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**EXHIBITS**

CASE NO. 2022 CH 2134

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**CASE NOTE**

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**Firm No. 44671**

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION**

Jacksonville Jaguars, LLC,

Plaintiff,

vs.

Axis Surplus Insurance Company,

Defendant.

2022CH02134

Case No.

Jury trial demanded<sup>1</sup>

**COMPLAINT**

Plaintiff, Jacksonville Jaguars, LLC (the “Jaguars”), by and through their attorneys, Proskauer Rose LLP, for their Complaint for breach of contract and declaratory judgment pursuant to 735 ILCS § 5/2-701 against Axis Surplus Lines Insurance Company, allege and state as follows:

**INTRODUCTION**

1. Unlike the vast majority of professional sports franchises in the world, the Jacksonville Jaguars were able to safely host thousands of fans (25 percent of capacity) at every one of their regular season games during the 2020-21 season. But doing so required substantial investments and extraordinary efforts on their part to reduce the level of interruption of their business due to the actual presence of the coronavirus at their facilities, and still resulted in millions of dollars in lost revenues from having to host reduced-capacity crowds and play in away games without fans. The Jaguars seek recovery of these substantial extra expenses to mitigate their income losses due to the physical damage to, and physical loss of, their property, as well as income losses suffered directly from physical damage and physical loss.

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<sup>1</sup> Plaintiff demands a jury on all issues so triable by jury.

2. More than 900,000 Americans have died from COVID-19, the disease caused by the novel coronavirus SARS-CoV-2, and millions more have contracted it. The disease has taken the lives of nearly 70,000 Florida residents, including more than 3,000 in Duval County, the Jaguars' home.

3. In addition to that human toll, the coronavirus has caused widespread physical damage to, and physical loss of, property. Viral particles circulate through the air in crowded buildings; merge with particulates through chemical reactions; and contaminate ventilation and other building systems, vents, ductworks, and other structures. Those viral particles also fall on the surfaces of fixtures and property throughout buildings, where the virus becomes adsorbed into and forms chemical bonds with those surfaces through physical, chemical, and electrostatic reactions. This process physically transforms those building surfaces in a number of ways, such as increasing the roughness and hydroscopic properties of those surfaces. And importantly, when these viral particles are adsorbed into and become chemically integrated with building surfaces, these viral particles transform building property and fixtures from useful properties into dangerous conduits for the deadly virus that are known as fomites. If someone touches the fomite surfaces, the virus can be carried to his or her nose, mouth, or eyes, where it can enter the body and replicate.

4. The coronavirus damages properties by physically altering their condition such that they are no longer fit for occupancy or use without extensive physical alterations necessary to reduce the damage. It damages properties in a number of ways, including:

- The coronavirus changes the chemical composition of properties by chemically bonding with surfaces.

- The chemical reaction between the coronavirus and surfaces changes the roughness of the surface.
- Surfaces that have bonded with the coronavirus change chemically by becoming more likely to repel water.
- When the coronavirus chemically bonds with a surface, that surface transforms from safe to dangerous by becoming capable of spreading the deadly coronavirus.
- The coronavirus circulates through the air in crowded buildings and damages building systems, vents, ductworks, and other structures as infectious particles chemically react with particulates.

5. Merely cleaning coronavirus-damaged properties is insufficient to repair the physical damage or prevent further damage. For structures like sports stadiums, the purpose of which is to hold thousands of people comfortably but compactly, substantial physical alterations to the property, safety protocols, testing, and other measures must be made to repair past property damage and limit both ongoing and future property damage. Without such physical alterations, and safety protocols like widespread testing and enhanced cleaning, the virus would spread and attach itself to and physically change the condition of building surfaces and make them unsafe, resulting in physical damage to the property and a total deprivation of the use of the property during such times.

6. TIAA Bank Field is a football stadium used by the Jacksonville Jaguars for virtually all of their football operations. Most importantly, TIAA Bank Field is where the Jaguars host NFL games. While it has outdoor seating for more than 67,000 fans, during games, Jaguar fans also gather in indoor areas of the stadium to eat, speak with each other, cheer on the Jaguars, and enjoy the communal experience of attending a professional football game. Fans go

to concourse areas to purchase concessions. They take stairs and elevators to travel throughout the stadium, and take breaks in restrooms. Some fans watch games entirely from enclosed suites.

7. Players, coaches, team personnel, referees, and game day staff also gather in indoor areas both during games and during the ordinary course of operating an NFL football team. Players and coaches from both the Jaguars and the visiting team prepare for games in locker rooms and training rooms. Team personnel meet with each other in conference rooms and office spaces at the facility.

8. Beginning in March 2020, the coronavirus was physically present at TIAA Bank Field, and the actual presence of the virus caused physical damage. Viral particles were released into the air by infected persons who were breathing, speaking, or coughing. The virus was contained in respiratory droplets and aerosols that circulated throughout the structure through indoor and outdoor airflow and ventilation and air circulation systems. The viral particles were adsorbed into particulates, dirt, and other particles also circulating in the air when chemical reactions caused the viral spike proteins to bond chemically with those particles.

9. The infectious viral particles contaminated building systems at TIAA Bank Field, such as vents and ductworks of building air and HVAC systems into which viral particles became adsorbed through physical, chemical, and electrostatic reactions. These viral particles dispersed throughout the stadium, and fell onto the surfaces of fixtures and other property in those buildings, such as stairs and flooring, tables, food and beverage vending areas, counters and railings, offices and conference rooms, elevators and control panels, restrooms, toilets, faucets, and other frequently touched areas. Upon reaching these surfaces, the viral particles also became adsorbed into the surfaces and cracks through physical, chemical, and electrostatic reactions causing the viral particles to bond with these surfaces. The adsorption and resulting

chemical bonding of viral particles into surfaces throughout the buildings damaged the surfaces of these fixtures, furniture, and systems by making them rougher and more hydrophobic, and transforming those property surfaces into virus-contaminated fomites through which the virus spread.

10. The coronavirus was present at TIAA Bank Field beginning in March 2020, and through the duration of the 2020-21 NFL season. The Jaguars spent millions of dollars on repairs, physical alterations, additional staff and cleaning, and testing protocols during that time, in order to host home games with limited-capacity crowds, and to prevent a total cessation of their business and complete dispossession of their property resulting from physical damage to the property. But the Jaguars lost millions of dollars in revenues because the coronavirus kept them from hosting full-capacity crowds, and because the coronavirus limited other stadiums' abilities to host fans during Jaguars road games.

11. Through this suit, the Jaguars seek to recover those losses, which were explicitly covered under their insurance policy with Axis.

### **NATURE OF THE ACTION**

12. This action arises out of Axis' wrongful failure to provide insurance coverage to Jacksonville Jaguars, LLC for substantial losses resulting from and incurred as a result of the Jaguars' repairs, alterations, and other measures taken to avoid or minimize the suspension of their operations due to physical damage to TIAA Bank Field caused by the presence of the coronavirus<sup>2</sup> SARS-CoV-2. The Jaguars seek to hold Axis responsible for its wrongful conduct

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<sup>2</sup> Although there are many types of coronavirus, references to "the coronavirus" in this complaint refer to SARS-CoV-2, which causes a disease known as "COVID-19."

by recovering damages for breach of contract and obtaining declarations that Axis must provide the Jaguars with the coverage it promised and for which the Jaguars paid Axis.

13. Jacksonville Jaguars, LLC owns and operates the Jacksonville Jaguars football team. The Jaguars are one of the 32 teams in the National Football League.

14. Each year, hundreds of thousands of fans attend Jaguars' home games at TIAA Bank Field to cheer on the team and celebrate its success with their fellow fans. The Jaguars earn millions of dollars in annual revenue from home games.

15. The Jaguars have always faced the risk that they would be unable to host home games because of a dangerous condition at their home stadium—TIAA Bank Field—or incur substantial expenses to protect against a dangerous condition in order to continue hosting home games.

