



1 Communities and (2) the various, related governmental orders impairing, prohibiting and  
2 preventing the use of, and access to, the Cascade Communities. The staggering but predictable  
3 financial losses caused by the forgoing required Cascade, on behalf of the Entities, to request  
4 policy benefits from Cascade's and the Entities' commercial property insurer, Continental  
5 Casualty Company ("Continental). In response, Continental failed to reasonably investigate its  
6 coverage responsibility and then denied all policy benefits through a denial letter which made no  
7 effort to even consider controlling Washington law.

8 Cascade, for itself and for the benefit of the Entities described below, brings this Complaint  
9 against Continental and alleges as follows:

10 **PARTIES**

11 1.1 Plaintiff Cascade Living Group, Inc., is a Washington corporation with its principal  
12 place of business in King County, Washington.

13 1.2 Plaintiff Cascade Living Group Management LLC, is a Washington limited liability  
14 company, with its principal place of business in King County, Washington.

15 1.3 The Entities on behalf of whom Cascade also brings this action are: KRE – ReNew  
16 Landlord LLC; KRE – ReNew Tenant LLC; KRE Tiger Alpine Way LLC; KRE Tiger Alpine Way  
17 Operations LLC; KRE Tiger Arbor Village LLC; KRE Tiger Arbor Village Operations LLC; KRE  
18 Tiger AG-Bremerton LLC; KRE Tiger AG-Bremerton Operations LLC; KRE Tiger AG-Mount  
19 Vernon LLC; KRE Tiger AG-Mount Vernon Operations LLC; KRE Tiger Bridgewood LLC; KRE  
20 Tiger Bridgewood Operations LLC; KRE Tiger Cascades-Bend LLC; KRE Tiger Cascades-Bend  
21 Operations LLC; KRE Tiger Deerfield LLC; KRE Tiger Deerfield Operations LLC; KRE Tiger  
22 Emerald Valley LLC; KRE Tiger Emerald Valley Operations LLC; KRE Tiger Inland Point LLC;  
23 KRE Tiger Inland point Operations LLC; KRE Tiger Jefferson LLC; KRE Tiger Jefferson  
24 Operations LLC; KRE Tiger Meadow Creek LLC; KRE Tiger Meadow Creek Operations LLC;  
25 KRE Tiger Parkland LLC; KRE Tiger Parkland Operations LLC; KRE Tiger Spring Valley  
26 LLC; KRE Tiger Spring Valley Operations LLC; KRE Tiger Cascades-Sierra LLC; KRE Tiger

1 Cascades-Sierra Operations LLC; KRE Tiger Creekside LLC; KRE Tiger Creekside Operations  
2 LLC; KRE Tiger Desert Hills LLC; KRE Tiger Desert Hills Operations LLC; KRE Tiger Grass  
3 Valley LLC; KRE Tiger Grass Valley Operations LLC; KRE Tiger Sierra Del Sol LLC; KRE  
4 Tiger Sierra Del Sol Operations LLC; KRE Tiger Sierra Place LLC; KRE Tiger Sierra Place  
5 Operations LLC; KRE Tiger Cottage LLC; KRE Tiger Cottage Operations LLC; KRE Tiger  
6 Willows LLC; KRE Tiger Willows Operations LLC; KRE Tiger Mountain Glen LLC;KRE Tiger  
7 Mountain Glen Operations LLC; S-H Forty-Nine PropCo Ventures LLC; KRE-ReNew Tiger Cubs  
8 Heritage Springs Operations LLC; S-H Forty-Nine PropCo-Grants Pass Cottages, LLC; S-H OpCo  
9 Spring Meadow Cottages, LLC; S-H Forty-Nine PropCo-Grants Pass Village, LLC; S-H OpCo  
10 Spring Village, LLC; S-H Forty-Nine PropCo-Grants Pass Pointe, LLC; S-H OpCo Spring Pointe,  
11 LLC; S-H Forty-Nine PropCo-Grants Pass Springs, LLC; S-H OpCo The Springs, LLC; KRE-  
12 ReNew Tiger Cubs Heritage Springs LLC; KRE-ReNew Tiger Cubs Magnolia Grand LLC; KRE-  
13 ReNew Tiger Cubs Regency Grand LLC; KRE-ReNew Tiger Cubs Regency Park LLC; KRE-  
14 ReNew Tiger Cubs Royalton Place LLC; KRE-ReNew Tiger Cubs Waterford Grand LLC; KRE-  
15 ReNew Tiger Cubs Magnolia Grand Operations LLC; KRE-ReNew Tiger Cubs Regency Grand  
16 Operations LLC; KRE-ReNew Tiger Cubs Regency Park Operations LLC;KRE-ReNew Tiger  
17 Cubs Royalton Place Operations; and KRE-ReNew Tiger Cubs Waterford Grand Operations LLC.

