

SUMMONS (CITACION JUDICIAL)

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

ZURICH AMERICAN INSURANCE COMPANY

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

CRUNCH HOLDINGS, LLC; CRUNCH, LLC; and CRUNCH FRANCHISING, LLC

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. ¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es): 400 McAllister Street, San Francisco, CA 94102

CASE NUMBER: (Número del Caso)

CCC-20-587340

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is: (El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Terry J. Mollica, MOLLICA LAW, 560 First Street, Suite B201, Benicia, CA 94510 Tele. (925) 239-2380

DATE:

(Fecha) OCT 28 2020

CLERK OF THE COURT

Clerk, by

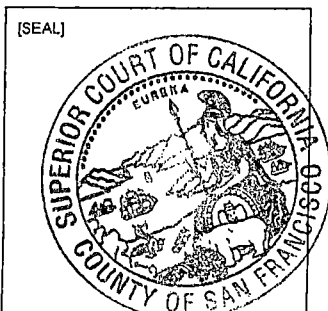
(Secretario)

S. Schiro Deputy (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010).)

SANDRA L. SCHIRO



NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.

2. ☐ as the person sued under the fictitious name of (specify):

3. ☐ on behalf of (specify):

under: ☐ CCP 416.10 (corporation)

☐ CCP 416.20 (defunct corporation)

☐ CCP 416.40 (association or partnership)

☐ other (specify):

☐ CCP 416.60 (minor)

☐ CCP 416.70 (conservatee)

☐ CCP 416.90 (authorized person)

4. ☐ by personal delivery on (date)

FILED BY FAX

1 Martin W. Jaszczuk, Esq. (*pro hac vice* to be filed)
2 Daniel I. Schlessinger, Esq. (*pro hac vice* to be filed)
3 Maria G. Enriquez, Esq. (*pro hac vice* to be filed)

JASZCZUK P.C.

3 311 South Wacker Drive
4 Chicago, Illinois 60606
5 Tel: (312) 442-0509
6 mjaszczuk@jaszczuk.com
7 dschlessinger@jaszczuk.com
8 menriquez@jaszczuk.com

7 Terry J. Mollica, Esq. (Bar No. 139816)

MOLLIKA LAW

8 560 First Street, Suite B201
9 Benicia, CA 94510
10 Telephone: (925) 239-2380
11 Facsimile: (925) 239-2382
12 tjm@caattnys.com

12 Attorneys for Plaintiffs

13 **SUPERIOR COURT OF CALIFORNIA**

14 **IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO**

15 **UNLIMITED JURISDICTION**

16
17
18 Crunch Holdings, LLC; Crunch, LLC; and
19 Crunch Franchising, LLC;

20 Plaintiffs,
21 v.

22 Zurich American Insurance Company,

23 Defendant.

Case No. **CGC-20-587340**

**COMPLAINT FOR BREACH OF
CONTRACT AND DECLARATORY
RELIEF**

JURY TRIAL DEMANDED

FILED
San Francisco County Superior Court

OCT 28 2020

CLERK OF THE COURT
BY: Sandra Schie
Deputy Clerk

1 **COMPLAINT**

2 COME NOW Plaintiffs Crunch Holdings, LLC; Crunch, LLC; and Crunch
3 Franchising, LLC (collectively, "Plaintiffs"), and for their Complaint against Zurich
4 American Insurance Company ("Defendant" or "Zurich"), allege as follows:
5

6 **I. INTRODUCTION**

7 Crunch Fitness is a chain of over 300 company-owned and franchised fitness clubs
8 located in the United States, Canada, Australia, Spain, Costa Rica, and Panama.
9

10 1. Plaintiff Crunch Holdings, LLC, a Delaware limited liability company, is the
11 corporate owner of the Crunch Fitness franchise. Through a number of subsidiaries, Crunch
12 Holdings owns and operates more than 50 Crunch Fitness workout facilities in California,
13 Florida, New Jersey, New York, and Oregon.
14

15 2. Plaintiff Crunch, LLC, a Delaware limited liability company, is a direct
16 subsidiary of Crunch Holdings. Crunch, LLC, both itself and through its subsidiaries and
17 affiliated companies, owns and operates the company-owned Crunch Fitness gyms that are
18 the subjects of this action.
19

20 3. Plaintiff Crunch Franchising, LLC, a Delaware limited liability company,
21 ("Crunch Franchising") is also a direct subsidiary of Crunch Holdings. Crunch Franchising
22 contracts with the third parties that operate franchised Crunch Fitness facilities. Crunch
23 Franchising receives royalties from each franchisee with which it contracts.
24

25 4. Beginning in March 2020, state and local officials in California, Florida, New
26 Jersey, New York, and Oregon, among other states (as well as governmental officials in
27 Canada and Costa Rica), issued a series of orders closing non-essential businesses, including
28 Crunch's company-owned and franchised gyms, and directing consumers to stay at home.

1 5. These orders prevented Crunch Fitness customers and employees from
2 physically occupying the gyms' premises, and prevented Plaintiffs and their franchisees
3 from operating their businesses.

4 6. Plaintiffs have suffered and continue to suffer staggering losses of business
5 income and royalty income as a result of these orders.
6

7 7. Plaintiffs are insured under a commercial property insurance policy issued by
8 Defendant, which provides for reimbursement of lost business income and lost royalty
9 income in the event Plaintiffs' business operations are suspended.

10 8. Plaintiffs purchased the policy to protect their livelihoods in the event of an
11 unforeseen interruption of their businesses, and Plaintiffs faithfully paid premiums over the
12 years to obtain this protection.
13

14 9. The recent government-mandated shutdowns of Plaintiffs' and their
15 franchisees' facilities are precisely the sort of unforeseen, economically calamitous events
16 Plaintiffs sought to insure themselves against when they purchased insurance from
17 Defendant. But when Plaintiffs made a claim for coverage as a result of the shutdowns that
18 physically deprived Plaintiffs of their businesses, Defendant made clear from the outset that
19 coverage would not likely be available, and ultimately denied Plaintiffs' claim.
20

21 10. Specifically, without investigation, and based on an erroneous reading of the
22 language in Plaintiffs' insurance policy as well as a misunderstanding of the nature of
23 Plaintiffs' losses, Defendant indicated in response to Plaintiffs' claim that it would likely be
24 denied. Defendant persisted in its denial even after Plaintiffs corrected Defendant's
25 misapprehensions.
26
27
28

11. Defendant's denial of Plaintiffs' claim was arbitrary, unreasonable, contrary to the language of Plaintiffs' insurance policy, contrary to the undisputed facts, and contrary to law.

12. Due to Defendant's wrongful denial of coverage, Plaintiffs bring this action for a declaratory judgment establishing that they are entitled to receive the benefit of the insurance coverage they purchased, for indemnification of the business losses they have sustained, and for breach of contract.

II. PARTIES

13. Plaintiff Crunch, LLC is a Delaware limited liability company with its principal place of business in New York, New York.

14. Plaintiff Crunch Holdings, LLC is a Delaware limited liability company with its principal place of business in New York, New York.

15. Plaintiff Crunch Franchising, LLC is a Delaware limited liability company with its principal place of business in Portsmouth, New Hampshire.

16. Upon information and belief, Defendant Zurich American Insurance Company is a New York insurance company with its principal place of business in Schaumburg, Illinois.

III. JURISDICTION AND VENUE

17. Defendant is subject to the jurisdiction of this Court because Defendant maintains an office in this County, insures risks located in this County, and conducts business within this County.

18. Venue is proper in this Court because property covered by the insurance policy at issue in this action is located in this County, Defendants' obligations under the

1 policy were to be performed in this County, and events giving rise to Defendant's liability
2 occurred in this County.

3 **IV. FACTUAL BACKGROUND**

4 19. In March 2020, officials in California, Florida, New Jersey, New York, and
5 Oregon—as in many other states—ordered the closing of all non-essential businesses,
6 including fitness facilities.
7

8 20. For example, on March 16, 2020, the Governor of New York entered
9 Executive Order No. 202.3, directing “[a]ny gym, fitness centers or classes” to “cease
10 operation.”
11

12 21. Similarly, on March 16, 2020, the Governor of New Jersey entered Executive
13 Order No. 104, closing “[g]yms and fitness centers and classes” to the public.

14 22. On March 15 and 16, 2020, the City of Los Angeles and Los Angeles
15 County, respectively, ordered the closing of a number of nonessential businesses, including
16 fitness clubs.
17

18 23. Shortly thereafter, on March 19, 2020, the Governor of California entered
19 Executive Order N-33-20, directing all California residents to shelter in place, except as
20 necessary to facilitate critical infrastructure sectors.

21 24. On March 20, 2020, the Governor of Florida entered Executive Order 20-71,
22 ordering “the closure of gymnasiums and fitness centers within the State of Florida.”
23

24 25. On March 23, 2020, the Governor of Oregon entered Executive Order 20-12,
25 prohibiting the operation of gyms and fitness studios.

26 26. In addition to these measures, county officials in Contra Costa County,
27 California, Orange County, California, Placer County, California, Riverside County,
28 California, Sacramento County, California, San Bernardino County, California, San Diego

1 County, California, San Francisco County, California, San Mateo County, California, the
2 City of Miami, Florida, Kings County, New York, and the City of Portland, Oregon, entered
3 orders directing residents to shelter in place and/or closing or restricting the operations of
4 non-essential businesses like Plaintiffs’.

5 27. In July 2020, the Governor of California and the California Department of
6 Public Health ordered fitness centers in 30 counties to close once again. (*See* California
7 Department of Public Health Statewide Public Health Officer Order dated July 13, 2020.)

8 28. Under these orders, Plaintiffs were required to close their facilities in
9 California, Florida, New Jersey, New York, and Oregon for a period of several months.
10

11 29. Crunch Franchising’s franchisees located in these states were also forced to
12 close as a result of these orders. Additionally, franchisees located in Alabama, Arizona,
13 Colorado, Connecticut, Georgia, Idaho, Illinois, Kansas, Kentucky, Maryland,
14 Massachusetts, Michigan, Minnesota, Mississippi, Nebraska, Nevada, New Mexico, North
15 Carolina, Ohio, Oklahoma, Pennsylvania, Puerto Rico, South Carolina, Texas, Virginia,
16 Wisconsin, Canada, and Costa Rica were shuttered as a result of similar government
17 directives. (*See, e.g.*, Alabama Order of the State Health Officer dated April 3, 2020;
18 Arizona Executive Order No. 2020-09; Fraser Health Class Order re: COVID-19 dated April
19 15, 2020; Colorado Executive Order No. D 2020 017; Connecticut Executive Order No. 7D;
20 Costa Rica Ministry of Health Medidas administrativas temporales para la atención de
21 actividades de concentración masiva debido a la alerta sanitaria por COVID-19 dated March
22 18, 2020; Georgia Executive Order No. 04.02.2020.01; Idaho Department of Health and
23 Welfare Order to Self-Isolate dated March 25, 2020; Illinois Executive Order 2020-10;
24 Kansas Executive Order Nos. 20-16, 20-18; Kentucky Cabinet for Health & Family Services
25
26
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28

1 Order dated March 17, 2020; Maryland Executive Order No. 20-03-23-01; Massachusetts
2 COVID-19 Order No. 13; Michigan Executive Order No. 2020-20; Mississippi Executive
3 Order No. 1466; Minnesota Executive Order No. 20-04; Nebraska Directed Health Measure
4 No. 2020-001; Nevada Declaration of Emergency for COVID-19 - Directive 003; New
5 Mexico Department of Health Public Health Order dated March 23, 2020; North Carolina
6 Executive Order No. 121; Ohio Department of Health Director's Order dated March 22,
7 2020; Oklahoma Executive Department Seventh Amended Executive Order No. 2020-07;
8 Pennsylvania Order of the Governor dated March 19, 2020; Puerto Rico Administrative
9 Bulletin No. OE-2020-023; South Carolina Executive Order No. 2020-17; Texas Executive
10 Order No. GA 08; Virginia Executive Order No. Fifty-Three; and Wisconsin Department of
11 Health Emergency Order No. 12.) (The government orders referenced in paragraphs 20-27
12 and 29 are hereinafter referred to as the "Executive Orders.")
13
14

15 30. During this time, Plaintiffs and their franchisees could not allow customers or
16 employees to enter their premises, nor could they operate their businesses in any capacity.
17

18 31. As a result of the Executive Orders, Plaintiffs suffered and continue to suffer
19 severe interruption to their businesses and critical loss of income.
20

21 **V. THE POLICY – CRUNCH COMPANY-OWNED LOCATIONS**

22 32. Plaintiffs are insured by Zurich American Insurance Company Insurance
23 Policy No. ERP 0113878-04 for the period April 1, 2019 to April 1, 2020 (the "Policy,"
24 attached as Exhibit A).¹

25 33. Plaintiffs obtained the Policy to ensure that they would be reimbursed for lost
26 income in the event that their business operations were interrupted.
27

28 ¹ The Policy was issued to Crunch, LLC. The named Plaintiffs, both themselves and through subsidiaries, own and operate Crunch locations that are insured under the Policy.

1 34. Plaintiffs faithfully paid premiums to Defendant on the Policy.

2 35. The Policy is an “all-risk” property insurance policy, meaning that it broadly
3 covers risk of loss of or damage to Plaintiffs’ property, unless a coverage exclusion applies.

4 36. Under the terms of the Policy, Defendant agreed to insure Plaintiffs against
5 “direct physical loss of or damage caused by a Covered Cause of Loss to Covered Property .
6 . . .” (Ex. A, form EDGE-D-100-B, § 1.01.)

7
8 37. “Covered Cause of Loss” is defined as “[a]ll risks of direct physical loss of or
9 damage from any cause unless excluded.” (Ex. A, Form EDGE-100-B, § 7.11.) “Direct
10 physical loss” is not defined in the Policy.

11
12 38. As part of this coverage, the Policy contains a “Time Element” provision,
13 pursuant to which Defendant agreed to pay for Plaintiffs’ lost business income sustained as a
14 result of a “necessary suspension of [Plaintiffs’] business activities” at an insured location,
15 where the suspension is due to “direct physical loss of or damage to Property . . . caused by
16 a Covered Cause of Loss.” (See Ex. A, Form EDGE-100-B, § 4.01.01.)

17
18 39. “Suspension” is defined, in pertinent part, as “[t]he slowdown or cessation of
19 the Insured’s business activities.” (*Id.*, § 7.56.)

20 40. Pursuant to the Time Element provision of the Policy, Defendant agreed to
21 pay, *inter alia*, Plaintiffs’ “Gross Earnings loss” for the period the businesses are suspended;
22 in other words, Defendant agreed to pay Plaintiffs the amount Plaintiffs would have earned
23 had there been no suspension of Plaintiffs’ businesses. (See *id.*, §§ 4.01-4.02.)²

24
25
26 ² Under the Policy, “Gross Earnings loss” is calculated generally as follows. First,
27 “Gross Earnings value” is determined as the sum of the insured’s net sales value of
28 production, net sales of merchandise, and other business income, less certain identified
costs. Then, “Gross Earnings loss” is determined as the “Gross Earning value” that

1 41. In summary, under the Policy, when a Covered Cause of Loss—such as an
2 unanticipated crisis and governmental shutdown of Plaintiffs’ businesses—causes “direct
3 physical loss of or damage” to Plaintiffs’ property—such as Plaintiffs’ inability to access
4 their facilities, to allow customers on their premises, and to otherwise operate their
5 businesses—Defendant is obligated to pay Plaintiffs for the Time Element loss (*i.e.*, lost
6 business income) they suffer during the time their business operations are suspended.

7
8 42. The Policy also provides for recovery of Plaintiffs’ lost business income
9 when a “Covered Cause of Loss” occurs at property other than Plaintiffs’ property, causing
10 Plaintiffs to be denied access to their property.

11
12 43. For example, the Policy contains a “Civil or Military Authority” provision,
13 which provides that Defendant will pay Plaintiffs’ lost business income when a “civil
14 authority” takes action that prohibits access to Plaintiffs’ premises, where that action is
15 taken as the result of a Covered Cause of Loss occurring somewhere other than Plaintiffs’
16 premises.

17
18 44. Specifically, the Policy provides as follows:

19 The Company will pay for the actual Time Element loss sustained by
20 the Insured, as provided by this Policy, resulting from the necessary
21 Suspension of the Insured’s business activities at an Insured Location
22 if the Suspension is caused by order of civil or military authority that
23 prohibits access to the Location. That order must result from a civil
24 authority’s response to direct physical loss of or damage caused by a
25 Covered Cause of Loss to property not owned, occupied, leased or
26 rented by the Insured or insured under this Policy and located within
27 the distance of the Insured’s Location as stated in the Declarations. The
28 Company will pay for the actual Time Element loss sustained, subject
29 to the deductible provisions that would have applied had the physical
30 loss or damage occurred at the Insured Location, during the time the

_____ would have been earned by the insured but for the interruption, less “charges and
expenses that do not necessarily continue” during the period of interruption. (*See* Ex. A,
Form EDGE-100-B, § 4.02.)

order remains in effect, but not to exceed the number of consecutive days following such order as stated in the Declarations up to the limit applying to this Coverage.

(Ex. A, Form EDGE-100-B, § 5.02.03.)

45. The Policy further provides for Time Element coverage where ingress and/or egress to Plaintiffs' property is prohibited as the result of a Covered Cause of Loss occurring elsewhere.

46. Specifically, the Policy provides:

The Company will pay for the actual Time Element loss sustained by the Insured, as provided by this Policy, resulting from the necessary Suspension of the Insured's business activities at an Insured Location if ingress or egress to that Insured Location by the Insured's suppliers, customers or employees is prevented by physical obstruction due to direct physical loss of or damage caused by a Covered Cause of Loss to property not owned, occupied, leased or rented by the Insured or insured under this Policy and located within the distance of the Insured Location as stated in the Declarations. The Company will pay for the actual Time Element loss sustained, subject to the deductible provisions that would have applied had the physical loss or damage occurred at the Insured Location, during the time ingress or egress remains prevented by physical obstruction but not to exceed the number of consecutive days as stated in the Declarations following such obstruction up to the limit applying to this Coverage.

(*Id.*, § 5.02.15.)

VI. THE POLICY – CRUNCH FRANCHISING

47. The Policy contains a "Contingent Time Element" provision, which provides for the above Time Element coverage when a suspension of an insured's business "results from direct physical loss of or damage caused by a Covered Cause of Loss to Property" at a "Direct Dependent Time Element Location[]." (Ex. A, Form EDGE-100-B, § 5.02.05.)

48. The Policy defines "Direct Dependent Time Element Location" to include "[a]ny Location of any company under a royalty, licensing fee or commission agreement" with Plaintiffs. (*See id.*, § 7.16.02.)

1 49. In summary, when a company under a royalty agreement with an
2 insured suffers a Covered Cause of Loss, and the insured's business operations are
3 suspended as a result, the insured is entitled to coverage for its lost business income,
4 including royalty income it would have earned but for the suspension.

5 50. Crunch Franchising enters into royalty agreements with Crunch Fitness
6 franchisees.

7 51. Crunch Franchising's franchisees' business operations were shut down
8 as a result of the Executive Orders, causing Crunch Franchising's business to be
9 suspended and causing it to lose substantial business income, including royalty
10 income.
11

12
13 **VII. PLAINTIFFS' CLAIM AND DEFENDANT'S RESPONSE**

14 52. On or about April 1, 2020, Plaintiffs made a claim under the Policy for losses
15 suffered as a result of the Executive Orders (the "Claim").

16 53. On April 29, 2020, Defendant responded to Plaintiffs' Claim. (A copy of
17 Defendant's April 29, 2020 letter is attached as Exhibit B.) In its response, Defendant stated
18 that "it does not appear that the presence of the COVID-19 virus constitutes direct physical
19 loss or damage to property," indicating coverage would likely not be available for Plaintiffs'
20 Claim. (See Ex. B, p. 2.)
21

22 54. Defendant's response to Plaintiffs' Claim misrepresented both the terms of
23 the Policy and the true cause of Plaintiffs' losses.
24

25 55. As an initial matter, and contrary to Defendant's statements, the Policy does
26 not require that Plaintiffs or its franchisees suffer "direct physical loss or damage to
27 property" for coverage to obtain. Instead, the Policy requires "direct physical loss of" or
28 damage to, Plaintiffs' (or its franchisees') property. "Direct physical loss of property is a

legally distinct concept from “direct physical loss to” property, as Defendant is undoubtedly aware.

56. Moreover, Plaintiffs’ lost business income and royalty income were not the result of “the presence of the COVID-19 virus” on Plaintiffs’ or their franchisees’ premises. Plaintiffs suffered business losses as a result of the Executive Orders, which physically prevented Plaintiffs and their franchisees, their employees, and their customers from occupying Plaintiffs’ and their franchisees’ facilities, and prevented Plaintiffs and their franchisees from operating their businesses.

57. After Plaintiffs brought these errors to Defendant’s attention, Defendant responded that it was denying coverage on the ground that “[t]he presence of the COVID-19 virus does not constitute ‘direct physical loss of or damage to property.’” (Plaintiffs’ May 6, 2020 letter to Defendant is attached as Exhibit C; Defendant’s May 22, 2020 letter to Plaintiffs is attached as Exhibit D.)

58. Under the terms of the Policy, Plaintiffs and their franchisees have suffered both “direct physical loss of” and “damage to” their property as a result of the Executive Orders.

59. The Policy does not define “loss” or “damage;” therefore, under well-recognized, undisputed rules of construction, those terms are to be given their generally understood meaning, and any ambiguity should be construed in favor of coverage for Plaintiffs and against Defendant, who selected the language for inclusion in its adhesion contracts.

1 60. “Loss” and “damage” are two distinct concepts; indeed, if the terms were
2 synonymous, there would be no need to include both in the Policy language, separated by
3 the disjunctive “or.”

4 61. Common dictionary definitions of “loss” include “deprivation” and “the harm
5 or privation resulting from loss or separation.”³

6 62. Common dictionary definitions of “damage” include harm caused to
7 something “in such a way as to impair its value, usefulness or normal function.”⁴

8 63. The events described herein have unquestionably deprived Plaintiffs and their
9 franchisees of access to, and have separated Plaintiffs and their franchisees from, their
10 business facilities. Accordingly, Plaintiffs and their franchisees have suffered “loss of” their
11 premises.
12

13 64. Additionally, these events have impaired the value of the businesses and have
14 prevented them from serving their normal function. Therefore, under commonly accepted
15 English usage, Plaintiffs and their franchisees have also suffered “damage to” their
16 premises.
17

18 65. Plaintiffs’ and their franchisees’ losses and damage are “direct” in that they
19 have been directly caused by the Executive Orders; and they are “physical” in that Plaintiffs’
20 and their franchisees’ property and operations have been physically impacted by
21 governmental shutdowns.⁵
22
23
24

25
26 ³ See <https://www.merriam-webster.com/dictionary/loss>.

