# APPENDIX A
# FORMS

## INDEX TO FORMS

**SECTION I**

**APPRAISAL DEMAND**

**FORM - 1**

(Letter Form)
(To be sent by email and Certified Mail/Return Receipt Requested)

Re:

This will acknowledge your recent offer of $___ with respect to building damage, $_____ with respect to the contents/personal property loss and $ ______ with respect to additional living expenses which was reported to me in our conversation/correspondence of [date].

Your offer is respectfully rejected as it fails to reflect the actual loss sustained. As a result of the foregoing, it is clear there is now a disagreement between us as to the amount of loss, actual cash value and replacement value.

Accordingly, the insured hereby demands the benefit of the appraisal provision and hereby nominates [Name of Appraiser] of [Name of Company], whose phone number is ___________and fax number is ____________.

Please select your appraiser within 20 days pursuant to the policy of insurance.

Additionally, the insured hereby demands, pursuant to the policy and applicable law/regulation that you tender the undisputed amount as reflected by your above offer.

We demand payment of said sum within _____ days consistent with the policy, regulation, and/or insurance law.

Very truly yours,

______________________

cc: To the appraiser appointed

## SECTION I

## APPRAISAL DEMAND

## FORM - 2

(Letter Form)
(To be sent Certified Mail/Return Receipt Requested and by Fax)

Re: [Date of Loss]
[Loss Location]

Dear

It is apparent that [The Insured] and [The Insurer] disagree as to the amount of loss and damage to the property insured by the ______ Insurance Company as a result of the [peril insured against] loss which occurred at the insured location on [date of loss]. Accordingly, pursuant to Section ________ of policy number ____________, the insured hereby makes written demand for an appraisal of the loss.

The insured requests that [Insurance Company] select a competent and disinterested appraiser by the ___ day of ____, 20___ and [The Insured] shall also select a competent and disinterested appraiser by that date.

We look forward to being advised as to the insurer's designated appraiser no later than the appointed date.

We hereby request and demand that the insurer make an immediate payment in the amount of $ _____ representing the undisputed amount of the loss as reflected by your last offer to the insured on [date].

If you have any questions, please contact me immediately. Waiving none and reserving all of the insured's rights, we remain,

Very truly yours,

____________________

## SECTION I

## APPRAISAL DEMAND

## FORM - 3

(Letter Form)
(To Be Sent Certified Mail/Return Receipt Requested and by email)

Re: [Date of loss]
[Loss location]

Dear

This letter is to advise you that the [Insurance Company] disagrees with your determination of the value of your loss to your [building, personal property] as reflected in the proof(s) of loss filed on [date]. In order to resolve this dispute concerning the value of the loss, the [Insurance Company] hereby invokes its right to have the loss appraised pursuant to the terms and conditions of the policy. The appraisal provision of the policy provides as follows:

[QUOTE THE APPLICABLE POLICY APPRAISAL PROVISION]

The [Insurance Company] hereby designates _________ of _____________, whose phone number is ____________ and whose fax number is ____________ A statement of ____'s qualifications is enclosed.

Pursuant to the terms of the appraisal provision, please notify the undersigned within 20 days from the receipt of this letter as to the identity of the appraiser who you have selected.

A check for the undisputed amount owed will be delivered to you under separate cover.

If you have any questions regarding the foregoing, please do not hesitate to contact me.

Very truly yours,

_________________

cc: Insurance Company Appraiser Appointed

## SECTION II

## APPRAISAL AGREEMENT

## FORM 1

It is hereby agreed by and between [insured], and [insurance company] that whereas the parties to this agreement have failed to agree on the amount of loss or damage to the [real, personal][1207] property of the insured situated at [insured location], which sustained damage as a result of a [covered peril] on or about the ___ day of _____, 20__, under policy number _____________, and they hereby submit their differences to appraisal based upon the following agreement:

1. The policy of insurance involved in this matter provides coverage for damage to [real, personal] up to a limit of liability of $_________ for the property at the location insured.

2. The policy contains the following provisions which are pertinent to these appraisal proceedings:

[Recite the "How We Settle a Loss" provision of the policy including the valuation provision, i.e...replacement value, actual cash value,

[1207] If there is a disagreement as to economic claims such as additional living expense or business interruption, add language including these as well.

agreed value, etc., including whatever definitions may be contained within the policy or local regulation or by statute.]

[Recite the applicable Appraisal Provision as contained in the policy or as required by the local Standard Fire Policy.]

3. Pursuant to the above-quoted Appraisal Clause, the insureds have selected:

Name ______________________
Address ______________________

Telephone ______________________
Fax ______________________
Email ______________________

as appraiser; and the insurer has selected;

Name ______________________
Address ______________________

Telephone ______________________
Fax ______________________
Email ______________________

as its appraiser.

4. The appraisers shall execute the "Declaration of Appraisers" attached hereto as Exhibit "A" before undertaking their duties as

appraisers in this matter. The appraisers shall first select an impartial umpire. If the appraisers are able to agree upon the selection of an umpire within the fifteen (15) day period provided by the policy and this agreement, the appraisers shall execute the "Selection of Umpire Form" attached hereto as Exhibit "B." If the appraisers cannot agree upon an umpire with fifteen (15) days from the date of this agreement, either party may petition the ____ Court, _____ County, for the appointment of a competent and disinterested umpire. Once an umpire is selected by the appraisers or appointed by a court of competent jurisdiction as hereinbefore described, the umpire shall execute the "Qualification of Umpire" form attached hereto as Exhibit "C".

The appraisers will then inspect the aforesaid property insured under the policy. The appraisers shall further receive and consider written estimates of value and loss submitted by the parties and convene a hearing in this matter prior to the inspection of the property to afford both the insured and the insurer through their representatives, a full and complete opportunity to submit such evidence and make such arguments as each shall reasonably request. The receipt of such evidence is proper for the determination to be made by the appraisers pursuant to this agreement.

The appraisers shall estimate and appraise separately the loss or damage, actual cash value, and replacement cost [or other measure of value per the policy] to the insured property alleged to have been damaged as a result of the ___ day of _____, 20___ incident.

