Kayla Buckley DEPUTY

## DC-21-02194 CAUSE NO.

JULIO & SONS COMPANY: BARTECA § IN THE DISTRICT COURT RESTAURANTS, LLC; UNCLE JULIO'S § ANNAPOLIS CONCESSIONS, LLC; UNCLE JULIO'S COLUMBIA CONCESSIONS, LLC; UNCLE JULIO'S CORPORATION; UNCLE JULIO'S OF FLORIDA, INC.; UNCLE JULIO'S OF GEORGIA, INC.; UNCLE JULIO'S OF ILLINOIS, INC.; UNCLE JULIO'S OF RESTON, INC.; § UNCLE JULIO'S OF TENNESSEE, INC.; UNCLE JULIO'S OF TEXAS, INC.; UNCLE JULIO'S RIO § GRANDE CAFE, INC.; CONROE FOODS, INC.; § HACIENDA II PARTNERS, LLLP; SOUTHWEST RESTAURANT PARTNERS, LLLP; THE MEXICAN RESTAURANT, INC.: 15-16 LLC: 2004 RESTAURANT, LLC; 2016 RESTAURANT, LLC; 971 FARMINGTON, LLC; BAR TACO PORT CHESTER, LLC; BAR TACO STAMFORD, LLC; BARTACO 12 SOUTH, LLC; BARTACO AVENTURA, LLC; BARTACO BALLSTON, LLC; BARTACO CHAPEL HILL, LLC; BARTACO CLOUD KITCHEN WMT, LLC; BARTACO DEERFIELD, LLC; BARTACO DR. PHILLIPS, LLC; BARTACO FORT POINT, LLC; BARTACO HILLDALE, LLC: BARTACO HYDE PARK, LLC: BARTACO INMAN PARK, LLC; BARTACO KOP, LLC: BARTACO MARIETTA, LLC: BARTACO § MOSAIC, LLC; BARTACO NORTH HILLS, LLC; § § BARTACO PEARL WEST, LLC; BARTACO RESTON, LLC; BARTACO ROSWELL, LLC; BARTACO TEJON, LLC; BARTACO WASHINGTON DC, LLC; BARTACO WESTPORT, LLC: and BARTACO WYNWOOD, LLC, Plaintiffs. 44th JUDICIAL DISTRICT v. CONTINENTAL CASUALTY COMPANY, § Defendant. DALLAS COUNTY, TEXAS

#### PLAINTIFFS' ORIGINAL PETITION

#### PRELIMINARY STATEMENT

1. Plaintiffs Julio & Sons Company, Barteca Restaurants, LLC, and their respective operating subsidiaries as more fully described below (collectively, "UJB"), by and through their undersigned counsel, bring this suit against Defendant Continental Casualty Company ("CNA") seeking to enforce the terms of their commercial property insurance policy (the "Policy," as further described below) and compel CNA to honor its contractual promises to indemnify UJB for the devastating property loss and damage that Plaintiffs have experienced as a result of the ongoing COVID-19 pandemic.

#### NATURE OF THE ACTION

- 2. Plaintiffs own and operate the popular and well-known Uncle Julio's®, Hacienda Colorado™ (collectively, "Uncle Julio's"), and bartaco™ ("Bartaco") restaurant chains, comprising dozens of restaurants in Texas and 15 other states. To protect these businesses, Plaintiffs' parent entity purchased the Policy from CNA in 2019. The Policy covers UJB's property, including all Uncle Julio's and Bartaco restaurant locations, for losses occurring during the period October 30, 2019 through October 30, 2020, and broadly included coverage for all "risks of direct physical loss of or damage to" any real or personal property, all "time element" losses for business interruption, losses due to orders of a "civil authority," and extra expenses associated with such losses, among other coverages. The Policy provides these coverages "except as hereafter excluded," but contains no exclusion for viruses. A suspension of operations or prohibition of access by a civil authority as a result of loss or damage from the coronavirus (as defined below) therefore triggers coverage under the Policy.
- 3. COVID-19 is a deadly disease caused by the recently discovered coronavirus known as SARS-CoV-2 ("SARS-CoV-2" or the "coronavirus"). The SARS-CoV-2 virus was

identified in China in late 2019 or January 2020, and since January 2020, the SARS-CoV-2 virus has spread across the globe. On March 11, 2020, the Director General of the World Health Organization declared the COVID-19 outbreak to constitute a worldwide pandemic, noting "alarming levels of spread and severity[.]" Thus far, more than 100 million people have contracted COVID-19, and more than 2.2 million people have perished from the disease.

- 4. In connection with the deadly spread of COVID-19 and as a result of the shutdowns and restrictions on restaurant operations due to the ongoing coronavirus pandemic, UJB has suffered significant losses and incurred substantial expenses. Both Uncle Julio's and Bartaco restaurants were forced to interrupt their operations, several of which closed and never re-opened. While some have since conducted a limited take-out and delivery service, at a fraction of UJB's historical revenues, none has returned to its pre-pandemic level of operations. The coronavirus also caused severe delays in the planned re-openings of some locations and several grand openings of new locations. Uncle Julio's and Bartaco restaurants also had to incur expenses to repair their properties, including but not limited to cleaning and remediation of the coronavirus or COVID-19 at all of their premises, and to modify their operations in an effort to restore business to the extent possible, in a limited capacity, under the circumstances of the pandemic and related civil authority orders.
- 5. Shortly after the pandemic and related orders interrupted the restaurants' operations, UJB timely submitted an insurance claim to CNA. When presented with this claim, however, CNA denied coverage without investigation, denying, *inter alia*, the existence of any direct physical loss of or damage to property at any of the covered locations.

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<sup>&</sup>lt;sup>1</sup> WHO Director-General's opening remarks at the media briefing on COVID-19 - 11 March 2020, World Health Organization, https://www.who.int/director-general/speeches/detail/who-director-general-sopening-remarks-at-the-media-briefing-on-covid-19---11-march-2020 (last visited Feb. 16, 2021).

#### **PARTIES**

- 6. Julio & Sons Company is a corporation organized and existing under the laws of Delaware with its principal place of business in Irving, Texas. Julio & Sons Company is a named insured under the Policy and the parent company of Uncle Julio's Corporation and the other entities listed below that operate "Uncle Julio's" and related brand restaurants.
- 7. Barteca Restaurants, LLC is a limited liability company organized and existing under the laws of Delaware with its principal place of business in Arlington, Virginia. Prior to relocating its headquarters in or about July 2020, Barteca Restaurants, LLC's principal place of business was in Irving, Texas. Barteca Restaurants, LLC is a named insured under the Policy and the parent company of the entities listed below that operate "bartaco" brand restaurants.
- 8. Uncle Julio's Annapolis Concessions, LLC is a limited liability company organized and existing under the laws of Maryland with its principal place of business in Annapolis, Maryland. Uncle Julio's Annapolis Concessions, LLC, a named insured under the Policy, operates a restaurant business in Annapolis, Maryland.
- 9. Uncle Julio's Columbia Concessions, LLC is a limited liability company organized and existing under the laws of Maryland with its principal place of business in Columbia, Maryland. Uncle Julio's Columbia Concessions, LLC, a named insured under the Policy, operates a restaurant business in Columbia, Maryland.
- 10. Uncle Julio's Corporation is a corporation organized and existing under the laws of Texas with its principal place of business in Irving, Texas. Uncle Julio's Corporation, a named insured under the Policy, operates Uncle Julio's catering business in Texas, Illinois, Maryland, and Virginia.
- 11. Uncle Julio's of Florida, Inc. is a corporation organized and existing under the laws of Florida with its principal place of business in Irving, Texas. Uncle Julio's of Florida, Inc., a

named insured under the Policy, operates restaurant businesses in several locations including Orlando, Florida; Bridgewater, New Jersey; Durham and Raleigh, North Carolina; Oklahoma City, Oklahoma; and Brookfield, Wisconsin.

- 12. Uncle Julio's of Georgia, Inc. is a corporation organized and existing under the laws of Georgia with its principal place of business in Irving, Texas. Uncle Julio's of Georgia, Inc., a named insured under the Policy, operates restaurant businesses in Atlanta and Sandy Springs, Georgia.
- 13. Uncle Julio's of Illinois, Inc. is a corporation organized and existing under the laws of Illinois with its principal place of business in Irving, Texas. Uncle Julio's of Illinois, Inc., a named insured under the Policy, operates restaurant businesses in Chicago, Kildeer, Lombard, Naperville, Orland Park, Schaumburg, Skokie, and Vernon Hills, Illinois.
- 14. Uncle Julio's of Reston, Inc. is a corporation organized and existing under the laws of Virginia with its principal place of business in Irving, Texas. Uncle Julio's of Reston, Inc., a named insured under the Policy, operates restaurant businesses in Ashburn, Fairfax, Gainesville, and Reston, Virginia.
- 15. Uncle Julio's of Texas, Inc. is a corporation organized and existing under the laws of Texas with its principal place of business in Irving, Texas. Uncle Julio's of Texas, Inc., a named insured under the Policy, operates restaurant businesses in several locations including Fort Worth, Dallas, Austin, Arlington, Katy, and Spring, Texas.
- 16. Uncle Julio's Rio Grande Cafe, Inc. is a corporation organized and existing under the laws of Virginia with its principal place of business in Irving, Texas. Uncle Julio's Rio Grande Cafe, Inc., a named insured under the Policy, operates restaurant businesses in Bethesda and Gaithersburg, Maryland; and in Arlington, Fairfax, and Woodbridge, Virginia.

- 17. Uncle Julio's of Tennessee, Inc. is a corporation organized and existing under the laws of Tennessee with its principal place of business in Irving, Texas. Uncle Julio's of Tennessee, Inc., a named insured under the Policy, operates a restaurant business in Brentwood, Tennessee.
- 18. Conroe Foods, Inc. is a corporation organized and existing under the laws of Texas with its principal place of business in Irving, Texas. Conroe Foods, Inc., a named insured under the Policy, operates restaurant businesses in Allen, Fort Worth, and Grapevine, Texas.
- 19. Hacienda II Partners, LLLP is a limited liability limited partnership organized and existing under the laws of Colorado with its principal place of business in Irving, Texas. Hacienda II Partners, LLLP, a named insured under the Policy, operates restaurant businesses in Colorado Springs, Englewood, and Westminster, Colorado.
- 20. Southwest Restaurant Partners, LLLP is a limited liability limited partnership organized and existing under the laws of Colorado with its principal place of business in Irving, Texas. Southwest Restaurant Partners, LLLP, a named insured under the Policy, operates a restaurant business in Lakewood, Colorado.
- 21. The Mexican Restaurant, Inc. is a corporation organized and existing under the laws of Maryland with its principal place of business in Irving, Texas. The Mexican Restaurant, Inc., a named insured under the Policy, operates restaurant businesses in several locations including Bethesda and Gaithersburg, Maryland.
- 22. 15-16 LLC is a limited liability company organized and existing under the laws of Colorado with its principal place of business in Irving, Texas. 15-16 LLC, a named insured under the Policy, operates a restaurant business in Wheat Ridge, Colorado.
- 23. 2004 Restaurant, LLC is a limited liability company organized and existing under the laws of Colorado with its principal place of business in Irving, Texas. 2004 Restaurant, LLC,

a named insured under the Policy, operates a restaurant business in Denver, Colorado.

- 24. 2016 Restaurant, LLC is a limited liability company organized and existing under the laws of Colorado with its principal place of business in Irving, Texas. 2016 Restaurant, LLC, a named insured under the Policy, operates a restaurant business in Denver, Colorado.
- 25. 971 Farmington, LLC is a limited liability company organized and existing under the laws of Connecticut with its principal place of business in West Hartford, Connecticut. 971 Farmington, LLC, a named insured under the Policy, operates a restaurant business in West Hartford, Connecticut.
- 26. Bar Taco Port Chester, LLC is a limited liability company organized and existing under the laws of New York with its principal place of business in Port Chester, New York. Bar Taco Port Chester, LLC, a named insured under the Policy, operates a restaurant business in Port Chester, New York.
- 27. Bar Taco Stamford, LLC is a limited liability company organized and existing under the laws of Connecticut with its principal place of business in Stamford, Connecticut. Bar Taco Stamford, LLC, a named insured under the Policy, operates a restaurant business in Stamford, Connecticut.
- 28. Bartaco 12 South, LLC is a limited liability company organized and existing under the laws of Delaware, and also qualified in Tennessee, with its principal place of business in Nashville, Tennessee. Bar Taco 12 South, LLC, a named insured under the Policy, operates a restaurant business in Nashville, Tennessee.
- 29. Bartaco Aventura, LLC is a limited liability company organized and existing under the laws of Delaware, and also qualified in Florida, with its principal place of business in Aventura, Florida. Bar Taco Aventura, LLC, a named insured under the Policy, operates a restaurant business

in Aventura, Florida.

- 30. Bartaco Ballston, LLC is a limited liability company organized and existing under the laws of Delaware, and also qualified in Virginia, with its principal place of business in Arlington, Virginia. Bar Taco Ballston, LLC, a named insured under the Policy, operates a restaurant business in Arlington, Virginia.
- 31. Bartaco Chapel Hill, LLC is a limited liability company organized and existing under the laws of Delaware, and also qualified in North Carolina, with its principal place of business in Chapel Hill, North Carolina. Bar Taco Chapel Hill, LLC, a named insured under the Policy, operates a restaurant business in Chapel Hill, North Carolina.
- 32. Bartaco Cloud Kitchen, LLC is a limited liability company organized and existing under the laws of Delaware, and also qualified in Georgia, with its principal place of business in Irving, Texas. Bartaco Cloud Kitchen, LLC, a named insured under the Policy, operates a restaurant business in Atlanta, Georgia.
- 33. Bartaco Deerfield, LLC is a limited liability company organized and existing under the laws of Delaware, and also qualified in Illinois, with its principal place of business in Deerfield, Illinois. Bar Taco Deerfield, LLC, a named insured under the Policy, during the policy period operated a restaurant business in Deerfield, Illinois.
- 34. Bartaco Dr. Phillips, LLC is a limited liability company organized and existing under the laws of Delaware, and also qualified in Florida, with its principal place of business in Orlando, Florida. Bar Taco Dr. Phillips, LLC, a named insured under the Policy, operates a restaurant business in Orlando, Florida.
- 35. Bartaco Fort Point, LLC is a limited liability company organized and existing under the laws of Delaware, and also qualified in Massachusetts, with its principal place of business in

Boston, Massachusetts. Bar Taco Fort Point, LLC, a named insured under the Policy, operates a restaurant business in Boston, Massachusetts.

- 36. Bartaco Hilldale, LLC is a limited liability company organized and existing under the laws of Delaware, and also qualified in Wisconsin, with its principal place of business in Madison, Wisconsin. Bar Taco Hilldale, LLC, a named insured under the Policy, operates a restaurant business in Madison, Wisconsin.
- 37. Bartaco Hyde Park, LLC is a limited liability company organized and existing under the laws of Delaware, and also qualified in Florida, with its principal place of business in Tampa, Florida. Bar Taco Hyde Park, LLC, a named insured under the Policy, operates a restaurant business in Tampa, Florida.
- 38. Bartaco Inman Park, LLC is a limited liability company organized and existing under the laws of Delaware, and also qualified in Georgia, with its principal place of business in Atlanta, Georgia. Bar Taco Inman Park, LLC, a named insured under the Policy, operates a restaurant business in Atlanta, Georgia.
- 39. Bartaco KOP, LLC is a limited liability company organized and existing under the laws of Delaware, and also qualified in Pennsylvania, with its principal place of business in King of Prussia, Pennsylvania. Bar Taco KOP, LLC, a named insured under the Policy, operates a restaurant business in King of Prussia, Pennsylvania.
- 40. Bartaco Marietta, LLC is a limited liability company organized and existing under the laws of Delaware, and also qualified in Georgia, with its principal place of business in Atlanta, Georgia. Bar Taco Marietta, LLC, a named insured under the Policy, operates a restaurant business in Atlanta, Georgia.
  - 41. Bartaco Mosaic, LLC is a limited liability company organized and existing under

the laws of Delaware, and also qualified in Virginia, with its principal place of business in Fairfax, Virginia. Bar Taco Mosaic, LLC, a named insured under the Policy, operates a restaurant business in Fairfax, Virginia.

- 42. Bartaco North Hills, LLC is a limited liability company organized and existing under the laws of Delaware, and also qualified in North Carolina, with its principal place of business in Raleigh, North Carolina. Bar Taco North Hills, LLC, a named insured under the Policy, operates a restaurant business in Raleigh, North Carolina.
- 43. Bartaco Pearl West, LLC is a limited liability company organized and existing under the laws of Delaware, and also qualified in Colorado, with its principal place of business in Boulder, Colorado. Bar Taco Pearl West, LLC, a named insured under the Policy, operates a restaurant business in Boulder, Colorado.
- 44. Bartaco Reston, LLC is a limited liability company organized and existing under the laws of Delaware, and also qualified in Virginia, with its principal place of business in Reston, Virginia. Bar Taco Reston, LLC, a named insured under the Policy, operates a restaurant business in Reston, Virginia.
- 45. Bartaco Roswell, LLC is a limited liability company organized and existing under the laws of Delaware, and also qualified in Georgia, with its principal place of business in Atlanta, Georgia. Bar Taco Roswell, LLC, a named insured under the Policy, operates a restaurant business in Atlanta, Georgia.
- 46. Bartaco Tejon, LLC is a limited liability company organized and existing under the laws of Delaware, and also qualified in Colorado, with its principal place of business in Denver, Colorado. Bar Taco Tejon, LLC, a named insured under the Policy, operates a restaurant business in Denver, Colorado.

- 47. Bartaco Washington DC, LLC is a limited liability company organized and existing under the laws of Delaware, and also qualified in the District of Columbia, with its principal place of business in Washington, DC. Bar Taco Washington DC, LLC, a named insured under the Policy, operates a restaurant business in Washington, DC.
- 48. Bartaco Westport, LLC is a limited liability company organized and existing under the laws of Delaware, and also qualified in Connecticut, with its principal place of business in Westport, Connecticut. Bar Taco Westport, LLC, a named insured under the Policy, operates a restaurant business in Westport, Connecticut.
- 49. Bartaco Wynwood, LLC is a limited liability company organized and existing under the laws of Delaware, and also qualified in Florida, with its principal place of business in Miami, Florida. Bartaco Wynwood, LLC, a named insured under the Policy, operates a restaurant business in Miami, Florida.
- 50. Together, Plaintiffs currently own and operate more than 37 Uncle Julio's restaurants and 20 Bartaco restaurants in 16 states, including 10 restaurants in Texas. A tenth Texas restaurant has permanently closed since the beginning of the pandemic, and some of Plaintiffs' other restaurants have closed or their planned openings have been delayed or canceled due to the coronavirus pandemic. Plaintiffs each have suffered covered losses as a result of the events described herein.
- 51. Upon information and belief, Defendant CNA is incorporated in Illinois with its principal place of business in Chicago, Illinois. CNA is a carrier eligible to engage in business in Texas. Pursuant to Texas Insurance Code § 804.103, service may be made on its registered agent, CT Corporation System, 1999 Bryan Street, Suite 900, Dallas, Texas 75201.

#### DISCOVERY CONTROL PLAN

52. The discovery in this case is intended to be conducted under Level 3 pursuant to

## **JURISDICTION AND VENUE**

- 53. At all times relevant to the allegations contained herein, CNA was an insurance company licensed to do business in the State of Texas that sold property insurance to numerous policyholders, including UJB, in Texas. This Court has personal jurisdiction over CNA because, within the time period relevant herein, CNA has been licensed to transact insurance business in Texas, has in fact transacted business in Texas, has maintained a substantial presence in Texas, and/or has insured substantial properties and risks located in Texas.
- 54. Jurisdiction is proper in the District Court of Dallas County, Texas because the amount in controversy is within the jurisdictional limits of this court and because this is a civil case with an amount in controversy greater than \$500, exclusive of interest. Tex. Gov't Code \$24.007(b).
- 55. Venue is proper in Dallas County pursuant to Texas Civil Practice and Remedies § 15.002 because a substantial part of the events or omissions giving rise to the claims asserted in this action occurred in Dallas County and pursuant to § 15.032 because insured property is located in Dallas County.
  - 56. UJB seeks monetary relief in excess of \$1,000,000.

#### **FACTUAL ALLEGATIONS**

- I. Uncle Julio's and Bartaco Were Successful Restaurant Chains Before the Pandemic.
- 57. Uncle Julio's is a national restaurant chain that has operated in Texas for more than 30 years, featuring "Mexican from scratch" offerings with an emphasis on fresh ingredients and handcrafted recipes. In March 2020, there were 44 operating Uncle Julio's restaurants in 12 states, including 10 locations in Texas (in the cities of Allen, Alliance, Arlington, Austin, Dallas, Fort Worth, Grapevine, Katy, Keller Springs, and Spring); eight in Illinois; seven in Colorado; six in

Virginia; four in Maryland; two in Georgia; two in North Carolina; and single locations in Florida, Oklahoma, Tennessee, Wisconsin, and New Jersey. At that time, Uncle Julio's was planning to open six new restaurants in 2020 or 2021, including two additional locations in Texas (in Lubbock and Frisco); and single locations in Missouri, Michigan, Florida, and Oklahoma.

- 58. Bartaco was founded in 2010 as an upscale, fast casual bar and restaurant featuring a high-end, casual yet sophisticated menu, freshly-squeezed juices, and craft cocktails. By March 2020, Bartaco had grown to 21 restaurants operating in 13 states, including one location in Texas (in Fort Worth); three in Connecticut; three in Georgia; three in Florida; two in Virginia; two in North Carolina; and single locations in Colorado, New York, Massachusetts, Pennsylvania, Tennessee, Wisconsin, and Illinois. When the pandemic struck, Bartaco was planning to open four new Bartaco restaurants in 2020 in Virginia, Colorado, Florida, and the District of Columbia.
- 59. The restaurant operations of the Uncle Julio's and Bartaco businesses depend upon in-house dining, with customers entering and remaining on restaurant premises to eat, drink, and socialize. In 2019 and until the pandemic in early 2020, both restaurant chains were expanding, with gross earnings for 2019 exceeding \$335 million and new openings planned in multiple cities around the country.
- 60. Beginning in March 2020, however, Uncle Julio's and Bartaco were financially devastated by the COVID-19 pandemic. UJB was forced to shut down Uncle Julio's and Bartaco properties, necessarily interrupting business operations as a result of the actual or unavoidable suspected presence of the coronavirus at Uncle Julio's and Bartaco restaurants, as well as due to numerous governmental orders issued by civil authorities in the various locations in which Uncle Julio's and Bartaco operate.
  - 61. As set forth below, the coronavirus has caused massive direct physical loss of and

damage to UJB's covered property, requiring UJB to incur significant extra expenses to remediate such damage and resulting in tens of millions of dollars in business interruption losses. These losses are also due to civil authority orders resulting from similar loss or damage to property in the immediate vicinity of UJB's premises and prohibiting access to Uncle Julio's and Bartaco restaurants' services.

# II. UJB Purchased Insurance To Protect Its Restaurant Businesses Against Catastrophes.

- 62. In or about October 2019, Plaintiffs, through their mutual parent at the time, UJ Barteca Parent, LLC, purchased commercial property insurance from CNA to protect their restaurant businesses against various risks, including the risk of lost income and extra expenses.
- 63. CNA issued the Policy, No. 6073187285, with a policy period of October 30, 2019 to October 30, 2020. Excerpts from the Policy are quoted below. The complete terms of the Policy are found in the copy attached to and made part of this Petition at **Exhibit A**.
  - 64. UJ Barteca Parent, LLC fully paid the premium for the Policy.
- 65. Thereafter, UJ Barteca Parent, LLC was dissolved, and CNA issued endorsements to the Policy identifying Julio & Sons Company, Uncle Julio's Corporation, Barteca Restaurants, LLC, and their parents and subsidiaries or affiliated organizations, including each of the Plaintiffs in this action, as named insureds under the Policy.

# A. The Policy Covers Risks of Physical Loss of or Damage to Property and Related Business Interruption Losses and Expenses.

- 66. The Policy provides both property and "time element" coverages, including business interruption, civil authority, ingress/egress, loss reduction expense, and extra expense coverage, among other coverage provisions.
- 67. The Policy provides a blanket limit of liability of \$50,000,000 per occurrence, without any sublimit for "time element" or business interruption losses or expenses, and further

extends coverage up to \$5,000,000 per occurrence for losses when access to UJB's properties is prohibited by order of civil authority.

68. The Policy insures against all "risks of direct physical loss of or damage to property and/or interests described herein," except as expressly excluded by the Policy. The Policy contains no exclusions or limitations for losses caused by viruses.

## 1) Time Element Business Interruption Coverage

- 69. The Policy provides "Time Element" coverage for "Business Interruption (Gross Earnings)," which means "loss resulting from necessary interruption of business caused by direct physical loss of or damage to covered property . . . by the peril(s) insured against and occurring during the term of this policy . . . ."
- 70. The "Business Interruption" component of Time Element coverage insures up to \$50,000,000 per occurrence against loss of Gross Earnings during the Period of Indemnity (up to 12 months) plus an Extended Period of Indemnity (up to 180 days), as set forth more fully in Section II.B and the Declarations of the Policy. The Policy expressly provides that these periods are not limited by the expiration date of the Policy.

#### 2) Civil Authority and Ingress-Egress Coverage

- 71. The Policy provides an additional "Civil Authority" coverage extension insuring against actual loss sustained when "access to the Insured's Location is prohibited by order of civil authority," if the order is "given as a direct result of physical loss or damage to property of the type insured from a peril insured against occurring in the immediate vicinity of said Location."
- 72. The Policy further extends coverage for "Ingress-Egress" losses "during the period of time when as a direct result of physical loss or damage to property of the type insured from a peril insured against, ingress to or egress from the Insured's Location is thereby physically prevented."

### 3) Coverage for Expenses

- 73. The Policy provides an additional coverage extension insuring "Expenses Related to Reducing Loss," which includes "such expenses as are necessarily incurred for the purpose of reducing a Time Element loss . . . ."
- 74. The Policy provides an additional coverage extension insuring "Extra Expense," which includes the Insured's "reasonable and necessary" extra expenses incurred "in order to continue as nearly as practicable the normal operation of the Insured's business following direct physical loss of or damage to covered property . . . ." Such extra expenses are covered for "such length of time as would be required with the exercise of due diligence and dispatch to rebuild, repair or replace such part of the property as has been damaged, commencing with the date of damage and not limited by the date of expiration of this policy," up to the Policy's stated sublimit of \$5 million per occurrence.
- 75. The Policy provides an additional coverage extension insuring "Loss Adjustment Expense," which includes the Insured's "reasonable expenses incurred . . . in preparing claim data" and "other documentation to show the extent of the loss."

#### B. The Policy Does Not Exclude Coronavirus-Related Losses.

- 76. Losses caused by virus are not excluded by the Policy. No exclusion in the Policy contains the word "virus," nor does that term appear anywhere else in the Policy.
- 77. When CNA sold the Policy to UJB, CNA had issued comparable policies covering property damage and business interruption losses to other insureds containing either a specific virus exclusion for losses caused by "virus" or expressly including the term "virus" within other exclusions. No such exclusion appears within the Policy.
- 78. CNA knew that the Policy provided coverage for and did not exclude losses caused by viruses. Indeed, a large majority of insurance policies issued in the United States that cover

business income losses contain an exclusion for losses caused by "virus." According to a June 2020 report by the National Association of Insurance Commissioners, 83 percent of insurance policies covering business income losses contain a "virus" exclusion. The Policy does not.

- 79. In February 2019, several months before CNA sold the Policy to UJB, CNA's parent company warned its investors about the potential for "material losses" to CNA and its affiliates from "pandemics" in its 2018 Form 10-K annual report filed with the U.S. Securities and Exchange Commission. CNA told its investors that such losses are "an inevitable part of [CNA's] business."
- 80. The Policy contains a "contaminants or pollutants" exclusion, but that exclusion is limited to "contaminants or pollutants" expressly defined to mean "[a]ny solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to: smoke and soot (other than smoke and soot emanating from a fire involving property insured under this policy), vapor, fumes, acids, alkalis, chemicals, vaccines and waste and any other substances which pose a hazard to human health or the environment. Waste includes materials to be recycled, reconditioned or reclaimed." This definition of "contaminants or pollutants" refers to chemical and other industrial materials or wastes and does not include the word "virus."
- 81. Although it did not do so here, CNA has issued to other policyholders commercial property insurance policies that contain a "contaminants or pollutants" exclusion and expressly *include* the word "virus" in the definition of "contaminants or pollutants."
- 82. The Policy's "contaminants or pollutants" exclusion does not apply to viruses generally or to UJB's losses specifically.

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<sup>&</sup>lt;sup>2</sup> CNA Financial Corporation, 2018 Annual Report (Form 10-K) (Feb. 13, 2019), https://www.annualreports.com/HostedData/AnnualReportArchive/c/NYSE CNA 2018.pdf.

- 83. To the extent the language of the exclusion is susceptible to any disagreement, the term "contaminants or pollutants" as used in the policy is ambiguous and must be construed in favor of coverage, to not encompass viruses.
- 84. The Policy contains a "fungi, wet rot, dry rot and microbes" exclusion, and defines "microbe" as "any non-fungal microorganism or non-fungal, colony-form organism that causes infection or disease." The Policy's definition of "microbe" does not contain the word "virus."
- 85. Although it did not do so here, CNA has issued to other policyholders commercial property insurance policies that contain microbe exclusions or other provisions and expressly include "virus" within the scope of the exclusion.
- 86. There is general consensus in the scientific community that a virus is not a microorganism or an organism because, unlike microorganisms and other organisms, which are living, viruses are not alive.<sup>3</sup> Unlike microorganisms and other organisms, viruses "cannot capture and store free energy," nor are they "functionally active outside their host cells." Unlike microorganisms and other organisms, viruses do not respond to changes in the environment, cannot reproduce on their own, and have no capacity to reproduce without first taking over the cells of a

can't carry out on their own any of the functions that we consider to be connected with life.").

<sup>&</sup>lt;sup>3</sup> See Marc van Regenmortel & Brian Mahy, Emerging Issues in Virus Taxonomy, Emerging Infectious Diseases J. (Jan. 2004) Vol. 10, No. 1, <a href="https://wwwnc.cdc.gov/eid/article/10/1/03-0279">https://wwwnc.cdc.gov/eid/article/10/1/03-0279</a> ("Although they are pathogens, viruses should not be considered pathogenic microorganisms since they are not alive."); Centre for Geobiology, University of Bergan, "What are microorganisms?" (Nov. 2010) <a href="https://www.uib.no/en/geobio/56846/what-are-microorganisms">https://www.uib.no/en/geobio/56846/what-are-microorganisms</a> ("Technically a microorganism or microbe is an organism that is microscopic . . . . The term microorganisms does not include viruses and prions, which are generally classified as non-living"); McNeil, Taylor, What Are Viruses and How Do They Work? (Apr. 3, 2020), <a href="https://now.tufts.edu/articles/what-are-viruses-and-how-do-they-work">https://now.tufts.edu/articles/what-are-viruses-and-how-do-they-work</a> ("The novel coronavirus . . . like other viruses, is inert, not even alive . . . . They're not really living organisms—they

<sup>&</sup>lt;sup>4</sup> Marc van Regenmortel & Brian Mahy, *Emerging Issues in Virus Taxonomy*, Emerging Infectious Diseases J. (Jan. 2004) Vol. 10, No. 1, https://wwwnc.cdc.gov/eid/article/10/1/03-0279.

host organism.<sup>5</sup>

- 87. The Policy's "microbe" definition does not apply to viruses generally or to the coronavirus, which is not a microorganism or an organism. The "fungi, wet rot, dry rot and microbe" exclusion therefore does not apply to UJB's losses.
- 88. To the extent the language of the exclusion is susceptible to any disagreement, the term "microbe" as used in the policy is ambiguous and must be construed in favor of coverage and not to encompass viruses.
  - 89. No other Policy exclusions apply to UJB's losses.