16. The Jaguars protected themselves against these risks by purchasing insurance from Axis. Axis promises that they “deliver[] services and products that directly meet [their] clients' needs” and that their “claims teams champion clients' needs.”

17. The Jaguars purchased a broad commercial property insurance policy from Axis<sup>3</sup> in March 2019, paying a \$98,391 premium. The policy the Jaguars purchased from Axis is called an “all-risk” policy. All-risk policies protect against all risks of loss except those explicitly excluded from coverage. By contrast, a “specific peril” policy is limited to risks of loss that are specifically enumerated; *e.g.*, an earthquake, hurricane, or fire. Unlike some of the insurance policies Axis has sold to other customers, the Jaguars' policy with Axis does not have a broad coverage exclusion for viruses and communicable disease.

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<sup>3</sup> Defendant Axis Surplus Insurance Company is referred to in this complaint as “Axis,” and references to statements made by Axis in this complaint include the defendant Axis Surplus Insurance Company and its parent and affiliates.

18. The policy covers “Business Income” losses incurred by the Jaguars because of “direct physical loss of or damage to” the covered properties. This is known as “business interruption” coverage in the insurance industry.

19. Importantly for this case, the policy also includes “Extra Expense” coverage, which covers the Jaguars’ costs to avoid or minimize the suspension of business due to direct physical loss of or damage to the covered properties.

20. Axis filed an annual report with the U.S. Securities and Exchange Commission on February 27, 2020, which stated: “Our results of operations, financial condition, or liquidity could be materially adversely affected by the occurrence of natural and man-made disasters, *as well as outbreaks of pandemic or contagious diseases.*” (Emphasis added.) Axis identified as a risk its “substantial exposure to unexpected losses resulting from...outbreaks of pandemic or contagious diseases.”

21. Axis had not warned investors of its pandemic risk until that February 2020 filing. Similar language in previous 10-Ks referred only to risks from “the occurrence of natural man-made disasters.” But by February 27, 2020, the coronavirus was already impacting sports leagues around the world. For example, on February 23, Italy’s top-tier professional soccer league, Serie A, began cancelling matches.

22. Once there was a highly contagious virus spreading across the world and affecting sports leagues, Axis informed its investors of the specific risk this pandemic presented, indicating that Axis understood that its all-risk policies included coverage for property damage due to the coronavirus.

23. The Jaguars reasonably expected that if damage to the stadium from a virus or communicable disease made it impossible to safely host games with fans in attendance, or



required incurring extra expenses to safely host fans, Axis would provide the coverage it had promised and for which they had paid.

24. Axis wrongly denied coverage to the Jaguars, taking the position that the coronavirus did not cause any “direct physical loss of or damage to” TIAA Bank Field, or at literally any other property in the world. Axis also claimed that exclusions intended for pollution and chemical weapon attacks bar the Jaguars’ coverage.

25. Through this action, the Jaguars seek recovery from Axis for their covered losses.

### **THE PARTIES**

26. Jacksonville Jaguars, LLC is a Delaware limited liability company with its principal place of business in Duval County, Florida. Jacksonville Jaguars, LLC is owned by Panthera Onca Holdings LLC, which has members in Illinois.

27. Axis Surplus Insurance Company is an insurance company domiciled in Illinois with its principal place of business in Chicago, Illinois. It is an entity in the Axis Capital Holdings Limited corporate family. At all relevant times, Axis was licensed to transact and did transact insurance business in this judicial district.

### **JURISDICTION AND VENUE**

28. This Court has jurisdiction pursuant to 735 ILCS § 5/2-209(a)(1) because, at all relevant times, Axis was domiciled in Illinois and registered with the Illinois Department of Insurance to transact insurance business within the State of Illinois, and Axis has transacted insurance business within the State. Jurisdiction is additionally proper under 735 ILCS § 5/2-701, because an actual controversy exists between the Jaguars and Axis regarding the parties’ rights and obligations under the insurance policy at issue.

29. Venue is proper in this Court pursuant to 735 ILCS § 5/2-103(e) because Axis is domiciled, licensed, and does business in the State of Illinois and has its principal place of business in Cook County, Illinois. Venue is also proper pursuant to 735 ILCS § 5/2-701 and 735 ILCS § 5/2-209(a)(4) because, upon information and belief, the policy was issued to the Jaguars from Axis' principal place of business in Cook County, Illinois and Axis' denial of coverage was delivered from its Cook County, Illinois headquarters, thus the events giving rise to the Plaintiffs' claims occurred here.

### **FACTUAL ALLEGATIONS**

#### **A. The Jaguars Purchase Broad Coverage from Axis to Insure Against Property and Business Interruption Losses and Expenses**

30. The Jaguars face a substantial business risk if they cannot host games with fans at TIAA Bank Field because of a dangerous physical condition at the property, or are required to incur significant expenses to avoid or minimize the suspension of their operations from that dangerous physical condition. In the case of the coronavirus, the Jaguars had to undertake significant cleaning and prevention efforts, including repairs, physical alterations, additional staff and cleaning, and testing protocols.

31. To protect against their business risk, the Jaguars obtained comprehensive insurance from Axis. The Jaguars purchased a broad commercial property policy from Axis bearing policy number EAF751588-19 for the period March 31, 2019 to March 31, 2020. It is attached as Exhibit A.

32. The limit of the Axis policy for property damage is \$28,200,000. Its sub-limit for business interruption losses is \$6,000,000. (*See* Ex. A (“Policy”) at Declarations, Sub-Limits of Liability.) The Policy covers “direct physical loss of or damage to” specified covered buildings

and personal property. (*See* Policy at Property Damage Coverage.) TIAA Bank Field (located at 1 TIAA Bank Field Drive, Jacksonville, FL 32202) is a covered property.

33. The Jaguars paid all premiums under the Policy, totaling \$98,391, and Axis accepted them.

34. Axis drafted the Policy.

35. The Policy covers the Jaguars for business income losses and expenses incurred by “direct physical loss of or damage” to their covered property. The Policy says:

We will pay for your actual loss sustained of “business income” due to the necessary “suspension” of your “operations” during the “period of restoration”. The “suspension” must be caused by direct physical loss of or damage to Covered Property at an “insured location”.

(*See* Policy at Time Element Coverage.)

36. The “period of restoration” begins “immediately after the time of direct physical loss or damage caused by or resulting from any Covered Cause of Loss at an ‘insured location’” and “[e]nds on the earlier of: (1) The date when the property at an ‘insured location’ should be repaired, rebuilt or replaced with reasonable speed and similar quality; or (2) The date when business is resumed at a new permanent ‘location.’” (*See* Policy at General Conditions – Definitions.)

37. The Axis Policy also specifically includes “Extra Expense” coverage. The Jaguars’ policy covers extra expenses to:

- (1) Avoid or minimize the “suspension” of business and to continue operations at an “insured location” or at replacement premises or temporary “locations”, including relocation expenses and costs to equip and operate the replacement “location” or temporary “location”.
- (2) Minimize the “suspension” of business if you cannot continue “operations” following direct, physical loss or damage to Covered Property at an “insured location” that is caused by or results from a Covered Cause of Loss.

(See Policy at Time Element Coverage.)

38. The Jaguars' Extra Expense coverage is included within the \$6 million sublimit for business interruption coverage. The Jaguars have an additional \$2.5 million in "Contingent Business Income" coverage, which covers business income losses resulting from direct physical loss of or damage to other properties relating to the Jaguars' operations, "including locations where Away Games are scheduled." (See Policy at Endorsement F.)

39. The Policy includes an "Extended Period of Indemnity" for an additional 365 days after operations are resumed. (See Policy at Declarations and Time Element Extensions of Coverage.)

40. The insurance industry, including Axis, has long known that viruses and communicable diseases can cause physical damage to property. Most insurers, including Axis, have created broad form "virus exclusions" to avoid providing coverage for these losses, which would otherwise be covered. Axis has included these virus exclusions in other insurance agreements, but not the applicable Jaguars policy.

