

F. Franklin Amanat, Esq.
NJ Attorney ID No. 906122012
DiCELLO LEVITT GUTZLER LLC
444 Madison Avenue, Fourth Floor
New York, New York 10022
Telephone: 646-933-1000, Ext. 502
famanat@dicellolevitt.com

Mark A. DiCello, Esq.
NJ Attorney ID No. 306102019
DICELLO LEVITT GUTZLER LLC
7556 Mentor Avenue
Mentor, Ohio 44060
Telephone: 440-953-8888
madicello@dicellolevitt.com

ATLANTIC CITY PALM, LLC, a New Jersey
limited liability company, 2801 Pacific Avenue,
Suite #102, Atlantic City, New Jersey 08401;

ATLANTA PALM FOOD CORPORATION, a
Georgia Corporation, 3391 Peachtree Road, NE,
Atlanta, Georgia 30326;

BOSTON PALM CORPORATION,
a Massachusetts corporation, 200 Dartmouth
Street, Boston, Massachusetts 02116;

)
) **SUPERIOR COURT OF NEW JERSEY**
) **LAW DIVISION – CIVIL PART**
) **ATLANTIC COUNTY VICINAGE**
)
) **CIVIL ACTION**
)
) **DOCKET NO. ATL-L-_____**
)
) **COMPLAINT AND JURY DEMAND**
)
)
)
)

CHARLOTTE PALM CORPORATION, a)
North Carolina corporation, 6705-B Phillips)
Place Court, Charlotte, North Carolina 28210;)
)
CHICAGO PALM, INC., an Illinois)
corporation, 323 East Wacker Drive, Chicago,)
Illinois 60601;)
)
PALM RESTAURANT OF HOUSTON, INC., a)
Texas corporation, 6100 Westheimer, Houston,)
Texas 77057;)
)
PALM MANAGEMENT CORPORATION)
d/b/a HUNTTING INN – PALM)
RESTAURANT, a New York corporation, 94)
Main Street, East Hampton, New York 11937;)
)
PALM RESTAURANT OF LAS VEGAS, INC.,)
a Nevada corporation, 3500 Las Vegas)
Boulevard South, Suite A7, Las Vegas, Nevada)
89109;)
)
L.A. DOWNTOWN PALM, LLC, a California)
limited liability company, 1100 South Flower)
Street, Los Angeles, California 90015;)
)
MIAMI PALM RESTAURANT, INC., a Florida)
corporation, 9650 East Bay Harbor Drive, Bay)
Harbor Islands, Florida 33154;)
)
NASHVILLE PALM RESTAURANT, LLC, a)
Tennessee limited liability company, 140 5th)
Avenue South, Nashville, Tennessee 37201;)
)
PALM WEST CORPORATION, a New York)
corporation, 250 West 50th Street, New York,)
New York 10119;)
)
PALM ORLANDO CORPORATION, a Florida)
corporation, 5800 Universal Boulevard,)
Orlando, Florida 32819;)
)
PALM NEW YORK DOWNTOWN, LLC, a)
New York limited liability company, 206 West)
Street, New York, New York 10013;)
)
)
)

_____)
PALM MANAGEMENT CORPORATION, a)
New York corporation, 7380 West Sand Lake)
Road, Suite 450, Orlando, Florida 32819;)
)
SAN ANTONIO PALM RESTAURANT, INC.,)
a Texas corporation, 233 East Houston Street,)
San Antonio, Texas 78205;)
)
PALM TYSONS TOO, INC., a Virginia)
corporation, 1750 Tyson’s Boulevard, McLean,)
Virginia 22102; and)
)
THE WASHINGTON PALM, INC., a District)
of Columbia corporation, 1225 19th Street NW,)
Washington, D.C. 20036)
)
<i>Plaintiffs,</i>)
)
v.)
)
EVEREST INDEMNITY INSURANCE)
COMPANY, a Delaware Corporation,)
)
<i>Defendant.</i>)
_____)

Plaintiffs, Atlantic City Palm, LLC, Atlanta Palm Food Corporation, Boston Palm Corporation, Charlotte Palm Corporation, Chicago Palm, Inc., Palm Restaurant of Houston, Inc., Palm Management Corporation dba Hunting Inn – Palm Restaurant, Palm Restaurant of Las Vegas, Inc., L.A. Downtown Palm, LLC, Miami Palm Restaurant, Inc., Nashville Palm Restaurant, LLC, Palm West Corporation, Palm Orlando Corporation, Palm New York Downtown, LLC, Palm Management Corporation, San Antonio Palm Restaurant, Inc., Palm Tysons Too, Inc., and The Washington Palm, Inc. (collectively, the “Plaintiffs”), by and through their attorneys, file this Complaint against the above-named defendant, Everest Indemnity Insurance Company (the “Defendant” or “Everest”), and allege and state as follows:

I. INTRODUCTION

1. This action for breach of contract, declaratory judgment, and bad faith arises out of Plaintiffs' claim for insurance coverage under an "all-risk" property insurance policy ("Policy")¹ issued and sold to them by the Defendant insurer.

2. Despite agreeing to cover Plaintiffs' property against all risks of direct physical loss, damage or destruction (except as specifically excluded in the Policy), and Plaintiffs' resulting property damage and business interruption loss, Defendant insurers wrongfully denied coverage.

II. THE PARTIES

3. Plaintiff Atlantic City Palm, LLC ("Palm – Atlantic City") is a New Jersey limited liability company with its principal place of business in Atlantic City, New Jersey.

4. Plaintiff Atlanta Palm Food Corporation ("Palm – Atlanta") is a Georgia corporation with its principal place of business in Atlanta, Georgia.

5. Plaintiff Boston Palm Corporation ("Palm – Boston") is a Massachusetts corporation with its principal place of business in Boston, Massachusetts.

6. Plaintiff Charlotte Palm Corporation ("Palm – Charlotte") is a North Carolina corporation with its principal place of business in Charlotte, North Carolina.

7. Plaintiff Chicago Palm, Inc. ("Palm – Chicago") is an Illinois corporation with its principal place of business in Chicago, Illinois.

8. Plaintiff Palm Restaurant of Houston, Inc. ("Palm – Houston") is a Texas corporation with its principal place of business in Houston, Texas.

¹ See Policy attached as Exhibit A.

9. Plaintiff Palm Management Corporation dba Hunting Inn – Palm Restaurant (“Palm – East Hampton”) is a New York corporation with its principal place of business in East Hampton, New York.

10. Plaintiff Palm Restaurant of Las Vegas, Inc. (“Palm – Las Vegas”) is a Nevada corporation with its principal place of business in Las Vegas, Nevada.

11. Plaintiff L.A. Downtown Palm, LLC (“Palm – Los Angeles”) is a California limited liability company with its principal place of business in Los Angeles, California.

12. Plaintiff Miami Palm Restaurant, Inc. (“Palm – Bay Harbor Islands”) is a Florida corporation with its principal place of business in Bay Harbor Islands, Florida.

13. Plaintiff Nashville Palm Restaurant, LLC (“Palm – Nashville”) is a Tennessee limited liability company with its principal place of business in Nashville, Tennessee.

14. Plaintiff Palm West Corporation (“Palm – New York (West 50th)”) is a New York corporation with its principal place of business in New York, New York.

15. Plaintiff Palm Orlando Corporation (“Palm – Orlando”) is a Florida corporation with its principal place of business in Orlando, Florida.

16. Plaintiff Palm New York Downtown, LLC (“Palm – New York (West St.)”) is a New York limited liability company with its principal place of business in New York, New York.

17. Plaintiff Palm Management Corporation (“Palm Management Corp.”) is a New York corporation with its principal place of business in Orlando, Florida.

18. Plaintiff San Antonio Palm Restaurant, Inc. (“Palm – San Antonio”) is a Texas corporation with its principal place of business in San Antonio, Texas.

19. Plaintiff Palm Tysons Too, Inc. (“Palm – McLean (VA)”) is a Virginia corporation with its principal place of business in McLean, Virginia.

20. Plaintiff The Washington Palm, Inc. (“Palm – Washington, D.C.”) is a District of Columbia corporation with its principal place of business in Washington, D.C.

21. Defendant Everest Indemnity Insurance Company is a Delaware corporation with its principal place of business in Liberty Corner, New Jersey. Everest provides insurance products and services throughout the United States, including in Georgia, New Jersey, Massachusetts, North Carolina, Illinois, Texas, New York, Nevada, Florida, Tennessee, Virginia, and Washington, D.C.

III. JURISDICTION AND VENUE

22. This Court has jurisdiction over this action pursuant to N.J. Const. Art. VI, §3, ¶2 and N.J. R. 4:3-1(a)(5); 6:1-2 because the Superior Court has original general jurisdiction in all causes throughout the State of New Jersey and the amount in controversy exceeds \$15,000.

23. Venue in this Court is proper pursuant to N.J. R. 4:3-2(a); (b) because a party, Palm – Atlantic City, is actually doing business in Atlantic County.

IV. FACTUAL ALLEGATIONS

24. Plaintiffs operate seventeen different restaurants across the United States from Boston, Massachusetts to Los Angeles, California.

25. Plaintiffs’ operate all their restaurants with one simple philosophy: treat guests like family, serve great food and always exceed expectations.

26. To protect Plaintiffs’ businesses in the event that Plaintiffs suddenly had to suspend operations for reasons outside of Plaintiffs’ control, or in order to protect Plaintiffs from

property loss or damage or to prevent imminent property loss or damage, Plaintiffs purchased insurance coverage from Defendant. *See* Exhibit A, Policy.

27. Defendant is an insurance company that sold an insurance policy providing coverage to Plaintiffs against “all risks of direct physical loss, damage or destruction ... except as hereinafter excluded.” *See* Exhibit A, Policy, at 14 of 69.

28. The Policy also provides Time Element coverage to Plaintiffs for business interruption losses occurring caused by direct physical loss, damage or destruction. *See* Exhibit A, Policy, at 26-36 of 69.

29. More specifically, the Policy provides Time Element coverage to Plaintiffs for “Business Interruption Gross Earnings” actual loss sustained and “Business Interruption Loss of Profits” resulting from the necessary interruption or reduction of Plaintiffs’ business operations caused by direct physical loss, damage or destruction by a covered peril to Plaintiffs’ restaurants. *See* Exhibit A, Policy, Time Element, at 26-29 of 69.

30. Unlike many policies that provide Time Element coverage, Plaintiffs’ Policy does not include, and is not subject to, any exclusion for losses caused by viruses or contagious or infectious disease.

31. In fact, Plaintiffs’ Policy actually provides coverage for loss sustained due to “contagious or infectious disease” under Special Time Element – Cancellation Coverage, which insures the actual loss sustained by Plaintiffs as a resulting from the cancellation of, and/or inability to accept bookings or reservations for accommodation, receive admissions, and/or interference with Plaintiffs’ business as a direct result of contagious or infectious disease (including decontamination and clean-up costs) and the outbreak of a contagious or infectious disease that occur within a ten (10) mile radius of Plaintiff’s restaurants. Moreover, this

provision is an additional coverage and it specifically recognizes that other coverage may be available under the Policy loss or damage resulting from contagious disease and, thus, the provision states that “Cancellation Coverage shall not conflict or reduce coverage provided elsewhere in this policy, most notably Contingent Time Element, Interruption by Civil or Military Authority, or Loss of Ingress or Egress.” *See* Exhibit A, Policy, at 35-36 of 69.

32. The Policy also provides coverage for Plaintiffs’ “Extra Expense” (Plaintiffs’ reasonable and necessary extra costs incurred by Plaintiffs to temporarily continue as nearly normal as practicable their business and use of their property during the Period of Recovery) incurred as a result from direct physical loss, damage or destruction of insured property. *See* Exhibit A, Policy, at 29 of 69.

33. The Policy also provides Interruption by Civil or Military Authority coverage, which insures the “Time Element” loss sustained during the period of time when normal business operations are interrupted or reduced because access to Plaintiffs’ premises were prohibited or impaired as a result of direct physical loss, damage or destruction *or imminent loss* within ten miles of Plaintiffs’ premises by the action of a civil or military authority. *See* Exhibit A, Policy, at 34 of 69.

34. In addition, the Policy includes numerous applicable property coverage Extensions and Extensions of Time Element coverage. *See* Exhibit A, Policy, at 15-23 of 69 and 33-36 of 59.

35. The Policy provides up to \$25,000,000 in coverage for property damage, with a substantial portion of that amount in coverage for business interruption losses, *on a per occurrence basis*. *See* Exhibit A, Manuscript Domestic Property Policy Declarations, at 1 of 1; Policy Declarations, at 7-9 of 69.

36. Losses due to COVID-19 are a covered cause of loss under Plaintiffs' Policy.

1. The COVID-19 Pandemic and the Covered Cause of Loss

37. COVID-19 is a deadly communicable disease that has already infected over 25,000,000 people in the United States, resulting to date, in more than 400,000 deaths.²

38. The World Health Organization ("WHO") has declared the COVID-19 outbreak a pandemic, and former President Donald Trump declared a nationwide emergency due to the public health crisis caused by the COVID-19 outbreak in the United States.

39. According to the CDC, "COVID-19 is caused by a coronavirus called SARS-CoV-2. Coronaviruses are a large family of viruses that are common in people and [many] different species of animals, including camels, cattle, cats, and bats. Rarely, animal coronaviruses can infect people and then spread between people."³ "The virus that causes COVID-19 is thought to spread mainly from person to person, mainly through respiratory droplets produced when an infected person coughs or sneezes. These droplets can land in the mouths or noses of people who are nearby or possibly be inhaled into the lungs. Spread is more likely when people are in close contact with one another (within about 6 feet)."⁴

40. COVID-19 can be transmitted in several ways, including human-to-human contact, airborne viral particles in ambient air, and touching surfaces or objects. For example, when an uninfected person touches a surface containing the coronavirus, the uninfected person may transmit the coronavirus to another person, either by touching and contaminating a second surface, which is subsequently touched by that other person, or more directly by transmitting the coronavirus to another person. The coronavirus spreads easily from person to person and person

² See <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html> (last viewed January 27, 2021).

³ See <https://www.cdc.gov/coronavirus/2019-ncov/faq.html#Coronavirus-Disease-2019-Basics> (last viewed on August 20, 2020).

⁴ *Id.*

to surface or object, primarily through small, physical droplets expelled from the nose or mouth when an infected person speaks, yells, sings, coughs, or sneezes. According to research published in the Journal of the American Medical Association, a person who sneezes can release a cloud of pathogen-bearing droplets that can span as far as 23 to 27 feet.⁵

41. According to WHO, the incubation period for COVID-19—i.e., the time between exposure to the coronavirus and symptom onset—can be up to 14 days. Other studies suggest that the period may be up to 21 days. Before infected individuals exhibit symptoms, *i.e.*, the so-called “pre-symptomatic” period, they are most contagious, as their viral loads will likely be very high, and they may not know they have become carriers. In addition, studies from the CDC and others estimate that between 40% to 70% of infected individuals may never become symptomatic (referred to as “asymptomatic” carriers). Pre- and asymptomatic carriers are likely unaware that they are spreading the coronavirus by merely touching objects and surfaces, or by expelling droplets into the air. The National Academy of Sciences has found that the majority of transmission is attributable to people who are not showing symptoms, either because they are pre-symptomatic or asymptomatic. These studies’ results further confirmed that individuals can become infected with COVID-19 through indirect contact with surfaces or objects contacted by an infected person, whether or not they were symptomatic.⁶

42. According to WHO, people can become infected with the coronavirus by touching such objects and surfaces, then touching their eyes, nose, or mouth. This mode of transmission – indirect transmission via objects and surfaces – is known as “fomite transmission.” As the WHO has noted, fomite transmission is “a likely mode of transmission of SARS-CoV-2” because

⁵ See <https://jamanetwork.com/journals/jama/fullarticle/2763852>.

⁶ See <https://www.nih.gov/news-events/news-releases/new-coronavirus-stable-hours-surfaces> (last viewed August 13, 2020); see also <https://www.who.int/news-room/commentaries/detail/modes-of-transmission-of-virus-causing-covid-19-implications-for-ipc-precaution-recommendations> (last viewed August 13, 2020).

studies have consistently confirmed the existence of virus-laden droplets on objects and surfaces “in the vicinity of infected cases,” and because it is well known that other coronaviruses can be transmitted via fomite transmission.⁷ For example, physical droplets containing the coronavirus can land on object and surfaces and after landing on objects and surfaces, the coronavirus can remain present and dangerous for periods ranging from hours to many days.

43. A study of a COVID-19 outbreak published in the CDC’s Emerging Infectious Diseases journal identified indirect transmission via objects such as elevator buttons and restroom taps as an important possible cause of a “rapid spread” of the coronavirus in a shopping mall in Wenzhou, China.⁸

44. Research has indicated that the coronavirus can be detected on certain surfaces even weeks after infected persons are present at a given location. WHO has also confirmed that COVID-19 can exist on objects or surfaces and that the transmission of COVID-19 can occur by indirect contact with surfaces in the immediate environment or with objects that were touched by an infected person hours before.⁹

45. One study, for example, found that coronavirus remains active and dangerous on plastics for at least three days, while another reported that coronavirus remained stable and viable for seven days on a range of common surfaces, including plastic, stainless steel, glass, and

⁷ See <https://www.who.int/news-room/commentaries/detail/transmission-of-sars-cov-2-implications-for-infection-prevention-precautions>; <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html> (providing that [I]t is possible that a person could get COVID-19 by touching a surface or object that has the virus on it and then touching their own mouth, nose, or eyes”); see also <https://www.cdc.gov/coronavirus/2019-ncov/faq.html#Spread>; <https://www.who.int/news-room/commentaries/detail/transmission-of-sars-cov-2-implications-for-infection-prevention-precautions>.

⁸ See https://wwwnc.cdc.gov/eid/article/26/6/20-0412_article.

⁹ See <https://www.who.int/news-room/commentaries/detail/modes-of-transmission-of-virus-causing-covid-19-implications-for-ipc-precaution-recommendations> (last viewed on August 13 2020).

wood.¹⁰ Another study detected viable coronavirus samples on glass, stainless steel, and money for approximately one month if left at or around room temperature.

46. All of these materials are present at Plaintiffs' restaurants.

47. Research has also indicated that COVID-19 can spread through the air and be transmitted from person to person through heating and ventilation (HVAC) systems.¹¹ For example, one study found the presence of COVID-19 within the HVAC system servicing hospital ward rooms of COVID-19 patients. This study detected COVID-19 RNA in ceiling vent openings, vent exhaust filters, and central ducts that were located more than 50 meters from the patients' rooms.¹²

48. The Environmental Protection Agency ("EPA") has recommended that business owners make improvements to their premises HVAC and ventilation systems based on several studies that show "epidemiological evidence suggestive of (coronavirus) transmission through aerosol."¹³

49. Accordingly, COVID-19 causes physical loss and damage by, among other things, destroying, distorting, corrupting, attaching to, and physically altering property, including its surfaces, and by rendering property unusable, uninhabitable, unfit for intended function, dangerous and unsafe. While mitigation efforts have been undertaken and remain ongoing,

¹⁰ See <https://www.nejm.org/doi/full/10.1056/nejmc2004973>; <https://www.medrxiv.org/content/10.1101/2020.05.07.20094805v1.full.pdf>; <https://virologyj.biomedcentral.com/articles/10.1186/s12985-020-01418-7>; <https://www.nih.gov/news-events/news-releases/new-coronavirus-stable-hours-surfaces> (last viewed August 13, 2020); see also <https://www.who.int/news-room/commentaries/detail/modes-of-transmission-of-virus-causing-covid-19-implications-for-ipc-precaution-recommendations> (last viewed August 13, 2020) (showing that a study in *The New England Journal of Medicine* established that COVID-19 can remain present in aerosols for up to three hours, up to four hours on copper, up to 24-hour on cardboard, and up to three days on plastic and stainless steel).

