

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK**

MILLENNIUM PARTNERS MANAGEMENT,  
INC., NEW COMMONWEALTH COMMERCIAL  
HOLDING CO LLC, LINCOLN WEST  
COMMERCIAL HOLDING CO LLC, LINCOLN  
SQUARE COMMERCIAL HOLDING CO LLC,  
LINCOLN TRIANGLE COMMERCIAL  
HOLDING CO LLC, MILLENNIUM  
GEORGETOWN COMMERCIAL TRUST,  
MILLENNIUM WASHINGTON COMMERCIAL  
TRUST, MILLENNIUM GEORGETOWN  
COMMERCIAL TRUSTEE LLC, MILLENNIUM  
WASHINGTON COMMERCIAL TRUSTEE LLC,  
735 MARKET STREET TENANT CO. LLC, CB-1  
COMMERCIAL CO LLC, MP FRANKLIN  
BURNHAM CO LLC, MP FRANKLIN TOWER  
CO LLC, 1770 IVAR LLC,

Plaintiffs,

-against-

AFFILIATED FM INSURANCE COMPANY,

Defendant.

Index No.

**COMPLAINT**

JURY TRIAL DEMANDED

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Plaintiffs Millennium Partners Management, Inc., New Commonwealth Commercial Holding Co LLC, Lincoln West Commercial Holding Co LLC, Lincoln Square Commercial Holding Co LLC, Lincoln Triangle Commercial Holding Co LLC, Millennium Georgetown Commercial Trust, Millennium Washington Commercial Trust, Millennium Georgetown Commercial Trustee LLC, Millennium Washington Commercial Trustee LLC, 735 Market Street Tenant Co. LLC, CB-1 Commercial Co LLC, MP Franklin Burnham Co LLC, MP Franklin Tower Co LLC, and 1770 Ivar LLC, by their undersigned counsel, and for their Complaint against Affiliated FM Insurance Company (“Insurer”), allege:

1. Plaintiffs bring this action against their “all risks” property damage and business interruption insurer, Defendant Affiliated FM Insurance Company, to obtain insurance coverage for property damage and business interruption losses that Plaintiffs have experienced as a result of the COVID-19 pandemic and the SARS-CoV-2 virus (referred to herein as “SARS-CoV-2,” “the COVID-19 virus,” “COVID-19,” or “the coronavirus”). This civil suit seeks declaratory relief and money damages arising from the Insurer’s failure and refusal to pay Plaintiffs’ COVID-19 insurance claims.

### **PARTIES**

2. Plaintiff Millennium Partners Management, Inc. (“Millennium Partners”) is a New York corporation, with its principal place of business in New York, New York.

3. Plaintiff New Commonwealth Commercial Holding Co LLC is a Delaware company, with its principal place of business in New York, New York.

4. Plaintiff Lincoln West Commercial Holding Co LLC is a Delaware company, with its principal place of business in New York, New York.

5. Plaintiff Lincoln Square Commercial Holding Co LLC is a Delaware company, with its principal place of business in New York, New York.

6. Plaintiff Lincoln Triangle Commercial Holding Co LLC is a Delaware company, with its principal place of business in New York, New York.

7. Plaintiff Millennium Georgetown Commercial Trust is a District of Columbia trust, whose trustee is Plaintiff Millennium Georgetown Commercial Trustee LLC, a Delaware company, with its principal place of business in New York, New York.

8. Plaintiff Millennium Washington Commercial Trust is a District of Columbia trust, whose trustee is Plaintiff Millennium Washington Commercial Trustee LLC, a Delaware company, with its principal place of business in New York, New York.

9. Plaintiff 735 Market Street Tenant Co. LLC is a Delaware company, with its principal place of business in New York, New York.

10. Plaintiff CB-1 Commercial Co LLC is a Delaware company, with its principal place of business in New York, New York.

11. Plaintiff MP Franklin Burnham Co LLC is a Delaware company, with its principal place of business in New York, New York.

12. Plaintiff MP Franklin Tower Co LLC is a Delaware company, with its principal place of business in New York, New York.

13. Plaintiff 1770 Ivar LLC is a Delaware company, with its principal place of business in New York, New York.

14. Defendant Affiliated FM Insurance Company is a Rhode Island company and a New York-licensed insurance company, with its principal place of business in Johnston, Rhode Island.

## JURISDICTION AND VENUE

15. The Court has jurisdiction over this action pursuant to Judiciary Law § 140-b.

16. The Court has jurisdiction over the Insurer pursuant to Civil Practice Law and Rules §§ 301 and 302. The Insurer is licensed to do business and does business in the State of New York. Additionally, the Insurer issued an insurance contract to Millennium Partners, a New York corporation, to cover risks located in the State of New York, among other places.

17. Venue lies in New York County pursuant to Civil Practice Law and Rules § 503. All Plaintiffs have their principal places of business located in New York, New York. Moreover, New York County is the location where substantial parts of the events giving rise to this lawsuit occurred.