41. A broad form virus exclusion provision was developed by the Insurance Services Office, Inc. or "ISO." ISO is an insurance industry trade organization that among other things develops model provisions that insurance companies, including Axis, use in the policies they issue. In preparing its virus exclusion provision, the ISO circulated a statement to state insurance regulators on behalf of its insurance company members and clients, including Axis.

It acknowledged:

Disease-causing agents may render a product impure (change its quality or substance), or enable the spread of disease by their presence on interior building surfaces or the surfaces of personal property. When disease-causing viral or bacterial contamination occurs, potential claims involve the cost of replacement of property (for example, the milk), cost of decontamination (for example, interior building surfaces), and

business interruption (time element) losses. Although building and personal property could arguably become contaminated (often temporarily) by such viruses and bacteria, the nature of the property itself would have a bearing on whether there is actual property damage. An allegation of property damage may be a point of disagreement in a particular case.

42. ISO stated it was creating the new exclusion to protect its members. The “specter of [a] pandemic or hitherto unorthodox transmission of infectious material,” warned the ISO circular, made it so insurers without a virus exclusion “may face claims.”

43. Axis created a communicable disease exclusion no later than September 2019—prior to the COVID pandemic—which Axis included in some policies but, again, not the applicable Jaguars’ Policy. Axis added the form exclusion to the Jaguars’ 2020-21 policy, effective March 31, 2020, after the relevant occurrence of physical loss or damage from the coronavirus.

44. If the presence of a virus or communicable disease at a property could not cause physical loss or damage, the exclusion would be unnecessary and illusory. Its existence confirms that Axis understood full well that if property was damaged (such as being rendered physically unusable) due to the presence of a virus at that property, that condition would constitute covered physical damage.

45. Because the Jaguars’ “all-risk” policy with Axis contained no such exclusion, the Jaguars reasonably expected that the “all-risk” Policy they purchased from Axis would cover coronavirus-related losses.

**B. The Jaguars Have Incurred Substantial Losses that the Policy Covers**

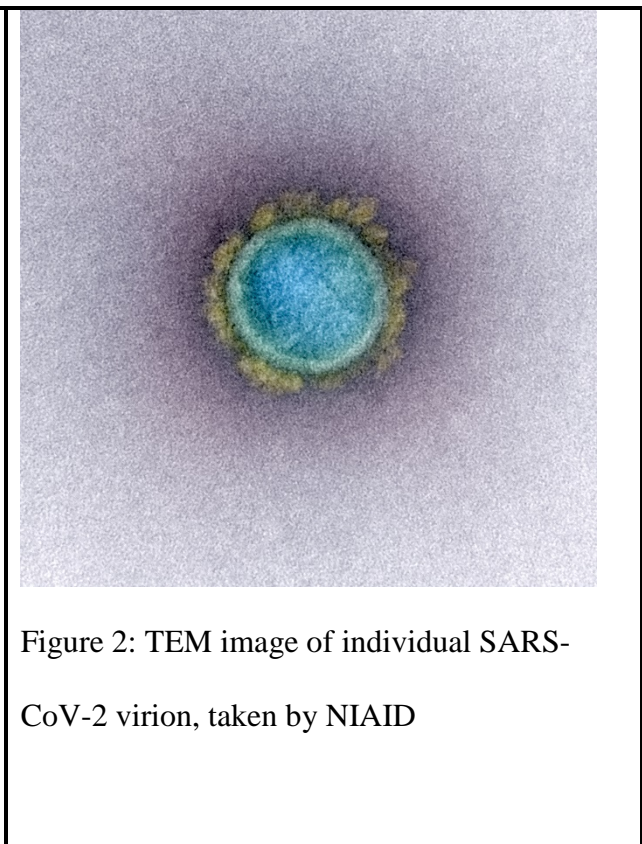
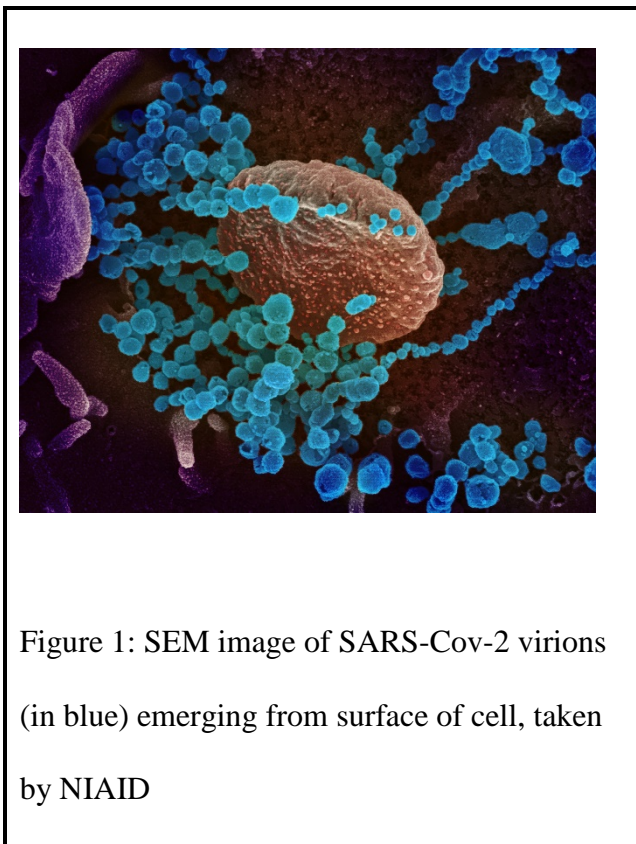
**i. SARS-CoV-2 and the Loss and Damage It Causes to Property**

46. Coronaviruses are a family of viruses that can cause illnesses ranging from the common cold to deadly diseases like severe acute respiratory syndrome (SARS) and Middle East

respiratory syndrome (MERS). In late 2019, a new coronavirus was identified as causing a disease outbreak in China. It was later named COVID-19 and the virus designated as SARS-CoV-2.

47. Although viruses are invisible to the naked eye, or even under a standard optical microscope of the sort used in high school classrooms, electron microscopy has revealed the physical structure of individual virus particles, also known as “virions.”

48. Individual virions of SARS-CoV-2 have been photographed by the National Institute of Allergy and Infectious Disease using scanning electron (Figure 1) and transmission electron microscopes (Figure 2).



49. Since being identified in late 2019, SARS-CoV-2 has spread rapidly throughout the world. The first documented case of coronavirus in Jacksonville was observed on March 12, 2020, and community spread in Florida was identified by the federal government that month.

50. Each coronavirus virion is a physical object with a material existence that can survive outside the human body in viral fluid particles that, like the virion itself, cannot be seen by the naked eye. As with other small particles, the physical viruses linger in the air, traveling on air currents until they attach to an object or other surface.

51. The coronavirus is so named because its physical appearance resembles a corona or crown. SARS-CoV-2 is spherical, with clubs or spikes protruding uniformly from the outer surface. The spikes on the outside of the virus are composed of proteins, which the coronavirus uses to bond with and invade human cells. But when these “spike proteins” are not bound to a human receptor, they nonetheless impact how the coronavirus interacts with other substances, including property.

52. The spike proteins are made up of different amino acids, which, by virtue of their molecular structure, have distinct chemical properties and carry an electric charge. These chemical and electric properties dictate how the coronavirus behaves in the air and on surfaces. *See Lei Xie et al., A Nanomechanical Study on Deciphering the Stickiness of SARS-CoV-2 on Inanimate Surfaces, 12 ACS APPLIED MATERIALS & INTERFACES 58360 (Dec. 18, 2020).*

**Damage to Buildings, Fixtures, and Building Systems Through Airborne Dispersal of Viral Particles**

53. A person can contract the coronavirus from (i) exposure to respiratory droplets when an infected person coughs, talks, shouts, or sings; (ii) aerosols produced by normal breathing; or (iii) by touching an infected surface, otherwise known as a “fomite.”