27 ⁴ See <https://www.lexico.com/en/definition/damage>.

28 ⁵ See <https://www.lexico.com/en/definition/direct> (defining “direct” as “[w]ithout
intervening factors or intermediaries”); *see also*
<https://www.lexico.com/en/definition/physical> (defining “physical” as “[r]elating to
things perceived through the senses as opposed to the mind; tangible or concrete.”).

1 66. Put simply, the Executive Orders have caused Plaintiffs and their franchisees
2 to suffer both (a) direct physical loss of, and, (b) damage to, their property because the
3 Executive Orders have deprived Plaintiffs and their franchisees of access to their property,
4 prevented customers from physically occupying Plaintiffs' and their franchisees' property,
5 and prohibited Plaintiffs and their franchisees from operating their businesses, thereby
6 impairing, and in fact nearly eliminating entirely, the normal function and value of
7 Plaintiffs' and their franchisees' business property.
8

9 67. Because Plaintiffs and their franchisees have suffered direct physical loss of
10 and damage to their property, they have experienced a "Covered Cause of Loss," and
11 Plaintiffs are entitled to reimbursement under the Time Element and Contingent Time
12 Element provisions of the Policy.
13

14 68. For these same reasons, Defendant is obligated to provide coverage under the
15 "Civil or Military Authority" provision in the Policy.
16

17 69. As set forth above, the Executive Orders are a Covered Cause of Loss.
18 Moreover, there are numerous establishments within one mile of each of Plaintiffs' facilities
19 and their franchisees' facilities that have also suffered physical loss of and damage to their
20 premises caused by this Covered Cause of Loss. Accordingly, the Executive Orders that
21 have prohibited access to Plaintiffs' and their franchisees' premises trigger the "Civil or
22 Military Authority" provision of the Policy.
23

24 70. Further, coverage is similarly provided under the "Ingress/Egress" provision
25 of the Policy, as the Executive Orders requiring the shutdown of businesses located within
26 one mile of Plaintiffs' and their franchisees' premises physically obstructed and prevented
27 physical ingress or egress to Plaintiffs' and their franchisees' facilities.
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VIII. THE CONTAMINATION/VIRUS EXCLUSION

71. The Policy does not contain the ISO Properties, Inc. 2006 “Exclusion of Loss due to Virus or Bacteria” (CP 01 40 07 06).

72. Nevertheless, in its responses to Plaintiffs’ Claim, Defendant asserted that Plaintiffs are not entitled to coverage under the Policy for the additional reason that Plaintiffs’ Claim is precluded by a “Contamination Exclusion” provision in the Policy. (*See* Ex. B, p. 2; Ex. D, pp. 2-3.)

73. This exclusion states that the Policy does not provide coverage for “Contamination, and any cost due to Contamination including the inability to use or occupy property or any cost of making property safe or suitable for use or occupancy, except as provided by the Radioactive Contamination Coverage of this Policy.” (Ex. A, Form EDGE-100-B, §§ 3.03.01, 3.03.01.01.)

74. “Contamination” is defined as “[a]ny condition of property due to the actual presence of any foreign substance, impurity, pollutant, hazardous material, poison, toxin, pathogen or pathogenic organism, bacteria, virus, disease causing or illness causing agent, Fungus, mold or mildew.” (*Id.*, § 7.09.)

75. Plaintiffs have made no claim of any type of contamination and are in fact unaware of any “actual presence” of SARS-CoV-2 or any other virus in their facilities or the facilities of their franchisees.

76. Plaintiffs have invited Defendant to inspect the insured premises for the presence of contamination, but Defendant has not done so. (*See* Ex. C, p. 2.)

77. Plaintiffs did not lose any business income or royalty income due to viral contamination.

1 78. As a result, Plaintiffs' losses fall outside the ambit of the Contamination
2 Exclusion, because they were not caused by contamination by SARS-CoV-2. To the
3 contrary, Plaintiffs' losses of business and royalty income were caused by, and the direct
4 result of, the Executive Orders of civil authorities closing Plaintiffs' and their franchisees'
5 facilities and directing consumers to stay at home.
6

7 79. It is Defendant's burden to prove that Plaintiffs' Claim is precluded by the
8 Contamination Exclusion, and that burden cannot be met here.⁶
9

10 **FIRST CAUSE OF ACTION**

11 (BREACH OF CONTRACT: COVERAGE OF PROPERTY DAMAGE CLAIMS)

12 80. Plaintiffs repeat and reallege the allegations of paragraphs 1 through 79 as if
13 fully set forth herein.
14

15 81. The Policy is an insurance contract under which Plaintiffs paid premiums in
16 exchange for Defendant's promise to pay Plaintiffs' claims for losses covered by the Policy,
17 such as business income and royalty income losses incurred as a result of government orders
18 impairing Plaintiffs' and their franchisees' business operations.
19

20 82. The Policy requires Defendant to provide "Time Element" and "Contingent
21 Time Element" coverage to Plaintiffs, as part of which Defendant is obligated to pay
22 Plaintiffs for the loss of business income and royalty income suffered while Plaintiffs' and
23 their franchisees' businesses were impaired as a result of the Executive Orders.
24

25 ⁶ Defendant's letters also referenced certain other Policy exclusions it believed may
26 preclude coverage, including exclusions for loss or damage arising from enforcement of
27 laws, ordinances, regulations, or rules regulating the use of property; and loss or damage
28 arising from delay, loss of market, or loss of use. But Defendant's interpretation of those
exclusions would effectively read the "Time Element," "Contingent Time Element,"
"Civil or Military Authority," and "Ingress/Egress" provisions out of the Policy, and, in
any event, Defendant bears the burden of proof with respect to the applicability of these
and any other exclusions.

1 83. Plaintiffs have complied with all applicable provisions of the Policy,
2 including payment of premiums in exchange for coverage under the Policy, and yet
3 Defendant has failed to fulfill its insurance coverage obligations under the terms of the
4 Policy.

5 84. By indicating that it would not provide coverage for any losses or damage
6 incurred by Plaintiffs in connection with the Executive Orders, Defendant has breached its
7 coverage obligations under the Policy.
8

9 WHEREFORE, Plaintiffs seek an award of compensatory damages in the amount
10 of their Time Element and Contingent Time Element losses, together with costs sustained
11 herein.
12

13 SECOND CAUSE OF ACTION

14 (BREACH OF CONTRACT: COVERAGE OF CIVIL AUTHORITY CLAIMS)

15 85. Plaintiffs repeat and reallege the allegations of paragraphs 1 through 84 as if
16 fully set forth herein.

17 86. The Policy is an insurance contract under which Plaintiffs paid premiums in
18 exchange for Defendant's promise to pay Plaintiffs' claims for losses covered by the Policy,
19 such as business income and royalty income losses incurred as a result of government orders
20 impairing Plaintiffs' and their franchisees' business operations.
21

22 87. The Policy requires Defendant to provide "Time Element" and "Contingent
23 Time Element" coverage to Plaintiffs, as part of which Defendant is obligated to pay
24 Plaintiffs their lost business income and royalty income caused by actions taken by civil
25 authorities that prohibited access to Plaintiffs' and their franchisees' premises, where those
26 actions were taken in response to a Covered Cause of Loss occurring at property other than
27 Plaintiffs' or their franchisees' property.
28

1 88. The Executive Orders constitute actions of civil authorities prohibiting access
2 to Plaintiffs' and their franchisees' property, and Plaintiffs' Claim otherwise meets the
3 requirements for coverage under the Civil or Military Authority provision of the Policy.

4 89. Plaintiffs have complied with all applicable provisions of the Policy,
5 including payment of premiums in exchange for coverage under the Policy, and yet
6 Defendant has failed to fulfill its insurance coverage obligations under the terms of the
7 Policy.
8

9 90. By indicating that it would not provide coverage for any losses or damage
10 incurred by Plaintiffs in connection with the Executive Orders, Defendant has breached its
11 coverage obligations under the Policy.
12

13 WHEREFORE, Plaintiffs seek an award of compensatory damages in the amount of
14 their Time Element and Contingent Time Element losses, together with costs sustained
15 herein.
16

17 **THIRD CAUSE OF ACTION**

18 (BREACH OF CONTRACT: COVERAGE OF INGRESS/EGRESS CLAIMS)

19 91. Plaintiffs repeat and reallege the allegations of paragraphs 1 through 90 as if
20 fully set forth herein.

21 92. The Policy is an insurance contract under which Plaintiffs paid premiums in
22 exchange for Defendant's promise to pay Plaintiffs' claims for losses covered by the Policy,
23 such as business income and royalty income losses incurred as a result of government orders
24 impairing Plaintiffs' and their franchisees' business operations.
25

26 93. The Policy requires Defendant to provide "Time Element" and "Contingent
27 Time Element" coverage to Plaintiffs, as part of which Defendant is obligated to pay
28 Plaintiffs for their lost business income and royalty income caused by a physical obstruction

1 that prevents ingress and/or egress to Plaintiffs' or their franchisees' property, where the
2 obstruction resulted from a Covered Cause of Loss occurring at property other than
3 Plaintiffs' or their franchisees' property that is located within the vicinity of Plaintiffs or
4 their franchisees.

5 94. The Executive Orders operated as obstructions preventing ingress and egress
6 to Plaintiffs' and their franchisees' businesses, and Plaintiffs' Claim otherwise meets the
7 requirements for coverage under the Ingress/Egress provision of the Policy.
8

9 95. Plaintiffs have complied with all applicable provisions of the Policy,
10 including payment of premiums in exchange for coverage under the Policy, and yet
11 Defendant has failed to fulfill its insurance coverage obligations under the terms of the
12 Policy.
13

14 96. By indicating that it would not provide coverage for any losses or damage
15 incurred by Plaintiffs in connection with the Executive Orders, Defendant has breached its
16 coverage obligations under the Policy.
17

18 WHEREFORE, Plaintiffs seek an award of compensatory damages in the amount of
19 their Time Element and Contingent Time Element losses, together with costs sustained
20 herein.
21

22 **FOURTH CAUSE OF ACTION**

23 (DECLARATORY JUDGMENT: THE POLICY HAS BEEN TRIGGERED BY DIRECT PHYSICAL
24 LOSS OF AND/OR DAMAGE TO PLAINTIFFS' PROPERTY AND THE POLICY'S
CONTAMINATION EXCLUSION DOES NOT APPLY)

25 97. Plaintiffs repeat and reallege the allegations of paragraphs 1 through 96 as if
26 fully set forth herein.

27 98. The Policy requires Defendant to provide "Time Element" and "Contingent
28 Time Element" coverage to Plaintiffs, as part of which Defendant is obligated to pay

1 Plaintiffs for the loss of business income and royalty income suffered while their businesses
2 and their franchisees' businesses were impaired as the result of the Executive Orders.

3 99. Plaintiffs have made a Claim for coverage for their lost business income and
4 royalty income under the terms of the Policy.

5 100. Defendant has asserted that Plaintiffs are not entitled to their lost business
6 income or royalty income because they and their franchisees did not suffer direct physical
7 loss of or damage to their property.
8

9 101. Plaintiffs and their franchisees have suffered both direct physical loss of their
10 property, and damage to their property, as they have been deprived of access to, and the full
11 value of, their property.
12

13 102. Defendant has also asserted that Plaintiffs' Claim for coverage under the
14 Policy is precluded by a contamination exclusion in the Policy.

15 103. The contamination exclusion is not applicable to Plaintiffs' Claim because
16 Plaintiffs' business and royalty income losses were not caused by, and did not result from,
17 contamination by the SARS-CoV-2 virus.
18

19 104. As set forth above, true controversy exists between the parties concerning the
20 parties' rights and obligations under the Policy.

21 WHEREFORE, Plaintiffs pray for judgment against Defendant as set forth below.
22

23 **FIRST, SECOND, AND THIRD CAUSES OF ACTION**

24 1. For general, special and compensatory damages, in the amount of their
25 business income and royalty income losses, in excess of the jurisdictional minimum of this
26 Court;
27

28 2. For costs of suit incurred herein;

1 **FOURTH CAUSE OF ACTION**

2 1. For a judicial declaration of the rights, duties, and obligations of the parties
3 under the Policy and a determination that the Time Element, Contingent Time Element,
4 Civil or Military Authority, and Ingress/Egress provisions of the Policy have been triggered
5 by direct physical loss of and damage to Plaintiffs' properties and the properties of others,
6 and that the contamination exclusion does not bar coverage of Plaintiffs' claims;
7

8 2. For costs of suit incurred herein.

9 **JURY DEMAND**

10 Plaintiffs demand a trial by jury of all claims in this Complaint so triable.
11

12 Dated: September 30, 2020

Respectfully Submitted,

13 MOLLICA LAW

14
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16 By: 

Terry J. Mollica

Attorneys for Attorneys for Plaintiffs
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EXHIBIT A
POLICY

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EXHIBIT B
4/29/20 LETTER

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EXHIBIT C
5/6/20 LETTER

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EXHIBIT D
5/22/20 LETTER

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EXHIBIT A
POLICY

-EXHIBIT A-



The Zurich EDGE Policy

Insured Name: Crunch, LLC

Reference Number: ERP 0113878-04

Effective Date: 04/01/2019



ZURICH

THIS DISCLOSURE IS ATTACHED TO AND MADE PART OF YOUR POLICY.

**DISCLOSURE OF IMPORTANT INFORMATION
RELATING TO TERRORISM RISK INSURANCE ACT**

SCHEDULE*

Premium attributable to risk of loss from certified acts of terrorism for lines of insurance subject to TRIA:

Not Applicable - Terrorism Exclusion

*Any information required to complete this Schedule, if not shown above, will be shown in the Declarations.

A. Disclosure of Premium

In accordance with the federal Terrorism Risk Insurance Act ("TRIA"), as amended, we are required to provide you with a notice disclosing the portion of your premium, if any, attributable to the risk of loss from terrorist acts certified under that Act for lines subject to TRIA. That portion of premium attributable is shown in the Schedule above. The premium shown in the Schedule above is subject to adjustment upon premium audit, if applicable.

B. Disclosure of Federal Participation in Payment of Terrorism Losses

The United States Government may pay a share of insured losses resulting from an act of terrorism. The federal share will decrease by 5% from 85% to 80% over a five year period while the insurer share increases by the same amount during the same period. The schedule below illustrates the decrease in the federal share:

January 1, 2015 – December 31, 2015 federal share: 85%

January 1, 2016 – December 31, 2016 federal share: 84%

January 1, 2017 – December 31, 2017 federal share: 83%

January 1, 2018 – December 31, 2018 federal share: 82%

January 1, 2019 – December 31, 2019 federal share: 81%

January 1, 2020 – December 31, 2020 federal share: 80%

C. Disclosure of \$100 Billion Cap on All Insurer and Federal Obligations

If aggregate insured losses attributable to terrorist acts certified under TRIA exceed \$100 billion in a calendar year (January 1 through December 31) and an insurer has met its deductible under the program, that insurer shall not be liable for the payment of any portion of the amount of such losses that exceeds \$100 billion, and in such case insured losses up to that amount are subject to pro rata allocation in accordance with procedures established by the Secretary of Treasury.

D. Availability

As required by TRIA, we have made available to you for lines subject to TRIA coverage for losses resulting from acts of terrorism certified under TRIA with terms, amounts and limitations that do not differ materially from those for losses arising from events other than acts of terrorism.

E. Definition of Act of Terrorism under TRIA

TRIA defines "act of terrorism" as any act that is certified by the Secretary of the Treasury, in accordance with the provisions of the federal Terrorism Risk Insurance Act ("TRIA"), to be an act of terrorism. The Terrorism Risk Insurance Act provides that the Secretary of Treasury shall certify an act of terrorism:

1. To be an act of terrorism;
2. To be a violent act or an act that is dangerous to human life, property or infrastructure;

3. To have resulted in damage within the United States, or outside of the United States in the case of an air carrier (as defined in section 40102 of Title 49, United States Code) or a United States flag vessel (or a vessel based principally in the United States, on which United States income tax is paid and whose insurance coverage is subject to regulation in the United States), or the premises of a United States mission; and
4. To have been committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

No act may be certified as an act of terrorism if the act is committed as part of the course of a war declared by Congress (except for workers' compensation) or if losses resulting from the act, in the aggregate for insurance subject to TRIA, do not exceed \$5,000,000.



Disclosure Statement

It is our pleasure to present the enclosed policy to you
for presentation to your customer.

INSTRUCTION TO AGENT OR BROKER:

WE REQUIRE THAT YOU TRANSMIT THE ATTACHED/ENCLOSED DISCLOSURE STATEMENT TO THE CUSTOMER
WITH THE POLICY.

Once again, thank you for your interest, and we look forward to meeting your needs and those of your customers.



Disclosure Statement

NOTICE OF DISCLOSURE FOR AGENT & BROKER COMPENSATION

If you want to learn more about the compensation Zurich pays agents and brokers visit:

<http://www.zurichnaproducercompensation.com>

or call the following toll-free number: (866) 903-1192.

This Notice is provided on behalf of Zurich American Insurance Company
and its underwriting subsidiaries.



ZURICH[®]

Important Notice - In Witness Clause

In return for the payment of premium, and subject to the terms of this policy, coverage is provided as stated in this policy.

IN WITNESS WHEREOF, this Company has executed and attested these presents and, where required by law, has caused this policy to be countersigned by its duly Authorized Representative(s).

President

Corporate Secretary

QUESTIONS ABOUT YOUR INSURANCE? Your agent or broker is best equipped to provide information about your insurance. Should you require additional information or assistance in resolving a complaint, call or write to the following (please have your policy or claim number ready):

Zurich in North America
Customer Inquiry Center
1299 Zurich Way
Schaumburg, Illinois 60196-1056
1-800-382-2150 (Business Hours: 8am - 4pm [CT])
Email: info.source@zurichna.com

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FORMS ATTACHED TO THE POLICY

EDGE-400-B	The Zurich EDGE Policy (Cover Page)
U-GU-630-D CW	Disclosure of Important Information Relating to Terrorism Risk Insurance Act
U-GU-319-F	Important Notice - In Witness Clause
EDGE-454-C	The Zurich Edge Table of Contents
EDGE-D-100-B	The Zurich Edge Declarations
EDGE-100-B	The Zurich Edge Body of Form
EDGE-450-B	Appendix A - Earth Movement/Earthquake Zones for USA including its Commonwealths and Territories
EDGE-451-D	Appendix B - Earth Movement/Earthquake Zones Worldwide except USA its Commonwealths and Territories
EDGE-452-B	Appendix C - Named Storm Zones for USA including its Commonwealths and Territories
EDGE-453-D	Appendix D - Named Storm Zones Worldwide except USA and its Commonwealths and Territories
EDGE-201-B	Amendatory Endorsement - Alaska
EDGE-207-F	Amendatory Endorsement - Connecticut
EDGE-210-D	Amendatory Endorsement - Florida
EDGE-211-A	Amendatory Endorsement - Georgia
EDGE-214-C	Amendatory Endorsement - Illinois
EDGE-215-A	Amendatory Endorsement - Indiana
EDGE-217-A	Amendatory Endorsement - Kansas
EDGE-218-B	Amendatory Endorsement - Kentucky
EDGE-219-C	Amendatory Endorsement - Louisiana
EDGE-221-C	Amendatory Endorsement - Maryland
EDGE-222-C	Amendatory Endorsement-Massachusetts
EDGE-220-B	Amendatory Endorsement - Maine
EDGE-224-B	Amendatory Endorsement - Minnesota
EDGE-225-B	Amendatory Endorsement - Mississippi
EDGE-226-A	Amendatory Endorsement - Missouri
EDGE-227-B	Amendatory Endorsement - Montana
EDGE-232-B	Amendatory Endorsement - Nebraska
EDGE-229-B	Amendatory Endorsement - Nevada
EDGE-233-B	Amendatory Endorsement - New York
EDGE-236-A	Amendatory Endorsement - Ohio

FORMS ATTACHED TO THE POLICY

EDGE-237-B	Amendatory Endorsement - Oklahoma
EDGE-240-A	Amendatory Endorsement - Rhode Island
EDGE-241-B	Amendatory Endorsement - South Carolina
EDGE-242-C	Amendatory Endorsement - South Dakota
EDGE-243-B	Amendatory Endorsement - Tennessee
EDGE-246-B	Amendatory Endorsement - Vermont
EDGE-248-B	Amendatory Endorsement - Washington
EDGE-249-A	Amendatory Endorsement - West Virginia
EDGE-250-A	Amendatory Endorsement - Wisconsin
EDGE-251-A	Amendatory Endorsement - Wyoming
EDGE-252-A VA	Amendatory Endorsement - Virginia
U-GU-1227-A CA	Notice To Policyholder Revised Definition of Spouse
U-GU-681-C CW	Exclusion of Certified Acts of Terrorism
EDGE-309-A	Endorsement Limited Coverage for Electronic Data Programs or Software
EDGE-313-A	Cyber Event Coverage Endorsement

Policy Number

ERP0113878-04

Named Insured and Mailing Address

Crunch, LLC

22 W 19th St

Fl 4

New York, NY 10011

hereafter referred to as the **First Named Insured**.

The following are all hereafter referred to as the "Insured", including legal representatives.

The **First Named Insured**; and

any subsidiary of the **First Named Insured**. The **First Named Insured**'s interest in any partnership, joint venture or other legal entity in which the **First Named Insured** has management control or ownership as now constituted or hereafter is acquired.

When any Insured described above is a party to a written contract or agreement on file, that requires a legal entity to be identified as an additional insured under this Policy, this Policy includes the legal entity as an additional insured, as its interest may appear, for physical damage to insured property which is the subject of the written contract or agreement on file, before any loss occurs; and does not provide any Time Element Coverage to the legal entity, except as provided under Leasehold Interest Coverage of this policy or as specifically endorsed to the policy.

Producer

CRYSTAL & COMPANY

32 OLD SLIP FINANCIAL SQUARE

NEW YORK, NY 10005

Policy Period

Begins April 1, 2019 at 12:01 AM; Ends April 1, 2020 at 12:01 AM

Insurance is provided by the following Stock Company

Zurich American Insurance Company

hereafter referred to as the "Company",

Proportionate Share of Company for Loss or Damage

100%	Quota Share	Being \$50,000,000 part of a \$50,000,000 primary loss layer	
Annual Policy Premium		Surcharges, Taxes & Fees	Total Policy Premium
\$343,233.00		\$775.12	\$344,008.12

PREMIUM PAYABLE

This Policy is issued in consideration of an initial premium. The **First Named Insured** shown on the Policy is responsible for the payment of all premiums and will be the payee for any return premiums paid by the Company. Premiums will be paid in the currency designated in Section II-2.02.

