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File Number: 13545

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SUPERIOR ATHLETICS  
PERFORMANCE SYSTEMS, LLC,

Plaintiffs,

vs.

MARKEL INSURANCE COMPANY and  
XYZ COMPANY 1-100 (a fictitious name  
for insurance companies and underwriters  
presently unknown)

Defendants.

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: SUPERIOR COURT OF NEW JERSEY  
: LAW DIVISION - MORRIS COUNTY

:  
: Docket No.:

:  
: CIVIL ACTION

:  
: **COMPLAINT FOR**  
: **DECLARATORY JUDGMENT,**  
: **NOTICE OF OTHER ACTIONS,**  
: **DESIGNATION OF TRIAL**  
: **COUNSEL, CERTIFICATION**  
: **PURSUANT TO RULE 4:5-1,**  
: **DEMAND FOR DOCUMENTS**  
: **AND DEMAND FOR ANSWERS**  
: **TO INTERROGATORIES**

Plaintiff, SUPERIOR ATHLETICS PERFORMANCE SYSTEMS, LLC,  
(collectively referred to as “SAPS”) file this Complaint for damages and declaratory  
judgment against defendants, MARKEL INSURANCE COMPANY (“MIC”) and XYZ  
COMPANY 1-100, (“XYZ”) being a fictitious name or insurance companies and  
underwriters presently unknown, alleging the following:

## INTRODUCTION

1. This action for declaratory judgment and bad faith arises out of plaintiff's claim for coverage under its All Risk Insurance Policy insured by defendant MIC and or XYZ.

2. "When members of the public purchase policies of insurance they are entitled to the broad measure of protection necessary to fulfill their reasonable expectations. They should not be subject to technical encumbrances or to hidden pitfalls and their policies should be construed liberally in their favor to the end that coverage is afforded 'to the full extent that any fair interpretation will allow.'" Danzeisen v. Selective Ins. Co. of America, 298 N.J. Super. 383, 388 (App. Div. 1997).

3. An All Risk Policy is a special type of insurance covering all fortuitous losses, in the absence of fraud or other intentional misconduct of the insured, unless a specific provision in the insurance policy expressly excludes or limits the loss from coverage. Victory Peach Group, Inc. Greater N.Y. Mutual Ins. Co., 310 N.J. Super. 82, 87-88 (App. Div. 1998).

4. Despite agreeing to cover plaintiffs for all risks of direct physical loss of or physical damage to Covered Property unless specifically excluded or limited by the policy, and plaintiff's business interruption loss following Governor Philip D. Murphy's March 9, 2020 Executive Order 103 which declared a State of Emergency and a Public Health Emergency throughout New Jersey, and which resulted in the mandatory closure of plaintiff's non-essential businesses indefinitely beginning on March 21, 2020 following the execution of Executive Order 107, defendant(s) have taken a calculated risk

of its own by systemically denying business interruption claims throughout New Jersey which seek insurance benefits for the loss of business due to the aforesaid business closures following New Jersey's State of Emergency and Public Health Emergency.

5. Undeniably, defendant(s) chose to insure plaintiffs against the very loss caused by the closure of their insureds' non-essential business during the pending State of Emergency and Public Health Emergency throughout New Jersey. Plaintiffs are entitled to recover under its insurance contract which it has long-relied upon as protection against unforeseen loss or damage and resulting loss of income.

### **THE PARTIES**

6. Defendant, MARKEL INSURANCE COMPANY ("MIC"), with its principal place of business located at Ten Parkway North, Deerfield, IL is the entity who insures the plaintiff and who is, upon information and belief, authorized to transact business in the state of New Jersey.

7. Defendant, XYZ COMPANY 1-100, ("XYZ") being a fictitious name or insurance companies and underwriters presently unknown, is an entity that insures the plaintiffs and or was the underwriter of the subject policy in dispute, and who is or may be liable to the plaintiffs for some or all of the alleged damages set forth in this Complaint.

8. Plaintiff, SUPERIOR ATHLETICS PERFORMANCE SYSTEMS, LLC, ("SAPS") with its principal place of business located at 17 Bank Street, Township of Morristown, County of Morris, state of New Jersey, (herein after referred to as the insured premises / scheduled premises) is a health club that, during all times hereinafter

mentioned, was insured under a certain Business Owner's Policy issued by defendant(s) bearing policy number HCP20021134-06, and which was in effect between March 9, 2020 and the present. This policy insured the plaintiff with business interruption insurance coverage.

### **FACTUAL BACKGROUND**

9. On March 9, 2020, Governor Philip D. Murphy executed Executive Order 103 which declared a State of Emergency and a Public Health Emergency throughout New Jersey. **(Exhibit "A")**

10. Thereafter, on March 21, 2020, with the execution of Executive Order 107, Governor Philip D. Murphy closed all New Jersey non-essential businesses indefinitely. **(Exhibit "B")**

11. Plaintiff, a health club, was deemed a non-essential business and ordered closed by the Governor effective March 21, 2020.

12. The mandatory closure of the plaintiff's non-essential business constitutes "physical damage" under the terms of the subject policy.

13. The mandatory closure of the plaintiff's non-essential business constitutes a Constructive Eviction under the terms of the subject policy.

14. The term "physical" is ambiguous since it can mean more than material alteration or damage, therefore it was incumbent upon the defendant(s) to clearly and specifically rule out coverage in the circumstances where it was not to be provided, something which did not occur in the case at bar. Wakefern Food Corp. v. Liberty Mutual Fire Ins. Co., 406 N.J. Super. 524, 541-542 (App. Div. 2009).

15. “Physical Damage” is not restricted to the physical destruction or harm to the insured property, rather it includes the loss of access, loss of use and loss of functionality of the insured/ scheduled premises. Wakefern Food Corp, 406 N.J. Super. 543.

16. Had defendant(s) intended that its policy would not provide coverage for a State of Emergency, a Public Health Emergency, and or a Constructive Eviction then it was obligated to define its policy exclusion more clearly. Wakefern Food Corp. v. Liberty Mutual Fire Ins. Co., 406 N.J. Super. 524, 541 (App. Div. 2009)

17. Prior to March 9, 2020, plaintiff’ entered into a contract of indemnity with defendants, MIC and or XYZ, whereby plaintiff agreed to make cash payments to defendant(s) in exchange for defendants’ promise to indemnify the plaintiff for losses including, but not limited to, business income losses at the insured premises / scheduled premises.

18. The insured premises known as 17 Bank Street, Morristown, New Jersey, whereupon the plaintiff operates its business, is covered under a policy issued by defendant MIC bearing policy number HCP20021134-06.

19. Policy HCP20021134-06, Building and Personal Property Coverage Form, endorsement CP 00 10 10 12 (the “Policy”) was in effect on March 9, 2020 and remain in effect to this day. A copy of the Policy is attached hereto as **Exhibit “C”**.

20. The Policy specifically includes property, business personal property, business income, extended business income, extra expense, accounts receivable, and civil authority coverage to its insured.

21. In March, 2020, plaintiff filed a business interruption claim with defendant, MIC. The claim was assigned to Executive Claims Examiner, Paul Hudgins, and assigned Claim Number CHCP20021U8726.

22. The denial letter, which is dated April 15, 2020, that plaintiff received from defendant MIC is attached hereto as **Exhibit “D”** and specifically sets forth the following reasons for the denial of plaintiff’s claim:



April 15, 2020

**VIA EMAIL, FIRST CLASS & CERTIFIED MAIL – RETURN RECEIPT REQUESTED**  
**Receipt No. 9207 1901 5421 8700 6872 50**

Matthew A. Scarfo  
Superior Athletics Performance Systems, LLC  
Dba: Full-Time Fitness  
17 Bank Street  
Morristown, NJ 07960

Email: [mattscarfo@fulltimefit.com](mailto:mattscarfo@fulltimefit.com)

**COVERAGE DISCLAIMER**

RE:	Insured:	Superior Athletics Performance Systems, LLC
	Issuing Company:	Markel Insurance Company
	Claim Number:	CHCP20021U8726
	Policy Number:	HCP20021134-06
	Policy Period:	December 03, 2019 to December 03, 2020
	Date of Loss:	March 17, 2020
	Location of Loss:	17 Bank Street Morristown, NJ 07960

Dear Mr. Scarfo:

Markel Service, Incorporated, as the claim service manager for Markel Insurance Company (MIC) acknowledges receipt of the above-captioned claim relating to an order issued by the State of New Jersey to close businesses in order to mitigate the spread of the COVID-19 virus. The order was issued March 16, 2020 effective March 17, 2020. The spread of the COVID-19 had already caused a reduction in business beginning about four weeks prior to the order. More specifically, you have filed a claim for loss of business income, including loss of net income caused by action of Civil Authority that prohibits access to your described premises. Notice was reported to MIC on or about March 17, 2020.

For the reasons stated below, MIC disclaims coverage for this loss at this time. The above-referenced policy contains the following pertinent language:

**CP 00 10 10 12, Building and Personal Property Coverage Form**, states in relevant part:

**A. Coverage**

*We will pay for direct physical loss of or damage to Covered Property at the premises described in the Declarations caused by or resulting from any Covered Cause of Loss.*

**3. Covered Causes Of Loss**

*See applicable Causes Of Loss form as shown in the Declarations.*

**Markel - Claims**

Arizona · California · Illinois · Nebraska · New Jersey · New York · Virginia · Wisconsin  
P.O. Box 2009, Glen Allen, VA 23058-2009 (800) 362-7535 Fax (855) 662-7535 [markelclaims@markelcorp.com](mailto:markelclaims@markelcorp.com)  
California License: Markel West Insurance Services #OD95581  
[www.markelcorp.com](http://www.markelcorp.com)

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**B. Exclusions And Limitations**

*See applicable Causes Of Loss form as shown in the Declarations.*

**MCP 1216 04 13, Health Clubs Commercial Property Champion Enhancement** endorsement, states in relevant part:

*F. The following Additional Coverages are added:*

**Business Income And Extra Expense**

**(1) Coverage**

*We will pay for the actual loss of Business Income you sustain due to the necessary "suspension" of your "operations" during the "period of restoration". The "suspension" must be caused by direct physical loss of or damage to property at premises that are described in the Declarations of the policy to which this endorsement is attached. The loss or damage must be caused by or result from a Covered Cause of Loss. With respect to loss of or damage to personal property in the open or personal property in a vehicle, the described premises include the area within 100 feet of such premises.*

**(3) Extra Expense**

*Extra Expense means the necessary expenses you incur during the "period of restoration" that you would not have incurred if there had been no direct physical loss or damage to property caused by or resulting from a Covered Cause of Loss.*

*We will pay Extra Expense (other than the expense to repair or replace property) to:*

- (a) Avoid or minimize the "suspension" of business and to continue "operations" at the described premises or at replacement premises or temporary locations, including relocation expenses and costs to equip and operate the replacement location or temporary location.*
- (b) Minimize the "suspension" of business if you cannot continue "operations".*

*We will also pay Extra Expense to repair or replace property, but only to the extent it reduces the amount of loss that otherwise would have been payable under this Coverage Form.*

**(4) Covered Causes Of Loss**

*See applicable Causes of Loss form as shown in the Declarations.*

**(6) Additional Coverages**

**(a) Civil Authority**

*In this Additional Coverage, Civil Authority, the described premises are premises to which this endorsement applies.*

*When a Covered Cause of Loss causes damage to property other than property at the described premises, we will pay for actual loss of Business Income you sustain and necessary Extra Expense you incur caused by action of civil authority that prohibits access to the described premises, provided that both of the following apply:*

- (i) Access to the area immediately surrounding the damaged property is prohibited by civil authority as a result of the damage, and the described premises are within that area but are not more than one mile from the damaged property; and*
- (ii) The action of civil authority is taken in response to dangerous physical conditions resulting from the damage or continuation of the Covered Cause of Loss that caused the damage, or action is taken to enable civil authority to have unimpeded access to the damaged property.*

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**CP 10 30 09 17, Causes of Loss – Special Form**, states in relevant part:

**A. Covered Causes Of Loss**

*When Special is shown in the Declarations, Covered Causes of Loss means direct physical loss unless the loss is excluded or limited in this policy.*

**CP 01 40 07 06, Exclusion of Loss Due to Virus or Bacteria**, states in relevant part:

*This endorsement modifies insurance provided under the following:*

*COMMERCIAL PROPERTY COVERAGE PART  
STANDARD PROPERTY POLICY*

**A.** *The exclusion set forth in Paragraph B, applies to all coverage under all forms and endorsements that comprise this Coverage Part or Policy, including but not limited to forms or endorsements that cover property damage to buildings or personal property and forms or endorsements that cover business income, extra expense or action of civil authority.*

**B.** *We will not pay for loss or damage caused by or resulting from any virus, bacterium or other microorganism that induces or is capable of inducing physical distress, illness or disease.*

*However, this exclusion does not apply to loss or damage caused by or resulting from "fungus", wet rot or dry rot. Such loss or damage is addressed in a separate exclusion in this Coverage Part or Policy.*

**CONCLUSION**

Based on the information provided and a review of the policy language, there is no coverage available to you for this loss. There is no direct physical loss of or damage to covered property at the premises described in the Declarations. The Civil Authority order was not the result of damage to property other than property at the described premises.

In addition, a Covered Cause of Loss did not cause or result in any direct physical loss of or damage to Covered Property. COVID-19 is not a Covered Cause of Loss. COVID-19 is a virus, and the virus exclusion in the Exclusion for Loss Due to Virus or Bacteria (CP 01 40 07 06) excludes "loss or damage caused by or resulting from any virus ... that induces or is capable of inducing physical distress, illness or disease." As a result, your claim is excluded.

Moreover, the Additional Coverage - Civil Authority does not apply because the information provided does not establish any damage to property other than property at the described premises caused by a Covered Cause of Loss. As noted, COVID-19 is a virus, which is specifically excluded as a Covered Cause of Loss. In addition, the information provided does not establish that, as a result of damage caused by a Covered Cause of Loss to property other than property at the described premises, an action of civil authority prohibited access to the described premises. Rather, the civil authority order in your area was a proactive measure to mitigate the spread of COVID-19. As a result, there is no Civil Authority coverage and no payment can be made for any claimed loss of Business Income that you sustain as a result of the action of civil authority.

We reserve our right to assert other and different grounds for disclaiming coverage and expressly do not waive any ground not set forth herein should facts develop which indicate additional grounds for disclaiming.

This letter quotes the policy in part. However, please refer to the policy for the complete language of the policy. The language cited herein is not meant to change, supplement, add or subtract from the policy terms. The language in the policy itself is controlling.

23. The policy issued by defendants to plaintiff, upon which the subject claim was made, did not contain exclusions or limitations for a State of Emergency. (**Exhibit “C”**)

24. The policy issued by defendants to plaintiff upon which the subject claim was made, did not contain exclusions or limitations for a Public Health Emergency. (**Exhibit “C”**).

25. The policy issued by defendants to plaintiff upon which the subject claim was made, did not contain exclusions or limitations for an Executive Order. (**Exhibit “C”**).

26. The policy issued by defendants to plaintiff upon which the subject claim was made, did not contain exclusions or limitations for a Constructive Eviction. (**Exhibit “C”**).

27. The policy issued by defendants to plaintiff upon which the subject claim was made, did not contain exclusions or limitations for a Pandemic. (**Exhibit “C”**).

28. The policy issued by defendants to plaintiff upon which the subject claim was made, did not contain exclusions or limitations for a Communicable Disease. Moreover, the policy does not define “virus” as a Communicable disease. (**Exhibit “C”**).

29. The policy issued by defendants to plaintiff upon which the subject claim was made, did not contain an exclusion or limitation for Contamination, other than by nuclear reaction, radiation or radioactive contamination. (**Exhibit “C”**).

30. In fact, the denial letter explicitly contained an explanation of the limited, yet specific, reasons for the denial of plaintiff's claim. (**Exhibit "D"**)

31. Namely, the defendant alleges that the plaintiff did not suffer a direct physical loss and that the defendant does not insure a loss due to a virus or bacteria.

32. Defendant's first reason for denying the plaintiffs' claim is without merit and simply unjustified! As noted above, the term "physical" is ambiguous since it can mean more than material alteration or damage, therefore it was incumbent upon the defendant(s) to clearly and specifically rule out coverage in the circumstances where it was not to be provided, something which did not occur in the case at bar. Wakefern Food Corp. v. Liberty Mutual Fire Ins. Co., 406 N.J. Super. 524, 541-542 (App. Div. 2009).

33. Moreover, "Physical Damage" is not restricted to the physical destruction or harm to the insured property, rather it includes the loss of access, loss of use and loss of functionality of the insured/ scheduled premises. Wakefern Food Corp., 406 N.J. Super. 543.

34. The defendant's kitchen sink defense does not end there! The defendant's second attempt to deny coverage wrongfully relies upon the premise that the plaintiff had a virus or bacteria upon or within its insured premises (**Exhibit "D"**)

35. This second excuse is also misplaced and wrong! A virus was never in or upon or in the premises and the defendant will never be able to prove otherwise.

36. "Physical Damage" is not restricted to the physical destruction or harm to the insured property, rather it includes the loss of access, loss of use and loss of functionality of the insured/ scheduled premises. Wakefern Food Corp., 406 N.J. Super.

543. Had defendant(s) intended that its policy would not provide coverage for a State of Emergency, a Public Health Emergency, Pandemic, Contamination and or a Constructive Eviction then it was obligated to define its policy exclusion more clearly. Wakefern Food Corp. v. Liberty Mutual Fire Ins. Co., 406 N.J. Super. 524, 541 (App. Div. 2009)

37. It is undisputed that the subject policy does not contain a single exclusion or limitation due to any of the following: a Public Health Emergency; an Executive Order, Pandemic, Contamination other than by nuclear reaction, radiation or radioactive contamination, or a Constructive Eviction. (**Exhibit “C”**).

38. The defendant’s third attempt to deny coverage wrongfully relies upon the premise that the plaintiff’s claimed loss is not covered because the civil authority closure of your premises did not result from a covered cause of loss.

39. The defendant’s third bite of the apple is just as bitter as the first two. The defendant’s reliance on “Civil Authority” is not due to the fact that “Civil Authority” is an “exclusion”, because it is not. Rather defendant stated that the act of a civil authority must stem from a “covered cause of loss” which caused damage to the property, to wit:

**the civil authority order was not the result of damage to property other than property as the described premises.**

40. In as much as a “Covered Cause of Loss” insures all risks unless specifically excluded or limited, as set forth above, the Civil Authority clause certainly applies to plaintiff’s claim because a Public Health Emergency; an Executive Order, a Pandemic, Contamination and a Constructive Eviction are not excluded or limited by the policy.

41. Governor Murphy's Executive Order was not a secret! The defendants knew full well why non-essential businesses were closed: a State of Emergency as well as a Public Health Emergency were declared on March 9, 2020 through Executive Order 103.

42. The acts or decision of Governor Murphy, through Executive Order 103, created a State of Emergency as well as a Public Health Emergency, both of which are independent of the other.

43. In addition, the acts or decision of Governor Murphy, through Executive Order 103, created a Constructive Eviction of the insured premises.

#### **BAD FAITH**

44. Defendant(s) failed to exercise good faith in processing plaintiff's claim. Had defendant(s) not conducted an inadequate and improper investigation of plaintiff's claim then defendant(s) would have realized that no debatable reason exists for the denial of plaintiff's insurance benefits.

45. It is quite apparent, based upon the face of defendant's denial letter (**Exhibit "D"**), that defendant(s) did not conduct any investigation into the merits of plaintiff's claim.

46. No reasonable Claims Examiner or Property Adjuster can say with a straight face that he was unaware of the March 9, 2020 Executive Order 103 which declared a State of Emergency as well as a Public Health Emergency throughout New

Jersey and which was immediately followed-up with Executive Order 107 on March 21, 2020 which indefinitely closed all New Jersey non-essential businesses in New Jersey.

47. Upon information and belief, defendant(s) never intended to insure such a claim and, furthermore, defendant(s) have denied all such claims made by its New Jersey insureds.

48. When an insured files an insurance claim, an insurer must treat its policyholders' interests with equal regard as it does its own interests.

49. When an insured files an insurance claim, an insurer must treat its policyholders' interests with equal regard as it does its own interests because this is not an adversarial process.

50. An insurance company should assist its policyholder with the claim.

51. An Insurance company must disclose to its insured all benefits, coverages and time limits that may apply to the claim.

52. An Insurance company must conduct a full, fair, and prompt investigation of the clam as its own expense.

53. An insurance company must fully, fairly, and promptly evaluate and adjust the claim.

54. An insurance company may not deny a claim or part of claim based on insufficient information, speculation, or biased information.

55. An insurance company may not misrepresent facts or policy provisions.

56. An insurance company acts with good faith when it assist the policyholder with locating coverage for the claimed loss.

57. An insurance company acts with good faith when it assist the policyholder with locating coverage for the claimed loss, such as when the insurer scours its policy for coverage rather than exclusions.

58. Upon information and belief defendant(s) did not treat its policyholder's (the plaintiff), interests with equal regard as it does its own interests.

59. Upon information and belief defendant(s) did not treat its policyholder's (the plaintiff), interests with equal regard as it does its own interests because defendants treated the clam as an adversarial process.