54. SARS-CoV-2 is released into the air when infected persons breathe, talk, cough, sneeze, or sing, and a person can contract COVID-19 by breathing in infected respiratory droplets. In the absence of remedial measures to reduce the risk of physical damage like those

implemented in the enclosed spaces at TIAA Bank Field like suites and concession areas, *see* ¶¶ 86-88, the risk of airborne transmission increases dramatically indoors. Indeed, the majority of SARS-CoV-2 clusters have been linked to indoor settings. Typical climate-controlled conditions indoors (moderate temperature and low humidity), such as those found at TIAA Bank Field, are favorable for virus stability and survival in the air and on surfaces and objects in the building.

55. Humans produce a wide range of particle sizes when coughing, sneezing, talking, singing, or otherwise dispersing droplets, with pathogens predominating in the smallest particles. Respiratory particles produced by the average person can travel almost 20 feet by sneezing. Kevin P. Fennelly, *Particle Sizes of Infectious Aerosols: Implications for Infection Control*, 8 LANCET RESPIRATORY MED. 914 (July 24, 2020). An M.I.T. researcher has found that virus-laden “clouds” containing clusters of droplets can travel 23 to 27 feet. Lydia Bourouiba, *Turbulent Gas Clouds and Respiratory Pathogen Emissions: Potential Implications for Reducing Transmission of COVID-19*, 323 JAMA 1837 (Mar. 26, 2020).

56. That the coronavirus can be transmitted through aerosols makes it particularly dangerous. Unlike larger droplets, which quickly fall to the ground or nearby surfaces, aerosols behave more like smoke. After being expelled, they disperse through the air, to be inhaled by anyone present on the property, circulating through air flow and spreading the virus. Since the diameter of SARS-CoV-2 viral particles themselves is roughly 100 nanometers (*i.e.*, 0.1 microns), even a 5-micron respiratory droplet can easily contain thousands of viral particles.

57. Because COVID-19 spreads throughout a property in airborne particles, it damages building systems, spreads through indoor air flow, and contaminates property throughout a structure. Without proper modifications and added equipment in place, aerosols containing COVID-19 recirculate through building systems, such as air circulation and plumbing



systems, thereby contaminating those systems and spreading the virus to other surfaces and fixtures throughout the building. Gil Correia *et al.*, *Airborne Route and Bad Use of Ventilation Systems as Non-Negligible Factors in SARS-CoV-2 Transmission*, 141 MED. HYPOTHESES 1 (Apr. 21, 2020).

58. The scientific community has studied the spread of the coronavirus through aerosols in indoor settings through air circulation and ventilation systems in real world settings, and confirmed the physical damage that the coronavirus can cause to those systems. For example:

- The CDC published a research letter concluding that a restaurant's air conditioning system triggered the transmission of the coronavirus, spreading it to people who sat at separate tables downstream of the restaurant's airflow. See Jianyun Lu *et al.*, *COVID-19 Outbreak Associated with Air Conditioning in Restaurant, Guangzhou, China, 2020*, 26 EMERGING INFECTIOUS DISEASES 1628 (July 2020); see also Keun-Sang Kwon *et al.*, *Evidence of Long-Distance Droplet Transmission of SARS-CoV-2 by Direct Air Flow in a Restaurant in Korea*, 35 J. KOR. MED. SCI. 1 (Nov. 23, 2020).
- A study detected coronavirus inside the HVAC system connected to hospital rooms of patients sick with COVID-19. The study found the coronavirus in ceiling vent openings, vent exhaust filters, and ducts located as much as 56 meters (over 183 feet) from the rooms of the sick COVID-19 patients. Karolina Nissen *et al.*, *Long-Distance Airborne Dispersal of SARS-CoV-2 in COVID-19 Wards*, 10 SCI. REP. (Nov. 11, 2020).

- A study detected a cluster of coronavirus cases associated with a shopping mall in Wenzhou, China, likely resulting from virus contamination of common objects through virus aerosols in a confined space. See Jing Cai *et al.*, *Indirect Virus Transmission in Cluster of COVID-19 Cases, Wenzhou, China, 2020*, 26 *Emerging Infectious Diseases* 1343 (June 2020).

59. On May 7, 2021, the CDC issued a scientific brief warning of the risks of airborne indoor transmission from aerosols at distances greater than six feet from the source, stating that “transmission of SARS-CoV-2 from inhalation of virus in the air farther than six feet from an infectious source can occur” and that:

Although infections through inhalation at distances greater than six feet from an infectious source are less likely than at closer distances, the phenomenon has been repeatedly documented under certain preventable circumstances. These transmission events have involved the presence of an infectious person exhaling virus indoors for an extended time (more than 15 minutes and in some cases hours) leading to virus concentrations in the air space sufficient to transmit infections to people more than 6 feet away, and in some cases to people who have passed through that space soon after the infectious person left. Per published reports, factors that increase the risk of SARS-CoV-2 infection under these circumstances include:

- Enclosed spaces with inadequate ventilation or air handling within which the concentration of exhaled respiratory fluids, especially very fine droplets and aerosol particles, can build-up in the air space.
- Increased exhalation of respiratory fluids if the infectious person is engaged in physical exertion or raises their voice (*e.g.*, exercising, shouting, singing).

- Prolonged exposure to these conditions, typically more than 15 minutes.

See CDC, *How COVID-19 Spreads*, <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html> (last updated Oct. 28, 2020); see also CDC, *SARS-CoV-2 Transmission*, <https://www.cdc.gov/coronavirus/2019-ncov/science/science-briefs/sars-cov-2-transmission.html> (last updated May 7, 2021).

60. The CDC has recommended “ventilation interventions” to help reduce exposure to the airborne virus in indoor spaces, including increasing airflow and replacing and improving air filtration (such as with high-efficiency particulate air (HEPA) fan/filtration systems). CDC, *Ventilation in Buildings*, <https://www.cdc.gov/coronavirus/2019-ncov/community/ventilation.html> (last updated June 2, 2021). These and other remedial measures must be implemented, at high cost and extra expense, to reduce the amount of coronavirus present in the space and to make property safe for its intended use.

**Damage to Buildings and Surfaces of Fixtures and Property From Physical, Chemical, and Electrostatic Reactions Between Viral Particles and Surface Materials That Physically Alter Those Properties and Surfaces**

61. COVID-19 also is transmitted to people from physical objects, materials or surfaces. “Fomites” are physical objects or materials that carry, and are capable of transmitting, infectious agents, altering these objects to become vectors of disease. “[C]ontaminated surfaces play a key role in the spread of viral infections.” Yang Xin *et al.*, *Adsorption of SARS-CoV-2 Spike Protein S1 at Oxide Surfaces Studied by High-Speed Atomic Force Microscopy*, 1 ADVANCED NANOBIOMED RES. 1 (Dec. 9, 2020). Fomite transmission has been demonstrated as highly efficient for viruses, both from object-to-hand and from hand-to-mouth. See Jing Cai *et*

*al., Indirect Virus Transmission in Cluster of COVID-19 Cases, Wenzhou, China, 2020, 26*  
EMERGING INFECTIOUS DISEASES 1343 (June 2020).

62. Small viral droplets can remain airborne almost indefinitely under most indoor conditions and, like smoke, can travel long distances with air currents. Whatever their size, however, virus-containing droplets eventually encounter physical objects and surfaces and settle onto them. When this occurs, respiratory aqueous droplets that contain virus droplets adhere to those physical objects and surfaces through a series of physical, chemical, and electrostatic reactions in a process called adsorption.

63. Adsorption occurs when the surfaces and internal capillaries and crevices of solid substances attract to their surfaces' molecules of gases or solutions with which they are in contact. Adsorption occurs through both physical and chemical reactions. Physical adsorption resembles the condensation of gases to liquids and depends on the physical (van der Waals) force of attraction between the solid surface and the viral molecules. In chemical adsorption, gases are bound to a solid surface by chemical forces that are specific for each surface and each gas.