## FACTS

### **I. PLAINTIFFS PURCHASED “ALL RISKS” PROPERTY INSURANCE TO PROTECT THEMSELVES AGAINST CATASTROPHES.**

18. To protect its significant property and business income interests, Millennium Partners purchased Policy No. KN206 from the Insurer (the “All Risks Policy” or the “Policy”). A copy of the All Risks Policy is attached to and made part of this Complaint at **Exhibit A**. The effective dates of the All Risks Policy are from December 1, 2019 to December 1, 2020. The pertinent provisions in the All Risks Policy are insurer-drafted.

19. The All Risks Policy provides “all risks” insurance, for which the Insurer collected substantial premiums. The Policy specifically recognizes coverage for a wide array of COVID-19 losses, including, by way of example, losses caused when orders by civil authorities limited use to insured properties and losses resulting from a communicable disease caused by virus. Coverage includes a number of different business interruption categories that apply when a communicable disease (such as COVID-19) causes physical loss or damage.

20. The “named insured” under the All Risks Policy is Millennium Partners “and its wholly or majority owned subsidiaries and any interest which may now exist or hereinafter be created or acquired which are owned, controlled or operated by any one or more of those named insureds.” Millennium Partners’ affiliates include the Plaintiffs, who own properties that the All Risks Policy insures.

21. The All Risks Policy insures real and personal property of the insured, including 25 scheduled locations and other locations Millennium Properties may acquire after the Policy was issued.

22. The All Risks Policy’s limits of liability, *i.e.*, the amounts the Insurers are obligated to pay, apply on a “per occurrence” basis, except as expressly stated otherwise in the Policy.

23. The All Risks Policy covers losses up to a scheduled limit for each of the 25 scheduled locations as set forth in the Policy. Some coverages are subject to sub-limits, as also set forth in the Policy. The Policy defines “occurrence” in pertinent part as “the sum total of all loss or damage of the type insured, including any insured Business Interruption loss, arising out of or caused by one discrete event of physical loss or damage.”

24. The All Risks Policy covers “all risks of physical loss or damage,” other than those expressly excluded, as well as express coverage for specified perils. The Policy provides both “All Risks” and “Business Interruption” coverage.

25. The basic “Business Interruption” grant of coverage in the All Risks Policy insures against either Gross Earnings or Gross Profits loss (at the Insured’s election) during the applicable Period of Liability, as set forth more fully in the Policy. The Policy’s “Business Interruption” coverage includes Rental Income loss, defined in the relevant part as “a) The fair

rental value of any portion of the property occupied by the Insured; b) Income reasonably expected from the rentals of unoccupied or unrented portions of such property; c) The rental income from the rented portions of such property, according to bona fide leases, contracts or agreements, in force at the time of loss,” “[a]ll less charges and expenses that do not continue.” The “Business Interruption” portion of the Policy additionally provides Extra Expense coverage for the extra costs incurred during the Period of Liability to continue in business and/or to temporarily use other facilities.

26. The All Risks Policy defines the Gross Earnings, Rental Income, or Extra Expense Period of Liability, in relevant part, as the period “starting from the time of physical loss or damage of the type insured,” and “[e]nding when, with due diligence and dispatch, a) The lost or damaged property could be repaired or replaced and made ready for production or business operations or services under the same or equivalent physical operating conditions that existed prior to the loss or damage; or b) The lost or damaged property under the course of construction or renovation could be repaired or replaced to the same or equivalent degree of completion that existed prior to the loss or damage. This period of time will be applied to the level of business that would have been reasonably achieved after construction and startup would have been completed had no physical damage happened.” The Policy defines a separate time period, the Gross Profit Period of Liability, in the relevant part, as the period “starting from the time of physical loss or damage of the type insured and ending no later than the period of time shown in the Declarations section during which the results of the business shall be directly affected by such damage.”

27. The Policy also provides coverage for Gross Earnings and Rental Income loss during a time period termed the Extended Period of Liability, which the Policy defines as

including “such additional length of time as would be required with the exercise of due diligence and dispatch to restore the Insured’s business to the condition that would have existed had no loss happened,” “[c]ommencing with the date on which the liability of the Company for loss resulting from interruption of business would terminate if this Business Interruption Coverage Extension had not been included in this Policy.”

28. In addition, the “Business Interruption” portion of the Policy includes a series of coverage extensions, among which, as set forth more fully in the Policy, are:

- Attraction Property coverage for the Business Interruption Coverage loss incurred directly resulting from physical loss or damage of the type insured to property of the type insured that attracts business to Plaintiffs’ insured property and is within one statute mile of that insured property;
- Civil or Military Authority coverage for the Business Interruption Coverage loss incurred if an order of civil authority prohibits access to an insured location if the order is the direct result of physical damage of the type insured at an insured location or within five statute miles;
- Communicable Disease coverage for the Business Interruption Coverage loss resulting from the limitation, restriction, or prohibition of access to any insured location owned, leased or rented by Plaintiffs due to the actual presence of communicable disease;
- Ingress/Egress coverage for the Business Interruption Coverage loss when Plaintiffs’ business is interrupted due to partial or total physical prevention of ingress to or egress from an insured location as a direct result of physical loss



or damage of the type insured to property of the type insured, whether or not at an insured location;

- Leasehold Interest coverage for continued rent payments made on property that is wholly or partially untenable or unusable and cancelled leases;
- Protection and Preservation of Property for the Business Interruption  
Coverage loss incurred to temporarily protect and preserve property to prevent immediately impending, insured physical loss or damage to insured property;
- Soft Costs coverage for “soft costs” as defined in the Policy that Plaintiffs incurred arising out of the delay in the completion of buildings and additions under construction directly resulting from physical loss or damage of the type insured to insured property under construction at insured locations; and
- Supply Chain coverage for loss directly resulting from physical loss or damage at premises within the United States of America of any “a) Direct suppliers, direct customers or direct contract service providers to the Insured; b) Any company under any royalty, licensing fee or commission agreement with the Insured; or c) Any company that is a direct or indirect supplier, customer or contract service provider of those described in a) above.”