# III. The Coronavirus and the COVID-19 Pandemic Cause Direct Physical Loss of and Damage to Property.

90. From March 2020 through the present, as a direct result of the COVID-19 pandemic and related government orders, UJB has suffered, and continues to suffer, physical loss of and damage to its covered property and severe "time element" losses and other covered losses and expenses due to necessary business interruptions of, and the prohibition of access to, its numerous Uncle Julio's and Bartaco restaurants and other property.

## A. The Virus Physically Alters Property.

- 91. COVID-19 is a dangerous and highly contagious disease caused by human exposure to the SARS-CoV-2 coronavirus. The coronavirus can be transmitted in several ways, including via direct human-to-human contact and by inhaling airborne viral particles in ambient air or touching surfaces or objects on which viral particles are present.
- 92. The coronavirus spreads easily and lingers both in the air and on surfaces and objects. Transmission from person to ambient air and from person to surface or object occurs

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<sup>&</sup>lt;sup>5</sup> Centre for Geobiology, University of Bergan, "What are microorganisms?" (Nov. 2010) https://www.uib.no/en/geobio/56846/what-are-microorganisms.

primarily through small, physical droplets expelled from the nose or mouth when an infected person breathes, speaks, laughs, coughs, or sneezes. According to published research, a person who sneezes can release a cloud of small, pathogen-bearing droplets that can travel as far as 23 to 27 feet. Such respiratory droplets or droplet nuclei containing the coronavirus physically persist in the ambient air and adhere to objects and surfaces. Though invisible to the naked human eye, such pathogen-bearing droplets have physical mass and dimensions measurable in micrometers ( $\mu$ m), ranging from smaller droplets (less than 5  $\mu$ m) that typically remain airborne longer to larger droplets (5–10  $\mu$ m) that land on and attach to surfaces and other objects.

- 93. COVID-19 contagion can occur in several ways, including when an uninfected person breathes air containing coronavirus-bearing droplets or through so-called "fomite transmission," when a person touches surfaces or objects on which such droplets are present and then touches their eyes, nose, or mouth. After touching such a surface or object, a person may further transmit the coronavirus by touching a second surface and depositing coronavirus-bearing droplets there.
- 94. Many coronavirus particles remain airborne for a period of time sufficient to travel a considerable distance, filling indoor and outdoor spaces and lingering in, attaching to, and spreading through heating, ventilation, and air conditioning (HVAC) systems. One study examined a COVID-19 cluster of people who had eaten at the same restaurant and concluded that the most likely cause of the outbreak was droplet transmission by the restaurant's HVAC system.<sup>6</sup> Another study examined a hospital's HVAC system and found coronavirus particles throughout the system, including in ceiling vent openings, vent exhaust filters, and central ducts that were located more

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<sup>&</sup>lt;sup>6</sup> See Lu J, Gu J, Li K, et al., COVID-19 Outbreak Associated with Air Conditioning in Restaurant, Guangzhou, China, 2020. 26 Emerging Infectious Diseases J. 7 at 1628-1631 (July 2020), https://wwwnc.cdc.gov/eid/article/26/7/20-0764 article, (last visited Feb. 16, 2021).

than 50 meters from infected patients' rooms.<sup>7</sup> The Environmental Protection Agency ("EPA") has compiled several studies reflecting epidemiological evidence indicative of coronavirus transmission through aerosols.<sup>8</sup>

95. On surfaces, the coronavirus can remain present and dangerous for hours, days, or even weeks under some circumstances. When the coronavirus attaches or binds to surfaces and objects, it converts the surfaces and objects to active fomites. One study found that the coronavirus remains active and dangerous on room-temperature stainless steel, glass, and money after 28 days. Indirect transmission via objects such as elevator buttons and restroom faucets in a shopping mall has been identified as an important possible cause of a "rapid spread" of the coronavirus.

96. Most people who transmit the coronavirus are unaware they are doing so. The "pre-symptomatic" incubation period for COVID-19—*i.e.*, the time between exposure to the coronavirus and symptom onset—can be up to 21 days. Pre-symptomatic individuals frequently have high viral loads, making them highly contagious, but they often do not know they are infected. In addition, some individuals never become symptomatic ("asymptomatic" carriers), and may never know they were infected. The U.S. Centers for Disease Control and Prevention ("CDC") and others have suggested that asymptomatic carriers make up about 40 to 70 percent of those

<sup>&</sup>lt;sup>7</sup> See Nissen et al., Long-Distance Airborne Dispersal of SARS-CoV-2 in COVID-19 Wards, at 7 (Oct. 20, 2020 version) (preprint), <a href="https://www.researchsquare.com/article/rs-34643/v2">https://www.researchsquare.com/article/rs-34643/v2</a> (last visited Feb. 16, 2021).

<sup>&</sup>lt;sup>8</sup> See U.S. Environmental Protection Agency, *Indoor Air and COVID-19 Key References and Publications*, <a href="https://www.epa.gov/coronavirus/indoor-air-and-covid-19-key-references-and-publications">https://www.epa.gov/coronavirus/indoor-air-and-covid-19-key-references-and-publications</a> (last visited Feb. 16, 2021).

<sup>&</sup>lt;sup>9</sup> See Riddell et al., The Effect of Temperature on Persistence of SARS-CoV-2 on Common Surfaces, 17 Virology J. 145, at 3 (Oct. 7, 2020), <a href="https://virologyj.biomedcentral.com/articles/10.1186/s12985-020-01418-7">https://virologyj.biomedcentral.com/articles/10.1186/s12985-020-01418-7</a>.

<sup>&</sup>lt;sup>10</sup> Cai et al., *Indirect Virus Transmission in Cluster of COVID-19 Cases, Wenzhou, China, 2020*, 26 Emerging Infectious Diseases 1343, 1345 (June 2020), <a href="https://wwwnc.cdc.gov/eid/article/26/6/20-0412">https://wwwnc.cdc.gov/eid/article/26/6/20-0412</a> article.

infected, and that most transmission is attributable to people who are not exhibiting symptoms, either because their infections are asymptomatic or they are still in the pre-symptomatic stage.

# B. Plaintiffs Have Suffered Direct Physical Loss of and Damage to Property Because of the Coronavirus and COVID-19.

- 97. The coronavirus and the fomites, droplets, and droplet nuclei carrying it are dangerous physical substances that have a material, tangible existence. In landing and settling on a surface or object, respiratory droplets containing the coronavirus physically change the property by adsorbing to or otherwise becoming a part of its surface. The viral particles themselves can adsorb to fomite surfaces, *i.e.*, they interact at a molecular level to form a chemical bond with the surface. The bond persists until broken through intervening forces, requiring either remediation or disposal and replacement of the property. This physical alteration makes those previously safe, inert surfaces (*e.g.*, handrails, doorknobs, bathroom fixtures, tables, plates, and silverware) unsafe.
- 98. When an infected person breathes, speaks, coughs, or sneezes, thousands of droplets carrying the coronavirus physically permeate the surrounding air. Air is a physical substance made up oxygen, nitrogen, and other gases. The introduction of expelled droplets and aerosolized droplet nuclei containing the virus alters the physical composition of the air in and around buildings.
- 99. The exposure of humans to fomites, respiratory droplets, or aerosolized droplet nuclei containing the coronavirus is particularly acute in locations—such as restaurants—where members of the public normally gather to socialize, eat, drink, shop, be entertained, and go for recreation. While measures to keep infected persons home and out of restaurants and public spaces have been recommended to prevent further spread, complete containment is not possible. Since a high percentage of infected people are pre-symptomatic or asymptomatic, even frequent cleanings cannot be assumed to have eliminated the coronavirus from a premises, given the coronavirus's

ability to spread whenever anyone carrying the virus enters the premises.

- 100. The coronavirus causes direct physical loss and damage by, among other things, physically permeating the air and attaching to, binding to, corrupting, distorting, and altering air, surfaces, objects, and other property within the insured premises.
- 101. Where the virus is physically present in air and on surfaces, it causes physical loss of and damage to that property and creates a significant risk to the health of anyone entering the premises. The presence of cases of COVID-19 and the coronavirus at a property thus transforms the property from one that is satisfactory, safe, and fit for its intended function and use into one that is unsatisfactory, uninhabitable, dangerous, and unfit for its intended function and use.
- 102. In addition, the presence of the coronavirus on or near a property creates a substantial risk and/or an imminent threat of further loss of and damage to that property or to nearby property. Individuals who come into contact with coronavirus-containing droplets or particles on fomite surfaces such as a doorknob or handrail at one location will carry those physical substances on their hands and deposit them elsewhere, rendering additional areas, surfaces, and objects at or near a property unsatisfactory, uninhabitable, unfit for their intended function and use, and dangerous and potentially deadly.
- 103. The aforementioned characteristics and impacts of the coronavirus and COVID-19 have caused direct physical loss of and damage to property at Plaintiffs Uncle Julio's and Bartaco restaurants and other covered property, resulting in necessary interruption of UJB's business, lost income, extra expenses, and other covered losses under the Policy.
- IV. COVID-19 Outbreaks Caused Physical Loss and Damage and Resulted in Government Orders to Close Non-Essential Businesses, Including Restaurants, and to Require Patrons to "Stay at Home."
- 104. Beginning in March 2020, Uncle Julio's and Bartaco suffered severe business interruption due to necessary suspension of operations, extra expenses incurred to remediate their

properties, and other financial losses covered by the Policy.

- 105. By March 15, 2020, every state in which Uncle Julio's or Bartaco operated one or more restaurants had suffered a known outbreak of COVID-19. For example, by March 17, 2020, Uncle Julio's' home state of Texas had at least 106 confirmed COVID-19 cases; by March 23, 2020, that number had increased to 728.
- 106. As a result of the rapid spread of COVID-19 and its presence in the United States, states and localities across the country began issuing States of Emergency, Public Health Emergencies, and Disaster Emergencies. By March 15, 2020, emergencies had been declared in all 16 states with Uncle Julio's or Bartaco restaurants. As set forth more fully below, orders followed shortly thereafter directing businesses to suspend operations and instructing residents to stay home.
- 107. Executive orders in all 16 states in which Uncle Julio's or Bartaco restaurants are located and the District of Columbia, as well as loss and damage caused by the coronavirus and COVID-19 at UJB properties, have caused UJB to implement necessary interruptions of its restaurants' operations and, in some cases, to suspend opening plans or permanently close, resulting in lost income and extra expenses associated with the coronavirus's physical impact.
- 108. For the period of time from the first known outbreaks of COVID-19 affecting UJB's restaurants and continuing through the date of this Petition, the physical loss of and damage to UJB's covered property caused by the coronavirus and the governmental orders prohibiting access to indoor dining have impaired and interrupted the operations of every Uncle Julio's and Bartaco restaurant. Each restaurant has lost substantial amounts, and UJB has lost tens of millions of dollars as a result. Additional losses are continuing to be incurred by those restaurants and UJB.

# A. The Coronavirus and COVID-19 Caused Direct Physical Loss of or Damage to UJB Properties.

- 109. Beginning in March 2020, employees who had been present on the premises of multiple Uncle Julio's and Bartaco locations tested positive for COVID-19.
- 110. Approximately 110 Uncle Julio's employees in Texas were quarantined after reporting that they were infected with COVID-19 or had been exposed to COVID-19 after close contact with another infected person. Outside of Texas, there were approximately 200 instances of Uncle Julio's employees being quarantined after making similar reports.
- 111. Uncle Julio's locations and Bartaco locations were repeatedly closed for cleaning and sanitation. Some locations closed for prolonged periods when the number of employees infected by or exposed to COVID-19 rose to levels that affected staffing and increased the risk of exposure.
- 112. In addition to the confirmed positive COVID-19 cases among employees on insured premises, because the coronavirus and COVID-19 are statistically certain to be carried by a number of individuals who visited Uncle Julio's and Bartaco restaurants daily whenever the restaurants were open, the coronavirus was continually reintroduced to the air and surfaces of those locations.
- 113. Persons with COVID-19 who were present on UJB's covered property spread the coronavirus through respiratory droplets expelled into the air, which remained airborne or settled on surfaces and objects, which then could be transferred to other people who touched those surfaces.
- 114. The physical spread of the coronavirus in the air and on surfaces, including through HVAC systems, caused a physical alteration to UJB's covered property, by, among other things, physically permeating, attaching to, binding to, corrupting, distorting, and altering property within the insured premises, rendering the insured premises unsatisfactory and unfit for their intended

function, dangerous, and unsafe.

- 115. The presence of cases of COVID-19 and the coronavirus at UJB's covered property is an external force that caused physical loss of and damage to property by transforming the property from satisfactory and safe for use into property that is unsatisfactory for use, uninhabitable, unfit for its intended function, and dangerous and potentially deadly.
- 116. In addition, the presence of the coronavirus on or near insured property created an imminent threat of additional damage to insured property, by further physical transmission of the coronavirus from one surface to other surfaces, causing more damage and loss.
- 117. These direct physical losses of and damage to UJB's property required UJB to close restaurants, incur extra expenses, adopt remedial measures to restore and remediate the air and surfaces at its restaurants, and suspend operations at its restaurants, all resulting in tens of millions of dollars in losses.

# B. Outbreaks Resulting in Government Orders Prohibited Access and Forced UJB To Suspend Restaurant Operations.

- 118. The impact of the coronavirus outbreaks on each of the cities with Uncle Julio's and Bartaco restaurants was severe, and the physical loss and damage resulting from the coronavirus and COVID-19 led directly to civil orders prohibiting access to, among other places, restaurants, resulting in massive losses to UJB.
- 119. As a result of the rapid spread of COVID-19 and its presence in the United States, states and localities across the country began issuing States of Emergency, Public Health Emergencies, and Disaster Emergencies. By March 15, 2020, emergencies had been declared in all 16 states with Uncle Julio's or Bartaco restaurants due to COVID-19 and the presence of the coronavirus in those states, including in the immediate vicinity of Plaintiffs' restaurants. Orders followed shortly thereafter suspending business operations and instructing residents to stay home.

- 120. Executive orders in all 16 states with Uncle Julio's or Bartaco restaurants and the District of Columbia have prohibited access to UJB's properties, requiring the restaurants to interrupt their operations or, in some cases, to suspend opening plans or permanently close, resulting in lost income and extra expenses associated with COVID-19's physical impact.
- 121. A non-exhaustive description of several examples of applicable civil orders is presented below.
- 122. As set forth above, Texas had at least 106 confirmed COVID-19 cases by March 17, 2020; less than a week later, that number had increased more than six-fold. As of January 27, 2021, there were over 2.3 million recorded COVID-19 cases in Texas and 35,636 recorded deaths as a result of COVID-19.
- 123. On March 19, 2020, Texas Governor Greg Abbott issued an Executive Order mandating, among other things, that "[i]n accordance with the Guidelines from the President and the CDC, people shall avoid eating or drinking at bars, restaurants, and food courts, or visiting gyms or massage parlors[.]" On March 31, 2020, Governor Abbott issued an executive order explicitly mandating that "people shall avoid eating or drinking at bars, restaurants, and food courts[.]"
- 124. These orders prohibited public access to Uncle Julio's and Bartaco restaurants in Texas. Subsequent orders allowed Texas restaurants to reopen indoor dining but with limited capacity. As of the date of this Petition, no Texas restaurants are allowed to operate at full capacity; thus, access to UJB properties in Texas remains prohibited by civil order to this day.
- 125. On March 7, 2020, Bartaco's home state of Virginia had at least one confirmed COVID-19 case; by March 30, 2020, that number was 1,026. As of February 19, 2021, there were 557,896 recorded COVID-19 cases in Virginia and 7,090 recorded deaths as a result of COVID-19.

- Health Commissioner issued an order declaring a public health emergency and ordering restaurants either to restrict the number of patrons to 10 or fewer or to close completely "in order to inhibit spread of the virus" and "for the purpose of suppressing conditions dangerous to the public health." On March 23, 2020, Governor Northam issued Executive Order No. 53, noting the "occurrence of the virus in every region of the Commonwealth" and ordering the closure of all dining and congregation areas in restaurants and dining establishments (but allowing take-out service). On March 30, 2020, the Governor ordered all individuals in Virginia to remain at their place of residence, except when engaging in nine specifically enumerated activities, which did not include patronizing restaurants.
- 127. These orders thus prohibited public access to Uncle Julio's and Bartaco restaurants in Virginia. Subsequent orders allowed Virginia restaurants to reopen indoor dining but with limited capacity. As of the date of this Petition, no Virginia restaurants are allowed to operate at full capacity; thus, access to UJB properties in Virginia remains prohibited by civil order to this day.
- 128. By March 13, 2020, at least 32 confirmed COVID-19 cases had arisen in Chicago, in the vicinity of eight Uncle Julio's restaurants. By March 19, the total number of confirmed COVID-19 cases had risen to 184. As of February 19, 2021, there were more than 1.1 million recorded cases of COVID-19 in Illinois and 22,297 recorded deaths.
- 129. Starting on March 13, 2020, Illinois Governor J.B. Pritzker issued a series of orders prohibiting public gatherings due to property damage and the presence of COVID-19 and the coronavirus. On March 16, Governor Pritzker issued Executive Order No. 7 suspending on-premises dining at all bars and restaurants, because "frequently used surfaces in public settings,"

including bars and restaurants, if not cleaned and disinfected frequently and properly, also pose a risk of exposure."<sup>11</sup> On March 20, Governor J.B. Pritzker issued another Executive Order directing all individuals to stay at home, requiring non-essential business operations to cease, and prohibiting gatherings outside of a single household or more than ten people. The order applied throughout the state of Illinois and stated: "Schools and other entities that provide food services . . . shall not permit the food to be eaten at the site where it is provided, or at any other gathering site due to the virus's propensity to physically impact surfaces and personal property."<sup>12</sup>

- 130. This order, along with other impacts of the outbreak, prohibited public access to Uncle Julio's restaurants in the Chicago area. Subsequent orders allowed Illinois restaurants to reopen indoor dining but with limited capacity. As of the date of this Petition, no Illinois restaurants are allowed to operate at full capacity; thus, access to UJB properties in Illinois remains prohibited by civil order to this day.
- 131. In or about March 2020, the 13 other states with Uncle Julio's and/or Bartaco restaurants—Colorado, Connecticut, Florida, Georgia, Maryland, Massachusetts, New Jersey, New York, North Carolina, Oklahoma, Pennsylvania, Tennessee, and Wisconsin—also each suffered similar outbreaks, which directly resulted in state and local authorities issuing orders prohibiting on-premises dining at bars and restaurants, among other restrictions. Several of these orders were issued expressly because of the propensity of the coronavirus to cause physical property damage. An appendix listing certain of the applicable orders of civil authority by date and location is attached hereto as **Exhibit B**.

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<sup>&</sup>lt;sup>11</sup> Executive Order in Response To COVID-19 (COVID-19 EXECUTIVE ORDER NO. 5), Illinois.gov (Mar. 16, 2020) <a href="https://www2.illinois.gov/Pages/Executive-Orders/ExecutiveOrder2020-07.aspx">https://www2.illinois.gov/Pages/Executive-Orders/ExecutiveOrder2020-07.aspx</a>.

<sup>&</sup>lt;sup>12</sup> Executive Order in Response to COVID-19 (COVID-19 EXECUTIVE ORDER NO. 8), Illinois.gov (Mar. 20, 2020) https://www2.illinois.gov/Pages/Executive-Orders/ExecutiveOrder2020-10.aspx.

- 132. During the summer and early fall of 2020, some states and counties eased certain restrictions, in some cases allowing for limited indoor dining at reduced capacity under certain conditions. Many jurisdictions, however, reinstated their stricter restrictions with the subsequent rise in COVID-19 cases, including restrictions and prohibitions on bar and restaurant operations.
- 133. As a result of the civil orders, at different points in time, depending on the location of the restaurant, access was prohibited and the premises were closed, in some cases for a short time, and in other cases permanently. As of the date of this Petition, no Uncle Julio's or Bartaco restaurants are allowed to operate at full capacity. Thus, access to UJB properties remains prohibited by civil order to this day.
- 134. These closures and restrictions on operations have resulted in significant actual losses to UJB.

#### C. UJB Has Suffered Tens of Millions of Dollars in Losses.

135. The cumulative impacts of these numerous outbreaks, of the physical loss of and damage to UJB's many insured facilities, and of the many government orders, have been severe and continue to accrue.

#### 1) Uncle Julio's Restaurants

devastated Uncle Julio's restaurants' ability to operate and conduct business. Starting the week of March 15, 2020, Uncle Julio's began closing locations as the virus spread and local governments in response began issuing stay-at-home, social distancing, and closure orders. By March 18, 2020, all but one Uncle Julio's restaurant had suspended both indoor and off-premise restaurant services. Every Uncle Julio's location necessarily interrupted its restaurant operations and was forced to engage in costly deep cleaning and sanitization and other efforts to remediate damage and reduce

and mitigate loss. In a matter of days, Uncle Julio's restaurants lost substantially all of their business.

- 137. The Uncle Julio's Plaintiffs incurred reasonable and necessary expenses to reduce their losses and in order to continue as nearly as practicable the normal operation of the Uncle Julio's business following the direct physical loss of or damage to covered property by the coronavirus and COVID-19. These expenses include but are not limited to extra expenses for COVID-19 screening of employees, employee masks, sanitizers and other cleaning supplies, physical and structural modifications to insured premises (including but not limited to installing plastic shields, sanitizing stations, and foot pulls on restroom doors; rearranging dining tables and chairs for social distancing; and sanitizing insured premises), disposable menus and a virtual menu system, extra security at closed facilities, and other operational changes.
- 138. In an effort to reduce their business interruption losses and keep their staff gainfully employed, and in accordance with the Policy's "Resumption of Operations" provision, many Uncle Julio's restaurants sought to offer off-premises service, such as take-out and delivery food service, and limited-capacity indoor dining, at insured properties where such limited operations were allowed under state and local orders. As the pandemic continued, however, several of these restaurants were compelled by civil authorities to return to closing their indoor operations for prolonged periods or indefinitely. As of the date of this Petition, six Uncle Julio's restaurants have not reopened at all. Thus, the majority of Uncle Julio's restaurants operating when the pandemic began are currently operating today on a limited basis.
- 139. Of six planned Uncle Julio's restaurants that were slated to open in 2020 and 2021, the openings of two Texas locations, in Lubbock and Frisco, have been delayed to 2021 and 2022, respectively; the opening of a Missouri location has been delayed to 2021; while the fate of planned

Michigan, Florida, and Oklahoma locations remains uncertain.

- 140. The necessary suspensions of construction and/or opening of these additional Uncle Julio's locations forced UJB to incur significant additional losses, including capital costs and lost gross earnings, as well as "soft costs" insured under the Policy, including but not limited to additional interest expense, overhead-developer expenses and real estate taxes, legal and professional fees, extra marketing expenses, debt service payments and insurance premiums, and/or refinancing charges and bond interest.
- 141. Notwithstanding the interruption of business, Uncle Julio's has continued to incur fixed costs associated with restaurant operations, including rent on leased properties, among other fixed expenses. These losses are continuing.
- 142. Since March 2020, even after partially resuming operations where possible, and after taking into account employee furloughs, reductions in workforce, and other belt-tightening efforts, Uncle Julio's' income from restaurant operations plummeted by tens of millions of dollars, and its losses are continuing to accrue.
- 143. In addition to the above losses, Uncle Julio's suffered, and is continuing to suffer, other losses and incurred expenses due to physical loss and damage caused by the coronavirus, all of which are covered by the Policy.

#### 2) Bartaco Restaurants

144. The COVID-19 pandemic and the resulting civil authority orders also devastated Bartaco restaurants' ability to operate and conduct business. By mid-March 2020, Bartaco began closing locations as the virus spread and local governments in response began issuing stay-at-home, social distancing, and closure orders. Every Bartaco location necessarily interrupted its restaurant operations and was forced to engage in costly deep cleaning and sanitization and other

efforts to remediate damage and reduce and mitigate loss. In a matter of days, Bartaco restaurants lost substantially all of their business.

- 145. The Bartaco Plaintiffs incurred reasonable and necessary expenses to reduce their losses and in order to continue as nearly as practicable the normal operation of the Bartaco business following the direct physical loss of or damage to covered property by the coronavirus and COVID-19. These expenses include but are not limited to extra expenses for COVID-19 screening of employees, employee masks, sanitizers and other cleaning supplies, physical and structural modifications to insured premises (including but not limited to installing plastic shields, sanitizing stations, and a retractable patio awning; rearranging dining tables and chairs for social distancing; and sanitizing insured premises), a virtual ordering system, extra security at closed facilities, and other operational changes.
- 146. In an effort to reduce their business interruption losses and keep their staff gainfully employed, and in accordance with the Policy's "Resumption of Operations" provision, Bartaco restaurants sought to offer off-premises service, such as take-out and delivery food service, and limited-capacity indoor dining, at insured properties where such limited operations were allowed under state and local orders. However, since COVID-19's resurgence in the second half of 2020, indoor bar and dining services at all Bartaco locations eventually closed and have remained closed. Two Bartaco locations that shut down in March 2020, were never able to reopen.
- 147. Bartaco also had to shelve the openings of four Bartaco restaurants, two of which were planned for the second quarter of 2020. One such location finally opened in January 2021, while the opening dates of the other three remain uncertain. The necessary suspensions of construction, commissioning, and/or the opening of these additional Bartaco locations forced UJB to incur significant additional losses, including capital costs and lost gross earnings, as well as

"soft costs" insured under the Policy, including but not limited to additional interest expense, overhead-developer expenses and real estate taxes, legal and professional fees, extra marketing expenses, debt service payments and insurance premiums, and/or refinancing charges and bond interest.

- 148. Notwithstanding the interruption of business, Bartaco continued to incur fixed costs associated with restaurant operations, including rent on leased properties, among other fixed expenses.
- 149. Since March 2020, even after partially resuming operations where possible, and after taking into account employee furloughs, reductions in workforce, and other loss reduction efforts, Bartaco's income from restaurant operations nevertheless dropped by tens of millions of dollars, and its losses are continuing to accrue.
- 150. In addition to the above losses, Bartaco suffered other losses and incurred expenses due to physical loss and damage caused by the coronavirus, all of which are covered by the Policy.

## V. The Policy Covers UJB's Losses.

- 151. Each Plaintiff, including, if any, their subsidiaries and related entities listed on the Policy's Named Insured Schedule, is insured under the Policy. Each restaurant property that is the subject of this Petition is an insured location under the Policy.
- 152. UJB, comprising all Uncle Julio's and Bartaco Plaintiffs, suffered actual direct physical loss of and damage to property that is insured by the Policy.
- 153. UJB has sustained actual losses and incurred extra expenses as a direct result of the coronavirus and related government orders. These losses and expenses arose out of numerous discrete events, at different times, in different locations, and under different circumstances.
- 154. UJB gave timely notice of its claims and has satisfied, is excused from performing, or CNA has waived or is estopped from insistence upon performance of, all conditions of the

Policy, including but not limited to payment of required premiums, provision of timely notice of claim, and submission of a Proof of Loss. A summary of some of the implicated coverages follows.

# A. The Coronavirus Has Caused, and Is Causing, Direct Physical Loss of or Damage to UJB's Insured Property.

- 155. The Policy insures against "risks of direct physical loss of or damage to property and/or interests described herein at covered Locations," except as expressly excluded by the terms of the Policy.
- 156. UJB, including each of its Uncle Julio's and Bartaco restaurants, has suffered direct physical loss of and damage to its insured property as a result of one or more risks which are not excluded, as described in Sections III.A and IV.A above, paragraphs 91 through 96 and 109 through 117.
- 157. Coronavirus droplets have been conveyed from infected persons (whether symptomatic, pre-symptomatic, or asymptomatic) to solid surfaces, including but not limited to doors, floors, furniture, silverware, bathroom facilities, kitchen equipment and supplies, and into the air and HVAC systems at UJB's insured property, causing damage and alteration to physical property and ambient air at the premises. Aerosolized coronavirus has entered the air in UJB's facilities.
- 158. The presence of the coronavirus and COVID-19, including but not limited to coronavirus droplets or nuclei on solid surfaces and in the air, has caused and will continue to cause damage to physical property and ambient air at UJB's facilities. The coronavirus, a physical substance, has attached and adhered to UJB's property, and by doing so, has physically altered that property.
- 159. The coronavirus has also caused direct physical loss of UJB's insured property. The on-site coronavirus, fomites, and respiratory droplets or nuclei containing the coronavirus are

external physical forces that have altered UJB's insured properties, including indoor air, converting them from a satisfactory to an unsatisfactory and dangerous state, thereby rendering them lost.

- 160. These physical losses to UJB's insured properties include without limitation the physical loss of the ability to use those properties for their primary functions as onsite dining establishments.
- 161. UJB has sustained actual loss, including but not limited to substantial sums spent to remediate physical damage to its property, such as for deep cleaning and disinfecting premises, repairing or replacing air filtration systems, remodeling and reconfiguring physical spaces, and other measures to reduce or eliminate the presence of the coronavirus on its property. Such remediation measures have been ongoing because of the continuous and repeated recurrence of the coronavirus while the pandemic persists.

### B. UJB Has Suffered Insured Time Element Loss.

- 162. The Policy insures "Time Element" loss from business interruptions, covering "loss resulting from necessary interruption of business caused by direct physical loss of or damage to covered property . . . ." measured in terms of Gross Earnings, which include the sum of (a) total net sales and (b) other earnings derived from operations of the business, less the costs of an enumerated list of operational costs.
- 163. As alleged in Section V.A at paragraphs 155 through 161 above, UJB has suffered direct physical loss of or damage to covered property.
- 164. As explained in Section IV.C at paragraphs 135 through 150 above, a direct result of the direct physical loss of and damage to UJB's covered properties was that UJB sustained, and is continuing to sustain, losses of gross earnings derived from total net sales and other earnings derived from operations of the business, among other covered losses.

- 165. UJB's Time Element losses are ongoing and likely to persist.
- 166. UJB has incurred expenses necessary for the purpose of reducing Time Element loss, and reasonable and necessary extra expenses in order to continue as nearly as practicable the normal operation of UJB's business following the direct physical loss of and damage to covered property by the coronavirus and COVID-19. These expenses include but are not limited to extra expenses for COVID-19 screening of employees, sanitizers and other cleaning supplies, physical and structural modifications to insured premises, extra security at closed facilities, and other operational changes.

# C. UJB Has Sustained Actual Loss Insured by the Policy's Civil Authority and Ingress-Egress Coverage Extension.

- 167. The Policy covers the "actual loss sustained: a. during the period of time while access to the Insured's Location is prohibited by order of civil authority, but only when such order is given as a direct result of physical loss or damage to property of the type insured from a peril insured against occurring at or in the immediate vicinity of said Location; or b. during the period of time when as a direct result of physical loss or damage to property of the type insured from a peril insured against, ingress to or egress from the Insured's Location is thereby physically prevented."
- 168. UJB has sustained actual loss and incurred extra expenses because one or more governmental orders have prohibited access to UJB's insured locations.
- 169. The governmental orders prohibiting access to UJB's insured locations have been issued as a direct result of, among other things, physical loss or damage caused by the coronavirus and COVID-19 to property at or in the immediate vicinity of UJB's insured locations. Such physical loss and damage is the type of risk insured, not excluded, by the Policy.
  - 170. Each governmental order described in Section IV.B, paragraphs 118 through 134

above, is the direct result of, among other things, physical loss or damage at or in the immediate vicinity of each of UJB's insured properties, which are located in densely populated urban and suburban areas.