If the appraisers are unable to agree upon the loss or damage, actual cash value and replacement cost [or other measure of value per the policy] of the property insured under the policy and lost or damaged as a result of the aforesaid incident, within twenty (20) days of appointment of an impartial umpire, the appraisers shall submit their differences only to the umpire.

The umpire's authority shall extend only to the resolution of the disputes as to the particular items upon which the appraisers are unable to agree.

An award shall be rendered within 20 days of the submission to the umpire. The Award in writing, inclusive of the initial agreement of the appraisers and the subsequent agreement of the umpire and one appraiser, signed by any two of the three shall determine the matters hereby submitted for appraisal.

When the appraisers or the umpire and at least one appraiser are able to agree upon the issues of value and loss submitted to them, they shall execute the “Award” form attached as Exhibit “D” and submit to each party or their designated representative a true and correct copy of such Award within three (3) days of execution.

Each appraiser shall be paid by the party selecting him, and the expenses of the appraisal and the services of the umpire shall be paid by the parties equally.

The parties to this agreement reserve the right to apply to ______Court, _______County, during these Appraisal proceedings and for a thirty (30) day period after receipt of a written Award as hereinbefore described in order to determine any issues of law arising in connection with the Appraisal proceedings.

It is further understood by the parties to this agreement that the policy’s suit provision as well as any statutory limitation on the time within which the insured has to bring suit under the insurance policy is tolled during the course of this appraisal process and for a period of up until 30 days after the delivery of an Award to the parties.

Upon receipt of a duly executed appraisal Award as described above, the insurer agrees to make payment thereon within five business days.

It is further agreed that should payment on the Award not be made within the time prescribed, interest shall be payable on such Award for such period of time after such payment was due pursuant to this agreement at the statutory rate for judgments.

If upon commencement of demolition and reconstruction hidden damage is discovered which was not reasonably within the contemplation of the parties prior to or during the appraisal process, upon demand of either party, the appraisers and umpire shall be afforded the opportunity to reinspect the newly discovered damage and upon agreement of the umpire, the appraisal shall be reopened for the purpose of making a further award under the terms of the policy and this agreement.

| | |
|---|---|
| Insured | Date |
| Appraiser for Insured | Date |
| Insurance Company | Date |
| Appraiser for Ins. Co. | Date |

## SECTION II

## APPRAISAL AGREEMENT

## FORM 2

IT IS HEREBY AGREED BY AND BETWEEN [insured] and [Insurance Company], that whereas the parties hereto have disagreed as to the amount of loss or actual cash value* of the following property: [Describe the property insured] which is alleged to have suffered loss or damage by [the insured peril], on the ___ day of ____ 20__.

NOW, WHEREAS the policy in existence between the parties provides as follows:

[Quote the policy's Appraisal Provision or that of the Standard Fire Agreement, (whichever is appropriate)].

WHEREAS a disagreement has now arisen between the parties to this policy as to the actual cash value* or the amount of loss to the covered property;

The insured selected ______________as (his/her/its) appraiser and the insurer having selected _____________ as its appraiser, said appraisers shall together first select an umpire, and shall then estimate and appraise, the loss of and to said property, stating in writing the actual cash value* of the insured property and the amount of loss, at the time of the loss, and, failing to agree, the appraisers shall submit their differences only to the umpire. An Award executed by any two, in writing, shall determine the matters as hereby submitted for appraisal.

Subscribed and dated this __ day of _____20__ .

| ____________________ | ____________________ |
|---|---|
| Insurer | Insured |

* or other insured value as provided in the policy.

## SECTION III

## AGREEMENT AND AUTHORIZATION NOMINATING THE APPRAISER

## FORM 1

Re: Loss of [Date of Loss]
At: [Property Insured]

The undersigned hereby retains the services of _________ to act as my appraiser in an Appraisal to be conducted with my insurance company as a result of my [peril] loss of ______20__, and to conduct an appraisal of replacement value*, loss and damage to the above-captioned property loss per the conditions of the subject policy and will determine the following claims:

1. Building - a survey of value, loss and damage, including betterments and improvements. This will include replacement cost, actual cash value*, demolition and debris removal, contractor's overhead and profit as well as applicable sales tax and set forth such information in accord with the relevant insurance policy provision.

2. Contents/Personal Property - a survey of replacement value, loss and damage. This will be based upon the inventory presented and

will not require a physical inventory to be taken by you.

3. <u>Additional Living Expenses</u> - a survey of loss based upon the information supplied to you, to establish the necessary additional living expenses in accordance with the insurance policy.

4. You will be supplied with all available evidence including photographs, damage estimates, inventories, and other materials which bear on the issue of value, loss and damage. You agree to review these materials and to use them as you deem fit in order to complete the appraisal.

5. In acting as appraiser, the undersigned appraiser agrees, if necessary, to consult with your attorney regarding the steps to be taken pursuant to the requirements of the insurance policy as well as other duties placed upon the parties in connection with the appraisal clause, and other provisions of the insurance policy.

6. <u>Outside Experts</u> - It shall be the appraisers responsibility to provide experts as needed, as well as laboratory testing services, etc., only when and if required. Charges, if any would be my obligation as the insured. Any such expert retention should be discussed and approved by me.

7. It is expressly understood and accepted that you, the insured, shall bear one-half of the umpire's cost, as well as one-half of other reasonable costs and expenses related to the work and services of the umpire. The other half shall be payable by the insurance carrier.

8. Appraiser's Compensation - For the services rendered by you as appraiser, the undersigned unconditionally agrees to pay and assigns a fee in the amount to be calculated at $__________ per hour for work performed measured portal to portal. In addition, I agree to reimburse reasonable expenses incurred by the appraiser in performing his appraisal duties. Any expense in excess of $100.00 shall be subject to my prior approval of the insured. Fees and expenses shall be reimbursable within 14 days of billing by the appraiser. To the extent there exists any balance due the appraiser upon the issuance of the Award, it is the responsibility of and agreement of the insured to make certain that the appraiser is fully paid within 3 days of the clearance of the insurance proceeds check.