¹¹ See https://wwwnc.cdc.gov/eid/article/26/7/20-0764_article#r2 (last viewed Dec. 16, 2020); <https://www.researchsquare.com/article/rs-34643/v1> (last viewed Dec. 16, 2020).

¹² See <https://www.researchsquare.com/article/rs-34643/v1>.

¹³ See <https://www.epa.gov/coronavirus/indoor-air-and-covid-19-key-references-andpublications> (last viewed Dec. 16, 2020); <https://www.epa.gov/coronavirus/indoor-air-and-coronavirus-covid-19> (last viewed Dec. 16, 2020) (suggesting facilities make improvements to their ventilation and HVAC systems by increasing ventilation with outdoor air and air filtration).

COVID-19 and has caused such physical loss and damage to Plaintiff's covered property, as described further below.

50. First, respiratory droplets (*i.e.*, droplets larger than 5-10 μm) expelled from infected individuals land on, attach, and adhere to surfaces and objects. In doing so, they structurally change the property and its surface by becoming a part of that surface. This structural alteration makes physical contact with those previously safe, inert surfaces (*e.g.*, walls, handrails, furniture) unsafe.

51. Second, when individuals carrying the coronavirus breathe, talk, cough, or sneeze, they expel aerosolized droplet nuclei (*i.e.*, those smaller than 5 μm) that remain in the air and, like dangerous fumes, make the premises unsafe and affirmatively dangerous. This process alters the structural properties of air in buildings from safe and breathable to unsafe and dangerous.

52. Fomites, aerosols, respiratory droplets, and droplet nuclei containing COVID-19 are not theoretical. In fact, they are physical substances that are active on physical surfaces and in the air and have a tangible and dangerous existence.¹⁴

53. When COVID-19 adheres onto a surface or material, it becomes part of that surface or material, changing them to fomites.¹⁵ This is a physical change in the impacted surface or material and constituting physical loss and damage requiring remedial measures in order to attempt eliminating COVID-19's presence thereon. Further, the physical alteration makes physical contact with these once safe surfaces unsafe.

54. The presence of COVID-19 and/or the presence of infected persons within a facility causes physical loss by transforming it from a facility that once was safe and usable for

¹⁴ See <https://www.who.int/news-room/commentaries/detail/transmission-of-sars-cov-2-implications-for-infection-prevention-precautions>.

¹⁵ *Id.*

its intended purpose into a facility that is not only unsafe and unusable, but also dangerous and potentially deadly for its patrons.

55. Furthermore, the presence of COVID-19 on a property creates an imminent threat of more damage to not only that property, but also to property nearby. For example, a business' patron who came into contact with fomites or respiratory droplets when opening a door or touching a handrail, will carry those same fomites and/or droplets on their hands and contaminate another surface in the business or into the next place that they go, causing additional physical damage and loss.

56. Plaintiffs operate their restaurants in major cities across the country. With the spread of COVID-19 likely beginning as early as November, 2019 and the rate of infection across the country since, as a matter of statistical probability, guests with COVID-19 *must* have been within their properties.

57. COVID-19 has rendered Plaintiffs' restaurants unfit for their intended business functions. In their current conditions, Plaintiffs' restaurants are not functional for their business purposes because of the changed physical environment due to COVID-19. COVID-19 also presented an imminent threat of immediate damage or loss to Plaintiffs' restaurants, forcing them to take costly action to prevent further damage or loss.

58. The threat and presence of COVID-19 is direct physical loss or damage to property. In response to the direct physical loss or damage to property due to COVID-19, civil authorities across the United States issued orders requiring the suspension or restriction of business at a wide range of establishments, including civil authorities with jurisdiction over business activities at Plaintiffs' restaurants (the "Closure Orders").

a. Civil Authority Orders Because of COVID-19 and Related Physical Loss and/or Damage to Plaintiffs' Property

59. Beginning in March 2020, in an effort to slow the spread of COVID-19, and as a consequence of physical damage caused COVID-19, executive officials across the country issued a series of unprecedented civil orders and advisements.

60. Loss and damage caused by COVID-19 and the related Closure Orders triggered multiple coverage provisions of Plaintiffs' Policy issued by Defendant.

61. Indeed, many governmental bodies specifically found that COVID-19 causes property damage when issuing stay at home orders. *See* N.Y.C. Emergency Exec. Order No. 100, at 2 (Mar. 16, 2020)¹⁶ (emphasizing the virulence of COVID-19 and that it “physically is causing property loss and damage”); Harris Cty. Tex. Office of Homeland Security & Emergency Mgmt., Order of Cty. J. Lina Hidalgo, at 2 (Mar. 24, 2020)¹⁷ (emphasizing that the COVID-19 virus can cause “property loss or damage” due to its contagious nature and transmission through “person-to-person contact, especially in group settings”); Napa Cty. Cal. Health & Human Service Agency, Order of the Napa Cty. Health Officer (Mar. 18, 2020)¹⁸ (issuing restrictions based on evidence of the spread of COVID-19 within the Bay Area and Napa County “and the physical damage to property caused by the virus”); City of Key West Fla. State of Local Emergency Directive 2020-03, at 2 (Mar. 21, 2020)¹⁹ (COVID-19 is “causing property damage due to its proclivity to attach to surfaces for prolonged periods of time”); City of Oakland Park Fla. Local Public Emergency Action Directive, at 2 (Mar. 19, 2020)²⁰ (COVID-19 is “physically causing

¹⁶ <https://www1.nyc.gov/assets/home/downloads/pdf/executive-orders/2020/eo-100.pdf>

¹⁷ https://www.taa.org/wp-content/uploads/2020/03/03-24-20-Stay-Home-Work-Safe-Order_Harris-County.pdf

¹⁸ <https://www.countyofnapa.org/DocumentCenter/View/16687/3-18-2020-Shelter-at-Home-Order>

¹⁹ https://www.cityofkeywest-fl.gov/egov/documents/1584822002_20507.pdf

²⁰ <https://oaklandparkfl.gov/DocumentCenter/View/8408/Local-Public-Emergency-Action-Directive-19-March-2020-PDF>

property damage”); Panama City Fla. Resolution No. 20200318.1 (Mar. 18, 2020)²¹ (stating that the resolution is necessary because of COVID-19’s propensity to spread person to person and because the “virus physically is causing property damage”); Exec. Order of the Hillsborough Cty. Fla. Emergency Policy Group, at 2 (Mar. 27, 2020)²² (in addition to COVID- 19’s creation of a “dangerous physical condition,” it also creates “property or business income loss and damage in certain circumstances”); Colorado Dep’t of Pub. Health & Env’t, Updated Public Health Order No. 20-24, at 1 (Mar. 26, 2020)²³ (emphasizing the danger of “property loss, contamination, and damage” due to COVID-19’s “propensity to attach to surfaces for prolonged periods of time”); Sixth Supp. to San Francisco Mayoral Proclamation Declaring the Existence of a Local Emergency, 26 (Mar. 27, 2020)²⁴ (“This order and the previous orders issued during this emergency have all been issued ... also because the virus physically is causing property loss or damage due to its proclivity to attach to surfaces for prolonged periods of time”); and City of Durham NC, Second Amendment to Declaration of State of Emergency, at 8 (effective Mar. 26, 2020)²⁵ (prohibiting entities that provide food services from allowing food to be eaten at the site where it is provided “due to the virus’s propensity to physically impact surfaces and personal property”).

62. The Closure Orders typically required businesses to close their doors and stop all in-person work, at least for a period of time. Although “essential” were permitted to partially operate in some states (*e.g.*, allowing restaurants to offer takeout or delivery services), they did not escape the devastating financial impacts of the Closure Orders.

²¹ <https://www.pcgov.org/AgendaCenter/ViewFile/Item/5711?fileID=16604>

²² <https://www.hillsboroughcounty.org/library/hillsborough/mediacenter/documents/administrator/epg/saferathomeorder.pdf>

²³ <https://www.pueblo.us/DocumentCenter/View/26395/Updated-Public-Health-Order---032620>

²⁴ https://sfgov.org/sunshine/sites/default/files/sotf_061020_item3.pdf

²⁵ https://durhamnc.gov/DocumentCenter/View/30043/City-of-Durham-Mayor-Emergency-Dec-Second- Amdmt-3-25-20_FINAL

63. These Closure Orders remain in effect as of the date of the filing and continue to severely restrict both non-essential and essential business operations.

64. The Closure Orders relevant to this have directly impacted Plaintiffs' restaurants by forcing them to limit operations across all locations and some have had to cease operations completely.

65. Further, Plaintiffs rely on customers, vendors, and suppliers locally, across the country, and around the world. As a result, Plaintiffs are directly affected by Closure Orders, wherever issued.

66. The Closure Orders, the damage caused by COVID-19, the transmission of COVID-19, and Plaintiffs' efforts to preserve and protect their property from COVID-19 have had a devastating impact on Plaintiffs' business.

67. The Closure Orders directly affecting Plaintiffs and which have severely restricted business throughout the states in which Plaintiffs restaurants operate, are summarized below.

i. Palm – Atlanta and the State of Georgia Closure Orders

68. On March 14, 2020, Georgia Governor Brian Kemp issued Executive Order 03.14.20.01 declaring that a Public Health State of Emergency existed in the State of Georgia.

69. On March 23, 2020, effective through April 6, 2020, Governor Kemp issued Executive Order 03.23.20.01 directing all bars to cease operation and that no business, establishment, corporation, non-profit corporation, or organization shall allow more than ten (10) persons to be gathered at a single location if such gathering required persons to stand or be seated within six (6) feet of any other person.

70. On April 2, 2020, effective through April 13, 2020, Governor Kemp issued a statewide shelter in place Executive Order 04.02.20.01 which prohibited businesses to allow

more than ten (10) people to be gathered in any single location if such gathering requires people to stand or be seated within six (6) feet of each other and required all residents and visitors of the State of Georgia to remain in their place of residence and to take every possible precaution to limit social interaction to prevent the spread of COVID-19. The Executive Order further required all businesses that were not Critical Infrastructure to engage in only Minimum Basic operations including requiring all restaurants and private social clubs to cease dine-in services and limit themselves to takeout, curbside pick-up and delivery. In addition, the Executive Order required all gyms, fitness centers, bowling alleys, theaters, live performance venues, operators of amusement rides, body art studios, estheticians, hair designers, massage therapists, and bars to cease in-person operations and close to the public.

71. On April, 8 2020 and on April 30, 2020 Governor Kemp issued Executive Order 04.08.20.02 and 04.30.20.01 respectively, which ultimately extended the Public Health State of Emergency declared by Executive Order 03.14.20.01 until June 12, 2020.

72. On April 23, 2020, Governor Kemp issued Executive Order 04.21.20.02 to provide guidance for reviving a healthy Georgia in response to COVID-19 and permitted restaurants and dining rooms, including those at private social clubs, to resume dine-in services provided that no more than ten (10) patrons should be allowed in the facility per 500 square feet of public space and that they implement a number of measures outlined in the Order which mitigate the exposure and spread of COVID-19 among its patrons and workforce.

73. On May 12, 2020, Governor Kemp issued Executive Order 05.12.20.02 which provided additional guidance for reviving a healthy Georgia in response to COVID-19, limited restaurants and dining rooms to no more than ten (10) patrons in the facility per 300 square feet of public space.

74. On May 28, 2020, Governor Kemp issued Executive Order 05.28.20.02 which continued to require all residents and visitors to Georgia to practice social distancing and sanitation in accordance to the guidelines published by the Centers for Disease Control and Prevention, continued to limit all businesses to no more than twenty-five (25) physically present persons, continued to encourage the use of face coverings when outside places of residence, continued to require restaurants and dining services to implement measures which mitigate the exposure and spread of COVID-19 among its patrons and workforce, and continued to only permit ten (10) patrons per 300 square feet of public space in restaurants and dining services.

75. On June 11, 2020, Governor Kemp issued Executive Order 06.11.20.01 and Executive Order 06.29.20.02 “[P]roviding additional guidance and empowering a healthy Georgia in response to COVID-19”, requiring all citizens and visitors of Georgia to practice social distancing, and requiring all restaurants and similar venues to implement measures which mitigate the exposure and spread of COVID-19 among its patrons and workforce.

76. On June 29, 2020, Governor Kemp issued Executive Order 06.29.20.01 which renewed the Public Health State of Emergency in response to COVID-19 through August 11, 2020 and on July 31, 2020, Governor Kemp issued Executive Order 07.31.20.01 which renewed the Public Health State of Emergency in response to COVID-19 through September 10, 2020.

77. On July 15, 2020, Governor Kemp issued Executive Order 07.15.20.01 and on July 31, 2020, Governor Kemp issued Executive Order 07.31.20.02 “[P]roviding additional guidance and empowering a healthy Georgia in response to COVID-19”, requiring all citizens and visitors of Georgia to practice social distancing, and requiring all restaurants and similar venues to implement measures which mitigate the exposure and spread of COVID-19 among its patrons and workforce.

ii. Palm – Atlantic City and the State of New Jersey Closure Orders

78. On March 9, 2020, Governor of the State of New Jersey Philp D. Murphy, issued Executive Order No. 103 declaring a State of Emergency and a Public Health Emergency existed in the State of New Jersey.

79. On March 16, 2020, Governor Murphy issued Executive Order No. 104 announcing aggressive social distancing measures to mitigate the spread of COVID-19 in New Jersey and deeming a subset of businesses as “essential.” These measures included limiting all gatherings to under fifty (50) people, limiting restaurants and bars to food delivery and/or take-out services thereby prohibiting any on-premises consumption of food or beverages, and closing schools, casinos, gyms, fitness centers, and entertainment centers.

80. On March 21, 2020, Governor Murphy issued Executive Order No. 107 which directed all New Jersey residents to remain at home or their place of residence until further notice. The Order also prohibited all social gatherings and required all brick-and-mortar premises of non-essential retail businesses to remain closed.

81. On March 21, 2020, Governor Murphy issued Executive Order No. 108 which invalidated any county or municipal restriction that in any way will or might conflict with any of the provisions of Executive Order No. 107.

82. On April 7, 2020, Governor Murphy issued Executive Order No. 119 extending the Public Health Emergency in New Jersey.

83. On April 8, 2020, Governor Murphy issued Executive Order No. 122 which imposed additional mitigation requirements on essential retail businesses and industries to limit the spread of COVID-19 including limiting those businesses’ occupancy to fifty percent (50%) of the stated maximum store capacity.

84. On April 11, 2020, Governor Murphy issued Executive Order No. 125 which implemented additional mitigation requirements on restaurants that continued to offer food delivery and/or take-out services to limit the spread of COVID-19 including limiting occupancy at ten percent (10%) of the stated maximum capacity.

85. On May 6, 2020, Governor Murphy issued Executive Order No. 138 extending the Public Health Emergency in New Jersey

86. On May 13, 2020 Governor Murphy issued Executive Order No. 142 permitting the resumption of curbside pickup at non-essential retail businesses and gatherings in cars.

87. On June 3, 2020, Governor Murphy issued Executive Order No. 150 announcing outdoor dining protocols and process to expand premises for restaurants and other dining establishments, bars and any other liquor license holders to offer in-person service at outdoor areas subject to certain requirements, including limiting capacity to a number that ensured all patrons could remain six (6) feet apart from other patrons.

88. On June 9, 2020, Governor Murphy issued Executive Order No. 152 which lifted the limits on indoor and outdoor gatherings to 25% the capacity of the room in which it takes place, with a minimum limit of ten (10) and a maximum of fifty (50) individuals regardless of the capacity of the room and limited the number of persons at outdoor gatherings to one-hundred (100) persons.

89. On June 22, 2020, Governor Murphy issued Executive Order No. 156 which increased indoor and outdoor gathering capacity limits to 25% of the capacity of the room in which it takes place, with a minimum limit of ten (10) persons and a maximum limit of one-hundred (100) persons and the number of individuals permitted at outdoor gatherings to two-hundred fifty (250) or fewer.

90. However, on June 29, 2020, Governor Murphy issued Executive Order No. 158 temporarily pausing the resumption of indoor consumption of food or beverages.

91. On July 2, 2020, Governor Murphy issued Executive Order No. 161 increasing outdoor gathering capacity limits to five-hundred (500) individuals or fewer.

92. On July 2, 2020, Governor Murphy issued Executive Order No. 162 extending the Public Health Emergency in New Jersey.

93. On August 1, 2020, Governor Murphy issued Executive Order No. 171, again extending the Public Health Emergency in New Jersey.

94. On August 3, 2020, Governor Murphy issued Executive Order No. 173 decreasing the indoor gathering capacity limit to 25% of the capacity of the room in which it takes place, with a minimum limit of ten (10) individuals and maximum limit of twenty-five (25) individuals.

A. Atlantic City Closure Orders

95. On May 31, 2020, Atlantic City Mayor Marty Small, Sr. and Chief Scott K. Evan, Coordinator of the Office of Emergency Management declared a State of Emergency in the City of Atlantic City due to the necessity to quell riots and imposed a limited curfew for Atlantic City from 7:00 p.m. until 6:00 a.m. beginning on May 31, 2020 and expiring on June 8, 2020 prohibiting persons from using or being in public except for in very limited circumstances.

iii. Palm – Boston and the Commonwealth of Massachusetts Closure Orders

96. On March 10, 2020, Governor of the Commonwealth of Massachusetts Charles D. Baker issued Executive Order No. 591 proclaiming a state of emergency in the Commonwealth of Massachusetts due to COVID-19.

97. On March 13, 2020, Governor Baker issued an emergency order prohibiting gatherings of over 250 people and directed the Massachusetts Department of Public Health to issue an order providing guidance to implement the terms of the emergency order.

98. On March 15, 2020 Governor Baker issued an emergency “Order Prohibiting Gatherings of More than 25 People and On-Premises Consumption of Food or Drink” rescinding the previous March 13, 2020 order and prohibiting gatherings of over twenty-five (25) people at the same time in any indoor or outdoor venue and prohibiting on-site consumption at any restaurant, bar, or establishment that offers food or drink.

99. On March 23, 2020, Governor Baker issued COVID-19 Order No. 13 identifying “COVID-19 Essential Services” and urging them to continue their services and functions subject to following social distancing protocols consistent with guidance provided by the Massachusetts Department of Public Health. Restaurants, bars, and other retail establishments that sell food and beverage products to the public were designated as COVID-19 Essential Services and were permitted to continue offering food and beverage for take-out and delivery but were prohibited from allowing any on-site consumption of food or beverages. All establishments that were not deemed COVID-19 Essential Services were required to close their brick-and-mortar locations. In addition, all gatherings of more than ten (10) people were prohibited throughout Massachusetts unless in an unenclosed, outdoor space and the Department of Public Health issued a stay-at-home advisory.

100. On March 31, 2020, Governor Baker issued COVID-19 Order No. 19 extending the operation of COVID-19 Order No. 13 through May 4, 2020 and the Massachusetts Department of Public Health issued a revised guidance regarding the order extension prohibiting

assemblages of more than ten (10) people and prohibiting on-premises consumption of food and beverages and announced their stay-at-home advisory remained in effect.

101. On April 28, 2020, Governor Baker issued COVID-19 Order No. 30 further extending the operation of COVID-19 Order No. 13 and COVID-19 Order No. 19 through May 18, 2020 and extending the Department of Public Health's stay-at-home advisory.

102. On May 15, 2020, Governor Baker issued COVID-19 Order No. 32, temporarily extending COVID-19 Order No.13 an additional twenty-four (24) hours to May 19, 2020.

103. On May 18, 2020, Governor Baker issued COVID-19 Order No. 33 implementing a phased reopening of workplaces and imposing workplace safety measures to address COVID-19. Restaurants, bars and other establishments that serve food or beverages were permitted to begin reopening their premises on May 18, 2020 and were required to certify they were adopting certain required workplace safety rules. While the ten (10) person limitation on gatherings did not apply to businesses or other organization authorized to re-open its physical premises, part of complying with the required workplace safety rules was requiring all persons to remain at least six (6) feet apart both inside and outside the workplace.

