attorney fees and legal costs incurred in defending a "employment related practices claim" to which this Employment Related Practices Limited Defense Expenses Reimbursement endorsement applies.
 - b. "Employment related practices claim" means a written demand or suit filed in State or Federal Court that alleges any of the following practices:
 - 1) any actual or alleged wrongful dismissal, discharge or termination in employment, breach of any oral or written employment contract, employment related misrepresentation, violation of any employment discrimination law or workplace harassment law;
 - 2) wrongful refusal to employee a qualified applicant for employment;
 - 3) wrongful failure to promote a qualified "farm employee";
 - 4) wrongful demotion, negligent evaluation, negligent reassignment or wrongful discipline;
 - 5) harassment, coercion, discrimination or humiliation as a consequence of race, color, creed, national origin, marital status, medical condition, gender, age, physical appearance, physical and/or mental impairments, pregnancy, sexual orientation or sexual preference; or
 - 6) oral or written publication of material that slanders, defames, or libels a "farm employee" or violates a "farm employee"'s right of privacy.

All terms and conditions of this policy apply unless modified by this endorsement.

Includes copyrighted material of Insurance Services Office, Inc., with its permission.
© ISO Properties Inc., 2005

Page 2 of 2

FPK FMPN 3027010948

INSURED'S COPY

FL 706 88 04 08

43 0000121

126

FARM
FO 704 40 04 02

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

SOUTH DAKOTA – CANCELLATION AND NONRENEWAL CONDITIONS

This endorsement modifies insurance provided under the following:
COMMON POLICY CONDITIONS

A. Paragraph 2. Of **Cancellation** Common Policy
Condition is replaced by the following:

2. We may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation at least 20 days before the effective date of cancellation.

After 60 days from the effective date of policy issuance a notice of cancellation may not be issued unless it is based upon at least one of the following reasons as stated in South Dakota law:

- 1) Nonpayment of premium;
- 2) Discovery of fraud or material misrepresentation made by or with the knowledge of the Named Insured in obtaining the policy, continuing the policy, or in presenting a claim under the policy;
- 3) Discovery of acts or omissions on the part of the Named Insured which increase any hazard insured against;
- 4) The occurrence of a change in the risk which substantially increases any hazard insured against after insurance coverage has been issued;
- 5) A violation of any local fire, health, safety, building or construction regulation or ordinance with respect to

any insured property or the occupancy thereof which substantially increases any hazard insured against;

- 6) A determination by the director of insurance that the continuation of the policy would jeopardize our solvency or would place us in violation of the insurance laws of South Dakota.
- 7) Your violation or breach of any policy terms or conditions; or
- 8) Such other reasons as are approved by the director of insurance.

B. The following condition is added and supersedes any provisions to the contrary:

NONRENEWAL

1. If we decide not to renew this policy, we will mail or deliver to the first Named Insured written notice of nonrenewal at least 60 days before:
 - 1) The expiration date; or
 - 2) The anniversary date if this is a continuous policy.
2. Any notice of nonrenewal will be mailed or delivered to the first Named Insured's last mailing address known to us. If notice is mailed, proof of mailing will be sufficient proof of notice.

All terms and conditions of this policy apply unless modified by this endorsement.

FO 704 40 04-02

FPK FMPN 3027010948

INSURED'S COPY

Page 1 of 1

43 0000122

127

Filed: 3/18/2021 10:50 AM CST Haakon County, South Dakota 27CIV20-000019

- Page 421 -

AA 127

EFFECTIVE DATE: 12:01 AM Standard Time.
(at your principal place of business)

FARM
FO 707 01 (01-01)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BLANKET ACREAGE

This endorsement modifies insurance provided under the following:

FARM PROPERTY COVERAGE FORM
FARM LIABILITY COVERAGE FORM

A. The following change is made to the FARM
PROPERTY COVERAGE FORM:

Under Section L, DEFINITIONS, the following is
added to the definition of "Insured Location":

"Insured location" also means any other lo-
cation that you own, rent or occupy, provided
that:

1. The location is used exclusively for "farm-
ing" purposes; and
2. Any "dwelling" or other buildings or struc-
tures at the location are not used for any
"business" purposes and are not used as
your residence premises.

B. The following change is made to the FARM LI-
ABILITY COVERAGE FORM:

Under Section F, DEFINITIONS, the following is
added to the definition of "Insured location":

"Insured location" also means any other lo-
cation that you own, rent or occupy, provided
that:

1. The location is used exclusively for "farm-
ing" purposes; and
2. Any dwelling or other buildings or struc-
tures at the location are not used for any
"business" purposes and are not used as
your "residence premises".

All terms and conditions of this policy apply unless modified by this endorsement.

FO 707 01 (01-01)

FPK FMPN 3027010948

INSURED'S COPY

43 0000123

128

EFFECTIVE DATE: 12:01 AM Standard Time,
(at your principal place of business)

FARM
FO 707 09 (02-02)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

COMMON POLICY CONDITIONS

All Coverage Parts included in this policy are subject to the following conditions.

A. Cancellation

1. The first Named Insured shown in the Declarations may cancel this policy by mailing or delivering to us advance written notice of cancellation.
2. We may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation at least:
 - a. 10 days before the effective date of cancellation if we cancel for nonpayment of premium; or
 - b. 30 days before the effective date of cancellation if we cancel for any other reason.
3. We will mail or deliver our notice to the first Named Insured's last mailing address known to us.
4. Notice of cancellation will state the effective date of cancellation. The policy period will end on that date.
5. If this policy is cancelled, we will send the first Named Insured any premium refund due. If we cancel, the refund will be pro rata. If the first Named Insured cancels, the refund may be less than pro rata. The cancellation will be effective even if we have not made or offered a refund.
6. If notice is mailed, proof of mailing will be sufficient proof of notice.

B. Changes

This policy contains all the agreements between you and us concerning the insurance afforded. The first Named Insured shown in the Declarations is authorized to make changes in the terms of this policy with our consent. This policy's terms can be amended or waived only by endorsement issued by us and made a part of this policy.

C. Examination Of Your Books And Records

We may examine and audit your books and records as they relate to this policy at any time during the policy period and up to three years afterward.

D. Inspections and Surveys

1. We have the right, but are not obligated to:
 - a. Make inspections and surveys at any time;
 - b. give you reports on the conditions we find; and
 - c. Recommend changes.
2. Any inspections, surveys, reports or recommendations made relate only to insurability and the premiums to be charged. We do not make safety inspections. We do not undertake to perform the duty of any person or organization to provide for the health or safety of workers or the public. And we do not warrant that conditions:
 - a. Are safe or healthful; or
 - b. Comply with laws, regulations, codes or standards.
3. This condition applies not only to us, but also to any rating, advisory, rate service or similar organization which makes insurance inspections, surveys, reports or recommendations.

FO 707 09 (02-02)

FPK FMPN 3027010948

INSURED'S COPY

Page 1 of 2

43 0000124

129

FO 707 09 (02-02)

E. Premiums

The first Named Insured shown in the Declarations:

1. Is responsible for the payment of all premiums.
2. Will be the payee for any return premiums we pay.

F. Due Date For Audit Premiums

The due date for audit premiums is the date shown as the due date on the bill.

G. Transfer Of Your Rights And Duties Under This Policy

Your rights and duties under this policy may not be transferred without our written consent except in the case of death of an individual named insured.

If you die, your rights and duties will be transferred to your legal representative but only while acting within the scope of duties as your legal representative. Until your legal representative is appointed, anyone having proper temporary custody of your property will have your rights and duties but only with respect to that property.

FO 707 09 (02-02)
FPK FMPN 3027010948

INSURED'S COPY

Page 2 of 2
43 0000125

130

FARM
FO 707 17 01 08

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION OF TERRORISM

This endorsement modifies insurance provided under the following:

FARM PROPERTY COVERAGE FORM
FARM LIABILITY COVERAGE FORM

SCHEDULE

The Exception Covering Certain Fire Losses (paragraph B.2. of this endorsement) applies to property located in the following states:

Arizona	Illinois	North Carolina	Virginia
California	Iowa	New York	Washington
Connecticut	Maine	Oregon	Wisconsin
Georgia	Missouri	Rhode Island	West Virginia

- A. The FARM PROPERTY COVERAGE FORM and the FARM LIABILITY COVERAGE FORM are amended as follows:

The following definition is added and applies under this endorsement wherever the term terrorism is enclosed in quotation marks.

"Terrorism" means activities against persons, organizations or property of any nature:

1. That involve the following or preparation for the following:
 - a. Use or threat of force or violence; or
 - b. Commission or threat of a dangerous act; or
 - c. Commission or threat of an act that interferes with or disrupts an electronic, communication, information, or mechanical system; and
2. When one or both of the following applies:
 - a. The effect is to intimidate or coerce a government or the civilian population or any segment thereof, or to disrupt any segment of the economy; or
 - b. It appears that the intent is to intimidate or coerce a government, or to further political, ideological, religious, social or economic objectives or to express (or express opposition to) a philosophy or ideology.

- B. The following changes are made to the FARM PROPERTY COVERAGE FORM:

The following are added under Section E. Exclusions:

1. EXCLUSION OF TERRORISM

We will not pay for loss or damage caused directly or indirectly by "terrorism", including action in hindering or defending against an actual or expected incident of "terrorism". Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss. But this exclusion applies only when one or more of the following are attributed to an incident of "terrorism":

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

FO 707 17 01 08

FPK FMPN 3027010948

INSURED'S COPY

Page 1 of 3

43 0000126

131

FO 707 17 01 08

- d. Pathogenic or poisonous biological or chemical materials are released, and it appears that one purpose of the "terrorism" was to release such materials; or
 - e. The total of insured damage to all types of property in the United States, its territories and possessions, Puerto Rico and Canada exceeds \$25,000,000. In determining whether the \$25,000,000 threshold is exceeded, we will include all insured damage sustained by property of all persons and entities affected by the "terrorism" and business interruption losses sustained by owners or occupants of the damaged property. For the purpose of this provision, insured damage means damage that is covered by any insurance plus damage that would be covered by any insurance but for the application of any terrorism exclusions. Multiple incidents of "terrorism" which occur within a 72-hour period and appear to be carried out in concert or to have a related purpose or common leadership will be deemed to be one incident, for the purpose of determining whether the threshold is exceeded.
- With respect to this item B.1.e., the immediately preceding paragraph describes the threshold used to measure the magnitude of an incident of "terrorism" and the circumstances in which the threshold will apply, for the purpose of determining whether this Exclusion will apply to that incident. When the Exclusion applies to an incident of "terrorism", there is no coverage under this Coverage Form.
2. **Exception Covering Certain Fire Losses**
The following exception to the EXCLUSION OF TERRORISM applies only if indicated and as indicated in the Schedule of this endorsement.
- If "terrorism" results in fire, we will pay for the loss or damage caused by that fire, subject to all applicable policy provisions including the Limit of Insurance on the affected property. Such coverage for fire applies only to direct loss or damage by fire to Covered Property. Therefore, for example, the exception does not apply to insurance provided under the Disruption of

Farming Operations and/or Farm Extra Expense Coverage Endorsements, if they are attached to this policy.

3. Application Of Other Exclusions

- a. When the EXCLUSION OF TERRORISM applies in accordance with the terms of B.1.a. or B.1.b., such exclusion applies without regard to the Nuclear Hazard Exclusion in this Coverage Form.
- b. The terms and limitations of any terrorism exclusion, or the inapplicability or omission of a terrorism exclusion, do not serve to create coverage for any loss or damage which would otherwise be excluded under this Coverage Form as losses excluded by exclusion E.5. Nuclear Hazard or exclusion E.8. War and Military Action.

4. The following changes are made to the FARM LIABILITY COVERAGE FORM:

- 1. The following definition is added and applies under this endorsement wherever the phrase any injury or damage, is enclosed in quotation marks:

"Any injury or damage" means any injury or damage covered under this Coverage Form or any applicable endorsement, and includes but is not limited to "bodily injury", "property damage" or "personal and advertising injury", as may be defined under this Coverage Form or any applicable endorsement.

- 2. The following exclusion is added:

EXCLUSION OF TERRORISM

We will not pay for "any injury or damage" caused directly or indirectly by "terrorism", including action in hindering or defending against an actual or expected incident of "terrorism". "Any injury or damage" is excluded regardless of any other cause or event that contributes concurrently or in any sequence to such injury or damage. But this exclusion applies only when one or more of the following are attributed to an incident of "terrorism":

- a. The "terrorism" is carried out by means of the dispersal or application of radioactive material, or through the use of a nuclear weapon or device that involves or produces a nuclear reaction, nuclear radiation or radioactive contamination; or

Page 2 of 3

FPK FMPN 3027010048

INSURED'S COPY

FO 707 17 01 08

43 0000127

132

FO 707 17 01 08

- b. Radioactive material is released, and it appears that one purpose of the "terrorism" was to release such material; or
- c. The "terrorism" is carried out by means of the dispersal or application of pathogenic or poisonous biological or chemical materials; or
- d. Pathogenic or poisonous biological or chemical materials are released, and it appears that one purpose of the "terrorism" was to release such materials; or
- e. The total of insured damage to all types of property exceeds \$25,000,000. In determining whether the \$25,000,000 threshold is exceeded, we will include all insured damage sustained by property of all persons and entities affected by the "terrorism" and business interruption losses sustained by owners or occupants of the damaged property. For the purpose of this provision, insured damage means damage that is covered by any insurance plus damage that would be covered by any insurance but for the application of any terrorism exclusions; or
- f. Fifty or more persons sustain death or serious physical injury. For the purposes

of this provision, serious physical injury means:

- 1) Physical injury that involves a substantial risk of death; or
- 2) Protracted and obvious physical disfigurement; or
- 3) Protracted loss of or impairment of the function of a bodily member or organ.

Multiple incidents of "terrorism" which occur within a 72-hour period and appear to be carried out in concert or to have a related purpose or common leadership will be deemed to be one incident, for the purpose of determining whether the thresholds in paragraphs 2.e. or 2.f. are exceeded.

With respect to this Exclusion, paragraphs 2.e. and 2.f. describe the threshold used to measure the magnitude of an incident of "terrorism" and the circumstances in which the threshold will apply, for the purpose of determining whether this Exclusion will apply to that incident. When the Exclusion applies to an incident of "terrorism", there is no coverage under this Coverage Form.

In the event of any incident of "terrorism" that is not subject to this Exclusion, coverage does not apply to "any injury or damage" that is otherwise excluded under this Coverage Form.

All terms and conditions of this policy apply unless modified by this endorsement.

Includes copyrighted material of Insurance Services Office, Inc., 2007 with its permission.

FO 707 17 01 08

FPK FMPN 3027010948

INSURED'S COPY

Page 3 of 3

43 0080128

133

FARM
FO 707 31 11 14

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

FARM PROTECTION PLUS COVERAGE ENDORSEMENT

This endorsement modifies insurance provided under the following:

FARM PROPERTY COVERAGE FORM
FARM LIABILITY COVERAGE FORM

This coverage applies only to the location(s) and item(s) shown on Form 8110 (Additional Endorsement Information) of this policy.

The Farm Property Coverage Form is revised as follows:

A. Under Coverage C - Household Personal Property, 1. Covered Property, the last paragraph is deleted and replaced with the following:

The Limit of Insurance for household personal property at any "insured's" "dwelling" other than at an "insured location" is 30% of the Limit of Insurance for Coverage C, or \$3,000, whichever is greater. This limitation does not apply to household personal property:

- Moved from the "insured location" shown in the Declarations because the residence is being repaired, renovated or rebuilt and is not fit to live in or store property in; or
- Situated at an "insured's" residence while the "dwelling" at the "insured location" shown in the Declarations is under construction; or
- Situated in a newly acquired principal "dwelling" for 30 days immediately after you begin to move the property there.

B. Under Coverage C - Household Personal Property, 3. Special Limits, paragraphs a., c., d., g., h., i.1), i.2), and i.3), l., and m. are deleted and replaced by the following:

- \$3,000 on gold other than goldware, "money", platinum other than platinumware and silver other than silverware, stamps and stamp collections, bullion and bank notes.
- \$6,000 on watercraft, including their equipment, parts, accessories, furnishings, outboard engines or motors, and trailers;
- \$5,000 on trailers not used with watercraft or for farming operations;

- \$10,000 on "business property", other than landlord's furnishings, on the "insured location" in a covered structure under Coverage A or B;

- \$2,500 on "business property", other than landlord's furnishings, off the "insured location". However, this limit does not apply to loss to adaptable electronic apparatus as described in Special Limits of Insurance for Coverage C paragraphs l. and m. below.