SECTION I – POLICY APPLICABILITY

1.01. INSURING AGREEMENT

This Policy Insures against direct physical loss of or damage caused by a **Covered Cause of Loss** to Covered Property, at an Insured Location described in Section II-2.01, all subject to the terms, conditions and exclusions stated in this Policy.

No coverage can be provided in violation of any U.S. economic or trade sanctions laws or regulations. Such coverage, which may be in violation of any U.S. economic or trade sanctions laws and regulations, shall be null and void and the Company shall not be liable to make any payments or provide any defense under this policy.

1.02. APPLICATION OF POLICY PERIOD

In the event of a claim the Policy Period is measured by local time at the location where the direct physical loss or damage occurs.

1.03. TERRITORY

Coverage under this Policy applies to all covered loss or damage that takes place in the United States of America, its territories and possessions, including the District of Columbia and the Commonwealth of Puerto Rico.

SECTION II - DECLARATIONS

2.01 INSURED LOCATION

This Policy insures an Insured Location unless otherwise provided.

An Insured Location is a **Location** :

- 2.01.01. Listed on a Schedule of Locations on file with Company; identified as Crunch UW submission 19-20
- 2.01.02. Covered as a **Miscellaneous Unnamed Location** ; and
- 2.01.03. Covered under the terms and conditions of the Newly Acquired Coverage or Errors and Omissions Coverage.

2.02. CURRENCY

All amounts, including deductibles and limits of liability, indicated in this Policy are in USD unless otherwise indicated by the three-letter currency designator as defined in Table A.1 Currency and Funds code list, International Standards Organization (ISO) 4217, edition effective at inception of this Policy.

2.03. POLICY LIMITS OF LIABILITY

The Policy Limit is \$50,000,000 for the total of all coverages combined regardless of the number of **Locations** involved subject to the following provisions:

- 2.03.01. The Company will pay no more in any one (1) **Occurrence** than its proportionate share of the Policy Limit.
- 2.03.02. Limits of Liability stated below or elsewhere in this Policy are part of and not in addition to the Policy Limit.
- 2.03.03. When an **Annual Aggregate** Limit of Liability is shown, the Company's maximum amount payable will not exceed such Limit of Liability during the **Policy Year** regardless of the number of **Locations**, Coverages or **Occurrences** involved.
- 2.03.04. The most the Company will pay in an **Occurrence** caused by a **Described Cause of Loss** is the Limit of Liability for that **Described Cause of Loss**.
- 2.03.05. Limits of Liability in an **Occurrence** apply to the total loss or damage, including any insured Time Element loss, at all **Locations** and for all Coverages involved.
- 2.03.06. Limits of Liability

The following are the Limits of Liability in an **Occurrence** unless otherwise shown. The Company will pay no more in any one (1) **Occurrence** than its proportionate share.

The limit of Liability we show for a coverage part is the maximum amount we will pay for the coverage part.

Sublimits within a coverage part may reduce the amount payable under a coverage part.

Limits of Liability and Coverage Part

Limit	Description
\$50,000,000	Property Damage (PD) and Time Element (TE) combined at scheduled locations: on file with the Company identified as Crunch UW submission 19-20. But not to exceed: <div style="display: flex; justify-content: space-between;">\$5,000,000EXTRA EXPENSE</div> <div style="display: flex; justify-content: space-between;">\$5,000,000LEASEHOLD INTEREST</div>
\$5,000,000	ACCOUNTS RECEIVABLE

\$100,000	COMPUTER SYSTEMS DAMAGE in the Annual Aggregate
\$5,000,000	CONTINGENT TIME ELEMENT per occurrence but not to exceed a \$5,000,000 limit per Direct Dependent Time Element Location NCP for Earth Movement, Flood, Named Storm or Volcanic Eruption; NCP per Indirect Dependent Time Element Location ; \$1,000,000 limit per ATTRACTION PROPERTY
\$10,000,000	DEBRIS REMOVAL
\$2,500,000	DECONTAMINATION COSTS
\$500,000	DEFERRED PAYMENTS
\$5,000,000	ERRORS AND OMISSIONS NCP for Earth Movement coverage for property located in Zone 1 or Zone 2 as defined in Appendix A & B; Flood coverage for locations with any part of the legal description within a Special Flood Hazard Area or Moderate Flood Hazard Area ; and Named Storm Coverage for property located in Zone 1 or Zone 2 as defined in Appendix C & D
\$5,000,000	EXPEDITING COSTS
\$1,000,000	FINE ARTS but not to exceed \$50,000 limit per item
\$500,000	FIRE DEPARTMENT SERVICE CHARGE
\$10,000,000	INCREASED COST OF CONSTRUCTION
\$250,000	LAND AND WATER CONTAMINANT CLEANUP, REMOVAL AND DISPOSAL
\$250,000	LAND IMPROVEMENTS
\$50,000	MISCELLANEOUS PERSONAL PROPERTY
\$5,000,000	MISCELLANEOUS UNNAMED LOCATION but not to exceed a \$5,000,000 limit per Location . NCP for Earth Movement coverage for property located in Zone 1 or Zone 2 as defined in Appendix A & B; Flood coverage for locations with any part of the legal description within a Special Flood Hazard Area or Moderate Flood Hazard Area ; and Named Storm Coverage for property located in Zone 1 or Zone 2 as defined in Appendix C & D
\$5,000,000	OFF PREMISES SERVICE INTERRUPTION
\$500,000	PROFESSIONAL FEES
NCP	RADIOACTIVE CONTAMINATION
NCP	RESEARCH ANIMALS
\$1,000,000	TENANTS PROHIBITED ACCESS
\$1,000,000	TRANSIT
\$5,000,000	VALUABLE PAPERS AND RECORDS
\$5,000,000	NEW CONSTRUCTION AND ADDITIONS
\$50,000	OFF PREMISES STORAGE FOR PROPERTY UNDER CONSTRUCTION

\$50,000,000	BREAKDOWN OF EQUIPMENT not to exceed: \$1,000,000 for AMMONIA CONTAMINATION \$1,000,000 for SPOILAGE \$1,000,000 for EXPEDITING EXPENSES \$1,000,000 for WATER DAMAGE \$1,000,000 for HAZARDOUS SUBSTANCES
\$15,000,000	EARTH MOVEMENT in the Annual Aggregate but not to exceed the following in an occurrence: a). \$15,000,000 for property located in Zone 1 for Earth Movement as described in Appendix A & B. b). \$15,000,000 for property located in Zone 2 for Earth Movement as described in Appendix A & B. c). \$1,000,000 as respects Newly Acquired Locations d). \$1,000,000 as respects Miscellaneous Unnamed Locations
\$15,000,000	FLOOD in the Annual Aggregate but not to exceed the following in an occurrence: a). \$15,000,000 as respects Locations with any part of the legal description within a Special Flood Hazard Area (SFHA) and not otherwise listed herein. b). \$15,000,000 as respects Locations with any part of the legal description within a Moderate Flood Hazard Area (MFHA) and not otherwise listed herein. c). \$1,000,000 as respects Newly Acquired Locations d). \$1,000,000 as respects Miscellaneous Unnamed Locations
\$50,000,000	NAMED STORM in the Annual Aggregate but not to exceed the following in an occurrence: a). \$50,000,000 for property located in Zone 1 for Named Storm as described in Appendix C & D. b). NCP for property located in Zone 2 for Named Storm as described in Appendix C & D. c). \$1,000,000 as respects Newly Acquired Locations d). \$1,000,000 as respects Miscellaneous Unnamed Locations

2.03.07. Causation Definition: The following term is included in the definition of the Peril as indicated:

Storm Surge is part of **Flood**

2.03.08. Time and Distance Limitations: In addition to the Limits of Liability shown elsewhere in this Policy, the following limitations apply:

Located within 1 mile(s) of the Insured Location.	ATTRACTION PROPERTY
60 day period for property within 1 mile(s) but not to exceed a \$5,000,000 limit.	CIVIL OR MILITARY AUTHORITY
30 day(s) but not to exceed a \$5,000,000 limit.	The actual Time Element loss sustained by the Insured arising out of the Delay in Completion
12 months	GROSS EARNINGS
365 day(s)	EXTENDED PERIOD OF LIABILITY
60 day(s)	ORDINARY PAYROLL
NCP	IMPOUNDED WATER

60 day period for property within 1 mile(s) but not to exceed a \$5,000,000 limit.

INGRESS/EGRESS

NCP

INTERNATIONAL INTERDEPENDENCY

90 day period but not to exceed a \$5,000,000 limit.

NEWLY ACQUIRED

NCP for **Earth Movement** coverage for property located in Zone 1 or Zone 2 as defined in Appendix A & B; **Flood** coverage for **locations** with any part of the legal description within a **Special Flood Hazard Area** or **Moderate Flood Hazard Area**; and **Named Storm** Coverage for property located in Zone 1 or Zone 2 as defined in Appendix C & D

48 hours for Gross Earnings: not to exceed a \$1,000,000 limit per **Location**.

PROTECTION AND PRESERVATION OF PROPERTY

NCP

RESEARCH AND DEVELOPMENT

2.03.09. Time Specifications: As follows:

EARTH MOVEMENT Occurrence	168 hours
NAMED STORM Occurrence	72 hours
Cancellation for non-payment of premium	10 days
Cancellation for any other reason	45 days

2.03.10. Valuation: As follows:

Finished Stock	Selling Price
Merchandise that carries the Insured's brand or trade name	Selling Price
All other Merchandise	Replacement Cost
Vehicles	Actual Cash Value

2.04. QUALIFYING PERIOD

For the Coverages listed below the following **Qualifying Period** applies:

OFF PREMISES SERVICE INTERRUPTION PROPERTY DAMAGE & TIME ELEMENT COVERAGE applies separately at each location.	24 Hours
COMPUTER SYSTEMS DAMAGE COVERAGE	48 Hours
TENANTS PROHIBITED ACCESS COVERAGE applies separately at each location.	48 Hours
NEW CONSTRUCTION AND ADDITIONS: Delay in Completion applies separately at each location.	30 Days

2.05. DEDUCTIBLES

Each claim for loss or damage as insured against arising out of any one (1) **Occurrence** shall be adjusted separately. The Company shall not be liable unless the Insured sustains loss or damage in excess of the deductible(s) stated below and then only for the proportionate share of such excess amount(s).

- 2.05.01. A deductible that applies on a per **Location** basis will apply separately to each **Location** where the physical loss or damage occurred regardless of the number of **Locations** involved in the **Occurrence**.
- 2.05.02. Unless stated otherwise, if two or more deductibles apply to an **Occurrence**, the total deducted will not exceed the largest applicable deductible. If two or more deductibles apply on a per **Location** basis in an **Occurrence**, the largest deductible applying to each **Location** will be applied separately to each such **Location**.
- 2.05.03. If separate Property Damage and Time Element loss deductibles are shown, then the deductibles shall apply separately.
- 2.05.04. When a "minimum deductible" per **Occurrence** is shown and is applicable to an **Occurrence**, the "minimum deductible" is the minimum dollar amount of covered damage that the Insured will retain in any one (1) **Occurrence**. The amount retained for purposes of applying the "minimum deductible" is the sum of:
 - 2.05.04.01. the specified location deductible for each location where the amount of covered damage exceeds the specified location deductible; and
 - 2.05.04.02. the amount of covered damage for each location where the amount of covered damage is less than specified location deductible.
- 2.05.05. Policy Deductible(s)
 - 2.05.05.01. \$25,000 Property Damage (PD) and 24 Hours Time Element (TE)
per **Occurrence** except as follows:
 - 2.05.05.02. Exceptions to Policy Deductible(s)
 - 2.05.05.02.01. Contingent Time Element
\$25,000 per **occurrence** regardless of any other deductibles that may also apply.
 - 2.05.05.02.02. Earth Movement
The following deductibles apply to loss or damage caused by or resulting from **Earth Movement**. This **Earth Movement** deductible will apply regardless of any other deductibles that may also apply.
 - 2.05.05.02.02.01. \$50,000 combined Property Damage (PD) and Time Element (TE)
per **Occurrence** except as follows:
 - 2.05.05.02.02.02. As respects **Locations** in Zone 1:
 - 2.05.05.02.02.02.01. Property Damage (PD) - 5% of the value per the most current Statement of values identified as Crunch UW submission 19-20 as of the date of loss, for the **Location** where the direct physical loss or damage occurred, per **Location**.
 - 2.05.05.02.02.02.02. Time Element (TE) - 5% of the full 12 months Gross Earnings values that would have been earned following the **Occurrence** by use of the facilities at the **Location** where the direct physical loss or damage occurred and all other **Locations** where Time Element loss ensues, per **Location**.
 - 2.05.05.02.02.02.03. The above **Earth Movement** deductibles are subject to a minimum deductible of \$25,000 Property Damage (PD) and \$25,000 Time Element (TE) per **Location**.
 - 2.05.05.02.02.03. As respects **Locations** in Zone 2:
 - 2.05.05.02.02.03.01. Property Damage (PD) and Time Element (TE) combined - \$50,000, per **Occurrence**.

- 2.05.05.02.03. Flood
- The following deductibles apply to loss or damage caused by or resulting from **Flood**. This **Flood** deductible will apply regardless of any other deductibles that may also apply.
- 2.05.05.02.03.01. \$50,000 combined Property Damage (PD) and Time Element (TE)
- per **Occurrence** except as follows:
- 2.05.05.02.03.02. As respects **Locations** in with any part of the legal description within a **Special Flood Hazard Area (SFHA)**:
- 2.05.05.02.03.02.01. Property Damage (PD) and Time Element (TE) combined - \$500,000 , for the **Location** where the direct physical loss or damage occurred, per **Location**.
- 2.05.05.02.03.03. As respects **Locations** with any part of the legal description within a **Moderate Flood Hazard Area (MFHA)**:
- 2.05.05.02.03.03.01. Property Damage (PD) and Time Element (TE) combined - \$100,000 , for the **Location** where the direct physical loss or damage occurred, per **Location**.
- 2.05.05.02.04. Named Storm
- The following deductibles apply to loss or damage caused by or resulting from **Named Storm**. The **Named Storm** deductible will apply regardless of any other deductibles that may also apply.
- 2.05.05.02.04.01. \$50,000 combined Property Damage (PD) and Time Element (TE)
- per **Occurrence** except as follows:
- 2.05.05.02.04.02. As respects **Locations** in Zone 1:
- 2.05.05.02.04.02.01. Property Damage (PD) - 3% of the value per the most current Statement of values identified as Crunch UW submission 19-20 as of the date of loss, for the **Location** where the direct physical loss or damage occurred, per **Location**.
- 2.05.05.02.04.02.02. Time Element (TE) - 3% of the full 12 months Gross Earnings values that would have been earned following the **Occurrence** by use of the facilities at the **Location** where the direct physical loss or damage occurred and all other **Locations** where Time Element loss ensues, per **Location**.
- The value of 2.05.05.02.04.02.01. & 2.05.05.02.04.02.02. combined.
- 2.05.05.02.04.02.03. The above **Named Storm** deductibles are subject to a minimum deductible of \$50,000 combined Property Damage (PD) and Time Element (TE) per **Location**.
- 2.05.05.02.05. Breakdown of Equipment Deductible(s)
- 2.05.05.02.05.01. \$25,000 combined Property Damage (PD) and Time Element (TE)
- per **Occurrence** for loss or damage caused by **Breakdown**;
- 2.05.05.02.06. Water or Liquid Damage Deductible(s)
- The following deductible applies to loss or damage caused by or resulting from covered water or other liquids not otherwise excluded, but not caused by **flood** or from fire extinguishing equipment.
- 2.05.05.02.06.01. \$50,000 combined Property Damage (PD) and Time Element (TE)
- per **Occurrence** for loss or damage caused by water or liquid damage;
- 2.05.05.02.07. Other Deductibles
- Not Applicable

Authorized Representative

Date

Print Name of Authorized Rep.

Office

SECTION III - PROPERTY DAMAGE

3.01. COVERED PROPERTY

This Policy insures the following property, unless otherwise excluded elsewhere in this Policy, located at an Insured Location or within 1,000 feet thereof or as otherwise provided for in this Policy.

- 3.01.01. The Insured's interest in buildings (or structures) including new construction, additions, alterations, and repairs that the Insured owns, occupies, leases or rents.
- 3.01.02. The Insured's interest in Personal Property, including **Improvements and Betterments**.
- 3.01.03. Property of Others will not extend any Time Element Coverage provided under this Policy to the owner of the property and is limited to property:
 - 3.01.03.01. In the Insured's care, custody or control;
 - 3.01.03.02. In which the Insured has an insurable interest or obligation;
 - 3.01.03.03. For which the Insured is legally liable; or
 - 3.01.03.04. For which the Insured has agreed in writing prior to any loss or damage to provide coverage.
- 3.01.04. Personal Property of officers and employees of the Insured.

3.02. PROPERTY NOT COVERED

This Policy does not insure the following property:

- 3.02.01. **Money**, precious metal in bullion form, notes, or **Securities**.
- 3.02.02. Watercraft or aircraft, except when unfueled and manufactured by the Insured.
- 3.02.03. Spacecraft, satellites, associated launch vehicles and any property contained therein.
- 3.02.04. Animals, standing timber and growing crops.
- 3.02.05. Bridges and tunnels when not part of a building or structure, dams, dikes, piers, wharfs, docks or bulkheads.
- 3.02.06. Land, water or any other substance in or on land; except this exclusion does not apply to:
 - 3.02.06.01. **Land Improvements**, or
 - 3.02.06.02. Water that is contained in any enclosed tank, piping system or any other processing equipment.
- 3.02.07. **Land Improvements** at a golf course.
- 3.02.08. Mines, mineshafts, caverns and any property contained therein.
- 3.02.09. Vehicles of officers and employees of the Insured or vehicles otherwise insured for physical loss or damage.

- 3.02.10. Transmission and distribution lines situated beyond 1,000 feet of the Insured Location.
- 3.02.11. Property in transit, except as otherwise provided by the Transit Coverage of this Policy.
- 3.02.12. Contraband or property in the course of illegal transit or trade.
- 3.02.13. Property more specifically insured, except for any excess beyond such more specific insurance limit.
- 3.02.14. Property sold by the Insured under conditional sale, trust agreement, installment plan or other deferred payment plan after delivery to customers except as provided by the Deferred Payments Coverage of this Policy.
- 3.02.15. **Electronic Data, Programs and Software**, except when they are **Stock in Process, Finished Stock, Raw Materials**, supplies or **Merchandise** or as otherwise provided by the Computer Systems Damage Coverage or **Valuable Papers and Records** Coverage of this Policy.

3.03. EXCLUSIONS

The following exclusions apply unless specifically stated elsewhere in this Policy:

- 3.03.01. This Policy excludes the following unless it results from direct physical loss or damage not excluded by this Policy.
 - 3.03.01.01. **Contamination**, and any cost due to **Contamination** including the inability to use or occupy property or any cost of making property safe or suitable for use or occupancy, except as provided by the Radioactive Contamination Coverage of this Policy.
 - 3.03.01.02. Changes in size, color, flavor, texture or finish.
 - 3.03.01.03. Loss or damage arising from the enforcement of any law, ordinance, regulation or rule regulating or restricting the construction, installation, repair, replacement, improvement, modification, demolition, occupancy, operation or other use, or removal including debris removal of any property.
- 3.03.02. This Policy excludes:
 - 3.03.02.01. Loss or damage arising from delay, loss of market, or loss of use.
 - 3.03.02.02. Indirect or remote loss or damage.
 - 3.03.02.03. Loss or damage arising from the interference by strikers or other persons with rebuilding, repairing or replacing property or with the resumption or continuation of the Insured's business.
 - 3.03.02.04. Unexplained disappearance; mysterious disappearance; or shortage disclosed on taking inventory when the factual existence of such shortage is solely dependant on inventory records.
 - 3.03.02.05. Loss or damage resulting from the Insured's suspension of business activities, except to the extent provided by this Policy.
 - 3.03.02.06. Any applicable Special Coverage, **Described Cause of Loss**, or portion of coverage if a Limit of Liability is identified as **NCP** in Section II-Declarations.

- 3.03.03. This Policy excludes direct physical loss or damage directly or indirectly caused by or resulting from any of the following regardless of any other cause or event, whether or not insured under this Policy, contributing concurrently or in any other sequence to the loss:
- 3.03.03.01. Nuclear reaction or radiation, any by-product of nuclear reaction, any radiological material or radioactive contamination however caused; but if direct physical loss of or damage to Covered Property by fire or sprinkler leakage results, the Company will pay for the loss or damage caused by the fire or sprinkler leakage.
- 3.03.03.02. War, invasion, act of foreign enemy, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power, nationalization, confiscation, requisition, seizure or destruction by the government or any public authority, including action in hindering, combating or defending against any of these. However, destruction by order of governmental or public authority to prevent spread of fire is covered.
- 3.03.03.03. Any weapon of war or of mass destruction employing biological or chemical warfare, atomic fission, atomic fusion, radioactive force or radioactive material, whether in time of peace or war regardless of who commits the act.
- 3.03.03.04. Dishonest, fraudulent or criminal acts by the Insured or any of the Insured's associates, proprietors, partners, officers, employees, directors, trustees or authorized representatives.
- This exclusion does not apply to acts of direct physical loss or damage resulting from a **Covered Cause of Loss** intentionally caused by any individual specified above and done without the knowledge of the Insured. In no event does this Policy cover loss caused by theft by any individual above.
- 3.03.03.05. Lack of the following services when caused by an event off the Insured Location (except as provided in Off Premises Service Interruption Property Damage and Time Element Coverage of this Policy). However, if the lack of any of the following services results in a **Covered Cause of Loss**, this exclusion does not apply to the loss or damage caused by the **Covered Cause of Loss**.
- 3.03.03.05.01. Incoming electricity, fuel, water, gas, steam, refrigerant;
- 3.03.03.05.02. Outgoing sewage; or
- 3.03.03.05.03. Incoming or outgoing voice, data or video.
- 3.03.04. This Policy excludes the following but any resulting physical damage not otherwise excluded is insured:
- 3.03.04.01. Faulty, inadequate or defective design, specifications, workmanship, construction or materials used.
- 3.03.04.02. Loss or damage to stock or material attributable to manufacturing or processing operations while such stock or material is being processed, manufactured, tested or otherwise worked on.
- 3.03.04.03. Corrosion, depletion, deterioration, erosion, inherent vice, latent defect, rust, wear and tear.
- 3.03.04.04. Changes of temperature (except to machinery or equipment) or changes in relative humidity, all whether atmospheric or not.