104. On June 1, 2020, Governor Baker issued COVID-19 Order No. 35 outlining details to allow for preparation for Phase II of Massachusetts' reopening plan.

105. On June 6, 2020, Governor Baker issued COVID-19 Order No. 37 authorizing the reopening of Phase II enterprises and among other things, authorizing restaurants to provide outdoor table service beginning on June 8, 2020.

106. On June 19, 2020, Governor Baker issued COVID-19 Order No. 40 initiating Step 2 of Phase II of Massachusetts's reopening process which allowed restaurants to commence indoor table service.

107. On July 2, 2020, Governor Baker issued COVID-19 Order No. 43 initiating Phase III of Massachusetts' reopening process.

108. On August 7, 2020, Governor Baker issued COVID-19 Order No. 46 replacing COVID-19 Order No. 44. Businesses designated as Phase I, II, or III were exempted from complying with the Order's gathering limits so long as they complied with COVID-19 safety rules and applicable capacity limitations as previously issued.

A. City of Boston Closure Orders

109. On March 15, 2020, The Boston Public Health Commission issued a declaration that a public health emergency exists within the City of Boston.

110. On April 5, 2020, City of Boston Mayor Martin J. Walsh announced strict new measures for social and physical distancing for Boston residents and the Boston Public Health Commission issued a Public Health Advisory for everyone in Boston, except essential workers, to stay home from 9:00 p.m. to 6:00 a.m. daily.

111. On April 27, 2020, the City of Boston and the Boston Public Health Commission extended the public health emergency in the City of Boston and on April 29, extended the Public Health Advisory requiring all non-essential workers to stay at home from 9:00 p.m. to 6:00 a.m. until May 18, 2020.

112. On June 10, 2020, Mayor Walsh and the City of Boston Licensing Board announced increased outdoor seating for restaurants in Boston.

113. While the Commonwealth of Massachusetts Step I of Phase III of reopening and updated gathering advisory began on July 6, 2020, for the City of Boston, it began on July 13, 2020.

iv. **Palm – Charlotte and the State of North Carolina Closure Orders**

114. On March 10, 2020, Governor of the State of North Carolina Roy Cooper issued Executive Order No. 116 proclaiming a state of emergency in the State of North Carolina based on the public health emergency posed by COVID-19.

115. On March 17, 2020, Governor Cooper issued Executive Order No. 118 closing restaurants and bars for dine-in service and limiting their operations to the sale of food and beverages by carry-out, drive-through or delivery only. This limitation was effective through March 31, 2020.

116. On March 23, 2020, Governor Cooper issued Executive Order No. 120 modifying Executive Order No. 117 issued on March 14, 2020, and limiting mass gatherings to a maximum of fifty (50) persons in a single room or single space at the same time.

117. On March 27, 2020, Governor Cooper issued Executive Order No. 121, a stay at home order which directed all individuals in North Carolina to remain at home, their place of residence, or current place of abode unless conducting essential activities. The Order specified that restaurants and other facilities that prepare and serve food were considered essential, but only for consumption off-premises through delivery, carry-out or similar means. Further the Order mandated all restaurants to maintain and follow the Order's prescribed "Social Distancing Guidelines." In addition, the Order replaced Executive Order Nos. 117 and 120's mass gathering definition and replaced it by defining mass gatherings as any event or convening that brings more than ten (10) persons in a single room or single space. The Oder was set to remain in effect for thirty days.

118. On April 9, 2020, Governor Cooper issued Executive Order No. 131 requiring retail establishments to take additional steps to limit the risk of community transmission and to

ensure employees and customers maintained appropriate social distancing. The Order limited the occupancy of retail establishments to no more than twenty percent (20%) of the stated fire capacity or to five (5) customers to every one thousand (1,000) square feet of the location's total square footage and established "Additional Social Distancing Requirements."

119. On April 23, 2020, Governor Cooper issued Executive Order No. 135 extending Executive Orders 118 and 121 until May 8, 2020.

120. On May 5, 2020, Governor Cooper issued Executive Order No. 138 easing restrictions on travel, business operations and mass gatherings in what was referred to as Phase 1. The Order specified that restaurants should remain open only for off-premises consumption through delivery, carry-out or similar means, and explicitly prohibited sit-down food or beverage service. The Order also recommended continued adherence to social distancing and public health guidelines. The Order was set to remain in effect through May 22, 2020

121. On May 20, 2020, Governor Cooper issued Executive Order No. 141 easing restrictions on travel, business operations and mass gatherings in what was referred to as Phase 2. The order lifted the stay at home order issued in Executive Order No. 138. The order also specified that restaurants may now conduct on-premises service, provided they operated at their Emergency Maximum Occupancy. Emergency Maximum Occupancy is the lower of either fifty percent (50%) of stated fire capacity or the number of people that could occupy the space while remaining six (6) feet apart. The Order also prohibited mass gatherings of more than ten (10) people indoors or twenty-five (25) people outdoors. The Order was set to remain in effect through June 26, 2020

122. On June 24, 2020, Governor Cooper issued Executive Order No. 147 extending Phase 2 measures until July 17, 2020. The Order also specified that restaurants must require all

workers to wear face coverings when within six feet of another person, and require all customers to wear face coverings when not at their table. The Order was set to remain in effect through July 17, 2020.

123. On July 16, 2020, Governor Cooper issued Executive Order No. 151 extending Phase 2 measures until at least August 7, 2020.

124. On July 28, 2020, Governor Cooper issued Executive Order No. 153 mandating that the sale and service of alcoholic beverages for onsite consumption cease between 11:00 pm and 7:00 am at restaurants, breweries, wineries, distilleries and other businesses. The Order is set to remain in effect through August 31, 2020.

125. On August 5, 2020, Governor Cooper issued Executive Order No. 155 extending Phase 2 measures until at least September 11, 2020.

A. City of Charlotte Closure Orders

126. On March 23, 2020, Vi Liles, Mayor of the City of Charlotte and others signed the Revised Joint Proclamation of the Chairman of the Mecklenburg County Board of Commissioners, The Mayor of the City of Charlotte, and the Mayors of the Towns in Conjunction with the Emergency Management Coordination and in Consultation with the Mecklenburg County Public Health Director. This proclamation directed restaurants to prepare and serve food only for consumption off-premises through means such as delivery, carry-out or similar means. The proclamation was set to remain in effect through April 16, 2020.

127. On April 15, Mayor Liles signed an Amended and Revised Joint Proclamation extending the March 23 Proclamation until April 29, 2020.

128. On July 23, 2020, Mayor Liles signed a Second Revised Amended Joint Proclamation allowing restaurants serving only food and non-alcoholic beverages to operate

during advertised hours provided all requirements for social distancing and mask wearing were followed. The Proclamation also ordered restaurants serving alcohol to restrict onsite operations between 11:00 pm and 5:00 am, but allowed for delivery, drive-through and pick-up services during those hours. The Proclamation was set to remain in effect concurrent with the Governor's Phase 2 reopening measures until August 7, 2020.

v. **Palm – Chicago and the State of Illinois Closure Orders**

129. On March 12, 2020, Governor of the State of Illinois J. B. Pritzker issued a Gubernatorial Disaster Proclamation announcing a disaster in the state and specifically declaring all counties in the State of Illinois as a disaster area based on the public health emergency posed by COVID-19. This Proclamation was set to expire after thirty days, at which point Governor Pritzker issued a new Proclamation. The most recent Proclamation was filed July 24, 2020, and remains in effect for 30 days.

130. On March 13, 2020, Governor Pritzker issued COVID-19 Executive Order No. 2 cancelling all public and private gatherings in the State of Illinois of 1,000 or more people for the duration of the Gubernatorial Disaster Proclamation.

131. On March 16, 2020, Governor Pritzker issued COVID-19 Executive Order No. 5 ordering that restaurants must suspend service for and may not permit on premises consumption of food or beverages and limited the operations of restaurants and bars to the sale of food and beverages by carry-out, drive-through, delivery or similar means. In addition, establishments offering carry-out service were required to ensure they had “an environment where patrons maintain adequate social distancing” of at least six (6) feet between each person, including where patrons wait in line. The Order also prohibited all public and private gatherings of fifty (50)

people or more for the duration of the Gubernatorial Disaster Proclamation. The Order was set to remain in effect through March 30, 2020.

132. On March 20, 2020, Governor Pritzker issued COVID-19 Executive Order No. 8 ordering all individuals currently living within the State of Illinois to stay at home or their place of residence. The Order permitted people to leave their homes only for essential activities, and urges people to maintain social distancing. The Order required all non-essential businesses and operations to cease and prohibits public and private gatherings of any size except for limited purposes. The Order permitted restaurants to continue operating, but only for off-premises consumption through carry-out, drive-through, delivery or similar means. The Order was set to remain in effect for the duration of the Gubernatorial Disaster Proclamation.

133. On April 1, 2020, Governor Pritzker issued COVID-19 Executive Order No. 16 continuing and extending prior executive orders related to operations of restaurants and bars. The Order restated the limit on restaurant operations for off-premises consumption only. The Order extended the provisions related to restaurants and bars through April 30, 2020.

134. On April 30, 2020, Governor Pritzker issued COVID-19 Executive Order No. 30 requiring all individuals to wear face coverings in public places. The Order restated the prior stay at home order and the limit on restaurant operations for off-premises consumption only.

135. On April 31, 2020, Governor Pritzker issued COVID-19 Executive Order No. 31 reissuing and extending prior COVID-19 Executive Orders. The Order extended the provisions related to restaurants and bars through May 29, 2020.

136. On May 29, 2020, Governor Pritzker issued COVID-19 Executive Order No. 36, Restoring Illinois – Protecting our Communities, which outlined steps for the State of Illinois to resume activities paused in response to COVID-19. The Order reiterated the need for social

distancing and face coverings, and restated the limit on restaurant operations for off-premises consumption only, except if outdoor and as permitted by DCEO guidance. Notwithstanding this Order, the Commissioner of Health of the City of Chicago issued an order continuing to prohibit all on-premises service in Chicago until June 3, and did not begin to permit food and beverage service in outdoor space until then.

137. The Illinois Department of Commerce and Economic Opportunity (DCEO) guidance referenced in COVID-19 Executive Order No. 36 set forth numerous physical restrictions and requirements on restaurants. Among other things, restaurants were required to configure space to allow for at least six feet of distance between tables or other designated customer service areas, ensure that the area for take-out customers allowed for at least six feet of separation from seated customers, close all open areas of congregation like waiting areas, self-service food stations and beverage stations, eliminate table presets (i.e. menus, salt and pepper shakers, straws, etc.), and display signage at entry with face covering, social distancing and cleaning requirements and guidelines.

138. On May 29, 2020, Governor Pritzker issued COVID-19 Executive Order No. 37 reissuing and extending prior COVID Executive Orders. The Order extended the provisions related to restaurants and bars through June 27, 2020.

139. On June 26, 2020, Governor Pritzker issued COVID-19 Executive Order No. 41, the Community Revitalization Order, which outlined next steps for the State of Illinois to resume activities paused in response to COVID-19. The Order allowed restaurants and bars to resume service for on-premises indoor food and beverage service, as permitted by DCEO guidance. Under DCEO's minimum guidelines, the maximum capacity for seated areas was determined by

arranging seating in order to provide at least six (6) feet between all tables and standing areas were limited to twenty-five percent (25%) occupancy.

140. In addition, restaurants providing indoor service were also impacted by similar DCEO physical workspace restrictions as those mentioned supra.

A. City of Chicago Closure Orders

141. On March 18, 2020, Commissioner of Health of the City of Chicago Allison Arwady, M.D. issued Order No. 2020-1, Shelter in Place for COVID-19 Illness. The Order directs residents of Chicago suffering from COVID-19 to shelter in their place of residence unless seeking necessary clinical care or essential life sustaining needs. The Order was to remain in effect until the Commissioner of Health makes a written determination that the threat to public health posed by COVID-19 has diminished to the point that the order can be safely repealed.

142. On April 8, 2020, Commissioner Arwady issued Order No. 2020-5, 9:00 p.m. Cessation of Alcoholic Liquor Sales. The Order directs all establishments licensed under Chapter 4-60 of the Municipal Code of Chicago to cease all sales of alcoholic liquor between 9:00 p.m. and the hour at which the licensee is permitted to resume alcoholic liquor sales under the Municipal Code of Chicago. The Order was to remain in effect until the Commissioner of Health makes a written determination that the threat to public health posed by COVID-19 has diminished to the point that the order can be safely repealed.

143. On March 18, 2020, Mayor of the City of Chicago Lori Lightfoot issued Emergency Executive Order No. 2020-1, Emergency Operations related to COVID-19 Outbreak. The Order declared a State of Emergency in the City of Chicago caused by the outbreak of COVID-19. The Order was to remain in effect until the Commissioner of Health makes a written

determination that the threat to public health posed by COVID-19 has diminished to the point that the order can be safely repealed.

144. On May 30, 2020, Mayor Lori Lightfoot and Commissioner Arwady issued Order No. 2020-8, Curfew. The Order establishes a curfew from the hours of 9:00 p.m. to 6:00 a.m. during which time no person may remain in public or on the premises of any establishment within the City of Chicago. The Order was to remain in effect until the Commissioner of Health and the Superintendent of Police issue a joint written determination that the Order can be safely repealed.

145. On June 3, 2020, Commissioner Arwady issued Order No. 2020-9, Phase III: Cautiously Reopen. The Order reiterates the need for social distancing and face coverings, and directs businesses to operate at their maximum capacity as set by the Cautiously Reopen Guidelines. The Order specified that establishments whose sole business is the sale of liquor for on-premises consumption may not reopen. The Order was to remain in effect until the Commissioner of Health made a written determination that the threat to public health posed by COVID-19 has diminished to the point that the Order can be safely repealed.

146. On June 7, 2020, Mayor Lori Lightfoot and Commissioner Arwady issued Repealer to Order No. 2020-8, repealing the curfew order.

147. On July 24, 2020, Commissioner Arwady issued Order No. 2020-9, Phase IV: Gradually Resume. The Order reiterates the need for social distancing and face coverings, and directs businesses to operate at their maximum capacity as set by the Gradually Resume Guidelines. The Order specifies no licensee may sell liquor for on-premises consumption indoors during the order unless it is a licensed retail food establishment. The Order was to remain in

effect until the Commissioner of Health makes a written determination that the threat to public health posed by COVID-19 has diminished to the point that the Order can be safely repealed.

vi. **Palm – Houston, Palm – San Antonio and the State of Texas Closure Orders**

148. On March 13, 2020, Governor of the State of Texas, Greg Abbott, issued a Proclamation declaring a state of disaster for all counties in the State of Texas.

149. On March 18, Governor Abbott issued a waiver that allowed restaurants to deliver alcoholic beverages with food purchases to patrons.

150. On March 19, the Commissioner of the Department of Health Services, John W. Hellerstedt, M.D. and, issued a Declaration of a Public Health Disaster in the State of Texas, which among other things, prohibited Texans from gathering in groups of ten or more. In addition, Governor Abbott issued Executive Order GA 08 directing everyone in Texas to avoid social gatherings in groups of more than 10, to avoid eating or drinking at bars, restaurants and food courts, and encouraging the use of drive-thru, pickup or delivery options. The Order was to remain in effect until April 3, 2020, unless modified, amended, rescinded or superseded by the governor.

151. On April 27, Governor Abbott issued Executive Order GA 18 directing everyone in Texas to avoid social gatherings and permitting dine-in restaurant services only for restaurants that operate at up to 25 percent of their total listed occupancy. The Order contained an exception for establishments in counties that attested to having five or fewer cases of COVID-19. The Order was to remain in effect until May 15, 2020, unless modified, amended, rescinded or superseded by the governor.

152. On May 5, 2020, Governor Abbott issued Executive Order GA 21 relating to the expanded reopening of services as part of the safe, strategic plan to Open Texas. The Order

permitted dine-in restaurant services for restaurants that operate at up to 25 percent of their total listed occupancy, and stipulated that the occupancy limit would not apply to customers seated in outdoor areas. The order directed people to continue avoiding bars. The Order was to remain in effect until May 19, 2020, unless modified, amended, rescinded or superseded by the governor.

153. On May 12, 2020, Governor Abbott issued a Proclamation renewing the disaster proclamation for all counties in Texas.

154. On May 18, 2020, Governor Abbott issued Executive Order GA 23 permitting dine-in restaurant services for restaurants that operate at up to fifty percent (50%) of their total listed occupancy. The Order also permitted bars to reopen provided they operate at up to twenty-five percent (25%) of their total listed occupancy. The Order was to remain in effect until June 3, 2020, unless modified, amended, rescinded or superseded by the governor.

155. On June 3, 2020, Governor Abbott issued Executive Order GA 26 permitting dine-in restaurant services for restaurants that operate at up to seventy-five percent (75%) of their total listed occupancy. The Order also permitted bars to serve only seated customers. The Order was to remain in effect until modified, amended, rescinded or superseded by the governor.

156. On June 11, 2020, Governor Abbott issued another Proclamation renewing the disaster proclamation for all counties in Texas.

157. On July 10, 2020, Governor Abbott issued another Proclamation renewing the disaster proclamation for all counties in Texas.

158. On June 26, 2020, Governor Abbott issued Executive Order GA 28 permitting dine-in restaurant services for restaurants that operate at up to seventy-five percent (75%) of their total listed occupancy until June 29, 2020, at which point restaurants were limited back down to operating at fifty percent (50%) of the total listed occupancy of the restaurant. The Order also

directed people not to visit bars except by use of drive-thru, pickup or delivery options for food and drinks. The Order was to remain in effect until modified, amended, rescinded or superseded by the governor.

159. On July 2, 2020, Governor Abbott issued Executive Order GA 29 requiring every person in Texas to wear a face covering over the nose and mouth when inside a commercial entity or other building or space open to the public or when in an outdoor public space wherever it is not feasible to maintain six feet of social distancing from another person. The Order was to remain in effect until modified, amended, rescinded or superseded by the governor.

A. City of Houston Closure Orders

160. On March 11, 2020, Houston Mayor Sylvester Turner and Harris County Judge Lina Hidalgo, to minimize the risk of exposure to COVID-19 and to promote the health and safety of Harris County residents, issued a Declaration of Local Disaster for Public Health Emergency.

161. On March 16, 2020, the Commissioners Court of Harris County extended the March 11, 2020 Declaration of Local Disaster for Public Health emergency and mandated the closure of all bars and dine-in restaurants, limiting restaurants to provide only take out, delivery, or drive through services.

162. On March 19, 2020, Harris County Judge Hidalgo issued an Order amending the March 16 Order. The Order prohibited dining on the premises of restaurants until April 3, 2020. The Order specifically allowed to-go, take out or delivery services. The Order also prohibited consuming alcoholic beverages on the premises of any restaurant or bar until April 3, 2020.

163. On March 24, 2020, Harris County Judge Hidalgo, extended the Declaration of Local Disaster for Public Health Emergency to April 29, 2020 and issued a “Stay Home, Work

Safe” Order prohibiting public or private gatherings of any number of people and providing that all residents in the county remain at home other than to perform essential services as defined in the Order. The Order defined restaurants as essential retail, but only for delivery, drive-thru or carry-out services. The Order was to remain in effect until April 3, 2020.

164. On April 3, 2020, Harris County Judge Hidalgo issued an Order Extending and Amending the “Stay Home, Work Safe” order. The Order was to remain in effect until April 30, 2020, unless modified, amended, rescinded or superseded.

165. On April 22, 2020, Harris County Judge Hidalgo issued a “Use of Face Coverings” Order requiring all persons over the age of ten (10) to wear some form of face covering in public places. The Order was to remain in effect until May 26, 2020, unless modified, amended, rescinded or superseded.