- 171. Numerous outbreaks of COVID-19 have led to numerous discrete events of physical loss and damage in the immediate vicinity of UJB's insured locations, and those damages have in turn led to numerous discrete governmental orders prohibiting access to UJB's insured locations. Certain governmental orders that purport to protect against future proliferation and spread of the coronavirus and future transmission of COVID-19 are the direct result of physical loss and damage of the type insured by the Policy.
- 172. UJB has sustained actual loss and incurred extra expenses because the presence of the coronavirus at or in the immediate vicinity of UJB's insured locations has physically prevented ingress to or egress from the premises.
- 173. UJB has incurred reasonable and necessary extra expenses, due to the prohibition of access by civil authorities and/or the prevention of ingress to or egress from UJB's properties, in efforts to continue as nearly as practicable the normal operation of its restaurant businesses.

## D. UJB's Losses Trigger Other Coverages.

174. In addition to the losses and coverages described above, UJB's losses and expenses are covered under any and all other coverages under the Policy that may apply. These include but are not limited to Leasehold Interest, Loss Adjustment Expense, Professional Fees, and Rental Value coverage.

# VI. UJB Timely Submitted its Claim and CNA Wrongfully Denied Coverage in Violation of the Texas Insurance Code.

175. UJB fully performed its obligations under the Policy, including but not limited to paying all premiums that were due to CNA and providing timely notice of its losses.

- 176. The Policy promised UJB the reimbursement of actual losses, including lost business income (gross earnings), in the event that its businesses were interrupted or in the event that accessing their property was prohibited by a government order issued due to loss or damage from a covered peril.
- 177. On, March 25, 2020, through its broker, Lockton Companies, UJB submitted a written claim to CNA for coverage for the losses suffered by its Uncle Julio's and Bartaco restaurants due to the coronavirus and COVID-19 and related civil orders.
- 178. CNA purportedly "investigated" the claim by requesting information about the restaurants' closures, losses, and cleaning expenses, and by asking if the restaurants had experienced "physical damage," a term it did not explain. CNA did not ask about "physical loss" and did not conduct any independent investigation about the coronavirus's properties, its ability to persist on surfaces and in indoor air, or its propensity to cause direct physical loss of or damage to property.
- 179. In addition to providing extensive information about its restaurant closures, access restrictions, losses, and mitigation efforts, UJB indicated that it had undertaken extensive cleaning and disinfecting measures at each of its restaurants to address actual instances of COVID-19 damage as well as the pervasive presence of the coronavirus, and to protect its properties from further loss or damage (as required by the Policy).
- 180. On June 18, 2020, 85 days after UJB submitted its claim, CNA summarily denied the claim, baldly asserting that "there was no covered physical loss, damage or destruction of property" and mischaracterizing UJB's cleaning and sanitizing efforts as "preventative" only.
- 181. As detailed in the paragraphs below, CNA wrongfully denied UJB's claim, even though the Policy provided coverage for losses such as those suffered by UJB.

- 182. CNA's denial failed to acknowledge the scientific and practical realities of the coronavirus: it is a physical substance that attaches to and alters physical structures; it is a physical substance that persists in and damages indoor air; it is an external force that makes previously satisfactory property unsatisfactory; and its presence causes direct physical loss of and/or damage to property.
- 183. CNA's denial failed to acknowledge that cleaning and disinfecting are not "preventative" actions, as they are activities that logically take place after something is present to be cleaned or disinfected, such as a virus. UJB's cleaning and disinfecting activities were undertaken to repair its property by remediating the physical presence of the coronavirus.
- 184. CNA's denial failed to acknowledge that the civil authority orders applicable to UJB's restaurants were in fact issued at least in part as a direct result of physical loss or damage to property by the coronavirus or COVID-19 in the vicinity of the insured properties.
- 185. In its denial, CNA failed to adequately explain to UJB its reasons for denying UJB's claim. CNA's denial stated no reasonable basis for denying UJB's claims, because it had none.
- 186. Specifically, CNA failed to explain why, despite scientific and factual realities to the contrary, it considered the physical loss and damage caused by COVID-19 to UJB's properties not to be covered perils under the policy. CNA's conduct is a violation of the Texas Insurance Code, Unfair Settlement Practices. Tex. Ins. Code. Ann. § 541.060(a)(3).
- 187. Despite a lack of a reasonable basis for denying UJB's claims, CNA made untrue statements of material fact and misrepresented to UJB the coverage afforded by the Policy for business interruptions UJB suffered due to the physical loss of or damage to property of UJB. CNA asserted that UJB's business interruption losses were not covered under the Policy, even though the business interruption losses were caused by a covered occurrence. CNA's conduct constitutes

misrepresentation of a policy and an unfair settlement practice in violation of the Texas Insurance Code, Unfair Methods Of Competition And Unfair Or Deceptive Acts Or Practices. *Id.* §§ 541.051, 541.060(a)(1), and 541.061.

- 188. CNA made untrue statements of material fact and misrepresented to UJB that its actual losses suffered due to governmental authorities' notices and orders were not issued as a result of direct physical loss of or damage to property at or in the immediate vicinity of UJB's locations caused by a covered peril. CNA's conduct constitutes a misrepresentation of a policy and an unfair settlement practice in violation of the Texas Insurance Code, Unfair Methods Of Competition And Unfair Or Deceptive Acts Or Practices. *Id.* §§ 541.051, 541.060(a)(1), and 541.061.
- 189. In its denial, CNA made untrue statements of material fact and misrepresented to UJB that even if there was direct physical loss of or damage to property at the covered Locations, as required under the Policy provisions, exclusions such as the contaminants and pollutants exclusion and microbe exclusion would apply to bar recovery. CNA's conduct constitutes a misrepresentation of a policy and an unfair settlement practice in violation of the Texas Insurance Code, Unfair Methods Of Competition And Unfair Or Deceptive Acts Or Practices. *Id.* §§ 541.051, 541.060(a)(1), and 541.061.
- 190. In denying UJB's claim, CNA failed to make an attempt to settle UJB's claim in a fair manner, although it was aware of its liability to UJB under the Policy. CNA's conduct constitutes an unfair settlement practice in violation of the Texas Insurance Code, Unfair Methods Of Competition And Unfair Or Deceptive Acts Or Practices. *Id.* § 541.060(a)(2)(A).
- 191. CNA's failure to conduct a reasonable investigation prior to refusing to compensate UJB under the terms of the Policy violated the Texas Insurance Code. Specifically, CNA's

superficial investigation was outcome-oriented and resulted in a biased and inequitable evaluation of Plaintiff's claim. In sum, CNA conducted only a perfunctory investigation to reach a predetermined conclusion and refused to honor its promise. CNA's conduct constitutes an unfair settlement practice in violation of the Texas Insurance Code, Unfair Methods Of Competition And Unfair Or Deceptive Acts Or Practices. *Id.* § 541.060(a)(7).

- 192. To date, UJB has not received any payment in respect of UJB's claim and CNA continues to refuse to pay and to delay paying UJB what is owed under the Policy. In doing so CNA is failing to meet its obligations under the Texas Insurance Code regarding prompt payment of claims. CNA's conduct constitutes a violation of the Texas Insurance Code, Processing and Settlement of Claims. *Id.* § 542.058.
- 193. UJB has presented CNA with a written demand letter notifying CNA of its actions of which UJB complains and notifying CNA that UJB seeks damages, costs, and attorneys' fees.

#### **CLAIMS FOR RELIEF**

# FIRST CAUSE OF ACTION Declaratory Relief

- 194. UJB repeats and incorporates by reference the allegations set forth in Paragraphs 1 through 193 of this Petition, inclusive, as though set forth fully herein.
  - 195. UJB seeks a declaration of the parties' rights and duties under the Policy.
- 196. An actual and justiciable controversy exists between UJB and CNA concerning CNA's contractual duties to cover UJB's claims for time element losses and other losses, costs, and expenses under the Policy.
  - 197. The controversy between Plaintiffs and Defendant is ripe for judicial review.
- 198. The controversy is of sufficient immediacy to justify the issuance of declaratory relief.

- 199. UJB, including all Plaintiffs, accordingly seeks a declaration from the Court that:
  - a. The coronavirus and COVID-19 caused and continue to cause direct physical loss of and damage to property within the meaning of the Policy;
  - Each coverage provision identified in the Petition is triggered by Plaintiffs'
     claims;
  - No exclusion in the Policy applies to preclude or limit coverage for Plaintiffs' claims;
  - d. Plaintiffs have satisfied or been excused from satisfying, or CNA has waived or is estopped from enforcing, all conditions precedent under the Policy;
  - e. CNA is contractually obligated under its Policy to indemnify Plaintiffs for their claims of real property losses, time element losses, loss reduction expense, extra expense, and other losses and expenses sustained as a result of direct loss of or damage to property due to the coronavirus and/or COVID-19;
  - f. CNA is contractually obligated under its Policy to indemnify Plaintiffs for their claims of time element losses for business interruption gross earnings during the business interruption period of indemnity and extended period of indemnity;
  - g. CNA is contractually obligated under its Policy to indemnify Plaintiffs for their claims of expenses incurred for the purpose of reducing time element losses;
  - h. CNA is contractually obligated under its Policy to indemnify Plaintiffs for

- their claims of extra expense incurred to continue business operations as nearly as practicable to UJB's normal business operations;
- i. CNA is contractually obligated under its Policy to indemnify Plaintiffs for their claims of time element losses and extra expense as a result of orders of civil authority that have prohibited access to insured properties as a result of the coronavirus and/or COVID-19 at insured property or other locations in the immediate vicinity;
- j. CNA is contractually obligated under its Policy to indemnify Plaintiffs for their claims of time element losses and extra expense wherever ingress to or egress from insured property has been impaired as a result of the coronavirus and/or COVID-19 at insured property or other locations;
- k. CNA is contractually obligated under its Policy to indemnify Plaintiffs for their loss adjustment expenses.

# SECOND CAUSE OF ACTION Breach of Contract

- 200. UJB repeats and incorporates by reference the allegations set forth in Paragraphs 1 through 193 of this Petition, inclusive, as though set forth fully herein.
- 201. The Policy constitutes a valid and enforceable written contract between UJB and CNA.
- 202. UJB fully performed its obligations under the Policy, including but not limited to paying all premiums that were due to CNA. In the alternative, CNA has waived, or is estopped from asserting, these conditions as defenses to coverage, or UJB's performance is otherwise excused.
  - 203. CNA agreed, in consideration of the premiums paid, to provide coverage for risks

of physical loss or damage not otherwise excluded, and to reimburse UJB's lost income and related expenses in the event that its business was interrupted due to direct physical loss of or damage to covered property, or in the event that UJB was prohibited from accessing its property due to orders of civil authority or due to prevention of ingress to or egress from its property, subject only to applicable deductibles and limits of liability in the Policy.

- 204. The coronavirus and the COVID-19 pandemic have caused and continue to cause physical loss of and/or damage to UJB's properties and to properties within the vicinity of UJB's insured locations.
- 205. UJB has suffered actual losses and incurred extra expense due to physical loss and damage caused by the coronavirus and the COVID-19 pandemic, a risk not excluded by the CNA Policy.
  - 206. No Policy exclusion applies to preclude or limit coverage.
- 207. CNA has breached and continues to breach its contractual obligations by denying UJB's claim and by not paying amounts due under the Policy.
- 208. As a direct and proximate result of its breach of contract, CNA has deprived UJB of the benefits of the insurance for which substantial premiums were paid, which entitles UJB to money damages in an amount to be proven at trial, including interest according to law.
- 209. UJB's losses as a result of CNA's breach of contract are continuing, and UJB reserves the right to seek the full and exact amount of its damages at the time of trial.
- 210. All conditions precedent to initiating this lawsuit have been performed or have occurred.

# THIRD CAUSE OF ACTION Breach of the Implied Covenant of Good Faith and Fair Dealing

211. Plaintiffs repeat and incorporate by reference the allegations set forth in Paragraphs

1 through 193 of this Petition, inclusive, as though set forth fully herein.

- 212. CNA owes its policyholders, including Plaintiffs, a duty of good faith and fair dealing.
- 213. CNA failed to investigate UJB's claim and determine whether there was any reasonable basis for a denial of coverage or delay in payment.
- 214. CNA denied UJB's claim and failed to pay proceeds due under the Policy with no reasonable basis.
- 215. CNA denied UJB's claim with no reasonable basis and with actual knowledge that its refusal to pay the claim would devastate UJB's business, forcing UJB to incur substantial losses and costs, including but not limited to losses and costs associated with having to permanently close restaurants, and to retain counsel and incur court costs to pursue its insurance claims through litigation.
- 216. By its conduct alleged herein, CNA breached the implied covenant of good faith and fair dealing arising out of the Policy.

# FOURTH CAUSE OF ACTION Violation of the Texas Insurance Code: Unfair Methods Of Competition And Unfair Or Deceptive Acts Or Practices

- 217. Plaintiffs repeat and incorporate by reference the allegations set forth in Paragraphs 1 through 193 of this Petition, inclusive, as though set forth fully herein.
- 218. CNA's conduct constitutes multiple violations of Chapter 541 of the Texas Insurance Code, Unfair Methods Of Competition And Unfair Or Deceptive Acts Or Practices. All violations under this article are actionable under Texas Insurance Code § 541.151. UJB has provided written notice to CNA that UJB seeks damages, costs, and attorneys' fees under the provisions of Chapter 541 described below.
  - 219. CNA is engaged in the business of insurance within the meaning of the Texas

Insurance Code.

- 220. CNA made false statements of material fact and misrepresentations to UJB relating to the Policy terms at issue, namely the terms relating to physical loss of or damage to insured property or at or in the vicinity of the covered property, and the applicability of the contaminants or pollutants exclusion and microbe exclusion.
- 221. CNA failed to attempt in good faith to effectuate a prompt, fair, and equitable settlement of UJB's claim, even though CNA's liability under the Policy was reasonably clear.
- 222. CNA failed promptly to provide UJB with a reasonable explanation of the basis in the Policy, in relation to the facts or applicable law, for its denial of the claim.
- 223. CNA failed to conduct a reasonable investigation with respect to the claim prior to denying the claim.
- 224. CNA's acts described herein constitute unfair methods of competition and unfair and deceptive acts or practices in the business of insurance under §§ 541.051(a)(1), 541.060(a)(1), 541.060(a)(2)(A), 541.060(a)(3), 541.060(a)(7), and 541.061 of the Texas Insurance Code.
- 225. CNA knowingly committed the acts of unfair competition and unfair and deceptive acts or practices in the business of insurance described herein.
- 226. As a result of the foregoing violations of the Texas Insurance Code, UJB has suffered substantial damages.

# FIFTH CAUSE OF ACTION Violation of the Texas Insurance Code: Prompt Payment of Claims

- 227. Plaintiffs repeat and incorporate by reference the allegations set forth in Paragraphs1 through 193 of this Petition, inclusive, as though set forth fully herein.
- 228. UJB provided timely written notice of its claim on or about March 25, 2020, and subsequently provided responses and detailed information in response to CNA's requests. CNA

denied UJB's claim on or about June 18, 2020.

- 229. CNA has failed to timely pay Plaintiffs' claim following receipt of all items, statements, and forms reasonably requested and required under § 542.055 of the Texas Insurance Code. Tex. Ins. Code Ann. § 542.058(a).
- 230. CNA's conduct violates the Texas Prompt Payment of Claims Act, as codified in §§ 542.051 to 542.061 of the Texas Insurance Code.
- 231. As a result of the foregoing violations of the Texas Insurance Code, UJB has suffered substantial damages.
- 232. CNA's failure and delay in payment entitles Plaintiffs to payment of damages in the amount of the claim plus interest at 18% per year as damages, together with Plaintiffs' reasonable and necessary attorney's fees, and prejudgment interest. *Id.* §§ 542.058(a), 542.060(a).

## **JURY DEMAND**

233. UJB requests a jury trial and will tender the jury fee to the Dallas County District Clerk's office pursuant to Tex. R. Civ. P. 216 and Tex. Gov't Code § 51.604.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully pray that the Court enter judgment in its favor and award the following relief:

#### A. On its First Cause of Action:

- 1. An order declaring that COVID-19 caused and continues to cause direct physical loss of or damage to property within the meaning of the Policy.
- 2. A declaration pursuant to Texas Civil Practice and Remedies Code § 37.004 that the Defendant has breached its contractual obligations to the Plaintiffs and that Plaintiffs are entitled to coverage under the Policy for Plaintiffs' business interruption losses and other actual losses due to the coronavirus and/or COVID-

19 at the covered locations or losses resulting from civil authority orders prohibiting access to covered locations due to the coronavirus and/or COVID-19 at or in the vicinity of covered locations.

- 3. An award of attorneys' fees pursuant to Texas Civil Practice and Remedies Code § 37.009.
- B. On the breach of contract claim set forth above in its Second Cause of Action:
  - 1. Compensatory and general damages in an amount to be proven at trial;
  - 2. An award of costs, expenses and attorneys' fees pursuant to pursuant to Chapter 38 of the Texas Civil Practice and Remedies Code and as otherwise permitted by law; attorneys' fees and costs incurred in obtaining the benefits due under the Policy;
  - 3. Pre-judgment and post-judgment interest at the maximum legal rate; and
  - 4. Such other and further relief as this Court finds proper, just, and equitable.
- C. On its Third Cause of Action an award of compensatory damages, including all forms of loss resulting from the insurer's breach of duty and any other relief the court determines is proper, just and equitable.
- D. On its Fourth Cause of Action an award of actual damages, which include the loss of the benefits that should have been paid pursuant to the policy, court costs, and attorneys' fees and any other relief the court determines is proper; and an award of exemplary damages up to three times Plaintiffs' actual damages under Texas Insurance Code § 541.152.
- E. On its Fifth Cause of Action an award of actual damages plus 18% interest, together with Plaintiffs' reasonable and necessary attorneys' fees and costs, and

prejudgment interest, under Texas Insurance Code §§ 542.051 to 542.061.

F. Such other and further relief as this Court finds proper, just, and equitable.

## Respectfully submitted,

# By: <u>/s/ Amy Elizabeth Stewart</u>

Amy Elizabeth Stewart State Bar No. 00784300 amy@amystewartlaw.com Marisa Jeffrey O'Sullivan State Bar No. 24075611 marisa@amystewartlaw.com

## **AMY STEWART PC**

5307 E. Mockingbird Lane, Suite 425 Dallas, Texas 75206

Telephone: (214) 233-7076 Facsimile: (214) 975-2806

# P. Benjamin Duke (pro hac vice pending)

pbduke@cov.com

Bruno Campos (pro hac vice pending)

bcampos@cov.com

Jessica F. Heymach (pro hac vice pending)

jheymach@cov.com

### **COVINGTON & BURLING LLP**

The New York Times Building

620 Eighth Avenue

New York, New York 10018

Telephone: (212) 841-1000

Facsimile: (212) 841-1010

# Suzan F. Charlton (pro hac vice pending)

scharlton@cov.com

## **COVINGTON & BURLING LLP**

One CityCenter

850 Tenth Street, NW

Washington, DC 20001

Telephone: (202) 662-6000

Facsimile: (202) 662-6291

### ATTORNEYS FOR PLAINTIFFS

**Policy Holder Notice - Florida** 

# IMPORTANT INFORMATION

# FOR OUR FLORIDA BAP, PACKAGE AND PROPERTY POLICYHOLDERS

Per 1992 House Bill Number 141-H, every insurer transacting insurance in Florida is required to collect a surcharge of 0.1% on all Fire, Allied Lines and Multi-Peril insurance premiums written on commercial property located within the state. The 0.1% surcharge will be applied to all coverage premiums on monoline property policies, BAP policies and package policies.

The purpose of the surcharge is to develop funds for the Fire College Trust Fund.

If you have any questions, please contact your CNA independent agent.

**EXHIBIT A** 



**Policy Holder Notice - Florida** 

# IMPORTANT INFORMATION

# FOR OUR FLORIDA BAP, PACKAGE AND PROPERTY POLICYHOLDERS

As a result of Legislation, which was signed into law by Governor Chiles on April 29, 1993, insurers are to collect a surcharge of \$4.00 for each commercial fire, commercial multiple peril and business owner's property insurance policy issued or renewed on or after May 1, 1993. The surcharge should be paid by the insured to the insurer, who will remit the surcharge in the same manner as the insurance premium tax to the Florida Department of Revenue. The proceeds will be deposited into the Emergency Management, Preparedness, and Assistance Fund. If your policy has been assessed, "FL Property Ins. Surcharge" with an amount will be displayed on your policy declarations. If you have any questions, please contact your CNA independent agent.



# IMPORTANT INFORMATION

# REQUEST FOR JURISDICTIONAL INSPECTION OF PRESSURE EQUIPMENT

Many states and some cities issue certificates permitting the continued operation of certain equipment such as boilers, water heaters and pressure vessels. Periodic inspections are required to renew these certificates. In most jurisdictions, as part of an equipment breakdown policy, insurance company employees who have been licensed are authorized to perform these inspections.

#### If:

- You own/operate pressure equipment that requires a certificate from a state, county, city or parish to operate legally, and
- We insure that equipment under this Policy, and
- You would like CNA to perform the next required inspection:

#### Then:

Complete the form on page 2 and email, mail or fax as instructed:

No need to call or respond if you do not have boilers or pressure vessels that require operating certificates.

BY EMAIL: EBinspections@cna.com (please scan the completed form and attach)

BY MAIL: BY FAX: 609-524-3649

CNA Equipment Breakdown Risk Control 184 Liberty Corner Road

4<sup>th</sup> Floor, Suite 402

Warren, NJ 07059 **BY PHONE**: call 866-262-0540 – press "4"

Questions or inquiries can be made via any of the above methods of communication.

### Please note the following:

- Your jurisdiction(s) may charge you a fee for renewing a certificate. It is your responsibility to pay such a fee.
- If CNA is required to pay the fee on your behalf, CNA will invoice you to recover that fee.
- All the provisions of the INSPECTION AND SURVEYS condition apply to the inspections described in this notice.

Failure to notify us can result in fines and penalties being issued to the equipment owner by the governing jurisdiction. CNA is not responsible for said fines or penalties.

#### REMINDER

If new equipment is installed or old equipment replaced that requires a jurisdictional inspection, please let us know by transmitting the new information to the postal address/fax number/email address listed above and on the following page.

If this is a renewal and information (locations) has not changed, please disregard this notice.

If inspection and maintenance are outside of your area of responsibility, we would appreciate your forwarding this notice to the appropriate person. If no response is received, we are assuming there are no jurisdictional objects at your location(s) and no inspections are required.

Note: Jurisdictional inspections are not conducted outside of the United States, its territories, possessions, or Canada.



# **Policy Holder Notice - Countrywide**

# REQUEST FOR JURISDICTIONAL INSPECTION

Insured Name: UJ BARTECA PARENT, L	LC		
Facility/Location Name:			
Policy Number: 6073187285	Policy Term: October 30,	2019 October 30, 20	020
Contact Person & Title:			
Contact Phone Number(s)—Office:	Cell:		
Contact Email Address:			
Location Address <sup>1</sup>	City	State	Zip
1.			
2.			
3.			
Equipment Type <sup>2,3,4</sup> (Boiler, Pressure Vessel)	Registration Number (State #)	Certificate Da	
Completed By (Name & Date):			
Telephone #/Email Address:			
BY EMAIL: EBinspections@cna.com (plea	ase scan the completed form and	attach)	
BY MAIL:	ВУ	<b>FAX:</b> 609-524-3649	
CNA Equipment Breakdown Risk Control 184 Liberty Corner Road 4 <sup>th</sup> Floor, Suite 402			
Warren, NJ 07059	BY PHONE: call 866-	-262-0540 – press "4"	
<sup>1</sup> If multiple objects and/or multiple locations	. please list all required information	on on separate page(	s).

objects and/or multiple locations, please list all required information on separate page(s).

<sup>&</sup>lt;sup>2</sup>Boiler is defined as an enclosed vessel heated by fuel or electricity to produce steam or hot water.

<sup>&</sup>lt;sup>3</sup>Pressure Vessel is defined as an enclosed vessel (tank) greater than 6 cubic feet (18 inches x 40 inches) to store liquid or gas under pressure for use when needed.

<sup>&</sup>lt;sup>4</sup>LPG (ex: propane, propylene, butane & butylenes) Tank with vapor pressures not exceeding that allowed for commercial propane. California requirement only.

# **CNA Property Policy**



# **Policy Holder Notice - Large Property Claims Reporting**

All new property claims under CNA Large Property policies should be reported to our centralized Loss Processing Center. Claims will be assigned to our specialized technical staff or to one of our preferred service providers.

### FOR EMERGENCY CONTACT:

Our 24-hour toll free number for direct contact with the CNA Loss Processing Center is:

877-261-6676

#### FOR NON-EMERGENCY:

• Property claims may be reported by toll free <u>fax</u> to the CNA Loss Processing Center at:

877-566-2728

Property claims may also be reported via email to the CNA Loss Processing Center at:

CNAproperty.LPC@cna.com

Claims reported by fax or email are processed during normal business hours. If your claim is an emergency requiring after hours contact with an adjuster, call the 24-hour toll free number.



# IMPORTANT INFORMATION

# NOTICE – OFFER OF TERRORISM COVERAGE; DISCLOSURE OF PREMIUM

THIS NOTICE DOES NOT FORM A PART OF THE POLICY, GRANT ANY COVERAGE OR CHANGE THE TERMS AND CONDITIONS OF ANY COVERAGE UNDER THE POLICY.

As used herein, 1) "we" means the insurer listed on the Declarations or the Certificate of Insurance, as applicable; and 2) "you" means the first person or entity named on the Declarations or the Certificate of Insurance, as applicable.

You are hereby notified that under the Terrorism Risk Insurance Act, as extended and reauthorized ("Act"), you have a right to purchase insurance coverage of losses arising out of acts of terrorism, as defined in Section 102(1) of the Act, subject to all applicable policy provisions. The Terrorism Risk Insurance Act established a federal program within the Department of the Treasury, under which the federal government shares, with the insurance industry, the risk of loss from future terrorist attacks.

This Notice is designed to alert you to coverage restrictions and to certain terrorism provisions in the policy. If there is any conflict between this Notice and the policy (including its endorsements), the provisions of the policy (including its endorsements) apply.

#### CHANGE IN THE DEFINITION OF A CERTIFIED ACT OF TERRORISM

The Act applies when the Secretary of the Treasury certifies that an event meets the definition of an act of terrorism. Originally, the Act provided that to be certified, an act of terrorism must cause losses of at least five million dollars and must have been committed by an individual or individuals acting on behalf of any foreign person or foreign interest to coerce the government or population of the United States. However, the 2007 re-authorization of the Act removed the requirement that the act of terrorism must be committed by or on behalf of a foreign interest, and now certified acts of terrorism may encompass, for example, a terrorist act committed against the United States government by a United States citizen, when the act is determined by the federal government to be "a certified act of terrorism."

In accordance with the Act, we are required to offer you the ability to purchase coverage for losses resulting from an act of terrorism that is certified under the federal program. The other provisions of this policy, including nuclear, war or military action exclusions, will still apply to such an act.

#### DISCLOSURE OF FEDERAL PARTICIPATION IN PAYMENT OF TERRORISM LOSSES

The Department of the Treasury will pay a share of terrorism losses insured under the federal program. In 2015, the federal share equals 85% of that portion of the amount of such insured losses that exceeds the applicable insurer retention, and shall decrease by 1 percentage point per calendar year until equal to 80%.

### LIMITATION ON PAYMENT OF TERRORISM LOSSES

If aggregate insured losses attributable to terrorist acts certified under the Terrorism Risk Insurance Act exceed \$100 billion in a calendar year (January 1 through December 31), the Treasury shall not make any payment for any portion of the amount of such losses that exceeds \$100 billion.

Further, this coverage is subject to a limit on our liability pursuant to the federal law where, if aggregate insured losses attributable to terrorist acts certified under the Act exceed \$100 billion in a calendar year (January 1 through December 31) and we have met our insurer deductible under the Act, we shall not be liable for the payment of any portion of the amount of such losses that exceeds \$100 billion. In such case, insured losses up to that amount are subject to pro rata allocation in accordance with procedures established by the Secretary of the Treasury.

#### CONFIRMATION OF ACCEPTANCE OF COVERAGE

In accordance with the Act, we offered you coverage for losses resulting from an act of terrorism that is certified under the federal program. This notice confirms that you have chosen to accept our offer of coverage for certified acts of terrorism. The policy's other provisions, including nuclear, war or military action exclusions, will still apply to such an act. The premium charge for terrorism coverage, if any, is shown separately on the Declarations or the Certificate of Insurance, as applicable.



# **CNA Property Policy**

# **Policy Declarations**

CNA Insurance 151 N. Franklin St. Chicago, IL 60606

Branch	Producer Number	Prefix	Policy Number
260	501391	RMP	6073187285

NAMED INSURED & ADDRESS:

UJ BARTECA PARENT, LLC
1101 N UNION BOWER RD
SUITE 160
IRVING, TX 75061

INSURANCE IS PROVIDED BY THE
COMPANY DESIGNATED BELOW (A stock
insurance company, herein called the company)
CONTINENTAL CASUALTY COMPANY

Policy Period: From October 30, 2019 to October 30, 2020

This policy becomes effective and expires at 12:01 a.m. Standard Time at Your Mailing Address Shown Above.

In Return For The Payment Of The Premium, And Subject To All The Terms Contained Herein, the Company Agrees With the Named Insured To Provide The Insurance As Stated.

☐ "X" if Supplemental Declarations is attached

### **DESCRIPTION OF PREMISES**

Per CNA SIGNATURE Property Policy

**COVERAGES PROVIDED** – INSURANCE AT THE DESCRIBED PREMISES APPLIES ONLY FOR COVERAGES FOR WHICH A LIMIT IS SHOWN

Per CNA SIGNATURE Property Policy

OPTIONAL COVERAGES - APPLICABLE ONLY WHEN ENTRIES ARE MADE IN THE SCHEDULE BELOW

Per CNA SIGNATURE Property Policy

**MORTGAGE HOLDER(S)** 

Per CNA SIGNATURE Property Policy

**DEDUCTIBLE** 

Per CNA SIGNATURE Property Policy

#### FORMS AND ENDORSEMENTS APPLICABLE AT TIME OF ISSUANCE:

APPLICABLE TO ALL COVERAGES: SEE ATTACHED SCHEDULE OF FORMS AND ENDORSEMENTS.





# **Policy Declarations**

TOTAL PREMIUM PAYABLE AT INCEPTION:	\$417,017.94	
Premium includes the following amount for Terrorism coverage:	\$4,127.00	
Total amount payable includes Taxes/Surcharges of:	\$172.94	
Florida Fire College Trust Fund	\$32.73	
Florida Emergency Management Trust Fund	\$4.00	
Texas Firefighters Surcharge	\$63.42	
New York Fire Insurance Fee	\$72.79	

IN WITNESS WHEREOF, the Company has caused this Policy to be signed by its Chairman and Secretary.