If for any reason the proceeds are uncollectible to the insured, the insured personally guarantees the payment of the appraiser's fees and expenses.

Sworn to before me this
______day of ______ 20___

______________________ ____________________
Notary Public APPRAISER

Sworn to before me this
______day of ______ 20___

______________________ ____________________
Notary Public INSURED

* or other value as defined by the policy or statute.

## SECTION IV

## DECLARATION OF APPRAISERS

## FORM 1

We, the undersigned, do solemnly swear that we will act in accordance with policy provisions and with due speed and dispatch in making an appraisement and estimate of the replacement cost and actual cash value* of the loss and damage [add all aspects of claimed damage which are the subject of appraisal, i.e., ALE, demolition and debris removal, etc.] upon the insured property mentioned, in accordance with the appointment, and that we will make a true, just and conscientious Award, according to the best of our knowledge, skill and judgment. We are not related to the insured or insurer, either as employees or otherwise, and we have no interest in the said property or the insurance thereon.

Sworn to before me this
______day of ______ 20___

________________________ ____________________
Notary Public APPRAISER

Sworn to before me this
______day of ______ 20___

________________________ ____________________
Notary Public APPRAISER

* for other such value as stated in the policy

## SECTION V

## APPRAISER'S LETTER NOMINATING AN UMPIRE

## FORM 1

(Letter Form)

Re:

Dear :

Please be advised that I have been nominated as appraiser on behalf of the above insured. In accordance with the provisions of the policy and statute, we are initially to attempt to select a competent and disinterested umpire. Accordingly, I hereby submit the following names for your consideration:

1. ___________________________

2. ___________________________

3. ___________________________

All of the above individuals have had experience acting as an umpire on disputed property insurance matters and are experienced in appraisal proceedings. Their curriculum vitae are annexed for your consideration.

Should any of the above be agreeable to you, please confirm such at your earliest convenience. In the event that none of the aforementioned umpires meet with your approval, kindly submit a list of names for my review that would be acceptable to you.

Should we be unable to agree on an umpire within 15 days, under the terms of the policy, I will advise counsel for the insured to petition the court for the appointment of a competent and disinterested umpire.

Kindly contact the undersigned upon receipt in order to arrange for a mutually convenient appointment to commence our discussions in this matter. We are mandated to act expeditiously in this matter and to bring it to a timely conclusion based on the contract between the parties.

I am looking forward to hearing from you forthwith.

Very truly yours,

_______________________

cc: Insured

## SECTION VI

## SELECTION OF THE UMPIRE

## FORM 1

We, the undersigned appraisers, hereby select and appoint [Umpire] to act as Umpire to settle matters of difference that shall exist between us, if any, by reason of and in compliance with the foregoing Agreement and Appointment.

The appointment of the umpire is hereby made with the agreement and understanding by the parties to this matter that the obligation of the fee to be paid to the Umpire plus all other reasonable expenses incurred by the Umpire shall be shared equally by the insurer and the insured, and said fees shall be paid promptly upon receipt of billing.

Witness our hands this____ day of ______, 20____.

___________________________
APPRAISER

___________________________
APPRAISER

## SECTION VII

## QUALIFICATION OF THE UMPIRE

## FORM 1

I, the undersigned, hereby accept the appointment as umpire, as provided in the foregoing Agreement and solemnly swear that I will act with strict impartiality in all matters of difference that shall be submitted to me in connection with this Appointment, and I shall make a true, just and conscientious award, according to the best of my knowledge, skill and judgment. I am not related to any of the parties to this Agreement, nor interested as a creditor or otherwise in said property or the insurance thereon, nor have I had prior dealings with either of the parties or their representatives.

_________________________
UMPIRE

Sworn to before me this
____day of ______ 20___.

________________________
Notary Public

## SECTION VIII

## APPOINTING THE UMPIRE

## AFFIRMATION AND AFFIDAVIT IN SUPPORT OF MOTION FOR THE APPOINTMENT OF AN UMPIRE AND PROPOSED ORDER

## FORM 1

________COURT OF THE STATE OF ___________

COUNTY OF ______________________________

--------------------------------------------------X

In the Matter of the Claim of                Index No.:

[Name of Insured]

against the [Insurance Company] Affirmation

pursuant to [policy number]

--------------------------------------------------X

____________, an attorney duly admitted to practice before the Courts of this State, herein alleges the following upon information and belief:

1. I am a member of the firm of ________ _attorneys for the insurer, the ________________ _ Insurance Company, and as such I am fully familiar with the facts and circumstances surrounding this claim.

2. This Affirmation is submitted in support of the insurer's application for the appointment of an umpire to resolve this insurance appraisal pursuant to section ________ of the Insurance Law of the State of _______________ and the insurance policy issued by insurer to the insureds.

3. The insurer, [Insurance Company] issued a homeowner's policy of insurance to the insureds [name of insured(s)] bearing policy number _____
for the insured's home and contents located at [location of loss].

4. On or about [date of loss] said dwelling insured under the policy was damaged by [the peril insured against].

5. Efforts to settle the claim between the insurer and the insureds were to no avail, and it appears that there is a disagreement with respect to the replacement value, actual cash value and the amount of loss.

6. The policy of insurance upon which this claim is made contains the following appraisal provision:

[quote policy appraisal provision]

7. Having been unable to reach agreement on the claim, the insureds made a formal demand upon the insurer to submit the dispute to appraisal pursuant to Insurance Law section _________ and the policy. The insureds nominated as their appraiser [name of appraiser for insured] (See Exhibit "A" annexed hereto). [annex the Appraiser's appointment]

8. In response to said demand, the insurer nominated [name of insurance company appraiser]. (See Exhibit "B" annexed hereto) [annex the Appraiser's appointment].

9. An impasse has arisen in that the two appraisers have been unable to agree on the selection of an umpire to assist in resolving the appraisal dispute. As set forth in the annexed Affidavit of [the moving party's appraiser], the insurer's designated appraiser, the two sides have been unable to resolve their difference with respect to the extent of the damage suffered.