166. On April 28, 2020, the Commissioner’s Court of Harris County, issued an Order to Extend the Declaration of Local Disaster for Public Health Emergency to May 20, 2020 and Harris County Judge Hidalgo issued an Amended order on the “Use of Face Coverings” in order to make the Order more consistent with the governor’s newly issued Executive Order GA-18. The Order was to remain in effect until May 26, 2020, unless modified, amended, rescinded or superseded.

167. On May 1, 2020, Harris County Judge Hidalgo issued Harris County’s Second Amended Stay Home, Work Safe Order which restated the requirement that bars remain closed for on-premises service. The Order provided that essential services may operate at full occupancy, but encouraged operation at less-than-total occupancy. The Order encouraged the continued use of delivery, drive-thru or carry-out services. The Order was set to remain in effect until May 22, 2020.

168. On May 19, 2020, Harris County Commissioner's Court extended Harris County's Disaster Declaration through June 10, 2020.

169. On May 21, 2020, Harris County Judge Hidalgo issued a Fourth Amended Stay Home, Work Safe. The Order encouraged the continued use of delivery, drive-thru or carry-out services. The Order was set to remain in effect until June 10, 2020.

170. On June 19, 2020 Harris County Judge Hidalgo, issued an Executive Order Regarding Health and Safety Policy and Face Coverings, providing that the Harris County Commissioners Court's Declaration of Local Disaster for Public Health Emergency was effective unless extended, modified, or terminated early by Harris County Judge Hidalgo, that all commercial entities develop, post, and implement a health and safety policy, and that face coverings must be worn in public.

171. On July 1, 2020, Harris County Judge Hidalgo, issued an Amended Order Regarding Health and Safety Policy and Face Coverings, providing that the Harris County Commissioner Court's Declaration of Local Disaster for Public Health Emergency was effective through August 26, 2020, unless extended, modified or terminated early by Judge Hidalgo and incorporated and adopted Governor Abbott's, Executive Order GA-28.

B. City of San Antonio Closure Orders

172. On March 13, 2020, Bexar County Judge Nelson Wolff declared a state of local disaster and public health emergency due to the imminent threat arising from COVID-19.

173. On March 18, 2020, the Bexar County Commissioners Court approved an Order Continuing Declaration of State of Local Disaster for Bexar County (the "Order of Continuation of Declaration") and Bexar County Judge Wolff issued an Executive Order prohibiting all public and private gatherings within an enclosed space of fifty (50) persons or more in Bexar County

and directing local restaurants and bars to follow all CDC guidelines including, among other thing, to limiting the amount of persons on their premises to half the designated seating maximum occupancy and to ensure that all tables were at least six (6) feet apart.

174. On March 19, 2020, Bexar County Judge Wolff issued Executive Order NW-02 prohibiting all public and private gatherings within an enclosed space of ten (10) persons or more and prohibiting people from eating or drinking at bars, restaurants, and food courts while permitting the use of drive-thru, pickup, or delivery options.

175. On March 23, 2020, Bexar County Judge Wolff issued Executive Order NW-03, directing everyone in Bexar County to stay at home. The Order also required all non-Exempted businesses to cease all activities at any facility in Bexar County. The Order specified that restaurants were Exempted Businesses, but only permitted the use of delivery, curbside pick-up or carry out services. The Order was set to remain in effect until April 9, 2020.

176. On April 3, 2020, Bexar County Judge Wolff issued Executive Order NW-04 which required restaurants offering pick-up and delivery services to limit the amount of people at pickup or in an establishment so that social distancing may be maintained, to implement an organized line system where people are spaced at least six (6) feet apart, and to post the establishment's guidelines in a highly visible location.

177. On April 6, 2020, Bexar County Judge Wolff issued Executive Order NW-05, extending provisions of NW-03. The Order was set to remain in effect until April 30, 2020.

178. On April 29, 2020, Bexar County Judge Wolff issued Executive Order NW-07, which reopened dine-in services at restaurants that operate at up to twenty-five percent (25%) of their total listed occupancy while highly encouraging the use of drive-thru, pickup, or delivery options. The Order was set to remain in effect until May 19, 2020.

179. On May 19, 2020, Bexar County Judge Wolff issued Executive Order NW-08, allowing restaurants to engage in covered services as defined in GA-23. The Order was set to remain in effect until June 4, 2020.

180. On June 4, 2020, Bexar County Judge Wolff issued Executive Order NW-09, incorporating and adopting the most recent State Executive Order GA-26. The Order was set to remain in effect until June 16, 2020. Subsequent orders extended the effect until July 15, 2020.

181. On June 16, 2020, Bexar County Judge Wolff, issued a Second Order of Continuation of Declaration of State of Local Disaster for Bexar County.

182. On June 17, 2020, and June 25, 2020, Bexar County Judge Wolff, issued Executive Order NW-10 and NW-11 respectively, continuing the local disaster declaration and public health emergency for Bexar County, incorporating and adopting Governor Greg Abbot's Executive Order GA-26, and mandating that all commercial entities in Bexar County develop and implement a health and safety policy.

183. On July 15, 2020, Bexar County Judge Wolff issued Executive Order NW-13, permitting restaurants to operate at up to fifty percent (50%) of their total listed occupancy. The Order also stipulated that people shall not visit bars, except by means of drive-thru, pickup or delivery options. The Order was set to remain in effect until at least August 12, 2020.

184. On August 12, 2020, Bexar County Judge Wolff, issued Executive Order NW-14 continuing the local disaster declaration and public health emergency for Bexar County, continuing the mandate that restaurant only operate at fifty percent (50%) of the total listed occupancy of the restaurant and prohibiting people from visiting bars, unless they offered drive-thru, pickup, or delivery options. This Order is effective through at least September 16, 2020.

vii. **Palm – East Hampton, Palm – New York (West 50th), Palm – New York (West St.) and the State of New York Closure Orders**

185. On March 7, 2020, Governor of the State of New York Andrew Cuomo, issued Executive Order No. 202 Declaring a Disaster Emergency in the State of New York. The Executive Order remains in effect until September 7, 2020.

186. On March 12, 2020, Governor Cuomo issued Executive Order No. 202.1 cancelling or postponing any large gathering anticipated to be in excess of five hundred people. The Order also required any place of business or public accommodation to operate at no greater than fifty percent occupancy, and no greater than fifty percent (50%) seating capacity for thirty days effective Friday, March 13, 2020.

187. On March 16, 2020, Governor Cuomo issued Executive Order No. 202.3 cancelling or postponing any large gathering anticipated to be in excess of fifty people. The order also required restaurants and bars to cease serving food or beverages on-premises effective at 8 pm on March 16, 2020. The Order specified that, until further notice, restaurants and bars may only serve food or beverage for off-premises consumption and that retail on-premises licensees were permitted to sell alcohol for off-premises consumption by take-out or delivery, subject to reasonable limitations set by the State Liquor Authority. The Order was set to expire April 15, 2020.

188. On March 18, 2020, Governor Cuomo issued Executive Order No. 202.5 requiring the closure of all indoor common portions of retail shopping malls with more than 100,000 square feet of retail space available for lease while allowing stores located within shopping malls that had their own external entrances open to the public, to remain open subject to the limitation that restaurants may serve food via take out or delivery only. The Order was set to expire April 17, 2020.

189. On March 23, 2020, Governor Cuomo issued Executive Order No. 202.10 cancelling or postponing non-essential gatherings of individuals of any size for any reason. The Order was set to expire April 22, 2020.

190. On April 12, 2020, Governor Cuomo issued Executive Order No. 202.16 requiring all essential businesses to provide face coverings at their expense for employees who are present in the workplace and in direct contact with customers or members of the public. The Order was set to expire May 12, 2020.

191. On April 7, 2020, Governor Cuomo issued Executive Order No. 202.14 extending previous Orders which had closed or otherwise restricted public or private businesses or places of public accommodation and which required postponement or cancellation of all non-essential gatherings of individuals of any size for any reason.

192. On April 15, 2020, Governor Cuomo issued Executive Order No. 202.17 requiring individuals to wear a mask or face covering when in public. The Order was set to expire May 15, 2020.

193. On April 16, 2020 and then again on May 14, 2020, Governor Cuomo issued Executive Order No. 202.18 and No. 202.31 extending the provisions of Executive Orders Nos. 202.3, 202.4, 202.5, 202.6, 202.7, 202.8, 202.10, 202.11, and 202.13 which each closed or otherwise restricted public or private businesses or places of public accommodation and which required postponement or cancellation of all non-essential gatherings of individuals of any size for any reason and was effective until at least May 15, 2020 and then May 28, 2020 respectively.

194. On May 28, 2020, Governor Cuomo issued Executive Order No. 202.34 extending provisions of Executive Orders 202.3, 202.4, 202.5, 202.6, 202.7, 202.8, 202.10, 202.11, 202.13, 202.14, and 202.28 which each closed or otherwise restricted public or private

businesses or places of public accommodation. The Order stipulated that as soon as a region meets the prescribed public health and safety metrics, they will be eligible for Phase One reopening. The Order extended these provisions until June 27, 2020.

195. On May 29, 2020, Governor Cuomo issued Executive Order No. 202.35 extending provisions of Executive Orders 202.3, 202.4, 202.5, 202.6, 202.7, 202.8, 202.10, 202.11, 202.13, 202.14, 202.28, and 202.31 which each closed or otherwise restricted public or private businesses or places of public accommodation. The Order stipulated that as soon as a region meets the prescribed public health and safety metrics, they will be eligible for Phase One reopening. The Order extended these provisions until June 28, 2020.

196. On June 6, 2020, Governor Cuomo issued Executive Order No. 202.38 extending and modifying the directive contained in Executive Order No. 202.3 and permitted restaurants and bars to serve patrons food or beverage on-premises only in outdoor space, provided such restaurants or bars complied with Department of Health Guidance promulgated for such activity. Upon resumption of on-premises outdoor service of food and beverages at the licensed premises of restaurants and bars, the Order permitted restaurants and bars to expand the premises licensed by the State Liquor Authority to use contiguous public space and/or otherwise unlicensed contiguous private space under the control of such restaurant or bar subject to reasonable limitations and approvals by the Chairman of the State Liquor Authority and local municipalities, as well as being subject to the guidance promulgated by the Department of Health. The Order was effective through at least July 6, 2020.

197. On June 7, 2020, Governor Cuomo issued Executive Order No. 202.39 modifying Executive Order No. 202.38 to explicitly limit its permissive use of restaurant and bar outdoor

space for food and beverage on-premises service only to those regions that were in Phase 2 of the reopening. The Order was set to expire July 7, 2020.

198. On June 13, 2020, Governor Cuomo issued Executive Order No. 202.41 extending provisions of Executive Orders 202.3, 202.4, 202.5, 202.6, 202.7, 202.8, 202.10, 202.11, 202.13, 202.14, 202.28, 202.31, and 202.34 which each closed or otherwise restricted public or private businesses or places of public accommodation. The Order further provided that effective on June 12, 2020, the reductions and restrictions on the in-person workforce at non-essential businesses shall no longer apply to Phase Three industries in regions that meet the prescribed metrics for Phase Three reopening, including restaurants. As of June 12, 2020, the regions meeting the prescribed public health and safety metrics required for Phase Three reopening were: Finger Lakes, Central New York, Mohawk Valley, Southern Tier, and the North Country. None of which applied to Plaintiffs. The Order extended these provisions until July 13, 2020.

199. On June 18, 2020, Governor Cuomo issued Executive Order No. 202.43 requiring restaurants and bars that serve alcoholic beverages to inspect, monitor or otherwise supervise the area within one-hundred feet (100) of the licensed premises to ensure that any consumption of food or beverage comports with the applicable open container ordinances and the social distancing and face covering requirements set for businesses in any applicable Executive Order. The Order was effective through July 18, 2020.

200. On June 24, 2020, Governor Cuomo issued Executive Order No. 205 instituting quarantine restrictions on travelers arriving in New York from a state with a positive test rate higher than 10 per 1000,000 residents, or higher than a ten percent (10%) test positivity rate,

over a seven-day rolling average and requiring these travelers to quarantine for a period of fourteen (14) days.

201. On June 26, 2020, Governor Cuomo issued Executive Order No. 202.45 extending provisions of Executive Orders 202.3, 202.4, 202.5, 202.6, 202.7, 202.8, 202.10, 202.11, 202.13, 202.14, 202.28, 202.31, 202.34 and 202.35 which each closed or otherwise restricted public or private businesses or places of public accommodation. In addition, the Order removed the reductions and restrictions for Phase Four industries as determined by the Department of Health, on the in-person workforce at non-essential businesses or other entities. The Order was effective through July 26, 2020.

202. On July 16, 2020, Governor Cuomo issued Executive Order No. 202.52, effective through August 15, 2020, permitting all businesses licensed by the State Liquor Authority for on premises service of alcoholic beverages, and which are required as a license condition to make food available, to serve alcoholic beverages for on premises consumption or for off premises consumption only if the service of such alcoholic beverage is accompanied by the purchase of a food item by each individual that is served an alcoholic beverage.

203. On July 21, 2020, Governor Cuomo issued Executive Order No. 202.53 continuing Executive Order No. 202.45 which extended the provisions of 202.3, 202.4, 202.5, 202.6, 202.7, 202.8, 202.10, 202.11, 202.13, 202.14, 202.28, 202.31, 202.34, 202.35 and 202.42 which each closed or otherwise restricted public or private businesses or places of public accommodation, and allowed regions to enter Phase Four of the State's reopening, provided that as of July 20, 2020 the New York region is deemed to have met the prescribed public health and safety metrics required for Phase Four industries to reopen. This Order was effective through August 20, 2020.

A. New York City Closure Orders

204. On March 12, 2020, New York City Mayor Bill de Blasio issued Emergency Executive Order No. 98 declaring a Local State of Emergency to address the threat that COVID-19 poses to the health and welfare of New York residents and visitors. This Order has been extended multiple times by subsequent orders, most recently on August 8, 2020 in Emergency Executive Order No. 138 for an additional thirty (30) days.

205. On March 15, 2020, Mayor de Blasio issued Emergency Executive Order No. 99 requiring all places used for the gathering of any number of people for purposes such as food or drink consumption to operate at no greater than fifty percent (50%) occupancy and no greater than fifty percent (50%) of seating capacity.

206. On March 16, 2020, Mayor de Blasio issued Emergency Executive Order No. 100 requiring all establishments that offer food or drink to close until further notice. However, the Order did allow restaurants and bars to remain open for the sole purpose of providing take-out or delivery service, provided the establishment did not exceed fifty percent (50%) of their total occupancy or seating capacity while persons are waiting for take-out and that such persons follow social distancing protocols.

207. On March 20, 2020, Mayor de Blasio issued Emergency Executive Order No. 102 extending provisions of Emergency Executive Order 100 requiring the closure of restaurants except for take-out or delivery service for an additional five days.

208. On March 25, 2020, Mayor de Blasio issued Emergency Executive Order No. 103 extending provisions of Emergency Executive Order 102, which provided for the extension of Order 100 requiring the closure of restaurants except for take-out or delivery service, for an

additional five days. Subsequent orders extended the provisions related to restaurants until June 22, 2020.

209. On June 18, 2020, Mayor de Blasio issued Emergency Executive Order No. 126 suspended numerous New York City codes, rules and regulations in order to allow the Department of Transportation to establish and administer a program to expand seating options for restaurants on streets that have been opened across the City pursuant to the Open Streets initiative to promote open space and to enhance social distancing (“Open Restaurants Program”). The Open Streets program allows pedestrians and cyclists to use the roadbed of the street while maintaining social distancing, for outdoor food and beverage service. The Order was to remain in effect for five days unless terminated or modified.

210. On June 22, 2020, Mayor de Blasio issued Emergency Executive Order No. 127 permitting restaurants, bars and other establishments participating in the Open Restaurants Program to provide on-site outdoor service in accordance with all guidance and procedures applicable to the Program in addition to take-out and delivery services. Dine-in services for restaurants remains prohibited. The Order was to remain in effect for five days unless terminated or modified. Subsequent orders extended the provisions related to restaurants, with the most recent order (Emergency Executive Order No. 142) being issued on August 21, 2020 extending the orders for five days.

viii. Palm – Las Vegas and the State of Nevada Closure Orders

211. On March 12, 2020, Governor of the State of Nevada Steve Sisolak, issued a Declaration of Emergency for COVID-19, announcing an emergency in the state based on the public health emergency posed by COVID-19.

212. On March 17, 2020, Governor Sisolak issued a Nevada Health Response COVID-19 Risk Mitigation Initiative establishing social distancing guidelines, postponing or cancelling all gatherings, and directed all restaurants and bars to close their dine-in facilities and only offer carry-out, delivery, or drive-through service.

213. On March 18, 2020, Governor Sisolak issued Declaration of Emergency Directive 002 ceasing all operations of gaming establishments until at least April 16, 2020.

214. On March 20, 2020, Governor Sisolak issued Declaration of Emergency for COVID-19 Directive 003, permitting restaurants to serve prepared meals but not for onsite dining and continued to require all restaurants and food establishments to cease onsite dining and to only serve customers through take-out, drive-through, curbside pickup or delivery. In addition, the Directive required restaurants to adopt policies to ensure their customers receiving orders outside the food establishment maintain adequate social distancing, to disallow the formation of queues in a manner that violates social distancing guidelines, to adopt contactless payment systems, and for their workers to abide by all applicable hygiene, sanitation, and disinfecting guidelines.

215. On March 20, 2020, the Chief of The Department of Public Safety, Division of Emergency Management, Homeland Security Justin Luna issued an emergency regulation letter to and endorsed by Governor Sisolak defining essential and non-essential businesses, as well as parameters for essential businesses to conduct business in Nevada under Governor Sisolak's March 12, 2020 Declaration of Emergency and related directives. Restaurants and food establishments that offer meals on a take-out, curbside pickup, delivery, or drive-through basis only and food distribution pods to provide meals to students were included in the definition of "Essential Licensed Business." The letter further reiterated the previously set out social

distancing, hygiene, sanitation, and disinfecting guidelines Essential Licensed Businesses were required to follow.

216. On March 24, 2020, Governor Sisolak issued Declaration of Emergency Directive 007 prohibiting all general public gatherings of groups of ten (10) or more in any indoor or outdoor area and reinforcing the six-foot social distancing requirements.

217. On March 31, 2020, Governor Sisolak issued Declaration of Emergency Directive 010 Stay at Home Order, extending the Declaration of Emergency to April 30, 2020, ordering all Nevadans to stay in their residences unless to provide services, perform work necessary, or obtain services from Essential Healthcare operations or to perform work necessary to the operations of Essential Infrastructure, and prohibiting gatherings of individuals outside the home. The Directive allowed Nevadans to leave their homes for essential services. The Directive was extended by Directive 016 until May 15, 2020.

218. On April 8, 2020, Governor Sisolak issued Declaration of Emergency Directive 013, which among other things, required essential licensed businesses providing services or selling goods to the public to implement measures to control in-store traffic to ensure social distancing standards are maintained and to ensure that customers queued to enter the premises or pay for goods are adequately spaced consistent with social distancing standards.

219. On April 29, 2020, Governor Sisolak issued Declaration of Emergency Directive 016 extending Directive 003 which required all restaurants and food establishments to cease onsite dining and to only serve customers through take-out, drive-through, curbside pickup or delivery, extending Directive 007 prohibiting all indoor or outdoor public gatherings, and extending Directive 010 Stay at Home Order to May 15, 2020.