Chairman of the Board

Secretary



# SCHEDULE OF FORMS AND ENDORSEMENTS

Forms and endorsements attached to this Policy at inception are as follows:

FORM NAME	FORM NUMBER	FORM EDITION DATE
Policy Declarations	G55161E	(01-17)
Named Insured Schedule	CNA91689XX	(03-18)
CNA Signature Property Policy	G300709A	(10-08)
Equipment Breakdown Coverage	G300710A	(10-08)
Contingent Business Interruption Revisions Endorsement	G301199A	(10-11)
Earth Movement & Loss Conditions Amendatory Endorsement	G300981B	(03-18)
Green Upgrade Endorsement	G300791B	(12-18)
Cancellation Changes	CNA79809XX	(08-14)
Locks and Keys Endorsement	CNA71096XX	(10-12)
Terrorism Coverage Under TRIA Endorsement	G300714A	(10-08)
Florida Amendatory Endorsement	CNA81234FL	(01-15)





## **Named Insured Schedule**

#### NAMED INSURED SCHEDULE

It is hereby understood and agreed:

The Commercial Property Coverage Part Declarations is amended to add the following Named Insureds:

Uncle Julio's of Illinois, Inc.

Uncle Julio's of Florida, Inc.

Uncle Julio's of Pennsylvania, Inc.

Uncle Julio's of Tennessee, Inc.

Uncle Julio's Columbia Concessions, LLC

Uncle Julio's Annapolis Concessions, LLC

Uncle Julio's Hacienda, Inc.

Hacienda GP, LLC

15-16, LLC

2004 Restaurant, LLC

2016 Restaurant, LLC

Hacienda II Partners, LLLP

Southwest Restaurant Partners, LLLP

445 Holland Hills, LLC

Barcard, LLC

Bartaco, LLC

Bartaco Texas, LLC

Bartaco WestBend, LLC

Bartaco WestBend Management, LLC

Bartaco WestBend Beverage Company

Bartaco Inman Park, LLC

Bartaco 12 South, LLC

Bartaco Reston, LLC

Bartaco Westport, LLC

Bartaco Stamford, LLC

Bartaco Dr. Phillips, LLC

Bar Taco Port Chester, LLC

Bartaco Roswell, LLC

Bartaco Hyde Park, LLC

Bartaco Marietta, LLC

Bartaco Woodbury, LLC

Bartaco Biltmore Avenue, LLC

Bartaco Pearl West, LLC

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CONTINENTAL CASUALTY COMPANY

Insured Name: UJ BARTECA PARENT, LLC

Policy No: 6073187285

Endorsement No: 1
Effective Date:

# **CNA Property Policy**



# **Named Insured Schedule**

Bartaco Chapel Hill, LLC

Bartaco Homewood, LLC

Bartaco Mosiac, LLC

971 Farmington, LLC

Bartaco Tejon, LLC

Bartaco Hilldale, LLC

Bartaco North Hills, LLC

Bartaco Ballston, LLC

Bartaco Deerfield, LLC

Bartaco (KOP), LLC

Bartaco Nyack, LLC

Bartaco Aventura, LLC

Bartaco Preston Center, LLC

Bartaco Fort Point, LLC

Bartaco Wynwood, LLC

Bartaco Greengate, LLC

All other terms and conditions of the Policy remain unchanged.

This endorsement, which forms a part of and is for attachment to the Policy issued by the designated Insurers, takes effect on the effective date of said Policy at the hour stated in said Policy, unless another effective date is shown below, and expires concurrently with said Policy.

CNA91689XX (03-18)

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CONTINENTAL CASUALTY COMPANY

Insured Name: UJ BARTECA PARENT, LLC

Policy No: 6073187285

Endorsement No: 1
Effective Date:





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# **CNA Property Policy**



## Signature Policy Form

(All words or terms in bold, italic, underlined format are defined in the Glossary at the end of this policy)

#### DECLARATIONS

#### 1. NAMED INSURED and MAILING ADDRESS

UJ BARTECA PARENT, LLC 1101 N UNION BOWER RD SUITE 160 IRVING, TX 75061

and its Affiliated or Subsidiary Organizations as of the date hereof.

The word "Insured" shall include as Named Insured any organization which is acquired or formed by the Insured and over which the Insured maintains an interest of more than fifty percent (50%) (other than a joint venture), provided that the Company is promptly notified of the acquisition or the formation within ninety (90) days after such organization is acquired or formed by the Insured. However, any such organization which is acquired by the Insured and over which the Insured maintains an interest of more than fifty percent (50%) shall only be covered from the effective date of such acquisition or formation.

#### TERM

f.

This insurance shall attach on **October 30**, **2019** and cover continuously thereafter until **October 30**, **2020** at 12:01 AM Local Standard Time at the mailing address shown above or for such further period as may be agreed upon in writing.

#### TERRITORIAL LIMITS

The coverage territory is The United States of America, including its territories and possessions, and Canada.

#### 4. LIMITS OF LIABILITY

POLICY LIMITS: \$50,000,000

Accounts receivable:

Debris Removal:

Blanket all coverages for the schedule of locations and values dated 10/31/2019 attached to this policy or on file with the Company, subject to a maximum limit any one occurrence of: \$50,000,000

And further subject to the individual sublimits stated below.

These sublimits are part of and not in addition to the above-stated POLICY LIMITS, the Property sublimits and the Business Interruption sublimits.

Coverage hereunder applies up to, but not more than, the stated limits per <u>Occurrence</u>, except where an <u>Annual Aggregate</u> is stated. Coverage attaches only to those items for which a dollar amount or "INCLUDED" is shown. "INCLUDED" means the coverage does not have a separate sublimit and is included within the applicable sublimits as shown above. See Section II. COVERAGE for description of items.

a.	Accoun	ts receivable.	\$5,000,000
b.	Arson a	and Crime Reward:	\$50,000
c.	Brand (	or Trademark Removal:	\$500,000
d.	Conting	ent Business Interruption (Gross Earnings):	
	•	Scheduled dependent property:	NOT COVERED
	•	Unscheduled dependent property within TERRITORIAL LIMITS:	\$5,000,000
e.	Contract Penalties:		\$25,000

\$5,000,000

\$5,000,000





g.	Decor	ntamination Expense:	\$250,000
h.		ise Costs:	\$50,000
i.	Defer	red Payments:	\$500,000
j.		l of Access by Civil Authority / Ingress – Egress:	\$5,000,000
k.	<u>Earth Movement</u> – <u>Annual Aggregate</u> at all <u>Locations</u> inclusive of <u>Locations</u> further limited as follows:		\$10,000,000
	(1)	<u>Locations</u> in Alaska, California, Hawaii, Puerto Rico – <u>Annual Aggregate:</u>	NOT COVERED
	(2)	<u>Locations</u> in <u>Critical New Madrid Areas</u> – <u>Annual</u> <u>Aggregate</u> :	\$10,000,000
	(3)	Locations in Critical Pacific Northwest Areas – Annual Aggregate:	\$10,000,000
I.	Elect	ronic Data Processing:	
	•	Electronic data processing equipment:	INCLUDED
	•	For additional perils specified in extension:	INCLUDED
	•	Cost of research to replace or restore information lost:	\$1,000,000
	•	Expense to Extract Computer Viruses:	\$2,500
	•	Unauthorized Computer Access:	\$10,000
m.	Equip	ment Breakdown (refer to addendum form):	INCLUDED
	•	Ammonia Contamination:	\$1,000,000
	•	Spoilage:	\$1,000,000
n.	Exped	diting Expense:	\$1,000,000
ο.	Extra	Expense:	\$5,000,000
p.	Fine A	Arts:	\$500,000
q.	Fire B	Brigade Charges and Extinguishing Expenses:	\$100,000
r.		<u>l – <b>Annual Aggregate</b></u> at all <u>Locations</u> inclusive cations further limited as follows:	\$10,000,000
	•	<u>Locations</u> wholly or partially situated in those areas designated as 100 Year (1% annual chance of flooding) floodplains by the Federal Emergency Management Agency or other governmental authority – <u>Annual</u> <u>Aggregate</u> :	\$1,000,000
	•	Locations outside of 100 Year (1% annual chance of flooding) floodplains, but wholly or partially situated in those areas designated as 500 Year (0.2% annual chance of flooding) floodplains by the Federal Emergency Management Agency or other governmental authority - or areas where the flood hazard has not been determined by the Federal Emergency Management Agency or other governmental authority – Annual Aggregate:	\$10,000,000





s.	Fungi, Wet Rot, Dry Rot, And Microbes - Annual Aggregate:	\$250,000	
t.	Leasehold Interest:	\$1,000,000	
u.	Loss Adjustment Expense:		
v.	<u>Named Storm</u> per <u>occurrence</u> all covered loss or damage for all <u>Locations</u> inclusive of all applicable sublimits, and <u>Locations</u> further limited as follows:	\$50,000,000	
	<ul> <li><u>Named Storm</u> per <u>occurrence</u> all <u>Locations</u> in Puerto Rico and the U.S. Virgin Islands, the states of Florida and Hawaii and <u>First Tier Areas</u> in all other states:</li> </ul>	\$50,000,000	
w.	Newly Acquired or Constructed Property – All Coverages Combined:	\$10,000,000	
x.	Ordinance or Law:		
	Undamaged Portion of Building:	INCLUDED	
	<ul> <li>Demolition Cost, and Increased Cost of Construction:</li> </ul>	\$10,000,000	
	<ul> <li>Business Interruption, Extra Expense, or Rental Value:</li> </ul>	\$2,500,000	
y.	Pollution Cleanup and Removal – <u>Annual Aggregate</u> :	\$250,000	
z.	Preservation of Property	INCLUDED	
aa.	Professional Fees:	INCLUDED	
bb.	Property in Course of Construction – Soft Costs:	\$500,000	
cc.	Property Off Premises – Including Fairs, Trade Shows and \$1,000,000		
dd.	Radioactive Contamination: \$25,000		
ee.	Rental Value:	INCLUDED	
ff.	Research and Development Expenses: \$		
gg.	Royalties: \$500,0		
hh.	Service Interruption:		
	Property:	\$1,000,000	
	• <u>Time Element</u> :	\$1,000,000	
ii.	Transit:		
	• Per <u>Occurrence</u> :	\$250,000	
	Per Conveyance:	\$250,000	
jj.	Trees, Shrubs, Plants and <i>Land Improvements</i> :		
	• Per <u>Occurrence</u>	\$250,000	
	Per Tree, Shrub or Plant:	\$2,500	
kk.	Unintentional Errors and Omissions: \$5,000,000		

# CNA

# **CNA Property Policy**

## Signature Policy Form

II. Unscheduled *Locations* – All Coverages Combined:

\$2,500,000

mm. Valuable Papers and Records:

\$5,000,000

#### 5. TIME LIMITS

**a.** Business Interruption Period of Indemnity:

Twelve (12) Months

**b.** Denial of Access by Civil Authority / Ingress – Egress:

Thirty (30) Days

**c.** Extended Period of Indemnity:

One Hundred And Eighty (180) Days

**d.** Newly Acquired or Constructed Property:

One Hundred And Twenty (120) Days

e. Ordinary Payroll Included in Determination of Gross Earnings: Three Hundred And Sixty Five (365) Days

**f.** Service Interruption Qualifying Period:

Twenty Four (24) Hours

#### 6. DEDUCTIBLES

All claims for loss, damage or expense covered under this policy and arising out of or resulting from any one **Occurrence** shall be adjusted as one claim. Except as provided below, from the amount of each such adjusted loss the sum of \$10,000 shall be deducted before the Company shall be liable for any loss, damage or expense covered.

Except as provided below, in the event of any one <u>Occurrence</u> where two or more deductibles apply, the total to be deducted shall not exceed the largest deductible applicable.

When this policy insures more than one <u>Location</u>, the deductible will apply against the total loss or damage covered by this Policy in an <u>Occurrence</u>. However, a deductible that applies on a per <u>Location</u> basis, will apply separately to each <u>Location</u> where the physical loss or damage occurred regardless of the number of <u>Locations</u> involved in the **Occurrence**.

If two or more deductibles apply on a per <u>Location</u> basis in an <u>Occurrence</u>, the largest deductible applying to each <u>Location</u> will be applied separately to each such <u>Location</u>.

If two or more minimum deductibles per <u>Occurrence</u> apply to loss or damage due to <u>Named Storm</u> or <u>Earth</u> **Movement**, only the largest minimum deductible will be applied.

If separate physical damage and <u>Time Element</u> loss deductibles are shown, then the deductibles shall apply separately.

- a. (1) As respects loss or damage due to <u>Flood</u> occurring at all <u>Locations</u> except as may be further provided below, the deductible shall be \$50,000 per **Occurrence**.
  - (2) As respects loss or damage due to <u>Flood</u> occurring anywhere within the policy territory at <u>Locations</u> wholly or partially situated in those areas designated as 100 Year (1% annual chance of flooding) floodplains by the Federal Emergency Management Agency or other governmental authority, the deductible for **Flood** shall be the sum of:
    - \$100,000 for physical damage to covered real property;
    - INCLUDED for physical damage to covered personal property while at an insured <u>location</u>; and
    - INCLUDED for Time Element;

for each Location damaged.

- (3) As respects loss or damage due to <u>Flood</u> occurring anywhere within the policy territory at <u>Locations</u> outside of 100 Year (1% annual chance of flooding) floodplains, but wholly or partially situated in those areas designated as 500 Year (0.2% annual chance of flooding) floodplains by the Federal Emergency Management Agency or other governmental authority or areas where the flood hazard has not been determined by the Federal Emergency Management Agency or other governmental authority, the deductible for <u>Flood</u> shall be the sum of:
  - \$100,000 for physical damage to covered real property;

# **CNA Property Policy**



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- INCLUDED for physical damage to covered personal property while at an insured location; and
- INCLUDED for <u>Time Element;</u>

for each Location damaged.

However, this deductible shall not apply to ensuing loss by fire or explosion.

- b. (1) As respects loss or damage due to <u>Earth Movement</u> occurring at all <u>Locations</u> except as may be further provided below, the deductible shall be \$50,000 per **Occurrence**.
  - (2) As respects loss or damage due to <u>Earth Movement</u> at <u>Locations</u> in the states of California, Hawaii and Alaska, and Puerto Rico, the deductible shall be the sum of:
    - NOT COVERED for physical damage per <u>Location</u>, and
    - NOT COVERED for <u>Time Element</u> per <u>Location</u>.

Subject to a minimum of NOT COVERED in any one Occurrence.

(3) As respects loss or damage due to <u>Earth Movement</u> at <u>Locations</u> in <u>Critical New Madrid</u>
<u>Areas</u> the deductible shall be the sum of:

Subject to a minimum of \$100,000 in any one **Occurrence**.

(4) As respects loss or damage due to <u>Earth Movement</u> at <u>Locations</u> in <u>Critical Pacific Northwest</u>
<u>Areas</u>, the deductible shall be the sum of:

Subject to a minimum of \$100,000 in any one *Occurrence*.

However, this deductible shall not apply to ensuing loss by fire, explosion or leakage from fire protective systems or devices.

- c. (1) As respects loss or damage due to wind or hail (other than wind or hail associated with a <u>Named Storm</u>) occurring at all <u>Locations</u>, except as may be further provided below, the deductible shall be \$10,000 per <u>Occurrence</u>.
- d. (1) As respects loss or damage due to wind or hail associated with a <u>Named Storm</u> occurring at all <u>Locations</u>, except as may be further provided below, the deductible shall be \$100,000 per <u>Occurrence</u>.
  - (2) As respects loss or damage due to wind or hail associated with a <u>Named Storm</u> at <u>Locations</u> in Puerto Rico or the U.S. Virgin Islands, the deductible shall be the sum of:

Subject to a minimum of \$200,000 in any one Occurrence.

(3) As respects loss or damage due to wind or hail associated with a <u>Named Storm</u> at <u>Locations</u> in the states of Florida and Hawaii, and in <u>First Tier Areas</u> in all other states, the deductible shall be the sum of:

Subject to a minimum of \$200,000 in any one **Occurrence**.

- e. As respects loss or damage under the additional coverage **TRANSIT** the deductible shall be \$10,000
- f. As respects loss or damage under the additional coverage Equipment Breakdown the deductible shall be:

Physical Damage: \$10,000

Time Element: Included with Physical Damage Deductible

Spoilage: Included with Physical Damage Deductible





## Application of <u>Earth Movement</u> and <u>Named Storm</u> Percentage Deductibles:

**Physical Damage:** In the event of a claim for physical damage loss, the Company shall not be liable unless the Insured sustains a loss greater than the applicable percentage of the property value including foundations (replacement cost or actual cash value based on Section IV. 12. VALUATION of this form), at each <u>Location</u> where the physical damage occurred, and then only for its share of that greater amount in excess of the applicable percentage.

<u>Time Element</u>: In the event of a claim for <u>Time Element</u> loss, the Company shall not be liable unless the Insured sustains a loss greater than the applicable percentage of the full annual <u>Time Element</u> value which would have been earned in the twelve (12) month period following the loss by use of the facilities at each <u>Location</u> where the physical damage occurred, and then only for its share of that greater amount in excess of the applicable percentage.



#### II. COVERAGE

Except as hereafter excluded and subject to the **LIMITS OF LIABILITY** in Section **I.4.** and all other policy provisions, this policy insures against risks of direct physical loss of or damage to property and/or interests described herein at covered **Locations**. Unless otherwise indicated, all items contained herein are part of and not in addition to the **POLICY LIMIT** shown in Section **I.4.** 

### A. PROPERTY

#### 1. COVERED PROPERTY AND RELATED INTERESTS

- a. The interest of the Insured in all real and personal property owned or used by the Insured, or hereafter erected, installed, or acquired, including while in course of building, erection, installation, and assembly, and including interest in *Improvements and Betterments*.
  - In the event of loss or damage, the Company agrees to accept and consider the Insured as sole and unconditional owner of <u>Improvements and Betterments</u>, notwithstanding any contracts or leases to the contrary.
- b. The interest of the Insured in the real and personal property of others in the Insured's care, custody and control, and the Insured's liability imposed by law or assumed by contract for physical loss or damage to such property.
- c. Personal property of the Insured's officers and employees while at <u>Locations</u> of the Insured, or within one thousand (1,000) feet thereof.

For the purpose of coverage provided herein, personal property shall mean business personal property owned by the Insured or by officers and employees of the Insured which is usual to the occupancy of the Insured, including manuscripts, furniture, fixtures, equipment (including Electronic Data Processing Equipment) and supplies not otherwise excluded under this policy. Such property is covered while at or within one thousand (1,000) feet of the <u>Locations</u> insured by this policy.

#### 2. PROPERTY NOT COVERED

This policy does <u>not</u> cover the following types of property or interests (unless otherwise provided for elsewhere in this form or endorsed hereon):

- Money, deeds, accounts, bills, stamps, letters of credit, evidence of debt, notes, Securities;
- b. Standing timber, growing crops, trees, shrubs and plants, animals or livestock except stock for sale;
- c. Land (including water or any other substance in land, or water on land), land values, excavations, the cost to replace land lost to *Earth Movement* or *Flood*;
- d. Personal property leased or rented to others for more than 180 days; or property sold by the Insured under conditional sale, trust agreement, installment plan, or other deferred payment plan after such property has been delivered to customers;
- e. Property in the course of transit, except as provided in Section II.C.34. TRANSIT;
- f. Transmission and distribution lines of any type, owned, operated, controlled by or leased by the Insured, beyond one thousand (1,000) feet of covered *Locations*;
- g. Satellites and spacecraft on the launch pad or after launch;
- h. Furs, jewelry, watches, precious stones and metals, gold, silver, including bullion and fine arts other than as included in Section I.4. This exclusion does not apply to precious metals and stones used by the Insured for industrial purposes;
- Watercraft, aircraft; railroad rolling stock, and motor vehicles licensed for highway use when not at the Insured's *Locations*;

# **CNA Property Policy**



# Signature Policy Form

- j. Underground mines, caves, caverns, tunnels and any property contained therein or any property underground. This exclusion does not apply to footings and foundations of covered buildings or machinery; underground pipes, flues, drains and tanks; or property in basements or cellars;
- Off-shore property, drilling rigs, production rigs and platforms, including personal property thereon;
- Bridges, dams, dikes, docks, bulkheads, reservoirs, retaining walls, pilings, piers and wharves, when loss or damage is caused by water pressure, ice or impact of watercraft;
- m. Contraband or any property in course of illegal transport or trade;
- Property or interests more specifically covered under another policy, except as excess under the terms of that policy.

#### B. TIME ELEMENT

## BUSINESS INTERRUPTION (GROSS EARNINGS)

a. This policy covers against loss resulting from necessary interruption of business caused by direct physical loss of or damage to covered property, except <u>Finished Stock</u>, by the peril(s) insured against and occurring during the term of this policy at covered <u>Locations</u> occupied by the Insured, subject to the sublimit specified in Section I.4. of this policy.

In the event of such physical loss or damage the Company shall be liable for the actual loss sustained by the Insured resulting directly from such interruption of business, but not exceeding the reduction in **Gross Earnings** as set forth below less charges and expenses which do not necessarily continue during the interruption of business, for only such length of time as would be required with the exercise of due diligence and dispatch to rebuild, repair or replace such part of the property herein described as has been damaged or destroyed, commencing with the date of such damage or destruction and not limited by the date of expiration of this policy, but in no event to exceed the number of months specified in Section I.5. **TIME LIMITS** if a Business Interruption Period of Indemnity limit is specified.

#### b. Determination of Gross Earnings:

- (1) Manufacturing Locations: Gross Earnings are the sum of:
  - (a) Total net sales value of production;
  - (b) Total net sales of <u>Merchandise</u>; and
  - (c) Other earnings derived from operations of the business;

Less the cost of:

- (d) Raw Stock from which production is derived;
- (e) Supplies consisting of materials consumed directly in the conversion of such <u>Raw Stock</u> into <u>Finished Stock</u> or in supplying the service(s) sold by the Insured;
- (f) <u>Merchandise</u> sold, including packaging materials therefore;
- (g) Service(s) purchased from outsiders (not employees of the Insured) for resale which do not continue under contract;
- (h) Ordinary Payroll expense (the entire payroll expense for all employees of the insured, except officers, executives, department managers and employees under contract) beyond the number of days included in Section I.5. of this policy;
- Depreciation Expense for any asset destroyed by perils insured hereunder; and
- (j) Other Discontinued Expenses meaning any other operating expenses discontinued as a result of the direct physical loss or damage caused by peril(s) insured against.





## Signature Policy Form

- (2) Mercantile & Non-Manufacturing Locations: Gross Earnings are the sum of:
  - (a) Total net sales; and
  - (b) Other earnings derived from operations of the business;

Less the cost of:

- (c) <u>Merchandise</u> sold, including packaging materials therefore;
- (d) Materials and supplies consumed directly in supplying the service(s) sold by the Insured;
- (e) Service(s) purchased from outsiders (not employees of the Insured) for resale which do not continue under contract; and
- (f) Depreciation Expense for any asset destroyed by perils insured hereunder;
- (g) Ordinary Payroll expense (the entire payroll expense for all employees of the insured, except officers, executives, department managers and employees under contract) beyond the number of days included in Section I.5. of this policy; and
- (h) Other Discontinued Expenses meaning any other operating expenses discontinued as a result of the direct physical loss or damage caused by a peril insured against.

### C. ADDITIONAL COVERAGES, COVERAGE EXTENSIONS AND LIMITATIONS

#### ACCOUNTS RECEIVABLE

This policy also covers subject to the sublimit specified in Section I.4. of this policy:

- a. All sums due the Insured from customers, which the Insured is unable to collect solely as the direct result of direct physical loss or damage by peril(s) insured against to the Insured's records of accounts receivable;
- Interest charges on any loan to offset impaired collections pending repayment of such sums made uncollectible by such loss or damage;
- Collection expense in excess of <u>Normal</u> collection cost and made necessary because of such loss or damage;
- **d.** Other expenses, when reasonably incurred by the Insured in reestablishing records of accounts receivable following such loss or damage.

For the purpose of this insurance, credit card company charge <u>Media</u> shall be deemed to represent sums due the Insured from customers, until such charge **Media** is delivered to the credit card company.

When there is proof that a loss of records of accounts receivable has occurred but the Insured cannot more accurately establish the total amount of accounts receivable outstanding as of the date of such loss, such amount shall be computed as follows:

- e. The monthly average of accounts receivable during the last available twelve (12) months, together with collection expenses in excess of <u>Normal</u> collection costs during the last available twelve (12) months and made necessary because of such loss or damage, and reasonable expenses incurred in reestablishing records of accounts receivable following such loss or damage, shall be adjusted in accordance with the percentage increase or decrease in the twelve (12) months from when last available average of monthly gross revenues which may have occurred in the interim.
- f. The monthly amount of accounts receivable thus established shall be further adjusted in accordance with any demonstrable variance from the average for the particular month in which the loss occurred.

There shall be deducted from the total amount of accounts receivable, however established, the amount of such 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 would *Normally* have been uncollectible by the Insured.





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### 2. ARSON and CRIME REWARD

The Company will pay up to the sublimit specified in Section I.4. of this policy for information that leads to an arson or other criminal conviction in connection with a loss covered under this policy.

#### 3. BRAND OR TRADEMARK REMOVAL

In case of covered physical damage to property bearing a brand or trademark of the Named Insured or which in any way carries or implies the guarantee or the responsibility of the Named Insured, the salvage value of such damaged property shall be determined after removal in the customary manner of all such brands or trademarks or other identifying characteristics. The Company will pay up to the Brand or Trademark Removal sublimit specified in Section I.4. of this policy for the reasonable costs incurred in the removal of such brands, trademarks or identifying characteristics.

### 4. CONTINGENT BUSINESS INTERRUPTION (GROSS EARNINGS)

Subject to the sublimits for scheduled and unscheduled dependent properties specified in Section **I.4.** of this policy, the policy is extended to pay for loss resulting from necessary interruption of business conducted at **Locations** occupied by the Insured and covered in this policy, caused by direct physical loss or damage by peril(s) insured against to:

- a. any real or personal property of the type insured hereunder of direct suppliers or service providers which wholly or partially prevents the delivery of materials, products or services (other than water, communication or power supply) to the Insured or to others for the account of the Insured; or
- any real or personal property of the type insured hereunder of direct customers to whom the Insured's product(s) or services (other than water, communication or power supply) is provided, which wholly or partially prevents the acceptance of said product(s) or services;
- c. any real or personal property of the type insured that is operated by others that the Insured depends upon to attract customers. Coverage is limited to dependent property within 5 miles of the Insured's *Location* unless it is a Scheduled Dependent Property.

#### 5. CONTRACT PENALTIES

This Company will pay contractual penalties incurred by the insured for its failure to timely deliver its products or services to its customers according to the contract terms, but only when such failure results solely from covered direct physical loss or damage to covered property, subject to the sublimit specified in Section I.4. of this policy.

#### 6. DEBRIS REMOVAL

This policy also covers the reasonable and necessary costs and expenses the Insured incurs, due to physical loss or damage from a peril covered under this policy, for removing from a covered <u>Location</u>, debris remaining after such physical loss or damage to property of the type insured under this policy.

The maximum amount payable under this clause is the Debris Removal Sublimit specified in Section I.4. of this policy.

This Coverage part does not apply to the increased cost of removal or disposal of covered property due to *Contaminants or Pollutants*.

There shall be no liability for the expense of removing contaminated property not covered by this policy or the *Contaminants or Pollutants* therein or thereon, whether or not the contamination results from an insured event.

### 7. DECONTAMINATION EXPENSE

Subject to the Decontamination Expense sublimit in Section **I.4.**, if covered property is contaminated as a direct result of physical damage caused by perils insured against, or if the damaged covered property inherently contains <u>Contaminants or Pollutants</u>, and there is in force at the time of such damage any law or ordinance regulating contamination, including but not limited to pollution, then this policy covers, as a result of enforcement of such law or ordinance, the increased cost of decontamination of the covered property and debris removal of such property in a manner to satisfy the minimum requirements of such law or ordinance.



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If this policy includes <u>Time Element</u> coverage, the period of interruption for <u>Time Element</u> coverage is extended to include the additional time as is necessary and reasonable, with the exercise of due diligence and dispatch, to decontaminate covered property in a manner to satisfy the minimum conditions of the aforementioned law or ordinance. Any increase in **Time Element** loss shall also be included in the Decontamination Expense sublimit.

There is no liability for expense or time required for removing contaminated property not insured under this policy or the contaminant therein or thereon, whether or not the contamination results from an insured *Occurrence*.

This coverage part does not apply to **RADIOACTIVE CONTAMINATION**.

### 8. DEFENSE COSTS

Subject to the sublimit in Section I.4. this policy covers the cost to defend any suit against the Insured alleging physical loss or damage as insured against, to real or personal property of others in the care, custody control of the Insured to the extent of the Insured's Liability therefore, even if such suit is groundless, false or fraudulent; but the Company may, without prejudice, make such investigation, negotiation or settlement of any such claim or suit as they deem expedient.

### 9. DEFERRED PAYMENTS

Subject to the Deferred Payments sublimit in Section I.4. the Company will reimburse the Insured for payments the Insured is unable to collect due to direct physical loss or damage within Territorial Limits to <u>Merchandise</u> or <u>Finished Stock</u> sold by the Insured on an installment or other deferred payment basis after it has been accepted by the Insured's customer(s). In no event shall this Company pay more than the Insured's financial interest in such property,

### 10. DENIAL OF ACCESS BY CIVIL AUTHORITY AND INGRESS-EGRESS

This policy is extended to cover for up to the time limit specified in Section I.5. but not exceeding the sublimit shown in Section I.4. of this policy, the actual loss sustained:

- a. during the period of time while access to the Insured's <u>Location</u> is prohibited by order of civil authority, but only when such order is given as a direct result of physical loss or damage to property of the type insured from a peril insured against occurring at or in the immediate vicinity of said *Location*; or
- **b.** during the period of time when as a direct result of physical loss or damage to property of the type insured from a peril insured against, ingress to or egress from the Insured's <u>Location</u> is thereby physically prevented.

### 11. ELECTRONIC DATA PROCESSING

This policy also covers:

- a. <u>Electronic Data Processing Equipment</u> for loss caused by or resulting from these additional perils:
  - (1) Artificially generated electrical current, including arcing that disturbs electrical devices, appliances, or wires; or
  - (2) Mechanical breakdown and machinery breakdown, including malfunction or component failure; all subject to the Limits specified in Section I.4. of this policy.
- **Electronic Media and Records**: for the cost of research to replace or restore the information lost due to perils insured, subject to the sublimit specified in Section **I.4.** of this policy.
  - The Company will not pay for loss or damage due to accidental erasure of information on <u>Electronic</u> **Media and Records** in the absence of physical damage to the **Electronic Media and Records**.
- c. <u>Computer Virus</u>: This Company will also pay for the expense incurred by the Insured to extract <u>Computer Viruses</u> that become known to the Insured during the policy period even though no direct loss or damage has occurred, subject to the sublimit specified in Section I.4. of this policy.

The Insured must report such <u>Occurrence</u> within one hundred-eighty (180) days of knowledge thereof for payment to be made under this clause.



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- **d. Unauthorized Computer Access:** With respect to the Insured's information systems operations, subject to the sublimit specified in Section **I.4.** of this policy, coverage shall include:
  - (1) Accidental, intentional or malicious distortion, corruption, manipulation, erasure or loss by unauthorized persons of <u>Media</u>, <u>Data</u>, <u>Application Software</u>, <u>System Software</u> or <u>Source</u> <u>Code</u> owned or operated on the Insured's <u>Electronic Data Processing Equipment</u>;
  - (2) <u>Theft</u> of any covered property (other than by an employee of the Insured) or willful acts causing loss or damage to covered property by any person when such loss results from the unauthorized use of the Insured's <u>Electronic Data Processing Equipment</u> including <u>Media</u>, <u>Data</u>, <u>Application Software</u>, <u>System Software</u> or <u>Source Code</u>. This provision does not apply to <u>Money</u> and <u>Securities</u> or any other property specifically excluded in this policy.