60. Defendant(s) did not assist its policyholder (the plaintiff) with its claim.

61. Defendant(s) did not disclose to its insured all benefits, coverages, and time limits that may apply to the claim.

62. Defendant(s) did not conduct a full, fair, and prompt investigation of the plaintiff's clam.

63. Defendant(s) did not fully, fairly, and promptly evaluate and adjust the plaintiff's claim.

64. Defendant(s) denied plaintiff's claim based on insufficient information, speculation, or a biased information.

65. Defendant(s) misrepresented the claim facts and policy provisions in order to attempt to justify its wrongful denial of plaintiff's claim.

66. Defendant(s) did not assist its policyholder (the plaintiff) with locating coverage for the claimed loss.

67. Defendant(s) did not search its policy for coverage that would protect its policyholder, the plaintiff.

68. Defendant(s) searched its policy for exclusions.

### **COUNT ONE**

#### **Declaratory Judgment**

69. Plaintiffs repeats and reiterates each of the averments set forth above as though more fully set forth herein.

70. Plaintiffs seeks the Court's declaration of the parties' rights and duties under the Policy pursuant to N.J.S.A. 2A:16-50 et seq.

71. A justiciable controversy exists between defendant(s) and the plaintiffs.

72. The controversy between the defendant(s) and the plaintiffs is ripe for judicial review

73. New Jersey has enacted the Declaratory Judgment Act, N.J.S.A. 2A:16-50 et seq. for purposes of declaring parties' rights in this precise circumstance.

74. Accordingly the plaintiff seeks a declaration from the Court that:

(a). No policy exclusion applies to bar or limit plaintiff's Business Owners Coverage claims under policy HCP20021134-06, endorsement CP 00 10 10 12;

(b). The Policy, HCP20021134-06, Building and Personal Property Coverage Form, under endorsement CP 00 10 10 12, covers plaintiff's claim;

(c). The Exclusions contained within the plaintiff's Building and Personal Property Coverage Form policy and which are relied upon by defendant(s) are ambiguous;

(d) The Exclusions contained within the plaintiff's Building and Personal Property Coverage Form policy and which are relied upon by defendant(s) are unenforceable;

(e). The Exclusions contained within the plaintiff's Building and Personal Property Coverage Form policy and which are relied upon by defendant(s) are Illusory;

(f). The mandatory closure of the plaintiff's non-essential business constitutes "physical damage" under the terms of the subject policy;

(g) The term "physical" is ambiguous since it can mean more than material alteration or damage, therefore it was incumbent upon the insurer (defendant) to clearly and specifically rule out coverage in the circumstances where it was not to be provided, something which did not occur in the case at bar. Wakefern Food Corp. v. Liberty Mutual Fire Ins. Co., 406 N.J. Super. 524, 541-542 (App. Div. 2009).

(h). Had defendants intended that its policy would provide no coverage for a State of Emergency, a Public Health Emergency, and or a Constructive Eviction then it was obligated to define its policy exclusion more clearly. Wakefern Food Corp. v. Liberty Mutual Fire Ins. Co., 406 N.J. Super. 524, 541 (App. Div. 2009);

(i). "Physical Damage" is not restricted to the physical destruction or harm to the insured property, rather it includes the loss of access, loss of use and loss of functionality of the insured/ scheduled premises. Wakefern Food Corp., 406 N.J. Super. 543.; and

(j). A State of Emergency, Public Health Emergency and or a Constructive Eviction is/are insurable risks under the policy;

**WHEREFORE**, pursuant to the Declaratory Judgment Act, N.J.S.A. 2A:16-50 et seq. the plaintiff, SUPERIOR ATHLETICS PERFORMANCE SYSTEMS, LL, prays for judgment by this Court that no policy exclusion applies to bar or limit plaintiff's Business Owners Coverage claims under policy HCP20021134-06, endorsement CP 00 10 10 12; The Policy, HCP20021134-06, Building and Personal Property Coverage Form, under endorsement CP 00 10 10 12, covers plaintiff's claim; The Exclusions contained within the plaintiff's Building and Personal Property Coverage Form policy and which are relied upon by defendant(s) are ambiguous; The Exclusions contained within the plaintiff's Building and Personal Property Coverage Form policy and which are relied upon by defendant(s) are unenforceable; The Exclusions contained within the plaintiff's Building and Personal Property Coverage Form policy and which are relied upon by defendant(s) are Illusory; The mandatory closure of the plaintiff's non-essential business constitutes "physical damage" under the terms of the subject policy; The term "physical" is ambiguous since it can mean more than material alteration or damage, therefore it was incumbent upon the insurer (defendant) to clearly and specifically rule out coverage in the circumstances where it was not to be provided, something which did not occur in the case at bar. Wakefern Food Corp. v. Liberty Mutual Fire Ins. Co., 406 N.J. Super. 524, 541-542 (App. Div. 2009); Had defendants intended that its policy would provide no coverage for a State of Emergency, a Public Health Emergency, and or a Constructive Eviction then it was obligated to define its policy

exclusion more clearly. Wakefern Food Corp. v. Liberty Mutual Fire Ins. Co., 406 N.J. Super. 524, 541 (App. Div. 2009); “Physical Damage” is not restricted to the physical destruction or harm to the insured property, rather it includes the loss of access, loss of use and loss of functionality of the insured/ scheduled premises. Wakefern Food Corp., 406 N.J. Super. 543.; and A State of Emergency, Public Health Emergency and or a Constructive Eviction is/are insurable risks under the policy.

## **COUNT TWO**

### **BREACH OF CONTRACT**

75. Plaintiff repeats and reiterate each of the averments set forth above as though more fully set forth herein.

76. The Policy is a valid and enforceable contract between the defendants and plaintiffs.

77. In the Policy, the defendants agreed to cover property against all risks of physical loss or damage not otherwise limited or excluded.

78. The Executive Orders of Governor Philip D. Murphy created physical loss or damage to the insured/scheduled premises.

79. No exclusions apply to bar coverage.

80. Plaintiff is entitled to coverage for the physical loss or damage.

81. Plaintiff complied with all applicable Policy provisions, including paying premiums and providing timely notice of its claim.

82. Nonetheless, defendant(s) unjustifiably refuse to pay for plaintiff’s direct physical loss or damage in breach of the Policy.

83. Plaintiff suffered and continue to suffer damages as a result of defendant(s) breach of contract.

**WHEREFORE**, the plaintiff, SUPERIOR ATHLETICS PERFORMANCE SYSTEMS, LLC, demands judgment against the defendants for damages, interest, costs of suit, and such further relief as the Court deems just and proper.

### **COUNT THREE**

#### **BAD FAITH**

84. Plaintiff, SUPERIOR ATHLETICS PERFORMANCE SYSTEMS, LLC, repeats and reiterates each of the averments set forth above as though more fully set forth herein.

85. Defendants failed to exercise good faith in processing plaintiff's claim. Had defendants not conducted an inadequate and improper investigation of plaintiff's claim the defendants would have realized that no debatable reason exists for the denial of plaintiff's insurance benefits.

86. It is quite apparent, based upon the face of the defendant's denial letter (**Exhibit "D"**), that defendant did not conduct any investigation into the merits of plaintiff's claim.

87. No reasonable Claims Examiner or Property Adjuster can say with a straight face that he was unaware of the March 9, 2020, Executive Order 103 which declared a State of Emergency, as well as a Public Health Emergency throughout New Jersey and which was immediately followed-up with Executive Order 107 on March 21, 2020 which indefinitely closed all New Jersey non-essential businesses in New Jersey.

88. Upon information and belief, defendants never intended to insure such a claim and, furthermore, defendants have denied all such claims made by its New Jersey insureds following the aforesaid Executive Orders.

89. When an insured files an insurance claim, an insurer must treat its policyholders' interests with equal regard as it does its own interests.

90. When an insured files an insurance claim, an insurer must treat its policyholders' interests with equal regard as it does its own interests because this is not an adversarial process.

91. An insurance company should assist its policyholder with the claim.

92. An Insurance company must disclose to its insured all benefits, coverages and time limits that may apply to the claim.

93. An Insurance company must conduct a full, fair, and prompt investigation of the claim as its own expense.

94. An insurance company must fully, fairly, and promptly evaluate and adjust the claim.

95. An insurance company may not deny a claim or part of claim based on insufficient information, speculation, or biased information.

96. An insurance company may not misrepresent facts or policy provisions.

97. An insurance company acts with good faith when it assist the policyholder with locating coverage for the claimed loss.

98. An insurance company acts with good faith when it assist the policyholder with locating coverage for the claimed loss, such as when the insurer scours its policy for coverage rather than exclusions.

99. Upon information and belief defendants did not treat its policyholder's (the plaintiff), interests with equal regard as it does its own interests.

100. Upon information and belief defendants did not treat its policyholder's (the plaintiffs), interests with equal regard as it does its own interests because defendants treated the claim as an adversarial process.

101. Defendants did not assist its policyholder (the plaintiffs) with its claim.

102. Defendants did not disclose to its insured all benefits, coverages, and time limits that may apply to the claim.

103. Defendants did not conduct a full, fair, and prompt investigation of the plaintiff's clam.

104. Defendants did not fully, fairly, and promptly evaluate and adjust the plaintiff's claim.

105. Defendants denied plaintiff's claim based on insufficient information, speculation, or a biased information.

106. Defendants misrepresented the claim facts and policy provisions in order to attempt to justify its wrongful denial of plaintiffs' claim.

107. Defendants did not assist its policyholder (the plaintiff) with locating coverage for the claimed loss.

108. Defendants did not search its policy for coverage that would protect its policyholder, the plaintiff.

109. Defendants searched its policy for exclusions.

110. Defendant does not have the capacity to pay for all business interruption claims, therefore it never intended to insure such an event as claimed herein.

**WHEREFORE**, the plaintiff, SUPERIOR ATHLETICS PERFORMANCE SYSTEMS, LLC demands judgment against the defendants for damages, punitive damages, attorney's fees, interest, costs of suit, and such further relief as the Court deems just and proper.

**DEMAND FOR TRIAL BY JURY**

Plaintiffs demand trial buy jury as to all issues involved in Counts Two and Three.

**DESIGNATION OF TRIAL COUNSEL**

Pursuant to R. 4:25-4, MICHAEL J. DEEM, ESQ. is hereby designated a Trial Counsel of this matter.

**CERTIFICATION**

I hereby certify that this matter is not the subject of any other action pending in any Court or a pending Arbitration proceeding, nor is any other action or Arbitration proceeding contemplated. All parties known to plaintiff at this time who should have been joined in this action, have been joined.

**R.C. SHEA & ASSOCIATES**  
Attorneys for Plaintiff

By: *Michael Deem*  
MICHAEL J. DEEM, ESQUIRE

Dated: August 13, 2020

**DEMAND FOR PRODUCTION OF DOCUMENTS**

**PLEASE TAKE NOTICE** that the undersigned attorneys for plaintiff(s), pursuant to New Jersey Court Rule 4:18-1, hereby demand that defendant(s) produce the following documents for inspection at the offices of R.C. SHEA & ASSOCIATES, 244 Main Street, Toms River, New Jersey, within 35 days from the date of this Notice.

**PLEASE TAKE FURTHER NOTICE** that the terms “policy” or “the policy” refer to the policy pled in the Complaint.

**DOCUMENTS REQUESTED**

1. Any and all statements made by any party to this lawsuit, their agents, representatives or employees, whether written or oral.
2. Any and all statements made by any witnesses to the events described in any and all of the paragraphs of the cause of action.
3. Any and all statements made by any person other than witnesses or parties which relate or refer in any way to the cause of action.
4. Any and all written reports rendered by defendant(s) proposed expert witnesses, intended or not intended to be called at the time of trial.
5. Any and all books, treatises commentaries, reports, statutes, codes, ordinances, rules, regulations or other published documents referred to and utilized by or relied upon by an expert witness whom defendant(s) intend(s) to call at trial.

6. Any and all blue prints, charts, diagrams, drawings, graphs, maps, plats, plans, photographs, video, models or other visual reproduction of any object, place or thing prepared or utilized by, referred to or relied upon by any expert witnesses whom defendant(s) intend(s) to call at the time of trial.

7. A copy of any and all written report or summaries of oral reports, as well as copies of the curriculum vitae of any and all experts that have been supplied to defendant's attorneys, whose testimony will be offered at time of trial in the above captioned matter.

8. The entire underwriting file and insurance policy for the Policy pled in the Complaint.

9. The entire claims file of the defendant pertaining to Claim Number CHCP20021U8726 including, but not limited to, any and all e-mail correspondence, policy logs, and claims activity logs.

10. Specifically identify and attached hereto the name of each and every underwriter(s) or any other person(s) that reviewed and approved the plaintiff's application for insurance; and the person(s) who set the rate plaintiffs insurance premium.

11. For the time period immediately preceding the plaintiff's application/renewal date for the coverage period at issue, specifically identify and produce any and all documents including, but not limited to, defendant's policies and procedures, underwriting standards/guidelines, memorandum, notes or any other document that defendant, its agents, and employees relied upon to determine whether or not to issue a policy or to set the cost of an applicant's premiums.

12. Produce a *Curriculum Vitae* for each and every agent, employee and/or other person identified in this Notice to Produce, defendant's Answers to Interrogatories and/or who defendant will call to testify at the time of trial, including but not limited to any expert witnesses.

13. Produce a complete and legible copy of defendant's Operations Guide, Business Interruption Claims Handling Manual, or the functional equivalent thereof for its first party claims and which was in effect on between March 9, 2020 and the present.

14. A list of all New Jersey business interruption claims which this defendant has agreed to pay due to the closure of non-essential businesses in New Jersey following the execution of Governor Philip D. Murphy's Executive Order 103 and 107.

15. Any and all documents, including email, which demonstrate that defendant was aware of Governor Philip D. Murphy's Executive Order 103 and 107.

16. Any and all documents, including email, which demonstrate that defendant was now aware of Governor Philip D. Murphy's Executive Order 103 and 107.

17. Any and all documents demonstrating that defendant conducted a full, fair, and prompt investigation of the plaintiff's claim.

18. Any and all documents demonstrating that defendant fully, fairly, and promptly evaluated and adjusted the plaintiff's claim.

19. Identify and attach hereto any and all facts, data and documents this defendant submitted to the Insurance Services Office seeking to exclude "virus" as an insurable risk from its New Jersey business interruption policies.

20. Any and all documents which were provided to the plaintiff and which demonstrate the first time the “virus” exclusion was included in the subject policy.

**DEMAND FOR ANSWERS TO SUPPLEMENTAL INTERROGATORIES.**

**PLEASE TAKE NOTICE** that pursuant to Rule 4:17-1(b)(1), plaintiff hereby demands Certified answers to the following Supplemental Interrogatories within sixty (60) days of the filing of Defendant’s Answer to this Complaint.

**SCHEDULE OF SUPPLEMENTAL INTERROGATORIES**

**PLEASE TAKE NOTICE** that the term “YOU” and MARKEL INSURANCE COMPANY (“MIC”), are used interchangeably throughout these interrogatories. “YOU” refers to the person answering these interrogatories and also refers to MARKEL INSURANCE COMPANY (“MIC”), and

**PLEASE TAKE FURTHER NOTICE** that “Policy” or “subject policy” refers to the Policy pled in the Complaint.

1. Please state whether, during the time period from January 1, 2019, to the present defendant issued a policy of automobile liability insurance or a renewal policy to plaintiff.

2. If your answer to interrogatory number 1 was yes, please set forth the policy number assigned to each policy.

3. If your answer to interrogatory number 1 was yes, please set forth the effective date of each policy.

4. If your answer to interrogatory number 1 was yes, please set forth the amount of the indemnity limits provided by each policy.

5. If your answer to interrogatory number 1 was yes, please identify any additional named insured under the terms of the policy.

6. If your answer to interrogatory number 1 was yes, please identify the present custodian of each policy.

**Effective Date**

7. Please set forth the effective date of the Policy in question.

**Receipt of Claim for Policy Benefits**

8. Please state whether defendant received notice of a claim tendered by plaintiff for the payment of benefits payable under the terms of the policy number between March 1, 2020 and the present.

9. If your answer to interrogatory number 8 was yes, please set forth the date that you first received notice.

10. If your answer to interrogatory number 8 was yes, please state whether the claim was presented orally or in writing.

11. If your answer to interrogatory number 8 was yes, please identify the person who first transmitted notice of the claim to you.

12. If your answer to interrogatory number 8 was yes, please state whether you received a written proof of claim relating to that claim.

13. If your answer to interrogatory number 8 was yes, please identify the present custodian of each writing relating to that claim.

14. Please identify each person who received a notice of the claim which is the subject of this lawsuit.

15. Please set forth each fact transmitted to you in support of the claim for policy benefits tendered by plaintiff which is the subject of this lawsuit.

16. As to each fact identified in your answer to interrogatory number 15, please identify any person who possesses knowledge relating to that fact.

17. As to each fact identified in your answer to interrogatory number 15, please identify each writing relating to each fact.

18. Please identify the present custodian of each writing identified in your answer to interrogatory number 17.

**Cause for Withholding Policy Benefits**

19. Please state whether you paid business interruption benefits under the subject policy in response to the claim for benefits tendered by plaintiff.

20. Please set forth each fact you relied upon in determining to withhold payment of the claim tendered by plaintiff under the policy that is the subject of this lawsuit.

21. As to each fact identified in your answer to interrogatory number 20, please identify each person who possesses knowledge relating to that fact.

22. As to each fact identified in your answer to interrogatory number 20, please identify each writing relating to each fact.

23. As to each fact identified in your answer to interrogatory number 20, please identify the present custodian of any writing identified in your answer to interrogatory number 22.

24. As to each fact identified in your answer to interrogatory number 20, please set forth the date that you became aware of that fact.

25. As to each fact identified in your answer to interrogatory number 20, please set forth the means by which you became aware of such fact.

**Cause for Non-Coverage Claim**

26. Do you contend that the claim for benefits tendered by plaintiff was based upon a risk, loss, damage [or other occurrence] as to which the subject policy afforded no coverage?

27. If your answer to interrogatory number 26 was yes, please set forth each fact you relied upon in determining that the risk, loss, damage [or claim for benefits] was not covered under the terms of the subject policy.

28. If your answer to interrogatory number 26 was yes, please identify each person who possesses knowledge relating to any fact.

29. If your answer to interrogatory number 26 was yes, please identify each writing relating to any fact.

30. Please identify the present custodian of each writing identified in your answer to interrogatory number 29.

31. Please state the date that you determined that the loss [or claim for Business Interruption benefits] tendered by plaintiff was not covered under the terms of the subject policy.

32. If you determined that the loss [or claim for Business Interruption benefits] tendered by plaintiff was not covered under the subject policy, please set forth the date that you communicated that determination to the insured [or claimant].

33. If you determined that the loss [or claim for Business Interruption benefits] tendered by plaintiff was not covered under the subject policy, please set forth the manner that you communicated the determination to the insured [or claimant].

34. If you determined that the loss [or claim for Business Interruption benefits] tendered by plaintiff was not covered under the subject policy, please identify each person who participated in the determination of non-coverage.

35. Please identify each writing relating to your determination of non-coverage.

36. Please identify the present custodian of each writing identified in your answer to interrogatory number 35.

### **Cause for Partial Payment**

37. Please state whether you determined that some portion of the loss [or claim for Business Interruption benefits] tendered by plaintiff under policy which is subject to this lawsuit was compensable under the terms of that policy.

38. If your answer to interrogatory number 37 was yes, please describe each loss [or claim for Business Interruption benefits] that you determined to be compensable.

39. If your answer to interrogatory number 37 was yes, please set forth whether you communicated that determination to the [insured or claimant].

40. If your answer to interrogatory number 37 was yes, please set forth the dollar amount that you determined was payable for the losses which you determined to be compensable.

41. If your answer to interrogatory number 37 was yes, please set forth whether you tendered payment for the losses.

42. If your answer to interrogatory number 37 was no, please set forth the reasons that you did not tender payment.

43. If your answer to interrogatory number 37 was yes, please describe each loss [or claim for Business Interruption benefits that you determined to be non-compensable.

44. As to each loss [or claim for Business Interruption benefits] that you determined to be non-compensable, please identify each person who participated in the determination.

45. As to each loss [or claim for Business Interruption benefits] that you determined to be non-compensable, please set forth each fact upon which you relied in making that determination.

46. as to each fact set forth in your answer to interrogatory number 45, please identify each person who possesses knowledge relating to any fact.

47. As to each fact set forth in your answer to interrogatory number 45, please identify each writing relating to such fact.

48. Please identify the present custodian of each writing identified in your answer to interrogatory number 47.

**Establishment of Claim File**

49. Please set forth the date that you received notice of the claim tendered by plaintiff for benefits under the terms of policy that is the subject of this lawsuit.

50. Did you establish a claim file upon receipt of the claim tendered by plaintiff?

51. If your answer to interrogatory number 50 was yes, please set forth the date that the claim file was established.

52. If your answer to interrogatory number 50 was yes, please set forth the claim number assigned to the file.

53. If your answer to interrogatory number 50 was yes, please identify the person who was assigned primary responsibility for the administration of the claim file.

54. If your answer to interrogatory number 50 was yes, please identify the present custodian of the claim file.

55. Please state whether, upon receipt of the claim tendered by plaintiff under policy that is the subject of this lawsuit, any particular person was assigned to investigate the facts relating to the claim.