In the event of loss by theft, misplacing or losing:

- \$5,000 on furs and garments trimmed with fur, jewelry, precious and semiprecious stones, and watches;
- \$10,000 on goldware, goldplated ware, silverware, silverplated ware, platinumware, platinum plated ware and pewterware; this property includes platedware, flatware, hollowware, tea sets, trays, trophies and the like; also other utilitarian items made of or containing silver, gold or pewter; and
- \$10,000 on firearms

- \$2,500 for loss to electronic apparatus, while in or upon a motor vehicle, other motorized land conveyance, or camp or home trailer, if the electronic apparatus is equipped to be operated by power from the electrical system of the vehicle, conveyance or trailer while retaining its capability of being operated by other sources of power. Electronic apparatus includes:

- Accessories and antennas; and
- Tapes, wires, records, discs and other media;

for use with the electronic apparatus; and

FO 707 31 11 14

FPK FMPN 3027010948

INSURED'S COPY

Page 1 of 3

43 0000129

134

FO 707 31 11 14

- m. \$2,500 for loss to electronic apparatus, while not in or upon a motor vehicle, other motorized land conveyance, or camp or home trailer, if the electronic apparatus:
- 1) is equipped to be operated by power from the electrical system of the vehicle, conveyance or trailer while retaining its capability of being operated by other sources of power;
 - 2) Is off the "insured location"; and
 - 3) Is used at any time or in any manner in connection with the operation of the farm or a "business".
- Electronic apparatus includes:
- 1) Accessories and antennas; and
 - 2) Tapes, wires, records, discs and other media
- for use with the electronic apparatus.
- C. Under **COVERAGE D – LOSS OF USE 2. FAIR RENTAL VALUE** is amended from 12 to 18 consecutive months.
- D. The Section B. **COVERAGE EXTENSIONS 1.a. Trees, Shrubs, Plants and Lawns** Limit of Insurance for any one tree, shrub, plant or lawn is amended from \$1,000 to \$2,000.
- E. The Section B. **COVERAGE EXTENSIONS 1.b. Refrigerated Products - Not Farm Personal Property** Limit of Insurance is amended from \$1,000 to \$2,000.
- F. The Section C. **ADDITIONAL COVERAGES 1.a. Debris Removal** is deleted and replaced with the following:
- 1.a. Debris Removal
 - 1) We will pay your expense to remove debris of Covered Property caused by or resulting from a Covered Cause of Loss that occurs during the policy period. The expenses will be paid only if they are reported to us in writing within 180 days of the date of direct physical loss or damage.
 - 2) Except as provided in C.1.a. 4) below, the most we will pay under this Additional Coverage is 25% of:
 - a) The amount we pay for the direct physical loss or damage to Covered Property; plus
 - b) The deductible in this policy applicable to that loss or damage.
 - 3) This Additional Coverage does not apply to costs to:
 - a) Extract "pollutants" from land or water;
 - b) Remove, restore or replace polluted land or water; or
 - c) Extract "pollutants" from Covered Property.
 - 4) Debris removal expense is included in the Limit of Insurance applying to the damaged property. But if:
 - a) The amount payable for the sum of direct physical loss or damage and debris removal expense exceeds the applicable Limit of Insurance; or
 - b) The debris removal expense exceeds the amount payable under the 25% limitation in C.1.a.2) above:

an additional 20% of the Limit of Insurance applying to the damaged property will be available to cover debris removal expense.
- G. The Section C. **ADDITIONAL COVERAGES 1.i. Landlord's Furnishings** Limit of Insurance is amended from \$5,000 to \$10,000.
- H. The Section C. **ADDITIONAL COVERAGES 2.a. Removal of Fallen Trees** Limit of Insurance is amended from \$2,500 to \$5,000. No more than \$2,000 of this limit will be available for the removal of any one tree.
- I. The Section C. **ADDITIONAL COVERAGES 2.b. Credit Cards and Fund Transfer Cards; Forgery; Counterfeit Currency** Limit of Insurance is amended from \$5,000 to \$10,000.
- J. The Section C. **ADDITIONAL COVERAGES 2.c. Loss Assessment** is amended from \$1,000 to \$5,000.
- K. The Section C. **ADDITIONAL COVERAGES 2. ADDITIONAL COVERAGES TO COVERAGES A, B, C AND D ONLY** is amended to add the following:
1. Backup From Sewers Or Drains Or Sump Pump Overflow
 - a. We will pay up to \$5,000 for direct physical loss or damage to Covered Property covered under Coverage A, B, C and for loss of use as covered under Coverage D, in the Farm Property Coverage Form, caused by or resulting from water which:
 - 1) Backs up through or overflows from a sewer or drain; or

Page 2 of 3

FPK FMPN 3027010948

INSURED'S COPY

FO 707 31 11 14

43 0000130

135

FO 707 31 11 14

- 2) Overflows from a sump, even if the overflow results from mechanical breakdown of a sump pump or its appurtenant equipment. However, we will not pay the cost of repairing or replacing a sump pump or its appurtenant equipment in the event of mechanical breakdown.
 - b. We will not pay:
 - 1) For loss or damage resulting from sewer back-up or sump pump overflow that occurs within 10 days before or 10 days after a "flood" on the "insured location";
 - 2) The cost of repairing or replacing a sump pump or its appurtenant equipment in the event of mechanical breakdown; or
 - 3) For loss or damage resulting from an insured's failure to keep the sump pump or its appurtenant equipment in proper working condition, or perform the routine maintenance or repair necessary to keep a sewer or drain free from obstructions.
 - c. With respect to the coverage provided by this endorsement, the following definition is added:
 "Flood" means a general and temporary condition of partial or complete inundation of normally dry land areas from:
 - 1) The unusual and rapid accumulation or runoff of surface waters from any source;
 - 2) The overflow of inland or tidal waters; or
 - 3) Waves, tides or tidal waves.
 - d. With respect to the coverage provided under this endorsement, the following do not apply:
 - 1) Mechanical Breakdown exclusionary provision 3.a.22(g) under Section D. COVERED CAUSES OF LOSS - SPECIAL; and
 - 2) Water exclusion 9.c. and d. under Section E. EXCLUSIONS; in the Farm Property Coverage Form.
 2. Lock Replacement
 If your keys to the Coverage A - Dwelling are lost or stolen, we will pay the cost of replacing the locks, up to \$2,500. You must notify us in writing within 72 hours after discovering the loss. No deductible applies to this coverage.
 3. Property In A Vault
 We will pay up to \$25,000 for loss of or damage to jewelry, silverware, goldware, platinumware and securities within a vault at a federal or state chartered bank, savings and loan association or thrift institution. This coverage is void with respect to property removed from the premises.
- The Farm Liability Coverage Form is revised as follows:
1. Watercraft Liability
 Under Section A. COVERAGES 2. EXCLUSIONS, exclusion I. Watercraft is revised as follows:
 All references in paragraph three to 50 horsepower are revised to 100 horsepower under 1) a), b), c), d), and e).
- The Farm Property and Farm Liability Coverage Forms are revised as follows:
1. The coverage limits provided by any coverage provision of this endorsement may not be combined with limits for the same coverage included on other endorsements within this policy.

All terms and conditions of this policy shall apply unless modified by this endorsement.

FO 707 31 11 14

FPK FMPN 3027010948

INSURED'S COPY

Page 3 of 3

43 0000131

136

FARM
FO 707 32 08 16

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

AGRICHoice® ELITE COVERAGE ENDORSEMENT

This endorsement modifies insurance provided under the following:

FARM PROPERTY COVERAGE FORM
FARM LIABILITY COVERAGE FORM

A. The following **FARM PROPERTY COVERAGES** are amended as follows:

1. The Section B. **COVERAGE EXTENSIONS**
2.b. **Additional and Replacement Farm Machinery, Vehicles and Equipment**
Newly Purchased Limit of Insurance is amended from \$250,000 to \$500,000.
2. The Section B. **COVERAGE EXTENSIONS**
3.a. **Rental Reimbursement on Farm Machinery, Implements and Equipment**
Limit of Insurance is amended from \$1,000 to \$2,500 for each day. The maximum Limit of Insurance for each loss is amended from \$10,000 to \$20,000.
3. The Section B. **COVERAGE EXTENSIONS**
3.b. **Rented or Leased Farm Machinery, Implements, Equipment and Vehicles**
Limit of Insurance is amended from \$100,000 to \$500,000 and the number of days this coverage extension will end after the date the property was rented or leased is amended from 60 to 90 days.
4. The Section B. **COVERAGE EXTENSIONS**
3.f. **Unharvested Grain or Crops** Limit of Insurance is amended from \$10,000 to \$25,000 for unharvested grain, and from \$5,000 to \$10,000 unharvested crops other than grain. Coverage is excess over other valid and collectible insurance.
5. The Section B. **COVERAGE EXTENSIONS**
5.a. **New Construction** Limit of Insurance is amended from \$250,000 to \$500,000 and the number of days elapsed since the first date of delivery of materials or supplies is amended from 60 to 90 days.
6. The Section C. **ADDITIONAL COVERAGES**
1.j. **Cost of Restoring Valuable Papers and Farm Operations Records** Limit of Insurance is amended from \$5,000 to \$10,000.
7. The Section C. **ADDITIONAL COVERAGES**
1.k. **Accidental Livestock Death** Limit of

Insurance is amended from \$1,500 to \$2,000 per head, and from \$7,500 to \$10,000 per occurrence.

8. The Section C. **ADDITIONAL COVERAGES**
1.i. **Borrowed Farm Machinery, Vehicles and Equipment** Limit of Insurance is amended from \$75,000 to \$100,000.

9. The Section C. **ADDITIONAL COVERAGES**
1. **ADDITIONAL COVERAGES TO COVERAGES A, B, C, D, E, F AND G** is amended to add the following:

a. **Money And Securities**

- 1) We will pay for loss of "money" and "securities" used in your "farming" operation while at a bank or savings institution, within your living quarters or the living quarters of any employee having use and custody of the property, at an "insured location", or in transit by direct route between any of these places, resulting directly from:
 - a) Theft, meaning any act of stealing;
 - b) Disappearance; or
 - c) Destruction.
- 2) In addition to the Limitations and Exclusions applicable to property coverage, we will not pay for loss:
 - a) Resulting from accounting or arithmetic errors or omissions;
 - b) Due to the giving or surrendering or property in any exchange or purchase;
 - c) Of property contained in any "money" operated device unless the amount deposited in it is recorded by continuous recording instrument in the device; or

FO 707 32 08 16

FPK FMPN 3027010948

INSURED'S COPY

Page 1 of 3

43 0000132

137

FO 707 32 08 16

- d) From an unattended motor vehicle.
- 3) All loss caused by one or more persons, or involving a single act or series of related acts, is considered one occurrence.
- 4) You must keep records of all "money" and "securities" so we can verify the amount of any loss.
- 5) The most we will pay under this Money and Securities Additional Coverage for loss in any one occurrence is \$10,000. This Limit of Insurance is additional insurance. No deductible applies to this coverage.
- b. **Forgery And Alteration**
 - 1) We will pay for loss resulting directly from forgery or alteration of, any check, draft, promissory note, bill of exchange or similar written promise of payment in "money" that you or your agent has issued, or that was issued by someone who impersonates you or your agent.
 - 2) If you are sued for refusing to pay the check, draft, promissory note, bill of exchange or similar written promise of payment in "money", on the basis that it has been forged or altered, and you have our written consent to defend against the suit, we will pay for any reasonable legal expenses that you incur in that defense.
 - 3) The most we will pay for any loss, including legal expenses, under this Additional Coverage is \$2,500. This Limit of Insurance is additional insurance. No deductible applies to this coverage.
- c. **Farm Office Lock Replacement**

If the keys to the Coverage G – Farm Office Building are lost or stolen, we will pay the cost of replacing the locks, up to \$1,000. You must notify us in writing within 72 hours after discovering the loss. No deductible applies to this coverage.
- 10. The Section C. **ADDITIONAL COVERAGES**
 - 3. **Damage in Course of Transit** limit is increased from \$10,000 to \$25,000.

- 11. The Section C. **ADDITIONAL COVERAGES**
 - 3. **ADDITIONAL COVERAGES TO COVERAGE E AND F ONLY** is amended to add the following:

Farm Computer and Farm Office Equipment Including Furnishings Coverage

Coverage applies to the following if used principally as aids in farm management:

- a. Electronic data processing equipment, laptop and portable computers, including related surge protection devices, component parts; and,
- b. Associated peripheral equipment that provides communication, including input and output functions such as printing, or auxiliary functions such as data transmission; and,
- c. Milk meters, transponders, identification modules and related electronic data processing equipment; and,
- d. Software, recording or storage media such as films, tapes, discs, drums and cells, only up to the amount to replace:
 - 1) as prepackaged software programs; or
 - 2) in unexposed or blank form, whichever is greater.

Farm office equipment including furnishings does not include household personal property.

The most we will pay for this **ADDITIONAL COVERAGE** is \$10,000 in any one occurrence. This limit of insurance applies in addition to any other applicable limit for this type of property shown in the declarations.

- 12. The Section C. **ADDITIONAL COVERAGES**
 - 4.a. **Extra Expense Limit of Insurance** is amended from \$5,000 to \$10,000.

- 2. The **Farm Liability Coverage Form** is revised as follows:

- 1. **Fire Legal Liability Coverage**

Section B. **ADDITIONAL COVERAGES** 3. **Fire Legal Liability Coverage** paragraph b. Limit of Liability is amended from \$100,000 to \$300,000.

Page 2 of 3

FPK FMPN 3027010948

INSURED'S COPY

FO 707 32 08 16

43 0000133

138

FO 707 32 08 16

C. Valuation

Unless otherwise stated in this endorsement, we will pay actual cash value at the time of loss. But, we will not pay more than the amount necessary for repair or replacement.

D. Deductible

With respect to coverage provided by this endorsement, and unless otherwise stated in this form, we will not pay for loss or damage in any one occurrence until the amount of loss or damage exceeds a deductible of \$500 for any

one of these coverages. We will then pay the amount of loss or damage in excess of \$500, up to the limit of insurance.

E. The Farm Property and Farm Liability Coverage Forms are revised as follows:

1. The coverage limits provided by any coverage provision of this endorsement may not be combined with limits for the same coverage included on other endorsements within this policy.

All terms and conditions of this policy apply unless modified by this endorsement.

FO 707 32 08 16

FPK FMPN 3027010948

INSURED'S COPY

Page 3 of 3

43 0000134

139

Filed: 3/18/2021 10:50 AM CST Haakon County, South Dakota 27CIV20-000019

- Page 433 -

AA 139

FARM
FO 707 35 11 14

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

FARM PREMIER PROTECTION PLUS COVERAGE ENDORSEMENT

This endorsement modifies insurance provided under the following:

FARM PROPERTY COVERAGE FORM
FARM LIABILITY COVERAGE FORM

This coverage applies only to the location(s) and item(s) shown on Form 8110 (Additional Endorsement Information) of this policy.

The Farm Property Coverage Form is revised as follows:

A. Under Coverage C - Household Personal Property, 1. Covered Property, the last paragraph is deleted and replaced with the following:

The Limit of Insurance for household personal property at any "insured's" "dwelling" other than at an "insured location" is 30% of the Limit of Insurance for Coverage C, or \$3,000, whichever is greater. This limitation does not apply to household personal property:

- a. Moved from the "insured location" shown in the Declarations because the residence is being repaired, renovated or rebuilt and is not fit to live in or store property in; or
- b. Situated at an "insured's" residence while the "dwelling" at the "insured location" shown in the Declarations is under construction; or
- c. Situated in a newly acquired principal "dwelling" for 60 days immediately after you begin to move the property there.

B. Under Coverage C - Household Personal Property, 3. Special Limits, paragraphs a., c., d., f., g., h., i.1), i.2), i.3), l., m., and n. are deleted and replaced by the following:

- a. \$3,000 on gold other than goldware, "money", platinum other than platinumware and silver other than silverware, stamps and stamp collections, bullion and bank notes.
- c. \$7,500 on watercraft, including their equipment, parts, accessories, furnishings, outboard engines or motors, and trailers;
- d. \$5,000 on trailers not used with watercraft nor for farming operations;
- f. \$2,500 for equine miscellaneous tack not specifically scheduled under Coverage E;

3. \$10,000 on "business property", other than landlord's furnishings, on the "insured location" in a covered structure under Coverage A or B;

7. \$2,500 on "business property", other than landlord's furnishings, off the "insured location". However, this limit does not apply to loss to adaptable electronic apparatus as described in Special Limits of Insurance for Coverage C paragraphs l. and m. below.

In the event of loss by theft, misplacing or losing:

- 1) \$10,000 on furs and garments trimmed with fur, jewelry, precious and semiprecious stones, and watches;
- 2) \$15,000 on goldware, goldplated ware, silverware, silverplated ware, platinumware, platinum plated ware and pewterware; this property includes platedware, flatware, hollowware, tea sets, trays, trophies and the like; also other utilitarian items made of or containing silver, gold or pewter; and
- 3) \$10,000 on firearms

4. \$3,000 for loss to electronic apparatus, while in or upon a motor vehicle, other motorized land conveyance, or camp or home trailer, if the electronic apparatus is equipped to be operated by power from the electrical system of the vehicle, conveyance or trailer while retaining its capability of being operated by other sources of power. Electronic apparatus includes:

- 1) Accessories and antennas; and
- 2) Tapes, wires, records, discs and other media;

for use with the electronic apparatus.

FO 707 35 11 14

FPK FMPN 3027010948

INSURED'S POLICY

Page 1 of 3

43 0000135

140

FO 707 35 11 14

- m. \$3,000 for loss to electronic apparatus, while not in or upon a motor vehicle, other motorized land conveyance, or camp or home trailer, if the electronic apparatus:
 - 1) Is equipped to be operated by power from the electrical system of the vehicle, conveyance or trailer while retaining its capability of being operated by other sources of power;
 - 2) Is off the "Insured location"; and
 - 3) Is used at any time or in any manner in connection with the operation of the farm or a "business".Electronic apparatus includes:
 - 1) Accessories and antennas; and
 - 2) Tapes, wires, records, discs and other mediafor use with the electronic apparatus.
 - n. \$3,000 for vehicle (including recreational vehicle) parts, equipment and accessories not currently attached to the vehicle, while the parts, equipment and accessories are stored on the Insured location.
- C. Under **COVERAGE D – LOSS OF USE 2. FAIR RENTAL VALUE** is amended from 12 to 24 consecutive months.
- D. The Section B. **COVERAGE EXTENSIONS 1.a. Trees, Shrubs, Plants and Lawns** Limit of Insurance for any one tree, shrub, plant or lawn is amended from \$1,000 to \$2,000.
- E. The Section B. **COVERAGE EXTENSIONS 1.b. Refrigerated Products - Not Farm Personal Property** Limit of Insurance is amended from \$1,000 to \$2,000.
- F. The Section C. **ADDITIONAL COVERAGES 1.a. Debris Removal** is deleted and replaced with the following:
- 1.a. **Debris Removal**
 - 1) We will pay your expense to remove debris of Covered Property caused by or resulting from a Covered Cause of Loss that occurs during the policy period. The expenses will be paid only if they are reported to us in writing within 180 days of the date of direct physical loss or damage.
 - 2) Except as provided in C.1.a.4) below, the most we will pay under this Additional Coverage is 25% of:
 - a) The amount we pay for the direct physical loss or damage to Covered Property; plus
 - b) The deductible in this policy applicable to that loss or damage.
 - 3) This Additional Coverage does not apply to costs to:
 - a) Extract "pollutants" from land or water;
 - b) Remove, restore or replace polluted land or water; or
 - c) Extract "pollutants" from Covered Property.
 - 4) Debris removal expense is included in the Limit of Insurance applying to the damaged property. But if:
 - a) The amount payable for the sum of direct physical loss or damage and debris removal expense exceeds the applicable Limit of Insurance; or
 - b) The debris removal expense exceeds the amount payable under the 25% limitation in C.1.a.(2) above:
 - an additional 25% of the Limit of Insurance applying to the damaged property will be available to cover debris removal expense.
- G. The Section C. **ADDITIONAL COVERAGES 1.d. Fire Department Service Charge** is amended from \$2,500 to \$3,500.
- H. The Section C. **ADDITIONAL COVERAGES 1.i. Landlord's Furnishings** Limit of Insurance is amended from \$5,000 to \$10,000.
- I. The Section C. **ADDITIONAL COVERAGES 1.n. Damage to Property of Others** is amended from \$5,000 to \$7,500.
- J. The Section C. **ADDITIONAL COVERAGES 2.a. Removal of Fallen Trees** Limit of Insurance is amended from \$2,500 to \$5,000. No more than \$2,000 of this limit will be available for the removal of any one tree.
- K. The Section C. **ADDITIONAL COVERAGES 2.b. Credit Cards and Fund Transfer Cards; Forgery; Counterfeit Currency** Limit of Insurance is amended from \$5,000 to \$10,000.
- L. The Section C. **ADDITIONAL COVERAGES 2.c. Loss Assessment** is amended from \$1,000 to \$10,000.
- M. The Section C. **ADDITIONAL COVERAGES 2. ADDITIONAL COVERAGES TO COVERAGES A, B, C, AND D ONLY** is amended to add the following:

Page 2 of 3

FPK FMPN 3027010948

INSURED'S COPY

FO 707 35 11 14

43 0000136

141

FO 707 35 11 14

1. **Backup From Sewers Or Drains Or Sump Pump Overflow**
 - a. We will pay up to \$7,500 for direct physical loss or damage to Covered Property covered under Coverage A, B, C and for loss of use as covered under Coverage D, in the Farm Property Coverage Form, caused by or resulting from water which:
 - 1) Backs up through or overflows from a sewer or drain; or
 - 2) Overflows from a sump, even if the overflow results from mechanical breakdown of a sump pump or its appurtenant equipment. However, we will not pay the cost of repairing or replacing a sump pump or its appurtenant equipment in the event of mechanical breakdown.
 - b. We will not pay:
 - 1) For loss or damage resulting from sewer back-up or sump pump overflow that occurs within 10 days before or 10 days after a "flood" on the "insured location";
 - 2) The cost of repairing or replacing a sump pump or its appurtenant equipment in the event of mechanical breakdown; or
 - 3) For loss or damage resulting from an insured's failure to keep the sump pump or its appurtenant equipment in proper working condition, or perform the routine maintenance or repair necessary to keep a sewer or drain free from obstructions.
 - c. With respect to the coverage provided by this endorsement, the following definition is added:

"Flood" means a general and temporary condition of partial or complete inundation of normally dry land areas from:

 - 1) The unusual and rapid accumulation or runoff of surface waters from any source;
 - 2) The overflow of inland or tidal waters; or
 - 3) Waves, tides or tidal waves.