- 3.03.04.05. Settling, cracking, shrinking, bulging or expansion of: foundations (including any pedestal, pad, platform or other property supporting machinery), floors, pavements, walls, ceilings or roofs.
- 3.03.04.06. Insects, animals or vermin damage.
- 3.03.04.07. Cumulative effects of smog, smoke, vapor, liquid and dust.

SECTION IV - TIME ELEMENT

4.01. LOSS INSURED

4.01.01. The Company will pay for the actual Time Element loss the Insured sustains, as provided in the Time Element Coverages, during the Period of Liability. The Time Element loss must result from the necessary **Suspension** of the Insured's business activities at an Insured Location. The **Suspension** must be due to direct physical loss of or damage to Property (of the type insurable under this Policy other than **Finished Stock**) caused by a **Covered Cause of Loss** at the **Location**, or as provided in Off Premises Storage for Property Under Construction Coverages.

The Company will also pay for the actual Time Element loss sustained by the Insured, during the Period of Liability at other Insured Locations. The Time Element loss must result from the necessary **Suspension** of the Insured's business activities at the other Insured Locations. Such other Location must depend on the continuation of business activities at the **Location** that sustained direct physical loss or damage caused by a **Covered Cause of Loss**.

4.01.02. There is recovery only to the extent that the Insured is:

4.01.02.01. unable to make up lost production within a reasonable period of time not limited to the period during which production is **Suspended**;

4.01.02.02. unable to continue such operations or services during the Period of Liability; and

4.01.02.03. able to demonstrate a loss of revenue for the operations, services or production **Suspended**.

4.01.03. The Company insures Time Element loss only to the extent it cannot be reduced by:

4.01.03.01. The Insured resuming business activities in whole or part;

4.01.03.02. Using damaged or undamaged property (including **Raw Stock**, **Stock in Process** or **Finished Stock**) at the Insured Location or elsewhere;

4.01.03.03. Using the services or property of others;

4.01.03.04. Working extra time or overtime; or

4.01.03.05. The use of other **Locations** not covered under this Policy.

4.01.03.06. Any amount recovered under property damage coverage at selling price for loss or damage to **Merchandise**.

4.01.04. The Company will include in any calculation the combined operating results of all Insured Locations in determining the Time Element loss.

4.01.05. In determining the Time Element loss, the Company will evaluate the experience of the business before and after the loss or damage and the probable experience had no direct physical loss or damage occurred at an Insured Location during the Period of Liability.

4.02. TIME ELEMENT COVERAGES

4.02.01. GROSS EARNINGS

4.02.01.01. Gross Earnings loss is the actual loss sustained by the Insured during the Period of Liability.

- 4.02.01.02. Gross Earnings value is determined as follows:
- 4.02.01.02.01. The sum of:
- 4.02.01.02.01.01. Total net sales value of production;
- 4.02.01.02.01.02. Total net sales of **Merchandise**;
- 4.02.01.02.01.03. The rental income; and
- 4.02.01.02.01.04. Other income derived from the Insured's business activities.
- 4.02.01.02.02. Less the cost of the following:
- 4.02.01.02.02.01. **Raw Stock** from which production is derived;
- 4.02.01.02.02.02. Supplies consisting of materials consumed directly in conversion of **Raw Stock** into **Finished Stock** or in supplying the service(s) sold by the Insured;
- 4.02.01.02.02.03. **Merchandise** sold, including related packaging materials; and
- 4.02.01.02.02.04. Service(s) purchased from outsiders (not Insured's employees) for resale, which do not continue under contract.
- 4.02.01.02.03. Gross Earnings loss is determined as follows:
- Gross Earnings value that would have been earned during the Period of Liability, less charges and expenses that do not necessarily continue during the Period of Liability.
- Consideration shall be given to the continuation of normal charges and expenses, including **Ordinary Payroll** for the number of consecutive days as stated in the Declarations but not to exceed the limit shown for **Ordinary Payroll**, to the extent necessary to resume the Insured's business activities with the same quality of service that existed immediately preceding the loss.
- 4.02.01.02.04. This Policy will also pay the reasonable and necessary expenses incurred (except the cost to extinguish a fire) by the Insured to reduce the amount of Gross Earnings loss during the Period of Liability. This Policy will pay for such expenses to the extent that they do not exceed the amount of Gross Earnings loss that otherwise would have been payable. This provision will not pay for the cost of permanent repair or replacement of property that has suffered direct physical loss or damage.
- 4.02.01.02.05. This Policy will also pay the increased tax liability incurred by the Insured due to the profit portion of a Gross Earnings loss payment being greater than the tax liability incurred on the profits that would have been earned had no loss occurred.

4.02.02. EXTENDED PERIOD OF LIABILITY

Upon the termination of the coverage for Gross Earnings loss under 4.02.01.01. this Policy will continue to pay the actual Gross Earnings loss sustained by the Insured until the earlier of:

- 4.02.02.01. The date the Insured could restore its business with due diligence, to the condition that would have existed had no direct physical loss or damage occurred to the Insured's Covered Property; or

- 4.02.02.02. The number of consecutive days as stated in the Declarations
- 4.02.02.03. Exclusion 4.02.05.01.02.01. is deleted during the Extended Period of Liability and is replaced with:
- 4.02.05.01.02.01. A reduction in sales after the Extended Period of Liability ends due to suspension, cancellation or lapse of any lease, contract, license or orders.

4.02.03. **EXTRA EXPENSE**

The Company will pay for the reasonable and necessary Extra Expenses incurred by the Insured, during the Period of Liability, to resume and continue as nearly as practicable the Insured's normal business activities that otherwise would be necessarily suspended, due to direct physical loss of or damage caused by a **Covered Cause of Loss** to Property of the type insurable under this policy at a **Location**.

The Company will reduce the amount payable as Extra Expense by the fair market value remaining at the end of the Period of Liability for property obtained in connection with the above.

Extra Expenses mean that amount spent to continue the Insured's business activities over and above the expenses the Insured would have normally incurred had there been no direct physical loss of or damage caused by a **Covered Cause of Loss** to Property of the type insurable under this policy at a **Location**. Extra Expense does not include any Gross Earnings loss, the cost of permanent repair or replacement of property that has suffered direct physical loss or damage, or expenses otherwise payable elsewhere in the Policy.

4.02.04. **LEASEHOLD INTEREST**

The Company will pay for the actual Leasehold Interest loss incurred by the Insured (as lessee) resulting from direct physical loss of or damage caused by a **Covered Cause of Loss** to a building (or structure) which is leased and not owned by the Insured, as follows:

- 4.02.04.01. If the building (or structure) becomes wholly untenable or unusable and the lease agreement requires continuation of the rent, the Company will pay the Insured the present value of the actual rent payable for the unexpired term of the lease, not including any options;
- 4.02.04.02. If the building (or structure) becomes partially untenable or unusable and the lease agreement requires continuation of the rent, the Company will pay the Insured for the present value of the proportionate amount of the actual rent payable for the unexpired term of the lease, not including any options; or
- 4.02.04.03. If the lease is cancelled by the lessor pursuant to the terms of the lease agreement or by operation of law, this Policy will pay the Insured for their **Lease Interest** for the first three (3) months following the loss or damage and for their **Net Lease Interest** for the remaining unexpired term of the lease.
- 4.02.04.04. The Insured must use any suitable property or service owned, controlled, or obtainable from any source to reduce the loss.
- 4.02.04.05. In addition to the exclusions elsewhere in this Policy, the Leasehold Interest Coverage excludes:
- 4.02.04.05.01. Any increase in the Leasehold Interest loss resulting from the suspension, lapse or cancellation of any lease;

- 4.02.04.05.02. Any loss from the Insured exercising an option to cancel the lease; or
- 4.02.04.05.03. Any loss from an act or omission by the Insured that constitutes default under the lease.

4.02.05. EXCLUSIONS

In addition to the exclusions elsewhere in this Policy, the following exclusions apply to Time Element Coverage;

- 4.02.05.01. This Policy does not insure against:
- 4.02.05.01.01. Any loss during any idle period that would have been experienced had the **Suspension** of business activities not occurred. This includes, but is not limited to, when production, operation, services, delivery or receipt of goods or services or any other business activities would have ceased, or would not have taken place or would have been prevented due to:
- 4.02.05.01.01.01. Planned or rescheduled shutdown;
- 4.02.05.01.01.02. Strikes or other work stoppage; or
- 4.02.05.01.01.03. Any reason other than physical loss or damage insured by this Policy.
- 4.02.05.01.02. Any increase in Time Element loss due to:
- 4.02.05.01.02.01. Suspension, cancellation or lapse of any lease, contract, license or orders;
- 4.02.05.01.02.02. Fines or damages for breach of contract or for late or non-completion of orders;
- 4.02.05.01.02.03. Penalties of any nature; or
- 4.02.05.01.02.04. Any other consequential or remote factors.
- 4.02.05.01.03. Any loss resulting from loss or damage to **Finished Stock**, nor the time required for their reproduction.
- 4.02.05.01.04. Any Time Element loss due to physical loss or damage not insured by this Policy on or off of the Insured Location.
- However, in the event that a **Suspension** is due to a **Covered Cause of Loss** and during such **Suspension** a loss that is otherwise excluded occurs, the Company will pay for the Time Element loss which is directly caused by the **Covered Cause of Loss** to Covered Property under this Policy.
- 4.02.05.01.05. Any Time Element loss resulting from damage to Property of Others; however this exclusion does not apply to Time Element loss suffered by the Insured as a direct result of the damage to Property of Others.

4.03. PERIOD OF LIABILITY

- 4.03.01. The Period of Liability applying to all Time Element Coverages, except Leasehold Interest, and as shown below or if otherwise provided under any Special Coverage, and subject to any Time Limit provided in 2.03.08., is as follows:

- 4.03.01.01. For building and equipment: The period starting from the time of physical loss or damage of the type insured against and ending when with due diligence and dispatch the building and equipment could be repaired or replaced, and made ready for operations under the same or equivalent physical and operating conditions that existed prior to the damage. The expiration of this Policy will not limit the Period of Liability.
- 4.03.01.02. For building and equipment under construction: The equivalent of the above period of time will be applied to the level of business that reasonably would have been achieved after construction and startup would have been completed had there been no direct physical loss or damage. Due consideration will be given to the actual experience of the business after completion of the construction and startup.
- 4.03.01.03. For **Stock in Process** and **Merchandise**: The period of time required with the exercise of due diligence and dispatch to restore **Stock in Process** to the same state of manufacture in which it stood at the inception of the interruption of production or suspension of business operations or services and to replace physically damaged **Merchandise**.
- 4.03.01.04. For **Raw Materials** and supplies: The period of time of actual interruption of production or suspension of operations or services resulting from the inability to get suitable **Raw Materials** and supplies to replace **Raw Materials** and supplies damaged, but limited to that period for which the damaged **Raw Materials** and supplies would have supplied operating needs.
- 4.03.02. The Period of Liability applying to all Time Element Coverage, except Leaschold Interest, or if otherwise provided under any Special Coverage, and subject to any Time Limit provided in 2.03.08., does not include any additional time due to the Insured's inability to resume operations for any reason, including but not limited to:
- 4.03.02.01. Making changes to equipment;
- 4.03.02.02. Making changes to the buildings or structures except as provided in the Increased Costs of Construction Coverage of the Special Coverages section; or
- 4.03.02.03. Re-staffing or retraining employees.

SECTION V - SPECIAL COVERAGES & DESCRIBED CAUSES OF LOSS

5.01. OPERATION OF SPECIAL COVERAGES & DESCRIBED CAUSES OF LOSS:

- 5.01.01. Special Coverages & **Described Causes of Loss** are subject to the applicable Limit of Liability and are included within and will not increase the Policy Limit.
- 5.01.02. Special Coverages & **Described Causes of Loss** are subject to the Policy provisions, including applicable exclusions and deductibles, all as shown in this section and elsewhere in this Policy, whether or not a Limit of Liability is shown.
- 5.01.03. If coverage is afforded under any Special Coverage or **Described Cause of Loss**, the applicable Limit of Liability for that Special Coverage or **Described Cause of Loss** is the most the Company will pay for all the loss or damage described therein even if coverage would otherwise be available under any other part of this Policy.
- 5.01.04. If no Limit of Liability is shown in this Policy, the Limit of Liability for that Special Coverage or **Described Cause of Loss** is part of the Policy Limit.
- 5.01.05. If **NCP** is shown for any Special Coverage or **Described Cause of Loss** in this Policy, then no coverage is provided for that Special Coverage or **Described Cause of Loss**.
- 5.01.06. If two or more Limits of Liability apply to a claim for loss or damage, or some part thereof, the lesser applicable Limit of Liability shall apply to the claim, or to the part thereof.
- 5.01.07. The Company will pay no more in any one (1) **Occurrence** than our proportionate share of any applicable Limit of Liability regardless of the number of **Locations** affected by such **Occurrence** and regardless of whether additional or greater limits would otherwise be available under any other part of this Policy.
- 5.01.08. Any **Annual Aggregate** limit is the most the Company will pay in the **Policy Year** regardless of the number of **Occurrences**.
- 5.01.09. In the event of loss or damage involving any one or more of the following Special Coverage or **Described Causes of Loss**, the Company will pay no more for the total of all such coverage combined than our proportionate share of the Policy Limit.

5.02. DESCRIPTION OF SPECIAL COVERAGES

5.02.01. ACCOUNTS RECEIVABLE

The Company will pay for the actual loss sustained resulting from direct physical loss of or damage caused by a **Covered Cause of Loss** to the Insured's accounts receivable records as respects the following:

- 5.02.01.01. All sums due the Insured from customers, provided the Insured is unable to collect these sums as a result of direct physical loss or damage to accounts receivable records;
- 5.02.01.02. Interest charges on any loan obtained by the Insured to offset impaired collections resulting from direct physical loss of or damage to accounts receivable records but only for such period of time reasonable and necessary for the Insured to resume normal collections;

- 5.02.01.03. Necessary collection expense in excess of normal collection cost due to direct physical loss of or damage to accounts receivable records; and
- 5.02.01.04. Other expenses, when reasonably incurred by the Insured in re-establishing accounts receivable records following direct physical loss of or damage to accounts receivable records.
- 5.02.01.05. For the purpose of this insurance, credit card charge records shall be deemed to represent sums due the Insured from customers, until the charge records are delivered to the credit card company.
- 5.02.01.06. When there is proof that direct physical loss of accounts receivable records has occurred and the Insured cannot accurately establish the total amount of accounts receivable outstanding as of the date of loss, the amount payable shall be computed as follows:
- 5.02.01.06.01. The monthly average of accounts receivable during the last available twelve (12) months; the reasonable and necessary collection expenses in excess of normal collection costs due to direct physical loss of or damage to accounts receivable records; and the reasonable and necessary expenses incurred in reestablishing accounts receivable records following direct physical loss or damage, shall be adjusted in accordance with the percentage increase or decrease in the twelve (12) months average of monthly gross revenues which may have occurred in the interim.
- 5.02.01.06.02. The monthly amount of accounts receivable as established in 5.02.01.06.01.above shall be further adjusted in accordance with any demonstrable variance from the average for the particular month in which the loss occurred. Consideration will also be given to the normal fluctuations in the amount of accounts receivable within the fiscal month involved.
- 5.02.01.06.03. The Company shall deduct from the total amounts of account receivable, the amount of accounts evidenced by records not lost or damaged, or otherwise established or collected by the Insured, and an amount to allow for probable bad debts which the Insured normally would have been unable to collect and for the normal collection costs incurred due to accounts receivable.
- 5.02.01.07. The following additional exclusion applies:
- This Coverage does not insure against shortage resulting from bookkeeping, accounting, billing errors or omissions, alteration, falsification, manipulation, concealment, destruction or disposal of accounts receivable records committed to conceal the wrongful giving, taking, obtaining or withholding of money, securities or other property; but only to the extent of such wrongful giving, taking, obtaining or withholding.

5.02.02. AMMONIA CONTAMINATION

In the event of direct physical loss of or damage to Covered Property caused by a **Breakdown of Covered Equipment** at a **Scheduled Location**, the Company will pay for resulting **Ammonia Contamination**.

5.02.03. CIVIL OR MILITARY AUTHORITY

The Company will pay for the actual Time Element loss sustained by the Insured, as provided by this Policy, resulting from the necessary **Suspension** of the Insured's business activities at an Insured Location if the **Suspension** is caused by order of civil or military authority that prohibits access to the **Location**. That order must result from a civil authority's response to direct physical loss of or damage caused by a **Covered Cause of Loss** to property not owned, occupied, leased or

rented by the Insured or insured under this Policy and located within the distance of the Insured's Location as stated in the Declarations. The Company will pay for the actual Time Element loss sustained, subject to the deductible provisions that would have applied had the physical loss or damage occurred at the Insured Location, during the time the order remains in effect, but not to exceed the number of consecutive days following such order as stated in the Declarations up to the limit applying to this Coverage.

5.02.04. COMPUTER SYSTEMS DAMAGE

The Company will pay for direct physical loss of or damage to the Insured's **Electronic Data, Programs, Software** and the actual Time Element loss sustained, as provided by this Policy, during the **Period of Interruption** directly resulting from mysterious disappearance of code, any failure, malfunction, deficiency, deletion, fault, **Computer Virus** or corruption to the Insured's **Electronic Data, Programs, Software** at an Insured Location. The Company will also pay for such loss or damage that may arise out of or result from any authorized or unauthorized access in, of, or to any computer, communication system, file server, networking equipment, computer system, computer hardware, data processing equipment, computer memory, microchip, microprocessor, integrated circuit or similar device.

This Coverage will only apply when the **Period of Interruption** exceeds the time shown as **Qualifying Period** in the **Qualifying Period** clause of the Declarations section. If the **Qualifying Period** is exceeded, then this Policy will pay for the amount of loss in excess of the Policy Deductible, but not more than the limit applying to this Coverage.

5.02.04.01. The following additional exclusions apply:

5.02.04.01.01. The Company will not pay for any loss or damage to **Electronic Data, Programs or Software** when they are **Raw Stock, Stock in Process, Finished Stock** manufactured by the Insured, and supplies or other **Merchandise**.

5.02.04.01.02. Errors or omissions in processing or copying, except when direct physical loss or damage caused by a **Covered Cause of Loss** results. Then only that resulting damage is covered.

5.02.04.01.03. Loss or damage to **Electronic Data, Programs or Software** from errors or omissions in programming or machine instructions.

5.02.05. CONTINGENT TIME ELEMENT

This Policy covers the actual Time Element loss as provided by the Policy, sustained by the Insured during the Period of Liability directly resulting from the necessary **Suspension** of the Insured's business activities at an Insured Location if the **Suspension** results from direct physical loss of or damage caused by a **Covered Cause of Loss** to Property (of the type insurable under this Policy) at **Direct Dependent Time Element Locations, Indirect Dependent Time Element Locations, and Attraction Properties** located worldwide, except for in the following:

Afghanistan, Albania, Algeria, Angola, Armenia, Azerbaijan, Belarus, Benin, Botswana, Burkina-Faso, Burundi, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Republic of Congo, Democratic Republic of the Congo, Cuba, Djibouti, Equatorial Guinea, Eritrea, Ethiopia, Gabon, Gambia, Ghana, Guinea, Guinea-Bissau, Georgia, Haiti, Iran, Iraq, Ivory Coast, Kazakhstan, Kampuchea (Cambodia), Kenya, Kyrgyzstan(Kyrgyz Republic), Laos, Lebanon, Lesotho, Liberia, Libya, Macedonia, Madagascar, Malawi, Mali, Mauritania, Mayotte, Mongolia, Montenegro, Mozambique, Myanmar (Burma), Namibia, Niger, Nigeria, North Korea, Pakistan, Palestine, Reunion, Rwanda, Sao Tomé and Príncipe, Senegal, Serbia, Sierra Leone, Somalia, Sri

Lanka, Southern Sudan, Sudan, Swaziland, Syria, Tajikistan, Tanzania, Tibet, Togo, Turkmenistan, Uganda, Uzbekistan, Western Sahara, Yemen, Zambia, Zimbabwe; or

Any other country where prohibited by United States law or where trade relations are unlawful as determined by the Government of the United States of America or its agencies.

5.02.05.01. As respects Contingent Time Element:

5.02.05.01.01. The Insured will influence and cooperate with the **Direct Dependent Time Element Locations, Indirect Dependent Time Element Locations, and Attraction Properties** in every way and take any reasonable and necessary action, including the use of other machinery, supplies or locations, to mitigate the loss payable hereunder.

5.02.05.01.02. In determining the indemnity payable hereunder, the Company will consider the amount of income derived before the date of physical loss or damage and the probable amount of income after the date of loss or damage.

5.02.05.01.03. 4.02.05.01.03. does not apply.

5.02.05.02. Any Time Element loss directly or indirectly caused by or resulting from any **Terrorist Activity** regardless of any other cause or event, whether or not insured under this Policy, contributing concurrently or in any other sequence to the loss is excluded when the **Direct Dependent Time Element Locations, Indirect Dependent Time Element Locations, and Attraction Properties** is outside of the USA, its territories, possessions and missions, and the Commonwealth of Puerto Rico.

5.02.05.03. As respects **Indirect Dependent Time Element Locations and Attraction Properties** any Time Element loss resulting from physical loss or damage caused by or resulting from Earthquake, **Flood, or Named Storm** regardless of any other cause or event, whether or not insured under this Policy, contributing concurrently or in any other sequence to the loss is excluded.

5.02.06. DEBRIS REMOVAL

This Policy covers the reasonable and necessary costs incurred to demolish and remove debris of property from an Insured Location that remains following direct physical loss or damage resulting from a **Covered Cause of Loss**. This includes the cost to demolish the physically undamaged portion of such property insured due to the enforcement of any law or ordinance regulating the demolition, construction, repair, replacement or use of buildings or structures at an Insured Location.

5.02.06.01. This Coverage does not insure the costs to remove:

5.02.06.01.01. Property Not Covered that is **Contaminated**; or

5.02.06.01.02. The **Contaminant** in or on Property Not Covered, whether or not the **Contamination** results from direct physical loss or damage caused by a **Covered Cause of Loss**. This Coverage shall cover the costs of removal of **contaminated** Covered Property or the **Contaminant** in or on Covered Property only if the **Contamination**, due to the actual not suspected presence of **Contaminant(s)**, of the debris resulted from direct physical loss or damage caused by a **Covered Cause of Loss**.