56. If your answer to interrogatory number 55 was yes, please identify each such person.

57. If your answer to interrogatory number 55 was yes, please set forth the date that the person was so assigned.

58. If your answer to interrogatory number 55 was yes, please set forth the manner in which that person was selected.

59. If your answer to interrogatory number 55 was yes, please identify each writing relating to that assignment.

60. Please identify the present custodian of each writing identified in your answer interrogatory number 69.

**Written Standards**

61. At the time that you received notice of the claim tendered by plaintiff for the payment of benefits under policy which is the subject of this lawsuit, did you maintain any writing setting forth your procedures for the investigation of these claims?

62. If your answer to interrogatory number 61 was yes, please identify any such writing.

63. If your answer to interrogatory number 61 was yes, please identify each person who participated in assembling the writing.

64. If your answer to interrogatory number 61 was yes, please identify the present custodian of that writing.

65. If your answer to interrogatory number 61 was yes, please state whether the person assigned to investigate the facts relating to the subject claim complied with the provisions of that writing.

66. If your answer to interrogatory number 61 was no, please set forth the reasons that they did not do so.

**Establishment of Loss Reserve**

67. Did you establish a loss reserve relating to the claim tendered by under the policy that is the subject of this lawsuit?

68. If your answer to interrogatory number 67 was yes, please set forth the date that the reserve was set.

69. If your answer to interrogatory number 67 was yes, please set forth the amount of the reserve.

70. If your answer to interrogatory number 67 was yes, please identify each person who participated in setting the reserve.

71. If your answer to interrogatory number 67 was yes, please state each fact you relied upon in establishing the reserve.

72. As to each fact identified in your answer to interrogatory number 67, please identify each person who possesses knowledge relating to such fact.

73. If your answer to interrogatory number 67 was yes, please identify each writing relating to the setting of the reserve.

74. Please identify the present custodian of each writing identified in your answer to interrogatory number 73.

**Nature and Extent of Investigation**

75. Did you conduct an investigation of the factual basis for the claim for benefits tendered by plaintiff under policy that is the subject of this lawsuit?

76. If your answer to interrogatory number 87 was yes, please set forth the date that the investigation was conducted.

77. If your answer to interrogatory number 75 was yes, please set forth each step you took to investigate the factual basis of the claim.

78. If your answer to interrogatory number 75 was yes, please set forth whether the investigation is reflected in any writing.

79. If your answer to interrogatory number 78 was yes, please identify each writing.

80. Please identify the present custodian of each writing identified in your answer to interrogatory number 78.

81. If your answer to interrogatory number 75 was yes, please set forth the date that the investigation was concluded.

82. In conducting your investigation of the facts relating to the claim for benefits tendered by plaintiff under the policy subject to this lawsuit, did you identify any person who possesses knowledge relating to any of these facts?

83. If your answer to interrogatory number 82 was yes, please identify any such person.

84. If your answer to interrogatory number 82 was yes, please describe the knowledge possessed by that person.

85. If your answer to interrogatory number 82 was yes, please identify each writing relating to the knowledge possessed by that person.

86. Please identify the present custodian of each writing identified in your answer to interrogatory number 85.

87. Please state whether, in your investigation of the facts which form the basis for the claim for benefits tendered by plaintiff under policy subject to this lawsuit, you obtained any statements from any person.

88. If your answer to interrogatory number 87 was yes, please identify the person who gave the statement.

89. If your answer to interrogatory number 87 was yes, please set forth the date that the statement was taken.

90. If your answer to interrogatory number 87 was yes, please identify the person who took the statement.

91. If your answer to interrogatory number 87 was yes, please identify each person who was present when the statement was taken.

92. If your answer to interrogatory number 87 was yes, please identify the present custodian of the statement.

93. Please state whether, in your investigation of the facts relating to the claim for benefits tendered by plaintiff under the subject policy you obtained all information that was reasonably available to you prior to your determination to [deny/partially deny/delay] payment of the claim.

94. If your answer to interrogatory number 93 was no, please set forth a description of any information that you did not obtain.

95. If your answer to interrogatory number 93 was no, please set forth the reason you did not obtain that information.

96. Identify what efforts were made by you to find coverage for the plaintiff, and if no effort was made then state the reason(s) why no effort was made.

**Expert Utilization**

97. In the course of your investigation of the claim for benefits tendered by plaintiff under the subject policy did you obtain any expert opinion relating to your determination to [deny/partially deny/delay] payment of the claim?

98. If your answer to interrogatory number 97 was yes, please identify any expert.

99. If your answer to interrogatory number 97 was yes, please set forth the discipline in which that person has expertise.

100. If your answer to interrogatory number 97 was yes, please set forth a description of the expert's training.

101. If your answer to interrogatory number 97 was yes, please set forth the date that the expert was retained.

102. If your answer to interrogatory number 97 was yes, please set forth whether the expert has examined any writing relating to the claim.

103. If your answer to interrogatory number 97 was yes, please set forth the date that the examination was conducted.

104. If your answer to interrogatory number 97 was yes, please identify any person present at the time of the examination.

105. If your answer to interrogatory number 97 was yes, please identify each writing relating to the expert's conclusions.

106. Please identify the present custodian of each writing identified in your answer to interrogatory number 105.

### **Investigation by Others**

107. Did you retain any person to conduct an investigation of the facts relating to the claim tendered by plaintiff under the subject policy?

108. If your answer to interrogatory number 107 was yes, please set forth the date that you retained that person.

109. If your answer to interrogatory number 107 was yes, please set forth each fact upon which you relied in selecting that person to conduct the investigation.

110. if your answer to interrogatory number 107 was yes, please set forth whether you provided that person with any writing relating to the manner in which the investigation was to be conducted.

111. If your answer to interrogatory number 107 was yes, please identify each writing relating to the investigation.

112. Please identify the present custodian of each writing identified in your answer to interrogatory number 107.

113. If your answer to interrogatory number 107 was yes, please identify each writing relating to the investigation conducted by that person.

114. Please identify the present custodian of each writing identified in your answer to interrogatory number 113.

**Insured or Claimant Conduct Regarding Investigation**

115. Do you contend that any act or omission on the part of the insured [or claimant] in any way affected your ability to conduct an adequate investigation of the insured's [or claimant's] claim?

116. Do you contend that any act or omission on the part of any agent of the insured [or claimant] affected your ability to conduct an adequate investigation of the

claim for payment?

**Claim Evaluation**

117. Please set forth each fact that supported your decision to deny payment of the claim of plaintiff under subject policy.

118. As to each fact identified in your response to interrogatory number 117, please set forth the date that you became aware of that fact.

119. As to each fact identified in your response to interrogatory number 117, please set forth the manner in which you became aware of that fact.

120. As to each fact identified in your response to interrogatory number 117, please identify any person who possesses knowledge relating to any such fact.

121. As to each fact identified in your response to interrogatory number 117, please identify each writing relating to that fact.

122. Please identify the present custodian of each writing identified in your answer to interrogatory number 121.

123. Please set forth each fact that supported the claim for payment as of the date that you determined to deny the payment of the claim under the subject policy.

124. As to each fact identified in your answer to interrogatory number 121, please set forth the manner in which you became aware of each fact or contention.

125. As to each fact identified in your answer to interrogatory number 121, please identify each person who possesses knowledge relating to any such fact.

126. As to each fact identified in your answer to interrogatory number 121, please identify each writing relating to that fact.

127. Please identify the present custodian of each writing identified in your answer to interrogatory number 126.

128. If you were in possession of facts supporting the payment of [claimant's] claim as well as facts supporting the denial of such claim, please set forth each reason you decided to deny payment.

129. Please state whether, at the time you decided to deny payment of the [claimant's] claim, you possessed any writing pertaining to the means by which these claims were evaluated.

130. If your answer to interrogatory number 129 was yes, please identify each writing.

131. If your answer to interrogatory number 129 was yes, please identify each person who participated in the preparation of that writing.

132. If your answer to interrogatory number 129 was yes, please state whether you consulted that writing in the course of evaluating [claimant's] claim.

133. Please identify the present custodian of each writing identified in your answer to interrogatory number 132.

134. Was the [claimant's] claim for payment under the policy submitted to any claims committee for evaluation?

135. If your answer to interrogatory number 134 was yes, please set forth the date that [claimant's] claim was submitted to the claims committee.

136. If your answer to interrogatory number 134 was yes, please identify each person who constituted the committee.

137. If your answer to interrogatory number 134 was yes, please set forth the manner in which the claim was presented to the committee.

138. If your answer to interrogatory number 134 was yes, please identify each writing relating to the submission of the claim to the committee.

139. Please identify the present custodian of each writing identified in your answer to interrogatory number 138.

140. Prior to your determination to deny payment of the [claimant's] claim under the policy number did you conduct any investigation to identify the reasonable expectations of the insured [or claimant] under the terms of the policy?

141. If your answer to interrogatory number 140 was yes, please set forth the nature of any investigation you conducted.

142. If your answer to interrogatory number 140 was yes, please identify each person who has knowledge of any fact relating to the investigation.

143. If your answer to interrogatory number 140 was yes, please identify each writing relating to the investigation.

144. Please identify the present custodian of any writing identified in your answer to interrogatory number 143.

145. If your answer to interrogatory number 140 was no, please set forth the reason why you did not conduct an investigation.

**Persons Involved in Claim Evaluation**

146. Please identify each person who participated in the determination to deny payment of the [claimant's] claim.

147. As to each person identified in your answer to interrogatory number 146, please set forth the job classification occupied by that person.

148. As to each person identified in your answer to interrogatory number 146, please set forth the length of time that each person had been employed by you as of the time that [claimant's] claim was denied.

149. As to each person identified in your answer to interrogatory number 146, please set forth the nature of any specialized training possessed by that person.

150. As to each person identified in your answer to interrogatory number 146, please set forth whether you presently employ that person, and if you do not then set forth their last known address.

151. Please state whether the decision to deny payment of the [claimant's] claim was reviewed by any review board or similar entity prior to the time that the claimant was notified of the denial.

152. If your answer to interrogatory number 151 was yes, please identify each member of the review board or similar entity who reviewed your initial determination.

153. If your answer to interrogatory number 151 was yes, please set forth the date that your initial determination was reviewed.

154. If your answer to interrogatory number 151 was yes, please set forth the manner in which each determination was reviewed.

155. If your answer to interrogatory number 151 was yes, please identify each writing presented to the review board or similar entity.

156. Please identify the present custodian of each writing identified in your answer to interrogatory number 155.

157. If your answer to interrogatory number 151 was yes, please set forth the action taken by the review board or similar entity.

158. By June 1, 2020, were you were aware of the March 9, 2020 Executive Order 103 which declared a State of Emergency as well as a Public Health Emergency throughout New Jersey?

159. If the answer to question 158 is no, then state what effort, if any , was made to learn the answer to that question.

160. By June 1, 2020, were you were aware of the March 21, 2020 Executive Order which indefinitely closed all New Jersey non-essential businesses?

161. If the answer to question 160 is no, then state what effort, if any, was made to learn the answer to that question.

162. To date, have you paid any New Jersey business interruption claims following the March 21, 2020 Executive Order?

163. If your answer to question 162 is yes, then identify each and every claim.

164. Do you agree that when an insured files an insurance claim, you must treat your policyholders' interests with equal regard as your own?

165. If your answer to question 164 is no then explain why you do not feel the need treat your policyholders' interests with equal regard as your own?

166. Do you agree that an insured files an insurance claim, you must treat the policyholders' interests with equal regard as your own because the claims process is not an adversarial process.

167. If your answer to question 166 is no then explain why you feel that the claims process is adversarial.

### **CERTIFICATION**

I hereby certify that the foregoing answers to interrogatories are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

I hereby certify that the copies of the reports annexed hereto provided by either treating physicians or proposed expert witnesses are exact copies of the entire report or reports provided by them; that the existence of other reports of said doctors or experts are unknown to me, and if such become later known or available, I shall serve them promptly on the propounding party.

Dated

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# EXHIBIT “A”

**EXECUTIVE ORDER NO. 103**

WHEREAS, Coronavirus disease 2019 ("COVID-19") is a contagious, and at times fatal, respiratory disease caused by the SARS-CoV-2 virus; and

WHEREAS, COVID-19 is responsible for the 2019 novel coronavirus outbreak, which was first identified in Wuhan, the People's Republic of China in December 2019 and quickly spread to the Hubei Province and multiple other countries; and

WHEREAS, symptoms of the COVID-19 illness include fever, cough, and shortness of breath, which may appear in as few as two or as long as 14 days after exposure, and can spread from person to person via respiratory droplets produced when an infected person coughs or sneezes; and

WHEREAS, on January 30, 2020, the International Health Regulations Emergency Committee of the World Health Organization declared the outbreak a "public health emergency of international concern," which means "an extraordinary event which is determined to constitute a public health risk to other States through the international spread of disease and to potentially require a coordinated international response," and thereafter raised its global risk assessment of COVID-19 from "high" to "very high"; and

WHEREAS, on January 31, 2020, the United States Department of Health and Human Services Secretary declared a public health emergency for the United States to aid the nation's healthcare community in responding to COVID-19; and

WHEREAS, as of March 9, 2020, according to the Centers for Disease Control and Prevention ("CDC"), there were more than 114,000 confirmed cases of COVID-19 worldwide, with over 4,000 of those cases having resulted in death; and

WHEREAS, as of March 9, 2020, there were more than 500 confirmed cases of COVID-19 in the United States, with 22 of those cases having resulted in death; and

WHEREAS, as of March 9, 2020, there were 11 presumed positive cases of COVID-19 in New Jersey, with 24 additional "Persons Under Investigation" spread across the counties of Bergen, Camden, Cumberland, Essex, Hunterdon, Middlesex, Monmouth, Passaic, Union, and Sussex; and

WHEREAS, as of March 9, 2020, there were 142 positive cases of COVID-19 in the State of New York and seven presumptive positive cases in the Commonwealth of Pennsylvania; and

WHEREAS, the CDC expects that additional cases of COVID-19 will be identified in the coming days, including more cases in the United States, and that person-to-person spread is likely to continue to occur; and

WHEREAS, if COVID-19 spreads in New Jersey at a rate comparable to the rate of spread in other affected areas, it will greatly strain the resources and capabilities of county and municipal governments, including public health agencies, that provide essential services for containing and mitigating the spread of contagious diseases, such as COVID-19, and the situation may become too large in scope to be handled in its entirety by the normal county and municipal operating services in some parts of this State, and this situation may spread to other parts of the State; and

WHEREAS, the spread of COVID-19 may make it difficult or impossible for citizens to obtain consumer goods and other necessities of life due to supply chain disruption and price increases, as well as hamper the delivery of essential services such as police, fire, and first aid; and

WHEREAS, the State's public bidding act, N.J.S.A. 52:34-6 et seq., provides a public exigency exemption, N.J.S.A. 52:34-10(b), that in the event of a threat to the life, health, or safety to the public, advertised bidding is not required to obtain those

goods and services necessary to address the public exigency where the Division of Purchase of Property provides preapproval in accordance with Treasury Circular 18-14-DPP; and

WHEREAS, in the event of a declared emergency pursuant to Treasury Circular 19-10-DPP, the threshold for delegated purchasing by individual State Departments is raised to \$100,000 such that purchases at or below that amount do not require prior approval or action by DPP; and

WHEREAS, the spread of COVID-19 may disrupt the timely delivery of State contracted goods or services, the immediate delivery and fulfillment of which is necessary for the life, safety, or health of the public; and

WHEREAS, the State of New Jersey has been working closely with the CDC, local health departments, and healthcare facilities to monitor, plan for and mitigate the spread of COVID-19 within the State; and

WHEREAS, through Executive Order No. 102, which I signed on February 3, 2020, I created the State's Coronavirus Task Force, chaired by the Commissioner of the New Jersey Department of Health ("DOH"), in order to coordinate the State's efforts to appropriately prepare for and respond to the public health hazard posed by COVID-19; and

WHEREAS, it is critical to prepare for and respond to suspected or confirmed COVID-19 cases in New Jersey, to implement appropriate measures to mitigate the spread of COVID-19, and to prepare in the event of an increasing number of individuals requiring medical care or hospitalization; and

WHEREAS, the State of New Jersey also acts as an employer with tens of thousands of employees, and the spread of COVID-19 requires preparedness for staffing shortages and flexibility in work rules to ensure that its employees can fully comply with all

medically appropriate measures while also ensuring the continuous delivery of State services performed by Executive branch agencies; and

WHEREAS, the continuous delivery of services at the county and municipal level performed by those governments and their employees is also essential; and

WHEREAS, the spread of COVID-19 within New Jersey constitutes an imminent public health hazard that threatens and presently endangers the health, safety, and welfare of the residents of one or more municipalities or counties of the State; and

WHEREAS, it is necessary and appropriate to take action against this public health hazard to protect and maintain the health, safety, and welfare of New Jersey residents and visitors; and

WHEREAS, the facts as set forth above and consultation with the Commissioner of DOH confirms that there exists a public health emergency in the State; and

WHEREAS, New Jersey's Consumer Fraud Act, N.J.S.A. 56:8-107 et seq., prohibits excessive price increases during a declared state of emergency, or for 30 days after the termination of the state of emergency; and

WHEREAS, the Constitution and statutes of the State of New Jersey, particularly the provisions of N.J.S.A. 26:13-1 et seq., N.J.S.A. App. A: 9-33 et seq., N.J.S.A. 38A:3-6.1, and N.J.S.A. 38A:2-4 and all amendments and supplements thereto, confer upon the Governor of the State of New Jersey certain emergency powers;

NOW, THEREFORE, I, PHILIP D. MURPHY, Governor of the State of New Jersey, in order to protect the health, safety and welfare of the people of the State of New Jersey, DO DECLARE and PROCLAIM that a Public Health Emergency and State of Emergency exist in the State of New Jersey, and I hereby ORDER and DIRECT the following:

1. I authorize and empower the State Director of Emergency Management, who is the Superintendent of State Police, in conjunction with the Commissioner of DOH, to take any such emergency measures as the State Director may determine necessary, including the implementation of the State Emergency Operations Plan and directing the activation of county and municipal emergency operations plans, in order to fully and adequately protect the health, safety and welfare of the citizens of the State of New Jersey from any actual or potential threat or danger that may exist from the possible exposure to COVID-19. The State Director of Emergency Management, in conjunction with the Commissioner of DOH, is authorized to coordinate the relief effort from this emergency with all governmental agencies, volunteer organizations, and the private sector.

2. The State Director of Emergency Management, in conjunction with the Commissioner of DOH, shall also supervise and coordinate all activities of all State, regional and local political bodies and agencies in order to ensure the most effective and expeditious implementation of this order, and, to this end, may call upon all such agencies and political subdivisions for any assistance necessary.

3. Given the concurrent invocation of both a State of Emergency pursuant to N.J.S.A. App.A.:9-33 et seq. and a Public Health Emergency as contemplated by N.J.S.A. 26:13-1 et seq., I reserve the right as specifically contemplated by N.J.S.A. 26:13-3 to exercise the authority and powers specific to the Emergency Health Powers Act as I deem necessary and appropriate to ensure the public health for New Jersey's residents.

4. It shall be the duty of every person or entity in this State or doing business in this State and of the members of the governing body and every official, employee, or agent of every

political subdivision in this State and of each member of all other governmental bodies, agencies, and authorities in this State of any nature whatsoever, to cooperate fully with the State Director of Emergency Management and the Commissioner of DOH in all matters concerning this state of emergency.

5. The Coronavirus Task Force established under Executive Order No. 102 is continued with the Commissioner of DOH as the chair, and shall provide assistance on the State's efforts preparing for and responding to the public health hazard posed by COVID-19.

6. I authorize and empower the executive head of any agency or instrumentality of the State government with authority to promulgate rules to waive, suspend, or modify any existing rule, where the enforcement of which would be detrimental to the public welfare during this emergency, notwithstanding the provisions of the Administrative Procedure Act or any law to the contrary for the duration of this Executive Order, subject to my prior approval and in consultation with the State Director of Emergency Management and the Commissioner of DOH. Any such waiver, modification, or suspension shall be promulgated in accordance with N.J.S.A. App. A:9-45.

7. All State agencies, and specifically the Departments of Banking and Insurance, Health, Human Services, Education, and the Civil Service Commission are authorized to take appropriate steps to address the public health hazard of COVID-19, including increasing access and eliminating barriers to medical care, protecting the health and well-being of students, and protecting the health and well-being of State, county, and municipal employees while ensuring the continuous delivery of State, county, and municipal services.

8. I authorize and empower the State Director of Emergency Management, in conjunction with the Commissioner of DOH, to order the evacuation of all persons, except for those emergency and governmental personnel whose presence the State Director deems necessary, from any area where their continued presence would present a danger to their health, safety, or welfare because of the conditions created by this emergency.

9. I authorize and empower the State Director of Emergency Management, in conjunction with the Commissioner of DOH, to utilize all property, equipment, and facilities owned, rented, operated, and maintained by the State of New Jersey to house and shelter persons who may need to be evacuated from a residence, dwelling, building, structure, or vehicle during the course of this emergency.