29. The Policy has a basic “All Risks” grant of coverage that includes the following additional coverage provisions, as set forth more fully in the Policy:

- Communicable Disease property damage coverage, including but not limited to costs incurred for cleanup, removal, and disposal of communicable diseases from insured property and related public relations fees and costs;

- Professional Fees, including but not limited to reasonable and necessary expenses payable to auditors, accountants, architects, engineers, or other professionals, as well as the cost of using the Insured's employees for producing and certifying any particulars or details to determine the loss payable under this Policy for which this Company has accepted liability; and
- Protection and Preservation of Property coverage, including but not limited to reasonable and necessary costs incurred to temporarily protect or preserve insured property to prevent immediately impending physical loss or damage to insured property.

## **II. THE CORONAVIRUS AND COVID-19 CAUSE PHYSICAL LOSS AND DAMAGE.**

### **A. COVID-19 Is a Deadly Communicable Disease.**

30. As described above, the All Risks Policy includes "business interruption" coverage for losses resulting from a communicable disease like COVID-19. As is now well known, COVID-19, the name of the human infectious disease caused by the SARS-CoV-2 coronavirus, is a dangerous, fast spreading, communicable disease responsible for more than 6 million deaths worldwide thus far. Not all viruses cause communicable diseases. There are viruses that do not infect humans, and there are viruses that infect humans but cannot be transmitted from human to human. Further, not all viruses that cause communicable disease cause the type of loss or damage to property that the coronavirus causes, or prompt authorities to issue shutdown orders or other civil orders. COVID-19 is a rare exception that, because of its particular nature and characteristics, meets all of these criteria: it is a communicable disease; it has caused physical loss and damage; and it has thereby led to hundreds of orders prohibiting anything other than very small gatherings, and ultimately, to enormous financial losses.

31. The coronavirus can be transmitted in several ways, including via human-to-human contact, airborne viral particles in ambient air, and touching surfaces or objects. For example, when an uninfected person touches a surface containing the coronavirus, the uninfected person may transmit the coronavirus to another person, either by touching and contaminating a second surface, which is subsequently touched by that other person, or more directly by transmitting the coronavirus to another person. The coronavirus spreads easily from person to person and person to surface or object, primarily through small, physical droplets expelled from the nose or mouth when an infected person speaks, yells, sings, coughs, or sneezes. According to research published in *The Journal of the American Medical Association*, a person who sneezes can release a cloud of pathogen-bearing droplets that can span as far as 23 to 27 feet.<sup>1</sup> The Centers for Disease Control and Prevention (“CDC”) has stated that the coronavirus is most likely to spread when people are within six feet of each other, but has acknowledged that the coronavirus may spread from an infected person who is more than six feet away or who has left a given space.<sup>2</sup> Further, longer exposure time likely increases exposure risk to the coronavirus.<sup>3</sup>

32. According to the World Health Organization (“WHO”), the incubation period for COVID-19—*i.e.*, the time between exposure to the coronavirus and symptom onset—can be up to 14 days. Other studies suggest that the period may be up to 21 days. Before infected individuals exhibit symptoms, *i.e.*, the so-called “pre-symptomatic” period, they are most contagious, as their viral loads will likely be very high, and they may not know they have

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<sup>1</sup> See <https://jamanetwork.com/journals/jama/fullarticle/2763852> (last viewed Mar. 18, 2022).

<sup>2</sup> See <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html> (last viewed Mar. 18, 2022).

<sup>3</sup> See <https://www.cdc.gov/coronavirus/2019-ncov/php/public-health-recommendations.html> (last viewed Mar. 18, 2022).

become carriers. In addition, studies from the CDC and others estimate that between 40% to 70% of infected individuals may never become symptomatic (referred to as “asymptomatic” carriers). Pre- and asymptomatic carriers are likely unaware that they are spreading the coronavirus by merely touching objects and surfaces, or by expelling droplets into the air. The National Academy of Sciences has found that the majority of transmission is attributable to people who are not showing symptoms, either because they are pre-symptomatic or asymptomatic.

33. Research from Northeastern University, reported by the New York Times, confirmed that “hidden outbreaks” of COVID-19 were spreading through cities long before testing confirmed cases of COVID-19.<sup>4</sup> The CDC estimates that the number of people in the United States who have been infected with COVID-19 is likely to be higher than the number of reported cases. For example, in June 2020, the CDC estimated that the number of people who had contracted COVID-19 was 10 times greater than the 2.4 million cases reported at the time.<sup>5</sup>

**B. COVID-19 and the Coronavirus Cause Physical Loss and Damage.**

34. Physical droplets containing the coronavirus can land on objects and surfaces. After landing on objects and surfaces, the coronavirus physically alters those objects and surfaces, turning them from physically safe to physically dangerous, and can remain present and dangerous for periods ranging from hours to many days.