5.02.07. DECONTAMINATION COSTS

If Covered Property is **Contaminated** from direct physical loss of or damage caused by a **Covered Cause of Loss** to Covered Property and there is in force at the time of the loss any law or ordinance regulating **Contamination** due to the actual not suspected presence of **Contaminant(s)**, then this Policy covers, as a direct result of enforcement of such law or ordinance, the increased cost of decontamination and/or removal of such **Contaminated** Covered Property in a manner to satisfy such law or ordinance. This Coverage applies only to that part of Covered Property so **Contaminated** due to the actual not suspected presence of **Contaminant(s)** as a result of direct physical loss or damage. The Company is not liable for the costs required for removing **Contaminated** uninsured property nor the **Contaminant** therein or thereon, whether or not the **Contamination** results from a **Covered Cause of Loss**.

5.02.08. DEFERRED PAYMENTS

This Policy will pay for direct physical loss of or damage caused by a **Covered Cause of Loss**, to Personal Property (of the type insurable under this Policy). Such property must be sold by the Insured under a conditional sale, trust agreement, or installment or deferred payment plan. Such property must have been delivered to the buyer. Coverage is limited to the unpaid balance for such property.

In the event of loss to property sold under deferred payment plans, the Insured will use all reasonable efforts, including legal action, if necessary, to collect outstanding amounts due or to regain possession of the property.

5.02.08.01. Under this Coverage the Policy excludes loss or damage:

- 5.02.08.01.01. Pertaining to products recalled including, but not limited to, the costs to recall, test or to advertise such recall by the Insured;
- 5.02.08.01.02. From theft or conversion by the buyer of the property after the buyer has taken possession of such property;
- 5.02.08.01.03. To the extent the buyer continues payments; or
- 5.02.08.01.04. Not within the covered Territory of this Policy.

5.02.09. ERRORS AND OMISSIONS

The Company will pay for direct physical loss of or damage caused by a **Covered Cause of Loss** to property which is not payable under this Policy because of an error or unintentional omission at the time of Policy inception in the description or inclusion of any **Location** owned, occupied, leased or rented by the Insured to be Covered Property; but only to the extent this Policy would have provided coverage had the error or unintentional omission not been made.

The Policy also covers the actual Time Element loss sustained by the Insured, during the Period of Liability resulting from the necessary **Suspension** of the Insured's business activities at that **Location**, if the **Suspension** is caused by direct physical loss of or damage caused by a **Covered Cause of Loss** to such Property.

The Insured must report any error or unintentional omission as soon as possible.

5.02.09.01. This Coverage does not apply:

5.02.09.01.01. If there is coverage available under Newly Acquired Coverage or Miscellaneous Unnamed Locations Coverage of this Policy; or

5.02.09.01.02. For any error or omission in limits or deductibles.

5.02.10. EXPEDITING COSTS

This Policy covers the reasonable and necessary costs incurred to pay for the temporary repair of direct physical loss of or damage caused by a **Covered Cause of Loss** to Covered Property and to expedite the permanent repair or replacement of such damaged property.

This Coverage excludes costs recoverable elsewhere in this Policy, or of permanent repair or replacement of damaged property.

5.02.11. FINE ARTS

The Company will pay for direct physical loss of or damage caused by a **Covered Cause of Loss** to **Fine Arts** at an Insured Location.

5.02.11.01. This Policy excludes loss or damage to **Fine Arts** directly or indirectly caused by or resulting from the following regardless of any other cause or event, whether or not insured under this Policy, contributing concurrently or in any other sequence to the loss:

5.02.11.01.01. Breakage of bric-a-brac, glassware, marble, porcelain, statuary, and similar fragile property resulting from the article being dropped or knocked over, whether intentional or accidental;

5.02.11.01.02. Any repairing, restoring or retouching process; or

5.02.11.01.03. Any pre-existing condition.

5.02.12. FIRE DEPARTMENT SERVICE CHARGE

The Company will pay for the reasonable additional expenses, resulting from costs of fire extinguishing materials expended, incurred by the Insured when the Fire Department is called to save or protect Covered Property from a **Covered Cause of Loss** at an Insured Location. The Fire Department Service Charges are those assumed by contract or agreement prior to loss or damage or required by local ordinance.

5.02.13. IMPOUNDED WATER

The Company will pay for the actual Time Element loss as provided by this Policy, sustained by the Insured during the Period of Liability resulting from the necessary **Suspension** of the Insured's business activities at an Insured Location if the **Suspension** is caused by the lack of a supply of water from a water supply stored behind dams or in reservoirs on the Insured Location. The water supply must be used as a **Raw Material** or for generation of power or for other manufacturing purposes. The inadequate supply of water must result from the release of the water from the water supply and be caused by direct physical loss of or damage caused by a **Covered Cause of Loss** to the dam, reservoir, or connected equipment. The Company will pay for the actual Time Element loss sustained, in excess of the applicable deductible, but not to exceed the number of consecutive days as stated in the Declarations after the damaged dam, reservoir or connected equipment has been repaired or replaced, with the exercise of due diligence and dispatch, up to the limit applying to this Coverage.

5.02.14. INCREASED COST OF CONSTRUCTION

5.02.14.01. This Policy covers the reasonable and necessary costs incurred, described in 5.02.14.03., to satisfy the minimum requirements of the enforcement of any law or ordinance regulating the demolition, construction, repair, replacement or use of buildings or structures at an Insured Location, provided:

5.02.14.01.01. Such law or ordinance is in force on the date of direct physical loss of or damage caused by a **Covered Cause of Loss** to Covered Property; and

5.02.14.01.02. Its enforcement is a direct result of direct physical loss of or damage caused by a **Covered Cause of Loss** to Covered Property.

5.02.14.02. This Coverage does not cover loss due to any law or ordinance with which the Insured was required to comply before the loss, even when the building was undamaged, and the Insured did not comply.

5.02.14.03. This Coverage, as respects the property insured in 5.02.14.01., covers:

5.02.14.03.01. The increased cost to repair or rebuild the physically damaged portion of such property with materials and in a manner to satisfy such law or ordinance; and

5.02.14.03.02. The increased cost to rebuild physically undamaged property that has been demolished with materials and in a manner to satisfy such law or ordinance, to the extent that such costs result when the demolition of the insured property is required to satisfy such law or ordinance.

5.02.14.03.03. This Coverage applies only to the costs described in 5.02.14.03. The portion of the cost to repair, rebuild or replace property with property of like kind and quality is not part of this Coverage and is to be considered direct physical loss of or damage under 1.01.

5.02.14.04. This Coverage excludes any costs incurred as a direct or indirect result of enforcement of any laws or ordinances regulating any form of **Contamination**.

5.02.14.05. The Company's maximum liability for this Coverage in any **Occurrence** will not exceed the actual cost incurred in 5.02.14.03. up to the limit applying to this Coverage.

5.02.15. INGRESS/EGRESS

The Company will pay for the actual Time Element loss sustained by the Insured, as provided by this Policy, resulting from the necessary **Suspension** of the Insured's business activities at an Insured Location if ingress or egress to that Insured Location by the Insured's suppliers, customers or employees is prevented by physical obstruction due to direct physical loss of or damage caused by a **Covered Cause of Loss** to property not owned, occupied, leased or rented by the Insured or insured under this Policy and located within the distance of the Insured Location as stated in the Declarations. The Company will pay for the actual Time Element loss sustained, subject to the deductible provisions that would have applied had the physical loss or damage occurred at the Insured Location, during the time ingress or egress remains prevented by physical obstruction but not to exceed the number of consecutive days as stated in the Declarations following such obstruction up to the limit applying to this Coverage.

5.02.16. INTERNATIONAL INTERDEPENDENCY

The Company will pay for the actual Time Element loss sustained by the Insured, as provided by this Policy, resulting from the necessary suspension of the Insured's business activities at an Insured Location, if the suspension is caused by direct physical loss of or damage to Property (of

the type insurable under this Policy other than **Finished Stock**) caused by a **Covered Cause of Loss** at a **Location**, that would be an Insured Location if it were located in the Coverage Territory of this Policy.

The **Location** that sustains direct physical loss or damage cannot be located within the Coverage Territory of this Policy and is located anywhere in the world, except for:

Afghanistan, Albania, Algeria, Angola, Armenia, Azerbaijan, Belarus, Benin, Botswana, Burkina-Faso, Burundi, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Republic of Congo, Democratic Republic of the Congo, Cuba, Djibouti, Equatorial Guinea, Eritrea, Ethiopia, Gabon, Gambia, Ghana, Guinea, Guinea-Bissau, Georgia, Haiti, Iran, Iraq, Ivory Coast, Kazakhstan, Kampuchea (Cambodia), Kenya, Kyrgyzstan(Kyrgyz Republic), Laos, Lebanon, Lesotho, Liberia, Libya, Macedonia, Madagascar, Malawi, Mali, Mauritania, Mayotte, Mongolia, Montenegro, Mozambique, Myanmar (Burma), Namibia, Niger, Nigeria, North Korea, Pakistan, Palestine, Reunion, Rwanda, Sao Tomé and Príncipe, Senegal, Serbia, Sierra Leone, Somalia, Sri Lanka, Southern Sudan, Sudan, Swaziland, Syria, Tajikistan, Tanzania, Tibet, Togo, Turkmenistan, Uganda, Uzbekistan, Western Sahara, Yemen, Zambia, Zimbabwe; or

Any other country where prohibited by United States law or where trade relations are unlawful as determined by the Government of the United States of America or its agencies.

The Insured Location must depend on the continuation of business activities at the **Location** that sustained direct physical loss or damage caused by a **Covered Cause of Loss**. The Company will pay for the actual Time Element loss sustained, in excess of the Policy Deductible, but not to exceed the number of consecutive days following such suspension as stated in the Declarations up to the limit applying to this Coverage.

- 5.02.16.01. Any Time Element loss directly or indirectly caused by or resulting from any **Terrorist Activity** regardless of any other cause or event, whether or not insured under this Policy, contributing concurrently or in any other sequence to the loss is excluded when the **Location**, that would be an Insured Location if it were located in the Coverage Territory of this Policy is outside of the USA, its territories, possessions and missions, and the Commonwealth of Puerto Rico.

5.02.17. LAND AND WATER CONTAMINANT CLEANUP, REMOVAL AND DISPOSAL

This Policy covers the reasonable and necessary cost for the cleanup, removal and disposal of the actual not suspected presence of **Contaminant(s)** from uninsured property consisting of land, water or any other substance in or on land at the Insured Location if the release, discharge or dispersal of such **Contaminant(s)** is a result of direct physical loss of or damage caused by a **Covered Cause of Loss** to Covered Property.

- 5.02.17.01. This Policy excludes the cost to cleanup, remove and dispose of **Contaminant(s)** from such property:
- 5.02.17.01.01. At any **Location** where the building or structure is not insured by this Policy;
- 5.02.17.01.02. At any property insured under Newly Acquired, Errors and Omissions or Miscellaneous Unnamed Location Coverage provided by this Policy; or
- 5.02.17.01.03. When the Insured fails to give written notice of loss to the Company within 180 days after inception of the loss.

5.02.18. **LAND IMPROVEMENTS**

The Company will pay for the additional cost of reclaiming, restoring or repairing **Land Improvements** resulting from direct physical loss of or damage caused by a **Covered Cause of Loss** to Covered Property at an Insured Location.

- 5.02.18.01. As respects lawns, plants, shrubs or trees direct physical loss or damage directly or indirectly caused by or resulting from Earthquake, **Flood**, or **Named Storm** regardless of any other cause or event, whether or not insured under this Policy, contributing concurrently or in any other sequence to the loss is excluded.

5.02.19. **MISCELLANEOUS PERSONAL PROPERTY**

The Company will pay for direct physical loss of or damage caused by a **Covered Cause of Loss** to the following property while within the coverage territory but away from an Insured Location.

- 5.02.19.01. The Insured's interest in Personal Property; and
- 5.02.19.02. Property of Others that is:
- 5.02.19.02.01. In the Insured's care, custody or control;
- 5.02.19.02.02. In which the Insured has an insurable interest or obligation;
- 5.02.19.02.03. For which the Insured is legally liable; or
- 5.02.19.02.04. For which the Insured has agreed in writing prior to any loss or damage to provide coverage.
- 5.02.19.02.05. This Coverage excludes property in transit or insured under any other coverage in this Policy.

5.02.20. **MISCELLANEOUS UNNAMED LOCATIONS**

- 5.02.20.01. The Company will pay for:
- 5.02.20.01.01. Direct physical loss of or damage caused by a **Covered Cause of Loss** at a **Miscellaneous Unnamed Location**; and
- 5.02.20.01.02. The actual Time Element loss sustained by the Insured, during the Period of Liability, resulting from the **Suspension** of the Insured's business activities if such **Suspension** is caused by direct physical loss or damage caused by a **Covered Cause of Loss**;
- 5.02.20.02. To the following:
- 5.02.20.02.01. Covered Property at a **Miscellaneous Unnamed Location** that has been reported to the Insurer, but agreed by the Insurer not to be scheduled;
- 5.02.20.02.02. Covered Property at a **Miscellaneous Unnamed Location** that has not been reported to the Insurer and is under the Insured's care, custody and control; or
- 5.02.20.02.03. Covered Property at a **Miscellaneous Unnamed Location** that has not been reported to the Insurer and is not under the Insured's care, custody and control.
- 5.02.20.03. This Coverage will not apply for loss or damage that is payable under any other provision in this Policy.

5.02.21. NEWLY ACQUIRED

The Company will pay for direct physical loss of or damage caused by a **Covered Cause of Loss** to property (of the type insurable under this Policy), at any **Location** purchased, leased or rented by the Insured after the inception date of this Policy. This Coverage applies from the date of purchase, lease or rental. The Policy also covers the actual Time Element loss sustained by the Insured, during the Period of Liability resulting from the necessary **Suspension** of the Insured's business activities at that **Location**, if the **Suspension** is caused by direct physical loss of or damage caused by a **Covered Cause of Loss** to such Property (other than **Finished Stock**).

The Coverage provided above will end at the earliest of: the Policy expiration, the number of consecutive days as stated in the Declarations after the Insured first acquired an interest in the Covered Property, or when the Insured reports the **Location** to the Insurer.

5.02.22. OFF PREMISES SERVICE INTERRUPTION PROPERTY DAMAGE AND TIME ELEMENT LOSS

The Company will pay for direct physical loss of or damage to Covered Property and for the actual Time Element loss sustained as provided by the Policy during the **Period of Service Interruption** at Insured Locations caused by the interruption of an incoming service consisting of electricity, gas, fuel, steam, water, refrigeration, voice, data or video or from the lack of outgoing voice, data, video or sewage service.

The lack of service must result from direct physical loss of or damage caused by a **Covered Cause of Loss** to property (other than satellites but including transmission and distribution lines) of the supplier of such service located within this Policy's Territory, that immediately prevents in whole or in part the delivery of such usable services.

This Coverage will only apply when the **Period of Service Interruption** exceeds the time shown as **Qualifying Period** in the **Qualifying Period** clause of the Declarations section. If the **Qualifying Period** is exceeded, then this Policy will pay for the amount of loss in excess of the applicable deductible, but not more than the limit applying to this Coverage.

5.02.22.01. Exclusions 3.03.01.02. and 3.03.04. do not apply to Off Premises Service Interruption Property Damage and Time Element Loss.

5.02.22.02. The following additional exclusion applies:

This Policy excludes direct physical loss or damage and Time Element loss directly or indirectly caused by or resulting from the interruption of such services, when such interruption is caused directly or indirectly by the failure of the Insured to comply with the terms and conditions of any contracts the Insured has for the supply of such specified services regardless of any other cause or event, whether or not insured under this Policy, contributing concurrently or in any other sequence to the loss.

5.02.23. PROFESSIONAL FEES

This Policy covers the actual costs incurred by the Insured, of reasonable fees paid to the Insured's accountants, architects, auditors, engineers, or other professionals and the cost of using the Insured's employees, for producing and certifying any details contained in the Insured's books or documents, or such other proofs, information or evidence required by the Company resulting from loss or damage payable under this Policy for which the Company has accepted liability.

This Coverage will not include the fees and costs of attorneys, **Public Adjusters**, and loss appraisers, all including any of their subsidiary, related or associated entities either partially or wholly owned by them or retained by them for the purpose of assisting them, nor the fees and costs of loss consultants who provide consultation on coverage or negotiate claims.

5.02.24. **PROTECTION AND PRESERVATION OF PROPERTY**

This Policy covers, up to the limit applying to this Coverage:

- 5.02.24.01. The reasonable and necessary costs incurred for actions to temporarily protect or preserve Covered Property; provided such actions are necessary due to actual or imminent physical loss or damage due to a **Covered Cause of Loss** to such Covered Property; and
- 5.02.24.02. The Gross Earnings loss sustained by the Insured for a period of time not to exceed the hours listed in the Declarations prior to and after the Insured first taking reasonable action for the temporary protection and preservation of Covered Property.
- 5.02.24.03. This Coverage is subject to the deductible provisions that would have applied had the physical loss or damage occurred.

5.02.25. **RADIOACTIVE CONTAMINATION**

The Company will pay for direct physical loss of or damage to Covered Property at an Insured Location caused by sudden and accidental radioactive contamination, including resultant radiation damage, provided:

- 5.02.25.01. Radioactive contamination arises out of material at the Insured Location:
 - 5.02.25.01.01. Which is commonly known to be radioactive;
 - 5.02.25.01.02. Is used as part of the Insured's business activities; and
 - 5.02.25.01.03. There is neither a nuclear reactor capable of sustaining nuclear fission in a self-supporting chain reaction, nor any new or used nuclear fuel which is intended for or which has been used in that type of nuclear reactor at the Insured Location.

5.02.26. **RESEARCH AND DEVELOPMENT**

The Company will pay for the fixed charges and fixed expenses (including **Ordinary Payroll**) actually incurred by the Insured directly attributable to the interruption of research and development project(s) after direct physical loss of or damage caused by a **Covered Cause of Loss** to research and development project(s) up to the limit applying to this Coverage.

- 5.02.26.01. Coverage starts when there is direct physical loss of or damage caused by a **Covered Cause of Loss** to research and development project(s) and ends the earlier of:
 - 5.02.26.01.01. The time period stated in the Declarations; or
 - 5.02.26.01.02. When the research and development project(s) has resumed.
- 5.02.26.02. This Policy will not pay for any other Time Element loss under this Coverage. Loss under this Coverage does not include any fixed charges and/or fixed expenses (including **Ordinary Payroll**) otherwise payable elsewhere in the Policy.

5.02.27. RESEARCH ANIMALS

The Company will pay for death of Research Animals and the Insured's reasonable and necessary costs incurred to research, replace or restore the animal lost to the condition that existed prior to the loss when caused by a **Covered Cause of Loss**, while anywhere within this Policy's Territory, including while in transit, when the loss is in excess of the amount stated in the Declarations. No deductible applies to this Coverage. This Coverage does not apply to loss of the Research Animals that cannot be replaced to the condition that existed prior to the loss.

5.02.27.01. The following additional exclusions apply:

5.02.27.01.01. Death or destruction from natural causes, unknown causes, medical procedures including surgery, inoculation, parturition, or abortion;

5.02.27.01.02. Errors or omission in processing and/or failure on the part of the Insured to provide nourishment, medicine or sanitary conditions;

5.02.27.01.03. **Contamination** of animal, food or medicine;

5.02.27.01.04. The intentional slaughter of animals;

5.02.27.01.05. Escape, unless directly resulting from a **Covered Cause of Loss**; or

5.02.27.01.06. Death or destruction resulting from activities of any animal, unless resulting from a **Covered Cause of Loss**.

5.02.28. SPOILAGE

In the event of spoilage of **Raw Materials, Stock in Process, Finished Stock or Merchandise**, caused by a sudden and accidental **Breakdown of Covered Equipment** or a part thereof, the Company will pay for such spoilage provided the **Raw Materials, Stock in Process, Finished Stock or Merchandise** is in storage or in the course of being manufactured.

5.02.29. TENANTS PROHIBITED ACCESS

The Company will pay for the actual Gross Earnings loss sustained, as provided by this Policy, resulting from the necessary **Suspension** of the Insured's business activities at an Insured Location if access to that **Location** by the Insured's suppliers, customers or employees is physically obstructed due to the owner, landlord or a legal representative of the building owner or landlord, prohibiting access to the Insured Location. This Coverage will only apply when the period of time that access is prohibited exceeds the time shown as **Qualifying Period** in the **Qualifying Period** clause of the Declarations section. If the **Qualifying Period** is exceeded, then this Policy will pay for the amount of loss in excess of the Policy Deductible, but not more than the limit applying to this Coverage.

5.02.29.01. The following additional exclusion applies:

This Policy excludes loss directly or indirectly caused by or resulting from prohibited access to the Insured Location, when such prohibited access is caused directly or indirectly by the failure of the Insured to comply with the terms and conditions of any contracts the Insured has for the use of such **Location** regardless of any other cause or event, whether or not insured under this Policy, contributing concurrently or in any other sequence to the loss.

5.02.30. TRANSIT

- 5.02.30.01. The Company will pay for direct physical loss of or damage caused by a **Covered Cause of Loss** to Covered Property while in transit within the coverage Territory and including:
- 5.02. 30.01.01. The Insured's interest in Free on Board (F.O.B) shipments, Free-Along-Side (F.A.S) shipments and Returned shipments. The Insured's contingent interest is admitted.
- 5.02. 30.01.02. The Insured's loss of property caused by fraud or deceit perpetrated by any person or persons who may represent themselves to be the proper party or parties to receive goods for shipment or accept goods for delivery.
- 5.02. 30.01.03. The Insured's legal liability as a carrier of lawful goods and merchandise by vehicles under bills of lading or shipping receipts issued by the Insured, while in the Insured's custody or in the custody of connecting carriers in transit.
- 5.02. 30.01.04. The Insured's interest in general average, salvage and other charges on shipments covered hereunder.
- 5.02. 30.01.05. The Insured is granted the privilege to ship under released or limited bills of lading or shipment receipts.
- 5.02. 30.02. The Policy also covers the actual Time Element loss sustained by the Insured, during the Period of Liability resulting from the necessary **Suspension** of the Insured's business activities at the destination Location, if the **Suspension** is caused by direct physical loss of or damage caused by a **Covered Cause of Loss** to such Property (other than **Finished Stock**).
- The Company will pay for the reasonable and necessary extra expenses incurred by the Insured, during the Period of Liability, to resume and continue as nearly as practicable the Insured's normal business activities that otherwise would be necessarily suspended, due to direct physical loss of or damage caused by a **Covered Cause of Loss** to Property of the type insurable under this policy.
- The Company will reduce the amount payable as extra expense by the fair market value remaining at the end of the Period of Liability for property obtained in connection with the above.
- Extra expenses mean that amount spent to continue the Insured's business activities over and above the expenses the Insured would have normally incurred had there been no direct physical loss of or damage caused by a **Covered Cause of Loss** to Property of the type insurable under this policy. Extra expense does not include any Gross Earnings loss, the cost of permanent repair or replacement of property that has suffered direct physical loss or damage, or expenses otherwise payable elsewhere in the Policy.
- 5.02. 30.03. Coverage starts when Covered Property is in or on the transporting vehicle and the vehicle leaves the originating Location and ends upon arrival at the destination Location and the goods are transferred to the custody and control of the consignee, warehouseman, or receiver.
- 5.02. 30.04. The Company will not pay for loss or damage to:
- 5.02. 30.04.01. Property while waterborne, except:
- 5.02. 30.04.01.01. While on the navigable inland waterways of a country;
- 5.02. 30.04.01.02. While on roll-on/roll-off ferries between countries; or

- 5.02. 30.04.01.03. While on coastal shipments.
- 5.02. 30.04.02. Property shipped by mail from the time it passes into custody of any governmental postal service;
- 5.02. 30.04.03. Property for sale while in the care, custody or control of the Insured's sales persons or representatives;
- 5.02. 30.04.04. Any conveyance used for property in transit;
- 5.02. 30.04.05. Property insured under any import or export ocean marine insurance; or
- 5.02. 30.04.06. Property under airborne shipment unless by regularly scheduled passenger airlines or air freight **Carriers**.
- 5.02. 30.05. If this Policy expires during the due course of transit, coverage is extended until the shipment is delivered to its final destination.