- d. With respect to the coverage provided under this endorsement, the following do not apply:
 - 1) Mechanical Breakdown exclusionary provision 3.a.22)g) under Section D. **COVERED CAUSES OF LOSS - SPECIAL**; and
 - 2) Water exclusion 9.c. and d. under Section E. **EXCLUSIONS**;

in the Farm Property Coverage Form.
2. **Lock Replacement**

If your keys to the Coverage A - Dwelling are lost or stolen, we will pay the cost of replacing the locks, up to \$2,500. You must notify us in writing within 72 hours after discovering the loss. No deductible applies to this coverage.
3. **Property in A Vault**

We will pay up to \$50,000 for loss of or damage to jewelry, silverware, goldware, platinumware and securities within a vault at a federal or state chartered bank, savings and loan association or thrift institution. This coverage is void with respect to property removed from the premises.

The Farm Liability Coverage Form is revised as follows:

1. **Watercraft Liability**

Under Section A. **COVERAGES 2. EXCLUSIONS**, exclusion I. **Watercraft** is revised as follows:

All references in paragraph three to 50 horsepower are revised to 100 horsepower under i) a), b), c), d), and e).
2. **Damage to Property of Others**

Under Section 8. **ADDITIONAL COVERAGES 2. Damage To Property Of Others**, the limit is amended from \$2,500 to \$5,000.
3. **Loss Assessment**

Under Section B. **ADDITIONAL COVERAGES 5. Loss Assessment**, the limit is amended from \$5,000 to \$10,000.

The Farm Property and Farm Liability Coverage Forms are revised as follows:

- A. The coverage limits provided by any coverage provision of this endorsement may not be combined with limits for the same coverage included on other endorsements within this policy.

All terms and conditions of this policy apply unless modified by this endorsement.

FO 707 35 11 14

FPK FMPN 3027010348

INSURED'S COPY

Page 3 of 3

43 0000137

FARM
FO 708 40 01 16

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

SOUTH DAKOTA AMENDATORY ENDORSEMENT

This endorsement modifies insurance provided under the following:

FARM PROPERTY COVERAGE FORM
FARM LIABILITY COVERAGE FORM

The term spouse includes:

- a. husband or wife; or
- b. if unmarried, a:
 - 1) civil partner by Civil Union or Registered Domestic Partnership filed and recognized by the state; or
 - 2) domestic partner.
Domestic partner means a person living with you and sharing a common domestic life and whose relationship resembles a mutually exclusive partnership such as that of a marriage and:
 - a) is at least 18 years of age and capable of entering into a legal contract;
 - b) is not a "Relative"; and
 - c) shares with you financial interdependence and common residence. Evidence of such includes, but is not limited to:
 - i. joint domestic responsibility for the maintenance of the household;
 - ii. having joint financial obligations, resources or assets;
 - iii. documents such as a driver's license, tax returns or bills showing a common address for both parties;
 - iv. both parties receiving mail at the same address;
 - v. a declaration of domestic partnership with that person or similar declaration about that person with an employer or government entity.

A domestic partner does not include more than one person, a roommate, or a housemate whether sharing expenses equally or not, or one who pays rent to the policyholder.

The Farm Property Coverage Form is modified as follows:

FO 708 40 01 16

FPK FMPN 3027010948

INSURED'S COPY

A. Paragraph d. under Section B. 3. **EXTENSIONS OF COVERAGE E AND COVERAGE F** is replaced by the following:

d. **Arson or Crime Information Reward**

- 1) In the event that a covered loss was the result of an act of arson, vandalism or theft, we will pay up to \$2,500 reward to anyone, other than paid investigators, who gives legal authorities information that leads to the conviction of anyone who committed such arson, vandalism or theft.
- 2) This payment is the most we will pay in any one occurrence, regardless of the number of persons providing information or convicted of arson, vandalism or theft.
- 3) The limit for this Arson or Crime Information Reward Extension of Coverage is in addition to the Limits of Insurance.
- 4) No deductible applies to this Arson or Crime Information Reward Extension of Coverage.

B. Paragraph a. 22) f) under Section D. 3. **COVERED CAUSES OF LOSS – SPECIAL** is replaced by the following:

- f) Nesting or infestation by one or more birds, vermin, rodents, insects or any other animals; or the discharge or release of waste and bodily fluids by one or more birds, vermin, rodents, insects or any other animals; unless sudden and accidental.

C. Under the Valuation Loss Conditions in Section I.1. **COVERAGE A – DWELLINGS**, 2. **COVERAGE B – OTHER PRIVATE STRUCTURES APPURTENANT TO DWELLINGS**, and 7. **COVERAGE G – FARM BUILDINGS AND STRUCTURES**, the following is added:

1. **Valued Policy Provision**

Page 1 of 4

43 0000138

143

FO 708 40 01 16

When this policy insures any real property in South Dakota against loss by fire, tornado or lightning and the property insured is wholly destroyed by fire, tornado or lightning, without criminal fault on the part of you or your assignee, the amount of the insurance written on such real property shall be taken conclusively to be the true value of the property insured and the true amount of loss and measure of damages, subject to the exceptions and conditions in Paragraphs A.2., A.3., A.4. and A.5. below.

2. The Valued Policy Provision, Paragraph A.1. above, does not apply to a fire loss which occurs less than 90 days after:
 - a. The policy was initially issued; or
 - b. The amount of insurance on the destroyed property was increased by 25% or more at the "insured's" request.

However, the Valued Policy Provision applies if the amount of insurance was increased:

- 1) In accordance with an inflation adjustment option; or
- 2) As a consequence of upgrading coverage to a replacement cost basis, provided there is a written agreement between you and us that the policy will be written on a valued basis.
3. Property in the process of being newly constructed for the purpose of serving as a residence, other than property covered by a builders risk policy, shall be valued and settled according to the terms and conditions of the policy for valuation of that portion of the construction completed at the time of the fire, tornado or lightning loss.
4. The Valued Policy Provision, Paragraph A.1. above, does not apply to any claim for loss to a covered appurtenant structure, unless a value for the covered appurtenant structure is specifically stated in the policy Declarations prior to the loss. If the Valued Policy Provision does not apply, any claim for loss to a covered appurtenant structure will be settled on a replacement cost basis or on an actual cash value basis, depending on the policy provisions applicable to the appurtenant structure.
5. If two or more policies are written upon the same property interest and cover the fire, tornado or lightning loss, each insurer will pay only that proportion of the cost of the loss that the limit of liability under its policy

bears to the total amount of insurance covering the loss.

5. The Valued Policy Provision, Paragraph A.1. above, does not apply to any claim for total loss to any building on which the insurance provided under **COVERAGE G – FARM BUILDINGS AND STRUCTURES** is modified by the **COVERAGE G – BLANKET FARM BUILDINGS AND STRUCTURES COVERAGE ENDORSEMENT**. We will settle any claim for total loss to such a building at replacement cost or actual cash value in accordance with the applicable Coverage G Loss Condition in the Section I. Loss Settlement Conditions of this Coverage Form.

- D. The Section J.2. Appraisal Farm Property Condition is replaced by the following:

2 Appraisal

If we and you disagree on the value of the property or the amount of loss, both parties may agree to an appraisal. However, an appraisal will be made only if both we and you agree, voluntarily, to have the loss appraised. If both parties so agree, then each party will select a competent and impartial appraiser.

The two appraisers will select an umpire. If they cannot agree, either may request that selection be made by a Judge of a court having jurisdiction. The appraisers will state separately the value of the property and the amount of loss. If they fail to agree, they will submit their differences to the umpire. Any outcome of the appraisal process will not be binding on either party. Each party will:

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

If we submit to an appraisal, we will retain our right to deny the claim.

- E. The Section J.5. Legal Action Against Us Farm Property Condition is replaced by the following:

5. Legal Action Against Us

No one may bring a legal action against us under a coverage form to which this condition applies, unless the action is brought within six years after the date on which the direct physical loss or damage occurred.

Page 2 of 4

FO 708 40 01 16

FPK FMPN 3027010948

INSURED'S COPY

43 0000139

FO 708 40 01 16

F. Paragraph b. of the Section J.6. Loss Payment Farm Property Condition is replaced by the following:

- b. The cost to repair, rebuild or replace does not include:
- 1) The increased cost attributable to enforcement of any ordinance or law regulating the construction, use or repair of any property; or
 - 2) Loss or damage arising out of or resulting from obsolescence, aesthetic differences, or other consequential loss to that part of the property not directly damaged by a covered cause of loss.

The Farm Liability Coverage Form is modified as follows:

A. The following exclusion is added to:

1. Paragraph 2. EXCLUSIONS of Section A – COVERAGES, COVERAGE H – BODILY INJURY AND PROPERTY DAMAGE LIABILITY in the Farm Liability Coverage Form:

2. EXCLUSIONS

This insurance does not apply to:

- ii. Access Or Disclosure Of Confidential Or Personal Information And Data-related Liability

Damages arising out of:

- 1) Any access to or disclosure of any person's or organization's confidential or personal information, including patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of nonpublic information; or
- 2) The loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate electronic data.

This exclusion applies even if damages are claimed for notification costs, credit monitoring expenses, forensic expenses, public relations expenses or any other loss, cost or expense incurred by you or others arising out of that which is described in Paragraph 1) or 2) above.

However, unless Paragraph 1) above applies, this exclusion does not apply to damages because of "bodily injury".

As used in this exclusion, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

- B. The following exclusion is added to Paragraph 2.a. EXCLUSIONS of Section A – COVERAGES, COVERAGE I – PERSONAL AND ADVERTISING INJURY LIABILITY in the Farm Liability Coverage Form:

This insurance does not apply to:

- a. "Personal and advertising injury":

25) Access Or Disclosure Of Confidential Or Personal Information

Arising out of any access to or disclosure of any person's or organization's confidential or personal information, including patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of nonpublic information.

This exclusion applies even if damages are claimed for notification costs, credit monitoring expenses, forensic expenses, public relations expenses or any other loss, cost or expense incurred by you or others arising out of any access to or disclosure of any person's or organization's confidential or personal information.

- C. The Section E.4. Legal Action Against Us Farm Liability Condition is replaced by the following:

Legal Action Against Us

No person or organization has a right under this Coverage Form to join us as a party or otherwise bring us into a "suit" asking for damages from an "insured".

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an "insured"; but we will not be liable for damages that are not payable under the terms of this Coverage Form or that are in excess of the applicable Limit of Insurance. An agreed settlement means a settlement and release of liability signed by us, the "insured" and the claimant or the claimant's legal representative.

FO 708 40 01 16

FPK FMPN 3027010948

INSURED'S COPY

Page 3 of 4

43 0000140

145

FO 708 40 01 16

All terms and conditions of this policy apply unless modified by this endorsement.

Includes copyrighted material of Insurance Services Office, Inc., with its permission.
© ISO Properties, Inc., 2014

Page 4 of 4

FPK FMPN 3027010948

INSURED'S COPY

FO 708 40 01 16

43 0000141

146

Filed: 3/18/2021 10:50 AM CST Haakon County, South Dakota 27CIV20-000019

- Page 440 -

AA 146

FARM
FO 708 60 02 14

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

POLICY CHANGES

This endorsement modifies insurance provided under the following:

FARM PROPERTY COVERAGE FORM
FARM LIABILITY COVERAGE FORM

The **Farm Property Coverage Form** is modified as follows:

- A. The following is added to item b. under 2. **PROPERTY NOT COVERED** in Section A. **COVERAGES** for **COVERAGE E – SCHEDULED FARM PERSONAL PROPERTY**:

- 3) "Recreational Vehicles" not licensed or required to be licensed for public road use and used primarily for "farming" purposes or primarily to service the farm. A vehicle is not licensed for public road use within the meaning of this provision if it is licensed as an implement of husbandry and used exclusively on an "insured location".

- B. Paragraph 18) under Section D.3. **COVERED CAUSES OF LOSS – SPECIAL** section a. is replaced by the following:

- 18) Collision, upset or overturn of farm machinery, implements or equipment, to the extent of any loss of or damage to the tires or inner tubes of such machinery, implements or equipment. But we will pay for the loss of or damage to the tires or inner tubes if the same accident caused other covered loss to the same machinery, implements or equipment.

Covered farm machinery, implements or equipment does not include farm machinery, implements or equipment being transported by a common or contract carrier, except to the extent that coverage is provided under the Coverage E or Coverage F Coverage Extension for Property in the Custody of a Common or Contract Carrier.

The **Farm Liability Coverage Form** is modified as follows:

- A. Exceptions c) and e) under A. **COVERAGES**, 2. **EXCLUSIONS**, exclusion k. are deleted and replaced with the following:

- c) Parking an "auto", motorcycle, motorized bicycle, tricycle or other "recreational

vehicle" on, or on the ways next to, premises you own or rent, provided the vehicle is not owned by, or rented or loaned to you or any insured. For purposes of this exception only, "recreational vehicle" as defined does not require ownership by the insured;

- e) A "recreational vehicle" not owned by an insured that is maintained, used, operated by or entrusted to others by any insured. For purposes of this exception only, "recreational vehicle" as defined does not require ownership by the insured;

- B. Exclusion c. under **COVERAGE J – MEDICAL PAYMENTS** is deleted and replaced with the following:

Any "farm employee" or other person engaged in work usual or incidental to the maintenance or use of the "insured location" as a farm.

The only exceptions to this exclusion are in "occurrences" of "bodily injury" sustained by a "residence employee" or by a person on or between "insured locations" in a neighborly exchange of assistance for which no insured is obligated to pay any money.

- C. Paragraph c. under 3. **Fire Legal Liability Coverage** of the Section B. **ADDITIONAL COVERAGES** is deleted and replaced with the following:

- a. Under **COVERAGE H – BODILY INJURY AND PROPERTY DAMAGE LIABILITY**, 2. **EXCLUSIONS**, Exclusion w. paragraph 2) does not apply to this Additional Coverage.

- D. Paragraph 2) under 2. a. of Section C. **WHO IS AN INSURED** is deleted and replaced with the following:

- 2) "Property damage" to property:

- a) Owned, occupied or used by; or
b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by:

FO 708 60 02 14

FPK FMPN 3027010948

INSURED'S COPY

Page 1 of 2

43 0030142

147

FO 708 60 02 14

you, any of your "farm employees", your
"residence employees", any partner or
member (if you are a partnership or joint
venture), any member or manager (if you

are a limited liability company) or any
"executive officer" and director.

All terms and conditions of this policy apply unless modified by this endorsement.

Includes copyrighted material of Insurance Services Office, Inc. 2006, with its permission.

Page 2 of 2

FPK FMPN 3027010946

INSURED'S COPY

FO 708 60 02 14

43 0000143

148

FARM
FO 708 99 06 06

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CHANGES IN COVERAGE FORMS – MOBILE EQUIPMENT SUBJECT TO MOTOR VEHICLE INSURANCE LAWS

This endorsement modifies insurance provided under the following:

FARM LIABILITY COVERAGE FORM

- A. Exception 2)e) to the Section A.2.k. Aircraft, Auto, Motorcycle, Or Motorized Bicycle, Tricycle Or Other Recreational Vehicle Exclusion is replaced by the following:

This exclusion does not apply to:

- e) "Bodily injury" or "property damage" arising out of:
 - i) The operation of machinery or equipment that is attached to, or part of, a land vehicle that would qualify under the definition of "mobile equipment" if it were not subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged; or
 - ii) The operation of any of the machinery or equipment listed in Paragraph f. 2) or f. 3) of the section F definition 20. "mobile equipment"

- B. Section F. Definitions is amended as follows:

- 1. The definition of 2. "Auto" is replaced by the following:

"Auto" means:

- a. A land motor vehicle, trailer or semi-trailer designed for travel on public roads, including any attached machinery or equipment; or
- b. Any other land vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged.

However, "auto" does not include "mobile equipment".

- 2. The following is added to definition 20. "Mobile equipment"

However, "mobile equipment" does not include land vehicles that are subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged. Land vehicles subject to a compulsory or financial responsibility law or other motor vehicle insurance law are considered "autos".

All terms and conditions of this policy apply unless modified by this endorsement.

FO 708 99 06 06

FPK FMPN 3027010940

INSURED'S COPY

Page 1 of 1

43 0000144

149

FARM
FP 702 27 07 12

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EQUIPMENT BREAKDOWN COVERAGE ENDORSEMENT

This endorsement modifies insurance provided under the following:

FARM PROPERTY COVERAGE FORM

The following is added to Section C. ADDITIONAL COVERAGES, 4. ADDITIONAL COVERAGE TO COVERAGES E, F AND G ONLY:

The term COVERED CAUSE OF LOSS includes the Additional Coverage Equipment Breakdown as defined and limited in this endorsement. This Additional Coverage applies only to property covered under **COVERAGE G – FARM BUILDINGS AND STRUCTURES** and irrigation equipment and "vehicle-mounted (GPS) global positioning systems" as defined and limited in this endorsement, which are covered under **COVERAGE E – SCHEDULED FARM PERSONAL PROPERTY**.