35. According to the WHO, people can become infected with the coronavirus by touching objects and surfaces that have been physically altered and harmed by the virus, then

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<sup>4</sup> See <https://www.nytimes.com/2020/04/23/us/coronavirus-early-outbreaks-cities.html> (last viewed Mar. 18, 2022).

<sup>5</sup> See <https://www.washingtonpost.com/health/2020/06/25/coronavirus-cases-10-times-larger/> (last viewed Mar. 18, 2022).

touching their eyes, nose, or mouth. This mode of transmission—indirect transmission via objects and surfaces—is known as “fomite transmission.” As the WHO has noted, fomite transmission is “a likely mode of transmission for SARS-CoV-2” because studies have consistently confirmed the existence of virus-laden droplets on objects and surfaces “in the vicinity of infected cases,” and because it is well known that other coronaviruses can be transmitted via fomite transmission.<sup>6</sup>

36. A study of a COVID-19 outbreak published in the CDC’s Emerging Infectious Diseases journal identified indirect transmission via objects such as elevator buttons and restroom taps as an important possible cause of a “rapid spread” of the coronavirus in a shopping mall in Wenzhou, China.<sup>7</sup>

37. Research has indicated that the coronavirus can be detected on certain surfaces that it has physically altered and harmed even weeks after infected persons are present at a given location.

38. One study, for example, found that the coronavirus remains active and dangerous on plastics for at least three days, while another reported that the coronavirus remained stable and viable for seven days on a range of common surfaces, including plastic, stainless steel, glass, and wood.<sup>8</sup> Another study detected viable coronavirus samples on glass, stainless steel, and money for approximately one month if left at or around room temperature.

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<sup>6</sup> See <https://www.who.int/news-room/commentaries/detail/transmission-of-sars-cov-2-implications-for-infection-prevention-precautions> (last viewed Mar. 18, 2022).

<sup>7</sup> See [https://wwwnc.cdc.gov/eid/article/26/6/20-0412\\_article](https://wwwnc.cdc.gov/eid/article/26/6/20-0412_article) (last viewed Mar. 18, 2022).

<sup>8</sup> See <https://www.nejm.org/doi/full/10.1056/nejmc2004973> (last viewed Mar. 18, 2022); <https://www.medrxiv.org/content/10.1101/2020.05.07.20094805v1.full.pdf> (last viewed Mar. 18, 2022); <https://virologyj.biomedcentral.com/articles/10.1186/s12985-020-01418-7> (last viewed Mar. 18, 2022).

39. Cleaning or disinfecting normally does not fully remove the coronavirus from surfaces that the virus has physically altered and harmed. For instance, studies have found that, even after cleaning, physical residue of the virus, and alteration of the surface caused by the virus, remained.<sup>9</sup>

40. Moreover, even diligent and thorough cleaning and disinfecting of surfaces cannot ensure that surfaces remain free of the virus and the resulting physical alteration and harm caused by the virus. Even after a surface is cleaned or disinfected, an infected person can expel virus-containing droplets that land on surfaces, thus physically altering and harming the surfaces, and surfaces cannot be continuously cleaned. For example, studies have demonstrated that even in hospitals, where cleaning and disinfecting practices are conducted under the supervision of health care professionals, the virus is still present on surfaces.<sup>10</sup>

41. Research has also indicated that the coronavirus can spread through the air, physically altering that air, and changing it from safe to unsafe. For example, airborne viral particles are known to have spread into a facility's heating and ventilation ("HVAC") system, leading to transmission of the coronavirus from person to person. A study of an outbreak at a restaurant in China concluded that the spread of the coronavirus "was prompted by air-conditioned ventilation," with persons who sat at tables downstream of the HVAC system's air flow becoming infected.<sup>11</sup> Another study found the presence of the coronavirus within the HVAC system servicing hospital ward rooms of COVID-19 patients. This study detected SARS-

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<sup>9</sup> See <https://arxiv.org/ftp/arxiv/papers/2005/2005.11443.pdf> (last viewed Feb. 24, 2022).

<sup>10</sup> See, e.g., <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7967612/> (last viewed Feb. 24, 2022).

<sup>11</sup> See [https://wwwnc.cdc.gov/eid/article/26/7/20-0764\\_article#r2](https://wwwnc.cdc.gov/eid/article/26/7/20-0764_article#r2) (last viewed Mar. 18, 2022).