10. The two appraisers have been unable to agree on the selection of an umpire.

11. It was this inability to agree on an umpire that is the basis for the instant application, which, upon information and belief will not be opposed by the insureds.

12. Based on the foregoing, and pursuant to the policy and Insurance Law section______, the insurer respectfully requests that this Court forthwith appoint a competent and disinterested person, to act as umpire in the ascertainment of the amount of loss, damage and actual cash value* in order to complete the appraisal process and resolve this claim pursuant to the terms of the policy.

13. Pursuant to the policy, the cost of the umpire and his reasonable expenses shall be shared equally by the parties.

14. As appraisal is intended by the legislature and the parties to be an expedited process, it is respectfully requested that the Court's nomination be made as soon as possible.

15. No previous application has been made for any of the relief requested herein.

WHEREFORE, the parties request that this Court grant the instant application pursuant to the contract between the parties and section _______ of the Insurance Law and appoint a competent and disinterested person to act as umpire and for such other and further relief as this Court may deem just and proper.

Dated: [City, State]
[Date]

______________________________
(SIGNATURE OF ATTORNEY)

*or other value as provided for in the policy

## SECTION VIII

## MOTION TO COMPEL UMPIRE

## FORM 2 - AFFIDAVIT

____COURT OF THE STATE OF _____
COUNTY OF ____________________

-------------------------------------------x
In the Matter of the Claim of Index No.:
[Name of Insured]
against the [Insurance Company] Affidavit
pursuant to [policy number]
-------------------------------------------x

State of )
County of )

[Appraiser's Name], being duly sworn, deposes and says:

1. I am employed by ________________, located at ________________.

2. I have extensive experience in estimating damage caused by perils such as that suffered by the insured in this matter.

3. On or about the ___ day of ___, 20__, I was retained by the above-mentioned insurer to act as its appraiser on a [peril insured

against] loss at a premises located at [location of loss].

4. The Appraiser for the insureds, [Name of Insured's Appraiser] and I have reached an impasse in our efforts to reach an agreement on the instant claim.

5. Additionally, the appraiser nominated by the insured and I have been unable to agree on the selection of a competent and disinterested umpire to assist in resolving our differences.

6. Each of us identified umpires as reflected on the correspondence annexed as Exhibits "A" and "B".

7. The insured's appraiser was notified of this impasse by my letter dated [_______]. (See Exhibit "C" annexed hereto).

8. Based on the foregoing, it is respectfully requested that this honorable court appoint a competent disinterested person in order to assist in the resolution of this claim by the appraisal process pursuant to the subject policy.

_____________________
[Insurer's Appraiser]

Sworn to before me this
this__ day of _____, 20__.

________________________

Notary Public

## SECTION VIII

## MOTION TO COMPEL UMPIRE

## FORM 3 - ORDER

_______COURT OF THE STATE OF _________
COUNTY OF ___________________________

-----------------------------------------X Index No.:

In the Matter of the Claim of
[Name of Insured] **ORDER**
against the [Insurance Company]
pursuant to [policy number]
-----------------------------------------X

This matter, having come on for a hearing, and the Court having reviewed the Affirmation and Affidavit submitted by the moving party as well as the Affirmation submitted by the respondent;

Therefore,

IT IS ORDERED THAT

[The Court Appointed Umpire] whose address is ______, whose phone number is ____ and whose fax number is ____ be and is hereby appointed to act as a neutral umpire with respect to the claims submitted by the insured to its insurer, as to the [type of loss] which occurred on the ___ day of ______, 20___ in accordance with the insurance policy in existence between the parties as well as 4section __________of the State of __________ Insurance Law.

IT IS FURTHER ORDERED THAT

The fees to be charged by the court appointed umpire in the amount of $ ________ per hour as well as reasonable expenses incurred shall be shared equally by the parties to this matter and paid within 14 days of the presentation of an invoice for services rendered.

IT IS FURTHER ORDERED THAT

The court retains jurisdiction over this matter in the event legal issues may arise during the pendency of the appraisal.

SO ORDERED:

__________________________
Judge

## SECTION VIII

## FORM 4

## NOTICE OF PETITION TO APPOINT UMPIRE IN THE STATE OF NEW YORK

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF

----------------------------------------x Index No.:

Petitioner,

**NOTICE OF PETITION**

-against-

Respondent.

----------------------------------------x

**PLEASE TAKE NOTICE** that upon the annexed Petition on behalf of PETITIONER, upon the annexed Affirmation of ATTORNEY, dated DATE, the annexed Affidavit of EXPERT and upon all the exhibits annexed hereto, an application will be made at an I.A.S Part of the Supreme Court, County of COUNTY, located at ADDRESS on the ___ day of ____, 20___ at TIME o'clock in the forenoon of that day or as soon thereafter as counsel can be heard for an Order appointing an Umpire, pursuant to N.Y. Insurance Law §§ 3404 and 3408, and the Appraisal provision of the policy of insurance between the above captioned parties.

**PLEASE TAKE FURTHER NOTICE** that answering papers, if any, are required to be served upon the undersigned no later than seven (7) days prior to the return date of this petition, since this notice is served at least twelve days before such time.

Dated: New York, New York
Date

Yours, etc.

By: ______________________

Attorneys for Petitioner

## SECTION VIII

## FORM 5

## PETITION TO APPOINT AND UMPIRE IN THE STATE OF NEW YORK

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF
--------------------------------------x Index No.

Petitioner,

**PETITION**

-against-

Respondent.
--------------------------------------x

The Petition of PETITIONER, respectfully shows to the Court:

1. That your Petitioner is the owner of a property located in the County of COUNTY, State of New York and insured under ________ INSURANCE COMPANY, policy number ____.

2. That ______ INSURANCE COMPANY is an insurance carrier licensed to issue policies of insurance in the State of New York, and is the issuer of the aforementioned policy. A copy of the aforementioned policy is annexed hereto as Exhibit "1".