#### 12. EXPEDITING EXPENSES

This Company will pay reasonable and necessary costs incurred by the Insured to expedite repairs to covered property following loss or damage covered under this policy. This includes payment of overtime wages and the extra cost to use express or other rapid means of transportation, subject to the sublimit specified in Section I.4. of this policy. However, coverage is not included hereunder for costs recoverable elsewhere in this policy or for the permanent repair or replacement of damaged property.

### 13. EXPENSES RELATED TO REDUCING LOSS

This policy covers such expenses as are necessarily incurred for the purpose of reducing a <u>Time Element</u> loss (except expense incurred to extinguish a fire) and such expenses, in excess of <u>Normal</u>, as would necessarily be incurred in replacing any <u>Finished Stock</u> used by the Insured to reduce loss. But in no event shall the aggregate of such expenses exceed the amount by which the loss otherwise recoverable elsewhere in this policy is thereby reduced.

### 14. EXTENDED PERIOD OF INDEMNITY

**a.** Business Interruption other than Rental Value:

This policy is extended to cover the loss of **Gross Earnings** sustained by the Insured resulting directly from the interruption of business, as covered by this policy, for such additional length of time as would be required with the exercise of due diligence and dispatch to restore the Insured's business to the condition that would have existed had no loss occurred, commencing with the later of the following dates:

- the date on which the liability of the Company for loss under Section **II.B.1.a.** would terminate if this provision had not been added to this policy; or
- the date on which the repair, replacement or rebuilding of damaged or destroyed covered property is actually completed;

but in no event for more than the number of days indicated in Section I.5. of this policy.

### **b.** Rental Value:

This policy is extended to cover the loss of Rental Value sustained by the Insured resulting directly from the untenantability of insured premises, as covered by this policy, for such additional length of time as would be required with the exercise of due diligence and dispatch to restore tenant occupancy to the condition that would have existed had no loss occurred, commencing with the later of the following dates:

- the date on which the liability of the Company for loss under Section II.C.30. RENTAL VALUE would terminate if this provision had not been added to this policy; or
- the date on which the repair, replacement or rebuilding of damaged or destroyed covered property is actually completed;

but in no event for more than the number of days indicated in Section I.5. of this policy.

### 15. EXTRA EXPENSE

The Company will pay for the reasonable and necessary extra expense, as hereinafter defined, incurred by the Insured in order to continue as nearly as practicable the <u>normal</u> operation of the Insured's business following direct physical loss of or damage to covered property by perils(s) insured against.



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In the event of such physical loss or damage, the Company shall be liable for such reasonable and necessary extra expense incurred for only such length of time as would be required with the exercise of due diligence and dispatch to rebuild, repair or replace such part of the property as has been damaged, commencing with the date of damage and not limited by the date of expiration of this policy, subject to the sublimit specified in Section **I.4.** of this policy.

#### 16. FINE ARTS

This policy is extended to cover physical loss or damage from peril(s) insured against to fine arts in which the Insured has an interest, subject to the sublimit specified in Section I.4. of this policy and the following:

Additional Exclusions - This extension does not insure against loss or damage caused by:

- a. any repairing, restoration or retouching process performed on any fine arts;
- **b.** breakage of statuary, art glass windows, glassware, bric-a-brac, marble, porcelain and similar fragile property unless such breakage is caused by a peril insured under this policy.

For purposes of the coverage provided herein, fine arts means property that is rare or has historic or artistic value including works of art, antiques, rare articles, etchings, pictures, statuary, marbles, bronzes, porcelains and bric-a-brac.

### 17. FIRE BRIGADE CHARGES AND EXTINGUISHING EXPENSES

This policy also covers fire brigade charges and other extinguishing expenses for which the Insured may be assessed after a covered loss hereunder, subject to the sublimit specified in Section **I.4.** of this policy.

### 18. FUNGI, WET ROT, DRY ROT AND MICROBES

- a. This policy covers loss or damage by <u>Fungi</u>, wet rot, dry rot and <u>Microbes</u>, when the <u>Fungi</u>, wet rot, dry rot and <u>Microbes</u> are the result of covered physical loss, damage or destruction of property insured by this policy, but only if;
  - (1) The Covered Cause of Loss from which the <u>Fungi</u>, wet rot, dry rot and <u>Microbes</u> loss or damage resulted occurred during this policy period; and
  - (2) All reasonable means were used to save and preserve the property from further damage at the time of and after that *Occurrence*; and
  - (3) The existence of the <u>Fungi</u>, wet rot, dry rot and <u>Microbes</u> loss or damage is reported as soon as practicable, but no later than 180 days after the <u>Occurrence</u> of the Covered Cause of Loss from which the **Fungi**, wet rot, dry rot and **Microbes** loss or damage resulted.
- b. As used in this policy, the term *Fungi*, wet rot, dry rot and *Microbes* loss or damage means:
  - (1) Direct physical loss or damage to covered property caused by <u>Fungi</u>, wet rot, dry rot and **Microbes**, including the cost of removal of the **Fungi**, wet rot, dry rot and **Microbes**;
  - (2) The cost to tear out and replace any part of the building or other property as needed to gain access to the *Fungi*, wet rot, dry rot and *Microbes*; and
  - (3) The cost of testing performed after removal, repair, replacement or restoration of the damaged property is completed, provided there is a reason to believe that *Fungi*, wet rot, dry rot and *Microbes*, are present.
- c. Coverage is subject to the <u>Fungi</u>, wet rot, dry rot and <u>Microbes</u> sublimit specified in Section I.4. Regardless of the number of claims, this limit is the most the Company will pay for the total of all loss or damage arising out of all <u>Occurrences</u> of Covered Causes of Loss which take place in a 12-month period (starting with the beginning of the present annual policy period). With respect to a particular <u>Occurrences</u> of loss which results in <u>Fungi</u>, wet rot, dry rot and <u>Microbes</u>, the Company will not pay more than the <u>Fungi</u>, wet rot, dry rot and <u>Microbes</u>, Sublimit, even if the <u>Fungi</u>, wet rot, dry rot and <u>Microbes</u>, continues to be present or active, or recurs, in a later policy period.



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d. This coverage does not increase the applicable limit or sublimit of liability on any covered property, or applicable sublimit of any Covered Cause of Loss. If a particular <u>occurrence</u> results in loss or damage by <u>Fungi</u>, wet rot, dry rot and <u>Microbes</u>, and other loss or damage, the Company will not pay more, for the total of all loss or damage, than the applicable Limit or Sublimit of Insurance on the affected covered property.

If there is covered loss or damage to covered property, not caused by <u>Fungi</u>, wet rot, dry rot and <u>Microbes</u>, loss payment will not be limited by the terms of this Coverage, except to the extent that <u>Fungi</u>, wet rot, dry rot and <u>Microbes</u>, causes an increase in the loss. Any such increase in the loss will be subject to the terms of this Limited Coverage.

#### 19. LEASEHOLD INTEREST

Subject to the sublimit specified in Section I.4. of this policy and all other policy provisions, this policy covers the interest of the Insured as lessee at all leased real property.

Recovery in the event of loss hereunder shall be the actual loss sustained to the <u>Leasehold Interest</u> by the Insured if caused by physical loss or damage of the type insured against by this policy to real property of the type covered by this policy situated at **Locations** occupied by the Insured, as follows:

- **a.** The actual rent which remains payable for the unexpired term of the lease if such property becomes wholly untenable or unusable and the lease agreement requires continuation of the rent payment; or
- b. the proportion of rent which remains payable for the unexpired term of the lease if such property becomes partially untenable or unusable and the lease agreement requires continuation of the rent payment; or
- the <u>Leasehold Interest</u> for the first three (3) months following loss or damage and the <u>Net Leasehold</u> <u>Interest</u> for the remaining unexpired term of the lease if the lease is canceled by the lessor pursuant to the lease agreement or by the operation of law.

Exclusions: This Section does not insure against any loss or expense resulting from:

- (1) the suspension, lapse, or cancellation of any license; or
- (2) the Insured exercising an option to cancel the lease; or
- any act or omission by the Insured which constitutes a default under the lease.

Additional Condition: It is a condition of this Section that the Insured shall use any suitable property or service owned or controlled by the Insured or obtainable from another source to reduce the amount of loss hereunder.

### 20. LOSS ADJUSTMENT EXPENSE

This insurance applies to the reasonable expenses incurred by the Insured in preparing claim data when required by the Company, subject to the sublimit in Section I.4. This includes the cost of taking inventories, obtaining appraisals and preparing other documentation to show the extent of loss. The Company will not pay for any expenses incurred, directed, or billed by or payable to attorneys, public adjusters, insurance brokers or agents or their associates or subsidiaries, or any costs as provided in Section IV. LOSS CONDITIONS 1. APPRAISAL.

### 21. MACHINERY/PAIR AND SET

In case of physical loss or damage caused by peril(s) insured against in this policy to any part of a machine or unit (consisting of two or more parts when complete either for sale or use), the liability of the Company shall be limited to the value of the part or parts lost or damaged or, at the Insured's option, to the cost and expense of replacing or duplicating the lost or damaged part or parts or of repairing the machine or unit.

In case of loss to any part of a pair or set, the Company may repair or replace such part to restore the pair to its value before the loss, or pay the difference between the value of the pair or set before and after the loss. In no event shall such loss or damage be construed to mean total loss of the pair or set.

### 22. NEWLY ACQUIRED or CONSTRUCTED PROPERTY

This policy covers newly acquired property of the Insured at any *Location* within the territorial limit of the policy



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that is not listed on the schedule of <u>Locations</u> and values on file with the Company; and new buildings constructed at any <u>location</u>; subject to the Newly Acquired or Constructed Property sublimit specified in Section **I.4.** of this policy and the following conditions:

- The Insured's interest is not covered under any other policy;
- b. The insured shall report newly acquired property or the beginning of construction of new buildings to this Company within the Newly Acquired or Constructed Property Time Limit specified in Section I.5., otherwise coverage under this policy shall cease except to the extent of any sublimit stated elsewhere for Unscheduled *Locations*; and
- **c.** Additional premium shall be payable from the date of acquisition or beginning of construction thereof.

If this policy includes <u>Time Element</u> coverage, any <u>Time Element</u> loss resulting from covered physical loss or damage at a newly acquired <u>Location</u>, or newly constructed building shall also be included in the Newly Acquired or Constructed Property sublimit.

This coverage excludes loss or damage directly or indirectly caused by or resulting from *Earth Movement* or *Flood*.

### 23. ORDINANCE OR LAW, DEMOLITION COST, AND INCREASED COST OF CONSTRUCTION

In the event of physical loss or damage covered hereunder that causes the enforcement of any law or ordinance in effect at the time of loss regulating the construction, repair or use of the damaged building(s), this Company shall be liable for:

- a. The value of the undamaged portion of the damaged building(s) that must be demolished;
- **b.** The cost of demolishing the undamaged portion of the damaged building(s) that must be demolished because of such law or ordinance, including the cost of clearing the site;
- c. The increased cost of repair or reconstruction of the damaged and undamaged portion of the damaged building(s) on the same site or another site, but limited to the costs that would have been incurred in order to comply with the minimum requirements of such law or ordinance regulating the repair or reconstruction of the damaged building(s) on the same site; and
- **d.** The increased loss or costs for business interruption, extra expense or rental value arising out of the additional time required to comply with said law or ordinance.

The Company shall not be liable for any costs attributable to any ordinance or law that the Insured was required to, but failed to, comply with before the loss.

The Company shall not be liable under **23.c.** or **23.d.** of this clause for any loss unless the damaged building is actually repaired, rebuilt or replaced with property of the same size and occupancy on the same site or at another site as soon as reasonably possible.

This coverage does not increase the applicable limit or sublimit of any Cause of Loss. For example, if <u>Earth</u> <u>Movement</u> or <u>Flood</u> are the cause of the physical loss or damage which results in the enforcement of an ordinance or law regulating the construction, repair or use of a damaged building, the most the Company will pay for all loss or damage including this coverage, is the <u>Earth Movement</u> or <u>Flood</u> sublimit in Section I.4.

The Company will not pay under this coverage for loss due to the enforcement of any ordinance or law which requires an Insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to or assess the affects of *Contaminants or Pollutants*.

In no event will the Company pay more under this coverage than the Ordinance or Law sublimits specified in Section **I.4.** of this policy.

### 24. POLLUTION CLEAN UP AND REMOVAL

The Company will pay the Insured's expense to extract <u>Contaminants or Pollutants</u> from land or water at insured <u>Locations</u> if the presence of the <u>Contaminants or Pollutants</u> is caused by or results from a covered peril that occurs during the policy period, subject to the <u>Annual Aggregate</u> sublimit specified in Section I.4. of this policy.



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Costs to test for, monitor or assess the existence, concentration or effects of <u>Contaminants or Pollutants</u> are not covered, but the Company will pay for testing which is performed in the course of extracting the <u>Contaminants or Pollutants</u> from land or water, subject to the Pollution Cleanup and Removal sublimit specified in Section I.4. of this policy

The expenses will be paid only if they are reported to the Company within one hundred- eighty (180) days of the date on which the loss or damage at insured *Locations* occurs.

### 25. PRESERVATION OF PROPERTY

If it is necessary to move covered property from an insured <u>Location</u> to preserve it from direct physical loss or damage by peril(s) insured against the Company will pay for any direct physical loss or damage to that property:

- a. While it is being moved or while temporarily stored at another location; and
- b. Only if the loss or damage occurs within 60 days after the property is first moved.

### 26. PROFESSIONAL FEES

This policy is extended to cover the fees of architects, surveyors, consulting engineers and fees of other professionals necessarily incurred in the work of repairing or rebuilding the property following a loss subject to the sublimit specified in Section I.4. of this policy. Such fees do not include those incurred by the Insured in the preparation of any claim.

### 27. PROPERTY IN THE COURSE OF CONSTRUCTION – SOFT COSTS

This policy includes, subject to the Property In the Course of Construction – Soft Costs sublimit specified in Section I.4. of this policy, Soft Cost expenses incurred due to physical loss or damage from peril(s) insured against for that property described in II.A.1. which is in the course of construction, installation, erection, start-up, commissioning, reconstruction, repairs, alteration, or renovation and the like at *Locations* insured hereunder.

Soft Cost expenses include the following reasonable and necessary expenses which are over and above those which would have *normally* been incurred had no loss occurred:

- a. Additional interest expense;
- **b.** General overhead-developer expenses and additional real estate taxes;
- c. Legal or professional fees;
- **d.** Extra marketing expenses and advertising fees;
- **e.** Debt service payments and insurance premiums;
- **f.** Refinancing charges and bond interest.

#### 28. PROPERTY OFF PREMISES

This policy is extended to cover property that is temporarily at a location the Insured does not own, lease or operate, including property in the care, custody or control of a salesperson; or at any fair, exhibition or trade show.

This extension does not apply to property in the due course of transit.

This coverage is subject to the sublimit specified in Section I.4. of this policy.

### 29. RADIOACTIVE CONTAMINATION

This policy covers loss or damage caused by sudden and accidental radioactive contamination, including resultant radiation damage, to the property covered hereunder, provided that such radioactive contamination arises out of material originating at the Insured *Locations*, and provided, at the time of such loss, 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 such a nuclear reactor, at the Insured's Locations. This coverage is subject to the sublimit specified in Section **I.4.** of this policy.



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### 30. RENTAL VALUE

Subject to the sublimit specified in Section I.4. of this policy, recovery in the event of loss hereunder shall be the actual loss sustained by the Insured resulting directly from necessary untenantability of insured premises, caused by direct physical loss or damage from peril(s) insured against, but not exceeding the reduction in rental value less charges and expenses which do not necessarily continue during the period of untenantability for only such length of time as would be required, with the exercise of due diligence and dispatch to rebuild, repair or replace such part of the property insured herein as has been damaged, commencing with the date of such damage and not limited by the date of expiration of this policy.

For purposes of this policy, rental value is defined as the sum of:

The total anticipated gross rental income from tenant occupancy of the covered property, and

- **a.** the amount of all charges which are the legal obligation of the tenant(s) and which would otherwise be obligations of the Insured, and
- **b.** the fair rental value of any portion of the said property which is occupied by the Insured.

In determining the rental value, due consideration shall be given to the rental experience before the date of the damage and the probable experience thereafter had no loss occurred.

As respects rental value coverage, this policy also covers such expenses as are necessarily incurred for the purpose of reducing loss, but in no event shall the aggregate of such expenses exceed the amount by which the loss otherwise payable under this policy is thereby reduced.

#### 31. RESEARCH AND DEVELOPMENT EXPENSES

In the event of direct physical loss or damage by peril(s) insured against to covered property which results in an interruption of research and development activities, which in themselves would not have produced income during the period of restoration, this policy shall cover the actual loss sustained of the continuing fixed charges and expenses, including ordinary payroll directly attributable to such research and development activities, subject to the sublimit specified in Section I.4. of this policy.

### 32. ROYALTIES

This policy is extended to cover the actual loss of royalties, commissions or similar fees the Insured sustains resulting from direct physical loss or damage to property of another not insured under this policy with whom the Insured has a royalty, licensing or commission agreement if that loss or damage is caused by a covered peril. The most the Company will pay under this coverage is the sublimit specified in Section I.4. of this policy.

### 33. SERVICE INTERRUPTION

This policy is extended to provide coverage when any direct physical loss or damage to unowned property described in paragraphs **a.** or **b.** below is caused directly by peril(s) insured against, (including covered **Equipment Breakdown** if applicable) and which, without the intervention of any other independent cause, results in a sequence of events which cause direct physical loss or damage to covered property at a covered **Location**, including loss caused by a change in temperature or humidity, and/or **Time Element** loss, as provided by this policy.

- a. Property, not otherwise excluded, at covered <u>Locations</u> and within one thousand (1,000) feet thereof that is used by the Insured for: air conditioning; communications; cooling; heating; humidifying; lighting; refrigeration; or generation and/or conversion of power. This includes all associated transmission and distribution lines while on covered **Locations** and within one thousand (1,000) feet thereof.
- b. Property, not otherwise excluded, beyond one thousand (1,000) feet from covered <u>Locations</u> that provides the Insured services of: communications; electricity; fuel; gas; refrigeration; sewer; steam; or water to covered <u>Locations</u>. This includes generating equipment, switching stations, substations, transformers, pumping and storage facilities, but excludes any associated transmission and distribution lines beyond the physical boundaries of the service providing facility.
  - (1) The physical damage deductible for this coverage is the applicable deductible for the covered peril causing such physical loss or damage to such unowned property.



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(2) Coverage for any <u>Time Element</u> loss, as provided by this policy, for this coverage applies only if any of the above mentioned services are continuously affected, as described above, for more than the number of hours specified in Section I.5. Service Interruption Qualifying Period.

In the event that the qualifying period has been satisfied, the Company shall then be liable for the amount of the <u>Time Element</u> loss until the resumption of <u>Normal</u> operations, in excess of the applicable deductible for the covered peril causing such physical loss or damage to such unowned property.

Liability under 33.b. is subject to the Service Interruption sublimits specified in Section I.4. of this policy.

### 34. TRANSIT

This policy is extended to cover the property insured while in due course of transit within the Territorial Limits of the policy from the time the property leaves the location at the initial point of shipment and continuously thereafter, until delivered at the final destination. Coverage shall include general average or salvage charges on shipments covered while waterborne.

This extension of coverage also insures against physical loss or damage:

- **a.** Occasioned by the acceptance by the Insured, Insured's agent, customer or consignee or others of fraudulent bills of lading, shipping or messenger receipts;
- **b.** Occasioned by fraud or deceit, perpetrated by any person(s) who may represent themselves to be the proper party or parties to receive the property for shipment or to accept it for delivery.
  - However, this coverage shall not apply to any fraud or deceit by an employee of the Insured, whether acting alone or in collusion with others.

This coverage does not apply to:

- (1) Export shipments, which have been laden on board export conveyance or have come under the protection of marine insurance, whichever first occurs;
- (2) Import shipments until fully discharged from import conveyance or until marine insurance has ceased to cover, whichever last occurs;
- (3) Shipments while waterborne except while on ferries or barges on inland waterways within territorial limits of the policy;
- Property of others, including the Insured's legal liability therefore, hauled on vehicles owned, leased or operated by the Insured when acting as a common or contract carrier.
- (5) Household goods of employees.

Coverage is subject to Transit the sublimits shown in Section I.4.

### 35. TREES, SHRUBS, PLANTS AND LAND IMPROVEMENTS

This policy is extended to cover physical loss or damage to trees, shrubs, plants (other than trees, shrubs or plants grown or held for sale) and <u>land improvements</u> at covered <u>Locations</u> caused by peril(s) insured against herein. The most the Company will pay under this coverage, per <u>occurrence</u> or per item, is the sublimit specified in Section I.4. of this policy.

### 36. UNINTENTIONAL ERRORS AND OMISSIONS

This insurance shall not be prejudiced by any unintentional or inadvertent error, omission, incorrect valuation or incorrect description of the interest, risk or property, provided notice is given to the Company as soon as practicable upon discovery of any such error, omission, incorrect valuation or incorrect description. The most the Company will pay under this coverage is the sublimit specified in Section **I.4.** of this policy.

### 37. UNSCHEDULED LOCATIONS

This policy is extended to cover property at unscheduled <u>Locations</u> which are <u>Locations</u> owned, leased, operated or regularly used by the Insured that do not appear on any Schedule of <u>Locations</u> and values on file



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with the Company. The most the Company will pay for loss or damage at any one of these **Locations** is the sublimit specified in Section I.4. of this policy.

If this policy includes <u>Time Element</u> coverage, any <u>Time Element</u> loss resulting from covered physical loss or damage at an unscheduled <u>Location</u> shall also be included in the Unscheduled <u>Locations</u> sublimit in Section I.4. of this policy.

This coverage excludes loss or damage directly or indirectly caused by or resulting from *Earth Movement* or *Flood*.

### 38. VALUABLE PAPERS & RECORDS

This policy also covers the costs of research and other expenses to replace or restore the information on valuable papers and records for which there are no duplicates. It also covers the amount in excess, if any, of valuation provision **IV.12.** All coverage is subject to the sublimit specified in Section **I.4.** of this policy.

For the purposes of the coverage provided herein, valuable papers and records means: written, printed, or otherwise inscribed documents and records, including books, manuscripts, maps, drawings, film, and other photographically produced records such as slides and microfilms, legal and financial agreements such as deeds, mortgages and leases, but does not mean <u>Money</u> or <u>Securities</u> nor does it mean <u>Media</u>, <u>Data</u>, <u>Application</u> <u>Software</u>, <u>System Software</u> or <u>Source Code</u>.

### D. EXCLUSIONS

### Group 1. Exclusions

Unless otherwise provided for and limited in Section I.4., this Policy excludes loss or damage directly or indirectly caused by or resulting from any of the following regardless of (a) the cause of the excluded event; or (b) other causes of the loss; or (c) any other causes or events, whether or not insured under this Policy, which may have contributed concurrently or in any sequence with the excluded event to produce the loss; or (d) whether the event occurred suddenly or gradually, involved isolated or widespread damage, arose from natural or external forces, or occurred as a result of any combination of any of the following:

### a. Nuclear Hazard

Nuclear reaction or nuclear radiation, or radioactive contamination from any cause, all whether controlled or uncontrolled, and whether such loss be direct or indirect, proximate or remote or in whole or in part caused by, contributed to or aggravated by the peril(s) insured against in this policy. However, ensuing loss from fire will be covered.

This exclusion does not apply to physical loss or damage caused by sudden and accidental radioactive contamination, including resultant radiation damage, from materials used or stored or from processes conducted on the insured premises, provided that, at the time of such loss or damage, there is neither a nuclear reactor nor any new or used nuclear fuel on the insured premises.

### b. War and Military Action

War, invasion, act of foreign enemy, hostilities or warlike operations (whether war be declared or not), civil war;

Mutiny, civil commotion assuming the proportions of or amounting to a popular uprising, military uprising, insurrection, rebellion, revolution, military or usurped power, martial law or state of siege or any of the events or causes which determine the proclamation or maintenance of martial law or state of siege;

Seizure or destruction under quarantine or customs regulation, commandeering, confiscation, expropriation, nationalization, or destruction by order of any government (de jure or de facto) or public authority, except destruction by order of public authority to prevent spread of fire or explosion.





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#### c. Terrorism

For the purposes of this policy, Terrorism shall mean the use or threat of force or violence against persons or property, or commission of an act dangerous to human life or property, or commission of an act that interferes with or disrupts an electronic or communication system, undertaken by any person or group, whether or not acting on behalf of or in connection with any organization, government, power, authority or military force, when one or more of the following apply:

The effect is to intimidate or coerce a government or business, or to disrupt any segment of the economy;

The effect is to cause any alarm, fright, fear or danger, or apprehension of public safety; or

The apparent or logically implied intent is to further political, ideological, religious or cultural objectives, or to express support for (or opposition to) a philosophy, ideology, religion or culture.

### d. Earth Movement,

unless otherwise endorsed hereon or limited in Section I.4. of this policy. However, ensuing loss by fire, explosion or leakage from fire protective systems or devices will be covered.

#### e. Flood,

unless otherwise endorsed hereon or limited in Section I.4. of this policy. However, ensuing loss by fire or explosion will be covered.

### f. Computer Virus

### g. <u>Contaminants or Pollutants</u>

The release, discharge, or dispersal of toxic or hazardous substances, <u>Contaminants or Pollutants</u>, all whether direct or indirect, proximate or remote or in whole or in part caused by, contributed to or aggravated by any physical loss or damage covered by this policy; unless the contamination is itself caused by covered physical loss or damage of property insured by this Policy for the following Causes of Loss:

Fire; lightning; explosion; wind or hail; smoke; direct impact of vehicle, aircraft or vessel; strike, riot or civil commotion; vandalism or malicious mischief; Equipment Breakdown; leakage or accidental discharge of fire protection equipment; collapse; falling objects; weight of snow, ice or sleet; theft; sudden and accidental discharge, leakage, backup, or overflow of liquids or molten material from confinement within piping, plumbing systems, tanks, equipment or other containment located at the insured *location*;

This policy does not insure against any loss, damages, costs or expenses incurred as the result of any government or regulatory directive or request that the Insured or anyone acting under the Insured's direction or control test for, monitor, clean up, remove, contain, treat, detoxify or neutralize any toxic hazardous substances, *Contaminants or Pollutants*.

### h. Fungi, Wet Rot, Dry Rot and Microbes,

- (1) The presence, growth, proliferation, spread or any activity of <u>Fungi</u>, wet rot, dry rot or <u>Microbes</u>, all whether direct or indirect, proximate or remote or in whole or in part caused by, contributed to or aggravated by any physical damage insured by this policy;
- (2) Any government or regulatory directive or request that the Insured or anyone acting under the Insured's direction or control test for, monitor, clean up, remove, contain, treat, detoxify or neutralize any *Fungi*, wet rot, dry rot or *Microbes*.
- i. Unexplained loss, mysterious disappearance, or loss or shortage disclosed upon taking inventory;
- j. Any willful or dishonest act or omission of the Insured or any associate, proprietor, partner, director, trustee, elected officer or employee, or agent of the Insured except a bailee or common carrier. This exclusion applies to <u>Theft</u> by the Insured's employees, but not to acts of destruction by such employees;



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- **k.** Losses which are eligible for coverage under any government or national program or scheme to the extent of recoverability there under (conditions of payment and or delays in payment shall not abrogate this exclusion). This policy shall apply as excess of any amounts recoverable under such programs or schemes subject to the terms, conditions and limitations of this policy.
- Loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with the actual or threatened malicious use of pathogenic or poisonous biological or chemical materials regardless of any other cause or event contributing concurrently or in any other sequence thereto.
- **m.** Costs, expenses, fines or penalties incurred or sustained by or imposed on the Insured at the order of any government agency, court or other authority arising from any cause whatsoever.

In any action, suit or other proceeding where the Company alleges that by reason of the above provisions any loss or damage is not covered by this insurance, the burden of proving that such loss or damage is covered shall be upon the Insured.

### 2. Group 2. Exclusions

Unless otherwise provided for and limited in Section I.4., this policy does not insure against physical loss or damage caused by or resulting from the following; however, if physical loss or damage from a peril(s) insured against herein ensues, then this policy shall cover only for such ensuing loss or damage:

- **a.** Errors or defects in design, construction or specification, errors in processing or manufacture, faulty workmanship or faulty materials;
- **b.** Electrical injury or disturbance to electrical appliances, devices or wiring caused by electrical currents artificially generated;
- c. Mechanical or machinery breakdown;
- **d.** Explosion, rupture, or bursting of fired or unfired pressure vessels or pipes, steam boilers, steam pipes, steam turbines, steam engines or flywheels owned or operated by the Insured;
- Damage sustained to goods while they are actually being processed, manufactured, tested or otherwise worked on;
- **f.** Enforcement of any ordinance or law regulating the construction, repair, use or demolition of any property insured hereunder, or which necessitates demolition of undamaged portions of property covered herein;
- g. Settling, bulging, cracking, shrinking or expansion of foundations, walls, roofs, ceilings, floors, walkways, patios, roadways and other paved surfaces;
- **h.** Delay, loss of market, loss of use or any other consequential or remote loss, unless coverage is provided by this policy, and then such loss is covered only to the extent provided herein;
- i. Gradual deterioration; depletion; inherent vice; insects, birds, rodents, or other animals, including nesting or infestation, or discharge or release of waste products or secretions; ordinary wear and tear; latent defect; decay, smog, shrinkage, evaporation, condensation, contamination, corrosion, erosion, rust, marring or scratching; loss of weight, change in flavor, color, texture or finish unless such loss or damage is caused directly by physical damage not otherwise excluded;
- **j.** Dampness or dryness of atmosphere, extremes of temperature, changes of temperature or humidity, all whether atmospheric or not;
- k. Product Contamination and Recall

Loss or damage caused by or resulting from adulteration or contamination to raw stock, stock in process or finished stock or products in the stream of commerce which causes the stock or products to become diminished in value or use, including but not limited to diminished value or use due to change in color,



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finish, flavor, size or texture. This exclusion applies unless the adulteration or contamination is itself caused by covered physical loss or damage of property insured by this policy for the following causes of loss:

Fire; lightning; explosion; wind or hail; smoke; direct impact of vehicle, aircraft or vessel; strike, riot or civil commotion; vandalism or malicious mischief; Equipment Breakdown; leakage or accidental discharge of fire protection equipment; collapse; falling objects; weight of snow, ice or sleet; theft; sudden and accidental discharge, leakage, backup, or overflow of liquids or molten material from confinement within piping, plumbing systems, tanks, equipment or other containment located at the insured <u>Location</u>;

Further, this policy does not insure against any loss, damages, costs or expenses incurred by the Insured or by others for loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of the Insured's products or the Insured's direct or indirect customers or suppliers if such product or any portion of it is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy, contamination or dangerous condition.

Loss or damage to the interior portion of buildings under construction or renovation from rain, sleet or snow, whether or not driven by wind, when the installation of the roof, walls and windows of such buildings has not been completed.

### 3. Time Element Exclusions

In addition to the Group 1. and Group 2. exclusions, the following exclusions apply to *Time Element* coverages;

- Any loss during a period during which business would not or could not have been conducted for any reason other than physical damage of the type insured against herein;
- Any increase in loss due to interference at the insured <u>Locations</u> by strikers or other persons charged with rebuilding, repairing or replacing the property, or with the resumption or continuation of business;
- Any increase in loss due to the suspension, lapse or cancellation of any lease, license, contract or order, except as provided by Section II.C.14. EXTENDED PERIOD OF INDEMNITY;
- d. Any loss resulting from damage to, expense associated with, or cost to remanufacture or recall any Finished Stock:
- Time Element loss arising from property in transit away from Locations insured by this policy.