CoV-2 RNA in ceiling vent openings, vent exhaust filters, and central ducts that were located more than 50 meters from the patients' rooms.<sup>12</sup>

42. The Environmental Protection Agency ("EPA") has compiled several studies reflecting "epidemiological evidence suggestive of [coronavirus] transmission through aerosol."<sup>13</sup> Based on these and other studies, the EPA has recommended that facilities make improvements to their ventilation and HVAC systems by, for example, increasing ventilation with outdoor air and air filtration.<sup>14</sup>

43. Accordingly, COVID-19 and the coronavirus cause physical loss and damage by, among other things, destroying, distorting, corrupting, attaching to, and physically altering property, including its surfaces, and by rendering property unusable, uninhabitable, unfit for intended function, dangerous and unsafe. While mitigation efforts have been undertaken and remain ongoing, COVID-19 and the coronavirus have caused, and continued for long periods to cause, such physical loss and damage to properties insured by the All Risks Policy, as described further below.

44. First, respiratory droplets (*i.e.*, droplets larger than 5-10  $\mu\text{m}$ ) expelled from infected individuals land on, attach, and adhere to surfaces and objects. In doing so, they physically change the property and its surface by becoming a part of that surface. This physical alteration makes physical contact with those previously safe, inert surfaces (*e.g.*, walls, handrails, desks) unsafe.

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<sup>12</sup> See <https://www.researchsquare.com/article/rs-34643/v1> (last viewed Mar. 18, 2022).

<sup>13</sup> See <https://www.epa.gov/coronavirus/indoor-air-and-covid-19-key-references-and-publications> (last viewed Mar. 18, 2022; capitalization omitted).

<sup>14</sup> See <https://www.epa.gov/coronavirus/indoor-air-and-coronavirus-covid-19> (last viewed Mar. 18, 2022).

45. Second, when individuals carrying the coronavirus breathe, talk, cough, or sneeze, they expel aerosolized droplet nuclei (*i.e.*, those smaller than 5  $\mu\text{m}$ ) that remain in the air and, like dangerous fumes, make the premises unsafe and affirmatively dangerous. This process alters the physical properties of air in buildings from safe and breathable to unsafe and dangerous. As noted above, Plaintiffs have undertaken, and continue to undertake, efforts to mitigate the impacts of COVID-19 and the coronavirus.

46. Fomites, droplets, droplet nuclei, and aerosols containing the coronavirus are not theoretical, informational, or incorporeal, but rather are dangerous physical substances that have a material, tangible existence.

47. In a study by the U.S. National Institutes of Health, researchers found that the coronavirus was detectable for up to three hours in aerosols, four hours on copper, up to 24 hours on cardboard, and up to three days on stainless steel and plastic surfaces.<sup>15</sup>

48. When the coronavirus and COVID-19 attach to and adhere on surfaces and materials, they become a part of those surfaces and materials, physically harming those surfaces and materials by converting them to dangerous fomites.<sup>16</sup> This represents a physical change in the affected surface or material, which constitutes physical loss and damage.

49. The presence of the coronavirus and COVID-19 within a facility causes physical loss and damage by necessitating remedial measures that include without limitation extensive cleaning and disinfecting, repairing or replacing air filtration systems, remodeling and

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<sup>15</sup> See <https://www.nih.gov/news-events/news-releases/new-coronavirus-stable-hours-surfaces> (last viewed Mar. 18, 2022).

<sup>16</sup> See <https://www.who.int/news-room/commentaries/detail/transmission-of-sars-cov-2-implications-for-infection-prevention-precautions> (last viewed Mar. 18, 2022).



reconfiguring physical spaces, and other measures to reduce or eliminate the presence of cases of COVID-19 and the coronavirus (and resulting physical damage to property) on-site.

50. The presence of cases of COVID-19 and the coronavirus within a facility causes physical loss and damage by transforming the facility from property that is usable and safe for humans into a property that is unsatisfactory for use, uninhabitable, unfit for its intended function, and extremely dangerous and potentially deadly for humans.

51. In addition, the presence of the coronavirus on property creates the imminent threat of further damage to that property or to nearby property. Individuals who come into contact, for example, with respiratory droplets at one location in the facility by touching a doorknob or a handrail, will carry those droplets on their hands and deposit them elsewhere in the facility, causing additional damage and loss.

52. The physical loss and the physical damage described in this Section II.B have occurred at Plaintiffs' insured property, leading to losses covered by the All Risks Policy. To the extent that the All Risks Policy require structural alteration to establish "physical damage," which Plaintiffs dispute, such alteration has occurred.

### **III. COVID-19 CAUSED PLAINTIFFS TO SUFFER SIGNIFICANT LOSSES.**

53. The COVID-19 pandemic and resulting physical loss and damage to Plaintiffs' insured property seriously disrupted Plaintiffs' business operations and caused them to suffer significant losses. These losses included, but are not limited to, lost rental income from Plaintiffs' retail tenants, financing expenses incurred in relation to retail tenants, lost parking garage revenue, and professional fees expended to investigate, respond, and mitigate these losses.

#### IV. THE POLICY COVERS PLAINTIFFS' LOSSES.

54. Plaintiffs suffered the actual physical loss and damage of property insured by the All Risks Policy.

55. Plaintiffs have sustained Business Interruption Coverage losses as a result of cases of COVID-19, the coronavirus, and related government orders. These losses and expenses arose out of numerous discrete events, at different times, in different locations, and under different circumstances.