18 1.4 Defendant Continental Casualty Company is a commercial property insurance  
19 company authorized to transact business in the State of Washington.

## 20 JURISDICTION AND VENUE

21 2.1 On behalf of itself and the Entities, Cascade purchased a commercial property  
22 insurance policy from Continental in King County, Washington. The insurance policy was issued  
23 and delivered to Cascade in King County, Washington, and it insures properties in the State of  
24 Washington, among other states.

25 2.2 The Court has original jurisdiction over the subject matter of this action under RCW  
26 2.08.010. Venue is proper in King County, Washington, pursuant to RCW 4.12.025.

1 **BACKGROUND FACTS**

2 **SARS CoV-2's SPREAD AND TRANSMISSION**

3 3.1 In December of 2019, a novel coronavirus referred to as SARS-CoV-2 began to  
4 spread in China. The World Health Organization (the "WHO") later named the disease caused by  
5 SARS-CoV-2, "COVID-19."

6 3.2 In January of 2020, health officials reported that a Washington State resident about  
7 30 miles north of Seattle became the first-known U.S. resident infected by the virus. The first  
8 reported COVID-19 death in the United States occurred in King County, Washington, on or around  
9 February 28, 2020.

10 3.3 Since January of 2020, COVID-19 has quickly spread across the United States; the  
11 Centers for Disease Control (the "CDC") reports that over 29,000,000 people have contracted  
12 COVID-19 and over 527,000 have died from the disease. The Washington Department of Health  
13 has reported over 347,000 confirmed and probable cases and over 5,000 deaths in Washington  
14 State at the time of filing. Oregon reports more than 159,000 confirmed cases and over 2,300  
15 deaths. California reports over 3,516,000 cases and over 54,800 deaths. Nevada reports over  
16 291,000 cases and over 4,900 deaths. Arizona reports over 831,000 cases and over 16,000 deaths.

17 3.4 COVID-19 reportedly has an incubation period of 2–14 days, during which time  
18 any person can spread the disease even before symptoms develop.

19 3.5 The WHO reports that around 40% of those infected with COVID-19 are  
20 asymptomatic or pre-symptomatic during the incubation period but are still capable of transmitting  
21 the disease.

22 3.6 The WHO has explained that COVID-19 is transmitted in three ways: contact  
23 (person-to-person) transmission, droplet transmission (from a person or property to a person), and  
24 airborne transmission.

25 3.7 Contact transmission occurs when an infected person talks, sneezes, or coughs and  
26 releases relatively large nasal or oral virus-laden droplets, which come into contact with another

1 person or an object.

2 3.8 Droplet transmission occurs when virus-containing droplets land on surfaces  
3 creating a “fomite,” (the term used to describe property affected by COVID-19), and a person  
4 comes into contact with the property and then touches their eyes, nose, or mouth.

5 3.9 Airborne transmission occurs when droplets “dry very quickly in the airstream” and  
6 can “remain suspended” in the air and travel “far from the source on air currents” such as HVAC  
7 systems and natural airflow.

8 3.10 COVID-19 can survive on surfaces for hours, days, or weeks, depending on the  
9 type of surface affected by the virus.

10 3.11 COVID-19’s presence in the air inside premises or on surfaces causes an  
11 observable change to property, rendering it dangerous, noxious, and/or harmful.

12 3.12 COVID-19’s presence in the air and/or on surfaces impairs, harms, damages and/or  
13 renders useless any property intended to be inhabited by humans.

14 **GOVERNMENTAL ORDERS ARISING FROM, CAUSED BY OR RELATED TO SARS COV-2**

15 3.13 Local, state, and federal government officials in Washington, Oregon, California,  
16 Nevada and Arizona have issued a multitude of orders and proclamations in an effort to stop or  
17 slow the transmission of COVID-19 via person-to-person and property-to-person transmission (the  
18 “Orders”).

19 3.14 The Orders have impacted every one of the Cascade Communities by impairing,  
20 prohibiting and preventing the use of, and access to, the Cascade Communities.