1. We will pay for direct physical damage to Covered Property, as indicated in the Declarations for **COVERAGE G** and covered irrigation equipment and "vehicle-mounted (GPS) global positioning systems" for **COVERAGE E** as defined and limited herein, that is a direct result of an "accident".
2. The following coverages also apply to the direct result of an "accident". These coverages do not provide additional amounts of insurance.
 - a. **Expediting Expenses**

With respect to your damaged Covered Property, we will pay up to \$50,000 for the reasonable extra cost to:

 - 1) Make temporary repairs; and
 - 2) Expedite permanent repairs or replacement.
 - b. **Loss of Income and/or Extra Expense**

We will pay up to \$50,000 for:

 - 1) Your actual loss of "farming operations income" during the "period of restoration";
 - 2) The actual and necessary expenses you incur to continue your "farming" operations during the "period of restoration", that are over and above the normal expenses you would have incurred to operate your "farming" operation during the same period had no

"accident" occurred; and

- 3) Actual and necessary expenses you incur to repair or replace damaged property, but only to the extent that such expenses reduce the amount of loss that otherwise would have been payable under this endorsement.

We will consider the actual experience of your business before the "accident" and the probable experience you would have had without the "accident" in determining the amount of our payment.

c. **Hazardous Substance**

We will pay up to \$50,000 for the additional cost to repair or replace Covered Property because of contamination by a "hazardous substance". This includes the additional expenses to clean up or dispose of such property.

Additional costs mean those beyond what would have been required had no hazardous substance been involved.

d. **CFC Refrigerants**

We will pay for the additional cost to repair or replace Covered Property because of the use or presence of a refrigerant containing CFC (chlorofluorocarbon) substances. This means the additional expense to do the least expensive of the following:

- 1) Repair the damaged property and replace any lost CFC refrigerant;
- 2) Repair the damaged property, retrofit the system to accept a non-CFC refrigerant and charge the system with a non-CFC refrigerant; or
- 3) Replace the system with one using a

FP 702 27 07 12

FPK FMPN 3027010948

INSURED'S COPY

Page 1 of 6

43 0000145

150

FP 702 27 07 12

non-CFC refrigerant.

Additional costs mean those beyond what would have been required had no CFC refrigerant been involved.

e. Spoilage

1) We will pay:

- a) For physical damage to "perishable goods" due to spoilage;
- b) For physical damage to "perishable goods" due to contamination from the release of refrigerant, including but not limited to ammonia;
- c) Any necessary expenses you incur to reduce the amount of loss under this coverage to the extent that they do not exceed the amount of loss that otherwise would have been payable under this coverage.

2) If you are unable to replace the "perishable goods" before its anticipated sale, the amount of our payment will be determined on the basis of the sales price of the "perishable goods" at the time of the "accident", less discounts and expenses you otherwise would have had. Otherwise our payment will be determined in accordance with the applicable Loss Settlement Condition.

The most we will pay for loss, damage or expense under this coverage is \$50,000.

f. Data Restoration

We will pay for your reasonable and necessary cost to research, replace and restore lost "data".

The most we will pay for loss or expense under this coverage, including actual loss of "farming operations income" you sustain and necessary extra expense you incur from the disruption of "farming" operations is \$50,000.

g. Service Interruption

We will pay up to \$50,000 for Loss of Income and/or Extra Expense or Spoilage caused by an "accident" to equipment that is owned by a utility, landlord, a landlord's utility or other supplier who provides you with any of the following services: electrical power, waste disposal, air conditioning, refrigeration, heating, natural gas, compressed air, water, steam, internet access, telecommunications services, wide area networks or "data" transmission. The equipment must meet the definition of "covered equipment", except that

it is not Covered Property.

Service Interruption coverage for Loss of Income will not apply unless the failure or disruption of service exceeds 24 hours immediately following the "accident". If the interruption exceeds 24 hours, coverage will begin at the time of the interruption.

3. Additional Exclusions

All exclusions in the **Farm Property Coverage Form** apply except as modified below and to the extent that coverage is specifically provided by this Equipment Breakdown Coverage Endorsement:

a. The following exclusions are modified:

1) When BASIC or BROAD is shown in the Declarations for Covered Causes of Loss, as respects this endorsement only, the following is added:

Depletion, deterioration, corrosion, erosion, wear and tear, or other gradually developing conditions. But if an "accident" results, we will pay for the resulting loss, damage or expense caused by that "accident".

2) When SPECIAL is shown in the Declarations for Covered Causes of Loss, as respects this endorsement only, the second to last paragraph of Exclusion a. 22) is deleted and replaced with the following:

But if an excluded cause of loss that is listed in 22) a) through 22) j) results in an "accident", we will pay for the loss, damage or expense caused by that "accident".

b. The following exclusions are added:

1) We will not pay under this Equipment Breakdown Coverage Endorsement for loss, damage or expense caused by or resulting from:

a) Any of the following tests:

A hydrostatic, pneumatic or gas pressure test of any boiler or pressure vessel, or an insulation breakdown test of any type of electrical equipment;

b) Any defect, programming error, programming limitation, computer virus, malicious code,

Page 2 of 6

FPK FMPN 3027010948

INSURED'S COPY

FP 702 27 07 12

43 0000146

151

FP 702 27 07 12

- loss of "data", loss of access, loss of use, loss of functionality or other condition within or involving "data" or "media" of any kind. But if an "accident" results, we will pay for the resulting loss, damage or expense.
- c) Fire (including fire resulting from an "accident"); or water or other means used to extinguish a fire; lightning; windstorm or hail; explosion (except as specifically provided in 7) a.3) below; smoke; aircraft or vehicles; riot or civil commotion; vandalism; sprinkler leakage; elevator collision; breakage of glass; falling objects; weight of snow, ice or sleet; freezing (caused by cold weather); collapse; molten material; flood; earth movement or water damage (including water damage resulting from an "accident").
 - d) Misalignment, miscalibration, tripping off-line or any condition which can be corrected by resetting, tightening, adjusting or cleaning, or by the performance of maintenance. But if an "accident" results, we will pay for the resulting loss, damage or expense caused by that "accident".
- 2) With respect to Income Loss, Extra Expense and Service Interruption coverages we will not pay for:
 - a) Loss caused by your failure to use due diligence and dispatch and all reasonable means to resume "farming" operations; or
 - b) Any increase in loss resulting from an agreement between you and your customer or supplier.
 - 3) We will not pay for any loss or damage to Covered Property caused by or resulting from an "accident" to a "vehicle-mounted (GPS) global positioning system" except for the loss or damage to:
 - a) The "vehicle-mounted (GPS) global positioning system" itself; and
 - b) The steering assemblies; servo-motors; or mixing, metering or hydraulic assemblies directly controlled by the "vehicle-mounted (GPS) global positioning system".
 - 4) We will not pay for loss, damage or expense caused directly or indirectly by the following, whether or not caused by or resulting from an "accident": Any mold, fungus, mildew or yeast, including any spores or toxins produced by or emanating from such mold, fungus, mildew or yeast. This includes, but is not limited to, costs arising from clean up, removal, or abatement of such mold, fungus, mildew or yeast, spores or toxins. However, this exclusion does not apply to spoilage of "farm personal property" that is "perishable goods", to the extent that spoilage is covered under Spoilage coverage.
 - 5) a) We will not pay for any direct loss or damage to:
 - i) Growing crops;
 - ii) "Livestock", "poultry" or other animals; or
 - iii) Alcohol stills.
 - b) We will not pay for any indirect loss or damage, or expense as a result of loss to:
 - i) Growing crops;
 - ii) "Livestock", "poultry" or other animals; or
 - iii) Alcohol stills.
- 4. Limits of Insurance
The most we will pay for loss or damage under this Equipment Breakdown Coverage is the applicable Limit of Insurance shown in the Declarations. Coverage provided under this endorsement does not provide an additional amount of insurance.
 - 5. Deductible
We will not pay for loss, damage or expense in any "one accident" until the amount of the covered loss, damage or expense exceeds the deductible amount indicated below. We will then pay the amount of loss, damage or expense in excess of the applicable deductible amount, subject to the applicable Limit of Insurance, after any deduction required by the Coinsurance provision.
The deductibles that apply to this Equipment Breakdown Coverage are:
 - a. \$5,000 for deep well pumps or any components within the well; and
 - b. \$1,000 for all other farm buildings.

FP 702 27 07 12

FPK FMPN 3027010948

INSURED'S 11/17

Page 3 of 6

43 0000147

FP 702 27 07 12

structures, equipment, and irrigation equipment;

unless higher deductibles are stated in the Declarations for the buildings, structures or equipment.

6. Additional Conditions

a. Suspension

Whenever "covered equipment" is found to be in, or exposed to a dangerous condition, any of our representatives may immediately suspend the insurance against loss from an "accident" to that "covered equipment". This can be done by mailing or delivering a written notice of suspension to:

- 1) Your last known address; or
- 2) The address where the "covered equipment" is located.

Once suspended in this way, your insurance can be reinstated only by an endorsement for that "covered equipment". If we suspend your insurance, you will get a pro rata refund of premium for that "covered farm equipment" for the period of suspension. But the suspension will be effective even if we have not yet made or offered a refund.

b. Jurisdictional Inspections

If any property that is "covered equipment" under this Equipment Breakdown Coverage Endorsement requires inspection to comply with state or municipal boiler and pressure vessel regulations, we agree to perform such inspection on your behalf. We do not warrant that conditions are safe or healthful.

c. Environmental, Safety and Efficiency Improvements

If "covered equipment" requires replacement due to an "accident", we will pay your additional cost to replace with equipment that is better for the environment, safer or more efficient than the equipment being replaced. However, we will not pay more than 125% of what the cost would have been to repair or replace with like kind and quality. This condition does not increase any applicable limits. This condition applies only to property covered at replacement cost.

7. Additional Definitions

With respect to this Equipment Breakdown Coverage Endorsement only, the following definitions apply in addition to those in Section L.

DEFINITIONS:

a. "Accident" means a fortuitous event that causes direct physical damage to "covered equipment". The event must be one of the following:

- 1) Mechanical breakdown, including rupture or bursting caused by centrifugal force;
- 2) Artificially generated electrical current, including electric arcing, that disturbs electrical devices, appliances or wires;
- 3) Explosion of steam boilers, steam pipes, steam engines or steam turbines owned or leased by you, or operated under your control;
- 4) Loss or damage to steam boilers, steam pipes, steam engines or steam turbines caused by or resulting from any condition or event inside such equipment; or
- 5) Loss or damage to hot water boilers or other water heating equipment caused by or resulting from any condition or event inside such boilers or equipment.

b. "Covered equipment"

1) "Covered equipment" means Covered Property under **COVERAGE G – FARM BUILDINGS AND STRUCTURES** and irrigation equipment and "vehicle- mounted (GPS) global positioning systems" as defined and limited herein, which are covered under **COVERAGE E – SCHEDULED FARM PERSONAL PROPERTY**:

- a) That generates, transmits or utilizes energy; or
 - b) Which, during normal usage, operates under vacuum or pressure, other than the weight of its contents.
- 2) None of the following is "covered equipment":
- a) Structure, foundation, cabinet, compartment or air supported structure or building;
 - b) Insulating or refractory material;
 - c) Sewer piping, buried vessels or piping, or piping forming a part of a sprinkler or fire

Page 4 of 6

FPK FMPN 3027010948

INSURED'S COPY

FP 702 27 07 12

43 0000148

153

FP 702 27 07 12

- suppression system;
- d) Water piping other than boiler feedwater piping, boiler condensate return piping or water piping forming a part of a refrigerating or air conditioning system;
- e) Satellite, spacecraft or any equipment mounted on a satellite or spacecraft;
- f) Dragline, excavation or construction equipment;
- g) Equipment manufactured by you for sale;
- h) Equipment used to service the "dwelling", its grounds or structures appurtenant to it, unless the equipment also services property covered under COVERAGE G;
- i) "Vehicle" or any equipment mounted on a "vehicle".
However, equipment that is:
 - i) Mounted on wheels or a trailer in order to make it transportable, not used to drive or steer such wheels or trailer and is stationary and in use at the "insured location" at the time of the "accident"; or
 - ii) Stationary, permanently installed at the "insured location" and that receives electrical power from an external power source; or
 - iii) A "vehicle-mounted (GPS) globe: positioning system" used in your "farming" operation will not be considered to be a "vehicle" or equipment mounted on a "vehicle"; or
- j) Irrigation systems except as follows:
 - i) As respects pivot irrigation systems, "covered equipment" does include the central pivot, the wheels, and the drive mechanisms for the swing arm and corner attachments, including but not limited to motors and gears; and
 - ii) As respects all irrigation systems, "covered equipment" does include sensors, controls, and pumps and drive motors and drive engines used with such pumps.
- c. "Data" means information or instructions stored in digital code capable of being processed by machinery.
- d. "Farming operations income" means the:
 - 1) Net income (net profit or loss before income taxes) that would have been earned or incurred; and
 - 2) Continuing normal operating expenses incurred, including payroll.
- e. "Hazardous substance" means any substance that is hazardous to health or has been declared to be hazardous to health by a governmental agency.
- f. "Media" means material on which "data" is recorded. This includes, but is not limited to, magnetic tapes, hard drives, optical storage drives or CD/DVD drives.
- g. "One accident" means: If an initial "accident" causes other "accidents", all will be considered "one accident". All "accidents" that are the result of the same event will be considered "one accident".
- h. "Period of restoration" means the period of time that:
 - 1) Begins on the date the "accident" occurs; and
 - 2) Ends on the earlier of:
 - a) The date you could restore your "farming" operations, with reasonable speed, to the condition that would have existed had no "accident" occurred; or
 - b) 30 consecutive days after the date the "covered equipment" is actually repaired, rebuilt or replaced.
- i. "Perishable goods" means "farm personal property", other than live animals, maintained under controlled conditions for its preservation, and susceptible to loss or damage if the controlled conditions change.
- j. "Vehicle" means, as respects this endorsement only, any machine or apparatus that is used for transportation or moves under its own power. "Vehicle" includes, but is not limited to a car, truck,

FP 702 27 07 12

FPK FMPN 3027010948

INSURED'S COPY

Page 5 of 6

43 0000149

154

FP 702 27 07 12

- bus, trailer, train, aircraft, watercraft, forklift,
bulldozer, tractor or harvester.
- k. "Vehicle-mounted (GPS)
global positioning system"
means:
- 1) A device or system mounted on
Covered Property that receives signals
- from a GPS satellite and direct
current input power from a
"vehicle's" electrical system; and
- 2) The controller computer
associated with this system.

All terms and conditions of this policy apply unless modified by this endorsement.

FARM
FP 702 30 01 07

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CONSTRUCTION COST ADJUSTMENT ENDORSEMENT

This endorsement modifies insurance provided under the following:

FARM PROPERTY COVERAGE FORM

Under Section C. ADDITIONAL COVERAGES, Additional Coverage 1.f. Construction Cost Adjustment is deleted and replaced with the following:

f. **Construction Cost Adjustment**

The Limit of Insurance shown in the Declarations for scheduled items insured under Coverages A, B and G may be increased or decreased to reflect changes in construction costs based upon reports from a recognized appraisal agency. Any such change will be made effective on the renewal date. Payment of the renewal premium when due will constitute your acceptance of the revised Limits of Insurance offered by us at the renewal of the policy.

All terms and conditions of this policy apply unless modified by this endorsement.

FP 702 30 01 07

FPK FMPN 3027010948

INSURED'S POLICY

Page 1 of 1

43 0000151

156

FARM
FP 702 41 07 12

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**BACKUP FROM SEWERS OR DRAINS OR SUMP PUMP
OVERFLOW COVERAGE ENDORSEMENT –
COVERAGES A, B, C AND D ONLY**

This endorsement modifies insurance provided under the following:

FARM PROPERTY COVERAGE FORM

This coverage applies only to the location(s) and item(s) shown on Form 8110 (Additional Endorsement Information) of this policy.

A. COVERAGE

We will pay for direct physical loss or damage to Covered Property covered under Coverage A, B, C and for loss of use as covered under Coverage D, in the Farm Property Coverage Form, caused by or resulting from water which:

1. Backs up through or overflows or is otherwise discharged from a sewer or drain; or
2. Overflows or is otherwise discharged from a sump, sump pump or related equipment, even if the overflow or discharge results from mechanical breakdown of a sump pump or its related equipment.

B. EXCLUSIONS

1. We will not pay:
 - a. The cost of repairing or replacing a sump pump or its related equipment in the event of mechanical breakdown; or
 - b. For loss or damage resulting from an insured's failure to:
 - 1) Keep a sump pump or its related equipment in proper working condition; or
 - 2) Perform the routine maintenance or repair necessary to keep a sewer or drain free from obstructions.
2. With respect to the coverage provided by this endorsement, Exclusion 9. under Section E. Exclusions in the Farm Property Coverage Form, is replaced by the following exclusion:
 9. Water
 - a. "Flood", surface water, overflow of any body of water, or spray from any of these, all whether or not driven by wind (including storm surge);

"Flood" means a general and temporary condition of partial or complete inundation of normally dry land areas from:

- 1) The unusual and rapid accumulation or runoff of surface waters from any source;
 - 2) The overflow of inland or tidal waters; or
 - 3) Waves, tides or tidal waves (including tsunamis).
- b. Mudslide or mudflow; or
 - c. Water under the ground surface pressing on, or flowing or seeping through:
 - 1) Foundations, walls, floors or paved surfaces;
 - 2) Basements, whether paved or not; or
 - 3) Doors, windows or other openings; or
 - d. Waterborne material carried or otherwise moved by any of the water referred to in Paragraph a., c. or d., or material carried or otherwise moved by mudslide or mudflow.

This exclusion applies regardless of whether any of the above, in Paragraphs a. through d., is caused by an act of nature or is otherwise caused. An example of a situation to which this exclusion applies is the situation where a dam, levee, seawall or other boundary or containment system fails in whole or in part, for any reason, to contain the water.

FP 702 41 07 12

FPK FMPN 3027010948

INSURED'S COPY

Page 1 of 2

43 0000152

157

Filed: 3/18/2021 10:50 AM CST Haakon County, South Dakota 27CIV20-000019

- Page 451 -

AA 157

FP 702 41 07 12

But:

- 1) If any of the above, in Paragraphs a. through d., results in fire, explosion or sprinkler leakage, we will pay for the loss or damage caused by that fire, explosion or sprinkler leakage; or
- 2) If loss or damage to:
 - a. Farm machinery, vehicles and equipment covered for the Special Causes of Loss; or
 - b. "Livestock"; is caused by water as described in Paragraph a.

above, this Water exclusion does not apply to such loss or damage.