64. Viral particles adsorbed to a host surface form an actual chemical bond between the viral particle and the surface. This differs from materials that merely are deposited onto a surface, such as dust, where no such chemical bond is formed. Once such a chemical bond is formed, the virus is difficult to detach from the surface of the property.

65. Depending on pH levels, the carboxyl amino groups found on SARS-CoV-2 spike proteins form hydrogen bonds with substances containing oxygen or hydroxyls, such as wood, cotton or glass. Certain positively charged amino acid structures, which are also found on coronavirus spike proteins, bind with negatively charged metallic surfaces. Edris Joonaki *et al.*, *Surface Chemistry Can Unlock Drivers of Surface Stability of SARS-CoV-2 in a Variety of*

*Environmental Conditions*, 6 CHEM 2135 (Sept. 2020). Depending on the ambient humidity, moisture levels on different property surfaces may augment chemical interactions between coronavirus spike proteins and the specific property exposed to the virus. Various endogenous polymeric molecules present in respiratory droplets (such as polysaccharides and proteins) act as a “bridge” binding the virus to the surface. Lei Xie *et al.*, *A Nanomechanical Study on Deciphering the Stickiness of SARS-CoV-2 on Inanimate Surfaces*, 12 ACS APPLIED MATERIALS & INTERFACES 58360 (Dec. 18, 2020). Also, electrostatic attraction between the surface and the virus plays a role in addition to basic gravity. Yang Xin *et al.*, *Adsorption of SARS-CoV-2 Spike Protein S1 at Oxide Surfaces Studied by High-Speed Atomic Force Microscopy*, 1 ADVANCED NANOBIOMED RES. 1 (Dec. 9, 2020). Porous objects like fabrics represent a special case because they entrap viral particles, thus making them hard to access, inactivate, or remove. In this case, the original respiratory droplets are first adsorbed by the fabric; once their surrounding water subsequently evaporates, the viral particles become embedded and entangled within the bulk of the object.

66. When viral spike proteins bind with property surfaces through physical and chemical adsorption, those surfaces change physically in several ways.

- First, as discussed above, the chemical composition of those surfaces changes based on the chemical reactions between the surfaces and the viral particles’ spike proteins.
- Second, when these physical and chemical reactions occur through adsorption, surface roughness is measurably increased. Lei Xie *et al.*, *A Nanomechanical Study on Deciphering the Stickiness of SARS-CoV-2 on Inanimate Surfaces*, 12 ACS APPLIED MATERIALS & INTERFACES 58360 (Dec. 18, 2020).

- Third, property exposed to SARS-CoV-2 also becomes more hydrophobic—more likely to repel water—after interaction with the coronavirus’s spike proteins. Edris Joonaki *et al.*, *Surface Chemistry Can Unlock Drivers of Surface Stability of SARS-CoV-2 in a Variety of Environmental Conditions*, 6 CHEM 2135 (Sept. 2020); Lei Xie *et al.*, *A Nanomechanical Study on Deciphering the Stickiness of SARS-CoV-2 on Inanimate Surfaces*, 12 ACS APPLIED MATERIALS & INTERFACES 58360 (Dec. 18, 2020).
- Finally, as explained below, when viral particles become physically and chemically adsorbed into the surfaces of buildings, fixtures, systems, and other property, those surfaces are altered from safe surfaces to dangerous surfaces through which this deadly virus spreads.

67. Chemical changes also occur when SARS-CoV-2 is released into the air within buildings. The same spike proteins that become adsorbed on various solid surfaces can also react with particulate matter in ambient air, such as minerals, soot, or plastics. Chemical bonding and electrostatic interaction between SARS-CoV-2 spike proteins and ambient particulate matter causes a physical alteration or physical change in the air upon exposure to the coronavirus. The adsorption of virus spike proteins by airborne particulates extends the time during which these particles remain infectious and dangerous. Jérôme F. L. Duval *et al.*, *Chemodynamic Features of Nanoparticles: Application to Understanding the Dynamic Life Cycle of SARS-CoV-2 in Aerosols and Aqueous Biointerfacial Zones*, 290 ADVANCES COLLOID & INTERFACE SCI. 1 (Feb. 27, 2021); Leonardo Setti *et al.*, *SARS-Cov-2RNA Found on Particulate Matter of Bergamo in Northern Italy: First Evidence*, 188 ENVTL. RES. 1 (May 30, 2020).

68. Infected COVID-19 respiratory droplets adhere to building surfaces—including fixtures, counters, railings, doors, door handles, elevators and buttons, seats, tables, floors, restrooms, locker rooms, countertops, food and beverage concessions, and other high-touch points. Once deposited, these surfaces are both physically and chemically transformed into disease-spreading fomites. If someone touches an infected surface, the virus can be carried to his or her nose, mouth, or eyes, where it can enter the body and replicate by the billions.

69. A study published in the *Journal of Epidemiology and Infection* demonstrated that after lockdown in the United Kingdom, coronavirus transmission via fomites may have contributed to as many as 25 percent of deaths in that region. Avery Meiksin, *Dynamics of COVID-19 Transmission Including Indirect Transmission Mechanisms: A Mathematical Analysis*, 148 EPIDEMIOLOGY & INFECTION 1 (Oct. 23, 2020).

70. Scientific studies have confirmed that the coronavirus remains capable of being further transmitted from physical surfaces, creating a dangerous property condition. Significant contamination of inanimate objects, such as floors, ceilings, fans, sinks, toilet bowls, door handles, and floors have been reported even after thorough disinfection. Reusable glasses and other common plastic-based products are easily contaminated and have the potential to spread coronaviruses.

- The coronavirus can remain infectious for “much longer time periods than generally considered possible.” Shane Riddell *et al.*, *The Effect of Temperature on Persistence of SARS-CoV-2 on Common Surfaces*, 17 VIROLOGY J. 1 (Oct. 7, 2020).
- A study of a COVID-19 outbreak published by the CDC identified elevator buttons and restroom taps as possible causes of the “rapid spread of SARS-CoV-

2” in a shopping mall in China. Jing Cai *et al.*, *Indirect Virus Transmission in Cluster of COVID-19 Cases, Wenzhou, China, 2020*, 26 EMERGING INFECTIOUS DISEASES 1343 (June 2020).

- A study published in the April 16, 2020 *New England Journal of Medicine* reported that the virus persisted on plastic and stainless steel. Neeltje van Doremalen, *Aerosol and Surface Stability of SARS-CoV-2 as Compared with SARS-CoV-1*, 382 NEW ENG. J. MED. 1564 (Apr. 16, 2020).
- Another study published in the *Journal of Hospital Infection* found that the coronavirus can remain infectious on inanimate surfaces at room temperature for well over a week. Günter Kampf *et al.*, *Persistence of Coronaviruses on Inanimate Surfaces and Their Inactivation with Biocidal Agents*, 104 J. HOSP. INFECTION 246 (Mar. 1, 2020).
- An April 2020 study published in the journal *Emerging Infectious Diseases* found a wide distribution of the coronavirus on surfaces in hospital wards in Wuhan, China, including floors, computer mice, trash bins, bed handrails, patients’ face masks, health workers’ personal protective equipment, and air vents. Zhen-Dong Guo *et al.*, *Aerosol and Surface Distribution of Severe Acute Respiratory Syndrome Coronavirus 2 in Hospital Wards, Wuhan, China, 2020*, 26 EMERGING INFECTIOUS DISEASES 1586 (July 2020).
- Numerous other scientific studies have found that the virus persists on doorknobs, toilets, faucets, and other high-touch points, as well as on commonly overlooked surfaces such as floors. *Id.*



- An article in the *Journal of Virology* reported that researchers demonstrated that COVID-19 can survive up to 28 days at room temperature (68°F) on a variety of surfaces on which the virus became integrated through physical and chemical adsorption, including glass, steel, vinyl, plastic, and paper. Shane Riddell *et al.*, *The Effect of Temperature on Persistence of SARS-CoV-2 on Common Surfaces*, 17 *VIROLOGY J.* 1 (Oct. 7, 2020).
- A CDC report from March 27, 2020, stated that COVID-19 was identified on surfaces of the cabins on the Diamond Princess cruise ship 17 days after the cabins were vacated. Leah F. Moriarty *et al.*, *Public Health Responses to COVID-19 Outbreaks on Cruise Ships — Worldwide*, February–March 2020, 69 *MMWR* 347 (Mar. 27, 2020).
- SARS-CoV-2 can infect and be shed from the human gastrointestinal tract, thereby contaminating public restrooms and creating another pathway for spread of the disease through property contamination. Viral RNA of SARS-CoV-2 has been detected in stool, and RNA shedding in stool was detected in up to 41 percent of COVID-19 patients. Orofecal transmission of SARS-CoV-2 occurs through contamination of public facilities through food-handling, as well as through viral transmission from aerosolized virus following toilet flushing in public restrooms. Gil Correia *et al.*, *Airborne Route and Bad Use of Ventilation Systems as Non-Negligible Factors in SARS-CoV-2 Transmission*, 141 *MED. HYPOTHESES* 1 (Apr. 21, 2020).