21 3.15 The Orders have imposed various additional costs and expenses on Cascade caused  
22 by COVID-19’s actual and presumed contamination of the Cascade Communities.

23 **CASCADE’S RESPONSE TO THE COVID-19 AND THE PANDEMIC’S SPREAD**

24 4.1 Cascade is responsible for the day-to-day operations of the Cascade Communities,  
25 including maintaining repairing and cleaning physical properties, staffing, health and welfare of  
26 residents, responding to regulatory requirements and governmental orders, obtaining commercial

1 property insurance, and making and prosecuting insurance claims.

2 4.2 Senior living facilities like the Cascade Communities are unique settings in that  
3 residents live and eat in close proximity with each other, and facility staff have continuous contact  
4 with residents. They are highly regulated by various governmental entities.

5 4.3 In early 2020, it became apparent that COVID-19 was present in the western United  
6 States and Cascade began preparing response plans for the Cascade Communities.

7 4.4 On March 19, 2020, COVID-19 was discovered for the first time at an insured  
8 location—the “Regency Park” facility—when an employee tested positive for COVID-19. By  
9 March 25, 2020, a Regency Park resident had passed away. Many more Regency Park residents  
10 and staff became sickened by COVID-19.

11 4.5 COVID-19 has now, at a minimum, been detected onsite among residents and staff  
12 at twenty-four (24) Cascade Communities.

13 4.6 On information and belief, the Cascade Communities have had 424 residents  
14 sickened by COVID-19.

15 4.7 On information and belief, COVID-19 has caused the deaths of 38 Cascade  
16 Communities’ residents.

17 4.8 As discussed above, COVID-19 is both highly contagious and deadly. It is  
18 particularly dangerous to elderly at risk populations. As a result, COVID-19’s actual and suspected  
19 presence created extremely dangerous conditions in the Cascade Communities. Many of Cascade’s  
20 senior residents have underlying medical conditions that make them exceptionally susceptible to  
21 COVID-19 and its worse consequences: serious illness and death.<sup>1</sup>

22 4.9 The spread of COVID-19 in the Cascade Communities and in community  
23 surrounding them caused immediate and significant consequences to Cascade. For example:  
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25 \_\_\_\_\_  
26 <sup>1</sup> The State of Oregon has reported that 86% of the COVID-19 deaths in Oregon have been to individuals with  
underlying medical conditions.

- 1 • The Cascade Communities were required to stop using their dining rooms, to  
2 purchase and use disposable dinnerware, and to institute food service to residents’  
3 rooms.
- 4 • The Cascade Communities lost the ability to access and use portions of their  
5 insured property such as pools, salons, activity rooms and other communal spaces.
- 6 • The Cascade Communities were forced to create quarantine areas by sealing off  
7 rooms and/or hallways with barriers.
- 8 • The Cascade Communities were required to institute new deep cleaning processes,  
9 including anti-viral fogging, and were required to hire outside vendors to  
10 accomplish much of this work.
- 11 • The Cascade Communities were forced to incur the costs of testing for the  
12 COVID-19 and purchasing PPE such as masks, gowns and gloves.
- 13 • The Cascade Communities were required to pay additional and increased  
14 employee wages and to hire temporary workers to respond to COVID-19’s actual  
15 and suspected presence.

16 4.10 The Cascade Communities, each an insured location, were also rendered useless  
17 for marketing the Cascade Communities and Cascade’s services. Indeed, even residents’ families  
18 were prevented from visiting.

19 4.11 Various Cascade Communities were intermittently forced into complete shutdown.  
20 For example, in Oregon any positive COVID-19 test result associated with an insured facility  
21 resulted in the building being shut down by governmental order. This occurred multiple times.

22 4.12 Without the ability to provide safe move-ins to new residents, and for all the other  
23 reasons discussed herein, Cascade and the Entities could not institute normal rent increases. This,  
24 in conjunction with Cascade and the Entities other losses, has economically devastated Cascade  
25 and the Entities.

### 26 THE POLICY

5.1 Continental issued its CNA Property Policy, No. 6014964608, for the period  
September 1, 2019 to September 1, 2020, (“Policy”) to Named Insured, Cascade Living Group,  
Inc. The definition of Named Insured includes Cascade Living Group, Inc.’s affiliated or

1 subsidiary organizations. By endorsement, the Entities identified in paragraph 1.3, above, are also  
2 Named Insureds under the Policy.