C. LIMIT OF INSURANCE

The most we will pay for the coverage provided under this endorsement is the limit shown on form 8110 (Additional Endorsement Information) for each insured dwelling covered by this endorsement.

- d. With respect to the coverage provided under this endorsement, the following does not apply: Mechanical Breakdown exclusionary provision 3.e.22(g) under Section D. COVERED CAUSES OF LOSS – SPECIAL in the Farm Property Coverage Form.

All terms and conditions of this policy apply unless modified by this endorsement.

Includes copyrighted material of Insurance Services Office, Inc., 2008 with its permission.

FARM
FP 702 55 08 12

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

COVERAGE F – FARM PERSONAL PROPERTY COVERAGE ENDORSEMENT

This endorsement modifies insurance provided under the following:

FARM PROPERTY COVERAGE FORM

- A. Under A. COVERAGES, COVERAGE F - LIMITED UNSCHEDULED FARM PERSONAL PROPERTY 1. COVERED PROPERTY AND 2. PROPERTY NOT COVERED is deleted and replaced with the following:

COVERAGE F – LIMITED UNSCHEDULED FARM PERSONAL PROPERTY

1. COVERED PROPERTY

All of the following are Covered Property under Coverage F of this Coverage Form, provided a Limit of Insurance is shown in the Declarations:

- a. All items of "farm personal property" on the "insured location", except for items specified under Paragraph 2. Property Not Covered; and
- b. The following items of "farm personal property" away from the "insured location":
 - 1) Grain, ground feed, fertilizer, pesticides, herbicides, manufactured and blended "livestock" feed, silage, hay, straw, fodder, threshed beans and threshed seeds, except while:
 - a) Being stored or processed in commercial drying plants, manufacturing plants, public elevators, seed houses or warehouses; or
 - b) In the custody of a common or contract carrier.
 - 2) "Livestock", except while:
 - a) In the custody of a common or contract carrier;
 - b) At public stockyards, sales barns or yards; or
 - c) At packing plants or slaughterhouses.

- 3) Farm machinery, equipment, implements, tools and supplies, except:

- a) Items specified under Paragraph 2. Property Not Covered; or
- b) While in the custody of a common or contract carrier.

2. PROPERTY NOT COVERED

Under Coverage F, Covered Property does not include:

- a. The items listed as Property Not Covered under Coverage E - Scheduled Farm Personal Property;
- b. Animals other than "livestock";
- c. "Poultry", bees, fish or worms;
- d. Racehorses, show horses or show ponies;
- e. Any of the following while being stored or processed in commercial drying plants, manufacturing plants, public elevators, seed houses or warehouses: grain, ground feed, fertilizer, pesticides, herbicides, manufactured and blended "livestock" feed, silage, hay, straw, fodder, threshed beans and threshed seeds;
- f. Tobacco, cotton, vegetables, root crops, potatoes, bulbs, fruit or nursery stock;
- g. Crops in the open, except to the extent provided for in the applicable Coverage Extension.
- h. Contents of chicken fryer or broiler houses, laying houses, "poultry" brooder or duck or turkey houses;
- i. Fences; windmills or windchargers or their towers;
- j. Irrigation equipment;

FP 702 55 08 12

FPK FMPN 3027010948

INSURED'S COPY

Page 1 of 3

43 0000154

159

Filed: 3/18/2021 10:50 AM CST Haakon County, South Dakota 27CIV20-000019

- Page 453 -

AA 159

FP 702 55 08 12

- k. Cotton pickers; or
 - l. Any property shown in the Declarations under the heading Other Property Not Covered Under Coverage F.
 - m. Magnetic recording or storage media for electronic data processing, such as cell, disc, drum, file and tape, over and above their replacement value:
 - 1) As prepackaged software programs; or
 - 2) In unexposed or blank form; whichever is greater.
 - n. Portable buildings, portable structures, or portable toilets.
 - o. Property separately described and specifically covered in whole or in part under another Coverage or Coverage Form of this or any other policy.
3. COVERED CAUSES OF LOSS
- a. Farm machinery, equipment, implements, tools, supplies, trays, bins, assembled and unassembled boxes, GPS Global Positioning Systems equipment and mobile radios, are covered against the SPECIAL Covered Causes of Loss.
 - b. "Livestock", farm office equipment, computers and related software are covered against the BROAD Covered Causes of Loss.
 - c. Hay, straw or fodder in the open in stacks, windrows or bales are covered against loss by fire, lightning, windstorm or hail, vandalism, vehicles and theft.
 - d. All other items of covered unscheduled "farm personal property" are covered against the BASIC Covered Causes of Loss.
4. SPECIAL LIMITS OF INSURANCE FOR COVERAGE F
- Under Coverage F, certain individual items of "farm personal property" are subject to Special Limits of Insurance. These Special Limits are part of, not in addition to, the applicable Limit of Insurance shown in the Declarations, and apply in excess of any applicable deductible.
- a. Sealed grain or grain under Farm Storage Loan is covered, but only for the "insured's" equity value of the grain.
 - b. If no specific stack limit is shown, for hay, straw or fodder at an "insured location" whether in sheds, barns, or in the open in stacks, windrows, or bales, the Limit will be:
 - 1) \$100,000 on any one stack of hay, straw or fodder.

A stack means hay, straw or fodder in one area separated by a clear space of 100 feet or more from any other stack of hay, straw or fodder, whether in buildings, structures, or in the open.
 - c. The most we will pay for loss of or damage to any one head of "livestock" is:
 - 1) \$2,500 on any horse, mule or head of cattle under one year of age as of time of loss; and
 - 2) \$5,000 on any head of "livestock" not included under 1) above.

If it becomes necessary to impose the penalty provided for in the Coverage F Loss Condition - Coinsurance, no amount used as the "actual cash value" of an animal will exceed the applicable Limit of Insurance specified above.
5. EXTENSIONS OF COVERAGE F
- a. You may apply up to 10% of the Limit of Insurance shown in the Declarations for "farm personal property" to cover the following in the open:
 - 1) Grain in piles, shocks, stacks, or swaths:

Fire, lightning, windstorm or hail, vandalism, vehicles and theft are the only Covered Causes of Loss for the property named in paragraphs 1) above.
 - 2) Unharvested barley, corn, oats, rye, wheat and other grains, flax, soy beans and sunflowers (but not on seed or forage crops, straw or stubble).

Page 2 of 3

FPK FMPN 3027010948

INSURED'S COPY

FP 702 55 08 12

43 0000155

160

FP 702 55 08 12

Fire or lightning are the only
covered Causes of Loss for this
property. This Extension is part of,
not in

addition to, the applicable Limit of
Insurance.

All terms and conditions of this policy apply unless modified by this endorsement.

Includes copyrighted material of Insurance Services Office, Inc., with its permission.

FP 702 55 08 12

FPK FMPN 3027010948

INSURED'S COPY

Page 3 of 3

43 0000156

161

Filed: 3/18/2021 10:50 AM CST Haakon County, South Dakota 27CIV20-000019

- Page 455 -

AA 161

FARM
FP 702 69 07 12

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ELECTRICAL GENERATING EQUIPMENT COVERAGE ENDORSEMENT

This endorsement modifies insurance provided under the following:

FARM PROPERTY COVERAGE FORM

- A. The following exclusion is added to 3. **Additional Exclusions, b.:**
- 6) We will not pay under this Equipment Breakdown Coverage for loss, damage or expense caused by or resulting from an "accident" to "electrical generating equipment" except as provided under 2.g. **Service Interruption** or 2.h. **Electrical Generating Equipment**.
- B. Only for the location(s) and item(s) listed on Form 8110 (**Additional Endorsement Information**) of this policy, the following coverages added to 2.
- h. **Electrical Generating Equipment**
- 1) We will pay for loss or damage to "electrical generating equipment". The equipment must be Covered Property and located at an "insured location". The equipment shall have the capacity to produce a maximum output of 250 kilowatts or less at each "insured location" based on the nameplate rating unless otherwise shown on Form 8110 (**Additional Endorsement Information**) of this policy.
 - 2) The most we will pay for loss, damage or expense under this coverage, including actual Loss of Income you sustain and necessary Extra Expense you incur, if shown as covered, is \$250,000 unless otherwise shown on Form 8110 (**Additional Endorsement Information**) of this policy.
 - 3) Coverages a. through 2.g. also apply to this **Electrical Generating Equipment** coverage.
- C. The following is added to 7) b.2) **"Covered equipment"** definition as equipment not covered:
- c) "Electrical generating equipment", except as provided under 2.g. **Service Interruption** or 2.h. **Electrical Generating Equipment**.
- D. The following definition is added to 7) **Additional Definitions:**
- "Electrical generating equipment"
- 1) means equipment which converts any other form of energy into electricity. This includes, but is not limited to, the following:
 - a) boilers used primarily to provide steam for one or more turbine-generator units;
 - b) turbine-generators including steam, gas, water or wind turbines;
 - c) engine-generators;
 - d) fuel cells or other alternative electrical generating equipment;
 - e) electrical transformers, switchgear and power lines used to convey the generated electricity; and
 - f) associated equipment necessary for the operation of any of the equipment listed in a) through e) above.
 - 2) does not mean:
 - a) elevator or hoist motors that generate electricity when releasing cable; or
 - b) equipment intended to generate electricity solely on an emergency basis..

FP 702 69 07 12

FPK FMPN 3027010948

INSURED'S COPY

Page 1 of 2

43 0000157

162

FP 702 69 07 12

E. The second paragraph of section 5. Deductible is deleted and replaced with:

The deductibles that apply to this Equipment Breakdown Coverage are:

- a. \$5,000 for deep well pumps or any components within the well; and
 - b. \$1,000 for all other farm buildings, structures, equipment, and irrigation equipment;
- Unless higher deductibles are stated in the Declarations for the buildings, structures or equipment; and

c. "Electrical generating equipment"

1) We will only pay for loss or damage to "electrical generating equipment" that exceeds:

- a) The dollar amount that results from multiplying 40 times the number of kilowatts the equipment is capable of producing based on the nameplate rating; or
- b) The dollar deductible shown for all other farm buildings.

All terms and conditions of this policy apply unless modified by this endorsement.

Page 2 of 2

FPK FMPN 3027010948

INSURED'S COPY

FP 702 69 07 12

43 0000158

163

Filed: 3/18/2021 10:50 AM CST Haakon County, South Dakota 27CIV20-000019

- Page 457 -

AA 163

FARM
FP 702 83 02 14

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

NON-OWNED POULTRY AND SWINE LOSS OF INCOME EQUIPMENT BREAKDOWN COVERAGE ENDORSEMENT

This endorsement modifies insurance provided under the following:

EQUIPMENT BREAKDOWN COVERAGE ENDORSEMENT
FARM PROPERTY COVERAGE FORM

For the purposes of coverage provided by this endorsement, the following are added:

1. We will pay up to \$25,000 for your Loss of Income caused by an "accident" which results in death or necessary destruction of "poultry" or swine for which you have a legal contract to raise, but which are not owned by you. This is an aggregate limit for the sum of all covered expenses occurring during each separate 12 month period of this policy.
No coverage other than Loss of Income is provided by this Non-Owned Poultry and Swine Loss of Income Equipment Breakdown Coverage Endorsement.
2. With respect to this coverage only, and only to the extent that coverage is provided herein, the following applies:
 - a. Additional Exclusion b.2) b) of the Equipment Breakdown Coverage Endorsement is deleted and replaced with:
 - ii. Any animal other than non-owned "poultry" or non-owned swine.
 - b. Any contractual penalty owed to the "poultry" or swine owner as a result of a loss covered by this Non-Owned Poultry and Swine Loss of Income Equipment Breakdown Coverage Endorsement.
 - b. Additional Exclusion b.5) b) ii. of the Equipment Breakdown Coverage Endorsement is deleted and replaced with:
 - b) We will not pay for any indirect loss or damage or expense as a result of loss to:
 3. Deductible
We will not pay for Loss of Income in any "one accident" until the amount of the covered Loss of Income exceeds \$5,000. We will then pay for loss of Income in excess of the deductible subject to the limit shown in 1. above.
 - c. The following Additional Conditions apply to this coverage. No coverage applies if these conditions are not maintained.
 - a. You must maintain an alarm system consisting of a permanent connection to an automatic digital alarm phone system or a permanent connection to an automatic pager system. The system must be functioning 24 hours per day and be capable of alerting you or your farm manager in the event of a power interruption or mechanical breakdown.
 - b. Each "Insured location" must have one or more fully-functioning auxiliary generator(s) with sufficient capacity to properly operate the ventilating system(s) of all confinement buildings at that "Insured location".
 - c. The functionality and effectiveness of the alarm system and the auxiliary generator(s) must be tested each month.

All terms and conditions of this policy apply, unless modified by this endorsement.

FP 702 83 02 14

FPK FMPN 3027010948

INSURED'S COPY

Page 1 of 1

43 0000159

164

FARM
FP 702 84 11 14

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

AMENDATORY

This endorsement modifies insurance provided under the following:

FARM PROPERTY COVERAGE FORM

- A. Subject to the provisions in Section D. **COVERED CAUSES OF LOSS**, when BASIC plus COLLAPSE is shown in the Declarations, paragraph D.1. **COVERED CAUSES OF LOSS - BASIC** includes the following Covered Cause of Loss:
- Weight Of Ice, Snow Or Sleet** causing damage to a building or to any property inside a building. But under this cause of loss we will not pay for loss by pressure or weight of water in any form, whether driven by wind or not, to any:
- 1) Foundation or retaining wall;
 - 2) Pavement or patio;
 - 3) Awning;
 - 4) Fence;
 - 5) Outdoor equipment;
 - 6) Swimming pool, spa; hot tub; whirlpool or other similar appliance and related equipment; or
 - 7) Bulkhead, dock, pier or wharf.
- B. The following paragraph is added to D. **COVERED CAUSES OF LOSS, 2. COVERED CAUSES OF LOSS - BROAD, r. Freezing.**
- The **Freezing** peril does not include the freezing, thawing, or pressure of weight of water or ice whether or not driven by wind, to any swimming pool; spa; hot tub; whirlpool or other similar appliance and related equipment.
- C. Under Section D. **COVERED CAUSES OF LOSS, 3. COVERED CAUSES OF LOSS - SPECIAL, a.5)e)** is deleted and replaced by the following:
- e) Swimming pool; spa; hot tub; whirlpools or other similar appliance and related equipment; or
- D. Under Section E. **EXCLUSIONS, 6 Utility Services** is deleted and replaced by the following:
- 6. Utility Services**
- The failure of power or other utility service supplied to the "insured location" however caused, if the failure occurs away from the "insured location", except as provided under Coverage C; and B. Coverage Extensions, Items 1.b. and 3.e.
- Failure includes lack of sufficient capacity and reduction in supply, except as provided under any Additional Coverage Equipment Breakdown.
- But if the failure of power or other utility service results in a Covered Cause of Loss, we will pay for the loss or damage caused by that Covered Cause of Loss.

All terms and conditions of this policy apply unless modified by this endorsement.

FP 702 84 11 14

FPK FMPN 3027010948

INSURED'S COPY

Page 1 of 1

43 000150

165

Filed: 3/18/2021 10:50 AM CST Haakon County, South Dakota 27CIV20-000019

- Page 459 -

AA 165

FARM
FP 702 85 11 14

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

WATER DAMAGE COVERAGE ENDORSEMENT

This endorsement modifies insurance provided under the following:

FARM PROPERTY COVERAGE FORM

- A. Under Section D, COVERED CAUSES OF LOSS, 2. COVERED CAUSES OF LOSS – BROAD, paragraph q.1) is deleted and replaced by the following:
 - 1) More than \$2,500 for all loss or damage to Covered Property caused by repeated leakage or seepage of water or steam, whether continuous or intermittent, not otherwise excluded.
- B. Under Section D, COVERED CAUSES OF LOSS, 3. COVERED CAUSES OF LOSS – SPECIAL, paragraph a.6)a) is deleted and replaced by the following:
 - a) More than \$2,500 for all loss or damage to Covered Property caused by repeated leakage or seepage of water or steam, whether continuous or intermittent, not otherwise excluded.

All terms and conditions of this policy apply unless modified by this endorsement.

FP 702 85 11 14

FPK FMPN 3027010948

INSURED'S COPY

Page 1 of 1

43 0000161

166

Filed: 3/18/2021 10:50 AM CST Haakon County, South Dakota 27CIV20-000019

- Page 460 -

AA 166

FARM
FP 702 87 08 15

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EQUIPMENT BREAKDOWN COVERAGE ENDORSEMENT – COVERAGES A, B, C & D

This endorsement modifies insurance provided under the following:

FARM PROPERTY COVERAGE FORM

This coverage applies only to the location(s) and item(s) shown on the Declarations of this policy.

A. The following is added to Section C. ADDITIONAL COVERAGES, 2. ADDITIONAL COVERAGES TO COVERAGES A, B, C AND D ONLY:

The term COVERED CAUSE OF LOSS includes the Additional Coverage Equipment Breakdown as defined and limited in this endorsement. This Additional Coverage applies only to property covered under COVERAGE A – DWELLINGS, COVERAGE B – OTHER PRIVATE STRUCTURES APPURTENANT TO DWELLINGS and COVERAGE C – HOUSEHOLD PERSONAL PROPERTY.

1. Damage to "Covered Dwelling Equipment"

We will pay for direct physical damage to "covered dwelling equipment" that is the direct result of a "dwelling accident" that occurs on or off the "insured location".

2. Expediting Expenses

With respect to your "covered dwelling equipment" that is damaged as the result of a "dwelling accident", we will pay up to \$50,000 for the reasonable extra cost to:

- Make temporary repairs; and
- Expedite permanent repairs or permanent replacement.

3. Loss of Use

Coverage for 1. YOUR ADDITIONAL LIVING EXPENSES and 2. FAIR RENTAL VALUE as defined under COVERAGE D – LOSS OF USE, is extended to the coverage provided by this endorsement.

B. Additional Exclusions

All exclusions in the Farm Property Coverage Form apply except as modified below and to the extent that coverage is specifically provided by this Equipment Breakdown Coverage Endorsement.