71. The presence of the virus on fixtures and building systems physically alters the underlying building, such that physical alterations are necessary to make the property safe.

**Routine Cleaning Is Not Sufficient to Prevent and Restore Damaged Property and Prevent Unsafe Property Conditions**

72. Because the coronavirus can spread throughout a property in airborne particles, it damages building systems, spreads through air flow, and contaminates structures. Aerosols containing the coronavirus recirculate through building systems, such as air circulation and plumbing systems. Protocols designed to protect buildings and fixtures are necessary to remediate the presence of the coronavirus. In short, substantial alterations of property and investment in enhanced protocols are required to reduce the risk of physical damage to property from the coronavirus in order to make sure the property remains in even a partially usable state.

73. Without substantial alterations and investment in enhanced protocols, an infected property cannot remain open to the public and the virus would result in a complete dispossession of the property. Cleaning of surfaces alone is insufficient, as touched surfaces will be re-contaminated. Droplets and aerosols expelled from infected persons physically change the surface by becoming a part of that surface. As a result of this physical alteration, human contact with previously safe surfaces becomes unsafe.

74. Unlike surface cleaning of visible substances like dust or debris, where the degree of “clean” can be visually confirmed to a reasonable degree of certainty, that is not the case for the cleaning and disinfection of coronavirus because, among other things: (a) the coronavirus is not visible to the naked eye; (b) the degree and magnitude of the coronavirus is undetectable, so the effectiveness of disinfection cannot be determined; and (c) viral inactivation through disinfection is different for different substrates and surfaces (*i.e.*, cardboard, plastic, stainless steel, or copper) and varies for porous versus nonporous surfaces. As compared to the cleaning of visible soiling, dirt, and debris, which typically does not require the same “disinfection” of

surfaces as required for viral contamination, the uncertainty involved in the effectiveness of disinfection of surfaces for something invisible (*i.e.*, the coronavirus) makes cleaning a much more complicated and less effective process.

75. A number of studies have also demonstrated that the coronavirus is “much more resilient to cleaning than other respiratory viruses so tested.” Nevio Cimolai, *Environmental and Decontamination Issues for Human Coronaviruses and Their Potential Surrogates*, 92 J. MED. VIROLOGY 2498 (June 12, 2020). The measures that must be taken to attempt to remove and disinfect the coronavirus from property are significant and depend on the concentration of the coronavirus, myriad surface characteristics (*e.g.*, type of surface, temperature, porosity), and extend far beyond ordinary or routine cleaning. Moreover, the toxicity of an agent may inhibit the growth of cells used to determine the presence of virus, making it difficult to determine if lower levels of infectious virus are actually still present on treated surfaces.

76. Without the alterations, testing, and enhanced protocols enacted at TIAA Bank Field, *see* ¶¶ 86-89, after which physical damage from the virus continued to occur, even a strict cleaning regimen would be inadequate to eradicate all viral particles. It is difficult to locate and reach every contaminated surface. Due to the manner in which the virus spreads, it is difficult to completely eradicate the virus, particularly in a stadium, even with robust and comprehensive routine cleaning protocols. In any event, given the ubiquity and pervasiveness of the coronavirus, no amount of cleaning or ventilation intervention will prevent an infected person who is contagious from entering an indoor space and exhaling millions of additional coronavirus droplets and infectious aerosols into the air, thereby further filling the air and physically altering it with aerosolized virus particles that can be inhaled; and depositing infectious droplets on the surfaces, physically altering and transforming those surfaces into disease-transmitting fomites.

77. In short, the coronavirus damages properties by physically altering their condition such that they are no longer fit for occupancy or use without extensive physical alterations, protocols, and testing to reduce the risk of further physical damage and prevent complete shutdowns. Indeed, the virus damages the air within buildings such that the air is no longer safe to breathe, and attaches itself to surfaces, physically changing the condition of those surfaces from safe to unsafe. It contaminates building systems, such as ventilation and plumbing.

78. Without the kinds of significant alterations and protocols that were made and enacted at TIAA Bank Field, the virus would continue to damage the air and make it unsafe to breathe, and attach itself to and physically change the condition of a larger number of building surfaces at greater concentrations, which would have necessitated a total shutdown and complete dispossession. In structures like stadiums, substantial alterations must be made and novel protocols must be enacted to reduce ongoing and future property damage and allow even partial operations.

79. The persistent presence of the coronavirus on surfaces and in the air damages buildings, fixtures, systems, and personal property and renders such properties unsafe and unfit for occupancy and use without repairs and physical alterations. The coronavirus has a material physical existence; is contained in respiratory droplets and aerosols; becomes adsorbed into, chemically bonded with, and alters the surfaces of property from once-safe surfaces to fomites containing the virus; and alters the physical condition of air in buildings, all of which constitutes physical damage to the properties.

ii. **The Coronavirus Causes “Direct Physical Loss of or Damage” to the Jaguars’ Property**

80. The coronavirus began to cause physical loss of or damage to the Jaguars’ property on March 13, 2020, when two Jaguars personnel tested positive for the coronavirus and the team’s facilities at TIAA Bank Field were closed.

81. Parking facilities at TIAA Bank Field were soon used to test people for the coronavirus, resulting in substantial influx of the virus and further damaging the property in the ways described earlier.

82. As a result of the direct physical loss or damage from the coronavirus, Jaguars’ personnel were not permitted to return to the Jaguars’ facilities until May 26, 2020, when only a limited number of employees were permitted to return.

83. The Jaguars were required to incur significant expense to limit the interruption of their business due to the physical damage by accommodating the needs of a newly remote workforce, including investing in videoconferencing, communications, and IT equipment to allow work from remote locations, including offsite coaching and scouting; and offsite training, exercise and physical therapy equipment for players to work and train remotely.

84. For example, the 2020 NFL Draft was held in April 2020, after the closure of TIAA Bank Field. To prepare for the draft, team personnel reviews scouting reports and video clips, and discusses their evaluations and rankings of various players. In previous years, Jaguars’ personnel would have conducted many of these activities from the team facilities at TIAA Bank Field. However, because the coronavirus caused the team’s facilities to close, the Jaguars had to incur expenses to allow team personnel to conduct these activities remotely. This culminated with Jaguars’ then-general manager Dave Caldwell conducting the draft from his home theater.

85. The Jaguars incurred additional expenses with respect to accommodating their other employees as well. In addition to videoconferencing and home office equipment for off-field personnel, the Jaguars also invested in training and exercise equipment to allow players to train, exercise, and rehabilitate injuries without needing to be present at TIAA Bank Field. Players who would normally have worked with team employees were instead doing so at home, at the expense of the Jaguars.