10. I authorize and empower the Adjutant General, in accordance with N.J.S.A. 38A:2-4 and N.J.S.A. 38A:3-6.1, to order to active duty such members of the New Jersey National Guard who, in the Adjutant General's judgment, are necessary to provide aid to those localities where there is a threat or danger to the public health, safety, and welfare and to authorize the employment of any supporting vehicles, equipment, communications, or supplies as may be necessary to support the members so ordered.

11. In accordance with the N.J.S.A. App. A:9-34 and N.J.S.A. App. A:9-51, I reserve the right to utilize and employ all available resources of the State government and of each and every political subdivision of the State, whether of persons, properties, or instrumentalities, and to commandeer and utilize any personal services and any privately-owned property necessary to protect against this emergency.

12. In accordance with N.J.S.A. App. A:9-40, no municipality, county, or any other agency or political subdivision of this State shall enact or enforce any order, rule, regulation, ordinance, or resolution which will or might in any way conflict with any of the provisions of this Order, or which will in any way interfere with or impede the achievement of the purposes of this Order.

13. In accordance with N.J.S.A. App. A:9-34, N.J.S.A. App. A:9-40.6, and N.J.S.A. 40A:14-156.4, no municipality or public or semipublic agency shall send public works, fire, police, emergency medical, or other personnel or equipment into any non-contiguous impacted municipality within this State, nor to any impacted municipality outside this State, unless and until such aid has been directed by the county emergency management coordinator or his or her deputies in consultation with the State Director of Emergency Management in conjunction with the Commissioner of DOH.

14. This Order shall take effect immediately and shall remain in effect until such time as it is determined by me that an emergency no longer exists.

GIVEN, under my hand and seal this  
9<sup>th</sup> day of March,  
Two Thousand and Twenty, and  
of the Independence of the  
United States, the Two  
Hundred and Forty-Fourth.

[seal]

/s/ Philip D. Murphy

Governor

Attest:

/s/ Matthew J. Platkin

Chief Counsel to the Governor

# EXHIBIT “B”

**EXECUTIVE ORDER NO. 107**

WHEREAS, through Executive Order No. 102 (2020), which I signed on February 3, 2020, I created the State's Coronavirus Task Force, chaired by the Commissioner of the New Jersey Department of Health ("DOH"), in order to coordinate the State's efforts to appropriately prepare for and respond to the public health hazard posed by Coronavirus disease 2019 ("COVID-19"); and

WHEREAS, in light of the dangers posed by COVID-19, I issued Executive Order No. 103 (2020) on March 9, 2020, the facts and circumstances of which are adopted by reference herein, which declared both a Public Health Emergency and State of Emergency; and

WHEREAS, in accordance with N.J.S.A. App. A:9-34 and -51, I reserved the right to utilize and employ all available resources of State government to protect against the emergency created by COVID-19; and

WHEREAS, in accordance with N.J.S.A. App. A:9-40, I declared that, due to the State of Emergency, no municipality, county, or any agency or political subdivision of this State shall enact or enforce any order, rule, regulation, ordinance, or resolution which will or might in any way conflict with any of the provisions of my Executive Orders, or which will in any way interfere with or impede their achievement; and

WHEREAS, to further protect the health, safety, and welfare of New Jersey residents by, among other things, reducing the rate of community spread of COVID-19, I issued Executive Order No. 104 (2020) on March 16, 2020, the facts and circumstances of which are also adopted by reference herein, which established statewide social mitigation strategies for combatting COVID-19; and

WHEREAS, Executive Order No. 104 (2020) limited the scope of service and hours of operation for restaurants and certain retail establishments to balance the need to allow individuals to access food and other essential materials with the need to limit unnecessary person-to-person contact; and

WHEREAS, Executive Order No. 104 (2020) deemed a subset of businesses as "essential," including grocery/food stores, pharmacies, medical supply stores, gas stations, healthcare facilities, and ancillary stores within healthcare facilities, and it authorized the State Director of Emergency Management, who is the Superintendent of State Police, to make additions, amendments, clarifications, exceptions, and exclusions to that list; and

WHEREAS, Executive Order No. 104 (2020) made clear that such essential businesses may continue operating without limits on their scope of service or hours of operation, absent further amendments by the State Director of Emergency Management; and

WHEREAS, Executive Order No. 104 (2020) and subsequent Administrative Orders issued by the State Director of Emergency Management also placed restrictions on other businesses' scope of service and hours of operation, and also placed restrictions on the size of gatherings in the State; and

WHEREAS, as of March 20, 2020, according to the Centers for Disease Control and Prevention ("CDC"), there were more than 234,000 confirmed cases of COVID-19 worldwide, with over 9,800 of those cases having resulted in death; and

WHEREAS, as of March 20, 2020, there were more than 15,000 confirmed cases of COVID-19 in the United States, with at least 201 of those cases having resulted in death; and

WHEREAS, as of March 20, 2020, there were at least 890 positive cases of COVID-19 in New Jersey, with at least 11 of those cases having resulted in death; and

WHEREAS, social mitigation strategies for combatting COVID-19 require every effort to reduce the rate of community spread of the disease; and

WHEREAS, the CDC has advised that COVID-19 spreads most frequently through person-to-person contact when individuals are within six feet or less of one another; and

WHEREAS, as a result, the CDC has recommended that individuals practice "social distancing" to prevent community spread of the virus; and

WHEREAS, the CDC has defined social distancing as the practice of "remaining out of congregate settings, avoiding mass gatherings, and maintaining distance (approximately 6 feet or 2 meters) from others when possible"; and

WHEREAS, to mitigate community spread of COVID-19, it is necessary to limit the unnecessary movement of individuals in and around their communities and person-to-person interactions in accordance with CDC and DOH guidance; and

WHEREAS, the best way for New Jersey residents to keep themselves, their families, and their communities safe during the COVID-19 outbreak is to stay at home as much as possible; and

WHEREAS, as of March 15, 2020, the CDC recommends that for the next eight weeks, gatherings of 50 or more people be canceled or postponed throughout the United States; and

WHEREAS, as of March 16, 2020, the White House went further than the CDC had and recommended that Americans avoid social gatherings in groups of more than 10 people; and

WHEREAS, restricting the physical presence of individuals in office environments and work sites is critical to preventing future spread of COVID-19; and

WHEREAS, accommodating work-from-home arrangements is an effective means to ensure continuity of operations while also limiting person-to-person contact; and

WHEREAS, the CDC has recommended employers to establish policies and practices to increase the physical distance among employees and between employees; and

WHEREAS, permitting the workforce to work from home may reduce stress on the State's child care system; and

WHEREAS, as of March 19, 2020, I have instructed all State departments and agencies to utilize work-from-home arrangements for both essential and non-essential employees wherever feasible; and

WHEREAS, given the rapidly rising incidence of COVID-19, temporarily closing non-essential retail businesses will strengthen New Jersey's efforts to slow the spread of COVID-19; and

WHEREAS, even as we institute social distancing measures, the number of COVID-19 cases in New Jersey is likely to increase for the immediate future, meaning we must take all possible steps to preserve our health care system's capacity to treat those who require emergency or intensive care; and

WHEREAS, the Constitution and statutes of the State of New Jersey, particularly the provisions of N.J.S.A. 26:13-1 et seq., N.J.S.A. App. A: 9-33 et seq., N.J.S.A. 38A:3-6.1, and N.J.S.A. 38A:2-4 and all amendments and supplements thereto, confer upon the Governor of the State of New Jersey certain emergency powers, which I have invoked;

NOW, THEREFORE, I, PHILIP D. MURPHY, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. The operative paragraphs of Executive Order No. 104 (2020) are hereby superseded in full. The factual findings of Executive Order No. 104 (2020) remain applicable except to the extent they are in conflict with the factual findings in this or any intervening Executive Order.

2. All New Jersey residents shall remain home or at their place of residence unless they are 1) obtaining goods or services from essential retail businesses, as described in Paragraph 6; 2) obtaining takeout food or beverages from restaurants, other dining establishments, or food courts, pursuant to Paragraph 8; 3) seeking medical attention, essential social services, or assistance from law enforcement or emergency services; 4) visiting family or other individuals with whom the resident has a close personal relationship, such as those for whom the individual is a caretaker or romantic partner; 5) reporting to, or performing, their job; 6) walking, running, operating a wheelchair, or engaging in outdoor activities with immediate family members, caretakers, household members, or romantic partners while following best social distancing practices with other individuals, including staying six feet apart; 7) leaving the home for an educational, religious, or political reason; 8) leaving because of a reasonable fear for his or her health or safety; or 9) leaving at the direction of law enforcement or other government agency.

3. When in public, individuals must practice social distancing and stay six feet apart whenever practicable, excluding immediate family members, caretakers, household members, or romantic partners.

4. Individuals who have to travel pursuant to Paragraph 2 should only use public transportation only if they have no other feasible choice. Individuals who ride public transportation should abide by best social distancing practices, including making

all efforts to stand or sit six feet away from other riders and frequently use sanitizing products.

5. Gatherings of individuals, such as parties, celebrations, or other social events, are cancelled, unless otherwise authorized by any part of this Order. The State Director of Emergency Management, who is the Superintendent of the State Police, shall have the discretion to make clarifications and issue orders related to this provision.

6. The brick-and-mortar premises of all non-essential retail businesses must close to the public as long as this Order remains in effect. Essential retail businesses, listed below, are excluded from this directive and may remain open during their normal business hours. Essential retail businesses must, wherever practicable, provide pickup services outside or adjacent to their stores for goods ordered in advance online or by phone. Additionally, online and telephonic delivery services are permitted to the extent the retail business is authorized to operate an online or telephonic delivery service under existing law. The State Director of Emergency Management, who is the Superintendent of the State Police, shall have the discretion to make additions, amendments, clarifications, exceptions, and exclusions to this list:

- a. Grocery stores, farmer's markets and farms that sell directly to customers, and other food stores, including retailers that offer a varied assortment of foods comparable to what exists at a grocery store;
- b. Pharmacies and alternative treatment centers that dispense medicinal marijuana;
- c. Medical supply stores;
- d. Retail functions of gas stations;

- e. Convenience stores;
- f. Ancillary stores within healthcare facilities;
- g. Hardware and home improvement stores;
- h. Retail functions of banks and other financial institutions;
- i. Retail functions of laundromats and dry-cleaning services;
- j. Stores that principally sell supplies for children under five years old;
- k. Pet stores;
- l. Liquor stores;
- m. Car dealerships, but only to provide auto maintenance and repair services, and auto mechanics;
- n. Retail functions of printing and office supply shops; and
- o. Retail functions of mail and delivery stores.

7. Any essential retail business whose brick-and-mortar premises remain open to the public shall abide by social distancing practices to the extent practicable while providing essential services. These include all reasonable efforts to keep customers six feet apart and frequent use of sanitizing products on common surfaces.

8. All restaurants, cafeterias, dining establishments, and food courts, with or without a liquor license, all bars, and all other holders of a liquor license with retail consumption privileges, are permitted to operate their normal business hours, but are limited to offering only food delivery and/or take-out services in accordance with their existing liquor licenses. If alcoholic beverages are to be sold from a restaurant, dining establishment or bar with a liquor license, such sales shall be

limited to original containers sold from the principal public barroom. The on-premises consumption of alcohol is prohibited. All retail sales of alcoholic beverages by limited brewery licensees, restricted brewery licensees, plenary and farm winery licensees (and associated salesrooms), craft distillery licensees and cidery and meadery licensees must be in original containers and must be sold through customer pick up and/or delivered by licensees in accordance with their existing licenses.

9. All recreational and entertainment businesses, including but not limited to the following list, must close to the public as long as this Order remains in effect. The State Director of Emergency Management, who is the Superintendent of State Police, shall have the discretion to make additions, amendments, clarifications, exceptions, and exclusions to this list:

- a. Casino gaming floors, including retail sports wagering lounges, and casino concert and entertainment venues. Online and mobile sports and casino gaming services may continue to be offered notwithstanding the closure of the physical facility.
- b. Racetracks, including stabling facilities and retail sports wagering lounges. Mobile sports wagering services may continue to be offered notwithstanding the closure of the physical facility.
- c. Gyms and fitness centers and classes.
- d. Entertainment centers, including but not limited to, movie theaters, performing arts centers, other concert venues, and nightclubs.
- e. All indoor portions of retail shopping malls. Restaurants and other stores located within

shopping malls that have their own external entrances open to the public, separate from the general mall entrance, may remain open pursuant to the terms and directives of this Order for operating hours and takeout or food delivery services. All entrances and exits to the common area portions of retail shopping malls must remain closed.

- f. All places of public amusement, whether indoors or outdoors, including but not limited to, locations with amusement parks, water parks, aquariums, zoos, arcades, fairs, children's play centers, funplexes, theme parks, bowling alleys, family and children's attractions.
- g. Facilities where personal care services are performed that, by their very nature, result in noncompliance with social distancing guidelines, including but not limited to cosmetology shops; barber shops; beauty salons; hair braiding shops; nail salons; electrology facilities; spas, including day spas and medical spas, at which solely elective and cosmetic medical procedures are performed; massage parlors, tanning salons, tattoo parlors, and public and private social clubs, whether or not they serve alcohol, including but not limited to facilities owned or operated by the American Legion, Veterans of Foreign Wars, Knights of Columbus, and any other social clubs associated with community service organizations. This excludes any health facilities that provide medically necessary or therapeutic services.

h. All municipal, county, and State public libraries, and all libraries and computer labs at public and private colleges and universities.

10. All businesses or non-profits in the State, whether closed or open to the public, must accommodate their workforce, wherever practicable, for telework or work-from-home arrangements. For purposes of this order, "telework" means the practice of working from home or alternative locations closer to home through the use of technology that equips the individual to access necessary materials.

11. To the extent a business or non-profit has employees that cannot perform their functions via telework or work-from-home arrangements, the business or non-profit should make best efforts to reduce staff on site to the minimal number necessary to ensure that essential operations can continue. Examples of employees who need to be physically present at their work site in order to perform their duties include, but are not limited to, law enforcement officers, fire fighters, and other first responders, cashiers or store clerks, construction workers, utility workers, repair workers, warehouse workers, lab researchers, information technology maintenance workers, janitorial and custodial staff, and certain administrative staff.

12. All public, private, and parochial preschool program premises, and elementary and secondary schools, including charter and renaissance schools, shall remain closed to students as long as this Order remains in effect.

13. All institutions of higher education shall continue to cease such in-person instruction as long as this Order remains in effect. The Secretary of the Office of Higher Education shall have the authority to grant a waiver to allow in-person instruction to students on a case-by-case basis where a compelling rationale to

allow such access exists. The Secretary of the Office of Higher Education shall coordinate with institutions of higher education to determine appropriate student housing conditions for those students who reside in on-campus housing as their primary residence.

14. The Commissioner of the Department of Education ("DOE"), in consultation with the Commissioner of DOH, shall be authorized to permit schools to remain open on a limited basis for the provision of food or other essential, non-educational services, or for educational or child care services if needed in emergency situations after consultation with the Commissioner of DOH. The Commissioner of DOE shall also have the authority to close any other career or training facilities over which he has oversight, after consultation with the Commissioner of DOH.

15. The Commissioner of DOE shall continue working with each public school district, and private and parochial schools as appropriate, to ensure that students are able to continue their educations during this time period through appropriate home instruction. Local school districts, charter schools, and renaissance schools, in consultation with the Commissioner of DOE, shall have the authority and discretion to determine home instruction arrangements as appropriate on a case-by-case basis to ensure all students are provided with appropriate home instruction, taking into account all relevant constitutional and statutory obligations.

16. The Secretary of the Department of Agriculture, in conjunction with the Commissioner of DOE, shall take all necessary actions to ensure that all students eligible for free or reduced meals shall continue to receive the services or supports necessary to meet nutritional needs during closures.

17. Nothing in this Order shall be construed to limit, prohibit, or restrict in any way the provision of health care or medical services to members of the public.

18. Nothing in this Order shall be construed to limit, prohibit, or restrict in any way access to essential services for low-income residents, including but not limited to food banks.

19. Nothing in this Order shall be construed to limit, prohibit, or restrict in any way the operations of newspapers, television, radio, and other media services.

20. Nothing in this Order shall be construed to limit, prohibit, or restrict in any way the operations of law enforcement agencies.

21. Nothing in this Order shall be construed to limit, prohibit, or restrict in any way the operations of the federal government, or the movement of federal officials in New Jersey while acting in their official capacity.

22. In accordance with N.J.S.A. App. A:9-33, et seq., as supplemented and amended, the State Director of Emergency Management, who is the Superintendent of State Police, through the police agencies under his control, to determine and control the direction of the flow of vehicular traffic on any State or interstate highway, municipal or county road, and any access road, including the right to detour, reroute, or divert any or all traffic and to prevent ingress or egress from any area that, in the State Director's discretion, is deemed necessary for the protection of the health, safety, and welfare of the public, and to remove parked or abandoned vehicles from such roadways as conditions warrant.

23. The Attorney General, pursuant to the provisions of N.J.S.A. 39:4-213, shall act through the Superintendent of State Police, to determine and control the direction of the flow of

vehicular traffic on any State or interstate highway, municipal or county road, and any access road, including the right to detour, reroute, or divert any or all traffic, to prevent ingress or egress, and to determine the type of vehicle or vehicles to be operated on such roadways. I further authorize all law enforcement officers to enforce any such order of the Attorney General or Superintendent of State Police within their respective municipalities.

24. It shall be the duty of every person or entity in this State or doing business in this State and of the members of the governing body and every official, employee, or agent of every political subdivision in this State and of each member of all other governmental bodies, agencies, and authorities in this State of any nature whatsoever, to cooperate fully in all matters concerning this Executive Order.

25. Penalties for violations of this Executive Order may be imposed under, among other statutes, N.J.S.A. App. A:9-49 and -50.

26. This Order shall take effect on Saturday, March 21, 2020, at 9:00 p.m., and shall remain in effect until revoked or modified by the Governor, who shall consult with the Commissioner of DOH as appropriate.

GIVEN, under my hand and seal this  
21<sup>st</sup> day of March,  
Two Thousand and Twenty, and  
of the Independence of the  
United States, the Two  
Hundred and Forty-Fourth.

[seal]

/s/ Philip D. Murphy

Governor

Attest:

/s/ Matthew J. Platkin

Chief Counsel to the Governor

# EXHIBIT “C”

## BUILDING AND PERSONAL PROPERTY COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy, the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we", "us" and "our" refer to the company providing this insurance.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section H. Definitions.

### A. Coverage

We will pay for direct physical loss of or damage to Covered Property at the premises described in the Declarations caused by or resulting from any Covered Cause of Loss.

#### 1. Covered Property

Covered Property, as used in this Coverage Part, means the type of property described in this section, **A.1.**, and limited in **A.2.** Property Not Covered, if a Limit Of Insurance is shown in the Declarations for that type of property.

**a. Building**, meaning the building or structure described in the Declarations, including:

- (1) Completed additions;
- (2) Fixtures, including outdoor fixtures;
- (3) Permanently installed:
  - (a) Machinery; and
  - (b) Equipment;
- (4) Personal property owned by you that is used to maintain or service the building or structure or its premises, including:
  - (a) Fire-extinguishing equipment;
  - (b) Outdoor furniture;
  - (c) Floor coverings; and
  - (d) Appliances used for refrigerating, ventilating, cooking, dishwashing or laundering;
- (5) If not covered by other insurance:
  - (a) Additions under construction, alterations and repairs to the building or structure;
  - (b) Materials, equipment, supplies and temporary structures, on or within 100 feet of the described premises, used for making additions, alterations or repairs to the building or structure.

#### b. Your Business Personal Property

consists of the following property located in or on the building or structure described in the Declarations or in the open (or in a vehicle) within 100 feet of the building or structure or within 100 feet of the premises described in the Declarations, whichever distance is greater:

- (1) Furniture and fixtures;
- (2) Machinery and equipment;
- (3) "Stock";
- (4) All other personal property owned by you and used in your business;
- (5) Labor, materials or services furnished or arranged by you on personal property of others;
- (6) Your use interest as tenant in improvements and betterments. Improvements and betterments are fixtures, alterations, installations or additions:
  - (a) Made a part of the building or structure you occupy but do not own; and
  - (b) You acquired or made at your expense but cannot legally remove;
- (7) Leased personal property for which you have a contractual responsibility to insure, unless otherwise provided for under Personal Property Of Others.

#### c. Personal Property Of Others that is:

- (1) In your care, custody or control; and
- (2) Located in or on the building or structure described in the Declarations or in the open (or in a vehicle) within 100 feet of the building or structure or within 100 feet of the premises described in the Declarations, whichever distance is greater.

However, our payment for loss of or damage to personal property of others will only be for the account of the owner of the property.