3 5.2 Among numerous coverages provided by the Policy, the Policy provides coverage  
4 for Blanket Real and Personal Property and Blanket Business Interruption.

5 5.3 The Policy is written on what amounts to an “all risks” basis and, therefore,  
6 provides broad coverage unless excluded or limited by other express terms of the Policy. To this  
7 end the Policy states:

8 Except as hereafter excluded and subject to the LIMITS OF LIABILITY in Section  
9 1.4, and all other policy provisions, this policy insures against *risks of direct*  
10 *physical loss of or damage to property/and or interests described herein at covered*  
*Locations...*

11 5.4 The Policy’s “Part A” sets forth the Policy’s wide scope of property coverage:

12 COVERED PROPERTY AND RELATED INTERESTS

13 The interest of the Insured in all real and personal property owned or used by the  
14 Insured, or hereafter erected, installed, or acquired, including while in course of  
building, erection, installation, and assembly, and including interest in  
Improvements and Betterments.

15 5.5 “Location” is defined as, “The area within legal boundaries of the premises, or of  
16 the portion of the premises, in which the Insured has an interest.”

17 5.6 The term “interest of the Insured” is not defined in the Policy.

18 5.7 Washington law requires that such undefined terms be interpreted as an ordinary  
19 purchaser of insurance would: with reference to the definitions provided in standard American  
20 dictionaries.

21 5.8 In standard American dictionaries, “Interest” is defined as “participation in  
22 advantage and responsibility” and “something that brings advantages.”

23 5.9 Police coverage section Part B “provides Time Element Coverage, which includes  
24 Business Interruption (Gross Earnings) coverage.”



1       5.10       The Policy’s business interruption coverage “...covers against loss resulting from  
2 necessary interruption of business caused by direct physical loss of or damage to covered  
3 property...by the peril(s) insured against and occurring during the term of this policy at covered  
4 **Locations** occupied by the Insured...”

5       5.11       The Policy provides also contains a “civil authority” coverage. This coverage  
6 provides that that Continental will cover the actual loss sustained by Cascade “during the period  
7 while access to the Insured’s Location is prohibited by order of civil authority, but only when such  
8 order is given as a direct result of physical loss or damage to property of the type insured from a  
9 peril insured against occurring at or in the immediate vicinity of said Location.”

10       5.12       The Policy additionally contains an ingress-egress coverage. This coverage  
11 provides that Continental will cover the actual loss sustained by Cascade “during the period of  
12 time when as a direct result of physical loss or damage to property of type insured from a peril  
13 insured against, ingress to or egress from the Insured’s **Location** is thereby physically prevented.”

14       5.13       With regards to extra expense, the Policy sets forth an “Extra Expense” coverage  
15 which covers “the reasonable and necessary extra expense incurred by the Insured in order to  
16 continue as nearly as practicable the normal operation of the Insured’s business following direct  
17 physical loss of or damage to covered property by perils insured against.”

18       5.14       In addition to the coverages discussed above, the Policy contains a “Health Care  
19 Endorsement.” That endorsement contains “Disease Contamination Coverage” which provides  
20 that “if as a result of an evacuation or decontamination order at a location by the national Center  
21 for Disease Control, authorized public health official or governmental authority because of the  
22 discovery or suspicion of a communicable disease or the threat of the spread of a communicable  
23 disease, Continental will pay for direct physical loss of or damage to covered property; and  
24 certain necessary and reasonable costs incurred by the insured as set forth in the coverage.”

25       5.15       The Policy does not define any of the terms within the phrase “direct physical loss  
26 of or damage to property.”



1           6.4           Because Cascade and the Entities have suffered direct physical loss of insured  
2 property at the insured locations, direct physical damage to their insured property at insured  
3 locations, and the loss of and damage to their interest in the covered property, multiple coverages  
4 under the Policy are triggered. These include, but are not limited to, property, business interruption,  
5 extra expense, civil authority, ingress/egress, and disease contamination coverages.

6           6.5           Cascade and the Entities' covered losses continue to increase. At the date of filing,  
7 their estimated losses are \$18,000,000.

8           6.6           On or about April 1, 2020, following the COVID-19 outbreak at the Regency Park  
9 community, Cascade made claim to Continental. In subsequent communications Cascade informed  
10 Continental that its claim encompassed all insured locations as the result of COVID-19's spread  
11 throughout the Cascade Communities and its omnipresence in the communities surrounding the  
12 insured locations.

13           6.7           By letter dated June 25, 2010, Continental notified Cascade that all policy benefits  
14 were being denied in their entirety.