5.02.31. **VALUABLE PAPERS AND RECORDS**

The Company will pay for direct physical loss of or damage caused by a **Covered Cause of Loss** to **Valuable Papers and Records** at an Insured Location. For all **Valuable Papers and Records**, the Company will pay for the value of the blank personal property, and the Insured's reasonable and necessary costs incurred to research, replace or restore the information lost or damaged thereon.

Except:

For **Electronic Data** and/or **Program (Software)**, the Company will pay for the value of the blank **Media**, and the cost of reproducing the **Electronic Data** and/or **Program (Software)** from duplicates or originals of the previous generation of the data.

This Coverage does not apply to loss or damage to property that cannot be repaired or restored with like kind or quality.

5.02.32. **NEW CONSTRUCTION AND ADDITIONS**

The Company will pay, up to the limit applying to this Coverage, for:

- 5.02.32.01. Direct physical loss of or damage to Property of the type insurable under this policy that is **New Construction or Additions**;
- 5.02.32.02. The actual Time Element loss sustained by the Insured arising out of the **Delay in Completion**; and
- 5.02.32.03. The Actual Loss Sustained incurred by the Insured as **Soft Costs** during such **Delay in Completion**.
- 5.02.32.04. The Coverage for Time Element will only apply when the **Delay in Completion** exceeds the time shown as **Qualifying Period** in the **Qualifying Period** clause of the Declarations section. If the **Qualifying Period** is exceeded, then this Policy will pay up to the number of consecutive days stated in the Declarations after the **Qualifying Period**.
- 5.02.32.05. The following additional exclusion applies to coverage provided in **NEW CONSTRUCTION AND ADDITIONS**:

This Policy excludes direct physical loss or damage directly or indirectly caused by or resulting from the effects of rain, sleet, or snow, whether or not driven by wind, on the interior portion of buildings under construction or addition when the installation of the roof, walls or windows of such buildings has not been completed regardless of any other cause or event, whether or not otherwise insured under this Policy, contributing concurrently or in any other sequence to the loss.

5.02.33. OFF PREMISES STORAGE FOR PROPERTY UNDER CONSTRUCTION

This Policy covers direct physical loss or damage to property (of the type insurable under this Policy) caused by a **Covered Cause of Loss** that is under contract to be used in a construction project at an Insured Location. Coverage attaches at the time such property is delivered to the Insured or its contractor (with respect to the property under construction) by the manufacturer or supplier and such property is located at a storage site within this Policy's Territory but away from the Insured Location.

This Coverage includes necessary expendable materials and supplies to be used in the construction project but does not include any property owned or rented by the contractor.

5.03. DESCRIBED CAUSES OF LOSS

5.03.01. BREAKDOWN OF EQUIPMENT

The Company will pay for direct physical loss of or damage to **Covered Equipment**, Time Element loss and Special Coverages loss as provided by this Policy, if such loss or damage is caused by a sudden and accidental **Breakdown of Covered Equipment** or a part thereof, which manifests itself by physical damage at the time of its **Occurrence** and necessitates repair or replacement; subject to the terms and conditions set forth in this Policy, regardless of any other cause or event contributing concurrently or in any other sequence of loss.

All **Breakdown(s)** at any one Insured Location that manifest themselves at the same time and are the result of the same cause will be considered one **Breakdown**.

5.03.02. EARTH MOVEMENT

The Company will pay for direct physical loss of or damage to Covered Property, Time Element loss and Special Coverages loss as provided by this Policy, if such loss or damage is caused by **Earth Movement** regardless of any other cause or event contributing concurrently or in any other sequence of loss. However, ensuing physical loss or damage by fire, explosion, theft, vandalism, sprinkler leakage or **Flood** will not be considered loss by **Earth Movement** within the terms and conditions of this Policy.

All **Earth Movement** that occurs within the period defined in the Declarations will constitute a single **Occurrence**. The expiration of this Policy will not reduce that period. The Insured may elect the point in time when the period defined in the Declarations begins; but such point in time must not precede loss or damage to Covered Property.

5.03.03. FLOOD

The Company will pay for direct physical loss of or damage to Covered Property, Time Element loss and Special Coverages loss as provided by this Policy, if such loss or damage is caused by **Flood** regardless of any other cause or event contributing concurrently or in any other sequence of loss. However, ensuing physical loss or damage by fire, explosion, theft, vandalism or sprinkler leakage will not be considered to be loss by **Flood** within the terms and conditions of this Policy.

5.03.04.

NAMED STORM

The Company will pay for direct physical loss of or damage to Covered Property, Time Element loss and Special Coverages loss as provided by this Policy, if such loss or damage is caused by **Named Storm**; regardless of any other cause or event contributing concurrently or in any other sequence of loss. However, ensuing physical loss or damage by fire, explosion, theft, vandalism, sprinkler leakage or **Flood** will not be considered loss by **Named Storm** within the terms and conditions of this Policy.

All **Named Storm** damage that occurs within the period defined in the Declarations will constitute a single **Occurrence**. The expiration of this Policy will not reduce that period. The Insured may elect the point in time when the period defined in the Declarations begins; but such point in time must not precede loss or damage to Covered Property.

SECTION VI –GENERAL POLICY CONDITIONS

6.01. CANCELLATION/NON-RENEWAL

6.01.01. Cancellation

6.01.01.01. The **First Named Insured** shown in the Declarations may cancel this Policy by mailing or delivering to the Company advance written notice of cancellation.

6.01.01.02. The Company may cancel this Policy by mailing or delivering to the **First Named Insured** written notice of cancellation at least:

6.01.01.02.01. The number of days before the effective date of cancellation if the Company cancels for nonpayment of premium, as stated in the Declarations; or

6.01.01.02.02. The number of days before the effective date of cancellation if the Company cancels for any other reason, as stated in the Declarations.

6.01.01.03. The Company will mail or deliver notice to the **First Named Insured's** mailing address shown in the Declarations of this Policy or any Endorsement attached thereto.

6.01.01.04. Notice of cancellation will state the effective date of cancellation. The Policy Period will end on that date.

6.01.01.05. If this Policy is cancelled, the Company will send the **First Named Insured** any premium refund due. If the Company cancels, the refund will be pro rata. If the **First Named Insured** cancels, the refund may be less than pro rata but no less than the customary short rate amount. The cancellation will be effective even if the Company has not made or offered a refund.

6.01.01.06. If notice is mailed, proof of mailing will be sufficient proof of notice.

6.01.01.07. If under the laws of the jurisdiction in which the property is located, such cancellation terms or conditions are different, then cancellation terms or conditions will be as permitted by such laws.

6.01.02. Non-renewal

6.01.02.01. The Company may non-renew this Policy by mailing or delivering to the **First Named Insured** written notice, the number of days before the non-renewal, as permitted by law in the jurisdiction where in the property is located.

6.02. CERTIFICATES OF INSURANCE

Any certificate of insurance issued in connection with this Policy is provided solely as a matter of convenience or information for the addressee(s) or holder(s) of such certificate of insurance, except as provided under the Policy when a loss payee(s) or mortgagee(s) are named. The certificate does not amend, extend or alter the coverage afforded by the Policy.

In the event this policy is cancelled pursuant to the CANCELLATION/NON-RENEWAL provision, other than for nonpayment of premium, and except as provided otherwise, the Company shall endeavor to provide notice of cancellation to those entities set out in the certificates of insurance on file with the Company, as soon as practicable, after notifying the **First Named Insured**. However, in no event will failure to provide notice to entities set out in certificates of insurance waive the Company's right or ability to cancel the policy as allowed by law.

The Company hereby authorizes the Producer named on the Policy to issue certificates of insurance consistent with the foregoing.

6.03. CONCEALMENT, MISREPRESENTATION OR FRAUD

- 6.03.01. This Policy is void as to all Insureds in any case of fraud by any Insured as it relates to this Policy at any time. It is also void if any Insured, at any time, intentionally conceals or misrepresents a material fact concerning:
- 6.03.01.01. This Policy;
 - 6.03.01.02. The Covered Property;
 - 6.03.01.03. The Insured's interest in Covered Property; or
 - 6.03.01.04. A claim under this Policy.

6.04. CONFORMITY TO STATUTES

Any provisions required by law to be included in policies issued by the Company shall be deemed to have been included in this Policy.

If the provisions of this Policy conflict with the laws of any jurisdictions in which this Policy applies, and if certain provisions are required by law to be stated in this Policy, this Policy shall be read so as to eliminate such conflict or deemed to include such provisions for Insured Locations within such jurisdictions.

6.05. CONTROL OF DAMAGED GOODS

In the event of direct physical loss of or damage caused by a **Covered Cause of Loss** to **Finished Stock or Merchandise** that carries the Insured's brand or trade name; this Policy gives control of the physically damaged property as follows, all subject to 6.05.05.

- 6.05.01. The Insured will have full rights to the possession, control and disposition of damaged property in the event of insured direct physical loss or damage to such property provided the Company agrees that the property is physically damaged.
- 6.05.02. The Insured, using reasonable judgment, will decide if the Insured can reprocess or sell the physically damaged property.
- 6.05.03. If the Company takes possession of property that carries the Insured's brand or trade name that has sustained direct physical loss or damage, the Company will pay for the Insured or the Insured representative to stamp "salvage", remove, or obliterate the brand, label or trade name on the property or its containers if doing so will not damage the property. In either event, the Insured must re-label such property or its containers to comply with any applicable law.
- 6.05.04. The salvage value of property that is claimed damaged shall be determined at the time of loss.
- 6.05.05. The Insured will allow the Company to deduct from the amount of loss otherwise payable, the fair market value of such salvage, which could have been obtained on any sale or other disposition of goods or products through normal insurance industry salvage practices.

6.06. CURRENCY FOR LOSS PAYMENT

- 6.06.01. Losses will be adjusted and paid in the currency designated in 2.02., unless directed otherwise by the Insured. In the event of a loss adjustment involving local currency, the exchange-selling rate will be calculated as follows:
- 6.06.01.01. As respects the calculation of deductibles and Limits of Liability, the rate of exchange published in the Midwest Ed. of The Wall Street Journal on the date of settlement.
- 6.06.01.02. As respects direct physical loss or damage to Real and Personal Property:
- 6.06.01.02.01. The cost to repair or replace Real and Personal Property will be converted at the time the cost of repair or replacement is incurred based on the rate of exchange published in the Midwest Ed. of The Wall Street Journal on the date of settlement.
- 6.06.01.02.02. If such property is not replaced or repaired, the conversion will be based on the rate of exchange published in the Midwest Ed. of The Wall Street Journal on the date of loss.
- 6.06.01.03. As respects Time Element loss the conversion will be based on the average of the rate of exchange published in the Midwest Ed. of The Wall Street Journal on the date of loss and the rate of exchange published in the Midwest Ed. of The Wall Street Journal on the last day of the Period of Liability.
- 6.06.01.04. If the Midwest Ed. of The Wall Street Journal was not published on the stipulated date, or the rate of exchange was not published on the stipulated date, the rate of exchange will be as published on the next business day the rate is published.

6.07. INSPECTIONS AND SURVEYS

- 6.07.01. The Company has the right but not the obligation to make inspections and surveys at any time, to give the Insured reports on the conditions found, and to recommend changes.
- 6.07.02. Any inspections, surveys, reports or recommendations relate only to insurability and the premiums to be charged. The Company does not make safety inspections. The Company does not undertake to perform the duty of any person or organization to provide for the health or safety of workers or the public, nor does it represent that conditions are safe, healthful, or comply with laws, regulations, codes or standards.
- 6.07.03. This condition applies not only to the Company, but also to any rating, advisory, rate service or similar organization that makes insurance inspections, surveys, reports or recommendations.

6.08. JOINT LOSS

This clause applies only if all of the following requirements are met:

- 6.08.01. The **BREAKDOWN OF EQUIPMENT** Coverage is shown as NCP in the Declarations of this Policy and the **BREAKDOWN OF EQUIPMENT** Coverage carried by the Named Insured, insuring the Covered Property contains a similar Joint Loss provision with substantially the same requirements, procedures, and conditions as contained in this Policy.
- 6.08.02. The loss or damage to the Covered Property was caused by a **Covered Cause of Loss** for which both the Insurer(s) of the Property Coverage and the Insurer(s) of the **BREAKDOWN OF EQUIPMENT** Coverage admit to some liability for payment under the respective policies.

- 6.08.03. The total amount of loss is agreed to by the Insured, the Insurer(s) of the Property Coverage and the Insurer(s) of the **BREAKDOWN OF EQUIPMENT** Coverage.
- 6.08.04. The Insurer(s) of the Property Coverage and the Insurer(s) of the **BREAKDOWN OF EQUIPMENT** Coverage disagree as to the amount of loss that both should pay that is attributable to:
- 6.08.04.01. An accident covered under the **BREAKDOWN OF EQUIPMENT** Coverage; and
- 6.08.04.02. A **Covered Cause of Loss** under the Property Coverage.
- 6.08.05. If the requirements listed above are satisfied, the Insurer(s) of the Property Coverage and of the **BREAKDOWN OF EQUIPMENT** Coverage will make payments to the extent, and in the manner, described in the following:
- 6.08.05.01. The Insurer(s) of the **BREAKDOWN OF EQUIPMENT** Coverage will pay, after the Insured's written request, the entire amount of loss that they have agreed as being covered by **BREAKDOWN OF EQUIPMENT** Coverage and one-half (1/2) the amount of loss that is in disagreement.
- 6.08.05.02. The Insurer(s) of the Property Coverage will pay, after the Insured's written request, the entire amount of loss that they have agreed as being covered by the Property Coverage and one-half (1/2) the amount of loss that is in disagreement.
- 6.08.05.03. The amount in disagreement to be paid by the Insurer(s) of the **BREAKDOWN OF EQUIPMENT** Coverage and the Insurer(s) of the Property Coverage under this Joint Loss provision shall not exceed the amount payable under the equivalent loss adjustment provisions of the Insurer(s) of the Property Coverage and the **BREAKDOWN OF EQUIPMENT** Coverage.
- 6.08.06. The amount to be paid under this Joint Loss provision shall not exceed the amount that would have been paid had no Property Coverage or, in the alternative, no **BREAKDOWN OF EQUIPMENT** Coverage been in effect at the time of loss.
- 6.08.07. Acceptance by the Insured of sums paid under this Joint Loss provision does not alter, waive or surrender any other rights against the Insurer(s).
- 6.08.08. Additional Conditions:
- 6.08.08.01. The Insurer(s) of the Property Coverage and the Insurer(s) of the **BREAKDOWN OF EQUIPMENT** Coverage agree to submit their differences to arbitration within 90 days after payment of the loss under the terms of this Joint Loss provision.
- 6.08.08.02. The Insured agrees to cooperate with any arbitration procedures. There will be three arbitrators: one will be appointed by the Insurer(s) of the **BREAKDOWN OF EQUIPMENT** Coverage and the one will be appointed by the Insurer(s) of the Property Coverage. The two arbitrators will select a third arbitrator. If they cannot agree, either may request that selection be made by a judge of a court having jurisdiction. A decision agreed to by two of the three arbitrators will be binding on both parties. Judgment on any award can be entered in any court that has jurisdiction. The Insurer(s) of the **BREAKDOWN OF EQUIPMENT** Coverage will pay their designated arbitrator and the Insurer(s) of the Property Coverage will pay their designated arbitrator. The Insurer(s) of the **BREAKDOWN OF EQUIPMENT** and the Insurer(s) of the Property Coverage will split the expense of the third arbitrator.

6.09. JURISDICTION

Any disputes arising hereunder will be exclusively subject to the jurisdiction of a court of competent jurisdiction within the USA.

6.10. LENDERS LOSS PAYEE AND MORTGAGE HOLDER INTERESTS AND OBLIGATIONS

- 6.10.01. When specified in the Policy or in Certificates of Insurance on file with the Company, the Company will pay for covered loss to property insured under this Policy to each:
- 6.10.01.01. Lender Loss Payee (hereinafter referred to as Lender) as its interest may appear, in order of precedence; or
- 6.10.01.02. Mortgagee as its interest may appear, in order of precedence.
- 6.10.02. The interest of the specified Lender or Mortgagee in property insured under this Policy will not be invalidated by:
- 6.10.02.01. Any act or neglect of any Insured.
- 6.10.02.02. Commencement of foreclosure, notice of sale, or similar proceedings with respect to the property.
- 6.10.02.03. Change in the title or ownership of the property.
- 6.10.02.04. Change to a more hazardous occupancy.
- 6.10.03. The Lender or Mortgagee will notify the Company of any known change in ownership, occupancy, or hazard and, within ten (10) days of written request by the Company, may pay the increased premium associated with such known change. If the Lender or Mortgagee fails to pay the increased premium, all coverage under this Policy will cease.
- 6.10.04. In the event of a claim, upon request of the Company, the Lender or Mortgagee will cooperate in any claim investigation.
- 6.10.05. If this Policy is cancelled at the request of the Insured or its agent, the coverage for the interest of the Lender or Mortgagee will terminate ten (10) days after the Company sends to the Lender or Mortgagee written notice of cancellation, unless:
- 6.10.05.01. Earlier terminated by authorization, consent, approval, acceptance, or ratification of the Insured's action by the Lender, Mortgagee, or its agent.
- 6.10.05.02. This Policy is replaced by the Insured, with a policy providing coverage for the interest of the Lender or Mortgagee, in which event coverage under this Policy with respect to such interest will terminate as of the effective date of the replacement policy, notwithstanding any other provision of this Policy.
- 6.10.06. The Company may cancel this Policy and/or the interest of the Lender or Mortgagee under this Policy, by sending the specified Lender or Mortgagee written notice sixty (60) days prior to the effective date of cancellation, if cancellation is for any reason other than non-payment of premium. If the Insured has failed to pay any premium due under this Policy, the Company may cancel this Policy for such non-payment, but will send the Lender or Mortgagee written notice ten (10) days prior to the effective date of cancellation. If the Lender or Mortgagee fails to pay the premium due by the specified cancellation date, all coverage under this Policy will cease.

- 6.10.07. The Company has the right to invoke this Policy's Suspended Property clause. When the Company suspends the insurance, it will apply to the interest of any Lender or Mortgagee. The Company will send the specified Lender or Mortgagee, at the last known address, a copy of such notice.
- 6.10.08. If the Company pays a Lender or Mortgagee for any loss, and denies payment to the Insured, the Company will, to the extent of the payment made to the Lender or Mortgagee be subrogated to the rights of the Lender or Mortgagee under all securities held as collateral. No subrogation will impair the right of the Lender or Mortgagee to recover the full amount of its claim. At its option, the Company may pay to a Lender or Mortgagee the whole principal due on the debt or mortgage plus any accrued interest and charges. In this event, all rights and securities will be assigned and transferred from the Lender or Mortgagee to the Company, and the remaining debt or mortgage will be paid to the Company.
- 6.10.09. If the Insured fails to render proof of loss, the Lender or Mortgagee, upon notice of the Insured's failure to do so, will render proof of loss within sixty (60) days of notice and will be subject to the Insured's duties, obligations and provisions of this Policy when presenting a claim.
- 6.10.10. In no event will the amount payable to a Lender or Mortgagee exceed the amount which would be payable to the Named Insured.

6.11. LIBERALIZATION

If during the period that insurance is in force under this Policy, any filed rules or regulations are revised by statute so as to broaden this insurance without additional premium charge, such extended or broadened insurance will inure to the benefit of the Insured within such jurisdiction, effective the date of the change specified in such statute.

6.12. LOSS ADJUSTMENT/PAYABLE

Loss, if any, will be adjusted with and payable to the **First Named Insured** as shown on this Policy, or as directed by the **First Named Insured**.

When a Lender or Mortgagee is named in the Certificates of Insurance on file with the Company, the Lender or Mortgagee will be included in loss payment as their interests may appear.

When a Loss Payee is named in the Certificates of Insurance on file with the Company, the loss payee will be included in loss payments made to the insured as their interests may appear. The loss payee has no other rights under the policy.

6.13. LOSS CONDITIONS

6.13.01. DUTIES IN THE EVENT OF LOSS OR DAMAGE

The Insured must see that the following are done in the event of direct physical loss or damage to Covered Property:

- 6.13.01.01. Notify the police if a law may have been broken.
- 6.13.01.02. Give the Company prompt notice of the loss or damage. Include a description of the property involved.
- 6.13.01.03. As soon as possible, give the Company a description of how, when and where the loss or damage occurred.

- 6.13.01.04. Take all reasonable steps to protect the Covered Property from further damage caused by a **Covered Cause of Loss**. If feasible, set the damaged property aside and in the best possible order for examination. Also, keep a record of expenses for emergency and temporary repairs for consideration in the settlement of the claim. This will not increase the Limit of Liability.
- 6.13.01.05. At the Company's request, provide a complete inventory of the damaged and undamaged property, including quantities, costs, values and amount of loss claimed.
- 6.13.01.06. As often as reasonably required, permit the Company to inspect the property and records evidencing the loss or damage, including taking some or all of damaged and undamaged property for inspection, testing and analysis, and permit the Company to make copies of the Insured's books and records.
- 6.13.01.07. Permit the Company to question the Insured, the Insured's employees and agents under oath, while not in the presence of any other insured and at such times as may be reasonably required, about any matter relating to this insurance or the loss or damage, including an Insured's books and records. In the event of this examination, an Insured's answers must be signed or attested to by a notary public or certified court reporter.
- 6.13.01.08. Give the Company a signed sworn statement of loss containing the information necessary to investigate the claim. If requested by the Company, the Company will supply the necessary form and the Insured must return this completed form within sixty (60) days of the request or as required by law.
- 6.13.01.09. Cooperate with the Company in the investigation or settlement of the claim.