3. Petitioner suffered a TYPE OF LOSS due to a CAUSE OF LOSS at the subject premises, ADDRESS OF DAMAGED PROPERTY.

4. As provided for in the Appraisal Clause of the aforementioned insurance policy and under New York Insurance Law §3404, your petitioner and ______INSURANCE COMPANY both appointed appraisers to determine the amount of your petitioners' loss.

5. The parties herein have been unable to agree on the appointment of any one specific umpire, despite attempts to do so and more than 15 days have past since the effort to select an umpire began.

6. The assistance of the Court is required to facilitate the selection of said umpire.

7. New York Insurance Law § 3408 and the Appraisal clause of the aforementioned insurance policy provide for the appointment of a competent, disinterested person to act as an umpire in the ascertainment of the amount of an insured's loss, when an agreement cannot be reached by the parties' appraisers.

8. No previous application has been made for the relief sought herein.

WHEREFORE, your petitioner prays that this Court forthwith designate and appoint a competent and disinterested third person to act as an umpire in the ascertainment of the amount of your petitioners' damage.

Date: New York, New York
Date

By: ______________________

Attorneys for Petitioners

**SECTION VIII**

**FORM 6**

**AFFIRMATION IN SUPPORT OF PETITION TO APPOINT UMPIRE IN THE STATE OF NEW YORK**

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF
---------------------------------------x Index No.

Petitioner,

**AFFIRMATION**

-against-

Respondent.
---------------------------------------x

NAME OF ATTORNEY, an attorney duly admitted to practice before the Courts of this State, hereby affirms the truth of the following, under penalty of perjury and pursuant to section 2106 of the CPLR:

1. I am a member of NAME OF FIRM, attorneys for Petitioner in the aforementioned action and as such am fully familiar with the facts and circumstances concerning this matter.

2. I submit this Affirmation seeking the appointment of an Umpire pursuant to NY

Insurance Law §§ 3404 and 3408 and the Appraisal provision of the policy of insurance issued by Respondent ________ INSURANCE COMPANY (hereinafter "Respondent") to the Petitioner, NAME OF PETITIONER, (hereinafter "PETITIONER").

3. On or about DATE OF LOSS, Petitioner suffered a loss due to an TYPE OF LOSS on the aforesaid date.

4. The loss is covered by an insurance policy, number ______ , issued to Petitioner by Respondent. At the time of the loss, said policy was in full force and effect.

5. Petitioners gave timely notice of the loss to the Respondent whereupon Respondent instituted an investigation and negotiations ensued. A disagreement as to the amount of loss became apparent and the parties were unable to resolve it.

6. In the event of a disagreement, Insurance Law §3404, provides a method for resolution. It states:

> "Appraisal. In case the insured and his company shall fail to agree as to the actual cash value or the amount of loss, then on the written demand of either, each shall select

> competent and disinterested appraiser and notify the other of the appraisers elected within twenty days of such demand. The appraiser shall first elect a competent and disinterested umpire; and failing for fifteen days to agree upon such umpire, then on the request of the insured or this company, such umpire shall be selected by a judge of a court of record in the state in which the property covered is located."

7. A demand for Appraisal was sent by Petitioners to Respondent which was acknowledged by Respondent on DATE. (see Exhibit "2" annexed hereto).

8. On DATE AND NAME OF APPRAISER was nominated as appraiser for Petitioner. On or about DATE Respondent then selected ________________ as its appraiser (See Exhibit "3" annexed hereto).

9. New York Insurance Law §3408(b) states:

> "The court shall, on proof by affidavit of the failure or neglect of the appraisers to agree upon and select an umpire within the time

> provided within such policy . . . forthwith appoint a competent and disinterested person to act as such umpire in ascertainment of the amount of such loss or damage."

10. Thereafter and heretofore, both sides exchanged letters in an attempt to agree on an umpire without success. (See Exhibit "4" annexed hereto).

11. Pursuant to their rights under the applicable New York Insurance Law, the instant insurance policy and under the foregoing authorities, Petitioners request that this Court forthwith appoint a competent and disinterested umpire in the instant matter.

WHEREFORE, affirmant respectfully requests that the Court appoint a competent, disinterested person as Umpire to act together with the appraisers selected by the parties in order to determine the amount of loss sustained by Petitioners.

Date: New York, New York
Date

__________________________

ATTORNEY

**FORM 7**

**AFFIDAVIT IN SUPPORT OF PETITION TO APPOINT AN UMPIRE IN THE STATE OF NEW YORK**

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF
----------------------------------------x Index No.

Petitioner,

**AFFIDAVIT**

-against-

Respondent.
----------------------------------------x
STATE OF NEW YORK )
: ss:
COUNTY OF NEW YORK)

NAME OF APPRAISER, affirms, and says:

I am the duly appointed appraiser for the Petitioner and as such, I am fully familiar with certain facts and circumstances concerned herein.

1. This affidavit is submitted in support of the appointment of an Umpire pursuant to NY Insurance Law §§ 3404 and 3408 and the

Appraisal provision of the policy of insurance issued by Respondent to the Petitioner.

2. On or about DATE I was appointed as the appraiser for Petitioner regarding a business interruption claim due to a loss.

3. In order to settle Petitioner's claim I was in contact with Respondent's appraiser.

4. We have attempted to come to an agreement upon an umpire, but have been unable to reach agreement.

5. Reaching an ascertainment of the appropriate measure of the claims involved, business interruption, extra expense, and cleaning, will necessarily require the umpire to be able to review the policy of insurance, its endorsements, and the interplay among them, and consider the positions and proof submitted by the parties.

6. It is my firmly held belief that an attorney, retired judge, or arbitrator would be best qualified to act as umpire, in contrast to another accountant. Although claims by their nature require consideration of dollars and cents, I believe that the dispute between Petitioner and Respondent are not related to accounting principles and the like.