15           6.8           In its denial, Continental asserted that there was no "direct physical loss of or  
16 damage to property and/or interests," and therefore there was no coverage under any of the  
17 provisions of the Policy. Continental did not attempt to define these terms its denial, probably  
18 because it was aware of the meaning these terms should/would be given if employing standard  
19 rules of policy interpretation.

20           6.9           With regard to the denial of access coverage, Continental again relied on its mis-  
21 interpretation of direct physical loss of or damage to property, and asserted that the relevant public  
22 orders did not prevent access or ingress or egress to the insured locations. It did so without actually  
23 assessing whether, and to what extent, access and/or ingress/egress was prevented to the Cascade  
24 Communities or portions of the insured locations.

25           6.10           Continental also denied coverage under the disease contamination coverage by  
26 refusing to acknowledge that various governmental orders or guidances had the effect of

1 prohibiting, preventing and/or impairing the occupation of, and access to, portions of Cascade  
2 Communities' insured locations.

3 6.11 Cascade has relied on the bases set forth in Continental's denial in bringing this  
4 lawsuit.

### 5 **FIRST CLAIM OF RELIEF**

#### 6 **(Breach of Contract)**

7 7.1 Cascade realleges and incorporates by reference each and every preceding  
8 paragraph.

9 7.2 For itself and the Entities, Cascade paid valuable premiums in consideration for the  
10 Policy.

11 7.3 Continental breached its express and implied obligations and duties under the  
12 Policy by, among other things, unreasonably investigating and denying all coverage to Cascade.

13 7.4 By breaching the terms of the policy, Continental has caused and continues to cause  
14 Cascade and the Entities damages in an amount to be proven at trial, but not less than \$18,000,000.

### 15 **SECOND CLAIM FOR RELIEF**

#### 16 **(Common Law Bad Faith)**

17 8.1 Cascade realleges and incorporates by reference each and every preceding  
18 paragraph.

19 8.2 Continental owes a duty of good faith and fair dealing to Cascade and the Entities.

20 8.3 Continental committed bad faith through multiple acts and omissions, including but  
21 limited to: failing to conduct a reasonable investigation; unreasonably failing to connect the  
22 controlling law and language of the Policy to the facts of the loss; failing to put Cascade and the  
23 Entities' interests on a par with its own and unreasonably denying Cascade and the Entities any  
24 and all insurance benefits. Continental's unreasonable acts and omissions constitute bad faith  
25 under Washington law.  
26

1 8.4 Continental's bad faith acts and omissions directly and proximately caused (and  
2 continue to cause) Cascade and the Entities to suffer damages in an amount to be proven at trial.  
3 These include, but are not limited to, the deprivation of benefits owed to cascade and the Entities  
4 under the Policy and the costs associated with bringing this action for coverage, including court  
5 costs and attorney fees.

### 6 **THIRD CLAIM FOR RELIEF**

#### 7 **(Per Se and Non Per Se Consumer Protection Act Claims)**

8 9.1 Cascade realleges and incorporates by reference each and every preceding  
9 paragraph.

10 9.2 Continental's acts and omissions as described above violated multiple provisions  
11 of WAC 284-30-330 including, but not limited to, subsections (4), (7) and (13); such violations  
12 are per se violations of RCW 19.86, Washington's Consumer Protection Act (the "CPA").

13 9.3 Continental's acts and omissions, as pled above, also constitute non per se  
14 violations of the CPA , such unreasonable acts and omissions were unfair or deceptive; occurred  
15 in trade or commerce; and affected Washington's policyholders and the public interest.

16 9.4 Such unfair or deceptive acts or omissions directly and proximately caused and  
17 continue to cause Cascade and the Entities to suffer damages in an amount to be proven at trial.  
18 These damages include, but are not limited to, the deprivation of benefits owed to Cascade and the  
19 Entities under the Policy and the costs associated with bringing this action for coverage, including  
20 court costs and attorney fees.

21 9.5 Cascade is entitled to recovery of its actual damages, attorney fees, litigation costs  
22 and treble damages up to \$25,000, pursuant to RCW 19.86.090.

### 23 **FOURTH CLAIM FOR RELIEF**

#### 24 **(Declaratory Relief)**

25 10.1 Cascade realleges and incorporates by reference each and every preceding  
26 paragraph.



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DATED this 18th day of March, 2021.

*s/ Tristan N. Swanson*  
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