The following exclusions are added:

We will not pay under this endorsement for:

- Loss, damage or expense caused by or resulting from electrical power surge or brown out, whether or not caused by lightning. However, with respect to COVERAGE C – HOUSEHOLD PERSONAL PROPERTY, if COVERED CAUSES OF LOSS – BROAD or COVERED CAUSES OF LOSS – SPECIAL applies, we will pay for loss, damage or expense caused by or resulting from artificially generated electrical current to the following:
 - Tubes, transistors or integrated circuitry that are a part of appliances, fixtures, computers, home entertainment units or other types of electronic apparatus; or
 - Laser or infrared devices used to operate or assist in the operation of any appliances, fixtures, computers, home entertainment units or other types of electronic apparatus.
- Any property that is not "covered dwelling equipment".
- Loss, damage or expense caused by or resulting from any of the following, whether the excluded cause of loss occurs on or off the "insured location":
 - Fire (including fire resulting from a "dwelling accident"); or water or other means used to extinguish a fire;
 - Explosion;
 - Lightning, windstorm or hail; smoke; aircraft or vehicles; riot or civil commotion; sprinkler leakage; elevator collision; breakage of glass; falling objects; weight of snow, ice or sleet;

FP 702 87 08 15

FPK FMPN 3027010948

INSUREO'S COPY

Page 1 of 3

43 0000162

FP 702 87 08 15

- freezing (caused by cold weather); collapse or molten material;
 - d. Vandalism;
 - e. Flood, surface water, waves, tides, tidal waves, overflow of any body of water, or their spray, all whether driven by wind or not; mudslide or mudflow; or water that backs up or overflows from a sewer, drain or sump, and any water damage (including water damage resulting from a "dwelling accident");
 - f. Any earth movement, including but not limited to earthquake, subsidence, sinkhole collapse, landslide, earth sinking, tsunami or volcanic action.
4. Loss, damage or expense caused by or resulting from:
- a. Any defect, programming error, programming limitation, computer virus, malicious code, loss of "data", loss of access, loss of use, loss of functionality or other condition within or involving "data" or "media" of any kind; or
 - b. Misalignment, miscalibration, tripping off-line or any condition which can be corrected by resetting, tightening, adjusting or cleaning, or by the performance of maintenance.
- But if a "dwelling accident" results, we will pay for the resulting loss, damage or expense caused by that "dwelling accident".
- C. Limits of Insurance
- 1. The most we will pay for loss, damage or expense under this endorsement arising from any "one dwelling accident" is the applicable Limit of Insurance in the Declarations.
 - 2. Coverage provided under this endorsement does not provide an additional amount of insurance.
- D. Deductible
- We will pay only that part of the loss that exceeds \$1,000, unless higher deductibles are stated in the Declarations for the dwellings or contents. No other deductible applies to this coverage.
- E. Additional Conditions
- In addition to the Common Policy Conditions and the Conditions in the FARM PROPERTY COVERAGE FORM, the following apply:
- 1. Environmental, Safety and Efficiency Improvements

If "covered dwelling equipment" requires replacement due to a "dwelling accident", we will pay your additional cost to replace with equipment that is better for the environment, safer for people, or more energy or water efficient than the equipment being replaced. However, we will not pay to increase the size or capacity of the equipment and we will not pay more than 150% of what the cost would have been to replace with like kind and quality. This condition does not apply to the replacement of component parts or to any property to which "actual cash value" applies and does not increase any of the applicable limits.

2. Valuation

As respects this endorsement only, the Valuation Loss Conditions for COVERAGES A, B and C in the FARM PROPERTY COVERAGE FORM are deleted and replaced with the following:

- a. We will settle the loss based on the smallest of the following amounts:
 - 1) The cost to repair the damaged property;
 - 2) The cost to replace the damaged property with material of like kind, quality and capacity for like use;
 - 3) The amount actually and necessarily spent to repair or replace the damaged property; or
 - 4) The applicable Limit of Insurance.

If the property is rebuilt or replaced at a new premises, the cost described above is limited to the cost that would have been incurred if the property had been rebuilt or replaced at the original premises.

- b. If the property is not repaired or rebuilt within 24 months after the date of the "dwelling accident", we will settle on the basis of "actual cash value".
- c. Except as described in Environmental, Safety and Efficiency Improvements above, you are responsible for the extra cost of replacing damaged property with property of a better kind or quality or of a different size or capacity.

Additional Definitions

With respect to this Equipment Breakdown Coverage Endorsement only, the following

Page 2 of 3

FP 702 87 08 15

FPK FMPN 3027010948

INSURED'S COPY

43 0000163

FP 702 87 08 15

definitions apply in addition to those in Section L.
DEFINITIONS:

1. "Covered dwelling equipment"
 - a. "Covered dwelling equipment" means Covered Property covered under **COVERAGE A – DWELLINGS, COVERAGE B – OTHER PRIVATE STRUCTURES APPURTENANT TO DWELLINGS or COVERAGE C – HOUSEHOLD PERSONAL PROPERTY**, and:
 - 1) That generates, transmits or utilizes energy; or
 - 2) Which, during normal usage, operates under vacuum or pressure, other than the weight of its contents.

"Covered dwelling equipment" may utilize conventional design and technology or new or newly commercialized design and technology.
 - b. None of the following is "covered dwelling equipment":
 - 1) Supporting structure, cabinet or compartment;
 - 2) Insulating material associated with "covered dwelling equipment";
 - 3) Water piping other than boiler feedwater piping, boiler condensate return piping or water piping connected to a heating or air conditioning system;
 - 4) Wastewater piping or piping forming a part of a fire protective sprinkler or irrigation system;
 - 5) Buried or encased piping or buried vessels. However, interior buried or encased piping connected to a heating or air conditioning system is "covered dwelling equipment";
 - 6) Software or "data"; or
 - 7) Riding lawn mowers, tractors or any other mobile equipment.
2. "Data" means information or instructions stored in digital code capable of being processed by machinery.

3. "Dwelling accident"
 - a. "Dwelling accident" means sudden and accidental:
 - 1) Mechanical breakdown; or
 - 2) Electrical breakdown; or
 - 3) Bursting, cracking or splitting of "covered dwelling equipment" that results in direct physical damage and requires repair or replacement of all or part of the damaged "covered dwelling equipment".
 - b. None of the following is a "dwelling accident".
 - 1) Rust, corrosion, erosion, deterioration or gradual loss of efficiency or functionality of "covered dwelling equipment";
 - 2) Leakage or seepage at or from any connection, valve, fitting, shaft or seal;
 - 3) Any programming error, programming limitation, computer virus, malicious code, loss of data, loss of access, loss of use, loss of functionality or other condition within or involving data or media of any kind;
 - 4) Complete or partial interruption of electrical power, fuel or water supply, whether deliberate or accidental;
 - 5) Any condition which can be corrected by resetting, recalibrating or by the performance of maintenance; or
 - 6) Cosmetic or other damage that does not impair functionality.
4. "Media" means material on which "data" is recorded. This includes, but is not limited to, magnetic tapes, hard drives, optical storage drives or CD/DVD drives.
5. "One dwelling accident" means: If an initial "dwelling accident" causes other "dwelling accidents", all will be considered "one dwelling accident". All "dwelling accidents" that are the result of the same event will be considered "one dwelling accident".

All terms and conditions of this policy apply unless modified by this endorsement.

FP 702 87 08 15

FPK FMPN 3027010948

INSURED'S COPY

Page 3 of 3

43 0000164

169

Filed: 3/18/2021 10:50 AM CST Haakon County, South Dakota 27CIV20-000019

- Page 463 -

AA 169

FARM
FP 702 90 06 15

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

SINGLE DEDUCTIBLE WITH MULTIPLE FARMOWNER POLICIES ENDORSEMENT

This endorsement modifies insurance provided under the following:

FARM PROPERTY COVERAGE FORM

If the same occurrence results in direct physical loss of or damage to real or personal Covered Property under the Farm Property Coverage Form (FP 700 10) on more than one of your policies, the largest deductible applicable to any property sustaining loss or damage shall apply only once to all covered loss or damage.

This provision applies only if the combined loss or damage exceeds the higher of any applicable deductibles.

The application of this provision shall not serve to reduce your recovery to less than the amount you would have received under individual policies.

All terms and conditions of this policy apply unless modified by this endorsement.

Includes copyrighted material of Insurance Services Office, Inc., with its permission.
© ISO Property, Inc., 2006

FP 702 90 06 15
FPK FMPN 3027010948

INSURED'S COPY

Page 1 of 1
43 0000165

170

FARM
FP 702 91 06 15

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**FARM BUILDINGS AND STRUCTURES - METAL ROOF
AND SIDING LOSS SETTLEMENT PROVISION**

This endorsement modifies Insurance provided under the following:

FARM PROPERTY COVERAGE FORM

Section I. LOSS SETTLEMENT CONDITIONS 7. COVERAGE G – FARM BUILDINGS AND STRUCTURES is amended to add the following:

f. Farm Buildings and Structures - Metal Roof and Siding Loss Settlement Provision

The most we will pay in any one occurrence for loss or damage to aluminum, steel, or other metal roofing or siding caused directly or indirectly by hail or wind driven hail is:

- 1) 30% of the total cost to repair or replace the damaged part(s) of the building or structure with material of like kind and quality and for like use if "Replacement Cost" is expressly indicated in the Declarations; or
- 2) 20% of the total cost to repair or replace the damaged part(s) of the building or structure with material of like kind and quality and for like use if "Actual Cash Value" is expressly indicated in the Declarations.

However, upon completion of repair or replacement of the damaged part of the building or structure caused directly or indirectly by hail or wind driven hail, this Farm Buildings and Structures - Metal Roof and Siding Loss Settlement Provision no longer applies.

All terms and conditions of this policy apply unless modified by this endorsement.

FP 702 91 06 15

FPK FMPN 3027010948

INSURED'S COPY

Page 1 of 1

43 0000166

171

Filed: 3/18/2021 10:50 AM CST Haakon County, South Dakota 27CIV20-000019

- Page 465 -

AA 171

FARM
FP 702 94 12 15

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

MARIJUANA EXCLUSION ENDORSEMENT

This endorsement modifies insurance provided under the following

FARM PROPERTY COVERAGE FORM

The Farm Property Coverage Form is amended as follows:

- A. Under A. COVERAGES, COVERAGE C – HOUSEHOLD PERSONAL PROPERTY, 2. PROPERTY NOT COVERED, the following is added:
marijuana or "marijuana products".
- B. Under A. COVERAGES, the following is added under COVERAGE E – SCHEDULED FARM PERSONAL PROPERTY, 2. PROPERTY NOT COVERED and COVERAGE F – LIMITED UNSCHEDULED FARM PERSONAL PROPERTY, 2. PROPERTY NOT COVERED:
marijuana or "marijuana products".
- C. Under B. COVERAGE EXTENSIONS, 1. EXTENSION OF COVERAGES A, B, AND C, a. Trees, Shrubs, Plants and Lawns, the following is added:
This coverage extension does not include damage to destruction of marijuana plants.
- D. As used in this endorsement, "marijuana products" means any product containing the controlled substance marijuana.

All terms and conditions of this policy are hereby modified by this endorsement.

FP 702 94 12 15

FPK FMPN 3027010948

INSURED'S COPY

Page 1 of 1

43 0000167

172

FARM
FP 705 09 01 09

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

FARM PROPERTY LOSS PAYABLE CLAUSE ENDORSEMENT

This endorsement modifies insurance provided under the following:

FARM PROPERTY COVERAGE FORM

The following is added to the Loss Payment Loss Condition in the Farm Property Coverage Form as indicated in the Declarations:

A. Loss Payable

For Covered Property in which both you and a Loss Payee designated with a "L" shown in the Declaration have an insurable interest, we will:

1. Adjust losses with you; and
2. Pay any claim for loss or damage jointly to you and the Loss Payee, as interests may appear.

B. Lender's Loss Payable

1. The Loss Payee in the Declarations designated with a "P" is a creditor, including a mortgageholder or trustee, whose interest in Covered Property is established by such written instruments as:

- a. Warehouse receipts;
- b. A contract for deed;
- c. Bills of lading;
- d. Financing statements; or
- e. Mortgages, deeds of trust, or security agreements.

2. For Covered Property in which both you and a Loss Payee have an insurable interest:

- a. We will pay for covered loss or damage to each Loss Payee in their order of precedence, as interests may appear.
- b. The Loss Payee has the right to receive loss payment even if the Loss Payee has started foreclosure or similar action on the Covered Property.
- c. If we deny your claim because of your acts or because you have failed to comply with the terms of this Coverage Form, the Loss Payee will still have the right to receive loss payment if the Loss Payee:

- 1) Pays any premium due under this Coverage Form at our request if you have failed to do so;
- 2) Submits a signed, sworn proof of loss within 60 days after receiving notice from us of your failure to do so; and
- 3) Has notified us of any change in ownership, occupancy or substantial change in risk known to the Loss Payee.

All of the terms of this Coverage Form will then apply directly to the Loss Payee.

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

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

At our option, we may pay to the Loss Payee the whole principal on the debt plus any accrued interest. In this event, you will pay your remaining debt to us.

3. If we cancel this policy, we will give written notice to the Loss Payee prior to the effective date of cancellation. If we elect not to renew this policy, we will give written notice to the Loss Payee prior to the expiration date of the policy. In either case, we will give the same number of days' advance notice to the Loss Payee as we give to the first Named Insured.

C. Contract Of Sale

1. The Loss Payee in the Declarations designated with a "C" is a person or

FP 705 09 01 09

FPK FMPN 3027010948

INSURED'S COPY

Page 1 of 2

43 0000168

173

Filed: 3/18/2021 10:50 AM CST Haakon County, South Dakota 27CIV20-000019

- Page 467 -

AA 173

FP 705 09 01 09

- organization you have entered a contract with for the sale of Covered Property.
2. For Covered Property in which both you and the Loss Payee have an insurable interest, we will:
 - a. Adjust losses with you; and
 - b. Pay any claim for loss or damage jointly to you and the Loss Payee, as interests may appear.
 3. The following is added to the Other Insurance And Service Agreement Condition in the Farm Property Coverage Form:
For Covered Property that is the subject of a contract of sale, the word "you" includes the Loss Payee.

All terms and conditions of this policy apply unless modified by this endorsement.

Includes copyrighted material of Insurance Services Office, Inc., 2002 with its permission.

FARM
FP 705 39 01 01

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

REPLACEMENT COST - HOUSEHOLD PERSONAL PROPERTY COVERAGE ENDORSEMENT

This endorsement modifies insurance provided under the following:
FARM PROPERTY COVERAGE FORM

This coverage applies only to the location(s) and item(s) shown on the Declarations of this policy with Replacement Cost Coverage.

Under Section I, LOSS SETTLEMENT CONDITIONS, the following Loss Condition - Valuation is added:

REPLACEMENT COST - HOUSEHOLD PERSONAL PROPERTY

A. Covered losses to the following property are settled at "replacement cost" at the time of loss:

1. Coverage C - Household Personal Property Coverage.
2. If covered in this policy, under Coverages A or C, awnings, carpeting, household appliances, outdoor antennas and outdoor equipment, whether or not attached to buildings.

Under Section I, LOSS SETTLEMENT CONDITIONS, Coverage C - Household Personal Property Loss Condition - Valuation does not apply to property described in paragraphs 1. and 2. above.

B. PROPERTY NOT ELIGIBLE

Property listed below is not eligible for "replacement cost" settlement. Any loss will be settled at "actual cash value" at the time of loss but not more than the amount required to repair or replace.

1. Antiques, fine arts, paintings, and similar articles of rarity or antiquity which cannot be replaced.
2. Memorabilia, souvenirs, collector's items, and similar articles whose age or history contribute to their value.

3. Articles not maintained in good or workable condition.
4. Articles that are outdated or obsolete and are stored or not being used.
5. Property not currently useful for its originally intended purpose.
6. Postage stamps or rare coins and current coins covered on a blanket basis.
7. Recreational motor vehicles and all other motorized land conveyances that may be insured under this policy.

C. 1. We will pay no more than the "actual cash value" for the loss or damage until the actual repair or replacement is complete.
Repair or replacement must be completed within a reasonable time after loss or damage, evidenced by the original of the replacement receipt, invoice or bill.

2. We will pay no more than the least of the following amounts:
 - a. "Replacement cost" at the time of loss without deduction for depreciation;
 - b. The full cost of repair at the time of loss;
 - c. The Limit of Insurance that applies to Coverage C; or
 - d. Any special Limits of Insurance stated in this policy.
3. You may make a claim for loss on an "actual cash value" basis and then make claim within 180 days after the loss for any additional settlement amount in accordance with this endorsement.

All terms and conditions of this policy apply unless modified by this endorsement.

FP 705 39 01 01
FPK FMPN 3027010948

INSURED'S COPY

Page 1 of 1
43 0000170

175

Filed: 3/18/2021 10:50 AM CST Haakon County, South Dakota 27CIV20-000019

- Page 469 -

AA 175

EFFECTIVE DATE: 12:01 AM Standard Time.
(at your principal place of business)

FARM
FP 705 51 (01-01)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ALARM OR FIRE PROTECTION SYSTEM ENDORSEMENT

This endorsement modifies insurance provided under the following:

FARM PROPERTY COVERAGE FORM

We acknowledge the installation of a protection system or automatic sprinkler system approved by us on an "insured location". You agree to maintain this system in working order and to notify us promptly of any change made to the system or if it is removed.

All terms and conditions of this policy apply unless modified by this endorsement.

FP 705 51 (01-01)

FPK FMPN 3027010948

INSURED'S COPY

43 0000171

176

Filed: 3/18/2021 10:50 AM CST Haakon County, South Dakota 27CIV20-000019

- Page 470 -

AA 176

FARM
FP 705 55 07 12

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

MOBILE HOME COVERAGE ENDORSEMENT

This endorsement modifies insurance provided under the following:

FARM PROPERTY COVERAGE FORM

With respect only to any mobile home designated in the Declarations as covered under Coverages A, B, C or D of the Farm Property Coverage Form, the following changes are applicable:

- A. Under Section A. COVERAGE, Coverage A - Dwellings, paragraph 1.a. is deleted and replaced by the following:
 - a. Each mobile home owned by you and for which a Limit of Insurance is shown in the Declarations, used principally as a private residence, including structures and utility tanks attached to the mobile home and the following and similar type items installed on a permanent basis: floor coverings, appliances, dressers, and cabinets.
- B. Under Section C. ADDITIONAL COVERAGES, 2. Additional Coverages to Coverages A, B, C and D Only, the following paragraph is added:
 - a. **REMOVAL OF MOBILE HOME**
If, at any time, a mobile home covered by this endorsement is endangered by a Covered Cause of Loss and removal is necessary to

avoid damage, we will pay the reasonable expense incurred by you, not to exceed \$500, for its removal and return. No deductible applies to this additional coverage.