Dated:

________________

Sworn to before me this
day of , 20

________________
NOTARY PUBLIC

## SECTION IX

## APPRAISAL AWARD

## FORM 1

We, the undersigned, pursuant to our appointment as appraisers and umpire in the appraisal of the loss to the property belonging to [the insured], located at ________arising out of the damage caused by the [peril] loss on the ____ day of _________, 20____,

WE DO HEREBY CERTIFY that we have truly and conscientiously performed the duties assigned to us in this Appraisal involving the _______Insurance Company's policy of insurance issued to [name of insured], the insured.

WE DO HEREBY CERTIFY that we have heard and seen all of the evidence offered by both the insured and the insurer and have appraised and determined the actual cash value, replacement value and amount of loss as follows;*

1. Fair and reasonable cost to repair or replace [type of peril] damage to the following building items or areas:*

(a) ______________________

(b) ______________________

(c) ______________________

(d) ______________________

TOTAL ____________________

2. Reasonable Depreciation allowance per the policy* _______%
(Line 1 multiplied by Line 2 percentage) $__________

3. Actual Cash Value of the Building loss (line 1 minus line 2)* $__________

4. Allowable percentage for Contractor's overhead (Percentage of Line 1) $__________

5. Allowable percentage for Contractor's profit (Percentage of Line 1) $__________

6. Sales Tax as applicable $ __________

7. Actual Cash Value of loss, Including overhead and profit and sales tax (Line 4 plus Line 5 plus Line 6 plus Line 7) Payable Now* $ __________

8. Fair and Reasonable Cost to Repair or Replace the damage to the personal property using material of like kind and quality per the policy of insurance* $____________

9. Reasonable Depreciation Allowance
per the policy _______%*
(Line 8 multiplied by
Line 9 percentage)* $____________

10. Actual Cash Value of the loss
(Line 8 minus Line 9) $____________
Payable now

11. Deductible $ ____________
(if appropriate)

12. Holdback on Building per
the policy* (Line 2) $ ____________

13. Holdback on Contents per
the policy (Line 9) $ ____________

The replacement cost holdback (Lines 10 and 11) will be paid per policy terms.

WE DO HEREBY AWARD the foregoing sums as our Appraisal Award.

The Appraisal Award is payable within__ days of the carrier's receipt of this Award pursuant to policy, statute, or regulation whichever is shortest.

Witness my hand this ___day of __ 20____.

______________________
APPRAISER

Witness my hand this ___day of ____ 20____.

______________________

APPRAISER

Witness my hand this ___day of ____ 20____.

______________________

UMPIRE

[Two out of three signatures validates the Award.]

*or such other value as defined by the policy

**SECTION IX**

**APPRAISAL AWARD**

**FORM 2**

This is to certify that we, the undersigned, pursuant to our appointment as appraisers and umpire, have met in accordance with policy provisions, carefully examined the damaged property and/or evidence thereof and have determined the following values and loss:

Replacement                Actual Cash Value

Loss  and Damage

1) Building ___________ ___________ ___________

2) Contents___________ ___________
$ per          # of

3) Additional Living month  x  months  $______
Expenses

The award shall be payable within ____ days pursuant to policy, statute or regulation, whichever is shortest.

This Award, determined and executed this _____ day of _________, 20__.

______________________          ___________
Umpire                                    Date

Appraiser Date

Appraiser Date

[Two out of three signatures validate the award]

## SECTION IX

## APPRAISAL AWARD

## FORM 3

State of ______________
County of ____________

We, the undersigned, have carefully examined the damaged property in accordance with our previous appointment and have determined the loss and damage to be $ __ at replacement value* with a holdback of $__ and an actual cash value payable now in the amount of $___.

_____________________
Appraiser

Sworn to before me this
____ day of ______, 20__.

______________________
Notary Public

_____________________
Appraiser

Sworn to before me this
____ day of ______, 20__.

______________________
Notary Public

______________________

Umpire

Sworn to before me this
____ day of ______, 20__.

______________________

Notary Public

[Signatures of any two validates the award.]

*or such other value as defined by the policy. Includes allowances for all aspects of covered loss including, i.e., demolition and debris removal and other additional coverages pursuant to the policy.

## SECTION IX

## APPRAISAL AWARD

## FORM 4

This is to certify that we, the undersigned, pursuant to our appointment as appraisers and umpire, have met in accordance with policy provisions and determined the following values* and loss for the property located at [loss location]__ damaged as a result of a [covered peril] which occurred on the __ day of _______, 20__.

| 1) Building | Value | Loss |
|---|---|---|
| Replacement of Dwelling | $ | $ |
| Architectural Fees | | |
| Lawn, Trees & Shrubs | | |
| Carpeting | | |
| Window Treatment | | |
| Wallpaper | | |
| Floor Tile | | |
| Patio & Walkways | | |
| Excavation & Basements Repairs or Replacements | | |
| Guard Service | | |
| Temporary Repairs | | |
| Demolition and Debris Removal-Building | | |
| Contractor's overhead (10%) | | |
| Contractor's profit (10%) | | |
| Sales Tax | | |

Total $ $

2) * <u>Additional Living Expense</u> $ $
*Subject to reduction by prior payment of $___
__________

This allowance includes the period from date of occurrence to the ______ day of _____, 20___, subject to further consideration by the panel in the event of unforeseen construction or other delay entitling the insured to additional payment pursuant to the policy.

3) <u>Contents</u> $ $

4) <u>Debris Removal Contents</u> $ $

The Appraisal Panel has determined that the dwelling required total demolition.

Payment upon this award shall be issued within ____ days of the facsimile transmission of this award to the parties, pursuant to policy, statute or regulation, whichever is shortest.

This Award, determined and executed this ___ day of _____, 20___ , at _____________.

_________________________
UMPIRE

_________________________
APPRAISER

APPRAISER

[Signatures of any two validates the award.]

## SECTION IX

## APPRAISAL AWARD

## FORM 5

[For use where there are coverage issues as to extent of covered property–in the context of a builder's risk claim for damage to a building with a co-insurance issue.]

We, the undersigned, pursuant to our appointment as appraisers and umpire, have met in accordance with the policy provisions in order to appraise the (fire, water, etc.) damage that occurred on or about (date of loss), located at (address).