56. Plaintiffs gave timely notice of their claims and have satisfied, are excused from performing, or the Insurer has waived or is estopped from insistence upon performance of, all conditions of the All Risks Policy, including but not limited to payment of required premiums, provision of timely notice of claim, and submission of a Proof of Loss. A summary of some of the implicated coverages is provided in Section I above.

57. One such implicated coverage is the All Risk Policy's Civil or Military Authority coverage. This coverage applies because Plaintiffs incurred Business Interruption losses when orders of civil authority prohibited access to several insured locations, and those orders were the direct result of physical damage of the type insured at the insured location or within five statute miles of it.

58. State and local authorities in each city and/or state where insured property is located have issued orders that prohibit access to insured property. Certain of the applicable Orders of Civil Authority include:

- The March 12, 2020 prohibition by New York Governor Andrew Cuomo requiring among other things, that "[a]ny place of business or public accommodation . . . shall operate at no greater than fifty percent occupancy, and no greater than fifty percent of seating capacity." This and other state and

local orders (along with other impacts of the outbreak) prohibited public access to at least three insured locations—1992 Broadway, 1972-1976 Broadway, and 1965 Broadway—and many properties within five miles of those locations;

- The March 30, 2020 “Stay at Home Order” Mayor Muriel Bowser of Washington, D.C. issued, requiring all Washington, D.C. residents to remain at home except to engage in enumerated essential activities. This and other local orders (along with other impacts of the outbreak) prohibited public access to at least two insured locations—3100-3150 South Street Georgetown Commons and 2200 M Street Northwest—and many properties within five miles of those locations;
- The March 23, 2020 order Governor Charles Baker of Massachusetts issued closing all non-essential physical workspaces and facilities to workers and customers. This and other state and local orders (along with other impacts of the outbreak) prohibited public access to at least three insured locations—426 Washington Street, 40 Franklin Street, and 2 Avery Street—and many properties within five miles of those locations;
- The March 11, 2020 prohibition by the City and County of San Francisco, California, of gatherings of more than 1,000 people. The San Francisco Board of Supervisors on April 7 adopted a “[r]esolution supporting the COVID-19 orders by civil authority interrupting and prohibiting access to businesses as necessary, *due to physical property loss or damage*” (emphasis added). These and other state and local orders (along with other impacts of the outbreak)

prohibited public access to at least two insured locations—735 Market Street and 737-767 Market Street CB-1—and many properties within five miles of those locations; and

- The March 19, 2020 “Safer at Home Order” that Los Angeles Mayor Eric Garcetti issued, which required all businesses in the county to cease any operations that required in-person attendance by workers at a workplace. The March 19 Los Angeles Order was issued “for the protection of life and property” and stated: “This Order is given because, among other reasons, the COVID-19 virus can spread easily from person to person and *is physically causing property loss or damage due to its tendency to attach to surfaces for prolonged periods of time*” (emphasis added). On May 27, Mayor Garcetti issued a revision to the “Safer at Home Order” that reiterated that “the COVID-19 virus can spread easily from person to person and *is physically causing property loss or damage due to its tendency to attach to surfaces for prolonged periods of time*” (emphasis added). These and other state and local orders (along with other impacts of the outbreak) prohibited public access to at least one insured location—1770 Ivar Avenue and 6334 Yucca Street—and many properties within five miles of that location.

59. Each of these governmental orders is the direct result of, among other things, physical loss and damage at or within five statute miles of Plaintiffs’ insured properties, including but not limited to physical damage caused by the physical presence of and/or structural damage caused by the coronavirus on furniture, doors, floors, walls, apartment units, offices,

equipment, and supplies; and in the air within lobbies, apartment units, offices, and HVAC systems at the insured properties.

60. Numerous outbreaks of COVID-19 have also led to numerous discrete events of physical loss and damage at or within five miles of insured locations, and those damages have in turn led to numerous discrete governmental orders prohibiting access to insured locations. Certain governmental orders that purport to prevent against future proliferation of the coronavirus and future transmission of COVID-19 are the direct result of physical loss and damage of the type insured. Such physical loss and damage is of the type insured by the All Risks Policy generally as well as by the Civil or Military Authority provision specifically.

**V. DESPITE PLAINTIFFS' TIMELY CLAIM FOR COVERAGE, THE INSURER REFUSED TO PAY IN ACCORDANCE WITH ITS CONTRACTUAL PROMISES.**

61. Plaintiffs provided timely notice to the Insurer on March 31, 2022. Despite evidence that persons infected with COVID-19 had attended Plaintiffs' insured properties and documented loss that the Insurer contractually promised to pay, the Insurer denied coverage for all portions of the claim except for Plaintiffs' loss associated with the Communicable Disease coverage at one insured location: 2200 M Street Northwest. The Insurer has failed to and refused to pay the remaining millions of dollars of insured losses Plaintiffs have suffered.

**FIRST CAUSE OF ACTION**  
**(FOR DECLARATORY JUDGMENT AS TO THE INSURER'S OBLIGATIONS)**

62. Plaintiffs repeat and incorporate by reference the allegations of each of the paragraphs above as if fully restated here.

63. For the purposes of CPLR § 3001, an actual and justiciable controversy has arisen and exists between Plaintiffs and the Insurer concerning the Insurer's contractual duties to pay

Plaintiffs' claims for real property losses, Business Interruption Coverage losses, and other losses, costs, and expenses under the All Risks Policy.