- C. Under Section J. FARM PROPERTY CONDITIONS, paragraph 7. Pair, Sets or Parts, the following is added:
 - c. Pay, in any loss involving part of a series of pieces or panels, the reasonable cost of repairing or replacing the damaged part to match the remaining pieces of panels as closely as possible. However, we do not guarantee the availability of replacements, nor in the event of damage to a part, will we be liable for the value of the entire series of pieces or panels, or the cost to repair or replace the entire series of pieces or panels.
- D. Under Section K. GENERAL CONDITIONS, the following is added to 4. Mortgageholders, paragraph a.:
The term "mortgageholder" also includes a lienholder.

All terms and conditions of this policy apply unless modified by this endorsement.

FP 705 55 07 12
FPK FPMN 3027010948

INSURED'S COPY

Page 1 of 1
43 0000172

177

FARM
FP 705 82 07 12

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

LIMITED FUNGI OR BACTERIA COVERAGE ENDORSEMENT

This endorsement modifies insurance provided under the following

FARM PROPERTY COVERAGE FORM

The limit of liability as shown on Form 8110 (Additional Endorsement Information) of this policy applies to the total of all loss payable under this endorsement, regardless of the number of occurrences, the number of claims made, or the number of locations insured under this endorsement.

- A. The following Additional Coverage is added under Section C.2. Additional Coverages To Coverages A, B, C and D Only:

"Fungi" or Bacteria

This Additional Coverage, as described and limited in 1) through 3) below, applies only to owner occupied residences covered under Coverages A, B, C and D.

- 1) We will pay up to the Limit of Insurance shown on the Form 8110 (Additional Endorsement Information) of this policy for:
 - a) The total of all loss payable caused by "fungi" or bacteria;
 - b) The cost to remove "fungi" or bacteria from Covered Property;
 - c) The cost to tear out and replace any part of the building or other covered property as needed to gain access to the "fungi" or bacteria; and
 - d) The cost of testing of air or property to confirm the absence, presence or level of "fungi" or bacteria whether performed prior to, during or after removal, repair, restoration or replacement. The cost of such testing will be provided only to the extent that there is a reason to believe that there is the presence of "fungi" or bacteria.
- 2) This Additional Coverage only applies when such loss or costs are a result of a Covered Cause of Loss that occurs during the policy

period and only if all reasonable means were used to save and preserve the property from further damage at and after the time the Covered Cause of Loss occurred.

- 3) The Limit of Insurance shown on Form 8110 (Additional Endorsement Information) of this policy is the most we will pay for the total of all loss or costs payable under this Additional Coverage regardless of the:

- a) Number of locations insured under this endorsement; or
- b) Number of claims made.

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

- B. Exclusion a.22)b) under Section D.3. Covered Causes of Loss – Special, is replaced by the following:

- b) Rust, corrosion, wet or dry rot, decay, deterioration, hidden or latent defect or any quality in property that causes it to damage or destroy itself;

- C. The following exclusion is added under Section E. Exclusions:

"Fungi" or Bacteria

We will not pay for loss or damage caused directly or indirectly by or resulting from "fungi" or bacteria of any type regardless of the cause of the growth, proliferation or accretion except as provided by Additional Coverages C.2. "Fungi" or Bacteria.

FP 705 82 07 12

FPK FMPN 3027010948

INSURED'S COPY

Page 1 of 2

43 0000173

178

FP 705 82 07 12

D. The following definition is added under Section
L. Definitions:

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

All terms and conditions of this policy apply unless modified by this endorsement.

Page 2 of 2

FPK FMPN 3027010948

INSURED'S COPY

FP 705 82 07 12

43 0000174

179

Filed: 3/18/2021 10:50 AM CST Haakon County, South Dakota 27CIV20-000019

- Page 473 -

AA 179

FARM
FP 705 99 07 12

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

UNSCHEDULED FARM PERSONAL PROPERTY LIVESTOCK EXCLUSION ENDORSEMENT

This endorsement modifies insurance provided under the following:

COVERAGE F – FARM PERSONAL PROPERTY COVERAGE

Under Section A, COVERAGES, Coverage F – Limited (), Scheduled Farm Personal Property, the following provision is added:

All coverage for "livestock" is deleted.

All terms and conditions of this policy apply, unless modified by this endorsement.

FP 705 99 07 12

FPK FMPN 3027010948

INSURED'S COPY

Page 1 of 1

43 0000175

180

13614 (11-85)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

SPECIAL CONTINUATION PROVISION

If we offer to continue and you or your representative do not accept, this policy will automatically terminate at the end of the current policy period. Failure to pay the required continuation premium when due shall mean that you have not accepted our offer.

13614 (11-85)

FPK FMPN 3027010948

INSURED'S COPY

43 0000176

181

Filed: 3/18/2021 10:50 AM CST Haakon County, South Dakota 27CIV20-000019

- Page 475 -

AA 181

FARMOWNERS POLICY
 AMENDMENT SUMMARY PLEASE READ CAREFULLY
 NATIONWIDE AGRIBUSINESS INSURANCE -NAIC
 1100 LOCUST ST DEPT 3000
 DES MOINES, IA 50391-3000

Policy Number: FPK FMPN 30 2 7010948	
Policy Effective From 02/20/17	To 02/20/18 12:01 A.M. Standard Time
Transaction Effective 03/13/17	12:01 A.M. Standard Time
Named FITCH, BURJES	
Insured: FITCH, CHERYL	
Mailing PO BOX 16	
Address: PHILIP SD 57567-0016	
Agency: FISCHER ROUNDS AND ASSOC INC 04249-4000	
PIERRE SD 57501	

*** THE FOLLOWING CHANGES WERE MADE ***

Description of Changes	Premium
<p>DELETE ADDITIONAL INTEREST ASSIGNMENT</p> <p>Loc #: 001 Item #: 006 Form #: _____</p> <p>Description: GRAIN BIN 25000 BU</p> <p>Name 1: COMMODITY CREDIT CORPORATION</p> <p>Street: PO BOX 339</p> <p>City: PHILIP State: SD Zip: 575670339</p>	\$0.00
<p>ADD ADDITIONAL INTEREST ASSIGNMENT</p> <p>Loc #: 001 Item #: 017 Form #: _____</p> <p>Description: GRAIN BIN 33000 BU</p> <p>Name 1: COMMODITY CREDIT CORPORATION</p> <p>Street: PO BOX 339</p> <p>City: PHILIP State: SD Zip: 575670339</p>	\$0.00
TOTAL PREMIUM	\$0.00

** THIS IS NOT A BILL - SEE YOUR BILLING STATEMENT. **

8109 01 06 00

L108 R 07261E INSURED'S COPY FPK FMPN3070109482 991442183 43 0000177

FPK FMPN 30 2 7010948

INSURED'S COPY
FARM LOCATION SCHEDULE

Loc	Acres	Location Information				County Name & Number	State
		Address City Number & Name Fire District Number & Name	Zipcode PC / DWL PC	Terr	Section Township Range		
1	13000	200 MYRTLE AVE 0999 PHILIP	57567-8807 06		-- -- --	HAAKON COUNTY 027	SD
2	1	21327 211TH AVE PHILIP	57567-8807 10		-- -- --	HAAKON COUNTY 027	SD
3	1	11100 FITCH TRAIL PHILIP	57564 10		-- -- --	SULLY 059	SD
4	1	20550 FITCH RD MILESVILLE	57553-3012 10		-- -- --	HAAKON COUNTY 027	SD

The interest of the insured in the premises is that of OWNER

Countersigned this _____ day of _____ by _____
8103 (03-13) 00 Authorized Representative

Page 00178

43

183

Filed: 3/18/2021 10:50 AM CST Haakon County, South Dakota 27CIV20-000019

- Page 477 -

AA 183

FPK FMPN 30 2 7010948

INSURED'S COPY

FARM PROPERTY SCHEDULE A

Loc/ Item	Year	Item Description	Limit	Class	Deductible		Const Type	Premium
					Other	W & H		
001/001	1970	DWELLING CHERYL 2840 SF	500,000	10331	2,500	2,500	FRAME	1520
001		COV B - OTHER PRIVATE STRUCT	20,000	99996	2,500	2,500		
001		COV D - LOSS OF USE (ALS)		99997				
002		HOUSEHOLD PERSONAL PROPERTY	178,000	20301	2,500	2,500	FRAME	491
005	2012	GRAIN BIN 25000 BU	55,500	33331	1,000	1,000	FRAME	491
006	2012	GRAIN BIN 25000 BU	55,500	33331	1,000	1,000	FRAME	101
007	2012	FRIESEN BULK BIN #3 1 BU	18,730	36931	2,500	2,500	FRAME	1112
008	2013	METAL SHOP 1/2 INT 80X90	140,150	33231	1,000	1,000	FRAME	121
011	2011	MERIDIAN 1620 BIN 4000 BU	17,530	36931	1,000	1,000	FRAME	61
012	2013	BULK BIN #1 1/2 INT 4000 BU	8,250	36931	1,000	1,000	FRAME	61
013	2013	BULK BIN #2 1/2 INT 4000 BU	8,250	36931	1,000	1,000	FRAME	572
016	2012	GRAIN BIN 33000 BU	55,000	33331	1,000	1,000	FRAME	572
017	2012	GRAIN BIN 33000 BU	55,000	33331	1,000	1,000	FRAME	6072
035		BLANKET EXCL GRAIN	135,250	72160	2,500	2,500		508
036	2014	RANGER S BY S 900 CC	20,000	65830	2,500	2,500		381
		S# 4XAUH88A4EG864741						
037	2011	JOHN DEERE GATOR 850 CC	15,000	65830	2,500	2,500		1255
		S# 1M0825GSTBN028196						254
039		GRAIN STORED IN BAGS	150,000	44210	2,500	2,500		254
040	2016	POLARIS #4XASEA572GA270199	10,000	65830	2,500	2,500		1076
041	2016	HONDA #1HFT44D8G4201348	10,000	65830	2,500	2,500		
002/001	1950	DWELLING TRUETT 1124 SF	141,357	10131	2,500	2,500	FRAME	
001		COV B - OTHER PRIVATE STRUCT	14,135	99996	2,500	2,500		
001		COV D - LOSS OF USE (ALS)		99997				
002	1980	QUONSET TRUETT LOC 60X40	5,900	33231	2,500	2,500	FRAME	432
003	1980	OPEN FRONT GARAGE 1 30X24	4,300	33232	2,500	2,500	FRAME	98
		TRUETT LOC						
004	1982	OPEN FRONT GARAGE 2 20X20	4,900	33232	2,500	2,500	FRAME	59
		TRUETT LOC						
005	2005	POLE BARN 112X52	17,700	33231	2,500	2,500	FRAME	506
		TRUETT LOC						
006	1990	GRAIN BIN BUTLER 1 3500 BU	8,200	33331	2,500	2,500	FRAME	84
		TRUETT LOC						
007	1990	GRAIN BIN BUTLER 2 3500 BU	8,200	33331	2,500	2,500	FRAME	84
		TRUETT LOC						
008	1990	GRAIN BIN BUTLER 3 3500 BU	8,200	33331	2,500	2,500	FRAME	84
		TRUETT LOC						
003/001	2014	DWELLING THEO 1280 SF	33,222	10231	2,500	2,500	FRAME	1208
001		COV B - OTHER PRIVATE STRUCT	3,222	99996	2,500	2,500		
001		COV D - LOSS OF USE (ALS)		99997				
002	1980	POLE BUILDING 60X40	13,200	33231	2,500	2,500	FRAME	307
		THEO LOC						
003	1990	RED POLE BARN 40X24	18,300	33231	2,500	2,500	FRAME	170
		THEO LOC						
004	1990	GRAIN BIN 4 8500 BU	13,200	33331	2,500	2,500	FRAME	163
		THEO LOC						
005	1990	GRAIN BIN 5 8500 BU	13,200	33331	2,500	2,500	FRAME	163
		THEO LOC						
006	2012	GRAIN BIN 6 40000 BU	72,900	33331	2,500	2,500	FRAME	654
		THEO LOC						
007	1980	GRAIN BIN 7 5000 BU	14,700	33331	2,500	2,500	FRAME	148
		THEO LOC						
004/001	1990	RED/WHITE POLE SHED 80X40	15,200	33231	2,500	2,500	FRAME	334
		TREVOR LOC						
002	1972	CATTLE BARN 84X42	10,900	33232	2,500	2,500	FRAME	459
		TREVOR LOC						
003	2012	MERIDIAN BULK BIN #1 18X18	15,000	36931	2,500	2,500	FRAME	114
		TREVOR LOC						
004	2012	MERIDIAN BULK BIN #2 18X18	15,000	36932	2,500	2,500	FRAME	142
		TREVOR LOC						

8104 (01-05) 03

Total 3,789,236

Page 001/09

43

184

FPK FMPN 30 2 7010948

INSURED'S COPY

FARM PROPERTY SCHEDULE B

Loc/ Item	Item Description	Cause Of Loss	Class/ Coverage	Roof Type	Prot Device	Aux Heat	EQ Cov	Occup Type	Repl Cost	Cost of Const.	Ord & Law	
001/001	DWELLING CHERYL	SPECIAL	10331	A	O	00	N	NO	O	S	Y	N
001	COV B - OTHER P		99996	B								
001	COV D - LOSS OF		99997	D								
002	HOUSEHOLD PERSON	SPECIAL	20301	C	O	00	N	NO	O	R	Y	N
005	GRAIN BIN	SPECIAL	33331	G	M	00	N	NO	O	A	Y	N
006	GRAIN BIN	SPECIAL	33331	G	M	00	N	NO	O	A	Y	N
007	FRIESEN BULK B1	SPECIAL	36931	G	M	00	N	NO	O	A	Y	N
008	METAL SHOP 1/2	SPECIAL	33231	G	M	00	N	NO	O	A	Y	N
011	MERIDIAN 1620 B	SPECIAL	36931	G	M	00	N	NO	O	A	Y	N
012	BULK BIN #1 1/2	SPECIAL	36931	G	M	00	N	NO	O	A	Y	N
013	BULK BIN #2 1/2	SPECIAL	36931	G	M	00	N	NO	O	A	Y	N
016	GRAIN BIN	SPECIAL	33331	G	M	00	N	NO	O	R	Y	N
017	GRAIN BIN	SPECIAL	33331	G	M	00	N	NO	O	R	Y	N
035	BLANKET EXCL GR	SEE POL	72160	F		00	N	NO			N	N
036	RANGER S BY S 9	SPECIAL	65830	E		00	N	NO		A	N	N
	S# 4XAUH88A4EG8											
037	JOHN DEERE GATO	SPECIAL	65830	E		00	N	NO		A	N	N
	S# 1M0825GSTBN0											
039	GRAIN STORED IN	BASIC	44210	E		00	N	NO		A	N	N
040	POLARIS #4XASEA	SPECIAL	65830	E		00	N	NO		A	N	N
041	HONDA #1HFE44D	SPECIAL	65830	E		00	N	NO		A	N	N
002/001	DWELLING TRUETT	SPECIAL	10131	A	O	01	N	NO	T	R	Y	N
001	COV B - OTHER P		99996	B								
001	COV D - LOSS OF		99997	D								
002	QUONSET TRUETT	SPECIAL	33231	G	M	00	N	NO	O	A	Y	N
003	OPEN FRONT GARA	SPECIAL	33232	G	O	00	N	NO	O	A	N	N
	TRUETT LOC											
004	OPEN FRONT GARA	SPECIAL	33232	G	M	00	N	NO	O	A	N	N
	TRUETT LOC											
005	POLE BARN	SPECIAL	33231	G	M	00	N	NO	O	A	Y	N
	TRUETT LOC											
006	GRAIN BIN BUTLE	SPECIAL	33331	G	M	00	N	NO	O	A	Y	N
	TRUETT LOC											
007	GRAIN BIN BUTLE	SPECIAL	33331	G	M	00	N	NO	O	A	Y	N
	TRUETT LOC											
008	GRAIN BIN BUTLE	SPECIAL	33331	G	M	00	N	NO	O	A	Y	N
	TRUETT LOC											
003/001	DWELLING THEO	SPECIAL	10231	A	O	00	N	NO	T	R	Y	N
001	COV B - OTHER P		99996	B								
001	COV D - LOSS OF		99997	D								
002	POLE BUILDING	SPECIAL	33231	G	M	00	N	NO	O	A	Y	N
	THEO LOC											
003	RED POLE BARN	SPECIAL	33231	G	M	00	N	NO	O	A	Y	N
	THEO LOC											
004	GRAIN BIN 4	SPECIAL	33331	G	M	00	N	NO	O	A	Y	N
	THEO LOC											
005	GRAIN BIN 5	SPECIAL	33331	G	M	00	N	NO	O	A	Y	N
	THEO LOC											
006	GRAIN BIN 6	SPECIAL	33331	G	M	00	N	NO	O	A	Y	N
	THEO LOC											
007	GRAIN BIN 7	SPECIAL	33331	G	M	00	N	NO	O	A	Y	N
	THEO LOC											
004/001	RED/WHITE POLE	SPECIAL	33231	G	M	00	N	NO	O	R	Y	N
	TREVOR LOC											
002	CATTLE BARN	SPECIAL	33232	G	M	00	N	NO	O	A	N	N
	TREVOR LOC											
003	MERIDIAN BULK B	SPECIAL	36931	G	M	00	N	NO	O	A	Y	N
	TREVOR LOC											
004	MERIDIAN BULK B	SPECIAL	36932	G	M	00	N	NO	O	A	N	N
	TREVOR LOC											

8105 09 05 10

00180

43

185

LEGEND

Roof Type:		Earthquake Coverage:	
Wood Shake	W	Earthquake Coverage Only	EQ
Hail Resistant	H	Earthquake with Retrofit Coverage	ER
Metal Roof with Metal Siding	M	Earthquake with Engineering Coverage	EE
Metal Roof with Other Than Metal Siding	P	Earthquake w/ Retrofit and Engineering Cov	EB
Other	O	Limited Earthquake Coverage Only	LQ
		Limited Earthquake with Retrofit Coverage	LR
		Limited Earthquake with Engineering Coverage	LE
		Limited Earthquake with Retrofit and	
		Engineering Coverage	LB
		No Earthquake Coverage	NO
Protective Device Credit:		Occupancy Type:	
None	00	Owner Occupied - Primary	O
1 Smoke Detectors, Dead Bolts, Heat	01	Owner Occupied - Additional	A
Detector, and Fire Extinguisher		Tenant Occupied	T
2 Local Burglar Alarm	02	Seasonally Occupied	S
3 Local Fire Alarm	03	Guest House	G
4 Central Station Burglary Alarm	04	Vacant	V
5 Central Station Fire Alarm	05	Course of Construction	C
6 Partial Sprinkler System	06	Condo & Rental	R
7 Total Sprinkler System	07	Hooby	H
1 and 6	08		
1 and 7	09		
2 and 3	10		
2 and 5	11		
2 and 6	12		
2 and 7	13		
3 and 4	14		
3 and 6	15		
3 and 7	16		
4 and 5	17		
4 and 6	18		
4 and 7	19		
5 and 6	20		
5 and 7	21		
2,3, and 6	22		
2,3, and 7	23		
4,5, and 6	24		
4,5, and 7	25		
8 Wrought Iron Bars on all Doors & Windows	26		
2 and 8	27		
4 and 8	28		
9 Permanent Storm Shutters or Impact	29		
Resistant Glass			
10 Permanent Storm Shutters and Impact	30		
Resistant Glass			
Auxiliary Heating Surcharge:		Wind Excl:	
Wood/Solid Fuel Stove	S	Excluded (Applicable code	E
Wood/Solid Fuel Furnace	F	varies by state	W
Exterior Unit	E	& class code)	X
Other	O	Not Excluded - Mitigation Factor Applies	M
None	N	Not Excluded	N
Ordinance or Law:		Cosm Loss Exclusion (Cosm Loss):	
Yes	Y	Yes	Y
(Where Applicable - Regular)	R	No	N
(Where Applicable - Broad)	B		
No	N		