## 2. Property Not Covered

Covered Property does not include:

- a. Accounts, bills, currency, food stamps or other evidences of debt, money, notes or securities. Lottery tickets held for sale are not securities;
- b. Animals, unless owned by others and boarded by you, or if owned by you, only as "stock" while inside of buildings;
- c. Automobiles held for sale;
- d. Bridges, roadways, walks, patios or other paved surfaces;
- e. Contraband, or property in the course of illegal transportation or trade;
- f. The cost of excavations, grading, backfilling or filling;
- g. Foundations of buildings, structures, machinery or boilers if their foundations are below:
  - (1) The lowest basement floor; or
  - (2) The surface of the ground, if there is no basement;
- h. Land (including land on which the property is located), water, growing crops or lawns (other than lawns which are part of a vegetated roof);
- i. Personal property while airborne or waterborne;
- j. Bulkheads, pilings, piers, wharves or docks;
- k. Property that is covered under another coverage form of this or any other policy in which it is more specifically described, except for the excess of the amount due (whether you can collect on it or not) from that other insurance;
- l. Retaining walls that are not part of a building;
- m. Underground pipes, flues or drains;

- n. Electronic data, except as provided under the Additional Coverage, Electronic Data. Electronic data means information, facts or computer programs stored as or on, created or used on, or transmitted to or from computer software (including systems and applications software), on hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other repositories of computer software which are used with electronically controlled equipment. The term computer programs, referred to in the foregoing description of electronic data, means a set of related electronic instructions which direct the operations and functions of a computer or device connected to it, which enable the computer or device to receive, process, store, retrieve or send data. This paragraph, **n.**, does not apply to your "stock" of prepackaged software, or to electronic data which is integrated in and operates or controls the building's elevator, lighting, heating, ventilation, air conditioning or security system;
- o. The cost to replace or restore the information on valuable papers and records, including those which exist as electronic data. Valuable papers and records include but are not limited to proprietary information, books of account, deeds, manuscripts, abstracts, drawings and card index systems. Refer to the Coverage Extension for Valuable Papers And Records (Other Than Electronic Data) for limited coverage for valuable papers and records other than those which exist as electronic data;
- p. Vehicles or self-propelled machines (including aircraft or watercraft) that:
  - (1) Are licensed for use on public roads; or
  - (2) Are operated principally away from the described premises.

This paragraph does not apply to:

- (a) Vehicles or self-propelled machines or autos you manufacture, process or warehouse;

- (b) Vehicles or self-propelled machines, other than autos, you hold for sale;
- (c) Rowboats or canoes out of water at the described premises; or
- (d) Trailers, but only to the extent provided for in the Coverage Extension for Non-owned Detached Trailers; or

q. The following property while outside of buildings:

- (1) Grain, hay, straw or other crops;
- (2) Fences, radio or television antennas (including satellite dishes) and their lead-in wiring, masts or towers, trees, shrubs or plants (other than trees, shrubs or plants which are "stock" or are part of a vegetated roof), all except as provided in the Coverage Extensions.

### 3. Covered Causes Of Loss

See applicable Causes Of Loss form as shown in the Declarations.

### 4. Additional Coverages

#### a. Debris Removal

- (1) Subject to Paragraphs (2), (3) and (4), we will pay your expense to remove debris of Covered Property and other debris that is on the described premises, when such debris is caused by or results from a Covered Cause of Loss that occurs during the policy period. The expenses will be paid only if they are reported to us in writing within 180 days of the date of direct physical loss or damage.
- (2) Debris Removal does not apply to costs to:
  - (a) Remove debris of property of yours that is not insured under this policy, or property in your possession that is not Covered Property;
  - (b) Remove debris of property owned by or leased to the landlord of the building where your described premises are located, unless you have a contractual responsibility to insure such property and it is insured under this policy;
  - (c) Remove any property that is Property Not Covered, including property addressed under the Outdoor Property Coverage Extension;

(d) Remove property of others of a type that would not be Covered Property under this Coverage Form;

(e) Remove deposits of mud or earth from the grounds of the described premises;

(f) Extract "pollutants" from land or water; or

(g) Remove, restore or replace polluted land or water.

(3) Subject to the exceptions in Paragraph (4), the following provisions apply:

(a) The most we will pay for the total of direct physical loss or damage plus debris removal expense is the Limit of Insurance applicable to the Covered Property that has sustained loss or damage.

(b) Subject to (a) above, the amount we will pay for debris removal expense is limited to 25% of the sum of the deductible plus the amount that we pay for direct physical loss or damage to the Covered Property that has sustained loss or damage. However, if no Covered Property has sustained direct physical loss or damage, the most we will pay for removal of debris of other property (if such removal is covered under this Additional Coverage) is \$5,000 at each location.

(4) We will pay up to an additional \$25,000 for debris removal expense, for each location, in any one occurrence of physical loss or damage to Covered Property, if one or both of the following circumstances apply:

(a) The total of the actual debris removal expense plus the amount we pay for direct physical loss or damage exceeds the Limit of Insurance on the Covered Property that has sustained loss or damage.

(b) The actual debris removal expense exceeds 25% of the sum of the deductible plus the amount that we pay for direct physical loss or damage to the Covered Property that has sustained loss or damage.

Therefore, if (4)(a) and/or (4)(b) applies, our total payment for direct physical loss or damage and debris removal expense may reach but will never exceed the Limit of Insurance on the Covered Property that has sustained loss or damage, plus \$25,000.

#### (5) Examples

The following examples assume that there is no Coinsurance penalty.

##### Example 1

Limit of Insurance:	\$ 90,000
Amount of Deductible:	\$ 500
Amount of Loss:	\$ 50,000
Amount of Loss Payable:	\$ 49,500
	(\$50,000 – \$500)
Debris Removal Expense:	\$ 10,000
Debris Removal Expense Payable:	\$ 10,000
	(\$10,000 is 20% of \$50,000.)

The debris removal expense is less than 25% of the sum of the loss payable plus the deductible. The sum of the loss payable and the debris removal expense (\$49,500 + \$10,000 = \$59,500) is less than the Limit of Insurance. Therefore, the full amount of debris removal expense is payable in accordance with the terms of Paragraph (3).

##### Example 2

Limit of Insurance:	\$ 90,000
Amount of Deductible:	\$ 500
Amount of Loss:	\$ 80,000
Amount of Loss Payable:	\$ 79,500
	(\$80,000 – \$500)
Debris Removal Expense:	\$ 40,000
Debris Removal Expense Payable	
Basic Amount:	\$ 10,500
Additional Amount:	\$ 25,000

The basic amount payable for debris removal expense under the terms of Paragraph (3) is calculated as follows: \$80,000 (\$79,500 + \$500) x .25 = \$20,000, capped at \$10,500. The cap applies because the sum of the loss payable (\$79,500) and the basic amount payable for debris removal expense (\$10,500) cannot exceed the Limit of Insurance (\$90,000).

The additional amount payable for debris removal expense is provided in accordance with the terms of Paragraph (4), because the debris removal expense (\$40,000) exceeds 25% of the loss payable plus the deductible (\$40,000 is 50% of \$80,000), and because the sum of the loss payable and debris removal expense (\$79,500 + \$40,000 = \$119,500) would exceed the Limit of Insurance (\$90,000). The additional amount of covered debris removal expense is \$25,000, the maximum payable under Paragraph (4). Thus, the total payable for debris removal expense in this example is \$35,500; \$4,500 of the debris removal expense is not covered.

#### b. Preservation Of Property

If it is necessary to move Covered Property from the described premises to preserve it from loss or damage by a Covered Cause of Loss, we will pay for any direct physical loss or damage to that property:

- (1) While it is being moved or while temporarily stored at another location; and
- (2) Only if the loss or damage occurs within 30 days after the property is first moved.

#### c. Fire Department Service Charge

When the fire department is called to save or protect Covered Property from a Covered Cause of Loss, we will pay up to \$1,000 for service at each premises described in the Declarations, unless a higher limit is shown in the Declarations. Such limit is the most we will pay regardless of the number of responding fire departments or fire units, and regardless of the number or type of services performed.

This Additional Coverage applies to your liability for fire department service charges:

- (1) Assumed by contract or agreement prior to loss; or
- (2) Required by local ordinance.

No Deductible applies to this Additional Coverage.

**d. Pollutant Clean-up And Removal**

We will pay your expense to extract "pollutants" from land or water at the described premises if the discharge, dispersal, seepage, migration, release or escape of the "pollutants" is caused by or results from a Covered Cause of Loss that occurs during the policy period. The expenses will be paid only if they are reported to us in writing within 180 days of the date on which the Covered Cause of Loss occurs.

This Additional Coverage does not apply to costs to test for, monitor or assess the existence, concentration or effects of "pollutants". But we will pay for testing which is performed in the course of extracting the "pollutants" from the land or water.

The most we will pay under this Additional Coverage for each described premises is \$10,000 for the sum of all covered expenses arising out of Covered Causes of Loss occurring during each separate 12-month period of this policy.

**e. Increased Cost Of Construction**

- (1) This Additional Coverage applies only to buildings to which the Replacement Cost Optional Coverage applies.
- (2) In the event of damage by a Covered Cause of Loss to a building that is Covered Property, we will pay the increased costs incurred to comply with the minimum standards of an ordinance or law in the course of repair, rebuilding or replacement of damaged parts of that property, subject to the limitations stated in e.(3) through e.(9) of this Additional Coverage.
- (3) The ordinance or law referred to in e.(2) of this Additional Coverage is an ordinance or law that regulates the construction or repair of buildings or establishes zoning or land use requirements at the described premises and is in force at the time of loss.
- (4) Under this Additional Coverage, we will not pay any costs due to an ordinance or law that:
  - (a) You were required to comply with before the loss, even when the building was undamaged; and
  - (b) You failed to comply with.

(5) Under this Additional Coverage, we will not pay for:

- (a) The enforcement of or compliance with any ordinance or law which requires demolition, repair, replacement, reconstruction, remodeling or remediation of property due to contamination by "pollutants" or due to the presence, growth, proliferation, spread or any activity of "fungus", wet or dry rot or bacteria; or
- (b) Any costs associated with the enforcement of or compliance with an ordinance or law which requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants", "fungus", wet or dry rot or bacteria.

(6) The most we will pay under this Additional Coverage, for each described building insured under this Coverage Form, is \$10,000 or 5% of the Limit of Insurance applicable to that building, whichever is less. If a damaged building is covered under a blanket Limit of Insurance which applies to more than one building or item of property, then the most we will pay under this Additional Coverage, for that damaged building, is the lesser of \$10,000 or 5% times the value of the damaged building as of the time of loss times the applicable Coinsurance percentage.

The amount payable under this Additional Coverage is additional insurance.

(7) With respect to this Additional Coverage:

- (a) We will not pay for the Increased Cost of Construction:
  - (i) Until the property is actually repaired or replaced at the same or another premises; and
  - (ii) Unless the repair or replacement is made as soon as reasonably possible after the loss or damage, not to exceed two years. We may extend this period in writing during the two years.

- (b) If the building is repaired or replaced at the same premises, or if you elect to rebuild at another premises, the most we will pay for the Increased Cost of Construction, subject to the provisions of e.(6) of this Additional Coverage, is the increased cost of construction at the same premises.
  - (c) If the ordinance or law requires relocation to another premises, the most we will pay for the Increased Cost of Construction, subject to the provisions of e.(6) of this Additional Coverage, is the increased cost of construction at the new premises.
  - (8) This Additional Coverage is not subject to the terms of the Ordinance Or Law Exclusion to the extent that such Exclusion would conflict with the provisions of this Additional Coverage.
  - (9) The costs addressed in the Loss Payment and Valuation Conditions and the Replacement Cost Optional Coverage, in this Coverage Form, do not include the increased cost attributable to enforcement of or compliance with an ordinance or law. The amount payable under this Additional Coverage, as stated in e.(6) of this Additional Coverage, is not subject to such limitation.
- f. Electronic Data**
- (1) Under this Additional Coverage, electronic data has the meaning described under Property Not Covered, Electronic Data. This Additional Coverage does not apply to your "stock" of prepackaged software, or to electronic data which is integrated in and operates or controls the building's elevator, lighting, heating, ventilation, air conditioning or security system.
  - (2) Subject to the provisions of this Additional Coverage, we will pay for the cost to replace or restore electronic data which has been destroyed or corrupted by a Covered Cause of Loss. To the extent that electronic data is not replaced or restored, the loss will be valued at the cost of replacement of the media on which the electronic data was stored, with blank media of substantially identical type.
- (3) The Covered Causes of Loss applicable to Your Business Personal Property apply to this Additional Coverage, Electronic Data, subject to the following:
    - (a) If the Causes Of Loss – Special Form applies, coverage under this Additional Coverage, Electronic Data, is limited to the "specified causes of loss" as defined in that form and Collapse as set forth in that form.
    - (b) If the Causes Of Loss – Broad Form applies, coverage under this Additional Coverage, Electronic Data, includes Collapse as set forth in that form.
    - (c) If the Causes Of Loss form is endorsed to add a Covered Cause of Loss, the additional Covered Cause of Loss does not apply to the coverage provided under this Additional Coverage, Electronic Data.
    - (d) The Covered Causes of Loss include a virus, harmful code or similar instruction introduced into or enacted on a computer system (including electronic data) or a network to which it is connected, designed to damage or destroy any part of the system or disrupt its normal operation. But there is no coverage for loss or damage caused by or resulting from manipulation of a computer system (including electronic data) by any employee, including a temporary or leased employee, or by an entity retained by you or for you to inspect, design, install, modify, maintain, repair or replace that system.

- (4) The most we will pay under this Additional Coverage, Electronic Data, is \$2,500 (unless a higher limit is shown in the Declarations) for all loss or damage sustained in any one policy year, regardless of the number of occurrences of loss or damage or the number of premises, locations or computer systems involved. If loss payment on the first occurrence does not exhaust this amount, then the balance is available for subsequent loss or damage sustained in but not after that policy year. With respect to an occurrence which begins in one policy year and continues or results in additional loss or damage in a subsequent policy year(s), all loss or damage is deemed to be sustained in the policy year in which the occurrence began.

## 5. Coverage Extensions

Except as otherwise provided, the following Extensions apply to property located in or on the building described in the Declarations or in the open (or in a vehicle) within 100 feet of the described premises.

If a Coinsurance percentage of 80% or more, or a Value Reporting period symbol, is shown in the Declarations, you may extend the insurance provided by this Coverage Part as follows:

### a. Newly Acquired Or Constructed Property

#### (1) Buildings

If this policy covers Building, you may extend that insurance to apply to:

- (a) Your new buildings while being built on the described premises; and
- (b) Buildings you acquire at locations, other than the described premises, intended for:
  - (i) Similar use as the building described in the Declarations; or
  - (ii) Use as a warehouse.

The most we will pay for loss or damage under this Extension is \$250,000 at each building.

## (2) Your Business Personal Property

- (a) If this policy covers Your Business Personal Property, you may extend that insurance to apply to:

- (i) Business personal property, including such property that you newly acquire, at any location you acquire other than at fairs, trade shows or exhibitions; or
- (ii) Business personal property, including such property that you newly acquire, located at your newly constructed or acquired buildings at the location described in the Declarations.

The most we will pay for loss or damage under this Extension is \$100,000 at each building.

- (b) This Extension does not apply to:

- (i) Personal property of others that is temporarily in your possession in the course of installing or performing work on such property; or
- (ii) Personal property of others that is temporarily in your possession in the course of your manufacturing or wholesaling activities.

## (3) Period Of Coverage

With respect to insurance provided under this Coverage Extension for Newly Acquired Or Constructed Property, coverage will end when any of the following first occurs:

- (a) This policy expires;
- (b) 30 days expire after you acquire the property or begin construction of that part of the building that would qualify as covered property; or
- (c) You report values to us.

We will charge you additional premium for values reported from the date you acquire the property or begin construction of that part of the building that would qualify as covered property.

**b. Personal Effects And Property Of Others**

You may extend the insurance that applies to Your Business Personal Property to apply to:

- (1) Personal effects owned by you, your officers, your partners or members, your managers or your employees. This Extension does not apply to loss or damage by theft.
- (2) Personal property of others in your care, custody or control.

The most we will pay for loss or damage under this Extension is \$2,500 at each described premises. Our payment for loss of or damage to personal property of others will only be for the account of the owner of the property.

**c. Valuable Papers And Records (Other Than Electronic Data)**

- (1) You may extend the insurance that applies to Your Business Personal Property to apply to the cost to replace or restore the lost information on valuable papers and records for which duplicates do not exist. But this Extension does not apply to valuable papers and records which exist as electronic data. Electronic data has the meaning described under Property Not Covered, Electronic Data.
- (2) If the Causes Of Loss – Special Form applies, coverage under this Extension is limited to the "specified causes of loss" as defined in that form and Collapse as set forth in that form.
- (3) If the Causes Of Loss – Broad Form applies, coverage under this Extension includes Collapse as set forth in that form.
- (4) Under this Extension, the most we will pay to replace or restore the lost information is \$2,500 at each described premises, unless a higher limit is shown in the Declarations. Such amount is additional insurance. We will also pay for the cost of blank material for reproducing the records (whether or not duplicates exist) and (when there is a duplicate) for the cost of labor to transcribe or copy the records. The costs of blank material and labor are subject to the applicable Limit of Insurance on Your Business Personal Property and, therefore, coverage of such costs is not additional insurance.

**d. Property Off-premises**

- (1) You may extend the insurance provided by this Coverage Form to apply to your Covered Property while it is away from the described premises, if it is:
  - (a) Temporarily at a location you do not own, lease or operate;
  - (b) In storage at a location you lease, provided the lease was executed after the beginning of the current policy term; or
  - (c) At any fair, trade show or exhibition.
- (2) This Extension does not apply to property:
  - (a) In or on a vehicle; or
  - (b) In the care, custody or control of your salespersons, unless the property is in such care, custody or control at a fair, trade show or exhibition.
- (3) The most we will pay for loss or damage under this Extension is \$10,000.

**e. Outdoor Property**

You may extend the insurance provided by this Coverage Form to apply to your outdoor fences, radio and television antennas (including satellite dishes), trees, shrubs and plants (other than trees, shrubs or plants which are "stock" or are part of a vegetated roof), including debris removal expense, caused by or resulting from any of the following causes of loss if they are Covered Causes of Loss:

- (1) Fire;
- (2) Lightning;
- (3) Explosion;
- (4) Riot or Civil Commotion; or
- (5) Aircraft.

The most we will pay for loss or damage under this Extension is \$1,000, but not more than \$250 for any one tree, shrub or plant. These limits apply to any one occurrence, regardless of the types or number of items lost or damaged in that occurrence.

Subject to all aforementioned terms and limitations of coverage, this Coverage Extension includes the expense of removing from the described premises the debris of trees, shrubs and plants which are the property of others, except in the situation in which you are a tenant and such property is owned by the landlord of the described premises.

**f. Non-owned Detached Trailers**

- (1) You may extend the insurance that applies to Your Business Personal Property to apply to loss or damage to trailers that you do not own, provided that:
  - (a) The trailer is used in your business;
  - (b) The trailer is in your care, custody or control at the premises described in the Declarations; and
  - (c) You have a contractual responsibility to pay for loss or damage to the trailer.
- (2) We will not pay for any loss or damage that occurs:
  - (a) While the trailer is attached to any motor vehicle or motorized conveyance, whether or not the motor vehicle or motorized conveyance is in motion;
  - (b) During hitching or unhitching operations, or when a trailer becomes accidentally unhitched from a motor vehicle or motorized conveyance.
- (3) The most we will pay for loss or damage under this Extension is \$5,000, unless a higher limit is shown in the Declarations.
- (4) This insurance is excess over the amount due (whether you can collect on it or not) from any other insurance covering such property.

**g. Business Personal Property Temporarily In Portable Storage Units**

- (1) You may extend the insurance that applies to Your Business Personal Property to apply to such property while temporarily stored in a portable storage unit (including a detached trailer) located within 100 feet of the building or structure described in the Declarations or within 100 feet of the premises described in the Declarations, whichever distance is greater.

- (2) If the applicable Covered Causes of Loss form or endorsement contains a limitation or exclusion concerning loss or damage from sand, dust, sleet, snow, ice or rain to property in a structure, such limitation or exclusion also applies to property in a portable storage unit.
- (3) Coverage under this Extension:
  - (a) Will end 90 days after the business personal property has been placed in the storage unit;
  - (b) Does not apply if the storage unit itself has been in use at the described premises for more than 90 consecutive days, even if the business personal property has been stored there for 90 or fewer days as of the time of loss or damage.
- (4) Under this Extension, the most we will pay for the total of all loss or damage to business personal property is \$10,000 (unless a higher limit is indicated in the Declarations for such Extension) regardless of the number of storage units. Such limit is part of, not in addition to, the applicable Limit of Insurance on Your Business Personal Property. Therefore, payment under this Extension will not increase the applicable Limit of Insurance on Your Business Personal Property.
- (5) This Extension does not apply to loss or damage otherwise covered under this Coverage Form or any endorsement to this Coverage Form or policy, and does not apply to loss or damage to the storage unit itself.

Each of these Extensions is additional insurance unless otherwise indicated. The Additional Condition, Coinsurance, does not apply to these Extensions.

**B. Exclusions And Limitations**

See applicable Causes Of Loss form as shown in the Declarations.

**C. Limits Of Insurance**

The most we will pay for loss or damage in any one occurrence is the applicable Limit Of Insurance shown in the Declarations.

The most we will pay for loss or damage to outdoor signs, whether or not the sign is attached to a building, is \$2,500 per sign in any one occurrence.

The amounts of insurance stated in the following Additional Coverages apply in accordance with the terms of such coverages and are separate from the Limit(s) Of Insurance shown in the Declarations for any other coverage:

1. Fire Department Service Charge;
2. Pollutant Clean-up And Removal;
3. Increased Cost Of Construction; and
4. Electronic Data.