64. Plaintiffs accordingly seek a declaration from the Court that:
- a) each coverage provision identified in the Complaint is triggered by Plaintiffs' claims,
  - b) no exclusion in the All Risks Policy applies to preclude or limit coverage for Plaintiffs' claims,
  - c) Plaintiffs have satisfied or are excused from satisfying, or the Insurer has waived or is estopped from enforcing, all conditions precedent under the All Risks Policy,
  - d) the Insurer is contractually obligated under its All Risks Policy to indemnify Plaintiffs for their claims of real property losses, Business Interruption Coverage losses, and other losses sustained as a result of direct loss or damage to property due to COVID-19,
  - e) the Insurer is contractually obligated under its All Risks Policy to indemnify Plaintiffs for their claims of Business Interruption Coverage losses for Gross Earnings or Gross Profits loss, at Plaintiffs' election, during the Period of Liability,
  - f) the Insurer is contractually obligated under its All Risks Policy to indemnify Plaintiffs for their claims of Business Interruption Coverage losses for Rental Income during the Period of Liability,
  - g) the Insurer is contractually obligated under its All Risks Policy to indemnify Plaintiffs for their claims of Extra Expense incurred to continue business during the Period of Liability,
  - h) the Insurer is contractually obligated under its All Risks Policy to indemnify Plaintiffs for their claims of Business Interruption Coverage losses wherever COVID-19 caused physical loss or damage to property of the type insured that attracts business to Millennium Partners' insured property within one statute mile of insured property,
  - i) the Insurer is contractually obligated under its All Risks Policy to indemnify Plaintiffs for their claims of Business Interruption Coverage losses as a result of orders of civil or military authority that have prohibited access to insured properties as a result of COVID-19 at insured property or other locations within five statute miles,
  - j) the Insurer is contractually obligated under its All Risks Policy to indemnify Plaintiffs for their claims of Business Interruption Coverage losses and other

losses as a result of the actual presence of communicable disease at insured locations,

- k) the Insurer is contractually obligated under its All Risks Policy to indemnify Plaintiffs for their claims of Business Interruption Coverage losses wherever ingress or access to, or egress from, insured property has been interrupted as a result of COVID-19 at insured property or other locations,
- l) the Insurer is contractually obligated under its All Risks Policy to indemnify Plaintiffs for their continued rent payments and cancelled leases,
- m) the Insurer is contractually obligated under its All Risks Policy to indemnify Plaintiffs for their claims of Business Interruption Coverage losses and other losses incurred to temporarily protect and preserve property to prevent immediately impending physical loss or damage to insured property,
- n) the Insurer is contractually obligated under its All Risks Policy to indemnify Plaintiffs for their claims of Business Interruption Coverage losses for soft costs they incurred arising out of the delay in the completion of buildings and additions under construction directly resulting from physical loss or damage of the type insured to insured property under construction at insured locations,
- o) the Insurer is contractually obligated under its All Risks Policy to indemnify Plaintiffs for their claims of Business Interruption Coverage losses associated with physical loss or damage to properties enumerated in the Policy's Supply Chain coverage,
- p) the Insurer is contractually obligated under the All Risks Policy to indemnify Plaintiffs for their claims of Gross Earnings and Rental Income losses incurring during the Extended Period of Liability after the end of the applicable Period of Liability, and
- q) the Insurer is contractually obligated under its All Risks Policy to indemnify Plaintiffs for their claims preparation costs.

**SECOND CAUSE OF ACTION**  
**(FOR BREACH OF CONTRACT AGAINST THE INSURER)**

65. Plaintiffs repeat and incorporate by reference the allegations of each of the paragraphs above as if fully restated here.

66. The All Risks Policy is a valid and enforceable contract between Millennium Partners and the Insurer.

67. Plaintiffs have satisfied, are excused from performing, or the Insurer has waived or is estopped from insistence upon performance of, all conditions of the All Risks Policy, including but not limited to payment of required premiums, provision of timely notice of claim, and submission of a Proof of Loss.

68. The Insurer agreed in its insurance contract to provide insurance coverage for all risks of physical loss or damage not otherwise excluded.

69. The COVID-19 pandemic has caused and continues to cause physical loss and/or damage to Plaintiffs' property and to properties within five statute miles of Plaintiffs' insured locations.

70. Plaintiffs have suffered Business Interruption Coverage losses due to physical loss and damage caused by the COVID-19 pandemic, a risk not excluded by the All Risks Policy.

71. No Policy exclusion applies to preclude or limit coverage.

72. As is set forth more fully above, the Insurer is contractually obligated under the All Risks Policy to indemnify Plaintiffs for the full amount of its losses, including real property losses, Business Interruption Coverage losses, and costs resulting from (i) physical loss and damage caused by the coronavirus and COVID-19, (ii) physical loss or damage to property of the type insured that attracts business to Plaintiffs insured properties within one statute mile of that insured property, (iii) civil authority orders, (iv) communicable disease and business interruption, (v) prevention of ingress and egress, (vi) untenable or unusable and cancelled leases, (vii) protection and preservation of insured property, (viii) delay in completion of buildings and additions under construction under construction at insured locations, (ix) losses under the Policy's Supply Chain coverage, (x) their claims of Gross Earnings and Rental Income losses incurring during the Extended Period of Liability after the end of the applicable Period of



Liability, and (xi) claims preparation costs, subject only to the applicable deductibles and limits of liability in the Policy.