### III. GENERAL CONDITIONS

### ABANDONMENT

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

### 2. ACCESS TO BOOKS AND RECORDS

It is agreed that the Company, or its authorized representatives, shall at all reasonable times, have access to and the right to review the books and records of the Insured for the purposes of conducting an audit or determining any facts relating to this insurance or a claim. With regard to any such review or access, the Insured shall provide, at the Insured's expense, adequate private working area and facilities and staff, adequate copying and telephone facilities.

### 3. ASSIGNMENT OF THE POLICY

This policy may be assigned or transferred only with the prior written consent of the Company.

### 4. CANCELLATION

This policy may be canceled at any time at the request of the Insured by mailing or delivering advance written notice of cancellation to the Company. If canceled at the Insured's request, the Company shall retain or collect



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the customary short rates for the time the policy has been in force. This policy may be canceled by the Company by mailing to the Insured written notice stating that not less than sixty (60) days after the mailing date such cancellation shall be effective. Upon cancellation by the Company, the Company shall return any pro-rata unearned premium to the Insured. Notwithstanding the above, this policy may be canceled by the Company for non-payment of premium by giving ten (10) days written notice of such cancellation.

The mailing of notice as aforesaid shall be sufficient proof of notice and the effective date and hour of cancellation stated in the notice shall become the end of the policy period. Delivery of such written notice either by the Insured or by the Company shall be equivalent to mailing.

### 5. CERTIFICATES OF INSURANCE

Any certificate of insurance issued in conjunction with this policy shall be issued solely as a matter of convenience or information for the addressee(s) or holder(s) of said certificate of insurance, except where any Additional Insured(s) or Loss Payee(s) are named pursuant to the Special Provisions of said certificate of insurance. In the event any Additional Insured(s) or Loss Payee(s) are so named, this policy shall be deemed to have been endorsed accordingly, subject to all other terms, conditions, and exclusions stated herein.

The listed broker of record may only issue Certificates of Insurance evidencing coverage afforded by this policy.

## 6. CONCEALMENT, MISREPRESENTATION OR FRAUD

This entire policy shall be void if, whether before or after a loss, the Insured has concealed or misrepresented any material fact or circumstance concerning this insurance or the subject thereof, or the interest of the Insured therein, or in any claim, or in the case of fraud, or false swearing by the Insured relating thereto.

#### 7. CONFORMANCE WITH STATE STATUTES

The terms of this policy which are in conflict with the applicable statutes of the state wherein this policy is issued are hereby amended to conform to such statutes, unless the statutes narrow or limit the coverage afforded by this policy and do not bar a policy from providing broader coverage.

### 8. CONTRIBUTING INSURANCE

Permission is granted for the Insured to have other policies written upon the same plan, conditions and provisions as those contained in this policy. This policy will contribute to the total of each loss otherwise payable herein that percent resulting from the ratio that the limit of liability of this policy bears to the total limit of liability as provided by all policies written upon the same plan, conditions and provisions as these contained in this policy.

#### 9. CURRENCY

Unless otherwise specified, all amounts expressed herein are in the currency of the United States of America.

### 10. DIVISIBLE CONTRACT CLAUSE

If this policy covers two (2) or more freestanding buildings, the breach of any condition of the policy in any one (1) or more of the buildings covered or containing covered property shall not prejudice the right to recover for loss occurring in any building covered or containing covered property, where, at the time of loss, a breach of condition does not exist.

### 11. ECONOMIC AND TRADE SANCTIONS

In accordance with laws and regulations of the United States concerning economic and trade embargoes, this policy is void **ab initio** (void from its inception) with respect to any term or condition of this policy that violates any laws or regulations of the United States concerning economic and trade embargoes including, but not limited to the following:

- a. Any insured, or any person or entity claiming the benefits of an insured, who is or becomes a Specially Designated National or Blocked Person or who is otherwise subject to U.S. economic or trade sanctions;
- b. Any claim or "suit" that is brought in a Sanctioned Country or by a Sanctioned Country Government, where any action in connection with such claim or suit is prohibited by U.S. economic or trade sanctions;



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- c. Any claim or "suit" that is brought by any Specially Designated National or Blocked Person or any person or entity who is otherwise subject to U.S. economic or trade sanctions;
- d. Property that is located in a Sanctioned Country or that is owned by, rented to or in the care, custody or control of a Sanctioned Country Government, where any activities related to such property are prohibited by U.S. economic or trade sanctions; or
- e. Property that is owned by, rented to or in the care, custody or control of a Specially Designated National or Blocked Person, or any person or entity that is otherwise subject to U.S. economic or trade sanctions.

As used in this policy a Specially Designated National or Blocked Person is any person or entity that is on the list of Specially Designated Nationals and Blocked Persons issued by the U.S. Treasury Department's Office of Foreign Asset Control (O.F.A.C.) as it may be from time to time amended.

As used in this policy a Sanctioned Country is any country that is the subject of trade or economic embargoes imposed by the laws or regulations of the United States of America.

#### 12. EXCESS INSURANCE

Permission is granted the Insured to have excess insurance over the limit of liability set forth in this policy without prejudice to this policy and the existence of such insurance, if any, shall not reduce any liability under this policy.

### 13. INSPECTIONS

The Company, at all reasonable times during the policy period, shall be permitted but not obligated to inspect the property insured. Neither the Company's right to make inspections nor the making thereof nor any report thereon shall constitute any undertaking, on behalf of or for the benefit of the Named Insured or others, to determine or warrant that such property is safe or healthful.

### 14. IMPAIRMENT OF RECOVERY RIGHTS FOR PROPERTY IN TRANSIT

Any act or agreement by the Insured before or after loss or damage to property in transit whereby any right of the Insured to recover in whole or in part for loss or damage to property covered hereunder against any carrier, bailee or other party liable therefore, is released, impaired or lost, shall render this policy null and void, but the Company's right to retain or recover the premium shall not be affected.

The Company is not liable for any loss or damage which, without its written consent, has been settled or compromised by the Insured. It shall, however, be permissible for the Insured without prejudice to this insurance, to accept the ordinary bill of lading or shipment receipts issued by carriers limiting their liability to less than the actual value.

### 15. LOSS PAYABLE CLAUSE

Loss, if any, shall be adjusted with and payable to the Named Insured or their order, whose receipt shall constitute a release in full of all liability under this policy with respect to such loss.

### 16. MORTGAGEE INTERESTS AND OBLIGATIONS

The following provisions in favor of any Mortgagee named in a schedule or Certificate of Insurance on file with the Company apply to the <u>Location</u> for which the Mortgagee is named, unless another Mortgagee Clause is specifically indicated as applying.

- **a.** The term "Mortgagee" includes Trustees.
- **b.** For insured loss under this policy to specified property the Company will pay to each specified Mortgagee, as its interest may appear under all present or future mortgages upon the property, in order of precedence of the mortgages.
- **c.** The interest of the Mortgagee in property insured under this policy will not be invalidated by:
  - (1) Any act or neglect of the Mortgagor or owner of the specified property;
  - (2) Foreclosures, notice of sale, or similar proceeding with respect to the specified property;



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- (3) Change in the title or ownership of the specified property; or
- (4) Change to an occupancy of the premises more hazardous than that permitted by this policy;

Provided that, if the Mortgagor or owner has failed to pay any premium due under this policy, the Mortgagee must pay the premium within ten (10) days of written notice by the Company.

- d. The Mortgagee will notify the Company of any known change in ownership or occupancy or increase in hazard of the covered property that has come to the knowledge of said Mortgagee. The Mortgagee may immediately pay the increased premium associated with such known change. If the Mortgagee fails immediately to notify the Company of such known change or fails to pay the increased premium, all coverage under this policy will cease at the time of such premium due date.
- **e.** The Company may cancel this policy, including the interest of the Mortgagee, by giving the Mortgagee or its agent written notice:
  - (1) Ten (10) days prior to the effective date of cancellation, if cancellation is for nonpayment of premium;
  - (2) Sixty (60) days prior to effective date of cancellation, if cancellation is for any other reason.
- f. If a loss hereunder is made payable, in whole or in part, to a designated Mortgagee not named in this policy, that interest may be canceled by giving to such Mortgagee ten (10) days written notice of cancellation.
- g. If the Company pays the Mortgagee for loss under this policy, and denies liability to the Mortgagor or owner, the Company will, to the extent of the payment made to the Mortgagee, be subrogated to all the rights of the Mortgagee under all securities and loan agreements held as collateral to the debt. At its option, the Company may pay to the Mortgagee the whole principal on the debt with its interest; and in this event, all rights and securities will be transferred from the Mortgagee to the Company. However, any subrogation by the Company will not impair the right of the Mortgagee to recover the full amount of said Mortgagee's claim.
- h. If the Insured fails to render proof of loss, the Mortgagee, upon notice, will render proof of loss within sixty (60) days of notice and will be subject to the provisions of the policy relating to Appraisal, Payment of Loss and Suit Against the Insurers.

Other provisions relating to the interests and obligations of such Mortgagee may be added hereto by agreement in writing.

### 17. NO BENEFIT TO BAILEE

This insurance shall in no way inure directly or indirectly to the benefit of any transportation carrier or bailee.

#### 18. OTHER INSURANCE

Except as stated in the contributing insurance and excess insurance provisions, if there is any other collectible insurance, this policy will apply as excess insurance and will not contribute with any other insurance.

The Company's liability for payment will begin at the greater of the ground up loss exceeding this policy's deductible or the primary insurance payment.

### 19. REINSTATEMENT

With the exception of loss subject to <u>Annual Aggregate</u> limits as noted in the Declarations (or elsewhere), no loss hereunder shall reduce the amount of this policy.

### 20. SUBROGATION

a. If the Company pays a claim under this policy, it will be subrogated, to the extent of such payment, to all the Insured's rights of recovery from other persons, organizations and entities. The Insured will execute and deliver instruments and papers and do whatever else is necessary to secure such rights.





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The Company will have no rights of subrogation against:

- Any person or entity, which is an Insured.
- (2) Any subsidiary or affiliated corporations or companies or any other corporations or companies associated with the Insured through ownership or management
- (3) Any other person or entity, which the Insured has waived its rights of subrogation against in writing before the time of loss.
- b. Notwithstanding the foregoing, it is a condition of this policy that the Company shall be subrogated to all the Insured's rights of recovery against:
  - (1) Any Architect or Engineer, whether named as an Insured or not, for any loss or damage arising out of the performance of professional services in their capacity as such and caused by an error, omission, deficiency or act of the Architect or Engineer, by any person employed by them or by any others for whose acts they are legally liable, and
  - (2) Any manufacturer or supplier of machinery, equipment or other property, whether named as an Insured or not, for the cost of making good any loss or damage which said party has agreed to make good under a guarantee or warranty, whether expressed or implied.
- c. The Insured will act in concert with the Company and all other interests concerned in the exercise of such rights of recovery. The Insured will do nothing after a loss to prejudice such rights of subrogation. If any amount is recovered as a result of such proceedings, the net amount recovered after deducting the costs of recovery, will accrue first to the Company. Any excess of this amount will be remitted to the Insured. If there is no recovery, the interests instituting the proceedings will bear the expense of the proceedings proportionately.

#### 21. TIME

Wherever reference is made to time in this policy regarding hours of the day or night, it shall be held to be Local Standard Time at the mailing address of the Named Insured shown in section I.1.

### 22. TITLES OF PARAGRAPHS

The several titles of the various paragraphs of this form (and of endorsements and supplemental contracts, if any, now or thereafter attached to this policy) are inserted solely for convenience of reference and shall not be deemed in any way to limit or affect the provisions to which they relate.

#### IV. LOSS CONDITIONS

#### APPRAISAL

If the Insured and the Company fail to agree on the amount of loss, each shall, upon the written demand of either made within sixty (60) days after receipt of proof of loss by the Company, select a competent and disinterested appraiser. The two selected appraisers shall then select a competent and disinterested umpire. If the appraisers should fail for fifteen (15) days to agree upon such umpire, then upon the request of the Insured or of the Company such umpire shall be selected by a judge of a court of record in the county and state, region, locale, or territory in which such appraisal is pending. Then at a reasonable time and place, the appraisers shall appraise the loss, stating separately the value at the time of loss and the amount of loss. If the appraisers fail to agree, they shall submit their differences to the umpire. An award in writing of any two shall determine the amount of loss.

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

### 2. ASSISTANCE AND COOPERATION OF THE INSURED

The Insured shall cooperate with the Company and upon the Company's request, shall attend hearings and trials



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and shall assist in effecting settlements, in securing and giving evidence, in obtaining the attendance of witnesses, and in conducting suits.

#### 3. CLAIMS AGAINST CARRIER

In the event of any loss or damage to the goods and/or <u>Merchandise</u> insured hereunder, the Insured shall immediately make claim in writing against the carrier or carriers involved.

### 4. DUTIES AFTER A LOSS

- a. The Insured shall protect the property from further loss or damage, separate damaged and undamaged personal property, and maintain such property in the best possible order; and refrain from demolishing damaged property until the Company has had the opportunity to inspect such damaged property.
- b. As soon as practical, the Insured shall give written notice to the Company of any loss, damage or expense, furnish a complete inventory of the destroyed, damaged and undamaged property, showing in detail quantities, costs, actual cash value and amount of loss claimed.
- c. Within sixty (60) days after being requested by the Company, unless such time is extended in writing by the Company, the Insured shall render to the Company a proof of loss, signed and sworn to by the Insured, stating the knowledge and belief of the Insured as to the following:
  - the time and origin of the loss,
  - the interest of the Insured and of all others in the property,
  - the value of each item thereof, in accordance with Section IV.12. VALUATION of this form, and the amount of loss thereto,
  - all encumbrances thereon,
  - all other contracts of insurance, whether valid or not, covering any of said property,
  - any changes in title, use, occupation, Location, possession or exposures of said property since the issuing of this policy,
  - by whom and for what purpose any building herein described and the several parts thereof were
    occupied at the time of loss whether or not it then stood on leased ground,
  - The Insured shall furnish a copy of all the descriptions and schedules in all policies and, if required, verified plans and specifications of any building, fixtures or machinery destroyed or damaged.

The Insured shall, as often as may be reasonably required, exhibit to any person designated by the Company all that remains of any property herein described, and submit to examinations under oath by any person named by the Company, and subscribe the same.

The Insured shall, as often as may be reasonably required, produce for examination at the request of the Company all books of account, business records, bills, invoices and other vouchers, or certified copies thereof if originals be lost, at such reasonable time and place as may be designated by the Company or its authorized representative, and shall permit extracts and copies thereof to be made.

### 5. EXPERIENCE OF THE BUSINESS

In determining the amount payable under <u>Time Element</u> coverages due consideration shall be given to the experience of the business before the interruption of business and the probable experience thereafter had no interruption of business occurred.

In the event the Insured would have experienced an operating deficit had no interruption of business occurred, then

a. the amount of <u>Fixed Costs</u> included in the actual loss sustained shall be determined by subtracting the operating deficit from the **Fixed Costs** that necessarily continue;



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b. the amount of payroll included in the actual loss sustained shall be determined by subtracting the excess, if any, of the operating deficit from the *Fixed Costs* that necessarily continue from such payroll.

#### 6. PARTIAL PAYMENT OF LOSS

In the event of loss covered by this policy, the Company shall allow partial payments of claims, subject to the policy provisions and normal adjustment process. To obtain said partial claim payment the Insured shall submit a partial proof of loss with supporting documentation. It shall be lawful for the Insured to make claim in accordance with the valuation provisions contained in this policy. It is agreed that the policy deductible must be satisfied before said partial payments are allowable.

### 7. PAYMENT OF LOSS

All adjusted claims shall be due and payable no later than sixty (60) days after presentation and acceptance of proofs of loss by the Company or its authorized representative.

### 8. RESUMPTION OF OPERATIONS

If the Insured could reduce the loss resulting from the interruption of business:

- a. by complete or partial resumption of operation of the property herein described, whether damaged or not;
   or
- b. by making use of <u>Merchandise</u> or other property at the insured <u>Locations</u> or elsewhere; or
- c. in respect of manufacturing risks, by making use of stock (raw, in process or finished) or <u>Merchandise</u> at the insured <u>Locations</u> or elsewhere;

the amount of the loss that the Insured could have reduced shall be subtracted from the amount payable under this policy.

### 9. SUIT AGAINST THE INSURERS

No suit or action on this policy for the recovery of any claim shall be sustainable in any court of law or equity unless the Insured shall have fully complied with all of the requirements of this policy, nor unless commenced within the twelve (12) months immediately following inception of the loss, unless a longer period of time is prescribed by the insurance laws of the state or jurisdiction in which this contract is issued.

#### 10. SALVAGE AND RECOVERIES

All salvages, recoveries, and payments, excluding proceeds from subrogation and underlying insurance, recovered or received prior to a loss settlement under this policy, shall reduce the loss accordingly. If recovered or received subsequent to a loss settlement under this policy, such net amounts received shall be divided between the interests concerned, i.e., the Insured and any other Company(ies) participating in the payment of any loss, in the proportion of their respective interests.

### 11. VACANCY

### a. Description of Terms

- (1) As used in this Vacancy Condition, the term building and the term vacant have the meanings set forth in (1)(a) and (1)(b) below:
  - (a) When this policy is issued to a tenant, and with respect to that tenant's interest in covered property, building means the unit or suite rented or leased to the tenant. Such building is vacant when it does not contain enough business personal property to conduct customary operations.
  - (b) When this policy is issued to the owner or general lessee of a building, building means the entire building. Such building is vacant unless at least 31% of its total square footage is:
    - (i) Rented to a lessee or sub-lessee and used by the lessee or sub-lessee to conduct its customary operations; and/or



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- (ii) Used by the building owner to conduct customary operations.
- (2) Buildings under construction or renovation are not considered vacant.

#### b. Vacancy Provisions

If the building where loss or damage occurs has been vacant for more than 60 consecutive days before that loss or damage occurs:

- (1) The Company will not pay for any loss or damage caused by any of the following even if they are Covered Causes of Loss:
  - (a) Vandalism;
  - (b) Sprinkler leakage, unless the Insured has protected the system against freezing;
  - (c) Building glass breakage;
  - (d) Water damage;
  - (e) Theft; or
  - (f) Attempted theft.
- With respect to Covered Causes of Loss other than those listed in **b.(1)(a)** through **b.(1)(f)** above, the Company will reduce the amount that would otherwise be paid for the loss or damage by 15%.

#### 12. VALUATION

In the event of physical loss or damage to covered property by perils(s) insured against the Company will not pay more than the least of: the limit of liability applicable to the lost or damaged property; the interest of the Insured in the lost or damaged property; the cost to repair the lost or damaged property; the actual expenditure incurred in repairing or replacing the damaged property; or the value of property insured determined as follows:

- a. Raw Stock, supplies and other Merchandise not manufactured by the Insured: the replacement cost;
- <u>Goods in Process</u>: the value of raw materials and labor expended plus the proper proportion of overhead charges;
- c. <u>Finished Stock</u> manufactured, owned and held for sale by the Insured: the regular cash selling price, less (1) all costs to complete the sale and (2) discounts and charges to which such <u>Finished Stock</u> would have been subject had no loss occurred;
- d. Exposed film, records, manuscripts and drawings: the value blank plus the cost of copying information from backup or from originals of a previous generation, but this policy does not insure any other cost, including research, engineering or other cost, of restoring or re-creating information lost;

<u>Data</u>, programs or any other software stored on electronic, electromechanical, electromagnetic data processing or production equipment: the cost of transferring such from backup or from originals of a previous generation, but this policy does not insure any other cost, including research, engineering or other cost of restoring or re-creating information lost, except as provided in Section II.C.10. **ELECTRONIC DATA PROCESSING**;

Other documents not specifically excluded or addressed above: not to exceed the value blank plus cost of reproducing; but no liability is assumed hereunder for the cost of gathering or assembling information or data for such reproduction;

- e. Property of others: at the amount for which the Insured is liable, but not to exceed **replacement cost**:
- f. Tenant's <u>Improvements and Betterments</u>: at replacement cost if repaired or replaced at Insured's expense within one (1) year from date of loss. If not so replaced, at **actual cash value** on date of loss;



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#### g. Electronic Data Processing Equipment:

If leased property, then the amount for which the Insured is liable under contract.

If not leased property, the least of the following:

- (1) If not under warranty or service contract, the cost to repair;
- (2) If under warranty or service contract, the cost to repair plus the minimum cost to reinstate such warranty or service contract;
- (3) The actual expenditure incurred in repairing or replacing the damaged property;
- (4) The cost to replace with functionally equivalent property;
- h. Fine Arts:
  - (1) If there is a schedule of values on file with the Company, then the scheduled value;
  - (2) If there is no schedule of values on file with the Company, then the appraised market value at the time and place of loss;
- i. Property For Sale, other than stock or merchandise, the least of:
  - (1) The selling price;
  - (2) The cost to repair;
  - (3) or actual cash value;
- j. Property in transit:
  - (1) Property under invoice, at the actual invoice cost, including prepaid freight, together with such cost and charges since shipment as may have accrued and become legally due thereon;
  - (2) Property not under invoice, in accordance with the valuation provisions of this policy, less any charges saved which would have become due and payable upon delivery at destination.
- k. Motor vehicles, railroad rolling stock and contractor's equipment:

The least of the following amounts:

- (1) The scheduled limit of liability applying to the damaged property (if specifically scheduled);
- (2) The actual cash value of the property;
- (3) The cost of reasonably restoring that property to its condition immediately before loss; or
- (4) The cost of replacing the property with used, but substantially identical property.
- I. All Other Property at replacement cost.

However, if within one (1) year, the process of repair, rebuilding or replacement in accordance with the provisions of this section (Section IV.12.), has not begun, then the value of the property will be **actual cash value**.

For the purposes of this Valuation section:

The term **replacement cost** as used here means the cost to repair or replace lost or damaged property with property of comparable material and quality on the same or another site, and used for the same purpose, without deduction for depreciation, deterioration, and obsolescence;

The term **actual cash value** as used here means the replacement cost with deduction for depreciation, deterioration and obsolescence.

All the above to be computed as of the time and at the place of loss insured against by this policy. The above valuation shall also be used for computing the premium due under this policy.





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#### **GLOSSARY**

Affiliated or Subsidiary

Organization

Entity of which fifty percent (50%) or more is either directly or indirectly owned by the

Named Insured.

<u>Annual Aggregate</u> Denotes the most this Company will pay for loss or damage during any annual policy term.

However, in the case of any extended policy term of more than one (1) year, but less than twenty-four (24) months, the annual aggregate will be construed to apply to the whole of

such extended term.

Application Software Any data entry, update, query or report program that processes Data for the user, whether

purchased or internally developed, including but not limited to: word processors.

spreadsheets, data bases, and accounting programs.

<u>Computer Virus</u>

Any unauthorized intrusive codes or programming that is entered by any means into

covered Electronic Data Processing Equipment and Electronic Media and Records

and interrupt the Insured's operations at any Location.

Contaminants or

**Pollutants** 

Any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to: smoke and soot (other than smoke and soot emanating from a fire involving property insured under this policy), vapor, fumes, acids, alkalis, chemicals, vaccines and waste and any other substances which pose a hazard to human health or the environment. Waste

includes materials to be recycled, reconditioned or reclaimed.

Critical New Madrid Areas Counties, parishes, independent cities, including all barrier islands, as listed below:

State County/Parish/Independent City

Arkansas Arkansas, Clay, Cleburne, Craighead, Crittenden, Cross, Fulton,

Greene, Independence, Izard, Jackson, Lawrence, Lee, Lonoke, Mississippi, Monroe, Phillips, Poinsett, Prairie, Randolph, Sharp, St.

Francis, Stone, White, Woodruff.

Illinois Alexander, Bond, Christian, Clark, Clay, Clinton, Coles, Crawford,

Cumberland, Douglas, Edgar, Edwards, Effingham, Fayette, Franklin, Gallatin Hamilton, Hardin, Jackson, Jasper, Jefferson, Johnson, Jersey, Lawrence, Macoupin, Madison, Marion, Massac, Monroe, Montgomery, Moultrie, Perry, Pope, Pulaski, Randolph, Saline, St. Clair, Richland, Shelby, Union, Wabash, Washington, Wayne, White, Williamson.

Indiana Gibson, Knox, Posey, Sullivan, Vanderburgh, Vigo.

Kentucky Ballard, Caldwell, Calloway, Carlisle, Crittenden, Fulton, Graves,

Henderson, Hickman, Hopkins, Livingston, Lyon, Marshall, McCracken,

Trigg, Union, Webster.

Mississippi Benton, Coahoma, DeSoto, Lafayette, Marshall, Panola, Quitman, Tate,

Tippah, Tunica.

Missouri Bollinger, Butler, Cape Girardeau, Carter, Crawford, Dent, Dunklin,

Franklin, Howell, Iron, Jefferson, Madison, Mississippi, New Madrid, Oregon, Pemiscot, Perry, Reynolds, Ripley, Shannon, St. Charles, St. Francis, St. Genevieve, St. Louis, St. Louis City, Scott, Stoddard, Texas,

Washington Wayne.

Tennessee Benton, Carroll, Chester, Crockett, Dyer, Fayette, Gibson, Hardeman,

Haywood, Henderson, Henry, Lake, Lauderdale, Madison, McNairy,

Obion, Shelby, Stewart, Tipton, Weakley.



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### Critical Pacific Northwest Areas

Counties, parishes, independent cities, including all barrier islands, as listed below:

State County/Parish/Independent City

Oregon Benton, Clackamas, Clatsop, Columbia, Coos, Curry, Douglas, Jackson,

Josephine, Lane, Lincoln, Linn, Marion, Multnomah, Polk, Tillamook,

Washington, Yamhill.

Washington Clallam, Clark, Cowlitz, Grays Harbor, Island, Jefferson, King, Kitsap,

Lewis, Mason, Pacific, Pierce, San Juan, Skagit, Skamania, Snohomish,

Thurston, Wahkiakum, Whatcom.

Data

Information stored in electronic, electromechanical or electromagnetic form such as, but not limited to, work processing documents, spreadsheet files, data base files, images and digitally-encoded voice and video.

Earth Movement

Earthquake, landslide, mine subsidence, volcanic eruption, volcanic action, earth sinking (including sinkhole collapse), rising, shifting, or any other earth movement (natural or man-made) except as follows:

- a. Flood, surface water, mudslide or mud flow (caused by accumulation of water on or underground), waves, tidal water or tidal wave, Tsunami, overflow of streams or other bodies of water, or spray from any of the foregoing, all whether driven by wind or not:
- **b.** Release of water impounded by a dam regardless of cause.

However, any fire, explosion or leakage from fire protective systems or devices resulting from <u>Earth Movement</u> will not be considered to be loss by <u>Earth Movement</u> within the terms of this policy.

<u>Electronic Data</u> Processing Equipment <u>Data</u> processing systems including computer equipment/networks, component parts and related systems, and peripheral equipment including air conditioning and fire protective equipment used solely for data processing operations. This does not include equipment held for sale or distribution and equipment in the course of manufacture.

Electronic Media and Records

See definitions for <u>Media</u>, <u>Data</u>, <u>Application Software</u>, <u>System Software</u>, and <u>Source</u> Code.

Finished Stock

Stock manufactured, owned and held by the Insured for sale which in the ordinary course of the Insured's business is ready for packing, shipment or sale.

First Tier Areas

Counties, parishes, independent cities, including all barrier islands, as listed below:

State County/Parish/Independent City

Alabama Baldwin, Mobile

Georgia Bryan, Camden, Chatham, Glynn, Liberty, McIntosh

Louisiana Cameron, Iberia, Jefferson, Lafourche, Orleans, Plaquemines, St.

Bernard, St. Mary, St. Tammany, Terrebonne, Vermilion

Mississippi Hancock, Harrison, Jackson

No. Carolina Beaufort, Brunswick, Camden, Carteret, Chowan, Craven, Currituck,

Dare, Hyde, Jones, New Hanover, Onslow, Pamlico, Pasquotank,

Pender, Perguimans, Tyrrell, Washington

So. Carolina Beaufort, Berkeley, Charleston, Colleton, Georgetown, Horry, Jasper

Texas Aransas, Brazoria, Calhoun, Cameron, Chambers, Galveston, Harris,

Jackson, Jefferson, Kenedy, Kleberg, Matagorda, Nueces, Orange,

Refugio, San Patricio, Willacy

Virginia Accomack, Gloucester, Lancaster, Mathews, Middlesex, Northampton,

Northumberland, and independent cities of Chesapeake, Hampton,

Norfolk, Poquoson, Portsmouth, and Virginia Beach



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#### **Fixed Costs**

### Flood

Operating costs not directly related to the level of sales achieved by the Insured; including, but not limited to wages and depreciation on property.

A general and temporary condition of partial or complete inundation of <u>normally</u> dry land areas, including dewatered areas, whether caused by natural <u>Occurrences</u>, acts or omissions of man or any other cause or combination of causes, including:

- **a.** The overflow of inland or tidal waters, waves or tidal waves, tsunami, or spray from any of the foregoing, all whether driven by wind or not.
- **b.** The unusual and rapid accumulation or runoff of surface waters from any source.
- **c.** Mudslide or mudflow caused or precipitated by accumulation of water on or under the ground.
- **d.** Release of water held by a dam, levee or dike or by a water or flood control device.
- e. Sewer backup resulting from *Flood*.

However, any fire or explosion resulting from *Flood* will not be considered to be loss by *Flood* within the terms of this policy.

### Fungi

<u>Fungi</u> includes any form of fungus, including but not limited to, yeast, mold, mildew, rust, smut or mushroom, and including any spores, mycotoxins, odors, or any other substances, products or byproducts produced by, released by, or arising out of the current or past presence of <u>fungi</u>. But <u>fungi</u> do not include any <u>fungi</u> intended by the Insured for consumption.

### Goods in Process

<u>Raw Stock</u> which has undergone any aging, seasoning, mechanical or other process of manufacture at the <u>Locations</u> herein described but which has not become <u>Finished</u> <u>Stock</u>.

# Improvements and Betterments

Fixtures, alterations, installations or additions comprising part of a building occupied but not owned by the Insured and acquired or made at the expense of the Insured, which the Insured cannot legally remove.

### Land improvements

Lawns, plants, shrubs or trees; pavements, roadways, sidewalks or similar works, but not including any fill or land beneath such property.

### Leasehold Interest

The excess rent paid for either the same or similar replacement property over the amount of rent and other charges which would have been payable under the unexpired lease plus bonuses or advance rent paid (including any maintenance, operating charges or taxes) for each month during the unexpired term of the Insured's lease.

### Location

The area within legal boundaries of the premises, or of the portion of the premises, in which the Insured has an interest.

#### Media

Any <u>Data</u> storage substance using electronic, electromechanical, or electromagnetic technology to represent values of stored bits and bytes of information. Such <u>Media</u> includes but is not limited to: CD-ROM, microcomputer diskettes, magnetic tapes, disk packs, paper tapes and cards.

### **Merchandise**

Goods kept for sale by the Insured which are not the product of manufacturing operations conducted by the Insured.

### Microbe

Any non-fungal microorganism or non-fungal, colony-form organism that causes infection or disease. <u>Microbe</u> includes any spores, mycotoxins, odors, or any other substances, products or byproducts produced by, released by, or arising out of the current or past presence of microbes.

### <u>Money</u>

Currency, coins, notes, bullion, traveler's checks, registered checks and money orders held for sale to the public.



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#### Named Storm

A storm system that has been declared to be a named tropical storm or hurricane by the U.S. National Weather Service or other governmental authority including hurricane or tropical storm spawned tornado(s) or microburst(s). The named tropical storm or hurricane begins when the National Weather Service officially declares the storm system to be a named tropical storm or hurricane and ends when the National Weather Service officially declares the named tropical storm or hurricane permanently downgraded to a tropical depression.