86. On July 10, 2020, the Jaguars announced plans to play home games in front of a significantly reduced capacity—about 25% of TIAA Bank Field’s regular capacity. The Jaguars incurred substantial extra expenses to modify TIAA Bank Field by addressing the physical damage from the coronavirus to prevent a complete interruption of business in order to host the reduced-capacity crowds, including:

- Physical modifications to seating areas to practice social distancing;
- 750 hand-sanitizing stations;
- Development and implementation of a mobile, touchless payment system, “JagsPay,” for concessions and merchandise;
- Dedicated staff members to help disinfect high-traffic areas;
- Physical alterations of concession areas, including touchless operations and plexiglass at every point of sale.

These physical alterations and protocols were intended to reduce the risk of physical damage to high-touch surfaces at the facilities by limiting contact and damage from physical chemical adsorption of the virus into surfaces and the resulting physical alteration of that property as described above. Ultimately, the extra expense incurred was an attempt to repair the property and limit the ongoing physical loss or damage that Axis would be responsible for covering.

87. During the period of restoration, the Jaguars incurred additional necessary expenses that they would not have incurred had there been no physical loss or damage. Specifically, the Jaguars incurred expenses to ensure that their facilities had proper air flow and filtering to address the physical alteration of building systems, ventilation and HVAC systems, and other property from the chemical and electrostatic reactions between the viral particles and indoor air. To increase the percentage of outdoor air taken in by HVAC systems, the Jaguars made needed repairs to outside dampeners and verified that each responded to the building automation system (BAS). The Jaguars added portable air scrubbers, MERV-1 filters, and HEPA filtration systems. To increase total airflow supply to occupied spaces and offset carbon dioxide levels, the BAS had a program installed to open outside air dampeners as carbon dioxide readings increased. The program also had an alarm in the event carbon dioxide readings reached a certain level. Changes were made to ventilation controls to be controlled by CO2 levels rather than temperature or occupancy.

88. The Jaguars tested the number of air changes per hour (ACH) in areas where staff and players would be spending a considerable amount of time, and made additional improvements based on the results.

89. In addition to the structural changes made to further avoid or minimize the possibility of having to close TIAA Bank Field because of physical damage from the coronavirus, the Jaguars spent millions of dollars on testing, enhanced cleaning protocols, and other coronavirus-related operating expenses. The amount of extra expense incurred by the Jaguars exceeds the Policy's applicable limits, and covered losses are continuing as the Jaguars continue to incur expenses beyond normal levels to reduce or eliminate suspension of operations at TIAA Bank Field and further physical damage to or physical loss of that property.

90. The Jaguars said that “any future increase in capacity” would “depend on developments on the health and safety front,” and that they would “continue to work diligently to develop new protocols for the health and safety of the entire Jaguars family, including our fans.”

91. During the 2020 NFL season, the Jaguars played and practiced at TIAA Bank Field. Players and personnel gathered in locker rooms, offices, and conference rooms to get ready for practices and games. Locker rooms, offices, and conference rooms are all indoor structures where air is circulated through the property via vents and ductworks.

92. Fans and media also gathered in indoor areas of the stadium during the 2020 season. Concession stands, suites, stairwells, elevators, and restrooms are also indoor structures where air is circulated through the property via vents and ductworks.

93. Notwithstanding the Jaguars’ extensive efforts, players and employees who had been at TIAA Bank Field continued to test positive for the coronavirus during the 2020-21 season. In July and August 2020, when Jaguars players and personnel returned to TIAA Bank Field to begin training and preparing for the 2020 NFL season, at least 20 players and team personnel who had been at TIAA Bank Field tested positive for the coronavirus.

94. While Governor Ron DeSantis eased Florida’s coronavirus restrictions to allow full stadia in October 2020, the continued presence of the coronavirus at TIAA Bank Field, and the resulting physical alteration of structures, fixtures, surfaces, and systems there, required operating at limited capacity for all of the Jaguars’ 2020-21 season, the November 7, 2020 Georgia-Florida game, and the January 2, 2021 Gator Bowl.

95. Despite the extraordinary efforts and extra expenses incurred, on October 17, 2020, the Jaguars announced that a member of their organization tested positive for the coronavirus, prompting them to close their practice facility. Over the next few months, more



than 20 members of the organization tested positive for the coronavirus. In addition, based on statistical analyses, other coronavirus-positive individuals were also undoubtedly present at the stadium.

96. The existence and presence of the coronavirus at TIAA Bank Field was not reflected completely in the reported cases or individuals' positive test results, as only a fraction of the population was tested around that time. For example, in June 2020, the Centers for Disease Control and Prevention ("CDC") estimated that the number of people in the United States who had been infected with COVID-19 was ten times higher than the number of reported cases. Lena H. Sun & Joel Achenbach, *CDC Chief Says Coronavirus Cases May Be 10 Times Higher than Reported*, WASH. POST (June 25, 2020),

<https://www.washingtonpost.com/health/2020/06/25/coronavirus-cases-10-times-larger/>.

Additionally, at least 40 percent of people infected with COVID-19 were asymptomatic. Ellen Cranley, *40% of People Infected with Covid-19 Are Asymptomatic, A New CDC Estimate Says*, BUS. INSIDER (July 12, 2020), <https://www.businessinsider.com/cdc-estimate-40-percent-infected-with-covid-19-asymptomatic-2020-7>.

97. The complications with detecting and stopping the spread of COVID-19 are further amplified because COVID-19 has a pre-symptomatic incubation period of up to 14 days, during which time infected people can transmit COVID-19 to other people by releasing infectious droplets and aerosols into the air and onto surfaces without experiencing any symptoms or realizing that they are contagious or infected. See WHO, CORONAVIRUS DISEASE 2019 (COVID-19) SITUATION REPORT - 73 (Apr. 2, 2020); Minghui Yang *et al.*, *SARS-CoV-2 Detected on Environmental Fomites for Both Asymptomatic and Symptomatic Patients with COVID-19*, 203 AM. J. RESPIRATORY & CRITICAL CARE 374 (Feb. 1, 2021).

98. Studies have demonstrated that pre-symptomatic individuals have an even greater ability to transmit COVID-19 than other infected people because they carry high levels of “viral load” during a period when they have no symptoms and therefore are unaware that they are infectious. *See, e.g., Xi He et al., Temporal Dynamics in Viral Shedding and Transmissibility of COVID-19*, 26 NATURE MED. 672 (Apr. 15, 2020); Lirong Zou et al., *SARS-CoV-2 Viral Load in Upper Respiratory Specimens of Infected Patients*, 382 NEW ENG. J. MED. 1177 (Mar. 19, 2020). The National Academy of Sciences has concluded that “the majority of transmission is attributable to people who are not exhibiting symptoms, either because they are still in the pre-symptomatic stage or the infection is asymptomatic.” Meagan C. Fitzpatrick et al., *The Implications of Silent Transmission for the Control of COVID-19 Outbreaks*, 117 PNAS 17513 (July 28, 2020).

99. For the reasons explained in ¶¶ 46-79, incorporated herein, the actual presence of the coronavirus at TIAA Bank Field physically damaged the property (and would have resulted in a total cessation of business and complete dispossession of the property in the 2020-21 season but for the Extra Expense that the Jaguars incurred to reduce their loss) in a number of ways, including the following:

- Viral particles were released into the air by infected persons at TIAA Bank Field who were breathing, shouting, engaged in physical exertion and athletic activities, singing, coughing, and speaking. The virus was contained in respiratory droplets and aerosols that circulated throughout the arena through indoor airflow and ventilation and air circulation systems. The viral particles were adsorbed into airborne particulates when chemical reactions caused the viral spike proteins to bond chemically with those particles. These infectious

viral particles contaminated building systems such as vents and ductworks of building air and HVAC systems into which they became adsorbed through physical, chemical, and electrostatic reactions.