220. On May 7, 2020, Governor Sisolak issued Declaration of Emergency for COVID-19 Directive 018 Phase One Reopening, allowing restaurants, food establishments, and bars licensed to serve food to resume on-site dining at fifty percent (50%) of the maximum seating capacity under normal circumstances, excluding bar seating. In addition, the directive also imposed the following social distancing requirements: tables or booths were required to be spaced, or customers seated a minimum of six (6) feet apart from other customers, bar tops and bar areas were to remain closed, customers waiting to dine onsite were to wait outside the establishment until they could be seated in a way that meets social distancing guidelines, and to the extent possible, encouraged restaurants to require reservations to manage occupancy. This Directive was to remain in effect through May 30, 2020. In addition, on May 13, 2020 Governor Sisolak issued COVID-19 Phase One Reopening: General Guidance and on May 15, 2020, Governor Sisolak issued COVID-19 Phase One Reopening – Industry-Specific Guidance providing guidelines and protocols for individuals and businesses to reference.

221. On May 28, 2020, Governor Sisolak issued Declaration of Emergency Directive 021 – Phase Two Reopening Plan, allowing restaurants to continue to operate under the Phase One conditions set forth in Directive 018 and to additionally utilize tables and serve food within the bar area., provided that bar top seating is limited such that barstools are spaced at a minimum of six (6) feet apart from other barstools or other customers not in the same party. The Directive was to remain in effect until June 30, 2020. The directive was extended by Directive 026 until July 31, 2020.

222. On June 29, 2020, Governor Sisolak issued Declaration of Emergency Directive 026 extending the provisions of Directive 007 and Directive 021, Phase Two of the Nevada United: Roadmap to Recovery plan to July 31, 2020.

223. On July 10, 2020, Governor Sisolak issued Declaration of Emergency Directive 027, amending Section 17(1) of Directive 018 to limit seating to parties not greater than six (6) and restricting restaurants, food establishments and bars to operate under Phase One conditions set forth in Directive 018 when located in a county with an Elevated Disease Transmission. In addition, bar tops and bar areas in any establishment in a county with an Elevated Disease Transmission were required to be closed to customers. The Directive was to remain in effect until terminated by subsequent directive.

224. On August 14, 2020, Governor Sisolak issued Declaration of Emergency Directive 030, which provided that Sections 4, 5, and 6 of Directive 027 will expire on August 20, 2020, at which time Sections 25 (which provided that restaurants and food establishments shall operate under Phase One conditions set forth in Section 17 of Directive 018 allowing for the maximum of fifty percent (50%) seating capacity for onsite dining services including the utilization of tables and food service within the bar area) and 26 of Directive 021 become effective as the statewide baseline mitigation standards for restaurants and food establishments. This Directive shall remain in effect until terminated by a subsequent directive.

ix. Palm – Los Angeles and the State of California Closure Orders

225. On March 4, 2020, Governor of the State of California Gavin Newsom, issued a Proclamation of a State of Emergency, announcing an emergency in the state of California based on the public health emergency posed by COVID-19.

226. On March 15, 2020, Governor Newsom called for all bars, wineries nightclubs and brewpubs to close at a news conference. Governor Newsom stated that restaurants could remain open, but can serve only fifty percent (50%) their maximum occupancies.

227. On March 15, 2020, Governor Newsom issued Executive Order N-27-20, ordering the imposition of social distancing measures.

228. On March 16, 2020, California Health and Emergency Officials released Guidance to Prevent the Transmission of COVID-19 in Food and Beverage Venues, which directed bars to close unless authorized to provide sale for off-premises consumption. The Guidance also urged restaurants to close for in-restaurant seated dining and to be open only to drive-through or other pick-up and delivery options.

229. On March 19, 2020, Governor Newsom issued Executive Order N-33-20, ordering all individuals in California to stay home or at their place of residence except as needed to maintain continuity of operations of the federal critical infrastructure sectors.

230. On July 13, 2020, Governor Newsom ordered all counties in the state to close all bars and the indoor operations of restaurants, while permitting outdoor service at restaurants. In addition, The California Department of Public Health maintained a County Monitoring List which dictates the permitted operations for bars and restaurants in different counties around California.

A. City of Los Angeles Closure Orders

231. On March 4, 2020, Mayor of Los Angeles Eric Garcetti issued a Declaration of Local Emergency in response to the threat posed by COVID-19.

232. On March 15, 2020, Mayor Garcetti issued a Public Order Under City of Los Angeles Emergency Authority, ordering that all bars and night clubs that do not serve food to close to the public, and that all restaurants be prohibited from serving food for consumption on premises and remain open only for delivery or pick-up service.

233. On March 19, 2020, Mayor Garcetti issued a Public Order Under City of Los Angeles Emergency Authority, titled Safer at Home. Safer at Home ordered all persons living within the City of Los Angeles to remain in their homes, and prohibited public and private gatherings of any number of people occurring outside a residence. The Order also required the closure of all businesses that require in-person attendance by workers at a workplace, and specifically provided that all restaurants operate via delivery, pick-up or drive-thru only.

234. On March 19, 2020, Mayor Garcetti issued a Public Order Under City of Los Angeles Emergency Authority allowing for the sale of alcoholic beverages for delivery and take-out.

235. On March 19, 2020, Mayor Garcetti issued a Public Order Under City of Los Angeles Emergency Authority ordering restaurant workers to wear face coverings over their noses and mouths while performing their work.

236. On July 31, 2020, Mayor Garcetti issued a Public Order Under City of Los Angeles Emergency Authority titled Safer L.A. The Order reiterated that restaurants may prepare and offer food to customers via delivery, pick-up or drive-thru service, and directed restaurants to only utilize outdoor seating for on-premises dining.

x. **Palm – Orlando, Palm – Bay Harbor Islands and the State of Florida Closure Orders**

237. On March 1, 2020, Governor of the State of Florida Ron DeSantis issued Executive Order 20-51 directing the State Health Officer and Attorney General to declare a public health emergency in the State of Florida based on the threats posed by COVID-19. On March 9, 2020, Governor DeSantis issued Executive Order 20-52 declaring a state of emergency in the State of Florida. The Order was set to expire sixty days after signing, unless extended.

238. On March 17, 2020, Governor DeSantis issued Executive Order 20-68 suspending all sales of alcohol at establishments that derive more than fifty percent (50%) of their gross revenue from the sale of alcoholic beverages for 30 days. The Order also required all restaurants to limit their occupancy to fifty percent (50%) of their current building occupancy, and to follow the CDC social distancing guidelines by ensuring a minimum six-foot distance between any group of patrons and limiting parties to no more than ten (10) individuals. The Order was set to expire 30 days after issuance, and was extended throughout the duration of Executive Order 20-52 by Executive Order 20-91.

239. On March 20, 2020, Governor DeSantis issued Executive Order 20-71 prohibiting all sales of alcoholic beverages for consumption on-premises, and allowing for the delivery or take-away sale of alcoholic beverages. The Order also suspended all on-premises food consumption at restaurants in Florida while allowing them to continue providing delivery or take-out services. The Order was set to expire upon expiration of Executive Order 20-52, including any extensions.

240. On March 24, 2020, Governor DeSantis issued Executive Order 20-82 directing all persons who entered Florida from an area with substantial community spread, expressly including the New York Tri-State area to isolate or quarantine for a period of fourteen (14) days from their time of entry into the State of Florida. This Order was set to expire upon the expiration of Executive Order 20-52, including any extensions, or upon an Executive Order lifting the isolation or quarantine.

241. On March 24, 2020, Governor DeSantis issued Executive Order 20-83 directing the State Surgeon General and State Health Officer to issue a public health advisory against all

social or recreational gatherings of ten or more people. This Order was also set to expire upon the expiration of Executive Order 20-52, including any extensions.

242. On March 27, 2020, Governor DeSantis issued Executive Order 20-86 imposing additional requirements of certain individuals traveling to Florida.

243. On March 30, 2020, Governor DeSantis issued Executive Order 20-89 restricting public access to businesses and facilities deemed non-essential in Miami-Dade County, Palm Beach County, and Monroe County. The Order was to remain in effect until April 15, 2020 unless renewed or extended.

244. On April 1, 2020, Governor DeSantis issued Executive Order 20-91 requiring all senior citizens and individuals with a significant underlying medical condition to stay at home, and urging all persons in Florida to limit their movements and personal interactions outside the home to only those necessary to obtain or provide essential services or conduct essential activities. The Order further identified that “essential services” means and encompassed the list detailed by the U.S. Department of Homeland Security in its Guidance on the Essential Infrastructure Workforce and encouraged all businesses or organizations to provide delivery, carry-out or curbside service outside of the business or organization of orders placed online or via telephone. The Order was extended past its initial set expiration by Executive Order 20-111 through May 4, 2020.

245. On April 29, 2020, Governor DeSantis issued Executive Order 20-112 outlining Phase 1 of the Plan for Florida’s Recovery. The Order continued to require bars to suspend the sale of alcoholic beverages for on-premises consumption while allowing restaurants and food establishments in counties other than Miami-Dade, Broward and Palm Beach, to allow on-premises consumption of food and beverage, so long as they adopt appropriate social distancing

measures and limit their indoor occupancy to no more than twenty-five percent (25%) of their building occupancy. In addition, outdoor seating at restaurants was permissible with appropriate social distancing, which required maintaining a minimum of six feet between parties, only seating parties of no more than ten persons and keeping bar counters closed to seating. For Miami-Dade and Broward counties, the Order contemplated consideration and consultation with local leadership for allowances regarding resumption of services. For Palm Beach County, the restriction was removed by Executive Order 20-120 on May 11, 2020 and the restrictions as to Miami-Dade and Broward counties were removed by Executive Order 20-122 on May 18, 2020.

246. On May 8, 2020, Governor DeSantis issued Executive Order 20-114 extending the state of emergency declared in Executive Order 20-052 and all orders referenced in Executive Order 20-112 for 60 days.

247. On May 14, 2020, Governor DeSantis issued Executive Order 20-123 expanding Phase 1 of the Plan for Florida's Recovery. The Order provided that restaurants and food establishments in all Florida counties may serve patrons at indoor seating so long as they limit indoor occupancy at fifty percent (50%) of their seating capacity, excluding employees. The Order was to be effective through May 18, 2020.

248. On June 3, 2020, effective on June 5, 2020, Governor DeSantis issued Executive Order 20-139 outlining Phase 2 of the Plan for Florida's Recovery. The Order provided that restaurants and other establishments, and bars and other vendors licensed to sell alcoholic beverages for consumption on the premises in counties other than Miami-Dade, Broward and Palm Beach, may operate at fifty percent (50%) of their indoor capacity, excluding employees. The Order permitted bar areas to be open with seated service and outdoor seating, with appropriate social distancing. For Miami-Dade, Broward and Palm Beach Counties, the Order

contemplated consideration of the reopening orders after each county sought approval with written request from the County Mayor or Administrator.

249. On July 7, 2020, Governor DeSantis issued Executive Order 20-166 extending the state of emergency declared in Executive Order 20-52 for sixty (60) days and extending Executive Order 20-139, Phase 2 of the Plan for Florida's Recovery.

250. On August 5, 2020, Governor DeSantis issued Executive Order 20-192 rescinding the additional requirements for certain individuals traveling to Florida as set forth in Section 3 of Executive Order 20-139. The Order also provided that the Department of Business and Professional Regulation shall ensure all restaurants implement employee screening protocols pursuant to guidance developed by the Centers for Disease Control and Prevention.

A. Miami-Dade County Closure Orders

251. On March 12, 2020, County Mayor of Miami-Dade County Carlos A. Gimenez issued Miami-Dade County Declaration of Local State of Emergency in response to the threat posed by COVID-19. The Local State of Emergency was set to continue for seven days, and was extended each week until the present. The most recent extension was filed August 20, 2020.

252. On March 16, 2020, Mayor Gimenez issued Miami-Dade County Emergency Order 02-20 requiring restaurants, bars and any other food and/or alcohol service business establishment with seating for more than eight (8) people business within the incorporated and unincorporated areas of Miami-Dade County to close to the public between 11:00 p.m. and no earlier than 6:00 a.m., with an exception made for delivery services to operate during that period. The Order was set to expire upon expiration of the Local State of Emergency, unless cancelled, which Mayor Gimenez did on May 31, 2020.

253. On March 17, 2020, Mayor Gimenez issued Miami-Dade County Emergency Order 03-20 requiring restaurants, bars and any other alcohol and/or food service business establishment with seating for more than eight people within the incorporated and unincorporated areas of Miami-Dade County to close on-premises service of customers. The Order allowed delivery, pick-up or take out services. The Order was set to expire upon expiration of the Local State of Emergency, unless cancelled. Mayor Gimenez cancelled the order on May 31, 2020.

254. On March 18, 2020, Mayor Gimenez issued Miami-Dade County Emergency Order 04-20 prohibiting gatherings of ten or more people in any parks, beaches or recreation facilities owned or operated by Miami-Dade County. The Order also recommended social distancing and was set to expire upon expiration of the Local State of Emergency, unless cancelled. Mayor Gimenez cancelled the order on May 31, 2020.

255. On March 24, 2020, Governor Gimenez issued Miami-Dade County Emergency Order 10-20 prohibiting gatherings of ten or more individuals in public, urging essential commercial and retail establishments to continue to observe the CDC social distancing guidelines and urging individuals to remain home other than to engage in essential retail and commercial businesses.

256. On March 27, 2020, Mayor Gimenez issued Miami-Dade County Emergency Order 13-20 requiring essential commercial or retail establishments to use reasonable efforts to ensure that customers and employees maintain social distancing, as recommended by the current CDC guidance. The Order was set to expire upon expiration of the Local State of Emergency, unless cancelled. Mayor Gimenez cancelled the order on May 31, 2020.

257. On April 2, 2020, Mayor Gimenez issued Miami-Dade County Emergency Order 17-20 requiring restaurants to limit capacity and monitor entrances and exits to reduce their maximum occupancy load by fifty percent (50%) in those areas where food is sold. The Order was set to expire upon expiration of the Local State of Emergency, unless cancelled. Mayor Gimenez cancelled the order on May 31, 2020.

258. On April 2, 2020, Mayor Gimenez issued Miami-Dade County Emergency Order 20-20 requiring persons working in or visiting restaurants to wear facial coverings. The Order was set to expire upon expiration of the Local State of Emergency, unless cancelled.

259. On May 15, 2020, Mayor Gimenez issued Miami-Dade County Emergency Order 23-20 allowing the reopening of commercial and retail establishments, provided they comply with enumerated requirements as set forth in the “Moving To A New Normal Handbook” attached to the Order as Exhibit A. Restaurants in the unincorporated municipal service area that complied with the Order’s requirements were permitted to provide outdoor dining areas in accordance with the provisions attached to the order as Exhibit B. The Order was set to expire upon expiration of the Local State of Emergency, unless cancelled.

260. On June 19, 2020, Governor Gimenez issued Amendment No. 3 to Miami-Dade County Emergency Order 23-20 which provided that a retail or commercial establishment that falls out of compliance with the amended portions of Emergency Order 23-20 therein, was required to immediately close and could only reopen upon taking twenty-four (24) hours to take all necessary measures to get back into compliance and by executing an attestation attached to the Amendment No. 3 to Miami-Dade County Emergency Order 23-20 demonstrating the review has been completed and the measures have been taken.

261. On June 28, 2020, Mayor Gimenez issued Amendment No. 4 to Miami-Dade County Emergency Order 23-20 prohibiting the sale of alcohol for on-site consumption between the hours of 12:01 a.m. and 6:00 a.m. each day. The Order is set to expire upon expiration of the Local State of Emergency, unless cancelled.

262. On June 30, 2020, Mayor Gimenez issued Amendment No. 5 to Miami-Dade County Emergency Order 23-20 requiring that no establishment permitted to open that serves alcohol shall sell alcohol between the hours of 12:01 a.m. and 6:00 a.m. each day, while allowing such establishments to operate their kitchens for the purpose of providing delivery, pick-up and take out services. The Order is set to expire upon expiration of the Local State of Emergency, unless cancelled.

263. On July 2, 2020, Mayor Gimenez issued Miami-Dade County Emergency Order 27-20 imposing a curfew for all of Miami-Dade County effective from 10:00 p.m. each night through 6:00 a.m. the next morning. The Order was set to expire upon the expiration of the Miami-Dade County State of Local Emergency.

264. On July 7, 2020, effective July 9, 2020, Mayor Gimenez issued Amendment No. 2 to Miami-Dade County Emergency Order No. 26-20 limiting all restaurants and other food service establishments with seating for more than eight people within the incorporated and unincorporated areas of Miami-Dade County to offering outdoor on-premises service only between the hours of 6:00 a.m. and 10:00 p.m. and to providing delivery, pick-up, or take-out services. In addition, table sizes were limited to four persons per table and music was to be eliminated or set at a decibel level below that of a normal conversation. The Order was set to expire upon the expiration of the Miami-Dade County State of Local Emergency.

265. On August 28, 2020, Mayor Giminez issued Miami-Dade County Emergency Order 28-20 providing that restaurants and other food establishments with seating for more than eight people shall close for on-premises dining between 10:00 p.m. and 6:00 a.m. the next morning, while permitting such establishments to operate their kitchens for the purpose of providing delivery, pick-up and take-out services. The Order also provided that restaurants in the unincorporated municipal service area may also provide outdoor dining areas. The Order is set to expire upon the expiration of the Miami-Dade County State of Local Emergency.

B. Orange County Closure Orders

266. On March 12, 2020, County Mayor of Orange County Jerry L. Demings issued Orange County Declaration of State of Local Emergency in response to the threat posed by COVID-19. The State of Local Emergency was set to continue for seven days, and was extended each week until the present. The most recent extension was filed August 21, 2020.

267. On March 16, 2020, Mayor Demings issued Emergency Executive Order 2020-04 requiring individuals to remain at their primary residence or domicile except to conduct certain necessary activities. The Order defined restaurants as essential businesses, subject to the limitations and requirements under Federal, State and Local Emergency Orders. The order was set to expire on April 9, 2020.

268. On May 1, 2020, Mayor Demings issued Emergency Executive Order 2020-12 allowing restaurants to allow on-premises consumption of food and beverage, so long as they adopt social distancing measures and limit indoor occupancy to no more than twenty-five percent (25%) of their building occupancy. The Order stipulated that outdoor dining areas remain subject to county and city zoning requirements. The Order encouraged the continued use of delivery and

curb-side pickup services. The Order is set to expire upon expiration of the State of Local Emergency, unless earlier rescinded.

269. On May 1, 2020, Mayor Demings issued Emergency Executive Order 2020-12 instructing all persons in Orange County to avoid congregating in large groups of larger than ten (10) persons and to maintain a distance of at least six (6) feet in between persons. In addition, the Order provided that restaurants and other food establishments could allow on-premises consumption of food and beverage, so long as they adopted appropriated social distancing measures and limited their indoor capacity to no more than twenty-five percent (25%) of their building occupancy, excluding employees and that outdoor dining was permissible provided appropriate social distancing and bar counters remaining closed to seating. The Order further encouraged the use of single service condiments, the taking of reservations to ensure occupancy limits are not exceeded for those restaurants that re-opened their indoor dining facilities, the use of delivery and curb-side pickup in lieu of re-opening indoor dining, the disinfecting of all common areas and objects, and the use of message boards, printable disposable menus or the like in place of traditional menus.

270. On May 18, 2020, Mayor Demings issued Orange County Emergency Executive Order 2020-16 amending Emergency Executive Order 2020-12. The Order allowed restaurants to serve patrons at indoor seating so long as they limit indoor occupancy to fifty percent (50%) of their seating capacity. The Order superseded the requirement for a minimum of six feet between patrons to the extent appropriate partitioning was put in place. In addition, bar counters were to remain closed to seating and outdoor seating remained available with appropriate social distancing. The Order is set to expire upon expiration of the State of Local Emergency, unless earlier rescinded.