### Net Leasehold Interest

The present value of the amount which placed at four percent (4%) annual interest would equal the Leasehold Interest (less any amounts otherwise payable hereunder).

# Normal, Normally Occurrence

The condition that would have existed had no loss occurred.

One or more losses which result from one common cause or disaster, even if arising out of more than one event.

Each event of <u>Theft</u> will be considered a separate <u>occurrence</u>.

If this policy covers against Earthquake, each loss by Earthquake shall constitute a single claim hereunder, provided if more than one Earthquake shock shall occur within any period of seventy-two (72) hours originating during the term of this policy, all such shocks shall be deemed to be a single *Occurrence*, the policy expiration date and time notwithstanding.

If this policy covers against <u>Flood</u>, any <u>Flood</u> occurring within a period of continuous rising or overflow of any river(s) or stream(s); or any <u>Flood</u> resulting from any <u>Tsunami</u>, tidal wave or series of tidal waves caused by any one disturbance shall be deemed to be a single <u>Occurrence</u> within the meaning of this policy.

All covered loss or damage including but not limited to <u>Flood</u>, wind, wind driven rain, or hail, that is associated with and occurs during a <u>Named Storm</u> shall be considered a single <u>occurrence</u>. Covered loss or damage that occurs subsequent to a <u>Named Storm</u> being downgraded to a tropical depression shall be considered a separate <u>occurrence</u>.

#### Raw Stock

Material in the state in which the Insured receives it for conversion by the Insured into *finished stock*.

Securities

All negotiable and nonnegotiable instruments or contracts representing either <u>Money</u> or other property and includes revenue and other stamps in current use, tokens and tickets, but not <u>Money</u>.

Source Code

<u>Application</u> and <u>System Software</u> in its original form as written by the programmer, not executable by the computer directly (because it must be converted into machine language by compilers, assemblers and interpreters).

System Software

Programs used to control the computer and develop <u>application software</u> such as operating systems, communications software, and application development tools.

Theft

An unlawful taking of property.

Time Element

Business Interruption (Gross Earnings), Expediting Expense, Extra Expense, Rental Value, *Leasehold Interest*, Contingent Business Interruption (Gross Earnings), Rents.

Tsunami

A great sea wave produced by sub-marine earth movement, volcanic eruption or other

earth movement.



## **Equipment Breakdown Coverage**

### **EB1. INSURING AGREEMENT**

- **a.** Subject to all the terms and conditions stated herein and in the policy of which this Coverage is part, and not in conflict herewith, the Company shall be liable for:
  - (1) Direct physical loss to property of the Insured and to property of others in the care, custody or control of the Insured; and
  - (2) The loss and expense resulting from the necessary interruption of business;

All as resulting from **Breakdown** of **Covered Equipment**. **Covered Equipment** must be in use or connected ready for use at the location specified for it at the time of the **Breakdown**.

- **b.** When used in this Coverage part, the following shall apply:
  - (1) Covered Equipment shall mean any:
    - (a) Equipment built to operate under internal pressure or vacuum other than weight of contents;
    - (b) any mechanical or electrical machine or apparatus used for the generation, transmission or utilization of mechanical or electrical power, including production machinery.
    - (c) Equipment described in paragraphs (a) or (b) that is owned by a public or private utility and used solely to provide utility services to the insured premises.
  - (2) Breakdown shall mean sudden and accidental breakdown of Covered Equipment or a part thereof which manifests itself at the time of its <u>occurrence</u> by physical damage that necessitates repair or replacement of the Covered Equipment or part thereof.
  - (3) None of the following is a **Breakdown**:
    - (a) Wear and tear, depletion, deterioration, corrosion or erosion;
    - **(b)** Malfunction including but not limited to adjustment, alignment, calibration, cleaning or modification:
    - (c) Leakage at any valve, fitting, shaft seal, gland packing, joint or connection;
    - (d) The functioning of any safety or protective device.
    - **(e)** The cracking of any part of an internal combustion gas turbine exposed to the products of combustion.

### **EB2. LIMIT OF LIABILITY**

The most the Company will pay for any and all coverages for loss or damage from any one **Breakdown** is the Equipment Breakdown Limit of Insurance shown in Section **I.4.m.** of the Declarations. If the Limit of Insurance is shown as "INCLUDED" the limit for Equipment Breakdown coverage is included in the Property and Business Interruption Limits provided under **I.4. LIMITS OF LIABILITY**.

If an initial **Breakdown** causes other **Breakdowns**, all **Breakdowns** at any one location which manifest themselves at the same time and are the result of the same cause will be considered one **Breakdown**.

#### **EB3. SUBLIMITED COVERAGES**

The following coverages are subject to the corresponding Equipment Breakdown sublimits shown in Section **I.4.m.** of the Declarations.

#### a. Ammonia Contamination

The Company will pay for loss, including salvage expense, with respect to damage by ammonia contacting or permeating property under refrigeration or in process requiring refrigeration, resulting from **Breakdown** of **Covered Equipment**.

### b. Spoilage

The Company will pay for the spoilage damage to raw materials, property in process or finished products, provided all of the following conditions are met:



## **Equipment Breakdown Coverage**

- (1) The raw materials, property in process or finished products must be in storage or in the course of being manufactured;
- (2) The Insured must own or be legally liable under written contract for the raw materials, property in process or finished products; and
- (3) The spoilage damage must be due to the lack or excess of power, light, heat, steam or refrigeration resulting from Breakdown of Covered Equipment.

### EB4. DEDUCTIBLE

There shall be no liability for loss or damage resulting from any one **Breakdown** until the amount of covered loss or damage exceeds the deductible shown in the Declarations for each applicable coverage. The Company will then pay the amount of covered loss or damage in excess of the deductible, up to the applicable Limit of Insurance.

- **a.** Deductibles apply separately for each applicable coverage except if:
  - (1) A deductible is shown as COMBINED for any of the coverages in the Declarations, then the Company will first subtract the combined deductible amount from the aggregate amount of any loss to which the combined deductible applies; or
  - (2) More than one item of **Covered Equipment** is involved in one **Breakdown**, then only the highest deductible shall apply for each of the applicable coverages.
- **b.** Determination Of Deductibles:
  - (1) **Dollar Deductible**: If a dollar deductible is shown in the Declarations, the deductible amount will be subtracted from any loss the Company would otherwise pay.
  - (2) Time Deductible: If a time deductible is shown in the Declarations, the Company will not be liable for any loss under that coverage that occurs during that specified time period immediately following a Breakdown. If a time deductible is shown in days, each day shall mean twenty-four consecutive hours.
  - (3) Multiple Of Daily Value Deductible: If a multiple of daily value deductible is shown in the Declarations, the deductible will be calculated as follows:
    - For the entire premises where the loss occurred, determine the total amount of <u>Time</u>

      <u>Element</u> that would have been earned during the period of interruption had no

      <u>Breakdown</u> taken place.
    - (b) Divide the result in Paragraph (a) by the number of days the business would have been open during the period of interruption. The result is the daily value.
    - (c) Multiply the daily value in Paragraph (b) by the number of days shown in the Declarations. The deductible amount will be subtracted from any loss the Company would otherwise pay. The Company will then pay the amount of loss or damage in excess of the deductible, up to the applicable Limit of Insurance.
  - (4) Percentage Of Loss Deductible: If a deductible is expressed as a percentage of loss in the Declarations, the Company will not be liable for the indicated percentage of gross amount of loss or damage (prior to the applicable deductible or coinsurance) insured under the applicable coverage.
- c. Minimum Or Maximum Deductibles:
  - (1) If:
    - (a) A minimum dollar amount deductible is shown in the Declarations; and
    - (b) The dollar amount of the Multiple of Daily Value or the Percentage of Loss Deductible is less than the Minimum Deductible:



## **Equipment Breakdown Coverage**

then the Minimum Deductible amount shown in the Declarations will be the applicable deductible.

- (2) If:
  - (a) A maximum dollar amount deductible is shown in the Declarations; and
  - **(b)** The dollar amount of the Multiple of Daily Value or the Percentage of Loss Deductible is greater than the Maximum Deductible;

Then the Maximum Deductible amount shown in the Declarations will be the applicable deductible.

### **EB5. EXCLUSIONS**

All of the exclusions in the policy of which this Coverage is part except **exclusions II.D.2. b.**, **c.**, **d.**, and **j.**, shall apply to Equipment Breakdown. The following additional exclusions shall also apply:

- a. Breakdown of any structure or foundation (other than a bedplate of a machine) supporting **Covered Equipment** or any part thereof, not caused by a **Breakdown** of **Covered Equipment**;
- **b.** Breakdown of any boiler settling, insulating or refractory material not caused by a **Breakdown** of **Covered Equipment**;
- **c.** Breakdown of well casings, penstock or draft tubes;
- d. Breakdown of Covered Equipment manufactured, rebuilt, repaired, refurbished or held by the Insured for sale to others;
- **e.** Breakdown of any oven, stove or furnace;
- f. Breakdown of any vacuum tube, gas tube or brush;
- **g.** Breakdown of any electronic computer or <u>electronic data processing equipment</u> used exclusively for administrative purposes;
- h. Breakdown of catalyst not caused by a **Breakdown** of **Covered Equipment** containing such catalyst or any other **Covered Equipment**;
- **i.** Breakdown of any sewer piping, any buried piping or any piping forming a part of a sprinkler system or any water piping other than:
  - (1) Feed water piping between any boiler and its feed pumps or injectors,
  - (2) Boiler condensate return piping, or
  - (3) Water piping forming a part of a refrigerating or air conditioning system used for cooling, humidifying or space heating purposes;
- j. Breakdown of Covered Equipment until such time as said Covered Equipment has been installed and completely tested on the premises of the Insured. For the purposes of this insurance, "completely tested" shall mean that said Covered Equipment has operated on the Insured's premises in the capacity for which it was designed as part of the Insured's normal production process or processes. Notwithstanding the above, coverage under this Agreement shall apply to any newly installed Covered Equipment having a fair market value of \$1,000,000 or less and to any spare or replacement Objects or parts therefor;
- k. Breakdown of Covered Equipment while it is being maintained or altered if said Breakdown is a direct result of said maintenance or alterations. However, if a Breakdown otherwise insured hereunder subsequently ensues, then the Company shall be liable for such Breakdown. Any opening, closing or transporting of Covered Equipment shall not be considered a part of any maintenance or alterations;
- I. Loss or damage resulting from corrosion anywhere following **Breakdown** of any **Covered Equipment** utilizing sulfur dioxide or hydrogen sulfide gas.
- **m.** Loss or damage for which there is coverage under any other part of the Policy to which this coverage is attached.





## **Equipment Breakdown Coverage**

### **EB6. CONDITIONS**

The following Condition applies in addition to all other Policy Conditions:

### a. SUSPENSION

Upon the discovery of a dangerous condition with respect to any **Covered Equipment**, any representative of the Company may immediately suspend the Insurance with respect to a **Breakdown** to such **Covered Equipment** by written notice mailed or delivered to the Insured at the address of the Insured, or at the location of the **Covered Equipment**. Insurance so suspended may be reinstated by the Company, but only by an endorsement issued to form a part of this policy. The Insured will be allowed the unearned portion of the premium paid for the suspended insurance, pro rata for the period of suspension; however, the suspension will be effective even if the company has not yet made or offered a refund.



## Cancellation Changes Endorsement

It is hereby understood and agreed:

The paragraph titled **CANCELLATION** under the **GENERAL CONDITIONS** section of this Policy is deleted and replaced with the following:

#### CANCELLATION

This policy may be canceled at any time at the request of the Insured by mailing or delivering advance written notice of cancellation to the Company. If canceled at the Insured's request, the Company shall retain or collect the customary short rates for the time the policy has been in force. This policy may be canceled by the Company by mailing to the Insured written notice stating that not less than 90 days after the mailing date such cancellation shall be effective. Upon cancellation by the Company, the Company shall return any pro-rate unearned premium to the Insured. Notwithstanding the above, this policy may be canceled by the Company for non-payment of premium by giving 10 days written notice of such cancellation.

The mailing of notice as aforesaid shall be sufficient proof of notice and the effective date and hour of cancellation stated in the notice shall become the end of the policy period. Delivery of such written notice either by the Insured or by the Company shall be equivalent to mailing.

All other terms and conditions of the Policy remain unchanged.

This endorsement, which forms a part of and is for attachment to the Policy issued by the designated Insurers, takes effect on the effective date of said Policy at the hour stated in said Policy, unless another effective date is shown below, and expires concurrently with said Policy.

CNA79809XX (08-14)

Page 1 of 1

CONTINENTAL CASUALTY COMPANY

Insured Name: UJ BARTECA PARENT, LLC

Policy No: 6073187285

Endorsement No: 2
Effective Date:



## **Contingent Business Interruptions Revision Endorsement**

### THIS ENDORSEMENT CHANGES YOUR POLICY - PLEASE READ IT CAREFULLY

It is hereby understood and agreed that the policy to which this endorsement is attached is amended as follows:

Section II. COVERAGE, C. ADDITIONAL COVERAGES, COVERAGE EXTENSIONS AND LIMITATIONS item 4. CONTINGENT BUSINESS INTERRUPTION (GROSS EARNINGS) is deleted in its entirety and replaced by the following:

### 4. CONTINGENT BUSINESS INTERRUPTION (GROSS EARNINGS)

Subject to the sublimits for scheduled and unscheduled dependent properties specified in Section **I.4** of this policy, the policy is extended to cover against loss to the Insured resulting from necessary interruption of business conducted by the Insured at <u>Locations</u> occupied by the Insured and covered in this policy, caused by perils insured against that result in direct physical loss or damage to any real or personal property, of the type insured hereunder, owned or operated by:

- a. direct suppliers or service providers of the Insured, which wholly or partially prevents the delivery of materials, products or services (other than water, communication or power supply) to the Insured or to others for the account of the Insured; or
- b. direct customers of the Insured, to whom the Insured's products or services (other than water, communication or power supply) are provided, which wholly or partially prevents the acceptance of said products or services by the Insured's customers; or
- c. any other third-parties that the Insured depends upon to attract customers. Coverage under this subsection is limited to dependent property within 5 miles of the Insured's <u>Location</u>, unless it is a Scheduled Dependent Property.

The Coverage provided under this endorsement does not apply to direct physical loss or damage to real or personal property owned or operated by the Insured.

All other terms and conditions of the Policy remain unchanged.

This endorsement, which forms a part of and is for attachment to the Policy issued by the designated Insurers, takes effect on the effective date of said Policy at the hour stated in said Policy, unless another effective date is shown below, and expires concurrently with said Policy.

G301199A (10-11)
Page 1 of 1
CONTINENTAL CASUALTY COMPANY
Insured Name: UJ BARTECA PARENT, LLC

Policy No: 6073187285 Endorsement No: 3 Effective Date:



## **Earth Movement & Loss Conditions Amendatory Endorsement**

### **EARTH MOVEMENT & LOSS CONDITIONS AMENDATORY ENDORSEMENT**

It is hereby understood and agreed:

- Subparagraph g. under Group 2 Exclusions in the EXCLUSIONS part of the COVERAGE section of this Policy I. is deleted and replaced by the following:
  - Settling, bulging, cracking, shrinking or expansion of foundations, walls, roofs, ceilings, floors, walkways, patios, or roadways and other paved surfaces; or expansion, contraction or settling of soil;
- Subparagraph d. of VALUATION under the LOSS CONDITIONS section of this Policy is deleted and replaced by II. the following:
  - d. Exposed film, records, manuscripts and drawings: the value blank plus the cost of copying information from backup or from originals of a previous generation, but this policy does not insure any other cost, including research, engineering or other cost, of restoring or re-creating information lost;

Data, programs or any other software stored on electronic, electromechanical, electromagnetic data processing or production equipment: the cost of transferring such from backup or from originals of a previous generation, but this policy does not insure any other cost, including research, engineering or other cost of restoring or re-creating information lost, except as provided in Section II.C.11. **ELECTRONIC DATA PROCESSING:** 

Other documents not specifically excluded or addressed above: not to exceed the value blank plus cost of reproducing; but no liability is assumed hereunder for the cost of gathering or assembling information or data for such reproduction;

III. The definition of Earth Movement in the GLOSSARY section of this Policy is deleted and replaced by the following:

Earthquake, landslide, mine subsidence, volcanic eruption, volcanic action, and other sudden earth sinking (including sinkhole collapse), rising, shifting, or movement (natural or man-made) except as follows:

- a. Flood, surface water, mudslide or mud flow (caused by accumulation of water on or underground), waves, tidal water or tidal wave, Tsunami, overflow of streams or other bodies of water, or spray from any of the foregoing, all whether driven by wind or not;
- Release of water impounded by a dam regardless of cause. b.

However, any fire, explosion or leakage from fire protective systems or devices resulting from *Earth Movement* will not be considered to be loss by **Earth Movement** within the terms of this policy.

All other terms and conditions of the Policy remain unchanged.

This endorsement, which forms a part of and is for attachment to the Policy issued by the designated Insurers, takes effect on the effective date of said Policy at the hour stated in said Policy, unless another effective date is shown below, and expires concurrently with said Policy.

G300981B (03-18)

Page 1 of 1

CONTINENTAL CASUALTY COMPANY

Insured Name: UJ BARTECA PARENT, LLC

Policy No: 6073187285

Endorsement No: 4 **Effective Date:** 



## Green Upgrade Endorsement

It is hereby understood and agreed:

Green Loss Percentage: 2%

Green Limit of Insurance: \$ 50,000

#### A. COVERAGE

Subject to the terms and conditions of this policy and subject to the **Green Loss Percentage** and **Green Limit of Insurance** shown above, coverage is extended to pay the reasonable additional costs incurred to repair or replace the damaged portion of covered property with property of similar kind and quality and used for the same purpose as the damaged property, but that is qualified as <u>Green</u>.

If there are no <u>Green</u> building materials, processes or upgrades available, or if use of these <u>Green</u> building materials, processes or upgrades impairs or interferes with the structural integrity, function or use of the covered property, then this coverage does not apply. In addition, the upgrades or improvements only apply to the specific portion of the covered property that has incurred the loss. Covered property left undamaged from the occurrence of a covered loss would not be subject to the <u>Green</u> upgrades or improvements described in this endorsement. This coverage will only apply if the lost or damaged property is actually repaired or replaced as soon as reasonably possible after the covered loss or damage has occurred.

### **B. ADDITIONAL COVERAGES**

Losses covered under Section A. of this endorsement are also subject to the following additional provisions.

### 1. Recycling Additional Expenses

Coverage for DEBRIS REMOVAL under ADDITIONAL COVERAGES, COVERAGE EXTENSIONS and LIMITATIONS in the COVERAGE section of this Policy is extended to include the increased costs to:

- Reuse or salvage building materials and products.
- b. Extract recyclable construction waste and transport it to recycling facilities instead of landfills.

Coverage applies to increased costs only to the extent they are not offset by any income derived from the recycling.

#### 2. Professional Fees

Coverage for PROFESSIONAL FEES under ADDITIONAL COVERAGES, COVERAGE EXTENSIONS and LIMITATIONS in the COVERAGE section of this Policy is extended to include the additional professional fees of <u>Green</u> accredited architects or engineers hired for use in planning and designing the applicable <u>Green</u> qualifying repairs or rebuild.

### 3. Certification or Re-Certification Expenses

Coverage includes the reasonable certification or re-certification expenses to the applicable <u>Green</u> accreditation organization so the repaired or replaced covered property can be certified or re-certified by the applicable organization. This additional coverage only applies to certification or re-certification expenses – it

G300791B (12-18)

Page 1 of 3

CONTINENTAL CASUALTY COMPANY

Insured Name: UJ BARTECA PARENT, LLC

Policy No: 6073187285 Endorsement No: 5

Effective Date:



## **Green Upgrade Endorsement**

does not apply to the actual costs of repair or upgrade incurred to bring the building or personal property in compliance with the standards of the accreditation organization.

### 4. Ventilation of Reconstructed Building

Coverage includes the expense incurred to flush-out the air in the building that has been repaired or rebuilt due to a covered loss under this policy and replace it with 100% outside air and air that has been fully ventilated through a *Green* air filtration system.

### 5. Time Element

If <u>Time Element</u> coverage is provided coverage is extended to pay for the increased loss or costs for business interruption, extra expense or rental value arising out of extra time required to make the <u>Green</u> qualifying repair or rebuild to the damaged portion of the property.

In addition, if a covered loss occurs to covered equipment that uses renewable resources (such as solar, wind, geo-thermal, etc.) to generate power, coverage is extended to pay the extra expense incurred to obtain power from a public utility, until such time as this equipment is repaired and operating. In addition, coverage applies to the loss of income for rebates and credits received from public utility companies for surplus power the renewable resources provide into the utility's power grid.

#### C. ADDITIONAL EXCLUSIONS & LIMITATIONS:

- 1. In addition to the exclusions and limitations already described on this policy, this endorsement does not cover:
  - **a.** Stock, raw materials, finished goods, *merchandise*, processing water, molds and dies, property in the open, property of others for which the Insured is legally liable, or personal property of employees and officers.
  - **b.** Any loss covered under any other section of this policy. For example, coverage provided under this endorsement does not replace nor supplement any applicable Ordinance or Law coverage already on this policy.
  - **c.** Any <u>Green</u> upgrades or improvements required under any existing ordinance or law with which the Insured was legally obligated to comply prior to the time of the insured direct physical loss or damage.
- 2. Coverage under this endorsement does not apply to any property for which the basis of valuation is other than replacement cost.
- **3.** Coverage under this endorsement does not apply to property at Unscheduled <u>Locations</u> or property at Newly Acquired <u>Locations</u>.

#### D. LIMITS OF INSURANCE

The Limits of Insurance provided under this endorsement are part of and not in addition to the Policy Limits and sub-limits as provided in Section I.4. of this Policy.

The most the Company will pay for a covered loss under this endorsement (including any amount(s) payable under Section **B. ADDITIONAL COVERAGES**) is the lesser of the following:

G300791B (12-18)

Page 2 of 3
CONTINENTAL CASUALTY COMPANY

Insured Name: UJ BARTECA PARENT, LLC

Policy No: 6073187285 Endorsement No: 5

Effective Date:



## **Green Upgrade Endorsement**

- 1. The **Green Loss Percentage** shown in this endorsement times the sum of the amount otherwise payable to repair or replace the damaged portion of covered property of like kind and quality for the location, plus the deductible amount applicable to the loss; or
- 2. The Green Limit of Insurance shown in this endorsement.

#### E. DEFINITIONS

<u>Green</u> means the practice of creating structures and using processes that are environmentally responsible and resource-efficient. **Green** structures, materials or processes incorporate one or more of the following:

- Energy Efficiency, including steps implemented to obtain an ENERGY STAR label for a covered building, as well
  as use of ENERGY STAR or equivalently rated materials, lighting systems, HVAC equipment, appliances or
  electronic products.
- Water Efficiency, including use of water efficient processes and wastewater technologies, as well as use of alternative water or indoor plumbing systems that reduce water usage from plumbing fixtures such as toilets, urinals, faucets, showers and sinks.
- Materials Efficiency, including use of sustainable and environmentally preferable construction materials, materials management and re-cycling programs.
- Environmental Quality, including reduction of the quantity of indoor air contaminants by use of low-emitting products or materials.

All other terms and conditions of the Policy remain unchanged.

This endorsement, which forms a part of and is for attachment to the Policy issued by the designated Insurers, takes effect on the effective date of said Policy at the hour stated in said Policy, unless another effective date is shown below, and expires concurrently with said Policy.

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CONTINENTAL CASUALTY COMPANY
Insured Name: UJ BARTECA PARENT, LLC

Policy No: 6073187285
Endorsement No: 5
Effective Date:



# Locks and Keys Endorsement

### THIS ENDORSEMENT CHANGES YOUR POLICY - PLEASE READ IT CAREFULLY

It is hereby understood and agreed that the policy to which this endorsement is attached is amended as follows:

The following is added to Section II.C. ADDITIONAL COVERAGES, COVERAGE EXTENSION and LIMITATIONS:

### LOCKS AND KEYS

This policy is extended to cover reasonable and necessary expenses incurred by the insured for replacing:

- a. Locks; and
- b. Keys;

Resulting from insured physical loss or damage.

Coverage includes the actual cost to:

- Replace;
- 2) Adjust; or
- Reprogram;

Locks to accept new keys or entry codes.

The most the Company will pay under this coverage for all Locks and Keys Expenses arising out of any one occurrence is the sublimit of \$25,000 .

All other terms and conditions of the Policy remain unchanged.

This endorsement, which forms a part of and is for attachment to the Policy issued by the designated Insurers, takes effect on the effective date of said Policy at the hour stated in said Policy, unless another effective date is shown below, and expires concurrently with said Policy.

CNA71096XX (10-12)

Page 1 of 1
CONTINENTAL CASUALTY COMPANY
Insured Name: UJ BARTECA PARENT, LLC

Policy No: 6073187285 Endorsement No: 6 Effective Date:



## **Terrorism Coverage Under TRIA Endorsement**

## THIS ENDORSEMENT CHANGES YOUR POLICY - PLEASE READ IT CAREFULLY

It is hereby understood and agreed that the policy to which this endorsement is attached is amended as follows:

### TERRORISM COVERAGE UNDER TRIA

Coverage under this policy is extended to loss or damage not otherwise excluded that is caused by an act of Terrorism that is certified under the U.S. Terrorism Risk Insurance Act.

Exclusion **1. c. Terrorism** is deleted for <u>locations</u> in the United States of America, including its territories and possessions.

### LIMITATIONS ON PAYMENT OF TERRORISM LOSSES

The Act, as amended, contains a \$100 Billion cap that limits U.S Government reimbursement as well as insurers' liability for losses resulting from certified acts of Terrorism when the amount of such losses in any one calendar year exceeds \$100 Billion.

When an act of Terrorism that is certified under the Act exceeds \$100 billion in any one calendar year (January 1 through December 31) and we have met our insurer deductible under the Act, we 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 the Treasury.

All other terms and conditions of the Policy remain unchanged.

This endorsement, which forms a part of and is for attachment to the Policy issued by the designated Insurers, takes effect on the effective date of said Policy at the hour stated in said Policy, unless another effective date is shown below, and expires concurrently with said Policy.

G300714A (10-08)
Page 1 of 1
CONTINENTAL CASUALTY COMPANY
Insured Name: UJ BARTECA PARENT, LLC

Policy No: 6073187285 Endorsement No: 7 Effective Date:



## Florida Amendatory Endorsement

It is hereby understood and agreed:

- I. The following is added to the **Duties After A Loss** Condition:
  - A claim, supplemental claim or reopened claim for loss or damage caused by hurricane or other
    windstorm is barred unless notice of claim is given to us in accordance with the terms of this policy within
    three years after the hurricane first made landfall or a windstorm other than hurricane caused the covered
    damage. (Supplemental claim or reopened claim means an additional claim for recovery from the
    Company for losses from the same hurricane or other windstorm which the Company had previously
    adjusted pursuant to the initial claim.)

This provision concerning time for submission of claim, supplemental claim or reopened claim does not affect any limitation for legal action against the Company as provided in this policy under the **Suit Against the Insurers Loss** Condition, including any amendment to that condition.

- Any inspection or survey by the Company or on the Company's behalf that is the subject of a claim, will be conducted with at least 48 hours notice to the Insured. The 48-hour notice may be waived by the Insured.
- II. Payment of Loss under the LOSS CONDITIONS section of this policy is deleted and replaced by the following:
  Payment of Loss

If the Insured has complied with all of the terms and conditions of this Policy:

- a. The Company will pay amounts due hereunder within 20 days after it receives a sworn proof of loss provided the Company and the Insured have reached agreement on the amount of loss or damage;
- **b.** The Company will pay amounts due hereunder within 30 days after the Company receives the sworn proof of loss and there is an entry of a final judgment or an appraisal award has been made; or
- **c.** The Company will pay amounts due hereunder within 90 days of receiving notice of claim, unless:
  - (1) the Company denies the claim during that time; or
  - (2) Factors beyond the Company's control reasonably prevent such payment.
- **d.** If a portion of the claim is denied, then the 90-day time period for payment of claim relates to the portion of the claim that is not denied. This item only applies to the following:
  - (1) Claims under a policy covering residential property;
  - (2) Claims for building or contents coverage if the insured structure is 10,000 square feet or less and the policy covers only *locations* in Florida; or
  - (3) Claims for contents coverage under a tenant's policy if the rented premises are 10,000 square feet or less and the policy covers only *locations* in Florida.

All other terms and conditions of the Policy remain unchanged.

This endorsement, which forms a part of and is for attachment to the Policy issued by the designated Insurers, takes effect on the effective date of said Policy at the hour stated in said Policy, unless another effective date is shown below, and expires concurrently with said Policy.

CNA81234FL (01-15)

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CONTINENTAL CASUALTY COMPANY

Insured Name: UJ BARTECA PARENT, LLC

Policy No: 6073187285 Endorsement No: 8

Effective Date:





## NAMED INSURED SCHEDULE

It is hereby understood and agreed:

The Commercial Property Coverage Part Declarations is amended to add the following Named Insureds:

Uncle Julio's of Illinois, Inc.

Uncle Julio's of Florida, Inc.

Uncle Julio's of Pennsylvania, Inc.

Uncle Julio's of Tennessee, Inc.

Uncle Julio's Columbia Concessions, LLC

Uncle Julio's Annapolis Concessions, LLC

Uncle Julio's Hacienda, Inc.

Hacienda GP, LLC

15-16, LLC

2004 Restaurant, LLC

2016 Restaurant, LLC

Hacienda II Partners, LLLP

Southwest Restaurant Partners, LLLP

445 Holland Hills, LLC

Barcard, LLC

Bartaco, LLC

Bartaco Texas, LLC

Bartaco WestBend, LLC

Bartaco WestBend Management, LLC

Bartaco WestBend Beverage Company

Bartaco Inman Park, LLC

Bartaco 12 South, LLC

Bartaco Reston, LLC

Bartaco Westport, LLC

Bartaco Stamford, LLC

Bartaco Dr. Phillips, LLC

Bar Taco Port Chester, LLC

Bartaco Roswell, LLC

Bartaco Hyde Park, LLC

Bartaco Marietta, LLC

Bartaco Woodbury, LLC

Bartaco Biltmore Avenue, LLC

Bartaco Pearl West, LLC

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CONTINENTAL CASUALTY COMPANY

Insured Name: UJ BARTECA PARENT, LLC

Policy No: 6073187285

Endorsement No: 9

Effective Date:10/30/2019



## **Named Insured Schedule**

Bartaco Chapel Hill, LLC

Bartaco Homewood, LLC

Bartaco Mosiac, LLC

971 Farmington, LLC

Bartaco Tejon, LLC

Bartaco Hilldale, LLC

Bartaco North Hills, LLC

Bartaco Ballston, LLC

Bartaco Deerfield, LLC

Bartaco (KOP), LLC

Bartaco Nyack, LLC

Bartaco Aventura, LLC

Bartaco Preston Center, LLC

Bartaco Fort Point, LLC

Bartaco Wynwood, LLC

Bartaco Greengate, LLC

GRNC, LLC

GUME, LLC

MARIS, LLC

MCHE, LLC

PLLA, LLC

SNGR, LLC

TPAS, LLC

All other terms and conditions of the Policy remain unchanged.

This endorsement, which forms a part of and is for attachment to the Policy issued by the designated Insurers, takes effect on the effective date of said Policy at the hour stated in said Policy, unless another effective date is shown below, and expires concurrently with said Policy.