- Viral particles dispersed throughout TIAA Bank Field fell onto the surfaces of fabric seats (into which the viral particles became enmeshed into the fabric surfaces and adsorbed into metal and plastic surfaces), playing surfaces, equipment, locker rooms and training rooms, counters, railings, stairs and flooring, tables, concession areas, food service facilities, plumbing fixtures and systems, food and beverage vending areas, elevators and their buttons and control panels and other frequently-touched areas; and contamination through fecal virus contamination of public restrooms, toilets, faucets, and plumbing fixtures and systems. Upon reaching these surfaces, the viral particles were adsorbed into the surfaces and cracks through physical, chemical, and electrostatic reactions causing the viral particles to bond with, become integrated into, and affixed to, these surfaces. The physical, chemical, and electrostatic reactions as part of the adsorption process and resulting chemical bonding of viral particles into these surfaces throughout the buildings damaged the surfaces of these fixtures, furniture, and systems by making them rougher and more hydrophobic; transformed those property surfaces into virus-contaminated fomites through which the virus spread; and thus physically damaged these fixtures and equipment throughout the arena and contaminated key building systems.

100. As a result of the presence of the coronavirus at TIAA Bank Field, and from efforts to avoid or minimize the suspension of safe operations resulting from the physical

damage caused by the coronavirus, the Jaguars incurred substantial extra expenses in modifications to the stadium and equipment, enhanced cleaning procedures, testing protocols, and other operational expenses. Those expenses would not have been incurred had there been no physical loss or damage caused by the coronavirus. And to further exacerbate the financial cost of the coronavirus because of the reduced capacity at home games, the Jaguars did not earn as much revenue from ticket, concession, and merchandise sales as they otherwise would have.

101. The Jaguars were also harmed as a result of the physical damage caused by the coronavirus to the properties of other NFL teams. The Jaguars' Policy included an additional \$2.5 million in "Contingent Business Income" coverage, for losses of business income resulting from physical damage to "contingent property."

102. The Policy specifically defined "contingent property" to include "locations where Away Games are scheduled."

103. The Jaguars were scheduled to play, and did play, eight Away Games during the 2020-21 season. Like other NFL teams, the Jaguars share in ticket revenues from Away Games. But those revenues were substantially reduced during the 2020-21 season because of the coronavirus.

104. Because of physical damage to, and physical loss and complete dispossession of, property caused by the coronavirus in the manner described above, fans were not allowed at five of those eight games:

- Week 2 against the Tennessee Titans, at Nissan Stadium, Nashville, TN.
- Week 7 against the Los Angeles Chargers, at SoFi Stadium, Inglewood, CA.
- Week 10 against the Green Bay Packers, at Lambeau Field, Green Bay, WI.

- Week 13 against the Minnesota Vikings, at U.S. Bank Stadium, Minneapolis, MN.
- Week 15 against the Baltimore Ravens, at M&T Bank Stadium, Baltimore, MD.

105. Because of physical damage caused by the coronavirus, three of those games were played in front of substantially reduced-capacity crowds:

- Week 4 against the Cincinnati Bengals, at Paul Brown Stadium, Cincinnati, OH.
- Week 5 against the Houston Texans, at NRG Stadium, Houston, TX.
- Week 17 against the Indianapolis Colts, at Lucas Oil Stadium, Indianapolis, IN.

106. The Jaguars were also scheduled to play two games in London during the 2020 season, which they were not able to do because of the presence of the coronavirus at that property in London. Instead, the Jaguars played those games at TIAA Bank Field, which required them to provide staff and otherwise prepare for two games that would not otherwise have been in Jacksonville. This not only resulted in a significant loss of income, but caused the Jaguars to incur substantial extra expenses.

**C. Axis Wrongfully Denies Coverage to the Jaguars**

107. The Jaguars provided timely notice of their claims for coverage to Axis. However, in an April 13, 2021 letter, Axis wrongfully denied coverage for all of the Jaguars' losses.

**FIRST CLAIM FOR RELIEF**

**(Declaratory Judgment)**

108. The Jaguars refer to above paragraphs 1 through 107, inclusive, and by this reference incorporate the same as though fully set forth.

109. The Jaguars are an Insured under the Policy, which is a valid and enforceable written contract sold to the Jaguars by Axis, and which provides coverage for property loss or damage, business interruption, extra expense, contingent business income coverage, extended period of indemnity, and other coverages.

110. The Jaguars have complied with all applicable terms and conditions of the Policy including the timely payment of premiums due under the Policy.

111. Pursuant to the terms of the Policy, including the property and business interruption coverages, Axis is obligated to provide coverage to the Jaguars, up to the respective limits of liability, for property and business interruption and time element losses and extra expenses, and contingent business income coverage and the extended period of indemnity.

112. The Jaguars have incurred losses that are covered under multiple coverage grants in the Policy.

113. The Jaguars gave Axis timely notice of their claims for property loss or damage, business interruption, extra expense, contingent business income coverage, extended period of indemnity, and other coverages, each of which involved a “Covered Cause of Loss” sufficient to trigger the Policy’s Time Element Coverages, as well as any coverages or benefits potentially available under the Policy.

114. On or about April 13, 2021, Axis wrongfully denied coverage for the claims, erroneously contending that the presence of the coronavirus does not constitute physical loss of or damage to property.

115. An actual and justiciable controversy exists between the Jaguars and Axis concerning the application of the Policy to the Jaguars’ claims, including whether the presence of the coronavirus at an insured location constitutes a Covered Cause of Loss.

116. The Jaguars are entitled to a declaration with respect to Axis' coverage obligations under the Policy. The Jaguars seek a declaration from the Court that: (a) the presence of the coronavirus at an insured location is a Covered Cause of Loss under the Policy; (b) the Jaguars are entitled to coverage under the Policy's Time Element Coverages (including Extra Expense), contingent business income coverage, and extended period of indemnity for their COVID-19-related losses or damages; and (c) there is no applicable Policy exclusion or condition that precludes coverage for the Jaguars' claims.

117. Under 735 Illinois Compiled Statutes § 5/2-701, this Court should enter a declaratory judgment in favor of the Jaguars and against Axis declaring that the Jaguars are entitled to coverage for their claims under the Policy, and any other relief this Court deems proper.

## **SECOND CLAIM FOR RELIEF**

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

118. The Jaguars refer to above paragraphs 1 through 117, inclusive, and by this reference incorporate the same as though fully set forth.

119. The Policy constitutes a valid and enforceable written contract between the Jaguars, on the one hand, and Axis, on the other.

120. The Jaguars are an Insured under the Policy.

121. The Jaguars made a timely claim to Axis under the Policy.

122. Pursuant to the terms of the Policy, including the property and business interruption, time element, extra expense, contingent business income, and extended period of indemnity coverages, Axis is obligated to provide coverage to the Jaguars, up to the respective limits of liability, for property and business interruption and time element losses and extra

expenses, contingent business income coverage, and extended period of indemnity, among other covered losses. The Jaguars' claims are not excluded by any provision in the Policy.

123. The Jaguars have complied with all applicable terms and conditions of the Policy that were not waived by Axis or excused as a result of Axis' denial of coverage or its breaches described herein. The Jaguars provided timely payment of premiums due under the Policy.

124. Axis has breached its obligations under the Policy by wrongfully denying the Jaguars' claims for coverage and refusing and failing to pay their covered losses.

125. The Jaguars have been damaged and continue to sustain damages due to Axis' breaches of the Policy in an amount to be determined at trial in the millions of dollars.

126. As a direct and proximate result of Axis' breaches of the Policy, the Jaguars request entry of judgment for breach of contract, awarding payment of damages in an amount to be proven at trial.

### **DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a jury trial in the above-entitled action on all claims for relief for which plaintiff is entitled to a trial by jury.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays that the Court enter judgment ordering as follows:

On the First Claim for Relief: For a judicial declaration that Axis is obligated to provide coverage to the Jaguars under the Policy for the Jaguars' losses and whatever further relief the Court deems proper.

On the Second Claim for Relief: For damages in an amount to be determined at trial, together with prejudgment and post-judgment interest.



On all Claims for Relief:

1. For the Jaguars' costs of suit; and
2. For such other and further relief as the Court may deem just.

Dated: March 11, 2022

Respectfully submitted,

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