We hereby certify that we have heard and reviewed all of the evidence presented both oral and written by both the insured, (name of insured) and the insurer, (name of insurance company), and have appraised and determined the Replacement Cost of the structure as built on (date of loss). We have also determined the total estimated completed value of the covered property pursuant to the policy.

| | | |
|---|---|---|
| A. | Replacement Cost of the structure as built on (date of loss) | $ |
| B. | Total Estimated Completed Value of the Covered Property | $ |

SCHEDULE B

| | ITEM | COST |
|---|---|---|
| 1. | Architect | |
| 2. | Drafting/Consulting | |
| 3. | Contractor's Fee | |
| 4. | Dumpster | |
| 5. | Excavating, Footings & Foundation | |
| 6. | Footings Foundation & Stone | |
| 7. | Concrete & Stone | |
| 8. | Lumber Package | |
| 9. | Truss Package | |
| 10. | Framing Contractor | |
| 11. | Stucco & Stone | |
| 12. | Stair & Railings | |
| 13. | Canopy | |
| 14. | Roofing | |
| 15. | Gutter | |
| 16. | Insulation/Fire Safing | |
| 17. | Doors & Windows | |
| 18. | Electronic Locks | |
| 19. | Drywall Hanging & Finish | |
| 20. | Popcorn Ceilings | |
| 21. | Suspended Ceiling | |
| 22. | Tile Work/Granite | |
| 23. | Lobby Millwork | |
| 24. | Lobby Solid Surfaces | |
| 25. | Labor Carpet/Vinyl | |
| 26. | Elevator | |
| 27. | Heating & Cooling | |

28. Plumbing
29. Hot Water System
30. HVAC
31. Plumbing Fixtures
32. Electrical
33. Electrical Fixtures
34. Phone System/T.V. Cable
35. Fire Alarm
36. Building Permit
37. Sliding Doors
38. Temp. Utilities
39. Vehicle Costs
    (construction equipment)
40. Insurance
41. Construction Supervision
42. Wall/Roof Sheathing
43. Exterior Facia- Wood
44. Metal Facia
45. Vinyl Soffits
46. Prime, Paint & Stain
47. Fire Extinguishers,
    Handicap rail
48. Interior Signage
    Material, Labor

Total Estimated Completed ) $
Value of Covered Property )

**Sitework subject to coverage issues**

49. Paving work, including
    material, labor & processed
    stone

50. Concrete, underground piping and site work
51. Curbs
52. Labor for Excavating & landscaping
53. Landscaping Material
54. Storm covers, hydrant work other materials & testing
55. Fire Hydrant

**Furniture, Fixtures and Equipment Subject to Coverage Issues**

| ITEM | COST |
|---|---|
| 56. Furniture & Fixtures | |
| 57. Motel/Office Supplies | |
| 58. Washer/Dryer | |
| Subtotal # 49-58 | $ |
| Total Estimated Completed ) | |
| Value with Disputed Sitework) Included ) | $ |

SCHEDULE C - COINSURANCE PENALTY CALCULATION

I. With items subject to coverage issues excluded

Amount of Ins. X Replacement Cost =
Amount Required

**Subtotal Award Payable** $
Debris Removal $
**Total Award Payable Now** $

(subject to credit for prior payments)

(payable within _______ days of the Award pursuant to the Loss Payment provision of the policy.)

II. With items subject to coverage issues included - includes amount payable now and amount subject to resolution of coverage issues.

Amount of Ins. x Replacement Cost = $
Amount Required

**Subtotal Award Payable** $
Debris Removal $
**Total Award Payable** $
(with disputed sitework and
furniture and fixtures included)

(subject to a credit for prior payments)

(payable within __ days of the Award pursuant to the Loss Payment provision of the policy, or statute ore regulation, whichever is shorter.)

WITNESS MY HAND THIS __ DAY OF _____, 20__.

______________
Appraiser

WITNESS MY HAND THIS __ DAY OF _____, 20__.

______________
Appraiser

WITNESS MY HAND THIS __ DAY OF ____, 20 __.

_________________
Umpire

[Signatures of any two validates the award.]

## SECTION X

## JURY INSTRUCTION - TRIAL UPON THE INSURER'S REFUSAL TO SUBMIT TO APPRAISAL

### FORM - 1

I charge you that under the terms of the insurance policy in evidence in this matter, if there is a dispute as to the amount of loss or actual cash value* then either party can demand an appraisal to determine the amount of such value and loss, by serving a notice in writing on the opposite party. If, upon your consideration of all of the evidence in this matter, you believe from the evidence, that there was a dispute between the parties as to the amount of loss or actual cash value* and that a notice in writing was served upon the insurer or someone authorized to act for the insurer, demanding such appraisal, in accordance with the provisions of the insurance policy, you may find that the insurer wrongfully failed to submit to appraisal in breach of the subject insurance policy. If however you determine after reviewing the evidence that either such a demand was not made or that there did not exist a dispute between the parties as to the amount of loss or actual cash value,* then I charge you that you may find there has been no such breach of contract.[1208]

If you decide that the insurer breached the policy of insurance, you must then decide the amount, in dollars, based upon all of the evidence in this trial, that represents the actual and consequential damage suffered by the insured as a direct result of such breach.[1209]

In addition to actual damages, the plaintiff is seeking consequential damages. Consequential damages are not recoverable in an action to recover for breach of contract unless the plaintiff has proven that such damages were foreseeable and within the contemplation of the parties at the time the contract was made.

In determining the contemplation of the parties, the nature, purpose and particular circumstances of the contract known by the parties should be considered as well as what liability the defendant fairly may be supposed to have assumed consciously or to have warranted the plaintiff reasonably to suppose

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[1208] Levy v. Scottish Union & National Ins. Co., 58 W. Va. 546, 52 S.E. 449 (1905); Birmingham Fire Ins. Co. v. Pulver, 126 Ill. 329, 18 N.E. 804 (1888), *aff'd*, 127 Ill. 246, 20 N.E. 18 (1889).