CNA91689XX (03-18)

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CONTINENTAL CASUALTY COMPANY

Insured Name: UJ BARTECA PARENT, LLC

Policy No: 6073187285

Endorsement No: 9

Effective Date10/30/2019

## Loss Payable Clause

### LOSS PAYABLE CLAUSE

It is hereby understood and agreed:

The Loss Payable Clause under the GENERAL CONDITIONS section of this Policy is replaced with the following:

### **Schedule**

Location No.	Loss Payee Name & Address	Applicable Clause (Enter a., b., c. or d.)	Description of Property
	Regions Bank, as Collateral Agent, I.S.A.O.A., A.T.I.M.A., Attention: Regions Capital Markets Group, 1180 West Peachtree Street NW, Atlanta, GA 30309	b.	

Nothing in this endorsement increases the applicable Limit of Insurance. The Company will not pay any Loss Payee more than their financial interest in the Covered Property, and the Company will not pay more than the applicable Limit of Insurance on the Covered Property.

For the Loss Payees named in the above Schedule of this endorsement or in the Declarations, the provisions of this endorsement apply according to the Applicable Clause shown for such loss payee at the *location* and for the property described in this Schedule or in the Declarations:

#### a. Loss Payable Clause

For covered property in which both the Insured and a Loss Payee shown in the Schedule or Declarations have an insurable interest, the Company will:

- (1) Adjust losses with the Insured; and
- (2) Pay any claim for loss or damage jointly to the Insured and the Loss Payee, as interests may appear.

#### b. Lender's Loss Payable Clause

- (1) The Lender Loss Payee shown in the above Schedule or in the Declarations is a creditor, including a mortgageholder or trustee, whose interest in Covered Property is established by such written instruments as:
  - (a) Warehouse receipts;
  - (b) A contract for deed;
  - Bills of lading; (c)
  - (d) Financing statements; or
  - Mortgages, deeds of trust, or security agreements. (e)
- (2) For Covered Property in which both the Insured and a Loss Payee have an insurable interest:
  - (a) The Company will pay for covered loss or damage to each Loss Payee in their order of precedence, as interests may appear.
  - The Loss Pavee has the right to receive loss payment even if the Loss Pavee has started (b) foreclosure or similar action on the Covered Property.
  - If the Company denies the claim because of acts of the Insured or because the Insured has failed (c) to comply with the terms of the Policy, the Loss Payee will still have the right to receive loss payment if the Loss Payee:

CNA82754XX (07-15)

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CONTINENTAL CASUALTY COMPANY

Insured Name: UJ BARTECA PARENT, LLC

Policy No: 6073187285

Endorsement No: 10

Effective Date: 10/30/2019



## Loss Payable Clause

- i. Pays any premium due under this Policy at the Company's request if the Insured has failed to do so:
- **ii.** Submits a signed, sworn proof of loss within 60 days after receiving notice from the Company of the Insured's failure to do so; and
- **iii.** Has notified the Company of any change in ownership, occupancy or substantial change in risk known to the Loss Payee.

All of the terms of this Policy will then apply directly to the Loss Payee.

- (d) If the Company pays the Loss Payee for any loss or damage and denies payment to the Insured because of the Insured's acts or because the Insured has failed to comply with the terms of this Policy:
  - i. The Loss Payee's rights will be transferred to the Company to the extent of the amount the Company pays; and
  - **ii.** The Loss Payee's rights to recover the full amount of the Loss Payee's claim will not be impaired.

At the Company's option, the Company may pay to the Loss Payee the whole principal on the debt plus any accrued interest. In this event, the Insured will pay the Insured's remaining debt to the Company.

- (3) If the Company cancels this policy, the Company will give written notice to the Loss Payee at least:
  - (a) 10 days before the effective date of cancellation if the Company cancels for the Insured's nonpayment of premium; or
  - (b) 30 days before the effective date of cancellation if the Company cancels for any other reason.
- (4) If the Company elects not to renew this policy, the Company will give written notice to the Loss Payee at least 10 days before the expiration date of this policy.

## c. Contract of Sale Clause

- (1) The Loss Payee shown in the Schedule or in the Declarations is a person or organization the Insured has entered a contract with for the sale of Covered Property.
- (2) For Covered Property in which both the Insured and the Loss Payee have an insurable interest, the Company will:
  - (a) Adjust losses with the Insured; and
  - (b) Pay any claim for loss or damage jointly to the Insured and the Loss Payee, as interests may appear.
  - (c) The following is added to the **Other Insurance** condition:

For Covered Property that is the subject of a contract of sale, the Loss Payee is included as an Insured.

## d. Building Owner Loss Payable Clause

- (1) The Loss Payee shown in the Schedule or in the Declarations is the owner of the described building in which the Insured is a tenant.
- (2) The Company will adjust losses to the described building with the Loss Payee. Any loss payment made to the Loss Payee will satisfy your claims against the Company for the owner's property.
- (3) The Company will adjust losses to tenants' improvements and betterments with the Insured, unless the lease provides otherwise.

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Page 2 of 3

CONTINENTAL CASUALTY COMPANY

Insured Name: UJ BARTECA PARENT, LLC

Endorsement No: 10

Effective Date: 10/30/2019

Policy No: 6073187285





# **Loss Payable Clause**

All other terms and conditions of the Policy remain unchanged.

This endorsement, which forms a part of and is for attachment to the Policy issued by the designated Insurers, takes effect on the effective date of said Policy at the hour stated in said Policy, unless another effective date is shown below, and expires concurrently with said Policy.

CNA82754XX (07-15)

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CONTINENTAL CASUALTY COMPANY

Insured Name: UJ BARTECA PARENT, LLC

Policy No: 6073187285

Endorsement No: 10

Effective Date: 10/30/2019





### NAMED INSURED SCHEDULE

It is hereby understood and agreed:

The Commercial Property Coverage Part Declarations is amended to add the following Named Insureds:

UJ Holdco, LP and BT Holding, LP

UJ Barteca Parent LLC

UJ Group LLC

UJ Holdco, LLC

Barteca Super Holdings, LLC

GRNC, LLC

GUME, LLC

MARIS, LLC

MCHE, LLC

PLLA, LLC

SNGR, LLC

TPAS, LLC

All other terms and conditions of the Policy remain unchanged.

This endorsement, which forms a part of and is for attachment to the Policy issued by the designated Insurers, takes effect on the effective date of said Policy at the hour stated in said Policy, unless another effective date is shown below, and expires concurrently with said Policy.

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CONTINENTAL CASUALTY COMPANY

Insured Name: UJ HOLDCO, LP AND BT HOLDING, LP

Policy No: 6073187285 Endorsement No: 14

Effective Date: 03/06/2020





## NAMED INSURED SCHEDULE

It is hereby understood and agreed:

The Commercial Property Coverage Part Declarations is amended to add the following Named Insureds:

The Uncle Julio's Family Foundation

All other terms and conditions of the Policy remain unchanged.

This endorsement, which forms a part of and is for attachment to the Policy issued by the designated Insurers, takes effect on the effective date of said Policy at the hour stated in said Policy, unless another effective date is shown below, and expires concurrently with said Policy.

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CONTINENTAL CASUALTY COMPANY

Insured Name: UJ HOLDCO, LP AND BT HOLDING, LP

Policy No: 6073187285 Endorsement No: 16

Effective Date: 04/13/2020

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### NAMED INSURED SCHEDULE

It is hereby understood and agreed:

The Commercial Property Coverage Part Declarations is amended to add the following Named Insureds:

Barteca Super Holdings, LLC

General Atlantic (BT) Blocker

**RCP Barteca Corp** 

Retained Wind Down Grilles 1, LLC

Retained Harlan Holdings, LLC

Del Frisco's - Chestnut Hill

Del Frisco's - Burlington

Del Frisco's - Huntington

Barteca Holdings

Barteca Restaurants, LLC

UJ Group LLC

UJ Holdings, Inc.

UJ Acquisition, Inc.

UJ Group Holdings, Inc.

UJ Holdco, LLC

Julio & Sons Company

**Uncle Julio's Corporation** 

Uncle Julio's of Texas, Inc.

Conroe Foods, Inc.

Uncle Julio's of Reston, Inc.

Uncle Julio's Rio Grande Cafe, Inc.

The Mexican Restaurant Inc.

Uncle Julio's of Georgia, Inc.

All other terms and conditions of the Policy remain unchanged.

This endorsement, which forms a part of and is for attachment to the Policy issued by the designated Insurers, takes effect on the effective date of said Policy at the hour stated in said Policy, unless another effective date is shown below, and expires concurrently with said Policy.

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CONTINENTAL CASUALTY COMPANY

Insured Name: UJ HOLDCO, LP AND BT HOLDING, LP

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Policy No: 6073187285

Endorsement No: 20

Effective Date: 10/30/2019

# **EXHIBIT B**

# APPENDIX OF CERTAIN CIVIL AUTHORITY ORDERS

State	Date	Description
Colorado	March 10, 2020	Disaster Emergency declared. <sup>1</sup>
	March 17, 2020	Public Health Order 20-22 closed on-premises food consumption at restaurants and bars.
	March 27, 2020/Amended April 9, 2020	Public Health Order 20-24 <sup>2</sup> issued a stay at home order stating "There is clear evidence that some individuals who contract the COVID-19 virus have no symptoms or have mild symptoms, which means they may not be aware they carry the virus. Because even people without symptoms can transmit the disease, and because evidence shows the disease is easily spread, gatherings promote transmission of COVID-19. COVID-19 also physically contributes to property loss, contamination, and damage due to its propensity to attach to surfaces for prolonged periods of time."
	April 26, 2020	Public Health Order 20-28 <sup>3</sup> stated "The following places of public accommodation remain closed to ingress, egress, use, and occupancy by members of the public: 1.  Restaurants, food courts, cafes, coffeehouses, and other similar places of public accommodation offering food or beverage for on-premises consumption."
	May 26, 2020	Fourth Amended Public Health Order 20-284 allowed inperson dining to open at 50% capacity, effective May 27, 2020.
	September 15, 2020	Public Health Order 20-35, <sup>5</sup> Safer At Home Dial implemented levels of restrictions for businesses. Level 1 and 2 allowed for 50% capacity for restaurants, Level 3 restaurant capacity was restricted to 25%,
	November 2, 2020	Public Health Order 20-36,6 COVID-19 Dial superseded and replaced 20-35 and established new levels by color.7
Connecticut	March 10, 2020	Public Health Emergency declared.8
	March 16, 2020	Executive Order 7D <sup>9</sup> limited restaurant, bar, and private club operations to off-premise consumption of food and non-alcoholic beverages.
	March 20, 2020	Executive Order 7H <sup>10</sup> "Stay Safe, Stay Home" placed restrictions on all workplaces for non-essential businesses.

State	Date	Description
	May 12, 2020	Executive Order 7MM <sup>11</sup> allowed for outdoor dining subject review and approval by local authorities.
	June 16, 2020	Executive Order 7ZZ <sup>12</sup> amended the previous executive order to allow for indoor dining pursuant to the Department of Economic and Community Development Sector Rules for Restaurants
	October 13, 2020	Executive Order 9G <sup>13</sup> instructed municipal authorities to revert to more restrictive size and capacity limitations when the municipality has an elevated case rate.
	October 29, 2020	Executive Order 9J <sup>14</sup> replaced Executive Order 9G with a more restrictive elevated case rate.
Florida	March 1, 2020	Public Health Emergency declared. <sup>15</sup>
	March 17, 2020	Executive Order 2020-68 <sup>16</sup> restricted restaurant capacity to 50% of the building occupancy.
	March 20, 2020	Executive Order 2020-71 <sup>17</sup> ordered all restaurants and food establishments to suspend on-premises food consumption but allowed for delivery and take-out services.
	April 29, 2020	Executive Order 2020-112 <sup>18</sup> implemented Phase 1 of Safe. Smart. Step-by-Step. Plan for Florida's Recovery. This included allowing for indoor dining at 25% capacity and outdoor on-premises dining. The order took effect on May 4, 2020.
	May 14, 2020	Executive Order 2020-12219 implemented Phase 1 in Broward and Miami-Dade Counties.
	June 3, 2020	Executive Order 2020-139 <sup>20</sup> implemented Phase 2 of Safe. Smart. Step-by-Step. Plan for Florida's Recovery. This included allowing for indoor dining at 50% capacity and outdoor on-premises dining. The order took effect on June 5, 2020.
	September 25, 2020	Executive Order 2020-244 <sup>21</sup> implemented Phase 3 "Right to Work; Business Certainty; Suspension of Fines." This order prevented local government orders from restricting capacity to less than 50% and required local governments to include certain information in COVID-19 emergency orders restricting capacity to less than 100%.
Georgia	March 14, 2020	Public Health Emergency declared. <sup>22</sup>

State	Date	Description
	March 23, 2020	Executive Order <sup>23</sup> limited large gatherings statewide, and ordered "shelter in place" for specific populations, closing bars and nightclubs in Georgia for fourteen days.
	April 2, 2020	Executive Order <sup>24</sup> issued a statewide shelter in place to stop the spread of COVID-19.
	April 23, 2020	Executive Order <sup>25</sup> provided guidance for reviving a healthy Georgia in response to COVID-19 which included a section on restaurants.
	April 27, 2020	Executive Order <sup>26</sup> provided additional guidance for food service establishments, bowling alleys, and theaters in response to COVID-19.
	May 12, 2020	Executive Order <sup>27</sup> provided additional guidance for reviving a healthy Georgia in response to COVID-19 including a section on restaurants. (Additional similar orders were issued every month since.)
Illinois	March 9, 2020	Disaster declared. <sup>28</sup>
	March 16, 2020	Executive Order Number 7 <sup>29</sup> ordered bars and restaurants to suspend on-premises consumption, but allowed restaurants to continue delivery service, drive-through and curbside pick-up.
	May 5, 2020	Office of the Governor, Restore Illinois: A Public Health Approach To Safely Reopen Our State. Guidelines were issued for different tiers of reopening which counties reached at different points in time. Phase 4, was the first to allow for restaurants to reopen indoor dining at a limited capacity. <sup>30</sup>
	November 20, 2020	Governor Pritzker ordered all 11 counties to move back to Tier 3 mitigations on November 20, 2020, closing all indoor dining once again. <sup>31</sup>
Maryland	March 5, 2020	State of Emergency declared. <sup>32</sup>
	March 16, 2020	Executive Order <sup>33</sup> closed all bars and restaurants in the state effective at 5:00 p.m. March 16, 2020. The order allowed for restaurants to continue carry-out, drive-thru, and delivery services, and allowed for eateries in health care facilities to remain open.

State	Date	Description
	May 27, 2020	Executive Order 20-05-27-01 <sup>34</sup> amended the previous orders to allow for restaurants to commence onsite outdoor dining.
	June 10, 2020	Executive Order 20-06-10-01 <sup>35</sup> amended the previous orders to allow for restaurants to commence indoor dining at 50% capacity, effective 5 pm on June 12,2020.
	September 1, 2020	Executive Order 20-09-18-01 <sup>36</sup> allowed for indoor dining at 75% capacity.
	November 11, 2020	Executive Order 20-11-10-01 <sup>37</sup> restricted indoor dining to only allow for 50% capacity.
	November 17, 2020	Executive Order 20-11-17-01 <sup>38</sup> continuing to allow for indoor dining at 50% and restricted dining hours closing restaurants from 10:00 p.m. and 6:00 a.m
Massachusetts	March 10, 2020	State of Emergency declared. <sup>39</sup>
	March 15, 2020	COVID-19 Order No. 5 <sup>40</sup> prohibited gatherings of more than 25 people and prohibiting restaurants from permitting the on-premises consumption of food and drink. Restaurants were permitted to continue to offer take-out and delivery.
	March 23, 2020	COVID-19 Order No. 13 <sup>41</sup> designated certain business as essential services and temporarily closed the brick-and-mortar premises of businesses and organizations that did not provide COVID-19 essential services and prohibited gatherings of more than 10 people.
	May 18, 2020	COVID-19 Order No. 33 <sup>42</sup> implemented phased reopening and described Phase 1 restrictions.
	June 6, 2020	COVID-19 Order No. 37 <sup>43</sup> described Phase 2 of the reopening plan. On June 8, 2020, as part of Step 1, restaurants were permitted to begin offering outdoor table service.
	June 19, 2020	COVID-19 Order No. 40 <sup>44</sup> included information on Step 2 of Phase 2 which allowed for indoor dining to open on June 22, 2020.
	July 2, 2020	COVID-19 Order No. 43 <sup>45</sup> authorized reopening of Phase III enterprises.

State	Date	Description
	September 10, 2020	COVID-19 Order No. 50 <sup>46</sup> made certain Phase III adjustments, including extension of outdoor dining provisions.
	November 2, 2020	COVID-19 Order No. 53 <sup>47</sup> required the early closure of certain businesses, including restaurants, each night at 9:30 PM. Restaurants were permitted to offer food and non-alcoholic beverages for take-out and by delivery during the mandatory closing period.
	December 22, 2020	COVID-19 Order No. 59 <sup>48</sup> applied 25% capacity limit to restaurants, applying separately to indoor and outdoor capacity.
	January 21, 2021	COVID-19 Order No. 62 <sup>49</sup> extended the 25% capacity limits in COVID-19 Order No. 59 until 5:00 a.m. on February 8, 2021 and repealed the nightly 9:30 p.m. to 5:00 a.m. mandatory closing period adopted so that restaurants no longer need to close at 9:30 p.m.
New Jersey	March 9, 2020	Public Health Emergency declared. <sup>50</sup>
	March 16, 2020	Executive Order 104 <sup>51</sup> restricted restaurants to offering only food delivery and/or take-out services.
	March 21, 2020	Executive Order 107 <sup>52</sup> directed all residents to stay at home.
	April 11, 2020	Executive Order 125 <sup>53</sup> implemented additional restrictions limiting restaurant occupancy to 10% capacity.
	June 3, 2020	Executive Order 150 <sup>54</sup> allowed for restaurants, bars, and other food or beverage establishments to provide outdoor in-person service effective June 15, 2020.
	June 26, 2020	Executive Order 157 <sup>55</sup> established rules for indoor dining restricting capacity to 25% and to take effect on July 2, 2020.
	June 29, 2020	Executive Order 158 <sup>56</sup> temporarily paused the resumption of indoor dining.
	September 1, 2020	Executive Order 183 <sup>57</sup> allowed for the resumption of indoor dining at 25% capacity to take effect on September 4, 2020.
	November 10, 2020	Executive Order 194 <sup>58</sup> announced new COVID-19 mitigation measures which required food and beverage

State	Date	Description
		establishments to close their indoor operations between the hours of 10:00 p.m. and 5:00 a.m. each day.
	February 3, 2021	Executive Order 219 <sup>59</sup> raised indoor capacity limits from 25% to 35% and allowed restaurants to offer in-person service at indoor areas between the hours of 10:00 p.m. and 5:00 a.m.
New York	March 7, 2020	Disaster Emergency declared. <sup>60</sup>
	March 16, 2020	Executive Order 202.3 <sup>61</sup> directed all restaurants to cease servicing food on-premises starting at 8 p.m. on March 16, 2020. Restaurants were allowed to continue to serve food for off-premises consumption.
	June 6, 2020	Executive Order 202.38 <sup>62</sup> modified Executive Order 202.3 to allow for on-premises outdoor dining, provided such restaurant or bar is in compliance with Department of Health guidance.
	June 7, 2020	Executive Order 202.39 <sup>63</sup> modified Executive Order 202.38 to restrict outdoor dining to only regions in Phase 2 of re-opening.
	June 11, 2020	Governor Cuomo announced that five regions will enter Phase 3 or re-opening. <sup>64</sup> Phase 3 allows for indoor restaurant services to resume. <sup>65</sup>
	June 22, 2020	Governor Cuomo announced that the Mid-Hudson Valley region was cleared to enter Phase 3 of re-opening on June 23, 2020. <sup>66</sup>
	October 6, 2020	Executive Order 202.68 <sup>67</sup> announced that the Department of Health will determine areas in the State that require enhanced public health restrictions based upon cluster-based cases of COVID-19. In red zones on-premises dining was prohibited, in orange zones restaurants were restricted to outdoor dining and takeout and delivery.
	November 11, 2020	Governor Cuomo announced that restaurants would be required to close from 10 p.m. to 5 a.m. <sup>68</sup> Restaurants were still allowed to provide curbside, food-only pick-up or delivery after 10 p.m.
	March 10, 2020	State of Emergency declared. <sup>69</sup>

State	Date	Description
North Carolina	March 17, 2020	Executive Order 11870 closed restaurants and bars for dine-in service and limited the sale of food and beverages to carry-out, drive through and delivery only.
	May 5, 2020	Executive Order 138 <sup>71</sup> announced Phase 1 of re-opening and continued to limit restaurant to only off-premises services.
	May 20, 2020	Executive Order 141 <sup>72</sup> announced Phase 2 of re-opening, which limited indoor and outdoor seating areas to 50% capacity.
	September 4, 2020	Executive Order 163 <sup>73</sup> revised COVID-19 prohibitions and restrictions. It continued to limit indoor and outdoor seating areas to 50% capacity.
	September 30, 2020	Executive Order 169 <sup>74</sup> revised prohibitions and restrictions that moved the state into Phase 3 measures.
	December 8, 2020	Executive Order 181 <sup>75</sup> implemented a modified stay at home order and required nighttime closure for certain businesses.
Oklahoma	March 15, 2020	State of Emergency declared. <sup>76</sup>
	March 24, 2020	Executive Order 2020-07 <sup>77</sup> closed all businesses not identified as critical infrastructure, except for pick-up, curbside and delivery service by restaurants and bars.
	April 22, 2020	Governor Stitt announced three-phase approach to reopening. 78 Beginning May 1, 2020 restaurant dining rooms were allowed to operate using CDC recommended social distancing and sanitation protocols. 79
	November 16, 2020	Seventh Amended Executive Order 2020-20 <sup>80</sup> announced additional restrictions to take effect on November 19, 2020 including ordering that no food or beverages shall be sold, dispensed, or served for on-premises consumption after 11 p.m.
	January 13, 2021	Ninth Amended Executive Order 2020-20 <sup>81</sup> extended the state of emergency but no longer included the requirement for restaurants to close at 11 p.m.
Pennsylvania	March 6, 2020	Disaster Emergency declared.82
	March 16, 2020	Governor Wolf ordered <sup>83</sup> "all restaurants and bars to close their dine-in facilities at 12:01 AM on Monday, March 16

State	Date	Description
		in Allegheny, Bucks, Chester, Delaware and Montgomery counties for 14 days."
	March 19, 2020	Executive Order <sup>84</sup> was issued closing all non-life sustaining businesses. The order noted that all restaurants had been previously ordered to close but that they were allowed to continue to offer carry-out, delivery, and drive-through services.
	June 4, 2020	Amended Executive Order <sup>85</sup> was issued allowing ten counties including Montgomery county to move to the yellow phase of the Process to Reopen on June 5, 2020, which allowed for restaurants to begin offering outdoor dining service in addition to carry-out and delivery. <sup>86</sup>
	June 25, 2020	Governor Wolf and Secretary of Health Dr. Rachel Levine issued an amended green phase order <sup>87</sup> for twelve counties including Montgomery county to begin on June 26, 2020, allowing indoor dining at "self-certified" restaurants at no more than 50% capacity. <sup>88</sup>
	September 8, 2020	Governor Wolf announced that all restaurants may increase indoor dining capacity from 25% to 50% beginning on September 21, 2020. <sup>89</sup>
	November 23, 2020	Governor Wolf announced new mitigation efforts encouraging Pennsylvanians to limit unnecessary travel and stay at home <sup>90</sup> and restricting alcohol sales. <sup>91</sup>
	December 10, 2020	Governor Wolf issued an order <sup>92</sup> prohibiting all indoor dining to take effect on December 12, 2020. Outdoor dining, take-out food service, and take-out alcohol sales were allowed to continue. <sup>93</sup>
	December 30, 2020	The December 10 mitigation order prohibiting indoor dining was allowed to expire on January 4, 2020.94
Tennessee	March 12, 2020	State of Emergency declared.95
	March 22, 2020	Executive Order 1796 closed restaurants, bars, and similar food or drink establishments, including nightclubs, except for drive through, pickup, carry-out, or delivery services.
	March 30, 2020	Executive Order 22 <sup>97</sup> implemented Safer at Home provisions.
	April 2, 2020	Executive Order 23 <sup>98</sup> required Tennesseans to stay at home unless engaging in essential activity or essential services.

State	Date	Description
	April 21, 2020	Governor Lee announced a re-opening plan to take effect as early as April 27, 2020.99
	April 24, 2020	Executive Order 29 <sup>100</sup> amended Executive Order 17 to allow for on-site dining to take effect on April 27, 2020 and instructing restaurants to comply with the Governor's Economic Recovery Group guidance. Six county health departments were given the authority to maintain any order or issue further restriction regarding the operation of restaurants.
	April 28, 2020	Executive Order 30 <sup>101</sup> repealed the stay at home order and allowed Tennesseans to return to work.
Texas	March 13, 2020	State of Disaster declared. 102
	March 19, 2020	Executive Order GA-8 <sup>103</sup> declared that people should avoid eating or drinking at bars, restaurants, and food courts in accordance with the guidelines from the president and CDC. The order encouraged the use of drive-thru, pickup, or delivery options.
	March 31, 2020	Executive Order GA-14 <sup>104</sup> required that "to reduce the spread of COVID-19, every person in Texas shall, except where necessary to provide or obtain essential services, minimize social gatherings and minimize in-person contact with people who are not in the same household." Furthermore, the executive order reiterated that people should avoid eating or drinking at bars restaurants and food courts.
	April 27, 2020	Executive Order GA-18 <sup>105</sup> set forth Phase 1 of reopening which defined dine-in restaurant services as "Reopened Services" and stated that starting on May 1, 2020 restaurants were allowed to operate at 25% capacity, provided that less than 51% of their gross receipts were from alcohol sales.
	May 5, 2020	Executive Order GA-21 <sup>106</sup> clarified that "Reopened" dinein restaurant services did not place an occupancy limit on outdoor areas of the restaurant.
	May 18, 2020	Executive Order GA-23 <sup>107</sup> allowed for dine-in restaurant services to operate at 50% capacity for all counties except for Deaf Smith, El Paso, Moore, Potter, and Randall counties.

State	Date	Description
	June 3, 2020	Executive Order GA-26 <sup>108</sup> , starting on June 12, 2020, for counties that had entered Phase Three, indoor dining was permitted to operate at 75% capacity.
	June 26, 2020	Executive Order GA-28 <sup>109</sup> implemented additional COVID-19 restrictions and ordered at restaurants shall remain at 75% capacity until June 29, 2020 at which time the capacity limit would be restricted to 50%.
	September 17, 2020	Executive Order GA-30 <sup>110</sup> allowed for dine-in restaurants to operate at 75% capacity except for establishments in areas with high hospitalizations.
	October 7, 2020	Executive Order GA-32 <sup>111</sup> provided that the 75% capacity cap for indoor dining was to continue for establishments in areas with high hospitalizations.
Virginia	March 12, 2020	State of Emergency declared March 12, 2020.112
	March 17, 2020	Executive Order <sup>113</sup> ordered all restaurants, fitness centers, and theatres to significantly reduce seating capacity to 10 patrons or less.
	March 23, 2020	Executive Order No. 53 <sup>114</sup> ordered the closure of all dining and congregation areas in restaurants and dining establishments to take effect on March 24, 2020.  Restaurants were allowed to continue offering delivery and take-out services.
	March 30, 2020	Executive Order No. 55 <sup>115</sup> ordered all individuals in Virginia to remain at their place of residence, except when engaging in nine specifically enumerated activities.
	May 8, 2020	Executive Order No. 61 <sup>116</sup> described Phase 1 of the easing of COVID-19 restrictions to take effect on May 15, 2020. It allowed for restaurants to resume outdoor dining operations.
	June 2, 2020	Executive Order No. 65 <sup>117</sup> described Phase 2 of the easing of COVID-19 restrictions to take effect on June 5, 2020. It allowed for the resumption of indoor dining at 50% capacity.
	June 30, 2020	Executive Order 67 <sup>118</sup> described Phase 3 of the easing of COVID-19 restrictions to take effect on July 1, 2020. It allowed for indoor dining without a capacity limitation, but to continue to require distancing and frequent sanitation.

State	Date	Description
	July 28, 2020	Executive Order 68 <sup>119</sup> which took effect on July 31, 2020 placed additional restrictions on the eastern region, including the cities of Virginia Beach, Chesapeake, Norfolk, Suffolk, Portsmouth, Hampton, Williamsburg, Newport News, Poquoson, James City County, and York County. It ordered that all restaurants close no later than 12:00 am and that indoor dining may not exceed 50% capacity.
	December 10, 2020	Executive Order 72 <sup>120</sup> implemented common sense restrictions due to COVID-19. It instructed individuals to remain in their residences between 12:00 am to 5:00 am with listed exceptions.
Wisconsin	March 12, 2020	Public Health Emergency declared March 12, 2020. 121
	March 17, 2020	Emergency Order No. 5 <sup>122</sup> prohibited the gathering of 10 or more people and ordered all bars and restaurants to close except for take-out and delivery services.
	March 24, 2020	Executive Order No. 12 <sup>123</sup> directed all individuals to stay at home with outlined exceptions.
	April 20, 2020	Emergency Order No. 31 <sup>124</sup> outlined the re-opening plan including the different phases which would allow for restaurants to re-open with restrictions in Phase 1 and resuming full operation in Phase 2.

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<sup>&</sup>lt;sup>1</sup> https://www.colorado.gov/governor/sites/default/files/inline-

files/D%202020%20003%20Declaring%20a%20Disaster%20Emergency.pdf

<sup>&</sup>lt;sup>2</sup> https://covid19.colorado.gov/public-health-executive-orders/

https://drive.google.com/file/d/1zYSF3mAD7IMFK3\_Zh9Q7tQYV\_KFOIknJ/view

<sup>3</sup> https://drive.google.com/file/d/1PWuZ-bhXERZNQ-5RpUZqpsg-o\_KNuoLa/view

<sup>4</sup> https://drive.google.com/file/d/19mjy5vyuLpPcrXz58nK1gWGWUFL4Op\_D/view

<sup>5</sup> https://drive.google.com/file/d/15kPjzUzDPiHlj8CVx1tDHJmXMUEthlRU/view?usp=sharing

<sup>6</sup> https://drive.google.com/file/d/1m\_tYVWNTMJAuqt3kq9d2\_6SNqrL7fLa7/view

<sup>7</sup> https://covid19.colorado.gov/restaurants-food-services

 $<sup>{}^8\</sup> https://portal.ct.gov/-/media/Office-of-the-Governor/News/20200310-declaration-of-civil-preparedness-and-public-health-emergency.pdf?la=en$ 

<sup>&</sup>lt;sup>9</sup> https://portal.ct.gov/-/media/Office-of-the-Governor/Executive-Orders/Lamont-Executive-Orders/Executive-Order-No-7D.pdf

<sup>&</sup>lt;sup>10</sup> https://portal.ct.gov/-/media/Office-of-the-Governor/Executive-Orders/Lamont-Executive-Orders/Executive-Order-No-7H.pdf

<sup>&</sup>lt;sup>11</sup> https://portal.ct.gov/-/media/Office-of-the-Governor/Executive-Orders/Lamont-Executive-Orders/Executive-Order-No-7MM.pdf

 $<sup>^{\</sup>scriptscriptstyle{12}}$ https://portal.ct.gov/-/media/Office-of-the-Governor/Executive-Orders/Lamont-Executive-Orders/Executive-Order-No-7ZZ.pdf

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