271. On May 31, 2020, Mayor Demings issued Emergency Executive Order 2020-19 which established a curfew for all of Orange County between 10:00 p.m. and 5:00 a.m. the next day. This curfew was terminated on June 8, 2020 by Emergency Executive Order 2020-21. On August 28, 2020, Mayor Demings issued Emergency Executive Order No. 2020-36 extending the State of Local Emergency declared in Executive Order 2020-01 for seven additional days.

C. Bay Harbor Islands Closure Orders

272. On March 11, 2020, Mayor of Bay Harbor Islands Stephanie Bruder declared a state of emergency.

273. On March 23, 2020, Mayor Bruder issued “Safer at Home” Emergency Order urging all persons living within the Town of Bay Harbor Islands to remain in their homes and prohibiting all public and private gatherings of any number of people outside a residence. The Order permitted residents to engage in essential retail and commercial activities, including going to restaurants for take-out and delivery only, and subject to social distancing separation of at least six (6) feet between patrons. The Order is to remain in effect until rescinded by the Town Manager.

xi. Palm – Nashville and the State of Tennessee Closure Orders

274. On March 12, 2020, Governor of the State of Tennessee Bill Lee issued Executive Order No. 14 declaring that a state of emergency exists to facilitate the response to COVID-19.

275. On March 22, 2020, Governor Lee issued Executive Order No. 17 prohibiting social gatherings of ten or more people and barring individuals from eating or drinking onsite at restaurants, bars, or other similar food or drink establishments. The Order specified that restaurants, bar and similar food or drink establishments shall be closed to persons except only to offer drive-through, pickup, carry-out or delivery service for food or drink. The Order also

allowed restaurants and limited service restaurants to provide take-out and delivery sales of alcoholic beverages so long as the sale of an any alcoholic beverage or beer was for consumption off of the premises of the restaurant or limited service restaurant. This Order was to remain in effect through April 6, 2020.

276. On March 30, 2020, Governor Lee issued Executive Order No. 22, directing Tennesseans to stay home unless engaging in essential activities, the closure of non-essential businesses for public use, and reiterating that Essential Services businesses should follow and observe the Health Guidelines and necessary precautions advised by the CDC. The Order defined restaurants serving food for off-premises consumption as essential.

277. On April 24, 2020, Governor Lee issued Executive Order No. 29, which amended Executive Order No. 17 to reopen restaurants for on-site dining so long as they operated in accordance with the operational guidance and measures adopted and/or issued by the Governor's Economic Recovery Group, which included, among other things, that restaurants limit their capacity to fifty percent (50%) and ensure that tables are no less than six feet apart, with no more than six persons per table.

A. City of Nashville Closure Orders

278. On March 15, 2020, Chairman of the Board of Health A. Alex Jahangir issued Health Director Order 1 suspending operations at bars and limiting restaurant capacity to half the capacity specified in the food service establishment permit or to a maximum capacity of 100, whichever was lower.

279. On March 18, 2020, Mayor of Nashville John Cooper issued Executive Order No. 006 declaring a State of Civil Emergency related to the COVID-19 epidemic.

280. On March 20, 2020, Chief Medical Director of Health Michael C. Caldwell, issued Amended and Restated Order 1 pursuant to the Declaration of Public Health Emergency adopted by the Board of Health for Nashville and Davidson County on March 15, 2020. The Order prohibited restaurants or bars from allowing the on-premises consumption of food or beverages by their customers while allowing restaurants and bars to provide call-in, take-out, drive-through, delivery, and/or curbside services.

281. On March 22, 2020, Chief Medical Director of Health Michael C. Caldwell, issued Amended and Restated Order 3 Safer at Home Order urging citizens of Nashville to shelter at home and prohibiting gatherings of more than ten (10) persons. The Order was effective through April 24, 2020, and was extended by subsequent Orders.

282. On May 8, 2020, effective on May 11, 2020 through May 31, 2020, Chief Medical Director of Health Michael C. Caldwell issued Order 5 Phase One: Reopening. The Order permitted restaurants and bars previously closed to the public serving food from a menu to open to the public at fifty percent (50%) or less of occupancy based on Tennessee's Building and Fire Code, provided they use the entire amount of space on which its occupancy limit is based subject to a number of social distancing and CDC guidance conditions.

283. On May 22, 2020, Chief Medical Director of Health Michael C. Caldwell issued Order 6 Phase Two: Reopening increasing the capacity at which restaurants and bars serving food from a menu could operate to seventy-five percent (75%) or less based on Tennessee's Building and Fire Code and subject to social distancing and CDC guidance conditions.

284. On June 22, 2020, Chief Medical Director of Health Michael C. Caldwell issued Amended and Restated Order 7 Phase Three: Reopening which maintained the same seventy-five percent (75%) occupancy and CDC guidelines established in Order 6.

285. On July 2, 2020, Chief Medical Director of Health Dr. Michael Caldwell issued Health Director Order 9. This order recognized the rise in COVID-19 cases, and again imposed a fifty percent (50%) limit on restaurant occupancy.

286. On July 23, 2020, Chief Medical Director of Health Michael C. Caldwell issued Amendment 2 of Order 9 Phase Two With Modifications: Reopening prohibiting the take-out, window, or curbside delivery and sale of alcohol by restaurants after 10:00 p.m. and requiring all restaurant customers be off premises and the premise closed to the public at 10:00 p.m.

287. On August 7, 2020, Chief Medical Director of Health Michael C. Caldwell issued Order 10 Phase Two With Additional Modifications allowing alcoholic beverages to be sold for consumption on restaurant premises, but not allowing customers to remove those beverages from the premises. In addition, receiving call-in orders, providing take-out, window, drive-through or curbside services for preparation of food or non-alcoholic beverages was permitted to remain open and continue to operate after 10:00 p.m. while the sale of alcohol was prohibited, except when sold for consumption on premises or for off-premises delivery.

288. On August 15, 2020, Chief Medical Director of Health Dr. Caldwell issued Amended and Restated Order 10 Phase Two with Additional Modifications that limited restaurants in the geographic areas in Nashville covering Downtown and Midtown to operate at the lesser of fifty percent (50%) of their maximum capacity or one hundred (100) patrons per floor, provided the business equally distributes patrons throughout the entire amount of space and subject to social distancing and CDC guidelines, including but not limited to no parties of more than six people allowed, bar counter areas must be closed to the public, and all customers shall be off premises and the premise closed to the public by 10:30 p.m.

289. Also on August 15, 2020, Chief Medical Director of Health Dr. Caldwell issued Order 11. This order reiterated the fifty percent (50%) limit on restaurant occupancy and required social distancing and CDC Guidelines.

290. On September 1, 2020, Chief Medical Director of Health Dr. Caldwell issued Second Amended and Restated Order 10 Phase Two With Additional Modifications and Order 11 Amended and Restated Phase Two With Modifications: Reopening extended the fifty percent (50%) limit on restaurant occupancy and the required social distancing and CDC Guidelines through at least September 30, 2020.

xii. Palm – McLean (VA) and the Commonwealth of Virginia Closure Orders

291. On March 12, 2020, Governor of the Commonwealth of Virginia Ralph S. Northam issued Executive Order No. 51 declaring a state of emergency in the Commonwealth of Virginia due to COVID-19. The declaration was extended to remain in effect until amended or rescinded.

292. On March 20, 2020, Governor Northam issued Order of Public Emergency One Amended restricting the number of patrons allowed in restaurants to ten (10) patrons or less and provided that any observation of eleven (11) or more patrons in a restaurant may result in immediate operation permit suspension. The Order was to stay in effect until amended or rescinded.

293. On March 23, 2020, Governor Northam issued Executive Order No. 53 prohibiting all public and private gatherings of ten (10) or more people and closing all dining and congregation areas in restaurants while permitting delivery and take-out services. In addition, all businesses were required to adhere to enhanced sanitizing practices on common surfaces and

apply the relevant workplace guidance from state and federal authorities. The restaurant provision of the Order was extended until May 14, 2020.

294. On March 30, 2020, Governor Northam issued Executive Order No. 55 ordering all individuals in Virginia to remain at their place of residence unless engaging in essential enumerated activities and prohibiting all public and private in-person gatherings of more than ten (10) individuals. The Order was to remain in effect until June 10, 2020.

295. On May 8, 2020, Governor Northam issued Executive Order No. 61 outlining Phase One easing certain temporary restrictions due to COVID-19. This Order allowed for restaurants to operate delivery, take-out and outdoor dining services only, provided they comply with the Guidelines for All Business Sectors, and sector-specific guidance for restaurant and beverage services incorporated in the Order. Those Guidelines included, but were not limited to, requiring occupancy not exceeding the fifty percent (50%) of the lowest occupancy load on the certificate of occupancy, no more than ten (10) patrons seated as a party, tables be positioned six (6) feet apart, and bar seats and congregating areas of restaurants be closed to patrons. The Order continued to prohibit all public and private in-person gatherings of more than ten (10) individuals, amended Executive Order No. 55 and was to remain in effect until June 10, 2020. Executive Order 61 was subsequently amended to remain in effect until amended or rescinded by further executive order.

296. However, on May 12, 2020, Governor Northam issued Executive Order No. 62 temporarily delaying certain jurisdictions in the Northern Virginia region from entering Phase One in Executive Order No 61 and were to remain in Phase Zero. One of those jurisdictions being Fairfax County, where Plaintiff Palm – McLean (VA) is located. Accordingly, in all of the affected Counties, all dining and congregation areas in restaurants remained closed. Restaurants

were permitted to continue to offer delivery and take-out services. All public and private in-person gatherings of more than ten (10) individuals were prohibited and a stay at home order remained in effect. The Northern Virginia Regions entrance into Phase One was to be delayed and the restrictions in this Order to remain in place until May 28, 2020.

297. On June 2, 2020, Governor Northam issued Executive Order No. 65 outlining Phase Two easing certain temporary restrictions due to COVID-19. The Order allowed for restaurants to operate delivery, take-out, and indoor and outdoor dining and beverage services, provided they comply with The Guidelines for all Business Sectors which included, among other things that restaurant occupancy may not exceed the fifty percent (50%) of the lowest occupancy load on the certificate of occupancy, all parties, whether seated together or across multiple tables, must be limited to fifty (50) patrons or less , tables must be six (6) feet apart, bar seats and congregating areas were to remain closed except for through traffic and frequently contacted surfaces were required to be thoroughly cleansed and disinfected regularly. All public and private in-person gatherings acceptable limit increased to no more than fifty (50) persons. The Order was to remain in effect until amended or rescinded by further executive order.

298. On June 9, 2020, Governor Northam issued Amended Executive Order No. 65 providing that effective June 12, 2020, the Northern Virginia Region and the City of Richmond shall enter Phase Two.

299. On June 30, 2020, Governor Northam issued Executive Order No. 67 outlining Phase Three easing certain temporary restrictions due to COVID-19. The Order provided that restaurants could continue to offer delivery, take-out, and indoor and outdoor service, provided they comply with the Guidelines for All Business Sectors, which now did not contain a limit on restaurant's operating capacities and reinstated self-service options for customers. While bar

seats and congregating areas of restaurants were to remain closed, non-bar seating in the bar area was permitted for customer seating so long as they were six (6) feet apart. The Order increased the limit on public and private in-person gathering to no more than 250 persons. The Order was to remain in effect until amended or rescinded by further executive order.

300. On August 21, 2020, Governor Northam issued Amended Executive Order No. 67 Phase Three further easing of certain restrictions due to COVID-19 and Order of Public Health Emergency Seven which generally provided for the same guidance to restaurants and for public gatherings while extending their effectiveness until amended or rescinded by further executive order.

xiii. Palm – Washington, D.C. and the Washington D.C. Closure Orders

301. On February 28, 2020, Mayor of Washington D.C. Muriel Bowser issued Mayor's Order 2020-035 outlining steps to coordinate the District's emergency response planning for the potential impacts of COVID-19.

302. On March 11, 2020, Mayor Bowser issued Mayor's Order 2020-045 declaring a public emergency in the District of Columbia based on the threats posed by COVID-19. The Order was to remain in effect for fifteen (15) days, and has most recently been extended through October 9, 2020 by Mayor's Order 2020-079.

303. On March 16, 2020, Mayor Bowser issued Mayor's Order 2020-048 prohibiting mass gatherings of more than fifty (50) people anywhere in the District of Columbia and suspending table seating at restaurants and taverns. The Order further clarified that restaurants and taverns may operate delivery and grab-and-go operations only. The Order was effective immediately and was extended past its initial date of expiration, March 31, 2020.

304. On March 24, 2020, Mayor Bowser issued Mayor's Order 2020-053, requiring all non-essential business activities to cease and continued to prohibit large gatherings of ten (10) or more persons. Essential businesses were permitted to remain open, subject to Social Distancing Requirements. While the Order permitted restaurants to remain open as an "essential business," they were only permitted to provide delivery, carry out, or grab and go services, including food trucks and rapid made-to-order meals, but not for sit down consumption. The Order was to remain in effect through April 24, 2020, and was extended by Mayor's Order 2020-063 until May 15, 2020.

305. On March 30, 2020, Mayor Bowser issued Mayor's Order 2020-054, a "Stay at Home" order requiring all individuals living in Washington, DC to stay at their place of residence, except to engage in essential activities. The Order incorporated the definition for Essential Businesses from Mayor's Order 2020-053, which defined restaurants as an essential business and permitted them to provide delivery, carry out, or "grab and go" services. The Order was set to remain in effect through April 24, 2020, and was extended by Mayor's Order 2020-063 until May 15, 2020.

306. On May 27, 2020, Mayor Bowser issued Mayor's Order 2020-067, declaring that Washington, DC is in Phase One of reopening which lifted the restrictions in the prior Stay-at-home Order and allowed for restaurants to open for outdoor dining in addition to continuing to provide takeout, delivery and "grab and go" services. While outdoor dining was allowed, it was subject to certain requirements including that the outdoor dining area must have been approved by the District Department of Transportation, all outdoor dining customers must be seated, place orders, and be served at tables, no more than six (6) individuals were to be seated at a table, and all tables must be at least six (6) feet apart. In addition, all restaurants were required to

implement sanitization and disinfection protocols and were encouraged to use a reservation system and keep customer logs to facilitate contact tracing by DOH. In addition, the Order extended the Public Emergency and Public Health Emergency through July 24, 2020, continued to prohibit large gatherings of more than ten (10) individuals and was to remain in effect until the date of the state of emergency was lifted or extended, or until the Order was rescinded, superseded or amended.

307. On May 31, 2020, Mayor Bowser issued Mayor's Order 2020-068 imposing a district-wide curfew from 11:00 p.m. until 6:00 a.m. the next day and then again on June 1, 2020, Mayor Bowser issued Mayor's Order 2020-069 which ordered another curfew from the hours of 7:00 p.m. to 6:00 a.m. to last through June 3, 2020.

308. On June 19, 2020, Mayor Bowser issued Mayor's Order 2020-075, effective June 22, 2020, initiating and outlining Phase Two of Washington, DC reopening. In addition to providing outdoor dining, takeout, delivery and "grab and go" services, the Order permitted restaurants to open for indoor service up to fifty percent (50%) of their maximum capacity as listed in their certificate of occupancy, excluding staff and patrons seated in outdoor dining areas. The Order required that all indoor customers must be seated, place orders, and be served at tables, all tables must be six (6) feet apart and no more than six (6) individuals may seated at one table. Further, the Order prohibited bar seating if any bartender was working at the bar and queuing indoors, as well as encouraging restaurants to use a reservation system and to keep customer logs to facilitate contact tracing if necessary. The Order was to remain in effect for the duration of the public health emergency or until it was repealed.

309. On July 22, 2020, Mayor Bowser issued Mayor's Order 2020-079, extending prior extensions issued in Mayor's Orders 2020-063 and 2020-067, of the public emergency and public health emergency declarations for the district through October 9, 2020.

310. On July 24, 2020, Mayor Bowser issued Mayor's Order 2020-081 requiring all residents and persons traveling to and from "high-risk areas" within any prior fourteen (14) days for non-essential travel to self-quarantine for fourteen (14) days following their return or arrival to DC. This Order went into effect on July 27, 2020 and is effective through October 9, 2020.

2. The Impact of COVID-19 and the Closure Orders

311. As a direct result of COVID-19 and the Closure Orders, issued directly because of COVID-19, physical damage to property, and to prevent further immediately impending physical damage to property, Plaintiffs' have suffered direct physical loss and/or damage or destruction, have experienced lost and/or limited functionality, and have been impaired by the existence of COVID-19.

312. Aerosol, droplet, and fomite transmission are the basis for masking, eye protection, use of gowns and gloves in the healthcare setting, social distancing, hand-washing, stay-at-home orders, home-shelter orders, distance learning, reduced capacity and/or occupancy limits, and other measures implemented in these executive orders. The virus is physically present in the community, including in the air and on objects and surfaces. Aerosol and fomite transmission are real, and due to constant recontamination of air and surface areas, it is simply impossible to entirely eradicate the virus from indoor spaces and such surfaces if there continue to be unmasked people in the area.

313. Reducing capacity in public settings is one way to reduce the presence of virus on objects and surfaces and, therefore, reduce the risk of transmission, especially during times of

rising infection rates. Wearing masks reduces, but does not eliminate, the likelihood of virus being aerosolized and transferred to objects and hard surfaces.

314. Even with cleaning and disinfecting, the presence of virus on objects and surfaces, though reduced, cannot be reliably eliminated because these surfaces will continue to become contaminated as people spread the virus through. The only way to ensure the absence of virus on objects and surfaces is to prevent access to an environment.

315. Plaintiffs were forced to suspend or reduce business at their restaurants due to COVID-19 and the Closure Orders mandating the closure and/or reduction of on-site services for restaurants, as well as in order to take necessary steps to prevent further damage and minimize the suspension of business and continue operations.

316. COVID-19 and COVID-19-containing respiratory droplets and nuclei are physical substances that are active on physical surfaces and are also emitted into the air. Such substances are not theoretical, intangible, or incorporeal, but rather have a material existence and are physically dangerous.

317. COVID-19 was present in the immediate area of Plaintiffs' restaurants. Plaintiffs operate their restaurants in major cities across the country. With the spread of COVID-19 likely beginning as early as November, 2019 and the rate of infection across the country since, as a matter of statistical probability, guests with COVID-19 *must* have been within their properties.

318. Individuals, including employees, with COVID-19 or otherwise carrying COVID-19 have been physically present at Plaintiffs' restaurants. COVID-19 and/or coronavirus-containing fomites (*i.e.*, inanimate objects), respiratory droplets, and nuclei from those individuals come into contact with, adhere to, and attach to the surfaces of the property upon

which they land, including without limitation, the real property, furniture, fixtures, and personal property at Plaintiffs' restaurants.

319. COVID-19 or COVID-19-containing fomites, respiratory droplets, and nuclei physically alter property to which they adhere, attach, or come in contact with including without limitation by altering the surfaces of that property and/or by making physical contact with those previously safe, inert materials dangerous.

320. When individuals carrying COVID-19 breathe, talk, cough, or sneeze, they expel aerosolized droplet nuclei that remain in the air and, like dangerous fumes, make the premises unsafe and affirmatively dangerous. In addition, COVID-19 physically alters the air. Air inside buildings that was previously safe to breathe, but can no longer safely be breathed due to COVID-19, has undergone a physical alteration.

321. The presence of COVID-19, including but not limited to COVID-19 droplets or nuclei on solid surfaces and in the air at insured property, has caused and will continue to cause direct physical damage to physical property and ambient air at the premises. COVID-19, a physical substance, has attached and adhered to Plaintiffs' property, and by doing so, altered that property. Such presence has also directly resulted in loss of functionality of that property.

322. Persons who tested positive for COVID-19 were present at insured property on various dates during 2020. Persons who came into contact with persons diagnosed with COVID-19 were present at insured property on various dates during 2020.

323. On information and belief, persons who were pre-symptomatic or asymptomatic and unknowingly carrying the coronavirus, including but not limited to employees, customers, and other business visitors, were present at insured property on various dates during 2020.