8105 09 05 10

06/18/21

FPK FMPN 30 2 7010948

INSURED'S COPY
FARM PROPERTY SCHEDULE C

Loc/ Item	Item Description	Class	Wind Excl	Cosm Loss	
001/001	DWELLING CHERYL	10331	N	N	
001	COV B - OTHER P	99996			
001	COV D - LOSS OF	99997			
002	HOUSEHOLD PERSON	20301	N	N	
005	GRAIN BIN	33331	N	N	
006	GRAIN BIN	33331	N	N	
007	FRIESEN BULK B1	36931	N	N	
008	METAL SHOP 1/2	33231	N	N	
011	MERIDIAN 1620 B	36931	N	N	
012	BULK BIN #1 1/2	36931	N	N	
013	BULK BIN #2 1/2	36931	N	N	
016	GRAIN BIN	33331	N	N	
017	GRAIN BIN	33331	N	N	
035	BLANKET EXCL GR	72160	N	N	
036	RANGER S BY S 9	65830	N	N	
037	S# 4XAUH88A4EG8 JOHN DEERE GATO	65830	N	N	
039	S# 1M0825GSTBN0 GRAIN STORED IN	44210	N	N	
040	POLARIS #4XASEA	65830	N	N	
041	HONDA #1HFTE44D	65830	N	N	
002/001	DWELLING TRUETT	10131	N	N	
001	COV B - OTHER P	99996			
001	COV D - LOSS OF	99997			
002	QUONSET TRUETT	33231	N	N	
003	OPEN FRONT GARA	33232	N	N	
004	TRUETT LOC	33232	N	N	
005	POLE BARN	33231	N	N	
006	TRUETT LOC	33331	N	N	
007	GRAIN BIN BUTLE	33331	N	N	
008	TRUETT LOC	33331	N	N	
003/001	THEO LOC	10231	N	N	
001	DWELLING THEO	99996			
001	COV B - OTHER P	99997			
002	COV D - LOSS OF	99997			
002	POLE BUILDING	33231	N	N	
003	THEO LOC	33231	N	N	
004	RED POLE BARN	33331	N	N	
005	THEO LOC	33331	N	N	
006	GRAIN BIN 4	33331	N	N	
007	THEO LOC	33331	N	N	
004/001	GRAIN BIN 5	33331	N	N	
002	THEO LOC	33331	N	N	
003	GRAIN BIN 6	33331	N	N	
004	THEO LOC	33331	N	N	
002	GRAIN BIN 7	33331	N	N	
003	THEO LOC	33331	N	N	
004	RED/WHITE POLE	33231	N	N	
002	TREVOR LOC	33232	N	N	
003	CATTLE BARN	36931	N	N	
004	TREVOR LOC	36932	N	N	
003	MERIDIAN BULK B	36931	N	N	
004	TREVOR LOC	36932	N	N	
004	MERIDIAN BULK B	36932	N	N	
004	TREVOR LOC				

8140 11 14 01

00182

43

187

FPK FMPN 30 2 7010948

INSURED'S COPY

FARM PROPERTY SCHEDULE A

Loc/ Item	Year	Item Description	Limit	Class	Deductible		Const Type	Premium
					Other	W & H		
005	2015	HOPPER BIN 4000 BU	15,000	33331	1,000	1,000	FRAME	143

8104 (01-01) 03

FPK FMPN 30 2 7010948

INSURED'S COPY
FARM PROPERTY SCHEDULE B

Loc/ Item	Item Description	Cause Of Loss	Class/ Coverage	Roof Type	Prot Device	Aux Heat	EQ Cov	Occup Type	Repl Cost	Cost of Const.	Ord & Law
005	HOPPER BIN	SPECIAL	33331 G	O	00	N	NO	O	R	Y	N

8105 09 05 10

00184

43

189

LEGEND

Roof Type:		Earthquake Coverage:	
Wood Shake	W	Earthquake Coverage Only	EQ
Hail Resistant	H	Earthquake with Retrofit Coverage	ER
Metal Roof with Metal Siding	M	Earthquake with Engineering Coverage	EE
Metal Roof with Other Than Metal Siding	P	Earthquake w/ Retrofit and Engineering Cov	EB
Other	O	Limited Earthquake Coverage Only	LQ
		Limited Earthquake with Retrofit Coverage	LR
		Limited Earthquake with Engineering Coverage	LE
Protective Device Credit:		Limited Earthquake with Retrofit and	
None	00	Engineering Coverage	LB
1 Smoke Detectors, Dead Bolts, Heat	01	No Earthquake Coverage	NO
Detector, and Fire Extinguisher			
2 Local Burglar Alarm	02		
3 Local Fire Alarm	03	Occupancy Type:	
4 Central Station Burglary Alarm	04	Owner Occupied - Primary	O
5 Central Station Fire Alarm	05	Owner Occupied - Additional	A
6 Partial Sprinkler System	06	Tenant Occupied	T
7 Total Sprinkler System	07	Seasonally Occupied	S
1 and 6	08	Guest House	G
1 and 7	09	Vacant	V
2 and 3	10	Course of Construction	C
2 and 5	11	Condo & Rented	R
2 and 6	12	Hobby	H
2 and 7	13		
3 and 4	14	Replacement Cost Coverage:	
3 and 6	15	Actual Cash Value	A
3 and 7	16	ACV Dwelling / RC Contents	B
4 and 5	17	Functional RC	F
4 and 6	18	Functional RC Dwelling / RC Cont	G
4 and 7	19	Replacement Cost	R
5 and 6	20	RC Dwelling / RC Cont	S
5 and 7	21	Utility Value	U
2,3, and 6	22	Utility Dwelling / RC Cont	V
2,3, and 7	23	Extended Replacement Cost	E
4,5, and 6	24	Extended Replacement Cost - 125%	L
4,5, and 7	25	Extended Replacement Cost - 150%	C
8 Wrought Iron Bars on all Doors & Windows	26	Agreed Value	D
2 and 8	27		
4 and 8	28	Cost of Construction;	
9 Permanent Storm Shutters or Impact	29	Cosmetic Loss Exclusion (Cosm Loss):	
Resistant Glass		None Sub ALE Waived:	
10 Permanent Storm Shutters and Impact	30	Yes	Y
Resistant Glass		No	N
Auxiliary Heating Surcharge:		Wind Excl:	
Wood/Solid Fuel Stove	S	Excluded (Applicable code	E
Wood/Solid Fuel Furnace	F	varies by state	W
Exterior Unit	E	& class code)	X
Other	O	Not Excluded - Mitigation Factor Applies	M
None	N	Not Excluded	N
Ordinance or Law:			
Yes	Y		
(Where Applicable - Regular)	R		
(Where Applicable - Broad)	B		
No	N		

8105 09 05 10

00185

FPK FMPN 30 2 7010948

INSURED'S COPY
FARM PROPERTY SCHEDULE C

Loc/ Item	Item Description	Class	Wind Excl	Cosm Loss	
005	HOPPER BIN	33331	N	N	

8140 11 14 01

00186

43

191

FPK FMPN 30 2 7010948

INSURED'S COPY

FARM LIABILITY INFORMATION

Coverage is provided only where a premium and a limit of liability are shown for that coverage.

COV	DESCRIPTION	LIMIT	PREMIUM
H	Farm Liability & Exchange Labor Bodily Injury And Property Damage Per Occurrence	\$1,000,000	\$661.00
	9999999 Total Acres At All Locations 75.50		
	Additional Dwellings With Personal Liability		
	2 Additional Dwellings Rented To Others On Farm		\$68.00
	1 Additional Residence Or Set Of Buildings		\$34.00
	Primary Livestock Type Livestock Number		
	Secondary Livestock Type Livestock Number		
	N Hobby Farm		
	N Lessor's Risk		
I	Personal Injury And Advertising Injury Per Person Or Entity	\$1,000,000	INCLUDED
	Products And Completed Operations Aggregate All Occurrences	\$2,000,000	INCLUDED
J	Medical Payments Per Person	\$5,000	\$33.00
	Medical Payments Per Occurrence	\$25,000	INCLUDED
	General Annual Aggregate For Coverages H, I, and J All Occurrences	\$2,000,000	INCLUDED
	Farmers Medical Payments Per Person:		
	INSURED FARM EMPLOYEES RATED ON A PER CAPITA BASIS: TYPE AND NUMBER EMPL AT ANY TIME DURING THE POLICY. SAME LIMITS AS COVERAGES H, I, AND J.		

FULL TIME WORKING IN EXCESS OF SIX MONTHS
PART TIME WORKING TWO TO SIX MONTHS
PART TIME WORKING LESS THAN TWO MONTHS
RESIDENCE (NON-FARM) IN EXCESS OF TWO EMPL
INCREASED EMPLOYEE MEDICAL

Total Annual Farm Liability Coverage Premium For State: SD

\$796.00

8106 (07-12)

Page 00187

43

192

FPK FMPN 30 2 7010948

INSURED'S COPY
FARM ENDORSEMENTS
SCHEDULE

This policy is subject to the following forms. For additional information refer to Form 8110.

Form	Date	Premium	Title
FP70241	0712	\$ 91	BACKUP FROM SEWERS OR DRAINS OR SUMP PUMP COV A, B
FO70735	1114	\$ 104	FARM PREMIER PROTECTION PLUS COVERAGE
FP70255	0812		COV F - FARM PERSONAL PROPERTY COVERAGE ENDORSEMENT
FP70599	0712		UNSCHEDULED FARM PERS. PROP. LIVESTOCK EXCL. END.
FO70731	1114	\$ 62	FARM PROTECTION PLUS COVERAGE
FL70620	0101	\$ 615	RECREATIONAL VEHICLE LIABILITY COVERAGE END.
FO70701	0101		BLANKET ACREAGE COVERAGE ENDORSEMENT
FO70732	0816	\$ 207	AGRICHOICE ELITE COVERAGE ENDORSEMENT
FP70269	0712		ELECTRICAL GENERATING EQUIPMENT COVERAGE ENDORSEMENT
FP70582	0712		LIMITED FUNGI OR BACTERIA COVERAGE
FL70687	0408		UNWARRANTED CLAIM OF ANIMAL CRUELTY LIMITED DEFENSE
FL70688	0408		EMPLOYMENT RELATED PRACTICES LIMITED DEFENSE EXP.
FL70313	0214		RAW MILK & RAW MILK PRODUCTS EXCLUSION END.
FL70658	0102		FUNGI OR BACTERIA EXCLUSION ENDORSEMENT
FL70321	0115		RECREATIONAL VEHICLE EXPANDED MEDICAL PAYMENTS COV
FL70331	0114		AGRICULTURAL UNMANNED AERIAL SYSTEMS LIABILITY EXT
FL70020	0712		FARM LIABILITY COVERAGE FORM
FO70709	0202		COMMON POLICY CONDITIONS
FO70860	0214		POLICY CHANGES
FP70284	1114		AMENDATORY
FO70840	0116		SOUTH DAKOTA AMENDATORY ENDORSEMENT
FP70539	0101		REPLACEMENT COST - HOUSEHOLD PERS. PROP. COV. END.
FP70551	0101		ALARM OR FIRE PROTECTION SYSTEM ENDORSEMENT
CHL0021	0101		NUCLEAR ENERGY LIABILITY EXCLUSION ENDORSEMENT
FP70010	0712		FARM PROPERTY COVERAGE FORM
FP70285	1114		WATER DAMAGE COVERAGE ENDORSEMENT
FO70899	0606		CHANGES IN COV. FORMS - MOBILE EQUIP. SUBJECT TO M
FP70290	0615		SINGLE DED. WITH MULTIPLE FARMOWNER POLICIES END.
FO70717	0108		EXCLUSION OF TERRORISM
13614	1185		SPECIAL CONTINUATION PROVISION
FP70283	0214		NON-OWNED POULTRY AND SWINE LOSS OF INCOME EQUIP.
FO70440	0402		SOUTH DAKOTA CANCELLATION AND NONRENEWAL CONDITION
FP70227	0712		EQUIPMENT BREAKDOWN COVERAGE ENDORSEMENT
FP70230	0107		CONSTRUCTION COST ADJUSTMENT ENDORSEMENT
IN7403	0107		IMPORTANT FLOOD INSURANCE NOTICE
FL70311	0214	\$ 57	LIMITED FARM POLLUTION LIABILITY COV END
FP70555	0712		MOBILE HOME COVERAGE ENDORSEMENT
IN0000N	0409		PRIVACY STATEMENT- NATIONWIDE
FP70509	0109		FARM PROPERTY LOSS PAYABLE CLAUSE ENDORSEMENT
IN5017	0593		IMPORTANT NOTICE FOR RENEWAL POLICIES
FL70334	1215		MARIJUANA EXCLUSION ENDORSEMENT
FP70284	1215		MARIJUANA EXCLUSION ENDORSEMENT
FP70287	0815		EQUIPMENT BREAKDOWN COV END-COVERAGES A, B, C & D
FP70291	0615		FARM BUILDINGS AND STRUCTURES - METAL ROOF & SIDING

8107 (07-12) 00

Page 00188

43

193

STATE OF SOUTH DAKOTA)	CIRCUIT COURT
)SS	
COUNTY OF HAAKON)	SIXTH JUDICIAL CIRCUIT
NATIONWIDE AGRIBUSINESS INSURANCE COMPANY, Plaintiff, vs. BURJES FITCH, CHERYL FITCH, TRUETT FITCH, THEO FITCH, FITCH FARMS, BC FITCH PARTNERSHIP, and HUNTER PETERSON Defendants.	27CIV20-19 STATEMENT OF UNDISPUTED MATERIAL FACTS IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

COMES NOW, the Plaintiff, the Nationwide Agribusiness Insurance Company
("Nationwide") by and through its counsel of record May, Adam, Gerdes and Thompson LLP,
and submits the following Statement of Undisputed Material Facts in Support of Motion for
Summary Judgment as follows:

1. Nationwide issued a Farm Liability policy FPK FMPN 3027010948 (the "Policy") to
Burjes Fitch ("Burjes") and Cheryl Fitch ("Cheryl"), providing coverage for the
policy period from February 20, 2017 to February 20, 2018.
Affidavit of Terra M. Larson ¶1; Exhibit A.
2. On or about August 13, 2017, Burjes and Cheryl's grandson, Hunter Peterson
("Peterson") was spraying noxious weeds on property owned by BC Fitch Limited
Partnership and leased by Burjes and Cheryl using a 2011 John Deere Gator
("Gator") owned by Burjes and Cheryl. Affidavit of Terra M. Larson ¶¶ 1, 5, 6;
Exhibit A; Exhibit D; Exhibit E; *see also* Answer of Burjes and Cheryl Fitch.

3. The Gator tipped over and Peterson was trapped underneath it, causing Peterson to sustain bodily injuries. Affidavit of Terra M. Larson ¶ 3; Exhibit B; Answer of Burjes and Cheryl Fitch.
4. Burjes was interviewed by Nationwide adjuster Michael A. Carter on August 16, 2017. Affidavit of Terra M. Fisher ¶ 5; Exhibit D; Affidavit of Michael A. Carter ¶ 2.
5. The August 16, 2017 interview was recorded. *Id.*
6. The August 16, 2017 recording was transcribed by a certified court reporter. Affidavit of Terra M. Larson ¶ 6; Exhibit E.
7. The transcript of the August 16, 2017 recording accurately reflects the August 16, 2017 recording. *Compare Exhibit D with Exhibit E.*
8. Burjes stated in his recorded interview that the incident as a “work-related accident” and he stated that “noxious weeds are required by law around here in this county to be sprayed. So it’s a requirement we keep the weeds down, you know, especially the Canadian thistle.” Exhibits D & E.
9. Burjes stated in his recorded interview as to Peterson that: “Oh, it’s just part-time help. He’s in high school, so they just, he just helps in the summertime. Yeah, just summertime off and on, just, when we need him for jobs like this. And he’s driving tractors and stacking bales and stuff like that, yes.” Exhibits D & E.
10. Burjes stated in his recorded interview as to the Gator that: “Yeah, well, they are all work related, we never have used them for recreational, yeah. We don’t go anywhere with them except to the ranch, that’s it, they are just used for anything and everything.” Exhibits D & E.

11. Burjes stated in his recorded interview that no formal employment agreement existed between Peterson and the Fitches. Exhibits D and E.
12. Michael A. Carter, an adjuster with Nationwide, interviewed Burjes on August 18, 2017. Affidavit of Michael A. Carter ¶ 3; Exhibit F.
13. Carter's log notes from his interview with Burjes stated that Burjes told Carter that Peterson was paid \$3,000 per month and that Burjes usually "settles up" with Peterson at the end of the month. Affidavit of Michael A. Carter ¶ 4; Exhibit F.
14. On August 3, 2020, Burjes, Cheryl, Truett, Theo, Fitch Farms, and BC Fitch Limited Partnership were served with a Summons and Complaint by Peterson alleging negligence and premises liability arising from the August 13, 2017 incident. Affidavit of Terra M. Larson ¶ 3; Exhibit B.
15. On September 14, 2020, Nationwide issued a reservations of rights letter to Burjes and Cheryl stating, among other things that it would provide a defense for the Complaint subject to their reservation of rights. Affidavit of Terra M. Larson ¶ 4; Exhibit C.
16. Nationwide's Policy is included in the Affidavit of Terra M. Larson ¶ 2, Exhibit A.
The Policy's provisions are not in dispute. See Answer
Dated this 18 day of March, 2021.

MAY, ADAM, GERDES & THOMPSON LLP

BY: 

TERRA M. LARSON
Attorneys for Plaintiffs
503 S. Pierre Street; PO Box 160
Pierre, SD 57501 (605) 224-8803
tmf@mayadam.net