6.13.02. ABANDONMENT

There may be no abandonment of any property to the Company.

6.13.03. SUBROGATION

The Insured is required to cooperate in any subrogation proceedings. To the extent of the Company's payment, the Insured's rights of recovery against any party are transferred to the Company.

The Company acquires no rights of recovery that the Insured has expressly waived prior to a loss, nor will such waiver affect the Insured's rights under this Policy.

Any recovery from subrogation proceedings, less costs incurred by the Company in such proceedings, will be payable to the Insured in the proportion that the amount of any applicable deductible and/or any provable uninsured loss, bears to the entire provable loss amount.

6.13.04. APPRAISAL

If the Insured and the Company fail to agree on the value of the property or the amount of loss, each will, on the written demand of either, select a competent, disinterested, and impartial appraiser, who has no direct or indirect financial interest in the claim. Each will notify the other of the appraiser selected within 20 days of such demand. The Insured may not invoke appraisal unless it has first fully complied with all provisions of this Policy, including Duties in the Event of Loss or Damage and has provided the Company with a signed and sworn statement of loss.

The appraisers will first select a competent, disinterested and impartial umpire. If the appraisers fail to agree upon an umpire within 15 days then, on the request of the Insured or the Company, a judge of a court of record in the jurisdiction in which the appraisal is pending will select the umpire. The

appraisers will then appraise the value of the property or the amount of loss. They will state separately, the actual cash value and replacement cost value, as of the date of loss and the amount of loss, each item of physical loss or damage or, if for Time Element loss, the amount of loss for each Time Element Coverage of this Policy.

If the appraisers fail to agree, they will submit their differences to the umpire. An award stating separately the actual cash value and replacement cost value, as of the date of loss and the amount of loss, for each item of physical loss or damage or, if for Time Element loss, the amount of loss for each Time Element Coverage of this Policy agreed to in writing by any two will determine the amount of loss.

Once there is an award, the Company retains the right to apply all policy terms and conditions (including but not limited to deductibles, exclusions, and Limits of Liability) to the award. The Company further retains its right to deny the claim in whole or in part.

The Insured and the Company will each pay its chosen appraiser and bear equally the other expenses of the appraisal and umpire.

6.13.05. SUIT AGAINST THE COMPANY

No suit, action or proceeding for the recovery of any claim will be sustained in any court of law or equity unless the Insured has fully complied with all the provisions of this Policy. Legal action must be started within (12) twelve months after the date of direct physical loss or damage to Covered Property or to other property as set forth herein.

If under the laws of the jurisdiction in which the property is located, such twelve months' limitation is invalid, then, any such legal action needs to be started within the shortest limit of time permitted by such laws.

6.14. NO REDUCTION BY LOSS

Loss or damage shall not reduce the amount of insurance recoverable, except where an **Annual Aggregate** applies. The reinstatement of any exhausted **Annual Aggregate** is not permitted unless authorized by the Company in writing.

6.15. OTHER INSURANCE

Insurance that is intended to pay proportionally with this insurance as a part of a property insurance plan or program expressly written with other participants is not other insurance as described below..

6.15.01. The Company will not be liable if, at the time of loss or damage, there is any other insurance that would attach in absence of this insurance; except that this insurance shall apply only as excess, Difference in Conditions/Difference in Limits and in no event as contributing insurance, and then only after all other insurance has been exhausted.

6.15.02. The Company gives the Insured permission to purchase insurance for all or any part of the deductibles in this Policy, and the existence of underlying insurance shall not prejudice the Insured's rights under this Policy.

6.15.02.01. The deductible and any amount paid under such insurance that would be covered under this Policy, shall apply to the deductible that would apply in this Policy.

6.15.02.02. This Policy shall then apply on an excess, Difference in Conditions/Difference in Limits basis.

- 6.15.03. The Insured can purchase excess insurance commencing on or after the inception of this Policy that is specifically excess over the Limits of Liability set forth in this Policy without prejudice to this Policy and the existence of such insurance shall not reduce any liability under this Policy.
- 6.15.04. The Company will not be liable if, at the time of loss or damage, there is any insurance with National Flood Insurance Program (NFIP); except that this insurance shall apply only as excess and in no event as contributing insurance, and then only after all NFIP insurance has been exhausted.
- 6.15.05. The Company will not be liable if, at the time of loss or damage, there is any insurance for **New Construction and Additions** under a specific policy for such New Construction and Additions; except that this insurance shall apply only as excess and in no event as contributing insurance, and then only after all specific insurance has been exhausted.
- 6.15.06. The Company will not be liable if, at the time of loss or damage, there is any insurance for stock under a specific policy for such stock; except that this insurance shall apply only as excess and in no event as contributing insurance, and then only after all specific insurance has been exhausted.

6.16. POLICY MODIFICATION

- 6.16.01. This Policy contains all of the agreements between the Insured and the Company concerning this insurance. The Insured and the Company may request changes to this Policy. Only endorsements issued by the Company and made a part of this Policy can change this Policy.
- 6.16.02. Notice to any agent or knowledge possessed by any agent or by any other person will not create a waiver or change any part of this Policy or prevent the Company from asserting any rights under the Policy.

6.17. PRIVILEGE TO ADJUST WITH OWNER

In the event of loss or damage involving Property of Others in your care, custody or control, we have the right, but not the duty to:

- 6.17.01. Settle the loss or damage with the owners of the Property.
- 6.17.02. Provide a defense for legal proceedings brought against the Insured. If provided, the expense for this defense will be at the Company's cost and will not reduce any applicable limit of insurance.

6.18. SETTLEMENT OF CLAIMS

6.18.01. Loss Payment

6.18.01.01. In the event of loss or damage to Covered Property, the Company will, at its option, either:

- 6.18.01.01.01. Pay the value of lost or damaged property;
- 6.18.01.01.02. Pay the cost of repairing or replacing the lost or damaged property;
- 6.18.01.01.03. Take all or any part of the property at any agreed valuation; or
- 6.18.01.01.04. Repair, rebuild or replace the property with other property of like kind and quality.

6.18.02. The Company will give notice of its intentions within thirty (30) days after receiving the sworn statement of loss or as required by law.

- 6.18.03. The Company will not pay more than the Insured's financial interest in the Covered Property.
- 6.18.04. The Company will pay for covered loss or damage within thirty (30) days or as required by law, after receiving the sworn statement of loss, if the Insured has complied with all the terms of this Policy; and
- 6.18.04.01. The Company has reached agreement on the amount of loss; or
- 6.18.04.02. An appraisal award has been made, subject to 6.13.04.
- 6.18.05. Priority of Payment
- In the event of a claim that involves more than one interest and/or coverage and/or peril; the insured has the option to apportion recovery under this Policy when submitting final proof of loss, subject to the overall amount of claim not exceeding the applicable limit of liability and subject to all other terms and conditions of the policy.
- For the purpose of attachment of coverage for excess layers, claims involving any interest and/or peril covered in the primary or underlying excess layers, but not covered in higher excess layers, will be recognized by such excess layers as eroding or exhausting the occurrence limits of the primary and/or underlying excess layer(s). Nothing, however, will extend coverage in such layers(s) to include loss from any interest and/or peril not covered in the excess layer(s) itself.

6.19. SUSPENDED PROPERTY

When Covered Property is found to be in, or exposed to, a dangerous condition, any of the Company's representatives may immediately suspend this insurance for that property. This can be done by delivering or mailing a written notice to the **First Named Insured's** mailing address or to the address where the Covered Property is located. Once suspended, this insurance can be reinstated only by an endorsement. Any unearned premium due will be returned by the Company.

6.20. TITLES

The titles of the various paragraphs and endorsements are solely for reference and shall not in any way affect the provisions to which they relate.

6.21. TRANSFER OF RIGHTS AND DUTIES

The Insured rights and duties under this Policy may not be transferred without the Company giving written consent.

6.22. VALUATION

In the event of any claim for direct physical loss of or damage to Covered Property:

- 6.22.01. The basis of adjustment is on a replacement cost basis unless a specific valuation applies. Replacement Cost shall be the cost to repair, rebuild or replace the damaged property (without deduction for depreciation) with materials of like kind, quality and capacity at the same or another site, but no more than the lesser of:
- 6.22.01.01. The cost to repair;
- 6.22.01.02. The cost to rebuild or replace on the same or another site with materials of equivalent size, kind, quality and capacity;

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EXHIBIT B
4/29/20 LETTER

-EXHIBIT B-

Zurich American Insurance Company
P.O. Box 968057
Schaumburg, IL 60196

April 29, 2020

Via Email

Evan Bolla

Re: Claim #: 5630048238
Insured: Crunch, LLC
Policy #: ERP 0113878 04
Date of Loss: March 14, 2020
Loss Location: Unknown

Dear Mr. Bolla,

This letter is in reference to an insurance claim submitted to our office in connection with the recent outbreak of the Coronavirus "COVID-19 virus". Zurich American Insurance Company understands that Crunch, LLC is seeking coverage under the civil authority coverage provision for the impact on business during the period the insured locations are affected by an order of civil authority issued in connection with the recent outbreak of the COVID-19 virus.

Zurich American Insurance Company received a claim from Crunch, LLC on April 1, 2020. Since that time, Zurich American Insurance Company has made several attempts to discuss this claim with Crunch, LLC and has been unsuccessful.

Zurich American Insurance Company issued Edge Policy No. ERP 0113878 04 to Crunch, LLC, effective April 1, 2019 to April 1, 2020 ("Policy"). Zurich American Insurance Company is investigating this claim to determine whether coverage is implicated under the Policy and, if so, to what extent. As we trust you can appreciate, the insurance claim is at an early stage and little detailed information has been provided upon which we can render any definitive conclusions concerning the availability of insurance coverage for this claim. Nonetheless, at this time, Zurich American Insurance Company wishes to call your attention to certain provisions, exclusions, and limitations in the Policy that may impact the coverage afforded under the policy.

Section 1.01 of the Policy contains the following Insuring Agreement:

1.01 INSURING AGREEMENT

This Policy insures against direct physical loss of or damage caused by a Covered Cause of Loss to Covered Property, at an Insured Location described in Section II-2.01, all subject to the terms conditions and exclusions stated in this Policy. . .

The term "Covered Cause of Loss" is defined in Section 7.11 of the Policy as "All risks of direct physical loss of or damage from any cause unless excluded."

As a preliminary matter, it does not appear that the presence of the COVID-19 virus constitutes direct physical loss or damage to property. Moreover, Zurich American Insurance Company notes, that the Policy excludes certain causes of loss. In particular, the following "Contamination" exclusion may come into play as set forth in Section 3.03 of the Policy:

3.03. EXCLUSIONS

The following exclusions apply unless specifically stated elsewhere in this Policy:

3.03.01. This Policy excludes the following unless it results from direct physical loss or damage not excluded by this Policy.

3.03.01.01. Contamination, and any cost due to Contamination including the inability to use or occupy property or any cost of making property safe or suitable for use or occupancy, except as provided by the Radioactive Contamination Coverage of this Policy.

The terms "Contamination (Contaminated)" and "Contaminants" are defined in Section 7.09 and 7.10 of the Policy as follows:

7.09. Contamination (Contaminated) - Any condition of property due to the actual presence of any foreign substance, impurity, pollutant, hazardous material, poison, toxin, pathogen or pathogenic organism, bacteria, virus, disease causing or illness causing agent, Fungus, mold or mildew.

7.10. Contaminant(s) - Any solid, liquid, gaseous, thermal or other irritant, pollutant or contaminant, including but not limited to smoke, vapor, soot, fumes, acids, alkalis, chemicals, waste (including materials to be recycled, reconditioned or reclaimed), asbestos, ammonia, other hazardous substances, Fungus or Spores.

The presence of the COVID-19 virus falls within the definition of Contamination. Accordingly, any loss resulting from the presence of the COVID-19 virus may be excluded under the Policy.

Zurich American Insurance Company understands that Crunch, LLC may also be presenting a claim for loss of income under the Time Element coverage provision set forth in Section 4.01 of the Policy, which provides, in pertinent part:

4.01 LOSS INSURED

4.01.01 . The Company will pay for the actual Time Element loss the Insured sustains, as provided in the Time Element Coverages, during the Period of Liability. The Time Element loss must result from the necessary Suspension of the Insured's business activities at an Insured Location. The Suspension must be due to direct physical loss of or damage to Property (of the type insurable under this Policy other than Finished Stock) caused by a Covered Cause of Loss at the Location . .

Coverage under Section 4.01.01 applies only when there is a necessary suspension of the insured's business as a result of direct physical loss of or damage to property caused by a "covered cause of loss" at the location. As noted above, it does not appear that the presence of the COVID-19 virus constitutes direct physical loss or damage to property. Moreover, to the extent the "contamination" exclusion cited above and found in Section 3.03.01 of the Policy applies, coverage may not be available under Section 4.01 of the Policy.

We understand that Crunch, LLC may also be presenting a claim under Section 5.02.03. of the Policy ("Civil or Military Authority"), which provides:

5.02.03. CIVIL OR MILITARY AUTHORITY

The Company will pay for the actual Time Element loss sustained by the Insured, as provided by this Policy, resulting from the necessary Suspension of the Insured's business activities at an Insured Location if the Suspension is caused by order of civil or military authority that prohibits access to the Location. That order must result from a civil authority's response to direct physical loss of or damage caused by a Covered Cause of Loss to property not owned, occupied, leased or rented by the Insured or insured under this Policy and located within the distance of the Insured's Location as stated in the Declarations. The Company will pay for the actual Time Element loss sustained, subject to the deductible provisions that would have applied had the physical loss or damage occurred at the Insured Location, during the time the order remains in effect, but not to exceed the number of consecutive days following such order as stated in the Declarations up to the limit applying to this Coverage.

We note that, in order for coverage to apply under Section 5.02.03, there must be a necessary suspension of the Insured's business activities as a result of an order of civil or military authority that has been issued as a result of direct physical loss of or damage to property not owned by the Insured as a result of a "Covered Cause of Loss." As noted above, it does not appear that the presence of the COVID-19 virus constitutes direct physical loss or damage to property and it is unclear at this time whether the order of civil authority affecting Crunch, LLC resulted from any direct physical loss or damage within the distance limit of one mile as set forth in the Declarations.

We also point out that, to the extent any order of civil or military authority was issued because of the presence of the COVID-19 virus or to stop the spread of COVID-19 virus, the order may not have resulted from a "Covered Cause of Loss." In this regard, Zurich American Insurance Company refers you to Contamination exclusion cited above and found in Section 3.03.01.01 of the Policy:

Additionally, the Policy contains the following "Law/Ordinance" exclusion in Section 3.03.01.03:

3.03. EXCLUSIONS

The following exclusions apply unless specifically stated elsewhere in this Policy:

3.03.01.03. Loss or damage arising from the enforcement of any law, ordinance, regulation or rule regulating or restricting the construction, installation, repair, replacement, improvement, modification, demolition, occupancy, operation or other use, or removal including debris removal of any property.

To the extent it is Crunch, LLC's position that its loss of income is the result of the enforcement of any law, ordinance, regulation or rule regulating or restricting the use of any property, including, but not limited to, the decision to close certain locations, cancel events, or limit the number of individuals who could attend events or premises, any loss may be excluded pursuant to this exclusion.

The Policy also contains the following exclusions set forth in Section 3.03.02. of the Policy:

3.03. EXCLUSIONS

The following exclusions apply unless specifically stated elsewhere in this Policy:

3.03.02 This Policy excludes:

3.03.02.01. Loss or damage arising from delay, loss of market, or loss of use.

* * *

3.03.02.05 Loss or damage resulting from the Insured's suspension of business activities, except to the extent provided by this Policy.

To the extent Crunch, LLC's loss of income is the result of delay, loss of market, or loss of use, or results from suspension of business activities other than what is covered under the Policy, such loss would be excluded under these exclusions..

We also note the following exclusion in the Time Element Coverage section of the Policy as set forth in Section 4.02.05:

4.02.05 EXCLUSIONS

In addition to the exclusions elsewhere in this Policy, the following exclusions apply to Time Element Coverage;

4.02.05.01. This Policy does not insure against:

4.02.05.01.01 Any loss during any idle period that would have been experienced had the **Suspension** of business activities not occurred. This includes, but is not limited to, when production, operation, services, delivery or receipt of goods or services or any other business activities would have ceased, or would not have taken place or would have been prevented due to . . .

4.02.05.01.01.3 Any reason other than physical loss or damage insured by this Policy.

To the extent any loss of income relates to a period of time when the suspension of business activities is the result of any reason other than physical loss or damage insured by the Policy, coverage would not be available.

We encourage you to refer to your Policy in its entirety. At this time, please be advised that Zurich American Insurance Company reserves its right to rely on the policy provisions cited above, and any other provisions that may later be deemed applicable. Our investigation of the claim and all efforts taken regarding the determination of coverage is without waiver of the terms and conditions of the policy.

Zurich American Insurance Company is continuing our investigation of your claim under a reservation of rights. To that end, please provide us with the following information:

1. The identity and location of each business you are submitting a claim for
2. Please confirm the loss or damage being claimed
3. A copy of each governmental order directing you to suspend operations
4. Please confirm if there was a complete shutdown or a partial shutdown of your business?
If partial, please confirm the ongoing business activities
5. Any documents or information regarding any actual COVID-19 contamination at any of the premises
6. Any other documents or information which you believe will aid our investigation

We will provide you with our coverage position as soon as our investigation is complete. Inasmuch as Zurich American Insurance Company's investigation still is ongoing, there may be additional exclusions or limitations in the Policy that could apply under the circumstances of this loss. Zurich American Insurance Company's efforts in conducting its investigation or in meeting with representatives of the insured to discuss the insurance claim should not be considered a waiver or variance of any of the Policy's terms and conditions. In addition, no consultant retained by or on behalf of Zurich American Insurance Company has any authority to interpret, waive, or alter any of the terms, conditions, or limitations of the Policy. All coverage determinations are reserved to Zurich American Insurance Company exclusively. All rights are reserved.

Zurich American Insurance Company is willing to review and consider any additional documentation and/or information you wish to provide that you believe might have a bearing on coverage for this claim. Please forward such documentation or information for our review as soon as possible.

Please feel free to contact me if you have questions about the contents of this letter or need our further assistance.

Sincerely,
Zurich American Insurance Company

A handwritten signature in black ink, appearing to read 'Eliset Cruz', with a stylized flourish at the end.

Eliset Cruz
Senior Claims Adjuster
P.O. Box 968057
Schaumburg, IL 60196

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EXHIBIT C
5/6/20 LETTER

-EXHIBIT C-



311 South Wacker Drive
Suite 3200
Chicago, IL 60606
Telephone: 312-442-0509
Fax: 312-442-0519
www.jaszczuk.com

Daniel I. Schlessinger
Direct Telephone: 312-442-0366
dschlessinger@jaszczuk.com

May 6, 2020

E-MAIL

Eliset Cruz
Senior Claims Adjuster
P.O. BOX 968057
Schaumburg, IL 60196

Eliset.cruz@zurichna.com

Re: Claim #: 5630048238
Insured: Crunch, LLC
Policy #: ERP 0113878 04
Date of Loss: Continuing
Loss Location: Multiple

Dear Ms. Cruz:

This firm represents your insured, Crunch, LLC ("Crunch") with respect to its business interruption claim against Zurich American Insurance Company ("Zurich"). We write in response to your correspondence of April 29, 2020 in which you reserve rights and request additional information. At the outset, we would like to correct some misstatements and misunderstandings in that correspondence.

You indicate that Crunch is seeking coverage under the civil authority provision of the captioned policy ("the Policy"). In fact, Crunch is seeking coverage under any and all provisions of the Policy that would or might provide benefits in connection with this loss. Those provisions include, without limitation, the Time Element coverage for Gross Earnings, the Extended Period of Liability, the Extra Expense provision, the Civil Authority section, the Ingress/Egress section, and possibly the Contingent Time Element and Decontamination Costs provisions. If other coverages are or become applicable under the policy, Crunch's intent is to pursue those as well.

You state that Zurich has made several attempts to discuss the claim with Crunch and has been unsuccessful. We are not fully familiar with those attempts, but we assure you that Crunch is extremely committed to resolving this claim as quickly as possible, particularly in light of the drastic economic impact of this crisis on Crunch. We ask that you direct further communications regarding the claim to us and we will respond as promptly as we reasonably can under the circumstances.

Your correspondence states that the presence of the Covid-19 virus does not appear to constitute "direct physical loss or damage to property". We have several comments in response to that observation. To begin with, the loss in question certainly does not result entirely from, and may not even be caused at all

by the presence of the virus. Zurich should understand that the scope of this loss is far greater than that. The impact on the operations of your insured arose from or was exacerbated by forces such as the advice from public health officials for people to shelter at home, the disinclination of consumers to venture out to public facilities such as those of your insured, and the orders of civil authorities for Crunch to close its doors.

In addition, we note that your language distorts the wording of the Policy in regard to the trigger of coverage. You correctly quote the initial Insuring Agreement in Section 1.01 of the Policy as insuring against “direct physical loss of or damage caused by a Covered Cause of Loss to Covered Property....” The definition of Covered Cause of Loss in Section 7.11 is about as broad as it could possibly be: “All risks of direct physical loss or damage from any cause unless excluded”. The description of the Loss Insured in Section 4.01.01 of the Time Element coverage uses essentially the same terminology: “direct physical loss of or damage to Property”. Your own comment on coverage, however, contradicts the language of all of these provisions by suggesting that the Policy trigger is “direct physical loss or damage to property”. We hope that this misquote is inadvertent and not deliberate because the language discrepancy could be significant. The Policy actually requires either “direct physical loss of” or “damage to” Property, while your correspondence eliminates the word “of” to make it seem as though the insured has to have experienced loss to Property rather than loss of Property.

There can be no doubt that Crunch has experienced direct physical loss of its Property. The word “loss” is undefined in the Policy, so under longstanding rules of construction it must be given its commonly understood meaning and interpreted in the manner most favorable to the insured. As is confirmed by many dictionaries, loss means deprivation. Crunch has been unable to provide its members with access to the insured premises; certainly Zurich cannot seriously contend that this is not a deprivation.

Furthermore, the alternative trigger under the Policy is damage to Property. Damage is commonly defined as harm that impairs the value, usefulness or normal function of the thing damaged. We can’t imagine that Zurich would argue that Crunch’s premises, which have been rendered totally unusable, have not suffered impairment of their value, usefulness and normal function. There can be no doubt that the Policy’s coverage has been triggered.