Payments under the Preservation Of Property Additional Coverage will not increase the applicable Limit of Insurance.

**D. Deductible**

In any one occurrence of loss or damage (hereinafter referred to as loss), we will first reduce the amount of loss if required by the Coinsurance Condition or the Agreed Value Optional Coverage. If the adjusted amount of loss is less than or equal to the Deductible, we will not pay for that loss. If the adjusted amount of loss exceeds the Deductible, we will then subtract the Deductible from the adjusted amount of loss and will pay the resulting amount or the Limit of Insurance, whichever is less.

When the occurrence involves loss to more than one item of Covered Property and separate Limits of Insurance apply, the losses will not be combined in determining application of the Deductible. But the Deductible will be applied only once per occurrence.

**Example 1**

(This example assumes there is no Coinsurance penalty.)

Deductible:	\$ 250
Limit of Insurance – Building 1:	\$ 60,000
Limit of Insurance – Building 2:	\$ 80,000
Loss to Building 1:	\$ 60,100
Loss to Building 2:	\$ 90,000

The amount of loss to Building 1 (\$60,100) is less than the sum (\$60,250) of the Limit of Insurance applicable to Building 1 plus the Deductible.

The Deductible will be subtracted from the amount of loss in calculating the loss payable for Building 1:

\$ 60,100
– 250
\$ 59,850 Loss Payable – Building 1

The Deductible applies once per occurrence and therefore is not subtracted in determining the amount of loss payable for Building 2. Loss payable for Building 2 is the Limit of Insurance of \$80,000.

Total amount of loss payable:  
\$59,850 + \$80,000 = \$139,850

**Example 2**

(This example, too, assumes there is no Coinsurance penalty.)

The Deductible and Limits of Insurance are the same as those in Example 1.

Loss to Building 1:	\$ 70,000
(Exceeds Limit of Insurance plus Deductible)	
Loss to Building 2:	\$ 90,000
(Exceeds Limit of Insurance plus Deductible)	
Loss Payable – Building 1:	\$ 60,000
(Limit of Insurance)	
Loss Payable – Building 2:	\$ 80,000
(Limit of Insurance)	
Total amount of loss payable:	\$ 140,000

**E. Loss Conditions**

The following conditions apply in addition to the Common Policy Conditions and the Commercial Property Conditions:

**1. Abandonment**

There can be no abandonment of any property to us.

**2. Appraisal**

If we and you disagree on the value of the property or the amount of loss, either may make written demand for an appraisal of the loss. In this event, each party will select a competent and impartial appraiser. The two appraisers will select an umpire. If they cannot agree, either may request that selection be made by a judge of a court having jurisdiction. The appraisers will state separately the value of the property and amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

- a. Pay its chosen appraiser; and
- b. Bear the other expenses of the appraisal and umpire equally.

If there is an appraisal, we will still retain our right to deny the claim.

**3. Duties In The Event Of Loss Or Damage**

a. You must see that the following are done in the event of loss or damage to Covered Property:

- (1) Notify the police if a law may have been broken.

- (2) Give us prompt notice of the loss or damage. Include a description of the property involved.
  - (3) As soon as possible, give us a description of how, when and where the loss or damage occurred.
  - (4) Take all reasonable steps to protect the Covered Property from further damage, and keep a record of your expenses necessary to protect the Covered Property, for consideration in the settlement of the claim. This will not increase the Limit of Insurance. However, we will not pay for any subsequent loss or damage resulting from a cause of loss that is not a Covered Cause of Loss. Also, if feasible, set the damaged property aside and in the best possible order for examination.
  - (5) At our request, give us complete inventories of the damaged and undamaged property. Include quantities, costs, values and amount of loss claimed.
  - (6) As often as may be reasonably required, permit us to inspect the property proving the loss or damage and examine your books and records.  
Also, permit us to take samples of damaged and undamaged property for inspection, testing and analysis, and permit us to make copies from your books and records.
  - (7) Send us a signed, sworn proof of loss containing the information we request to investigate the claim. You must do this within 60 days after our request. We will supply you with the necessary forms.
  - (8) Cooperate with us in the investigation or settlement of the claim.
- b. We may examine any insured under oath, while not in the presence of any other insured and at such times as may be reasonably required, about any matter relating to this insurance or the claim, including an insured's books and records. In the event of an examination, an insured's answers must be signed.

#### 4. Loss Payment

- a. In the event of loss or damage covered by this Coverage Form, at our option, we will either:
- (1) Pay the value of lost or damaged property;
  - (2) Pay the cost of repairing or replacing the lost or damaged property, subject to **b.** below;
  - (3) Take all or any part of the property at an agreed or appraised value; or
  - (4) Repair, rebuild or replace the property with other property of like kind and quality, subject to **b.** below.
- We will determine the value of lost or damaged property, or the cost of its repair or replacement, in accordance with the applicable terms of the Valuation Condition in this Coverage Form or any applicable provision which amends or supersedes the Valuation Condition.
- b. The cost to repair, rebuild or replace does not include the increased cost attributable to enforcement of or compliance with any ordinance or law regulating the construction, use or repair of any property.
  - c. We will give notice of our intentions within 30 days after we receive the sworn proof of loss.
  - d. We will not pay you more than your financial interest in the Covered Property.
  - e. We may adjust losses with the owners of lost or damaged property if other than you. If we pay the owners, such payments will satisfy your claims against us for the owners' property. We will not pay the owners more than their financial interest in the Covered Property.
  - f. We may elect to defend you against suits arising from claims of owners of property. We will do this at our expense.
  - g. We will pay for covered loss or damage within 30 days after we receive the sworn proof of loss, if you have complied with all of the terms of this Coverage Part, and:
    - (1) We have reached agreement with you on the amount of loss; or
    - (2) An appraisal award has been made.

h. A party wall is a wall that separates and is common to adjoining buildings that are owned by different parties. In settling covered losses involving a party wall, we will pay a proportion of the loss to the party wall based on your interest in the wall in proportion to the interest of the owner of the adjoining building. However, if you elect to repair or replace your building and the owner of the adjoining building elects not to repair or replace that building, we will pay you the full value of the loss to the party wall, subject to all applicable policy provisions including Limits of Insurance, the Valuation and Coinsurance Conditions and all other provisions of this Loss Payment Condition. Our payment under the provisions of this paragraph does not alter any right of subrogation we may have against any entity, including the owner or insurer of the adjoining building, and does not alter the terms of the Transfer Of Rights Of Recovery Against Others To Us Condition in this policy.

#### 5. Recovered Property

If either you or we recover any property after loss settlement, that party must give the other prompt notice. At your option, the property will be returned to you. You must then return to us the amount we paid to you for the property. We will pay recovery expenses and the expenses to repair the recovered property, subject to the Limit of Insurance.

#### 6. 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 sublessee and used by the lessee or sublessee to conduct its customary operations; and/or
- (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) We 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 you have protected the system against freezing;
  - (c) Building glass breakage;
  - (d) Water damage;
  - (e) Theft; or
  - (f) Attempted theft.
- (2) With respect to Covered Causes of Loss other than those listed in b.(1)(a) through b.(1)(f) above, we will reduce the amount we would otherwise pay for the loss or damage by 15%.

#### 7. Valuation

We will determine the value of Covered Property in the event of loss or damage as follows:

- a. At actual cash value as of the time of loss or damage, except as provided in b., c., d. and e. below.
- b. If the Limit of Insurance for Building satisfies the Additional Condition, Coinsurance, and the cost to repair or replace the damaged building property is \$2,500 or less, we will pay the cost of building repairs or replacement.

The cost of building repairs or replacement does not include the increased cost attributable to enforcement of or compliance with any ordinance or law regulating the construction, use or repair of any property.

However, the following property will be valued at the actual cash value, even when attached to the building:

- (1) Awnings or floor coverings;
  - (2) Appliances for refrigerating, ventilating, cooking, dishwashing or laundering; or
  - (3) Outdoor equipment or furniture.
- c. "Stock" you have sold but not delivered at the selling price less discounts and expenses you otherwise would have had.
- d. Glass at the cost of replacement with safety-glazing material if required by law.
- e. Tenants' Improvements and Betterments at:
- (1) Actual cash value of the lost or damaged property if you make repairs promptly.
  - (2) A proportion of your original cost if you do not make repairs promptly. We will determine the proportionate value as follows:
    - (a) Multiply the original cost by the number of days from the loss or damage to the expiration of the lease; and
    - (b) Divide the amount determined in (a) above by the number of days from the installation of improvements to the expiration of the lease.

If your lease contains a renewal option, the expiration of the renewal option period will replace the expiration of the lease in this procedure.
  - (3) Nothing if others pay for repairs or replacement.

**F. Additional Conditions**

The following conditions apply in addition to the Common Policy Conditions and the Commercial Property Conditions:

**1. Coinsurance**

If a Coinsurance percentage is shown in the Declarations, the following condition applies:

- a. We will not pay the full amount of any loss if the value of Covered Property at the time of loss times the Coinsurance percentage shown for it in the Declarations is greater than the Limit of Insurance for the property.

Instead, we will determine the most we will pay using the following steps:

- (1) Multiply the value of Covered Property at the time of loss by the Coinsurance percentage;
- (2) Divide the Limit of Insurance of the property by the figure determined in Step (1);
- (3) Multiply the total amount of loss, before the application of any deductible, by the figure determined in Step (2); and
- (4) Subtract the deductible from the figure determined in Step (3).

We will pay the amount determined in Step (4) or the Limit of Insurance, whichever is less. For the remainder, you will either have to rely on other insurance or absorb the loss yourself.

**Example 1 (Underinsurance)**

When:	The value of the property is:	\$ 250,000
	The Coinsurance percentage for it is:	80%
	The Limit of Insurance for it is:	\$ 100,000
	The Deductible is:	\$ 250
	The amount of loss is:	\$ 40,000

Step (1):  $\$250,000 \times 80\% = \$200,000$   
 (the minimum amount of insurance to meet your Coinsurance requirements)

Step (2):  $\$100,000 \div \$200,000 = .50$

Step (3):  $\$40,000 \times .50 = \$20,000$

Step (4):  $\$20,000 - \$250 = \$19,750$

We will pay no more than \$19,750. The remaining \$20,250 is not covered.

**Example 2 (Adequate Insurance)**

When:	The value of the property is:	\$ 250,000
	The Coinsurance percentage for it is:	80%
	The Limit of Insurance for it is:	\$ 200,000
	The Deductible is:	\$ 250
	The amount of loss is:	\$ 40,000

The minimum amount of insurance to meet your Coinsurance requirement is \$200,000 ( $\$250,000 \times 80\%$ ). Therefore, the Limit of Insurance in this example is adequate, and no penalty applies. We will pay no more than \$39,750 ( $\$40,000$  amount of loss minus the deductible of \$250).

- b. If one Limit of Insurance applies to two or more separate items, this condition will apply to the total of all property to which the limit applies.

**Example 3**

When: The value of the property is:

Building at Location 1:	\$ 75,000
Building at Location 2:	\$ 100,000
Personal Property at Location 2:	<u>\$ 75,000</u>
	<u>\$ 250,000</u>
The Coinsurance percentage for it is: <span style="float: right;">90%</span>	
The Limit of Insurance for Buildings and Personal Property at Locations 1 and 2 is: <span style="float: right;">\$ 180,000</span>	
The Deductible is: <span style="float: right;">\$ 1,000</span>	
The amount of loss is:	
Building at Location 2:	\$ 30,000
Personal Property at Location 2:	<u>\$ 20,000</u>
	<u>\$ 50,000</u>

Step (1):  $\$250,000 \times 90\% = \$225,000$   
 (the minimum amount of insurance to meet your Coinsurance requirements and to avoid the penalty shown below)

Step (2):  $\$180,000 \div \$225,000 = .80$

Step (3):  $\$50,000 \times .80 = \$40,000$

Step (4):  $\$40,000 - \$1,000 = \$39,000$

We will pay no more than \$39,000. The remaining \$11,000 is not covered.

**2. Mortgageholders**

- a. The term mortgageholder includes trustee.
- b. We will pay for covered loss of or damage to buildings or structures to each mortgageholder shown in the Declarations in their order of precedence, as interests may appear.
- c. The mortgageholder has the right to receive loss payment even if the mortgageholder has started foreclosure or similar action on the building or structure.
- d. If we deny your claim because of your acts or because you have failed to comply with the terms of this Coverage Part, the mortgageholder will still have the right to receive loss payment if the mortgageholder:
  - (1) Pays any premium due under this Coverage Part at our request if you have failed to do so;

- (2) Submits a signed, sworn proof of loss within 60 days after receiving notice from us of your failure to do so; and
- (3) Has notified us of any change in ownership, occupancy or substantial change in risk known to the mortgageholder.

All of the terms of this Coverage Part will then apply directly to the mortgageholder.

- e. If we pay the mortgageholder for any loss or damage and deny payment to you because of your acts or because you have failed to comply with the terms of this Coverage Part:
  - (1) The mortgageholder's rights under the mortgage will be transferred to us to the extent of the amount we pay; and
  - (2) The mortgageholder's right to recover the full amount of the mortgageholder's claim will not be impaired.

At our option, we may pay to the mortgageholder the whole principal on the mortgage plus any accrued interest. In this event, your mortgage and note will be transferred to us and you will pay your remaining mortgage debt to us.

- f. If we cancel this policy, we will give written notice to the mortgageholder at least:
  - (1) 10 days before the effective date of cancellation if we cancel for your nonpayment of premium; or
  - (2) 30 days before the effective date of cancellation if we cancel for any other reason.
- g. If we elect not to renew this policy, we will give written notice to the mortgageholder at least 10 days before the expiration date of this policy.

**G. Optional Coverages**

If shown as applicable in the Declarations, the following Optional Coverages apply separately to each item:

**1. Agreed Value**

- a. The Additional Condition, Coinsurance, does not apply to Covered Property to which this Optional Coverage applies. We will pay no more for loss of or damage to that property than the proportion that the Limit of Insurance under this Coverage Part for the property bears to the Agreed Value shown for it in the Declarations.

- b. If the expiration date for this Optional Coverage shown in the Declarations is not extended, the Additional Condition, Coinsurance, is reinstated and this Optional Coverage expires.
- c. The terms of this Optional Coverage apply only to loss or damage that occurs:
  - (1) On or after the effective date of this Optional Coverage; and
  - (2) Before the Agreed Value expiration date shown in the Declarations or the policy expiration date, whichever occurs first.

## 2. Inflation Guard

- a. The Limit of Insurance for property to which this Optional Coverage applies will automatically increase by the annual percentage shown in the Declarations.
- b. The amount of increase will be:
  - (1) The Limit of Insurance that applied on the most recent of the policy inception date, the policy anniversary date, or any other policy change amending the Limit of Insurance, times
  - (2) The percentage of annual increase shown in the Declarations, expressed as a decimal (example: 8% is .08), times
  - (3) The number of days since the beginning of the current policy year or the effective date of the most recent policy change amending the Limit of Insurance, divided by 365.

### Example

If: The applicable Limit of Insurance is: \$ 100,000  
 The annual percentage increase is: 8%  
 The number of days since the beginning of the policy year (or last policy change) is: 146  
 The amount of increase is:  
 $\$100,000 \times .08 \times 146 \div 365 =$  \$ 3,200

## 3. Replacement Cost

- a. Replacement Cost (without deduction for depreciation) replaces Actual Cash Value in the Valuation Loss Condition of this Coverage Form.
- b. This Optional Coverage does not apply to:
  - (1) Personal property of others;
  - (2) Contents of a residence;
  - (3) Works of art, antiques or rare articles, including etchings, pictures, statuary, marbles, bronzes, porcelains and bric-a-brac; or

- (4) "Stock", unless the Including "Stock" option is shown in the Declarations.

Under the terms of this Replacement Cost Optional Coverage, tenants' improvements and betterments are not considered to be the personal property of others.

- c. You may make a claim for loss or damage covered by this insurance on an actual cash value basis instead of on a replacement cost basis. In the event you elect to have loss or damage settled on an actual cash value basis, you may still make a claim for the additional coverage this Optional Coverage provides if you notify us of your intent to do so within 180 days after the loss or damage.
- d. We will not pay on a replacement cost basis for any loss or damage:
  - (1) Until the lost or damaged property is actually repaired or replaced; and
  - (2) Unless the repair or replacement is made as soon as reasonably possible after the loss or damage.

With respect to tenants' improvements and betterments, the following also apply:

- (3) If the conditions in d.(1) and d.(2) above are not met, the value of tenants' improvements and betterments will be determined as a proportion of your original cost, as set forth in the Valuation Loss Condition of this Coverage Form; and
- (4) We will not pay for loss or damage to tenants' improvements and betterments if others pay for repairs or replacement.
- e. We will not pay more for loss or damage on a replacement cost basis than the least of (1), (2) or (3), subject to f. below:
  - (1) The Limit of Insurance applicable to the lost or damaged property;
  - (2) The cost to replace the lost or damaged property with other property:
    - (a) Of comparable material and quality; and
    - (b) Used for the same purpose; or
  - (3) The amount actually spent that is necessary to repair or replace the lost or damaged property.

If a building is rebuilt at a new premises, the cost described in e.(2) above is limited to the cost which would have been incurred if the building had been rebuilt at the original premises.

- f. The cost of repair or replacement does not include the increased cost attributable to enforcement of or compliance with any ordinance or law regulating the construction, use or repair of any property.

**4. Extension Of Replacement Cost To Personal Property Of Others**

- a. If the Replacement Cost Optional Coverage is shown as applicable in the Declarations, then this Extension may also be shown as applicable. If the Declarations show this Extension as applicable, then Paragraph **3.b.(1)** of the Replacement Cost Optional Coverage is deleted and all other provisions of the Replacement Cost Optional Coverage apply to replacement cost on personal property of others.
- b. With respect to replacement cost on the personal property of others, the following limitation applies:

If an item(s) of personal property of others is subject to a written contract which governs your liability for loss or damage to that item(s), then valuation of that item(s) will be based on the amount for which you are liable under such contract, but not to exceed the lesser of the replacement cost of the property or the applicable Limit of Insurance.

**H. Definitions**

1. "Fungus" means any type or form of fungus, including mold or mildew, and any mycotoxins, spores, scents or by-products produced or released by fungi.
2. "Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.
3. "Stock" means merchandise held in storage or for sale, raw materials and in-process or finished goods, including supplies used in their packing or shipping.

## COMMERCIAL PROPERTY

**COMMERCIAL PROPERTY CONDITIONS**

This Coverage Part is subject to the following conditions, the Common Policy Conditions and applicable Loss Conditions and Additional Conditions in Commercial Property Coverage Forms.

**A. CONCEALMENT, MISREPRESENTATION OR FRAUD**

This Coverage Part is void in any case of fraud by you as it relates to this Coverage Part at any time. It is also void if you or any other insured, at any time, intentionally conceal or misrepresent a material fact concerning:

1. This Coverage Part;
2. The Covered Property;
3. Your interest in the Covered Property; or
4. A claim under this Coverage Part.

**B. CONTROL OF PROPERTY**

Any act or neglect of any person other than you beyond your direction or control will not affect this insurance.

The breach of any condition of this Coverage Part at any one or more locations will not affect coverage at any location where, at the time of loss or damage, the breach of condition does not exist.

**C. INSURANCE UNDER TWO OR MORE COVERAGES**

If two or more of this policy's coverages apply to the same loss or damage, we will not pay more than the actual amount of the loss or damage.

**D. LEGAL ACTION AGAINST US**

No one may bring a legal action against us under this Coverage Part unless:

1. There has been full compliance with all of the terms of this Coverage Part; and
2. The action is brought within 2 years after the date on which the direct physical loss or damage occurred.

**E. LIBERALIZATION**

If we adopt any revision that would broaden the coverage under this Coverage Part without additional premium within 45 days prior to or during the policy period, the broadened coverage will immediately apply to this Coverage Part.

**F. NO BENEFIT TO BAILEE**

No person or organization, other than you, having custody of Covered Property will benefit from this insurance.

**G. OTHER INSURANCE**

1. You may have other insurance subject to the same plan, terms, conditions and provisions as the insurance under this Coverage Part. If you do, we will pay our share of the covered loss or damage. Our share is the proportion that the applicable Limit of Insurance under this Coverage Part bears to the Limits of Insurance of all insurance covering on the same basis.
2. If there is other insurance covering the same loss or damage, other than that described in 1. above, we will pay only for the amount of covered loss or damage in excess of the amount due from that other insurance, whether you can collect on it or not. But we will not pay more than the applicable Limit of Insurance.

**H. POLICY PERIOD, COVERAGE TERRITORY**

Under this Coverage Part:

1. We cover loss or damage commencing:
  - a. During the policy period shown in the Declarations; and
  - b. Within the coverage territory.
2. The coverage territory is:
  - a. The United States of America (including its territories and possessions);
  - b. Puerto Rico; and
  - c. Canada.

**I. TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US**

If any person or organization to or for whom we make payment under this Coverage Part has rights to recover damages from another, those rights are transferred to us to the extent of our payment. That person or organization must do everything necessary to secure our rights and must do nothing after loss to impair them. But you may waive your rights against another party in writing:

1. Prior to a loss to your Covered Property or Covered Income.
2. After a loss to your Covered Property or Covered Income only if, at time of loss, that party is one of the following:
  - a. Someone insured by this insurance;
  - b. A business firm:
    - (1) Owned or controlled by you; or
    - (2) That owns or controls you; or
  - c. Your tenant.