[1209] The Willow Inn, Inc. v. Public Service Mut. Ins. Co., 2002 WL 922144 (E.D. Pa. 2002), *aff'd*, 66 Fed. Appx. 398 (3d Cir. 2003), *on remand to*, 2003 WL 21321370 (E.D. Pa. 2003); Bi-Economy Market, Inc. v. Harleysville Ins. Co. of New York, 10 N.Y.3d 187, 886 N.E.2d 127 (2008).

that it assumed when the contract was made.[1210]

*or other value as insured by the policy

[1210] Bi-Economy, *supra*; Kenford Co., Inc. v. Erie, 73 N.Y.2d 312, 540 N.Y. Supp.2d 1, 537 N.E.2d 176 (1989), quoting Holmes in Globe Refining Co. v. Landa Cotton Oil Co., 190 U.S. 540, 23 S. Ct. 754 (1903).

## SECTION X

## JURY INSTRUCTIONS - TRIAL UPON THE INSURED'S REFUSAL TO SUBMIT TO APPRAISAL

## FORM - 2

I charge you that in the event of a dispute between the parties to this matter as to the amount of loss or actual cash value* then either party upon its written demand may compel the other to proceed through an appraisal process by serving notice in writing upon the opposite party. I further charge you that the appraisal provision reads as follows:

<u>[Quote policy appraisal provision]</u>

If after considering all of the evidence admitted in this matter, you conclude that there existed a dispute as to the amount of loss or actual cash value* and if you further conclude that a proper demand was made by the insurer in this matter to the insured to proceed to the appraisal process, and if you further find that the insured refused to proceed to appraisal without sufficient cause, I charge you that you may then conclude that the insured breached the policy of insurance in this matter and the insured may not now recover and your verdict must be for the insurance company.[1211]

* or other value as insured under the policy

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[1211] Levy v. Scottish Union & National Ins. Co., 52 S.E. 449, 58 W.Va. 546 (1905); Birmingham Fire Ins. Co. v. Pulver, 18 N.E.804, 126 Ill. 329 (1888)

# SECTION XI

## COMPLAINT SEEKING TO SET ASIDE AN APPRAISAL AWARD

## FORM - 1

SUPREME COURT OF THE STATE OF ______
COUNTY OF __________________________
-----------------------------------------x

Index No.:

Plaintiff,

-against-

**Complaint**

Defendant.
-----------------------------------------x

Plaintiff, by his attorneys, as and for his complaint, alleges the following upon information and belief:

1. At all times hereinafter mentioned, plaintiff, was and is a natural person over the age of eighteen (18) years and is a resident of the County of _____ ,City of _____, and State of ________.

2. At all times relevant to this action, defendant,(insurance company), was and is domiciled in the state of _______ , and licensed to issue property insurance policies in the state of__________ .

3. On or about (date policy issued), defendant (insurance company) made and issued insurance policy number (policy number), whereby it did insure the dwelling and personal property, located at (loss location) (hereinafter the "SUBJECT PREMISES") against all risks of loss subject to certain exclusions and limitations including (type of loss) damage.

4. At all relevant times herein mentioned, Plaintiff(s), had an ownership interest in the dwelling and personal property located at the subject premises.

5. On or about (date of loss), the above mentioned policy was in full force and effect.

6. On or about (date of loss), the subject premises sustained damage resulting in extensive loss to the dwelling and personal property therein.

7. As a result thereof, plaintiff has sustained an unreimbursed loss in the amount of at least (open amount of claim) ($_______) Dollars.

8. No part of said personal property claim has been paid, although duly demanded.

**<u>AS AND FOR THE FIRST CAUSE OF ACTION</u>**

9. The subject policy of insurance contains the following clause relating to the insured's right of appraisal (the "Appraisal Clause"):

APPRAISAL

QUOTE FULL APPRAISAL CLAUSE FROM POLICY [OR FROM THE STANDARD FIRE POLICY, WHICHEVER IS MORE BENEFICIAL TO THE INSURED, IF APPROPRIATE].

10. Following the submission of plaintiff's claim, the plaintiff and defendant failed to agree on the amount of the loss and damage to personal property.

11. On or about (date of demand of appraisal), the plaintiff made a demand for Appraisal pursuant to the policy, and appointed (name of appraiser designated) as appraiser.

12. On or about (date carrier appointed appraiser), (Name of Insurance Company) appointed (Name of appraiser designated).

13. On or about (date umpire retained), (Name of Umpire) was retained to act as

umpire for the appraisal with the consent of both parties.

14. Said Appraisal proceeded and on or about ____, 20__ , an award was rendered and executed by the Umpire and Appraiser for the insurance company, a copy of which is annexed as Exhibit "A".

15. On or about _____, 20__, the Umpire and defendant's appraiser signed an appraisal award for the value of the personal property loss, (the "Award"), which appeared as follows: [This sample alleges lack of itemization as the basis for challenge. The recognized grounds for successful challenge are discussed in Chapter X[D]. The facts underlying the challenge should be alleged in separate allegations and with specificity.]

16. The Award violates the above quoted Appraisal Clause of the policy by failing to separately state the value of each item and amount of loss, as required.

17. The lump sum award also violates the Standard Fire Policy, in which the Legislature sets forth the minimum standard policy language all insureds are entitled to, pursuant to Insurance Law _____, which states as follows: "An award in writing, so itemized, of any two when filed with this Company shall determine the amount of actual cash value

and loss." (NOTE - language from New York Insurance Law §3404).

18. The Award dated ____, should be vacated.

**AS AND FOR THE SECOND CAUSE OF ACTION**

[Insert additional cause of action for breach of contract.]

WHEREFORE, Plaintiff demands judgment against defendant on the First Cause of Action vacating the award dated _________; and on the Second Cause of Action a judgement in the sum of at least $___________ Dollars, plus attorneys' fees, together with interest thereon from (date of award), and the costs and disbursements of this action and such other and further relief as to this Court deems just and proper.

# APPENDIX B

# TABLE OF CASES

## Cases.