Your correspondence refers to several Policy exclusions that you say may apply. As you know, Zurich bears the burden of establishing the application of any exclusion and we see no way it will be able to do so. The Contamination exclusion you cite requires the actual presence of a foreign substance. Zurich is welcome to inspect any of the insured premises, but Crunch is not aware of the presence of Contamination at any of them and we doubt that Zurich will find any. The exclusion for loss resulting from the enforcement of any law does not negate coverage here because the orders of civil authorities that restricted access to the insured premises were not laws, ordinances, regulations or rules. The exclusions for delay and for loss that would have occurred regardless of the crisis simply have no application to the facts here.

Your correspondence seeks additional information, and we are pleased to provide that as follows.

1. The identity and location of each business you are submitting a claim for.

Please see the attached spreadsheet. The locations listed in the spreadsheet are those that are owned by Crunch. In addition, Crunch has suffered damages from loss of royalties and other payments from franchisee clubs that have lost business and/or closed.

Ms. Eliset Cruz
May 6, 2020
Page 3

2. Please confirm the loss or damage being claimed.

Please see our explanation above. To repeat, Crunch is claiming all benefits to which it is entitled under the Policy. This includes the loss of income from diminished use and eventual closure of the insured locations, as well as extra expense it has incurred. While these losses are ongoing, Crunch is eager to review with Zurich the details known to date of the damages it has suffered as soon as possible.

3. A copy of each governmental order directing you to suspend operations.

There have been numerous governmental orders that are compiled on various publicly available databases. If Zurich cannot locate the applicable orders, please let us know and we will provide copies as available.

4. Please confirm if there was a complete shutdown of your business? If partial, please confirm the ongoing business activities.

Most of the insured clubs experienced diminished business and all were eventually forced to shut down completely.

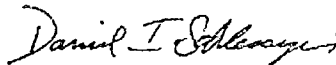
5. Any documents or information regarding any actual COVID-19 contamination at any of the premises.

Although some employees and members have tested positive for COVID-19, Crunch is not aware of any virus contamination at any of its premises.

6. Any other documents or information which you believe will aid our investigation.

Crunch is suffering massive losses from its inability to operate its clubs. We will make available to Zurich the details of the losses in whatever manner is most efficient for resolution of this claim. Please contact me as soon as possible to discuss whatever additional information you require to begin reimbursing Crunch in accordance with the Policy.

Very truly yours,



Daniel I. Schlessinger

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EXHIBIT D
5/22/20 LETTER

-EXHIBIT D-

Crunch, LLC
ATTN: Daniel I. Schlessinger
311 South Wacker Drive
Suite 3200
Chicago, IL 60606
Re: 5630048238

Zurich American Insurance Company
P.O. Box 968057
Schaumburg, IL 60196

May 22, 2020

Crunch, LLC
ATTN: Daniel I. Schlessinger
311 South Wacker Drive
Suite 3200
Chicago, IL 60606

Re: Claim #: 5630048238
Insured: Crunch, LLC
Policy #: ERP 0113878 04
Date of Loss: March 14, 2020
Loss Location: Multiple Locations

Dear Mr. Schlessinger,

This letter is in reference to an insurance claim submitted to our office in connection with the recent outbreak of the Coronavirus "COVID-19 virus" for your client Crunch, LLC. Zurich American Insurance Company understands that Crunch, LLC is seeking coverage for loss of business income and extra expense associated with the recent COVID-19 virus outbreak.

Per your letter on May 6, 2020, we understand Crunch, LLC is seeking coverage for loss of income from diminished use and eventual closure of the Crunch, LLC's locations, as well as extra expense. Zurich American Insurance Company understands that Crunch, LLC is seeking coverage under any and all provisions of the Policy that would or might provide benefits in connection with the loss. You have specifically referenced the Time Element coverage for Gross Earnings, the Extended Period of Liability, the Extra Expense provision, the Civil Authority section, the Ingress/Egress section, and possibly the Contingent Time Element and Decontamination Costs provisions. We have reviewed the claim presented in conjunction with the terms of the Policy. Based on the information provided, we have concluded that the Policy does not provide coverage for the loss of revenue and extra expense associated with COVID-19 virus or civil authority closure of Crunch, LLC's locations.

Zurich American Insurance Company issued Edge Policy No. ERP 0113878 04 to Crunch, LLC, effective April 1, 2019 to March 18, 2020¹("Policy"). The insuring agreement of the Time Element section of the Policy (Section 4.01.01) provides, in pertinent part:

¹ The policy was cancelled effective 3/18/2020.

The Company will pay for the actual Time Element loss the Insured sustains, as provided in the Time Element Coverages, during the Period of Liability. The Time Element loss must result from the necessary Suspension of the Insured's business activities at an Insured Location. The Suspension must be due to direct physical loss of or damage to Property (of the type insurable under this Policy other than Finished Stock) caused by a Covered Cause of Loss at the Location . . .

The Company will also pay for the actual Time Element loss sustained by the Insured, during the Period of Liability at other Insured Locations. The Time Element loss must result from the necessary Suspension of the Insured's business activities at the other Insured Locations. Such other Location must depend on the continuation of business activities at the Location that sustained direct physical loss or damage caused by a Covered Cause of Loss.

Subject to all its terms, the Contingent Time Element coverage under Section 5.02.05 of the policy also requires direct physical loss of or damage caused by a Covered Cause to Property (of the type insurable under this Policy) at dependent or attraction properties.

Please also refer to Policy (Section 4.02.03) which provides, in pertinent part:

4.02.03. EXTRA EXPENSE

The Company will pay for the reasonable and necessary Extra Expenses incurred by the Insured, during the Period of Liability, to resume and continue as nearly as practicable the Insured's normal business activities that otherwise would be necessarily suspended, due to direct physical loss of or damage caused by a Covered Cause of Loss to Property of the type insurable under this policy at a Location.

The presence of the COVID-19 virus does not constitute "direct physical loss of or damage to property". Moreover, any direct physical loss of or damage to property would be excluded under the following "Contamination" exclusion set forth in Section 3.03 of the Policy:

3.03. EXCLUSIONS

The following exclusions apply unless specifically stated elsewhere in this Policy:

3.03.01. This Policy excludes the following unless it results from direct physical loss or damage not excluded by this Policy.

3.03.01.01. Contamination, and any cost due to Contamination including the inability to use or occupy property or any cost of making property safe or suitable for use or occupancy, except as provided by the Radioactive Contamination Coverage of this Policy.

The terms "Contamination (Contaminated)" and "Contaminants" are defined in Section 7.09 and 7.10 of the Policy as follows:

7.09. Contamination (Contaminated) - Any condition of property due to the actual presence of any foreign substance, impurity, pollutant, hazardous material, poison, toxin, pathogen or pathogenic organism, bacteria, virus, disease causing or illness causing agent, Fungus, mold or mildew.

7.10. Contaminant(s) - Any solid, liquid, gaseous, thermal or other irritant, pollutant or contaminant, including but not limited to smoke, vapor, soot, fumes, acids, alkalis, chemicals, waste (including materials to be recycled, reconditioned or reclaimed), asbestos, ammonia, other hazardous substances, Fungus or Spores.

The presence of the COVID-19 virus falls within the definition of Contamination. Accordingly, any loss resulting from the presence of COVID-19 virus or any "suspension" of operations as a result of the presence of COVID-19 virus would be excluded under the Policy. The coverages for Time Element including Gross Earnings and the Extended Period of Liability, Extra Expense, and Contingent Time Element all require direct physical loss of or damage to Covered Property (or other specified property for Contingent Time Element) caused by a Covered Cause of Loss. The requirements for coverage are not met and there is no coverage under the terms of the Policy.

We also understand that Crunch, LLC is presenting a claim under Section 5.02.07. Decontamination Costs of the Policy, which provides:

5.02.07. DECONTAMINATION COSTS

If Covered Property is Contaminated from direct physical loss of or damage caused by a Covered Cause of Loss to Covered Property and there is in force at the time of the loss any law or ordinance regulating Contamination due to the actual not suspected presence of Contaminant(s), then this Policy covers, as a direct result of enforcement of such law or ordinance, the increased cost of decontamination and/or removal of such Contaminated Covered Property in a manner to satisfy such law or ordinance. This Coverage applies only to that part of Covered Property so Contaminated due to the actual not suspected presence of Contaminant(s) as a result of direct physical loss or damage. The Company is not liable for the costs required for removing Contaminated uninsured property nor the Contaminant therein or thereon, whether or not the Contamination results from a Covered Cause of Loss.

The Decontamination Costs coverage applies if "Covered Property is Contaminated from direct physical loss of or damage caused by a Covered Cause of Loss to Covered Property and there is in force at the time of the loss any law or ordinance regulating Contamination due to the actual not suspected presence of Contaminant(s)". There has not been contamination from direct physical loss of or damage caused by a Covered Cause of Loss to Covered Property, nor increased costs of decontamination.

We also understand that Crunch, LLC is presenting a claim under Section 5.02.03. ("Civil or Military Authority") and Section 5.02.15. ("Ingress/Egress") of the Policy, which provides:

5.02.03. CIVIL OR MILITARY AUTHORITY

The Company will pay for the actual Time Element loss sustained by the Insured, as provided by this Policy, resulting from the necessary Suspension of the Insured's business activities at an Insured Location if the Suspension is caused by order of civil or military authority that prohibits access to the Location. That order must result from a civil authority's response to direct physical loss of or damage caused by a Covered Cause of Loss to property not owned, occupied, leased or rented by the Insured or insured under this Policy and located within the distance of the Insured's Location as stated in the Declarations. The Company will pay for the actual Time Element loss sustained, subject to the deductible provisions that would have applied had the physical loss or damage occurred at the Insured Location, during the time the order remains in effect, but not to exceed the number of consecutive days following such order as stated in the Declarations up to the limit applying to this Coverage.

5.02.15. INGRESS/EGRESS

The Company will pay for the actual Time Element loss sustained by the Insured, as provided by this Policy, resulting from the necessary Suspension of the Insured's business activities at an Insured Location if ingress or egress to that Insured Location by the Insured's suppliers, customers or employees is prevented by physical obstruction due to direct physical loss of or damage caused by a Covered Cause of Loss to property not owned, occupied, leased or rented by the Insured or insured under this Policy and located within the distance of the Insured Location as stated in the Declarations. The Company will pay for the actual Time Element loss sustained, subject to the deductible provisions that would have applied had the physical loss or damage occurred at the Insured Location, during the time ingress or egress remains prevented by physical obstruction but not to exceed the number of consecutive days as stated in the Declarations following such obstruction up to the limit applying to this Coverage.

We note that, in order for coverage to apply under Section 5.02.03, there must be a necessary suspension of the Insured's business activities as a result of an order of civil or military authority that has been issued as a result of direct physical loss of or damage to property not owned by the Insured as a result of a "Covered Cause of Loss." Moreover, the order of civil or military authority must prohibit access to the "Insured Location" in order to trigger coverage under this provision of the Policy. Similarly, under section 5.02.15., the physical obstruction must be due to direct physical loss of or damage caused by a Covered Cause of Loss to property not owned, occupied, leased or rented by the Insured or insured under this Policy and located within 1 mile as stated in the Declarations

To the extent any order of civil or military authority was issued because of the presence of the COVID-19 virus or to stop the spread of COVID-19 virus, such order would not be the result of a "Covered Cause of Loss." Significantly, as addressed above, the presence of the COVID-19 virus is excluded as a cause of loss under the Contamination exclusion (Section 3.03.01.01); accordingly, any order of civil authority affecting Crunch, LLC does not result from a covered cause of loss and civil authority coverage would not be available. Moreover, to the extent access

to the "Location" is not prohibited, coverage would not be available for this additional reason. Similarly, ingress or egress to an Insured Location has not been prevented by physical obstruction due to direct physical loss of or damage caused by a Covered Cause of Loss to property within 1 mile of an Insured Location.

Additionally, the Policy contains the following "Law/Ordinance" exclusion in Section 3.03.01.03:

3.03. EXCLUSIONS

The following exclusions apply unless specifically stated elsewhere in this Policy:

3.03.01.03. Loss or damage arising from the enforcement of any law, ordinance, regulation or rule regulating or restricting the construction, installation, repair, replacement, improvement, modification, demolition, occupancy, operation or other use, or removal including debris removal of any property.

To the extent it is Crunch, LLC's position that its loss of income is the result of the enforcement of any law, ordinance, regulation or rule regulating or restricting the use of any property, including, but not limited to, the decision to close certain locations, cancel events, or limit the number of individuals who could attend events or premises, loss is excluded pursuant to this exclusion.

The Policy also contains the following exclusions set forth in Section 3.03.02. of the Policy:

3.03. EXCLUSIONS

The following exclusions apply unless specifically stated elsewhere in this Policy:

3.03.02 This Policy excludes:

3.03.02.01. Loss or damage arising from delay, loss of market, or loss of use.

* * *

3.03.02.05 Loss or damage resulting from the Insured's suspension of business activities, except to the extent provided by this Policy.

To the extent Crunch, LLC's loss of income is the result of delay, loss of market, or loss of use, or results from suspension of business activities other than what is covered under the Policy, such loss is excluded.

We also note the following exclusion in the Time Element Coverage section of the Policy as set forth in Section 4.02.05:

4.02.05. EXCLUSIONS

In addition to the exclusions elsewhere in this Policy, the following exclusions apply to Time Element Coverage;

4.02.05.01. This Policy does not insure against:

4.02.05.01.01 Any loss during any idle period that would have been experienced had the Suspension of business activities not occurred. This includes, but it not limited to, when production, operation, services, delivery or receipt of goods or services or any other business activities would have ceased, or would not have taken place or would have been prevented due to . . .

4.02.05.01.01.3 Any reason other than physical loss or damage insured by this Policy.

To the extent any loss of income relates to a period of time when the suspension of business activities is the result of any reason other than physical loss or damage insured by the Policy, coverage is not available.

For the foregoing reasons, we have concluded that the Policy does not provide coverage for the loss of revenue or extra expenses associated with the presence of the COVID-19 virus or any order of civil authority relating to the COVID-19 virus. If you have any other information bearing on this loss that you would like Zurich American Insurance Company to consider, please forward it to us at your earliest convenience and it will be reviewed without prejudice to the parties' respective rights. Moreover, if you have any questions concerning this letter and Zurich American Insurance Company's position as set forth above, we will be pleased to discuss them with you.

We also direct your attention to Section 6.13.06 of the Policy, which provides that any action against the insurer must be commenced within twelve months after the date of direct physical loss or damage to Covered Property or to other property.

Should you wish to take this matter up with the New York State Department of Financial Services, you may file with the department either on its website at:

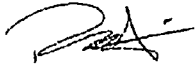
<http://www.dfs.ny.gov/consumer/fileacomplaint.htm> or you may write to or visit the Consumer Assistance Unit, Financial Frauds and Consumer Protection Division, New York State Department of Financial Services, at: One State Street, New York, NY 10004; One Commerce Plaza, Albany, NY 12257; 163B Mineola Boulevard, Mineola, NY 11501; or Walter J. Mahoney Office Building, 65 Court Street, Buffalo, NY 14202.

Please be advised that this letter should not be considered a waiver or variance of any of the Policy's terms or conditions. Additionally, this letter in no way restricts or limits Zurich American

Insurance Company from relying upon and asserting any other facts or grounds that are or may become available to it. All rights are reserved.

If you should have any questions, please do not hesitate to contact me.

Sincerely,
Zurich American Insurance Company

A handwritten signature in black ink, appearing to read 'Eliset Cruz', with a stylized flourish at the end.

Eliset Cruz
Senior Claims Adjuster
P.O. Box 968057
Schaumburg, IL 60196

FOR COURT USE ONLY

FILED

San Francisco County Superior Court

OCT 28 2020

CLERK OF THE COURT

 BY: Sandra Schie
 Deputy Clerk

CASE NUMBER:

CQC-20-587340

JUDGE:

DEPT.:

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name)

Terry J. Mollica, Esq. (SBN 139816)

MOLLIKA LAW

560 First Street, Suite B201, Benicia, CA 94510

Bar number, and address:

TELEPHONE NO.: (925) 239-2380

FAX NO. (Optional): (925) 239-2382

ATTORNEY FOR (Name): Plaintiffs

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO

STREET ADDRESS: 400 McAllister Street

MAILING ADDRESS:

CITY AND ZIP CODE: San Francisco, CA 94102

BRANCH NAME: Civil Center Courthouse

CASE NAME:

Crunch Holdings, LLC, et al. v. Zurich American Insurance Company

CIVIL CASE COVER SHEET

☒ **Unlimited**
 (Amount demanded exceeds \$25,000)

☐ **Limited**
 (Amount demanded is \$25,000)

Complex Case Designation

☐ Counter ☐ Joinder

 Filed with first appearance by defendant
 (Cal. Rules of Court, rule 3.402)

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort

☐ Auto (22)
☐ Uninsured motorist (46)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

☐ Asbestos (04)
☐ Product liability (24)
☐ Medical malpractice (45)

☐ Other PI/PD/WD (23)

Non-PI/PD/WD (Other) Tort

☐ Business tort/unfair business practice (07)
☐ Civil rights (08)
☐ Defamation (13)
☐ Fraud (16)
☐ Intellectual property (19)
☐ Professional negligence (25)
☐ Other non-PI/PD/WD tort (35)

Employment

☐ Wrongful termination (36)
☐ Other employment (15)

Contract

☐ Breach of contract/warranty (06)
☐ Rule 3.740 collections (09)
☐ Other collections (09)
☒ Insurance coverage (18)
☐ Other contract (37)

Real Property

☐ Eminent domain/Inverse condemnation (14)
☐ Wrongful eviction (33)
☐ Other real property (26)

Unlawful Detainer

☐ Commercial (31)
☐ Residential (32)
☐ Drugs (38)

Judicial Review

☐ Asset forfeiture (05)
☐ Petition re: arbitration award (11)
☐ Writ of mandate (02)
☐ Other judicial review (39)
Provisionally Complex Civil Litigation
(Cal. Rules of Court, rules 3.400-3.403)
☐ Antitrust/Trade regulation (03)
☐ Construction defect (10)
☐ Mass tort (40)
☐ Securities litigation (28)
☐ Environmental/Toxic tort (30)
☐ Insurance coverage claims arising from the above listed provisionally complex case types (41)

Enforcement of Judgment

☐ Enforcement of judgment (20)

Miscellaneous Civil Complaint

☐ RICO (27)
☐ Other complaint (not specified above) (42)

Miscellaneous Civil Petition

☐ Partnership and corporate governance (21)
☐ Other petition (not specified above) (43)
2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

- a. ☐ Large number of separately represented parties d. ☐ Large number of witnesses
- b. ☐ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve e. ☐ Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
- c. ☐ Substantial amount of documentary evidence f. ☐ Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☐ punitive

4. Number of causes of action (specify): 4

5. This case ☐ is ☒ is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: 9/14/2020

Terry J. Mollica

(TYPE OR PRINT NAME)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

CM-010

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the Civil Case Cover Sheet contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the Civil Case Cover Sheet to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort	Contract	Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)
Auto (22)—Personal Injury/Property Damage/Wrongful Death	Breach of Contract/Warranty (06)	Antitrust/Trade Regulation (03)
Uninsured Motorist (46) <i>(if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)</i>	Breach of Rental/Lease Contract <i>(not unlawful detainer or wrongful eviction)</i>	Construction Defect (10)
	Contract/Warranty Breach—Seller Plaintiff <i>(not fraud or negligence)</i>	Claims Involving Mass Tort (40)
	Negligent Breach of Contract/Warranty	Securities Litigation (28)
Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort	Other Breach of Contract/Warranty Collections (e.g., money owed, open book accounts) (09)	Environmental/Toxic Tort (30)
Asbestos (04)	Collection Case—Seller Plaintiff	Insurance Coverage Claims <i>(arising from provisionally complex case type listed above)</i> (41)
Asbestos Property Damage	Other Promissory Note/Collections Case	Enforcement of Judgment
Asbestos Personal Injury/Wrongful Death	Insurance Coverage <i>(not provisionally complex)</i> (18)	Enforcement of Judgment (20)
Product Liability <i>(not asbestos or toxic/environmental)</i> (24)	Auto Subrogation	Abstract of Judgment (Out of County)
Medical Malpractice (45)	Other Coverage	Confession of Judgment <i>(non-domestic relations)</i>
Medical Malpractice—Physicians & Surgeons	Other Contract (37)	Sister State Judgment
Other Professional Health Care Malpractice	Contractual Fraud	Administrative Agency Award <i>(not unpaid taxes)</i>
Other PI/PD/WD (23)	Other Contract Dispute	Petition/Certification of Entry of Judgment on Unpaid Taxes
Premises Liability (e.g., slip and fall)	Real Property	Other Enforcement of Judgment Case
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)	Eminent Domain/Inverse Condemnation (14)	Miscellaneous Civil Complaint
Intentional Infliction of Emotional Distress	Wrongful Eviction (33)	RICO (27)
Negligent Infliction of Emotional Distress	Other Real Property (e.g., quiet title) (26)	Other Complaint <i>(not specified above)</i> (42)
Other PI/PD/WD	Writ of Possession of Real Property	Declaratory Relief Only
Non-PI/PD/WD (Other) Tort	Mortgage Foreclosure	Injunctive Relief Only <i>(non-harassment)</i>
Business Tort/Unfair Business Practice (07)	Quiet Title	Mechanics Lien
Civil Rights (e.g., discrimination, false arrest) <i>(not civil harassment)</i> (08)	Other Real Property <i>(not eminent domain, landlord/tenant, or foreclosure)</i>	Other Commercial Complaint Case <i>(non-tort/non-complex)</i>
Defamation (e.g., slander, libel) (13)	Unlawful Detainer	Other Civil Complaint <i>(non-tort/non-complex)</i>
Fraud (16)	Commercial (31)	Miscellaneous Civil Petition
Intellectual Property (19)	Residential (32)	Partnership and Corporate Governance (21)
Professional Negligence (25)	Drugs (38) <i>(if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)</i>	Other Petition <i>(not specified above)</i> (43)
Legal Malpractice	Judicial Review	Civil Harassment
Other Professional Malpractice <i>(not medical or legal)</i>	Asset Forfeiture (05)	Workplace Violence
Other Non-PI/PD/WD Tort (35)	Petition Re: Arbitration Award (11)	Elder/Dependent Adult Abuse
Employment	Writ of Mandate (02)	Election Contest
Wrongful Termination (36)	Writ—Administrative Mandamus	Petition for Name Change
Other Employment (15)	Writ—Mandamus on Limited Court Case Matter	Petition for Relief From Late Claim
	Writ—Other Limited Court Case Review	Other Civil Petition
	Other Judicial Review (39)	
	Review of Health Officer Order	
	Notice of Appeal—Labor Commissioner Appeals	