This will not restrict your insurance.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **EXCLUSION OF LOSS DUE TO VIRUS OR BACTERIA**

This endorsement modifies insurance provided under the following:

COMMERCIAL PROPERTY COVERAGE PART  
STANDARD PROPERTY POLICY

- A. The exclusion set forth in Paragraph **B.** applies to all coverage under all forms and endorsements that comprise this Coverage Part or Policy, including but not limited to forms or endorsements that cover property damage to buildings or personal property and forms or endorsements that cover business income, extra expense or action of civil authority.
- B. We will not pay for loss or damage caused by or resulting from any virus, bacterium or other micro-organism that induces or is capable of inducing physical distress, illness or disease.  
However, this exclusion does not apply to loss or damage caused by or resulting from "fungus", wet rot or dry rot. Such loss or damage is addressed in a separate exclusion in this Coverage Part or Policy.
- C. With respect to any loss or damage subject to the exclusion in Paragraph **B.**, such exclusion supersedes any exclusion relating to "pollutants".
- D. The following provisions in this Coverage Part or Policy are hereby amended to remove reference to bacteria:
  - 1. Exclusion of "Fungus", Wet Rot, Dry Rot And Bacteria; and
  - 2. Additional Coverage – Limited Coverage for "Fungus", Wet Rot, Dry Rot And Bacteria, including any endorsement increasing the scope or amount of coverage.
- E. The terms of the exclusion in Paragraph **B.**, or the inapplicability of this exclusion to a particular loss, do not serve to create coverage for any loss that would otherwise be excluded under this Coverage Part or Policy.

POLICY NUMBER:HCP20021134-06

COMMERCIAL PROPERTY  
CP 04 11 09 17

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## PROTECTIVE SAFEGUARDS

This endorsement modifies insurance provided under the following:

COMMERCIAL PROPERTY COVERAGE PART  
STANDARD PROPERTY POLICY

### SCHEDULE

Premises Number	Building Number	Protective Safeguards Symbols Applicable
001	001	P-1
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.		

**A.** The following is added to the Commercial Property Conditions:

**Protective Safeguards**

As a condition of this insurance, you are required to:

1. Maintain the protective safeguards listed in the Schedule, and over which you have control, in complete working order;
2. Actively engage and maintain in the "on" position at all times any automatic fire alarm or other automatic system listed in the Schedule; and
3. Notify us if you know of any suspension of or impairment in any protective safeguard listed in the Schedule.

However, if part of an Automatic Sprinkler System or Automatic Commercial Cooking Exhaust And Extinguishing System is shut off due to breakage, leakage, freezing conditions or opening of sprinkler heads, notification to us will not be necessary if you can restore full protection within 48 hours.

**B.** The following is added to the **Exclusions** section of:

- Causes Of Loss – Basic Form
- Causes Of Loss – Broad Form
- Causes Of Loss – Special Form
- Mortgageholders Errors And Omissions Coverage Form
- Standard Property Policy

We will not pay for loss or damage caused by or resulting from fire if, prior to the fire, you failed to comply with any condition set forth in Paragraph **A.**

**C.** The protective safeguards to which this endorsement applies are identified by the following symbols:

**"P-1" Automatic Sprinkler System**, including related supervisory services.

Automatic Sprinkler System means:

- a. Any automatic fire protective or extinguishing system, including connected:
  - (1) Sprinklers and discharge nozzles;
  - (2) Ducts, pipes, valves and fittings;
  - (3) Tanks, their component parts and supports; and
  - (4) Pumps and private fire protection mains.
- b. When supplied from an automatic fire protective system:
  - (1) Non-automatic fire protective systems; and
  - (2) Hydrants, standpipes and outlets.

**"P-2" Automatic Fire Alarm**, protecting the entire building, that is:

- a. Connected to a central station; or
- b. Reporting to a public or private fire alarm station.

**"P-3" Security Service**, with a recording system or watch clock, making hourly rounds covering the entire building, when the premises are not in actual operation.

**"P-4" Service Contract** with a privately owned fire department providing fire protection service to the described premises.

**"P-5" Automatic Commercial Cooking Exhaust And Extinguishing System** installed on cooking appliances and having the following components:

- a. Hood;
- b. Grease removal device;
- c. Duct system; and
- d. Wet chemical fire extinguishing equipment.

**"P-9"**, the protective system described in the Schedule.

## CAUSES OF LOSS – SPECIAL FORM

Words and phrases that appear in quotation marks have special meaning. Refer to Section **G**, Definitions.

### A. Covered Causes Of Loss

When Special is shown in the Declarations, Covered Causes of Loss means direct physical loss unless the loss is excluded or limited in this policy.

### B. Exclusions

1. We will not pay for loss or damage caused directly or indirectly by any of the following. Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss.

#### a. Ordinance Or Law

The enforcement of or compliance with any ordinance or law:

- (1) Regulating the construction, use or repair of any property; or
- (2) Requiring the tearing down of any property, including the cost of removing its debris.

This exclusion, Ordinance Or Law, applies whether the loss results from:

- (a) An ordinance or law that is enforced even if the property has not been damaged; or
- (b) The increased costs incurred to comply with an ordinance or law in the course of construction, repair, renovation, remodeling or demolition of property, or removal of its debris, following a physical loss to that property.

#### b. Earth Movement

- (1) Earthquake, including tremors and aftershocks and any earth sinking, rising or shifting related to such event;
- (2) Landslide, including any earth sinking, rising or shifting related to such event;
- (3) Mine subsidence, meaning subsidence of a man-made mine, whether or not mining activity has ceased;

- (4) Earth sinking (other than sinkhole collapse), rising or shifting including soil conditions which cause settling, cracking or other disarrangement of foundations or other parts of realty. Soil conditions include contraction, expansion, freezing, thawing, erosion, improperly compacted soil and the action of water under the ground surface.

But if Earth Movement, as described in **b.(1)** through **(4)** above, results in fire or explosion, we will pay for the loss or damage caused by that fire or explosion.

- (5) Volcanic eruption, explosion or effusion. But if volcanic eruption, explosion or effusion results in fire, building glass breakage or Volcanic Action, we will pay for the loss or damage caused by that fire, building glass breakage or Volcanic Action.

Volcanic Action means direct loss or damage resulting from the eruption of a volcano when the loss or damage is caused by:

- (a) Airborne volcanic blast or airborne shock waves;
- (b) Ash, dust or particulate matter; or
- (c) Lava flow.

With respect to coverage for Volcanic Action as set forth in **(5)(a)**, **(5)(b)** and **(5)(c)**, all volcanic eruptions that occur within any 168-hour period will constitute a single occurrence.

Volcanic Action does not include the cost to remove ash, dust or particulate matter that does not cause direct physical loss or damage to the described property.

This exclusion applies regardless of whether any of the above, in Paragraphs **(1)** through **(5)**, is caused by an act of nature or is otherwise caused.

**c. Governmental Action**

Seizure or destruction of property by order of governmental authority.

But we will pay for loss or damage caused by or resulting from acts of destruction ordered by governmental authority and taken at the time of a fire to prevent its spread, if the fire would be covered under this Coverage Part.

**d. Nuclear Hazard**

Nuclear reaction or radiation, or radioactive contamination, however caused.

But if nuclear reaction or radiation, or radioactive contamination, results in fire, we will pay for the loss or damage caused by that fire.

**e. Utility Services**

The failure of power, communication, water or other utility service supplied to the described premises, however caused, if the failure:

- (1) Originates away from the described premises; or
- (2) Originates at the described premises, but only if such failure involves equipment used to supply the utility service to the described premises from a source away from the described premises.

Failure of any utility service includes lack of sufficient capacity and reduction in supply.

Loss or damage caused by a surge of power is also excluded, if the surge would not have occurred but for an event causing a failure of power.

But if the failure or surge of power, or the failure of communication, water or other utility service, results in a Covered Cause of Loss, we will pay for the loss or damage caused by that Covered Cause of Loss.

Communication services include but are not limited to service relating to Internet access or access to any electronic, cellular or satellite network.

**f. War And Military Action**

- (1) War, including undeclared or civil war;

- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or

- (3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

**g. Water**

- (1) Flood, surface water, waves (including tidal wave and tsunami), tides, tidal water, overflow of any body of water, or spray from any of these, all whether or not driven by wind (including storm surge);

- (2) Mudslide or mudflow;

- (3) Water that backs up or overflows or is otherwise discharged from a sewer, drain, sump, sump pump or related equipment;

- (4) Water under the ground surface pressing on, or flowing or seeping through:

- (a) Foundations, walls, floors or paved surfaces;

- (b) Basements, whether paved or not; or

- (c) Doors, windows or other openings; or

- (5) Waterborne material carried or otherwise moved by any of the water referred to in Paragraph (1), (3) or (4), or material carried or otherwise moved by mudslide or mudflow.

This exclusion applies regardless of whether any of the above, in Paragraphs (1) through (5), is caused by an act of nature or is otherwise caused. An example of a situation to which this exclusion applies is the situation where a dam, levee, seawall or other boundary or containment system fails in whole or in part, for any reason, to contain the water.

But if any of the above, in Paragraphs (1) through (5), results in fire, explosion or sprinkler leakage, we will pay for the loss or damage caused by that fire, explosion or sprinkler leakage (if sprinkler leakage is a Covered Cause of Loss).

**h. "Fungus", Wet Rot, Dry Rot And Bacteria**

Presence, growth, proliferation, spread or any activity of "fungus", wet or dry rot or bacteria.

But if "fungus", wet or dry rot or bacteria result in a "specified cause of loss", we will pay for the loss or damage caused by that "specified cause of loss".

This exclusion does not apply:

- (1) When "fungus", wet or dry rot or bacteria result from fire or lightning; or
- (2) To the extent that coverage is provided in the Additional Coverage, Limited Coverage For "Fungus", Wet Rot, Dry Rot And Bacteria, with respect to loss or damage by a cause of loss other than fire or lightning.

Exclusions B.1.a. through B.1.h. apply whether or not the loss event results in widespread damage or affects a substantial area.

**2. We will not pay for loss or damage caused by or resulting from any of the following:**

**a. Artificially generated electrical, magnetic or electromagnetic energy that damages, disturbs, disrupts or otherwise interferes with any:**

- (1) Electrical or electronic wire, device, appliance, system or network; or
- (2) Device, appliance, system or network utilizing cellular or satellite technology.

For the purpose of this exclusion, electrical, magnetic or electromagnetic energy includes but is not limited to:

- (a) Electrical current, including arcing;
- (b) Electrical charge produced or conducted by a magnetic or electromagnetic field;
- (c) Pulse of electromagnetic energy; or
- (d) Electromagnetic waves or microwaves.

But if fire results, we will pay for the loss or damage caused by that fire.

**b. Delay, loss of use or loss of market.**

**c. Smoke, vapor or gas from agricultural smudging or industrial operations.**

**d.(1) Wear and tear;**

(2) Rust or other corrosion, decay, deterioration, hidden or latent defect or any quality in property that causes it to damage or destroy itself;

(3) Smog;

(4) Settling, cracking, shrinking or expansion;

(5) Nesting or infestation, or discharge or release of waste products or secretions, by insects, birds, rodents or other animals.

(6) Mechanical breakdown, including rupture or bursting caused by centrifugal force. But if mechanical breakdown results in elevator collision, we will pay for the loss or damage caused by that elevator collision.

(7) The following causes of loss to personal property:

(a) Dampness or dryness of atmosphere;

(b) Changes in or extremes of temperature; or

(c) Marring or scratching.

But if an excluded cause of loss that is listed in 2.d.(1) through (7) results in a "specified cause of loss" or building glass breakage, we will pay for the loss or damage caused by that "specified cause of loss" or building glass breakage.

**e. Explosion of steam boilers, steam pipes, steam engines or steam turbines owned or leased by you, or operated under your control. But if explosion of steam boilers, steam pipes, steam engines or steam turbines results in fire or combustion explosion, we will pay for the loss or damage caused by that fire or combustion explosion. We will also pay for loss or damage caused by or resulting from the explosion of gases or fuel within the furnace of any fired vessel or within the flues or passages through which the gases of combustion pass.**

**f. Continuous or repeated seepage or leakage of water, or the presence or condensation of humidity, moisture or vapor, that occurs over a period of 14 days or more.**

- g. Water, other liquids, powder or molten material that leaks or flows from plumbing, heating, air conditioning or other equipment (except fire protective systems) caused by or resulting from freezing, unless:
- (1) You do your best to maintain heat in the building or structure; or
  - (2) You drain the equipment and shut off the supply if the heat is not maintained.
- h. Dishonest or criminal act (including theft) by you, any of your partners, members, officers, managers, employees (including temporary employees and leased workers), directors, trustees or authorized representatives, whether acting alone or in collusion with each other or with any other party; or theft by any person to whom you entrust the property for any purpose, whether acting alone or in collusion with any other party.

This exclusion:

- (1) Applies whether or not an act occurs during your normal hours of operation;
  - (2) Does not apply to acts of destruction by your employees (including temporary employees and leased workers) or authorized representatives; but theft by your employees (including temporary employees and leased workers) or authorized representatives is not covered.
- i. Voluntary parting with any property by you or anyone else to whom you have entrusted the property if induced to do so by any fraudulent scheme, trick, device or false pretense.
- j. Rain, snow, ice or sleet to personal property in the open.
- k. Collapse, including any of the following conditions of property or any part of the property:
- (1) An abrupt falling down or caving in;
  - (2) Loss of structural integrity, including separation of parts of the property or property in danger of falling down or caving in; or
  - (3) Any cracking, bulging, sagging, bending, leaning, settling, shrinkage or expansion as such condition relates to (1) or (2) above.

But if collapse results in a Covered Cause of Loss at the described premises, we will pay for the loss or damage caused by that Covered Cause of Loss.

This exclusion, **k.**, does not apply:

- (a) To the extent that coverage is provided under the Additional Coverage, Collapse; or
  - (b) To collapse caused by one or more of the following:
    - (i) The "specified causes of loss";
    - (ii) Breakage of building glass;
    - (iii) Weight of rain that collects on a roof; or
    - (iv) Weight of people or personal property.
- i. Discharge, dispersal, seepage, migration, release or escape of "pollutants" unless the discharge, dispersal, seepage, migration, release or escape is itself caused by any of the "specified causes of loss". But if the discharge, dispersal, seepage, migration, release or escape of "pollutants" results in a "specified cause of loss", we will pay for the loss or damage caused by that "specified cause of loss".
- This exclusion, **i.**, does not apply to damage to glass caused by chemicals applied to the glass.
- m. Neglect of an insured to use all reasonable means to save and preserve property from further damage at and after the time of loss.
3. We will not pay for loss or damage caused by or resulting from any of the following, **3.a.** through **3.c.** But if an excluded cause of loss that is listed in **3.a.** through **3.c.** results in a Covered Cause of Loss, we will pay for the loss or damage caused by that Covered Cause of Loss.
- a. Weather conditions. But this exclusion only applies if weather conditions contribute in any way with a cause or event excluded in Paragraph **1.** above to produce the loss or damage.
  - b. Acts or decisions, including the failure to act or decide, of any person, group, organization or governmental body.
  - c. Faulty, inadequate or defective:
    - (1) Planning, zoning, development, surveying, siting;
    - (2) Design, specifications, workmanship, repair, construction, renovation, remodeling, grading, compaction;
    - (3) Materials used in repair, construction, renovation or remodeling; or
    - (4) Maintenance;

of part or all of any property on or off the described premises.

#### 4. Special Exclusions

The following provisions apply only to the specified Coverage Forms:

##### a. Business Income (And Extra Expense) Coverage Form, Business Income (Without Extra Expense) Coverage Form, Or Extra Expense Coverage Form

We will not pay for:

- (1) Any loss caused by or resulting from:
  - (a) Damage or destruction of "finished stock"; or
  - (b) The time required to reproduce "finished stock".

This exclusion does not apply to Extra Expense.
- (2) Any loss caused by or resulting from direct physical loss or damage to radio or television antennas (including satellite dishes) and their lead-in wiring, masts or towers.
- (3) Any increase of loss caused by or resulting from:
  - (a) Delay in rebuilding, repairing or replacing the property or resuming "operations", due to interference at the location of the rebuilding, repair or replacement by strikers or other persons; or
  - (b) Suspension, lapse or cancellation of any license, lease or contract. But if the suspension, lapse or cancellation is directly caused by the "suspension" of "operations", we will cover such loss that affects your Business Income during the "period of restoration" and any extension of the "period of restoration" in accordance with the terms of the Extended Business Income Additional Coverage and the Extended Period Of Indemnity Optional Coverage or any variation of these.
- (4) Any Extra Expense caused by or resulting from suspension, lapse or cancellation of any license, lease or contract beyond the "period of restoration".
- (5) Any other consequential loss.

##### b. Leasehold Interest Coverage Form

- (1) Paragraph **B.1.a.**, Ordinance Or Law, does not apply to insurance under this Coverage Form.
- (2) We will not pay for any loss caused by:
  - (a) Your cancelling the lease;
  - (b) The suspension, lapse or cancellation of any license; or
  - (c) Any other consequential loss.

##### c. Legal Liability Coverage Form

- (1) The following exclusions do not apply to insurance under this Coverage Form:
  - (a) Paragraph **B.1.a.** Ordinance Or Law;
  - (b) Paragraph **B.1.c.** Governmental Action;
  - (c) Paragraph **B.1.d.** Nuclear Hazard;
  - (d) Paragraph **B.1.e.** Utility Services; and
  - (e) Paragraph **B.1.f.** War And Military Action.
- (2) The following additional exclusions apply to insurance under this Coverage Form:

##### (a) Contractual Liability

We will not defend any claim or "suit", or pay damages that you are legally liable to pay, solely by reason of your assumption of liability in a contract or agreement. But this exclusion does not apply to a written lease agreement in which you have assumed liability for building damage resulting from an actual or attempted burglary or robbery, provided that:

- (i) Your assumption of liability was executed prior to the accident; and
- (ii) The building is Covered Property under this Coverage Form.

##### (b) Nuclear Hazard

We will not defend any claim or "suit", or pay any damages, loss, expense or obligation, resulting from nuclear reaction or radiation, or radioactive contamination, however caused.

## 5. Additional Exclusion

The following provisions apply only to the specified property:

### Loss Or Damage To Products

We will not pay for loss or damage to any merchandise, goods or other product caused by or resulting from error or omission by any person or entity (including those having possession under an arrangement where work or a portion of the work is outsourced) in any stage of the development, production or use of the product, including planning, testing, processing, packaging, installation, maintenance or repair. This exclusion applies to any effect that compromises the form, substance or quality of the product. But if such error or omission results in a Covered Cause of Loss, we will pay for the loss or damage caused by that Covered Cause of Loss.

## C. Limitations

The following limitations apply to all policy forms and endorsements, unless otherwise stated:

1. We will not pay for loss of or damage to property, as described and limited in this section. In addition, we will not pay for any loss that is a consequence of loss or damage as described and limited in this section.
  - a. Steam boilers, steam pipes, steam engines or steam turbines caused by or resulting from any condition or event inside such equipment. But we will pay for loss of or damage to such equipment caused by or resulting from an explosion of gases or fuel within the furnace of any fired vessel or within the flues or passages through which the gases of combustion pass.
  - b. Hot water boilers or other water heating equipment caused by or resulting from any condition or event inside such boilers or equipment, other than an explosion.
  - c. The interior of any building or structure, or to personal property in the building or structure, caused by or resulting from rain, snow, sleet, ice, sand or dust, whether driven by wind or not, unless:
    - (1) The building or structure first sustains damage by a Covered Cause of Loss to its roof or walls through which the rain, snow, sleet, ice, sand or dust enters; or
    - (2) The loss or damage is caused by or results from thawing of snow, sleet or ice on the building or structure.
2. We will not pay for loss of or damage to the following types of property unless caused by the "specified causes of loss" or building glass breakage:
  - a. Animals, and then only if they are killed or their destruction is made necessary.
  - b. Fragile articles such as statuary, marbles, chinaware and porcelains, if broken. This restriction does not apply to:
    - (1) Glass; or
    - (2) Containers of property held for sale.
  - c. Builders' machinery, tools and equipment owned by you or entrusted to you, provided such property is Covered Property.
 

However, this limitation does not apply:

    - (1) If the property is located on or within 100 feet of the described premises, unless the premises is insured under the Builders Risk Coverage Form; or
- d. Building materials and supplies not attached as part of the building or structure, caused by or resulting from theft.
 

However, this limitation does not apply to:

  - (1) Building materials and supplies held for sale by you, unless they are insured under the Builders Risk Coverage Form; or
  - (2) Business Income Coverage or Extra Expense Coverage.
- e. Property that is missing, where the only evidence of the loss or damage is a shortage disclosed on taking inventory, or other instances where there is no physical evidence to show what happened to the property.
- f. Property that has been transferred to a person or to a place outside the described premises on the basis of unauthorized instructions.
- g. Lawns, trees, shrubs or plants which are part of a vegetated roof, caused by or resulting from:
  - (1) Dampness or dryness of atmosphere or of soil supporting the vegetation;
  - (2) Changes in or extremes of temperature;
  - (3) Disease;
  - (4) Frost or hail; or
  - (5) Rain, snow, ice or sleet.