324. COVID-19 droplets have been conveyed from infected persons (whether symptomatic, pre-symptomatic, or asymptomatic) to solid surfaces, including but not limited to furniture, doors, floors, bathroom facilities, equipment, and supplies, and into the air and HVAC system at Plaintiffs' restaurants, causing damage and alteration to physical property and ambient air at the premises. Aerosolized COVID-19 has entered the air in Plaintiffs' restaurants.

325. The physical losses to Plaintiffs' restaurants include without limitation the rendering of its insured property from a satisfactory state to a state dangerous and/or unsatisfactory for use because of the fortuitous presence and effect of the COVID-19, fomites, and respiratory droplets or nuclei directly upon its property.

326. The physical losses to Plaintiffs' restaurants include without limitation the physical loss of the ability to use covered property for its primary function.

327. The presence of COVID-19 caused "direct physical loss, damage or destruction, of the property of the type insured under the Policy" by: (i) causing direct physical loss of or damage to the covered property; (ii) denying use of and damaging the covered property; (iii) requiring physical repair and/or alterations to the covered property; and/or (iv) by causing a necessary suspension of operations during a period of restoration.

328. Because of the threat, spread, and/or presence of COVID-19, Plaintiffs' indoor dining rooms have lost their functionality and their space can only operate at limited capacities, if at all, and the air in Plaintiffs' restaurants and the Plaintiffs' physical properties are altered and damaged and have become unsafe, necessitating repairs and/or alterations.

329. In addition, the functional space in Plaintiffs' restaurants have been diminished by the spread or presence of COVID-19. For example, Plaintiffs have installed plexiglass and other barriers at multiple restaurants.

330. In an effort to remediate the air in Plaintiffs' restaurants and to repair the physical loss or damage, including the infestation on the surface of covered property caused by COVID-19, Plaintiffs took several measures, including but not limited to, the changing and installation of new air filters at multiple locations.

331. Thus, there have been many obvious structural alterations, changes, and/or repairs made to Plaintiffs' restaurants so that Plaintiffs could continue their business after experiencing direct property damage which was caused by COVID-19 and to avoid imminent threat of further property damage.

332. The threat, presence and transmission COVID-19, caused "direct physical loss of or damage to each "Covered Property" under the Plaintiffs' Policy, by: (i) impairing the function of, infesting, causing loss and damaging the Covered Property; (ii) denying use of and damaging the Covered Property; (iii) structurally altering the air, surface, and the character of the Covered Property and thus requiring physical repair and/or alterations to the Covered Property; and/or (iv) causing necessary suspension of operations during a period of restoration.

333. The Closure Orders prohibited access to Plaintiffs' covered property and the area immediately surrounding covered property, in response to dangerous physical conditions resulting from a covered cause of loss.

334. As a result of the presence of COVID-19 and the Closure Orders, Plaintiffs lost business income and incurred extra expense as further detailed below.

335. Plaintiffs have submitted a claim for loss to Defendant under their Policy due to the threat, spread, and/or presence of COVID-19 and the Closure Order, but Defendant has effectively denied that claim.

3. Plaintiffs' "All – Risks" Policy

336. In return for the payment of a premium, Defendant issued the Policy to Plaintiffs, which covers property located at each of Plaintiffs' restaurant locations "against all risks of direct physical loss, damage or destruction occurring during the terms of this Policy to the type of property insured hereunder...except as hereinafter excluded" *See* Exhibit A, Policy, at 14-15 of 69.

337. Plaintiffs restaurants covered by the Policy are located at:

- i. Palm – Atlantic City
2801 Pacific Avenue, Suite #102
Atlantic City, New Jersey 08401
- ii. Palm – Atlanta
3391 Peachtree Road, NE
Atlanta, Georgia 30326
- iii. Palm – Boston
200 Dartmouth Street
Boston, Massachusetts 02116
- iv. Palm – Charlotte
6705-B Phillips Place Court
Charlotte, North Carolina 28210
- v. Palm – Chicago
323 East Wacker Drive
Chicago, Illinois 60601
- vi. Palm – Houston
6100 Westheimer
Houston, Texas 77057
- vii. Palm – East Hampton
94 Main Street
East Hampton, New York 11937
- viii. Palm – Las Vegas
3500 Las Vegas Boulevard South, Suite A7
Las Vegas, Nevada 89109

- ix. Palm – Los Angeles
1100 South Flower Street
Los Angeles, California 90015
 - x. Palm – Bay Harbor Islands
9650 East Bay Harbor Drive
Bay Harbor Islands, Florida 33154
 - xi. Palm – Nashville
140 5th Avenue South
Nashville, Tennessee 37201
 - xii. Palm – New York (West 50th)
250 West 50th Street
New York, New York 10119
 - xii. Palm – Orlando
5800 Universal Boulevard
Orlando, Florida 32819
 - xiii. Palm – New York (West St.)
206 West Street
New York, New York 10013
 - xiv. Palm Management Corp.
7380 West Sand Lake Road, Suite 450
Orlando, Florida 32819
 - xv. Palm – San Antonio
233 East Houston Street
San Antonio, Texas 78205
 - xvi. Palm – McLean (VA)
1750 Tyson’s Boulevard
McLean, Virginia 22102
 - xvii. Palm – Washington, D.C.
1225 19th Street NW
Washington, D.C. 20036
338. Defendant drafted the Policy.
339. The Policy is effective from September 1, 2019, through September 1, 2020.

340. Plaintiffs performed all of their obligations under the Policy and in exchange for Defendant's agreement to take on Plaintiffs' risk of loss, Plaintiffs dutifully paid Defendant annual premiums.

341. Pursuant to the Special Time Element – Cancellation Coverage, the Policy expressly covers, among other things, Plaintiffs' loss resulting from the cancellation of, and/or inability to accept bookings or reservations, receive admissions, and/or interference with the business at Plaintiffs' restaurants as a direct result of "contagious or infectious disease (including decontamination and clean up costs) ..." *See* Exhibit A, Policy, at 35-36 of 69.

342. By providing for the "decontamination and clean up costs" of "contagious or infectious disease," the Policy explicitly recognizes that "contagious or infectious disease" physically damages property.

343. Accordingly, because the Policy specifically covers remediation of the damage caused by "contagious or infectious disease," the physical damage to property caused by "contagious or infectious disease" is "physical loss, damage or destruction...to the type of property insured" under the Policy.

344. The existence and actual presence of COVID-19 on the tables, chairs, walls, floors, door handles, railings, equipment, and other insured property at Plaintiffs' restaurants have triggered coverage under the Policy because COVID-19 caused actual damage to the insured property and has also caused (and continues to cause) Plaintiff to experience covered business interruption losses.

a. COVID-19 Triggered Coverage Under the “All Risks” Policy

345. The existence and actual presence of COVID-19 at Plaintiffs restaurants has triggered coverage under the Policy and has also caused (and continues to cause) Plaintiffs to experience covered business interruption.

346. In addition, the existence and presence of COVID-19 on property away from Plaintiffs’ restaurants has triggered coverage under the Policy.

347. COVID-19 has caused (and continues to cause) physical loss and/or physical damage to property, including Plaintiff’s property. The property has been impaired. COVID-19 also has impaired many other properties, including those within and without a ten-mile radius of each of Plaintiffs’ restaurants.

348. Those properties, including bars, restaurants, shopping centers, and many other businesses cannot be currently used in the manner in which they were before COVID-19.

349. The loss of functionality is no less physical than the impact of a property having lost its roof to a tornado or hurricane. Where once property could carry on its business function, the property with a blown away and crumbling roof cannot operate in that way. Where once the property could seat patrons away from the elements, it can no longer do so. That is physical damage, as is the loss of function at Plaintiffs’ restaurants caused by COVID-19.

350. The presence of COVID-19 on property damages the property. It makes it unsafe. It makes it cause sickness. Because Plaintiffs’ restaurants are frequented by many people, COVID-19 has no doubt been present at Plaintiffs’ restaurants and has impaired property surfaces causing physical loss and/or damage or destruction to covered property.

351. Plaintiffs restaurants suffered direct physical loss, damage or destruction. Due to COVID-19, Plaintiffs’ restaurants have become unsafe, and thus does not function, for its

intended purpose. Their restaurants' business functions have been impaired. If they were to conduct business as usual, the disease and virus would show up and people would get sick. This is not a non-physical or remote loss such as one occasioned by a breach of contract, loss of a market, or the imposition of a government penalty.

352. The presence of virus or disease constitutes physical damage to property, as the industry has recognized since at least 2006. When preparing so-called "virus" exclusions to be placed in some policies, but not others, the insurance industry drafting arm, ISO, circulated a statement to state insurance regulators that included the following:

Disease-causing agents may render a product impure (change its quality or substance), or enable the spread of disease by their presence on interior building surfaces or the surfaces of personal property. When disease-causing viral or bacterial contamination occurs, potential claims involve the cost of replacement of property (for example, the milk), cost of decontamination (for example, interior building surfaces), and business interruption (time element) losses. Although building and personal property could arguably become contaminated (often temporarily) by such viruses and bacteria, the nature of the property itself would have a bearing on whether there is actual property damage. An allegation of property damage may be a point of disagreement in a particular case.

353. The presence of virus or disease has resulted in physical damage to property in that manner in this case.

354. Moreover, due to COVID-19, Plaintiff's restaurants have suffered direct physical loss and damage under the plain meaning of those words. COVID-19 has impaired Plaintiffs' property by making it unusable in the way that it had been used before COVID-19.

355. Instead of being able to pack in patrons, due to the Closure Orders, Plaintiffs various restaurant locations have been forced to close their doors, limit their service to curbside pick-up or delivery, or resume in-person to a severely limited number of customers at any one

time, provided they followed mandated social distancing protocols. To do so otherwise would not only violate the Closure Orders, but it would also lead to the emergence or reemergence of COVID-19 at the Plaintiffs' restaurants and in the community at large. Until COVID-19 was brought even slightly under control, even such limited use as this was impossible.

356. Plaintiffs' loss is "direct." Plaintiffs are not, for example, asking Defendant to reimburse Plaintiffs after someone obtained a judgment against Plaintiffs for getting them sick. Rather, Plaintiffs are asking Defendant to pay for its loss of business income occasioned by being unable to use their property. Further, COVID-19 was not only a substantial factor in causing the loss, it also was the predominant or immediate factor in causing the loss or damage: COVID-19 was close in proximity to the loss or damage, such that any ordinary person would think that the loss or damage was in the zone of danger of COVID-19, and as a matter of ordinary speech and usage an ordinary person would understand and say that COVID-19 caused the loss or damage. Plaintiffs will present expert testimony to a jury to establish the proximity in distance of the virus and the common understanding of the cause of the virus, which will establish to a jury that the loss or damage was direct – even under the strictest test on the meaning of "direct."

357. Plaintiffs' loss is "physical." The physical space of Plaintiffs' restaurant properties has been altered by the threat, spread, and/or presence of COVID-19. COVID-19 structurally altered the surfaces of covered property and ambient air within covered properties. Plaintiffs will present expert chemical testimony to show the structural alteration to the ambient air within and surfaces of covered property. Plaintiffs are unable to use their spaces in the manner in which they had previously used those spaces, as Plaintiffs will show through the facts and expert testimony on a safe occupancy of physical space. The probability of illness prevents

the functioning and/or use of the physical space in no less of a way than, on a rainy day, a crumbling and open roof from the aftermath of a tornado would make the interior space of a business unusable.

358. Plaintiffs' loss is in fact a "loss." Plaintiffs have lost the use and function of their physical space(s) for business purposes. It is the diminishment the physical space in the buildings. What once could hold many can now safely hold only a few. It is the injury and structural change to ambient air within covered property and the surfaces of covered property.

359. The impairment of the business function is also damage to the restaurants.

360. Plaintiffs have submitted a claim pursuant to the Policy as a result of sustaining losses covered by the Policy. Despite receiving initial notice of Plaintiffs' claim(s) over nine months from the time of this filing, Defendant has yet to investigate, pay, or deny Plaintiffs' claim, or any portion thereof. In addition, Defendant has failed to timely and adequately respond to any of Plaintiffs' inquiries into the status of their claims or to even communicate next steps to resolve them. On information and belief, Defendant has done so in bad faith based on a systematic company practice designed to minimize payments to its insureds.

361. More specifically, upon information and belief, Defendant has, on a widescale basis with many if not all of its insureds, wrongfully refused to provide coverage due to COVID-19 and the resultant executive orders by civil authorities that have required the suspension of business without any meaningful investigation of the claims.

b. Multiple Coverages are Triggered under the "All Risks" Policy

362. In addition to triggering the Policy's "all risks" coverage, Plaintiffs' claims triggers the Policy's Time Element coverage, multiple property "Extensions," and "Extensions of Time Element Coverage" provided under the Policy including but not limited to the following.

i. COVID-19 Triggered the Policy's Time Element Coverage

363. The Policy affords coverage for Plaintiffs' business interruption losses, subject to the Policy's terms and conditions.

364. COVID-19 has caused Plaintiffs to suffer business interruption loss from the necessary interruption or reduction of business operations as a direct result of physical loss and damage of the type insured under the Policy.

365. This loss triggers coverage under the Policy's Time Element provisions including, without limitation, coverage for up to the Period of Recovery and/or the Maximum Period of Recovery of Business Interruption Gross Earnings loss, Business Interruption Loss of Profits, Extra Expense, Rental Value loss, Royalties loss, Leasehold Interest loss, and Soft Costs loss.

A. *COVID-19 Triggered the Policy's Extra Expense Coverage*

366. COVID-19 has caused Plaintiffs to incur reasonable and necessary expenses to continue as nearly normal as practicable the conduct of Plaintiffs' business. Such expenses are beyond those that would have normally been incurred in conducting the business absent the presence of COVID-19.

367. The expense incurred by Plaintiffs beyond those necessary in the normal operation of its business solely as a result of the physical loss and damage caused by COVID-19 trigger coverage under the Policy's Extra Expense coverage.

ii. COVID-19 Triggered the Policy's Property Extensions

A. *COVID-19 Triggered the Policy's Claims Preparation Coverage*

368. The Policy affords coverage for Plaintiffs' claim preparation expenses, subject to the Policy's terms and conditions.

369. COVID-19 has caused Plaintiff to incur expenses in order to prepare and certify the amount of loss payable under the Policy triggering the Policy's Claims Preparation Coverage.

B. *COVID-19 Triggered the Policy's Contamination Cleanup Coverage*

370. The Policy affords coverage for Plaintiffs' costs or expenses incurred to clean up and/or remove contaminated land and/or water resulting from direct physical loss, damage or destruction to Plaintiffs' restaurants, subject to the terms and conditions of the Policy.

371. Plaintiffs incurred expenses to clean up contaminated property at Plaintiffs' restaurants triggering the Policy's Contamination Cleanup Coverage.

C. *COVID-19 Triggered the Policy's Debris Removal and Cost of Clean Up Coverage*

372. The actual or suspected presence of COVID-19 at Plaintiffs' restaurants that has resulted in direct physical loss, damage or destruction of Plaintiffs' property has caused Plaintiffs to incur necessary and reasonable expenses to clean up, remove, and/or adhere to the Closure Orders mandated protocols to clean and disinfect Plaintiffs' restaurants to eliminate or minimize the presence of COVID-19.

373. The expense incurred by Plaintiffs beyond those necessary in the normal operation of Plaintiffs' business as a result of the physical loss and/or damage or destruction caused by COVID-19 triggers coverage under the Policy's Debris Removal and Cost of Clean Up coverage.

D. *COVID-19 Triggered the Policy's Decontamination Costs Coverage*

374. The actual or suspected presence of COVID-19 has contaminated and/or caused direct physical loss, damage or destruction to Plaintiffs' property.

375. At all relevant times, the Closure Orders were in effect, have been enforced, and complied with by Plaintiffs in a manner that satisfied their obligations thereunder.

376. This coverage provision applies notwithstanding any other Policy provision or exclusion, including any purported exclusion respecting pollution and/or contamination.

377. The increased cost of decontamination and/or removal of such contaminated insured property caused by COVID-19 and Plaintiffs' compliance with the Closure Orders issued in response to COVID-19, triggers coverage under the Policy's Decontamination Costs coverage.

E. *COVID-19 Triggered the Policy's Demolition and Increased Cost of Construction Coverage*

378. COVID-19 caused direct physical loss, damage or destruction to Plaintiffs' restaurants and the restoration, repair or use of Plaintiffs' property was and is regulated by the enforcement of numerous ordinances, regulations, or government directives, in the Closure Orders.

379. The Plaintiffs' have incurred costs to (re)construct, restore, or repair their restaurants as required by the Closure Orders to bring both the undamaged and damaged portions of their restaurants' property into compliance with the Closure Orders mandated cleaning and social distancing protocols and practices in an effort to continue their business operations, even at a severely limited capacity.

380. These additional costs incurred by Plaintiffs' to comply with the Closure Orders triggers the Policy's Demolition and Increased Cost of Construction Coverage.

F. *COVID-19 Triggered the Policy's Expediting Expenses Coverage*

381. COVID-19 caused direct physical loss, damage or destruction to Plaintiffs' restaurants and as a result Plaintiffs' incurred reasonable extra costs to make temporary repairs, expedite permanent repairs, and/or expedite permanent replacement of such property.

382. In addition, Plaintiffs' were force to incur these costs in order to fully comply with the mandates of the Closure Orders, allowing Plaintiffs to continue their business operations, even at a severely limited capacity.

383. These repair costs incurred by Plaintiffs triggered the Policy's Expediting Expenses coverage.

G. *COVID-19 Triggered the Policy's Preservation of Property Coverage*

384. The policy affords coverage for the expenses incurred by Plaintiffs in taking actions for the temporary protection and preservation of property covered under the Policy in the event of actual or imminent direct physical loss, damage or destruction to such property.

385. This type of coverage has historically been known as "sue and labor" coverage or a "sue and labor" provision, and property policies have long provided coverage for these types of expenses.

386. Plaintiff incurred expenses and losses as a direct result of COVID-19 and the Closure Orders issued directly as a result of COVID-19 and in an effort to prevent property damage and further imminent property damage.

387. In remediating the property loss and/or damage or destruction caused by COVID-19 and in complying with the Closure Orders and otherwise suspending or limiting operations, Plaintiffs have incurred expenses taking action to protect and preserve their property.

388. These expenses incurred by Plaintiffs triggered the Policy's Preservation of Property coverage.

H. *COVID-19 Triggered the Policy's Removal Coverage*

389. The Policy covers incurred expenses to remove and/or temporarily store insured property as a direct result of imminent danger of physical loss, damage or destruction.

390. Plaintiff incurred expenses to remove or temporarily store property in imminent danger of direct physical loss, damage or destruction caused by COVID-19 and in order to comply with the Closure Orders, issued as a direct result of COVID-19 and in an effort to prevent property damage and further imminent property damage.

391. These expenses incurred by Plaintiff triggered the Policy's Removal Coverage.

iii. COVID-19 Triggered the Policy's Attraction Property Coverage

392. COVID-19 has also caused, and is continuing to cause, physical loss and damage to property away from Plaintiffs' restaurants, including property within five (5) statute miles Plaintiffs' restaurants that attracts business to Plaintiffs' restaurants.

393. Plaintiffs have sustained, and will continue to sustain, a loss of business income directly resulting from physical loss and damage of the type insured to property of the type insured that attracts business to Plaintiffs' restaurants triggering the Policy's Attraction Property coverage.

iv. COVID-19 Triggered the Policy's Extensions of Time Element Coverage

394. As a direct result of COVID-19 and the physical loss, damage or destruction it has caused and is continuing to cause of the type insured under the Policy, Plaintiffs have suffered Time Element business interruption loss, triggering coverage under, including but not limited to, the Policy's below Extensions of Time Element Coverage.