73. Nonetheless, the Insurer has refused to pay for Plaintiffs' loss and expenses in breach of the All Risks Policy.

74. As a direct and proximate result of its breach of contract, the Insurer has deprived Plaintiffs of the benefits of the insurance coverage for which substantial premiums were paid, which entitles Plaintiffs to money damages, including interest according to law.

75. Plaintiffs' losses as a result of the Insurer's breach of contract are continuing, and Plaintiffs reserve the right to seek the full and exact amount of its damages at the time of trial.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request that the Court enter a judgment in its favor:

- (i) Declaring, pursuant to Civil Practice Law and Rules § 3001, that (a) each coverage provision identified in the Complaint is triggered by Plaintiffs' claims, (b) no exclusion in the All Risks Policy applies to preclude or limit coverage for Plaintiffs' claims, (c) Plaintiffs have satisfied or are excused from satisfying, or the Insurer has waived or is estopped from enforcing, all conditions precedent under the All Risks Policy, (d) the Insurer is contractually obligated under its All Risks Policy to indemnify Plaintiffs for their claims of real property losses, Business Interruption Coverage losses, and other losses sustained as a result of direct loss or damage to property due to COVID-19, (e) the Insurer is contractually obligated under its All Risks Policy to indemnify Plaintiffs for their claims of Business Interruption Coverage losses for Gross Earnings or Gross Profits loss, at Plaintiffs' election, during the Period of Liability, (f) the Insurer is

contractually obligated under its All Risks Policy to indemnify Plaintiffs for their claims of Business Interruption Coverage losses for Rental Income during the Period of Liability, (g) the Insurer is contractually obligated under its All Risks Policy to indemnify Plaintiffs for their claims of Extra Expense incurred to continue business during the Period of Liability, (h) the Insurer is contractually obligated under its All Risks Policy to indemnify Plaintiffs for their claims of Business Interruption Coverage losses wherever COVID-19 caused physical loss or damage to property of the type insured that attracts business to Plaintiffs' insured property within one statute mile of insured property, (i) the Insurer is contractually obligated under its All Risks Policy to indemnify Plaintiffs for their claims of Business Interruption Coverage losses as a result of orders of civil or military authority that have prohibited access to insured properties as a result of COVID-19 at insured property or other locations within five statute miles, (j) the Insurer is contractually obligated under its All Risks Policy to indemnify Plaintiffs for their claims of Business Interruption Coverage losses and other losses as a result of the actual presence of communicable disease at insured locations, (k) the Insurer is contractually obligated under its All Risks Policy to indemnify Plaintiffs for their claims of Business Interruption Coverage losses wherever ingress or access to, or egress from, insured property has been interrupted as a result of COVID-19 at insured property or other locations, (l) the Insurer is contractually obligated under its All Risks Policy to indemnify Plaintiffs

for their continued rent payments and cancelled leases, (m) the Insurer is contractually obligated under its All Risks Policy to indemnify Plaintiffs for their Business Interruption Coverage losses and other losses incurred to temporarily protect and preserve property to prevent immediately impending physical loss or damage to insured property, (n) the Insurer is contractually obligated under its All Risks Policy to indemnify Plaintiffs for their claims of Business Interruption Coverage losses for soft costs it incurred arising out of the delay in the completion of buildings and additions under construction directly resulting from physical loss or damage of the type insured to insured property under construction at insured locations, (o) the Insurer is contractually obligated under its All Risks Policy to indemnify Plaintiffs for their claims of Business Interruption Coverage losses associated with physical loss or damage to properties enumerated in the Policy's Supply Chain coverage, (p) the Insurer is contractually obligated under the All Risks Policy to indemnify Plaintiffs for their claims of Gross Earnings and Rental Income losses incurring during the Extended Period of Liability after the end of the applicable Period of Liability, (q) the Insurer is contractually obligated under its All Risks Policy to indemnify Plaintiffs for their claims preparation costs, and (r) making any other declaration of the Parties' rights as may be just and proper;

- (ii) Awarding Plaintiffs damages for the Insurer's breaches of contract in an amount to be proven at trial, together with prejudgment interest at the maximum legal rate

running from the date such payments were due, plus any other amounts in accordance with Civil Practice Law and Rules § 5001, all as Plaintiffs will prove at trial;

- (iii) Awarding Plaintiffs their reasonable attorneys' fees, costs, expenses, and post-judgment interest as provided by law; and
- (iv) Granting such other and further relief as the Court may deem just and proper.

Dated: March 18, 2022  
New York, New York

COVINGTON & BURLING LLP

By: /s/ Bert Wells

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**JURY DEMAND**

Plaintiffs hereby demand a jury trial.

Dated: March 18, 2022  
New York, New York

COVINGTON & BURLING LLP

By: /s/ Bert Wells

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