(2) To Business Income Coverage or to Extra Expense Coverage.

3. The special limit shown for each category, a. through d., is the total limit for loss of or damage to all property in that category. The special limit applies to any one occurrence of theft, regardless of the types or number of articles that are lost or damaged in that occurrence. The special limits are (unless a higher limit is shown in the Declarations):
- a. \$2,500 for furs, fur garments and garments trimmed with fur.
  - b. \$2,500 for jewelry, watches, watch movements, jewels, pearls, precious and semiprecious stones, bullion, gold, silver, platinum and other precious alloys or metals. This limit does not apply to jewelry and watches worth \$100 or less per item.
  - c. \$2,500 for patterns, dies, molds and forms.
  - d. \$250 for stamps, tickets, including lottery tickets held for sale, and letters of credit.

These special limits are part of, not in addition to, the Limit of Insurance applicable to the Covered Property.

This limitation, C.3., does not apply to Business Income Coverage or to Extra Expense Coverage.

4. We will not pay the cost to repair any defect to a system or appliance from which water, other liquid, powder or molten material escapes. But we will pay the cost to repair or replace damaged parts of fire-extinguishing equipment if the damage:
- a. Results in discharge of any substance from an automatic fire protection system; or
  - b. Is directly caused by freezing.

However, this limitation does not apply to Business Income Coverage or to Extra Expense Coverage.

#### D. Additional Coverage – Collapse

The coverage provided under this Additional Coverage, Collapse, applies only to an abrupt collapse as described and limited in D.1. through D.7.

1. For the purpose of this Additional Coverage, Collapse, abrupt collapse means an abrupt falling down or caving in of a building or any part of a building with the result that the building or part of the building cannot be occupied for its intended purpose.

2. We will pay for direct physical loss or damage to Covered Property, caused by abrupt collapse of a building or any part of a building that is insured under this Coverage Form or that contains Covered Property insured under this Coverage Form, if such collapse is caused by one or more of the following:

- a. Building decay that is hidden from view, unless the presence of such decay is known to an insured prior to collapse;
- b. Insect or vermin damage that is hidden from view, unless the presence of such damage is known to an insured prior to collapse;
- c. Use of defective material or methods in construction, remodeling or renovation if the abrupt collapse occurs during the course of the construction, remodeling or renovation.
- d. Use of defective material or methods in construction, remodeling or renovation if the abrupt collapse occurs after the construction, remodeling or renovation is complete, but only if the collapse is caused in part by:

- (1) A cause of loss listed in 2.a. or 2.b.;
- (2) One or more of the "specified causes of loss";
- (3) Breakage of building glass;
- (4) Weight of people or personal property; or
- (5) Weight of rain that collects on a roof.

3. This **Additional Coverage – Collapse** does not apply to:

- a. A building or any part of a building that is in danger of falling down or caving in;
- b. A part of a building that is standing, even if it has separated from another part of the building; or
- c. A building that is standing or any part of a building that is standing, even if it shows evidence of cracking, bulging, sagging, bending, leaning, settling, shrinkage or expansion.

4. With respect to the following property:

- a. Outdoor radio or television antennas (including satellite dishes) and their lead-in wiring, masts or towers;

- b. Awnings, gutters and downspouts;
  - c. Yard fixtures;
  - d. Outdoor swimming pools;
  - e. Fences;
  - f. Piers, wharves and docks;
  - g. Beach or diving platforms or appurtenances;
  - h. Retaining walls; and
  - i. Walks, roadways and other paved surfaces;
- if an abrupt collapse is caused by a cause of loss listed in 2.a. through 2.d., we will pay for loss or damage to that property only if:

- (1) Such loss or damage is a direct result of the abrupt collapse of a building insured under this Coverage Form; and
- (2) The property is Covered Property under this Coverage Form.

5. If personal property abruptly falls down or caves in and such collapse is **not** the result of abrupt collapse of a building, we will pay for loss or damage to Covered Property caused by such collapse of personal property only if:
- a. The collapse of personal property was caused by a cause of loss listed in 2.a. through 2.d.;
  - b. The personal property which collapses is inside a building; and
  - c. The property which collapses is not of a kind listed in 4., regardless of whether that kind of property is considered to be personal property or real property.

The coverage stated in this Paragraph 5. does not apply to personal property if marring and/or scratching is the only damage to that personal property caused by the collapse.

- 6. This Additional Coverage, Collapse, does not apply to personal property that has not abruptly fallen down or caved in, even if the personal property shows evidence of cracking, bulging, sagging, bending, leaning, settling, shrinkage or expansion.
- 7. This Additional Coverage, Collapse, will not increase the Limits of Insurance provided in this Coverage Part.
- 8. The term Covered Cause of Loss includes the Additional Coverage, Collapse, as described and limited in D.1. through D.7.

#### E. Additional Coverage – Limited Coverage For "Fungus", Wet Rot, Dry Rot And Bacteria

- 1. The coverage described in E.2. and E.6. only applies when the "fungus", wet or dry rot or bacteria are the result of one or more of the following causes that occur during the policy period and only if all reasonable means were used to save and preserve the property from further damage at the time of and after that occurrence:
  - a. A "specified cause of loss" other than fire or lightning; or
  - b. Flood, if the Flood Coverage Endorsement applies to the affected premises.

This Additional Coverage does not apply to lawns, trees, shrubs or plants which are part of a vegetated roof.

- 2. We will pay for loss or damage by "fungus", wet or dry rot or bacteria. As used in this Limited Coverage, the term loss or damage means:
  - a. Direct physical loss or damage to Covered Property caused by "fungus", wet or dry rot or bacteria, including the cost of removal of the "fungus", wet or dry rot or bacteria;
  - b. The cost to tear out and replace any part of the building or other property as needed to gain access to the "fungus", wet or dry rot or bacteria; and
  - c. 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 "fungus", wet or dry rot or bacteria are present.
- 3. The coverage described under E.2. of this Limited Coverage is limited to \$15,000. Regardless of the number of claims, this limit is the most we will pay for the total of all loss or damage arising out of all occurrences of "specified causes of loss" (other than fire or lightning) and Flood which take place in a 12-month period (starting with the beginning of the present annual policy period). With respect to a particular occurrence of loss which results in "fungus", wet or dry rot or bacteria, we will not pay more than a total of \$15,000 even if the "fungus", wet or dry rot or bacteria continue to be present or active, or recur, in a later policy period.

4. The coverage provided under this Limited Coverage does not increase the applicable Limit of Insurance on any Covered Property. If a particular occurrence results in loss or damage by "fungus", wet or dry rot or bacteria, and other loss or damage, we will not pay more, for the total of all loss or damage, than the applicable Limit of Insurance on the affected Covered Property.

If there is covered loss or damage to Covered Property, not caused by "fungus", wet or dry rot or bacteria, loss payment will not be limited by the terms of this Limited Coverage, except to the extent that "fungus", wet or dry rot or bacteria cause an increase in the loss. Any such increase in the loss will be subject to the terms of this Limited Coverage.

5. The terms of this Limited Coverage do not increase or reduce the coverage provided under Paragraph F.2. (Water Damage, Other Liquids, Powder Or Molten Material Damage) of this Causes Of Loss form or under the Additional Coverage, Collapse.
6. The following, 6.a. or 6.b., applies only if Business Income and/or Extra Expense Coverage applies to the described premises and only if the "suspension" of "operations" satisfies all terms and conditions of the applicable Business Income and/or Extra Expense Coverage Form:
- a. If the loss which resulted in "fungus", wet or dry rot or bacteria does not in itself necessitate a "suspension" of "operations", but such "suspension" is necessary due to loss or damage to property caused by "fungus", wet or dry rot or bacteria, then our payment under Business Income and/or Extra Expense is limited to the amount of loss and/or expense sustained in a period of not more than 30 days. The days need not be consecutive.
  - b. If a covered "suspension" of "operations" was caused by loss or damage other than "fungus", wet or dry rot or bacteria but remediation of "fungus", wet or dry rot or bacteria prolongs the "period of restoration", we will pay for loss and/or expense sustained during the delay (regardless of when such a delay occurs during the "period of restoration"), but such coverage is limited to 30 days. The days need not be consecutive.

## F. Additional Coverage Extensions

### 1. Property In Transit

This Extension applies only to your personal property to which this form applies.

- a. You may extend the insurance provided by this Coverage Part to apply to your personal property (other than property in the care, custody or control of your salespersons) in transit more than 100 feet from the described premises. Property must be in or on a motor vehicle you own, lease or operate while between points in the coverage territory.
- b. Loss or damage must be caused by or result from one of the following causes of loss:
  - (1) Fire, lightning, explosion, windstorm or hail, riot or civil commotion, or vandalism.
  - (2) Vehicle collision, upset or overturn. Collision means accidental contact of your vehicle with another vehicle or object. It does not mean your vehicle's contact with the roadbed.
  - (3) Theft of an entire bale, case or package by forced entry into a securely locked body or compartment of the vehicle. There must be visible marks of the forced entry.
- c. The most we will pay for loss or damage under this Extension is \$5,000.

This Coverage Extension is additional insurance. The Additional Condition, Coinsurance, does not apply to this Extension.

### 2. Water Damage, Other Liquids, Powder Or Molten Material Damage

If loss or damage caused by or resulting from covered water or other liquid, powder or molten material damage loss occurs, we will also pay the cost to tear out and replace any part of the building or structure to repair damage to the system or appliance from which the water or other substance escapes. This Coverage Extension does not increase the Limit of Insurance.

**3. Glass**

- a. We will pay for expenses incurred to put up temporary plates or board up openings if repair or replacement of damaged glass is delayed.
- b. We will pay for expenses incurred to remove or replace obstructions when repairing or replacing glass that is part of a building. This does not include removing or replacing window displays.

This Coverage Extension **F.3.** does not increase the Limit of Insurance.

**G. Definitions**

1. "Fungus" means any type or form of fungus, including mold or mildew, and any mycotoxins, spores, scents or by-products produced or released by fungi.
2. "Specified causes of loss" means the following: fire; lightning; explosion; windstorm or hail; smoke; aircraft or vehicles; riot or civil commotion; vandalism; leakage from fire-extinguishing equipment; sinkhole collapse; volcanic action; falling objects; weight of snow, ice or sleet; water damage.
  - a. Sinkhole collapse means the sudden sinking or collapse of land into underground empty spaces created by the action of water on limestone or dolomite. This cause of loss does not include:
    - (1) The cost of filling sinkholes; or
    - (2) Sinking or collapse of land into man-made underground cavities.
  - b. Falling objects does not include loss or damage to:
    - (1) Personal property in the open; or
    - (2) The interior of a building or structure, or property inside a building or structure, unless the roof or an outside wall of the building or structure is first damaged by a falling object.
  - c. Water damage means:
    - (1) Accidental discharge or leakage of water or steam as the direct result of the breaking apart or cracking of a plumbing, heating, air conditioning or other system or appliance (other than a sump system including its related equipment and parts), that is located on the described premises and contains water or steam; and

- (2) Accidental discharge or leakage of water or waterborne material as the direct result of the breaking apart or cracking of a water or sewer pipe caused by wear and tear, when the pipe is located off the described premises and is connected to or is part of a potable water supply system or sanitary sewer system operated by a public or private utility service provider pursuant to authority granted by the state or governmental subdivision where the described premises are located.

But water damage does not include loss or damage otherwise excluded under the terms of the Water Exclusion. Therefore, for example, there is no coverage under this policy in the situation in which discharge or leakage of water results from the breaking apart or cracking of a pipe which was caused by or related to weather-induced flooding, even if wear and tear contributed to the breakage or cracking. As another example, and also in accordance with the terms of the Water Exclusion, there is no coverage for loss or damage caused by or related to weather-induced flooding which follows or is exacerbated by pipe breakage or cracking attributable to wear and tear.

To the extent that accidental discharge or leakage of water falls within the criteria set forth in **c.(1)** or **c.(2)** of this definition of "specified causes of loss," such water is not subject to the provisions of the Water Exclusion which preclude coverage for surface water or water under the surface of the ground.

# EXHIBIT “D”



April 15, 2020

VIA EMAIL, FIRST CLASS & CERTIFIED MAIL – RETURN RECEIPT REQUESTED  
Receipt No. 9207 1901 5421 8700 6872 50

Matthew A. Scarfo  
Superior Athletics Performance Systems, LLC  
Dba: Full-Time Fitness  
17 Bank Street  
Morristown, NJ 07960

Email: [mattscarfo@fulltimefit.com](mailto:mattscarfo@fulltimefit.com)

**COVERAGE DISCLAIMER**

RE:	Insured:	Superior Athletics Performance Systems, LLC
	Issuing Company:	Markel Insurance Company
	Claim Number:	CHCP20021U8726
	Policy Number:	HCP20021134-06
	Policy Period:	December 03, 2019 to December 03, 2020
	Date of Loss:	March 17, 2020
	Location of Loss:	17 Bank Street Morristown, NJ 07960

Dear Mr. Scarfo:

Markel Service, Incorporated, as the claim service manager for Markel Insurance Company (MIC) acknowledges receipt of the above-captioned claim relating to an order issued by the State of New Jersey to close businesses in order to mitigate the spread of the COVID-19 virus. The order was issued March 16, 2020 effective March 17, 2020. The spread of the COVID-19 had already caused a reduction in business beginning about four weeks prior to the order. More specifically, you have filed a claim for loss of business income, including loss of net income caused by action of Civil Authority that prohibits access to your described premises. Notice was reported to MIC on or about March 17, 2020.

For the reasons stated below, MIC disclaims coverage for this loss at this time. The above-referenced policy contains the following pertinent language:

CP 00 10 10 12, Building and Personal Property Coverage Form, states in relevant part:

**A. Coverage**

*We will pay for direct physical loss of or damage to Covered Property at the premises described in the Declarations caused by or resulting from any Covered Cause of Loss.*

**3. Covered Causes Of Loss**

*See applicable Causes Of Loss form as shown in the Declarations.*

**Markel - Claims**

Arizona · California · Illinois · Nebraska · New Jersey · New York · Virginia · Wisconsin  
P.O. Box 2009, Glen Allen, VA 23058-2009 (800) 362-7535 Fax (855) 662-7535 [markelclaims@markelcorp.com](mailto:markelclaims@markelcorp.com)  
California License: Markel West Insurance Services #OD95581  
[www.markelcorp.com](http://www.markelcorp.com)

**B. Exclusions And Limitations**

*See applicable Causes Of Loss form as shown in the Declarations.*

MCP 1216 04 13, Health Clubs Commercial Property Champion Enhancement endorsement, states in relevant part:

**F. The following Additional Coverages are added:****Business Income And Extra Expense****(1) Coverage**

*We will pay for the actual loss of Business Income you sustain due to the necessary "suspension" of your "operations" during the "period of restoration". The "suspension" must be caused by direct physical loss of or damage to property at premises that are described in the Declarations of the policy to which this endorsement is attached. The loss or damage must be caused by or result from a Covered Cause of Loss. With respect to loss of or damage to personal property in the open or personal property in a vehicle, the described premises include the area within 100 feet of such premises.*

**(3) Extra Expense**

*Extra Expense means the necessary expenses you incur during the "period of restoration" that you would not have incurred if there had been no direct physical loss or damage to property caused by or resulting from a Covered Cause of Loss.*

*We will pay Extra Expense (other than the expense to repair or replace property) to:*

- (a) Avoid or minimize the "suspension" of business and to continue "operations" at the described premises or at replacement premises or temporary locations, including relocation expenses and costs to equip and operate the replacement location or temporary location.*
- (b) Minimize the "suspension" of business if you cannot continue "operations".*

*We will also pay Extra Expense to repair or replace property, but only to the extent it reduces the amount of loss that otherwise would have been payable under this Coverage Form.*

**(4) Covered Causes Of Loss**

*See applicable Causes of Loss form as shown in the Declarations.*

**(6) Additional Coverages****(a) Civil Authority**

*In this Additional Coverage, Civil Authority, the described premises are premises to which this endorsement applies.*

*When a Covered Cause of Loss causes damage to property other than property at the described premises, we will pay for actual loss of Business Income you sustain and necessary Extra Expense you incur caused by action of civil authority that prohibits access to the described premises, provided that both of the following apply:*

- (i) Access to the area immediately surrounding the damaged property is prohibited by civil authority as a result of the damage, and the described premises are within that area but are not more than one mile from the damaged property; and*
- (ii) The action of civil authority is taken in response to dangerous physical conditions resulting from the damage or continuation of the Covered Cause of Loss that caused the damage, or action is taken to enable civil authority to have unimpeded access to the damaged property.*

CP 10 30 09 17, Causes of Loss – Special Form, states in relevant part:

**A. Covered Causes Of Loss**

*When Special is shown in the Declarations, Covered Causes of Loss means direct physical loss unless the loss is excluded or limited in this policy.*

CP 01 40 07 06, Exclusion of Loss Due to Virus or Bacteria, states in relevant part:

*This endorsement modifies insurance provided under the following:*

**COMMERCIAL PROPERTY COVERAGE PART  
STANDARD PROPERTY POLICY**

- A.** *The exclusion set forth in Paragraph B. applies to all coverage under all forms and endorsements that comprise this Coverage Part or Policy, including but not limited to forms or endorsements that cover property damage to buildings or personal property and forms or endorsements that cover business income, extra expense or action of civil authority.*
- B.** *We will not pay for loss or damage caused by or resulting from any virus, bacterium or other microorganism that induces or is capable of inducing physical distress, illness or disease.*

*However, this exclusion does not apply to loss or damage caused by or resulting from "fungus", wet rot or dry rot. Such loss or damage is addressed in a separate exclusion in this Coverage Part or Policy.*

**CONCLUSION**

Based on the information provided and a review of the policy language, there is no coverage available to you for this loss. There is no direct physical loss of or damage to covered property at the premises described in the Declarations. The Civil Authority order was not the result of damage to property other than property at the described premises.

In addition, a Covered Cause of Loss did not cause or result in any direct physical loss of or damage to Covered Property. COVID-19 is not a Covered Cause of Loss. COVID-19 is a virus, and the virus exclusion in the Exclusion for Loss Due to Virus or Bacteria (CP 01 40 07 06) excludes "loss or damage caused by or resulting from any virus ... that induces or is capable of inducing physical distress, illness or disease." As a result, your claim is excluded.

Moreover, the Additional Coverage - Civil Authority does not apply because the information provided does not establish any damage to property other than property at the described premises caused by a Covered Cause of Loss. As noted, COVID-19 is a virus, which is specifically excluded as a Covered Cause of Loss. In addition, the information provided does not establish that, as a result of damage caused by a Covered Cause of Loss to property other than property at the described premises, an action of civil authority prohibited access to the described premises. Rather, the civil authority order in your area was a proactive measure to mitigate the spread of COVID-19. As a result, there is no Civil Authority coverage and no payment can be made for any claimed loss of Business Income that you sustain as a result of the action of civil authority.

We reserve our right to assert other and different grounds for disclaiming coverage and expressly do not waive any ground not set forth herein should facts develop which indicate additional grounds for disclaiming.

This letter quotes the policy in part. However, please refer to the policy for the complete language of the policy. The language cited herein is not meant to change, supplement, add or subtract from the policy terms. The language in the policy itself is controlling.

If for any reason you believe that the factual information relied upon by MIC in this letter is incorrect, or if you possess any additional information which you believe impacts the coverage position taken herein, please immediately contact the undersigned at 804-965-1704 or [Paul.Hudgins@Markel.com](mailto:Paul.Hudgins@Markel.com). Should you have any questions regarding our position, I would be happy to discuss them with you at your convenience.

Pursuant to N.J.S.A. 17:29E-9, we have established an Internal Appeals process which gives you the opportunity to have this coverage decision reviewed by a panel of insurance professionals. The panel will review your objections to this coverage decision within 10 working days.

Should you wish to appeal this coverage decision, the enclosed Internal Appeal Request Form must be completed and returned to begin the appeal process. Please respond within 20 days of the date of this letter. We must point out that your request for appeal does not waive any of the terms, provisions or conditions under the policy including, but not limited to, the time limit for filing suit in this matter. Should you have any questions regarding the appeal process, please feel free to contact the Internal Appeals Administrator at (800) 362-7535.

Please reference MIC Claim Number CHCP20021U8726 on all future correspondence.

Very truly yours,

MARKEL SERVICE, INCORPORATED

Paul J Hudgins

Executive Claims Examiner

**NEW JERSEY INTERNAL APPEAL REQUEST FORM**

1. File Number: \_\_\_\_\_

2. Policy Number: \_\_\_\_\_

3. Name: \_\_\_\_\_

4. Address: \_\_\_\_\_

5. Loss Location: \_\_\_\_\_

6. Date of Loss: \_\_\_\_\_

7. Description of Loss: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

8. State the basis of your dispute with the coverage position taken. Include policy and/or endorsement language, where applicable, that supports your position.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*Fraud Prevention – New Jersey Warning*  
*Any person who knowingly files a statement of claim containing false or misleading information is subject to criminal and civil penalties.*

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Date: \_\_\_\_\_

Should you have any questions regarding the appeal process, please feel free to contact the Internal Appeals Administrator, Steve Boesen at 800-362-7535.