A. *COVID-19 Triggered the Policy's Expenses to Reduce Loss Coverage*

395. As a direct result of COVID-19 and the physical loss and damage it has caused and is continuing to cause of the type insured under the Policy, Plaintiffs have suffered Time Element business interruption loss and have incurred expenses necessary to reduce same in an amount to be proven at trial.

396. These losses suffered by Plaintiffs triggered the Policy's Expenses to Reduce Loss Coverage.

B. *COVID-19 Triggered the Contingent "Time Element" Coverage*

397. Plaintiffs have suffered Time Element business interruption loss as a direct result of the physical loss, damage or destruction caused by and continuing to be caused by COVID-19 to property of the type insured by the Policy of others in the vicinity of Plaintiffs' restaurants that attracts customers to Plaintiffs' restaurant and to direct and indirect suppliers and/or receivers of Plaintiffs which has prevented the rendering or accepting of goods and/or services to or from the Plaintiffs.

398. This business interruption loss is covered under the Policy's Contingent "Time Element" coverage.

C. *COVID-19 Triggered the Policy's Interdependent "Time Element" Coverage*

399. As a direct result of the physical loss, damage or destruction caused COVID-19 to Plaintiffs' restaurants, Plaintiffs have suffered Time Element business interruption loss within and among companies owned or controlled by Plaintiffs, or that are joint ventures or partnerships in which Plaintiffs have an interest.

400. As a result, the Policy's Interdependent "Time Element" coverage was triggered.

D. *COVID-19 Triggered the Interruption by Civil or Military Authority Coverage*

401. The physical damage, loss or destruction or imminent loss caused by COVID-19 at property located within ten (10) statute miles of Plaintiffs' restaurants has directly resulted in the issuance of orders and directives, including but not limited to the above Closure Orders, preventing or impairing access to Plaintiffs' restaurants.

402. As a result, Plaintiffs have sustained, and will continue to sustain, Time Element business interruption losses.

403. These business interruption losses are covered under the Policy's Interruption by Civil or Military Authority coverage.

E. *COVID-19 Triggered the Loss of Ingress or Egress Coverage*

404. COVID-19 and the physical damage, loss or destruction it has caused, and continues to cause within ten (10) statute miles of Plaintiffs' restaurants, has reduced and/or interrupted Plaintiffs' normal business operations because ingress to or regress from Plaintiffs' restaurants has been prevented or impaired.

405. The Time Element business interruption losses sustained by Plaintiffs as a result of the necessary suspension and/or reduction of Plaintiffs' business as a result of the total or partial denial of access to Plaintiffs' restaurants triggers coverage under the Policy's Ingress/Egress coverage.

F. *COVID-19 Triggered the Law, Ordinance, Regulation or Governmental Directive*

406. COVID-19 and the Closure Orders, issued as a direct result of COVID-19, regulated the reconstruction, restoration, repair or use of Plaintiffs' property at the time COVID-

19 caused physical loss, damage or destruction to Plaintiffs' property, as well as other similarly situated businesses.

407. Plaintiffs' incurred additional expenses and delay in order to ensure both their damaged and undamaged property were in full compliance with all relevant Closure Orders.

408. This additional time required by Plaintiffs' triggered and is covered by the Policy's Law, Ordinance, Regulation or Governmental Directive coverage.

G. *COVID-19 Triggered the Policy's Downzoning Coverage*

409. COVID-19 caused Plaintiffs' restaurants to suffer physical loss, damage or destruction. As a result of COVID-19 and the resulting property loss and/or damage, Plaintiffs were caused to comply with the Closure Orders regulating the repair, use or occupancy of Plaintiffs' restaurants.

410. As a result of complying with the Closure Orders, Plaintiffs' were forced to operate and/or forced to rebuild their restaurant space in a manner that reduced occupancy from before COVID-19 and complying with the Closure Orders.

411. Plaintiffs' reduced occupancy business interruption loss triggered the Policy's Downzoning coverage.

H. *COVID-19 Triggered the Policy's Special Time Element – Cancellation Coverage*

412. Plaintiff has suffered loss resulting from the cancellation of, and/or inability to accept bookings or reservations, receive admissions, and/or interference with the business at Plaintiffs' restaurants as a direct result of "contagious or infectious disease (including decontamination and clean up costs)," the closing of the whole or part of Plaintiffs' restaurants by order of a civil authority due to the existence or threat of hazardous conditions either actual or suspected at Plaintiffs' restaurants, and/or to the extent such Time Element loss is not otherwise

insured under the Policy, as a direct result of an “outbreak of a contagious and/or infectious disease” within a ten (10) mile radius of Plaintiffs’ restaurants. *See* Exhibit A, Policy at 35-36 of 69.

413. COVID-19 is a contagious or infectious disease.²⁶

414. Plaintiffs’ restaurants were forced to close in whole or in part due to multiple civil authority orders, as discussed supra, due to the existence and/or threat of hazardous conditions either actual or suspected at Plaintiffs’ restaurants.

415. The business interruption loss caused by COVID-19 and the Closure Orders as a direct result of COVID-19 triggers the Policy’s Special Time Element – Cancellation Coverage, which covers the actual loss sustained by Plaintiffs.

c. No Exclusion Impacts Coverage

416. No exclusion in the Policy applies to preclude or limit coverage for the actual or suspected presence of COVID-19 at or away from Plaintiffs’ restaurants, the physical loss, damage or destruction to property at Plaintiffs’ restaurants, and/or any of the Time Element business interruption losses that has and will continue to result from the physical loss, damage or destruction to property. To the extent that Defendant contends any exclusion(s) apply, such exclusion(s) are unenforceable.

d. The Policy’s Pollution, Contamination Exclusion Does Not Apply

417. The Policy’s Special Time Element – Cancellation Coverage affords coverage for business interruption loss resulting from “contagious or infectious disease.” *See* Exhibit A, Policy, at 38 of 69.

²⁶ *See* <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/question-and-answers-hub/q-a-detail/q-a-coronaviruses> (last viewed on August 24, 2020).

418. Specifically, the Policy's Special Time Element – Cancellation Coverage provides coverage for, among other things, the “actual loss sustained...resulting from the cancellation of, and/or inability to accept bookings or reservations for accommodation, receive admissions, and/or interference with the business at any insured location all as a direct result of the ‘Occurrence’ of: ... contagious or infectious disease (including the decontamination and clean up costs).”

419. The Policy also contains an exclusion that purports to preclude coverage for “contaminants or pollutants.” *See* Exhibit A, Policy, at 38 of 69.

420. The Policy defines “contaminants or pollutants” as, “any material that after its release can cause or threaten damage to human health or human welfare or causes or threatens damage, deterioration, loss of value, marketability or loss of use of property insured by this Policy, including, but not limited to, bacteria, virus, or hazardous substances as listed in the Federal Water Pollution Control Act, Clean Air Act, Resource Conservation and Recovery Act of 1976, and Toxic Substances Control Act, or as designated by the U.S. Environmental Protection Agency.” *See* Exhibit A, Policy, at 38 of 69.

421. The Policy's “contaminants or pollutants” exclusion does not exclude coverage for loss caused by “contagious or infectious disease.”

422. The Policy's “contaminants or pollutants” exclusion does not exclude coverage for immediate costs to protect or preserve insured property due to impending physical loss or damage.

423. The Policy's “contaminants or pollutants” exclusion does not purport to exclude coverage for business interruption losses.

424. Further, since at least 2006, when the insurance industry began recognizing that the presence of virus or disease can constitute physical damage, the insurance industry drafting arm, ISO, began drafting express “virus” exclusions, of which the insurance industry began incorporating into their policies either in their form or as an endorsement which provides in pertinent part, “[W]e 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.” If Defendant had wanted to exclude losses due to “virus,” Defendant was free to do so and could have included a standardized express virus exclusion first drafted at least fourteen (14) years ago.

425. In addition, the Policy’s “contaminants or pollutants” exclusion purports to exclude any direct “physical loss, damage or destruction caused by, resulting from, contributed to or made worse by actual, alleged, or threatened *release, discharge, escape or dispersal* of ‘contaminants or pollutants’...” and defines “contaminants or pollutants” as “any material that *after its release* can cause or threaten damage to human health ...” Written as such, the Policy’s “contaminants or pollutants” exclusion only applies to “any material”, including “virus”, as some sort of medical or commercial waste that was actually, allegedly, or threatened to be, released, discharged, escaped, or dispersed and thus is inapplicable to Plaintiffs’ immediate claims.

426. To the extent that Defendant contends that the Policy’s “contaminants or pollutants” exclusion bars coverage for loss caused by “contagious or infectious disease,” cost incurred to preserve or protect Plaintiffs insured property, Time Element business interruption loss, or some other aspect of Plaintiffs’ claim, the Policy is at best, ambiguous, and therefore, must be construed in favor of coverage.

e. **The Policy's Special Time Element – Cancellation Coverage Sublimit Does Not Cap Plaintiffs' Losses**

427. Under the Policy, Defendant must cover Plaintiffs for the actual presence of “contagious or infectious disease” at Plaintiffs’ restaurants, pursuant to the Policy’s Special Time Element – Cancellation Coverage section.

428. This coverage is denoted as one of the Extensions of Time Element Coverage under the Policy and do not purport to reduce other coverages available under the Policy. They are additive. Other coverages under the Policy that might also apply to loss or damage from or caused by contagious or infectious disease or the threat of contagious or infectious disease, are not impacted by the Special Time Element – Cancellation Coverage sublimits. Further, any sublimit applicable to the Special Time Element – Cancellation Coverage does not apply to limit the Policy’s other coverages that may apply to physical loss or damage to Plaintiffs’ restaurants.

V. CLAIMS FOR RELIEF

COUNT I

Declaratory Judgment

429. Plaintiffs repeat and reallege the allegations in Paragraphs 1-428 as if fully set forth herein.

430. Plaintiffs seek the Court’s declaration of the parties’ rights and duties under the Policy, pursuant to New Jersey Statutes Annotated 2A:16-53 and New Jersey Rules of Court 4:42-3. A justiciable controversy exists between Plaintiffs and Defendant regarding the availability of coverage under the Policy for Plaintiffs’ claim(s).

431. Accordingly, Plaintiffs seek a declaration from the Court that:

a. The various coverage provisions identified herein are triggered by the Plaintiffs’ claims;

b. The Interruption by Civil or Military Authority provision and the Special Time Element —Cancellation Coverage provision sublimit apply on a per occurrence basis and there have been multiple occurrences;

c. No Policy exclusion applies to bar or limit coverage for Plaintiffs' claim; and

d. The Policy covers Plaintiffs' claim.

COUNT II

Breach of Contract – Property Loss and/or Damage or Destruction

432. Plaintiffs repeat and reallege the allegations in Paragraphs 1-428, as if fully set forth herein.

433. The Policy is a valid and enforceable contract between Plaintiffs and Defendant.

434. In the Policy, Defendant agreed to cover property against all risks of physical loss, damage or destruction not otherwise excluded.

435. COVID-19 has caused and is continuing to cause physical loss and/or physical damage to Plaintiff's property.

436. No exclusions apply to bar coverage.

437. Plaintiffs are entitled to coverage for the physical loss and/or damage up to the Policy's \$25,000,000 of coverage.

438. Plaintiffs have complied with all applicable policy provisions, including the paying of premiums and providing timely notice of its claim.

439. Nonetheless, Defendant unjustifiably refuses to pay for Plaintiffs' physical loss or damage in breach of the Policy.

440. Plaintiffs have suffered and continue to suffer damages as a result of Defendant's breach(es) of the Policy.

441. Plaintiffs are entitled to damages as a result of Defendant's breach in an amount to be determined at trial, including pre- and post-judgment interest and any other costs and relief that this Court deems appropriate.

COUNT III

Breach of Contract – Time Element Coverage

442. Plaintiffs repeat and reallege the allegations in Paragraphs 1-428, as if fully set forth herein.

443. The Policy is a valid and enforceable contract between Plaintiffs and Defendant.

444. In the Policy, Defendant agreed to cover Business Interruption Gross Earnings, Business Interruption Loss of Profits, and Extra Expense, as provided in the Time Element coverage, resulting from the necessary interruption or reduction of Plaintiffs' business operations caused by direct physical loss, damage or destruction, of the property of the type insured under the Policy.

445. COVID-19 has caused and, upon information and belief, is continuing to cause, physical loss and/or damage or destruction to Plaintiffs' property and the property of others that has caused Plaintiffs to suffer business interruption losses and incur extra expense.

446. No exclusions apply to bar coverage.

447. Plaintiffs are entitled to coverage for their business interruption losses and incurred extra expense related to COVID-19 up to the Policy's per occurrence limits of liability for business interruption losses per occurrence or any applicable sublimits.

448. Plaintiffs complied with all applicable policy provisions, including paying premiums and providing timely notice of its claim.

449. Nonetheless, Defendant unjustifiably refuses to pay for these losses and expenses in breach of the Policy.

450. Plaintiffs have suffered and continue to suffer damages as a result of Defendant's breach of the Policy.

451. Plaintiffs are entitled to damages as a result of Defendant's breach in an amount to be determined at trial, including pre- and post-judgment interest and any other costs and relief that this Court deems appropriate.

COUNT IV

Breach of Contract – Extensions and Extensions of Time Element Coverage

452. Plaintiffs repeat and reallege the allegations in Paragraphs 1-428, as if fully set forth herein.

453. The Policy is a valid and enforceable contract between Plaintiffs and Defendant.

454. In the Policy, Defendant agreed to afford additional coverage as provided in the Policy's coverage "Extensions" and "Extensions of Time Element Coverage."

455. COVID-19 has caused and, upon on information and belief, is continuing to cause, physical loss and/or damage or destruction to Plaintiffs' property and the property of others that has caused Plaintiffs' to suffer losses under the Policy's coverage "Extensions" and "Extensions of Time Element Coverage."

456. No exclusions apply to bar coverage.

457. Plaintiffs are entitled to coverage for losses related to COVID-19 up to each coverage "Extensions" and "Extensions of Time Element Coverage" limit of liability or any applicable sublimits.

458. Plaintiffs have complied with all applicable Policy provisions, including paying premiums and providing timely notice of its claim.

459. Nonetheless, Defendant unjustifiably refuses to pay for these losses and expenses in breach of the Policy.

460. Plaintiffs have suffered and continue to suffer damages as a result of Defendant's breach of the Policy.

461. Plaintiffs are entitled to damages as a result of Defendant's breach in an amount to be determined at trial, including pre- and post-judgment interest and any other costs and relief that this Court deems appropriate.

COUNT V

Breach of the Covenant of Good Faith and Fair Dealing

462. Plaintiffs repeat and reallege the allegations in Paragraphs 1-428, as if fully set forth herein.

463. Defendant has effectively denied Plaintiffs' claim for coverage under the Policy relating to its losses from COVID-19.

464. Defendant's denial of Plaintiffs' claim lacks any reasonable basis.

465. Defendant has failed to conduct a reasonable investigation of Plaintiffs' claim under the Policy and, therefore, Defendant's basis for its denial is unreasonable.

466. Upon information and belief, Defendant has, on a widescale basis with many if not all its insureds, refused to provide coverage due to COVID-19 and the resultant executive orders issued by civil authorities that have required the suspension and/or reduction of business operations. Defendant employed a systematic "one-size-fits-all" approach to adjusting and denying coverage for all COVID-19 claims, including Plaintiffs' claim.

467. Defendant knew or was actually or implicitly aware of the lack of any reasonable basis to deny coverage.

468. Defendant acted with reckless disregard as to the unreasonableness of its denial.

469. Defendant breached its duty of good faith and fair dealing by failing to reasonably investigate Plaintiffs' claim and provide coverage.

470. Defendant's denial of coverage constitutes bad faith.

471. As a result of Defendant's bad faith, Plaintiffs have suffered and are continuing to suffer damages.

472. Plaintiffs are entitled to an award of damages as a result of Defendant's bad faith in an amount to be determined at trial, including attorney's fees, pre- and post-judgment interest and any other costs and relief that this Court deems appropriate.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court enter judgment in their favor and against Defendant as follows:

1. A declaration from the Court that:
 - a. The various coverage provisions identified herein are triggered by Plaintiffs' claim;
 - b. No Policy exclusion applies to bar or limit coverage for Plaintiffs' claim; and
 - c. The Policy covers Plaintiffs' claim.
2. For special and consequential damages against Defendant in an amount to be proved at trial, in excess of \$15,000;
3. Pre- and post-judgment interest, as provided by law;
4. An award of attorney's fees and costs of suit incurred; and

5. For such other and further relief as the Court deems just and proper.

JURY DEMAND

Plaintiffs hereby demand a trial by jury on all claims so triable.

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, W. Mark Lanier is hereby designated as trial counsel, subject to his admission *pro hac vice*.

Dated: February 23, 2021

Respectfully submitted,

DiCELLO LEVITT GUTZLER LLC
Attorneys for Plaintiffs

By: _____

F. Franklin Amanat, Esq.
NJ Attorney ID No. 906122012
444 Madison Avenue, Fourth Floor
New York, New York, 10022
Telephone: 646-933-1000, Ext. 502
famanat@dicellolevitt.com

Mark A. DiCello, Esq.
NJ Attorney ID No. 306102019
7556 Mentor Avenue
Mentor, Ohio 44060
Telephone: 440-953-8888
madicello@dicellolevitt.com

Of Counsel:

W. Mark Lanier*
Ralph (Skip) McBride*
Alex Brown*
Matthew D. Przywara*
THE LANIER LAW FIRM PC
10940 West Sam Houston Parkway North, Suite 100
Houston, Texas 77064
Telephone: 713-659-5200
WML@lanierlawfirm.com
alex.brown@lanierlawfirm.com
Skip.McBride@LanierLawFirm.com

(continued...)

Denman H. Heard*
HEARD LAW FIRM, PLLC
2925 Richmond Avenue, Suite 1550
Houston, Texas 77098
Telephone: 877-317-2698
Denman@heardlawfirm.com

Adam J. Levitt*
Amy E. Keller*
Daniel R. Ferri*
Mark Hamill*
Laura E. Reasons*
DICELLO LEVITT GUTZLER LLC
Ten North Dearborn Street, Sixth Floor
Chicago, Illinois 60602
Telephone: 312-214-7900
alevitt@dicellolevitt.com
akeller@dicellolevitt.com
dferr@dicellolevitt.com
mhamill@dicellolevitt.com
lreasons@dicellolevitt.com

Kenneth P. Abbarno*
Mark Abramowitz*
DICELLO LEVITT GUTZLER LLC
7556 Mentor Avenue
Mentor, Ohio 44060
Telephone: 440-953-8888
kabbarno@dicellolevitt.com
mabramowitz@dicellolevitt.com

Timothy W. Burns*
Jeff J. Bowen *
Jesse J. Bair*
Freya K. Bowen*
BURNS BOWEN BAIR LLP
One South Pinckney Street, Suite 930
Madison, Wisconsin 53703
Telephone: 608-286-2302
tburns@bbblawllp.com
jbowen@bbblawllp.com
jbair@bbblawllp.com
fbowen@bbblawllp.com

(continued...)

Douglas Daniels*
DANIELS & TREDENNICK
6363 Woodway, Suite 700
Houston, Texas 77057
Telephone: 713-917-0024
douglas.daniels@dtlawyers.com

* Applications for admission *pro hac vice* to be filed

RULE 4:5-1 CERTIFICATION

I hereby certify that to the best of my knowledge the matter in controversy is not the subject of any other action pending in any court or of any pending arbitration proceeding, and that no other action or arbitration proceeding is contemplated. I am not aware of any non-party who should be joined in the action pursuant to R. 4:28 or who is subject to joinder pursuant to R. 4:29-1(b) because of potential liability to any party on the basis of the same transactional facts.

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

/s/ F. Franklin Amanat

F. Franklin Amanat

DiCello Levitt Gutzler LLC

Dated: February 23, 2021